

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

STEPHEN JONES AND RICHARD
RENSHAW,

Plaintiffs,

v.

C.A. No.: 1:25-cv-02445

PERDUE FARMS INC., PERDUE
AGRIBUSINESS LLC, AND PERDUE
FOODS LLC,

Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS, STRIKE, OR STAY**

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INTRODUCTION

After having sent a deficient statutory notice, Plaintiffs Stephen Jones and Richard Renshaw brought this action under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*, against Defendants Perdue Farms Inc., Perdue Agribusiness LLC, and Perdue Foods LLC (collectively, “Perdue”),¹ alleging that Perdue’s purported disposal of materials contaminated with per- and polyfluoroalkyl substances (“PFAS”) has violated RCRA’s regulations pertaining to *non-hazardous* solid waste.² For several fundamental reasons, Plaintiffs’ claims must be dismissed.

First, as to Counts I, II, and III, brought under 42 U.S.C. § 6972(a)(1)(A), Plaintiffs’ statutorily mandated notice is inadequate because it fails to identify specific violations of any “permit, standard, regulation, condition, requirement, prohibition, or order.” This divests the Court of subject matter jurisdiction to hear these claims.

Second, Plaintiffs lack Article III standing to pursue any of their claims. Neither Plaintiff has pled any personal, particularized injury based on harm to the environment. Without this injury, they cannot seek remedies that redress solely environmental harms. As to harm to their properties, Plaintiffs have omitted key, inconvenient facts, which this Court may consider when determining whether Plaintiffs should be permitted to avail themselves of this Court’s jurisdiction: Mr. Jones’s injury already has been remedied with a treatment system that Mr. Renshaw refused, instead opting

¹ The allegations do not differentiate between Defendants. To avoid excessive clarification, except when describing correspondence, Perdue adopts Plaintiffs’ conventions for the purposes of this memorandum only, without admitting that any allegations are correct as to all (or any) Defendants.

² The First Amended Complaint advances four counts: Violation of RCRA—Open Dumping (Count I); Violation of RCRA—Pollution of Surface Water (Count II); Violation of RCRA—Contamination of Groundwater (Count III); and Violation of RCRA—Imminent and Substantial Endangerment (Count IV). Counts I, II, and III are brought under 42 U.S.C. § 6972(a)(1)(A) and Count IV is brought under 42 U.S.C. § 6972(a)(1)(B).

for a lawsuit. The treatment system that Perdue provided to Mr. Jones has reduced the measurable PFAS in his drinking water to nondetectable levels, well below EPA standards for drinking water. Neither Mr. Jones, whose injury has been remedied, nor Mr. Renshaw, who refused altogether to have a treatment system installed, has sought any additional relief related to his drinking water. Accordingly, neither can claim that this suit will provide the remediation he seeks. These deficiencies also render the Court without subject matter jurisdiction over this suit.

Third, all the claims fail as pled. Count I fails as Plaintiffs allege no specific regulatory violation. To the extent there is any discernable regulatory violation in Count I, it is duplicative of Count II, which relies on the undefined and unidentifiable “Statewide water quality management plan.” Count III fails as a matter of law because PFAS are not listed contaminants under RCRA’s implementing regulations. And Count IV fails because Plaintiffs allege the presence of contaminants, but not imminent harm.

Alternatively, if this case is permitted to proceed, certain allegations supporting Count IV should be struck because they fail as a matter of law. The case should also be stayed to allow the Maryland Department of the Environment (“MDE”) to complete its investigation and determine the appropriate remedial response consistent with governing federal and state laws. RCRA citizen suits are designed to ensure diligent compliance with environmental regulations, normally through a court injunction. Such judicial involvement may be necessary where state actors fail to enforce compliance. Here, by contrast, Perdue is taking active remedial steps to treat PFAS contamination at the facility and in the community while MDE’s investigation into the source and scope of the PFAS contamination continues. Perdue remains committed to remediation and is consistently updating MDE and the public. This case will distract from those efforts and present a real risk of conflicting determinations that will only hamper the current work.

BACKGROUND³

Plaintiffs allege they reside less than a mile from the Salisbury Agribusiness Facility. ECF 4 ¶¶ 17-19. Plaintiffs allege Perdue’s wastewater disposal methods, storage of wastewater, air emissions, and excavation of soil have contributed to PFAS contamination in groundwater that “migrate[s] to Plaintiffs’ properties.” *Id.* ¶¶ 44-45, 50, 52. Plaintiffs also contend they “have suffered, and continue to suffer, harm to their property and their recreational, aesthetic, and/or commercial interests within the area” due to Perdue’s “ongoing disposal of PFAS and other solid wastes at the Salisbury Agribusiness Facility.” *Id.* ¶ 17. Neither Plaintiff has alleged a sufficient injury caused by the alleged harm to the environment outside his property, relying instead on general allegations with no connection to the Plaintiffs.

On April 29, 2025, Plaintiffs’ counsel sent Perdue a form of notice (albeit defective) conveying an intent to sue under RCRA. ECF 1-2. Plaintiffs filed suit on July 25, 2025, asserting three claims under 42 U.S.C. § 6972(a)(1)(A). ECF 1 at 18-22.⁴ On August 6, 2025, Plaintiffs filed a First Amended Complaint, adding a claim under 42 U.S.C. § 6972(a)(1)(B). ECF 4 at 22-23.

LEGAL STANDARDS

Subject matter jurisdiction challenges are properly raised under Federal Rule of Civil Procedure 12(b)(1). *Evans v. B.F. Perkins Co., a Div. of Standex Int’l Corp.*, 166 F.3d 642, 647 (4th Cir. 1999). “Under that rule, the plaintiff bears the burden of proving, by a preponderance of

³ This Court is familiar with the general background related to the PFAS investigation and treatment from a previously filed and pending class action. *See Chaney v. Perdue Farms Inc.*, No. 24-2975 (D. Md. filed Oct. 11, 2024). In the interest of brevity, Perdue hereby incorporates the statement of facts from their Motion to Dismiss in *Chaney*. *See* Defs.’ Mot. to Dismiss or Stay, *Chaney v. Perdue*, No. 24-2975 (D. Md. Dec. 23, 2024), ECF 23 at 3-6.

⁴ All page citations refer to the ECF-generated page numbers that appear at the top of the page.

evidence, the existence of subject matter jurisdiction.” *Martin v. W.L. Gore & Assocs.*, No. SAG-24-3549, 2025 WL 1294891, at *2 (D. Md. May 5, 2025). “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

To withstand a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the complaint must allege “sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A court decides whether [the pleading] standard is met by separating the legal conclusions from the factual allegations, assuming the truth of only the factual allegations, and then determining whether those allegations allow the court to reasonably infer” that the plaintiff is entitled to the legal remedy sought. *Soc’y Without a Name v. Virginia*, 655 F.3d 342, 346 (4th Cir. 2011). “It is now well established that mere conclusory and speculative allegations are not sufficient to withstand a motion to dismiss.” *Painter’s Mill Grille, LLC v. Brown*, 716 F.3d 342, 350 (4th Cir. 2013).

ARGUMENT

RCRA authorizes two types of citizen suits against private companies, which are sometimes colloquially referred to as “(a)(1)(A)” and “(a)(1)(B)” claims. 42 U.S.C. § 6972(a)(1)(A), (B). The first, an (a)(1)(A) claim, permits citizen suits against those “alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter.” *Id.* § 6972(a)(1)(A). The second, an (a)(1)(B) claim, permits citizen suits against those who “ha[ve] contributed or who [are] contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.” *Id.* § 6972(a)(1)(B). Here, Plaintiffs allege both (a)(1)(A) and (a)(1)(B)

claims. *See* ECF 4 ¶¶ 86-117 (alleging in Counts I, II, and III a violation of prohibitions against open dumping under (a)(1)(A) and in Count IV an imminent and substantial endangerment claim under (a)(1)(B)).

Plaintiffs’ (a)(1)(A) claims in Counts I, II, and III and Plaintiffs’ (a)(1)(B) claim in Count IV are legally and factually deficient and should be dismissed. First, Plaintiffs’ (a)(1)(A) claims in Counts I, II, and III should be dismissed due to insufficient notice, which deprives the Court of jurisdiction. Second, the Court should dismiss all of Plaintiffs’ claims for lack of standing because Plaintiffs have not alleged sufficient injury and redressability. Third, even if the Court finds that Plaintiffs have satisfied the jurisdictional requirements, all of Plaintiffs’ claims should be dismissed for failure to state a claim under RCRA’s citizen suit provisions. Fourth, in the event Plaintiffs’ Count IV survives dismissal, the Court should strike portions of the Plaintiffs’ allegations that fail to assert disposal of a “solid waste.” Fifth and finally, in the event any count remains, the Court should exercise its inherent authority to stay the case pending MDE’s determination of a remedial plan.

I. Counts I, II, and III Should be Dismissed Under Rule 12(b)(1) for Insufficient Pre-Suit Notice.

It is well established that “[n]otice requirements in citizen-suit provisions are jurisdictional.” *Martin*, 2025 WL 1294891, at *2 (citation omitted). Accordingly, under RCRA, citizen plaintiffs must provide a notice of intent to sue to the alleged violator, the Environmental Protection Agency, and the relevant state enforcement agency at least 60 days prior to filing suit for claims under 42 U.S.C. § 6972(a)(1)(A) and at least 90 days prior to filing suit for claims under 42 U.S.C. § 6972(a)(1)(B). 42 U.S.C. § 6972(b). Strict compliance with this pre-suit notice requirement is a mandatory precondition for the Court’s exercise of jurisdiction. *Hallstrom v. Tillamook Cnty.*, 493 U.S. 20, 31 (1989). Actual knowledge and constructive notice do not suffice.

Id. at 29-31; *see also* *Cmt. of Cambridge Env't Health & Cmty. Dev. Grp. v. City of Cambridge*, 115 F. Supp. 2d 550, 559 (D. Md. 2000) (holding notice was insufficient under the Clean Water Act (“CWA”) where the notice failed to specify names of plaintiffs and finding defendants’ actual knowledge of the unnamed plaintiffs immaterial to the notice’s sufficiency (citing *Monongahela Power Co. v. Reilly*, 980 F.2d 272, 275 n.2 (4th Cir. 1993)));⁵ *see also* *Save Our Health Org. v. Recomp of Minn., Inc.*, 37 F.3d 1334, 1337-38 (8th Cir. 1994) (finding notice insufficient in Clean Air Act (“CAA”) citizen suit where plaintiff failed to specify violations in the intent to sue letter and finding defendant’s independent knowledge of violations was immaterial);⁶ *Nat’l Parks & Conservation Ass’n v. TVA*, 502 F.3d 1316, 1329 (11th Cir. 2007) (finding notice that failed to specify violations was insufficient under the CAA even if the defendants “should have known exactly what violations were alleged” based on independent knowledge from an ongoing administrative action); *Bldg. Indus. Ass’n v. Lujan*, 785 F. Supp. 1020, 1021 (D.D.C. 1992) (rejecting that “constructive notice” can remedy an insufficiency in notice prerequisites, and holding “the reasoning in *Hallstrom* require[s] dismissal”).

Adequate pre-suit notice for (a)(1)(A) claims must include “sufficient information” for the alleged violator to identify:

1. the specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated,
2. the activity alleged to constitute a violation,
3. the person or persons responsible for the alleged violation,
4. the date or dates of the violation, and

⁵ The Fourth Circuit recognizes that the notice requirements under the CWA are analogous to those under RCRA. *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 629 F.3d 387, 398-99 (4th Cir. 2011) (noting RCRA’s “identical statutory notice requirement” to that of CWA).

⁶ Congress modeled the notice requirement in RCRA after the notice provisions of the Clean Air Act. *Wash. Trout v. McCain Foods*, 45 F.3d 1351, 1353 n.3 (9th Cir. 1995). Accordingly, many courts, including the Supreme Court in *Hallstrom v. Tillamook County*, 493 U.S. 20 (1989), rely on CWA and CAA cases to determine the sufficiency of notice under RCRA. *Ohio Valley Env’t Coal., Inc. v. Hobet Mining, LLC*, 723 F. Supp. 2d 886, 902 n.7 (S.D. W. Va. 2010).

5. the full name, address, and telephone number of the person giving notice.

40 C.F.R. § 254.3(a) (numeration added).

Plaintiffs’ Notice of Intent to Sue (the “Notice”) is inadequate as to Counts I, II, and III, as the Notice failed to include “the specific permit, standard, regulation, condition, requirement, or order” allegedly violated at the root of each of these Counts. *Id.* Counts I, II, and III are each premised on an alleged open dumping violation of RCRA, which governs disposal of non-hazardous solid waste. ECF 4 ¶¶ 87-89, 96-97, 105-06. The statute defines an “open dump” as any facility failing to meet criteria established by the EPA, found in 40 C.F.R., Part 257, Subpart A. 42 U.S.C. § 6903(14); 42 U.S.C. § 6944(a); 40 C.F.R. § 257.1(a)(1) (“Facilities failing to satisfy any of the criteria in §§ 257.1 through 257.4 or §§ 257.5 through 257.30 or §§ 257.50 through 257.107 are considered open dumps, which are prohibited under section 4005 [42 U.S.C. § 6945] of the Act.”). Thus, to allege a violation of the prohibition against open dumping under 42 U.S.C. § 6945, Plaintiffs must identify a specific criteria violation included within 40 C.F.R., Part 257, Subpart A. While Plaintiffs’ *Complaint* alleges violations of 40 C.F.R. § 257.3-3(c) and 40 C.F.R. § 257.3-4 (*i.e.*, specific criteria in § 6945’s implementing regulations), Plaintiffs’ Notice does not include any reference to these regulations, nor does it otherwise identify any “*specific . . . regulation, condition, requirement, or order*” that Perdue allegedly violated or the “date or dates of” the violations, as required to notice any § 6972(a)(1)(A) claim. *See* 40 C.F.R. § 254.3(a) (emphasis added). The Notice states, in relevant part:

- With their “unpermitted release and disposal of [PFAS],” Perdue has “violated the RCRA prohibition against Open Dumping established in 42 U.S.C. § 6945”; and
- Perdue’s “release and disposal of [PFAS] without a permit to do so, constitutes Open Dumping in violation of 42 U.S.C. § 6945 and its implementing regulations, and is actionable by Citizens pursuant to 42 U.S.C. § 6972(a)(1)(A).”

ECF 1-2 at 3, 7. Stated differently, Plaintiffs’ Notice regarding open dumping merely alleges that 42 U.S.C. § 6945 and its “implementing regulations” have been violated—but never states

precisely which regulations. Perdue could not possibly attempt to remedy the open dumping allegation without knowing what precisely needed to be fixed. *See Nat'l Parks & Conservation Ass'n*, 502 F.3d at 1330 (“The language of the regulation does not suggest that the notice may be good enough if it generally orients the agency or violator as to the type of violation. . . . [T]he recipient of the notice must understand from the notice what the citizen *is alleging*[.]” (emphasis in original) (citation omitted)).

Further, Plaintiffs’ allegations do not identify the “date or dates of” the violations, nor do they put Perdue on notice of *specific* violations of any “permit, standard, regulation, condition, requirement, or order,” as required by RCRA § 6972(a)(1)(A). 40 C.F.R. § 254.3(a). For instance, while Plaintiffs’ Complaint alleges violations of the “Statewide water quality management plan,” ECF 4 ¶ 97, there is no reference to any such plan in the Notice. *See* ECF 1-2.

Courts must dismiss citizen suits where the pre-suit notices fail to include “sufficient information.” 40 C.F.R. § 254.3(a); *see Blumenthal Power Co., Inc. v. Browning-Ferris, Inc.*, No. 94CV2612, 1995 WL 1902124, at *4 (D. Md. Apr. 19, 1995) (dismissing RCRA claims where pre-suit notice failed to include specific RCRA sections violated); *Little v. Louisville Gas & Elec. Co.*, 33 F. Supp. 3d 791, 808 (W.D. Ky. 2014) (dismissing RCRA claim where pre-suit notice failed to include the “date” or “duration” of the alleged ongoing violation). In *Blumenthal Power Co. v. Browning-Ferris, Inc.*, the Court dismissed a plaintiff’s (a)(1)(A) claims because the “notice refer[red] only to § 6972(a)(1)(A) but d[id] not include a substantive section which Defendant allegedly violated (other than generally referring to all of Subchapter III).” 1995 WL 1902124, at *4. Plaintiffs’ Notice here regarding violations under § 6972(a)(1)(A) suffers from the same deficiency as the plaintiff’s notice in *Blumenthal*, which the Court found warranted dismissal.

Similarly, in *Brod v. Omya, Inc.*, the Second Circuit affirmed the dismissal of plaintiffs’ open dumping claim because the pre-suit notice failed to include the specific regulatory violation at issue. 653 F.3d 156, 169 (2d Cir. 2011). Although the complaint alleged a violation of 40 C.F.R. § 257.3-4, the *notice* alleged only that defendant’s “disposal of [processing] waste into the environment constitutes illegal open dumping.” *Id.* The district court dismissed the open dumping claim because the notice “did not include ‘sufficient information to permit the recipient to identify the specific . . . regulation . . . which ha[d] allegedly been violated, [or] the activity alleged to constitute a violation.’” *Id.* (alterations in original) (quoting 40 C.F.R. § 254.3). Likewise, in *Chesapeake Bay Found. v. Severstal Sparrows Point, LLC*, this Court dismissed a CWA claim where the notice did not provide the alleged violator with enough information to attempt to correct the violation and avert the citizen suit. 794 F. Supp. 2d 602, 621-22 (D. Md. 2011).

Courts consistently dismiss citizen suit complaints for similar notice deficiencies. *See Karr v. Hefner*, 475 F.3d 1192, 1203 (10th Cir. 2007) (affirming dismissal of CWA complaint where the notice failed to clearly “identify with appropriate specificity the laws” that the defendant allegedly violated); *Riverkeeper v. Tweden*, No. 24-CV-00886, 2025 WL 725741, at *6 (M.D. Tenn. Mar. 6, 2025) (dismissing RCRA claims where notice letter failed to identify “which provision or implementing regulation” defendant violated and rejecting plaintiff’s “*they-know-what-they-did* argument” (emphasis in original)); *Stark-Tusc-Wayne Joint Solid Waste Mgmt. Dist. v. Am. Landfill, Inc.*, No. 10-cv-00119, 2012 WL 4475444, at *4 (N.D. Ohio Sept. 26, 2012) (dismissing RCRA claims where the “notice letter d[id] not provide the Moving Defendants with sufficient information of a specific regulatory violation”).

As one court has opined, if courts were to permit legal theories to be stated for the first time in a citizen suit complaint, “such a forgiving view would negate the effectiveness of the notice requirement, since the citizen-plaintiff could notify in generalities and plead in specifics, thereby eliminating the purpose underlying the notice requirement.” *Nat. Res. Council of Me. v. Int’l Paper Co.*, 424 F. Supp. 2d 235, 250 n.18 (D. Me. 2006). Plaintiffs have made no showing here that the legal theories propounded in their amended complaint could not have been mentioned in their notice, “and, as they could have, they should have.” *Id.*

Indeed, requiring Plaintiffs to point to a specific violation is consistent with the purpose of the RCRA citizen suit provisions. *See Hallstrom*, 493 U.S. at 29-30 (addressing legislative intent in enacting RCRA, explaining that “[r]equiring citizens to comply with the notice and delay requirements allows Government agencies to take responsibility for enforcing environmental regulations [and] gives the alleged violator ‘an opportunity to bring itself into complete compliance with the Act and thus likewise render unnecessary a citizen suit’”) (citations omitted)). This Court recently highlighted this purpose in *Martin v. W.L. Gore*, dismissing a complaint for insufficient notice and explaining that “the point of the notice is to give the alleged violator ‘an opportunity to bring itself into complete compliance with the Act and thus likewise render unnecessary a citizen suit.’” 2025 WL 1294891, at *3 (quoting *Hallstrom*, 493 U.S. at 29); *see also Ctr. for Biological Diversity v. Marina Point*, 566 F.3d 794, 801-04 (9th Cir. 2009) (finding the district court lacked jurisdiction due to deficient notice, noting the Ninth Circuit has “never abandoned the requirement that there be a true notice that tells a target precisely what it allegedly did wrong, and when”); *ONRC Action v. Columbia Plywood, Inc.*, 286 F.3d 1137, 1143 (9th Cir. 2002) (dismissing CWA claims because a notice that stated one theory of permit invalidity did not

notify the defendant of other potential theories of invalidity, and the defendant “was not required to speculate as to all possible attacks”).

Even if Perdue was in violation of RCRA, which Perdue is not, Plaintiffs did not give Perdue the opportunity to bring themselves into compliance before coming to this Court. The burden is not on Perdue to investigate what provisions it may have violated based on a vague allegation that Perdue violated RCRA’s open dumping prohibition. *Cf. Nat. Res. Council of Me.*, 424 F. Supp. 2d at 252 (“The statute, regulation, and case law do not contemplate that recipients should have to parse the language in the notice to understand the citizen-plaintiff’s contentions.”). Thus, due to insufficient notice, Counts I, II, and III must be dismissed for lack of subject matter jurisdiction.

II. Plaintiffs Lack Article III Standing.

“[T]o establish standing to sue, the plaintiff must demonstrate three basic elements: (1) the plaintiff must have suffered an ‘injury in fact,’ (2) the injury must be ‘fairly traceable’ to the defendant’s challenged conduct, and (3) it must be likely that the plaintiff’s injury would be redressed by the requested relief.” *Richardson v. Mayor of Baltimore*, No. RDB-13-1924, 2014 WL 60211, at *3 (D. Md. Jan. 7, 2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Defendants may challenge standing either facially, challenging the sufficiency of the allegations, or factually, challenging the veracity of the allegations. *Wikimedia Found. v. NSA/Central Sec. Serv.*, 857 F.3d 193, 208 (4th Cir. 2017). Where, as with respect to redressability here, Defendants raise a factual challenge, the court may look beyond the complaint to determine whether there are facts to support the jurisdictional allegations. *See id.*

A. Facial Challenge

First, on the face of the Complaint, Plaintiffs fail to allege sufficient particularized injury to themselves based on environmental harms to the area surrounding the facility. “To establish an

imminent threatened or future injury to his/her use of an area, a plaintiff must assert concrete plans to use the area rather than a vague, ‘some day’ desire to use the area.” *EarthReports, Inc. v. U.S. Army Corps of Eng’rs*, No. 10-cv-1834-AW, 2011 WL 4480105, at *4 (D. Md. Sept. 26, 2011) (citation omitted). A plaintiff must allege “an aesthetic or recreational interest in a particular place, or animal, or plant species and that that interest is impaired by a defendant’s conduct.” *Ecological Rts. Found. v. Pac. Gas & Elec. Co.*, 874 F.3d 1083, 1093 (9th Cir. 2017) (citation omitted); *Am. Canoe Ass’n v. Murphy Farms, Inc.*, 326 F.3d 505, 517 (4th Cir. 2003) (“The relevant showing for purposes of Article III standing . . . is not injury to the environment but injury *to the plaintiff*.” (adopting alteration in original) (emphasis added) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000))).

Plaintiffs do not allege any plans to use the area around the facility, much less “concrete plans.” Plaintiffs merely conclude that “ongoing violations . . . harm the recreational, aesthetic, and/or commercial interests of citizens in the surrounding areas, including Plaintiffs.” ECF 4 ¶ 8. While Plaintiffs allege “harm to aquatic life, including fish and shellfish,” *id.*, they fail to articulate with any particularity how such harms to aquatic life affect *their* “recreational, aesthetic, and/or commercial interests.” See *Richardson*, 2014 WL 60211, at *4 (holding similarly “vague allegations” of proximity to a contaminated river failed to establish a threat of imminent harm to a plaintiff asserting an environmental injury). Accordingly, Plaintiffs fail to establish their injury-in-fact based on their unparticularized claims of harm to their “recreational, aesthetic, and/or commercial interests.”

B. Factual Challenge

Additionally, although Plaintiffs have alleged an injury to their property in the form of drinking water contamination, they cannot show that the relief sought in this suit will remedy that injury because Plaintiffs have either refused treatment for their drinking water (as in the case of

Mr. Renshaw) or have already received a treatment system that has reduced the level of PFAS in their drinking water to nondetectable levels (as in the case of Mr. Jones). It is Plaintiffs' burden to prove "a likelihood that the requested relief will redress the alleged injury." *Marino v. NOAA*, 33 F.4th 593, 596 (D.C. Cir. 2022) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998)); *Lujan*, 504 U.S. at 561 (indicating a plaintiff must show it is "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision'" (citation omitted)); *Duke Power Co. v. Carolina Env't Study Grp.*, 438 U.S. 59, 79 (1978) (explaining a plaintiff must show a "substantial likelihood" that the judicial relief requested will redress the claimed injury). Plaintiffs cannot make this showing, as none of the requested relief is likely to remedy their alleged injury of drinking water contamination on their properties.

Because Plaintiffs have failed to provide allegations related to these facts, the Court must look beyond the Complaint, which is permissible on a factual challenge to standing under Rule 12(b)(1).⁷ *Wikimedia Found.*, 857 F.3d at 208. Relevant here, Perdue has already completed well water testing for 100% of the properties within MDE's approved testing area for those who requested it (677 properties total). *Updates on Salisbury private wells sampling for PFAS*, Perdue, <https://corporate.perdufarm.com/water-testing-resources/#progress-update> (last visited Aug. 28, 2025) [hereinafter Perdue PFAS Updates]; Declaration of Adam Hackenberg in Support of Motion to Dismiss, Strike, or Stay, Exhibit A, ¶ 5. Perdue has installed point of entry treatment ("POET")

⁷ Plaintiffs may argue they need discovery to respond to Perdue's factual challenge to their standing to bring a claim in this Court. It is unclear why that would be the case because Plaintiffs have in their possession the relevant facts related to their drinking water and their desired remedies to any harm to their drinking water. They have just omitted them, perhaps because the relevant facts undercut the broad relief they seek. That said, should the Court decide jurisdictional discovery is warranted, Perdue requests that such discovery be limited to jurisdictional issues. *See Beyond Sys. v. Keynetics, Inc.*, 422 F. Supp. 2d 523, 530 (D. Md. 2006) ("[C]ourts may authorize limited discovery as to jurisdictional facts[.]" (citation omitted)).

systems at more than 95% of the properties where elevated levels of PFAS were detected and homeowners agreed to install POET systems, including at Mr. Jones's property. Exhibit A, ¶ 6. Accordingly, to date, Mr. Jones's drinking water reveals non-detectible levels of PFAS. Exhibit A, ¶ 8; Exhibit B. Mr. Jones failed to establish a "substantial likelihood" that injuries based on his drinking water can be redressed by a favorable judicial decision, when his drinking water has already been treated and has no detectable levels of PFAS.

Additionally, some property owners, such as Mr. Renshaw, have declined Perdue's offer to install PFAS treatment systems. Exhibit A, ¶ 7. Mr. Renshaw does not allege what other remediation or treatment he seeks to remedy the alleged injury *to his property*, and he cannot create his own injury by refusing treatment and then claim his injuries will be redressed by a favorable decision. Additionally, Perdue has been supplying free bottled water to Mr. Jones since October 9, 2024, and to Mr. Renshaw since December 9, 2024, Exhibit C, ¶¶ 4-5, thereby eliminating the risk of drinking contaminated water for property owners like Mr. Renshaw who refuse to accept a PFAS treatment system.

Curiously, Plaintiffs do not allege what additional action is needed beyond Perdue's current remediation efforts to address the PFAS contamination in their drinking water. Instead, they acknowledge that Perdue has "sent letters to residents in the communities west of U.S. Route 50 advising them that [Perdue] would test their well water and offer to supply bottled water for drinking purposes." ECF 4 ¶ 61 (citing ECF 1-5). Of course, Plaintiffs stop short of the full picture, making no mention of Mr. Jones's POET or Mr. Renshaw's refusal, because doing so would reveal that they cannot allege how this suit will redress their injuries in a way not currently addressed by Perdue's efforts. The Complaint does not allege any other remedy that would redress injuries to Plaintiffs' properties.

Rather, Plaintiffs seek an expansive injunction ordering Perdue to “eliminate and remediate” all open dumping at its Salisbury facility, all solid waste at its facility, all offsite impacts to groundwater, surface water, and soil, and to implement policies for future disposal of solid waste. ECF 4 ¶ 118. While such an injunction could conceivably address injuries to the environment at large, as noted above, Plaintiffs do not meet the requirements for Article III standing with their alleged generalized environmental injuries. Absent an injury to *themselves* that is redressable by a favorable decision, Plaintiffs have no standing to bring their claims.

III. Plaintiffs’ Counts I-IV Should be Dismissed Under Rule 12(b)(6) for Failure to Allege RCRA Violations.

Even if this Court finds that Plaintiffs satisfied jurisdictional notice requirements for Counts I, II, and III, and that Plaintiffs have satisfied Article III standing requirements, all of Plaintiffs’ claims should be dismissed for failure to state a claim under RCRA’s citizen suit provisions. Count I must be dismissed as it is conclusory and duplicative of Counts II and III. Count II, alleging open dumping pursuant to a violation of 40 C.F.R. § 257.3-3(c), fails because Plaintiffs’ Complaint lacks factual allegations sufficient to support its conclusory allegations. Count III, alleging open dumping pursuant to 40 C.F.R. § 257.3-4(a), must be dismissed as a matter of law because PFAS are not listed as regulated contaminants, which is required to assert a 40 C.F.R. § 257.3-4(a) open dumping claim. Finally, Count IV should be dismissed because Plaintiffs fail to allege an imminent and substantial endangerment and merely allege the presence of a contaminant, which is insufficient to support an (a)(1)(B) claim.

A. Count I Fails to Allege Open Dumping and Is Merely Duplicative.

Plaintiffs’ generalized “open dumping” claim fails to identify a violation of the regulatory criteria defining open dumping for the purposes of a claim predicated on § 6945. Additionally, Count I is duplicative of Counts II and III. As described above, § 6945(a) prohibits “open

dumping” as that term is defined by criteria developed by EPA under the mandate of another RCRA provision, 42 U.S.C. § 6907(a)(3). *See* 42 U.S.C. § 6945(a) (“Upon promulgation of criteria under section 6907(a)(3) of this title, any solid waste management practice or disposal of solid waste . . . which constitutes the open dumping of solid waste . . . is prohibited.”).⁸ Thus, Plaintiffs can state a claim for open dumping only if they adequately allege that, at the time they filed the Complaint, Perdue was “engaged in the act of open dumping,” *i.e.*, that Perdue was in violation of the relevant regulatory criteria. *S. Rd. Assocs. v. Int’l Bus. Machs. Corp.*, 216 F.3d 251, 255 (2d Cir. 2000); *Env’t Integrity Project v. McCarthy*, 319 F.R.D. 8, 10-11 (D.D.C. 2016). The relevant regulatory criteria are located in 40 C.F.R. Part 257. *See* 40 C.F.R. § 257.1(a) (“Unless otherwise provided, the criteria in §§ 257.1 through 257.4^[9] are adopted for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects

⁸ 42 U.S.C. § 6944(a) also mandates and authorizes these same criteria, requiring EPA to “promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps.” In turn, RCRA’s general definitions section defines an open dump by elimination and reference to the criteria developed under § 6944. *See* 42 U.S.C. § 6903(14) (an open dump is “any facility . . . where solid waste is disposed of *which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste*” (emphasis added)); *see also S. Rd. Assocs. v. Int’l Bus. Machs. Corp.*, 216 F.3d 251, 256 (2d Cir. 2000) (“Promulgated on the authority of 42 U.S.C. §§ 6907(a)(3) and 6944(a), 40 C.F.R. pt. 257 lists criteria for determining what is, and what is not, an open dump.”).

⁹ Section 257.1 provides the scope and purpose of the regulation. Section 257.2 provides the definitions for the regulation. Section 257.4 provides the effective date of the regulation. Accordingly, the relevant criteria are found only in the subparts of § 257.3 (“Solid waste disposal facilities or practices which violate any of the following criteria pose a reasonable probability of adverse effects on health or the environment”): 40 C.F.R. § 257.3-1 (restrictions on floodplains); 40 C.F.R. § 257.3-2 (endangered species); 40 C.F.R. § 257.3-3 (surface water); § 257.3-4 (ground water); 40 C.F.R. § 257.3-5 (application of solid waste for crop production); 40 C.F.R. § 257.3-6 (disease vectors and sewage sludge); 40 C.F.R. § 257.3-7 (open burning); and 40 C.F.R. § 257.3-8 (explosive gases, fires, bird hazards to aircraft, and uncontrolled public access).

on health or the environment under sections 1008(a)(3) [42 U.S.C. § 6907(a)(3)] and 4004(a) [42 U.S.C. § 6944(a)] of the [RCRA].”); *see also S. Rd. Assocs.*, 216 F.3d at 256.

Thus, whether an entity is an “open dump” is a legal conclusion hinging on the failure to meet regulatory criteria. At the motion to dismiss stage, Plaintiffs must allege facts to support that conclusion in order for the claim to survive. Plaintiffs’ Count I fails in this regard. While Counts II and III (which are deficient for other reasons) at least relate to specific violations of the relevant criteria dictating what constitutes open dumping under 42 U.S.C. § 6945(a), Count I is a sweeping claim, alleging open dumping in a general sense. It attempts to encompass all possible violations of 42 U.S.C. § 6945(a), yet lacks any specific factual allegations supporting it apart from those allegations upon which Plaintiffs rely for their § 6945(a) claims under Counts II and III.¹⁰ Accordingly, Count I should be dismissed “as a matter of judicial economy” because Plaintiffs fail to provide allegations to support it that are not duplicative of Plaintiffs’ other two (a)(1)(A) counts. *See Doe v. Cmty. Coll. of Balt. Cnty.*, 595 F. Supp. 3d 392, 417-18 (D. Md. 2022).

B. Count II Fails to State a Claim for Pollution of Surface Water.

In Count II, Plaintiffs allege a criterion violation in support of their open dumping claim, 40 C.F.R. § 257.3-3(c), yet still Plaintiffs fail to identify a *specific* violation by Perdue sufficient to state such a claim. Section 257.3-3(c) forbids causing “non-point source pollution of waters of the United States that violates applicable legal requirements implementing an areawide or Statewide water quality management plan that has been approved by the Administrator under section 208 [33 U.S.C. § 1288] of the Clean Water Act.”¹¹ Plaintiffs conclude that there is an

¹⁰ In Counts II and III, Plaintiffs only allege violations of the criteria in 40 C.F.R. § 257.3-3 (surface water) and § 257.3-4 (ground water). They do not allege violations of any of the other possible criteria, *i.e.*, 40 C.F.R. § 257.3-1, -2, -5, -6, -7, or -8 (described in footnote 9 above).

¹¹ “Section 208 plans are developed under 33 U.S.C. § 1288 to improve designated areas that have substantial water quality control problems.” *O’Leary v. Moyer’s Landfill, Inc.*, 523 F. Supp. 642, 655 n.30 (E.D. Pa. 1981) (citing, generally, 44 Fed. Reg. 53438, 53444-45 (Sept. 13, 1979)).

“areawide or Statewide water quality management plan in Maryland that EPA has approved under section 208 [33 U.S.C. § 1288] of the CWA” and that Perdue has violated it, ECF 4 ¶¶ 98-100, which is nothing more than a bare recitation of the elements of the claim. *See* 40 C.F.R. § 257.3-3(c); *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 260 (4th Cir. 2009) (“We are thus left with bare assertions, ‘devoid of further factual enhancement,’ which are not entitled to an assumption of truth. Such conclusory statements are insufficient as a matter of law to demonstrate [plaintiff’s] entitlement to relief. . . . Rule 8 requires ‘more than conclusions’ to ‘unlock the doors of discovery for a plaintiff.’” (internal citations omitted)); *Chart v. Town of Parma*, No. 10-CV-6179P, 2012 WL 3839241, at *8-10 (W.D.N.Y. Aug. 28, 2012) (dismissing (a)(1)(A) claim and noting “courts have dismissed complaints that omit factual allegations, but merely recite legal conclusions tracking the statutory language”).

Plaintiffs fail to allege in Count II a specific, enforceable legal requirement that Perdue has violated within the meaning of § 257.3-3(c). Plaintiffs do not identify what “Statewide water quality management plan” they are referring to, they do not attach it to the Complaint, nor do they identify a provision within the “Statewide water quality management plan” purportedly violated by Perdue. *See generally* ECF 4. It is not Perdue’s burden to divine what Plaintiffs are referring to by their lip service to a “Statewide water quality management plan.” Rather, it is Plaintiffs’ burden to allege it. *See Chart*, 2012 WL 3839241, at *8-10.

Additionally, Plaintiffs’ claims do not permit Perdue even to infer what Statewide water quality management plan they are referencing. Plaintiffs allege that Perdue engages in activities that put PFAS and “other non-point source pollutants”¹² into the water, and as to at least some of

¹² Plaintiffs never identify these “other non-point source pollutants.” Accordingly, Plaintiffs’ Count I-IV should be dismissed as to any other unnamed pollutants.

those activities, that Perdue does not have a permit to discharge PFAS. ECF 4 ¶ 100. But Plaintiffs fail to allege that the “Statewide water quality management plan” they refer to *requires* a permit for Perdue’s discharges. While Plaintiffs cite Md. Code Ann., Env’t §§ 9-322 and 9-323, and COMAR 26.04.07.03 and 26.08.02.09A, they do not allege that these citations are part of the “Statewide water quality management plan approved by the EPA pursuant to Section 208 of the Clean Water Act.” Accordingly, Plaintiffs ask the Court to agree with their legal conclusion that Perdue’s alleged discharges without a permit violates this plan without any basis to support such a conclusion. ECF 4 ¶¶ 98-100.

A complaint that fails to provide factual allegations vis-à-vis the regulation at issue in the context of a claim under 42 U.S.C. § 6945(a) does not allow a defendant or Court to assess the claim’s sufficiency. *See Twombly*, 550 U.S. at 555 (the purpose of a pleading is to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests” (internal citations omitted)); *Chart*, 2012 WL 3839241, at *9 (“[E]ven if the complaint is construed to assert a statutory open dumping claim, the Court is unable to review the [defendant’s] alleged conduct against the applicable regulatory criteria to determine the sufficiency of the allegations. This alone constitutes grounds for dismissal.”); *Berka v. Cuomo*, No. 20-cv-0516 (GTS/DJS), 2021 WL 1163148, at *6 (N.D.N.Y. Mar. 26, 2021), *appeal dismissed as moot*, 2021 WL 4026066 (2d Cir. June 2, 2021) (“Plaintiff fails to allege any facts plausibly suggesting what particular emissions standard or limitation of the Clean Air Act would be violated . . . (and the Court has trouble identifying one).”). Thus, Count II amounts to a bare legal conclusion and should be dismissed.

C. Count III Fails to State a Claim for Contamination of Ground Water.

In Count III, Plaintiffs allege a violation of groundwater criteria found in 40 C.F.R. § 257.3-4(a). ECF 4 ¶¶ 105-06. Section 257.3-4(a) states: “A facility or practice *shall not contaminate* an underground drinking water source beyond the solid waste boundary or beyond

an alternative boundary specified in accordance with paragraph (b) of this section.” *Id.* (emphasis added). Plaintiffs allege that “Perdue’s practices of emitting, discharging, and/or disposing of PFAS and other contaminants^[13] on-site and off-site to soils, groundwater and surface waters . . . has caused the *contamination of groundwater* that is prohibited by RCRA as a form of open dumping of solid waste.” ECF 4 ¶ 106 (emphasis added). However, Plaintiffs’ Count III must fail because PFAS are not recognized contaminants under RCRA’s implementing regulations.

As defined within the groundwater criteria of § 257.3-4, “contaminate” means to “introduce a substance that would cause”:

(i) The concentration of that substance in the ground water to exceed the maximum contaminant level *specified in appendix I*, or

(ii) An increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contaminant level *specified in appendix I*.

Id. § 257.3-4(c)(2) (emphasis added). Plaintiffs’ claim of a PFAS-related criteria violation outlined in 40 C.F.R. § 257.3-4 must fail because PFAS are not listed in Appendix I. *See* 40 CFR Pt. 257, App. I; *Living Lands, LLC v. Cline*, 657 F. Supp. 3d 831, 845 (S.D. W. Va. 2023) (holding that a claim under § 3-4 must fail when Appendix I specified no MCL for beryllium, and so the defendant “cannot have caused an exceedance of an MCL that does not apply”); *Mervis Indus., Inc. v. PPG Indus., Inc.*, No. 09-CV-0633-SEB-JMS, 2010 WL 1381671, at *3 (S.D. Ind. Mar. 30, 2010) (“The fact that pollutants remain on the Properties unremediated is not sufficient to allege an ongoing violation of the open dumping prohibition, nor is the fact that [defendant] . . . is causing contaminated groundwater to move through the Properties.”). Accordingly, Plaintiffs’

¹³ Plaintiffs do not identify any “other contaminants.” Accordingly, Plaintiffs’ Count I-IV should be dismissed as to any other unnamed contaminants.

open dumping claim pursuant to § 257.3-4(a) fails as a matter of law, as PFAS are not recognized contaminants that can violate § 257.3-4(a) and support a RCRA open dumping claim.

Plaintiffs attempt to avoid this conclusion by referencing the Safe Drinking Water Act (“SDWA”) and EPA’s decision in June 2024 to adopt Maximum Contaminant Levels (“MCLs”) for certain PFAS.¹⁴ ECF 4 ¶ 108. Plaintiffs suggest that the EPA may one day choose to include PFAS in their list of regulated contaminants in Appendix I. *Id.* But whether EPA elects to amend RCRA to incorporate the SDWA MCLs is irrelevant to this Court’s determination. This Court is tasked with determining whether PFAS currently constitute regulated contaminants under Appendix I of the RCRA implementing regulations. They do not.

This Court should reject Plaintiffs’ attempt to engraft the SDWA MCLs into Appendix I of 40 C.F.R. § 257 because doing so would subvert a lawful administrative process. *See Courtland Co. v. Union Carbide Corp.*, Nos. 18-cv-01230, 19-cv-00894, 21-cv-00101, 21-cv-00487, 2023 WL 6331069, at *94 (S.D. W. Va. Sept. 28, 2023) (refusing to supplant the MCL for arsenic in 40 C.F.R. § 257, Appendix I, with a lower SDWA MCL for arsenic, in part because such a judicial construction would deprive the public of certain notice and comment procedures and the court would not “draw any inferences from the USEPA’s conceivable failure to amend its regulations”); *see also Brod*, 653 F.3d at 168-70 (“Whether the regulation is wise is not a question entrusted to the courts.”). EPA, not Plaintiffs, decides which MCLs are appropriate to apply to any substance in either context.

¹⁴ Plaintiffs assert in paragraph 60 of the Amended Complaint that on April 26, 2024, the EPA finalized a new rule setting MCLs under SDWA at 4.0 ppt for PFOA and PFOS. This framing omits that on May 14, 2025, the EPA announced it will rescind and “reconsider the regulatory determinations” for other PFAS. *See EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS*, EPA, <https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos> (last visited Aug. 28, 2025).

In sum, Plaintiffs' Count III fails as a matter of law because PFAS are not listed contaminants in RCRA's implementing regulations. *See* 40 C.F.R. § 257, App. I. Accordingly, Plaintiffs cannot establish a violation of § 257.3-4(a) and cannot adequately allege that Perdue is engaged in "open dumping" on that basis.

D. Plaintiffs Fail to State a Claim for Imminent and Substantial Endangerment (Count IV).

To prevail on an imminent and substantial endangerment claim, a plaintiff must show:

(1) the defendant was or is a generator or transporter of solid or hazardous waste or owner or operator of a solid or hazardous waste treatment, storage or disposal facility, (2) the defendant has contributed or is contributing to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste, as defined by RCRA, and (3) that the solid or hazardous waste in question may pose an imminent and substantial endangerment to health or the environment.

Prisco v. A&D Carting Corp., 168 F.3d 593, 608 (2d Cir. 1999). Here, Plaintiffs have failed to adequately allege the third element, that the solid or hazardous waste in question may pose an imminent and substantial endangerment to health or the environment.

"An endangerment can only be 'imminent' if it 'threatens to occur immediately.'" *Warren v. Johnson Matthey, Inc.*, No. 15-01919, 2016 WL 215232, at *7 (E.D. Pa. Jan. 19, 2016) (quoting *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 480 (1996)). "[A]n endangerment is substantial if there is some reasonable cause for concern that someone or something may be exposed to a risk of harm . . . if remedial action is not taken." *United States v. Union Corp.*, 259 F. Supp. 2d 356, 400 (E.D. Pa. 2003) (internal citations omitted). However, alleging "the 'mere presence' of contaminants, even at high concentrations, is 'alone not enough to constitute an imminent and substantial endangerment' to human health or the environment." *Courtland Co.*, 2023 WL 6331069, at *98 (quoting *Me. People's All. & NRDC v. Mallinckrodt, Inc.*, 471 F.3d 277, 282 (1st Cir. 2006)); *Miller v. City of Fort Myers*, 424 F. Supp. 3d 1136, 1147 (M.D. Fla. 2020) ("[T]he simple existence of contaminated groundwater does not automatically impel an endangerment

claim. Instead, many courts [have] rejected groundwater endangerment claims with no evidence of anyone potentially drinking contaminated water.”); *Schmucker v. Johnson Controls, Inc.*, No. 14-cv-1593, 2019 WL 718553, at *27 (N.D. Ind. Feb. 19, 2019) (“Contamination does not create an endangerment by its mere presence . . .”). Something more is required.

Indeed, “[a] number of courts have found that a contaminated water supply does not pose an imminent and substantial endangerment where plaintiffs are not drinking the contaminated water.” *Warren*, 2016 WL 215232, at *7 (citing *Two Rivers Terminal, L.P. v. Chevron USA, Inc.*, 96 F. Supp. 2d 432, 446 (M.D. Pa. 2000) (“The fact that no one is drinking this water eliminates it as a threat to health or the environment.”); *Scotchtown Holdings LLC v. Town of Goshen*, No. 08-CV-4720, 2009 WL 27445, at *2 (S.D.N.Y. Jan. 5, 2009) (“Accordingly, courts routinely dismiss RCRA claims where, notwithstanding the existence of hazardous substances in a water supply, the specific factual circumstances at issue prevent humans from actually drinking contaminated water.”)).

In *Warren*, for instance, the district court granted a motion to dismiss an (a)(1)(B) claim as the complaint failed to allege the plaintiffs were drinking the contaminated water. *See* 2016 WL 215232, at *7 (“The insufficiency of such a conclusory statement aside, the Warrens’ amended complaint does not allege that they are drinking the water.”). So too here, this Court should grant Perdue’s motion to dismiss Plaintiffs’ (a)(1)(B) claim as Plaintiffs have failed to allege that they are continuing to drink the water and are thereby facing a reasonable cause for concern of harm in the absence of judicial intervention. Plaintiffs have only alleged the presence of a contaminant, which is insufficient to establish an “imminent and substantial endangerment” (a)(1)(B) claim. Accordingly, Plaintiffs’ Count IV should be dismissed.

IV. In the Alternative, this Court Should Strike Certain Allegations in Plaintiffs’ Imminent and Substantial Endangerment Claim.

Should Plaintiffs’ (a)(1)(B) claim survive, the Court should strike any reference to air emissions because such releases do not constitute “solid waste.”

RCRA defines “solid waste” in 42 U.S.C. § 6903(27) as:

[A]ny garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or *contained gaseous material* resulting from industrial, commercial, mining, and agricultural operations, and from community activities

(emphasis added). Thus, emitted gases can only qualify as solid waste if they are “contained” before disposal, per the text of the statute, but Plaintiffs allege the emissions are *not* contained. ECF 4 ¶ 52 (alleging Perdue’s manufacturing processes and disposals emit PFAS directly into the air). The emissions Plaintiffs describe are not the proper subject of a RCRA claim. *See United States v. Sims Bros. Const.*, 277 F.3d 734, 740 & n.9 (5th Cir. 2001) (“gaseous material” may only be solid waste within the meaning of 42 U.S.C. § 6903(27) if it is “contained”); *Steward v. Honeywell Int’l, Inc.*, 469 F. Supp. 3d 872, 881 (S.D. Ill. 2020) (finding unpersuasive plaintiffs’ allegations that air emitted from uranium hexafluoride plant is “solid waste governed by RCRA”).

Plaintiffs allege that “Perdue is emitting PFAS into the air from its manufacturing processes.” ECF 4 ¶ 52. Plaintiffs do not adequately allege a “solid waste” here, because they do not allege the PFAS is a “contained gaseous material.” *See* 42 U.S.C. § 6903(27). And, in any event, the statute is not designed to address this type of emission with respect to non-hazardous solid waste. *See Ctr. for Cmty. Action & Env’t Just. v. BNSF Ry. Co.*, 764 F.3d 1019, 1025-26 (9th Cir. 2014) (holding emissions of solid waste “*into the air*” do not constitute disposal of solid waste under 42 U.S.C. § 6903(3) (emphasis in original)). Accordingly, in the event Plaintiffs’ (a)(1)(B) claim is not dismissed due to their failure to allege imminent and substantial

endangerment, the Court should strike any reference to air emissions under Count IV, as these releases do not constitute “disposal” of “solid waste.”

V. In the Alternative, this Court Should Stay Further Proceedings Pending MDE Remediation Events.

To the extent the Court does not dismiss all claims, this case should be stayed to allow MDE to complete its investigation and determine the appropriate remedial response consistent with governing federal and state laws. *See generally* COMAR 26.14.02.06 (outlining MDE’s remedial response process).

While Perdue is aware that the Court recently denied a motion to stay in a separate suit against Perdue related to the PFAS contamination at the facility, *see* Mem. Op. at 12-13, ECF 44, *Chaney v. Perdue*, No. 24-2975 (D. Md. Aug. 12, 2025), this suit is distinguishable in that there is a complete overlap in the broad environmental remediation relief Plaintiffs seek and the remediation plan MDE is assessing. *See id.* (noting that some of the relief plaintiffs seek in *Chaney*, such as medical monitoring, would not result from MDE’s investigation). Delaying proceedings until MDE determines what specific remediation is necessary will avoid any conflict between MDE’s determination and this Court’s ruling and may render this litigation unnecessary.

MDE has already identified Perdue as the “responsible” party for performing remediation. *See* ECF 1-2, Attachment A; COMAR 26.14.02.06C (indicating MDE’s authority to make such designations and MDE’s ability to assume remediation responsibilities if MDE determines the responsible person will not remediate properly or in a timely manner). This suit arrives in the middle of MDE’s three-phase remediation process, COMAR 26.14.02.06A, as MDE’s next phase involves “[s]election of the remedy, design, and implementation of the remedy.” *See* COMAR 26.14.02.06A(2); *see also* Perdue PFAS Updates, <https://corporate.perdufarm.com/water-testing-resources/#progress-update> (last visited Aug. 28, 2025) (providing a timeline of MDE and

Perdue activities and updates on progress). Plaintiffs' RCRA suit essentially asks this Court to bypass MDE, and unilaterally design and implement its own remedy via the Court's injunctive powers. However, this would be an inefficient and unnecessary burden on the judiciary when there is no evidence that Maryland's administrative experts are dilatory or neglectful of their responsibility to oversee PFAS remediation.

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Maryland v. Universal Elections, Inc.*, 729 F.3d 370, 379 (4th Cir. 2013) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). A stay is appropriate when an issue "involves technical questions of fact and policy bound up with an assessment of industry standards or practices." *Stewart v. T-Mobile USA, Inc.*, No. 14-cv-02086-PMD, 2014 WL 12614418, at *3 (D.S.C. Oct. 8, 2014). Under the doctrine of primary jurisdiction, a court may find that such questions are best answered by an administrative agency acting within its purview.

"The principal reasons for the doctrine of primary jurisdiction are to obtain the benefit of the expertise and experience of the administrative agencies and the desirable uniformity which occurs when a specialized agency decides certain administrative questions." *Cavalier Tel., LLC v. Va. Elec. & Power Co.*, 303 F.3d 316, 322 n.10 (4th Cir. 2002) (quoting *Alltel Tenn., Inc. v. Tenn. Pub. Serv. Comm'n*, 913 F.2d 305, 309 (6th Cir. 1990)).

Courts have developed a four-factor test to determine whether to stay a case under the primary jurisdiction doctrine:

- (1) whether the question at issue is within the conventional experience of judges or it is within the agency's particular field of expertise;
- (2) whether the question at issue is particularly within the agency's discretion;
- (3) whether there exists a substantial danger of inconsistent rulings; and
- (4) whether a prior application to the agency has been made.

Stewart, 2014 WL 12614418, at *2-3 (citing cases). Each of these factors weighs in favor of a stay.

This case concerns the discharge of a substance into surface waters and groundwater in Maryland, precisely MDE's area of expertise. *See* Md. Code Ann., Env't. § 4-101 *et seq.* (governing water management); *id.* § 7-101 *et seq.* (governing hazardous materials and hazardous substances); *id.* § 9-201 *et seq.* (governing water pollution control). Additionally, MDE is taking a proactive approach to PFAS identification and remediation. *See generally*, Maryland PFAS Action Plan, Md. Dep't of the Environment and Md. Dep't of Health (December 2023), *also at* <https://tinyurl.com/bdev773f>. This proactive approach is exemplified in the current case, where MDE initiated sampling of Perdue's Salisbury facility, identified the presence of PFAS, designated Perdue as the responsible person for remediation efforts, ECF 1-2, Attachment A, and already defined its procedures for developing a remediation program. *See* Exhibit D at 2 (December 20, 2024, letter from MDE to Perdue indicating such a program includes the drafting of a report "that is equivalent to a Phase I Environmental Site Assessment," and the development of a "Conceptual Site Model" and "Feasibility Study"). As MDE noted in the December 20, 2024 correspondence, Perdue AgriBusiness has been committed to working with MDE to address the concerns related to PFAS at its Salisbury site and intends to comply with the procedures MDE has designed. *Id.* at 3.

Notably, the test for whether a stay is warranted is not limited to formal proceedings, nor where the agency formerly enjoyed deference under *Chevron*. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), *overruled by Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). *Chevron* and *Loper Bright* concerned deference to an agency's legal interpretations, not its factual findings, which the Supreme Court has emphasized are still entitled to deference when the agency is operating within its area of expertise. *Loper Bright*, 603 U.S. at 388 (citing

Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944)). That is precisely what is happening here: MDE is investigating the PFAS contamination at the site and determining how best to remediate it. These are not legal determinations, but factual ones, and for that reason, are best reserved to the responsible agency. Accordingly, both factors one and two weigh in favor of a stay.

The third factor also weighs in favor of a stay because there is a danger of inconsistent rulings between the Court's putative injunction and MDE's ultimate determination as to the most feasible and efficient path towards remediation. The danger of inconsistent rulings is heightened when an individual brings a RCRA claim. *See Coal. for Health Concern v. LWD, Inc.*, 60 F.3d 1188, 1194-95 (6th Cir. 1995) (abstaining from a RCRA complaint because the state had its own program under RCRA and was attempting to establish a coherent policy under its law concerning hazardous waste disposal facilities); *Space Age Fuels, Inc. v. Standard Oil Co. of Cal.*, No. CIV. 95-1637-JE, 1996 WL 160741, at *3 (D. Or. Feb. 29, 1996) ("I am convinced that this court's disposition of Space Age's RCRA claim could substantially interfere with the state's administration of that policy.").

Finally, the fourth factor favors a stay because MDE is already investigating the allegations Plaintiffs have made and is working with Perdue to develop an identification and remediation plan. MDE's investigation will inform, at the very least, the core elements of Plaintiffs' RCRA claims, including their ability to establish standing to pursue their claims. Moreover, if not more importantly, a program is already in place that installs POETs to treat residential well water containing elevated levels of PFAS. This program is available to all homes, including Mr. Jones's, within the current area of investigation.

Indeed, Perdue has completed well water testing for 100% of the properties within MDE's approved testing area for those who requested it (673 properties total). Perdue PFAS Updates,

<https://corporate.perdufarm.com/water-testing-resources/#progress-update> (last visited Aug. 28, 2025). Perdue has installed POET systems at more than 95% of the properties where elevated levels of PFAS were detected, though some property owners are nonresponsive or have declined Perdue’s offer to install these PFAS treatment systems, such as Mr. Renshaw. Exhibit A, ¶¶ 6, 7. Perdue is committed to installing systems at every impacted property within MDE’s approved area that requests a system. Perdue PFAS Updates, <https://corporate.perdufarm.com/water-testing-resources/#progress-update> (last visited Aug. 28, 2025).

Moreover, Perdue has been following MDE’s directions, prioritizing the identification and mitigation of PFAS detected in private drinking wells in MDE’s approved area. *Id.* Perdue has installed a state-of-the-art PFAS treatment system at the facility, and test results show the system has reduced PFAS concentrations in treated wastewater to trace levels. *Id.* Finally, in June 2025, MDE approved the workplan submitted by Perdue’s experts, which details a comprehensive process for identifying and understanding the presence of any PFAS at the site. *Id.* That plan continues to be updated as more data become available. *Id.*; *see also Revised/Final Per and Polyfluoroalkyl (PFAS) Investigation Work Plan* (May 28, 2025), <https://tinyurl.com/23v7djvp>; *Monthly Progress Report* (June 2025), <https://tinyurl.com/4ujuu257>.

Ultimately, all four factors weigh in favor of a stay in this case because judicial intervention at this stage is both premature and unnecessary. RCRA citizen suits were designed to empower citizens to ensure assiduous remedial efforts and prosecution of environmental violations. *See Friends of Santa Fe Cnty. v. Lac Minerals, Inc.*, 892 F. Supp. 1333, 1350 (D.N.M. 1995) (“[I]t would be improper for this Court to exercise its equitable jurisdiction to interfere with the comprehensive programs designed to solve a complex social, economic and technological problem. Quite simply, [the Court] choose[s] not to pollute the scene with still more studies and

standards.” (internal citations and quotations omitted)); *Cf. Coll. Park Holdings, LLC v. Racetrac Petroleum, Inc.*, 239 F. Supp. 2d 1334, 1348 (N.D. Ga. 2002) (granting summary judgment to plaintiff on RCRA claim where, “despite numerous directives and notices of violation issued by” state authority, defendant “refused to fulfill its legal obligations to investigate, delineate, and remediate the free product and groundwater contamination at [its] [p]roperties,” and noting defendant “had many chances to attain compliance,” but “failed to do so.”).

Yet here, not only has Perdue prioritized investigation and remediation, so too has MDE. *Supra* Maryland PFAS Action Plan. MDE’s PFAS investigation at the Salisbury facility is a far cry from dilatory. *Cf. Chesapeake Bay Found. v. Severstal Sparrows Point, LLC*, 794 F. Supp. 2d 602, 617 n.12 (D. Md. 2011) (declining to abstain where parties were 13 years into a consent decree and the relevant RCRA claim was not addressed in that decree). Unlike *Chesapeake Bay Foundation*, MDE is actively investigating the source and scope of PFAS contamination and any remedy the Plaintiffs could seek in this proceeding is currently being considered by environmental experts within MDE. This is entirely consistent with the purpose of RCRA. *See Meghrig*, 516 U.S. at 483 (“RCRA’s primary purpose . . . is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated[.]” (emphasis added)). Accordingly, the Court should grant Perdue’s request for a stay.

CONCLUSION

For the reasons outlined herein, Plaintiffs’ First Amended Complaint should be dismissed in its entirety. Alternatively, this Court should strike allegations in Plaintiffs’ Count IV based on air emissions and stay any surviving claims for the duration of MDE’s investigation. A proposed order to this effect is appended to the instant Motion.

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/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 28, 2025, I electronically filed this Motion to Dismiss, Strike, or Stay with the Court and used the CM/ECF system to serve all parties in this action registered with that system.

I FURTHER CERTIFY that a courtesy copy of the foregoing will be sent by overnight mail to the Clerk's Office.

_____/s/_____
Catherine G. Ottenritter