IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STEPHEN JONES, *et al.*, Plaintiffs, v. PERDUE FARMS INC., *et al.*, Defendants.	C.A. No. 1: 25-cv-02445

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO RECONSIDER

Plaintiffs respectfully request that this Court reconsider the portion of its Memorandum Opinion (ECF 34) and Order (ECF 35) that dismissed Count IV of Plaintiffs' First Amended Complaint ("Complaint"), which alleged that Perdue's past or present practices concerning its PFAS-laden solid waste have led to a widespread contamination of the area's drinking water, groundwater, surface water, and soil and "may present an imminent and substantial endangerment to health or the environment." *See* 42 U.S.C. § 6972(a)(1)(B). Plaintiffs request reconsideration for two primary reasons: (1) because Plaintiffs are authorized to bring claims under the Resource Conservation and Recovery Act ("RCRA") on behalf of others and the environment so long as they can establish Article III standing themselves; and (2) because, even if individualized risk were required, Plaintiffs' allegations satisfy Rule 12(b)(6) such that the portion of Defendants' motion seeking dismissal of Count IV should be denied.

PROCEDURAL HISTORY

On January 8, 2026, this Court entered an Order (ECF 35) with an accompanying Memorandum Opinion (ECF 34) which granted in part and denied in part Defendants' Motion to Dismiss, Strike, or Stay (ECF 19). As it relates to this Motion for Reconsideration, the Court

dismissed Count IV of Plaintiffs' Complaint because "Plaintiffs did not allege in their complaint that they are currently drinking the contaminated water" and because the Court concluded that Plaintiffs lacked standing to bring claims alleging environmental harm. ECF 34 at 13–14.

LEGAL STANDARD

Under Rule 54, the Court may revise any non-final order or decision "at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(b). The district court's power to reconsider prior rulings under Rule 54(b) is discretionary and not subject to the stricter standards governing reconsideration of final orders and final judgments. *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514–15 (4th Cir. 2003).

ARGUMENT

I. RCRA Does Not Require Plaintiffs to Allege Endangerment to Their Own Health or Their Particularized Use or Enjoyment of the Environment

RCRA does not require plaintiffs to allege that they themselves suffer an imminent and substantial endangerment to their health or to their use or enjoyment of the environment in order to bring a citizen suit under 42 U.S.C. § 6972(a)(1)(B). Rather, a plaintiff need only satisfy the requirements of Article III standing. To the extent the Court's Memorandum Opinion requires that Plaintiffs allege a personalized endangerment to their own health or to their own use or enjoyment of the environment, ECF 34 at 13–14, that interpretation imposes a limitation not found in the statute.

This follows from the nature and purpose of RCRA's citizen suit provision. RCRA is not a mechanism through which plaintiffs seek relief solely on their own behalf, but rather it authorizes "a private means of obtaining the same relief that the EPA Administrator has previously been authorized to seek under RCRA by [42 U.S.C. § 6973]." *Middlesex Cnty. Bd. of Chosen*

Freeholders v. State of N.J. Dep't of Env't Prot., 645 F.Supp. 715, 721 (D. N.J.1986); *see also Lincoln Props., Ltd. v. Higgins*, No. CIV. S-91-760DFL/GGH, 1993 WL 217429, at *9 n.22 (E.D. Cal. Jan. 21, 1993) (noting that the RCRA citizen suit provision requires the same elements as a government enforcement action brought under 42 U.S.C. § 6973).

Consistent with that framework, the merits consideration for RCRA citizen suits does not turn on the plaintiff's personal damages, but rather whether the defendant has engaged in conduct that either: (1) violated a "permit, standard, regulation, condition, requirement, prohibition, or order" under RCRA; or (2) has contributed or is 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." 42 U.S.C. § 6972(a)(1)(A)-(B). Where the defendant has engaged in such conduct, Congress authorized citizen suits to seek the same relief that the EPA Administrator could seek under RCRA, which includes broad injunctive and equitable relief.

The statute itself contains no requirement that a plaintiff demonstrate individualized harm beyond Article III standing. *Maine People's All. And Nat. Res. Def. Council v. Mallinckrodt, Inc.*, 471 F.3d 277, 283 (1st Cir. 2006) ("Because there is nothing in RCRA's text or history that suggests a congressional intent to erect statutory standing barriers beyond those imposed by Article III of the Constitution . . . we focus on what is essential to establish Article III standing.") This is why courts evaluating imminent and substantial endangerment claims routinely consider risks posed to others or to the environment more broadly, rather than limiting the inquiry to the plaintiff's own exposure.[1] *See, e.g., Two Rivers Terminal, L.P. v. Chevron USA, Inc.*, 96 F. Supp.

[1] In *Warren v. Matthey*, No. CV 15-01919, 2016 WL 215232 (E.D. Pa. Jan. 19, 2016), which Plaintiffs argue below should be considered unpersuasive, the court focused on risk of harm to the named plaintiffs because those plaintiffs framed their claims solely in terms of harm to themselves. *Id.* at *7 ("The Warrens merely

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.") (emphasis added); *Scotchtown Holdings LLC v. Town of Goshen*, No. 08-CV-4720-(CS), 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.") (emphasis added); *Courtland Co., Inc. v. Union Carbide Corp.*, No. 2:18-CV-01230, 2023 WL 6331069, at *57 (S.D.W. Va. Sept. 28, 2023), aff'd, No. 23-2143, 2025 WL 2827873 (4th Cir. Oct. 6, 2025) ("Succinctly stated, the record evidence fails to demonstrate any viable exposure pathway by which *any receptor* could come into contact with the contaminated groundwater existing beneath the surface on-site or off, whether through ingestion or otherwise, which effectively eliminates any potential cause for concern to human health." (emphasis added).

For the same reason, courts frame the imminent and substantial endangerment analysis in terms of public health and environmental risk, rather than endangerment of a particular plaintiff or their personal use or enjoyment of the environment. *See Maine People's All.*, 471 F.3d at 287 (discussing Congress's expansion of the RCRA provisions authorizing both the EPA Administrator and the public "to sue a polluter who may be causing an imminent and substantial endangerment to public health or the environment."); *Foster v. United States*, 922 F. Supp. 642, 661 (D.D.C. 1996) ("An imminent and substantial endangerment exists if there is reasonable cause for concern that *someone or something* may be exposed to a risk of harm ... if remedial action is not taken." (emphasis added) (quotation omitted); *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 399 F.3d 248, 259 (3d Cir. 2005) ("[G]iven RCRA's language and purpose, Congress must have intended that if an error is to be made in applying the endangerment standard, the error must be

allege that their 'contaminated drinking water poses an imminent and substantial endangerment to *their* health and safety." (emphasis added).

made in favor of protecting public health, welfare and the environment.") (quoting *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 194 (W.D. Mo. 1985)).

Here, the Complaint alleges current widespread risk of harm to human health and the environment. The Complaint alleges that contamination is widespread in the surrounding area, with at least 112 nearby drinking water wells exceeding EPA's maximum contaminant levels ("MCLs") for one or more PFAS compounds, often at levels of 10 to 100 times the regulatory limit. First Am. Compl. ¶ 57; *see also id.* ¶¶ 74–85 (discussing risk of harm posed to the environment). Whether Plaintiffs can ultimately prove their allegations of a risk of imminent and substantial endangerment to health or the environment is a factual question that will require significant development of evidence by both sides.[2] But the facts alleged in the Complaint, taken as true at this pleading stage, are more than sufficient to state a plausible claim for relief.

Accordingly, because the Court correctly found that Plaintiffs have Article III standing, Count IV should not be dismissed based on any perceived absence of allegations of individualized harm to Plaintiffs' health or impairment of Plaintiffs' personal use or enjoyment of the environment, as RCRA imposes no such requirement. Even so, and as set forth below, the Complaint alleges facts sufficient to establish a present and personalized risk of harm to Plaintiffs' health.

[2]Not for the Court's consideration as part of this Rule 12(b)(6) issue, but illustrative of the type of evidence that will be explored, Perdue's website indicates that at least 9% of "impacted properties" do not have a point-of-entry treatment ("POET") system installed. Perdue Farms, Updates on Salisbury private well sampling for PFAS (last updated Jan. 20, 2026), https://corporate.perduefarms.com/water-testing-resources/#progress-update. Given that the plume of contaminated water continues to migrate, First Am. Compl. ¶¶ 53–55, Plaintiffs reasonably anticipate that the number of homes with contaminated wells and without treatment systems will increase absent meaningful remediation.

II. Even If Individualized Risk Were Required, Plaintiffs' Allegations Satisfy Rule 12(b)(6)

Plaintiffs do not dispute the Rule 12(b)(6) standard articulated by the Court, ECF 34 at 4, but respectfully submit that the allegations contained in the Complaint satisfy that standard when properly applied to Count IV, even if individualized risk were required.

Here, Plaintiffs have alleged sufficient facts establishing that they may face an imminent and substantial endangerment to their health based on Perdue's actions. *See* First Am. Comp. ¶¶ 18–19 (alleging fear of adverse health effects due to contamination of Plaintiffs' properties and their drinking water); *id.* ¶ 21 (alleging that Plaintiffs "have encountered PFAS-laden solid wastes through contamination of their drinking water, groundwater, surface water, and soil" and reasonably fear that such exposure will continue); *id.* ¶ ¶ 22–24 (alleging testing results of drinking well water at Plaintiffs' properties showing significantly elevated levels of PFAS well above the EPA's MCLs under the Safe Drinking Water Act); *id.* ¶ 58 (alleging that Perdue has caused Plaintiffs potable water to be contaminated); *id.* ¶ 93 (alleging that Perdue is "continuing to contaminate on-site and off-site groundwater and surface waters used and enjoyed by Plaintiffs"); *id.* ¶ 110 (alleging that Perdue has contaminated Plaintiffs' source of drinking water); *see also id.* ¶¶ 62–73 (detailing alleged health risks posed by exposure to PFAS, including that particular PFAS compounds are carcinogenic).

In light of the abundant allegations in the Complaint concerning the contamination of Plaintiffs' property and drinking water, and keeping in mind the Court's duty under a Rule 12(b)(6) motion to draw all reasonable inferences in favor of the Plaintiffs, this Court should reject Perdue's argument that Plaintiffs must include the particular incantation that Plaintiffs are currently drinking contaminated water in order to state a claim for relief that Perdue's actions "may present an

imminent and substantial endangerment" to their health under 42 U.S.C. § 6972(a)(1)(B). The Fourth Circuit has rejected a similar argument in construing statutory language closely paralleling RCRA's imminent and substantial endangerment provision.

Although arising under the Safe Drinking Water Act ("SDWA") rather than RCRA, the Fourth Circuit's decision in *Trinity Am. Corp. v. U.S. E.P.A.*, 150 F.3d 389, construed materially identical language authorizing EPA to act where contamination "may present an imminent and substantial endangerment to the health of persons." *Id.* at 394 (quoting 42 U.S.C. § 300i(a)).[3] The Fourth Circuit rejected the argument that the provision of bottled water defeated a finding of imminent and substantial endangerment, explaining that the statute does not require proof "that any individuals are actually drinking contaminated water." *Id.* at 399. Instead, the court emphasized that the relevant well "remains contaminated, as does at least one large plume of water that extends as far as 500 feet beyond the Trinity property into an area that Trinity itself recognizes includes approximately 100 homes." *Id.* at 400. As alleged here, Plaintiffs likewise contend that their drinking water source remains contaminated and that PFAS contamination has migrated beyond the source property into surrounding residential areas, giving rise to a continuing risk of exposure.

[3] The *Trinity* decision itself confirmed that the imminent and substantial endangerment provisions under the SDWA and RCRA may be analyzed in a similar manner, expressly comparing its holding to an unpublished Fourth Circuit decision addressing a RCRA endangerment claim. *See Trinity*, 150 F.3d at 400 (discussing *Leister v. Black & Decker (U.S.), Inc.*, 117 F.3d 1414 (4th Cir. 1997) (unpublished)). The Fourth Circuit distinguished *Leister* on the ground that the filtration system at issue there had fully remedied the groundwater contamination. *Id. Leister* also involved a 170-acre farm adjoining an industrial facility, rather than a populated area with many homes, and the district court had stricken exhibits purporting to show elevated contaminant levels prior to filtration and contamination of surface waters due to authentication defects. *Leister*, 1997 WL 378046, *1 n.3. For all these reasons, *Leister* offers little guidance here, and the Court should instead look to the Fourth Circuit's published analysis in *Trinity*.

The out-of-circuit decision relied upon by the Court, *Warren v. Matthey*, No. CV 15-01919, 2016 WL 215232 (E.D. Pa. Jan. 19, 2016), should not be persuasive on this question because its reasoning conflicts both with the statutory language of RCRA and with the Supreme Court's interpretation of the imminent and substantial endangerment provision in *Meghrig v. KFC W., Inc.*, 516 U.S. 479 (1996). RCRA authorizes citizen suits when the handling, storage, treatment, transportation, or disposal of solid or hazardous waste "may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B). The Supreme Court has explained this provision is designed "to provide a remedy that ameliorates present or obviates the risk of future 'imminent' harms." *Meghrig*, 516 U.S. at 486. Thus, the statute covers circumstances in which harm is not currently occurring, but where a current threat exists that may result in harm in the future. *Id.* (explaining that "there must be a threat which is present *now*, although the impact of the threat may not be felt until later") (emphasis in original) (quoting *Price v. United States Navy*, 39 F.3d 1011, 1019 (9th Cir. 1994)). Requiring that Plaintiffs continue to knowingly consume contaminated water to maintain standing under RCRA undermines the entire purpose of the statute.

In *Warren*, the plaintiffs alleged that defendants had contaminated their well water with the carcinogen trichloroethylene. *Warren*, 2016 WL 215232, at *2. Rather than concluding that the presence of contaminated well water constituted a current threat of future harm, the court dismissed the RCRA claim based on judicial notice of water filtration test results and counsel's representation during oral argument that the plaintiffs were drinking bottled water. *Id.* at *7. In effect, the court treated interim protective measures as eliminating the existence of a threat of imminent and substantial endangerment.

That approach is inconsistent with both the statutory text and *Meghrig*. The statute requires only that the management of waste "may present" an imminent and substantial endangerment, not that harm be unavoidable or presently occurring. *See* 42 U.S.C. § 6972(a)(1)(B). The Supreme Court confirmed in *Meghrig* that a plaintiff need only show that a threat of endangerment currently exists. *Meghrig*, 516 U.S. at 486. Where residents rely on bottled water and filtration systems to avoid harming their health, the threat has not been eliminated. The continued presence of contaminated well water, combined with reliance on interim and fallible protective measures that require frequent maintenance and monitoring, constitutes a present threat of future harm within the meaning of RCRA.

In their opposition brief, Plaintiffs distinguished the two cases relied upon by *Warren,* as well as the additional decision referenced in this Court's memorandum opinion, *Courtland Co. v. Union Carbide Corp.*, Civ. No. 2:18-cv-01230, 2023 WL 6331069 (S.D.W. Va. Sept. 28, 2023). ECF 23-1 at 28. Plaintiffs submit that those decisions involved situations where there was no existing pathway of exposure. By contrast, Plaintiffs here allege that Perdue has contaminated their potable well water, soil, and adjacent surface water, giving rise to a present threat of future harm with an existing and obvious pathway for exposure.

Even apart from the allegations concerning drinking water, the Complaint alleges contamination of surface water and soil on and around Plaintiffs' properties, which may be associated with harm as Plaintiffs come into contact with contaminated water and soil . First Am. Comp. ¶¶ 21, 93. Read in the light most favorable to Plaintiffs, those allegations plausibly support additional pathways of harmful exposure and further confirm that Plaintiffs have adequately alleged an imminent and substantial endangerment at this stage of the case.

The Complaint further alleges that contamination is not confined to Plaintiffs' properties, but is widespread in the surrounding area, with at least 112 nearby drinking water wells exceeding EPA's MCLs for one or more PFAS compounds, often at levels of 10 to 100 times the regulatory limit. First Am. Compl. ¶ 57. At the pleading stage, these allegations support a reasonable inference that PFAS contamination has migrated through shared groundwater sources and remains uncontrolled, reinforcing the plausibility of Plaintiffs' allegations that they face a continuing and imminent risk of harmful exposure.

Accordingly, Plaintiffs' allegations are sufficient to state a claim under RCRA even assuming a standard requiring individualized risk and Count IV should not be dismissed on that basis.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request this Court reconsider its dismissal of Count IV of the Complaint and to grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

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