



December 20, 2019

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Re: “Modernizing the Administrative Exhaustion Requirement for Permitting Decisions and Streamlining Procedures for Permit Appeals”

Dear Administrator Andrew Wheeler:

The [Environmental Protection Network](http://environmentalprotectionnetwork.org) (EPN) is an organization comprised of over 450 U.S. Environmental Protection Agency (EPA) alumni volunteering their time to protect the integrity of the EPA, human health and the environment. We harness the expertise of former EPA career staff and confirmation-level appointees to provide an informed and rigorous defense against current Administration efforts to undermine public health and environmental protections.

We are writing to you with comments regarding the December 3, 2019, “[Modernizing the Administrative Exhaustion Requirement for Permitting Decisions and Streamlining Procedures for Permit Appeals](#)” proposal. This proposed rule largely impacts the functionality of the Environmental Appeals Board (EAB), the final decision maker on administrative appeals under all major environmental statutes that EPA administers. There may be ways to improve the efficiency of the EAB, but it should not be done at the expense of the public’s ability to meaningfully raise issues of concern about permits that allow emissions of pollutants in American communities. What we find most concerning about this proposal are the numerous elements that would privilege speed of resolution for the permit holder at the expense of the public’s opportunity to raise issues and would allow political leadership to interfere with what has traditionally been an impartial and reliable bread-and-butter activity of the agency. Indeed, virtually every aspect of the proposal would narrow, shorten, or curtail the public’s ability to raise issues before the EAB or limit authorities the EAB has reasonably exercised for decades.

The proposal would strike a particularly serious blow to environmental justice. It provides that the EAB cannot resolve a dispute unless both parties agree. That means that a permit applicant can prevent an EAB hearing and force residents of overburdened communities who wish to challenge a permit to bear the expense and burden of filing an action in federal court. It would also prevent the EAB from reviewing permitting actions to ensure that they comply with agency policy, including the requirement to conduct an environmental justice analysis of a proposed permitting decision.

The proposal does not put forward a compelling need for these changes. In fact, it provides no argument or evidence that the current EAB process is causing unreasonable delay in the permit review process. Rather, it notes that the number of permits reviewed by the EAB has decreased over time, and the voluntary

alternative dispute resolution (ADR) process has helped achieve faster resolution and broader support of outcomes. This is a process that is not broken and does not need fixing.

We appreciate the opportunity to comment and the agency's consideration of our points. EPN urges that EPA not move forward with this proposal. Attachment 1, "Updates to the Environmental Appeals Board Procedures," describes in more specific detail our key concerns with the proposal, and we incorporate them in this letter for the agency's consideration and response.

Respectfully submitted,

Michelle Roos
Executive Director
Environmental Protection Network