No. 25-579

In the Supreme Court of the United States

DEPARTMENT OF THE AIR FORCE, ET AL., PETITIONERS

v.

PRUTEHI GUAHAN

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONERS

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QUESTIONS PRESENTED

The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 *et seq.*, is a comprehensive environmental statute providing for the regulation of hazardous waste through a scheme of cooperative federalism. Under RCRA, the United States Environmental Protection Agency may authorize state and territorial regulators to administer permitting programs for hazardous-waste-treatment facilities in their respective jurisdictions, including facilities operated by the federal government. The questions presented are as follows:

1. Whether the federal government's submission to a state or territorial regulator of an application to renew a previously issued RCRA permit is "final agency action" that is immediately reviewable under the Administrative Procedure Act, 5 U.S.C. 704.

2. Whether the federal government must comply with the general environmental-review procedures of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, before submitting a permit-renewal application under RCRA, which sets forth its own specific procedures to review environmental impacts in the context of hazardous-waste treatment.

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellees below) are the United States Department of the Air Force; Troy E. Meink, Secretary of the Air Force; the United States Department of Defense (hereinafter Department of War); and Pete Hegseth, Secretary of Defense (hereinafter Secretary of War). Individual petitioners sued in their official capacities have been automatically substituted for their predecessors in office. See Sup. Ct. R. 35.3.

Respondent (plaintiff-appellant below) is Prutehi Guahan, formerly known as Prutehi Litekyan: Save Ritidian.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-74a) is reported at 128 F.4th 1089. The order of the district court (Pet. App. 75a-91a) is available at 2022 WL 5246740.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 2025. A petition for rehearing was denied on July 17, 2025 (Pet. App. 92a-93a). On October 1, 2025, Justice Kagan extended the time within which to file a petition for a writ of certiorari until November 14, 2025, and the petition was filed on that date. The petition for a writ of certiorari was granted on March 9, 2026. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reproduced in the appendix. App., *infra*, 1a-24a.

INTRODUCTION

Congress enacted and President Ford signed into law the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. No. 94-580, 90 Stat. 2795, as amended (42 U.S.C. 6901 *et seq.*), to provide comprehensive, cradle-to-grave regulation of hazardous waste. RCRA's rigorous substantive and procedural requirements include a mandatory permitting program for anyone, including a federal agency, that operates a facility for the treatment, storage, or disposal of hazardous waste. The United States Environmental Protection Agency (EPA) has authorized nearly all States, the District of Columbia, and Guam to administer RCRA permitting programs in their respective jurisdictions, subject to the stringent safeguards of the federal statute and EPA's implementing regulations.

For more than four decades, the United States Air Force has treated unexploded World War II-era ordnance and other potentially dangerous waste munitions at Andersen Air Force Base, an isolated facility on Guam's northern coast. Beginning in 1982, the Air Force has continuously held a RCRA permit for that facility. Since then, in accordance with RCRA and governing EPA regulations, the Air Force has periodically applied to renew the permit, and the Guam Environmental Protection Agency (Guam EPA) has repeatedly granted renewal. The Air Force most recently applied for renewal in 2021. Guam EPA has published a draft permit, solicited comments, and held a public hearing, but it has not yet reached a final decision on the application.

In 2022, respondent filed this suit under the Administrative Procedure Act (APA), ch. 324, 60 Stat. 243, 5 U.S.C. 551 *et seq.*, 701 *et seq.*, challenging the Air Force's still-pending permit-renewal application. Respondent does not contend that the Air Force or Guam EPA failed to comply with RCRA in any respect. Instead, respondent's sole claim is that the Air Force's mere submission of the 2021 permit-renewal application violated the National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190, 83 Stat. 852, as amended (42 U.S.C. 4321 *et seq.*). NEPA is a purely procedural statute that generally requires federal agencies to consider the environmental effects of their actions, but that does not specifically address hazardous waste. Respondent asserts that before submitting its renewal application to Guam EPA, the Air Force should have first prepared a NEPA document called an Environmental Impact Statement (EIS) or an Environmental Assessment (EA)—something that the Air Force has never been asked to do for any of its permit-renewal applications since 1982.

The district court dismissed respondent's suit for multiple reasons, but a divided panel of the court of appeals reversed. As relevant here, the court of appeals held that (1) the Air Force's submission of a permit-renewal application is "final agency action" reviewable under the APA; and (2) despite RCRA's specific environmental-review provisions for hazardous-waste permits, the Air Force was required to comply with NEPA's general environmental-study provisions before submitting its permit-renewal application.

Those holdings are inconsistent with basic principles of administrative and environmental law. On the APA issue, "submission of an application is a far cry from fi-

nal agency action." Pet. App. 52a (VanDyke, J., dissenting). To be "final" under this Court's APA precedents, an action must both (a) mark the consummation of an agency decisionmaking process and (b) determine legal rights or obligations. The Air Force's submission of a permit-renewal application does neither: it is simply the initial step of an ongoing regulatory process, and it entails no meaningful legal consequences until Guam EPA grants or withholds a new permit. The court of appeals' contrary conclusion "turns the prevailing understanding of final agency action on its head." *Id.* at 70a. And its "sweeping" ruling "will have massive implications beyond this case." *Ibid.*

The court of appeals likewise erred in holding that federal agencies complying with RCRA, which imposes its own detailed environmental-review procedures in the specific context of hazardous-waste treatment, must separately comply with NEPA's general environmental-review procedures. As a matter of statutory interpretation and common sense, the specific governs the general. When the Air Force seeks a permit renewal under RCRA, which "specifically deals with the environmental issue at hand," separate NEPA review "would be redundant and a waste of resources." Pet. App. 89a (district-court decision). That sensible reading accords with EPA's longstanding regulation, adopted shortly after RCRA's enactment, providing that "RCRA * * * permits are not subject to the environmental impact statement provisions" of NEPA. 40 C.F.R. 124.9(b)(6). This Court recently rejected a lower court's interpretation of NEPA that would "paralyze" agency decisionmaking instead of properly "inform[ing]" it. *Seven County Infrastructure Coalition* v. *Eagle County*, 605 U.S. 168, 173 (2025). The Court should do the same here.

STATEMENT

A. Statutory Background

1. RCRA

RCRA "is a comprehensive environmental statute that governs the treatment, storage, and disposal of solid and hazardous waste." *Meghrig* v. *KFC Western, Inc.*, 516 U.S. 479, 483 (1996). Through RCRA, the government "regulate[s] hazardous wastes from cradle to grave, in accordance with the rigorous safeguards and waste management procedures of [the statute]." *City of Chicago* v. *Environmental Defense Fund*, 511 U.S. 328, 331 (1994).

A centerpiece of RCRA's "stringent regulation" of hazardous waste is its "permitting process." *Chicago*, 511 U.S. at 332. That process is administered either by EPA or by a State or Territory pursuant to EPA authorization. See 42 U.S.C. 6903(31), 6926; *United States Department of Energy* v. *Ohio*, 503 U.S. 607, 611-612 (1992) (discussing States' role in the scheme). Today, EPA has authorized nearly all States and various Territories, including Guam, to implement hazardous-waste programs under RCRA. EPA, *State Authority under the Resource Conservation and Recovery Act (RCRA)* (Jan. 29, 2026), perma.cc/K2CR-2KTG; see Pet. App. 10a. Guam EPA has adopted regulations that incorporate, in whole or in relevant part, various EPA regulations that govern the RCRA permitting process. See generally 22 Guam Admin. R. & Regs. Ch. 30. For ease of reference, this brief generally refers to EPA's regulations, rather than to the analogous provisions of Guam EPA's regulations, except as otherwise noted.

Regardless of which agency administers the process at a particular site, anyone who owns or operates any facility that treats, stores, or disposes of hazardous

waste must obtain a RCRA permit. 42 U.S.C. 6925(a); 40 C.F.R. 270.1(c). That obligation extends to federal agencies, which must comply with RCRA requirements "both substantive and procedural (including any requirements for permits[)] * * * in the same manner, and to the same extent, as any person is subject to such requirements." 42 U.S.C. 6961(a); see *Ohio*, 503 U.S. at 627 (discussing this "federal-facilities section of RCRA").

RCRA imposes substantive environmental standards to ensure that hazardous-waste permits protect "human health and the environment." 42 U.S.C. 6924(a). In addition, RCRA and its implementing regulations impose detailed procedural requirements, including extensive analysis of environmental impacts, for the submission and review of permit applications. Each permit application "shall contain such information" concerning various topics specified in the statute "as may be required under" EPA's implementing regulations. 42 U.S.C. 6925(b); see 40 C.F.R. Pts. 124, 260-270. For example, each applicant must "submit, among other things, a 'description of the processes to be used for treating, storing, and disposing of hazardous waste'; 'chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility'; and a 'description of procedures, structures or equipment' used to prevent runoff, water contamination, atmospheric releases, and other hazards to the surrounding area and personnel." Pet. App. 9a (brackets and citations omitted). For the category of permit at issue in this case, an applicant "must also submit 'detailed hydrologic, geologic, and meteorologic assessments' that 'address and ensure compliance of the unit' with certain environmental performance standards." *Id.* at 10a (brackets and citation omitted).

"Once an application is complete," the permitting authority "shall tentatively decide whether to prepare a draft permit." 40 C.F.R. 124.6(a); see 40 C.F.R. 271.13, 271.14 (generally requiring state-level RCRA permitting authorities to comply with that and related EPA regulations). If the permitting authority tentatively decides to prepare a draft permit, it must provide public notice of the draft that it has prepared. 40 C.F.R. 124.6(e). And if commenters so request, the permitting authority must hold a "public hearing (including an opportunity for presentation of written and oral views) on whether [it] should issue a permit," 42 U.S.C. 6974(b)(2); see 42 U.S.C. 6926(f) (requiring state-level permitting authorities to provide information to the public); 40 C.F.R. 124.10-124.15, 124.17.

The submission of a completed application does not necessarily end the applicant's responsibilities in the permitting process. The permitting authority "may request additional information from an applicant" to "clarify, modify, or supplement previously submitted material," and the authority may require the applicant to "correct deficiencies in the application." 40 C.F.R. 124.3(c) and (d). The permitting authority also may "reopen[]" the comment period to request submission of additional material, and it may "modif[y]" the draft permit and accompanying documents in response to new submissions. 40 C.F.R. 124.14(b)(1) and (c). As part of that process, the permitting authority may need to provide, among other things, written "[r]easons why any requested variances or alternatives to required standards do or do not appear justified." 40 C.F.R. 124.8(b)(5). And in issuing a "final permit decision," including a "final decision to issue" or "deny" a permit, the permitting authority must "issue a response to comments" and pro-

vide notice of the "procedures for appealing" its decision. 40 C.F.R. 124.15(a), 124.17(a).

If the permitting authority ultimately issues a permit, the authority retains power to "review[] and modify[] [the] permit at any time during its term." 42 U.S.C. 6925(c)(3); see 40 C.F.R. 270.41, 270.42 (providing for permit modifications on the initiative of either the permitting authority or the permittee). All permittees have a duty to provide "any relevant information which the [permitting authority] may request" to "determine compliance with th[e] permit," as well as "copies of records" relating to the permit. 40 C.F.R. 270.30(h).

RCRA permits have a maximum term of ten years, 42 U.S.C. 6925(c)(3), although state or local permitting authorities may reduce that period. Guam's permitting authority, for example, has reduced it to three years. 22 Guam Admin. R. & Regs. § 30109(m) and (n). In considering "any application for a permit renewal," the permitting authority's "[r]eview * * * shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations." 42 U.S.C. 6925(c)(3). The authority also "shall revoke" a permit if it finds "noncompliance" with RCRA's requirements. 42 U.S.C. 6925(d).

2. NEPA

NEPA "is a purely procedural statute" that "imposes no substantive environmental obligations or restrictions." *Seven County Infrastructure Coalition* v. *Eagle County*, 605 U.S. 168, 172-173 (2025). In general, NEPA "requires an agency to prepare" a "report" to "weigh environmental consequences" of "major Federal actions significantly affecting the quality of the human environment." *Id.* at 173; NEPA § 102(2)(C), 83 Stat. 853 (42 U.S.C. 4332(2)(C) (Supp. V 2023)). Under NEPA, some

projects require the relevant agency to prepare a "detailed statement" called an Environmental Impact Statement (EIS), while other projects are "categorically excluded from the requirement to produce an EIS," and still others require preparation only of "a more limited document, an Environmental Assessment (EA)." *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 757 (2004).

In 2023, Congress amended NEPA to clarify the appropriate scope of the required environmental review. See Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, Div. C, Tit. III, § 321, 137 Stat. 38. Those amendments "reinforce[d] the basic principles that NEPA, correctly interpreted, already embodied." *Seven County*, 605 U.S. at 181 n.3. For example, Congress codified the practice of categorical exclusions and EAs that had previously developed under the relevant regulatory scheme. 42 U.S.C. 4336(a)(2), (b)(1), and (b)(2) (Supp. V 2023); cf. *Public Citizen*, 541 U.S. at 757. Congress also clarified that NEPA's requirements to "prepare an environmental document" are inapplicable in several circumstances, including where "the proposed agency action is not a final agency action within the meaning" of the APA, and where "the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law." 42 U.S.C. 4336(a)(1) and (3) (Supp. V 2023); cf. *Flint Ridge Development Co.* v. *Scenic Rivers Association*, 426 U.S. 776, 791 (1976) (holding that NEPA does not apply if its application would create a "clear and fundamental conflict of statutory duty"). In this case involving pre-2023 events, the court of appeals applied the pre-2023 version of NEPA. Pet. App. 5a n.3. The 2023 amendments are

not directly relevant to the questions presented, except as otherwise noted below.

An EPA regulation states that "all RCRA * * * permits" (among others) "are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act." 40 C.F.R. 124.9(b)(6). EPA adopted that regulatory provision shortly after RCRA was enacted, 45 Fed. Reg. 33,290, 33,488 (May 19, 1980), and the agency has not altered it since. Guam EPA's regulations governing the RCRA permitting process do not expressly incorporate that provision. See 22 Guam Admin. R. & Regs. § 30110(h)(b)(6).

3. APA

The APA provides that "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. 704. "As a general matter, two conditions must be satisfied for agency action to be 'final'" under the APA. *Bennett* v. *Spear*, 520 U.S. 154, 177 (1997) (citation omitted). "First, the action must mark the 'consummation' of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature." *Id.* at 177-178 (citation omitted). "And second, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Id.* at 178 (citation omitted); see *United States Army Corps of Engineers* v. *Hawkes Co.*, 578 U.S. 590, 597 (2016) (reaffirming *Bennett*'s "two conditions" for final agency action).

RCRA incorporates the APA's judicial-review provisions, "sections 701 through 706 of title 5," for review of EPA permitting decisions under RCRA. 42 U.S.C. 6976(b). An interested person may obtain review in an appropriate court of appeals of EPA's action "issuing,

denying, modifying, or revoking any [RCRA] permit." *Ibid.* EPA's regulation implementing that provision specifies that, "[f]or purposes of judicial review" in accordance with 5 U.S.C. 704, "final agency action on a permit occurs when agency review procedures * * * are exhausted and [EPA] subsequently issues a final permit decision." 40 C.F.R. 124.19(*l*)(2). When a State or Territory is the RCRA permitting authority, however, RCRA's judicial-review provision and EPA's implementing regulation do not directly apply. See 22 Guam Admin. R. & Regs. § 30110(a).

B. Factual Background

1. Guam is an island in the west-central Pacific Ocean, located about 3800 miles west of Hawaii. The United States acquired the island from Spain in 1898, after the Spanish-American War. For the next half century, except for a Japanese occupation from 1941 to 1944, Guam remained under the jurisdiction of the United States Navy. See *Ngiraingas* v. *Sanchez*, 495 U.S. 182, 186 (1990). In 1950, Congress transferred jurisdiction from the Navy to a new civilian government and established Guam as an unincorporated Territory. Organic Act of Guam, ch. 512, 64 Stat. 384.

This case concerns treatment of waste military munitions on Guam, including potentially dangerous munitions that must be quickly destroyed. To render those explosive materials harmless, the United States Air Force has since the early 1980s operated a waste-treatment facility at Andersen Air Force Base, on the northeastern coast of the island. See C.A. S.E.R. 150. The facility is bounded to the north by the Pacific Ocean, with a "continuous reef line approximately 200 feet off shore" that blocks access by sea, and in other directions by "natural barriers" including "dense jungle growth"

and "tremendous[ly]" steep limestone formations that "prevent any person from accessing" the facility inadvertently. *Id.* at 477. On shore, the facility is "totally enclosed" within the Air Force base and is surrounded by a "2,400 foot-radius safety zone," and the "nearest public or private property is several miles off base." *Id.* at 390, 477; see *id.* at 152, 575-576, 648 (maps). That isolated location limits human exposure to material at the facility. See *id.* at 651.

The treatment facility "has been in constant use since its inception," C.A. S.E.R. 33, and the Air Force has "estimated that [it] will be operated until the Air Force Base ceases operation," *id.* at 154. The Air Force has used the facility to treat waste explosives using open burning (OB) and open detonation (OD) processes. Those operations involve placing ordnance or munitions in a burn kettle (for OB) or a pit (for OD), along with any needed flammable or explosive materials, and then remotely initiating ignition from a bunker. C.A. E.R. 108; C.A. S.E.R. 390. For both forms of waste treatment, EPA has promulgated regulations requiring "(1) that units be operated in a manner that does not threaten human health and the environment and (2) that a minimum safe distance from other properties be maintained when waste explosives are disposed of by open burning or open detonation." 52 Fed. Reg. 46,946, 46,952 (Dec. 10, 1987); see 40 C.F.R. 265.382, 270.23, 270.32.

2. Pursuant to longstanding federal authorization, Guam EPA administers the RCRA permitting program in the Territory. Guam EPA requires permittees to submit RCRA permit-renewal applications every three years. 22 Guam Admin. R. & Regs. § 30109(m) and (n). Guam EPA also has adopted a federal regulation

providing that when a permittee timely applies for renewal, its "expired permit continue[s] in force * * * until the effective date of a new permit." 40 C.F.R. 270.51(a); see 22 Guam Admin. R. & Regs. § 30109(a). That rule is consistent with the APA, which likewise provides that "[w]hen [a] licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency." 5 U.S.C. 558(c); see *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 210 n.10 (1980).

In 1982 the Air Force received its first RCRA permit for operations at the Andersen facility. C.A. E.R. 108. The permit authorizes OB/OD operations at the facility to treat hazardous-waste explosives, subject to specified processes and environmental performance standards. C.A. S.E.R. 391, 582-597. Pursuant to the governing regulations, the Air Force has periodically submitted renewal applications for that permit, and Guam EPA has repeatedly granted those applications over more than three decades. See C.A. E.R. 108. The Air Force has not separately completed NEPA review before submitting any of those RCRA permit-renewal applications.

3. In May 2021 the Air Force submitted its most recent application to renew the facility's RCRA permit. The application (including the requested permit) is more than 350 pages long, and it requests a permit almost identical to the existing permit. Compare C.A. S.E.R. 2-355 (2021 permit-renewal application), with *id.* at 359-713 (2018 permit). Pursuant to RCRA and the governing regulations, both the Air Force's 2021 application and Guam EPA's existing permit address various

environmental considerations, including required protections for human health and the environment, potential contamination and residues, a plan to achieve clean closure, required maintenance of a groundwater monitoring program, and a biological mitigation plan to protect wildlife. *Id.* at 33-43, 149-215, 240-254, 278-354. The application also discusses potential alternatives to the waste-treatment processes currently used at the facility. The application explains that, because the identified alternatives are generally "years away" from viability, with the quality of their safety standards "not verified," they do not currently constitute a "viable alternative" to the "simple" and "very safe" processes that Guam EPA has previously approved. *Id.* at 225-226.

After considering the Air Force's permit-renewal application, Guam EPA published a draft permit and provided a 45-day public-comment period on the draft, as well as a public hearing. See J.A. 113-115. In October 2021, Guam EPA informed the Air Force that it had not yet reached a final decision on the application, which it was continuing to review in light of comments received from the public. *Ibid.* Because Guam EPA has not yet taken final action on the permit-renewal application, the prior permit's terms and conditions continue in force pending further action by Guam EPA. See *ibid.*

C. Proceedings Below

1. Respondent, a nonprofit corporation, filed this suit in 2022 against the Departments and Secretaries of the Air Force and of War. See Pet. App. 75a-76a. Respondent pleaded one claim for relief, alleging that the government's "decision to submit the May 21, 2021 application for renewal" of the RCRA permit "violates

NEPA" because the government did not "first prepar[e] a legally adequate EA or EIS." J.A. 24 (Compl. ¶ 62).

The district court granted the government's motion to dismiss on multiple grounds. Pet. App. 75a-91a. As relevant here, the court held that respondent's challenge was not justiciable because the Air Force's submission of a permit-renewal application, which Guam EPA had not yet ruled on, was not "final agency action" under the APA. *Id.* at 81a-82a.

In the alternative, the district court ruled that the complaint should be dismissed for failure to state a claim because the "issue specific" provisions of RCRA, a "comprehensive environmental statute on hazardous waste," preclude the application to this context of NEPA's general requirements. Pet. App. 82a; see *id.* at 82a-90a. In applying the interpretive principle that "specific statutes prevail over general statutes dealing with the same basic subjects," the court followed the "instructive" reasoning of Eleventh Circuit precedent "specifically address[ing]" the interaction between RCRA and NEPA, as well as the "consistent positions" of "other circuits" with respect to specialized environmental legislation analogous to RCRA. *Id.* at 88a-89a (citing, *inter alia*, *Alabama ex rel. Siegelman* v. *EPA*, 911 F.2d 499 (11th Cir. 1990)).

2. The court of appeals reversed. Pet. App. 1a-74a.

a. As relevant here, the court of appeals held that the Air Force's "decision to apply for a RCRA permit" renewal in 2021 was final agency action immediately reviewable under the APA because that decision "reflected the agency's commitment to a particular location for and method of waste munitions disposal." Pet. App. 3a; see *id.* at 19a-33a. The court determined that the application met both requirements for final agency ac-

tion identified in *Bennett*. As to *Bennett*'s first requirement, the court concluded that the Air Force had "reached the 'consummation' of its decisionmaking process when it filed its permit application." *Id.* at 22a. The court viewed the application as reflecting the Air Force's conclusive view as to appropriate "OB/OD operations at" the designated waste-treatment site. *Id.* at 23a.

As to *Bennett*'s second requirement, the court of appeals concluded that the Air Force's decision to submit the permit-renewal application "imposes a legal obligation upon the agency." Pet. App. 29a. The court reasoned that, "[s]hould Guam EPA issue the Air Force a renewal permit, the permit's terms and conditions will be predicated on the representations made and the disposal plans set forth in the Air Force's application." *Ibid.* The court further reasoned that, "if Guam EPA denies the permit, that too would impose a legal consequence flowing from the Air Force's waste disposal plan—the obligation not to conduct waste disposal in accord with the decision reached before the application was submitted." *Ibid.*

b. The court of appeals also held that RCRA review does not preclude NEPA review in this context, and that the Air Force therefore was required to comply with NEPA's environmental-review process before submitting its RCRA permit-renewal application. Pet. App. 33a-46a. The court recognized that "an alternative statute may displace NEPA's procedural requirements by creating a comparable process for ensuring environmental protection." *Id.* at 35a (brackets, citation, and internal quotation marks omitted). It further acknowledged that there is "some overlap between NEPA's procedural requirements" and the "RCRA permitting pro-

cess," since both "require some analysis of the environmental impact of a proposed action and some degree of public involvement." *Id.* at 37a. But the court concluded that "NEPA and RCRA are fundamentall[]y dissimilar," *id.* at 41a, largely because "the timing of each statute's prescribed environmental review is entirely distinct," *id.* at 37a. As the court construed the statutes, NEPA required the Air Force to prepare an environmental analysis *before* deciding to submit a permit-renewal application, see *id.* at 37a-38a, whereas Guam EPA's RCRA review of that application would occur *after* that submission decision had been made, see *id.* at 38a-39a.

The court of appeals acknowledged the contrary holdings of "[o]ther circuit courts," including the Eleventh Circuit's decision in *Siegelman*. Pet. App. 40a. But the court viewed those cases as distinguishable because they involved federal "agencies whose focus is protecting the environment." *Ibid.* The court observed that neither the Air Force nor its parent agency "is engaged primarily in an examination of environmental questions." *Id.* at 41a (citation and internal quotation marks omitted).

c. Judge VanDyke dissented. Pet. App. 46a-74a. He concluded that "submission of an application is a far cry from final agency action," *id.* at 52a, and that the renewal application here did not satisfy either of the *Bennett* criteria. Judge VanDyke explained that the renewal application "only *initiated* a permit process that would allow [petitioners] to *continue* their longstanding OB/OD operations." *Id.* at 54a. And the application itself determined "no legal rights or obligations," as "underscore[d]" by the majority's use of "conditional language" to describe a "contingent future event," *i.e.*,

Guam EPA's eventual grant or denial of the pending application. *Id.* at 65a. Judge VanDyke criticized the majority's contrary ruling as a "sweeping decision" that "turns the prevailing understanding of final agency action on its head," "creates a conflict with precedent from * * * other circuits," and "will have massive implications beyond this case" because it threatens to subject "each and every permit application" to immediate APA review. *Id.* at 70a. Because Judge VanDyke would have affirmed the district court's dismissal of the suit for lack of final agency action, he did not address "whether the RCRA permitting requirements have displaced NEPA in the context of RCRA permitting." *Id.* at 47a n.1.

SUMMARY OF ARGUMENT

I. The Air Force's permit-renewal application is not "final agency action" under the APA because it does not satisfy either of the two requisite conditions set forth in *Bennett* v. *Spear*, 520 U.S. 154 (1997): the application neither reflects the consummation of the Air Force's decisionmaking process nor has direct and appreciable legal consequences.

A. The permit-renewal application here does not reflect the consummation of the Air Force's decisionmaking process. The application triggered an iterative administrative process in which Guam EPA and the Air Force would engage in a dialogue, including a public-comment process, during which the Air Force may be required to modify its application. The application thus is merely a tentative step toward a possible permit renewal. The Air Force's decision to submit the application to Guam EPA is no more "final" than an agency's decision to publish a notice of proposed rulemaking in the Federal Register.

B. The permit-renewal application likewise does not have direct and appreciable legal consequences. The application itself does not determine any legal rights or obligations; it instead asks Guam EPA to make those determinations. The application thus resembles other agency requests or recommendations that this Court has held are not final. Respondent attempts to distinguish those precedents on the ground that they involved an intra-branch superior. But that fact is immaterial to finality, and in any event the Air Force is subordinate to Guam EPA with respect to the RCRA permit renewal.

The only immediate legal effect of the renewal application here was to trigger an automatic extension of the Air Force's preexisting RCRA permit until Guam EPA rules on the application. The continuation of an existing permit does not "determine" any rights or obligations. And even if it did, any such rights or obligations would flow from the previous permit, not from the renewal application. The APA likewise provides that a license-renewal application automatically tolls expiration of the previously issued license, but respondent identifies no court that has viewed such tolling as a sufficient ground for treating a renewal application as final agency action.

II. RCRA's specific and comprehensive procedural and substantive requirements for renewing a hazardous-waste-treatment permit displace NEPA's more general procedural requirements.

A. This Court has frequently observed that a more specific statute governs a general statute covering the same subject matter. RCRA is a comprehensive statute that specifically governs hazardous-waste treatment and disposal from cradle to grave. With respect to the issuance of hazardous-waste-treatment permits in par-

ticular, RCRA includes both substantive environmental requirements and procedural mandates, including a public-comment process. RCRA is accordingly the functional equivalent of, and thus displaces, NEPA's similar but much more generalized requirements. Respondent observes that implied repeals are disfavored, but this Court has long recognized that NEPA gives way to more specific statutory directives.

The court of appeals viewed the RCRA permitting process as an inadequate substitute for NEPA because NEPA requires analysis "*before* reaching a final decision to undertake a particular activity" and more "in-depth analysis of alternatives." Pet. App. 37a, 39a. But even after a permit or permit-renewal application is submitted, RCRA requires additional environmental analysis and public engagement before a permit may be issued or renewed, and thus before the on-the-ground activity may be undertaken. The inquiry Guam EPA conducts before *authorizing* OB/OD operations obviates the need for the Air Force to conduct a similarly extensive inquiry (*e.g.*, by convening public hearings) before *requesting permission* to engage in those operations. And the Air Force was required to (and did) perform significant environmental analysis, including consideration of potential alternatives, to ensure that its renewal application contained all the information that RCRA requires. The RCRA provisions that describe the required contents of permit or permit-renewal applications are more "specific" than NEPA, both in the sense that they focus on hazardous-waste treatment, and in the sense that they address a discrete phase in the reticulated process by which permitting decisions are made.

B. Longstanding EPA regulations provide that the RCRA permitting process is not subject to NEPA's requirements, and Congress has amended RCRA multiple times in the intervening decades without expressing disapproval of that interpretation. The court of appeals attempted to distinguish EPA (in its role as RCRA permitting agency) from applicant agencies (like the Air Force here) whose primary focus is not environmental work. Nothing in the statute or regulations draws such a distinction. Nor does it make sense to impose redundant NEPA requirements on an applicant agency based on whether its *other* work is primarily environmental.

ARGUMENT

I. AN APPLICATION FOR RENEWAL OF A RCRA PERMIT IS NOT FINAL AGENCY ACTION

In circumstances where no other statute authorizes suits to challenge particular federal actions, the APA confines judicial review to "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. 704. To be subject to immediate judicial review under that provision, an agency action (1) "must mark the 'consummation' of the agency's decisionmaking process" and (2) "must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett* v. *Spear*, 520 U.S. 154, 177-178 (1997) (citations omitted). That limited category may include promulgating a final regulation; issuing a final order at the conclusion of an agency adjudication; or—as most relevant here—making a final decision to grant or deny a permit. See 40 C.F.R. 124.19(*l*)(2). The mere submission of an application to renew a permit, by contrast, satisfies neither of the *Bennett* conditions and therefore "is a far cry from final agency action." Pet. App. 52a (VanDyke, J., dissenting). Indeed,

although many federal agencies must comply with myriad permitting programs, neither respondent nor the Ninth Circuit has identified any precedent finding the submission of a permit application, standing alone, to be final agency action.

A. The Air Force's Permit-Renewal Application Did Not Consummate The Air Force's Decisionmaking Process

1. The Air Force's 2021 permit-renewal application does not satisfy *Bennett*'s first prerequisite to "final agency action," namely, that the action "mark the 'consummation' of the agency's decisionmaking process" and "not be of a merely tentative or interlocutory nature." 520 U.S. at 178 (citation omitted). The renewal application initiated an administrative process through which a different agency (Guam EPA) will determine whether and on what conditions a permit will be granted. The Air Force's submission of the application thus marked the beginning, not the end, of the process by which Guam EPA will decide whether the permit should be renewed.

After receiving the Air Force's application, Guam EPA "held a public review and comment period * * * and hosted a public hearing." Pet. App. 13a; see 42 U.S.C. 6926(f), 6974(b); 40 C.F.R. 124.6; Government of Guam, *Public Notice—July 30, 2021: Notice of 45-Day Public Comment Period and Public Hearing*, perma.cc/AF2B-38DV. As Guam EPA continues to evaluate the renewal application, the Air Force will remain actively engaged and may be asked to take additional steps or make additional submissions, including potential modifications to the application in response to comments on its proposed mitigation plans. See 40 C.F.R. 124.3(c) and (d), 124.14(b).

The application thus triggered an iterative process—one that has played out for many decades—that involves the Air Force, Guam EPA, and any members of the public who commented on Guam EPA's tentative draft permit. Guam EPA "has been working with [the Air Force] during the permit application process," J.A. 113, and that process remains ongoing. Submission of the 2021 permit-renewal application therefore was not the "'consummation'" of the Air Force's own decisionmaking process, *Bennett*, 520 U.S. at 178 (citation omitted), let alone of the larger process by which Guam EPA will make its ultimate permitting decision.

2. The court of appeals believed (Pet. App. 20a-23a) that, although Guam EPA's permitting process remains ongoing, submission of the 2021 renewal application marked the consummation of the Air Force's own decisionmaking process. But as explained above, the Air Force's supposed "decision to conduct OB/OD operations in the future according to specified protocols" (*id.* at 20a) is itself tentative and interlocutory. If (for example) Guam EPA informs the Air Force that it will renew the permit only if the protocols are changed in some specified way, the Air Force will have to decide whether to modify its application to incorporate those new protocols, engage in further dialogue with Guam EPA, pursue potential administrative or judicial remedies, or abandon the renewal entirely. The Air Force's "decision" to propose the "particular protocols[] reflected by the content of the 2021 permit application," *id.* at 22a-23a (emphasis omitted), thus remains contingent—and interlocutory under *Bennett*—until Guam EPA renders a final decision.

Respondent's use of "contingent language" in describing the supposed finality of the Air Force's deci-

sion underscores that the decision is tentative or interlocutory. Pet. App. 65a (VanDyke, J., dissenting). For example, by contending that the Air Force has "committed itself to a particular course of action *upon the application's approval*," Br. in Opp. 16 (emphasis added), respondent tacitly concedes that the Air Force will not have committed itself to anything unless and until Guam EPA approves (or denies) that application. Respondent's assertion that "the Air Force will not be free to 'deviate unilaterally' from the *issued permit's* terms and conditions," *ibid.* (emphasis added; citation omitted), likewise underscores that finality attaches only if and when Guam EPA issues a permit. And as explained above, that final issuance might well require the Air Force to revisit the terms and conditions that it has proposed in the currently pending application. Respondent's assertions are akin to saying that a notice of proposed rulemaking is "final agency action" because the agency has made a conclusive decision to publish the notice in the Federal Register and has committed itself to the course of action identified in the notice *if and when* it issues a final rule to that effect.

3. Respondent contends that the "possibility" that "the Air Force could theoretically make changes to its permit application at Guam EPA's request" does not render the application tentative or interlocutory because "this Court has already rejected the argument that the 'mere possibility' an agency might change its mind in response to third-party feedback 'suffices to make an otherwise final agency action nonfinal.'" Br. in Opp. 17-18 (quoting *Sackett* v. *EPA*, 566 U.S. 120, 127 (2012), and citing *United States Army Corps of Engineers* v. *Hawkes Co.*, 578 U.S. 590, 598 (2016)) (brackets omitted). But as explained above, the governing regu-

lations allow (and in some circumstances require) the Air Force to make changes that Guam EPA requests as part of the ongoing "permit application process" in which Guam EPA "has been working with" the Air Force "before making a final decision." J.A. 113-114. That is no mere theoretical possibility, but a regulatory guarantee of further, still-ongoing proceedings between the Air Force, Guam EPA, and other stakeholders, including the public.

Any requests for changes from Guam EPA cannot fairly be characterized as run-of-the-mill "third-party feedback." Br. in Opp. 18. Guam EPA is the permitting agency with authority to grant or deny the Air Force's renewal application. If Guam EPA requests changes to the Air Force's proposed permit terms, it can and presumably will make clear that its willingness to renew the permit depends on the Air Force's acceding to that request. And while respondent minimizes the likelihood that the public-comment process will lead the Air Force to modify its application, the core premise of respondent's NEPA claim is that the procedural NEPA violation it alleges has inflicted a cognizable injury in part because NEPA's public-comment process might cause the Air Force to change its mind. See Pet. App. 18a-19a; J.A. 13-15 (Compl. ¶¶ 34-39).

Respondent's reliance on *Sackett* and *Hawkes* is especially misplaced because those cases involved agency actions that generally "were not subject to further Agency review." *Sackett*, 566 U.S. at 127; see *Hawkes*, 578 U.S. at 598. In *Sackett*, the agency issued a "compliance order" that came with "no entitlement to further Agency review." 566 U.S. at 127. In *Hawkes*, the government agreed that "[u]nlike preliminary JDs" (jurisdictional determinations) described in relevant regula-

tions, the "approved JD" the agency had issued in that case was "typically not revisited." 578 U.S. at 597-598. In contrast, the relevant statutory and regulatory provisions here expressly contemplate further agency review and revision of the permit-renewal application.

In addition, the compliance order in *Sackett* and jurisdictional determination in *Hawkes* were products of the respective agencies' own deliberations, and those agencies had the sole discretionary power to decide whether to revisit or reopen their own conclusions when provided with certain new information. It was in that context that the Court observed that the "mere possibility that an agency might reconsider in light of 'informal discussion' and invited contentions of inaccuracy does not suffice to make an otherwise final agency action nonfinal." *Sackett*, 566 U.S. at 127; see *Hawkes*, 578 U.S. at 598 (explaining that the "possibility" of such "revis[ion]" is "a common characteristic of agency action, and does not make an otherwise definitive decision nonfinal").

Here, by contrast, the Air Force does not control whether Guam EPA will request changes to the application and draft permit as part of the pre-approval dialogue. The statutory and regulatory scheme requires that dialogue, and the Air Force likely will feel compelled as a practical matter to adopt any reasonable change requests from Guam EPA, which ultimately decides whether the permit will be renewed. Cf. *Hawkes*, 578 U.S. at 599 (noting "the 'pragmatic' approach [the Court] ha[s] long taken to finality") (citation omitted). The Air Force might reasonably *hope* that its permit-renewal application will be approved without changes, but that hope does not convert a necessarily tentative proposal into a final decision. And to the extent re-

spondent seeks to challenge some "final *internal* [Air Force] decision about whether to conduct hazardous-waste-munitions disposal on this site under particular conditions and protocols," separate and apart from the "formal" permit-renewal application "reflecting that choice," Br. in Opp. 13 (emphasis added), this Court has rejected such ethereal distinctions. See *Biden* v. *Texas*, 597 U.S. 785, 809 (2022) ("To the extent that the Court of Appeals understood itself to be reviewing an abstract decision apart from specific agency action, as defined in the APA, that was error.")

B. The Air Force's Submission Of A Permit-Renewal Application Does Not Have Direct And Appreciable Legal Consequences

1. The Air Force's submission to Guam EPA of a permit-renewal application also does not satisfy *Bennett*'s requirement that the action "be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" 520 U.S. at 178 (citation omitted). Standing alone, an application for a permit or permit renewal does not determine any rights or obligations; it is merely a request that someone else (here, Guam EPA) make those determinations. Nor does the application impose any "direct and appreciable legal consequences." *Ibid.* Rather, the legal consequences—*i.e.*, the authorization for the Air Force to engage in waste-treatment activities that RCRA would otherwise prohibit—flow either from Guam EPA's prior approval of the existing permit or from Guam EPA's subsequent action on the pending renewal application.

The renewal application is not a permit, and by itself it authorizes nothing under the governing RCRA provisions. The Air Force is not bound to follow the waste-treatment procedures described in the application un-

less and until Guam EPA grants a new permit that includes those conditions. The Air Force's activities are currently governed by the prior permit, which respondent did not challenge.

The permit-renewal application thus resembles other agency submissions that this Court has held were not immediately reviewable because they did not impose direct legal consequences, but merely informed a subsequent decision (often, as here, a decision made by a different entity) that would have operative legal effect. In *Franklin* v. *Massachusetts*, 505 U.S. 788 (1992), for example, the Court held that an agency's submission of a census report to the President was not final agency action because, under the governing statutory scheme, the report "ha[d] no direct effect on reapportionment until the President takes affirmative steps to calculate and transmit the apportionment to Congress." *Id.* at 799. Likewise, in *Dalton* v. *Specter*, 511 U.S. 462 (1994), the Court held that agencies' submissions of reports recommending military-base closures were not final agency actions because—as the Court deemed "crucial"—the reports "'carr[ied] no direct consequences'" absent subsequent presidential approval, which was the only "action that 'will directly affect' the military bases" at issue. *Id.* at 469-470 (quoting *Franklin*, 505 U.S. at 797-798). Similarly here, because the Air Force's application "carries no direct consequences" absent further action by a separate entity (Guam EPA), the application "serves more like a tentative recommendation than a final and binding determination." *Franklin*, 505 U.S. at 798.

Respondent attempts to distinguish *Franklin* and *Dalton* on the ground that each of those cases involved "a subordinate's recommendation to an intra-branch su-

perior about what that superior should do." Br. in Opp. 18. That distinction is immaterial to finality. A subordinate's tentative recommendation or request to a superior, which respondent concedes is not final agency action, does not become final if it instead is directed toward a decisionmaker outside the subordinate's chain of command. With respect to the renewal of a RCRA permit for OB/OD activities that will take place in Guam, the Air Force is in all relevant respects subordinate to Guam EPA.

In that respect, the Air Force's permit-renewal application is more akin to the Federal Trade Commission's complaint in *FTC* v. *Standard Oil Co.*, 449 U.S. 232 (1980), which "was not 'final agency action.'" *Id.* at 239. The complaint there "[s]erv[ed] only to initiate" administrative proceedings and otherwise had a "lack of legal or practical effect" upon the respondent to the complaint. *Id.* at 242. Although the complaint was "definitive on the question whether the Commission avers reason to believe" that the respondent there was violating the law, such a "threshold determination that further inquiry is warranted" was not sufficiently "definitive" in the sense required for final agency action. *Id.* at 241. Here too, the Air Force's permit-renewal application has no legal or practical effect except to initiate proceedings administered by Guam EPA.

2. Respondent emphasizes that the Air Force's permit-renewal application has the "effect of extending the 2018 permit's term" until Guam EPA rules on the application. Br. in Opp. 17; see *id.* at 19; Pet. App. 31a n.9; 40 C.F.R. 270.51(d). That effect, however, does not constitute the sort of direct and appreciable legal consequence that characterizes final agency action. The continuation of a previously issued permit does not it-

self "determine[]" any "rights or obligations." *Bennett*, 520 U.S. at 178 (citation omitted). Even if it did, any such determination would flow from the terms of the 2018 permit—which respondent has not challenged—and not from the 2021 renewal application. And while respondent emphasizes (Br. in Opp. 19) that the 2021 application has enabled the Air Force to continue operating under the 2018 permit "for over four years and counting," that is a result of Guam EPA's independent choice to withhold "final decision" on the Air Force's renewal application, J.A. 114, not an inevitable consequence of the application itself.

There is also a mismatch between a focus on the automatic extension of the 2018 permit, as the immediate operative legal effect of submitting the renewal application, and the NEPA analysis that the court of appeals' decision would require the Air Force to perform. Even if a permit-renewal application proposed terms radically different from those of the preexisting permit, the timely filing of such an application would trigger the automatic extension under 40 C.F.R. 270.51(d) *of the existing permit*. The court below did not suggest, however, that NEPA required the Air Force to analyze the environmental effects of maintaining the 2018 permit in effect during the pendency of the renewal proceedings. Rather, the court described the question before it as "whether NEPA applies to an agency's antecedent decision to dispose of hazardous waste in a particular manner at a particular location, a decision memorialized in the permit application." Pet. App. 42a. The court thus clearly contemplated that the Air Force would perform NEPA analysis of the OB/OD protocols *proposed in the 2021 renewal application*. See *id.* at 46a (holding that "NEPA applies to the Air Force's decision to conduct

OB/OD operations at Tarague Beach for another three years"). It is entirely clear, however, that the terms of the renewal application cannot take effect unless and until they are approved by Guam EPA.

Treating the automatic-extension provision as giving rise to final agency action would also produce extreme and untenable results. The automatic-extension rule is not limited to RCRA permit-renewal applications submitted to Guam EPA. Rather, the APA establishes an across-the-board rule that, when a "licensee has made timely and sufficient application for a renewal," the license generally "does not expire until the application has been finally determined by the agency." 5 U.S.C. 558(c). EPA incorporated that tolling rule into its regulations for EPA-issued permits because the "[APA] automatically extends the permit until EPA acts on the permit renewal application." 48 Fed. Reg. 39,611, 39,614 (Sept. 1, 1983); see 40 C.F.R. 270.51(a); see also 40 C.F.R. 270.51(d). And Guam EPA has adopted those regulations to govern its own RCRA permitting process. See 22 Guam Admin. R. & Regs. § 30109(a) and (*o*).

Given the APA's general tolling rule, treating such tolling as a sufficient basis for immediate judicial review would imply that *every* permit- or license-renewal application submitted by a federal agency would be "final agency action" subject to immediate judicial review. That is obviously incorrect. Tolling under the APA is triggered by the filing of a "timely and sufficient application," 5 U.S.C. 558(c), yet Congress notably omitted "application" from the long list of nouns in the APA's definition of "agency action," 5 U.S.C. 551(13). And as explained in a longstanding EPA regulation, "final agency action on a permit occurs" not when the applica-

tion is filed, but when a permitting agency "issues a final permit decision." 40 C.F.R. 124.19(*l*)(2).

To be sure, applications to renew federal permits usually are filed by private regulated parties, not by federal agencies. In that scenario, the non-federal status of the applicant provides an independent basis for concluding that the application itself is not "final agency action." But that comparison simply underscores the fact that, when one agency files an application with another agency, the applicant acts as a regulated entity rather than as a sovereign regulator performing the type of final agency action with which the APA is concerned. The distinction between a governmental entity acting in a proprietary capacity and one acting in a sovereign regulatory capacity runs throughout the law. See, *e.g.*, *Hughes* v. *Alexandria Scrap Corp.*, 426 U.S. 794, 805-810 (1976) (Commerce Clause); *Parker* v. *Brown*, 317 U.S. 341, 350-352 (1943) (federal antitrust laws); cf., *e.g.*, *Lindke* v. *Freed*, 601 U.S. 187, 198 (2024) (state-action doctrine). That distinction reinforces the ultimate conclusion that a mere application to renew a permit—even when submitted by a federal agency—is not, standing alone, "final agency action" immediately reviewable under the APA. Cf. Antonin Scalia and Bryan A. Garner, *Reading Law* 228-229 (2012) ("[W]hen the federal Food, Drug, and Cosmetic[] Act defines *drugs* as 'articles (other than food) intended to affect the structure or any function of the body,' it assuredly does not include exercise bikes.") (footnote omitted).

3. That a permit-renewal application is not immediately reviewable "final agency action" comports with the aims of judicial review. Cf. *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 149-150 (1967) (explaining that the Court applies a "pragmatic" and "flexible view of fi-

nality" in light of the purposes of judicial review). The APA limits judicial review to "final agency action" for substantially the same reason that Congress has generally limited federal appellate review to final decisions of federal trial courts: to avoid the delay and inefficiency that can arise from piecemeal review of intermediate steps in ongoing proceedings. Cf. *GEO Group, Inc.* v. *Menocal*, 146 S. Ct. 774, 781 (2026) ("[P]reventing piecemeal appeals[] 'promotes the efficient administration of justice.'") (citation omitted); *McLish* v. *Roff*, 141 U.S. 661, 665-666 (1891) ("From the very foundation of our judicial system the object and policy of the acts of congress in relation to appeals * * * have been to save the expense and delays of repeated appeals in the same suit, and to have the whole case and every matter in controversy in it decided in a single appeal.").

If permit or permit-renewal applications filed by federal agencies could trigger immediate judicial review, the processes by which those applications are prepared and considered could generate a multitude of suits. One suit could challenge the application as deficient at the outset of the administrative proceedings. Another could challenge the final disposition of the application at the end of those proceedings. And additional suits filed in the interim could challenge each successive amended application on the theory that each amendment reflects the applicant agency's latest "final internal decision" about how to proceed. Br. in Opp. 13. Absent clear statutory language compelling those results, Congress should not be understood to have enacted such a wasteful and duplicative scheme.

4. In concluding that the Air Force's renewal application "imposes a legal obligation upon the agency," the court of appeals explained that "if Guam EPA issues a

permit, the Air Force will not be able to deviate unilaterally from the [permit] conditions"; whereas "if Guam EPA denies the permit," its decision will impose on the Air Force "the obligation not to conduct waste disposal." Pet. App. 29a. That analysis erroneously assumes that the application presents Guam EPA with a binary choice between (a) granting renewal based on the precise terms set forth in the application and (b) denying renewal altogether. In fact, the application triggers an iterative process in which the Air Force may be required to supplement or revise its application in response to Guam EPA's requests, and Guam EPA will have substantial latitude to formulate its own preferred permit conditions.

The more fundamental problem with the court of appeals' analysis, however, is that neither of the downstream possibilities the court identified would be a "direct and immediate" effect of the application itself. *Franklin*, 505 U.S. at 797 (citation omitted). Rather, each would be the direct and immediate effect of Guam EPA's disposition of that application (and thus at most an indirect and delayed effect of the application). The fact that the Air Force's obligations will vary so substantially depending on whether renewal is granted or denied underscores the fact that it is *Guam EPA's* decision, not the Air Force's application, that will have substantial operative legal consequences.

The court of appeals also viewed the permit-renewal application here as being "closely analogous to the agency action at issue in *Bennett*." Pet. App. 30a. But unlike the Air Force's application for a permit renewal, the Fish and Wildlife Service's biological opinion in *Bennett* "constitute[d] a permit" in its own right: it directly "authoriz[ed]" another agency to take an endan-

gered species under specified terms and thus had the "direct and appreciable legal consequences" of "alter[ing] the legal regime to which the action agency is subject." 520 U.S. at 170, 178 (citing 16 U.S.C. 1536(*o*)(2)). Indeed, the governing statute put the agency and its employees at the "peril" of "substantial civil and criminal penalties, including imprisonment," if they did not follow the biological opinion. *Id.* at 170. The Air Force's permit-renewal application shares none of those characteristics.

II. THE AIR FORCE WAS NOT REQUIRED TO ENGAGE IN NEPA REVIEW BEFORE SUBMITTING ITS RCRA PERMIT-RENEWAL APPLICATION

RCRA's specific provisions for environmental review as part of the hazardous-waste permitting process preclude the application of NEPA's more general environmental-review requirements to the Air Force's submission of a permit-renewal application.*

A. RCRA's Comprehensive And Specific Environmental-Review Requirements Preclude Any Requirement That The Air Force Conduct A NEPA Review Before Submitting A RCRA Permit-Renewal Application

1. RCRA's specific provisions for environmental review as part of the hazardous-waste permitting process preclude the application to this context of NEPA's more

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* The recent amendments to NEPA clarify that "[a]n agency is not required to prepare an environmental document" if "the proposed agency action is not a final agency action." 42 U.S.C. 4336(a)(1) (Supp. V 2023). Although the court of appeals applied the pre-amendment version of NEPA to this case, see Pet. App. 5a n.3, a holding that the submission of a RCRA permit-renewal application is not "final agency action" could obviate the need for the Court to address the second question presented.

general environmental-review requirements. "It is a commonplace of statutory construction that the specific governs the general." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012) (brackets and citation omitted). "That is particularly true where," as in RCRA, "'Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.'" *Ibid.* (citation omitted).

NEPA is a generally applicable and "purely procedural statute" that requires agencies to "address the significant environmental effects of a proposed project and identify feasible alternatives that could mitigate those effects." *Seven County Infrastructure Coalition* v. *Eagle County*, 605 U.S. 168, 172-173 (2025). But "NEPA imposes no substantive environmental obligations or restrictions," and it "does not require the agency to weigh environmental consequences in any particular way." *Id.* at 173.

RCRA, in contrast, is a "comprehensive environmental statute" that regulates the specific topic of hazardous waste "from cradle to grave." *City of Chicago* v. *Environmental Defense Fund*, 511 U.S. 328, 331 (1994). RCRA's "rigorous safeguards and waste management procedures," *ibid.*, include both "substantive and procedural standards" designed to "ensure that EPA" or a state or territorial regulator "considers fully, with the assistance of meaningful public comment, environmental issues involved in the permitting of hazardous waste management facilities," *Alabama ex rel. Siegelman* v. *EPA*, 911 F.2d 499, 505 (11th Cir. 1990); see pp. 6-7, *supra*. Thus, in the specific context of hazardous-waste-treatment permits, the RCRA scheme comprehensively addresses what environmental information should be considered and how to assess it, both for the potential

permittee developing an application and for the permitting agency considering the application. See 40 C.F.R. 270.14, 270.23(b).

Because "RCRA is comprehensive in its field of application," it is the "equivalent and more specific counterpart of NEPA" in the context of hazardous-waste treatment. *Siegelman*, 911 F.2d at 504-505. Like other specialized legislation that "'mandates specific procedures for considering the environment'" in a particular context, RCRA independently "cover[s] the core NEPA concerns" through a "'functional equivalent[] of the impact statement process.'" *Western Nebraska Resources Council* v. *EPA*, 943 F.2d 867, 871-872 (8th Cir. 1991) (citation omitted). Thus, the "traditional view that specific statutes prevail over general statutes dealing with the same basic subjects" implies that "Congress did not intend" for a federal agency "to comply with NEPA when RCRA applies." *Siegelman*, 911 F.2d at 504-505; see Pet. App. 82a-90a (district-court decision below).

That analysis is especially compelling with respect to the operations at issue here. The RCRA permitting process necessarily requires both the Air Force and Guam EPA to "address the significant environmental effects of" OB/OD operations at Andersen Air Force Base. *Seven County*, 605 U.S. at 172. Respondent has not argued otherwise. Indeed, respondent concedes that the Air Force's renewal "application * * * acknowledges the potential for impacts to the human environment," J.A. 19 (Compl. ¶ 46), and respondent's allegations of potential environmental harm rely heavily on the application's consideration and proposed mitigation of those potential harms, J.A. 2, 15-17, 19-21 (Compl. ¶¶ 2, 42, 44, 46-52). The complaint does not identify any environmental effects from the facility's existing operations

that would allegedly need to be considered under NEPA but were not already identified and considered in preparing the RCRA renewal application—or that would not be considered in Guam EPA's review of the application.

The RCRA permitting process also requires the agencies to "identify feasible alternatives." *Seven County*, 605 U.S. at 172. EPA generally allows "open burning and detonation of waste explosives" only if the waste explosives "cannot safely be disposed of through other modes of treatment." 40 C.F.R. 265.382. And RCRA permit renewals require consideration of "improvements in the state of control and measurement technology." 42 U.S.C. 6925(c)(3). That requirement ensures that the control measures adopted in an earlier permit are not mechanically incorporated into a renewed permit if technological improvements have enabled the development of more effective control measures since the earlier permit was approved. Those RCRA requirements to consider environmental effects and feasible alternatives, both with respect to hazardous-waste treatment overall and with respect to OB/OD operations in particular, displace NEPA's more generalized requirements to address the same concerns.

2. The court of appeals acknowledged the general principle that, when another environmental statute covers much of the same ground as NEPA, or when NEPA's requirements are incompatible with the requirements of another federal law, then NEPA must yield. Pet. App. 34a-36a; see Pet. 30 n.6 (listing cases); *Siegelman*, 911 F.2d at 505 n.12 (same). The court also acknowledged that there is "some overlap between NEPA's procedural requirements and Guam EPA's RCRA permitting process: Both require some analysis

of the environmental impact of a proposed action and some degree of public involvement." Pet. App. 37a.

The court of appeals nevertheless held that the Air Force was required to prepare a NEPA report here because, in the court's view, "the timing of each statute's prescribed environmental review is entirely distinct." Pet. App. 37a; see Br. in Opp. 24-25 (same). The court regarded NEPA as differing "critically" from RCRA because "under NEPA, agencies must prepare an EIS or EA and engage with the public *before* reaching a final decision to undertake a particular activity that may have significant environmental impact." Pet. App. 37a. The court concluded that applying NEPA to this process is necessary to ensure that the Air Force adequately considers the advantages and disadvantages of various alternatives *before* it submits a permit-renewal application. See *id.* at 39a (stating that, "as far as the RCRA application process is concerned, the Air Force can proceed on a single track approach in each application cycle, never meaningfully considering whether an alternative approach to waste disposal would achieve its purpose with less adverse environmental impacts"); *id.* at 37a-39a. That analysis is wrong for two reasons.

First, even with respect to the Air Force's submission of its RCRA permit-renewal application, the court failed to appreciate the full scope of RCRA's "timing" requirements. Pet. App. 37a. RCRA and its regulatory regime prescribe not just the applicant's post-application conduct, but the required contents of the permit application itself. See 42 U.S.C. 6925(b); 40 C.F.R. Pt. 270, Subpt. B. And by defining the necessary contents of the application, that scheme effectively requires the Air Force to conduct significant environmental analysis before seeking a permit or permit renewal.

Second, RCRA and the implementing regulations govern the *entirety* of the permitting process, from the required contents of the permit (or permit-renewal) application, to the permitting agency's consideration of the application (including through solicitation and review of public comments), to the permitting agency's ultimate grant or denial of a permit. That regime is designed to ensure that robust and fully informed environmental analysis occurs before any permit can be issued and the hazardous-waste-treatment activity can be undertaken, see, *e.g.*, 42 U.S.C. 6974(b)(2); 40 C.F.R. 270.14, 270.23(b), while avoiding needless duplication of effort at different stages of the process. The RCRA and accompanying regulatory provisions that identify the required contents of permit applications are more "specific" than NEPA, not only in the sense that they focus on hazardous-waste treatment and disposal, but also in the sense that they address a particular stage of the larger process by which hazardous-waste-treatment operations are authorized.

In asserting that the Air Force had "already" made a final "commitment" to the "specific course of action" described in its permit application, Pet. App. 38a, the court of appeals seemed to suggest that, before submitting its renewal application, the Air Force should have performed the *same* environmental analysis that NEPA would have required if the Air Force (rather than Guam EPA) had final authority to decide what waste-treatment activities would be performed at the site. That would mean, *inter alia*, that the Air Force must conduct a public process before determining what proposed conditions should be included in its renewal application. See 42 U.S.C. 4332(2)(C) (Supp. V 2023). RCRA and EPA's implementing regulations, by contrast, treat

each step in the renewal process as part of a larger whole, in which the informational requirements that apply at each stage are intended to complement each other; and they reflect an awareness that the *permitting agency* (rather than the applicant) will ultimately determine what on-the-ground activities may occur. Under the established interpretive canon that a specific statute governs over a general one, the RCRA regime should control with respect to the type and degree of environmental analysis that should occur at each stage of the permit-renewal process, including the type and degree of analysis that the renewal application should reflect.

3. The court of appeals also concluded that the Air Force must prepare a NEPA report because NEPA requires "'informed and meaningful consideration of alternatives—including the no action alternative'"—whereas RCRA "does not demand the same kind of in-depth analysis of alternatives." Pet. App. 39a (brackets and citation omitted); see Br. in Opp. 29-30 (similar). But as explained above, RCRA permit renewals require consideration of alternatives made possible by intervening technological improvements, including consideration of alternative methods of treatment for OB/OD operations. 42 U.S.C. 6925(c)(3); 40 C.F.R. 265.382. The RCRA process thus substantially overlaps with the "discussion of alternatives" that "forms 'the heart of'" NEPA review. *Citizens Against Burlington, Inc.* v. *Busey*, 938 F.2d 190, 194 (D.C. Cir.) (Thomas, J.) (citation omitted), cert. denied, 502 U.S. 994 (1991).

In any event, the fact that the two statutes might impose somewhat different requirements with respect to consideration of feasible alternatives is a reason to apply the specific/general canon, not to disregard it. See

Siegelman, 911 F.2d at 505 (explaining that the "RCRA permitting procedures 'strike a workable balance between some of the advantages and disadvantages of full application of NEPA'") (citation omitted); see *Portland Cement Association* v. *Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973) (similar), cert. denied, 417 U.S. 921 (1974). For instance, Congress might well have streamlined the consideration of alternatives in the RCRA permitting process because it reasonably concluded that unlike, say, constructing a new railroad line, *e.g.*, *Seven County*, 605 U.S. at 173, the need to safely treat hazardous waste—such as the unexploded and potentially deadly munitions at issue here—might not readily invite "the no action alternative," Pet. App. 39a (citation omitted). And with respect to the Air Force's consideration of alternatives *before* it submits a permit application, the RCRA scheme takes account of the fact that the application by itself does not authorize any on-the-ground activities, but simply triggers a further deliberative process through which the permitting agency (here, Guam EPA) finally determines what hazardous-waste-treatment operations will be allowed.

4. Respondent emphasizes that implied repeals are disfavored, and that two statutes touching on the same subject matter should both be given effect absent a "clearly expressed congressional intention" that only one should apply. Br. in Opp. 25 (quoting *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 510 (2018)). That principle is sound, but Congress has clearly expressed such an intention here. This Court recognized 50 years ago that an agency was not required to comply with NEPA's procedures when another statute imposed incompatible requirements, even though neither statute contained language expressly repealing the other. See *Flint Ridge*

Development Co. v. *Scenic Rivers Association*, 426 U.S. 776, 788-789 (1976). The specific/general canon likewise provides a basis to effectuate that same congressional intention.

Indeed, nearly every court of appeals agrees that specific environmental statutes can displace NEPA's more general requirements, including because they serve as functional equivalents, see Pet. 30 n.6 (listing cases), regardless of whether it is theoretically possible to comply with both NEPA and those other statutes, cf. Br. in Opp. 26. The 2023 NEPA amendment, which codified *Flint Ridge* and identified additional circumstances in which a NEPA report need not be prepared, see 42 U.S.C. 4336(a)(1)-(4) (Supp. V 2023), confirms that Congress views NEPA as a general background statute that yields to other, more specific, environmental laws. And while respondent asserts (Br. in Opp. 24) that "this proposed action is not exempt from NEPA merely because the Air Force also needed a RCRA permit to carry it out," our position is narrower: that the Air Force need not follow the general NEPA procedures as a condition of submitting an application to renew a previously issued RCRA permit.

B. Regulatory History And Practice Confirm That NEPA Does Not Apply To RCRA Permit-Renewal Applications

1. Regulatory history and practice confirm that an agency need not prepare a NEPA report before applying to renew a RCRA permit. Shortly after RCRA's enactment, EPA promulgated a regulation providing that "RCRA * * * permits are not subject to the environmental impact statement provisions of [NEPA]." 40 C.F.R. 124.9(b)(6); see *Siegelman*, 911 F.2d at 502 & n.6. EPA explained that the RCRA permitting regime's "extensive procedures, including public participation

for evaluation [of] environmental issues, constitute[] the functional equivalent of NEPA's requirements," and that the permitting process "fully allows and encourages involvement of the public in [RCRA] decision making." 44 Fed. Reg. 34,244, 34,247, 34,254 (June 14, 1979) (citing, *inter alia*, *Portland Cement*, *supra*). The regulation codifying that view, see 40 C.F.R. 124.9(b)(6), has remained in force, unchanged, for more than four decades. See 48 Fed. Reg. 14,146, 14,269 (Apr. 1, 1983). Agency "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369, 394 (2024).

Congress has revisited RCRA (and NEPA) multiple times in those intervening decades, yet it has never indicated through statutory text (or otherwise) that it disagrees with EPA's longstanding view as to the interaction between the two statutes. See, *e.g.*, Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 98 Stat. 3221; Federal Facility Compliance Act of 1992, Pub. L. No. 102-386, 106 Stat. 1505; Land Disposal Program Flexibility Act of 1996, Pub. L. No. 104-119, 110 Stat. 830. That too is "persuasive evidence" that the agency's "longstanding interpretation" is "the one intended by Congress." *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 275 (1974). And it is especially persuasive evidence given that Congress has specified how RCRA interacts with *other* environmental statutes. See, *e.g.*, 42 U.S.C. 6905(a) and (b).

2. The court of appeals seemed to acknowledge that neither EPA nor Guam EPA, acting as permitting agency, would be required to prepare or require the preparation of a NEPA report before *issuing* a RCRA

permit. Pet. App. 40a-41a; see 40 C.F.R. 124.9(b)(6). The court appeared to recognize that, when a RCRA permitting agency considers an application, use of NEPA procedures is unnecessary because RCRA "mandates specific procedures for considering the environment that are functional equivalents of the impact statement process." Pet. App. 41a (citation and brackets omitted). The court nevertheless held that the Air Force must prepare a NEPA report before submitting its permit-renewal *application* because only "agencies whose focus is protecting the environment" or who are "'engaged primarily in an examination of environmental questions'" may be exempted from NEPA's requirements in these circumstances. *Id.* at 40a-41a (citation and emphasis omitted); see Br. in Opp. 23 (similar).

Neither RCRA nor NEPA distinguishes between federal agencies that are "engaged primarily" in environmental work and those (like the Air Force) that are engaged primarily in national-defense work, or between agencies "whose focus is protecting the environment" and agencies whose focus is protecting the American people. Whether RCRA's permit-renewal requirements displace NEPA's procedural directives turns on whether those requirements cover similar ground as, or are otherwise incompatible with, NEPA's directives. The answer to that question does not depend on whether the agency seeking the RCRA permit renewal primarily deals with environmental issues in its *other* work. If EPA need not conduct a NEPA review before it *grants* a RCRA permit—an action that has operative legal consequences—there is no sound reason to require such review when another federal agency simply *applies* for a permit.

Nor did the court of appeals explain why Congress would have authorized EPA and state and territorial regulators to issue RCRA permits to all applicants without requiring preparation of a NEPA report, but nevertheless would have required any federal agency that is not primarily engaged in environmental work to prepare its own NEPA report before it applies to renew a RCRA permit. As explained above, the Air Force (like a non-federal applicant for a RCRA permit or permit renewal) was required to perform a degree of environmental analysis to ensure that its permit-renewal application included all required information. Those requirements are tailored to a specific stage of the RCRA permitting process, and there is no sound reason to subject the Air Force to additional environmental-analysis requirements under NEPA's much more general standards. Congress ordinarily does not impose unnecessary or duplicative procedural requirements, and it would be anomalous to assume that it did so here. Cf. *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 768 (2004) ("NEPA's purpose is not to generate paperwork.") (citation omitted).

Respondent emphasizes that NEPA "authorizes and directs that, to the fullest extent possible[,] public laws of the United States should be interpreted and administered with the policies that NEPA sets forth." Br. in Opp. 25 (brackets, citation, and ellipses omitted); see Pet. App. 33a-34a (adopting "as liberal an interpretation as we can to accommodate the application of NEPA") (citation omitted). But NEPA is a "purely procedural" statute whose purpose is to "inform agency decisionmaking, not to paralyze it." *Seven County*, 605 U.S. at 173. Fulfilling *that* purpose to "the fullest extent possible" would counsel against respondent's position

here. Respondent's expansive reading would only exacerbate NEPA's improper use as "a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down * * * even those projects that otherwise comply with all relevant substantive environmental laws." *Id.* at 183.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. 42 U.S.C. 4331 provides:

Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

2. 42 U.S.C. 4336 provides:

Procedure for determination of level of review

(a) Threshold determinations

An agency is not required to prepare an environmental document with respect to a proposed agency action if—

(1) the proposed agency action is not a final agency action within the meaning of such term in chapter 5 of Title 5;

(2) the proposed agency action is excluded pursuant to one of the agency's categorical exclusions, another agency's categorical exclusions consistent with section 4336c of this title, or another provision of law;

(3) the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law; or

(4) the proposed agency action is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action.

(b) Levels of review

(1) Environmental impact statement

An agency shall issue an environmental impact statement with respect to a proposed agency action requiring an environmental document that has a reasonably foreseeable significant effect on the quality of the human environment.

(2) Environmental assessment

An agency shall prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, unless the agency finds that the proposed agency action is excluded pursuant to one of the agency's categorical ex-

clusions, another agency's categorical exclusions consistent with section 4336c of this title, or another provision of law. Such environmental assessment shall be a concise public document prepared by a Federal agency to set forth the basis of such agency's finding of no significant impact or determination that an environmental impact statement is necessary.

(3) Sources of information

In making a determination under this subsection, an agency—

(A) may make use of any reliable data source; and

(B) is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable.

3. 42 U.S.C. 6925(a)-(d) provides:

Permits for treatment, storage, or disposal of hazardous waste

(a) Permit requirements

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall

take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.

(b) Requirements of permit application

Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

(1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this subchapter, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

(2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

(c) Permit issuance

(1) Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 6924 of this title, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 6924 of this title, the permit shall specify the time allowed to complete the modifications.

(2)(A)(i) Not later than the date four years after November 8, 1984, in the case of each application under this subsection for a permit for a land disposal facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(ii) Not later than the date five years after November 8, 1984, in the case of each application for a permit under this subsection for an incinerator facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(B) Not later than the date eight years after November 8, 1984, in the case of each application for a permit under this subsection for any facility (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(C) The time periods specified in this paragraph shall also apply in the case of any State which is administering an authorized hazardous waste program under section 6926 of this title. Interim status under subsection (e) shall terminate for each facility referred to in subparagraph (A)(ii) or (B) on the expiration of the five- or eight-year period referred to in subparagraph (A) or (B), whichever is applicable, unless the owner or operator of the facility applies for a final determination regarding the issuance of a permit under this subsection within—

(i) two years after November 8, 1984 (in the case of a facility referred to in subparagraph (A)(ii)), or

(ii) four years after November 8, 1984 (in the case of a facility referred to in subparagraph (B)).

(3) Any permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of this section and section 6924 of this title. Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

(d) Permit revocation

Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) of noncompliance by a facility having a permit under this chapter with the requirements of this section or section 6924 of this title, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) shall revoke such permit.

4. 42 U.S.C. 6926 provides in pertinent part:

Authorized State hazardous waste programs

* * * * *

(b) Authorization of State program

Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this sub-

chapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce permits deemed to have been issued under section 6935(d)(1)[1] of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

* * * * *

(d) Effect of State permit

Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken

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[1] See References in Text note below.

within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(f) Availability of information

No State program may be authorized by the Administrator under this section unless—

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subchapter in such State.

* * * * *

5. 42 U.S.C. 6961(a) provides:

Application of Federal, State, and local law to Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid

waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local solid waste or hazard-

ous waste regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State solid or hazardous waste law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

6. 42 U.S.C. 6974(b) provides:

Petition for regulations; public participation

(b) Public participation

(1) Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 6925 of this title, the Administrator shall—

(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency's intention to issue such permit, and

(B) transmit in writing notice of the agency's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility.

If within 45 days the Administrator receives written notice of opposition to the agency's intention to issue such permit and a request for a hearing, or if the Administrator determines on his own initiative, he shall hold an informal public hearing (including an opportunity for pre-

sentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time, and subject matter of such hearing. No State program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 6926 of this title unless such program provides for the notice and hearing required by the paragraph.

7. 40 C.F.R. 124.6 provides:

Draft permits.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit (except in the case of State section 404 permits for which no draft permit is required under § 233.39) or to deny the application.

(b) If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. See § 124.6(e). If the Director's final decision (§ 124.15) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of

intent to deny and proceed to prepare a draft permit under paragraph (d) of this section.

(c) *(Applicable to State programs, see §§ 123.25 (NPDES) and 233.26 (404).)* If the Director tentatively decides to issue an NPDES or 404 general permit, he or she shall prepare a draft general permit under paragraph (d) of this section.

(d) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

(1) All conditions under §§ 122.41 and 122.43 (NPDES), 144.51 and 144.42 (UIC, 233.7 and 233.8 (404, or 270.30 and 270.32 (RCRA) (except for PSD permits)));

(2) All compliance schedules under §§ 122.47 (NPDES), 144.53 (UIC), 233.10 (404), or 270.33 (RCRA) (except for PSD permits);

(3) All monitoring requirements under §§ 122.48 (NPDES), 144.54 (UIC), 233.11 (404), or 270.31 (RCRA) (except for PSD permits); and

(4) For:

(i) RCRA permits, standards for treatment, storage, and/or disposal and other permit conditions under § 270.30;

(ii) UIC permits, permit conditions under § 144.52;

(iii) PSD permits, permit conditions under 40 CFR § 52.21;

(iv) 404 permits, permit conditions under §§ 233.7 and 233.8;

(v) NPDES permits, effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under §§ 122.41, 122.42, and 122.44, including when applicable any conditions certified by a State agency under § 124.55, and all variances that are to be included under § 124.63.

(e) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* All draft permits prepared by EPA under this section shall be accompanied by a statement of basis (§ 124.7) or fact sheet (§ 124.8), and shall be based on the administrative record (§ 124.9), publicly noticed (§ 124.10) and made available for public comment (§ 124.11). The Regional Administrator shall give notice of opportunity for a public hearing (§ 124.12), issue a final decision (§ 124.15) and respond to comments (§ 124.17). For RCRA, UIC or PSD permits, an appeal may be taken under § 124.19 and, for NPDES permits, an appeal may be taken under § 124.74. Draft permits prepared by a State shall be accompanied by a fact sheet if required under § 124.8.

8. 40 C.F.R. 124.9(b) provides:

Administrative record for draft permits when EPA is the permitting authority.

(b) For preparing a draft permit under § 124.6, the record shall consist of:

(1) The application, if required, and any supporting data furnished by the applicant;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The statement of basis (§ 124.7) or fact sheet (§ 124.8);

(4) All documents cited in the statement of basis or fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

(6) For NPDES new source draft permits only, any environmental assessment, environmental impact statement (EIS), finding of no significant impact, or environmental information document and any supplement to an EIS that may have been prepared. NPDES permits other than permits to new sources as well as all RCRA, UIC and PSD permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4321.

9. 40 C.F.R. 265.382 provides:

Open burning; waste explosives.

Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which

chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives must do so in accordance with the following table and in a manner that does not threaten human health or the environment.

Pounds of waste explosives or propellants	Minimum distance from open burning or detonation to the property of others
0 to 100	204 meters (670 feet).
101 to 1,000	380 meters (1,250 feet).
1,001 to 10,000	530 meters (1,730 feet).
10,001 to 30,000	690 meters (2,260 feet).

10. 40 C.F.R. 270.51 provides:

Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit (see § 124.15) if:

(1) The permittee has submitted a timely application under § 270.14 and the applicable sections in §§ 270.15 through 270.29 which is a complete (under § 270.10(c)) application for a new permit; and

(2) The Regional Administrator through no fault of the permittee, does not issue a new permit with an effective date under § 124.15 on or before the expiration

date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effective and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit, the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under § 124.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(d) *State continuation.* In a State with a hazardous waste program authorized under 40 CFR part 271, if a permittee has submitted a timely and complete application under applicable State law and regulations, the terms and conditions of an EPA-issued RCRA permit continue in force beyond the expiration date of the permit, but only until the effective date of the State's issuance or denial of a State RCRA permit.

(e) *Standardized permits.* (1) The conditions of your expired standardized permit continue until the effective date of your new permit (see 40 CFR 124.15) if all of the following are true:

(i) If EPA is the permit-issuing authority.

(ii) If you submit a timely and complete Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit; and (iii) If the Director, through no fault on your part, does not issue your permit before your previous permit expires (for example, where it is impractical to make the permit effective by that date because of time or resource constraints).

(2) In some cases, the Director may notify you that you are not eligible for a standardized permit (see 40 CFR 124.206). In those cases, the conditions of your expired permit will continue if you submit the information specified in paragraph (a)(1) of this section (that is, a complete application for a new permit) within 60 days after you receive our notification that you are not eligible for a standardized permit.

11. 22 Guam R. & Regs. § 30101 provides:

Purpose and Objective. Whereas continued technological and social progress has increased the amount of hazardous waste generated, the public health and human safety may be endangered and adverse consequences to the environment may result if these hazardous wastes are not managed in a safe and prudent manner. Therefore, pursuant to 10 GCA § 51103, these waste management.

Thus it is the purpose of these regulations to protect, promote and preserve the beauty and integrity of Guam's environment and to maintain the health and well being of all that live therein.

It is the objective of these regulations to establish a program which identifies hazardous waste, regulates hazardous waste storage, treatment, handling, transport and disposal, and establishes capabilities of inspection and enforcement to ensure that hazardous waste management activities shall not jeopardize human health and are carried out in an environmentally sound manner.

12. 22 Guam R. & Regs. § 30102(a) provides:

Hazardous Waste Management System: General. (a) Federal and State regulations cited in these Regulations are those adopted as of July 1, 1986. Title 40, Code of Federal Regulations (CFR) Parts 124, 260 through 266, and 270 are adopted by reference when so noted.

13. 22 Guam R. & Regs. § 30109 provides in pertinent part:

The Hazardous Waste Permit Program. (a) All of Title 40 CFR Part 270, as amended as of July 1, 1986, with the exception of §§ 270.2 and 270.10(f)(3) is hereby adopted and incorporated by reference (Appendix H) and modified by the following:

* * * * *

(m) § 270.50 (a) is amended as follows:

(a) RCRA permits shall be effective for a fixed term not to exceed 3 years.

(n) 40 CFR 270.50(d) is amended as follows:

(d) Each permit for a land disposal facility shall be reviewed by the Director three years after the date of permit issuance as part of the permit reissuance process. The reissued permit shall be modified as necessary, as provided in §270.41.

(*o*) In §270.51(a) the words *under 5 U.S.C. 558(c)* are deleted.

14. 22 Guam R. & Regs. § 30110 provides in pertinent part:

Procedures for Permit Administration. (a) All of Title 40 CFR Part 124 as amended as of July 1, 1986, relating to HWM facilities, with the exception of §§ 124.2, 124.4, 124.16, 124.19 through 124.21, is hereby adopted and incorporated by reference (Appendix I), and modified by the following:

* * * * *

(e) § 124.6 entitled "Draft permits" is replaced by the following:

(a) Once an application is complete, the Administrator shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Administrator tentatively decides to deny the permit application, he or she shall issue a

notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under (5) of this subpart.

(c) Reserved.

(d) If the Administrator decides to prepare a draft permit, he or she shall prepare a draft permit containing the following information:

(1) all conditions under §§ 270.30 and 270.32, see Part VIII;

(2) all compliance schedules under § 270.33, see Part VIII;

(3) all monitoring requirements under § 270.31, see Part VIII;

(4) standards for treatment, storage and/or disposal and other permit conditions under § 270.30, see Part VIII.

(5) All draft permits prepared by GEPA under this subsection shall be accompanied by a statement of basis (§ 124.7, see Part IX.F) or fact sheet (§ 124.8, see Part IX.G), and shall be based on the administrative record (§ 124.9, see Part IX.H), publicly noticed (§124.10, see Part IX.I) and made available for public comment (§ 124.11, see Part IX.J). The Administrator shall give notice of opportunity for a public hearing (§ 124.12, see Part IX.K), issue a final decision (§ 124.15, see Part IX.N) and respond to comments
(§ 124.17, see Part IX.O).

* * * * *

(h) § 124.9 entitled "Administrative record for draft permits" is replaced by the following:

* * * * *

(b) For preparing draft permit under § 124.6, see Part IX.E, the record shall consist of:

(1) The application, if required, and any supporting data furnished by the applicant;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The statement of basis (§ 124.7, see Part IX.F) or fact sheet (§ 124.8, see Part IX.C);

(4) All documents cited in the statement of basis or fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

(6) Reserved.

* * * * *