IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

Case No. 7:22-CV-00073-M

CENTER FOR ENVIRONMENTAL HEALTH, et al., Plaintiffs, v. MICHAEL S. REGAN, in his official capacity as Administrator of the U.S. Environmental Protection Agency, et al., Defendants.	)	ORDER

This matter comes before the court on Defendants Michael S. Regan, in his official capacity as Administrator of the United States Environmental Protection Agency, and United States Environmental Protection Agency's (collectively "EPA") Motion to Dismiss Plaintiffs' Complaint. DE 48. The Plaintiffs are nonprofit public health and environmental justice organizations. They filed a petition under Section 21 of the Toxic Substances Control Act ("TSCA") requesting testing on 54 Per- and Polyfluoroalkyl Substances ("PFAS") manufactured by The Chemours Company. EPA granted the petition. However, the Plaintiffs argue that EPA effectively denied their petition because the agency does not currently project testing all of the 54 PFAS individually and does not plan to implement many of the proposed tests requested in the petition. Pursuant to statutory directives, EPA argues it construed Plaintiffs' petition as a request for testing a category of substances with a recommended testing program and EPA granted the petition as to that category of substances. EPA then initiated proceedings under the statute.

For the reasons stated herein, the court finds that EPA granted Plaintiffs' petition. This court lacks jurisdiction to review such a grant. Therefore, EPA's motion is granted, and Plaintiffs' Complaint is dismissed.

I. Background

Plaintiffs are four community and environmental justice groups in Eastern North Carolina—Center for Environmental Health, Cape Fear River Watch, Clean Cape Fear, and Toxic Free NC—who are concerned about the effects of pollution in the Cape Fear River and surrounding communities. Amend. Compl. [DE 32] ¶¶ 1, 15, 16, 17, 20.[1] On October 14, 2020, Plaintiffs petitioned Defendant Environmental Protection Agency ("EPA") under Section 21 of the Toxic Substances Control Act ("TSCA") to require comprehensive health and environmental effects testing on 54 PFAS manufactured by the Chemours Company at its chemical production facility in Fayetteville, North Carolina. The facility is adjacent to and upstream from the communities that plaintiffs represent. *Id.* ¶ 2.

The Defendants are Michael Regan, in his official capacity as Administrator of EPA, and EPA, an agency of the United States Executive Branch. *Id.* ¶¶ 21–22. EPA is tasked with implementing the provisions of TSCA. This includes responding to citizen petitions under Section 21 of the Act. *Id.* The Defendants initially denied the petition, but after reconsideration, granted it. *Id.* ¶¶ 3–5. However, the Plaintiffs were dissatisfied with the grant and allege that it was effectively a denial. They seek judicial review of the petition "denial" under Section 21(b)(4)(A) of the TSCA. *See id.* ¶ 9.

[1] On November 1, 2022, Plaintiffs North Carolina Black Alliance and Democracy Green voluntarily dismissed their claims against Defendants. DE 64.

The Statute: Toxic Substances Control Act

Congress enacted the TSCA, 15 U.S.C. §§ 2601–2697, to provide a comprehensive framework for regulating toxic chemicals. *See generally* 15 U.S.C. § 2601(b); *see also Env't Def. Fund v. Reilly*, 909 F.2d at 1498 ("Enactment of this legislation in 1976 launched a 'comprehensive program' to anticipate and forestall injury to health and the environment from activities involving toxic chemical substances.").

Section 4 of the TSCA provides for substance testing. 15 U.S.C. § 2603. It requires EPA to conduct testing on specific chemical substances or mixtures if the EPA Administrator finds three factors met. *Id.* § 2603(a)(1). First, the Administrator must find "the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment." *Id.* § 2603(a)(1)(A)(i)(I). Second, he must find "there is insufficient information and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted." *Id.* § 2603(a)(1)(A)(i)(II). Third, he must find the "testing of such substance or mixture with respect to such effects is necessary to develop such information." *Id.* § 2603(a)(1)(A)(i)(III). If the Administrator finds these three factors met, he must require testing on the substance or mixture to fill the information gap and determine if use of the substance or mixture presents "an unreasonable risk of injury to health or the environment." *Id.* § 2603(a)(1).

Section 21 of the TSCA provides for citizen petitions. *Id.* § 2620. It states that "[a]ny person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule . . . or an order under section 2603." *Id.* § 2620(a). The petition must state why it

is necessary for EPA to act and the Administrator may hold a public hearing or conduct investigations or proceedings to determine if the petition should be granted. *Id.* § 2620(b)(1), (2). Within ninety days, EPA must grant or deny the petition. *Id.* § 2620(3). If the Administrator grants the petition, he must "promptly commence an appropriate proceeding." *Id.* If he denies the petition, he must "publish in the Federal Register the Administrator's reasons for such denial." *Id.*

Section 21 also provides a right to judicial review in a district court of the United States in two circumstances: (1) EPA denies the petition, or (2) EPA fails to grant or deny the petition within ninety days. *Id.* § 2620(b)(4)(A). Any civil action must be filed within 60 days of EPA denying the petition or the expiration of the ninety-day window to act on the petition. *Id.*

In such a civil action, the petition shall be "considered by the court in a de novo proceeding." *Id.* § 2620(b)(4)(B). The court must "order the Administrator to initiate the action requested by the petitioner" if it finds by a preponderance of the evidence that

> (I) information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance to be subject to such rule or order; and
>
> (II) in the absence of such information, the substance may present an unreasonable risk to health or the environment, or the substance is or will be produced in substantial quantities and it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to it.

Id. § 2620(b)(4)(B).

The Pollutant: Per-and Polyfluoroalkyl Substances (PFAS)

Plaintiffs filed a citizen petition under the TSCA on October 14, 2020. The following allegations of fact are drawn principally from Plaintiffs' petition and complaint: The petition provides background information on PFAS. Amend. Compl. ¶ 39. PFAS are used in a variety of industries and there are numerous pathways for human exposure to PFAS. These chemicals do not break down or degrade over time and have a high degree of mobility and are often linked to many serious health effects in animals and humans. *Id.* ¶¶ 39–46. For example, studies of human exposure to PFAS have noted associations with health conditions. Conditions include kidney and testicular cancer, elevated cholesterol, liver disease, decreased fertility, thyroid problems, and changes in hormone levels and immune systems. *Id.* ¶ 45. Plaintiffs allege that EPA has failed to use its testing authorities under Section 4 of the TSCA to fill the data-gaps on PFAS. *Id.* ¶ 46.

The Polluter

Plaintiffs allege as follows: the Chemours' facility in Fayetteville, North Carolina, has created PFAS contamination in the Cape Fear River Basin. *Id.* ¶ 47.

The Chemours plant is located on a 2,150-acre site in a rural area south of Fayetteville, adjacent to the west bank of the Cape Fear River. *Id.* ¶ 48. The river flows to the City of Wilmington and broadens into an estuary ultimately flowing into the Atlantic Ocean. *Id.* The river is a source of drinking water for residents of Wilmington and other population centers downstream from or adjacent to the Chemours plant. *Id.*

The plant is a major producer and user of PFAS. *Id.* ¶ 50. Its PFAS-based product lines are Fluoromonomers, Fluorinated Vinyl Ethers, and Nafion Polymers, which are used as membranes in fuel cells and chlorine production. *Id.* The mix of substances associated with these product lines is complex and not well-understood but likely involves hundreds or thousands of

individual PFAS. *Id.* Many of these PFAS have unidentified chemical structures. *Id.* For example, Chemours' produces "GenX" compounds and discharges them into the Cape Fear River. *Id.* ¶ 51. Strynar et al. and Sun et al. monitored the river and identified GenX and nine other PFAS in the river and drinking water downstream of the plant. *Id.* ¶ 52. McCord et al. (2019) sampled the river downstream and located 37 unique PFAS molecules. *Id.* Several of these compounds were detected in the blood of residents in the region. *Id.* Sampling in the river indicated a total PFAS concentration of 130,000 parts per trillion. *Id.* Water utilities also sampled drinking water intakes and identified numerous PFAS linked to Chemours' operations. *Id.* Chemours also conducted compliance testing under a North Carolina consent order and several additional PFAS associated with the Fayetteville plant were detected in private wells, wastewater, stormwater, sediment, groundwater, soil, air emissions, and local produce, including a larger number of compounds of uncertain chemical composition. *Id.* ¶ 53. The 2019 consent order also required controls on wastewater discharges and air emissions of PFAS and other monitoring and mitigating measures related to PFAS. *Id.* ¶ 54.

The Petition: Plaintiffs' Petition for a Test Rule or Order Under Section 21 of the TSCA

Plaintiffs' petition identified 54 PFAS linked to the Chemours facility that warrant health and environmental effects testing. *Id.* ¶ 55. Plaintiffs selected the 54 PFAS based on evidence of known or anticipated human exposure. *Id.* The petition argued the 54 PFAS met the TSCA criteria for testing because (1) data on their effects are insufficient or unavailable, and (2) they may present unreasonable risks due to the combination of potential toxicity and exposure. *Id.* The 54 PFAS are divided into Tier 1 substances, for which there is evidence of human exposure, and Tier 2 substances, for which human exposure is probable. *Id.* The petition asserted that PFAS potential for causing adverse health and environmental effects provided a strong basis for concluding the 54

PFAS "may present an unreasonable risk of injury" under Section 4(a)(1)(A) of the TSCA. *Id.* ¶ 57. The petition asserts the potential risk is magnified by the co-occurrence of multiple PFAS in drinking and surface water, other environmental media, and the blood of humans and wildlife in the Cape Fear watershed. *Id.* The risk is increased when more than one PFAS is present. *Id.* The petition argued that available information on the 54 PFAS are "insufficient" under Section 4(a) of the TSCA. *Id.* ¶ 58.

Petitioners also make numerous arguments about how they want the EPA to carry out its duties. The petition argued "sufficiency" should be determined by comparing available data with the known adverse effects of other PFAS. *Id.* It then asserted that the 54 substances either lack any health and ecological effects data or the available studies are limited and incomplete and do not provide an adequate basis for hazard and risk assessment. *Id.* ¶ 59. The petition listed key data gaps. *Id.* It then proposed a testing program consisting of experimental animal studies, human studies, and ecological effects/fate and transport and physical-chemical properties studies. *Id.* ¶ 60. The petition also requested the EPA contract with the National Academy of Sciences (NAS) to form an independent expert science panel with responsibility for overseeing all aspects of the testing program. *Id.* ¶ 61. The public and Chemours would then have the opportunity to submit nominations for membership on the panel. *Id.*

The Initial Denial of Plaintiffs' Petition

EPA denied the petition on January 7, 2021. *Id.* ¶ 62. The petition denial affirmed EPA's "high concern" about PFAS. It did not dispute that all PFAS are concerning for serious health effects based on the overall properties of the class. *Id.* EPA did not deny that most of the 54 PFAS have been detected in the environment. *Id.* The bulk of the petition denial summarized EPA's PFAS Action Plan and provided a detailed list of the PFAS-related measures EPA has taken. *Id.*

¶ 63. The petition denial also asserted that "the petitioners have not provided the facts necessary for the Agency to determine for each of the 54 PFAS that existing information and experience are insufficient and testing of such substance or mixture with respect to such effects is necessary to develop such information." *Id.* ¶ 64.

However, the petition reflects that the Plaintiffs reviewed the available data for the 54 PFAS. *Id.* ¶ 65. The petition explained that some testing has been conducted or is underway on a small number of compounds, but it fails to provide necessary data for all-endpoints and most of the 54 PFAS have no health effects data at all. *Id.* In addition, EPA and other expert bodies agree there are fundamental data gaps for nearly all PFAS. *Id.* ¶ 66. For example, EPA's PFAS Action Plan states "[t]here are many PFAS of potential concern to the public that may be found in the environment. Most of these PFAS lack sufficient toxicity data to inform our understanding of the potential for adverse human or ecological effects." *Id.*

EPA's denial found the petition lacking. The denial found "that the petitioners failed to address ongoing testing and data collection for some of the 54 PFAS, thereby failing to set forth facts that are necessary to establish there is a need for the testing sought in the petition. This research may provide information that overlaps with testing the petitioners requested, which would render the information unnecessary under TSCA Section 4(a)(1)(A)(i)(III)." *Id.* ¶ 67. Plaintiffs allege that all ongoing research cited by EPA consists of *in vitro* assays, including high-throughput testing conducted by the EPA Office of Research and Development (ORD) to determine various markers of bioactivity that might signal the potential for *in vivo* effects. By contrast, the health effects testing proposed in the petition consists of *in vivo* animal studies, epidemiological research, and limited monitoring of workers. The petition did not propose any *in vitro* assays. It asserts

non-animal test methods cannot now provide a scientifically sufficient understanding of the health and environmental effects of PFAS. *Id.* ¶ 68.

The Reconsideration: Petitioners Request EPA Reconsider their Petition

On March 4, 2021, Plaintiffs requested EPA reconsider and grant their October 14, 2020 petition. *Id.* ¶ 69. The request rebutted EPA's January 7, 2021 denial point-by-point. *Id.*

Plaintiffs' reconsideration request provided the results of a systemic and comprehensive literature search conducted by petitioners' scientific consultants on these substances. *Id.* ¶ 70. The search included EPA's ChemView and CompTox databases as well as Pub-Med and the European Chemicals Agency (ECHA) files. The search showed that the 54 PFAS lack most or all of the studies proposed in the petition. *Id.* Most of the reported toxicology data were for a small number of commercially significant compounds, such as Gen-X, tetrafluoroethylene, and hexafluoropropylene. *Id.* ¶ 71. Even for these substances, there were still significant gaps in health effects and ecotoxicity information that would necessitate further testing. *Id.* Moreover, 41 of the 54 PFAS did not have any reported data for health and environmental effects. *Id.* The literature search also found that, with one exception, no human epidemiological data was available for the 54 PFAS. *Id.* ¶ 72. Similarly, only one substance (GenX) had data for immunological effects, an endpoint of high concern for PFAS as a class. No testing on mixtures for the endpoints identified in the petition were reported. *Id.* The reconsideration request also responded to EPA's concern that the new study proposed in the petition would be duplicative of a study ongoing through the Centers for Disease Control and Prevention and ATSDR cooperative agreements. *Id.* ¶¶ 73–74.

Plaintiffs supported their request for reconsideration with letters and other submissions to EPA. *Id.* ¶ 75. EPA received letters of support for the petition from dozens of non-profit organizations and numerous scientists. *Id.* ¶ 76. After submission of the reconsideration request,

additional support letters were received from 120 non-profit groups, nearly 50 scientists, and the City of Wilmington, County of Hanover and Cape Fear Public Utility Authority in North Carolina. *Id.* On June 16, 2021, seven members of the North Carolina Congressional delegation wrote to Administrator Regan in support of Plaintiffs' petition.

The Grant: EPA Grants the Petition but the Plaintiffs assert it is, in effect, a denial

On September 16, 2021, EPA informed Plaintiffs' counsel that it was granting Plaintiffs' request for reconsideration and would "review the petition denial and will endeavor to provide a response as expeditiously as possible." *Id.* ¶ 77. On December 28, 2021, EPA granted the petition. *Id.* ¶ 81. Its response did not make a final determination whether TSCA's Section 4 factors had been met but did not dispute that the 54 PFAS lacked sufficient information "to permit a reasoned evaluation of their health and environmental effects" and "in the absence of such information . . . may present an unreasonable risk to health or the environment . . ." as required to grant petitions seeking testing under TSCA Section 21(b)(4)(B)(i). *Id.* ¶ 80. EPA acknowledged "the vast majority of PFAS are 'data-poor,' that is, lacking data that inform behavior in the environment or in exposed ecological or human populations." *Id.*

The Agency asserted that it "is granting the petition under TSCA section 21 to . . . issue an order under TSCA Section 4(a)(1)(A)(i) compelling health and environmental effects testing regarding PFAS." *Id.* EPA "determined that the petition sets forth facts demonstrating that it is appropriate to issue a section 4 order to address the health and environmental effects of PFAS." *Id.* As a result, EPA committed to "exercise[ing] its TSCA authorities to compel development of information on PFAS." *Id.*

Plaintiffs contend EPA's grant of the petition is in reality a denial as follows: In granting the petition, EPA's letter in response [DE 49-2] refused to require testing for 47 of the 54

substances proposed in the petition and rejected all of the studies the petition requested. Amend. Compl. ¶ 82.

In summary, they argue that EPA's response to the petition:

- Did not require testing on 47 of the 54 PFAS, *id.* ¶¶ 84–87;
- Conditioned testing for 7 PFAS on a "tiered" approach that could result in no animal studies for the end-points highlighted in the petition, *id.* ¶¶ 88–89;
- Did not address the petition's request for multigeneration or extended one-generation and 2-year rodent carcinogenicity studies on the 14 Tier 1 PFAS with substantial exposure from drinking water and/or presence in human blood, *id.* ¶¶ 90–91;
- Did not require testing for GenX compounds despite EPA's recognition in its own toxicity assessment of the need for more studies on this ubiquitous and harmful PFAS, *id.* ¶¶ 92–96;
- Did not require a comprehensive epidemiological study of North Carolina residents exposed to the PFAS pollution created by the Chemours facility, *id.* ¶¶ 97–103;
- Did not require biomonitoring of Chemours employees (human half-life studies), *id.* ¶¶ 104–105;
- Did not require testing on PFAS mixtures found in the drinking water and/or blood of Cape Fear residents, *id.* ¶¶ 106–110;
- Did not require Chemours to develop and submit analytical standards and methods on the 54 PFAS, *id.* ¶¶ 111–113;
- Did not address the petition's requests for ecotoxicity and fate and transport studies on the 54 PFAS, *id.* ¶¶ 114–120.

Id. ¶ 83.

As a result, Plaintiffs argue that EPA's "grant" of their petition is effectively a denial. Under Section 21 of the TSCA, Plaintiffs seek judicial review of EPA's denial of their petition seeking issuance of a rule or order under Section 4 of the TSCA. *Id.* ¶¶ 127–129. They ask this court to "direct EPA to initiate a proceeding for the issuance of a rule or order requiring Chemours to carry out the studies on the 54 PFAS specified in Plaintiffs' petition." *Id.* ¶ 131.

II. Procedural Posture

Plaintiffs filed their Complaint on March 3, 2021, in the United States District Court for the Northern District of California, and an Amended Complaint on February 1, 2022. DE 1; DE 32. The case was transferred to the Eastern District of North Carolina on May 9, 2022. DE 38.

On June 23, 2022, EPA filed a motion to dismiss for lack of jurisdiction and memorandum in support. DE 48; DE 49. The Plaintiffs responded in opposition. DE 52. EPA replied. DE 55. Following a January 20, 2023 status conference [DE 69] and a joint motion from the parties [DE 70], the court set a supplemental briefing schedule [DE 71]. Both parties filed supplemental briefs on February 1, 2023 [DE 72; DE 73], and supplemental replies on February 8, 2023 [DE 75, DE 76]. The court held a motion hearing on February 14, 2023. DE 77. Following that hearing, the Plaintiffs requested leave to file a post-hearing brief. DE 78. The court granted Plaintiffs' motion [DE 80] and on March 10, 2023, EPA filed a response to Plaintiffs' post-hearing brief in support of EPA's motion to dismiss. DE 83.

The matter being fully briefed, it is now ripe for decision.

III. Legal Standards

"Federal courts are courts of limited jurisdiction." *E,g., Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They can only decide cases and controversies authorized by the Constitution and statute. *Id.* Federal courts do not have jurisdiction over executive agencies

unless the United States has affirmatively waived the agency's sovereign immunity. *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit."). If the federal government waives its immunity, the scope of that waiver defines the court's jurisdiction to entertain a suit against an agency. *See United States v. Mottaz*, 476 U.S. 834, 841 (1986) ("When the United States consents to be sued, the terms of its waiver of sovereign immunity define the extent of the court's jurisdiction.").

The Defendant moves to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 12(b)(1). A defendant may challenge subject-matter jurisdiction in one of two ways: facially or factually. A facial challenge asserts that a complaint does not allege sufficient facts on which to base subject-matter jurisdiction. *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009). The plaintiff bears the burden of establishing the court's jurisdiction. *See Lujan v. Defs. of Wildlife,* 504 U.S. 555, 561 (1992).[2]

In making a Rule 12(b)(1) facial challenge, the plaintiff receives the same procedural protections as under a Rule 12(b)(6) motion. *Kerns*, 585 F.3d at 192. The court accepts as true all of the Complaint's well-pleaded factual allegations and draws all reasonable inferences in the plaintiff's favor, *Hall v. DIRECTV, LLC*, 846 F.3d 757, 765 (4th Cir. 2017), but any legal conclusions proffered by the plaintiff need not be accepted as true, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). The *Iqbal* Court made clear that "Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading

[2] The parties agree EPA raises a facial challenge to subject-matter jurisdiction, DE 49 at 12; DE 52 at 11, not a factual challenge.

regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id.* at 678–79.

To survive a Rule 12(b)(6) motion, the plaintiff's well-pleaded factual allegations, accepted as true, must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). *Twombly's* plausibility standard requires that a plaintiff's well-pleaded factual allegations "be enough to raise a right to relief above the speculative level," i.e., allege "enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct]." *Id.* at 555–56. A speculative claim resting upon conclusory allegations without sufficient factual enhancement cannot survive a Rule 12(b)(6) challenge. *Iqbal*, 556 U.S. at 678–79 ("[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'") (quoting Fed. R. Civ. P. 8(a)(2)); *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) ("'[N]aked assertions' of wrongdoing necessitate some 'factual enhancement' within the complaint to cross 'the line between possibility and plausibility of entitlement to relief.'" (quoting *Twombly*, 550 U.S. at 557)).

On a statutory-interpretation question of first impression, the court considers the statute's text, its history, and any relevant precedent. *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1014 (2020) ("But, taken collectively, clues from the statute's text, its history, and our precedent persuade us that § 1981 follows the general rule."). The court starts with the relevant statutory text. *United States v. Quality Stores, Inc.*, 572 U.S. 141, 145 (2014); *see also Othi v. Holder*, 734 F.3d 259, 265 (4th Cir. 2013) ("We begin, as always in deciding questions of statutory interpretation, with the text of the statute."). A statute's words are generally read with their ordinary meaning at the time of the statute's enactment. *See New Prime Inc. v.*

Oliveira, 139 S. Ct. 532, 539 (2019); *see also Othi*, 734 F.3d at 265 ("Unless Congress indicates otherwise, 'we give statutory terms their ordinary, contemporary, common meaning.'"). "To determine a statute's plain meaning, we not only look to the language itself, but also the specific context in which that language is used, and the broader context of the statute as a whole." *Othi*, 734 F.3d at 265. Importantly, "[j]udicial review provisions . . . are jurisdictional in nature and must be construed with strict fidelity to their terms." *Stone v. I.N.S.*, 514 U.S. 386, 405 (1995).

After considering all the tools of statutory interpretation, if a statute remains ambiguous, the court applies deference to an agency's interpretation of the statute it is charged with interpreting. The court applies *Chevron* deference if the agency produces its interpretation through notice-and-comment rule-making or formal adjudication. *Ctr. for Biological Diversity v. Jackson*, 815 F. Supp. 2d 85, 90–91 (D.D.C. 2011) (referencing *Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984)). The court applies *Skidmore* deference if the agency's interpretation results from informal action that lacks the force of law. *Id.* (referencing *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). Under *Skidmore*, the court defers to an agency's interpretation only to the extent it has the "power to persuade." *Id.* "An agency's interpretation 'may merit some deference whatever its form, given the specialized experience and broader investigations and information available to the agency, and given the value of uniformity in its administrative and judicial understandings of what a national law requires [.]'" *Id.*

III. Analysis

EPA argues this court lacks jurisdiction and Plaintiffs' suit is moot because EPA granted Plaintiffs' petition and Section 21 of the TSCA does not permit courts to review when an agency grants a petition. EPA argues text, legislative history, and precedent support its position.

The Plaintiffs counter that EPA effectively denied their petition and this court therefore has jurisdiction. The Plaintiffs argue EPA's "grant" is a denial because the agency projects that it will not individually test 47 of the 54 PFAS requested in their petition and EPA is rejecting their recommended testing methods. They argue denying review would insulate EPA's decision.

Plaintiffs are mistaken. EPA reasonably construed the Plaintiffs' petition as a single petition asking EPA to initiate proceedings to test 54 PFAS. EPA granted the petition to test those 54 substances as a category—PFAS—and has initiated testing on that category of substances. *See* 15 U.S.C. § 2603 (h)(1)(B)(ii) (encouraging EPA to group substances into categories for testing); *id.* § 2625(c)(1) (stating when EPA takes action with respect to a category of substances "any reference in this chapter to a chemical substance or mixture (insofar as it relates to such action) shall be deemed to be a reference to each chemical substance or mixture in such category."). After granting the petition, EPA "initiate[d] a proceeding" for the issuance of a rule(s) or order(s) under section 2603 as to the 54 PFAS as a category of substances. 15 U.S.C. § 2620(a). Plaintiffs have a right to petition EPA to initiate proceedings for the issuance of rules and orders, but Plaintiffs do not have a right to compel the content of EPA's proceedings or to compel EPA to issue a specific rule or order. *See Citizens for a Better Env't v. Thomas*, 704 F. Supp. 149, 152 (N.D. Ill. 1989) (holding under 15 U.S.C. § 2620 "the court [can] order the petitioner to initiate the rulemaking procedures requested by the petitioner . . . . However initiating rulemaking proceedings does not in anyway require the adoption of rules."); *see also id.* ("If the Act permitted the court to substitute its judgment and promulgate the final rule, a significant intrusion into executive power would exist but that is not the case here.").

In sum, EPA granted Plaintiffs' petition. The petition recommended a testing program, including rules and orders for the 54 PFAS. EPA has initiated proceedings to determine the rules

and orders it will issue to test PFAS. The Plaintiffs cannot dictate the testing program, rules, or orders EPA must issue. As such, their petition was granted, and EPA has initiated proceedings for the category of substances requested in the petition. Section 21 of the TSCA does not empower this court to review EPA's grant of a petition. This court lacks jurisdiction.

In addition, contrary to Plaintiffs' arguments, EPA's actions are not insulated from review. As explained below, Plaintiffs have alternative avenues to seek review of EPA's actions and inactions. Plaintiffs are also free to file future petitions making more specific requests.

1. EPA granted Plaintiffs' petition and this court does not have jurisdiction to review an agency's decision to grant a petition under Section 21 of the TSCA.

Section 21 of the TSCA authorizes a plaintiff to sue only when EPA (1) denies a petition or (2) fails to grant or deny a petition. 15 U.S.C. § 2620(b)(4)(A). It does not authorize suit when the agency grants a petition. EPA granted Plaintiffs' petition in December 2021. DE 49-2. This court lacks jurisdiction to review EPA's grant of Plaintiffs' petition.

The Plaintiffs have already received the relief authorized by Section 21 of the TSCA. The text states the court can only "compel the Administrator to initiate a rulemaking proceeding as requested in the petition." 15 U.S.C. § 2620(b)(4)(A). Judicial review provisions are jurisdictional and therefore "construed with strict fidelity to their terms." *Stone*, 514 U.S. at 405. As such, the court can only compel the initiation of a proceeding for the issuance of a rule or order. EPA has already initiated proceedings. The court cannot dictate the substance of a rule or order. *See Citizens for a Better Env't*, 704 F. Supp. at 152 ("However initiating rulemaking proceedings does not in anyway require the adoption of rules. In fact unless the EPA makes the findings required by Section 2603(a)(1) it cannot adopt a rule requiring testing. These findings can only be made by the EPA; not by the court."). Plaintiffs' request for this court to construe EPA's grant as a denial based on Plaintiffs' disagreement with EPA's forecast of its proceedings and the rules or

orders EPA may issue, asks this court to do what it cannot do—substitute its judgment for the EPA's as to the content of the agency's proceedings and the rules or orders it chooses to issue. EPA initiated appropriate proceedings. Therefore, the Plaintiffs have received the only remedy that this court can provide under Section 21 of the TSCA. Because EPA did in fact grant the petition, this court lacks jurisdiction, and, even if this court could entertain Plaintiffs' suit under Section 21 of the TSCA, the suit is moot.[3]

The scope of judicial review under Section 21 makes sense in light of the statute's other mechanisms for judicial review. As stated above, Section 21 only authorizes judicial review of a petition denial or a failure to grant or deny a petition. 15 U.S.C. § 2620(b)(4)(A). However, if a petition is granted, the Plaintiffs can still challenge the results of the rulemaking proceeding. *Id.* § 2618(a)(1)(A) ("Except as otherwise provided in this subchapter, not later than 60 days after the date on which a rule is promulgated . . . any person may file a petition for judicial review of such rule or order. . . ."). Plaintiffs can also seek judicial review to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). If Plaintiffs contend that their petition satisfies statutory criteria making EPA action mandatory, they can institute a civil action under 15 U.S.C. § 2619 "to compel the Administrator to perform any act or duty under this chapter which

---

[3] Plaintiffs argue that this court can order EPA to issue a rulemaking that tests the 54 PFAS and implements their petition's proposed testing methods because the court can "order the Administrator to initiate the action requested by the petitioner." 15 U.S.C. § 2620(b)(4)(B). However, Plaintiffs misread the statute. The petitioner can only request the agency initiate proceedings for the issuance of a rule. As the text makes clear, the "action requested by the petitioner" is "to initiate a proceeding for the issuance, amendment, or repeal of a rule . . . or an order . . . ." *Id.* § 2620(a). The statute refers to the petition as "a petition to initiate a proceeding for the issuance of a rule . . . or an order." *Id.* § 2620(b)(4)(B). This court can only order the agency to initiate a proceeding for the issuance of a rule or an order. It cannot dictate the time, place, manner, or content of that proceeding. It cannot dictate the substance of a rule or an order. EPA granted the petition, has initiated a proceeding, and therefore Plaintiffs have received the remedy available to them under Section 21 of the TSCA.

is not discretionary." 15 U.S.C. § 2619(a)(2). Contrary to Plaintiffs' assertions, EPA's grant of the petition is not insulated from review.

2. EPA granted Plaintiffs' petition in form and substance.

The Plaintiffs argue that EPA's grant of their petition is in fact a denial because it rejects nearly all their requests for testing. The Plaintiffs make three primary arguments in support of this contention. First, the court must look past agency labels to the substance of the agency action and here find EPA's decision a denial. Second, the petition process and judicial review under Section 21 is a powerful tool for the public to force EPA to test toxic substances. Third, if EPA's interpretation prevails, any sham decision the agency makes will be insulated from review.

First, Plaintiffs cite numerous cases for the proposition that courts look past the label an agency puts on its action to the action's substance. For example, in *Azar v. Allina Health Services*, the Supreme Court stated, "courts have long looked to the *contents* of the agency's action, not the agency's self-serving *label*, when deciding whether statutory notice-and-comment demands apply." 139 S. Ct. 1804, 1812 (2019). Plaintiffs then cite a string of cases supporting similar propositions. DE 52 at 13 (collecting cases).

Plaintiffs are correct that this court would have jurisdiction to review if an agency labeled its action a "grant" but in fact denied a petition. However, the facts before the court render that claim implausible. Instead, the allegations demonstrate that EPA granted Plaintiffs' petition as to the category of substances requested in the petition. EPA provided a forecast for proceedings, tests, rules, and orders that *might* result from the grant, and Plaintiffs objected. That is not a denial in label or substance.

Second, Plaintiffs characterize the judicial review prescribed by Section 21 of the TSCA as a powerful tool to force EPA's hand and encourage citizen participation in enforcing the TSCA.

See Trumpeter Swan Soc. v. E.P.A., 774 F.3d 1037, 1039 (D.C. Cir. 2014); *see also Env't Def. Fund*, 909 F.2d at 1498–99. Plaintiffs note Section 21 requires a *de novo* proceeding to determine whether the substances in the petition under review meet the statutory criteria and should be tested. 15 U.S.C. § 2620(b)(4)(B). If the statutory criteria are met by a preponderance of the evidence, then "the court shall order the Administrator to initiate the action requested by the petitioner." *Id.* Plaintiffs assert that the court must consider individually each specific chemical proposed in Plaintiffs' petition and if it finds the statutory criteria met, then the court "*must* direct EPA to initiate the test orders and/or rules 'requested by the petitioner' and these orders and/or rules must apply to the specific chemicals which the Court has determined meet the testing criteria." DE 52 at 15.

Plaintiffs mischaracterize Section 21 and assert purpose over text. First, a petition under Section 21 can only request that EPA "*initiate a proceeding* for the issuance, amendment, or repeal of a rule." *Id.* ¶ 2620(a) (emphasis added). The rest of the text confirms this plain reading. If EPA grants the petition, "the Administrator shall promptly *commence an appropriate proceeding*." *Id.* ¶ 2620(b)(3) (emphasis added). If EPA denies or fails to grant or deny a petition, "the petitioner may commence a civil action . . . to compel the Administrator *to initiate a rulemaking proceeding as requested in the petition*." *Id.* ¶ 2620(b)(4)(A) (emphasis added). Section 21 also describes a citizen petition as "a petition *to initiate a proceeding* to issue a rule . . . or an order . . . ." *Id.* ¶ 2620(b)(4)(B) (emphasis added). Thus, when the statute states "the court shall order the [Administrator] to initiate the action requested by the petitioner," that requested action is to initiate a proceeding to issue a rule or order, it does not empower the court to dictate to the agency the substance of a rule or order. *See Citizens for a Better Env't*, 704 F. Supp. at 152 ("If the Act permitted the court to substitute its judgment and promulgate the final rule, a significant intrusion

into executive power would exist but that is not the case here."). The Plaintiffs overread the statute in suggesting that the court can order EPA to issue a rule that encompasses specific proposals from Plaintiffs' petition. Section 21 is a powerful tool by which citizens can force EPA's hand, but they can only force EPA to initiate proceedings to issue rules and orders. At this stage, neither citizens nor this court may dictate EPA's proceedings or the substance of specific rules or orders.

Third, Plaintiffs argue that ruling for EPA would allow the agency to permanently insulate itself from review by labeling a denial a "grant" and proceeding in bad faith. DE 52 at 15. Plaintiffs fear is unfounded. As explained above, Plaintiffs have numerous additional means of subjecting agency action (and inaction) to judicial review. Plaintiffs can move to compel the Administrator to perform any nondiscretionary act, 15 U.S.C. § 2619(a)(2), challenge any agency delay as unreasonable, 5 U.S.C. § 706(1), and seek review of the agency's final rulemaking, 15 U.S.C § 2618(a)(1)(A). Plaintiffs can also file future petitions specifically requesting testing for any substance or data-gap left unfilled by the results of EPA's proceedings. In sum, EPA's "grant" of Plaintiffs' petition is not insulated from review.

3. EPA granted Plaintiffs' petition and initiated appropriate proceedings to issue rules and orders as to the petition's 54 substances grouped as a category—PFAS.

At the motion hearing on February 14, 2023, Plaintiffs argued that because EPA forecasts conducting only three percent of the petition's proposed testing program, EPA cannot have granted the petition. However, at the risk of repetition, the statute does not permit petitioners to compel the substance of EPA's proceedings, rules, or orders, including what tests it will conduct. They may petition to initiate proceedings but may not dictate the results of those proceedings. EPA reasonably construed Plaintiffs' petition as a single petition requesting testing on 54 PFAS based on a data gap for those substances. They granted as to a category of substances—PFAS—and

initiated proceedings for the issuance of rules and orders to fill that data gap. As a result, Plaintiffs received all the relief they are entitled to under the statute.

Pursuant to statutory directives, EPA granted Plaintiffs' petition as to PFAS as a category of substances. In doing so, EPA complied with the statute by granting the petition as to a category of substances. 15 U.S.C. § 2603(h)(1)(B)(ii) (encouraging the agency to group substances into "scientifically appropriate categories" for testing to avoid "the use of vertebrate animals in the testing of chemical substances"). It also complied with the statute in choosing to test that category of substances through an iterative or tiered process. *Id.* § 2603(a)(4) ("When requiring the development of new information under this subsection, the Administrator shall employ a tiered screening and testing process, under which the results of screening-level tests or assessments of available information inform the decision as to whether 1 or more additional tests are necessary."). The court finds EPA's decision to grant Plaintiffs' petition as to a category of substances reasonable and permissible under the TSCA.

In *Center for Biological Diversity v. Jackson*, the D.C. Circuit heard a case on the meaning of "petition" in the TSCA. The Court held that the term "petition" is ambiguous as to whether it means "a formal document containing a request, or instead, a request contained" within a formal document. *Ctr. for Biological Diversity*, 815 F. Supp. 2d at 92. Given that statutory ambiguity, the Court determined it must apply either *Chevron* or *Skidmore* deference to the agency's determination of how to treat a petition. *Id.* at ¶ 93. The Court assumed *Skidmore* deference and applied and accepted the agency's decision to treat two requests in one formal document as two separate petitions. In doing so, the Court held that "EPA has expertise in handling TSCA petitions, and the Court finds that it should defer to the Agency's determination of the most efficient way to address rulemaking documents containing multiple requests." *Id.*

Following the D.C. Circuit's opinion, this court will apply *Skidmore* deference to EPA's determination to construe the Plaintiffs' petition as a single petition and grant as to the category of substances in the petition. Under *Skidmore*, the agency's persuasiveness turns on "the thoroughness in its consideration, the validity of its reasoning, and its consistency with earlier pronouncements." *Ctr. for Biological Diversity*, 815 F. Supp. 2d at 93. The court finds EPA's decision persuasive in this case. The agency decided to address the 54-plus unspecified requests in Plaintiffs' petition as a single petition requesting EPA fill information gaps with respect to PFAS. EPA considered the petition and determined that it identified a valid information gap for PFAS. The agency construed the petition as a request to fill that data gap, accompanied by petitioners' preferred testing methods. EPA then initiated proceedings to issue rules and orders to fill those information gaps, but the statute does not require EPA to adopt the petitioners' preferred tests, rules, and orders. *See Citizens for a Better Env't,* 704 F. Supp. at 152 ("However initiating rulemaking proceedings does not in anyway require the adoption of rules. . . . These findings can only be made by the EPA; not by the court. . . . If the Act permitted the court to substitute its judgment and promulgate the final rule, a significant intrusion into executive power would exist but that is not the case here."). Moreover, EPA's construction of Plaintiffs' petition is consistent with the Plaintiffs' representations throughout the briefing that their petition was a single petition EPA had effectively denied. *See, e.g.*, DE 52 at 12 (characterizing the petition as either granted or denied); *see also* DE 72 at 3 (characterizing the petition as a single petition requesting a testing program for 54 substances—all PFAS). It was not until the February 14, 2023 hearing that

Plaintiffs asserted that their petition contained numerous petitions. This court finds persuasive EPA's decision to treat Plaintiffs' petition as one petition and will defer under *Skidmore*.[4]

In sum, as did the D.C. Circuit, this court holds that "EPA has expertise in handling TSCA petitions, and the Court finds that it should defer to the Agency's determination of the most efficient way to address rulemaking documents containing multiple requests." *Ctr. for Biological Diversity,* 815 F. Supp. 2d at 94. Plaintiffs received the relief they are entitled to under the statute.

4. The supplemental briefing does not change the foregoing analysis.

The Plaintiffs make two principal arguments in their post-hearing brief. First, they argue a petition and EPA's petition response "must be focused on defined substances or mixtures and proposed studies and anchored in specific facts and circumstances demonstrating that these substances [ ] or mixtures and test methodologies meet the statutory criteria for testing." DE 82 at 2 (emphasis omitted). Second, Plaintiffs argue their petition can and did contain multiple "petitions" (i.e. requests) and that EPA's "all-or-nothing approach requiring either a total grant or total denial of a petition containing multiple requests would force EPA into simplistic decisions that do not allow for the focused fact-specific analysis of individual requests that section 21 requires." *Id.* at 5. They also argue that their constituents want testing of the impact on the people within the Cape Fear River Basin specifically.

---

[4] In *Center for Biological Diversity v. Jackson*, EPA treated two requests in a single formal document as two petitions. By contrast, in this case, EPA is treating numerous requests in a single formal document as one petition. Nevertheless, the D.C. Circuit recognized that although "EPA's choice to sever the Rulemaking Petition . . . may be novel" because "EPA has always disposed of rulemaking petitions containing multiple requests at the same time," that novel interpretation still received *Skidmore* deference because it was persuasive. *Ctr. for Biological Diversity,* 815 F. Supp. 2d at 94. Indeed, "[a]n agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures . . . and priorities . . . ." *Id.* (citing *Mobil Oil Expl. & Producing Se. Inc. v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991)).

Plaintiffs arguments do not convince the court. It is true that the statute requires a petition to focus on a specific substance or mixture. It is also true that a petition can request specific testing methodologies. However, the statute also encourages "the grouping of 2 or more chemical substances into scientifically appropriate categories in cases in which testing of a chemical substance would provide scientifically valid and useful information on other chemical substances in the category." 15 U.S.C § 2603(h)(1)(B)(ii). Additionally, the statute expressly provides that anywhere the statute says "a chemical substance or mixture," the EPA may substitute that text with "a category of chemical substances or mixtures."[5] Thus, when Plaintiffs reference a "chemical substance or mixture" in the statute's text and legislative history to argue for individualized consideration of a substance, *see* DE 82 at 1–4, those references equally support EPA's consideration of substances as a category. EPA acted within the statute and its discretion in grouping the 54 PFAS as a category for testing, particularly in light of the petition as framed by Plaintiffs.

Again, a petition can only request EPA initiate a proceeding for the issuance of a rule or order. It cannot compel the specific test requested in a petition. Plaintiffs' Supplemental Brief begins by mischaracterizing the statute. They assert that "Section 21(a) authorizes petitions 'for the issuance of . . . an order' requiring testing under section 4 of TSCA." DE 82 at 1. While true, the citation of Section 21 omits additional key language: the statute authorizes petitions "*to initiate a proceeding* for the issuance . . . of . . . an order." 15 U.S.C § 2620(a) (emphasis added). It

[5] "Any action authorized or required to be taken by the Administrator under any provision of this chapter with respect to a chemical substance or mixture may be taken by the Administrator in accordance with that provision with respect to a category of chemical substances or mixtures. Whenever the Administrator takes action under a provision of this chapter with respect to a category of chemical substances or mixtures, any reference in this chapter to a chemical substance or mixture (insofar as it relates to such action) shall be deemed to be a reference to each chemical substance or mixture in such category." 15 U.S.C. § 2625(c)(1).

follows that this court can only order EPA to initiate appropriate proceedings for the issuance of an order to test a substance that meets the statutory criteria. It cannot dictate the outcome of EPA's proceedings. *See Citizens for a Better Env't*, 704 F. Supp. at 152 ("If the Act permitted the court to substitute its judgment and promulgate the final rule, a significant intrusion into executive power would exist but that is not the case here."). EPA correctly identifies Plaintiffs' central error: "[They] conflate two distinct concepts—whether testing is necessary to fill information gaps for chemical substances and whether certain proposed testing protocols and methodologies are necessary to fill those information gaps." DE 83 at 2. EPA grants or denies a petition on the former not the latter.[6] Here, EPA determined there is an information gap for PFAS and granted the petition. The agency has initiated appropriate proceedings to determine what, if any, rules and orders and testing protocols and methodologies are required to fill the gaps identified in Plaintiffs' petition. The proceedings are in the expert purview of the agency.

[6] To the extent that it matters, Plaintiffs also argue the legislative history supports their view that specific substances or chemicals must be identified, and specific testing methodologies must be identified, and any denial of a specified substance *or* specific testing methodology is a partial denial. DE 82 at 3. However, Plaintiffs' legislative history citations are generic and do not stand for the precise propositions they assert. By contrast, EPA produced a Senate Committee report and House report that support its specific reading of the statute. The Senate report states "in reviewing a denial of the citizen's petition by [EPA] the court can only require EPA to initiate an action. The court would not be allowed in this situation to determine the content of a rule or outcome of such a proceeding." DE 83 at 3 (citing S. Rep. No. 94-698, at 12 (1976), reprinted in 1976 U.S.C.C.A.N. 4491, 4502 (reproduced in Corrected Annex of Legislative History, at LHA020, ECF No. 57-1) (emphasis added)). The House report, in an analysis relating to a different part of the bill with nearly identical language to TSCA section 21, "noted that granting the petition does not obligate the Administrator to modify or repeal the rule as requested. Granting a petition only triggers the requirement to initiate a proceeding. Final action by the Administrator will, of course, depend on the record developed during the proceeding." DE 83 at 4 (citing H. Rep. No. 94-1341, at 28 (Jul. 14, 1976) (reproduced in Corrected Annex of Legislative History, at LHA075, ECF No. 57-1)). In sum, although the text is unambiguous, the legislative history reinforces that the TSCA permits a petition to initiate appropriate proceedings for the issuance of a rule to test a substance or mixture (or category of substances or mixtures); it does not allow petitions to dictate the content of a rule.

Second, the court acknowledges that a petition can contain multiple requests. *See Ctr. for Biological Diversity*, 815 F. Supp. 2d at 91–94 (determining the word "petition" in TSCA Section 21 is ambiguous between "[1] a formal document containing a request, or instead, [2] a request contained therein" and deferring to the "Agency's determination of the most efficient way to address rulemaking documents containing multiple requests."). However, the Plaintiffs packaged their petition as a request for testing PFAS as a class and requested a series of specific tests on 54 PFAS. EPA's decision to grant Plaintiffs petition as to PFAS "as a class" is consistent with the petition. DE 49-1 at 4 ("EPA and many other authoritative bodies have noted the common characteristics of PFAS *as a class*." (emphasis added)); *id.* at 5 ("To date, EPA has failed to use its testing authorities under TSCA section 4 to fill the extensive data-gaps on PFAS. . . . A full understanding of this large and problematic *chemical class* will be impossible unless industry contributes its sizable resources to determining their risks to human health and the environment. The goal of this petition is to compel EPA to use its TSCA testing authorities to assure that industry assumes this responsibility." (emphasis added)); *id.* at 11 ("SERIOUS HEALTH AND ENVIRONMENTAL CONCERNS PRESENTED BY PFAS *AS A CLASS*" (emphasis added)); *id.* at 20 ("For groups of chemicals that qualify as a 'category' under section 26(c) because of similarities in chemical structure and/or toxicity, these determinations need not be made for every individual substance but can be based on the common characteristics *of the class*." (emphasis added)); *id.* ("Health Effects of PFAS as a Class"). Plaintiffs' petition did not separately delineate each petition or request such that the agency (or this court) could determine how many possible "petitions" it had before it. As such, EPA permissibly construed the petition as a petition for testing a category of substances—PFAS. The court will defer to EPA's construction of Plaintiffs' petition. *Ctr. for Biological Diversity*, 815 F. Supp. 2d at 94 ("In addition to the deference afforded

to the EPA under *Skidmore,* the Court also notes that an agency 'enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures and priorities.'").

Next, Plaintiffs argue that not only does their petition contain 54 petitions—one for each substance—but that each requested testing methodology constitutes an individual petition and therefore each rejected testing methodology is also a partial denial. DE 82 at 5. Plaintiffs' petition does not present itself in that manner. It does not delineate each "petition" or request, and EPA is not required to guess how many petitions are in Plaintiffs' single document. The agency was reasonable in construing the petition as a single petition and the court will defer to the agency's decision. Moreover, when EPA grants a petition, it does not have to guarantee the specific testing methodology requested by the petition. This is particularly true when the petition packages 54 substances with an unnumbered list of requested tests into a single document.

Finally, Plaintiffs argue this court can, following a partial denial and de novo proceeding, order "EPA to initiate development of testing orders requiring Chemours to fund epidemiology and mixture studies and testing on the 24 omitted PFAS." DE 82 at 6. While such orders may ultimately result from the contemplated proceedings, an intervention by this court at this stage is not the process Congress prescribed by statute. EPA reasonably construed Plaintiffs' petition as a request for testing PFAS, granted the petition as to that category of substances, and initiated appropriate proceedings for the issuance of a rule or an order under section 2603.

IV. Conclusion

In granting Plaintiffs' petition, EPA is obligated to start its administrative process, but EPA is not obligated to initially agree to issue the rules and orders and conduct the specific tests that Plaintiffs' request. EPA granted Plaintiffs' petition and initiated proceedings. Initiation is a

beginning, not an end, and many of plaintiffs' positions may ultimately be adopted by the EPA over the course of time. Neither the content nor the wisdom of EPA's proceedings is properly before this court, because it lacks jurisdiction to review EPA's decision to grant a petition. EPA's motion is GRANTED. Plaintiffs' Complaint is dismissed.

SO ORDERED this 30th day of March, 2023.

Richard E Myers II

RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE