



**To: TCI Leadership Team:** Kathleen Theoharides, Secretary, Massachusetts Executive Office of Energy and Environmental Affairs and R. Earl Lewis, Jr., Deputy Secretary, Maryland Department of Transportation

**TCI Executive Policy Committee:** Marty Suuberg, Commissioner, Massachusetts Department of Environmental Protection and Roger Cohen, Senior Advisor to the Secretary, Pennsylvania Department of Transportation

**TCI Technical Analysis Workgroup:** Christine Kirby, Assistant Commissioner, Massachusetts Department of Environmental Protection and Chris Hoagland, Economist, Climate Change Division, Maryland Department of the Environment

**TCI Investment and Equity Workgroup:** Garrett Eucalitto, Deputy Commissioner, Connecticut Department of Transportation, Kate Fichter, Assistant Secretary, Massachusetts Department of Transportation, Kirsten Rigney, Legal Director, Connecticut Department of Energy and Environmental Protection and Dan Sieger, Undersecretary of Environmental Affairs, Massachusetts Executive Office of Energy and Environmental Affairs

**TCI Outreach and Communications Workgroup:** Chris Bast, Chief Deputy, Virginia Department of Environmental Quality and Elle O'Casey, Director of Communications and Outreach, Vermont Agency of Natural Resources

**Governors and Other State Officials:** Connecticut, Delaware, New Hampshire, New Jersey, New York, North Carolina, Maryland, Massachusetts, Pennsylvania, Rhode Island, Vermont, Virginia

**Mayor and Other City Officials:** District of Columbia

**From:** Climate Justice Alliance Northeast Region Member Organizations and Allies

**Re:** Comments on the Model Rule for the Transportation & Climate Initiative Program (TCI-P)

May 7, 2021

We, the undersigned organizations, submit the following comments on the proposed Model Rule for the Transportation and Climate Initiative Program (TCI-P) on behalf of the Climate Justice Alliance (CJA). The MOU and model rule for the TCI-P solidify plans for a cap-trade-and-invest program and include a commitment to ensure that overburdened and underserved communities will have the

opportunity to provide meaningful input in decision-making processes.<sup>1</sup> However, the equity provisions are just two pages in the model rule of over 150 pages. This underscores that equity is an afterthought to this program. At the very least, the model rule should make clear that the states are strongly encouraged to do more, and that these proposed provisions are the absolute minimum. Without these guarantees, the memorandum of understanding (MOU) and model rule cannot begin to meet the needs of EJ populations and others on the frontlines of pollution from transportation. As a first step to address this problem, we request that:

1. Georgetown Climate Center and the agencies responsible for implementing the TCI-P in participating jurisdictions (Massachusetts, Connecticut, Rhode Island, and the District of Columbia) engage directly with the Climate Justice Alliance, environmental and climate justice organizations, and community-based organizations rooted in communities that are on the frontlines of pollution from transportation and related infrastructure; and
2. all jurisdictions, whether formally involved in the TCI-P or not, prioritize policies that are grounded in transportation and climate justice. These initiatives include things like: addressing disparities in air quality in pollution hotspots and frontline communities; support for low-income or free fare programs for transit systems in your states; electrification of public transportation and large public and commercial vehicle fleets, with a priority for routes that are located in environmental justice communities and also a focus on electric bus service in smaller cities; and amending siting and permitting requirements to ensure that new warehousing and transportation infrastructure do not disproportionately burden environmental justice and frontline communities.<sup>2</sup>

### **A. The Engagement Process has been Flawed**

Since 2010, the northeast states have been involved in discussions about how to limit emissions from the transportation sector. Environmental and climate justice organizations, community-based organizations, and residents of neighborhoods that bear the brunt of pollution and health impacts from our transportation infrastructure were not invited to participate in these conversations. This choice continues a pattern of marginalization that has plagued decades of climate policy, including the development of the Regional Greenhouse Gas Initiative (RGGI), the Clean Power Plan, and other market-based mechanisms.<sup>3</sup> It is perplexing and deeply troubling that, when called in on this fact, Peter Raffle and Georgetown Climate Center doubled down on their defense of the closed-door conversations that led to the creation of the TCI-P, stating: “I understand that the perception is that

<sup>1</sup> Transportation and Climate Initiative Program Memorandum of Understanding, December 21, 2020, <https://www.transportationandclimate.org/sites/default/files/TCI%20MOU%2012.2020.pdf>.

<sup>2</sup> For an example of a transit justice focused policy platform that is grounded in leadership from EJ organizations and frontline communities in Massachusetts, see: <https://docs.google.com/document/d/1WzDxu2MIOfJWPREytaJli9KB-b7kUVOnubkWpyc3320/edit?usp=sharing>.

<sup>3</sup> While green NGOs “overwhelming supported cap and trade” mechanisms in their comments on the Clean Power Plan, “EJ advocates overwhelmingly opposed the creation of carbon markets that were promoted as solutions.” For more background on EJ organizations’ involvement in the development of the Clean Power Plan, see <https://bea4impact.org/media/7/download>, 27-28. EJ activists and organizations have repeatedly expressed similar concerns regarding the Regional Greenhouse Gas Initiative (RGGI) and California’s Cap and Trade Program, which have resulted in the unequal distribution of resources. For more information on the impacts of RGGI, see: <https://drive.google.com/file/d/1mB-12SYJHOV4VjFe4OItZFfvQPdLB-cz/view>. For an EJ perspective on CA’s cap and trade program, see: <https://caleja.org/wp-content/uploads/2017/04/EJissuesinCAcapandtrade.pdf>.

somehow there was a conversation going on that [environmental justice groups] were not part of... The actual timeline is a little different from that from the states' perspective.”<sup>4</sup> We are well aware of the difference between the development of the TCI-P and the broader conversations around TCI. Whether the process began in 2010 or 2015, our critique is the same: the communities most impacted by pollution from transportation infrastructure were not centered in the creation of this policy. This is unacceptable.

More dedicated outreach and engagement will be necessary to center the needs of impacted communities. This engagement should result in changes to transportation and climate policies that address our needs. However, it is impossible for our communities to engage fully in any regional process if the harm of repeated marginalization and the dismissal of our concerns is not addressed. We call on Georgetown and agency staff in participating states to meet with the Climate Justice Alliance and the signatories to this letter to discuss how to rectify this harm.

At least two speakers stated during the September 29, 2020 webinar that the TCI jurisdictions have received feedback critiquing the cap-trade-and-invest design and the extent to which achieving transportation and environmental justice is possible within a market-based program alone. The TCI states, in their engagement and design process, have acknowledged this feedback yet have offered insufficient measures to address EJ concerns. In this moment of reckoning around racial and environmental justice, the TCI jurisdictions must center the needs of impacted communities and follow through on this commitment, not simply say that they hear EJ voices without sufficiently incorporating our input into the policy. Extending the deadline for comments on the model rule and committing to do more stakeholder engagement in the jurisdictions that have signed on to the MOU is the bare minimum. When considering all of the feedback on the model rule, we request that you attribute the same or more weight to comments from overburdened and underserved communities discussing impacts of TCI-P on those communities as comments regarding the overall reductions in emissions or the amount of revenue that could be generated by the program.

### **B. Offsets Should be Eliminated**

We recommend that offsets be eliminated from the program design. Studies have documented the ways in which offsets create an illusion that climate change is being addressed without actually compensating for emissions. Offsets allow emissions to increase and worsen global warming. They also violate the human rights of Indigenous peoples in the global south.<sup>5</sup> If offsets are included in the model rule, we strongly suggest that the participating states not include offsets as a program element in their enabling legislation or regulations.

### **C. “Complementary Policies” Can’t Guarantee Equity**

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<sup>4</sup> Ysabelle Kempe, *Why activists distrust this plan to cut emissions from cars and trucks*, Grist (Apr. 2, 2021), available at: <https://grist.org/equity/why-activists-distrust-this-plan-to-cut-emissions-from-cars-and-trucks/>.

<sup>5</sup> Gilbertson, Tamra, *Carbon Pricing- A Critical Perspective for Community Resistance*, Climate Justice Alliance (Oct. 2017), available at: <https://co2colonialism.org/wp-content/uploads/2019/11/Carbon-Pricing-A-Critical-Perspective-for-Community-Resistance-Online-Version.pdf>

The TCI-P as described in the MOU and model rule does not include the guardrails needed to guarantee that the policy will not be regressive: imposing a fee on the primary suppliers of gasoline will almost definitely be passed onto individual drivers at the pump, having impacts similar to a gas tax. As such, drivers from communities of color and low income individuals who are car-dependent, especially in rural areas, will spend a larger portion of their incomes on gas than their whiter, wealthier neighbors. According to the Bureau of Labor Statistics Consumer Expenditures Survey data<sup>6</sup> Black households spend an average of 3.1% of their household income on gasoline and other transportation fuels compared to 2.5% for white households. Similarly, households in the lowest income decile spend 15.7% of their household income on transportation fuels, compared to 1.1% for the highest income decile. These same drivers are less likely to be able to limit their fuel consumption despite having an incentive to do so.<sup>7</sup> They are also less likely to be able to afford an electric vehicle.

It is in our view a fundamental policy design flaw to address concerns about equity at the back-end, in the allocation of funding, rather than at the front end, in the policy design. The fact that “equity” and “modeling/technical” conversations have largely been siloed, with input from overburdened and underserved communities only informing the former, and that leaders have failed to incorporate findings from existing engagement into policy design, leaves us feeling that engagement on equity is window dressing.

The TCI model rule does not address the main drivers of environmental injustice arising from the transportation sector, namely, discriminatory zoning and land use policies that systematically locate polluting infrastructure such as highways and freight terminals in communities of color and low-wealth communities. Nor does it address the main driver of the high (and growing) greenhouse gas emissions from the transportation sector - the growth of Vehicle Miles Traveled (VMT). It merely attempts to correct these at the back-end through allocation of proceeds from the auction of pollution permits to “complementary policies” that may reduce VMT. There is of course no guarantee that they will, because the allocation of funding to “complementary policies” is left to the discretion of the participating states.

We understand the complexity of the climate crisis and that the TCI-P cannot fully address the public health and environmental disparities caused by decades of policies undergirded by environmental and systemic racism. We are also well aware of the financial constraints of the participating states and the costs associated with addressing these deep inequities. We are troubled that TCI leaders have chosen to focus on TCI as a standalone policy, without providing real commitments on additional policies to intentionally and concurrently address pollution hotspots and transportation injustice. This ignores the feedback of the EJ community given to date in this process and risks repeating the mistake made when RGGI was developed.

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<sup>6</sup> US Bureau of Labor Statistics, “Consumer Expenditure Surveys,” last accessed Mar. 16, 2021, <https://www.bls.gov/cex/tables.htm#annual>.

<sup>7</sup> Spiller, Elisheba and Stephens, Heather and Chen, Yong, Understanding the Heterogeneous Effects of Gasoline Taxes Across Income and Location (Sept. 23, 2016), available at <https://ssrn.com/abstract=2113594>.

Policies that have to date been categorized as “complementary” but must be implemented to ensure that the TCI-P does not increase disparities in our communities include: additional air quality monitoring and mitigation of pollution in hotspots; the creation of low income or free fare programs on public transit; increasing service in the communities that have limited access to and are most dependent on public transit; the electrification of public transit and other large fleets of vehicles; and the reform of the siting process for energy infrastructure to include cumulative impacts and environmental and climate justice into their decision-making authority. Many of our organizations are already working on these issues and will continue to do so regardless of the implementation of the TCI-P.<sup>8</sup> We thank agency staff at the Massachusetts DEP, EEA, and DOT for engaging directly with Alternatives for Community & Environment and GreenRoots, and encourage Georgetown and staff in the other participating states to meet with the organizations in their own states to discuss how to correct previous mistakes around engagement and to ensure that our work on these critical policies is not overshadowed by the implementation of the TCI-P. The New York-based signatories to these comments have already seen this dynamic playing out in the working groups convened to implement the state’s Community Leadership and Climate Protection Act (CLCPA). That legislation codifies an economy-wide net-zero-emissions mandate by 2050, including the transportation sector. Advocates for the CLCPA are concerned that TCI, if adopted by the state, could undermine or be misaligned with the transportation policies currently being developed in the CLCPA implementation process. This is especially concerning because it would deprive New York state residents of the CLCPA’s democratic process to determine future transportation policy. Further, the possibility of New York joining the TCI-P would clearly undermine the Climate and Community Investment Act, introduced in 2021. This proposed law’s equitable polluter fee framework and investment program were developed by EJ organizations and allies in the NY Renews coalition; of particular note is the CCIA’s rebate program, designed to blunt potential regressive impacts, unlike the TCI-P.

The TRECH study finding that disparities in air quality and public health outcomes will continue to persist in 2032 should be a call to action: the policies framed by the states as “complementary” to TCI are necessary. At minimum, the equity section should mandate that the participating states address disparities in air quality in environmental justice communities and other pollution hot spots. A Harvard study found that an increase in long-term air pollution exposure ( $1 \mu\text{g}/\text{m}^3$ ) leads to a COVID-19 death rate that is eight percent above the risk borne by residents of communities without such exposure.<sup>9</sup> The model rule should direct the states to work with community stakeholders to identify and monitor pollution hotspots and set enforceable air improvement targets. These targets should produce measurably better air quality in environmental justice communities by 2032.

#### **D. Revenue-Related Feedback**

The revenues raised through TCI are subject to considerable uncertainty and volatility because of fluctuations in demand for transportation fuel, as the reduction in traffic and consequent fall in

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<sup>8</sup> For an example of a transit justice policy platform developed by ACE, GreenRoots, and allies in Massachusetts, see: <https://docs.google.com/document/d/1WzDxu2MIOfJWPREytaJli9KB-b7kUVOnubkWpvc3320/edit?usp=sharing>.

<sup>9</sup> Wu, X., Nethery, R. C., Sabath, M. B., Braun, D. and Dominici, F., 2020. Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis. *Science advances*, 6, p.eabd4049, <https://projects.iq.harvard.edu/covid-pm>.

demand for transportation fuels during the COVID pandemic so vividly illustrated. It's also a revenue source that will decrease over time (or at least should, if the program were to meet its goals), making it an unreliable source for ongoing funding for critical transportation equity programs.

Another of our critiques is that the TCI-P, like RGGI, could be subject to general budget raids by some of our respective governors. For example, those of us in New York State recently had to oppose Governor Cuomo's 2021-22 budget proposal to do precisely that: raid RGGI revenues to plug State budget gaps.<sup>10</sup> We are aware that individual states' approaches on how to allocate TCI-P proceeds will vary and that some flexibility is necessary to address different needs across the region. However, the failure to learn the lesson from RGGI and the lack of a provision in the MOU or model rule to protect these cap-and-trade revenues from raids again raises the question why our communities should trust that "frontline EJ/CJ communities will receive 35-40% of transportation investments..." when these funds could be diverted for unrelated purposes. These structural issues are not sufficiently addressed by the model rule.

The model rule should clearly state that the 35% of investments dedicated to "overburdened and underserved" communities is considered the bare minimum that jurisdictions allocate for this purpose. For the TCI-P to come close to being equitable, the level of investment should be at least proportional to the percentage of the population that meets the definition of "overburdened and underserved" in each state. To ensure that investments actually reach the populations most in need of this funding, we request that the model rule specify that a minimum of 35% of **investments**, not benefits from those investments, be allocated to our communities.

We look forward to a response from Georgetown and the participating jurisdictions. To respond to these comments, contact Sofia Owen, Director of Environmental Justice Legal Services at Alternatives for Community & Environment, at: [sofia@ace-ej.org](mailto:sofia@ace-ej.org).

Signed,

Alternatives for Community & Environment (ACE)  
 Connecticut Coalition for Environmental Justice  
 GreenRoots  
 Institute for Policy Studies  
 Ironbound Community Corporation  
 New York City Environmental Justice Alliance  
 UPROSE

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<sup>10</sup> Kate Kurera, Environmental Advocates of New York, Testimony Regarding the Environmental Provisions of Governor Cuomo's Executive Budget Proposal for SFY 2021-22 (Jan. 27, 2021), 4, *available at* <https://eany.org/wp-content/uploads/2021/01/Budget-Testimony-SFY-2021-2022-.pdf>.