No. 25-579

IN THE

Supreme Court of the United States

DEPARTMENT OF THE AIR FORCE, ET AL.,
Petitioners,

v.

PRUTEHI GUÅHAN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT

DAVID L. HENKIN
EARTHJUSTICE
850 Richards Street
Suite 400
Honolulu, HI 96813

LINNET DAVIS-STERMITZ
EARTHJUSTICE
810 Third Avenue
Suite 610
Seattle, WA 98104

CAROLINE A. FLYNN
Counsel of Record
KIRTI DATLA
THIEN T. CHAU
EARTHJUSTICE
1250 Eye Street NW
Floor 4
Washington, DC 20001
(202) 797-4316
cflynn@earthjustice.org

Counsel for Respondent

QUESTIONS PRESENTED

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, requires federal agencies to prepare a statement evaluating environmental effects and potential alternatives before proposing any major federal action. The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §§ 6901 *et seq.*, requires facilities, including those operated by federal agencies, to secure a permit to treat hazardous waste. Pursuant to a regulation of the RCRA permitting authority in this case (the Guam Environmental Protection Agency), a facility's submission of a permit-renewal application automatically extends the prior permit term until the permitting authority acts on the application.

The questions presented are:

1. Whether the court of appeals correctly concluded that the Air Force's decision to treat hazardous-waste munitions using a particular method at a particular site constitutes final agency action.

2. Whether the court of appeals correctly concluded that NEPA applies to the Air Force's decision to dispose of hazardous-waste munitions using a particular method at a particular site, even though that activity also requires a RCRA permit from the Guam Environmental Protection Agency.

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; and Pete Hegseth, Secretary of Defense. 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 Guåhan, formerly known as Prutehi Litekyan: Save Ritidian.

CORPORATE DISCLOSURE STATEMENT

Under Supreme Court Rule 29.6, respondent Prutehi Guåhan states that it is a nonprofit organization that has no parent corporation and no publicly held company has any ownership interest in it.

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STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant statutory and regulatory provisions are reproduced in the appendix to this brief.

INTRODUCTION

In 2021, the Department of the Air Force decided to destroy expired munitions by detonating those hazardous explosives in the open air on a beach in northern Guam. The detonation range is adjacent to the Pacific Ocean. The beach is an important cultural and historical site. And the range sits atop Guam's main source of drinking water. There is no question that these operations significantly affect the human environment. The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, therefore required the Air Force to first examine those effects, evaluate alternative options, and seek public input before deciding to proceed. The Air Force did not.

For the people of Guam, those procedural failures fit a familiar pattern. Respondent—who represents CHamoru families, landowners, and other local stakeholders—accordingly turned to the federal courts to hold the Air Force accountable to NEPA's most basic requirements. All respondent asks is that the Air Force meaningfully consider the impacts of and alternatives to these open-detonation operations, including less sensitive locations. And as NEPA envisions, respondent asks for that hard look *before* the agency decides to move forward—that is, before "resources have been committed or the die otherwise cast." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

The Air Force claims that a different law, the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §§ 6901 *et seq*., implicitly relieved it of those obligations. That argument ignores that when Congress has exempted agency actions under other environmental laws from NEPA review, Congress has said so expressly. It ignores this Court's precedent, which interpreted NEPA to give way only where there is an irreconcilable and fundamental conflict with another law's requirements. It ignores that Congress recently codified those two principles, instructing that another law displaces NEPA only if that law says so (RCRA does not) or there is a clear conflict between the two (none exists here). 42 U.S.C. § 4336(a)(2)-(3). And it ignores that the Department of Defense's own procedures take as a given that NEPA applies even if a component must also seek a permit under a statute like RCRA.

Perhaps recognizing that their argument for the statute's displacement is unsustainable, petitioners also contend that any NEPA violation in this case is unreviewable. Specifically, they argue that the Air Force's decision to continue open-detonation operations at this site—memorialized in its 2021 RCRA permit-renewal application—was not final agency action under the Administrative Procedure Act (APA). But petitioners do not represent that the Air Force is still internally debating whether to continue open-detonation past 2021. Nor could they, as the Air Force's submission of its renewal application extended the prior permit's term, and the Air Force has in fact continued operations under that extended authorization for nearly five years. That legal consequence, among others, more than suffices

to enable respondent to turn to the courts now. There is nothing to be gained by forcing respondent to wait to challenge *the Air Force's* decisionmaking under NEPA until a *different* entity makes a decision under a *different* law.

Petitioners' determination to bypass NEPA in this instance is at odds with other agency practice, including in the hazardous-waste-munitions context. It is also misguided as a policy matter. Far from being an unusual application of NEPA, this situation caters to one of the statute's strengths: streamlining analysis under different environmental laws in one place at an early juncture. Or as one DOD component has put it, "NEPA saves time and money" by "reduc[ing] uncertainties and facilitat[ing] compliance with other environmental laws." Dep't of Army, *National Environmental Policy Act: NEPA Overview* 1 (Jan. 2019) (Army NEPA Overview), perma.cc/4W4H-V83Z. If that is truly too burdensome for petitioners, they can ask Congress to create an exemption to NEPA for RCRA permitting. But this Court should not pencil one in. Nor should it undermine NEPA enforcement in the permitting context by endorsing the government's cramped understanding of finality. The judgment below should be affirmed.

STATEMENT

A. Factual Background

As an unincorporated U.S. Territory, important decisions about Guam are made "with little to no input from the people of this island." Guam Comm'n on Decolonization, *Guam: A Territory Like No Other* 5 (last visited July 16, 2026), perma.cc/FT2F-U8NF.

One consequence is that the "natural resources of Guam continue to be exploited." *Id.*

The U.S. military's presence in Guam shapes the island's environment. *See* Andrew Tilghman, Cong. Rsch. Serv., *Guam: Defense Infrastructure and Readiness* 1, 6 (2023) (the military owns about 25% of Guam's land). Decisions the military made nearly a century ago caused damage that still requires extensive and expensive cleanup. *See, e.g.*, EPA, *National Priorities List (NPL) Sites - by State* (last updated May 12, 2026), perma.cc/39Z7-8AFG (listing two Superfund cleanup sites in Guam: a base and a former military landfill). And military decisions made more recently compound the damage Guam already bears.

One such decision concerns the Air Force's use of open burning and open detonation (OB/OD) to destroy hazardous-waste munitions like bombs, landmines, and missiles. Starting in 1982, the Air Force has conducted OB/OD on Andersen Air Force Base (Andersen AFB) in northern Guam. Pet. App. 12a. The Air Force suspended its OB operations in the 2000s, but OD continues. *Id.*; J.A. 19.

Andersen's detonation range is located on Tarague Beach, about 50 yards from the Pacific Ocean. J.A. 3; *see also* J.A. 85, 90-94 (photos). The range is located on ancestral land that the military seized from local families after World War II. J.A. 3. Tarague Beach is also adjacent to culturally significant fishing locations—upon which local families depend for sustenance—and contains sites for collecting traditional medicines. J.A. 3, 6-7. And Tarague is "one of the oldest occupied sites documented in the

Marianas" and "one of Guam's most significant archeological sites," with "deposits dating back to the 2nd millennium BC." Dep't of Navy, *Tarague Beach*, perma.cc/5QR7-NSHJ?type=image. Finally, the detonation range sits above an aquifer that provides drinking water to over 80% of the island's population. J.A. 20.



OD operation at Tarague Beach, J.A. 3.

Open detonation typically involves placing munitions in a pit and triggering detonation. Nat'l Acads. of Scis., Eng'g, & Med., *Alternatives for the Demilitarization of Conventional Munitions* 7 (2019) (National Academies), perma.cc/9Z2R-ALSQ. As the name suggests, this method is inherently uncontrolled, and operations "release contaminants . . . directly into the environment." *Id.* at 1.

OD operations on Tarague Beach are no different.

Explosions eject unexploded ordnance and ordnance fragments into the surrounding area, including the ocean and reef. J.A. 20, 102-06. The explosions also release toxic chemicals—like smoke, explosive material, and heavy metals—directly into the air and soil. C.A. S.E.R. 133; National Academies 7. Hazardous constituents threaten to reach the aquifer and contaminate Guam's water supply. J.A. 20; C.A. S.E.R. 394. And it may be impossible to fully decontaminate the range and remove unexploded material once operations cease, rendering the area off-limits even once closed. J.A. 20-21, 73.

The military has nonetheless relied on OD as a cheap and uncomplicated way to destroy expired munitions. National Academies 1. But as a congressionally mandated study concluded in 2019, safe and feasible alternative methods now exist. *Id.* at 1-6. These include contained detonation or contained treatment. *Id.* at 1. "[T]here are no significant technical, safety, or regulatory barriers to the full-scale deployment of [those] alternative technologies." *Id.* at 93; *see also* EPA, *Alternative Treatment Technologies to Open Burning and Open Detonation of Energetic Hazardous Wastes* 12 (2019), perma.cc/3UY4-JQ7C (EPA report likewise concluding that "safe alternatives exist and are being used"). And the study found that these alternatives have upsides: They can be carried out at all hours, in most weather conditions, and avoid the long-term remediation costs associated with OB/OD. National Academies 1-2.

Nor is Tarague Beach, or Andersen AFB more generally, the only potential location for OD

operations. There are several military and private facilities in the continental United States that have OB/OD authorization. *See* EPA, *Current Open Burning/Open Detonation Facilities* (last updated July 29, 2025), perma.cc/6U4Q-QD6A.

B. Legal Background

1. NEPA is a "procedural statute" enacted to "help[] federal] agencies to make better decisions and to ensure good project management" when those agencies take action affecting the environment. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 177 (2025). It mandates that agencies "take a 'hard look' at the environmental consequences before taking a major action." *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

NEPA does this by requiring "all" federal agencies to include a "detailed statement" "in every recommendation or report on proposals for . . . major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).[1] This environmental impact statement (EIS) must cover, among other things, the "reasonably foreseeable environmental effects of the proposed agency action" and "a reasonable range of alternatives." *Id.* § 4332(2)(C)(i), (iii). To prepare this study, agencies must obtain public comment. *See id.* § 4336a(c); Dep't of War, *Department of War National*

[1] Congress amended NEPA in 2023. *See* Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 321, 137 Stat. 10, 38-46. This brief cites the current version, unless differences in the pre-2023 law applicable to the Air Force's decision are relevant.

Environmental Policy Act Implementing Procedures Pts. 1.8(b), 2.1(b)-(e) (last updated Apr. 30, 2026) (DoW NEPA Proc.), perma.cc/NSP2-KY3V.

NEPA does not require a full EIS in every instance. An agency may adopt "categorical exclusions" for actions that normally do not have a significant environmental effect, and then comply with NEPA by invoking an exclusion for a particular project. 40 C.F.R. § 1501.4 (2021); *see also* 42 U.S.C. §§ 4336(a)(2) & (b)(2), 4336c. For proposed actions where the environmental effects are not fully known, NEPA requires agencies to prepare an environmental assessment (EA). *See* 42 U.S.C. § 4336(b)(2). The agency can then take one of two steps: prepare a "finding of no significant impact" and end its analysis there, or proceed to an EIS. *Id.*

NEPA's procedural requirements ensure that important environmental effects of governmental action are not "overlooked or underestimated," only to be realized "after resources have been committed or the die otherwise cast." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). In addition, per NEPA's various provisions directing coordination, "[m]ost agencies use NEPA as an 'umbrella' statute—that is, a framework to coordinate or demonstrate compliance with any study, review, or consultation required by other environmental laws." Cong. Rsch. Serv., *The National Environmental Policy Act (NEPA*) 1 (Jan. 10, 2011); *see* 42 U.S.C. §§ 4331(b), 4332(2)(C), 4336a(a)(2)-(3) & (b).

All "public laws of the United States" must be interpreted consistently with NEPA "to the fullest extent possible." 42 U.S.C. § 4332. As amended in

2023, NEPA identifies limited circumstances when agency action is fully exempt from the law's procedural requirements. An agency need not prepare a NEPA analysis if "the proposed agency action is excluded pursuant to . . . another provision of law," *id.* § 4336(a)(2), or if such preparation "would clearly and fundamentally conflict with the requirements of another provision of law," *id.* § 4336(a)(3).

2. A separate federal law, RCRA, governs public and private management of hazardous waste. *See* Pub. L. No. 94-580, 90 Stat. 2795 (1976). RCRA is described as a "cradle to grave" statute because it covers different phases of waste management, such as generation, disposal, and remedial cleanup. *City of Chicago v. Environmental Def. Fund*, 511 U.S. 328, 331 (1994). This case concerns RCRA subtitle C, which requires facilities that treat, store, or dispose of hazardous waste to obtain a permit from the U.S. Environmental Protection Agency (EPA) or from a state or territorial program administrator. 42 U.S.C. §§ 6925-6926. Permits can last up to ten years. *Id.* § 6925(c)(3).

RCRA obligates EPA to regulate hazardous-waste facilities "to protect human health and the environment." 42 U.S.C. § 6924(a). To obtain a subtitle C permit, RCRA requires the facility to provide information regarding the composition and quantities of waste; the frequency or rate of storage, treatment, or disposal; the site; and other information EPA or the relevant permitting authority may require. *Id.* §§ 6925(b), 6929. RCRA also requires permitting authorities to include "terms and conditions" in issued permits that are "necessary to

protect human health and the environment." *Id.* § 6925(c)(3).

EPA has authorized almost all States and Territories, including Guam, to operate their own RCRA hazardous-waste permitting programs. Under Guam EPA's program, a RCRA permit has a three-year term. 22 Guam Admin. R. & Regs. § 30109(m). If a facility submits a renewal application before a permit term expires, the previous permit "continue[s] in force" by operation of law "until the effective date of a new permit." 40 C.F.R. § 270.51(a); *see* 22 Guam Admin. R. & Regs. § 30109(a), (*o*).

C. Procedural Background

1. For nearly forty years, the Air Force has received RCRA permits to conduct OD at Tarague Beach. Pet. App. 12a. Its most recent permit, issued in 2018, had a September 3, 2021 expiration date. *Id.*

In early 2021, the Air Force decided to continue those OD operations, rather than cease upon the permitted term's expiration. Pet. App. 12a. It accordingly submitted a RCRA permit-renewal application in May. *Id.* The 2021 application is identical to the 2018 permit in all material respects. Among other things, the Air Force named Tarague Beach as the site and identified the same detonation range. J.A. 68-69, 79-85, 90-94; C.A. S.E.R. 390, 575-77, 579-81. The Air Force also specified the same munitions for OD, including bombs, mortars, antipersonnel and antitank mines, grenades, and "military ordnance material (such as black powder, white/red phosphorus, tear gas, ammunitions, propellants, and explosive materials)." J.A. 41, 70; *see*

J.A. 46-49, 75-79. And the Air Force explained that it would open-detonate the same quantity of munitions each year, approximately 30,000 pounds. J.A. 37, 62.

Notwithstanding the environmental, cultural, and public-health risks of conducting OD on Tarague Beach, the Air Force made its 2021 decision to continue to treat hazardous-waste munitions on that site without preparing a NEPA analysis. Pet. App. 12a-13a. Nor did the Air Force invoke a NEPA categorical exclusion. *Id.* at 12a. The 2021 application did copy and paste a cursory discussion of technological alternatives to OB/OD from the 2018 application, stating that "the effectiveness of other forms of treatment" is "for the most part, unknown," and that "most" alternative methodologies "are still years away from being a viable alternative." J.A. 96; *see also* J.A. 54-56, 95-97, 102. The 2021 application did not address the contrary findings in the National Academies and EPA reports, which came out after the 2018 permitting cycle. Nor did the application address alternative locations.

To date, Guam EPA has not approved or denied the 2021 permit-renewal application. The Air Force accordingly has been conducting OD under its 2018 permit for nearly five additional years—longer than the three-year term the 2021 application sought. Pet. App. 13a; *see also* J.A. 116.

2. Respondent Prutehi Guåhan is a Guam-based organization dedicated to protecting the island's natural and cultural resources and the well-being of its people. J.A. 4-5. Respondent's members include residents who own land near Tarague Beach, who recreate on the beach, and who regularly use the

traditional fishing sites offshore. J.A. 6-7; *see also* D. Ct. Doc. 56-1, at ¶¶ 5, 13 (Oct. 25, 2025) (Flores Decl.). Respondent's members also include families of the indigenous CHamoru owners of seized land alongside the OD detonation range and elsewhere on Guam's northern coast. J.A. 6; Flores Decl. ¶¶ 5-6. These members fear that OD operations will permanently contaminate their ancestral lands and prevent the lands' return to indigenous families. J.A. 6; Flores Decl. ¶ 6.

Respondent sued under the APA, 5 U.S.C. § 704, to challenge the Air Force's failure to comply with NEPA before deciding to conduct OD on Tarague Beach for an additional period. The district court granted petitioners' motion to dismiss, finding that there was no final agency action. Pet. App. 81a. The court also held that respondent failed to state a claim because RCRA implicitly displaces the Air Force's obligation to prepare any NEPA analysis. *Id.* at 89a.

3. The court of appeals reversed and remanded. Pet. App. 1a-46a.

a. The court of appeals held that RCRA does not eliminate the Air Force's NEPA obligations. Pet. App. 33a-46a. Relying on this Court's holding in *Flint Ridge Development Co. v. Scenic Rivers Association of Oklahoma*, 426 U.S. 776 (1976), the court of appeals first reasoned that another statute may displace NEPA if there is "an irreconcilable and fundamental statutory conflict" between the two. Pet. App. 34a. But the court found no conflict at all between NEPA's and RCRA's provisions. *Id.*

Applying circuit precedent, the court also reasoned that a law may supplant NEPA if the two statutes'

environmental-review requirements are "'sufficiently similar'" such that "the overlap renders NEPA superfluous," or "'sufficiently different'" such that "the divergence reflects Congress's intent to replace NEPA[]." Pet. App. 35a-36a (citation omitted).[2] But the court determined that RCRA permitting is not the functional equivalent of NEPA because "the timing of each statute's prescribed environmental review is entirely distinct." *Id.* at 37a. And "nothing in RCRA's language or structure suggests that applying the statute alongside NEPA would sabotage" the permitting process. *Id.* at 43a (internal quotation marks and citation omitted). As the court explained, "[i]f anything, applying NEPA to an agency's antecedent decision to dispose of hazardous waste *furthers*, rather than detracts from, RCRA's statutory purpose." *Id.* at 46a.

b. The court of appeals also determined that the Air Force's decision to continue OD on Tarague Beach, "as evidenced by the content of its RCRA permit renewal application," is reviewable final agency action. Pet. App. 20a; *see id.* at 20a-32a. With respect to the first prong of this Court's test in *Bennett v. Spear*, 520 U.S. 154 (1997)—whether the agency had completed its decisionmaking—the court of appeals explained that the Air Force's application reflected its "'definitive position.'" Pet. App. 22a (citation omitted). The court observed that the Air Force "has not suggested it is still in the middle of trying to figure out its position on OB/OD operations at Tarague Beach, or that the plan memorialized in its

[2] At petitioners' urging, the court of appeals declined to consider NEPA's 2023 amendments. Pet. App. 5a n.3.

application was tentative from the agency's perspective." *Id.* at 23a (internal quotation marks, brackets, and citation omitted).

With respect to *Bennett*'s second prong—whether the agency's decision is one from which "legal consequences will flow," 520 U.S. at 178 (citation omitted)—the court of appeals concluded that the Air Force's decision to conduct OD operations on Tarague for another period "commit[ted] the Air Force to a particular course of action." Pet. App. 31a (citation omitted). The court also found that the Air Force's renewal application had the "legal consequence of prolonging the life of its 2018 permit" by virtue of the extension regulation. *Id.* at 31a n.9.

c. Judge VanDyke dissented from the final-agency-action holding, while expressing no view on NEPA displacement. Pet. App. 47a & n.1.

SUMMARY OF ARGUMENT

I. The Air Force has a clear statutory duty to prepare a NEPA analysis before deciding whether to conduct OD operations on Tarague Beach. RCRA does not displace that duty. In NEPA's text, Congress directed that the law's environmental-study mandate gives way to another statute in only two circumstances: when that other statute says so, or when that statute's requirements "clearly and fundamentally conflict" with NEPA's. 42 U.S.C. § 4336(a)(2)-(3). The first circumstance tracks Congress's drafting practices in this area, and the second codifies this Court's holding in *Flint Ridge Development Co. v. Scenic Rivers Association of Oklahoma*, 426 U.S. 776 (1976).

Neither circumstance exists here. Over the past fifty years, Congress has expressly excluded from NEPA some agency actions taken under *other* environmental laws. But Congress has never enacted such an exclusion for RCRA. And consolidating early NEPA review with the analysis necessary for the RCRA-permitting process does not pose a conflict of any kind, let alone a clear and fundamental one. To the contrary, the two processes are complementary, consistent with NEPA's design.

Petitioners instead ask this Court to create a third route for NEPA displacement. According to petitioners, NEPA should also give way when a court decides that another environmental statute requires the "functional equivalent" of NEPA's impact-statement process. But in addition to contravening NEPA's text, petitioners' addendum flouts the "strong presumption" against the implied repeal of statutes, which requires Congress to speak clearly when it wishes to overtake existing law. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (brackets and citation omitted). Petitioners cannot carry their burden to show such a clear statement merely by intoning that the "specific governs the general"—an interpretive principle that likewise requires an actual conflict between statutes. Nor can they seek refuge in lower-court cases applying functional-equivalence tests, as those decisions have no better answer to NEPA's text and never applied such an exception to an agency, like the Air Force here, that is not itself a regulator.

Even if the Court were to employ some kind of functional-equivalence standard, NEPA remains binding on the Air Force. The RCRA permitting

process does not fulfill NEPA's hard-look requirement, which imposes procedures at a different time and mandates evaluation of different considerations—including, here, alternative locations for OD.

II. The Air Force thus had an obligation to comply with NEPA before deciding to continue OD operations at Tarague Beach in 2021. And that obligation is enforceable under the APA. The Air Force's decision, memorialized in its permit-renewal application, more than satisfies this Court's requirements for finality. *See Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

First, the Air Force has made up its mind to continue OD at Tarague Beach beyond 2021. There is nothing suggesting that the Air Force's decision was tentative or still under review within the agency. Indeed, the Air Force has implemented its decision on the ground by actually engaging in OD operations on Tarague to this day.

The prospect that Guam EPA may deny a new RCRA permit does not mean that the *Air Force's* decision to proceed is provisional. This Court has been clear that the "mere possibility" an agency might change its mind in response to external process or further engagement "does not suffice to make an otherwise final agency action nonfinal." *Sackett v. EPA*, 566 U.S. 120, 127 (2012). Petitioners nonetheless argue that, as a matter of law, an agency cannot conclude its own decisionmaking when external authorization is required. But this Court's decision in *Biden v. Texas*, 597 U.S. 785, 809 n.7 (2022)—which deemed an agency decision final even though its implementation required judicial

authorization—proves them wrong. And petitioners' theory would mean that there can never be final agency action whenever one aspect of an overall federal project requires external approval or some lingering contingency remains. That is not the law.

Second, the Air Force's decision to continue OD operations at Tarague beyond 2021 carried concrete legal consequences. Most obviously, the Air Force's submission of its permit-renewal application had the real-world effect of extending the prior permit's term—authorizing the Air Force to carry out OD operations for an additional five years and counting.

Petitioners concede that this extension was an immediate legal effect. And per the plain text of the relevant regulation, the renewal application was a necessary trigger. Petitioners assert that there is a mismatch between this legal consequence and respondent's NEPA challenge. But respondent's claim is that petitioners failed to comply with NEPA before deciding to conduct OD operations past September 2021. And petitioners acknowledge that the 2018 permit and the 2021 application are identical in all material respects, so the Air Force's operations during the extension period are no different from the operations for which it seeks a new permit. Alternatively, this Court can find that legal consequences "will flow" from the application, *Bennett*, 520 U.S. at 178 (citation omitted), because the Air Force's commitments in that application will bind the Air Force when approved. Once again, the fact that a condition must fall into place before those plans will be operative does not preclude a finality finding under this Court's precedent.

ARGUMENT

I. RCRA Does Not Displace NEPA's Mandate To Examine Environmental Impacts Before Deciding To Conduct Open-Detonation Operations

Under every standard tool of statutory interpretation—text, context, canons of construction, and precedent—the answer is the same: NEPA applies to the Air Force's action here.

A. Congress Directed That NEPA's Requirements Give Way To Another Statute In Specific Circumstances Absent Here

NEPA's environmental-study requirement applies to "every recommendation or report" on all proposed "major Federal actions." 42 U.S.C. § 4332(2)(C). That mandate applies to "all agencies of the Federal Government." *Id.* § 4332(2). And Congress further "authorize[d] and direct[ed]" that, "to *the fullest extent possible*," agencies and courts "interpret[]" and "administer[]" the "policies, regulations, and public laws of the United States" in accordance with NEPA. *Id.* § 4332(1) (emphasis added).

That fullest-extent-possible command is "neither accidental nor hyperbolic." *Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Okla.*, 426 U.S. 776, 787 (1976). It is meant to force a hard look at environmental factors—including those relevant to other applicable laws—at the earliest possible stage. It also requires early public input. All to ensure that concerns are aired when they might make a difference—that is, before "resources have been committed or the die

otherwise cast." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

Congress has specified that another law can displace NEPA's broad command in only two situations. An agency need not "prepare an environmental document with respect to a proposed agency action" if the action is (1) "excluded" from NEPA under "another provision of law"; or if (2) preparing the NEPA document "would *clearly and fundamentally conflict* with the requirements of another provision of law." 42 U.S.C. § 4336(a)(2)-(3) (emphasis added); *see also id.* § 4332(2)(C) (requiring compliance except where it "would be inconsistent with other statutory requirements").[3] Neither of those textual exemptions covers a proposed action for which the federal agency will need to seek a RCRA permit.

1. Congress has expressly excluded many other agency actions from NEPA's environmental-study requirement. For instance, Congress has completely excluded actions taken under the Clean Air Act. 15

[3] Although Congress codified this displacement framework in 2023, it reflects longstanding congressional practice and this Court's precedent. *See infra* at 19-21. Petitioners told the court of appeals that the 2023 NEPA amendments could not be considered in this pre-2023 case. C.A. Doc. No. 35, at 1-2 (Sept. 19, 2023). Petitioners appear to have reconsidered, stating that the amendments "reinforce[] the basic principles that NEPA, correctly interpreted, already embodied." Pet. Br. 9 (quoting *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 181 n.3 (2025)); *see also* Cert. Reply 6 n.2. If this Court nevertheless believes that the 2023 amendments cannot be considered, it should dismiss the petition as improvidently granted, as a decision could not conclusively resolve the relationship between NEPA and other statutes going forward. *See* Br. in Opp. 34-35.

U.S.C. § 793(c)(1). It has largely excluded actions EPA takes under the Clean Water Act, with some carve-outs. 33 U.S.C. § 1371(c)(1). It has excluded limited actions under the Endangered Species Act. 16 U.S.C. § 1536(k). And it has excluded specified actions under several other statutes dealing with environmental concerns, like the Nuclear Waste Policy Act, the Powerplant and Industrial Fuel Use Act, and the Surface Mining Control and Reclamation Act. 42 U.S.C. § 10141(c); 42 U.S.C. § 8473; 30 U.S.C. §§ 1251(a), 1292(d).

Indeed, Congress has enacted full or partial exclusions for specific categories of actions or projects numerous times over NEPA's 50-year history—including in the same 2023 legislative session where Congress amended NEPA.[4] As these provisions demonstrate, "when Congress intended" to displace NEPA in other statutory contexts, "it knew how to do so." *Thompson v. United States*, 604 U.S. 408, 416 (2025) (internal quotation marks and citation omitted).

Yet Congress has not excluded agency actions that require a RCRA permit. That is not for lack of opportunity. When Congress enacted RCRA in 1976, NEPA had been on the books for six years. During that period, Congress articulated express NEPA

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[4] *See* Pub. L. No. 118-105, § 2(1)-(2), 138 Stat. 1587, 1587-89 (2023) (codified at 15 U.S.C. §§ 4652(h), 4659(d)); *see also, e.g.*, 10 U.S.C. § 2667(g)(4); 15 U.S.C. § 793(c)(2); 16 U.S.C. § 544*o*(f); 30 U.S.C. § 1419(d); 42 U.S.C. § 5159; 45 U.S.C. § 791(c); Pub. L. No. 113-223, § 8(b), 128 Stat. 2096, 2109 (2014); Pub. L. No. 113-66, § 2966(c), 127 Stat. 672, 1043 (2014); Pub. L. No. 96-305, § 11, 94 Stat. 929, 933 (1980); Pub. L. No. 94-207, § 2(b), 90 Stat. 28, 28 (1976).

exclusions elsewhere. *See, e.g.*, Pub. L. No. 92-500, 86 Stat. 816, 893 (1972) (Clean Water Act exclusion). Even in a RCRA provision instructing EPA to "avoid duplication" with specified statutes "to the extent [integration] can be done in a manner consistent with the goals and policies of" those statutes, Congress omitted any mention of NEPA. 42 U.S.C. § 6905(b)(1). Further, Congress amended RCRA in 1992 to specifically clarify the law's application to federal facilities in various ways. *See* Pub. L. No. 102-386, 106 Stat. 1505. Had Congress wanted to relieve federal RCRA permittees of NEPA obligations, that would have been the natural time to do so.

2. Nor is there a "clear[] and fundamental[] conflict" between NEPA's environmental-study requirement and RCRA's permit requirement. 42 U.S.C. § 4336(a)(3).

This standard—requiring not just a conflict, but an undeniable and significant one—imposes a high bar. It comes from this Court's decision in *Flint Ridge*. There, the Court interpreted Congress's direction that NEPA apply "'to the fullest extent possible'" as a "deliberate command" to agencies to fulfill NEPA's requirements while carrying out other laws. 426 U.S. at 787 (quoting 42 U.S.C. § 4332). As the Court explained, this language was meant to ensure that agencies' duty to consider environmental factors at the outset "not be shunted aside in the bureaucratic shuffle." *Id.*; *see id.* at 787-88.

Only if it is "inconceivable" that an agency could fulfill both NEPA and another law does NEPA "give way." *Flint Ridge*, 426 U.S. at 788; *see also id.* ("clear and unavoidable conflict"). *Flint Ridge* presented

such an "irreconcilable and fundamental conflict" because the other law in question required a timeline for action that made it impossible to complete the NEPA process. *Id.* at 788-89.

There is no such conflict here, *see* Pet. App. 34a-35a, and petitioners have never claimed otherwise. For good reason. Requiring an agency to complete a NEPA analysis before deciding whether to conduct waste-treatment operations in no way conflicts—let alone clearly or fundamentally—with the RCRA-permitting process.

To the contrary, NEPA's requirements *complement* RCRA. Pet. App. 45a-46a. In the Army's words: "NEPA saves time and money: If done early, [it] reduces uncertainties and facilitates compliance with other environmental laws." Army NEPA Overview 1. If an agency decides to seek a RCRA permit for operations it has evaluated under NEPA, information developed in the NEPA analysis can support the permit application and inform the permitting authority's decision. That, indeed, is one of NEPA' strengths: to "help[] agencies identify and plan for compliance with other environmental requirements." *Id.* at 2; *see also* 85 Fed. Reg. 43304, 43308 n.27 (July 16, 2020) (describing this "longstanding agency practice" of integrating environmental review under other laws in the "NEPA document").

B. Petitioners' "Functional Equivalence" Test Flouts Basic Rules Of Statutory Interpretation

Without contesting either of those points, petitioners invite the Court to create a third route for

NEPA's displacement. According to petitioners, NEPA also gives way when a court decides that another environmental statute is NEPA's "functional equivalent." Pet. Br. 20. That standard finds no support in NEPA's or RCRA's text or other permissible tools of statutory interpretation.

1. Petitioners' proposal violates the canon against implied repeals. It is a cardinal rule of statutory interpretation that, "[w]hen confronted with two Acts of Congress allegedly touching on the same topic," courts are "not at 'liberty to pick and choose among congressional enactments'" and must strive "'to give effect to both.'" *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (citation omitted). Thus, courts "will not infer a statutory repeal" unless the legislature's intention is "'clear and manifest.'" *National Ass'n of Home Builders v. Defenders of Wildlife* (*NAHB*), 551 U.S. 644, 662 (2007) (citation omitted).

That clear manifestation is present only where the later statute (1) "expressly contradicts the original act," or (2) such a construction "is absolutely necessary in order that the words of the later statute shall have any meaning at all." *NAHB*, 551 U.S. at 662 (ellipses and brackets omitted); *see also Epic*, 584 U.S. at 510 (under the "'strong presumption'" against implied repeals, Congress must make its intent "'clear and manifest'" through a "conflict" (brackets and citations omitted)). In other words, a later-enacted statute may displace another only in the two scenarios that Congress has now written into NEPA.

Petitioners nonetheless argue that they can satisfy the rule against implied repeals by invoking the principle that "the specific governs the general." Pet.

Br. 4. Because RCRA is more "specific" than NEPA when it comes to hazardous-waste operations, the theory goes, this Court should infer that Congress clearly intended displacement.

But the specific-controls-the-general principle cannot overcome the presumption against implied repeals in the absence of an actual conflict. *See supra* at 23. In *Epic*, for instance, this Court rejected the argument that a National Labor Relations Act provision "specific" to labor rights could knock out the Federal Arbitration Act's mandates in the context of a labor dispute, because the two laws could be harmonized. 584 U.S. at 523-24; *see also id.* at 510-11, 525. A leading treatise is in accord: "*If there is a conflict* between a general provision and a specific provision," then "the specific provision prevails." Antonin Scalia & Bryan A. Garner, *Reading Law* 183 (2012) (emphasis added) (Scalia & Garner).

Petitioners' sole authority, *RadLax Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012) (Br. 36), does not establish that the mere specificity of a later-enacted statute can repeal an earlier related law. In *RadLax*, the Court simply observed that while the specific/general principle is "most frequently applied" when "a general permission or prohibition is contradicted by a specific prohibition or permission," it can also be invoked to avoid reading one (more general) clause to permit what another (more specific) clause proscribes. *Id.* at 645-46. That does not describe the dispute here.[5]

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[5] Nor does the RCRA permitting process "cover[] the whole subject of" NEPA, such that it is "'clearly intended as a

Even on its own terms, the specific-governs-the-general canon provides little illumination in this case. Petitioners assume that RCRA is the hazardous-waste "specific" counterpart to NEPA's more "general" command across environmental contexts. But NEPA is more specific than RCRA when it comes to the environmental review the Air Force must undertake before proposing its action—including the depth of analysis, the consideration of alternatives, and the process for coordinating with other agencies. *See* 42 U.S.C. §§ 4332, 4336, 4336a-4336c. Here, as elsewhere, assigning the two labels is not straightforward. *See, e.g.*, *Epic*, 584 U.S. at 523-24; Scalia & Garner 187-88. Given the slipperiness of the canon, and the judicial "restraint" this Court has "counsel[ed]" in this area, the better course is to stick to an "interpretation that gives effect to all of Congress's work." *Epic*, 584 U.S. at 511, 524.

Finally, congressional practice in this area only reinforces the strong presumption against implied repeals. Not only does Congress have a long history of codifying NEPA exemptions. And not only did Congress amend NEPA to specifically address when the law gives way to other statutes. In making those amendments, Congress simultaneously rejected a proposal to adopt a functional-equivalence standard. The 2023 NEPA amendments adopted "elements of the BUILDER Act." 169 Cong. Rec. S1877 (daily ed. June 1, 2023) (Sen. Capito); *see* Pub. L. No. 118-5,

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substitute.'" *NAHB*, 551 U.S. at 663 (citation omitted). Among other differences between the two regimes, RCRA does not govern federal facilities' antecedent decision whether to carry out hazardous-waste operations in the first place. *See infra* at 32-36.

§ 321, 137 Stat. 38-46 ("BUILDER Act"). As introduced, that bill would have also exempted from NEPA actions "for which such agency's compliance with another statute's requirements serve the same or similar function as the requirements of [NEPA]." H.R. 1577, 118th Cong., § 2(b) (Mar. 14, 2023). But Congress went a different route: It retained the BUILDER Act's language about express exclusions and clear conflicts, while jettisoning the functional-equivalence language. *Cf. United States v. Johnson*, 529 U.S. 53, 58 (2000) ("When Congress provides exceptions in a statute," the "proper inference" is that Congress "limited the statute to the ones set forth.").

2. Petitioners' other attempts to shore up their functional-equivalence standard are likewise unconvincing.

a. Petitioners appeal (Br. 36-37, 42-43) to lower-court decisions that have embraced a functional-equivalence test. But the standard those decisions apply is not the rule petitioners advocate here. And those decisions have no better answer to NEPA's text than petitioners do.

Petitioners' cases—starting with the first in the line, *Portland Cement Association v. Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973)—stand for the proposition that in some circumstances, environmental agencies enforcing environmental statutes need not also comply with NEPA's environmental-study requirement. *See id.* at 381, 384-85 (deciding whether NEPA "is applicable to environmentally protective regulatory agencies"). With respect to such agencies—like EPA when it acts as the RCRA permitting authority—those cases rest on the notion

that courts should strike a "balance between some of the advantages and disadvantages of full application of NEPA" when another statute imposes procedural requirements on those agencies too. *Portland Cement*, 486 F.2d at 386; *see also id.* at 379-80 (explaining that NEPA's "language" can be "overrid[den]" by "purpose and legislative history"); *see also State of Alabama ex rel. Siegelman v. U.S. EPA*, 911 F.2d 499, 504-05 (11th Cir. 1990).

But courts are not "free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal." *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 463 (2022) (citation omitted). This rule exists for particularly "good reason[]" in the implied-repeal context: "Allowing judges to pick and choose between statutes risks transforming them from expounders of what the law *is* into policymakers choosing what the law *should be*." *Epic*, 584 U.S. at 511.

In any event, even as they ride on those decisions' coattails, petitioners do not agree with their reasoning. Despite invoking *Portland Cement* (Br. 42, 44), petitioners flatly contest (Br. 44-45) the D.C. Circuit's holding that "NEPA must be accorded full vitality as to non-environmental agencies." 486 F.2d at 387. Petitioners cannot have it both ways.

b. Petitioners are equally mistaken in contending (Br. 43-44) that "regulatory history and practice" support a functional-equivalence standard.

i. Considerable regulatory history and practice points toward the opposite conclusion: that agencies have long understood their obligation to comply with NEPA even when their actions require authorization

under another statute. For example, in 2002, the Department of Energy (DOE) issued guidance requiring an actual conflict between NEPA and another environmental law—including RCRA—to find NEPA's displacement. *See* Memorandum from Beverly Cook, Ass't Sec'y, DOE, to Secretarial Officers and Heads of Field Organizations, *DOE Policies on Application of NEPA to CERCLA and RCRA Cleanup Actions* 1-3 (July 11, 2002), perma.cc/Z4JG-8X4N.

Past and current NEPA regulations and guidance reflect a similar understanding. The Council on Environmental Quality regulations in effect during this case contemplated that action agencies would comply with NEPA notwithstanding a need to obtain permits. *See* 40 C.F.R. § 1502.24(b) (2021) (requiring draft EISs to "list all Federal permits, licenses, and other authorizations that must be obtained"); *id.* § 1503.3(d)-(e) (2021) (referencing permitting agencies' comments on action agencies' draft EISs). The Army's 2020 NEPA regulations likewise directed that the NEPA analysis "integrat[e]" environmental review under other laws—including, notably, RCRA. 32 C.F.R. § 651.14(e)(9) (2021).

Moreover, just last year, DOD components adopted categorical exclusions to NEPA built on the premise that components have NEPA obligations when they need permits or when RCRA otherwise applies. For instance, DOD adopted a categorical exclusion for "[c]onstruction, *in accordance with applicable permits*," of certain water crossings. DoW NEPA Proc., App. A, § I(b)(8) (emphasis added); *see also id.* § III(37) (maintenance dredging and debris disposal where "*applicable permits are secured*" (emphasis

added)). And the Air Force adopted a categorical exclusion applicable to "[r]outine transporting of hazardous materials and wastes in accordance with applicable Federal . . . laws." *Id.* App. A, at 45. If petitioners' position in this case were correct, then their own NEPA infrastructure would be superfluous.

What their procedures suggest, agency practice confirms. Most pertinent here, agencies—including DOD components—proposing hazardous-waste-management activities have routinely completed NEPA analyses for activity also covered by RCRA. For example, before expanding OB/OD operations at Edwards Air Force Base (and obtaining a modification to its RCRA permit), the Air Force evaluated that decision under NEPA.[6] Before operating a thermal-treatment facility to replace OB at the Holston Army Ammunition Plant, the Army completed a NEPA analysis.[7] And DOE completed a NEPA analysis before carrying out OB/OD operations at Lawrence Livermore National Laboratory, while also applying for a RCRA permit.[8]

ii. For their part, petitioners invoke (Br. 43) a 1980 EPA regulation stating that "RCRA . . . permits

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[6] *See* Cal. Env't Prot. Agency, *Draft Environmental Impact Report/Environmental Assessment: Edwards Air Force Base Open Burn/Open Detonation Units* ES-1 to ES-2, 1-1 (Aug. 2013), perma.cc/QT4G-7B4T.

[7] *See* U.S. Army Corps of Eng'rs, *Final Environmental Assessment for Installing and Operating a Thermal Treatment Facility* 1-1, 1-3 (Mar. 2020), perma.cc/9BGX-SEQZ.

[8] *See* DOE, *Environmental Assessment for the Explosive Waste Treatment Facility at Site 300*, at 1-2 (Nov. 1995) (Lawrence Livermore EA), perma.cc/YNZ3-Q3QB.

are not subject to the environmental impact statement provisions of [NEPA]." 40 C.F.R. § 124.9(b)(6). But this EPA regulation—which applies only "when EPA is the permitting authority," *id.* § 124.9 (title)—does not address the NEPA obligations of RCRA permit *applicants*. It speaks only to the procedures for "draft permit[s] prepared by EPA." *Id.* § 124.9(a); *see also id.* § 124.6.

The regulation's preamble—which states EPA's "position that [NEPA] does not require preparation of an [EIS] *when permits are issued* under [RCRA]"—confirms that the regulation is speaking only to EPA's duties as the permit-approving entity. 45 Fed. Reg. 33290, 33406 (May 19, 1980); *see also* 72 Fed. Reg. 53652, 53653-54 (Sept. 19, 2007) (describing the regulation as applicable to EPA). That narrower reading is also reflected in the regulation's notice of proposed rulemaking, which grounds the relevant language in court decisions holding that "action *taken by an agency with recognized environmental expertise* . . . constitutes the functional equivalence of NEPA's requirements." 44 Fed. Reg. 34244, 34247 (June 14, 1979) (emphasis added) (citing *Portland Cement*).

Finally, petitioners overshoot with their congressional-acquiescence argument (Br. 44). Even putting aside the many indications that Congress did not acquiesce in *any* non-conflict standard for displacement, *see supra* at 18-22, at most, Congress would have understood the EPA regulation to have taken a position about whether *EPA* must comply with NEPA in approving RCRA permits. There is no basis to believe that Congress endorsed the much

broader understanding of functional equivalence that petitioners advance now.

iii. Petitioners' invitation to write in a RCRA exception to NEPA would result in an indeterminate and unworkable rule.

This is an area where "courts should strive . . . for clarity and predictability," and petitioners' reading provides none. *Seven Cnty.*, 605 U.S. at 192. Petitioners themselves are not clear on would make another statute's requirements the functional equivalent of NEPA's. Is it enough that the statutes "cover similar ground"? Pet. Br. 45. Or would RCRA displace NEPA if it required consideration of *all* the same environmental effects NEPA does? *See* Pet. Br. 37-38; *but see infra* at 36. Or is the triggering condition instead that the two statutes impose "somewhat *different* requirements"? Pet. Br. 41 (emphasis added). Or is the answer something in between? *See* Pet. App. 35a-36a (evaluating whether NEPA and RCRA are "sufficiently similar" or "sufficiently different" (citation omitted)).

Nor do petitioners explain *which* RCRA regime should be compared with NEPA. For instance, they observe (Br. 38) that a RCRA regulation specific to OB/OD requires consideration of safer modes of waste treatment. *See* 40 C.F.R. § 265.382; 22 Guam Admin. R. & Regs. § 30107(a). Even putting aside that NEPA's required alternatives analysis is broader, *see infra* at 34-35, at most this might mean the two analyses more closely converge in the specific factual context of OB/OD. Should the functional-equivalence inquiry take place on such a context-specific basis, rather than a statutory one?

In addition, RCRA reserves considerable power to States (and Territories) to adopt their own regulations and impose requirements "more stringent" than those in EPA regulations. 42 U.S.C. §§ 6926(b), 6929. If a state or territorial hazardous-waste program requires consideration of a broader set of environmental effects or alternatives, could an action agency's NEPA obligation be displaced in some places but not others?

Unlike the clear carveouts in 42 U.S.C. § 4336(a)(2)-(3), neither NEPA's nor RCRA's text would answer these questions. And such problems abound when a test for redlining two statutory schemes turns on the editor's subjective—and potentially policy-laden—views of "what Congress *really* wanted." *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175, 205 (2023) (Gorsuch, J., concurring in the judgment).

C. RCRA's Permitting Requirements Are Not The Functional Equivalent Of NEPA Obligations

Even if this Court were to adopt a version of petitioners' standard, RCRA's permitting requirements are not the functional equivalent of NEPA's command that the Air Force take a hard look before it leaps.

1. To begin with, the timing of the environmental analyses prescribed by each statute is "entirely distinct." Pet. App. 37a. NEPA requires action agencies like the Air Force to prepare an environmental study—and to engage with the public—*before* those agencies decide to undertake an activity that may have significant environmental

impact and (as here) apply for a permit. *Id.* That is to assure "that environmental concerns be integrated into the very process of agency decision-making" and considered "during the planning stage." *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979).

RCRA, by contrast, does not mandate a "determination" of environmental impacts until the point of the permitting agency's decision on an application. 42 U.S.C. § 6925(c)(1); *see* Pet. App. 38a. RCRA says nothing about what *facilities* must evaluate before deciding to treat hazardous waste using a particular method at a particular site. *See* 42 U.S.C. § 6925(b). As a practical matter, a facility needs to undertake the environmental analysis necessary to support a permit application and facilitate the permitting authority's determination. But RCRA does not require facilities to do so before deciding whether to submit the application in the first place. In other words, RCRA only compels the facility to provide the environmental analysis necessary to justify the decision it already made and to aid someone else's decision.

Petitioners note (Br. 7, 14) that Guam EPA offers the opportunity for public comment on its permit-approval decisions. But that is no substitute for the Air Force obtaining public input before it makes up its mind about how (OD) and where (Tarague Beach) to treat hazardous-waste explosives. The Air Force has no obligation to consider or respond to comments Guam EPA receives. And had there been public engagement before the Air Force submitted its application, Guam residents and other stakeholders could have tried to convince the Air Force to change

course—including by selecting an off-island site that would have obviated the need for Guam EPA's involvement. As a DOD component has explained, "[s]ome of the most constructive and beneficial interaction between the public and an agency occurs when citizens identify or develop reasonable alternatives that the agency can evaluate." U.S. Army Corps of Eng'rs, *Scoping Report* 1 (Aug. 2008), perma.cc/K7FW-68EW.

Indeed, a recent study found that public comments during NEPA review substantively altered agency decisions 62% of the time. Ashley Stava et al., *Quantifying the Substantive Influence of Comment on United States Federal Environmental Decisions under NEPA*, 20 Env't Rsch. Letters, 2025, at 1. And even if it does not change the outcome, public engagement at the outset "can increase citizen's trust in decision-making, leading to strengthened support for policy and decision-making outcomes." *Id.*

2. NEPA also requires evaluation of a broader set of alternatives than RCRA. Pet. App. 39a. One of NEPA's touchstones is agencies' obligation to weigh proposed actions against a feasible "range of alternatives" as they choose their course. 42 U.S.C. § 4332(2)(C)(iii) & (2)(F). The RCRA permitting process for hazardous-waste treatment, meanwhile, does not typically require facilities seeking authority for one course of action to develop and present information on alternative plans. *See id.* § 6925(b). So when applying for a permit for one OD site—say, a beach on Guam—the facility faces no obligation to consider whether other OD sites—say, an off-island military base *not* sitting atop Guam's main aquifer

and an archeological site—might pose less risk. Indeed, to respondent's knowledge, petitioners have never evaluated non-Tarague sites for OB/OD in their prior RCRA applications.

Petitioners mistakenly suggest (Br. 38) that RCRA folds in the equivalent of NEPA's alternatives analysis by requiring the permitting agency's "[r]eview" of renewal applications to "consider improvements in the state of control and measurement technology." 42 U.S.C. § 6925(c)(3). That provision requires consideration of certain technologies. It would not require (for instance) evaluation of alternative sites for OD. The same goes for EPA's RCRA regulation governing OB/OD in particular, which requires evaluation of alternative modes of treatment, not alternative OB/OD sites. *See supra* at 31.

Petitioners also hypothesize (Br. 42) that Congress "might well" have thought that a NEPA alternatives analysis is inappropriate in the hazardous-waste context because munitions are "potentially deadly." To be clear, no NEPA review or RCRA permit is needed to treat unexploded munitions that pose an immediate risk to safety or property. *See* 40 C.F.R. §§ 266.204, 270.1(c)(3)(i)(D); DoW NEPA Proc. Pt. 3.12(b). And there are viable alternative actions in the hazardous-waste context generally. As noted, here, the Air Force could have evaluated whether to conduct OD somewhere in the continental United States. Or it could have evaluated whether to store munitions for longer periods of time, including until better treatment methods are available. *See, e.g.*, 65 Fed. Reg. 20140, 20140 (Apr. 14, 2000) (Army NEPA

document evaluating continued storage of munitions and chemical agents as an alternative); Lawrence Livermore EA 3 (considering offsite shipment of waste as an alternative).

3. In addition, NEPA requires evaluation of a broader range of harms. Consistent with Congress's mandate to "preserve important historic, cultural, and natural aspects of our national heritage," 42 U.S.C. § 4331(b)(4), NEPA obligates agencies to evaluate effects on the quality of the "human environment," *id.* § 4332(2)(C). That term has long been understood to encompass "cultural," "aesthetic," "economic," and "social" effects, among others. 40 C.F.R. § 1508.1(g)(4), (m) (2021); *see also* 43 Fed. Reg. 55978, 55988, 56004 (Nov. 29, 1978); DoW NEPA Proc. Pt. 6.1(f)(1). By contrast, RCRA's text—and EPA's and Guam EPA's implementing regulations—do not require the Air Force or Guam EPA to weigh, for example, the fact that active OD operations on Tarague prevent access to culturally significant fishing sites. *See* J.A. 6-7; *see also* J.A. 68-69, 79.

D. NEPA Compliance Strengthens Agency Planning

Petitioners are also wrong to suggest that applying NEPA according to its text "paralyze[s]" agency action requiring permits. Pet. Br. 46 (citation omitted). NEPA's procedures are specifically designed to streamline environmental analysis required under multiple laws in a way that guides agency planning. *See supra* at 22. For instance, the NEPA regulations applicable to this case told agencies to "prepare draft [EISs] concurrent and integrated with environmental impact analyses and related surveys and studies

required by all other Federal environmental review laws." 40 C.F.R. § 1502.24(a) (2021); *see also id.* § 1501.9(f)(4) (2021) (instructing agencies to integrate "other environmental review" and "authorization" requirements in the NEPA analysis).

DOD's current procedures likewise instruct components to prepare NEPA documents "concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes." DoW NEPA Proc. Pt. 3.8(a); *see id.* at Pt. 3.8(b). Such integration enables the agency to complete all its required analyses at once, in a way that will inform its "go/no-go" decision while supporting the record for permit applications. 40 C.F.R. § 1502.5 (2021); *see also, e.g.*, DOE, Argonne Nat'l Lab., *Technology Resource Document for the Assembled Chemical Weapons Assessment Environmental Impact Statement* 26, 49, 73, 95 (May 2001), perma.cc/SXJ6-2HQ2 (studies relevant to alternative weapons-destruction technologies were used to "support" both "the [NEPA] EIS and [RCRA] permit application").

In addition, there are multiple ways for agencies to rest on prior NEPA analyses in subsequent permitting cycles without reinventing the wheel. They can rely on "programmatic" environmental documents for actions with relevant similarities or those occurring in a particular location. *See* 42 U.S.C. § 4336b; DoW NEPA Proc. Pt. 3.1; *see also id.* Pt. 1.8(e). Or if the agency prepared a NEPA analysis for the last permit cycle and nothing material has changed since, it can incorporate the prior analysis by reference. *E.g.*, DoW NEPA Proc. Pt. 3.2.

Moreover, agencies can adopt categorical exclusions for actions that "normally do[] not significantly affect the quality of the human environment." 42 U.S.C. § 4336e(1); *see also id.* §§ 4336(a)(2), 4336c. Indeed, agencies may be able to exclude categorically some actions that are done in compliance with other environmental laws, as DOD has done with respect to routine hazardous-waste transport. *See* DoW NEPA Proc., App. A, at 45.

As evidenced by the fact that agencies have been doing this for decades, *see supra* at 27-29, 36-37, there is no sound basis to believe that continued NEPA compliance will gum up the permit-renewal process. Instead, the law will serve the basic purpose Congress intended: to "help[] agencies to make better decisions and to ensure good project management." *Seven Cnty.*, 605 U.S. at 177.

II. The Air Force's Decision To Conduct Open-Detonation Operations On Tarague Beach Is Final Agency Action

Because "Congress intends [the Air Force] to obey [NEPA's] commands," it likewise "expects the courts to grant relief" when those commands are violated. *Bowen v. Michigan Acad. of Family Physicians*, 476 U.S. 667, 681 (1986). The court of appeals correctly found that such relief is available to respondent in an APA suit.

The APA provides for judicial review of "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Petitioners do not dispute that the Air Force's decision to continue OD operations at Tarague Beach constitutes agency

action. *See* 5 U.S.C. § 551(4) & (13); Pet. App. 20a-21a. Petitioners contest only whether that decision is "final" within the meaning of the APA. The answer is yes.

The Court has distilled its finality precedents into a two-prong test. "[F]irst, the action must mark the 'consummation' of the agency's decisionmaking process." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citation omitted). "[S]econd, 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). Both prongs are satisfied here. And petitioners' argument to the contrary is yet another attempt to insulate important agency decisions from timely judicial review. This Court has turned away such arguments in the past, and it should do so again here.

A. The Air Force's Permit Application Consummated Its Decisionmaking

1. When the expiration date of the Air Force's most recent RCRA permit drew near, it had to make a decision: continue OD operations at the Tarague Beach range past September 2021, or cease. The Air Force decided to continue. As it had done many times before, it submitted a permit-renewal application essentially replicating its previous permit. Pet. App. 22a. And while it awaited Guam EPA's decision on the new permit, the Air Force proceeded to conduct those same operations, under those same terms, for years. There is no question that the Air Force reached the culmination of its internal decisionmaking on whether to conduct OD on Tarague Beach.

The Air Force's 2021 application includes numerous indicia that the agency had reached a final decision about whether to continue these operations. It specified a particular site for OD on an existing detonation range. J.A. 58, 68-69, 79-85, 102-03. It provided detailed procedures. *E.g.*, J.A. 102-04, 105-08. It stated what it would detonate and in what permissible amounts. J.A. 62, 75-79, 108; C.A. S.E.R. 108. And the application is signed by an Air Force official who "certif[ied]" that the document contained true, accurate, and complete information. C.A. S.E.R. 8. The document is thus "definitive," not "informal." *Abbott Labs. v. Gardner*, 387 U.S. 136, 151 (1967).

Moreover, there is nothing suggesting that the Air Force is still debating whether to continue OD at Tarague Beach or that "the plan memorialized in its application was tentative from the agency's perspective." Pet. App. 23a. To the contrary, the Air Force has been acting on that decision for nearly five years by exercising its authority under the extended 2018 permit. *See supra* at 11. The Air Force's "own behavior thus belies the claim that its [decision] is not final." *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 479 (2001).

True, Guam EPA has not yet issued a new three-year permit. But the first *Bennett* prong asks whether the action represents the culmination of "*the agency's* decisionmaking process"—meaning, the agency whose action the plaintiff challenges. 520 U.S. at 178 (emphasis added). The possibility that Guam EPA may deny the permit does not render provisional the *Air Force's* decision to proceed. That is like saying that a homeowner submitting detailed architectural

plans to a historic-preservation board has not decided whether she wants to renovate. Or like claiming that a President's nomination of a cabinet secretary does not mean that he has made his final selection, simply because the Senate still needs to confirm the nominee.

The same goes for the possibility that the Air Force might withdraw its permit-renewal request, either on its own initiative or at Guam EPA's behest. This Court has repeatedly rejected the government's contentions that the "mere possibility" an agency might reconsider in response to further engagement or external processes "suffice[s] to make an otherwise final agency action nonfinal." *Sackett v. EPA*, 566 U.S. 120, 127 (2012). *Sackett*, for instance, concerned EPA's issuance of an order stating the agency's view that property was subject to the Clean Water Act and that the recipient had violated the Act. *Id.* at 122. This Court deemed it immaterial that EPA's order explicitly "invited" the recipient to discuss the findings with EPA and inform the agency of inaccuracies. *Id.* at 127. Because agency reconsideration was not guaranteed, EPA's findings were final for APA purposes. *See id.*

Similarly, in *United States Army Corps of Engineers v. Hawkes*, 578 U.S. 590 (2016), this Court found that the Corps had completed its decisionmaking process in issuing a jurisdictional determination under the Clean Water Act stating the Corps' view about whether property contained waters of the United States. *Id.* at 593. That the Corps could "revise" the determination within a five-year period "based on 'new information'" did not defeat a finding that the agency's decisionmaking had ended. *Id.* at

598 (citation omitted). The "possibility" of revision, this Court again explained, "is a common characteristic of agency action, and does not make an otherwise definitive decision nonfinal." *Id.*

Biden v. Texas, 597 U.S. 785 (2022), illustrates the same principle in a context where third-party authorization was required. There, this Court deemed final the Secretary of Homeland Security's memoranda directing the termination of certain migrant protocols—even though, at the time the memoranda issued, the Department of Homeland Security (DHS) was subject to a district-court injunction *prohibiting* the protocols' termination. *Id.* at 809 n.7; *see also id.* at 796. Even though the Secretary's unimplemented decision could conceivably be altered—or completely barred—as judicial proceedings unfolded, the Court found that the agency's decisionmaking had concluded. *Id.* at 809 n.7.

So too here. The Air Force's deliberations about whether to continue OD operations on Tarague have ended. The first *Bennett* prong requires nothing more.

2. Petitioners' contrary arguments lack merit.

Petitioners first assert (Br. 22) that the Air Force's RCRA application "marked the beginning, not the end, of the process by which Guam EPA will decide whether the permit should be renewed." But respondent is not challenging *Guam EPA's* decision on the new permit. Respondent challenges *the Air Force's* decision to conduct OD operations on Tarague Beach beyond September 2021.

Nothing suggests that the Air Force's deliberations

over that decision were not "at an end" when it submitted the renewal application. *Sackett*, 566 U.S. at 129. Petitioners do not represent that the Air Force has ever withdrawn an application for OD after its submission. Nor do petitioners claim that the Air Force has ever changed its mind about OD operations at Andersen AFB once external approval was secured, or that the Air Force might reconsider now. And a claim of lingering ambivalence would be especially strained in this case, given that the Air Force has been actually implementing its decision to carry out post-2021 OD operations at Tarague for nearly five years.

Petitioners nonetheless argue (Br. 23-26) that the application context necessarily renders the Air Force's decision provisional as a matter of law. In *Sackett* and *Hawkes*, petitioners argue, those wishing to reverse the agency's decision had no way to compel that change. Here, Guam EPA could force the Air Force to abandon its chosen plan.

But Guam EPA cannot retroactively change the Air Force's mind. And *Biden v. Texas* forecloses the argument that it was legally impossible for the Air Force to conclude its deliberations insofar as Guam EPA's approval is required. There was no question in *Biden* that when the DHS Secretary directed the future termination of the relevant policy, the agency was legally barred from acting on that direction. Yet it was sufficient that the agency had reached a decision about how it planned to proceed once the necessary condition fell into place.

Precedent aside, petitioners' theory—that an agency decision cannot be final under the APA unless all prerequisites for its implementation have been

resolved—plainly cannot be right. Many federal agency actions constitute just one piece of a larger overall project requiring action from multiple other decisionmakers (like other federal, state, and local authorities). *See, e.g.*, 42 U.S.C. § 4332(2)(C) (hanging paragraph). If any uncertainty about one of those pieces rendered every other decision contingent and thus non-final, there could be no judicial review until *every* relevant process had fully run its course. That is not the law.

B. Legal Consequences Flowed From The Permit Application

The Air Force's decision to conduct OD operations at Tarague Beach past September 2021 also satisfied *Bennett*'s second prong, on either of two grounds.

1. a. The Air Force's submission of the 2021 application had the concrete legal effect of extending the 2018 permit's term. Pet. App. 31a n.9.

Because the Air Force "submitted a timely application . . . for a new permit," the "conditions of [the] expired permit *continue[d] in force* . . . until the effective date of a new permit." 40 C.F.R. § 270.51(a) (emphasis added). The application itself thus granted the Air Force legal authority that it would otherwise have lost. And there is no dispute that the Air Force has actually exercised that authority. *See* Pet. App. 31a; J.A. 116. Put differently, because it formed and implemented the decision to continue operations past their scheduled expiration date, the Air Force has enjoyed the legal right to destroy munitions on Tarague Beach for nearly five years and counting—much longer that the three-year permit term it

applied for.

b. Petitioners acknowledge (Br. 19) that this considerable extension of OD authority qualifies as an "immediate legal effect." Yet they elsewhere insist (Br. 29) that it "does not constitute the sort of direct and appreciable legal consequence that characterizes final agency action." That assertion is difficult to understand. Had the Air Force not submitted the renewal application, it could not lawfully conduct OD operations at the Tarague Beach range past September 3, 2021. Because the Air Force submitted the application, it can and has kept those operations going. *See* J.A. 116. That real-world legal consequence is not hard to "apprecia[te]." It is certainly not lost on respondent's members and other Guam residents, who have endured these operations taking place in their surroundings since 2021. *See* Flores Decl. ¶¶ 9, 15; D. Ct. Doc. 56-2, at 1-2 (Oct. 25, 2025).

Petitioners next claim (Br. 30) that this effect "flow[ed]" from the 2018 permit, not from the 2021 application. But per the regulation's plain language, the Air Force's submission of the renewal application was a necessary trigger: "the conditions of an expired permit continue in force . . . until the effective date of a new permit . . . *if* . . . [t]he permittee has submitted a timely application [for a new permit]." 40 C.F.R. § 270.51(a) (emphasis added).

It is true (Pet. Br. 27) that the renewal application did not cause this result entirely "by itself." But this Court has never suggested that agency action must be an independently sufficient cause of a legal consequence, as opposed to a but-for one. After all,

"[a]gency orders that have no independent coercive effect are common." *Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970). This Court has repeatedly refused to allow such technicalities to immunize agency action from judicial review. *See, e.g.*, *Hawkes*, 578 U.S. at 599-600; *Abbott Labs.*, 387 U.S. at 151-52.

Petitioners' concern (Br. 30) that there is a "mismatch" between the 2018 permit extension and respondent's NEPA challenge to the Air Force's 2021 decision is similarly unavailing. Petitioners suggest that "if a permit-renewal application proposed terms radically different from those of the preexisting permit," it would be improper to base a final-agency-action finding on the preexisting permit's extension. *Id.* They are mistaken.

To begin with, there is no mismatch here. There is no dispute that the Air Force's 2018 permit was identical in all material respects to the 2021 draft permit. *See* Pet. Br. 13. They both select the exact same site for OD and authorize precisely the same operations to treat the same hazardous-waste explosives. *See supra* at 10-11. Respondent's claim—that the Air Force failed to comply with NEPA before deciding to continue OD operations past the 2018 permit's expiration—accordingly applies to the automatic-extension period too. *See* J.A. 1-2; D. Ct. Doc. 20, at 1-2, 6, 8 (May 2, 2022); D. Ct. Doc. 52-1, at 5 (Oct. 17, 2025); Flores Decl. ¶¶ 9, 17.

Even if there were some discrepancy between the legal effect satisfying *Bennett* and the nature of respondent's claim, that would be irrelevant—as evidenced by *Bennett* itself. There, the dispute was

about the Bureau of Reclamation's operation of an irrigation project. 520 U.S. at 157. Because the project triggered the Endangered Species Act, the Bureau sought a biological opinion from the Fish and Wildlife Service; that opinion recommended alternatives to the Bureau's plans that the Service believed would avoid jeopardy to the species. *Id.* at 159. The *Bennett* plaintiffs were irrigation districts and ranch operators who used the project's water and who objected to the Service's recommendations as overly restrictive. *Id.* at 159-60, 167. In finding the APA's finality requirement met, this Court relied on the fact that the biological opinion and an accompanying agency statement created safe-harbor protection for the Bureau if the Service's recommendations were followed. *Id.* at 178; *see id.* at 169-70. But the Court did not ask whether the districts and ranchers objected to the Bureau receiving safe-harbor protection *per se*—and there is no reason to think they did. *See id.* at 178. In other words, so long as the Service action the plaintiffs challenged had a legal consequence, their APA suit could proceed.

iii. Petitioners' remaining arguments on this point fare no better.

Once again, the EPA regulation that petitioners invoke (Br. 31-32) is neither applicable nor helpful. That judicial-review regulation specifies that, when EPA is the permitting authority, EPA's "final agency action" on a RCRA application occurs when EPA grants or denies the permit and the aggrieved party exhausts its intra-EPA appeals. 40 C.F.R. § 124.19(*l*)(2). It thus purports to define the point of

finality for purposes of the *permitting authority*'s decision on the application—not a federal applicant's antecedent decision to conduct hazardous-waste operations.

Petitioners also note (Br. 31) the similarity between the RCRA permit-extension regulation and an APA provision stating that, when a licensee has applied for renewal of a license for "an activity of a continuing nature," the prior license "does not expire until the application has been finally determined." 5 U.S.C. § 558(c). Petitioners call the APA provision a mere "tolling" rule, but it authorizes an extension. *See Rico v. United States*, 607 U.S. 609, 614-15 (2026); *Pan-Atlantic S.S. Corp. v. Atlantic Coast Line R.R. Co.*, 353 U.S. 436, 439 (1957). Accordingly, when the provision applies, it effects a legal consequence. *Cf. Rico*, 607 U.S. at 615-17 (treating a proposed extension rule as carrying legal effect and requiring legal grounding).[9]

To the extent that affirmance here would suggest as much, such a result would hardly be "untenable." Pet. Br. 31. A license extension by virtue of the APA provision would give rise to litigation only if the licensee is a federal agency (*see* Pet. Br. 32); if the challenger's claim centers on the licensee agency's decisionmaking (not the licensing agency's); and if the

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[9] Petitioners note (Br. 31) that "application" is not among the examples of agency action in 5 U.S.C. § 551(13). But the application is relevant here because it memorialized the Air Force's decision, and in any case, Section 551(13) merely contains examples. *See FTC v. Standard Oil Co.*, 449 U.S. 232, 238 n.7 (1980) (issuance of a complaint qualifies); *see also supra* at 38-39.

challenger can establish an Article III injury stemming from the licensee agency's continued conduct. In other words, the claim would have to closely resemble respondent's NEPA claim here.

2. In the alternative, the court of appeals correctly concluded that legal consequences "will flow" from the Air Force's application because the Air Force will be bound by the application's plans and representations upon Guam EPA approval. *Bennett*, 520 U.S. at 178 (citation omitted); *see* Pet. App. 29a.

The Air Force's application, which includes a draft permit, is clear that its terms and conditions will become legally binding once the permit is operative. *See, e.g.*, J.A. 63 (providing that "[t]he Permittee is allowed to treat hazardous waste at the OB/OD unit in accordance with the conditions of this permit" and that "[a]ny treatment of hazardous waste not authorized in this Permit is prohibited"). Submitting the application "alters the legal regime to which [the Air Force] is subject," in that the Air Force has made commitments it will not be free to unilaterally change once accepted. *Bennett*, 520 U.S. at 169.

Petitioners argue that, without Guam EPA's approval, the Air Force's permit application "authorizes nothing." Pet. Br. 27. Even putting aside the automatic extension of the 2018 permit, this Court's decision in *Biden v. Texas* refutes petitioners' gloss on the *Bennett* test. In *Biden*, the fact that the agency could not carry out the DHS Secretary's direction "until it obtained vacatur of the District Court's injunction" did not make that direction "any less the agency's final determination of its employees' obligation to do so once such judicial authorization

had been obtained." 597 U.S. at 809 n.7. Here too, the Air Force's decision to conduct OD at Tarague finally determined the agency's plan of operations, even though full implementation must await an external decision.

Petitioners instead rely on cases where agency officials delivered reports to the President that functioned "like a tentative recommendation" for his action. *Franklin v. Massachusetts*, 505 U.S. 788, 798-99 (1992); *see also Dalton v. Specter*, 511 U.S. 462, 469-70 (1994). But respondent's suit does not challenge a subordinate's recommendation to an intra-branch superior about the decision at hand. *Cf. Abbott Labs.*, 387 U.S. at 151 (rulings of "a subordinate official" can be non-final). Here, the decision respondent challenges—whether to treat munitions through OD operations at Tarague past 2021, or cease—was the Air Force's to make. And that decision was not subject to further approval within the chain of command. *See* Pet. App. 23a.

Petitioners dismiss (Br. 28-29) the significance of *Franklin* and *Dalton*'s intra-branch context, contending that the Air Force ought to be analogized to Guam EPA's subordinate. But the Air Force is not Guam EPA's subordinate, and the Air Force's decision represents DOD's last word on its operational plans. And again, *Biden v. Texas* has since confirmed that *Franklin* and *Dalton* cannot be read so broadly as to preclude a legal-consequence finding merely because another entity's independent action is required. *See* 597 U.S. at 809 n.7.

Nor is the Air Force's permit application the equivalent of a case-initiating notice in an

enforcement action. *See* Pet. Br. 29 (citing *FTC v. Standard Oil Co.*, 449 U.S. 232 (1980)). In *Standard Oil*, the Federal Trade Commission's complaint merely found that there was a sufficient basis to *begin* proceedings in which the Commission itself would *later* determine liability. 449 U.S. at 241-42. Here, the Air Force's permit-renewal application represents its "definitive statement of position" on whether it will conduct further OD operations on Taraque, *id.* at 241, and it will not revisit that question at the end of the RCRA-permitting process.

C. Hearing The NEPA Claim Now Furthers Sound Principles Of Judicial Review

Reviewing respondent's NEPA claim at this juncture also "tracks the 'pragmatic' approach [this Court] ha[s] long taken to finality." *Hawkes*, 578 U.S. at 599 (citation omitted).

If the Court concludes, as it should, that NEPA applies to the Air Force's decision, *see supra* at 18-38, then respondent's claim that the Air Force violated that statute must be heard eventually. Petitioners are cagey about their view of when, exactly, the Air Force's decision to carry out environmentally destructive operations on Taraque becomes final agency action.[10] If it is not the point of memorializing

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[10] In the court below, petitioners argued that the relevant action happened when the Air Force first decided to conduct OB/OD at Taraque in 1982. *See* Pet. App. 28a; *id.* at 55a (VanDyke, J., dissenting). Petitioners do not renew that contention here. And they would be hard-pressed to explain why the first decision to conduct OD and seek a RCRA permit (*see id.* at 12a) constituted final agency action, while each permit-renewal decision does not.

the decision in a RCRA application, then when? When the permitting agency approves the application? The day an OD operation is scheduled? Seconds before the explosives are detonated? Whatever the answer, it cannot be that this federal decision about significant federal operations escapes review simply because a non-federal entity also has to authorize it.[11]

If the Air Force takes final agency action at some point (as it surely must), then there can be no dispute that respondent's NEPA challenge would need to be resolved then too. After all, even a "preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action." 5 U.S.C. § 704.

So the question is not whether a court *ever* hears respondent's NEPA claim, but when. Postponing adjudication until the permit issues—or perhaps until the eve or day of an OD operation—defeats NEPA's core objective of informing agency decisionmaking as early as possible. And it serves no one. It would build in delay (in this case, five years' worth) that could preclude addressing a NEPA failure close in time to its occurrence. It could give rise to emergency litigation. It could create a scenario where the natural APA remedy for the NEPA violation—vacating the pending application, *see* 5 U.S.C. § 706(2)—is unavailable. And even assuming a court could issue

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[11] Post-2023 NEPA does not require environmental study when "the *proposed* agency action is not a final agency action." 42 U.S.C. § 4336(a)(1) (emphasis added); *see* Pet. Br. 35 n.*. Here, the action the Air Force *proposes* is to conduct (permitted) OD operations—which undoubtedly qualifies as final agency action.

another equitable remedy, a compliant NEPA analysis could render Guam EPA's review of the prior application a waste of time—either because the application will materially change, or because the Air Force will withdraw it entirely (for instance, because it decided to treat munitions off Guam).

Nor would it be possible in many cases to consolidate a NEPA claim against a federal-permittee agency with any challenge to the permit's issuance. When the permitting authority is a State, judicial review of the permit usually proceeds under a state-law cause of action. *See, e.g.*, *City of Phoenix v. Arizona Dep't of Env't Quality*, 74 P.3d 250, 251-53 (Ariz. Ct. App. 2003). But the Eleventh Amendment bars state-law actions against state agencies from being heard in federal court. *See Pennhurst State Sch. & Hosp. v. Hardiman*, 465 U.S. 89, 119-23 (1984).

In short, adopting petitioners' understanding of finality is a recipe for inefficiency and prolonged uncertainty. The Court should reject it.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

DAVID L. HENKIN
EARTHJUSTICE
850 Richards Street
Suite 400
Honolulu, HI 96813

LINNET DAVIS-STERMITZ
EARTHJUSTICE
810 Third Avenue
Suite 610
Seattle, WA 98104

CAROLINE A. FLYNN
Counsel of Record
KIRTI DATLA
THIEN T. CHAU
EARTHJUSTICE
1250 Eye Street NW
Floor 4
Washington, DC 20001
(202) 797-4316
cflynn@earthjustice.org

Counsel for Respondent

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APPENDIX

1. 5 U.S.C. § 558(c) provides:

Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

* * *

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the 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.

2. 5 U.S.C. § 704 provides:

Actions reviewable

Agency 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. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

3. 42 U.S.C. § 4331(b) provides:

Congressional declaration of national environmental policy

* * *

(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.

4. 42 U.S.C. § 4332 (2018) provides in pertinent part:

Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

* * *

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

* * *

5. 42 U.S.C. § 4332 (2024) provides in pertinent part:

Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the

policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

* * *

(C) consistent with the provisions of this chapter and except where compliance would be inconsistent with other statutory requirements, include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) reasonably foreseeable environmental effects of the proposed agency action;

(ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.

Prior to making any detailed statement, the head of the lead agency shall consult with and obtain the

comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

6. 42 U.S.C. § 4336 (2024) 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 exclusions, 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.

7. 42 U.S.C. § 6905(b) provides in pertinent part:

Application of chapter and integration with other Acts

* * *

(b) Integration with other Acts

(1) The Administrator shall integrate all provisions of this chapter for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts

referred to in this subsection.

8. 42 U.S.C. § 6924(a) provides in pertinent part:

Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities

(a) In general

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations. Such standards shall include, but need not be limited to, requirements respecting—

(1) maintaining records of all hazardous wastes identified or listed under this chapter which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest

system referred to in section 6922(5) 1 of this title;

(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable; and

(7) compliance with the requirements of section 6925 of this title respecting permits for treatment, storage, or disposal.

* * *

9. 42 U.S.C. § 6925 provides in pertinent part:

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.

* * *

(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.

* * *

10. 32 C.F.R. § 651.14(e) (2021) provides in pertinent part:

Integration with Army planning.

* * *

(e) *Analyses and documentation.* Several statutes, regulations, and Executive Orders require analyses, consultation, documentation, and coordination, which duplicate various elements and/or analyses required by NEPA and the CEQ regulations; often leading to confusion, duplication of effort, omission, and, ultimately, unnecessary cost and delay. Therefore, Army proponents are encouraged to identify, early in the NEPA process, opportunities for integrating those requirements into proposed Army programs, policies, and projects. Environmental analyses required by this part will be integrated as much as practicable with other environmental reviews, laws, and Executive Orders (40 CFR 1502.25). Incorporation of these processes must ensure that the individual requirements are met, in addition to those required by NEPA. The NEPA process does not replace the procedural or substantive requirements of other environmental statutes and regulations. Rather, it addresses them in one place so the decision maker has a concise and

comprehensive view of the major environmental issues and understands the interrelationships and potential conflicts among the environmental components. NEPA is the "umbrella" that facilitates such coordination by integrating processes that might otherwise proceed independently. Prime candidates for such integration include, but are not limited to, the following:

* * *

(9) Resource Conservation and Recovery Act.

11. 40 C.F.R. § 124.9(a)-(b) provides:

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

(a) The provisions of a draft permit prepared by EPA under §124.6 shall be based on the administrative record defined in this section.

(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.

12. 40 C.F.R. § 124.19 provides in pertinent part:

Appeal of RCRA, UIC, NPDES and PSD Permits.

(a) *Petitioning for review of a permit decision.* (1) *Initiating an appeal.* Appeal from a RCRA, UIC, NPDES, or PSD final permit decision issued under §124.15 of this part, or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under §270.29 of this chapter, is commenced by filing a petition for review with the Clerk of the Environmental Appeals Board within the time prescribed in paragraph (a)(3) of this section.

* * *

(l) *Final disposition and judicial review.* (1) A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of the final

agency action.

(2) For purposes of judicial review under the appropriate Act, final agency action on a permit occurs when agency review procedures under this section are exhausted and the Regional Administrator subsequently issues a final permit decision under this paragraph (l). A final permit decision must be issued by the Regional Administrator:

(i) When the Environmental Appeals Board issues notice to the parties that the petition for review has been denied;

(ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

* * *

13. 40 C.F.R. § 265.382 provides in pertinent part:

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.

* * *

14. 40 C.F.R. § 270.51(a)-(b) 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.

15. 40 C.F.R. § 1502.24 (2021) provides:

Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements

concurrent and integrated with environmental impact analyses and related surveys and studies required by all other Federal environmental review laws and Executive orders applicable to the proposed action, including the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*), and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other authorization is necessary, the draft environmental impact statement shall so indicate.

16. 40 C.F.R. § 1508.1 (2021) provides in pertinent part:

Definitions.

* * *

(g) *Effects or impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.

(1) Effects include ecological (such as the

effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

* * *

(m) *Human environment* means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment. (*See also* the definition of "effects" in paragraph (g) of this section.)