Navigating Regulatory Frontiers: US Appeals Court Curtails EPA's Ability to Regulate Under Toxic Substances Control Act

By Brian D. Gross | Mikaela Barbour

April 8, 2024

On March 21, 2024, the United States Court of Appeals for the Fifth Circuit issued a decision unanimously agreeing with Inhance Technologies, LLC (Inhance) that the United States Environmental Protection Agency (EPA) exceeded its statutory authority when it issued orders under Section 5 of the Toxic Substances Control Act (TSCA) that directed Inhance to shut down its barrier technology facilities.

Section 5 of TSCA empowers the EPA to oversee the manufacturing or processing of any chemical substance for a "use which the [EPA] has determined…is a significant new use." 15 U.S.C. 2604(a)(1)(A)(ii). The Significant New Use Rule (SNUR) under TSCA requires certain entities to provide at least 90 days' notice to EPA before commencing manufacturing, importing or processing certain long-chain per- and polyfluoroalkyl substances PFAS.

In March 2022, EPA issued Inhance a Notice of Violation of the SNUR, as it alleged that Inhance's fluorination of plastic containers, a process that Inhance had been utilizing for more than 40 years, resulted in the creation of long-chain PFAS. EPA ultimately issued two orders under Section 5 of TSCA that prohibited Inhance from manufacturing or processing PFAS during its fluorination process, "at least until Inhance completes further testing to address information gaps identified during the review." It did so despite the fact that EPA had previously indicated that the SNUR was not applicable to PFAS uses that were ongoing at the time of the SNUR's promulgation.

The company responded swiftly by bringing suit against EPA in the United States Court of Appeals for the Fifth Circuit. At the heart of the dispute was EPA's assertion that PFAS produced during Inhance's fluorination process constituted a "new use" under TSCA. In its lawsuit, Inhance argued that the EPA's characterization of PFAS production as a new use disregarded the company's decades-old fluorination process, and that EPA's reliance on Section 5 of the TSCA bypasses a comprehensive analysis of the adverse effects on its business and the broader economy.

In a unanimous decision in favor of Inhance, the Court found that Section 5 of TSCA does not apply to the fluorination process Inhance has utilized for more than four decades, even if its creation of PFAS was recently discovered. Circuit Court Judge Cory Wilson concluded that EPA's determination that Inhance's process was "new," despite the fact that it preceded the enactment of TSCA "defies common sense."

The Fifth Circuit's decisive ruling serves as a beacon of hope for businesses threatened by EPA's regulatory ambiguities and overreach. As businesses continue to navigate the evolving PFAS regulatory landscape, this decision acts as a step in the right direction in holding EPA accountable while upholding the rights and interests of industry stakeholders and consumers. While this decision was certainly a victory for Inhance, this fight is not over. While the Fifth Circuit held that EPA exceeded its authority in regulating Inhance under Section 5 of TSCA, it did acknowledge EPA's theoretical authority to regulate Inhance's fluorination process under Section 6 of TSCA. That, however, would entail a more extensive cost-benefit analysis as well as a public notice-and-comment period. In addition, EPA and private environmental groups are plaintiffs in an action against Inhance in the United States District

Court for the Eastern District of Pennsylvania, where they similarly seek to regulate Inhance under TSCA and force it to cease its fluorination process.

Attorney Advertising. This material is for general informational purposes only and does not represent our advice as to any particular set of facts; nor does it represent any undertaking to keep recipients advised of all legal developments. Prior results do not guarantee a similar outcome. © 2026 MG+M The Law Firm