

Erik Baptist Weighs In on Landmark TSCA-Related Water-Fluoridation Lawsuit

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Erik C. Baptist, partner in Wiley Rein's Environment & Product Regulation Practice, was quoted in an *Inside EPA* story on January 13 regarding a lawsuit challenging the Environmental Protection Agency's (EPA) denial of a Toxic Substances Control Act (TSCA) citizen petition seeking to ban drinking water fluoridation. As reported by *Inside EPA*, the plaintiffs overcame an initial EPA motion to end the case, but the presiding U.S. District Court Judge, the Hon. Edward Chen, recently ruled that it can proceed.

Mr. Baptist pointed out that the plaintiffs, who were successful in overcoming the EPA challenge to their standing during the pre-trial motions phase, may have a more difficult time proving standing in the upcoming trial, according to *Inside EPA*.

"The plaintiffs survived the standing challenge at the summary judgment stage because their alleged injuries 'rise above the purely speculative, albeit perhaps barely, for standing purposes.' The summary judgment stage is not the last time the plaintiffs will need to demonstrate standing," Mr. Baptist said.

Regarding the standing challenge, Mr. Baptist told *Inside EPA* that the "bar is raised at trial, and the plaintiffs must provide adequate evidence to overcome another challenge to standing, presumably at the end of their presentation of their case and before the government puts on its defense. To date, it does not appear that the plaintiffs have set forth facts sufficient to convince Judge Chen that they have standing under Article III of the Constitution."

Mr. Baptist also pointed to Judge Chen's order denying the plaintiffs' motion for summary judgment, where the judge used the phrase "afford only moderate support to Plaintiffs' position" regarding their evidence of unreasonable risk.

"This language foreshadows how the court may weigh the plaintiffs' evidence during the de novo proceeding, if the court were to reach the merits of this challenge after finding that the plaintiffs have standing," Mr. Baptist said.

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