

No. 25-579

In the Supreme Court of the United States

DEPARTMENT OF THE AIR FORCE, ET AL., PETITIONERS

v.

PRUTEHI GUÅHAN

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

REPLY BRIEF FOR THE PETITIONERS

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TABLE OF CONTENTS

	Page
A. An application for renewal of a RCRA permit is not final agency action	4
B. Respondent's NEPA claim fails on the merits.....	13

TABLE OF AUTHORITIES

Cases:

<i>Bennett v. Spear</i> , 520 U.S. 154 (1997).....	1, 4, 6-8
<i>Biden v. Texas</i> , 597 U.S. 785 (2022).....	2, 4
<i>Bostock v. Clayton County</i> , 590 U.S. 644 (2020)	17
<i>Camp v. Pitts</i> , 411 U.S. 138 (1973).....	5
<i>City of Chicago v. Environmental Defense Fund</i> , 511 U.S. 328 (1994).....	13
<i>Dalton v. Specter</i> , 511 U.S. 462 (1994).....	11
<i>Elgin v. Department of the Treasury</i> , 567 U.S. 1 (2012)	16
<i>FTC v. Standard Oil Co.</i> , 449 U.S. 232 (1980)	11
<i>Flint Ridge Development Co. v. Scenic Rivers Association</i> , 426 U.S. 776 (1976).....	14
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	11
<i>National Association of Home Builders v. Defenders of Wildlife</i> , 551 U.S. 644 (2007)	14, 16, 23
<i>Portland Cement Association v. Ruckelshaus</i> , 486 F.2d 375, cert. denied, 417 U.S. 921 (1974).....	21
<i>RadLAX Gateway Hotel, LLC v. Amalgamated Bank</i> , 566 U.S. 639 (2012)	3, 13, 15
<i>Sackett v. EPA</i> , 566 U.S. 120 (2012)	5
<i>Seven County Infrastructure Coalition v. Eagle County</i> , 605 U.S. 168 (2025).....	12, 21, 23

II

Cases—Continued:	Page
<i>United States Army Corps of Engineers v. Hawkes Co.</i> , 578 U.S. 590 (2016)	5
<i>United States v. Fausto</i> , 484 U.S. 439 (1988)	15
Statutes and regulations:	
Administrative Procedure Act, 5 U.S.C. 551 <i>et seq.</i> , 701 <i>et seq.</i> :	
5 U.S.C. 558(c)	8
5 U.S.C. 704	1, 4
Atomic Energy Act, 42 U.S.C. 2131-2142	9
Archaeological Resources Protection Act, 16 U.S.C. 470ee	9
Clean Air Act, 42 U.S.C. 7418(a)	9
Clean Water Act, 33 U.S.C. 1342	9
Endangered Species Act, 16 U.S.C. 1539	9
Federal Land Policy and Management Act, 43 U.S.C. 1767	9
Marine Mammal Protection Act, 16 U.S.C. 1374	9
Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1411(a)	9
National Environmental Policy Act of 1969, 42 U.S.C. 4321 <i>et seq.</i>	1
42 U.S.C. 4336(a)(1) (Supp. V 2023)	12
42 U.S.C. 4336(a)(1)-(4) (Supp. V 2023)	14
42 U.S.C. 4336(a)(2) (Supp. V 2023)	14, 17
Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, 90 Stat. 2795 (42 U.S.C. 6901 <i>et seq.</i>)	1
Safe Drinking Water Act, 42 U.S.C. 300j-6	9
28 U.S.C. 1581	16

III

Regulations—Continued:	Page
32 C.F.R. 651.14(e) (2025).....	18
40 C.F.R.:	
Section 124.9(b)(6)	16, 20
Section 124.19(l)(2)	10
Section 1502.24(a) (2021).....	18
Section 1502.24(b) (2021)	18
Miscellaneous:	
Department of Energy, <i>DOE Policies on Application of NEPA to CERCLA and RCRA Cleanup Actions</i> (July 11, 2002), perma.cc/Z4JG-8X4N	18
Department of War, <i>National Environmental Policy Act Implementing Procedures</i> (version 1.2, Apr. 30, 2026):	
Pt. 1.1(a)(5).....	19, 21
App. A:	
§ I(b)(A24-8)	19
§ II(b)(A110-28)	19
§ III(A157-37)	19
44 Fed. Reg. 34,244 (June 14, 1979).....	21

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Respondent’s sole claim in this lawsuit is that the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, required the Air Force to conduct additional environmental analysis before submitting to the Guam Environmental Protection Agency (Guam EPA) a permit-renewal application under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 *et seq.* Respondent’s claim fails at the outset because the Air Force’s submission of an application to renew its RCRA permit is not “final agency action” subject to judicial review under the Administrative Procedure Act (APA), 5 U.S.C. 704. Because the permit-renewal application triggered a still-ongoing iterative administrative process in which the Air Force may be required to modify its application, submission of the application did not “mark the ‘consummation’ of the agency’s decisionmaking process.” *Bennett v. Spear*, 520 U.S.

154, 178 (1997) (citation omitted). Nor did any “legal consequences” “flow” from the application itself, *ibid.* (citation omitted); instead, legal consequences will flow only from Guam EPA’s ultimate disposition of the application.

Respondent asserts that the RCRA permit-renewal application marked the consummation of *internal* Air Force deliberations about whether and how to continue waste-munitions-disposal activities at Andersen Air Force Base. But this Court has squarely rejected the proposition that a plaintiff can challenge some “abstract” internal agency decisionmaking “apart from specific agency action[s].” *Biden v. Texas*, 597 U.S. 785, 809 (2022). And in describing the legal consequences that purportedly flow from the permit-renewal application, respondent repeatedly references the legal obligations to which the Air Force will be subject *if and when* Guam EPA approves that application. Those formulations underscore the fact that legal consequences do not flow from the application itself, but solely from Guam EPA’s disposition of it. Respondent also relies on the fact that the Air Force’s submission of the RCRA permit-renewal application automatically tolled the expiration of the agency’s existing permit, which was issued in 2018 and otherwise would have expired in 2021. But any resulting legal consequences flow from Guam EPA’s prior approval of the 2018 permit, not from the proposed terms set forth in the renewal application.

The fact that the permit-renewal application is not a final agency action, and therefore is not directly reviewable under the APA, provides an independently sufficient basis for reversing the judgment below and ordering dismissal of respondent’s suit. And because NEPA’s requirements do not apply to nonfinal agency actions, a

ruling that the permit-renewal application is not a final agency action would effectively resolve the merits as well. The Court thus need not address how NEPA and RCRA would interact in a case that *did* involve final agency action.

Even if the Court holds that the Air Force's renewal application was final agency action, respondent's NEPA claim still lacks merit. Respondent's core merits argument is that, because neither NEPA nor RCRA expressly exempts or supersedes the other statute, federal agencies engaged in hazardous-waste disposal must comply with both. That argument ignores the canon that specific statutes govern over general ones, especially where (as here) "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citation omitted). RCRA establishes a comprehensive regulatory scheme that is more specific than NEPA in two ways: RCRA focuses on hazardous-waste treatment and disposal, and it establishes a lengthy permitting process with specific requirements that apply at discrete stages of that process, including the permit-application stage. There is no sound reason to treat NEPA's generalized provisions as imposing additional requirements on RCRA permit renewals. And the rigid rule that respondent advocates, which would require federal agencies that seek RCRA permits to *complete* NEPA review before *starting* the RCRA process, is particularly unsound. For those reasons and others set forth below and in our opening brief, this Court should reverse the judgment of the court of appeals.

A. An Application For Renewal Of A RCRA Permit Is Not Final Agency Action

For an agency action to be “final agency action” reviewable under the APA, it “must mark the ‘consummation’ of the agency’s decisionmaking process” and “must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Bennett*, 520 U.S. at 177-178 (citations omitted). The Air Force’s 2021 permit-renewal application satisfies neither of those conditions.

1. The permit-renewal application did not reflect the consummation of the Air Force’s decisionmaking process. Rather, the application was simply one step of a multistep process involving the Air Force, Guam EPA, and the public, which will end only when the RCRA permit is either renewed or finally rejected. Gov’t Br. 22-27. Respondent’s contrary arguments lack merit.

a. Respondent contends (Br. 39) that, when the Air Force submitted the permit-renewal application to Guam EPA, it had “reached the culmination of its internal decisionmaking on whether to conduct OD [open detonation]” at Andersen Air Force Base. But the APA does not permit judicial review of an agency’s *internal* decisionmaking; it authorizes review only of “final agency action,” 5 U.S.C. 704. Courts thus may not review “an abstract decision apart from specific agency action, as defined in the APA.” *Biden v. Texas*, 597 U.S. at 809.

In *Biden v. Texas*, the Court rejected the contention that the relevant action for APA review was the agency’s internal decision to terminate a particular immigration program. 597 U.S. at 809. Instead, the operative agency actions for purposes of judicial review were the formal memoranda stating that the program would be

terminated—not, as the plaintiffs had contended and the lower court had held, some prior internal agency decision that was merely documented in the memoranda. *Id.* at 809-810. In focusing on a putative internal Air Force decision, respondent makes the same error that the *Biden v. Texas* Court corrected.

There is likewise no merit to respondent’s suggestion (Br. 40) that the finality of the permit-renewal application turns on whether the Air Force “is still debating” its contents. That approach would require courts to order potentially intrusive discovery into internal agency decisionmaking processes simply to determine whether the plaintiff has identified a reviewable agency action. That would be inconsistent with the rule that “the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973) (per curiam). It also would convert what should be a purely objective inquiry into a subjective one, in which the presence of final agency action could turn on the mental states of agency personnel.

b. Respondent’s reliance (Br. 41-42) on *Sackett v. EPA*, 566 U.S. 120 (2012), and *United States Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590 (2016), is misplaced. Those decisions hold that otherwise-final agency actions will not be considered nonfinal simply because they are theoretically open to reconsideration on the agency’s own initiative. Gov’t Br. 24-27. Respondent asserts (Br. 43) that “Guam EPA cannot retroactively change the Air Force’s mind.” But Guam EPA *can* reject the renewal application or condition its approval on specified modifications, in which case the Air Force will have to consider whether to modify the

application, seek other remedies, or abandon the application.

Respondent is also wrong in invoking (Br. 42-43) *Biden v. Texas*, *supra*, for the proposition that an agency action can be final even if some other party must ultimately approve the action. There, the agency issued a set of memoranda that conclusively terminated an immigration program and required agency personnel “to immediately cease implementing [the program] * * * ‘as soon as practicable after a final judicial decision to vacate’” an existing court-ordered injunction. 597 U.S. at 809 n.7 (citation omitted). This Court held that the memoranda constituted final agency action even though agency personnel could not lawfully carry out the memoranda’s directives until the injunction was vacated. See *ibid.* That scenario bears little resemblance to the situation here. The Air Force’s permit-renewal application does not purport to make any final decision or take any final action; instead, it *seeks permission* from Guam EPA to undertake the activities described in the application.

2. The permit-renewal application at issue here also fails *Bennett*’s second requirement, *i.e.*, that the action “be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” 520 U.S. at 178 (citation omitted); see *ibid.* (action must have “direct and appreciable legal consequences”). Any rights, obligations, or legal consequences would be determined by or flow from Guam EPA’s ultimate disposition of the pending renewal application. Gov’t Br. 27-35.

a. In arguing to the contrary, respondent principally invokes a ground that the court of appeals mentioned only in passing: that the 2021 permit-renewal applica-

tion “had the concrete legal effect of extending the 2018 permit’s term.” Resp. Br. 44; cf. Pet. App. 31a n.9. That effect does not make the 2021 application final agency action. Unless and until Guam EPA disposes of the Air Force’s request to renew its permit, the relevant rights and obligations are still defined by the 2018 permit, not by the 2021 application. Gov’t Br. 29-30. Indeed, there is a mismatch between respondent’s focus (for final-agency-action purposes) on the automatic extension of the *old* permit, and respondent’s merits claim that the agency should have engaged in NEPA review of the proposed terms in the *new* application. *Id.* at 30-31.

Respondent argues (Br. 46) that “there is no mismatch here” because the “2018 permit was identical in all material respects to the 2021” application. But nothing required the terms to be identical, and respondent does not contend that the final-agency-action determination should depend on the degree of similarity. Respondent likewise does not contend that, when a federal agency’s renewal application specifies terms significantly different from those of the existing permit, the agency must perform NEPA analysis of the likely environmental consequences of maintaining the prior permit in effect during the renewal process.

Respondent is also wrong in suggesting (Br. 46-47) that a similar mismatch existed in *Bennett*. The plaintiffs in *Bennett* challenged a biological opinion that analyzed the effects of a federal water-reclamation project on two endangered species. 520 U.S. at 157-159. The biological opinion identified potential changes to the project’s operation, including the adoption of minimum water levels, that were viewed as necessary to prevent jeopardy to those species. *Id.* at 159. The plaintiffs contended that the new restrictions on water levels were

arbitrary and unlawful because those restrictions would disserve the plaintiffs' own interest in obtaining project water, while providing no benefit to the listed species. *Id.* at 159-160.

In holding that the biological opinion was final agency action reviewable under the APA, the *Bennett* Court emphasized that the biological opinion “alter[ed] the legal regime” that governed the operation of the reclamation project, *id.* at 178, thereby exerting a “virtually determinative effect” on the federal officials who would decide whether to adopt the specified water-level requirements, *id.* at 170-171. The Court’s final-agency-action analysis thus focused on the *same* effect—*i.e.*, the coerced adoption of new minimum water levels—that was the subject of the plaintiffs’ merits challenge. Here, by contrast, respondent’s final-agency-action argument relies in part on an effect of the renewal application (the tolling of the 2018 permit’s expiration date) that is unconnected to the substance of respondent’s NEPA claim.

Treating the automatic extension of the 2018 permit as giving rise to final agency action would produce untenable results, given that Guam EPA’s tolling rule is based on a generally applicable rule set forth in the APA. 5 U.S.C. 558(c); see Gov’t Br. 31-32. Respondent’s theory implies that every permit-renewal application filed by any federal agency under any statutory scheme would constitute final agency action subject to immediate judicial review. Respondent has identified no lower-court decision adopting that view.

Respondent suggests (Br. 48-49) that the practical effect of such a rule would be manageable because the rule would apply only when “the licensee is a federal agency” and “the challenger’s claim centers on the li-

censee agency’s decisionmaking.” But federal agencies hold numerous permits and licenses issued by federal, state, or territorial authorities.* And the effect of respondent’s proposed rule would not be limited to suits that “closely resemble respondent’s NEPA” suit. Resp. Br. 49. If the automatic-extension provision justifies treating an agency’s renewal application as (in effect) a self-granted permit, a plaintiff could challenge the agency’s decision to seek a permit renewal on virtually any ground that is cognizable under the APA. For example, respondent’s allegation that OB/OD operations harm the “cultural, spiritual, recreational, aesthetic, economic, and other interests” of respondent’s members, J.A. 6, could easily be recharacterized as a claim that the Air Force supposedly acted arbitrarily and capriciously by failing to consider those interests before submitting its application.

b. Respondent also defends, “[i]n the alternative,” the principal rationale on which the court of appeals found the 2021 permit-renewal application to be final agency action: that legal consequences flow from the application “because the Air Force will be bound by the application’s plans and representations *upon Guam*

* For example, the Department of War informs us that it and its components hold more than 2700 permits under RCRA, the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act in areas covered by the Ninth Circuit. That is just one agency in one circuit under four statutory regimes; and there are many other federal statutes requiring permits or licenses to which other federal agencies might be subject. See, *e.g.*, Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1411(a); Endangered Species Act, 16 U.S.C. 1539; Marine Mammal Protection Act, 16 U.S.C. 1374; Archaeological Resources Protection Act, 16 U.S.C. 470ee; Atomic Energy Act, 42 U.S.C. 2131-2142, Federal Land Policy and Management Act, 43 U.S.C. 1767.

EPA approval.” Resp. Br. 49 (emphasis added); see *ibid.* (stating that the “terms and conditions [in the application] will become legally binding *once the permit is operative*,” and that the “Air Force has made commitments [in the application] it will not be free to unilaterally change *once accepted*”) (emphases added); *id.* at 17 (explaining that “the Air Force’s commitments in that application will bind the Air Force *when approved*”) (emphasis added); see Br. in Opp. 16 (more examples of similar language). Respondent thus uses the same sort of “contingent language,” Pet. App. 65a (VanDyke, J., dissenting), that characterized the Ninth Circuit’s opinion. *Id.* at 29a-32a; see Gov’t Br. 23-24.

The need for that contingent language reflects the fact that the relevant legal consequences will flow not from the Air Force’s *submission* of the permit-renewal application, but from Guam EPA’s *disposition* of that application. Indeed, EPA regulations have long made clear that “final agency action on a permit occurs” only when the permitting agency “issues a final permit decision.” 40 C.F.R. 124.19(l)(2). Respondent argues (Br. 47-48) that this principle simply “define[s] the point of finality for purposes of the *permitting authority*’s decision on the application.” But a permit application triggers a collaborative dialogue between the permit applicant and the permitting authority, which is not definitively resolved until the end of the process. And even if the permitting authority ultimately grants a permit or renewal, it may insist on terms different from those in the original application. It thus makes no sense to say that legal consequences flow from the application when a plaintiff sues the applicant but not when it sues the permitting authority.

Respondent also has no persuasive ground for distinguishing this Court’s holding in *FTC v. Standard Oil Co.*, 449 U.S. 232 (1980), that an agency’s filing of a complaint was not final agency action because it “[s]erv[ed] only to initiate” administrative proceedings and otherwise had a “lack of legal or practical effect.” *Id.* at 242. Respondent observes (Br. 51) that the complaint there “merely found that there was a sufficient basis to *begin* proceedings.” But the Air Force’s 2021 application likewise simply commenced permit-renewal proceedings under RCRA. Here as in *Standard Oil*, the challenged agency conduct did not itself determine legal consequences, but instead triggered a process through which those consequences would be determined.

The permit-renewal application here therefore resembles the census report in *Franklin v. Massachusetts*, 505 U.S. 788 (1992), and the base-closure report in *Dalton v. Specter*, 511 U.S. 462 (1994), each of which was found not to be final agency action because each operated as a recommendation to the final decisionmaker. Gov’t Br. 28-29. Respondent observes (Br. 50) that each of those cases involved the submission of a recommendation to a superior within the same branch of the federal government. But respondent does not explain how that distinction is logically relevant to the *finality* of the agency recommendation. See Gov’t Br. 29.

3. Treating permit-renewal applications as final agency actions would open the door to a multitude of suits throughout the permitting process: one upon the submission of the initial application, another upon the final decision on the permit, and potentially others in the interim when revised applications are submitted. See Gov’t Br. 32-33. That kind of wasteful review would undermine not just judicial efficiency, but also coopera-

tive federalism, as “state permit authority will effectively be cut down as review is punted to federal courts.” West Virginia Amicus Br. 2. Respondent has no answer to those points.

Respondent argues (Br. 51) that, “[i]f the Court concludes * * * that NEPA applies to the Air Force’s decision” to seek a permit renewal, then respondent’s NEPA claim “must be heard eventually.” But if this Court holds that the Air Force’s submission of a permit-renewal application was not final agency action reviewable under the APA, the Court’s decision will effectively resolve the question whether the Air Force was required to perform NEPA analysis before submitting that application. Even apart from the fact that RCRA’s more specific provisions supersede NEPA’s more general requirements (see Gov’t Br. 35-47; pp. 13-23, *infra*), the 2023 NEPA amendments confirm that “[a]n agency is not required to prepare an environmental document * * * if * * * the proposed agency action is not a final agency action within the meaning of” the APA. 42 U.S.C. 4336(a)(1) (Supp. V 2023); see Gov’t Br. 35 n. *.

Respondent agrees (Br. 19 n.3) that the 2023 NEPA amendments “reflect[] longstanding congressional practice and this Court’s precedent.” See *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 181 n.3 (2025) (explaining that the 2023 statute “strongly reinforces the basic principles that NEPA, correctly interpreted, already embodied”). A holding that the Air Force’s permit-renewal application is not final agency action therefore would effectively resolve the merits of respondent’s NEPA claim, no matter which version of NEPA applies to this case. Respondent was free to raise its environmental concerns (*e.g.*, by proposing alternative methods or locations for the OB/OD opera-

tions) in the Guam EPA proceedings, and respondent remains free to challenge any permit that Guam EPA might eventually issue.

B. Respondent’s NEPA Claim Fails On The Merits

If this Court holds that the submission of a RCRA permit-renewal application was not final agency action, that holding will resolve this case and compel dismissal of respondent’s suit. Because NEPA does not contain its own judicial-review provision, respondent has invoked the APA; but the APA does not authorize direct judicial review of nonfinal agency action. And as just explained, the 2023 NEPA amendments make clear that federal agencies are not required to conduct NEPA analysis of nonfinal agency actions. The Court therefore would not need to address how NEPA and RCRA would interact in a case that *did* involve final agency action.

Even if the Court holds that the Air Force’s submission of the 2021 permit-renewal application *was* final agency action immediately reviewable under the APA, the agency still was not required to perform NEPA analysis before submitting that application. RCRA’s specific provisions for environmental review as part of the hazardous-waste permitting process preclude the application of NEPA’s more general environmental-review requirements to the Air Force’s submission of a permit-renewal application.

1. “It is a commonplace of statutory construction that the specific governs the general.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (brackets and citation omitted). RCRA is a “comprehensive environmental statute” that regulates the specific topic of hazardous waste “from cradle to grave,” *City of Chicago v. Environmental Defense Fund*,

511 U.S. 328, 331 (1994), and thus precludes application of NEPA’s generalized and purely procedural requirements. Gov’t Br. 35-38. Respondent’s contrary arguments lack merit.

a. Respondent’s reliance (Br. 24; see Br. 23-24) on the “presumption against implied repeals” is misplaced. Under that presumption, courts will not interpret “a later enacted statute * * * to amend or even repeal an earlier statutory provision” unless “the intention of the legislature to repeal is clear and manifest.” *National Association of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662 (2007) (brackets and quotation marks omitted). That presumption is sound, but Congress provided a clear and manifest indication here.

NEPA itself makes clear that more specific environmental statutes can displace its requirements. This Court recognized long ago that an agency need not comply with NEPA’s procedures when another statute imposes incompatible requirements, even though neither statute contains language expressly superseding the other. *Flint Ridge Development Co. v. Scenic Rivers Association*, 426 U.S. 776, 788-789 (1976). The recent NEPA amendments codifying *Flint Ridge* and specifying additional circumstances under which a NEPA report need not be prepared, see 42 U.S.C. 4336(a)(1)-(4) (Supp. V 2023), confirm that Congress views NEPA as a generalized background statute that yields to more specific and comprehensive environmental laws.

Indeed, one circumstance in which NEPA review is not required occurs when a “proposed agency action is excluded pursuant to * * * another provision of law.” 42 U.S.C. 4336(a)(2) (Supp. V 2023). Contrary to respondent’s repeated characterization (Br. 19-21), that language does *not* require that the exclusion be “ex-

press.” The general/specific canon thus provides a well-established basis to supply such an exclusion. See Chamber of Commerce Amicus Br. 20-24. Applying that canon thus does not implicitly repeal NEPA; it *implements* an exclusion contained in NEPA itself. Cf. *United States v. Fausto*, 484 U.S. 439, 453-454 (1988).

Respondent argues (Br. 24) that the general/specific canon applies only “to avoid reading one (more general) clause to permit what another (more specific) clause proscribes.” But the canon is equally applicable where, as here, the more general provision proscribes what the more specific provision permits. The point of the canon is that the specific controls the general—not that the prohibitory controls the permissive. Thus, the general NEPA statute should not be read to prohibit (absent additional compliance actions) hazardous-waste-related actions that the more specific RCRA framework would authorize, especially given the substantial overlap and functional equivalence between the RCRA and NEPA processes. See Gov’t Br. 35-43.

Respondent objects (Br. 25) that “NEPA is more specific than RCRA when it comes to * * * the depth of analysis, the consideration of alternatives, and the process for coordinating with other agencies.” But a law through which “Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions,” *RadLAX*, 566 U.S. at 645 (citation omitted), may be the more specific statute in the relevant respect. Unlike NEPA, which addresses environmental concerns generally, RCRA establishes a comprehensive scheme to target the specific problem of hazardous and solid waste. See Gov’t Br. 5-8, 36-38.

RCRA is more specific in another way as well. Whereas NEPA addresses a broad array of federal

agency actions, RCRA and its implementing regulations specifically address permit (and permit-renewal) applications, including by specifying their contents and their role within the larger framework that governs hazardous-waste operations. See Gov’t Br. 40. Respondent’s attempt to superadd NEPA’s requirements to RCRA’s requirements for permit-renewal applications is inconsistent with that framework. Cf. *Home Builders*, 551 U.S. at 663 (where statute includes nine criteria, courts should not “engraft[] a tenth criterion” from a different statute).

b. Respondent observes that “Congress has expressly excluded many other agency actions from NEPA’s environmental-study requirement,” but has not expressly “excluded agency actions that require a RCRA permit.” Resp. Br. 19-20; see *id.* at 19-21, 25-26. But this Court has never suggested that the general/specific canon ceases to apply whenever the general statute contains express exceptions. For example, although Congress has enacted specific exceptions (see, *e.g.*, 28 U.S.C. 1581) to the general statutory grant of federal-question jurisdiction to district courts, more specific and comprehensive judicial-review schemes can establish additional exceptions, *e.g.*, *Elgin v. Department of the Treasury*, 567 U.S. 1, 11 (2012).

Shortly after RCRA’s enactment, EPA promulgated a regulation stating that “RCRA * * * permits are not subject to the environmental impact statement provisions of [NEPA].” 40 C.F.R. 124.9(b)(6); see Gov’t Br. 43-44. In the ensuing decades, Congress has revisited both RCRA and NEPA multiple times without disapproving EPA’s view. Congress may have thought it unnecessary to enact statutory language explicitly exempting the RCRA permitting process from NEPA’s

generalized and duplicative requirements, given the EPA rule that achieved the same practical result.

The longstanding EPA rule might also explain why the 2023 NEPA amendments did not ultimately include language contained in a predecessor bill, which stated that NEPA’s requirements do not apply to actions “for which such agency’s compliance with another statute’s requirements serve the same or similar function as the requirements of NEPA.” Resp. Br. 26 (brackets and citation omitted). Congress might have viewed that language as unnecessary given that the functional-equivalence principle has long been a settled feature of NEPA jurisprudence in the lower courts. See Gov’t Br. 43. Congress might also have viewed that language as redundant in light of the (enacted) provision referring to “proposed agency action excluded pursuant to * * * another provision of law,” 42 U.S.C. 4336(a)(2) (Supp. V 2023); see pp. 14-15, *supra*. Respondent’s reliance (Br. 26) on the predecessor bill thus illustrates the “danger[s]” of relying on congressional inaction or unenacted legislation as a tool of statutory interpretation. *Bostock v. Clayton County*, 590 U.S. 644, 670 (2020) (citation omitted).

c. Respondent invokes (Br. 28-29, 36-38) various regulations and past agency practices. None of its citations supports the claim that an agency must prepare a NEPA analysis before applying to renew a RCRA permit.

July 2002 DOE Memo. Contrary to respondent’s characterization (Br. 28), the July 2002 Department of Energy memorandum does not suggest that NEPA’s requirements become inapplicable only when “an actual conflict between NEPA and another environmental law” exists. Rather, the memorandum states that “RCRA

corrective actions generally do not require a separate NEPA analysis.” Department of Energy, *DOE Policies on Application of NEPA to CERCLA and RCRA Cleanup Actions*, at 1 (July 11, 2002), perma.cc/Z4JG-8X4N.

Former CEQ regulations. Former Council on Environmental Quality regulations (cf. Resp. Br. 28, 37) provided that, *if* an agency prepares an environmental impact statement (EIS) under NEPA, the EIS “shall list” all applicable permits and licenses, and its preparation should be “concurrent and integrated” with analyses required by other environmental statutes. 40 C.F.R. 1502.24(a) and (b) (2021). Those regulations did not purport to require federal agencies to prepare NEPA analyses when submitting RCRA permit-renewal applications. And to the extent the former CEQ regulations required that any NEPA analysis an agency does conduct must proceed “concurrent[ly]” with the RCRA process, 40 C.F.R. 1502.24(a) (2021), those regulations were inconsistent with respondent’s rigid sequencing rule, which would require NEPA analysis to be completed before a RCRA permit application is filed.

Former Army regulation. A former Army regulation (Resp. Br. 28) likewise merely provided that, *if* a NEPA analysis is conducted, the analysis should be “integrated as much as practicable with other environmental reviews.” 32 C.F.R. 651.14(e) (2025). That regulation did not purport to require NEPA review when a RCRA permit is sought, much less require such a review to be completed before a RCRA permit-renewal application is filed.

Categorical Exclusions. Respondent is wrong in asserting (Br. 28-29, 38) that several categorical exclusions adopted by the Department of War (DoW) would

be superfluous if the government's position here were accepted. The very document on which respondent relies (Br. 28-29, 37) articulates an overarching principle that "NEPA review is not required for * * * an action for which another statute's requirements serve the function of agency compliance with NEPA." DoW, *National Environmental Policy Act Implementing Procedures*, Pt. 1.1(a)(5), at 5 (version 1.2, Apr. 30, 2026) (*DoW NEPA Proc.*). There is no sound reason to draw from the categorical exclusions a negative inference that would render the larger document self-contradictory.

The three categorical exclusions cited by respondent (Br. 28-29) are not superfluous. The first two, dealing with certain "[c]onstruction * * * of new or improved low water crossing and fording areas," and "[m]aintenance dredging and debris disposal," refer to "applicable permits" under any regime, not just RCRA permits. *DoW NEPA Proc.* App. A, §§ I(b)(A24-8) and III(A157-37), at 34, 49. And the third does not refer to permits at all, but to "applicable Federal, state, interstate, and local laws." § II(A110-28), at 45. The categorical exclusions make clear that the enumerated activities are exempt from NEPA analysis, whether or not those other (unspecified) laws and permitting regimes impose the same level of "cradle to grave" regulation of the permitted activities as RCRA does for hazardous waste. By exempting specified activities from NEPA review even in circumstances where the general/specific canon or functional-equivalence principle might not apply, the exclusions serve a significant practical purpose.

Scattered examples. Respondent identifies (Br. 29 & nn.6-8) three instances in which the Air Force, the Army, and the Department of Energy respectively have completed NEPA analyses for projects that involved ac-

tivities requiring a RCRA permit. Of course, an agency may choose to conduct a NEPA analysis even where one is not required. In any event, each of those projects also involved a significant expansion and modification of operations, including construction of new facilities. See *ibid.* NEPA analysis therefore may have been required for those other activities, which might have environmental effects substantially unrelated to the effects of subsequent hazardous-waste disposal, even if NEPA review was not required for the activities addressed by the RCRA permitting process.

2. Respondent's remaining arguments lack merit.

a. Respondent contends (Br. 29-30) that the longstanding EPA regulation providing that "RCRA * * * permits are not subject to the environmental impact statement provisions of [NEPA]," 40 C.F.R. 124.9(b)(6), is irrelevant because that regulation "does not address the NEPA obligations of RCRA permit *applicants*." Resp. Br. 30. Respondent likewise contends (Br. 26-27, 30) that environmental statutes that are the functional equivalents of NEPA displace NEPA's requirements only for the environmental agencies (*e.g.*, EPA) that enforce those laws, not for the agencies (like the Air Force) whose activities the laws regulate.

Respondent again identifies no logical reason to distinguish between enforcement agencies like EPA, on the one hand, and the Air Force or other permittee agencies, on the other. The rationale for concluding that EPA need not conduct NEPA review—*i.e.*, that such review would be duplicative of the more specific and targeted RCRA permitting process—applies equally to the applicant agency. Indeed, since the permitting agency rather than the applicant agency makes the ultimate determination whether and on what terms a RCRA permit

will be issued, it would be particularly anomalous to require the latter but not the former to conduct a NEPA review. See Gov't Br. 45; cf. *Seven County*, 605 U.S. at 188 (holding that "agencies are not required [under NEPA] to analyze the effects of projects over which they do not exercise regulatory authority").

b. Respondent's workability concerns (Br. 31-32) are overblown. The functional-equivalence principle has held sway in the lower courts since at least the D.C. Circuit's 1973 decision in *Portland Cement Association v. Ruckelshaus*, 486 F.2d 375, cert. denied, 417 U.S. 921 (1974), and EPA expressly endorsed it in 1979, see 44 Fed. Reg. 34,244, 34,247 (June 14, 1979). Other agencies have incorporated that principle into their own NEPA guidance. *E.g.*, *DoW NEPA Proc.* Pt. 1.1(a)(5), at 5. Respondent conjures (Br. 31-32) a series of rhetorical questions about how to apply the principle, but respondent does not contend that the lower courts have found the rule confusing or difficult to administer in practice.

c. Contrary to respondent's contention (Br. 32-36), RCRA's permitting requirements supply the functional equivalent of NEPA's required analysis.

Echoing the court of appeals, respondent focuses (Br. 32-34) on the "timing of the environmental analyses prescribed by each statute," asserting that NEPA requires analysis "*before* those agencies decide to undertake an activity," whereas RCRA "does not mandate a 'determination' of environmental impacts until the point of the permitting agency's decision on an application." Resp. Br. 32-33 (citation omitted). But as our opening brief explains (at 39), "RCRA and its regulatory regime prescribe * * * the required contents of the permit application itself," thereby "effectively requir[ing] the Air

Force to conduct significant environmental analysis before seeking a permit or permit renewal.” Respondent does not address that point, or our related point (Gov’t Br. 40-41) that RCRA governs the entirety of the multi-step permitting process, specifying the analysis that must occur at each stage. Respondent’s contrary approach would disrupt that reticulated scheme by requiring would-be permittees to perform, at the application stage of the process, the *same* NEPA review that would be appropriate if the applicant (rather than the permitting authority) had the final say over what disposal activities may go forward. See *ibid.*; cf. Resp. Br. 33 (stating that “the opportunity for public comment” as Guam EPA considers potential permit terms “is no substitute for the Air Force obtaining public input before it makes up its mind about” what permit terms to propose).

Respondent also contends (Br. 33-34) that “public comments during NEPA review substantively alter[] agency decisions 62% of the time,” but that the “Air Force has no obligation to consider or respond to comments Guam EPA receives” in the RCRA process. But Guam EPA is obligated to respond to such comments, and it may seek additional information from the Air Force if it views such information as necessary for the preparation of an adequate response. And persons who believe that their comments were not sufficiently addressed during Guam EPA’s permitting procedures, like similarly situated commenters in a NEPA review, are free to pursue administrative and judicial remedies.

Respondent also catalogs (Br. 34-36) various ways in which a NEPA analysis deviates from a RCRA analysis. Respondent observes (*ibid.*) that NEPA review may entail consideration of a broader set of alternatives or cultural and social harms than does the RCRA permitting

process. Nothing precludes respondent from raising those considerations to Guam EPA as part of the RCRA process. But the fact that the two statutes impose somewhat different (albeit overlapping) requirements is a reason to apply the general/specific canon, not to disregard it. If the two statutes imposed identical requirements, there would be no need to determine whether one displaced the other.

It is precisely because RCRA specifically addresses hazardous-waste disposal with a comprehensive set of procedural and substantive requirements that courts should not “engraft” additional NEPA-based requirements or considerations onto the RCRA permitting process. *Home Builders*, 551 U.S. at 663. Doing so would contravene not only Congress’s policy decision to omit those additional requirements from RCRA, but also its policy choice that NEPA should merely “inform agency decisionmaking,” not “paralyze it.” *Seven County*, 605 U.S. at 173.

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For the reasons stated above and in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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