From the perspective of nearly 40 years of experience as a state and federal agency lawyer and practitioner dealing “with the public,” I read with great interest Adam Eckerd’s article “Risk Management and Risk Avoidance in Agency Decision Making,” in which he assesses the role of the public in agency decision making. Of particular focus was his evaluation of “risk” from the standpoint of the regulator, the regulated community, and the larger “public.” From the enactment of the National Environmental Policy Act (NEPA) in 1969 to President Barack Obama’s contemporary pronouncements for “more transparency” in government, there has been a popular though largely unexamined belief that citizen involvement will somehow result in better decision making or at least resolution, acceptance, and “buy-in.”

My experience in numerous permit and siting controversies, many in the context of civil enforcement litigation, bears out Eckerd’s conclusion that citizen involvement often has little impact on government decision making. Where citizen involvement is limited to “not in my backyard” (NIMBY) stock objections, such input adds little objective value to the substantive discussion. NEPA decisions and agency decision making generally are not subject to referenda or popularity contests. Regulatory agencies are charged with the informed, expert implementation of their organic statutes and resultant regulations. That is what Chevron deference is all about. The contrary attitude stems from a lack of sophistication about the underlying technical issues or, as Eckerd suggests, a predisposition to object to any proposal on the grounds that it risks changes to the status quo. Or, perhaps, there is simply a sense of frustration that the decision has already been made, and a NIMBY response at least provides some measure of satisfaction.

In some circumstances in which controversial regulations have been put out for notice and comment under the Administrative Procedure Act, some citizen activists have mobilized campaigns to submit comments. But hundreds of postcard “comments” to ban mountaintop mining, for example, rarely reach the technical, scientific, or economic merits of the proposal and offer little insight to government decision makers.

While, of course, the voices of citizens should and must be heard and often add real value, practitioners can rely on Eckerd’s careful scholarly analysis to give them confidence in their own judgment in the face of occasional public reaction to the contrary.