No. 24-0682

IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

VANDALIA ENVIRONMENTAL ALLIANCE,

Plaintiff-Appellee-Cross Appellant

-v.-

BLUESKY HYDROGEN ENTERPRISES

Defendant-Appelant

Appeal from the United States District Court for the Middle District of Vandalia
C.A. No. 24-0682
Judge Samuel L. Danger

BRIEF OF DEFENDANT-APPELANT BLUESKY HYDROGEN ENTERPRISES

Team 19

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

FEDERAL STATUTES

OTHER SOURCES

JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction to hear this case under 28 U.S.C. § 1332: BlueSky Hydrogen Enterprises ("BlueSky") is incorporated and headquartered in Richmond, Virginia, while the Vandalia Environmental Alliance ("VEA") is based in Vandalia, the actions at issue allegedly occurred in Vandalia, and the action involves a controversy exceeding the sum of $75,000. This Court has jurisdiction over these appeals through 28 U.S.C. § 1292. BlueSky has filed an appeal on the granting of a preliminary injunction via § 1292(a)(1), while the VEA has filed a cross-appeal on the granting of the stay of trial proceedings via § 1292(b). This court has exercised its discretion to hear the cross-appeal. These appeals were timely filed under FRAP Rule 4(a)(1), "within 30 days after entry of the judgment or order appealed from." Fed.R.App. P. 4(a)(1). The district court issued the order granting a preliminary injunction on November 24, 2025 and BlueSky filed its appeal a week later on December 1. The district court granted the motion to stay on December 8, and VEA filed its appeal of that in a timely fashion.

STATEMENT OF THE ISSUES PRESENTED

1. Whether the district court correctly stayed its proceedings pending appeal of the preliminary injunction under *Coinbase, Inc. v. Bielski,* 599 U.S. 736 (2023);
2. Whether the VEA has a special injury sufficient to give it standing to bring its public nuisance claim for BlueSky's PFOA air emissions;
3. Whether BlueSky's air emissions of PFOA is considered "disposal" under RCRA and thus the district court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim; and

4. Whether the irreparable harm prong of the *Winter* test considers only harm to the Plaintiff, or whether harm to the public can also be evidence of irreparable harm sufficient to issue a preliminary injunction.

STATEMENT OF THE CASE

BlueSky is a hydrogen company that owns and operates the SkyLoop Hydrogen Plant ("SkyLoop") in the Middle District of Vandalia, south of Mammoth. Skyloop uses numerous kinds of feedstock, including waste, to cleanly create hydrogen fuel. One of Skyloops' feedstocks is industrial sludge from Martel Chemicals which has historically used PFAS in its operations. The VEA, is a regional environmental public interest organization with members residing in Mammoth. The VEA operates a farm five miles south of Mammoth and a mile and a half north of SkyLoop. While there are many other local farms between VEA and SkyLoop, the VEA uses its farm to donate food and encourage community members to pick up farming.

In 2025, the VEA was made aware that Mammoth Public Service District's ("PSD") water supply had been contaminated by a concentration of PFOA.. In response, the VEA alerted its members of the contamination, instructing them to cease drinking water from PSD, and stopped farming its land. The VEA filed an action against Bluesky—a public nuisance claim and a RCRA imminent and substantial endangerment citizen suit claim.

In its action, the VEA alleges that BlueSky's air emissions containing PFOA have created a public nuisance by contaminating the PSD water supply, and that they have been specially harmed because PFOA has landed on its property allowing them to bring a public nuisance claim. The VEA is also bringing an action under the Resource Conservation and Recovery Act's ("RCRA") imminent and substantial endangerment statutory ("ISE") scheme. They then sought a preliminary injunction. In support, the VEA alleged that the entire community of Mammoth

faced irreparable harm because of the PFOA emissions. The VEA asserted case law from several 6th Circuit district courts, holding that air emissions constitute "disposal" under RCRA, However, the VEA conceded other nearby farms were being similarly harmed. While BlueSky conceded the public interest and balance of harm factors under the four-part *Winter* preliminary injunction test, it asserted that (1) because BlueSky's actions do not constitute "disposal" under RCRA as laid out in 9th circuit precedent, the VEA cannot prove that it is likely to succeed on the merits, and (2) irreparable harm can only be assessed through the VEA's members, who have testified that they have since stopped drinking the PSD water upon discovery of contamination. Additionally, BlueSky asserted that the VEA had not been specially harmed when viewed against the comparative population.

Upon review The district court granted the preliminary injunction. First, the court accepted the VEAs argument that it was specially injured due to the PFOA landing on its vegetable gardens, while disregarding the other farms in their analysis. The court also adopted the 6th Circuit court's reasoning for "disposal," and considered the entire community when examining irreparable harm. BlueSky appealed the preliminary injunction and sought to stay the trial pending the appeal. The district court granted the stay and the VEA filed an interlocutory appeal of the stay order. The two appeals have been consolidated into this matter before the court.

SUMMARY OF THE ARGUMENT

The district court correctly applied circuit precedent in staying the trial proceedings pending appeal of the preliminary injunction. Based on historical and modern Supreme Court precedent, when appeals are filed then the district court is divested of jurisdiction of the issues on appeal, and when effectively the entire case is on appeal then the trial proceedings must be automatically stayed.

Next, the VEA is unable to establish that they have suffered a special injury because they have not alleged a harm that is different in kind and degree from the general public. Additionally, because their injury does not flow from the public nuisance, case law further suggests that they cannot bring a private public nuisance suit.

The district court abused its discretion by finding that VEA was likely to succeed on the merits based solely on an erroneous interpretation of "disposal" under RCRA. The statutory text limits "disposal" to conduct in which solid waste is first placed "into or on any land or water," and it does not encompass air emissions that only later deposit on land or water. By adopting a non-binding and disputed interpretation that reads this language out of the statute, the district court improperly expanded RCRA beyond clear congressional intent and into territory governed by the Clean Air Act. Because likelihood of success is the most important factor under *Winter*, and that finding rested entirely on a legal error, the preliminary injunction must be reversed.

The district court also wrongfully allowed the VEA to substitute their required showing of irreparable harm to themselves with purely public harm. It can be gleaned from the language in *Winter*, other persuasive cases, and the case law provided by the VEA that the appellants must prove some irreparable harm to themselves.

ARGUMENT

I. The district court correctly applied *Coinbase* to stay trial proceedings in accordance with circuit precedent because all of the aspects of the case are involved in the appeal.

In 1982, the Supreme Court granted certiorari to resolve a circuit split and certify that a federal district court and a federal court of appeals should not have jurisdiction over a case simultaneously. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982). The *Griggs* principle holds that the "filing of a notice of appeal is an event of jurisdictional significance–it 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." *Id.* at 58. Forty-one years later, the Supreme Court reaffirmed this principle, but required the staying of trial proceedings to be mandatory in instances where the issues on appeal were effectively the entire trial. *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). Coinbase dealt with an arbitration, but the Supreme Court did not cabin their holding to such scenarios: "absent contrary indications [by Congress], the background *Griggs* principle already requires an automatic stay of district court proceedings that relate to any aspect of the case involved in the appeal." *Id.* at 744.

Two years later, the issue of which court had jurisdiction once an appeal was filed made its way to the Fourth Circuit Court of Appeals. *City of Martinsville, v. Express Scripts, Inc.,*128 F.4th 265 (4th Cir. 2025) revolved around the appeal for an order to remand to state courts. Because the appeal decided whether the state court or federal district court held jurisdiction, the entire case was at issue on appeal. The court of appeals adhered to the decision in *Coinbase* and *Griggs* and automatically stayed the district court decision? pending the appeal. *Express Scripts,* 128 F.4th at 270. This Court then adopted the *Express Scripts* opinion and reasoning as its own for questions of jurisdictionality on appeal.

Now before the Court is the question of whether the United States District Court for the Middle District of Vandalia properly followed circuit precedent when it stayed trial court proceedings pending the appeal of a preliminary injunction. The answer is yes because the issues on appeal for the injunction make up the entirety of the case for trial, and because the VEA has not asserted any authorities holding that appeals of preliminary injunctions covering the core case do not fall within the range of *Coinbase*.

First, outside of this issue, every issue on appeal goes towards the merits of the trial proceedings. Those are: whether the VEA has standing to bring a public nuisance claim through special injury status; whether the district court properly construed air emissions of PFOA to be "disposal" under RCRA leading to the court finding a likelihood of success on the merits; and whether the district court was correct to consider the population beyond the VEA when determining irreparable harm. These are exactly the issues in contention at trial, and if this Court finds in favor of BlueSky for one, if not all three, then the landscape ahead of the trial will shift dramatically. Ruling in favor of BlueSky on the public nuisance claim renders it ineligible for trial. Ruling in favor of BlueSky on either the RCRA issue or *Winter* irreparable harm issue practically dissolves the VEA's motion for a preliminary injunction. Conversely, because the three issues before this Court are the only ones being disputed at the district court level, not granting a stay for the trial proceedings pending this appeal would lead to the district court and this Court hearing the issues simultaneously. Not only is this antithetical to the *Griggs* principle, but it is wasteful to the scarce judicial resources of both this Court and the district court. *Coinbase*, 599 U.S. at 743. Additionally, Congress has not spoken on whether 28 U.S.C. § 1292(a)(1), the basis for BlueSky's appeal, disallows stays of trials pending appeals.[1]

[1] BlueSky concedes that 28 U.S.C. § 1292 (1958) was promulgated prior to the decision in *Griggs v. Provident Consumer Discount*, 459 U.S. 56 (1982). However, the *Griggs* principle has existed since that time and Congress has not made any legislative moves to create a "no-stay provision." Following *Coinbase*, Congress has sufficiently

Second, the VEA has provided several district court cases of persuasive authority to convince this Court that *Coinbase* and *Express Scripts* do not extend to preliminary injunctions. These cases are all distinguishable. Two of these cases barely mention *Coinbase*; one in a footnote, and the other attached in the party's arguments with a note that *Coinbase* was about arbitration, but otherwise disregarding it.[2] The two cases which do meaningfully consider *Coinbase's* applicability and declined to use them have distinguishable facts.

In *Brown v. Taylor*, No. 2:22-cv-09203-MEMF-KS, 2024 WL 1600314 (C.D. Cal. Apr. 3, 2024), the interlocutory appeal was dealing with a rejected preliminary injunction and the appellant sought to stay the appellee's motion for summary judgement. The court found that there was "little overlap between the issues raised in the [two] orders," *Brown*, 2024 WL 1600314, at *3, and so declined to stay the case. The court in *Forester-Hoare v. Kind*, No. 23-cv-537-JPS, 2025 WL 101660 (E.D. Wis. Jan. 15, 2025) similarly found that the motion to stay the case was sufficiently different from the pending preliminary injunction. It concluded "the question of whether Plaintiff can succeed on the merits [on one of three separate claims] is different from whether he was entitled to preliminary relief…the interests of justice will best be served by the case proceeding forward…" *Forester-Hoare,* 2025 WL 101660, at *1. The case before this Court is unlike either of these.

Finally, the VEA fears that affirming this motion to stay would encourage the weaponization of motions to stay trials pending appeals. These fears are unfounded and inappropriately applied here. As the Supreme Court reassured, "the courts of appeals possess robust tools to prevent unwarranted delay," such as by imposing sanctions or through a party's

---

been put on notice of its duty to create such no-stay provisions, and this Court should not break from circuit and Supreme Court precedent on this technicality.

[2] *See SEC v. Reven Holdings*, *Inc.*, No. 1:22-cv-03181-DDD-SBP, 2024 WL 3691603 (D. Colo. Aug. 7, 2024); *N. Miss. Med. Ctr. v. Quaritz Tech, Inc.,* No. 1:23-cv-00003-CWR-LGI, 2024 WL 2262684 (N.D. Miss. May 17, 2024)

request to dismiss interlocutory appeals as frivolous, *Coinbase*, 599 U.S. at 745. This appeal is not frivolous as it cuts straight to the heart of the entire legal proceeding. Therefore, this Court should follow its precedent, and uphold the district court's decision to stay the trial proceedings.

II. The District Court erred in finding that the VEA suffered a "special injury" under public nuisance doctrine when the VEA did not properly allege one according to the state of the law in a majority of circuits.

Having concluded that the stay of the trial court was properly decided, the Court must consider the modern application of a long-existing tort: public nuisance. A public nuisance is an unreasonable interference with a right common to the general public. Restatement (Second) of Torts § 821B (Am. L. Inst. 1979). It was decided below, and BlueSky concedes, that releasing PFOA which pollutes public water supplies would be a public nuisance. Bluesky contests the VEA's standing to assert this claim and enjoin Bluesky as a result. Originally, remedies for public nuisance were only obtainable through criminal prosecution or a suit to enjoin the nuisance brought by or on behalf of the state or an appropriate subdivision of the public authority. *Id.* § 821C. However, private suits for public nuisances became codified by the Supreme Court in the early 20th Century in instances where the nuisance so specially injured a private party that it created a cause of action. *Arizona Copper Co. v. Gillespie*, 230 U.S. 46 (1913).

Modern courts have described this "special injury" doctrine using the example of a public road where a party has obstructed it. The obstruction interferes with the equal right of each citizen to the road's reasonable use and is therefore a public nuisance. *Higgins v. Huhtamaki, Inc.,* No. 1:21-cv-00369-JCN, 2024 WL 4008257, at *6 (D. Me. Aug. 30, 2024). But should a plaintiff attempt to use the obstructed road and experience significant delay, or have the obstruction block access to their property, or suffer injury or damage to their vehicle due to the

obstruction, then that plaintiff would have suffered a "special injury." *Id.*, *e.g.* Restatement (Second) of Torts § 821C cmt. d (Am. L. Inst. 1979). This special injury must be different in kind and degree than the injury suffered by the public, but difference in kind is the crucial determination; a driver who must travel the obstructed road twelve times in a week suffers no more special injury than the driver who drives it twice in a week. *Id.* § 821C, Cmt b. The kinds of injury commonly asserted for special injury are personal injury, pecuniary harm, interference with property rights, or interference to business or contracts. 58 Am. Jur. 2d Nuisances §§ 189-191 (2024).

The district court found that the VEA had sustained a special injury by means of PFOA landing on its vegetable farm. The district court erred in coming to this conclusion because the VEA has not suffered an injury that is different in kind and degree from the other members of the community, and has not shown that its injury is derived from the common right. This Court reviews the issue with a clear error standard on findings of fact, and a de novo standard for conclusions of law.

a. The VEA has not suffered any interference with property rights that can distinguish it from the surrounding farmland and qualify it for "special injury."

In the subset of public nuisance cases involving chemical spills or pollution, interference with property rights is not always the most effective route absent a showing of inability to use or enjoy the property. But suffering devaluation or loss of enjoyment of the property sufficiently does distinguish the sufferer from the broader general public. While the VEA may come close to being able to show that its property has been damaged, it fails in two clear ways: (1) the VEA has not alleged that its property has been devalued, let alone in a distinguishable fashion from the comparative population, and (2) it has not alleged a burden caused by Bluesky's actions that is preventing the VEA from enjoying the its property.

Examining *Arizona Copper*, 230 U.S. 46, is useful. There, Gillespie was a riparian landowner who brought action against an upstream copper mine for polluting the river that in turn polluted his land through irrigation. *Id.* at 57. The court held that the common right that had been injured was the river[3], and the pollution into the river constituted a public nuisance. *Id.* What granted Gillespie a cause of action was that his land was polluted in addition to the pollution done to the general public right; he had experienced pollution on his land stemming from the polluted stream for about twenty years before getting his time in court. This case shares attenuated similarities at best with the VEA's case.

Principally, *Arizona Copper* featured a farmer who was harmed by the pollution for decades and actively prevented him from properly farming his land.[4] This is vastly different from the short period of time that the VEA has suffered the PFOA allegedly deposited by Bluesky, after which the VEA voluntarily stopped farming. Additionally, the interference with Gillespie's property rights was derived from the polluted public right. This is a common thread in many public nuisance cases: an injury to the enjoyment of one's private property can sustain a public nuisance case, but only if the damages were caused by the interference with the public right. *Corvello v. New England Gas Co.,* 460 F.Supp.2d 314, 325 (D.R.I. 2006).[5] In *Arizona Copper*, the public right was the Gila River, and in *Corvello* it was the ground which houses were built upon, filled with toxic coal gasification waste polluting the homes and causing the city to issue a moratorium on excavation in the area. *Id.* at 319. But the facts are different here: the public right

[3] All rivers, streams and running waters have been declared public by statute in Arizona. *Arizona Copper Co. v. Gillespie*, 230 U.S. 46, 55 (1913).

[4] The effects were three-fold: blocking irrigation through raising the height of land at initial deposition, forming a compact impermeable layer over the soil, and packing the dirt around the roots and stems choking the plants. The second effect was the most injurious because the alfalfa they grew could not survive deep plowing to break up the layer of deposited material. *Arizona Copper Co. v. Gillespie*, 12 Ariz. 190 (1909), aff'd, 230 U.S. 46 (1913).

[5] *See also Lewis v. Gen. Elec. Co.*, 37 F.Supp. 2d 55 (D.Mass. 1999); *Gibson v. Am. Cyanamid Co*, 756 F.Supp. 3d 660 (E.D. Wis. 2024); *Thornburgh v. Ford Motor Co.*, No. 4:19-CV-01025-HFS, 2021 WL 1230271 (W.D. Mo. Mar. 31, 2021); *Tosco Corp. v. Koch Indus., Inc.,* 216 F.3d 886 (10th Cir. 2000).

which the VEA makes its public nuisance claim on is the polluted drinking water. The drinking water is polluted from PFOA landing on wellfields which PSD feeds from; this same emission of PFOA is what is polluting the VEA's farmland, not the polluted drinking water.[6]

There are two other faults with the VEA's interference with property rights claim. First, there are a multitude of other farm owners similarly situated and harmed as the VEA has been, yet do not join them in pursuing an injunctive remedy, and an apparent lack of interference. Second, the district court's finding of special injury for the VEA was based on PFOA landing on its vegetable garden, yet the district court disregarded the other farmers in a move that was a clear error of fact. The VEA also has not taken steps to align itself with the other farmers which would give weight to the purported interference of property rights, as shown in *Baptiste v. Bethlehem Landfill Co.,* 956 F.3d 214 (3rd Cir. 2020).

In *Baptiste*, the plaintiff brought a challenge to a nearby landfill development on behalf of approximately 8,500 landowners who were represented as a putative class. Plaintiffs alleged that defendants did not properly manage their landfill in accordance with the Solid Waste Management Act, resulting in "noxious odors, pollutants, and air contaminants," wafting onto the plaintiffs properties. *Baptiste* 956 F.3d at 218. The odor was so horrendous that it kept the homeowners from enjoying their homes and land, disallowing swimming in their pools, having guests over, and sometimes virtually trapping them in their residence. *Id*. The resulting "inability" to use their property was key to the appeal. *Id.* at 221. That district court incorrectly stated that because so many suffered the injury it was not special, but the court of appeals corrected them by directing the attention to the comparative population outside the putative class. *Id.* Where community members and visitors may have been put off by the odors, "the Baptistes

[6] If the district court found that PFOA being transmitted through the air or landing on the ground constituted a public nuisance (which BlueSky does not concede), the VEA would still not be specially injured as all of the surrounding farmlands and Mammoth's residents would suffer the same public nuisance.

have alleged additional invasions of their private property rights *resulting from the interference with the common right to clean air.*" *Id.* at 222.[7] (emphasis added).

Baptiste is particularly enlightening if you consider a scenario where the VEA was representing the owners of additional farmland as a class. Those land owners would be distinguishable from the rest of the comparative population, Mammoth's residents, and would be considered together with VEA. If they all were prevented from growing crops on their land as a result of the PFOA, then they would present a stronger case that BlueSky allegedly interfered with their property rights. As it stands, the other farmers are a part of the comparative population that VEA is considered against, and there is no indication that they have stopped farming.[8]

The interference with the property rights of the VEA is very well its best argument, yet the VEA's inability to be differentiated from the comparative population, and voluntary cessation of farming, do not indicate that they have been specially injured. Nor has VEA alleged that their property value has decreased. The organization's other bases for special injury status are weaker still.

b. The VEA did not allege a special injury through harm to their business or contracts, personal injury, or pecuniary harm.

Parties may assert a special injury status if, as a result of the public nuisance, they have suffered interference with their business. This can be through the nuisance causing the party to incur additional expenses or burdens while performing a specific contract for example. 58 Am. Jur. 2d Nuisances § 191. The VEA has no existing contracts however, and donates their food to

[7] *See also Strickland v. Lambert*, 268 Ala. 580 (1959) (Finding complainant suffered from a public nuisance which cost them the comfortable enjoyment of their property when a nearby dwelling which housed chickens caused odors and flies to permeate their residence for three years.)

[8] Further, the VEA operates its farm to teach and encourage members of Mammoth to farm their own crops. It is probable to say that some of those residents may have picked up farming. Should the factual findings at trial show that the PFOA is being deposited into those farmlands, then the VEA's claim of being specially injured weakens further.

food banks around Mammoth. Nor have they alleged that they have actually suffered a loss of reputation. As a result, VEA does not meet this definition of specially injured.

Personal injuries are one of the best indications that a plaintiff has suffered a special injury. The district court in *Higgins v. Huhtamaki, Inc.,* No. 1:21-cv-00369-JCN, 2024 WL 4008257, at *6 (D. Me. Aug. 30, 2024), citing the Restatement (Second) of Torts, calls personal injuries derived from public nuisances as being "well established" to create special injuries, as "the harm is normally different in kind from that suffered by other members of the public." This injury must be presently established though, and district courts have been hesitant to say that "accumulation of PFOA in the plaintiffs' blood, and the alleged risk of developing certain diseases in the future…constitute an 'injury' for purposes of proving [tort] claims." *Rhodes v. E.I. du Pont de Nemours & Co.*, 636 F.3d 88, 94 (4th Cir. 2011). This is because abstract fears of future disease or harm, which are not reasonably certain to result in significant physical injury, are not commonly seen as a special harm distinct from other members of the community. *Higgins*, 2024 WL 4008257, at *7.

Consider two public nuisance cases from Massachusetts. In *Sullivan v. Chief Justice for Admin. & Mgmt. of the Trial Court*, 858 N.E.2d 699 (Mass. 2006), plaintiffs brought suit against the chief of maintaining the trial court courthouse for not maintaining the building while they worked there, resulting in them being exposed to significant amounts of asbestos. In, *Anderson v. W.R. Grace & Co.*, 628 F. Supp. 1219 (D. Mass. 1986), plaintiffs brought suit against alleged contaminators for releasing TCE and other chemicals into groundwater. Both TCE and asbestos, just as PFOA in *Rhodes* and the present case, are concededly dangerous chemicals, yet only the plaintiffs in *Anderson* were victorious in proving special injury. The plaintiffs in *Anderson* had contracted leukemia, and they alleged the contraction stemmed from the contaminated

groundwater. *Anderson* at 1222. This injury to the person's health was "by [its] nature 'special and peculiar' and cannot properly be said to be common or public." *Id.* at 1233.

Compare that to *Sullivan*; the plaintiffs alleging they were only at greater risk of developing mesothelioma at the time of filing due to the asbestos exposure led the court to see their injury as one that was shared by the broader community. *Sullivan* at 716. Even if plaintiffs had been exposed for a greater period of time due to employment there, "the harm is the same in kind as that suffered by other members of the public who are exposed to the [same] environmental conditions." The plaintiffs in *Sullivan* and *Rhodes* exemplify the pitfall that this PFOA public nuisance claim suffers: attempting to show an injury distinguishable from the public at large is insufficient when what is alleged is a diffuse risk of harm through ubiquitous exposure of a concerning chemical. *Higgins,* 2024 WL 4008257, at *9.

Finally, accretion of pecuniary damages is a common method for a private cause of action for public nuisances in pollution cases.[9] When a party incurs an expense in order to clean their property of the pollution, then that pecuniary loss is considered to be of a different kind of harm than that suffered by the general public. Rest. 2d Torts § 821C Cmt. h (1979). However, the VEA has not alleged that they have suffered expenses as a result of testing the grounds for the PFOA or for removing it. As a result, this ground for special injury is not available to them.

Based on the previous exploration of public nuisance doctrine and "special injuries," this court should correctly find that the district court below made a clear error of fact when declaring that the VEA had been specially injured. In addition to there being a split between the public right they allege Bluesky has polluted and their basis for claiming to be specially injured, they do

[9] *See Johnson v. 3M*, 563 F. Supp. 3d 1253 (N.D. Ga. 2021); *Ryan v. Grief, Inc.*, 708 F. Supp. 3d 148 (D. Mass. 2023); *City of Portland v. Boeing Co.*, 179 F. Supp. 2d 1190 (D. Or. 2001) (Representing cases where pecuniary harm incurred plaintiff shows satisfies "special injury.")

not fit into any categories to meet such a status. This court should find that the VEA does not have standing to pursue a public nuisance claim against Bluesky.

III. The District Court Improperly Found a Likelihood of Success because its interpretation of "disposal" under RCRA rests on a legal error.

"When reviewing a district court's grant of a preliminary injunction, we review the court's findings of fact for clear error, its conclusions of law de novo, and the ultimate decision granting the preliminary injunction for an abuse of discretion." *Bimbo Bakeries USA, Inc. v. Botticella*, 613 F.3d 102, 109 (3d Cir. 2010). To prove that a preliminary injunction is warranted, the district court must follow the well-established four-part *Winter* test. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The moving party must first, and most importantly, prove that it has a likelihood of success on the merits. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc) ("The first factor under *Winter* is the most important …"). For a RCRA ISE claim to be successful, plaintiffs here were required to demonstrate to the district court a likelihood of proving at trial that (1) the air emissions at BlueSky's SkyLoop facility constitutes "solid waste" under RCRA; 2) those air emissions were handled by BlueSky in a manner consistent with "disposal," and 3) that the air emissions may present an ISE. 42 U.S.C. § 6972(a)(1)(B); *Ecological Rts. Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 514 (9th Cir. 2013).

Here, the district court chose to anchor its finding that the VEA is likely to succeed on the merits of its RCRA claims based on a disputed interpretation of "disposal," which weakens the district court's sole reasoning for finding likelihood of success on the merits. And because the district court's finding as to success on the merits depended entirely on its erroneous interpretation of "disposal" under RCRA, this Court should find that the district court abused its discretion when granting the preliminary injunction. *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d

700, 708 (3d Cir. 2004) (Appellate courts must reverse if the district court has proceeded on the basis of an erroneous view of the applicable law); *see also Mallet & Co. v. Lacayo*, 16 F.4th 364, 379 n.17 (3d Cir. 2021).

a. Tools of statutory construction prohibit the court from finding that "disposal" under RCRA encompasses air emissions that only later deposit on land or water.

The ISE citizen suit provision of RCRA allows citizens to only bring claims against persons who have "contributed or who [are] contributing to the past or present handling, storage, treatment, transportation, *or disposal* of any solid or hazardous waste which may present an ISE to health or the environment."42 U.S.C. § 6972(a)(1). (emphasis added). Under § 6903(3), the definition of "disposal" is very specific: it limits "disposal" to particular conduct causing a particular result. *Ctr. for Cmty. Action & Env't Just. v. BNSF R. Co.*, 764 F.3d 1019, 1024 (9th Cir. 2014). First, an actor must discharge, deposit, inject, dump, spill, leak, or place solid waste *"into or on any land or water." Id.* (emphasis added). Then, that solid waste must be placed in a way that it may "enter the environment or be emitted into the air or discharged into any waters" to constitute disposal. *Id.*

Here, by adopting the broad interpretation of "disposal" in *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.,* 91 F. Supp. 3d 940 (S.D. Ohio 2015) the district court has wrongly followed in the 6th circuit's footsteps by (1) reading out a large portion of the statutory definition, giving "into or on any land or water" no effect, (2) improperly expanding RCRA regulations far past clear congressional or agency intent and (3) circumventing the regulatory framework of the CAA, CWA, and the SDWA. *See BNSF*, 764 F.3d at 1024.

Interpretation of the term "disposal" must begin with the text of the statute. *BNSF*, 764 F.3d at 1024 ("We begin with RCRA's text."); *see also Safe Air for Everyone v. Meyer,* 373 F.3d 1035, 1041 (9th Cir. 2004). "Disposal" is cabined to the acts listed in 42 U.S.C. § 6903(3), which

notably omits the term "emitting." *BNSF,* 764 F.3d at 1024. Under *expressio unius est exclusio alterius*, when Congress provides a list, the court may assume that "what is not listed is excluded." *Id.* Under RCRA, Congress not only excluded "emit" from the express list of disposal activities, but also demonstrated that it "knew how to use the word 'emit' when it wanted to" within the statute. *Pakootas v. Teck Cominco Metals, LTD.*, 830 F.3d 975, 983–84 (9th Cir. 2016). Congress used both "emitting" and "disposing" within RCRA's definition of "release," demonstrating a well-established presumption that when Congress includes particular language in one section of an Act but omits it in another, it does so intentionally. *BNSF,* 764 F.3d at 1024. And in a similar vein, Congress's choice to include "emitting" in addition to "disposing" within RCRA's definition of "release" indicates that it was aware that "disposal" fails to already encompass emissions. If it did, the term emitting would be superfluous.

BlueSky recognizes that courts have historically construed other elements of RCRA ISE suits broadly, particularly when it comes to defining "solid waste" under 42 U.S.C. §6903(27). *United States v. Sims Bros. Const.,* 277 F.3d 734, 740 (5th Cir. 2001) ("Under RCRA, for waste to be hazardous it must be 'solid waste.' "). That tendency arose largely from courts' application of *Chevron*'s two-step analysis when interpreting "solid waste." *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *See Connecticut Coastal Fishermen's Ass'n v. Remington Arms Co., Inc.*, 989 F.2d 1305, 1314-15 (2d Cir. 1993) (holding that, while hesitant to further complicate an already complex statute, the court was compelled to defer to EPA's dual definition of "solid waste" under its Chevron two-step analysis); *see also Owen Elec. Steel Co. of South Carolina, Inc. v. Browner*, 37 F.3d 146 (4th Cir. 1994) (where the court stated it would accord the EPA's interpretation of statutory definition of 'solid waste' substantial deference under *Chevron*); *Water Keeper Alliance v. U.S. Dept. of Defense*, 152 F.Supp.2d 163

(2001) (where the court stated that "EPA's conclusions regarding the interpretation of RCRA are entitled to deference" under *Chevron.*)

But such history does not require every element of an ISE claim be read so broad as to permit limitless expansion of RCRA, which the EPA recognized in at least two rulemakings when it spoke on the issue of non-contained gasses directly. *See N. Illinois Gas Co. v. City of Evanston*, 162 F. Supp. 3d 654, 660–61 (N.D. Ill. 2016) (discussing EPA's 1989 rulemaking concluding that RCRA's definition of "solid waste" excludes gases other than "containerized or condensed gases," and therefore non-contained air emissions cannot constitute RCRA disposal); *Id.* at 661 (distinguishing EPA's later CO2 sequestration rulemaking on the ground that the CO2 at issue was a "supercritical fluid," neither a gas nor a liquid, and therefore not an "uncontained gas" excluded from RCRA). Here, the VEA appears to suggest that "solid waste," "disposal," "imminent and substantial endangerment," and "irreparable harm" all be read in their broadest and textually unstable grounds, which risks assigning major regulatory authority in a manner that circumvents statutory and regulatory frameworks. For example, under 42 U.S.C. § 7409(b)(2), Congress already requires that standards be set through the CAA to protect public welfare "from any known or anticipated adverse effects" of air pollutants, which includes consideration of their effects on soils, water, and vegetation. And while RCRA may be a gap-filling statute, it is not a substitute for following properly established regulatory regimes. Here, the district court, through its adoption of the Sixth Circuit's interpretation of "disposal," has applied a non-binding and disputed district court precedent that encroaches on the Clean Air Act, massively expands the regulatory framework of RCRA, and fails a traditional statutory interpretation review. Therefore, the district court wrongfully adopted the Sixth Circuit's interpretation of disposal.

b. The district court committed an abuse of discretion by finding a likelihood of success based solely on a non-binding, unsettled, and textually flawed statutory interpretation of "disposal" under RCRA.

On review of the district court's decision to grant a preliminary injunction, abuse of discretion is found where the district court "based its decision [] on an erroneous legal standard or clearly erroneous finding of fact." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). As previously stated, a preliminary injunction is an extraordinary remedy issued in absence of a fully developed record. *Winter,*555 U.S. 7, 20(2008). Therefore, enjoining an actor before a claim has been fully argued requires more than a mere possibility of success on the merits. *Id.* at 22. That standard becomes even more difficult to meet when the court is faced with unsettled questions of statutory interpretation and competing interpretations from persuasive authorities. *See Just City, Inc. v. Bonner*, 758 F. Supp. 3d 785, 814-15 (W.D. Tenn. 2024) (denying plaintiffs motion for a preliminary injunction on the basis that the court could not determine plaintiffs were likely to succeed where there was strong uncertainty of the proper interpretation of statutory language that established statutory authority over the claim); *see also Revelex Corp. v. World Travel Holdings, Inc.*, 511 F. Supp. 2d 1320, 1324 (S.D. Fla. 2007) ("to the extent there is a close question on…interpretation, the Court cannot rest an injunction on concluding that Plaintiff's interpretation is correct.) Here, the district court determined that the VEA was likely to succeed on the merits of their RCRA claim based on a flawed textual understanding of "disposal" and provided no additional explanation to support that finding. Furthermore, in *Little Hocking Water,* the Sixth Circuit District Court held that "when interpreting what constitutes land disposal of solid waste under RCRA, the Court should proceed on a case-by-case basis…" 91 F. Supp. 3d at 966. Here, the district court appears to have adopted *Little Hocking Water*'s interpretation of "disposal" while failing to follow its instruction to

inform its interpretation of the term based on a case-by-case analysis that only a fully formed record provides. Therefore, the district court abused its discretion when it chose to adopt a textually flawed, excessively broad, and highly disputed 6th circuit interpretation of "disposal" to support its grant and the preliminary injunction must be reversed.

IV. The irreparable harm prong of the *Winter* test must consider harm to the plaintiff and cannot rely solely on general public harm.

Irreparable harm is defined as harm that is actual and imminent, not remote or speculative, and cannot be adequately remedied by monetary damages or other legal remedies available at a later stage of litigation. *Winter,* 555 U.S. at 129. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter* 555 U.S. 7 at 129.[10] "When reviewing a district court's grant of a preliminary injunction, we review the court's findings of fact for clear error, its conclusions of law de novo, and the ultimate decision granting the preliminary injunction for an abuse of discretion." *Bimbo Bakeries USA, Inc. v. Botticella*, F.3d at 109. BlueSky argues that irreparable harm must be shown to the plaintiff under the *Winter* test, and therefore harm to a third party alone cannot satisfy this prong. Rec. at 13.

The VEA is concerned that the PFOA allegedly emitted from SkyLoop could "increase their risk of adverse health effects, particularly given the persistent nature of PFOA and its tendency to accumulate in the body", if consumed regularly by its members. *Id* at 8. However, the VEA also admitted that although their members had been previously drinking from the PSD, "all members have since ceased drinking the public water and have resorted to buying bottled water." *Id*. In a separate claim, the VEA alleged that the PFOA residue on its farm undermines its

[10] Citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).

organization's mission and goodwill with the community because they, "fear that [they] could be unwittingly poisoning those who eat the food with PFOA." *Id* at 9. Similarly, the VEA also admits that they have since "ceased providing food to community food banks and soup kitchens out of an abundance of caution." *Id.* The current harms felt by the VEA are not "imminent" as described in *Winter*, and they can be easily remedied through monetary means. The irreparable harm prong of the preliminary injunction dispute should fall in favor of BlueSky.

Under VEA's framework, a private suit, if on behalf of the public, can use the public injury as a substitute for the plaintiff's own injury toward the irreparable harm prong. The District Court ultimately uses this interpretation in their analysis, but this is wrongly applied for two reasons. First, the precedent set by *Winter,* as well as that by several other circuit courts, uses language that affirms BlueSky's argument that the irreparable harm prong applies only to the plaintiff and not the broader public. Second, the VEA asserts that the Court should consider public harm as part of the irreparable harm that the plaintiffs must prove under *Winte*r, however, VEA must still show personal harm.

The Supreme Court in *Winter* asserted that in order to satisfy the irreparable harm prong, the plaintiff must prove that "*he* is likely to suffer irreparable harm in the absence of preliminary relief." *Winter* 555 U.S. at 20. (emphasis added). Several other Appellate courts in different jurisdictions use the same or similar language. The Second Circuit stated that "[p]laintiffs must demonstrate that absent a preliminary injunction *they* will suffer an injury that is neither remote nor speculative…." *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (emphasis added). The Eight Circuit stated that, "a federal court must consider the threat of irreparable harm to the movant, or whether the movant is likely to suffer irreparable harm in the absence of preliminary relief." *Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 462 (8th Cir.

2025). Finally, the Sixth Circuit reiterates that a, "'district court abuses its discretion when it grants a preliminary injunction without making specific findings of irreparable injury to the party seeking the injunction.'" *EOG Res., Inc. v. Lucky Land Mgmt., LLC*, 134 F.4th 868, 885 (6th Cir. 2025.[11]

The VEA contends that environmental cases offer a different structure in that they may use a public harm in place of showing harm to themselves. However, many other jurisdictions do not make this exception. In *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, the court stated that, "plaintiffs seeking injunctive relief must show 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). The VEA could perhaps use public harm as a way to supplement their irreparable harm claims, but generalized harm to the environment cannot completely replace a showing of harm to themselves. This is clear in the appellant's own argument as well.[12] If appellants cannot show irreparable harm to themselves, then their standing falls into question, thereby removing their ability to "invoke the general public interest in support of their claim for injunctive relief." (Rec. at 13).

This is made even more apparent when assessing the appellant's provided cases. Appellants cite *Hazardous Waste Treatment Council v. South Carolina*, wherein the district court found that HWTC's members, inside and outside of South Carolina, would be injured by the challenged aspects of the legislation. *Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 781, 788 (4th Cir. 1991). Appellants also cite *Courtland Co. v. Union Carbide*

[11] Quoting their previous decision in *Friendship Materials, Inc. v. Michigan Brick, Inc*., 679 F.2d 100, 105 (6th Cir. 1982).
[12] "plaintiff has established jurisdiction (i.e., standing), they may invoke the general public interest in support of their claim for injunctive relief. Warth v. Seldin, 422 U.S. 490, 501 (1975)." Record at 13.

Co., in which the court decided that, "there is no basis for the court to find any irreparable harm to Courtland, the public, the environment, or otherwise that would warrant issuance of a permanent injunction." *Courtland Co. v. Union Carbide Corp.*, Civil Action No. 2:19-cv-00894, 2024 WL 4339600, at *20 (S.D. W. Va. Sep. 27, 2024).[13] Without the appellants proving some kind of irreparable harm to themselves, the district court should only consider irreparable harm to the public as part of the public interest factor of preliminary injunctions.

CONCLUSION

Wherefore in light of the arguments raised, BlueSky urges the Court to:

1. Reverse the preliminary injunction, or in the alternative enjoin BlueSky from receiving feedstock from Martel Chemicals;
2. Affirm the stay of the trial court; and
3. Find that the VEA lacks standing on its public nuisance claim

And any other relief this court finds appropriate to grant.

Respectfully submitted,

Team 19

[13] In the case cited here, there is neither a personal harm nor an environmental harm. Although the court does not address whether the inclusion of either one in particular is dispositive, it is most important to note that both are absent.

APPENDIX B

Certificate of Service

Pursuant to *Official Rule* IV, *Team Members* representing BlueSky 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, 2025.

Respectfully submitted,

Team No. 19