C.A. No. 24-0682

UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

VANDALIA ENVIRONMENTAL ALLIANCE

Appellant,

-against-

BLUESKY HYDROGEN ENTERPRISES

Appellee.

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

BRIEF FOR THE APPELLANT

Team No. 21
Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

JURISDICTINAL STATEMENT

This court has authority to hear this case under its federal question jurisdiction, 28 U.S.C. § 1331, because Appellant Vandalia Environmental Alliance has brought an action under § 7002(a)(1)(B) of the Resource Conservation and Recovery Act and 42 U.S.C. § 6972(a)(1)(B), a federal statute. This court also has jurisdiction over the joint action brought by Appellant under Vandalia common-law public nuisance pursuant to federal supplemental jurisdiction, 28 U.S.C. § 1367, because the claim is "part of the same case or controversy." *Id*.

STATEMENT OF THE ISSUES PRESENTED

(1) Did the district court correctly interpret Coinbase to require an automatic stay of its proceedings pending appeal of the preliminary injunction?

(2) Was the injury to the Vandalia Environmental Alliance's private property sustained through the exercise of the right common to the general public that was the subject of interference by BlueSky Hydrogen Enterprises, and does that injury constitute a special injury as required by Vandalia common-law to bring an action in public nuisance?

(3) Should BlueSky's air emissions of PFOA, which led to PFOA particulates being deposited onto the ground, be considered "disposal" under the RCRA, thus justifying the district court's determination that the VEA was likely to succeed on the merits of its RCRA ISE claim?

(4) Can evidence of harm to the public satisfy the irreparable harm prong of the *Winter* test, such that it is sufficient to issue a preliminary injunction?

STATEMENT OF THE CASE

I. Procedural History

This case consists of consolidated cross appeals arising from the same district court case. The case is comprised of two actions originally brought in the United States District Court for the Middle District of Vandalia by Appellant Vandalia Environmental Alliance against Appellee BlueSky Hydrogen Enterprises.

The actions in this case are brought under Vandalia common-law public nuisance claim and § 7002(a)(1)(B) of the Resource Conservation and Recovery Act and 42 U.S.C. § 6972(a)(1)(B) by Appellant regarding Appellee's PFOA air emissions. Appellant alleges that it may maintain its first claim on behalf of the public because it has suffered a special injury, different in kind and degree, from the general public. Appellee's PFOA air emissions have landed directly on Appellant's private property, contaminating its farm and educational center. Under its second claim, Appellant alleges that Appellee's SkyLoop Facility presents an imminent and substantial endangerment to health or the environment due to its PFOA air emissions settling on the PSD's wellfield and contaminating the public water supply. Under both actions Appellant seeks declaratory and injunctive relief to immediately halt the disposal of PFOA onto their private land and PSD's wellfield. Additionally, Appellant seeks Appellee to clean up or otherwise pay for treatment of Mammoth's water supply, that has been poisoned by the presence of the forever chemical PFOA.

Appellee appeals the District Court's decision to grant Appellant's motion for preliminary injunction. Appellant Vandalia Environmental Alliance filed for a preliminary injunction to temporarily shut down the SkyLoop facility, or, to stop the SkyLoop facility from

utilizing any feedstock that may contain PFOA. Appellant asserted that the decision could not wait for a final resolution on the merits to stop Appellee's air emissions because PFOA is a forever chemical, in which there is no safe level to consume. The District Court issued the preliminary injunction, concluding that Appellant and sufficiently established all four *Winter* factors.

Appellant appeals the District Court's decision granting Appellee's motion to stya proceedings pending appeal. Appellee BlueSky Hydrogen Enterprises filed a motion to stay proceedings in the lower court pending appeal, alleging the stay is mandatory under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). The District Court granted Appellee's motion to stay, and Appellant Vandalia Environmental Alliance asked the District Court for an interlocutory appeal of its stay order. The District Court granted Appellant's request, and this court permitted Appellant's discretionary, interlocutory cross appeal, consolidating it with Appellee's appeal of the court's order granting a preliminary injunction.

II. Statement of Facts

BlueSky Hydrogen Enterprises ("BlueSky") operates the SkyLoop waste-to-hydrogen facility in rural Mammoth, Vandalia, as part of the Appalachian Regional Clean Hydrogen Hub ("ARCH2"). SkyLoop began operations in January 2024 and converts waste streams—including plastics, biosolids from wastewater treatment plants, and chemical by-products—into hydrogen through high-temperature thermal and chemical processes. One of SkyLoop's waste feedstocks includes biosolids originating from a wastewater treatment plant that accepts industrial sludge from Martel Chemicals, a company with a history of using PFAS compounds. According to records obtained by the Vandalia Environmental Alliance ("VEA") through public records

requests, PFOA is present in this sludge and is not required to be removed during wastewater treatment or at any stage of SkyLoop's processing.

VEA is a Vandalia-based environmental public interest organization with members throughout the state, including many residents of Mammoth who receive their drinking water from the Mammoth Public Service District ("PSD"). VEA also operates an educational outreach center and small farm—VEA Sustainable Farms—located approximately 1.5 miles north of the SkyLoop facility and near numerous other working farms that supply food to the local community. Prior to the events giving rise to this litigation, VEA was generally supportive of the SkyLoop project because it displaced landfill development, promised cleaner energy alternatives, and provided local jobs.

In March 2025, results from the 2024 Unregulated Contaminant Monitoring Rule ("UCMR") testing of Mammoth PSD's drinking water were released, revealing detectable levels of PFOA at 3.9 parts per trillion. PFOA had not been detected in the Mammoth water supply in 2023. The detection of PFOA alarmed VEA and Mammoth residents because PFOA is a persistent "forever chemical" linked to serious long-term health risks, including cancer and developmental harm. Although the U.S. Environmental Protection Agency has established a Maximum Contaminant Level of 4 ppt for PFOA, that standard will not become enforceable until 2029, and Mammoth PSD currently lacks any treatment technology capable of removing PFOA from drinking water. Installation of such treatment would take at least two years.

The timing of the PFOA detection coincided with the commencement of SkyLoop's operations. Based on its investigation, VEA believes that PFOA contained in SkyLoop's waste feedstocks survives the facility's processing and emissions controls and is released into the air

through SkyLoop's stacks. Prevailing winds in the area blow northward, toward Mammoth PSD's wellfield, creating a pathway by which airborne PFOA can deposit onto land and infiltrate groundwater. Despite this risk, PFOA and other PFAS compounds are not regulated under SkyLoop's Title V Clean Air Act permit, leaving emissions of these substances unmonitored and unaddressed.

As a result of the contamination, many VEA members have stopped drinking municipal water and now rely on bottled water, incurring ongoing expense and inconvenience. VEA has also halted the distribution of food grown at its farm to local food banks and soup kitchens out of concern that airborne PFAS deposition may have contaminated its soil and crops. These harms extend beyond VEA alone, as Mammoth PSD supplies drinking water to the broader community, and numerous neighboring farms may be similarly affected by deposition from SkyLoop's emissions.

SUMMARY OF THE ARGUMENT

The District Court erred in staying its proceedings because it fundamentally misapplied the *Coinbase* and *Martinsville* framework. These precedents established an automatic stay under the *Griggs* principle only for narrow, "foundational" questions of forum authority—specifically arbitrability and orders to remand. Because an appeal of a preliminary injunction does not challenge the court's underlying power to hear the case, it does not involve the "entire case" in a way that risks wasting judicial resources. Unlike questions of venue or jurisdiction, a decision on an injunction cannot strip the lower court of its authority; therefore, the traditional *Nken* four-factor balancing test should remain the governing standard for discretionary stays.

Furthermore, the Federal Rules of Civil Procedure explicitly override the *Griggs* principle in this context. Rule 62(c)(1) stipulates that interlocutory judgments regarding injunctions are not stayed unless the court orders otherwise, confirming that the District Court retains jurisdictional control even during an appeal. Applying a "bright-line" automatic stay to all appeals would not only contradict the Federal Rules but also degrade judicial discretion and overrule the established *Nken* test. Such a broad expansion would allow appealing parties to halt proceedings regardless of merit, creating the very administrative inefficiencies and delays that the *Griggs* principle was originally designed to prevent.

The District Court correctly found that the Vandalia Environmental Association (VEA) possesses standing to bring its public nuisance claim because it has suffered a "special injury" distinct from the general public. Under the Second Restatement of Torts, physical damage to private property and the resulting interference with its use constitute a different kind of harm than the general infringement of a public right. While the general public shares the injury of contaminated air and water, the VEA has suffered unique, localized damage: toxic PFOA deposits have poisoned its soil, forced the abandonment of its community garden, and rendered its private acreage unsafe for recreation. This injury is a direct result of the defendant's interference with the public right to clean air, matching the causal framework required to establish a private action for a public nuisance.

Furthermore, the VEA's injuries extend beyond mere pecuniary loss, as the contamination has effectively incapacitated the organization's core mission. The inability to host educational programming, distribute produce to local food banks, or maintain its land in an ecologically sustainable manner represents a specialized harm to the VEA's organizational purpose and community relationships. Even if other local farmers suffer similar agricultural

damage, the VEA remains distinct from the "general public" under the *Baptiste* standard. Because the pollution has physically invaded the VEA's property and halted its unique mission-driven activities, the organization has a clear right to seek injunctive relief to protect its land and its institutional viability.

BlueSky's air emissions of PFOA constitute "disposal" under the Resource Conservation and Recovery Act, supporting the district court's conclusion that VEA is likely to succeed on the merits of its RCRA imminent and substantial endangerment claim. Since beginning operations at the SkyLoop facility, BlueSky has emitted PFAS-containing particulates into the air, which have settled onto surrounding land and groundwater, coinciding with newly detected PFOA contamination in Mammoth PSD's water supply. RCRA is a remedial statute intended to fill gaps left by other environmental laws and is to be construed liberally, particularly in citizen suits addressing threats to health and the environment. The statutory definition of "disposal" expressly encompasses releases that allow hazardous waste to enter the environment or be emitted into the air and subsequently contaminate land or water. Consistent with this broad interpretation, courts within the Sixth Circuit have repeatedly held that aerial emissions that later settle onto land and contaminate groundwater qualify as disposal under RCRA, including in cases closely analogous to this one. Unlike cases rejecting RCRA liability for air pollution alone, VEA's claim targets the downstream contamination of soil and groundwater by persistent "forever chemicals," not harm to air quality itself. Accordingly, the district court properly relied on persuasive precedent to conclude that BlueSky's conduct falls within RCRA's disposal provision and poses an imminent and substantial endangerment warranting relief.

Harm to the public, including environmental and public health harm, can satisfy the irreparable harm prong of the Winter test, particularly in the context of a RCRA citizen suit.

Courts have consistently recognized that environmental harm is inherently irreparable because it is often permanent or of long duration and cannot be remedied by monetary damages, and that threats to public health and natural resources weigh heavily in favor of injunctive relief. Where Congress has enacted statutes like RCRA to prevent imminent and substantial endangerment to health or the environment, courts may presume irreparable harm upon a showing of a likely statutory violation, especially when private plaintiffs are authorized to sue on the public's behalf. Here, BlueSky's alleged air emissions of PFAS deposit persistent "forever chemicals" into groundwater relied upon by VEA members and the surrounding community, posing significant risks to human health and the environment. Because RCRA is expressly designed to prevent such public harms and PFAS contamination constitutes an imminent and substantial endangerment, the resulting injury to the public satisfies the irreparable harm requirement. Accordingly, the district court correctly concluded that the irreparable harm prong of the Winter test was met and properly issued a preliminary injunction.

ARGUMENT

I. The District Court incorrectly stayed its proceedings pending appeal of the preliminary injunction because it misapplied *Coinbase*.

The District Court's reliance on *Coinbase* and *Martinsville* is misplaced because the automatic stay triggered by the *Griggs* principle is strictly confined to foundational questions of forum authority. While those precedents address whether a case belongs in court at all, an appeal of a preliminary injunction does not challenge the court's jurisdiction and thus remains subject to the discretionary balancing test established in *Nken*.

a. *Coinbase* and *Martinsville* only expanded automatic stays pending appeal for all cases answering the fundamental question of forum authority of the court below and is therefore unapplicable to the case at hand.

In *Coinbase, Inc. v. Bielski* the Supreme Court established a framework for an automatic stay of lower court proceedings when an appeal is made regarding the question of arbitrability. *Coinbase, Inc. v. Bielski* 599 U.S. 736 (2023). The court relied on the "Griggs principle,"[1] which required "an automatic stay of district court proceedings," when an appeal was made regarding the arbitrability of the case. *Id.* at 743. The court cited the need for an additional safeguard surrounding arbitrability appeals, stressing its concern for unnecessary, and expensive, court proceeds which would "largely defeat[] the point of the appeal." *Id*. The issue on appeal in *Coinbase* was the issue of arbitrability of the case – a foundational issue calling into question the forum authority of the district court. Therefore, "the entire case [was] essentially involved in the appeal," (*Id.*) requiring that the lower court stay proceedings.

The Fourth Circuit, in *City of Martinsville v. Express Scripts, Inc.* expanded the automatic stay framework to encompass appeals on orders to remand. *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265 (4th Cir. 2025). The Twelfth Circuit has since adopted this interpretation of Coinbase. The Fourth Circuit found the Griggs principle applicable as detailed in *Coinbase* on an appeal of an order to remand because the appeal asked the same "foundational question: Which forum will hear the case?" *Id.* at 270. Any concurrent proceedings in the district court as this question was evaluated by the Fourth Circuit, could result in wasted court resources "largely defeat[ing] the point of the appeal." *Coinbase*, 599 U.S. at 743.

The Griggs principle is thus only applicable when the issue on appeal encompasses a foundational question of the case – necessitating that district court proceedings halt or risk wasting precious court resources on a case they may not even have authority to hear. This is

[1] The Griggs principle was extrapolated by the Court from its precedent case, *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982).

vastly different from the issue appealed in the case at hand: an appeal of a preliminary injunction is not an evaluation of the district court's forum authority. The outcome of the Circuit Court's decision regarding the preliminary injunction does not have the potential to strip the lower court of its authority, thus wasting judicial resources as so feared by the Supreme Court.

b. The well-established four-factor test should be employed in place of the Griggs principle, which would necessarily find that a stay is improper.

The process of evaluating a motion to stay proceedings is well-established in Supreme Court precedent. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Nken v. Holder*, 556 U.S. 418 (2009). This process employs a four-factor test consists of "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken*, 556 U.S. at 434 (quoting *Hilton*, 481 U.S. at 776). A district court is tasked with balancing these factors to reach and equitable outcome between the parties.

The four factors evaluated are strikingly similar to those required to obtain a preliminary injunction under the *Winter* test – it should therefore come as no surprise that the district court in this proceeding lamented on their perceived inability to use their judicial discretion to avoid staying proceedings.

c. Even if viewed expansively, authority given to *Coinbase* by *Martinsville* does not allow for the Griggs principle to apply because it is overridden by FRCP Rule 26(c)(1).

Even if *Coinbase* was to be applied to *all* cases, even those not involving "foundational question[s]" of forum authority, the permanent granting of jurisdiction over preliminary

injunctions to the district court under the FRCP Rule 62 poses direct opposition "override[ing] the background Griggs principle." *Martinsville*, 128 F.4th at 270.

Rule 62(c)(1) of the Federal Rules of Civil Procedure stipulates that, "Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken: (1) an interlocutory or final judgment in an action for an injunction or receivership." FRCP 62(c)(1). This rule necessarily concludes that even on appeal to the circuit court, the district court retains jurisdictional control over injunctions. In other words, the Circuit Court cannot "halt all proceedings covered by the Griggs principle" (*Martinsville*, 128 F.4th at 270) because proceedings related to preliminary injunctions are left to the discretion of the district court.

d. Widespread application of the Griggs principle would result in the degradation of judicial discretion and unnecessary delay in district court proceedings.

Even without the issue of the Federal Rules of Civil Procedure being in direct opposition to the application of the Griggs principle – widespread application of the Griggs principle beyond answering fundamental case questions related to forum authority degrade judicial discretion and essentially overrule the four-factor test established in *Nken*. If every district court is required to stay all proceedings relating to any issue on appeal, it establishes a bright-line rule which eliminates the need to invoke a balancing test to ensure each party is protected. Rather, it creates a system in which the appealing party always wins – regardless of merit or need for the court's protection.

This certainly cannot be the Supreme Courts, nor the Fourth Circuit's intention because they did not explicitly state that they were overturning *Nken*. Instead, the heightened scrutiny of the Griggs principle is applicable only where foundational questions relating to "the whole case" are at stake – specifically those that require the court to answer questions of forum authority. Any other application would result in the unnecessary delay in court proceedings which would go

against the very values the Griggs principle was created on, the efficiency and proper use of the court's resources.

II. The District Court correctly ruled that VEA has a special injury sufficient to give it standing to bring its public nuisance claim because the organization's private property has been directly harmed, and its mission has been incapacitated.

It is a generally accepted principle held in common law that a private individual or entity pursing an action of public nuisance requires that the Plaintiff suffers a special injury, different in kind from that of the general public. *See*, *Mayor of City of Georgetown v. Alexandria Canal Co.*, 37 U.S. 91, 99 (1838) ("The principle then, is that in cases of public nuisance, where a bill is filed by a private person, asking for relief by way of prevention, the plaintiff cannot maintain a stand in court of equity unless he avers a proves some special injury"). This requirement is reiterated in the Second Restatement of Torts requiring that private entities bringing an action for a public nuisance must have "suffered a harm of a kind different from that suffered by other members of the public." Restatement (Second) of Torts § 821(C)(1) (A.L.I 1979). The Restatement recognizes three types of harm that usually qualify as "different kind" of harm for purposes of the restatement: physical harm, harm to private property, and inhibiting access to private property. Restatement (Second) of Torts § 821(C)(1)(d)-(f). These types of harm are generally recognized by common-law jurisdictions as well, especially those who follow the Second Restatement of Torts, as Vandalia does.

The VEA has suffered harm to its private property through the settling of PFOA deposits onto its land, poisoning its soil, and ultimately forcing the organization to halt all farming done on the land. VEA members can no longer enjoy leisure time on the land, nor can they conduct educational and event programming on the property due to the presence of the toxic forever-chemical. The cease in educational programming, and the direct environmental harm to its land

directly impedes the VEA's ability to achieve its organization's mission – incurring yet another special injury as a result of Appellee's air emissions.

a. The VEA has suffered a unique injury while exercising the same rights as the general public, right to clean air.

The special injury incurred by a private Plaintiff in a public nuisance action must typically be incurred while exercising the same public right as the general public. *See Philadelphia Electric Co. v. Hercules, Inc.*, 762 F.2d 303, 315-16 (3d Cir. 1985). The Second Restatement of Torts upholds this concept, specifying that the special injury must be incurred while "exercising the right common to the general public that was the subject of interference." Restatement (Second) of Torts § 821(C)(1). In the matter at hand, Appellee's PFOA air emissions are interfering with the public right to clean air, which has resulted in the poisoning of land and the Mammoth Public Service's ("PSD") water supply. VEA's harm is thus twofold: VEA's members are harmed through the consumption of toxic drinking water (which is an injury shared by the general public) and through the inability to use the organization's private land for farming, recreation, or educational purposes.

Appellee's release of PFOA into the air in and around Mammoth, Vandalia has infringed upon the right to clean air the general public which is comprised of, but not limited to, citizens of Mammoth, visitors, rural farmers, and VEA members. Appellee's PFOA air emissions have resulted in PFOA deposition within the PSD's drinking water supply, violating the separate public right to clean water. The polluted air has also resulted in PFOA deposits across private land, including VEA's property contaminating its soil and crops.

In *Philadelphia Electric Co. v. Hercules, Inc.* the Third Circuit held that a private landowner could not bring an action of public nuisance against the previous owner of the private land for the contamination of the groundwater on the property. *Philadelphia Electric Co.* 762 F.2d

at 316 & 319. The basis of this decision was the fact that the Plaintiff's damages were not a direct result of the Plaintiff "exercising the right common to the general public that was the subject of interference." *Id.* at 316 (quoting Restatement (Second) of Torts § 821(C)(1)). "The public right that was interfered with was the right to 'pure water.'" *Id.*

The VEA's special injury is distinguishable from that of the private landowner in *Philadelphia Electric Co.* in that VEA's injuries are the direct "*result* of the pollution, [not] the *cause* of it." *Id.* (emphasis original). The poisoning of VEA's soil on their private land was the direct result of Appellee's infringement of the general public's right to clean air. But for the Appellee's emission of PFOA into the air contaminating the air, the surrounding land, and the PSD's water supply, the VEA would not have realized such injuries.

b. The VEA has sustained a special injury, different in kind and degree, from that of the general public because it is unable to use its private land for farming, educational initiatives, or recreation.

Both the Second Restatement of Torts, and our Federal Circuit courts have by in large recognized that damage to private property, or the ability to use private property, constitutes a "special injury" needed to bring an action of public nuisance. The very nature of damage to private property necessitates the conclusion of a "special injury," and in this case VEA's unique use of its land further forces this conclusion.

While physical damage to the VEA's property exists here, it is not a prerequisite to establish a "special injury" through its impacts on private property. In 2021, the Third Circuit in *Baptiste v. Bethlehem Landfill Co.* held that the Plaintiffs' inability to enjoy leisure time at their private homes due to pervasive pollution and an awful smell emanating from a nearby landfill qualifies as a special injury as required to bring a public nuisance claim. *Baptiste v. Bethlehem Landfill Co.*, 965 F.3d 214, 220-23 (3d Cir. 2021). The fact that multiple homeowners within a

certain area may have suffered similar injuries due to proximity did not dissuade the Court, because this subset of property owners were separate from the general public who may have suffered harm through the consumption of polluted air. *Id.*

The VEA, in part, uses its land to cultivate a vegetable garden. This land use is similar to that of other farmers in and around Mammoth. The harm suffered by VEA in relation to their farm and produce is admittedly similar to that of other farmers in the area. However, the "special injury" requirement under the Second Restatement of Torts does not require that the harm suffered is unique from every member of the public, only that of the general public. See *Baptiste v. Bethlehem Landfill Co.*, 965 F.3d at 220. The overlap of potential harm common harm suffered by VEA and other local farmers does not preclude the VEA from pursuing an action under Vandalia common-law public nuisance.

While potential harm shared by the VEA and surrounding farmers does not prevent the VEA from pursing an action of public nuisance, it is important to note that the injuries suffered by the VEA are still different in kind and degree from that of the surrounding farmers. Local farmers may suffer harm to the produce they grow and the soil they tend, which can be largely categorized as pecuniary damages. However, the harm the VEA has suffered go far beyond pecuniary damages, which require injunctive relief.

First, the VEA takes care to farm produce that is then donated *locally* to community food banks and soup kitchens. The distribution of locally grown food to the community is unique to the VEA. The organization's inability to farm therefore harms more than it's right to use its private land; it harms its relationships with community organizations that have grown to rely on their supply of locally grown produce. The damage to the VEA's crops thus goes beyond simply

pecuniary damages[2] and degrades the very relationships that the VEA has dedicated its work to maintaining.

The VEA's farm is not strictly used for the production of food. Additionally, the organization uses it to educate the community on how to start and maintain a small farm or garden. The organization has ceased its farming for fear of poisoning the community, due to the detected presence of PFOAs in their soil. The VEA has thus suffered additional harm in halting its educational programming, degrading its relationship with the community once again. While it is unclear if the organization may safely continue its educational programming within its education center on the property, the education center itself has been damaged by the deposit of PFOA air emissions. The programming also relied on the produce grown at the farm for its hosted events, which can no longer be safely consumed.

VEA Members used to frequent the organization's land several times a year. However, with the inability to farm nor host events and the presence of dangerous chemicals across the property, members cannot safely use the property for leisure activities. VEA members are already incurring harm shared by the general public by their inability to safety drink their tap water and thus expending considerable amounts of their own money to purchase potable water. However, members are unable to exercise their VEA membership to the extent that they used to, incurring yet another special injury at the hands of Appellee's air emissions.

While the law surrounding public nuisance is evolving, this action does not require that the preconceived notions of "special injury" be expanded in any way. Indeed, in an action before

[2] Even if Appellee BlueSky Hydrogen Enterprises were to provide pecuniary damages to Appellant to supplement their loss of crops, there are no suitable substitutes for its locally grown produce because all local produce has been poisoned by Appellee's air emissions.

the Supreme Court in 1913, the Court held that a farmer along a river that was continuously polluted by an upstream copper mining company had a special injury due to the pollution seeping onto his land and harming his crops. *Arizona Copper Co. v. Gillespie*, 230 U.S. 46 (1913). The pollution released from the copper mining company prevented the farmer from using his land as he pleased, and it was an injury that he would continue to suffer without an injunction from the Court. *Id.* at 56.

c. The VEA's mission as an organization to "protect[] the State's natural environment (including clean air and water) and to encourage and educate others on how to protect their State and live more sustainably" has been incapacitated because it is unable to provide its members and the community at large educational opportunities on their land.

The VEA has incurred a special injury not just through the harm to its private property, and subsequently its relationship with the community, but also through the inhibition of the organization's core mission. The VEA's core 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." Problem at 7.

The actions brought before the court are the manifestation of the VEA's core mission and special interest in protecting the local environment. However, its mission is also upheld in its preservation and cultivation of its property – something that has been soiled by Appellee's PFOA air emissions. Not only does the VEA require that Appellee's toxic air emissions cease entirely to not infringe on its organizational mission; it also must undertake the extensive and expensive cleaning of its private land. The VEA cannot pursue its mission of protecting the State's natural environment when its own land is riddled with a toxic forever chemical.

Additionally, and as previously discussed, the VEA strives to encourage and educate others on how to protect their State and live more sustainably. This educational programming

was largely facilitated by their farm, or at their educational facility and catered by its own produce. The education facilitated by the use of the VEA's private property has ceased due to the presence of the toxic chemical deposited by Appellee's air emissions. The VEA thus cannot fulfill its organizational mission in either aspect.

III. BlueSky's Air Emissions of PFOA should be considered "disposal" under the Resource Conservation and Recovery Act ("RCRA")

Under the RCRA, BlueSky's emissions of PFOA should be considered "disposal" and, therefore, the district court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim.

a. BlueSky is emitting PFAS into the air, impacting the surrounding water sources

BlueSky conducts waste-to-hydrogen procedures at its SkyLoop facility. The processes for using these technologies to convert waste into clean energy (like gasification or fermentation) have the potential for air emissions, including carbon dioxide, nitrogen oxides, and particulates. In March 2025, the results from the 2024 Unregulated Contaminant Monitoring Rule ("UCMR") testing of the Mammoth Public Service District's ("PSD") water supply showed detectable levels of PFOA. This water is supplied from a series of groundwater wells one mile north of VEA Sustainable Farms. In 2023, PFOA was not detected in the Mammoth water supply. But since operations at the SkyLoop facility began in January 2024, PFOA levels have risen to 3.9 ppt. PFOA is a "forever chemical", meaning it does not break down in the environment. Additionally, consumption of PFOAs has been linked to several long-term health risks.

The VEA discovered that one of SkyLoop's primary waste feedstocks contains PFOA, and that it is not required to be removed at any point in the treatment and processing stage. Should the PFOA survive SkyLoop's emissions control processes, it would ultimately be

released into the air through SkyLoop's stacks, blown north, and settled onto surrounding land, including the PSD's wellfield. Mammoth PSD currently lacks any treatment technology capable of removing the PFOA and it would take 2 years to implement such technology. As a result, SkyLoop's emission of PFOA has left the residents of Mammoth exposed to potentially harmful chemicals in their water supply.

b. The RCRA is intended to fill the gaps of other federal environmental laws

The Resource Conservation and Recovery Act ("RCRA") is the primary federal law governing the disposal of solid and hazardous waste. Enacted in 1976 in response to the growth of municipal and industrial waste generation, RCRA allows for private causes of action for citizens seeking relief against present or future risks of harm to health or the environment created by the handling, storage, treatment, transportation, or disposal of any solid or hazardous waste. The act was intended to fill the gaps of other federal environmental laws. The RCRA ISE (imminent and substantial endangerment) 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). Exemplifying these liberal standards with which the provisions are intended to be applied, the term "solid waste" takes on a broader meaning within the citizen suit provision than when that term is used in other parts of the statute.

c. Under the RCRA, "disposal" has generally included air emissions

The RCRA provision under scrutiny in this section is 42 U.S.C. § 6972, the Citizen Suits section of the RCRA. § 6972 allows for a person to commence a civil action in two instances,

and this action is brought under the second one, which states a person may commence a civil action:

> against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has 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 to health or the environment; or

Resource Conservation and Recovery Act, 42 U.S.C. § 6972 (a)(1)(B)

The VEA contends that BlueSky's air emissions of PFOA constitute a "disposal" of "solid waste" that poses an "imminent and substantial endangerment" to the health of those consuming the contaminated water. It is first worth noting the definition of "disposal" as used in the statute:

> 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 water.

42 U.S.C. § 6903(3)

This Court has yet to rule on the interpretation of "disposal" as used in this provision of the RCRA, but several courts in the Sixth Circuit have interpreted its meaning in cases closely analogous to this one. In *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, a non-profit public water provider brought action against a manufacturing facility operator, alleging claims under the same RCRA ISE provision. The Southern District of Ohio approached this case with the guiding principle that the RCRA is a remedial statute meant to be interpreted broadly. The court held that the defendant's aerial emissions, which landed on the plaintiff's wellfield and contaminated the groundwater, did constitute disposal under the RCRA based on its legislative

history. *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d. 940, 963-66 (S.D. Ohio 2015). The court interpreted the language to allow for a claim in an instance where the harm caused by the release of particles in the air was not harm to the air quality itself, but to the land and water on which particles landed and remained. *Id.* at 965. The court reasoned that "if the same waste entered the soil and groundwater via seeps or dumping…a private citizen harmed by such…contamination would have standing to pursue an ISE claim" and the scenario at issue was distinct, but not different. *Id.*

This is not the only case where the Southern District of Ohio interpreted the term "disposal" to include gas emissions. In *Citizens Against Pollution v. Ohio Power Co.*, the court examined the definition of disposal, focusing on the part of the provision that says disposal can be the "discharge…or placing of any solid waste or hazardous waste…on any land…". 42 U.S.C. §6903(3). In that case, the emissions from the Ohio Power Company came out in blue "plumes" that could be seen touching the ground. This, paired with evidence in the record supporting the assertion that the gas was discharged onto the land, led the court to determine that gas emissions can fit into the disposal definition. *Citizens Against Pollution v. Ohio Power Co.*, No. C2-04-CV-371, 2006 WL 6870564, at *3-5 (S.D. Ohio July 13, 2006).

The facts of our case are extremely similar to those at issue in *Little Hocking Water Ass'n* and *Citizens Against Pollution*. Here, BlueSky's SkyLoop is emitting PFAS particles into the air through their stacks. Those particles are then blown north, where they settle into the ground and water around Mammoth PSD. VEA's complaint is not that the aerial emission of PFAS is harming the public through air pollution; it claims that the aerial emission of PFAS has led to the harmful contamination of ground water after those particles reach the wellfield. Applying the same liberal interpretation of RCRA ISE provision used in *Little Hocking*, it seems apparent that

air emissions do satisfy the definition of "disposal" as used in the statute. Hazardous waste is being deposited onto land and is discharged into the groundwater.

BlueSky has pointed to a case from the Ninth Circuit where the court held that aerial emissions could not constitute disposal under RCRA. In *Ctr. For Cmty. Action & Envtl. Justice v. BNSF R. Co.*, an environmental organization brought a suit against railyard operators under RCRA for the trains' diesel emissions. Here, the court held that the emitting of diesel particulate matter was not a disposal of solid waste in violation of RCRA. *Ctr. for Cmty. Action & Env't Just. v. BNSF R. Co*., 764 F.3d 1019, 1030 (9th Cir. 2014). However, the facts from this case differ significantly from ours in several ways. First, the plaintiff in *BNSF Railway* brought the action in response to air pollution impacting residents surrounding the railyard. Under RCRA, there is no claim for disposal of waste into the air. VEA, on the other hand, brings action for particulates that are placed onto the land through aerial emissions. The complaint is not that the air is being polluted, but that the particulates being released through air emissions are being discharged onto the ground, seeping into the ground water. Second, PFAS are substantially more dangerous than diesel as they are a "forever chemical" that, once released, will not break down. Finally, the action brought by the VEA is far more administrable than that in *BNSF Railway*. If the court there had said diesel emissions constituted a valid claim under RCRA, there would be a slippery slope into suits brought against railways, vehicles, and other common modes of transportation used across the country. Here, the targeted hazardous waste disposal is of a much smaller scale, and the harm is posed by a company engaged in non-reciprocal risk creation.

d. The district court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim

The district court correctly found that VEA was likely to succeed on the merits of its RCRA claim. The court followed the reasoning in *Little Hocking Water Ass'n* to determine that air emissions were "disposal" under RCRA, and that the VEA's claim under this provision was likely to succeed. We ask that this finding be affirmed.

IV. The Irreparable Harm Prong of the *Winter* Test can be Satisfied by Harm to the Public

The fourth prong of the *Winter* test requires a plaintiff seeking a preliminary injunction to demonstrate that irreparable harm is likely in the absence of such relief. *Radiant Glob. Logistics, Inc. v. Furstenau*, 368 F. Supp. 3d 1112 (E.D. Mich. 2019). In the context of a claim under the RCRA, this brief argues that harm to the public, including environmental harm caused by air emissions depositing PFAS into water sources, satisfies the irreparable harm requirement. Courts have consistently recognized that environmental harm, by its nature, is often irreparable and that harm to public health and the environment can justify injunctive relief. *Southeast Alaska Conservation Council v. U.S. Army Corps of Eng'rs*, 472 F.3d 1097, 1100 (9th Cir. 2006).

a. Legal standard for irreparable environmental harm under the Winter test

The *Winter* test, as articulated by the Supreme Court, requires a plaintiff to establish four elements to obtain a preliminary injunction: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in the plaintiffs favor, and (4) that an injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7 (2008). The Court has emphasized that all four factors must be satisfied and that courts must consider the public consequences of granting or denying injunctive relief. The prong at issue here is second prong, known as the "irreparable harm prong", and whether it can be satisfied by harm to the public.

Courts have consistently held that environmental harm is irreparable because it is often permanent or of long duration and cannot be adequately remedied by monetary damages. *Nat'l Audubon Soc'y v. Dep't of Navy*, 422 F.3d 174, 201 (4th Cir. 2005). In *Amoco Production CO. v. Gambell,* the Supreme Court recognized that environmental injury, by its nature, is often irreparable and that, if such injury is sufficiently likely, the balance of harms will usually favor the issuance of an injunction to protect the environment. *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987). Similarly, in *Ohio Valley Envtl. Coalition, Inc. v. Hobet Minits, LLC*, the court found that environmental harm caused by excess selenium pollution in water sources constituted irreparable harm, as it contributed to the degradation of the watershed. *Ohio Valley Envtl. Coalition, Inc. v. Hobet Mining*, LLC, 723 F. Supp. 2d 886 (S.D.W. Va. 2010). These cases underscore the principle that environmental harm, particularly when it affects public health and natural resources, satisfies the irreparable harm requirement.

Federal Courts have recognized that harm to the public can satisfy the irreparable harm requirement in certain circumstances. For example, in cases where a statute explicitly or implicitly finds that violations will harm the public, courts have granted injunctive relief without requiring an additional showing of irreparable harm. *Assisted Living Assocs. L.L.C. v. Moorestown Twp.*, 996 F. Supp. 409 (D.N.J. 1998). The Third Circuit in *Gov't of V.I., Dep't of Conservation & Cultural Affairs v. V.I. Paving, Inc.*, 714 F.2d 283 (3d Cir. 1983) held that when a statute contains such a finding, courts may presume irreparable harm upon a showing of a statutory violation. Similarly, the Ninth Circuit in *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172 (9th Cir. 1987) found that irreparable harm to the public is presumed when statutory conditions for injunctive relief are met. This is especially true in cases of environmental harm, where courts have regularly assessed irreparable harm to the plaintiff *or* the public for the

purpose of injunctive relief. *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).

b. Application of the RCRA and public harm

The RCRA was enacted to prevent harm to human health and the environment by regulating the management of hazardous waste. *Titan Wheel Corp. v. United States EPA*, 291 F. Supp. 2d 899, 903 (S.D. Iowa 2003). Courts have recognized that violations of the RCRA can result in harm to the public, even when the harm is not immediately apparent. Additionally, the RCRA's citizen suit provision allows private parties to seek injunctive relief to address imminent and substantial endangerment to health or the environment, reflecting Congress's intent to prioritize the prevention of public harm. 42 U.S.C § 6972. It has been established as principle that where Congress has granted citizens a right of action and the plaintiff has established 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). Once injury to plaintiff has been established, that person may argue the public interest in support of their claim. *Sierra Club v. Morton*, 405 U.S. 727, 737 (1972). In the present case, the VEA claims that BlueSky's air emissions are depositing PFAS into the groundwater supply, thereby harming the members of VEA, the VEA farm, surrounding farms, and residents consuming water in the Mammoth PSD. PFAS are known to pose significant risks to human health and the environment, and their presence in water sources constitutes an imminent and substantial endangerment. *See Interfaith Cmty. Org. v. Honeywell Int'l, Inc*., 399 F.3d 248 (3d Cir. 2005). Courts have held that such harm to public health and the environment satisfies the irreparable harm requirement under the *Winter* test. *Quad Cities Waterkeeper Inc. v. Ballegeer*, 2017 U.S. Dist. LEXIS 45829, *25. When the cause

of action is one that allows private citizens to sue on behalf of the public in the face of such imminent harm, like a RCRA citizen suit, the public can and should be considered in the irreparable harm prong.

c. Balancing public and private interests

The Supreme Court has emphasized the importance of considering public interest when evaluating the irreparable harm prong. *Seeger v. United States DOD*, 306 F. Supp. 3d 265 (D.D.C. 2018). In *Amoco Production Co.,* the Court reasoned that the balance of harms will usually favor the issuance of an injunction to protect the environment when environmental injury is sufficiently likely. *Quad Cities Waterkeeper Inc. v. Ballegeer*, 2017 U.S. Dist. LEXIS 45829; *Wilson v. Amoco Corp*., 989 F. Supp. 1159 (D.Wyo. 1998). Similarly, in cases involving harm to public health, courts have recognized that the public interest in preventing such harm outweighs the potential economic impact on the defendant. This reasoning supports the conclusion that harm to the public, including harm caused by PFAS contamination, satisfies the irreparable harm requirement.

d. The district court correctly issued a preliminary injunction, finding all four Winter's prongs satisfied

Harm to the public, including environmental harm caused by air emissions depositing PFAS into water sources, satisfies the irreparable harm prong of the *Winter* test. Courts have consistently recognized that environmental harm is irreparable due to its long-term and often permanent nature. The RCRA's citizen suit provision further underscores the importance of preventing harm to public health and the environment. *Amoco Production Co. v. Gambell*, 479 U.S. 807 (1987). Having established injury to the members of the VEA, the VEA farm, and the

general public, the VEA has demonstrated that the irreparable harm requirement is met in this case.

CONCLUSION

For these reasons, this Court should affirm the preliminary injunction and overrule the stay of proceedings. The district court misapplied Coinbase and Martinsville by treating an interlocutory injunction appeal as triggering an automatic Griggs stay, even though such appeals do not implicate foundational questions of jurisdiction or forum authority and therefore remain subject to the discretionary *Nken* four-factor test; Rule 62(c)(1) further confirms that injunction-related orders are not automatically stayed and that district courts retain control during appeal. By contrast, the injunction itself was properly granted. VEA established standing through a "special injury" distinct from the public—physical PFOA contamination of its land, destruction of its community garden, and impairment of its mission-driven activities—supporting its public nuisance claim. The district court also correctly found VEA likely to succeed on its RCRA imminent and substantial endangerment claim because BlueSky's airborne PFAS emissions that settled onto soil and groundwater constitute "disposal" under RCRA's broad remedial framework and persuasive precedent. Finally, persistent PFAS contamination poses irreparable environmental and public health harm that cannot be remedied by damages and satisfies the *Winter* factors. Accordingly, because the stay was legally erroneous and the injunction was well supported by law and fact, this Court should affirm the injunction and reverse the stay order.

Certificate of Service

Pursuant to *Official Rule* IV, *Team Members* representing 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 1, 2023.

Respectfully submitted,

Team No. 21