

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 OF *AMICUS CURIAE*
BLUE OCEAN LAW
IN SUPPORT OF RESPONDENT**

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INTEREST OF *AMICUS CURIAE*¹

Blue Ocean Law (“BOL”) is a Guam-based law firm focused on human rights and environmental protection in the U.S.-affiliated Pacific Islands and the wider Pacific.

BOL has engaged in international work concerning the rights of the Chamorro people amid harms from U.S. military activities in Guam. Specifically, BOL has submitted materials to United Nations human rights mechanisms on behalf of the Chamorro people documenting the cumulative effects of U.S. military expansion in Guam, including destruction of cultural and ecological resources, impacts to sacred sites, public-health harms, and the structural exclusion of Chamorro voices from decisions affecting their homeland. *See* BLUE OCEAN LAW & UNREPRESENTED NATIONS & PEOPLES ORG., SUBMISSION TO MR. FRANCISCO CALÍ TZAY, SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES, REGARDING ONGOING HUMAN RIGHTS VIOLATIONS OF THE INDIGENOUS CHAMORRO PEOPLE OF GUAM UNDER U.S. COLONIZATION AND MILITARIZATION (2020), <https://perma.cc/4CHL-LGZ5> [hereinafter “BOL 2020 FILING”]; BLUE OCEAN LAW, FURTHER SUBMISSION TO MR. FRANCISCO CALÍ TZAY, SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES, REGARDING

¹ Pursuant to this Court’s Rule 37.6, Amicus states that no counsel for any party authored this brief in whole or in part. No entity or person, aside from Amicus Curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

ONGOING HUMAN RIGHTS VIOLATIONS OF THE INDIGENOUS CHAMORRO PEOPLE OF GUAM UNDER U.S. COLONIZATION AND MILITARIZATION (2024), <https://perma.cc/MPY7-XMFS> [hereinafter “BOL 2024 FILING”].

BOL has also made submissions to UN human rights mechanisms documenting civil and political rights violations and democratic-accountability deficits that lie at the heart of the federal-territorial relationship. *See* BLUE OCEAN LAW, CTR. FOR CONST. RIGHTS & AM. C.L. UNION - PUERTO RICO, TOWARDS DECOLONIZATION & REPAIR: U.S. TERRITORIES, SELF-DETERMINATION, AND THE INCOMPATIBILITY OF COLONIALISM AND HUMAN RIGHTS, REPORT TO THE U.N. HUM. RTS. COMM. (Sept. 12, 2023), <https://perma.cc/QCS3-TD7Y>.

Amicus offers a distinct perspective on the context of this dispute: Guam is not merely the site of a federal permit application. It is an unincorporated U.S. territory where federal decisions carry profound consequences, but where ordinary checks on federal power are missing and opportunities for democratic participation are severely limited.

Amicus does not ask the Court to decide questions concerning Guam’s status as an unincorporated territory or, under UN terminology, a non-self-governing territory, *see* G.A. Res. 80/96, The Question of Guam (Dec. 8, 2025), or to enforce international law applicable to such territories. Guam’s territorial status also does not alter the text of the Administrative Procedure Act, the National

Environmental Policy Act (“NEPA”), or the Resource Conservation and Recovery Act (“RCRA”). But it does mean that NEPA’s federal self-scrutiny and participatory functions matter acutely there: offering what is often the only structured opportunity for Guam’s people to play a role in federal decisions that profoundly affect them.

BOL submits this brief in support of Respondent Prutehi Guåhan (“Prutehi”) to ensure that federal agencies cannot evade their statutory accountability obligations where they matter most.

SUMMARY OF ARGUMENT

Amicus’ argument proceeds in three parts.

First, NEPA is a lifeline in Guam—where military decisions have profound consequences, but where the ordinary structures of federal accountability are absent. NEPA is often the only structured opportunity for Guam’s communities to participate in federal decisions that directly affect them. RCRA review does not serve the same function. To hold that the Air Force’s antecedent self-scrutiny and public engagement obligations under NEPA are displaced by the Guam Environmental Protection Agency’s (“EPA”) subsequent permitting process would absolve federal actors of public accountability where it matters most.

Second, RCRA cannot displace NEPA because there is no clear and irreconcilable conflict between the two statutes. Under NEPA’s plain language and this Court’s precedents, an agency’s NEPA obligations may be displaced where compliance is irreconcilable with its duties under another statute. That is not the case here. The Air Force was required to conduct NEPA review before committing to the course of action memorialized in the renewal application it submitted to Guam EPA. Guam EPA’s RCRA review began after that application was submitted. The two processes do not conflict. If anything, NEPA’s broader review would inform Guam EPA’s subsequent, more targeted RCRA review.

Third, assuming *arguendo* that the functional equivalent test applies, RCRA cannot displace the Air Force's NEPA obligations on this basis. NEPA review is procedural, requiring agencies to integrate environmental assessment and public perspectives into their decision-making before committing to a course of action. RCRA review is substantive, requiring the permitting agency to determine whether a proposed facility complies with hazardous-waste standards; it does not provide the *ex-ante* self-scrutiny or public participation required by NEPA. As the Ninth Circuit correctly determined, the two serve distinct but complementary functions.

ARGUMENT

Guam EPA’s review of the Air Force’s RCRA renewal application cannot displace the Air Force’s separate NEPA obligations.

In 2021, the Air Force sought to renew a RCRA permit for open burn/open detonation (“OB/OD”) of waste munitions on Tarague Beach. OB/OD involves exploding waste munitions on the open ground or burning them in the open air. NAT’L ACADS. OF SCIS., ENG’G, & MED., ALTERNATIVES FOR THE DEMILITARIZATION OF CONVENTIONAL MUNITIONS 7 (2019). These practices release uncontrolled contaminants directly into the environment, endangering human and ecological health. *Id.*

The Air Force’s chosen site sits above the Northern Guam Lens Aquifer, which provides drinking water to over 80% of Guam’s population, and within a landscape of deep ecological and cultural significance. *See* BOL 2024 FILING, *supra*, at 17-18. Tarague is among the earliest known locations of human civilization in the Mariana Islands and “one of Guam’s most significant archaeological sites” with artifacts dating back to 2000 BC. Dep’t of Navy, *Tarague Beach* (accessed July 17, 2026), <https://perma.cc/ADT4-2ZW5?type=image>; *see also* JOLIE LISTON ET AL., THE LEGACY OF TARAGUE EMBAYMENT AND ITS INHABITANTS, ANDERSEN AFB 2 (Int’l Archaeology Rsch. Inst., 1996). Today, local communities fish, gather medicine, and maintain ancestral burial grounds there; endangered species also depend on the surrounding habitat. BOL 2024 FILING, *supra*, at 18; Resp’t’s Br. 4.

Despite the extreme risks OB/OD poses to the human environment, the Air Force did not comply with its NEPA obligations to conduct environmental review before deciding to continue OB/OD on Tarague.

Petitioners now argue that the Air Force's NEPA obligations are displaced by the RCRA permitting process. They claim the two conflict, or else that RCRA renders NEPA superfluous.

Petitioners are wrong. The statutes do not conflict: both advance the nation's environmental policy and do so in complementary ways.

Nor does RCRA render NEPA superfluous. NEPA would have required the Air Force to integrate environmental analysis into its decision-making from the outset and it would have allowed Guam's people to play a role in that process. RCRA review, while also important, does not provide these essential functions. Carried out here by Guam EPA after the Air Force filed its application, RCRA review checks the Air Force's chosen course against substantive hazardous-waste standards. It did not require the Air Force to comprehensively assess the impacts of its proposed action on the human environment or hear public perspectives before committing to that course.

NEPA's *ex-ante* review mechanisms matter everywhere. But they especially matter in Guam. As an unincorporated territory, Guam is subject to the absolute power of the U.S. government. *See Downes v. Bidwell*, 182 U.S. 244, 268 (1901). Yet because Guam is a territory, its people, though U.S. citizens, lack federal representation. And because the territorial

government does not possess the retained sovereignty of a state, it cannot regulate military conduct as a state can. In light of these deficits, NEPA is often the only structured process by which Guam's people can participate in federal decisions that directly impact their island, their communities, and their futures.

To hold that Guam EPA's review of the Air Force's renewal application can absolve the Air Force of its NEPA obligations would compound Guam's territorial disenfranchisement, eliminating one of the only channels through which its people may play a role in federal decision-making that profoundly affects them.

I. NEPA Has Heightened Importance In Guam

NEPA's federal accountability functions take on heightened importance in Guam.

Guam is an unincorporated U.S. territory. *Guam v. Guerrero*, 290 F.3d 1210, 1214 (9th Cir. 2002). That "subordinate" political status means that the ordinary checks on federal power embedded in constitutional federalism and representative democracy are largely absent in Guam. *See Crain v. Gov't of Guam*, 195 F.2d 414, 417 (9th Cir. 1952); *see also United States v. Cotto-Flores*, 970 F.3d 17, 30-31, 50 (1st Cir. 2020).

As an unincorporated territory, Guam is subject to the "general and plenary" power of the federal government. *Downes*, 182 U.S. at 268. The island has been an "indispensable" military asset since the United States first took possession of it in 1898. ANDREW TILGHMAN, CONG. RSCH. SERV., R47643, GUAM: DEFENSE INFRASTRUCTURE AND READINESS 2

(2023); LANNY THOMPSON, *IMPERIAL ARCHIPELAGO: REPRESENTATION AND RULE IN THE INSULAR TERRITORIES UNDER U.S. DOMINION AFTER 1898* 227-29 (Univ. Haw. Press, 2010). Beyond Guam’s strategic location, this is due precisely to the unrestricted power the United States enjoys over the island. See *Sakamoto v. Duty Free Shoppers, Ltd.*, 764 F.2d 1285, 1286 (9th Cir. 1985) (“Since Guam is an unincorporated territory enjoying only such powers as may be delegated to it by Congress in the Organic Act of Guam . . . the Government of Guam is in essence an instrumentality of the federal government.”); 48 U.S.C. § 1423i; BOL 2024 FILING, *supra*, at 2.

Yet even as the federal government exercises extraordinary power over the territory, the ordinary mechanisms of federal accountability are lacking. Though U.S. citizens, Guam’s people cannot vote for President, see *Att’y Gen. of Guam v. United States*, 738 F.2d 1017, 1019 (9th Cir. 1984), have no Senators, and have only a non-voting delegate to the House of Representatives. 48 U.S.C. § 1711. And because Guam’s territorial government—unlike the several states and Indian tribes—is not a “sovereign[] distinct from the United States,” *Puerto Rico v. Sanchez Valle*, 579 U.S. 59, 71 (2016), it cannot regulate military actions within its territory as a state can. See *Sakamoto*, 764 F.2d at 1286.

That structural reality has real consequences. Federal military policy is not episodic or peripheral in Guam; it is pervasive. Over 25% of the island is occupied by the military, and that footprint is expanding. TILGHMAN, *supra*, at 5; GOV’T OF GUAM

COMM'N ON DECOLONIZATION, GIHA MO'NA: A SELF-DETERMINATION STUDY FOR GUÅHAN 331 (2019). Congress authorized over \$1 billion for military construction projects on the 212-square-mile island in fiscal year 2026, *see* National Defense Authorization Act for Fiscal Year 2026, 139 Stat. 1551 § 4601, and is considering nearly \$2 billion more for 2027. *See* S. 4784, 119th Cong. § 4601 (2026); H.R. 8800, 119th Cong. § 4601 (2026).

It is not hyperbolic to say that federal decisions, especially military decisions, shape every aspect of life in Guam—affecting land, water, culture, health, and livelihoods. Two sites in Guam are on the Superfund National Priorities List, with U.S. EPA assessing many other sites. *See Superfund Site Search Results for Guam*, U.S. ENV'T PROT. AGENCY (accessed July 23, 2026), <https://perma.cc/LQ3C-DB92>. Many additional contaminated sites are documented—all overwhelmingly linked to military activity. *See, e.g.,* IAN S. HARTWELL ET AL., NAT'L OCEANIC & ATMOSPHERIC ADMIN, TECH. MEM. NOS NCCOS 235, AN ANALYSIS OF CHEMICAL CONTAMINANTS IN SEDIMENTS AND FISH FROM COCOS LAGOON, GUAM 1 (2017); U.S. GOV'T ACCOUNTABILITY OFF., GAO/NSIAD-87-87, HAZARDOUS WASTE: DoD FACILITIES IN GUAM HAVING DIFFICULTY COMPLYING WITH REGULATIONS 3-4 (1987); *see also* BOL 2020 FILING, *supra*, at 8. Military contamination is linked to a range of adverse health consequences, including elevated rates of cancer. *See* Julian Aguon, *Blessed is the Spot*, PLACES J. (Oct. 2025), <https://perma.cc/2SN2-AN38>. And Guam's principal drinking water source, the Northern Guam Lens

Aquifer—above which the Air Force conducts OB/OD—is already partially compromised by contamination from a Superfund site at Andersen Air Force Base. *Superfund Site: Anderson Airforce Base*, U.S. ENV'T PROT. AGENCY (accessed July 17, 2026), <https://perma.cc/9S83-S6BK>; *see also* AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, PUBLIC HEALTH ASSESSMENT: ANDERSEN AIR FORCE BASE, YIGO, GUAM 8 (Jan. 4, 2002).

The military also strains Guam's civilian infrastructure, including its electrical grid, roads, water and sewage systems, housing, and labor force. TILGHMAN, *supra*, at 30. The ever-expanding military presence risks pushing these systems beyond capacity. *Id.*; *see also* NAT'L RENEWABLE ENERGY LAB'Y, GUAM: ENERGY BASELINE REPORT 26 (May 2024); GUAM HOUS. & URB. RENEWAL AUTH., GUAM HOUSING STUDY AND NEEDS ASSESSMENT 43-46 (2020); BOL 2024 FILING, *supra*, at 11-13.

For all this, Guam's military enlistment rate far exceeds that of any U.S. state. Indeed, in 2022, "Guam's enlistment per capita rate was more than double the highest U.S. state's rate." U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-106364, VETERANS AFFAIRS: ACTIONS NEEDED TO IMPROVE ACCESS TO CARE IN THE U.S. TERRITORIES AND FREELY ASSOCIATED STATES 2 (2024). More Chamorros have died per capita in recent U.S. wars than any other ethnic group. *See* Catherine Lutz, *Bureaucratic Weaponry and the Production of Ignorance in Military Operations on Guam*, 60 CURRENT ANTHROPOLOGY 108, 110 (2019). But because Guam is an

unincorporated territory, veterans must travel to the states to access much of the veterans' care they qualify for and are ineligible for certain state-level programs altogether. *See* U.S. GOV'T ACCOUNTABILITY OFF., VETERANS AFFAIRS, *supra*, at 11-26; Emma Moore & Brent Peabody, *Veteran Benefits in U.S. Territories*, CTR. NEW AM. SEC. (Feb. 25, 2020), <https://perma.cc/SG5P-Y75G>.

All this to say Guam disproportionately bears the burden of the United States' national security. Yet because of its subordinate political status, federal actors are not accountable to Guam's government or its people through the ordinary political channels.

NEPA reduces that accountability gap. NEPA requires federal agencies to look before they leap: to consider environmental consequences, examine reasonable alternatives, and internalize public perspectives before committing to an action. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). NEPA may be procedural, but it serves an essential accountability function. While it does not dictate outcomes, NEPA ensures affected communities can "play a role" in federal decisions that directly affect them. *Id.* The NEPA process gives the public a chance to bring place-based knowledge, cultural concerns, and practical alternatives into federal decision-making at a time when those considerations can still matter. In Guam, it is often the only structured opportunity to do so.

Guam’s lived experience shows that the NEPA process makes a difference. For example, in 2007 the Department of Defense (“DoD”, now Department of War, “DoW”) published a Notice of Intent to prepare an Environmental Impact Statement (“EIS”) for a massive military build-up in Guam. 72 Fed. Reg. 10186-7 (Mar. 7, 2007). The proposed buildup would expand the military footprint from 25% to 40% of the island; bring 80,000 personnel to Guam over four years, nearly doubling the island’s population; and site a live-fire range complex over Pāgat, a sacred Chamorro village and burial ground dating from 700 AD. *Id.*; Pāgat, NAT’L TR. HIS. PRES. (accessed July 21, 2026), <https://perma.cc/GX8E-LGXL>.

In 2009, the Navy published a Draft EIS (“DEIS”). DEPT’ OF NAVY, DRAFT ENVIRONMENTAL IMPACT STATEMENT: GUAM AND CNMI MILITARY RELOCATION (2009). Over the course of a 90-day public comment period, the island, with a population of just 166,000, submitted more than 10,000 comments and testimonies raising substantive concerns about the build-up’s impacts on environment, health, culture, housing, infrastructure, and livelihoods. *See* Sarah A. Topol, *The America That Americans Forget*, N.Y. TIMES MAG. (Jul. 7, 2023), <https://perma.cc/H82A-9G3M>; BOL 2020 FILING, *supra*, at 13. Concern was especially strong about DOD’s proposal to site a live-fire range complex at Pāgat. BOL 2020 FILING, *supra*, at 13. Guam’s collective engagement with the NEPA process was unprecedented—said to be a DoD record. Topol, *supra*.

Largely in response to that engagement, the military agreed to relocate the live-fire range complex. *See id.*; BOL 2020 FILING, *supra*, at 13. Concerns about the speed and scale of the build-up raised during the comment period by both the local public and other federal actors also led DoD to substantially revise its plan, reducing the total number of personnel coming to Guam from 80,000 to under 10,000 and limiting development to land already under federal control. DEP'T OF NAVY, FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT: GUAM AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (2012 ROADMAP ADJUSTMENTS) ES-4 fig. ES-1 (2015).

These revisions mattered. The initial proposal was expected to cause food, water, and housing shortages, overwhelm civilian infrastructure, release unsafe levels of carcinogenic air pollutants, compromise integral cultural heritage, and destroy 71 acres of coral reef, among other impacts. BOL 2020 FILING, *supra*, at 11-12; DEP'T OF NAVY, DRAFT ENVIRONMENTAL IMPACT STATEMENT, *supra*, at ES-35 to ES-36. NEPA's public process enabled Guam's people to preserve the liveability of their island and save a site of immense cultural significance even as the military advanced its defense priorities.

Guam's lived experience anecdotally confirms what the data show: that NEPA's public process can and does "substantively affect agency decisions." Ashley Stava et al., *Quantifying the Substantive Influence of Public Comment on United States Federal Environmental Decisions Under NEPA*, 20 ENV'T RES. LETTERS 1, 6 (2025). And the island's level of engagement—10,000 comments from a population of

166,000—shows that NEPA is nothing short of a lifeline for Guam’s people.

Here, too, NEPA is a lifeline. The Air Force’s decision to continue OB/OD, and its choice of where and how to do so, will have huge impacts—on health and well-being, on land and resources, and on culture and heritage.

NEPA also has heightened importance in Guam because of the multitude of overlapping military projects there. In addition to active installations, there were 58 active military construction projects in Guam as of November 2024. *Military Construction Command Lists 58 Active Defense Projects on Guam*, PACIFIC IS. TIMES (Nov. 5, 2024), <https://perma.cc/3UDE-ACXW>.

NEPA requires agencies to consider the cumulative impacts of their proposed actions. *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 106-07 (1983). These are impacts “which result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 769 (quoting 40 C.F.R. § 1508.7).²

² Unless otherwise stated, citations to NEPA and its implementing regulations are to those in effect at the time of the Air Force’s 2021 decision.

NEPA's cumulative impact analysis ensures that agencies and the public comprehend the real-world consequences of proposed federal actions, which do not impact the environment in isolation. Rather, "the total impact from a set of actions may be greater than the sum of the parts." *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994 (9th Cir. 2004). For example, in preparing an EIS for a new military air-space designation in North Carolina, NEPA required the Navy to consider the cumulative impacts of that action together with pre-existing projects, including "special use areas for military training and operations, training routes for low-altitude flight practice, and target ranges for weaponry training." *Nat'l Audubon Soc'y v. U.S. Dep't. of Navy*, 422 F.3d 174, 196 (4th Cir. 2005) (internal citations omitted). That the "region" of impact was "part of a National Wildlife Refuge heighten[ed] the Navy's statutory duty." *Id.* at 197 (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)).

Similar cumulative impacts are at play here. Tarague sits adjacent to the Mason Live-Fire Range Complex, an 1,800-acre installation consisting of four live-fire ranges. According to DoW's planned use, over 6.7 million lead bullets will be fired from the complex over the Northern Guam Lens Aquifer each year for the foreseeable future. See DEPT OF NAVY, FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT, *supra*, at 2-10 tbl. 2.2-4. Lead is an exceptionally mobile contaminant with high potential to enter groundwater systems, see R. Kelebemang et al., *Speciation and Mobility of Lead in Shooting Range Soils*, 29 CHEMICAL SPECIATION & BIOAVAILABILITY

143, 149 (2017), a risk exacerbated by Guam's highly permeable karst limestone geology. See Nico Goldscheider, *A Holistic Approach to Groundwater Protection and Ecosystem Services in Karst Terrains*, 34 CARBONATES & EVAPORATES 1241, 1242, 1246-47 (2019); John W. Jenson et al., *Karst Features of Guam in Terms of a General Model of Carbonate Island Karst*, 63 J. CAVE & KARST STUD. 9, 12, 20-21 (2001). OB/OD on Tarague thus likely compounds impacts of the range complex (and contamination from the Anderson Air Force Base Superfund site) on Guam's main drinking water source.

Tarague also abuts the Guam National Wildlife Refuge, Ritidian Unit, which itself is overlaid by Navy, Air Force, and Marine Corps installations. See *Guam National Wildlife Refuge*, U.S. FISH & WILDLIFE SERV. (accessed July 21, 2026), <https://perma.cc/9VES-JMEY>; 33 C.F.R. § 334.1425. Ritidian holds some of Guam's last remaining pristine limestone forest. BOL 2024 FILING, *supra*, at 14. This unique ecosystem, largely lost elsewhere due to military expansion, is essential habitat for many of Guam's endemic and critically endangered species, including the *åga* (Mariana Crow), the *sihek* (Guam Kingfisher), the *ko'ko'* (Guam Rail), the *fanihi* (Mariana fruit bat), and the *ababang* (Mariana eight-spot butterfly). See GUAM NAT'L WILDLIFE REFUGE & U.S. FISH & WILDLIFE SERV., GUAM NATIONAL WILDLIFE REFUGE COMPREHENSIVE CONSERVATION PLAN, 5-12 tbl. 3 (2009).

Because Tarague is nearby and some OB/OD contaminants (e.g., PFAS, lead) are highly mobile, see Nejunal Kannankeril Khadid & Sébastien Sauvé,

PFAS Behavior in the Environment: Transport Pathways, Physicochemical Properties, and Emerging Precursors, 2 NATURE EMERGING CONTAMINANTS 1, 2 (2026); Kelebemang et al., *supra*, at 29, the Air Force’s OB/OD operations likely compound impacts to Ritidian from other military activities, such as land clearing and live-fire training. See DEP’T OF NAVY, FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT, *supra*, at 8-15.

In short, NEPA ensures that decision-makers and the public fully comprehend both the direct and additive effects of military projects on Guam’s unique environment, communities, and culture. Here, NEPA would have required the Air Force to take a “hard look” at not only environmental but social, cultural, historic, and economic impacts of continuing OB/OD on Tarague before committing to that course, 42 U.S.C. § 4331(b); to consider them against the broader slate of military projects in Guam, *Balt. Gas & Elec.*, 462 U.S. at 106-07; to evaluate reasonable alternatives, including less sensitive locations, 42 U.S.C. § 4332(C)(iii); and to integrate public perspectives. *Robertson*, 490 U.S. at 349. But because the Air Force did not comply with NEPA, it did not undertake any of these considerations before acting. *Id.* at 350. Above all, the Air Force’s non-compliance denied Guam’s public the opportunity to raise the issues that matter most to them and excluded these perspectives from its decision-making.

RCRA, while also important, does not provide the same essential functions. Performed by the permitting authority, RCRA review ensures that proposed facilities comply with substantive standards

for the treatment, storage, and disposal of hazardous waste. 42 U.S.C. § 6925(c).

RCRA thus requires Guam EPA to determine whether the Air Force's choice to continue OB/OD on Tarague complies with hazardous waste disposal requirements. It did not require the Air Force to integrate environmental considerations into its own decision-making or undertake a fulsome consideration of less harmful alternatives. Nor did it allow Guam's people to have a say in the Air Force's decision to continue OB/OD on Tarague in the first place.

That distinction is decisive. To hold that RCRA displaces NEPA would let the Air Force avoid the process Congress intended agencies to undertake before acting—and would do so in a place where military decisions carry extraordinary consequences, where environmental burdens are already substantial, and where ordinary checks on federal power are effectively absent.

II. RCRA Does Not Clearly Conflict With NEPA

NEPA's plain language and this Court's precedents provide that an agency's NEPA obligations can only be displaced if they are in "clear and unavoidable conflict" with its obligations under another, directly operable statute. *Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Okla.*, 426 U.S. 776, 788 (1976). Guam EPA's review of the Air Force's RCRA renewal application cannot displace the Air Force's NEPA obligations because they do conflict. To the contrary, as the Ninth Circuit properly recognized,

the two processes are distinct but complementary. Pet. App. 45a.

NEPA codifies the nation’s environmental policy:

“to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”

42 U.S.C. § 4331(a).

In furtherance of that goal, the statute mandates that “to the fullest extent possible . . . 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.” 42 U.S.C. § 4332. It likewise requires “to the fullest extent possible” that for any major federal action significantly affecting the quality of the human environment, “all agencies of the Federal Government shall” prepare and make available to the public a detailed EIS.³ *Id.*

³ The agency directly prepares an EIS if its proposed action will clearly have significant impacts. 40 C.F.R. § 1501.3. Otherwise, it prepares an Environmental Assessment (“EA”) to determine if significant impacts are likely. *Id.* If so, the agency then prepare an EIS; if not, it issues a Finding of No Significant Impact. *Id.* Regardless, the agency must complete this process before committing to a major federal action.

The “fullest extent” phrasing is “neither accidental nor hyperbolic.” *Flint Ridge*, 426 U.S. at 787. Its purpose is “to make it clear that each agency of the Federal Government shall comply with the directives set out in [NEPA] [u]nless the existing law applicable to such agency’s operations expressly prohibits or makes full compliance with one of the directives impossible.” *Id.* at 787-88. NEPA itself thus expressly sets out the test for determining if and when another statute displaces its environmental review requirements. That is, as this Court has long recognized, an agency’s NEPA obligations can only be displaced if they are in “clear and unavoidable conflict” with its duties under another statute. *Id.* at 788. Congress reaffirmed this understanding in 2023, amending NEPA to explicitly provide that, as concerns discretionary final agency actions, unless subject to a categorical exclusion, an agency is exempted from its obligations only if they are “excluded pursuant to . . . another provision of law” or “clearly and fundamentally conflict with the requirements of another provision of law.” 137 Stat. 39 (2023) (codified at 42 U.S.C. § 4336(a)(2)-(3)).

This NEPA-specific test sits comfortably within more general rules of statutory construction. As the Court has explained, “[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 instead strive to give effect to both.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018). When two statutes cannot be harmonized, only then, as Petitioners stress, may the specific prevail over the general. *See* Pet’rs’ Br. 36.

But what Petitioners overlook is the “heavy burden” borne by the party claiming that one statute displaces another, and the “strong presumption that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute.” *Epic Sys.*, 584 U.S. at 510.

Petitioners have not carried their “heavy burden.” The District Court and the Ninth Circuit agreed that the “conflict exemption is not applicable in the instant case.” Pet. App. 35a. They are correct. RCRA furthers the policy objective set out in NEPA: to protect the health of the nation’s environment and citizens. *See* 42 U.S.C. § 4331(a) *and* 42 U.S.C. § 6902(a). Far from in “clear and unavoidable conflict,” the two review processes are complementary. And Petitioners point to no provision of law that excludes the Air Force’s NEPA obligations.

An agency’s NEPA obligations can be displaced where they are irreconcilable with its separate obligations under another, directly operable statute. *Flint Ridge*, 426 U.S. at 791. In *Flint Ridge*, the Court found the Interstate Land Sales Full Disclosure Act’s mandate that the Secretary of Housing and Urban Development give effect to accurate statements of record filed by private parties within 30 days irreconcilable with NEPA because “[i]t is inconceivable that an environmental impact statement could, in 30 days, be drafted, circulated, commen[t]ed upon, and then reviewed and revised in light of the comments.” *Id.* at 788-89. Relevant was the non-discretionary nature of the 30-day deadline, as was the fact that such delay would directly conflict

with the purpose of the Act's time limit: to prevent the registration requirement from causing costly delays to developers. *Id.* at 790-91.

But there is no such conflict between the Air Force's antecedent NEPA obligations and Guam EPA's subsequent review of its RCRA permit application. Under NEPA, the agency proposing an action is responsible for preparing the EIS, *see* 40 C.F.R. §§ 1501.7, 1508.1,⁴ and must do so by the time "it makes a recommendation or report on a proposal for federal action." *Aberdeen & Rockfish R.R. Co. v. Students Challenging Regul. Agency Proc.*, 422 U.S. 289, 320 (1975) (interpreting 42 U.S.C. § 4332(C)). The EIS "shall accompany the proposal through the existing agency review processes," presumably including permitting processes.⁵ 42 U.S.C. § 4332(C). Here, the Air Force was required to carry out NEPA review at least by the time it decided to continue OB/OD on Tarague, as memorialized in its RCRA renewal application. Guam EPA's review began only after that application was submitted. The processes do not overlap let alone conflict. To the contrary, the Air Force's comprehensive review under NEPA could have informed Guam EPA's subsequent, more targeted review under RCRA. *See Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 177 (2025) ("Properly applied, NEPA helps agencies to

⁴ For actions not proposed by a federal agency, the agency with greatest involvement prepares the EIS. 40 C.F.R. § 1501.7.

⁵ As Prutehi correctly explains, NEPA is intended to inform federal permitting processes—a purpose acknowledged by DoW. *See* Resp't's Br. 22.

make better decisions and to ensure good project management.”); Resp’t’s Br. 36-37.

Alternatively, Petitioners contend that the Air Force’s NEPA obligations are displaced on the basis of regulatory history and practice. They point to a U.S. EPA regulation providing that, when EPA is the permitting authority, RCRA permits “are not subject to the environmental impact statement provisions’ of NEPA.” Pet’rs’ Br. 43 (quoting 40 C.F.R. § 124.9(b)(6)).

But as Prutehi rightly argues, this contention fails for at least two reasons. Resp’t’s Br. 30-31. First, the cited regulation is irrelevant because Guam EPA has not adopted it in its RCRA permitting process. *See* 22 Guam Admin. R. & Regs. § 30110(h)(b)(6). Second, and more fundamentally, the regulation exempts the EPA as the “permitting authority” from NEPA requirements when preparing the “draft permit.” 40 C.F.R. § 124.9(a)-(b). It does not affect the Air Force’s separate NEPA obligations, as the agency proposing to continue OB/OD, to conduct environmental review “during the development of [the] proposal” put forth in its renewal application. *Kleppe*, 427 U.S. at 409.

Petitioners have failed to demonstrate a conflict between NEPA and RCRA. To the contrary, RCRA advances NEPA’s broad policy goals and should be interpreted “to the fullest extent possible,” to give effect to NEPA. 42 U.S.C. § 4332. Displacement is not warranted.

III. RCRA Is Not The Functional Equivalent Of NEPA

Under Ninth Circuit precedent, NEPA obligations may also be displaced by another environmental statute's review process if it is the "functional equivalent" of the NEPA process. Pet. App. 35a. That is, when another applicable statutory procedure is "sufficiently similar" to render NEPA "superfluous," or else "sufficiently different" to reveal Congress' intent to replace it. *Id.*

Assuming *arguendo* that the "functional equivalent" test applies, Petitioners' arguments fail for much the same reasons. As the Ninth Circuit correctly recognized, "NEPA and RCRA achieve fundamentally different, but complementary, goals." Pet. App. 45a. NEPA governs federal decision-making; RCRA governs hazardous-waste permitting. Each achieves its purpose through complementary but distinct functions.

NEPA is procedural. It "does not mandate particular results, but simply prescribes the necessary process for an agency's environmental review of a project" *Seven Cnty.*, 605 U.S. at 177. Congress enacted NEPA's review procedures in order to achieve two "action-forcing purpose[s]." *Robertson*, 490 U.S. at 349. First, NEPA ensures that "the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Id.* Second, it "guarantees that the relevant information will be made available to the larger audience that may

also play a role in both the decisionmaking process and the implementation of that decision.” *Id.*

RCRA is substantive. It ensures that permitted facilities are compliant with “rigorous safeguards and waste management procedures.” *City of Chicago v. Env’t Def. Fund*, 511 U.S. 328, 331 (1994); 42 U.S.C. § 6925(c)(1); 40 C.F.R. § 270.14(a).

Each achieves its purpose through a distinct process. NEPA review is broader than RCRA review, entails more extensive public engagement, and must be carried out by the decision-making agency at the earliest possible stage before committing to an action. By contrast, where, as here, the applicant is a federal agency, RCRA review only begins after that decision-making process is complete.

A. RCRA Review Begins Too Late

As the Ninth Circuit rightly recognized, a “critical” difference between RCRA and NEPA is timing. Pet. App. 7a.

NEPA requires agencies to “integrate” environmental assessment at the “earliest possible time to ensure that planning and decisions reflect environmental values.” *Andrus v. Sierra Club*, 442 U.S. 347, 351 (1979). Its regulations provide that the responsible agency is required to “commence preparation of an [EIS] as close as practicable to the time the agency is developing . . . a proposal.” 40 C.F.R. § 1502.5. The statute itself requires the final statement at least by the time the agency “makes a recommendation or report on a proposal for federal

action.” *Aberdeen*, 422 U.S. at 320. NEPA’s early integration of environmental assessment and public voices into agency decision-making ensures “that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Robertson*, 490 U.S. at 349.

Because RCRA review begins after the permitting agency receives an application, it is limited to “an applicant’s settled decision to handle hazardous waste in a particular fashion.” Pet. App. 38a. When the applicant is a federal actor, RCRA review necessarily fails to “internalize[]” environmental assessment and public opinion in the agency’s decision-making because it begins only once that process is complete. *Id.* at 38a-39a. Indeed, because “environmental concerns are not interwoven into the fabric of agency planning, the ‘action-forcing’ characteristics of [NEPA are] lost.” *Andrus*, 442 U.S. at 351.

B. RCRA Public Comment Is Not NEPA Public Participation

Public engagement procedures are “at the heart of the NEPA review process.” *California v. Block*, 690 F.2d 753, 770-71 (9th Cir. 1982). Integral to Congress’ policy objectives, they ensure the public can “play a role” in federal decision-making that affects them. *Robertson*, 490 U.S. at 349. And they serve as an important mechanism of federal accountability, providing the public “assurance that the agency has indeed considered environmental concerns in its decisionmaking.” *Pub. Citizen*, 541 U.S. at 768.

NEPA requires public engagement from the outset. The responsible agency “must use a public scoping process to decide the scope of actions, alternatives, and impacts to be considered in an environmental impact statement,” *N. Alaska Env’t Ctr. v. U.S. Dep’t of Interior*, 983 F.3d 1077, 1093 (9th Cir. 2020). The agency must then prepare a draft EIS, issue notice, provide an adequate opportunity for public review and comment, including public hearings, and respond to all substantive public comments before publishing a final EIS. *See* Pet. App. 8a-9a; *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 735 (9th Cir. 2020).

But where a permit applicant is a federal agency, the RCRA process begins only after that agency has committed to a specific waste disposal plan. So while the public is able to provide comments on the permitting decision and may request a public hearing, 40 C.F.R. § 124.11, RCRA does not guarantee them an opportunity to participate in underlying agency decision-making as NEPA does.

Empirically, NEPA’s public process matters. In 2025, U.S. Geological Survey researchers published a comprehensive study analyzing the effect of public comments on 108 EIS processes over 22 years. Stava et al., *supra*, at 1. The study found that “public comments resulted in substantive decision alterations in 62% of cases, with 64% showing modifications to alternatives, 42% showing modifications to mitigation plans and 11% leading to the selection of an entirely new preferred alternative.” *Id.* Alterations were made in 78 of the 108 EISs evaluated and in 88% of those cases, agencies attributed the changes to public

comments. *Id.* at 3. In 21 instances, agencies selected an entirely new preferred alternative, attributing 100% of those changes to public comments. *Id.* Far from the unsubstantiated assertions of some amici that NEPA's public process is "just more paper-pushing," Br. of *Amici Curiae* U.S. Chamber of Commerce et al. 25; Br. of *Amici Curiae* State of West Virginia et al. 23, the data show that NEPA's robust public process "can substantively affect agency decisions." Stava et al., *supra*, at 6.

These empirical findings are borne out by Guam's lived experience. As described in Section I, Guam submitted over 10,000 public comments on a DEIS for a major military build-up and the military responded by substantially revising its proposal. It drastically reduced the speed and scale of the build-up, which, as originally planned would have compromised essential resources and infrastructure, and relocated a planned live-fire range complex slated for construction over Pãgat, an ancient Chamorro village of cultural and historic significance.

The Air Force's OB/OD practices on Tarague implicate similar issues. The disposal site sits above Guam's only freshwater aquifer and primary drinking water source. Like Pãgat, Tarague is a place of enormous cultural and historic importance to the Chamorro people. Numerous ancestral burials lie as close as the access road to the OB/OD site. See RICHARD OLMO & WENDY GOODMAN, ARCHAEOLOGICAL MONITORING AND EXCAVATION REPORT, TARAGUE BEACH MWR CAMPGROUND ENHANCEMENT PROJECT AND THE INSTALLATIONS RESTORATION PROGRAM DRILLING PROJECT, ANDERSEN AIR FORCE BASE, GUAM

22 (Int'l Archaeology Rsch. Inst., 1993). Tarague also houses plants essential to Chamorro medicine and is a site of subsistence fishing.

The Air Force's decision to continue OB/OD on Tarague thus profoundly affects Guam's people. Although RCRA allowed the public to comment on that decision, it, unlike NEPA, did not let them "play a role" in the Air Force's decision to continue OB/OD in the first instance. *Robertson*, 490 U.S. at 349. RCRA simply does not provide the same democratic mechanism for public participation in federal decision-making at the heart of NEPA review.

C. RCRA Review Is Different In Scope

NEPA review is comprehensive. The statute "places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action," *Balt. Gas & Elec.*, 462 U.S. at 97, encompassing not only ecological impacts, but also historic, cultural, economic, and social effects. 42 U.S.C. § 4331(b); *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1251 (10th Cir. 2011). RCRA review is more technical and more focused. While it entails a careful evaluation of hazardous waste disposal specifications, it does not comprehensively consider cultural, historic, economic, and social impacts as NEPA does—all of which are deeply implicated by the Air Force's decision to continue OB/OD on Tarague.

NEPA also requires a more fulsome alternatives analysis than RCRA. NEPA obligates the responsible agency to consider "a reasonable range of alternatives to the proposed agency action," including a "no action

alternative.” 42 U.S.C. § 4332(C)(iii); *see also Seven Cnty.*, 605 U.S. at 177.

Alternatives analysis sits, along with public engagement, “at the heart” of the NEPA process. *W. Watersheds Project v. U.S. Bureau of Land Mgmt.*, 76 F.4th 1286, 1290 (10th Cir. 2023); *Nevada v. Dep’t. of Energy*, 457 F.3d 78, 87 (D.C. Cir. 2006); *N. Alaska Env’t Ctr. v. Kempthorne*, 457 F.3d 969, 978 (9th Cir. 2006). It is critical to Congress’ goal of ensuring environmentally-informed decision-making. *See Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 141 F.4th 976, 993-94 (9th Cir. 2025) (“In the end, the touchstone of our review is whether an EIS’s selection and discussion of alternatives fosters informed decision-making and informed public participation.”); *Lowman v. Fed. Aviation Admin.*, 83 F.4th 1345, 1349-50 (11th Cir. 2023). The “no-action” alternative is particularly critical, providing a “baseline” against which decision-makers and the public can gauge the proposed action’s impacts. *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 72 F.4th 1166, 1185 (10th Cir. 2023). “The existence of a viable but unexamined alternative renders the environmental review conducted under NEPA inadequate.” *Earth Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 877 (9th Cir. 2022).

To satisfy NEPA’s alternatives-analysis requirement, the responsible agency must “at least consider a preferred alternative and a no action alternative, and give full and meaningful consideration to all reasonable alternatives.” *Earth Island Inst. v. U.S. Forest Serv.*, 87 F.4th 1054, 1065 (9th Cir. 2023). NEPA’s participatory process lets the

public raise alternatives the agency may not have considered. The agency need only consider a range of alternatives that are feasible and meet project needs, but it must “explain its reasoning for eliminating an alternative.” *Kemphorne*, 457 F.3d at 978.

RCRA, as the Ninth Circuit rightly held, “does not demand the same kind of in-depth analysis of alternatives, and so does not require the permit applicant to give the full and meaningful consideration that [NEPA] would require.” Pet. App. 39a.

The importance of NEPA’s “in-depth” alternative analysis is at its zenith here. OB/OD is a dangerous practice posing substantial risks to human and environmental health. *See* NAT’L ACADS. OF SCI., ENG’G, & MED., *supra*, at 30. Tarague Beach, where the Air Force conducts its OB/OD operations, is a culturally and ecologically sensitive area. The Air Force decided to continue OB/OD on Tarague despite known risks and without considering less harmful alternatives.

NEPA required the Air Force to do more. For instance, it would require the Air Force to consider alternative sites for waste disposal—ones less critical to Guam’s water and food security, culture, and endangered species. At the very least, it would allow the public to suggest such alternatives and require the Air Force to explain why it opted to exclude them.

NEPA would also require the Air Force to consider alternative disposal methods. Between the Air Force’s 2018 permit approval and its 2021 renewal

application, federal and scientific authorities identified viable, safe alternatives to OB/OD for the vast majority of conventional waste munitions, bulk energetics, and associated wastes. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra*, at 4. In 2019, the National Academies of Sciences, Engineering, and Medicine found no “significant technical, safety, or regulatory barriers to full-scale deployment” of these alternative technologies. *Id.* U.S. EPA found the same for energetic hazardous wastes. U.S. ENV'T PROT. AGENCY, ALTERNATIVE TREATMENT TECHNOLOGIES TO OPEN BURNING AND OPEN DETONATION OF ENERGETIC HAZARDOUS WASTES 12 (2019).

The Air Force did not address these developments in its 2021 renewal application, instead copying a brief discussion of technological alternatives from its 2018 application. Pet. App. 56a. So even if Guam EPA were to deny the renewal on this basis,⁶ RCRA would

⁶ As Petitioners note, *see* Pet'rs' Br. 38, RCRA regulations prohibit OB/OD except for waste explosives that “cannot safely be disposed of through other modes of treatment,” 40 C.F.R. § 265.382, and the statute requires the permitting agency to consider “improvements in the state of control and measurement technology.” 42 U.S.C. § 6925(c)(3). Petitioners assert that these permitting considerations displace the need for the Air Force to conduct its own *ex-ante* alternatives analysis under NEPA. But the consideration of other modes of treatment is only required in the case of OB/OD—not any other form of waste disposal. And the permitting authority's consideration of improved control and measurement technology applicable to an applicant's selected waste disposal plan does not displace the responsible agency's obligations to consider less impactful alternatives before committing to a course of action. Nor does it satisfy the scope of alternatives analysis required by NEPA, which encompasses siting and no action alternatives as well as alternatives raised by

still not achieve NEPA's requirement that the Air Force integrate environmental assessment into its *own* decision-making *before* it committed to continuing OB/OD. *Andrus*, 442 U.S. at 350 ("The thrust of [NEPA review] is [] that environmental concerns be integrated into the very process of agency decision-making."). Moreover, neither RCRA nor its regulations require analysis of a no-action alternative or alternative project sites.

In short, the scope of RCRA is different to that of NEPA; the two are not "functional equivalents." Under RCRA, Guam EPA's review has necessarily been limited to the "single track approach" selected by the Air Force. Pet. App. 39a. It has not analyzed alternative sites or a no-action alternative, nor has it comprehensively assessed the social, cultural, or historic impacts of the Air Force's chosen approach.⁷ So while RCRA fulfills its own purpose of ensuring compliance with hazardous waste disposal

the public and requires comparison of a broader range of impacts, including social, cultural, and historic impacts.

⁷ The difference between RCRA and NEPA is apparent even here, where the proposed federal action is a stand-alone hazardous-waste practice. In other cases, waste disposal may be but one component of a federal action. For example, the waste-disposal facilities of a new Marine Corps base in Guam are "potentially subject to RCRA." See DEPT OF NAVY, FINAL ENVIRONMENTAL IMPACT STATEMENT: GUAM AND CNMI MILITARY RELOCATION ES-1 to ES-2 (2010). It would be difficult to reconcile NEPA's text and purpose with a rule exempting an entire federal construction project from NEPA merely because one component requires RCRA review, yet that is precisely what Petitioners propose.

requirements, it does not achieve NEPA's complementary but distinct "action-forcing" function of integrating comprehensive environmental assessment from the outset of agency decision-making.⁸ *Robertson*, 490 U.S. at 349.

⁸ Entirely relevant is that this case concerns the *Air Force's* decision to continue OB/OD on Tarague Beach, not *Guam EPA's* decision to grant or deny the Air Force's renewal application. While Petitioners point to a single decision finding that NEPA could be displaced by RCRA, that case concerned whether a permitting agency must undertake NEPA review before issuing a permit to a private operator of a hazardous waste facility. The court reasoned that NEPA could be displaced by applying a rule that "an agency need not comply with NEPA *where the agency is engaged primarily in an examination of environmental questions* and where *the agency's organic legislation* mandate[s] specific procedures for considering the environment that are functional equivalents of the impact statement process." *State of Alabama ex rel. Siegelman v. U.S. Env't Prot. Agency*, 911 F.2d 499, 504 (11th Cir. 1990) (emphasis added). RCRA review is not the functional equivalent of NEPA review. But even if it was, *Siegelman* would not control because the Air Force is not an agency "engaged primarily in an examination of environmental questions" nor is RCRA the Air Force's "organic legislation."

CONCLUSION

Federal decisions, especially military decisions, have profound consequences in Guam. But because Guam is an unincorporated territory, these are not subject to ordinary checks on federal power. NEPA is often the sole mechanism of federal accountability available in Guam. RCRA does not serve the same function. To hold that Guam EPA's RCRA permitting process absolves the Air Force of its NEPA obligations would eliminate one of the only channels through which Guam's people have a voice in federal decision-making that affects them.

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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July 24, 2026