

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R25-18
BOARD CONSIDERATION OF)	(Rulemaking – Procedural)
ENVIRONMENTAL JUSTICE IN)	
BOARD PROCEEDINGS)	

NOTICE OF FILING

TO: Don A. Brown, Clerk
Illinois Pollution Control Board
60 East Van Buren Street
Suite 630
Chicago, Illinois 60605

See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board a COMMENT SUBMITTED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you along with this notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Andrew Armstrong
Andrew Armstrong
Chief Legal Counsel
Division of Legal Counsel

DATED: February 10, 2025

2520 W. Iles Ave.
P. O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
andrew.armstrong@illinois.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R25-18
BOARD CONSIDERATION OF)	(Rulemaking – Procedural)
ENVIRONMENTAL JUSTICE IN)	
BOARD PROCEEDINGS)	

APPEARANCE

The undersigned hereby enters his appearance as an attorney for the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Andrew Armstrong
Andrew Armstrong
Chief Legal Counsel
Division of Legal Counsel

DATED: February 10, 2025

2520 W. Iles Ave.
P. O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
andrew.armstrong@illinois.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R25-18
BOARD CONSIDERATION OF)	(Rulemaking – Procedural)
ENVIRONMENTAL JUSTICE IN)	
BOARD PROCEEDINGS)	

**COMMENT SUBMITTED BY
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by its attorneys, and hereby submits its comments concerning the Illinois Pollution Control Board’s (“Board”) August 22, 2024 order opening the above-captioned docket to explore the creation of a Board procedural rule to provide guidance to the Board when considering environmental justice issues, including the selection of environmental justice screening tools for identifying areas of environmental justice concern, in its proceedings. For the reasons stated below, Illinois EPA requests that the Board hold this docket open for an additional period of at least six (6) months, until at least August 22, 2025, to account for the possibility of new legislation during the Illinois General Assembly’s 2025 Spring Session, and for related stakeholder discussions.

The Agency appreciates the Board’s interest in adopting rules for consideration of environmental justice issues in its proceedings. Environmental justice concepts are embedded in a variety of State and federal laws, so it is appropriate for the Board to formally consider their application in its proceedings. Article XI of the Illinois Constitution establishes that “each person” in Illinois, no matter their status, has the right to a healthful environment. Sections 9 and 12 of the Illinois Environmental Protection Act prohibit acts that cause or tend to cause air pollution and water pollution, “either alone or in combination with . . . other sources,” recognizing the cumulative impact of multiple sources of pollution. 415 ILCS 5/9 and 12 (2022).

Federal and State civil rights laws prohibit the Agency and other recipients of public funding from discrimination on the basis of race, color, national origin, and gender, including activities that have the effect of subjecting the individuals they serve to such discrimination. *See, e.g.*, 40 C.F.R. § 7.35; 740 ILCS 23/5 (2022). Based on previous alleged violations of federal and State civil rights laws, the Agency has entered into three settlement agreements with the United States Environmental Protection Agency, in 2005, 2013, and 2024, which the Agency continues to implement.¹ Collectively, these agreements reflect Agency actions over the past two decades to, among other things, establish its own Environmental Justice Policy and Enhanced Public Participation Plan, and to incorporate environmental justice considerations into its programs. These efforts have included conducting enhanced public outreach and implementing enhancements to its permit review process in some transactions located in areas of environmental justice concern.

Moreover, in recent years, stakeholders representing both communities of environmental justice concern and regulated entities have supported various proposed State legislation seeking to further define the Agency's consideration of environmental justice in its decisionmaking. Such bills necessarily have included criteria for identifying areas of environmental justice concern. The Agency expects that stakeholders will continue to support State environmental justice legislation during the Illinois General Assembly's ongoing Spring Session, currently scheduled to adjourn on May 31, 2025.

The Board's August 22, 2024 order opening this subdocket provided that it should remain open until February 24, 2025, during which any participant could file a rulemaking proposal. Based on the Board's August 22, 2024 order opening this subdocket, it is not clear to the Agency

¹ The settlement agreements and related documents are available at <https://epa.illinois.gov/environmental-justice/grievances.html>.

precisely what topics the Board might seek to include in new rules, beyond the selection of environmental justice screening tools for identifying areas of environmental justice concern. The Agency would welcome any further guidance the Board might offer on its intent in this regard. Given the possibility of legislation this year providing criteria for identifying areas of environmental justice concern, though, the Agency maintains it would be most efficient to extend this subdocket until at least after adjournment of the current legislative session. In this way, the Board and all stakeholders can see whether the Illinois General Assembly will take further action on this subject. The Agency would be willing to participate in a status conference to further discuss these issues, to the extent the Board may find it helpful.

In conclusion, the Agency respectfully requests: (i) that the Board hold this docket open for an additional period of at least six months, at least until August 22, 2025; and (ii) that the Board, to the extent it finds appropriate, provide additional guidance on the desired scope of rule amendments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Andrew Armstrong
Andrew Armstrong
Chief Legal Counsel
Division of Legal Counsel

DATED: February 10, 2025

2520 W. Iles Ave.
P. O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

SERVICE LIST

<p>ILLINOIS ATTORNEY GENERAL Jason E. James, Assistant Attorney General 201 West Point Drive, Suite 7 Belleville, IL 62226</p>	<p>GREATER CHICAGO LEGAL CLINIC, INC. Keith I. Harley 211 West Wacker, Suite 750 Chicago, IL 60606</p>
<p>ARENTFOX SCHIFF LLP Andrew N. Sawula One Westminster Place, Suite 200 Lake Forest, IL 60045</p>	<p>ILLINOIS DEPARTMENT OF NATURAL RESOURCES Renee Snow, General Counsel One Natural Resources Way Springfield IL 62702-1271</p>
<p>FAITH E. BUGEL Faith E. Bugel 1004 Mohawk Road Wilmette, IL 60091</p>	<p>HEPLERBROOM, LLC Melissa S. Brown Alec Messina 4340 Acer Grove Drive Springfield, IL 62711</p>
<p>ENVIRONMENTAL LAW & POLICY CENTER Cantrell Jones 35 E. Wacker Drive, Suite 1600 Chicago, IL 60601</p>	<p>ILLINOIS POLLUTION CONTROL BOARD Don Brown, Clerk 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605</p>
<p>MCDERMOTT, WILL & EMERY Mark A. Bilut 227 W. Monroe Street Chicago, IL 60606-5096</p>	<p>ILLINOIS ATTORNEY GENERAL Molly Kordas, Assistant Attorney General Ann Marie A. Hanohano – Assistant Attorney General 69 W. Washington, Suite 1800 Chicago, IL 60602</p>
<p>ILLINOIS ENVIRONMENTAL REGULATORY GROUP Kelly Thompson, Executive Director 215 E. Adams St. Springfield, IL 62701</p>	<p>ILLINOIS ENVIRONMENTAL PROTECTION AGENCY Charles E. Matoesian – Assistant Counsel Dana Vetterhoffer – Deputy General Counsel 2520 West Iles Avenue P.O. Box 19276 Springfield, IL 62794-9276</p>
<p>ARENTFOX SCHIFF LLP Joshua R. More Sarah L. Lode 233 S. Wacker Drive, Suite 6600 Chicago, IL 60606-6473</p>	<p>U.S. EPA, REGION 5 Michael Leslie Ralph H. Metcalfe Federal Building 77 West Jackson Blvd. Chicago, IL 60604-3590</p>