

Ohio EPA NPDES Program Updates

Walter Ariss, P.E.

NPDES and 208 Program Manager



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Presentation Outline

- NPDES permit writing and development
- Rule updates
- NPDES Program Administrative updates



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New SWIMS deployed Feb 2022

- Improved internal processing timeframes
- Ability for program staff to make improvements to the system
- Slight changes in permit “feel”
- Improved display of schedules of compliance



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NPDES Individual Permit Development Process

1. Receive Application
2. Completeness Review
3. Develop TBELs
4. Develop WQBELs
5. Develop Monitoring and Reporting Requirements
6. Develop Special Conditions
7. Incorporate Standard Conditions
8. Prepare Fact Sheet
9. Preview Period
10. Public Notice
11. Respond to Public and EPA Comments
12. Issue Final Permit



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Completeness Review



- Correct forms?
- Flow and 2C data complete?
- Correct SIC codes FEGs identified?
- Calculations and diagrams complete?
- Antidegradation?
- Pre-permit inspection.

Develop TBELs

- (Technology based effluent limits)
- EPA has developed effluent guidelines for 58 industrial sectors.
- Current list of sectors with effluent guidelines can be found at:
- <http://water.epa.gov/scitech/wastetech/guide/industry.cfm>
- 40 CFR 401-499.
- FEGs must be met without the benefit of dilution, and are often included at internal stations.

Develop WQBELs

- Determine WQS
- Characterize effluent and receiving water
- Calculate parameters
- Apply Reasonable Potential



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PEQ Multipliers

n	F	n	F	n	F	n	F
1	6.2	6	2.1	11	1.7	28-34	1.2
2	3.8	7	2.0	12-13	1.6	34-43	1.1
3	3.0	8	1.9	14-16	1.5	44-56	1.0
4	2.6	9	1.8	17-22	1.4	>56	0.9
5	2.3	10	1.7	23-27	1.3		



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PEQ Example - Barium

- Two data points 158 ug/l, 130 ug/l
- PEQ_{max} = 158 x 3.8 = 600 ug/l
- PEQ_{avg} = 600 ug/l x 0.73 = 438 ug/l

- WLA_{max} = 4000 ug/l
- WLA_{avg} = 420 ug/l



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PEQ Example - Barium

- Effluent data – 12 samples, 158 ug/l max
- PEQmax = $158 \times 1.6 = 253$ ug/l
- PEQavg = $253 \times 0.73 = 185$ ug/l

- WLAavg = 420 ug/l
- $185/420 = 44\%$, No limits or monitoring



Rules Updates

- Biocriteria Narrative
- Variances
- Aquatic Life Use

Biocriteria Narrative

- OAC 3745-1-07(C)
- Getting prepared for JCARR review
- “Biological criteria take precedence”
- Move NPDES language to Chapter 2



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WQS Variances

- New-ish federal rules
- EPA encouraging more widespread use of variances by standardizing across states
- Variance issued/approved as permit action, not rule



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Multiple Discharger Variances

- Mercury – will be renewed
 - Must meet 12 ng/L annual average to qualify
- Ammonia
 - 2013 USEPA adopted new criteria
 - Ohio proposing to adopt new criteria along with a variance for small continuous discharge lagoons
 - Economic and social impact
- Rule package completed ESO, IPR is next



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Triennial Review – Aquatic Life Criteria

- Ammonia
 - New toxicity data reflecting freshwater mussel and snail sensitivity published by USEPA in 2013
- Selenium
 - Fish tissue approach to prevent reproduction impacts
- Cadmium
 - New toxicity data include 75 new species and 49 new genera published by USEPA in 2016



Program Administration Updates

- H2Ohio Rivers Initiative
- Water Reuse
- Emerging contaminants and Environmental Justice
- New Federal ELG's in development



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Questions?

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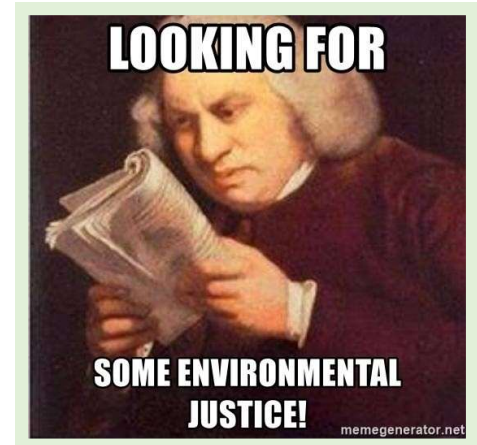
Environmental Justice & NPDES Permitting

Presented by: Krystina Garabis

What is Environmental Justice?

“[T]he fair treatment and meaningful involvement of all people regardless of race, color, culture, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies to ensure that each person enjoys—

- A. The same degree of protection from environmental and health hazards; and
- B. equal access to any Federal agency action on environmental justice issues in order to have a healthy environment in which to live, learn, work, and recreate.”



How did this all start?

Early 1980s hazardous waste, against the opposition of the local community, was dumped near a primarily African American community in Warren County, NC.

Which led to → ***Toxic Waste and Race*** in 1987.

- Three out of the five largest commercial hazardous waste landfills in the United States were located in predominantly Black* or Hispanic communities. These three landfills accounted for 40 percent of the total estimated commercial landfill capacity in the nation.

**TOXIC WASTES AND RACE
IN THE
UNITED STATES:**
A National Report on the Racial and
Socio-Economic Characteristics of Communities
with Hazardous Waste Sites

Commission for Racial Justice
United Church of Christ

Dr. Benjamin F. Chavis Jr.
Executive Director

Charles Lee
Director
Special Project on
Toxic Injustice

Executive Order 12898

Federal Register

Vol. 59, No. 32

Wednesday, February 16, 1994

Presidential Documents

*Federal Actions To Address Environmental Justice in
Minority Populations and Low-Income Populations*

The catalyst of the use of environmental justice in agency decision making.

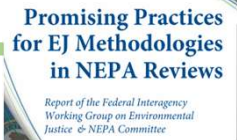
EO 12898 directed federal agencies to:

- **Consider environmental justice as part of its mission**
 - “Each Federal agency shall analyze the environmental effects, including human health, economic, and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by **NEPA**.”

EPA's Response...

This committee's goal is to improve the effective, efficient, and consistent consideration of EJ issues in the NEPA process through the sharing of information (research, best practices, lessons, etc.)

EPA releases report providing agencies recommendations for conducting EJ analysis & "EJ 2020", the EPA's "Action Agenda" revealing its plans for EJ for 2016 – 2020



EPA Guidance on the Consideration of EJ

2010

EJ 2014

2011

Creation of the NEPA Committee

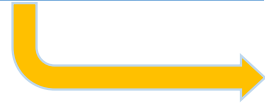
2012

Memorandum of Understanding on the Environmental Justice & Executive Order 12898

2013

EPA releases a notice discussing actions taken to evaluate EJ considerations, as well as EPA's promises and practices, taken in reviewing permit applications.

2016



NOW THEREFORE, the undersigned agencies (referred to herein as "Federal agencies") hereby agree:

I. Purposes

- A. To declare the continued importance of identifying and addressing environmental justice considerations in agency programs, policies, and activities as provided in Executive Order 12898, including as to agencies not already covered by the Order.
- B. To renew the process under Executive Order 12898 for agencies to provide environmental justice strategies and implementation progress reports.
- C. To establish structures and procedures to ensure that the Interagency Working Group operates effectively and efficiently.
- D. To identify particular areas of focus to be included in agency environmental justice efforts.

The agencies agreed to focus on:

- (1) NEPA
- (2) Civil Rights Amendment
- (3) Impacts from climate change
- (4) Impacts from commercial transportation

EJ 2020

EPA's 2016 – 2020 “Action Agenda” for EJ


EJ 2020 ACTION AGENDA
THE U.S. EPA'S ENVIRONMENTAL JUSTICE STRATEGIC PLAN FOR 2016 - 2020

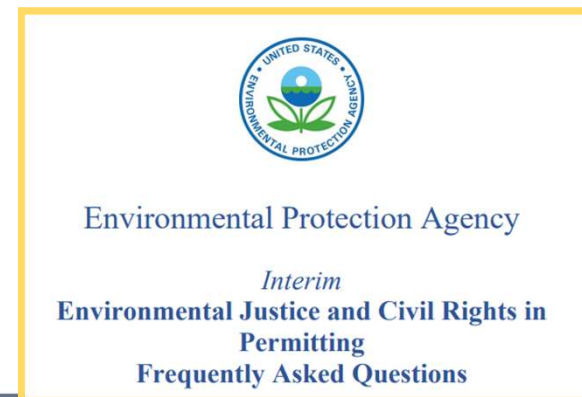
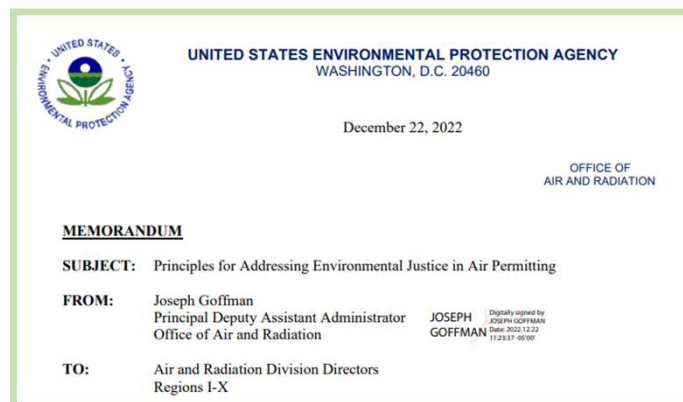
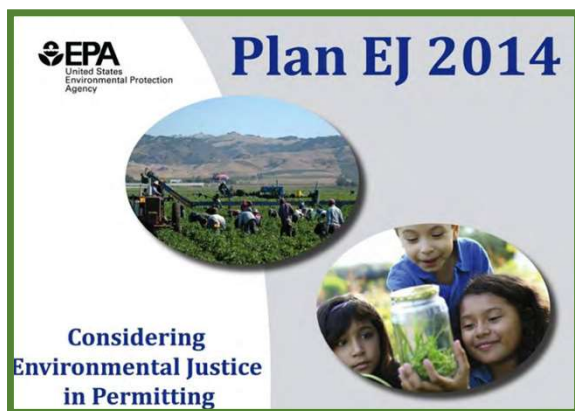


EJ 2020 Goals & Areas		
Goal I: Deepen EJ Practice Within EPA Programs to Improve the Health and Environment of Overburdened Communities	Goal II: Work With Communities to Expand Our Positive Impact Within Overburdened Communities	Goal III: Demonstrate Progress on Significant National Environmental Challenges
Rulemaking	States and Local Governments	Lead Disparities
Permitting	Federal Agencies	Drinking Water
Compliance and Enforcement	Community-Based Work	Air Quality
Science	Tribes and Indigenous Peoples	Hazardous Waste Sites

How EPA has Incorporated EJ so far...

In 2022, EPA released two policies regarding EJ considerations in permit applications:

- **August 2022:** FAQ on EJ and Civil Rights in permitting
- **December 2022:** Addressing EJ in Air permitting



EPA's Suggested Strategies for EJ in Permitting

Strategy 1: Develop tools that will enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process.

Strategy 2: Concurrently with Strategy 1, develop tools to assist permitting authorities to meaningfully address environmental justice in permitting decision.

Strategy 3: Implement these tools at EPA and work with others to do the same.

Some FAQs:

5

Does an entity's full compliance with the federal environmental laws in carrying out its permitting programs and decisions equate to compliance with the federal civil rights laws?

State, local, and other recipients of federal financial assistance have an independent obligation to comply with federal civil rights laws with respect to all of their programs and activities, including environmental permitting programs.¹³

A recipient's compliance with the requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean that the recipient is complying with federal civil rights laws. Federal civil rights laws prohibit recipients of federal financial assistance from taking actions that discriminate based on race, color, national origin, disability, age, and sex. Enforcement of federal civil rights laws and implementation of environmental laws are complementary. Used together, these laws help to ensure the non-discriminatory protection of human health and the environment.

Q6: How could a permitting decision raise a statutory civil rights compliance concern about intentional discrimination, or have a discriminatory effect?

A: the EPA provides an example of “**intentional discrimination:**”

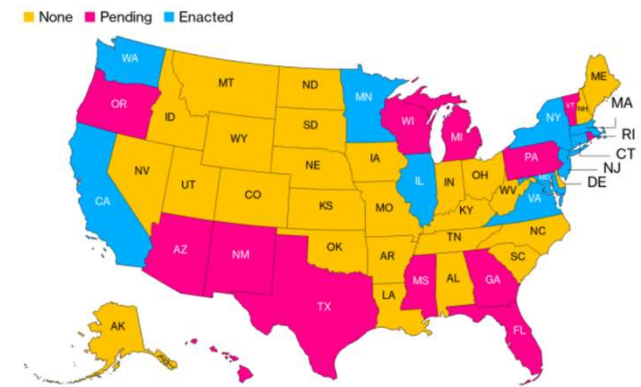
A permit recipient holds public hearings about a proposed permit for a facility on the west side of a town, a predominantly Black population. The east section of town is predominantly White.

Two hearings are held on the east side during the day and at night. Only one, daytime, hearing is held on the west side. At the west side hearing there are armed security and the hearing is shorter than the east side hearings.

EJ in the States

- **New Jersey** [SB 232](#) (2020): allows a permit to be denied if there is a determination that a new facility will have a disproportionately negative impact on the surrounding community
- **Massachusetts** [SB 9](#) (2021): requires an environmental impact report for any projects with impact on air quality
- **New York** [SB 8830](#) (2022): requires environmental impact statements to determine a potentially disparate impact

State Environmental Justice Legislation



Sources: Bloomberg Law and Bloomberg Government

Bloomberg Law

Ohio EPA and environmental justice

Published 04/01/2008 03:39 PM | Updated 07/01/2023 04:01 AM | Answer ID 1097

Does Ohio EPA have information on environmental justice?

Ohio EPA has found that the most effective way to address environmental justice (EJ) concerns is by building partnerships with community organizations.

As a recipient of federal funding, Ohio EPA is under a legal obligation to comply with Title VI of the Civil Rights Act. We have fully reviewed the guidance developed by U.S. EPA for states regarding environmental justice. We meet our legal obligations and implement federal guidance through both our technical review and our public involvement activities on permit applications.

Under Title VI, states are prohibited from using criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, or national origin. As a result, states may not issue permits that are intentionally discriminatory, or issue permits that have a discriminatory effect based on race, color, or national origin. While we do not have a specific environmental justice policy to follow, we consider all comments regarding environmental justice to ensure we comply with Title VI. Also, Ohio EPA issues permits based upon standards that are equally protective of all Ohio citizens.

Ohio EPA staff attend and participate in U.S. EPA meetings regarding environmental justice regularly. In addition, our Agency works closely with U.S. EPA when reviewing permits for facilities both agencies have jurisdiction over. In addition to permit reviews, Ohio EPA participates in U.S. EPA's taskforce addressing efforts to reduce lead exposure for residents in urban areas and potential environmental justice areas (however, in Ohio, Ohio Department of Health is the lead agency addressing lead).

We've also incorporated information from [EJ Screen](#) when we were determining the counties that receive priority for distribution of our Volkswagen Settlement funds. As an additional reference you may also be interested in [U.S. EPA's website on Environmental Justice](#).

If you have additional questions, contact our Public Interest Center at (614) 644-2160.

Where does this leave us?



Any questions?



PFAs Monitoring

Federal Guidance to States

Cheri A. Budzynski

Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs – Guidance to States

- Applicability - Industry categories known or suspected to discharge PFAS (but not limited to):
 - Organic chemicals, plastics & synthetic fibers
 - Metal finishing; electroplating
 - Electric and electronic components
 - Landfills
 - Pulp, paper & paperboard
 - Leather tanning & finishing
 - Plastics molding & forming
 - Textile mills
 - Paint formulating
 - Airports

Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs

- Guidance directed toward states
- Recommended monitoring:
 - Each of the 40 PFAS parameters detectable by draft method 1633
 - Conducted at least quarterly to ensure that there are adequate data to assess the presence and concentration of PFAS in discharges
- Best Management Practices such as:
 - Product elimination or substitution when a reasonable alternative is available
 - Accidental discharge minimization
 - Equipment decontamination or replacement to prevent discharge of legacy PFAS following the implementation of product substitution

Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs

- BMPs to address PFAS-containing firefighting foams for stormwater permits:
 - Prohibiting the use of Aqueous Film Forming Foams (AFFFs) other than for actual firefighting
 - Eliminating PFOS and PFOA -containing AFFFs
 - Requiring immediate clean-up in all situations where AFFFs have been used, including diversions and other measures that prevent discharges via storm sewer systems
- Issues:
 - Where to dispose?
 - Alternatives are not as effective

Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs

- **Permit Limits:**
 - Site-specific technology-based effluent limits (TBELs) for PFAS discharges developed on a best professional judgment (BPJ) basis
 - NPDES permits must include water quality-based effluent limits (WQBELs) as derived from state water quality standards, in addition to TBELs if necessary to achieve water quality standards
- **Issues:**
 - Most states do not have established standards
 - Legacy PFAs – PFAs is found everywhere
 - Technology for large scale treatment?

Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs

- Recommendations for Publicly Owned Treatment Works
 - Applicability: All POTWs, including POTWs that do not receive industrial discharges, and industrial users (IUs) in the industrial categories above
 - Effluent, influent, and biosolids monitoring
 - Pretreatment program activities
 - Update IU Inventory: Permits to POTWs should contain requirements to identify and locate all possible IUs that might be subject to the pretreatment program and identify the character and volume of pollutants contributed to the POTW by the IUs
 - Utilize BMPs and pollution prevention to address PFAS discharges to POTWs
 - Update IU permits/control mechanisms to require quarterly monitoring
 - Where authority exists, develop IU BMPs or local limits
 - In the absence of local limits, state pretreatment coordinators are encouraged to work with the POTWs to encourage pollution prevention, product substitution, and good housekeeping practices

Questions?

Cheri Budzynski

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Biographical Information

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Walter is the NPDES Permitting and 208 Program Manager at the Ohio EPA Division of Surface Water Central Office. He has 20+ years' experience in the NPDES permit program with Ohio EPA. He has a B.S. in chemical engineering from The Ohio State University. He is a registered P.E. in the state of Ohio and holds a Class III Ohio Wastewater operator license.

**Krystina E. Garabis, Attorney at Law
Shumaker, Loop & Kendrick, LLP
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kgarabis@shumaker.com**

Krystina has a diversified litigation background rooted in creative problem solving and the ability to adapt to her clients' needs. She began her practice with a primary focus in products, transportation, and toxic tort litigation, defending clients in matters involving catastrophic injury, wrongful death, insurance coverage, and toxic torts. Her current practice focuses in environmental litigation, white-collar crime, and business litigation.

In addition, Krystina has an interest in defining herself as a leading authority in drone litigation and drone legislation. Her numerous interests allow her to assist clients in a wide range of legal issues.

Krystina is a lifelong resident of Columbus, growing up in Upper Arlington and attending Columbus School for Girls, where she played on the golf team. Krystina received her J.D. from The Ohio State University Moritz College of Law, and received her M. A. in Public Affairs from The Ohio State University. For her undergraduate degree, she attended Michigan State University, where she received a B.A. in English Language and Literature.

Outside the office, Krystina enjoys traveling, playing golf, and spending time with her dog.

Cheri A. Budzynski

Partner, Diversity and Inclusion Committee Co-Chair



CONTACT

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Toledo, OH

EDUCATION

J.D., *magna cum laude*, Order of the Coif, The University of Toledo, 2007

Ph.D., Experimental Psychology, Bowling Green State University, 2001

M.A., Experimental Psychology, Bowling Green State University, 1998

B.A., *summa cum laude*, Lourdes College, 1995

SERVICE LINES

Environmental and Energy

Environmental

BUSINESS SECTORS

Construction

Environmental

Manufacturing

A management-side attorney for more than 10 years, Cheri counsels clients on day-to-day environmental compliance and other administrative issues at their facilities. Clients draw on the fact she frequently works with Ohio EPA, U.S. EPA, and the Ohio River Valley Water Sanitation Commission regarding environmental regulations, thus, allowing her to effectively and efficiently, advise clients on regulations on both the state and federal level and seek changes to regulations that impact their business by providing input to the regulatory agencies and, if necessary, appealing the regulations.

Cheri serves as national discovery counsel for asbestos litigation, concentrating on all aspects of discovery. Hardworking and organized, she has significant experience managing a large document repository, developing discovery responses, assisting with corporate product witness deposition preparation, and helping counsel around the country with defense strategy.

Colleagues and clients alike also look to Cheri for her ability to successfully handle sophisticated permit issues, including permits under the Title V and New Source Review Provisions of the Clean Air Act, the NPDES program under the Clean Water Act, and construction and operation permits.

Outside her environmental practice, Cheri also advises clients on contractual agreements related to equine law.

Furthermore, Cheri enjoys spending time cooking and riding horses.



BAR AND COURT ADMISSIONS

- Florida, 2008
- Ohio, 2007
- United States Court of Appeals, District of Columbia
- United States Court of Appeals, Sixth Circuit
- United States District Court, Northern and Southern Districts of Ohio
- United States Supreme Court

PROFESSIONAL AND COMMUNITY AFFILIATIONS

- Toledo Bar Association
- Toledo Women's Bar Association
- Ohio Bar Association
- President, Toledo Women's Bar Association
- Past Social Media Vice Chair, American Bar Association Section of Environment, Energy, and Resources Air Quality Committee

HONORS

- Best Lawyers in America, Environmental Law, 2021
- Ohio Rising Star by *Super Lawyers* magazine, 2014 - 2017
- *Toledo Business Journal*, "Who's Who in Toledo Area Law"