CASE NO. 25-0682

IN THE
UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

Vandalia Environmental Alliance,

Plaintiff – Appellant,

v.

BlueSky Hydrogen Enterprises,

Defendant – Appellee.

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

BRIEF FOR APPELLANT

SUBMITTED BY:
Team 4

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JURISDICTIONAL STATEMENT

The United States District Court for the Middle District of Vandalia has jurisdiction over this case under 28 U.S.C. § 1331, since the RCRA claim arises under federal law, and 28 U.S.C. § 1367, which provides supplemental jurisdiction over related claims.

The Court of Appeals for the Twelfth Circuit has jurisdiction to hear this case under 28 U.S.C. § 1292(a)(1) and 28 U.S.C. § 1292(b), because this is a consolidated interlocutory appeal of a motion granting a preliminary injunction and a motion granting stay of district court proceedings. On November 24, 2025, the District Court issued an order granting Vandalia Environmental Alliance's (VEA) Motion for a preliminary injunction. On December 1, 2025, BlueSky Hydrogen Enterprises (BlueSky) filed this appeal and filed a motion to stay proceedings in the district court pending appeal. On December 5, 2025, the VEA issued a response in opposition of BlueSky's motion to stay. The District Court granted an interlocutory appeal of the stay order pursuant to 28 U.S.C. § 1292(b). On December 29, 2025, this Court issued an order permitting the VEA's discretionary, interlocutory cross appeal and consolidating the appeal of the stay and the preliminary injunction.

STATEMENT OF ISSUES

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

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

III. Whether BlueSky's air emissions of PFOA 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?

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

STATEMENT OF CASE

BlueSky Hydrogen Enterprises ("BlueSky"), a hydrogen company based in Virginia, has built hydrogen facilities throughout the Appalachian region, including the SkyLoop Plant in Vandalia which opened in 2024. R. 4, 6. In response to recent federal legislation providing federal funding and tax credits to companies who build hydrogen facilities, investors are pushing BlueSky to increase shareholder profitability by constructing more plants. R. 4.

The Vandalia Environmental Alliance ("VEA") is a public interest organization in Vandalia focusing solely on the Appalachian region's environment. R. 6. The organization strives to conserve the local habitat by holding polluters accountable and educating residents on sustainable living. R. 6-7. One way VEA models sustainability is through "VEA Sustainable Farms," an outreach center and farm approximately 1.5 miles north of BlueSky's SkyLoop Plant, where community members can learn how to grow and care for their own small farm or garden. R. 7. Any food grown at VEA Sustainable Farms is either served at one of the farm's events or is donated to a nearby food bank. *Id.*

VEA was initially supportive of the SkyLoop Plant, since it was projected to benefit Vandalia's environment and economy; however, this optimism was soon overshadowed by the project's environmental harm. R. 7. Before SkyLoop began operating, testing conducted pursuant to the Unregulated Contaminant Monitoring Rule (UCMR) showed that the Mammoth Public Service District's (PSD) water supply contained no detectable levels of PFOA; however, testing conducted in 2024, the year SkyLoop began operations, revealed the presence of PFOA in PSD's water. *Id.*

Recognizing that the presence of PFOAs in Mammoth PSD's water supply began when SkyLoop started operating in Vandalia, VEA launched an investigation into SkyLoop and made

several Freedom of Information Act (FOIA) requests. R. 7. From this research, VEA found that SkyLoop gets a significant portion of its waste feedstock from a wastewater treatment plant that takes sludge from Martel Chemicals. *Id.* The sludge from Martel Chemicals has been shown to contain PFOAs, which aren't required to be removed at the waste water treatment plant nor the SkyLoop Plant. R. 7-8. Additionally, VEA's research indicates that SkyLoop's emissions control protocol does not effectively trap PFOA particles, allowing the particles to escape through the facility's smokestacks and blow north, before eventually settling on farmland or PSD's wellfield are located north of the SkyLoop Plant. *Id.*

PFOAs are problematic because they persist in the environment, will not break down absent human intervention, and have been shown to cause cancer, liver problems, and birth defects. *Id.* To combat the issue of PFOAs, the EPA has recently created a Maximum Contaminant Level (MCL) of 4 ppt and a Maximum Contaminant Level Goal (MCLG) of 0 ppt, which are set to take effect in 2029. *Id.* The 2024 UCMR tests revealed that Mammoth's water supply already contains PFOA levels of 3.9 ppt, putting the community's water source almost at the EPA's MCL and far away from the administration's MCLG. *Id.* Since Mammoth PSD does not have a way to remove PFOAs from its water supply and will not be able to install such a system for at least two years, Mammoth residents have been forced to choose between relying on the PSD's water supply and ingesting PFOAs each day, or purchase and dispose of plastic water bottles. R. 7-8. The spread of PFOAs through SkyLoop's air stacks has also required VEA to stop donating the crops grown at its farm, to prevent accidentally harming consumers with PFOA-laden food. R. 9.

Acting on its concerns about PFOA contamination from SkyLoop, the VEA filed a lawsuit against BlueSky in the United States District Court for the Middle District of Vandalia

on June 30, 2025. R. 11. The VEA pursued both a public nuisance claim and a Resource Conservation and Recovery Act (RCRA) imminent and substantial endangerment (ISE) citizen suit claim for the disposal of PFOA-containing air emissions. R. 11. As required under RCRA's ISE provision, the VEA sent BlueSky a notice of intent to sue and waited the required 90 days before filing in the District Court. *Id*.

The VEA filed a motion for a preliminary injunction shortly after filing its complaint against BlueSky, asking the district court to either temporarily shut down SkyLoop or stop SkyLoop from accepting and using waste that could contain PFOA as feedstock. *Id*. BlueSky ceded the public interest and balance of harm factors of the *Winter* preliminary injunction test. R. 12. However, BlueSky argued that the VEA lacked standing to bring a public nuisance claim because it did not have a "special injury" and that the VEA is unlikely to succeed on the merits because air emissions do not constitute "disposal" under RCRA. *Id*. Further, BlueSky argued that *Winter's* irreparable harm prong cannot be established, because the VEA's members all stopped drinking the public water supply and would not experience irreparable harm from consuming PFOAs. R. 13. For its part, the VEA contended that once standing is established via particularized harm, harm to the public can be used to establish irreparable harm for the purpose of a preliminary injunction. *Id*.

After briefing and an evidentiary hearing on the motion, the district court granted the VEA's motion for preliminary injunction. R. 14. BlueSky appealed and filed a motion to stay proceedings in the District Court pending appeal. The district court granted the motion to stay, finding that a stay was mandatory under *Coinbase, Inc. v. Bielski*. 599 U.S. 736 (2023); R. 15-16. Believing *Coinbase* was incorrectly applied and that the stay would cause harm because significant resources had already been invested for trial preparation, the VEA sought and the

district court granted interlocutory appeal of the stay order under 28 U.S.C. § 1292(b). R. 16. The Twelfth Circuit permitted the interlocutory cross appeal on the stay order, consolidating it with BlueSky's appeal of the order granting a preliminary injunction. *Id*.

SUMMARY OF ARGUMENT

This Court should reverse the district court's order granting a stay and affirm the district court's order granting a preliminary injunction. First, a stay is not warranted in this case because BlueSky cannot satisfy the discretionary stay factors, and *Coinbase, Inc. v. Bielski* does not require a mandatory stay whenever a preliminary injunction is appealed. Under *Coinbase*, stays are mandatory only when the entire case is on appeal, such that allowing the district court to exercise jurisdiction over any part of the case while the appeal is pending risks two separate courts operating concurrently on the same case. The only issue on appeal when a preliminary injunction order is appealed is whether the preliminary injunction should or should not be granted. There is no harm in allowing the district court to continue proceedings in the meantime, and no benefit to requiring the district court to stay proceedings until the preliminary injunction appeal is final. To find otherwise would upend civil litigation and significantly limit the utility of preliminary injunctions for civil plaintiffs.

Second, this Court should affirm the order granting a preliminary injunction, because the VEA has sufficiently alleged that it sustained a "special injury" that confers public nuisance standing. The VEA experienced harm to its private farmland, which constitutes a harm that is distinct in kind and degree from the harms borne by the public. Further, the VEA's unique use of its farmland in furtherance of its mission means that no one else has experienced a harm identical to the harm borne by the VEA.

Third, this Court should affirm the district court's holding that the VEA was likely to succeed on the merits of its RCRA imminent and substantial endangerment citizen suit claim because BlueSky's air emissions of PFOA is a "disposal" under RCRA. BlueSky alleges that the definition of "disposal" requires waste particles to follow a specific sequence of events.

However, this argument is antithetical to RCRA and its citizen suit provision. Additionally, BlueSky's argument misconstrues the definition of "disposal" and ignores the critical role of "may" in the definition.

Fourth, and finally, this Court should affirm the district court's holding that courts may consider harm to the public when assessing the "irreparable harm" prong of *Winters.* The irreparable harm analysis of *Winters*' is different in the context of environmental litigation and, as long as the Plaintiff has Article III standing, a court may consider harm to the public when assessing "irreparable harm". Since the VEA has Article III standing, the district court was correct in considering harm to the public. Alternatively, even if the court did not consider harm to the public, the VEA could still prove that its own interests suffered "irreparable harm" because the subject of VEA's interests suffered "irreparable harm."

ARGUMENT

I. The District Court incorrectly stayed proceedings pending appeal of the preliminary injunction under *Coinbase* because that case is not applicable to preliminary injunctions and the discretionary stay factors weigh against a stay.

Under *Coinbase, Inc. v. Bielski*, the United States District Court for the Middle District of Vandalia incorrectly stayed proceedings pending appeal of the preliminary injunction because *Coinbase* is not applicable to preliminary injunctions. In *Coinbase*, the Supreme Court held that a district court must stay its proceedings during an interlocutory appeal of arbitrability under the Federal Arbitration Act. 599 U.S. 736, 738 (2023). The holding is specifically limited to arbitrability appeals. *Id*. at 740; *see also Id*. at 761 (Jackson, J. Dissenting). Arbitration and preliminary injunctions are notably distinct contexts with distinct considerations. *Coinbase* does not require mandatory stays whenever a preliminary injunction is appealed because the risk of wasted trial present in the arbitration context is not at issue, concurrent proceedings as prohibited by *Griggs* are not a concern when a preliminary injunction is appealed, and the regular stay factors sufficiently protect parties' rights. Further, in this case, the stay factors weigh against staying proceedings.

A. A mandatory stay is not required because there is no risk of wasted trial when a motion granting a preliminary injunction is appealed.

The consequences of continuing to trial while awaiting an interlocutory disposition on arbitrability is risky, but the same is not true of continuing to trial while awaiting interlocutory disposition on a preliminary injunction. *Coinbase* is grounded in the concern that allowing district court proceedings to continue while an arbitrability determination is appealed risks a

wasted trial if the appellate court determines arbitration is the proper disposition. 599 U.S. at 742. In fact, the very benefits of arbitration—avoiding costly litigation and reducing strain on courts—are at risk if parties are forced to proceed to trial while the appeal is pending, only to be diverted to arbitration by the appellate court. *Id*. at 743.

By contrast, the results of an interlocutory appeal of a district court's grant or denial of a preliminary injunction do not affect whether the case will proceed to trial. Regardless of whether an appellate court affirms or reverses a district court's ruling on a preliminary injunction, the case will continue to trial, absent some second trigger, like settlement. Resources are not wasted by allowing the district court to move proceedings forward while the injunction appeal is pending. In fact, in this case, a mandatory stay wastes resources. VEA has already invested significant resources in preparing for the upcoming May 2026 trial, and a stay risks destruction of evidence and the need for duplicative preparation efforts whenever a new trial date is set. R. 16. Ultimately, the preliminary injunction context poses no risk that simultaneous district court proceedings will be undone by a pending interlocutory appeal.

B. A mandatory stay is not required because concurrent proceedings in the district and appellate court are not a threat amid interlocutory appeal of a preliminary injunction.

Understandably, district courts and appellate courts should not concurrently exercise jurisdiction over the same aspect of a case. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). This foundational rule is the *Griggs* principle, and it is the key precedent on which *Coinbase* turns. *Coinbase*, 599 U.S. at 741. However, for *Griggs* to be implicated, the district court and appellate court must exercise jurisdiction over the same aspect of the case. *City of*

Martinsville, Virginia v. Express Scripts, Inc., 128 F.4th 265, 269 (4th Cir. 2025). If *Griggs* is not implicated via concurrent jurisdiction, *Coinbase* cannot apply.

In the context of arbitrability, the central question is whether the case belongs in federal court or in arbitration. Thus, the entire case is at issue, because whether it can proceed in federal court depends on the outcome of the appeal. *Coinbase*, 599 U.S. at 741. The same is true in other contexts where *Coinbase* has been extended. In *City of Martinsville*, the Fourth Circuit held that a motion to remand warranted a mandatory stay following *Coinbase*, because the central question is about which court will decide the case. 128 F.4th at 270. The question on appeal is "the whole ballgame," so the district court loses control over the entire case. *Id*. at 269.

By contrast, when a preliminary injunction is appealed, the appellate court is only considering whether the injunction was properly granted or denied. While a circuit court has yet to consider whether to apply Coinbase to preliminary injunctions, several district courts have declined to do so on the basis that the preliminary injunction appeal does not occupy the entire case. *Forester-Hoare v. Kind*, No. 23-CV-537-JPS, 2025 WL 101660, at *1 (E.D. Wis. Jan. 15, 2025) (refusing to find that the whole case is at issue in the preliminary injunction appeal because there were other claims in the case and because whether preliminary relief is warranted is distinct from relief on the merits); *Brown v. Taylor*, No. 222CV09203MEMFKS, 2024 WL 1600314, at *4 (C.D. Cal. Apr. 3, 2024) (refusing to apply *Coinbase* because the issues in a preliminary injunction order were sufficiently distinct from those presented in a motion for summary judgment, such that it would consider the motion for summary judgment while the preliminary injunction appeal was pending); and *United States Sec. & Exch. Comm'n v. Reven Holdings, Inc.*, No. 1:22-CV-03181-DDD-SBP, 2024 WL 3691603, at *1 n.1 (D. Colo. Aug. 7, 2024) (finding that *Griggs*, and by extension *Coinbase*, does not apply to preliminary

injunctions). Ultimately, each of these courts continued district court proceedings amid pending interlocutory appeals of preliminary injunction orders because a preliminary injunction is not the entire case and does not divest a district court of its jurisdiction.

Unlike where remand or arbitrability are at issue, the district court and court of appeals are not necessarily exercising concurrent jurisdiction over the same element of the case in an interlocutory appeal of a preliminary injunction order. Thus, in an appeal of a grant or denial of a preliminary injunction, *Griggs* does not apply. Since *Griggs* does not apply, neither can *Coinbase*, and a mandatory stay is unnecessary.

C. A mandatory stay is not required because the discretionary stay factors sufficiently protect parties' rights and upending the utility of preliminary injunctions via mandatory stays is therefore not justified.

The discretionary factors that have long been applied by courts assessing whether a stay is appropriate provide sufficient protection for parties seeking a stay in the wake of an appeal of a preliminary injunction. For decades, courts have considered (1) likelihood of success on the merits, (2) irreparable harm, (3) favorable balance of equities, and (3) alignment with the public interest in assessing whether to grant a stay in most contexts, preliminary injunctions included. *Nken v. Holder*, 556 U.S. 418, 426 (2009) citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). By nature of the fact that these are discretionary factors, the appellant is not entitled to a stay as "a matter of right" where *Nken* applies. *Nken*, 556 U.S. at 427 quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926). The party who seeks a stay bears the burden of showing the four factors are met. *Nken*, 556 U.S. at 434.

Finding that *Coinbase* requires mandatory stays wherever a district court's decision on a motion for preliminary injunction undergoes interlocutory appeal would fundamentally change

civil litigation. Defendants could halt proceedings every time plaintiffs seek a preliminary injunction. The *Coinbase* majority confined its holding to arbitrability precisely because of the "destabilizing consequences" of imposing mandatory stays more broadly. *Coinbase*, 599 U.S. at 761 (Jackson, J. dissenting). The discretionary stay factors that courts have applied in most contexts when assessing whether a stay is appropriate give parties the chance to obtain a stay where necessary to prevent irreparable harm, so long as success on the merits is likely and the balance of equities and public interest do not counsel otherwise. *See N. Mississippi Med. Ctr., Inc. v. Quartiz Techs.*, No. 1:23-CV-00003-CWR-LGI, 2024 WL 2262684, at **2–7 (N.D. Miss. May 17, 2024) (applying the discretionary stay factors rather than *Coinbase* to determine whether a stay is appropriate amid pending appeal of a preliminary injunction). These factors have provided parties sufficient protection for decades, and there is no need to upend the utility of preliminary injunctions as a tool by giving parties an automatic right to a stay in this context.

In this case, BlueSky cannot satisfy all the *Nken* factors. In fact, the district court expressed its reluctance to stay the case and explained that it would not have granted a discretionary stay, and was only staying the case because of *Coinbase*. R. 16. In particular, BlueSky cannot show that, absent a stay, it will suffer irreparable harm. Requiring BlueSky to continue participating in litigation while it awaits determination from this Court on the preliminary injunction will not subject the company to irreparable harm, particularly because once a ruling on the injunction is made, the district court proceedings will continue. Allowing litigation to proceed is the status quo and does not impose harm on a party to the case. This Court should therefore find that *Coinbase* does not apply to preliminary injunctions in order to protect the utility of this essential feature of civil litigation.

II. The district court correctly held that VEA has a "special injury" sufficient to give it standing to bring its public nuisance claim for BlueSky's PFOA air emissions.

The VEA has standing to bring a public nuisance claim because it suffered a special injury different in kind and degree from Vandalia's general population due to BlueSky's PFOA air emissions. Vandalia generally follows the Second Restatement of Torts, which defines a public nuisance as "an unreasonable interference with a right common to the general public." Rest. 2d Torts § 821B(1) (A.L.I. 1979). Interference includes environmental contamination. *See e.g., Ryan v. Greif, Inc.*, 708 F. Supp. 3d 148, 173–74 (D. Mass. 2023). While normally brought by state or local governments against the public nuisance-causing entity, non-governmental organizations or private citizens may bring public nuisance claims if they can establish a "special injury" that distinguishes them from the general public. *Ariz. Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913); *see also* Rest. 2d Torts § 821B cmt. h. Where a member-based organization sues in federal court, a cognizable injury sufficient to grant standing does not need to be monetary but does need to be a specific injury that is more than a mere affront to the organization's values and mission. *Sierra Club v. Morton*, 405 U.S. 727, 738–39 (1972).

Here, the VEA has undeniably experienced a cognizable injury via the damage to its vegetable gardens and the damage to its members' drinking water supply. R. 8–9. Furthermore, the VEA established that it is experiencing a special injury sufficient to grant standing to bring a public nuisance claim. Where the public nuisance is one that affects a private right, like privately owned land, the plaintiff's harm is different in kind and provides the basis for a public nuisance action. Rest. 2d Torts § 821C cmt. e. However, even if a special injury must be an injury that no one other than the plaintiff experiences, the VEA satisfies that standard via the harm to its teaching farm and damage to its reputation.

A. The VEA established a "special injury" via harm to its private property.

BlueSky argues that the VEA did not suffer a "special injury" different in kind and degree from the general population. R. 12. However, this argument misstates the injury requirements in a public nuisance action where the plaintiff's private land is affected by the public nuisance. Certainly, the law requires that a private plaintiff asserting a public nuisance action experiences an injury not "borne by the public." *Ariz. Copper Co.*, 230 U.S. at 57. Yet, where the public nuisance affects private land, the requirement that a special harm not be "borne by the public" means the harm cannot be common among all members of a community, not that the harm be experienced by no one in the community other than the plaintiff. *See id; see also* Rest. 2d Torts § 821C cmt. e. When the impact of a public nuisance is a private harm, the harm is different in kind so as to support the private plaintiff's recovery on a nuisance claim. Rest. 2d Torts § 821C cmt. e.

In *Arizona Copper*, the plaintiff landowner Gillespie successfully enjoined Arizona Copper's pollution of the river that Gillespie used to irrigate his crops. Gillespie sought the injunction via a public nuisance action. 230 U.S. at 52. Despite acknowledging that pollution by the mining company affected the "agricultural interests" of a large community of riparian owners who used the river for irrigation, the court still found that Gillespie experienced sufficiently special injury because of his status as a riparian landowner. *Id*. at 56–57; *see also Ravndal v. Northfork Placers*, 60 Idaho 305, 91 P.2d 368, 371 (1939) (finding special injury by virtue of harm to private land, even though multiple landowners experienced the harm). The fact that other members of the public experienced a similar injury to Gillespie did not destroy Gillespie's standing to bring a public nuisance action where pollution by the mine affected Gilelspie's use of his own land. *Ariz. Copper Co.*, 230 U.S. at 56–57.

Much like *Arizona Copper*, the fact that other farms in Vandalia experienced harm from PFAS contamination by BlueSky's hydrogen plant does not preclude the VEA from asserting a public nuisance claim. The VEA experienced harm to its privately owned farmland via the deposition of PFOA air emissions. R. 9. The harm to the VEA's private land thus constitutes a private harm caused by a public nuisance, for which the Second Restatement of Torts confers special injury standing. The VEA has therefore experienced a special injury and satisfies the VEA's standing to bring a public nuisance claim.

Ultimately, the Second Restatement of Torts limits who can bring a public nuisance claim in order to prevent multiplicious actions by members of the public and to limit requests for trivial damages. Rest. 2d Torts § 821C(2) cmt. As the Restatement contemplates, those concerns are less applicable where a party seeks an injunction rather than damages. *Id*. To the extent that other circuits ignore this section of the requirement and elevate the specialized harm standard, those circuits limit public nuisance relief beyond what the Second Restatement of Torts contemplates. Here, because the VEA seeks an injunction and because it has experienced harm to its private land via BlueSky's PFOA air emissions, the VEA has alleged sufficient special injury to confer public nuisance standing.

B. Even if harm to the VEA's private property is not sufficient to establish "special injury," the VEA meets the standard via the unique harms to its teaching farm and reputation.

While the damage the VEA experienced to its private land via the PFOA contamination produced at BlueSky's plant is sufficient to confer special injury under a public nuisance action, the contamination's interference with VEA's unique facility and mission also create harms that are entirely unique to the VEA. The VEA is therefore injured differently than the community at

large. Rest. 2d § 821C; *see also Rhodes v. E.I. du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 767 (S.D.W. Va. 2009). In fact, the VEA experienced injury that is unique from the injury of anyone else in the community.

Scenarios where courts have found a plaintiff's injury sufficiently unique to achieve special injury status are cases where some aspect of the plaintiff's property or pecuniary interests are adversely affected in a unique way because of the location or nature of these assets, as compared to others who are affected. *See* Rest. 2d § 821C. For example, commercial fishermen in Maine who were unable to fish in waters polluted by an oil spill sustained a special injury. *Burgess v. M/V Tamano*, 370 F. Supp. 247, 250 (D. Me. 1973). These fishermen were injured differently from others in the public whose enjoyment of the waters for recreation was affected by the spill, and there was a direct link between the fishermen's injury, inability to fish, and the public nuisance, the oil spill. *Id*.

In another example, plaintiff landowners whose well water was contaminated with PFAS and who received PFAS-ladden compost from the defendant fertilizer company suffered the special injury of needing to decontaminate their property. *Ryan,*708 F. Supp. 3d at 174–75; *see also Johnson v. 3M*, 563 F. Supp. 3d 1253 (N.D. Ga. 2021), aff'd sub nom. *Johnson v. 3M Co.*, 55 F.4th 1304 (11th Cir. 2022) (plaintiffs suffered special harm because they had to pay the costs of removing PFAS contamination from their water).

Contrary to these examples of special injuries are cases where the injury is general to the public. *In re Lead Paint Litig.*, 191 N.J. 405, 501, 924 A.2d 484 (2007). Lead paint exposure, for example, is an injury that permeates the general public and so did not form the basis for a special injury for any particular plaintiff or class of plaintiffs. *Id*. Furthermore, plaintiffs who experience harm with an attenuated connection to the public nuisance likely cannot establish a special

injury. *Burgess*, 370 F. Supp. at 251. Unlike the fishermen, other business people in the oil spill case could not prove special injury via reduced tourism due to a damaged fish population. *Id*. If a harm is experienced by all or does not arise directly from the public nuisance, it cannot be special.

Like the fishermen whose unique use of the public waters made their harm distinct from the general public, the VEA's unique use of its land caused it to suffer a harm unlike anyone else in Vandalia. The VEA uses its farm to teach farming and gardening practices to the public. R. 7. Farm products produced at the VEA's farm are either used at on-farm education events or donated to local food banks. *Id*. Critically, the educational and farming activities at the VEA's farm in Mammoth are carefully conducted in accordance with the VEA's mission to be a steward of Vandalia's environment. R. 9. Thanks to the VEA's steadfast commitment to its mission and its members, the VEA has built substantial goodwill among the community. *Id*.

Because of the unique activities carried out at the VEA's farm and their special purpose, PFOA contamination from BlueSky's SkyLoop plant is particularly harmful to the VEA. While other farms in the area may also have to divert contaminated products from their usual distribution chain, those farms will not experience the same reputational damage as the VEA. The VEA has publicly committed to caring for its environment and its community. The inability to grow safe, clean food at the VEA's farm, to use the now contaminated soils to teach people about sustainable farming, and to provide healthy, local foods to community members in need directly prohibits the VEA from carrying out its mission. The inability to steward its land in alignment with its mission risks damaging the VEA's reputation and diminishing its membership.

Such harms are directly derived from the PFOA contamination and are entirely unique to the VEA. Unlike lead paint exposure, which affects the general public, no one other than the VEA—including other local farms whose products may be damaged—is experiencing these organizational and reputational harms. Rather, the VEA's experience is akin to the fishermen whose unique use of the oil-contaminated ecosystem positioned their harm differently from other members of the public. The VEA has made an entirely unique use of its farmland in accordance with its mission, and therefore has experienced a special injury. Accordingly, the district court correctly found that the VEA sustained a special injury and has standing to bring a public nuisance claim, and this Court should affirm.

III. The district court was correct in finding that the VEA was likely to succeed on the merits of its RCRA imminent and substantial endangerment citizen suit claim because BlueSky's air emissions of PFOA are considered a "disposal" under RCRA.

The district court was correct to hold that the VEA was likely to succeed on the merits of its RCRA ISE claim because BlueSky's air emissions of PFOA are considered "disposal" under RCRA. To prevail on an RCRA ISE claim, a plaintiff has the burden of proving "(1) that the defendant is a person, including, but not limited to, one who was or is a generator or transporter of solid or hazardous waste or one who was or is an owner or operator of a solid or hazardous waste treatment, storage, or disposal facility; (2) that the defendant has contributed to or is contributing to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste; and (3) that the solid or hazardous waste may present an imminent and substantial endangerment to health or the environment." *Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993, 1015 (11th Cir. 2004) (*quoting Cox v. City of Dallas*, 256 F.3d 281, 292 (5th Cir. 2001)).

Although the district court held that BlueSky's deposition of PFOAs through air emissions constitutes a "disposal" under the RCRA, BlueSky disputes this holding. R. 12, 15. Under the Act a "disposal" is considered to be "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." *See* 42 U.S.C. § 6903(3); R. 12. BlueSky claims that this definition requires a strict sequence of events. R. 12. First, the hazardous waste must be deposited "into or on any land or water" before being "emitted into the air." *Ctr. for Cmty. Action & Envtl. Justice v. BNSF R. Co.*, 764 F.3d 1019, 1024 (9th Cir. 2014); R. 12. Since BlueSky's emission of PFOAs doesn't follow this sequence, it cannot be classified as a "disposal". R. 12. However, BlueSky's claims are antithetical to RCRA's purpose.

A. BlueSky's Position is Antithetical to the Purpose of RCRA and RCRA's Citizen Suit Provision

To protect the environment and human health, Congress enacted RCRA—a statute that regulates the solid and hazardous waste throughout its lifecycle. *See Meghrig v. Kfc W.*, 516 U.S. 479, 483 (1996); 42 U.S.C. § 6902. RCRA strives to reduce or eliminate hazardous waste "as expeditiously as possible", which it accomplishes in part by allowing citizens to bring suit against people or government entities alleged to 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 to the health or the environment[.]" 42 U.S.C. 6902(b); 42 U.S.C. § 6972(a)(1)(B). Congress' implementation of a citizen suit provision signals its intent to enforce RCRA to the fullest extent, including when the

government fails to do so. *StarLink Logistics, Inc. v. ACC, LLC*, 101 F. 4th 431, 447 (6th Cir. 2024).

BlueSky's reasoning misses the forest for the trees by finely parsing the definition of "disposal" while overlooking the overall purpose of the statutory scheme in which the term exists. R. 12; *See Ctr. for Cmty. Action & Envtl. Justice v. BNSF Ry. Co.*, 764 F.3d 1019, 1024 (9th Cir. 2014). RCRA was intended to be vigorously enforced to ensure that the environment and humans avoided exposure to the harmful effects of hazardous waste. Within the first year of SkyLoop's operations, Mammoth PSD's water supply went from no detectable amount of PFOAs to PFOA levels of 3.9 ppt. R. 7. Recently, the U.S. EPA's set the Maximum Contaminant Level ("MCL") of PFOAs at 4 ppt, leaving almost no room for additional PFOAs in Mammoth's water supply and putting Mammoth residents at-risk for suffering the long-term negative health effects RCRA set out to prevent. *Id.*

Considering the purpose of RCRA, many Circuits have liberally construed the Act. *Davis v. Sun Oil Co.*, 148 F.3d 606, 609 (6th Cir. 1998); *See Dague v. Burlington*, 935 F.2d 1343, 1355 (2d Cir. 1991); *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). Following BlueSky's reasoning would not only deviate from the precedents set in other Circuits, but would also contradict the very purpose of RCRA.

B. Even under the Ninth Circuit's reasoning, BlueSky's air emissions constitute a "discharge" under RCRA.

In support of its assertion that the deposition of PFOAs through air emissions is not a "disposal" under RCRA, BlueSky cites to the Ninth Circuit's reasoning in *BNSF*, where the court held that an emission of diesel particulate matter into the air wasn't a "disposal" because the

term's definition excluded the word "emitting"; therefore, under the interpretive canon *expressio unius est exclusion alterius*, a court may interpret the omission of a term from a list as an intentional act by Congress. *BNSF,* 764 F.3d at 1023-24; *See* 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes & Statutory Construction 47:23 (7th ed. 2012). However, the Ninth Circuit fails to acknowledge that "discharge" and "emit" are synonymous.

According to the Merriam Webster Dictionary, the definition of "discharge" includes "to give outlet or vent to : EMIT". *Discharge*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/discharge, (last visited Feb. 2, 2026). Therefore, even under the Ninth Circuit conclusion that "disposal" requires that waste "is *first* placed 'into or on any land or water' and is *thereafter* 'emitted into the air'", BlueSky's emissions are a "disposal" because the particles *first* touchdown on the surrounding land once they leave the SkyLoop's air stacks. *BNSF*, 764 F.3d at 1024; *See* 42 U.S.C. § 6903(3); R. 8. From the ground, the PFOA particles can still be emitted into the air.

Additionally, BlueSky's reasoning misconstrues what is required of a "disposal." BlueSky claims a "disposal" mandates that waste "is *first* placed 'into or on any land or water' and is *thereafter* 'emitted into the air.'" *BNSF,* 764 F.3d at 1024; *See* 42 U.S.C. § 6903(3); R. 12. However, this conclusion disregards the term "may" in the definition of "disposal". *See* 42 U.S.C. § 6903(3). The waste is not required to be emitted into the air; instead, the waste must first land on the ground or in the water so that it "*may* enter the environment or be emitted into the air or discharged into any waters, including ground waters. *Id.* (emphasis added). The statute is not concerned with the sequential steps a particle of waste takes, but rather with the fact that once the waste enters the environment, it becomes easier for it to spread through natural processes. *Id.*

Considering the purpose of RCRA and its citizen suit provision, as well as the fact that BlueSky's air emissions still constitute a "disposal" under the Ninth Circuit's reasoning, the district court was correct in holding that the VEA was likely to prevail on the merits of its RCRA ISE claim because Blue Sky's emissions of PFOAs are considered a "disposal" under RCRA.

IV. Under the irreparable harm prong of the *Winter* test, the court may consider harm to the public.

The district court was also correct in holding that courts may consider harm to the public when analyzing the irreparable harm prong of the *Winter* test. To prevail on a preliminary injunction motion, the Supreme Court held in *Winter v. Natural Resource Defense Council, Inc.* that a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." 555 U.S. 7, *20 (2008). BlueSky argues that the VEA has satisfied all elements of the *Winter* test except for the irreparable harm prong, claiming the district court erred by considering harm to the public. R. 12, 15. However, in the environmental context, other courts have considered harm to the public when assessing the irreparable harm prong of *Winter*. *See W. Va. Rivers Coal., Inc. v. Chemours Co. FC, LLC*, 793 F. Supp. 3d 790, 809 (S.D.W. Va. 2025) (hereinafter "*Chemours Co.*"). Alternatively, even if the court does not consider harm to the public, the VEA can still demonstrate that they would suffer irreparable harm absent a preliminary injunction.

A. When a preliminary injunction involves an environmental issue, as long as the Plaintiff has Article III standing, a court may consider harm to the public when assessing the "irreparable harm" prong of Winters.

Since environmental issues tend to impact more than the parties involved in a lawsuit, as long as the plaintiff establishes they have standing, courts have considered harm to the public when analyzing *Winters*' "irreparable harm" prong. *See Warth v. Seldin*, 422 U.S. 490, 501 (1975) (acknowledging that if a plaintiff satisfies Article III's standing requirement, "Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules."); *Chemours Co.,* 793 F. Supp. 3d at 811 (stating "Ms. Robinson and all those who use the Ohio River, suffer irreparable harm with each incremental exposure to HFPO-DA."); *see also Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 781, 788 (4th Cir. 1991) (considering irreparable harm to the plaintiff *and* public if litigation lasts too long). Here, Plaintiffs have standing and the purpose of RCRA makes it appropriate for the court to consider harm to the public when assessing *Winters*' "irreparable harm" element.

1. VEA has Article III standing.

To satisfy Article III's standing requirement, a plaintiff "must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants." *Warth*, 422 U.S. at 501. However, when an environmental injury is alleged, plaintiffs can satisfy standing by demonstrating that they utilize the area impacted by an alleged polluter's conduct and that the alleged conduct degrades the value they derive from the area. *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 517 (4th Cir. 2003). Here, VEA members used Mammoth PSD's water supply, but had to stop because BlueSky's air emissions posed a serious threat to their health and the environment. R. 8. Since plaintiffs have Article III standing, the court can consider harm to the public when assessing *Winters'* "irreparable harm" prong.

2. Since the VEA has Article III standing, the court may consider harm to the public when assessing "irreparable harm."

As previously mentioned, *Winters'* "irreparable harm" analysis is different in the environmental litigation context because environmental issues tend to impact more than the parties involved in a lawsuit; additionally, "[p]ollution's effects are cumulative, diffuse, and often invisible until it is far too late." *Chemours Co.,* 793 F. Supp. 3d at 809. Therefore, courts may consider harm to the public when assessing "irreparable harm."

In *Chemours Co.*, the district court found that, considering the Clean Water Act's purpose, plaintiffs and the public had suffered irreparable harm when the defendant discharged pollutants in excess of its permit because the permitted levels were set to protect human and environmental health. *Id.* at 809-11. The court also rejected defendant's argument that an injunction was futile because quantifying the harm inflicted was difficult, stressing that "Defendant's argument posits a dangerous premise: exposure to a harmful pollutant [] is acceptable on some average, despite many permit violations, and the purpose of the Clean Water Act." *Id.* at 811.

Similar to the issue before the court in *Chemours Co.*, BlueSky continues to discharge PFOAs into the environment, which have been shown to cause long-term health effects. R. 7. Although BlueSky argues that a preliminary injunction would be futile because VEA's members have ceased drinking Mammoth PSD's water supply, allowing this line of reasoning to prevail would set a dangerous precedent. R. 13. It would allow polluters to get away with discharging harmful substances—that have been shown to cause environmental and human health issues later—so long as the harm inflicted is hard to quantify in the plaintiffs at the time of the lawsuit. Since RCRA was created to reduce or eliminate hazardous waste "as expeditiously as possible" and hold polluters accountable, courts may consider harm to the public when assessing Winters' "irreparable harm" prong. 42 U.S.C. 6902(b); 42 U.S.C. § 6972(a)(1)(B).

B. Alternatively, the Ninth Circuit previously found "irreparable harm" to plaintiffs' own interests because the subject of plaintiffs' interest suffered "irreparable harm".

In support of its claim that VEA failed to demonstrate they will suffer "irreparable harm" absent an injunction, BlueSky also cited to *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, where the court stated that "[p]laintiffs seeking injunctive relief must show that they themselves are likely to suffer irreparable harm absent an injunction." 886 F.3d 803, 822 (9th Cir. 2018) (hereinafter *NWF*). Out of context, this quote appears to support BlueSky; however, the holding of *NWF* supports the VEA's position by elaborating on *how* a plaintiff can show they have suffered "irreparable harm."

NWF involves three federal agencies challenging a preliminary injunction that required them to perform spill and fish monitoring operations throughout the Federal Columbia River Power System to protect endangered species of salmon and steelhead. *Id.* at 811-12. Before the Ninth Circuit embarks on its "irreparable harm" analysis, the court clarifies that "[i]rreparable harm should be determined by reference to the purposes of the statute being enforced." *Id.* at 818. Considering the goal of the Endangered Species Act, the Ninth Circuit concluded that plaintiffs had shown satisfied this element of the *Winters* test, in part, by showing that irreparable harm to the endangered species would cause irreparable harm to their interests. *Id.* at 822. Similar to *NWF*, irreparable harm to the public would cause irreparable harm to VEA's interests.

VEA is a public interest organization whose mission includes "protecting the State's natural environment (including clean air and clean water)[.]" R. 7. Allowing BlueSky to continue releasing PFOA particles into the environment would cause irreparable harm to VEA's interests by enabling "forever chemicals"—which have shown to cause cancer, liver problems, and birth defects—to degrade Vandalia's air and water quality. Therefore, even if the court does not

consider pollution to Mammoth PSD's water supply, VEA can still demonstrate that it would suffer "irreparable harm" if a preliminary injunction is not issued against BlueSky.

CONCLUSION

There is limited risk for exercise of simultaneous jurisdiction over the same aspect of the case in the district and appellate court in the context of a motion appealing a preliminary. This Court should therefore find *Coinbase* inapplicable and vacate the stay order. Furthermore, the preliminary injunction was properly granted by the District Court because VEA has "special injury" standing, VEA is likely to succeed on the merits of its RCRA claim, and the irreparable harm *Winter* factor can be met via harm to the public. This Court must therefore affirm the preliminary injunction.

Respectfully Submitted,

Team 4

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