February 2026

UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

C.A. No. 24-0682
BRIEF FOR RESPONDENT BLUESKY HYDROGEN ENTERPRISES

VANDALIA ENVIRONMENTAL ALLIANCE,	)	
Appellant,	)	
-v.-	)	C.A. No. 25-0682
BLUESKY HYDROGEN ENTERPRISES,	)	
Appellee.	)	

Appeal from the United States District Court for the District of Vandalia, challenging the preliminary injunction issued.

Team Number 023
February 3, 2026
Attorneys for Bluesky Hydrogen Enterprises

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Miscellaneous

JURISDICTIONAL STATEMENT

The United States District Court for the Middle District of Vandalia had subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Vandalia Environmental Alliance (VEA) asserted claims arising under federal law, including a claim under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6972(a)(1)(B), as well as supplemental jurisdiction over related state law public nuisance claims under 28 U.S.C § 1367.

This court has appellate jurisdiction under 28 U.S.C § 1292 to review the district court's November 24, 2025 order granting a preliminary injunction against BlueSky Hydrogen Enterprises. This court also has jurisdiction under 28 U.S.C § 1292 over VEA's interlocutory appeal of the district court's December 8, 2025 order staying proceedings pending appeal, which the district court certified for immediate appeal and which this court accepted and consolidated with BlueSky's appeal.

BlueSky timely filed its notice of appeal from the preliminary injunction order on December 1, 2025. The VEA timely sought and obtained certification for interlocutory appeal of the stay order, and this court granted permission to appeal. Accordingly, this court has jurisdiction over all issues presented in this consolidated appeal.

STATEMENT OF THE ISSUES PRESENTED

This brief address four issues wherein a question of law is presented:

1. Upon appeal of an interlocutory injunction, may a district court stay proceedings relying upon *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023) to justify the stay due to transfer of judicial authority?

2. Under Vandalia law, does the plaintiff have proper standing to bring a public nuisance claim when they do not have priority rights or vested property interest in the affected resource and received the same exposure as the general populace?
3. Under 42 U.S.C. § 6903, does a facility "dispose" of waste when it emits PFOA into the air through permitted stacks, and that PFOA is later transported by wind and settles onto surrounding land and groundwater?
4. May the irreparable harm prong of the *Winter* test be satisfied by showing harm to the public or must a court only consider harm to the party to issue a preliminary injunction, when a party avoids drinking from the contaminated public water supply and therefore does not suffer the same harm as the public?

STATEMENT OF THE CASE

I. Procedural History

This appeal before the United States Court of Appeals for the Twelfth Circuit arises from a suit filed by the VEA on June 30th, 2025 in the U.S. District Court for the Middle District of Vandalia, who has subject matter jurisdiction over plaintiff's suit pursuant to 28 U.S.C. § 1292. R. at 11. Plaintiffs pursued a public nuisance claim and a claim under RCRA, pursuant to § 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), alleging imminent and substantial endangerment to citizens. R at 11.

Shortly thereafter, the VEA then filed a motion for preliminary injunction against BlueSky for PFOA air emissions, which BlueSky opposed, but the injunction was granted by the district court on November 24th, 2025. The district court found that Petitioner had standing and established all four *Winter* factors. R. at 14. Defendant filed to appeal the preliminary injunction on December 1st, 2025, in the Court of Appeals for the Twelfth Circuit, asking the order for the

preliminary injunction be vacated. R. at 15. On December 8th, 2025, the district court granted the motion to stay proceedings to the lower court, citing *Coinbase*. R. at 16. Thereafter, the Twelfth Circuit issued an order on December 29th, 2025 permitting the Petitioner's discretionary, interlocutory cross appeal and consolidated the appeal with Defendant's appeal of the court's order granting a preliminary injunction. R. at 16.

II. Statement of the Facts

Vandalia is a state with less environmental regulation than surrounding states and as a result more landfills are located in Vandalia than in other surrounding states. Regional Clean Hydrogen Hubs (H2Hubs) Programs are developed to promote domestic energy pathways by converting commercial-scale waste into hydrogen. Hydrogen contains approximately three times as much energy as oil, making it a more efficient alternative to carbon-based fuel. Arch2, *Hydrogen 101*. Arch2 Hub, https://www.arch2hub.com/resources/hydrogen-101/ (last visited Feb. 1, 2026) . Vandalia is part of the Appalachian Regional Clean Hydrogen Hub (ARCH2). ARCH2 projects include hydrogen production facilities and hydrogen liquefiers. ARCH2 will convert fossil fuels, biomass, and waste into hydrogen for industry, power generation, and transportation within the Appalachian Region. ARCH2 will additionally provide long-term employment opportunities and skilled training for local residents of Vandalia.

The ARCH2 Vandalia based project is the waste-to-energy SkyLoop Hydrogen Plant, owned and operated by Appellee, BlueSky Hydrogen Enterprises. SkyLoop's waste-to-energy process begins at a waste collection and preparation facility that aggregates various forms of waste from facilities like chemical companies, waste water treatment facilities, and plastics. Incoming waste is handled by following strict safety and compliance requirements. Using a process that minimizes unwanted byproduct formation, the waste is sorted and prepared, then

heated to extreme temperatures that breaks the waste down into gas rich in hydrogen and carbon dioxide– called synthesis gas or syngas. The syngas next undergoes a water-gas shift reaction to produce more hydrogen, and is further purified to remove impurities like carbon monoxide and other gases. Hydrogen at this stage is considered high purity and is separated for fuel usage, while the captured carbon dioxide is stored or used commercially. The remaining byproduct can be used as reusable construction material, further diverting waste from landfills.

The SkyLoop facility is part of a circular system that addresses waste management and the growing demand for alternative fuel sources through the production of low-carbon hydrogen. SkyLoop utilizes waste materials that would otherwise end up in landfills, incinerated, or treated as hazardous. SkyLoop supports Vandalia's goal of reducing landfill waste while creating local jobs and hydrogen for local industries.

As SkyLoop converts waste into hydrogen, it reduces the flow of waste into landfills and thus reduces methane and other uncontrolled emissions from landfills. However, the processes used at the facility still have the potential for air emissions like carbon dioxide, nitrogen oxides, and particulates. Because of this, SkyLoop retains a Title V Clean Air Act Permit. Before venting any exhaust gases, such emissions undergo a multistep cleaning process. Filtration, scrubbing, and catalytic treatment technologies are used to remove particulates, acid gases, and trace organics generated during waste conversion. These processes are continuously monitored to measure real-time emissions, thus allowing the facility to address any deviations from the permitted allowance. Since SkyLoop began its operations at the start of 2024, BlueSky has remained compliant with its Title V Permit.

The Vandalia Environmental Alliance (VEA) is a regional public interest group that has previously held polluters responsible for harm to its members and the State. The VEA also

provides encouragement and education on sustainability, with outreach that includes an educational center and small farm in Mammoth. The farm hosts events, educational opportunities, and donates produce to the local community food banks and soup kitchens. The VEA was supportive of BlueSky's SkyLoop Plant in Vandalia as a landfill alternative, citing the jobs it would bring to community members and the hydrogen it would produce as a cleaner alternative to fossil fuels.

The VEA Sustainable Farms are located one mile north of ground water wells that supply the Mammoth Public Service District's (PSD) water and near other farms that grow food for consumption. Testing of the PSD water supply under the Unregulated Contaminant Monitoring Rule (UCMR) takes place periodically. In March of 2025, results from the 2024 UCMR testing showed detectable levels of Perfluorooctanoic acid (PFOA) in the PSD water supply at 3.9 parts per trillion (ppt). As a forever chemical, PFOA does not readily break down in the environment and has been linked to cancer, birth defects, and liver problems. Due to the persistent nature and health risks of PFOA, the EPA has established a Maximum Contaminant Level (MCL) at 4.0 ppt and a Maximum Contaminant Level Goal (MCLG) at 0.0 ppt for PFOA. However, the MCL for PFOA is not enforceable until 2029.

As there was no detectable PFOA in the Mammoth water supply in 2023, and detectable levels spiked around the time SkyLoop began operations, the VEA suspects that BlueSky may be responsible. After the VEA submitted Freedom of Information Act ("FOIA") requests to the Vandalia Department of Environmental Protection (VDEP), the report showed that a primary waste feedstock for SkyLoop contained PFOA. SkyLoop processes biosolids from a wastewater treatment facility that accepts industrial sludge from Martel Chemicals, a regional company with a history of operations with per- and polyfluoroalkyl substances (PFAS) chemicals. The VDEP

documents show that although PFOA is present in Martel's sludge, it is not required to be removed at the Waste Water Treatment Plant nor during SkyLoop's treatment and processing stages. The VEA suspects that PFOA survive the SkyLoop emissions process and are being released through the stacks, traveling northerly by the prevailing winds, and deposited onto surrounding land, including the wellfields that supply Mammoth's public water. In order for Mammoth's PSD to treat PFOA in the water supply, it would require a system overhaul.

Once the VEA learned of the potential PFOA contamination in the water supply it began advising its members to limit or avoid use of water from PSD, and as far as the VEA is aware, all of its members have switched to bottled water. Meanwhile, most of the community members in Mammoth continue to drink the water supplied by PSD. The VEA has also halted supplying the food bank and soup kitchen with produce from the VEA Sustainable Farm out of caution that it may be contaminated with PFOA.

SUMMARY OF THE ARGUMENT

The district court erred in granting a preliminary injunction against BlueSky Hydrogen Enterprises. First, the court correctly stayed the proceedings pending appeal under *Coinbase, Inc. v. Bielski*, because BlueSky's interlocutory appeal divested the district court of jurisdiction over issues involved in the appeal, making a stay mandatory rather than discretionary.

Second, the Vandalia Environmental Alliance lacks standing to bring a public nuisance claim because it has not suffered a special injury distinct in kind from that experienced by the public at large. The alleged harms, exposure to PFOA through the public water supply and speculative airborne deposition, are shared by the surrounding community and do not involve the invasion of a vested or proprietary interest required for private standing under Vandalia law.

Third, BlueSky air emissions of PFOA do not constitute "disposal" under RCRA. RCRA's definition of disposal requires the placement of waste into land or water, and emissions released first into the air fall outside the statute's scope. Extending RCRA's definition of "disposal" to cover air emissions would improperly exceed Congress's carefully drawn regulatory scheme.

Finally, the VEA failed to establish irreparable harm as required by *Winter v. NRDC, Inc.* The irreparable-harm inquiry, established by *Winter*, focuses on harm to the plaintiff, not to the public at large. Because the VEA's members ceased drinking the allegedly contaminated water, they are unlikely to suffer irreparable injury absent preliminary relief. Harm to nonparties cannot substitute for the individualized showing that *Winter* demands.

As such the preliminary injunction should be reversed.

STANDARD OF REVIEW

The issues presented on appeal primarily involve questions of law and are therefore reviewed de novo. *City of Huntington, W. Virginia v. AmerisourceBergen Drug Corp*., 157 F.4th 547, 561 (4th Cir. 2025). Whether the district court correctly interpreted and applied statutory requirements, including standing and the definition of "disposal" under RCRA, presents legal questions subject to de novo review. *Id*. Likewise, the legal conclusions underlying the district court's grant of injunctive relief, including whether the alleged harms satisfy the governing legal standards, are reviewed de novo. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 818 (9th Cir. 2018). By contrast, the district court's ultimate decision to grant a preliminary injunction is reviewed for abuse of discretion, while any underlying factual findings are reviewed for clear error. *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 129 S. Ct. 365, 369, 172 L. Ed. 2d 249 (2008).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY STAYED PROCEEDINGS PENDING APPEAL OF THE PRELIMINARY INJUNCTION.

The filing of BlueSky's interlocutory appeal triggered a transfer of authority over all aspects of the case involved with the appeal upon proper notice of filing. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56 (1982). That principle of jurisdictional transfer applies with particular force where, as here, the appeal challenges the district court's authority to continue adjudicating the case at all. In such circumstances, the entire action is necessarily "involved in the appeal". *Id*. at 58. Whether the district court properly stayed proceedings is a question of law that this Court reviews de novo. Continued district court proceedings would undermine the appellate court's jurisdiction and the purpose of interlocutory review. *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 741 (2023). Because jurisdiction is divested as a matter of law, the stay of proceedings is mandatory and not subject to discretionary balancing. *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 270 (2025). The district court therefore acted correctly in halting proceedings pending resolution of this appeal.

A. <u>The Filing of a Proper Notice of Appeal Divests the District Court of Jurisdiction Over All Aspects of the Case Involved in the Appeal.</u>

"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." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). This separation of jurisdictional powers, known as the Griggs principle, applies swiftly to interlocutory appeals and operates automatically, regardless of the district court's assessment of efficiency or fairness. *Id*. Once jurisdiction is turned over to the appellate court, the district court may not continue to exercise control over matters that would

interfere with or undermine the appellate court's review. *Griggs* at 61 (1982). The Supreme Court reaffirmed this principle of separation of jurisdictional powers in *Coinbase, Inc. v. Bielski*, ruling that a district court must stay its proceedings while an interlocutory appeal on the question of arbitrability is ongoing. *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). When an appeal concerns whether or not litigation may proceed in the district court at all, jurisdiction necessarily transfers to the court which is being appealed to. *Id*. In such circumstances, the district court is divested of authority over the case to the extent necessary to preserve the appellate court's ability to meaningfully resolve the question presented. *Id*.

Although the Supreme Court specified a question of arbitration as an element to stay proceedings in *Coinbase*, the Twelfth Circuit has adopted the reasoning and holding of *City of Martinsville v. Express Scripts, Inc*., 128 F.4th 265 (4th Cir. 2025), which expands the application of automatic stays by further relying upon the Griggs principle. The court in *Express Scripts* firmly stated that "[t]wo courts at once is one court too many", and that jurisdictional authority must be limited to one source of authority at a time. *Express Scripts, Inc.*, at 272.

Here, the notice of appeal was properly filed and invoked the jurisdictional authority of the Twelfth Circuit Court of Appeals. Because the preliminary injunction determines whether BlueSky may continue operating at all during the pendency of this litigation, the appeal necessarily implicates the entire case and the district court's authority to proceed. Allowing discovery or trial preparation to continue while the validity of the injunction is under appellate review would risk

inconsistent rulings, add to litigation burdens, and effectively nullify the purpose of interlocutory review. See *Coinbase*, 599 U.S. at 742–43. For the purpose of this case, the Twelfth Circuit Court of Appeals ruling on the case at the same time as the U.S. District Court for the Middle District of Vandalia is certainly "one court too many." *Express Scripts* at 272 (4th Cir. 2025).

B. <u>Once Jurisdiction is Divested, a Stay is Mandatory, and is Not Subject to Discretionary Balancing.</u>

Under the Griggs principle, once a proper notice of appeal is filed, jurisdiction over the aspects of the case involved in the appeal automatically transfers to the appellate court. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Because jurisdiction is automatically divested under *Griggs*, a stay of proceedings is required as a matter of law, and is not subject to discretionary balancing under the traditional four-factor test articulated in *Nken v. Holder*, 556 U.S. 418 (2009). As *Coinbase* made clear, the Griggs principle "applies regardless" of whether the district court believes a stay would be prudent. *Coinbase*, 599 U.S. at 747. Where an appeal challenges the district court's power to proceed with the litigation at all, as it does here, the entire case is necessarily swept into the scope of jurisdiction divested to the court of appeals. *Id*.

Here, the district court properly recognized that jurisdiction had passed to the Twelfth Circuit, and therefore correctly imposed a stay of all proceedings pending appellate review. Any attempt to continue discovery, pretrial motions, or trial preparation would have impermissibly encroached on the appellate court's authority and undermined the interlocutory appeal. It would be inequitable to force Appellee, BlueSky, to litigate the underlying matter while simultaneously

> appealing the injunction, and would effectively nullify the purpose of interlocutory review. By recognizing the mandatory nature of the stay, the district court appropriately protected the integrity of the appellate process and ensured that the Appellate Court can fully and fairly adjudicate BlueSky's appeal.

For these reasons, the district court correctly recognized that BlueSky's interlocutory appeal divested it of jurisdiction over the case. The stay of proceedings was therefore mandatory, not discretionary, and the court acted properly in halting further litigation until the appellate court resolves the preliminary injunction.

II. THE VEA DOES NOT HAVE SPECIAL INJURY SUFFICIENT TO GIVE IT STANDING.

The harms alleged by the VEA are indistinguishable from those experienced by the public at large and therefore fall squarely within the category of generalized grievances that public nuisance law does not permit private plaintiffs to litigate. Whether the VEA has standing to bring a public nuisance claim presents a purely legal question that this Court reviews de novo. Standing exists only where a plaintiff alleges a concrete, personal stake in the outcome of the dispute, not merely a sincere or longstanding interest in an issue of public concern. *Sierra Club v. Morton*, 405 U.S. 727, 731-32 (1972). Public nuisance is defined as an unreasonable interference with a right common to the general public. *In re Lead Paint Litigation*, 191 N.J. 405, 423, 924 A.2d 484, 495 (2007). Although public entities may seek to address a public nuisance, a private plaintiff may proceed only where it has suffered a special injury, or an injury that is different in kind and not merely degree, from that suffered by the public at large. *Id.*; *City of Huntington v. Amerisourcebergen Drug Corp.*, 157 F.4th 547, 567 (4th Cir. 2025). The Supreme Court has repeatedly held that plaintiffs must assert their own legal rights and interests, and cannot "rest their claim on the legal rights or interests of third parties". *Warth v. Seldin*, 422 U.S. 490 at 499

(1975). Because the VEA has proven unable to articulate a legal right to the drinking water from Mammoth PSD, and instead has relied upon a generalized grievance applicable to the general population, their claim fails. The VEA has attempted to rest their claim on the rights of the people of Mammoth as a whole, who are not involved in this litigation. Public nuisance law protects legally cognizable rights, not generalized use of public resources or shared exposure to environmental risk. *Ariz. Copper Co. v. Gillespie*, 230 U.S. 46 (1913), *In re Lead Paint Litigation*, 191 N.J. at 451-52.

Courts have rejected public nuisance claims where plaintiffs allege widespread environmental or public health harms without showing a concrete and individualized injury unique to the plaintiff. *Sierra Club v. Morton*, 405 U.S. 727 (1972); *Warth v. Seldin*, 422 U.S. 490 (1975). Were the Twelfth Circuit to allow such a claim to be litigated here would impermissibly expand public nuisance doctrine into a medium for generalized regulatory enforcement. *In re Lead Paint Litig.*, 191 N.J. at 451–52. Absent a special injury, a private nuisance claim fails as a matter of law. *Ariz. Copper Co. v. Gillespie*, 230 U.S. 46 (1913).

a. Private Standing Requires Invasion of a Vested, Proprietary Right, Which the VEA Fails to Establish.

Arizona Copper illustrates the narrow circumstances wherein a private plaintiff may maintain a public nuisance action. *Ariz. Copper Co. v. Gillespie*, 230 U.S. 46 (1913). There, the plaintiff farmer Gillespie was the first appropriator of the Gila River, and possessed a legally recognized and enforceable water right. *Id.* at 52 (1913). The appellant mining company's pollution directly invaded that vested right by degrading and contaminating the water used to irrigate Gillespie's farmland, which resulted in a demonstrable and concrete economic loss to his crops. *Id*. Although many downstream users were affected by the pollution,

Gillespie's injury was different in kind. *Id*. Not all residents downstream used the Gila River to irrigate crops, not all used the water on owned land, and not all suffered measurable economic harm. *Id*. Arizona Copper illustrates the legal protections afforded to proprietary interests, not generalized access or harm to public resources. *Id*.

The VEA's claims here stand in stark contrast to those of Mr. Gillespie, as the VEA does not possess priority rights or vested property interest in Mammoth PSD water. The VEA also fails to show a concrete invasion of a legally protected interest. Instead, the VEA alleges generalized airborne contamination and suspected land pollution, which lack the elements required by *Arizona Copper*. The VEA has failed to demonstrate actual contamination of its soil, crops, or property by failing to enter into evidence soil testing, crop testing, or examples of physical damage. The VEA's claimed injury rests on suspected exposure and precautionary measures, without proof of an actual invasion of property or economic loss. The elements established under *Arizona Copper* require more than speculative harm, but instead require a need for a tangible intrusion on a vested right. *Ariz. Copper Co.* at 57 (1913). The VEA's allegations fall well below that standard. Public nuisance law does not confer standing based on hypothetical exposure or fear shared by the surrounding community.

b. Allegations of Community-Wide Harm Do Not Establish the Special Injury Required for Private Standing.

The Supreme Court of New Jersey's decision in *In re Lead Paint Litigation* reinforces that widespread environmental or public health harm does not constitute a special injury, even when the harms are serious and costly. *In re*

Lead Paint Litigation, 191 N.J. 405, 423, 924 A.2d 484, 494 (2007). There, plaintiffs alleged widespread exposure to a toxic substance, significant public health risks, extensive economic and social costs, and the need for large-scale remediation. *Id*. at 414. The court held that these injuries were shared by the entire community, and that even governmental plaintiffs could not bypass doctrinal limits on standing and causation by reframing product-related harms as public nuisance claims. *Id*. at 436. This conclusion is reinforced by standing principles articulated in *Warth v. Seldin*, 422 U.S. 490 (1975). There, the Supreme Court emphasized that federal courts may exercise jurisdiction only where the plaintiff has suffered a "distinct and palpable injury" to itself, and not merely a generalized grievance shared by the public at large. *Id*. at 501. Even when an alleged harm is serious and widespread, standing is lacking unless the plaintiff can demonstrate a concrete showing of its own legally protected interests. *Id*. at 504.

The VEA's allegations mirror those rejected in *Lead Paint*: generalized exposure to danger, public health concerns, and downstream economic impacts shared broadly by the community of Mammoth. Under settled nuisance principles, such harms, despite their real existence, remain public, not private. No special injury means no claim. The VEA concedes that other farms would likely be affected by the same alleged PFOA emissions through the same airborne pathway. R. at 12. Where many other properties are affected in the same manner, by the same source, and through the same mechanism, the alleged injury is public in nature, not private. The special injury requirement exists precisely to prevent

private plaintiffs from litigating harms that are collective rather than individualized. Allowing the VEA to proceed would improperly expand public nuisance doctrine by permitting any organization affected by a community-wide environmental condition to claim standing based solely on proximity or precautionary measures.

The VEA's allegations of generalized public health concerns mirror the type of injuries that *Warth* held insufficient to warrant judicial intervention. Allowing standing here would improperly transform courts into forums for resolving abstract policy disputes over environmental regulation, a role the Supreme Court has expressly cautioned against and counseled to leave to other governmental institutions better equipped to respond. *Warth v. Seldin,* at 500. Because the VEA does not allege a concrete, individualized injury distinct in kind from that experienced by the surrounding community, its public nuisance claim fails under longstanding prudential standing limitations.

The VEA is likely to rely on *Amerisourcebergen* in their argument, as the harm there was widespread to the public. *City of Huntington v. Amerisourcebergen Drug Corp.,* 157 F.4th 547 (4th Cir. 2025). That case is distinguishable from the facts here because in *Amerisourcebergen* the plaintiffs were municipal and county governments acting within their traditional roles of enforcers of public nuisance law. *Id.* at 547. The alleged injuries of strain on law enforcement, foster care systems, public health infrastructure, and municipal budgets were injuries specific to the government, not private harms. *Id*. Public nuisance law has historically been enforced by governments on behalf of the

> public. *Id*. at 565. If BlueSky's emissions present the kind of widespread harm alleged, the proper plaintiffs to bring the suit are governmental entities, not private organizations like the VEA. Extending *Amerisourcebergen* to confer standing on private entities would erase the special injury requirement entirely and transform courts into de facto environmental regulators.

The VEA lacks standing because it has not suffered a special injury distinct in kind from that allegedly experienced by the public at large. As *Arizona Copper* makes clear, private standing exists only where pollution causes a concrete invasion of a vested, legally protected property interest. *Ariz. Copper,* at 52 (1913). The VEA alleges no such invasion. Instead, it asserts generalized exposure and speculative contamination, harms that *In re Lead Paint Litigation* squarely holds as insufficient to transform a public concern into a private cause of action.

This limitation is especially important here. BlueSky is not an evil polluter seeking to shirk the harm it has caused; it is a clean-energy enterprise that provides jobs and economic stability while advancing emissions-reducing technology. BlueSky's overall process represents a net environmental and social benefit, not the kind of unreasonable interference traditionally targeted by public nuisance law. Moreover, the waste product at issue was acquired pre-contaminated, a fact that undermines the causal chain between BlueSky's conduct and the alleged harm. The VEA's claims do not justify judicial expansion of nuisance doctrine to compensate for perceived regulatory gaps. If BlueSky's emissions raise concerns of public health or environmental policy, those concerns remain within the province of legislative and regulatory authorities, not private organizations lacking an individualized injury. Public nuisance law is not a substitute for environmental regulation, and courts are not equipped to make such nuanced

determinations as to enforce such regulation. Therefore, because the VEA has failed to allege a special injury sufficient to confer standing, its public nuisance claim must be dismissed.

III. BLUESKY'S AIR EMISSIONS OF PFOA IS NOT CONSIDERED "DISPOSAL" UNDER RCRA.

RCRA's imminent and substantial endangerment provision applies only where a defendant has "contributed to the handling, storage, treatment, transportation, or disposal of any solid or hazardous waste". 42 U.S.C. § 6972(a)(1)(B). "Disposal" is defined narrowly 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 waste may enter the environment or be emitted into the air or discharged into any waters". 42 U.S.C. § 6903(3). This definition imposes a distinct requirement; the waste must be placed into or on land or water. The district court concluded that BlueSky's alleged air emission of PFOA constituted disposal because the particles were later deposited onto land and ground water. That conclusion rests on an overly expansive reading of RCRA. Appellee asks this court to adopt the reasoning of the Ninth Circuit found in *Center for Community Action & Environmental Justice v. BNSF Railway Co.*, which faithfully applies the statutory text and holds that emissions first released into the air do not constitute "disposal," even if the particles later settle onto land or migrate into groundwater. *Ctr. for Cmty. Action & Env't Just. v. BNSF R. Co*., 764 F.3d 1019, 1020–21 (9th Cir. 2014).

A. RCRA's Statutory Purpose Confirms That Congress Intended the Act to Regulate Land-Based Waste Disposal, Not Air Emissions, and Interpreting "Disposal" to Reach Emissions First Released Into the Air Would Improperly Collapse RCRA Into the Clean Air Act.

Courts evaluating RCRA's purpose should not only look to the remedial goals, but also to the specific problem Congress sought to address and the statutory scheme it enacted to do so. *Ctr. for Cmty. Action & Env't Just.,* 764 F.3d at 1022.. In *Center*, the Ninth Circuit concluded that RCRA's purpose strongly supported a narrow reading of

"disposal" limited to land and water placement. *Id*. at 1026-30. The court explained that RCRA was enacted to close "the last remaining loophole in environmental law" – unregulated land disposal of hazardous waste – at a time when Congress had already enacted the Clear Air Act to address air pollution. *Id*. The court emphasized that Congress deliberately assigned air emissions to the Clear Air Act and land disposal to RCRA, and that expanding the RCRA to cover emissions would undermine that statutory division. *Id.* at 1024-29. Applying a textualist approach, the court reasoned where Congress omitted "emissions" from RCRA's definition of disposal but included it elsewhere in the statute, courts should take that as a conscious omission rather than expand RCRA based on generalized remedial goals. *Id* at 1024-25.

By contrast, courts relying on a broader conception of RCRA's purpose have treated the statute's remedial character as justification for extending it to air emissions. In *Citizens*, the court emphasized that RCRA is a remedial statute that should be interpreted broadly to address environmental harm and concluded that particulate matter emitted into the air and later deposited onto land fell within the RCRA's scope. *Citizens Against Pollution v. Ohio Power Co.*, 484 F. Supp. 2d 800, 805-806 (S.D. Ohio 2007). Similarly, in *Little Hocking*, the court relied on RCRA's remedial purpose to support liability where airborne C8 contamination ultimately affected soil and ground water. *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 949-53 (S.D. Ohio 2015). In both cases, the Sixth Circuit Court emphasized environmental harm over congressionally set statutory boundaries, effectively allowing RCRA to regulate pollution pathways Congress omitted from the Clean Air Act. *Id.*

The court should adopt the reasoning found in *BNSF*, not *Citizens* or *Little Hocking*. BlueSky operates under a Title V Clean Air Act permit, and the VEA's allegations concern air emissions of PFOA that EPA has chosen not to regulate under the Clean Air Act. Allowing RCRA to fill that perceived regulatory gap would conflict with Congress's deliberate allocation of regulatory authority and would permit citizen suits to override policy judgments embedded in the Clean Air Act. As the Ninth Circuit explained, regulatory gaps created by Congress are not invitations for courts to expand RCRA beyond its text. *Ctr. for Cmty. Action & Env't Just.,* 764 F.3d at 1026.

Under a textualist reading, RCRA's purpose must be derived from the statute congress actually enacted, not from an abstract desire to remedy all environmental harms. Congress targeted land disposal of solid and hazardous waste, and it drafted the definition of disposal accordingly. Reading that definition to include air emissions would not advance RCRA's purpose but would instead distort it by transforming RCRA into a parallel air-pollution statute. Because the alleged harm here arises from air emission regulation, RCRA's statutory purpose supports adopting the Ninth Circuit's interpretation and rejecting the district court's expansive reading.

B. BlueSky's Alleged PFOA Releases Do Not Satisfy RCRA's Placement Requirement Because the Contamination is Alleged to Originate With Air Emissions, Not the Discharge or Placement of Waste Into Land or Water.

Courts evaluating RCRA's placement requirement focus on the initial act giving rise to contamination: when waste is first emitted into the air, rather than introduced into land or water through dumping or discharge, the placement element is not satisfied, notwithstanding later atmospheric deposition.

In *BNSF*, the court concluded that the plaintiffs failed to satisfy RCRA's placement requirement because the alleged waste was emitted into the air as part of

ordinary operations, not discharged or deposited into land or water. *Id*. at 1021-24. The plaintiffs alleged that diesel particulate matter was released from locomotives and vehicles at railyards, carried by wind, and eventually settled onto surrounding land and water. *Id*. Despite these downstream effects, the court focused on the initial act giving rise to the contamination: the particulates entered the environment through air emissions, not through dumping, leaking, or placing waste into land or water. *Id* at 1024. Because the waste began in the air, the placement element was not satisfied.

By contrast, the courts in *Citizens Against Pollution* and *Little Hocking Water Association* relied on materially different factual circumstances. In *Citizens,* the defendant operated a coal-burning facility that produced flue gas containing combustion byproducts, and the court emphasized evidence that the plume visibly touched down onto nearby land, causing immediate physical effects on residents and property. *Citizens Against Pollution*, 484 F. Supp. 2d at 810. In *Little Hocking*, the airborne emissions occurred against a backdrop of long-term chemical manufacturing and waste handling, where contaminants had already been introduced into the environment through multiple pathways, including releases affecting soil and ground water. *Little Hocking Water Ass'n*, 91 F. Supp. 3d at 949-53. In both cases, the courts viewed air emissions as part of a broader pattern of waste management that directly implicated land-based contamination.

The facts alleged here align closely with *BNSF* and are distinguishable from *Citizens* and *Little Hocking*. Like the railyards in *BNSF*, BlueSky's SkyLoop facility allegedly releases particulate matter through air emissions, which are then transported by wind and later touch onto the surrounding land. The VEA does not allege that BlueSky dumped, spilled, leaked, or otherwise placed PFOA directly into land or water. Nor does

it allege a history of land-based waste disposal or contamination comparable to *Little Hocking*. Instead, as in *BNSF*, the alleged harm depends entirely on atmospheric transport following an air release. Unlike *Citizens*, there is no allegation that BlueSky discharged waste in a manner functionally equivalent to depositing it onto land, and unlike *Little Hocking*, there is no broader pattern of waste handling tying the contamination to land-based disposal practices. Because the VEA alleges only air emissions followed by atmospheric transport, and not the placement of waste into land or water, BlueSky did not "dispose" of waste within the meaning of RCRA.

IV. THE *WINTER* STANDARD REQUIRING IRREPARABLE HARM TO THE PLAINTIFF DOES NOT EXTEND TO HARM TO THE PUBLIC SUFFICIENT TO ISSUE A PRELIMINARY INJUNCTION.

Under *Winter*, the Supreme Court held that a plaintiff seeking a preliminary injunction must establish that *he* is likely to suffer irreparable harm in the absence of preliminary relief. *Winter v. NRDC, Inc.*, 555 U.S. 7 at 20 (2008) (emphasis added). Subsequent cases affirmed *Winter*, that "the irreparable-harm factor is about the individual interests of each movant," *Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 463 (8th Cir. 2025), a plaintiff must assert irreparable harm specific to themselves, absent an injunction, *Nat'l Wildlife Fed'n*, at 822. *Winter* imposes a distinct requirement, that harm will continue to occur specifically to the plaintiff if the injunction is not granted. The VEA failed to demonstrate specific irreparable harm that it or any of its members would be subject to in the absence of an injunction. Therefore, the Winter standard is not satisfied.

First, the VEA's members ceased consumption of the public water supply upon learning of PFOA contamination. Because of this, the VEA is unlikely to suffer irreparable harm in the time leading up to trial, which a preliminary injunction seeks to prevent. The VEA solely relied on harm through the public water supply in its motion for a preliminary injunction, this waives

any additional potential harm the VEA may experience to their farm's produce and their decision to halt donation of produce to the community food shelf and soup kitchen. Second, the VEA may argue that by establishing standing it may bring in public interest to establish irreparable harm. However, as discussed in the issue two above, the VEA does not have a special injury sufficient to provide standing. Third, irreparable harm to the community and the VEA may occur if the preliminary injunction is granted. If litigation were to drag on and the waste-to-energy facility were to remain closed, more waste would be directed to landfills further exacerbating the system that SkyLoop is designed to relieve. Appellee contends that the court apply the irreparable harm prong of *Winter* to only include harm to the movant.

A. The VEA Must Establish Irreparable Harm Specific to Itself and Its Members For Grant of Injunctive Relief.

Courts evaluating irreparable harm should only focus on harm to the movant specifically, rather than consider harm to the public. In *Nat'l Wildlife Fed'n*, the Ninth Circuit Court of Appeals held that the movant must show injury to himself not injury to the environment, as harm to a third party does not satisfy the requirement. *Nat'l Wildlife Fed'n*, 886 F.3d at 822. Members of the National Wildlife Federation showed irreparable harm to their interests as a result of harm to a listed species. *Id*. Movants submitted a declaration on recreational and aesthetic pursuits on Idaho's rivers that depend on the health of listed salmonid populations. *Id*.

Here, the VEA fails to establish how PFOA contamination in Mammoth's public drinking water, that its members are not drinking, will impact it and its members directly. Because the VEA's motion for the preliminary injunction was so narrow as to only cover harm through the public drinking water, it cannot establish harm through to the community members, by way of the VEA's Sustainable Farm, pulling produce donations

from the local food shelf and soup kitchen. Therefore, the VEA has not established irreparable harm to itself directly.

Furthermore, *Beber* concluded that irreparable harm cannot be established by economic loss alone, if the harm can be fully compensated through an award of damages. *Beber*, at 461. In *Beber*, the movants potential harm was loss of income as result of compliance with a noncompete and nonsolicitation covenant. *Id.*, at 458. Once the court determined the plaintiff's potential harm was purely economic and compensable by the respondent, the court held plaintiff's injury to not be irreparable. *Id*., 563.

Here, the VEA alleges potential harm by PFOA contaminated drinking water, however the VEA's members have ceased consumption of the public water supply and instead purchase bottled water. Therefore, the VEA's claimed potential injury leading up to trial would be the money that the VEA's members will spend on continued use of bottled water, which is purely economic and compensable. Economic loss alone is not enough to establish irreparable harm and thus the VEA has not met the irreparable harm prong of the *Winter* test.

B. The VEA May Not Establish Irreparable Harm Through General Public Harm.

The VEA is likely to rely on the principle discussed in *Warth*, that by establishing standing a party may invoke general public interest in support of his claim for injunctive relief. *Warth v. Seldin*, 422 U.S. 490, 501 (1975). However, "the plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants." *Id*. In *Warth*, petitioners of organizations and individuals challenged zoning ordinances alleging that they effectively excluded people of low and moderate income from living within the town's limits. *Id.*, at 493. Petitioners who asserted standing based on low income or moderate income failed to establish specific

facts of injuries from the zoning ordinance or specific benefits from court intervention. *Id*. While Petitioners who asserted standing based on status as taxpayers within the town based their claim on injuries of third parties by violation of their constitutional rights. *Id*.

Here, the VEA alleges that contamination of public water supply will continue if the preliminary injunction is not granted, thus posing a health risk to the VEA members and the general public of Mammoth. However, the VEA fails to establish a "distinct and palpable injury," *Id*., at 501, as its members are no longer drinking the public water and are only consuming bottled water. Therefore, the VEA may not invoke general interest to establish irreparable harm. To allow a private party to bring harm to the general public as the basis for establishing the irreparable requirement to issue a preliminary injunction would set a precedent that parties without a distinct injury may bring a claim for injunctive relief which in turn would overburden the courts. If the contamination is a legitimate public health concern, the VEA is not the correct party to bring suit.

If the court does consider public harm to establish an irreparable injury then the court must also consider the effect of granting the preliminary injunction with regard to public consequence. *Winter*, at 9. As a "preliminary injunction is an extraordinary remedy never awarded as of right." *Id*. In each case, courts must balance the competing claims of injury and consider the effect of granting or withholding the requested relief, paying particular regard to the public consequences. *Id*.

Under *Hazardous Waste Treatment Council*, the Fourth Circuit Court of Appeals weighed the potential harm to the movant against public interest when considering whether to award a preliminary injunction. *Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 781, 788 (4th Cir. 1991). *Hazardous Waste Treatment Council*

involved a national association that licensed hazardous waste facilities that challenged new state statutes that would impose regulations on the facilities. *Id.*, at 782. There, the movant challenged the statutes and sought a preliminary injunction to halt enforcement while litigation was pending. *Id*. The court in *Hazardous Waste Treatment Council* took into consideration that if the preliminary injunction was granted and litigation were to take too long, then irreparable harm may occur to the public as a result of possible additional untreated waste that facilities were unable to handle. *Id.*, at 788.

Here, a similar issue is at hand, if the preliminary injunction is granted and the SkyLoop facility has to remain closed for an extended period, it will further divert untreated waste to landfills and could require new landfills to accommodate. In a region where environmental regulations are more lax than surrounding states, these facilities have the potential to create additional environmental issues for the community. If the preliminary injunction is granted, the Vandalia community will be at risk for increased environmental harm.

CONCLUSION

For the foregoing reasons, BlueSky Hydrogen Enterprises respectfully requests that this Court affirm the district court's order staying proceedings pending appeal, reverse the district court's order granting a preliminary injunction, and remand with instructions to dissolve the injunction and dismiss the claims for lack of standing and failure to satisfy the requirements of RCRA and *Winter v. NRDC, Inc*. consistent with the rulings and guidance set forth herein.

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. 23