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ON APPEAL FROM
SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
A-002936-22; A-002959-22

SAT BELOW:

Hon. Heidi W. Currier, J.A.D.
Hon. Maritza Berdote Byrne, J.A.D.
Hon. Jeffrey Jablonski, J.A.D.

PROPOSED BRIEF ON BEHALF OF *AMICUS CURIAE* THE SABIN
CENTER FOR CLIMATE CHANGE LAW IN SUPPORT OF RESPONDENT
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
Submitted: October 5, 2026

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Sabin Center for Climate Change Law at Columbia Law School (the “Sabin Center”) respectfully submits this proposed brief as amicus curiae in support of respondent New Jersey Department of Environmental Protection (“NJDEP”) and its Environmental Justice Rule (the “EJ Rule” or “Rule”), N.J.A.C. 7:1C-1.1 *et seq.* The Sabin Center’s interest arises from its work on climate law, environmental justice, and cumulative impacts (“CI”). This brief offers an academic and interdisciplinary perspective on the methods used to identify disproportionate environmental burdens, select geographic comparison populations, and assess environmental and public-health vulnerability.

The Sabin Center is an academic research center at Columbia Law School that develops legal techniques to address climate change and advance climate justice, trains law students and lawyers in their use, and provides the public with resources on climate law and regulation. Its work encompasses climate and environmental regulation, including legal and policy tools available to address disproportionate environmental burdens affecting environmental justice communities.

The Sabin Center participates in the Interdisciplinary Network on Cumulative Impact Technical Engagement (“INCITE”), housed at Columbia Climate School. INCITE brings together researchers and practitioners in public

health, law, climate science, urban planning, engineering, and public policy to advance methods for assessing cumulative health, environmental, and pollution burdens. Its work includes supporting implementation of New Jersey and New York laws requiring CI analysis.¹ This interdisciplinary work informs the Sabin Center’s interest in the methodological questions before the Court.

Through this work, the Sabin Center has developed expertise in the methodological approaches used to identify and evaluate the multiple environmental, health, and socioeconomic conditions that contribute to cumulative burdens in environmental-justice communities.

The issues presented in this case implicate precisely these questions of methodological rationale and implementation. The EJ Rule represents an effort to incorporate CI analysis into environmental decision-making and to mitigate negative project-based impacts that contribute to disproportionate burdens in New Jersey’s Overburdened Communities (“OBCs”). The Sabin Center submits this proposed brief to provide the Court with relevant context concerning the development of CI methodologies and the historical federal and state approaches that inform the Rule’s consideration of environmental, public-health, and socioeconomic conditions.

¹ *Interdisciplinary Network on Cumulative Impact Technical Engagement*, COLUMBIA CLIMATE SCH., <https://people.climate.columbia.edu/networks/profile/interdisciplinary-network-on-cumulative-impact-technical-engagement> (last visited Sept. 30, 2026).

PRELIMINARY STATEMENT

Pursuant to R. 1:13-9, the Sabin Center respectfully submits this proposed amicus brief in support of the NJDEP’s lawful adoption of the EJ Rule, which implements the New Jersey Environmental Justice Law, (the “EJ Law”), N.J.S.A. 13:1D-157 *et seq.* The EJ Law and Rule represent a significant development in environmental permitting as they require NJDEP to account for cumulative environmental and public-health stressors when evaluating certain permits proposed for New Jersey’s environmental justice communities, or OBCs, and, under certain circumstances, require denial of a permit for a new facility. N.J.A.C. 7:1C-1.1 *et seq.*; N.J.S.A. 13:1D-157 *et seq.*

New Jersey’s approach emerged from a broad and rapidly developing body of CI research, policy, and law. In 2020, following years of advocacy by New Jersey environmental justice (“EJ”) organizations, the State became the first jurisdiction to codify a requirement that a permit be denied based on the outcome of a CI assessment.² This feature of the EJ Law is particularly significant. Although earlier legislative proposals contemplated that agencies “may deny” permits or “shall consider” cumulative impacts, the Legislature ultimately directed that NJDEP “shall” deny a permit for a new facility when

² Ana Isabel Baptista et al., *A Resource Database of Cumulative Impacts Permitting Policies: Emerging Opportunities to Protect Environmental Justice Communities from Additional Burden*, 18 ENV’T JUST. 400, 401 (2025).

the statutory conditions are satisfied, subject to the Law's compelling-public-interest exception. N.J.S.A 13:1D-159(c). As advocates and scholars who have tracked the development of New Jersey's law observed, this distinction was central to the Law's design.³ The statute did not merely authorize NJDEP to consider CI, rather it made the outcome of that consideration consequential to the permitting decision.

New Jersey's mandatory-denial requirement nevertheless draws on a broader development of methods for assessing cumulative burdens. Other jurisdictions use screening tools and assessment frameworks to inform resource allocation, identify disproportionately burdened communities, and, in some instances, guide permitting decisions.⁴ These approaches differ in their legal requirements and consequences but provide relevant context for the analytical methods used to identify and evaluate CI in New Jersey's case. A recent database developed by the Tishman Environment and Design Center at The New School identifies at least eighteen states and the District of Columbia with enacted or proposed laws or policies addressing cumulative impacts in permitting.⁵ Some approaches require agencies to consider CI without

³ Nicky Sheats et al., *They Said It Couldn't Be Done: A Case Study of New Jersey's Landmark Environmental Justice Law* (S. 232), 18 ENV'T JUST. 366, (2025).

⁴ *Cumulative Impacts*, TISHMAN ENV'T & DESIGN CTR., <https://www.tishmancenter.org/cumulativeimpacts> (last visited Sept. 30, 2026).

⁵ *Id.*

prescribing a particular permitting consequence, while others establish different methods for evaluating cumulative burdens or determining when a permit may be conditioned or denied.⁶

Against that backdrop, the methodological questions presented by this case extend beyond the application of a single New Jersey rule. The EJ Rule embodies one approach to a problem that governments, researchers, and communities across the country are increasingly attempting to address – how to identify and evaluate cumulative burdens, and how to meaningfully incorporate that information into environmental decision-making that protects historically vulnerable communities. The EJ Rule’s methodology, including its “Geographic Point of Comparison” and its identification of “Environmental and Public Health Stressors,” must therefore be understood in the context of the broader body of CI methodologies that has evolved across federal, state, and local institutions.

The significance of this case accordingly extends beyond whether NJDEP’s particular methodology survives this challenge. New Jersey’s EJ Law represents an early and consequential effort to translate CI principles into binding permitting requirements. As other jurisdictions consider their own approaches, the validity of the methodologies used to implement New Jersey’s

⁶ Charles Lee et al., *Reducing Concentrated Environmental Burden: Addressing Cumulative Impacts in Government Decision Making*, 18 ENV’T JUST. 357, 361 (2025).

Law will provide an important reference point for the continuing development of cumulative-impacts law and policy.

The Sabin Center submits this brief to provide the Court with that broader context and to explain why the challenged features of the EJ Rules are consistent with established approaches to identifying and evaluating cumulative environmental burdens.

PROCEDURAL HISTORY AND STATEMENT OF FACTS⁷

Amicus incorporates by reference the Procedural History and Statement of Facts as set forth by Respondent DEP in its brief. DEPb4–12.⁸

ARGUMENT

I. The NJ EJ Rule's cumulative impacts (CI) analysis and methodology are grounded in well-established approaches to identifying and evaluating environmental burdens.

CI analysis has become an increasingly established feature of environmental decision-making. CI refers to “the total burden of multiple environmental, health, and social stressors and their effects on health, well-being, and quality of life.”⁹ These impacts reflect the lived reality of communities experiencing multiple, overlapping burdens, including pollution

⁷ For the sake of judicial efficiency and to avoid repetition, the statement of facts and procedural history are combined, and Amicus incorporates by reference the Procedural History and Statement of Facts in Respondent DEP’s Supreme Court merits brief.

⁸ “DEPb” refers to DEP’s Supreme Court merits brief.

⁹ Lee et al., *supra* note 6 at 357.

and climate-related hazards, health conditions, and social and economic vulnerabilities. This is a more accurate depiction of impacts than separately showing each distinct environmental stressor or source of harm.¹⁰ High levels of CI result from the concentration of environmental, health, and social stressors together with the social, physical, and economic conditions that shape health and well-being.¹¹

The need to holistically examine combined effects has a longstanding place in environmental regulation and law. Early cases under the National Environmental Policy Act (“NEPA”) recognized that the environmental consequences of concurrently proposed actions may need to be considered together when their impacts are cumulative or synergistic.¹² Although NEPA’s procedural requirements differ from the EJ Law’s substantive permitting requirements, this history demonstrates that examining environmental burdens collectively is an established analytical approach.

Environmental-justice policy efforts further honed CI analysis through recommendations made in 2004 by the National Environmental Justice Advisory Council (“NEJAC”). State initiatives began incorporating CI consideration into

¹⁰ *Id.*

¹¹ John D. Prochaska et al., *Social Determinants of Health in Environmental Justice Communities: Examining Cumulative Risk in Terms of Environmental Exposures and Social Determinants of Health*, 20 HUM. & ECOLOGICAL RISK ASSESSMENT 980, 981 (2014).

¹² *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) (explaining that “when several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together”).

specific decision-making contexts.¹³ For example, Minnesota required CI analysis for certain air permits in 2008,¹⁴ while California directed investment toward disadvantaged communities identified through environmental, public-health, and socioeconomic criteria in 2012.¹⁵

New Jersey's Legislature likewise acted to address conditions specific to the state. Its findings identify the disproportionate concentration of industrial, commercial, and governmental sources of pollution in low-income communities and communities of color, the resulting adverse health effects, and the continuing consequences of that history. N.J.S.A. 13:1D-157. The EJ Law translates those findings into a permitting framework that requires consideration of existing community stressors alongside the proposed facility's effects and a comparison to burdens borne by other communities. N.J.S.A. 13:1D-160(a)(1), (c)–(d). These provisions place established CI principles within an independently enacted state-law framework.

Federal research and guidance have likewise grappled with how to assess cumulative burdens in a way that captures lived experiences of environmental justice communities. EPA's 2022 research recommendations addressed the

¹³ Lee et al., *supra* note 6 at 359.

¹⁴ *Air Permitting in South Minneapolis*, MINN. POLLUTION CONTROL AGENCY, <https://www.pca.state.mn.us/business-with-us/air-permitting-in-south-minneapolis> (last visited Sept. 29, 2026).

¹⁵ Act of Sept. 30, 2012, ch. 830, §§ 2–3, 2012 Cal. Stat. (adding Cal. Health & Safety Code §§ 39711, 39713).

combined effects of chemical and nonchemical stressors,¹⁶ and its January 2023 legal-tools addendum discussed opportunities to consider cumulative impacts across agency decision-making.¹⁷ Changes in federal executive policy, including the 2025 revocation of Executive Order 12898, do not themselves amend the NJ EJ Law or withdraw NJDEP’s authority under it; the federal materials cited here inform only the scientific and methodological discussion, whose relevance does not depend on their status as current federal policy.¹⁸

In tracing the methodological approaches to assessing CI, a common analytical premise emerges: cumulative burdens depend on both environmental stressors and the public-health and socioeconomic conditions that shape their effects.¹⁹ This premise informs the methodological choices discussed below, including how to identify disproportionate burdens through geographic comparisons and which conditions to consider in assessing community burden. The EJ Rule’s “Geographic Point of Comparison” and its challenged “May Cause Potential Public Health Impacts” and “Social Determinants of Health” stressor categories should be understood within this established analytical tradition.

¹⁶ U.S. ENV’T PROT. AGENCY, CUMULATIVE IMPACTS RESEARCH: RECOMMENDATIONS FOR EPA’S OFFICE OF RESEARCH AND DEVELOPMENT 5 (2022).

¹⁷ U.S. ENV’T PROT. AGENCY, OFF. OF GEN. COUNS., EPA LEGAL TOOLS TO ADVANCE ENVIRONMENTAL JUSTICE: CUMULATIVE IMPACTS ADDENDUM 2 (2023).

¹⁸ Exec. Order No. 14,173, § 3(a)(i), 90 Fed. Reg. 8633, 8634 (Jan. 31, 2025).

¹⁹ Sheila Foster, *After Retreat: Environmental Justice’s Legal and Methodological Evolution* (forthcoming HARV. ENV’T L. REV. 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6921324.

II. The NJ EJ Rule's “Geographic Point of Comparison” reflects recognized CI approaches to identifying disproportionate environmental burdens.

A. CI methodologies appropriately select comparison populations based on the purpose and geographic scope of the inquiry.

As indicated in the previous section, federal guidance offers methodological context for NJDEP’s selection of comparison populations; it does not bind New Jersey or supply the legal standard governing the Rule. That guidance has historically recognized that the appropriate comparison group depends on the purpose and geographic scope of the particular regulatory action.²⁰ EPA has explained that “[a] variety of methods can be used to define a comparison group,” and has identified regulatory analyses in which the agency selected different comparison populations based on the characteristics of the communities and environmental burdens at issue.²¹ For example, in its analysis supporting the Mercury and Air Toxics Standards, EPA compared high-risk counties – those in the top five percent of mortality risk – to counties not facing high mortality risk.²² In analyzing a proposed rule concerning concentrated animal feeding operations, EPA initially compared affected census tracts to the average U.S. census tract, but revised its comparison group after recognizing

²⁰ U.S. ENV’T PROT. AGENCY, TECHNICAL GUIDANCE FOR ASSESSING ENVIRONMENTAL JUSTICE IN REGULATORY ANALYSIS 56 (2016).

²¹ *Id.* at 54.

²² *Id.*

that urban populations disproportionately influenced the national average even though concentrated animal feeding operations were located primarily in rural areas.²³ EPA instead compared affected tracts to the average rural census tract.²⁴

EPA's guidance accordingly cautions against treating any comparison population as universally appropriate. It explains that “[b]ecause comparison groups can be defined in a number of valid ways,” analysts may use different definitions to provide a more complete depiction of potential impacts and should evaluate how the choice of comparison group affects the information conveyed by the analysis.²⁵ The guidance additionally recognizes that results may differ depending on the geographic unit of analysis and encourages analysts to explain and transparently document their choice.²⁶ These examples illustrate a methodological principle relevant to NJDEP’s approach: the suitability of a comparison population depends on the inquiry it is intended to inform. From that perspective, the question is whether the selected population provides a meaningful benchmark for assessing disproportionate burdens, with the basis for its selection clearly explained.

B. CI methodologies employ several different approaches to geographic comparison, including both composite scoring and stressor-by-stressor comparison.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 55.

²⁶ *Id.* at 56.

Contemporary CI methodologies and approaches reflect a similar flexibility. There are two general methodologies for assessing CI – the “Single Scoring Method” and the “Matrix Method.”²⁷ The Single Scoring Method aggregates environmental and social-vulnerability indicators into a single composite score.²⁸ California’s CalEnviroScreen, for example, combines pollution-burden and population-characteristic indicators to calculate a composite percentile score for census tracts relative to other tracts throughout the State.²⁹

The second approach, the “Matrix Method” or the “NJ Method,”³⁰ has been around as a concept as far back as the early 2000s but until recently was never fully developed and implemented.³¹ This method keeps individual environmental burdens distinct rather than collapsing them into a single score.³² This approach represents environmental burdens and social vulnerabilities as separate factors that can be evaluated against independently defined thresholds. Under such an approach, “[e]ach stressor in the EJ community is analyzed in

²⁷ Ana Isabel Baptista et al., *supra* note 2 at 407.

²⁸ *Id.*

²⁹ CalEnviroScreen, CAL. OFF. OF ENV’T HEALTH HAZARD ASSESSMENT, <https://oehha.ca.gov/calenviroscreen> (last visited Sept. 29, 2026).

³⁰ Paul Mohai et al., *Environmental Justice, Cumulative Impacts and Environmental Decision-Making: Challenges and Progress*, at 24:53, YOUTUBE (Sept. 11, 2024), <https://www.youtube.com/watch?v=Xw7pdQ4GcoM> (indicating that it is called the NJ method because it is named after the NJ EJMAP, even though NJ does not use the term “Matrix Method” or “NJ Method”).

³¹ *Id.* at 19:43.

³² Ana Isabel Baptista et al., *supra* note 2 at 407.

comparison to the same stressor from a geographic point of comparison to determine if the stressor is adversely affecting the community.”³³ The approach is particularly suited to regulatory programs that must evaluate whether particular burdens in a community warrant additional conditions or restrictions on a proposed source.³⁴ It also allows the decisionmaker to see the individual indicators underlying the determination rather than obscuring them within a composite score.³⁵

The NJ EJ Rule’s methodology fits within this latter approach. Rather than combining disparate indicators into a single composite measure, the Rule evaluates individual “Environmental and Public Health Stressors” against a defined “Geographic Point of Comparison.” N.J.A.C. 7:1C-1.5. In other words, the Rule asks whether a particular stressor in the affected community exceeds the applicable reference value. This methodology preserves the distinct environmental burdens relevant to the regulatory decision while providing an objective geographic benchmark against which those burdens can be evaluated.

The approach is also consistent with emerging CI methodologies in other states. The Minnesota Pollution Control Agency, for example, has proposed a CI framework that would establish a “Geographic Point of Comparison” using

³³ *Id.*

³⁴ Mohai et al., *supra* note 30 at 24:16.

³⁵ *Id.* at 23:46.

the lower of the State or county 50th percentile for the applicable environmental stressor or combined stressor total.³⁶ Although Minnesota’s proposal has not yet been adopted and is still under consideration, its use of a geographic point of comparison based on percentile values demonstrates that the NJ EJ Rule’s methodological choice is part of a broader effort to establish transparent, geographically grounded reference points for assessing cumulative burdens.

C. The NJ EJ Rule’s selection of county and statewide reference populations, excluding overburdened communities, serves the statutory inquiry into disproportionate burdens.

Against this backdrop, the NJ EJ Rule’s use of both county- and statewide reference populations is not an anomalous departure from CI methodology. Rather it reflects the principle, recognized in EPA guidance, that the appropriate comparison population may depend on the geographic and regulatory context.³⁷ After considering alternative geographic units and discussing their respective advantages and disadvantages with stakeholders, the NJDEP concluded that a “one-size-fits-all” approach would not provide equitable protection in a State as geographically and demographically diverse as New Jersey.³⁸ The Rule

³⁶ Minn. Pollution Control Agency, Proposed Permanent Rules Relating to Cumulative Impacts Analysis in Environmental Justice Areas, RD4805, at 19 (Apr. 6, 2026), <https://www.revisor.mn.gov/rules/status/document/RD-04805-1.pdf>.

³⁷ U.S. ENV’T PROT. AGENCY, *supra* note 20 at 56.

³⁸ N.J. DEP’T OF ENV’T PROT., ENVIRONMENTAL JUSTICE TECHNICAL GUIDE 12 (2023).

therefore provides a defined reference point while accounting for variation at both the county and statewide levels. N.J.A.C. 7:1C-1.5.

The composition of the reference population also matters. Excluding OBCs allows NJDEP to compare their stressor levels against a benchmark drawn from communities not designated as overburdened. Including the communities whose disproportionate burdens the Rule seeks to identify could raise the reference value and obscure disparities, particularly where elevated stressor levels are widespread. The exclusion thus serves the comparison's statutory purpose of identifying whether cumulative environmental or public-health stressors exceed those borne by other communities. N.J.S.A. 13:1D-160(c). It is a reasoned methodological choice that complements the Rule's use of county and statewide reference populations.

The significance of this methodological history is straightforward. Established CI practice demonstrates how agencies and researchers use different comparison populations, geographic units, thresholds, and analytical structures depending on the regulatory question and the characteristics of the communities being evaluated. What matters is that the methodology is grounded in a reasoned approach to identifying disproportionate burdens. The Rule's "Geographic Point of Comparison" – including its use of county and statewide reference populations – falls squarely within that recognized methodological range.

III. The NJ EJ Rule's inclusion of stressors identified under the “May Cause Potential Public Health Impacts” and the “Social Determinants of Health” is consistent with established federal and state approaches to identifying CI.

A. Federal and state CI frameworks recognize that environmental burdens arise from combinations of environmental, health, social, and socioeconomic conditions.

CI frameworks increasingly recognize that communities experience the combined effects of multiple environmental, health, social, and socioeconomic stressors, not merely the effects of individual pollutants or sources in isolation.³⁹ Communities with concentrated environmental burdens are often also communities with fewer economic resources, employment opportunities, and health-promoting amenities such as trees, parks, and open space, as well as reduced access to health care, food, and energy.⁴⁰ Accordingly, contemporary approaches to CI account not only for conditions that contribute directly to disease or environmental harm, but also for the presence or absence of resources and conditions that promote health and well-being.

The “Total Environment” framework used in EPA research reflects this broader conception. It examines chemical and nonchemical stressors across the built, natural, and social environments, together with individual characteristics

³⁹ Lee et al., *supra* note 6 at 357.

⁴⁰ *Id.* at 358.

and behaviors that influence their effects on health and well-being.⁴¹ This approach recognizes that environmental burdens are experienced within a broader social and physical context: the same environmental stressor may have different consequences depending on the health, socioeconomic conditions, infrastructure, and resources of the community exposed to it.⁴² Evaluating CI therefore necessarily may require consideration of both environmental stressors and the conditions that compound or mitigate their effects.

B. Scientific literature demonstrates that green space, tree canopy, and impervious surfaces affect environmental conditions, such as urban heat islands, which in turn exacerbate public health risks.

Scientific research provides substantial support for considering the availability of green space and tree canopy, as well as the prevalence of impervious surfaces, when evaluating cumulative impacts. Vegetation and paved surfaces affect local temperatures and air quality, with consequences for heat exposure, pollution exposure, and human health. These documented relationships support NJDEP’s consideration of lack of green space, lack of tree canopy, and impervious surfaces as conditions that “may cause potential public health impacts” under the EJ Law.

⁴¹ Nicolle S. Tulve et al., *Redefining Exposure Science to Advance Research Supporting Cumulative Impacts, Environmental Justice, and Decision-Making*, 33 J. EXPOSURE SCI. & ENV’T EPIDEMIOLOGY 843, 844 (2023).

⁴² *Id.*

Urban heat islands, for example, illustrate how these land-cover conditions can affect public health. Urban heat islands are driven in part by the conversion of natural landscapes to impervious surfaces and the loss of vegetation.⁴³ As researchers explain, increased absorption and trapping of solar radiation by built environments, combined with the “absence of green areas,” are among the principal factors associated with the formation of urban heat islands.⁴⁴ These environmental conditions have well-recorded, direct public-health consequences. Exposure to high ambient temperatures has been associated with premature mortality, cardiorespiratory morbidity, hospital admissions, and increased mortality and hospital admissions among children.⁴⁵ Thus, vegetation and impervious surfaces can shape the intensity of environmental heat exposure, while public-health and socioeconomic conditions influence its consequences. A recent study indicates older adults and people with certain preexisting illnesses are particularly vulnerable to extreme heat; other circumstances, including limited mobility, lower educational attainment, living alone, and lack of air conditioning, can reduce a person’s ability to cope with

⁴³ Tamara Iungman et al., *Cooling Cities Through Urban Green Infrastructure: A Health Impact Assessment of European Cities*, 401 LANCET 577, 577 (2023).

⁴⁴ *Id.*

⁴⁵ *Id.*; Paul J. Schramm et al., *Heat-Related Emergency Department Visits During the Northwestern Heat Wave—United States, June 2021*, 70 MORBIDITY & MORTALITY WKLY. REP. 1020 (2021); Shakoor Hajat et al., *Health Effects of Hot Weather: From Awareness of Risk Factors to Effective Health Protection*, 375 LANCET 856, 858 (2010); Holly Ching Yu Lam et al., *Short-Term Association Between Ambient Temperature and Acute Myocardial Infarction Hospitalizations for Diabetes Mellitus Patients: A Time Series Study*, 15 PLOS MED., July 2018, art. e1002612.

that exposure.⁴⁶ This interaction illustrates why assessing environmental burdens may require considering both the physical conditions producing exposure and the social characteristics that influence its effects.

The health implications of these environmental conditions, facilitated by lack of tree canopy and impervious surfaces, extend beyond heat exposure. One recent study has associated greater residential tree canopy with lower measures of physiological stress and chronic-disease risk.⁴⁷ More specifically, the study found that greater tree canopy was associated with lower “allostatic load,” or the measure of the cumulative physiological burden of chronic stress, and that increased physical activity partially mediated this relationship.⁴⁸ Other research has linked greater urban tree coverage with reduced cardiovascular risk. One study found that living in urban areas with a higher percentage of visible trees was associated with a four-percent reduction in cardiovascular disease.⁴⁹

Research by U.S. Forest Service scientists and collaborators has likewise estimated substantial public-health benefits from pollution removal by trees and forests. The researchers estimated that pollution removal across the contiguous

⁴⁶ Anuska Narayanan et al., *Socioeconomic and Demographic Vulnerabilities as Primary Determinants of Heat-Related Mortality in the U.S.*, 5 ENV'T RSCH.: CLIMATE, art. 035046, 1, 9 (2026).

⁴⁷ Amber L. Pearson et al., *Residential Tree Canopy and Allostatic Load in US Adults: A Population-Based Cross-Sectional Study*, 57 LANCET REG'L HEALTH—AMERICAS, May 2026, art. 101437, at 1.

⁴⁸ *Id.*

⁴⁹ Karen Feldscher, *Living Near Trees Linked with Lower Heart Disease Risk in Cities*, HARV. T.H. CHAN SCH. OF PUB. HEALTH (Jan. 29, 2026), <https://hsph.harvard.edu/news/living-near-trees-linked-with-lower-heart-disease-risk-in-cities/>.

United States in 2010 avoided more than 850 deaths and approximately 670,000 incidents of acute respiratory symptoms.⁵⁰ As the study indicates, the health significance of urban trees is particularly pronounced because of their proximity to people, and greater tree cover generally produces greater pollution removal and associated health benefits.⁵¹

Taken together, this literature demonstrates why the presence or absence of environmental amenities such as tree canopy and recreational open space, and the prevalence of impervious surfaces, can be not only relevant yet integral to a CI assessment. These characteristics influence the environmental conditions to which communities are exposed and can affect physiological and public-health outcomes through multiple pathways. Their consideration therefore does not expand CI analysis beyond environmental concerns; it reflects the scientific understanding that environmental burdens are produced and experienced within the physical environments in which people live.

C. Contemporary environmental-justice screening tools use multiple environmental, health, and vulnerability indicators to characterize community burden.

Contemporary environmental-justice screening tools further demonstrate that the indicators challenged by Petitioners are widely used to characterize

⁵⁰ David J. Nowak et al., *Tree and Forest Effects on Air Quality and Human Health in the United States*, 193 ENV'T POLLUTION 119, 124 (2014).

⁵¹ *Id.* at 127.

cumulative community burden (*see* Figure 1). Although these tools organize their indicators differently – sometimes distinguishing environmental pollution from climate vulnerability, health sensitivity, or socioeconomic vulnerability – they share a common methodological premise that environmental burdens cannot be understood in isolation from the physical and social conditions that shape a community’s exposure and vulnerability.⁵²

The 2021 White House Environmental Justice Advisory Council’s recommendations concerning the Climate and Economic Justice Screening Tool (“CEJST”), for example, expressly recommend adding indicators of neighborhood green space, tree canopy, impervious surfaces, and flooding risk to measure climate vulnerability in communities, in addition to social indicators of unemployment and educational attainment.⁵³ The recommendations are presented here for their methodological relevance as they illustrate an approach to assessing community vulnerability that considers physical environmental conditions alongside socioeconomic factors.

⁵² Rachel Morello-Frosch et al., *Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy*, 30 HEALTH AFFS. 879, 880 (2011).

⁵³ WHITE HOUSE ENV’T JUST. ADVISORY COUNCIL, FINAL RECOMMENDATIONS: JUSTICE40, CLIMATE AND ECONOMIC JUSTICE SCREENING TOOL & EXECUTIVE ORDER 12898 REVISIONS 71–72 (2021), <https://www.govinfo.gov/content/pkg/GOVPUB-EP-PURL-gpo183130/pdf/GOVPUB-EP-PURL-gpo183130.pdf>; On January 20, 2025, Executive Order 14148 revoked Executive Order 14008, which had directed CEQ to develop CEJST; the tool was subsequently removed from public access. Exec. Order No. 14,148, § 2(s), 90 Fed. Reg. 8237, 8238 (Jan. 28, 2025); *Sierra Club v. EPA*, No. 25-cv-1112, ECF No. 49, at 2–3 (D.D.C. Mar. 11, 2026). Litigation challenging that removal concerned public access rather than the validity of the tool’s indicators or methodology; the court dismissed the challenge for lack of standing. *Id.* at 1, 26.

State screening tools reflect this same understanding, even when they organize the relevant indicators differently. Some separately identify environmental and public-health indicators, while others draw the connection through categories such as climate vulnerability that capture environmental conditions with consequences for public health.

Minnesota’s March 2026 CI Analysis Tool Technical Guide includes five out of the six categories challenged by Petitioners here: lack of educational attainment and unemployment as social factors and impervious surfaces, lack of recreational open space, and lack of tree canopy as neighborhood factors.⁵⁴

New York’s disadvantaged-community identification methodology combines environmental burdens and climate-change risks with population characteristics and health vulnerabilities. Its indicators include low vegetative cover, projected coastal and inland flooding, unemployment, and educational attainment.⁵⁵ Although these indicators do not precisely replicate NJDEP’s measures, they reflect a similar approach to identifying the environmental conditions and population vulnerabilities that contribute to community burden.

⁵⁴ MINN. POLLUTION CONTROL AGENCY, CUMULATIVE IMPACTS MAPPING AND ANALYSIS PLATFORM (CI-MAP) TECHNICAL SUPPORT DOCUMENT 20, 22, 26—28, (2026), <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25an.pdf>.

⁵⁵ N.Y. STATE DEP’T OF ENV’T CONSERVATION & N.Y. STATE CLIMATE JUST. WORKING GRP., 2023 DISADVANTAGED COMMUNITIES CRITERIA FINAL REPORT 31–34 (2025). New York’s criteria and designations were challenged in *Town of Palm Tree v. Climate Justice Working Group*, No. 907000-23, slip op. at 22 (N.Y. Sup. Ct. Albany Cnty. Aug. 14, 2025), where the New York Supreme Court, Albany County dismissed the petition, concluding that the development, adoption, and application of the criteria were neither arbitrary and capricious nor contrary to law. That decision concerned New York’s designation methodology.

Connecticut’s Environmental Justice Screening Tool similarly combines environmental hazards with socioeconomic and health-vulnerability indicators, including tree canopy, impervious surfaces, unemployment, and education as part of a CI model.⁵⁶

California’s CalEnviroScreen likewise evaluates environmental conditions alongside sensitive-population and socioeconomic indicators, expressly including unemployment and educational attainment as factors that can increase vulnerability to pollution’s effects.⁵⁷

Washington’s Environmental Health Disparities Map similarly incorporates unemployment and education as socioeconomic indicators in assessing CI.⁵⁸

Maryland’s EnviroScreen tool provides a particularly clear example of the connection between environmental conditions and public-health vulnerability. Its climate-vulnerability methodology incorporates climate hazards such as urban heat, flooding, drought, and storm surge alongside tree-canopy

⁵⁶ *Data Overview*, CONN. ENV’T JUST. MAPPING PROJECT, <https://connecticut-environmental-justice.circa.uconn.edu/datasoverview-2/> (last visited Sept. 24, 2026); Yaprak Onat et al., *A State-Specific Approach for Visualizing Overburdened Communities: Lessons from the Connecticut Environmental Justice Screening Tool 2.0*, 17 SUSTAINABILITY, 2025, art. 4535.

⁵⁷ *Indicators Overview*, CAL. OFF. OF ENV’T HEALTH HAZARD ASSESSMENT, <https://oehha.ca.gov/calenviroscreen/fact-sheet/indicators-overview> (last visited Sept. 24, 2026). CalEnviroScreen has also figured in litigation challenging a California Public Utilities Commission solar-compensation decision, including its treatment of disadvantaged communities. That litigation concerned the Commission’s decision rather than the validity of CalEnviroScreen’s indicators or scoring methodology. See *Ctr. for Biological Diversity, Inc. v. Pub. Utils. Comm’n*, No. A167721 (Cal. Ct. App. Mar. 9, 2026).

⁵⁸ WASH. STATE DEP’T OF HEALTH, WASHINGTON ENVIRONMENTAL HEALTH DISPARITIES MAP: TECHNICAL REPORT at 22—23 (2022), https://doh.wa.gov/sites/default/files/2022-07/311-011-EHD-Map-Tech-Report_0.pdf.

coverage.⁵⁹ These methodologies recognize that environmental conditions can exacerbate public-health vulnerabilities and therefore are essential to assessing the cumulative burdens experienced by communities.

These tools differ in their purposes, terminology, and selection of indicators, but they demonstrate that considering environmental conditions alongside health and socioeconomic vulnerability is an established practice among environmental agencies. That practice responds to Petitioners' contention that consideration of these conditions falls outside NJDEP's expertise: the challenged types of indicators are familiar components of environmental community-burden assessment. Their use elsewhere does not establish the validity of each feature of New Jersey's mandatory permitting regime, but it provides methodological support for NJDEP's consideration of recreational open space, tree canopy, impervious surfaces, flooding, unemployment, and educational attainment.

⁵⁹ MD. DEP'T OF THE ENV'T, MDENVIROSCREEN TOOL DOCUMENTATION, 25—28 (2025) https://mde.maryland.gov/Environmental_Justice/Documents/Environmental%20Justice/EnviroScreen/FINAL_6.20.25_Maryland%20Department%20of%20the%20Environment%20MDEnviroScreen%20Tool%20Documentation%20V3.pdf.

Figure 1. Selected screening tools, designation methodologies, and recommendations addressing indicators analogous to those challenged under the NJ EJ Rule

	Recreational Open Space	Tree Canopy	Impervious Surfaces	Flooding	Unemployment	Education
WHEJAC CEJST Recommendation ⁶⁰	✓	✓	✓	✓	✓	✓
NJ Rule ⁶¹	✓	✓	✓	✓	✓	✓
MN CI-MAP ⁶²	✓	✓	✓	—	✓	✓
NY DAC Criteria ⁶³	—	—	Analogous*	✓	✓	✓
CT EJ Screening Tool ⁶⁴	—	✓	✓	—	✓	✓
CalEnviroScreen ⁶⁵	—	—	—	—	✓	✓
WA EHD Map ⁶⁶	—	—	—	—	✓	✓
MDEnviroScreen ⁶⁷	—	✓	—	✓	✓	✓

⁶⁰ WHITE HOUSE ENV'T JUST. ADVISORY COUNCIL, *supra* note 53.

⁶¹ N.J.A.C. 7:1C app.

⁶² MINN. POLLUTION CONTROL AGENCY, *supra* note 54.

⁶³ N.Y. STATE DEP'T OF ENV'T CONSERVATION & N.Y. STATE CLIMATE JUST. WORKING GRP., *supra* note 55.

⁶⁴ CONN. ENV'T JUST. MAPPING PROJECT, *supra* note 56.

⁶⁵ CAL. OFF. OF ENV'T HEALTH HAZARD ASSESSMENT, *supra* note 57.

⁶⁶ WASH. STATE DEP'T OF HEALTH, *supra* note 58.

⁶⁷ MD. DEP'T OF THE ENV'T, *supra* note 59.

Figure 1 Legend

✓ = included or recommended indicator.

— = no corresponding indicator identified in this comparison.

“Open space” refers to recreational open space.

* New York uses low vegetative cover, a related land-cover measure that does not precisely replicate NJDEP’s impervious-surface indicator.

CONCLUSION

The EJ Rule applies methodologies and indicators that fall within a broader body of established federal, state, and interdisciplinary practice. Federal guidance recognized that the appropriate geographic comparison depends on the purpose and context of the inquiry. Contemporary CI methodologies employ different comparison populations, geographic units, and analytical structures to accommodate diverse regulatory goals. This methodological flexibility supports evaluating the EJ Rule’s use of county and statewide reference populations that exclude OBCs considering its purpose: identifying disproportionate burdens.

Likewise, the Rule’s consideration of environmental conditions, public health vulnerabilities, and socioeconomic factors reflects the interdisciplinary

nature of contemporary CI analysis. Federal and state frameworks recognize that communities experience environmental burdens in combination with the physical, social, and economic conditions that shape exposure and vulnerability. The indicators challenged by Petitioners, including lack of recreational open space, lack of tree canopy, impervious surfaces, flooding, unemployment, and educational attainment, are reflected in federal recommendations, state screening tools, and scientific research examining their relationship to exposure and public health vulnerability.

While the federal guidance and other state frameworks discussed here are not binding on New Jersey, they demonstrate that the methodological questions presented by this case have been explored across jurisdictions and disciplines. New Jersey's distinctive contribution is to make CI findings consequential to permitting, including through mandatory permit denial in specified circumstances. The EJ Rule thus applies established methods of assessing community burdens within a novel statutory permitting regime. The Court should affirm the judgment upholding NJDEP's adoption of the EJ Rule.

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