

Cleveland Division of Air Quality
601 Lakeside Ave., Room 227
Cleveland, OH 44114

February 17, 2025

**Comments of All Phase Foundation, Case Western Reserve University School of Law
Milton & Charlotte Kramer Environmental Law Clinic, Cleveland Owns, Northeast Ohio
Black Health Coalition, Organic Connects, and RE Collective Regarding Preliminary
Recommendations for an Updated Air Code for the City of Cleveland (Cleveland Code of
Ordinances, part 2, tit. V, et seq.) (Jan. 13, 2025)**

To the Cleveland Division of Air Quality,

The undersigned groups and organizations (“Commenters”) submit these comments in response to the Cleveland Division of Air Quality (“CDAQ”)’s preliminary recommendations for an updated air code (“Updated Air Code”) for the City of Cleveland (“City”).

The Commenters represent a collective group of concerned citizens, lawyers, and community leaders who share a common goal: protecting the City’s most vulnerable residents and preventing further contamination of the City’s air and water, while maintaining a robust local economy and workforce. Commenters would first like to thank CDAQ for its efforts to update the City’s air code and its encouragement of public input on these revisions. Commenters hope these updates will recognize the cumulative impact of air pollution, including the environmental justice impacts of such pollution, and empower CDAQ to address existing and historic harms. We commend CDAQ for reevaluating the existing code and, importantly, introducing cumulative impact protections in the preliminary Updated Air Code, but urge CDAQ to include additional language that ensures tangible impacts. For decades, particular neighborhoods have disproportionately borne the burden of the City’s air pollution without meaningful relief. Additionally, we understand CDAQ wants to retain some flexibility in the code in order to adapt to and include evolving data and methodologies. However, there should be baselines and minimum standards to ensure transparency in these processes so that the public can understand the methodologies used by the CDAQ and the City for these efforts. The City’s forthcoming Updated Air Code has the potential to help these neighborhoods, and all of Cleveland, remedy air quality issues—but only if these updates empower CDAQ’s decision-making in concrete and particularized ways.

Before addressing specific sections of the Updated Air Code, the Commenters want to highlight that throughout these comments, CDAQ will see recommendations related to incorporating environmental justice language throughout the Updated Air Code in order to ensure these neighborhoods and areas of the City receive particularized attention and extra effort

to remedy the historic and ongoing burdens they face. Specifically, the Commenters ask that the City include language in the Updated Air Code requiring CDAQ to consider environmental justice when making permitting decisions, empowering the agency to deny or condition permits which harm environmental justice populations, requiring CDAQ to deny or condition permits where such harms reach a certain risk level or where cumulative harm is already severe, and increase penalties and fees for violations of permits and other regulations when those violations adversely impact environmental justice populations.¹ Alongside these recommendations, Commenters also recommend defining the term “environmental justice” and have included a proposed definition in Section VI of this letter, which has suggested edits to the definitions section of the Updated Air Code.

Section I of this letter evaluates CDAQ’s approach to cumulative impacts assessments in the Updated Air Code. **Section II** provides the Commenters’ recommendations regarding the Health Impact Assessment in the Updated Air Code. **Sections III and IV** of this comment respectively consider the Updated Air Code’s approach to fees and penalties as well as maximum concentrations. **Section V** addresses ambiguities in the Updated Air Code. **Section VI** includes recommended edits to the definitions section of the Updated Air Code as well as a new recommended term for inclusion. Finally, **Section VII** concludes that Commenters’ suggested edits to the Updated Air Code that will help effectively mitigate ongoing air-related harms impacting Cleveland’s environmental justice communities.

I. Cumulative Impact Assessment §257.01(e)

Commenters suggest that CDAQ make the following updates regarding the Updated Air Code’s treatment of cumulative impact assessments in §257.01(e). Commenters strongly feel that in order to produce long-lasting environmental health protections, CDAQ’s cumulative impacts analyses and its Updated Air Code more generally should align with the agency’s decisions to issue permits, make rules, and set standards.

a. Frequency of Air Quality Health Impact Report

First, concerning § 257.01(e)(1), the Commenters request that the Air Quality Health Impact Report be updated more often than every five years. The Commenters recommend CDAQ update the report every three years, which also aligns with much of the public response to this matter at meetings attended by Commenters. Importantly, CDAQ should also clarify its procedure for developing this report, including what sources of data it intends to consult during development. Moreover, the language “as needed” should be struck. At a public meeting, CDAQ indicated the inclusion of the term “as needed” was intended to allow the agency to review their reports more frequently than every five years. Commenters’ recommendation for greater frequency is because it is necessary to be effective and also will then reflect CDAQ’s stated intention with the phrase “as needed” in the current Updated Air Code draft.

¹ This is not without precedent. For example, in New Jersey, no facility or proposal is permitted to add pollution which will cause or contribute to environmental or public health stressors in overburdened communities. In Minnesota and Massachusetts, by contrast, permits are denied if their impact upon an environmental justice population has a significant or substantial impact. Commenters are happy to provide this information and citations to our research.

Accordingly, Commenters' suggested additions to § 257.01(e)(1) of the Updated Air Code are indicated in **bold**, and suggested deletions in ~~striketrough~~:

Within one year of the effective date of this ordinance, the Commissioner will develop and issue an Air Quality Health Impact Report that identifies census blocks that present with the most vulnerability to the health impacts of air pollution. The Air Quality Health Impact Report will include social vulnerability index scores, health data, and environmental data to establish scores for each census block. ***[Insert brief description of CDAQ's methodology for producing this report, including its sources of data and language indicating CDAQ will engage the public in this process and present opportunity for public comment].*** The Air Quality Health Impact Report will be evaluated and updated, ~~as needed every five years~~ **at minimum, every three years. Evaluations may occur more frequently at CDAQ's discretion."**

b. New or Modified Source Emission Unit Evaluation

Second, in § **257.01(e)(4)**, the Commenters note that the "New or Modified Source Emission Unit Evaluation" is included in the cumulative impact assessment section (§ 257.01 (e)), yet rather than assess cumulative impacts, this evaluation tool only requires applicants to identify, to a greater degree than is already otherwise required, how much a new or modified source will emit. It does not require applicants to consider the actual impact of the new or modified source in combination with existing sources. The Commenters urge CDAQ to revise this language to include a true cumulative impact reporting requirement. Commenters believe a holistic understanding of cumulative impact can be achieved through both additional reporting requirements for permit applicants, as well as CDAQ's utilization of back-end emissions and public health data. Accordingly, Commenters suggest edits to § 257.01(e)(4) as follows:

New or Modified Source Emission Unit Evaluations **and Cumulative Impacts Assessments shall include:** (A) potential emissions of the following: annual emissions of criteria air pollutants from the new or modified source and the new total per facility in tons per year, annual emissions of individual and combined hazardous air pollutants from the new or modified source and the new total per facility in tons per year, daily total of vehicle miles travelled (VMT) for all medium and heavy-duty vehicle traffic traveling on and off the facility premises, and daily hours of operation for all off-road equipment, medium duty and heavy-duty vehicles that operate on the facility premises; **(B) public opinion regarding the proposed new or modified source determined through public engagement efforts including, but not limited to, a public notice posted in accessible locations throughout communities within a five-mile radius of the proposed new or modified source at least sixty (60) days prior to filing a permit application for a new or modified source of pollution, and at least two public meetings prior to submission of the application for permit. The public notice must include a fact sheet describing the proposed project in accessible wording and translated into any non-English language spoken by a significant percentage of environmental justice populations in that radius and must include contact information for the applicant so that community members can provide comments.**

The Commenters note that these requirements, even with Commenters suggestions, are significantly less than the requirements of cumulative impacts assessments in other municipalities. The City is encouraged to model more stringent requirements in order to best ensure the assessments the Updated Air Code produces are comprehensive.² Further, the inclusion of public engagement requirements for permit applicants—such that these applicants are required to secure community support and risk a permit’s denial where they fail to do so—are critical to ensure our industries are working to build relationships with the communities in which they exist both while applying for permits and to help with ongoing community engagement.

Further, Commenters understand that data CDAQ is collecting through its Air Quality Impact Report can be utilized to bolster the above information provided by applicants. Commenters recommend CDAQ consider, when reviewing a New or Modified Source Emission Unit Evaluation, these additional components and factor them into the overall assessment described above as components (C) and (D):

In addition to this information provided by applicants, CDAQ will also review and analyze: (C) the same emissions from existing sources within a five-mile radius of the proposed new or modified sources; (D) existing conditions in nearby environmental justice populations including data on environmental, public health, and socioeconomic indicators.³ CDAQ will then include those factors in its ultimate cumulative impact assessment when determining permits for New or Modified Source Emission Unit Evaluations.

Commenters strongly feel this additional information will provide a more holistic cumulative impact assessment.

(i) Scope of Areas Requiring New or Modified Source Emission Unit Evaluation:

Additionally, under § 257.01(e)(2), a “New or Modified Source Emission Unit Evaluation” should not just be limited to the upper levels of the City’s proposed relative ranking analysis (identified in the Updated Air Code as 8, 9, or 10s). The Commenters, and community members that Commenters have heard from during public meetings, find these constraints to be too restrictive to be effective. While the Commenters acknowledge that CDAQ seeks to prioritize areas that are the most acutely impacted due to resource limitations,⁴ ultimately, air pollution knows no bounds and CDAQ risks comprising the effectiveness of the Updated Air Code by so discretely limiting the application of this ordinance. The Commenters ask that CDAQ require these evaluations for all neighborhoods, but at least for those ranked as a 5 or higher.

² See, e.g., 310 MASS. CODE. REGS. 7.02(14) (2024), <https://mass.gov/doc/310-cmr-70214-cumulative-impact-analysis-amendments/download>.

³ The Commenters request that the City incorporate here the same indicators enumerated in the Massachusetts’ regulations at Table 1. Those include air quality/climate, nearby regulator facilities, health, socioeconomic, and nearby sensitive receptors indicators. 310 MASS. CODE. REGS. 7.02(14)(c)4.

⁴ Though the Commenters note that the burden for producing these evaluations falls on permit applicants, not CDAQ.

Moreover, under § 257.01(e)(2), Commenters suggest the standard for identifying the ranking analysis be objective, rather than “relative.” If all of Cleveland’s neighborhoods are ranked an 8, 9, or a 10 when compared to objective data regarding what constitutes healthy air quality, then they should be treated accordingly. In other words, Commenters strongly feel that air quality shouldn’t be graded on a curve. If CDAQ would prefer utilizing a relative standard (comparing Cleveland’s neighborhoods to other neighborhoods) as opposed to an objective standard (comparing Cleveland’s neighborhoods to data indicating what level of air quality is healthy), then Commenters suggest the standard be relative to national comparisons (i.e., the cleanest neighborhoods in the United States, not the cleanest neighborhoods in Cleveland). Commenters suggest the methodology for whichever standard CDAQ so chooses is appropriate also be disclosed to ensure transparency in how that determination is being made and so the public can understand the methodology. Accordingly, Commenters suggest § 257.01(e)(2) read:

As a condition for obtaining an installation or modification permit after the issuance of an Air Quality Health Impact Report, all new, modified or renewed sources that are located within the ~~upper levels of the relative ranking analysis (8, 9, or 10)~~ **the upper half of the ranking analysis (a 5 or higher)** will be required to submit a New or Modified Emission Unit Evaluation of the proposed source.

(ii) Scope of CDAQ’s Authority to Deny Permits

Finally, also in § 257.01(e)(2), Commenters urge the City to clarify what the impact of a “New or Modified Source Emission Unit Evaluation” is on the permitting process and introduce language empowering CDAQ to deny a permit when that evaluation indicates the source will exacerbate preexisting disproportionate impacts (or environmental injustice). At a recent public meeting, CDAQ indicated it did not know when, if at all, the new data collected under the Updated Air Code would ultimately allow it to deny a permit. Commenters strongly feel that the ability to deny a permit based on environmental injustice issues will further CDAQ’s ability to rectify historic and ongoing environmental burdens.

Accordingly, Commenters suggest that § 257.01(e)(2) include the following language at the end of the suggested language above:

The Commissioner may deny a permit for a new or modified source when the New or Modified Source Emission Unit Evaluation indicates that the source will exacerbate existing disproportionate impacts. The Commission shall deny a permit where the new or modified source will create or significantly exacerbate existing disproportionate impacts.

II. The Health Impact Assessment

The Commenters suggest that CDAQ make the following updates regarding the Updated Air Code’s treatment of the health impact assessment in §257.01(e)(5).

a. Scope of Health Impact Assessment

First, the Commenters urge CDAQ to find that the Health Impact Assessment should not only be triggered for areas determined to be at the maximum ranking of 10. Rather, the assessment should apply to areas ranked at an 8 or above. Additionally, Commenters strongly recommend this assessment apply to environmental justice populations, even if those populations are within areas determined to be ranked lower than an 8. It may be uncommon to find an environmental justice population outside of an area designated below an 8, but that is exactly why it is necessary that the Health Impact Assessment is triggered for those areas.

Moreover, the Commenters suggest these assessments additionally apply to permit renewals as well as applications for new or modified sources. Accordingly, Commenters suggest § 257.01(e)(5) read:

All new or modified sources that result in an increase of either criteria air pollutants or hazardous air pollutants, ~~that are located in the highest relative ranking (10) and that meet the criteria of either a synthetic minor, FEPTIO, or Title V facility~~ **that are located within the upper levels of the relative ranking analysis (8, 9, or 10), or are located in an area suffering a disproportionate impact**, will be required to complete and submit a Health Impact Assessment prior to the issuance of a ~~permit City of Cleveland Permit to Install~~.

b. Frequency of Review of Health Impact Assessment

Second, Commenters suggest that the review of the health concerns be addressed by the Health Impact Assessment be updated more frequently than every five years. Based on public response at public meetings regarding the Updated Air Code, Commenters suggest every three years. Accordingly, Commenters suggest § 257.01(e)(5)(C) read:

The specific health concerns to be addressed by the Health Impact Assessment, will be released on ~~a quinquennial~~ **a triennial basis** and will correspond with the Air Quality Health report.

c. Scope of CDAQ's Authority to Deny Permits

Third, the Updated Air Code is silent as to whether, if ever, CDAQ can deny a permit based on information included in the Health Impact Assessment. Similar to our comments on the "New or Modified Source Emission Unit Evaluation," Commenters strongly feel that the ability to deny a permit based on environmental justice issues will further CDAQ's ability to rectify historic and ongoing environmental burdens.

Accordingly, § 257.01(e)(5)(C) should include the following sentence at the end of the suggested language above:

The Commissioner may deny a permit for a new or modified source when the Health Impact Assessment indicates that the source will exacerbate existing disproportionate impacts. The Commission shall deny a permit where the new or

modified source will create or significantly exacerbate existing disproportionate impacts.

III. Fees: Chapter 263 & Penalties § 299.99

The Commenters first note and appreciate that CDAQ has increased fees and penalties for permit applications to fund implementation of emissions reduction technologies and other mitigation activities to help improve the City's air quality. Commenters also recommend ensuring that CDAQ be properly funded, whether through City budget allocations or these collections to ensure the necessary staffing for CDAQ to effectively implement these requirements.

However, under Chapter 263, the Commenters additionally ask that CDAQ further increase permit fees for permits submitted in environmental justice communities, or in neighborhoods suffering from disproportionate impacts. Accordingly, Commenters recommend including the following language under Chapter 263:

Fee Increase for Permits in Disproportionately Impacted Communities: The fees required in this Chapter shall be increased by twenty-five percent (25%) if the permit is implemented in a neighborhood suffering from a disproportionate impact.

Additionally, Commenters note that § 263.02 holds a space for "PENDING DETERMINATION OF PTI FEES". Commenters reiterate our comments that any permit, including a permit to install, that is issued should be higher for installations in environmental justice communities or neighborhoods suffering from disproportionate impacts, if appropriate to be granted at all. Commenters look forward to seeing the permit to install fees and will certainly have additional feedback to share.

Similarly, under § 299.99, the Commenters applaud the heightened penalties included in this section of the Updated Air Code but recommend they should be heightened to an even greater degree when violations are committed in environmental justice communities or neighborhoods suffering from disproportionate impacts. Accordingly, Commenters suggest introducing the following language:

Penalty Increase for Violations in Environmental Justice or Disproportionately Impacted Communities: The penalties required in this Section shall be doubled if the violation is committed in a neighborhood suffering from a disproportionate impact.

IV. Maximum Concentrations § 253.01

The Updated Air Code now defers to the standards contained in Ohio Administrative Code (OAC) 3745-25-02 for concentrations in ambient air of contaminants in all areas of the City. Based upon Commenters' review of OAC 3745-25-02, this now means that the maximum concentration of sulfur dioxide is now less stringent than the City's original 1977 Air Code. The City's original air code sets the maximum annual arithmetic mean concentration of sulfur

dioxide at 0.023 parts per million by volume, whereas the Ohio Administrative Code currently sets this limit at 0.030 parts per million by volume. In an industrialized city like Cleveland, this puts the health of City residents at risk, especially in environmental justice areas. Though other contaminants the Commenters reviewed appear comparable, Commenters do not recommend leaving the determination of maximum concentrations up to agency discretion because changes could happen quickly, more frequently, and of most concern, without any input from CDAQ, the City, or the residents it ultimately impacts.

V. Ambiguities Regarding Cumulative Impact and other Analyses

Commenters have noted ambiguities throughout the Updated Air Code regarding specific analyses and assessments. Commenters find the City's use of the term "cumulative impact," considering the § 251.24 definition, is inconsistent throughout the Updated Air Code in ways which will complicate its use if the Updated Air Code were to go into effect as is. For example, § 257.01(b) indicates that the Commissioner may deem it necessary for a permit application to include information regarding "a cumulative impact." Notably, there is no indication concerning when the Commissioner might find such information to be necessary, what form this analysis might come in, or whether the City means to refer to later sections of the Updated Air Code. For instance, § 257.01(e), entitled "Cumulative Impact Assessment," discusses the requirement that the Commissioner develop and issue an "Air Quality Health Impact Report," identifying census blocks that present the greatest vulnerability to "the health impacts of air pollution." In this context, it is unclear what the difference between a "Cumulative Impact Assessment" and a "Air Quality Health Impact Report" is, and how the use of the term "cumulative impact" in this section interacts with § 257.01(b)'s reference to a discretionary requirement that an applicant include cumulative impact information.

Moreover, in § 259.02, the Updated Air Code indicates that a work practice plan is required if a facility's operations are located within a census tract that has scored "in the top quartile of a cumulative impact analysis." It is unclear what analysis this section refers to and who must produce that analysis. Finally, § 263.01(a)(1) refers to an "Air Quality and Cumulative Impact Report." A report by that title is not referred to anywhere else in the proposed code. It is unclear if this term is meant to refer to the "Air Quality Health Impact Report" or some other cumulative impact analysis.

VI. Definitions

The Commenters suggest the following alterations and additions to the definitions in the City's Updated Air Code to properly empower CDAQ to combat environmental injustice problems. Commenters indicated suggested additional language in **bold**, and suggested deletions in ~~strike through~~. Additionally, Commenters note the current sections of the Updated Air Code for the recommended revisions and suggest the recommended locations for the additional definition.

- a. Cumulative Impacts, currently § 251.24.

The Commenters recommend including the following language, shown in **bold**, to indicate that the enumerated lists are not exhaustive:

Non-pollutant source stressors include, **but are not limited to**, socioeconomic disadvantages, lack of environmental assets (e.g., greenspace) in a community, health vulnerabilities, and health disparities exacerbated by racial and social injustices. Non-pollutant source health vulnerabilities include, ~~for example~~ **but are not limited to**, indicators of sensitive populations, such as incidence of asthma, cardiovascular disease, or low birthweight, and non-pollutant source socioeconomic factors include, **but are not limited to**, educational attainment, linguistic isolation, and poverty.

b. Disproportionate Impact, currently § 251.25.

While the Updated Air Code indicates, at § 257.01, that the Commissioner may deem it necessary for a permit applicant to include “disproportionate impact,” the definition of the term lacks quantitative trigger language, and thus does not make it clear how an applicant could show, or, conversely, disprove, a disproportionate impact.

Other cumulative impacts regulations define disproportionately disadvantaged communities—more properly referred to as environmental justice populations, in this context—along statistical lines. Massachusetts, for example, defines an environmental justice population as a neighborhood meeting one or more of the following criteria: (1) where the annual median household income is not more than 65 percent of the statewide annual median household income; (2) where minorities comprise 40 percent or more of the neighborhood’s population; (3) where 25 percent or more of households in the neighborhood lack English proficiency; and (4) where minorities comprise 25 percent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 percent of the statewide median household income.⁵

Commenters recommend that CDAQ include similar quantitative parameters in its definition, and, to provide CDAQ flexibility, note that the Secretary may otherwise designate a geographic area an environmental justice community.

c. Fugitive Emissions, currently § 251.34, and Objectionable Odor, currently § 251.44

Section 251.34 of the Updated Air Code defines “fugitive emissions”, and section 251.44 defines “objectionable odor.”

Regarding both of these definitions, Commenters recommend the City introduce language into the Updated Air Code identifying non-exhaustive examples of fugitive emissions and objectionable odors that it deems qualifies as either. Commenters additionally ask CDAQ to include language in the Updated Air Code requiring CDAQ to promptly (within one year)

⁵ 310 MASS. CODE. REGS. 7.00.

establish a procedure for determining when a pollutant or odor qualifies under either of these definitions and require it to maintain a public list of these example pollutants and odors.

Accordingly, Commenters recommend the City clarify the meaning of “documented investigation” referred to in § 251.44. Particularly, Commenters recommend that the finalized air code indicate this term refers to an investigation conducted by CDAQ.

d. Work Practice Plan, currently § 215.78

Commenters recommend the City include language in §§ 259.02(a)(2) and 277.05(b) indicating that applicants will be subject to penalties and fees for violating a work practice plan.

e. New Addition: Environmental Justice, suggested for inclusion as § 251.29

“Environmental injustice” is a term of art identifying the historic and ongoing land use, siting, permitting, and other decisions that have created, enforced, and exacerbated disproportionate pollution and health burdens borne by predominantly poor communities of color. The term’s inverse, “environmental justice,” recognizes efforts to rectify these historic and ongoing burdens. In Cleveland, environmental injustice is particularly acute given that the City suffers from historic industrialization, significant air and water pollution, and elevated rates of pollution-caused health respiratory and other harms, including asthma, COPD, and more.

The Commenters have concern about the lack of “environmental justice” language and definition in the Updated Air Code. Cumulative impacts ordinances and regulations are too often borne out of efforts—predominately spearheaded by grassroots activists located in environmental justice communities—to redress environmental injustice. Omitting this language is problematic, given that it erases these communities from its text, and it also meaningfully weakens the Updated Air Code. While the Updated Air Code does mention “disproportionate impacts”, it is insufficient, particularly given the limited manner in which that term is used throughout the rest of the Updated Air Code.

The Commenters, therefore, ask that CDAQ define “environmental justice” as **the ability to live in and enjoy a clean and health environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency, which includes the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies, and the equitable distribution of energy and environmental benefits and burdens.**

VII. Conclusion

The Commenters commend CDAQ’s renewed efforts to implement changes in the City’s air code. We share CDAQ’s concern that cumulative impacts must be understood and evaluated in order to protect Cleveland’s most vulnerable communities. The stakes of this update are significant. CDAQ and our City have the opportunity to create systemic change, and place

Cleveland at the forefront of innovative environmental justice work to protect our City and public health. This work, however, can only be done when environmental injustice and disproportionate impacts are named, and the revisions are centered around protecting those most impacted. Commenters would be happy to discuss these comments with the CDAQ team and appreciate the opportunity to provide these recommendations. Accordingly, the Commenters request that CDAQ implement the recommended changes.

Thank you,

/s/ Chad Stephens

**Chad Stephens, CEO and President
All Phase Foundation**



/s/ Yvonka Hall

**Yvonka Hall, Executive Director
Northeast Ohio Black Health Coalition**



/s/ Craig Ickler

**Craig Ickler, Energy Democracy
Organizer
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A handwritten signature in black ink, appearing to read "W.L.J.", is positioned above a horizontal line.

**Whitnye Long Jones, Executive Director
Organic Connects**



/s/ Miranda Leppla

Miranda Leppla, Director

/s/ Kendall McPherson

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