



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Fluorinating Plastic Containers/Toxic Substances Control Act: Public Employees for Environmental Responsibility Notice of Intent to Sue U.S. Environmental Protection Agency Regarding Alleged PFOA Related Non-discretionary Duty

06/07/2024

The Public Employees for Environmental Responsibility (“PEER”) sent a May 17th document to the United States Environmental Protection Agency (“EPA”) styled:

Notice of Intent to File Suit to Compel Performance of a Non-discretionary Duty under Section 20(a)(2) of TSCA

The Center for Environmental Health (“CEH”) also joined the Notice of Intent to Sue (“NOI”).

CEH and PEER argue that EPA has failed to perform its non-discretionary duty under Section 4(f) of the Toxic Substances Control Act (“TSCA”). The alleged non-discretionary duty is stated to include initiating applicable action under Section 5, 6, or 7 to prevent or reduce the risk posed by perfluorooctanoic acid (“PFOA”) formed in the process of fluorinating plastic containers.

The organizations take the position that the obligation to undertake this non-discretionary duty arose within 180 days of EPA’s receipt of information indicating that they believe there may be a reasonable basis to conclude that, when in the presence of such containers, PFOA presents a significant risk of serious or widespread harm to human beings.

The NOI describes information that EPA is stated to have received and the corresponding dates.

Additional components of the NOI include:

- Applicable provisions of TSCA.
- Background.
- The LCPFAC SNUR.
- Submission of SNUNs.
- EPA’s Section 5(e) and 5(f) Orders.
- Rationale for the Orders.

- United States Court of Appeals Fifth Circuit Decision Staying the EPA Orders.
- Application of Section 4(f) to PFOA formed during the fluorination of plastic containers.
- The risks to health of LCPFACs subject to the 5(f) Order are serious and significant.
- The risk to health of LCPFACs found in fluorinated containers are widespread.
- EPA's obligation to take action under Section 4(f).
- Section 7 Imminent Hazard Authority.

A copy of the NOI can be downloaded [here](#).