

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 THE HON. JARED HUFFMAN,
JULIA BROWNLEY, DEBBIE DINGELL,
AND PABLO JOSÉ HERNÁNDEZ, MEMBERS
OF CONGRESS, AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENT**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION AND STATEMENT OF INTEREST OF <i>AMICI CURIAE</i>	1
ARGUMENT.....	3
I. CONGRESS ENACTED NEPA IN 1969 TO SUPPLEMENT EXISTING ENVIRONMENTAL POLICIES AND COORDINATE REVIEWS	3
A. NEPA’s Statutory Framework.....	5
B. Litigation Affirming NEPA’s Supple- mentary Role	10
II. RECENT CASELAW AND CONGRESS’S AMENDMENTS HAVE LEFT NEPA’S FOCUS ON SUPPLEMENTAL, CROSS- AGENCY COORDINATION INTACT.....	13
A. Congressional Activity Confirming That NEPA Supplements RCRA.....	13
B. <i>Seven County Infrastructure Coalition</i> Buttresses Enforcement of NEPA Here.....	16
CONCLUSION	18
APPENDIX A: Environmental Laws Prior to 1969.....	1a
APPENDIX B: Current Statutes with NEPA Restrictions/Exemptions	5a

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Bittner v. United States</i> , 598 U.S. 85 (2023).....	15
<i>Chemical Weapons Working Group</i> <i>v. U.S. Department of the Army</i> , 935 F. Supp. 1206 (D. Utah 1996).....	10
<i>Concerned About Trident v. Rumsfeld</i> , 555 F.2d 817 (D.C. Cir. 1976).....	10
<i>Defenders of Wildlife</i> <i>v. U.S. Department of the Navy</i> , 733 F.3d 1106 (11th Cir. 2013).....	11
<i>National Association of Home Builders</i> <i>v. Defenders of Wildlife</i> , 551 U.S. 644 (2007).....	7, 16
<i>Seven County Infrastructure Coalition</i> <i>v. Eagle County, Colorado</i> , 605 U.S. 168 (2025).....	4, 13, 16
<i>Sierra Club v. Gates</i> , 499 F. Supp. 2d 1101 (S.D. Ind. 2007)	11
<i>Watt v. Alaska</i> , 451 U.S. 259 (1981).....	7
STATUTES AND REGULATIONS	
15 U.S.C. § 793(c)(1).....	14
33 U.S.C. § 1371(c)	14
42 U.S.C. § 4331(a), NEPA § 101(a)	9
42 U.S.C. § 4331(b), NEPA § 101(b)	9
42 U.S.C. § 4332, NEPA § 102	4

TABLE OF AUTHORITIES—Continued

	Page(s)
42 U.S.C. § 4332(C), NEPA § 102(c)	3, 17
42 U.S.C. § 4335, NEPA § 105	6
42 U.S.C. § 4336a	13, 14
42 U.S.C. § 4336(a)(2)–(3)	14
43 U.S.C. § 1652	14
Fiscal Responsibility Act of 2023 §§ 107(e), 107(g), Pub. L. No. 118-5, 137 Stat. 10, 41-42	13
Howard Coble Coast Guard and Maritime Transportation Act of 2014 § 608(b)(4), Pub. L. 113-281, 128 Stat. 3022, 3063 (Dec. 18, 2014)	15
National Defense Authorization Act for Fiscal Year 2014 § 2966(c), Pub. L. 113- 66, 127 Stat. 672, 1043 (Dec. 26, 2013)...	15
Pub. L. No. 114-328, § 1421, 130 Stat. 2000, 2570-2571 (Dec. 23, 2016)	17
Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6901 <i>et seq.</i> .	2
Sikes Act of 1960, Pub. L. 86-797, 74 Stat. 1052 (Sept. 15, 1960)	7
Solid Waste Disposal Act, Pub. L. No. 89- 272, 79 Stat. 997 (Oct. 20, 1965)	7
§ 202(a)(4), 79 Stat. 997	7
§ 203(1), 79 Stat. 998	7
§ 204(a), 79 Stat. 998-99	7
40 C.F.R. § 124.9(b)(6)	4

TABLE OF AUTHORITIES—Continued

COURT FILINGS	Page(s)
Brief for 30 Members of the U.S. House and Senate as <i>Amici Curiae</i> in Support of Respondents, Case No. 23-975, <i>Seven County Infrastructure Coalition v. Eagle County, Colorado</i> (filed Oct. 25, 2024)	1
LEGISLATIVE MATERIALS	
115 Cong. Rec. 29053 (1969)	6
115 Cong. Rec. 29084 (1969)	9
115 Cong. Rec. 29085 (1969)	9
115 Cong. Rec. 40419 (1969)	8
115 Cong. Rec. 40423 (1969)	8-9
Congressional White Paper on A National Policy for the Environment (Comm. Print. 1968)	8
<i>Joint House-Senate Colloquium to Discuss a National Policy for the Environment: Hearing Before the Comm. on Interior and Insular Affs. U.S. S. and the Comm. on Science and Astronautics U.S. H.R., 90th Cong. 15 (1968)</i>	8
<i>National Environmental Policy: Hearing Before the Comm. on Interior and Insular Affs. on S. 1075, S. 237, and S. 1752, 91st Cong. 27 (1969)</i>	2, 5
S. Rep. No. 91-296 (1969)	5, 6, 8, 9

TABLE OF AUTHORITIES—Continued

NEPA DOCUMENTS	Page(s)
Department of the Army, <i>Final Second Supplemental Environmental Impact Statement for the Storage and Ultimate Disposal of the European Chemical Munition Stockpile</i> (June 1990), https://www.osti.gov/servlets/purl/6949564	12
United States Army, <i>Final Environmental Impact Statement, Realignment of Pueblo Depot Activity, Colorado</i> (Aug. 1991), https://apps.dtic.mil/sti/tr/pdf/ADA386109.pdf	12
U.S. Army Corps of Engineers, <i>Final Environmental Assessment for Installing and Operating a Thermal Treatment Facility, Holston Army Ammunition Plant, TN</i> (Mar. 2020), https://cswab.org/wp-content/uploads/2020/10/Holston-Army-Environmental-Assessment-Thermal-Treatment-Facility-Final-March-2020.pdf	12
OTHER AUTHORITIES	
A. Dan Tarlock, <i>The Story of Calvert Cliffs</i> , in ENVIRONMENTAL LAW STORIES (R. Lazarus & O. Houck, eds. 2005).....	4
Matthew J. Lindstrom & Zachary A. Smith, THE NATIONAL ENVIRONMENTAL POLICY ACT: JUDICIAL MISCONSTRUCTION, LEGISLATIVE INDIFFERENCE, & EXECUTIVE NEGLECT (Texas A&M University Press 2001)	4

TABLE OF AUTHORITIES—Continued

	Page(s)
National Academies of Sciences, Engineering, and Medicine, <i>ALTERNATIVES FOR THE DEMILITARIZATION OF CONVENTIONAL MUNITIONS</i> (2019), <a href="https://www.nationalacademies.org/projects/DEP
S-BAST-17-01">https:// www.nationalacademies.org/projects/DEP S-BAST-17-01	3, 17
Richard Lazarus, <i>The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and A Peek Behind the Curtains</i> , 100 GEO. L.J. 1507 (2012)	5
THE TENNESSEE BLUE BOOK (2025- 2026 ed.)	8

INTRODUCTION AND STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amici curiae are Members of Congress² who have debated or voted on amendments to the National Environmental Policy Act of 1969 (NEPA) over many years—debates which now inform their perspective on the proper role for NEPA in the underlying case. All are members of the House Natural Resources Committee, which has primary jurisdiction over NEPA in the House.

Amici curiae are:

- The Honorable Jared Huffman, who represents California’s 2nd Congressional District. He was first elected to Congress in November 2012, is a Member of the Committee on Transportation and Infrastructure, and serves as the Ranking Member on the Committee on Natural Resources in the 119th Congress.
- The Honorable Julia Brownley, who represents California’s 26th Congressional District. She was first elected to Congress in November 2012, is a Member of the Committee on Transportation and Infrastructure and the Committee on

¹ Pursuant to Rule 37.6, counsel for *amici curiae* certifies that no person or entity other than *amici curiae* and their counsel authored this brief in whole or in part. No person other than *amici curiae* and their counsel made a monetary contribution to its preparation or submission of the brief.

² This filing incorporates by reference and builds upon an earlier *amicus* brief, which addressed similar questions of statutory background. See Brief for 30 Members of the U.S. House and Senate as *Amici Curiae* in Support of Respondents, Case No. 23-975, *Seven County Infrastructure Coalition v. Eagle County, Colorado* (filed Oct. 25, 2024).

Natural Resources, and serves as the Ranking Member on the House Veterans' Affairs Subcommittee on Health in the 119th Congress.

- The Honorable Debbie Dingell, who represents Michigan's 6th Congressional District. She was first elected to Congress in November 2014, and is a Member of the Committee on Energy and Commerce and the Committee on Natural Resources in the 119th Congress.
- The Honorable Pablo José Hernández, Member of Congress, who represents Puerto Rico as Resident Commissioner. He was first elected to Congress in November 2024, and is a Member of the Committee on Homeland Security and the Committee on Natural Resources in the 119th Congress.

Amici curiae file this brief to underline two key points drawn from their knowledge of Congress and the legislative process. First, at the time NEPA was drafted, there was a bevy of federal environmental law already on the books, although these laws were perceived by our congressional predecessors as “too narrow, too limited, and too specialized.” *National Environmental Policy: Hearing Before the Comm. on Interior and Insular Affs. on S. 1075, S. 237, and S. 1752*, 91st Cong. 27 (1969). NEPA sought to supplement but not supplant other environmental statutes. Second, as NEPA and other laws have been amended in recent years, NEPA's focus on supplemental environmental coordination has remained. To be sure, Congress has, from time to time, drafted exemptions from NEPA's procedures. But neither the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6901 *et seq.*, nor the Air Force's project for the destruction of unexploded munitions on

the island of Guam have been among those exemptions. *Amici curiae* thus file this brief in support of Respondent and in defense of NEPA’s supplementary role to the RCRA permitting process.

ARGUMENT

I. CONGRESS ENACTED NEPA IN 1969 TO SUPPLEMENT EXISTING ENVIRONMENTAL POLICIES AND COORDINATE REVIEWS.

The Department of the Air Force’s decision to commit to one particular option for the destruction of hazardous-waste munitions on Guam—while rejecting alternatives highlighted in a congressionally mandated report from the National Academies of Sciences, Engineering, and Medicine³—was a “major Federal action[]” triggering NEPA. 42 U.S.C. § 4332(C), NEPA § 102(C). *Amici curiae* therefore ask this Court to uphold the judgment of the Court of Appeals and reaffirm that Petitioners erred in failing to evaluate the National Academies Report in the earliest stages of their decisionmaking processes. Had Petitioners followed NEPA, the most cost-effective, gold-standard recommendations from the National Academies could have been put into practice.

That Petitioners also had to apply to a non-federal authority (Guam EPA) for another permit does *not* relieve them of their obligation to prepare an

³ See National Academies of Sciences, Engineering, and Medicine, ALTERNATIVES FOR THE DEMILITARIZATION OF CONVENTIONAL MUNITIONS (2019), <https://www.nationalacademies.org/projects/DEPS-BAST-17-01> (hereinafter “National Academies Report”).

Environmental Impact Statement (EIS).⁴ The statutory background on NEPA confirms as much. The EIS was conceived as a process that would lead to “[f]ewer environmentally controversial decisions... because ecologically injurious projects would be denied serious consideration *in their early stages*.” Matthew J. Lindstrom & Zachary A. Smith, *THE NATIONAL ENVIRONMENTAL POLICY ACT: JUDICIAL MISCONSTRUCTION, LEGISLATIVE INDIFFERENCE, & EXECUTIVE NEGLECT*, at 39 (Texas A&M University Press 2001) (emphasis added). In other words, NEPA would help ensure “the disclosure of ‘bad’ projects that should be nipped in the bud.” A. Dan Tarlock, *The Story of Calvert Cliffs*, in *ENVIRONMENTAL LAW STORIES*, at 87 (R. Lazarus & O. Houck, eds. 2005).

The reason to nip bad ideas “in the bud” is to prevent federal agencies—and in turn, American taxpayers—from wasting money on imprudent expenditures when better alternatives exist. For the cost-saving benefits of NEPA to accrue, the EIS needs to occur at the earliest possible moment, before “any irreversible and irretrievable commitments of Federal resources” have been made. *See* 42 U.S.C. § 4332, NEPA § 102. *See also Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168, 177 (2025) (“Properly applied, NEPA helps agencies to make better decisions and to ensure good project management”).

⁴ Petitioners cite to 40 C.F.R. § 124.9(b)(6), which is a U.S. Environmental Protection Agency (EPA) regulation addressing preparation of the administrative record for certain draft permits “when EPA is the permitting authority.” *See* Br. for Pet’rs, at 44-45. As the U.S. EPA is neither the permit applicant nor the permit issuer, the citation is inapplicable.

A. NEPA's Statutory Framework.

To explain why Congress needed a statute like NEPA, it is critical to understand the state of environmental law prior to 1969. Environmental policy in that era was “too narrow, too limited, and too specialized.” *National Environmental Policy: Hearing Before the Comm. on Interior and Insular Affs. On S. 1075, S. 237, and S. 1752*, 91st Cong. 27 (1969). Prior to NEPA, there had been no mandate calling for interagency coordination or collaboration. What NEPA did, then, was “supplement existing, but narrow and fractionated, congressional declarations” by establishing an “orderly, rational, and constructive” procedure for considering the environment in agency decisionmaking. S. Rep. No. 91-296, at 9 (1969). See also Richard Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and A Peek Behind the Curtains*, 100 GEO. L.J. 1507, 1513 (2012) (“Senator Henry ‘Scoop’ Jackson and his committee staff are widely credited for promoting the central insight that better environmental results could be achieved by merging the holistic teachings of what was then dubbed ‘ecosystem ecology’ with ‘systems analysis’ for more rational, systematic governmental decision-making.”).

By the time President Nixon signed NEPA into law on January 1, 1970, at least forty-five federal environmental and natural-resource statutes were already on the books, spanning wildlife protection, water and air quality, public land management, and pollution control. See *Appendix A: Environmental Laws Prior to 1969*. But these laws offered only a patchwork of environmental protections. The proverbial left hand often didn’t know what the right hand was doing. No statute “provide[d] an effective or orderly manner to

consider all forms of environmental degradation,” particularly those which might cut across geography and jurisdiction. 115 Cong. Rec. 29053 (1969).

NEPA’s text was crafted to remedy this problem. The statutory language confirms that Congress intended NEPA to operate alongside an existing body of environmental law—not to replace it, and not to be displaced by it—but to help coordinate it. “The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.” 42 U.S.C. § 4335, NEPA § 105. This text demands production of an EIS as a supplement to other laws like RCRA.

Petitioners attempt to wriggle out of this obligation by claiming NEPA should be reinterpreted to change with the times. They argue that as a matter of “common sense, the specific governs the general” when it comes to interpreting the old NEPA language. Br. of Pet’rs, at 4. Not only does this argument ignore the plain, black-letter text of the statute, it also flouts the history of environmental law in the United States, which tells a different story. Congress enacted NEPA against a backdrop already crowded with highly specialized environmental legislation. Rather than permitting these narrower, specific statutes to override NEPA’s more general provisions, Congress structured NEPA to operate in a supplemental capacity alongside them. The Senate Committee Report on Section 105 states that “[t]he measure is designed to supplement existing, but narrow and fractionated, congressional declarations of environmental policy.” S. Rep. No. 91–296, at 9 (1969).

One of the statutes NEPA was drafted to supplement was the Solid Waste Disposal Act of 1965—a predecessor statute to RCRA—which sought to rem-

edy “inefficient and improper methods of disposal of solid wastes [that] result in scenic blights, create serious hazards to the public health, including pollution of air and water resources.” Pub. L. No. 89-272, 79 Stat. 997 (Oct. 20, 1965), Solid Waste Disposal Act § 202(a)(4). The law, among other things, assigned roles to the Secretary of Health, Education and Welfare and the Secretary of the Interior. *Id.* at 79 Stat. 998, Solid Waste Disposal Act § 203(1). And it also sought to foster cooperation among “appropriate public (whether Federal, State, interstate, or local) authorities ... relating to the operation and financing of solid-waste disposal programs” *Id.* at 79 Stat. 998-99, Solid Waste Disposal Act § 204(a).

Even before the Solid Waste Disposal Act, Congress had adopted the Sikes Act of 1960, which directed the “Secretary of Defense ... to carry out a program of planning, development, maintenance and coordination of wildlife, fish and game conservation and rehabilitation in military reservations” Pub. L. 86-797, 74 Stat. 1052 (Sept. 15, 1960). Laws like RCRA evolved out of the very statutory frameworks (Sikes Act, Solid Waste Disposal Act) that NEPA had been drafted to supplement. Subsequent enactment of RCRA cannot possibly be read as an implicit repeal of NEPA’s environmental review requirements. *See National Association of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662 (2007) (“While a later enacted statute ... can sometimes operate to amend or even repeal an earlier statutory provision ... ‘repeals by implication are not favored’ and will not be presumed unless the ‘intention of the legislature to repeal [is] clear and manifest.’”) (quoting *Watt v. Alaska*, 451 U.S. 259, 267 (1981)) (alteration in original). Laws analogous to RCRA were already on the books when NEPA was added to the mix.

Despite the presence of these early environmental laws, many agencies—including Petitioners here—did not “have a mandate within the body of their enabling laws to allow them to give adequate attention to environmental values,” S. Rep. No. 91-296, at 14 (1969), much less the “clear authority to assure consideration of environmental factors which conflict with other Federal objectives,” 115 Cong. Rec. 40419 (1969). Then-Secretary of the Interior Stewart Udall testified to the seriousness of this problem in 1968, using the example of the Tennessee Valley Authority (TVA), which thought “their mission was to produce electric power as cheaply as possible... and that if this destroyed resources, rivers and hillsides, and ruined parts of the country outside the TVA area for all time, this was none of their business.” *Joint House-Senate Colloquium to Discuss a National Policy for the Environment: Hearing Before the Comm. on Interior and Insular Affs. U.S. S. and the Comm. on Science and Astronautics U.S. H.R.*, 90th Cong. 15 (1968).⁵

Because “[e]nvironmental problems cut across many existing operational organizations” and cannot be in “the exclusive bailiwick of any committee of Congress nor department of Government,” NEPA was drafted to provide “all agencies and all Federal officials with a legislative mandate and a responsibility to consider the consequences of their actions on the environment.” Congressional White Paper on A National Policy for the Environment 12 (Comm. Print. 1968); 115 Cong.

⁵ Udall’s concern stood even as TVA would be obligated to abide by state environmental regulations. See THE TENNESSEE BLUE BOOK, at 350 (2025-2026 ed.) (“The Tennessee General Assembly had previously created the Stream Pollution Control Board in 1945, making Tennessee the first state in the South to pass a water pollution control law.”), <https://sos.tn.gov/blue-book>.

Rec. 40423 (1969); S. Rep. No. 91-296, at 14 (1969). That is, agencies would take an “interdisciplinary, team approach” to assess the consequences of federal development projects. 115 Cong. Rec. 29085 (1969). “Many of the environmental controversies” of the day were “caused by the failure to consider all relevant points of view in the planning and conduct of Federal activities.” S. Rep. No. 91-296, at 20 (1969). Congress enacted NEPA to end the practice of agencies operating in isolated silos.

The text of NEPA mandates interagency coordination: “[I]t is the continuing policy of the Federal Government, *in cooperation with State and local governments...* to use all practicable means and measures... to create and maintain conditions under which man and nature can exist in productive harmony.” 42 U.S.C. § 4331(a), NEPA § 101(a). Explaining the intent of this language, *amici curiae*’s congressional predecessors stated that “the activities and resources of the Federal Government shall be improved and coordinated to... attain certain broad national goals in the management of the environment.” 115 Cong. Rec. 29084 (1969). Describing the intent of Section 101(b), they similarly noted that “environmental evaluation” should not be restricted to “the province of a particular agency.” 115 Cong. Rec. 29085 (1969).

The Congress that enacted NEPA thus envisioned it as a meaningful and responsive mandate for inter-agency cooperation and coordination, supplementing other environmental laws.

B. Litigation Affirming NEPA's Supplementary Role.

NEPA's supplementary and interagency focus is reflected in decades of litigation on the implementation of the Act—cases which highlight the Department of Defense's own understanding that issuance of other environmental permits does *not* obviate the need for coordinated reviews under NEPA.

Shortly after NEPA was enacted, its applicability to issues of national defense was tested in *Concerned About Trident v. Rumsfeld*, 555 F.2d 817 (D.C. Cir. 1976). There, the Navy argued that NEPA should not apply “to strategic military decisions.” *Id.* at 823. The D.C. Circuit disagreed, explaining that a purported “defense exemption from NEPA flies in the face of the clear language of the statute ... Section 102 of NEPA clearly instructs all federal agencies to comply with its requirements ... The only time that a federal agency can avoid this inclusion is when a clear and unavoidable conflict in statutory authority exists.” *Concerned About Trident*, at 822-23.

Twenty years further on, the rule from *Concerned About Trident* had become accepted procedure. Thus, in *Chemical Weapons Working Group v. U.S. Department of the Army*, the Department of Defense completed both NEPA reviews and applications for other environmental permits, including one under RCRA. 935 F. Supp. 1206, 1210-11 (D. Utah 1996) (“[T]he Army completed and circulated a Draft Programmatic Environmental Impact Statement” and “obtained a RCRA permit to operate from the State of Utah under Utah’s delegated program.”). The Army never suggested that RCRA relieved it of the need to conduct the requisite NEPA reviews.

Eleven years later, in *Sierra Club v. Gates*, 499 F. Supp. 2d 1101 (S.D. Ind. 2007) (denying motion for preliminary injunction), the Army again argued that it had concurrently complied with NEPA and other environmental statutes. That case concerned the Army's Chemical Stockpile Disposal Program and expressly contemplated both NEPA review and subsequent RCRA permitting. *See id.* at 1103-04 (The court quoted the Army's notice of its Record of Decision, which referenced "site-specific [NEPA] review, which will include the preparation of an Environmental Impact Statement (EIS) or Environmental Assessment (EA) ... In addition, the Army is obligated to obtain [RCRA] and Clean Air Act ["CAA"] permits".) (alterations in original).

Once more, in *Defenders of Wildlife v. U.S. Department of the Navy*, 733 F.3d 1106 (11th Cir. 2013), the Navy prepared an Environmental Impact Statement for a proposed Undersea Warfare Training Range but made clear that implementation of the project would occur only after additional environmental reviews and compliance with other federal statutes. As the Eleventh Circuit recounted, the Navy's Record of Decision stated that any "decision to implement training... will be based on the updated analysis of environmental effects in a future [EIS] in conjunction with appropriate coordination and consultation with the [National Marine Fisheries Service] and after compliance with applicable laws and executive orders including the [Marine Mammal Protection Act], the [Endangered Species Act], the [NEPA] and the Coastal Zone Management Act" *Id.* at 1116.

Not surprisingly, administrative records for various military projects are also replete with instances of the Department of Defense documenting its compliance with both NEPA and RCRA concurrently. *See, e.g.,* Department of the Army, *Final Second Supplemental Environmental Impact Statement for the Storage and Ultimate Disposal of the European Chemical Munition Stockpile*, at 2-7 (June 1990) (“The proposed action will require that the RCRA permit be modified to allow for the increased number of chemical munitions to be incinerated”), <https://www.osti.gov/servlets/purl/6949564>; U.S. Army Corps of Engineers, *Final Environmental Assessment for Installing and Operating a Thermal Treatment Facility, Holston Army Ammunition Plant, TN*, at 1-3 (Mar. 2020), (“NEPA requires that federal agencies consider the environmental consequences of proposed actions during the decision-making process ... As part of this environmental assessment (EA), the Army considered ... [the] Resource Conservation and Recovery Act”), <https://cswab.org/wp-content/uploads/2020/10/Holston-Army-Environmental-Assessment-Thermal-Treatment-Facility-Final-March-2020.pdf>; United States Army, *Final Environmental Impact Statement, Realignment of Pueblo Depot Activity, Colorado*, at S-10, S-11 (Aug. 1991) (“it is likely that a revision of or a modification to a pending RCRA permit will be required”), <https://apps.dtic.mil/sti/tr/pdf/ADA386109.pdf>.

* * *

Simply put, NEPA’s statutory text, congressional understanding of that text, and the Department of Defense’s own history of following that text all point to one conclusion: NEPA supplements other federal environmental laws (both pre-1969 and post) and is not supplanted by them.

II. RECENT CASELAW AND CONGRESS'S AMENDMENTS HAVE LEFT NEPA'S FOCUS ON SUPPLEMENTAL, CROSS-AGENCY COORDINATION INTACT.

Petitioners argue that RCRA should implicitly be read to override the coordinated environmental reviews of NEPA. But this argument overlooks that when Congress wants a specific statutory command to override NEPA's general requirements, it says so. In fact, *amici curiae* have identified at least ten current statutes in the United States Code with an exemption; RCRA is not among them. *See Appendix B: Current Statutes with NEPA Restrictions/Exemptions.*

A. Congressional Activity Confirming That NEPA Supplements RCRA.

In recent years, Congress has modified the process for EIS reviews but has left NEPA's commitment to interagency coordination and supplemental environmental reviews untouched.

The BUILDER Act, passed as part of the Fiscal Responsibility Act of 2023, imposes clear page and time limits as part of a comprehensive package of NEPA reform. 42 U.S.C. § 4336a; Pub. L. No. 118-5, 137 Stat. 10, 41-42, Fiscal Responsibility Act of 2023 § 107(e), 107(g). Instead of the 3,600-page EIS that was before the Court in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025), agencies are now capped at 150 pages (300 for projects of "extraordinary complexity"). *See* 42 U.S.C. § 4336a. And the timing for preparing an EIS is now designed to dovetail with the real-world project deadlines that Petitioners might face: within two years or less after determining that an EIS is required.

Id. The BUILDER Act also reaffirmed that there are only rare and narrow circumstances in which NEPA yields to other statutory requirements, *e.g.*, when NEPA “would clearly and fundamentally conflict” with another statute. *Id.* § 4336(a)(2)–(3).

In a small handful of cases, Congress has carved out specific projects as not subject to further NEPA scrutiny. Shortly after NEPA’s passage, for example, Congress recognized that the Department of the Interior had already completed a “Final Environmental Impact Statement” for the Trans-Alaska Pipeline and thus exempted the pipeline from additional NEPA reviews. 43 U.S.C. § 1652. Another example comes from Section 7(c) of the Energy Supply and Environmental Coordination Act of 1974, which provides, “No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.” 15 U.S.C. § 793(c)(1). Similarly, Section 511(c) of the Clean Water Act identifies limited EPA actions where NEPA must apply and explicitly commands that outside of those scenarios, “no action of the Administrator taken pursuant to this chapter shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969....” 33 U.S.C. § 1371(c).

There have also been occasional, defense-related matters where Congress has stepped in to establish a NEPA exemption. More than twelve years ago, Congress directed the Department of the Navy and the Department of the Interior to realign boundaries for the Chocolate Mountain Aerial Gunnery Range in Southern California as a means of improving the

Bradshaw Trail, a 70-mile, backcountry dirt road. Congress declared that “The National Environmental Policy Act of 1969... shall not apply to any transfer of land [related to this particular realignment]... or any decontamination actions undertaken in connection with such a transfer.” *See* Pub. L. 113-66, 127 Stat. 672, 1043 (Dec. 26, 2013), National Defense Authorization Act for Fiscal Year 2014 § 2966(c). In a related vein, Congress transferred ownership of a lighthouse in Puget Sound, Washington, from the United States Coast Guard to the city of Gig Harbor. In directing the transfer, Congress added that the conveyance “shall not be considered a major Federal action for purposes of section 102(2) of the National Environmental Policy Act of 1969....” Pub. L. 113-281, 128 Stat. 3022, 3063 (Dec. 18, 2014), Howard Coble Coast Guard and Maritime Transportation Act of 2014 § 608(b)(4).

The takeaway from these examples is that Congress knows how to exempt a project from NEPA when it chooses to do so.⁶ *See Appendix B: Current Statutes with NEPA Restrictions/Exemptions.* Congress’s decision *not* to amend RCRA or NEPA (or create any form of NEPA exemption for the Guam munitions project) must be understood as intentional. *See Bittner v. United States*, 598 U.S. 85, 94 (2023) (“When Congress includes particular language in one section of a statute but omits it from a neighbor, we normally understand that difference in language to convey a difference in

⁶ As Petitioners note, the Air Force’s activities to manage unexploded munitions on the island of Guam have been ongoing in various iterations since 1982. Br. for Pet’rs, at 2. At any time over the last eight presidential administrations, Petitioners might have gone to Congress to secure a project-specific exception or general RCRA exemption from NEPA. They did not.

meaning (*expressio unius est exclusio alterius*).”); *National Association of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662 (2007) (“repeals by implication are not favored”).

**B. *Seven County Infrastructure Coalition*
Buttresses Enforcement of NEPA Here.**

Amici curiae’s understanding of NEPA—that it supplements statutes like RCRA and is not supplanted by them—is buttressed by the Court’s recent decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025). As the *Seven County* Court explained, NEPA functions as an early-stage, “procedural cross-check,” where “[t]he goal of the law is to inform agency decisionmaking.” *Id.* at 173. That understanding of the law dovetails perfectly with what the Department of the Air Force *should* have done here: complete its NEPA reviews before submitting an application to Guam EPA. “Properly applied, NEPA helps agencies to make better decisions and to ensure good project management.” *Id.* at 177.

True, the *Seven County* Court noted concerns about challengers henpecking 3,600-page EIS documents to “block[] or delay[] even those projects that otherwise comply with all relevant substantive environmental laws.” *Id.* at 183. But an overly aggressive use of NEPA is not remedied by Petitioners’ call for judicial repeal of the statute altogether. NEPA’s “modest procedural requirement” is still that—a requirement. *Id.* at 183.

In *Seven County*, this Court noted that “[t]he bedrock principle of judicial review in NEPA cases can be stated in a word: Deference.” *Id.* at 185. That, of course, requires that there be *something in the*

record—some form of an Environmental Assessment (EA), Finding of No Significant Impact (FONSI), or Environmental Impact Statement (EIS)—to which courts can defer.

* * *

Petitioners were obligated to take a hard look at the “reasonably foreseeable environmental effects of the proposed agency action,” to evaluate “adverse environmental effects,” and to identify “alternatives” that might mitigate or avoid those adverse effects. 42 U.S.C. § 4332(c), NEPA § 102(c). Thus, before applying to Guam EPA for a RCRA permit, they were required to consider alternatives that had been evaluated in the National Academies Report. *See supra* note 3. That report was prepared at the explicit direction of Congress as part of the Fiscal Year 2017 National Defense Authorization Act, which required:

1. “An analysis of disposal, treatment, and reuse technologies, including technologies currently used by the Department and emerging technologies used or being developed by private or other governmental agencies, including a comparison of cost, throughput capacity, personnel safety, and environmental impacts... “; and
2. “[a]n identification and evaluation of any barriers to full-scale deployment of alternatives to open burning, open detonation, or non-closed loop incineration/combustion, and recommendations to overcome such barriers.”

See Pub. L. No. 114-328, § 1421, 130 Stat. 2000, 2570-2571 (Dec. 23, 2016).

Amici curiae struggle to understand why the Department of the Air Force did not evaluate this

report in the earliest stages of its decisionmaking process, when the most cost-effective, gold-standard recommendations from the National Academies could have been put into practice.

CONCLUSION

For these reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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July 27, 2026

APPENDIX

APPENDIX TABLE OF CONTENTS

	Page
APPENDIX A: Environmental Laws Prior to 1969.....	1a
APPENDIX B: Current Statutes with NEPA Restrictions/Exemptions	5a

APPENDIX A:**ENVIRONMENTAL LAWS PRIOR TO 1969**

Year	Statute	Historical Citation
1884	Rivers and Harbors Act	ch. 229, 23 Stat. 133
1897	Act of June 4, 1897 (Forest Service Organic Administration Act)	ch. 2, 30 Stat. 11, 32
1900	Lacey Act (wildlife conservation)	ch. 553, 31 Stat. 187
1902	Reclamation Act (National Irrigation Act)	ch. 1093, 32 Stat. 388
1906	American Antiquities Preservation Act	ch. 3060, 34 Stat. 225
1911	Weeks Law (Appalachian Forest Act)	ch. 186, 36 Stat. 961
1916	National Park Service Organic Act	ch. 408, 39 Stat. 535
1918	Migratory Bird Treaty Act	ch. 128, 40 Stat. 755
1924	Oil Pollution Act	ch. 316, 43 Stat. 604
1929	Migratory Bird Conservation Act	ch. 257, 45 Stat. 1222
1934	Fish and Wildlife Coordination Act	ch. 55, 48 Stat. 401
1934	Taylor Grazing Act	ch. 865, 48 Stat. 1269

2a

1935	Soil Conservation and Domestic Allotment Act	ch. 85, 49 Stat. 163
1937	Federal Aid in Wildlife Restoration Act	ch. 899, 50 Stat. 917
1940	Bald and Golden Eagle Protection Act	ch. 278, 54 Stat. 250
1947	Federal Insecticide, Fungicide, and Rodenticide Act	ch. 125, 61 Stat. 163
1948	Federal Water Pollution Control Act	ch. 758, 62 Stat. 1155
1950	Federal Aid in Fish Restoration Act	ch. 658, 64 Stat. 430
1953	Outer Continental Shelf Lands Act	ch. 345, 67 Stat. 462
1953	Submerged Lands Act	ch. 65, 67 Stat. 29
1954	Watershed Protection and Flood Prevention Act	ch. 656, 68 Stat. 666
1955	Air Pollution Control Act	ch. 360, 69 Stat. 322
1956	Fish and Wildlife Act	ch. 1036, 70 Stat. 1119
1960	Multiple-Use Sustained-Yield Act	Pub. L. No. 86-517, 74 Stat. 215
1960	Sikes Act (wildlife conservation on military reservations)	Pub. L. No. 86-797, 74 Stat. 1052

3a

1962	McIntire-Stennis Cooperative Forestry Act	Pub. L. No. 87-788, 76 Stat. 806
1963	Clean Air Act (amending the Air Pollution Control Act of 1955)	Pub. L. No. 88-206, 77 Stat. 392
1964	Land and Water Conservation Fund Act	Pub. L. No. 88-578, 78 Stat. 897
1964	Water Resources Research Act	Pub. L. No. 88-379, 78 Stat. 329
1964	Wilderness Act	Pub. L. No. 88-577, 78 Stat. 890
1965	Anadromous Fish Conservation Act	Pub. L. No. 89-304, 79 Stat. 1125
1965	Motor Vehicle Air Pollution Control Act	Pub. L. No. 89-272, 79 Stat. 992
1965	Solid Waste Disposal Act (later incorporated into the Resource Conservation and Recovery Act)	Pub. L. 89-272, 79 Stat. 997
1965	Water Quality Act (amending the Federal Water Pollution Control Act of 1948)	Pub. L. No. 89-234, 79 Stat. 903
1965	Water Resources Planning Act	Pub. L. No. 89-80, 79 Stat. 244
1966	Act of October 15, 1966 (Endangered Species Preservation Act)	Pub. L. No. 89-669, 80 Stat. 926

4a

1966	Clean Water Restoration Act (amending the Federal Water Pollution Control Act of 1948)	Pub. L. No. 89-753, 80 Stat. 1246
1966	Marine Resources and Engineering Development Act	Pub. L. No. 89-454, 80 Stat. 203
1966	National Historic Preservation Act	Pub. L. No. 89-665, 80 Stat. 915
1966	National Sea Grant College and Program Act	Pub. L. 89-688, 80 Stat. 998
1966	National Wildlife Refuge System Administration Act	Pub. L. 89-669, 80 Stat. 927
1967	Air Quality Act (amending the Clean Air Act of 1963)	Pub. L. No. 90-148, 81 Stat. 485
1968	Act of August 3, 1968 (Estuary Protection Act)	Pub. L. No. 90-454, 82 Stat. 625
1968	National Trails System Act	Pub. L. No. 90-543, 82 Stat. 919
1968	Wild and Scenic Rivers Act	Pub. L. No. 90-542, 82 Stat. 906

Note: This list includes statutes in force when NEPA was enacted, whether or not they remain in effect today.

APPENDIX B:
CURRENT STATUTES WITH NEPA
RESTRICTIONS/EXEMPTIONS

Statute	Congressional Language on Statutory Restriction/ Exemption	Current Citation
Energy Supply and Environmental Act	"No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969."	15 U.S.C. § 793(c)(1)
Clean Water Act	"Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works... and the issuance of a permit... for the discharge of any pollutant by a new source... no action of the Administrator taken pursuant to this chapter shall be deemed a major Federal	33 U.S.C. § 1371(c)(1)

	action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.”	
Trans-Alaska Pipeline Authorization Act	“The actions taken pursuant to this chapter which relate to the construction and completion of the pipeline system... shall be taken without further action under the National Environmental Policy Act of 1969....”	43 U.S.C. § 1652(d)
Regional Rail Reorganization Act	“The provisions of section 4332(2)(C) of Title 42 shall not apply with respect to any action taken under authority of this chapter before, and including, the conveyance of rail properties ... and shall not apply thereafter to any action taken in compliance with the requirements of the final system plan.”	45 U.S.C. § 791(c)
Disaster Relief Act	“An action which is taken or assistance which is provided...	42 U.S.C. § 5159

	which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969....”	
Surface Mining Control and Reclamation Act	30 U.S.C. § 1251(a): “The issuance of the interim regulations shall be deemed not to be a major Federal action within the meaning of section 4332(2)(c)1 of Title 42.” 30 U.S.C. § 1292(d): “Approval of the State programs... promulgation of Federal programs... and implementation of the Federal lands programs... shall not constitute a major action within the meaning of section 102(2)(C) of the Nat-	30 U.S.C. §§ 1251(a), 1292(d)

	ional Environmental Policy Act of 1969....”	
Power Plant and Industrial Fuel Use Act	“The following actions are not deemed to be major Federal actions for purposes of section 4332(2)(C) of this title... the grant or denial of any temporary exemption under this chapter for any electric powerplant... the grant or denial of any permanent exemption under this chapter for any existing electric powerplant... the grant or denial of any exemption under this chapter for any powerplant for which the Secretary finds... and publishes such finding that an environmental impact statement is required....”	42 U.S.C. § 8473
Nuclear Waste Policy Act	“The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the	42 U.S.C. § 10141(c)

	National Environmental Policy Act of 1969....”	
Columbia River Gorge National Scenic Area Act	“Actions by the Secretary... shall neither be considered major Federal actions significantly affecting the quality of the environment under section 102 of the National Environmental Policy Act... nor require the preparation of an environmental assessment in accordance with that Act.”	16 U.S.C. § 544o(f)
Building Chips in America Act	4652(h): “Notwithstanding any other provision of law, the provision by the Secretary of Federal financial assistance for a project described in this section that satisfies the requirements under subsection (a)(2)(C)(i) of this section shall not be considered to be a major Federal action under the National Environmental Policy Act of 1969....”	15 U.S.C. § 4652(h), 4659(d)

	4659(d): “Notwithstanding any other provision of law, each of the following shall be treated as a category of action categorically excluded from the requirements relating to environmental assessments and environmental impact statements under section 1501.4 of title 40, Code of Federal Regulations, or any successor regulation....”	
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