C.A. No. 25-0682

IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

VANDALIA ENVIRONMENTAL ALLIANCE,
Appellant,

-v.-

BLUESKY HYDROGEN ENTERPRISES,
Appellee.

On Appeal from the United States District Court for the Middle District of Vandalia

(The Honorable Samuel L. Danger, United States District Court Judge)

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

ADDITIONAL AUTHORITIES

JURISDICTIONAL STATEMENT

The plaintiff-appellant, the Vandalia Environmental Alliance ("VEA" or the "Alliance"), is a regional public interest organization based in Vandalia with members residing throughout Vandalia. The defendant-appellee, BlueSky Hydrogen Enterprises ("BlueSky"), is a Virginia company with its headquarters in Richmond, Virginia. The VEA sought an injunction against BlueSky based on its claim under the Resource Compensation and Recovery Act (RCRA) and public nuisance claim for the same allegedly unlawful conduct. The district court had federal question jurisdiction over the VEA's RCRA action pursuant to 28 U.S.C. § 1331. The district court had supplemental jurisdiction over the VEA's public nuisance claim pursuant to 28 U.S.C. § 1367.

This Court has jurisdiction over an interlocutory appeal of the grant of a preliminary injunction pursuant to 28 U.S.C. § 1292(a)(1). This Court also has jurisdiction over an interlocutory appeal of an order involving a controlling question of law that this Court permits in its discretion pursuant to 28 U.S.C. § 1292(b). On November 24, 2025, the district court issued an order granting the VEA's motion for a preliminary injunction. On December 1, 2025, BlueSky timely filed its appeal of the district court's order granting a preliminary injunction. On the same day, BlueSky filed a motion to stay proceedings in the lower court pending appeal. On December 8, 2025, the district court granted BlueSky's motion to stay. The VEA timely noted its appeal of the district court's stay order. The district court granted the VEA's appeal to resolve controlling questions of law involving the application of *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023) and materially advance the progress of the litigation. This Court, in its discretion, permitted the appeal. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES PRESENTED

1. **Under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), did the district court correctly issue a stay of proceedings when an appeal of a preliminary injunction is pending?**
2. **Whether the VEA has suffered a special injury sufficient to confer standing to bring its public nuisance claim based on BlueSky's PFOA air emissions.**
3. **Does "disposal" under the Resource Conservation and Recovery Act (RCRA) include BlueSky's eir emissions of PFOA, and, if so, did VEA demonstrate likelihood of success on the merits for its RCRA claim?**
4. **Whether, under the irreparable harm prong of the *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), test, a court may consider harm to the public as evidence of irreparable harm supporting a preliminary injunction.**

STATEMENT OF THE CASE

Defendant BlueSky operates the SkyLoop Hydrogen Plant in Mammoth, Vandalia, just 1.5 miles south of VEA Sustainable Farms. The SkyLoop Plant is a waste-to-hydrogen facility that converts multiple waste streams into a hydrogen-rich gas product that can be used as energy by BlueSky's customers. The SkyLoop facility first processes its waste feedstock to ensure safety and quality. After the waste is processed, it is subject to thermal and chemical processes intended to break down the waste and convert it into a marketable hydrogen-rich gas.

This waste conversion process necessarily results in exhaust gases that must be routed through additional treatment systems to ensure that BlueSky's resulting air emissions do not violate local, state, and federal air quality standards. Finally, the SkyLoop facility emits its waste gas into the environment. The production of clean hydrogen, however, does not produce

substantial amounts of criteria air pollutants or greenhouse gases. Accordingly, BlueSky has consistently complied with its Title V permit since it began operations in January 2024.

One of the primary waste feedstocks processed at the SkyLoop facility, however, are biosolids received from a wastewater treatment plant that itself accepts industrial sludge from Martel Chemicals. According to the Vandalia Department of Environmental Protection ("VDEP"), that sludge is contaminated with PFOA—a "forever" chemical that causes severe long-term health risks in humans. Further, VDEP documents indicate that neither the wastewater treatment plant nor the SkyLoop facility are required to process PFOA. Since this waste goes entirely untreated, PFOA is capable of surviving in BlueSky's air emissions and settling all across Mammoth.

Indeed, these fears have already become reality. The Unregulated Contaminant Monitoring Rule testing results from 2024 documented detectable levels of PFOA in the Mammoth Public Service District's water supply. In December 2024 alone, the Mammoth water supply showed levels of PFOA at 3.9 ppt—just below the Maximum Contaminant Level that the U.S. EPA recently established at 4 ppt. The presence of PFOA—an unregulated "forever" chemical that causes long-term health risks in humans—in Mammoth's drinking water was unprecedented since the 2023 testing results showed no signs of PFOA contamination. Since the SkyLoop facility began accepting and combusting PFOA-contaminated in January 2024, the VEA concluded that the PFOA must originate from BlueSky's operations. Specifically, PFOA survives the processes designed to catch regulated pollutants, is emitted into the air, and deposits all across Mammoth, including on the VEA's farm. Recognizing the harms from consuming PFOA-contaminated food in addition to the PFOA-contaminated water, the VEA stopped distributing its produce to food banks and soup kitchens in Mammoth.

The VEA filed suit against BlueSky in the U.S. District Court for the Middle District of Vandalia on June 30, 2025. First, the VEA alleged that BlueSky's PFOA air emissions constituted a public nuisance. The VEA alleged that it had standing to sue for public nuisance because the VEA's property damage from PFOA constituted a "special injury." Second, the VEA filed a citizen-suit claim under the Resource Conservation and Recovery Act (RCRA) alleging an imminent and substantial endangerment to health and the environment from BlueSky's "disposal" of PFOA by air emission. Several days later, the VEA filed a motion for preliminary injunction alleging irreparable harm to the public and to the VEA's members.

The district court granted the VEA's motion on November 24, 2025. First, the court found that, while the VEA failed to prove irreparable harm to its members, it demonstrated irreparable harm to the public from drinking PFOA-contaminated water. This harm to the public, the court held, was sufficient to warrant a preliminary injunction. The district court also held that the VEA had standing to pursue a public nuisance claim because its property damage constituted a "special injury" distinct from the public's injuries. Finally, the court held that BlueSky's air emissions constitute "disposal" and, therefore, the VEA was likely to succeed on the merits of its RCRA claim.

On December 1, 2025, BlueSky filed an appeal of the district court's order granting a preliminary injunction to the U.S. Court of Appeals for the Twelfth Circuit. BlueSky also filed a motion to stay proceedings, arguing that *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), mandated a stay pending BlueSky's appeal. On December 8, 2025, the district court granted BlueSky's motion, conceding that a stay was mandatory under *Coinbase*. The VEA timely noted its appeal of the district court's decision to stay proceedings.

SUMMARY OF THE ARGUMENT

1. Limiting Mandatory Divestment

The district court incorrectly applied the mandatory stay rule articulated in *Coinbase v. Bielski* to appeals of preliminary injunctions. While the "divestment of jurisdiction" principle is a foundational rule of appellate procedure, the push by defendant-appellees to expand application of this rule to preliminary injunctions presents a substantial procedural threat. Environmental litigation is unique, since delays in obtaining relief can amount to lives placed in jeopardy. Imposing an automatic stay of the entire case on a challenge to such relief effectively nullifies the purpose of pre-trial relief.

The Twelfth Circuit has previously adopted the Fourth Circuit's *Express Scripts* decision, embracing the *Coinbase* rationale of applying the mandatory stay in instances where "the entire case is essentially involved in the appeal." While *Express Scripts* (and *Coinbase*) applied the mandatory stay to cases with appeals involving "questions of forum" - such as arbitration or a remand order (both of which determine where a case belongs) - the Fourth Circuit clarified that an appeal of an interlocutory injunction does not deprive the district court of jurisdiction to proceed in *Castro v. Trump*. Because the Twelfth Circuit has already aligned itself with the Fourth Circuit's jurisdictional logic, this court should follow *Castro* to distinguish "forum-focused" issues on appeal (which have the "entire case involved") and "requests for relief" that do not concern the entire case. Instead of a mandatory stay, the district court should have exercised its discretionary authority under the factors established in *Nken v. Holder*. As Justice Jackson acknowledged in her *Coinbase* dissent, preserving this discretion prevents the preliminary injunction process from becoming a "trap" that allows defendant-appellees to unilaterally halt trials.

2. "Special injury" for Public Nuisance

The VEA has standing to sue for public nuisance because it has suffered a "special injury" based on the property damage from PFOA contamination on its farm. When a public nuisance also interferes with the use and enjoyment of a plaintiff's private property, that plaintiff has suffered a "special injury." Here, the VEA's private property is contaminated with PFOA, interfering with the VEA's attempts to grow food and distribute its produce in community food banks and soup kitchens. This injury is different in kind from the general public's collective exposure to PFOA-contaminated drinking water. Even though other farms in the community also suffer contamination from PFOA deposition, the VEA's private injury does not need to be unique. Moreover, the VEA's claimed injury only needs to be different in kind from the "general public," not from those similarly situated in the immediate vicinity. Finally, the VEA suffered its property damage while exercising a right common to the public: the right to uncontaminated soil and water. The VEA exercises this right by producing food on its private land and distributing this food to the community. The PFOA contamination directly injures the VEA in the exercise of this public right by making the VEA's food unsafe to eat or distribute. Accordingly, the VEA has suffered a "special injury" and has standing to sue for public nuisance.

3. "Disposal"

VEA has sufficiently established a likelihood of success on the merits of its RCRA imminent and substantial endangerment claim as the district court properly found the defendant's PFOA emissions constitute "disposal" under 42 U.S.C. § 6903. Defendant-appellee offers the Ninth Circuit's *BNSF* decision (there, holding that defendant's conduct was not considered "disposal"), arguing that this court should apply that holding to this case. This argument fails to

acknowledge that *Little Hocking*, however, is much more analogous to the case before the court and, as such, contains the proper holding to apply.

Comparing *BNSF* and *Little Hocking* to the present case illustrates these key factual and logical distinctions. PFOA, the waste in question, is the same type of waste the defendant in *Little Hocking* disposed of, while the defendant in *BNSF* handled diesel particulate matter. The process the waste underwent before causing harm to the plaintiff is also the same: in both this case as well as *Little Hocking*, the PFOA (or, C8) was emitted, settled on the ground and water, and remained there. Conversely, the waste in *BNSF* was emitted, settled on the ground, and was then re-entrained into the air to cause harm (specifically, through its presence in the air, not on the ground) to the plaintiff. The shared qualities between this case and *Little Hocking* should guide the court to find one other similarity between the two; the defendant's conduct constituted "disposal" under RCRA.

That is especially true when applying a broad, remedial interpretation of "disposal" supported by RCRA's legislative history. Congress passed the act with the intent of granting courts the authority to grant all relief necessary to ensure complete protection of the public health. This intent, and the broad reading that accompanies it, have been applied to RCRA's other enforcement provision, 42 U.S.C. § 6973. Courts have found this provision (concerning EPA enforcement) and the citizen suit provision to be almost identical, and the two should be interpreted in the same manner. The court should reject an unnecessarily restrictive reading of "disposal," as it would be detrimental to the pursuit of environmental justice by frustrating the Act's clear protective purpose.

4. "Irreparable harm"

District courts may consider whether "irreparable harm" to the public when considering a preliminary injunction for activities that endanger the public health and the environment. Public nuisance and RCRA claims are unique in granting private plaintiffs standing to sue in the public interest. This context is relevant in the preliminary injunction analysis, which must consider the goals and purposes of the plaintiff's claims.

First, the VEA's RCRA claim stems from a statutory citizen suit provision. Congress deliberately gave private citizens the power—and district courts the authority—to protect public health and the environment from hazardous wastes. When Congress creates express rights of action, private citizens can sue based on the public interest. Once a plaintiff satisfies the constitutional requirements of standing, their statutory claim enables them to invoke the injuries to the public, including on a motion for preliminary injunction. RCRA, moreover, is distinct from procedural provisions in other environmental statutes that do not impose safeguards on risks to public health or the environment. Since procedural statutes are intended to guide decision-making, they still require injuries to the plaintiff. A citizen suit is also different from a purely private cause of action, which also requires the plaintiff to demonstrate personal injury.

Second, the VEA's public nuisance claim is a similarly broad power for the plaintiff to defend injuries to the public. While plaintiffs are required to demonstrate some "special injury" to sue for public nuisance, this is a requirement of standing. If a plaintiff can demonstrate standing for their public nuisance claim, then that plaintiff may also assert the interests of the general public. In the context of the VEA's claims against hazardous pollution threatening the community of Mammoth, the district court's consideration of injuries to the public fits within the goals and purposes of RCRA and public nuisance.

ARGUMENT

STANDARD OF REVIEW

The VEA challenges the district court's interpretation of *Coinbase* as mandating a stay of proceedings pending the appeal of a preliminary injunction. The district court's legal conclusions in granting a stay of proceedings are reviewed *de novo*. *See Plaquemines Par. v. Chevron United States, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023).

This Court also reviews *de novo* the legal question of whether the VEA possesses standing to sue for public nuisance. *See Piney Run Pres. Ass'n v. Cnty. Comm'rs*, 268 F.3d 255, 262 (4th Cir. 2001).

BlueSky challenges the district court's interpretation of 42 U.S.C. § 6903(3). The Court reviews *de novo* matters of statutory interpretation. *See United States v. Florentine*, 147 F.4th 477, 480 (4th Cir. 2025).

Finally, BlueSky challenges the district court's consideration of harm to the public under the "irreparable harm" prong of a preliminary injunction analysis. The district court's legal conclusions in issuing a preliminary injunction are reviewed *de novo*. *See K.A. v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 105 (3d Cir. 2013).

I. THE DISTRICT COURT ERRED IN EXTENDING THE DIVESTMENT OF JURISDICTION PRINCIPLE IN *COINBASE* TO AN APPEAL OF PRELIMINARY INJUNCTIONS, AND SHOULD HAVE USED ITS DISCRETIONARY AUTHORITY TO MAKE A DETERMINATION ON ISSUANCE OF A STAY.

Stays are, and should be viewed as, "an intrusion into the ordinary processes of administration and judicial review, and accordingly [are] not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken v. Holder*, 556 U.S. 418, 427. The district court was persuaded by the rather succinct argument BlueSky makes for staying proceedings in a

case where time very well may equate to lives being in jeopardy. We find the district court erred in applying the broad, forum-centric holding in *Coinbase v. Bielski*, 599 U.S. 736 (2023), to a process that should have remained in the control of the district court and its discretion. This court should find, in the interest of the public and the harmed parties, the maintenance of the process of justice, and the understood relationship between the district and appellate courts, that this is not the proper application in the present case.

A. The Supreme Court's holding in *Coinbase* should not be applied in appeals of preliminary injunctions as they do not consider "the entire case at hand."

The district court all but declared that, had it not been for the post-*Coinbase* confusion, the stay at question would have never materialized. But, such confusion has forced courts to craft guiding parameters for a holding with potentially massive ramifications. Several have pointed to crucial differences in the central questions presented to them as justification for finding the principles in *Coinbase* are not applicable to preliminary injunctions. We urge this court to view, as these courts have, these distinctions as a crucial determinant as in deciding whether *Coinbase* applies.

The question being asked here is not the same one asked in either *Coinbase* or *City of Martinsville, Virginia v. Express Scripts, Inc.*, 128 F.4th 265 (2025), both cited by BlueSky. Appeals on preliminary injunction under 28 U.S.C. § 1292(a)(1) typically address discrete requests for relief, rather than fundamental questions about which court should hear the case. *Coinbase* involved a question of forum; whether the case should have been heard in arbitration or in the district courts, a situation in which the court appropriately found "the entire case is essentially involved in the appeal." *Coinbase*, 599 U.S. at 741. In *Express Scripts*, the case this circuit has since adopted from the Fourth Circuit, the *Coinbase* mandatory stay pending appeal

also spun around a question of forum. 128 F.4th at 270 ("[J]ust like a motion to compel arbitration, a remand order decides the foundational question: Which forum will hear the case?").

BlueSky contends that the issues on appeal regarding the merits of the preliminary injunction involve, as seen in the issues in both *Coinbase* and *Express Scripts*, "the entire case" in their appeal. *Id*. at 260; *Coinbase* 599 U.S. at 741. This court would be hard pressed to find questions regarding the appropriateness of a preliminary injunction, a process with little impact on a court's remaining proceedings, are of the same scale and breadth as the issue of forum.

Other courts have held similarly in finding that the remainder of the case can, and in maintenance of the status quo, should proceed despite a preliminary injunction being on appeal due to it being a distinctly narrow issue. The court in *Brown v. Taylor* found this to be true, holding that "[h]ere, the appeal concerns only whether Brown should be entitled to injunctive relief based on the factual record at the time of the PI Order, and regardless of whether he won that relief, the case would have eventually proceeded." No. 222CV09203MEMFKS, 2024 WL 1600314, at *4 (C.D. Cal. Apr. 3, 2024). Questions regarding preliminary injunctions are not questions to "the entire case," but instead questions that can be answered separately from the remainder of proceedings that should continue to pursue a timely resolution. *Id.*

The court in *Forester-Hoare v. Kind* acknowledged that same distinction, and reasoned that such a difference served as the basis for rejecting an application of *Coinbase*. No. 23-CV-537-JPS, 2025 WL 101660, at *1 (E.D. Wis. Jan. 15, 2025) ("In some instances, the entire case is essentially 'involved in the appeal,' and so all proceedings at the district court should be stayed pending the interlocutory appeal. This is not one of those cases."). An interlocutory appeal on preliminary relief has a contained focus on the narrow issue of the plaintiff's safety and whether such relief was warranted, not the much greater question of where

the case should be heard.[1] The Fourth Circuit, which decided that *Coinbase* applied in the question of forum, recognized this caveat in *Castro v. Trump.* No. CV 3:23-4501-MGL-SVH, 2024 WL 1051115, at *4 (D.S.C. Feb. 12, 2024) ("[N]umerous courts, including in this circuit, have held that an appeal of interlocutory injunction does not deprive the district court of jurisdiction to proceed in a case."). The Twelfth Circuit, in adopting the Fourth Circuit's decision that *Coinbase* was applicable in *Express Scripts*, should continue following the Fourth Circuit's lead in finding the same distinction between an appeal of an interlocutory injunction from the entirety of the case as the court had in *Castro v. Trump*. *Id.*

Whether to grant the injunction is a question separate from the trial itself; deciding which court the issue belongs is not. This court should find that the questions being presented before the court are sufficient to distinguish the present case from *Coinbase* and *Express Scripts*, so much so that applying the rules and principles of those cases would be inappropriate. BlueSky would be correct if their appeal addressed the entirety of the case, but to quote from the *Forester-Hoare* decision, "this is not one of those cases." 2025 WL 101660, at *1.

B. Applying *Coinbase* to preliminary injunctions will result in an ineffective distribution of justice.

Extending the automatic stay principle in *Coinbase* into the realm of preliminary injunctions is not an extension, but an invasion. Enjoining a defendant is one of the few available measures to stave off potentially life-threatening harm until the conclusion of the trial process, preserving the relative positions of the parties until a trial on the merits can be held. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (purpose of injunctions is preservation of position); *see also Fisher v. Goord*, 981 F. Supp. 140 (1997) (purpose of injunctions is to prevent future

[1] *Id.* ("The interlocutory appeal will focus on the narrow issue of Plaintiff's current safety and whether preliminary relief was warranted. The case as a whole currently has three separate claims and the question of whether Plaintiff can succeed on the merits of his failure to protect claim is different than whether he was entitled to preliminary relief.")

irreparable harm). To receive injunctive relief, an extraordinary remedy in its own right, plaintiffs must satisfy the four factor test highlighted in *Winter v. Natural Resources Defense Council, Inc.* 555 U.S. 7 (2008). Such is the case for the appellant in the matter at hand.

The discretionary stay is, in essence, the defendant's equal and opposite remedy, and it is an appropriate one. Both are a vehicle for halting an opposing party's action; the injunction in freezing a harmful action against the plaintiff, and the stay in stopping a potentially detrimental legal action against the defendant. *Pepsi Cola Bottling Co. of P.R. v. United States*, 500 F. Supp. 304 (1980) ("the purpose of the stay...is the same as the purpose of the preliminary injunction...to preserve the status quo of the case pending the litigation of the merits"). Given the similarities, it is no surprise courts have applied similar tests to determine whether a stay or preliminary injunction should be granted. The factors used in determining whether a stay is appropriate are essentially the same factors in determining whether a preliminary injunction is appropriate.[2]

Nken v. Holder has long stood as that analogous test in determining whether a discretionary stay is warranted, establishing the four factor test that is easily applicable to this case.[3] Courts, including this one, continue to grapple with *Coinbase* and whether its mandatory stay provision of the *Nken* test applies. *United States Securities & Exchange Comm'n v. Reven Holdings, Inc.* has addressed the issue on what standard should apply in granting a defendant's motion to stay a case pending appeal of a preliminary injunction in the post-*Coinbase* era. No. 1:22-CV-03181-DDD-SBP, 2024 WL 3691603, at *4 (D. Colo. Aug. 7, 2024). That court held

[2] *N. Miss. Med. Ctr., Inc. v. Quartiz Techs.*, No. 1:23-cv-00003-CWR-LGI, 2024 WL 2262684, at *7 (N.D. Miss. May 17, 2024) ("The factors the court assesses when considering a motion to stay are substantially similar to those weighed when determining whether to grant a preliminary injunction, and the movant bears the burden of showing the balance of equities weighs heavily in favor of granting the stay.").

[3] These factors include (1) whether stay applicant has made strong showing that he is likely to succeed on merits; (2) whether applicant will be irreparably injured absent stay; (3) whether issuance of stay will substantially injure the other parties' interest in the proceeding; and (4) whether granting the stay serves the public interest. 556 U.S. 418, at 434.

that despite the *Nken* factors being created to stay an order under appeal, they too applied in a request to stay a case while the order is appealed.[4] Holding defendants to the same relative standard to receive their extraordinary relief as the plaintiff creates the very equity that courts at law have always sought to promote.

Coinbase, however, does not take the equity provided into account. Justice Jackson fleshed out the ramifications of this much more one-sided approach in her dissent, explaining how "[f]or plaintiffs, then, every preliminary injunction motion becomes a trap: Even if the motion is granted, the defendant can take that opportunity to stop the trial proceedings in their tracks." *Coinbase*, 599 U.S. at 760–61 (Jackson, J., dissenting). *Coinbase*, if applied in the context of appeals of preliminary injunctions, nullifies the very purpose of a preliminary injunction in providing a form of pre-trial relief. If an appeal of provided relief immediately halts not only the relief being provided, but all other avenues to obtain relief in the remaining proceedings, then a plaintiff will have virtually no form of immediate recourse remaining.

The district court in this present case has admitted that it would not have ruled in favor of a stay using its discretion, and this court should find this discretion to still be applicable.

II. THE VEA'S PROPERTY DAMAGE IS A "SPECIAL INJURY" SUFFERED WHILE PRIVATELY EXERCISING THE PUBLIC'S RIGHT TO AN UNCONTAMINATED ENVIRONMENT AND IS DIFFERENT IN KIND FROM THE MAMMOTH RESIDENTS' EXPOSURE TO PFOA-CONTAMINATED WATER.

The VEA exercises a public right to soil and water free from contamination by farming its private land and distributing its food in the community. BlueSky infringes this public right by releasing hazardous PFOA into the ambient air that deposits on the Mammoth Public Service

[4] *Id.* ("[W]hile the traditional stay factors of *Nken* most directly concern a request to stay the order under appeal—and here the request is instead to stay the case while the order is appealed—the *Nken* factors are more adapted to assessing these circumstances . . . . [T]his court finds that even when discovery remains to be done, a request to stay the case pending an appeal is governed by the *Nken* factors.").

District's wellfield and infiltrates the public's drinking water. BlueSky's air emissions also deposit PFOA on the VEA's farm, causing property damage and interfering with the VEA's community-oriented missions. Since the general public of Mammoth does not suffer similar private injuries, the VEA's property damage is a "special injury" that supports standing to bring a public nuisance claim.

A private person may maintain an action for public nuisance "if the private person suffers harm of a kind different from that suffered by other members of the public and the injury was suffered while exercising a right common to the general public." *Hale v. Ward Cnty.*, 848 N.W.2d 245, 252 (N.D. 2014). A public right is one that is "common to all members of the general public," Restatement (Second) of Torts § 821B cmt. g (A.L.I. 1979), and it includes "[the] right to soil and water that is free from environmental contamination," *In re Methyl Tertiary Butyl Ether Prods. Liab. Litig.*, 175 F. Supp. 2d 593, 629 (S.D.N.Y. 2001) (*MTBE*). Pollution that makes water harmful to residential uses or otherwise detrimental to public health qualifies as a public nuisance. Restatement (Second) of Torts § 832 cmt. b–c; *see also Maryland v. Exxon Mobil Corp.*, 406 F. Supp. 3d 420, 467 (D. Md. 2019) (observing that pollution of drinking water is a "'quintessential public nuisance'" (citation omitted)).

Here, BlueSky's PFOA air emissions infringe upon the public's "right to soil and water that is free from environmental contamination" by polluting Mammoth's drinking water supply with hazardous substances. *MTBE*, 175 F. Supp. 2d at 629. The affected public right is more comprehensive than a mere right to "a water supply uncontaminated with PFAS" because BlueSky's conduct is also proscribed by federal statutes.[5] *Severa v. Solvay Specialty Polymers*

[5] The Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) govern the safe disposal and clean-up of hazardous waste. *See generally* RCRA, 42 U.S.C. § 6901 *et seq.*; CERCLA, 42 U.S.C. § 9601 *et seq*.

USA, LLC, 524 F. Supp. 3d 381, 395 (D.N.J. 2021); *see* Restatement (Second) of Torts § 821B cmt. c (statutes may declare certain conduct to be "unreasonable interference[s] with a public right"). In the context of hazardous waste disposal, the Court of Appeals for the Second Circuit declared that "the release or threat of release of hazardous waste into the environment unreasonably infringes upon a public right" and constitutes a public nuisance. *New York v. Shore Realty Corp.*, 759 F.2d 1032, 1051 (2d Cir. 1985); *accord Graham Oil Co. v. BP Oil Co.*, 885 F. Supp. 716, 720, 723 (W.D. Pa. 1994) (denying BP's motion to dismiss RCRA and state public nuisance claims and finding that BP's release of hazardous substances "interfered with [the public right] to soil and water free of contamination"). The Mammoth residents, therefore, have a public right to clean soil and water that is impaired by the deposition of PFOA and its infiltration of the public's drinking water supply. *Accord Johnson v. 3M*, 563 F. Supp. 3d 1253, 1340 (N.D. Ga. 2021) (finding a general public harm from the "contamination of the Conasauga, Oostanaula, and Coosa Rivers and the interference with the use and enjoyment of those waters, including the provision of safe drinking water").

In addition to this common injury, the VEA also suffers property damage to its farm from BlueSky's PFOA deposition that is different in kind from the injuries to the general public. *See* 58 Am. Jur. 2d *Nuisances* § 190 (2025) ("An interference with the enjoyment and value of a person's private property rights is a special injury . . . that allows recovery for a public nuisance by a private individual[.]"). When the public's injury stems from air, water, or soil pollution, a plaintiff suffers a "special injury" when her private property is also contaminated, affecting her personal and commercial uses of property. *See Ariz. Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913) (holding that effect of upstream water pollution on plaintiff's riparian rights and use of water for irrigation is a "special injury"); *Soap Corp. of Am. v. Reynolds*, 178 F.2d 503, 506 (5th

Cir. 1949) (holding that interference with "the enjoyment and value of a person's private property rights" caused by defendant's noxious odors is a "special injury")[6]; *Agudelo v. Sprague Operating Res., LLC*, 528 F. Supp. 3d 10, 14–15 (D.R.I. 2021) (denying motion to dismiss public nuisance and finding that "[the] interference with the use and enjoyment of [plaintiffs'] private property and [the] negative effect on [their] property value[s]" caused by defendant's noxious odors is a "special injury"). Here, the VEA alleges property damage to their farm that prevents them from providing food to the community's food banks and soup kitchens. This damage to private property is a sufficient "special injury" for standing to bring a public nuisance claim.

Further, the plaintiff's "special injury" only needs to be different in kind from the general public and not from others nearby and similarly situated. *See Baptiste v. Bethlehem Landfill Co.*, 965 F.3d 214, 222 (3d Cir. 2020) (holding that District Court erred when it failed to compare "the injuries suffered by putative class members as homeowner-occupants and renters with the harm shared by all community members including nonresidents"); *Ariz. Copper Co.*, 230 U.S. at 52–53, 57 (holding that plaintiff suffered a "special grievance" even though defendant's water pollutants were deposited "upon the lands of plaintiff and other lands" who were "situated in the same valley" and "irrigated in the same way" by the same river). *Contra Davies v. S.A. Dunn & Co., LLC*, 156 N.Y.S.3d 457, 464 (N.Y. App. Div. 2021), *leave to appeal denied*, 185 N.E.3d 1004 (N.Y. 2022) (applying New York law and holding that plaintiffs failed to assert an injury different in kind from "all of the residents in the nearby vicinity of the landfill"). Here, the VEA's property damage differs in kind from the general injuries suffered by the public. Like all Mammoth residents, the VEA suffers injury from PFOA-contaminated drinking water. Unlike

[6] Although the plaintiff sought to enjoin a private nuisance, the defendant argued that the alleged injuries showed a public nuisance and that the plaintiff lacked a "special injury." *Soap Corp.*, 178 F.2d at 504, 506. The Fifth Circuit disagreed that the plaintiff would be unable to sustain a public nuisance action.

the general public, the VEA also suffers contamination of their crops that prevents them from pursuing their community programs. Although the other farms around the VEA are also contaminated by deposition of BlueSky's PFOA, the VEA's "special injury" does not need to be "unique." *See Fresh Air for the Eastside, Inc. v. Waste Mgmt. of N.Y., L.L.C.*, 405 F. Supp. 3d 408, 443 (W.D.N.Y. 2019) ("A 'special injury' need not be 'unique.'"). Like in *Arizona Copper Co.*, where the plaintiff suffered a "special injury" to his land even though defendant's water pollution similarly affected "a large community of riparian owners" and agriculturists, the VEA's property damage is still a "special injury" despite the other farms that are similarly affected. 230 U.S. at 57. Accordingly, this Court should follow the "majority of courts" and compare the VEA's harms to "'everyone in the community,'" not solely the other farms and organizations in the VEA's immediate vicinity. *Demmons v. ND OTM LLC*, No. 1:22-cv-00305-NT, 2023 WL 5936671, at *7 n.8 (D. Me. Sep. 12, 2023) (quoting *Baptiste*, 965 F.3d at 221) (collecting cases).

Finally, the VEA suffered property damage while exercising their public rights to uncontaminated soil and water. A "special injury" is suffered while exercising a public right if the plaintiff privately uses this right during the period of contamination and the injury directly results from the plaintiff's conduct. *See Phila. Elec. Co. v. Hercules, Inc.*, 762 F.2d 303, 316 (3d Cir. 1985) (finding that plaintiff's injuries incurred in cleaning up past environmental contamination were not suffered while exercising a public right because plaintiff "did not allege that it used the [polluted] waters of the Delaware River itself, or that it was directly harmed in any way by the pollution of those waters"); *Rockaway v. Klockner & Klockner*, 811 F. Supp. 1039, 1057 (D.N.J. 1993) (finding that the impaired use and enjoyment of the aquifer under plaintiff's property due to contamination from hazardous chemicals was a "special injury" sustained "in the exercise of a right common to the general public"); *Demmons*, 2023 WL

5936671, at *10 (finding that plaintiffs' diminished property values and impaired use and enjoyment of private property due to noxious odors and air pollution are "direct" injuries "suffered while exercising the public right"). Unlike the plaintiff in *Hercules*, whose post-contamination clean-up costs were not incurred while exercising a public right to pure water, the VEA suffers ongoing property damage from BlueSky's ongoing PFOA air emissions. 762 F.2d at 316. The VEA's injuries arise because the VEA exercises its public right to uncontaminated soil by farming on its private land and distributing its food in the community. Instead, the VEA's injuries are like *Rockaway*, where the plaintiff sought to exercise its public right to groundwater by accessing the aquifers under its private property. 811 F. Supp. at 1057. The VEA's property damage is also like *Demmons*, where the injuries to plaintiffs' property interests were sustained due to the impacts of unclean air and noxious odors. 2023 WL 5936671, at *10.

The VEA's property damage is a "special injury" that is different in kind from the general public of Mammoth and suffered while privately exercising the VEA's public right to soil and water free from contamination.

III. THE DISTRICT COURT CORRECTLY DETERMINED APPELLANT WAS LIKELY TO SUCCEED ON THE MERITS OF THEIR RCRA ISE CLAIM, AS BLUESKY'S AIR EMISSIONS OF PFOA WERE PROPERLY FOUND TO BE "DISPOSAL" UNDER RCRA.

The district court correctly interpreted the meaning of "disposal" under 42 U.S.C. § 6903 as it applied the only reading that gives effect to the true purpose of RCRA in its enforcement provisions: a broad one.[7] The reading provided by district courts in the Sixth Circuit fits more

[7] *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, at 952 (S.D. Ohio 2015). (quoting *United States v. Aceto Agric. Chems. Corp.*, 872 F.2d 1373, 1383 (8th Cir.1989)) ("The 'endangerment' provision in RCRA Section 7003(a) is one of the statute's most important enforcement tools, and it is intended to 'give broad authority to the courts to grant all relief necessary to ensure complete protection of the public health and the environment.'").

properly with the case at hand than BlueSky's preferred interpretation provided by the Ninth Circuit in *Center for Community Action & Environmental Justice v. BNSF Railway Co*., 764 F.3d 1019 (9th Cir. 2014), both in maintaining similar key facts used by other courts to determine whether the conduct constituted disposal and doing so with the understood history and purpose of RCRA in mind when making such a finding. This court should reach a similar conclusion, as the blueprint for constructing a proper legal definition of "disposal" under RCRA has been provided in other jurisdictions and in more alike circumstances.

A. The facts at hand are most analogous to *Little Hocking*, and as such, this Court should adopt *Little Hocking*'s definition of "disposal" under RCRA.

Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co., 91 F. Supp. 3d 940 (S.D. Ohio 2015), is much more analogous to the facts at hand than BlueSky's preferred comparison, *BNSF Railway*. While both cases define "disposal" under RCRA, the factual situation involved here bears a striking resemblance to the situation in *Little Hocking*. 91 F. Supp. 3d at 952. We urge the court to find, as the district court had, that the holding in that case should rightfully be applied here under such similar circumstances.

The waste in *BNSF* took the form of diesel particulate matter (a completely different form of particulate matter than PFOA) which was discharged into the air from engines in the defendant's railyard, fell onto the ground, and was re-entrained into the atmosphere. 764 F.3d at 1023. In layman's terms, the situation in *BNSF* was one of "Up, Down, and Up." The harmful substance was emitted into the air, settled on to the ground, and *then* caused the harm in its sweeping back into the air. *Id.* The Ninth Circuit responded to that factual chain by parsing the meaning of "disposal" under RCRA, leaning on a sequence-based analysis in making a determination that it was in fact an ambiguous statutory term. *Id.* at 1024–26. Specifically, the

fact the harm plaintiff suffered did not stem from the particulate falling and being present on the ground, but its kicking up after first landing (*i.e.*, re-entrainment) was a primary force behind rejecting plaintiffs actions as disposal. *Id.* at 1024 ("The solid waste at issue here . . . as it is characterized in Plaintiffs' complaint, is not first placed 'into or on any land or water'; rather, it is first emitted into the air. Only after the waste is emitted into the air does it then travel 'onto the land and water.'")

Conversely, *Little Hocking* dealt directly with C8 particulate matter (a.k.a. PFOA) being emitted from defendants stacks, falling onto plaintiffs land, and causing harm to both the environment and plaintiffs business operations. *Little Hocking*, 91 F. Supp. 3d at 949–50, 962–63. The steps the particulate had to take to harm the plaintiff are distinguishable from *BNSF* and, as a result, that specific chain of events was considered "disposal."[8] That final, crucial "re-entrainment" component is missing. This then becomes, using those same layman's terms, an instance of "Up, Down." In holding that the specific conduct of the defendant constituted disposal under RCRA, the court impressed a step-by-step analysis that mirrored the framework of *BNSF* so as to better distinguish it. *Id.* ("[A]erial emissions of C8 particulate matter, which fell onto the ground, remained there, and contaminated the groundwater, constitutes disposal of solid waste under RCRA."). The *Little Hocking* court rooted this rationale in precedent, as another Southern District of Ohio case previously found that harmful or solid waste particulate is considered "disposal" pursuant to RCRA when that particulate makes contact with the ground. [9]

[8] *Id.* at 965 ("In *BNSF Railway*, the diesel particulate matter fell onto the land, and then was swept back up into the air, causing harm to those who inhaled it. In contrast, in the case *sub judice*, solid C8 particles are emitted into the air, fall onto the ground, remain there, and then contaminate the soil and groundwater. This Court finds that this type of soil and groundwater contamination is precisely the type of harm RCRA aims to remediate in its definition of 'disposal.'").

[9] *See Citizens Against Pollution v. Ohio Power Co.*, No. C2-04-CV-371, 2006 WL 6870564, at *5 (S.D. Ohio July 13, 2006) (physical touching of ground constitutes "disposal" as it is the "placing of any solid or hazardous waste . . . on any land").

In the case before the court, the harm VEA has been exposed to is the direct result of BlueSky's placement of PFOA onto their land and water. The situation is, based on an analysis of the steps the particulate took to get to the caused harm, not one where harm stems from re-entrainment, but rather the "Up, Down" process. This is precisely the same situation the *Little Hocking* court found to fall under the definition of "disposal:"

> "...the harm caused by Defendant's release of C8 particles into the air is not to air quality, but to the land and the water on which the C8 particles land and remain. If the same waste entered the soil and groundwater via seeps or dumping directly from a waste treatment plant or industrial Facility, however, a private citizen harmed by such soil and groundwater contamination would have standing to pursue an ISE claim. This Court finds, therefore, that these two scenarios present a distinction without a difference."[10]

This court should apply this holding to the present case based on the distinct similarities that not only led the court in the Southern District of Ohio to factually distinguish *Little Hocking* from *BNSF*, but the district court in distinguishing this case from *BNSF* as well.

B. The legislative history of RCRA supports a broad interpretation of the statute and its enforcement provisions.

Based on its very purpose, a broad reading of RCRA is an appropriate one. *See United States v. Aceto Agr. Chems. Corp.*, 872 F.2d 1373, 1383 (1989) ("relevant legislative history supports a broad, rather than a narrow, construction"); *see also United States v. Waste Indus., Inc.*, 734 F.2d 159, 167 (4th Cir. 1984) (A liberal interpretation resolves "problems that Congress could not have anticipated when passing the Act will be dealt with in a way minimizing the risk of harm to the environment and the public"). Courts have consistently found that liberal interpretations of RCRA are necessary when interpreting RCRA's enforcement mechanisms as Congress, in passing the Act and such mechanisms, provided these measures to fulfill its mission

[10] *Little Hocking,* 91 F. Supp. 3d at 965.

of handling harm to the environment and public.[11] These have typically been interpretations of the government enforcement provision of RCRA, 42. U.S.C. § 6973. *E.g. United States v. Aceto Corp.*, 872 F.2d at 1382–84. Congress specifically included expansive language in the statute to give courts interpreting the provision "the authority to grant affirmative equitable relief to the extent necessary to eliminate any risk posed by toxic wastes." *Davis v. Sun Oil Co*., 148 F.3d 606, 609 (6th Cir. 1998). VEA is instead permitted by RCRA's citizen suit provision, 42 U.S.C. § 6972(a)(1)(B), to commence this civil action. Sections 6973 and 6972(a)(1)(B) of RCRA are "nearly identical" except that § 6973 permits EPA enforcement, while § 6972(a)(1)(B) permits citizen enforcement. *See Acme Printing Ink Co. v. Menard, Inc*., 870 F. Supp. 1465, 1499 n.3 (1994). Because of this similarity, we urge this court, as the Southern District of Ohio and the district court in the present case, to apply the same broad reading applied to one of RCRA's enforcement provisions to the other.

The Southern District of Ohio determined a liberal reading is appropriate for courts interpreting the definition of "disposal" in RCRA, especially after adopting the long-standing plain and obvious meaning principle.[12] Considering Congressional intent in passing RCRA is also an essential part of the court's analysis for defining "disposal" in *Little Hocking*. 91 F. Supp. 3d at 965 ("RCRA's legislative history and purpose supports a finding… in this case that the aerial emissions of C8 particulate matter, which fell onto the ground, remained there, and

[11] *See Little Hocking*, 91 F. Supp. 3d at 952 (quoting *United States v. Price*, 688 F.2d 204, 211 (3d Cir. 1982)) ("'By enacting the endangerment provisions of RCRA . . . Congress sought to invoke the broad and flexible equity powers of the federal courts . . . .'").

[12] *Citizens Against Pollution v. Ohio Power Co.* No. C2-04-CV-371, 2006 WL 6870564, at *5 (S.D. Ohio July 13, 2006). *See also Davis v. Sun Oil Co.*, 148 F.3d 606, 609 (6th Cir. 1998) ("RCRA is a remedial measure, courts have tended to construe it in 'a liberal, though not unbridled, manner.'" (citation omitted)); *Hadix v. Johnson*, 398 F.3d 863, 866 (6th Cir. 2005) ("If the Court can discern an unambiguous and plain meaning from the language of the statute, then the Court must enforce the statute according to its clear terms."); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994). ("in construing a statute, courts generally give words not defined in a statute their 'ordinary or natural meaning.'")

contaminated the groundwater, constitutes disposal of solid waste under RCRA"). The facts presented in that case (which bear a shocking resemblance to the case at hand) indicated the situation before the district court was precisely the kind that Congress passed RCRA to address. *Id.* Given the similarities between *Little Hocking* and the present case, we urge this court to follow these same fundamental principles of statutory interpretation, not only in furtherance of the intent Congress so prescribed in the passage of such language, but in ensuring that the roads to justice Congress paved in creating such law are not roadblocked.

IV. THE VEA'S RCRA AND PUBLIC NUISANCE CLAIMS ARE BROUGHT IN THE PUBLIC INTEREST TO PROTECT THE PUBLIC, REQUIRING EVALUATION OF HARMS TO THE PUBLIC.

A broad view of "irreparable harm" encompassing injuries to the public appropriately accounts for the unique nature of the pollution-abatement context whereby threats to public health and the environment are grounds for a private cause of action. In *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), the Court held that a plaintiff must prove that "he is likely to suffer irreparable harm in the absence of preliminary relief," *id.* at 20. Within the context of an RCRA citizen suit, "irreparable harm" includes the "imminent and substantial endangerment" to the public's health and the environment. 42 U.S.C. § 6972(a).

The VEA's citizen suit for violations of RCRA necessarily involves harm to the public health and environment in addition to the VEA's private harms. First, the Resource Conservation and Recovery Act was designed "'to end the environmental and public health risks associated with the mismanagement of hazardous waste.'" *Tenn. Riverkeeper v. Waste Connections of Tenn., Inc.*, 769 F. Supp. 3d 784, 788 (M.D. Tenn. 2025) (quoting *United States v. Kentucky*, 252 F.3d 816, 822 (6th Cir. 2001)); *see also United States v. Aceto Agric. Chems. Corp.*, 872 F.2d 1373, 1383 (8th Cir. 1989) ("The purpose of [RCRA] is to 'give broad authority to the courts to grant

all relief necessary to ensure complete protection of the *public health and the environment*.'" (emphasis added) (quoting *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 199 (W.D. Mo. 1985))). Accordingly, Congress enacted a citizen-suit provision so that the public could enforce this broad mandate against "any person" whose "past or present" conduct contributes to "an imminent and substantial endangerment *to health or the environment*." 42 U.S.C. § 6972(a) (emphasis added). Since motions for preliminary injunction are measured by reference to the purposes of the statute being enforced, the "irreparable harm" analysis is modified by the RCRA's enunciated goals. *E.g.*, *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 417 (1975) (In Title VII, Congress invoked the courts' equity powers "to further transcendent legislative purposes. . . . The District Court's decision must therefore be measured against the purposes which inform Title VII."); *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 172–74 (1978) (observing that the Endangered Species Act, by "affording the highest of priorities" to the survival of endangered species, therefore "require[s]" an injunction).

Second, citizen suits are an example of Congress's authority to create "legal rights, the invasion of which creates standing." *Linda R. S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973). Although the harms from violations of environmental laws are generalized grievances typically barred by prudential standing rules, Congress overcomes these rules when it grants "express right[s] of action" in citizen suits. *Warth v. Seldin*, 422 U.S. 490, 501 (1975). After a plaintiff demonstrates Article III standing by proving a personal injury, that plaintiff may then rely on injuries to the public to prove his citizen suit. *See id.* at 501 ("[P]ersons to whom Congress has granted a right of action . . . may have standing to seek relief on the basis of the legal rights and interests of others, and, indeed, may invoke the general public interest in support of their claim."); *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 477 (1940) (Plaintiffs may argue

that the FCC's decision to grant a broadcasting license will not serve "'public convenience, interest, or necessity'" because Congress granted standing to "'any other person aggrieved'" by the approval of such a license. (quoting 47 U.S.C. §§ 307(a), 402(b)(2))). This rule applies to a plaintiff's motion for preliminary injunction so that he may argue that "irreparable harm" will result to the public. *See W. Va. Rivers Coal., Inc. v. Chemours Co. FC, LLC*, 793 F. Supp. 3d 790, 813–16 (S.D. W. Va. 2025) (issuing preliminary injunction after finding "irreparable harm to the public" from the discharge of toxic chemicals into the Ohio River); *Courtland Co. v. Union Carbide Corp.*, No. 2:19-cv-00894, 2024 WL 4339600, at *6–7 (S.D. W. Va. Sep. 27, 2024) (declining to issue preliminary injunction after finding no irreparable injury to the plaintiff or the public from unpermitted arsenic discharges that contaminated groundwater).

Citizen suits are thus substantively different from the procedural action under the National Environmental Policy Act (NEPA) at issue in *Winter*. There, the plaintiffs' "ultimate legal claim . . . that the Navy must prepare an [environmental impact statement]" provided "no basis" for the district court to enjoin the Navy's sonar training. 555 U.S. at 32–33. An injunction was inappropriate because NEPA "imposes only procedural requirements" and the Navy already studied the environmental consequences of their training exercises. *Id.* at 23. *See also Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 160 & n.5 (2010) (finding that the district court lacked authority under NEPA and the Plant Protection Act to enjoin even partial deregulation pending an environmental impact statement because the agency "ha[d] not yet invoked the procedures necessary to attempt a limited deregulation"). Moreover, plaintiffs seeking preliminary injunctions for procedural actions must tether any public or environmental harms to their own injured interests because these provisions are intended to guide decision-makers about potential impacts. *See Winter*, 555 U.S. at 25–26 (finding no irreparable harm to plaintiffs'

"ecological, scientific, and recreational interests" or their "ability to study and observe the animals"); *Monsanto Co.*, 561 U.S. at 162–63 (finding no irreparable harm to plaintiffs' organic or conventional alfalfa farms if genetically-modified alfalfa is deregulated for cultivation in limited geographic areas). "[D]efining the scope and nature of the primary harm" in a procedural claim brought under NEPA is uniquely challenging because the "'primary goals' of the statute are very broad" when compared to other environmental statutes like the Endangered Species Act (ESA). Avalyn Taylor, *Rethinking the Irreparable Harm Factor in Wildlife Mortality Cases*, 2 STAN. J. ANIMAL L. & POL'Y 113, 139 (2009). Under the ESA, "irreparable harm" analysis includes a consideration of environmental impacts because this is the Act's "highest of priorities." *Tenn. Valley Auth.*, 437 U.S. at 174; *see also Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 820–22 (9th Cir. 2018) (finding irreparable harm to the endangered salmonids and irreparable harm to plaintiffs' interests "stemming from the irreparable harm to the listed [endangered] species" of salmonids).

Citizen suits are also meaningfully different from private causes of action, such as private contractual disputes. In *Beber v. NavSav Holdings, LLC*, 140 F.4th 453 (8th Cir. 2025), the plaintiffs failed to demonstrate that they would suffer irreparable harm if the non-compete and non-solicitation covenants were enforced against them, *id.* at 461–63. Unlike a RCRA citizen suit brought to protect the public from "imminent and substantial endangerment," 42 U.S.C. § 6972(a), or a public nuisance suit brought to protect the rights of the public from interference, the underlying contract claim in *Beber* involves exclusively private injuries between the litigants. Environmental harms, by contrast, are "often permanent or at least of long duration, *i.e.*, irreparable," and involve overlapping injuries to the plaintiff, the public, and the environment. *Amoco Prod. Co. v Vill. of Gambell*, 480 U.S. 531, 545 (1987); *see Fairway Shoppes Joint*

Venture v. Dryclean U.S.A., Inc., No. 95-8521-CIV-HURLEY, 1996 WL 924705, at *10–11 (S.D. Fla. Mar. 7, 1996) (finding irreparable harm in a RCRA citizen suit based on an "unacceptable degree of risk" to the public health and environment from toxic chemicals leaching into the groundwater).

While citizen suits are unique as a right of action expressly granted by Congress, public nuisance suits are the common-law claim available for an individual plaintiff to vindicate a generalized grievance. *See* Restatement (Second) of Torts § 821B ("A public nuisance is an unreasonable interference with a right common to the general public."). A public nuisance action, like a citizen suit, requires that the individual plaintiff prove standing by demonstrating he has suffered a "special injury." *Id.* § 821C; *see also Rhodes v. E.I. Du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 768–70 (S.D. W. Va. 2009) (holding that plaintiffs lack standing for public nuisance because PFOA contamination and an increased risk of disease are not "special injuries" different in kind and degree from all other individuals consuming the same contaminated water). This "special injury" requirement is significant for standing purposes because public nuisances are generally prosecuted by public officials who possess a "'duty . . . to vindicate the rights of the public.'" *Sharon Steel Corp. v. City of Fairmont*, 334 S.E.2d 616, 620 (W. Va. 1985) (citation omitted). While the plaintiff proves "special injury" to demonstrate standing, he must then also prove an ongoing injury to the public as an element of his claim. *See Blair v. Anderson*, 570 N.E.2d 1337, 1339–40 (Ind. Ct. App. 1991) (a private party may successfully enjoin a public nuisance if he demonstrates "special and particular injury *apart from the injury suffered by the public*" (emphasis added) (citations omitted)). Finally, once the plaintiff demonstrates standing, "[he] may assert the interests of the general public in support of his claims for equitable relief." *Sierra Club v. Morton*, 405 U.S. 727, 740 n.15 (1972). In a public

nuisance suit, this includes the public injury that is elemental to the plaintiff's claim. *See Taylor v. Culloden Pub. Serv. Dist.*, 591 S.E.2d 197, 206 (W. Va. 2003) (recognizing that public nuisance actions by private citizens are essential to supplement governmental enforcement and ensure that "serious public health concerns" and "potential environmental hazard[s]" are eradicated).

The VEA's RCRA citizen suit and public nuisance actions are claims brought to ameliorate public injuries in addition to the injuries suffered by the VEA's members. Courts evaluate these claims according to the purposes of RCRA and the public health interests at stake in both claims. Since these claims necessarily involve ongoing injuries to the public, courts evaluate the likelihood of "irreparable harm" to the public as well as the plaintiff when considering whether to grant a preliminary injunction.

CONCLUSION

This Court should reverse the district court's order granting BlueSky's motion to stay proceedings and hold that *Coinbase* does not mandate a stay of proceedings pending an appeal of a preliminary injunction; affirm the district court's holding that the VEA suffered a "special injury" and possessed standing to sue for public nuisance; affirm the district court's holding that the VEA was likely to succeed on the merits of its Imminent and Substantial Endangerment claim based on its interpretation that "disposal" under RCRA includes air emissions; and affirm the district court's interpretation of *Winter* that harm to the public can be evidence of "irreparable harm" sufficient to grant a preliminary injunction.

Respectfully submitted,

Team No. 20

Certificate of Service

Pursuant to *Official Rule* IV, *Team Members* representing the Vandalia Environmental Alliance certify that our Team emailed the brief (PDF version) to the *West Virginia University Moot Court Board* in accordance with the *Official Rules* of the National Energy Moot Court Competition at the West Virginia University College of Law. The brief was emailed before 1:00 p.m. Eastern time, February 4, 2026.

Respectfully submitted,

Team No. 20