

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

No. 23-60620

Inhance Technologies, L.L.C.,  
*Petitioner,*

*versus*

United States Environmental Protection Agency; Michael S. Regan, *Administrator*;  
*United States Environmental Protection Agency,*  
*Respondents.*

Petition for Review from an Order of the Environmental Protection Agency

Agency No. SN-23-0002

Agency No. SN-23-0004 Agency No. SN-23-0005 Agency No. SN-23-0003  
Agency No. SN-23-0006 Agency No. SN-23-0008 Agency No. SN-23-0009  
Agency No. SN-23-0010 Agency No. SN-23-0011

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**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* CENTER FOR  
ENVIRONMENTAL HEALTH, PUBLIC EMPLOYEES FOR  
ENVIRONMENTAL RESPONSIBILITY, AND JAY DE LA ROSA IN  
SUPPORT OF RESPONDENT UNITED STATES EPA**

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## **CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.1.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Inhance Technologies LLC (Petitioner)
2. Hogan Lovells US LLP (Counsel for Petitioner)
3. Catherine E. Stetson (Counsel for Petitioner)
4. Susan M. Cook (Counsel for Petitioner)
5. Adam M. Kushner (Counsel for Petitioner)
6. J. Tom Boer (Counsel for Petitioner)
7. Marlan Golden (Counsel for Petitioner)
8. Claire Adkins (Counsel for Petitioner)
9. Aurora Capital Partners Management LP (Interested Party)
10. United States Environmental Protection Agency (Respondent)
11. Michael S. Regan, Administrator, United States Environmental Protection Agency (Respondent)
12. Merrick B. Garland, Attorney General, United States Department of Justice (Counsel for Respondents)
13. Daniel Martin (Counsel for Respondents)
14. Alexandra St. Romain (Counsel for Respondents)
15. Richard Gladstein (Counsel for Respondents)

16. Jonah Seligman (Counsel for Respondents)
17. Public Employees for Environmental Responsibility (PEER)  
(Prospective *amicus curiae*)
18. Center for Environmental Health (Prospective *amicus curiae*)
19. Jay De La Rosa (prospective *amicus curiae*)
20. Robert M. Sussman (Counsel for Center for Environmental Health  
and Jay De La Rosa)
21. Paula Dinerstein (Counsel for PEER)
22. Laura Dumais (Counsel for PEER)
23. Monica Mercola (Counsel for PEER)
24. Michael D. Fiorentino (Counsel for PEER, CEH, and Jay De La Rosa)

/s/ Robert M. Sussman

Robert M. Sussman

*Counsel for Prospective amici curiae*

**MOTION OF CENTER FOR ENVIRONMENTAL HEALTH, PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, AND JAY DE LA ROSA FOR LEAVE TO FILE AMICUS BRIEF**

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure and Fifth Circuit Local Rule 29, Center for Environmental Health (CEH), Public Employees for Environmental Responsibility (PEER), and Jay De La Rosa move the Court for leave to file the attached *amicus curiae* brief in support of Respondent United States Environmental Protection Agency (EPA). Respondent's counsel consented to the filing of this brief. Petitioner's counsel consented to the filing of two amicus briefs from industry groups supporting its position, but declined to consent to this brief in support of EPA.

Prospective *amici* CEH and PEER are non-profit organizations dedicated to protecting the public from harmful per- and polyfluoroalkyl substances (PFAS) and promoting a high standard of scientific integrity and legal accountability. For the last three years, both CEH and PEER have been extensively involved in legal, policy, and scientific issues related to the formation of per- and polyfluoroalkyl substances (PFAS) during the fluorination of plastic containers. Testing in 2020 by PEER first demonstrated the presence of PFAS in plastic containers fluorinated by Inhance.<sup>1</sup> These findings were later confirmed by EPA and ultimately led to the

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<sup>1</sup> Ex. 5 to prospective *amici*'s motion to intervene in this case, Doc 46-5 (Bennett Decl.) ¶ 7; Ex. 4 to prospective *amici*'s motion to intervene, Doc. 46-5 (Whitehouse Decl.) ¶ 16.

Orders that Petitioner now challenges. PEER and CEH have remained active throughout the events leading to this case, including by initiating and funding further testing confirming the presence of PFAS in fluorinated containers; commissioning a report from leading experts documenting the health risks of PFAS exposure during container use; submitting detailed technical comments to EPA on the SNUNs and meeting with EPA to discuss them; and continuing to advocate for public health protections against PFAS.<sup>2</sup> As this Court has observed, “courts should welcome amicus briefs for one simple reason: ‘[I]t is for the honour of a court of justice to avoid error in their judgments.’” *Lefebure v. D’Aquila*, 15 F.4th 670, 675 (5th Cir. 2021) (quoting *The Protector v. Geering*, 145 Eng. Rep. 394 (K.B. 1686)).

Prospective *Amici* are also Intervenor-Petitioners in *United States v. Inhance Technologies LLC* (No. 22- 05055, E.D. Pa.), which seeks injunctive relief against Inhance’s continuing manufacture of PFAS in violation of EPA’s July 2020 significant new use rule (SNUR) for long-chain PFAS. As such, PEER and CEH are intimately familiar with the issues in this case, which overlap with the issues before the Court here. For example, Inhance has raised in both proceedings the scope of TSCA’s SNUR authority, the difference between “impurities” and

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<sup>2</sup> Ex. 5 to prospective *amici*’s motion to intervene, Doc 46-5 (Bennett Decl.) ¶ 9; Ex. 4 to prospective *amici*’s motion to intervene, Doc. 46-5 (Whitehouse Decl.) ¶¶ 16-20.

“byproducts,” and whether Inhance received “fair notice” of the SNUR’s application to fluorination. Prospective *amici* have a vital interest in ensuring that this Court has all essential arguments before it, as the outcome of this case could adversely affect their positions in the Pennsylvania district court.

Prospective amici are filing this brief two days after Respondent EPA’s brief was filed, five days before the deadline under the Federal Rule of Appellate Procedure 29(a)(6), and five days before Inhance’s reply is due. Inhance thus has adequate time to respond to the amicus brief in its reply brief, and no changes to the expedited schedule or oral argument date are required.

Particularly given that two *amicus* briefs from industry organizations have already been filed in support of Inhance, it would be unjust to deny proposed *amici* the ability to offer arguments on behalf of EPA that reflect the amici’s public health and environmental protection perspective. As then-Judge Alito once noted, “[a] restrictive policy with respect to granting leave to file may . . . create at least the perception of viewpoint discrimination.” *Neonatology Associates, P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 133 (3rd Cir. 2002).

Prospective *amici*’s perspective is invaluable, and their brief covers several points that EPA’s brief did not address – or did not address fully or from the same perspective – but are critical to the disposition of this case. For these reasons,

prospective amici urge the Court to grant this motion for leave to file the attached *amicus curiae* brief.

Dated: January 24, 2024

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPE  
FACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

I hereby certify that this motion complies with the requirements of Federal Rule of Appellate Procedure 27(d) because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 712 words, according to the count of Microsoft Word.

/s/ Robert M. Sussman

Robert M. Sussman

*Counsel for Prospective amici curiae*



## CERTIFICATE OF CONFERENCE

I hereby certify under 5th Cir. R. 27.4 and Fed. R. App. P. 29(a)(2) that on January 17, 2024 I contacted the Petitioner and the Respondent by email and that Respondent EPA consented to the filing of the Brief of *Amici Curiae* but Petitioner Inhance did not.

/s/ Robert M. Sussman

Robert M. Sussman

*Counsel for Prospective amici curiae*

**CERTIFICATE OF SERVICE**

I certify that I electronically filed this brief using the appellate CM/ECF system on January 24, 2024. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Laura Dumais

Laura Dumais

*Counsel for prospective amici curiae*