

EPA's Review of NEPA Documents

(EPA's 309 Process)

Bob Hargrove
Director, NEPA Compliance Division
U.S. EPA

EPA Roles in the NEPA Process

- Complies with NEPA, as necessary, for EPA actions.
- Receives EISs filed by other federal agencies.
- Reviews NEPA products pursuant to NEPA and Section 309 of the Clean Air Act.

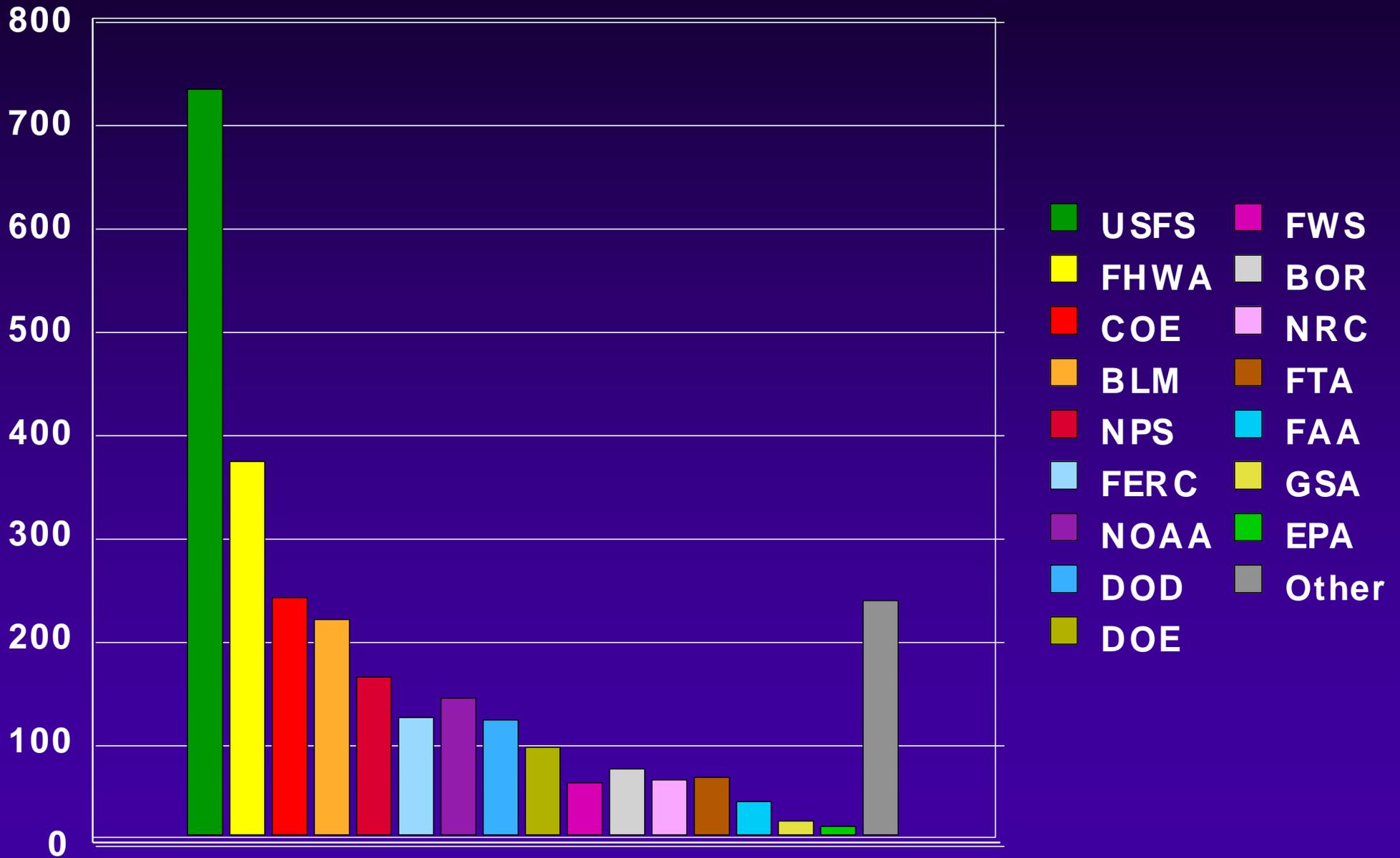
Filing EISs

- EISs must be distributed for public review before filing with EPA.
- EPA publishes notices of availability (NOAs) for EISs weekly in the *Federal Register*; notices appear on the Friday following the week of filing.
- EPA NOAs start the comment (DEISs) and wait (FEISs) periods.
- EPA can reduce prescribed comment/wait periods “upon a showing by the lead agency of compelling reasons of national policy” (40 CFR 1506.10[d]).
- Information regarding EIS filings is available on EPA’s website: <http://www.epa.gov/compliance/nepa/eisdata.html>

EISs Issued



EISs Filed by Agency (2004-2008)



EPA Review Responsibilities

- Under Section 102 of NEPA, all federal agencies and the public can review EISs.
- Under Section 309 of the Clean Air Act, EPA must review:
 - legislation proposed by another federal agency;
 - newly authorized federal construction projects and major federal actions (i.e., EISs); and
 - regulations proposed by other federal agencies.
- Comments must be in writing, and must be made public.
- Any action deemed “unsatisfactory” from the standpoint of public health/environmental quality shall be referred to CEQ.

Important EPA Review Concerns

- Water quality
- Air quality
- Ground water/sole source aquifers
- Wetlands
- Hazardous waste issues
- Environmental Justice
- Cumulative Impacts

EPA's EIS Rating System

- Project:

 - LO = Lack of Objections

 - EC = Environmental Concerns

 - EO = Environmental Objections

 - EU = Environmentally Unsatisfactory

- Document:

 - 1 = Adequate EIS

 - 2 = Insufficient Information

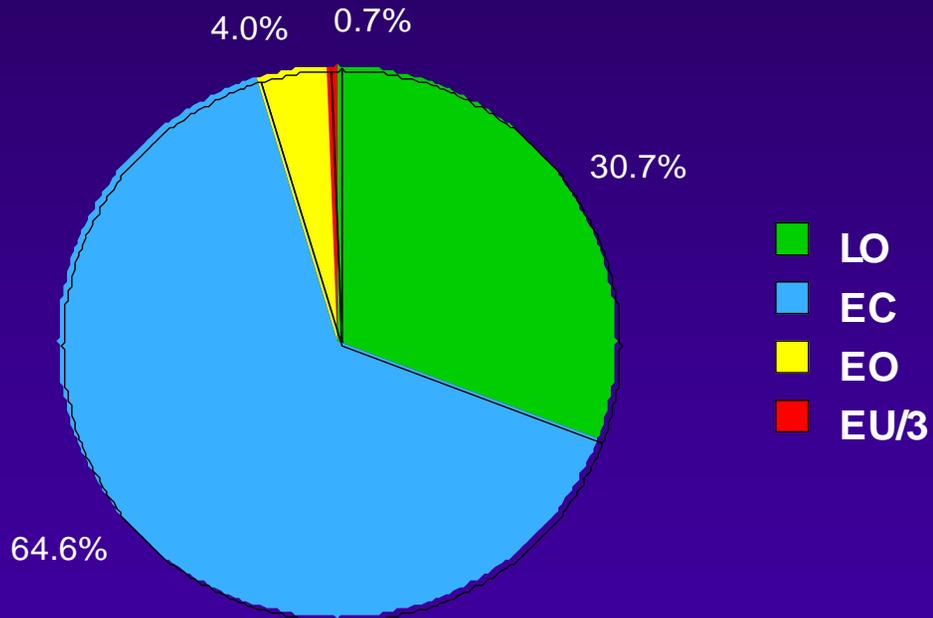
 - 3 = Inadequate EIS

- Adverse ratings (EU & 3) require Headquarters approval

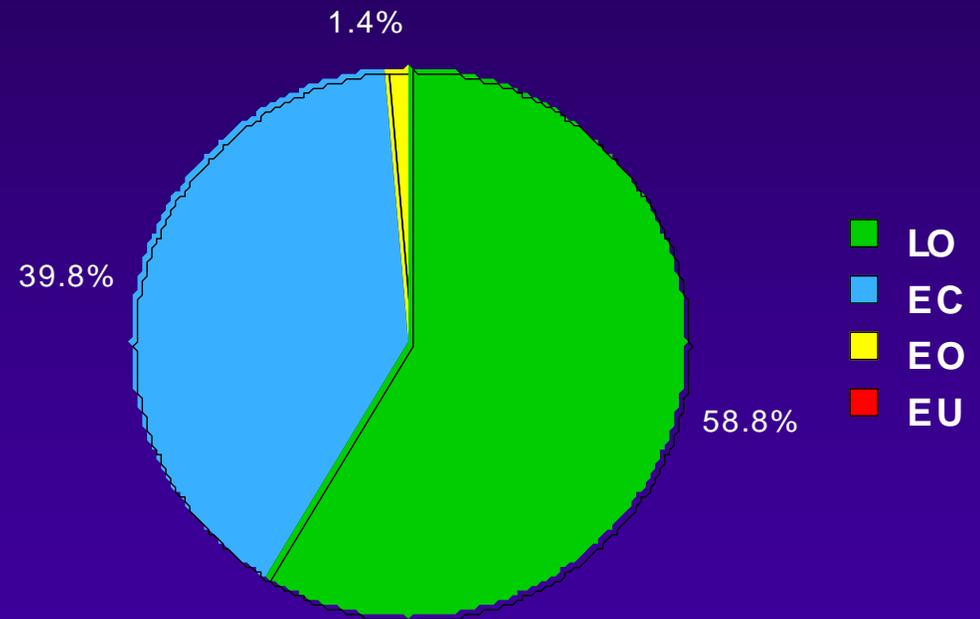
EIS Ratings 2004-2008

All Agencies

Draft EISs



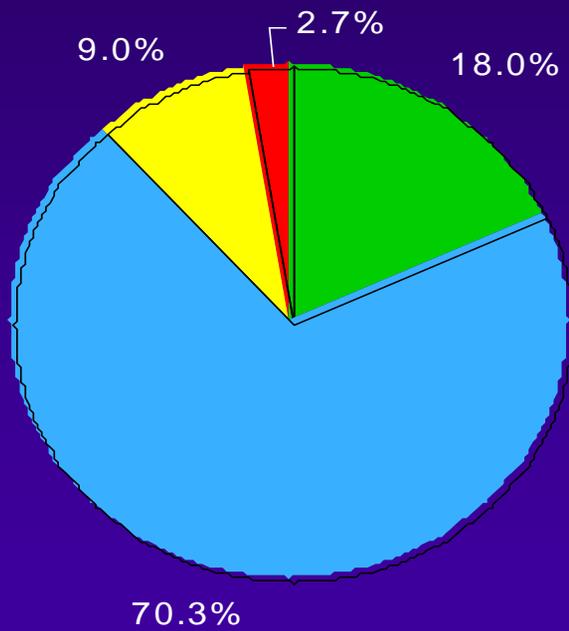
Final EISs



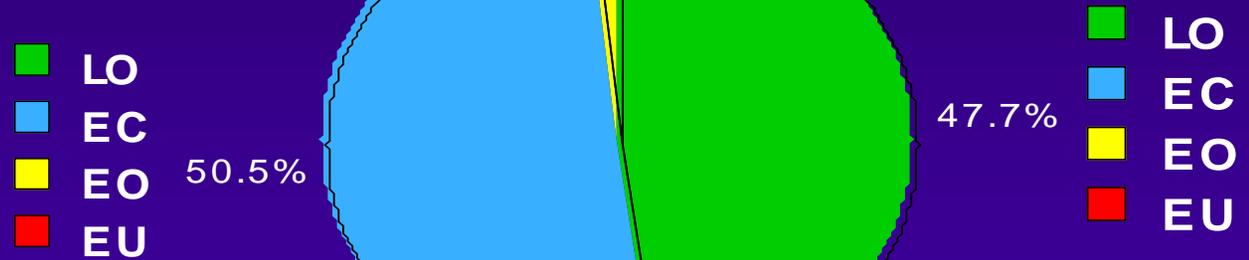
EIS Ratings 2004 - 2008

BLM

Draft EISs



Final EISs



Selected Projects & Issues

- Clear Creek Management Area RMP: DEIS rated 3
 - Naturally occurring asbestos
 - Public health concerns about exposure to recreational OHV usersEPA and BLM collaborated on a risk assessment.
Area of highest concern was closed to OHV users May 2008

- Jonah Infill Drilling Project: DEIS was going to be rated 3
 - Visibility Impairment in Class 1 areas
 - Inadequate mitigationRather than issue the adverse rating, EPA worked with BLM on supplemental air quality analyses and mitigation proposals that have essentially eliminated this project's visibility impacts.

- Montana Statewide Oil & Gas Project: DEIS was going to be rated EU-3
 - Visibility impairment in Class 1 areas (e.g., 240+ days on the Northern Cheyenne Reservation)
 - Inadequate mitigationAnalysis used correct model, but with worst-case inputs.
Rather than issue the adverse rating, EPA and BLM worked on revising the air quality analysis and mitigation commitments.
Revised analysis and mitigation effectively eliminated the adverse visibility impacts.

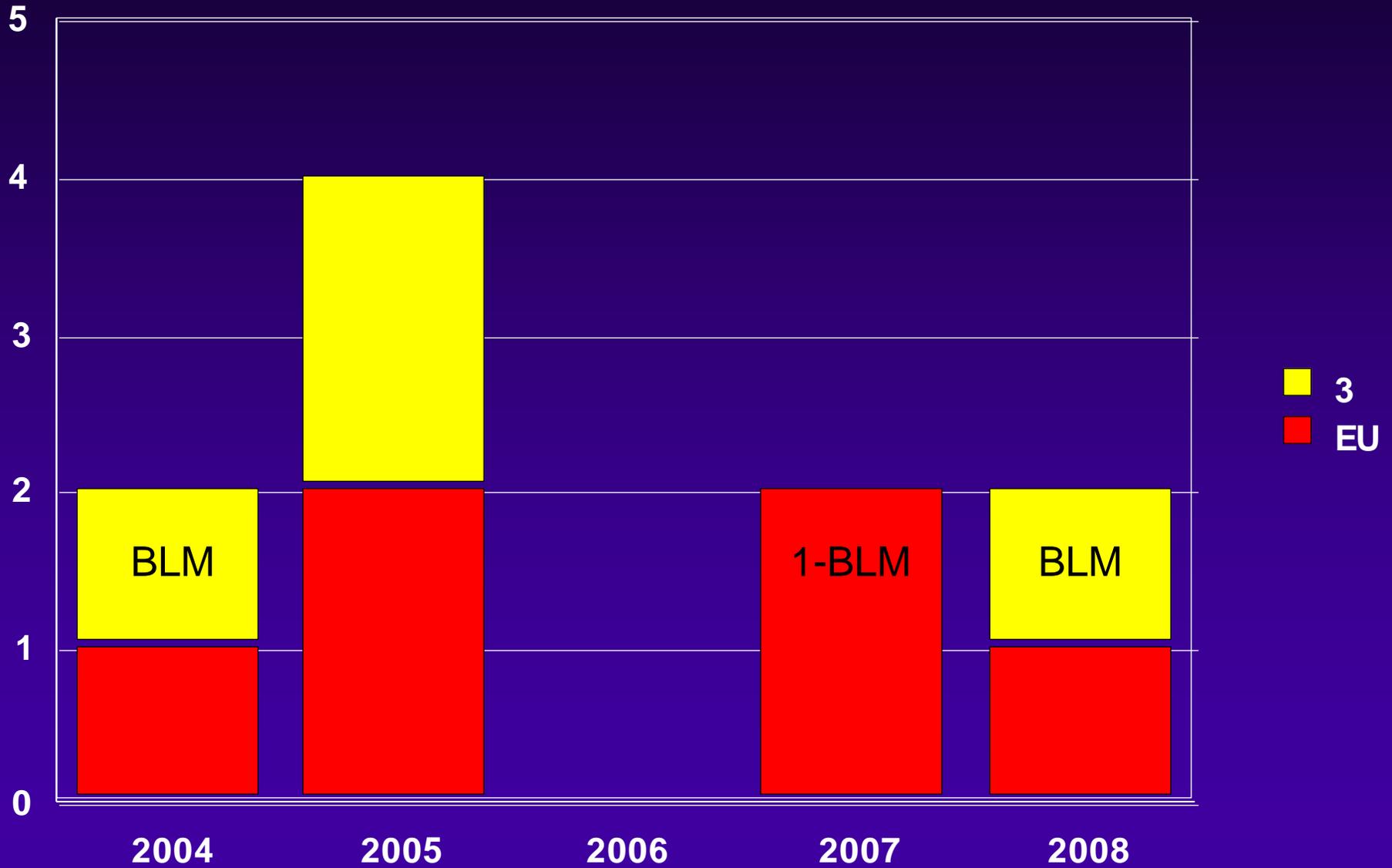
Selected Projects & Issues

- Pinedale Anticline Oil & Gas Exploration and Development Project: DEIS rated EU-3
 - Ozone NAAQS exceedances
 - Visibility impairment
 - Groundwater contaminationEPA, BLM, and the WYDEQ worked together to refine the analyses and to develop appropriate mitigation

- West Tavaputs Plateau Natural Gas Full Field Development Plan: DEIS rated 3
 - Potential Ozone NAAQS exceedancesIssues are under discussion

- Situation Assessment (SA): Last Summer, EPA, in collaboration with BLM, hired a neutral party to assess why EPA's review of proposed BLM energy development projects often result in disagreements over the air quality and visibility impact analyses. The SA offers three recommendations:
 - 1) each agency develop its approach to addressing the air quality issues associated with energy development projects;
 - 2) the agencies participate in a facilitated meeting to discuss the merits of the respective approaches; and
 - 3) the agencies convene a seminar to discuss each agency's respective authorities/interests.We are working to implement the recommendations through the U.S. Institute for Environmental Conflict Resolution; the Forest Service, National Park Service, and states will be invited to participate.

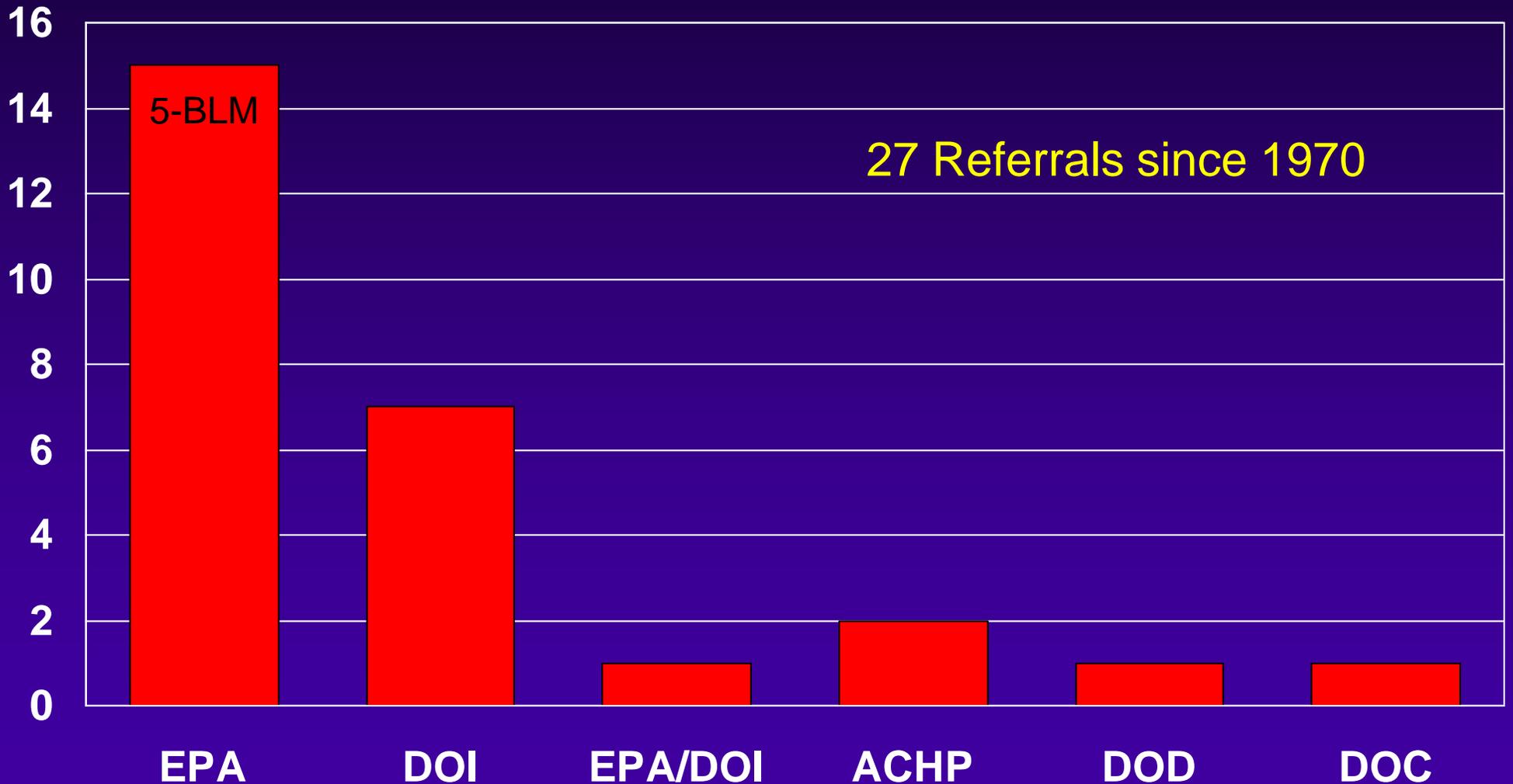
Recent EPA Adverse Ratings



Referrals to CEQ

- Action, at Final EIS, is environmentally unacceptable because of:
 - possible violations;
 - severity, duration, or geographical scope of impacts;
 - availability of environmentally preferable alternative(s); or
 - importance as a precedent
- Section 309 of the Clean Air Act expands EPA's referral authority to any matter
- Historically, CEQ has discouraged referrals if the referring agency has authority to address the environmentally unsatisfactory issue.

Referrals by Agency



Referrals to CEQ

Possible CEQ Actions

- Conclude the matter has been resolved
- Send matter back for further coordination
- Publish findings/recommendations
- Submit matter to the President for resolution

Project cannot proceed until referral is resolved

Important NEPA Web Pages

- CEQ:
<http://www.whitehouse.gov/ceq>
- CEQ NEPAnet:
<http://nwww.nepa.gov>
- EPA NEPA Program:
<http://www.epa.gov/compliance/nepa/index.html>