

Environmental Justice

What Is It & Why Does It Matter?

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Presentation Overview

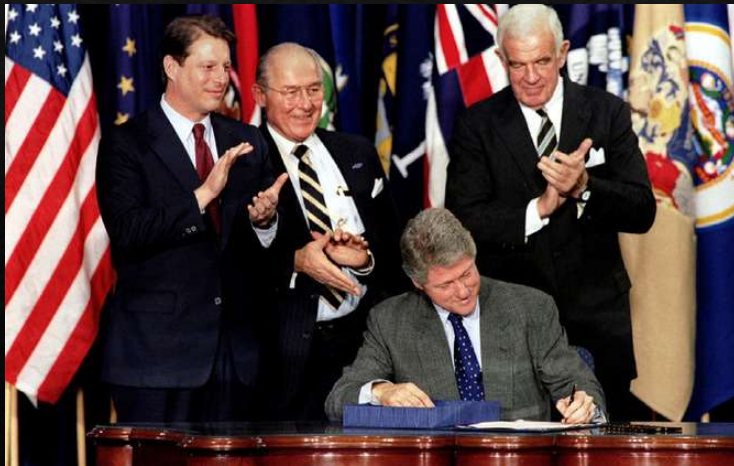
- ◆ What is Environmental Justice
- ◆ What are the Legal Authorities for Environmental Justice
- ◆ Update on EPA EJ Initiatives and Enforcement
- ◆ Spotlight on Permitting and Environmental Justice
- ◆ EJScreen Tool Highlights
- ◆ Practical Tips on Permitting with Environmental Justice and EPA's Involvement
- ◆ What to Expect Next Regarding EJ
- ◆ Questions and Discussion

What Is Environmental Justice?

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

"Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"

– Pres. Bill Clinton, 1994
Executive Order 12898



- ❖ Identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law.
- ❖ Developed a strategy for implementing environmental justice.
- ❖ Promote nondiscrimination in federal programs that affect human health and the environment as well as provide minority and low-income communities with access to public information and public participation.
- ❖ Established an interagency working group on environmental justice which was chaired by the EPA administrator.

What Is Meaningful Involvement?

- ◇ Potentially affected communities have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health
- ◇ The public's contribution can influence the regulatory agency's decision
- ◇ The concerns of all participants involved will be considered in the decision-making process
- ◇ Decision-makers seek out and facilitate the involvement of those potentially affected

Who are Underserved Communities?

Populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, such as Black, Latino, and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

What are Cumulative Impacts?

- ◆ Cumulative means growing by successive additions.
- ◆ This could mean additions overtime, additional pollutants, additional sources of pollution, or additional routes of impact.
- ◆ This could also be used to describe an individual's integrated exposure to pollutants as they engage in daily activities or move through successive environments.
- ◆ Their daily scenarios incorporate all of the above accumulations as well as integration over the space outlined by their movements.

Disproportionate Impacts

Refers to differences and impacts or risks that are extensive enough that they may merit agency action and should include cumulative impacts where appropriate.

Equity

The consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.

Fair Treatment

No group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies.

Traditional Legal Foundations for EJ

- EPA can only do what Congress authorizes it to do.
- EPA must act within the authorities granted to it under applicable federal statutes.
- There is no federal law expressly governing environmental justice but claims are raised under:

Civil Rights Act of 1964, Title VI

National Environmental Policy Act

Federal Executive Orders

Civil Rights Act of 1964, Title VI

- Prohibits recipients of federal funding from discriminating based on race, color, or national origin in any program or activity.
- EJ actions brought as Title VI cases for EPA to investigate.
- Any person can file a Title VI complaint with EPA. Once a complaint is filed, EPA has 20 days to review it and either accept, reject or refer it to another federal agency.
- State agencies are subject to Title VI because they receive federal funding to carry out their EPA-approved programs.
- No private right of action under Title VI unless there is proof of intentional discrimination. But a Title VI complaint can greatly impact a facility's operations and support other lawsuits or permit challenges directly filed against a company (e.g., Clean Air Act, Clean Water Act, etc.).

Recent Environmental Title VI Complaints

- (Jan. 20, 2022) Concerned Citizens of St. John and the Sierra Club filed a Title VI complaint with EPA against the Louisiana Department of Environmental Quality (LDEQ) and the Louisiana Department of Health (LDH) arguing that expired air permits had a disproportionate impact on residents of St. John the Baptist Parish, Louisiana and LDH had failed to take any action to protect children in a St. John elementary school.
- (Jan. 5, 2022) Childhood Lead Action Project filed a Title VI complaint with EPA against the Providence Water Supply Board claiming that the Board's lead pipe replacement practices discriminate against Black, Latino, and Native American people. Providence Water has more than 27,000 lead service lines that exceed EPA's actionable level for lead in water. People of color, renters, and families in poverty are more likely to live in homes serviced by these lead pipes. Claimants seek removal and replacement of all lead service lines.

President Biden's EJ Executive Orders

- *President Biden's First Day (Jan. 20, 2021):*
 - **Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities through the Federal Government**
 - **Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis**
 - **Memorandum Modernizing Regulatory Review**
- *One Week Later (Jan. 27, 2021):*
 - **Executive Order 14008: Tackling the Climate Crisis at Home and Abroad**

Executive Order 14008

- Most sweeping environmental justice reforms in this Executive Order
- Emphasizes how the Biden Administration will integrate EJ in “all of government”
- Created the “Justice40 Initiative”
 - Sets goal that at least 40% of the overall benefits from federal investments in climate and clean energy will flow to disadvantaged communities
- Orders the development of a Climate and Economic Justice Screening Tool
- Establishes two White House environmental justice councils:
 - White House Environmental Justice Interagency Council
 - White House Environmental Justice Advisory Council
 - Final recommendations were issued on May 13, 2021

EJ Enforcement Initiatives by EPA

- (April 30, 2021) Office of Enforcement and Compliance Assistance memo **Strengthening Enforcement in Communities with Environmental Justice Concerns** calling for increased inspections, enforcement and engagement.
- (June 21, 2021) Office of Enforcement and Compliance Assistance memo **Strengthening Environmental Justice through Criminal Enforcement** includes “tools for the detection of environmental crimes in overburdened communities, improving outreach to the victims of such crimes, and ensuring that our investigations are structured to provide maximum assistance to the Department of Justice in its exercise of prosecutorial discretion and pursuit of remedies that will guarantee adequate protection for those communities.”

EJ Enforcement Initiatives by EPA (cont'd)

(Jan. 26, 2022) EPA Administrator's announcements on EJ policy:

- Aggressively using EPA authority to **conduct unannounced inspections** of suspected non-compliant facilities and hold them accountable
- **Expand air monitoring capacity**, secure additional air pollution inspectors and invest in community air monitoring
- **Press state and local elected officials** to take urgent action to protect the most overburdened communities
- Hold companies more accountable with **increased monitoring and oversight**

(May 5, 2022) Comprehensive Environmental Justice Strategy by Department of Justice

- New Office of Environmental Justice within the Justice Department created “to ensure that DOJ is using all available legal tools to promote environmental justice” and restores uses of SEPs

(May 2022) EPA Office of General Counsel “Legal Tools to Advance Environmental Justice”

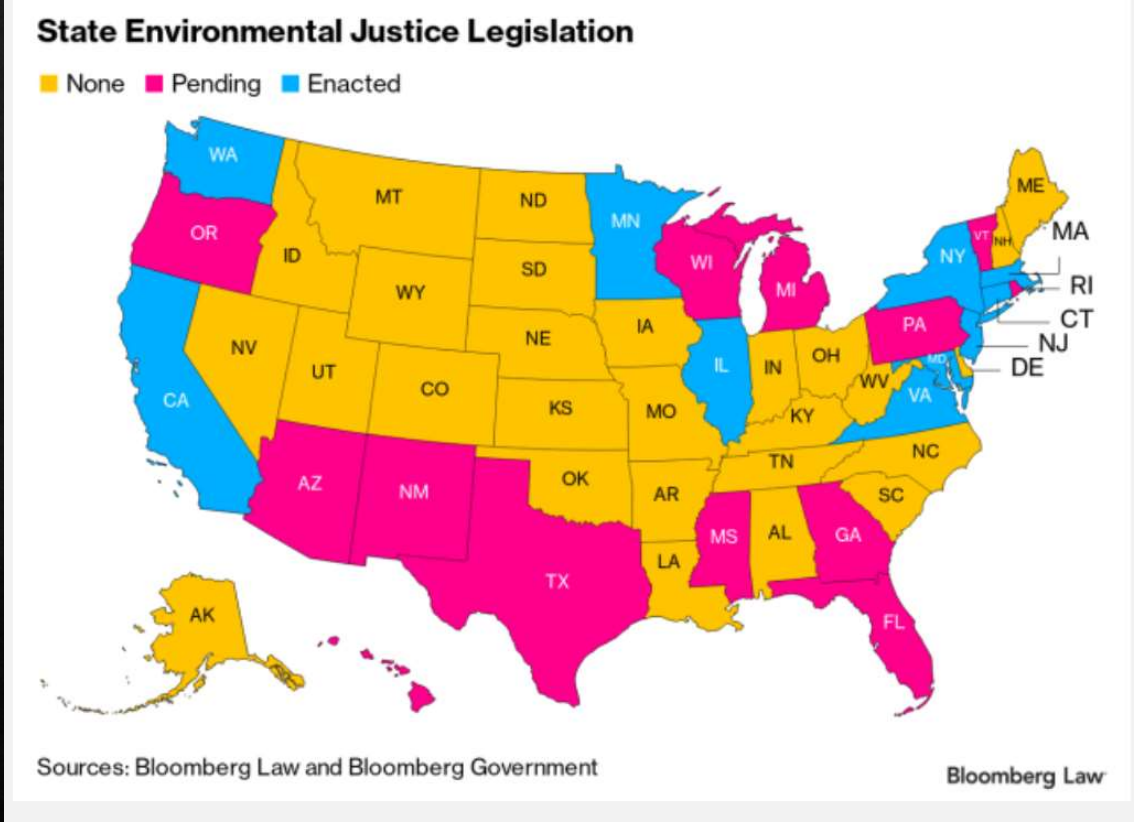
EPA Interpretations on Civil Rights Act, Title VI

- **Select Steel Corp.**, Permit No. 579-97, Docket No. PSD 98-21 (Environmental Appeals Board, Sept. 11, 1998); US EPA Response to Select Steel Complaint, EPA File No. 5R-98-R5 (Oct. 30, 1998)
Construction of a stationary source that will not cause a violation of health-based NAAQS creates a *rebuttable presumption* that no adverse impacts are caused by the environmental permit
- **US EPA's External Civil Rights Compliance Office Compliance Toolkit (2017)**
“clarification of existing law and policy intended to provide guidance to promote and support EPA recipients' compliance with federal civil rights laws”
“compliance with environmental laws does not necessarily constitute compliance with federal civil rights laws”
EPA will examine whether site-specific information demonstrates the presence of adverse health effects from NAAQS pollutants, even though the area is designated attainment and the facility obtained a permit that meets applicable requirements.

Spotlight on Recent Permitting Actions

- **AJAX Asphalt Plant (Kalamazoo, MI)**
 - September 16, 2021: EPA Region 5 comment letter to Michigan EGLE highlighting EJ concerns regarding the issuance of the air permit and advised that Michigan EGLE should “assess its own obligations under civil rights laws and policies” including whether permittee should consider an alternative site
- **Reserve Management Group/Southshore Recycling (Chicago, IL)**
 - May 7, 2021: EPA Region 5 comment letter recommends that City complete an environmental justice analysis, such as a Health Impact Assessment, to meaningfully consider the aggregate potential health effects of the proposed facility on the southeast area of Chicago. “Such an analysis would help to illustrate the direct link between the environmental burdens in this community and the health of the residents.”

State Environmental Justice Legislation



EJ Screen Tool

<https://ejscreen.epa.gov/mapper/>

An official website of the United States government [Here's how you know](#)

EPA United States Environmental Protection Agency

Search EPA.gov

Environmental Topics ▾ Laws & Regulations ▾ Report a Violation ▾ About EPA ▾

CONTACT US

EJScreen: Environmental Justice Screening and Mapping Tool



Launch the EJScreen Tool

Explore EPA's environmental justice screening and mapping tool

In order to better meet the Agency's responsibilities related to the protection of public health and the environment, EPA has developed a new environmental justice (EJ) mapping and screening tool called EJScreen. It is based on nationally consistent data and an approach that combines environmental and demographic indicators in maps and reports. [Learn more about Environmental Justice at EPA.](#)

What is EJScreen?



- [What is EJScreen?](#)
 - [How was It Developed?](#)
 - [How Does EPA Use It?](#)
 - [Purposes and Uses](#)

Learn to Use EJScreen



- [Learn to Use EJScreen](#)
- [EJScreen Office Hours and Trainings](#)

Launch the Tool



- [Launch the EJScreen Tool](#)

Understanding Results



- [Understanding EJScreen Results](#)
 - [EJ Indexes](#)
 - [Environmental Indicators](#)
 - [Demographic Indicators](#)
 - [How to Interpret a Standard Report](#)

Technical Information



- [Technical Information](#)
 - [Limitations and Caveats](#)
 - [Download EJScreen Data](#)

Additional Resources



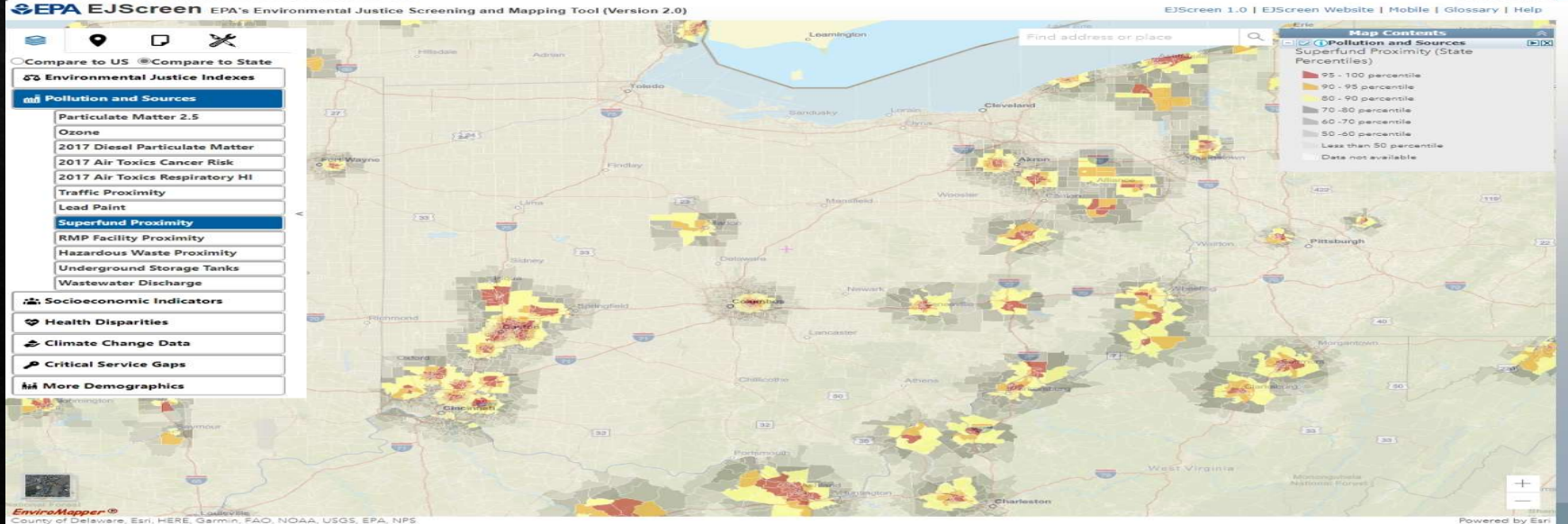
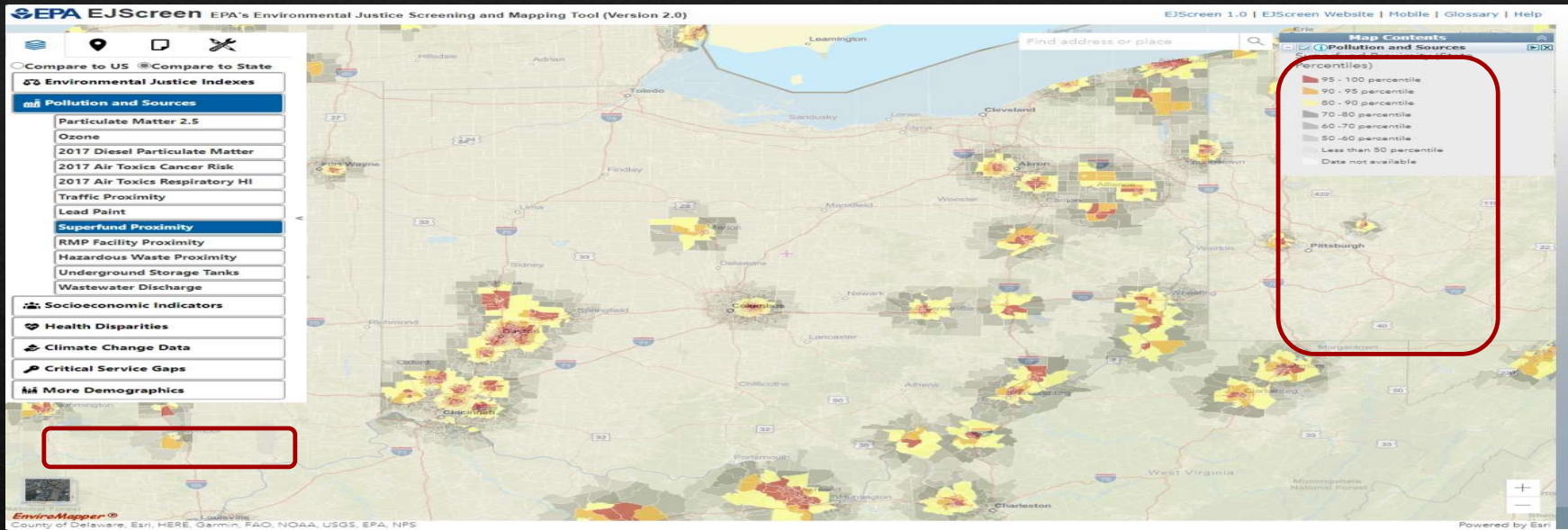
- [EJScreen Resources](#)
 - [Frequent Questions about EJScreen](#)
 - [Glossary of EJScreen Terms](#)
 - [Other EPA Mapping Tools](#)
 - [EJScreen Videos](#)

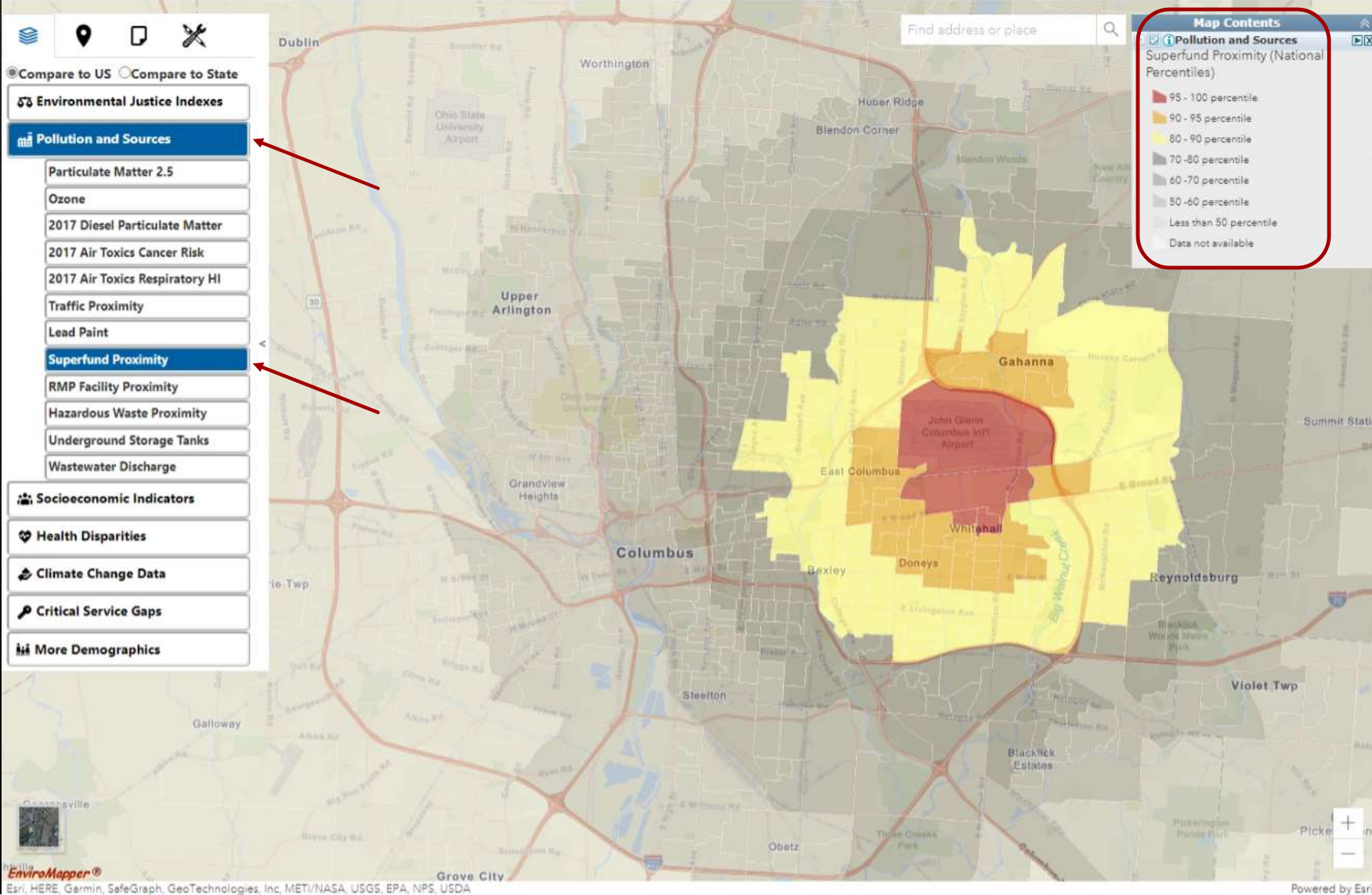
How Does EPA Use EJScreen?

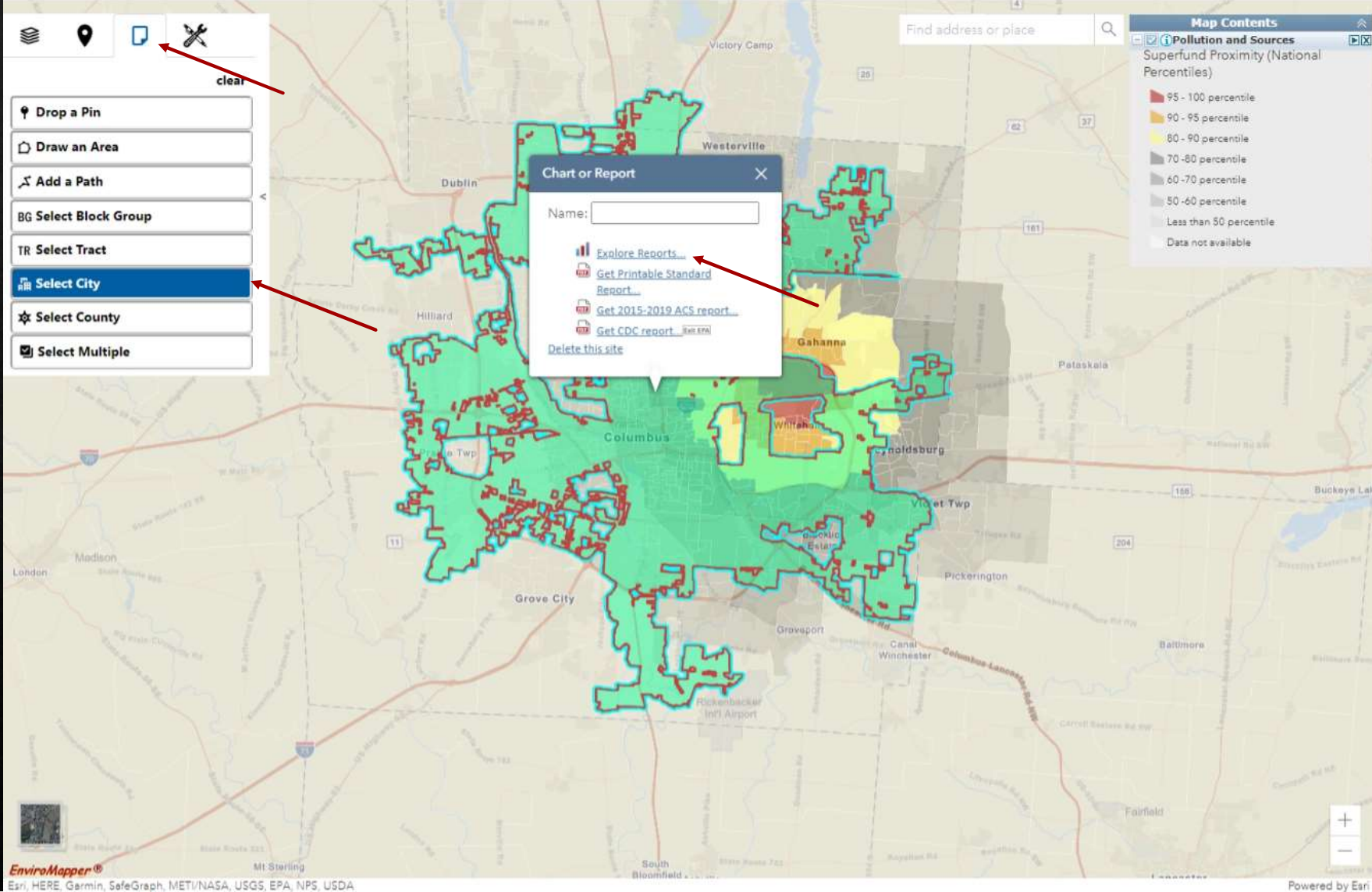
- ◆ To identify areas that may have higher environmental burdens and vulnerable populations
- ◆ To develop programs, policies and activities that may affect communities
- ◆ To inform outreach and engagement practices
- ◆ As an initial screen for voluntary programs, enhanced outreach in permitting, and prioritizing enforcement work
- ◆ To develop retrospective reports of EPA work

How Does EPA not Use EJScreen?

- ◇ As a means to identify or label an area as an “EJ community”
- ◇ To quantify specific risk values for a selected area
- ◇ As the sole basis for EPA decision-making or for making a determination regarding the existence or absence of EJ concerns







- Drop a Pin
- Draw an Area
- Add a Path
- BG Select Block Group

Explore Reports

City Columbus city, OHIO, EPA Region 5 (Population: 871,940)

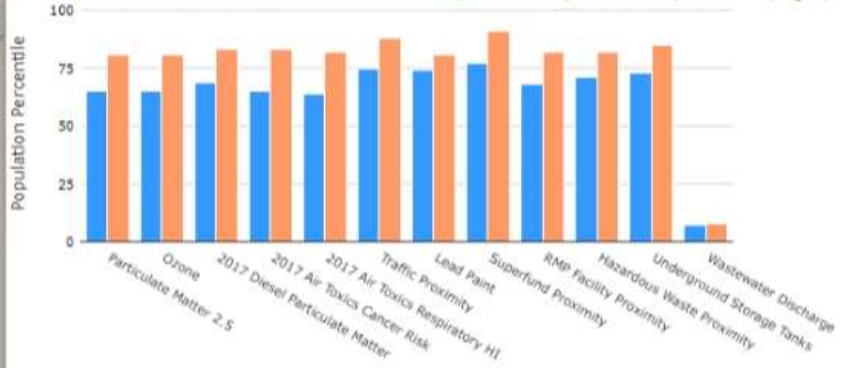
- Environmental Justice Indexes**
- Pollution and Sources
- Socioeconomic Indicators

[Unselect All]

- Particulate Matter 2.5
- 2017 Air Toxics Cancer Risk
- Lead Paint
- Hazardous Waste Proximity
- Ozone
- 2017 Air Toxics Respiratory HI
- Superfund Proximity
- Underground Storage Tanks
- 2017 Diesel Particulate Matter
- Traffic Proximity
- RMP Facility Proximity
- Wastewater Discharge

- State Percentile
- Regional Percentile
- USA Percentile

Environmental Justice Indexes for the Selected Area Compared to All People's Block Groups in the State/Region/US



- Drop a Pin
- Draw an Area
- Add a Path
- BG Select Block Group

Explore Reports

City Columbus city, OHIO, EPA Region 5 (Population: 871,940)

Environmental Justice Indexes **Pollution and Sources** Socioeconomic Indicators

[Unselect All]

<input checked="" type="checkbox"/> Particulate Matter 2.5	<input checked="" type="checkbox"/> Ozone	<input checked="" type="checkbox"/> 2017 Diesel Particulate Matter
<input checked="" type="checkbox"/> 2017 Air Toxics Cancer Risk	<input checked="" type="checkbox"/> 2017 Air Toxics Respiratory HI	<input checked="" type="checkbox"/> Traffic Proximity
<input checked="" type="checkbox"/> Lead Paint	<input checked="" type="checkbox"/> Superfund Proximity	<input checked="" type="checkbox"/> RMP Facility Proximity
<input checked="" type="checkbox"/> Hazardous Waste Proximity	<input checked="" type="checkbox"/> Underground Storage Tanks	<input checked="" type="checkbox"/> Wastewater Discharge

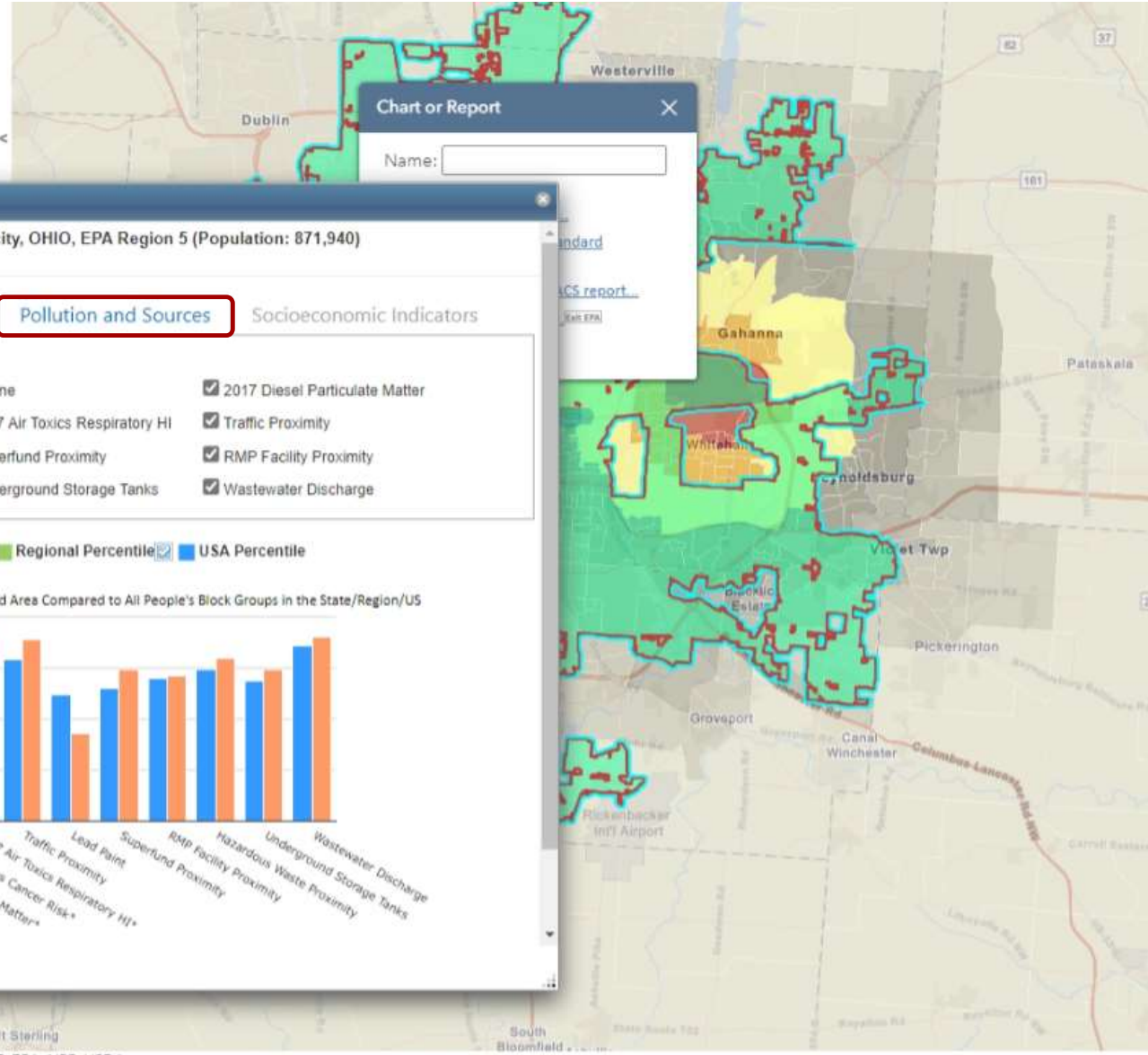
State Percentile
 Regional Percentile
 USA Percentile

Pollution and Sources for the Selected Area Compared to All People's Block Groups in the State/Region/US

Metric	State Percentile	Regional Percentile	USA Percentile
Particulate Matter 2.5	75	75	75
Ozone	90	85	85
2017 Diesel Particulate Matter	95	95	95
2017 Air Toxics Cancer Risk*	95	55	55
2017 Air Toxics Respiratory HI*	90	80	80
Traffic Proximity	65	65	65
Lead Paint	45	45	45
Superfund Proximity	75	75	75
RMP Facility Proximity	75	75	75
Hazardous Waste Proximity	85	85	85
Underground Storage Tanks	70	70	70
Wastewater Discharge	95	95	95

Chart or Report

Name:



- Drop a Pin
- Draw an Area
- Add a Path
- BG Select Block Group

Explore Reports

City Columbus city, OHIO, EPA Region 5 (Population: 871,940)

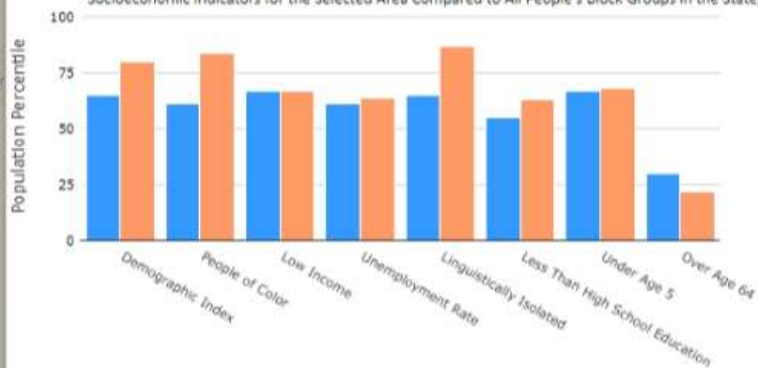
- Environmental Justice Indexes
- Pollution and Sources
- Socioeconomic Indicators**

[Unselect All]

- Demographic Index
- People of Color
- Low Income
- Unemployment Rate
- Linguistically Isolated
- Less Than High School Education
- Under Age 5
- Over Age 64

- State Percentile
- Regional Percentile
- USA Percentile

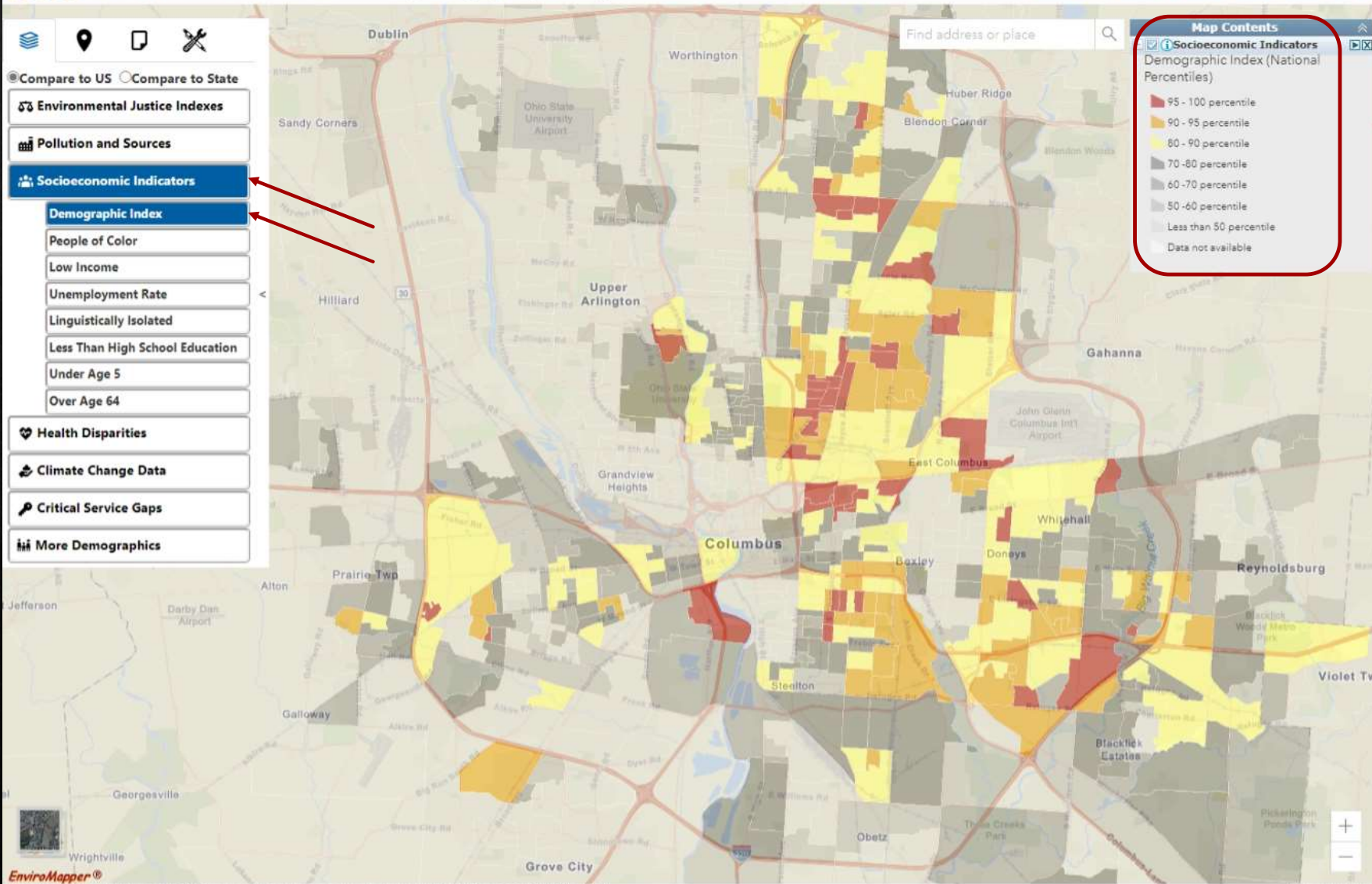
Socioeconomic Indicators for the Selected Area Compared to All People's Block Groups in the State/Region/US

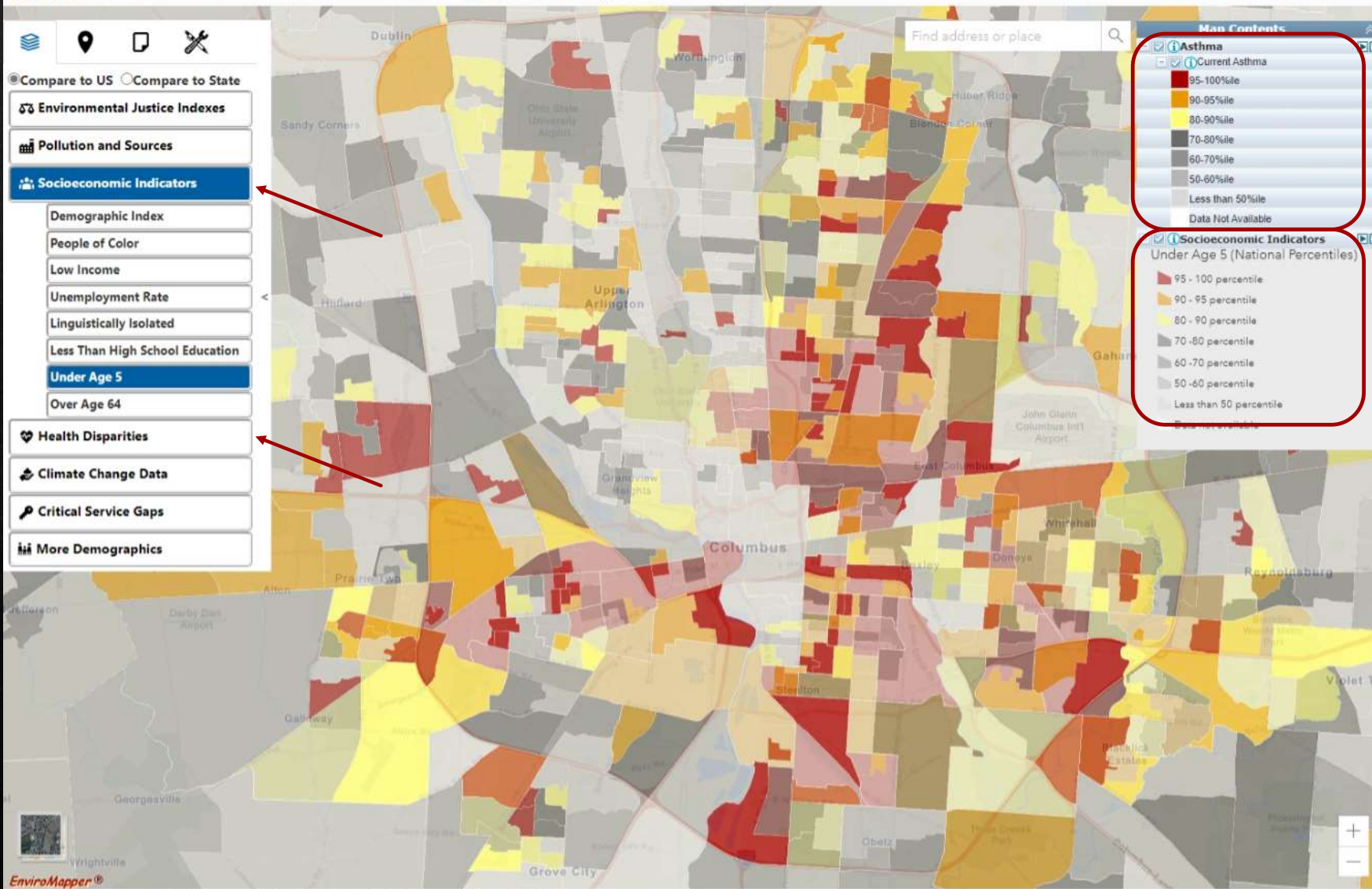


Socioeconomic Indicators

Chart or Report

Name:





What Might EJ Look Like?

- ◇ Increase in facility inspections
- ◇ Increase in requests for information (114 Requests)
- ◇ Increase in community engagement
- ◇ Partnership between state and local regulators
- ◇ Community groups and non-governmental organizations (NGOs) petitioning EPA

What Might EJ Mean?

- ◇ Grants to support communities that need help
- ◇ Additional actions needed for new permits
- ◇ More stringent requirements for sites in impacted communities
- ◇ Lots of data available to the public
- ◇ Communities and regulators can be proactive rather than reactive
- ◇ Meeting civil rights requirements might mean going beyond compliance

Where Might You Find EJ Efforts?

- ◇ Standard-Setting
- ◇ Licensing
- ◇ Cleanup
- ◇ Emergency Response
- ◇ Infrastructure Funding
- ◇ Awarding Grants
- ◇ Planning
- ◇ Reviews
- ◇ Monitoring
- ◇ Reporting
- ◇ Research
- ◇ Procurement
- ◇ Working with Sister Agencies
- ◇ State Program Oversight
- ◇ Ensuring Meaningful Public Involvement

EJ & Community Engagement

- ◇ Listen and understand community issues
- ◇ Consider the historical perspective they can offer
- ◇ Be humble about what you know
- ◇ Partnership approach vs. procedural approach to community engagement

EJ & Permitting

- ◇ EPA's job is to protect the environment and human health
- ◇ Everyone can agree that pollution reduction is a good thing
- ◇ The same pound of pollution reduction can have different impacts on two different communities
- ◇ The same level of emissions reduced can have a much greater impact in certain disadvantaged and overburdened communities

What Can We Expect Next?

- **More Federal Accountability & Oversight**
 - NEPA review will more strongly consider cultural resources and EJ
 - EPA may direct State Implementation Plans (“SIPs”) to prioritize disadvantaged communities
 - Draft Climate and EJ Screening Tool released Feb. 2022
- **Regulatory Initiatives/Reforms**
 - Attention to EJ risks in ongoing risk evaluations for high-priority substances under TSCA
 - Additional monitoring for pollution (emissions, criteria pollutants, etc.) in “frontline and fence line communities”
- **Third Party Liability**
 - Increased citizen and third party tort suits due to pollution and exposure in underprivileged and overburdened communities

What Can We Expect Next?

Social and Economic

- Companies and organizations are developing robust policies for Environmental, Social and Corporate Governance that include an EJ analysis; shareholder considerations

Permitting

- Consideration of cumulative impacts
- Consideration of maximization of EJ benefits
- Siting considerations and location

Enforcement

- Prioritizing regulations with EJ impacts (e.g., toxic air pollutants)
- Supplemental Environmental Projects (SEPs)
- Unannounced inspections and enforcement in impacted communities
- Use of “Next-Gen” compliance tools, including advanced monitoring, audits, electronic reporting, etc.
- More resources for enforcement within US DOJ

Any Questions?



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Biographical Information

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Julie Hall is a Senior Project Manager with Weaver Consultants Group. Julie has spent her career in environmental consulting, specializing in air compliance and permitting for clients throughout the Midwest. Julie has prepared countless installation, modification, and renewal permit applications. She has been engaged with permit writers during the permitting process to develop acceptable permit terms and to ensure permits meet her client's needs. She has been active in tracking and reviewing new and revised regulations. Julie has completed emission unit inventories and developed potential to emit calculations for facilities. She has prepared and submitted state and federal compliance reports. Julie has participated in agency inspections and records requests on behalf of her clients.

Julie received her B.S. in Chemical Engineering and her Master's in Business Administration from the University of Cincinnati. She is an active member of the Air and Waste Management Association. Julie has given numerous presentations across the country on permitting, compliance, and air regulations at various national conferences. She lives in West Chester, Ohio with her husband, three teenage sons, two dogs, and a cat. In her free time, she enjoys hiking and rock climbing with her family.



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Dale Papajcik focuses his business on counseling on strategic and routine environmental, health and safety, commercial, real estate and insurance matters.

RELATED SERVICES

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About

For more than 30 years, Dale has represented a broad range of major manufacturing, energy and mining clients on nearly every aspect of environmental health and safety law. Dale's clients routinely achieve a highly desirable level of success. His practice has principally focused on both civil and criminal enforcement defense of industrial clients and has involved all environmental media. Dale's representations include some of the largest and most complex industrial and mining facilities in the world. He has particularly broad experience in the Great Lakes and heartland states. Dale's roles have run the gamut, from project engineer to chief legal counsel and senior business leader.

Dale has represented steel, coal and coke; chemicals; the extractive industries; automotive; aerospace and defense; tire and rubber; coal, metal and mineral mining; metal manufacturing; waste management; and agribusiness.

Credentials

Education

- The University of Akron, J.D., 1986
-

- The University of Akron, B.S.C.E., 1980

Admissions

- Ohio, 1986

Courts

- U.S. Dist. Ct., N. Dist. of Ohio, 1986
- U.S. Ct. of App., Third Circuit

Languages

- English

About Squire Patton Boggs

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Katherine Wenner is an associate in the Environmental, Safety & Health Practice Group, where she assists clients on a wide variety of environmental matters.

RELATED SERVICES

Environmental, Safety & Health

About

Prior to joining the firm, Katherine served as a law clerk to a magistrate judge in the US District Court for the District of Wyoming and to a senior district judge in the US District Court for the Western District of North Carolina. During this time, Katherine managed a significant portion of these judges' dockets, performed legal research on a vast range of issues, briefed both judges on a broad variety of legal matters, wrote legal memoranda and assisted in drafting numerous decisions.

Before attending law school, Katherine worked as a legislative aide in the Ohio House of Representatives, where she performed a variety of tasks, including managing constituent needs, corresponding with interested parties, coordinating legislative meetings and assisting in preparing bill drafts.

Credentials

Education

- Wake Forest University, J.D., *cum laude*, 2019
- The Ohio State University, B.S., 2014

Admissions

- North Carolina, 2019

Courts

- U.S. Dist. Ct., W. Dist. of North Carolina

Publications

- Author, Comment, “Quick Response Codes for Genetically Engineered Foods: A Quick Fix to America’s Deep-rooted Debated Surrounding Genetically Engineered Foods,” *Wake Forest L. Rev.*, 2018.
- Author, “Pulling the Wool Over Our Eyes: How Inconsistent and Misleading Labels are Failing Consumers and Animals,” *Laws & Paws*, 2018.
- Co-author, “Making the Band: Hazing and an Analysis of Interpersonal Dynamics,” *VA. Sports & Ent. L.J.*, 2018.

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