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Citizen Suit Action/Toxic Substances Control Act: Public Employees for Environmental Responsibility Notice of Intent to Sue U.S. Environmental Protection Agency Addressing Fluorinating Plastic Containers

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Two environmental organizations sent a May 17th document to the United States Environmental Protection Agency (“EPA”) styled:

Notice of Intent to File Suit to Compel Performance of a Non-Discretionary Duty Under Section 20(a)(2) of TSCA (“NOI”).

The organizations sending the document include:

- Public Employees for Environmental Responsibility
- Center for Environmental Health

(collectively, “PEER”)

The organizations allege that EPA has failed to perform a non-discretionary duty under Section 20(a)(2) of the Toxic Substances Control Act (“TSCA”).

PEER takes the position that EPA has failed to perform its non-discretionary duty under Section 4(f) of TSCA, 15 U.S.C. § 2603(f), to initiate applicable action under Section 5, 6, or 7 to prevent or reduce the risk posed by perfluorooctanoic acid (“PFOA”) formed in the process of fluorinating plastic containers.

The alleged obligation is stated to have arisen within 180 days of EPA’s receipt of information that the organizations state indicates that there may be a reasonable basis to conclude that:

...when present in such containers, PFOA presents a significant risk of serious or widespread harm to human beings.

The NOI further alleges:

- EPA received information triggering Section 49(f) by March 29, 2023.
- EPA possesses conclusive data on carcinogenicity of PFOA to humans together with extensive documentation of the formation of PFOA and other harmful Per- and Polyfluoroalkyl substances during the fluorination of plastic containers distributed and used throughout the economy.

The components of the NOI include:

- Applicable Provisions of the Toxic Substances Control Act.
- Background.
- The Fluorination Process.
- Rationale for the Orders.
- Application of Section 4(f) to PFOA Formed during the Fluorination of Plastic Containers.
- The Risks to Health of the LCPFACs Subject to the 5(f) Order are Serious and Significant.
- The Risks to Health of LCPFACs Found in Fluorinated Containers are Widespread.
- EPA's Obligation to Take Action under Section 4(f).
- Section 7 Imminent Hazard Authority.

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