EPA Moves to Pause Part of PFAS Rule Litigation

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As previously reported, on Wednesday, January 20, 2026, a three-judge panel of the US Court of Appeals for the District of Columbia Circuit unanimously denied a request by the Trump administration to vacate and remove maximum contaminant limits (MCLs) for four per- and polyfluoroalkyl substances (PFAS) that were imposed in 2024 by the Biden administration. In response, the Environmental Protection Agency (EPA) has filed a Motion to Sever and Hold Challenges to Index PFAS in Abeyance in *American Water Works Association, et al. v. U.S. Environmental Protection Agency et al.*, No. 24-1188 (D.C. Cir.). The motion seeks to sever and hold in abeyance Petitioners' claims that challenge the portion of EPA's proposed rule that set MCLs for perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA) (commonly known as a GenX chemical), and perfluorohexane sulfonic acid (PFHxS) (collectively Index PFAS) individually and a Hazard Index to regulate PFNA, HFPO-DA, PFHxS, and perfluorobutane sulfonate in combination (the Rule), while allowing Petitioners' claims concerning MCLs for perfluorooctanoic acid and perfluorooctanoic sulfonic acid to proceed.

In support of its motion, EPA argues that it continues to work to rescind that portion of the Rule that regulates the Index PFAS, which, if finalized, may moot Petitioners' challenges.[1] Moreover, EPA argues that abeyance is warranted because not only does legal precedent allow federal agencies to revisit past decisions, particularly when there is a change in the administration, but also agencies should seek abeyance pending its reconsideration decision.[2]

On March 2, Petitioners American Water Works Association and Association of Metropolitan Water Agencies (collectively, the Water Associations) filed their response in opposition. The Water Associations argue that their members would be prejudiced by further delay in the adjudication of their challenges, but, perhaps more importantly, "judicial economy weighs heavily in favor of denial . . ." as "the position of the Respondent-Intervenors in this litigation, combined with the Safe Drinking Water Act's anti-backsliding provision, means it is all but inevitable that this Court will have to adjudicate the legality of EPA's current PFAS Rule" even if EPA actually rescinds the provisions concerning the Index PFAS.[3]

In addition, several environmental groups that previously intervened in this matter (Respondent-Intervenors) similarly filed an opposition to EPA's motion. Respondent-Intervenors argue that EPA's motion should be denied because severance is illogical where many of Petitioners' claims pertain to the Rule as a whole and cannot be easily parsed and because an abeyance would prejudice Respondent-Intervenors while EPA has failed to demonstrate any prejudice.[4]

As of this writing, the court has yet to address EPA's motion. It seems unlikely, however, given the anti-backsliding provisions of the Safe Drinking Water Act, that the court will sever and stay a portion of Petitioners' challenge. As the Water Associations point out, even if Petitioners' claims were mooted by EPA rescinding the portion of the Rule concerning Index PFAS, the court is still likely to have to adjudicate the legality of the Rule, as others challenge EPA's action.

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[1] Motion to Sever and Hold Challenges to Index PFAS in Abeyance at 3, *American Water Works Association, et al. v. U.S. Environmental Protection Agency et al.*, No. 24-1188 (D.C. Cir. Feb. 19, 2026).

[2] *Id.* at 4.

[3] Response of Petitioners American Water Works Association and Association of Metropolitan Water Agencies in Opposition to Respondents' Motion to Sever and Hold Challenges to Index PFAS in Abeyance at 3, *American Water Works Association, et al. v. U.S. Environmental Protection Agency et al.*, No. 24-1188 (D.C. Cir. Mar. 2, 2026).

[4] Respondent-Intervenors' Opposition to EPA's Motion to Sever and Hold Challenges to Index PFAS in Abeyance at 6–7, *American Water Works Association, et al. v. U.S. Environmental Protection Agency et al.*, No. 24-1188 (D.C. Cir. Mar. 2, 2026).

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