

Summary of NEPA Letter to EPA Acting Administrator Andrew Wheeler

November 2, 2018

On October 22, 2018, EPA Associate Administrator for the Office of Policy Brittany Bolen issued a memo on EPA's review responsibilities under Clean Air Act Section 309 and the National Environmental Policy Act of 1969 (NEPA). The memo states that EPA will no longer assign a letter and numerical rating in its comments on reviews conducted by other agencies.

In a joint letter, the [Environmental Protection Network](#) (EPN) and [Save EPA](#) strongly urge Acting Administrator Wheeler to continue the rating system until EPA has sought public review and comment on both the existing guidance and proposed alternative language. EPA's action leaves a gap that will create confusion and inconsistency—the very things the action sought to avoid.

- (1) **Ratings are not a substitute for comments; they are designed to complement them.**
Ratings alert officials to the level of EPA's concern and act as both a warning and impetus for fixing the problems and gaps identified in the comments.
- (2) **The absence of immediate, contemporaneous guidance for specific language to be used in lieu of ratings leaves a gap that will create confusion and inconsistency.**
Any EPA substitution of specific wording in its comment letter for the 1984 ratings scheme makes it imperative that EPA provide contemporaneous guidance on what that wording is and means or it risks even more of the problems of inconsistency and/or confusion that EPA is purportedly concerned about.
- (3) **Prior to elimination of the rating scheme, EPA should provide opportunity for review and comment.**
It has been customary under Administrative practice that significant modifications to guidance be informed by public review and comment. Changing long standing guidance by Memorandum without public notice and comment is contrary to the principles of good government.
- (4) **The interplay between review responsibilities of EPA between the Clean Air Act Section 309 and NEPA appears to be mischaracterized.**
Our understanding of the scope of EPA's authority and mandate would include the full range of impacts and, at EPA's discretion, any proposed federal agency action that warrants review.
- (5) **The unique value of ratings to garner high level attention to address problems and secure consistency should not be overlooked**
Adverse ratings of a draft EIS have often been a very effective tool in getting an agency's attention to an inadequate EIS or an environmentally unacceptable project.

For all of these reasons, EPN and Save EPA strongly recommend this proposal be put on hold until EPA has sought public review and comment on both the existing guidance and proposed alternative language.

Read EPN's Full Public Comments: <https://www.environmentalprotectionnetwork.org/nepa-ratings-letter/>

For more information, contact EPN by email at info@environmentalprotectionnetwork.org or call 202-656-6229.

Media inquiries can be directed to press@environmentalprotectionnetwork.org or call 202-656-6229.