UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

C.A. No. 25-0682

VANDALIA ENVIRONMENTAL ALLIANCE,	)	
Appellant,	)	
-v.-	)	C.A. No. 25-0682
BLUESKY HYDROGEN ENTERPRISES,	)	
Appellee.	)	

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

BRIEF FOR THE APPELLANT

Team No. 22

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Jurisdictional Statement

The district court had proper jurisdiction over this case. The district court had original subject matter jurisdiction over the RCRA claim pursuant to 28 U.S.C. § 1331 because 42 U.S.C. § 6972 is a federal statute which creates a private cause of action. The District Court had supplemental jurisdiction over the public nuisance claim pursuant to 28 U.S.C. § 1367(a) because it arises out of the same case or controversy.

This Court has appellate jurisdiction over BlueSky's appeal of the preliminary injunction pursuant to 28 U.S.C. § 1294(1) because the Twelfth Circuit Court of Appeals embraces the Middle District of Vandalia, and the appeal concerns a final judgment entered by the District Court. The District Court's order is dispositive of all claims in this case.

This appeal was timely filed. The district court issued its final judgment granting VEA's preliminary injunction on November 24, 2025, and BlueSky filed its appeal of that judgment on December 1, 2025, within the 30-day appeal period. Fed. R. App. P. 4. This Court also has jurisdiction over VEA's cross appeal of the stay pending appeal pursuant to 28 U.S.C. § 1292(b) because the district court authorized an interlocutory appeal of that order.

Statement of the Issues Presented

1. Does *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023) mandate a stay of proceedings pending the appeal of a decision granting a preliminary injunction?
2. Did VEA suffer "special injury" sufficient to establish standing for a public nuisance claim against BlueSky's for its PFOA air emissions?
3. Is BlueSky's air emission of PFOA considered "disposal" under the RCRA?
4. Under the *Winter* test, does the "irreparable harm" prong consider harm to the public—rather than just the plaintiff—as evidence sufficient to grant a preliminary injunction?

Statement of the Case

Factual Background

BlueSky Hydrogen Enterprises ("BlueSky") is a hydrogen company that operates in the Appalachian Region, including Vandalia. R. at 4. BlueSky opened its SkyLoop Hydrogen Plant in Vandalia in January 2024. R. at 6. SkyLoop is a "waste-to-hydrogen" facility that converts traditional waste—like sewage, plastic, and chemicals—into usable hydrogen gas, an alternative energy source. R. at 4.

Although the waste-to-hydrogen refinement process is designed to reduce the environmental harm from landfills and fossil fuels, the process still produces air emissions. R. at 5–6. SkyLoop's air emissions contain carbon dioxide (CO_2), nitrogen oxides (NO_x), and particulate matter, despite being filtered and catalytically treated before exiting the facility's stacks. R. at 6. Perfluorooctanoic acid (PFOA) is one type of particulate matter emitted by the SkyLoop facility. R. at 7. PFOA is a harmful "forever chemical" that is linked to cancer, birth defects, liver problems, and other long-term health conditions. *Id.*

A test conducted under the Unregulated Contaminant Monitoring Rule ("UCMR") in December 2024 revealed a PFOA concentration of 3.9 ppt in the Mammoth, Vandalia water supply. R. at 7. For comparison, the Environmental Protection Agency (EPA) has recently designated the "Maximum Contaminant Level" of PFOA as 4.0 ppt and the "goal" for PFOA contamination as 0 ppt.[1] *Id.* However, there was no PFOA detected in the same water supply just one year prior. *Id.* The presence of PFOA in the Mammoth water supply coincided with the new SkyLoop facility, which opened in January 2024. R. at 6–7.

[1] These designations do not go into effect until 2029 but are still instructive when considering the severity of the PFOA contamination in Mammoth.

Upon further investigation, it was discovered that waste from one of SkyLoop's "primary waste feedstocks," a water treatment plant accepting industrial sludge, contains PFOA. R. at 7. SkyLoop is not required to remove the PFOA from the sludge at any stage of the process. R. at 8. Accordingly, when SkyLoop processes the sludge, the PFOA particulates are released into the air as a harmful byproduct. *Id.*

The PFOA particulates that SkyLoop releases goes on to affect the rest of the community. R. at 8. The Vandalia Environmental Alliance ("VEA") is a public interest organization based in Vandalia with many members in Mammoth. R. at 6. VEA owns a farm just 1.5 miles north of the SkyLoop facility. R. at 7. The wind carries airborne PFOA particles north where they settle on nearby land, including VEA's farm and the Mammoth Public Service District (PSD)'s wellfield, which serves as the municipality's water supply. R. at 8. The PFOA then leaches into the ground and contaminates the water supply. *Id.*

PFOA contamination is a serious environmental and health threat. BlueSky themselves admitted that drinking the contaminated water would harm human health. R. at 13. Mammoth PSD lacks the technology to remove PFOA from drinking water, and it would take about two years to install such a system. R. at 8. To the best of VEA's knowledge, VEA members in Mammoth have stopped drinking public water and have resorted to buying bottled water. *Id.* However, most Mammoth residents continue to drink the PFOA-contaminated water. *Id.*

VEA's farm suffered additional harm. As part of its mission, VEA donates locally grown food to local food banks and soup kitchens. R. at 9. VEA also runs an education program teaching community members how to start and maintain sustainable farms and gardens. R. at 7. However, because VEA is afraid to "unwittingly poison[]" the community with potentially deadly PFOA, VEA has since been forced to stop its donations and programs. R. at 9.

Procedural History

After discovering BlueSky's PFOA emissions, VEA sent BlueSky notice of its intent to sue. R. at 11. On June 30, 2025, after more than 90 days had passed since sending notice, VEA filed this suit against BlueSky in the Middle District of Vandalia to pursue two separate claims related to the PFOA emissions. *Id.*

VEA's first claim alleges that BlueSky's PFOA emissions and water contamination constitute a public nuisance. *Id.* VEA asserts that its food-donation and education programs being shut down by the PFOA contamination concerns gives rise to a "special injury" allowing VEA to bring suit under the public nuisance cause of action. *Id.*

VEA's second claim arises under 42 U.S.C. § 6972(a)(1)(B), a federal statute which permits citizen suits to enforce certain provisions of the Resource Conservation and Recovery Act ("RCRA"). R. at 10–11. For this claim, VEA alleges that SkyLoop's PFOA air emission is "disposal" which presents an "imminent and substantial endangerment" (ISE) to the environment and residents of Mammoth. R. at 11–12.

VEA seeks declaratory and injunctive relief. R. at 11. Shortly after bringing this suit, VEA filed a motion for a preliminary injunction against BlueSky and addressed all four *Winter* factors. *Id.* BlueSky opposed the motion. *Id.* BlueSky contested the "irreparable harm" and "likelihood of success on the merits" prongs and conceded the "public interest" and "balance of harm" prongs. *Id.*

On November 24, 2025, the district court granted VEA's motion for a preliminary injunction, siding with VEA on all contested matters. R. at 14–15. Notably, the district court held that (1) VEA has a "special injury" sufficient to confer standing to bring the public nuisance claim, (2) VEA is likely to succeed on the merits because BlueSky's air emissions are "disposal"

under the RCRA, and (3) there is a likelihood of irreparable harm to the residents of Mammoth sufficient to justify granting a preliminary injunction. R. at 15.

BlueSky appealed the district court's order on December 1, 2025. R. at 15. On the same day, BlueSky filed a motion to stay proceedings pending appeal, arguing that such a stay is mandatory under *Coinbase, Inc. v. Bielski*. *Id.* VEA opposed this motion. R. at 16. On December 8, 2025, the district court granted the stay, noting that it would not grant one if it did not believe one was mandatory under *Coinbase*. *Id.*

VEA requested an interlocutory appeal of the district court's stay pending appeal pursuant to 28 U.S.C. § 1292(b) because VEA has invested significant resources in discovery and expert witnesses for the trial scheduled for May 2026. R. at 16. The district court granted. *Id.* The Twelfth Circuit permitted the interlocutory cross appeal, consolidated VEA's and BlueSky's appeals, and issued an order setting forth the issues on appeal on December 29, 2025. *Id.*

Summary of the Argument

I. *Coinbase* does not mandate a stay of proceedings pending the appeal of a preliminary injunction because *Coinbase* does not extend beyond arbitrability and jurisdiction appeals. *Coinbase* mandates a stay only when an appeal concerns a foundational issue determining whether litigation may proceed in the district court at all. A preliminary injunction is neither foundational nor jurisdictional, it addresses only temporary relief to prevent imminent harm, not final liability or forum selection. Courts have recognized that preliminary injunctions are "limited and deferential" and do not extend to the underlying merits. Because the district court retains full jurisdiction over the core case, and the injunction affects only one provisional aspect, *Nken*'s discretionary factors govern, not *Coinbase*'s mandatory stay rule.

II. VEA has standing because it suffered special injury. A private party may bring a public nuisance claim if it suffers a "special injury" that is different in kind and degree from the harm experienced by the general public. VEA has satisfied this low threshold by demonstrating that it suffered injury different in kind when PFOA contaminated its land and soil, its garden, and its mission was undermined by the pollution. VEA demonstrated that it suffered a different degree of harm relative to the general public due to its proximity to the plant, the complete closure of its nonprofit program, and the out-of-pocket costs of confirming contamination on its property.

III. PFOA air emissions are "disposal" under the RCRA. The RCRA's definition of "disposal" leaves "discharge" and "deposit" undefined, and the ordinary meaning of those words includes air emissions. Therefore, the aerial emission of PFOA is "disposal." This interpretation is supported by case law and the RCRA's legislative history, and also gives effect to the RCRA's remedial purpose. Holding otherwise would produce absurd results which undermine the RCRA's remedial purpose.

IV. Courts can consider evidence of public harm in their irreparable harm analysis under the *Winter* test. The irreparable harm prong is interpreted more broadly in environmental cases because of the inherently far-reaching nature of environmental harms. The causes of action addressing environmental harm are likewise tailored to addressing the harm of all those injured. Courts must read the irreparable harm standard in light of the cause of action. Because both causes of action here—the RCRA and public nuisance—are enacted to address public harm, the irreparable harm analysis should consider public harm as well. *Winter* itself does not foreclose such a result. In fact, this rule is consistent with the Court's approach in *Winter*: the statute was

designed to remedy a narrow harm to the plaintiff, and thus irreparable harm was correctly construed to only consider the harm to the plaintiff in that *particular* case.

Standard of Review

On appeal, legal determinations must be reviewed *de novo*, while factual findings are reviewed for clear error. *Bufkin v. Collins*, 604 U.S. 369, 382 (2025). Since Issue 1 (mandatory stay) and Issue 2 (special injury) relate to whether agreed-upon facts meet a certain legal standard, those issues are legal determinations and warrant *de novo* review.

On the other hand, when reviewing district court determinations of whether a plaintiff is entitled to a preliminary injunction, courts only reverse when the lower court's decision constitutes an abuse of discretion. *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931–32 (1975). A district court abuses its discretion when it makes its decision based on an erroneous view of the law or a clearly erroneous assessment of the evidence. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Issue 3 (disposal) and Issue 4 (irreparable harm) relate to two prongs of the preliminary injunction standard and should be reviewed under the more deferential standard of an abuse of discretion.

Argument

I. *Coinbase* does not impose a mandatory stay of proceedings for appeals of preliminary injunctions.

Federal Rule of Appellate Procedure 4(a)(4) and the divestiture rule serve to prevent district and appellate courts from exercising concurrent control over the same case. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). Whether a stay is required during an appeal depends on whether the appeal concerns a foundational issue that divests the district court of jurisdiction, or a provisional issue that leaves the court's jurisdiction intact. Because a

preliminary injunction is a provisional remedy that does not reach the merits of the entire case, a stay is discretionary rather than mandatory.

Mandatory stays are reserved for specific contexts where the appeal challenges the very forum of the litigation, such as arbitration or federal officer removal. *See Coinbase*, 599 U.S. at 744 (2023); *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 271 (4th Cir. 2025). Outside of these narrow exceptions, the power to stay remains an "exercise of judicial discretion" to be applied on a case-by-case basis. *Nken v. Holder*, 556 U.S. 418, 433 (2009).

Here, the appeal of a preliminary injunction does not divest the district court of its control over the underlying litigation. Unlike the mandatory stay required in *Coinbase*, a preliminary injunction is limited in scope and does not determine whether the case may proceed in this forum. *See Griggs*, 459 U.S. at 58. Because the core merits remain with the district court, the discretionary *Nken* factors apply rather than the mandatory divestiture rule.

A. Under *Coinbase,* the motion to stay in this case is discretionary because the decision of whether to award a preliminary injunction does not influence other aspects of the case.

The district court granted BlueSky's motion to stay because it believed the stay was mandatory under *Coinbase*. However, a stay is not mandatory under these facts because only a specific aspect of the case is being appealed, unlike in *Coinbase*.

The divestiture rule aims to prevent district and appellate courts from simultaneously presiding over the same aspects of a single case. *Griggs*, 459 U.S. at 58. While a stay pending appeal is generally an exercise of judicial discretion, *Nken*, 556 U.S. at 433, a mandatory stay is required under *Coinbase* when an appeal concerns a "foundational" issue that determines whether the litigation may proceed in the district court at all. *Coinbase*, 599 U.S. at 741.

An appeal of a preliminary injunction does not trigger this mandatory divestiture. Because such an injunction is "limited and deferential" and "does not extend to the underlying merits of the case," it is a provisional remedy rather than a jurisdictional one. *See Am. Encore v. Fontes*, 152 F.4th 1097, 1109 (9th Cir. 2025). Accordingly, because the district court retains jurisdiction over the core merits, a stay remains a matter of judicial discretion under *Nken*.

This principle is exemplified by the Ninth Circuit's holding in *California ex rel. Harrison v. Express Scripts Inc*. 139 F.4th 763, 770 (9th Cir. 2025). The *Harrison* court held that an interlocutory appeal of a district court's remand order does not result in an automatic stay of litigation pending that appeal. *Id.* at 768. The court determined that *Coinbase*'s sole question was limited to cases within the arbitration context. *Id.*

Here, the preliminary injunction does not apply to the entirety of the case, and reviewing a preliminary injunction does not extend to the underlying merits of the case. *See Am. Encore*, 152 F.4th at 1109. The preliminary injunction in this case is merely stopping the air emissions of PFOA from the SkyLoop Hydrogen Plant while the merits of the case are being decided. R. at 11. Its purpose is to prevent further harm to the environment before the trial begins. It does not determine final liability or award permanent damages; instead, it provides only a temporary, provisional remedy to prevent harm during litigation. In *Coinbase*, the question before the Court was whether the case belonged in arbitration or litigation, which inherently impacts the remainder of the case. There is no such question in the present case.

Moreover, a preliminary injunction is not a "controlling question[s] of law." *Harrington v. Cracker Barrel Old Country Store Inc.*, 713 F. Supp.3d 568, 583–84 (D. Ariz. 2024). The *Harrington* court reasoned that *Coinbase* is limited to arbitration and jurisdiction questions because those were the only two examples cited to justify halting proceedings. *Id.* at 584–85.

Here, the preliminary injunction is a form of temporary relief that has no bearing on the final outcome or continuation of the case, unlike arbitration and personal jurisdiction.

Therefore, *Coinbase*'s reasoning should be limited, and as such, a mandatory stay is not required.

B. The reasoning in *Coinbase* and *Martinsville* does not apply here because the facts are sufficiently different.

This court has adopted *Martinsville*'s reasoning, but the reasoning does not control this case. *See Martinsville*, 128 F.4th at 268–70. The *Martinsville* Court held that an interlocutory appeal of a district court's remand order under the federal-officer removal statute results in an automatic stay of the remand order pending appeal. *Id.* at 269. A mandatory stay was imposed because the appeal remand order concerned whether the entire case may proceed or not. *Id.* However, a preliminary injunction does not determine whether a case may proceed; thus, this case differs from *Martinsville*. *See e.g., id.*

The fact that this Court has adopted the reasoning in *Martinsville* does not change the analysis. Under the *Griggs* principle, an appeal divests the district court of jurisdiction only over aspects of the case "involved in the appeal." *Griggs*, 459 U.S. at 58. Because a preliminary injunction does not decide final liability, only the likelihood of success, the underlying trial on the merits is a separate track that can proceed without interfering with appellate court review. Since the aspects of this case that are not being appealed can proceed, a mandatory stay is not warranted.

The policy reasons considered in *Coinbase* demonstrate why *Martinsville* reasoning does not apply here. *Coinbase*, 599 U.S. at 740. The Court in *Coinbase* granted a mandatory stay but limited its holding to cases involving only questions of arbitration for three reasons: (1) proceeding in district court would irreparably forfeit the core benefits of arbitration (efficiency,

reduced cost, limited discovery), *id.* at 741–42; (2) absent a stay, parties may be pressured to settle to avoid litigation they contractually agreed to avoid, *id.* at 742; and (3) under the *Griggs* divestiture rule, an interlocutory appeal on arbitrability divests the district court of control over the case because the entire action is "involved in the appeal," *id.* at 739–41.

These concerns do not exist here for several reasons. First, there are no arbitration benefits imputed here. Unlike an arbitration agreement, which is intended to bypass the court system entirely, a preliminary injunction is a standard procedural tool used in litigation. Denying a stay here does not "forfeit" a contractual right to avoid court; rather, the parties are already in their chosen forum. The VEA has already invested significant resources in discovery and expert witnesses for the trial scheduled for May 2026. R. at 16. A stay would harm efficiency by stopping trial proceedings in their tracks after significant investment has already been made. *Id.*

Second, there is no concern about unwarranted settlement pressure. In this case, BlueSky is not being forced to litigate a case it contracted to avoid; it is defending against alleged ongoing environmental harm. And because the preliminary injunction was granted to prevent the "disposal" of a "forever chemical" (PFOA), the pressure on the parties is driven by the imminence of health risks, not the mere cost of the legal process. R. at 7.

Lastly, the sole question of arbitration does not exist here. Hearing a preliminary injunction is about is to prevent further harm to the environment. This is legally distinct from the forum question that *Coinbase* sought to avoid. Not only is the subject matter here legally distinct, but applying a mandatory stay would also contradict long-standing principles regarding judicial review. A stay is an "intrusion into the ordinary processes of administration and judicial review" and accordingly "is not a matter of right, even if irreparable injury might otherwise result." *Nken*, 556 U.S. at 427. An expansive interpretation of the "divestiture rule" is at odds with longstanding

Supreme Court precedent that stays are highly discretionary. *Id.* at 434. *Nken* was a landmark case that clarified the discretionary nature of stays. If *Coinbase* effectively overruled *Nken* by making all stays mandatory, the Court would have said so in *Coinbase*. It did not. Therefore, the Court intended for Coinbase to be limited in its application.

This Court should find that *Martinsville* and *Coinbase* are inapplicable here and exercise its discretionary power to deny the stay.

II. VEA has a special injury sufficient to confer standing to bring its public nuisance claim because its injury is different from that of the general public.

In the State of Vandalia, a public nuisance is defined as "an unreasonable interference with a right common to the general public." Restatement (Second) of Torts § 821B(1) (A.L.I. 1979). Usually, state or local governments bring public nuisance claims. However, non-governmental entities or private citizens can bring a public nuisance claim if they have "special injury" that differentiates them from the general public. *See Ariz. Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913).

A. VEA has a special injury because it is different in kind and degree.

A "special injury" must be different in degree and kind. *In re Lead Paint Litig.*, 924 A.2d 484, 503 (N.J. 2007) (explaining that a special injury in the public nuisance context is an injury different from those "directly arising from the common right"). A special injury must be suffered to a greater extent or degree than, and be distinct from the general public. Restatement (Second) of Torts § 821C(1) (A.L.I. 1979). This threshold requirement is a low bar. *Chelan Basin Conservancy v. GBI Holding Co.*, 413 P.3d 549, 560–61 (Wash. 2018) (explaining that "an injury to the aesthetic appeal and environment of an area is sufficient to support standing if the plaintiff establishes that he or she uses that area for recreational purposes.").

Here, VEA has met the low bar. VEA has suffered a special injury distinct from that of the general public because it interfered with VEA's use and enjoyment of its land. And PFOA caused chemical contamination to VEA's soil. Accordingly, VEA has standing in its public nuisance claim.

1. VEA's injury is different in kind from the harm to the general public.

VEA's injury is different in kind because their land and soil were contaminated, their garden was damaged by PFOA, and their mission was undermined by the pollution.

The interference with the enjoyment and value of private property rights is a special injury that justifies a private action. *Surfside v. Cnty. Line Land Co.*, 340 So. 2d 1287, 1289 (Fla. Dist. Ct. App. 1977). By showing their unique environments and specific business uses, plaintiffs can move the injury beyond a general environmental concern shared by the public to demonstrate an injury that is different in kind. *Corradetti v. Sanitary Landfill, Inc.*, 912 F. Supp. 2d 156, 163 (D.N.J. 2012) (finding that property owners whose drinking water was contaminated by a neighboring landfill satisfied the special injury requirement).

Here, the general public is made up of Mammoth residents who exercise the public right to clean drinking water, not other farms in the area. VEA's property damage constitutes a "special injury" compared to a standard resident. Property owners have a right to use their property in an ordinary way, and VEA was using its land to grow crops for community food banks and soup kitchens. R. at 9. However, when private testing confirmed PFOA was detected in VEA's soil and property, VEA ceased these operations. R. at 9, 14.

Unlike the general public, VEA sells farm-grown food to local community food banks and soup kitchens and has a specific mission to "protec[t] the State's natural environment . . . and to encourage and educate others on how to protect their State and live more sustainably." R. at 7.

The contamination undermines VEA's mission to protect the environment and threatens the goodwill the organization has built with the community through its agricultural programs. Id. As a result, VEA cannot use its land in the ordinary way it had been using it.

In addition, VEA members, who previously enjoyed visiting the farm several times a year for educational purposes, now face a property the district court found to have suffered "special injury" regarding its vegetable garden and loss of property value. R. at 16. Thus, BlueSky's nuisance interferes with VEA's enjoyment and value of their property because they cannot use their land to serve the community, and the presence of PFOA has decreased their property's value.

Therefore, VEA's public nuisance is different in kind than the general public.

2. VEA's injury is different in degree from the harm to the general public.

VEA suffered a greater degree of harm relative to the general public due to its proximity to the plant, the complete closure of its nonprofit program, and the out-of-pocket costs of confirming contamination on its property.

Interference with the enjoyment and value of private property constitutes a "special injury" justifying a private action for public nuisance. *Surfside*, 340 So. 2d at 1289. The court held that a land company had standing to enjoin the operation of a municipal dump that emitted foul odors and attracted vermin, as these conditions rendered its adjacent property ineligible for FHA mortgage insurance. *Id.* The FHA administrator specifically deemed the proposed housing development ineligible "because of the subject property's close proximity to the Surfside dump." *Id.* at 1288. The court reasoned that the "interference with the enjoyment and value of private property rights is a special injury" that allows a private individual to maintain a suit. *Id.* at 1289. Because the dump's operation directly interfered with the land company's specific "use and value

of the subject property," the court found the standing requirement was satisfied despite the broader impact on the surrounding neighborhood. *Id.*

Here, VEA's property is located a mere 1.5 miles from the SkyLoop facility. R. at 7–8. Because it is directly downwind (north) of the plant, the concentration of PFOA in their soil may be higher than PFOA levels to which the general public is exposed to through municipal water. *Id.* VEA was injured and, as a result, stopped providing food grown on the farm to local community food banks and soup kitchens because it did not want to "unwittingly poison those who ate the food with PFOA." R. at 9. Additionally, considering that PFOA is a forever chemical, having more PFOA in VEA's land will cause it to suffer more damaging and lasting effects compared to property that is further away.

Moreover, compared to the general public, VEA had to take a more proactive approach to protect its interests by testing its land for PFOA. R. at 14. These private tests impose a quantifiable economic burden that the average resident or member of the public does not bear. The results of this private inspection created a unique "injury of knowledge" that fundamentally altered the property's value. The harm is amplified because the very data they paid for has rendered their primary output (locally grown food) a potential liability, effectively nullifying the property's utility. Likewise, the district court noted that VEA's property damage was a specific injury to the land itself, establishing standing. R. at 15. This suggests a degree of harm from forever chemicals that may require expensive, long-term soil remediation, which a typical resident consuming the municipal water does not face. Therefore, VEA's injury is different in degree from that of the general public.

B. BlueSky's contrary arguments that VEA's injury is purely public in character and common amongst the public are unpersuasive.

VEA has standing to bring a public nuisance claim because it suffered a particular, direct,

and substantial property injury constituting an injury different in kind because PFOA was found on the land and inflicts property damage and loss of value. And VEA's injury was special and peculiar to the public; they suffered an injury different in degree because PFOA undermines VEA's purpose, which is different from the public and other farmers.

1. BlueSky's argument to refute that VEA's injury is purely public in character is unpersuasive because a particular, direct, and substantial injury to property constitutes a special injury different in kind.

A particular, direct, and substantial property infringement on special rights constitutes a special injury different in kind. *Bouquet v. Hackensack Water Co.*, 101 A. 379, 379 (N.J. Ct. Err. & App. 1917). Although *Bouquet* restricts recovery for the loss of "purely public character" rights, it affirms that a private action under special injury remains robust when a nuisance inflicts a "particular, direct, and substantial injury" upon an owner's specific property interests. *Id.*

Here, VEA's injury was particular because it damaged VEA's garden, distinguishing it from the general public's concerns regarding drinking water. R. at 15. Next, it was a direct injury because PFOA was deposited on VEA's land, as private testing confirmed. R. at 13–14. Lastly, the injury was substantial because VEA had to cease its primary activity of donating locally grown food to food banks and soup kitchens out of concern for community health. R. at 9. Additionally, PFOA is a forever chemical that is persistent and does not readily break down in the environment, meaning the injury to the soil is enduring rather than temporary. R. at 15.

Therefore, this Court is compelled to find that VEA's injury is different in kind.

2. BlueSky's argument that because other people suffered a similar injury does not make VEA's injury special is unpersuasive because injury to private property is inherently special.

Just because numerous people have suffered similar does not mean the injury is no longer "special." *Sullivan v. American Mfg. Co.*, 33 F.2d 690, 692 (4th Cir. 1929). The court held that a

private individual could maintain an action for a public nuisance when a factory's emissions depreciated her property value and injured her health. *Id.* at 695. It reasoned injury to an individual's private property or health is inherently **"**special and peculiar**"** and does not become "common or public" simply because of "numerous . . . cases of similar damage arising from the same cause." *Id.* at 692 (reasoning that a private wrong—damage to an individual's land or body—does not merge with a public wrong just because many people are affected).

VEA's injury to its property is inherently special and peculiar, regardless of whether there are numerous other cases arising from the same nuisance. Here, the general public of Mammoth does not share the communal assets of VEA's garden or its non-profit food donation. R. at 9, 11. Even if a small group of farmers were affected, the harm remains "special" if it is peculiar to the plaintiff in a way not shared by the community at large. While other farms are commercial, the VEA uses its land for educational outreach and community nutrition. R. at 7. Unlike the public and other farmers, VEA used its property to carry out its mission to "protec[t] the State's natural environment…and to encourage and educate others on how to protect their State and live more sustainably." R. at 7. However, the PFOA contamination caused VEA to cease "providing food to the community food banks and soup kitchens" and to its education center. R. at 9, 11. This constitutes a different degree of injury than that suffered by others.

Accordingly, BlueSky's argument cannot demonstrate that VEA has not suffered a special injury because they have satisfied the requirements by showing their injury is different in kind and degree.

III. VEA is likely to succeed on the merits of its RCRA ISE claim because BlueSky's PFOA air emission constitutes "disposal" under the RCRA.

VEA is likely to succeed on the merits of its RCRA claim. BlueSky does not contest the fact that PFOA particulate matter qualifies as "solid waste" under the RCRA. Therefore, for VEA

to have a likelihood of success on the merits, VEA must only show that PFOA air emissions are considered "disposal" of solid waste under the RCRA.

Although the RCRA's definition of "disposal" leaves many terms undefined, the ordinary meaning of the definition supports the lower court's finding that "disposal" includes PFOA air emissions. Such a conclusion is supported by existing case law and is consistent with the RCRA's legislative history. Finally, because the RCRA is a remedial statute intended to close "loopholes" in environmental law, a liberal reading of its provisions is appropriate to give effect to the Act of Congress. Therefore, the district court did not abuse its discretion by determining that VEA had a likelihood of success on the merits.

A. The RCRA's definition of "disposal" must be liberally construed to include PFOA particulate emissions.

PFOA air emissions are "disposal" under the RCRA. Turning first to the controlling statutory definition, the RCRA defines disposal as "the **discharge**, **deposit**, injection, dumping, spilling, leaking, or placing" of solid waste "into or on any land or water" so that the waste may enter the environment, "including ground waters." 42 U.S.C. § 6903(3) (emphasis added). The relevant terms from the RCRA's definition are "discharge" and "deposit." However, because the RCRA leaves these key terms undefined, they must be given their plain, ordinary meaning. *Van Buren v. United States*, 593 U.S. 374, 387 (2021).

1. The plain meaning of "disposal" under the RCRA includes particulate emissions which eventually settle onto the land.

Merriam-Webster defines "deposit" as "to let fall" or "to lay down; place." *Deposit*, Merriam-Webster (Jan. 28, 2026), https://www.merriam-webster.com/dictionary/deposit. The latter definition ("place") cannot be the correct meaning under the canon of surplusage because the RCRA definition already includes "placing." Antonin Scalia & Bryan A. Garner, *Reading*

Law: The Interpretation of Legal Texts 174 (2012) (stating that, if at all possible, every word of a statute must be given effect). In order to give "deposit" a distinct effect from "placing," then, the other definition must be adopted. Therefore, the ordinary meaning of "deposit" in the context of the RCRA is "to let fall." *Deposit*, Merriam-Webster, *supra*.

Merriam-Webster defines "discharge" as "to give outlet or vent to; **emit**." *Discharge*, Merriam-Webster (Feb. 2, 2026), https://www.merriam-webster.com/dictionary/discharge (emphasis added). The dictionary further provides the following illustrative example: "vehicles *discharging* exhaust fumes." *Id.* (emphasis in original). Thus, the ordinary meaning of "discharge" is "to emit."

This broad usage of the word "discharge" is consistent with its use in another environmental statute: the Clean Water Act (CWA), 33 U.S.C. § 1362. The CWA defines discharge as "any addition of any pollutant" into the environment. *Id.* § 1362(12)(A). The CWA's definition of discharge can be interpreted as consistent with the RCRA's usage for several reasons. First, the CWA and RCRA are both remedial environmental protection statutes. Second, and more importantly, the CWA and RCRA already incorporate other definitions from each other. *See, e.g., id.* § 1362(6) (incorporating the RCRA's definition of "solid waste" into the CWA's definition of "pollutant"). Accordingly, the two acts may be read as consistent with one another.

The plain meaning of the RCRA's definition of "disposal" includes BlueSky's emission of PFOA. BlueSky is *emitting* (i.e., discharging) PFOA particles from SkyLoop's stacks, thereby *letting them fall* (i.e., depositing them) onto land north of the SkyLoop facility. Substituting the definitions above: BlueSky is discharging PFOA particles into the air and depositing them onto the land north of the SkyLoop facility. Therefore, by the RCRA's plain language, BlueSky's aerial emission of PFOA is "disposal." *See Citizens Against Pollution v. Ohio Power Co.*, 2006

WL 6870564 at *5 (S.D. Ohio July 13, 2006) (reasoning that air emissions which settle onto land satisfy the "into or on land" requirement of the RCRA's disposal definition).

Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co. arrived at this same conclusion under nearly identical factual circumstances. 91 F. Supp. 3d 940, 965 (S.D. Ohio 2015). In *Little Hocking*, a Teflon manufacturer released PFOA into the environment via air emission, water disposal, and land dumping. *Id.* at 947. The airborne chemicals traveled downwind, deposited on land, and leaked into underground wells, contaminating the water. *Id.* at 949. The *Little Hocking* court held that PFOA air emissions were "disposal" under the statute, relying in part on the RCRA's remedial nature. *Id.* at 963–65.

2. PFOA water contamination is exactly the type of environmental harm that the RCRA was enacted to eliminate.

PFOA water contamination falls directly within the remedial purpose of the RCRA. Congress passed the RCRA to "eliminate the last remaining loophole in environmental law." *Ctr. for Community Action and Envtl. Just. v. BNSF R. Co.*, 764 F.3d 1019, 1026 (9th Cir. 2014). As a remedial statute, the RCRA must be "construed broadly to effectuate its purposes." *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967); *accord. Davis v. Sun Oil Co.*, 148 F.3d 606, 609 (6th Cir. 1998) (noting the RCRA's remedial nature and interpreting it broadly). The essence of the RCRA's remedial purpose was "to confer upon the courts the authority to eliminate any risks posed by toxic waste," and this Court's interpretation must give effect to that purpose. *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 399 F.3d 248, 260 (3d Cir. 2005).

The RCRA's legislative history expressly demonstrates an intent to prevent particulate air emissions. The House Report for the RCRA states that:

> the federal government is spending billions of dollars to remove pollutants from the **air and water**, only to dispose of such pollutants on the land in an environmentally unsound manner. The existing methods of land disposal often result in **air**

> **pollution**, subsurface leachate and surface run-off, which affect **air and water** quality. [The RCRA] will eliminate this problem and permit the environmental laws to function in a **coordinated and effective** way.

H.R. Rep. No. 94-1491, Part I, at 4 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6238, 6241–42 (emphasis added). When enacting the RCRA, Congress was concerned with preventing both water *and air* pollution by eliminating "the last remaining loophole in environmental law," thereby allowing the environmental laws to function in an "effective way." *Id.* at 3, *reprinted in* 1976 U.S.C.C.A.N. at 6241–42.

Furthermore, Congress "expressed a special concern with waste that was burned." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1050 (9th Cir. 2004) (Paez, J., concurring in part, dissenting in part). Emissions from burned waste are strikingly similar to BlueSky's air emissions via SkyLoop's stacks. Given Congress's concern with air and water pollution while drafting the RCRA, it would be manifestly unreasonable to hold that "Congress left an intentional regulatory gap over . . . aerial emissions" of PFOA particles. *Little Hocking*, 91 F. Supp. 3d at 965.

Therefore, under the language and remedial purpose of the RCRA, BlueSky's aerial emission of PFOAs constitutes "disposal."

B. All arguments to the contrary are unpersuasive.

Any arguments that BlueSky's activities do not fall within the RCRA necessarily fail. First, the Ninth Circuit's reasoning in *BNSF*, which BlueSky urged the lower court to adopt, does not change the result. Second, holding that PFOA air emissions are not "disposal" produces absurd results that are inconsistent with the RCRA's purpose.

BNSF does not change the result of this case. In *BNSF*, a railway company emitted diesel particulate matter into the air, which then fell onto the land, was swept airborne by the wind, and then harmed people who later inhaled the airborne particles. *BNSF*, 764 F.3d at 1021–22. The

harm being contemplated in *BNSF* was not long-term water pollution caused by the disposal of solid waste, as it the case here—instead, *BNSF*'s core harm was inhalation of airborne particles which were aerially emitted, temporarily settled onto the ground, and were made airborne again by the wind. *Id.* Accordingly, *BNSF*'s facts do not fall within the type of harm that the RCRA was enacted to remedy. The present case, however, is *exactly* what the RCRA was meant to remedy. BlueSky is contaminating groundwater wells and local farms with PFOA, and that is the harm being litigated—not the intermediate step of air pollution.

Furthermore, the *BNSF* court did not engage with the same arguments presented in this case. *BNSF*'s conclusion was based on reasoning that "disposal" requires a particular sequence of events: (1) the waste is first disposed of onto land, and (2) the waste is either emitted into the air or discharged into groundwater. *See BNSF*, 764 F.3d at 1024. Such a reading of the RCRA is not accurate. *See Little Hocking*, 91 F. Supp. 3d at 965–66 (disagreeing with the Ninth Circuit's sequential interpretation of the RCRA's disposal definition). However, even under *BNSF*'s sequential framework, VEA prevails in this case. As demonstrated by the plain meaning of the statute, BlueSky (1) discharged PFOA into the air which deposited on the land north of SkyLoop—i.e., disposed of it, and (2) the PFOA then entered the groundwater. Therefore, even under *BNSF*'s reasoning, BlueSky's activities are still "disposal" under the RCRA.

Second, holding that aerial emissions of solid waste, which then pollute ground water, are not "disposed" of under the RCRA would lead to absurd results. For illustration, such a rule would make it unlawful under the RCRA for a power plant to pipe coal ash slurry directly into a local pond, but it would be perfectly lawful release that *same* coal ash into the *same* pond by first emitting it from the plant's smokestacks—and the local citizens would have no cause of action under the RCRA.

If "air emissions" are not prohibited by the RCRA, then industrial actors are free to emit all kinds of harmful solid waste by discharging it from their smokestacks and letting gravity do the rest. This result is absurd. *Holy Trinity Church v. U.S.*, 143 U.S. 457, 460 (1892) ("If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity."). The mere fact that the contaminants entered the air *first*, before ultimately settling within the RCRA's "protected" areas, does not change the analysis. *See Little Hocking*, 91 F. Supp. 3d at 965–66.

Therefore, because BlueSky's PFOA air emissions are "disposal" under the RCRA, the lower court did not abuse its discretion by determining the VEA is likely to succeed on the merits of its RCRA ISE claim.

IV. The district court did not abuse its discretion in granting VEA's motion for a preliminary injunction because courts can consider harm to the public as evidence of irreparable harm under the *Winter* test.

To establish the necessity of a preliminary injunction, a plaintiff must prove all of the following elements: (1) the plaintiff is likely to succeed on the merits of their claim, (2) the plaintiff will likely suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in the plaintiff's favor, and (4) issuing an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The irreparable harm prong is at issue here.

The irreparable harm analysis necessarily includes consideration of harm to the public in environmental cases. While the language of the *Winter* framework suggests that the relevant inquiry is whether the plaintiff themselves suffered irreparable harm, a closer analysis of the causes of action and case law demonstrates that public harm may also be considered. There are three primary reasons why courts may factor public harm as evidence of irreparable harm: (1) the irreparable harm prong has been analyzed more broadly in environmental contexts, (2) the broad

purpose of the RCRA and public nuisance causes of action warrants using evidence of public harm, and (3) interpreting irreparable harm to include harm to the public is not foreclosed by *Winter*. Based on the above, the district court did not abuse its discretion in granting VEA's motion for a preliminary injunction. Thus, this Court should affirm.

A. The irreparable harm prong of the *Winter* test is analyzed more broadly in environmental contexts.

Courts have substantial discretion when exercising their power to award equitable relief. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 310, 313 (1982). One form of equitable relief courts may issue are preliminary injunctions. *See id.* To obtain a preliminary injunction, plaintiffs need to establish that irreparable harm is likely to occur in the absence of preliminary relief. *Winter*, 555 U.S. at 22. It is uncontested that plaintiffs can satisfy the irreparable harm prong by establishing irreparable harm to themselves. *Id.* at 20. But some courts interpret *Winter* to hold that irreparable harm can only be established by proving harm to the plaintiff. *See, e.g.*, *Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 462 (8th Cir. 2025); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 818, 822 (9th Cir. 2018).

However, one case cannot be interpreted to limit the court's equitable jurisdiction. Unless a statute explicitly, "or by necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542 (1987) (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)). To recognize the full scope of their jurisdiction, especially in environmental cases, courts consider the "public interest" when exercising equitable discretion. *Amoco*, 480 U.S. at 545 (referencing *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982)).

Utilizing their discretion, courts analyze the irreparable harm prong of the *Winter* test differently in environmental cases. *W. Va. Rivers Coal., Inc. v. Chemours Co. FC*, 793 F. Supp.

3d 790, 810 (S.D.W. Va. 2025). The nature of environmental harm is inherently "irreparable" because it "can seldom be adequately remedied by money damages and is often permanent or at least of long duration." *Amoco*, 480 U.S. at 545. Harm to the environment also tends to affect the broader public. *See, e.g.*, *United States v. Students Challenging Regul. Agency Procs.*, 412 U.S. 669, 687-88 (1973). The far-reaching nature of environmental injury has led multiple courts to consider evidence of public harm in their irreparable harm analysis. *See, e.g.*, *Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 781, 788 (4th Cir. 1991) (considering public harm of not having a facility to dispose of hazardous waste in irreparable harm analysis); *Chemours*, 793 F. Supp. 3d at 813–15 (discussing reasons why public harm should be considered in the irreparable harm analysis); *Courtland Co. v. Union Carbide Corp.*, No. 2:21-cv-00487, 2024 U.S. Dist. LEXIS 175780, at *14 (S.D.W. Va. Sep. 27, 2024) (stating that plaintiff must either establish harm to themselves or the public to satisfy the irreparable harm prong); *Justice v. Comm'r of Soc. Sec.*, No. MJM-24-1372, 2024 U.S. Dist. LEXIS 100547, at *6 (D. Md. June 6, 2024) (considering public harm of reduced Social Security payments in irreparable harm analysis).

Courts that adopt this approach and consider harm to the public as evidence of irreparable harm are not conflating the public interest and irreparable harm prongs of the *Winter* test. *Chemours*, 793 F. Supp. 3d at 814–15. The public interest prong analyzes how *issuing a preliminary injunction* will impact the public interest, while the irreparable harm analysis considers how *the polluter's actions* harm the public. *Chemours*, 793 F. Supp. 3d at 814–15 (describing the difference between the public interest and irreparable harm prongs as consideration of "post-injunction" effects and "pre-injunction" harm respectively). Considering public harm is further consistent with the general principle that parties can "invoke the general

public interest in support of their claim" when Congress has provided them with a cause of action. *Pub. Int. Rsch. Grp. v. Powell Duffryn Terminals*, 913 F.2d 64, 73 (3d Cir. 1990) (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)) .

Harm to the Mammoth community is appropriately used as evidence of irreparable harm because of the far-reaching impacts of BlueSky's pollution. The PFOA not only infiltrated the public water supply, but also deposited on the farmlands surrounding SkyLoop, contaminating the community's soil and crops. There is no workable solution to resolve the issue in a timely manner. Mammoth's Public Service District does not have the technology to remove the PFOAs from the water supply and cannot install one for at least two more years. In the meantime, Mammoth residents would be stuck drinking water contaminated with forever chemicals. Consistent with other environmental cases, the district court utilized its discretion to provide an adequate remedy and considered public harm when analyzing the irreparable harm prong.

B. The purpose of the RCRA and public nuisance claims warrants consideration of public harm in the irreparable harm analysis.

The prongs of the *Winter* test should be read in light of the alleged cause of action. *Maine People's All. v. Mallinckrodt, Inc.*, 471 F.3d 277, 296 (1st Cir. 2006) ("[The *Winter*] framework is inevitably colored by the nature of the case and the purposes of the underlying environmental statute."). How a cause of action is framed and the kind of conduct it prohibits especially influences how the irreparable harm prong is analyzed. *See Nat'l Wildlife Fed'n*, 886 F.3d at 818, 822. Courts have used their discretion in awarding equitable relief, like preliminary injunctions, to ensure the purpose of the statute is carried out. *Chemours*, 793 F. Supp. 3d at 815 (holding that irreparable harm may be satisfied by evidence of harm to the public as a result of contaminated water when the statute is attempting to protect against water pollution).

The RCRA primarily seeks to prevent harm to the public resulting from environmental pollution. 42 U.S.C. § 6972(a)(1)(B). By authorizing citizen suits, the statute allows any individual to sue any person who contributes to the "disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." *Id.* This expansive language, which focuses on the risk of endangering public health and the environment rather than actual harm to individual persons, suggests Congress intended to remedy harm to the general public. *See id.* Not only is the statute framed in expansive terms, but the legislative history also indicates Congress' intent to provide courts with broad authority to grant equitable relief to protect against environmental harm caused by hazardous waste. *See United States v. Price*, 688 F.2d 204, 213–14 (3d Cir. 1982) (citing H.R. Comm. Print No. 96-IFC 31, 96th Cong., 1st Sess. at 32 (1979)).

Read in light of the statute's broad purpose, the standard for irreparable harm is more lenient for violations under the RCRA. *Fairway Shoppes Joint Venture v. Dryclean U.S.A., Inc.*, No. 95-8521-CIV-HURLEY, 1996 U.S. Dist. LEXIS 22363, at *2–3 (S.D. Fla. July 31, 1996), *adopting Fairway Shoppes Joint Venture v. Dryclean U.S.A., Inc.*, No. 95-8521-CIV-HURLEY, 1996 U.S. Dist. LEXIS 22364, at *27–28 (S.D. Fla. Mar. 7, 1996) (Magistrate's Report and Recommendation) (holding that irreparable harm may be established by showing a threat of harm to public health or the environment).

The public nuisance cause of action also seeks to prevent harm to the public, including harm caused by environmental pollution. *See* Restatement (Second) of Torts § 821B(1) (A.L.I. 1979). A public nuisance is defined as "an unreasonable interference with a right common to the general public." *Id.* Conduct that significantly interferes with public health may constitute an unreasonable interference with a public right. *Id.* § 821B(2). Inherent in this language is the

notion of public harm. *Id.* § 821B. In fact, pollution only constitutes a public nuisance once enough members of the community are affected by the pollution. *Id.* cmt. g. As with the RCRA claim above, public nuisance claims can take the form of a citizen suit. *See* Restatement (Second) of Torts § 821C(2)(c) (A.L.I. 1979). Subject to special standing requirements, an individual can sue for a public nuisance "as a representative of the general public." *Id.* Thus, similar to the RCRA, courts should use a more lenient standard for irreparable harm that encompasses harm to the public for public nuisance actions. *Cf. Fairway*, 1996 U.S. Dist. LEXIS 22363, at *2–3, *adopting Fairway*, 1996 U.S. Dist. LEXIS 22364, at *27–28.

The district court used its discretion to carry out the purpose of the RCRA and public nuisance causes of action. PFOA is exactly the kind of hazardous waste the RCRA contemplates. And by BlueSky's own admission, the PFOA-contaminated water would cause harm to human health that substantially interferes with the public right of Mammoth residents. By enjoining BlueSky's PFOA emissions, the district court carried out Congress's intent to allow VEA to sue on behalf of Mammoth residents who are still drinking the contaminated water. Thus, this Court should uphold the district court's order granting VEA's motion for a preliminary injunction.

C. Interpreting the irreparable harm prong to include evidence of public harm is not foreclosed by *Winter*.

Winter specifically states that a "plaintiff seeking a preliminary injunction must establish . . . that he is likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Some argue that this language suggests irreparable harm is proven by providing evidence of harm to the plaintiff. *See id.* BlueSky goes as far as to say that *only* irreparable harm to the *plaintiff* warrants an injunction. R. at 13. But that is not accurate. Nothing in the *Winter* suggests that irreparable harm can never be established using other evidence of harm such as public harm. *Winter*, 555 U.S. at 20; *see also Chemours*, 793 F. Supp. 3d at 813.

Applying the approach of subsequent courts and reading the irreparable harm prong in light of the statute in *Winter* yields the same result the Court reached. The statute in *Winter*—the National Environmental Policy Act (NEPA)—supports a narrow interpretation of the irreparable harm prong, one requiring evidence of harm to the plaintiff. The NEPA imposes procedural requirements on federal agencies to prepare an environmental impact statement for "major [f]ederal actions significantly affecting the quality of the human environment." *Winter*, 555 U.S. at 7, 23; National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. § 4332.

The NEPA differs from the RCRA in two critical ways: (1) the NEPA does not allow individuals to sue on behalf of the general public via a citizen suit provision and (2) it does not have a substantive prohibition against actions that "significantly affect[] the quality of the human environment." 42 U.S.C. § 4332(c); *Chemours*, 793 F. Supp. 3d at 813. The statutory violation is not an action to remedy harm to the environment, but rather the failure to draft an impact statement. *Winter*, 555 U.S. at 23; 42 U.S.C. § 4332(c). Thus, the "harm" in relation to the statute is not harm to the environment that affects the general public, but harm to an individual resulting from the absence of the statement. *See Winter*, 555 U.S. at 23 ("Part of the harm NEPA attempts to prevent in requiring [a statement] is that, without one, there may be little if any information about prospective environmental harms and potential mitigating measures."); *Chemours*, 793 F. Supp. 3d at 813. Under the facts of *Winter*, it is appropriate to require evidence of individual harm to the plaintiff for the irreparable harm prong.

The RCRA compels a different result that *Winter* does not foreclose. At its core, the RCRA and public nuisance causes of action allow plaintiffs to sue on behalf of others in the community. But the NEPA does not have the same purpose of preventing environmental harm and protecting people from the effects of that harm. Instead, the NEPA merely seeks to promote

information sharing regarding the mitigation of environmental harm. The difference between statutes' purposes compels a different result. While the statute in *Winter* required evidence of harm to the plaintiff to establish irreparable harm, the causes of action alleged here warrants a more flexible interpretation—one that allows evidence of public harm to be considered.

In light of the deferential standard of review used for preliminary injunction determinations—abuse of discretion—this Court should uphold the district court's order granting VEA's motion for a preliminary injunction based on evidence of public harm. Individuals should not have to continue poisoning themselves to obtain injunctive relief. Had members of the VEA continued to drink the contaminated water, the irreparable harm prong would undoubtedly be met. Being proactive and taking steps to protect themselves from forever chemicals BlueSky emitted should not change the analysis for environmental cases like this one.

Conclusion

For the foregoing reasons, VEA respectfully requests that this Court affirms the lower court's grant of a preliminary injunction and reverse the lower court's stay of proceedings.

Respectfully submitted,

/s/Team No. 22
Team No. 22

Certificate of Service

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

Respectfully submitted,

/s/Team No. 22
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