

No. 25-579

In the Supreme Court of the United States

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

v.

PRUTEHI GUAHAN

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

REPLY BRIEF FOR THE PETITIONERS

D. JOHN SAUER
*Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

TABLE OF CONTENTS

	Page
A. The Ninth Circuit’s decision is incorrect	2
B. The decision below conflicts with decisions of other circuits and warrants this Court’s review.....	9

TABLE OF AUTHORITIES

Cases:

<i>AFGE v. Trump</i> , 139 F.4th 1020 (9th Cir.), stay of underlying decision granted, 145 S. Ct. 2635 (2025)	11
<i>AFSCME v. OMB</i> , No. 25-cv-8302, 2025 WL 3018250 (N.D. Cal. Oct. 28, 2025).....	11
<i>Alabama ex rel. Siegelman v. EPA</i> , 911 F.2d 499 (11th Cir. 1990)	5-10
<i>Berk v. Choy</i> , No. 24-440 (Jan. 20, 2026)	7
<i>Citizens Against Burlington, Inc. v. Busey</i> , 938 F.2d 190 (D.C. Cir.), cert. denied, 592 U.S. 994 (1991).....	7
<i>City of Chicago v. Environmental Def. Fund</i> , 511 U.S. 328 (1994).....	7
<i>Columbia Riverkeeper v. Caswell</i> , No. 24-cv-868, 2025 WL 2256295 (D. Or. Aug. 7, 2025).....	11
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997).....	2, 4
<i>Biden v. Texas</i> , 597 U.S. 785 (2022).....	3
<i>Dalton v. Specter</i> , 511 U.S. 462 (1994).....	4
<i>FTC v. Standard Oil Co.</i> , 449 U.S. 232 (1980)	4
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	4, 5
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024).....	8

II

Cases—Continued:	Page
<i>RadLAX Gateway Hotel, LLC v. Amalgamated Bank</i> , 566 U.S. 639 (2012)	6
<i>Sackett v. EPA</i> , 566 U.S. 120 (2012)	3, 4
<i>Seven Cnty. Infrastructure Coal. v. Eagle Cnty.</i> :	
605 U.S. 168 (2025)	6, 11
144 S. Ct. 2680 (2024)	11
<i>United States Army Corps of Eng'rs v. Hawkes Co.</i> ,	
578 U.S. 590 (2016)	4
Statutes and regulations:	
Administrative Procedure Act, 5 U.S.C. 551 <i>et seq.</i> :	
5 U.S.C. 558(c)	5
5 U.S.C. 704	2
National Environmental Policy Act of 1969,	
42 U.S.C. 4321 <i>et seq.</i>	1
42 U.S.C. 4332 (2018)	6
42 U.S.C. 4336(a)(2) (Supp. V 2023)	6
42 U.S.C. 4336(a)(3) (Supp. V 2023)	6
Resource Conservation and Recovery Act of 1976,	
42 U.S.C. 6901 <i>et seq.</i>	1
42 U.S.C. 6925(c)(3)	7
40 C.F.R.:	
Section 124.9(b)(6)	8
Section 124.19(l)(2)	5
Section 270.51(a)	4
Section 1501.1(a)(6) (2023)	8
Section 1507.3(d)(6) (2023)	8

III

Miscellaneous:	Page
Dep't of Def., <i>National Environmental Policy Act Implementing Procedures</i> , https://www.denix.osd.mil/nepa/denix-files/sites/55/2025/06/DoD-NEPA-Procedures-FINAL.pdf	8
85 Fed. Reg. 43,304 (July 16, 2020).....	9
90 Fed. Reg. 27,857 (June 30, 2025).....	8
91 Fed. Reg. 618 (Jan. 8, 2026).....	8

In the Supreme Court of the United States

No. 25-579

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

v.

PRUTEHI GUAHAN

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

REPLY BRIEF FOR THE PETITIONERS

In the decision below, the Ninth Circuit held that (1) the submission of a permit-renewal application is “final agency action” subject to immediate judicial review even while the application remains pending, and (2) federal agencies complying with the specific and comprehensive environmental-review provisions for hazardous-waste treatment under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 *et seq.*, must separately comply with the general environmental-review provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* Respondent fails to reconcile those rulings with fundamental principles of administrative and environmental law.

Respondent’s additional grounds for denying review are also unpersuasive. Although respondent describes the Ninth Circuit’s decision as “narrow” and “‘fact-bound,’” Br. in Opp. 12, 19 (citation omitted), the perti-

nent legal issues recur routinely in numerous permit-renewal proceedings and in other analogous circumstances, threatening “massive implications beyond this case” from the Ninth Circuit’s “far-reaching” and “sweeping decision,” Pet. App. 70a, 73a (VanDyke, J., dissenting). Respondent also speculates that future legislation may change or clarify the legal rules that govern the second question presented. But that possibility does not affect the certworthiness of the first question presented, and it does not outweigh the important government interests warranting this Court’s review. The Court should grant the petition for a writ of certiorari.

A. The Ninth Circuit’s Decision Is Incorrect

1. To be “final agency action” subject to immediate judicial review under the Administrative Procedure Act (APA), 5 U.S.C. 704, an agency pronouncement must both (a) “mark the consummation of the agency’s decisionmaking process” and (b) “be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-178 (1997) (citations and internal quotation marks omitted). The Ninth Circuit held that the agency conduct at issue here—*i.e.*, the Air Force’s 2021 submission to the Guam Environmental Protection Agency (Guam EPA) of a (still-pending) application to renew a RCRA permit to treat hazardous waste at Andersen Air Force Base—satisfied both of those requirements. That holding was erroneous. A mere application, unlike a final decision to grant or deny a permit, does not satisfy either of *Bennett*’s two independent requirements and therefore “is a far cry from final agency action.” Pet. App. 52a (VanDyke, J., dissenting).

a. Respondent’s argument on the first *Bennett* prong fails to address any of the statutory and regulatory pro-

visions that define a permit-renewal application’s interlocutory role in the RCRA permitting scheme. Compare Br. in Opp. 16-18, with Pet. 19-20 (collecting citations). Under that scheme, the renewal application does not reflect the “consummation” of proceedings, *contra* Br. in Opp. 13 (citation omitted), but instead triggers a further iterative process. Respondent does not contest that, under the governing regulations, the Air Force may (and in some circumstances must) “make changes to its permit application at Guam EPA’s request,” *id.* at 17, as part of the ongoing “permit application process” in which Guam EPA “has been working with” the Air Force “before making a final decision,” C.A. S.E.R. 714. That is no mere “theoretical[]” “‘possibility’ an agency might change its mind,” Br. in Opp. 17-18 (quoting *Sackett v. EPA*, 566 U.S. 120, 127 (2012)); it is a regulatory guarantee of further, still-ongoing proceedings between the Air Force, Guam EPA, and other stakeholders, including the public.¹

Respondent’s continued “use of contingent language underscores the problem.” Pet. App. 65a (VanDyke, J., dissenting). By contending that the Air Force has “committed itself to a particular course of action *upon the application’s approval*,” respondent tacitly concedes that the Air Force has not yet committed to anything, since “Guam EPA has not yet approved” (or denied)

¹ Insofar as respondent purports to identify implicit final agency action in the Air Force’s “internal decision” to apply for permit renewal, separate from the “formal application” to Guam EPA, Br. in Opp. 13, this Court’s precedent forecloses that ethereal distinction. See *Biden v. Texas*, 597 U.S. 785, 809 (2022) (“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.”).

that application. Br. in Opp. 16 (emphasis added); see Pet. 22. The relevant agency proceedings have not been consummated, but rather remain ongoing.

b. On the second *Bennett* prong, respondent does not dispute that an agency submission is non-final when it “function[s] ‘like a tentative recommendation,’” Br. in Opp. 18 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 798 (1992)), and therefore has no “direct and appreciable legal consequences” absent a subsequent decision, *Bennett*, 520 U.S. at 178; see Pet. 20-23. That is equally true whether the subsequent decision will be made by an “intra-branch superior,” Br. in Opp. 18; see *Franklin*, 505 U.S. at 798; *Dalton v. Specter*, 511 U.S. 462, 470 (1994); by the same federal agency, *FTC v. Standard Oil Co.*, 449 U.S. 232, 242 (1980); by a different federal agency, see Pet. 5-6 (explaining EPA’s role in RCRA permitting); or (as here) by Guam EPA, Pet. 20-24. Respondent misses this “crucial” distinction between the Air Force’s application and the “binding” actions that were held to satisfy the second prong in *Bennett*, 520 U.S. at 178; in *United States Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590, 598 (2016) (action was “binding on the Government”) (citation omitted); and in *Sackett*, 566 U.S. at 126 (challenged agency action imposed “legal obligation[s]”).

Respondent also invokes a regulation providing that Guam EPA’s temporary withholding of a final decision on the 2021 permit-renewal application tolls the expiration of the 2018 permit that Guam EPA had previously issued. See Br. in Opp. 19 (citing 40 C.F.R. 270.51(a)). But respondent “did not separately challenge” either the 2018 permit, *id.* at 19 n.4, or Guam EPA’s delay in ruling on the 2021 application, see C.A. S.E.R. 714. Respondent observes that the 2021 application was a “nec-

essary” precondition to tolling, Br. in Opp. 19, but that is not the test for finality. It was equally true in *Franklin*, for example, that the agency was required to send a report to the President. 505 U.S. at 800. The crucial point is that the 2021 permit application, like the report, is not *sufficient* to impose “direct and immediate” legal consequences absent separate actions. *Id.* at 797 (citation omitted).

In any event, respondent does not dispute that its argument “would (implausibly) suggest that *every* permit-renewal application is ‘final agency action,’” given the APA’s generally applicable tolling rule. Pet. 23; see 5 U.S.C. 558(c). That is not the law. Rather, as explained in another longstanding regulation that respondent ignores, “final agency action on a permit occurs when” EPA “issues a final permit decision.” Pet. 23-24 (quoting 40 C.F.R. 124.19(l)(2)).

2. With respect to the second question presented in the certiorari petition, RCRA’s specific provisions for environmental review as part of the hazardous-waste permitting process preclude the application to this context of NEPA’s more general environmental-review requirements. Pet. 24-28. The Ninth Circuit correctly acknowledged that other, specific environmental statutes “displace[]” NEPA where the statutes “substantial[ly] overlap” or are “functional equivalent[s].” Pet. App. 35a-36a (citation omitted). That principle precludes NEPA review here, since RCRA review ensures that agencies “consider[] 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 (11th Cir. 1990).

Respondent appears to accept the “prevailing framework for NEPA displacement” as endorsed by “most circuits.” Br. in Opp. 20, 24 (quoting *Siegelman*, 911 F.2d at 504). And as respondent’s own authority explains, that framework depends on “the traditional view that specific statutes prevail over general statutes dealing with the same basic subjects.” *Siegelman*, 911 F.2d at 504. There is consequently no basis for disputing that the general/specific canon—often a “strong indication of statutory meaning,” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 646 (2012)—is “implicated here,” Br. in Opp. 26. Far from conflicting with NEPA’s statement of purpose, see *id.* at 25 (citing 42 U.S.C. 4332 (2018)), this reading properly furthers NEPA’s “modest” purpose to “inform agency decisionmaking, not to paralyze it,” “in line with the statutory text and common sense,” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 173, 183-184 (2025).²

Respondent also acknowledges that the Air Force’s 2021 renewal application included a “discussion of technological alternatives,” Br. in Opp. 8, in keeping with RCRA’s directive that “[r]eview of any application for a permit renewal shall consider improvements in the

² Respondent cites Congress’s 2023 amendments to NEPA, Br. in Opp. 25-26, but it does not explain why they are relevant here, given the Ninth Circuit’s determination not to apply those amendments to this case involving pre-2023 agency conduct, see Pet. 9 n.2 (citing Pet. App. 5a n.3). Regardless, the 2023 provision that respondent cites merely codified the prevailing view that NEPA does not apply where “another provision of law,” such as RCRA, “exclude[s]” or “conflict[s] with” NEPA review. 42 U.S.C. 4336(a)(2) and (3) (Supp. V 2023). Here as elsewhere, the 2023 amendments “reinforce[d] the basic principles that NEPA, correctly interpreted, already embodied.” *Seven County*, 605 U.S. at 181 n.3.

state of control and measurement technology,” 42 U.S.C. 6925(c)(3); see Pet. 8; contra Br. in Opp. 30 & n.7 (describing that consideration as “unusual”). That RCRA process substantially overlaps with the “discussion of alternatives” that “forms ‘the heart of’” NEPA review. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 194 (D.C. Cir.) (Thomas, J.) (citation omitted), cert. denied, 592 U.S. 994 (1991). Respondent highlights variations in “timing” and other details of review, see Br. in Opp. 24-25, 29-31; but those comparisons only underscore that the “RCRA permitting procedures ‘strike a workable balance’” as NEPA’s “more specific counterpart,” *Siegelman*, 911 F.2d at 505 (citation omitted). These are not “policy arguments,” Br. in Opp. 29; they are textual indications that Congress intended agencies “to apply [RCRA], because that specifically deals with the environmental issue at hand,” in lieu of conducting NEPA analysis, Pet. App. 89a; cf. *Berk v. Choy*, No. 24-440 (Jan. 20, 2026), slip op. 7 n.2 (“[D]rawing a negative inference from text is sometimes the best way to understand it.”).

Given this “overlap between NEPA’s procedural requirements and Guam EPA’s RCRA permitting process,” Pet. App. 37a, respondent cannot justify the Ninth Circuit’s departure from the “prevailing” rule that specific environmental statutes “displace[]” NEPA, Br. in Opp. 24. Respondent suggests that this rule should not apply to “non-environmental agenc[ies] like the Air Force.” *Id.* at 22-23. But “RCRA is a comprehensive environmental statute,” *City of Chicago v. Environmental Def. Fund*, 511 U.S. 328, 331 (1994), that requires EPA or a state-level counterpart environmental agency to review every permit application. See Pet. 5-9. If anything, respondent’s distinction cuts the opposite way:

Because “EPA d[oes] not have to comply with NEPA” when it *grants* RCRA permits, *Siegelman*, 911 F.2d at 505, it follows *a fortiori* that the Air Force need not comply with NEPA when it simply *applies* for permit renewal, Pet. 28.

Like the Ninth Circuit, respondent does not properly account for the Executive’s longstanding position that RCRA displaces NEPA—a “consistent” and “contemporaneously” expressed view that is “especially useful in determining the statute’s meaning.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024); see Pet. 9-10, 28. As respondent acknowledges, a 45-year-old regulation provides that RCRA displaces NEPA when a federal agency *grants* permits. See Br. in Opp. 27 (citing 40 C.F.R. 124.9(b)(6)). The same reasoning applies with equal or greater force when federal agencies *apply* for permits or permit renewals through the same process.

Respondent contends that its contrary view (Br. in Opp. 27-29, 32-33) is supported by scattered references to “permits” in rescinded regulations previously issued by the Council on Environmental Quality (CEQ), see 91 Fed. Reg. 618, 619 (Jan. 8, 2026); by rescinded military regulations that “had served as a supplement to those CEQ regulations,” 90 Fed. Reg. 27,857, 27,857 (June 30, 2025); and by defense-related procedures established in 2025. Respondent’s reliance on those sources is misplaced. Those materials confirm that “NEPA review is not required” where “another statute’s requirements serve [NEPA’s] function,” Dep’t of Def., *National Environmental Policy Act Implementing Procedures* 2, <https://www.denix.osd.mil/nepa/denix-files/sites/55/2025/06/DoD-NEPA-Procedures-FINAL.pdf>; accord 40 C.F.R. 1501.1(a)(6), 1507.3(d)(6) (2023), and specifically that “agencies do not need to conduct NEPA analyses under

* * * the Resource Conservation and Recovery Act,” 85 Fed. Reg. 43,304, 43,341 & n.102 (July 16, 2020) (citing, *inter alia*, *Siegelman*, 911 F.2d at 504-505). Those sources accordingly support the government’s consistent position that RCRA’s specific permitting procedures displace NEPA’s more general requirements.

B. The Decision Below Conflicts With Decisions Of Other Circuits And Warrants This Court’s Review

1. On the first question presented, respondent acknowledges that the Third and D.C. Circuits “hold[] that agency actions are not final where a separate actor . . . must take an additional action to create any legal consequence.” Br. in Opp. 14 (quoting Pet. 29). Those decisions conflict with the Ninth Circuit’s ruling that the Air Force’s 2021 permit-renewal application is final even though “there is still an additional action [Guam EPA] needs to take to alter the legal obligations at play.” Pet. App. 65a (VanDyke, J., dissenting). And the Fourth and Tenth Circuits’ “analogous” decisions bolster Judge VanDyke’s conclusion that “the periodic submission of a RCRA application does not transform that one aspect of ongoing ‘project implementation’ into a final agency action.” *Id.* at 59a-60a.

Respondent contends that other circuits’ rulings are distinguishable because “[n]one of those cases involved an agency submitting self-binding plans for its *own* course of action.” Br. in Opp. 15. But as explained above (see pp. 3-4, *supra*), the Air Force’s permit-renewal application is “self-binding” only in the sense that it reflects that agency’s commitment to implement particular protective measures *if* the application is granted. Respondent does not dispute that no “other circuit precedent” has *ever* “treated a permit application as final agency

action,” Pet. 29, despite the ubiquity of such applications under RCRA and other laws, see Pet. 31.

On the second question presented, respondent recognizes that “‘most circuits’” have held that “‘an agency need not comply with NEPA’” where another statute “‘imposes ‘specific procedures for considering the environment.’” Br. in Opp. 20 (citation omitted). The Ninth Circuit’s merits ruling conflicts with those decisions, and particularly with the Eleventh Circuit’s holding that “RCRA is an exception to NEPA.” *Siegelman*, 911 F.2d at 504; see Pet. 29-30. Respondent’s only answer is that the Air Force’s *submission* of a RCRA permit-renewal application should trigger NEPA obligations, even if a federal environmental agency’s *disposition* of a permit application would not. Br. in Opp. 20-23. That distinction is illogical. See pp. 7-8, *supra*. And respondent does not dispute that the Ninth Circuit’s decision “requires the preparation of NEPA analyses in circumstances where no other court of appeals has required them.” Pet. 30.

2. Respondent seeks to minimize the “massive implications” of the Ninth Circuit’s “sweeping decision.” Pet. App. 70a (VanDyke, J., dissenting). It suggests that compliance with the decision might “not be overly burdensome” in other cases if courts approve potential work-arounds. Br. in Opp. 33-34. But while respondent describes this case as “unusual” and “fact-driven,” *id.* at 3, 14, 33, the decision below actually turned on circumstances that are routinely present when federal agencies apply for renewals of RCRA permits.

While “we can hope” that the Ninth Circuit’s decision will not be read “as capaciously as its terms might imply,” Pet. App. 62a (VanDyke, J., dissenting), other plaintiffs in diverse contexts are already challenging putatively

“similar agency decision[s] by relying on the analysis below,” Br. in Opp. 34. For example, a recent court of appeals brief argues that, for “final agency action” purposes, this case “closely resembles” a NEPA suit challenging Florida’s operation of an immigration detention facility.³ Respondent offers no sound reason to doubt that the Ninth Circuit’s decision will impose significant burdens on courts and agencies, including the military, and will disrupt longstanding Executive Branch practice. Pet. 31.

3. Respondent’s cursory invocation of the 2023 NEPA amendments (Br. in Opp. 34-35) provides no sound reason for this Court to deny review. The non-federal respondents in *Seven County* urged the Court to deny certiorari for substantially the same reason, see Eagle Cnty., et al. Br. in Opp. at 25 (No. 23-975) (arguing that the “2023 NEPA amendments” made “review particularly unsuitable now”), but the Court granted the petition, see 144 S. Ct. 2680 (2024). In its subsequent merits ruling, the Court explained that the 2023 amendments had “reinforce[d] the basic principles that NEPA, correctly interpreted, already embodied,” so that *Seven County*’s analysis of the pre-2023 law equally “applies to NEPA as amended.” 605 U.S. at 181 n.3; see p. 6 n.2, *supra*; Pet. 5, 9 n.2, 24 n.5. It follows *a fortiori* that the mere possibility of *future* NEPA amendments, Br. in

³ See 25-12873 C.A. Doc. 103, at 37 (11th Cir. Jan. 20, 2026); see also, e.g., *AFGE v. Trump*, 139 F.4th 1020, 1039 (9th Cir.), stay of underlying decision granted, 145 S. Ct. 2635 (2025); *AFSCME v. OMB*, No. 25-cv-8302, 2025 WL 3018250, at *16 (N.D. Cal. Oct. 28, 2025); *Columbia Riverkeeper v. Caswell*, No. 24-cv-868, 2025 WL 2256295, at *10 (D. Or. Aug. 7, 2025); Plaintiffs-Appellees’ Corrected Br. at 30, *NTEU v. Vought*, No. 25-5091 (D.C. Cir. May 9, 2025).

Opp. 35, does not overcome the strong justifications for the Court's review in this case.

* * * * *

For the reasons stated above and in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

FEBRUARY 2026