

ORAL ARGUMENT NOT YET SCHEDULED
IN THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT

AMERICAN WATER WORKS
ASSOCIATION, ET AL.,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY et al.,

Respondents.

Case No. 24-1188 and
Consolidated Cases

**MOTION TO SEVER AND HOLD CHALLENGES TO INDEX PFAS IN
ABEYANCE**

Respondents United States Environmental Protection Agency and Administrator Lee M. Zeldin (collectively, “EPA” or “Agency”) respectfully move the Court to sever Petitioners’ challenges to the Index PFAS regulatory determinations and regulations and hold those claims in abeyance while EPA’s rulemaking in which it has proposed to rescind those actions proceeds.

Undersigned counsel has conferred with counsel for the other parties in this matter. Petitioner Chemours takes no position on this motion. Petitioners AWWA, AMWA, NAM, and ACC and Respondent-Intervenor NRDC oppose this motion. Counsel for the remaining Respondent-Intervenors advised that they are

still conferring with their clients but intend to file a response. The grounds for this motion are as follows:

1. Petitioners in the above-captioned cases seek review of an EPA rule entitled “PFAS National Primary Drinking Water Regulation,” 89 Fed. Reg. 32532 (Apr. 26, 2024). *See, e.g.*, ECF 2058535. This rule consists of multiple severable components, including (as challenged here): regulatory determinations and maximum contaminant levels (“standards”) for each of PFNA, PFHxS, and HFPO-DA (also referred to as GenX) individually and PFNA, PFHxS, HFPO-DA, and PFBS in combination using a Hazard Index approach (collectively, the “Index PFAS”), as well as standards for PFOA and PFOS. *Id.*; 89 Fed. Reg. at 32731-32.

2. On May 14, 2025, EPA announced its intention to rescind the portion of the rule issuing regulatory determinations and standards for the Index PFAS (both individually and in combination). *See* <https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos>.

3. Recognizing the time necessary to complete a rulemaking and the upcoming deadlines public water systems face regarding the Index PFAS, EPA also moved this Court for partial vacatur of the portion of the rulemaking relating

to regulatory determinations and standards for the Index PFAS (both individually and in combination). ECF 2134523.

4. On January 21, 2026, this Court denied the motion for partial vacatur, explaining that “[t]he merits of the parties’ positions are not so clear as to warrant summary action.” ECF 2155270.

5. In the meantime, EPA has continued working on the rulemaking in which it plans to rescind those same Index PFAS portions of the rule challenged in this action. Ex. 1 (Kramer Decl.) ¶ 6. The Agency has drafted a notice of proposed rulemaking, which it plans to transmit to the Office of Management and Budget to commence the rulemaking process imminently. *Id.*

6. Because that rule, if finalized as proposed, may moot Petitioners’ challenges to the regulatory determinations and standards for the Index PFAS, severing the portion of this litigation related to the Index PFAS and placing that portion in abeyance pending completion of the rulemaking would best preserve both judicial economy and the parties’ resources.

7. This Court has “broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v. N. Am. Co.*, 299 US. 248, 254 (1936); *Cottrell v. Duke*, 737 F.3d

1238, 1248 (8th Cir. 2013). An abeyance is prudent “if the public welfare or convenience will thereby be promoted.” *Landis*, 299 U.S. at 256.

8. Abeyance is warranted here because courts have long recognized that agencies may generally review and, if appropriate, revise their past decisions. *See, e.g., Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“[R]egulatory agencies do not establish rules of conduct to last forever [and] an agency must be given able latitude to adapt their rules and policies to . . . changing circumstances.”); *Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038, 1043 (D.C. Cir. 2012) (explaining that an agency’s “reevaluation of which policy would be better in light of the facts” is “well within” its discretion and that a change in administration is a “perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations” (internal quotation marks omitted)).

9. Good cause thus exists for the requested abeyance. *See Anchor Line Ltd. v. Fed. Maritime Comm’n*, 299 F.2d 124, 125 (D.C. Cir. 1962) (“[W]hen an agency seeks to reconsider its action, it should move the court to remand or to hold the case in abeyance pending reconsideration by the agency.”); *cf. Ctr. for Biological Diversity v. EPA*, 56 F.4th 55, 71–71 (D.C. Cir. 2022) (courts “routinely

stay [their] hand when parties identify developments that are likely to render judicial resolution unnecessary”).

10. No party would be prejudiced by the requested abeyance. The first deadline, an initial monitoring deadline, for these contaminants is still over a year away (April 26, 2027). 40 C.F.R. § 141.902(b)(1)(xi). And the additional monitoring that would be required for the Index PFAS to meet this deadline is likely to be minimal because EPA is not rescinding any monitoring requirements for PFOA and PFOS, which are the same sampling and analysis requirements as would be necessary to monitor Index PFAS. 89 Fed. Reg. 32532, 32543, 32605 (Apr. 26, 2024). In addition, although briefing is nearly complete, no oral argument date has been set for this matter.

11. For these reasons, the Court should sever Petitioners’ challenges to the Index PFAS regulatory determinations and standards from the remaining litigation regarding the standards for PFOA and PFAS and place the severed Index PFAS challenges in abeyance with status reports due at 120-day intervals. Litigation over PFOA and PFOS standards should remain on the current schedule (i.e. reply briefs due February 20, 2026 and final briefs due March 6, 2026).

Respectfully submitted,

ADAM R.F. GUSTAFSON

*Principal Deputy Assistant Attorney
General*

Of Counsel:

Heidi Nalven

U.S. Environmental Protection
Agency

BRADLEY CRAIGMYLE

Deputy Assistant Attorney General

Date: February 19, 2026

/s/ Kimere J. Kimball

KIMERE J. KIMBALL

U.S. Department of Justice

Env't & Natural Resources Div.

P.O. Box 7611

Washington, DC 20044

(202) 514-2285 (Kimball)

Kimere.Kimball@usdoj.gov

CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 915 words.

This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Finally, I certify that on February 19, 2026, I electronically filed this document with the Court's CM/ECF system, which will serve each party's counsel of record.

/s/ Kimere J. Kimball
KIMERE J. KIMBALL

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<hr/>)	
AMERICAN WATER WORKS)	
ASS’N, et al.,)	
)	
	Petitioners,)	
)	
v.)	
)	No. 24-1188
UNITED STATES)	(and consolidated cases)
ENVIRONMENTAL PROTECTION)	
AGENCY, et al.,)	
)	
	Respondents.)	
<hr/>)	

DECLARATION OF JESSICA L. KRAMER

I, Jessica L. Kramer, declare the following statements are true and correct to the best of my knowledge and belief and are based on my personal knowledge, information contained in records of the U.S. Environmental Protection Agency (the “EPA” or “Agency”), and information supplied to me by current EPA employees.

1. I am the Assistant Administrator for the Office of Water in the EPA, a position in which I have served since September 18, 2025. I am responsible for, and provide counsel to, the Administrator on policy, planning, program development and implementation, management, and control of the technical and administrative aspects of the Office of Water. I manage the Agency’s programs under several statutes, including the Safe Drinking Water Act (“SDWA”).

2. Within the EPA, the Office of Water has primary responsibility for the rulemaking process related to SDWA. The Office of Water's functions include development of national primary drinking water standards for public water systems under Section 1412 of SDWA. 42 USC 300g-1.
3. In April 2024, the EPA promulgated a final rule entitled, "PFAS National Primary Drinking Water Regulation," 89 Fed. Reg. 32532 (Apr. 26, 2024) ("the Rule"). The Rule established maximum contaminant levels for two per- and polyfluoroalkyl substances (PFAS) – PFOA and PFOS. The Rule also included Agency determinations to regulate and established maximum contaminant levels for three additional PFAS – perfluorononanoic acid (PFNA), perfluorohexane sulfonic acid (PFHxS), and hexafluoropropylene oxide dimer acid (HFPO-DA)—and mixtures of those three PFAS and a fourth PFAS, perfluorobutane sulfonic acid (PFBS) through a "hazard index." These latter four PFAS are referred to as Index PFAS. The Rule is the subject of this litigation.
4. On May 14, 2025, EPA announced its intention to rescind the portion of the Rule issuing regulatory determinations and standards for the Index PFAS (both individually and in combination). See <https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos>.
5. Over the intervening months, EPA has been working on rulemaking in which it

plans to propose to rescind the Index PFAS portions of the Rule. The Agency has drafted a notice of proposed rulemaking which it plans to transmit to the Office of Management and Budget (OMB) to commence the rulemaking process imminently. I declare under penalty of perjury that the foregoing is true and correct, based on my personal knowledge, information contained in records of the EPA and information provided to me by employees of the EPA.

Dated: February 19, 2026

Jessica
Kramer

Digitally signed by Jessica
Kramer
Date: 2026.02.19 17:03:36
-05'00'

Jessica L. Kramer
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency