BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
BOARD CONSIDERATION OF	)	R 25-18
ENVIRONMENTAL JUSTICE IN BOARD	)	(Rulemaking – Procedural)
PROCEEDINGS	)	

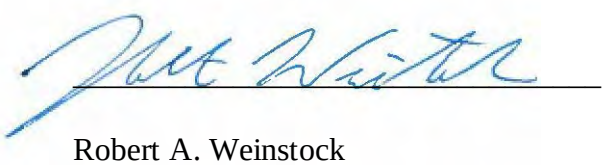
NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on October 31, 2025, I electronically filed with the Clerk of the Illinois Pollution Control Board the **Written Comments and Responses to Board Questions of the Chicago Environmental Justice Network** and the **Appearance of Robert A. Weinstock**, copies of which are served on you along with this notice.

Dated: October 31, 2025

Respectfully submitted,



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R 25-18
BOARD CONSIDERATION OF ENVIRONMENTAL JUSTICE IN BOARD PROCEEDINGS	)	(Rulemaking — Procedural)

Written Comments and Responses to Board Questions of the Chicago Environmental Justice Network

I. Introduction

These comments and responses to questions are submitted on behalf of the Chicago Environmental Justice Network ("CEJN"), an alliance of community-based organizations working to advance clean air, safe housing, and healthy neighborhoods across Chicago's South and West Sides. CEJN's member organizations include the Little Village Environmental Justice Organization,[1] People for Community Recovery,[2] the Southeast Environmental Task Force,[3] and Neighbors for Environmental Justice.[4] Individually and together, these groups represent Chicago communities that experience cumulative and disproportionate exposure to pollution, industrial emissions, and environmental degradation.

CEJN thanks the Pollution Control Board ("Board") for opening this docket as a means to solicit input and develop strategies to address environmental justice concerns across its authorities.[5] The Board initiated this rulemaking to determine how environmental justice ("EJ") considerations can be incorporated into its procedural rules and decision-making processes under its existing statutory authority. In reviewing the Board's orders in this proceeding, CEJN greatly appreciates the Board's emphasis that "enhancing environmental justice considerations is vital to the State of Illinois," and that the Board has clarified its interest in broader, substantive consideration of EJ issues and prioritization of EJ-oriented reforms, as articulated in the Board's September 18, 2025, Order ("September 18th Order").[6]

There are real human costs to the failure to fully consider the EJ impacts when administering state environmental laws and programs. For example, when a proposed garbage truck depot seeks approval to locate in a community already experiencing high asthma rates and air quality that fails to meet health-based national standards, decisionmakers must consider that the people who live there will bear the added pollution burden of scores of new diesel trucks passing their homes and schools each day.[7] Likewise, regulators must consider demographic context and existing environmental conditions when they evaluate whether to issue an air pollution permit for a scrap-metal facility that repeatedly violated dust and emissions standards before seeking to relocate across the street from a high school in a predominantly Latinx and

[1] Little Village Environmental Justice Organization, http://lvejo.org/.
[2] People for Community Recovery, http://www.peopleforcommunityrecovery.org/.
[3] Southeast Environmental Task Force, https://anthropocenealliance.org/southeast-environmental-task-force/.
[4] N4EJ, https://n4ej.org/.
[5] Order of the Board, *In re Board Consideration of Environmental Justice in Board Proceedings,* R25-18 (Ill. Pollution Control Bd. Aug. 22, 2024).
[6] Order of the Board, *In re Board Consideration of Environmental Justice in Board Proceedings,* R25-18 (Ill. Pollution Control Bd. Sept. 18, 2025) at 1.
[7] Opening Brief of People Opposing Du Page Envtl. Racism, People Opposing Du Page Envtl. Racism v. City of W. Chi., No. PCB 23-109 (Ill. Pollution Control Bd. Nov. 13, 2023) https://pcb.illinois.gov/documents/dsweb/Get/Document-109653 (describing plans to expand waste-hauling and trucking operations in already overburdened South and West Side neighborhoods where asthma hospitalization rates are among the highest in Illinois) [hereinafter PODER Br.].

Black neighborhood that already suffered from elevated levels of respiratory disease and some of the worst existing air quality in the state.[8]

Not only is the Board's explicit and comprehensive consideration of EJ issues a moral imperative, but it is already a statutory imperative in Illinois as well. The State's existing civil rights and environmental laws already authorize—and, in fact, require—decision makers including the Board to consider that its decisions could mean more inhalers in school backpacks, more emergency room visits, and more chronic respiratory illness in communities already overburdened by pollution. And yet, in both of those examples and many more, local governments and state agencies—acting under the Environmental Protection Act and the Board's oversight—affirmatively rejected considering those real impacts on real people.[9] This proceeding should change that.

CEJN writes now, primarily, to address the Board's questions about how and where it should consider environmental justice in its decision-making. In short, the Board must consider environmental justice in each and every action it takes as both a rule-maker and adjudicator of permit appeals and enforcement actions. The Board's September 18th Order poses a litany of important questions to the Illinois Environmental Protection Agency ("IEPA"), Attorney General's office, and other state agencies concerning critical topics like the use of technology to facilitate public participation and IEPA's use of environmental justice screening tools.[10] CEJN looks forward to reviewing and discussing the agencies' responses to these important questions. Here, CEJN highlights several of IEPA's recent commendable actions to more deeply and effectively integrate environmental justice in the exercise of its existing authorities: the Board should look to IEPA's actions for models, develop its own policies that are complementary to IEPA's, and ensure that IEPA adheres to its commitments.

The communities CEJN represents have, for generations, lived a truth that the General Assembly has recognized and that the Board now laudably seeks to address: that environmental

[8] *See* Complaint Under Title VI of the Civil Rights Act of 1964, Southeast Env't. Task Force & Chi. Southeast Side Coal. to Ban Petcoke (Dec. 17, 2020) https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/environmental-justice/documents/grievance/setf-coalition-title-vi-complaint-redacted.pdf (describing IEPA failure to consider cumulative and disparate impact in air construction permitting process); *Hunger Strikers Seeking Environmental Justice Win Air Pollution Delay*, *Scientific American* (Mar. 24, 2021), https://www.scientificamerican.com/article/hunger-strikers-seeking-environmental-justice-win-air-pollution-delay/; *Fears, D. & Amer, R., To stop a scrapyard, some protesters in a Latino community risked everything, The Washington Post* (Oct. 22 2021), https://www.washingtonpost.com/climate-environment/interactive/2021/south-side-chicago-scrapyard/ (reporting that relocated General Iron facility was proposed across from George Washington High School in a heavily polluted Southeast Side community).

[9] PODER Br. (alleging that the City misinterpreted § 39.2(a)(ii) of the Illinois Environmental Protection Act to exclude consideration of environmental justice and disparate impacts); Complaint Under Title VI of the Civil Rights Act of 1964, Southeast Env't. Task Force & Chi. Southeast Side Coal. to Ban Petcoke (Dec. 17, 2020) https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/environmental-justice/documents/grievance/setf-coalition-title-vi-complaint-redacted.pdf (alleging that IEPA's issuance of Air Construction Permit No. 19090021 for General III, LLC violated Title VI and ignored cumulative air-quality and health impacts in an overburdened community).

[10] *In re Bd. Consideration of Env't Just. in Bd. Proceedings*, R25-18.

harms are not distributed evenly in all communities across the state and that vulnerable and marginalized populations bear the heaviest environmental burdens. The legislature has declared the elimination of these disparities as a key policy goal, in the Illinois Environmental Justice Act, which declared that "no segment of the population, regardless of race, national origin, age, or income, should bear disproportionately high or adverse effects of environmental pollution." 415 ILCS 155/5. The EJ Act thus codified a statewide commitment to remedy disproportionate and cumulative burdens and to ensure that regulatory decision-making protects all residents equitably, regardless of their demographic characteristics. That commitment has been reaffirmed in other recent amendments to the Act. For example, the General Assembly, in enacting § 22.59 on coal-combustion residuals, expressly recognized that "meaningful participation of State residents, especially vulnerable populations … is critical to ensure that environmental justice considerations are incorporated." 415 ILCS 5/22.59(a). Further, the 2021 Climate and Equitable Jobs Act (CEJA), imposed varied, nuanced and specific EJ considerations in provisions related to the regulation of fossil fuel power plants and the deployment of renewable energy resources.[11]

CEJN applauds the Board's opening this proceeding and urges the Board to use it as a starting point to ensure the full consideration of the EJ implications of every decision it makes, as compelled by state civil rights laws, as authorized and required under the longstanding language of the Act, and to further clear legislative policy priorities. At bottom, this effort is necessary to fulfill the constitutional guarantee of the "right to a healthful environment" to everyone in Illinois. Ill. Const. art. XI, § 2.

II. Overview of CEJN Comments in Response to Board Questions 11 & 12

CEJN submits these comments as responses to the two general questions the Board posed to any interested parties in the September 18th Order and in reaction to the Board's background discussion in that order.[12] In its comments below, CEJN will explain how the consideration of cumulative impacts and disparate impacts to mitigate and avoid environmental injustices is mandated and authorized under current law.

In response to Question 11 regarding relevant demographics to consider in implementing EJ priorities, CEJN urges the Board to root its EJ efforts in the well-documented disproportionate exposure to environmental stressors born by low-income people and people of color. The Board should first recognize that the Illinois Civil Rights Act requires state agencies to avoid administering their programs in ways that disproportionately burden people in defined demographic classes. *See* Section III, *infra*.

[11] Climate and Equitable Jobs Act, Pub. Act 102-0662, § 10-5 (eff. Sept. 15, 2021) (establishing environmental-justice guidelines for greenhouse-gas regulation and aligning air-pollution provisions with the Act's overarching protection of public health and welfare).
[12] *In re Bd. Consideration of Env't Just. in Bd. Proceedings*, R25-18, at 4.

But the Board is also wise to note that addressing EJ in Illinois must extend beyond the income- and race-based classifications traditionally used to identify overburdened communities and defined as protected classes under civil rights laws. For the Board to fulfill its obligation to protect public health and welfare, *see infra* Section IV, it must also account for context-specific vulnerabilities and environmental injustices that may arise in a given rulemaking, permitting or enforcement context. In the specific context of each decision it makes, the Board must identify and address lived experiences and conditions that heighten a particular community's exposure to environmental burdens or the impacts of such exposures, or that limit its ability to participate in decision making about their own protection. In some contexts, such "overlooked demographics" may include immigrant and refugee communities with limited English proficiency, residents of public or manufactured housing, people living near industrial or freight corridors, incarcerated persons, elderly and medically vulnerable populations, residents of unincorporated or rural areas lacking infrastructure or representation, or migrant and seasonal laborers.

CEJN also notes that while its coalition reflects the experiences of people in Chicago's South and West Side communities, it recognizes that downstate and rural residents face distinct EJ challenges. CEJN does not and cannot speak for such communities but urges the Board to ensure those communities have direct opportunities to be heard in this and future proceedings.

The bulk of CEJN's following comments are in response to Question 12**,** in which the Board asks for input as to how to implement EJ in its decision-making processes and how to prioritize such reforms. In short, the Board already possesses ample statutory authority, and indeed statutory obligations, to incorporate EJ across its rulemaking, permitting, and enforcement activities.

First and foremost, the Illinois Civil Rights Act prohibits units of state government from administering their authorities in ways that result in discriminatory effects by creating disparate impacts on protected demographic classes. *See infra* Section III. To meet that statutory requirement, the Board should develop proactive procedures and screening methods, consistent with disparate-impact jurisprudence, to identify and prevent discriminatory effects before decisions are made.

Second, throughout the Illinois Environmental Protection Act ("Act"), the Board is charged with protecting "public health, safety, and welfare," language that should be read as necessarily encompassing the duty to prevent cumulative impacts and disparate impacts of environmental harms. *See infra* Section IV. CEJN urges the Board to announce that interpretation in a final order in this proceeding. Such an order would provide the Board with a unifying framework to guide the consistent application of EJ considerations across all of its dockets and decisions, and provide state agencies, municipalities, regulated entities, and the public with a clear understanding of how these considerations are to be addressed.

Third, CEJN identifies various examples of statutory authority that enable the Board to promote public participation, address specific environmental injustices, and integrate cumulative impacts and disparate impacts consideration within specific programs and regulatory contexts. *See infra* Section V. CEJN presents various recommendations as to specific statutory authorities throughout Section V below, and highlights here that the Board should prioritize five key areas for immediate integration of EJ into its regulations:

1. **Air Permitting and Cumulative-Impact Assessment.** The Board should require IEPA to evaluate cumulative emissions, proximity to existing pollution sources, and demographics and vulnerabilities of impacted communities when permitting new or modified facilities in or near EJ areas. IEPA has already agreed, under an informal resolution agreement described below, to implement such review processes for certain air permits. The Board should incorporate this existing process into regulation, should hold IEPA to the IRA in permit appeals both substantively and by allowing impacted communities to initiate such appeals, and should consider whether that process should be expanded to other categories of permits.

2. **Regulating Air Pollution from Vehicles.** The Board has express statutory authority to regulate vehicles to abate and mitigate harms caused by the air pollution they emit. In another proceeding, the Board has received overwhelming and uncontroverted evidence regarding the massive public health and economic harm caused by localized air pollution from medium- and heavy-duty diesel vehicles and the climate change-related harms from all on-road vehicles with combustion engines, including uncontested evidence that these harms are borne disproportionately by EJ communities. Acting on that evidence should be a top priority of the Board in considering how to address EJ within its rules.

3. **Local Siting Review.** The Board should require the consideration of cumulative impacts and disparate impacts in the local siting process for pollution control facilities under section 39.2 and Board review of such decisions under section 40.1.

4. **Underground Storage Tank Program and Site Remediation.** The Board should amend its rules to require EJ considerations and participation reforms during remediation, including community notice, an opportunity for comment, and, where legally permissible, a third-party right to appeal agency determinations such as No Further Remediation Letters. Further, the Board should reconsider the approach to the use of land use controls within remediation programs, which are remedial components that result in contamination remaining in communities and can impede future redevelopment.

5. **Rulemaking & Enforcement Authorities.** In defining the Board's general authorities to promulgate rules and adjudicate enforcement actions, the Act already includes key EJ considerations. The Board should commit to considering cumulative and disparate

impacts in performing those functions, including by performing an EJ analysis in each rulemaking, incorporating community-borne costs in economic analyses, fashioning injunctive relief that considers community context, and setting penalties that reflect the particular harms of pollution in EJ communities, and emphasizing community-centered supplemental environmental projects.

Each of these recommendations illustrate how the Board can operationalize EJ within its existing authority.

Fourth, CEJN closes these comments with observations in relation to the Board's questions regarding public participation improvements, which were centrally directed to IEPA and the Attorney General's office. *See infra* Section VI. CEJN endorses public participation recommendations made by the Attorney General's office and already being advanced by IEPA through its recently revised public participation process, though notes some specific additional recommendations for the Board to implement. CEJN particularly highlights that the Board must remain responsive to changing public participation needs—particularly in this specific moment at which simply attending a public meeting in an EJ community could result in a person being detained by federal agents.

CEJN closes these comments by reiterating its thanks to the Board for undertaking this effort and CEJN's eagerness to work with the Board, IEPA, Attorney General's Office and other stakeholders to advance environmental justice in Illinois.

III. To Comply with the Illinois Civil Rights Act, the Board Should Implement Processes to Identify and Prevent Discriminatory Effects in Its Administration of Environmental Statutes and Programs.

The Illinois Civil Rights Act prohibits government actions that result in discriminatory effects, including actions when there is no discriminatory intent. Despite this mandate, the Board does not systematically analyze whether its actions could result in such prohibited discriminatory effects. Moreover, the Board does not directly analyze whether IEPA actions subject to Board review could cause prohibited discriminatory effects. Traditionally, the Board also does not evaluate whether actions of units of local government pursuant to 415 ILCS 5/39.2 could cause discriminatory effects. The Board has no systems, policies or rules to identify, assess, and prevent discriminatory effects in its rulemaking, permit review, or enforcement functions. In this proceeding, the Board has given itself an invaluable, if overdue, opportunity to fill this void in is regulations and practices. To conform with the Illinois Civil Rights Act, the Board should develop proactive measures to evaluate and prevent potential discriminatory effects in its own actions and in the actions of other units of Illinois government that are subject to Board review.

The Illinois Civil Rights Act, 740 ILCS 23/5, states:

> No unit of State, county, or local government in Illinois shall: (1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person's race, color, national origin or gender; or (2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender.

740 ILCS 23/5. The Board is, of course, a unit of State government, and as such must ensure it is not violating the prohibitions in the Civil Rights Act. As are IEPA and local siting authorities. Several plain language mandates of this law are important to underscore.

First, this law explicitly identifies categories—race, color, national origin and gender—of protected individuals. This dictates that the Board, at a minimum, should be viewing its actions and the actions of other Illinois units of government in light of specific demographic characteristics of affected individuals. This cannot be achieved without developing methods to identify the demographic characteristics of populations affected by government actions. IEPA's responses to the Board's questions in this rulemaking related to environmental justice screening methodologies (questions five through eight) should help the Board develop such methods through a process that includes input from impacted communities.

Second, the Illinois Civil Rights Act explicitly encompasses a wide range of governmental actions, including: 1. participation, 2. the allocation of benefits, 3. programs, 4. activities, and 5. criteria and methods of administration. The final category of covered governmental actions is particularly noteworthy: the Board's "criteria and methods of administration" encompasses the substantive rules that dictate substantive results of applying the environmental statutes and programs over which the Board has authority. This dictates that the Board should be viewing its actions and the actions of other Illinois units of government in a comprehensive manner to ensure non-discrimination in the effects of the laws it administers.

Third, the non-discretionary mandate of the law is to avoid discriminatory *effects* from any of this wide range of government actions. This explicit mandate is distinct from prohibitions based on discriminatory intent. The mandate to avoid discriminatory effects can create analytical challenges, but nonetheless is the plainly stated requirement to, first, determine if the "programs, activities and criteria and methods of administration" of units of government are leading to discriminatory outcomes or not and, then, to prevent such outcomes.

Fourth, given the breadth of government actions that are subject to the non-discrimination mandate, the Board should develop proactive non-discrimination policies and procedures across its activities including, but not limited to, regulatory development, permit appeals, program

reviews, local siting decisions and the resolution of enforcement actions. These policies and procedures should evaluate potential discrimination in public participation, in how funding and other benefits, including resulting pollution levels and environmental outcomes, are distributed through programs overseen by the Board, and in the ultimate effects of its "programs, activities and criteria and methods of administration."

Importantly, courts have consistently concluded that even facially neutral actions can cause disparate impacts on a protected minority group in violation of the Illinois Civil Rights Act. The court in *Gallagher v. Magner*, 619 F.3d 823 (8th Cir. 2010), concisely explained the test courts use under analogous federal doctrine to determine if prohibited discrimination occurs due to the discriminatory effects of a unit of government's methods of administering a program:

> Appellants must establish a prima facie case, which requires showing "that the objected-to action[s] result[ed] in . . . a disparate impact upon protected classes compared to a relevant population." Stated differently, Appellants "must show a facially neutral policy ha[d] a significant adverse impact on members of a protected minority group." Appellants are not required to show that the policy or practice was formulated with discriminatory intent. If Appellants establish a prima facie case, the burden shifts to the City to demonstrate that its policy or practice had "'manifest relationship'" to a legitimate, non-discriminatory policy objective and was necessary to the attainment of that objective. If the City shows that its actions were justified, then the burden shifts back to Appellants to show "a viable alternative means" was available to achieve the legitimate policy objective without discriminatory effects.

Gallagher v. Magner, 619 F.3d 823, 833-34 (8th Cir. 2010)(citations omitted). This test was reaffirmed in *Powell v. Illinois*, No. 18 CV 6675, 2019 LX 75412 (N.D. Ill. Sep. 30, 2019) and has been applied to Illinois Civil Rights Act actions in Illinois state courts. *See Central Austin Neighborhood Ass'n v. City of Chicago*, 1 N.E.3d 976, 980 (Ill. App. Ct. 1st. Dist. 2013) (citing *Gallagher*). Because the Illinois Civil Rights Act "was patterned after Title VI," state courts look to federal court decisions when ruling on its scope and meaning, including in applying this disparate impacts test.[13] *Kirk v. Arnold*, 157 N.E.3d 1111, 1118 (Ill. App. Ct. 1st Dist. 2020); *See also Weiler v. Village of Oak Lawn*, 86 F. Supp. 3d 874, 889 (N.D. Ill. 2015).

[13] The Illinois Civil Rights Act was passed in 2003 as a direct response to the U.S. Supreme Court decision in *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001), which "limited the ability of individuals to bring disparate impact claims via Title VI" in federal courts. 93d Ill. Gen. Assemb., H. Deb., April 3, 2003 (statement of Rep. Fritchey). The specific purpose of enacting the Illinois Civil Rights Act was to create in State law an express statutory basis for the disparate impacts formulation and a state statutory prohibition on units of government administering programs in ways that create or discriminatory effects. *Id.* (explaining statutory purpose as creating "a venue for individuals to bring a cause of action alleging disparate impact of a government policy via the State Courts.").

Applying this test to Board actions suggests the Board should develop proactive policies and procedures that, as a threshold matter, determine if its specific actions or the actions of other governmental units subject to Board review result in a disparate impact upon protected classes compared to a relevant population. This can include facially neutral policies that nonetheless have a significant, adverse impact on members of a protected minority group. At a general level and as recognized by the Board in opening this docket and elsewhere, there is no meaningful dispute that the environmental statutes and programs that the Board oversees have created disparate impacts on protected categories of people in Illinois. Indeed, as the General Assembly warned over a decade ago: "certain communities in the State may suffer disproportionately from environmental hazards related to facilities with permits approved by the State." 415 ILCS 155/5(ii). So, the Board should examine if specific actions cause or contribute to specific instances of such disproportionate effects.

As a next step in such a civil rights review process, if the Board determines that a potential disparate impact exists in a specific decision context, the Board should next assess if (1) the disputed action has a "manifest relationship" to a legitimate non-discriminatory policy and (2) is necessary to the attainment of the objective. Even if the discriminatory impact arises from an otherwise legitimate and necessary objective, the Board should go on to evaluate a "viable alternative means" is available to achieve the legitimate objective without discriminatory effects and, ultimately, require or implement such viable alternative means.

The Illinois Civil Rights Act provides a clear imperative for the Board to incorporate civil rights considerations into the full range of its activities in order to prevent discrimination in implementing the full range of its statutory authorities. Moreover, the Illinois Civil Rights Act also provides a basis for the Board to develop policies and procedures to determine if the actions of other units of government subject to Board review result in prohibited discriminatory effects on protected minority populations.

IV. The Board Should Issue an Order Interpreting Statutory Phrases Like "Public Health and Welfare" as Compelling Consideration of Cumulative and Disparate Impacts.

The legislature created the Board with specific powers to promulgate rules, review permits, and adjudicate certain violations of environmental laws. In performing each of those roles, the legislature empowered and obliged the Board to protect "public health, safety, and welfare." As explained below, the phrase "public health, safety, and welfare," and its slight variations found throughout the Act, must be read as including consideration of disparate and cumulative impacts. Analyzing the potential outcomes of a decision in terms of potential "cumulative impacts" and "disparate impacts" is key means to operationalize EJ concerns. The Act, therefore, already contains all the authority the Board needs to consider EJ in every substantive decision it makes.

To fully consider "public health, safety and welfare," the Board should issue an order that clarifies that disparate impacts and cumulative impacts must be addressed in every decision guided by such a phrase in the Act, and that it will apply that definition in individual permit and enforcement proceedings, as well as in revising regulations governing the implementation of the Act by IEPA and the Board.

Assessing "cumulative impacts" refers to understanding the "totality of exposures to combinations of chemical and nonchemical stressors and their effects on health, well-being, and quality of life outcomes" for the people that will be impacted by a decision.[14] Cumulative impacts are caused by a combination of social, environmental and public health factors that typically center around "BIPOC, low-income, and limited English proficiency" communities that have faced decades of disproportionate impacts from pollutants.[15] If a particular neighborhood experiences conditions that exacerbate the effects of multiple pollutants, and in turn interferes with a resident's health or lived environment, then those impacts should be evaluated and mitigated in any decision that will contribute to those burdens. An example here could be the Board's review of a local municipality's approval of siting for a pollution control facility that will draw diesel truck traffic through a community with already high rates of asthma in an area that already fails to meet U.S. EPA air quality standards set to protect public health.[16]

Ensuring that its decisions prevent and mitigate "disparate impacts" is an equally important aspect of EJ. Disparate impacts are defined as, "the adverse effect of a facially neutral practice … that nonetheless discriminates against persons because of their race, sex, national origin, age, or disability."[17] Black's Law Dictionary (12th ed. 2024). "Disparate impacts," therefore, refers to the same sorts of outcomes addressed as "discriminatory effects" under the Illinois Civil Rights Act discussed above. For example, if a specific neighborhood has elevated rates of respiratory conditions such as asthma or cardiovascular disease, people there would suffer more severe health effects from the same level of air pollution than people in a neighborhood with lower rates of such conditions. According to a U.S. EPA report, assessing disparate impacts in the environmental context should focus on "whether the consequences of the [agency's] permitting policies, decisions, and actions, or failure to act, has had or will have the effect of subjecting persons to discrimination, regardless of the [agency's] intent."[18]

The consideration of both cumulative and disparate impacts is already captured by a practical and plain understanding of the phrase "public health, welfare, and safety." To best

[14] *Cumulative Impacts Explained*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/cumulative-impacts/cumulative-impacts-explained (last visited Oct. 21, 2025).
[15] *Cumulative Impacts: Overview*, NAT'L CAUCUS OF ENV'T LEGISLATORS, https://ncel.net/issue/cumulative-impacts/ (last visited Oct 21. 2025).
[16] Opening Brief of People Opposing Du Page Envtl. Racism at 25, 32, People Opposing Du Page Envtl. Racism v. City of W. Chi., No. PCB 23-109 (Ill. Pollution Control Bd. Nov. 13, 2023).
[17] The *definition* also includes a reference to "business necessity," but that appears to be in the context of describing disparate impacts discrimination by private business entities so it is inapplicable here.
[18] *Environmental Justice and Civil Rights in Permitting Frequently Asked Questions*, U.S. ENV'T PROT. AGENCY, (Aug. 2022) https://www.epa.gov/system/files/documents/2024-01/ej_and_cr_permitting_faqs.pdf.

demonstrate how this phrase captures these impacts, the Board should begin by looking at the individual words in the phrase.[19] Health, safety, and welfare are all abstract nouns that are context specific and are not defined in the Act. Black's Law Dictionary (12th ed. 2024) defines "health" as: "[s]tate, or condition of being sound or whole in body, mind or soul; esp., freedom from pain or sickness." That dictionary also defines "welfare" as "[w]ell-being in any respect" and "public safety" as "[t]he welfare and protection of the general public." *Id.* These broad words encompass a variety of issues and potential harms depending on the factual context.

The qualifier "public" is crucial to understanding how the Board should apply these broad considerations in a given decision. "Public" must be read by reference to the specific people or communities that will be impacted by a particular Board decision. Understanding "public" in this manner compels the consideration of cumulative and disparate impacts because it requires the Board to identify the particular "public" who will be harmed by a rule or decision and then assess *how* they will be harmed. To assess the impact on an identified population, the Board must ask what stressors are already impacting them. Looking at its ordinary meaning "public" is defined to mean as a noun "the people of a country or community as a whole" or as an adjective "relating to, or involving an entire community, state or country." Black's Law Dictionary (12th ed. 2024). Either way, to protect the "public" in the context of a specific decision, the Board must identify the relevant *community* or communities that are affected and consider ways that such effects may be distributed within different segments of the "public."

The phrase "public health, safety, and welfare," and variations, are employed throughout the Act in contexts that demonstrate the legislature uses the phrase to be broad and context dependent.[20] Caselaw applying one example of the phrase "public health, safety, and welfare"—review of local siting authority decisions applying § 39.2(a)(ii) of the Act—demonstrates that the phrase compels considering the unique context of the specific "public" impacted by a decision.[21] As one appellate court explained, a decisionmaker would be "equally within its statutory

[19] It is appropriate to employ a dictionary to ascertain the plain and ordinary meaning of the undefined language of the Act. *People v. Beachem*, 229 Ill. 2d 237, 244–45 (2008).

[20] *See* 415 ILCS 5/8 (West 2023) (finding air pollution constitutes a menace to *public health and welfare*); *Id.* § 2 (finding hazardous wastes threatens to *public health, safety and welfare*); *Id.* § 3.545 (finding water pollution is harmful to *public health, safety and welfare*); *Id.* § 9.4 (finding that air pollution from municipal waste incineration may constitute a threat to *public health, welfare* and the environment); *Id.* §11 (finding water pollution constitutes a menace to *public health and welfare*); *Id.* § 9.5 (finding *public health and welfare* may be endangered by the release of toxic contaminants into the air); *Id.* § 20 (finding excessive quantities of waste and improper methods of waste disposal is a hazard to *public health and safety*); *Id.* § 25b–1 (finding that emissions of toxic chemicals are a chronic threat to *public health*); *Id.* § 40.3 (finding PSD permit may be stayed to if it preserves the status quo without endangering the *public* and is not contrary to *public policy*); *Id.* § 59 (finding carbon capture and sequestration shall be conducted in a manner that protects human *health*).

[21] *See, e.g., Will County v. Village of Rockdale*, 2018 IL App (3d) 160463, ¶¶ 65–71 (analyzing evidence about traffic from queuing trucks and stormwater flooding and runoff); *Timber Creek Homes, Inc. v. Illinois Pollution Control Bd.*, 2015 IL App (2d) 140909-U, ¶ 2 at 3 (analyzing evidence about noise, visibility, pests, and odor); *Fox Moraine*, 2011 IL App (2d) 100017, ¶¶ 94–103 (analyzing evidence about leachate, landfill gas, stormwater monitoring, wells); *E & E Hauling, Inc. v. Pollution Control Board*, 116 Ill.App.3d 586, 609–613 (1983) (analyzing evidence about landfill leachate in groundwater); *Town & Country*, 225 Ill. 2d at 110-13 (analyzing evidence about geographic extent of potential groundwater pollution contamination).

authority to base its rejection of a site on similar technical criteria" if the proposed facility presents a "a potential health hazard to the surrounding community." *McHenry County Landfill, Inc. v. Illinois Environmental Protection Agency,* 154 Ill. App. 3d 89, 101 (1987). Even where facilities or sources of pollution would have the same characteristics themselves, the Act may dictate they be regulated or permitted differently if those similar characteristics will have different impacts based on the "surrounding community."

Finally, this plain meaning of the term "public health, safety, and welfare," is compelled by the "Legislative Declaration" of the Act, which directs how to interpret the statute's substantive provisions: "the terms and provisions of this Act shall be liberally construed so as to effectuate the purposes of this Act as set forth in subsection (b)." 415 ILCS 5/2. Subsection (b), in turn, states that among "the purpose[s] of this Act" is "to assure that adverse effects upon the environment are fully considered and borne by those who cause them." *Id*. § 2(b). The language "fully considered" and "borne by those who cause them" instructs the Board to consider both cumulative and disparate impacts because it must consider all potential impacts. The phrase "borne by those who cause them" prevents the Board from using cost-benefit analyses that turn some communities into sacrifice zones based on the rationale that concentrating environmental and health harms in one community is somehow acceptable if arguably outweighed by broader social benefits. By requiring polluters to bear all costs, the Act mandates that they must also bear the costs of cumulative and disparate impacts on affected communities.

The best reading of the phrase "public health, safety and welfare" encompasses both cumulative and disparate impacts across all Board authorities because they are inherent in "fully consider[ing]" how the "health, safety and welfare" of a particular "public" will be effected by an action or rule. There are also, however, other provisions in the Act and broader legal context that more specifically bring within the Board's responsibility the consideration of either cumulative impacts or disparate impacts.

A. Cumulative Impacts

Interpreting terms like "public health, safety and welfare" to include an obligation to consider cumulative impacts is also contextually supported by the Act.

For example, when the Board acts as rule maker or enforcement adjudicator, it implements Title VII, Regulations, and Title VIII, Enforcement. Each of those provisions includes language reinforcing the need to consider cumulative impacts, as the statute requires consideration of the existing: character of the land, air and water quality, and other physical conditions. 415 ILCS 5/27; 415 ILCS 5/33. These standards require a cumulative impact analysis, as they state that existing pollutants and land characteristics must be evaluated to understand the effect of introducing new pollution.

There are also sections in the air and water provisions of the Act that explicitly incorporate cumulative impact analysis by stating that no person shall cause air or water pollution in "alone or in combination with contaminants from other sources." 415 ILCS 5/9; 415

ILCS 5/12. The phrase—"alone or in combination with"—expressly contemplates that there are instances where pollution from a single source alone would not violate the Act's prohibition on causing air or water pollution, but where that single source still violates the Act if combined with others. That is precisely the question that a cumulative impacts analysis answers. Indeed, "cumulative" means to "include[e] all the amounts previously added." Black's Law Dictionary (12th ed. 2024). To know if that situation is before it, the Board—or IEPA when reviewing a permit application in the first instance—must actually consider how the new source will combine with existing emissions already impacting the relevant community. As discussed below, IEPA is already doing just that for certain air permits under the Informal Resolution Agreement. *See infra* at 16-18. Identifying and addressing cumulative impacts is explicitly within the ambit of the Act and informs what the legislature intended to protect every time it used the phrase "public health and welfare."

B. Disparate Impacts

Considering and mitigating potential disparate impacts is also inherent in the obligation to protection "public health," as informed by pragmatism and legal context.

To understand how new pollution will affect health, the baseline health status and health history of the people who will be exposed that pollution must be considered. An evaluation of how a new source of pollution will affect a community requires answers to questions like: does that community have a prevalence of pre-existing conditions that make the people there especially vulnerable to new pollution? Does the community lack access to high-quality health care which might mitigate health problems exacerbated by the new pollution? Will people in a low-income community experience greater economic hardship if forced to bear the costs of such health burdens in the form of missed days of work or medical or mitigation expenses like buying bottled water or running air conditioning to avoid opening windows? Therefore, the Act requires asking whether the relevant "public" includes groups who have suffer from higher levels of relevant health maladies or barriers with respect to social determinants of health. Once a determination has been made about the "public" in question, the Board must utilize its authority to review permits and enforce violations within the context of the effected community to best address disparate impacts. And the Board must use its rulemaking authority to require IEPA weigh such considerations in the first instance in the case-by-case permitting and enforcement decisions.

Reading "public health" within the Act to include the idea that adverse actions will affect the health of different people in different ways, depending on their pre-existing conditions and social vulnerabilities, is consistent with general legal approaches to understanding health impacts, in federal judicial decisions as to federal rules and other states' permitting decisions, principles of tort law and policy statements of the General Assembly.

This way of analyzing public health was endorsed in the federal rulemaking context in *Lead Industries Association v. EPA*, 647 F.2d 1130 (D.C. Cir. 1980), *cert. denied*, 449 U.S. 1042

(1980). The case concerned whether U.S. EPA could consider particularly vulnerable populations when setting NAAQS at levels to protect "public health" and "public welfare." *Id.* at 1141-42. The Court held that U.S. EPA may establish standards based on the needs of particularly vulnerable populations and set national standards accordingly. *Id.* at 1161. Although this case specifically examined federal statutory language relevant to setting NAAQS, it provides a good example of how courts have treated public health and welfare considerations to include addressing disparate impacts in rulemaking.

A federal court of appeals read a state statute similar to the Act as requiring consideration of the specific characteristics of the affected population in the 2020 case, *Friends of Buckingham v. State Air Pollution Control Board*, 947 F.3d 68 (4th Cir. 2020). The Fourth Circuit found that the Virginia State Air Pollution Control Board failed in its statutory duty to consider the reasonableness of "the character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused," alongside the "suitability of the activity to the area in which it is located." Va. Code Ann. § 10.1-1307 (West 2022). The reason why the Board failed was two-fold:

> (1) it failed to make any findings regarding the character of the local population at Union Hill, in the face of conflicting evidence;
> (2) it failed to individually consider the potential degree of injury to the local population independent of NAAQS and state emission standards.

Friends of Buckingham, 947 F.3d at 86. This is a clearcut example of a state board failing to meet its state statutory duty to protect the "health" and "safety" of the public by failing to consider how the pollution at issue would affect the specific people at issue.

The notion that the law's treatment of an action depends not only on the characteristics of the action itself, but on the gravity of that action on specific people who are subjected to it is not some radical notion. Rather it is evident in the centuries old common law doctrine known as the "eggshell skull" rule, which states that a negligent actor may be subject to liability for harm that is greater than was reasonably foreseeable because the specific person who was harmed was particularly vulnerable. Restatement (Second) of Torts § 461 (1965). This doctrine recognizes that an actor is responsible for the consequences of their action, even when the action would not harm a reasonably healthy person, if it nonetheless harms the health of someone with a pre-existing health condition.

Finally, recognizing that the Act already requires disparate impacts consideration of the characteristics of the specific "public" whose "health, safety, and welfare" must be protected is also consistent with the legislature's observation in the EJ Act that past practices under the Act have allowed an accumulation of disparate impacts. 415 ILCS 155/5 (finding "certain communities in the State may suffer disproportionately from environmental hazards related to facilities with permits approved by the State; and [that] these environmental hazards can cause long-term health effects"); *id.* § 10 (creating commission to "review and analyze the impact of

current State laws" in producing the inequitable distribution of environmental hazards by "race, national origin, age, or income"). Though the Act has historically been implemented to create disparate impacts, that is not nearly the best reading of the Act's text, indeed it is the product of systemic failure to meet the Act's clear mandates.

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The Board already has the authority and duty to operationalize environmental justice by considering cumulative and disparate impacts in every act it takes to protect "public health, safety and welfare." The Board should announce in this proceeding that it will apply that interpretation every time it encounters that statutory phrase and that it will hold IEPA to the same definition in its capacity as reviewer of and rule-maker for the agency.

V. Specific Statutory Provisions Authorize or Command the Board to Integrate EJ Considerations into Specific Rulemaking or Decision-making Contexts.

The Board, when making rules, reviewing permit appeals, and adjudicating enforcement actions should be considering cumulative and disparate impacts in all decisions based on its over-arching duties to "fully consider[]" all adverse effects of pollution and to protect "public health, safety, and welfare," but statutory text governing specific rulemaking or permit and enforcement decisions also compels the Board to consider cumulative impacts and disparate impacts in particular contexts. In the following subsections, addressing each of Air, Water, Land, Rulemaking and Enforcement, CEJN identifies for the Board specific programs in which the consideration of EJ should be formalized based on existing statutory authority and such considerations should compel Board action under specific authorities.[22]

A. Air

1. Overview

As addressed above, cumulative impacts analysis is already required to address the overall air pollution problem that the Board is tasked with addressing. Nowhere is this clearer than in Section 9 of the Act, which stipulates that "in order to protect health, welfare, property, and the quality of life," no person shall "cause or tend to cause air pollution in Illinois, *either alone or in combination with contaminants from other sources*… ." 415 ILCS 5/9 (emphasis added).

[22] It is important to note that the consideration of cumulative impacts and disparate impacts is already contemplated in the Act's various specific permitting sections. Title X, which establishes Illinois's comprehensive permitting framework direct both the IEPA and the Board to administer permits in ways that address cumulative harms and the inequitable distribution of environmental burdens. Section 39(g) imposes continuing obligations to protect communities from the long-term consequences of hazardous-waste sites; section 39.1(f) incorporates the Clean Air Act's health-protective and participatory mandates; section 39.9(c)(7) requires early, preventive scrutiny of potential water and waste impacts; section 39.14(d) ensures that expedited procedures do not bypass substantive environmental review; and section 40.3(3) conditions relief from permit denials on a finding that no public endangerment would result.

It is also embedded in the legislative and regulatory definition of "air pollution." Air pollution is defined as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property." 415 ILCS 5/3.115. The Board has promulgated the same definition. 35 Ill. Adm. Code § 201.141. Because the definition is rooted in the protection of health, the Board should ensure its regulations of all types of emissions that might be considered "air pollution" address their effects in relation to the specific people they will impact. And, again, it must always evaluate such sources, "either alone or in combination."

Air pollution is caused by both mobile and stationary sources, which are governed under different regulatory schemes and subject to certain differentiated statutory provisions. In reevaluating its approach to stationary sources, the Board should review, incorporate, and consider expanding the IEPA's Informal Resolution Agreement ("IRA") which requires the Agency to consider and mitigate cumulative and disparate impacts when issuing certain air permits. Mobile sources of air pollution—i.e. vehicles, and particularly medium- and heavy-duty vehicles with diesel combustion engines—present perhaps the most pronounced environmental justice problem in the state. The Board is authorized under Sections 10(c) and (d) of the Act to regulate mobile sources and already has before it has mountains of evidence justifying its use of that authority to protect the people of Illinois.[23] Accordingly, the Board must act on that authority if the it is to "prioritize certain subject matter areas" to respond to environmental justice concerns.

2. Stationary Sources

The Board has the authority to adopt regulations establishing permit programs for stationary sources.[24] Stationary sources commonly present environmental justice problems due to their frequent concentration in environmental justice areas.[25] The best means for the Board to fulfill its obligations to address cumulative and disparate impacts in the stationary air source context is by incorporating into its permitting rules the IRA that IEPA is currently implementing under existing state law and to consider expanding the application of that IRA process to additional categories of air permit.

[23] Order of the Bd., In re Proposed Clean Car & Truck Standards: Proposed 35 Ill. Adm. Code 242, No. R 24-17, slip op. at 5-6 (Ill. Pollution Control Bd. Nov. 7, 2024) https://pcb.illinois.gov/documents/dsweb/Get/Document-111136 (noting volume of evidence received in proceeding proposing exercise of Board's § 10 authority).
[24] Sections 9.1 through 9.19 contain specific regulatory authority related to implementing the federal Clean Air Act and various pollutant-specific state programs. 415 ILCS 5/9.1 *et seq*. Section 10 contains subsections provides a non-exclusive list of approaches to regulating air pollution that cover stationary sources. 415 ILCS 5/10.
[25] Jonah Kurman, *Clearing the Air: Local Pollution as a Social Justice Issue*, CLIMATE XCHANGE, (Oct. 4, 2019), https://climate-xchange.org/2019/10/clearing-the-air-local-pollution-as-a-social-justice-issue/; Tonyisha Harris & Iyana Simba, *A Look at Chicago's Environmental Justice Battles, Impacts and Solutions*, ILL. ENV'T COUNCIL, (Jan. 5, 2022), https://ilenviro.org/a-look-at-chicagos-environmental-justice-battles-impacts-and-solutions/.

The Agency agreed to the provisions of the IRA in response to a civil rights complaint filed by CEJN member organizations with U.S. EPA.[26] This complaint arose from IEPA's failure to consider cumulative and disparate impacts in reviewing an air permit application from a facility commonly known as General Iron.[27] General Iron operated a large metal shredding facility in the Lincoln Park neighborhood that had committed numerous environmental pollution violations.[28] In 2019, General Iron, after negotiating with the City of Chicago, decided to move the facility to the Southeast Side.[29] As raised by numerous and voluminous technical and public comments submitted to IEPA during the construction permitting process, the facility would be emitting air pollution in an area that already experienced some of the highest levels of air pollution in the state, was already overburdened by other stationary and mobile air pollution sources, exhibited severe health disparities related to environmental pollution, and was comprised of communities of color harmed and disempowered by decades of documented systemic racism.[30] Nonetheless, IEPA granted an air construction permit.[31] In doing so, the Agency did not consider cumulative impacts from the existing pollution in the Southeast Side. In response to a federal Civil Rights Act complaint filed by CEJN member organization Southeast Environmental Task Force that alleged this IEPA permit process created discriminatory effects, U.S. EPA and the IEPA ultimately agreed that IEPA would implement the terms of the IRA.

The IRA implemented enhancements to the Agency's permit review process.[32] Overall, these enhancements require the Agency to consider cumulative and disparate impacts of communities and to meet applicable civil rights statutes, including the Illinois Civil Rights Act, when considering certain categories of air permits. The IRA mandates a number of steps for IEPA to consider when drafting and issuing air construction permits. First, IEPA must geographically screen for potential environmental justice issues as indicated by local environmental, health or socioeconomic indicators.[33] Other indicators that IEPA is required to or may consider are the "location of sensitive populations,[34] demographic factors that may increase community exposure or vulnerability,[35] a polluter's "past compliance history," and the levels of pollution from other sources.[36] If any of these indicators demonstrate that there will be

[26] SETF Coalition Title VI Complaint, Ill. Env't. Prot. Agency (Dec. 17, 2020) https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/environmental-justice/documents/grievance/setf-coalition-title-vi-complaint-redacted.pdf.
[27] *Id.* at 1.
[28] *Id.* at 5-6.
[29] *Id.* at 5.
[30] *Id.* at 3,5.
[31] *Id.* at 4.
[32] *Resolution of EPA Complain No. 01RNO-21-R5*, OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE (Feb. 23, 2024) https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/environmental-justice/documents/grievance/021424%20Informal%20Resolution%20Letter%20and%20Agreement_EPA%20Complaint%20No.%2001RNO-21-R5.pdf.
[33] *Id.* at 4, 11.
[34] Sensitive locations include schools, hospitals, day care centers, and culturally significant resources. *Id.* at 11.
[35] Factors include cultural practices, subsistence fishing, hunting, and foraging information. *Id.*
[36] *Id.* at 10-11.

disparate impacts IEPA must make "additional refinements" in or related to a draft permit it proposes to issue. IEPA may "prioritize[e] compliance inspections," "prioritize[e] grant funding for projects in the affected community," and consult with [U.S.] EPA to analyze "potential mitigation options" to mitigate disparate impacts.[37] At the end of the process, IEPA will provide a written analysis compiling all of this information and will post it among the documents available on IEPA's public notice website for draft permits published for public comment or will be posted at the time of permit issuance if public participation is not provided for in the regulations.[38]

The Board should move the IRA into regulation to further the rights and protections of communities facing the brunt of environmental impacts.[39] When the Board reviews air permits on appeal it should evaluate whether the permit adequately considered environmental justice issues and fully mitigated cumulative and disparate impacts in its provisions, and if it did not the Board should require conditions to ensure that the permit does.[40] The Board should revise its regulations to also allow impacted third-parties—i.e. the people whose health permit conditions are supposed to protect—to appeal IEPA permits to ensure this process is fully and properly implemented and that those people are by the Board even if agency officials ignore them in the future.

The Board should also consider expanding the universe of air permits covered by the IRA process and expanding public participation opportunities in a larger set of air permits. In particular, these expansions should cover data centers and backup power generators more generally, which often evade "major source" categorization through operational limits that may or may not be adhered to in reality and are a growing threat to air quality.

At the very least, the Board should confirm that the IRA procedures are within IEPA's current statutory authority and announce that it will uphold IEPA permits that include conditions aimed at addressing disparate impacts or cumulative impacts developed through the IRA process.

3. Mobile Sources

Air pollution from motor vehicles has substantially damaged public health, poses a dire threat of increased climate change harms in Illinois, and disproportionately impacts Illinois residents in EJ communities.[41] Motor vehicle emissions are a major cause of smog, which plagues the air that most Illinois residents breathe.[42] On-road vehicles are also the state's leading

[37] *Id.* at 11-12.
[38] *Id.* at 12.
[39] Specifically, the Board could integrate the IRA into Section 201.156. 35 Ill. Adm. Code § 201.156.
[40] This could be done by revising 35 Ill. Adm. Code § 201.168.
[41] *For Equity and Health*, ILL. CLEAN JOBS COAL.: NEIGHBORS FOR AN EQUITABLE TRANSITION TO ZERO-EMISSION, https://www.netzillinois.org/for-equity-and-health (last visited Oct. 21, 2025).
[42] *Smog Vehicle Emissions*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/greenvehicles/smog-vehicle-emissions (last visited Oct. 21, 2025).

source of climate-altering greenhouse gases.[43] Diesel exhaust in particular causes—every year—an estimated 416 premature deaths, over 24,000 lost workdays, and $4.6 billion in exposure costs in Illinois—impacts that fall most heavily on already overburdened communities disproportionately affected by air pollution.[44] In another proceeding, the Board has received uncontroverted evidence from sophisticated economic models, air quality experts, air pollution policy experts, medical experts, and hundreds of members of the public that speaks to the massive health and economic benefits of at least one particular policy scenario that would reduce diesel emissions and how such benefits would be experienced most prominently in the EJ communities that currently bear the worst costs of diesel pollution.[45]

Section 10 of the Act specifically empowers the Board to regulate vehicles so as to prevent these harms of air pollution they cause: "The Board, pursuant to procedures prescribed in Title VII of this Act, may adopt regulations" that, among other things, impose:

> (c) Standards for the issuance of permits for construction, installation, or operation of any equipment, facility, ***vehicle***, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution; [and]
>
> (d) Standards and conditions regarding the sale, offer, or use of any fuel, ***vehicle***, or other article determined by the Board to constitute an air pollution hazard;
>
> 415 ILCS 5/10(A) (2022) (emphasis added).

The critical aspect of this section is the language that the Board may adopt regulations to promote the purpose of the Act in relation to air pollution from *vehicles*. Section 10(c) permits the Board to issue standards that require permits for the operation of vehicles, while Section(d) permits the Board to regulate the sale, offer, or use of any vehicle. When making these decisions, the Board must effectuate the purpose of the Act, which is to protect the "public health and welfare." As such, the Board must consider cumulative and disparate impacts when considering whether and how to regulate mobile sources in order to adequately achieve these objectives.

The Board has recently recognized this substantive rulemaking authority to address air pollution from mobile sources. In *In re Proposed Clean Car & Truck Standards*, The Board acknowledged that it had the authority to "adopt regulations to promote the purposes of" the

[43] Brett Chase, *In Illinois, cars and trucks top coal as biggest contributor to global warming*, THE STATE JOURNAL-REGISTER, (May 19, 2019) https://www.sj-r.com/story/news/2019/05/19/in-illinois-cars-trucks-top/5118200007/.
[44] Rule Proponents' Responsive Comment, In re Proposed Clean Car and Truck Standards, No. R 24-17, at 1-2 (Ill. Pollution Control Bd. May 16, 2025) https://pcb.illinois.gov/documents/dsweb/Get/Document-113865.
[45] *Id.* at 19-21 (addressing benefits of proposed Advanced Clean Trucks rule and summarizing and citing to hearing testimony and exhibits).

Act.[46] The Board read its Section 10 authority plainly and rejected a kitchen sink of lobbyists' arguments that sought to limit its state statutory power to regulate emissions from on-road vehicles. In particular, the Board rejected arguments purportedly based in the text of the Act and found it had authority to regulate air pollution from vehicles even though that pollution comes from burning petroleum, which is elsewhere excluded from unrelated definitions that set the scope of entirely different Board regulatory authorities.[47] In distinguishing a past case, the Board was particularly blunt: "the Board's authority to promulgate emission standards is clear."[48] Most recently, the Board reiterated that "it remains true" that is possesses Section 10 authority to consider rules related to vehicle air pollution, even while it stayed that proceeding to await the outcome of litigation in federal court that will impact whether the particular California standards proposed there can be enforced in Illinois.[49]

While that federal legal issue hangs over that proceeding and though the Board reiterated technical issues as to the precise proposed rules there, the "robust record"[50] of facts developed in that proceeding demonstrate that air pollution from vehicles imposes pernicious, pervasive and inequitable harms on the people of Illinois. Indeed, no party there challenged that proposition at any point. There is nothing in that record that calls into question the mountain of evidence that diesel emissions create an enormous environmental justice problem in Illinois.[51] Issuing regulations that use its "clear" authority to address that undeniable and massive environmental justice problem should be a top EJ priority.

B. Water

In the context of preventing harmful water pollution, the Act again compels consideration of disparate and cumulative impacts due to the obligation to protect "public health and welfare." 415 ILCS 5/11. Further, as in the Air section, section 12(a) states that no person shall cause, threaten, or allow "the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or *in combination with matter from other sources*" in a manner which violates regulations adopted by the Board under this Act. 415 ILCS 5/12(a)(emphasis added). As above, the "in combination" language explicitly requires consideration of cumulative impacts as to water pollution.

Going forward, any Board regulations related to water should be revised to ensure consideration of cumulative and disparate impacts. Furthermore, the Board must consider

[46] Order of the Bd., In re Proposed Clean Car & Truck Standards: Proposed 35 Ill. Adm. Code 242, No. R 24-17, slip op. at 3 (Ill. Pollution Control Bd. Nov. 7, 2024) https://pcb.illinois.gov/documents/dsweb/Get/Document-111136.
[47] *Id.* at 6-7.
[48] *Id.* at 6.
[49] Order of the Board at 10-11, In re Proposed Clean Car and Truck Standards: Proposed 35 Ill. Adm. Code 242, No. R24-17 (Ill. Pollution Control Bd. Sept. 18, 2025) https://pcb.illinois.gov/documents/dsweb/Get/Document-114496.
[50] Sept. 18th Order 24-17, at 11.
[51] *See generally*, Rule Proponents' Responsive Comment, In re Proposed Clean Car and Truck Standards, No. R 24-17 (Ill. Pollution Control Bd. May 16, 2025) https://pcb.illinois.gov/documents/dsweb/Get/Document-113865.

cumulative and disparate impacts when reviewing water permit appeals. For example, the Board would be justified in rejecting or requiring more stringent permit conditions: (1) when a waterway in an EJ area—such as the Calumet River, Bubbly Creek, or the Chicago Sanitary and Ship Canal—is particularly polluted from other cumulative impact sources or (2) where there is evidence of people interacting with the waterways in ways that make them more vulnerable, such as subsistence fishing and swimming. To consider EJ issues in the water permitting context, IEPA and the Board could look to the IRA discussed above as a model. Indeed, the IRA even already mentions "subsistence fishing" as a potential "[f]actor [] that may increase community exposure or vulnerability."[52]

C. Land

Title V of the Act, sections 20 through 45, governs land pollution, hazardous and solid waste, and related remediation. Section 20(a)(2) reinforces the general purposes of the Act in section 5/2(b) by defining improper waste management as a community health and welfare concern, not merely a technical or engineering issue. The Legislature found that "excessive quantities of refuse and inefficient and improper methods of refuse disposal result in scenic blight, cause serious hazards to public health and safety, create public nuisances, divert land from more productive uses, depress the value of nearby property, offend the senses, and otherwise interfere with community life and development." 415 ILCS 5/20(a)(2). These harms—public health hazards, diminished property values, and interference with community life—are inherently social and spatial. They compel regulators to consider who is affected, how burdens accumulate, and whether impacts are disproportionately borne by certain communities. In this sense, section 20(a)(2) requires an evaluation of cumulative and disparate impacts as integral to the entire enterprise of assessing and addressing environmental and public health effects of contaminated land.

Furthermore, by requiring that Illinois's hazardous waste program be "no less stringent than" federal law under the Resource Conservation and Recovery Act ("RCRA") under section 20(a)(6), the Legislature incorporated not only RCRA's technical standards but also its public-health and participatory foundations. When IEPA issues permits under its delegated RCRA authority, it is obligated to include in permits "terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment." 40 CFR 270.32(b)(2); *see* 42 U.S.C. § 6925(c)(3); 35 Ill. Adm. Code § 703.241 (Board regulations incorporating same language). Additionally, the federal standards referenced in the state Act include the RCRA requirement that "public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program … shall be provided for, encouraged, and assisted by the Administrator and the States." 42 U.S.C.

[52] *Resolution of EPA Complain No. 01RNO-21-R5*, OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE, at 4, 11 (Feb. 23, 2024) https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/environmental-justice/documents/grievance/021424%20Informal%20Resolution%20Letter%20and%20Agreement_EPA%20Complaint%20No.%2001RNO-21-R5.pdf.

§ 6974(b). Such provisions establish that protection of human health and meaningful public involvement are core statutory obligations, not mere aspirations.[53] The "no less stringent" command in the Act, therefore, imports RCRA's dual emphasis on substantive health protection and procedural participation.

Read with this context, the Board should interpret its hazardous-waste and land-pollution authority through a public health and EJ lens, ensuring that in every act it takes, it evaluates who bears cumulative environmental burdens, how risks are distributed, and whether affected communities have a genuine voice in decision-making.

1. Pollution Control Facility Siting Must Account for Disparate and Cumulative Impacts

Under section 40.1, the Board is empowered to review the decisions of local siting authorities made under section 39.2 related to requests for siting approvals by pollution control facilities. 415 ILCS 5/39.2; 415 ILCS 5/40.1. The Board should issue an order in this proceeding that makes clear that the substantive standards of section 39.2 encompass cumulative impacts and disparate impacts review. As such, local siting authorities must address cumulative impacts and disparate impacts in their review—and may deny or condition siting approvals on those bases—and the Board must independently evaluate the application for such impacts when it reviews local siting authority decisions.

Section 39.2(a) requires that applicants for new pollution control facilities demonstrate, among other things, that "(ii) the facility is so located as to protect the public health, safety, and welfare," "(iii) the facility is located so as to minimize incompatibility with the character of the surrounding area," and "(viii) the facility is located so as to minimize the effect on the value of surrounding property and to be consistent with the public interest." As explained in the briefs of People Opposing DuPage Environmental Racism in PCB No. 23-107, these criterion–particularly (ii)—compel consideration of cumulative and disparate impacts.[54] Under Section 40.1, the Board's review of such siting decisions requires the exercise of its own independent technical judgment rather than deference to the local authority, meaning that both the local decision and the Board's review must account for community-specific and cumulative environmental burdens. 415 ILCS 5/40.1; *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 123 (2007).

[53] *See also* 42 U.S.C. § 6902(a)–(b), § 6973(a) ("objectives of this chapter are to promote the protection of health and the environment" and hazardous-waste practices must be conducted "in a manner which protects human health and the environment," authorizing expedient action whenever waste "may present an imminent and substantial endangerment to health or the environment").

[54] *See generally* Opening Brief of People Opposing Du Page Envtl. Racism, People Opposing Du Page Envtl. Racism v. City of W. Chi., No. PCB 23-109 (Ill. Pollution Control Bd. Nov. 13, 2023) https://pcb.illinois.gov/documents/dsweb/Get/Document-109653 [hereinafter PODER Br.].

These criteria necessarily call for a holistic assessment of the community context into which a facility would be introduced. A determination of whether a site is "so located as to protect the public health, safety and welfare" cannot be made in isolation from the existing environmental and health conditions of the surrounding area. The word "located" explicitly demands consideration of spatial context. Local siting authorities must therefore evaluate not only the technical design of a facility, but also the geographic and social setting in which it would operate. As the statutory text makes clear in this context—as with the use of the similar phrase throughout the Act—the protection of "public health" and "welfare" requires understanding who comprises that "public" and how the "health" and "welfare" of that community is already affected by existing pollution sources. Likewise, section 39.2(a)(iii), requiring that facilities be "located so as to minimize incompatibility with the character of the surrounding area," links siting review to cumulative and disparate impacts by mandating attention to the character of the surrounding area as actually experienced by residents. A neighborhood already burdened by diesel traffic, particulate emissions, or waste transfer activities cannot be said to be "protected" if those harms are intensified by an additional facility. These provisions compel local siting authorities to assess how new facility impacts will combine with existing pollution sources and how those combined burdens affect community health and welfare.[55]

Because section 40.1 provides for Board review of local siting authority decisions, the interpretation of section 39.2 has developed through Board decisional law and judicial appeals of Board cases. The consideration of cumulative impacts and disparate impacts under section 39.2(a)(ii) fits squarely within that body of decisional law.[56] By order in this case, the Board should announce that local siting authorities must consider the potential of cumulative and disparate impacts from proposed pollution control facilities subject to section 39.2 review. Such review must include assessing impacts of diesel emissions from traffic anticipated in relation to the proposed facility. The explicit inclusion of diesel impacts is reinforced by the Legislature's amendment of section 39.2(a) just this past session, which clarified that analyses of traffic impacts may include studies of traffic emissions. *See* 415 ILCS 5/39.2(k)(1) (as amended by P.A. 104-223, eff. Jan. 1, 2026). Through that amendment, the General Assembly expressed a specific expectation that diesel impacts would be within the scope of local siting authority and Board application of the section 39.2 criteria.

2. Addressing Cumulative and Disparate Impacts in the Underground Storage Tank Program

Title XVI establishes the framework for investigation, corrective action, and funding of petroleum releases from underground storage tanks ("UST"). Throughout, the Legislature ties each procedural step to a substantive goal: protecting health, safety, and the environment. This

[55] *See also* PODER Br. at 21–23 (arguing that so located as to "protect" and the character of the "surrounding area" require local siting authorities to evaluate cumulative and disparate impacts within the affected community).
[56] *Id.* at 23-30.

language, reiterated across sections 57.5–57.12A, makes clear that risk management under the UST program is not primarily a financial question. It is a health-protective obligation.

Section 57.8(b) of the Act directs the Board to "adopt regulations setting forth procedures based on risk to human health or the environment under which the owner or operator … may elect to defer site investigation or corrective action activities until funds are available." 415 ILCS 5/57.8(b). The statute further mandates that "[t]he regulations shall establish criteria based on risk to human health or the environment to be used for determining on a site-by-site basis whether deferral is appropriate" and "shall establish the minimum investigatory requirements for determining whether the risk-based criteria are present at a site considering deferral." *Id.* Risk to human health and the environment is thus the controlling criterion for determining whether corrective action may be delayed. *Id.* The statute does not authorize purely financial or administrative triage; it requires a substantive, site-specific risk evaluation.

The Board's implementing regulations, under sections 731.165–.166 (site investigation and corrective action) and § 731.167 (public participation), do not define or operationalize "risk" to include cumulative or community-specific vulnerability factors. *See* 35 Ill. Admin. Code §§ 731.165–.167. To align its implementation of section 57.8(b) with the Act's health-protective and equity-based purposes, the Board should consider revising Part 731 to:

1. **Amend § 731.165(a)** to require that site investigations include analysis of cumulative exposures and existing contamination within the surrounding community, rather than only site-specific concentrations;
2. **Amend § 731.166(b)** to clarify that "risk" determinations and corrective-action priorities must account for cumulative impacts, community vulnerability indicators, and broadly foreseeable land-use transitions identified under section 58(a)(1); and
3. **Revise § 731.167** to require targeted notice procedures that reach affected environmental justice populations whenever cleanup is deferred, downgraded, or reprioritized.

These revisions would ensure that cleanup deferrals under section 57.8(b) are allowed only where a site-specific and community-contextualized analysis—that includes the community itself—demonstrates minimal risk in light of total environmental and health burdens.

3. Integration of Cumulative Impacts and Disparate Impacts Considerations in the Site Remediation Program

Sections 58.1 and 58.5 establish the risk-based remediation framework that governs most contaminated site cleanups in Illinois. Under this system, responsible parties may propose site-specific remediation objectives, including "Tier III" objectives, that reflect "local characteristics, exposure pathways, and receptor risks." 415 ILCS 5/58.5(a)(2). Section 58.5's language is intentionally broad in describing the environmental contamination that must be addressed: "any

threat to human health or the environment" must be minimized, not merely those tied to current exposures or the site's boundary. 415 ILCS 5/58.5(a)(4)(A)(ii). By using "any," the General Assembly required a comprehensive evaluation of potential risks, including cumulative and disparate burdens that arise from local conditions and population vulnerabilities. "Local characteristics" therefore cannot be read narrowly to mean only soil composition or current on-site land use; it necessarily includes demographic, health, and exposure factors that define how risk manifests in specific communities. The Board's Part 742 regulations echo that this framework is designed to "provide for the adequate protection of human health and the environment" while incorporating "site related information." 35 Ill. Adm. Code § 742.100(a).

The requirement to consider "current and currently planned future land use" likewise carries forward the Act's broader purposes of promoting redevelopment. 415 ILCS 5/58.5(a)(4)(A)(ii). This is implemented in section 742.115(c) of the Board's rules, which requires evaluation of "the present and post-remediation uses of the site." 35 Ill. Adm. Code § 742.115(c). Remediation standards must anticipate foreseeable reuse rather than freeze assessments at the moment of cleanup. To ensure that the site remediation program does not lock-in historic land use patterns that perpetuate cumulative and disparate impacts, "currently planned" should be broadly construed to ensure that cleanup do not preclude community-driven redevelopment visions, whatever the current landowner's immediate intentions. 415 ILCS 5/58.5(a)(4)(A)(ii). Limiting remediation to the landowner's specifically planned uses would contradict the Act's commitment to "restore, protect, and enhance the quality of the environment" and risk locking EJ areas into under-remediated industrial uses that block reinvestment or stifle community-centered redevelopment with less polluting land uses. 415 ILCS 5/2(b).

Accordingly, the Agency must apply Section 58.5's minimization standard substantively: responsible parties must demonstrate that any remaining contamination cannot cause adverse effects under either current or reasonably foreseeable community uses. Reliance on institutional controls that merely restrict land use or the allowance of less intensive cleanups, without data showing the absence of off-site, cumulative risks, fails to satisfy this statutory test. Furthermore, IEPA and the Board regulations it implements should reject cleanup proposals that lock in industrial land uses in perpetuity or over decades-long timeframes when there is the possibility of less-polluting reuses that will benefit the community. The text demands a forward-looking, community-centered evaluation of "local characteristics" to ensure remediation standards enable healthy, equitable redevelopment rather than perpetuate patterns of exclusion and environmental harm. 415 ILCS 5/58.5. The Board should consider revisions to its rules to effectuate these statutory purposes and deliver these EJ benefits.

4. Reform the Use of "No Further Remediation" Letters

Section 58.10 establishes the mechanism by which a site may be deemed sufficiently remediated and released from further corrective-action obligations. IEPA's issuance of a "No Further Remediation Letter" ("NFR Letter") constitutes "prima facie evidence that the site does not constitute a threat to human health and the environment," a presumption that holds only "so long as the site is utilized in accordance with the terms of the [NFR] Letter." 415 ILCS 5/58.10(a). Subsection (e) authorizes the Agency to void the letter if institutional controls are violated or if new contaminants are discovered that "pose a threat to human health or the environment." *Id.*

This framework confirms that NFR Letters should be reserved for situations where a responsible owner can demonstrate conclusively that the site poses no health or environmental threats and that public-health protection remains the governing standard even after closure. An NFR Letter is not a permanent discharge of responsibility but a conditional certification that no unacceptable risk exists under defined land-use conditions and constant understandings of exposure pathways.

To understand existing uses or potential changes in the use of a site or in routes for human exposures to pollutants remaining at a site, IEPA must consider the community that surrounds the site directly and should be informed by local knowledge. For example, local community members may be the only way IEPA could know that a formally vacant contaminated industrial site is used informally by local teenagers for bike riding and socializing, activities that could expose them to contaminated soils.

To ensure local knowledge is considered and provide for public participation, the Board and IEPA should reform the applicable review process under this program to include meaningful public notice and participation opportunities, including potentially a right to appeal agency decisions to the Board. The "[p]ublic participation" provision in section 58.7(h) instructs the Agency to "develop guidance to assist [Remedial Applicants] in the implementation of a community relations plan." 415 ILCS 58.7(h). That is a starting point and detailed Board regulations could address the content of such plans and ensure compliance with them. Without such reforms, affected residents may not be aware that a property is even under consideration for an NFR letter and cannot review, comment upon, or contest NFR Letters even when questions remain about residual contamination or exposure risk.

Indeed, Title XVII explicitly envisions a Board role and does not preclude the Board from creating avenues for public participation in the process. Section 58.11(c) provides that "the Board shall adopt … rules that are consistent with this Title, including classifications of land use and provisions for the voidance of No Further Remediation Letters." 415 ILCS 5/58.11(c). The Board has used that power in § 742.1005 specifically and Subpart J more broadly. 35 Ill. Adm.

Code § 742.1005. This delegation empowers the Board to define procedures governing how the Agency evaluates, conditions, and voids NFR Letters, and additionally empowers the Board to establish the transparency measures necessary to ensure their integrity.

The Board should use that power and consider revising these rules and requiring that proposed NFR Letters be published for public notice and comment, with an opportunity for third-party appeal to the Board before final issuance. Such rules would close a procedural gap, align the NFR process with the Act's broader goals, and reaffirm that "protection of human health and the environment" remains the controlling standard. They would also advance the Act's purpose "to restore, protect, and enhance the quality of the environment" and ensure that "adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b). Embedding transparency and participation in the NFR system would allow it to transform from an administrative closure tool into a vehicle for environmental justice and community restoration**,** ensuring that remediation decisions genuinely protect public health and support equitable redevelopment across Illinois.

5. Refine the Use of Environmental Land Use Controls

Section 58.17 authorizes the Board to promulgate rules governing Environmental Land Use Control ("ELUC") instruments that establishes "land use limitations or obligations on the use of real property when necessary to manage risk to human health or the environment arising from contamination left in place pursuant to the procedures set forth in Section 58.5." 415 ILCS 5/58.17. The statute further directs that such rules "shall include provisions addressing establishment, content, recording, duration, and enforcement of ELUCs." *Id*.

Though this provision allows for the possibility that some contamination may remain on-site following remediation under Section 58.5 or 35 Ill. Adm. Code 742, it requires assurance that residual contamination will not endanger nearby residents or ecosystems. *Id.* It also must be read in light of the Act's central goal of ensuring that the costs of pollution are borne by those that create the pollution. 415 ILCS 5/2(b). Accordingly, § 58.17 cannot be read to endorse indefinite reliance on institutional controls that leave contaminants in place and restrict beneficial redevelopment, thereby transferring the burden of pollution, and its economic and health consequences, onto surrounding communities and future generations. Moreover, section 27 of the Act requires that all Board regulations take into account "existing physical conditions, the character of the area involved, including the character of surrounding land uses." 415 ILCS 5/27(a). Read together, §§ 27 and 58.17 compel the Board to ensure that ELUC rules not only contain risk but also advance health-protective land reuse that considers social context.

The Board's current ELUC regulations in Part 742, Subpart J, formally define an ELUC as "an institutional control … used … to impose land use limitations or requirements related to environmental contamination." 35 Ill. Adm. Code § 742.1010(a). The rules also provide that "an

ELUC shall remain in effect in perpetuity," unless released or modified under strict conditions. 35 Ill. Adm. Code § 742.1010(c)(1). By restricting land uses "in perpetuity" ELUCs perpetuates static land-use patterns and constrain redevelopment potential, especially in EJ communities where long-term land restrictions can entrench disinvestment and shift the burden of contamination onto affected residents for generations—both in terms of the direct risks of remaining pollution and the economic harms of restricting redevelopment.

To align the rules with statutory purpose and Title VII's health-protective mandate, the Board should consider revising its rules to push cleanups away from reliance on institutional controls and toward active remediation and restoration. The Board should revise its ELUC regulations to:

1. **Prioritize full remediation and cleanup.** ELUCs should be permitted only where treatment or removal is technically infeasible or would create greater environmental harm. This would respect statutory directives to balance cleanup costs against demonstrate risks or to consider "technical practicability and economic reasonableness," while avoiding frameworks that leave community's with the burden of contamination remaining in place. *See, e.g.*, 415 ILCS 5/27(a).

2. **Integrate redevelopment and community benefit.** Rules should require evaluation of whether residual contamination or perpetual land-use restrictions could impede community-driven redevelopment. "Local characteristics" under § 27(a) should be interpreted as a basis for regulations that include considering community plans for productive reuse or trends that suggest land uses in the area are changing or could change, not merely the current owner's intended use, ensuring that cleanup decisions do not foreclose future beneficial development in EJ areas. *Id.*

A reformed ELUC framework should therefore promote complete actual cleanups, equitable redevelopment, and community-centered restoration, ensuring that pollution control does not come at the expense of long-term health or economic opportunity and that all costs of pollution are borne by those that cause it, not those communities forced to live amongst it.

D. Rulemaking Authority

The Board has an obligation to consider cumulative and disparate impacts whenever it adopts or revises substantive regulations. Indeed, coupled with the Illinois Civil Rights Act, the Board has a duty to ensure its current regulations and means of administering them are not resulting in discriminatory effects. *See supra* Section III. As referenced above, Section 27, mandates that the Board consider multiple contextual factors when adopting any substantive regulation. 415 ILCS 5/27(a). These required factors include:

> [E]xisting physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.

Id. Each of these terms inherently requires location-specific analysis as an examination of how cumulative and disparate impacts have shaped and continue to affect particular communities is critical to meeting the needs of those communities as defined by those communities.

From an EJ perspective, it is crucial to note that this list of factors should not be read as allowing overburdened communities to become sacrifice zones, where the presence of existing polluting sources justifies the addition of more pollution. While an area may be zoned for industrial use, that does not mean there are no people living there or living in areas zoned for other uses in the immediate vicinity. For example, the General Iron scrap metal shredder sought to locate within a zoned industrial corridor on a parcel directly across the street from homes, grocery stores and a public high school. Policymakers should demonstrate humility and deference to the people who live in a community when making judgments about the "character of the area."

The required analysis of physical conditions compels the Board to account for cumulative impacts in its rulemaking process. As far as cumulative impacts are concerned, the Board's mandate to consider "existing physical conditions" such as the "character of the area involved," the "character of surrounding land uses," and the "nature of existing air quality" inherently requires examining impacts that have already accumulated and those that will follow the regulation's adoption. This language embodies the purpose of a cumulative impact assessment, which is evaluating how new regulatory effects combine with past impacts to create reasonably foreseeable future impacts.

The language in the statute also compels the Board to consider disparate impacts, as looking at the character of the area involved necessarily requires looking at the people who live there and how a regulation will affect specific communities. The Board must account for situations where the implementation of a proposed rule would unfairly impact the "character of the area[s]," where it would be applied. For example, if a regulation covers a specific universe of facility types, the Board must look at where such facilities are located or are likely to be located and then examine the vulnerabilities and demographics of those communities.[57]

[57] Moreover, certain localities may face more severe environmental challenges than others, which could justify site-specific regulations also authorized under section 27. 415 ILCS 5/27(a).

Section 27(b) compels the Board to consider "whether the proposed rule has any adverse economic impact on the people of the State of Illinois." 415 ILCS 5/27(b). To properly assess potential "adverse economic impact[s]" in a manner that considers the actual "public" effected by a rule, any regulatory economic impacts analysis should:

1. Assess distributional impacts (i.e. how the proposed rule impacts wealthy or poor people differently);

2. Identify often overlooked economic impacts of pollution that communities bear (like hospital costs, lost days of work/school, etc.); and

3. Look at whether protected classes of people may bear economic impacts differently (i.e. consider that a dollar in marginal compliance costs for a large company may be appropriately weighed less than as a dollar in avoided health care costs for a lower-income person already burdened by pollution and who lacks of access to health care, etc.)

Ensuring that costs borne by the impacted community are fully accounted for in section 27(b) economic analyses is imperative to fulfill the Act's directives to "fully consider" the costs of pollution and ensure those costs are borne by the entities that cause them.[58]

In an order in this proceeding, the Board should commit to the consideration of cumulative impacts and disparate impacts and to perform economic analyses that account for costs borne by impacted communities in all future rulemakings.

E. Enforcement

Illinois law embeds equity considerations in the Board's authorities with respect to enforcement. In resolving cases under its various enforcement authorities, it must both order injunctive relief to stop or correct the violation and impose financial penalties based on statutory factors. 415 ILCS 5/33; 415 ILCS 5/42.

1. The Board's Power to Issue Injunctive Relief

Section 33 authorizes the Board to issue orders in enforcement actions that "include a direction to cease and desist from" violating the Act or Board regulations. 415 ILCS 5/33(b). In making such orders, the Board is to "take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, dischargers, or deposits involved." 415 ILCS 5/33(c). "Facts and circumstances" that the Board should consider include, "but [are] not limited to":

[58] *See* U.S. Env't Prot. Agency, *Guidance on Considering Environmental Justice During the Development of Regulatory Actions* (May 2015), https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf.

> [T]he character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people; the social and economic value of the pollution source; the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved; the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and any subsequent compliance.

Id.

These requirements implicate the same fundamental imperative as the broader consideration of "public health" discussed in various places above: the Board must consider the specific "people" whose "health, general welfare and physical property" has been injured or interfered with. Otherwise, the Board cannot meet its obligation to consider the "degree of injury to" or "interference with the protection of the health" of the people because different people are impacted by pollution in different ways. Where violations impose more pollution in an already burdened or vulnerable community, the degree to which that violation is interfering with the "protection of the health" is greater. Therefore, violations in an EJ area should be met with more intensive and proscriptive injunctive orders.

Overall, these considerations emphasize the public health and welfare and to understand how a violation has impacted the public health and welfare of given "people" necessitates an analysis of cumulative and disparate impacts. Importantly, the inclusion of economic and technical practicability does not permit the Board to put the needs of the economy over the public. Rather, the Board's obligation is to consider economic and technical factors, and what is ultimately found reasonable could change based on the disparate and cumulative impacts present.

2. EJ Considerations in the Board's Penalty-setting Authority

To meet the Act's command that the "adverse effects upon the environment are fully…borne by those who cause them," the Board must impose penalties that reflect the real-world "adverse effects" at issue. 415 ILCS 5/42(h). And section 42(h) empowers the Board to do just that.

First, section 42(h) directs the Board to set penalties that are at least equal to "the economic benefits … accrued by the respondent as a result of the violation." 415 ILCS 5/42(h). By removing the financial incentive to pollute, this provision enforces an equity principle: violators may not profit from conduct that externalizes health risks and environmental harms onto surrounding communities.[59] Setting a penalty floor that assures polluters do not profit by

[59] The only statutory exception to this economic benefit floor for penalties—where payment would cause "arbitrary or unreasonable financial hardship"—confirms that fairness, not convenience, defines the limit of leniency.

violating the law is an important part of fulfilling the Act's purpose that "adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/42(h). While necessary, setting a penalty that assures a violator does not save money by violating the law is not sufficient to ensure that the cost of pollution is not shifted to those already most affected by it.

Above that penalty floor, section 42(h) establishes a list of factors the Board is to consider in setting penalties. Most importantly, the Board must set penalties that reflect the "gravity of the violation." 415 ILCS 5/42(h)(1). In communities already experiencing cumulative and disparate environmental burdens—including burdens amplified and perpetuated by historic underenforcement of environmental laws in those communities, it must be recognized—the same violation of an environmental standard will often impose greater harm than in a less-burdened community. Violations in EJ areas, therefore, often justify a higher civil penalty to reflect that greater gravity. In other words, a violation of environmental laws that adds illegal pollution in a community that exhibits greater incidence of related health conditions or with less access to mitigation measures or health care should be considered as having greater "gravity" than if the same pollution were emitted elsewhere. Penalties must account for these contextual differences to ensure that enforcement outcomes reflect the real-world distribution of environmental and health impacts.

Subsection (h)(2) directs the Board to consider "the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act." 415 ILCS 5/42(h)(2). "Due diligence" cannot be read narrowly as submitting paperwork or procedural good faith; rather, it encompasses whether a violator took reasonable steps to prevent foreseeable harms and ensure compliance with environmental laws. In communities already overburdened by cumulative emissions or waste exposure, that duty of diligence requires heightened care. Failure to anticipate or mitigate foreseeable cumulative impacts demonstrates a lack of "due diligence" within the meaning of § 42(h)(2), justifying an aggravated penalty. Moreover, this provision is not limited to due diligence with respect to the specific violation at issue—if the violator has exhibited a less than diligent approach to complying with any provisions of the Act, the Board should impose a higher penalty. 415 ILCS 5/42(h)(2)(referencing "requirements of this Act and regulations thereunder" without limitation to the specific "violation," unlike other 42(h) subsections). Too often companies located in EJ areas exhibit longstanding neglect of their workers and neighbors in their approach to environmental protection and safety—violations by such companies must be met with higher penalties from the Board.

Subsection (h)(4) instructs the Board to weigh "the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act." 415 ILCS 5/42(h)(4). Deterrence here operates not only at the level of the individual violator but across similarly situated facilities and communities. If penalties are systematically

lower in areas already subject to heavier pollution burdens, deterrence fails and inequities are compounded. Furthermore, to address cumulative impacts in EJ communities, greater deterrence is needed when violations occur in areas where more polluters operate and more pollution is present. To "enhanc[e] voluntary compliance" system-wide, deterrence must reflect both the magnitude of risk and the vulnerability of the affected community, ensuring that polluters in EJ areas perceive greater deterrence from the enforcement system, which justifies higher penalties for violations in already overexposed areas.

Subsection (h)(5) calls for consideration of "the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent." 415 ILCS 5/42(h)(5). This factor inherently speaks to cumulative behavior and recurring harms. A pattern of adjudicated violations, even if individually minor, signals systemic disregard for environmental obligations and creates chronic exposure conditions. In addition, it is important to distinguish this factor from the due diligence factor above. The Act compels the Board to consider separately the quality of the violators' approach to compliance—its diligence—and the facts related to past violations that stemmed from that approach—its previously adjudicated violations.

Finally, subsection (h)(7) recognizes that lower penalties can be justified if "the respondent has agreed to undertake a 'supplemental environmental project,' … an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action … but which the respondent is not otherwise legally required to perform." 415 ILCS 5/42(h)(7). This clause offers a direct mechanism to address cumulative and disparate impacts: supplemental environmental projects, which can be designed to remediate harms borne disproportionately by affected communities, strengthen local resilience, or reduce future exposure. CEJN recognizes and welcomes that IEPA and the Attorney General's office have announced policies to emphasize and facilitate community-centered SEPs as part of their EJ efforts.[60] Those are important policies and there are examples of SEPs that have meaningfully addressed cumulative and disparate impacts. However, the Board should view § 42(h)(7) as a statutory vehicle for restorative enforcement, pushing IEPA and the Attorney General's office to further channel penalties into community-based remedies that advance environmental justice in direct response to specific violations that harm vulnerable communities. In doing so, the Board, IEPA, and the Attorney General's office should be facilitating and prioritizing SEPs that come from the impacted community and deliver intersectional benefits to the impacted community, such as including local employment opportunities to implement habitat restoration, home improvement or other public health programs funded with SEP monies.

[60] Ill. Envtl. Prot. Agency, *Environmental Justice (EJ) Policy*, https://epa.illinois.gov/topics/environmental-justice/ej-policy.html; Office of the Ill. Att'y Gen., *Attorney General Raoul & Coalition Issue Guidance Highlighting Need for Environmental Justice Initiatives* (June 17, 2025), https://illinoisattorneygeneral.gov/news/story/attorney-general-raoul-coalition-issue-guidance-highlighting-need-for-environmental-justice-initiatives-6-17-25.

Across Titles VIII and XII, the Act makes clear that enforcement is an instrument of public-health protection and environmental equity. Each enforcement mechanism, whether administrative, civil, or criminal, turns on whether conduct "creates a danger to the public health or the environment," reflecting the Legislature's intent that violations be measured by their social and cumulative impact, not only their technical form. 415 ILCS 5/42–45, 44.1. And most fundamentally, ensuring that EJ is at the center of the Board's approach to its role as enforcement adjudicator is crucial to manifest the Act's purpose that "adverse effects upon the environment are … borne by those who cause them." 415 ILCS 5/2(b).

VI. Public Participation, Accessibility, and Transparency

The Board, the Office of the Attorney General, and IEPA all deserve recognition for the significant progress already made toward improving procedural equity and accessibility in environmental decision-making.[61] The Attorney General's detailed proposed amendments in this docket provide an excellent foundation for codifying virtual participation, language access, and transparency requirements within the Board's procedural rules.[62] Likewise, the IEPA's revised Public Participation Policy—developed as a requirement of the IRA referenced above—offers a strong practical model for equitable engagement—particularly its multilingual notice practices, hybrid meeting procedures, and community liaison provisions.[63] The Board should look to that policy as a resource as it finalizes its own reforms. Building on this groundwork, the following targeted recommendations refine the efforts already advanced by the Attorney General and IEPA to ensure these commitments become clear, enforceable, and community-centered.

A. Public Notice

The Board publishes hearing details in newspapers and online under 415 ILCS 5/28(a) and 35 Ill. Adm. Code 102.416. 415 ILCS 5/28(a); 35 Ill. Adm. Code 102.416. CEJN recommends the following improvements:

- Expand notice practices consistent with IEPA's Enhanced Public Participation Plan and the Attorney General's proposed amendments by providing multilingual summaries of hearing notices in prevalent non-English languages for the affected area.[64]

[61] *See* Comment of the Ill. Att'y Gen. for the People of the State of Ill., *In re Bd. Consideration of Env't Just. in Bd. Proceedings*, R25-18 (Ill. Pollution Control Bd. Feb. 24, 2025) [hereinafter AG Feb. 2025 Comments]; Comment of the Ill. Att'y Gen. for the People of the State of Ill., *In re Bd. Consideration of Env't Just. in Bd. Proceedings*, R25-18 (Ill. Pollution Control Bd. Aug. 27, 2025) [hereinafter AG Aug. 2025 Comments].; Comment of the Ill. Env't Prot. Agency, *In re Bd. Consideration of Env't Just. in Bd. Proceedings*, R25-18 (Ill. Pollution Control Bd. Feb. 10, 2025) [hereinafter IEPA Feb. 2025 Comments].

[62] *See* AG Feb. 2025 Comments; AG Aug. 2025 Comments.

[63] Ill. Envtl. Prot. Agency, *Enhanced Public Participation Plan* (rev. 2024), https://epa.illinois.gov/topics/environmental-justice/ejppp/enhanced-public-participation-plan.html.

[64] *See Id;* AG Feb. 2025 Comments; AG Aug. 2025 Comments.

- Use targeted community outreach, including direct mailings to census block groups flagged as EJ areas, individual outreach to local civic, religious and community organizations, community radio announcements, and postings in local centers and libraries.

B. Virtual and Hybrid Participation

Allowing videoconference and telephonic participation is consistent with the Open Meetings Act and expands accessibility for residents with limited transportation or mobility or with other concerns or limitations related to in-person attendance. CEJN recognizes that the Board and IEPA gained significant experience in this regard during the COVID-19 pandemic and recommends that the Board continue to use technology to facilitate public participation in the following ways:

- Adopt standards aligned in the Attorney General's proposed improvements to section 101.110(d) and section 101.600(b) from its February 24 and August 27, 2025 filings in this matter, thereby formally permitting virtual testimony, public comment, and sign-in.[65]
- Coordinate with DoIT to select a platform (Zoom, Webex, Teams) that ensures public access, captioning, and recording retention. CEJN notes that members of the public have had immense difficulty accessing past public meetings run by state agencies on the Webex platform, including particular issues with signing on from mobile devices, which some community members rely on for internet access.
- Require real-time captioning for all streamed meetings and post recordings and transcripts to the Board's website soon after they occur.
- Collect participation data (number of virtual attendees, use of captioning, remote testimony) for inclusion in annual reporting metrics.

Permitting full and flexible participation over remote platforms is particularly crucial to enable participation in EJ communities in the current political moment, when in-person attendance at public meetings poses dire risks of federal immigration enforcement.

C. Interpretation and Language Services

The Board provides interpreters on request, but sometimes only upon filing a formal motion. CEJN appreciates the availability of translation and recommends that the Board:

- Codify translation and interpretation obligations directly in procedural rules, consistent with the Attorney General's proposed definitions in section 101.202 and amendments to section 101.600.[66]

[65] *Id*.
[66] *See* AG Feb. 2025 Comments; AG Aug. 2025 Comments.

- Implement the specific practices and general approaches embodied in IEPA's Language Access Plan,[67] which was developed with public input.
- Require interpreter services and translated written materials for hearings likely to affect limited-English-proficient communities, without requiring a formal motion to the hearing officer. This ensures that the duty to provide language access rests with the agency, not communities with limited legal or financial resources.
- Extend these requirements of interpreter services and translated written materials to proceedings of IEPA and local siting authorities that the Board reviews. This is particularly warranted in the local siting context, where section 40.1 instructs the Board to assess whether a local siting authority's proceedings were "fundamentally fair" and where the legislature has recently amended section 39.2 to provide for language access in that process.[68]
- Develop a vendor roster for interpreters and translators across commonly spoken languages and establish funding for proactive translation of major rulemaking materials.

D. Transparency, Data Access and Continuous Improvement

CEJN recommends that the Board adopt the following as means to clearly track and communicate information about implementation of its EJ commitments under the Act and compliance with the Illinois Civil Rights Act:

- Create a centralized EJ Portal on the Board's website that contains EJ screening maps the Board ultimately deems relevant to its decision-making, relevant docket links, and archived meeting recordings.[69]
- Publish an **"**EJ Consideration Statement" with each final rulemaking and other Board decision, summarizing how EJ factors and community input were weighed in the outcome.
- Issue an annual or biennial EJ Implementation Report summarizing the Board's efforts to address EJ issues, discussing collected metrics such as interpreter use, virtual participation, and documenting instances where EJ considerations influenced outcomes in Board proceedings.
- For ongoing consultation, the Board should coordinate with the existing Statewide Environmental Justice Commission or otherwise convene a standing EJ advisory body.[70]
- Continue periodic review of procedural rules with community organizations and technical experts to identify additional accessibility improvements.

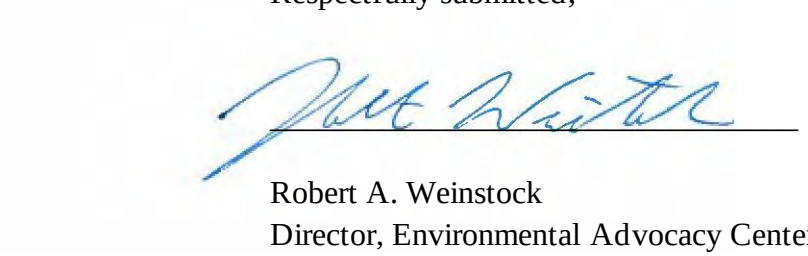
[67] https://epa.illinois.gov/about-us/accessibility/language-access/language-access-plan.html
[68] 415 ILCS 5/40.1(a); 415 ILCS 5/39.2 (as amended by P.A. 104-223, eff. Jan. 1, 2026).
[69] *See, e.g.*, Illinois Environmental Protection Agency (Ill. EPA), *Environmental Justice (EJ) Policy* (rev. Oct. 2021), https://epa.illinois.gov/topics/environmental-justice/ej-policy.html.
[70] *See* Illinois Environmental Protection Agency, *Commission on Environmental Justice* (updated [date unknown]), https://epa.illinois.gov/topics/environmental-justice/commission.html.

VII. Conclusion

In opening this proceeding, the Board has given itself an opportunity to align Illinois's environmental governance with the constitutional right to a healthful environment and the principles of equity embedded throughout the Act. The tools are already there: existing statutory mandates to protect public health and welfare, prevent discriminatory effects, and ensure meaningful participation provide the legal and moral foundation for centering environmental justice in the Board's work. By applying these provisions to require consideration of cumulative and disparate impacts in every rulemaking, permitting, and enforcement action, the Board can continue its laudable work toward building more transparent, equitable, and inclusive environmental decision-making processes. CEJN appreciates the opportunity to submit this comment, looks forward to continuing to engage in this and other Board proceedings, and thanks the Board for its efforts.

Dated: October 31, 2025

Respectfully submitted,



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a Chicago Environmental Justice Network member organization

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

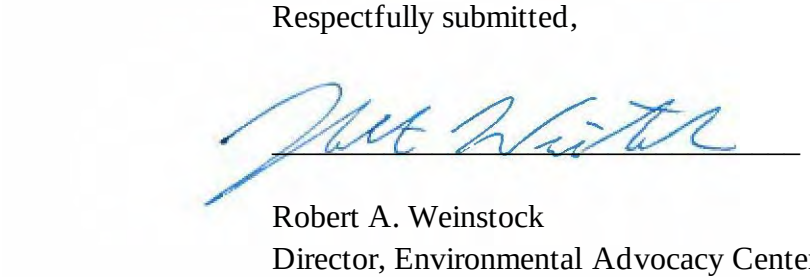
IN THE MATTER OF:	)	
	)	
BOARD CONSIDERATION OF	)	R 25-18
ENVIRONMENTAL JUSTICE IN BOARD PROCEEDINGS	)	(Rulemaking – Procedural)
	)	

APPEARANCE

I hereby file my appearance in this proceeding on behalf of the Chicago Environmental Justice Network.

Dated: October 31, 2025

Respectfully submitted,



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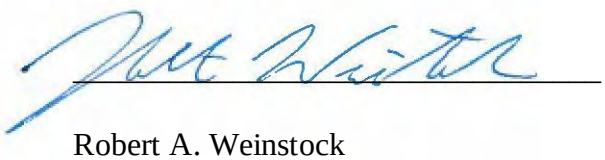
CERTIFICATE OF SERVICE

The undersigned, Robert Weinstock, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, *available at* https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=17537, a true and correct copy of the **Written Comments and Responses to Board Questions of the Chicago Environmental Justice Network** and the **Appearance of Robert A. Weinstock**, before 4:30 p.m. Central Time on October 31, 2025. The number of pages in the email transmission is 43 pages.

Dated: October 31, 2025

Respectfully submitted,



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