

August 21, 2026

Subject: Breakthrough Institute Comment on Implementation of the National Environmental Policy Act [Docket ID NRC-2025-0478].

The Breakthrough Institute (BTI) appreciates the opportunity to comment on the U.S. Nuclear Regulatory Commission's proposed rulemaking, *Implementation of the National Environmental Policy Act*.¹ BTI is an independent, nonprofit 501(c)(3) global research center that advocates for appropriate regulation and oversight of nuclear reactors to enable the new and continued use of safe and clean nuclear energy. BTI acts in the public interest and does not receive funding from industry.

BTI generally supports the NRC's effort to make environmental reviews more efficient, proportionate, and predictable. Overly prescriptive and outdated environmental reviews delay the deployment of nuclear infrastructure, undermining energy security and climate goals. *National Environmental Policy Act* (NEPA)² reviews have served as an important procedural safeguard for ensuring that environmental consequences are considered before federal decisions are made; it should remain so. The NRC can and must uphold high environmental standards while modernizing the process to ensure it is proportionate, predictable, and benefits society.

Several aspects of the proposed framework would achieve efficiency by narrowing the legal and procedural scope of environmental review in ways that create new uncertainty rather than eliminate it. Most importantly, the proposed rule would tie the scope of environmental effects considered under NEPA to the NRC's substantive regulatory authority, narrow the alternatives inquiry, blur the distinction between threshold NEPA applicability and the scope of effects once NEPA applies, and reduce opportunities for meaningful predecisional public review. Several of these changes rest on legal interpretations that extend far beyond what Congress expressly required and are not clearly compelled by existing precedent. If finalized without clearer limiting principles and implementation safeguards, they could shift disputes from environmental review into adjudication and judicial review, producing the opposite of the predictability and durability the rule is intended to achieve.

Nevertheless, the proposed rule includes several constructive reforms, including elimination of action-specific requirements that automatically trigger an Environmental Impact Statement

¹ Nuclear Regulatory Commission, *Implementation of the National Environmental Policy Act*, Docket ID NRC-2025-0478, 91 FR 42086 (July 7, 2026), <https://www.federalregister.gov/documents/2026/07/07/2026-13687/implementation-of-the-national-environmental-policy-act> (*Hereinafter Implementation of the National Environmental Policy Act*).

² National Environmental Policy Act of 1969, Pub. L. 91-190, 42 U.S.C. § 4321 et seq. (*Hereinafter NEPA*).

(EIS), continued use of Environmental Assessments (EA) and Findings of No Significant Impact (FONSI), expanded use of Categorical Exclusions (CatEx), and greater reliance on generic environmental findings. The proposed rule, while following executive and congressional direction in many respects, exceeds it in others and doesn't conform to likely court interpretation under existing precedent. The final rule should not treat the limits of the NRC's substantive authority as a categorical basis for excluding reasonably foreseeable project effects from NEPA review, narrow purpose and need so substantially that the no-action alternative becomes the only reasonable alternative, or treat unresolved site-specific environmental issues as resolved through the interaction of generic analyses and CatExs. The NRC should preserve the proposed rule's streamlining measures that are well-supported while ensuring that the revised framework remains consistent with its statutory obligations, applicable case law, and its mission statement to produce a complete and legally durable administrative record.

I. SUMMARY OF RECOMMENDATIONS

BTI supports substantial modernization of Part 51 and recommends that the NRC preserve the proposal's well-supported efficiency measures while making the following revisions to ensure that the final framework is legally durable, predictable, and administratively workable.

Recommendations are provided in Sections III–VIII of this comment. Selected key recommendations include:

1. **Define environmental effects by causation and project attribution, not categorically by the NRC's substantive regulatory authority.** The NRC should revise § 51.4 so that reasonably foreseeable effects, not limited to radiological impacts, with a reasonably close causal relationship to the proposed agency action remain within the NEPA inquiry when they arise from the project before the NRC. The limits of the NRC's substantive authority should remain relevant to what the NRC may regulate or mitigate, but should not automatically define the universe of environmental effects cognizable under NEPA. Where another agency has primary substantive authority, the NRC should rely on incorporation by reference, consultation, and interagency coordination rather than duplicative analysis.
2. **Preserve a bounded but meaningful alternatives inquiry.** The NRC appropriately should eliminate routine analysis of gas, solar, wind, purchased power, and other generation alternatives outside its regulatory role. But the final rule should not presume that the proposed action and no action ordinarily exhaust the reasonable range. Purpose and need should reflect both the applicant's legitimate objectives and the NRC's statutory role, while allowing proportionate consideration of reasonable nuclear alternatives—such as

alternative sites, technologies, system designs, or project configurations—where they are technically and economically feasible and relevant to the licensing decision.

3. **Keep NEPA applicability separate from the scope and level of review.** Proposed § 51.19 should remain a threshold provision addressing whether NEPA applies, while questions concerning the significance of effects, CatExs, and the depth of environmental analysis should be addressed separately under §§ 51.20, 51.22, and the provisions governing scope. The NRC should move § 51.19(b)'s "action or project at hand" limitation, and the portion of § 51.19(a)(6)(ii) addressing causal responsibility for particular environmental effects, to the provisions governing the scope of effects once NEPA applies.
4. **Use significance-based review, CatExs, and generic analyses where the supporting record warrants them.** BTI supports eliminating automatic EIS categories and using EAs, FONSI, CatExs, and generic environmental findings more proportionately. The NRC should establish clear significance-screening criteria, retain authority to require an EIS where significant effects are reasonably foreseeable, and ensure that every CatEx rests on an adequate technical and legal record. For proposed § 51.22(i), the NRC should clearly document the relationship among NUREG-2249, the final Appendix C framework, and the final definition of "effects," including which issues are resolved generically and which are excluded from the operative NEPA scope based on the NRC's substantive-authority determination. The NRC should also apply Tables S-3 and S-4 only within their demonstrated technical bounds and require targeted supplemental analysis where an application falls outside those bounds.
5. **Preserve a meaningful opportunity for predecisional public review.** The NRC should retain meaningful scoping and routine draft-EIS review. The proposed rule limits the use of an EIS to instances where reasonably foreseeable significant impacts are expected. The NRC should provide a 30-day comment period for a DEIS, which would provide a reasonable timeline for review that protects both public engagement and timeline requirements. If it eliminates routine DEIS preparation, the final rule should establish an equivalent and predictable predecisional opportunity to review and comment on the NRC's substantially developed environmental analysis before it becomes final. This would preserve error correction, strengthen the administrative record, and reduce the risk that disputes first mature only after final agency action.
6. **Coordinate Part 51 with related NRC rulemakings and adjudicatory procedures.** The NRC should reconcile shared definitions, cross-references, and implementation assumptions across Parts 2, 50, 52, 53, 57, 70, and other affected frameworks. The NRC should identify how site-specific issues left unresolved by NUREG-2249 are addressed in related licensing pathways, align the definition and timing of "construction" across applicable parts, and

review Part 2 to ensure that environmental contention scope, CatEx challenges, applicant prepared documents, and contention timing conform to the revised Part 51 framework.

7. **Implement applicant prepared environmental documents as an efficiency tool, not a duplicative process and allow both the applicant and independent contractors to prepare such documents.** The § 51.46 pathway should substitute for, rather than reproduce, environmental-report work. The final framework should establish clear contractor qualification and conflict-of-interest standards, NRC supervision and independent-review responsibilities, and a transparent administrative record, while coordinating information requirements across licensing pathways so applicants are not required to submit substantially duplicative environmental information.
8. **Finalize NUREG-2270 as flexible, technology-appropriate implementation guidance and provide a clear transition plan.** The guidance should integrate Endangered Species Act (ESA), National Historic Preservation Act (NHPA), and other consultations into licensing schedules; clearly assign responsibilities among the NRC, applicants, and other agencies; avoid duplicative interagency analysis; replace legacy LWR assumptions with scalable methods where appropriate; and promote consistent implementation of CatExs. The final rule should also clearly distinguish its effective date, mandatory compliance date, optional election dates, and the point at which the new framework applies to pending reviews, while giving appropriate credit for environmental work already completed.

II. STATUTORY AND JUDICIAL FRAMEWORK

The NRC's proposed rule revising Part 51 regulations is governed by several related but distinct sources of law. *The Atomic Energy Act of 1954* (AEA) defines the NRC's substantive licensing and regulatory authority over nuclear materials and facilities.³ NEPA separately establishes procedural requirements governing the environmental review of qualifying federal actions.⁴ Congress has recently amended both frameworks: the *Fiscal Responsibility Act of 2023* (FRA)⁵ substantially revised NEPA, the *Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024* (ADVANCE Act)⁶ directed the NRC to improve the efficiency and predictability of nuclear licensing and environmental review under the AEA, and the *One Big Beautiful Bill Act of 2025* (OBBBA)⁷ further amended NEPA by establishing an expedited, project-sponsor-funded

³ Atomic Energy Act of 1954 § 161, 42 U.S.C. § 2201, (*Hereinafter AEA*).

⁴ National Environmental Policy Act of 1969 § 102(2)(C), 42 U.S.C. § 4332(2)(C), (*Hereinafter NEPA*).

⁵ Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, div. C, tit. III, § 321, 137 Stat. 10, 38–40 (2023), (*Hereinafter FRA*).

⁶ Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024, Pub. L. No. 118-67, 138 Stat. 1447, 1478 (2024), (*Hereinafter ADVANCE Act*).

⁷ One Big Beautiful Bill Act, Pub. L. No. 119-21, § 60026, 139 Stat. 72 (2025) (adding NEPA § 112).

environmental review mechanism in new § 112. Those changes support substantial modernization of Part 51, but they do not make the scope of the NRC's substantive authority and the scope of every NEPA inquiry legally interchangeable.

The AEA and NEPA Perform Distinct Functions

The AEA supplies the NRC's authority to license and regulate nuclear activities. Among other provisions, AEA Section 161 authorizes the NRC to “establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property” and to protect the common defense and security including the design, location, and operation of such facilities.⁸ AEA Section 185 separately governs construction permits and operating licenses and requires NRC findings concerning construction and operation in conformity with the Act and NRC regulations. The ADVANCE Act has since amended the AEA to require “efficient and timely reviews and proceedings” for granting, suspending, revoking, or amending licenses and construction permits.⁹

NEPA performs a different function. It does not confer upon the NRC a general substantive power to regulate air quality, water quality, wildlife, land use, historic resources, or other matters beyond the authority Congress has otherwise assigned to the agency. Nor does NEPA require the NRC to select the environmentally preferable licensing outcome. The Supreme Court has repeatedly characterized NEPA as procedural: it requires informed consideration of environmental consequences to inform agency decisionmaking and public understanding rather than to dictate the substantive result.

The precise substantive boundary of the NRC's AEA authority is important to this rulemaking. The proposed rule states that, outside certain statutory exceptions, that authority is generally limited to matters bearing a reasonable nexus to radiological health and safety or the common defense and security. On that premise, the NRC proposes to limit NEPA analysis principally to radiological effects and certain hazards associated with radioactive materials.¹⁰

⁸ AEA § 161.

⁹ ADVANCE Act § 505(b).

¹⁰ Implementation of the National Environmental Policy Act, § 51.4(a): “(3) *The NRC's regulatory authority for production and utilization facilities and source, special, and byproduct materials is limited to effects or impacts with a reasonable nexus to radiological health and safety or the common defense and security.*”

The Atomic Energy Commission (AEC, predecessor to the NRC) initially tried to limit its duties strictly to radiological safety and adopted weak internal rules that ignored broader environmental concerns. Cases such as *New Hampshire v. Atomic Energy Commission* and *People Against Nuclear Energy v. NRC (PANE)* upheld the NRC's interpretation that its responsibility under the AEA was directed to the physical hazards associated with radioactivity.^{11,12} *New Hampshire* was decided before NEPA and did not address what procedural obligations NEPA would subsequently impose on the AEC or NRC. *PANE*, decided after NEPA's enactment, treated the AEA and NEPA questions *separately*. Accordingly, neither decision establishes that a nonradiological consequence of an NRC-authorized project is necessarily outside NEPA merely because the NRC lacks independent AEA authority over that environmental harm. The distinction between substantive regulatory authority and the scope of environmental review remains analytically important. *Seven County Infrastructure Coalition v. Eagle County* reiterates both principles, that an agency needs to weigh the environmental effects of the project but remains free to weigh environmental consequences as permitted by its governing statute and other substantive law.

The proposition that NEPA does not enlarge the NRC's substantive regulatory authority does not itself answer every question concerning the information that falls within a NEPA review. NEPA expressly directs federal agencies to employ an interdisciplinary approach to environmental decision making and to give environmental amenities and values appropriate consideration alongside economic and technical considerations.¹³ The relationship between the NRC's substantive authority and the scope of that procedural obligation must be analyzed under NEPA's text and the cases interpreting it, rather than inferred solely from the boundaries of the AEA.

Congress Has Recently Revised the Scope and Thresholds of NEPA Review

The Fiscal Responsibility Act

The FRA amendments are especially relevant to the present rulemaking because Congress materially revised NEPA's existing environmental-review requirements. Section 102(2)(C) had long required an EIS, where applicable, to address the environmental consequences of the proposed action, unavoidable adverse effects, and alternatives to the proposed action. In 2023, Congress revised § 102(2)(C)(i)–(v), retaining the basic framework while amending several elements:

¹¹ *New Hampshire v. Atomic Energy Commission*, 406 F.2d 170, 174–76 (1st Cir. 1969), cert. denied, 395 U.S. 962 (1969).

¹² *People Against Nuclear Energy v. U.S. Nuclear Regulatory Commission*, 678 F.2d 222, 249–53 (D.C. Cir. 1982), rev'd on other grounds sub nom. *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983).

¹³ 42 U.S.C. § 4332(2)(A)–(B).

consideration of “*reasonably foreseeable* environmental effects of the proposed *agency* action,” unavoidable adverse effects, and a “*reasonable range of* alternatives to the proposed *agency* action” that are “*technically and economically feasible and meet the proposal’s purpose and need*” (our *emphasis* reflecting revised statutory text).^{14,15} The FRA also added a separate requirement to study, develop, and describe technically and economically feasible alternatives.¹⁶

The FRA also added § 106 that expressly governs when an environmental document is not required and the appropriate level of environmental review. Section 106(a) identifies four threshold circumstances in which an agency is not required to prepare an environmental document: where the proposed action is not final agency action; where it is categorically excluded or otherwise excluded by law; where preparation of an environmental document would clearly and fundamentally conflict with another law; or where the proposed action is nondiscretionary and the agency lacks authority to consider environmental factors in determining whether to take the action.¹⁷ For actions requiring environmental review, § 106(b) distinguishes between EAs and EISs based on whether the proposed action has a *reasonably foreseeable* significant effect on the quality of the human environment or whether the significance of that effect is unknown.¹⁸

Sections 104 and 105 further indicate that NEPA’s procedural framework operates alongside an agency’s substantive authorities rather than simply mirroring their boundaries. Section 104 preserves federal agencies’ obligations to comply with environmental standards, coordinate or consult with other agencies, and act or refrain from acting on the basis of another agency’s recommendation or certification.¹⁹ Section 105 states that NEPA’s policies and goals are “supplementary to those set forth in existing authorizations of federal agencies.”²⁰ These provisions neither enlarge the NRC’s substantive authority under the AEA nor suggest that NEPA’s procedural requirements contract to the boundaries of that authority. Rather, they contemplate that NEPA operates alongside an agency’s organic statute and alongside environmental responsibilities assigned to other agencies.

Section 107, added by the FRA, establishes lead- and cooperating-agency arrangements when multiple federal agencies participate in an environmental review and directs coordination of environmental documents, reviews, permits, and authorizations. Congress preserved the

¹⁴ FRA § 321(a)(3)(B).

¹⁵ Id. § 321(a)(6), 137 Stat. 10, 39 (2023).

¹⁶ 42 U.S.C. § 4332(2)(F).

¹⁷ 42 U.S.C. § 4336(a).

¹⁸ Id. § 4336(b).

¹⁹ NEPA § 104, 42 U.S.C. § 4334.

²⁰ NEPA § 105, 42 U.S.C. § 4335.

statutory framework in which agencies with different substantive responsibilities may participate in a coordinated environmental review of the same proposed action.

The ADVANCE Act

The ADVANCE Act directs the NRC to streamline environmental reviews within its statutory requirements, not outside of them. Section 501 directed the NRC to conduct licensing and regulation efficiently and without unnecessarily limiting nuclear deployment or its societal benefits, consistent with the AEA and Energy Reorganization Act policies concerning adequate protection, common defense and security, and protection of the environment.²¹

Section 506 specifically directed the NRC to facilitate “efficient, timely, and predictable environmental reviews” for reactor license applications, including through expanded use of CatExs, EAs, and Generic Environmental Impact Statements (GEIS). Most significantly, Congress stated that potential revisions to Part 51 should facilitate efficient and predictable review while also assisting decisionmaking on relevant environmental issues, maintaining openness with the public, meeting the NRC’s obligations under NEPA, and reducing burdens on applicants and the Commission.²² Those objectives are complementary. The ADVANCE Act supports proportionate analysis, generic resolution of issues amenable to generic treatment, use of existing information, and elimination of unnecessary duplication. It does not itself establish that environmental effects outside the NRC’s independent regulatory jurisdiction cease to be environmental effects of an NRC-authorized project.

Congress also identified specific mechanisms and objectives for the NRC to carry out that modernization. Section 506 directs the NRC to consider reliance on environmental analyses prepared by other federal, state, and local agencies; coordination with other agencies to avoid duplication; streamlined consultation; additional CatExs; and case-specific use of EAs in circumstances where NRC regulations had previously mandated an EIS. Congress also expressly directed the NRC to consider opportunities to streamline its analysis of alternatives in environmental reviews, “including the Commission’s analysis of alternative sites.”²³

²¹ ADVANCE Act § 501(a).

²² ADVANCE Act § 506(b)(2)(L)(i)–(v).

²³ ADVANCE Act § 506(b)(2)(G).

The OBBBA

Congress amended NEPA again in 2025 through § 60026 of the OBBBA, which added § 112: “Project Sponsor Opt-in Fees for Environmental Reviews.”²⁴ Section 112 is significant to the present rulemaking because it reflects an additional statutory mechanism for accelerating NEPA review through resources, defined schedules, and applicant participation, rather than through categorical contraction of the substantive scope of environmental analysis. The NRC’s proposed rule expressly recognizes OBBBA and includes procedures for project sponsors seeking expedited review under § 112.

CEQ Guidance Is an Important Implementation Reference, but Does Not Displace Statutory and Judicial Requirements

The Council on Environmental Quality (CEQ) has an important statutory role in coordinating federal implementation of NEPA. NEPA Section 102(2)(B) directs federal agencies to identify and develop methods and procedures for implementing NEPA in consultation with CEQ. The current CEQ guidance is an important implementation and interpretive resource, but it is *not* an independent source of binding legal requirements. Effective April 11, 2025, CEQ now provides governmentwide implementation direction principally through guidance and agency consultation rather than binding NEPA regulations. In September 2025, CEQ issued updated implementation guidance together with an “Agency NEPA Procedures Template” intended to assist agencies revising their own NEPA procedures.²⁵

CEQ expressly states that its September 2025 guidance and template are not mandatory or binding and do not create new legal obligations. The template itself is explicit: *Agencies should not interpret any portion of this template as mandatory or prescriptive. The template is not a regulation, does not carry the force and effect of law, and is not intended to bind the public or any Federal agency.* CEQ instead describes the template as technical assistance designed to promote consistency while allowing each agency to adapt its NEPA procedures to its own statutory responsibilities and

²⁴ Section 112 permits a project sponsor to pay a fee equal to 125 percent of the anticipated costs of preparing an EA or EIS—or, where the sponsor prepares the document under § 107(f), 125 percent of the anticipated costs of supervising and, as applicable, preparing the document—in exchange for accelerated review deadlines. An EA subject to § 112 must be completed within 180 days after payment of the fee, and an EIS within one year after publication of the notice of intent.

²⁵ Council on Environmental Quality, *Implementation of the National Environmental Policy Act* (Sept. 29, 2025).

mission. CEQ further instructs agencies to use the template only to the extent consistent with agency authorities and applicable law.²⁶

The NRC appropriately has looked to that governmentwide framework in developing the proposed Part 51 revisions.²⁷ But the template does not itself supply an independent statutory or judicial basis for every provision it contains. Where proposed language is not directly grounded in NEPA or controlling precedent, the NRC should independently explain why that approach is appropriate for the NRC, including how it fits the agency's governing statutes, licensing framework, and existing environmental-review responsibilities. That agency-specific justification is important for provisions governing whether NEPA applies, the scope of environmental effects, the range of alternatives, the appropriate level of review, and coordination with other statutory processes.

Judicial Precedent Requires Both Meaningful Limits and Careful Attention to the Project Before the Agency

The landmark federal court ruling *Calvert Cliffs' Coordinating Committee, Inc. v. U.S. Atomic Energy Commission* in 1971 required the AEC to fully integrate nonradiological environmental impacts into its nuclear licensing decisions under NEPA. The D.C. Circuit rejected AEC rules that treated environmental review as peripheral to the agency's licensing process. The court emphasized that NEPA imposed procedural duties on the AEC notwithstanding the agency's preexisting statutory responsibilities and cautioned against using an "excessively narrow construction" of existing statutory authority to avoid those duties, absent an actual statutory conflict.²⁸

The court rejected the proposition that compliance with another agency's water-quality standards necessarily displaced the AEC's NEPA analysis. Congress had expressly contemplated consultation with agencies authorized to develop and enforce environmental standards, the court reasoned, but had not thereby authorized the AEC to abdicate NEPA review to those agencies. The court distinguished the substantive obligation to comply with another regulator's standards from the AEC's separate environmental-review responsibility, reasoning that NEPA

²⁶ Council on Environmental Quality, *Implementation of the National Environmental Policy Act* (Sept. 29, 2025), at 1; Council on Environmental Quality, *Agency NEPA Procedures Template*, Appendix 1 to Implementation of the National Environmental Policy Act (Sept. 29, 2025), at 1.

²⁷ *The proposed rule expressly states, for example, that the NRC is revising certain definitions for consistency with CEQ Guidance and that proposed § 51.19 would codify criteria for determining when NEPA applies consistent with that guidance.* Implementation of the National Environmental Policy Act, at 42089–90.

²⁸ *Calvert Cliffs' Coordinating Committee, Inc. v. U.S. Atomic Energy Commission*, 449 F.2d 1109, 1114–15 (D.C. Cir. 1971).

duties were displaced only where another specific statutory obligation actually precluded their performance.

Calvert Cliffs does not resolve the present rule by itself, as it predates current statutory reforms and legal precedent. But its language must be read together with present authorities, not as an independent basis for constricting NEPA beyond the limits Congress and the Supreme Court have recognized.

In *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983), the Supreme Court held that NEPA requires a “reasonably close causal relationship” between the relevant environmental change and the asserted environmental effect, analogous to proximate causation. Effects connected only through an attenuated causal chain fall outside NEPA even if factual “but for” causation could be established.²⁹ Applied to TMI-1, the Court identified low-level radiation, cooling-tower fog, and the discharge of warm water into the Susquehanna River as direct environmental effects of renewed reactor operation that the NRC had considered. The psychological effects claimed by the challengers fell outside NEPA because accident risk and the perception of that risk inserted additional links that rendered the asserted harm too attenuated. Thus, *Metropolitan Edison* establishes a causal boundary; it does not draw that boundary simply between radiological and nonradiological effects.

The Supreme Court added an agency authority component to that causation inquiry in *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004).³⁰ The Court held that where an agency lacks the ability to prevent an effect because of its limited authority over the relevant actions, it cannot be treated as the legally relevant cause of that effect.³¹ The factual basis of *Public Citizen* is important to the proposed rulemaking: the agency did not lack authority to regulate one environmental consequence of an activity it was otherwise free to authorize or reject; it lacked legal authority to prevent the underlying activity that produced the asserted effects. The extent to which *Public Citizen* applies to a discretionary NRC licensing action depends on the NRC’s legal authority over the proposed action itself, not simply on whether the NRC has independent regulatory authority over each environmental effect of that action.

In *Public Citizen* the Court also distinguished that the NRC’s lack of authority to require a different environmental control is different from its separate consideration under NEPA of the environmental effects resulting from the control authorized by the permitting authority. In

²⁹ *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774–76 (1983).

³⁰ *Department of Transportation v. Public Citizen*, 541 U.S. 752, 766–70 (2004).

³¹ *The Court identified the President’s lifting of the moratorium, not FMCSA’s ministerial implementation, as the legally relevant cause of the increased trucking activity.*

CLI-22-05 regarding Point Beach Nuclear Plant Units 1 and 2 (to be referred to as *Point Beach*), the Commission rejected three contentions and concluded that it could not use NEPA to second-guess the cooling system approved by the Clean Water Act permitting authority or require analysis of cooling towers as an alternative.³² That conclusion rested in part on a specific statutory limitation: the Clean Water Act prevents NEPA from being used to impose a different effluent limitation as a condition of a federal license or permit. At the same time, the NRC explained that the permitting agency determines what cooling system the facility may use while the NRC “factors the impacts resulting from use of that system into the NEPA cost-benefit analysis.”³³

In reaching its conclusion, *Point Beach* quoted *Sierra Club v. FERC (Sabal Trail)* for the proposition that an agency has no obligation to gather or consider environmental information if it lacks statutory authority to act on that information.³⁴ However, the original *Sabal Trail* opinion framed the inquiry as what factors FERC could lawfully consider when exercising its regulatory authority. The court distinguished circumstances in which Congress had forbidden FERC from relying on a particular environmental factor from circumstances in which FERC possessed broader statutory discretion to consider environmental harm.³⁵ BTI does not rely on *Sabal Trail* for the proposition that an agency must analyze effects of separate projects it does not regulate. Its relevance here is that it explains the reasoning incorporated into *Point Beach* and underscores the need to identify the precise statutory limitation that prevents an agency from acting on information.

That aspect of *Sabal Trail* must now be read in light of *Seven County Infrastructure Coalition v. Eagle County*.³⁶ The Supreme Court’s decision in *Seven County Infrastructure Coalition v. Eagle County* now supplies the principal modern framework for determining the scope of NEPA review. The Court emphasized both the procedural character of NEPA and the substantial discretion agencies possess in determining the appropriate depth and breadth of environmental analysis. When assessing significant environmental effects and feasible alternatives, agencies necessarily make “fact-dependent, context-specific, and policy-laden choices,” and reviewing courts should not second-guess those choices so long as they fall within a broad zone of reasonableness.³⁷

That deference operates within a substantive boundary that the Court repeatedly described in terms of the “project at hand.” The textual focus of NEPA, the Court explained, is the proposed action before the agency rather than other future or geographically separate projects that may

³² *NextEra Energy Point Beach, LLC (Point Beach Nuclear Plant, Units 1 & 2)*, CLI-22-05, 95 NRC 97, 104–05 (2022), [ML22082A151](#).

³³ *Id.* at 9.

³⁴ *Id.*

³⁵ *Sierra Club v. FERC (Sabal Trail)*, 867 F.3d 1357 (D.C. Cir. 2017).

³⁶ *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 172–73 (2025).

³⁷ *Id.* at 177–78.

occur as a consequence of it.³⁸ Thus, the Surface Transportation Board was not required to analyze the environmental effects of separate upstream oil-production and downstream refining projects merely because construction of the railway could foreseeably facilitate those activities. The post-*Seven County* decision repeatedly framed the limitation around effects of separate projects, including a power-generation facility outside FERC's jurisdiction.³⁹ This distinction suggests that environmental effects attributable to the proposed action itself remain part of the NEPA inquiry, including effects that arise indirectly from that action, as discussed further in Section III of this comment.

The majority opinion addressed agency authority directly—a project at hand versus a separate project—and the final rule should engage that discussion rather than rely on the concurrence alone. The Court observed, regarding a separate project specifically, that the Board “possesses no regulatory authority or control” over those separate projects; restated *Public Citizen's* rule that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect”; and summarized that “agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority.”⁴⁰ For effects of a project before the agency the court ruled: “To the extent that the new 88-mile railroad line could disrupt the habitat of protected species, or the new rail embankments could cause soil erosion into local bodies of water, or trains on the new line could pollute the air, NEPA dictated that the Board evaluate those effects.”⁴¹ The Surface Transportation Board holds no more authority over habitat, soil erosion, or ambient air quality than the NRC holds over the corresponding effects of reactor construction, yet NEPA required analysis of those effects because they were consequences of the railway the Board approved.

Justice Sotomayor's concurrence in the judgment, joined by Justices Kagan and Jackson, articulated the agency-authority principle more broadly.⁴² An agency is not responsible for environmental effects it could not lawfully avoid either through mitigation or by disapproving the federal action. It further reasoned that, where an agency's organic statute precludes consideration of an issue, the agency may set that issue aside in its NEPA review. That reasoning is important to this rulemaking and appears to underlie the NRC's proposed approach despite AEA not precluding consideration of each category of effect the NRC proposes to exclude.

³⁸ Id. at 188–91, 189–90.

³⁹ *Sierra Club v. Federal Energy Regulatory Commission*, No. 24-1099, slip op. at 18–19 (D.C. Cir. Sept. 30, 2025).

⁴⁰ *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 188–90 (2025).

⁴¹ Id. at 189.

⁴² Id. at 198–200.

The Governing Framework for This Rulemaking

Read together, the statutes and cases establish several principles that should guide the final rule.

First, NEPA does not expand the NRC's substantive powers or authorize the NRC to impose environmental controls that the AEA or another governing statute does not permit. Second, NEPA imposes an independent procedural requirement where Congress has made environmental review applicable. Third, NEPA does not extend to every factual consequence of federal action: the effects considered must be reasonably foreseeable and bear a reasonably close causal relationship to the proposed agency action, and *Seven County* permits agencies to exclude effects attributable to separate projects beyond the project under review. Fourth, the NRC's organic authority can bear directly on causal responsibility, notably where the NRC lacks legal discretion to prevent the underlying action producing the effect. Organic-law limits may also matter where Congress has affirmatively prohibited the NRC from considering a specific environmental factor in exercising its licensing discretion. But the existence and consequence of that limitation must be established under the relevant statutory provision and factual setting; it should not be presumed merely because another regulator possesses primary jurisdiction over a particular environmental resource.

The NRC's proposed rule appears to draw substantially on *Seven County's* concurrence and on *Public Citizen's* authority-based formulation, but the legal premise necessary to apply that formulation under the AEA is established in neither the rule itself nor the preamble. *People Against Nuclear Energy*, relying on *New Hampshire*, established substantial limits on the NRC's substantive authority to regulate nonradiological harms as matters of nuclear health and safety. But those decisions do not themselves establish that the AEA affirmatively precludes the NRC from considering every such effect when exercising discretion over an NRC licensing action. The relevant question for the final rule is not whether another regulator possesses substantive jurisdiction over an environmental resource, but whether the NRC's governing statute actually prevents the NRC from considering the environmental consequence in deciding whether or how to act on the proposed federal action.

Congress has directed the NRC to make environmental review substantially more efficient. The most legally durable means of doing so are those Congress itself identified: proportional analysis, generic treatment where supported by an adequate technical record, CatExs for categories of actions that ordinarily lack significant effects, reliance on existing studies, interagency coordination, and elimination of unnecessary duplication.⁴³ The more difficult legal questions

⁴³ ADVANCE Act § 506(a), (b)(2)(A)–(F), (H)–(I).

arise where streamlining changes the boundary of the “proposed agency action,” eliminates closely caused effects of the NRC-authorized project from the environmental review, or converts limitations on the NRC’s substantive remedial authority into categorical limitations on what NEPA permits the NRC to consider.

Those distinctions inform BTI’s comments on the proposed definition of environmental effects, threshold applicability of NEPA, purpose and need, alternatives, level of NEPA review, generic analyses, and public participation below.

III. SCOPE OF ENVIRONMENTAL EFFECTS

Proposed § 51.4 would categorically exclude from NEPA review effects that the NRC has “no ability to prevent due to the limits of its regulatory authority,” while defining that authority, for most licensed facilities and materials, principally by reference to radiological health and safety and the common defense and security. This conflates substantive matters the NRC may regulate under the AEA with the environmental consequences of the project that NEPA requires the NRC to identify and evaluate. The final rule should not exclude reasonably foreseeable nonradiological effects that have a close causal relationship to the proposed agency action from NEPA reviews. The limits of NRC authority under the AEA do not prevent the agency from reviewing such relevant environmental effects under NEPA. As established, the NRC should only exclude such effects that are attributable to separate projects or actions outside the NRC’s control.

The NRC is Conflating its Substantive Authority with its Procedural Responsibility

The proposed rule repeatedly treats the NRC’s inability to regulate or mitigate an environmental effect as sufficient reason to exclude that effect from NEPA review.⁴⁴ The preamble states that even where an activity and its effects have a close causal relationship to the proposed agency action, the NRC will not consider those effects if it lacks authority to prevent or mitigate them.⁴⁵ This is

⁴⁴ Implementation of the National Environmental Policy Act, at 42,105–06.

⁴⁵ Id. at 42089: “Therefore, under this proposed rule, the NRC’s evaluation of reasonably foreseeable effects of the proposed agency action and reasonable range of action alternatives (e.g., the no-action alternative) would focus on those radiological effects that the NRC has the substantive statutory authority to regulate (e.g., radiological impacts and, in some cases, the impact of chemical hazards of radiological materials), as described in the definition of “effects” in § 51.4. This means that while certain activities and their associated effects may have a close-causal relationship with the proposed agency action, the NRC may not have legal authority to prevent or mitigate the effects and therefore, will not consider those effects in its NEPA reviews.”

incorrect. The proposed rule identifies nonradiological construction impacts “such as dust, noise, nonradiological water and air quality impacts, [and] nonradiological ecological impacts” as effects it would exclude from NEPA review. However, such impacts are not the product of an independent third-party decision, or remote in time or space. The NRC’s licensing action gates them: construction of a production or utilization facility may not lawfully begin without NRC authorization, so the licensee’s construction is activity the NRC may permit, condition, or refuse. That distinguishes these effects from each exclusion in proposed § 51.4(a)(2). They are not effects the NRC “has no ability to prevent”; denying the permit prevents them entirely. They are not effects that “would occur regardless of the proposed agency action”; without the permit they cannot lawfully occur at all. And they do not “need to be initiated by a third party” in the sense that exclusion should be understood, because no third party can initiate them without the NRC’s authorization. Proposed § 50.36b confirms the NRC’s continuing role by authorizing permit conditions “to protect the environment during construction.”

As discussed above, BTI does not dispute that the NRC’s substantive AEA authority is principally for radiological health and safety. But, operating within the bounds of the NRC’s substantive authority, the AEA does not necessarily define the scope of environmental effects under NEPA with respect to procedure. NEPA Section 106(a)(4), as amended by the FRA, does not provide a general exemption when environmental consequences of an action fall outside an agency’s substantive regulatory jurisdiction. Rather, the provision addresses a “nondiscretionary action” with respect to which the agency lacks authority to take environmental factors into consideration in deciding whether to act. That threshold provision does not resolve the scope of effects in every discretionary licensing proceeding, but it reinforces the need to distinguish NEPA applicability, the scope of effects, and the substantive remedies available to the NRC. Congress did not insert an equivalent limitation into Section 102(2)(C)’s effects or alternatives provisions.

The Proposed Rule Meaningfully Departs from Existing Regulation

Existing regulation demonstrates the relationship between substantive environmental jurisdiction and the NRC’s ability to act on environmental information. § 50.36b authorizes construction permits, early site permits, and combined licenses to include “conditions to protect the environment during construction,” and permits environmental conditions to be similarly included in operating licenses during operation and decommissioning.⁴⁶ Those conditions may

⁴⁶ 10 CFR § 50.36b(a)–(b).

include reporting and recordkeeping requirements and “conditions and monitoring requirement[s] for the protection of the nonaquatic environment.” The proposed rule would preserve those substantive provisions while conforming their references to the revised Part 51 framework.⁴⁷ Proposed § 51.75 continues to direct the NRC’s environmental document to consider environmental conditions and monitoring requirements that will be included in the license under § 50.36b.⁴⁸ Section 50.36b does not, by itself, establish that the NRC possesses general substantive jurisdiction over those environmental resources, nor does it establish that every nonradiological effect may support a license condition. But the continued existence of express environmental-conditioning authority makes it insufficient to infer, solely from the NRC’s lack of primary regulatory jurisdiction over a resource, that the NRC is legally incapable of considering or acting on information concerning nonradiological effects.

The proposed rule also removes existing regulatory language that bears directly on the distinction between another regulator’s substantive authority and the NRC’s environmental-review responsibilities. Current § 51.71(d), footnote 3, provides that compliance with environmental-quality standards imposed under the Federal Water Pollution Control Act “is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action,” including water-quality degradation, and to consider available alternatives for reducing adverse effects.⁴⁹ The footnote then specifies how the NRC addresses that division of authority: where the permitting authority has prepared an assessment of aquatic impacts, the NRC considers that assessment in determining the magnitude of the environmental impacts; where no such assessment exists, the NRC establishes the magnitude of the potential impacts itself or in coordination with the permitting authority and other agencies with relevant expertise.⁵⁰ The existing rule responds to overlapping jurisdiction through reliance and coordination, rather than by treating the NRC’s lack of primary regulatory authority over water quality as sufficient to remove the resulting environmental effect from NRC consideration. That provision reflects the same basic distinction recognized in *Calvert Cliffs* and *Point Beach*: another regulator may determine the applicable environmental standard without necessarily displacing the NRC’s consideration of the resulting environmental consequence.

⁴⁷ Implementation of the National Environmental Policy Act, at 42104.

⁴⁸ Id. at 42117–18.

⁴⁹ Implementation of the National Environmental Policy Act, at 42116–17.

⁵⁰ Id.

The proposed rule removes that statement while simultaneously defining “effects” to exclude certain consequences based on limits to the NRC’s regulatory authority. Proposed § 51.71(b) continues to require discussion of reasonably foreseeable environmental effects, and proposed § 51.71(c) separately retains the existing statement that satisfaction of NRC radiological standards does not eliminate consideration of radiological effects under NEPA.⁵¹ But the proposed framework does not retain a comparable statement explaining the relationship between environmental standards administered by other authorities and the NRC’s consideration of project effects. The final rule should acknowledge this change and explain whether, and why, the NRC now interprets the relationship between substantive environmental jurisdiction and NEPA consideration differently.

Legal Precedent

Dust, noise, runoff, habitat disturbance, and other nonradiological effects caused by construction of an NRC-authorized facility are analogous to the habitat disruption, erosion, and air pollution associated with the railway in *Seven County*. They arise from the physical construction of the project before the agency rather than from a separate project undertaken later by another regulated entity. The fact that the Environmental Protection Agency (EPA), a State, a Tribe, or another federal agency possesses primary regulatory authority over the affected environmental resource does not by itself transform an effect of NRC-authorized construction into an effect of a separate project. The relevant distinction is whether the effect is attributable to the project before the NRC or to a separate action outside the NRC’s control. Nonradiological effects caused by excavation, foundation work, or other NRC-authorized construction are physical consequences of constructing the licensed project itself, not caused by a separate or secondary project.

Seven County also expressly cautioned that effects of the project at hand may remain within NEPA even when they extend outside the project’s geographic area or materialize later in time, identifying downstream runoff and downwind emissions as examples. Temporal and geographic remoteness may bear on whether an effect is reasonably foreseeable and bears a reasonably close causal relationship to the proposed action, but they should not independently exclude an effect that remains attributable to the project under review.

⁵¹ Id.

Jurisdictional Limits Should Lead to Coordinated Review, Not Fragmented Analysis

The concerns discussed above are significant as related statutes allocate different kinds of authority and consultation produces information relevant to the physical development of the project. The NHPA principally imposes procedural duties to identify, consider, and consult regarding environmental effects, while others may give another agency substantive authority to prohibit, condition, or permit the activity causing those effects. The ESA can involve both procedural consultation and substantive constraints, while Clean Water Act permitting and certification requirements may place substantive authority over specific discharges or water-quality impacts outside the NRC. Those differences do not make the underlying environmental effect unrelated to the NRC-authorized action. Nor does considering an effect under NEPA necessarily require the NRC to duplicate another agency's analysis, alter another regulator's determination, or exercise substantive authority that Congress assigned elsewhere.

The proposed rule would also risk separating analytical processes where the same underlying information remains necessary to multiple statutory requirements. The proposed rule treats the NRC's lack of substantive authority over a distinct environmental effect as a basis for excluding that effect from the NRC's NEPA analysis. But the 2023 amendments to NEPA establish another model for streamlining environmental review: coordinating responsibility, schedules, expertise, and environmental documentation across agencies.

NEPA § 107, titled "Timely and Unified Federal Reviews," establishes page limits, project-sponsored preparation procedures, and deadlines of one year for EAs and two years for EISs. It also expressly gives the lead agency access to agencies that have the very jurisdiction or expertise the lead agency itself may lack:

To the extent practicable, if a proposed agency action will require action by more than one Federal agency and the lead agency has determined that it requires preparation of an environmental document, the lead and cooperating agencies shall evaluate the proposal in a single environmental document.⁵²

⁵² FRA § 107(b).

Congress's streamlining model included unifying review, assigning institutional responsibility, coordinating agencies, relying on others' expertise, establishing schedules, and avoiding duplicative documents, *not* to analyze less. Where information concerning a project effect must already be developed through one of these processes, excluding that information categorically from the NEPA document may shift rather than eliminate analytical work.

The proposed rule's approach to NRC jurisdiction of effects does not heed this direction. This creates complications that Congress was expressly trying to avoid. One such example is if NHPA is implicated during a NRC NEPA review of a proposed project, it is not even clear in the proposed rule itself what other agency would conduct that review. The NRC's proposed framework continues to contemplate NRC responsibility for consultations required under other environmental statutes, and the draft NUREG-2270 separately provides for integrating NEPA review with those requirements. Further, Congress specifically directed the NRC in the ADVANCE Act to consider opportunities to coordinate EAs and EISs with other federal agencies to avoid duplicative review and to streamline formal and informal consultation and coordination with federal, state, and local permitting agencies.⁵³

The Proposed Limitation May Shift Rather Than Eliminate Adjudicatory and Implementation Burdens

The proposed limitation may reduce the number of environmental issues addressed on the merits under NEPA, but it may not reduce the disputes associated with those effects. Instead, it makes the boundary of the NRC's substantive authority a threshold question for both environmental review and adjudication. The NRC expressly states that, under the proposed definition of "effects," contested hearings on NEPA contentions would focus only on radiological effects within the NRC's substantive statutory authority.

The proposed rule could thus replace some disputes over environmental analysis with disputes over regulatory jurisdiction and NEPA scope rather than resolving contested issues. *Calvert Cliffs* illustrated how the agency's rules governing how NEPA would operate within the nuclear licensing process became the subject of judicial review. The proposed rule could create a modern form of that threshold dispute. A future contention concerning an ecological, water-quality, human-health, or land-use consequence may no longer turn first on whether the effect was

⁵³ ADVANCE Act § 506(b)(2)(E)–(F).

adequately analyzed. Instead, the threshold question may be whether the asserted effect is sufficiently connected to radiological health and safety to fall within the NRC's authority at all. Rather than litigating only whether the NRC adequately evaluated a specific environmental effect, parties could challenge whether the NRC lawfully excluded an entire category of effects from NEPA review based on its interpretation of substantive regulatory authority. The governing statutory and judicial framework is materially different today, and *Calvert Cliffs* does not establish that the proposed limitation is unlawful. But the case illustrates that a categorical rule intended to reduce case-specific environmental disputes can instead generate a more consequential challenge to the legal boundary governing all subsequent licensing reviews.

That risk is heightened because the NRC proposes a categorical definition, not merely a case-specific judgment about remoteness or causation. The proposal would exclude even effects closely connected to the agency action where the NRC concludes that it lacks authority to prevent or mitigate them. A disagreement over substantive authority could determine whether an entire category of information enters the NEPA analysis and, because the same definition would govern across licensing proceedings, could become a recurring challenge to the regulatory framework itself.

A robust measure of modernization should be whether the rule reduces the total analytical, adjudicatory, consultation, and implementation burden of a licensing action, not simply the length or subject matter of the NEPA document. A shorter environmental document provides limited efficiency gains if excluded issues must still be developed elsewhere or if their exclusion generates recurring disputes over NRC authority, contention admissibility, or the proper statutory forum.

Recommendations

1. **Revise § 51.4 so that NEPA effects are bounded primarily by causation and project attribution, not categorically by NRC substantive regulatory authority.** Section 51.4(2) should continue to exclude effects that are remote, causally attenuated, attributable to separate projects, would occur regardless of the proposed action, or depend on independent actions by third parties. The NRC should retain a reasonably close causal relationship to the proposed agency action as the operative boundary.

2. **Revise proposed § 51.4(a)(2) to clarify that a licensed activity is not third-party initiation.** Proposed § 51.4(a)(2) excludes effects "that would need to be initiated by a third party." Read literally, that exclusion could remove the environmental effects of NRC-authorized construction from NEPA review, because the licensee—not the NRC—performs the construction. That cannot be the intended result. The third-party exclusion in proposed § 51.4(a)(2) should reach effects contingent on an independent third-party decision, not effects of activity the NRC itself authorizes and may condition under § 50.36b. The NRC should insert "independently" so the provision excludes effects "that would need to be initiated *independently* by a third party."
3. **Reconcile proposed § 51.4 with §§ 50.36b and 51.75**, and with analogously proposed § 53.1112. The final rule should (1) reconcile those longstanding provisions with the preamble's conclusion that the NRC lacks authority to condition or deny a construction permit to mitigate nonradiological construction effects such as dust, noise, air- and water-quality effects, and ecological effects; and (2) identify the legal boundary between environmental matters that the NRC may address through § 50.36b and matters that governing law actually precludes the NRC from considering or mitigating.
4. **Revise temporal and remote treatment of reasonably foreseeable effects to:** *"In determining whether an effect has a reasonably close causal relationship to the proposed agency action or alternatives, the NRC may consider temporal or geographic remoteness and the length of the causal chain. Temporal or geographic remoteness alone does not exclude an effect of the proposed agency action or alternatives."*
5. **Make NRC authority a separate limiting inquiry and require an identifiable legal basis when authority is used to exclude an effect.** Section 51.4(3) should describe the limits of the NRC's substantive regulatory authority without defining those limits as the universe of "effects or impacts" cognizable under NEPA. Consistent with *Public Citizen*, effects may be excluded where the NRC lacks legal control over the underlying action producing them; consistent with *Seven County*, effects attributable to separate projects may fall outside the review of the project at hand. But an otherwise reasonably foreseeable effect of the NRC-authorized project should not be excluded solely because another regulator has primary substantive authority over the affected environmental resource. Where the NRC relies on its organic statute to exclude an effect, the final rule or preamble should identify why the NRC lacks legal control over the underlying action or why applicable law actually prevents consideration of that effect.

6. **Preserve coordinated use of environmental information developed under other statutory regimes.** Where ESA, NHPA, Magnuson-Stevens Act or another process already produces information about an effect of the project, the NRC should be able to incorporate, reference, or coordinate that information rather than either duplicating the analysis or excluding it from the NEPA record.
7. **Clarify how the revised effects boundary operates in adjudication and implementation.** The final rule and NUREG-2270 should address effects involving both radiological and nonradiological pathways, clarify how contention admissibility is determined where the dispute concerns whether an effect falls within § 51.4, and explain how information developed through parallel statutory processes should be treated. The NRC should evaluate efficiency across the full licensing process—including environmental analysis, consultation, adjudication, and implementation—not simply by whether fewer subjects appear in an EA or EIS.

IV. PURPOSE AND NEED AND REASONABLE ALTERNATIVES

Narrowing the alternatives analysis is appropriate. The NRC should not routinely evaluate gas, solar, wind, or other forms of electricity generation that fall outside its regulatory and licensing role as alternatives to a nuclear licensing action. However, the final rule should not replace that overbroad framework with a presumption that no action is ordinarily the only reasonable alternative. Instead, the NRC should preserve a case-specific alternatives inquiry focused on reasonable nuclear alternatives—including, where appropriate, alternative sites, nuclear technologies or system designs, and materially different project configurations—in addition to the no-action alternative.

The NRC Should Move Away From Alternatives Outside Its Regulatory and Licensing Role but Supports a Bounded and Meaningful Alternatives Inquiry

SRM-SECY-24-0046 appropriately directed the NRC staff to narrow the historical alternatives analysis, but inappropriately constricted the NRC's analysis to only the action at hand or no action at all.⁵⁴ After approving Option 1.b, "Rulemaking to Modify Purpose and Need to Focus on Agency Action," the NRC instructed:

⁵⁴ Nuclear Regulatory Commission, *Implementation of the Fiscal Responsibility Act of 2023 National Environmental Policy Act Amendments*, SRM-SECY-24-0046, July 28, 2025, [ML25209A050](#).

In implementing Option 1.b, the staff should limit the alternative analysis to avoid analysis of forms of generation outside the NRC's regulatory and licensing authority, including a focus on the no action alternative.

BTI agrees that NRC review of a proposed nuclear facility generally should not require the agency to determine whether a gas-fired power plant, solar facility, wind project, purchased power, or another non-nuclear resource could satisfy the same generalized demand for electricity. Those alternatives involve separate technologies and regulatory decisions that the NRC cannot authorize or select. Focusing the analysis on the agency action before the NRC would reduce unnecessary analysis and better align the environmental review with the decision the NRC must actually make. That narrower approach is also consistent with the agency-control principles reflected in *Public Citizen* and *Seven County*: NEPA does not ordinarily make an agency responsible for separate actions or projects over which it lacks legal control.

The broader approach developed in SECY-24-0046 goes beyond eliminating unrelated forms of generation. Staff recommended that, “[i]n most cases,” the reasonable range of alternatives to an NRC regulatory or licensing decision would be “defined as and limited to the no action alternative” because not engaging in the licensing decision would be the only reasonable alternative to the agency action.⁵⁵ That narrow conclusion is separate from the appropriate decision to exclude non-nuclear generation alternatives. The proposed-rule preamble carries that reasoning forward, stating that the NRC’s agency action will typically be the regulatory or licensing decision and that, in most cases, the reasonable range will be limited to no action.

The NRC has substantial statutory discretion to define the purpose and need of an environmental review, but that discretion has limits. NEPA (as amended by the FRA) Sections 102(2)(C)(iii) and 102(2)(F) give the NRC substantial room to exclude infeasible or irrelevant alternatives, but the statutory formulation does not itself establish that the reasonable range will ordinarily consist only of the application as filed and no action.

NEPA § 102(2)(C)(iii) requires consideration of a “reasonable range of alternatives to the proposed agency action” that are technically and economically feasible and meet the proposal’s purpose and need. The statute does not require multiple affirmative alternatives in every case, but neither does it support presuming that the reasonable range will ordinarily collapse to the proposed action and no action before the circumstances of the licensing decision are considered. Once

⁵⁵ Nuclear Regulatory Commission, *Implementation of the Fiscal Responsibility Act of 2023 National Environmental Policy Act Amendments*, SECY-24-0046 Enclosure 1: Proposed Agency Action and Reasonable Range of Alternatives, June 13, 2024, [ML24078A008](#), at 6.

alternatives outside the NRC's regulatory role are removed, the relevant question is what reasonable alternatives remain within that role; especially where the NRC has more than one legally available regulatory option and those options could produce materially different environmental effects.

Proposed § 51.4 defines “reasonable alternatives” to include only alternatives that are technically and economically feasible, “within the scope of the NRC’s statutory authority,” and meet the purpose and need for the proposed agency action. *Citizens Against Burlington, Inc. v. Busey* provides a useful framework. The D.C. Circuit explained that NEPA requires an agency to evaluate alternatives to the federal action rather than alternatives to the applicant’s private proposal. At the same time, the agency’s goals are appropriately “shaped by the application at issue and by the function that the agency plays in the decisional process,” and the agency may consider the applicant’s objectives in formulating the goals of its own action.⁵⁶ The court afforded substantial discretion to the agency’s definition of purpose, but cautioned that an agency may not define its objectives so narrowly that only one alternative within its authority can satisfy them and the EIS becomes a “foreordained formality.”⁵⁷ The purpose and need should reflect the NRC’s statutory role in acting on the application and should be informed by the applicant’s legitimate project objectives. But it should be framed at a level that permits meaningful comparison among reasonable nuclear alternatives where they exist.

The NRC already has experience with such an approach. NRC staff has explained that new and advanced reactor EISs historically have considered, as applicable, no action, site alternatives, energy-generation alternatives, and system-design alternatives. The NRC can modernize that framework by eliminating the portion that takes the agency outside its proper role—routine comparison against non-nuclear forms of generation—while preserving the nuclear-project alternatives that may meaningfully inform the licensing decision.

The ADVANCE Act reinforces that case-specific approach. Congress directed the NRC to consider “opportunities to streamline the Commission’s analyses of alternatives, including the Commission’s analysis of alternative sites.”⁵⁸ That direction does not require the NRC to analyze alternative sites in every environmental review. But Congress’s choice to direct the NRC to streamline alternative-site analysis—not only no action analysis—indicates that alternative sites remain a category that warrants consideration where relevant.

⁵⁶ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

⁵⁷ *Id.*

⁵⁸ ADVANCE Act, § 506(b)(2)(G).

Recommendations

1. **Preserve a case-specific, bounded alternatives inquiry rather than presuming that no action is ordinarily the only reasonable alternative.** The NRC should revise the final rule and NUREG-2270 so that purpose and need reflects both the applicant's legitimate objectives and the NRC's independent statutory role in acting on the application. The NRC should not define purpose and need so narrowly that the alternatives inquiry is effectively limited at the outset to approval of the application as filed or no action.
2. **Limit affirmative alternatives to those meaningfully related to the NRC's licensing role, while preserving reasonable nuclear alternatives where they exist.** The NRC appropriately may exclude gas, solar, wind, purchased power, and other unrelated generation projects that it lacks authority to authorize or select. But "within the scope of the NRC's statutory authority" should not be interpreted to exclude an alternative nuclear site, technology, system design, project configuration, or other regulatory option solely because the NRC could not unilaterally compel the applicant to adopt it. For each review, the NRC should conduct a proportionate screening for technically and economically feasible alternatives that meet the properly framed purpose and need, and briefly explain why any potentially relevant alternative is excluded.
3. **Clarify how reasonably foreseeable consequences of the no-action alternative will be evaluated.** The final rule or NUREG-2270 should distinguish between an external generation resource that the NRC need not analyze as an affirmative alternative and replacement generation, resource inadequacy, or another external response that may be a reasonably foreseeable consequence of selecting no action. Where those consequences are reasonably foreseeable and material to the environmental comparison, the NRC should provide a proportionate analysis sufficient to characterize the no-action alternative without recreating a full alternatives analysis of projects outside its regulatory authority.

V. DETERMINATION OF WHEN NEPA APPLIES

BTI supports codifying a clear threshold framework for determining when NEPA applies to NRC actions. Proposed § 51.19 should preserve the distinction Congress drew between threshold applicability and the separate determination of the appropriate level and scope of environmental review. For the NRC's principal licensing actions, including new licenses, renewals, and other discretionary authorizations that the NRC itself generally identifies as "major," the threshold inquiry ordinarily should be straightforward. The real streamlining question is generally what level and scope of environmental review is appropriate, not whether the federal licensing decision escapes NEPA altogether.

The “Project at Hand” Principle Should Govern the Scope of Review, Not Whether the NRC Action Is Subject to NEPA

Proposed § 51.19(b) states that “[i]n determining whether NEPA applies to a proposed agency action, the NRC will consider only the action or project at hand.”⁵⁹ The NRC should reconsider the placement and function of this provision. The “project at hand” principle recognized in *Seven County* addresses the scope of effects attributable to a project once the agency is conducting NEPA review; it does not itself establish whether the federal agency action is subject to NEPA.

Congress expressly separated those questions in the FRA. Section 106(a) identifies the circumstances in which an environmental document is not required. For actions that remain subject to environmental review, § 106(b) separately determines the appropriate level of review according to the significance of the proposed agency action’s reasonably foreseeable effects. The NRC’s proposed §§ 51.19 and 51.20 reflect the same sequence: § 51.19 determines whether NEPA applies, while § 51.20 determines whether an applicable action may be categorically excluded or requires an EA or EIS.⁶⁰

The Court distinguished environmental effects of the project itself—including indirect effects such as downstream runoff or downwind emissions—from effects attributable to separate future or geographically distinct projects.⁶¹ The Court then applied that principle by requiring analysis of habitat disruption, erosion, and air pollution caused by construction and operation of the railway itself, while excluding effects attributable to separate upstream drilling and downstream refining projects.⁶²

That reasoning provides an important and administrable boundary for the scope of NEPA review. But incorporating it into § 51.19(b) as a criterion for determining “whether NEPA applies” risks assigning a scope-of-effects principle a different threshold function. The final rule should instead use § 51.19 to determine whether the NRC action itself is subject to NEPA and address the project-at-hand principle in the provisions governing the scope of effects once NEPA applies. At minimum, the NRC should clarify that § 51.19(b) does not permit the agency to treat an otherwise covered licensing decision as outside NEPA merely because some effects arise from separate projects that fall outside the scope of the resulting environmental analysis.

⁵⁹ Implementation of the National Environmental Policy Act, § 51.19(b).

⁶⁰ Implementation of the National Environmental Policy Act, §§ 51.19–51.20.

⁶¹ *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 182–90.

⁶² *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. at 189–90.

NRC-Specific Exclusions Should Be Tied to an Identifiable Statutory or Precedential Basis

As discussed in Section II, proposed § 51.19 substantially follows CEQ's September 2025 Agency NEPA Procedures Template. CEQ expressly contemplates that agencies will adapt it to their own statutory authorities and applicable law; the NRC should ensure that provisions incorporated from the template are independently grounded in NEPA, controlling precedent, and the NRC's own statutory framework.

Proposed § 51.19(a)(4) draws on both § 106(a)(4) and § 111(10)(B)(vii), but those provisions are not worded identically. Section 106(a)(4) refers to a nondiscretionary action for which the agency lacks authority to take environmental factors into consideration in deciding whether to act; § 111(10)(B)(vii) excludes nondiscretionary activities or decisions made in accordance with the agency's statutory authority.⁶³ The NRC's "no residual discretion" formulation may provide a workable means of implementing both provisions, but the final-rule preamble should explain that relationship and which statutory provision supports a determination.

For the NRC's principal nuclear licensing actions, the first inquiry ordinarily should be relatively straightforward. NEPA now defines "major Federal action" as an action subject to "substantial Federal control and responsibility," and proposed § 51.19 states: *(i) The NRC anticipates, on the basis of its experience, that the following types of actions are generally "major:" an application for a new license or permit; an application for renewal of a license or permit; significant amendments to licenses or permits; some exemption requests; rulemaking; decommissioning actions; license termination; and limited work authorizations.*⁶⁴ The NRC should similarly explain how its interpretation that "major" and "Federal action" each have "independent force" relates to Congress's enacted definition of a major federal action as an action subject to "substantial Federal control and responsibility."⁶⁵ Proposed § 51.19 usefully identifies some generally major actions, which should improve predictability for significant NRC licensing decisions. But terms such as "some exemption requests" leave the operative boundary unclear. The final rule or guidance should identify the factors that distinguish exemption requests or other NRC actions that are major, such as exemptions that significantly alter the licensing basis or have a significant nexus to adequate protection, from those that do not.

⁶³ NEPA §§ 106(a)(4), 111(10)(B)(vii), 42 U.S.C. §§ 4336(a)(4), 4336e(10)(B)(vii).

⁶⁴ Implementation of the National Environmental Policy Act, § 51.19(a)(6)(i).

⁶⁵ NEPA § 111(10)(A), 42 U.S.C. § 4336e(10)(A).

Proposed § 51.19(a)(5) adopts CEQ template language providing that NEPA does not apply where “another statute’s requirements serve the function of agency compliance with” NEPA.⁶⁶ But neither the template nor proposed § 51.19 identify when another statutory regime completely displaces NEPA rather than satisfying NEPA requirements. Elsewhere, CEQ’s template adopts a more specific approach for rulemakings, providing that procedures or documentation required by another statute or Executive order may satisfy “one or more requirements” of the agency’s NEPA procedures when the agency identifies the corresponding requirements that have been satisfied.⁶⁷ The NRC should clarify whether § 51.19(a)(5) is intended to recognize only circumstances in which another statutory process satisfies identified NEPA requirements or where another statute displaces NEPA compliance altogether because the existence of overlapping environmental requirements does not, standing alone, establish that NEPA has been displaced.

Proposed § 51.19(a)(7) also warrants more precise explanation. NEPA § 111(10)(B)(v) expressly excludes “bringing judicial or administrative civil or criminal enforcement actions” from the definition of major federal action.⁶⁸ Proposed § 51.19(a)(7) extends beyond that statutory formulation to include notices of violation, orders, denials of requests for action under Part 2, confirmatory action letters, bulletins, generic letters, notices of deviation, and notices of nonconformance.⁶⁹ Some or all of those actions may independently fall outside the statutory definition of major federal action, but the final rule should identify the basis for that determination rather than treating the statutory enforcement exclusion as self-evidently dispositive of every listed NRC action.

Proposed § 51.19(a)(8) likewise adopts CEQ’s template statement that “[t]he issuance or update of [agency’s] NEPA procedures is not subject to NEPA review.”⁷⁰ CEQ’s accompanying guidance explains that agencies may establish NEPA implementing procedures either through rulemaking or through nonregulatory guidance and establishes a consultation process for both approaches. But the template does not identify an express statutory exemption or judicial authority for categorically treating the issuance or revision of NEPA procedures as outside NEPA. Because proposed § 51.19(a)(6)(i) otherwise identifies “rulemaking” as an action that is generally major, the NRC should explain the legal basis for treating rulemakings establishing or revising the NRC’s NEPA procedures differently from rulemakings generally.

⁶⁶ Implementation of the National Environmental Policy Act, § 51.19(a)(5)).

⁶⁷ Council on Environmental Quality, *Agency NEPA Procedures Template*, Appendix 1 to *Implementation of the National Environmental Policy Act* (Sept. 29, 2025), at 17, § XXX3.12.

⁶⁸ NEPA § 111(10)(B)(v), 42 U.S.C. § 4336e(10)(B)(v).

⁶⁹ Implementation of the National Environmental Policy Act, § 51.19(a)(7)).

⁷⁰ Implementation of the National Environmental Policy Act, § 51.19(a)(6)(i), (a)(8)).

Without clearer distinctions, § 51.19 could create threshold disputes that the new provision is intended to prevent. Applicants, NRC staff, and other participants may be required to determine whether an issue concerns finality, nondiscretionary agency action, substantial federal control and responsibility, the scope of the project at hand, the significance of environmental effects, or the applicability of a CatEx before the substantive environmental review begins. A clearer allocation of those questions among §§ 51.19, 51.20, 51.22, and the definition of “effects” in § 51.4 would improve predictability while preserving the streamlined sequence Congress established.

Recommendations

1. **Retain the structure in the proposed rule, where applicability under § 51.19 is separate from level-of-review determinations under §§ 51.20 and 51.22.** § 51.19 should preserve the threshold applicability while §§ 51.20 and 51.22 dictate determination on the appropriate level and scope of environmental review.
2. **Relocate or clarify § 51.19(b)** so that the “project at hand” principle governs the scope of review rather than whether an otherwise covered NRC action is subject to NEPA.
3. **Explain the NRC-specific legal basis and limiting principles for §§ 51.19(a)(5), (a)(7), and (a)(8),** including how provisions drawn from CEQ’s nonbinding template implement NEPA within the NRC’s statutory framework and the criteria underlying terms such as “some exemption requests.”

VI. DETERMINING THE APPROPRIATE LEVEL OF NEPA REVIEW

Several aspects of the proposed rule move environmental review requirements toward more reasonable, tailored, and appropriate levels of NEPA review grounded in the effects a proposed project will have. BTI supports this more proportionate approach to environmental review: the level of review should reflect the expected environmental effects of the proposed agency action rather than be predetermined solely by the licensing pathway.⁷¹ That being said, there are several areas in the proposed rule where aspects of determining the appropriate level of NEPA review need to be clarified or modified for legal durability.

⁷¹ Yue “Joy” Jiang, Spencer Toohill, and Deric Tilson, The Breakthrough Institute, *Environmental Reviews Should Empower Nuclear Energy, Not Stall It*, May 5, 2025, <https://thebreakthrough.org/issues/energy/environmental-reviews-should-empower-nuclear-energy-not-stall-it>.

Elimination of Mandatory EIS Categories

BTI supports the proposed elimination of the prescriptive, automatic EIS requirements in current 10 CFR § 51.20(b), which generally requires an EIS for specified categories of NRC action based on the type of license or approval at issue. Proposed § 51.20 would instead apply the significance-based framework established by NEPA and eliminate the need for case-by-case exemptions where an EA is sufficient under NEPA, other than § 51.20(d) which requires an EIS for uranium enrichment facilities.⁷² It also directly responds to section 506 of the ADVANCE Act,⁷³ which instructed the NRC to consider amending § 51.20(b) to allow case-specific determinations that an EA may be appropriate in lieu of an EIS.

Eliminating the mandatory EIS categories does not eliminate or narrow the NRC's obligation to prepare an EIS when the record warrants one. If an EA or other information before the NRC indicates that reasonably foreseeable significant environmental effects are likely, the NRC should prepare an EIS. The final rule and implementing guidance should preserve clear significance-screening criteria and NRC discretion to require an EIS where the characteristics of the proposed action, the affected environment, or the reasonably foreseeable effects warrant that level of review.

Retain Routine Scoping and Draft-EIS Review

The NRC proposed to eliminate routine scoping and the preparation and publication of draft Environmental Impact Statements (DEIS) in its environmental review process. BTI recommends that the NRC retain both steps and instead adjust the timing and function. The proposed rule's other modernizations strengthen the case for this approach, including using the appropriate level of review that follows the significance of the reasonably foreseeable effects of the action rather than the category of license at issue, and the scope of the analysis narrowed both by the "project at hand" principle and by the NRC's position that it need not analyze alternatives it lacks authority to implement. These changes significantly and appropriately shift what the preparation of an EIS signifies. Once the automatic EIS categories are removed and the analysis is confined to the effects of the agency action itself, the NRC prepares an EIS only where it has determined that the action is likely to have reasonably foreseeable significant effects. Remaining

⁷² The NRC granted Kairos Power's Hermes 2 test reactor an exemption from the mandatory EIS requirement in current § 51.20(b), the NRC then completed an EA in less than one year using substantially fewer pages and staff hours than the Hermes EIS. U.S. Nuclear Regulatory Commission, SRM-SECY-24-0046—Implementation of the Fiscal Responsibility Act of 2023 National Environmental Policy Act Amendments, July 28, 2025, [ML25209A050](#).

⁷³ ADVANCE Act § 501.

EIS-level reviews are, by construction, the set of NRC actions with the most consequential environmental effects and the least generic precedent: precisely the reviews in which comment on a developed analysis is most useful to the NRC, and in which an uncorrected analytical error is most costly. Those same changes also reduce the number of EISs the NRC will prepare, so retaining scoping and a draft EIS for that smaller set carries a correspondingly smaller schedule burden than it would under the current framework.

Concern about timeline uncertainty can be addressed by retaining and adjusting 51.73 to a 30-day timeline, rather than removing that section. A fixed 30-day comment period is shorter than the 45-day minimum and the up-to-15-day extensions that current § 51.73 provides, so such a change reduces the schedule exposure of the existing provision rather than adding to it. Nor is a fixed window of that length impracticable on the NRC's own recent practice: the NRC has asked the public to comment on this proposed rule in 45 days, and has set comparable fixed periods for its other concurrent modernization rulemakings. A draft analysis of a single licensing action should not require more.

Removal of both steps is not, by itself, inconsistent with NEPA because the statute does not expressly require agencies to prepare or publish a separate DEIS before issuing a final EIS. However, NEPA's procedural function is not satisfied merely by producing a final environmental document.⁷⁴ The Supreme Court reaffirmed in *Seven County Infrastructure Coalition v. Eagle County* that NEPA is a procedural statute requiring agencies to consider the environmental effects of a proposed action as part of the decisionmaking process.⁷⁵ That process also has a public-facing function.

BTI's principal concern is that, if the DEIS process is eliminated as proposed, the NRC risks losing an important opportunity for public participation, development of the administrative record, and identification and correction of material errors before the agency finalizes its environmental analysis and takes action. A "notice of EIS" informs the public about plans to evaluate environmental effects for proposed nuclear actions like plant license renewals, new reactor sites, or major facility construction. There is opportunity to comment at the notice stage, but it lacks meaningful substance for the public to actually comment on and provide feedback because the analysis is not available at this stage. The NRC is effectively shifting from a linear and sequential environmental review process (Scoping → Draft EIS → Public Comment → Final EIS) to a process in which the first substantially developed NRC environmental analysis available for

⁷⁴ NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C).

⁷⁵ *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 172–73, 177–78 (2025).

public scrutiny is the final EIS; a point where a public comment would not change the decision-making or outcome.

That concern is important in NRC licensing proceedings because judicial review of covered NRC final orders is governed by the *Hobbs Act*, as incorporated through AEA § 189(b). Section 189(b) provides that covered final NRC orders are subject to judicial review under chapter 158 of title 28. Providing a meaningful opportunity to identify and address environmental objections before final agency action is important both to the development of the administrative record and to orderly subsequent judicial review.

In *Department of Transportation v. Public Citizen*, the Court explained that parties generally must raise their NEPA objections during the administrative process so that the agency is alerted to the issue and has an opportunity to address it before final action.⁷⁶ Parties challenging NEPA compliance generally must participate in a manner that alerts the agency to their position and gives it an opportunity to address the objection before final action. NRC's own contention rules reflect that concern. 10 CFR 2.309 permits participants to raise new or amended environmental contentions based on subsequently issued NRC environmental documents, and the proposed rule would continue to permit such contentions subject to the requirements governing later-filed contentions.⁷⁷ Eliminating routine review of a developed DEIS could make that process more difficult. If the factual or analytical basis for a NEPA objection first becomes apparent when the NRC publishes the final EIS, the opportunity to raise and resolve the issue before final agency action may be substantially reduced. The result may be to shift disputes into later contention practice or judicial-review proceedings rather than resolve them during development of the environmental analysis.

Additionally, proposed § 2.309(f)(2) provides that “[o]n issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant’s environmental report or draft environmental document.” However, proposed § 51.4 states that a “draft environmental document” is, by definition, applicant prepared, and it exists only where the NRC has authorized the § 51.46 contractor pathway. For every other application, the applicant’s environmental report is the only document available when contentions are due, and proposed § 2.332(d) bars hearings on environmental issues until the final EIS issues. The NRC’s own analysis is never a permissible basis for a timely contention. The NRC should state which document it expects NEPA contentions on the agency’s analysis to be based on.

⁷⁶ *Department of Transportation v. Public Citizen*, 541 U.S. 752, 764–65 (2004).

⁷⁷ 10 CFR § 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

Environmental Assessments and Findings of No Significant Impact

BTI supports retaining the NRC's existing framework for EAs and FONSIIs, including the proposed codification of mitigated FONSIIs in § 51.32. Proposed § 51.32(a)(8) appropriately requires the NRC to identify the authority for mitigation it adopts and any applicable monitoring or enforcement provisions. The more important issue is enforceability where mitigation is necessary to support the FONSI itself. Proposed § 51.32(a)(8) would allow the NRC to rely not only on enforceable mitigation requirements, but also on "voluntary mitigation commitments" undertaken to avoid significant effects, while proposed § 51.4 separately states that NEPA does not itself provide authority to impose mitigation. Where the NRC would otherwise find reasonably foreseeable significant effects, mitigation credited to avoid an EIS should have a sufficiently reliable implementation mechanism.

In SECY-24-0046, the NRC has previously recognized that an EA can create scheduling uncertainty if the review later determines that a FONSI cannot be supported and an EIS is required.⁷⁸ Although the proposed rule and Draft NUREG-2270 encourage earlier assessment of the appropriate level of NEPA review through preapplication interactions, Draft NUREG-2270 also recognizes that the significance determination ultimately depends on NRC expert judgment. An applicant could proceed substantially through an EA before the NRC determines that an EIS is necessary, creating avoidable schedule uncertainty and duplicative review. The final guidance should establish clearer significance-screening factors and decision points for use during preapplication interactions and early review to reduce the likelihood of unnecessary mid-review EA-to-EIS transitions, while preserving the NRC's ability to require an EIS when later-developed information warrants one.

Categorical Exclusions

BTI is largely supportive of the expanded use of CatExs as an important tool for streamlining NEPA reviews. Where the NRC has a sufficient technical and administrative basis to conclude that a defined category of actions normally will not significantly affect the human environment, a CatEx can avoid unnecessary or duplicative review while preserving agency resources for actions that warrant more extensive NEPA review.

⁷⁸ U.S. Nuclear Regulatory Commission, SECY-24-0046, Implementation of the Fiscal Responsibility Act of 2023 National Environmental Policy Act Amendments, Enclosure 2, "Procedure for Determination of Level of Review," at 1–2 (May 30, 2024), [ML24078A048](#).

BTI supports the proposed adoption of “extraordinary circumstances.”⁷⁹ The change does not materially alter the existing concept that an action that would normally qualify for a CatEx may nevertheless have significant environmental effects. However, the proposed rule removes the “[e]xcept in special circumstances” proviso from § 51.22 and its cross-reference to unresolved conflicts concerning alternative uses of available resources under NEPA section 102(2)(H), and the term “extraordinary circumstances” appears only in the preamble; § 51.20(a)(2) is reserved. The NRC should codify an extraordinary circumstances provision rather than leave it to guidance, and should apply that review when applying either an NRC-developed or externally adopted CatEx and should document the basis for concluding that the exclusion applies to the identified action.

BTI also supports the adoption of CatExs established by other federal agencies to reduce duplicative analysis. But adoption should not be a simple copy-paste: BTI supported DOE’s recent Advanced Reactor CatEx while identifying limitations in the breadth of the category and the record supporting certain applications, particularly with respect to construction and siting impacts, both on their own terms and if the category were adopted in whole or in part by the NRC.⁸⁰ If the NRC considers adopting an external CatEx, it should independently confirm that the category, supporting record, assumptions, and limiting conditions are appropriate for the NRC actions to which it would apply.

As the NRC expands its use of CatExs, those categories should rest on a durable technical and legal record and be applied consistently across the NRC’s licensing frameworks, including Parts 50, 52, 53, and 57. CatEx eligibility should depend upon the environmental characteristics of the proposed action, not on the licensing pathway selected by the applicant. Where the same reactor design, site characteristics, and environmental effects are bound by the same technical record, the NRC should seek consistent CatEx treatment across licensing frameworks. At the same time, the information required to demonstrate CatEx eligibility should remain proportionate to that purpose and should not turn the CatEx determination into the functional equivalent of an EA.

Because a CatEx avoids preparation of a publicly available EA or EIS, transparency and administrative-record discipline are especially important. The NRC should document the legal and technical basis for establishing or adopting a CatEx, the limits of the category, and the basis for concluding that extraordinary circumstances are absent or adequately addressed in an application. A clear record will help ensure that CatExs remain durable streamlining tools rather

⁷⁹ Implementation of the National Environmental Policy Act, at 42090–92.

⁸⁰ Spencer Toohill, *BTI Comment on Categorical Exclusion for Advanced Nuclear Reactors*, Docket No. DOE-HQ-2025-0405, Comment ID DOE-HQ-2025-0405-0230, March 4, 2026, <https://www.regulations.gov/comment/DOE-HQ-2025-0405-0230>.

than sources of uncertainty or litigation over whether the category was defined or applied too broadly.

Generic Environmental Findings and GEISs

BTI supports the NRC's continued use of generic environmental findings in the proposed rule to improve the efficiency and consistency of environmental reviews. Generic environmental analysis can avoid repetitive review of impacts that are common across reactor projects while allowing project-specific review to focus on issues that depend on the selected design or site.⁸¹ Increased use of generic findings will become increasingly important as the NRC prepares for a potentially larger and more diverse volume of new reactor applications. The New Reactor GEIS (NR GEIS), NUREG-2249, provides an important technical foundation for a more efficient and technology-inclusive environmental review framework.

The relationship between NUREG-2249 and proposed § 51.22(i) depends on the scope of effects established by the final rule. NUREG-2249 evaluates 119 environmental issues: 100 are designated Category 1, 17 are designated Category 2 because they require project-specific analysis, and two are designated N/A because their impacts are uncertain. Draft NUREG-2270 applies the NRC's proposed limitation of NEPA review to effects within its substantive statutory authority and identifies 27 Category 1 issues and no Category 2 issues within that narrowed scope. Consistent with that approach, the proposed rule states that "there would no longer be any Category 2 issues in Appendix C," and proposed § 51.22(i) relies on the resulting Table C-1 findings and plant and site parameter envelopes.

The Category 2 issues identified in NUREG-2249 now fall out of the operative Appendix C framework because of the NRC's proposed legal determination concerning the scope of "effects," not because those issues have been converted into generic findings through additional technical analysis. Their treatment accordingly depends on the validity of the § 51.4 scope determination discussed in Section III. If the final rule retains within NEPA any effects presently excluded on substantive-authority grounds, the NRC should correspondingly revise Appendix C and § 51.22(i) so that any issue brought back within scope is either supported by an adequate generic finding or remains subject to appropriate project-specific review.

The same principle should apply to other generic environmental findings. Tables S-3 and S-4 provide substantial opportunities for efficient review, but their findings should be applied only

⁸¹ Breakthrough Institute, Comments on the Draft NUREG-2249, "Generic Environmental Impact Statement for Licensing of New Nuclear Reactors", Docket ID NRC-2020-0101, Dec. 18, 2024, [ML24355A170](#).

within the technical assumptions and parameter bounds supporting them. Table S-3 remains grounded largely in a conventional light-water-reactor fuel-cycle model, while Table S-4 relies on conventional assumptions regarding reactor fuel, enrichment, shipment characteristics, and transportation configurations. Although the proposed rule would update portions of these tables, applicants using materially different fuels, enrichments, or fuel-cycle and transportation assumptions may still need to demonstrate that the generic findings bound their proposed action or provide supplemental analysis.⁸²

Recommendations

1. **Use the appropriate level of environmental review based on the reasonably foreseeable environmental effects of the proposed action.** The final rule should preserve the proposed significance-based framework rather than requiring an EIS solely because an action falls within a predetermined licensing category. At the same time, the NRC should retain clear authority to require an EIS whenever the record indicates that significant environmental effects are reasonably foreseeable.
2. **The NRC should retain meaningful scoping and should not eliminate routine draft-EIS review, instead implementing a 30-day comment period.** Scoping identifies the issues and information that should be considered, while review of a developed environmental analysis allows interested parties to evaluate the NRC's conclusions before they become final. The proposed rule limits the use of an EIS to instances where reasonably foreseeable significant impacts are expected. The NRC should provide a 30-day comment period for a DEIS, which would provide both a reasonable timeline for public engagement and an efficient review schedule. If the NRC nevertheless eliminates routine DEIS preparation, the final rule should establish an equivalent predecisional review process for actions requiring an EIS. At a minimum, that process should require public disclosure of the NRC's substantially developed alternatives analysis, significance determinations, principal technical conclusions, use of generic environmental findings, and material mitigation assumptions before issuance of the final EIS.
3. **The final rule should clarify when a voluntary commitment may support a mitigated FONSI** and how the NRC will ensure that mitigation material to the significance determination is implemented, monitored where appropriate, and enforceable through the license, another applicable statutory authority, or another binding mechanism.

⁸² Proposed 10 C.F.R. §§ 51.51–51.52, Tables S-3 and S-4; U.S. Nuclear Regulatory Commission, *Environmental Review Guidance for U.S. Nuclear Regulatory Commission Actions*, Draft Report for Comment, NUREG-2270, July 2026, app. C, at C-42–C-45, C-51–C-53.

4. **Establish clearer significance-screening criteria and decision points for EA reviews.** The final guidance should encourage early determination of the appropriate level of review during preapplication interactions and at the beginning of the environmental review process, reducing avoidable EA-to-EIS transitions while preserving the NRC's ability to require additional review when later-developed information warrants it.
5. **Use CatExs only where the applicable technical and administrative record supports the categorical finding.** Each CatEx should rest on a durable technical and legal record, contain clear boundaries, and be applied consistently across Parts 50, 52, 53, and 57. Before adopting another agency's CatEx, the NRC should determine that the category and its supporting record are appropriate for the NRC action and codify its own extraordinary circumstances review.
6. **The NRC should codify a provision in the final rule that details the change to "extraordinary circumstances."** The NRC asserts the potential use of "extraordinary circumstances" in the proposed rule statements of consideration, but it is not codified in the rule.
7. **Ensure that generic environmental findings are technology-inclusive and applied within their technical bounds.** The NRC should retain and update Tables S-3 and S-4 while clearly identifying their assumptions, technical bounds, and unresolved issues. Where an application falls outside those bounds, the NRC should require targeted supplemental analysis for the affected issue.

VII. CROSS-RULE COORDINATION

In implementing Executive Order 14300, the NRC is simultaneously modernizing several interrelated regulatory frameworks on overlapping timelines.⁸³ Many of these rulemakings rely on shared definitions, cross-references, eligibility criteria, finality provisions, or implementation requirements and are intended to operate as an integrated regulatory framework rather than as isolated amendments. Finalizing those provisions without conforming changes across the related rules could lock in mechanisms before the NRC has fully aligned the substantive and procedural assumptions on which they depend.

⁸³ Executive Order 14300, "Ordering the Reform of the Nuclear Regulatory Commission," 90 Fed. Reg. 22587 (May 23, 2025), <https://www.federalregister.gov/d/2025-09798>.

Disposition of Site-Specific Issues Under the Part 57 CatEx

The proposed Part 57 rulemaking creates a CatEx framework that depends in part on the Part 51 environmental framework.⁸⁴ Part 51 supplies the generic findings, while Part 57 is intended to disposition the issues that Part 51 leaves for site-specific review. A Part 57 applicant could receive a CatEx even though the underlying Part 51 technical record identifies certain environmental issues as requiring site-specific analysis. The final rules need to show that the two frameworks fit together without leaving gaps.

BTI previously flagged a gap where, for environmental issues not resolved through those generic findings, Part 57 relies on additional eligibility criteria in § 57.350(b), with implementation guidance in Chapter 16 of draft NUREG-2271. The Part 57 preamble expressly stated that its CatEx “does not rely upon Category 2 issues in NUREG-2249” because those conclusions are not generic across all sites; instead, the § 57.350(b) criteria are intended to ensure that the remaining environmental impacts would not be significant.⁸⁵

Under this rulemaking, as Category 2 issues identified in NUREG-2249 now fall out of the operative Appendix C framework because of the NRC’s proposed legal determination concerning the scope of “effects,” the issue flagged in Part 57 may be resolved. As stated above, if the final rule retains within NEPA any effects presently excluded on substantive-authority grounds, the NRC should correspondingly revise Appendix C and § 51.22(i) so that any issue brought back within scope is either supported by an adequate generic finding or remains subject to appropriate project-specific review. If an issue that Part 51 leaves unresolved is being dispositioned through a Part 57 CatEx criterion, the NRC should identify that criterion and explain why it provides a sufficient technical basis to eliminate further project-specific NEPA review.

The Definition of “Construction” and the NEPA Review Boundary

The NRC should reconcile the definition of “construction” across Part 51 and other ongoing and future rulemakings. Proposed § 51.4 would no longer establish an independent substantive

⁸⁴ Nuclear Regulatory Commission, *Licensing Requirements for Microreactors and Other Reactors With Comparable Risk Profiles*, 91 FR 23628 (May 1, 2026) (proposed 10 C.F.R. § 57.350).

⁸⁵ The Breakthrough Institute, *Comment on Licensing Requirements for Microreactors and Other Reactors with Comparable Risk Profiles*, Docket ID NRC-2025-0379, Comment ID NRC-2025-0379-0123, June 15, 2026, at 62–63, <https://www.regulations.gov/comment/NRC-2025-0379-0123>.

definition of construction. Instead, it would provide that “construction” has the meaning assigned in the part of 10 CFR governing the authorized activity. The NRC explains that this approach is intended to avoid inconsistencies when construction definitions in other licensing parts change. That approach makes sense, but it also makes Part 51 directly dependent on how those other rules define the boundary between construction and pre-construction.

On Part 57, BTI recommended that the NRC clarify how the Part 57 definition of “construction” in § 57.3 applies in practice, including which activities may proceed without a construction permit and which remain subject to prior NRC authorization.⁸⁶ The *Modernizing Reactor Licensing, Safety Oversight, and Siting Practices* rule, which is currently open for comment period, proposes to revise construction under §§ 50.10 and 53.020 to focus on work involving safety-related, safety-significant, and security-related SSCs. NRC explains that activities outside this construction boundary generally do not require NRC authorization and, absent another federal action, do not require NRC NEPA review, while activities within the boundary require NRC authorization and associated environmental review. The *Modernizing materials licensing* rulemaking presents the same cross-rule issue more directly. Part 70 currently distinguishes between “construction,” which covers the installation or in-place assembly of structures, systems, and components related to radiological safety or security, and “commencement of construction,” which also reaches other site activities having a reasonable nexus to radiological health and safety or common defense and security. In its comment on that rule, BTI recommended a functional approach: “construction” should be limited to activities that install or permanently incorporate an SSC, or that may affect the required function of an SSC credited for radiological safety, nuclear criticality safety, physical protection, or another safety-significant function; activities outside that scope should be permitted to proceed at the applicant’s own risk.⁸⁷

The definition of construction is a direct cross-rule coordination issue. Part 51 determines the environmental consequences of the boundary, but the substantive boundary may be established or changed in Parts 40, 50, 53, 57, or 70. At the same time, separate pending rules propose changes to both § 51.4 itself and the provisions to which § 51.4 would refer. Without conforming to the final

⁸⁶ The Breakthrough Institute, *Comment on Licensing Requirements for Microreactors and Other Reactors with Comparable Risk Profiles*, Docket ID NRC-2025-0379, Comment ID NRC-2025-0379-0123, June 15, 2026.

⁸⁷ The Breakthrough Institute, *Comment on Modernizing Materials Licensing*, Docket ID NRC-2025-1370, RIN 3150-AL56, Aug. 10, 2026.

text, the applicable construction and NEPA-review boundary would depend on numerous, slightly different definitions of construction rather than on a deliberate, integrated NRC policy.

Environmental Adjudication Should Be Conformed to the Revised NEPA Framework

The NRC should coordinate the revised Part 51 framework with Part 2 rather than relying only on terminology-based conforming amendments. The proposed Part 51 rule changes the substantive scope, preparation, and timing of NRC environmental review. Those changes affect what environmental issues may be raised in an adjudicatory proceeding, what agency document a contention may challenge, when such a contention becomes ripe, and how generic environmental determinations are treated under Part 2.

First, Part 51 would narrow the scope of NRC environmental review by revising the definition of “effects,” the framing of the proposed agency action, and the reasonable range of alternatives. That substantially narrows the scope of Part 51 while participants and licensing boards remain without an equally clear procedural rule for determining whether an environmental contention falls within that scope.

Second, the expanded CatEx framework requires clearer adjudicatory treatment. To “avoid undue delay”, the proposed rule allows if requested by the petition, the NRC will consider using the process for establishing CatExs via publication on NRC’s website.”⁸⁸ The NRC acknowledges that § 2.335 would not apply to such a CatEx until codification. The NRC should distinguish between a challenge to the generic technical or legal basis for a CatEx and a claim that a licensing action does not satisfy the conditions for applying that CatEx. The former implicates the finality of the generic determination; the latter is an application-specific issue that may remain appropriate for adjudication.

Third, the “applicant prepared” document provisions create a new procedural interface with Part 2. Proposed Part 51 would permit applicants to prepare draft EAs or EISs under NRC supervision. The final framework should identify when an applicant prepared environmental document becomes an NRC analysis for adjudicatory purposes, whether and when contentions may be

⁸⁸ Implementation of the National Environmental Policy Act, at 42091.

directed to that document, and how material NRC revisions or supplements affect the opportunity to raise or amend environmental contentions.

Finally, Part 2 hearing procedures should be coordinated with the timing of the revised Part 51 process. Where the environmental analysis continues to develop after an initial hearing opportunity, the rules should provide a predictable point at which environmental issues are ripe for adjudication and address the treatment of material new or supplemental environmental analysis. The objective should be to avoid both premature contentions based on an incomplete record and unnecessary reopening of issues that have already been resolved.

The same conforming review is needed within Part 51 itself. Because the proposed rule revises and republishes Part 51 in its entirety rather than amending it section by section, provisions are removed by omission and the internal cross-references are not individually checked. Two examples illustrate the point. The republished authority citation provides that Sections "51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148," but §§ 51.80 and 51.97 appear nowhere in the republished part, while § 51.20, which does survive, was dropped from that same list. The final rule should not carry forward references to provisions it eliminates.

Recommendations

1. **The NRC should coordinate the sequencing and finalization of Part 51 with the related Part 57, reactor licensing and siting, and materials-licensing rulemakings so that dependent provisions are conformed to a common final framework.** Where those rules rely on Part 51 definitions, environmental-review boundaries, generic findings, construction terminology, or cross-references, the NRC should establish the controlling Part 51 provisions before—or concurrently with—the dependent final rules and make any necessary conforming amendments as part of that process. The effective dates and implementation guidance should likewise be coordinated so that the applicable requirements do not depend on which overlapping rulemaking happens to become final first.
2. **The NRC should reconcile the final construction provisions across these rulemakings and retain in § 51.4 a clear cross-reference structure identifying the controlling provision for each licensing pathway.** NUREG-2270 should likewise identify the applicable definition of construction or commencement of construction, which activities may

proceed without prior NRC authorization, and when NRC authorization triggers Part 51 review.

3. **The NRC should conduct a targeted review of Part 2 against the final Part 51 framework and make any substantive amendments needed to address:** (1) environmental contention scope; (2) challenges to the generic basis and application of CatExs, including website-established CatExs; (3) the adjudicatory status of applicant prepared environmental documents and subsequent NRC supplements; (4) the timing and ripeness of environmental contentions. Terminology-only conforming amendments are insufficient where the underlying Part 51 changes alter the substantive scope, document-development process, or timing of environmental adjudication; and (5) internal consistency within the republished Part 51 itself, including the authority citation and any cross-references to sections the republication removes. Where the republication deletes a provision whose function is intended to be absorbed elsewhere—as appears to be the case for §§ 51.80 and 51.97 relative to §§ 51.70 and 51.71—the final rule should say so.

VIII. IMPLEMENTATION, GUIDANCE, AND TRANSITION

Applicant Prepared EAs and EISs

BTI supports allowing applicants to prepare draft EAs and EISs under NRC supervision. NEPA § 107(f) requires lead agencies to establish procedures allowing project sponsors to prepare EAs or EISs under agency supervision, subject to independent agency evaluation and responsibility for the final document.⁸⁹ The ADVANCE Act reinforces that requirement for the NRC specifically by directing the agency to consider authorizing use of an applicant's EIS as the NRC's draft EIS, consistent with NEPA § 107(f).⁹⁰

Proposed § 51.46 would not allow the applicant itself to prepare the draft environmental document.⁹¹ Instead, the NRC would require the applicant to hire a qualified contractor with no financial or other interest in the outcome of the licensing action. The NRC explains that it adopted this restriction because the applicant necessarily has a financial interest in the proposed action. That additional restriction is not required by § 107(f). Congress expressly contemplated preparation by the project sponsor despite the sponsor's inherent interest in the

⁸⁹ National Environmental Policy Act of 1969 § 107(f), 42 U.S.C. § 4336a(f).

⁹⁰ ADVANCE Act of 2024, § 506(b)(2)(j).

⁹¹ Implementation of the National Environmental Policy Act, 42091–92.

project and addressed document integrity through a different safeguard: agency supervision, independent evaluation, and agency responsibility for the final document.

Section 51.46 should permit the applicant to prepare the draft EA or EIS using its own personnel and expertise alongside allowing the applicant to retain outside technical support or an independent contractor when useful. The NRC should retain authority to revise or reject applicant analysis, request additional information, independently prepare portions of the document, and make all final NEPA findings and decisions.

Another principal implementation risk is that this option could duplicate rather than replace existing work. Appendix H contemplates supplemental technical-basis documentation containing information that otherwise might appear in an ER. Applicants could fund both a draft EA or EIS and extensive supporting analyses that substantially reproduce the new pathway. The applicant prepared-document provisions should also be coordinated with Parts 50, 52, 53, and 57 so that applicants are not required to submit substantially duplicative environmental information through separate application requirements.

Timing also requires clarification. Applicants may need to select the § 51.46 pathway and retain a qualified contractor before the NRC formally determines the appropriate level of NEPA review. If that determination later changes, completed work should be reusable rather than repeated. The NRC should also address contractor qualification and conflict-of-interest requirements early enough to avoid creating a new technical-talent bottleneck.

Finally, the process should preserve a clear administrative record. Contractor analysis should be distinguishable from NRC findings, and the record should demonstrate the NRC's independent evaluation and adoption of the conclusions for which it is responsible.

Final Guidance and Implementation of NUREG-2270

NUREG-2270 will perform much of the practical work of implementing the revised Part 51 framework. The NRC should finalize the guidance concurrently with the rule and ensure that implementation does not recreate procedural bottlenecks that the rule is intended to remove.

Interagency consultations and environmental authorizations are a potential hidden critical path. NUREG-2270 recognizes that a CatEx does not eliminate NRC responsibilities under statutes such as the ESA and NHPA and directs applicants and staff to Appendices I and J for consultations and other environmental authorizations. Some of these responsibilities also remain inherently governmental; for example, Appendix I explains that an applicant cannot independently

complete the NHPA Section 106 process because portions of that process require NRC participation. Streamlining the NEPA document will have limited practical value if consultations continue on a separate or later schedule. The final guidance should integrate these processes into the licensing schedule, identify which consultations must be completed before each NRC action, assign responsibility early, and coordinate NRC work with other federal agencies rather than duplicate analyses outside the NRC's assigned scope. NUREG-2270 already provides that when another agency is lead or co-lead, the NRC's NEPA contribution should be limited to effects within its substantive statutory authority. The implementation procedures should make that division of responsibility operational.

The final guidance should also ensure that its technology-neutral structure is matched by technology-appropriate review methods. Some portions still rely on legacy LWR assumptions. For example, the transportation guidance directs reviewers to normalize shipments to a 1,100-MWe LWR with an 80-percent capacity factor and assumes a 40-year operating period, even while recognizing that non-LWRs may use HALEU and substantially different fuel forms. The NRC should identify such legacy assumptions and provide scalable alternatives where reactor size, fuel form, operating model, cooling needs, or deployment configuration makes the traditional methodology inappropriate.

Finally, the NRC should promote consistent implementation of CatExs across review organizations. NUREG-2270 requires staff to determine whether a CatEx applies, evaluate extraordinary circumstances, and document that determination. Because Appendix A relies on checklists and staff judgment, implementation should not vary materially among offices or turn the CatEx determination itself into an EA-like review.

Transition and Grandfathering

The proposed grandfathering approach is reasonable insofar as it avoids reopening environmental reviews completed before the revised rule becomes effective. The more difficult question is how the NRC will treat reviews already underway.

The final rule should distinguish among the rule's legal effective date, the date compliance becomes mandatory, the date an applicant elects an optional provision, and the point at which the revised framework becomes controlling for a pending environmental review. For ongoing reviews, the NRC should explain whether the existing framework remains controlling, whether applicants may elect to transition, and whether individual new flexibilities may be used without

converting the entire review. Previously completed analyses and consultations should receive appropriate credit.

Recommendations

1. **Implement the revised Part 51 framework through a coordinated final rule, NUREG-2270, and transition plan.** For applicant prepared EAs and EISs, the final framework should ensure that the § 51.46 pathway substitutes for rather than duplicates existing environmental-report work, with clear contractor qualification and conflict-of-interest standards, defined NRC supervision and independent-review responsibilities, a transparent administrative record, and early identification of the expected level of NEPA review. The NRC should also coordinate environmental-information requirements across Parts 50, 52, 53, and 57 so that use of an applicant prepared environmental document does not trigger substantially duplicative submissions elsewhere in the licensing framework.
2. **Section 51.46 should permit the applicant to prepare the draft EA or EIS using its own personnel and expertise, while allowing the applicant to retain outside technical support when useful.** The NRC should retain authority to revise or reject applicant analysis, request additional information, independently prepare portions of the document, and make all final NEPA findings and decisions.
3. **NUREG-2270 should remain flexible, technology-neutral guidance rather than become a de facto mandatory checklist.** The final guidance should integrate ESA, NHPA, and other required consultations into the licensing schedule, clearly assign responsibilities among the NRC, applicants, and other federal agencies, avoid duplicative analysis when another agency is lead or co-lead, replace legacy LWR assumptions with scalable methods where appropriate, and promote consistent and proportionate implementation of CatExs across NRC review organizations.
4. **Provide clear transition and grandfathering provisions.** The final rule should distinguish its effective date, mandatory compliance date, any optional election date, and the point at which the revised framework becomes controlling for a pending review. Applicants with reviews already underway should receive clear direction on whether and how they may transition to the new framework, and environmental analyses, consultations, and other work already completed should receive appropriate credit rather than being repeated solely because the governing framework has changed.

IX. RESPONSES TO SPECIFIC REQUESTS FOR COMMENT

1. Considering the NRC's substantive statutory authority and the NRC's obligations under NEPA as amended by the FRA and OBBBA and as shaped by recent case law and E.O.s, has the NRC proposed removing the assessment of any environmental impacts from the scope of its NEPA reviews that should continue to be addressed (in Table S-3, Table S-4, appendix B, or appendix C to 10 CFR part 51; or as discussed in the associated draft staff guidance, NUREG-2270, "Environmental Review Guidance for U.S. Nuclear Regulatory Commission Licensing Actions")? Beyond radiological impacts, are there other environmental effects that have a close causal relationship to an NRC licensing decision and that are not remote in time, geographically separate, or the result of an attenuated causal chain that the NRC should consider in its environmental reviews? Please provide detailed rationales.

Yes, the NRC should continue to address nonradiological effects that are reasonably foreseeable, bear a reasonably close causal relationship to the proposed NRC action, and arise from the project before the agency rather than from a separate project or attenuated causal chain. As discussed in Sections II and III, *Metropolitan Edison*, *Public Citizen*, and *Seven County* support meaningful limits on NEPA review, but they do not make another regulator's substantive jurisdiction dispositive of whether an effect of the NRC-authorized project is an environmental effect of that project. For example, dust, runoff, habitat disturbance, and similar effects caused by construction of a licensed facility arise from the project itself, even where the EPA, a State, a Tribe, or another federal agency regulates the affected resource. The NRC's NR GEIS likewise evaluates nonradiological construction and operational effects, resolving some generically while retaining others for project-specific review or statutory consultation.

The FRA and OBBBA reinforce the need for efficient review but do not establish that the limits of the NRC's substantive remedial authority categorically define the scope of environmental effects. The NRC should retain causation, reasonable foreseeability, and project attribution as the principal boundaries of review; exclude effects attributable to separate projects or actions the NRC lacks legal authority to prevent; and use incorporation by reference, consultation, and interagency coordination where another agency has primary substantive authority. See Sections II and III for the detailed statutory and judicial analysis.

2. E.O. 14154 directs all agencies, consistent with applicable law, to "prioritize efficiency and certainty over any other objectives." Does the proposed rule prioritize efficiency and certainty over other objectives in a manner consistent with applicable law? Are there potential unintended consequences or increases in regulatory uncertainty that could result from the proposed changes in this rule, such as the need for additional NEPA reviews by other agencies? Please identify the regulatory requirement with your response and be as specific as possible regarding potential unintended consequences or increases in uncertainty.

Yes, but several provisions could create new uncertainty if finalized without clarification. The proposed rule appropriately prioritizes efficiency and certainty through significance-based selection of EAs and EISs, expanded use of CatExs and generic analyses, applicant prepared environmental documents, and greater reliance on existing information. Those reforms are consistent with the NRC's stated objective of reducing regulatory burden while complying with NEPA.

The principal unintended consequence concerns proposed § 51.4. Excluding nonradiological effects from the NRC's NEPA review does not necessarily eliminate the underlying work because NUREG-2270 still requires consultation and analysis under statutes such as the ESA and NHPA. The result may be fragmented review, duplicative information development, or greater reliance on separate agency processes rather than a net reduction in burden. Where another federal agency also has an action requiring NEPA review, narrowing the NRC's analysis could likewise reduce opportunities for a unified environmental document. See Sections III, V, and VI for further discussion.

3. Are there NEPA procedures that the NRC proposes to eliminate from the regulations—either by deletion or by moving them into guidance—that should be retained in the regulations? If so, why? Please identify the specific procedures, regulatory requirement, or other related items with your response.

Yes. The NRC should retain meaningful scoping and a defined opportunity for predecisional review of a substantially developed EIS. The proposed rule would remove routine scoping from Part 51 and make scoping discretionary, while also eliminating routine preparation and publication of a draft EIS. The NRC would still publish a notice of intent requesting comment under proposed § 51.70, but Draft NUREG-2270 contemplates fuller scoping only in limited circumstances.

Removing both procedures risks making the final EIS the first substantially developed NRC environmental analysis available for public scrutiny. That reduces the opportunity to identify factual or analytical errors while the analysis can still be revised, weakens development of the administrative record, and may shift disputes into later contention or judicial-review proceedings. As discussed in Section VI, *Public Citizen* reinforces the value of giving the agency an opportunity to consider and respond to objections during the administrative process. See Section VI for more detailed discussion and specific recommendations.

4. What additional specific licensing or regulatory actions should the NRC consider for categorical exclusion from further NEPA review and why? Please describe actions you believe normally result in no significant

environmental impacts and explain the basis for your recommendation. Furthermore, please provide any parameters that clarify limiting characteristics for each categorical exclusion. Please also provide comments on the newly proposed categorical exclusions in terms of whether the actions would normally result in no significant environmental impacts.

BTI does not recommend an additional specific category of NRC actions for a CatEx in this comment. BTI supports expanded use of CatExs where the NRC has a durable technical and administrative basis for concluding that a defined category of actions normally will not significantly affect the human environment. CatEx eligibility should turn on the environmental characteristics of the action and the supporting technical record, rather than simply on the licensing pathway used.

For the newly proposed CatExs, BTI is generally supportive but recommends caution with proposed § 51.22(i) for new-reactor licensing actions. NUREG-2249 evaluates 119 environmental issues, but resolves only 100 as Category 1; 17 remain Category 2 issues requiring application-specific analysis and two additional issues are classified as unresolved. The NRC should explain how those site-specific issues are addressed before concluding that a qualifying construction permit, operating license, early site permit, or combined license normally has no significant environmental effects. If Table C-1, extraordinary-circumstances review, or another mechanism disposes of those issues, the final rule should make that connection explicit.

BTI also supports the NRC's ability to adopt another federal agency's CatEx, but the NRC should independently confirm that the adopted category, supporting record, assumptions, and limiting conditions are appropriate for the NRC action and retain its own extraordinary-circumstances review. See Section VI for detailed discussion.

5. What additional NRC actions should the NRC consider developing generic environmental documents for (e.g., technology- or application-specific) that could further streamline future environmental reviews?

BTI does not identify a specific additional NRC action that presently requires a new generic environmental document. The NRC should first make full use of existing generic analyses, including the NR GEIS and existing generic findings, where applications fall within their established technical bounds. Generic analysis can substantially reduce repetitive review when recurring environmental issues are supported by a sufficiently developed technical record. See Section VI for further discussion of generic environmental findings and the appropriate use of the NR GEIS.

6. Considering the NRC's obligations under NEPA as amended by FRA and OBBBA and as shaped by recent case law and E.O.s, are there additional approaches that the NRC should consider to preserve meaningful public engagement in the NRC's environmental review process—either within the context of NEPA or at other stages during review of an application (e.g., pre-application engagement, ad hoc public briefings, listening sessions, etc.)? If so, what are they?

Yes, the NRC should preserve meaningful scoping and a predictable opportunity for predecisional review of a substantially developed environmental analysis. If routine draft-EIS review is eliminated, the final rule should require an equivalent predecisional process in which the NRC discloses its principal alternatives analysis, significance determinations, technical conclusions, use of generic findings, and material mitigation assumptions, provides a defined comment period, and addresses material comments before issuing the final EIS. As discussed in Section VI, this would preserve the opportunity to identify and correct errors before final agency action and strengthen the administrative record.

Pre-application meetings, public briefings, and listening sessions can usefully supplement that process, as the FRA and OBBBA impose shorter review timelines, but they should not substitute for a predictable opportunity to comment on the NRC's developed environmental analysis. OBBBA § 112 adds an expedited review pathway, making early and well-defined engagement important where applicants elect accelerated schedules. The ADVANCE Act likewise directs the NRC to pursue efficient and predictable environmental review while maintaining openness with the public. See Section VI for further discussion.

7. What additional information on the procedures for applicant-prepared EAs and EISs can the NRC provide to inform prospective applicants' decision on whether to pursue that process? Should the NRC consider moving more information on applicant-prepared EAs and EISs from the regulation to the guidance document to allow for greater flexibility in the program? What changes, if any, should the NRC consider to make the process for applicant-prepared NEPA documentation clearer or more efficient? Do the requirements in § 51.46 appropriately balance agency compliance with NEPA with the goal of realizing efficiencies for applicants?

Yes. Proposed § 51.46 provides an appropriate framework for applicant prepared EAs and EISs, but prospective applicants need clearer information about when the pathway will actually save time and resources. Before an applicant elects the process, the NRC should identify the expected level of NEPA review, the information and supporting analyses the applicant must provide, contractor qualification and conflict-of-interest requirements, NRC supervision and review milestones, and how work will be treated if the NRC later determines that a different level of review is required. See Section VIII.

Appendix H should clearly state that an applicant prepared EA or EIS substitutes for, rather than substantially reproduces, the environmental-report work otherwise required. The NRC should coordinate environmental-information requirements across the applicable licensing parts, credit supporting analyses already completed, and allow work to be reused if the level of review changes. The administrative record should also distinguish contractor analysis from NRC findings and demonstrate the NRC's independent evaluation and adoption of the final document.

The NRC may appropriately place operational details—such as process steps, recommended documentation, contractor-selection procedures, and review milestones—in NUREG-2270 so they can be updated as experience develops. The regulation should retain the core safeguards required for the pathway, including NRC supervision, independent evaluation, and agency responsibility for the environmental document. With those clarifications, § 51.46 can appropriately balance NEPA compliance with the efficiencies Congress intended applicant prepared environmental documents to provide. See Section VIII for further discussion.

8. How can interagency coordination on environmental matters be improved to foster more effective and efficient environmental reviews that meet statutory requirements under NEPA and other environmental statutes such as the National Historic Preservation Act (NHPA), Coastal Zone Management Act, and Endangered Species Act, consistent with the NRC's statutory authority? What effect, if any, does the NRC's proposal to narrow the scope of its environmental reviews have on interagency coordination? How might the proposed changes affect NHPA section 106 consultations with State Historic Preservation Officers, Indian Tribes, and interested parties including the public? The NRC is particularly interested in feedback from Tribes and state agencies on these matters.

Interagency coordination should be improved by integrating related statutory reviews into a single licensing schedule, assigning responsibilities early, and using incorporation by reference and shared environmental documents wherever practicable. The ADVANCE Act specifically directs the NRC to coordinate with other federal agencies to avoid duplicative environmental review and to streamline formal and informal consultation with federal, state, and local permitting agencies. NEPA § 107(b) likewise favors a single environmental document where more than one federal agency must act. See Sections II, III, and VIII.

The proposed narrowing of NRC NEPA scope could make that coordination more difficult if information concerning ecological, historic, cultural, or water-resource effects is removed from the NRC's NEPA document even though the same information remains necessary under the ESA, NHPA, Clean Water Act, or other statutory processes. The likely consequence is not elimination of the work, but separation of related analysis into parallel procedural tracks. The NRC should

preserve mechanisms to incorporate or cross-reference information developed through those processes rather than require separate development of substantially the same record.

For NHPA § 106, narrowing NEPA does not eliminate the NRC's consultation responsibilities. Draft NUREG-2270 recognizes that portions of the § 106 process require NRC participation and cannot be completed independently by an applicant. The final guidance should integrate § 106 consultation with the NRC licensing schedule, identify when consultation with State Historic Preservation Officers, Tribes, and other consulting parties must occur, and ensure that information developed through consultation remains available to inform the NRC's environmental and licensing record where relevant. Otherwise, narrowing NEPA could separate consultation from the environmental-review process without reducing the underlying consultation burden.

9. Can the NRC improve the organization, accessibility, or usability of its draft consolidated NEPA guidance document, NUREG-2270, issued with this rule? Should additional information be provided as to how an applicant would use the guidance document for common licensing actions?

Yes, NUREG-2270 would be more useful if it provided clearer action-specific pathways showing applicants which portions of the guidance apply to common licensing actions. Appendix K is a useful start: it directs users through CatExs, EAs and EISs, efficiency measures, and licensing-specific appendices. The NRC should expand that approach through concise crosswalks or workflows for common actions—such as new reactor licensing, license renewal, materials licensing, and amendments—identifying the applicable Part 51 provisions, relevant NUREG-2270 sections, required environmental information, consultations, and likely decision points. This would improve usability without turning the guidance into a mandatory checklist. See Section VIII.

10. What environmental topics or issues are missing from the NRC's draft NEPA guidance document, NUREG-2270?

BTI does not identify an entirely omitted environmental resource area, but NUREG-2270 needs more technology-appropriate methods for advanced reactors. Some portions of the draft guidance continue to rely on legacy LWR assumptions. For example, the transportation methodology normalizes shipments to a 1,100-MWe LWR with an 80-percent capacity factor and a 40-year operating period even though non-LWR designs may use different fuels, enrichments, reactor sizes, and deployment models.

The NRC should identify such legacy assumptions throughout NUREG-2270 and provide scalable or technology-appropriate methods where reactor size, fuel form, operating model, cooling needs, or deployment configuration makes the traditional methodology inappropriate. See Section VIII.

11. Given the new draft consolidated environmental review guidance, NUREG-2270, should the NRC sunset or retain existing NEPA guidance (e.g., NUREG-1555, “Environmental Standard Review Plan,” NUREG-1748, “Environmental Review Guidance for Licensing Actions Associated with NMSS Programs”, Regulatory Guide 4.2, “DG-4037 (RG 4.2 Rev 5) Preparation of Environmental Reports for Nuclear Power Stations”)?

The NRC should generally sunset existing guidance where NUREG-2270 supersedes it, rather than maintain multiple parallel sources of procedural guidance. NUREG-2270 is expressly designed as consolidated guidance for NRC environmental reviews and already identifies NUREG-1555 and NUREG-1748 as guidance previously used for reactor and materials reviews.

Before sunsetting an existing document the NRC should confirm that any unique technical or application-specific material that remains useful has been incorporated into NUREG-2270 or another current guidance document. The final NUREG-2270 should include a crosswalk identifying which legacy guidance is superseded, which provisions have been carried forward, and any documents or portions that remain applicable during transition. Maintaining two sets of overlapping guidance without a clear hierarchy would undermine the consolidation and predictability the new NUREG is intended to provide. See Section VIII.

12. It is not feasible for the NRC to prepare separate environmental documents for both actions in response to a complete application requesting both an LWA and a CP or COL in the same timeframe (e.g., one year for EAs) as currently provided in § 51.76(a). Therefore, the NRC is proposing that it would prepare a single environmental document to address the full CP or COL requested, which would also provide the required NEPA review of actions under an LWA. What other feasible alternatives or procedural changes could address these timeframes to ensure efficient, timely, and predictable decisionmaking for LWAs requested as part of a complete application for a CP or COL?

BTI supports the proposed use of a single environmental document when an LWA is requested as part of a complete CP or COL application. Proposed § 51.76(a) appropriately provides that the single document would address both the full CP or COL and the activities proposed under the LWA. The NRC should preserve the phased-application pathway for applicants that need an earlier decision limited to LWA activities.

Proposed § 51.76(b) already allows environmental review for part one of a phased application to focus on the LWA activities and redress plan, with a separate statutory review period beginning

when part two is docketed. That provides a reasonable alternative where an applicant needs an early LWA without requiring the NRC to complete the environmental review for the entire CP or COL on the LWA schedule. BTI does not recommend another procedural mechanism at this time. The final framework should preserve both a single integrated environmental document for a complete LWA-plus-CP/COL application, and a phased review.

X. CONCLUSION

The NRC's Part 51 modernization can materially improve the efficiency and proportionality of environmental review, but the durability of those reforms will depend on how carefully the final framework is drawn. Streamlining that rests on clear statutory authority, consistent treatment across related rulemakings, transparent opportunities for public participation, and workable implementation guidance will provide applicants, stakeholders, and NRC staff with greater regulatory certainty. By contrast, reforms that rely on unsettled legal interpretations, use an overly broad reading of legal precedent, or leave key procedural boundaries ambiguous may reduce review time in the short term while creating uncertainty, inconsistent implementation, or avoidable litigation later. The NRC should use the final rule and NUREG-2270 to establish a framework that is streamlined, legally durable, predictable, and capable of being applied consistently over time *within* statutory and legal bounds.

BTI supports the NRC's effort to modernize Part 51 and make environmental reviews more efficient, proportionate, and predictable. Many elements of the proposed rule can reduce unnecessary procedural burden and allow NRC resources to focus on issues that are genuinely material to the licensing decision. BTI appreciates the opportunity to submit these comments and would welcome further engagement with the staff on the issues raised in this letter.

Sincerely,

Spencer Toohill
Chief of Staff, Nuclear Energy Innovation
The Breakthrough Institute

Adam Stein, PhD
Director, Nuclear Energy Innovation
The Breakthrough Institute

Yue "Joy" Jiang
Energy Innovation Analyst
The Breakthrough Institute

Marc Levitt
Director, Environmental Regulatory Reform
The Breakthrough Institute