

ENTERED
Office of Chief Counsel
April 21, 2026
Part of
Public Record

Re: Docket EP 779 – Environmental Rules (NEPA Update)
Subject: Comments on Proposed Revisions to Environmental Review Procedures

The proposed revisions to the Board's NEPA procedures would materially reduce the scope and reliability of environmental review for rail-related actions, particularly through expanded categorical exclusions and a narrowed interpretation of "major federal action."

The justification provided—efficiency and predictability—does not address the central issue: these changes would shift risk from the review process to the environment itself, especially in areas where impacts are diffuse, cumulative, and hydrologically connected.

1. Expansion of categorical exclusions without enforceable guardrails

The proposal assumes that certain activities, particularly within existing rights-of-way, are unlikely to produce significant environmental effects. That assumption does not hold in practice.

Rail corridors frequently intersect with:

- modified drainage systems
- flood-prone and tidal environments
- legacy industrial sites with contaminated soils
- highly constrained urban watersheds

Even minor grading, track work, or operational changes can alter runoff pathways, mobilize contaminants, or increase pollutant loading into adjacent water bodies.

Without explicit, binding conditions that disqualify projects from categorical exclusion when these factors are present, the rule creates a structural pathway for impacts to occur without meaningful review.

2. Narrowing of "major federal action" and the risk of segmentation

The proposed definition increases the likelihood that related or sequential actions will be treated as isolated decisions. This creates a segmentation problem: multiple small actions, each individually excluded or minimized, can collectively produce substantial environmental effects.

This is particularly concerning for water systems, where cumulative changes across a corridor or watershed—impermeable surface increases, altered drainage, repeated disturbance—drive long-term degradation.

A rule that does not clearly prevent segmentation undermines the purpose of NEPA review.

3. Constraining review to "reasonably foreseeable" effects

Limiting analysis to effects that are narrowly defined as "reasonably foreseeable" risks excluding precisely the types of impacts that are most relevant in infrastructure contexts:

- cumulative loading to waterways
- downstream transport of sediment and contaminants
- interaction with existing flood risk and climate-driven variability

These are not speculative concerns; they are well-documented characteristics of infrastructure systems. Narrowing the analytical frame does not eliminate these effects, it simply removes them from consideration.

4. Reduced transparency at the stage where it matters most

Expanded reliance on categorical exclusions reduces early public visibility into projects. This is the stage at which site-specific risks—especially those related to water pathways and local conditions—are most effectively identified.

Once a project proceeds under a categorical exclusion, opportunities to surface these issues are significantly diminished.

Conclusion

As written, the proposal prioritizes procedural efficiency over environmental reliability. It reduces the Board's ability to identify and evaluate impacts that are:

- site-specific but not immediately obvious
- cumulative across multiple actions
- mediated through water systems that extend beyond project boundaries

If the Board proceeds with revisions, at minimum it should:

- establish clear, enforceable disqualifiers for categorical exclusions tied to hydrology, contamination, and flood risk
- include explicit safeguards against segmentation of related actions
- preserve a meaningful scope for cumulative and indirect impact analysis
- maintain transparency sufficient for early identification of site-specific risks

Absent these elements, the rule will function less as a streamlining measure and more as a systematic narrowing of environmental review.

Thank you for considering these comments.

TerryAnn Towers Saint Amand