



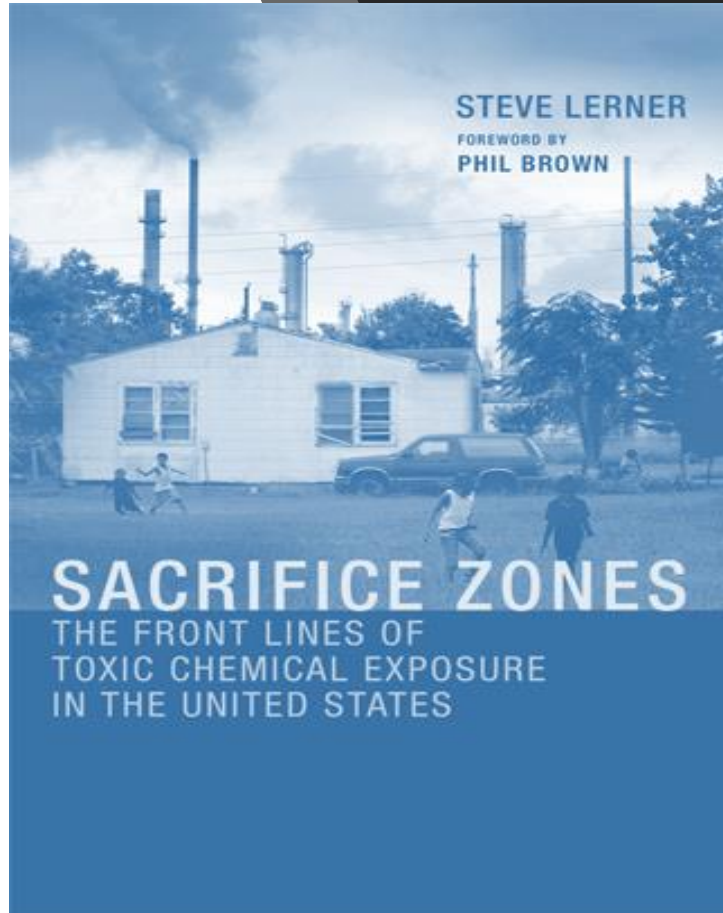
EPA: Cumulative Impacts Framework for Addressing Equity Goals

Charles Lee

Office of Environmental Justice and External Civil Rights

March 16, 2023

Why the cumulative impacts issue is important



- Cumulative impacts issue is the “holy grail” of environmental justice
- Systemic factors in society have driven the disproportionate concentration of environmental burdens in people of color, indigenous and low-income communities.
- Numerous examples exist (Often referred to as hotspots, geographic clustering of environmental burdens, sacrifice zones)
- Pattern of disproportionate concentration of environmental burden is incontrovertible and unacceptable.
- This results from multiple factors, ranging from a siloed and fragmented approach to environmental protection to vestiges of systemic racism and historic discrimination in land use decision-making



Cumulative Impacts

Historical Context

- CEQ, 1978 -- Considering Cumulative Effects Under the National Environmental Policy Act
- CalEPA EJ Advisory Committee – Cumulative Impacts Definition/Precautionary Approaches (2005)
- NJ EJAC CI Recommendations (2009)
- CalEPA - Cumulative Impacts: Building a Scientific Foundation (2010)
- CalEnviroScreen (2012) and other state mapping tools
- State and Local Legislation (MN, CA, NJ, CO, MA, OR, WA, VT, etc.)
- Chicago DPH “General Iron” Permit Analysis (2022)
- New Jersey DEP Regulations (forthcoming 2022)
- MassDEP Air Permit Regulations (forthcoming 2022)
- Other important developments, such as California and Minneapolis “Green Zones”



“These rules represent the hard work and diligence of EJ activists that have worked tirelessly alongside NJDEP to produce the strongest environmental justice law in the nation.” (Ana Baptista, Ph.D.)



Purpose: To inform the expansion of EPA's cumulative impacts research portfolio

- Recommendations are already informing actions within EPA to advance the state of the science
- Input was critical to developing these recommendations –
 - Listening sessions with 65 Tribes, 62 state agencies, 35 local agencies, and 9 national associations
 - Workshop with EPA Programs and Regions and community member panels
 - Science Advisory Board consultation



Cumulative Impacts: Legal Tools



EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum

January 2023

Office of General Counsel

U.S. Environmental Protection Agency

Washington, D.C. 20460

This document discusses a variety of federal statutory and regulatory provisions but does not itself have legal effect and is not a substitute for those provisions and any legally binding requirements that they may impose. It does not expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations, or benefits to any person. To the extent there is any inconsistency between this document and any statutes, regulations or guidance, the latter take precedence. EPA retains discretion to use or deviate from this document as appropriate.

Purpose: Identify a wide range of authorities that can be deployed to address cumulative impacts affecting communities with environmental justice concerns

- [EPA Legal Tools to Advance Environmental Justice \(EJ Legal Tools\)](#) highlights the environmental and civil rights statutes EPA implements to protect human health and the environment for all communities and persons
- The [Cumulative Impacts Addendum](#) compiles legal authorities available to EPA for addressing cumulative impacts on communities with environmental justice concerns and other underserved populations, including communities of color, Indigenous peoples, and low-income communities.

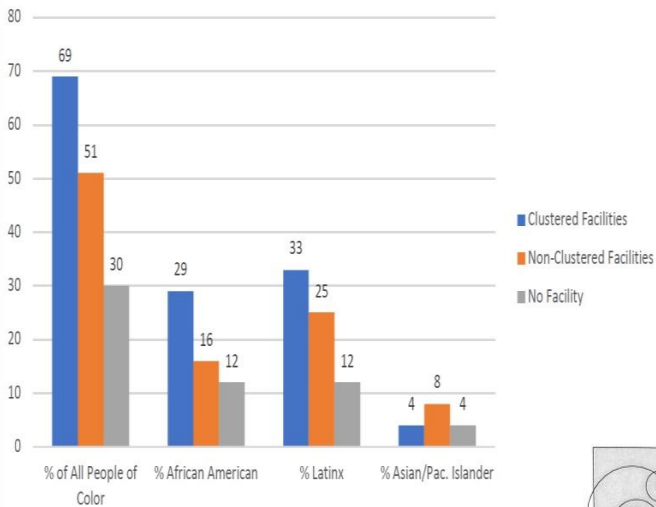
Commitments

- **Agency Equity Action Plan:** Develop a comprehensive framework for considering cumulative impacts in relevant EPA decisions and operationalize that framework in EPA's programs and activities
- **FY2022-2026 EPA Strategic Plan:** Sets Agency Priority Goal of "by September 30, 2023, EPA will develop and implement a cumulative impacts framework."



E.O. 13985
EQUITY ACTION PLAN:
U.S. ENVIRONMENTAL PROTECTION AGENCY
APRIL 2022

People of Color Percentages in Neighborhoods with Clustered Facilities, Non-Clustered Facilities and No Facility



Toxic Wastes and Race at Twenty

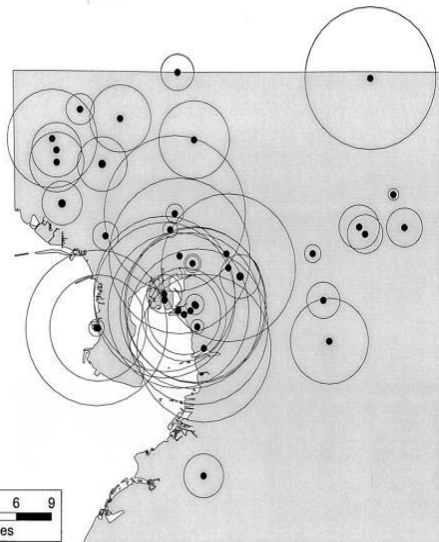


Fig. 2. Circular buffers around extremely hazardous substances facilities in Hillsborough County, Florida. Chakraborty

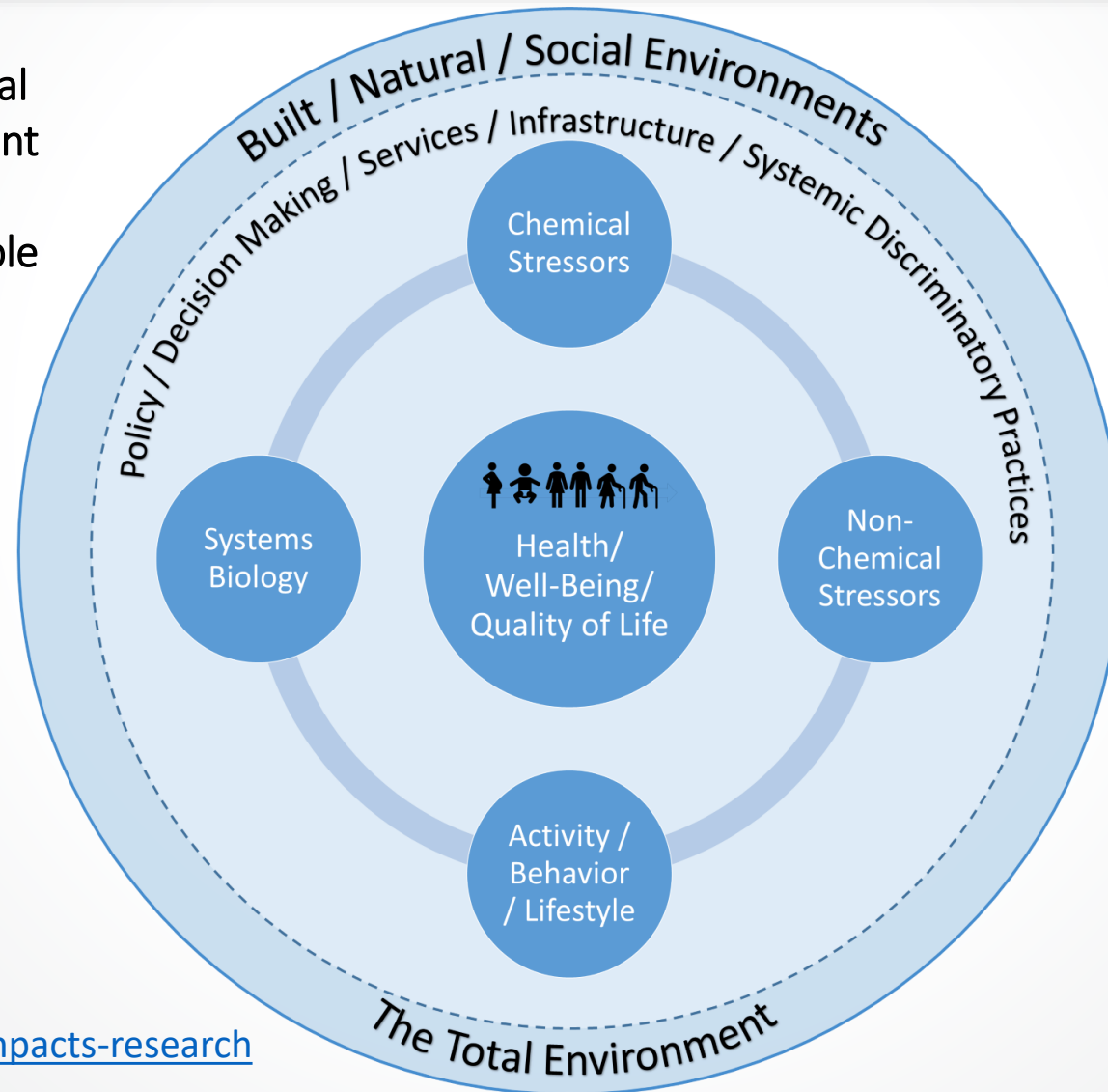
Definitions

- Cumulative Impacts** are defined as the totality of exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes.
- Cumulative Impact Assessment** is defined as a process of evaluating both quantitative and qualitative data representing cumulative impacts to inform a decision.



Cumulative Impacts Conceptual Diagram

Combined influences on the total (built, natural, social) environment for individuals, geographically defined communities, or definable population groups





Relationship between disproportionate and cumulative impacts

Figure 4.1 – People of Color Percentages in Neighborhoods with Clustered Facilities, Non-Clustered Facilities and No Facility

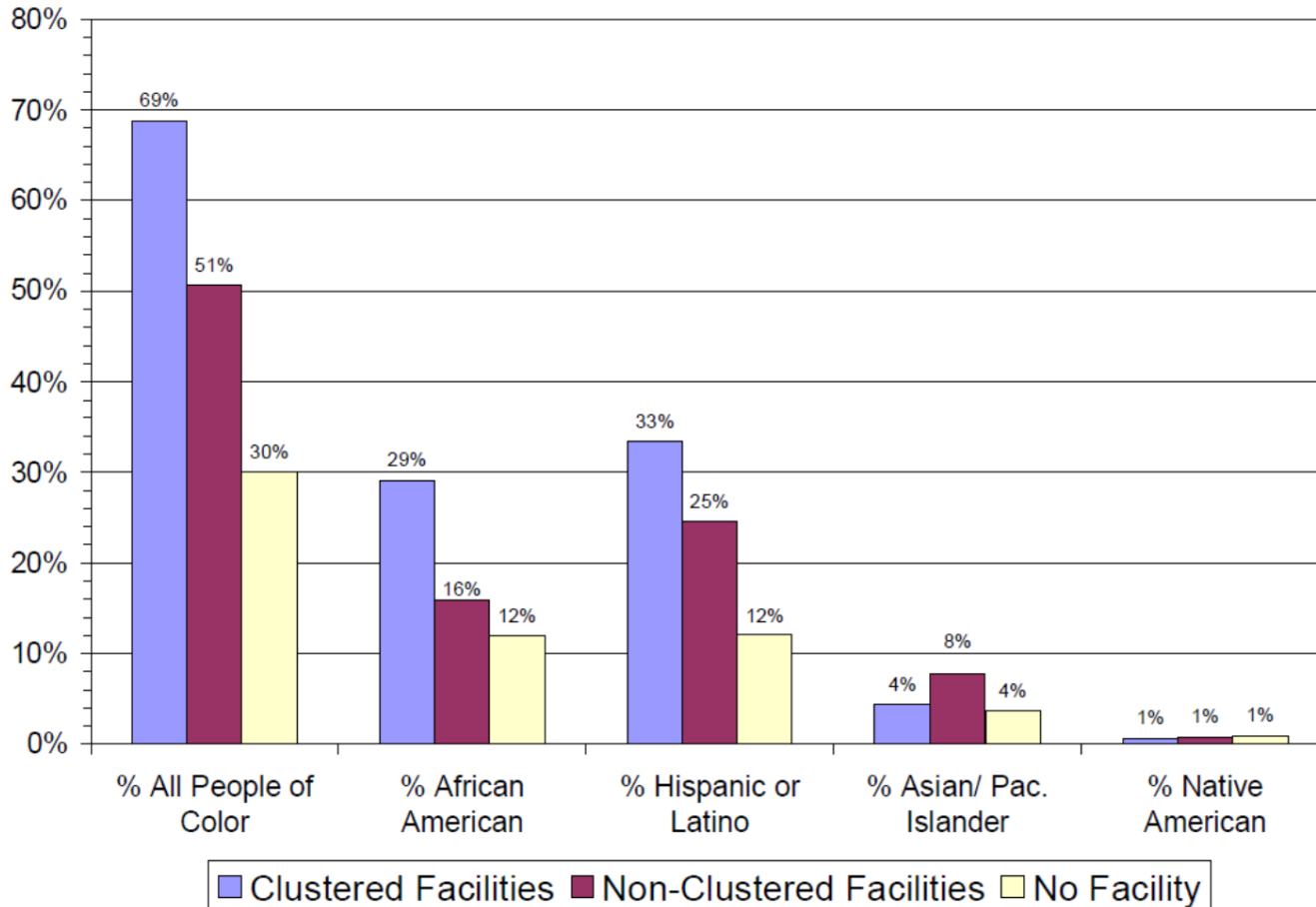
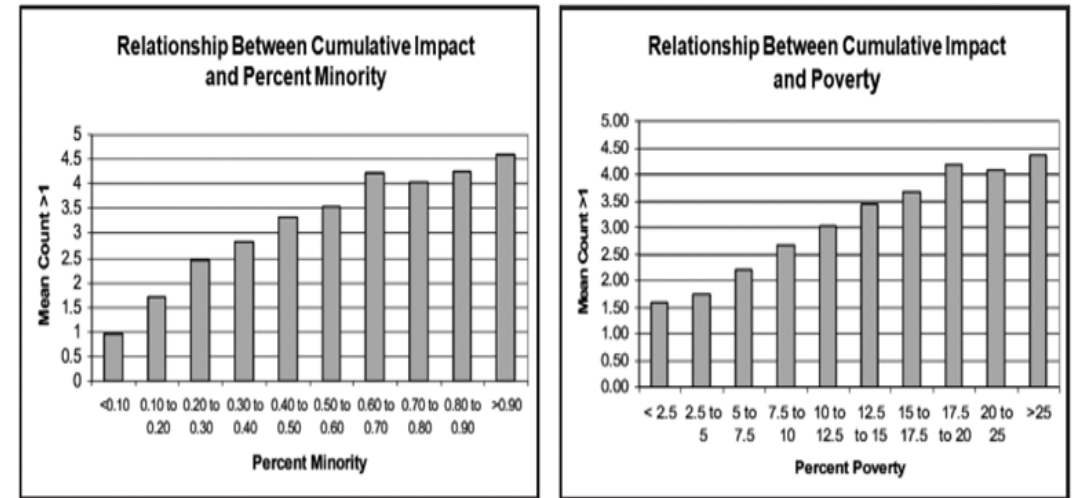


Figure 7. Cumulative Impacts in New Jersey



Source: New Jersey DEP

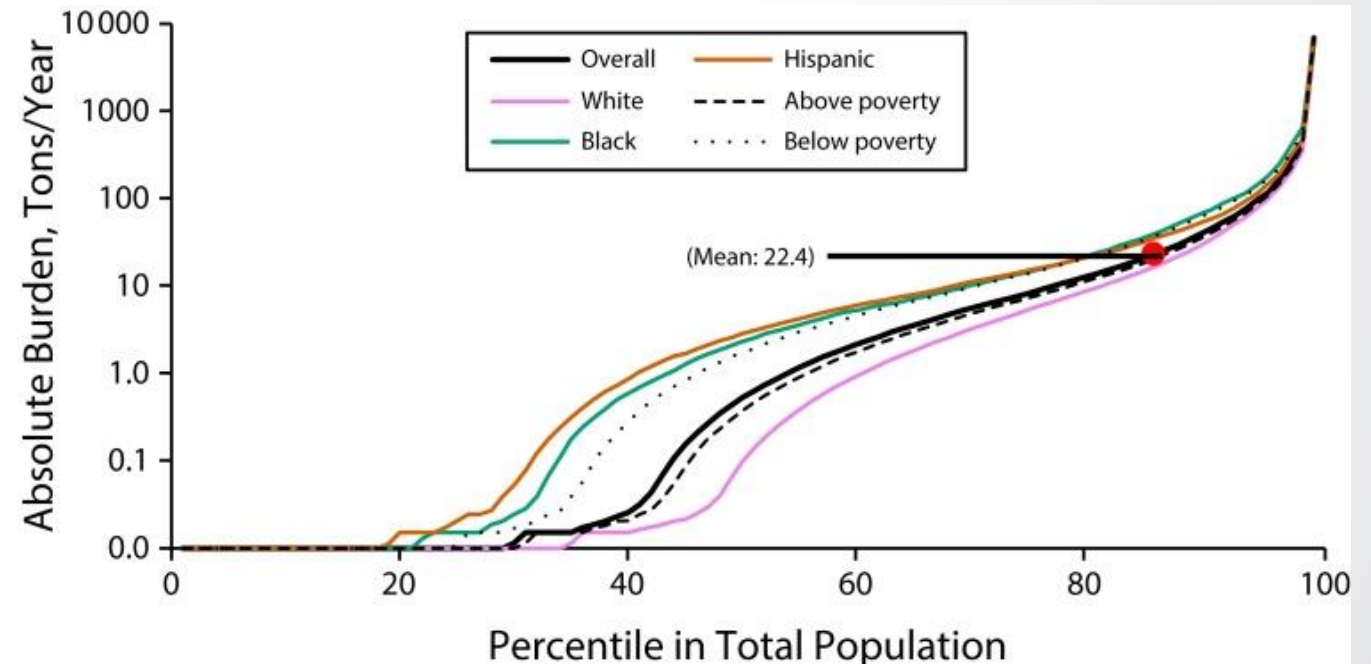


Cumulative Impacts

Example: Cumulative and Disproportionate Impacts

- Those in poverty had 1.35 times higher PM_{2.5} burden than did the overall population
- Non-Whites had 1.28 times higher burden
- Blacks, specifically, had 1.54 times higher burden than did the overall population

Communities of Color / Poverty Experience Disproportionate PM Emissions Burden



Distribution of Absolute Burdens of PM_{2.5} Emissions From Nearby Facilities in the 2011 National Emissions Inventory, Stratified by Race/Ethnicity and Poverty Status: American Community Survey, United States, 2009–2013 (Mikati, et al, AJPH 2018)



Cumulative Impacts

Example: Cumulative and Disproportionate Impacts

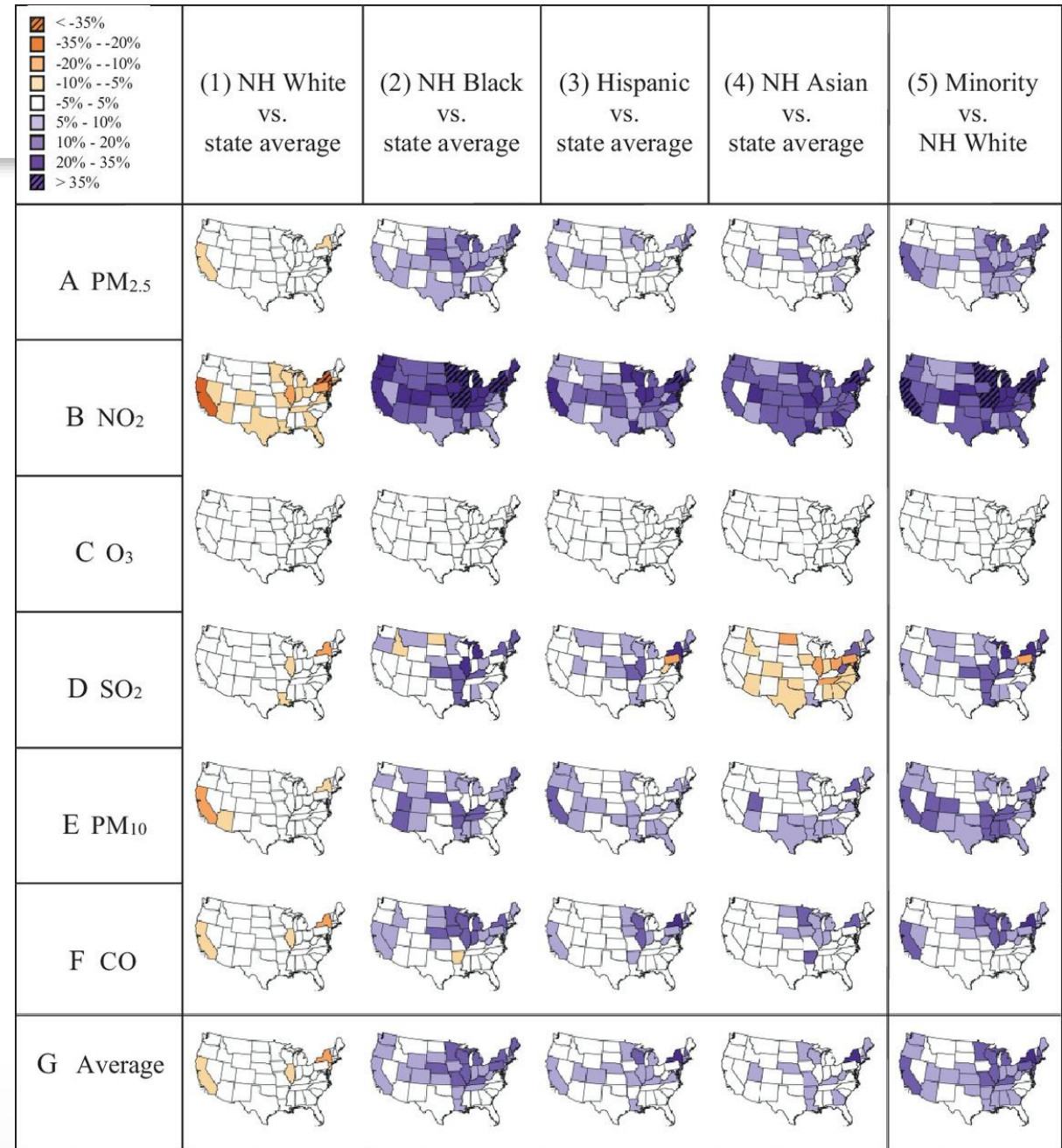
Racial disparities in NAAQS air pollutants

State/racial ethnic disparities in pollution exposure 1990-2010.

Purple denotes mean exposures are higher than average

Orange denotes mean exposures lower than average

Liu, et al, 2021 Env Health Perspect

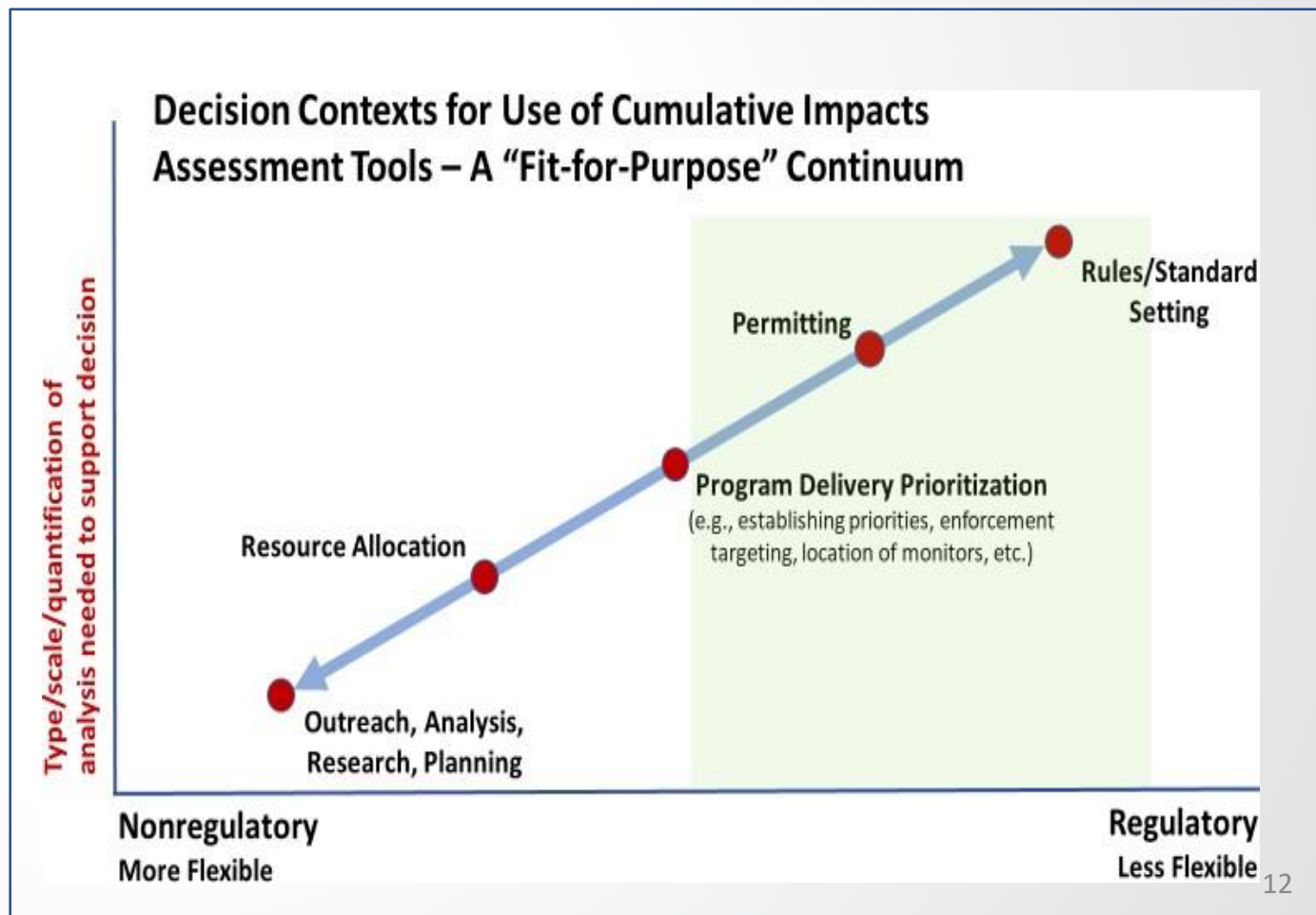




Cumulative Impacts

Critical Concepts: Fit-for-purpose

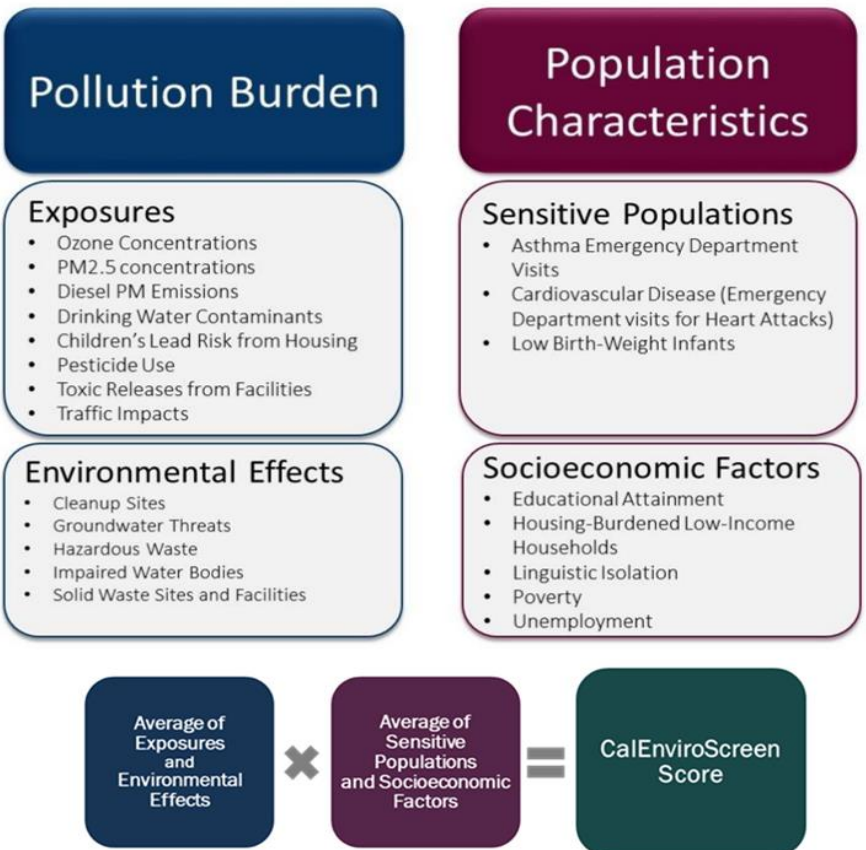
- Cumulative impact assessment information has already been used in significant ways.
- As we move into the regulatory decision contexts, EPA and its partners at the state and local levels are identifying key questions and developing new methods.
- These developments represent major challenges and opportunities for EPA in developing and operationalizing a cumulative impacts framework.



Proliferation of EJ mapping tools

- State Level Tools include CA, WA, IL, NC, etc.
 - Began with California SB 535 and Greenhouse Gas Reduction Fund
 - Illinois Future Energy Jobs Act
 - NYS Climate and Community Protection Act
- National Level Tools
 - EJSCREEN
 - CEJEST/Justice40
 - CDC Environmental Justice Index

CalEnviroScreen 4.0 Indicators and Methodology

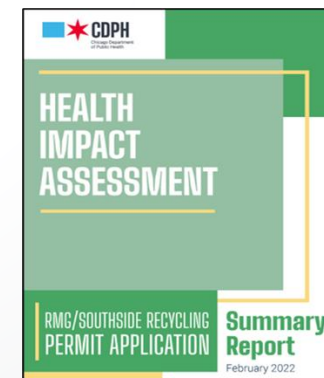
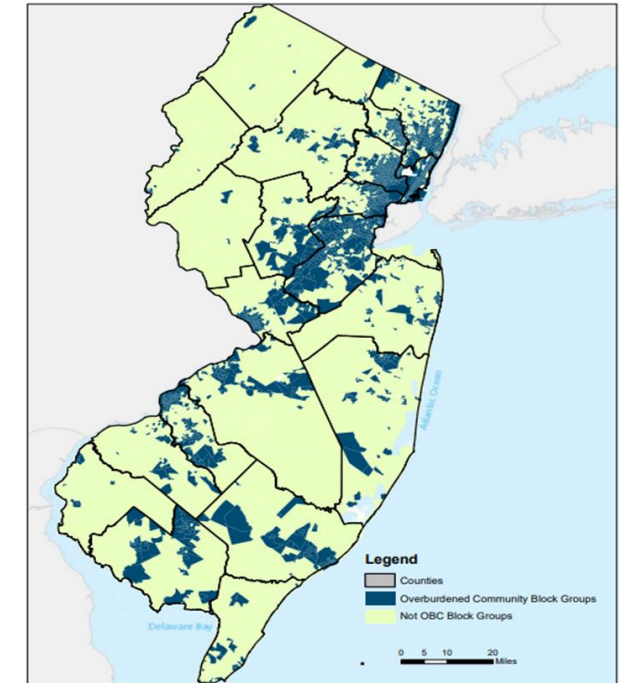


Source: CalEPA 2021



Moving into Regulatory Decision Contexts

- 14 states have statutes or bills pending (>25%); with subset having permitting requirement (MN, CA, NJ, CO, MA, NY)
- Permitting Protocol Development
 - MN, CA, MA – Not defined
 - NJ, NY, CO – Requirement to consider equity
- Landmark NJDEP Regulations
- Chicago DPH “General Iron” Permit, using Health Impact Assessment



NJ DEP Overburdened Community Summary

Overburdened Community Stressor Summary

Block Group: 340130072001

Municipality: Newark City

County: Essex

ODC Criteria: Low Income, Minority, and Limited English

Combined Stressor Total	
Block Group Value: Combined Stressor Total	21
County	15
State	13
Geographic Point of Comparison	13
Adverse Cumulative Stressors	Higher than 50th Percentile

Concentrated Areas of Air Pollution					
Stressor	Block Group Value	County Non ODC 50th	State Non ODC 50th	Geographic Point of Comparison	Adverse Stressor
Ground-Level Ozone (3-year average days above standard)	1.3	1.0	1.3	1.0	Yes
Fine Particulate Matter (PM _{2.5}) (3-year average days above standard)	0	0	0	0	Yes
Cancer Risk from Diesel Particulate Matter (estimated cancer risk/million)	301	174	95	95	Yes
Cancer Risk from Air Toxics Excluding Diesel Particulate Matter (estimated cancer risk/million)	64	51	40	40	Yes
Non-Cancer Risk from Air Toxics (Combined Hazard Quotient)	8.71	3.67	2.05	2.05	Yes

Mobile Sources of Air Pollution					
Stressor	Block Group Value	County Non ODC 50th	State Non ODC 50th	Geographic Point of Comparison	Adverse Stressor
Traffic - Cars, Light- and Medium-Duty Trucks (Annual Average Daily Traffic (AADT)-miles/square mile)	88257	30409	23623	23623	Yes
Traffic - Heavy-Duty Trucks (AADT-miles/square mile)	1130	293	293	293	Yes
Railways (all miles/square mile)	0.0	0.0	0	0	No

Contaminated Sites					
Stressor	Block Group Value	County Non ODC 50th	State Non ODC 50th	Geographic Point of Comparison	Adverse Stressor
Known Contaminated Sites (weighted sites/square mile)	54.5	3.01	1.49	1.49	Yes
Soil Contamination Deep Restrictions (percent area)	0.15	0.0	0	0	Yes
Ground Water Classification Exception Area/Currently Known Extent Restrictions (percent area)	0.0	0.0	0	0	No

Transfer Stations, or Other Solid Waste Facilities, Recycling Facilities, Scrap Metal Facilities					
Stressor	Block Group Value	County Non ODC 50th	State Non ODC 50th	Geographic Point of Comparison	Adverse Stressor
Solid Waste Facilities (sites/square mile)	0.0	0	0	0	No
Scrap Metal Facilities (sites/square mile)	2.29	0	0	0	Yes

Point-Sources of Water Pollution					
Stressor	Block Group Value	County Non ODC 50th	State Non ODC 50th	Geographic Point of Comparison	Adverse Stressor
Surface Water (percent of uses impaired)	75.0	100.0	87.39	87.39	No
Combined Sewer Overflows (count)		NA	NA	NA	No

May Cause Potential Public Health Impacts					
Stressor	Block Group Value	County Non ODC 50th	State Non ODC 50th	Geographic Point of Comparison	Adverse Stressor
Drinking Water (count of public drinking water violations or exceedances, or percent of private well testing exceedances)	13	NA	NA	NA	1
Potential Lead Exposure (percent houses older than 1950)	95.99	50.73	15.30	15.30	Yes



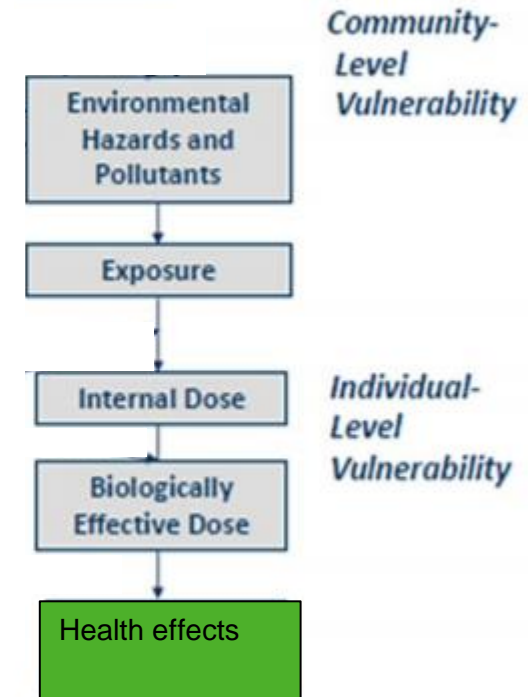
Cumulative Impacts

Critical Concepts: Chemical and Non-Chemical stressors

We feel fairly comfortable with the Source-Exposure-Dose-Effect paradigm for single and multiple chemical assessments

How do we go from this traditional chemical risk assessment paradigm...

Traditional Risk Assessment



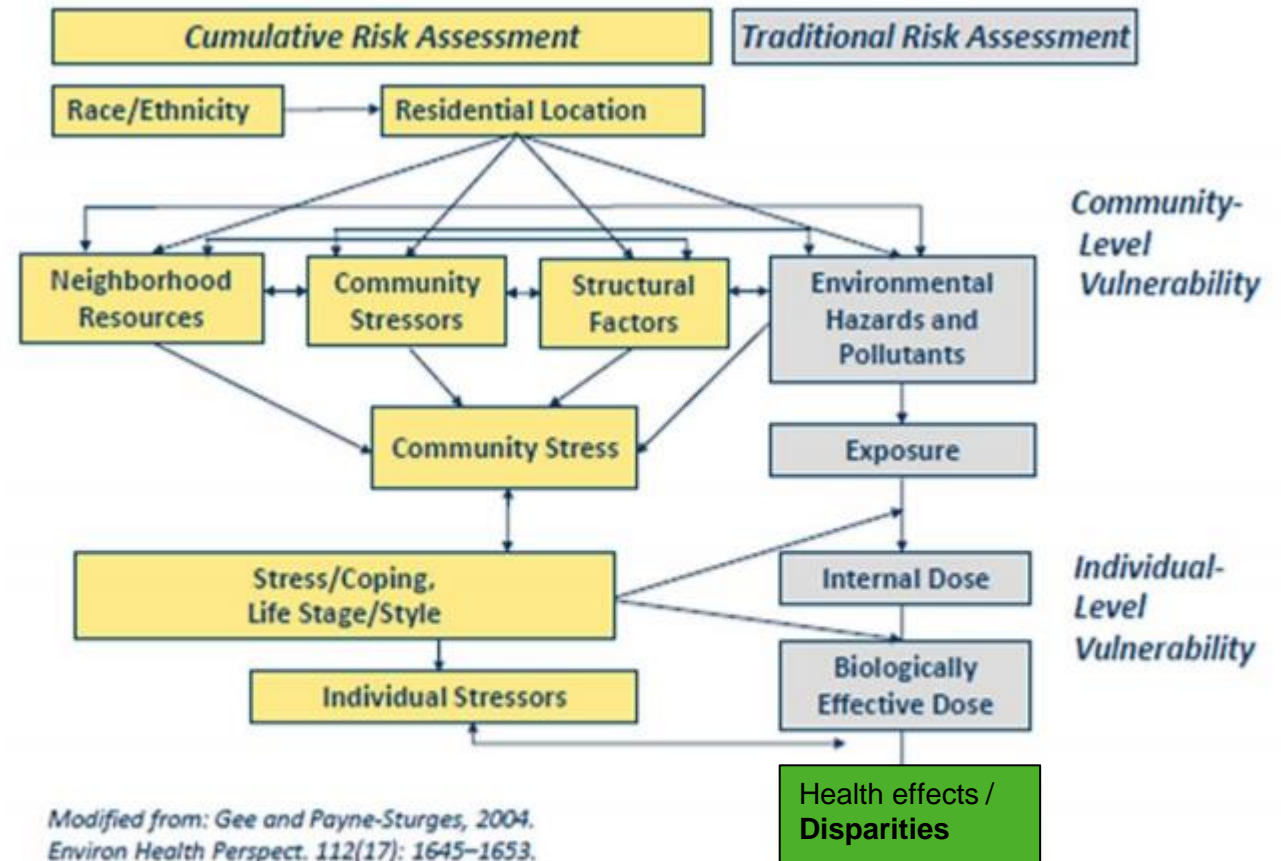
From Environmental Justice Research Roadmap EPA 601/R-16/006 (2016)



Cumulative Impacts

Critical Concepts: Chemical and Non-Chemical stressors

...to this paradigm that incorporates non-chemical stressors that undoubtedly play a role in disparate exposures and health outcomes?





Cumulative Impacts

Critical Concepts: Key elements for structured assessment and decision processes

- Screening and Tiering
- Scoping
 - Community engagement
 - Analysis design
- Assessment
 - Analysis (quantitative and qualitative methods)
 - Use of mixed methods
 - Identifying potential actions
- Decisions and Action Plans (Recommendations)
- Implementation (Reporting and monitoring)

HOW THESE ELEMENTS ARE USED DEPENDS ON DECISION CONTEXT AND OTHER FACTORS



Cumulative Impacts

Example: Mixed methods assessment approach by Chicago DPH



Pollution	Traffic/Street Conditions	Noise	Explosion/Fires
Potential Mitigations / Permit Conditions			
<ul style="list-style-type: none"> • Conduct daily patrols for auto shredder residue and litter; clean in surrounding community areas • Prohibit torch cutting of metals and accepting any waste, including hazardous waste • Conduct continuous sampling for pollutants • Install, operate, and maintain weather station and particulate matter monitors; notify CDPH of any exceedances within 15 minutes • Treat all discharges to City's sewer system • Prohibit use of detention pond water for dust control 	<ul style="list-style-type: none"> • Improve and make public Burley Avenue between 106th street and 122nd Street to redirect truck traffic from residential and sensitive populations along Avenue O. 	<ul style="list-style-type: none"> • Install, operate, and maintain a noise monitor • Notify CDPH of any and all shredder explosions, including raw sound pressure levels and minimum one-band octaves of the explosion 	<ul style="list-style-type: none"> • Require thermal cameras to monitor material stockpiles for hotspot • Conduct air monitoring and sampling for fires lasting more than one hour • Fire Department dispatch to flag RMG address and ensure prompt response by hazmat team with appropriate air monitoring equipment

These steps could help to offset the most significant environmental, health, and quality of life impacts. However, permit conditions are only effective to the extent that they are implemented as required by RMG – and mitigations would not address community concerns related to the continued concentration of industry in their neighborhoods.

<https://www.chicago.gov/city/en/sites/rmg-expansion/home/health-impact-assessment.htm> |

“Our community is not a sacrifice zone... This decision can be a turning point for communities of color that have been hurt by environmental racism for decades. Although we are celebrating this decision, the community continues to deal with the toxic legacy that has allowed pollution to accumulate in our community and we will not stop fighting for our right to clean air, and we will continue to fight until the health of Chicago communities like ours can live in a healthy environment.” -- Coalition of community organizations



Cumulative Impacts

Critical Concepts: Working across multiple decisions, programs and agencies

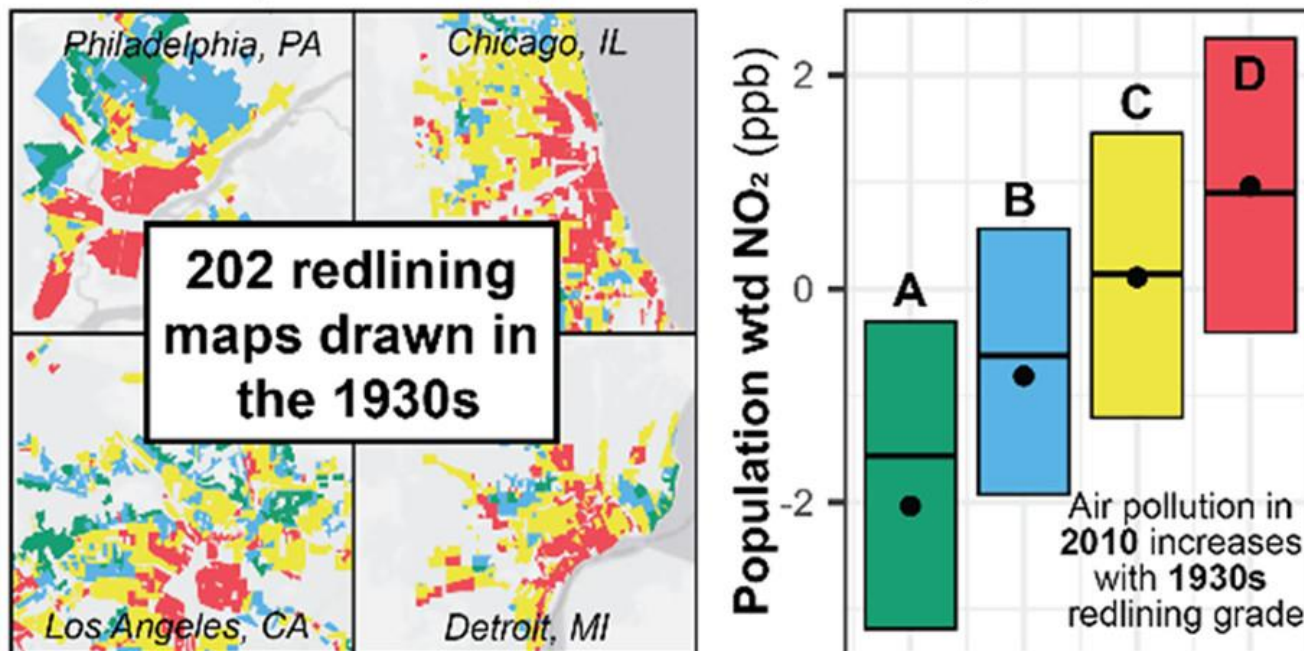
- Identify impacts of concern
 - EPA regulated, Non-EPA regulated, Unregulated
- Inventory relevant decisions, programs or policies at multiple levels of government
- Promote community involvement and leadership
- Determine desired health, environmental, social, economic and quality of life outcomes
- Look for coordination gaps and opportunities
- Optimize impacts of multiple decisions
- Be realistic about and address capacity issues

**THINKING
STRATEGICALLY
TO DEVELOP
ACTION PLAN**

Cumulative Impacts

Example: Chemical
and Non-Chemical stressors

Modern air pollution disparities in historically redlined areas



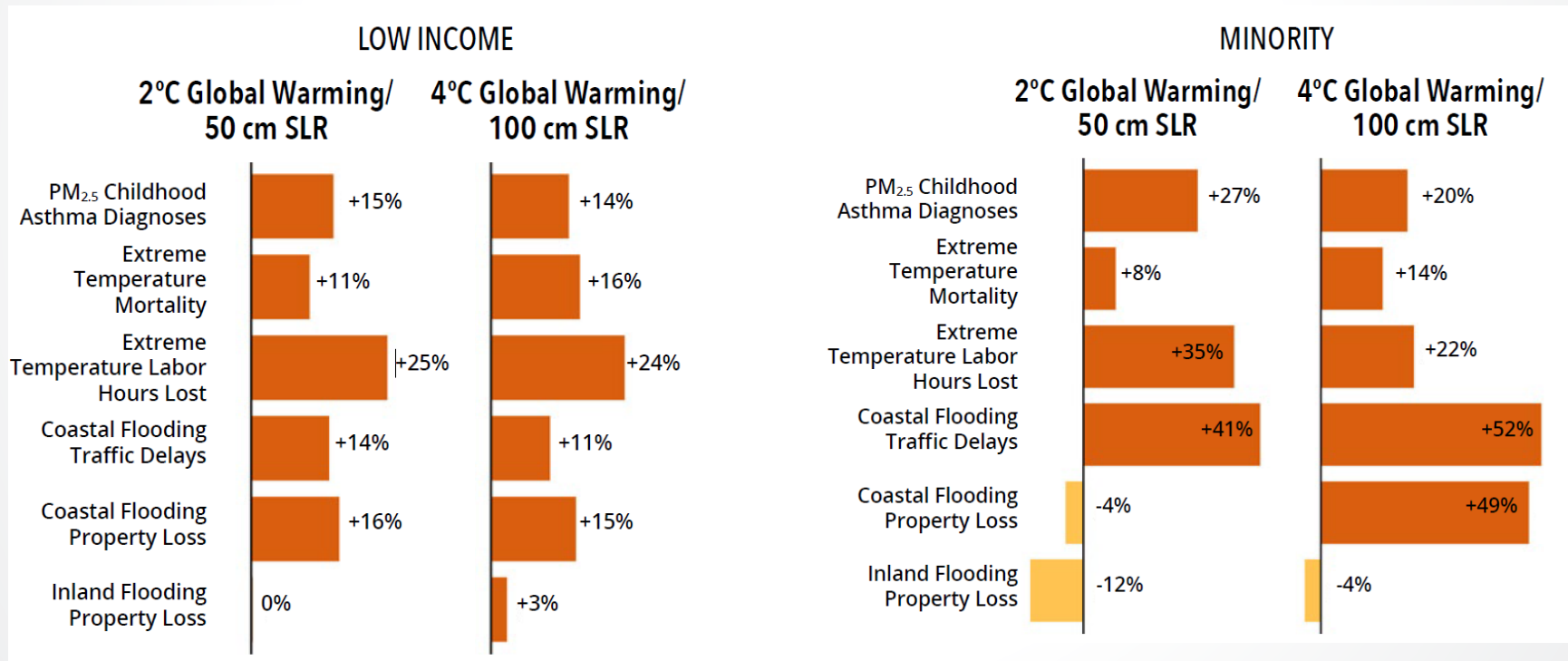
Lane, et al, 2022 Env Sci Tech Letters



Cumulative Impacts

Example:
Climate

Low income Americans and Americans of Color are more likely to live in areas facing higher risks of most climate damage impacts





Thank You



clean
AIRE
nc

NCDEQ EJEAB Meeting

Health and Equity in the Historic West End Green District

Ron Ross, Historic West End Green District

March 16, 2023

Air Pollution is a Leading Cause of Death

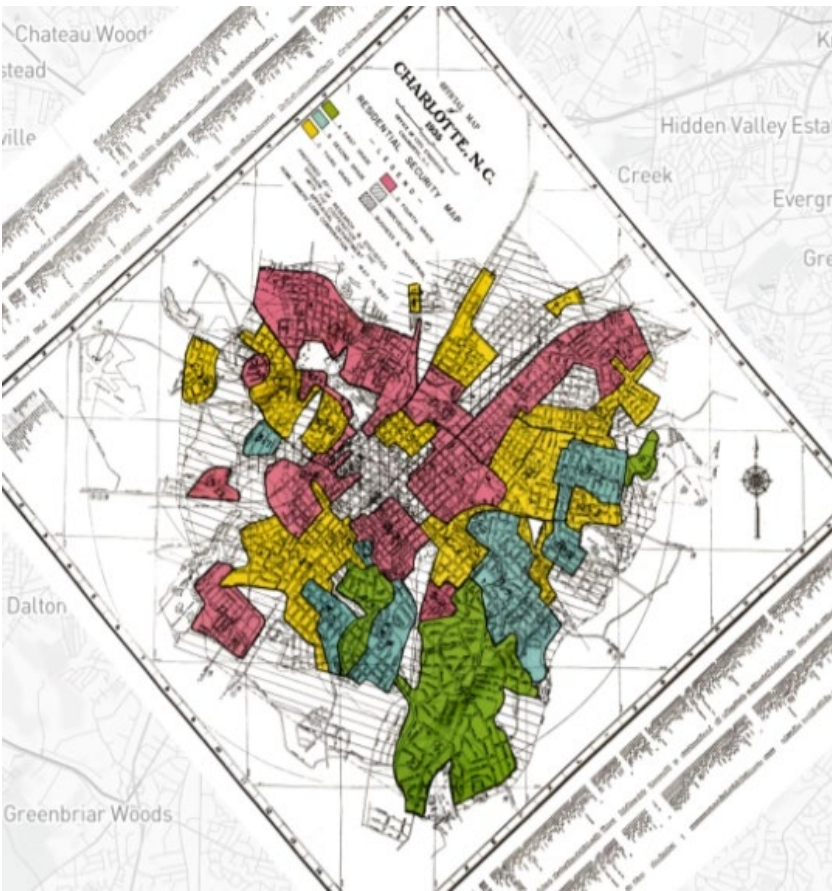
Leading Causes of Death in <i>North Carolina</i>		
Rank	Cause	Deaths, 2020
1	Heart Disease	20,373
2	Cancer	19,996
3	Covid-19	161.7 (crude death rate per 100,000)
4	Accidents	7,379
5	Stroke	5,720

Source: Centers for Disease Control & Prevention, 2020, 2021

Historic West End Challenges

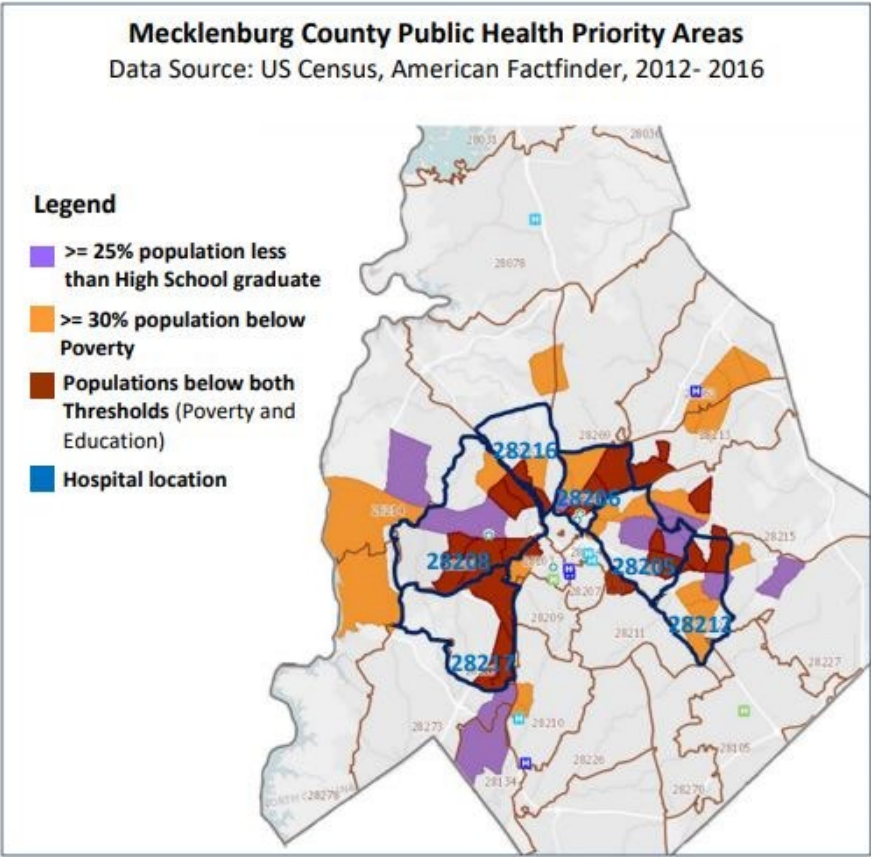
Historical Place Based Social Exclusion

1935 Redlining Disinvestment Map Crescent



Social Determinants of Health

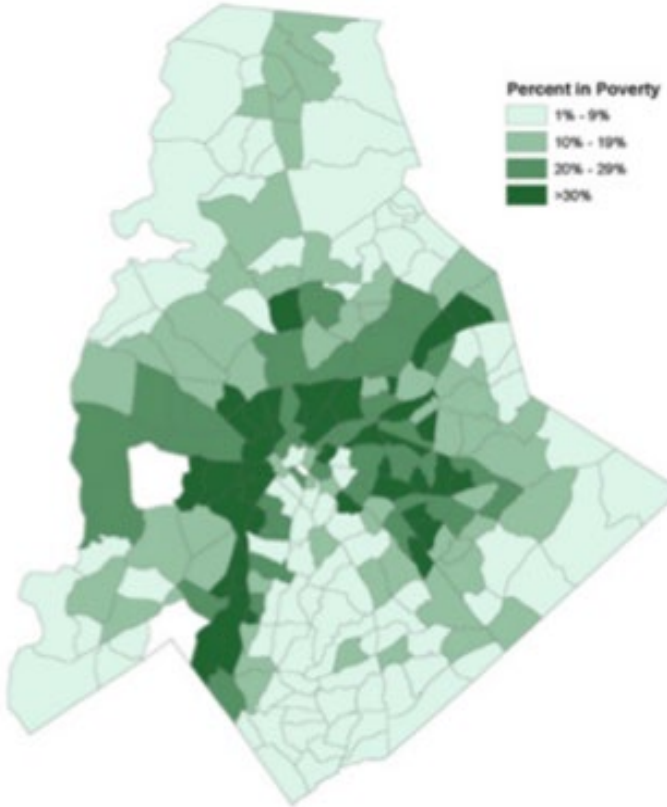
2012-2016 Public Health Priority Areas



Continued Economic Segregation

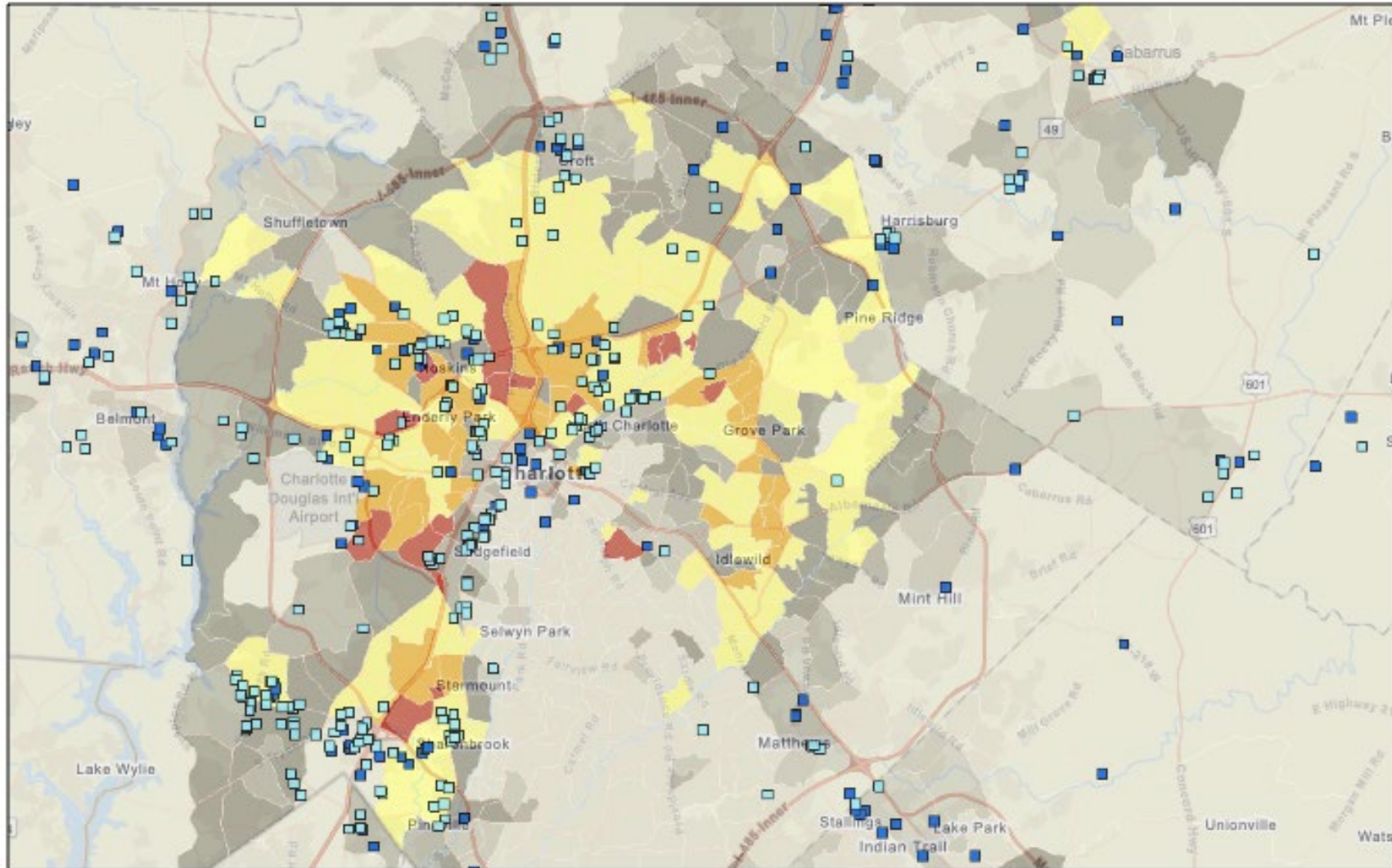
2020 Poverty

Segregation by Poverty

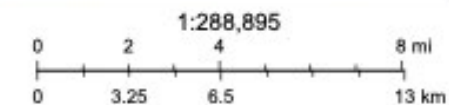


Sources: 2017-18 Mecklenburg County Health Assessment, 2018 Mecklenburg State of the County Health Report (SCOTCH)

Meck Co EPA Polluting Sites

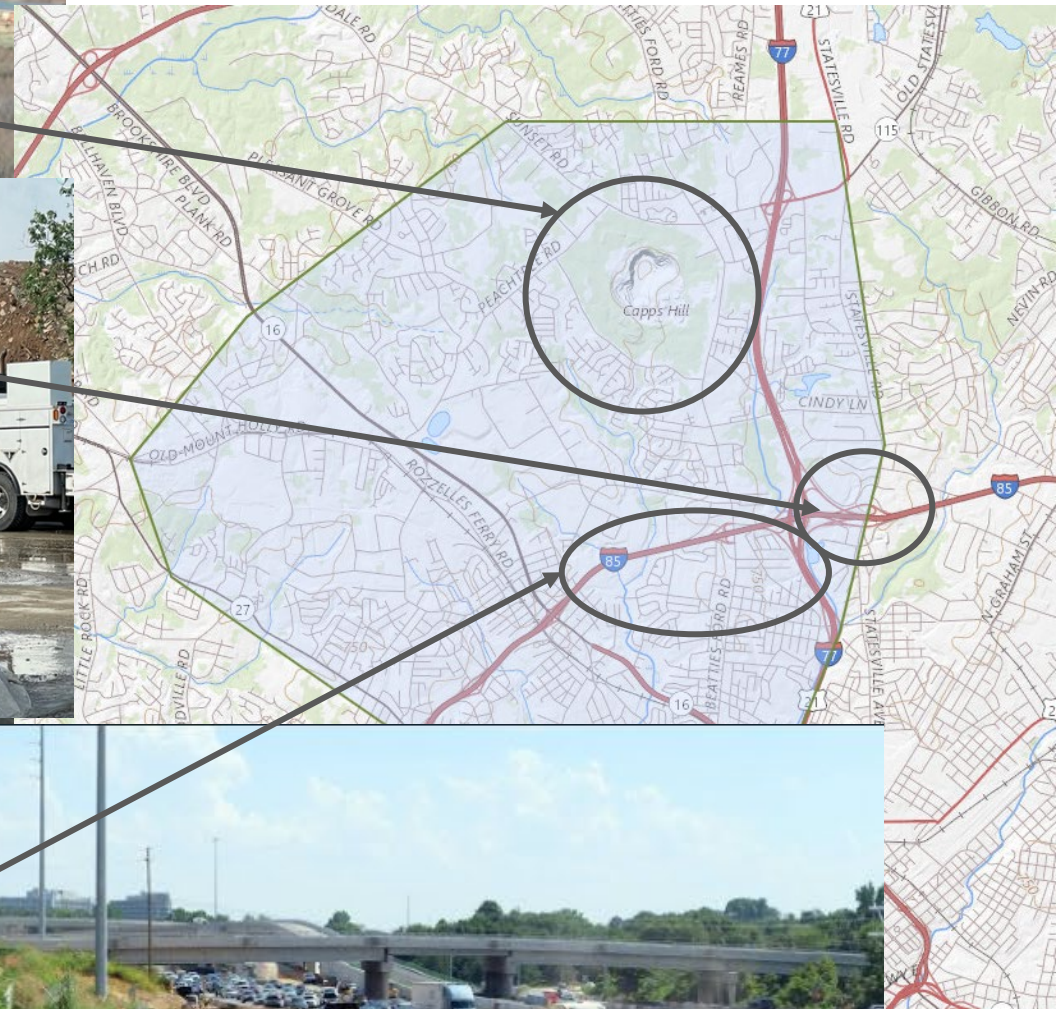


3/28/2022



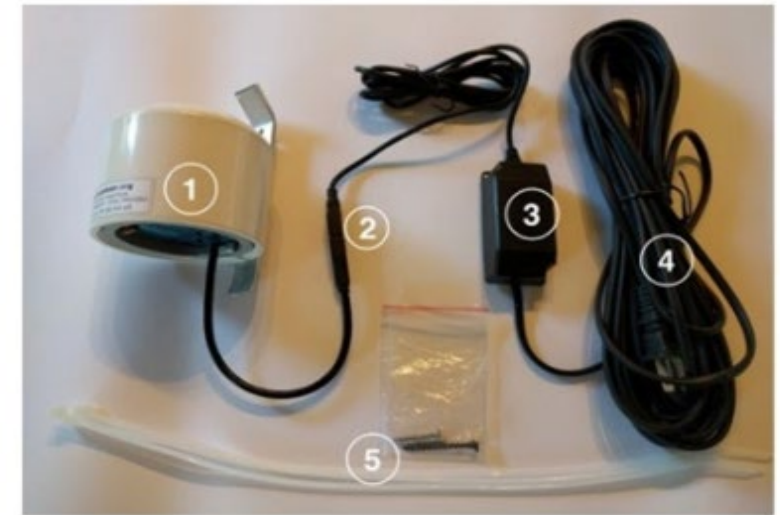
EPA, OMS, City of Charlotte, NC, Cabarrus County Government, Esri, HERE, Garmin, SafeGraph, METINASA, USGS, EPA, NPS, USDA

Martin Marietta Quarry

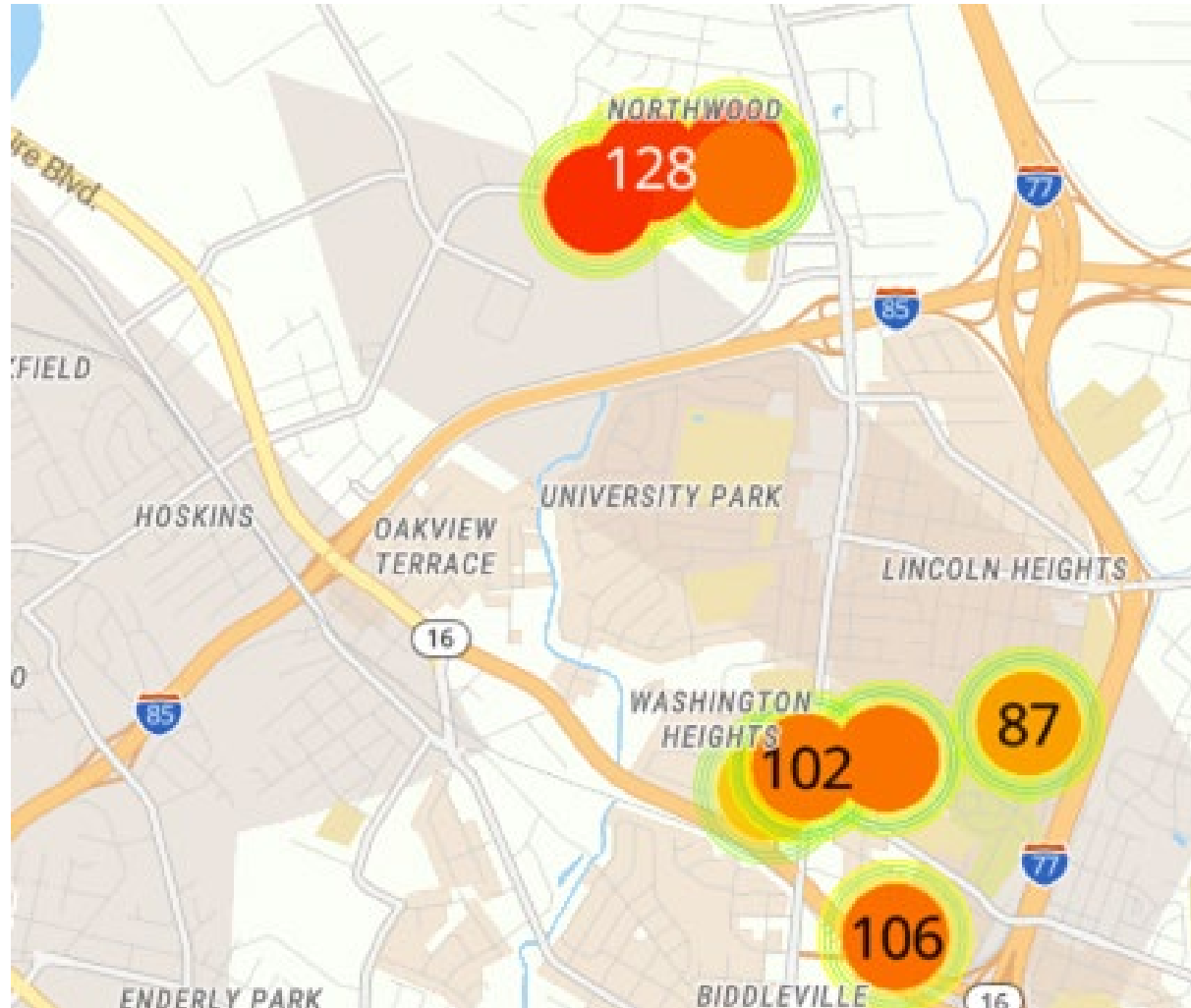


Understanding & Addressing Challenges Through Community Monitoring

- 2017: Community monitoring efforts begin
- Measured levels of PM 2.5
- Connections between social determinants of health and exposure to air pollution



Historic West End Monitors

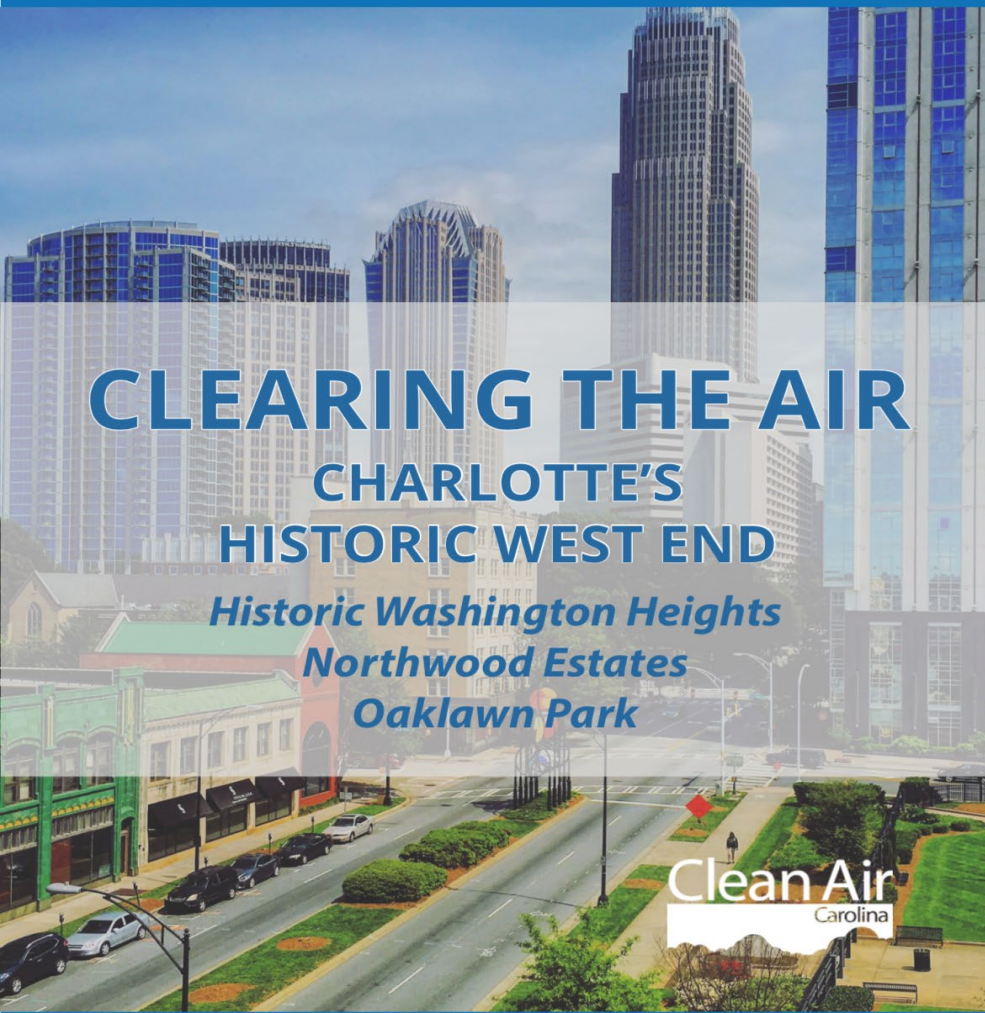


12 PurpleAir Monitors
across 6 Historic West
End Neighborhoods



AQI (US)	PM2.5 (µg/m3)	Remark
0-50	0-12	Good
51-100	12-35	Moderate
101-150	35-55	Unhealthy for Sensitive Individuals
151-200	55-150	Unhealthy
201-300	150-250	Very Unhealthy
>300	>250	Hazardous

Mecklenburg County Commission Approves EPA Monitor in Historic West End as a result of Citizen Science Monitoring



FALL 2018



Friendship Missionary Baptist Church, EPA
Federal PM 2.5 Air Monitor



Ron Ross (L), Calvin Cupini (R)



HISTORIC WEST END Green District



Ron Ross, Mattie Marshall, and William Hughes are Historic West End Green District lead organizers.

The Historic West End Green District is an initiative between community leaders who have been working with CleanAIRE NC to monitor levels of air pollution in their neighborhoods since 2017.

Our goal is to implement a vision of a Green District designed to improve air quality, reduce carbon emissions, and improve health. Below is a list of priorities our group is currently working on.

Air Quality Monitoring

Monitoring efforts began with the intent to broaden understanding of local air quality and the possible health impacts associated with it. In 2018, these ongoing efforts led to the successful advocacy for a federal EPA regulated monitor installment in the Historic West End.

Located in Friendship Park near the Sportsplex, the monitor measures invisible particle pollution that is linked to asthma, COPD, diabetes, and heart disease. Monitoring efforts continue in order to inform neighbors about pollution sources and increase opportunities to advocate for cleaner air. Host a PurpleAir monitor at your home for free today!



Mattie Marshall using a portable air monitor to measure air particles in her neighborhood.



Obtain current air quality reports from the Friendship Park Air Quality Monitoring Station at <https://airquality.mecknc.gov/data>



Genesis Park is adjacent to Interstate-77, a source of noise, air, and visual pollution.



Planting vegetation and trees along I-77 between car lanes and neighborhoods will provide relief from noise, reduce pollution, and enhance beauty.

Strategic Tree Planting

Trees provide boundless benefits. Among many things, they are responsible for filtering out pollutants, releasing oxygen, and providing heat relief.

The trouble is that these benefits are not equitably distributed and in many cases have been removed. In the late 1960s, thousands of Black residents were forced to relocate to make room for I-77. Not only were homes and communities removed, but also trees and their beneficial impact. The latest report from TreesCharlotte confirms that there is disproportionate tree loss in the Historic West End and other undeserved neighborhoods.

For this reason, strategic tree planting, landscaping, and vegetation is needed to protect the health and safety of the community and shield residents from existing and new pollution. A major goal of the Historic West End Green District is to make access to the benefits of trees more equitable.



Electric Vehicle Charging Stations

With transportation being the major source of air pollution in Charlotte, promoting electric vehicles, electrification efforts and sustainable transportation which emit no pollution is a major goal of this initiative. The Historic West End wants to ensure they do not get left behind in securing EV infrastructure and benefiting from a clean energy transition.

Partnerships have been formed with local government entities and businesses to deploy EV charging stations in various locations, including the latest PoleVolt charging station located at the Ritz at Washington Heights. In this process, we are also working to facilitate opportunities and incentives to make electric vehicles more accessible and affordable to members of the community.

Left: William Hughes and his daughter Laila attend the installation of the PoleVolt

Green Infrastructure

Green infrastructure includes vegetation on various architectural features such as green walls and green roofs. This type of infrastructure helps to mitigate climate and air pollution impacts, as well as enhance social equity and improve health outcomes.

As climate change increases the number of days above 90 degrees, we must reduce heat impacts by enhancing infrastructure that will help to build resiliency. We have begun implementing plans to beautify and add green infrastructure to the Historic West End including biomonitors, green walls and adding greenery to the iconic Historic West End Green District pillars.



Artist Sala Faruq's artwork beautifies a traffic signal box.

Clean Air Awareness

One of our goals is to educate the community about sustainable strategies to reduce air pollution and protect health. We offer educational series to increase understanding of air pollution in the Historic West End, increase enthusiasm for reducing emissions, and encourage participants to take actions to protect their health. Historic West End residents receive stipends for participating in these sessions!

The Clean Air Advocacy Training provides the location of pollution sources and tools residents can use to increase their engagement in air permitting and zoning decisions.

The Healthy Air Education series increases participants' knowledge about air quality impacts on specific health issues.



Historic West End Green District general boundaries



Education and action promote a green vision for the Historic West End Green District.



For more information about the Historic West End Green District and to join our efforts, contact:

Daisha Williams (daisha@cleanairenc.org)
Ron Ross (ron@cleanairenc.org)

We welcome grant opportunities, volunteers, financial resources, and partnerships!

Green Infrastructure + Strategic Tree Plantings

Projects & Outcomes

- Wells Fargo ATM Clean Air Garden
- Charlotte 2022 Placemaking Grant: HWE Green District Green Pillars
- Tree Adoption with TreesCharlotte
- Monitoring in highly polluted neighborhoods



Electric Vehicle Expansion

Projects & Outcomes

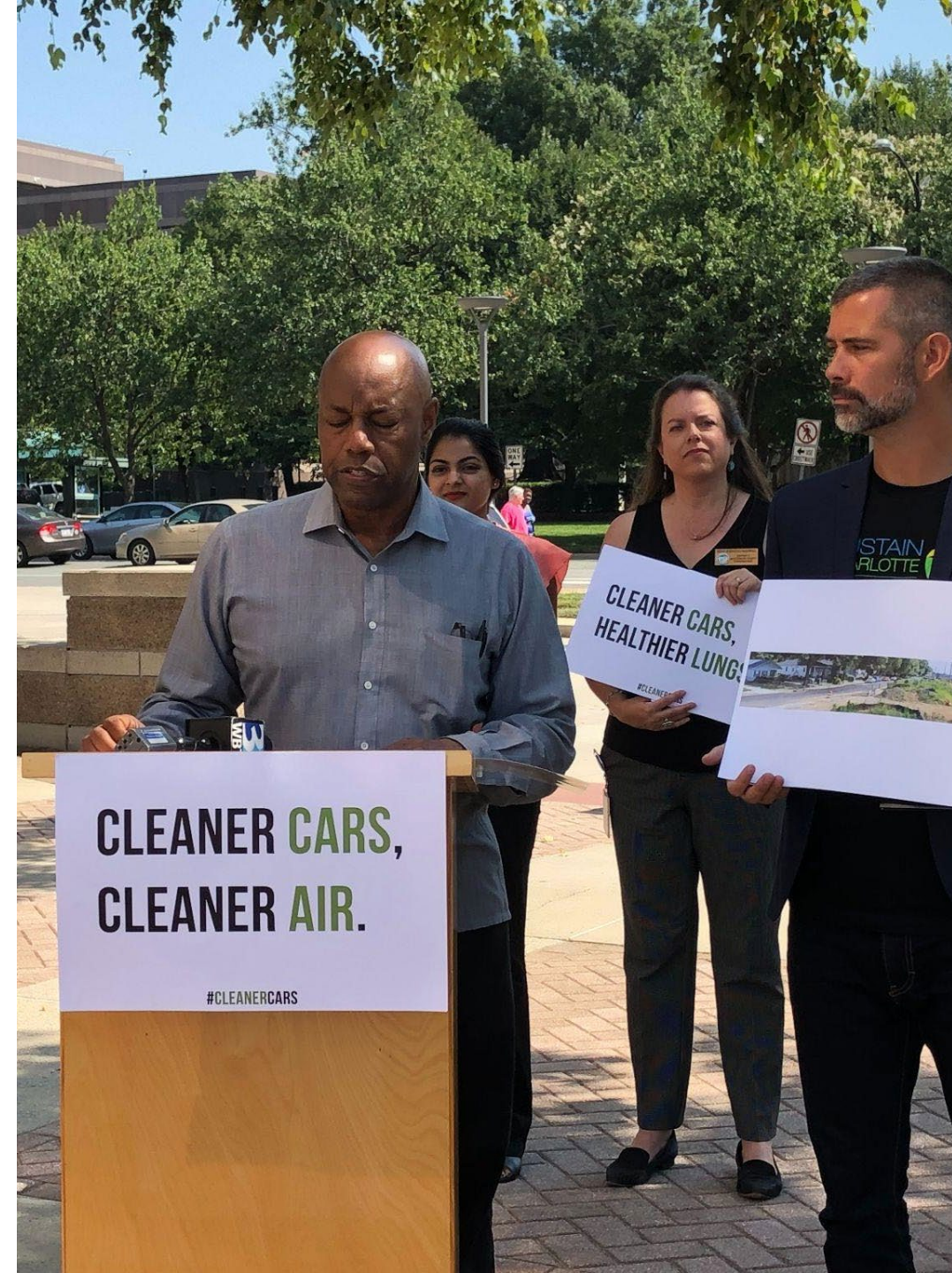
- PoleVolt & PurpleAir Monitor
- EV Ride and Drive Event to educate residents about electric vehicle infrastructure and expansion
- Deployment of other EV charging sites: Beatties Ford Rd Corridor



Education & Advocacy

Projects & Outcomes

- **July 2022:** Virtual Clean Air Advocacy Trainings, Sessions 1 & 2
- **September 2022:** Virtual Healthy Air Education Series, Sessions 1 & 2
- **100+** Historic West End residents participated!



Moving Forward

- Improve tree canopy and green infrastructure in historically impacted communities
- Green buffers along I-77, I-85 and NC-16
- Utilize community-led data collection, especially since there is a gap in federal monitoring and understanding of neighborhood level exposure
- Provide economic benefits and career opportunities around EV expansion
- Seeking affordable opportunities for residents to obtain Electric Vehicles
- Community Benefits Agreements
- Provide more access to health resources and provide additional studies around the impacts of cumulative sources of pollution in impacted communities
- Clean Construction Partnerships

THANK YOU!

<https://cleanairenc.org/hwe-clt/>

Ron Ross

roneross@gmail.com

Legal Obligations for DEQ to Consider Cumulative Impacts

March 16, 2023



**SOUTHERN
ENVIRONMENTAL
LAW
CENTER**

Jasmine B. Washington

Associate Attorney

Southern Environmental Law Center

Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

42 U.S.C. § 2000d.

“A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.” 40 C.F.R. § 7.35(b).

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42 U.S.C. § 2000d.

“A recipient shall not use criteria or methods of administering its **program or activity** which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.” 40 C.F.R. § 7.35(b).

EPA's 2017 External Civil Rights Compliance Office Compliance Toolkit

“[P]ermitting decisions[] taken by state agencies funded by EPA are subject to federal civil rights laws.”

Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be **subjected to discrimination** under any program or activity receiving Federal financial assistance.”

42 U.S.C. § 2000d.

“A recipient shall not use criteria or methods of administering its program or activity which have **the effect of subjecting individuals to discrimination** because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.” 40 C.F.R. § 7.35(b).

Types of Discrimination

Intentional Discrimination

Occurs when a recipient of federal financial assistance acts, at least in part, ***because of*** the actual or perceived race, color, or national origin of the alleged victim.

Disparate Impact

Occurs when a recipient of federal financial assistance uses a **facial neutral policy** or practice that has a **harmful and disproportionate effect** based on race, color, or national origin.

Cumulative Harms Considered in Disparate Impact*

- Environmental harms
 - Local air quality
 - Local water quality
- Adverse health effects
 - Asthma & other respiratory illness
 - Cardiac disease
 - Cancer
- Non-health harms
 - Decreased property value
 - Nuisance odors and noise
 - Traffic congestion
 - Social & recreational harms

*** Intent does not matter**

EPA's 2017 External Civil Rights Compliance Office Compliance Toolkit

“It is also important to note that civil rights laws and environmental laws function separately.

Thus if, in a given circumstance, you are complying with applicable environmental laws that fact alone does not necessarily mean that you are complying with federal civil rights laws.”

EPA's 2022 Interim Environmental Justice & Civil Rights in Permitting Frequently Asked Questions

FAQ #5:

“[R]ecipients of federal financial assistance have an **independent obligation to comply with federal civil rights** laws with respect to all of their programs and activities, including environmental permitting programs.

A recipient's compliance with the requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean that the recipient is complying with federal civil rights laws.”

New EPA Guidance on Cumulative Impacts

- Interim Environmental Justice & Civil Rights Permitting FAQs
 - Published in August 2022
- Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum
 - Published in January 2023
- EJ in Air Permitting: Principles for Addressing Environmental Justice Concerns in Air Permitting
 - Published in December 2022

*** Intent does not matter**

EPA's 2022 Interim Environmental Justice & Civil Rights in Permitting Frequently Asked Questions

FAQ #12

“In the context of Title VI investigations, EPA considers cumulative impacts when evaluating whether there is an adverse impact from the recipient’s policy and practice.

That is, EPA considers whether any adverse impact caused by the permitting decision—and borne disproportionately by persons on the basis of race, color, or national origin (including LEP)—may be even greater considering cumulative impacts from other chemical and non-chemical stressors.”

EPA's 2023 EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum

“[Title VI’s] prohibition against discriminatory ‘effects’ covers the overall effect of a recipient’s activities—including consideration of cumulative impacts from both chemical and non-chemical stressors.

Accordingly, EPA has the authority to consider cumulative impacts when evaluating whether there is an adverse impact from a recipient’s policy or practice.”

EPA's 2023 EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum

Describes EPA's legal authority to address EJ concerns under existing environmental laws, including:

- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Resource Conservation & Recovery Act
- Title VI

DEQ's 2001 Environmental Equity Policy

To Meet The Goals, DENR Will:

- Inform potentially affected and protected communities about the Environmental Equity Initiative which seeks first to fully understand environmental issues as raised by the community, staff, industry, or other interested parties, and then attempts to address them in an environmentally sensitive manner that is consistent with sustainable economic development.
- Address environmental equity issues in permitting decisions for projects potentially having a disparate impact on communities protected by Title VI of the Civil Rights Act of 1964,
- Promote greater use and analysis of demographic information to identify communities that may be disproportionately impacted by sources of pollution,
- Use demographic information to determine whether there is: 1) a need for greater outreach to community in order to encourage more meaningful participation, or 2) special health risks based on the nature of the population,
- Develop guidelines for assessing the cumulative effects of permitted facilities.
- ~~Provide opportunities for interested parties to raise concerns on Environmental Equity in DENR's decisions,~~
- Develop a process for intervention or mediation specific for each instance with a focus on mutually acceptable solutions,
- Resolve environmental equity complaints, consistent with the protection afforded by Title VI of the Civil Rights Act of 1964,
- Develop a full record of environmental equity issues.

DEQ's Obligation to Act

- 40 C.F.R. § 7.35 (b), (c)
- N.C. Gen. Stat. § 130A-294(a)(4)(c)(9) (2007)
- EPA, EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum (2023)
- EPA, Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions (2022)
- EPA, U.S. EPA's External Civil Rights Compliance Office Toolkit (2017)
- U.S. Dep't of Justice, Title VI Legal Manual: Section VII: Proving Discrimination – Disparate Impact
- 78 Fed. Reg. 24,739, 24,739 (Apr. 26, 2013)
- 65 Fed. Reg. 39,650 (June 27, 2000)
- Letter from Lilian Dorka, EPA, to Father Phil Schmitter (Jan. 19, 2017) (making final finding of discrimination in Genesee Power Plant complaint).
- EPA Office of Inspector General, Improved EPA Oversight of Funding Recipients' Title VI Programs Could Prevent Discrimination (Sept. 28, 2020)
- *S. Camden Citizens in Action v. N.C. Dep't of Env't Prot.*, 145 F. Supp. 2d 446, (D.N.J. 2001)

Takeaways for DEQ

1. DEQ is bound by Title VI in their permitting programs.
2. Title VI has its own legal obligations, separate and distinct from obligations under federal and state environmental law.
3. Title VI requires DEQ to consider and mitigate cumulative impacts.

**We request that the EJEAB advise
DEQ that they are required to
consider the cumulative impacts of
permitting decisions on
communities of color in order to
comply with Title VI of the Civil
Rights Act of 1964.**





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