No. 24-0682

In the United States Court of Appeals for the Twelfth Circuit

VANDALIA ENVIRONMENTAL ALLIANCE,

Plaintiff-Appellant,

v.

BLUESKY HYDROGEN ENTERPRISES,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Vandalia
Honorable Samuel L. Danger, Judge Presiding
District Court No. 25-0682

BRIEF OF DEFENDANT-APPELLEE

Team No. 18

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JURISDICTIONAL STATEMENT

The district court had federal question jurisdiction under 28 U.S.C. § 1331 (2018) because the Vandalia Environmental Alliance ("VEA") asserted a federal claim under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B) (2018). The district court had supplemental jurisdiction over the VEA's state-law public nuisance claim pursuant to 28 U.S.C. § 1367(a) (2018). The district court entered an order granting a preliminary injunction on November 24, 2025. BlueSky filed a timely notice of appeal on December 1, 2025, giving this Court jurisdiction under 28 U.S.C. § 1292(a)(1) (2018). The district court granted a stay on December 8, 2025, and certified the VEA's cross-appeal under 28 U.S.C. § 1292(b) (2018). This Court accepted the cross-appeal and consolidated both appeals.

STATEMENT OF THE ISSUES PRESENTED

I. Whether the district court was required under *Coinbase, Inc. v. Bielski* to stay proceedings pending appeal where BlueSky's interlocutory appeal challenges the legal determinations on which the preliminary injunction is based.

II. Whether the VEA lacks standing to bring a public nuisance claim for BlueSky's alleged PFOA air emissions, where the VEA's claimed injury to its farm is identical in kind to the injury suffered by all other farms in the area.

III. Whether emissions released into the air constitute "disposal" under RCRA when the statute requires waste to first be placed "into or on any land or water."

IV. Whether the district court misapplied *Winter v. Nat. Res. Def. Council, Inc.'s* irreparable harm requirement by granting a preliminary injunction based on generalized harm to the public and the agricultural community, where the court

expressly found that the VEA failed to show its members were likely to suffer plaintiff-specific irreparable harm before trial.

STATEMENT OF THE CASE

BlueSky Operates a State-Licensed Hydrogen Production Facility

BlueSky Hydrogen Enterprises operates the SkyLoop Hydrogen Plant, a waste-to-hydrogen facility in Mammoth, Vandalia. R. at 4. Vandalia has historically struggled with waste management challenges because it has less environmental regulation than surrounding states, leading many companies to locate their landfills there. R. at 4-5. SkyLoop directly addresses this problem by converting waste streams, including plastics, biosolids, and chemical by-products, into clean hydrogen through enclosed, oxygen-limited systems with advanced filtration, scrubbing, and catalytic treatment technologies. R. at 5-6. The facility supports Vandalia's environmental goals of reducing landfill waste while supplying hydrogen for industrial and energy applications and creating local jobs. R. at 5. The facility began operations in January 2024 and has remained in full compliance with its Title V Clean Air Act permit. R. at 6. Some biosolids processed at SkyLoop contain PFOA, a PFAS compound not regulated under the Clean Air Act and not subject to monitoring or emission limits under SkyLoop's permit. R. at 7-8.

Detection of PFOA in Mammoth's Water Supply

In March 2025, periodic testing by the Mammoth Public Service District's ("PSD") showed PFOA levels of 3.9 ppt in Mammoth's water supply. R. at 7. PFOA had not been detected in previous testing in 2023. R. at 7. The detected level was below the EPA's Maximum Contaminant Level of 4 ppt, which does not even become enforceable until 2029. R. at 7. The VEA alleges that PFOA survives SkyLoop's emissions controls and is released into the air and that prevailing winds carry the emissions onto surrounding land including Mammoth PSD's wellfield. R. at 8. The

Mammoth PSD currently lacks any treatment technology capable of removing PFOA from the water supply. R. at 8.

The VEA and Its Claimed Injuries

The VEA is a regional environmental organization that operates the VEA Sustainable Farms, an educational outreach center located 1.5 miles north of SkyLoop. R. at 7. The farm includes a vegetable garden used for educational programming and to supply produce to local food banks. R. at 7. There are many other local farms that grow produce for local and regional consumption located in-between SkyLoop and the VEA's farm. R. at 7. The VEA claims PFOA deposition may be contaminating its soil and crops, thus the VEA has voluntarily stopped providing food to local food banks "out of an abundance of caution." R. at 9. Importantly, the VEA explicitly admits that its concerns "are not unique to its own land" and that any resulting injury "would likely be shared broadly across the agricultural community near SkyLoop." R. at 9.

Many of the VEA members drink water from the Mammoth PSD, however, upon learning of potential PFOA contamination all of the VEA members voluntarily stopped drinking water from the public supply and now purchase bottled water. R. at 8. The VEA's own toxicologist could not provide any opinion on what harm these VEA members will suffer that a preliminary injunction could prevent. R. at 14.

Procedural History

Following its investigation into BlueSky's PFOA air emissions, the VEA sent a notice of intent to sue under RCRA's imminent and substantial endangerment provision ("ISE Provision"). R. at 11. After 90 days, the VEA filed suit in the United States District Court for the Middle District of Vandalia on June 30, 2025, asserting a public nuisance claim and a RCRA imminent and substantial endangerment claim. R. at 11. Several days later, the VEA moved for a preliminary

injunction to stop BlueSky's operations or, alternatively, to prevent SkyLoop from accepting feedstock containing PFOA. R. at 11. BlueSky opposed the motion, arguing that the VEA lacked standing to bring a public nuisance claim, that SkyLoop's air emissions did not constitute "disposal" under RCRA, and that the VEA had failed to establish irreparable harm under the *Winter* factors. R. at 12-14.

The district court held an evidentiary hearing on the VEA's motion for preliminary injunction on September 29, 2025. R. at 14. On November 24, 2025, the district court granted the VEA's motion for a preliminary injunction. R. at 14-15. BlueSky filed a timely notice of appeal on December 1, 2025, along with a motion to stay proceedings in the district court pending appeal. R. at 15. The district court granted the stay on December 8, 2025, finding it mandatory under *Coinbase, Inc. v. Bielski*. R. at 16. The VEA asked the district court for an interlocutory appeal of its stay order under 28 U.S.C. § 1292(b), which the district court granted. R. at 16. This Court accepted the cross-appeal and consolidated the VEA's appeal with BlueSky's appeal of the preliminary injunction and issued an order on December 29, 2025, identifying the four issues for briefing. R. at 16.

SUMMARY OF THE ARGUMENT

The district court erred in granting the VEA's motion for a preliminary injunction but correctly stayed proceedings pending this appeal. This Court should affirm the stay of proceedings and reverse the injunction.

Under *Coinbase, Inc. v. Bielski*, a district court must stay proceedings when an interlocutory appeal places before the appellate court the legal rulings on which further proceedings depend. BlueSky's appeal challenges the district court's core rulings on standing, RCRA liability, and the *Winter* factors that the district court relied upon to grant the injunction.

Because those determinations are now before this Court, the district court correctly concluded that it lacked authority to proceed.

The VEA lacks standing to bring a public nuisance claim because it has not suffered a special injury. A private plaintiff can proceed on a public nuisance theory only by demonstrating a kind of harm different from the harm suffered by the general public. The VEA admits that its farm is located among numerous other farms and that any alleged injury would be shared across the surrounding agricultural community. An injury shared broadly across the agricultural community is not special. The VEA's proximity to SkyLoop and positive soil tests reflect differences in degree, not kind. The district court erred in finding special injury based on the VEA's vegetable garden when neighboring farms also grow food for local consumption and face identical contamination.

SkyLoop's air emissions do not constitute "disposal" under RCRA. The statute requires that waste first be placed "into or on any land or water" before it may be emitted into the air. 42 U.S.C. § 6903(3) (2018). The VEA's theory reverses this sequence as it alleges PFOA travels from air to land, not land to air. That is not disposal. The district court erred in extending RCRA's citizen-suit provision to reach air emissions that Congress separately addressed through the Clean Air Act.

The district court also misapplied *Winte*r's irreparable harm requirement. A plaintiff seeking preliminary relief must show a likelihood of irreparable harm to itself, not harm to the public. The irreparable-harm and public-interest factors serve distinct purposes and should not be merged. The district court found that the VEA failed to show its members were likely to suffer irreparable harm before trial, yet granted the injunction based on generalized environmental harm shared by the entire agricultural community. That approach fails to treat the conditions of *Winte*r'*s*

four-factor test as distinct requirements, unjustifiably lowering the threshold for preliminary injunctive relief.

STANDARD OF REVIEW

This Court reviews the district court's decision to stay proceedings pending appeal *de novo*. *See Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023). Whether the VEA has standing to bring a public nuisance claim is a legal question reviewed *de novo*. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Whether conduct constitutes "disposal" under RCRA is a statutory interpretation question, which this Court reviews *de novo*. *See Ctr. for Cmty. Action & Envtl. Justice v. BNSF R. Co.* ("*BNSF*"), 764 F.3d 1019, 1022 (9th Cir. 2014). This Court reviews the district court's grant of a preliminary injunction for abuse of discretion. *Winter v. Nat. Res. Def. Council, Inc. ("NRDC")*, 555 U.S. 7, 20 (2008). However, the district court's underlying legal conclusions, including its application of the *Winter* factors, are reviewed *de novo*. *See Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 463 (8th Cir. 2025).

ARGUMENT

The district court correctly stayed proceedings pending appeal because the issues underlying the injunction are now before this Court; however, it made three independent errors in granting the VEA's motion for a preliminary injunction. First, the district court found that the VEA had standing to bring a public nuisance claim despite the VEA's admission that the surrounding agricultural community shares its alleged injury. Second, it extended RCRA's definition of "disposal" to reach air emissions that do not initially touch land or water. Third, the district court's analysis under *Winter* relied on generalized public concerns rather than a showing of likely irreparable harm specifically to the VEA's members. Each of these conclusions provides an independent basis for reversal.

I. Under *Coinbase,* the District Court Was Required to Stay Proceedings Pending Appeal.

The district court correctly stayed proceedings pending this appeal. The *Griggs* principle establishes that a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). A district court must stay its proceedings during an interlocutory appeal that concerns whether the case belongs in court, and this requirement is not limited to arbitration disputes. *Coinbase*, 599 U.S. at 761; *see City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 270 (4th Cir. 2025) (affirming the district court's decision to stay proceedings and holding that the stay was mandated under *Coinbase* because the appeal was relevant to the district court's authority to continue with proceedings). Where the entire case is "essentially involved" in the appeal, all proceedings at the district court should be stayed pending resolution of the appeal. *See Am. Encore v. Fontes*, No. CV-24-01673-PHX-MTL, 2025 U.S. Dist. LEXIS 121339, at *6 (D. Ariz. June 26, 2025) (staying all further proceedings under *Coinbase* where the interlocutory appeal challenged standing and other legal determinations governing whether the case should proceed). Taken together, these principles firmly establish that when an interlocutory appeal places before the appellate court legal determinations governing whether the case may proceed, the district court lacks authority to move forward with proceedings and must stay them.

Here, the *Griggs* principle firmly applies, and the District Court was required to stay all proceedings pending appeal. *Coinbase*, 599 U.S. at 741. BlueSky exercised its statutory right to interlocutory appeal of the preliminary injunction ruling under 28 U.S.C. § 1292(a)(1). Upon the notice of appeal of this issue, the district court was divested of authority over aspects of the case

involved in the appeal. *Griggs*, 459 U.S. at 58. Proceeding further would require the court to assume the correctness of the preliminary rulings that are now under this Court's jurisdiction. Crucially, the district court relied upon preliminary rulings on standing, RCRA theory, and a relatively permissive application of the *Winter* test to determine that ordering a preliminary injunction against BlueSky was the appropriate course of action. Because those determinations were legal requirements to order the injunction, BlueSky's interlocutory appeal necessarily also places each of them before this Court for review. *City of Martinsville*, 128 F.4th at 271.

Additionally, although its central decision concerns a motion to compel arbitration, *Coinbase* is not about arbitration alone. Rather, *Coinbase* illustrates the *Griggs* principle that once an appeal is taken, the district court may not exercise control over aspects of the case that the appellate court is deciding. *Coinbase*, 599 U.S at 736. *Coinbase* establishes that this principle applies when an interlocutory appeal raises a threshold question that determines whether litigation may actually proceed. *Id.* Here, the interlocutory appeal similarly challenges whether the district court may proceed under the legal framework it adopted in granting the preliminary injunction. Allowing the district court to continue proceedings related to these issues would risk inconsistent rulings and would encroach upon the appellate authority of this Court. *Id.* at 741.

Finally, this stay is mandatory and automatic. When the *Griggs* principle is invoked, the usual four-factor standard for determining a discretionary stay does not apply. *See City of Martinsville*, 128 F.4th at 270 (explaining that "the background *Griggs* principle applies" rather than "the usual four-factor standard" for discretionary stays once a proper notice of appeal is filed). The court must stay proceedings to the extent that they involve aspects of the case under appeal, whether the parties request this stay or not, consistent with the limits articulated in *Griggs* and *Coinbase*. *Coinbase*, 599 U.S at 741; *Griggs*, 459 U.S. at 58. Because authority is now vested in

this appellate Court, because the scope of the *Coinbase* decision is not limited to arbitration, and because this stay is mandatory and automatic, the district court correctly stayed proceedings pending appeal.

II. The VEA Lacks Standing to Bring Its Public Nuisance Claim Because It Has Not Suffered a Special Injury.

A public nuisance is "an unreasonable interference with a right common to the general public." Restatement (Second) of Torts § 821B(1) (A.L.I. 1979). Since such claims concern rights held in common by the public, they are generally brought by governmental entities that are responsible for protecting the public interest. *See City of Huntington v. AmerisourceBergen Drug Corp.*, 157 F.4th 547, 565 (4th Cir. 2025). A private plaintiff has standing to assert a public nuisance claim only if the plaintiff has suffered a special injury distinct from the public at large. *See Ariz. Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913) (public nuisance requires "a special injury not borne by the public"); *Phila. Elec. Co. v. Hercules, Inc.*, 762 F.2d 303, 315 (3d Cir. 1985); Restatement (Second) of Torts § 821C(1) (A.L.I. 1979).

The VEA cannot satisfy the special injury requirement. PFOA deposition on farmland is an alleged harm affecting agricultural properties across the surrounding region, rather than an injury particularly affecting the VEA. The VEA's injury differs only in degree from neighboring farms, not in kind. Its reliance on *Arizona Copper* fails because the comparison population here is other farmers suffering identical harm, not the general public. Lastly, the district court erred in finding that the injury to the VEA's vegetable garden was sufficient to establish a special injury when surrounding farms also suffered similar contamination.

A. The VEA Has Not Suffered a Special Injury Distinct From the Surrounding Agricultural Community.

The special injury doctrine draws a critical distinction between injuries that differ in kind and those that differ only in degree. *See id.* at cmt. b; *In re Lead Paint Litig.*, 191 N.J. 405, 436 (2007); *Venuto v. Owens-Corning Fiberglas Corp.*, 22 Cal. App. 3d 116, 125 (1st Dist. 1971). An injury is different in kind when it is a qualitatively different type of harm. *See* Restatement (Second) of Torts § 821C cmt. b (A.L.I. 1979). An injury is different in degree when it is the same harm experienced more intensely, more frequently, or more proximately. *Id.*

Courts have consistently applied this distinction to deny standing where plaintiffs experience the same kind of harm as the affected public even if it is to a greater extent. *See Sullivan v. Chief Justice for Admin. & Mgmt. of the Trial Ct.*, 448 Mass. 15, 36 (2006) (holding courthouse employees lacked special injury from asbestos exposure because visitors faced the same kind of harm even if less frequently); *532 Madison Ave. Gourmet Foods, Inc. v. Finlandia Ctr., Inc*., 96 N.Y.2d 280, 293 (2001) (businesses suffering economic harm from street closure lacked special injury where harm was common to the community); *Venuto*, 22 Cal. App. 3d at 128 (homeowners near industrial facility could not show special injury from air pollution where discomfort and annoyance were shared in common with many other people in the area). By contrast, courts find a special injury when a plaintiff's harm is different from the harm suffered by the public. *See Leo v. Gen. Elec. Co.*, 145 A.D.2d 291, 294 (2d Dep't 1989) (commercial fishermen whose livelihoods depended on PCB-polluted waters had special injury different from recreational users).

The VEA does not claim a unique livelihood different from neighboring farms. Instead, it claims agricultural contamination, which is the same injury suffered by every farm in the affected area. *See* R. at 9. The VEA admits that its farm "is located near numerous other farms that grow

food for local and regional consumption" and that "the resulting injury to farmland would likely be shared broadly across the agricultural community near SkyLoop." R. at 9. The VEA points to its proximity to SkyLoop (1.5 miles), its positive soil tests, and its educational mission, but none of these factors change the type of injury. *See* R. at 9. Whether a farm is 1.5 miles from SkyLoop or 3 miles away, whether soil tests are already positive or still pending, and whether the farm is educational or commercial, the harm is the same: agricultural contamination. These are differences in degree, not kind. The VEA's injury is identical in kind to the injury suffered by the surrounding agricultural community, thus it cannot satisfy the special injury requirement.

B. *Arizona Copper* Does Not Support the VEA's Claim.

The special injury analysis requires identifying the correct comparison population. *See Rhodes v. E.I. Du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 768 (S.D. W. Va. 2009). A plaintiff's injury must be different from that of "other persons exercising the same public right." Restatement (Second) of Torts § 821C cmt. b (A.L.I. 1979). The VEA chose to base its special injury claim on farmland contamination rather than drinking water harm. R. at 11. That choice shows that the relevant comparison population is other agricultural landowners affected by SkyLoop's emissions, not the general public.

Arizona Copper involved pollution that caused damage to an individual riparian landowner asserting a property-specific injury, distinguishing him from the general public. *Ariz. Copper Co.,* 230 U.S. at 52. In that case, mining companies polluted the Gila River, harming public water quality. *Id.* at 49-50. Gillespie, a riparian landowner, sued for public nuisance, alleging the pollution destroyed his ability to irrigate his 276-acre farm. *Id.* at 52. The Supreme Court found a special injury because Gillespie's harm was different in kind from the public's. While the public experienced generalized harm from the contamination of the river, Gillespie lost the irrigation

capacity of his specific farm. *Id.* at 57. Gillespie alleged a property-based injury distinct from the general public's injury. *Id*.

The surface similarity between *Arizona Copper* and this case is obvious as both cases involve pollution harming farmland, and both plaintiffs claim injury to agricultural operations; however, the analogy fails on closer inspection. Gillespie's injury set him apart from the public because no one else depended on that specific stretch of river for irrigation. *Id*. The comparison population was recreational users of the river, and Gillespie's agricultural harm was different in kind from their loss of enjoyment. *Id.* The VEA's situation is dissimilar. The VEA does not claim individualized harm different from its neighbors. It claims agricultural contamination, the same injury suffered by every farm in the affected area. *See* R. at 11. Here, the comparison population is other farmers, and the VEA's alleged harm is identical to other farmers. *Arizona Copper* requires injury "not borne by the public." 230 U.S at 57. The VEA's injury is borne by the entire farming community surrounding SkyLoop.

C. The District Court Erred in Finding a Special Injury.

The district court found that the VEA satisfied the special injury requirement based on the VEA's vegetable garden. R. at 15. That conclusion is flawed for two reasons.

First, growing vegetables does not distinguish the VEA from the surrounding agricultural community. The record establishes that the VEA's farm "is located near numerous other farms that grow food for local and regional consumption." R. at 9. Other farms grow vegetables as well. The type of crop does not change the type of injury. Agricultural contamination is agricultural contamination, whether the affected farm grows vegetables, fiber, or soybeans.

Second, the district court failed to address BlueSky's argument that neighboring farms share the identical injury. R. at 15. BlueSky argued that PFOA deposition on farmland is a harm

shared across the agricultural community. R. at 12. The district court did not explain why the VEA's vegetable garden makes its injury different in kind, rather than different in degree, from the injury suffered by neighboring farms facing the same contamination. *See* R. at 15.

Since the VEA has not suffered harm different in kind from the surrounding agricultural community, it lacks standing to bring a public nuisance claim. The proper plaintiff for widespread agricultural harm is a governmental entity tasked with protecting the public, not a private organization whose injuries are indistinguishable from its neighbors. Thus, this Court should reverse.

III. RCRA Does Not Authorize Plaintiff's Claim Under Its Text, Structure, or Legislative History.

RCRA is a waste-disposal statute designed "to reduce the volume of waste that ends up in our nation's landfills." *BNSF*, 764 F.3d at 1029. Congress pursued that objective through a comprehensive enforcement scheme that relies on the Environmental Protection Agency ("EPA") regulation, supplemented by narrowly defined private citizen suits. *See Chi. v. EDF*, 511 U.S. 328, 331 (1994). Under that scheme, the EPA regulates facilities that generate, transport, treat, store, or dispose of solid or hazardous waste under a "cradle-to-grave" framework, requiring such facilities to obtain permits and operate in compliance with RCRA's waste-management requirements. *Id.*; *see also Safe Air For Everyone v. Meyer*, 373 F.3d 1035, 1041-42 (9th Cir. 2004) (holding that "Congressional intent to extend EPA's authority only to materials that are truly discarded, disposed of, thrown away, or abandoned.") (internal citation omitted).

Consistent with that design, RCRA authorizes only two narrow categories of private citizen suits: (1) actions to enforce compliance with operative RCRA-based permits and regulatory mandates; and (2) actions against a "past or present owner or operator of a treatment, storage, or

disposal facility" responsible "to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(A)-(B). The first category is inapplicable here because SkyLoop operates its waste-to-hydrogen facility pursuant to a Title V Clean Air Act permit and is not subject to RCRA permitting requirements. R. at 5. The VEA therefore may proceed only under 42 U.S.C. § 6972(a)(1)(B), a provision it cannot satisfy. The statutory definition of "disposal" requires that waste be placed "into or on any land or water" before it may affect the environment, and emissions released directly into the air do not meet that requirement. *See BNSF*, 764 F.3d at 1023-24 (dismissing a 42 U.S.C. § 6972(a)(1)(B) citizen suit where diesel particulates were emitted into the air and only later settled onto land and water). RCRA's overall structure reinforces this conclusion, confirming that Congress did not intend the citizen-suit provision to reach air emissions, which Congress separately regulated through the Clean Air Act. Therefore, this Court should reverse the district court's holding that SkyLoop's air emissions constitute "disposal" under RCRA, which permitted the VEA's 42 U.S.C. § 6972(a)(1)(B) citizen suit to proceed. *See* R. at 15 (citing *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 963-66 (S.D. Ohio 2015) (relying on *Little Hocking* involving both land- and water-based waste releases to conclude that air emissions alone constitute "disposal" under RCRA).

A. RCRA Does Not Define Air Emissions as "Disposal," and SkyLoop's Emissions Therefore Cannot Support a Citizen Suit Under 42 U.S.C. § 6972(a)(1)(B).

To satisfy 42 U.S.C. § 6972(a)(1)(B), a private citizen must allege that the defendant operates "a treatment, storage, or disposal facility" that has contributed, or is contributing, to the

"handling, storage, treatment, transportation, or disposal" of solid or hazardous waste. The VEA contends that SkyLoop satisfies this requirement because its air emissions of PFOA are deposited onto surrounding land and the Mammoth wellfield, thereby constituting "disposal" under RCRA. R. at 13-14. That theory fails because RCRA's definition of "disposal" is limited to land- or water-directed placement of waste, and by extending it to emissions released into the air, the district court improperly allowed a private RCRA citizen suit to proceed.

1. RCRA Defines "Disposal" as Placement of Waste Directly Into Land or Water, Not Air.

The plain text of 42 U.S.C. § 6903(3) dictates the sequence in which waste must move before it qualifies as "disposal," which is defined as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water." 42 U.S.C. § 6903(3). The statute then describes the downstream consequences of that initial land- or water-based placement: "so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 42 U.S.C. § 6903(3). Taken as a whole, the definition establishes a two-step progression in which disposal requires an initial placement of waste into or on land or water, and the subsequent clause explains the environmental consequences that placement may produce. *See BNSF*, 764 F.3d at 1024. In addition, each verb Congress selected, "discharge, deposit, injection, dumping, spilling, leaking, or placing," describes an act directed at land or water. The subsequent phrase only describes what may happen *after* the initial land or water-based placement. It does not independently authorize a finding of "disposal" for emissions that originate in the air.

The Ninth Circuit in *BNSF* has adopted this meaning of 42 U.S.C. § 6903(3), holding that "RCRA's definition of 'disposal' does not include the act of 'emitting.'" *Id.* at 1024. The court

found that the listed verbs—"discharging, depositing, injecting, dumping, spilling, leaking, and placing"—all describe conduct directed toward land or water. *Id.* The court explained that the statute "limits the definition of 'disposal' to particular conduct causing a particular result," and that the sequential result—"that such solid waste … may enter the environment or be emitted into the air"—does not redefine the sequential requirement. *See id.* ("We therefore conclude that 'disposal' occurs where the solid waste is *first* placed 'into or on any land or water' and is *thereafter* 'emitted into the air.'").

The Ninth Circuit also examined RCRA as a whole to confirm the meaning of "disposal" in 42 U.S.C. § 6903(3). When a statutory term is ambiguous, courts apply the fundamental canon of statutory construction that "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Mich. Dep't of the Treasury*, 489 U.S. 803, 809 (1989). Applying this canon, the Ninth Circuit pointed to another RCRA provision—42 U.S.C. § 6991(8)—in which Congress defined "release" to include "spilling, leaking, emitting, discharging, escaping, leaching, or disposing." *BNSF*, 764 F.3d at 1024. The inclusion of "emitting" in 42 U.S.C. § 6991(8), and its omission from 42 U.S.C. § 6903(3), confirms that Congress deliberately excluded air emissions from the definition of "disposal." *Id.* at 1024-25; *Barnhart v. Sigmon Coal Co*., 534 U.S. 438, 452 (2002) (recognizing that Congress's inclusion of specific language in one provision and omission of that language in another reflects deliberate legislative intent). Read in context, RCRA defines "disposal" by land- or water-directed placement, with air emissions addressed elsewhere in the statute rather than folded into 42 U.S.C. § 6903(3). *BNSF*, 764 F.3d at 1024. To hold otherwise would require the court to rearrange the wording of the statute, an act that exceeds the judicial role. *See Id.* (emphasizing that "rearrang[ing] the wording of the statute" is "something that we, as a court, cannot do.").

2. The District Court Misread Little Hocking, Which Is Factually Distinct and Does Not Justify Treating Air Emissions Alone as "Disposal" Under RCRA.

The district court relied on *Little Hocking*, a district court decision from the Southern District of Ohio, to conclude that SkyLoop's air emissions constitute "disposal" within the meaning of RCRA. R. at 15. That reliance was misplaced: *Little Hocking* is a district court decision that expressly declined to follow the Ninth Circuit interpretation of "disposal" in *BNSF* and instead adopted a broader, purposivist interpretation of RCRA—an approach the court has described as "contrary to RCRA's text and legislative history." *BNSF*, 764 F.3d at 1025 n.5; *see* R. at 15. More importantly, *Little Hocking* involved undisputed releases of contaminants directly into land and surface waters—including landfill disposal, soil contamination, and river discharges—whereas this case alleges only emissions released into the air, with no claim that SkyLoop placed waste into or on land or water. *See* 91 F. Supp. 3d at 947. This Court should follow *BNSF*'s textual approach rather than *Little Hocking*'s overbroad expansion of RCRA's private remedial authority.

In *Little Hocking*, the defendant DuPont operated a facility that manufactured products containing PFOA (otherwise known as C8). *Id.* Over the span of two decades, DuPont disposed of C8 directly into the Ohio River, placed C8-containing wastes in on-site and off-site landfills, and contaminated soils and sediments at and around the defendant's facility. *Id.* at 948, 959-62. Relying on *Citizens Against Pollution v. Ohio Power Co.*, No. C2-04-CV-371, 2006 U.S. Dist. LEXIS 100839 (S.D. Ohio July 13, 2006), the *Little Hocking* court treated downstream environmental effects on land and groundwater as sufficient to satisfy RCRA's definition of "disposal." *See Little Hocking*, 91 F. Supp. 3d at 963-66. That approach reads the second clause of 42 U.S.C. § 6903(3)—describing what may happen after disposal—as independently sufficient,

rather than conditional on the statute's threshold requirement that waste be placed "into or on any land or water."

The Ninth Circuit in *BNSF* had already considered and rejected that same theory: In *BNSF*, the plaintiffs argued, citing *United States v. Apex Oil Co.*, No. 05-CV-242-DRH, 2008 U.S. Dist. LEXIS 59973 (S.D. Ill. July 28, 2008), that waste emitted into the air could constitute "disposal" because it later settled onto land and groundwaters. *See BNSF*, 764 F.3d at 1025. The court rejected that argument, explaining that *Apex Oil* involved waste disposed onto land as the act of disposal, with subsequent environmental migration, and therefore did not support treating air emissions as "disposal" under 42 U.S.C. § 6903(3). *See id.* at 1025 n.5; *see also Pakootas v. Teck Cominco Metals, Ltd.*, 830 F.3d 975 (9th Cir. 2016) (reaffirming *BNSF* and holding that air emissions with later deposition are not disposal). Accepting plaintiffs' theory, the court explained, would require rewriting 42 U.S.C. § 6903(3) to treat downstream contact with land as sufficient in itself—an interpretation the court expressly declined to adopt. *Id.* The flaw in *Little Hocking* is therefore not the severity or persistence of contamination, but its adoption of a land-contact theory that disregards RCRA's required sequence and treats air-first emissions as disposal.

Furthermore, *Little Hocking* arose in a materially different factual posture that makes its reasoning inapplicable here. Critically, DuPont did not contest that it released C8 "via air emissions, water disposal, and at sites near or on the Facility." *Little Hocking*, 91 F Supp. 3d at 947. Against that backdrop, the question presented in *Little Hocking* was not whether air emissions, standing alone, constitute "disposal" under RCRA, but whether that undisputed land- and water-based disposal resulted in C8 reaching the aquifer and drinking-water wells serving the plaintiffs, thereby satisfying RCRA's requirement that waste be placed "into or on any land or water." *Id.* at 958-66. The court's analysis thus rested on undisputed placement of waste into land and surface

waters, with air emissions treated only as one alleged pathway by which contamination from those land- and water-based releases reached the plaintiffs' wellfield, not as an independent or sufficient basis for liability. *See id.*

Here, the VEA does not allege that BlueSky dumps PFOA into landfills, discharges PFOA-contaminated wastewater, spills PFOA onto soil, or otherwise deposits, dumps, spills, leaks, or places PFOA "into or on any land or water." R. at 7-8, 11-12, 13. The VEA alleges instead that SkyLoop began operations in January 2024 and that later testing detected PFOA in the Mammoth public water supply, which had not been detected in prior years. R. at 7-8. From that timing alone, and without identifying any act by BlueSky that placed PFOA into or on land or water, the VEA asks the Court to infer that PFOA was emitted from SkyLoop's stacks into the air and only afterward deposited downwind onto surrounding land and the Mammoth wellfield. *See* R. at 11-12, 14. That alleged sequence does not constitute "disposal" under 42 U.S.C. § 6903(3) because RCRA requires waste to be placed into or on land or water in the first instance. *See BNSF*, 764 F.3d at 1023-24.

3. RCRA Liability Requires Affirmative Discarding, Not Passive Retention or Materials Remaining Within an Active Industrial or Recycling Process.

Courts interpreting RCRA have consistently required affirmative conduct placing waste into land or water, not mere passive conditions, downstream migration, or the continued presence of materials. *See Sycamore Industrial Park Associates v. Ericsson, Inc.*, 546 F.3d 847, 853-54 (7th Cir. 2008). In *Sycamore*, the plaintiff alleged RCRA liability based on asbestos-containing insulation that remained in place inside an abandoned boiler system after the defendant sold the property. *Id.* at 849-50. Although the asbestos was undisputedly hazardous and remained on the site, the court held there was no "disposal" because the defendant had not discharged, dumped,

spilled, leaked, or placed the material into land or water, but had merely left it in place. *Id.* at 851-53. The court explained that RCRA, "has contributed or is contributing" language, requires affirmative action, not passive inaction, and that liability cannot be based solely on the existence or later discovery of contamination. *Id.* at 854 ("The ordinary meaning of 'contribute' is 'to act as a determining factor.'"); *see also Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993, 1013 (11th Cir. 2004) (finding "disposal" under RCRA where defendants affirmatively placed scrap metal and other materials on land, leaving "little doubt" that the waste could enter the environment).

On the other hand, courts have rejected efforts to treat substances released into the air as RCRA "disposal" when the substance is not being affirmatively "discarded" and that the theory is simply an attempt to repackage another statutory violation as a RCRA claim. In *No Spray Coalition, Inc. v. City of N.Y.*, plaintiffs argued that pesticides became "discarded solid wastes" once sprayed "onto or into the air," but the Second Circuit rejected that premise because "material is not discarded until after it has served its intended purpose," and the pesticides were sprayed "with the design of effecting their intended purpose." *252* F.3d 148, 150 (2d Cir. 2001). The court also explained that plaintiffs were trying to use RCRA's private right of action to enforce a regulatory dispute that properly belonged under Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), which Congress did not make privately enforceable. *See id.*

Here, SkyLoop's operations do not involve the affirmative discarding of waste required to establish "disposal" under RCRA. Courts applying 42 U.S.C. § 6903(3) distinguish between materials that are removed from an industrial process and abandoned to land or water, and materials that remain within an ongoing production stream. *See Owen Elec. Steel Co. of S.C. v. Browner*, 37 F.3d 146, 148-50 (4th Cir. 1994) (holding that slag generated during steel production constituted "discarded" material where it was removed from the production process, left exposed

on bare ground for approximately six months to weather and cure, and only later sold for use as construction aggregate). The decisive feature in *Owen* was not that the material was ultimately reused, but that it was first taken out of the production process and relinquished to the environment before any later commercial use. *See id.* at 150. No such facts are alleged here. The VEA does not contend that SkyLoop places PFOA-containing material onto land, stores it on soil, or disposes of it in surface water or groundwater. R. at 7-8, 12-14. Instead, the VEA alleges that PFOA is released into the air during SkyLoop's active processing and only afterward settles onto surrounding land and the Mammoth wellfield. R. at 8. That alleged sequence lacks the affirmative act of discarding into land or water that 42 U.S.C. § 6903(3) requires. *See BNSF*, 764 F.3d at 1023-24. Treating such post-release atmospheric deposition as "disposal" would eliminate the statutory distinction between waste management and air emissions and allow RCRA's imminent-endangerment provision to reach conduct Congress chose to regulate, if at all, under a different statutory scheme.

B. RCRA's Statutory Structure Confirms It Cannot Be Used to Regulate Air Emissions Addressed By the Clean Air Act.

In *BNSF*, the Ninth Circuit resolved any ambiguity in RCRA's definition of "disposal" by examining the text, structure, and legislative history of both RCRA and the Clean Air Act, concluding that Congress made a deliberate choice to regulate air emissions through the Clean Air Act rather than through RCRA's citizen-suit provision. *See id.* at 1029. The court emphasized that RCRA is principally concerned with land disposal, while the Clean Air Act was meant to govern air emissions, and that courts are "not at liberty to disturb" Congress's allocation of regulatory authority between the two statutes. *Id.* at 1030. When Congress chose to address air emissions in RCRA at all, it did so expressly and vested enforcement authority in the EPA, not private plaintiffs. *See id.* at 1025. Courts are not permitted to expand RCRA's citizen-suit provision to regulate air

emissions simply because a particular pollutant is not fully regulated elsewhere. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 794 (2014) ("'Congress wrote the statute it wrote'—meaning, a statute going so far and no further.") (internal citation omitted). The district court's decision to extend 42 U.S.C. § 6972(a)(1)(B) to SkyLoop's air emissions ignores these limits and improperly merges two distinct statutory frameworks.

1. Air Emissions Fall Within the Clean Air Act's Regulatory Domain, and the Absence of the EPA Regulation Does Not Create a RCRA Cause of Action.

SkyLoop holds a Title V Clean Air Act permit governing its air emissions, including criteria pollutants, and the VEA does not allege any violation of that permit. R. at 6. The record confirms that SkyLoop's facility operates under the Clean Air Act's regulatory framework, not RCRA's, and SkyLoop has remained in full compliance with that permit since operations began. R. at 6. The VEA's claim does not rest on any violation of existing Clean Air Act requirements, but on disagreement with the EPA's decision not to regulate PFOA emissions under the Clean Air Act, for which no private statutory remedy exists.

BNSF squarely rejected the proposition that courts may use RCRA's citizen-suit provision to remedy such dissatisfaction. *See* 764 F.3d at 1025. The Ninth Circuit explained that plaintiffs' attempt to invoke RCRA to regulate emissions already addressed—or deliberately left unaddressed—under the Clean Air Act would collapse the careful distinction Congress drew between land disposal and air emissions. *Id.* at 1028-30. The court's refusal to allow RCRA to "fill in the gaps" of the Clean Air Act "illustrates judicial reluctance to expand the scope of environmental legislation." Alekzandir Morton, *IN BRIEF: Harping on Harmonics: Strategy and Advocacy in* Center for Community Action & Environmental Justice v. BNSF Railway, 42 Ecology L.Q. 557, 561 (2015). The appropriate remedy for perceived under-regulation of air

pollutants lies with Congress or the EPA, not with courts rewriting 42 U.S.C. § 6972(a)(1)(B). *See Bay Mills*, 572 U.S. at 794.

2. Congress's Legislative History Confirms That Air-Emissions Regulation Was Not Made Privately Enforceable Under RCRA.

The legislative history of RCRA and the Clean Air Act shows that Congress repeatedly revisited both statutes over time and consistently chose to address air pollution and waste disposal through separate legislative responses, refining each scheme without extending RCRA's citizen-suit provision to regulate air emissions. *BNSF*, 764 F.3d at 1026-30.

When Congress chose to address air emissions within RCRA, it did so explicitly and narrowly through 42 U.S.C. § 6924(n), assigning regulatory authority to the EPA and deliberately declining to extend RCRA's citizen-suit provision to air-emissions regulation. *Id.* at 1025-26. Section 6924(n) requires the EPA to promulgate regulations for monitoring and controlling air emissions at hazardous-waste treatment, storage, and disposal facilities. Plaintiffs argued that this limited air-emissions provision showed RCRA and the Clean Air Act should be "harmonized" to permit citizen suits over air pollution, reasoning that because Congress allowed RCRA to reach air emissions in some circumstances, RCRA's citizen-suit provision could be used to fill gaps left by the Clean Air Act. *Id.* at 1025. The Ninth Circuit rejected that argument because 42 U.S.C. § 6924(n) contains no private right of action. *Id.* at 1025-26. Furthermore, the fact that RCRA authorizes EPA regulation of air emissions does not mean that RCRA's citizen-suit provision authorizes any person to enforce air-emissions regulation, so extending 42 U.S.C. § 6972(a)(1)(B) in that manner would require courts to create a private enforcement mechanism Congress deliberately withheld. *Id.*

The legislative history confirms that this limitation was deliberate. When Congress enacted the 1984 amendments to RCRA, it did so against the backdrop that the EPA already possessed authority to regulate air emissions under the Clean Air Act, but the Senate Report criticized the EPA's performance under the Clean Air Act as "appallingly slow." *Id.* at 1028. Congress's response was not to authorize private plaintiffs to regulate air emissions through RCRA's citizen-suit provision, but instead to amend RCRA by adding section 6924(n), which directs EPA rulemaking over air emissions from hazardous-waste treatment, storage, and disposal facilities without creating any private right of action. *Id.* at 1025. As the Ninth Circuit explained, the existence of 42 U.S.C. § 6924(n) shows that Congress knew how to address air emissions within RCRA and chose to confine enforcement to the EPA, and that courts are therefore "not at liberty to disturb" that choice by extending 42 U.S.C. § 6972(a)(1)(B) beyond its text. *Id.* at 1029-30. Where Congress has drawn those lines, courts may not expand RCRA's citizen-suit provision simply because a particular pollutant is not comprehensively regulated elsewhere. To do so would rewrite section 6972(a)(1)(B) and convert RCRA into an air-pollution statute Congress never intended.

IV. The District Court Misapplied *Winter's* Irreparable Harm Requirement to Grant an Injunction on the Basis of Harm to the Public, Rather than a Showing of Likely, Plaintiff-Specific Injury.

The lower court's interpretation of *Winter's* four-factor preliminary-injunction test impermissibly collapses those factors by allowing evidence of one analytically distinct factor to satisfy another, effectively treating them as interchangeable. Other courts consistently interpret the *Winter* test to require a plaintiff-specific showing of irreparable harm that is separate from a

showing of harm to the public. Abandoning that requirement waters down the limits that *Winter* places on the availability of preliminary injunctions.

A. ***Winter*** **Requires a Showing of Likely, Plaintiff-Specific Irreparable Harm.**

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. To satisfy the irreparable harm prong, the harm must be likely, not speculative, imminent, concrete, and not compensable by money damages. *Id.* Prior to *Winter,* some courts permitted generalized public harm as evidence to inform the irreparable-harm analysis. *See Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 781, 788 (4th Cir. 1991). However, *Winter* later clarified that approach by implementing the modern four-factor test for a preliminary injunction, establishing that the irreparable-harm factor and public-interest factor are analytically distinct and should not be treated as interchangeable. *See Beber,* 140 F.4th at 463 (treating irreparable harm and public interest as analytically distinct factors in an environmental pollution dispute). The irreparable-harm factor is "about the individual interests of each movant," whereas "[t]he public-interest factor is about the good of society as a whole." *Id*. Because these factors are distinct, a plaintiff cannot successfully establish the irreparable harm factor by showing evidence of public harm. *Id.* Rather, a plaintiff must demonstrate that "they themselves are likely to suffer irreparable harm absent an injunction." *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 822 (9th Cir. 2018).

In ruling in favor of the VEA, the district court relied upon evidence of PFOA deposits on farmland, risk to the food supply, and environmental contamination extending beyond the VEA's property. Notably, these are all harms shared by the surrounding agricultural community. R. at 14-

15. The court expressly found that the VEA failed to show that its members were likely to suffer irreparable harm before trial yet still found that the irreparable-harm factor was satisfied based solely on these generalized harms. R. at 15. All of these cited harms are public harms and do not demonstrate a plaintiff-specific injury. Under *Winter* and *Beber,* evidence of generalized public harm may inform the public-interest factor but cannot independently establish irreparable harm. *Beber,* 140 F.4th at 463.

Further, the record does not show that the VEA's members face any imminent harm prior to trial as a result of the alleged PFOA deposits. R. at 13. Upon learning of the potential contamination, VEA's members stopped using the public water supply and switched to bottled water. R. at 8. VEA members also stopped distributing food that was grown on the affected farmland. R. at 9. These voluntary actions substantially mitigated risk of harm to the VEA members as a result of any alleged PFOA contamination. Because the VEA's members have taken these steps to avoid consumption of potentially contaminated food and water, any alleged harm to those members is neither imminent nor irreparable.

Additionally, the EPA's recent regulatory standards confirm the absence of imminent, irreparable harm. Recently, the EPA established a Maximum Contaminant Level ("MCL") of four parts per trillion ("ppt"), but that standard will not become enforceable until 2029. R. at 7. Testing of Mammoth's public water supply revealed current PFOA levels of only 3.9 ppt. R. at 7. Even if the future MCL applied today, Mammoth's public water supply would remain in compliance. PFOA levels that fall below future regulatory limits do not demonstrate a likelihood of imminent, irreparable harm.

Even if this Court finds that the VEA has standing to pursue its claims, that determination does not automatically satisfy the irreparable-harm factor. *Beber*, 140 F.4th at 463. Standing is an

inquiry that asks only whether the plaintiff has alleged a special injury that allows the court to step in and resolve the dispute. Irreparable harm is a remedial and forward-looking analysis that asks whether the plaintiff faces a likelihood of imminent, non-compensable injury that justifies the extraordinary remedy of a preliminary injunction. So, a plaintiff may successfully establish standing based on a past injury but fail to show that it will suffer irreparable harm in the future if the injunction is not awarded. While public injury may support standing or inform the public-interest factor, it cannot substitute for the distinct requirement that the plaintiff himself is likely to suffer irreparable harm absent an injunction. *Id.*

B. Treating Public Interest Evidence as Irreparable Harm Collapses *Winter's* Four-Factor Test and Dilutes Its Limits on Injunctions.

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). The *Winter* test gives concrete structure to that demanding standard by requiring plaintiffs to establish each of the four prerequisites before a court may grant injunctive relief. *Winter*, 555 U.S. at 20. Among these factors, irreparable harm serves a critical role in limiting the availability of an injunction. Allowing evidence of public harm to satisfy the irreparable harm requirement impermissibly collapses *Winter's* four-factor test. As *Winter's* multifactor framework reflects, a likelihood of irreparable harm to the plaintiff in the absence of injunctive relief is a separate requirement from a showing that the injunction would serve the public interest. *Winter*, 555 U.S. at 20. Because irreparable harm and public interest serve distinct functions within the *Winter* analysis, treating generalized public harm as sufficient to establish irreparable harm would collapse those inquiries and eliminate the independent force of the irreparable harm requirement. *See id.*; *Beber,* 140 F.4th at 463.

The district court relied upon evidence of public harm to satisfy the irreparable harm factor of the *Winter* test. R. at 13-15. The VEA pointed to alleged PFOA deposits on their land and surrounding land as evidence that the deposits were adverse to the public interest and relied upon the same evidence to show that irreparable harm would occur if injunctive relief was not granted. R. at 13-14. These concerns apply broadly to the entire affected area, and do not constitute a unique, irreparable injury to the VEA itself. This evidence is relevant only to the public interest factor, not the irreparable harm factor of the *Winter* test. By permitting the same evidence of generalized public harm to satisfy both factors, the district court effectively allowed a showing on the public-interest prong to do the work of the irreparable-harm requirement. The framework adopted by the district court is inconsistent with the distinctive framework established in *Winter* and inappropriately eliminates the intended independent effect of the irreparable harm factor.

Adopting this simplified framework dilutes the limits on injunctions established in the *Winter* test. The Supreme Court emphasized that a preliminary injunction is an extraordinary remedy because it is issued before a court has reached a fully informed decision on the merits. *Winter*, 555 U.S. at 9. By allowing evidence of generalized public harm to satisfy the irreparable harm requirement, courts lower the threshold for injunctive relief and expose defendants to binding judicial restraints before proceedings have concluded. This simplified framework effectively disregards *Winter's* requirement that each factor be satisfied and exposes the defendant to a significant legal remedy based on an incomplete record. *Id.* at 20. Because the irreparable harm factor is not otherwise established by the facts in the record, this Court should reverse the district court's decision to implement a preliminary injunction.

CONCLUSION

For these reasons, this Court should affirm the order of the United States District Court for the Middle District of Vandalia staying proceedings pending appeal and reverse the district court's grant of the VEA's preliminary injunction.

CERTIFICATE OF SERVICE

Pursuant to *Official Rule* IV, *Team Members* representing BlueSky Hydrogen Enterprises certify that our *Team* emailed the brief (PDF version) to the *West Virginia University Moot Court Board* in accordance with the *Official Rules* of the National Energy Moot Court Competition at the West Virginia University College of Law. The brief was emailed before 1:00 p.m. Eastern time, February 4, 2026.

Respectfully submitted,

Team No. 18