

ILLINOIS

How Does Illinois Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

The Illinois Environmental Protection Agency (IEPA) defines environmental justice as “A census block group or areas within one mile of a census block group with income below poverty and/ or minority population greater than twice the statewide average.”

This definition leaves out any explicit reference to race, color, national origin, or income; however, the IEPA defines “areas of environmental justice concern” as “a census block group or areas within one mile of a census block group with income below poverty and/or minority population greater than twice the statewide average.”¹

However, The Illinois Environmental Justice Act:

finds that: (i) the principle of environmental justice requires that no segment of the population, regardless of race, national origin, age, or income, should bear disproportionately high or adverse effects of environmental pollution;(ii) certain communities in the State may suffer disproportionately from environmental hazards related to facilities with permits approved by the State; and (iii) these environmental hazards can cause long-term health effects.²

Environmental Justice Mapping Tools:

IEPA has developed an environmental justice mapping tool called EJ START which it uses primarily to determine if a proposed permitting site is in an “area of environmental justice concern.” The threshold for environmental justice status was set at twice the statewide average for Minority population and Low-Income population, defined respectively as total population minus White alone non-Hispanic and total population below twice the state poverty line.³

The mapping tool is available publicly on the IEPA’s environmental justice webpage⁴ and it includes only demographic data. The mapping tool has several layers, including current and

¹ See, 35 Ill. Admin. Code § 845.700(g)(6); see also, *IEPA Environmental Justice Public Participation Policy* (April 20, 2018), at 1, available at <https://www2.illinois.gov/epa/topics/environmental-justice/Documents/ejPUBLICPP.pdf> (last visited June 29, 2022).; “Areas of environmental justice concern” are also called “Environmental Justice Areas” in the Illinois Administrative code.

² 415 ILCS 155/5.

³ IEPA, *EJ Start*, <https://Illinois-epa.maps.arcgis.com/apps/webappviewer/index.html?id=f154845da68a4a3f837cd3b880b0233c> (last visited June 29, 2022).

⁴ IEPA, *Environmental Justice Policy*, <https://www2.Illinois.gov/epa/topics/environmental-justice/Pages/ej-policy.aspx> (last visited June 29, 2022).

historical areas of environmental justice concern.⁵ The data is available “buffered” and “unbuffered.”⁶ The unbuffered view shows only the census block regions that meet the threshold for environmental justice status while the buffered view also shows the one mile area around each census block area that meets the environmental justice status threshold.⁷ The buffered view is the default and shows the “areas of environmental justice concern;” however the mapping tool does not explicitly make that clear.⁸

How Does Illinois Consider Environmental Justice in its Substantive Actions⁹?

Environmental Justice as a Policy of the Environmental Agency or Across All Agencies:

While not explicitly mentioning environmental justice, the Illinois Constitution creates a public policy and legislative responsibility for the environment mandating that “[t]he 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.”¹⁰

Consideration of Environmental Justice in Permitting:

IEPA’s environmental justice policy states that when concerns regarding environmental impacts in an environmental justice area are raised, the IEPA will assess whether there are potential significant adverse environmental impacts.¹¹ If it finds potential adverse impacts, the Illinois EPA “will either request an assessment or assess these impacts using the information and tools reasonably available, and within the time constraints allowed by applicable state and federal law,” and will make such assessments available to the public. IEPA states it will make an “appropriate response” based on the assessments. The website notes however:

“The task of addressing environmental justice is exacerbated by the absence of a consensus on the validity of cumulative risk assessment tools and clear direction at the federal level. There are significant uncertainties regarding the availability and effectiveness of cumulative risk assessment tools, the availability of emissions data and emissions inventories, and these uncertainties increase as the scope of cumulative impact analysis increases.”¹²

⁵ IEPA, *EJ Start*, <https://illinois-epa.maps.arcgis.com/apps/webappviewer/index.html?id=f154845da68a4a3f837cd3b880b0233c> (last visited June 29, 2022).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Substantive is defined as governing the original rights and obligations of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/substantive_law (last visited June 29, 2022).

¹⁰ Ill. Const. art. XI § 1.

¹¹ IEPA, *Environmental Justice Policy*, <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/ej-policy.aspx> (last visited June 29, 2022).

¹² *Id.*

The Illinois Environmental Protection Act (Act) includes a local siting approval process for "Pollution Control Facilities" (PCFs).¹³ PCFs include landfills, commercial incineration facilities, wastewater treatment plants, and similar waste treatment, storage or disposal facilities. Among other things, the facility must show it is located "so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property."¹⁴ There are also public participation opportunities provided during this process.

The IEPA's Agency Facility Inventory and Information Search System (AFIIS) allows the public to search for regulated facility information and includes a column that indicates whether the site is considered an environmental justice site.

[Illinois HB 4093](#) would require consideration of environmental justice in environmental permitting. In addition, recently enacted [coal ash law/regulations in Illinois](#) require consideration of environmental justice when prioritizing coal ash impoundments.

Consideration of Environmental Justice in Enforcement:

IEPA does not make enforcement decisions based on environmental justice concerns. However, the Environmental Justice Officer (EJO) is supposed to keep communities abreast of the status of enforcement actions and accepts complaints involving environmental justice that may result in enforcement action.¹⁵

Additionally, the Illinois Department of Natural Resources Office of Law Enforcement "must investigate" complaints and information about environmental justice issues.¹⁶ However, the Illinois Department of Natural Resources does not elaborate on what it considers environmental justice issues, nor does it explain what "investigations" may entail.¹⁷

Consideration of Environmental Justice in Land Use:

The Illinois Pollution Control Board is required by statute to develop a process for identifying areas of environmental justice concern and for prioritizing for closure those coal combustion residual surface impoundments: (1) with the highest risk to public health and the environment and (2) in areas of environmental justice concern.¹⁸ The Board's rules define "area of environmental justice concern" as:

¹³ 415 ILCS § 5/39.2.

¹⁴ *Id.*

¹⁵ IEPA, Environmental Justice Public Participation Policy (April 20, 2018), at 2; available at <https://www2.illinois.gov/epa/topics/environmental-justice/Documents/ejPUBLICPP.pdf>.

¹⁶ Environmental Justice Questionnaire for IDNR <https://www2.illinois.gov/epa/Documents/iepa/environmental-justice/dnr-questionnaire.pdf> (last visited June 29, 2022).

¹⁷ *Id.*

¹⁸ 415 ILCS 5/22.59.

1) Any area within one mile of a census block group where the number of low-income persons is twice the statewide average, where low income means the number or percent of a census block group's population in households where the household income is less than or equal to twice the federal poverty level; or

2) Any area within one mile of a census block group where the number of minority persons is twice the statewide average, where minority means the number or percent of individuals in a census block group who list their racial status as a race other than white alone or list their ethnicity as Hispanic or Latino.¹⁹

In addition, off site contamination of soils, groundwater, or drinking water wells can trigger requirements for a Community Relation Plan (CRP), posting of notice, and distribution of fact sheets regarding the release.²⁰ IEPA has provided a model CRP, and suggests that applicants use it as guidance for developing CRP in permitting actions.²¹

State Environmental Policy Act “Mini-NEPA”:

N/A.

Dedicated Funding to Environmental Justice Communities:

N/A.

Consideration of Cumulative Impacts:

See “*permitting*” section above.

Prohibitions on Disparate Impact Discrimination:

N/A.

Established Environmental Rights:

The State Constitution provides that “[e]ach person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.”²²

How Does Illinois Address Environmental Justice in its Procedures²³?

Environmental Justice as Part of Environmental Agency’s Mission:

¹⁹ 35 Ill. Admin. Code § 845.700(g)(6).

²⁰ 35 Ill. Admin. Code § 1600.315.

²¹ 35 Ill. Adm. Code Part 1600, Appendix A.

²² Ill. Const. art. XI § 2.

²³ Procedural is defined as rules and the methods used to ensure the rights of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/procedural_law (last visited June 29, 2022).

IEPA states that it “is committed to protecting the health of the citizens of Illinois and its environment, and to promoting environmental equity in the administration of its programs to the extent it may do so legally and practicably. The IEPA supports the objectives of achieving environmental equity for all of the citizens of Illinois.”²⁴ The IEPA Environmental Justice Policy goals are:

- to ensure that communities are not disproportionately impacted by degradation of the environment or receive a less than equitable share of environmental protection and benefits;
- to strengthen the public's involvement in environmental decision-making, including permitting and regulation, and where practicable, enforcement matters;
- to ensure that Illinois EPA personnel use a common approach to addressing environmental justice issues; and
- to ensure that the Illinois EPA continues to refine its environmental justice strategy to ensure that it continues to protect the health of the citizens of Illinois and its environment, promotes environmental equity in the administration of its programs, and is responsive to the communities it serves.²⁵

IEPA also provides technical assistance to the Illinois Commission on Environmental Justice.²⁶

Environmental Justice as Part of Other Agency's Mission:

N/A.

Processes and Procedures (including Title VI):

- *Non-Discrimination Policy:*

IEPA's notice of non-discrimination is available on its webpage including a contact for a coordinator for civil rights compliance and for filing a complaint.²⁷

Grievance Procedures:

²⁴ IEPA, Environmental Justice Policy, available at <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/ej-policy.aspx> (last visited June 29, 2022).

²⁵ *Id.*

²⁶ 415 ILCS 155/10.

²⁷ IEPA, *Notice of Nondiscrimination*, <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/notice-of-nondiscrimination.aspx> (last visited June 29, 2022).

IEPA's web page also links to its grievance procedure for environmental justice concerns.²⁸ The grievance procedure addresses allegations of discrimination on the basis of race, color, national origin, religion, disability, income, age, or gender. Complaints must be filed within 60 days of an alleged violation, although IEPA has some discretion to address complaints that are filed past the deadline. IEPA must respond to a complaint within 120 days of accepting a complaint.²⁹ Complaints and settlement agreements are available online.³⁰

- *Enhanced Public Participation and Information Access:*

IEPA has adopted a Public Participation Policy (PPP) that addresses environmental justice.³¹ The PPP applies when a permitting action is “likely to generate significant public interest” or when the applicant is a High Priority Violator per USEPA guidance or is the subject of an enforcement action. The executive director makes the determination that a permitting action is likely to be of public interest by weighing seven statutory factors:

- the type of permit,
- the nature and amount of pollutants,
- possible effects of emissions,
- the location of the source,
- interest in the source exhibited by the public based on comments and inquiries,
- other factors that are distinctive to the source, and
- the proposed action by the IEPA.

The statutory factors do not include environmental justice on their face; however, the IEPA has interpreted the “location of the source” such that it encompasses whether the source will be in an area of environmental justice concern. This interpretation is not available in a public guidance document, but the IEPA has relied on this interpretation in court.³²

The PPP requires IEPA to encourage applicants to conduct appropriate public participation and outreach but it does not create a requirement for applicants. The PPP

²⁸ IEPA, *Grievance Procedure*, <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/grievance-procedure.aspx> (last visited June 29, 2022).

²⁹ *Id.*

³⁰ IEPA, *Grievances and Resolutions*, <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/grievances.aspx> (last visited June 29, 2022).

³¹ IEPA, *Environmental Justice Public Participation Policy* (April 20, 2018), available at <https://www2.illinois.gov/epa/topics/environmental-justice/Documents/ejPUBLICPP.pdf> (last visited June 29, 2022).

³² *Kcbx Terminals Company, Petitioner v. Illinois Environmental Protection Agency*, Respondent, 2014 WL 5395322, at *3.

allows the IEPA to hold informational meetings with the public and encourages applicants to also take public outreach measures.³³ IEPA must provide enhanced notice under the PPP by mailing notice to community leaders, public officials, environmental groups and concerned citizens rather than merely placing notice in the newspaper, rather than merely placing notice in the newspaper.³⁴

The PPP is implemented through the Environmental Justice Officer (EJO) and the Office of Community Outreach. The EJO is supposed to act as the liaison between the public in areas of environmental justice concern and IEPA personnel. It is also supposed to keep communities up to date on enforcement actions and to encourage applicants to have appropriate public engagement.

The Office of Community Outreach creates factsheets and issues notices in collaboration with the IEPA Bureau with jurisdiction on a particular permit. The notices are required to be written in plain language to the extent permissible and should be written in a language easily understandable by the majority of readers.

- Language Access:

IEPA does not have clear criteria for when language access resources are necessary. A portion of the IEPA environmental justice webpage is translated into Spanish, including the notice of non-discrimination, the PPP, and environmental justice grievance procedures. The rest of the webpage, and the IEPA website generally is not translated. The Commission on Environmental Justice webpage is not translated.

Under the PPP, IEPA must make a “good faith effort” to provide a translator when they know that “residents” do not speak English very well or when the IEPA receives a request within two weeks of a public hearing.³⁵ In cases involving lead contamination in drinking water, public education materials must be languages other than English if there is a “large portion of non-English speakers” who are served by the contaminated system.³⁶ Similarly, plain-language fact sheets following a release of hazardous waste must be translated if a “significant portion of the population surrounding the site where the release occurred is non-English speaking.”³⁷

- Consultation with Indigenous Communities and Tribal Nations:

N/A.

Governmental Environmental Justice Structures, Positions, and Funding Streams:

³³ IEPA, Environmental Justice Public Participation Policy at 4-6.

³⁴ IEPA, Environmental Justice Public Participation Policy at 4.

³⁵ *Id.* at 5-6.

³⁶ 35 Ill. Admin. Code § 611.355.

³⁷ 35 Ill. Admin. Code § 1600.315.

- Environmental Justice Coordinating Agency:

N/A.

- Environmental Justice Coordinator:

IEPA has an Environmental Justice Officer (EJO). The EJO is the primary Environmental Justice Coordinator for IEPA. The IEPA Environmental Justice Work Group advises the EJO, and they work together to address environmental justice complaints and develop complaint procedures. The IEPA Environmental Justice Work Group is supposed to develop training material for IEPA personnel and other internal procedures for addressing environmental justice. The IEPA Environmental Justice Work Group is composed of a representative from the IEPA Bureaus of Land, Water, and Air, Division of Legal Counsel and Office of Community Relations.

- Environmental Justice Advisory Board:

The Illinois Environmental Justice Act created the Commission on Environmental Justice to investigate environmental justice problems in Illinois, advise state agencies on environmental justice issues, review state laws and policies, assess the adequacy of state laws regarding environmental justice, and make recommendations to the Governor.³⁸ The Commission is required to report on its findings each October. In 2015, the Commission recommended the adoption of a land bank system to address brownfields in Illinois.³⁹ It does not appear to have made recommendations in its reports to the Governors and Legislators since.⁴⁰ The last available report on the IEPA website is from 2018.

The Commission is composed of the Governor-appointed Chairperson; two House and two Senate Representatives; in *ex officio* capacity, the heads of the IEPA, the Department of Transportation, the Department of Public Health, the Department of Commerce and Economic Opportunity, the Department of Natural Resources, and the Housing office of the Department of Human Services; ten representatives of various stakeholders including manufacturers, the energy sector, labor unions, workers in the

³⁸ 415 ILCS 155/10.

³⁹ Ill. Comm'n on Env't Justice, Governor's Report (2015)

<https://www2.illinois.gov/epa/Documents/iepa/environmental-justice/commission/resources/2015-ej-commission-report.pdf>.

⁴⁰ See also, 2016 Report at

https://www2.illinois.gov/epa/Documents/iepa/environmental-justice/commission/resources/2016_20ej_20commission_20report_20final.pdf; 2017 report at

https://www2.illinois.gov/epa/topics/environmental-justice/commission/Documents/2017_EJ_Commission_Report.pdf; 2018 report at

https://www2.illinois.gov/epa/topics/environmental-justice/commission/Documents/2018_EJ_Commission_Report.pdf.

energy industry, environmental groups, local governments, and the general public; and at least four members from communities affected by environmental justice.⁴¹

- Funding for Environmental Justice:

N/A.

Additional Illinois Environmental Justice Provisions?

Recently, Illinois has passed legislation amending the Environmental Protection Act to ban the burning of most objects containing PFAS.⁴²

Illinois Environmental Justice Contacts?

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Where to Find Illinois Environmental Justice Laws, Policies, and Tools?

Constitutional Provisions:

- Ill. Const. art. XI §§ 1-2.

Executive Orders:

N/A.

Legislation and Statutes:

- 415 ILCS 155.
- 415 ILCS 5/39.2.
- 415 ILCS 5/22.59.
- 15 ILCS 5/22.6.

Regulations:

- 35 Ill. Admin. Code § 252.104 – Determination that a source would create public interest.

⁴¹ Comm'm on Env't Justice Factsheet, https://www2.illinois.gov/epa/topics/environmental-justice/Documents/EJ_Commission_Factsheet.pdf.

⁴² 415 ILCS 5/22.6, available at [https://www.westlaw.com/Document/N07C495E0FB4211EC87F29654070F6813/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cb1.0](https://www.westlaw.com/Document/N07C495E0FB4211EC87F29654070F6813/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cb1.0).

- 35 Ill. Admin. Code § 611.355 – Lead contamination language access rule.
- 35 Ill. Admin Code § 845.700(g)(6) – Area of Environmental Justice Concern.
- 35 Ill. Admin. Code § 1600.315 – Hazardous waste language access rule.
- 35 Ill. Adm. Code Part 1600, Appendix A. – Model Community Relation Plan.

Policies/Guidance:

- IEPA Public Participation Plan,
<https://www2.illinois.gov/epa/topics/environmental-justice/Documents/ejPUBLICPP.pdf>.

Mapping Tools:

- Environmental Justice Start,
<https://Illinois-epa.maps.arcgis.com/apps/webappviewer/index.html?id=f154845da68a4a3f837cd3b880b0233c>.

Other:

- 45 Ill. Reg. 5992 (May 7, 2021) – Coal ash rule containing explicit environmental justice provision.