IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

IOWA ENVIRONMENTAL COUNCIL and SIERRA CLUB, *Petitioners*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; LEE ZELDIN, in his official capacity as Administrator, U.S. Environmental Protection Agency; and JIM MACY in his official capacity as Regional Administrator, Region 7, U.S. Environmental Protection Agency, *Respondents*.	)	Case No. EMERGENCY MOTION FOR STAY PENDING DISPOSITION OF PETITION FOR REVIEW

EMERGENCY MOTION FOR STAY PENDING DISPOSITION OF PETITION FOR REVIEW

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 8th Cir. R. 26.1A, petitioners Iowa Environmental Council and Sierra Club make the following disclosures:

The Iowa Environmental Council has no parent corporation, and no publicly held company owns 10% or more of its stock.

The Sierra Club has no parent corporation, and no publicly held company owns 10% or more of its stock.

Dated: November 19, 2026

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STATEMENT OF JURISDICTION AND VENUE

Petitioners seek review of a final permitting decision of the U.S. Environmental Protection Agency Region 7 ("EPA") authorizing the treatment of hazardous waste through open detonation at the Iowa Army Ammunition Plant in Middletown, Iowa. This Court has exclusive jurisdiction under Resource Conservation and Recovery Act ("RCRA") § 7006(b), 42 U.S.C. § 6976(b), which provides for direct review in the United States Courts of Appeals of the Administrator's action "issuing, denying, modifying, or revoking any permit" under RCRA.

Venue is proper here under 42 U.S.C. 6976(b) because Petitioners Iowa Environment Council and Sierra Club are interested persons that reside and/or transact business upon application of such persons in the state of Iowa, which is within this Circuit.

INTRODUCTION

Petitioners respectfully seek an emergency stay pending review of the decision of EPA to issue an Emergency Hazardous Waste Management Facility Permit to the United States Department of the Army (the "Army") on November 13, 2026. The permit at issue authorizes the Army to detonate hazardous lead azide in the open, thus creating a plume of lead dust that will blanket homes and communities, possibly as far away as 100 miles or more. The Army intends to do

so with less than a week's notice to the full public of the scope and potential impact of the planned detonation.

Specifically, Petitioners challenge: EPA's failure to incorporate applicable environmental performance standards; EPA's failure to require all permit conditions necessary to protect human health and the environment; EPA approval of the Army's selection of open detonation to treat lead azide without full consideration of less dangerous alternatives that would avoid widespread dispersal and deposition of toxic lead; and inadequate public notice of the plan to open detonate hazardous waste due to the extraordinarily rushed timeline set by the Army.

To avoid immediate, irreparable harm that petitioners and their members will suffer without a stay, petitioners respectfully **request a ruling on this motion by 10:00 AM Central (one to two hours prior to the time of scheduled open detonation) on November 20, 2026.** Considering the short amount of time before the scheduled detonation, Petitioners ask, in the alternative, that if the Court cannot rule on this motion by the requested time, that it grant an administrative stay of the emergency permit until such time as this motion can be fully heard by the Court. *United States v. Texas*, 144 S. Ct. 797, 798 (2024).

BACKGROUND

A. Relevant Procedural History

In March 2026, the Army determined that 68 drums of lead azide, stored for more than two decades in two earth-covered magazines, had deteriorated. According to Army reports, changes in the water-and-ethanol storage solution had allowed the explosive material to recrystallize, increasing its sensitivity to shock and friction. EPA, *Emergency Hazardous Waste Management Facility Permit, EPA RCRA ID# 1A7213820445* (Nov. 13, 2026), Exhibit A ("Permit").

Over the next nine months, the Army operated under successive emergency hazardous-waste storage authorizations while developing a disposal plan. On July 13, the Army publicly announced that EPA had extended its emergency storage authorization, permitting the material to remain in its earth-covered magazines while a permanent disposal method was developed. KCRG, *Iowa Army Ammunition Plant gets extension to store hazardous waste* (July 13, 2026), https://www.kcrg.com/2026/07/13/iowa-army-ammunition-plant-gets-extension-store-hazardous-waste/. On September 29, EPA issued a third emergency permit authorizing continued storage through December 26, 2026, though it was not published by EPA until November 3, 2026. EPA, *Public Notice: Iowa Army Ammunition Plant* (Nov. 3, 2026), https://www.epa.gov/ia/iowa-army-ammunition-plant-middletown-iowa-2 [https://perma.cc/F9FX-DVS2]. That permit did not

authorize detonation. On November 13, 2026, EPA approved an emergency permit authorizing continued storage and intentional in-place detonation of the lead azide. EPA, *Public Notice: Iowa Army Ammunition Plant* (Nov. 16, 2026), https://www.epa.gov/ia/iowa-army-ammunition-plant-middletown-iowa-3 [https://perma.cc/HXF8-38CR] ("EPA Nov. 16 Notice"). The permit became effective the same day it was issued and expires February 11, 2027.

B. Lack of Timely and Accurate Public Information

Two days later, on November 15, the Army publicly announced that two controlled detonations were scheduled for November 20 at approximately noon central time. *Army Public Advisory regarding lead azide detonation scheduled for Nov. 20, 2026* (Nov. 15, 2026), Exhibit B ("Nov. 15 Army Notice"). EPA published notice of its November 13 emergency permit on November 16, three days *after* the permit became effective, and a mere four days before the planned detonations.

The Army Public Advisory included maps highlighting the large zone of potential exposure to hazardous lead dust in the air and on surfaces. The preliminary maps (below) showed a potential airborne plume stretching northward across eastern Iowa, the Mississippi River, and potentially into far northwest Illinois. On November 18, the Illinois Environmental Protection Agency and Illinois Department of Public Health issued a public statement reporting that Army

air-dispersion modeling showed possible lead-dust impacts in Mercer County, Illinois and that it had not been notified of the planned detonation by EPA Region 7, nor had Illinois officials received sufficient details about the Army's environmental monitoring methods.[1] The Army issued an additional public advisory with updated projection maps on November 18, 2026. Army, *Public and Media Advisory Regarding the Detonation of Lead Azide at Iowa Army Ammunition Plant* (Nov. 18, 2026), Exhibit C ("Nov. 18 Army Notice"). The maps continue to show lead dispersal and deposition over significant portions of the area. The changing projections also demonstrate the potential for further changes in weather conditions that could cause the detonation to impact human and environmental receptors not currently accounted for or notified.

The widespread plume is cause for significant concern. In addition to airborne dust, toxic dust particles are expected to settle on surfaces, raising concerns about lead contamination on land, residential properties, playground equipment, and other outdoor surfaces.

[1] Illinois Dep't Public Health, *Illinois Officials Monitoring Planned Detonation at Middletown, Iowa Army Ammunition Plant* (Nov. 18, 2026), https://dph.illinois.gov/resource-center/news/2026/november/18-release-2.html.

PUBLIC ADVISORY

POTENTIAL EXPOSURE TO TOXIC LEAD DUST

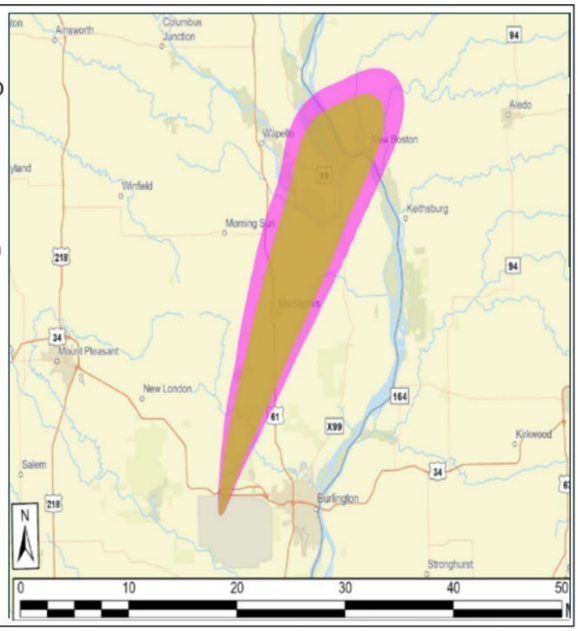
LEAD SURFACE DEPOSITION

Consider avoiding the highlighted area or remain indoors with windows/doors closed

Children under six are especially vulnerable to Lead exposure

AWAIT US ARMY TO ANNOUNCE ALL-CLEAR DETERMINATION

Issued Nov. 15, 2026



PUBLIC ADVISORY

POTENTIAL EXPOSURE TO TOXIC LEAD DUST

LEAD AIR DISPERSION

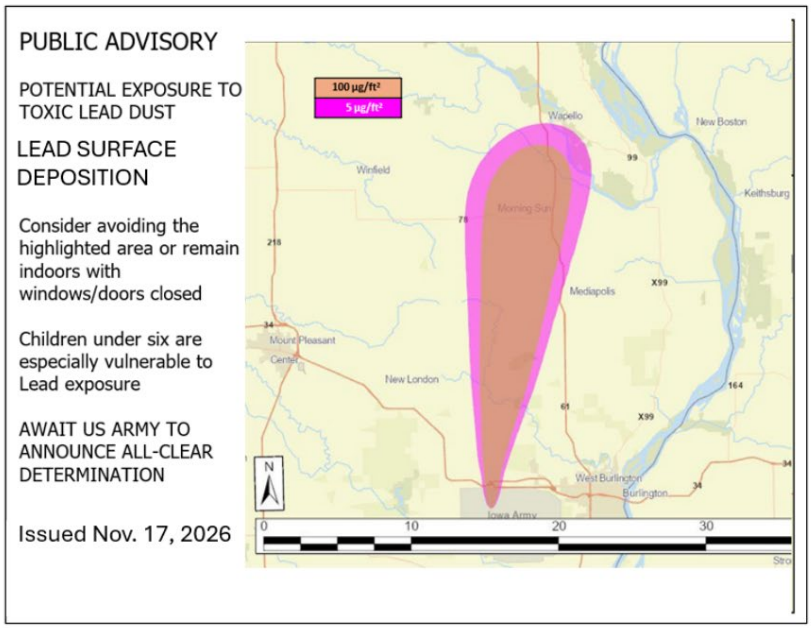
Consider avoiding the highlighted area or remain indoors with windows/doors closed

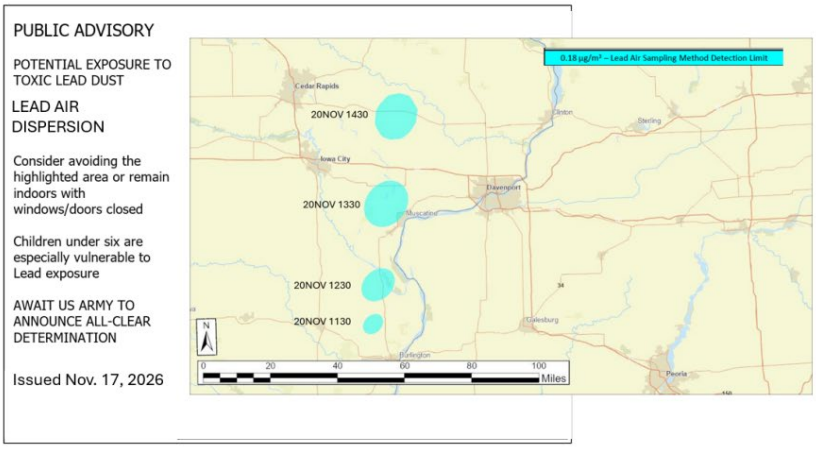
Children under six are especially vulnerable to Lead exposure

AWAIT US ARMY TO ANNOUNCE ALL-CLEAR DETERMINATION

Issued Nov. 15, 2026







While the Army endeavored to provide notice a month earlier to the Middletown community in closest proximity to the detonation site, Army, *IAAAP hosts open house, shares Lead Azide detonation information* (Oct. 28, 2026), https://www.army.mil/article/296388 [https://perma.cc/383W-7KV6], it provided no direct notice to any of the other communities within the zone of potential exposure. Many residents and even local officials reported learning of the planned

detonation through friends and social media, rather than from the Army or the EPA. Green Decl. at 15; Giehl Decl. at 1 (Ex. D, Declarations of Iowa Environmental Council).

In addition to the dearth of public information, some of the information shared by the Army was factually inaccurate. For example, Army spokesperson Justine Barati, while acknowledging that the explosion could send fine particles of lead as far as Maquoketa (115 miles north of the detonation site), was quoted as saying "The good thing is, if people have concerns about it being on their property, all they have to do is hose that off, and it's gone." Radio Iowa, *Planned Friday blast could coat section of eastern Iowa in lead dust* (Nov. 17, 2026), https://www.radioiowa.com/2026/11/17/planned-friday-blast-could-coat-section-of-eastern-iowa-in-lead-dust/. Lead persists in the environment and spreads easily across media: lead emitted into the air settles into soil and water, so people will continue to be exposed through soil, runoff, and waterbodies long after it lands. Lanphear Decl. ¶¶ 22-25, Exhibit E. Lead also accumulates in the body, where it can be stored for years in bones and teeth and, under some circumstances like pregnancy, re-enter the bloodstream. *Id.* Children are especially vulnerable: their crawling and hand-to-mouth behavior brings them into closer contact with deposited lead, they breathe more air and absorb more ingested lead than adults, and more of that lead reaches their brains. *Id.* The idea that widespread lead dust

can simply be rinsed away with no harmful effect is absurd, counterfactual, and extremely harmful misinformation to share with the public.

C. There Is No Safe Level of Lead Exposure, Especially for Children

The danger of lead to children has been known for over a century. Lead is a neurotoxin: it permanently damages children's brains and development. *Id.* High doses can cause the brain to swell and can be fatal, while lower doses can still destroy nerve cells in a child's brain, causing harm that cannot be undone. *Id.* Children are most vulnerable because their brains develop rapidly before birth and in early childhood, and the damage can last into adulthood. *Id.* Lead is also harmful to adults, and has been linked to heart disease, kidney and liver disease, reproductive harm, cognitive decline, and cancer. *Id*. A 2018 study estimated that low-level lead exposure is responsible for about 412,000 deaths each year in the United States, including roughly 256,000 from cardiovascular disease. *Id*.

There is no known safe level of lead: researchers have found no point below which it stops causing harm. *Id*. Research shows that even very low blood lead levels, below 10 μg/dL, hurt children. *Id*. Lead exposure in childhood also harms learning, attention, and behavior, making children more likely to struggle in school. *Id.*

STANDARD OF REVIEW

Pursuant to 42 U.S.C. §6976(b), this Court reviews EPA's action under the standards set forth in the Administrative Procedure Act ("APA"), 5 U.S.C. § 706. Petitioners contend that EPA's issuance of the emergency permit was arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and taken without observance of procedures required by law.

ARGUMENT

Petitioners seek an emergency stay of the challenged permit pending this Court's review pursuant to the Administrative Procedure Act, 5 U.S.C. § 705 and Federal Rule of Appellate Procedure 18. Because this permit was issued without notice and public comment, Petitioners did not have the opportunity to first appeal and move for a stay of the permit before the agency. *See* 40 C.F.R. §§ 124.19(a)(1) (providing for appeals of RCRA permits "issued under § 124.15"), 124.15 (final decision on draft permits subject to public comment); *see also* 40 C.F.R. § 124.19(a)(2) ("Any person who filed comments on the draft permit…may file a petition for review as provided in this section.").

A request for a stay under APA § 705 is analyzed under the same standard that federal courts ordinarily use to analyze preliminary injunction requests. *Minnesota v. U.S. Dep't Agric*., 826 F. Supp. 3d 975, 993 (D. Minn. 2026), citing *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 995 (9th Cir. 2025) (explaining

that "the factors used to determine whether to issue a § 705 stay under the APA are the same equitable factors used to consider whether to issue a preliminary injunction"). A party seeking a preliminary injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 20, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008). *See also Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc) (same factors). The third and fourth stay factors, "assessing the harm to the opposing party and weighing the public interest," "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

A. Petitioners are Likely to Succeed on the Merits

1. EPA's Permit Fails to Ensure Protection of Human Health and the Environment.

Under RCRA, all hazardous waste permits, including the one at issue here, must include conditions necessary to protect human health and the environment and achieve compliance with the Act and regulations, including applicable requirements in 40 C.F.R. subparts 264 and 266 through 268. See 42 U.S.C. 6925; 40 C.F.R. 270.32. The permit is unlawful and arbitrary and capricious because it fails in many respects to include such requirements.

a. Failure to comply with environmental performance standards.

First, the permit fails to comply with fundamental requirements applicable to permits for open detonation of hazardous waste and necessary to protect human health and the environment. Open detonation of hazardous waste is regulated under 40 C.F.R. part 264, subpart X. 52 Fed. Reg. 46952 (Dec. 10, 1987); *see also* EPA OB/OD Memo at 6 (June 7, 2022), https://www.epa.gov/system/files/documents/2022-06/OBOD_Policy_Memo_signed_6.7.22_508.pdf ("EPA 2022 Memo") ("OB/OD units treating explosive waste are permitted under 40 CFR Part 264, Subpart X Miscellaneous Units"). The regulations governing emergency permits provide that such permits "[s]hall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of [part 270] and 40 CFR parts 264 and 266." 40 C.F.R. § 270.61(b)(6). In issuing this permit, EPA acknowledged that the requirements of part 264 must be incorporated. *See* Permit at 1 ("This Emergency Permit is issued…pursuant to…Sections 264 – Subpart X, 270.61"). The environmental performance standards under Subpart X provide that "[p]ermits for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment." 40 C.F.R. § 264.601. "Protection of human health and the environment includes, but is not limited to…***[p]revention*** of any releases that may have adverse effects on human health or

the environment due to migration of waste constituents in the ground water or subsurface environment… surface water, or wetlands or on the soil surface…[and] in the air." *Id.* § 264.601(a)-(c) (emphasis added).

Far from preventing releases of hazardous constituents, the emergency permit authorizes releases of toxic lead dust into the environment and surrounding communities. The permit contemplates that open detonation of lead azide will cause "atmospheric dispersion and ground deposition" of lead dust. *See e.g.,* Permit Condition Q.2 (requiring a "Final Impact Area Report for the atmospheric dispersion and ground deposition plume to the EPA for review"), App. B (requiring modeling of air dispersion and dust-lead deposition), App. C (requiring public notification of "Exposure Risks" from "Deposition of lead-containing dust [that] may occur after the detonation on surfaces within certain areas affected by the detonation plume" and advisory area notifications for "areas that are expected to be affected by dust-lead deposition"). By the Army's most recent modeling done to comply with the permit, open detonation of lead azide threatens to deposit toxic lead dust over an area approximately 25 miles long and 5 miles wide that encompasses residences and surface waters, including tributaries to the Mississippi River. Nov. 18 Army Notice (ex.C). Previous modeling showed the dispersal over an area more than 40 miles long. Nov. 15 Army Notice (ex.B). Both models show dispersion of lead in the air along an area stretching over more than 100 miles from

the detonation site, including near population centers, and that the plumes could shift at any moment.

This expected widespread release of lead dust certainly "may have adverse effects on human health or the environment." 40 C.F.R. § 264.601. As noted, the dangers of lead exposure have long been known. *Supra* p. 9. Despite these known impacts, the permit utterly fails to prevent releases to air, water, and soil, in direct contravention of the applicable requirement and thereby endangers human health and the environment. EPA cannot rely on conditions for sampling and clean-up as a substitute for preventing the harmful release in the first place.

In addition, the emergency permit fails to incorporate several considerations relevant to protection of human health and the environment that the environmental performance standards expressly list. *See* 40 C.F.R. § 264.601(a)-(c). As an initial matter, while EPA has denied the public access to the Army's permit application, EPA's summary of the permit application in Appendix A to the emergency permit demonstrates that EPA issued the permit without requiring the Army to submit all necessary information for miscellaneous units. Namely, Appendix A does not show that the Army submitted any "[d]etailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of § 264.601." 40 C.F.R. § 270.23(b). The failure to provide this

necessary information shows that EPA could not have incorporated conditions addressing and ensuring compliance with the Subpart X environmental performance standards.

Further, the permit itself shows that EPA largely ignored the potential for releases to groundwater, the subsurface environment, surface water, wetlands, the soil surface, and the atmosphere. For example, there are no conditions addressing the "potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents." 40 C.F.R. § 264.601(a)(9), (b)(11), (c)(7). This is particularly concerning given the large amount of farmland that the Army's modeling shows could be covered by lead dust. Nor are there conditions to address potential impacts to current and potential users of groundwater and surface waters. *Id.* § 264.601(a)(5), (b)(7). Despite modeling showing potential dispersal of lead over a large area of land and nearby waters, the permit fails to specifically account for and address the numerous human and environmental receptors in that area. The permit's cursory mentions of releases to air, soil, and water do not actually address the express considerations required by Subpart X. For example, Permit Condition IV.E requires the Army to "minimize the possibility" of "any unplanned, sudden or non-sudden release of hazardous waste constituents to air, soil, groundwater or surface water." But the expected atmospheric dispersal and ground deposition of dust-lead is not unplanned but

rather explicitly authorized by the permit. Permit Condition L.1 requires a contingency plan for activities associated with the open detonation of lead azide and resulting cleanup to minimize hazards to human health or the environment from any unplanned or non-sudden releases of hazardous waste or hazardous constituents to the air, soil, groundwater or surface water. But this bare requirement to follow a contingency plan that the Army developed (and has not been shared publicly) itself falls short of actually incorporating permit conditions that expressly address the considerations outlined in the Subpart X environmental performance standards. Given these plain deficiencies, the permit is unlawful and arbitrary.

b. Failure to include additional requirements.

EPA's permit lacks other minimum protections that are necessary to protect human health and the environment from the known risks associated with the Iowa Army Ammunition Plant's (IAAP's) planned open detonation. EPA's failure to include additional permit provisions tailored to the significant toxic risk presented is unlawful and arbitrary.

As discussed, IAAP has acknowledged that the detonation could result in exposure to toxic lead dust up to 100 miles away. This is a massive area with an unknown number of people, daycares, hospitals, animals, livestock, parks, properties, agricultural areas, gardens, wells, and waterways at risk. At a minimum, for protection of health and the environment, it was critical for the permit to

include specific conditions ensuring that members of the affected public were given timely notice of the open detonations and the associated threats before they occur. Yet the permit lacks even a clear deadline by which such notice had to be provided. As a result, IAAP did not broadly notice its plan or information about the potential scope of the exposure area until November 15, just five days before the scheduled open detonations. According to local reports, many areas are only now finding out about the planned detonations and it is unclear how many potentially affected residents still do not know about the looming risks to their health and homes.

Additionally, while EPA is well aware that there is no safe level of lead exposure and that proper removal of lead dust involves specialized techniques and serious risk if done incorrectly, the permit fails to include requirements to ensure that lead dust deposition is safely and properly cleaned up. For example, the permit merely requires IAAP to instruct members of the public where dust levels are expected to exceed 100 ug/ft (20 times higher than the level at which action can be considered complete) to wet-clean surfaces. The permit does not detail specific instructions for how that cleanup should be conducted or provide for professional services. Instead, it includes confusing language that IAAP simply copied into its notifications, without providing any instruction at all. *See* Permit 2.ii.b; Public Advisory. Moreover, separate environmental documents indicate that cleanup of

soil will be based on a screening level of 800 mg/kg for lead, which far exceeds the current EPA screening level for soil cleanup of 200 mg/kg. Mitigated Finding of No Significant Impact (Nov. 18, 2026), https://www.dvidshub.net/publication/issues/78363 [https://perma.cc/ELX4-BKL2]; *EPA Updates Lead Guidance to Accelerate Cleanup of Superfund, Hazardous Waste Sites Across the Nation* (Oct. 19, 2025), https://www.epa.gov/newsreleases/epa-updates-lead-guidance-accelerate-cleanup-superfund-hazardous-waste-sites-across.

The permit further fails to require specific and adequate provisions for the protection of especially vulnerable populations, including pregnant women and children. Nor does it include specific conditions for protection of cattle, chicken, and other animals. The permit also lacks requirements for robust pre-detonation and post-detonation sampling for the entire affected area. Given the seriousness of the risks, the permit should also include requirements for the Army to offer lead blood testing and medical monitoring.

c. Failure to fully consider alternative treatment methods.

EPA unlawfully authorized the Army to open detonate lead azide without fully considering alternatives and demonstrating that open detonation is the only safe option. As noted, the requirements of Subpart X applicable to open detonation units apply to this emergency permit. *Supra*, Part A.1.a. EPA recently reaffirmed

that, pursuant to Subpart X, permit applicants must "demonstrate that their waste explosives 'cannot safely be disposed of through other modes of treatment.'" EPA June 2022 Memo at 7. To be permitted to open detonate, the Army therefore "must successfully demonstrate, through accurate waste characterization and an evaluation of alternative technologies, that the waste has the potential to detonate and that there are no other technologies that can safely treat that waste stream." *Id.* at 7-8. "Where safe alternatives are available, facilities **must** use those alternatives in lieu of OB/OD." *Id.* at 1 (emphasis in original).

The permit notes that the Army did evaluate alternatives, however that evaluation was not attached to the permit and EPA has not provided the public with access to the permit application which contains the evaluation. EPA Nov. 16 Notice, https://perma.cc/HXF8-38CR. The Army's Environmental Assessment (posted publicly yesterday), prepared to purportedly comply with the National Environmental Policy Act, shows that it did not fully consider non-detonation alternatives and mobile treatment units. Environmental Assessment (Nov. 18, 2026), https://d34w7g4gy10iej.cloudfront.net/pubs/pdf_78364.pdf [https://perma.cc/2WUQ-97YK] ("EA"). It states that, while "Chemical Neutralization (Non-Detonation)" "offered environmental protections by avoiding a blast plume" containing toxic lead, this alternative was eliminated from further consideration "due to unacceptable risk to human safety." EA at 8. The Army's

reasoning, however, is unsupported by any publicly-available documents. Specifically, the Army claims that the required additional "'hands-on'" time and physical manipulation of the lead azide drums for chemical neutralization drastically increases the probability of accidental, fatal detonation during handling. *Id.* But it provides no supporting data, let alone an "accurate waste characterization," to demonstrate the potential for this cache of lead azide to detonate during chemical neutralization, nor does it explain why no mitigative measures can be taken to reduce or prevent the risk of a detonation during chemical neutralization operations. As noted, EPA has not provided the public with the alternatives evaluation submitted as part of the Army's application or the correspondence between EPA and the Army concerning alternatives. Upon information and belief—including the fact that Appendix A of the emergency permit does not show that EPA provided any comments or required any revisions to an alternative technology evaluation—EPA arbitrarily accepted the Army's conclusory assertions dismissing chemical neutralization without scrutiny.

The arbitrariness of EPA's unquestioning acceptance of the Army's conclusion is bolstered by the fact that EPA itself has acknowledged, and disseminated for public information and use by facilities treating waste explosives, that chemical neutralization is a viable alternative technology for treating lead azide specifically. *See* EPA Compendium of Potential Alternative Technologies to

OB/OD at 83 (Jan. 3, 2025), https://www.epa.gov/system/files/documents/2025-01/updated_potential_alternative_technologies_compendium.pdf (listing MuniRem as a treatment technology that has been implemented for lead azide); *see also* Nat'l Acad. Sci., *Alternatives for the Demilitarization of Conventional Munitions* at 62-63 (2019), https://www.nationalacademies.org/read/25140/chapter/1#ii (describing MuniRem as a technology using "sulfur reduction chemistry" that "has been demonstrated to…dissolve and neutralize explosive residues and propellants.").

The arbitrariness of EPA's decision is further illustrated by the stark contrast between the alternatives the Army considered. EPA accepted the Army's dismissal of chemical neutralization, which would avoid a blast plume and dispersal of toxic lead, based on unsupported reasoning. And in doing so EPA authorized open detonation instead, which poses threats to human health and the environment that are supported by data, including the Army's own modeling of widespread lead dispersal and deposition and general scientific understanding of the serious harms from even low levels of lead exposure.

EPA also acted unlawfully by authorizing the Army to open detonate lead azide even though the Army seemingly failed to consider using mobile treatment units as an alternative to open detonation. EPA has identified mobile treatment units as a class of technology that could "provid[e] alternative technology treatment services sooner than permitting and constructing a permanent on-site

unit," provide "particularly keen" benefits for facilities "that do not treat waste explosives routinely," and "could offer an additional compliance option beyond off-site shipment and building an alternative technology unit." 89 Fed. Reg. 19952, 19992 (Mar. 20, 2024). These potential benefits are highly relevant to the Army's need to treat lead azide at the IAAP given the Army's claimed need for expedient action, the fact that the lead azide is a discreet volume of hazardous waste the plant is not routinely treated at this site, and the Army has claimed off-site shipment is not possible. Despite this alignment of needs and benefits, the EA shows that the Army did not consider this entire class of treatment technology at all. The EA looked only at the options of mitigated open detonation (what the EPA permitted), no action, chemical neutralization, transport to the plant's on-site open detonation unit, and unmitigated controlled detonation. EA at 7-9. Thus, EPA's grant of the permit to authorize open detonation of lead azide, where the Army failed to evaluate a whole class of technologies that EPA has identified as beneficial to reducing the need for open detonation, is arbitrary and contrary to EPA's own regulations and guidance for open detonation permits.

2. EPA Failed to Provide Notice and Comment Opportunity.

EPA's own regulations require all RCRA emergency permits to be accompanied by public notice under 40 C.F.R. 124.10(b) that provides at least 45 days for public comment. 40 C.F.R. 270.61(b)(5). Nonetheless, EPA did not notice

a draft permit nor provide any opportunity for public comment at all. Indeed, on its website noticing the final permit, posted just four days ago, EPA announced it is "neither requesting nor accepting comments on this public notice." EPA Nov. 16 Notice, https://perma.cc/HXF8-38CR. The regulations do not allow EPA to skirt this notice-and-comment obligation and EPA cited no such exception to the rule. Any excuse it may offer now in the name of an "emergency" cannot be justified under the terms of the rule or by the facts that show the plan to open detonate was in the works for months and EPA had time to comply. EPA's failure has left the Petitioners' members in the dark, lacking critical information relevant to their health and safety and deprived of the opportunity to participate in and raise concerns about EPA's decisionmaking.

B. Petitioners will suffer irreparable harm in the absence of a stay.

"Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.,* irreparable." *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 545 (1987). Petitioners and their members will be irreparably harmed if the open detonation of lead azide proceeds as planned on Friday.

Once lead dust is dispersed, there is no undoing the harm. Lead persists in the environment and spreads easily between media. Lanphear Decl. ¶ 25. Lead dust in the air will not just disappear once it settles to the ground—people, cattle,

chickens and wildlife will continue to face exposures to lead from soil, water runoff, and deposition into waterbodies. *Id.* Lead also builds up and stays in the human body. *Id.* at ¶ 29. Once lead enters the body, it travels through the blood to soft tissues and mineralizing tissues (bones and teeth). *Id.* It can then be stored for years in mineralizing tissues where it can accumulate over time and, under some circumstances—like during pregnancy—re-enter the bloodstream. *Id.* Lead also accumulates in the bodies of cattle, chicken, and other animals that are exposed to contaminated soil or drinking water. *Id.* Elevated lead levels have been detected in chicken eggs, cow milk, and the in the tissues and bones of cattle, creating additional pathways for human exposures. *Id.* The concentration of agricultural operations around the detonation site creates a risk that lead will contaminate local livestock, rendering them unsafe for sale or contaminating the food supply. *Id.*

Again, there is no evidence of a threshold for the adverse consequences of lead exposure. *Id.* at ¶ 12. In other words, lead is considered hazardous at any level. Thus, the Army's planned detonation of 9700 pounds of explosive lead material poses a significant risk of irreparable harm that cannot later be remedied.

C. A stay will serve the public interest.

When the government is opposing a stay pending review, the balance of equities and public interest factors merge. *See Nken*, 556 U.S. at 435; *Minnesota v. U.S. Dep't Agric*., 826 F. Supp. 3d at 993 (citing *Immigrant Defs. L. Ctr.*, 145 F.4th

at 995). The Supreme Court has recognized that "[i]f [environmental] injury is sufficiently likely, . . . the balance of harms will usually favor the issuance of an injunction to protect the environment." *Amoco Prod. Co*, 480 U.S. at 545. Moreover, "[t]here is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (internal citations omitted). "To the contrary, there is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their existence and operations.'" *Id.* (citations omitted). There can be no protectable government interest in bypassing environmental review that is plainly required by the law and are fundamental to protecting human health and the environment.

Petitioners do not dispute the EPA and Army's assertion that there is risk involved in leaving the lead azide at the IAAP untreated. Indeed, as the EPA's permit recognizes, recrystallization during the Army's "long-term storage" of reactive lead azide in an area that was "not covered for treatment, storage, or disposal of hazardous waste" under the Army's hazardous waste permit has created circumstances posing a threat to public health and the environment, such that it necessitated EPA issuing several emergency permits to provide needed oversight of the Army's continued storage of lead azide while the agencies decided how to address the problem. Permit at 1-2; *supra* pp. 3-4. In more direct terms, the Army

left 68 drums of a primary explosive to degrade for roughly two decades until it decided that the only safe option became detonating them near populated areas. That turned the Army's storage management failure into a public health event for people in at least two states. This rushed final week is a symptom of that; the Army has been aware of the risk since at least March, yet it gave public notice of its plans a mere five days before intended detonation.

Petitioners do believe there is a public interest in adequately and safely addressing the risk posed by the improper management of lead azide at the IAAP. But that interest is not served by the permit's authorization of open detonations that would blast lead dust across an area of Iowa (and possibly Illinois) that contains thousands of families (including young children highly sensitive to lead exposure), significant quantities of farmland, water bodies including the iconic Mississippi River, and countless wildlife and other natural resources. And particularly not where, as explained, the open detonations are a result of unlawful government activity—including the EPA's arbitrary acceptance of the Army's dismissal of treatment alternatives that would avoid a blast plume—where much of the impacted public received less than a week's notice, where inaccurate and potentially harmful information was disseminated by the Army on actions residents should take to protect themselves from lead exposure, and where several crucial conditions to protect human health and the environment are glaringly absent from

the permit. Thus, the Army's proposed solution creates entirely new risks, and does so with too little time and transparency for members of the public to adequately protect themselves.

To be clear, the Court is not balancing the risk of treating lead azide with the risk of not taking any action. What the Court must balance is the risks associated with the ***possibility*** of unplanned detonation while crucial additional time is given to take actions necessary to protect human health and the environment, against the very significant ***known*** harm of a massive lead dust plume. Given the facts at hand, the balance of equities and the public interest strongly favor a stay pending review.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court issue a stay of the permit. To avoid immediate, irreparable harm that petitioners and their members will suffer without a stay, petitioners respectfully request a ruling on this motion by 10:00 AM Central (one hour prior to the time of scheduled open detonation) on November 20, 2026. In the alternative, that if the Court cannot rule on this motion by the requested time, Petitioners request that it grant an administrative stay of the emergency permit until such time as this motion can be fully heard by the Court. *United States v. Texas*, 144 S. Ct. at 798.

Dated: November 19, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November 2026, the foregoing EMERGENCY MOTION FOR STAY PENDING DISPOSITION OF PETITION FOR REVIEW was served on Respondents via certified mail, return receipt requested, to the following addresses:

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Jim Macy
Regional Administrator
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/s/Thomas Cmar
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