

# David Smith-Watts

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## Legal Experience

### **United States Environmental Protection Agency**

**Washington, D.C.**

#### **Attorney-Advisor, Office of Civil Enforcement (OCE), Crosscutting Policy Staff (XPS) 2016 - Present**

- EPA's National Coordinator for Civil Penalties and Financial Analyses working on legal, policy, and financial issues impacting the assessment of civil penalties under the Clean Water Act (CWA) and other environmental statutes (CAA, EPCRA, FIFRA, OPA, RCRA, SDWA, TSCA, CERCLA).
- Provide daily counsel to regional and OCE case teams when developing, negotiating, and litigating administrative and judicial cases on economic benefit gained from noncompliance (EcBen) calculations, ability to pay (ATP) analyses, and the collection of civil penalties.
- Financial Models and Tools:
  - Responsible for updating and maintaining EPA's financial computer models (BEN, ABEL, INDIPAY, MUNIPAY, PROJECT) and associated documents, such as each of the models' Help Systems and the INDIPAY and MUNIPAY Financial Data Request Forms, as well as answering associated questions.
  - Developed the Partial-Year Data ATP Tool for Businesses and associated data request form due to the COVID-19 pandemic.
  - Developed INDIPAY+ to help case teams perform in-depth ATP analyses of individuals.
- Economic Benefit and Civil Penalty Trainings:
  - Presented 13 trainings to 707 EPA and state participants on economic benefit and civil penalties in FY21-22.
  - Developed materials and sponsored 24 financial model trainings to 1,198 EPA and state participants from FY17 to FY20.
  - Presented economic benefit and civil penalty trainings to China (three times), Taiwan, Argentina, and Brazil.
  - Currently developing civil penalty webinars, which include economic benefit, for Canada and Mexico as part of the United States-Mexico-Canada Agreement.
- Chair of the EPA & States Penalty and Financial Analysis Monthly Call where we discuss economic benefit and ability to pay issues in environmental enforcement cases.
- Chair of the Penalty Inflation Workgroup where we:
  - Published in the Federal Register six penalty inflation rules from 2017 to 2022 that were signed by the EPA Administrator.
  - Globally amended all of EPA's penalty policies to account for inflation in 2018, 2020, and 2022 through a memorandum signed by the OECA Assistant Administrator.
- Tax law contact for OCE responsible for answering complex legal, policy, and enforcement questions and coordinating with other EPA offices on EPA's tax identification and reporting obligations.
- Accounts receivable contact for OCE.

#### **Attorney-Advisor, On Detail to OCE's Waste and Chemical Enforcement Division**

**2015 –2016**

- Financial assurance contact.
  - Provided approximately 75 legal, policy, and financial consultations to EPA and states on financial assurance.
  - Led and organized monthly calls with all EPA regions and states.

- Negotiated, drafted, and finalized two settlements in the Reichhold bankruptcy.
  - RCRA settlement established an environmental response trust with \$4.25 million to perform corrective action at the Gulfport facility in Region 4.
  - CERCLA settlement resulted in allowed claims of \$13 million and resolved debtor's liability at nine Superfund sites in five EPA regions.
- Worked with DOJ to file a supplemental 28j letter with the Ninth Circuit Court of Appeals in the Teck Cominco air emission case.

**Attorney-Advisor, Office of Site Remediation Enforcement, Regional Support Division      2008 –2015**

- Member of the Bankruptcy Team.
  - Negotiated and settled ten multi-regional bankruptcy cases, including:
    - Lyondell Chemical: Settlement resulted in \$1.01 billion in allowed claims, \$108.4 million into a custodial trust to cleanup nine properties, \$53.6 million for existing work obligations, and resolved EPA's CERCLA, RCRA, and CAA claims.
    - Kodak: Case resulted in the establishment of a trust funded by Kodak and the New York Department of Environmental Conservation to clean up the Eastman Business Park in Rochester, NY.
    - Chrysler: Settlement resulted in \$26 million allowed claim for cleanup of Behr Dayton Site and \$5 million allowed claim for penalties.
    - G-I Holdings: Settlement resulted \$25.8 million for future response costs at 11 sites in five regions and \$7.75 million for injunctive relief at the Vermont Asbestos Group site in Region 1.
    - WP Steel/RG Steel: DOJ filed three Proofs of Claim under RCRA, CAA, and CWA for seven steel facilities. Settlement resulted in EPA receiving \$19.8 million in allowed claims for civil penalties.
  - Developed the Model Bankruptcy Settlement Agreement and the Model Short-Form Bankruptcy Settlement Agreement with DOJ.
  - Provided in-person bankruptcy trainings to Region 1 and Region 10.
- Member of the Burlington Northern Team.
  - Responsible for reviewing and commenting on U.S. briefs and providing legal counsel to EPA regional offices involving arranger liability and divisibility issues under CERCLA in light of the U.S. Supreme Court's 2009 Burlington Northern decision.
  - OSRE contact for the First Circuit's United States v. General Electric arranger liability case which was the first Circuit Court finding for arranger liability since Burlington Northern.
- OSRE Liaison to Region 10 from 2009 to 2013.
  - Upper Columbia River Site: In this transboundary case involving a Superfund site in Washington State contaminated by a smelter facility in Canada, the case team filed two U.S. amicus briefs with the District Court of Washington – one on divisibility in 2011 and another on "disposal" under RCRA in 2014.
  - Midnite Mine Site: OSRE approved settlement where a party will do \$193 million worth of cleanup work and provide financial assurance in that amount.
  - Holden Mine Site: OSRE approved a joint EPA and Forest Service Unilateral Administrative Order requiring a party to conduct \$107 million of cleanup work.
- OSRE Liaison to Region 5 from 2013 to 2016.

- USS Lead Site: \$43 million settlement to cleanup residential yards contaminated by smelter sites; novel settlement and remedial action that has become a model for community engagement in an Environmental Justice Community.
- Ashland Lakefront Site: OSRE approved settlement where costs exceeded \$100 million.
- National subject matter contact for the following CERCLA areas: access to properties under CERCLA § 104(e); the useful product defense to arranger liability; and the Superfund Recycling Equity Act (SREA) under CERCLA § 127.
- Mentored eight law clerks from the summer of 2009 to the Spring of 2013.

**Attorney General of Ohio**

**Toledo, Ohio**

Law Clerk, Environmental Enforcement Division

Fall 2007

- Wrote a memorandum on whether non-friable floor tiles containing asbestos can be deemed friable and therefore regulated under Ohio law.
- Wrote a memorandum on whether ash emitted from a coal burning fluidized bed combustion can be regulated under Ohio law.
- Drafted interrogatories in defense of the Ohio EPA Director’s approval of open burn permits.

**University of Toledo College of Law**

**Toledo, Ohio**

Research Assistant for Environmental Law Professor Kenneth Kilbert

Fall 2007, Spring 2008

- Researched and reviewed Professor Kilbert’s scholarly article which advocated that courts should find an implied right of contribution under RCRA.

**United States Environmental Protection Agency**

**Washington, D.C.**

Law Clerk, Office of Site Remediation Enforcement

Summer 2007

- Researched and analyzed how the U.S. v. Atlantic Research Corp. decision affected a party’s settlement protection when another party brings a cost recovery or contribution claim.
- Researched CERCLA case law, analyzed issuances of UAOs to different polluters, and examined the history of the “Enforcement First” program to prepare the division director for a deposition during the discovery phase of General Electric v. EPA.

**Sixth District Court of Appeals of Ohio**

**Toledo, Ohio**

Law Clerk

Spring 2007

- Researched and drafted opinions which were reviewed by the Judge and staff attorneys. Case types: criminal law, criminal procedure and civil procedure.

**Legal Aid of the Bluegrass**

**Covington, Kentucky**

Law Clerk

Winter Break 2006-07

- Researched case law; wrote memos; updated forms with current law; helped to interview walk-in clients; traveled to several courts in Northern Kentucky.

**Lucas County Probate Court**

**Toledo, Ohio**

Law Clerk

Fall 2006

- Under the supervision of the Judge and Magistrates, researched and drafted opinions and closed pending estate cases; observed pretrial meetings in the Judge’s chamber.

### **EPA Awards and Recognition**

- Gold Medal for Exceptional Service, Auto Sector Bankruptcy Team, 2011.
- Bronze Metal for Commendable Service, Financial Assurance Initiative Case Team, 2012.
- Bronze Metal for Commendable Service, Burlington Northern Response Team, 2010.
- Superior Accomplishment Recognition Award, Finalizing Model Bankruptcy Settlement Agreement, 2013.
- OECA AA's Award for Excellence, Eastman Kodak Settlements Team, 2015.
- OECA COVID-19 Award, Analysis of the 2015 ATP Guidance in Context of COVID Impacts, 2020.
- OECA COVID-19 Award, Development of CBI Procedures for COVID, 2020.
- OECA COVID-19 Award, COVID FOIA Review, 2020.
- Office of Water's Partners of OW Award, OECA Support Team for OW Activities, 2020.
- Quality Step Increase Award, 2012, 2020.
- Shooting Star Award for "answering questions regarding the BEN model on a time sensitive matter" in the Churchill Downs case, 2019.

**Admission:** Admitted to Ohio State Bar, November 2008.

### **Education**

#### **University of Toledo College of Law**

**Toledo, Ohio**

*Juris Doctor* with Certificate of Specialization in Environmental Law

May 2008

- **Moot Court**, Environmental Law Team, 2006-2007; Environmental Law Team Coach, 2007-2008.
- **Teaching Assistant**, Advanced Appellate Advocacy, CWA problem, 2007.
- **Environmental Law Society**, 2005-2008; Vice President, 2007-2008.
- **International Environmental Law class**, highest grade, 2008.

#### **Denison University**

**Granville, Ohio**

*Bachelor of Arts* in Philosophy, Political Science and Economics (PPE)

May 2005

- **Senior Thesis**, Titled "Can Environmental Ethics Survive in the Political Arena?"
- **Distinguished Leadership Award**, Presented by the Vice President of Student Affairs.