UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

C.A. No. 24-0682

STOP COAL COMBUSTION RESIDUAL ASH PONDS, Appellant, -v.- COMMONWEALTH GENERATING COMPANY, Appellee.	)	C.A. No. 24-0682

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

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TEAM NO. 15

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

United States Court of Appeals Cases

District Court Cases

LEGAL AUTHORITIES INVOLVED

Constitutional Provisions

Statutes

Regulations

Rules

OTHER AUTHORITIES

JURISDICTIONAL STATEMENT

Stop Coal Combustion Residual Ash Ponds ("SCCRAP") brought original action against the Commonwealth Generating Company ("ComGen") for violations of the Resource Conservation and Recovery Act ("RCRA") pursuant to 42 U.S.C. § 6972 (a)(1)(A), 42 U.S.C. § 6972 (a)(1)(B), and in violation of the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., pursuant to § 505 of the CWA. Record ("R") at 12. The U.S. District Court for the Middle District of Vandalia granted ComGen's motion to dismiss on October 31, 2024. R. at 13. The district court had proper jurisdiction under 28 U.S.C. § 1331. SCCRAP timely appealed to the United States Court of Appeals for the 12th Circuit on November 10, 2024. R. at 15. This Court has jurisdiction under 28 U.S.C. § 1291 to review the district court's grant of a motion to dismiss as a final decision of a U.S. district court. Fed. R. Civ. P. 54(h). SCCRAP timely filed a Notice of Appeal on November 10, 2024, asking that the rulings of the lower court be reversed. R. at 15. The 12th Circuit issued an order on December 30, 2024, setting forth the issues to be briefed and argued here. R. at 15.

STATEMENT OF THE ISSUES PRESENTED

1. Whether ComGen's discharge of PFOS and PFBS from Outlet 001 is an unpermitted discharge under the Clean Water Act.
2. Whether, in deciding Issue 1, the Court owes deference to its own decision adopting *Piney Run* (and its reasoning) and to EPA's guidance on unpermitted discharges in light of the Supreme Court's decision in *Loper Bright*.
3. Whether SCCRAP has standing to challenge ComGen's coal ash closure plan for the Little Green Run Impoundment.

4. Whether SCCRAP can pursue a RCRA imminent and substantial endangerment claim related to the Little Green Run Impoundment when there is no allegation of endangerment to a living population but only to the environment itself.

STATEMENT OF THE CASE

I. Factual Background

Stop Coal Combustion Residual Ash Ponds ("SCCRAP") is a national environmental and public interest organization based in Washington, D.C., with the mission of protecting public water from pollutants. R. at 8. Commonwealth Generating Company ("ComGen") is a wholly owned subsidiary of Commonwealth Energy ("CE"), a multistate electric utility holding company system. R. at 3. ComGen owns several regulated power plants, including the one at issue in this appeal: the coal-fired Vandalia Generating Station. R. at 3-4.

Opening in 1965, The Vandalia Generating Station ("the station") is one of the oldest generating plants in the state of Vandalia. R. at 5. The Environmental Protection Agency ("EPA") promulgated the Effluent Limitations Guidelines ("ELG"), which set pollution discharge standards that coal-fired power plants must meet to continue operating. R. at 4. Due to the substantial upgrades required for ELG compliance and the plants old age, condition, and suitably,[1] ComGen announced its closure in 2018. *Id.*

The station has a Vandalia Pollutant Discharge Elimination System ("VPDES") permit, effective since September 1, 2020. *Id*. The permit limits pollutants such as selenium, aluminum, pH, among others and covers the stations outfalls (Outlets 001, 002, and 003) into the Vandalia River and its tributaries, which are waters of the United States. *Id*. It is set to expire in September of 2025. *Id*.

[1] ComGen has a "Building a Green Tomorrow" program aimed at lowering costs and pollution; included in the program are plans to retire coal-fired plants by replacing their capacity with cleaner alternatives. R. at 4.

Before the Vandalia Department of Environmental Protection issued the permit, a deputy director emailed an employee of ComGen to inquire about potential pollutants. *Id*. Specifically, although the VPDES permit does not set exclusive limits for PFOS and PFBS, the deputy director inquired whether any outlets may discharge these contaminants. *Id*. Recent studies indicating the presence of PFAS in fly and bottom ash prompted the deputy director to ask about the potential presence of these pollutants. *Id*. The ComGen employee assured the deputy that neither of the pollutants were known to be in the discharge. *Id*. The Little Green Run Impoundment ("the Impoundment") disposes of the coal ash produced by the station. R. at 5.

A. Harmfulness of the contaminates

"Coal ash," or Coal Combustion Residuals ("CCRs") are byproducts of coal combustion at electric generating plants. R. at 3. Coal ash is one of the largest industrial waste streams generated in the United States. *Id*. In 2012, 110 million tons of coal ash were disposed of across 47 U.S. states and Puerto Rico. *Id*. Additionally, coal ash has been linked to cancer and other serious health effects. *Id*. According to the EPA, if not properly managed, these harmful pollutants—containing arsenic, mercury, and selenium—can leach into groundwater. *Id*. Once the contaminates hit groundwater, they can migrate into water sources, causing the public health problems mentioned above. *Id*.

Coal ash comes in all shapes and sizes: (1) *Fly ash* is a fine, powdery substance primarily composed of silica, produced when finely ground coal burns in a boiler; (2) *Bottom ash* consists of coarse, angular particles too heavy to rise through smokestacks, accumulating at the base of the coal furnace; (3) *Boiler slag* is molten bottom ash from slag-tap and cyclone furnaces that solidifies into smooth, glassy pellets when rapidly cooled with water; and (4) *Flue gas desulfurization (FGD) material* is a byproduct of sulfur dioxide emission reduction in coal-fired boilers, appearing either

as a wet sludge of calcium sulfite *or* as a dry powder composed of sulfites and sulfates. *Id*. One way these harmful contaminates are disposed of is through on-site disposal impoundments. *Id*.

B. The Little Green Run Impoundment

ComGen utilizes the Impoundment, which is located alongside the Vandalia River, as their disposal impoundment. *Id*. The Impoundment was formed due to the construction of a dam across Green Run. *Id*. The unlined, dam-created, containment area is currently holding approximately 38.7 million cubic yards of mainly coal ash and other waste material removed during the coal cleaning process. R. at 5. ComGen first began monitoring wells for the Impoundment in 2021 (after 56 years of operation). R. at 7. As required[2], ComGen installed upgradient and downgradient groundwater monitoring wells which show exactly whether the Impoundment is sufficiently holding the coal ash in place or if pollutants are leaking. *Id*.

II. The Clean Water Act

Title 33 of the Clean Water Act ("CWA"), known as the Federal Water Pollution Contract Act, maintains the chemical, physical, and biological integrity of the Nation's waters. 33 U.S.C. § 1251. The CWA is meant to protect water quality and prohibit toxic pollutant discharges in toxic amounts. *Id*. The CWA prohibits any discharge of a pollutant into navigable waters without a permit under the National Pollutant Discharge Elimination System (NPDES). *Id*. §§ 1311(a), 1342. "Pollutant" defined by the CWA covers "chemical wastes" and "industrial discharges." *Id*. § 1362(6). The CWA establishes a regulatory framework which requires permit holders to disclose all pollutants in their discharge application, ensuring compliance and oversight of water quality standards.

III. The Resource Conservation and Recovery Act

[2] ComGen began monitoring the wells due to their first closure-in-place activity as required by the Disposal of Coal Combustion Residials from Electric Utilities ("the CCR Rule"). R. at 5.

The Resource Conservation and Recovery Act ("RCRA") was enacted in 1976 to regulate waste harmful to human or environmental health by using the best practices in the handling, storage, and disposal of solid and hazardous waste. 42 U.S.C. § 6901 et seq. Under RCRA's citizen suit provisions parties have two avenues of relief. Under § 6972 (a)(1)(A), private parties may bring claims against entities who violate regulatory requirements. Under § 6972 (a)(1)(B) contribute to past or present pollution and create an "imminent and substantial endangerment" to public health or the environment. *Id*. § 6972 (a)(1)(A); *Id*. at (B). SCCRAP brings action under both provisions.

IV. Procedural History

The proceeding before this Court is a consolidation of three separate actions wherein SCRAPP is seeking review of the District Court's decision. On September 3, 2024, SCCRAP filed suit against ComGen in the United States District Court for the Middle District of Vandalia, seeking three separate claims. R. at 12. First, pursuant to § 505 of the CWA, 33 U.S.C. § 1251, ComGen violated the CWA by discharging PFOS and PFBS into the Vandalia River. *Id*. Second, pursuant to § 7002(a)(1)(A) of RCRA; 42 U.S.C. § 6972 (a)(1)(A), SCCRAP challenged ComGen's Closure Plan as inadequate. *Id*. Third, pursuant to § 7002 (a)(1)(B) of RCRA; 42 U.S.C. § 6972 (a)(1)(B), SCCRAP alleged imminent and substantial endangerment to the environment from the Little Green Run Impoundment contamination. *Id*.

ComGen moved to dismiss all claims on September 20, 2024. R. at 13. ComGen argued *Piney Run Pres. Ass'n v. Cnty. Comm'rs of Carroll Cnty., MD* was not applicable to the case. 268 F.3d 255 (4th Cir. 2001); *Id*. ComGen then argued SCCRAP's challenge of the Closure Plan was too conclusory and failed to provide sufficient facts on standards set by the CCR Rule. *Id*. Finally,

ComGen argued SCCRAP failed to state a claim as a matter of law in regard to the imminent and substantial endangerment claim. *Id*.

The district court granted ComGen's motion to dismiss in full. *Id*. In result, the district court adopted the reasoning from *Atlantic States v.* and did not follow *Piney Run*. *Id*. at 14. Additionally, the district court determined SCCRAP lacked standing to bring suit against ComGen under § 7002(a)(1)(A); § 6972 (a)(1)(A) of RCRA. Furthermore, RCRA did not support an imminent and substantial endangerment claim to the environment itself under § 7002(a)(1)(B); § 6972 (a)(1)(B). *Id*. SCCRAP timely appealed on November 10, 2024, to the United States Court of Appeals for the 12th Circuit, seeking reversal of the District Court's dismissal. *Id*. at 15.

SUMMARY OF THE ARGUMENT

ComGen's discharge of PFOS and PFBS into the Vandalia River constitutes an unpermitted discharge under the CWA. ComGen's pollution is ongoing and documented, with reported pollution levels exceeding EPA's proposed regulatory limits. ComGen misrepresented the presence of PFOS and PFBS to regulators and failed compliance with the CWA's disclosure requirements. Therefore, ComGen cannot rely on the permit shield defense since the *Piney Run* two-prong test would be mute. The discharge was also not within the reasonable contemplation of the permitting authority. The Court should reject ComGen's defense and rule ComGen violated the CWA by contributing to unpermitted discharge.

The Court should reaffirm *Piney Run* and consider EPA guidance in evaluating unpermitted discharges under the CWA. In *Loper Bright v. Raimondo,* the Court's decision eliminated agency review from the *Chevron U.S.A. Inc. V. Nat. Res. Def. Council, Inc*. decision, known as the *Chevron* deference, but allows courts to consider agency expertise including in complex environmental cases. *Loper Bright Enters. v. Raimondo,* 603 U.S. 369 (2024); 467 U.S.

837 (1984). *Piney Run* remains binding precedent requiring complete pollutant disclosure for the permit shield defense. Courts have relied on EPA agency guidance, and ignoring EPA expertise would create loopholes for undisclosed pollutants. The Court should uphold *Piney Run* and consider EPA guidance to prevent regulatory evasion and ensure accountability.

SCCRAP satisfies all three elements of associational standing. ComGen challenges the first element of associational standing: whether a member of SCCRAP would meet the traditional requirements of Article III Standing on their own. Importantly, SCCRAP does meet the traditional requirements of Article III standing because (1) it suffers from an injury-in-fact in the form of aesthetic and recreational injuries (undisputed), (2) that injury is fairly traceable to ComGen's misconduct, and (3) SCCRAP's injuries would be redressed by a favorable ruling. ComGen's misconduct stems from an inadequate closure plan under 40 C.F.R. § 257.102(d)(2)(i)-(iii). Noncompliance of this regulation constitutes open dumping, a violation under § 405 of RCRA. The closure plan is inadequate because it allows for the continuance of ongoing coal ash pollution into the Vandalia River. The injury is ongoing because the closure plan is insufficient under the CCR rule, and therefore, there is not a proper disposal procedure in place. Moreover, similar Clean Water Act challenges hold that so long as ComGen's misconduct exacerbated an existing environmental harm, the harm can occur before the challenged conduct occurred. Thus, SCCRAP meets the traditional requirements of Article III standing, and has standing to challenge the closure plan under § 6971(A)(1)(a).

Congress intended for 42 U.S.C. § 6972 (a)(1)(B), to provide a pathway for citizens to vigorously pursue actions against polluters who contribute to an imminent and substantial endangerment to the environment itself. *Me. People's All. & Nat. Res. Def. Council v. Mallinckrodt, Inc.,* 471 F.3d 277, 295 (1st Cir. 2006). RCRA was intended to be a broad

remedial environmental act, and § 6972 (a)(1)(B) claims do not have to demonstrate that endangerment threatens a living population. *Id.* Consistent with fundamental rules of statutory construction, the term "environment" must be given its plain, ordinary meaning, in line with RCRA's purpose.

ARGUMENT

The appellant in this case is Stop Coal Combustion Residual Ash Ponds ("SCCRAP"). SCCRAP respectfully contends that this Court should reverse each of the below decisions.

I. Standard of Review

The appellate courts review determinations of Standing and "questions of law, such as a motion to dismiss" for failure to state a claim, *de novo*. *See Nolen v. Jackson*, 102 F.3d 1187, 1190 (11th Cir. 1997). "Interpretation of a statute is a purely legal matter and therefore subject to de novo standard of review." *Belanger v. Salvation Army, FL*, 556 F.3d 1153, 115 (11th Cir. 2009). Thus, all of SCCRAP's claims are considered under *de novo* review.

II. Introduction

This is an appeal arising from a case about protecting the environment. On one side, the appellant is a national and environmental public-interest organization with the mission of protecting the environment who has suffered an injury due to appellee's coal ash pollution. On the other, the appellee is the owner of a coal-fired power plant that has knowingly been polluting the Vandalia River with harmful contaminants for years. Appellee, who has records of its pollution, argues technicalities. Appellee does nothing to deny the claims of pollution, but instead lists arguments that rely on technical specificities like: (1) the pollutants the deputy general specifically inquired about are not technically regulated under NPDES permits, (2) *Piney Run* probably is no longer applicable after *Chevron*, (3) SCCRAP lacks standing because of an unsettled argument

over the interpretation of "ongoing", and (4) that despite the legislative history saying otherwise, SCCRAP in unable to pursue an imminent and substantial endangerment claim when the harm is to the environmental itself. R. at 13. Unable to combat the tangible harms of their conduct, appellees resort to arguing Hail-Marys to avoid liability. SCCRAP asks this court to reverse the lower court's opinion so the citizens of Vandalia can once again safely enjoy the Vandalia River without fear for their health.

III. ComGen's misrepresentation of unpermitted discharge is not shielded; ComGen violated the CWA.

The CWA prohibits discharge of pollutants from a point source into navigable waters without a permit. Unlike in *Emerald Coast*, where pollution levels were insufficient to establish a violation, ComGem reported concentrations of pollution levels exceeding EPA's proposed limits for safe drinking water. The *Piney Run* test determines whether ComGen should be protected by the permit shield, but it fails both prongs due to misrepresentation of PFOS and PFBS levels to regulators. ComGen's unpermitted discharge of PFOS and PFBS violates the CWA, and the permit shield defense is invalid under *Piney Run*. This Court should reject ComGen's permit shield defense and find ComGen liable for discharging pollutants without authorization.

A. ComGen's discharge of PFOS and PFBS constitutes an unpermitted discharge under the CWA.

The CWA forbids the discharge of pollutants from a point source into navigable waters. One goal of the CWA's is to maintain the "chemical, physical and biological integrity of [the] Nation's waters," 33 U.S.C. § 1251. In *Emerald Coast Utils. Auth. v. 3M Co.,* plaintiffs alleged 3M was responsible for PFAS contamination in the water supply, but failed to show pollutants were being actively discharged at the time of the lawsuit. 746 F. Supp. 2d 1216 (N.D. Fla. 2010). The court concluded that the presence of PFOA and PFOS in the water supply did not establish an

injury without concrete evidence of harm or regulatory requirements for monitoring and remediation at the time of the suit. *Id*. at 1231. ComGen adds to the existing pollution currently and actively discharging from Outlet 1 into the Vandalia River, and thus, there is an ongoing injury. R. at 14. Unlike *Emerald Coast*, ComGen's pollution is not contamination originating decades earlier. ComGen's own monitored data reported by subpoena shows discharges from 2015 to the present. R. at 9.

The level of PFOS and PFBS detected by ComGen are far more significant than the PFOS and PFOA found in *Emerald Coast*. The court in *Emerald Coast* ackowledged the levels of PFOS and PFOA but ruled there was no evidence the concentrations were sufficient to trigger a regulatory violation of the CWA. *Emerald Coast,* 746 F. Supp. 2d at 1225. However, ComGen's reports show a PFOS concentration as high as 15 µg/L (15,000 ppt) and PFBS concentrations as high as 35 µg/L (35,000 ppt). R. at 9. SCCRAP independently tested the mixing zone near Outlet 1 reported PFOS concentrations of 6 ppt and PFBS concentrations of 10 ppt. R. at 9. Both reported levels are higher than the EPA's proposed maximum contamination level for drink water at 4 ppt for PFOS and 4 ppt for PFBS. U.S. Envt'l. Prot. Agency, *PFAS Explained*, EPA, https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas (last visited Feb. 4, 2025). ComGen's levels of PFOS and PFBS exceed safe thresholds.

B. The *Piney Run* Two-Prong Test should govern the permit shield defense.

Piney Run provides a clear two-prong test of the permit shield defense. The test is pertinent to establishing the discharge of Outlet 001, instead of the *Atlantic States* argument. The permit shield defense establishes that a permit holder is barred from suit for unlisted pollutants in their permit if they pass the two-prong test. *Piney Run*, 268 F.3d at 259. The test requires "(1) the permit holder complies with the express terms of the permit and with the Clean Water Act's disclosure

requirements and (2) the permit holder does not make a discharge of pollutants that was not within the reasonable contemplation of the permitting authority at the time the permit was granted." *Id*. at 259. ComGen actively misrepresented the presence of PFOS and PFBS to the VDEP and is therefore not within the reasonable contemplation of the permitting authority. When VDEP specifically inquired about PFOS and PFBS before issuing the VDEP permit, ComGen falsely ensured VDEP the pollutants were not present in the discharge. R. at 4. VDEP was not given the information to make a reasonable limit on PFOS and PFBS discharges in the permit terms. Affirmative misrepresentation by ComGen actively misled VDEP.

C. ComGen fails the first prong of the *Piney Run* Test that invalidates the permit shield defense.

Atlantic States does not provide comprehensive framework when addressing unpermitted discharges. *Atlantic* States addresses the discharge of unlisted pollutants as permissible when the pollutants have been disclosed to permitting authorities. *Atlantic States*, 12 F.3d at 353. However, ComGen did not disclose the pollutants to any permitting authorities. The District Court's reliance on the *Atlantic States* test was therefore misplaced because the situation applied to regulators being aware of the potential presence of the pollutants. Again, ComGen did not disclose the PFOS and PFBS in their permit, and VDEP was actively misled. R. at 4. A permit shield under the CWA should not be permitted to defend parties withholding or misrepresenting information to regulators. The Court should use the *Piney Run* two-prong test to determine the application of the permit shield defense for discharge cases.

The first prong of the *Piney Run* test asks ComGen to comply with the express terms of the permit and with the CWA's disclosure requirements. *Piney Run,* 268 F.3d at 259. In *S. Appalachian Mt. Stewards v. A & G Goal Corp.*, the permit shield defense for the pollutant discharging company was invalid because the company did not disclose the presence of selenium

in the permit application required by both the federal and state regulations. 758 F.3d 560, 569 (4d. Cir. 2014). To disclose the requirements, the state authority's NPDES must issue a permit. CWA requires that every NPDES state authority establishes a total maximum daily load ("TMDL") for every pollutant to meet the water quality standards. 33 U.S.C. § 1313(d). The VPDES covering Outlet 001 reviewed and set limits on the discharge, but ComGen failed to disclose the PFOS and PFBS discharge in the permit application request. R. at 4. ComGen did not comply with the first prong of the *Piney Run* permit shield test, therefore the second part of the test does not need to be reviewed. Lack of meeting the permit shield test exposes ComGen to misrepresentation and proves the unpermitted discharge violates the CWA.

IV. The Court should adhere to *Piney Run* and consider EPA guidance on unpermitted discharges.

The court should adhere to the precedent established in *Piney Run* despite the Supreme Court's decision in *Loper Bright*. In *Loper Bright*, the Court emphasized the judiciary's role in exercising independent judgment when interpreting statutes but allowed for "respectful consideration" of agency expertise and interpretations. *Loper Bright*, 603 U.S. at 431-32. *Loper Bright* does not invalidate judicial precedents like *Piney Run* made prior to the *Loper Bright* decision. *Loper Bright* also does not preclude courts from considering expertise from agencies as persuasive authority during complex environmental regulation analysis. *Piney Run* should be reaffirmed by the Court and consider the EPA guidance in evaluating unpermitted discharge.

A. *Piney Ridge* should test unpermitted discharges in light of the decision in *Loper* Bright.

Under *Piney Run*, permit holders are shielded from liability under the CWA if unlisted pollutants in the permit were (1) adequately disclosed and (2) within the reasonable contemplation of the permitting authority at the time the permit was issued. 268 F.3d at 255. The CWA explicitly

requires all discharges to comply with permits and applicable effluent limitations. 33 U.S.C. §§ 1311, 1342. The express terms of CWA permits require pollutant disclosure and compliance, emphasizing the need to follow *Piney Run* precedent. Rather than an agency interpretation subject to *Chevron* deference, *Piney Run* is a judicial interpretation of the CWA remaining binding law post-*Loper Bright*. The Could should reaffirm *Piney Run*, ensuring permit holders like ComGen are not shielded from liability when they fail to disclose pollutants. In the present case, ComGen failed to adequately disclose PFOS and PFBS pollutants in its permit application. R. at 4. The permit's express terms and the CWA's disclosure requirements mandate such disclosures. 33 U.S.C. § 1311. Consequently, under *Piney Run*, ComGen should not benefit from the permit shield defense without proper disclosure.

B. Full disclosure of all pollutants by ComGen should be required regardless of formal EPA regulations.

Even when *Loper Bright* eliminated *Chevron* deference, courts should consider EPA guidance as persuasive authority when interpreting environmental statutes. The EPA's guidance and regulatory framework regarding unpermitted discharges lend further support to SCCRAP's position. Courts have historically recognized the EPA's expertise in interpreting and implementing complex environmental statutes, where the Court deferred to EPA interpretations concerning National Pollutant Discharge Elimination System (NPDES) permitting requirements. *See Michigan v. EPA*, 576 U.S. 743 (2015); *Decker v. Northwest Envtl. Def. Ctr.*, 568 U.S. 597 (2013). The Supreme Court demonstrated consulting EPA guidance in statutory provision interpretation is essential when deciphering ambiguous provisions. CWA did not explicitly address PFOS and PFBS; therefore, the Court should consider the EPA's past interpretations on unpermitted discharges when assessing disclosure of pollutants.

Additionally, Supreme Court decisions also emphasize the EPA's role in defining what constitutes a permitted discharge under the CWA. The Court outlined several factors for determining whether a discharge requires a permit, including the extent of dilution or chemical change. *Cty. of Maui v. Haw. Wildlife Fund*, 590 U.S. 165, 184 (2020). This precedent highlights the importance of the EPA's administrative guidance in assessing whether PFOS and PFBS discharges should have been contemplated within ComGen's permit. Despite the ruling in *Loper Bright*, the foundational principles of *Piney Run* remain applicable to the present case.

Even in the absence of formal EPA regulations specifically governing PFOS and PFBS, the disclosures required by the CWA remain crucial because they are still considered pollutants. The CWA requires that any discharge of pollutants must comply with permit terms and applicable effluent limitations designed to meet water quality standards. 33 U.S.C. § 1311. This regulatory framework supports the application of *Piney Run*'s reasoning to PFOS and PFBS discharges, ensuring that permit holders are not penalized for pollutants disclosed and considered during the permitting process, even if specific EPA regulations are absent. 33 U.S.C. § 1342. Allowing ComGen to selectively disclose pollutants would create a regulatory loophole for future companies to hide contaminants until they are explicitly regulated by the CWA or EPA. “Pollutant” is broadly defined to address emerging contaminants like PFAS as scientific knowledge evolves.

The Court should continue to follow the reasoning in *Piney Run* and give due consideration to EPA guidance. *Piney Run* remains controlling law post-*Loper Bright.* Following EPA guidance ensures that environmental statutes are interpreted consistently, and that regulatory compliance remains grounded in full and transparent disclosure of pollutants, which ComGen failed to provide.

V. **SCCRAP has standing to challenge ComGen’s Closure Plans.**

SCCRAP satisfies the three elements for standing as an association. ComGen contends that SCCRAP fails the first element: whether a member of SCCRAP would have standing to sue on their own. This dispute arises from SCCARP's claim against the implementation of the closure plan pursuant to § 6972 (a)(1)(A) of RCRA. The District Court ruled that SCCRAP lacked standing, specifically, lacking traceability and redressability and instead SCCRAP should have brought suit pursuant to § 6972 (a)(1)**(B)** of RCRA. ComGen's deficient closure plan would allow the continuance of groundwater pollution. R. at 8. Therefore, SCCRAP properly brought suit pursuant to § 6972 (a)(1)**(A)** of RCRA and satisfies the elements of standing.

A. SCCRAP meets all requirements of Article III standing.

Derived from Article III, § 2 of the United States Constitution, plaintiffs must have standing to bring a claim in federal court. U.S. CONST. art. III, § 2 (granting federal courts the power to resolve "Cases" and "Controversies"). To have standing, the plaintiff must have suffered (1) a concrete, particularized, and actual or imminent injury ("injury-in-fact"), (2) that is fairly traceable to the defendant's conduct, and (3) that is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Organizations have standing to redress an injury suffered by its members without showing an injury to the association itself. *S. River Watershed All., Inc. v. Dekalb Cnty., Ga.*, 69 F.4th 809, 819 (11th Cir. 2023). Associational standing arises when: (1) the organization's members would have standing to sue on their own; (2) the issue involved aligns with the organization's purpose; and (3) the claim made, and the relief sought do not necessitate the involvement of individual members in the lawsuit. *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1342 (11th Cir. 2014). Taken together, the traditional standing analysis applies to the first element of associational standing. ComGen and the lower court do not dispute the other two elements of associational standing. To prevail, SCCRAP must show it suffered an

injury due to ComGen's misconduct, that the misconduct is factually linked to the injury, and that a favorable ruling would mitigate the harm. Establishing this satisfies the first element of associational standing, allowing the claim to proceed.

i. The lower court agrees, SCCRAP suffered an aesthetic and recreational injury-in-fact.

Injury-in-fact is non- issue in this case. Injury-in-fact is the first requirement of standing and requires that the plaintiff must have suffered from "an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual and imminent.'" *Lujan*, 504 at 560 (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)). Here, the source of SCCRAP's injuries are the levels of arsenic and cadmium that are above the federal advisory levels and Vandalia's groundwater quality standards, as reported by ComGen. R. at 8. Moreover, there is heightened concentrations of PFOS and PFBS in the Vandalia River due to ComGen and the Impoundment. R. at 9. Thus, the lower court determined that members of "SCCRAP [have] suffered an injury-in-fact in the form of aesthetic and recreational injuries…" because they are no longer able to enjoy the Vandalia River as they once did. R. at 14. Injury-in-fact is a non-issue in this case, and the first requirement of Article III standing is met.

ii. ComGen's deficient closure plan will allow an ongoing violation of RCRA to continue and that conduct is traceable to SCCRAP's injury-in-fact.

SCCRAP's injuries are fairly traceable to ComGen's conduct. The second requirement of Article III standing is traceability which requires that "[t]here must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly traceable to the challenged action of the defendant.'" *Lujan*, 504 U.S. at 560 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41 (1976). As held in *City of Toledo*, "the disposal of waste can constitute a

continuing violation [of RCRA] as long as no proper disposal procedures are put into effect or as long as the waste has not been cleaned up and the environmental effects remain remediable." *City of Toledo v. Beazer Materials & Servs., Inc.*, 833 F. Supp. 646, 656 (N.D. Ohio 1993) (emphasis added); *see also Scarlett & Associates, Inc. v. Briarcliff Center Partners, LLC*, No, 1:05-cv-0145-CC, 2009 WL 3151089 (N.D. Ga Sept.30, 2009); *Truck Components Inc., v. Beatrice Co.*, No. 94C3228, 1994 WL 520939 (N.D. Ill. Sept.21, 1994).

Here, SCCRAP's injuries arise from ComGen's Closure Plan of the Impoundment. To set the stage: Act One follows ComGen's continuous pollution of the Vandalia River since—at least—2015. R. at 8-9. "Both . . . groups agree that the Impoundment was likely leaching for at least 5 to 10 years prior [to] . . . 2021." R. at 8. Moreover, since ComGen began monitoring their coal ash pollution in 2021, each year since, they have reported elevated levels of arsenic and cadmium. R. at 8. This is an ongoing violation of RCRA. *City of Toledo*, 833 at 656. Near the end of Act One, ComGen hints at what lies ahead in Act Two: an escalation of ComGen's environmental assault featuring an inadequate closure plan.

Before Act Two got too far underway, SCCRAP challenged the faulty closure plan for the Impoundment. The closure plan seeks to permanently store coal ash below sea level and in contact with groundwater. R. at. 9. If Act Two moves forward, any storm or severe weather that raises the Vandalia River's water levels will result in more coal ash spilling into the river and groundwater. R. At 9. Because "no proper disposal procedures" are taking place, there will be an ongoing violation of RCRA. *City of Toledo*, 833 at 656. If SCCRAP is not granted injunctive relief now, ComGen will be allowed to permanently and continuously harm SCCRAP. Thus, ComGen's misconduct—the faulty closure plan—is fairly traceable to SCCRAP's injuries.

iii. Redressability and traceability go hand in hand.

The undisputed "aesthetic and recreational injuries…" would be redressed by a favorable decision. R. at 14. "[I]t must be 'likely,' as opposed to merely 'speculative that the injury will be redressed by a favorable decision.'" *Lujan*, at 561 (quoting *Simon v. Eastern Ky. Welfare Rights organization*, 426 U.S. 26, 38, 43 (1976). In *Mobile Baykeeper, Inc. v. Alabama Power Co.*, the court noted "[t]raceability and redressability "often travel together." No. CV 1:22-00382-KD-B, 2024 WL 54118 (S.D. Ala. Jan. 4, 2024), at 13 (quoting *Support Working Animals, Inc., v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021)). If SCCRAP prevails, this Court would require ComGen to amend their closure plan. The new plan must address the ongoing contamination issues, and so long as it is more comprehensive, would reduce future groundwater and river pollution, thus, mitigating SCCARP's injuries.

B. The *Mobile Baykeeper*, and therefore the lower court, erred.

The lower court relied on *Mobile Baykeeper* to form their redressability opinion, but two wrongs don't make a right. SCCRAP correctly brought suit under § 6972(A)(1)**(a)** of RCRA, rather than § 6972(A)(1)**(b)**. The lower court contended that SCCRAP would have been injured in the same way even if the Impoundment was not closing because the harm began before any closure activities began. R. at 14. This is an erroneous analysis because SCCRAP does not have to show that the closure plan is the sole cause of harm, rather that the closure plan will continue to contribute to ongoing pollution. Therefore, the lower court's reliance on *Baykeeper* is erroneous.

i. **ComGen is contributing to ongoing harm.**

The challenge against ComGens' closure plan should be brought under § 6972(A)(1)**(a)**. This provision of RCRA allows citizen suits against "any person . . . who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which became effective pursuant to RCRA." § 6972(A)(1)(a).

40 C.F.R. § 257.102(d)(2) established regulatory guidelines for closure plans and became effective pursuant to RCRA. *See* 40 C.F.R. § 257.102(d) (Requiring that the CCR unit "controls, minimizes, or eliminates to the maximum extent possible, post-closure infiltration of liquids . . . and releases of CCR . . . run-off to the ground or surface waters.") The lower court, however, disagrees, arguing that SCCRAP should have brought suit under § 6972(A)(1)**(b)** of RCRA. R. at 5.

The key distinction between § 6972(A)(1)**(b)** and § 6972(A)(1)**(a)** is that § 6972(A)(1)**(a)** addresses ongoing and current regulatory violations of RCRA, whereas § 6972(A)(1)**(b)** does not require proof of any ongoing violations. Instead, § 6972(A)(1)**(b)** focuses on imminent and substantial endangerment, regardless of whether a current RCRA violation exists. Additionally, ComGen's closure plan must comply with 40 C.F.R. § 257.102(d)(2), and a failure to do so constitutes an open dumping offense under RCRA.

Here, there is no question that ComGen is currently violating RCRA—it is undisputed that ComGen has been leaking coal ash above permittable levels into the Vandalia River for at least the last 5 to10 years. R. at 8-9. There is no evidence in the record to indicate that ComGen has halted this pollution, and the same pollution will persist if the closure plan remains unchanged. The ongoing pollution of coal ash constitutes a continuing violation of RCRA. Furthermore, the failure to comply with § 257.102(d)(2)

ii. **Furthermore, analyses under the CWA reinforce the argument that the lower court's analysis was incorrect.**

The CWA and RCRA are designed to work in tandem, both incorporating the same "ongoing" violation requirement for citizen suits. R. at 11. In *Gwaltney*, the Supreme Court ruled that this requirement is "identical" under the CWA and RCRA, meaning that legal analyses under one statute can inform decisions under the other. *Gwaltney of Smithfield v. Chesapeake Bay*

Found., 484 U.S. 49, 57 (1987). *See also Upstate Forever v. Kinder Morgan Energy*, 887 F.3d 637, 647 (4th Cir. 2018).

In *S.F. Baykeeper v. City of Sunnyvale*, a CWA case, the court held that a defendant's conduct "need only exacerbate an environmental injury" to establish standing. *S.F. Baykeeper v. City of Sunnyvale*, 627 F. Supp. 3d 1102 (N.D. Cal. 2022). Accordingly, SCCRAP does not need to prove that ComGen's closure plan is the sole cause of harm—only that it contributes to the ongoing pollution. The fact that contamination of the Vandalia River began before the closure plan was implemented does not negate standing.

SCCRAP members continue to suffer ongoing harm because the closure plan allows pollution to persist rather than remediating it, thereby worsening an existing environmental injury. *Id.* If the court rules in favor of SCCRAP, ComGen would be required to implement more effective closure strategies to reduce pollution risks. These improved strategies would restore SCCRAP members' ability to enjoy the river, satisfying the redressability requirement.

For these reasons, and those discussed above, SCCRAP meets all standing requirements.

VI. THE DISTRICT COURT'S INTERPRETATION OF RCRA § 7002(a)(1)(B) IS CONTRADICTS THE STATUTORY PURPOSE AND IS INCONSISTENT WITH INTERPRETATIONS FOUND IN THE MAJORITY OF JUDICIAL OPINIONS ON THE MATTER.

Pursuant to § 7002(a)(1)(B) of RCRA, private citizens or organizations representing citizens, such as SCCRAP, may bring suit against polluters who create or contribute to an imminent and substantial endangerment to health or the environment. In general, RCRA provides that injunctive relief may be issued against:

> 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.

42 U.S.C. § 6972(a)(1)(B).

SCCRAP argues that the legal standard applied by the district court inconsistent with the conventional interpretation of RCRA § 7002(a)(1)(B) and contradicts the legislative purpose and intent of RCRA. A closer examination of the statute's conventional interpretation and its legislative history will demonstrate that the statute's remedial purpose is not confined to addressing the "endangerment of a living population."

A. The language and purpose of RCRA clearly compels the interpretation of "environment" adopted by sister circuits.

This issue "revolves around the meaning and purport" of the term "environment" as used in RCRA § 7002(a)(1)(B), otherwise referred to as the "endangerment claim." *Mallinckrodt,* 471 F.3d at 277, 286. This appeal provides the 12th Circuit with an opportunity to resolve a question of first impression—whether the RCRA citizen suit provision supports an imminent and substantial endangerment claim to the environment itself.

The lower court mistakenly concluded that a citizen suit under § 6972 (a)(1)(B) requires evidence of a threat to a living population to demonstrate environmental endangerment. This interpretation shows little regard for statutory language and imposes a limit that is not present in the law, directly contradicting the legislative purpose and intent of the statute.

This Court must follow the objective intent of the legislation. If intent is not clearly expressed in the statute's language, the legislative intent may be determined through the use of canons of statutory construction, and the examination of the statute's legislative history. When unambiguous language calls for a "logical and sensible result," and the lower court's holding is directly contrary to the statute's intent, the lower court's holding cannot stand, for that would constitute judicial legislation. *See Armstrong Paint & Varnish Works v. Nu-Enamel Corp,* 305 U.S. 315, 318 (1938).

SCCRAP argues that the language in RCRA plainly permits citizens to pursue a claim pursuant to § 7002(a)(1)(B) when the allegation of "imminent and substantial endangerment" is to the environment itself. 42 U.S.C. § 6972(a)(1)(B). This interpretation of RCRA is strongly supported by many neighboring courts and legislative documentation.

i. Conventional construction of § 7002(a)(1)(B) supports a pain reading analysis.

To understand the meaning of a statute, the court must follow a three-part process, which is to: "(1) Read the statute, (2) read the statute, (3) read the statute!" John David Kennedy, *Statutory Construction in Maine*, 7 MEBJ 148 (1992). RCRA outlines three elements necessary to support a § 6972 (a)(1)(B) claim. Only the third, which includes the term "environment," is disputed. RCRA states, "that the solid or hazardous waste may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972 (a)(1)(B) (emphasis added).

The conventional and widely applied construction of § 6972 (a)(1)(B) is explained by the First Circuit Court of Appeals: The operative word is "may," and the claim need only demonstrate that the waste "may present" and "imminent and substantial endangerment." *Mallinckrodt, Inc.,* 471 F.3d at 277, 286. "Endangerment," is a "probabilistic" term requires only evidence of a threatened or potential harm and does not require proof of actual harm. *Id*. The endangerment must be "imminent," wherein "[a]n endangerment can only be "imminent" if it threaten[s] to occur immediately… this quite clearly excludes waste that no longer presents such a danger" - i.e. the site of contamination has been remediated by company or governmental agency measures, or some other occurrences which rectifies the potential for serious harm. *Id*. Lastly, the term "substantially" simply denotes "serious" risk of harm to health *or the environment*. *Id*.

RCRA does not expressly define the term "environment," nor does it make suggestions of limiting its meaning. In fact, throughout judicial opinions and legislative history, there is little-to-

no mention of defining "environment" as a term of art outside of the context of its ordinary meaning. Therefore, the Court must look into the rules of statutory construction to determine the meaning and legislative intent of the term "environment," as used in § 6972 (a)(1)(B) of RCRA. *Meghrig v. KFC Weste*rn*, Inc.*, 516 U.S. 479, 485 (1996) (applying a plain reading analysis to the term "imminent.").

ii. The plain, ordinary meaning of "environment."

Statutory construction begins with the language of the statute, which should be given its plain meaning. *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). Neither RCRA nor legislative history define "environment." "This silence compels us to 'start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used.'" *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 83 (2000) (stating that "[b]ecause the [statute] does not define [a term] or otherwise suggest that the ordinary meaning of [the term] should not apply, [the Supreme Court accords] the term its well-established meaning"). *Merriam-Webster's Dictionary* defines "environment" in two ways: (1) the "environment" would ordinarily mean, "the circumstances, objects, or conditions surrounding someone or something"; (2) "environment" may also be described as "the whole complex of factors (as soil, climate, and living things) that influence the form and the ability to survive of a plant or animal or ecological community." MERRIAM-WEBSTER'S DICTIONARY AND THESAURUS 274 (2020). Furthermore, "something" is defined as "some undetermined or unspecified thing;" *Id.* at 780, while "ecological community" refers to "the relationships between organisms and their environment." *Id*. at 274. Thus, bringing the plain language analysis back to the term "environment." Therefore, the plain, ordinary meaning of "environment" is broad in nature, and is commonly understood as encompassing both living and non-living "somethings."

iii. Judicial opinions clearly embrace the plain meaning of "environment."

Absent express definitions or limitations to the contrary, the Court is implored to adopt the plain meaning of "environment," under the rules of statutory construction. *Randolph*, 531 U.S. at 79, 80 (2000). This argument is strongly supported by numerous judicial opinions that also applied the plain meaning to general terms not expressly defined in RCRA. *See Cox v. City of Dallas, Tex.,* 256 F.3d 281, 294-95 (5th Cir. 2001); *Burlington N. & Sante Fe Ry. Co. v. Grant,* 505 F.3d 1013, 1024 (10th Cir. 2007).

One such opinion includes the Supreme Court holding in *Meghrig,* where the Court construed the term "imminent," as used in § 7002(a)(1)(B) of RCRA, in its common, ordinary meaning, as defined in *Webster's Dictionary*. 516 U.S. at 485, 116 S.Ct. 1251, 1255 (1996) (referencing WEBSTER'S NEW INTERNATIONAL DICTIONARY OF ENGLISH LANGUAGE 1245 (2d ed. 1934). Sister circuits have also not strayed from the plain language analysis when interpreting terms in 42 U.S.C. § 6972(a)(1)(B). *See Cox 256* F.3d at 294 (applying the plain meaning of the word "contribute," as defined in WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 496 (unabridged) (1963)).

Under plain reading, it is clear that SCCRAP may bring a suit against ComGen for contributing to the disposal and storage of waste which may present an imminent and substantial endangerment to health or the environment "itself". It is apparent that under the statute's conventional construction, nearly all terms used in § 7002(a)(1)(B) have general, broad definitions. *infra*. To maintain consistency with other judicial opinions, including the Supreme Court, the Court must define "environment" in its plain, broad meaning.

iv. Legislative history does not digress from the plain meaning of "environment".

As previously noted, there is no clear legislative intent or explicit definition for the term "environment." However, a review of the legislative history strongly supports adopting a broad, plain meaning for the term.

In examining the Congressional Reports related to the RCRA Amendments of 1980 and 1984, the term "environment" appears over 20 times. Despite these numerous mentions, Congress did not provide a specific definition, nor is there any indication that the term was meant to be interpreted narrowly. *See* H.R. CONF. REP. 96-1444, 41-42, 1980 U.S.C.C.A.N. 5028, 5041; H.R. CONF. REP. 98-1133, 103, 1984 U.S.C.C.A.N. 5649, 5674 ("The administrator… has a responsibility to protect human health and the environment."); S. REP. 96-172, 5, 1980 U.S.C.C.A.N. 5019, 5023. Hence, there is a lack of evidence from the legislative record to justify excluding the definition of "environment" from its plain, ordinary meaning.

When interpreting any statute to understand legislative intent, we start with the plain and ordinary meaning of the language used in the text. *Burlington N.,* 505 F.3d at 1013. Legislative history and case law indicate that RCRA includes broad, expansive language that is clear, unequivocal, and unambiguous, as the statute imposes no clear limitations. *Interfaith Community Organ. v. Honeywell Int'l*, 399 F.3d 248, 259 (3d Cir. 2005) (quoting *United States v. Price*, 688 F.2d 204, 213–14 (3d Cir.1982)). Since RCRA does not explicitly define "environment" nor does legislative history indicate that the common meaning is inapplicable, the Court should assign "environment" in § 7002(a)(1)(B) of RCRA its established definition.

B. The lower court's decision is not supported by contextual evidence.

A plain reading of the 42 U.S.C. § 6972(a)(1)(B) clearly permits private citizens to sue responsible parties for harm to the environment itself. Courts have found that nearly all terms used in this provision of RCRA are intended to be construed broadly. *Price,* 688 F.2d at 213–14

(concluding the provision contains ‘‘expansive language” conferring upon the courts the authority to grant affirmative equitable relief to the extent necessary to eliminate any risk posed by toxic wastes). Despite the lack of judicial and congressional support, the lower court ruled to limit the definition of "environment," thereby establishing an "environmental" test that undermines the purpose and intent of RCRA. The test used in the lower court is as follows: to establish environmental endangerment, the endangerment must affect (1) a living population, or (2) a pathway to a living population. R. at 14. The lower court’s test clearly creates a pathway to statutory redundancy.

This Court must construe the statute to give meaning and effect to all terms used in its provisions. Following Justice Frankfurter’s advice, we are obliged to read § 6972(a)(1)(B) once again, this time focusing on the disjunctive phrase “health *or* the environment.” (emphasis added). The use of disjunctive phrasing indicates the statute is concerned about both endangerment to health and the environment. As mentioned in *Interfaith* and *Sante Fe*, the provision’s use of “disjunctive rather than conjunctive phrasing” plainly imposes liability for environmental endangerment regardless of whether there is a present threatened living population. *Interfaith,* 399 F.3d at 258; *Burlington N.,* 505 F.3d at 1013 (stating “phrasing in the disjunctive indicates proof to a living population is unnecessary to succeed on the merits”). Requiring endangerment to a living population would negate the function of the disjunction "or," and render the term "environment" unnecessary. § 6972 (a)(1)(B). Furthermore, the phrase “endangerment to health,” implies endangerment to a living population, since “health” is a living concept. The statute would, in effect, require “endangerment to a living population, or endangerment to a living population.” Thus, if the Court were to uphold the lower court’s interpretation, the resulting legal standard would be improper.

The lower court wrongly rejected *Interfaith's* holding. The lower court's decision contradicts other federal court rulings, including the very opinion cited by the lower court and ComGen. *Infra*. In justifying its statutory interpretation, the lower court relied on *Courtland,* where the court declines to find an imminent and substantial endangerment based solely on the presence of contamination in groundwater, absent any actual or threatened harm to health or the environment. *Courtland Co. v. Union Carbide Corp.*, 2:18-CV-01230, 2023 WL 6331069 (S.D. W. Va. Sept. 28, 2023). The lower court's interpretation of the statute misinterprets the legal standard used in *Courtland* and is incompatible with RCRA's purpose and intent.

In *Courtland*, the question was whether the plaintiff had "provided sufficient evidence to demonstrate that [the] waste may present an imminent and substantial endangerment to human health or the environment." *Id.* at 97. The court determined that the plaintiff's evidence failed "to establish that conditions at and emanating from the [waste site] may present an imminent and substantial endangerment." *Id.* at 101. In turn, the court rejected the theory that "presence of contamination alone is enough to demonstrate that site conditions may present an imminent and substantial endangerment to health or the environment." *Id.* at 98. *Courtland* is clear, "mere contamination" is not enough to constitute an imminent and substantial endangerment to human health and the environment." *Id.* Under *Courtland,* a claim pursuant § 6972 (a)(1)(B) of RCRA must show that "there is reasonable cause for concern that someone or something may be exposed to the contaminated groundwater 'in the event remedial action is not taken." *Id.* at 100. Here, as explained above, the phrase "someone or something" is directly stated in the definition of "environment." *infra.* And "something" is an indeterminate descriptor which may reference both living and non-living things. *infra.* Thus, *Courtland's* legal standard is consistent with RCRA's conventional construction and could be understood to mean: a contamination creates an imminent

and substantial endangerment when "there is reasonable cause for concern that [the environment] may be exposed to the contaminated groundwater in the event remedial action is not taken." *Tri-Realty*, cited by ComGen, also embraces the *Courtland* legal standard, finding that an imminent and substantial endangerment "to the lake in and of itself may exist if… the lake can no longer serve" its purpose in the local ecosystem. 124 F. Supp. 3d 418, 456 (E.D. Pa. 2015).

Both *Courtland* and *Tri-Realty* clearly address concerns about contamination that poses an imminent and substantial endangerment to the environment, rendering it unable to fulfill its ecological purpose if not remediated. Unlike the lower court, the legal standard under *Tri-Realty* and *Courtland* properly applies RCRA, aligning with the statute's purpose and intent by minimizing waste in a resourceful and conservative manner." *See Meghrig,* 516 U.S. at 483 (quoting 42 U.S.C. § 6902(b)) ("RCRA's primary purpose … is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated, 'so as to minimize the present and future threat to human health and the environment"). Still, ComGen urges the Court to reject the plain meaning of "environment," arguing it would lead to absurd outcomes.

Nearly four decades of legislative history provides evidence to the contrary. *See Mallinckrodt, Inc.,* 471 F.3d at 277. Relevant case law and legislative records favor a broad rather than narrow construction of RCRA's citizen suit provisions and thereby prefer a broad application of "health or the environment." *See Albany Bank & Trust Co. v. Exxon Mobil Corp.*, 310 F.3d 969 (7th Cir. 2002). Indeed, RCRA's purpose "is to 'give broad authority to the courts to grant all relief necessary *to ensure complete protection of* the public health and *the environment.*" *KFC W., Inc. v. Meghrig*, 49 F.3d 518, 521 (9th Cir. 1995) rev'd on other grounds *Meghrig*, 516 U.S. 479 (1996) (emphasis added). Broad authority is further supported by the numerous legislative documents that

fail to make an explicit distinction between a narrow and broad statutory purpose. H.R.Rep. No. 98–198, Part I, at 48 (1983), reprinted in 1984 U.S.C.C.A.N. 5576, 5607 (RCRA "has always provided the authority to require the abatement of present conditions of endangerment resulting from past disposal practices, whether intentional or unintentional.") The creation of CERCLA also emphasized the preventative and remedial purpose of RCRA, whereby "RCRA establishes a comprehensive regulatory framework for the handling and disposal of solid and hazardous waste," in order to prevent the creation of superfund sites. *See Meghrig,* 516 U.S. at 484-86 (1996). Once a site becomes a superfund site it is not within the scope of RCRA's remedial purpose. *Id*. RCRA was intended to remediate sites such as the Impoundment. The judiciary may interpret limits in statutory language, but the lower court sets a limit that is clearly contrary to RCRA's purpose and congressional intent. It is clear that a private party may bring suit against polluters who are contributing to an imminent and substantial endangerment to the environment itself.

CONCLUSION

For the foregoing reasons, SCCRAP respectfully asks this Court to reverse the decisions of the United States District Court for the District of Vandalia.

CERTIFICATE OF SERVICE

Pursuant to *Official Rule* IV, *Team Members* representing Stop Coal Combustion Residual Ash Ponds 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 College of Law. The brief was emailed before 1:00 p.m. Eastern time, February 1, 2025.

Respectfully submitted,

Team No. 15