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**United States Court of Appeals
for the Third Circuit**

AMERICAN CHEMISTRY COUNCIL,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents,

CENTER FOR ENVIRONMENTAL HEALTH and ENVIRONMENTAL DEFENSE FUND

Intervenors-Respondents.

(Caption continues inside front cover.)

On Petition for Review of Final Agency Action of the
United States Environmental Protection Agency

**BRIEF FOR STATES OF NEW YORK, CALIFORNIA,
COLORADO, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS,
MARYLAND, MASSACHUSETTS, MINNESOTA, NEVADA,
NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON,
RHODE ISLAND, VERMONT, AND WISCONSIN, AND
THE DISTRICT OF COLUMBIA AS AMICI CURIAE
IN SUPPORT OF INTERVENORS-RESPONDENTS**

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(Caption continues from front cover.)

GEORGIA CHEMISTRY COUNCIL; ALLIANCE FOR A STRONG U.S. BATTERY SECTOR; TEXAS CHEMISTRY COUNCIL; MICROPOROUS, LLC; ENVIRONMENTAL DEFENSE FUND; OHIO CHEMISTRY TECHNOLOGY COUNCIL; OLIN CORPORATION; MISSOURI ALLIANCE FOR A STRONG US BATTERY SECTOR; CENTER FOR ENVIRONMENTAL HEALTH; TRENT CAPITAL PARTNERS, LLC; PPG INDUSTRIES, INC.; OLIN CORP.; and VINYL INSTITUTE,

Petitioners.

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INTRODUCTION AND INTERESTS OF AMICI CURIAE

Congress enacted the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., in 1976, to protect human health and the environment from dangerous chemical substances. In 2016, Congress amended TSCA, directing the U.S. Environmental Protection Agency (EPA) to prioritize review of the riskiest chemicals and to evaluate comprehensively the risks that those substances pose to human health and the environment. Trichloroethylene (TCE) is one of the highly toxic chemical substances that EPA prioritized for initial review. Prolonged human exposure to TCE can harm organ function, impair fetal development, and cause cancer, among other serious conditions. EPA determined that TCE presents an unreasonable risk of injury to health under the conditions of use.

In the regulation at issue here, EPA took final action, as TSCA requires, to address the unreasonable risk of TCE exposure by phasing out the manufacture, processing, and distribution in commerce of TCE for all uses, with certain narrow, time-limited exemptions. Several trade associations and manufacturers, including a group led by the American Chemistry Council (“industry petitioners”), challenged various aspects of EPA’s final rule. In its brief here, EPA has signaled its intent to reconsider

those provisions. Resp'ts' Br. at 53–55. Several nonprofit organizations have intervened to defend the rule in full.

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), the States of New York, California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, and Wisconsin, and the District of Columbia (“amici States”) submit this brief in support of intervenors and in defense of the rule. The experience of amici States confirms that TCE exposure poses significant public health and environmental risks. Amici States also have a substantial interest in the implementation of EPA’s final rule because the federal government plays a crucial role in regulating TCE that supports amici States’ own efforts to protect their residents from the risks posed by this highly toxic substance. And if EPA’s rule is set aside in part, as industry petitioners request, amici States could incur higher costs to address the severe public health and environmental harms caused by TCE.

Amici States also have an interest in the proper construction of TSCA. Contrary to industry petitioners’ arguments, TSCA requires EPA to evaluate and regulate the risks posed by a chemical’s “conditions of use”

comprehensively and collectively rather than in piecemeal fashion. In other words, Congress enacted TSCA to authorize EPA to address the risks of a chemical substance across all applications. Industry petitioners’ preferred use-by-use approach would contravene that statutory mandate to the detriment of amici States, their residents, and the nation.

BACKGROUND

A. The Toxic Substances Control Act (TSCA)

Congress enacted TSCA in 1976 to “prevent unreasonable risks of injury to health or the environment associated with the manufacture, processing, distribution in commerce, use, or disposal of chemical substances.” S. Rep. No. 94-698, at 1 (1976); *see Safer Chems., Healthy Fams. v. EPA*, 943 F.3d 397, 406–07 (9th Cir. 2019). Before TSCA, agencies could regulate only those uses of a chemical that fell within each agency’s specific purview. *See* S. Rep. No. 94-698, at 1–2. Congress concluded that this “fragmented” scheme was “inadequate” to address the health and environmental risks posed by toxic chemicals generally. *See* H.R. Rep. No. 94-1341, at 6 (1976). To address those deficiencies, TSCA granted EPA “the authority to look at the hazards in total,” S. Rep. No. 94-698, at 2, and authorized the agency to regulate “chemicals themselves”—as

opposed to regulating only products containing chemicals or discharges or emissions of chemicals, *Safer Chems.*, 943 F.3d at 406.

In 2016, Congress strengthened TSCA by enacting the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, 130 Stat. 448 (2016) (codified at 15 U.S.C. § 2601 et seq.). When first enacted, TSCA had authorized EPA to impose restrictions on a chemical only “to the extent necessary to protect adequately against such risk using the least burdensome requirements.” Pub. L. No. 94-469, § 6(a), 90 Stat. 2003, 2020 (1976). Now, section 6 provides that if EPA determines “that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance . . . presents an unreasonable risk of injury to health or the environment,” EPA must take regulatory measures “to the extent necessary so that the chemical substance . . . no longer presents such risk”—up to and including a complete prohibition on use and distribution. 15 U.S.C. § 2605(a). Under the amendments, EPA is no longer required to use the least burdensome means to address a chemical’s risk to health or the environment. *See id.*; H.R. Rep. No. 114-176, at 23 (2015).

The 2016 amendments also enacted a new section 6(b), which creates a comprehensive risk evaluation process for determining whether a chemical substance presents an unreasonable risk to human health or the environment. *See* 15 U.S.C. § 2605(b); H.R. Rep. No. 114-176, at 23–25. During the first stage of this process, EPA must identify “high-priority” chemicals, i.e., chemicals posing the greatest potential risk to human health or the environment based on the potential for hazard and exposure, among other considerations. *See* 15 U.S.C. § 2605(b)(1).

During the second stage—the “risk evaluation” stage—EPA must determine whether a chemical “presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors.” *Id.* § 2605(b)(4)(A). Among other things, that analysis must consider any “unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by [EPA], under the conditions of use.” *Id.* The term “conditions of use” means the circumstances, as determined by [EPA], under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.” *Id.* § 2602(4).

A risk evaluation has three linked components. The first component requires EPA to prepare an initial scope document that identifies the focus of the risk evaluation, including the hazards, exposures, conditions of use, and potentially exposed or susceptible subpopulations that EPA expects to consider. *See id.* § 2605(b)(4)(D). The second component requires EPA to analyze “available information” on the hazards and exposures, “including information that is relevant to specific risks of injury to health or the environment.” *Id.* § 2605(b)(4)(F). The third component requires EPA to determine whether the chemical presents an unreasonable risk to health or the environment. *See id.* § 2605(b)(4)(A).

If EPA determines that a chemical presents an unreasonable risk to health or the environment, the agency must move to the final stage, risk management. *See id.* § 2605(a). Congress specified that, during the risk management stage, EPA must implement rules to eliminate the unreasonable risk, including use restrictions, limitations on production, warning labels, recordkeeping, or product or disposal bans. *See id.* In proposing a risk management rule, EPA must consider the effects of the chemical on health and the environment, the magnitude of human exposure to the chemical, the benefits of the chemical, the economic consequences of the

rule, as well as the availability of feasible, more beneficial alternatives. *Id.* § 2605(c)(2)(A), (C). EPA must factor these considerations into its rulemaking “to the extent practicable” in accordance with section 6(a). *Id.* § 2605(c)(2)(B)–(C). Finally, EPA may grant an exemption from the requirement of a risk management rule for a specific condition of use only if it finds that certain conditions apply. *Id.* § 2605(g)(1). See *infra* at 21–22.

B. Regulation of Trichloroethylene (TCE) Under TSCA

TCE is a volatile organic liquid that is used for industrial purposes and found in a wide range of consumer and commercial products. Trichloroethylene (TCE), 89 Fed. Reg. 102568, 102574 (Dec. 17, 2024). Between 2016 and 2019, 100 to 250 million pounds of TCE was manufactured or imported into the United States each year. *Id.* During that time, around 84% of TCE was processed as an intermediate in the production of the refrigerant hydrofluorocarbon 134a, while around 15% was used as a degreasing solvent. *Id.* TCE is present in a range of consumer products, including mold-release products, shoe polish, fabric spray, and cleaners for brakes, tires, electronics, furniture, and carpets. Trichloroethylene (TCE), 88 Fed. Reg. 74712, 74726–29 (Oct. 31, 2023).

Inhalation of and dermal exposure to TCE pose serious risks to human health on both an acute and chronic basis. 89 Fed. Reg. at 102575–77. Short-term exposure to TCE can cause lightheadedness and headaches; long-term exposure can impair fetal development and negatively affect functioning of the liver and kidneys and the nervous, immune, and reproductive systems. EPA, *Risk Evaluation for Trichloroethylene* 235–43 (Nov. 2020). The chemical is also a human carcinogen and can cause liver cancer, kidney cancer, and non-Hodgkin’s lymphoma. *Id.* at 244–45.

TCE can be introduced to the environment through the air, water, and soil at facilities where it is produced or used. After it is in the soil, TCE vapor moves into the air or migrates into groundwater, where it can persist for many years. *Id.* at 83; EPA, *Toxicological Review of Trichloroethylene* 2-6 (Sept. 2011). TCE vapor can also enter buildings through cracks in their foundations, around pipes, or through sump or drain systems, contaminating indoor air.¹ As of the date of this filing,

¹ See EPA, *What is Vapor Intrusion?* (updated Sept. 9, 2025), <https://www.epa.gov/vaporintrusion/what-vapor-intrusion>. All websites last visited August 6, 2026.

TCE is listed as a contaminant of concern at 765 sites on the federal Superfund National Priorities List.²

In late 2016, EPA designated TCE as one of the first ten priority chemicals requiring risk evaluation under the 2016 amendments to TSCA. Designation of Ten Chemical Substances for Initial Risk Evaluations, 81 Fed. Reg. 91927, 91928 (Dec. 19, 2016). EPA completed its risk evaluation in November 2020, determining that certain conditions of use of TCE present an unreasonable risk of injury to health or the environment. Trichloroethylene (TCE); Final Toxic Substances Control Act (TSCA) Risk Evaluation, 85 Fed. Reg. 75010, 75010 (Nov. 24, 2020). In January 2023, EPA revised its risk evaluation after concluding that TCE warrants an unreasonable risk determination “that is comprehensive for the chemical substance” and not limited to specific uses. Trichloroethylene (TCE); Revision to the Toxic Substances Control Act (TSCA) Risk Determination, 88 Fed. Reg. 1222, 1223–24 (Jan. 9, 2023).

² EPA, *Superfund Site Search Results* (n.d.), <https://cumulis.epa.gov/supercpad/Cursites/srchsites.cfm> (search NPL or Superfund Alternative Approach Status: “Currently on the NPL”; Contaminant Name: “TCE”).

Later that year, EPA published its proposed risk management rule for TCE, which included a phaseout of the manufacture, processing, and distribution of TCE. 88 Fed. Reg. at 74712. Many States, including many amici States, submitted a comment letter on the proposed rule to express their strong support for the proposed TCE phaseout and to advocate that, until the phaseout is complete, EPA provide additional protections for fenceline communities, i.e., communities who live close to sites that produce or are contaminated with TCE and who are therefore at higher risk of TCE exposure. Comments of Att’y Gen. of N.Y. et al. on Proposed Rule: Trichloroethylene (TCE) (Dec. 15, 2023) (EPA-HQ-OPPT-2020-0642-0311). EPA published the final rule in December 2024. 89 Fed. Reg. at 102568. The final rule comprises a phased prohibition on the manufacture, processing, and distribution in commerce of TCE for all uses, with time-limited exemptions for specific conditions of use. *See id.*

ARGUMENT

POINT I

TCE POSES SEVERE HEALTH RISKS AND IMPOSES COSTS ON AMICI STATES AND THEIR RESIDENTS

TCE poses significant risks to public health and the environment and imposes a range of costs on amici States and their residents. Amici States thus have a strong interest in ensuring that the final rule remains fully in place.

Amici States have long contended with the harmful effects of TCE. As the final rule explains, nearly 70,000 people work with or in proximity to TCE, and more than 1,000 of these workers are pregnant and at risk of fetal cardiac defects. 89 Fed. Reg. at 102574. Such work-related illnesses can generate substantial healthcare costs in the form of emergency room visits, long-term care expenses, and medications.³ Studies

³ See, e.g., J. Paul Leigh, *Economic Burden of Injury and Illness in the United States*, 89 Milbank Q. 728, 729–31 (2011); Paul A. Schulte, *Characterizing the Burden of Occupational Injury and Disease*, 47 J. Occupational & Env't Med. 607, 616 (2005); Pew Charitable Trs., *The Share of State Budgets Spent on Medicaid Posts Largest Annual Increase in 20 Years* (June 16, 2025), <https://www.pew.org/en/research-and-analysis/articles/2025/06/16/the-share-of-state-budgets-spent-on-medicaid-posts-largest-annual-increase-in-20-years>.

show that many of these costs will not be covered by workers' compensation or other forms of private insurance and will instead be borne by amici States through Medicaid and other programs.⁴ Moreover, many of the chronic illnesses caused by TCE, such as cancer, liver disease, and kidney disease, may not manifest until long after workers would be able to claim private, employer-provided benefits.⁵

For decades, spills and leakage of TCE have threatened the health and well-being of amici States and their residents. For example, in the 1960s and 1970s, drinking water contaminated with TCE led to an epidemic of childhood leukemia in the industrial town of Woburn, Massachusetts.⁶ In California, three manufacturers of silicon chips in Santa Clara County allowed large amounts of TCE to leak into groundwater in the 1960s and 1970s, creating a Superfund "Triple Site"

⁴ See Leigh, *supra*, at 749; Schulte, *supra*, at 615.

⁵ See J. Paul Leigh, Shagufta Yasmeen & Ted R. Miller, *Medical Costs of Fourteen Occupational Illnesses in the United States in 1999*, 29 Scandinavian J. Work, Env't & Health 304, 306, 311 (2003).

⁶ 1 Mass. Dep't of Pub. Health, *Woburn Childhood Leukemia Follow-Up Study* 1–2 (1997) (Executive Summary), <https://www.mass.gov/doc/woburn-childhood-leukemia-follow-up-study/download>.

that drove vapor intrusion into nearby residences and schools.⁷ And in Beaverton, Oregon, contamination of a well at the View-Master plant exposed thousands of workers to TCE.⁸

Despite recent efforts to regulate TCE use, historical TCE contamination continues to threaten communities. In March 2022, for example, EPA added a site in the Greenpoint/East Williamsburg neighborhood of Brooklyn, New York, to the Superfund National Priorities List due to the presence of chlorinated volatile organic compounds, including TCE. According to EPA, “[h]undreds of residents and workers are exposed to the indoor air contamination that results from vapor intrusion into the [site’s] structures.”⁹

⁷ EPA, *Triple Site, Sunnyvale, CA* (n.d.), <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=0900265>; Beth Winegarner, *Silicon Valley’s Toxic Past Haunts Sunnyvale Neighborhood*, KQED (updated Dec. 7, 2017), <https://www.kqed.org/futureofyou/388730/silicon-valleys-toxic-past-haunts-sunnyvale-neighborhood>.

⁸ Or. Dep’t of Hum. Servs., *Feasibility Investigation of Worker Exposure to Trichloroethylene at the View-Master Factory in Beaverton, Oregon* (2004), <https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/TRACKINGASSESSMENT/ENVIRONMENTALHEALTHASSESSMENT/Documents/viewmaster/tcereport.pdf>.

⁹ EPA, *National Priorities List (NPL): Meeker Avenue Plume* (Mar. 2022), <https://semspub.epa.gov/work/HQ/402017.pdf>.

Amici States have borne and will continue to bear the costs of cleaning up TCE within their borders. For example, TCE is the primary contaminant in a large groundwater plume on Long Island, which resulted from aerospace and defense company Northrup Grumman's and the U.S. Navy's use of the chemical to clean aircraft parts at their manufacturing plant. The plume has affected eleven public water supply wells and threatens sixteen additional supply wells, a problem New York is still working to remedy.¹⁰ This site is only one of many: as of December 2023, TCE was or had been a contaminant of concern at over 600 inactive hazardous waste disposal sites¹¹ in New York, with 175 sites in New York City alone.¹²

¹⁰ N.Y. Dep't of Env't Conservation, *Amended Record of Decision for the Northrup Grumman Bethpage Facility and Naval Weapons Industrial Reserve Plant* 8–9 (Dec. 2019), https://extapps.dec.ny.gov/docs/remediation_hudson_pdf/130003aarodou2ou3.pdf.

¹¹ These are sites “where consequential amounts of hazardous waste may have been disposed” sometime in the past. N.Y. Dep't of Env't Conservation, *Inactive Hazardous Waste Disposal Site Program* (n.d.), <https://dec.ny.gov/environmental-protection/site-cleanup/brownfield-and-state-superfund-programs/state-superfund-sites>.

¹² Comments of Att'y Gen. of N.Y. et al., *supra*, at 5.

Other amici States have also funded or overseen the cleanup of TCE in their groundwater. In Corvallis, Oregon, a manufacturer of glass-fiber battery-separator material allowed TCE to leak into the environment, resulting in an extensive groundwater plume affecting residential neighborhoods and the Willamette River.¹³ Groundwater pump-and-treat systems and vapor extraction systems have been operating for years in an attempt to contain and mitigate the contamination.¹⁴ In Stratford, Connecticut, state agencies maintain sub-slab depressurization systems at residences exposed to TCE vapors from a groundwater plume caused by a former automotive parts manufacturer.¹⁵ And in Minnesota, TCE from a former metalworking facility has resulted in a groundwater plume spanning around ten square miles.¹⁶

¹³ Or. Dep't of Env't Quality, *Staff Report: Recommended Remedial Act for Evanite Fiber Corporation* 4, 6 (Apr. 2015), <https://www.oregon.gov/deq/FilterDocs/HVStaffReport.pdf>.

¹⁴ *See id.* at 6–7.

¹⁵ EPA, *Raymark Industries, Inc.* (n.d.), <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=0100094#content>.

¹⁶ EPA, *Baytown Township Ground Water Plume* (n.d.), <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0505340#bkground>.

Recognizing the harms associated with TCE, several amici States have taken steps to limit its manufacture and sale. New York, for example, has banned the use of TCE in any manufacturing or industrial cleaning process. N.Y. Env't Conserv. Law § 37-0119. Minnesota has banned the use of TCE at most facilities requiring an air emissions permit. Minn. Stat. § 116.385. Many States and jurisdictions, including California, Colorado, Connecticut, Delaware, Illinois, Maryland, Massachusetts, New York, Rhode Island, and the District of Columbia, restrict the use or sale of TCE in consumer products.¹⁷ Some States also impose reporting requirements on facilities that manufacture or use TCE. *See, e.g.*, Mass. Gen. Laws ch. 21E, §§ 9–10; 301 Mass. Code Regs. § 41.06(2).

EPA's authority under TSCA is an important complement to these efforts. While States and local governments have many tools to regulate the use of toxic substances, federal law may in some circumstances

¹⁷ *See* Cal. Code Regs. tit. 17, §§ 93111(d), 94509(m), 94522(d); Cal. Health & Safety Code § 25210.2(a); Colo. Code Regs. § 1001-25:A.II.K; Conn. Agencies Regs. §§ 22a-174-40(d)(4)–(6), 22a-174-40(d)(14); 7 Del. Admin. Code §§ 1141-2.3.5.3, 1141-2.3.8, 1141-2.3.10; D.C. Mun. Regs. tit. 20, §§ 725.5, 727.1, 728.1; Md. Code Regs. 26.11.32.06(C), 26.11.32.08, 26.11.32.09; 310 Mass. Code Regs. §§ 7.25(12)(c)(9), 7.25(12)(c)(11)–(12); 6 N.Y.C.R.R. §§ 235-3.1(l)–(m), 235-3.1(o)–(p); 250 R.I. Code R. §§ 120-05-31.7(G), 120-05-31.7(J)–(K).

constrain what they can do to address the public health costs of TCE exposure, including the ability to regulate the manufacture, processing, and sale of a toxic chemical after EPA has acted under TSCA to address that chemical. *See* 15 U.S.C. § 2617. For example, sometimes EPA’s promulgation of a final risk management rule may preempt state and local efforts to address the same chemical. *See id.* § 2617(c)–(e). Accordingly, amici States have a strong interest in robust federal regulation of TCE to support their efforts to protect public health and the environment.

POINT II

EPA’S FINAL RULE PROPERLY TARGETS THE UNREASONABLE RISK PRESENTED BY TCE AS A WHOLE

Industry petitioners’ claim that EPA violated TSCA is premised on a fundamental misunderstanding of the statutory scheme. According to industry petitioners, EPA was required to first determine whether each specific use of TCE presented an unreasonable risk before it prohibited the manufacture, processing, and distribution of TCE. Under this flawed interpretation of the statute, EPA’s purported failure to consider whether a highly specific condition of use poses an unreasonable risk deprives EPA of any ability to regulate that use. *See* Opening Br. of Am. Chem.

Council et al. (“Industry Br.”) at 5; *see also id.* at 31, 35, 40–41, 45–46. But that argument gets TSCA backward. The statute requires EPA to assess whether a chemical as a whole presents an unreasonable risk, devise a rule to ameliorate that risk, and then exercise its discretion to carve out exemptions for specific conditions of use if needed. *See supra* at 5–7. Here, as intervenors explain, EPA correctly found that TCE as a whole presents an unreasonable risk, and TSCA authorizes EPA to eliminate that risk. *See* 15 U.S.C. § 2605(a); Br. of Intervenors Ctr. for Env’t Health & Env’t Def. Fund at 18–27.

Contrary to industry petitioners’ arguments, EPA properly considered the overall risk posed by TCE exposure and regulated the chemical as a whole rather than on a use-by-use basis. Congress enacted TSCA to address a specific problem: the piecemeal regulation of toxic chemicals and the absence of a single agency with “authority to look comprehensively at the hazards associated with the chemical.” S. Rep. No. 94-698, at 2. Pre-TSCA laws authorized different agencies to address the hazards associated with discrete uses of chemicals in consumer products or occupational settings, and agencies could “only look at the hazards within their jurisdiction in isolation from other hazards associated with

the same chemical.” *Id.* In enacting TSCA section 6, Congress sought to give EPA “the authority to look at the hazards *in total*.” *Id.* (emphasis added). And when Congress strengthened the provisions of section 6 in 2016, Congress reinforced that fundamental purpose. *See* S. Rep. No. 114-67, at 7 (2015).

The text of section 6 reflects Congress’s aim to ensure that EPA evaluate the hazards of each chemical substance comprehensively. TSCA section 6(b) requires EPA to determine “whether a *chemical substance*,” as opposed to the substance’s separate uses, “presents an unreasonable risk of injury to health or the environment.” 15 U.S.C. § 2605(b)(4)(A) (emphasis added). Section 6(a) provides that EPA must promulgate risk management rules if it “determines in accordance with subsection (b)(4)(A) that the manufacture, processing, distribution in commerce, use, or disposal of a *chemical substance* or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment.” *Id.* § 2605(a) (emphasis added). TSCA’s directive to assess the risk of each *substance* precludes EPA from dissecting a substance’s

risk on an overly granular use-by-use basis, as industry petitioners mistakenly contend.¹⁸ *See* Industry Br. at 31–32, 40–41, 45–46.

Other provisions of TSCA further confirm that EPA must make a single risk determination for the chemical substance as a whole. TSCA section 19(a) authorizes judicial review of any “order” under section 6(i). *See* 15 U.S.C. § 2618(a). And section 6(i), in turn, provides that “*a* determination” by EPA “that *a chemical substance*” does or does not present an unreasonable risk is an order constituting final agency action for judicial review purposes. *See id.* § 2605(i) (emphases added). That provision makes clear that EPA must make a single, binary determination as to “whether *a substance meets or does not meet* the safety standard.” S. Rep. No. 114-67, at 17 (emphasis added).

¹⁸ Relatedly, industry petitioners’ overly narrow conception of a “condition of use” is unworkable. For example, industry petitioners fault EPA for banning the disposal of wastewater containing de minimis concentrations of byproduct TCE because, while EPA evaluated the risks associated with the disposal of wastewater that contains TCE, the agency did not separately analyze whether the disposal of wastewater containing very small amounts of TCE poses an unreasonable risk to workers. Industry Br. at 45–47. Nothing in TSCA mandates such granular risk assessments. In fact, TSCA authorizes EPA to consider high-end exposure scenarios. *See* 15 U.S.C. § 2605(b)(4)(F)(ii); 40 C.F.R. § 702.33.

To be sure, TSCA also requires EPA to identify and evaluate the risks of each chemical's conditions of use as part of its risk evaluation.¹⁹ *See* 15 U.S.C. § 2605(b)(4)(F). Congress imposed that requirement to help the agency identify relevant exposure pathways and activities that should be targeted for risk management, if EPA finds an unreasonable risk. *See* S. Rep. No. 114-67, at 17. But the instruction to consider a substance's conditions of use does not supplant TSCA's clear requirements that EPA evaluate the overall risk posed by a chemical substance in a single risk determination, *see* 40 C.F.R. § 702.39(f)(1), and promulgate regulations to eliminate that risk.

Congress granted EPA discretion to exclude specific conditions of use from its regulatory response at the risk management stage, in either of two ways. First, EPA may decide to adopt less than a total prohibition on the chemical's manufacture, processing, or distribution. *See* 15 U.S.C. § 2605(a). Second, EPA may exempt a specific condition of use from risk management if (i) the condition of use is critical and there is no "economi-

¹⁹ Section 6(b)(4)(F) lays out the specific requirements for EPA's risk evaluation. Although the provision references "conditions of use," it nowhere suggests that EPA's analysis may proceed only on a use-by-use basis. *See* 15 U.S.C. § 2605(b)(4)(F).

cally feasible safer alternative,” (ii) compliance with the risk management requirement “would significantly disrupt the national economy, national security, or critical infrastructure,” or (iii) the condition of use, “as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.” *Id.* § 2605(g)(1). But nothing in TSCA requires EPA to narrow a risk management rule or grant an exemption whenever one condition of use in isolation is comparably less risky than another, as industry petitioners suggest. *See* Industry Br. at 35–37. To hold otherwise would resurrect the requirement that EPA regulate risk using only the “least burdensome requirements”—a requirement that Congress specifically eliminated when it amended TSCA in 2016. *See supra* at 4.

Industry petitioners mistakenly rely on TSCA section 6(b)(4)(D) (Industry Br. at 36–37)—an inapposite provision governing EPA’s preparation of the initial scope document. *See* 15 U.S.C. § 2605(b)(4)(D). That provision is not relevant to the substance of a risk evaluation or the resulting risk management rule, which are governed by separate provisions of TSCA. *See id.* § 2605(a), (b)(4)(F). Nothing in the governing provisions requires EPA to disaggregate its risk analysis or risk management

on a use-by-use basis. *See id.* To the contrary, TSCA reflects the common-sense proposition that multiple exposures to the same chemical from different activities will increase the risks to health and the environment and that a chemical should therefore be regulated as a whole. Accordingly, EPA must “*integrate and assess*” all of the relevant information on “hazards and exposures for the conditions of use,” *id.* § 2605(b)(4)(F)(i) (emphasis added), and regulate a “chemical substance or mixture” according to whether “the manufacture, processing, distribution in commerce, use or disposal of” a chemical—or “any combination of such activities”—“presents an unreasonable risk of injury to health or the environment,” *id.* § 2605(a).

Even if section 6(b)(4)(D) of TSCA were relevant (which it is not), that provision still would not support industry petitioners’ use-by-use approach. Section 6(b)(4)(D) requires EPA to publish an initial scope document identifying the “conditions of use” to be studied during the risk evaluation. *See* 15 U.S.C. § 2605(b)(4)(D). But the mere fact that EPA is required to identify the relevant conditions of use in its initial scope document does not mean that EPA must first determine that a specific use presents an unreasonable risk before regulating it. Rather, the requirement serves to clarify that EPA must identify all of the relevant

applications for which a substance is used, distributed, or sold so that all known and reasonably foreseeable risks “are included in the scope of that substance’s [risk] evaluation.” *See Safer Chems.*, 943 F.3d at 419.

CONCLUSION

Industry petitioners' petitions for review should be denied.

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COMBINED CERTIFICATIONS OF COUNSEL

I, Gillian Barna, certify under penalty of perjury under 28 U.S.C. § 1746 that:

1. I am a member of the bar of this Court and counsel of record for the State of New York et al.
2. The brief for the State of New York et al., filed on August 6, 2026, complies with the typeface requirements and length limits of Rules 29 and 32(a)(5)-(7) of the Federal Rules of Appellate Procedure and contains 4,495 words.
3. The brief for the State of New York et al. was prepared on a system using CrowdStrike Falcon Sensor anti-virus software and no viruses were identified in these documents.
4. The text of the electronic file of the brief for the State of New York et al. is identical to the text of the paper copies being submitted to the court.

Dated: New York, New York
August 6, 2026

/s/ Gillian Barna
Gillian Barna
Assistant Solicitor General

CERTIFICATE OF SERVICE

I, Gillian Barna, affirm upon penalty of perjury that, on August 6, 2026, the accompanying Brief for the State of New York et al. as Amici Curiae in Support of Intervenor-Respondents was served on all counsel of record, all of whom are ECF filers, electronically by the Notice of Docket Activity pursuant to Third Circuit L.R. 113.4:

Dated: New York, NY
August 6, 2026

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