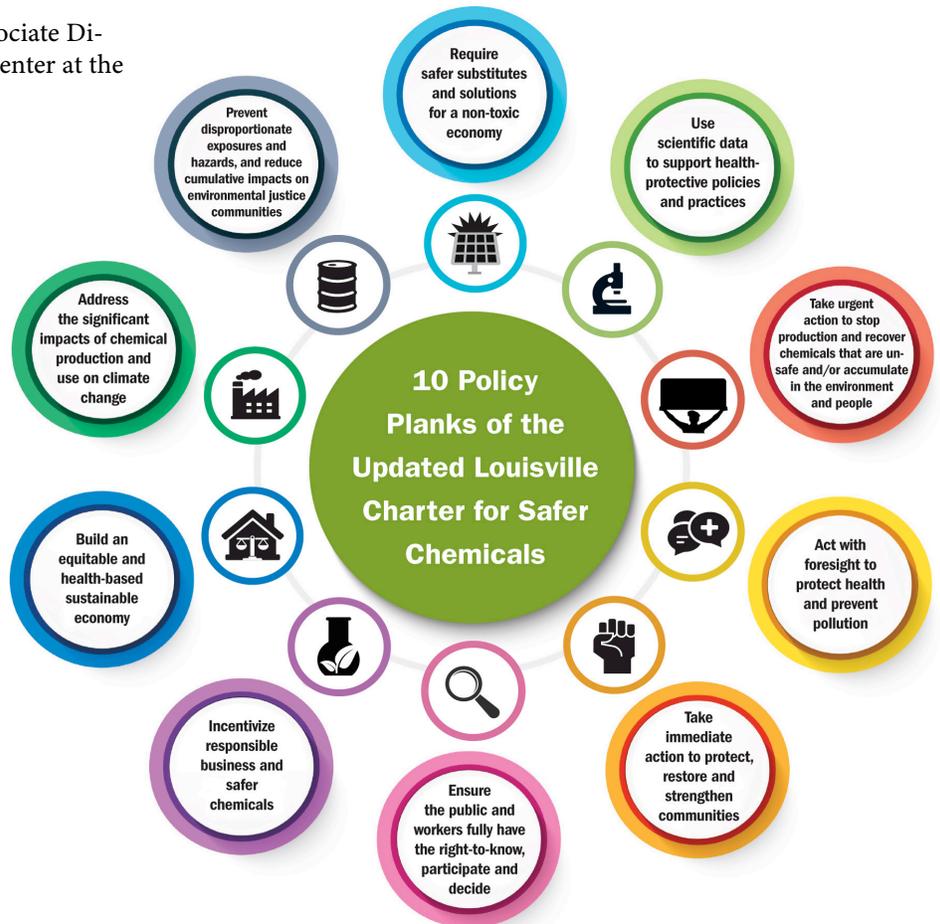


Addressing Environmental Injustice Through the Adoption of Cumulative Impacts Policies

POLICY BRIEF supporting plank #2 of the LOUISVILLE CHARTER

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SUMMARY

This plank calls for the adoption of policies and practices that remedy the disproportionate chemical hazards and exposures faced by environmental justice (“EJ”) communities - communities of color, Tribes and Native/Indigenous communities, and low-income communities. In addition, this plank recognizes that EJ communities are often exposed to multiple pollutants from multiple sources at the same time, which contribute to negative health outcomes in the community. The risks and impacts caused by the pollutants, both individually and when combined with each other and social vulnerabilities, are called cumulative impacts. Cumulative impacts are almost certainly one reason our nation suffers from persistent health disparities and inequities that are rooted in race and income. A coherent set of strong policies are needed to address cumulative impacts and the disproportionate pollution loads often associated with this issue.

EJ FACTS

- Communities of color and low-income communities have been found to have higher exposure rates to air pollution than their white and higher income counterparts.
- During the pandemic, people of color were more likely to be hospitalized and nearly twice as likely to die from COVID-19 as compared to their white counterparts due to multiple factors and disproportionate exposure to air pollution appears to be one of these factors.
- Landfills, hazardous waste sites, and other industrial facilities are more often located in communities of color.
- Lead poisoning disproportionately affects children of color.
- Climate change disproportionately affects low-income communities and communities of color.
- Water contamination plagues low-income areas and communities of color across the nation.

WHAT ARE CUMULATIVE IMPACTS?

There are a number of different, but similar, definitions for cumulative impacts. A definition that members of the EJ community in New Jersey have found useful is that cumulative impacts are the risks and impacts caused by multiple pollutants, both in isolation and through their interaction with each other and any social vulnerabilities that exist in a community. These pollutants are usually emitted by multiple sources located within or nearby a community.

When pollutants interact, three types of effects might occur that contribute to cumulative impacts: additive, synergistic and antagonistic impacts. An additive effect is when combined impacts are equal to the sum of individual impacts. A synergistic effect is when combined impacts are greater than the sum of individual impacts. In an antagonistic effect the opposite is true, combined impacts are less than the sum of individual impacts. EJ communities are typically most concerned about additive and synergistic effects because they are more likely to be associated with detrimental health impacts.

WHY IS IT SO HARD TO ADDRESS CUMULATIVE IMPACTS?

The United States primarily regulates pollution by setting standards for individual pollutants from individual facilities. The problem with this paradigm from an EJ community perspective, is that there can be detrimental health impacts even if no individual standard is violated largely due to the total amount of pollution in an area, such as where there are multiple sources of individual pollutants in a concentrated area. Moreover, our laws, policies and regulations frequently fail to account for the heightened susceptibilities of EJ communities to pollution due to social vulnerabilities that already exist in those communities.

Cumulative impacts are significantly linked to race and income. A number of studies have found that race and income are the most important factors involved in determining the location of unwanted land uses, with race often a greater determinant for pollution than income. Since racial discrimination has perhaps been the most difficult issue in our society to resolve it is easy to understand why an issue such as cumulative impacts is a difficult one to address.

The EJ movement has done a good job of advancing awareness of cumulative impacts and EJ from the margins to the mainstream of policy-making discussions. However, for many years the movement has had difficulty realizing significant policy achievements connected to cumulative impacts. That may be changing because recently there have been several policies and laws developed to address the issue, although it is still true that not many have actually been adopted. While this document is not meant to be a comprehensive review of existing cumulative impacts policies, a sample of state and local policies developed in New Jersey as well as federal policies that address cumulative impacts are described below.

NEW JERSEY'S COMMUNITY-DRIVEN APPROACH to ADDRESSING EJ and CUMULATIVE IMPACTS

The New Jersey EJ community has argued that in order to significantly reduce disproportionate pollution loads and address cumulative impacts, a coherent strategy composed of multiple policies, regulations and laws is needed. These reforms must directly address two important and distinctly different elements. The first is adopting the overarching concept of cumulative impacts into laws, policies and regulations. The second is addressing that overlaid on top of the concept of cumulative impacts is the fact that communities of color and low income are disproportionately exposed to cumulative loads of pollutants. An example of the first element is the recently adopted cumulative impacts law in New Jersey described below that addresses cumulative impacts directly by using the overarching concept of cumulative impacts. An example of the second reflects the ways that the EJ community has already been advocating for climate change mitigation policy, and that is to ensure reductions of disproportionate pollution burdens in EJ communities is included in the climate change reforms.

1. New Jersey EJ Alliance's Model Statewide Cumulative Impacts Policy

The [New Jersey EJ Alliance's \("NJEJA"\) proposed statewide policy](#) protects EJ communities from new sources of pollution while at the same time reducing existing pollution within their communities. The policy begins by identifying EJ and/or overburdened communities. It protects them from new sources of pollution by refusing to issue a new major pollution permit unless the applicant can demonstrate it will not increase pollution in the community in which it would be sited. It accomplishes this by either showing it would have no emissions or would reduce emissions somewhere else in the same community by more than its own emissions. The policy also reduces existing pollution in the community by refusing to renew any major pollution permits unless the applicant could show it would reduce existing pollution by either reducing its own emissions or reducing emissions somewhere else in the community. Since EJ communities have traditionally opposed pollution offsets in climate policy due to the fact that the benefit of the offsets occur outside of the community and the burden remains within the community, the NJEJA proposal provides that EJ organizations advocating for this policy may implement it without the aforementioned offsets if they desire.

The NJEJA proposal also advances quality of life incentives to attract new non-polluting businesses. It also ensures the availability of nutritious and affordable food and adequate green space. Moreover, efforts to increase enforcement of environmental violations are boosted in the policy.

The New Jersey EJ Alliance's statewide policy has not yet been adopted in exactly this format although it did form the basis of the cumulative impacts policy contained in the proposed federal EJ Act of 2017 (and 2019 and 2021).

2. New Jersey’s Adopted Statewide Environmental Justice Law

[EJ legislation](#) adopted by the New Jersey Legislature in late August of 2020 mandates that an application for a new major pollution permit will be denied if granting the permit will result in adverse cumulative environmental and public health stressors being higher in the census block where the proposed facility would be located than in other block groups. The law also requires that if the application is for a permit renewal or facility expansion and granting it would elevate adverse cumulative environmental and public health stressors, then the permit, although it cannot be denied, can have conditions applied to it that mitigate the impact. The law applies to “overburdened” census block groups which are defined as any block groups whose residents are at least 40% of color or 35% low-income or 40% of limited English proficiency.

3. Municipal Ordinance on EJ and Cumulative Impacts Adopted by the City of Newark

The [Newark ordinance](#), which was adopted by the city in 2016, provides information on existing pollution and the pollution that will be generated by newly-proposed activities. Armed with this information, the city and its residents can make an informed decision on whether or not the proposed activity would be beneficial to the municipality. One prominent feature of the ordinance is the requirement that the city create an “environmental resource index” that contains information on existing pollution sources including location and the types of pollution emitted. The index also provides demographic information. New commercial or industrial sources have to provide similar information and are also mandated to detail other impacts such as employment opportunities to be generated. In Newark, along with adoption of the EJ and Cumulative Impacts Ordinance, the city also amended its zoning ordinance to prohibit some activities and make others conditional. The EJ and Cumulative Impacts Municipal Ordinance adopted by Newark is a customized version of NJEJA’s Model Cumulative Impacts Policy adapted to meet the specific needs and pollution threats in its community. To date, there is a need for a comprehensive review of the effectiveness of the ordinance and to evaluate whether there has been a reduction of pollution in the community.

FEDERAL LEGISLATION to ADVANCE EJ and CUMULATIVE IMPACTS POLICIES

1. ENVIRONMENTAL JUSTICE ACT

[The EJ Acts of 2017, 2019 and 2021](#) were introduced by Senator Cory Booker (D-NJ) and Representative Raul Ruiz (D-CA), and contain a cumulative impacts section that was derived from NJEJA's Statewide Cumulative Impacts policy. This bill provides that, if there is not reasonable certainty that no cumulative harm will result from granting a permit application under the Clean Air Act or Clean Water Act, then the permit application must be denied. There are additional sections of the bill that address other environmental justice issues, including the codification of the 1994 Presidential Executive Order on Environmental Justice (EO 12898), and the reinstatement of a private right of action to sue for discriminatory impacts under Title VI of the Civil Rights Act of 1964. The Act has not yet been adopted by Congress.

2. ENVIRONMENTAL JUSTICE FOR ALL ACT

[The EJ for All Act of 2021](#) was introduced by Representatives Raul Grijalva (D-AZ) and Donald McEachin (D-VA), and contains a cumulative impacts section that was adopted from the EJ Act of 2021. This bill also addresses other environmental justice issues in addition to cumulative impacts, such as the codification of EO 12898, a fix to Title VI and increased funding for EJ grant programs to communities. The Act has not been adopted by Congress.

3. ENVIRONMENTAL JUSTICE LEGACY POLLUTION CLEANUP ACT

[The EJ Legacy Pollution Cleanup Act of 2021](#) prevents any new air pollution permits from being issued in overburdened census tracts after the law is enacted, and any permit renewals subsequent to January 25, 2025. An "overburdened" census tract is defined as a census tract that has an ambient fine particulate matter concentration that is greater than 8 µg/m³ or has a cancer risk that is greater than 100 in a million as determined by the National Air Toxics Assessment. The Act was introduced by Senator Booker and has not yet been adopted by Congress.