



Comments on TCI-P Draft Model Rule and Update on Public Engagement Planning

April 13, 2021

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 Jersey, New York, North Carolina, Maine, Maryland, Massachusetts, Pennsylvania, Rhode Island, Vermont, Virginia

Mayor and other city officials:

- District of Columbia

Dear Transportation and Climate Initiative leaders,

Green For All respectfully submits our comments in response to the draft TCI-P model rule and “Update on Public Engagement Planning” documents that were released on March 1, 2021. We appreciate the initial steps that TCI leaders took in December to incorporate equity commitments into the TCI-P MOU. However, TCI leaders can and must go further in expanding the scope of these commitments and include greater detail about implementation into the model rule itself. Without setting a clearer standard, the adoption of a more equitable TCI-P will be inconsistent across participating jurisdictions and lack a necessary level of rigor to ensure equitable outcomes.

We are encouraged by the “Update on Engagement Planning” document but similarly recommend that the Metropolitan Group and the Georgetown Climate Center offer greater specificity around these plans.

Model Rule

Subpart 3: Equity

- Uphold standardized equity provisions
- Incorporate high road labor and workforce development standards
- Ensure robust and direct benefits and dedicated investments
- Offer detailed guidance around the membership, responsibilities, capacity support, and accessibility of the equity advisory body
- Strengthen air quality monitoring
- Commit to localized emission reductions

Update on Public Engagement Planning

- Include greater detail about timeline and process for developing the Model Framework for Public Engagement
- TCI-P engagement conversations should situate the program within a broader dialogue about community priorities related to transportation, environmental health, climate change, etc.
- Best practices from the Model Framework for Public Engagement should be incorporated into state enabling TCI legislation and regulations
- Offer community based organizations and their staff comprehensive technical assistance to develop funding proposals and engage community members about TCI-P

Response to the [Draft TCI-P Model Rule](#)

Subpart XX-3 Equity

- I. Uphold Standardized Equity Provisions

The bracketed language at the top of Subpart XX-3 treats the equity provisions in the model rule as being up to further interpretation from participating jurisdictions. However, this section is pivotal for the success of TCI-P and should include concrete directives that all jurisdictions must follow. We recommend removing the language that states Subpart XX-3 is “an example of one possible approach” so as to ensure this section offers a standard framework for the implementation of TCI-P equity commitments, just as the model rule does for other program components such as the emissions reporting and allowance auctions.

II. Incorporate High Road Labor and Workforce Development Standards

In Subpart XX-1.1 Purpose, the TCI-P model rule states that one goal of the program is to “promote local economic opportunity and create high quality jobs.” However, investments in transportation solutions and relevant infrastructure alone will not secure this beneficial outcome for workers. The model rule language must incorporate explicit provisions to ensure TCI-P promotes fair labor and workforce development standards while preventing worker displacement.

Therefore, the model rule must commit jurisdictions to adopt a program that ensures TCI-P investments support high road, domestic jobs with fair pay, good benefits, and union neutrality. TCI-P funded projects must also include prevailing wage requirements and support workforce development, hiring, and contracting that is accessible to communities who face barriers to employment, displacement due to industry transition, or under-employment. These communities include women, people of color, veterans, formerly incarcerated individuals, and people with disabilities. Including equity criteria in requests for proposals, awarding extra points in competitive bidding, and requiring contractor reporting on equity metrics (such as percentage of sub-contractors and workforce who face these barriers) will help prioritize and track economic benefits to underserved communities. One important way to promote job access for justice involved individuals is to fund projects that employ a “ban the box” policy in order to separate conviction or arrest history from hiring processes.¹ Furthermore, TCI-P investments should prioritize projects that establish collective bargaining contracts or Project Labor Agreements.

Lastly, transportation electrification investments may increase the need for new parts that are produced in sectors with weaker labor standards than the auto manufacturing sector and that have a limited domestic supply. This could open the door to sourcing products that are made under poorer working conditions from manufacturers outside the U.S.² Thus, to the maximum extent feasible, TCI-P procurement dollars must go toward U.S. sourced, manufactured, and assembled components and products.

XX-3.1 Equity investment commitment

III. Ensure Robust and Direct Benefits and Dedicated Investments

¹ Avery, Beth, Han Lu, “Ban the Box,” National Employment Law Project, October, 2020, <https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-Oct-2020.pdf>.

² “Taking the High Road: Strategies for a Fair EV Future,” UAW Research Department, accessed March 24, 2021, <https://uaw.org/wp-content/uploads/2019/07/190416-EV-White-Paper-REVISED-January-2020-Final.pdf>.

In order to seriously commit to its stated goal of advancing equity, TCI-P must give “overburdened and underserved” communities in each jurisdiction a significantly greater share of program proceeds than their share of the total population. If, for example, a population that is determined “overburdened and underserved” is 45% of a given jurisdiction’s total population, the minimum investment percentage of 35% would fail to distribute TCI proceeds equitably. As currently worded, the phrase “invest in a manner that reflects the population of overburdened and underserved communities” is too vague to give legislators and regulators the direction they need to invest an amount that is, at the bare minimum, proportional to their percentage of the population. Thus, this section should be amended to ensure dedicated investments are greater than 35% *and* greater than the percentage of the total population determined “overburdened and underserved.” Furthermore, investments from TCI-P should directly and meaningfully benefit “overburdened and underserved” communities *and* be located within these communities. To the extent a project or program is only partially located in or benefitting a community, only a proportion of that project or program should be counted towards this dedicated investment. For instance, projects that are partially located in or serving an identified disproportionately impacted community, such as a transit bus that runs through that community but also services other areas, should not have 100% of associated costs apply toward this minimum investment obligation.

XX-3.2 Equity advisory body

IV. Incorporate Detailed Guidance Around Equity Advisory Body Implementation

The equity advisory body can uplift the needs of disproportionately impacted communities in the TCI-P implementation process. However, the lack of a clear framework for setting up these bodies in the TCI-P model rule could dampen the ultimate efficacy and agency of these bodies in shaping equitable program decisions and outcomes. The TCI-P model rule must offer greater detail about membership, capacity support, and responsibilities of newly formed equity advisory bodies, as outlined in the “Equity Advisory Body Principles” document that we submitted with partners across the region through the TCI input portal on April 6, 2021. Below is a summary of some of the key provisions that the model rule should incorporate to offer greater clarity around the establishment of newly designated equity advisory bodies. In the case that jurisdictions select existing bodies to serve this role, jurisdictions should strive to equip these bodies to follow these guidelines.

The first step to ensure the equity advisory body can effectively advance community decision-making power throughout the TCI-P implementation process is to fill the advisory body with a majority of members who directly live in and/or represent the demographics of communities facing disproportionate pollution burden or inadequate access to quality mobility options. Within these categories, TCI jurisdictions should strive to achieve representation from the following impacted groups: low income communities, Black, Indigenous, and People of Color, labor representatives from the transportation value chain, transit-dependent riders, people with disabilities, transportation users in rural communities, older adults, queer and/or trans people, youth, communities for whom English is not their primary language, and immigrant

communities. TCI jurisdictions should employ a nomination and appointment process that is insulated from political bias from elected officials and amplifies the influence and preferences of community based organizations and disproportionately impacted communities.

The model rule should also give the equity advisory body expanded responsibilities and greater agency to shape TCI-P implementation. These additional responsibilities include: developing investment proposal evaluation and scoring criteria, informing and tracking state implementation of air quality monitoring associated with TCI-P, offering recommendations about additional state enforcement measures when fuel suppliers frequently fail to comply and program adjustments during annual reviews, and advising on community outreach and stakeholder engagement strategies. Advisory bodies should be able to provide *final* recommendations regarding investments that the state must actively consider. If the state's preferred selections differ from these recommendations, the state must report in writing within 60 days of receiving these recommendations to advisory bodies explaining how their selections meet the proposal evaluation and prioritization criteria that the advisory body developed.

Additionally, the TCI-P model rule should specify capacity building measures to ensure disproportionately impacted communities can meaningfully participate in the equity advisory body. This support includes compensation for equity advisory body members, technical assistance in the form of data, staff time, tools, and more, and comprehensive skills and content training. Furthermore, all TCI-P meetings and communication, including as it relates to the equity advisory body, should be accessible to the public, to people with different educational backgrounds and work schedules, to people who do not speak English as their first language, and to people with disabilities.

XX-3.3 Equity review and reporting

V. Report on and Strengthen Air Quality Monitoring

Existing national air quality monitoring networks produce data at a geographic and time scale that fails to capture exposure to *local* transportation pollution.³ Therefore, we strongly support the commitment in the MOU and model rule to expand air quality monitoring in communities facing disproportionate pollution exposure. New air quality monitors must be installed to gather shorter term local data that are publicly available and easily accessible in real time.

Communities must be actively consulted, engaged, and supported to engage in this process. The hyper local nature of air quality monitoring work means that disproportionately impacted communities must receive adequate resources and technical assistance to lead the process, from hotspot identification to planning to implementation and community education. TCI-P must also ensure that communities have the tools, data, understanding, and capacity needed to track and successfully advocate for improvements in air quality.

Additionally, the model rule should further clarify key implementation details such as the timeline for air quality monitoring and the types of pollutants each jurisdiction must track, including at a minimum PM_{2.5}, NO_x, ozone, and VOCs. By June 30, 2022, participating

³ Gómez Alfredo, "AIR POLLUTION Opportunities to Better Sustain and Modernize the National Air Quality Monitoring System," GAO, November, 2020, <https://www.gao.gov/assets/gao-21-38.pdf>.

jurisdictions should have installed a robust expanded network of air quality monitors in pollution hotspots. Jurisdictions should place air quality monitors in locations identified in consultation with the equity advisory body and that prioritize low-income communities, communities of color, and residents living near highways, distribution centers, freight corridors, ports, and in areas that fail federal air quality standards. By December 31, 2022 jurisdictions will have captured data to identify baseline air quality in these areas. Lastly, annual reports should include detailed data and findings from air quality monitoring in addition to how TCI-P proceeds are spent.

VI. Commit to Localized Air Pollution Reduction

Expanding air quality monitoring and gathering reliable air quality data is just a first step in addressing the history of disproportionate pollution burden faced by environmental justice communities. In order to promote real and direct improvements in environmental health for these communities, the TCI-P model rule must at the very least establish annual air pollution reduction targets between 2023 to 2032 for at a minimum PM2.5, NOx, ozone, and VOCs. Using these data, TCI-P leaders should work with the equity advisory body with support from technical experts to make program adjustments and identify other strategies needed to ensure meaningful and immediate progress toward these targets.

Response to the [Update on Public Engagement Planning](#)

We are encouraged by the “Update on Public Engagement Planning” document and we support the planned efforts to offer technical assistance, facilitate engagement around the TCI-P equity advisory bodies, and create plain language communications materials and translated materials. However, more substantial detail is needed regarding these plans to merit robust feedback. We look forward to weighing in when the TCI-P model framework for public engagement is released. In the meantime, here are some initial high level areas of input regarding the plan.

- This document should include a timeline indicating when the TCI-P model framework for public engagement will be finalized by and greater detail regarding the process that jurisdictions intend to use to develop this framework. This process must center the needs and leadership of disproportionately impacted communities.
- The outreach and engagement that relevant agencies conduct should situate discussions about TCI-P within a much larger conversation about transportation, environmental health, labor, and other needs as determined by impacted stakeholders. Through this process, agency officials can cultivate meaningful dialogue with environmental justice and equity stakeholders and identify not just funding preferences as it relates to TCI-P but also priorities to inform a larger and more comprehensive suite of policies to fully tackle air pollution, transit inequities, and climate change.
- Jurisdictions moving forward with adoption should strive to incorporate elements of the TCI-P model framework for public engagement directly into TCI enabling legislation and regulation to ensure greater accountability. The success of TCI-P hinges on whether impacted stakeholders, through both the equity advisory body and more expansive

public input processes, are able to participate in shaping the program and investment allocations. Therefore, it is critical that public engagement best practices be directly codified and committed to within TCI enabling legislation and regulation.

- The technical assistance that jurisdictions provide to equity and environmental justice stakeholders should extend to impacted community members as well as community based organizations. Jurisdictions should support the capacity of community based organizations to develop and submit their own proposals for TCI-P funding and offer the necessary training and ready-to-use materials to allow community organizers and leaders to share information about TCI-P in an accessible manner with community members.

Conclusion

In sum, if TCI leaders want to follow through on their commitment as stated in Section XX-1.1 of the model rule to “advance equity for communities overburdened by pollution and underserved by the transportation system,” more specific and robust language must be incorporated into this foundational framework to ensure regulators and legislators successfully carry out this goal. The TCI-P model rule must outline concrete detail regarding implementation of the equity provisions, including dedicated investments and formation of the equity advisory bodies. Additionally, the model rule should integrate high road labor and workforce development standards while offering greater direction regarding expanded air quality monitoring and localized air pollution reduction. The “Update on Public Engagement Planning” holds promise but similarly necessitates greater detail and should approach TCI-P engagement from a holistic perspective and in a way that uplifts community capacity and leadership. Thank you for your consideration.

Sincerely,

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