



**Marathon
Petroleum Corporation**

Workshop F: Impacts of Environmental Justice (EJ) on Permitting and Enforcement for Businesses/Facilities ... The Road Ahead

Sherry L. Hesselbein, Deputy General Counsel

July 20, 2023

8:45 AM – 10:15 AM



Topics

- Definition of Environmental Justice
- U.S. EPA's multi-faceted approach to Environmental Justice
- The Civil Rights Act, Title VI
- Example of how Environmental Justice and the Civil Rights Act have driven enforcement at a facility



U.S. EPA's Definition of Environmental Justice

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

Fair Treatment

Meaningful Involvement

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

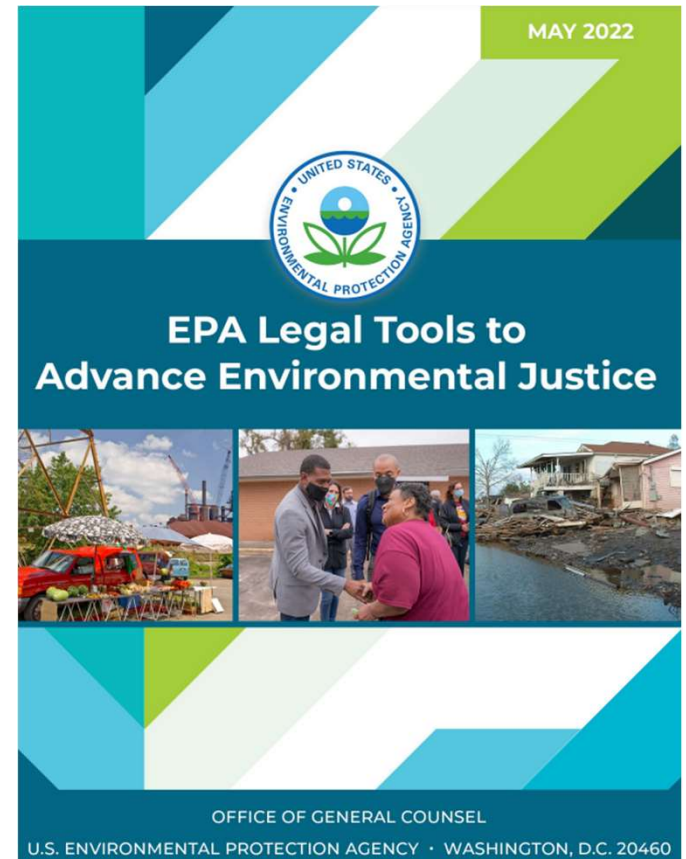
People have an **opportunity to participate** in decisions about activities that may affect their environment and/or health



U.S. EPA's Multi-Faceted Approach to Environmental Justice

Background

- Enforcement
 - Strengthen enforcement in overburdened communities
 - Seek early and innovative relief, i.e. fence line monitoring
 - Incorporate Supplemental Environmental Projects
- Permitting
- Regulatory actions
 - Evaluation of rule impact on overburdened communities
- Monitoring
 - Increase facility inspections in overburdened communities
- Funding and community grantmaking
- Public engagement
 - Engage with EJ groups, industry, state and local agencies
 - Enhance Enforcement and Compliance History Online, i.e. ECHO Notify's weekly emails
- Civil rights law enforcement



The Civil Rights Act, Title VI

- Prohibits recipients of federal financial assistance from taking action in their programs or activities that are **intentionally discriminatory** or have a **discriminatory effect (disparate impact)** on the basis of race, color, or national origin.
 - Can apply to state/local permitting
 - Complaints filed with federal agency that provided financial assistance – agency investigates to determine if a violation has occurred, even absent specific supporting evidence from complainant
 - Resolved through informal resolution, voluntary compliance agreements, or referral to Administrative Law Judge or Department of Justice to terminate federal funding
- EPA Civil Rights Docket – list of a few of the agencies currently subject to a civil rights complaint:
 - Louisiana Department of Environmental Quality (recently closed)
 - Michigan Department of Environment, Great Lakes, and Energy
 - Texas Commission on Environmental Quality

Case Example

Denka Facility in Louisiana

■ Background

- Denka Performance Elastomer LLC is a Neoprene production facility located in St. John the Baptist Parish, Louisiana. Denka purchased the facility from DuPont in 2014.
- In 2017, Denka and LDEQ agreed to an Administrative Order under which Denka agreed to reduce chloroprene emissions by 85% below the facility's 2014 baseline.

■ EPA “Journey to Justice”

- Community residents expressed concern about the emissions from the facility.
- U.S. EPA conducted community monitoring from October 2019 to September 2020. Denka agreed to install fenceline monitoring by January 2022.
- In January 2022, Administrator Regan sent a letter to Denka saying he expected the company to take other needed action to address the community concerns.



Case Example

Denka Facility in Louisiana

■ Civil Rights Complaint

- Also in January 2022, Earthjustice filed a civil rights complaint with U.S. EPA alleging that LDEQ's permitting practices subjected St. John the Baptist Parish residents to discrimination on the basis of race.
 - The complaint stated LDEQ's failure to renew Title V permits for the Denka facility and failure to reduce chloroprene emissions from the facility as the bases for its allegation.
- In October 2022, U.S. EPA issued its preliminary findings, determining significant evidence exists suggesting disparate adverse impacts.
- To address these issues, EPA recommended that LDEQ:
 - Conduct cumulative impact analyses, including hiring a professional risk communicator to communicate results to the community
 - Implement a formal environmental justice process for air permitting actions, and
 - Establish limits for future Industrial Corridor Air Permits.
- Recently, EPA closed its civil rights investigation but committed to address concerns at the Denka facility.
 - Enforcement action
 - Proposed rulemaking to reduce chloroprene and ethylene oxide emissions
 - Transparency of information: LaPlace, St. John the Baptist Parish, Louisiana (<https://www.epa.gov/la/laplace-st-john-baptist-parish-louisiana>)



Case Example

Denka Facility in Louisiana

■ U.S. EPA Enforcement

- U.S. EPA has filed a lawsuit against Denka to reduce chloroprene emissions
- The lawsuit was filed under Clean Air Act Section 303, a seldom-used provision that permits EPA to bring suit to “immediately restrain any person causing or contributing” to alleged pollution whenever the EPA has evidence that the alleged pollution presents “an imminent and substantial endangerment to public health or welfare, or the environment.”

“As Regional Administrator, I am committed to reducing exposure to chloroprene in St. John the Baptist Parish,” said Administrator Dr. Earthea Nance of EPA Region 6. “Transparent engagement with the community is a top priority because people who live near Denka deserve to understand the purpose of the motion filed today and what EPA hopes to achieve by bringing this Clean Air Act Imminent and Substantial Endangerment case.”

[Office of Public Affairs | United States Seeks Preliminary Injunction Against Denka Performance Elastomer to Immediately Reduce Chloroprene Emissions | United States Department of Justice, March 20, 2023](#)



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July 20, 2023

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Farshid Kiani, P.E., Senior Consultant (Trinity Consultants, Westerville, OH)



trinityconsultants.com

How can EJ impact me?

- ▶ **Legislation, Rule Development, & Policies**
- ▶ **Agency Procedures**
 - ◆ Tools & methodologies for identifying EJ communities
 - ◆ Public participation, community engagement
 - ◆ Impact assessment
 - ◆ Monitoring
 - ◆ Inspections & enforcement
- ▶ **Funding & Direction of Resources**
- ▶ **Litigation**
 - ◆ Title VI Civil Rights Act complaints, lawsuits



Agencies with EJ Initiatives

- ▶ EPA / DOJ
- ▶ State / Local agencies
- ▶ NEPA
 - ◆ EPA
 - ◆ FERC
 - ◆ DOI
 - ◆ US Army Corps
 - ◆ MARAD, US Coast Guard
 - ◆ DOE
 - ◆ DOT
- ▶ Courts



Federal EJ Initiatives Abbreviated Timeline

- ▶ **Feb 2023** – EPA announces \$550M in grants to reduce pollution in disadvantaged communities
- ▶ **Jan 2023** – EPA Legal Guidance on Identifying, Addressing Cumulative Impacts to Advance EJ, Equity
- ▶ **Dec 2022** - EPA's 8 Principals for addressing EJ in Air Permitting
- ▶ **Nov 2022** – EPA announces \$53M in grants for EJ community monitoring projects
- ▶ **Fall 2022** – EPA Responses to Civil Rights Act Title VI complaints for LDEQ, TCEQ ... (EPA audits, letters of concern)
- ▶ **Sep 2022** – CalEPA & EPA Region 9 EJ Enforcement MOU and EJ Enforcement Action Plan
- ▶ **Sept 2022** – Inflation Reduction Act includes **\$3 Billion** for EJ & Climate Justice
- ▶ **Aug 2022** - EPA Interim EJ and Civil Rights in Permitting FAQs
- ▶ **Spring/Summer 2022** – EPA & state monitoring and site visits Texas & Louisiana petrochemical facilities
- ▶ **May 26, 2022** – EPA Legal Tools to Advance Environmental Justice (206-page document)
- ▶ **May 23, 2022** – Biden-Harris Admin outlines EJ progress in report to Congress on implementing White House EJ Advisory Council (WHEJAC) recommendations
- ▶ **May 5, 2022** – DOJ and EPA launch comprehensive EJ Enforcement strategy and restore SEPs to help communities
- ▶ **May 5, 2022** – DOJ announces Office of Environmental Justice (OEJ)
- ▶ **Feb 2, 2022** – EPA Office of Inspector General - Refinery Benzene Fenceline Monitoring Investigation
 - Top EPA management challenges include integrating and leading EJ, including communicating risks.
- ▶ **Jan 22, 2022** - EPA hires addt'l criminal investigators
- ▶ **Nov 2021** – EPA Administrator Regan’s “Journey for Justice Tour” (MS, LA, TX)
- ▶ **July 20, 2021** – White House Interim Implementation Guidance for the Justice40 Initiative
 - Goal of delivering 40% of overall benefits of relevant fed investments to disadvantaged communities
- ▶ **Jun 2, 2021** – EPA Administrator Regan FY 2022 Budget Request - **\$900 mil for EJ & Civil Rights**

EJ and Civil Rights in Permitting

(EPA and DOJ influence on State Agencies)

EPA Interim EJ and Civil Rights in Permitting FAQs - Aug 2022



Environmental Protection Agency

Interim
Environmental Justice and Civil Rights in
Permitting
Frequently Asked Questions

1. Why is it important for permitting programs to ensure consideration of environmental justice and comply with federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as well as state civil rights and environmental justice laws?
2. What are EPA's responsibilities under federal environmental justice policy, including with respect to permitting?
3. What responsibilities do EPA staff and managers with permit issuance and review responsibilities have to ensure compliance with civil rights laws by recipients of EPA financial assistance?
4. What is the relationship between EJ and civil rights compliance, particularly in the context of environmental permitting?
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?**
6. How could a permitting decision raise a statutory civil rights compliance concern about intentional discrimination, or have a discriminatory effect?
7. In addition to federal civil rights laws, what other laws and regulations support consideration of environmental justice in permitting?
8. How can states and other recipients screen for EJ and civil rights concerns with respect to their permitting programs and decisions?
9. **If the screening analysis indicates that a proposed permitting action raises civil rights and/or environmental justice concerns, what additional steps can a permitting program consider to address EJ concerns and ensure compliance with Title VI?**
10. What are promising practices in conducting an EJ analysis?
11. **What is a disparate impact analysis under Title VI?**
12. **How would EPA consider "cumulative impacts" within the Title VI disparate impact analysis?**
13. **What if a Title VI disparate impact analysis by a permitting program concludes that the permit decision will have adverse disparate impacts on the basis of race, color, or national origin (including LEP status)?**
14. **What are some examples of measures that a permitting program may be able to take to mitigate adverse and disproportionate impacts and/or develop and implement less discriminatory alternatives?**
15. When and how should permitting programs conduct community engagement?
16. How does tribal consultation differ from community engagement?
17. What are some resources on environmental justice, civil rights, and tribal consultation? How do I get additional information or provide feedback on the FAQs?

EPA Interim EJ and Civil Rights in Permitting FAQs (1/5)

FAQ #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?

► EPA's answer – **No.**

Compliance with the requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean compliance with federal civil rights laws.

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.

EPA Interim EJ and Civil Rights in Permitting FAQs (2/5)

FAQ #9

If the screening analysis indicates that a proposed permitting action raises civil rights and/or environmental justice concerns, what additional steps can a permitting program consider to address EJ concerns and ensure compliance with Title VI?

► EPA's answer

- Conduct an appropriately scoped EJ analysis or disparate impact analysis as needed.
- Prevent or mitigate any adverse disproportionate impacts that would otherwise violate Title VI.
- To the extent mitigation included in the permit is not sufficient to address adverse and disproportionate impacts that would otherwise violate Title VI; consider implementing mitigation outside the context of the permit.

EPA Interim EJ and Civil Rights in Permitting FAQs (3/5)

FAQ #11

What is a disparate impact analysis under Title VI?

FAQ #12

How would EPA consider “cumulative impacts” within the Title VI disparate impact analysis?

► EPA’s answer

- Adverse impacts: harmful health effects, odor, noise, decrease in property values, etc.
- Is a disproportionate share of the adversity borne based on race, color, or national origin (including LEP status)?
- Causal link between policy/practice and the disparate impact
- “Cumulative impacts” refers to the total burden from chemical and non-chemical stressors and their interactions that affect the health, well- being, and quality of life of an individual, community, or population at a given point in time or over a period of time

EPA Interim EJ and Civil Rights in Permitting FAQs (4/5)

FAQ #13

What if a Title VI disparate impact analysis by a permitting program concludes that the permit decision will have adverse disparate impacts on the basis of race, color, or national origin (including LEP status)?

► EPA's answer

Is there a comparably effective alternative decision or action that would result in less adverse impact?

“If there are no mitigation measures the permitting authority can take ... denial of the permit may be the only way to avoid a Title VI violation.”

EPA Interim EJ and Civil Rights in Permitting FAQs (5/5)

FAQ #14


What are some examples of measures that a permitting program may be able to take to mitigate adverse and disproportionate impacts and/or develop and implement less discriminatory alternatives?

► EPA's answer

- Permit terms: More stringent limits, additional control devices, CEMS, etc.
- Use of non-environmental authorities: mobile health monitoring program, traffic plan to reduce diesel emissions, etc.
- Other potential commitments: Third-party monitoring of community complaints

EPA's 8 Principles for Addressing EJ in Air Permitting (12/22/2022)

- ▶ **Identify communities** with potential environmental justice concerns
- ▶ Engage early in the permitting process to promote meaningful participation and treatment
- ▶ Enhance **public involvement** throughout the permitting process
- ▶ **Conduct a “fit for purpose” environmental justice analysis**
- ▶ Minimize and mitigate **disproportionally high and adverse effects** associated with the permit action
- ▶ Provide federal support throughout the air permitting process
- ▶ Enhance **transparency** throughout the air permitting process
- ▶ Build capacity to enhance the consideration of environmental justice in the air permitting process



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

December 22, 2022

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Principles for Addressing Environmental Justice in Air Permitting

FROM: Joseph Goffman
Principal Deputy Assistant Administrator
Office of Air and Radiation

TO: Air and Radiation Division Directors
Regions I-X

JOSEPH GOFFMAN
Date: 2022.12.22
11:23:17 -0500

Digitally signed by
JOSEPH GOFFMAN
Date: 2022.12.22
11:23:17 -0500

I am pleased to share the attached “Principles for Addressing Environmental Justice in Air Permitting” for your immediate use. These principles provide an interim operating framework for identifying, analyzing, and addressing environmental justice concerns in the context of Clean Air Act (CAA) permitting as EPA continues to build more tools and explore additional opportunities to advance environmental justice and equity with our co-regulatory partners, communities, and other stakeholders. EPA regional air permitting staff are encouraged to apply these eight principles in developing federal CAA permit decisions. Regions are equally encouraged to share these principles with state, tribal, and local partners and to work proactively and collaboratively with those partners to facilitate consideration and application of these principles in their air permitting actions.

I want to thank the national EPA workgroup that developed these principles and supporting information resources for EPA permit writers. The principles reflect a number of best practices the regions have developed over many years, including early identification of potential environmental justice concerns in specific locations and early, ongoing engagement with communities throughout the permitting process. The principles also recognize the various types of Clean Air Act permits and the need to determine the appropriate scope of an environmental justice analysis on a case-by-case basis. Similarly, opportunities for addressing disproportionately high and adverse effects associated with a permitting action may also vary from one situation to another. The principles encourage consideration of all relevant statutory and regulatory authorities available to develop permit terms and conditions to address or mitigate identified air quality impacts to the extent

Conduct “fit for purpose” EJ Analysis (Principal #4)

- ▶ Further **evaluation of demographic data** indicating vulnerabilities in the affected population;
- ▶ Further **input from stakeholders**, including the affected community;
- ▶ An **evaluation of existing environmental data**, including air monitoring, air modeling, or, as appropriate, data from other media;
- ▶ An evaluation of the facility’s **compliance record**;
- ▶ An evaluation of **existing public health data** about the affected community;
- ▶ An evaluation of the permitting action’s **potential health and non-health adverse effects** (e.g., noise, odor, and traffic);
- ▶ An evaluation of the **cumulative impact** of the permitting action under consideration together with impacts from other regulated and non-regulated sources of pollution in the community;
- ▶ An evaluation of the **potential effects** of the permitting action under consideration **on the health** of a population and the **distribution of those effects** within the population; and
- ▶ An evaluation of potential methods for minimizing or **mitigating adverse effects** on the community.



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Julie Hall

Senior Project Manager
Weaver Consultants Group
320 Cramer Creek Court
Dublin, OH 43017

Environmental Justice Terms

Fair Treatment

**Meaningful
Involvement**

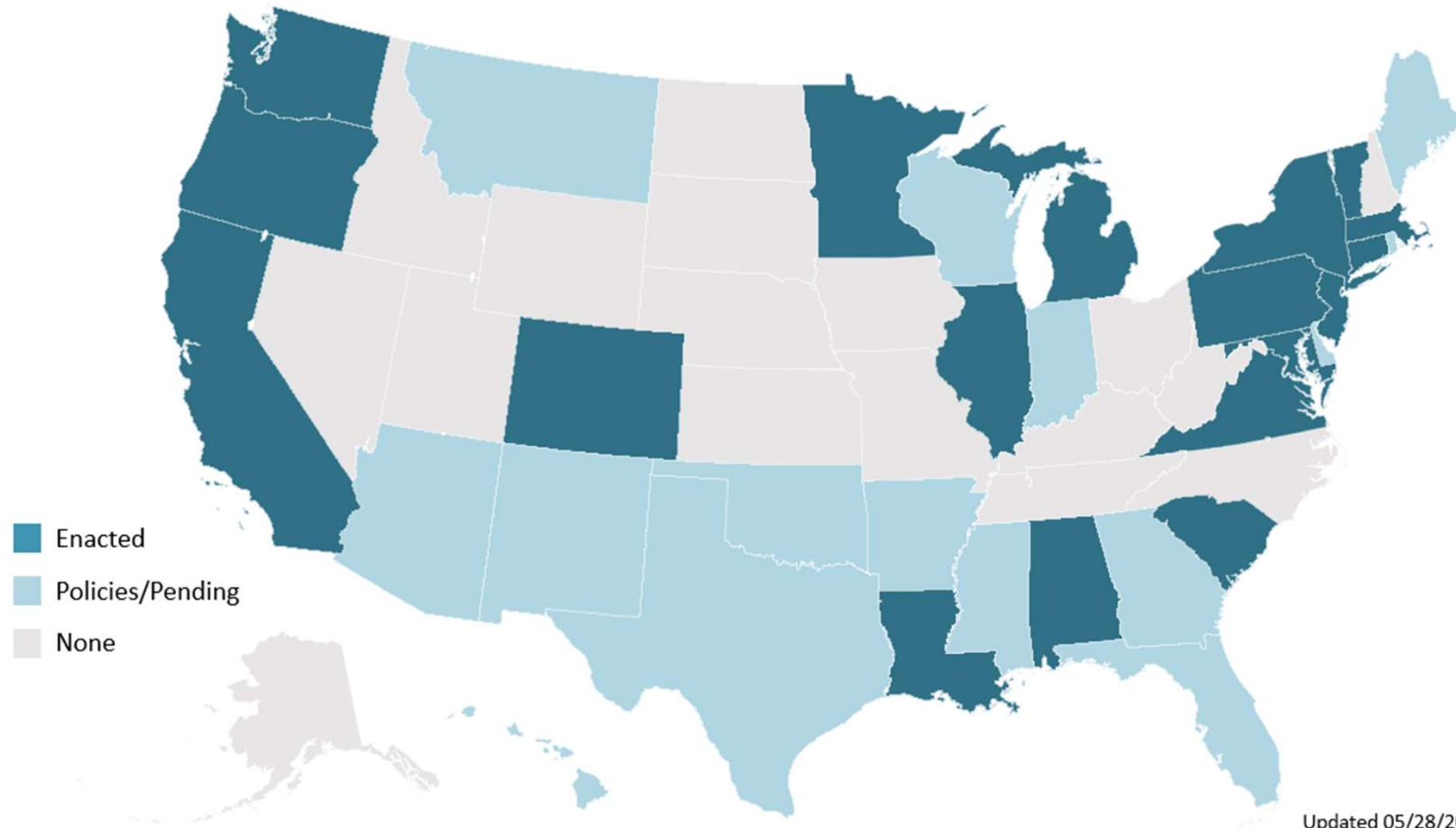
**Underserved
Communities**

**Cumulative
Impacts**

**Disproportionate
Impacts**

Equity

States with EJ Legislation



Updated 05/28/2023

EJ Permitting Cases

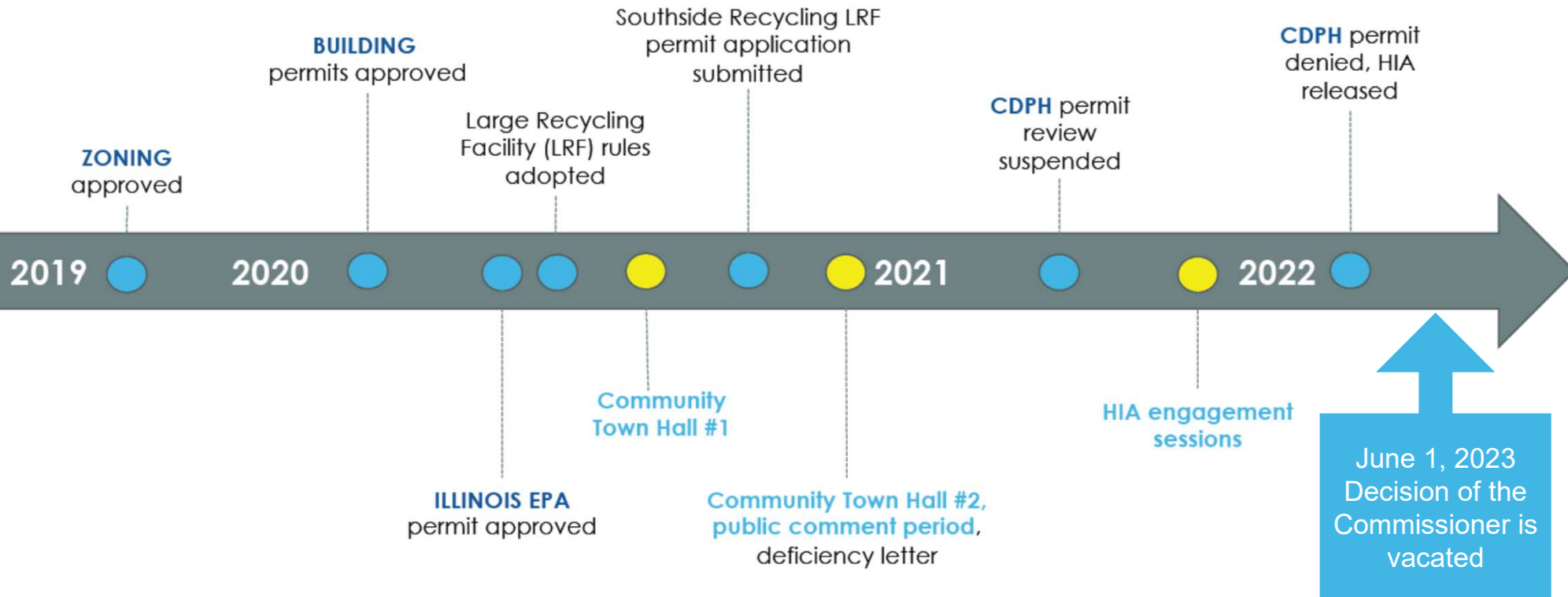


AJAX Asphalt Plant (Kalamazoo, MI)

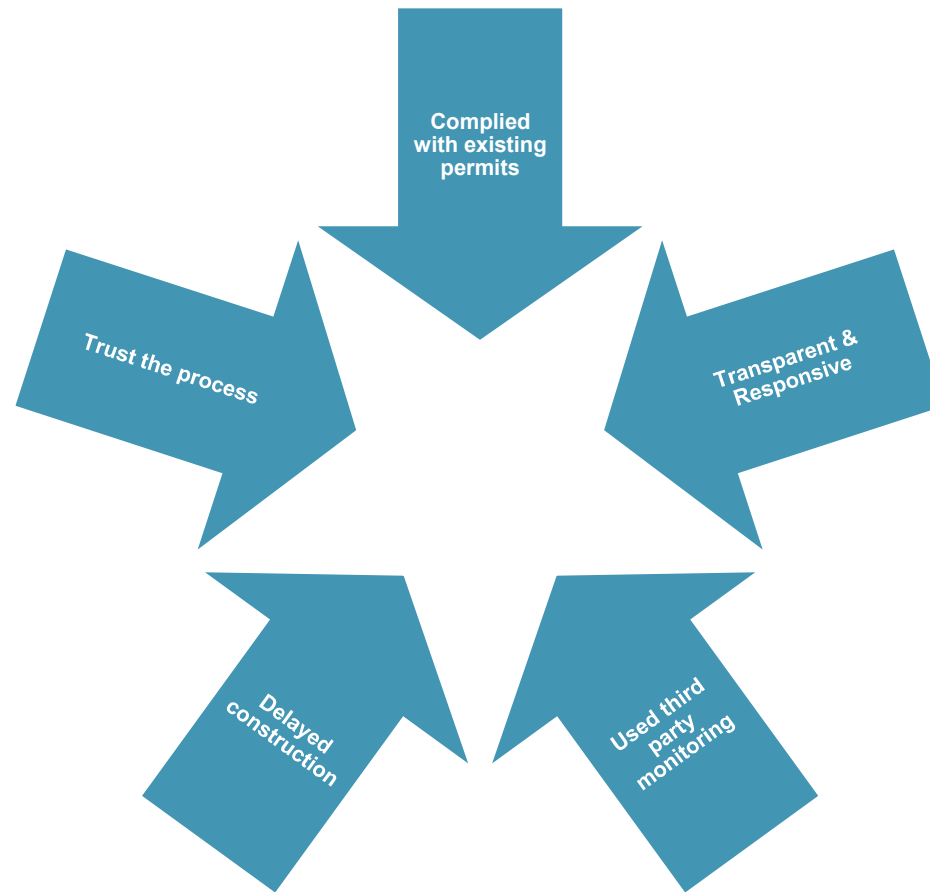
- September 16, 2021: EPA Region 5 sent comment letter to Michigan EGLE
- November 15, 2021: Michigan EGLE issued minor source permit
- Civil rights complaints were filed with HUD and EPA
- Ajax filed petition for review of permit
- June 20, 2023: Circuit court upheld Michigan EGLE's decision

EJ Permitting Cases

Reserve Management Group/Southside Recycling (Chicago, IL)



What Could They Have Done?



What Can We Expect Next?



What Would We Recommend?



Plan ahead and be patient



Over-document and over-explain



Respond promptly to agency requests



Go beyond regulatory obligations



Don't assume permit is forthcoming

Questions?

Sherry L. Hesselbein – Deputy General Counsel
Marathon Petroleum Corporation
shesselbein@marathonpetroleum.com

Farshid Kiani, P.E. – Senior Consultant
Trinity Consultants
fkiani@trinityconsultants.com

Julie Hall – Senior Project Manager
Weaver Consultants Group
jhall@wcgrp.com



Biographical Information

**Sherry L. Hesselbein, Deputy General Counsel, HESS&PQ Law
Marathon Petroleum Corporation
539 S. Main St., Findlay, OH 45840
shesselbein@marathonpetroleum.com
419-421-4616**

Sherry Hesselbein is Deputy General Counsel, overseeing the Health, Environmental, Safety, Security and Product Quality group in Marathon Petroleum's Legal Department. She joined Marathon in 2010 as the remediation attorney, with an emphasis on RCRA and CERCLA compliance. She then counseled the refining operations organization on environmental compliance and served as the Legal Department's subject matter expert on the Clean Air Act. Sherry has also advised the company on fuels compliance and product quality matters before assuming her role as supervisor of the group. Sherry has held multiple temporary assignments within Marathon including Environmental Supervisor at the Catlettsburg, Kentucky Refinery. Prior to joining Marathon, Sherry was an associate in the Columbus office of Ulmer & Berne LLP practicing in the areas of environmental and construction law and an assistant attorney general with the Ohio Attorney General's Office Environmental Enforcement Section.

Sherry holds a J.D. from The Ohio State University Moritz College of Law and a B.S. in earth, atmospheric and planetary science from the Massachusetts Institute of Technology. She is a member of the Women for Economic and Leadership Development (WELD).

**Farshid Kiani, PE, Senior Consultant
Trinity Consultants
440 Polaris Pkwy. Ste. 275, Westerville, OH 43082-8026
614-433-0733
fkiani@trinityconsultants.com**

Mr. Kiani serves as a Senior Consultant in Trinity's Columbus, Ohio Office and is a P.E. in the State of Ohio. His experience includes Prevention of Significant Deterioration (PSD) permitting in Ohio and West Virginia, air dispersion modeling analysis, Maximum Achievable Control Technology (MACT) compliance assistance, New Source Performance Standards (NSPS), Title V compliance management, emission inventory development, Toxic Release Inventory Reports (TRIs), and digital solutions. He has helped clients in chemical manufacturing, petroleum refining, and general manufacturing sectors with air quality permitting and consulting services as well as implementation of digital solutions for utility industry. Mr. Kiani earned a B.S. degree in Civil Engineering from Babol University of Technology in Iran and an M.S. with honors in Environmental Engineering from the University of Kansas.

Biographical Information

Julie Hall, Senior Project Manager
Weaver Consultants Group
6185 Shamrock Court – Ste. B, Dublin, OH 43016
513.254.9224
jhall@wcgrp.com

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 is the current chairperson for the Ohio Chapter of Air & Waste Management Association.

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.