

**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: Persons on Attached Service List**

PLEASE TAKE NOTICE THAT on Wednesday, August 27, 2025, I caused to be electronically filed with the Clerk of the Illinois Pollution Control Board, via the “COOL” System, the Illinois Attorney General’s Comments for the People of the State of Illinois, true and correct copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
*Ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

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**CERTIFICATE OF SERVICE**

I, Caitlin Kelly, an Assistant Attorney General, caused to be served on August 27, 2025, a true and correct copy of Illinois Attorney General's Comments, true and correct copies of which are attached hereto and hereby served upon the persons listed on the Service List via electronic mail or electronic filing, as indicated.

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**COMMENT SUBMITTED BY  
THE ILLINOIS ATTORNEY GENERAL’S OFFICE**

The Illinois Attorney General’s Office, on behalf of the People of the State of Illinois (“People”), provide these comments regarding the August 22, 2024 order of the Illinois Pollution Control Board (“Board”) opening a docket to explore the creation of a Board procedural rule to provide guidance to the Board when considering environmental justice (EJ) issues in its proceedings. The People support the opening of this docket and the Board’s important efforts to promote environmental justice in the State of Illinois.

**I. The Board Should Adopt Procedural Rules to Increase Public Participation in Board Proceedings.**

Embedded in the concept of environmental justice is the idea that the public must be able to both access public proceedings and provide their input, particularly on issues that affect their health and well-being. For example, the Illinois Environmental Protection Agency (“Agency”) recognizes that environmental justice includes “opportunities for meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>1</sup> Similarly, the United Nations Special Rapporteur on Human Rights and the Environment recognizes the importance of public participation in protecting the right to a healthy environment and finds that to be effective, “public participation must be open to all members of the public who may be affected and occur early in the decision-making process” and

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<sup>1</sup> Illinois EPA, *Environmental Justice (EJ) Policy*, <https://epa.illinois.gov/topics/environmental-justice/ej-policy.html>, last accessed on Aug. 20, 2025.

that all information about any proposal and the decision-making process should be “made available to the affected public in an objective, understandable, timely and effective manner.”<sup>2</sup>

To have meaningful and effective public participation in matters before the Board, all members of the public, including those with limited English proficiency, those with disabilities, and those with income limitations must be able to access the Board proceedings. Persons living in environmental justice communities may face greater obstacles to attending Board proceedings, such as limited access to transportation and childcare services and difficulties attending hearings during the workday. The People therefore suggest that the Board implement procedural rules to expand access, including increasing language services as well as the ability to participate in Board proceedings virtually.

The Board has ample authority under state law to implement procedural rules to increase accessibility of Board proceedings. The Illinois Environmental Protection Act (“Act”) empowers the Board to “adopt rules and regulations in accordance with Title VII” of the Act, which concerns the procedures for adopting, amending, or repealing Board regulations. *See* 415 ILCS 5/5(d), 415 ILCS 5/28. The Board can look to the Illinois Administrative Procedure Act (“APA”) for guidance on language access services. *See* 5 ILCS 100/10-25.1(g).

For the foregoing reasons, the People suggest the procedural rules outlined below to increase access to Board proceedings.

**A. The People propose an amendment to Section 101.110(d) of the Board Procedural Rules concerning Public Remarks at a Board Meeting.**

The People recommend that the Board allow for virtual participation in Board meetings

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<sup>2</sup> United Nations Human Rights Special Procedures, *Framework Principles on Human Rights and the Environment*, 2018, <https://www.ohchr.org/sites/default/files/FrameworkPrinciplesUserFriendlyVersion.pdf>, last accessed on Aug. 20, 2025.

whenever possible, including allowing public remarks to be made virtually.<sup>3</sup> This would increase the ability for members of the public who have mobility difficulties and those with limited access to transportation and childcare to access Board meetings. The Board can employ the use of technology to facilitate virtual participation, through platforms such as Microsoft Teams and Zoom. Virtual hearings could also be accompanied by closed captioning, to facilitate access for those with hearing difficulties.

(d) Public Remarks at a Board Meeting. During the period designated for public remarks, any person physically present or present via a virtual connection, once recognized by the Chairman, may make public remarks to the Board concerning a proceeding listed on that meeting's agenda.

- 1) Sign-In Sheet. Beginning at least 15 minutes before the scheduled start of each Board meeting, a public remarks sign-in sheet will be available to the public at the meeting and through virtual means for meetings with participation via video conference. Anyone who wishes to make public remarks at the meeting must provide the following information on the sign-in sheet:
  - A) Full name;
  - B) Any person he or she is representing; and
  - C) The docket number of the proceeding on which he or she would like to make public remarks.

The People also propose the following amendments to subsection (2) as well as adding a new subsection (5) to Section 101.110(d) to address language access concerns, as follows:

- 2) Time Limits. A period of up to 30 minutes at the beginning of each Board meeting, as designated on the meeting agenda, is reserved for public remarks. The Chairman may extend the public remarks portion of the meeting as necessary to accommodate persons who signed in under subsection (d)(1) or to accommodate persons making comments with interpretive assistance. A person's public remarks on a proceeding must not exceed five minutes in length, but this period may be extended with the Chairman's permission.
- 5) Language Access. Prior to the Board meeting, a limited English proficient person wishing to attend a Board meeting

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<sup>3</sup> Proposed additions are shown in underline.

and/or make public remarks in a language other than English may submit a request to the Board ten days prior to the Board meeting. The Board shall arrange for a foreign language interpreter fluent in the requested language to attend the meeting and provide interpretive assistance. For meetings with agenda items that concern an area with a large population of non-English speakers of a particular language, the Board shall arrange for a foreign language interpreter to provide interpretive assistance for that language.

**B. The People propose amendments to the Definitions in Section 101.202 of the Board Procedural Rules.**

To accompany the above amendments and additions, the People recommend including the following definitions in Section 101.202, adopting the definitions found in the APA. *See* 5 ILCS 100/10-25/1.

“Foreign language interpreter” means a person who is fluent in both English and another language, who listens to a communication in one language and orally converts it into another language while retaining the same meaning, and who either (i) has satisfied the certification requirement set forth in Section 8a.2 of the Personnel Code or (ii) has been contracted with by the State or an agency to provide interpretive assistance in administrative hearings. A foreign language interpreter need not be physically present to provide interpretive assistance.

“Interpretive assistance” means services that involve listening to a communication in one language and orally converting that communication into another language while retaining the same meaning.

“Language access services” means the full spectrum of language services available to provide meaningful access to the programs and services for limited English proficient persons, including, but not limited to, in-person interpreter services, telephonic and video remote interpreter services, translation of written materials, and bilingual staff services.

“Limited English proficient person” means someone who speaks a language other than English as his or her primary language and has a limited ability to read, write, speak, or understand English and requires the assistance of a foreign language interpreter to effectively communicate in a legal proceeding.

“Written translation” means a conversion of written text from one language into written text in another language.



**C. The People suggest amendments to Section 101.600 of the Board Procedural Rules concerning Hearings.**

Similarly, the People recommend the following amendments to Section 101.600 to increase language access and videoconferencing in Board hearings. The People also note the existing requirement that Board hearings be held in compliance with the Americans with Disabilities Act of 1990 and recommend that the Board consider communication access for persons with hearing, vision, or speech disabilities, including the use of sign language.

(a) All hearings are open to the public and are held in compliance with the Americans with Disabilities Act of 1990 (42 USC 1201 et seq.). The hearings will be held at locations ordered by the hearing officer. The hearing officer will select locations that comply with any geographic requirements imposed by applicable law and, to the extent feasible, promote the attendance of interested members of the public, including residents of areas of environmental justice concern; the convenience of the parties; and the conservation of the Board's resources. All hearings are subject to cancellation without notice. Interested persons may contact the Clerk's Office or the hearing officer for information about the hearing. Parties, participants, and members of the public must conduct themselves with decorum at the hearing.

b) Any Board hearing may be held by videoconference. Upon its own motion or the motion of any party, the Board or the hearing officer may order that a hearing be held by videoconference or allow for interested persons to attend an in-person hearing via videoconference. In deciding whether a hearing should be held by videoconference or to allow for attendance via videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, whether issues involved affect areas of environmental justice concern, the parties' preferences, and the proceeding's complexity and contentiousness.

c) The Board shall provide interpretive assistance and language access services to any limited English proficient person who submits a request for such assistance to the Board 10 days prior to a hearing. For hearings concerning matters of public importance to an area of the State with a high number of limited English proficient persons, the Board shall consider providing interpretive assistance and/or language access services.

**D. The People propose amending Section 101.602 of the Board Procedural Rules concerning Notice of Board Hearings.**

For members of the public to participate in Board hearings, they must have proper notice of the date and time of the proceedings. Given the increasing popularity of virtual resources over newspapers, the Board should consider publishing notice of hearings in a wider range of outlets. The Board should also consider the language needs of the public when publishing notices.

b) The Clerk will provide notice of all hearings, except for administrative citation hearings, in a newspaper of general circulation in the county in which the facility or pollution source is located, or where the activity in question occurred. Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 *et seq.*) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the Illinois Register in lieu of newspaper notice. Notice must be published at least 21 days before the hearing and must include the date, time, and location of the hearing. If the proceeding involves federal rules that the State has been delegated authority to administer, notice must be published at least 30 days before the hearing.

c) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or water facilities provided by a municipally owned or publicly regulated company, the Board shall at least 30 days prior to the scheduled date for the first hearing in the proceeding, give notice of the date, time, place, and purpose of the hearing by public advertisement in a newspaper of general circulation in the area of the State concerned [415 ILCS 5/33(c)], as well as on a portal on the Board's website dedicated to Board hearings.

**E. The People propose Amendments to Section 101.628 of the Board's Procedural Rules concerning Statements from Participants.**

The People recommend the below amendment to Section 101.628 to increase access to Board proceedings for limited English proficient persons.

a) Oral Statements. The hearing officer may permit a participant to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. The oral statements must be made under oath and are subject to cross-examination. (See Sections 101.110 and 101.114). Limited English

proficient persons may make oral statements in their preferred language and the Board shall provide for interpretive services as provided in Section 101.600(c).

- b) Written Statements. Any participant may submit written statements relevant to the subject matter at any time before hearing or at hearing. The participant submitting the statement will be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment in compliance with subsection (c) and will be afforded lesser weight than evidence subject to cross-examination. Limited English proficient persons may submit written statements in their preferred language and the Board shall provide for written translation of the statements into English within 15 days of receipt.
- c) Public Comments or Amicus Curiae Briefs. Oral public comment may be made on the record at a hearing and is not subject to cross-examination. Additionally, participants may file written public comments subject to the requirements of this Section and the hearing officer's schedule for completing the record. The Board also allows for the filing of amicus curiae briefs by non-party participants. Amicus curiae briefs will be allowed in compliance with Section 101.110.
  - 1) Written public comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. Consistent with the burden of proof in an adjudicatory proceeding or with the designation of the proponent in a rulemaking or the petitioner in a TLWQS proceeding, the hearing officer may provide for differing filing deadlines regarding post-hearing comments by different persons. Under hearing officer order, rebuttal public comments may be submitted.
  - 2) All public comments must present arguments or comments based on evidence in the record. The comments may also present legal argument citing legal authorities.
  - 3) Comments must be filed with the Board.
  - 4) Limited English proficient persons may submit oral public comment in their preferred language and the Board shall

provide for interpretive services as provided in Section 101.600(c). Limited English proficient persons may also submit written public comment in their preferred language and the Board shall provide for written translation of the comments into English within 15 days of receipt.

**F. The People Propose Amendments to Section 102.108 of the Board's Rules on Regulatory Proceedings concerning Public Comments.**

The People recommend the below amendment to Section 102.108 to increase access to Board proceedings for limited English proficient persons.

- a) The Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section 102.604. However, when adopting identical-in-substance regulations, the Board will accept written comments from USEPA and other persons for at least 45 days after the date of publication of the proposed regulations or amendments in the Illinois Register in accordance with Section 102.610. Limited English proficient persons may submit written comments in their preferred language, and the Board will provide for written translation of the comments into English within 15 days of receipt.

**II. An Agency-Wide Environmental Justice Screening Methodology Should Include Demographic and Environmental Indicators.**

In opening this subdocket, the Board reviewed the recommendation of the Environmental Groups to expand the screening criteria for the Agency to identify areas of environmental justice concern for prioritizing closure of CCR surface impoundments under Part 845. The Board found there was no benefit to amending the definition given that the deadline for filing permit applications under this section has passed. *See* Order of the Board, R20-19(A), Aug. 22, 2024, at 27. However, the Board invited comments to provide guidance on the use of environmental justice screening tools to identify areas of environmental justice concern more broadly in its proceedings. The People welcome this expansion and support the adoption of an EJ screening tool that encompasses both demographic and environmental factors.

The methodology currently used by the Agency to identify areas of environmental justice consists of analyzing two demographic factors: the percentage of a population in a given census block group that is characterized as (1) “low income” or (2) “minority,” through the “EJStart” tool.<sup>4</sup> Census block groups with low-income and/or minority population greater than twice the statewide average are classified as “areas of environmental justice concern” by the Agency.<sup>5</sup> While this methodology importantly recognizes the fact that low-income and minority communities are exposed to disproportionately high levels of pollution, it may leave out other communities that are also vulnerable to environmental burdens, such as communities with higher populations of children and senior citizens. This approach also excludes an analysis of measurable environmental factors such as concentration of pollutants such as ozone, nitrogen dioxide, and particulate matter; proximity to hazardous waste facilities; and likelihood of exposure to lead through paint and drinking water.

As the People recognized in the Public Comment submitted to the Board on August 2, 2022 in response to Rulemaking 2020-019(A), the Illinois Solar for All program employs a methodology to identify environmental justice communities that incorporates both demographic and environmental factors in their implementation of the Illinois Solar for All program.<sup>6</sup> The Illinois Power Agency (IPA) uses a calculation that involves eleven environmental<sup>7</sup> and six demographic<sup>8</sup>

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<sup>4</sup> Illinois EPA’s EJ Start map can be accessed at:

<https://experience.arcgis.com/experience/aa364c77db684dfa92afa5094b69f6ff>, last accessed Aug. 20, 2025.

<sup>5</sup> Illinois EPA, *Environmental Justice Policy*, *supra* note 1.

<sup>6</sup> See Illinois Solar for All, *Environmental Justice Communities*, <https://www.illinoissfa.com/environmental-justice-communities/>, last accessed Aug. 20, 2025.

<sup>7</sup> National-Scale Toxics Assessment (NATA) air toxics cancer risk; NATA respiratory hazard index; NATA diesel PM; particulate matter; ozone; traffic proximity and volume; lead paint indicators; proximity to risk management plan sites; proximity to hazardous waste treatment, storage and disposal facilities; proximity to National Priorities List sites; and wastewater dischargers indicator.

<sup>8</sup> Percent low-income, percent minority, persons with less than a high school education, linguistic isolation, individuals under 5, and individuals over 64.

factors, relying on census data and data compiled in the U.S. Environmental Protection Agency's (USEPA) former EJSCREEN tool.<sup>9</sup> The IPA has published a map that identifies environmental justice communities across the state.<sup>10</sup> However, given that USEPA is no longer maintaining EJSCREEN,<sup>11</sup> this tool is not available for future updates to the map.

Several states are incorporating both demographic and environmental factors in their analysis of environmental justice issues. For example, the New Jersey Department of Environmental Protection has adopted a tool incorporating 20 "stressors" sourced from community-level environmental and public health data, including demographic markers such as levels of unemployment and education and environmental markers such as ground level ozone, fine particulate matter, and cancer risk from air toxics.<sup>12</sup> Similarly, California uses the CalEnviroScreen mapping tool, which incorporates a wide range of environmental and demographic indicators.<sup>13</sup>

As recognized by the Environmental groups, the IPA, and states such as New Jersey and California, incorporating a multivariable approach in environmental justice analysis better ensures that communities vulnerable to environmental burdens are accurately identified. The People therefore invite the Board to seek further comment from stakeholders on how the Board could

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<sup>9</sup> See Illinois Power Agency, *2022 Long-Term Renewable Resources Procurement Plan: Modified Plan* (May 4, 2023), 286-9, <https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/2022-long-term-plan-23-august.pdf>, last accessed Aug. 20, 2025.

<sup>10</sup> The IPA's Environmental Justice Communities Map can be found at: <https://www.illinoisfa.com/environmental-justice-communities-map/>, last accessed Aug. 20, 2025.

<sup>11</sup> Harvard Law School Environmental & Energy Program, *EJScreen Removed from EPA Website*, Apr. 15, 2025, <https://eelp.law.harvard.edu/tracker/epa-added-environmental-health-indicators-to-ejscreen/>, last accessed Aug. 20, 2025.

<sup>12</sup> See New Jersey Department of Environmental Protection, *Environmental Justice Mapping, Assessment, and Protection (EJMAP): Data and Methodology Documentation*, Jan. 31, 2025, <https://dep.nj.gov/wp-content/uploads/ej/docs/njdep-ej-methodology-document-january-2025.pdf>, last accessed Aug. 20, 2025.

<sup>13</sup> See State of California Office of Environmental Health Hazard Assessment, *CalEnviroScreen 4.0*, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>, last accessed Aug. 20, 2025.

include a wider array of demographic factors as well as incorporate environmental indicators in defining environmental justice areas of concern.

### III. Conclusion

The Attorney General appreciates the Board's attention to and consideration of environmental justice issues and applauds the Board's efforts to increase protections for all Illinoisans. Given the importance of public participation for the fulfillment of environmental justice goals, the Attorney General encourages the Board to review its procedural rules with the goal of increasing accessibility, especially for persons with disabilities, persons with limited English proficiency, and persons who have difficulty attending Board proceedings for lack of transportation and childcare. The People further support the Board's consideration of the development of a multivariable approach to identifying areas of environmental justice concern.

Respectfully submitted,

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