**March 31, 2021**

**Transportation & Climate Initiative**

[**https://www.transportationandclimate.org/main-menu/tci-regional-policy-design-stakeholder-input-form**](https://www.transportationandclimate.org/main-menu/tci-regional-policy-design-stakeholder-input-form)

Dear TCI comment review team,

Our organization writes in regards to the Transportation & Climate Initiative Program’s (TCI-P) Draft Model Rule, released to the public on March 1, 2021. The NC Conservation Network (NCCN) is a statewide environmental advocacy group based in North Carolina, a state that is participating in TCI-P discussions with an eye to joining the program. Many of our tens of thousands of advocates and supporters are directly affected by the results of climate change: more intense storms, more frequent floods, rising sea level, economically damaging heat waves. All of NCCN’s advocates and supporters participate in our state’s transportation system––a system TCI-P is intended to reform. In order to deliver on its goals in North Carolina, TCI-P must achieve substantial greenhouse gas emissions reductions, reduce rather than amplify existing environmental and economic disparities, and do all of this in a way that is politically viable in a purple state. We appreciate the chance to offer these thoughts on how the Draft Model Rules can achieve these goals.

We are impressed by and grateful for the careful thought that has clearly shaped the Draft Model Rule thus-far. That said, the Draft Model Rule has opportunities for meaningful improvement, absent which it will prevent TCI-P from achieving the goals established in the program’s Memorandum of Understanding (MOU) released on December 21, 2020. Specifically, the Draft Model Rule should be adjusted as follows:

Issues with Subpart XX 3.1 - Equity investment commitment:

Subpart 3.1 of the Draft Model Rule requires that participating jurisdictions dedicate a minimum of 35% of auction proceeds to investments that benefit overburdened and underserved communities; this investment is intended “to ensure that overburdened and underserved communities benefit equitably from clean transportation projects and programs” in accordance with a central goal established in TCI-P’s MOU.

When asked by a viewer of the TCI-P Webinar on March 1, 2021 about how this 35% benchmark was selected, a participating jurisdiction representative explained that their team had estimated that roughly 35% of its residents could be classified as overburdened or underserved so the team had selected a proportional benchmark. This thinking was formalized in TCI-P’s Draft Model Rule in Section 3.3 where the program announces an intent “to invest [auction proceeds] in a manner that reflects the population of overburdened and underserved communities.” Recognizing that the Webinar statement and the Draft Model Rule language might not capture the range of reasons each participating jurisdiction came to consensus on this 35% benchmark, this comment nonetheless suggests the arbitrariness of this 35% benchmark. Moreover, a proportional allocation of funds does not ensure that these communities “benefit equitable from clean transportation projects and programs” because a proportional allocation disregards the decades of environmental injustice these overburdened and underserved communities have endured.

Furthermore, neither the Draft Model Rule nor the March 1 TCI-P Webinar provided any clarification about what types of projects would or would not “ensure that overburdened and underserved communities benefit equitable from clean transportation projects and programs.” Though NCCN has concerns with the manner in which the 35% benchmark was selected, of deeper concern to the organization is the absence of specific information on the types of projects TCI-P thinks will ensure equity. Without such parameters, it is unclear that any specific funding benchmark will generate the results TCI-P seeks.

*In order to rectify these decades of injustice and ensure an equitable clean transportation future, TCI-P proceeds must go beyond an investment floor and build accountability mechanisms to ensure that these investments actually serve to reduce disparate impacts on overburdened and underserved communities. This accountability process must happen in consultation with those communities and their representatives. Second, TCI-P must clearly delineate how the other 65% of auction proceeds will be used, with particular attention on efforts to reduce disparate impacts on impacted transportation system users outside of these overburdened and underserved categories-–impacted transportation system users including rural residents, commuters and commercial road users.*

Issues with Subpart XX 3.2 - Equity Advisory Body:

Crucial to properly allocating TCI-P auction proceeds is an understanding of what defines a community as overburdened or underserved. With this in mind, TCI-P’s Draft Model Rule creates an equity advisory body––a body required to be “composed of diverse stakeholder groups, with a majority of members being representatives of overburdened and underserved communities or populations''––and charges that body with the task of “[d]eveloping criteria for defining overburdened and underserved communities.” Put another way, this circular framework requires that an equity advisory body composed of majority stakeholders from overburdened and underserved communities be created, then makes this equity advisory body’s first order of business to define what it means to be overburdened or underserved. This opens up the possibility that the members of an initial body will create a self-inclusive definition, which then could leave out overburdened or underserved communities not included in the initial equity advisory body membership.

Additionally, the amount of space the Draft Model Rule spends addressing equity concerns––1.5 pages of a 153 page document––demonstrates the need for further work by TCI-P jurisdictions to (1) engage with diverse stakeholders and (2) prioritize equity.

*Bearing in mind these foundational issues, TCI-P jurisdictions must fundamentally reconsider its and their equity efforts. To this end, TCI-P jurisdictions must (1) participate in robust stakeholder engagement before moving forward with the Draft Model Rule development, and (2) meaningfully incorporate feedback from this stakeholder engagement into the Draft Model Rule’s definition of overburdened and underserved communities.*

Issues with Subpart XX 3.3 - Equity review and reporting:

The Draft Model Rule is also nonspecific about how an equity advisory body can achieve its other two mandates: (1) recommending investment strategies that promote equity and (2) evaluating TCI-P’s progress toward accomplishing its equity goals.

Specific to the first mandate, TCI-P grants the equity advisory body the power to advise, not the power to enact. This means that the Draft Model Rule fails to guarantee that justice issues will actually be addressed in accordance with the input of these communities. Specific to the second mandate, the Draft Model Rule simply requires that each participating jurisdiction assess TCI-P’s progress toward accomplishing its equity goals on an “ongoing basis,” that this process include an unspecified level of air quality monitoring, and that each jurisdiction report on how it invests its auction proceeds. It does not require a specified periodicity or robustness to its equity reporting and it does not provide any framework for improvement based on these periodic assessments of its performance. A Draft Model Rule without more definite means of enacting recommendations of the equity advisory body threatens to undermine the intent of the participant states to reduce inequities in their transportation systems at the same time that they reduce the sector’s emissions.

To offer a concrete example, communities in North Carolina already suffer from a disconnect between the findings of Clean Air Act compliance-based monitoring of National Ambient Air Quality Standards (NAAQS) for criteria pollutants and the actual conditions experienced in overburdened and underserved communities along heavily-traveled highways; a decade of research has confirmed the elevated risk to children and adults living in close proximity to such roads.[[1]](#footnote-1) You can see this in the EPA EJScreen layers for 'proximity to traffic' and the National Air Toxics Assessment (NATA) hazards. Virtually all North Carolina counties comply with federal NAAPS standards based on monitoring data averaged over the county, yet EJScreen predicts hazardous levels of exposure for neighborhoods located near roadways. With this in mind, how each state conducts monitoring to demonstrate compliance with TCI-P’s equity goals matters a great deal. For instance, in North Carolina, if TCI-P-based monitoring were to piggyback on existing CAA-based monitoring, the state’s TCI-P advisory body would not have the data necessary to discern disparate exposure in the first place, let alone measure North Carolina’s progress toward addressing transportation-based equity concerns.

*With these concerns in mind, TCI-P jurisdictions must reconceive Section 3.3 of the Draft Model Rule so that it (1) integrates equity into the governance mechanisms of the Model Rule itself,[[2]](#footnote-2) (2) discusses at length the specific and enforceable means by which the program will routinely assess its progress toward and shortcomings in meeting its equity commitments, and (3) determines how feedback from periodic assessments of the program will be incorporated.*

Other Issues and Concerns

In addition to the points raised above, NCCN raises the following process, distributional, and educational concerns. Many of these concerns can be traced to TCI-P’s lack of clear information on these issues in its MOU and Draft Model Rule.

For instance, TCI-P has to date provided minimal public information describing the modeling of how costs associated with its efforts will ultimately be absorbed by the consumer at the fuel pump.[[3]](#footnote-3) For the information it has made publicly-available, TCI-P does not provide sufficient detail about how it arrived at generalized cost estimates associated with the program, i.e. that gas prices would go up approximately 5 cents per gallon as a result of the program or the amount of variability from these average estimates consumers are likely to experience in terms of sector-specific impacts, fuel-type-specific impacts, or impacts linked to high demand periods. Without more specificity around the applicability of these cost estimates and in the absence of more top-down guidance on how states should go about guiding end-user impacts, NCCN has concerns that costs will fall disproportionately on users least-equipped to absorb them. For instance, extra costs at the fuel pump may have a disproportionate impact on low-income individuals, rural residents, commuters, and the freight industry.

*In an effort to illuminate answers to these questions, TCI-P could (1) better explain the modeling already conducted in a manner aimed at the general public, (2) commission new modeling efforts, and (3) consider methods for ensuring that TCI-P does not burden the users it aims to protect.*

Likewise, TCI-P has not adequately educated the public on other components of the Draft Model Rule. It has not clarified how it agreed on a three-fold penalty for jurisdictions’ allowance exceedances under Section XX 6.5(d) nor has it clarified how it arrived at the emissions and cost containment reserve prices established in the Draft Model Rule. To make matters worse, TCI-P has not modeled whether either this penalty or these reserve prices will be adequate in order to ensure necessary curtailments of emissions from the transportation sector. TCI-P has not explained why it opted to use an emissions benchmark with a floating price for emissions allowances rather than a price benchmark with floating emissions reductions. TCI-P also hasn’t explained how it settled on its selected emissions reductions benchmarks nor has it examined whether these benchmarks are appropriately aggressive––the degree to which they represent a change from a business as usual scenario.

*With these concerns in mind, TCI-P must do a more robust job of educating jurisdictions and impacted communities on these essential program components.*

Thank you for your consideration of these comments, we look forward to continuing to engage with TCI-P as the program continues to develop.

Sincerely,

**Molly Bruce**

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1. See Isakov et al. (2014) [Air Quality Modeling in Support of the Near-Road Exposures and Effects of Urban Air Pollutants Study (NEXUS)](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4198990/?tool=pmcentrez&report=abstract), Int J Environ Res Public Health. 11(9): 8777–8793. See generally [EJSCREEN Data](https://catalog.data.gov/dataset?q=ejscreen&sort=score+desc%2C+name+asc). [↑](#footnote-ref-1)
2. NCCN acknowledges that such efforts may raise legislative or Constitutional questions. However, TCI’s framework ensures that these questions will unfold at the state level and will likely look different in each jurisdiction. With this in mind, this comment letter does not address specific strategies for addressing potential legislative and Constitutional questions associated with increased regulatory authority being granted to a new regulatory body. [↑](#footnote-ref-2)
3. TCI’s only cost modeling, [Estimating the Regional Environmental, Health, and Economic Benefits and Costs of the Transportation and Climate Initiative Program](https://www.transportationandclimate.org/sites/default/files/TCI-P_modeling-summary_12-21-2020.pdf), is premised on all 13 initially-interested jurisdictions joining TCI. However, only 4 jurisdictions ultimately joined the program, calling into question the applicability of TCI’s cost modeling and its ability to appropriately capture potential cost impacts. Furthermore, though TCI’s modeling suggests that the CCR will limit average impacts on 2023 fuel prices to 9 cents per gallon, the modeling fails to explain whether impacts will be more severe in particular sectors or in particular regions. Given the regional scope of the TCI program and its potential impacts on particular communities and industries, more information is necessary to address concerns about at the pump price impacts over time and to populations at risk of disproportionate impact. [↑](#footnote-ref-3)