

ILLINOIS POLLUTION CONTROL BOARD
March 20, 2025

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

On April 15, 2021, the Board adopted rules implementing Section 22.59 of the Environmental Protection Act (Act) (415 ILCS 5/22.59 (2022)). Specifically, the Board added a new Part 845 to its rules, which created standards for the disposal of coal combustion residuals (CCR) within the State. In that rulemaking, docket R20-19, the Board opened sub-docket A to address other issues concerning CCR. Those four issues are: (1) historic, unconsolidated coal ash fill in the State; (2) the use of temporary storage piles of coal ash, including time and volume limits; (3) fugitive dust monitoring plans for areas surrounding CCR surface impoundments; and (4) the use of environmental justice screening tools. The Board requested comment as well as proposed language to address the four issues.

On August 22, 2024, the Board issued an order that opened a new rulemaking docket to explore environmental justice issues in greater detail. That rulemaking is R25-18, In the Matter of: Board Consideration of Environmental Justice in Board Proceedings. The Board found in that August 22, 2024, order that changes to environmental justice screening methodologies should be applied across all platforms, not just limited to Part 845, as the original sub-docket intended. In discussing the aim of this new rulemaking, the Board said:

[T]he Board directs the Clerk to open a new rulemaking docket to explore the creation of a Board procedural rule that will 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. The Board will hold this new docket open for six months until February 24, 2025, during which time a participant may file a rulemaking proposal. If it receives one or more proposals by that date, the Board will then determine how to proceed. The Board also directs the assigned hearing officer to expeditiously establish a public comment period during which time the Agency or other participants may file comments to develop the issues surrounding an environmental justice procedural rule. The Board will determine how to proceed in this matter after the end of the public comment period.

The Board received two comments in this rulemaking, one from the Illinois Environmental Protection Agency (IEPA) (PC 1), and one from the Office of the Illinois Attorney General (AG) (PC 2).

IEPA Comment

On February 10, 2025, IEPA submitted a comment requesting that the Board hold open this docket for an additional period of time – at least six months – to account for the possibility

of adopting new environmental justice legislation during the Illinois General Assembly's 2025 session as well as related stakeholder discussions. PC 1 at 1. IEPA reports to the Board:

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 issues 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 scheduled to adjourn on May 31, 2025. *Id.* at 2.

IEPA also reports that it is willing to participate in a status conference to further discuss these issues. IEPA suggests that, if the Board finds it appropriate, it is also willing to provide additional guidance on the desired scope of the environmental justice regulations it will consider in this rulemaking docket. *Id.* at 3.

AG Comment

On February 25, 2025, the AG filed a comment that "echoes" the IEPA comment. PC 2 at 1. The AG also asks that the Board hold this docket open at least until August 22, 2025 to allow for time to consider potential changes due to legislation proposed in the General Assembly. *Id.* The AG says:

As the Board recognized in opening this docket, environmental justice is a crucial consideration in every environmental law decision and is vitally important for protecting the constitutional right to a healthful environment for all citizens of Illinois. Too many communities in the State are overburdened with environmental harm, often as a result of the legacy of past discriminatory policies, and proactive action must be taken at all levels of government to address these disproportionate burdens. This includes the Board's adoption of rules to consider environmental justice in its proceedings. *Id.* at 1-2, omitting internal footnote.

The AG mirrors IEPA's request that, if the Board intends to proceed with proposed rules, the Board issue further guidance on the desired scope of the rule amendments. *Id.* at 3.

Current Bills Under Consideration By the General Assembly

In looking at current bills related to environmental justice that are under consideration by the House and the Senate, the Board found two bills before the House and three bills before the Senate.

HB1230

This bill would amend the Act to create an Air Quality Enforcement and Mitigation Fund. The Fund would provide grants to nonprofits, local health departments, local environmental departments, and school districts to carry out the purposes of the Act. It would also require IEPA, in collaboration with environmental interest groups, to develop a process to identify “environmental protection communities.” That term is defined in the proposed legislation as: “a geographic area that the Agency, using tools such as the United States Environmental Protection Agency’s EJSCREEN, has identified as a community facing a disproportionate environmental burden, using indicators such as sensitive populations, socioeconomic factors, and environmental exposures and effects.”

HB1608 and SB1307

Both House Bill 1608 and Senate Bill 1307 propose similar language that would require IEPA to annually review and update the underlying data for, and use of, indicators used to determine whether a community is designated as an environmental justice community. The bills would also create a process for communities to request such a designation. The bills also address permits under Clean Air Act Permit Program for sources that would be located in environmental justice communities by requiring public meetings prior to submission of the permit application. Such permit applications would also need to have an environmental justice assessment that would identify the potential environmental and health impacts to the proposed area.

SB1686

This bill would create the Environmental Justice Public Participation Program as well as the Office of Environmental Justice within IEPA. As proposed, the Office would have several duties, such as notifying residents of areas of environmental justice concern, elected officials, and other interested parties of permit actions in those areas. It would also allow for areas to request that IEPA designate it as an area of environmental justice concern.

SB1794

This bill would direct IEPA to establish an enhanced statewide environmental monitoring program particularly for protecting environmental justice communities.

Board Discussion

The Board appreciates both IEPA’s and the AG’s comments on this rulemaking subject. Given the wide scope of these proposed environmental justice bills, the Board finds that holding open this docket an additional six months will benefit the aim of this rulemaking.

ORDER

The Board will hold open this rulemaking docket until at least August 22, 2025. The Board will review the status of these bills by September 4, 2025 and if necessary, issue further guidance at that time.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 20, 2025, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board