PERALES, ALLMON & ICE, P.C.
ATTORNEYS AT LAW
1206 San Antonio Street
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
info@txenvirolaw.com

Of Counsel:
David Frederick
Vic McWherter
Claire Krebs

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Department of Energy
Office of NEPA Policy and Compliance (GC-54)
1000 Independence Avenue, S.W.
Washington, DC 20585

Via Federal eRulemaking Portal

Re: Comments regarding DOE categorical exclusion for advanced nuclear reactors; Docket No. DOE-HQ-2025-0405; notice provided at 91 Fed. Reg. 4550 (Feb. 2, 2026).

Dear DOE:

These comments are submitted on behalf of Nuclear Information and Resource Service ("NIRS") regarding the U.S. Department of Energy's ("DOE" or the "Department") proposal to establish a categorical exclusion for authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors for inclusion in its National Environmental Policy Act ("NEPA") implementing procedures.[1]

The following organizations have also signed on to these comments: Beyond Nuclear, Blue Ridge Environmental Defense League, Coalition for a Nuclear-Free Mississippi River, Chesapeake Physicians for Social Responsibility, Citizens Awareness Network, Columbia Riverkeeper, Friends of the Earth US, Greenpeace USA, HEAL Utah, Hudson Valley Climate Science and Solutions, Montana Environmental Information Center, Nevada Nuclear Waste Task Force, Nuclear Watch New Mexico, Ohio Nuclear Free Network, Oregon Conservancy Foundation, Oregon Physicians for Social Responsibility, PeaceWorks Kansas City, Riverkeeper, Safe Energy Rights Group, San Antonio Bay Estuarine Waterkeeper, Snake River Alliance, Southern Alliance for Clean Energy, Texas Nuclear Watchdogs, Uranium Watch, and Wyoming Outdoor Council.

[1] *See* 91 Fed. Reg. 4550 (Feb. 2, 2026) https://www.federalregister.gov/documents/2026/02/02/2026-02071/categorical-exclusion-for-advanced-nuclear-reactors.

I. Signing Organizations

The following is a description of each commenting organization, as provided by each organization. All of the organizations and/or their members are either neighbors of existing or proposed nuclear power plants and/or conduct advocacy related to nuclear power, and many have participated in, intervened in, or plan to do so in regulatory proceedings for the licensing or re-licensing of nuclear power plants. All have interests threatened by DOE's proposal to create this new categorical exclusion from NEPA, such as informational, recreational, property, health, aesthetic, and environmental interests.

Nuclear Information and Resource Service[2] ("NIRS") is a non-profit corporation with over 17,200 members across the United States, including 3,160 of whom reside in states where DOE's initial Pilot Reactor Program projects are to be located. NIRS has a mission to promote a nonnuclear energy policy and a concern for the health and safety of the people and ecosphere through public education, advocacy, research, and analysis. We have frequently engaged in environmental review processes, involving regulatory, licensing, and permitting proceedings before multiple agencies, including the Department of Energy, the Nuclear Regulatory Commission, and the Environmental Protection Agency. In such proceedings, we have often represented the interests of our members who would be affected by the proposed actions. The information that the public would have access to through environmental reviews of projects under DOE's Pilot Reactor Program and other "advanced" reactor projects is essential to understanding the impacts such projects would have on local populations and the environment, including our members.

Beyond Nuclear[3] is a 501(c)(3) non-profit, anti-nuclear advocacy organization based in Takoma Park, Maryland, dedicated to abolishing nuclear weapons and phasing out nuclear power in favor of sustainable, renewable energy. Founded in 2007 by Linda Pentz Gunter, it focuses on educating the public on the dangers of radioactive waste, advocating against new reactor construction, and promoting environmental justice.

Blue Ridge Environmental Defense League[4] is a regional, community-based non-profit environmental organization founded in 1984 and today has members and projects in Virginia, North Carolina, South Carolina, Tennessee, Alabama, and Georgia. BREDL's founding principles are earth stewardship, environmental democracy, social justice, and community empowerment. BREDL encourages government agencies and citizens to take responsibility for conserving and protecting our natural resources and protecting public health. BREDL also functions as a "watchdog" of the environment, monitoring issues and holding government officials accountable for their actions. BREDL has opposed a number of industrial and governmental projects which could have contaminated the environment

[2] https://www.nirs.org/.
[3] www.BeyondNuclear.org.
[4] https://www.bredl.org/.

with radioactive pollution. To remove the protections afforded by NEPA and other standards would gamble with public health and the lives of our members.

Chesapeake Physicians for Social Responsibility[5] is a statewide, evidenced-based, organization of over 850 physicians, and other health professionals and supporters, that addresses the existential public health threats of: nuclear weapons, the climate crisis and the issues of pollution and toxics' effect on health as seen through the intersectional lens of environmental, social and racial justice. As an organization founded by physicians, we understand that prevention is far superior to treatment in reducing costs; death, illness, injury, and suffering.

Citizens Awareness Network[6] ("CAN") is a volunteer, grassroots organization, committed to the creation of vibrant communities with the replacement of nuclear reactors and fossil fuels in New England with sustainable solutions. CAN is committed to empowering people to participate in the democratic process to ensure a sustainable, equitable, and energy independent future with the closure and safe decommissioning of New England's aging fleet of nuclear reactors. CAN is a regional group, with over 1,000 members in New England and the Northeast that was instrumental in the closure of four New England reactors – Yankee Rowe, CT Yankee, Millstone Unit 1, and Vermont Yankee. CAN has won lawsuits against the NRC and nuclear corporations concerning decommissioning, public participation, and high-level waste storage and has intervened in NRC hearings on the cleanup of Yankee Rowe and CT Yankee, and license transfer proceedings on Indian Point, Fitzpatrick, and Vermont Yankee. CAN's other work has included: helping organize a citizen health study on radioactive releases; engaging in outreach to the public via waste tours, public summits, and action camps; supporting legislative action regarding nuclear sites; and helping create a citizen advisory panel to advise on the decommissioning of Vermont Yankee.

The **Coalition for a Nuclear-Free Mississippi River**[7] is a network of environmental, Indigenous, and nuclear advocacy organizations based in Western Wisconsin and Eastern Minnesota. The Coalition's mission is the immediate decommissioning of the Monticello nuclear reactor, and to educate the public on dangers of the nuclear power reactors and safe alternatives. The organization has seven member organizations with a total of 4,000 members spanning the United States. We have participated in environmental review processes with the Department of Energy and the Nuclear Regulatory Commission. Given the significant environmental and health impacts of construction, operation, nuclear waste storage and decommissioning of advanced nuclear reactor facilities, our Coalition believes it is essential that there be full public environmental review and regulation of any such project.

[5] https://www.chesapeakepsr.org/.
[6] https://www.nukebusters.org/.
[7] https://nuclearfreemississippi.wordpress.com.

Columbia Riverkeeper[8] is a non-profit organization with a mission to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Columbia Riverkeeper has over 16,000 members and supporters who live, work, and recreate throughout the Columbia River Basin, including thousands of members and supporters in Washington state.

For over two decades, Columbia Riverkeeper has worked with Tribal Nations and people in communities throughout the Northwest who rely on a cold, clean Columbia to address toxic and radioactive waste at the Hanford Nuclear Site. Based on this experience, our organization has seen firsthand the complex challenges, and unanswered questions, when it comes to long-term management of nuclear waste. The public and Columbia Riverkeeper members continue to catch and consume fish from the Columbia River, drink water from the river, irrigate farms with the river water, and recreate in the Hanford Reach and downstream of Hanford. The federal government has an obligation to ensure that Hanford's nuclear legacy does not compromise current and future generations' use and enjoyment of the Columbia River. And despite the significant cleanup challenges that already exist onsite, companies, such as X-Energy, are planning to develop novel Small Modular Nuclear Reactors (SMNRs) at Hanford. The proposed location of these SMNRs directly impacts cleanup operations onsite, threatens worker and community safety, burdens future generations with increased nuclear waste, and holds the potential to mobilize highly radioactive and toxic waste. Any and all proposals to build nuclear infrastructure and increase nuclear waste must undergo rigorous environmental review.

Friends of the Earth US[9] ("Friends") is a 501(c)(3) non-profit organization dedicated to improving the environment and creating a more healthy and just world. The organization was founded in 1969 by David Brower in part to safeguard against safety and environmental risks of nuclear powerplants. Friends has more than 140,000 members in all 50 states and the District of Columbia and more than 4.7 million activist supporters across the country. Friends regularly submits comments as part of NEPA and APA in connection with federal actions that will affect the interests of Friends and its members. In this instance, Friends and its members are significantly harmed by the creation and application of a Categorical Exclusion to certain activities related to advanced nuclear reactors. This action denies essential and timely information about what the federal government and the nuclear power industry is doing. It denies Friends the ability to fully participate in the federal process as to issues rooted in its mission. And it denies Friends the ability to better understand and anticipate the range of potential impacts that federal decisions and actions could have on people and the planet, including our members.

Greenpeace USA is an independent, non-profit environmental organization incorporated in California with an office in Washington, DC and staff located around the country. We have over 250,000 supporters spread across the U.S. Our mission is to protect

[8] https://www.columbiariverkeeper.org/.
[9] www.foe.org.

biodiversity, prevent pollution and abuse of the earth's oceans, land, air and fresh water, end all nuclear threats and promote peace, global disarmament, and non-violence. Greenpeace USA is independent of but connected to a network of Greenpeace offices located in over 20 countries around the world. We believe that members of the public, including Greenpeace supporters living near DOE facilities, should have access to information through environmental reviews of projects related to the Department's Pilot Reactor Program, particularly in light of potential risks posed to their health, safety and security.

Since 1999, **HEAL Utah**[10] has been a relentless force in safeguarding our air quality, championing clean energy initiatives, and leading efforts against toxic and radioactive waste in Utah. Through a multifaceted approach encompassing education, grassroots mobilization, and policy at both state and federal tiers, we have achieved significant milestones in protecting Utah's environment and its people.

Hudson Valley Climate Science and Solutions is a grassroots group dedicated to providing climate information and promoting and implementing effective climate solutions.

The **Montana Environmental Information Center**[11] (MEIC) is a nonprofit environmental advocacy organization founded in 1973 by Montanans committed to protecting and restoring the state's natural environment. MEIC has approximately 1555 members across Montana. At the state level, MEIC leads efforts to advance clean, affordable, reliable, and efficient energy solutions for Montana — which do not include nuclear power. As NorthWestern Energy and several elected officials explore nuclear development in Montana, MEIC and its members are concerned about the risks of increased air and water pollution, dangerous radiation exposure, and the significant financial burden nuclear projects would place on ratepayers. MEIC has extensive experience participating in regulatory, licensing, and permitting proceedings. Full environmental review and public transparency — including under the Department of Energy's Pilot Reactor Program and other advanced reactor proposals — are essential to understanding the potential impacts of construction, operation, waste storage, and decommissioning. Given the serious environmental and public health implications, MEIC believes any proposed nuclear project must undergo comprehensive environmental review and robust public oversight.

A primary focus of **Nevada Nuclear Waste Task Force** is to assist members of the public wanting to be involved in the federal government decision making process in regard to nuclear waste issues. We and the residents we deal with rely heavily on NEPA and the public comment opportunities it provides through drafts, finals and records of decisions.

[10] https://www.healutah.org/.
[11] https://meic.org/.

Nuclear Watch New Mexico[12] ("NukeWatch NM") is a nonprofit organization based in Santa Fe, New Mexico. Through comprehensive research, public education, and effective citizen action, NukeWatch NM seeks to promote safety and environmental protection at regional nuclear facilities; mission diversification away from nuclear weapons programs; greater accountability and cleanup in the nation-wide nuclear weapons complex; and consistent U.S. leadership toward a world free of nuclear weapons. We have been engaged in environmental review processes since 2000, including submitting over 60 sets of formal comments to the Department of Energy ("DOE"). We have also advocated for years for programmatic-level environmental review of plutonium pits at Los Alamos and the Savannah River Site, and were a plaintiff in the recent lawsuit against DOE and DOE's semi-autonomous nuclear weapons agency, the National Nuclear Security Administration, over its failure to complete a programmatic environmental impact statement on the expanded production of plutonium "pit" bomb cores, as required by the National Environmental Policy Act ("NEPA"). Site-specific risks, accidents, waste, and groundwater particularly concern our group.

The **Ohio Nuclear Free Network**[13] ("ONFN") is a non-profit organization with an office in Toledo, Ohio. ONFN members and supporters are mostly Ohio residents, but we also have members around the United States and in Canada. ONFN educates the public about the costs and dangers of radioactivity generated by nuclear power and nuclear weapons. Some of our members and supporters live close to the Portsmouth Nuclear Site at Piketon, Ohio ("PORTS"). PORTS has a long history of radioactive contamination of Pike County and surrounding counties in Southern Ohio. Our members frequently comment on Department of Energy and Nuclear Regulatory Commission proposals, activities, and licenses. ONFN has been involved in regulatory, licensing, and permitting proceedings before multiple agencies. Currently, Oklo, Inc. is proposing two new nuclear reactors at PORTS, along with other activities including the reprocessing of the radioactive waste that these reactors would generate. Given the environmental and health impacts of construction, operation, radioactive waste generation, and decommissioning of these facilities, ONFN believes that a full public environmental review and regulation of any such project is essential. Information from environmental reviews of DOE's Pilot Reactor Program projects and other new reactor projects is essential to understanding the impacts such projects would have on the environment and on our members.

Oregon Physicians for Social Responsibility[14] ("OPSR") is a nonprofit organization based in Oregon with nearly 5,000 supporters, the overwhelming majority of whom reside in the Pacific Northwest, where a small modular reactor ("SMR") project is planned along the region's largest waterway. Our mission is to protect public health through education and advocacy on the gravest risks to human health and safety, including nuclear threats and climate change. We review and rely on publicly available documents, including

[12] https://nukewatch.org/.
[13] https://onfn.org/.
[14] https://www.oregonpsr.org.

environmental review materials, to evaluate proposed policies and projects and to inform the public about potential environmental and health impacts. The information the public would have access to through environmental reviews of SMRs and other advanced reactor projects is essential to understanding the impacts such projects may have on local communities and the environment.

The **Oregon Conservancy Foundation** ("OCF") is a regional non-profit tax-exempt foundation created in 1991 as the result of a settlement in a lawsuit against Pacific Power and Light for illegally charging Oregon ratepayers for abandoned nuclear power plants. OCF promotes the public benefit by supporting environmental protection, reverence for life, and human rights. OCF works to keep fossil fuels in the ground, to oppose the resurgence of nuclear power and its small modular nuclear reactor designs, and promotes the use of clean renewable energy, energy efficiency, and energy conservation applications. OCF advocates for energy project compliance with NEPA to determine that all environmental impacts are assessed with public input in order to ensure consideration of environmental harms that need to be to be prevented or mitigated.

PeaceWorks Kansas City[15] is a nonprofit organization working to eliminate nuclear weapons, speak truth to power, and take action against racism, violence, and oppression. We are particularly concerned with the Deep Fission company's plan to operate an experimental and novel micro-nuclear reactor at the bottom of a one-mile deep borehole in Parsons, Kansas. The speed with which it is planned to be implemented is also deeply concerning. One of the projects that DOE is sponsoring, the Deep Fission project, was only announced on December 4, 2025 and with plans to reach criticality by July 5, 2026. This project needs strict health and safety regulations and informed public consent, not a categorical exclusion.

Riverkeeper[16] is a 501(c)(3) non-profit organization dedicated to protecting and restoring the Hudson River estuary and its tributaries and safeguarding drinking water supplies for surrounding communities. For more than 50 years, Riverkeeper has stopped polluters, championed public access to waterways, influenced land use decisions, protected aquatic life, and restored habitat through advocacy that is rooted in community partnerships, science, and law. Riverkeeper's work is made possible by the support of approximately 3,400 members. As part of its advocacy, Riverkeeper frequently participates in and utilizes the information made available through federal and state environmental reviews. In January 2017, Riverkeeper won one of its longest battles when it joined New York State and Entergy, the owner of the nuclear power plant Indian Point, in an historic agreement to close the aging and unsafe nuclear power plant by April 2021. Riverkeeper is ensuring that both the decommissioning of the facility and any planned redevelopment

[15] https://pwkc.org.
[16] https://www.riverkeeper.org/.

of the site is completed safely and with the best interests of the local communities and environment in mind.

Safe Energy Rights Group ("SEnRG") is an organization that advocates for better energy options for communities in New York State and nationally. Some members live very close to the decommissioning Indian Point nuclear plant and three adjoining high pressure gas pipelines in Westchester County, New York. SEnRG seeks to educate people locally, statewide, and nationally regarding the costs, safety risks, health effects, and other aspects of nuclear and fossil fuel energy. Some of SEnRG's previous advocacy work includes bringing a lawsuit (along with other organizations) challenging FERC's approval of the location of an additional gas pipeline that would run adjacent to the Indian Point nuclear plant. SEnRG continues to monitor the decommissioning activities at the plant by attending and commenting at the NY State Decommissioning Oversight Board meetings, and would oppose the siting of new nuclear facilities at that location.

San Antonio Bay Estuarine Waterkeeper[17] ("Waterkeeper") is a Calhoun County, Texas, membership organization founded in 2012 as a project of the non-profit Calhoun County Research Watch. Waterkeeper is a member of the national network of organizations in the Waterkeeper Alliance. Its mission is to monitor and protect the San Antonio, Matagorda, and Lavaca Bays by investigating and reporting violations of environmental permits, participating in the pollution permitting process, coordinating community actions and visits, and educating the public on the sources of pollution that impact Calhoun County. Commercial fishermen, marine biologists, volunteers, environmental advocates, and other community members work from within and with Waterkeeper to ensure compliance with environmental laws and support recovery and cleanup projects in regional bays and waterways.

Waterkeeper is actively involved in challenging the licensing of four high-temperature gas-cooled reactors at the proposed Long Mott Generating Station, which DOE is supporting through its Advanced Reactor Demonstration program. Waterkeeper includes members who reside, recreate, and work within 50 miles of the proposed reactors and who will be affected by this reactor facility. Waterkeeper's ability to participate in licensing proceedings and to keep its members informed would be adversely impacted if a categorical exclusion were applied to this project or any other future project proposed in the area.

The **Snake River Alliance**[18] is a 501(c)(3) nonprofit organization based in Boise, Idaho. The Snake River Alliance works to nourish and grow an intergenerational community of Idahoans reckoning with our nuclear and radioactive past, present, and future, and protecting Idaho from nuclear waste and contamination in perpetuity. We represent over 1000 supporters and members who reside mainly in southern Idaho, where

[17] https://sanantoniobaywaterkeeper.org.
[18] www.snakeriveralliance.org.

the Department of Energy's Idaho National Laboratory is located above our aquifer. We have frequently engaged in environmental review processes, involving regulatory, licensing, and permitting proceedings before multiple agencies, including the Department of Energy, the Nuclear Regulatory Commission, and the Environmental Protection Agency. Projects and planned reactors, such as Oklo, Project Pele, Marvel, Aurora Fuel Fabrication Facility, Aalo Atomics, and the Molten Chloride Reactor Experiment, to name just a few, all potentially pose significant health and environmental impacts from construction, operation, nuclear waste storage, and decommissioning of facilities. The Snake River Alliance believes it is essential that there be a full public environmental review and regulation of any such project.

The **Southern Alliance for Clean Energy**[19] promotes responsible and equitable energy choices to ensure clean, safe, and healthy communities throughout the Southeast. We actively track and review federal energy decisions in our region.

Texas Nuclear Watchdogs is a network of individuals who work together to educate the public and policymakers about nuclear issues and take legal action if necessary to prevent risks to health, safety, the environment and public welfare. There is still a risk of accidents with small modular reactors and potential for radiation releases. Our members come from throughout Texas, and many are active in other environmental, business and consumer organizations as well. The lack of an environmental analysis and environmental impact statement for the Texas A&M Rellis campus nuclear projects in Bryan, Texas could put several of our members at risk. Similarly, several of our members that live near Abilene, Texas and drive through the city frequently could be impacted by Natura's project at the Abilene Christian University campus. Any licensing or expansion of these sorts of facilities should undergo a full NEPA analysis, not be subject to a categorical exclusion.

Uranium Watch[20] is a public interest not-for-profit that addresses the health, safety, and environmental risks and impacts from uranium mining and other nuclear fuel cycle facilities, primarily in Utah. The DOE has already placed a Valar Atomics' test reactor about 135 miles from Uranium Watch's home base in Moab, Utah. News articles about the placement of the test reactor at the Utah State-owned San Rafael Energy Lab in Orangeville did not provide any information about the operation of the test reactor; how workers, nearby residents, and others would be protected; emergency response planning; storage of spent fuel; who to contact to get information; site operation and oversight responsible parties; operational regulations; need for NRC licensing if power is sold to non-federal entities; and other aspects of the testing and operation of the reactor.

Established in 1967, the **Wyoming Outdoor Council**[21] ("WOC") is Wyoming's oldest independent conservation organization. WOC's mission is to protect Wyoming's

[19] www.cleanenergy.org.
[20] https://uraniumwatch.org.
[21] https://wyomingoutdoorcouncil.org/.

environment and quality of life for current and future generations. WOC accomplishes this through local, state, and federal advocacy to protect clean water, air, wildlife, public lands, and natural resources in Wyoming. WOC is not an anti-nuclear group and believes that responsible energy development can co-exist with conservation values. WOC is, however, concerned over DOE's proposed Categorical Exclusion for Advanced Nuclear Reactors, and the threat that this could pose to Wyoming's environment, communities, and the opportunity for Wyoming citizens to make informed decisions for their communities. This has become especially important in the context of new nuclear projects that have been proposed across Wyoming in communities such as Kemmerer, Bar Nunn, and Gillette.

II. Summary of DOE's action and its incompatibilities with NEPA, the APA, and the advanced nuclear reactor landscape.

In this Federal Register Notice ("Notice"), DOE purports to establish a categorical exclusion for a broad range of activities[22] related to advanced nuclear reactors and amends Appendix B of its National Environmental Policy Act ("NEPA") implementing procedures accordingly.[23] Namely, DOE issues a new categorical exclusion for the following actions:

> *B5.26 Advanced Nuclear Reactors*
>
> *Authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors, provided DOE determines that:*
>
> > *(1) the project's attributes, including potential fission product inventory, fuel type, reactor design, and operational plans, reduce sufficiently the risk of adverse offsite consequences from the release of radioactive or hazardous materials, and*
> >
> > *(2) the project demonstrates that any hazardous waste, radioactive waste, or spent nuclear fuel generated by the project can be managed in accordance with applicable requirements.*
>
> *For the purposes of this category, a project may include multiple reactors within a nuclear facility.*

DOE cites Executive Orders 14301 and 14299 as the prime impetus for its action.[24] As for its legal authority, DOE cites its NEPA implementing procedures, which exist

[22] Specifically, the "authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors." 91 Fed. Reg. 4550.
[23] 91 Fed. Reg. 4551.
[24] 91 Fed. Reg. 4550; Executive Order 14301*, Reforming Nuclear Reactor Testing at the Department of Energy* (May 23, 2025) 90 Fed. Reg. 22591; Executive Order 14299, *Deploying Advanced Nuclear Reactor Technologies for National Security*, 90 Fed. Reg. 22581 (May 23, 2025). DOE also mentions it received public comment

outside the Code of Federal Regulations ("CFR") and describe how DOE establishes categorical exclusions (as of 2025).[25] It disclaims any need to follow notice-and-comment procedures, and fails to mention the Administrative Procedures Act ("APA") at all, instead stating that the categorical exclusion is effective immediately.[26]

But the process DOE uses to establish this categorical exclusion relies on its unlawfully revised NEPA procedures and regulations, in violation of both NEPA and the APA. The categorical exclusion itself also violates NEPA: the categorical exclusion is ill-defined and of indefinite scope. And DOE's Written Record offered in support fails to justify its finding that a categorical exclusion for certain advanced nuclear reactor actions is appropriate by, for example: (1) lumping diverse technologies together that in fact have very different safety, security, waste production & handling, and national security concerns; (2) ignoring historical experience of fuel damage events, radiological releases, and long-term environmental consequences; and (3) relying on studies issued before DOE's overhaul of its safety and environmental protection rules. Finally, DOE's action in establishing this categorical exclusion only in its implementing procedures and not in its NEPA regulations violates both NEPA and the APA.

III. DOE establishes this categorical exclusion in a process contrary to NEPA and the APA.

A. NEPA as a statute demands agencies use "all practicable means" in cooperation with the public to implement NEPA, which this process does not incorporate.

NEPA is a bedrock environmental statute that defines how agencies make certain decisions. By statute, it mandates that agencies like DOE must "use all practicable means and measures"—"in cooperation with . . . concerned public and private organizations"—to advance the policies of NEPA that have been there from the start: to support humans and nature coexisting and to fulfill the "social, economic, and other requirements" of present and future generations.[27] NEPA declares a continuing responsibility for the federal government and its agencies to treat each generation as a "trustee of the environment," preserve historical and cultural heritage, and allow for safe, healthful, productive

requesting such an exclusion. 91 Fed. Reg. 4552 (citing *National Environmental Policy Act Implementing Procedures*, 89 Fed. Reg. 34074 (April 30, 2024) (DOE rulemaking establishing a categorical exclusion for energy storage and solar).

[25] 91 Fed. Reg. 4551 & n.2.

[26] *See generally* 91 Fed. Reg. 4550 et seq.; *Id.*. at 4552 n.4.

[27] 42 U.S.C. § 4331(a). This is reiterated by Executive Order 11514, which remains in effect today. *See* Executive Order 11514, *Protection and Enhancement of Environmental Quality*, 35 Fed. Reg. 4247, § 2(b) (Mar. 5, 1970) (emphasis added) (stating the federal agencies "***shall ... [d]evelop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties.*** These procedures shall include, whenever appropriate, provision for public hearings, and ***shall provide the public with relevant information, including information on alternative courses of action."***).

surroundings and high standards of living, with the goal of "attain[ing] the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences."[28]

This overarching policy applies even to actions that fall within a categorical exclusion from NEPA. Under NEPA, a "categorical exclusion" is "a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment."[29] If an action is found to fit within a categorical exclusion, the agency need not prepare an environmental document reviewing the impacts of that action,[30] but the agency is still not exempt from adhering to NEPA's goals.

And over the decades, courts consistently have continued to recognize that NEPA's goals are to imbue agency decisionmaking with the environmental consequences of projects and inform the public that the agency has considered these concerns.[31] As the Supreme Court has explained, "NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."[32] These core functions of NEPA are unchanged by recent events, including the 2023 and 2025 statutory amendments to NEPA,[33] the withdrawal of NEPA regulations issued by the Council on Environmental Quality ("CEQ"),[34] and recent Supreme Court precedent. The Court's recent decision in *Seven County* made this clear:

> The law ensures that the agency and the public are aware of the environmental consequences of proposed projects. Properly applied, NEPA

[28] 42 U.S.C. § 4331(b)(1); 42 U.S.C. § 4321 (declaring NEPA's national policy "to promote efforts which will prevent or eliminate damage to the environment and biosphere").
[29] 42 U.S.C. § 4336e(1).
[30] 42 U.S.C. § 4336(a)(2).
[31] *See Balt. Gas & Elec Co. v. NRDC*, 462 U.S. 87, 97 (1983) ("NEPA has twin aims. First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.") (cleaned up); *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979) ("NEPA . . . contains action-forcing procedures which will help to insure that the policies of the Act are implemented") (cleaned up); *see also Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976) (NEPA announced a national policy of environmental protection and placed a responsibility upon the Federal Government to further specific environmental goals); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) ("The sweeping policy goals announced in § 101 of NEPA are thus realized through a set of "action-forcing" procedures that require that agencies take a 'hard look' at environmental consequences, and that provide for broad dissemination of relevant environmental information.") (citations omitted) (cleaned up).
[32] *Robertson*, 490 U.S. at 348.
[33] The 2023 NEPA amendments did codify a definition for categorical exclusions for the first time: NEPA defines a categorical exclusion as "a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of section 102(2)(C)." 42 U.S.C. § 4336e(1).
[34] CEQ's justification for removing its NEPA rules relied on recent Executive Orders and that it assessment that it lacked authority to maintain its regulations, not that the rules themselves were substantively flawed or unreasoned. *See Removal of National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 10610, 10614 (Feb. 25, 2025). In fact, CEQ concluded that "removal of CEQ's regulations does not strip agencies of discretion to continue following similar procedures." *Id.; see also id.* at 10615 ("This rulemaking does not take any position on the agency's prior interpretations of NEPA's procedural requirements"). And although CEQ argued that its interim final rule satisfied the APA, it also declared that notice-and-comment was not required. *Id.*

> helps agencies to make better decisions and to ensure good project management.[35]

Here DOE's categorical exclusion does not ensure that the public will be aware of the environmental consequences of DOE's oversight of advanced nuclear reactors, nor does sheltering these projects within a categorical exclusion help the agency make informed, and better, decisions. Instead, DOE implements a categorical exclusion that has the potential to remove a significant number of advanced reactor activities from the normal NEPA review process that would require an environmental report, assessment of alternatives, and opportunities for public input to improve DOE decisionmaking.

DOE's Notice does not even explain whether or when it will issue a Federal Register notice that this categorical exclusion is being applied to a project. According to DOE's implementing procedures, the public would not even be aware that a project would qualify for a categorical exclusion until "generally within two weeks of the determination, unless additional time is needed."[36] DOE does all of this without a formal notice-and-comment period, even though for years prior, this has been a "practicable means" by which agencies have promulgated categorical exclusions.[37] All of these actions bring DOE into conflict with NEPA's long-standing statutory values that including the public brings about better decisionmaking and adherence to NEPA's values.

DOE seeks to justify this flawed process by relying on its NEPA implementing procedures, which minimize public notice and involvement in the promulgation of categorical exclusions. But these procedures, and DOE's implementing regulations, were themselves unlawfully enacted. To the point, DOE arbitrarily and capriciously and without explanation placed its categorical exclusion procedures in NEPA implementing procedures that sit outside its NEPA requirements found in the Code of Federal Regulations. Such an action dispenses entirely with the DOE's Administrative Procedures Act requirements for public notice and justification and thus is not in accordance with the law, as the following further explains.

B. The NEPA regulations and procedures DOE issued in 2025 that it relies on today were established in violation of the APA.

For years, the Council on Environmental Quality's NEPA regulations provided the background for many an agency's NEPA regulations and processes, like DOE's. For example, the 2024 CEQ regulations stated that changes to categorical exclusions were to

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[35] *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 US 168, 177 (2025); *id.* at 185 ("NEPA's procedural mandate helps to insure a fully informed and well-considered decision." (cleaned up)).
[36] DOE Implementing Procedures 5.4(e) (Feb. 2026: https://www.energy.gov/sites/default/files/2026-01/DOE-NEPA-Implementing-Procedures-2026-02-02.pdf; June 2025: https://www.energy.gov/sites/default/files/2025-06/2025-06-30-DOE-NEPA-Procedures.pdf).
[37] *See* Section III.B.

be conducted through notice-and-comment processes.[38] CEQ's abrupt and unjustified withdrawal of its NEPA regulations in 2025 did not change the fundamental logic behind such regulations; in fact, CEQ specifically stated that "This rulemaking does not take any position on the agency's prior interpretations of NEPA's procedural requirements."[39]

Later in 2025, DOE also amended its NEPA regulations arguing it was exempt from normal notice-and-comment rulemaking,[40] and among other changes, placed its categorical exclusion framework and categories in "implementing procedures" outside the CFR. Its revised procedures stated that it would give notice when a categorical exclusion was established, but not that it would use notice-and-comment rulemaking to do so.[41] DOE declined to appropriately justify this change. In short, neither CEQ nor DOE's actions complied with the APA as the following describes.

1. The APA requires notice-and-comment and reasoned decisionmaking before agency action like DOE's promulgation of the categorical exclusion and its categorical exclusion procedures.

The APA requires that agencies follow notice-and-comment procedures before finalizing rules and procedures in all but limited situations.[42] This includes notice of the proposal published in the Federal Register and an opportunity for the public to meaningfully participate in the proceeding through the submission of comments.[43] Only "[a]fter consideration of the relevant matter presented" may the agency finalize a rule, and not fewer than 30 days before publication in the Federal Register.[44] Agency decisions—including revisions of previous decisions—are to be justified; actions that are arbitrary, capricious or not otherwise in accordance with law violate the APA.[45] Recent Executive Orders have not changed U.S. law or policy here.[46]

Limited exceptions to these processes exist in two circumstances, neither of which apply here: (1) for interpretive rules, or rules of agency organization, procedure, or

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[38] 40 C.F.R § 1507.3(c)(8)(ii) (citing §§ 1507.3(b)(1) & (2), which, among other things, included providing an opportunity for public review ***before*** issuing final procedures).
[39] *Removal of National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 10610, 10615 (Feb. 25, 2025).
[40] *Revision of National Environmental Policy Act Implementing Procedures*, 90 Fed. Reg. 29676, 29680, 29680-81 (July 3, 2025). While DOE opened a comment period, it made its interim final rule effective immediately and argued that the good cause exception to the APA applied to make notice-and-comment unnecessary. *Id.*
[41] DOE Implementing Procedures at 5.1(a) (June 2025) (providing that DOE will publish notice of new categorical exclusions, but not providing for full notice-and-comment rulemaking); *id.* at 5.2(a) (providing that DOE will publish notice of other agencies' categorical exclusions that it adopts and will list them in Appendix C to the Implementing Procedures, without providing for full notice-and-comment rulemaking).
[42] 5 U.S.C. § 553(b).
[43] 5 U.S.C. § 552(c).
[44] 5 U.S.C. § 553(c)-(d).
[45] 5 U.S.C. § 706(2).
[46] Executive Order 14154 § 2(h) states that "[i]t is the policy of the United States …to guarantee that all executive departments and agencies … provide opportunity for public comment and rigorous, peer-reviewed scientific analysis." *Unleashing American Energy*, 90 Fed. Reg. 8353, 8354 (Jan. 20, 2025).

practice; or (2) when the agency finds (and so details in its rule) that good cause exists to not conduct notice-and-comment rulemaking because it is impracticable, unnecessary, or contrary to the public interest.[47] In fact, DOE cites neither exception to the APA when it promulgated this categorical exclusion without notice-and-comment in the Federal Register Notice.[48]

Nor is either exception applicable here. Courts review whether agency action is subject to APA notice-and-comment on a case-by-case basis; exceptions are "narrowly construed and only reluctantly countenanced."[49] And this categorical exclusion promulgation falls neither in the first nor second exception from the APA. First, DOE's action is not purely procedural and thus does not fit into the first category for an exemption, which relates primarily to "internal house-keeping measures organizing agency activities."[50] Here, DOE creates a categorical exclusion for certain advanced nuclear reactor activities, effectively removing otherwise available opportunities for external input—i.e., the public's ability to participate in the environmental review.[51] Second, good cause does not exist (nor was argued)—on the contrary, soliciting and incorporating public comment will help DOE determine whether a "category of actions . . . normally does not significantly affect the quality of the human environment," by offering a forum for the public to explain how proposed actions impact their human environment, not just receiving input from regulated entities.[52] In fact, DOE admits that one driver for this categorical exclusion was from a public comment submitted during a previous, unrelated, notice-and-comment rulemaking.[53] Public input at this stage could only benefit DOE's decisionmaking.

Furthermore, neither exception to the APA process applied when DOE issued its 2025 regulations and implementing procedures that established the process it is using now. In its 2025 interim final rule, DOE relied heavily on *Seven County* to erroneously argue that because NEPA is a procedural statute, any rules implementing it are procedural and thus exempt from APA notice-and-comment.[54] But *Seven County* made no such conclusion—it was about the scope of judicial review, not the applicability of the APA to

[47] 5 U.S.C. § 553(b)(A)-(B).
[48] *See* 91 Fed. Reg. 4550 et seq.
[49] *New Jersey Dep't of Env't Prot. v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980).
[50] *Am. Fed'n of Lab. & Cong. of Indus. Orgs. v. Nat'l Lab. Rels. Bd.*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (discussing the "limited carveout" for procedural rules); *see e.g., Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014) (finding rules governing the processing of petitions to be procedural rules); *Lamoille Valley R.R. Co. v. Interstate Com. Comm'n*, 711 F.2d 295, 327–28 (D.C. Cir. 1983) (finding a modified scheduling deadline to be a procedural rule).
[51] While the Implementing Procedures also do not guarantee public involvement at many stages, contradicting NEPA's purpose to include the public and elevate informed decisionmaking, the public still would have had an opportunity to participate during the EIS process (7.1), and any public scoping on environmental assessments DOE opens (6.1). In contrast, DOE excludes the public from involvement when a categorical exclusion might be applied.
[52] 42 U.S.C. § 4336e(1) (emphasis added).
[53] 91 Fed. Reg. 4225 (citing 89 Fed. Reg. 34074) (an energy storage and solar rulemaking on a new proposed categorical exclusion).
[54] 90 Fed. Reg. 29679-80.

NEPA.[55] And, as discussed above, although NEPA does not mandate any particular outcome, it is intended to improve the substance of agency decisionmaking.[56] Moreover, DOE's 2025 rules and procedures regulate the threshold for applying NEPA, defining when the public will have an opportunity to comment, and establishing the bounds of DOE's analyses, all of which are well beyond the scope of merely setting "internal house-keeping measures."[57]

In fact, other agencies recognize that defining a categorical exclusion is subject to APA rulemaking. For example, as recently as February 2026, FERC opened a notice of proposed rulemaking to add a category of actions to an existing categorical exclusion for certain terminations or revocations of water power licenses and exemptions.[58] NRC's rules also require that before a categorical exclusion category can be created, it must go through the rulemaking process.[59]Up until recently, DOE conducted much more robust reviews and APA notice-and-comment rulemakings when it established a categorical exclusion.[60]

Nor did DOE meet the strict standard to show good cause for avoiding compliance with the APA when issuing its revisions in 2025—an agency's desire to "eliminate more quickly legal and regulatory uncertainty is not by itself good cause,"[61] and DOE could have simply continued to rely on CEQ's NEPA regulations, while using traditional notice-and-comment to develop the next iteration of rules, as is typically done when an agency revises its procedures.[62] Instead, arbitrarily and capriciously and without explanation, DOE

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[55] *Seven County* spoke to the judiciary's role under NEPA, not the agency's obligations under the APA. *Seven County* at 182 ("it is critical to disaggregate the agency's role from the court's role"); *id.* at 184 ("Congress did not design NEPA for *judges* to hamstring new infrastructure and construction projects." (emphasis in original)).
[56] *Seven County* at 177.
[57] *Am. Fed'n of Lab. & Cong. of Indus. Orgs. v. Nat'l Lab. Rels. Bd.*, 57 F.4th 1023, 1034 (D.C. Cir. 2023).
[58] *Categorical Exclusion Under the National Environmental Policy Act for Certain Terminations or Revocations of Water Power Licenses and Exemptions*, 91 Fed. Reg. 8799 (notice of proposed rulemaking) (Feb. 24, 2026).
[59] 10 C.F.R. § 51.22(a); *see also, e.g., Categorical Exclusions from Environmental Review,* 89 Fed. Reg. 54727 (July 2, 2024) (NRC proposed rulemaking to modify its categorical exclusions).
[60] For example, in 2024 DOE used formal notice-and-comment rulemaking to add and revise categorical exclusions for certain energy storage systems, powerlines, and solar systems. National Environmental Policy Act Implementing Procedures, 89 Fed. Reg. 34074 (April 30, 2024) (final rule). Unlike DOE's action now, DOE provided the public with a meaningful opportunity to review and comment on DOE's proposed changes before finalizing. *See e.g., id.* at 34080 (providing an extended comment period of 59 days as "DOE appreciates that there are competing schedule demands and that these may fall hardest on small organizations and community members"). DOE reviewed all comments received on the notice of proposed rulemaking, and in response, added information to its (significantly more robust) written record, revised its categorical exclusions based on public comment and provided responses to comments received. *See e.g., id.* at 34077 ("DOE is making three clarifying changes in response to public comment on the notice of proposed rulemaking). And critically, DOE has never adequately justified its deviation from these protocols to the ones it uses now. *See Encino Motorcars v. Navarro*, 579 U.S. 211, 221 (2016) (holding that an agency must "give adequate reasons" when it reverses course).
[61] *California v. Azar*, 911 F.3d 558, 576 (9th Cir. 2018); *see also United States v. Cotton*, 760 F. Supp. 2d 116, 128 (D.D.C. 2011) (collecting cases).
[62] CEQ's rules were withdrawn because of recent Executive Orders and the agency was worried it lacked authority, not that the rules were fundamentally flawed. *Removal of National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 10610, 10613 (Feb. 25, 2025).

revised its regulations and procedures outside of normal APA notice-and-comment rulemaking.

In short, the process used to promulgate this categorical exclusion was established in violation of both the APA and NEPA. But that is not all. The categorical exemption itself ignores requirements in NEPA and is unsupported by the evidence, as the following explains.

IV. DOE's proposed categorical exclusion is vague and not identified in sufficient detail, contrary to NEPA.

DOE's action fails to give sufficient notice of the scope of the categorical exclusion that will be applied, contrary to NEPA's requirements and advancing the goals of informed decisionmaking. In particular, the 2023 statutory amendments to NEPA recognized that when adopting categorical exclusions, an agency must "identify to the public the categorical exclusion that the agency plans to use for its proposed actions."[63] In other words, the categorical exclusion must be sufficiently detailed and give notice to the public, regulators, and regulated community as to its scope and bounds—what actions and projects would be reviewed through the lens of a categorical exclusion, and what would not. Otherwise, the ability of the public (and others) to provide meaningful feedback when the categorical exclusion is established is seriously threatened.

Here, DOE fails to sufficiently identify the exclusion when it proposes the following categorical exclusion be added to its implementing procedures (repeated from Section II above):

> *B5.26 Advanced Nuclear Reactors*
>
> *Authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors, provided DOE determines that:*
>
> > *(1) the project's attributes, including potential fission product inventory, fuel type, reactor design, and operational plans, reduce sufficiently the risk of adverse offsite consequences from the release of radioactive or hazardous materials, and*
> >
> > *(2) the project demonstrates that any hazardous waste, radioactive waste, or spent nuclear fuel generated by the project can be managed in accordance with applicable requirements.*

[63] 42 U.S.C. § 4336c.

For the purposes of this category, a project may include multiple reactors within a nuclear facility.

Multiple problems exist with this definition. **First**, DOE never defines what qualifies as an "advanced nuclear reactor," not in the proposed categorical exclusion nor elsewhere in the Federal Register notice or Written Record.[64] Even the Executive Orders cited in the Federal Register use conflicting definitions for this term (nor would definitions therein suffice even if they were identical).

For example, Executive Order 14301 (May 23, 2025) defines "advanced reactors" as having the same meaning as the term ''advanced nuclear reactor'' in 42 U.S.C. § 16271(b)(1), which for fission reactors, requires "significant improvements" compared to reactors operational by December 27, 2020, but also includes fusion reactors and radioisotope power systems.[65] Executive Order 14299 does not mention this definition nor incorporate its contents, but open-endedly describes such reactors as "nuclear energy systems like Generation III+ reactors, small modular reactors, microreactors, and stationary and mobile reactors that have the potential to deliver resilient, secure, and reliable power to critical defense facilities and other mission capability resources."[66] Where such projects might be located, and for what applications, also is inconsistent between these references and the categorical exclusion notice, making it even more

[64] *See generally* 91 Fed. Reg. 4550. Note also that, contrary to the Federal Register Notice, the Written Record is not available directly at http://www.energy.gov/nepa but is instead located several links away. This frustrates the public's ability to understand and comment on this categorical exclusion. When information is not located where an agency states it will be, the ability of the public and concerned organizations to participate in and share information about agency action is impaired.

[65] Specifically: "The term 'advanced nuclear reactor' means— (A) a nuclear fission reactor, including a prototype plant (as defined in sections 50.2 and 52.1 of title 10, Code of Federal Regulations (or successor regulations)), with significant improvements compared to reactors operating on December 27, 2020, including improvements such as—

(i) additional inherent safety features;
(ii) lower waste yields;
(iii) improved fuel and material performance;
(iv) increased tolerance to loss of fuel cooling;
(v) enhanced reliability or improved resilience;
(vi) increased proliferation resistance;
(vii) increased thermal efficiency;
(viii) reduced consumption of cooling water and other environmental impacts;
(ix) the ability to integrate into electric applications and nonelectric applications;
(x) modular sizes to allow for deployment that corresponds with the demand for electricity or process heat; and
(xi) operational flexibility to respond to changes in demand for electricity or process heat and to complement integration with intermittent renewable energy or energy storage;

(B) a fusion reactor; and
(C) a radioisotope power system that utilizes heat from radioactive decay to generate energy."

[66] Executive Order 14299. Nor does it mention the Generation VI reactors of Executive Order 14301, and identifies mobile reactors, which Executive Order 14299 omits.

difficult for the public to be informed about how, when, and where this exclusion is applied.[67]

This failure to identify a term fundamental to the categorical exclusion leaves the public unable to predict when a categorical exclusion might be considered for a project, and unclear about how and when relevant information is to be provided so that DOE can accurately assess whether this categorical exclusion is appropriate. And under DOE's unlawful implementing procedures, the public will likely not learn that such a categorical exclusion has been applied until after the decision is made, with no opportunity to participate.[68] This lack of clarity will not speed up DOE's review of projects as it leaves decisions open to litigation over the propriety of such a decision.

Second, no benchmarks are provided as to when the risk of "adverse offsite consequences" is "sufficiently" reduced, nor when other preconditions would be met that would warrant applying the categorical exclusion to a particular action.[69] Because, as the categorical exclusion notice describes, before applying the exclusion, DOE will also consider "each of the conditions in the categorical exclusion itself," the integral elements in Appendix B of DOE's NEPA procedures, and other conditions in its implementing procedures, "including whether extraordinary circumstances exist such that a normally excluded action may have a significant environmental effect."[70] Yet these issues that DOE bakes into its categorical exclusion, including those about waste management and risks associated with "fission product inventory, fuel type, reactor design, and operational plans" go to the very heart of a project and are all fundamental questions that are at the heart of an in-depth NEPA analysis. And DOE makes no guarantee that it will review any information from the public; instead, it appears that the decision will take place with the categorical exclusion applicant as the only non-governmental entity involved in the process[71] and without the more robust review an environmental assessment or environmental impact statement would entail.[72]

Yet historically, public input during the NEPA process has helped agencies identify the relevant universe of environmental effects and alternatives, potential mitigation

[67] *See e.g.,* Executive Order 14301 ("[Advanced nuclear reactors] will open a range of new applications to support data centers, microchip manufacturing, petrochemical production, healthcare, desalination, hydrogen production, and other industries."); 91 Fed. Reg. 4552 ("reactors in this category developed for additional purposes, such as power production and industrial applications, are also appropriate for this categorical exclusion").
[68] DOE Implementing Procedures at 5.4(e).
[69] *See* Categorical Exclusion B5.26.
[70] 91 Fed. Reg. 4551.
[71] At best, DOE indicates that it "may review . . . information from other sources as needed." 91 Fed. Reg. 4551 (describing by name other entities that it might consult with instead, including the applicant and other governmental agencies).
[72] For example, an alternatives analysis is conducted as part of an environmental assessment or environmental impact statement, but not when a categorical exclusion is applied.

options, and other information DOE would be expected to evaluate.[73] Public involvement surfaces "reliable data source[s]" necessary for evaluating environmental impacts,[74] so that DOE does not have to locate that material all by itself. And experience shows that engaging the public and listening to their concerns reduces controversy and boosts the likelihood that projects will be timely permitted and built. Public involvement saves agencies time while producing better environmental reviews.

Third, the exclusion expressly would allow DOE to apply it to ***multiple*** reactors within a facility. And DOE's implementing procedures explicitly anticipate that more than one categorical exclusion could be applied to a proposal.[75] DOE's determination as to whether multiple categorical exclusions could be applied (e.g., whether a proposal has been unlawfully segmented, or whether "extraordinary circumstances" exist creating unknown or reasonably foreseeable significant impacts) would be insulated from public input. Not only does this risk ignoring significant impacts that increase as multiple reactors increase risks; this and any other "stacking" of categorical exclusions is unlawful because it runs contrary to NEPA's structure and purpose by allowing agency actions with potentially significant impacts to evade NEPA review.[76]

It is critical that DOE's categorical exclusion here be properly assessed and appropriate boundaries set. It impacts not only projects under DOE's jurisdiction, but other agencies, including NRC, that may adopt this categorical exclusion.[77] In addition, DOE's implementing procedures provide that, for any individual project, DOE "will consider whether to establish a new categorical exclusion, or revise an existing categorical exclusion" if no relevant categorical exclusion is available for a proposed action.[78] This unjustified change broadens how this categorical exclusion may morph project-by-project and deviates from past practice: CEQ regulations gave agencies only limited authority to adopt categorical exclusions in the context of a particular action, namely in the context of more "programmatic" environmental review, where agencies would necessarily be taking a broader view.[79]

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[73] Exhibit 1, Stava, Ashley et al., *Quantifying the substantive influence of public comment on United States federal environmental decisions under NEPA.* Environ. Res. Lett. 20 (2025) https://www.congress.gov/119/meeting/house/118561/documents/HHRG-119-II00-20250910-SD210.pdf.

[74] 42 U.S.C. § 4336(b)(3).

[75] DOE Implementing Procedures at 5.4(c).

[76] *See* 42 U.S.C. §§ 4336(a)(2) ("the proposed agency action is excluded pursuant to ***one*** of the agency's categorical exclusions, another agency's categorical exclusions consistent with section 4336c of this title, or another provision of law;") (emphasis added); *id.* at (b)(2) (substantively identical); *Friends of the Inyo v. U.S. Forest Serv.*, 103 F.4th 543, 556–57 (9th Cir. 2024).

[77] DOE and NRC split jurisdiction over nuclear projects. *See e.g.,* 42 U.S.C. § 5842 (NRC has jurisdiction over activities ''for the purpose of demonstrating the suitability for commercial application of . . . a reactor'') 42 U.S.C. § 2140(a)(2).

[78] DOE Implementing Procedures at 2.2(b)(2).

[79] 40 C.F.R. § 1501.4(c); *see* 89 Fed. Reg. at 35472.

V. DOE is factually incorrect that advanced reactors do not normally have a significant effect on the human environment.

As discussed above, the Federal Register Notice does not define "advanced nuclear reactor." The Written Record cites studies of only three (very different) categories of reactor, even though the definition of "advanced reactor" is not so limited. Even these three categories have very different risk profiles and are not appropriate to combine into one categorical exclusion. Moreover, the Written Record DOE offers does not support DOE's conclusion that this categorical exclusion meets the demands of NEPA.

A. The Written Record does not support the conclusion that this broad category merits a categorical exclusion.

The Written Record asserts that advanced reactors incorporate passive safety mechanisms, improved physical architecture, and fuel characteristics that limit adverse consequences from releases of radioactive material.[80] It cites studies for only three types of reactors: liquid sodium-cooled fast reactors; high-temperature, gas cooled reactors; and molten salt reactors.[81] But the broader technical record, which it ignores, does not support treating these reactor classes as generically insignificant in their environmental and security impacts. As the following explains, these three technologies have diverse impacts when it comes to safety, security, waste production & handling, and national security.

1. Advanced reactors encompass a wide spectrum of different technologies that are not appropriate to combine in one categorical exclusion, especially given anticipated significant impacts to the human environment.

The term "advanced reactors" encompasses a wide spectrum of fundamentally different technologies—including helium-cooled graphite-moderated systems, sodium-cooled fast reactors, and liquid-fuel molten salt designs—each with distinct neutron spectra, coolant chemistries, fuel forms, enrichment requirements, waste characteristics, and backend fuel-cycle implications.

Independent expert analyses consistently evaluate these technologies separately because their safety characteristics, accident progression pathways, waste burdens, and proliferation risks are materially different.[82] The technical literature does not treat sodium-cooled fast reactors, high-temperature gas reactors, and molten salt reactors as a uniform class with consistently bounded impacts. Rather, it identifies substantial design-specific

[80] Written Record at 2.
[81] Written Record at 4.
[82] *See, e.g.,* Exhibit 2, Cong. Rsch. Serv., Advanced Nuclear Reactors: Technology Overview and Current Issues, at 2–3 (Feb. 17, 2023) ("CRS"); Exhibit 3, Edwin Lyman, Union of Concerned Scientists, "Advanced" Isn't Always Better: Assessing the Safety, Security, and Environmental Impacts of Non-Light-Water Nuclear Reactors (Mar. 2021) ("Lyman").

variation in accident behavior, chemical hazards, enrichment levels, fuel-cycle complexity, waste forms, and safeguards challenges.

NEPA categorical exclusions are reserved for categories of actions that normally do not have significant environmental effects. Collapsing these heterogeneous reactor systems into a single categorical exclusion presumes uniform insignificance where the expert record demonstrates meaningful and unresolved differences. The broader technical literature does not support treating this array of advanced reactor designs as generically insignificant in their environmental, safety, or security consequences.

Liquid Sodium–Cooled Fast Reactors[83]

Safety and Security

Sodium-cooled fast reactors differ fundamentally from light-water reactors (LWRs) in coolant chemistry and neutron behavior.[84] Liquid sodium reacts violently with water and ignites upon exposure to air. Historical sodium-cooled reactor programs experienced sodium leaks and fires, demonstrating that sodium's chemical reactivity introduces persistent operational hazards distinct from those faced by LWRs.[85]

Fast-spectrum cores also exhibit different reactivity characteristics. Under certain configurations, sodium voiding can increase reactivity, requiring engineered countermeasures to prevent power excursions.[86] Claims of inherent or passive safety rely heavily on modeling assumptions and idealized system responses. Unlike LWRs, which have accumulated decades of commercial operating experience, fast-spectrum sodium systems lack a comparable empirical safety record.

Although DOE asserts that advanced fuel forms and reduced fission product inventories limit offsite consequences, these conclusions depend on bounding assumptions and project-specific modeling rather than operational experience across commercial-scale deployments. First-of-a-kind deployments inherently involve material and performance uncertainties not reflected in generalized safety claims.

Nuclear Waste Production and Handling

Sodium-cooled fast reactors produce waste streams materially different from LWR oxide fuel. Irradiated sodium coolant and sodium-bonded fuels introduce chemically reactive waste forms that complicate long-term management. Sodium residues must be

[83] Projects relied on in the Written Record include the Versatile Test Reactor (VTR) and MARVEL.
[84] Lyman at 55-56.
[85] Lyman at 59-61.
[86] Lyman at 62-63.

stabilized prior to disposal, adding additional processing steps and secondary waste streams.[87]

Claims that fast reactors reduce long-lived waste burdens typically rely on fuel recycling or transmutation. However, fuel recycling generates additional processing waste streams and introduces separation facilities with their own environmental and contamination risks.[88] Even where recycling is pursued, high-level waste requiring geologic disposal remains unavoidable.

The United States does not currently have an operational geologic repository for high-level radioactive waste.[89] Introducing new waste forms with different chemical and radiological characteristics into an unresolved disposal framework raises material environmental considerations that cannot be dismissed categorically.[90]

Nuclear Proliferation and Terrorism

Fast-spectrum reactors generate plutonium isotopic mixtures that remain weapons-usable.[91] Safeguarding separated or semi-separated plutonium-bearing material is more complex than safeguarding intact LWR spent fuel assemblies.[92] If recycling or fuel fabrication pathways are pursued, the number of facilities handling attractive nuclear material increases.

Closed fuel-cycle systems present greater proliferation and terrorism risks than once-through LWR fuel cycles. International safeguards and security measures for plutonium-bearing systems are more costly and complex and cannot fully eliminate diversion risk. The deployment of fast reactors, particularly if coupled with recycling infrastructure, therefore presents proliferation challenges beyond those associated with current LWR systems.[93]

High-Temperature Gas-Cooled Reactors[94]

Safety and Security

DOE emphasizes the robustness of TRISO fuel particles and passive decay heat removal in high-temperature gas-cooled reactors (HTGRs). While TRISO fuel has

[87] CRS at 3, 27-28.
[88] Lyman at 49-50, 66-67.
[89] CRS at 2.
[90] *See* Exhibit 4, Kornecki, Kasia, and Catherine F. Wise. "The role of advanced nuclear reactors and fuel cycles in a future energy system." PNAS Nexus. Jan. 23, 2024. https://doi.org/10.1093/pnasnexus/pgae030.
[91] Lyman at 66-67.
[92] CRS at 2.
[93] Lyman at 49-50.
[94] Projects relied on in the Written Record include Pele and DOME.

demonstrated high temperature tolerance in controlled testing environments, commercial-scale accident validation does not exist.[95]

HTGRs contain large graphite inventories. Graphite oxidation and air-ingress scenarios introduce fire hazards distinct from LWR accident pathways.[96] Although passive heat removal is often cited as a safety enhancement, quantitative safety assessments for non-light-water reactors lack the extensive validation available for LWR probabilistic risk assessments.

HTGRs therefore avoid certain LWR-specific accident modes but introduce new material and fire-related hazards. Safety claims are based primarily on modeling and limited experimental data rather than decades of commercial operation.[97]

Nuclear Waste Production and Handling

HTGR fuel assemblies contain significant quantities of graphite, which dilutes fuel and increases waste volume per unit of electricity generated. Analyses indicate that HTGR systems can produce substantially greater volumes of waste than LWRs due to graphite mass.[98]

Irradiated graphite contains carbon-14 and other activation products that contribute to long-term repository release considerations. Waste volume increases packaging, transportation, and repository space requirements. Disposal feasibility for spent TRISO fuel remains uncertain, and proposals for additional processing would generate further secondary waste streams.

The claim that HTGR waste streams are categorically manageable does not account for these volumetric and material differences compared to LWR systems.

Nuclear Proliferation and Terrorism

HTGR designs frequently rely on high-assay low-enriched uranium (HALEU) enriched between 5% and 20% uranium-235. HALEU is a material of greater security concern than conventional LEU. Large-scale deployment would require expanded enrichment, transportation, and storage infrastructure.[99]

Although TRISO fuel complicates reprocessing, it does not render spent fuel inaccessible. The expanded use of HALEU increases safeguards burdens and proliferation

[95] Lyman at 77-81.
[96] Lyman at 77-78.
[97] For example, safety characteristics vary by configuration (e.g., prismatic block vs. pebble bed) and by fuel enrichment level, underscoring the technological heterogeneity within the “advanced reactor” category.
[98] Lyman at 81-82.
[99] CRS at 2-3.

risks relative to the current once-through LWR fleet.[100] International oversight mechanisms would require substantial augmentation to address these risks.

Molten Salt Reactors[101]

Safety and Security

Molten salt reactors (MSRs) operate at low pressure, reducing certain pressure-driven accident risks. However, they introduce corrosion, materials degradation, and liquid fuel handling challenges that remain insufficiently demonstrated at commercial scale.[102]

Liquid-fuel MSRs circulate radioactive material during normal operation. Continuous removal and processing of fission products introduce additional handling steps not present in LWRs. Freeze-plug safety systems and passive drain tanks are frequently cited as inherent safety features, but these systems lack large-scale operational validation.[103]

Safety claims for MSRs rely heavily on modeling and small-scale experiments rather than commercial experience. Materials performance under high temperature, corrosive salt chemistry, and radiation remains an area of ongoing research.[104]

Nuclear Waste Production and Handling

MSRs generate chemically distinct waste streams, including spent fuel salts, off-gas capture products, and filtered fission products. Insoluble fission products must be removed and managed during operation.

Long-term storage pathways for spent fuel salts remain unresolved.[105] Unlike solid oxide LWR fuel, molten salt waste forms may require stabilization or conversion prior to disposal. Claims that MSRs reduce long-lived waste burdens depend on fuel-cycle assumptions that introduce additional processing steps and secondary waste streams.[106]

The absence of a licensed geologic repository further complicates claims that MSR waste streams can be categorically managed.

Nuclear Proliferation and Terrorism

[100] Lyman at 46-48.
[101] Projects relied on in the Written Record include MCRE, MSRR, and Hermes 2.
[102] Lyman at 91-92.
[103] Lyman at 94.
[104] CRS at 2.
[105] Lyman at 97-99.
[106] Lyman at 95-98.

Liquid-fuel MSR concepts that incorporate on-line fuel processing increase fissile material throughput and separation steps. Systems that separate uranium-233 or plutonium introduce weapons-usable materials into accessible chemical streams.[107]

Safeguarding continuously circulating and partially processed fuel presents verification challenges beyond those associated with sealed LWR fuel assemblies. Proposals involving HALEU or thorium fuel cycles require expanded enrichment and processing infrastructure, increasing both proliferation and security burdens.[108]

Compared to once-through LWR systems, MSRs incorporating fuel processing present elevated proliferation and safeguards complexity.

Application to NEPA's Legal Standard for Categorical Exclusions

As discussed above, under NEPA and DOE's implementing procedures, a categorical exclusion may be established only for categories of actions that normally do not have significant effects on the human environment.[109] DOE must demonstrate that the defined category, as a class, does not normally present significant environmental impacts, which it fails to do.

For example, DOE's Written Record for the categorical exclusion relies in part on the assertion that advanced reactors as a group have limited fission product inventories and reduced offsite consequences.[110] However, DOE's own environmental assessments ("EAs") for specific advanced reactor demonstrations illustrate that accident analyses remain highly design-specific and dependent on modeled assumptions.[111] The presence of design-specific accident modeling and other project-specific analysis across multiple DOE EAs demonstrates that environmental consequences for advanced reactor systems depend on site-specific and design-specific characteristics.

And as shown, the technical literature does not treat sodium-cooled fast reactors, high-temperature gas reactors, and molten salt reactors as a homogeneous class with uniformly bounded impacts. Instead, it identifies material differences in accident progression pathways, chemical hazards, waste volumes, waste forms, enrichment requirements, fuel-cycle complexity, and safeguards demands. Moreover, DOE's categorical exclusion is not limited to these three reactor types at all.[112]

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[107] Lyman at 102-103.
[108] Lyman at 49-50; CRS at 3.
[109] 42 U.S.C. § 4336e(1).
[110] Written Record at 2.
[111] For example, the MARVEL environmental assessment demonstrates that offsite dose calculations are reactor-specific and dependent upon bounding assumptions. *See e.g.,* Marvel EA at 45-48. Similarly, the DOME EA includes project-specific modeled accident analyses and radiological dose calculations. *See e.g.,* DOME EA at 47-48. The EA for the TREAT reactor likewise includes project-specific analysis of radiological consequences, transportation impacts, and intentional destructive acts. TREAT EA at 21-25.
[112] *See* Section IV *supra*.

These reactor types introduce novel materials, novel waste forms, expanded HALEU infrastructure requirements, and—in some cases—fuel-cycle separation processes that are not characteristic of current LWR systems. Safety claims rely heavily on modeling rather than operational history. Proliferation and safeguards challenges increase where enrichment levels rise, or separation steps are introduced. Waste management pathways remain unresolved in key respects. For example, advanced reactors may produce more complex or voluminous radioactive waste streams than traditional light-water reactors, as recent academic studies have shown.[113] Excluding these from NEPA review will also assuredly fail to account for the unique, long-term environmental hazards of "exotic" fuels and coolants for new, untested reactors.

Because these reactor designs are heterogeneous and involve materially different safety, waste, and proliferation characteristics, they cannot reasonably be treated as a single category that normally lacks significant environmental impact. The technical record demonstrates design-specific uncertainties and impact variability inconsistent with categorical treatment.

Accordingly, the proposed categorical exclusion for advanced nuclear reactors under B5.26 does not satisfy NEPA's requirement that excluded categories normally lack significant environmental effects.

2. Historical operating experience with similar reactor designs shows significant impacts to the human environment.

In contrast—and not acknowledged in the Written Record—historical operating experience with similar reactor designs demonstrates that such technologies have experienced fuel damage events, radiological releases, and long-term environmental consequences. Two notable examples—the Sodium Reactor Experiment at the Santa Susana Field Laboratory in California and the THTR-300 pebble-bed reactor in Germany—illustrate the operational vulnerabilities and release pathways associated with sodium-cooled and graphite-moderated gas-cooled systems.

The Sodium Reactor Experiment (SRE)—a sodium-cooled, graphite-moderated reactor that operated from 1957 to 1964 at the Santa Susana Field Laboratory in Southern California—experienced a partial core meltdown in July 1959. At a rated electricity

[113] Exhibit 5, Krall, Lindsay M., Allison M. Macfarlane, and Rodney C. Ewing. "Nuclear waste from small modular reactors." Proceedings of the National Academy of Sciences, 119 (23) e2111833119. May 31, 2022. https://www.pnas.org/doi/10.1073/pnas.2111833119 (concluding that water-, molten salt–, and sodium-cooled small modular reactors ("SMRs") increase the volume of waste by factors of 2 to 30 and do not reduce the generation of certain geochemically mobile fission products and in general SMRs will exacerbate the challenges of nuclear waste disposal and management); Exhibit 6, Kim, Philseo, and Allison Macfarlane. "Challenges of small modular reactors: A comprehensive exploration of economic and waste uncertainties associated with U.S. small modular reactor designs." Progress in Nuclear Energy, Volume 190. 2026. https://www.nirs.org/wp-content/uploads/2025/09/SMR-Costs_Challenges-of-SMRs-cost-waste_Kim-Macfarlane_2026.pdf (examining cost uncertainties for SMRs given their novelty and waste concerns). Neither study is cited in the Written Record.

generation capacity of 6.5 MW, the SRE closely resembled the size, design features, and fission product inventory of microreactor designs DOE would include in the proposed categorical exclusions. Blockages in the sodium cooling system reduced heat transfer, leading to overheating and damage to approximately one-third of the reactor core. Fuel cladding failures resulted in the release of radioactive gases, including iodine-131 and other fission products, into the surrounding environment. Contemporary public disclosure was limited, and subsequent investigations indicate that releases continued intermittently over a period of weeks. The site remains contaminated decades later, with documented soil and environmental contamination requiring ongoing remediation.[114]

Similarly, the THTR-300 reactor in Hamm-Uentrop, Germany—a 300-megawatt graphite-moderated, helium-cooled pebble-bed reactor—experienced a radiological release in May 1986. A fuel pebble became lodged in the reactor's fueling mechanism, and attempts to clear the obstruction resulted in damage to fuel elements and the release of radioactive material through the helium coolant system. Radioactive contamination was detected in the surrounding region. The THTR was similar in size, design features, and fission product inventory to small modular reactors and other "advanced" reactor designs to which DOE would apply the criteria for the proposed categorical exclusions. The reactor had been promoted as inherently safe due to the high-temperature tolerance of coated fuel particles and passive heat removal characteristics. Nonetheless, operational problems, fuel damage events, and reliability concerns led to its permanent shutdown in 1988 after limited commercial service.[115]

Taken together, these historical cases illustrate that technologies analogous to those currently under consideration—far from having "been verified to prevent adverse offsite consequences from release of radioactive or hazardous materials"[116]—have experienced partial meltdowns, fuel damage, radioactive releases, and long-term environmental consequences. The historical record supports the need for full, project-specific environmental analysis under NEPA rather than categorical exclusion.

B. DOE's categorical exclusion determination relies on studies that presumed safety procedures that no longer exist.

DOE's determination that these activities normally do not have a significant impact on the human environment relies on studies finalized in 2014 to 2025. Since that time, DOE has overhauled a vast set of nuclear safety directives and shared them with the companies it is charged with regulating, without making the new rules available to the public.[117]

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[114] *See e.g.,* NRDC. *Questions and Answers About the Santa Susana Field Lab.* (Accessed March 4, 2026) https://www.nrdc.org/bio/caroline-reiser/questions-and-answers-about-santa-susana-field-lab

[115] *See e.g.,* NIRS. *The Pebble Bed Modular Reactor* (Accessed March 4, 2026) https://www.nirs.org/pebble-bed-modular-reactors/.

[116] Written Record at 3.

[117] Brumfiel, Geoff. *The Trump administration has secretly rewritten nuclear safety rules.* NPR. (Updated Jan. 28, 2026) https://www.npr.org/2026/01/28/nx-s1-5677187/nuclear-safety-rules-rewritten-trump.

Standards that are being loosened include: groundwater protections, accident investigation thresholds, security protocols (including those to secure nuclear material), and protections to the environment from radiation.[118] In other words, the safety standards that were presumed to apply and render insignificant the impacts from previously studied advanced reactors will no longer be safeguards for advanced reactor projects going forward and these new projects may indeed have significant impacts under NEPA. This makes the Written Record's studies an inappropriate basis on which to define this categorical exclusion and apply it going forward.

C. All relevant impacts must be considered.

To the extent DOE's establishment of this categorical exclusion does not consider direct, indirect, and cumulative effects, its conclusions violate NEPA. DOE's 2025 regulations and implementing procedures remove reference to the effects that will be considered, yet analyzing these effects has been at the heart of NEPA for decades.[119] In addition, it has been clear for many years that federal agencies have an obligation to assess climate impacts under NEPA, an obligation consistently affirmed by the courts.[120] Both CEQ and DOE have worked for many years to integrate climate into NEPA reviews. In addition, DOE fails to provide any guidance on how to address NEPA's purpose of assuring "for ***all Americans*** safe, healthful, productive, and esthetically and culturally pleasing surroundings," by considering environmental justice.[121] At no point in this agency action, nor in CEQ and DOE's prior revisions to its regulations, has the decision to abandon these considerations been explained or justified.

VI. DOE's action introduces conflicts between its implementing procedures and NEPA regulations.

DOE's proposal appears to contemplate incorporating this new categorical exclusion only into Appendix B of its implementing procedures, and not in the Code of Federal Regulations (10 CFR Part 1021 et seq.).[122] But DOE houses its categorical exclusions in both places.[123] Any amendment of DOE's regulations would require adhering to the Administrative Procedures Act and conducting formal notice-and-comment rulemaking, which, as explained above, is not the process DOE has pursued here. Instead,

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[118] *Id.*

[119] For example, CEQ regulations included all three. 40 C.F.R. § 1508.1(i)(1)–(3). And as discussed above, CEQ regulations were not removed because it found that its NEPA recommendations were incorrect. Indeed, neither CEQ nor DOE have provided a reasoned explanation why these effects would not continue to be part of a NEPA review. *See Encino Motorcars v. Navarro*, 579 U.S. 211, 221 (2016) (holding that an agency must "give adequate reasons" when it makes a decision).

[120] *See, e.g., Vecinos para el Bienestar v. FERC*, 1321 6 F.4th, 1329–30 (D.C. Cir. 2021).

[121] 42 U.S.C. § 4331(b)(2) (emphasis added).

[122] *See generally* 91 Fed. Reg. 4550.

[123] *Compare* 10 C.F.R. Part 1021 Appendix B and C *with* Implementing Procedures Appendix B and C. *See also* § 1021.102 (describing the actions listed in Appendices A and B "to this part" as those that qualify as DOE's categorical exclusions, with no mention of DOE's implementing procedures).

DOE is arbitrarily and capriciously and without explanation placing this categorical exclusion in NEPA implementing procedures that sit outside its NEPA requirements found in the Code of Federal Regulations. Such an action dispenses entirely with the Department's Administrative Procedures Act requirements for public notice and justification and thus is not in accordance with the law. Instead, it appears that going forward DOE will be operating with two different sets of categorical exclusions, violating the APA and undermining what should be DOE's goal of providing certainty in its NEPA process.

VII. Conclusion

For at least these reasons, DOE's action in promulgating this categorical exclusion is ill-advised and contrary to law, and we respectfully request that DOE revise both this categorical exclusion and its categorical exclusion procedures accordingly.

Respectfully submitted,

/s/ Claire Krebs
Claire Krebs
Texas Bar No. 24105341
krebs@txenvirolaw.com
Marisa Perales
Texas Bar No. 24002750
marisa@txenvirolaw.com
PERALES, ALLMON & ICE, P.C.
1206 San Antonio Street
Austin, Texas 78701
512-469-6000 (t) | 512-482-9346 (f)

Counsel for NIRS

/s/ Paul Gunter
Paul Gunter, Director, Reactor Oversight Project
Beyond Nuclear
7304 Carroll Avenue #182
Takoma Park, Maryland 20912
(301) 523-0201
paul@beyondnuclear.org

/s/ Gwen L. DuBois
Gwen L. DuBois MD, MPH, President
Chesapeake Physicians for Social Responsibility

/s/ Gayle Kathy Andrews
Gayle Kathy Andrews, Executive Director
Louis Zeller, Strategic Advisor
Blue Ridge Environmental Defense League, Inc.
P.O. Box 88
Glendale Springs, North Carolina 28629
(843) 698-9816
bredl@skybest.com

/s/ Deb Katz
Deb Katz, Executive Director
Citizens Awareness Network

P.O. Box 10445
Baltimore, Maryland 21209
(410) 615-0717
gdubois@jhsph.edu

/s/ Kelly Lundeen
Kelly Lundeen, Member
Coalition for a Nuclear-Free Mississippi River
740A Round Lake Road
Luck, Wisconsin 54853
(715) 472-4185
nuclearfreemississippi@zohomail.com

/s/ Hallie Templeton
Hallie Templeton, Legal Director
Friends of the Earth US
1101 15th Street NW, 11th Floor
Washington, District of Columbia 20005
(866) 217-8499
htempleton@foe.org

/s/ Lexi Tuddenham
Lexi Tuddenham, Executive Director
HEAL Utah
824 S 400 W, Suite B111
Salt Lake City, Utah 84101
(801) 355-5055
lexi@healutah.org

/s/ Shannon James
Shannon James, Campaigns & Advocacy Director
Montana Environmental Information Center
324 Fuller Avenue C-8
Helena, Montana 59601
(406) 443-2520
sjames@meic.org

/s/ Sophia Stroud
Sophia Stroud, Associate Director
Nuclear Watch New Mexico
P.O. Box 83
Shelburne Falls, Massachusetts
(413) 834-3280
deb@nukebusters.org

/s/ Simone Anter
Simone Anter, Senior Attorney & Hanford Program Director
Columbia Riverkeeper
2621 Wasco Street, Suite A
Hood River, Oregon 97031
(541) 399-5312
simone@columbiariverkeeper.org

/s/ Charlie Cray
Charlie Cray, Senior Strategist
Greenpeace USA
1301 I Street NW, Suite 1100 East
Washington, District of Columbia 20005
(202) 497-3673
charlie.cray@greenpeace.org

/s/ Manna Jo Greene
Manna Jo Greene, Coordinator
Hudson Valley Climate Science and Solutions
148 Cottekill Road
Cottekill, New York 12419
(845) 807-1270
mannajo@gmail.com

/s/ Judy Treichel
Judy Treichel, Executive Director
Nevada Nuclear Waste Task Force
4587 Ermine Court
Las Vegas, Nevada 89147
(702) 248-1127
judynwtf@aol.com

/s/ Patricia A. Marida
Patricia A. Marida, Coordinator
Ohio Nuclear-Free Network

903 W. Alameda #325
Santa Fe, New Mexico 87501
(505) 989-7342
sophia@nukewatch.org

/s/ Cathryn Chudy
Cathryn Chudy, Board Member
Oregon Conservancy Foundation
19140 SE Bakers Ferry Road
Boring, Oregon 97009
(503) 637-3549
chudyca@gmail.com

/s/ Ann Suellentrop
Ann Suellentrop, Vice-Chair
PeaceWorks Kansas City
4509 Walnut Street
Kansas City, Missouri 64111
(816) 561-1181
annsuellen@gmail.com

/s/ Nancy Vann
Nancy Vann, President
Safe Energy Rights Group
201 Union Avenue
Peekskill, New York 10566
(646) 831-5811
nancy_vann@hotmail.com

/s/ Leigh Ford
Leigh Ford, Executive Director
Snake River Alliance
223 N 6th St, Suite 10
Boise, Idaho 83702
(208) 344-9161
lford@snakeriveralliance.org

/s/ Karen Hadden
Karen Hadden, Director
Texas Nuclear Watchdogs
605 Carismatic Lane
Austin, Texas 78748
(512) 797-8481

316 North Michigan Street, Suite 520
Toledo, Ohio 43604
(614) 286-4851
patmarida@outlook.com

/s/ Joshua Baker
Joshua Baker, PhD, Nuclear Free Program Director
Oregon Physicians for Social Responsibility
1821 SE Ankeny Street
Portland, Oregon 97214
(503) 274-2720
josh@oregonpsr.org

/s/ Larissa Liebmann
Larissa Liebmann, Staff Attorney
Riverkeeper, Inc.
20 Secor Road
Ossining, New York 10562
(914) 478-4501
lliebmann@riverkeeper.org

/s/ Diane Wilson
Diane Wilson, Executive Director
San Antonio Bay Estuarine Waterkeeper
600 Ramona Road
Seadrift, Texas 77983
(361) 218-2353
wilsonalamobay@aol.com

/s/ Stephen A. Smith
Stephen A. Smith, Executive Director
Southern Alliance for Clean Energy
P.O. Box 1842
Knoxville, Tennessee 37901
(865) 637-6055
sasmith@cleanenergy.org

/s/ Sarah Fields
Sarah Fields, Program Director
Uranium Watch

/s/ John Burrows
John Burrows, Energy and Climate Policy Director
Wyoming Outdoor Council
236 S. 2nd Street
Lander, Wyoming 82520
(307) 332-7031
johnb@wyomingoutdoorcouncil.org

2070 Bonnie's Way, Unit 110
Moab, Utah 84532
(435) 260-8384
sarah@uraniumwatch.org