No. 24–0682

IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

VANDALIA ENVIRONMENTAL ALLIANCE,

Appellant,

v.
BLUESKY HYDROGEN ENTERPRISES,

Appellee.

On appeal from the United States District Court
for the Middle District of Vandalia

BRIEF OF APPELLEE

TEAM #17

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JURISDICTIONAL STATEMENT

This Court has jurisdiction over the interlocutory appeal filed by Appellee pursuant to 28 U.S.C. § 1292(a)(1), which grants the courts of appeals jurisdiction over interlocutory orders from the district courts of the United States granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. This Court also has jurisdiction over the discretionary interlocutory appeal filed by Appellant pursuant to 28 U.S.C. § 1292(b), which allows a judge to stay proceedings when there is an application for appeal. This matter is properly before the Court because the district court granted—and this Court permitted—Appellant's discretionary interlocutory appeal of its stay order. Both parties timely filed their appeals.

STATEMENT OF THE ISSUE

There are four issues before this Court. First, whether the district court properly stayed its proceedings pending appeal under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), where it interpreted *Coinbase* as mandating the court divest jurisdiction over the elements of the case involved in the appeal. Second, whether the district court properly found standing where the moving party failed to show that it suffered harm different in kind and degree from that of the public. Third, whether the district court properly found a likelihood of success on the merits of a RCRA ISE claim based on its determination that air emissions are "disposal" under RCRA. Fourth, whether the district court erred by finding the irreparable harm prong of the *Winter* test could be satisfied by harm to a third party, rather than to the plaintiff.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

BlueSky Hydrogen Enterprises (hereinafter "BlueSky") operates the SkyLoop Hydrogen Plant (hereinafter "SkyLoop") in Mammoth, Vandalia,[1] an advanced waste-to-hydrogen facility

[1] Vandalia faces significant waste management challenges due to having fewer environmental regulations than neighboring states, making it an attractive site for landfills. R.4–5.

that converts complex waste into clean energy. R.4. SkyLoop started its operations in January 2024. R.6. SkyLoop receives prepared, aggregated waste and then converts it into hydrogen-rich gas using high-temperature thermal and chemical processes. R.5. The gas then goes through several purification stages, resulting in high-purity hydrogen suitable for a wide range of applications. *Id.*

Although SkyLoop keeps waste out of landfills[2] and generates clean energy, its processes may emit air pollutants, so SkyLoop obtained an operating permit issued under Title V of the Clean Air Act ("CAA"). *Id.* SkyLoop's air emissions process strictly controls reaction conditions, limits atmospheric releases, and fully treats all byproducts before discharge. R.6. SkyLoop's enclosed processing, strong emissions controls, and continuous oversight limits impacts on local air quality in Mammoth and the surrounding Vandalia region, resulting in a substantially lower greenhouse gas footprint than conventional hydrogen production methods. *Id.* Additionally, SkyLoop's technology diverts plastic waste, wastewater residuals, and chemical by-products from landfills or open disposal, preventing further uncontrolled emissions. *Id.* Since beginning operations, BlueSky has always remained in compliance with its Title V permit. *Id.*

In March 2025, the Mammoth Public Service District's ("PSD") water supply results for the periodic Unregulated Contaminant Monitoring Rule ("UCMR") were released. R.7. The December 2024 UCMR results showed PFOA levels of 3.9 parts per trillion ("ppt"), below the U.S. Environmental Protection Agency's ("EPA") Maximum Contaminant Level ("MCL"), which does not take effect until 2029. *Id.* Since PFOA was not detected in Mammoth's water supply in 2023, the Vandalia Environmental Alliance (hereinafter "VEA") investigated and found that one

[2] SkyLoop was created as an alternative to a landfill, earning support from the Vandalia Environmental Alliance. R.7.

of SkyLoop's feedstocks contains PFOA,[3] which is not required to be removed. VEA speculates that any PFOA that manages to survive SkyLoop's rigorous emissions-control process is released into the air, carried north by the wind, and deposited on surrounding land, including the PSD.[4] R.8.

Based on these suspicions, the VEA advised its members to limit or avoid using the municipal water supply when possible. *Id.* However, Mammoth and Vandalia issued no official advisories nor provided alternatives. *Id.* As a precaution, the VEA ceased supplying food from its VEA Sustainable Farms to the Mammoth community. R.7, 9. The VEA Sustainable Farms is five miles south of Mammoth's urban center and a mile and a half north of the SkyLoop Plant. R.7. There are many farms located within the one-and-a-half-mile stretch between VEA's farms and the SkyLoop Plant. *Id.* These farms also grow food and raise livestock for local and regional consumption, while VEA Sustainable Farms just uses its food for VEA-hosted events or for local donations. *Id.* The VEA admitted that, due to the presence of other farms between it and the SkyLoop Plant, its concerns are not unique to VEA Sustainable Farms. R.9.

II. PROCEDURAL BACKGROUND

The VEA sent a notice of intent to sue BlueSky under the Resource Conservation and Recovery Act's ("RCRA") imminent and substantial endangerment ("ISE") provision. R.11. Ninety days after sending its notice of intent to sue, on June 30, 2025, VEA filed a lawsuit against BlueSky in the United States District Court for the Middle District of Vandalia. *Id.* In its Complaint, VEA made two arguments. First, VEA alleged that the PFOA air emissions constitute a public nuisance and that it has standing to bring this claim because it has suffered a special injury

[3] PFOA is not regulated under the Clean Air Act and SkyLoop's Title V air permit does not include limits or monitoring requirements for PFOA. R.8. Furthermore, the EPA's Maximum Contaminant Level Goal ("MCLG") for PFOA is at 4ppt and 0 ppt. Id. The MCLG does not become enforceable until 2029. *Id*.

[4] The Mammoth PSD lacks treatment technology capable of removing PFOA from drinking water before it is distributed. R.8.

distinct from that of the general public, as its farm and education center have been damaged by the PFOA emissions. *Id.* Second, VEA alleged that SkyLoop presents an ISE by allowing PFOA emissions to enter the PSD wellfield and contaminate the water supply. *Id.*

Several days after filing suit, VEA filed a motion for preliminary injunction against BlueSky. *Id.* In its motion, VEA addressed each of the *Winter* factors[5] and argued that it and the Mammoth community would suffer irreparable harm without an injunction. *Id.* BlueSky opposed the motion for a preliminary injunction, arguing that there were key weaknesses in each of the VEA's claims. R.12. BlueSky raised three arguments in response: first, VEA lacks standing to bring a public nuisance claim because it has not suffered a special injury different in kind and degree from that of the general population with respect to drinking water; second, VEA is unlikely to succeed on the merits of its ISE claim because air emissions cannot constitute "disposal" under RCRA; and third, VEA and its members cannot show they are likely to suffer irreparable harm because, 1) VEA's members have all ceased drinking from the public water supply, meaning VEA is relying on harm to a third party, and 2) other potential harms have been waived. R.12–13.

In reply, VEA first argued that when a cause of action already allows private citizens to sue on the public's behalf—such as a RCRA citizen suit or public nuisance claim—courts may consider harm to the public in the irreparable harm prong. R.13. Second, VEA urged the court to find that RCRA covers air emissions. R.14. At the September 29, 2025, evidentiary hearing, VEA presented testimony from its members concerned about drinking from the PSD. *Id.* VEA also offered testimony from an air emissions expert, who opined that if SkyLoop's emissions continued, PFOA levels could reach 10 ppt by May 2026. *Id.* Another VEA toxicology expert testified that individuals drinking contaminated PSD water will suffer irreparable harm. *Id*. But the expert could

[5] *See infra* note 8.

not identify any harm a preliminary injunction would prevent for VEA members who had already stopped drinking the water. *Id.*

On November 24, 2025, the district court granted VEA's motion for a preliminary injunction. *Id.* The district court found VEA had standing to bring a public nuisance claim; that air emissions are "disposal" under RCRA; and that VEA satisfied the irreparable harm prong of *Winter*. R.15. On December 1, 2025, BlueSky filed this appeal in the United States Court of Appeals for the Twelfth Circuit, seeking vacatur of the district court's order granting a preliminary injunction. *Id.* That same day, BlueSky filed a motion to stay proceedings in the district court based on *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). *Id.* The district court ordered VEA to file an expedited response to the stay motion. R.16. On December 5, 2025, the VEA opposed the motion, arguing *Coinbase* does not apply to preliminary injunctions. *Id.* On December 8, 2025, the district court granted BlueSky's motion to stay. *Id.* Pursuant to 28 U.S.C. § 1292(b), VEA requested an interlocutory appeal of the district court's stay order, which the district court granted. *Id.*

The Twelfth Circuit permitted VEA's discretionary interlocutory cross-appeal and consolidated it with BlueSky's appeal from the order granting a preliminary injunction. *Id.* On December 29, 2025, the Twelfth Circuit issued an order setting forth the issues to be briefed and argued on appeal. *Id.*

SUMMARY OF ARGUMENT

This Court should reverse the district court's grant of interlocutory appeal and affirm the district court's grant of stay for several legal and jurisdictional reasons. First, the district court correctly stayed its proceedings pending this appeal under *Coinbase, Inc. v. Bielski*, 599 U.S. 736. Because the issues on appeal in the preliminary injunction involve the "whole ballgame" of the case, the district court properly divested itself of jurisdiction over these central matters while this Court hears those issues. Furthermore, restricting *Coinbase* to the narrow context of arbitration

would ignore its clear *ratio decidendi* regarding the proper allocation of power between courts with claims over the same case.

Second, the district court erred in concluding VEA has standing to bring a public nuisance claim because VEA failed to show a "special injury" different in kind and degree from that of the general public. Any alleged harm from PFOA in the municipal water supply is a harm common to all customers. Even if the court went beyond the common right to clean drinking water asserted by VEA and accepted its claimed farm damages, the harm is not unique, as the organization admits neighboring agricultural operations share the same concerns.

Third, the district court erred in finding VEA is likely to succeed on the merits of its RCRA ISE claim because BlueSky's emissions do not constitute "disposal" under the statute. As a matter of law, emissions that go into the air prior to being placed into or on land or water cannot constitute "disposal." Furthermore, uncontained air emissions are not considered "solid waste" under RCRA.

Finally, the district court improperly found irreparable harm by relying on harm to the general community rather than harm to the plaintiff itself. Under the *Winter* test, VEA must prove it is likely to suffer irreparable harm. Because VEA members have already ceased drinking the public water supply and any economic losses are compensable by money damages, VEA cannot demonstrate the requisite likelihood of irreparable injury.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY STAYED ITS PROCEEDINGS PENDING APPEAL OF THE PRELIMINARY INJUNCTION UNDER *COINBASE, INC. V. BIELSKI*.

The district court correctly stayed its proceedings pending BlueSky's interlocutory appeal of its grant of a preliminary injunction because it properly interpreted *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023) as requiring the district court to divest itself of jurisdiction over the issues on appeal. This Court reviews a district court's decision to stay proceedings using an abuse of

discretion standard. *Nken v. Holder*, 556 U.S. 418, 433 (2009) (the grant or denial of a stay is "an exercise of judicial discretion," and "[t]he propriety of its issue is dependent upon the circumstances of the particular case") (citations omitted); *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559 (2014) ("An appellate court should review a district court's decision for abuse of discretion if the decision is based on a matter committed to the district court's discretion."). Under the highly deferential abuse of discretion standard, *Gall v. United States*, 552 U.S. 38, 40 (2007), this Court should affirm the district court order's grant of stay because the district court properly exercised its discretion in granting BlueSky's motion to stay proceedings pending its interlocutory appeal.

A. *Coinbase* requires district courts to divest jurisdiction over all aspects of the case related to the appeal when those aspects of the case are involved in the appeal.

In *Coinbase, Inc. v. Bielski*, the United States Supreme Court held that district court proceedings must be stayed pending an interlocutory appeal on arbitrability. 599 U.S. at 736. *Coinbase* clarified and reiterated the *Griggs* principle, which holds that an appeal, including an interlocutory appeal, "divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). In sum, *Coinbase* mandates that a district court divest jurisdiction over the elements of a case involved in an appeal. Here, the district court correctly interpreted *Coinbase* by divesting jurisdiction over the proceedings to this Court, as those issues are on appeal. *See infra* Sections II, III, IV.

To properly understand *Coinbase*, we must begin with the *Griggs* principle. In *Griggs*, the Supreme Court wrote that "[t]he 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." 459 U.S. at 58. Forty years later, in Coinbase, the Supreme Court clarified *Griggs* and provided useful context. Justice Kavanaugh,

writing for the majority, described *Griggs* as a background principle that "requires an automatic stay of district court proceedings that relate to any aspect of the case involved in the appeal." *Coinbase*, 599 U.S. at 744. The *Griggs* principle is so pervasive that, when Congress authorizes an interlocutory appeal and an automatic stay of district court proceedings during that appeal, it does not feel the need to explicitly state its position on the stay. *Id.* at 743–44. In contrast, when Congress does *not* want to automatically stay district court proceedings pending appeal, it typically says so. *Id.* at 744, n.6 (listing statutes). For example, a Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 provision states,

> An appeal under this paragraph *does not stay* any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, *unless* the respective...district court...or the court of appeals in which the appeal is pending, *issues a stay of such proceeding pending the appeal*. 28 U.S.C. § 158(d)(2)(D) (emphasis added).

In other words, between *Griggs* and *Coinbase*, there arose a "default rule...that an appeal automatically stays all aspects of the case involved in the appeal." *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 270 (4th Cir. 2025). The *Coinbase* decision clarified and reiterated this "default rule." *Id*.

In *Coinbase*, the defendant (Coinbase) filed an interlocutory appeal of the district court's denial of its motion to compel arbitration. *Id*. at 736. Coinbase then filed a motion to stay the proceedings at the district court pending the interlocutory appeal; the district court and the Ninth Circuit denied the motion. *Id.* The Supreme Court reversed the denials, citing *Griggs*. The Court wrote that, "[b]ecause the question on appeal is whether the case belongs in arbitration or instead in the district court, the entire case is essentially 'involved in the appeal.'" *Id.* at 741 (citing *Griggs*, 459 U.S. at 58). It made "'no sense for trial to go forward with the court of appeals cogitates on whether there should be one.'" *Id.* (citing *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989)).

This Court must affirm the district court's order granting a stay of proceedings because it adopted the Fourth Circuit's reasoning and holding in *Express Scripts*. R.15, n.6. In *Express Scripts*, the Fourth Circuit interpreted *Coinbase* as "requiring...the district court [to] halt all proceedings related to the appeal" because the "notice of appeal suspended the district court's power to act." 128 F.4th at 268. The facts are as follows: the district court mailed a remand order after the defendants noted an immediate appeal of the district court's removal of the case to state court. *Id*. at 267–68. In doing so, the district court "tried to cook when the kitchen was ours," and the Fourth Circuit was required to find "that the district court lacked the authority to mail the remand order because it was automatically stayed under *Coinbase* from doing so." *Id*. at 268. Because this Court adopted the Fourth Circuit's interpretation of *Coinbase*, R.15 n.6, it must affirm the district court's order granting a stay of proceedings.

Even if this Court were not bound by its adoption of the Fourth Circuit's interpretation of *Coinbase*, it should still affirm the district court's order granting a stay of proceedings. Overly restricting the *Coinbase* rationale would be detrimental to judicial efficiency and effectiveness by allowing "two courts at once" to decide the same case—"one court too many." *Express Scripts, Inc.*, 128 F.4th at 272. After all, having too many cooks in the kitchen is a recipe for disaster. In fact, the *Griggs* Court was explicitly concerned with a "class of situations...in which district courts and courts of appeals would have had *the power to modify the same judgment.*" *Griggs*, 459 U.S. at 59–60 (emphasis added). Any argument that *Coinbase* is limited to arbitration must fail. 128 F.4th at 270–71 ("[w]hile *Coinbase* was a case about arbitration, this does not mean it was *only* a case about arbitration.") (emphasis in original). As Justice Gorsuch wrote in *Ramos v. Louisiana*, "[i]t is usually a judicial decision's reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases." 590 U.S. 83, 104 (2020). Under stare decisis, a higher

court's *ratio decidendi*, or "the point in a case that determines the judgment," Ratio Decidendi, *Black's Law Dictionary* (5th ed. 1979), is binding on lower courts and "carries precedential weight in 'future cases,'" "regardless of a decision's procedural posture." *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2663–64 (2025) (citing *Ramos*, 590 U.S. at 104); see also *Bucklew v. Precythe*, 587 U.S. 119, 136 (2019) ("[J]ust as binding as [a] holding is the reasoning underlying it"). The *ratio decidendi* of *Coinbase* is that power must be properly allocated "among multiple courts with claims over the same case." *Express Scripts, Inc.*, 128 F.4th at 272. Furthermore, the *Coinbase* majority did not limit itself to the context of arbitration. In fact, the Court "approvingly recognize[d]... 'analogous contexts' where the courts of appeals have long imposed automatic stays upon appeal." *Id.* at 271 (citing *Coinbase*, 599 U.S. at 742) (discussing qualified immunity and double jeopardy).

The claim that *Coinbase* requires district courts to stay proceedings in every case—thereby "upending federal litigation as we know it"—is an overblown misreading of the majority's decision. *Coinbase*, 599 U.S. at 760 (Jackson, J., dissenting). First, *Coinbase* reinforced the "common practice" of staying district court proceedings related to an appeal while the appeal was ongoing. *Id.* at 742–43. According to the Supreme Court, this "common practice...reflects common sense." *Id.* Second, the defendant in *Coinbase* conceded "the district court may still proceed with matters that are not involved in the appeal, such as the awarding of costs and attorney's fees." *Id*. at 741, n.2. Third, concerns about frivolous motions to stay are tempered by the text of *Coinbase*. In response to the dissent's concerns about frivolous motions to stay, Justice Kavanaugh noted "a party can ask the court of appeals to summarily affirm, to expedite an interlocutory appeal, or to dismiss the interlocutory appeal as frivolous." *Id*. at 745. Further, "nearly every circuit has

developed a process by which a district court itself may certify that an interlocutory appeal is frivolous." *Id*. (citing *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 629 (2009)).

In the present case, the district court properly stayed its proceedings because they are before this Court. *See infra* Sections II, III, IV. In other words, the issues on appeal regarding what may suffice for standing, a RCRA ISE claim, and irreparable harm are "the whole ballgame." *Express Scripts, Inc.*, 128 F.4th at 269. Therefore, this Court should affirm the district court's order granting a stay of proceedings.

II. THE DISTRICT COURT IMPROPERLY FOUND VEA SUFFERED A SPECIAL INJURY SUFFICIENT TO BRING ITS PUBLIC NUISANCE CLAIM, AS VEA'S INJURIES VEA IDENTICAL TO THOSE OF THE GENERAL PUBLIC.

Whether VEA proved a "special injury" sufficient to support its public nuisance claim is a legal question reviewed de novo, because the relevant facts are undisputed, and the only issue is whether those facts satisfy the governing legal standard. *See Miller v. Fenton*, 474 U.S. 104, 113–14 (1985); *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 227 (2020). Applying that standard, the district court erred in concluding that VEA suffered a special injury adequate to confer standing for its public nuisance claim.

Although private entities may bring public nuisance claims upon a showing of special injury, that injury must be concrete and distinct from the harm suffered by the general public. *Ariz. Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 346 (2016) (Thomas, J., concurring). Any harm alleged by VEA is shared either with other Mammoth PSD customers who consumed contaminated water or with other farms affected by the alleged PFOA.[6] Moreover, courts are not the proper forum to retroactively deem conduct harmful where that

[6] *See supra* note 3. An MCLG is a non-enforceable health goal, not an enforceable regulation. 40 C.F.R. § 141.2 (2026). PFOA in the air is not currently regulated by the EPA, but the EPA may regulate PFOA under the CAA. 42 U.S.C. § 7408. Since the EPA has chosen not to regulate air emissions of PFOA, BlueSky has no requirements or limitations regarding PFOA emissions.

conduct is subject to extensive legislative and regulatory oversight. Therefore, the court must vacate the order granting a preliminary injunction. Because the district court misapplied the special-injury requirement, this Court must vacate the order granting a preliminary injunction.

B. The harm VEA allegedly suffered due to contaminated drinking water is not different in kind and degree from the harm allegedly suffered by the public.

VEA sought a preliminary injunction after PFOA was detected in Mammoth's water supply, attributing the contamination to BlueSky based solely on the speculative theory that PFOA from a feedstock became airborne and migrated into Mammoth's watershed. R.11–12. BlueSky concedes these allegations fit under the public nuisance umbrella. R.12. However, for a non-governmental entity to establish standing in a public nuisance case, the entity must have suffered a special injury different in kind and degree from the public. *See, e.g., In re Lead Paint Litig.*, 191 N.J. 405, 436 (2007) (holding plaintiffs alleged only injuries shared by the public at large, failing to identify a special injury they themselves suffered different in kind or degree).

When dealing with PFOA-contaminated water, other courts have concluded that the release of a pollutant into a municipal water supply can only implicate a right common to the general public. *Rhodes v. E.I. du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 767–68 (S.D. W. Va. 2009), *aff'd*, 636 F.3d 88, 97–98. In *Rhodes*, the court relied on the Restatement (Second) of Torts § 821B cmt. G (A.L.I. 1979), holding that access to clean drinking water is a common right shared by all customers, not right of each recipient. *Id*. at 768. VEA failed to establish special injury because it did not allege a distinct injury arising from the right to clean drinking water. Restatement (Second) of Torts § 821C cmt. B (A.L.I 1979). Therefore, the district court erred, and this Court must vacate its order granting a preliminary injunction. R.15.

To determine whether a plaintiff has demonstrated a special injury, courts first define the relevant comparative population (hereinafter "RCP"), or the community seeking to exercise the

same public right as the plaintiff. *Rhodes*, 657 F. Supp. 2d at 769. When faced with PFOA contamination in public drinking water, the District Court for the Southern District of West Virginia found the RCP to be the customers. *Id*. Similarly, VEA's public nuisance claim below alleged that PFOA air emissions contaminated public drinking water, making the relevant class the water recipients. R.11. After all, "[t]he private individual can recover in tort for a public nuisance only if he has suffered a harm of a different kind from that suffered by other persons exercising the same public right." *Id*. (quoting Restatement (Second) of Torts § 821C cmt. b).

The same West Virginia court found that any injuries resulting from PFOA contamination would not differ in degree from those alleged in the RCP, as such injury would be shared among the plaintiffs and other customers. *Rhodes*, 657 F. Supp. 2d at 770. Likewise, injuries VEA claims from PFOA-contaminated water are no different from those of the public, showing no special injury. R.11–12. VEA attempts to circumvent the special injury framework by focusing on alleged damage to its farm, crops, and education center. R.11. However, the Restatement (Second) of Torts requires the special injury to be harm different from that of others who would exercise the same public right. § 821C cmt. b. Since VEA is exercising its right to clean drinking water but claims that damage to its farm and education center is caused by PFOA air emissions, any damage to its property must be considered outside the scope of a special injury analysis. R.9, 11. The district court erred by finding that VEA suffered special harm based on alleged property damage rather than harm from contaminated drinking water, and this Court should therefore vacate the district court's order granting a preliminary injunction.

C. Even if damage to VEA's farm is factored into the special injury determination, that injury is not different from neighboring farms.

The district court improperly included damage to VEA Sustainable Farms in its special injury analysis because it disregarded the Restatement and precedent from the Fourth Circuit, and

the Supreme Court.[7] A non-governmental plaintiff cannot have standing to bring a public nuisance claim without a special injury. *Ariz. Copper Co.*, 230 U.S. at 57. Further, VEA itself stated its injury is not different in kind to its neighbors. R.9, 12 (stating its "concerns are not unique to its own land" because its property is located amongst many other farms).

While the Supreme Court has upheld select rulings in which a private party has suffered a special injury, such jurisprudence does not apply to VEA. *Ariz. Copper Co.*, 230 U.S. at 57. In *Ariz. Copper Co.*, the private property owner irrigated his land with water from the adjacent Gila River, which was contaminated with waste from an upstream mining operation. *Id*. at 52–53. The Court found that he suffered a special injury not shared with the public because of the negative effects on his property rights and water rights as an irrigated farm. *Id*. at 57. VEA cannot claim they "suffer a special injury not borne by the public," because, unlike the riverside property owner who showed unique harm to his enjoyment and the value of his property, VEA itself has stated that any harm to their property is also shared with surrounding farms. R.9, 12.

The district court erred by including alleged property damage in its special injury analysis. *See* § IIA. The district court continued its failed determination by disregarding VEA's admissions that any damage to VEA Sustainable Farms was indistinguishable to the surrounding farms. R.15, 9, 12. As this determination involves questions of both law and fact, this Court must vacate the district court's order granting a preliminary injunction and uphold Supreme Court precedent. *Rhodes*, 657 F. Supp. 2d at 769; *Ariz. Copper Co.*, 230 U.S. at 57.

[7] Restatement (Second) of Torts § 821C cmt. b.; *Rhodes v. E.I. du Pont de Nemours & Co.*, 636 F.3d 88, 97–98 (4th Cir. 2011); *Ariz. Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913) (requiring a different harm than that suffered by others exercising the same public right).

D. Public nuisance actions seeking judicial relief are an improper avenue for private parties wanting to halt conduct that is legal and compliant with applicable statutes and agency regulations.

Judicial intervention through a public nuisance action, like the preliminary injunction requested by VEA, is not the proper remedy for a non-governmental agency seeking to retroactively redefine legal conduct. American Tort Reform Association, *The Plaintiffs' Lawyer Quest for the Holy Grail: The Public Nuisance "Super Tort"* 2 (2025). BlueSky has remained in compliance since opening SkyLoop and is protecting the planet from a growing waste problem and worsening climate change by creating clean energy from waste materials. R.4, 6–7. These are not actions that warrant judicial intervention. Public nuisance jurisprudence has unjustifiably leaked outside of its original purpose to flood courtrooms with lawsuits attempting to subject businesses to liability for torts they have not committed. *See* David A. Thomas, *Thompson on Real Property*, § 73.08(b)(1) (8th ed., 2026); American Tort Reform Association, *supra* at 2.

Since beginning operations at SkyLoop in January 2024, BlueSky has maintained compliance with its CAA Title V permit. R.6. Additionally, the EPA finalized a MCL and MCGL for PFOA, at 4 ppt and 0 ppt, respectively. R.7. The MCL does not become enforceable until 2029. 40 C.F.R. § 141.2 (2026); *Id*. § 141.60(a)(4). And the MCGL is a *non-enforceable* health goal. *Id*. § 141.2. Fortunately, for Mammoth PSD customers, the results of the 2024 testing show PFOA levels *below* the MCL. R.7. SkyLoop operates exactly as required by law and is already compliant with future regulations. R.6–7.

Courts around the nation are reluctant to interfere with issues involving policy questions for the legislature or activities regulated by executive agencies. *Diamond v. Gen. Motors Corp.*, 97 Cal. Rptr. 639, 645 (Ct. App. 1971); *Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 384–85, 387 (Ill. 2004). In California, for example, a court dismissed public nuisance claims against companies whose activities contributed to Los Angeles' smog problem because the companies'

activities were governed by an extensive framework of statutes and regulations. *Diamond*, 97 Cal. Rptr. at 645. The court dismissed the claim and found that, even if their conduct contributed to public nuisance, engaging in lawful conduct cannot become tortious after the fact. *Id*. The court rejected the plaintiffs' request to stand in place of elected legislators and bureaucrats to adopt and enforce more stringent rules governing air emissions. *Id*.

Similarly, the Illinois Supreme Court found that it was not its job to balance the harms and benefits of guns, another major societal issue, because that would amount to interference in the lawmaking process. *Beretta*, 13 Ill. 2d at 384–85, 387. As these cases make clear, the courtroom is not the proper venue for handling issues currently legislated and regulated by the other branches. *Diamond*, 97 Cal. Rptr. at 645; *Beretta*, 13 Ill. 2d at 387.

Here, BlueSky is compliant with legislatively imposed statutes and administratively enforced requirements. R.6–7. VEA has available remedies, and the court cannot assume the role of legislature and executive agencies. *Diamond*, 97 Cal. Rptr. at 645; *Beretta*, 13 Ill. 2d at 387. If PFAS is as great a threat as VEA claims, a major response by government leaders is needed, *not* public nuisance litigation brought by private parties. Am. Tort Reform Ass'n, *supra* at 18.

VEA has not suffered special injury sufficient to prove standing for its public nuisance claim. VEA's alleged harm from contaminated drinking water is shared with the public, disqualifying it as a special injury. Even if the district court properly included alleged harm to VEA's property, it improperly found that harm to be unique to VEA—as VEA admitted neighboring farms would suffer similar impacts. Furthermore, courts are not the proper venue for attempts to solve major societal issues that are already heavily legislated and regulated. This Court must vacate the district court's order granting a preliminary injunction because the district court

made an unsubstantiated finding that VEA suffered special injury sufficient to bring its public nuisance claim.

III. THE DISTRICT COURT ERRED IN HOLDING THAT BLUESKY'S AIR EMISSIONS CONSTITUTE "DISPOSAL" UNDER RCRA, BECAUSE AN ISE CLAIM REQUIRES DISPOSAL OF SOLID OR HAZARDOUS WASTE AND § 6903(3) UNAMBIGUOUSLY REQUIRES LAND- OR WATER-FIRST PLACEMENT.

This Court shall review *de novo* the legal issues of whether 1) uncontained air emissions constitute "disposal" of solid waste under RCRA, and whether the district court, based on a legal error, abused its discretion in granting a preliminary injunction. *See Koon v. United States*, 518 U.S. 81, 100 (1996); *Pinal Creek Grp. v. Newmont Mining Corp.*, 118 F.3d 1298, 1300 (9th Cir. 1997); *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863, 870 (9th Cir. 2001). The district court erred in four independent ways. First, Congress vested primary authority over air emissions in the CAA, confining RCRA's regulation of airborne releases to narrow exceptions, rendering VEA's invocation of RCRA's ISE provision a fundamental statutory error. Second, the district court misread RCRA's definition of "disposal" under 42 U.S.C. § 6903(3), which has a sequential structure that requires solid or hazardous waste be placed into or on land or water before it enters the environment. Third, the district court misapplied cases that collapse § 6903(3) into a results-based test, contrary to the statute's plain meaning. Finally, uncontained air emissions are not "solid waste" under RCRA. Therefore, this Court should reverse the district court's order granting a preliminary injunction.

A. VEA chose the wrong statute, and the district court improperly collapsed RCRA into the CAA, thus contradicting congressional design.

The district court erred in determining VEA was likely to succeed on the merits of its RCRA ISE claim, as VEA seeks to impose liability for conduct Congress deliberately placed outside RCRA's scope. Thus, VEA's argument fails at the threshold. Congress created distinct regulatory regimes to address different environmental problems: RCRA governs the management

and disposal of solid and hazardous waste on land or in water, while CAA comprehensively regulates air emissions. Treating air emissions themselves as "disposal" under RCRA would collapse these carefully crafted statutes, contradict Congress's design, and expand RCRA beyond its intended reach.

Congress's statutory choices leave no doubt air emissions are regulated primarily—and comprehensively—under the CAA, not RCRA. When RCRA was enacted in 1976, it contained no provision covering air emissions. *See* Resource Conservation and Recovery Act of 1976, 94 Pub. L. No. 580; 90 Stat. 2795 (1976) (current version at 42 U.S.C. § 6901 *et seq.*). Congress expressly described RCRA as closing "the last remaining loophole in environmental law, that of *unregulated land disposal* of discarded materials and hazardous wastes." H.R. Rep. No. 94–1491, at 4 (1976) (Conf. Rep.) (emphasis added). Although Congress acknowledged that improper land disposal could lead to air pollution, subsurface leachate, and surface runoff, it identified air pollution as a downstream consequence of land disposal—not an independent form of "disposal" regulated by RCRA. *Id.* Congress remained focused on disposal "in ponds or lagoons or on the ground," underscoring RCRA's land- and water-centered scope. *Id.*

By contrast, the CAA—first enacted in 1963 and comprehensively amended in 1970—was expressly designed to "preven[t] and control . . . air pollution at its source." Clean Air Act Amendments of 1970, Pub. L. No. 91–604, § 110(a)(3), 84 Stat. 1676 (current version at 42 U.S.C. §7401 *et seq.*). It was not until 1984 that Congress created a narrow, explicit overlap between the statutes by enacting § 6924(n). The Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98–616, § 201(n), 98 Stat. 3221, 3233 (current version at 42 U.S.C. § 6901 *et seq.*). As the Ninth Circuit explained, this provision represents "the first (and only) overlap between RCRA and the Clean Air Act: regulation of emissions of hazardous air pollutants from 'hazardous waste

treatment, storage, and disposal facilities.'" *Ctr. for Cmty. Action & Envtl. Justice v. BNSF Ry. Co.*, 764 F.3d 1019, 1028 (9th Cir. 2014).

Interpreting RCRA to regulate emissions beyond § 6924(n) would make the section superfluous and create substantial overlap with the CAA, improperly turning RCRA into a *de facto* air-pollution statute. Courts must construe statutes to give effect to every provision Congress enacted, not to expand one to the point it would make another—or later amendment—unnecessary. *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Although overlapping statutes may operate in harmony where Congress so intends, that principle does not permit courts to nullify deliberate boundaries or manufacture overlap where Congress created it narrowly and expressly. *POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 112–15 (2014). Limiting RCRA's reach over air emissions to § 6924(n) preserves both statutes' distinct regulatory schemes and avoids conflict.

Congress's statutory design confirms that the present case does not belong under RCRA. When Congress intended RCRA to reach air emissions, it did so expressly and narrowly for hazardous waste facilities under § 6924(n). VEA nevertheless elected to proceed solely on alleged harm from drinking water under RCRA's ISE provision, § 6972(a)(1)(B), not § 6924(n), nor under any CAA claim. R.11–14. Because Congress's deliberate statutory structure forecloses VEA's litigation choices here, the district court's order granting a preliminary injunction must be vacated.

B. Even if RCRA could regulate air emissions in the present case, BlueSky's air emissions are not "disposal" because § 6903(3) unambiguously requires land- or water-first placement before any emission into the air.

RCRA authorizes citizen suits only where a defendant has "contributed to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste." § 6972(a)(1)(B). Because Congress expressly defined "disposal," courts must begin with the statute's language and apply that definition as written. *Stenberg v. Carhart*, 530 U.S. 914, 942

(2000); *Duncan*, 533 U.S. at 172. Accordingly, courts interpreting RCRA begin—and often end—with the text. *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863, 877–78 (9th Cir. 2001).

Congress defined "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste *into or on any land or water 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." § 6903(3) (emphasis added). Courts have repeatedly recognized that this definition is unambiguous and controlling. *3550 Stevens Creek Assocs. v. Barclays Bank*, 915 F.2d 1355, 1362 (9th Cir. 1990) (emphasizing Congress imported RCRA's meaning of "disposal" to the Comprehensive Environmental Response, Compensation, and Liability Act rather than separately defining it, reasoning the "meaning is clear.").

The structure of § 6903(3) establishes a mandatory sequence. The phrase "so that" is causative and sequential: it describes what may occur *after* waste is placed into or on land or water. Every operative verb in the first clause—"discharge," "deposit," "dumping," "placing"—is modified by the same geographic limitation: "into or on any land or water." The statute's second clause confirms the order: waste may "enter the environment" or "be emitted into the air" only as a downstream consequence of land- or water-based placement.

The legislative history confirms § 6903(3)'s land- or water-first sequence. Congress enacted RCRA to close "the last remaining loophole in environmental law, that of *unregulated land disposal* of discarded materials and hazardous wastes." H.R. Rep. No. 94–1491, at 4 (1976) (emphasis added). The House Report repeatedly identifies air emissions as a consequence of land-based disposal, explaining that "land disposal often result[s] in air pollution, subsurface leachate and surface run-off." *Id*. Far from authorizing regulation of stand-alone air emissions, Congress

treated air impacts as downstream effects of waste first placed on land or in water—precisely the sequence codified in § 6903(3).

The Ninth Circuit squarely enforced this sequence in *BNSF Railway*. There, the court declined to determine whether the emission at issue constituted "solid waste" and instead grounded its holding in the statute's required order, rejecting the argument that emissions released into the air before any land or water placement can constitute "disposal" under RCRA. 764 F.3d at 1023–24, 1030 n.10. The court held that "disposal" occurs only "where the solid waste is *first* placed 'into or on any land or water' and is *thereafter* 'emitted into the air,'" warning that treating emissions themselves as disposal would "effectively be to rearrange the wording of the statute—something that we, as a court, cannot do." *Id.* at 1024 (emphasis in original).

In *Hanford Challenge v. Moniz*, the District Court for the Eastern District of Washington applied—and confirmed—the same sequential framework. No. 4:15-CV-5086-TOR, 2016 U.S. Dist. LEXIS 205592 (E.D. Wash. Nov. 15, 2016). Unlike *BNSF Railway*, *Hanford Challenge* involved solid waste that had already been disposed of and stored in land-based tanks, which later released vapors. *Id.* at *8. The court held those vapors fell within RCRA only because the solid waste had first been placed "into or on land," and the air emissions occurred thereafter—precisely the statutory sequence Congress required. *Id.* Far from undermining *BNSF Railway*, *Hanford Challenge* reinforces that emissions qualify as "disposal" only when they emanate from previously disposed waste.

Neither *BNSF Railway* nor *Hanford Challenge* turned on the physical form of the waste, the proximity of any alleged contamination, or whether contamination ultimately occurred. Both decisions turned on the order of events, as Congress mandated. Where that sequence is absent, RCRA does not apply.

VEA's theory does exactly what *BNSF Railway* forbids—it rearranges the words of the statute. Treating emissions as "disposal" collapses § 6903(3)'s two distinct clauses into one and renders the phrase "into or on any land or water" superfluous. Courts may not rewrite statutory text to serve purpose-driven expansions or remedial objectives. *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 328 (2014) ("We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate."). Although RCRA is a remedial statute, its remedial purpose cannot override clear limits set by Congress.

Canons of construction reinforce this conclusion. Congress omitted "emitting" from the list of disposal verbs in the first clause of § 6903(3). Under *expressio unius est exclusio alterius*, that omission is intentional. *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452 (2002); *United States v. Vonn*, 535 U.S. 55, 65 (2002) ("expressing one item of a commonly associated group or series excludes another left unmentioned"). Where Congress intended to regulate air emissions under RCRA, it did so expressly and narrowly. *See* 42 U.S.C. § 6924(n) (governing air emissions at hazardous waste treatment, storage, and disposal facilities). Congress's decision to include "emissions" in other RCRA sections shows the omission in § 6903(3) was intentional, meant to exclude emissions from the scope of "disposal."

Here, VEA alleges only that BlueSky released PFOA directly into the air. R.8. They do not allege—and cannot establish—that BlueSky first placed solid or hazardous waste into or on land or water. There is no prior disposal site, no land-based waste emitting vapors, and no land- or water-first placement of any kind. Because § 6903(3) unambiguously requires land- or water-first placement, VEA's theory fails at the threshold.

The statute's plain language, structure, legislative history, and controlling precedent all confirm that "disposal" is a two-step process: first, *placement* of solid or hazardous waste into or

on any land or water; and only then, entry or emission into the environment. Courts have consistently enforced this interpretation, ensuring that the definition of disposal remains grounded in the statutory text. Courts must enforce what Congress enacted, not rewrite clear statutory terms. Because § 6903(3) requires land- or water-first placement and VEA alleges only direct air emissions, the district court's order granting a preliminary injunction must be vacated—BlueSky did not engage in "disposal" within the meaning of RCRA.

C. Courts treating airborne contaminants as "disposal" misread § 6903(3) by collapsing its sequential structure; this court should follow *BNSF Railway*.

The district court relied exclusively on two flawed decisions from the same Southern District of Ohio court—*Citizens Against Pollution* and *Little Hocking*—both of which fundamentally misread § 6903(3). Instead of respecting the statute's two-step sequence, these decisions erroneously collapse "disposal" into a single, result-oriented inquiry, ending the analysis once contact with land is established. That approach cannot be reconciled with the statutory text and should be rejected in favor of *BNSF Railway*'s faithful interpretation of Congress's ordered definition of "disposal."

In *Citizens Against Pollution v. Ohio Power Co.*, the court concluded that flue gas emissions constituted "disposal" once the plume contacted the ground. No. C2-04-CV-371, 2006 U.S. Dist. LEXIS 100839, at *15–17 (S.D. Ohio July 13, 2006). The court held that ground contact qualified as disposal under the statutory definition, since disposal occurs when waste either enters land *or* is discharged or placed on land. *Id.* at *16–17.

That reasoning is untenable. Section 6903(3) defines disposal as affirmative acts occurring "into or on any land or water" *so that* waste may later enter the environment or be emitted. "So that" establishes a sequential, causative relationship, not equivalence. *Citizens Against Pollution*

erroneously converted Congress's two-step statutory inquiry into a single, result-driven test, disregarding half the statute.

In *Little Hocking Water Ass'n v. E.I. du Pont de Nemours & Co.*, the District Court for the Southern District of Ohio repeated the same error. 91 F. Supp. 3d 940 (S.D. Ohio 2015). While the court recognized *BNSF Railway*, it chose not to adopt its reasoning, citing that the Ninth Circuit's reading of the text and legislative history was "too narrow." *Id.* at 965. Without providing any alternative textual analysis, the court emphasized that RCRA is a remedial statute intended to address environmental harm, and that Congress intended "disposal" reach aerial emissions which fell on the ground, remained there, and later contaminated groundwater. *Id*. Just as it did earlier in *Citizens Against Pollution*, the court again failed to reconcile its decision with the statutory land- or water-first placement requirement, thereby allowing downstream environmental harm to supplant the statutory definition.

Both decisions also improperly equated immediate, localized deposition with satisfaction of the statute's sequential process. In *Citizens Against Pollution*, the court relied on visible "blue plumes" that traveled only a short distance before settling near the source. 2006 U.S. Dist. LEXIS 100839 at *4–5. *Little Hocking* similarly involved emissions alleged to fall directly onto adjacent land and migrate into groundwater, without intervening atmospheric transport. 91 F. Supp. at 965. Whatever the merits of that approach, it has no application here, where VEA alleges long-range, unobserved air transport over miles with no evidence of where, when, or how any material contacted land. R.7–8.

The Southern District of Ohio cases do not interpret § 6903(3); they bypass it altogether. As the Supreme Court has emphasized, courts cannot rewrite statutory text to expand liability in light of remedial objectives when Congress has spoken clearly. *Util. Air Regulatory Grp.*, 573 U.S.

at 328. Interpreting § 6903(3) beyond the scope of "disposal" and past the statutory framework creates uncertainty about the limits of RCRA's applicability.

Because the district court relied solely on these flawed, result-driven decisions, its order granting a preliminary injunction cannot stand. Section 6903(3)'s clear, two-step sequence was never satisfied here, and VEA's allegations of direct airborne emissions fail to constitute "disposal."

D. BlueSky's emissions are not "solid waste," independently requiring reversal.

Even if VEA could establish "disposal," their claim still fails: BlueSky's alleged emissions are not "solid waste" under RCRA. RCRA regulates only the disposal of "solid or hazardous waste" 42 U.S.C. §§ 6903(3), (5), (27). RCRA defines solid waste to include "solid, liquid, semisolid, or contained gaseous material." *Id.* § 6903(27). *See generally* H.R. Rep. No. 94–1491, at 2 ("the Committee recognizes that Solid Waste, the traditional term for trash or refuse is inappropriate . . . .Not only solid wastes, but also liquid and contained gaseous wastes, semi-solid wastes and sludges are the subjects of this legislation."). By specifically including "contained gases," Congress evinced its intent to exclude uncontained gases. *See N. Ill. Gas Co. v. City of Evanston*, 162 F. Supp. 3d 654, 662 (N.D. Ill. 2016) (quoting Resp'ts' Br. at 21, 57-58, *Carbon Sequestration Council v. EPA*, 787 F.3d 1129 (D.C. Cir. 2015) (Nos. 14-1046, 14-1048), ECF 1521146 (filed Nov. 6, 2014)). The canon *expressio* unius *est exclusio alterius* confirms that the reference to "contained" gases was deliberate. *See Vonn*, 535 U.S. at 65.

Courts nationwide consistently hold that uncontained gases released directly into the atmosphere are not "solid waste." *See United States v. Sims Bros. Const., Inc.*, 277 F.3d 734, 740 (5th Cir. 2001) (holding "[f]or gaseous material to be 'solid waste' it must be 'contained.'"); *Helter v. AK Steel Corp.*, No. C-1-96-527, 1997 U.S. Dist. LEXIS 9852, at *32 (S.D. Ohio Mar. 31, 1997) (concluding plain language of § 6903(27) excludes leaked coke oven gas from "solid waste" and,

thus, from RCRA's coverage); *N. Ill. Gas Co.*, 162 F. Supp. at 663 (holding there is no basis for RCRA claim on release of methane gas from natural gas pipelines, reasoning methane gas does not meet solid waste definition); *Steward v. Honeywell Int'l, Inc.*, 469 F. Supp. 3d 872, 881 (S.D. Ill. 2020) (rejecting argument uranium hexafluoride converted into "airborne particulate matter" was governed by RCRA, reasoning those emissions are not solid waste RCRA intended to govern).

The EPA's longstanding interpretation of RCRA confirms that the statute's authority does not extend to uncontained gases. *See* 54 Fed. Reg. 50968, 50970–73 (Dec. 11, 1989) (emphasis added) ("EPA['s] . . . authority to identify or list a waste as hazardous under RCRA *is limited to containerized or condensed gases* (*i.e.*, [§ 6903 (27)] of RCRA excludes all other gases from the definition of solid wastes . . .)"). *But see* 79 Fed. Reg. 350–01, 355 (Jan. 3, 2014) (explaining CO_2 emissions that are captured and compressed for geologic sequestration constitute a solid waste, reasoning as a "supercritical fluid" it has properties between a gas and liquid).

Applied here, VEA cannot establish that BlueSky's emissions constitute "solid waste" within the meaning of RCRA. VEA alleges only that PFOA was released as an uncontained air emission during routine facility operations. R.8. It does not allege that the emissions were captured, condensed, contained, or otherwise discarded in a physical form recognizable as waste at the time of release. Reliance on cases such as *Citizens Against Pollution* and *Little Hocking* is misplaced, because those decisions treated immediate, observable land contact as dispositive, effectively substituting physical proximity for the statutory definition. Here, VEA alleges no visible plume, no defined physical form, and no contemporaneous deposition onto land—only that PFOA traveled downwind after release. R.8. It is settled nationwide that uncontained air emissions are not "solid waste" under RCRA. As the Ninth Circuit made clear in *BNSF Railway*, emissions released into the air before any land- or water-based placement cannot constitute "disposal." Because VEA's

claims fail both the "solid waste" requirement and the statutory land- or water-first sequence, the district court's order granting a preliminary injunction must be vacated as a matter of law.

IV. THE DISTRICT COURT INCORRECTLY FOUND IRREPARABLE HARM, BECAUSE IT BASED ITS FINDING ONLY ON HARM TO THE COMMUNITY AND MADE NO FINDING OF HARM TO VEA THROUGH ITS MEMBERS.

The district court must determine whether VEA satisfied the irreparable harm prong of the *Winter* test,[8] a legal question reviewed *de nov*o as it requires interpreting precedent and applying it to undisputed facts. *Miller*, 474 U.S. at 113–14; *Guerrero-Lasparilla*, 589 U.S. at 227. VEA cannot meet this standard. Under *Winter v. NRDC*, 555 U.S. 7, 20 (2008), VEA must show irreparable harm to itself and may not rely on generalized public or third-party harm. Even assuming public harm is relevant, the alleged injury is avoidable through alternatives VEA identified—purchasing bottled water or eliminating PFOA from SkyLoop's feedstock. Since the district court granted a preliminary injunction based on public, avoidable harm rather than irreparable injury to VEA, this Court must vacate the district court's order granting a preliminary injunction.

A. VEA will not suffer irreparable harm as all members have stopped drinking public water, and VEA cannot use third party harm to satisfy the *Winter* test.

VEA will not suffer irreparable harm warranting a preliminary injunction because none of its members are currently facing such harm, having ceased drinking water from Mammoth PSD. R.8. VEA cannot *steal* potential harm from the community of Mammoth to maintain its motion for preliminary injunction. *See Winter*, 555 U.S. at 20; *Beber v. NavSav Holdings, LLC*, 140 F.4th

[8] Under *Winter*, a plaintiff seeking a preliminary injunction must independently establish four factors: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm without preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. 555 U.S. at 20. The irreparable harm prong of the *Winter* test is at issue in the present case. R.11–13. The Court in *Winter* clarified that the plaintiff must prove "…[they are] likely to suffer irreparable harm." 555 U.S. at 22 (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948.1, p. 139 (2d ed. 1995)). The alleged irreparable harm must be suffered by the applicant themself, and must be likely, not only possible. 555 U.S. at 22.

453, 462 (8th Cir. 2025); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv*., 886 F.3d 803, 822 (9th Cir. 2018). As the *Winter* test makes clear, plaintiffs must show *they themselves* are likely to suffer irreparable harm without injunctive relief. *Winter*, 555 U.S. at 20. Because all citizens have stopped drinking the water, VEA cannot suffer any harm—a conclusion supported by both VEA's own admission and the district court's finding. R.8, 15.

VEA's claim that its members are harmed because they purchase bottled water lacks merit, as economic loss alone does not constitute irreparable harm. *Sierra Club v. EPA*, 793 F. Supp. 3d 158, 164 (D.D.C. 2025). Courts across the circuits consistently hold that economic harm, standing alone, does not satisfy the irreparable-harm requirement. *See Wildhawk Invs., LLC v. Brava I.P., LLC*, 27 F.4th 587, 597 (8th Cir. 2022) (economic loss alone is not an irreparable harm when losses can be recovered); *Acierno v. New Castle Cnty.*, 40 F.3d 645, 653 (3d Cir. 1994); *Mexichem Specialty Resins, Inc. v. EPA*, 415 U.S. App. D.C. 295, 306 (2015); *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980). Any costs members may incur from purchasing bottled water are fully offset by corresponding reductions in their water bills.

VEA attempts to rely on potential harm to the community to satisfy the *Winter* test. R.8. But irreparable harm must be tied to the litigant, not the general public or a third party. *See Beber*, 140 F.4th at 462 ("When a preliminary injunction is sought, 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."); *Nat'l Wildlife Fed'n*, 886 F.3d at 822; *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC)*, 528 U.S. 167, 181 (2000). In *Beber*, the Eighth Circuit held that a district court erred by considering potential harm to Nebraska public policy rather than to the individual movants in granting a preliminary injunction. 140 F.4th at 461–62.

In environmental cases, courts grant plaintiffs broad discretion to show irreparable harm they would suffer without a preliminary injunction. *Nat'l Wildlife Fed'n*, 886 F.3d at 822 (plaintiff demonstrated irreparable harm to its own interests through harm to species in which it had a concrete interest). Even in this context, the Supreme Court has made clear that standing requires a showing of injury to the plaintiff themselves, not merely to the environment, reaffirming that while plaintiffs may allege multiple forms of harm, at least one must be their own. *Friends of the Earth*, 528 U.S. at 181 (environmental damage from mercury discharges was not harm to plaintiff).

VEA, by its own admission and by the district court's findings, cannot show irreparable harm. R.8, 15. Its members have voluntarily ceased drinking public water, and this Court should follow its sister circuits by not allowing VEA to rely on potential harm to the general public to support a preliminary injunction. *Beber*, 140 F.4th at 462; *Nat'l Wildlife Fed'n*, 886 F.3d at 822; *Friends of the Earth*, 528 U.S. at 181. The district court's reliance on public harm to satisfy the irreparable harm prong of the *Winter* test was therefore erroneous and must be reversed.

B. Even if VEA is allowed to bypass showing harm to itself and usurp public harm, issuing a preliminary injunction is too drastic an order when other reasonable alternatives exist.

Preliminary injunctions are an extraordinary remedy, not awarded as a right. *Winter*, 555 U.S. at 24, 32. Even if this Court allows VEA to rely on harm the public may suffer, VEA has not shown that such harm is likely to persist absent a preliminary injunction. *Id*. at 22. In *Winter*, the Court emphasized—citing its own precedent and Wright & Miller's "Federal Practice and Procedures"—that a movant must demonstrate a likelihood of irreparable harm *without* such relief. *Id*. Here, VEA members identified alternatives that mitigate harm from contaminated public water, and even requested relief other than an injunction by proposing SkyLoop stop using PFOA-containing feedstock. R.8, 11, 15. Because irreparable harm to the public can be avoided through

such measures, the district court's issuance of a preliminary injunction was improper and must be reversed. *Winter*, 555 U.S. at 22, 24.

VEA members already avoid drinking water provided by Mammoth PSD by purchasing bottled water. R.8, 15. While the expense may constitute a form of damage, it is not irreparable and is compensable through monetary relief. *Sierra Club*, 793 F. Supp. 3d at 164. Any alleged harm to the public from Mammoth PSD water can likewise be mitigated by the same measures. R.8, 15. VEA also proposed an alternative remedy—ceasing acceptance of PFOA-containing feedstock from Martel Chemicals—which would prevent the harm without an injunction. R.11. Since the same result can be achieved through these alternatives, irreparable harm is not likely, and injunctive relief is not warranted. *Winter*, 555 U.S. at 22. Any public or third-party harm cannot substitute for the plaintiff's required showing of irreparable harm. Accordingly, the district court's grant of a preliminary injunction was unfounded and must be reversed.

The *Winter* test requires a plaintiff seeking a preliminary injunction to prove each prong independently. *Id*. VEA cannot satisfy the second prong because it has not shown that it would suffer irreparable harm absent injunctive relief. Even if this court were to depart from *Winter* and allow public harm to satisfy the irreparable harm prong, that harm could be avoided without a preliminary injunction. The district court erroneously relied on public harm to find irreparable injury; this Court must vacate the district court's order granting a preliminary injunction.

CONCLUSION

For the reasons stated above, BlueSky Hydrogen Enterprises respectfully requests the Court to vacate the district court's order granting a preliminary injunction and affirm the district court's order granting a stay of proceedings.

Respectfully submitted,

TEAM #17
Attorney for Appellee

February 4, 2026

Appendix B

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. 17