C.A. No. 24-0682

UNITED STATES COURT OF APPEALS FOR THE TWELFTH CIRCUIT

VANDALIA ENVIRONMENTAL ALLIANCE,

Petitioner-Appellant,

v.

BLUESKY HYDROGEN ENTERPRISES,

Respondent-Appellee.

BRIEF FOR PETITIONER-APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF VANDALIA

Team 1 – *Counsel for Petitioner-Appellant*

ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

The United States District Court for the Middle District of Vandalia had subject matter jurisdiction under 28 U.S.C. § 1331 because the Vandalia Environmental Alliance ("VEA") brought a citizen suit claim under the Resource Conservation and Recovery Act's ("RCRA") imminent and substantial endangerment provision, 42 U.S.C. § 6972(a)(1)(B). The district court also had supplemental jurisdiction over VEA's related state law public nuisance claim under 28 U.S.C. § 1367(a).

This Court has jurisdiction over BlueSky's interlocutory appeal from the district court's November 24, 2025, order granting a preliminary injunction under 28 U.S.C. § 1292(a)(1). BlueSky timely filed its notice of appeal on December 1, 2025. This Court also has jurisdiction over VEA's cross appeal from the district court's December 8, 2025, order staying proceedings. The district court certified its stay order for interlocutory appeal under 28 U.S.C. § 1292(b), and this Court granted permission to appeal and consolidated the cross appeal with BlueSky's appeal of the preliminary injunction.

STATEMENT OF THE ISSUES PRESENTED

I. Whether the district court correctly stayed its proceedings pending appeal of the preliminary injunction under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023);

II. Whether the VEA has suffered a special injury sufficient to give it standing to bring its public nuisance claim for BlueSky's PFOA air emissions;

III. Whether BlueSky's air emissions of PFOA are considered "disposal" under RCRA and thus district court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim; and

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

STATEMENT OF THE CASE

This appeal arises from the district court's order granting the Vandalia Environmental Alliance's ("VEA") motion for a preliminary injunction against BlueSky Hydrogen Enterprises,

the operator of the SkyLoop waste-to-hydrogen facility in Mammoth, Vandalia. *Vandalia Env't All. v. BlueSky Hydrogen Enters.*, Nos. 24-0682, 25-0682, at 1–2 (12th Cir. Dec. 29, 2025) (order). SkyLoop is part of the Appalachian Regional Clean Hydrogen Hub ("ARCH2") and converts various waste streams, including plastics, biosolids, and chemical by-products, into hydrogen. *Id.* at 7–8. FOIA responses from the Vandalia Department of Environmental Protection revealed that SkyLoop processes biosolids from a wastewater treatment plant that accepts PFAS-containing sludge from Martel Chemicals, and that PFOA in Martel's sludge is not removed at either the wastewater plant or SkyLoop. *Id.* at 8.

Mammoth's drinking water is supplied by the Mammoth Public Service District ("PSD") from a series of groundwater wells located north of VEA Sustainable Farms, an educational farm owned and operated by the VEA approximately 1.5 miles from SkyLoop. *Id.* at 7–8. In March 2025, Unregulated Contaminant Monitoring Rule results showed that PFOA—undetected in 2023—was present at 3.9 parts per trillion in Mammoth's drinking water. *Id.* at 9, 12. PFOA is a persistent "forever chemical" that does not readily break down and has been linked by regulators to cancer, birth defects, and liver disease, and there is no safe level of PFOA exposure without increased health risks. *Id.* at 8, 12. VEA's investigation, aided by prevailing-wind data, concluded that PFOA emitted from SkyLoop's stacks was carried northward, deposited on surrounding land including the PSD wellfield, and accumulated in Mammoth's groundwater. *Id.* at 9.

The Mammoth PSD lacks any treatment technology capable of removing PFOA from drinking water and cannot install such treatment for at least two years due to required system upgrades and equipment procurement. *Id.* at 11–12. Many VEA members initially continued to drink the contaminated water but ceased doing so after learning of the contamination and now

purchase bottled water at significant cost. *Id.* at 13. Most Mammoth residents, however, remain unaware of the contamination or cannot afford alternatives and continue to drink untreated water from the PSD. *Id.* at 14–15. The VEA also commissioned soil testing at its farm, which detected PFOA in the soil, prompting the VEA to suspend donations of its produce to local food banks and soup kitchens due to concerns about potential exposure. *Id.* at 9.

After providing notice of intent to sue under RCRA's imminent and substantial endangerment provision, the VEA filed suit on June 30, 2025, asserting a state-law public-nuisance claim and a RCRA § 7002(a)(1)(B) citizen suit alleging that BlueSky had contributed to the disposal of PFOA on the PSD wellfield, creating an imminent and substantial endangerment to health and the environment. *Id.* at 10. The VEA sought declaratory and injunctive relief, including an order halting PFOA-bearing feedstocks and requiring BlueSky to fund cleanup or treatment of Mammoth's water supply. *Id.*

The VEA moved for a preliminary injunction, arguing that it could not wait for final judgment to halt the ongoing disposal of a persistent hazardous chemical into the community's drinking water. *Id.* at 11. BlueSky opposed, asserting that air emissions cannot constitute "disposal" under RCRA and that the VEA could not show irreparable harm because its members had stopped drinking PSD water and suffered only economic injury. *Id.* at 12–13.

At a September 29, 2025, evidentiary hearing, the VEA members testified that they had stopped drinking PSD water and now rely on bottled water. *Id.* at 13. The VEA's executive director testified that soil testing at VEA Sustainable Farms detected PFOA. *Id.* at 9. The VEA's air-emissions expert testified that, if SkyLoop's emissions continue, PFOA levels in Mammoth's drinking water could reach approximately 10 parts per trillion by May 2026. *Id.* at 15. The VEA's toxicologist testified to a reasonable degree of scientific certainty that Mammoth

residents who continue to drink PSD water will suffer irreparable harm between now and trial in the form of increased health risks. *Id.* at 14–15. BlueSky presented no opposing toxicologist. *Id.* at 15.

On November 24, 2025, the district court granted the VEA's motion for a preliminary injunction, concluding that SkyLoop's PFOA air emissions constitute "disposal" under RCRA and that ongoing contamination of Mammoth's drinking water and surrounding land presents irreparable harm. *Id.* at 15–16. BlueSky appealed and moved to stay district-court proceedings pending appeal. *Id.* at 16. The district court granted the stay solely because it believed a stay was mandatory under *Coinbase*, notwithstanding its acknowledgment that it would not have granted one as a matter of discretion. *Id.* at 16. These cross-appeals followed.

SUMMARY OF THE ARGUMENT

"*Water and air, the two essential fluids on which all life depends, have become global garbage cans*." – Jacques-Yves Cousteau

SkyLoop's PFOA emissions threaten Mammoth's public water supply and the surrounding farmland with an aggressive forever chemical. The district court granted a preliminary injunction to stop any further deposition while the case proceeds to trial. In doing so, the court has preserved the status quo and delayed additional contamination and the health risks that would accompany it. This Court should vacate the blanket stay and affirm the injunction so the case can move forward.

The district court erred in staying all proceedings pending BlueSky's interlocutory appeal. *Coinbase's* automatic stay rule is limited to arbitration appeals and does not apply to preliminary injunction appeals. Traditional stay principles therefore govern, and BlueSky can't satisfy them. This is specifically apparent in discovery and case management, both of which don't threaten this Court's ability to review the injunction. At a minimum, divestiture extends

only to matters involved in the appeal, not to the entirety of the case. The stay should be reversed, as it delays the resolution of the cases while contamination continues in the background.

Second, the VEA has standing to pursue a public nuisance claim because it suffered a special injury at the hands of the general public. The Alliance owns and operates VEA Sustainable Farms, which acts as both an educational and community resource. PFOA deposition has damaged VEA's property, impaired its ability to operate farm-based programs, and ultimately prevented it from fulfilling its mission to the community. That injury, together with the continued threat of deposition, satisfies the special injury requirement for a plaintiff who is seeking to lessen a public nuisance.

Third, the district court correctly found a likelihood of success under RCRA's imminent and substantial endangerment provision. BlueSky releases PFOA-bearing particles into the air, and said particles settle onto both land and water, causing a wasting effect on the environment. That counts as disposal in the traditional sense, especially when emissions present an imminent and substantial endangerment to a community's drinking water supply. Because BlueSky is contributing to that disposal, the VEA should succeed on the merits presented.

Finally, the remaining *Winter* factors strongly favor injunctive relief. The repeated contamination of an entire public water supply and the communities surrounding environment constitutes irreparable harm since it escalates over time and cannot be fully remedied later. The balance of facts does not favor allowing BlueSky to continue depositing PFOA when the litigation proceedings are at a halt. Especially given the overwhelming public support against further contamination. For these reasons, the Court should vacate the blanket stay and affirm the preliminary injunction.

ARGUMENT

I. The district court's stay of its proceedings pending appeal of the preliminary injunction was improper under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023).

The district court erred by staying all proceedings pending appeal. *Coinbase* does not automatically grant a case-wide stay for preliminary injunction appeals; instead, traditional stay principles apply. *Coinbase*, *Inc. v. Bielski*, 599 U.S. 736, 740-41 (2023); *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). *Coinbase's* automatic-stay logic rests on preserving the right to arbitrate, a right lost if litigation continues during the appeal surrounding arbitration. *Coinbase*, 599 U.S. at 741. In contrast, a preliminary injunction appeal seeks temporary relief while the case proceeds toward final judgment, so a stay requires a traditional equitable showing. *Nken*, 556 U.S. at 433-34.

The stay should be vacated. BlueSky appealed only for the preliminary injunction, and the district court stayed solely because it believed a stay was mandatory, all the while acknowledging that it would not have granted one as a matter of discretion. *Vandalia Env't All. v. BlueSky Hydrogen Enters.*, Nos. 24-0682, 25-0682, at 1-2, 16 (12th Cir. Dec. 29, 2025) (order).

A. The district court misapplied *Coinbase*, which applies only to arbitration appeals.

The district court's blanket stay rests on a misreading of *Coinbase* because *Coinbase's* automatic-stay rule is confined to arbitration appeals and does not apply to preliminary injunction appeals. *Coinbase*, 599 U.S. at 740-41.

Coinbase's mandatory-stay logic applies only to interlocutory appeals about whether a case belongs in arbitration, where continued litigation would undermine the appealed right. *Coinbase*, 599 U.S. at 740-41. Aside from that, a stay is discretionary and requires the *Nken* equitable showing: likelihood of success, irreparable harm, harm to the non-movant, and the public interest. *Nken*, 556 U.S. at 433-34.

In *Express Scripts, Inc.*, the Ninth Circuit held "*Nken*, and not *Coinbase*," governed and affirmed the denial of a stay pending interlocutory appeal. *People v. Express Scripts, Inc.*, 139 F.4th 763, 770-73 (9th Cir. 2025). And in *Sierra Club*, the district court applied *Nken* and denied a stay of a preliminary injunction, stressing the merits could be resolved quickly. *Sierra Club v. Trump*, No. 19-cv-00892-HSG, 2019 U.S. Dist. LEXIS 90962, at *3-4 (N.D. Cal. May 30, 2019).

The district court stayed because it believed *Coinbase* required it. *Vandalia Env't All.*, at 16. However, *Coinbase's* holding is tied to arbitration, not preliminary injunctions. *Coinbase*, 599 U.S. at 740-41. BlueSky filed its appeal and stay motion on December 1, 2025; the VEA opposed on December 5; and the court granted the stay on December 8 solely because it viewed a stay as mandatory, which is a legal error. *Vandalia Env't All.*, at 15-16.

Nothing about this preliminary injunction appeal threatens to deprive any appealing party of the benefit of an appealed right, as continued litigation would in an arbitration case. *Coinbase*, 599 U.S. at 741-742. The dispute alleges ongoing PFOA air emissions from the SkyLoop facility contaminating the Mammoth PSD and depositing onto farmland. *Vandalia Env't All.*, at 9. This contamination prompted the VEA to advise members to avoid municipal water and to halt the distribution of locally grown food. *Id*. The record also includes uncontested expert evidence that continued emissions could drive PFOA levels in the Mammoth PSD to as high as 10 ppt by May 2026 and increase health risks for residents who are still drinking the water. *Id*. at 15. The parties had already invested heavily in discovery and expert preparation for the May 2026 trial by the time the stay was issued; stopping now would invite duplication and undermine efficient resolution. *Vandalia Env't All.*, at 16.

Coinbase cannot be stretched into a universal automatic-stay rule for preliminary injunction appeals. *Coinbase*, 599 U.S. at 740-41. Thus, because the district court treated the stay as

mandatory rather than applying the correct governing framework, the blanket stay should be vacated. *Nken*, 556 U.S. at 433-34.

B. Even if *Coinbase* informs this Court's analysis, any divestiture is limited, so the district court's blanket stay was improper.

Even if *Coinbase* is relevant, it does not justify stopping the entire case, because interlocutory appeals deprive the court of jurisdiction only over the aspects of the case actually involved in the appeal.

An interlocutory appeal deprives the district court only of "those aspects of the case involved in the appeal"; it does not halt unrelated aspects of litigation. *Coinbase*, 599 U.S. at 740 (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). Courts may proceed on the merits and case management so long as they do not change the appealed injunction when it comes to the context of a preliminary injunction. *The Satanic Temple, Inc. v. Tex. Health & Hum. Servs. Comm'n*, 79 F.4th 512, 520 (5th Cir. 2023).

In *Satanic Temple*, plaintiffs appealed the denial of preliminary relief, but the district court proceeded to dismiss on the merits while the appeal was pending; the Fifth Circuit held the injunction appeal did not "inherently divest" jurisdiction to take other steps. *Satanic Temple, Inc.*, 79 F.4th at 513-514, 520.

Even if *Coinbase's* "*Griggs* principle" applies, it divests the district court only as to "those aspects of the case involved in the appeal." *Coinbase*, 599 U.S. at 740. BlueSky's appeal targets the preliminary injunction, and it does not prevent the court from building the merits record and moving toward the scheduled May 2026 trial, as long as the injunction itself is not modified. *Vandalia Env't All.*, at 1-2, 16; *Satanic Temple*, 79 F.4th at 520. Proceeding on the merits would not open the floor for appellate review of the injunction; it would preserve the status quo while

the Twelfth Circuit reviews the temporary order that's in place. *Coinbase*, 599 U.S. at 741; *Vandalia Env't All.*, at 1-2.

The Satanic Temple illustrates that, even with an interlocutory appeal of preliminary relief, the district court continued to decide the merits, and the Fifth Circuit held that the appeal did not constitute an implied divestment of jurisdiction. *Satanic Temple*, 79 F.4th at 513-14, 520. In this circumstance, delays are especially harmful because the injunction concerns ongoing PFOA emissions and community exposure. *Vandalia Env't All.*, at 9, 15.

Thus, a blanket stay exceeds any divestment, and proceedings should continue for matters not "involved in the appeal." *Coinbase*, 599 U.S. at 741.

C. The blanket stay substantially prejudices the VEA and the public, and, even under the discretionary *Nken* standard, BlueSky cannot justify a stay.

Even if the stay were discretionary, it still should not have been granted because it prejudices VEA, delays merits resolution, and disregards the public interest. Proper use of the *Nken* equitable balancing test, for a proper stay, shows that the result should not be an automatic pause and that it decisively weighs against BlueSky.

A stay pending appeal is an "extraordinary remedy" and "not a matter of right." *Nken*, 556 U.S. at 433-34. The party seeking a stay bears the burden of justification and must satisfy a four-factor equitable test: (1) the applicant must make a strong showing that it is likely to succeed on the merits of the appeal; (2) the applicant must show it will suffer irreparable injury absent a stay; (3) the court must consider whether issuance of the stay will substantially injure the other parties; and (4) the court must consider where the public interest lies. Id. at 433-34. The first two factors, likelihood of success and irreparable harm, are the "most critical." *Id*. at 434. Separately, courts evaluating whether to stay proceedings also account for practical case-management

concerns, including prejudice from delay and judicial efficiency. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324-25 (9th Cir. 1995).

Nken reaffirmed that a stay is not presumed even where serious interests are at stake; the movant must satisfy the four-factor standard. *Nken*, 556 U.S. at 433-34. *Keating* also rejected an automatic stay and emphasized prejudice and judicial efficiency in balancing. *Keating*, 45 F.3d at 324-25.

Under *Nken*, BlueSky bore the burden to justify a stay by a strong showing on the first two "most critical" factors and by demonstrating that the balance of harms and public interest favors halting the case, which they failed to accomplish. *Nken*, 556 U.S. at 433-34.

BlueSky is unlikely to succeed on the notion that a preliminary injunction appeal kicks off an automatic case-wide stay. *Coinbase* framed the "sole question" as whether a district court must stay proceedings during an interlocutory appeal "on arbitrability." *Coinbase*, 599 U.S. at 740-41. The district court assumed that the same logic carried over here. *Vandalia Env't All.*, at 16. Unlike arbitration, nothing about discovery would eliminate the benefits of appeal; the injunction question can be resolved on the existing record as the case moves toward judgment. *Coinbase*, 599 U.S. at 741.

BlueSky identified no irreparable harm from allowing litigation to continue. The preliminary injunction hearing focused on evidence about ongoing PFOA exposure, not a right to avoid litigation altogether. *Nken*, 556 U.S. at 433-34. Additionally, ordinary litigation burdens are not found to be irreparable under *Nken*. *Id*. BlueSky's only asserted injury is continuing to litigate a case already pending in federal court, which is not an example of irreparable harm. *Id*.

The stay injures the VEA and the community. The VEA members stopped drinking Mammoth PSD water and continue to fight ongoing bottled-water costs; the VEA also halted the

distribution of locally grown food due to PFOA concerns. *Vandalia Env't All.*, at 9, 15. The district court credited uncontested expert evidence that continued emissions could drive PFOA levels to as high as 10 ppt by May 2026 and increase health risks for residents still drinking the water. *Id*. at 15. A blanket stay also wastes substantial discovery and expert work already completed for the May 2026 trial, the type of prejudice that *Keating* treats as central. *Id*. at 16; *Keating*, 45 F.3d at 324-25. The VEA also alleged that the PFOA deposition threatened its members' gardens and property interests, increasing the ongoing harm that stemmed from the delay. *Vandalia Env't All.*, at 9.

Finally, the public interest favors resolving allegations of ongoing PFOA exposure through drinking water and land deposition. *Vandalia Env't All.*, at 15. Because BlueSky cannot satisfy *Nken's* factors, the stay should be vacated. *Nken*, 556 U.S. at 433-34. The district court's perspective, that it would not have stayed the case as a matter of discretion, confirms the equitable balance favors continued proceedings, as its application weighs so clearly against BlueSky. *Vandalia Env't All.*, at 16.

Therefore, this Court should reverse the district court's stay of its proceedings pending appeal of the preliminary injunction under *Coinbase*.

II. The VEA has standing to bring its public nuisance claim for BlueSky's PFOA air emissions because it suffered a "special injury" and satisfies the Constitution's standing requirements.

This Court should affirm the district court's order granting Vandalia Environmental Alliance's ("VEA") motion for a preliminary injunction against BlueSky Hydrogen Enterprises ("BlueSky") because the VEA satisfies the constitutional standing requirements and thus may bring its public nuisance claim to enjoin BlueSky from producing PFOA air emissions.

The standing requirement comes directly from the Constitution of the United States, which grants federal courts the power only to resolve justiciable matters when there are "Cases" and "Controversies" suitable for judicial review. U.S. Const. art. III, § 2, cl. 1. To satisfy the Constitution's standing requirement, the plaintiff must show three elements. First, the plaintiff must have suffered an "'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000). Second, the injury must be "fairly traceable to the challenged action of the defendant." *Id*. Third, it must be likely, "as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id*. at 181.

A. The VEA has suffered an "injury in fact" sufficient to have standing to bring a claim for public nuisance to enjoin BlueSky from producing PFOA emissions.

The VEA has suffered an "injury in fact" by showing a special injury sufficient to bring a public nuisance claim against BlueSky and enjoin its release of PFOA emissions. As stated above, to establish injury in fact, a plaintiff must show that it suffered an injury that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

For an injury to be "particularized," it "must affect the plaintiff in a personal and individual way" *Spokeo*, 578 U.S. at 339 (quotation omitted). For an injury to be "concrete," it must actually exist and be "real," not "abstract." *Id*. at 340. However, a concrete injury does not necessarily mean it must be "tangible." *Id*. Thus, while tangible injuries clearly constitute concrete injuries, "intangible injuries can nevertheless be concrete." Id. (quotation omitted). Additionally, the threat of future injury may be "actual or imminent" and "not conjectural or hypothetical" if the threatened injury is "certainly impending," or there is a "substantial risk" that the harm will occur. *Trump v. New York*, 592 U.S. 125, 138 (2020) (quoting *Clapper v. Amnesty*

Int'l USA, 568 U.S. 398, 414, n. 5 (2013)). A plaintiff need not "demonstrate that it is literally certain that the harms they identify will come about." *Clapper*, 568 U.S. at 414, n. 5. The VEA's injury in this case satisfies both requirements because the VEA has suffered a demonstrable "special injury" that is different in kind from the harm suffered by the general public.

According to the Restatement (Second) of Torts, a public nuisance is "an unreasonable interference with a right common to the general public." Restatement (Second) of Torts § 821B(1) (A.L.I. 1979). Generally, only state or local governments may bring public nuisance claims against persons or entities causing public nuisances. *Vandalia Env't All. v. BlueSky Hydrogen Enters.*, Nos. 24-0682, 25-0682, at 10 (12th Cir. Dec. 29, 2025) (order). However, in special circumstances, non-governmental entities or private citizens may bring public nuisance claims if they can prove they have a "special injury" that is different in kind, not merely in degree, from that suffered by the general public. *Arizona Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913); *Bowe v. Scott*, 233 U.S. 658, 661-662 (1914). Although BlueSky argues that the relevant comparative population would be narrowly limited to only the residents drinking the water, the population would also include those residents "exercising the same public right" to clean drinking water and farmland as the VEA. Restatement § 821B(1); *Vandalia Env't All*., at 12.

Courts have consistently recognized that certain types of property damage or contamination to a plaintiff's land or business operations constitutes a "special injury" sufficient to establish standing in public nuisance claims. See *Corradetti v. Sanitary Landfill, Inc.*, 912 F. Supp. 2d 156, 162 (D.N.J. 2012) (holding that the plaintiffs had standing because they sufficiently alleged a "special injury" based on the defendants' contamination of their drinking water on their property); *Higgins v. Huhtamaki, Inc.*, No. 1:21-cv-00369-JCN, 2024 U.S. Dist. LEXIS 156104,

at *24-25 (D. Me. Aug. 30, 2024) (affirming that the plaintiffs plausibly alleged special injury by demonstrating harm to their property and water due to hazardous levels of PFAS contamination).

In *Arizona Copper Co. v. Gillespie*, the Supreme Court recognized that while water contamination constituted a public nuisance that affected the public generally, the plaintiff *could* also seek relief as a private individual because he suffered a "special injury" affecting his property rights as a riparian owner and individual user of the water for irrigation purposes. 230 U.S. 46, 57 (1913). That Court pointed to several facts that were relevant to its finding of a "special injury."

First, the Court noted that the plaintiff alleged a "special grievance to himself" that specifically affected the "enjoyment and value of his property rights" as both a riparian owner and an individual user of water for irrigation. *Id*. at 57. Thus, because the water contamination had a direct impact on his property rights, it constituted a special injury sufficient to support a public nuisance claim. See, e.g., *Corradetti*, 912 F. Supp. 2d at 162; *Higgins*, 2024 U.S. Dist. LEXIS 156104, at 23-24. Here, the VEA has a "special grievance" because BlueSky's PFOA emissions have affected the use, value, and enjoyment of its property rights. The VEA owns and operates VEA Sustainable Farms and uses that farmland as an educational outreach center and source of food production for the community. *Vandalia Env't All*., at 7. Additionally, the VEA depends on uncontaminated water for its agricultural production and uses the farmland to further its mission of educating residents about sustainable living. *Id*. at 7. Thus, like in *Arizona Copper*, BlueSky's contamination of the water supply and farmland directly interferes with the VEA's operations and deprives it of the use and enjoyment of its particularized property rights because the presence of PFOA on the land renders the farm inoperable, *Arizona Copper*, 230 U.S. at 57,

thereby eliminating the VEA's production of food and damaging its commitment to community outreach. *Vandalia Env't All*., at 9, 12.

Second, the Court deferred to the lower court's findings and affirmed that the "harmful and damaging character" of the deposits from the copper company was "continuous" and that a monetary remedy would be "inadequate" to address the ongoing injury to his land and crops. *Arizona Copper*, 230 U.S. at 53. Here, a monetary remedy would be inadequate because BlueSky's contamination of the VEA's farmland and the public water supply is ongoing, Mammoth lacks any treatment technology capable of removing PFOA, and such technology will not be available for at least two years. *Vandalia Env't All*., at 8–9. Thus, absent an injunction, the VEA will bear all the "investigation and remediation" costs associated with mitigating the continual PFOA contamination. See *Tosco Corp. v. Koch Indus.*, 216 F.3d 886, 895-96 (10th Cir. 2000) (holding that the plaintiff suffered a "special injury" sufficient to bring a public nuisance action because it bore the entire cost of investigation and remediation).

Third, the Court held that the plaintiff suffered an injury that was distinct in kind from the public generally. While the contamination of the river might have constituted a "public nuisance" affecting the greater public, the plaintiff suffered a "special injury not borne by the public" because of the direct physical interference with his specific farming operations. *Arizona Copper*, 230 U.S. at 57. Here, BlueSky's PFOA emissions directly interfere with the VEA's farming operations and its outreach programs because the VEA can no longer grow crops on its farmland or donate to food banks and soup kitchens. *Vandalia Env't All*., at 9. Additionally, BlueSky's emissions interfere with the VEA's stated purpose of serving the community and educating residents on sustainability because the farm is inoperable due to PFOA pollution. *Id*. Thus, the

VEA has suffered injuries that are distinct in kind from the public generally because BlueSky's emissions directly impact the organization's ability to operate as a farm and community center.

Therefore, the VEA has shown an "injury in fact" because it suffered a "special injury" that is different in kind from the harm suffered by the general public and sufficient to grant it standing to bring a public nuisance action against BlueSky.

B. The VEA has demonstrated its injury is "fairly traceable" to Bluesky's emissions.

The VEA has demonstrated that the injury to its farmland and organizational outreach is "fairly traceable" to Bluesky's PFOA emissions. The Supreme Court has held that for an injury to be "fairly traceable," there must be a "causal connection between the injury and the conduct complained of." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Here, the harm suffered by the VEA's is causally related to BlueSky's release of PFOA emissions because the increase in PFOA contamination in Mammoth's water supply coincided with the beginning of SkyLoop's operations and one of SkyLoop's primary waste feedstocks contained PFOA. *Vandalia Env't All*., at 7. Specifically, PFOA has contaminated the Mammoth PSD's water supply because PFOA particles from BlueSky's plant are blown onto surrounding agricultural land, which includes the PSD's wellfield. *Id*. at 8. Crucially, BlueSky has not disputed that the contamination of Mammoth's water supply from its PFOA emissions constitutes a public nuisance. See *id*. at 12 ("BlueSky agreed that contamination of a public water supply would have to be brought as a public nuisance action"). Therefore, the VEA's injury is "fairly traceable" to Bluesky's PFOA emissions.

C. The VEA has established that it is substantially likely that its injury will be redressed by a preliminary injunction against BlueSky.

The VEA has established the substantial likelihood that its injury will be redressed by a preliminary injunction. To establish redressability—that it is likely, as opposed to merely

speculative, that an injury will be redressed by a favorable decision—a plaintiff must demonstrate a substantial likelihood that the relief sought will remedy the alleged injury. *Lujan*, 504 U.S. at 561, 595. Additionally, a plaintiff must show a "continuing or imminent injury… to justify forward-looking relief like an injunction." *N. America's Bldg. Trades Unions v. DOD*, 783 F. Supp. 3d 290, 305 (D.D.C. 2025); *City of Los Angeles v. Lyons*, 461 U.S. 95, 105-06 (1983).

Here, the VEA and its members suffer from a continuing injury because BlueSky's air emissions of PFOA will continue to contaminate the VEA's farmland and pollute the town's water supply in the absence of an injunction. *Vandalia Env't All*., at 11-12. While BlueSky argues that the contaminated water supply poses no risk to the health of the VEA's members because they stopped consumption, this argument is unpersuasive. *Id*. at 8. Even though the VEA's members ceased consumption, the widespread contamination from BlueSky's PFOA emissions creates a serious risk of inadvertent exposure for the VEA's members living in Mammoth. *Id*. at 7. A preliminary injunction would provide redress for the VEA's injuries because it would enjoin BlueSky's PFOA emissions and prevent further contamination of the water supply and the VEA's farmland. Additionally, if this Court orders a preliminary injunction against BlueSky, it would allow Mammoth time to install water treatment technology and overhaul their system or develop alternative methods of water purification, such as outsourcing treatment or importing affordable purified water to replace the contaminated supply. *Id*. at 8.

Thus, the VEA has demonstrated that a preliminary injunction is substantially likely to redress the injuries to its farmland and its members and has shown the necessity of such relief in this case. See *Lujan*, 504 U.S. at 595.

Therefore, the VEA has standing to bring its public nuisance against BlueSky because it suffered a "special injury" and satisfies the Constitution's standing requirements.

III. BlueSky's deposition of PFOA onto land and the resulting groundwater contamination meet the statutory definition of "disposal" under 42 U.S.C. § 6903(3), and the district court correctly found that the VEA is likely to succeed on its RCRA ISE claim.

BlueSky's emission and deposit of PFOA onto the community's farmland and contamination of Mammoth's groundwater supply fits squarely within the definition of "disposal" set out in 42 U.S.C. § 6903(3). Thus, the district court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim. The Resource Conservation and Recovery Act ("RCRA") permits "private causes of action for citizens seeking relief against present or future risks of harms to health or the environment created by the handling, storage, treatment, transportation or disposal of any solid or hazardous waste." *Vandalia Env't All. v. BlueSky Hydrogen Enters.*, Nos. 24-0682, 25-0682, at 10 (12th Cir. Dec. 29, 2025) (order).

Under 42 U.S.C. § 6972(a)(1), a private action may be brought against an entity in violation of "any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA" or who contributes or is contributing to the "handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment ("ISE") to health or the environment." 42 U.S.C.A. § 6972(a)(1)(A), (B). The ISE provision functions as a codification of common law public nuisance and should be interpreted "more liberal[ly] than [its] common law counterparts." *Fresh Air for the Eastside, Inc. v. Waste Mgmt. of N.Y., L.L.C.*, 405 F. Supp. 3d 408, 434–45 (W.D.N.Y. 2019) (citation omitted). Thus, the question becomes whether the term "disposal" is defined narrowly or broadly for the purposes of the statute.

A. BlueSky's PFOA emissions constitute "disposal" under RCRA.

BlueSky's PFOA emissions constitute "disposal" based on the definition set out in 42 U.S.C. § 6903(3). That statute defines disposal broadly as any "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… may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 42 U.S.C. §6903(3).

Based on RCRA's remedial purpose, most jurisdictions have applied the above definition liberally when determining whether a challenged activity classifies as "disposal." See *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 399 F.3d 248, 260 (3d Cir. 2005) (finding that RCRA is a remedial statute "intended to… eliminate any risks posed by toxic wastes"). BlueSky argues that this Court should adopt the Ninth Circuit's restrictive definition of "disposal" from *Center for Community Action & Environmental Justice v. BNSF Railway Co.*, where "disposal" occurs only when waste is dumped onto land or into water *before* it gets emitted into the air as emissions. 764 F.3d 1019, 1024 (9th Cir. 2014). However, the Ninth Circuit's narrow definition is inconsistent with precedent from other courts. See, e.g., *U.S. v. Power Engineering Co.*, 191 F.3d 1224, 1231 (10th Cir. 1999) (chromium mist from a facility's air scrubbers deposited on soil constituted "disposal").

In *Little Hocking Water Ass'n v. E.I. du Pont de Nemours & Co.*, the Southern District of Ohio expressly rejected the Ninth Circuit's narrow interpretation. 91 F. Supp. 3d 940, 965 (S.D. Ohio 2015). There, the Court held that airborne PFOA emissions that settled onto land and contaminated groundwater constituted "disposal" under RCRA, *id*., emphasizing that Congress intended RCRA's endangerment provisions to invoke the "broad and flexible equity powers of the federal courts." *Id*. at 952 (quoting *United States v. Price*, 688 F.2d 204, 211 (3d Cir. 1982)). In this way, the statute grants courts "broad authority" to provide "all relief necessary to ensure complete protection of the public health and the environment." *Little Hocking*, 91 F. Supp. 3d at 952. Thus, this Court has a "congressional mandate" to provide relief for individuals when solid

or hazardous waste exists, which requires that the definition of disposal be "developed in a liberal, not a restrictive, manner." *Id*.

Additionally, in *United States v. Waste Industries, Inc.*, the Fourth Circuit held that "[s]ince the term "disposal" is used throughout [the RCRA], its definition in section 6903(3) must necessarily be broad and general to encompass… less common emergency situations." 734 F.2d 159, 165 (4th Cir. 1984). Because the ongoing contamination of the public water supply in the present case represents an "emergency situation," a narrow interpretation of "disposal" would be inconsistent with congressional intent and undermine the RCRA's protective purpose.

The facts of the present case are similar to those in *Little Hocking*. In that case, residents discovered that the defendant's air emissions had contaminated their public water supply with PFOA that had settled onto the wellfield, contaminating the groundwater, the land, plants, and soil. *Little Hocking*, 91 F. Supp. 3d at 947. Here, BlueSky's air emissions have settled onto both the VEA and the community's lands and seeped into Mammoth's public wellfield. *Vandalia Env't All*., at 7-8. As a result of BlueSky's widespread PFOA contamination, Mammoth faces a serious health crisis that will only worsen if BlueSky is allowed to continue its activities. *Id*. at 7, 11-12. If this Court adopts the Ninth Circuit's narrow interpretation of "disposal," it would undermine Congress's mandate to protect communities from the health and environmental harms posed by hazardous waste. See *Little Hocking*, 91 F. Supp. 3d at 952. A broad reading of "disposal" is necessary to "ensure complete protection of the public health and the environment." *Id*. Thus, BlueSky's release of PFOA emissions constitutes "disposal" under 42 U.S.C. § 6903(3).

B. BlueSky's disposal of PFOA presents an imminent and substantial endangerment to the health of Mammoth's community and its natural environment.

This Court should affirm the preliminary injunction order because the district court properly determined that the VEA is likely to succeed on the merits of its RCRA ISE claim. To succeed

on a RCRA ISE claim, a plaintiff must show that the defendant's challenged conduct "may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B). The Supreme Court clarified the meaning of "imminent" under the RCRA, stating that endangerment can only be "imminent" if it "threaten[s] to occur immediately," even if the "impact of the threat may not be felt until later." *Meghrig v. Kfc W.*, 516 U.S. 479, 485-486 (1996). The plain language "may present" means that courts can act preventatively to protect the health of the community and preserve the environment. See *id*. at 485.

Courts also interpret "substantial endangerment" broadly, requiring only "reasonable cause for concern" that exposure to hazardous waste poses a serious threat to health or the environment. See *Interfaith*, 399 F.3d 248 at 259 ("if an error is to be made in applying the endangerment standard, the error must be made in favor of protecting public health, welfare and the environment"). In *Interfaith*, the Third Circuit upheld a lower court's finding of imminent and substantial endangerment where waste contaminated soil and groundwater at levels exceeding regulatory standards, even though some remediation measures had been implemented. *Id*. at 253, 258-63, 264–65. There, the court ordered excavation and waste removal to remedy the contamination and preserve public health. *Id*. at 264–68.

Here, BlueSky's continual release of PFOA emissions can cause serious health complications, including cancer, birth defects, and liver problems. *Vandalia Env't All*., at 7. These complications are "reasonable cause for concern" because the PFOA contamination poses a serious threat to the health of Mammoth's residents and its natural environment. Compounding that risk, Mammoth "currently lacks any treatment technology capable of removing PFOA from drinking water" and cannot install a treatment system for at least two years. *Id*. at 8. During this time, most Mammoth residents are expected to continue drinking untreated, PFOA-contaminated

water because they lack information or cannot afford alternatives. *Id*. Each day of continued exposure to PFOA represents another step toward a future filled with significant health complications and environmental pollution.

Additionally, the danger posed by the emissions is underscored by the EPA's standards. The EPA set an MCL of 4 ppt and an MCLG of 0 ppt for PFOA in drinking water, based on regulatory findings that PFOA is a persistent "forever chemical" that "does not readily break down in the environment." *Id*. at 7. While BlueSky would argue that the EPA's standards are not determinative because the MCL is not enforceable until 2029, the VEA's air-emissions expert testified that, based on observed accumulation rates, PFOA levels in Mammoth's water supply could reach approximately 10 ppt by May 2026 if SkyLoop's emissions continue unabated. *Id*. at 14. Based on these findings, the contamination of Mammoth's water supply and land is a present, not speculative, endangerment to the health and environment of Mammoth's residents. Thus, this Court should affirm the district court's finding that the VEA is likely to succeed on the merits of its ISE claim because the ongoing contamination from BlueSky's PFOA emissions meets the RCRA's "imminent and substantial endangerment" standard.

C. BlueSky's PFOA disposal is exactly the kind of risk RCRA's ISE provision was designed to address because the contamination of drinking water and the threat of ongoing exposure is paradigmatic ISE.

This Court should affirm the district court's finding that the VEA is likely to succeed on the merits of its ISE claim because SkyLoop's PFOA disposal is exactly the kind of risk RCRA's ISE provision was designed to address. See, e.g., *W. Va. Rivers Coal., Inc. v. Chemours Co. FC, LLC*, 793 F. Supp. 3d 790, 813 (S.D. W. Va. 2025) ("[p]laintiff seeks to stop the precise conduct Congress has declared harmful—the unlawful discharge of pollutants above permit limits").

In *Chemours*, the Court held that a preliminary injunction is typically justified when pollution exceeds EPA safety standards and when forever chemicals contaminate a community's

water supply because such chemicals pollute downstream drinking water and cause severe health risks. *Chemours*, 793 F. Supp. 3d at 815. Courts treat these conditions as an "imminent and substantial endangerment" because forever chemicals can "reach any area in the world before any significant amount of substance degradation has occurred." *Id*. at 815; citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

The present case is a paradigmatic RCRA ISE scenario: a hazardous, persistent contaminant is being "discharge[d], deposit[ed], [or] plac[ed]" onto land and into groundwater, contamination is documented and increasing, affected residents lack feasible treatment options, and scientific evidence shows that continued exposure will increase health risks between now and trial. *Vandalia Env't All*., at 7, 8, 13. As illustrated in *Little Hocking* and *Chemours*, courts use § 7002(a)(1)(B) precisely to prevent ongoing exposure to hazardous substances in drinking water when other regulatory regimes have failed to prevent or remedy the problem. BlueSky's efforts to exempt its PFOA emissions from the definition of "disposal" and brush aside the harm posed by those emissions would strip RCRA's ISE provision of its core protective function and leave Mammoth's residents with no way of escaping the dangers posed by PFOA contamination. Thus, this Court should affirm the district court's finding that the VEA is likely to succeed on the merits of its ISE claim.

This Court should affirm the district court's grant of a preliminary injunction against BlueSky because BlueSky's PFOA emissions constitute "disposal" under § 6903(3) and such disposal "present[s] an imminent and substantial endangerment to health or the environment" under § 7002(a)(1)(B). Therefore, the VEA is likely to succeed on the merits of its RCRA claim.

IV. The irreparable harm prong of the *Winter* test considers harm to the plaintiff or its interests, *and* harm to the public as evidence of irreparable harm sufficient to issue a preliminary injunction.

According to *Winter v. Natural Resources Defense Council, Inc.*, a plaintiff seeking a preliminary injunction must establish that he is "likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." 555 U.S. 7, 20 (2008).[1] A party suffers irreparable harm when there is "no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages." *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1346 (8th Cir. 2024) (quoting *Gen. Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 319 (8th Cir. 2009)). To show irreparable harm, the movant must demonstrate "harm that 'is certain and great and of such imminence that there is a clear and present need for equitable relief.'" *Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 461 (8th Cir. 2025) (quoting *H&R Block, Inc. v. Block, Inc.*, 58 F.4th 939, 951 (8th Cir. 2023)).

A. Injunctive relief is appropriate because the VEA has shown concrete irreparable harm to its own property, and its organizational interests.

In *Beber*, the Eighth Circuit held that the irreparable harm prong was not met and denied injunctive relief. 140 F.4th at 464. The Court emphasized that the lower court erred by focusing on whether Nebraska's public policy against restrictive covenants would be harmed. *Id*. at 462. The court clarified that "the proper inquiry is not whether enforcement of the covenants would irreparably harm Nebraska public policy" but whether "enforcement of the covenants would irreparably harm the individual movants." *Id*. Ultimately, because the movants failed to show irreparable harm to themselves or their interests, the Eighth Circuit vacated the preliminary injunctions. *Id*. at 463.

[1] BlueSky stipulated at the district court that the VEA made a sufficient showing on the public interest and balance of harm factors.

However, BlueSky mischaracterizes the scope of *Beber* by limiting irreparable injury to only harms suffered directly by the movant. See *Vandalia Env't All. v. BlueSky Hydrogen Enters.*, Nos. 24-0682, 25-0682, at 13 (12th Cir. Dec. 29, 2025) (order). The Court in *Beber* made no such limitation and expressly acknowledged that irreparable harm may include harm to the plaintiff's interests, which may overlap with those of the public generally. See *Beber*, 140 F.4th at 463. There, the Court's denial of injunctive relief was based on a flawed public policy argument, not on the substance of a properly pled claim for irreparable harm to the movant or his interests. *Id*. at 462. Thus, while *Beber* does restrict the scope of what may be considered irreparable harm, it does not narrowly restrict it to *only* direct harm to the plaintiff, as argued by opposing counsel in this case. See *Vandalia Env't All*., at 13.

1. BlueSky's ongoing and lasting contamination of the VEA's own property constitutes direct irreparable harm.

The VEA suffered irreparable harm because the ongoing PFOA emissions threaten the VEA's use of its real property and its agricultural operations. Generally, long-lasting and pervasive environmental pollution is a prototypical irreparable harm. See *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) ("[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable"); *Concerned Pastors for Soc. Action v. Khouri*, 217 F. Supp. 3d 960, 977 (E.D. Mich. 2016) (holding that contamination of a municipal water system and ongoing exposure of residents is irreparable harm).

Here, VEA Sustainable Farms faces continuing exposure to PFOA from the air emissions on its land. *Id*. at 9. The VEA conducted a private test of its soil and identified detectable levels of PFOA. *Id*. at 14. Additionally, the contamination of the VEA's land will continue in the absence of an injunction because BlueSky will continue to release emissions that threaten the soil and

crops on the VEA's farm. *Id*. at 9. The harm to the VEA's farm is ongoing because Mammoth lacks the treatment technology capable of removing PFOA and will not be able to install such technology for at least two years. *Id*. at 8. Thus, the need for injunctive relief in this case is great. While the damage to the VEA's farm is not wholly unique to its own land, because other farms in the area will likely be equally impacted, the direct injury to its farmland is a classic example of irreparable harm. See *Lands Council v. McNair*, 537 F.3d 981, 1004 (9th Cir. 2008). Thus, BlueSky's PFOA emissions and contamination of the VEA farm's soil and crops constitutes direct injury to the organization itself, which satisfies the standard for irreparable harm set out in *Beber*.

2. The VEA has suffered irreparable harm to its organizational interests because of BlueSky's ongoing emission of PFOA and lasting contamination of the environment.

The VEA has suffered irreparable harm to its core mission and outreach programs because of BlueSky's ongoing PFOA pollution of the community. Generally, if a defendant's actions have significantly impaired the plaintiff's ability to provide organizational services or impedes the organization's ability to carry out its mission, "there can be no question that the organization has suffered injury in fact." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). The VEA's mission includes "protecting the State's natural environment (including clean air and clean water) and to encourage and educate others on how to protect their State and live more sustainably." *Vandalia Env't All*., at 7. A key aspect of its mission is providing safe, locally grown food to the community and teaching community members sustainable farming and gardening skills. *Id*.

Here, BlueSky's emissions forced the VEA to stop providing food to food banks and soup kitchens out of fear that PFOA contamination would undermine the goodwill and trust generated by the VEA's activities. *Id*. at 9. BlueSky's ongoing emissions interfere with the VEA's ability

to carry out its mission of serving the community and conducting environmental outreach because the farm is effectively inoperable due to PFOA contamination and the organization's community activities have either been reduced or wholly eliminated. Thus, the VEA has suffered irreparable harm to its operational and mission interests because of BlueSky's environmental contamination. See *Sierra Club v. United States Army Corps of Eng'rs*, 645 F.3d 978, 995 (8th Cir. 2011) ("irreparable harm to the environment necessarily means harm to the plaintiffs' specific aesthetic, educational and ecological interests").

Additionally, while the VEA agrees with BlueSky that "[p]laintiffs seeking injunctive relief must show that they themselves are likely to suffer irreparable harm absent an injunction," *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 822 (9th Cir. 2018); see *Winter*, 555 U.S. at 20 (plaintiff must establish "that he is likely to suffer irreparable harm"), BlueSky's reliance on this case is misplaced. Instead of standing for the proposition that a plaintiff must *always* show personal harm, *National Wildlife* supports the VEA's argument that there are circumstances where a movant may establish irreparable harm by showing harm to the movant's interests. See *id*. at 822 (holding that the plaintiffs were able to show "irreparable harm to their own interests").

Thus, injunctive relief is appropriate in the present case because the VEA has suffered irreparable harm in the form of a "concrete and demonstrable injury to the organization's activities" and institutional interests. *Havens*, 455 U.S. at 379; see*,* e.g., *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (upholding a finding of irreparable harm where an organization asserted "its members' ability to 'view, experience, and utilize' the areas in their undisturbed state" was restricted).

B. Injunctive relief based on irreparable harm to the public or a third-party is permissible where the plaintiff is seeking injunctive relief in environmental cases or public nuisance actions.

Under established precedent, the irreparable harm prong of the *Winter* test may be satisfied by showing irreparable harm to either the plaintiff *or* the public where the plaintiff is seeking injunctive relief, whether preliminary or permanent, in environmental cases or public nuisance actions. See, e.g., *Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 781, 788 (4th Cir. 1991) (holding that injunctive relief was proper if the lack of a new waste-treatment facility "would create irreparable harm, not only to [the plaintiff] *but to the public*") (emphasis added).

In a similar case, a West Virginia district court held that although the plaintiff failed to establish irreparable harm because there were no known public or private groundwater wells within a mile radius of the site, and no one on the affected properties was utilizing or planning to utilize the groundwater, thus nullifying any threat of harm, the plaintiff could have shown such harm by demonstrating harm to "itself *or* the public." Cour*tland Co. v. Union Carbide Corp.*, Civil Action No. 2:19-cv-00894, 2024 U.S. Dist. LEXIS 175780, at *15, 18 (S.D. W. Va. Sep. 27, 2024) (emphasis added). Thus, the Court did not foreclose on a plaintiff's ability to show irreparable harm based on injury to the public but expressly acknowledged that irreparable harm may be based on harm to either the plaintiff or the public generally.

Here, BlueSky's PFOA emissions represent a serious threat to the public because the chemical threatens Mammoth's residents with long-term health risks, including cancer, birth defects, and liver problems. *Vandalia Env't All*., at 7. Indeed, even limited exposure to PFOA can cause severe health complications because there is no safe level of PFOA contamination or consumption. *Id*. at 12. Mammoth's residents have suffered irreparable harm from BlueSky's

emissions in several ways. First, Mammoth's residents suffered irreparable harm from the PFOA emissions because the toxic chemical settled onto the farmland surrounding BlueSky's plant, thereby contaminating the soil and crops used to grow food for the community. *Id*. at 9. Thus, the PFOA that is deposited through air emissions onto farmland near the SkyLoop plant directly harms Mammoth's vibrant agricultural lands and community.

Second, Mammoth's residents face ongoing and unavoidable exposure to PFOA through the contaminated water in the public supply because PFOA is a long-lasting and semi-permanent chemical that will not break down naturally in the environment. *Id*. at 7. This threat is heightened by the fact that Mammoth is not equipped to handle an environmental crisis of this magnitude. Mammoth lacks the technology capable of treating and removing PFOA from the water supply and will not be able to install any treatment technology for the next two years. *Id*. at 8. Based on this timetable, it is unclear how long it will take before the water supply can be purified. Unfortunately for Mammoth's residents, they do not have time to wait and find out. The VEA's expert toxicologist testified that if BlueSky's emissions continue, PFOA levels would reach as high as 10 ppt by May 2026, a figure that exceeds the EPA's recommended Maximum Contaminant Level ("MCL") of 4 ppt and Maximum Contaminant Level Goal ("MCLG") of 0 ppt. *Id*. at 7.[2]

An injunction is necessary in this case because Mammoth residents who drink the contaminated water will suffer irreparable harm between now and trial. *Id*. at 14. While BlueSky disputed the toxicologist's findings at the evidentiary hearing, it did not present its own expert to refute the toxicologist, effectively conceding the issue of irreparable harm to the public. *Id*. Absent an injunction, BlueSky's emissions will continue to contaminate the water supply and

[2] The EPA's MCL does not become enforceable until 2029.

Mammoth's residents will be forced to choose between drinking from a *poisoned chalice* and forsaking a vital natural resource. Thus, the district court's order granting injunctive relief was proper because this is an environmental and public nuisance case and Mammoth residents suffered irreparable harm to their farmland and the public water supply.

Therefore, this Court should affirm the district court's order granting the VEA's request for a preliminary injunction against BlueSky because the irreparable harm prong of the *Winter* test is satisfied where the plaintiff is seeking injunctive relief in environmental cases or public nuisance actions and shows irreparable harm to itself, its interests, or the public.

CONCLUSION

For the foregoing reasons, the VEA respectfully requests that this Court affirm the district court's order granting a preliminary injunction against BlueSky's PFOA emissions and reverse that court's order granting BlueSky's motion to stay proceedings.

Certificate of Service

Pursuant to *Official Rule* IV, *Team Members* representing Appellant, The Vandalia Environmental Alliance, 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. 1