

No. 25-579

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF
THE AIR FORCE, ET AL.,

Petitioners,

v.

PRUTEHI GUAHAN,

Respondent.

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

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA, AMERICAN CEMENT ASSOCIATION,
AMERICAN FOREST & PAPER ASSOCIATION, AMERICAN ROAD
& TRANSPORTATION BUILDERS ASSOCIATION, ASSOCIATED
GENERAL CONTRACTORS OF AMERICA, INC., CENTER FOR
LNG, NATIONAL ASSOCIATION OF MANUFACTURERS, AND
NATURAL GAS SUPPLY ASSOCIATION
AS *AMICI CURIAE* SUPPORTING PETITIONERS**

Andrew R. Varcoe
Stephanie A. Maloney
U.S. CHAMBER LITIGATION
CENTER
1615 H Street, NW
Washington, DC 20062

*Counsel for the Chamber
of Commerce of the United
States of America*

Michael R. Huston
Counsel of Record
Nicholas S. Crown
Addison W. Bennett
PERKINS COIE LLP
700 Thirteenth St., N.W.
Suite 800
Washington, DC 20005-3960
(202) 434-1630
MHuston@perkinscoie.com

Counsel for Amici Curiae

(Additional counsel listed inside cover)

Leah Pilconis
AMERICAN CEMENT ASSOCIATION
200 Massachusetts Ave NW, Suite 200
Washington, DC 20001

Counsel for American Cement Association

Prianka P. Sharma
AMERICAN ROAD &
TRANSPORTATION
BUILDERS ASSOCIATION
250 E Street SW, Suite 900
Washington, DC 20024

*Counsel for American Road &
Transportation Builders Association*

J. Spencer Phillips
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.
53 D St SE
Washington, DC 20003

*Counsel for Associated General Contractors
of America, Inc.*

Erica Klenicki
Caroline McAuliffe
NATIONAL ASSOCIATION OF MANUFACTURERS
733 10th Street, N.W.
Suite 700
Washington, DC 20001

Counsel for National Association of Manufacturers

TABLE OF CONTENTS

Interest of Amici Curiae.....1

Introduction and Summary of Argument.....6

Argument8

I. An application to renew a RCRA permit is not final agency action under the APA.....8

 A. The Air Force’s permit-renewal application did not consummate agency decisionmaking and carried no legal consequences9

 B. The Ninth Circuit’s expansive view of final agency action would destabilize settled APA doctrine and saddle the federal permitting process with premature litigation13

II. Congress displaced NEPA’s default requirements by enacting RCRA’s specialized and comprehensive system for regulating hazardous waste17

 A. RCRA’s rigorous, start-to-finish regulatory framework supplies the operative environmental-review requirements here.....18

 B. Layering NEPA on top of RCRA would be duplicative, costly, and unsupported.....25

Conclusion.....30

TABLE OF AUTHORITIES

	PAGES
CASES	
<i>350 Montana v. Haaland</i> , 50 F.4th 1254 (9th Cir. 2022)	23
<i>AFGE v. Trump</i> , 139 F.4th 1020 (9th Cir. 2025)	15
<i>AFSCME v. OMB</i> , No. 25-cv-8302, 2025 WL 3018250 (N.D. Cal. Oct. 28, 2025)	15
<i>Alabama ex rel. Siegelman v. EPA</i> , 911 F.2d 499 (11th Cir. 1990)	19-20, 25
<i>Army Corps of Eng'rs v. Hawkes Co.</i> , 578 U.S. 590 (2016)	8
<i>Bark v. USFS</i> , 958 F.3d 865 (9th Cir. 2020)	23
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997)	6, 8, 11
<i>Biden v. Texas</i> , 597 U.S. 785 (2022)	11
<i>Cellular Phone Taskforce v. FCC</i> , 205 F.3d 82 (2d Cir. 2000)	21
<i>City of Chicago v. Environmental Def. Fund</i> , 511 U.S. 328 (1994)	6, 18, 25
<i>Corner Post, Inc. v. Board of Governors of Fed. Rsrv. Sys.</i> , 603 U.S. 799 (2024)	13
<i>Dalton v. Specter</i> , 511 U.S. 462 (1994)	11

<i>DOT v. Public Citizen</i> , 541 U.S. 752 (2004)	24
<i>Douglas County v. Babbitt</i> , 48 F.3d 1495 (9th Cir. 1995)	21
<i>Environmental Def. Fund, Inc. v. EPA</i> , 489 F.2d 1247 (D.C. Cir. 1973)	21
<i>Flint Ridge Dev. Co. v. Scenic Rivers Ass’n of Okla.</i> , 426 U.S. 776 (1976)	20
<i>Forest Grove Sch. Dist. v. T.A.</i> , 557 U.S. 230 (2009)	22
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992)	9-11
<i>Friends of the Everglades, Inc. v. Secretary of U.S. Dep’t of Homeland Sec.</i> , No. 25-12873, 2026 WL 1077624 (11th Cir. Apr. 21, 2026).....	14
<i>FTC v. Standard Oil Co. of California</i> , 449 U.S. 232 (1980)	9-11
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	22
<i>Meghrig v. KFC W., Inc.</i> , 516 U.S. 479 (1996)	18, 25
<i>Merrell v. Thomas</i> , 807 F.2d 776 (9th Cir. 1986)	21
<i>NTEU v. Vought</i> , 149 F.4th 762 (D.C. Cir. 2025).....	14
<i>Portland Cement Ass’n v. Ruckelshaus</i> , 486 F.2d 375 (D.C. Cir. 1973)	21
<i>RadLAX Gateway Hotel, LLC v. Amalgamated Bank</i> , 566 U.S. 639 (2012)	7, 20

<i>Seven County Infrastructure Coal. v. Eagle County</i> , 605 U.S. 168 (2025)	6, 14-15, 19, 23-24, 26, 28
<i>South Terminal Corp. v. EPA</i> , 504 F.2d 646 (1st Cir. 1974)	21
<i>Tanzin v. Tanvir</i> , 592 U.S. 43 (2020)	23
<i>Thunder Basin Coal Co. v. Reich</i> , 510 U.S. 200 (1994)	7
<i>Western Neb. Res. Council v. EPA</i> , 943 F.2d 867 (8th Cir. 1991)	21
<i>Western Watersheds Project v. Abbey</i> , 719 F.3d 1035 (9th Cir. 2013)	23
<i>Wyoming v. Hathaway</i> , 525 F.2d 66 (10th Cir. 1975)	21

STATUTES

5 U.S.C.	
§ 558(c)	12
§ 558(c)(2)	12
§ 704	6, 8, 13-14
15 U.S.C.	
§ 717f	17
§ 793(e)(1)	24
16 U.S.C. § 3636(a)	24
21 U.S.C. § 360	17
28 U.S.C. § 2401(a)	14
33 U.S.C.	
§ 1344	17
§ 1371(e)(1)	24

42 U.S.C.	
§ 4332(2)(C)	20
§ 4336(a)(2)	7, 22
§ 4336(a)(3)	7, 22
§ 4336a(g)	27
§ 5159	24
§ 6924(a)	18, 26
§ 6925(a)	18
§ 6925(c)(3)	19, 26
§ 6925(d)	19
§ 6926(f)	9
§ 6974(b)	9
§ 6974(b)(2)	19, 26
43 U.S.C. § 1761	17
47 U.S.C. § 307	17
49 U.S.C. § 44706	17
Federal Facility Compliance Act of 1992 (FFCA), Pub. L. No. 102-386, 106 Stat. 1505	22
Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 98 Stat. 3221	22
Interstate Land Sales Full Disclosure Act, Pub. L. No. 90-448, 82 Stat. 590 (1968)	20
Land Disposal Program Flexibility Act of 1996, Pub. L. No. 104-119, 110 Stat. 830	22
Metropolitan Washington Waste Management Study Act, Pub. L. No. 102-386, tit. II, § 203(a), 106 Stat. 1505	22

REGULATIONS**10 C.F.R.**

pt. 52	17
pt. 54	17

40 C.F.R.

§ 124.3(c).....	9
§ 124.3(d)	9
§ 124.6	26
§ 124.6(a)	9
§ 124.6(e).....	9, 19
§ 124.8(b)(5).....	19, 26
§ 124.9(b)(6).....	7, 21
§ 124.14(b)	9
§ 124.17	19, 26
§ 124.19(l)(2)	12
§ 261.31(a).....	29
§ 261.32	29
§ 261.33(e).....	29
§ 261.33(f).....	29
§ 266.80(a).....	29
§ 270.13	26
§ 270.13(i)	18
§ 270.14	26
§ 270.14(b)(2).....	18
§ 270.14(b)(8).....	19
§ 270.51(a).....	12
§ 273.2	29

44 Fed. Reg. 34,244 (June 14, 1979)	21, 26
---	--------

45 Fed. Reg. 33,290 (May 19, 1980)	21
--	----

85 Fed. Reg. 43,304 (July 16, 2020) 21

OTHER AUTHORITIES

Aidan Mackenzie, <i>How NEPA Will Tax Clean Energy</i> , Inst. for Progress (July 25, 2024).....	28
Congressional Research Service, <i>The National Environmental Policy Act (NEPA): Background and Implementation</i> (Jan. 10, 2011)	28
Council on Environmental Quality, <i>Fact Sheet: CEQ Report on Environmental Impact Statement Timelines (2010-2018)</i> (June 12, 2020)	26
Council on Environmental Quality, <i>Fact Sheet: CEQ Report on Environmental Impact Statement Timelines (2010-2024)</i> (Jan. 13, 2025)	27
Environmental Protection Agency, <i>Resource Conservation and Recovery Act (RCRA) Overview</i>	7
Government Accountability Office, GAO-14-370, <i>National Environmental Policy Act: Little Information Exists on NEPA Analyses</i> (Apr. 15, 2014)	27
Mark C. Rutzick, <i>A Long and Winding Road: How the National Environmental Policy Act Has Become the Most Expensive and Least Effective Environmental Law in the History of the United States, and How to Fix It</i> , Regulatory Transparency Project (Oct. 16, 2018)	27

Martin Durbin, <i>It's Time to Permit America to Build</i> , U.S. Chamber of Commerce (Apr. 5, 2023).....	16
Rayan Sud et al., <i>How to Reform Federal Permitting to Accelerate Clean Energy Infrastructure: A Nonpartisan Way Forward</i> , Brookings Inst. (Feb. 2023).....	28
U.S. Chamber of Commerce, <i>Permit America to Build</i>	16

INTEREST OF AMICI CURIAE¹

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Cement Association (ACA), founded in 1916, is the premier policy, research, education, and market intelligence organization serving America's cement manufacturers. ACA represents a majority of U.S. cement manufacturers, and advocates on their behalf before Congress, the Administration, federal agencies, the courts, and the media. The Association promotes safety, sustainability, and innovation in all aspects of cement manufacturing and construction, fosters continuous improvement in manufacturing and distribution practices, and supports economic growth and sound infrastructure investment throughout the United States. As part of its core mission and purpose, ACA engages in regulatory advocacy and litigation to protect its members' interests, including filing briefs in cases

¹ No counsel for any party authored this brief in whole or in part. No entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

involving federal environmental and safety regulations affecting the cement industry.

The American Forest & Paper Association (AF&PA) serves to advance public policies that foster economic growth, job creation, and global competitiveness for a vital sector that makes the essential paper and packaging products Americans use every day. The U.S. forest products industry employs more than 925,000 people, largely in rural America, and is among the top 10 manufacturing sector employers in 44 states. The AF&PA's industry accounts for approximately 4.7% of the total U.S. manufacturing GDP, manufacturing more than \$435 billion in products annually. AF&PA member companies are significant producers and users of renewable biomass energy and are committed to making sustainable products for a sustainable future through the industry's decades-long initiative—Better Practices, Better Planet 2030.

The American Road & Transportation Builders Association (ARTBA) includes private and public sector members that plan, design, build, and maintain the nation's roadways, waterways, bridges, ports, airports, rail, and transit systems. ARTBA's nearly 8,000 members generate more than \$650 billion annually in U.S. economic activity, sustaining more than 4.4 million American jobs. Many ARTBA members are directly involved in projects subject to several environmental review and permitting requirements. ARTBA members are committed to balancing the goals of improving our nation's transportation infrastructure with the need to protect the environment. Consequently, ARTBA has an interest in this case because the Court's resolution of the issues presented may have broader implications for the administration of

federal review and permitting frameworks applicable to transportation construction projects.

The Associated General Contractors of America, Inc. (AGC of America) is the nation's largest and most diverse trade association in the commercial construction industry, now representing more than 28,000 member companies that include general contractors, specialty contractors, and service providers and suppliers to the industry through a nationwide network of chapters in all 50 states, as well as over 150 student chapters located at universities nationwide. AGC of America represents both union- and open-shop employers engaged in building, heavy, civil, industrial, utility, and other construction for both public and private property owners and developers. AGC of America works to ensure the continued success of the commercial construction industry by advocating for federal, state, and local measures that support the industry; providing education and training for member firms; and connecting member firms with resources needed to be successful businesses and responsible corporate citizens. The National Environmental Policy Act (NEPA) comes into play on a significant number of critical construction projects that serve the public and the environment.

The Center for LNG (CLNG) is a trade association that promotes public policies advancing the use of natural gas in the United States and its export internationally. As a committee of the Natural Gas Supply Association, CLNG represents the full value chain, including large-scale LNG export facilities in the United States, shippers, and multinational developers, providing it with unique insight into the ways in which the vast potential of this abundant and versatile fuel can be fully realized.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes \$2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Natural Gas Supply Association (NGSA) represents integrated and independent companies that supply natural gas. Founded in 1965, NGSA is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry. NGSA advocates for regulatory certainty and well-functioning markets for natural gas. Through its support for innovative technologies and partnerships with all energy sources, NGSA is dedicated to sustainably meeting our nation's growing energy demand.

Many of amici's members operate in industries that require federal permits subject to the substantive and procedural requirements of the Resource Conservation and Recovery Act (RCRA). And amici's members also regularly interact with, and benefit from, Executive Branch action governed by the environmental-review procedures in NEPA. Amici's members have an interest in agencies' using available means to organize and expedite their permitting review processes to ensure timely, effective decisions. Amici's members depend on the predictability, efficiency, and finality of those permitting pro-

cesses to plan long-term investments, maintain ongoing operations, secure project financing, and bring new projects to fruition.

The Ninth Circuit in this case threatened those important interests in two respects. First, the court of appeals adopted an unjustified, expansive definition of “final agency action” under the Administrative Procedure Act (APA) that cannot fit the statutory text. The Ninth Circuit’s conception would subject the mere act of requesting a permit to immediate judicial review—even though an *application* for a permit is a preliminary step that does not produce legal consequences, rights, or obligations until the permitting authority acts. Left uncorrected, the decision below will unsettle established APA doctrine and invite a wave of front-loaded litigation against applications that have not yet been resolved. Second, notwithstanding Congress’s deliberate selection in RCRA of the comprehensive environmental-review procedures that should apply to permit applications in this context, the Ninth Circuit held that the permit application is subject *also* to NEPA. That holding finds no support in either statute, this Court’s precedents, or the Executive Branch’s longstanding practice.

If uncorrected, the Ninth Circuit’s two holdings will invite premature and duplicative litigation, risking cascading harm to the nation’s businesses, critical development projects, and the permitting system on which they depend.

This Court should reverse.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court recently reaffirmed that NEPA is “a purely procedural statute” with a “modest” purpose: it is meant “to inform agency decisionmaking, not to paralyze it.” *Seven County Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 173, 183 (2025). The decision below resists that holding. The Ninth Circuit treated the mere submission of a permit-renewal *application* as immediately reviewable “final agency action,” and simultaneously imposed a freestanding NEPA obligation on applicants who already must adhere to RCRA’s “comprehensive,” “cradle-to-grave” hazardous-waste-permitting regime. *City of Chicago v. Environmental Def. Fund*, 511 U.S. 328, 331 (1994). That decision converts the federal permitting process into a litigation gauntlet and would impose substantial and gratuitous burdens on the nation’s businesses, agencies, and courts.

First, the Ninth Circuit held that the Air Force’s 2021 submission of a RCRA permit-renewal application to the Guam Environmental Protection Agency (Guam EPA) is “final agency action” immediately reviewable under the APA, 5 U.S.C. § 704—even though Guam EPA has *not yet decided* whether to grant or deny the application, Pet. App. 19a. That holding cannot be reconciled with any sensible reading of the statutory word “final.” It also flouts this Court’s settled two-prong test for APA finality and the line of decisions holding that preliminary steps in a multi-stage administrative process are not independently reviewable. See, e.g., *Bennett v. Spear*, 520 U.S. 154, 177-178 (1997). The Air Force’s pending application satisfies neither prong of *Bennett*: it is the opening step of an iterative process in which Guam EPA may require the applicant to modify, supplement, or correct the application.

And it produces no binding legal consequences unless and until that process yields a permit decision.

Second, the Ninth Circuit held that NEPA required the Air Force to prepare an environmental impact statement, or an environmental assessment, before submitting its permit-renewal application—even though Congress in RCRA established its own detailed, comprehensive regime for evaluating the environmental consequences of hazardous-waste-management facilities. Pet. App. 33a-46a. That holding disregards the traditional rule of “statutory construction that the specific governs the general.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012); see *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207-216 (1994). It also conflicts with EPA’s longstanding regulation—created contemporaneously with RCRA and in force for nearly half a century—providing that “all RCRA ... permits are not subject to the environmental impact statement provisions of [NEPA].” 40 C.F.R. § 124.9(b)(6). Congress’s 2023 amendments to NEPA codified the same displacement principles, and the Ninth Circuit’s ruling cannot be reconciled with that statute, either. See 42 U.S.C. § 4336(a)(2), (3).

Without reversal, the practical consequences of the Ninth Circuit’s holdings would be severe. RCRA’s “permitting universe” comprises 6,600 facilities that handle the nation’s “2.96 billion tons of solid, industrial[,] and hazardous waste.” Environmental Protection Agency, *Resource Conservation and Recovery Act (RCRA) Overview*.² Affected industries include chemical manufacturing, semiconductor fabrication, pharmaceutical production, petroleum refining, and battery manufacturing and recycling—to name just a few. And as the federal govern-

² <https://perma.cc/B95G-6JES>.

ment has explained (Pet. 31), the Department of Defense alone periodically renews about 2,500 environmental permits within the Ninth Circuit. Private industry holds many multiples of that number across RCRA, the Clean Water Act, the Clean Air Act, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Endangered Species Act, the Atomic Energy Act, and analogous statutory regimes. Under the Ninth Circuit’s approach below, the federal permitting process would grow more protracted, and U.S. businesses’ investments, financing, and operational decisions will suffer. Layering a free-standing NEPA obligation onto every RCRA applicant would stack redundant review on top of NEPA’s already lengthy and inefficient regime.

ARGUMENT

I. An application to renew a RCRA permit is not final agency action under the APA.

The APA authorizes judicial review only of “final agency action.” 5 U.S.C. § 704. “As a general matter, two conditions must be satisfied for agency action to be ‘final’” under the APA. *Bennett v. Spear*, 520 U.S. 154, 177 (1997) (citation omitted). First, “the action must mark the ‘consummation’ of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature.” *Id.* at 177-178 (citation omitted). Second, “the action must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Id.* at 178 (citation omitted). Both conditions are required: This Court takes a “pragmatic” approach to finality, *Army Corps of Eng’rs v. Hawkes Co.*, 578 U.S. 590, 599 (2016) (citation omitted), but pragmatism is not a license to dispense with either *Bennett* requirement.

The Air Force’s submission of the 2021 RCRA permit-renewal application satisfied neither prong.

A. The Air Force’s permit-renewal application did not consummate agency decisionmaking and carried no legal consequences.

1. The Ninth Circuit concluded that the Air Force “reached the ‘consummation’ of its decisionmaking process when it filed its permit application.” Pet. App. 22a. That was error because submitting a permit-renewal application under RCRA *begins*, rather than concludes, an iterative administrative process that includes inputs from a state agency and the public.

The Air Force’s renewal application was a preliminary step in the agency’s decisionmaking. Guam EPA “may request additional information from” the Air Force to “clarify, modify, or supplement previously submitted material,” 40 C.F.R. § 124.3(c), or to “correct deficiencies in the application,” 40 C.F.R. § 124.3(d). The agency may also “reopen[.]” the comment period and “modif[y]” the draft permit in response to “new” submissions, 40 C.F.R. § 124.14(b). Guam EPA gave the public an opportunity to comment on its “tentative[.]” decision to “prepare a draft permit.” 40 C.F.R. § 124.6(a), (e); see 42 U.S.C. §§ 6926(f), 6974(b). And the Air Force acknowledges that in some circumstances it “must ... ‘make changes to its permit application at Guam EPA’s request.’” Cert. Reply Br. 3 (citations omitted). In other words, the Air Force’s “planned activities,” Pet. App. 3a, are subject to ongoing back-and-forth and remain “tentative”—not “final,” *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992).

This Court has held that similar iterative or intermediate steps do not satisfy the APA’s finality requirement. In *FTC v. Standard Oil Co. of California*, 449 U.S. 232 (1980), the Court held that an agency action is not “final” where it is merely “a prerequisite” to the agency’s ultimate decision. *Id.* at 241-242. The FTC’s “issuance of [a]

complaint,” though “definitive” on whether the Commission had “reason to believe that” the respondent was violating the law, simply “represent[ed] a threshold determination that further inquiry [was] warranted.” *Id.* at 241. So too in *Franklin*, an agency’s submission of a census report to the President was not “final” because the President was “not expressly required to adhere to the policy decisions reflected in the [agency]’s report.” 505 U.S. at 799. Rather, it was “the President’s personal transmittal of the report to Congress that settle[d] the apportionment.” *Ibid.* Thus, “until [the President] act[ed] there [was] no determinate agency action to challenge.” *Ibid.*

The same logic supports reversal here. As in *Standard Oil*, the challenged action—applying for a permit—sets the stage for potential future final action; it is not itself final and does not settle anything. See 449 U.S. at 241-242. And here, as in *Franklin*, the Air Force’s permit application is not a “determinate agency action” because it is the subsequent iterative process—dependent on a state agency’s decision—that will ultimately “settle[.]” whether the Air Force receives a permit and may dispose of hazardous waste as it proposed. 505 U.S. at 799.

The Ninth Circuit’s contrary conclusion rests on the mistaken view that “[t]he Air Force’s decision marked an endpoint” because it “had ‘not suggest[ed] it is still in the middle of trying to figure out its position.’” Pet. App. 23a (citation omitted). Respondent has similarly suggested (Br. in Opp. 9) that the Air Force’s “decision to engage in OB/OD operations”—if permitted—was the relevant final agency action. But that “decision” implicates ongoing dialogue with Guam EPA and public stakeholders. Final agency action does not turn on some moment of internal subjective commitment untethered from the agency’s regulatory obligations. “To the extent that the Court of

Appeals understood itself to be reviewing an abstract decision apart from specific agency action, as defined in the APA, that was error.” *Biden v. Texas*, 597 U.S. 785, 809 (2022). The Air Force’s decisionmaking on its 2021 application remains ongoing in every meaningful sense.

2. The Air Force’s still-pending renewal application also fails *Bennett*’s second prong because it does not “determine[.]” any “rights or obligations” or produce “direct and appreciable legal consequences.” 520 U.S. at 178. Instead, it “serves more like a tentative recommendation than a final and binding determination.” *Franklin*, 505 U.S. at 798.

This Court has consistently held that agency submissions that only inform a later decision are not themselves final agency action. In *Franklin*, this Court recognized that an agency’s census report to the President did not reflect final agency action because “its effect ... is felt only after the President makes the necessary calculations and reports the result to Congress.” 505 U.S. at 796. In *Dalton v. Specter*, 511 U.S. 462 (1994), the Court recognized that the Secretary of Defense’s “tentative recommendation” on base closures was not final agency action because it became binding only on the President’s approval. *Id.* at 469-470. And in *Standard Oil*, as noted above, the Court held that an FTC complaint merely “initiate[d] the proceedings” and set the stage for potential future action. 449 U.S. at 241-242. The Air Force’s precursor submission to Guam EPA falls squarely on the same side of the line.

The Ninth Circuit attempted to extract legal consequences from the Air Force’s application by reasoning that, “[s]hould Guam EPA issue ... a renewal permit, the permit’s terms and conditions will be predicated on” the application. Pet. App. 29a (emphasis added). But the court’s use of conditional language underscores that any

legal consequences of the application are “contingent [on a] future event” that has not yet occurred. *Id.* at 65a (VanDyke, J., dissenting).

The court of appeals (Pet. App. 31a n.9) and respondent (Br. in Opp. 19) have suggested that the permit application carries legal consequences because it “extended” the Air Force’s prior permit under 40 C.F.R. § 270.51(a). That is incorrect. The same regulations make clear that “final agency action on a permit occurs when” EPA “issues a final permit decision.” 40 C.F.R. § 124.19(l)(2). That regulation tracks the APA’s generally applicable tolling rule, 5 U.S.C. § 558(c)(2), which provides that when a licensee “has made timely and sufficient application for a renewal,” its license “do[es] not expire ... until the application has been finally determined.” As that provision makes clear, the tolling provision simply freezes the status quo until final agency action—that is, the “final[] determin[ation]” of the renewal application—can occur. *Ibid.* In the interim, the agency’s pre-existing obligations continue to be “governed by the terms of” the pre-existing permit. Pet. App. 65a (VanDyke, J., dissenting). Thus, the legal “obligations” the decision below identified will flow from the *prior* permit, not the applicant’s request for a renewed one.

The APA’s tolling mechanism is the linchpin of operational continuity for thousands of industrial facilities nationwide—including chemical plants, refineries, electric generating units, manufacturing operations, and waste-management facilities—for which permit renewal is routine. See 5 U.S.C. § 558(c); 40 C.F.R. § 270.51(a). If each application to renew a pre-existing permit (or for that matter, a federal agency’s receipt of such an application) constituted “final agency action” susceptible to immediate challenge, then the very mechanism Con-

gress designed to *prevent* operational disruption during the renewal process would become a vehicle for litigation-induced shutdowns and supply-chain interruptions. That is not the law.

B. The Ninth Circuit’s expansive view of final agency action would destabilize settled APA doctrine and saddle the federal permitting process with premature litigation.

The Ninth Circuit’s decision unsettles the established understanding of which agency actions are reviewable under the APA and when—thereby upending both basic administrative-law principles and industry expectations. If the decision below is not reversed, interested parties would be left to guess which steps start the APA’s six-year clock. And the decision exposes an already overburdened permitting process—a principal bottleneck to needed development—to interlocutory challenges that produce no corresponding environmental benefit.

1. The Ninth Circuit’s own reasoning underscores the problem. To square its result with this Court’s precedents, the decision below invented a novel “mandated trigger points” theory under which any statutorily required agency step may qualify as final agency action. Pet. App. 27a n.7. But as the dissent explained, that test has “no logical stopping point”: even “a forest ranger’s decision to fill up his truck with gas so he can continue patrolling the forest” would count. *Id.* at 62a, 65a.

That new “trigger points” theory of finality, if not reversed, is bound to sow confusion. A “final” agency action triggers not only the right to bring an APA action, but also (once the plaintiff has suffered an injury from that action) a deadline to file within a six-year limitations period. *Corner Post, Inc. v. Board of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 809 (2024); see 5 U.S.C.

§ 704; 28 U.S.C. § 2401(a). Under the Ninth Circuit’s rule, prospective challengers must instigate seriatim litigation at every stage that arguably qualifies under the “trigger points” test, lest discrete agency decisions slip past the limitations period. See Pet. App. 27a. That dynamic flouts the APA’s design, which channels review to the agency’s *decision*—not every document or plan preceding it. Cf. *Seven County Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 184-185 (2025) (“The ultimate question is not whether an [environmental impact statement] in and of itself is inadequate, but whether the agency’s final decision was reasonable and reasonably explained.”).

The Ninth Circuit’s murky reading of finality has already begun to spread, prompting litigants to relabel ordinary interlocutory steps as “final” actions subject to immediate judicial review. In the Eleventh Circuit, environmental groups and a tribe challenged a detention facility built entirely by the State of Florida. *Friends of the Everglades, Inc. v. Secretary of U.S. Dep’t of Homeland Sec.*, No. 25-12873, 2026 WL 1077624, at *1 (Apr. 21, 2026). They argued that the federal government’s mere assertion of some later “authority” over that facility in housing noncitizens constituted final agency action for APA purposes—citing the Ninth Circuit’s decision here. See No. 25-12873 C.A. Doc. 103, at 37 (11th Cir. Jan. 20, 2026). In the D.C. Circuit, challengers to an administration “plan” to close a federal agency likewise cited the decision below in arguing that a government plan to act in the future can satisfy the APA’s “finality” requirement. Plaintiffs-Appellees’ Corrected Br. at 30, *NTEU v. Vought*, No. 25-5091 C.A. Doc. 2115274 (D.C. Cir. May 9, 2025). That case has caused substantial confusion within the D.C. Circuit about the extent to which the agency action under review is “final.” *NTEU v. Vought*, 149 F.4th 762, 770 (2025), reh’g en

banc granted, opinion vacated, No. 25-5091, 2025 WL 3659406 (Dec. 17, 2025).

Courts within the Ninth Circuit have likewise read the decision below to mean that an agency’s mere expression of intent to take further action can constitute final agency action. For example, the Ninth Circuit recently perceived final agency action in a “memorandum” to executive agencies merely requesting that those agencies submit plans to implement an executive order. *AFGE v. Trump*, 139 F.4th 1020, 1039 (9th Cir.), stay granted, 145 S. Ct. 2635 (2025). And a district court in California invoked the decision below in concluding that an “assessment” or “plan” can constitute final agency action even if it is entirely contingent on “some other occurrence” by “another administrative agency.” *AFSCME v. OMB*, No. 25-cv-8302, 2025 WL 3018250, at *16 (N.D. Cal. Oct. 28, 2025) (cleaned up).

Treating preliminary steps like “plans” or “assessments” as final agency action is not merely doctrinally mistaken; it invites a flood of premature challenges. As this Court observed, procedural challenges under NEPA allow “project opponents” to wield a “blunt and haphazard tool” against development, even where those opponents are motivated by something other than the legal interests that the statute was designed to vindicate. *Seven County*, 605 U.S. at 183. Left undisturbed, the Ninth Circuit’s rule will draw a steady stream of suits targeting preliminary agency action—interfering with agencies’ ongoing decisionmaking, prolonging environmental reviews and other interlocutory assessments, and over time, deterring agencies from undertaking those preliminary steps at all.

2. The Ninth Circuit’s approach would impose real-world costs on amici’s members and the national economy.

Under the court of appeals’ approach to final agency action, agencies would be forced to defend suits at inter-

stitial stages of decisionmaking, regulated parties would bear additional expense and undergo additional delays, and the public would lack the benefits of critical infrastructure. A “broken permitting system” is the “biggest obstacle to building the infrastructure of the future.” U.S. Chamber of Commerce, *Permit America to Build*.³ To complete almost any project of consequence today, developers must navigate a maze of overlapping procedures rife with inefficiencies and redundancies. Those procedural costs cause unnecessary delay and incentivize developers to shrink, relocate, or abandon critical investments, even where Congress has specifically appropriated funds for critical infrastructure development. See *ibid.* The Ninth Circuit’s approach thus exacerbates a pre-existing problem: Even though Congress has appropriated more than \$1 trillion in grants and loans for transportation, energy, water, broadband, and other infrastructure in recent years, not nearly enough is being built. See Martin Durbin, *It’s Time to Permit America to Build*, U.S. Chamber of Commerce (Apr. 5, 2023).⁴

The decision below would compound those inefficiencies by embroiling courts in disputes at every stage of a project (and often, even stages of deliberation *preceding* a project), without any offsetting benefit. Under the Ninth Circuit’s rule, project opponents may seek judicial review at virtually every interlocutory phase, including an agency’s disclosure of “plan[s]” or “request[s]” to act in the future. Pet. App. 21a-22a. As the government explains (Br. 33), that approach “could generate a multitude of suits” that would divert agency resources to defending preliminary steps, sideline federal funds appropriated for

³ <https://perma.cc/Q8E7-EJFL>.

⁴ <https://perma.cc/NWM5-KR3H>.

critical infrastructure, and force project sponsors and lenders to price in litigation risk at every juncture.

The ramifications of the decision below would extend beyond the particular permitting regime at issue here. Amici’s members operate under overlapping state and federal authorization frameworks that depend on periodic agency decisions—including Federal Energy Regulatory Commission certificates of public convenience and necessity for interstate natural-gas pipelines, 15 U.S.C. § 717f; Nuclear Regulatory Commission licenses and license renewals, 10 C.F.R. pts. 52, 54; Bureau of Land Management rights-of-way across federal land, 43 U.S.C. § 1761; Federal Communications Commission broadcast and spectrum license renewals, 47 U.S.C. § 307; Federal Aviation Administration airport operating certificates, 49 U.S.C. § 44706; Food and Drug Administration facility registrations, 21 U.S.C. § 360; and Clean Water Act permits, 33 U.S.C. § 1344. As the dissent below observed, “basically any statute that directs an agency to do anything requires a long list of agency decisions that could be characterized as ‘periodic decisional junctures’ or ‘mandated trigger points’—many of which are not even explicit” but would constitute final agency action under the Ninth Circuit’s new rubric. Pet. App. 62a. Regulated entities would have “no idea” when their interactions with the government are subject to litigation—or when to bring their own challenges. *Ibid.*

II. Congress displaced NEPA’s default requirements by enacting RCRA’s specialized and comprehensive system for regulating hazardous waste.

RCRA’s end-to-end regulatory framework displaces NEPA in the context of hazardous-waste treatment. RCRA comprehensively governs the treatment, storage, and disposal of hazardous waste. Its detailed substantive

and procedural requirements achieve the same ends that NEPA’s general environmental-review provisions are designed to advance. Requiring permit applicants to satisfy *both* regimes would impose redundant review, prolong agency decisionmaking, and add another layer of litigation—again without any corresponding environmental benefit.

A. RCRA’s rigorous, start-to-finish regulatory framework supplies the operative environmental-review requirements here.

1. This Court has observed that “RCRA is a comprehensive environmental statute that empowers EPA to regulate hazardous wastes from cradle to grave.” *City of Chicago v. Environmental Def. Fund*, 511 U.S. 328, 331 (1994). It imposes “rigorous safeguards,” *ibid.*, “govern[ing] the treatment, storage, and disposal of solid and hazardous waste,” *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 483 (1996).

RCRA sets sweeping substantive standards to ensure that hazardous-waste permits “protect human health and the environment.” 42 U.S.C. § 6924(a). The statute governs, among other things, “operating methods, techniques, and practices” for “treatment, storage, or disposal” of hazardous waste; “contingency plans for effective action to minimize unanticipated damage”; and “the maintenance of operation of” waste-treatment facilities. *Ibid.* It further provides that any party who owns, operates, or constructs any facility treating, storing, or disposing of hazardous waste must obtain a RCRA permit. See 42 U.S.C. § 6925(a). Each permit application must describe “the processes to be used for treating, storing, and disposing of hazardous waste,” 40 C.F.R. § 270.13(i); “[c]hemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility,” 40

C.F.R. § 270.14(b)(2); and the “procedures, structures or equipment used at the facility to” prevent “runoff,” “contamination of water supplies,” “releases to atmosphere,” and other “hazards in unloading operations,” 40 C.F.R. § 270.14(b)(8). Permit-renewal review “shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations.” 42 U.S.C. § 6925(c)(3). And the permitting authority “shall revoke” a permit upon a determination of “noncompliance” with the statute’s mandates. 42 U.S.C. § 6925(d).

RCRA also imposes numerous procedural safeguards to ensure informed agency decisionmaking and public participation. RCRA and its implementing regulations require, among other things, public notice of a draft permit, 40 C.F.R. § 124.6(e), written responses to public comments, 40 C.F.R. § 124.17, written “[r]easons why any requested variances or alternatives to required standards do or do not appear justified,” 40 C.F.R. § 124.8(b)(5), and a public hearing upon request, 42 U.S.C. § 6974(b)(2). As the Eleventh Circuit observed more than three decades ago, RCRA’s “substantive and procedural standards” are designed to “ensure that EPA [or its delegate] considers fully, with the assistance of meaningful public comment, environmental issues involved in the permitting of hazardous waste management facilities.” *Alabama ex rel. Siegelman v. EPA*, 911 F.2d 499, 505 (1990).

RCRA’s substantive and procedural requirements duplicate NEPA’s standards in some respects and exceed NEPA’s in others. “NEPA is a purely procedural statute” that, unlike RCRA, “imposes no substantive environmental obligations or restrictions.” *Seven County*, 605 U.S. at 173. At most, NEPA “simply requires an agency to prepare” a “report” to “weigh environmental consequences

as the agency reasonably sees fit.” *Ibid.*; see 42 U.S.C. § 4332(2)(C).

The statutory context makes it apparent that RCRA displaces NEPA’s general environmental-review provisions. Where, as here, two federal statutes evaluate substantially similar environmental questions through substantially similar procedures, Congress cannot be presumed to have required applicants to run the same gauntlet twice. That is particularly true 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) (collecting cases). This Court has employed similar reasoning in holding that the Interstate Land Sales Full Disclosure Act, Pub. L. No. 90-448, 82 Stat. 590 (1968), displaced NEPA’s general requirements. *Flint Ridge Dev. Co. v. Scenic Rivers Ass’n of Okla.*, 426 U.S. 776, 788-791 (1976). In such a circumstance, as in others, “the specific governs the general.” *RadLAX*, 566 U.S. at 645. That principle applies with full force here, because RCRA specifically addresses environmental review of hazardous-waste-treatment facilities. NEPA, by contrast, supplies only *general* procedural directives for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Because “RCRA is the later and more specific statute directly governing EPA’s [or its delegate’s] process for issuing permits to hazardous waste management facilities,” RCRA “controls.” *Siegelman*, 911 F.2d at 504-505.

That conclusion accords with longstanding precedent of multiple circuits. The courts of appeals have consistently held that NEPA’s general procedural requirements are displaced by specialized statutory provisions that

serve the same core function as NEPA review. Courts have thus concluded that Congress displaced NEPA in, for example, provisions of the Clean Air Act, see *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 384-386 (D.C. Cir. 1973); *South Terminal Corp. v. EPA*, 504 F.2d 646, 676 (1st Cir. 1974); FIFRA, see *Merrell v. Thomas*, 807 F.2d 776, 779 (9th Cir. 1986); *Wyoming v. Hathaway*, 525 F.2d 66, 71-72 (10th Cir. 1975); *Environmental Def. Fund, Inc. v. EPA*, 489 F.2d 1247, 1256-1257 (D.C. Cir. 1973); the Safe Drinking Water Act, see *Western Neb. Res. Council v. EPA*, 943 F.2d 867, 871-872 (8th Cir. 1991); and the Endangered Species Act, see *Douglas County v. Babbitt*, 48 F.3d 1495, 1503 (9th Cir. 1995). The concept of functional compliance with NEPA, as a substitute for formal NEPA compliance, has even been applied to certain federal regulations. See, e.g., *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 94-95 (2d Cir. 2000) (concluding that FCC procedures were functionally compliant with NEPA).

Recognizing RCRA's displacement of NEPA in this context would also accord with nearly a half-century of Executive Branch practice. Since RCRA's enactment in 1976, EPA has understood that "all RCRA ... permits are not subject to the environmental impact statement provisions of [NEPA]." 40 C.F.R. § 124.9(b)(6); see 45 Fed. Reg. 33,290, 33,488 (May 19, 1980). EPA explained at the time that RCRA's "extensive procedures, including public participation for evaluation [of] environmental issues, constitute[] the functional equivalent of NEPA's requirements." 44 Fed. Reg. 34,244, 34,247 (June 14, 1979). EPA has maintained that common-sense view. See, e.g., 85 Fed. Reg. 43,304, 43,341 & n.102 (July 16, 2020) ("[A]gencies do not need to conduct NEPA analyses under [RCRA]."). That "contemporaneous[]" and "consistent" agency interpretation, while not binding, is "especially useful in deter-

mining” Congress’s intent here. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024).

Statutory history points in the same direction. Since EPA promulgated its regulations in 1980, Congress has declined to enact any amendment imposing a NEPA overlay on RCRA—despite revisiting both statutes over the years. Congress reinforced RCRA’s requirements in the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 98 Stat. 3221; the Federal Facility Compliance Act of 1992 (FFCA), Pub. L. No. 102-386, 106 Stat. 1505; and the Land Disposal Program Flexibility Act of 1996, Pub. L. No. 104-119, 110 Stat. 830. And despite the federal government’s longstanding view that RCRA displaced NEPA, Congress never suggested otherwise. See, e.g., *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-240 (2009) (“Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.”) (cleaned up). Congress, moreover, knows how to impose a NEPA overlay on other environmental statutes when it wishes to do so. In the same enactment containing the FFCA’s amendments to RCRA, Congress passed the Metropolitan Washington Waste Management Study Act, which expressly required “an environmental impact statement, pursuant to [NEPA].” Pub. L. No. 102-386, tit. II, § 203(a), 106 Stat. 1505.

Congress underscored those displacement principles when it amended NEPA in 2023. Congress made clear that agencies are relieved of NEPA obligations either when compliance “is excluded pursuant to ... another provision of law,” 42 U.S.C. § 4336(a)(2), *or* when “the preparation of [a NEPA] document would clearly and fundamentally conflict with the requirements of another provision of law,” 42 U.S.C. § 4336(a)(3). As this Court re-

cently explained, the 2023 amendments “reinforce[] the basic principles that NEPA, correctly interpreted, already embodied.” *Seven County*, 605 U.S. at 181 n.3. In other words, the settled understanding that RCRA applicants need not comply with NEPA’s more general—and redundant—requirements provided the “legal ‘backdrop against which Congress enacted’” those amendments. *Tanzin v. Tanvir*, 592 U.S. 43, 48 (2020).

Importing the Ninth Circuit’s NEPA precedent into the RCRA context would also be a poor doctrinal fit. That court’s NEPA decisions arose largely in settings involving resource uses on federal lands, where comprehensive environmental statutes such as RCRA were less likely to apply. See, e.g., *350 Montana v. Haaland*, 50 F.4th 1254, 1264-1269 (9th Cir. 2022) (coal lease); *Bark v. USFS*, 958 F.3d 865, 869-872 (9th Cir. 2020) (timber and vegetation management); *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1046-1051 (9th Cir. 2013) (livestock grazing). RCRA occupies a far different domain from the typical federal-lands NEPA case: RCRA establishes an exacting, technology-specific permitting regime that prescribes precisely how wastes must be characterized, contained, monitored, and closed out. See pp. 18-20, *supra*.

2. Respondent’s counterarguments lack merit.

Respondent has suggested (Br. in Opp. 26) that NEPA displacement occurs “only when two statutory provisions are irreconcilable.” But the decisions cited above—and Congress’s 2023 amendments to NEPA itself—refute that argument. See pp. 20-23, *supra*. Regardless, respondent concedes that, under the “prevailing framework for NEPA displacement,” a federal agency “need not comply with NEPA when it administers a statute that mandates its own examination of environmental questions and that imposes specific procedures for considering the envi-

ronment that are functional equivalents of the NEPA impact statement process.” Br. in Opp. 20, 24 (brackets, citation, and internal quotation marks omitted). That rule compels reversal here.

Of course, Congress has many additional tools at its disposal to exempt a proposed activity or decision from NEPA. Congress may do so by enacting an express exemption. See, *e.g.*, 15 U.S.C. § 793(c)(1) (exempting EPA actions under the Clean Air Act); 33 U.S.C. § 1371(c)(1) (exempting certain EPA actions under the Clean Water Act); 42 U.S.C. § 5159 (exempting certain actions taken or assistance provided within a Presidentially declared emergency or disaster area); 16 U.S.C. § 3636(a) (exempting regulation of Pacific salmon fishing). Or Congress may simply “limit[]” an agency’s “discretion” to take or refrain from taking a challenged action: If “an agency has no ability to prevent” an environmental effect “due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect” and need not consider that effect in its NEPA review. *DOT v. Public Citizen*, 541 U.S. 752, 769-770 (2004); see, *e.g.*, *Seven County*, 605 U.S. at 198 (Sotomayor, J., concurring) (“NEPA’s central aim is to improve *agency* decisionmaking” (emphasis added)). But respondent errs insofar as it contends that those methods are the *only* ways to displace NEPA’s purely procedural scheme.

Respondent also repeats the Ninth Circuit’s novel view that NEPA displacement is limited to agencies “engaged primarily in an examination of environmental questions.” Br. in Opp. 24 (quoting Pet. App. 41a). Displacement does not rise or fall with the agency’s primary mandate. What matters is whether Congress established a specialized environmental-review process for the substantive question at hand—and Congress indisputably did so

for hazardous-waste permitting in RCRA. Respondent's distinction also makes little sense: All agree that an agency need not "comply with NEPA" when it *grants* a RCRA permit. *Siegelman*, 911 F.2d at 505. There is no sound reason to demand compliance with NEPA when a party merely *requests* a permit.

Respondent observes (Br. in Opp. 24) that NEPA review must occur "*before*" an agency "reach[es] a final decision," whereas RCRA "does not require an environmental evaluation until *after* the action agency has reached that decision." But that argument recycles the Ninth Circuit's erroneous finality holding; it does not provide an independent reason to require redundant review. Because the Air Force's pending application is not final agency action, the only reviewable "decision" here will follow the grant or denial of a renewed permit—a step that RCRA governs exhaustively.

B. Layering NEPA on top of RCRA would be duplicative, costly, and unsupported.

There is no sound policy reason to require that a RCRA permit application follow NEPA's procedures. The Ninth Circuit's rule would produce no incremental environmental information, no additional public participation, and no meaningful input in agency decisionmaking—just more paper-pushing.

Imposing both RCRA and NEPA review is neither necessary nor appropriate to ensure the safety of permitted activities or to inform the public of environmental risks. Again, RCRA is "a comprehensive environmental statute," *Meghrig*, 516 U.S. at 483, that "regulate[s] hazardous wastes from cradle to grave, in accordance with ... rigorous safeguards and waste management procedures," *Environmental Def. Fund*, 511 U.S. at 331. And as noted (at 18-20, *supra*), RCRA supplies substantive

standards and technical specifications, requires notice-and-comment and written responses, and allows for public hearings. See, *e.g.*, 42 U.S.C. §§ 6924(a), 6925(c)(3), 6974(b)(2); 40 C.F.R. §§ 124.6, 124.8(b)(5), 124.17, 270.13-270.14. The Executive Branch—which is charged with both preparing NEPA reviews and administering the RCRA permitting process—has long recognized that RCRA “fully allows and encourages the involvement of the public in [RCRA] decision making.” 44 Fed. Reg. at 34,254. NEPA’s general informational mandate adds nothing to that framework. Unlike RCRA, NEPA “imposes no substantive environmental obligations or restrictions” and “simply” seeks “to inform agency decisionmaking.” *Seven County*, 605 U.S. at 173. But that is precisely what RCRA accomplishes already.

If anything, applying NEPA in this context would *undermine* RCRA’s comprehensive plan to ensure the safe and efficient treatment of hazardous waste. NEPA review here would achieve only one end: delay. In 2020, the Council on Environmental Quality (CEQ) reported that it took 4.5 years on average to complete an environmental impact statement to obtain a federal permit; doing so for building a road or bridge took 7.4 years, and doing so for the construction of public transit took 5.3 years. See Council on Environmental Quality, *Fact Sheet: CEQ Report on Environmental Impact Statement Timelines (2010-2018)* 1-2, 4, 10 (June 12, 2020) (observing average of 4.5 years and median of 3.5 years to complete environmental reviews and issue final records of decision, according to agency-by-agency timelines).⁵ In 2025, CEQ reported that federal agencies were taking an average of 3.8 years and median of 2.5 years to complete an environ-

⁵ <https://perma.cc/XWW7-S56L>.

mental impact statement and record of decision in complying with NEPA. See Council on Environmental Quality, *Fact Sheet: CEQ Report on Environmental Impact Statement Timelines (2010-2024)* 7 n.13.⁶ Only 41 percent of final environmental impact statements issued in 2024 were completed within two years—an improvement over earlier figures, but still an unacceptable outcome. *Id.* at 2.⁷

NEPA review can also cost millions of dollars: According to the Department of Energy, “the average payment to a contractor to prepare an [environmental impact statement] from calendar year 2003 through calendar year 2012 was \$6.6 million, with the range being a low of \$60,000 and a high of \$85 million.” Government Accountability Office, GAO-14-370, *National Environmental Policy Act: Little Information Exists on NEPA Analyses* 13 (Apr. 15, 2014).⁸ “‘NEPA compliance’ now consumes as much as one billion dollars of direct federal expenditures every year, or more (no one knows the exact amount), and demands the full-time work effort of hundreds or thousands of federal employees and contractors (no one knows how many) in every agency of the government.” Mark C. Rutzick, *A Long and Winding Road: How the National Environmental Policy Act Has Become the Most Expensive and Least Effective Environmental Law in the History of the United States, and How to Fix It* 3, Regulatory Transparency Project (Oct. 16, 2018).⁹

⁶ <https://perma.cc/AZE4-5KSC>.

⁷ In the Fiscal Responsibility Act of 2023, Congress amended NEPA to generally require that environmental impact statements be completed within a two-year period. 42 U.S.C. § 4336a(g).

⁸ <https://www.gao.gov/assets/gao-14-370.pdf>.

⁹ <https://perma.cc/76XQ-LMVS>.

The mere prospect of NEPA litigation drives further inefficiency and encourages agencies to undertake unnecessary analysis to “litigation-proof” their impact statements. Rayan Sud et al., *How to Reform Federal Permitting to Accelerate Clean Energy Infrastructure: A Nonpartisan Way Forward* 18, Brookings Inst. (Feb. 2023).¹⁰ This dynamic “lead[s] to an increase in the cost and time needed to complete NEPA documentation, but not necessarily an improvement in the quality of the documents ultimately produced.” Congressional Research Service, *The National Environmental Policy Act (NEPA): Background and Implementation* 26 (Jan. 10, 2011).¹¹ And there is little reason to believe that *even* a so-called “litigation proof” statement will deter “project opponents,” whose objective, as this Court has recognized, is often delay or obstruction rather than “concern for the environment.” *Seven County*, 605 U.S. at 183. That uncertainty, as one commentator put it, has left “an invisible graveyard of projects that were never built” across many industries, including bridge construction, clean-energy projects, and wildfire prevention. Aidan Mackenzie, *How NEPA Will Tax Clean Energy*, Inst. for Progress (July 25, 2024) (collecting examples).¹²

Especially in the hazardous-waste context, added delay often harms the environment and the general public. Every additional year when a renewal application languishes under NEPA review is a year when an aging facility continues to operate under a stale permit, when planned upgrades to containment and treatment systems remain on hold, and when hazardous waste accumulates

¹⁰ <https://perma.cc/K284-MWMJ>.

¹¹ <https://www.congress.gov/crs-product/RL33152>.

¹² <https://perma.cc/Z3UP-MFVY>.

while awaiting authorized disposal capacity. NEPA's procedural overlay, in short, may impose precisely the environmental harms that Congress enacted RCRA to prevent. The Ninth Circuit's reflexive extension of its NEPA case law to a domain Congress comprehensively addressed in RCRA cannot be squared with either statute's design or common sense.

The harms caused by the decision below if it is not corrected will be especially acute. RCRA applies to many of the country's most essential industries, including chemical manufacturing, 40 C.F.R. § 261.32; pharmaceutical production, 40 C.F.R. § 261.33(e), (f); semiconductor fabrication, 40 C.F.R. § 261.31(a); petroleum refining, 40 C.F.R. § 261.32; and battery manufacturing and recycling, 40 C.F.R. §§ 266.80(a), 273.2.

In short, applying *both* NEPA and RCRA to the same agency action would upset the balance Congress struck in providing for appropriate environmental review without needless bureaucracy, and without impeding the timely completion of essential projects. The nation's industrial base—including the healthcare, energy, and semiconductor sectors that depend on RCRA permits—would not absorb the resulting friction without substantial cost, including risk to capital investment and supply chains. If left undisturbed, the decision below will compound the inefficiencies that already burden the federal permitting process, with serious consequences for investment, financing, and operational decisions on which our national economy depends.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

Andrew R. Varcoe
Stephanie A. Maloney
U.S. CHAMBER LITIGATION
CENTER
1615 H Street, NW
Washington, DC 20062
*Counsel for the Chamber
of Commerce of the United
States of America*

Leah Pilconis
AMERICAN CEMENT
ASSOCIATION
200 Massachusetts Ave NW,
Suite 200
Washington, DC 20001
*Counsel for American
Cement Association*

Prianka P. Sharma
AMERICAN ROAD &
TRANSPORTATION
BUILDERS ASSOCIATION
250 E Street SW, Suite 900
Washington, DC 20024
*Counsel for American Road
& Transportation Builders
Association*

Michael R. Huston
Counsel of Record
Nicholas S. Crown
Addison W. Bennett
PERKINS COIE LLP
700 Thirteenth St., N.W.
Suite 800
Washington, DC 20005-3960
(202) 434-1630
MHuston@perkinscoie.com

Counsel for Amici Curiae

Erica Klenicki
Caroline McAuliffe
NATIONAL ASSOCIATION OF
MANUFACTURERS
733 10th Street, N.W.
Suite 700
Washington, DC 20001

*Counsel for National
Association of
Manufacturers*

J. Spencer Phillips
ASSOCIATED GENERAL
CONTRACTORS OF
AMERICA, INC.
53 D St SE
Washington, DC 20003

*Counsel for Associated
General Contractors of
America, Inc.*