In the United States Court of Appeals for the Twelfth Circuit

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C.A. No. 24-0682

**BlueSky Hydrogen Enterprises**
*Defendant-Petitioner*
v.
**Vandalia Environmental Alliance**
*Plaintiff-Respondent*

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

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BRIEF FOR BLUESKY HYDROGEN ENTERPRISES

*Team No. 3*

*Counsel for BlueSky Hydrogen Enterprises*

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## TABLE OF CONTENTS



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## TABLE OF AUTHORITIES

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**United States Supreme Court Cases**



**Additional Cases**



**United States Regulations and Statutes**

## STATEMENT OF JURISDICTION

The United States District Court for the Middle District of Vandalia had jurisdiction pursuant to 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291. Following the district court's final decision on November 24, 2025, the decision was timely appealed on December 1, 2025. The Twelfth Circuit issued an order on December 29, 2025, which set forth four issues.

## STATEMENT OF ISSUES PRESENTED

1. Did the District Court err in following *Coinbase* in staying the proceedings pending appeal of the preliminary injunction?
2. Did the district court err in finding that the VEA has suffered a "special injury" that is different in kind, and not merely in degree, from the harm suffered by the general public, as required to establish standing for a public nuisance claim involving PFOA air emissions?
3. Did the district court err in determining that direct air emissions fall within the definition of a "disposal" within the Resource Conservation and Recovery Act?
4. Did the district court err in reading the "irreparable harm" factor of the *Winter* test to be met by a showing of potential harm to a third party rather than the plaintiff?

## STATEMENT OF THE CASE

*Factual History*

As the climate changes and severe weather events become more frequent, industries and governments around the world are looking for cleaner energy sources to reduce carbon emissions. BlueSky's Appalachian Regional Clean Hydrogen Hub ("ARCH2") is designed to accelerate the commercial-scale deployment of clean hydrogen energy. ARCH2 and hydrogen hubs around the world are expected to initially result in a net reduction of at least 5 million metric tons of CO2 each year.

The SkyLoop Hydrogen Plant is part of the ARCH2 infrastructure, which is located in Vandalia. This facility is designed to help the region address its extensive waste management issues by converting waste streams into a clean energy source. The SkyLoop plant will take materials that would otherwise end up in landfills, emitting methane, and instead convert them into hydrogen. This system solves a waste problem for the local community while also providing a clean energy solution for industry. These benefits are why the Vandalia Environmental Alliance ("VEA") was initially supportive of the SkyLoop project.

However, in March 2025, the 2024 testing of Mammoth Public Service District's ("PSD") water supply showed that there were detectable levels of PFOA that were not present in the 2023 tests. After investigating the issue, the VEA pieced together that one of the waste suppliers to the SkyLoop Plant was Martel Chemicals, a local chemical company known for having PFAS compounds in its operations. Although further investigation showed Martel's waste contained PFOAs, Martel was not required to remove the PFOAs before sending its waste for treatment. Additionally, the Wastewater Treatment Plant is also not required to remove the PFOAs before passing the waste onto the SkyLoop Plant. PFOAs appear to survive the treatment and processing

controls in place at the SkyLoop Plant, and they end up in the airborne emissions from the SkyLoop's stacks. Once in the air, the VEA believes the winds are carrying the PFOA particles to the north, where they are settling on the surrounding land which includes local farms, the PSD wellfield, and VEA's farm.

The SkyLoop facility's air emissions are regulated under the Clean Air Act ("CAA") through a Title V permit, which includes regulations on the facilities emission of carbon dioxide, nitrogen oxides, and particulate matter. However, the EPA has chosen not to regulate PFOAs under the CAA. As such, SkyLoop's Title V permit does not include any limits or monitoring requirements for PFOAs. Currently, the SkyLoop facility is in full compliance with its Title V permit. However, the VEA is concerned about the possible contamination of the surrounding land and water. These concerns led the VEA to bring legal action against the SkyLoop facility.

*Procedural History*

On June 30, 2025, VEA filed its initial complaint against BlueSky in the United States District Court for the Middle District of Vandalia. This initial complaint alleged a public nuisance claim as well as a RCRA imminent and substantial endangerment citizen suit claim against BlueSky. Several days after filing the initial complaint, VEA filed a motion for preliminary injunction, asking the court to temporarily shut down BlueSky's SkyLoop plant, or alternatively to stop SkyLoop from accepting and using any waste that could contain PFOA.

Once the motion for preliminary injunctions was fully briefed by both sides, the district court held an evidentiary hearing on September 29, 2025. The district court then issued an order granting the VEA's motion for a preliminary injunction. Following this order from the district court, defendant BlueSky filed an interlocutory appeal in the United States Court of Appeals for

the 12th Circuit, asking that the district court's order granting the preliminary injunction be stayed. BlueSky specifically challenged the order on grounds of standing, likelihood of success on the merits, and the absence of irreparable harm. BlueSky consecutively filed a motion in the district court to stay proceedings pending appeal. VEA opposed the motion on December 5, 2025, and shortly after, on December 8, the district court granted BlueSky's motion to stay. Finally, the 12th Circuit then consolidated the appeals and ordered briefing on the four issues.

## SUMMARY OF THE ARGUMENT

1. The district court correctly stayed the proceedings, pending BlueSky's appeal, because *Coinbase* requires an automatic, non-discretionary stay when an interlocutory appeal is filed that divests the lower court of jurisdiction on any overlapping issues. This concept, known as the "*Griggs* Principle" was used by the Supreme Court in *Coinbase*, and was affirmed by the Fourth Circuit later in *Martinsville*, which further explained these concepts. Here, BlueSky's appeal directly overlaps with proceedings in the district court, since both address the issues of VEA's standing, potential irreparable harm under *Winter*, and the likelihood of success on the VEA's RCRA claim. Finally, contrary to VEA's contention, *Coinbase* extends well past the contexts of arbitration, as explained in both *Griggs* and *Martinsville*. This means that despite differences in settings, the principles of *Coinbase* must still be applied, and the district court's stay must be upheld.

2. While the matter of the VEA's public nuisance claim is proper because contamination of a public water supply would have to be brought as a public nuisance action, the main point of contention is whether the VEA has suffered a "special injury" that would allow it to maintain its public nuisance claim against BlueSky for its PFOA air emissions. The

"special injury" requirement hinges on the type of harm suffered and who else suffered the harm. The VEA did not suffer a "special injury" just on account of living in an area affected by a public nuisance. While the harm may have varied in degree due to the VEA's proximity, it would be the same harm suffered by other farmers in the area. As BlueSky correctly argued, the relevant comparative population would be the residents who drink the water, and it would also include the surrounding farms in Mammoth. The VEA fails to differentiate itself from the other members of the relative comparative population because it admits that it faces the same type of harm as others in the surrounding area. Thus, the VEA is unable to establish a "special injury" sufficient to grant it standing for a public nuisance claim against BlueSky for SkyLoop's PFOA air emissions.

3. The district court erred in concluding that direct air emissions fall within RCRA's definition of a disposal. The 9th Circuit was correct in its textual and contextual analysis that Congress intended for direct air emissions to be covered by the CAA, not RCRA. The plain text of RCRA sets up a temporal requirement that a disposal must first be placed onto land or water and then later may contaminate the environment through air emissions. The BlueSky facility emissions are emitted directly into the air and do not meet the RCRA's definition of a disposal. Additionally, the legislative history of the CAA and RCRA shows that Congress did not intend for RCRA to cover air emissions unless explicitly stated in an amendment of the statutes. Congress has not added any amendment stating that airborne PFAS emissions should fall under RCRA instead of the CAA. A textual and contextual analysis shows that BlueSky's emissions are not a disposal, as defined under RCRA.

4. The district court's preliminary injunction should be reversed because the VEA has not shown that its organization or its members are likely to suffer irreparable harm. The language of *Winter* draws out four distinct factors that the *plaintiff* must show. At issue here is the factor which requires that the plaintiff show its likelihood of suffering irreparable harm. In failing to show that the VEA will face any such harm themselves, it conflates a separate factor under the *Winter* test, that of the public interest. When mixing these two factors together, any usefulness of the *Winter* test is diminished. Because the plaintiff cannot demonstrate that it alone risks suffering irreparable harm and not the general public, the district court was wrong in granting the preliminary injunction, which should be reversed by this Court.

## ARGUMENT

### I. *Coinbase* mandates an automatic, non-discretional stay.

The district court was correct in staying the proceedings pending BlueSky's appeal. *Coinbase* requires an automatic stay when parties appeal an interlocutory order if the issues that are on appeal are related to the issues that the district court would be deciding at trial. The Supreme Court held that while an interlocutory appeal is ongoing, the district court must stay its proceedings. *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 738, 143 S. Ct. 1915, 1918, 216 L.Ed.2d 671, 676 (2023). The twelfth circuit has adopted this principle in *Martinsville*, stating that regardless of parties making a motion to stay, district courts must halt all proceedings when a proper notice of appeal is docketed. *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 268 (4th Cir. 2025). The stay must be automatic and not discretionary. This means that once the needed prerequisites are met, a district court has no discretion in issuing the stay. The district court recognized this required by *Coinbase*.

Although it stated that it was reluctant to stay the case, it ultimately reaches the correct outcome by acknowledging that the stay is automatic and not discretionary.

**a) There is substantial overlap under the Griggs principle for the stay to apply.**

*Coinbase* relies on the "Griggs principle." This principle requires that, once a notice of appeal has been properly filed, the appeal divests the district court of its control over those aspects of the case involved in the appeal. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 402, 74 L.Ed.2d 225, 228 (1982). Because the appeal was properly filed, the second portion of the principle is what is at issue in this case. This overlap in aspects between the case in the district court and the aspects on appeal is intended to prevent the case from proceeding on identical issues but in separate courts. BlueSky's appeal overlaps directly with the issues that the district court was hearing. These issues include whether the VEA has standing, whether irreparable harm had been shown under *Winter*, and whether the VEA was likely to succeed on the merits of its RCRA claim. These issues are equally central to each of the proceedings, and the overlap is significant enough to bring the case fully into *Coinbase*'s automatic stay requirement.

**b) Coinbase's automatic stay requirement extends beyond arbitration contexts.**

The VEA's attempts to restrict *Coinbase* and *Griggs* only to specific contexts, like arbitration, are a misreading of the Supreme Court's precedent. The appeal under question in *Coinbase* was indeed a denial to compel arbitration. However, *Coinbase* relied on cases that existed in different contexts and has since been expanded to other contexts as well. *Griggs*, notably, was dealing with an appeal of the district court's rejection of a motion to alter or amend its judgment. More recently, *Martinsville* centered around a removal from state court to federal court under the *Class Action Fairness Act*, which was appealed by the Defendant once the motion for removal was granted. The court in *Martinsville* specifically addressed this concept in stating that *Coinbase* applies to more

than just arbitration. “Distinctions require meaningful differences to matter; a decision's rationale binds us even if some immaterial facts differ.” Though there are differences between previous cases and the facts of our current situation, a proper application of *Coinbase* means that the district court was correct to stay proceedings.

## II. The VEA cannot maintain a public nuisance claim on behalf of the public because it has not suffered a special injury.

While the VEA can initiate a public nuisance claim due to the public nature of the underlying nuisance, the VEA cannot succeed in its public nuisance claim because it has not demonstrated how BlueSky’s PFOA air emissions create a “special injury.” This Court should reverse the district court and find that the VEA has not established a “special injury” sufficient to grant it standing for a public nuisance claim against BlueSky.

### a) Both the VEA and BlueSky agree that the contamination of a public water supply has to be brought as a public nuisance claim.

Both the VEA and BlueSky agree that the contamination of Mammoth PSD’s water supply with PFOA is properly categorized as a public nuisance claim. A public nuisance is an "unreasonable interference with a right common to the general public.” Restatement (Second) of Torts § 821B(1) (A.L.I. 1979). Unlike a private nuisance, which involves an invasion of an individual's interest in the private use and enjoyment of their land, a public nuisance affects the collective rights of the community as a whole. *In re Lead Paint Litig.*, 191 N.J. 405, 924 A.2d 484, 503 (2007). Recognizing the alleged accumulation of PFOA emissions in the Mammoth PSD water supply, which serves the needs of an entire community, both parties agree that the claim addresses a grievance shared by community members exercising a common right. While the parties disagree over whether the VEA has standing to maintain this action, they are aligned regarding the public nature of the underlying nuisance.

**b) When a public nuisance is identified, it may only be addresses by public authorities unless a private plaintiff establishes standing by demonstrating a "special injury."**

The identification of a public nuisance does not mean that the VEA inherently has standing to bring such a claim. A non-governmental entity, such as the VEA, or a private citizen, is allowed to bring public nuisance claims only if it can prove it has a "special injury" that differentiates it from the general public. *See Ariz. Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913) (affirming that a private individual can sue for injunctive relief for a public nuisance if they can show they suffered a special injury not shared by the public, even if the harm is also a public wrong). In the public nuisance context, a "special injury" is an injury different from those "directly arising from the common right." *In re Leading Paint Litig.*, 191 N.J. 405, 924 A.2d 484, 503 (2007) *Rhodes v. E.I. de Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 769 (S.D. W. Va. 2009).

The harm suffered must be of a different kind, not merely in degree, from that suffered by other persons exercising the same public right. Restatements (Second) of Torts § 821C cmt. b (A.L.I 1979). It is not enough that the individual has suffered the same kind of harm or interference to a greater extent or degree. *Id.* A harm that is different in kind refers to a qualitatively different type of injury that is not shared by the general public. Conversely, a harm that differs in degree uses quantitative measurements to gauge how members of the public are experiencing varying levels of the same harm. A harm that is only different in degree is insufficient to meet the "special injury" requirement in public nuisance cases. Thus, the VEA was tasked to show how BlueSky's PFOA air emissions created a "special injury" that others, such as nearby farmers, do not share.

To determine whether the VEA meets the "special injury" requirement, the relevant comparative population must be designated. The relevant comparative population is "the community seeking to exercise the same public right as the plaintiff." *Rhodes v. E.I. du Pont de*

*Nemours & Co.*, 657 F. Supp. 2d 751, 769 (S.D. W. Va. 2009); Restatement (Second) or Torts § 821C cmt, b (A.L.I. 1979). When an entire class of people within the relevant comparative population, such as all municipal water customers, suffers the same interference, a single plaintiff within that class cannot claim a special injury. *Rhodes*, 657 F. Supp. 2d at 770. As seen in *Rhodes*, the relevant comparative population was the population of Parkersburg Water District (PWD) customers attempting to exercise their public right to a clean municipal water supply contaminated by PFOA air emissions. *Id.* at 769. The two alleged "special injuries" in *Rhodes* were the "PFOA contamination of their properties and bodies" and the "increased risk of disease." *Id.* The *Rhodes* court found the plaintiffs did not have standing to bring a public nuisance claim because PFOA contamination alone is not an injury, and all individuals who consumed PWD water suffered a significantly increased risk of disease. *Id.* at 769-70. In this instance, the district court erred by improperly designating the relevant comparative population. Comparing the VEA's vegetable garden injury to a resident's drinking water injury is a false equivalence. Adjusting the relevant comparative population to include the residents who drink the water and exercise the right to use the land for agricultural purposes would lead to the same outcome as *Rhodes* because the alleged injury would not be distinguishable from others.

The VEA claims it can maintain a public nuisance claim on behalf of the public due to the contamination from PFOA air emissions landing on its farm and education center, which lends itself to a "special injury." However, the VEA has discredited its own argument by admitting the surrounding farms in Mammoth have similarly been injured by SkyLoop's PFOA air emissions landing on their property. The relevant comparative population should include residents who drink the water and the surrounding farms in Mammoth. By limiting its review to the VEA and its vegetable garden, the district court erred when granting the VEA standing to bring a public

nuisance claim. Even though the surrounding farms might not have an educational facility located on their property, they still face the same injuries to their food supply. The lack of an educational facility is not dispositive in determining the existence of a special injury. When using the land for agricultural purposes in the Mammoth region, the VEA is in the same position as the neighboring farmers. At best, the VEA can demonstrate that it experiences a greater degree of interference due to its proximity to the SkyLoop Plant. Satisfying one aspect of the kind and degree test outlined in the Restatement (Second) of Torts does not give the VEA standing to bring a public nuisance claim.

For the reasons stated above, the VEA cannot overcome the "special injury" requirement needed for standing in a public nuisance claim. Following the suit of other non-governmental entities that bring public nuisance claims, which lack the "special injury" requirement, this Court should reverse the district court's finding for standing.

## III. Air emissions of PFOAs are not a disposal under RCRA and do not satisfy the merits for an ISE claim.

Any PFOAs that have exited BlueSky's facility are airborne emissions that should be regulated by the Clean Air Act ("CAA") through the facility's Title V permit. Airborne emissions do not fit within the Resource Conservation and Recovery Act's ("RCRA") definition of a disposal and thus do not fall within RCRA's citizen suit provision. 42 U.S.C. § 6972(a)(1)(B). This court should reverse the district court's decision and instead follow the thorough reasoning of the 9th Circuit, which concluded that RCRA disposals do not encompass air emissions. *Ctr. for Cmty. Action & Envtl. Justice v. BNSF R. Co.*, 764 F.3d 1019, 1021 (9th Cir. 2014).

The 9th Circuit correctly evaluated the textual and legislative context of the statute to navigate RCRA's ambiguities and ultimately determine that direct air emissions do not qualify as a disposal. *Id*. Alternatively, the district court ruling focused solely on the "purpose" of RCRA. *Little Hocking*

*Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 966 (S.D. Ohio 2015). That circuit court concluded that because RCRA is a "remedial statute," it should be interpreted broadly and used by the courts to fill in legislative gaps. *Id*. This court should reverse the district court's findings and honor Congress' strategic, decades-long legislation involving air emissions and hazardous waste disposals. Any PFOA emissions from BlueSky's facility should be regulated through the Clean Air Act. Additionally, RCRA's citizen suit provision should not be used by the courts to leapfrog the proper legislative pathways for regulations and permits.

**a) The 9th Circuit was correct in determining that air-borne emissions do not fall within RCRA's definition of a disposal.**

Pollutants that are first emitted into the air, and then, in some cases, may fall onto land or water, are designed to be regulated by the Clean Air Act. On the other hand, RCRA is designed to cover hazardous waste that is first disposed of directly "onto land or water" and thereafter may contaminate the environment by entering the surrounding land, water, or air. 42 U.S.C. § 6903(3). The plain language of the statutes supports the 9th Circuit's conclusion that air-borne emissions do not fall under RCRA's definition of a disposal. Applying the 9th Circuit's reasoning to this case, BlueSky's emissions should be regulated by the Clean Air Act and not RCRA.

A textual analysis of RCRA's plain language sets the foundation for how to interpret the boundaries of RCRA's authority over PFOA emissions. RCRA's citizen-suit provision authorizes private persons to only sue "any person ... 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). In this case, VEA has argued that BlueSky's emissions should fall within this language as a "disposal." However, the statute defines a "disposal" as a "discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on

any land or water so that [the waste] may enter the environment or be emitted into the air or discharged into any waters." 42 U.S.C. § 6903(3).

The 9th Circuit astutely noticed that the definition of a disposal explicitly leaves out "emitting" from its list of actions, even though "emitting" is used elsewhere in the statute. *Ctr. for Cmty. Action & Envtl. Justice v. BNSF R. Co.*, 764 F.3d 1019, 1024 (9th Cir. 2014). This 9th Circuit case involved diesel particulate from locomotives that was emitted into the air and then landed on nearby ground before being picked up by the wind and breathed in by local residents. *Id*. at 1021. Similarly to this case, the plaintiffs argued that the locomotive emissions should be classified as a disposal and fall within the scope of RCRA's provision suit. *Id*. However, the 9th Circuit disagreed. The court found two key pieces of textual evidence to support its ruling that air emissions do not fall within RCRA's citizen suit provision.

First, the court noted the exclusion of "emitting" from RCRA's definition of disposal. 42 U.S.C. § 6903(3). The Court utilized the statutory canon of *expressio unius est exclusio alterius* to support the proposition that when Congress creates a list, anything not included can be assumed to have been excluded purposefully. *Id*. at 1024. This assumption is strengthened by the fact that Congress used the term "emitting" in other sections of RCRA, thus supporting the argument that it was purposefully left out of the definition of disposal. *Id*. (citing *Barnhart v. Sigmon Coal Co.,* 534 U.S. 438, 452 (2002)).

Second, RCRA's definition explicitly sets up a temporal requirement that a "disposal" must "*first* be placed 'into or on any land or water' and *thereafter* be 'emitted into the air.' *Id*. at 1024. The 9th Circuit concludes that any other reading of the text would effectively require a rearranging of the statute's wording, which is something a court cannot do when interpreting statutes. *Id*. Under RCRA § 6903(3) as drafted by Congress, "'disposal' does not extend to emissions of solid waste

directly into the air." *Id*. at 1025. The PFOAs at issue in this case are being directly emitted into the air and should fall under the purview of the CAA, and not RCRA's citizen suit provision.

**b) The district court rulings in the 6th Circuit are an overreach of judicial power that is not supported by the statute's plain text or legislative history.**

When evaluating ambiguities in the law, a statute's purpose statement does not outweigh the plain language and legislative intent of the statute. The 6th Circuit's district court bases its argument against the 9th Circuit's interpretation of a "disposal" on the fact that "RCRA is a remedial statute that is to be interpreted broadly." *Id*. at 963; citing *Davis v. Sun Oil Co.*, 148 F.3d 606, 609 (6th Cir. 1998). However, the Supreme Court has been explicit that statutory interpretation should begin with the text of a statute, since the best persuasive evidence for the purpose of a statute is the words that the legislature used. *U.S. v. American Trucking Ass'ns*, 310 U.S. 534 (1940). More recently, the Supreme Court has again affirmed the importance of focusing on a statute's text so that individuals and corporations can understand the laws that bind them. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Although a statute's purpose may be a relevant factor, the district court erred in utilizing RCRA's purpose to go against the statute's plain text and legislative history.

The VEA incorrectly relies on the argument that RCRA's purpose of reducing hazardous waste presupposes that it should be "interpreted broadly" and used to fill in any perceived gaps in federal legislation. *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 963 (S.D. Ohio 2015); citing *Citizens Against Pollution v. Ohio Power Company*, 2006 WL 6870564 at *5. This assumption creates an overreach of judicial power into the realm of legislating and is unsupported by the plain text and legislative history of the statute. If this court and the VEA find that there are still ambiguities left after a textual analysis of RCRA, then those concerns can be resolved by looking at RCRA's legislative history.

The legislative history of the CAA and RCRA further supports the textual analysis that Congress did not intend for air emissions to be considered a disposal under RCRA. The CAA was passed in 1970, and then six years later, RCRA was passed to close the "last remaining loophole in environmental law … unregulated land disposal and discarded … hazardous waste." *Ctr. for Cmty. Action & Envtl. Justice v. BNSF R. Co.*, 764 F.3d 1019, 1026-29 (9th Cir. 2014). The only overlap between these two statutes was in 1984 when Congress added an amendment to RCRA that gave it governing power over air emissions from landfills. *Id*. at 1027-28. The 9th Circuit reasoned that this amendment highlighted that Congress did not intend RCRA to regulate air emissions, which is why the amendment was required to explicitly designate that authority to RCRA for the exception of landfill emissions. *Id*.

The 6th Circuit district court outlined this same history in *Little Hocking Water* and agreed with the 9th Circuit's analysis but erred in deciding that its case was factually distinguishable from *BNSF Railway*. *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 964-65 (S.D. Ohio 2015). In *Little Hocking Water*, PFOA particulates were released by DuPont's facility into the air and then landed on a nearby wellfield and contaminated the soil and water. *Id*. at 941. These facts are analogous to the diesel particulate matter in *BNSF Railway*, which was emitted from locomotives and landed on nearby land. The district court even admits that the 1984 amendment "makes clear that RCRA does not cover emissions that cause air pollution." *Id*. at 965. However, the court then makes an error when it delineates that when air pollution that lands onto the ground seeps into land or water, instead of being blown back into the air, RCRA should come back into play. *Id*.

The district court's attempt to skirt precedent by differentiating *Little Hocking Water* and *BNSF Railway* is unfounded, and the 9th Circuit's analysis should prevail. Arguing for a distinction

between the relevant facts in *Little Hocking Water* and *BNSF Railroad* goes against the plain text and legislative history of RCRA. The plain language says that RCRA covers waste that is disposed of onto land or water and then may be emitted into the air, and the legislative history supports that Congress only intended RCRA to cover air emissions directly from landfills. There is no evidence to support a valid differentiation between air emissions that touch down and then reenter the air versus air emissions that touch down and then seep into the land or water. In either case, the direct air emissions did not come from a landfill and therefore do not fall within the authority of RCRA's citizen suit provision. This distinction is the district court's attempt to utilize RCRA's purpose to fill in a perceived gap in legislation. Although the district court may wish that the PFOA emissions fall within RCRA's citizen suit provision, that is a concern that should be brought before the lawmakers, not the courts.

## IV. The plain language of *Winter* requires that plaintiffs, not third parties, face potential irreparable harm.

The language of the *Winter* test is clear and concise, considering just four simple factors. "That he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 374, 172 L.Ed.2d 249, 261 (2008). If consideration of non-movant parties or individuals were necessary, the *Winter* court would not have used such specific language when laying out these factors. Irreparable harm might factually occur to third parties or to some other ambiguous individual, but in a motion for preliminary injunction, this harm must be shown as affecting the movant only. The Supreme Court was deliberate in using this language, specifically choosing to state in three of the four factors that it is the plaintiff who is under examination. **He**, the plaintiff will succeed on the merits, **he** will suffer the irreparable harm, and the balance of equities tips in **his** favor. *Id*. (emphasis added). It is

only the final factor that moves consideration to a broader crowd than just the plaintiff. The structure of these factors is not accidental or written in an unclear, murky manner. Had the Supreme Court intended irreparable harm to non-movant parties, it would have chosen to write the factors differently.

**a) Public interest is a distinct factor separate from irreparable harm.**

Consideration of the public interest is not completely ignored but is instead its own separate factor under the *Winter* test. The four factors were deliberately written into distinct criteria that must each be shown to be independent of the others. "The irreparable-harm factor is about the individual interests of each movant. The public-interest factor is about the good of society as a whole. Both factors are components of the preliminary injunction test, but they are not interchangeable." *Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 463 (8th Cir. 2025). The 8th Circuit in *Beber* reversed the lower court's grant of a preliminary injunction specifically because it abused its discretion by conflating the two interests, precisely the error committed here. This is directly analogous to the case at hand, because while the general public (residents of Mammoth) may suffer some harm, plaintiff VEA has not shown that it will face any such harm itself or through its members. Its members have **all** ceased drinking the public water supply, and so any risk of irreparable harm does not exist. The court clearly erred in granting the preliminary injunction because it considered harm to parties that are not members of the VEA and were not before the court.

The correct questions that the court must ask are (1) will the movant face irreparable harm absent a preliminary injunction, and (2) is the injunction in the public interest? While the answer to the second question may be a resounding yes, the answer to the first question is still no. The district court essentially admitted this in finding that there was not enough evidence to show that

the VEA's members were likely to suffer irreparable harm, and only by erroneously conflating the two factors was the district court able to check the boxes of the *Winter* test. By allowing the VEA to rely on non-movant harm, the Supreme Court's *Winter* factors are extended well beyond their intended use and lose any functional purpose.

**b) The VEA is unable to demonstrate direct or even indirect harm to itself.**

The VEA has not successfully argued that it faces any harm, directly or indirectly, through the operation of BlueSky's facility. While plaintiffs in related but distinct *Winter* cases have been able to successfully argue that they are indirectly harmed through a third party, VEA has failed to make such a showing. The 9th Circuit allowed pollution, a direct harm to native fish species, to be irreparable harm to the plaintiff-movant, because loss of the fish species caused by the pollution would then harm the plaintiff's enjoyment of the areas affected by pollution. "Plaintiffs have shown irreparable harm to their own interests stemming from the irreparable harm to the listed species." *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 822 (9th Cir. 2018). While this might seem contrary to the distinctiveness of the individual factors, the harm being suffered was still that of the plaintiff, even if the pollution was only directly affecting the endangered species. But this remains a harm that must be distinctly shown as affecting the plaintiff. The harm was indirectly flowing through an intermediary.

Under our current circumstances, the VEA made no such argument to show how it was being indirectly or directly harmed by potential water contamination and thus suffering irreparable harm. It argued that it was suffering soil contamination, which is merely an economic harm that does not rise to the level needed to grant a preliminary injunction. Any changes the VEA made regarding food provision to the community were also voluntary decisions made from an abundance of caution, again not rising to the level of irreparable harm required for a preliminary injunction.

Because the VEA has failed to demonstrate that it is likely to suffer irreparable harm, the district court's preliminary injunction must be reversed.

## CONCLUSION

For the reasons stated above, the BlueSky respectfully requests that the judgment of the district court be reversed.

Respectfully Submitted,

Team 3

*Counsel for Appellee*
*BlueSky Hydrogen Enterprises*

**CERTIFICATE OF SERVICE**

Pursuant to *Official Rule* IV, *Team Members* representing BlueSky Hydrogen Enterprises 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. 3*