



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

As coalitions of labor unions and environmental groups, collectively representing millions of members and supporters, BlueGreen Alliance and New Jersey Work Environment Council submits comments on the Transportation and Climate Initiative Program's Model Implementation Plan, the Strategies for Regional Collaboration, and Draft Framework for Public Engagement.

The purpose of TCI-P stated is to:

- a) Reduce carbon dioxide (CO<sub>2</sub>) emissions from the transportation sector;
- b) Improve air quality and public health, increase resilience to the impacts of climate change, and provide more affordable access to clean transportation choices;
- c) Promote local economic opportunity and create high quality jobs;
- d) Maximize the efficiency of the multijurisdictional program to ensure greater benefits; and
- e) Advance equity for communities overburdened by pollution and underserved by the transportation system, including expanding low-carbon and clean mobility options in urban, suburban, and rural communities, particularly for populations and communities that are disproportionately adversely affected by climate change and transportation pollution and currently underserved by the transportation system<sup>1</sup>.

A robust implementation plan that aligns with the purpose of TCI is necessary to provide a roadmap to achieve the goals of the program. We appreciate that the Model Rule includes both implementation plan creation and explicitly names that this plan will describe how equity commitments will be met<sup>2</sup>. One of the major purposes of TCI-P is to improve air quality and health equity, thus we appreciate the inclusion of both equity impacts and air quality monitoring as the evaluation factors to determine the success of TCI-P in the Model Rule. We also support the annual reporting requirement on how proceeds are spent, including lists of projects and programs supported by TCI-P proceeds and the levels of investment received by each<sup>3</sup>.

We appreciate the opportunity to comment on the Model Implementation Plan and corresponding documents, and value that these guiding documents began to reflect comments we submitted on April 20, 2021. We acknowledge the increased attention to labor standards, and consideration of how the program will reach the goal of creating high-quality jobs. Given that these proposals were not included in the model rule itself, they are just the first step to ensure the Transportation and Climate Initiative Program (TCI-P) can fulfill its promise to reduce pollution and increase access to jobs and economic benefit for disproportionately impacted communities.

### **Model Implementation Plan**

We appreciate TCI jurisdictions for creating the draft Model Implementation Plan (MIP) to help ensure that TCI-P is adopted by the participating jurisdictions in a way that aligns with the goals of the

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<sup>1</sup> Model Rule § XX-1.1 Purpose at 6.

<sup>2</sup> Model Rule § XX-1.9 Implementation Plan at 33.

<sup>3</sup> Model Rule § XX-3.3 Equity review and reporting at 45.

program. There is room, however, to make the MIP even more specific to ensure each jurisdiction's own implementation plan is comprehensive and impactful. We recommend the following additions.

### **Establish or Designate Equity Advisory Body<sup>4</sup>**

We appreciate the foundational guidance that is established in this section regarding the Equity Advisory Body. When communities are able to participate effectively in decision-making, they are less likely to be the recipients of negative environmental consequences, including impacts associated with emissions sources. We suggest the following clarifications to strengthen this important section of the MIP.

- 1) We support the Equity Advisory Boards role to develop metrics for how investments of program proceeds demonstrably provide direct and meaningful benefits for overburdened and underserved communities. We request that in addition to developing the metrics for evaluation the Equity Advisory Board also participates in the evaluation of the program's success based on these metrics.
- 2) Participating Jurisdictions should list out the technical support, and financial compensation or reimbursement they plan to provide Equity Advisory Board members to facilitate their success.
- 3) The MIP should specify how each jurisdiction will be accountable to the recommendations put forward by the Equity Advisory Board and clarify how ultimate decision-making is made; for example written reports, decision making summaries, responsiveness papers etc.

### **Working With Stakeholders to Develop a Public Engagement Plan<sup>5</sup>**

Public participation is a process, not a single event. It consists of a series of activities and actions by a sponsor agency over the full lifespan of a project. There are a number of techniques that agencies can use to implement the public participation process. We recommend that this section provide more clarity to guide phases of the public engagement process. One example may be following the Environmental Protection Agencies Situational Assessment Model<sup>6</sup>, which could provide the following phased planning tool.

Phase 1: the internal assessment, the purpose of which is to clarify the problem or opportunity, the decision to be made, available resources and commitment for public participation, and the expectations on the appropriate level of public participation

Phase 2: the external assessment, the purpose of which is to identify the full range of external stakeholders, centering on environmental justice communities and impacted workers. The MIP should be explicit about outlining which communities they will make a concentrated effort to engage, and the strategies to engage them including social and digital media, radio, print media, and in-person community events and workshops.

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<sup>4</sup> DRAFT - TCI-P Model Implementation Plan (MIP) for Low- Carbon Transportation, June 2010 at pg 2.

<sup>5</sup> DRAFT - TCI-P Model Implementation Plan (MIP) for Low- Carbon Transportation, June 2010 at pg 3.

<sup>6</sup> [www.epa.gov/international-cooperation/public-participation-guide-situation-assessments](http://www.epa.gov/international-cooperation/public-participation-guide-situation-assessments)

## **Ensuring Transparency and Accountability Regarding TCI-P Implementation and Progress Toward Achieving Program Goals<sup>7</sup>**

Monitoring air pollutants is the first necessary step to understand if TCI-P is achieving progress toward program goals. We recommend that the MIP should specify the following subsections to provide additional guidance for participating jurisdictions.

1. **Timeframe:** The MIP should prompt jurisdictions to clarify the timeline for identifying new sites for air quality monitor placement, installing those monitors, and establishing an air quality baseline before the first auction of allowances.
2. **Engagement of Impacted Communities:** The MIP should prompt jurisdictions to include how the jurisdiction will engage directly with, and support the leadership of, disproportionately impacted communities in carrying out the air quality monitoring process.

Participating jurisdictions should also consider implementing community led processes (like California's Community Air Protection Program) to identify pollution reduction measures in communities most overburdened by pollution<sup>8</sup>.

## **Investing Proceeds and Creating High-Quality Jobs Through Transparent Processes<sup>9</sup>**

The MIP should include clear guidelines for TCI-P investments to include best practices for creating family-sustaining jobs, and high road economic development. We appreciate the framework in the Draft MIP to task the Equity Advisory Body to provide recommendations regarding investments to ensure that overburdened and underserved communities benefit equitably from clean transportation projects and programs and more clarity is needed on what Participating Jurisdiction mean when the term "High-Quality Jobs" is stated. We recommend that the term "High-Quality Jobs" include the following standards; Labor Peace Agreements (LPA's), Project Labor Agreements (PLA's), utilization of registered apprentices and other labor-management training programs, protection against worker misclassification and wage theft, neutrality agreements, local hire, and prevailing wage. The goal of these standards is to ensure all jobs associated with any project are jobs that offer quality benefits and pay family-sustaining wages.

We recommend that the Project Selection Criteria subsection specifically list the preferred labor conditions stated in the Draft Proposed Strategies for Regional Collaboration. We recommend the language be changed to:

[Jurisdiction] will describe here the policy and programmatic decision-making processes through which projects will be selected for funding, including any conditions to ensure high-quality domestic jobs including projects that have prevailing wage requirements, union neutrality, Ban the Box or Fair Chance hiring policies, high percentage for domestic sourcing for component

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<sup>7</sup> DRAFT - TCI-P Model Implementation Plan (MIP) for Low- Carbon Transportation, June 2010 at pg 3.

<sup>8</sup> [ww2.arb.ca.gov/capp](http://ww2.arb.ca.gov/capp)

<sup>9</sup> DRAFT - TCI-P Model Implementation Plan (MIP) for Low- Carbon Transportation, June 2010 at pg 4.

parts, and employers with a current community benefit agreement, collective bargaining agreement, and/or project labor agreement in place.

Regarding the Workforce Development Programs subsection, we have some concerns that the Draft MIP appears to be guiding participating jurisdictions towards investing in workforce development programs, without the recommendations first assessing on whether or not workforce development programs are necessary for TCI-P funded projects, and without guidance on best practices for successful workforce development program standards. In other words, Participating Jurisdictions should not train for jobs that may not exist; they should ensure a clear connection between investments in job training and job creation. If workforce development programs are being included as a recommendation for investments, we recommend that first a landscape analysis take place of current programs that exist in the jurisdiction, and if these programs include the following best practice standards:

- Access to training for careers that provide living wages.
- Affiliation agreements/MOU's with trade unions and employers.
- Transparent screening process used during recruitment.
- Recognized assessment tools: testing cognitive, social emotional and technical skills to identify if potential program participants have basic skills necessary to enter training.
- Accurate information to provide participants on the industries that they train for.
- Strong connections with industry; including an employer advisory council.
- Have licenses or certifications from state approved programs.
- Alignment with local Workforce Investment Boards and public Career Centers.
- Alternative pathways: pre-training literacy, pre-apprenticeship etc.
- Proven practitioners as instructors with current knowledge of the field.
- Partnership with participants in identifying and mitigating barriers to employment: barriers to employment vary based on participant pool but must be considered in program design to aid in participant success and thus program success.
- Completes IEP (Individual Employment Plan): IEPs for the adult workforce to allow for programs to work in collaboration with the participant in planning their education plan and sets goals for next steps.
- Robust apprentice/externship /internship experience with industry partners who have completed an Affiliation Agreement, MOA or MOU.
- Working with program participants on post-graduation placement to support long-term retention.
- Graduation, placement, and retention rates are available.

### **Collaborating With Other TCI-P Jurisdictions to Administer TCI-P<sup>10</sup>**

In order to prevent collusion, market power and/or price manipulation we recommend that the TCI-P jurisdictions should, in addition to the market monitor, outline in this section the steps they plan to take to regulate the secondary market through purchase limits on the percentage of allowances fuel distributors can hold as stated in the Final Rule.

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<sup>10</sup> DRAFT - TCI-P Model Implementation Plan (MIP) for Low- Carbon Transportation, June 2010 at pg 4 and 5.

## Strategies for Collaboration

To achieve TCI-P's economic, climate, and equity goals, high road standards elevating job quality are necessary. Workforce standards are a proven tool to address socio-economic inequities that leave people vulnerable to loss of income or security when they are sick or faced with crisis.<sup>11</sup>

We appreciate how TCI-P jurisdictions have incorporated recommendations to improve the possibility that TCI projects will create high quality jobs and economic opportunity, however are concerned that the draft language is not strong enough to encourage Participating Jurisdictions to use best practices to create high-quality jobs.

We recommend that language be strengthened through the following edits to Section 2: Ensuring High-Quality Domestic Jobs and Workforce Development<sup>12</sup> :

- Low-carbon transportation investments funded by TCI-P program proceeds will prioritize projects that meet, at a minimum, prevailing wage requirements.
- Low-carbon transportation investments funded by TCI-P program proceeds will source a high percentage of components *and/or materials* from US-based manufacturers.
- Low-carbon transportation investments funded by TCI-P program proceeds, where applicable, will partner with ongoing state recognized workforce development programs and union apprenticeship programs that create economic opportunities for people of color and low-income communities.
- Low-carbon transportation investments funded by TCI-P program proceeds will ~~aim to~~ prioritize employers with “Ban the Box” or “Fair Chance” hiring policies in place, to help enable previously incarcerated job applicants to make it past the first screen of hiring processes.

TCI-P jurisdictions acknowledge that unionization is an important strategy for achieving the goals of the program<sup>13</sup>, however, have left out commitments to actual strategies that would enable this. We are disappointed that strategies recommended in our previous comments were not included<sup>14</sup>, and again urge TCI-P jurisdictions to incorporate the following recommendations:

**1) Prioritize projects where employers commit to union neutrality in industries connected with TCI-P investments.** A “neutrality agreement” is an agreement between a union and an employer under which the employer agrees to not interfere with unionization efforts of its workers. Unions raise wages for all workers. Union workers earn significantly more on average than non-union counterparts and union employers are more likely to provide benefits. Women, Black, and Latinx workers have higher

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<sup>11</sup> BlueGreen Alliance, 2020, State-based Policies to Build a Cleaner, Safer, More Equitable Economy: A Policy Toolkit, page 8, available at: <https://www.bluegreenalliance.org/resources/state-based-policies-to-build-a-cleaner-safer-more-equitable-economy-a-policy-toolkit/>.

<sup>12</sup> Draft Proposed Strategies for Regional Collaboration pg 2.

<sup>13</sup> Draft Proposed Strategies for Regional Collaboration pg 2.

<sup>14</sup> BGA\_NJWEC TCI Draft Model Rule Comment, April 20, 2021.

wages in unionized workplaces.<sup>15</sup> <sup>16</sup> Non-union workers earn on average 16% less weekly than workers who are union members and are more likely to have healthcare and retirement plans.<sup>17</sup>

**2) Prioritize projects that involve employers with collective bargaining contracts or a Project Labor Agreement in place.** A collective bargaining agreement (CBA) is the written legal contract between an employer and a union representing the employees. The CBA is the result of an extensive negotiation process between the parties regarding topics such as wages, hours, and terms and conditions of employment. Project Labor Agreements provide comprehensive guidance for large projects. Project Labor Agreements (PLA) is the contract covering all of the craft workers on a construction project. Because they provide comprehensive guidance and set mutual expectations for large projects, PLAs are considered the gold standard of labor provisions by most building trades unions. Where a governmental purchaser shows that using a Project Labor Agreement is intended to protect/further the government's proprietary interest, PLAs should be encouraged.

Additional recommendations include the following:

**3) TCI-P funding should restrict investing in projects that contract with temporary staffing agencies** (unless agencies certify that temporary employees are necessary to address an acute, short-term labor demand). Temporary employees, with the same skills and experience, earn an average of 22% less pay for the same work and usually receive no benefits of any kind. Additionally, in some industries, 9 out of 10 workers report incidence of wage theft and no ability to recover what they are owed.<sup>18</sup>

**4) Companies or institutions connected to TCI-P funding should commit to no mandatory arbitration.** Mandatory arbitration is a controversial practice in which a business requires employees to agree to arbitrate legal disputes with the business rather than going to court. It occurs when an employer conditions initial employment, continued employment, or important employment benefits on the employee's agreement to arbitrate any future claims against the employer. Mandatory arbitration deprives workers of the right to access the public court system.<sup>19</sup> The practice results in workers finding it exponentially more difficult to enforce their rights going forward.

### **Framework for Public Engagement**

We appreciate the opportunity to submit comments on the guiding principles for public engagement. We commend participating jurisdictions for creating a document with the intention of achieving just and equitable outcomes. We recommend the following additions:

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<sup>15</sup> Center for Economic and Policy Research. John Schmitt. Unions and Upward Mobility for Women Workers. December 2008.

<sup>16</sup> Center for Economic and Policy Research. John Schmitt. Unions and Upward Mobility for African American Workers. December 2008.

<sup>17</sup> Bureau of Labor Statistics. News Release, Union Members 2020. January 22, 2021.

<sup>18</sup> National Employment Law Project and National Staffing Workers Alliance. Rebecca Smith and Claire McKenna. TempedOut: How the Domestic Outsourcing of Blue Collar Jobs Harms America's Workers.

<sup>19</sup> Economic Policy Institute. The Growing Use of Mandatory Arbitration. Alexander J.S. Colvin. September 27, 2017.

Under the priority “each TCI-P jurisdiction will work with their stakeholders to create, or adapt existing, public engagement plans that include the following elements”<sup>20</sup>, we recommend to include impacted workers and union representatives within the transportation sector, and representation from low-mobility individuals and transportation accessibility advocates.

We appreciate the opportunity to comment and look forward to continuing the conversation regarding TCI-P.

Sincerely,

Blue Green Alliance  
New Jersey Work Environment Council

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<sup>20</sup> Draft Framework for Public Engagement at pg 2.

