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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

BURGESS PIGMENT COMPANY,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Defendant.

Case No. 5:25-cv-309-TES

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FEDERAL DEFENDANT'S MOTION TO DISMISS THE COMPLAINT UNDER RULE 12(b)(6)

INTRODUCTION

This matter involves Burgess Pigment Company's ("Burgess") belated attempt to seek judicial review of a decision made by the United States Environmental Protection Agency ("EPA") in 2020 that a specific chemical used by Burgess would no longer be treated as confidential under the Toxic Substances Control Act ("TSCA"). Burgess failed to timely file a notice identifying a chemical substance as confidential under the 2017 TSCA Inventory Notification (Active-Inactive) Requirements Rule ("Active-Inactive Rule"), 82 Fed. Reg. 37520 (Aug. 11, 2017). As a result, in 2020, EPA notified Burgess that a specific chemical substance used by Burgess would no longer be treated as confidential. Burgess then attempted to file the required forms three years after the deadline and also included a confidential business information ("CBI") claim in its 2020 Chemical Data Rule ("CDR") Report. EPA again denied the CBI claim based on Burgess's prior failure to timely file an existing claim of confidentiality under the Active-Inactive Rule. In 2024, Burgess again included a CBI claim in its 2024 CDR Report. EPA once again denied the CBI claim based on the agency's prior denial.

Now, eight years after Burgess's failure to file a notification under the Active-Inactive Rule, and five years after EPA first notified Burgess that the chemical substance was not entitled to confidential treatment, Burgess seeks to challenge EPA's 2025 notice, which merely reiterates that EPA made a prior

determination that the identity of the chemical substance is not entitled to confidential treatment under TSCA.

In its complaint, Burgess correctly cites the provision of TSCA that authorizes judicial review of a notification by EPA denying a claim for confidentiality: 15 U.S.C. § 2613(g)(2)(D)(i). Complaint ("Compl."), Dkt. No. 1, ¶¶ 23, 26(d). But Burgess then asserts a single claim under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2). Compl. at 11 and ¶ 66. This is likely because Burgess recognizes that it failed to file its challenge within the time provided under TSCA, i.e., within 30 days of EPA's notification of its decision in 2020 and because the April 2025 notice did not reopen the issue and thus trigger the opportunity to seek review of the 2020 determination.

Burgess's complaint should be dismissed. *First*, the challenge is not timely brought. Burgess seeks to challenge the 2020 determination that its failure to file a notice in response to the 2017 Active-Inactive Rule resulted in the chemical identity not being entitled to confidential treatment. While the complaint may attempt to style the challenge as one to EPA's 2025 notification, it is clear from the allegations in the complaint that Burgess is challenging the determination made in 2020. The time to bring a challenge to that determination has long passed. *Second*, EPA did not reconsider its prior determination or invoke a new basis to deny Burgess's confidentiality claim in the 2024 CDR that is being challenged in this

litigation. *Third*, even if Burgess had timely challenged EPA's 2020 decision or reconsidered the issue in issuing its 2025 notice, EPA was statutorily required to deny Burgess's CBI claim and move the chemical to the nonconfidential portion of the list because Burgess did not timely file the required notice. Indeed, Burgess admits as much in its complaint. Finally, none of the other bases cited in the complaint provide a cognizable claim or waiver of sovereign immunity.

Therefore, Burgess has not provided a plausible claim for relief, and the complaint should be dismissed for failure to state a claim.

BACKGROUND

I. STATUTORY AND REGULATORY BACKGROUND

A. TSCA Section 8(b)

Section 8(b) of the Toxic Substances Control Act requires EPA to compile, keep current, and publish a list of each chemical substance that is manufactured or processed, including imports, in the United States; this is referred to as the "TSCA Inventory." 15 U.S.C. § 2607. The TSCA Inventory has a nonconfidential and a confidential[1] portion. *Id.* § 2607(b)(4)(B). The confidential chemical substances are identified by accession numbers, which are non-sequential five or six-digit non-confidential numbers by which the chemical substances can later be

[1] Under Section 14 of TSCA, manufacturers or processors may claim information submitted to EPA under TSCA as confidential business information ("CBI"). 15 U.S.C. § 2613(a), (c).

referenced. The confidential portion must be maintained consistently with Section 8 and Section 14, which govern the disclosure of confidential information.

Under TSCA Section 8(b)(4)(A), as enacted by the 2016 Lautenberg Amendments, EPA had to issue a rule by June 22, 2017 that required any manufacturer or processor of a confidential chemical substance to submit a notice that the company intended to maintain a confidentiality claim for the substance's specific chemical identity. *Id.* § 2607(b)(4)(A). If no notice is received, EPA is required to move the specific chemical identity to the nonconfidential portion of the TSCA Inventory. *Id.* § 2607(b)(4)(A)(iii).

When EPA decides that information is not entitled to confidential treatment, EPA must notify the filer that EPA intends to disclose the information. *Id.* § 2613(g)(2)(A). EPA may not disclose such information until 30 days after the date that notification is received. *Id.* § 2613(g)(2)(B). If a filer believes information is protected from disclosure under TSCA, that person may bring an action to restrain disclosure before the date on which the information is to be disclosed. *Id.* § 2613(g)(2)(D)(i).

B. The Active-Inactive Rule

In 2017, EPA issued the Active-Inactive Rule under TSCA Section 8(b). 82 Fed. Reg. 37520. The Active-Inactive Rule implements TSCA Section 8(b)(4)(B), 15 U.S.C. § 2607(b)(4)(B), by setting out specific reporting requirements for the

maintenance of existing confidential chemical identity claims. Manufacturers that intended to maintain an existing claim of confidentiality for the specific chemical identity of a substance listed on EPA's TSCA Inventory were required to fill out a Notice of Activity Form A ("NAA") by February 7, 2018. *Id.* at 37543. Under certain circumstances, manufacturers were exempt from filing an NAA for the sole purpose of reporting ongoing manufacturing activity. *Id.* at 37523–24. However, manufacturers were required to file an NAA if they wanted to maintain a claim of confidentiality for a specific chemical identity. *Id.* at 37524.

C. Chemical Data Reporting

As required by TSCA Section 8(a), EPA also collects information on the production and use of chemicals in commerce through Chemical Data Reporting ("CDR"). Through CDR, manufacturers of chemicals on the TSCA Inventory that are produced over certain volume thresholds are required to provide certain exposure-related information to EPA and may assert a CBI claim for chemical identity if the reported chemical substance is already on the confidential portion of the Inventory. 40 C.F.R. § 711.5. Claims for chemical identity that are waived by the submitter or denied by EPA can be used by EPA to update the TSCA Inventory. *See generally* 15 U.S.C. § 2607(b)(1), (b)(4)(B). While the Active-Inactive Rule required only a one-time notice of activity form, the CDR Rule requires reporting every four years. 40 C.F.R. § 711.20. When submitting their

CDR, companies may claim their chemical identity as confidential but must substantiate the confidentiality claim in accordance with TSCA Section 14(c), 15 U.S.C. § 2613(c), and the applicable regulations in 40 C.F.R. Section 711.30(b) and (c). To properly assert a claim for confidentiality, among other things, the submitter must substantiate and certify that they have taken reasonable measures to protect the confidentiality of the information and determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law. 15 U.S.C. § 2613(c). Relatedly, for CDR, confidentiality may only be claimed for a specific chemical identity "if the identity of that chemical substance is treated as confidential in the Master Inventory File as of the time the report is submitted for that chemical substance." 40 C.F.R. § 711.30(c).

Because of the nature of the quadrennial CDR Rule and the one-time Active-Inactive Rule, the need to submit an NAA when a 2016 CDR had previously been filed depended on whether the submitter wanted to maintain a confidentiality claim for specific chemical identity. Manufacturers who were *not* claiming confidentiality of a specific chemical identity could be exempted from filing a NAA under the Active-Inactive Rule through specific other filings, including the 2016 CDR, since such filings so would denote that the chemical was "active" in U.S. commerce. However, manufacturers who wanted to maintain a claim of confidentiality for a specific chemical identity needed to file an NAA even if they

had already filed a 2016 CDR for the substance to properly preserve their claim for confidentiality on the TSCA Inventory, as required by the statute. 82 Fed. Reg. at 37524.

II. FACTUAL BACKGROUND

In 2016, Burgess submitted its 2016 CDR, which claimed Accession Number 99888 (Acc. # 99888) [2] as confidential.[3] Compl. ¶ 48. However, Burgess did not submit a request to maintain an existing claim of confidentiality for the specific chemical identity of the substance by February 7, 2018 as required by the Active-Inactive Rule. *Id.* ¶ 49. Therefore, under TSCA Section 8(b)(4)(A)(iv), EPA is required to move the specific chemical identity of the substance to the nonconfidential portion of the list.

On August 3, 2020, EPA issued a final determination letter responding to Burgess's 2016 CDR submission and explaining that two chemical substances identified in the submission, Acc. # 99888 and a chemical substance that is not at

[2] Chemical substances with confidentiality claims are identified on the Inventory using accession numbers to preserve the confidentiality. While EPA no longer considers this chemical substance as entitled to confidential treatment, the substance is referred to as Acc. # 99888 in the supporting documentation for the decisions challenged in this litigation.

[3] This motion to dismiss relies on Burgess's description of the facts of the case and the documents attached to the complaint. *See Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) (in deciding a Rule 12(b)(6) motion, a court may consider a document attached to the complaint or incorporated by reference when the document is central to the plaintiff's claim and its authenticity is undisputed).

issue in this litigation, were not entitled to confidential treatment. *Id.* ¶ 50. The determination letter stated that "EPA is aware that another entity is no longer treating the specific chemical identity of these chemical substances on the TSCA Inventory as confidential." *Id.* ¶ 53. The determination letter also included an explanatory footnote stating that one of the underlying bases for denial was "[n]ot a single entity submitted a[n] [NAA] submission reasserting a chemical identity CBI claim when the chemical was listed as CBI on the Exemption List for the TSCA Inventory Active-Inactive rule." Dkt. No. 1-5, at 2 n.1. The letter also noted that Burgess had 30 days to appeal this decision. *Id.* at 3.

Through counsel, Burgess requested to toll its deadline to judicially appeal the determination on August 13, 2020. Dkt. No. 1-6, at 1. Over the next 16 months, the parties engaged in communications regarding the denial. Compl. ¶ 59. EPA ultimately affirmed the denial determination for Acc. # 99888 in a letter on January 26, 2022. *Id.* In that letter, EPA clarified that Acc. # 99888 was not entitled to confidential treatment because no entity timely filed an NAA submission as required to maintain confidential treatment. Dkt. No. 1-8, at 3. In that letter, EPA also noted that Burgess attempted to submit an NAA submission for chemical substance Acc. # 99888 on September 4, 2020, but that this was long after the filing deadline for manufacturers of February 7, 2018 and for processors of October 5, 2018. *Id.* EPA explained that "[b]ecause the specific chemical identity

is no longer eligible for confidential treatment on the TSCA Inventory due to the failure to timely file an NAA submission to maintain the existing CBI claim, the information in [Burgess's] 2016 CDR submission is no longer entitled to confidential treatment pursuant to section 14." *Id.* The letter noted that Burgess had 30 days to challenge this determination in accordance with TSCA Section 14(g)(2)(D). *Id.* at 4. Burgess did not challenge the determination.

In September 2020, Burgess submitted its 2020 CDR. Compl. ¶ 58. In the 2020 CDR, Burgess again claimed Acc. # 99888 was entitled to confidential treatment. On September 15, 2023, EPA denied the CBI claim in Burgess's 2020 CDR submission. *Id.* ¶ 60. In the denial, EPA reiterated its prior determination that "[n]o person requested to maintain an existing claim of confidentiality for this substance under the [Active-Inactive Rule]," and therefore "the specific chemical identity is no longer confidential." *Id.*; Dkt. No. 1-9 at 4. Burgess did not challenge the 2020 CDR decision, which specifically informed Burgess that the chemical identity *is no longer confidential*. Dkt. No. 1-9 at 4.[4]

On November 20, 2024, Burgess filed its 2024 CDR. On April 24, 2025, EPA once again affirmed the denial. Compl. ¶ 63. The stated basis for denial was that the chemical identity "is publicly available or is pending public release"

[4] In the complaint, Burgess claims with no explanation that it did not receive the 2020 CDR determination. Compl. ¶ 60.

because "EPA previously denied for another filing." *Id.*; Dkt. No. 1-10 at 5. EPA and Burgess engaged in communications regarding this denial. Compl. ¶ 64. And on July 18, 2025, Burgess filed a complaint alleging that EPA's denial was arbitrary and capricious under the APA. Compl. at 11.

STANDARD OF REVIEW

To survive a Rule 12(b)(6) motion, a complaint must contain sufficient factual matter to provide plausible grounds showing its legal entitlement to the requested relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Supreme Court has held that this requires "more than labels and conclusions," and that a "formulaic recitation of the elements of a cause of action" will not suffice. *Id.* Without a well-pleaded factual foundation supporting each element of a cause of action, the Court must dismiss Burgess's complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ARGUMENT

I. Burgess failed to timely challenge the denial of confidentiality in the 2016 CDR.

It is clear from the complaint that Burgess seeks to challenge EPA's initial determination in 2020 that Acc. #99888 was not entitled to confidential treatment in the 2016 CDR denial. In its complaint, Burgess offers no allegations to support a claim that the 2020 CDR denial (or later reiterations of that denial) were arbitrary and capricious. Rather, Burgess alleges that the disclosure of the specific chemical

identity of Acc. #99888 because of Burgess's "mistaken failure to submit a request for CBI *under the 2017 Active/Inactive Rule*" is "unreasonable adherence to form over function." Compl. ¶ 90–91 (emphasis added). In other words, Burgess is asking this Court to compel EPA to excuse Burgess for its failure to request to maintain an existing claim of confidentiality for the specific chemical identity of the substance by February 7, 2018 as required by the Active-Inactive Rule.

Congress made clear in TSCA Section 14(g) that Burgess had 30 days from the date of notification that the information would be disclosed to file a judicial challenge. 15 U.S.C. § 2613(g)(2)(B), (D)(i). EPA sent Burgess a letter regarding the decision to disclose in 2020. After agreeing to toll that deadline for a period, EPA engaged in discussions with Burgess over the denial, after which EPA affirmed its original determination and issued a letter explaining this affirmation in detail on January 26, 2022. Despite being again informed in that letter that it had 30 days to file a judicial challenge, Burgess did not challenge the denial of the 2016 CDR. Therefore, after February 25, 2022, Burgess could no longer bring an action to restrain disclosure of Acc. #99888.

Notably, Burgess cites to no grounds for finding that the denial of the 2016 CDR can still be challenged in court years later. The complaint asserts that "EPA continued to treat the chemical identity as confidential." Compl. ¶ 61. This is not only false, but it is also irrelevant. The deadline under the Active-Inactive Rule for

EPA to complete its review of claims to update the nonconfidential inventory is February 19, 2026. 15 U.S.C. § 2607(b)(4)(E). Since Burgess's time to challenge EPA's denial of its claim in the 2016 CDR submission expired, EPA has considered any confidentiality claims for Acc. #99888 to be invalidly asserted and has consistently notified Burgess that the underlying chemical identity is not entitled to confidential treatment. While EPA has not yet published a new version of the nonconfidential inventory with the specific chemical identity of Acc. #99888 revealed, the identity is not being treated as confidential by the Agency. If, for instance, EPA received a FOIA request for the information in the years since the claim was denied, EPA would provide the chemical identity in response to that request.

Thus, the fact that EPA is still working to update the broader TSCA Inventory list is no basis for Burgess to presume that EPA had suddenly rescinded a decision that it clearly provided notice of. EPA has repeatedly and clearly communicated to Burgess that EPA is no longer treating Acc. #99888 as confidential each time the company attempted to re-assert the claim. *See* Compl. Ex. A, Dkt. No. 1-5 (EPA's 2020 letter); Ex. D, Dkt. No. 1-8 (EPA's 2022 email); Ex. E, Dkt. No. 1-9 (EPA's 2023 letter); Ex. F, Dkt. No. 1-10 (EPA's 2025 letter).[5]

[5] Documents attached or described in a complaint may be incorporated by reference as part of the complaint. *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005).

Further, Burgess has not alleged the deadline should be tolled and, even if it had, Burgess's failure to take EPA's denial at face value five years ago does not provide any basis to toll the deadline.

Because Burgess's complaint seeks to challenge EPA's decision that Acc. #99888 was not entitled to confidential treatment, a decision which must have been challenged by February 25, 2022 (at the latest), this Court should dismiss the complaint. *Henriquez v. Ga. Dep't of Revenue*, No. 21-12567, 2023 WL 4624473, at *4 (11th Cir. July 19, 2023) ("When it is apparent from the face of a complaint that the claims asserted therein are time-barred, the complaint is subject to dismissal pursuant to Rule 12(b)(6).").

II. EPA has not issued a new decision that is challenged in this litigation.

In its complaint, Burgess appears to be alleging that it can challenge EPA's earlier determinations by seeking review of EPA's April 2025 response to Burgess's 2024 CDR submission.[6] *See* Compl. ¶¶ 63–64, 68. TSCA Section 14(g)(2)(D)(i) allows for judicial actions to restrain disclosure within 30 days of notification that information will be disclosed. 15 U.S.C. § 2613(g)(2)(D)(i). However, EPA's 2025 letter reiterated, rather than provide Burgess with any new

[6] While the complaint also references the APA (Compl. at 11), because 15 U.S.C. § 2613(g)(2)(D)(i) provides for judicial review of decisions that business information is not entitled to confidentiality, the APA does not provide a cause of action for Burgess's claim. 5 U.S.C. § 704.

notice, that Acc. # 99888 was not entitled to confidential treatment. The notice to Burgess that the information would inevitably be disclosed was provided five years earlier (then reiterated in 2022 and 2023). In the 2025 letter, EPA only repeated that the agency had decided years before: that Acc. #99888 was not entitled to confidential treatment.

Creating and maintaining an inventory of chemicals is a significant undertaking, and Congress was aware of that. Therefore, Congress put strict boundaries on the reviewability of confidentiality determinations to ensure that EPA did not need to revisit these determinations at every turn. Allowing Burgess to challenge EPA's determination five years later would not only undermine the statutory scheme contemplated by Congress, but it would also prove administratively unworkable. Such a rule would permit companies to restart the "30-day clock" simply by asking EPA to protect the confidentiality of information that EPA has *already decided* is not entitled to confidentiality.

This point is underscored by TSCA Sections 14(g)(2)(B) and (D)(i), which prohibit disclosure of disputed confidential information during the 30-day window to file a judicial challenge and during the pendency of that judicial challenge. 15 U.S.C. § 2613(g)(2)(B), (D)(i). Permitting ongoing challenges every time that EPA restated a previous decision would pose a significant impediment to EPA ever publishing or updating the TSCA Inventory.

Burgess appears to suggest that because EPA considered reopening the 2017 Active-Inactive Rule in 2021 that somehow allows it to now challenge the 2020 denial. Compl. ¶¶ 79–83. Any such allegation is without merit. There are a number of reasons that Burgess could not challenge the announcement of reconsideration (including finality and timeliness). But more importantly, there are numerous forums in which Burgess could have appropriately challenged the Active-Inactive Rule including: filing a direct challenge to the Active-Inactive Rule after it was promulgated; filing a petition for review with the Administrator under TSCA Section 21 seeking to amend or repeal the Active-Inactive Rule (which if denied would be judicially reviewable); or timely seeking judicial review of the initial denial of the confidentiality claim for failure to file the required notice under the Active-Inactive Rule. Burgess's failure to diligently pursue judicial review at the time these decisions were made does not provide a legal basis to challenge the decisions years later.

As stated, EPA has not issued any new decision with respect to Acc. #99888 which can be challenged in this litigation. Therefore, for the reasons explained in Section I, this Court should dismiss Burgess's complaint because it was not timely brought under 15 U.S.C. § 2613(g)(2)(D)(i).

III. EPA is required by law to move the chemical substance to the nonconfidential portion of the inventory because of Burgess's failure to comply with TSCA § 8(b)(4)(B) and 40 C.F.R. § 710.37(a).

Even if Burgess had timely filed a challenge to EPA's confidentiality determination, there is no basis for its claim. EPA is statutorily required to move Acc. #99888 to the nonconfidential portion of the list. Burgess plainly admits in the complaint that it failed to timely file the required notice in response to the Active-Inactive Rule. Compl. ¶ 20. Therefore, as required by TSCA Section 8(b)(4)(A)(iv), EPA is under a nondiscretionary duty to move the chemical substance to the nonconfidential portion of the list. 15 U.S.C. § 2607(b)(4)(B)(iv) ("The Administrator *shall*…move any active chemical substance *for which no request was received* to maintain an existing claim for protection against disclosure of the specific chemical identity of the chemical substance as confidential from the confidential portion of the list published under paragraph (1) to the nonconfidential portion of that list.") (emphasis added). While Burgess alleges this was an abuse of discretion, Compl. ¶ 75, EPA had no discretion to choose not to move the chemical to the nonconfidential portion of the list. EPA acted in accordance with its statutory directive, and it would have been inconsistent with TSCA for EPA to decline to move the chemical to the nonconfidential portion of the Inventory or to grant Burgess's 2020 or 2024 CBI claims.

Nor do Burgess's repeated efforts to reassert its invalid claim in successive TSCA filings change EPA's statutory obligation to eventually disclose the chemical identity of Acc #99888. Burgess states that "EPA may not release confidential information that has been substantiated in response to EPA's request." Compl. ¶¶ 12, 70. However, this misrepresents the statute, EPA's regulations, and the facts. At the time Burgess submitted its 2024 CDR Request (the only request that could arguably be timely challenged in this complaint), EPA had long-since determined that the chemical identity was not entitled to confidential treatment and had plainly stated that the chemical identity was no longer confidential. *See* Compl. Ex. E, Dkt. No. 1-9 at 4.

Here, Burgess did not preserve its confidentiality claim because it did not file its NAA to maintain the claim as required by the TSCA statute or attempt to protect the confidentiality of the chemical identity by judicially challenging the original denial. Therefore, disclosure of the chemical identity was statutorily required. 15 U.S.C. § 2607(b)(4)(B)(iv). Most importantly, when Burgess belatedly attempted to seek confidentiality in 2020 and beyond, there was no longer a confidentiality claim because EPA had already determined the information was not confidential, and Burgess does not contest that it was on notice that the information was required to be made public. Burgess had no basis for certifying that it had taken reasonable measures to protect confidentiality or that the information was not

required to be disclosed. Accordingly, no valid confidentiality claim could be asserted, and EPA acted reasonably in denying Burgess's claim.

Burgess has not provided any plausible grounds for relief: the claim is not timely, there are no plausible grounds for tolling the time limit, and even if the claim was timely brought, there is no discretion for this Court to review. EPA complied with its statutory obligations and acted reasonably in doing so. And because Burgess cannot remedy the defects in its claim through amending the complaint, this Court should dismiss Burgess's complaint with prejudice. *See In re Engle Cases*, 767 F.3d 1082, 1108–09 (11th Cir. 2014) (leave to amend is appropriately denied where amendment would be futile).

IV. The other provisions cited by Burgess do not waive sovereign immunity or provide the basis for a claim.

In addition to the fact Burgess cannot rely on TSCA Section 14(g)(2)(D) as a basis for its claim, Burgess may not rely on the other provisions it cites in its complaint, *see* Compl. ¶¶ 26 and 66, which neither fail to provide the basis for a claim nor waive sovereign immunity for Burgess's claim.

Sovereign immunity shields the United States and its agencies from suit absent a consent to be sued that is "unequivocally expressed." *King v. United States*, 878 F.3d 1265, 1267 (11th Cir. 2018) (citing *United States v. Nordic Vill., Inc.,* 503 U.S. 30, 33-34 (1992)). Neither 28 U.S.C. § 1331 (federal question jurisdiction) nor 28 U.S.C. §§ 2201–2202 (the Declaratory Judgment Act) waive

sovereign immunity. *Harbert v. United States*, 206 F. App'x 903, 907 (11th Cir. 2006).

The Little Tucker Act, 28 U.S.C. § 1346(a)(2), only operates to waive sovereign immunity for monetary claims premised on other sources of law. *United States v. Bormes*, 568 U.S. 6, 10 (2012). And the APA contains a waiver of sovereign immunity to review final agency action, but limits judicial review to "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Because Burgess had an adequate remedy under TSCA, it may not pursue its claim under the APA.

CONCLUSION

For the foregoing reasons, EPA respectfully requests that this motion to dismiss be granted and that Burgess's complaint be dismissed with prejudice.

Dated: November 24, 2025

Respectfully submitted,

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