

**In the Supreme Court of the United States**

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DEPARTMENT OF THE AIR FORCE, ET AL.,

*Petitioners,*

*v.*

PRUTEHI GUAHAN,

*Respondent.*

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

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**BRIEF OF AMICI CURIAE STATES OF WASHINGTON,  
COLORADO, DELAWARE, MAINE, MARYLAND,  
MICHIGAN, MINNESOTA, NEW MEXICO, NEW YORK,  
OREGON, AND THE DISTRICT OF COLUMBIA IN  
SUPPORT OF RESPONDENT**

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NICHOLAS W. BROWN  
*Attorney General  
State of Washington*

NOAH G. PURCELL  
*Solicitor General*

PETER B. GONICK  
*Deputy Solicitor General  
Counsel of Record*

*Elizabeth Harris  
Assistant Attorney General*

1125 Washington Street SE  
Olympia, WA 98504-0100  
360-753-6200  
Peter.Gonick@atg.wa.gov

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## INTRODUCTION AND INTERESTS OF AMICI CURIAE

The States of Washington, Colorado, Delaware, Maine, Maryland, Michigan, Minnesota, New Mexico, New York, Oregon, and the District of Columbia (Amici States) share an interest in protecting their people, environment, and natural resources. Both the Resource Conservation and Recovery Act (RCRA) and the National Environmental Policy Act (NEPA) provide tools to protect this interest, but in significantly different ways. Whereas RCRA requires hazardous waste permit applicants to meet a set of substantive standards, NEPA asks federal agencies to look before they leap, without directing an outcome. Precisely because of this structural difference, NEPA benefits the Amici States and the public in a way that RCRA cannot. When both statutes apply, NEPA ensures the development of alternatives and meaningful analysis before an applicant submits a RCRA permit application. This difference leads to concrete benefits within our states.

For over fifty years the Amici States have used NEPA, Pub. L. No. 91-190, 83 Stat. 852 (1970) (*codified as amended at* 42 U.S.C. § 4321 *et seq.*) to protect their interests. NEPA recognizes that major federal actions do not occur in isolation from the environment. For this reason, NEPA ensures that federal agencies consider the reasonably foreseeable environmental impacts of, as well as a reasonable range of alternatives to, a proposed major federal action. 42 U.S.C. § 4332(2)(C)(i), (iii). This informed decision-making ensures federal agencies can choose

an alternative action or incorporate mitigation measures to lessen anticipated environmental effects within our states.

The federal RCRA, Pub. L. No. 94-580, 90 Stat. 2795 (*codified as amended at* 42 U.S.C. § 6901 *et seq.*) works to minimize hazardous waste generation and to ensure that the minimized waste generated nonetheless is treated, stored, and disposed of in alignment with regulatory standards. The statute establishes a hazardous waste management system that provides critical guardrails for preserving Amici States' interests in keeping their environment, natural resources, and people safe. The responsible disposal and storage of hazardous waste management is a grave safety issue for Amici States. Improperly handled hazardous waste can expose humans to toxic chemicals, leach into water supplies and soil, or volatilize into the air. When things go wrong at the storage, treatment, or disposal stage, hazardous waste has the potential to cause serious lasting health effects and devastate the environment and critical natural resources within our states.

Many Amici States administer hazardous waste programs that have been authorized by the Environmental Protection Agency (EPA) under RCRA. When evaluating applications for hazardous waste disposal permits, the States must determine if the application meets the substantive standards mandated in RCRA-equivalent state law.

The point of NEPA is for a federal agency to conduct an analysis to inform its decision before it gets to the point of deciding what action it will take. Only after deciding what it will actually do, and

completing a NEPA analysis of that proposed action if required, can the agency apply for permits. For this reason, a RCRA permit application is not a substitute for NEPA.

This Court should recognize that NEPA requires environmental analysis of major federal actions significantly affecting the environment that also require a RCRA permit.

### **SUMMARY OF ARGUMENT**

Where both NEPA and RCRA apply to a major federal action, their different approaches provide distinct benefits to the Amici States, and one does not supplant the other.

Congress codified two different approaches to environmental protection, employing two different tool sets, through passage of NEPA and RCRA. The timing of NEPA's environmental analysis, requiring both public participation and the development of alternatives *before* an agency decides on an action, ensures that federal agencies make an informed decision. Federal agencies can then develop less environmentally impactful actions, to the benefit of Amici States. In contrast, the RCRA permit application process does not generally require the analysis of alternatives and is submitted *after* an applicant has already settled on a proposed waste disposal action.

NEPA's requirements to consider *any* reasonably foreseeable adverse environmental effects and to analyze the impact of the entire major federal action give the Amici States vital information. Amici

States use this information to protect their interests, including through the development of protective RCRA permit conditions. RCRA's narrower focus ensures an applicant meets standards for a disposal action. The arguments of the Air Force and other amici states that NEPA impedes permitting are overblown. NEPA's environmental analysis often supplies needed information for a RCRA application and improves, rather than impedes, the permitting process.

Through the NEPA process, the Amici States understand the impacts of federal activities within their states, influence federal decision-making, and craft state-level action to address impacts within their states. RCRA standing on its own does not afford the Amici States these same opportunities. For these reasons, this Court should hold that the RCRA permit application process does not displace NEPA's statutory mandate for major federal actions significantly affecting the environment.

## ARGUMENT

The Ninth Circuit correctly recognized that the RCRA application process “complements, but does not substitute for, environmental review under NEPA.” *Prutehi Litekyan: Save Ritidian v. U.S. Dep’t of the Air Force*, 128 F. 4th 1089, 1114 (9th Cir. 2025). Congress directed federal agencies to implement NEPA “to the fullest extent possible[.]” 42 U.S.C. § 4332. However, there are limited circumstances where circuit courts have found another federal statute’s environmental review process can replace NEPA. While circuit courts provide varying formulations of this analysis, a RCRA permit application from a federal agency would not

meet the standard in any circuit. In the Ninth Circuit, courts look to see if a statute's process is either "sufficiently similar," rendering NEPA unnecessary, or "sufficiently different," rendering NEPA compliance unworkable, to determine if a federal agency must also conduct a NEPA review. *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 650 (9th Cir. 2014). The Eleventh Circuit has held that in the specific circumstance of EPA's review of a RCRA permit application, that review is the "equivalent and more specific counterpart of NEPA." *Alabama ex rel. Siegelman v. EPA*, 911 F.2d 499, 505 (11th Cir. 1990). This is distinct from the situation where a federal agency applies for a RCRA permit from an authorized state agency. In that situation the application is neither the "equivalent and more specific counterpart" of nor "sufficiently similar" to NEPA analysis of the agency's proposed major federal action to displace NEPA's statutory mandate. A federal agency's NEPA review of its own proposed major federal action differs significantly from the analysis in a RCRA permit application. These differences ensure that States have the opportunity to influence federal decision-making, as Congress intended in NEPA, and gives States information necessary to protect their environment, people, and resources. In this way NEPA improves federal decision-making to the benefit of the Amici States without burdening the RCRA application process.

**A. RCRA is Neither Substantially Similar nor Equivalent to NEPA**

NEPA and RCRA serve different purposes, protect different interests, and generate different information. RCRA ensures that permittees meet

substantive environmental protection standards related to waste management and disposal. NEPA, on the other hand, ensures that agencies take a holistic look at environmental impacts and consider alternatives before making a decision, but does not mandate a substantive outcome. These differences mean that submitting an application for a RCRA permit does not, on its own, exempt a federal agency from complying with NEPA.

Initially, this Court should recognize the difference between the NEPA review process and a RCRA permitting agency's review of a RCRA permit application. What is at issue in this case is how a federal agency makes the decision that leads to the need for a RCRA permit in the first place. That decision is broader than a RCRA application review because it can cover a bigger action than just the disposal of hazardous waste and it includes the consideration of alternatives. The RCRA permit-issuing agency does not need to consider the environmental impacts of a broader agency action—it must only consider whether the proposed hazardous waste storage, treatment, and/or disposal activities meet RCRA's standards for ensuring the safe management and disposal of the hazardous waste. Similarly, the RCRA permit issuing agency does not need to consider potential alternatives to a waste disposal action. The necessary NEPA review is not merely on the action of submitting a RCRA permit application. The NEPA review is of the proposed major federal action that requires a RCRA permit.

**1. RCRA ensures a hazardous waste disposal action meets environmentally protective standards**

Congress enacted RCRA in 1976 as an Act to recover “energy and other resources from discarded materials and for the safe disposal of discarded materials, and to regulate the management of hazardous waste.” 42 U.S.C. § 6901 (1976); *see also Meghriq v. KFC W., Inc.*, 516 U.S. 479, 483 (1996) (“RCRA’s primary purpose, rather, is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated, ‘so as to minimize the present and future threat to human health and the environment.’” (quoting 42 U.S.C. § 6902(b))). The Act is intended to ensure compliance with environmentally protective standards, providing a comprehensive framework to “regulate hazardous wastes from cradle to grave[.]” *City of Chicago v. Env’t Def. Fund*, 511 U.S. 328, 331 (1994). As such, RCRA empowers EPA and States to control the full lifecycle of hazardous waste.

RCRA accomplishes this part of the goal through a permitting process for all facilities dealing with the treatment, storage, and disposal of hazardous waste. These facilities are required to obtain permits under the Act in order to operate in alignment with RCRA’s design, operation, and monitoring standards. The RCRA permit process is broken into two parts. Part A of the application process requires the applicant to specify the particular hazardous wastes that are to be treated, stored, or disposed of at the facility and the particular process to

be used for the treatment, storage, and disposal of the waste. 40 C.F.R. § 270.13 (2006). Part B of the permit application contains site-specific information including geologic, hydrologic, and engineering data. 40 C.F.R. §§ 270.14-.28 (2006). The processes and details proposed must comply with the minimum standards established by RCRA. *See* 40 C.F.R. §§ 260-270 (2006).

RCRA has a public participation process described in EPA’s RCRA regulations at 40 C.F.R. §§ 124.10-.12 (2025), which also applies to State RCRA permitting programs. 40 C.F.R. § 271.14(h) (1983). Public notice and an opportunity for comment is required for RCRA permit applications after tentative denial of a permit application, preparation of a draft permit, or scheduling of a public hearing. 40 C.F.R. § 124.10(a)(1), (b) (2025).

State environmental agencies can seek approval from the EPA to administer a hazardous waste disposal permitting program in conformance with RCRA. 42 U.S.C. § 6926(b). To be so authorized, state law (including implementing regulations) must be at least as stringent as RCRA and EPA’s RCRA-implementing regulations. In such “RCRA authorized” states, hazardous waste regulation—including issuing hazardous waste disposal permits—is accomplished under state law in lieu of RCRA. These actions “have the same force and effect as” an EPA action. 42 U.S.C. § 6926(d). Under this regime, the state permitting agency has the ultimate decision-making authority to accept as complete or deny a permit application. *See, e.g.*, Wash. Admin. Code § 173-303-840(1), (2).

RCRA provides for permitting of a wide variety of actions, from an action which consists solely of detonating ordnance on a beach, as in the underlying case, to the long-term landfilling of hazardous wastes from multiple sources.

Importantly, a RCRA permit may only cover a portion of a major federal agency action. For instance, where a federal agency undertakes the cleanup of a contaminated site, it may need to seek a RCRA permit for the waste disposal portion of the action if the waste generated by the cleanup is being disposed of on site. However, the RCRA permit may not cover other aspects of the cleanup action such as investigation of the site, remediation or treatment activities that occur on site, transportation of the waste to a disposal facility, construction of temporary facilities on site, water use or diversion, or any number of other parts of a cleanup action that do not require a RCRA permit. As described below, many of these actions may be covered by NEPA.

## **2. NEPA ensures informed agency decision-making**

While NEPA is a procedural law, its substantive goal is to “. . . inform agency decisionmaking,” *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 173 (2025), and ensure a “well-considered decision[.]” *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978). NEPA’s procedures “‘place[] upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action,’” and “‘ensure[] that the agency will inform the public that

it has indeed considered environmental concerns in its decisionmaking process.” *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (quoting *Vt. Yankee Nuclear Power Corp.*, 435 U.S. at 553). In order to inform a decision, an analysis must necessarily happen *before* the decision is made.

Congress codified this foundational idea by mandating that federal agencies complete a “detailed statement” on the “reasonably foreseeable environmental effects” and “a reasonable range of alternatives” on a proposed major federal action that may significantly impact the environment. *See, e.g.*, 42 U.S.C. § 4332(2)(C). This detailed statement is an environmental impact statement, or EIS. *Id.* at § 4336(b)(1). For actions that will not have a reasonably foreseeable significant effect, or where it is unclear if the effect will be significant, the agency can complete a shorter environmental assessment (EA). *Id.* at § 4336(b)(2). Federal agencies conducting such actions then have the option of choosing an action that reduces potential harm and enhances ecological, social, and economic well-being. *See, e.g., id.* at §§ 4331, 4332(2)(A). For instance, the Department of War can use “an early and open” NEPA scoping process to identify “substantive issues that meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed[.]” Dep’t of War, *National Environmental Policy Act Implementing Procedures* 14, (version 1.2, Apr. 30, 2026), [https://www.denix.osd.mil/nepa/denix-files/sites/55/2026/05/DOW-Procedures-Combined\\_05252026\\_V1.2.pdf](https://www.denix.osd.mil/nepa/denix-files/sites/55/2026/05/DOW-Procedures-Combined_05252026_V1.2.pdf). Federal agencies can even choose to implement mitigation to reduce environmental impacts and in some cases

reach a finding that the mitigated action will lead to no significant environmental impacts (a “Finding of No Significant Impact,” or FONSI). *See, e.g., id.* at 12 (“If DoW finds no significant effects based on mitigation, the mitigated FONSI will state any mitigation requirements enforceable by the DoW or voluntary mitigation commitments that will be undertaken to avoid significant effects.”). Where an agency finds that mitigation avoids significant impacts and issues a FONSI, the agency would not need to complete an EIS.

Public participation is built into NEPA’s structure in order to improve agency decision-making. Each notice of intent to prepare an EIS must include a request for public comment before an agency has determined which form of action to take. 42 U.S.C. § 4336a(c). This Court has recognized that the publication of an EIS serves as a “springboard” for further public participation through public comment. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Providing notice to the public also begins the NEPA scoping process, providing further opportunities to interested parties to provide input on the range of issues to be addressed in an EIS. 42 U.S.C. § 4336a(c). The federal agency can then incorporate this information into their analysis and ultimate choice of action.

NEPA also creates an important role for States in the environmental review process. When enacting NEPA, Congress declared that the federal government must act “in cooperation with States and local governments” to evaluate potential environmental impacts and directly incorporated

states into the process. 42 U.S.C. §§ 4331(a), 4332(2)(G), 4336a(a)(1)(B), 4336a(a)(3). The Amici States rely on this participation in the NEPA process to protect their quasi-sovereign interest in preventing harm to the health of natural resources and ecosystems. In this regard, States are entitled to “special solicitude” in seeking redress for environmental harms within our borders. *Massachusetts v. EPA*, 549 U.S. 497, 519-22 (2007).

States secure meaningful participation and opportunities to protect their people and resources under NEPA through serving as a Joint Lead Agency or Cooperating Agency, federal consultation with state agencies, and public comment opportunities. 42 U.S.C. §§ 4332(2)(G), 4336a(a)(1)(B), 4336a(a)(3), 4336a(c). Through these engagement opportunities, States share information about potential state environmental impacts with the lead federal agency. This information is especially meaningful where the federal agency was not aware of these potential impacts. This can happen, for instance, where states share information about state endangered species or the location of cultural resources. They can also work with the federal agency to better understand the proposed action and thus how the action could impact State interests.

NEPA’s enactment served as a model to the States, many of which enacted their own environmental review laws or “little NEPAs” to protect public health and the environment.<sup>1</sup> Examples

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<sup>1</sup> NEPA.Gov, State, Tribe, and Local Government Information, <https://nepa.gov/content/state-tribe-and-local-government-information> (last visited July 22, 2026).

include the Maryland Environmental Policy Act, Md. Code Ann., Nat. Res. §§ 1-301–305, New York’s State Environmental Quality Review Act, N.Y. Env’tl. Conserv. Law. art. 8; N.Y. Comp. Codes R. & Regs. tit. 6, § 617, and Washington’s State Environmental Policy Act, Wash. Rev. Code §§ 43.21C.010-.914; Wash. Admin. Code §§ 197-11-010 to -990. These little NEPAs create a process so that states can protect their own state resources. Some of the little NEPAs also include mitigation provisions that provide a powerful tool for states to reduce environmental impacts. *See, e.g.*, Wash. Admin. Code § 197-11-660.

The public participation built into NEPA gives states and the public a unique opportunity to participate in agency decision-making before an agency has determined the exact contours of their project.

### **3. NEPA provides unique benefits to the Amici States where a federal agency applies for a RCRA permit**

The different structures and requirements of RCRA and NEPA mean that one is not the substitute for the other.

#### **a. NEPA improves state agency RCRA permitting**

NEPA’s mandate applies before a federal agency determines which major federal action it will take. It is not until after the completion of the NEPA process, and making a final decision, that a federal agency knows the specifics of the type of storage, treatment, or disposal action it will take. Because of this, the NEPA process happens before the federal

agency would even apply for a RCRA permit. It is precisely for this reason that the NEPA process can improve the RCRA permitting process by providing data about environmental impacts to inform the RCRA permitting process.

States can use this information to craft RCRA permit terms to protect their state interests. And contrary to the Air Force and its amici's arguments, requiring NEPA review prior to submitting a RCRA application is workable and routine. A good example of the benefits of NEPA and RCRA working together is the Hanford cleanup site located in Southeast Washington State. Starting in 1940, the federal government developed and operated nuclear reactors at Hanford to produce plutonium for World War II's Manhattan Project. *See generally* Energy.Gov, *The Hanford Site*, Understand the PAST, <https://www.hanford.gov/page.cfm/understandPAST> (last visited July 22, 2026). While critical to America's defense systems, this process created staggering amounts of hazardous waste and radiological material, which accrued over a fifty-year period. This left Hanford the biggest cleanup site in the United States, and one of the biggest in the world. Beginning in 1987, the Department of Energy (DOE) and the EPA worked with Washington State to start cleaning up the Hanford Site.

The federal government has completed multiple NEPA reviews and needed multiple modifications of its state-issued RCRA hazardous waste permit in undertaking this long-term, multi-part cleanup. One of these modifications addresses construction and operation of a key landfill known as the Integrated Disposal Facility, which is intended for

waste treated by Hanford’s massive Waste Treatment Plant complex. Wash. Dep’t of Ecology, *Hanford Facility Resource Conservation and Recovery Act (RCRA) Permit, Dangerous Waste Portion for the Treatment, Storage, and Disposal of Dangerous Waste*, <https://fortress.wa.gov/ecy/nwp/permitting/hdwp/rev/8c/index.html> (last visited July 22, 2026). This proposed landfill construction and operation action also triggered NEPA. See U.S. Dep’t of Energy, *DOE/EIS-0391: Final Environmental Impact Statement* (FEIS) (Nov. 2012), <https://www.energy.gov/nepa/articles/doeeis-0391-final-environmental-impact-statement-november-2012>. DOE worked with the Washington State Department of Ecology to draft the EIS, see 1 FEIS, Ecology Foreword, at 2-3, which includes extensive analysis of waste disposal alternatives for the landfill. See e.g., 1 FEIS, at 5-421–5-1292 (ch. 5, pts. 3-6).

The analysis in this EIS was not required by RCRA itself to secure a landfill permit. The Washington State RCRA implementing regulations for landfill permit applications found at Wash. Admin. Code § 173-303-806(4)(h) lay out the requirements for securing a RCRA landfill permit. While extensive, these requirements do not include the in-depth and comparative alternatives analysis required by NEPA, which allowed DOE and Ecology to model long-term impacts from disposal at the landfill of several different waste treatment technologies for hazardous waste generated through cleanup of the site. This information provided the basis for waste disposal conditions to protect against the impacts identified through the NEPA process included by the Department of Ecology in the RCRA permit

chapter for the landfill. *See* Wash. Dep’t of Ecology, Hanford Dangerous Waste Permit 8C, Integrated Disposal Facility Operating Unit Group 11 (OUG-11), at condition III.11.E Waste Stream Acceptance, <https://fortress.wa.gov/ecy/nwp/permitting/hdwp/rev/8c/IDF/conditions.pdf> (last visited July 22, 2026). It was the NEPA process, not the RCRA permit application, that gave Washington the information it needed to craft permit conditions to protect the state from the environmental impacts of hazardous waste disposal.

Additionally, States can use the NEPA process to reduce delays in the RCRA permitting process. A state permitting agency reviewing a RCRA permit application will often conduct a state environmental review of the state agency’s issuance of a RCRA permit. When a federal agency is proposing a major federal action requiring a RCRA permit, the state agency can build off the federal agency’s NEPA process to fulfill their own state review requirements. In some cases, state agencies can even use a federal EIS to fulfill their obligations under a state environmental review law. *See, e.g.*, Wash. Admin. Code § 197-11-610(3); N.Y. Comp. Codes R. & Regs. tit. 6, § 617.15(a).

Were NEPA not to apply to major federal actions requiring a RCRA permit, this absence would increase the burden on the Amici States with a little NEPA. Without a NEPA analysis from the federal agency, a state permitting agency would face the burden of conducting analysis and producing environmental documents under its own state statute. This would place an additional burden on existing agency staff and potentially introduce delay.

Because a RCRA permit application does not include all the information required of a NEPA or little NEPA analysis, States may also have to take the additional step of requesting information from the federal agency in order to conduct their own state level environmental analysis. For instance, the federal agency may have exclusive access to the transportation plans for a disposal action or the modeling of groundwater effects thousands of years into the future necessary to understand the impacts of radiological materials disposal. This additional step of requesting information, including potential follow-up requests to ensure complete information, will take time. This time will delay the ultimate permit approval process. The federal agency is better placed to conduct this analysis more efficiently in the first place.

As a result, exempting major federal actions requiring a RCRA permit from NEPA's environmental review mandate would not simplify or expedite the permit process for states with a little NEPA. Rather, the burden of environmental review would shift to state and local jurisdictions with little NEPAs. This could lead to additional processing time for a RCRA permit and delay the proposed federal action.

**b. NEPA's alternatives analysis provides a unique opportunity to shape federal decision-making**

NEPA's mandate that agencies analyze project alternatives ensures that federal agencies have the chance, though not the obligation, to take a less

environmentally impactful action. In contrast, RCRA does not have a requirement that an applicant propose, let alone analyze, reasonable alternatives to the proposed disposal action.

NEPA requires an agency to analyze the environmental impacts of three categories of potential actions: the proposed action, not taking the proposed action (the “no-action alternative”), and reasonable alternatives to an agency’s proposed action in an EIS. *See* 42 U.S.C. §§ 4332(2)(C)(iii), (F). This requires agencies to “identify feasible alternatives that could mitigate” the “significant environmental effects of a proposed project[.]” *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 172. This analysis is so fundamental to NEPA that failure of an agency to consider alternatives leads to reversal of the decision. *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 746 & n.36 (D.C. Cir. 1986) (the “failure of an agency to consider obvious alternatives has led uniformly to reversal” (collecting cases)); *see, e.g., Motor Vehicle Mfr. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983) (failure to “even consider the possibility” of “this alternative way of achieving the objectives of the Act” was arbitrary and capricious).

NEPA explicitly requires agencies to solicit “public comment on alternatives” as well as “impacts and on relevant information, studies, or analyses with respect to the proposed agency action” before the federal agency has even begun drafting the EIS. 42 U.S.C. § 4336a(c). This statutory requirement ensures that members of the public, including states, can provide information the agency may not have and propose potential alternatives the federal agency

may not have considered. *See New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 708 (10th Cir. 2009) (“Without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public involvement would be greatly degraded.”). This information from States can include the location of culturally sensitive resources, the distribution of state-endangered species, the presence of overburdened communities, and community-specific patterns of resource use. Any of this information could be used by the federal agency to develop an alternative or modify an action to prevent or lessen environmental impacts.

As one example, at the Hanford cleanup site in Washington State, the NEPA alternatives process played an important role in protecting Washington’s environment. Through the NEPA cooperating agency process, Ecology helped to “formulate the alternatives” in the EIS. 1 FEIS, Ecology Foreword, at 2. In this process, DOE and Ecology found that one potential landfill location on the east of the site would lead to fewer environmental impacts than another location on the west of the site. 1 FEIS Ecology Foreword, at 14. Because of the NEPA alternatives analysis, the DOE ultimately applied for a RCRA permit for a landfill located on the eastside of the site. Were the DOE not required to consider alternatives through NEPA, it may not have considered or analyzed this location. Ecology, as the RCRA permit issuing agency, would only be able to review the proposed location in the application. If the more impactful westside location could meet the standards

in RCRA, the less impactful eastside location may never have been considered. In this scenario, Washington would suffer the harm from the additional environmental impacts of the more impactful westside location that could have been avoided through a NEPA analysis.

In stark contrast, RCRA does not require a consideration of alternatives. It would be quite a complicated permit application that included environmental analysis and information for each of several reasonable alternatives to the proposed disposal action.

The Air Force points to a requirement in RCRA to consider “improvements in the state of control and measurement technology” as an alternatives analysis. Pet’r’s Br. 38; 42 U.S.C. § 6925(c)(3). However, this is not equivalent or even similar to a NEPA alternatives analysis. This statutory provision requires an applicant to keep up with advances in control and measurement technology as a permit is renewed. It does not require the applicant to consider reasonable alternatives to the chosen disposal action. For instance, it does not require the applicant to consider alternative disposal locations, or alternative transportation methods or routes. Neither does it require the applicant to consider wholly alternative disposal methods, as opposed to improvements in a particular disposal method. The Air Force argues it was limited in the available disposal methods in this instance (*see* Pet’r’s Br. 38). *Contra* Nat’l Acad. of Scis., Eng’g, & Med., *Alternatives for the Demilitarization of Conventional Munitions* 1 (2019), <https://perma.cc/9Z2R-ALSQ> (“Over time, a number of technology alternatives to OB/OD have become

available and more are in research and development.”). Even assuming this is true, it would not apply to all RCRA permit applicants. It is possible to imagine a different situation where the Air Force could have transported expired ordnance to another disposal site, for instance, or used alternative technologies. Fundamentally, nothing in RCRA requires the applicant to consider alternatives before submitting a RCRA permit application.

To be sure, a state agency can put conditions on a RCRA permit to ensure compliance with their RCRA-equivalent state law. However, the state agency does not have the authority to request an applicant to consider information traditionally developed only as part of a NEPA process, such as a different disposal location, or to provide information on the transportation method and routes expected to be used.

The alternatives analysis under NEPA provides states and the public with an opportunity to impact the federal action to protect people and resources in a way that is not possible under RCRA.

**c. NEPA’s broader scope provides States with valuable information**

RCRA permit applications do not include the same rigorous environmental analysis of all reasonably foreseeable environmental impacts required under NEPA. *See* 42 U.S.C. § 6925(b), 42 U.S.C. § 4332(2)(C)(i)-(ii). A RCRA permit application’s environmental risk assessments are discrete and site-specific, focusing on the characteristics of the waste in question, facility

design, and protective measures for proximate soil and water. As the Ninth Circuit observed, the environmental disclosures in the Air Force’s RCRA application are “short and minimally descriptive,” and “certainly not ‘precise’ by scientific or environmental standards.” *Prutehi Litekyan: Save Ritidian v. U.S. Dep’t of Airforce*, 128 F.4th 1089, 1116 (9th Cir. 2025), *cert. granted sub nom. Dep’t of the Air Force v. Prutehi Guahan*, 146 S. Ct. 1794 (2026).

RCRA’s mandate to provide information to determine if an applicant can meet the standards under RCRA and the EPA’s implementing regulations at 40 C.F.R. § 264 generate information about the disposal action itself. In contrast, NEPA looks at the reasonably foreseeable environmental impacts of a proposed action, including “*any* reasonably foreseeable adverse environmental effects[.]” 42 U.S.C. § 4332(2)(C)(i)-(ii) (emphasis added). This extends beyond the single act of storage, treatment, or disposal for many major federal actions.

For example, the RCRA permit application process for operation of a hazardous waste disposal site in Southeastern Washington, the Hanford disposal site, covered the environmental impacts of the operation of a landfill to ensure it meets the standards required under RCRA. But it did not look at the environmental impacts of the ship, truck, or train traffic necessary to transport waste to the facility, which are completely outside any RCRA permitting requirements. Some of this analysis happened under NEPA when the United States Navy proposed to transport waste to the facility. The Navy assessed their plan to dispose of decommissioned, defueled Naval Reactor Plants from USS Enterprise

at the Hanford disposal site in an environmental assessment. U.S. Dep't of the Navy, *Final Environmental Assessment on the Disposal of Decommissioned, Defueled Naval Reactor Plants from USS Enterprise (CVN 65)* (Aug. 2012), [https://www.hanford.gov/files.cfm/final\\_EA\\_aug2012.pdf](https://www.hanford.gov/files.cfm/final_EA_aug2012.pdf) (herein-after EA). The EA analyzed the impacts to the environment at the Puget Sound Naval Shipyards, the initiating site of the waste, then looked at the impacts to the water transportation route used to move the waste, and finally assessed the impacts from the ultimate land disposal at Hanford. EA at 3-1-3-14. This analysis would not have happened under the RCRA application for operation of the Hanford site.

Similarly, a RCRA application may document how a disposal facility will meet RCRA requirements for disposal of hazardous waste mixed with radioactive materials. However, it does not compel the analysis of reasonably foreseeable impacts to groundwater continuing for thousands if not millions of years. In contrast, NEPA would look at this potential impact where it is reasonably foreseeable. A State agency reviewing a RCRA application would not have the benefit of this long-term impact analysis unless the applicant also does a NEPA analysis. Significantly, RCRA also does not require analysis of the cumulative impact of one disposal action with respect to other disposal actions. States can use this information developed through the NEPA process to better protect their environment, people, and resources.

Another example of the broader scope of NEPA review is the issuance of hazardous waste permits in Colorado. The Colorado Department of Public Health

& Environment administers the Colorado Hazardous Waste Act (CHWA), which operates in lieu of RCRA in the state. Colo. Rev. Stat. § 25-15-301. Colorado also does not have its own state-level environmental review statute. There are currently three federal facilities with CHWA permits in Colorado: the Pueblo Chemical Depot, a former chemical weapons storage facility; the Pueblo Chemical Agent-Destruction Pilot Plant (PCAPP), a decommissioning chemical weapons destruction facility built to destroy mustard agent munitions previously stored at the Pueblo Chemical Depot; and Fort Carson, an active army base with hazardous waste storage facilities. During the initial PCAPP permitting process, the Army conducted a NEPA analysis regarding potential mustard agent destruction impacts on the surrounding community. *See generally* Dep't of the Army, *Destruction of Chemical Munitions at Pueblo Chemical Depot, Colorado: Final Environmental Impact Statement* (Mar. 2002), <https://oitco.hylandcloud.com/cdpherm pop/docpop/docpop.aspx>.

In general, the NEPA analysis undertaken as part of a state hazardous waste permit application in Colorado provides an extra layer of protection for citizens and adds value to the CHWA permitting process. While there is some overlap between RCRA and NEPA, that overlap is not complete. The PCAPP NEPA analysis looked at traffic and safety considerations, light pollution, and cultural resource impacts. The NEPA analysis also considered air quality issues beyond those analyzed as part of the CHWA permit, including traffic-related vehicular emissions, and possible impacts on organic farmers in

the rural area adjacent to the Pueblo Chemical Depot. Provision of this information through the NEPA process ensured that the public understood the potential impacts of the proposed action and could meaningfully participate in the decision-making process before the Army decided on a particular alternative. The NEPA process also ensured that Colorado had relevant information about impacts to state resources to inform their coordination with the Army.

Under the RCRA permitting process, there is not a clear path for a state permitting agency to request information covered by NEPA, but not RCRA, from the federal agency. Without the obligation to conduct a NEPA review of major federal actions requiring a RCRA permit, states and federal agencies would be left in the dark.

RCRA's lack of an alternatives analysis and consideration of all reasonably foreseeable environmental effects means it is neither "sufficiently similar" to NEPA, nor the equivalent of NEPA.

## **CONCLUSION**

The question here is whether a federal agency must make an informed decision about how to store, treat, and dispose of hazardous waste. NEPA requires the federal agency to do exactly that. RCRA on its own does not require the development of feasible alternatives and the analysis of all reasonably foreseeable environmental effects of a major federal action. NEPA review of major federal actions that also require a RCRA permit is instrumental to Amici States in protecting their people, environment, and natural resources.

History has shown how NEPA's mandate provides information and participation opportunities beyond the RCRA permitting process. This better equips states to protect their residents, environment, and resources. It is not a meaningless paperwork exercise—it has real, on-the-ground implications for the human environment within our states. Federal agencies use this information to develop less impactful alternatives. Amici States can use the alternatives analysis and the information developed as part of the NEPA process to craft more protective RCRA permit terms and advocate for protection of their resources.

To resolve the second question presented, this Court should hold that federal agencies proposing a major federal action that requires a RCRA permit must also comply with NEPA.

RESPECTFULLY SUBMITTED.

NICHOLAS W. BROWN  
*Attorney General*  
*State of Washington*

NOAH G. PURCELL  
*Solicitor General*

PETER B. GONICK  
*Deputy Solicitor General*  
*Counsel of Record*

ELIZABETH HARRIS  
*Assistant Attorney General*

1125 Washington Street SE  
Olympia, WA 98504-0100  
360-753-6200

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PHIL WEISER  
*Attorney General*  
*State of Colorado*  
 1300 Broadway,  
 10th Floor  
 Denver, CO 80203

KATHLEEN JENNINGS  
*Attorney General*  
*State of Delaware*  
 820 N. French Street  
 Wilmington, DE 19801

AARON M. FREY  
*Attorney General*  
*State of Maine*  
 6 State House Station  
 Augusta, ME 04333

ANTHONY G. BROWN  
*Attorney General*  
*State of Maryland*  
 200 Saint Paul Place,  
 20th Floor  
 Baltimore, MD 21202

DANA NESSEL  
*Attorney General*  
*State of Michigan*  
 P.O. Box 30212  
 Lansing, MI 48909

KEITH ELLISON  
*Attorney General*  
*State of Minnesota*  
 State Capitol, Suite 102  
 75 Rev. Dr. Martin  
 Luther King, Jr. Blvd.,  
 Saint Paul, MN 55155

RAÚL TORREZ  
*Attorney General*  
*State of New Mexico*  
 408 Galisteo Street  
 Santa Fe, NM 87501

LETITIA JAMES  
*Attorney General*  
*State of New York*  
 28 Liberty Street,  
 16th Floor  
 New York, NY 10005

DAN RAYFIELD  
*Attorney General*  
*State of Oregon*  
 1162 Court Street NE  
 Salem, OR 97301

BRIAN L. SCHWALB  
*Attorney General*  
*District of Columbia*  
 400 6th Street, NW,  
 Suite 8100  
 Washington, D.C. 20001