

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 (“Board”) **COMMENTS OF ENVIRONMENTAL LAW & POLICY CENTER**, copies of which are served on you along with this notice.

Dated: October 31, 2025

Respectfully Submitted,



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COMMENTS OF ENVIRONMENTAL LAW & POLICY CENTER

Environmental Law & Policy Center (“ELPC”) provides these comments in response to the September 18, 2025 Order of the Illinois Pollution Control Board (“Board”) regarding the Board’s consideration of environmental justice. The Board has constitutional and statutory authority to evaluate and address environmental justice concerns across the range of the Board’s work. ELPC respectfully urges the Board to meet that opportunity and responsibility.

Certain communities—predominately lower income and communities of color—have been disproportionately exposed to environmental pollution from industrial activities, waste facilities, and mobile sources of pollution and overburdened by negative health outcomes from such pollution. The environmental impacts of an individual source of pollution should not be assessed in isolation. Instead, cumulative impacts should be considered to more fully take into account how all pollution sources and environmental stressors in a community combine to affect the residents and can result in major health impacts. For example, exposure to air pollution can “increase chronic illnesses like heart and lung diseases” and “chronic disease is a leading driver of Chicago’s nine-year life expectancy gap between Black and white residents.”¹

¹ City of Chicago, *Air Quality and Health Report*, at 3 (2020), available at https://www.chicago.gov/content/dam/city/depts/cdph/statistics_and_reports/Air_Quality_Health_doc_FI_NALv4.pdf.

ELPC urges the Board to consider environmental justice when accounting for the cumulative impacts that sources of pollution can have on already-overburdened communities in the Board's decision-making processes.

I. The Board Has Sufficient Legal Authority To Consider Environmental Justice Concerns.

As a threshold matter, the Board has asked participants in this rulemaking whether “a statutory mandate—similar to that found in Section 22.59 [415 ILCS 5/22.59]—would be necessary in order to add environmental justice considerations to specific Board regulations.” The answer to that question is no. Existing Illinois law—Article XI of the Illinois Constitution, the Illinois Environmental Protection Act, and the Illinois Civil Rights Act—already provides legal authority for the Board to consider environmental justice concerns.

A. Under Article XI of the Illinois Constitution, Providing and Maintaining a Healthful Environment for all Illinoisans Is the Public Policy of Our State.

The Illinois Attorney General's comments recognize that environmental justice concepts are embedded in Article XI of the Illinois Constitution, which declares:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Ill. Const. art. XI, § 1.

The Board can and should consider environmental justice in order to provide *all* Illinois residents with a healthful environment. The Board, acting through its authority delegated by the Illinois General Assembly, *see* 415 ICLS 5/5, should implement and enforce the State's public policy to provide and maintain a healthful environment for the benefit of this and future generations. Ill. Const. art. XI, § 1; *see also Vill. of Carpentersville v. Pollution Control Bd.*, 553 N.E.2d 362, 366 (1990).

Article XI was adopted by the Sixth Illinois Constitutional Convention on September 3, 1970, was ratified by the people of Illinois on December 15, 1970, and became effective on July 1, 1971. The 1970 Illinois Constitution, including Article XI, represented “the first major comprehensive revision in Illinois’ organic law in 100 years,” which was “progressively designed to meet the needs of the 20th and 21st centuries” through “a stable and permanent instrument, deeply rooted in Illinois history.” *See* Samuel W. Witwer, “Introduction to the 1970 Illinois Constitution,” published on the Illinois General Assembly’s website at <https://www.ilga.gov/commission/lru/Intro.pdf>. The record of the Constitutional Convention demonstrates that Article XI was intended to prioritize environmental protection and place the Illinois Government in a leading role in the fight against pollution. *See* Sixth Illinois Constitutional Convention General Government Committee Proposal Number 16 (“General Government Committee”) at 696–700. Through Article XI, the people of Illinois enshrined in their Constitution a “mandate” that “[t]he General Assembly shall provide by law for the implementation and enforcement of” “[t]he public policy . . . to provide and maintain a healthful environment for the benefit of this and future generations.” Ill. Const. art. XI, § 1; *see also* Sixth Illinois Constitutional Convention Verbatim Transcript of July 22, 1970 (“Convention Transcript”) at 2991.

The drafters of Article XI believed that the General Assembly had taken a major step towards providing and maintaining a healthful environment when it passed the Illinois Environmental Protection Act and created the Board. *See* Convention Transcript at 2993. As part of that Act, the General Assembly delegated part of its duty to provide and maintain a healthful environment to the Board. *See* 415 ILCS 5/5; *see also* *Town & Country Utilities, Inc. v. Illinois Pollution Control Bd.*, 225 Ill. 2d 103, 866 N.E.2d 227, 229–30 (2007). The Illinois Supreme Court has stated that the Board’s authority stems from Article XI. *See id.*

Article XI's drafters said that a healthful environment is the "quality of physical environment which a reasonable man would select for himself were a free choice available." *See* General Government Committee at 701. For too many years, pollution sources have concentrated in low-income and minority communities, exposing the residents to heightened levels of health harms, and preventing those communities from living in the quality of physical environment contemplated as a "healthful environment." Regulators have not adequately accounted for and protected those residents' right to a healthful environment.

The term healthful environment was intended to be "flexible" so that it adapts to the environmental problems of the time. *See* General Government Committee at 697–98. Even if the drafters of Article XI at the time did not have the proper terminology to describe environmental justice and its importance for providing a healthful environment, some of the drafters understood that certain areas of Illinois were disproportionately impacted by pollution and would benefit from Article XI's right to a healthful environment. Convention Transcript at 2997 ("For example, a whole area in south Chicago is affected by the noxious fumes from the steel mills"); *id.* at 3014 (delegate discussing the importance of Article XI "in light of the fact that my district—or at least one section of my district—is a section of the city which is highly polluted because of the activity of Commonwealth Edison, Midway Airport, and the Clearing Industrial District"). The Board should meet its authority to "provide and maintain a healthful environment" for *all* Illinois residents by fully considering and taking into account cumulative environmental impacts in environmental justice communities.

B. The Illinois Environmental Protection Act and Illinois Civil Rights Act Authorize the Board to Consider Environmental Justice.

The Chicago Environmental Justice Network's and the Illinois Attorney General's comments explain that the Illinois Environmental Protection Act ("Act") and the Illinois Civil Rights Act authorize the Board to consider environmental justice in all of its rules and decisions.

The Environmental Protection Act directs the Board to "determine, define, and implement the environmental control standards applicable in the State of Illinois." 415 ILCS 5/5(b). The Act repeatedly calls for those environmental control standards to be set based on "public health and the environment" *See e.g.*, 415 ILCS 5/9.5(1)(d) (the Board "shall adopt regulations establishing a program to control toxic contaminants released into the air in a manner that protects the public health and the environment"); 415 ILCS 5/22(g) (the Board may adopt regulations prohibiting "the disposal of certain hazardous wastes in sanitary landfills where . . . it is determined by the Board that the long-term impacts to public health and the environment are such that land burial should not be allowed."). The Board's authority to consider "public health and the environment" can and should include cumulative environmental impacts on overburdened communities.

Further, in the context of air and water pollution, the Act specifically calls for the Board to promulgate regulations that prescribe standards for the issuance of permits for "any equipment, facility, vehicle, vessel or aircraft capable of causing *or contributing to*" air or water pollution. 415 ILCS 5/10(A)(c); 415 ILCS 5/13(a)(3) (emphasis added). This "contributing to" language clearly contemplates cumulative impact considerations. While each individual source may not by itself cause a major increase in pollution in isolation, the source further contributes to the pollution in that community. Therefore, the Board can and should take into account the cumulative impacts of each air and water pollution source in a community.

The Illinois Civil Rights Act prohibits units of government from utilizing “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(a)(2). As detailed in the comments submitted by the Illinois Attorney General’s Office, Illinois has a history of environmental injustice due to a variety of factors including the concentration of toxic industrial pollution in low-income communities and communities of color.² This has led to disparate health impacts for communities of color—such as higher asthma hospitalization rates³ and higher cancer mortality rates⁴ for Black Illinois residents. Under the Illinois Civil Rights Act, the Board should consider approaches for its rules to avoid causing communities to be disparately impacted by environmental pollution due to their race, color, national origin, or gender. *See, e.g., Jackson v. Cerpa*, 696 F. Supp. 2d 962, 964 (N.D. Ill. 2010) (citing *Ill. Native Am. Bar Ass’n v. Univ. of Ill.*, 368 Ill. App. 3d 321, 856 N.E.2d 460 (1st Dist. 2006) (holding that the Illinois Civil Rights Act prohibits disparate impact discrimination). To do so, the Board should affirmatively consider environmental justice and cumulative impacts.

II. Considering Environmental Justice Can Directly Benefit Overlooked Demographics.

The Board asked commenters to provide concrete examples of overlooked demographics in this state in matters concerning environmental justice. Order at 4. Environmental justice is a

² See Comments Submitted by the Illinois Attorney General’s Office at 12–17.

³ Illinois Department of Public Health, Division of Patient Safety and Quality, *Hospital Discharge 2016-2019*, <https://dph.illinois.gov/content/dam/soi/en/web/idph/files/publications/asthma-trends-hospital-discharge-data-2016-2019.pdf>

⁴ Illinois Department of Human Services, *Health and Human Services Task Force Health Outcomes Disparities Report 2024*, at 12, available at https://www.ilga.gov/documents/reports/ReportsSubmitted/4867RSGAEmail10314RSGAAttachDHS_IL_HealthDisparitiesReport_Memo%2020240328.pdf.

statewide issue. The Board should consider how environmental justice impacts downstate communities and communities that are particularly vulnerable to the impacts of pollution.

A. Downstate Environmental Justice Impacts

Environmental justice communities are located throughout Illinois as shown by Figures 1, 2, and 3.⁵ Figure 1 shows the Superfund Proximity Environmental Justice Index, which accounts for a community's proximity to a superfund site and socioeconomic indicators and shows that many downstate communities are disproportionately located near Superfund sites. Figure 2 shows the Drinking Water Non-compliance Environmental Justice Index, which accounts for the community's drinking water compliance rates and socioeconomic indicators; many downstate communities have disproportionately high rates of drinking water non-compliance. Figure 3 shows the Illinois Solar for All's Environmental Justice Map of both designated and self-designated Environmental Justice Communities, which are located throughout the state.

⁵ Figures 1 and 2 were derived from an archived version of the U.S. EPA's EJ Screening Tool, available at <https://pedp-ejscreen.azurewebsites.net/>. The Environmental Justice Indexes in Figures 1 and 2 take in account both socioeconomic indicators and environmental burden indicators.

Figure 1: Map from EJ Screen Showing Superfund Site Proximity

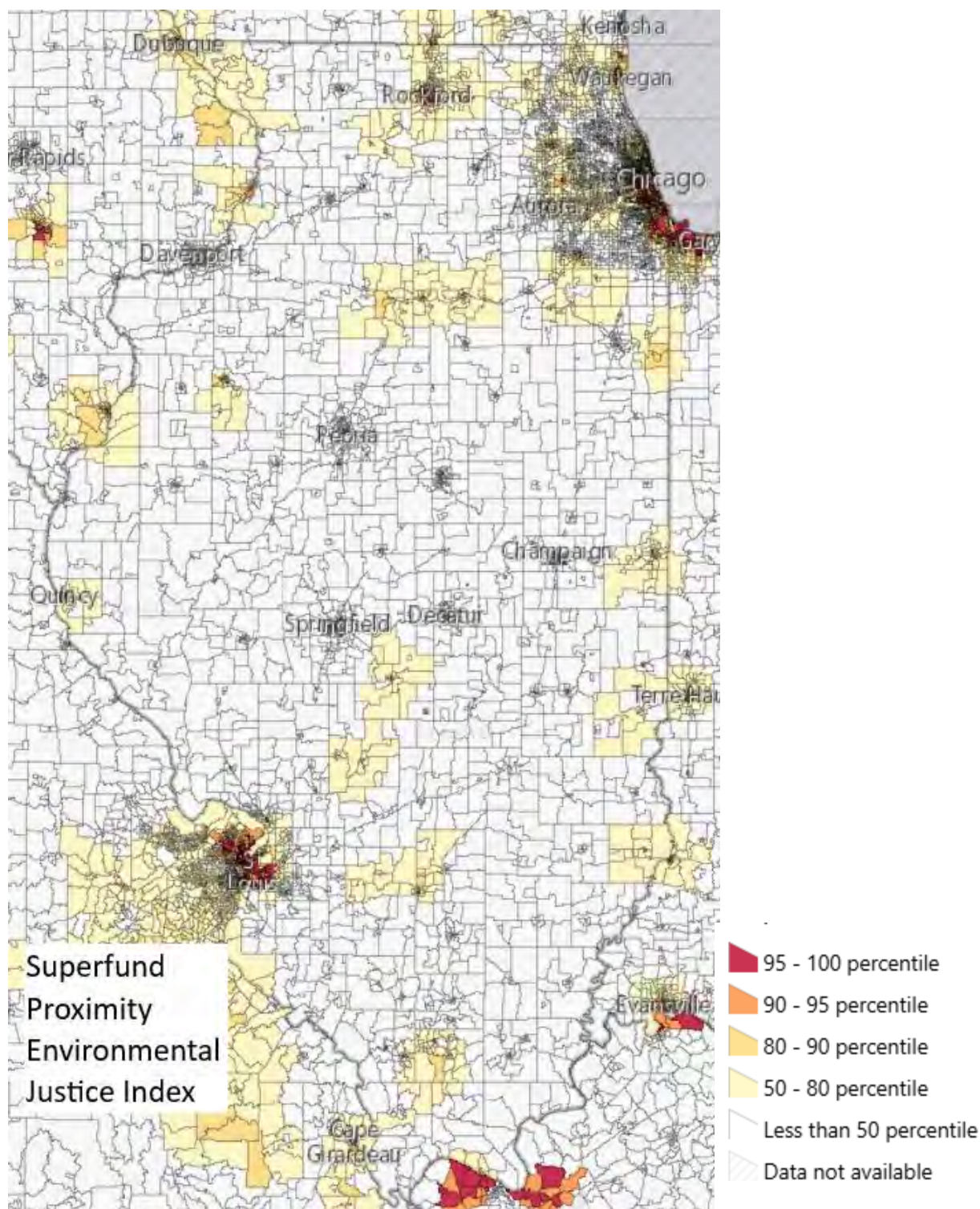


Figure 1: Map from EJ Screen Showing Drinking Water Non-Compliance

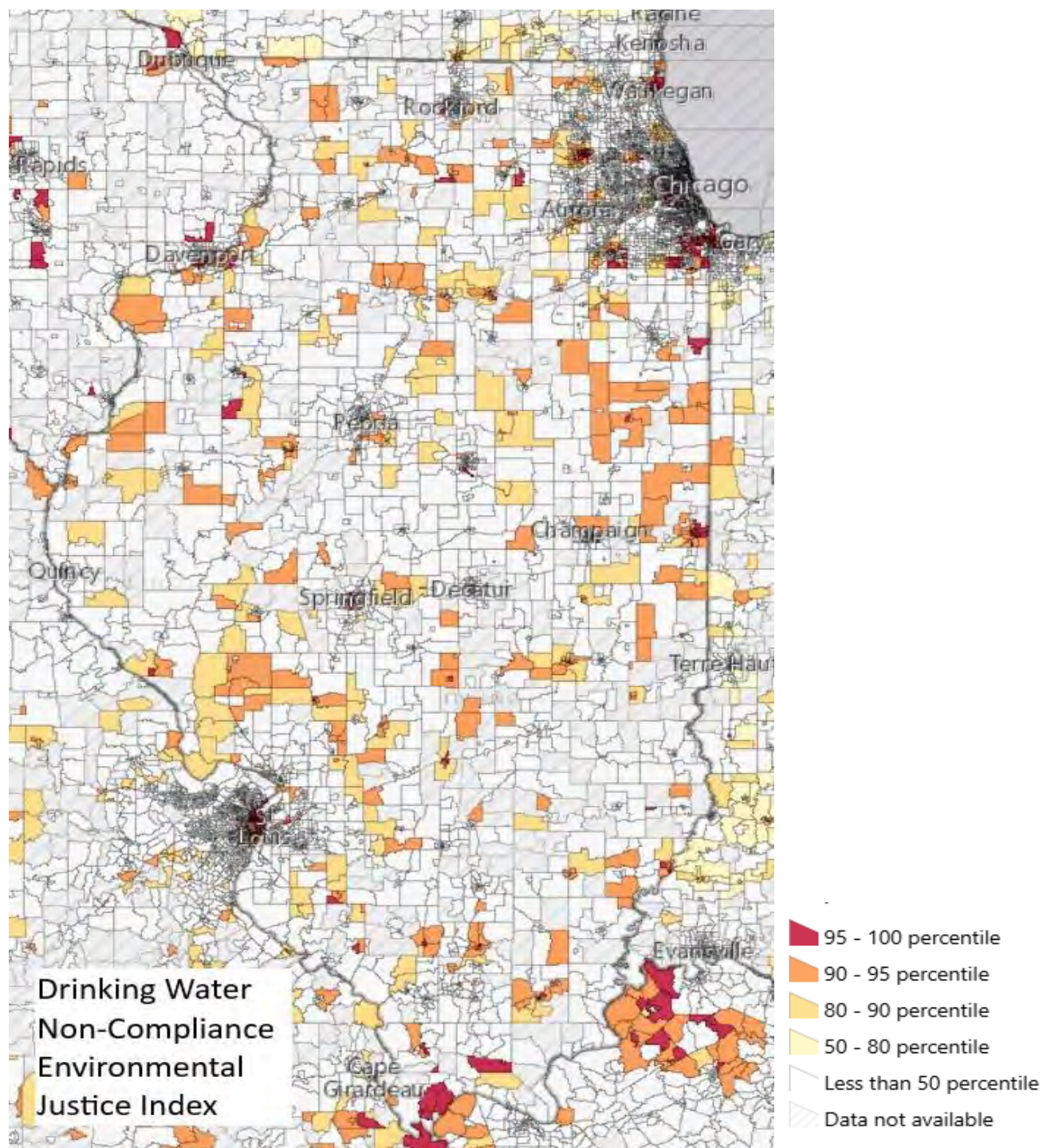
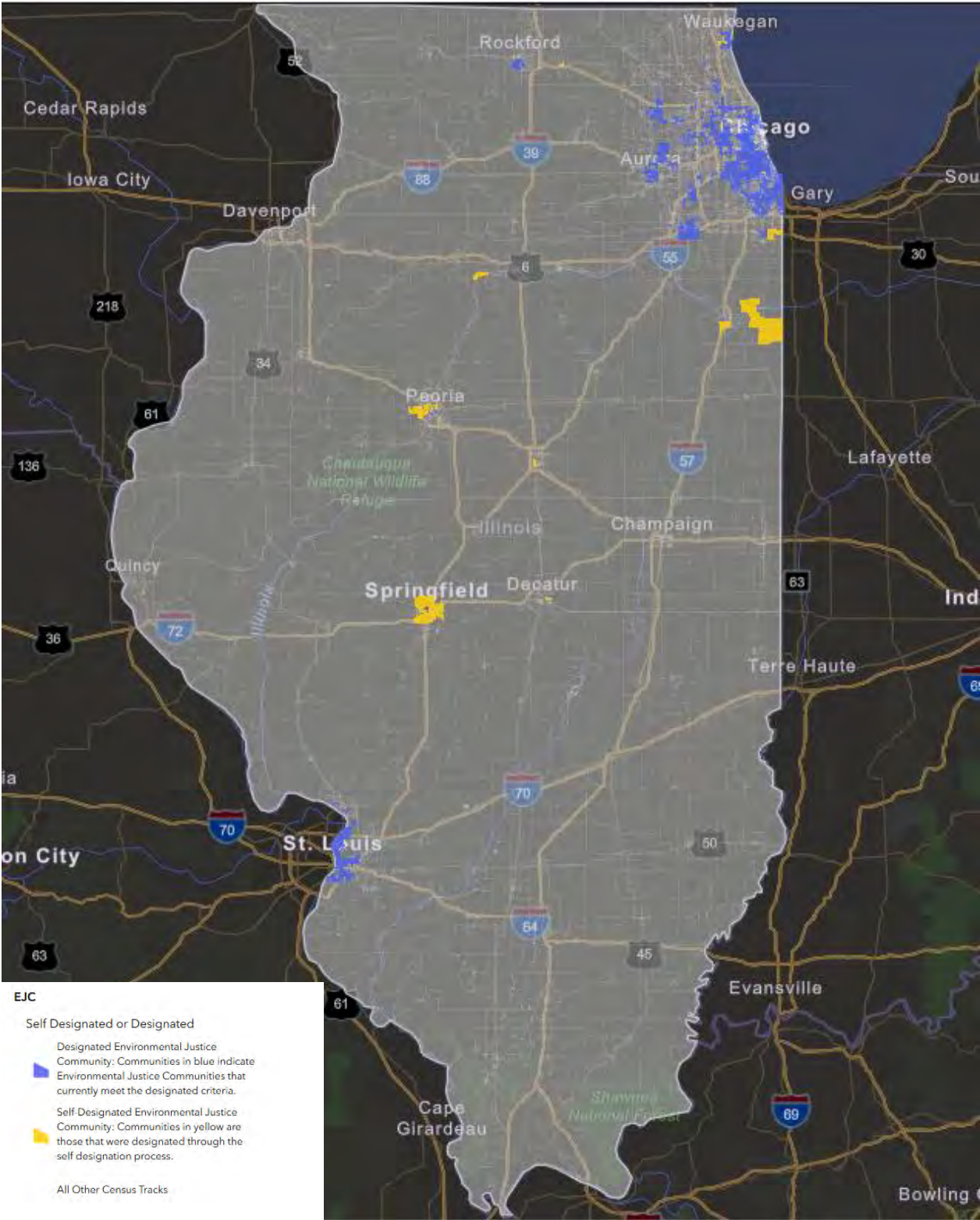


Figure 3: Map from Illinois Solar for All of Environmental Justice Communities



B. Children Are Particularly Vulnerable To Diesel Pollution

Further, the Board should consider that children are particularly vulnerable to the health impacts of diesel emissions. The vast majority of the 23,000 school buses in Illinois are fueled by diesel and are ridden by nearly 1 million school children,⁶ which exposes them to particular emissions that impede lung development and exacerbate asthma.⁷ Pre-schoolers on buses (such as Head Start students) may develop asthma and wheezing from early exposure to ozone at levels well below the current U.S. EPA standard.⁸ Switching to electric buses better protects children's health.

III. The Board Should Do More to Consider Environmental Justice in Its Rules.

As part of this Order, the Board asked commenters whether it should “prioritize certain subject matter areas when amending its rules to include environmental justice considerations.” Order at 4. The Board's work covers a broad span of environmental issues in Illinois and ELPC hopes that this proceeding will be a starting point for the Board to dive more deeply into specific rules and regulations.

While ELPC would welcome additional opportunity to evaluate and provide input on further proceedings regarding consideration of environmental justice in specific rules, regulations, or other work of the Board, after initial review of the Board rules since the issuance of this Order, ELPC has identified and provides preliminary input below regarding four types of Board rules or actions in which the Board can and should consider environmental justice. Many of the Boards'

⁶ See 2023-2024 SchoolBusFleet.com (December 2024) at 12.

⁷ See, e.g., Sara D. Adar, *et al.*, *Adopting Clean Fuels and Technologies on School Buses. Pollution and Health Impacts in Children*, 191 Am. J. of Respiratory and Critical Care Med. 12 (2015).

⁸ *Early-life ozone pollution linked to higher asthma risk in young kids*, JAMA Network Open (April 2025).

current rules can and should be interpreted as requiring or allowing consideration of environmental justice as written without needing to be amended.

A. Permit Conditions

A wide variety of industrial activities require permits set to environmental standards determined by the Board, issued by the Illinois EPA, and sometimes reviewed by the Board.

Some Board rules state that the Illinois EPA should impose permit conditions that “assure compliance with” or “accomplish the purposes of” the Illinois Environmental Protection Act and regulations and standards adopted by the Board pursuant to the Act. *See, e.g.*, 35 IAC § 201.156 (Clean Air Act Construction Permits); 35 IAC § 201.161 (Clean Air Act Operating Permits); 35 IAC § 309.243 (Water Permits); Section 405.101 (Mining Permits); 35 IAC § 502.304 (Agricultural Waste Permits); 35 IAC § 702.160 (RCRA and Underground Injection Control Well Permits); 35 IAC § 807.206 (Solid Waste Permits). As explained above, the Act requires consideration of “public health and the environment” which can and should include environmental justice and cumulative impacts.

Further, Section 703.241(a)(2) states that “[e]ach RCRA permit issued . . . must contain terms and conditions that the [Illinois EPA] determines are *necessary to adequately protect human health and the environment.*” 35 IAC § 703.241(a)(2) (italics added). The Board can and should consider environmental justice and cumulative impacts when determining whether a permit’s conditions will “adequately protect human health.”

B. Variances

The Board should consider environmental justice factors when it considers requested variances. Allowing polluters to exceed permit limits and conditions could further exacerbate environmental harms.

If the Board grants a variance it “may impose such conditions as the policies of the Act may require.” 35 IAC § 104.244. Because the Act requires the Board to consider “public health and the environment” throughout its decision-making, if the Board grants any variances, it can and should consider conditions necessary to minimize cumulative pollution impacts.

C. Civil Penalties

The Board’s current civil penalty rule gives it the authority to consider environmental justice when issuing penalties. The rule states that “civil penalties will be determined under [415 ILCS 5/33(c), 42].” 35 IAC § 103.502. Section 33(c) states that when making its determinations the “Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to” 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.” 415 ILCS 5/33(c)(iii). This language gives Board explicit authority to consider the characteristics of the area in which a polluting source is located. The Board can and should find that polluting sources located in already-overburdened communities warrant higher civil penalties in appropriate cases.

Section 42(h)(1) states that the Board may consider the “the duration and gravity of the violation” as a mitigating or aggravating factor in its civil penalty determination. 415 ILCS 5/42(h). This language allows the Board to consider cumulative impacts and environmental justice. Violating a pollution standard in an already overburdened community suffering from disparate health impacts has much graver consequences than a typical violation.

D. Siting

The Board should consider strengthening current siting regulations to more explicitly require evaluation of public health, environmental justice, and cumulative impacts. *See, e.g.*, 35 IAC Part 107 (Petition to Review Pollution Control Facility Siting Decisions); 35 IAC § 501.402

(Location of New Livestock Management Facilities and Waste-Handling Facilities); 35 IAC § 730.162 (Minimum Criteria for Siting Class I Hazardous Waste Injection Wells); 35 IAC § 730.183 (Minimum Criteria for Siting Class VI Wells); 35 IAC § 811.102 (Location Standards for New Municipal Solid Waste Landfills); 35 IAC § 811.302 (Facility Location for Putrescible and Chemical Waste Landfills); 35 IAC § 817.309 (Facility Location for Steel and Foundry Industrial Potentially Usable Waste Landfills); 35 IAC § 830.203 (Location Standards for Landscape Waste Compost Facilities); 35 IAC § 845.300 (Location Restrictions for CCR Surface Impoundments).

Conclusion

For the reasons explained above, under existing Illinois law, the Board can and should incorporate environmental justice concerns into its decision-making process. ELPC encourages the Board to continue advancing this important issue.

Dated: October 31, 2025

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned, Daniel Abrams, 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 **COMMENTS OF ENVIRONMENTAL LAW & POLICY CENTER**, before 5 p.m. Central Time on October 31, 2025. The number of pages in the email transmission is 19 pages.

Dated: October 31, 2025

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Dan Abrams', is written over a horizontal line.

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