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Fifteenth Annual Energy and Sustainability Moot Court Competition
West Virginia University College of Law

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UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

C.A. No. 24-0682
ORDER

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

This case involves a cross appeal to the United States Court of Appeals for the 12th Circuit of an order by the United States District Court for the Middle District of Vandalia granting Vandalia Environmental Alliance's motion for a preliminary injunction against BlueSky Hydrogen Enterprises and the district court's subsequent order granting BlueSky's request to stay proceedings pending BlueSky's appeal of the preliminary injunction.

With respect to this appeal, the Court hereby orders that the Vandalia Environmental Alliance and BlueSky brief the following issues:

Issue 1: Whether the district court correctly stayed its proceedings pending appeal of the preliminary injunction under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023);

Issue 2: Whether the VEA has a special injury sufficient to give it standing to bring its public nuisance claim for BlueSky's PFOA air emissions;

Issue 3: Whether BlueSky's air emissions of PFOA is considered "disposal" under RCRA and thus the district court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim; and

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

SO ORDERED
Entered this 29th Day of December, 2025
Judge Samuel L. Danger

Factual Background

A. Regional Clean Hydrogen Hub

As the most abundant element in the universe, hydrogen has unique characteristics as an energy carrier that make it one of the best options to decarbonize energy-intensive heavy industry and support heavy-duty transportation. The Regional Clean Hydrogen Hubs (H2Hubs) Program invests in hydrogen hubs across America to create a national network of hydrogen producers, consumers, and connective infrastructure while supporting the production, storage, delivery, and end-use of hydrogen. The H2Hubs aim to accelerate the commercial-scale deployment of clean hydrogen, helping to generate clean, dispatchable power, create a new form of energy storage, and decarbonize heavy industry and transportation. The H2Hubs will also help enable the development of diverse, domestic clean energy pathways across multiple sectors of the economy and serve as a central driver in helping communities benefit from energy investments, good-paying jobs, and improved energy security.

Vandalia is located in Appalachia and is part of the Appalachian Regional Clean Hydrogen Hub ("ARCH2"). According to its website, "ARCH2 will use the nation's lowest-cost natural gas as primary feedstock to enable and sustain a regional H_2 economy across multiple end-use sectors in the Appalachian region while providing employment and economic growth to local communities."[1] While fossil fuels are the primary feedstock for ARCH2 projects, other feedstock options include biomass, waste, plastics, etc. ARCH2 proposes to use clean hydrogen in a diversity of end uses, including but not limited to industry, power generation, and transportation. Further, ARCH2 would create opportunities for skilled training and long-term employment for residents of the region.

ARCH2 is proposed to consist of a suite of demonstration projects involving clean hydrogen production, transportation, and end uses located within the Appalachian Region. As currently proposed, ARCH2 would encompass 12 proposed projects, including hydrogen production facilities that could produce at least 1,700 metric tons per day of clean hydrogen (autothermal reformation facilities with carbon capture, biomass pyrolysis facilities, electrolysis facilities, and facilities for recovering hydrogen from waste gases), hydrogen liquefiers, and a range of end uses including residential fuel cells, materials handling equipment, mobility, and industrial uses, including production of ammonia, urea, and low-carbon aviation fuel.

[1] https://www.arch2hub.com/.

B. Waste-to-Hydrogen Technology

Waste-to-hydrogen technology can convert various waste streams (organic, plastic, chemical, sewage) into clean hydrogen fuel using processes like gasification, pyrolysis, or anaerobic digestion, tackling waste management issues while producing a valuable, carbon-neutral energy source for transport or industry. Key methods involve high-temperature breakdown into syngas, followed by water-gas shift and purification, or microbial processes producing biogas, ultimately reducing landfills and providing decentralized energy hubs.

Below is an example of how waste-to-hydrogen plants operate:

1. **Waste Preprocessing:** Waste (plastics, organic matter, paper) is sorted, cleaned, and prepared, removing contaminants like metals, sand, and paper.
2. **Gasification/Thermolysis:** The preprocessed waste is heated to extreme temperatures (e.g., >3,000°C) with controlled oxygen/steam, breaking it down into a synthesis gas (syngas) rich in hydrogen and carbon monoxide (CO).
3. **Syngas Refining:** The syngas undergoes a water-gas shift reaction to produce more hydrogen, and purification steps remove impurities like CO and other gases.
4. **Hydrogen & CO2 Separation:** High-purity hydrogen is separated for use as fuel, while the captured carbon dioxide (CO2) can be stored or used commercially.
5. **Byproduct:** Inert, glass-like slag is left as a reusable construction material, minimizing landfill waste.

C. BlueSky Hydrogen Enterprises

BlueSky Hydrogen Enterprises is a hydrogen company incorporated and headquartered in Richmond, Virginia, and doing business in the Appalachian Region, including Vandalia. BlueSky is ahead of the curve and, unlike many other hydrogen companies that have cropped up as a result of the hydrogen hubs funded by new federal legislation, BlueSky had already invested and recently completed several hydrogen facilities, one of which is in Vandalia. To many, BlueSky's projects are large successes, and investors are eager for BlueSky to develop new hydrogen projects in the region to take advantage of federal funding and tax credits available through the hydrogen hubs and become even more profitable for shareholders.

1. BlueSky's Waste-to-Hydrogen Plant in Vandalia

One of BlueSky's main successes is its SkyLoop Hydrogen Plant in a rural portion of Mammoth, Vandalia. SkyLoop is an advanced waste-to-hydrogen facility designed to transform complex waste streams into a clean, valuable energy resource. SkyLoop is part of an integrated, circular system that addresses both waste management challenges and the growing demand for low-carbon hydrogen. Vandalia in particular has been dealing with extensive waste management issues. Vandalia has less environmental regulation than surrounding states so many companies have

chosen to locate their landfills in Vandalia rather than in other states in the region. By converting materials that would otherwise be landfilled, incinerated, or treated as hazardous residuals, SkyLoop supports Vandalia's environmental goals of reducing landfill waste while supplying hydrogen for industrial and energy applications nearby and creating jobs for the community.

The SkyLoop process begins upstream at a dedicated waste collection and preparation facility. According to BlueSky's website, this facility aggregates waste from multiple sources, including plastic waste, biosolids from wastewater treatment plants, and by-products from several chemical companies in the region. At this first stage, the incoming materials are sorted, conditioned, and processed to ensure consistent quality and composition. Plastics are reduced and homogenized, wastewater residuals are dewatered and stabilized, and chemical by-products are handled under strict safety and compliance protocols. Only properly prepared feedstock is then transported to the SkyLoop Plant.

Once received at SkyLoop, the processed waste enters a controlled conversion system designed to extract hydrogen efficiently. The materials are subjected to high-temperature thermal and chemical processes that break down long-chain hydrocarbons and organic compounds into simpler molecular components. This conversion step produces a hydrogen-rich synthesis gas while minimizing the formation of unwanted by-products. Inorganic materials and trace residues are separated and managed responsibly, significantly reducing overall waste volume.

The hydrogen-rich gas is then cooled, cleaned, and refined through multiple purification stages. These steps remove particulates, carbon compounds, and other impurities, allowing SkyLoop to produce high-purity hydrogen suitable for a wide range of uses. The final hydrogen product can be stored, transported, or directly supplied to nearby industrial customers, supporting decarbonization efforts across the region.

SkyLoop not only diverts challenging waste materials from being landfilled but also converts them into a reliable source of clean hydrogen. This approach positions SkyLoop as a model for sustainable infrastructure in Mammoth and throughout Vandalia, showing how innovation can align environmental stewardship with economic and energy needs.

2. Air Emissions from SkyLoop

Waste-to-hydrogen technologies are able to convert waste into clean energy, significantly cutting methane emissions from landfills, but the processes (like gasification or fermentation) still have the potential for air emissions, including carbon dioxide (CO_2), nitrogen oxides (NOx), and particulates. Because of this potential to emit, SkyLoop has a Title V Clean Air Act permit regulating these criteria pollutants.

Air emissions at SkyLoop are managed as a core design and operational priority. Because SkyLoop converts waste into hydrogen rather than combusting it for energy, the facility's emissions profile is fundamentally different from traditional incineration or fossil-based hydrogen production. The process is designed to tightly control reaction conditions, limit atmospheric releases, and ideally treat all process gases before any discharge occurs.

During waste conversion, the thermal and chemical processes operate in enclosed, oxygen-limited systems. This prevents uncontrolled combustion and, under ideal conditions, significantly reduces the formation of criteria pollutants. Instead of being released directly to the atmosphere, process gases are captured as part of the hydrogen-rich synthesis gas stream and routed through downstream treatment systems.

Before any venting, exhaust gases pass through multiple stages of gas cleanup and emission control. These systems remove particulates, acid gases, and trace organics generated during waste breakdown. Advanced filtration, scrubbing, and catalytic treatment technologies are used to ensure emissions meet or exceed applicable local, state, and federal air quality standards. Continuous monitoring systems track key emission parameters in real time, allowing operators to maintain stable performance and quickly address any deviations.

Carbon-containing gases produced during conversion are largely managed within the process itself, either as part of hydrogen production or as captured byproducts. As a result, SkyLoop's overall greenhouse gas footprint is substantially lower than conventional hydrogen production methods that rely on natural gas reforming or waste incineration. Additionally, by diverting plastic waste, wastewater residuals, and chemical by-products from landfills or open disposal, the facility helps avoid methane and other uncontrolled emissions that would otherwise occur.

Overall, SkyLoop's air emissions strategy reflects BlueSky's commitment to responsible operation and environmental stewardship. Through enclosed processing, robust emissions controls, and continuous oversight, the plant integrates waste management and clean hydrogen production while minimizing impacts on local air quality in Mammoth and the surrounding Vandalia region. Since operations at its SkyLoop facility began in January 2024, BlueSky has remained in compliance with its Title V permit.

D. The Vandalia Environmental Alliance

The Vandalia Environmental Alliance ("VEA" or the "Alliance") is a regional environmental public interest organization based in Vandalia. The VEA has members located throughout Vandalia, including in the town of Mammoth. The VEA has previously utilized both federal environmental statutes and state tort claims to hold polluters responsible for actions that harm the State and its members.

Some of the VEA's core missions include 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. To that end, the VEA has an educational outreach center and small farm in Mammoth, called VEA Sustainable Farms, that provides opportunities for community members to learn how to start and maintain a small farm or garden. This farm is located approximately 5 miles south of Mammoth's urban center and just 1.5 miles north of the SkyLoop Plant. In between VEA Sustainable Farms and SkyLoop are many other local farms, which grow a variety of food and also raise livestock. All the food that the VEA grows on VEA Sustainable Farms is either used on site for events hosted at the farm or donated to the local community food banks and soup kitchens.

1. The VEA's Discovery of SkyLoop's PFAS Air Emissions

While many national environmental groups oppose hydrogen projects, the VEA was generally supportive of BlueSky's SkyLoop Plant in Vandalia, mainly because SkyLoop was built in lieu of a landfill. The VEA also hoped that SkyLoop's hydrogen would be more environmentally friendly than fossil fuels and that the Plant would provide good paying jobs to the community.

However, in March 2025, the 2024 results from the periodic Unregulated Contaminant Monitoring Rule ("UCMR") testing of the Mammoth Public Service District's ("PSD") water supply[2] were released and showed detectable levels of PFOA. Specifically, the UCMR results for December 2024 show PFOA levels of 3.9 ppt in the Mammoth water supply. PFOA was not detected in the Mammoth water supply in 2023. These results have understandably alarmed the VEA and Mammoth residents, as PFOA is a persistent PFAS compound, a forever chemical, that does not readily break down in the environment and has been linked by regulators to long-term health risks, including cancer, birth defects, and liver problems. The U.S. EPA has recently established a Maximum Contaminant Level ("MCL") and Maximum Contaminant Level Goal ("MCLG") for PFOA, at 4 ppt and 0 ppt respectively, but the MCL does not become enforceable until 2029.[3] The VEA believes that the contamination of the Mammoth water supply is an environmental and public health crisis that demands immediate attention.

Because this spike in PFOA in the water coincided with SkyLoop's operations beginning, the VEA suspected that SkyLoop could be responsible. Through a series of investigations and Freedom of Information Act ("FOIA") requests submitted to the Vandalia Department of Environmental Protection ("VDEP"), the VEA discovered that one of SkyLoop's primary waste feedstocks contains PFOA. SkyLoop reportedly processes biosolids originating from a wastewater treatment plant that accepts industrial sludge from Martel Chemicals, a regional chemical company known to have historically used PFAS compounds in its operations. According to VDEP documents, there

[2] The Mammoth PSD's water is supplied from a series of groundwater wells one mile north of VEA Sustainable Farms.
[3] https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas.

is PFOA present in Martel's sludge, but it is not required to be removed at the Waste Water Treatment Plant nor at SkyLoop's treatment and processing stages. The VEA believes that this PFOA also survives SkyLoop's emissions control process and is ultimately being released into the air through SkyLoop's stacks. Based on prevailing winds, the VEA believed these PFOA particles are then blown in a northernly direction and have settled onto surrounding land, including the PSD's wellfield.

As a result of this suspected air deposition since SkyLoop began its operations in the beginning of 2024, PFOA has accumulated in the Mammoth PSD's water supply. Compounding the issue, the Mammoth PSD currently lacks any treatment technology capable of removing PFOA from drinking water before it is distributed to customers and would not be able to install treatment in the next two years, as it would require a system overhaul and requires ordering equipment with at least a twelve-month lag time. This means residents are consuming water that contains PFOA without any practical means of filtration or mitigation in place and will continue to do so until treatment can be installed.

The VEA has also identified regulatory gaps that has allowed the situation to persist. Notably, the VEA learned that EPA does not regulate PFOA under the Clean Air Act and that SkyLoop's Title V air permit does not include limits or monitoring requirements for PFOA or other PFAS compounds. The VEA believes that this omission has left both regulators and the public without critical oversight of emissions that may be directly impacting community health.

2. The VEA's Harm from the PFAS Air Emissions

Many members of the VEA live in Mammoth and receive their drinking water from the Mammoth PSD. These members became aware of the potential PFOA contamination through the VEA's investigations and community outreach. At the time the issue first surfaced, many were still consuming the water because no official advisories had been issued and no alternative supply was available. However, members expressed growing concern that continued consumption and exposure over time could increase their risk of adverse health effects, particularly given the persistent nature of PFOA and its tendency to accumulate in the body.

In response to these concerns, the VEA began advising its members to limit or avoid use of the municipal water where possible, emphasizing precaution. As far as the VEA knows, all of its members have ceased drinking the public water and have resorted to buying bottled water. While this guidance reduced the VEA's members' immediate exposure, it also highlighted the broader public risk—the Mammoth PSD supplies water to the entire community, most of whom continue to drink the water without treatment (either out of ignorance or an inability to afford an alternative water source).

The VEA has also expressed concern about the air emissions from the SkyLoop facility settling onto its own farm in Mammoth. The VEA particularly worries that PFOA deposition on its property could be contaminating its soil and crops, undermining both the organization's mission to protect the State's natural environment and the goodwill it has developed with the community programs that accept its locally-grown food. The VEA has ceased providing food to the community food banks and soup kitchens out of an abundance of caution and the fear that it could be unwittingly poisoning those who eat the food with PFOA.

While the VEA is of course concerned about its own farm, the VEA admits that its concerns are not unique to its own land. The organization's property is located near numerous other farms that grow food for local and regional consumption. If PFOA is being deposited through air emissions, the resulting injury to farmland would likely be shared broadly across the agricultural community near SkyLoop.

Legal Background

A. Preliminary Injunctions

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008). Each of these *Winter* factors must be established independently.

B. Public Nuisance

Vandalia generally follows the Restatement (Second) of Torts, which defines a public nuisance as "an unreasonable interference with a right common to the general public." Restatement (Second) of Torts § 821B(1) (A.L.I. 1979). Public nuisances can involve actions like polluting public spaces, obstructing streets, creating severe health hazards (like illegal dumping or stagnant water), or generating excessive noise, smells, or dangerous conditions that impact many people, differing from a private nuisance that affects a single property owner. More recently, public nuisance claims have been successfully utilized against opioid companies. *See City of Huntington, W. Va. v. AmerisourceBergen Drug Cor*p., No. 22-1819, 2025 WL 3009526 (4th Cir. Oct. 28, 2025). Public nuisance claims have also been utilized more creatively in many other contexts.[4]

[4] *See, e.g.*, https://www.atra.org/wp-content/uploads/2025/03/ATRA_The-Public-Nuisance-Super-Tort_WhitePaper_FINAL.pdf.

Generally speaking, state or local governments bring public nuisance claims against persons or entities causing public nuisances. However, non-governmental entities or private citizens are allowed to bring public nuisance claims if they can prove they have a "special injury" that differentiates them from the general public. *E.g., Ariz. Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913). Many non-governmental entities that bring public nuisance claims have such claims dismissed because they fail to have this "special injury" or the alleged public nuisance is in fact a private nuisance.

C. The Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act ("RCRA") is the primary federal law governing the solid waste and hazardous waste disposal. Enacted in 1976 to address the growing volume of municipal and industrial waste being generated throughout the nation, RCRA provides for 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.

Two types of private suits are authorized by RCRA:

1. Private actions against entities that are alleged to have violated "any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA," and
2. Private actions against persons who have "contributed or who is contributing to the past or present 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. § 6972(a)(1).

RCRA's provisions were intended to fill the gaps of other federal environmental laws. The RCRA ISE provision is "'essentially a codification of the common law public nuisance' and is intended to be construed '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) (alterations in original) (citation omitted). Within the citizen suit provision, the term "solid waste" takes on a broader meaning than it does when that term is used in other parts of the statute.

Procedural Background

A. The VEA's District Court Action

Following the VEA's discovery of BlueSky's PFOA air emissions in Mammoth, the VEA sent a notice of intent to sue BlueSky under RCRA's ISE provision. After 90 days had passed since sending its notice of intent to sue, on June 30, 2025, the VEA filed a lawsuit suit against BlueSky in the United States District Court for the Middle District of Vandalia. In its Complaint, the VEA pursued two separate claims related to BlueSky's PFOA air emissions—a public nuisance claim and a RCRA imminent and substantial endangerment citizen suit claim.[5]

First, the VEA alleged that BlueSky's PFOA air emissions are a public nuisance because the emissions contaminate the city of Mammoth's drinking water supply with a forever chemical that the PSD is not able to remove before it distributes it to customers. *See, e.g.*, *Rhodes v. E.I. du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 767–68 (S.D. W. Va. 2009). The VEA alleges that it can maintain a public nuisance claim on behalf of the public because it has suffered a "special injury" different from the general population due to its farm and education center also being damaged from the PFOA air emissions landing directly on their property and contaminating the food grown on the property.

Second, pursuant to § 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), the VEA alleged that BlueSky's SkyLoop Facility presents an imminent and substantial endangerment to health or the environment because its air emissions of PFOA are being disposed of on the PSD's wellfield and contaminating the public water supply. *See Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 399 F.3d 248 (3d Cir. 2005); *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co*., 91 F. Supp. 3d 940 (S.D. Ohio 2015). The VEA seeks declaratory and injunctive relief to stop the disposal of PFOA onto Mammoth's wellfield and for BlueSky to clean up or otherwise pay for treatment for the town's water supply.

B. The VEA's Motion for a Preliminary Injunction

Several days after filing its Complaint, the VEA filed a motion for a preliminary injunction against BlueSky for its PFOA air emissions, explaining that it could not wait for the final resolution on the merits to stop these air emissions, particularly since PFOA is a forever chemical. In its motion, which addressed all four *Winter* factors, the VEA asked the Court to temporarily shut down SkyLoop or, alternatively, to stop SkyLoop from accepting and using as feedstock any waste that could contain PFOA.

In its motion, the VEA specifically argued that it and the entire community in Mammoth will likely suffer irreparable harm in the absence of an injunction because BlueSky's air emissions of PFOA

[5] It should be assumed that all of the Factual Background was included in the VEA's Complaint.

will continue to contaminate the town's water supply, and there is no safe level of PFOA to drink without increased health risks.

BlueSky opposed the VEA's motion for a preliminary injunction, focusing on key weaknesses in each of the VEA's claims and ceding the public interest and balance of harm factors of the *Winter* test.

As to the VEA's public nuisance claim, BlueSky agreed that contamination of a public water supply would have to be brought as a public nuisance action (as opposed to a private nuisance action). However, BlueSky argued that the VEA did not have standing to bring a public nuisance claim because it does not have a "special injury" different *in kind and degree* from the general population related to drinking water. *See, e.g.*, *In re Lead Paint Litig.*, 191 N.J. 405, 924 A.2d 484, 503 (2007) (explaining that a special injury in the public nuisance context is an injury different from those "directly arising from the common right"). The relevant comparative population is the community seeking to exercise the same public right as the plaintiff. *See* Restatement (Second) of Torts § 821C cmt. b ("The private individual can recover in tort for a public nuisance only if he has suffered a harm of a different kind from that suffered by other persons exercising the same public right."). BlueSky argued that the relevant comparative population would be the residents drinking the water, but it would also include the surrounding farms in Mammoth, which the VEA admits all of which have similarly been injured by SkyLoop's PFOA air emissions landing on their property.

As to the VEA's RCRA ISE claim, BlueSky argued that the VEA is not likely to succeed on the merits because the air emissions of PFOA cannot constitute "disposal" under RCRA. The term "disposal" means "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 42 U.S.C. § 6903. BlueSky urged the district court to follow the Ninth Circuit, which held that emissions of particulate matter in diesel exhaust by trains and vehicles in Defendants' railyards—which were discharged into the air, fell onto the ground and water nearby, and then re-entrained into the atmosphere, causing elevated cancer risk—did not meet the definition of "disposal" under RCRA § 6903(3). *Ctr. for Cmty. Action & Envtl. Justice v. BNSF R. Co.,* 764 F.3d 1019, 1024 (9th Cir.2014). Specifically, it held that under § 6903(a) "disposal" is strictly confined to a particular order, in which solid waste is "*first* placed 'into or on any land or water' and is *thereafter* 'emitted into the air,'" and thus disposal directly into the air which then fell on the ground was not "disposal" under RCRA. *Id.* For further support, the Ninth Circuit noted that the term "emissions" was absent from the definition of disposal, even though that term was present in other portions of the statute. *Id.* Lastly, the court rejected plaintiff's contention that since RCRA has an "air emissions" provision—§ 6924(n), which covers gas discharges from solid waste dump sites—that "emitting" must fall within the statute's reach. *Id.* at 1025 (distinguishing § 6924(n) from the rest of the remedial scheme and finding that the necessity

to include § 6924(n) in RCRA indicated that RCRA did not otherwise intend to regulate air emissions through § 6972(a)(1)(B)).

Finally, BlueSky argued that irreparable harm can only be shown to the plaintiff under *Winter* because it requires a plaintiff to establish that "*he* is likely to suffer irreparable harm in the absence of preliminary relief." 555 U.S. at 20 (emphasis added); *Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 462 (8th Cir. 2025) ("When a preliminary injunction is sought, a federal court must consider the threat of irreparable harm to the movant, or whether the movant is likely to suffer irreparable harm in the absence of preliminary relief.") (emphasis in original) (cleaned up); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 822 (9th Cir. 2018) ("Plaintiffs seeking injunctive relief must show that they themselves are likely to suffer irreparable harm absent an injunction."). Harm to a third party therefore cannot satisfy the irreparable-harm requirement. While BlueSky cedes that drinking water contaminated with PFOA linked to SkyLoop's air emissions would cause harm to human health, BlueSky argues that because the VEA's members have all ceased drinking the public water supply due to their knowledge that it has PFOA in it, the VEA itself (through its members) are not likely to suffer irreparable harm between now and trial, which is what a preliminary injunction is meant to prevent. BlueSky emphasizes that the VEA solely relied on harm through drinking water in its preliminary injunction motion and other potential harms that the VEA may or may not be experiencing, particularly at its farm, have been waived.

The VEA, in its reply, pushed back on BlueSky's claims that irreparable harm can only be shown to the plaintiff, particularly in environmental cases or public nuisance actions. In environmental cases, courts regularly assess irreparable harm to the plaintiff *or* the public in the context of injunctive relief, whether preliminary or permanent. *See, e.g.*, *Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 781, 788 (4th Cir. 1991); *Courtland Co. v. Union Carbide Co.*, No. 2:19-cv-00894, 2024 WL 4339600, at *5–6 (S.D. W. Va. Sept. 27, 2024). This approach is consistent with the principle that where Congress has granted citizens a right of action and the plaintiff has established jurisdiction (i.e., standing), they may invoke the general public interest in support of their claim for injunctive relief. *Warth v. Seldin*, 422 U.S. 490, 501 (1975). Although injury to a litigant (or its members) is necessary to establish standing, "once review is properly invoked, that person may argue the public interest in support of his claim. *Sierra Club v. Morton*, 405 U.S. 727, 737 (1972); *see also id.* at 740 n.15 ("The test of [private] injury in fact goes only to the question of standing to obtain judicial review. Once this standing is established, the party may assert the interests of the general public in support of his claims for equitable relief."). Essentially, the VEA argues that when the cause of action is already one that allows private citizens to sue on behalf of the public, like a RCRA citizen suit or a public nuisance claim, the public can and should be considered in the irreparable harm prong.

In reply, the VEA also urged that the Ninth Circuit's interpretation of "disposal" in RCRA is incorrect and urges the court to follow several district courts in the Sixth Circuit that have

interpreted the same provision in a more closely analogous context. Specifically, the Southern District of Ohio declined to follow *BNSF Railway* and rejected its reasoning, explaining that "RCRA's legislative history and purpose supports a finding in this case that the aerial emissions of C8 particulate matter, which fell onto the ground, remained there, and contaminated the groundwater, constitutes disposal of solid waste under RCRA." *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 963–66 (S.D. Ohio 2015). This holding is in line with another case from the Southern District of Ohio, which found that particulate matter released via the air, which then "touches down" onto the ground, constitutes disposal of solid waste under RCRA. *See Citizens Against Pollution v. Ohio Power Co.,* No. C2–04–CV–371, 2006 WL 6870564, at *3–5 (S.D. Ohio July 13, 2006).

After the preliminary injunction motion was fully briefed, the district court scheduled an evidentiary hearing for September 29, 2025. During that hearing, the VEA presented testimony from several VEA members regarding their concerns about drinking their water from the PSD. They testified that, because it was contaminated with PFOA, they had stopped drinking the water and would not drink it again until they knew the PFOA was removed. Because they stopped drinking their tap water, they have had to expend considerable funds each month buying bottled water. These members also testified that they enjoy going to VEA Sustainable Farms several times a year. The VEA also provided testimony from its Executive Director that the VEA had privately tested the soil on its farm in Mammoth and found detectable levels of PFOA on the property. The VEA presented expert testimony from an air emissions expert, who opined that based on the rates of PFOA accumulation in the Mammoth PSD water to date, PFOA levels could reach as high as 10 ppt by May 2026 if SkyLoop's emissions continue. Finally, the VEA presented expert testimony from an expert toxicologist who opined that, in her expert opinion to a reasonable degree of scientific certainty, Mammoth residents who drink the water from the PSD contaminated with PFOA will suffer irreparable harm between now and trial in the form of increased health risks. However, the VEA's toxicologist was unable to provide an expert opinion on what harm the VEA members who have stopped drinking the water will suffer that a preliminary injunction could prevent.

BlueSky did not provide an opposing expert toxicologist but emphasized throughout the hearing that the VEA failed to show any evidence that its members themselves are likely to be irreparably harmed since they have ceased drinking the water. For instance, while the VEA members have to pay for bottled water now and the VEA has stopped distributing its locally grown food to the community, those types of injuries (as opposed to health injuries) are compensable by money damages, and thus not irreparable.

C. The District Court's Decisions

On November 24, 2025, the district court issued an order granting the VEA's Motion for a preliminary injunction, finding that the VEA had standing and established all four *Winter* factors.

As for the VEA's standing to bring a public nuisance claim, the district court found that the property damage to the VEA's farm, particularly its vegetable garden, was enough to show a "special injury" differentiating it from the public's injuries from drinking water from the Mammoth PSD. The district court's opinion did not address BlueSky's arguments that many other farms near SkyLoop would have the same injury to their land that the VEA relies on for a special injury.

As for likelihood of success on the merits of its RCRA claim, the court determined that the air emissions were "disposal" under RCRA, following the reasoning in *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 963–66 (S.D. Ohio 2015).

Finally, the Court found that irreparable harm was occurring from BlueSky's air emissions of PFOA, a forever chemical, and the local community's exposure to it in their drinking water and on their land. While the court found that there was not enough evidence presented to show that the VEA's members were likely to suffer irreparable harm between now and trial since they ceased drinking the contaminated water, the Court found that the VEA presented unrebutted evidence that the Mammoth residents who are still drinking the contaminated water will suffer irreparable harm without an injunction and that this satisfies the irreparable harm prong of *Winter*. *See W. Va. Rivers Coal., Inc. v. The Chemours Co. FC, LLC*, 793 F. Supp. 3d 790, 813–16 (S.D.W. Va. 2025).

D. The Appeal

On December 1, 2025, BlueSky filed this appeal to the United States Court of Appeals for the 12th Circuit, asking that the district court's order granting a preliminary injunction be vacated.

The same day of its appeal, BlueSky also filed a motion to stay proceedings in the lower court pending appeal. BlueSky argued that this stay is mandatory under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023).[6] BlueSky argued that, under *Coinbase*, the court must defer ruling on any issues that are "involved" in Chemours's appeal from this court's preliminary injunction ruling. *Id.* at 744. Essentially, "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). As the Supreme Court has explained, this "*Griggs* principle . . . requires an automatic stay of district court proceedings that relate to any aspect of the case involved in the appeal," a principle that applies fully to "interlocutory appeal[s]." *Coinbase*, 599 U.S. at 744. Because standing and irreparable harm were part of the district court's order, which is now on appeal, and those issues will also have to be resolved at a trial on the merits, the district court is divested of jurisdiction over those issues, and thus the case, until the appeal is resolved. *See Am. Encore v. Fontes*, No. CV-24-01673-PHX-MTL, 2025 WL 1839464 (D. Ariz. June 26, 2025).

[6] On April 1, 2025, the Twelfth Circuit adopted the Fourth Circuit's reasoning and holding in *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265 (4th Cir. 2025), which is a case that interprets *Coinbase*.

The district court ordered an expedited response from the VEA to BlueSky's stay motion. On December 5, 2025, the VEA opposed the motion to stay, arguing that while *Coinbase* has been extended outside the arbitration context in this Circuit, it is not applicable to preliminary injunctions. *See, e.g.*, *N. Miss. Med. Ctr., Inc. v. Quartiz Techs.*, No. 23-00003, 2024 WL 2262684, at *7 (N.D. Miss. May 17, 2024); *U.S. Sec. & Exch. Comm'n v. Reven Holdings, Inc.*, 1:22-CV-03181, 2024 WL 3691603, at *1 n.1 (D. Colo. Aug. 7, 2024); *Brown v. Taylor*, 222-CV-09203, 2024 WL 1600314, at *4 (C.D. Cal. Apr. 3, 2024); *Forester-Hoare v. Kind*, 23-CV-537-JPS, 2025 WL 101660, at *1 (E.D. Wis. Jan. 15, 2025). Such an expansive reading of *Coinbase* and *Express Scripts* would "upend federal litigation as we know it. . . . For plaintiffs, then, every preliminary-injunction motion becomes a trap: Even if the motion is granted, the defendant can take that opportunity to stop the trial proceedings in their tracks." *Coinbase*, 599 U.S. at 760–61 (Jackson, J., dissenting).

On December 8, 2025, the district court granted the motion to stay. In its order staying its proceedings pending appeal, the district court explained that it believed a stay was mandatory under *Coinbase* and the Twelfth Circuit's interpretation of it. However, the court explained its reluctance to stay the case and explicitly stated it would not have used its discretionary powers to stay the case pending appeal.

The VEA believed that the district court incorrectly applied *Coinbase* and that it would be harmed by the stay because the VEA has already invested significant resources in discovery and expert witnesses for the upcoming May 2026 trial on the merits. Thus, pursuant to 28 U.S.C. § 1292(b), the VEA asked the district court for an interlocutory appeal of its stay order, which the district court granted. Part of the district court's reasoning, other than satisfying the prerequisites set out in the statute for interlocutory appeals, was that this type of decision would generally not be reviewable by the Court of Appeals and it is in the best interest of all district courts in this Circuit to understand the limits of *Coinbase*.

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

[NOTE: No decisions or documents dated after December 29, 2025, may be cited either in briefs or in oral arguments.]