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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CLEAN AIR COUNCIL;
COMMUNITIES FOR A BETTER
ENVIRONMENT; and NATURAL
RESOURCES DEFENSE COUNCIL,
INC.,

Plaintiffs,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY; LEE
ZELDIN, in his official capacity as
Administrator; and NANCY BECK, in
her official capacity as Principal
Deputy Assistant Administrator for the
Office of Chemical Safety and
Pollution Prevention,

Defendants.

Case No. 8:25-cv-1473-MWF (DFMx)

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS FIRST AMENDED
COMPLAINT (DKT. NO. 50)**

Date: June 10, 2026

Time: 10:00 a.m.

Judge: Hon. Michael W. Fitzgerald

Courtroom: 5A

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INTRODUCTION

The premise of this lawsuit is that using hydrogen fluoride (“HF”) in oil refining presents an unreasonable risk of injury to the public or the environment. It presents such a risk, according to Plaintiffs, because HF could do a lot of harm during a major release event. But these worst-case scenarios are unpredictable events that rarely (if ever) happen. Plaintiffs’ reliance on disaster events dooms their case.

On standing, Plaintiffs do not allege that the refineries near their members have ever released HF into the community, or that they will imminently release HF. Instead, Plaintiffs cite unrelated incidents at refineries across the United States and allege that future releases of HF *could* occur because, they assert, refineries are aging and extreme weather events *could* occur near refineries that *could* be located near at least some of their alleged members. Their theory is truly limitless.

On the merits, Plaintiffs theory fails as a matter of law. They again rely on unpredictable catastrophic events for their assertion that HF poses an unreasonable risk to human health and the environment, but an unreasonable risk under the relevant statute (TSCA) must be based on the *likely* exposure to a chemical substance.

The Court should grant EPA’s motion and dismiss Plaintiffs’ amended complaint.

ARGUMENT

I. Plaintiffs have not alleged sufficient facts to show an injury-in-fact and thus lack standing.

Plaintiffs have not alleged facts sufficient to show that they have suffered or will suffer an injury-in-fact that is actual or imminent. At most, the allegations, assuming they are true at this stage, are still not specific to Plaintiffs’ members, who assert that they live near the Torrance, Wilmington, and Trainer refineries.

1 **A. Plaintiffs’ claimed injury based on the use of HF is not imminent or**
2 **certainly impending.**

3 Plaintiffs’ theory of injury relies on a worst-case scenario; a future release of
4 HF that affects millions of people. *See* Plaintiffs’ Combined Opposition to Federal
5 Defendants’ and Movant-Defendant Intervenor’s Motions to Dismiss 6-11, Dkt.
6 No. 58 (“Opp.”). But they have not alleged facts showing there is a “credible
7 threat” that their members will be exposed to HF. *Id.* at 18. Rather, Plaintiffs’
8 theory of harm is speculative and thus not certainly impending, and that is fatal.
9 *See* EPA’s Memorandum of Points and Authorities in Support of Defendants’
10 Motion to Dismiss First Amended Complaint 10-19, Dkt. No. 53-1 (“EPA Mem.”).
11 Plaintiffs are not shy about the scope of their theory of harm. In their view, anyone
12 who spends time near a refinery that uses HF or an HF transportation route has
13 standing here because a worst-case release could happen at any time. Opp. 7. But
14 that is not all. Plaintiffs also say their members are harmed by the imminent threat
15 of both a small exposure of HF (rather than a catastrophic one) *and* no exposure at
16 all (through near-releases). *Id.* at 19, 20-21. All of this, Plaintiffs say, is
17 compounded by climate change. *Id.* at 23. The Court should reject this
18 unrecognizably broad theory of standing.

19 **Catastrophic releases.** Plaintiffs say (both in their petition to EPA and in
20 their amended complaint) that millions of Americans are at risk of being exposed
21 to HF from refinery-related releases. *See* Shahrasbi Decl. Ex. A (Feb. 11, 2025
22 Section 21 Petition) at i, 3-11, and 11-46; First Amended Complaint ¶¶ 65-102, Dkt.
23 No. 50 (“FAC”).¹ Indeed, in their petition Plaintiffs expressly rely on guideline

24
25 ¹ A document is incorporated by reference where, as here, the complaint “refers
26 extensively to the document or the document forms the basis of the plaintiff’s
27 claim.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir.
28 2018) (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)). This
“prevents plaintiffs from selecting only portions of documents that support their
claims, while omitting portions of those very documents that weaken—or doom—

1 levels developed for “catastrophic exposures” and “worst-case scenarios” in
2 asserting unreasonable risk. *See* Shahrabi Decl. Ex. A at 13, 18-36. The petition
3 references potential “catastrophic” HF releases no less than twelve times, “worst-
4 case” scenarios of HF releases no less than forty-three times, and “major” releases
5 of HF no less than nine times. *See generally id.* The amended complaint likewise
6 relies on “worst-case” scenarios or “how far the resulting HF cloud would spread.”
7 EPA Mem. 14 (citing FAC ¶ 76).

8 Plaintiffs try to ground their risk-of-catastrophic-release theory of injury in a
9 lone case, *Eng v. EPA*, 172 F.4th 747 (9th Cir. 2026), but that attempt fails. *See*
10 Opp. 18. In *Eng*, the petitioner administratively requested that EPA object to a
11 Clean Air Act permit proposed for a specific refinery based on alleged defects in
12 the Risk Management Plan, Emergency Response Plan, Emergency Response
13 Manual, and other documents required under the refinery’s permit. 172 F.4th at
14 752. No party challenged petitioner’s standing, and the court addressed the issue in
15 a footnote. *Id.* at 750 n.1. In denying the petition for review of EPA’s denial of the
16 administrative petition, the court concluded that the petitioner had “standing for
17 present purposes” based on the “asserted deficiencies in the Refinery’s operating
18 permit.” *Id.* Thus, the claimed injury in *Eng* was focused on the specific permitting
19 requirements that the petitioner asserted were not met.

20 In contrast here, Plaintiffs challenge EPA’s denial of a petition to ban HF at
21 all refineries under TSCA. They have not alleged increased risk associated with
22 particular risk management techniques required by law. Instead, Plaintiffs’ broad
23 claims of injury are based on the mere use of HF. Determining “‘injury’ for Article
24

25 _____
26 their claims.” *Id.* at 1002. This court may consider the petition when assessing the
27 sufficiency of a complaint under Rule 12(b)(6). *Id.* at 998.
28

1 III standing purposes is a fact-specific inquiry,” *Lujan v. Defs. of Wildlife*, 504 U.S.
2 555, 606 (1992) (Blackmun, J., dissenting), and the traceability and redressability
3 prongs necessarily turn on the relevant statutory and regulatory scheme. Unlike a
4 challenge to an individual permit based on specific risk-management requirements
5 intended to address catastrophic risks, Plaintiffs here rely on the generalized (and
6 speculative) theory “that all the predicate conditions for a harmful HF release
7 persist and continue to worsen.” Opp. 24. Thus, *Eng* is of little value as the court
8 made no finding about the likelihood of a catastrophic release of HF from the
9 nearby refinery.

10 ***Smaller releases.*** Plaintiffs then try to pivot away from the risk of
11 catastrophic exposure and half-heartedly argue that “much smaller releases still
12 threaten to injure people and damage the ecosystem.” *Id.* at 20. Even if that were
13 true, it does not salvage Plaintiffs’ standing. Plaintiffs do not allege that their
14 members work in refineries or interact directly with HF. They necessarily rely on a
15 community exposure that extends beyond refinery boundaries and reaches their
16 members.²

17 Plaintiffs are thus wrong to say that allegations regarding the scale of a
18 potential release is a merits question. *Id.* at 26. Plaintiffs’ theory of harm relies
19 predominantly on their proximity to oil refineries that use HF. Thus, this case is
20 distinguishable from *Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134 (9th Cir.
21 2024), cited by Plaintiffs. In *Bowen*, the Ninth Circuit found that the district court
22 erred in requiring the plaintiff to show that the defendant violated Food and Drug
23

24
25 ² This is also true for Plaintiffs’ purported economic harms, which rely on the
26 possibility of a release that is significant enough to require sheltering in place or
27 evacuating. But those alleged economic injuries are not specific to the use of HF.
28 Even if EPA were to ban the use of HF in oil refineries, Plaintiffs would still face
these same alleged economic harms if they were required to shelter-in-place or
evacuate for any industrial accident, including those unrelated to HF.

1 Administration guidelines to establish injury under an economic-harm theory, and
2 that the court improperly weighed disputed evidence. *Id.* at 1146. Here, EPA is not
3 asking the Court to resolve disputed facts regarding the scope of a possible release
4 or HF's chemical properties or toxicity level. The issue is whether Plaintiffs have
5 alleged facts to support their claimed injury of a potential HF release large enough
6 to create a community exposure that is "certainly impending." *Clapper v. Amnesty*
7 *Int'l*, 568 U.S. 398, 409 (2013).

8 Plaintiffs have not done so because (1) they try to rely on their members'
9 proximity to certain refineries and transportation routes but allege no facts showing
10 these facilities or routes present a credible threat of HF release, (2) the mere
11 hazardous nature of HF does not show that Plaintiffs' members are at risk of
12 exposure, and (3) other factors like refinery age and climate change do not bridge
13 these gaps.

14 **1. Plaintiffs rely on their proximity to the Torrance, Wilmington, and**
15 **Trainer refineries, but they allege no facts about how those specific**
16 **refineries create a credible threat of HF exposure.**

17 Plaintiffs' claim based on their members' proximity to refineries fails to
18 establish standing for several reasons. First, the only allegations in the amended
19 complaint that relate to Plaintiffs' members' proximity to HF pertain to the
20 Torrance, Wilmington, and Trainer refineries. EPA Mem. 17. Plaintiffs' opposition
21 does not dispute this point. But rather than point to allegations in the amended
22 complaint regarding the use of HF specific to these three refineries, Plaintiffs'
23 allegations are generalized to refineries across America. For Plaintiffs to be facing
24 "certainly impending" harm or "'credible threat' [of] probabilistic harm," one
25 would look to the use, storage, and history at specific refineries near their
26 members. *Id.* at 17-18.

27 No allegations in their amended complaint show that Plaintiffs' members
28 who live near these three refineries face an impending, substantial, or credible risk

1 of harm due to an HF release from those refineries. *See id.* While Plaintiffs point to
2 an incident at the Torrance refinery that occurred over a decade ago, there is no
3 allegation that any quantity of HF was released. Opp. 22. Nor do Plaintiffs
4 meaningfully respond to EPA’s arguments relating to the lack of information
5 supporting inferences of imminent harm from these refineries. *See* EPA Mem. 17.

6 Second, proximity alone does not establish standing. Nearly all the cases
7 Plaintiffs cite in their opposition involved plaintiffs who lived close to a site with
8 an acknowledged environmental problem. *See San Luis Obispo Mothers for Peace*
9 *v. U.S. Nuclear Regul. Comm’n*, 100 F.4th 1039, 1054 (9th Cir. 2019) (involving
10 acknowledged age-related degradation and an expiring license for the facility);
11 *Pub. Watchdogs v. S. Cal. Edison Co.*, No. 19-CV-1635 JLS (MSB), 2019 WL
12 6497886, at *7 (S.D. Cal. Dec. 3, 2019) (citing grievous errors in management and
13 handling of spent nuclear waste); *Texas v. U.S. Nuclear Regul. Comm’n*, 78 F.4th
14 827, 836 (5th Cir. 2023) (holding in the context of issuance of a new license for
15 nuclear waste disposal that proximity is sufficient to establish injury), *rev’d on*
16 *other grounds*, 605 U.S. 665, 669 (2025); *Covington v. Jefferson Cnty.*, 358 F.3d
17 626, 638 (9th Cir. 2004) (citing factual showing of fires and groundwater
18 contamination at landfill). And *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d
19 1094, 1112 (9th Cir. 2002), involved a finding of a procedural injury under the
20 National Environmental Policy Act.

21 In risk-of-exposure cases the threat must be “quite high” to be credible.
22 *NRDC v. EPA*, 735 F.3d 873, 879 (9th Cir. 2013). Proximity alone does not confer
23 standing, and the risk of harm that Plaintiffs allege here is far from “almost
24 guaranteed” or “quite high.” *Id.*; *San Luis Obispo*, 100 F.4th at 1054. There are no
25 specific allegations that there is current mismanagement of HF at the refineries
26 near Plaintiffs’ members. Instead, there are only conclusory allegations about all
27 refineries in the country being “generally more prone to failures and releases.” *See*
28 EPA Mem. 18; FAC ¶ 106. Plaintiffs’ members’ mere proximity to refineries does

1 not establish standing to seek the imposition of regulation for a chemical that they
2 do not adequately allege is released from refineries, let alone these particular
3 refineries.

4 **2. The hazardous nature of HF does not establish Plaintiffs’ standing.**

5 Plaintiffs contend that the consequences of exposure to HF “help establish
6 the credible threat” “[b]ecause HF is so toxic and volatile, a worst-case release is
7 not the only harmful scenario” that the “use and storage of tens or hundreds of
8 thousands of pounds of HF create[s] the conditions for a catastrophic release.”
9 Opp. 20. But a chemical’s hazardous nature does not resolve whether Plaintiffs
10 have shown that harm is imminent or that there is a credible threat of a
11 probabilistic harm. Like proximity to a refinery, Plaintiffs must allege more than
12 the fact that HF is hazardous; were the rule otherwise, any litigant could challenge
13 the mere storage or possession of a chemical that could be dangerous upon
14 exposure. There is no inherently dangerous exception to Article III standing.

15 The cases cited by Plaintiffs do not establish otherwise.³ In *Public*
16 *Watchdogs*, the plaintiffs alleged “grievous errors” in defendants’ management and
17 handling of spent nuclear waste, which the court found created an imminent risk
18 that nuclear waste will be released. 2019 WL 6497886, at *7. Here, Plaintiffs do
19 not allege facts to show an injury is imminent; they provide no details or
20 “sufficient factual matter” about the state of the refineries or their equipment, and
21

22 ³ *Baur v. Veneman* is an out-of-circuit decision that was decided before *Clapper*.
23 352 F.3d 625 (2nd Cir. 2003). Even so, in that case the court did not draw the
24 conclusion that the hazardous nature of mad cow disease alone made the injury
25 imminent. Rather, the court looked to the imminence of the potential exposure. *Id.*
26 at 637-40. See also *Ctr. for Food Safety v. Perdue*, 517 F. Supp. 3d 1034, 1040
27 (N.D. Cal. 2021) (holding that in food and drug safety cases “[e]xposure to risk ...
28 must be imminent”). The Second Circuit recently rejected a plaintiff’s attempt to
rely on *Baur* because the theory of injury there, as here, was speculative and not
imminent. See *Farm Sanctuary v. USDA*, No. 24-382-CV, 2026 WL 1030616, at
*3 (2d Cir. Apr. 16, 2026) (unpublished).

1 do not allege that EPA has “abdicated meaningful supervision.” *Id.*; *Ashcroft v.*
2 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
3 570 (2007)). *See also Pub. Watchdogs*, 2019 WL 6497886, at *13 (citing *Moss v.*
4 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009)) (“In sum, for a complaint to
5 survive a motion to dismiss, the non-conclusory ‘factual content,’ and reasonable
6 inferences [drawn] from that content, must be plausibly suggestive of a claim
7 entitling the plaintiff to relief.”). To the contrary, Plaintiffs acknowledge that EPA
8 requires risk management reports of refineries, which include how much HF is
9 stored and estimated “worst-case” scenario releases. Opp. 7, 38. Although
10 Plaintiffs dispute that current regulations are enough, they do not allege that EPA
11 “abdicated meaningful supervision” of HF under other statutes. *Pub. Watchdogs*,
12 2019 WL 6497886, at *7.

13 **3. Plaintiffs fail to allege sufficient facts to show that refineries’ age,**
14 **safety records, or other conditions present an imminent threat of**
15 **harm.**

16 Plaintiffs’ allegations regarding the state of refineries are conclusory and
17 generalized. EPA Mem. 18. For example, Plaintiffs state that “[a]ging refineries
18 are generally more prone to failures and releases, in part because original
19 components (such as piping) that have not been replaced or properly maintained
20 have had longer to deteriorate.” FAC ¶ 106. But Plaintiffs do not attribute that
21 quality to the Torrance, Wilmington, and Trainer refineries. The only information
22 relating to the age of those refineries, which Plaintiffs appear to agree are the ones
23 relevant to their amended complaint, is that the Wilmington refinery was built in
24 1979, Torrance in 1929, and Trainer in 1925. Plaintiffs appear to assume that, just
25 because a refinery was established in a specific year, the owner has made no
26 upgrades, renovations, repairs, or improvements since it was built. Moreover,
27 Plaintiffs have not alleged that the Torrance, Wilmington, or Trainer refineries
28 have specific structural or any other issues relating to HF use. Indeed, all refineries

1 are subject to a bevy of existing operational and maintenance requirements under
2 the Clean Air Act, additional federal and state laws, and applicable permits.

3 Beyond that flaw, there are no factual allegations of any HF release outside
4 of these refineries.⁴ See EPA Mem. 17. Plaintiffs do not meaningfully address
5 those arguments or allege that failures of mitigation systems designed to suppress
6 HF levels or isolating valves designed to stem HF flow to a broken vessel or pipe
7 have historically failed to control releases at the Torrance, Wilmington, or Trainer
8 refineries. Opp. 23. Indeed, Plaintiffs refer to the 2015 Torrance incident but do not
9 allege that the incident was caused by “poor safety records.” *Id.* at 22. Nor do
10 Plaintiffs cite any allegations in the amended complaint to support their contention
11 that people who “live or work near refineries and transportation routes cannot
12 count on mitigation systems.” *Id.* at 22-23. Such a claim is not plausible unless
13 supported by “sufficient factual matter,” and Plaintiffs point to none. *Iqbal*, 556
14 U.S. at 678. Plaintiffs’ citation to a Chemical Safety Board statement on releases of
15 HF at a refinery in Corpus Christi, Texas, Opp. 23, does not indicate it applies to
16 all refineries across the country, and certainly not those near Plaintiffs’ members.
17 Plaintiffs have not alleged sufficient facts that show the refineries near them are
18 outdated, improperly maintained, inadequately regulated, and “prone to failures
19 and releases.” EPA Mem. 18.

20 Plaintiffs’ reliance on “near-releases” fares no better. Opp. 21. At the outset,
21 none of Plaintiffs’ members have alleged that near-releases caused them harm.
22 This is unsurprising because Plaintiffs’ theory of harm relies on actual releases of
23

24
25 ⁴ On one hand, Plaintiffs argue that Article III does not require them to show past
26 harms to establish a credible threat of future harm, but on the other hand, Plaintiffs
27 rely on past events to show possible future harm. Plaintiffs misconstrue EPA’s
28 arguments—past events at the refineries near Plaintiffs’ members inform whether
there is a credible threat of imminent future harm. The cases cited by Plaintiffs do
not demonstrate otherwise. Opp. 23-24.

1 HF, and their “fears” about future releases, *id.*, are speculative because they fail to
2 show that any release is certainly impending.⁵ Plaintiffs are thus forced to argue
3 that “near-releases” also impose costs on their members, Opp. 21, but that theory is
4 even more speculative and attenuated than their exposure theory. And the cases
5 they rely on show a much more direct connection between the challenged action
6 the plaintiff’s alleged injury. *See* Opp. 21, citing *Thomas v. Cnty. of Humboldt*, 124
7 F.4th 1179, 1188 (9th Cir. 2024) (finding costs as a cognizable injury when
8 individual Plaintiffs alleged they had been charged with fines by the county even
9 though they had not paid them yet); *see also* Opp. 26, citing *Council of Ins. Agents*
10 *& Brokers v. Molasky-Arman*, 522 F.3d 925, 932 (9th Cir. 2008) (finding more
11 than an “identifiable trifle” when the plaintiff alleged a state statute precluded her
12 from doing business in a different state on substantially equal terms with residents
13 of that state).

14 Finally, Plaintiffs generally allege that climate change makes Plaintiffs’
15 alleged injury imminent. FAC ¶ 115. Plaintiffs’ allegations are vague and general
16 and lack specificity relating to the refineries at issue here. The sole information
17 provided relating to natural disasters states that the Torrance and Wilmington
18 refineries lie in a “high-hazard earthquake zone” and that the Wilmington refinery
19 has identified hurricanes as a risk factor in its RMP reporting. *Id.* ¶ 114. Plaintiffs
20 provide no information about how climate change increases the possibility of
21 natural disasters, their frequency, or their effect on HF use at the refineries that
22 would make their injury, actual, imminent, or “certainly impending.” *Clapper*, 568
23 U.S. at 409. They only “aver that any significant adverse effects of climate change
24 ‘may’ occur at some point in the future.” *Ctr. for Biological Diversity v. U.S. Dep’t*

25
26 ⁵ EPA cited *Metro Edison Co. v. People Against Nuclear Energy* to illustrate that
27 the Supreme Court does not consider fear or worry, or other psychological health
28 damage, as cognizable claims under a statute that requires analysis of effects on the
environment. 460 U.S. 766, 776 (1983); EPA Mem. 11.

1 *of Interior*, 563 F.3d 466, 478 (D.C. Cir. 2009). That is not enough to show
2 imminent harm.

3 Plaintiffs claim that HF exposure is a mere “accident[] waiting to happen,”
4 but their reliance on the potential for a literal natural disaster to chain events
5 ending in an HF release strongly suggests otherwise. Opp. 30. In order to show that
6 “accidents are waiting to happen” at the Torrance, Wilmington, and Trainer (or any
7 other) refineries, *id.*, Plaintiffs bear the burden of alleging sufficient facts to
8 establish the imminence of an accident that would impact their members. Nothing
9 Plaintiffs have alleged in their amended complaint supports such a conclusion.
10 Accordingly, Plaintiffs’ amended complaint should be dismissed for lack of
11 standing.

12 **B. Plaintiffs concede that their theory of injury relies on a chain of**
13 **events, but they do not allege facts to show that each link in the chain**
14 **of causation is likely.**

15 Plaintiffs’ alleged injury relies on a speculative chain of events that is not
16 “imminent” or “certainly impending.” *See* EPA Mem. 10. Plaintiffs appear to
17 acknowledge that their theory of injury rests on what they call the “existence of
18 multiple steps” that would have to take place before their members would be
19 harmed by an HF exposure. Opp. 25. But Plaintiffs do not point to factual
20 allegations in the amended complaint to show why it is likely that (1) an accident
21 will happen at an oil refinery near Plaintiffs’ members; and (2) mitigation
22 measures in place by the refinery will fail; and (3) the accident will result in the
23 release of HF; and (4) response actions will not contain the release; and (5) the
24 amount of HF that is released will be significant enough to move beyond the
25 confines of the refinery; and (6) weather conditions on that day are such that the
26 HF will spread into the Plaintiffs’ members communities; and (7) the HF release
27 will injure Plaintiffs’ members, their family members, communities, or the local
28 environment. *See* EPA Mem. 13-14.

1 Plaintiffs assert that “[i]njury-in-fact is not defeated by the existence of
2 multiple steps when ‘each step in the causal chain is credible,’” Opp. 25, but do not
3 address *how* each of the events in the chain are imminent or how there is a credible
4 threat of the events occurring here. *Id.* at 26. Moreover, since each link in the chain
5 is dependent on the other, under Plaintiffs’ theory they must show why there is a
6 credible threat that each step would occur and occur consecutively. They have not.
7 Courts have repeatedly rejected standing arguments premised on a speculative
8 chain of events and Plaintiffs do not meaningfully engage in distinguishing the
9 case law affirming that position. *Id.* at 27-28. As in *International Partners for*
10 *Ethical Care Inc. v. Ferguson*, 146 F.4th 841 (9th Cir. 2025), Plaintiffs here have
11 not alleged facts to substantiate their fear that such a speculative chain will happen
12 at the refineries near them. Opp. 27. Like the plaintiffs in *International Partners*,
13 Plaintiffs here ask this Court to rely on “convoluted series” of events to show
14 imminent harm. 146 F.4th at 851; *see also Munns v. Kerry*, 782 F.3d 402, 411 (9th
15 Cir. 2015) (holding that “the chain of events” leading to injury as too hypothetical
16 when relying on a series of ifs to occur); EPA Mem. 13. And standing cannot
17 depend on a “speculative chain of possibilities,” as it does under Plaintiffs’ theory.
18 *G.B. v. EPA*, 172 F.4th 1042, 1058 (9th Cir. 2026) (citing *Clapper*, 568 U.S. at
19 414).

20 **C. Plaintiffs have not alleged imminent harm affected by EPA’s**
21 **decision to deny their petition.**

22 Plaintiffs challenge EPA’s decision to deny their petition. They must
23 therefore show that EPA’s denial caused their alleged injury. *See* EPA Mem. 18-
24 19. But Plaintiffs have not done so because EPA’s decision has had no concrete
25 effects on Plaintiffs’ members.

26 Plaintiffs’ response on this point, *see* Opp. 29-30, misconstrues EPA’s
27 argument. Unlike cases involving the issuance of a permit, expiration of a license,
28 or some other agency action that would change the status quo, or actions taken by

1 the Plaintiffs to avoid their alleged harm, Plaintiffs here do not allege that the
2 denial of the petition has had any independent effect on Plaintiffs. Nor do Plaintiffs
3 allege facts that show EPA’s decision caused a future HF exposure that is
4 imminent.

5 **II. Plaintiffs have failed to state a claim because they have not shown**
6 **that exposures to HF from “catastrophic” events and “worst-case**
7 **scenarios” are likely to occur at all, much less in a regular and**
8 **predictable manner required for TSCA regulation.**

9 Plaintiffs agree that in petitioning EPA under TSCA section 21, and in
10 bringing this action, they bear the burden of demonstrating that HF presents an
11 unreasonable risk to human health and the environment under the “conditions of
12 use.” Opp. 32 (citing 15 U.S.C. § 2620(b)(4)(B)(ii)). Plaintiffs further agree that
13 “conditions of use” are “the circumstances, as determined by [EPA], under which a
14 chemical substance is intended, known, or reasonably foreseen to be manufactured,
15 processed, distributed in commerce, used, or disposed of.” *Id.* (citing 15 U.S.C.
16 § 2602(4)). But because Plaintiffs fail to plausibly allege that using HF at (or
17 distribution of HF for) oil refineries poses an unreasonable risk of injury to human
18 health or the environment, Plaintiffs fail to state a claim under TSCA section 21
19 and consequently are unable to invoke a waiver of sovereign immunity.

20 As an initial matter, Plaintiffs assert that their claim of unreasonable risk is
21 not based “solely” on the potential for “catastrophic” HF releases. Opp. 31. As
22 discussed above, Plaintiffs cannot seriously dispute that their petition is premised
23 on the harms that *could* happen *if* there were to be a large-scale HF release from a
24 refinery or vehicle carrying HF.

25 Plaintiffs’ central contention is clear: the risks from catastrophic releases of
26 HF present an unreasonable risk under TSCA. There are two—often conflated—
27 rationales advanced by Plaintiffs for why TSCA is best read as requiring EPA, and
28 now this Court, to use the potential for sporadic and unpredictable events as a basis
for an unreasonable risk determination. The first rationale is that the catastrophic

1 release of HF itself is a condition of use that presents an unreasonable risk. The
2 second rationale is that catastrophic releases of HF are exposures that must be
3 considered when evaluating a parent condition of use (*e.g.*, “refinery-related HF
4 use,” Opp. 31, or “the storage and use for alkylation of HF at refineries[] and the
5 distribution of HF in commerce to refineries,” Opp. 32). We address each in turn.

6 First, catastrophic releases of HF are not themselves conditions of use and
7 thus may not be independently considered by this Court when deciding whether
8 Plaintiffs’ theory fails as a matter of law. Plaintiffs appear to recognize this,
9 relegating their defense of this point to a footnote in which they suggest that
10 “[a]rguably” the definition of “conditions of use” also includes such releases. Opp.
11 32 n.8. But to constitute a condition of use, the circumstances of the manufacture,
12 processing, distribution in commerce, use, or disposal must be “intended, known,
13 or reasonably foreseen.” 15 U.S.C. § 2602(4). Plaintiffs do not assert facts to
14 support a finding that the catastrophic releases at issue here are reasonably
15 foreseen or that they themselves can be considered the “manufactur[e],
16 process[ing], distribut[ion] in commerce, use[], or dispos[al]” of HF. *Id.*

17 Plaintiffs suggest that an “incident history” supports their contention that a
18 more devastating release than any in the record is foreseeably on the horizon. Opp.
19 32. However, absent the conclusory statement that “refinery-related releases . . .
20 are reasonably foreseeable,” the events cited in Plaintiffs’ petition and complaint
21 do not show that significant releases of HF and corresponding exposures to the
22 nearby community and environment are occurring, are likely to occur in the future,
23 or are otherwise reasonably foreseeable. FAC ¶ 116. Instead, the events Plaintiffs
24 point to are random and unique.

25 Perhaps to avoid this fact, Plaintiffs instead focus their response on their
26 related contention that EPA and this Court must consider catastrophic releases
27 when determining whether an associated activity that is clearly a condition of
28 use—“refinery-related HF use,” Opp. 31, or “the storage and use for alkylation of

1 HF at refineries[] and the distribution of HF in commerce to refineries,” *Id.* at 32—
2 presents an unreasonable risk. Plaintiffs argue that because TSCA section
3 6(b)(4)(F) doesn’t explicitly bar EPA from considering any category of exposure, a
4 finding of unreasonable risk must therefore consider all exposures—even if those
5 exposures are completely hypothetical or highly unlikely. *Id.* at 33-34. But
6 requiring EPA (or this Court) to look at every possible exposure, without
7 considering the likelihood of that exposure, is contrary to TSCA.

8 Indeed, when evaluating exposure, the statute expressly requires the
9 evaluator to “take into account” information about “the *likely* duration, intensity,
10 frequency, and number of *exposures*” under the conditions of use. 15 U.S.C. §
11 2605(b)(4)(F)(iv) (emphasis added). “Likely” means “having a high probability of
12 occurring or being true; very probable.”⁶ If no relevant exposure to the chemical *is*
13 occurring or *is likely* to occur under the conditions of use, there can be no
14 unreasonable risk. Plaintiffs are unable to make this showing with respect to HF
15 because the kinds of community exposures Plaintiffs are concerned with have only
16 occurred a single time in the long history of HF use in refineries. Plaintiffs’
17 complaint and opposition brief are riddled with nothing more than speculative and
18 conclusory allegations that such an event is likely to occur again in the future. *See,*
19 *e.g.*, Opp. 4-15.

20 TSCA requires Plaintiffs (at this stage) to also plausibly allege that these
21 exposures are occurring or are likely to occur in such a regular and predictable
22 manner so as to be fairly considered a part of the condition of use in question and
23 thus properly assessed under TSCA. While Plaintiffs are correct that the terms
24 “regular and predictable” do not appear in the text of TSCA, section
25 6(b)(4)(F)(iv)’s directive to assess the “likely. . . frequency” of exposures is no
26

27
28 ⁶ *See Likely*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/likely> [<https://perma.cc/48XB-YDGS>].

1 different than the regular and predictable inquiry EPA has followed for several
2 years now. *See, e.g.*, 89 Fed. Reg. 37028, 37033 (“Procedures for Chemical Risk
3 Evaluation Under the Toxic Substances Control Act (TSCA)”) (May 3, 2024). An
4 examination of the regularity and predictability of exposures necessarily requires
5 an examination of the *likelihood* of exposure, i.e., whether the exposures of a
6 chemical are regular— “frequent[t],” or predictable— “likely.” 15 U.S.C. §
7 2605(b)(4)(F)(iv). The regular and predictable phrasing used by EPA is thus no
8 more than a restatement of Congress’ mandate to consider only the likely exposure
9 scenarios under a condition of use. So, even if Plaintiffs could somehow
10 demonstrate that a significant release of HF that would harm the nearby
11 community—something that has never occurred in the proximity of Plaintiffs’
12 members—is probable, they cannot make the requisite showing that such an
13 extraordinary event will occur with such frequency so as to be considered a likely
14 exposure scenario. Their theory thus fails as a matter of law.

15 Plaintiffs attempt to distance unreasonable risk in this case from TSCA
16 section 6(b). *See* Opp. 33. However, any analysis of whether HF presents an
17 unreasonable risk is informed by the requirements that Congress imposed on
18 EPA’s analysis of the same question because Plaintiffs seek a rulemaking under
19 TSCA section 6(a). TSCA section 6(a) expressly references determining
20 unreasonable risk “in accordance with [TSCA section 6(b)(4)(A)],” 15 U.S.C.
21 2605(a), which in turn is governed by the requirements in TSCA section
22 6(b)(4)(F)(iv). To read TSCA sections 6 and 21 otherwise would mean that what
23 constitutes “unreasonable risk” would differ substantively between a TSCA section
24 21 petition and the TSCA section 6 process—an absurd result belied by the
25 statutory text.

26 Plaintiffs also argue that if Congress wanted EPA and the Court to exclude
27 from their analysis a category of potential exposure it would have done so
28 explicitly. But the converse is true—if Congress wanted EPA to account for

1 irregular and unpredictable releases and corresponding exposures such as those
2 from “unintended industrial failures or natural disasters,” or base an unreasonable
3 risk determination solely on the hazardous characteristics of a chemical when
4 determining risk, Congress would have said so.⁷ Opp. 34. Instead, the language of
5 TSCA mandates only that EPA take into account the exposures under the
6 conditions of use that are “likely,” thus evincing Congress’ intent to have
7 determinations of unreasonable risk be based, in part, on an assessment of the
8 exposures under the conditions of use of a chemical that are regular, predictable,
9 and foreseeable. It is counterintuitive to assume that Congress wanted EPA to base
10 its regulation of chemicals on an assessment of hypothetical and completely
11 random exposures that are the exception to the ordinary consequences of a
12 chemical’s use instead of real-world exposures that are occurring or are likely to
13 occur. After all, the regulatory trigger is “*unreasonable risk*.” 15 U.S.C.
14 2620(b)(4)(B)(ii) (emphasis added).

15 Plaintiffs mischaracterize EPA’s argument (Opp. 34 n.10) that unreasonable
16 risk determinations be based, in part, on “actual *exposures that are likely to occur*
17 under the conditions of use.” EPA Mem. 5, 20-21 (emphasis added). EPA does
18 consider potential exposures that can be predictable and regular.

19 Relatedly, Plaintiffs point to a 2016 exchange between a former EPA Office
20 of Chemical Safety and Pollution Assistant Administrator and Senator Capito
21 regarding accidental releases. Opp. 34-35. EPA’s position has not changed. EPA is
22 not saying it would refuse to consider catastrophic or other extraordinary events at
23

24
25 ⁷ See Proposed Intervenor’s Motion to Dismiss, Dkt. No. 54, at 24 citing to Clean
26 Air Act, 42 U.S.C. § 7412, Clean Water Act, 33 U.S.C. § 1321; Oil Pollution Act,
27 33 U.S.C. § 2701 *et seq*). *See also* Emergency Planning and Community Right-to-
28 Know Act, 42 U.S.C. § 11049(8). Moreover, Plaintiffs agree that risk is a function
of hazard and exposure. FAC ¶ 39. Thus, an “unreasonable risk” determination
must account for both hazard and exposure.

1 all; rather, the Agency does not consider these events if they do not lead to regular
2 and predictable exposures to the chemical substance. In fact, EPA has considered
3 events like extreme weather events in other risk evaluations for chemicals in areas
4 where such events are shown to be regular and predictable based on chemical- and
5 facility-specific data. In one example in Louisiana, EPA had six recent years of
6 chemical- and facility-specific release data, and EPA considered the range of
7 releases and corresponding conditions, particularly given the frequency of storm
8 events in Louisiana during that time.⁸ Here, Plaintiffs did not allege facts to show
9 that refineries near their members are predictably impacted by natural disasters.
10 Nor did they allege facts about the conditions of the refineries near them that
11 would allow EPA to assess whether the “near-misses” cited by Plaintiffs show a
12 likely potential future exposure. The information that is provided is conclusory and
13 unspecific with respect to the HF components of the refineries, and the exposures
14 listed are random outliers of HF’s regular use at oil refineries.

15 Plaintiffs also assume that, because EPA requires worst-case scenario
16 reporting under the Clean Air Act’s Risk Management Program, EPA must
17 consider unlikely and unexpected releases under TSCA. But the reporting
18 requirement under the Clean Air Act exists to ensure that facilities using
19 specifically-listed hazardous chemicals implement safety protocols to prevent
20 accidental releases. *See* 42 U.S.C. § 7412(r)(7); 40 C.F.R. § 68.130. Every
21 chemical substance can have a worst-case scenario, but unless those scenarios
22 result in “likely . . . exposure[s]” (that is, regular and predictable), they cannot form
23 the basis of an unreasonable risk determination under TSCA.

24
25
26 ⁸ *See* EPA, Office of Chemical Safety and Pollution Prevention, Risk Evaluation
27 for 1,1- Dichloroethane at 87 (2025),
28 [https://www.epa.gov/system/files/documents/2025-06/01.-1-1-dichloroethane.-](https://www.epa.gov/system/files/documents/2025-06/01.-1-1-dichloroethane.-risk-evaluation.-public-release.-hero.-june-2025.pdf)
[risk-evaluation.-public-release.-hero.-june-2025.pdf](https://www.epa.gov/system/files/documents/2025-06/01.-1-1-dichloroethane.-risk-evaluation.-public-release.-hero.-june-2025.pdf) [[https://perma.cc/J6UU-](https://perma.cc/J6UU-2AEB)
[2AEB](https://perma.cc/J6UU-2AEB)].

1 Thus, even assuming the allegations in Plaintiffs amended complaint are
2 true, they have failed to state a claim by failing to plausibly allege that using HF at
3 or distributing HF to oil refineries presents an unreasonable risk of harm to their
4 members.

5 **III. Plaintiffs seek relief that is not authorized under TSCA.**

6 Section 21 of TSCA authorizes petitions for EPA to “initiate a proceeding
7 for the issuance, amendment, or repeal of a rule . . . or an order” issued under
8 specified sections of the Act. 15 U.S.C. § 2620(a). It further authorizes the
9 petitioner to file a civil action “to compel the Administrator to initiate” such a
10 proceeding in the event the petition is denied. *Id.* § 2620(b)(4)(A). And where the
11 petitioner demonstrates by a preponderance of the evidence that the chemical
12 substance presents an unreasonable risk of injury to health or the environment
13 under its conditions of use, the court is authorized to “order the Administrator to
14 *initiate the action requested by the petitioner.*” *Id.* § 2620(b)(4)(B) (emphasis
15 added). The statute neither authorizes petitioners to request specific timeframes for
16 administrative action, nor authorizes courts to order EPA to propose or finalize
17 action on a specific schedule.

18 Plaintiffs ignore EPA’s citation of relevant case law involving the question
19 of what authority courts have under Section 21. *See Ctr. for Env’t Health v. Regan*,
20 103 F.4th 1027, 1038 (4th Cir. 2024) (“So, all the district court can provide a
21 successful petitioner is an order directing the EPA to initiate a proceeding for a
22 rule or order—depending on what was requested in the petition.”); *Cf. Food &*
23 *Water Watch, Inc. v. EPA*, No. 17-CV-02162-EMC, 2024 WL 4291497, at *42
24 (N.D. Cal. Sep. 24, 2024) (ordering EPA to initiate rulemaking pursuant to
25 Subsection 6(a) of TSCA).⁹

26
27
28 ⁹ EPA’s appeal in this matter is pending before the Ninth Circuit. *Food & Water*
Watch v. EPA, No. 25-384 (9th Cir.).

Instead, Plaintiffs point to cases in which courts were remanding agency action found to be arbitrary, capricious, or contrary to law. *See* Opp. 42-43 (citing *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 937 (9th Cir. 2008); *Intertribal Sinkiyone Wilderness Council v. Nat’l Marine Fisheries Serv.*, No. 1:12-CV-00420 NJV, 2013 WL 8374150, at *2 (N.D. Cal. Nov. 26, 2013)). But the courts in those cases relied on “Ninth Circuit precedent [that] expressly permits imposition of deadlines on the remand process,” which is not the case here. *Intertribal Sinkiyone Wilderness Council*, 2013 WL 8374150, at *2; *see also* *League of United Latin Am. Citizens v. Regan*, 996 F.3d 673, 702-03 (9th Cir. 2021) (recognizing that providing the agency a deadline to act on remand was due to rare circumstances in which the agency had limited legal discretion in light of the court’s findings). Similarly misplaced is Plaintiffs’ reliance on a case in which the court found EPA had unreasonably delayed initiating a rulemaking process after granting an administrative petition. Opp. 43 (citing *In re A Cmty. Voice*, 878 F.3d 779 (9th Cir. 2017)). This is not a case asserting unreasonable delay, and *In re A Community Voice* and Plaintiffs’ reliance on the Administrative Procedure Act, 5 U.S.C. § 555(b), which is the basis for most unreasonable delay claims against agencies, has no application here.

Moreover, none of the cases cited by Plaintiffs involve court direction to merely “initiate” a proceeding, as is the case with Section 21 of TSCA. Plaintiffs’ assertions that they are entitled to seek deadlines not only for the initiation of rulemaking but for final action are particularly inapt in light of the clear statutory limits Congress set on available relief under Section 21.

CONCLUSION

For the reasons set forth in the memorandum of points and authorities in support of Defendants' motion and in this reply, EPA respectfully requests that the Court dismiss Plaintiffs' amended complaint.

Respectfully Submitted,

Dated: May 15, 2026

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Certificate of Compliance

The undersigned, counsel of record for Defendants, certifies that this brief contains 6,591 words, which complies with the word limit of L.R. 11-6.1.

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