C.A. NO. 25-0682

IN THE

UNITED STATES COURT OF APPEALS

FOR THE TWELFTH CIRCUIT

VANDALIA ENVIRONMENTAL ALLIANCE

Appellant,

v.

BLUESKY HYDROGEN ENTERPRISES

Appellee.

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

BRIEF OF THE APPELLANT

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JURISDICTIONAL STATEMENT

The United States District Court for the Middle District of Vandalia ("District Court") had jurisdiction as Appellant claims a federal question under the Resource Conservation and Recovery Act ("RCRA") under 42 U.S.C. § 6972(a)(1). R. at 10. Supplemental jurisdiction allows for other claims like state tort claims of public nuisance. R. at 9. The United States Court of Appeals for the 12th Circuit has jurisdiction under 28 U.S.C. § 1292(b). R. at 16. The Twelfth Circuit issued its order December 29, 2025. *Id*.

STATEMENT OF THE ISSUES PRESENTED

ISSUE 1: Whether the District Court correctly stayed is proceeding of the preliminary injunction when *Coinbase* has not been extended to preliminary injunctions;

ISSUE 2: Whether the VEA has a special injury to provide standing sufficient for a public nuisance claim when it suffered an injury unlike that of the Mammoth population at large;

ISSUE 3: Whether BlueSky's air emissions of PFOA constitutes "disposal" under RCRA when air emissions are disposed in the water and on the land of Mammoth; and

ISSUE 4: Whether irreparable harm occurs when a forever chemical exposes itself to the local community's drinking water and soil.

STATEMENT OF THE CASE

Statement of Facts

The State of Vandalia is in a member of the Appalachian Regional Clean Hydrogen Hub ("ARCH2") which is part of a larger scheme to have a national network of hydrogen infrastructure. R. at 3. Fossil fuels are the primary feedstock for ARCH2 which has twelve pending projects. *Id*.

BlueSky Hydrogen Enterprises ("BlueSky") is a company that has already established a for-profit hydrogen facility, SkyLoop Hydrogen Plant, in Vandalia. R. at 4. Many of BlueSky's investors are motivated to construct additional facilities for tax credit and federal subsidy purposes. *Id*. Furthering BlueSky's interest in Vandalia specifically is the State's reputation for having less stringent environmental regulations. *Id*. While the SkyLoop facility reduces landfill waste, its processes still leave room for air pollution to occur as evidenced by the facilities Title V Clean Air Act pollution regulation permit. R. at 5.

The Vandalia Environmental Alliance ("VEA") is a public interest group with members residing across Vandalia, including Mammoth, where SkyLoop is located. R. at 6. The VEA, a supporter of environmentally friendly alternatives, initially was in favor of the SkyLoop Plant coming to the community in 2024. R. at 7. This sentiment changed in March of 2025 when Mammoth Public Service District's ("PSD") testing results showed a PFOA level of 3.9 ppt in its water supply. *Id*. In 2023, one year prior to SkyLoop's arrival, the PFOA level was undetectable. *Id*. The Environmental Protection Agency ("EPA") has rolled out a Maximum Contaminant Level ("MCL") of 4 ppt for the forever chemical PFOA and a goal of 0 ppt. *Id*. MCL enforcement does not come into effect until 2029. *Id*.

As a result on reporting requirements, Vandalia's Department of Environmental Protection ("VDEP") obtained disclosures displaying SkyLoop's feedstocks holding PFOA. *Id*. SkyLoop is processing biosolids that are linked to a chemical company, Martel Chemical, which is known to have PFAS in its processes. *Id*. PFOA has built up over the past year in the water supply of greater Mammoth. R. at 8. Such water contamination is considered to have resulted from Martel's PFOA's making it through SkyLoop's emission process and consequentially being released into the air to the north. *Id*. VEA has a farm for education, food donation, and other

sustainable opportunities located 1.5 miles north of SkyLoop. R. at 7. Nearby are numerous other farm operations and the city's center. *Id*.

PSD will not have the technological infrastructure to remove PFOA from drinkable water in Mammoth for two more years. R. at 8. In addition to this imminent concern, PFOA is not regulated under SkyLoop's permit nor by the Clean Air Act. *Id*. Given this concern, all of VEA's members are bearing an additional cost by strictly consuming bottled water. *Id*. However, its members are unable to remedy the concern of PFOA air emissions impacting its soil and food products. *Id*. As a result, VEA's mission has been impacted, in part, by it halting its food distribution programs. R. at 9.

Procedural History

The VEA initiated suit against BlueSky on June 30, 2025, in District Court. R. at 11. This came shortly after VEA's notice of intent to sue period lapsed. *Id*. VEA's concern regarding PFOA emissions materialized with claims of public nuisance and a RCRA citizen suit. *Id*. Later, VEA filed a motion for a preliminary injunction relating to the PFOA emissions. *Id*. On November 24, 2025, the District Court found that VEA had standing under the *Winter* factors and granted VEA a preliminary injunction. R. at 14. As to VEA's public nuisance claim, the District Court found a "special injury" to establish standing. R. at 15. Similarly, the District Court held that VEA's RCRA claim was sufficient to constitute "disposal" as it relates to PFOA emissions. *Id*. Lastly, the Court found irreparable harm from PFOA for the citizens of Mammoth at large but not the VEA members who claimed to no longer drink the town's water. *Id*.

On appeal, BlueSky asked the District Court to vacate the preliminary injunction and filed a motion to stay. *Id*. On December 5, 2025, VEA asserted that a motion to stay does not apply to preliminary injunctions. R. at 16. On December 8, 2025, the motion to stay was granted

by the District Court. *Id*. VEA requested an interlocutory appeal for the stay order which was granted by the District Court. *Id*. The Court of Appeals for the 12th Circuit consolidated both VEA and BlueSky's appeals. *Id*.

SUMMARY OF THE ARGUMENT

BlueSky is not entitled to a stay of the District Court's proceedings during the appeal of the order granting the VEA's motion for a preliminary injunction. Under this Court's interpretation of *Coinbase v. Bielski*, the appeal has not divested the District Court of its control over the whole case. Further, discretionary factors counsel against a stay in this case and the balance of equities tips substantially against BlueSky.

The VEA has also established its right to sue BlueSky for public nuisance because the VEA suffered a "special injury." When comparing those seeking to exercise the same public rights, the VEA suffered qualitatively different harm as a result of BlueSky's pollution. Whereas the residents of Mammoth collectively experienced negative health implications from contaminated drinking water, the VEA additionally suffered damage to its farming operations. This special injury is sufficient to establish standing to bring a public nuisance claim.

Under RCRA, BlueSky's PFOA air emissions constitute "disposal." The statute examines where hazardous waste was placed in the environment instead of the way in which it was initially released. To read "disposal" to exclude airborne deposition would undermine legislative intent. Specifically, the regulatory gaps Congress sought to eliminate with the RCRA. Courts have consistently held air emissions that result in persistent and cumulative land or groundwater contamination constitute "disposal" under RCRA. BlueSky's emissions settled into soil and migrated into drinkable groundwater, placing this case squarely within RCRA's remedial reach.

The District Court correctly concluded the VEA satisfied the irreparable-harm requirement. As displayed here, ongoing contamination of public drinking water supply constitutes harm which cannot be remedied through delayed relief. In RCRA citizen suit actions, courts recognize that continued exposure to hazardous substances, specifically in groundwater, is irreparable by nature and warrants injunctive relief. BlueSky's ongoing PFOA emissions threaten a shared public resource, intensify over time, and expose the Mammoth community to a chemical that cannot be readily removed from the environment. Allowing contamination to continue during litigation would defeat RCRA's preventative design and allow the type of harm Congress empowered courts to stop.

ARGUMENT

This Court's review of all issues is *de novo*. Specifically, questions of law are to be reviewed *de novo* with no deference given to the District Courts holding of legal questions.

I. THE DISTRICT COURT INCORRECTLY STAYED ITS PROCEEDINGS PENDING THE APPEAL OF THE PRELIMINARY INJUNCTION UNDER *COINBASE*.

Central to the concept of automatic stay is the so-called *Griggs* principle. *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023). This principle dictates that an appeal "divests the district court of its control over those aspects of the case involved in the appeal." *Id.* (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). The United States Supreme Court has held the *Griggs* principle to mean that district courts must stay their proceedings whenever an "interlocutory appeal on arbitrability is ongoing." *Id.* at 740. This Court recently endorsed the reasoning of *City of Martinsville v. Express Scripts, Inc.*, a Fourth Circuit case. *Express Scripts* held that *Coinbase*'s automatic stay applies any time the "whole case is 'involved in the appeal.'" *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 270 (4th Cir. 2025).

Coinbase involved a class action lawsuit against a cryptocurrency platform. *Coinbase*, 599 U.S. at 739. Users of the platform alleged that Coinbase fraudulently transferred funds from the users' accounts and failed to replace them. *Id.* The platform filed a motion to compel arbitration, citing the arbitration clause contained within its User Agreement. *Id.* When the district court denied this motion, Coinbase filed an interlocutory appeal to the Ninth Circuit. *Id.* Both the district court and the Ninth Circuit declined to stay the underlying proceedings pending the appeal. *Id.* The Supreme Court based its subsequent decision on the fact that the appeal of the motion to compel arbitration was the "mirror image of the question presented on appeal." *Id.* at 741. The Court reasoned that it would "make[] no sense for trial to go forward while the court of

appeals cogitates on whether there should be one." *Id.* For these reasons, the Court required an automatic stay of the underlying proceedings under the *Griggs* principle. *Id.* at 747.

In *Express Scripts*, the City of Martinsville, Virginia, brought suit against several prescription drug companies, alleging public nuisance for their contribution to the opioid epidemic. *Express Scripts*, 128 F.4th at 268. The defendants twice removed the case to federal court. *Id.* When the district court granted Martinsville's second motion to remand, Express Scripts immediately appealed the remand order before the clerk could mail it to state court. *Id.* The Fourth Circuit Court of Appeals held that an automatic stay kicked in when Express Scripts filed its appeal. *Id.* at 272. This result was necessary, according to the Fourth Circuit, because a remand order is functionally equivalent to a motion to compel arbitration under *Coinbase* and the *Griggs* principle. *Id.* at 270. In both cases, "essentially the whole case is 'involved in the appeal.'" *Id.* (quoting *Coinbase*, 599 U.S. at 740). *Coinbase* and *Express Scripts* may appear broad at first glance, but they go no further than a strict application of the *Griggs* principle.

If an automatic stay is not appropriate in a given case, the court is left to use its discretion. *Nken v. Holder* establishes a four-factor test for discretionary stays. *Nken v. Holder*, 556 U.S. 418, 425–26 (2009). These factors are as follows:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 426 (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Regarding the first issue, the Supreme Court clarified in *Trump v. CASA* that courts are to ask whether a stay applicant "is likely to prevail on the merits of the issue before us, not whether he is likely to prevail on the merits of the underlying suit." *Trump v. CASA, Inc.*, 606 U.S. 831, 860 (2025). Without overturning the *Nken* factor test, *Trump* addressed the last three factors collectively as a "balance

of equities." *Id.* at 861. This is consistent with how the Supreme Court has approached the *Nken* factors in other recent cases as well. *See Ohio v. E.P.A.*, 603 U.S. 279, 292 (2024) (referring to "the latter three *Nken* factors" as a "ledger").

A. An automatic stay of the proceedings in this case is not required by *Coinbase* and *Express Scripts*.

The entire instant case is not on appeal—preliminary injunction is. In the underlying proceedings, the VEA asserts BlueSky is liable for the public nuisance of emitting harmful "forever chemicals" into the air and causing harm to the VEA and others. The VEA also seeks a preliminary injunction to protect itself from ongoing pollution during litigation. Unlike in *Coinbase* and *Express Scripts*, the whole case here does not rest on the fate of the appeal. The preliminary injunction has no bearing on whether the District Court may hear this case. Nor could it resolve the dispositive questions posed to the District Court regarding public nuisance.

Admittedly, the VEA's two objectives conjure up similar types of disputes, but this does not mean they are mirror images of one another. Both the motion for preliminary injunction and the underlying proceedings require the court to inquire into the pollution in this case and the soundness of the parties' claims. Their conceptual resemblance, however, does not render them legally coextensive. Protecting the VEA from BlueSky's continued pollution during litigation is not the same as finding BlueSky liable for public nuisance. Therefore, the *Griggs* principle does not automatically subject the underlying proceedings to a stay.

B. Assuming that an automatic stay is not appropriate here, this Court should use its discretion to reverse the stay.

The *Nken* factors weigh heavily against a stay in this case. Under the first factor, Bluesky fails to make a strong showing that it is likely to succeed on the merits, as explained in detail

below. Likewise, BlueSky fails the second factor because it introduced no evidence suggesting that it will experience irreparable harm in the absence of a stay. As for the third factor, the issuance of a stay would substantially injure the VEA because it would extend the period over which BlueSky's pollution causes harm. It would also substantially harm the public because of the continued buildup of contamination in the public water supply during extended litigation. For the same reasons, the public interest counsels against issuing a stay.

A discretionary stay would upset the balance of equities in this case. BlueSky has already conceded that the balance of harm weighs in favor of the VEA in the preliminary injunction context. So too does that balance tip in favor of the VEA in the stay context. The VEA's harm includes serious, tangible interference with its operations and its members' health. On the other side of the ledger, BlueSky would suffer merely financial loss. Even if that financial loss has downstream economic impacts, BlueSky's potential harm is outweighed by that of the VEA. This Court should therefore hold that no stay is appropriate in this case.

II. THE VEA HAS SUFFERED A SPECIAL INJURY SUFFICIENT TO GIVE IT STANDING TO BRING ITS PUBLIC NUISANCE CLAIM FOR APPELLEE'S PFOA AIR EMISSIONS.

To bring a common law public nuisance action, a plaintiff must show that he has suffered a special injury. Restatement (Second) of Torts § 821C cmt. b, (1979). That is, the plaintiff must have "suffered harm of a different kind from that suffered by other persons exercising the same public right." *Id.* A difference merely in degree of harm is not sufficient. *Id.* The Restatement further indicates that harm to land, for example, is typically a special injury. *Id.* at cmt. d. In analyzing this difference, courts ordinarily first identify the "relevant comparative population." *See Rhodes v. E.I. du Pont de Nemours and Co.*, 657 F. Supp. 2d 751, 769 (S.D. W. Va. 2009). They then pit the plaintiff's injury against that of "the community seeking to exercise the same

public right as the plaintiff." *Id.* But despite the differences in injury, the plaintiff's harm must have originated from the same source as that of the public. *Reudy v. Clear Channel Outdoor, Inc.*, 356 Fed.Appx. 2, 4 (9th Cir. 2009). Black's Law Dictionary defines a public right as "a right belonging to all citizens and usu[ally] vested in and exercised by a public office or a political entity." Right, *Black's Law Dictionary* (12th ed. 2024).

According to the Restatement, the rationale for the special injury requirement is twofold. First, it takes heed of "the difficulty or impossibility of drawing any satisfactory line for each public nuisance at some point in the varying gradations of degree." Restatement (Second) of Torts § 821C cmt. b (1979). Additionally, the requirement seeks to avoid excessive private litigation when public officials could take action to remedy interferences with public rights. *Id.*

In *Arizona Copper Co. v. Gillespie*, the United States Supreme Court held that the owner of a riverside property suffered a special injury sufficient to bring a public nuisance claim. *Arizona Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913). When the appellant polluted the Gila River with waste from its mining operations, the material contaminated the appellee's downstream irrigation system and harmed his crops. *Id.* at 52–53. However, other riverside landowners who conducted similar operations in the same valley were similarly harmed by the contamination. *Id.* at 52. In fact, the Court notes that this segment of the Gila River supported a "large agricultural community" which was "dependent upon irrigation." *Id.* Still, the Court found that the negative impact on the appellee's "enjoyment and value of his property rights as a riparian owner and as an individual user of the water for purposes of irrigation" was a special injury. *Id.* at 57.

The United States District Court for the Southern District of West Virginia in *Rhodes v. E.I. du Pont de Nemours and Co.* declined to find a special injury when the plaintiffs alleged that

chemicals in public drinking water caused "contamination of their properties and bodies." *Rhodes*, 657 F. Supp. 2d at 769. On appeal, the Fourth Circuit Court of Appeals affirmed the district court's ruling as to this issue. *Rhodes v. E.I. du Pont de Nemours and Co.*, 636 F.3d 88, 98 (4th Cir. 2011). The district court compared the plaintiffs' injuries to those of other "customers attempting to exercise their public right to a clean municipal water supply." *Rhodes*, 657 F. Supp. 2d at 769. Because the plaintiffs had alleged that all public water customers experienced a heightened risk of disease, the plaintiffs could not cite this harm as their own special injury. *Id.* at 769–70.

A. The relevant comparative population for the VEA's special injury consists of Mammoth residents who suffered interference with their public right to the PSD's water supply.

Under the first step in the special injury analysis, the comparative population is the community affected by the PSD's contaminated water supply. The public right at issue—which forms the basis for this public nuisance action—is the water supply. It is a right which belongs to all citizens of Mammoth, and it is vested in and exercised by the town. The VEA has grounded its public nuisance claim in the allegation that Mammoth residents fell victim to the "forever chemicals" emitted by BlueSky which have accumulated in the PSD's water supply. The VEA additionally alleges injury to its Sustainable Farms site, but to that extent, it does not rely on a public right. As detailed below, it alleges harm to its own private land. The SkyLoop facility is the common source of all these injuries.

BlueSky is misplaced in its contention that injuries to other downwind farms bar the VEA's public nuisance action. *Arizona Copper* dispenses with this argument. The riverside landowner in that case suffered a special injury, even though others experienced similar harm to their property along the river. The enjoyment of a particular piece of private property is not a

public right. It does not belong to all citizens, nor is it vested in a government entity. *Arizona Copper*, then, did not contemplate others' use of their own land when identifying the comparative population. Neither do the nearby farms constitute the appropriate comparative population in this case. The calculus does not include those who experienced harm to their private property independent of a public right.

B. The VEA suffered a qualitatively different injury than that of the comparative population.

The VEA has alleged a special injury in the instant case. The chemical pollutants which the SkyLoop plant continues to emit have caused damage to VEA's farm. When hazardous material enters the air and falls onto the farm, the soil is contaminated. This makes it unsafe for VEA to conduct its usual agricultural operations. The VEA can no longer donate the food grown at its farm to help local food banks and soup kitchens provide meals for those in need. Neither can it educate people on sustainable farming and gardening practices.

Further, *Rhodes* is distinguishable. While the comparative populations in both that case and the present are composed of citizens who use public water, this fact is far from dispositive. The Southern District of West Virginia made clear that the plaintiffs failed to plead a special injury because all of their alleged harm was precisely the same as every other user of public water. But VEA is not merely alleging harm resulting from the contaminated public water supply. Instead, it also asserts that the pollutants caused damage to its farm. The *Rhodes* plaintiff did argue a special injury based in part on damage to property, but that damage was still a direct result of the contaminated public water supply. Every other public water user would have experienced similar damage. Not so in this case. Rather than simply entering via the same network of pipes which connects the public to a common water source, the PFOA air emissions

fell directly onto the VEA's farmland. This affected the private right to enjoyment of property, not just the public right to a water supply. Just as the Restatement suggests, the contamination of the VEA's farmland is a special injury.

III. BLUESKY'S AIR EMISSIONS OF PFOA CONSTITUTE "DISPOSAL" UNDER RCRA BECAUSE EXCLUDING AIRBORNE DEPOSITION WOULD UNDERMINE RCRA'S TEXT, STRUCTURE, AND PREVENTIVE PURPOSE.

A person may bring a suit under RCRA's imminent and substantial endangerment provision "against 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). To prevail under § 6972(a)(1)(B), a plaintiff must prove:

> (1) that the defendant is a person, including but not limited to, one who was or is a generator or transporter of solid or hazardous waste or one who was or is an owner or operator of a solid or hazardous waste treatment, storage, or disposal facilitate; (2) that the defendant has contributed to or is contributing to *the handling, storage, treatment, transportation, or disposal of solid or hazardous waste*; and (3) that the solid or hazardous waste may present an imminent and substantial endangerment to health or the environment.

Interfaith Cmty. Org. v. Honeywell Int'l, Inc., 399 F.3d 248, 258 (3rd Cir. 2005) (quoting *Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993, 1015 (11th Cir. 2004)) (emphasis added). Likewise, in *United States v. Price*, the Third Circuit explained § 6972(a)(1)(B)'s broad language authorizes courts to grant equitable relief to address the risks of toxic waste. *United States v. Price*, 688 F.2d 204, 213–14 (3rd Cir. 1982).

Congress expressly listed RCRA's objectives to include: "promot[ing] the protection of health and the environment and conserv[ing] valuable material and energy resources . . . [as well as] minimizing the generation of hazardous waste . . . ." 42 U.S.C. § 6902(a). Later, when

Congress then enacted RCRA in 1976, the Act aimed to eliminate regulatory gaps by addressing the unregulated disposal of discarded materials and hazardous wastes. H.R. Rep. No. 1491, 94th Cong., 2d Sess. 4, reprinted in 1976 U.S.C.C.A.N. 6238, 6241. Those gaps included harms not fully addressed by the Clean Air Act's emissions-focused regulatory scheme. *Ctr. for Cmty. Action & Envtl. Justice v. BNSF Ry. Co.*, (*BNSF*), 764 F.3d 1019, 1026–27 (9th Cir. 2014). Specifically, the Clean Air Act's statutory design governs air pollution. However, the Act does not fully cover the disposal-like effects of hazardous waste once it settles onto land or groundwater. *Id.* Interpreting "disposal" to categorially exclude hazardous substances emitted into the air, which later deposit onto land or water, would create the precise regulatory blind spots Congress sought to eliminate when enacting RCRA. Such an interpretation would allow hazardous waste generators to avoid liability under RCRA's imminent-endangerment provisions by fixating on the initial medium of release instead of the resulting environmental effects. This interpretation would improperly place form over function.

A. "Disposal" under RCRA includes air emissions which deposit onto land or water because the statute turns on environmental placement, not release mechanics.

Congress defines "disposal" broadly to mean "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water so that such . . . hazardous waste . . . may enter the environment . . . ." 42 U.S.C. § 6903(3).

Courts often reject narrow and technical interpretations of "disposal" under RCRA because these would undermine its remedial purpose. In *Little Hocking Water Ass'n v. E.I. du Pont de Nemours & Co*., the court held airborne PFOA emissions constituted "disposal" under RCRA when they entered the ground and contaminated the groundwater. *Little Hocking Water Ass'n*, 91 F. Supp. 3d 940, 965-66 (S.D. Ohio 2015). Applying canons of statutory construction,

the court reasoned the exclusion of airborne deposition would create a statutory loophole inconsistent with RCRA's structure and purpose. *Id.* Further, courts have confirmed RCRA's broad scope by looking to related statutory definitions, such as the Comprehensive Environmental Response, Compensation and Liability Act's ("CERCLA") definition of "release," to ensure consistent treatment for similar modes of contamination. *See Carson Harbor Vill., Ltd. v. Unocal Corp.,* 270 F.3d 863, 880–81 (9th Cir. 2001); *see also Orange County Water Dist. v. MAG Aerospace Indus., Inc.*, 12 Cal. App. 5th 229, 246–48 (2017).

Passive migration of hazardous waste falls directly under RCRA's definition of disposal. In *SPS Ltd. P'ship, LLLP v. Severstal Sparrows Point, LLC*, the court held passive movement of contaminants through soil and groundwater satisfied RCRA's disposal requirement. *SPS Ltd. P'ship, LLLP v. Severstal Sparrows Point, LLC*, 808 F. Supp. 2d 794, 806–08 (D. Md. 2011). The court emphasized the statute's passive terms, such as "leaking" and "spilling," do not require active human conduct. *Id.* The Ninth Circuit treated "disposal" under CERCLA in precisely the same way the term is defined under the RCRA. *Carson Harbor Vill.*, 270 F.3d at 879–83. While rejecting liability on the facts presented, the court recognized the statutory language encompasses both active and passive contamination pathways. *Id.*

Passive environmental movement is relevant where a defendant's conduct initiates the contamination pathway, even if natural processes control later movement. The RCRA's definition of "disposal" focuses on the environmental placement that results in land or groundwater contamination, not the direct or indirect initial medium of release. In *Little Hocking Water*, the court focused on airborne PFOA emissions' eventual migration into drinkable groundwater, and not their initial entry into the air. Routine industrial releases of PFOA predictably migrated into groundwater serving the surrounding community. This produced

measurable deposition in the land and water resources which RCRA protects. BlueSky's operations present the same contamination pathway. Additionally, their emissions have already resulted in high PFOA levels in Mammoth's drinking water, and allowing BlueSky to continue operating will risk increasing contamination in surrounding land and groundwater.

B. The Ninth Circuit's restrictive reading of "disposal" is inapplicable here because it fails to account for ongoing emissions of persistent contaminants and contradicts RCRA's preventive design.

Congress enacted RCRA to "minimize the present and future threat to human health and the environment" posed by hazardous waste. 42 U.S.C. § 6902(b). RCRA's imminent and substantial endangerment provision was intended to "confer upon the courts the authority to eliminate any risks posed by toxic wastes." *Little Hocking Water*, 91 F. Supp. 3d at 962 (quoting *Interfaith Cmty. Org.*, 399 F.3d at 260). Because RCRA is a remedial statute, courts focus on its preventive function rather than delaying relief until environmental harm has already occurred. *Citizens Against Pollution v. Ohio Power Co.*, 2006 WL 6870564, at *5, *17–18 (S.D. Ohio July 13, 2006). Courts must avoid statutory constructions that would frustrate RCRA's purpose by creating regulatory gaps inconsistent with Congress's intent. *Little Hocking Water*, 91 F. Supp. 3d at 962.

The Ninth Circuit's interpretation of RCRA's definition of "disposal" is unnecessarily narrow and context-specific. As such, it does not account for the statute's preventive purpose. *See BNSF*, 764 F.3d at 1023–24. In *BNSF*, the Ninth Circuit examined diesel particulate matter from railyards causing harm through inhalation rather than land or water contamination. *Id.* The court interpreted "disposal" to require *placement* into land or water. *Id.* at 1024. The court emphasized that the word "emissions" is absent from § 6903(3). *Id*. It also noted the presence of a separate air-emissions provision elsewhere in RCRA. *Id*. Thus, the court concluded Congress

did not intend the imminent-endangerment provision to reach air releases. *Id*. Such reasoning narrows RCRA's reach based on textual inference rather than environmental consequence. *See Little Hocking Water*, 91 F. Supp. 3d at 962.

Courts confronting ongoing contamination from persistent chemicals have rejected the Ninth Circuit's narrow approach as inconsistent with RCRA's purpose. In *Little Hocking Water*, the court expressly distinguished *BNSF* because the diesel particulate matter there "fell onto the land, and then was swept back up into the air," whereas the C8 particulate matter "fell onto the ground, remained there, and contaminated the groundwater." *Id.* at 964–65. The court emphasized that soil and groundwater contamination from persistent contaminants is "precisely the type of harm RCRA aims to remediate." *Id.* at 965. Similarly, in *Citizens Against Pollution*, the court concluded particulate matter released into the air, which later touched down onto land, constituted disposal because excluding such contamination would undermine RCRA's remedial scheme. No. C2-04-CV-371, 2006 WL 6870564, at *3–5 (S.D. Ohio July 13, 2006).

Adopting *BNSF*'s narrow interpretation in cases involving cumulative contamination would contradict RCRA's preventive function. RCRA authorizes judicial intervention where hazardous waste "may present" an endangerment. *Id.* at *17–18. This reflects Congress's intent to address threats before they fully manifest. *Id.* Interpreting "disposal" to exclude ongoing emissions depositing onto land and into groundwater would allow contamination to continue unchecked until remediation becomes extraordinarily difficult or impossible. *Little Hocking Water*, 91 F. Supp. 3d at 962–63. The Sixth Circuit district courts' interpretation properly considers RCRA's forward-looking design. By contrast, the Ninth Circuit's interpretation is restrictive and improperly constricts the statute's breadth. *Id.* at 964–66.

In assessing whether *BNSF*'s restrictive interpretation applies, the inquiry turns on whether the factual and analytical premises align with the contamination pathway at issue. *BNSF* addressed diesel particulate matter causing harm primarily through inhalation, without lasting placement in land or groundwater. The emissions entered the air, briefly settled, and re-entered the atmosphere, resulting in injury through continued air exposure instead of soil or water contamination. BlueSky's operations differ significantly. Its emissions deposit onto land, persist, and then migrate into drinkable groundwater. Unlike *BNSF*'s transient air pollution, BlueSky is producing enduring environmental contamination.

Contamination pathways involving persistent chemicals fall outside *BNSF*'s limited sequential logic. *Little Hocking Water* distinguished particulate matter swept back into the air from C8 particles settling into soil and contaminating groundwater. Likewise, *Citizens Against Pollution* treated particulate matter touching down onto land as analytically significant because contamination continued through environmental deposition. These cases focus on whether hazardous substances *enter and remain* in pathways regulated by RCRA, not on the method or sequence of release. BlueSky's emissions produce cumulative contamination intensifying with continued operations. They fall outside *BNSF*'s narrow factual context and squarely within RCRA's preventive reach.

IV. THE DISTRICT COURT CORRECTLY HELD THE VEA SATISFIED THE IRREPARABLE-HARM PRONG, BECAUSE RCRA CITIZEN-SUIT ACTIONS TREAT ONGOING ENVIRONMENTAL AND PUBLIC HEALTH HARM AS IRREPARABLE INJURY.

A plaintiff seeking a preliminary injunction must establish they are likely to suffer irreparable harm in the absence of preliminary relief. *Winter v. Nat. Res. Def. Council, Inc.*, 55 U.S. 7, 20 (2008). Irreparable harm is harm which cannot be adequately remedied by damages or

other remedies at a later stage. *Id.* Courts applying environmental statutes recognize environmental injury, by its nature, can be irreparable because it is often permanent or of long duration. *Amoco Prod. Co. v. Vill. Of Gambell*, 480 U.S. 531, 545 (1987). In actions brought under RCRA's citizen-suit provision, courts consider whether ongoing conditions "may present an imminent and substantial endangerment. . ." to health or the environment when evaluating the need for injunctive relief. *Interfaith Cmty. Org.*, 399 F.3d at 258–69.

A. *Winter* does not preclude consideration of public harm because it arose outside the context of a citizen-suit statute like RCRA.

Irreparable harm exists where injuries cannot be undone through monetary relief or remedied after final judgment. *Winter*, 555 U.S. at 20. Exposure to environmental contamination constitutes irreparable harm where risks to human health cannot be precisely measured or reversed. *W. Va. Rivers Coal., Inc. v. Chemours Co. FC, LLC*, 793 F. Supp. 3d 790, 812–13 (S.D. W. Va. 2025). Courts have treated contamination of drinking water supplies as irreparable harm because once groundwater is polluted, remediation is difficult and the exposure continues over time. *Rhodes*, 657 F. Supp. 2d at 767–68. Environmental harms affecting human health are difficult to quantify, not readily compensable by damages, and therefore weigh in favor of injunctive relief. *Amoco*, 480 U.S. at 545.

In environmental cases, the evaluation of irreparable harm to individual plaintiffs focuses on the continued exposure to contamination beyond repair through later relief. For example, in *Rhodes*, the court held continued exposure from groundwater contamination is difficult to remediate, making post-judgment relief inadequate. *Rhodes*, 657 F. Supp. 2d at 767–68. The court explained that contamination of a drinking water could not be remedied through monetary

damages because the injury involved both loss of clean water and continued health risks. *Id.* at 768. Harm does not become speculative because it is not readily quantifiable.

Further, exposure to lasting PFOA chemicals constitutes irreparable harm when contamination remains unremedied. In *W. Va. Rivers Coal.*, the court explained PFAS contamination caused irreparable harm when plaintiffs faced ongoing exposure through drinking water. *W. Va. Rivers Coal.*, 793 F. Supp. 3d at 812–13. The court held this harm was not merely speculative. *Id.*

Additionally, delayed relief remain relevant where continued exposure would persist during litigation. For instance, in *Rhodes*, the court emphasized continued exposure during ongoing remediation efforts. *Rhodes*, 657 F. Supp. 2d at 767–68. Specifically, the inability to quickly restore contaminated groundwater to safe conditions. *Id*. This reasoning shows that courts consistently find irreparable harm where exposure to hazardous substances is ongoing and irreversible. *See W. Va. Rivers Coal.*, 793 F. Supp. 3d at 812–13.

Applied here, the alleged harm aligns with injuries treated as irreparable in other environmental contamination cases. Like in *Rhodes*, here, the VEA members rely on a groundwater-based public water supply which is already contaminated and not realistically restorable through later remediation. The VEA members' injuries involve continued exposure to hazardous substances which are not compensable after final judgment. Because BlueSky does not have a readily available method to decontaminate the groundwater, a delay of injunctive relief exposes Mammoth residents to ongoing loss. Namely, loss of clean drinking water and associated health risks. These are irreparable injuries. This case involves irreparable harm arising from ongoing PFAS exposure through a community water supply, as addressed in *W. Va. Rivers. Coal*. There, contamination had already occurred and exposure persisted during litigation. The

court determined the PFAS exposure was irreparable because the chemical persisted in the environment, caused unknown long-term health effects, and could not be readily removed from the water. These features are present in the instant case. PFOA is a persistent "forever chemical" detectable in Mammoth's water supply and cannot be removed with existing infrastructure. Continued operations, therefore, prolong harmful chemical exposure.

The injury here remains ongoing rather than speculative. As in *Rhodes* and *W. Va. Rivers Coal.*, delay would leave the Mammoth community and the VEA members exposed to contamination beyond reversal once it occurs. Delayed remediation will not be able to undo the PFOA levels which are accumulating in the groundwater during litigation. The absence of remediation options coupled with the contamination of a "forever chemical" in Mammoth's drinking water, creates an injury that requires immediate relief. Mammoth's risk extends beyond mere economic loss and to prolonged exposure affecting human health. This is precisely the type of harm which warrants preliminary injunctive relief.

B. Under RCRA, ongoing threats to public health and the environment constitute irreparable harm.

Where Congress authorizes citizen suits to abate environmental endangerment, injunctive relief accounts for harm to shared environmental resources, not just isolated private injury. *Interfaith Cmty. Org.*, 399 F.3d at 258–60. Contamination affecting public resources, such as groundwater, constitutes irreparable harm. *W. Va. Rivers Coal., Inc.*, 793 F. Supp. 3d at 812–13. Particularly when environmental threats remain ongoing. *Id*. In RCRA actions, continued environmental hazards satisfy the irreparable harm requirement if contamination increases and persists because of delay. *Interfaith Cmty. Org.*, 399 F.3d at 258–60; *see also W. Va. Rivers Coal., Inc.*, 793 F. Supp. 3d at 813–15.

Precedent supports the conclusion that BlueSky's contamination of Mammoth's public water system constitutes irreparable harm. The citizen-suit provision of RCRA is designed to prevent threats to public health and the environment. *Interfaith Cmty. Org.*, 399 F.3d at 258–59. Therefore, public-facing environmental contamination supports injunctive relief. *Id.* It is hard to imagine a more public-facing environmental threat than contamination of public drinking water. Its harm to the public is far-reaching and resists prompt remediation. *See W. Va. Rivers Coal., Inc.*, 793 F. Supp. 3d at 813–16. The public's continued exposure during remediation further underscores irreparability, because the resulting harm cannot be undone through later monetary relief. *Id.* at 815.

Courts have emphasized that delaying injunctive relief during ongoing environmental endangerment goes against RCRA's established framework. In *Interfaith Cmty. Org.*, the court emphasized that RCRA authorizes injunctive relief to address environmental endangerment and is not limited to remedying harm after contamination has fully occurred. *Interfaith Cmty. Org.*, 399 F.3d at 258–60. The rationale in *Interfaith Cmty. Org.* supports treating ongoing contamination to a public resource as irreparable harm to both the public and those contemplated by RCRA's statutory scheme. *See Id.* at 259.

BlueSky's PFAS emissions implicate the interests that RCRA's citizen-suit provision is designed to protect. As in *Interfaith Cmty. Org.*, the alleged endangerment extends well beyond private injury and threatens shared environmental resources. BlueSky's continuing emissions affect Mammoth's groundwater and the surrounding land, resources relied upon by the community at-large. This leaves Mammoth vulnerable to an accumulated contamination from a forever chemical.

The risk to Mammoth's public drinking water supply alone independently supports injunctive relief. Like *W. Va. Rivers Coal.*, BlueSky's contamination of a public resource constitutes irreparable harm because contamination only spreads while remediation is delayed. Mammoth's drinking water continues to be exposed to rising levels of PFOA without a readily available treatment. VEA's decision to halt groundwater consumption demonstrates a recognition of danger, rather than the absence of it. The VEA's temporary avoidance of exposure does not suggest a lack of imminent endangerment under RCRA. Allowing contamination to proceed until consumption resumes would go against RCRA's preventive design. Under no interpretative regime can it be said that the legislative meaning was to delay enforcement action until damage cannot be undone. The District Court correctly applied these principles and properly issued injunctive relief to prevent further endangerment.

CONCLUSION

For the foregoing reasons, this honorable Court should reverse the District Court's stay and affirm the grant of injunctive relief.

Respectfully submitted,

Team 10
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

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

Respectfully submitted,

Team No. 10