

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ENVIRONMENTAL DEFENSE FUND, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No. 1:20-cv-00762 (LLA)
)	
LEE ZELDIN, Administrator, U.S.)	
Environmental Protection Agency, in his)	
official capacity, <i>et al.</i> ,)	
<i>Defendants.</i>)	
)	

**Defendants’ Motion to Govern Proceedings
in light of New Related Lawsuit**

On March 13, 2026, Arkema Inc. sued Defendants (“EPA”) alleging that EPA’s decision to release confidential business information (“CBI”) pursuant to this Court’s December 2025 Order (ECF No. 75) is unlawful. Compl. at 20-21, *Arkema v. EPA*, No. 1:26-cv-886 (D.D.C.), ECF No. 1. Given this new lawsuit, EPA respectfully requests that the Court stay the March 23, 2026 deadline for EPA to produce the unredacted pre-manufacture notices (“PMNs”) that are subject to this Court’s December 2025 Order pending resolution of *Arkema*. Alternatively, EPA requests that the Court hold a status conference to address the Agency’s obligations under that Order.

Pursuant to Local Rule 7(m), undersigned counsel for EPA contacted counsel for Plaintiffs, and Plaintiffs oppose EPA’s request and intend to file a response. In support of this motion, EPA states as follows:

1. On December 3, 2024, the parties filed a Joint Statement Regarding the Scope of the Record. ECF No. 69. In that report, the parties agreed upon the scope of production for the

PMN public files. *Id.* at 3. However, the parties contested whether materials designated by submitters as CBI should be produced and if so, when it should be produced. *Id.* at 3-12.

2. In that report, EPA requested 90 days to produce materials designated as CBI, if the Court ordered EPA to do so. *Id.* at 12. In requesting that time, EPA explained that the Toxic Substances Control Act (“TSCA”) requires EPA to provide 30 days’ notice to the submitter before disclosing materials the submitter designated as CBI. *Id.* at 11; 15 U.S.C. § 2613(g)(2). Specifically, TSCA requires EPA to notify by “certified mail (return receipt requested), by personal delivery, or by other means that allows verification of the fact and date of receipt” when the agency intends to disclose materials designated as CBI pursuant to a court order. 15 U.S.C. § 2613(g)(2)(A); *see also id.* § 2613(d)(9). And TSCA prohibits EPA from disclosing such materials until “30 days after the date on which the person that asserted [CBI] . . . receives notification.” *Id.* § 2613(g)(2)(B). Additionally, in the event the Court ordered EPA to produce materials designated as CBI, the parties agreed upon the terms of a protective order. Joint Statement at 12.

3. On December 24, 2025, the Court ordered EPA to produce the PMN public files to Plaintiffs by January 23, 2026, and the unredacted PMNs by March 23, 2026. Order (ECF No. 75) at 3. In doing so, this Court entered the parties’ proposed protective order (ECF No. 74), finding that the proposed protective order would mitigate any potential issues raised by the inclusion of confidential information. Order at 2-3.

4. Pursuant to TSCA, EPA sent notices to the companies that submitted the 84 PMNs at issue. 15 U.S.C. § 2613(g)(2)(A). A company that receives such a notice may—within 30 days from their receipt of the notice in this case—bring an action to restrain disclosure of the information in the United States District Court for the District of Columbia. *Id.* § 2613(g)(2)(B),

(g)(2)(D)(i)(II). Generally, subject to 15 U.S.C. § 2613(d), if a disclosure lawsuit is filed, EPA cannot disclose the relevant CBI until after the court rules on the lawsuit. *Id.*

§ 2613(g)(2)(D)(ii).

5. Arkema claims to have CBI within the PMNs that are subject to this litigation. *See* Compl. ¶ 76, *Arkema*, No. 1:26-cv-886. Thus, EPA sent Arkema a disclosure notice to comply with TSCA’s requirements before producing the unredacted PMNs, as ordered by this Court. Following receipt, Arkema sued EPA within 30 days of receiving the notice to prevent disclosure of the information it claims as CBI to the Plaintiffs under the existing Protective Order. *Id.* at 20-21.

6. Arkema seeks relief only as to the information that it claims is CBI. *Id.* However, Arkema’s lawsuit implicates all materials designated as CBI that are at issue in this case for two reasons.

7. First, Arkema broadly alleges that EPA’s actions in this case as it pertains to the production of the unredacted PMNs are unlawful. For example, Arkema alleges that EPA’s decision not to request that this Court “narrow the scope of its order to CBI pertaining to information that the [Plaintiffs] alleged to be ‘health and safety’ information” is unlawful. *Id.* ¶¶ 90-91. Arkema also alleges the terms of this Court’s Protective Order are insufficient to “safeguard[] CBI under TSCA and EPA’s own implementing regulations.” *Id.* ¶ 92.

8. Second, Arkema claims the identity of its company as CBI. Compl. ¶ 67. Indeed, many PMN submitters do so. *See, e.g.,* Certain New Chemicals; Receipt and Status Information for September-December 2025, 91 Fed. Reg. 11544, 11545, tbl. 1 (Mar. 10, 2026) (indicating that many PMN submitters claimed their identity as CBI). Accordingly, even though Arkema seeks relief only as to its information it claims is CBI, Arkema’s CBI claims affect EPA’s ability

to produce the unredacted PMNs that are not at issue in Arkema's lawsuit. In other words, if this Court were to require EPA to split production—produce the unredacted PMNs from submitters besides Arkema and only produce the unredacted PMNs from Arkema after *Arkema* is resolved—that would reveal Arkema's identity as the submitter of the PMNs not included in the first production, which is among the claimed CBI Arkema seeks to prevent from disclosure. Compl. ¶ 67.

9. Because *Arkema* directly impacts EPA's compliance with this Court's December 2025 Order requiring EPA to produce the unredacted PMNs that are within the scope of the record for judicial review under the Protective Order, EPA respectfully requests that the Court, pending resolution of *Arkema*, stay the deadline for EPA to produce the unredacted PMNs that are subject to this Court's December 2025 Order. Alternatively, EPA requests that the Court hold a status conference to address the Agency's obligations under that Order.

Date: March 17, 2026

Respectfully submitted,

Adam R.F. Gustafson
Principal Deputy Assistant Attorney General

/s/ Jin Hyung Lee

Jin Hyung Lee
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Tel: (202) 598-7264
Jin.hyung.lee@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ENVIRONMENTAL DEFENSE FUND, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No. 1:20-cv-00762 (LLA)
)	
Lee Zeldin, Administrator, U.S. Environmental)	
Protection Agency, in his official capacity, <i>et</i>)	
<i>al.</i> ,)	
<i>Defendants.</i>)	
_____)	

[PROPOSED] ORDER

Upon consideration of Defendants’ Motion to Govern Proceedings in light of New Related Lawsuit, it is hereby ORDERED that:

Defendants’ Motion is GRANTED;

Defendants’ deadline for producing the unredacted PMNs within the scope of the record for judicial review is stayed pending resolution of *Arkema*.

SO ORDERED.

LOREN L. ALIKHAN
United States District Judge