

Joint Comments: TCI-P Draft Policy Statements

August 18, 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

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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

Please accept this updated version of the letter we originally submitted on August 13, 2021. It includes an added section titled "Promoting Local Economic Opportunity and Creating High Quality Jobs: Recommendations to the Draft Model Implementation Plan (MIP) and Proposed Strategies for Regional Collaboration" and additional signatories.

The undersigned organizations and individuals are based in Maryland and have been following the process to develop the Transportation and Climate Initiative Program (TCI-P). We urge you to ensure that the TCI-P is effective and equitable. To those ends many of the undersigned individuals and organizations submitted comments individually and/or jointly on the Draft Model Rule in May. We also reviewed and discussed the package of updates and new materials released for public comment in June. We offer comments and recommendations on the following aspects of the program and ask you to revise the draft policy statements and/or the Model Rule to better address them.

Air Quality Goals and Air Quality Monitoring

Disadvantaged communities usually have the worst air quality; therefore, the guiding principle must be to improve the air in those communities first.

The air quality monitoring plans in the draft policy documents are vague. The use of technical experts and inclusion of experts on the Equity Advisory Bodies in each state are very important steps. We respectfully suggest that the planned air quality monitoring be hyperlocal. Studies such as one looking at mobile emissions in Newark, New Jersey (attached) have provided valuable information on sources and levels of pollution in communities. However, they must often rely on modeling due to the lack of sufficient air quality monitoring. An approach worth considering is an amendment to the INVEST in America Act introduced in the House this session that calls for detailed monitoring in communities where pollution hotspots are located (see [press release](#) from the House Select Committee on the Climate Crisis). It is unclear what will be included in the final reconciliation package in Congress, so it is important that TCI jurisdictions have their own detailed plans.

Additionally, not all sources of air pollution will be affected by the TCI-P proposal. This includes air pollution from energy generation and air pollution blown in from outside jurisdictions. What modeling has been done to estimate the regional reductions with time that are to be expected? This would greatly help inform the program review to be conducted at three years to assess whether goals are being achieved or if they should be ratcheted up.

We realize that the initial goals of TCI are a compromise to enhance chances for adoption. However, with the release of the IPCC press report (attached) on August 9, 2021 indicating that the climate crisis is proceeding at a more rapid clip and that more drastic action is necessary, we respectfully request that the goals be readjusted now from the inception to be in-line with what is needed to stave off disaster. From the IPCC:

In model pathways with no or limited overshoot of 1.5°C, global net anthropogenic CO₂ emissions decline by about 45% from 2010 levels by 2030 within 40–60% interquartile range (see [report on Global Warming of 1.5° C](#) from the IPCC Intergovernmental Panel on Climate Change).

Public Engagement

This section has several guiding principles. The overarching principle, to allow communities to have a stake in the TCI process and own parts of it, seems to be missing. While an Equity Advisory Body is an important first step, it cannot single-handedly ensure equity within the TCI-P. There are established ways to work towards more comprehensive public engagement and mitigation of discriminatory impacts. With that in mind, we offer the following feedback for strengthening public engagement in the TCI-P.

- Though equality and equity are distinct goals, TCI-P has an obligation to work towards both as a means of addressing disparities. To achieve this purpose, the Model Rule must more explicitly include specific Title VI Public Participation Guidelines, as required by USDOT Federal Transit Administration. There are specific criteria, guidelines, and programs that distinguish successful agency programs in ensuring meaningful public participation (see California EPA's Public Participation Manual). The Model Rule should use Title VI as an example of what TCI-P jurisdictions should and should not do in engaging the public.
- Community members need to know the levels of pollutants to which they are exposed, and agencies need to learn from the community the public health impacts they are experiencing in order to address the harm.
- Agencies need to have a clear understanding of the proactive strategies, procedures, and desired outcomes for their public participation activities. Their public participation plan should be guided by an internal review of how, when, and why public involvement is critical.
- The Model Rule should not only recommend specific actions to ensure meaningful public participation in transportation emissions decision-making but also note that there are important indicators for when a public participation program is not successful. If one or more of these indicators is present, the underlying cause(s) should be examined because there are reasons that these circumstances might occur, even if the program itself is sound. It is critical to the success of the program that gaps that result in less meaningful public participation be quickly identified and corrected.
- The goal of any public participation process must be to empower communities to advance local residents' causes, to educate the public, and to influence local policymakers through the voices of the local community affected residents. The

program must give communities the power to decide and empower grassroots leaders to develop actionable strategic plans for environmental equality within the affected frontline and fenceline communities.

Additionally, we offer the following responses to the questions posed in the draft framework for public engagement.

1. Is anything missing from this proposed public engagement approach that is important to you?

Under Principle number 1), labor and youth should be particularly included. Youth face specific problems when riding public transit to school, and the school bus system is often overlooked. Also, “meaningful and effective public engagement” should be spelled out, with definitions and/or examples of what would make public engagement meaningful and what would make it effective.

Under Principle number 2), it should be specified which channels of communication the TCI jurisdictions will be using to communicate with stakeholders, how they plan to communicate with non-English speakers, and what information they are planning to share with stakeholders besides where TCI proceeds will be spent.

Under Principle number 4), rather than simply recognizing a community's knowledge and expertise, they should also incorporate communities' recommendations. This is key, as communities must have a say in the decisions that affect their lives.

Under Principle number 6), they should spell out what they mean by “build capacity” or how they plan on building this capacity.

Also, working with community connectors is key to reaching out to some populations that are hard to reach and could benefit immensely from improving our transportation infrastructure and reducing emissions from this sector. These connectors are groups that have agency, social capital, and the infrastructure to act and disseminate information (faith groups, youth, community serving organizations, justice groups in general, health groups). These are groups that are engaged in the community in other social issues such as health or youth, have cultural competency, and can be connectors.

2. Are there any aspects of the proposed approach that are particularly relevant or important to you?

All the principles are very important. There are two that we would highlight: number 5 as access and representation are key, especially for communities that have historically been underrepresented or not represented at all. And number 6), as there is a need for building capacity in communities that have been underrepresented. Building long-term capacity is critical to ensure long-term participation in this and other opportunities.

3. *How could TCI-P jurisdictions provide additional opportunities and entry points for environmental justice, equity, and other stakeholders to meaningfully engage in the implementation of TCI-P?*

There is a need to map out different communities across Maryland to make sure there is an opportunity for them to participate. Often, the same communities or advocates dominate the conversation, so mapping out stakeholders and communities from the onset will ensure broader engagement.

4. *Does anything need to be added to these principles to guide each jurisdiction's implementation of TCI-P to effectively target benefits for environmental, climate, and transportation justice communities, tribal communities, and other equity stakeholders (e.g., air quality improvement, access to reliable, low-cost transportation options)?*

No additional comments.

Prioritizing Investment in Overburdened and Underserved Communities

Our current transportation system is deeply inequitable. The overarching guiding principle for TCI is, therefore, to overcome existing inequities in transportation impacts (such as noise and pollution) and inequities in access. As research from the [Union of Concerned Scientists](#) shows, Black and Brown communities face disproportionate exposure to and health harms from transportation vehicle pollution.

Low-income families and individuals across urban, rural, and suburban areas struggle to obtain safe and affordable transportation to work, school, medical appointments, recreation, and other needs. Many of these same overburdened and underserved communities are on the front lines of and most vulnerable to the impacts of climate change.

Given the attention to overburdened and underserved communities in the *Draft Framework for Public Engagement* and *Draft TCI-P Model Implementation Plan*, as well as in the goal of investing at least 35% of TCI expenditures in said communities, the way that these communities are identified is very important. While each jurisdiction's Equity Advisory Board will play a role in developing the criteria for this definition, the TCI-P should suggest multiple points in that process where opportunities for meaningful input by each Equity Advisory Board will be added and ensure that each Equity Advisory Board has sufficient authority to establish or revise the definition. Additionally, the TCI-P should recommend a few major categories to consider the cumulative impacts of, such as air pollution burdens; at-risk groups; socioeconomic factors; access to jobs, schools, healthy foods and other destinations via auto and non-auto modes of

transportation; and communities where a high percentage of workers spend at least 45 minutes commuting to work . The TCI-P jurisdictions should also identify data gaps and strategies to address them (e.g., air quality monitoring, access to jobs from suburban communities) as a part of TCI implementation to ensure these communities are identified with enough accuracy and spatial specificity.

Promoting Local Economic Opportunity and Creating High Quality Jobs: Recommendations to the Draft Model Implementation Plan (MIP) and Proposed Strategies for Regional Collaboration

Decarbonization of the transportation sector will create job losses and job opportunities. TCI's guiding principle must be to promote local economic opportunity and create high quality jobs.

Section 1. Introduction

In our letter dated May 7, 2021, we outlined recommendations directed to the purpose in the Draft Model Rule [Section XX-1.1(C)] of “Promot[ing] local economic opportunity and create high quality jobs”. In these comments, which we incorporate herein by reference, we set forth:

- (1) Policies that would promote local economic opportunity (i.e. create local jobs);
- (2) The elements of high quality job standards;
- (3) Policies to promote/incentivize for high quality job creation;
- (4) Policies to ensure a just transition to a decarbonized transportation system;
- (5) The process by which workforce training programs should be developed.

We commend the TCI-P jurisdictions for including some of these recommendations (in whole or in part) in the most recent Draft documents and we express our appreciation for the same. We continue to believe, however, that the TCI-P would be improved by a more robust commitment to labor standards, and to that end offer the following recommendations

Section 2. Draft Model Implementation Rule (MIP)

(7) Investing proceeds and creating high quality jobs through transparent processes

First, as noted above, the MOU commits TCI-P jurisdictions to “promot[ing] local economic opportunity. . .” But Step 7 of the MIP omits the word “local”. That omission

should be corrected throughout the MIP and the Draft Proposed Strategies for Regional Collaboration.

Second, Step 7 references the process by which projects will be funded including any conditions to ensure high quality domestic jobs but it does not define what is meant by the term. We recommend including the elements of a quality job as we did in the May letter (pp.10-11). We also recommend incorporating the language in the Proposed Strategies draft (Section D, page 2): “TCI-P jurisdictions recognize that unionization is an important strategy for achieving this goal” [of creating high quality jobs].

Third, we recommend adding the following to the Workforce development programs sub-section: “workforce development and training programs should include apprenticeship and pre-apprenticeship programs and should be developed in consultation with unions and other community stakeholders”.

Fourth, the MIP should include reference to just transition programs. The transition to a low-carbon transportation future may result in job displacement and other adverse economic consequences for individual workers and communities. THE MIP should require TCI-P jurisdictions to develop plans for protecting workers and communities during the transition. These plans should include job security protections for transit workers who maintain diesel buses as well as training for transit operations and maintenance employees as fleets transition to zero emissions vehicles.

Section 3. Draft Proposed Strategies for Regional Collaboration

2. Ensuring High Quality Domestic Jobs and Workforce Development

The TCI-P jurisdictions are to be commended for including the language recognizing that “unionization is an important strategy for achieving this goal” of creating high quality jobs. We believe, however, that more robust labor standards should be included in this section.

- ***Low-carbon transportation investments funded by TCI-P program proceeds will aim to prioritize projects that are subject to prevailing wage rules.***

We support what we believe to be the intent of this language but recommend that it be re-written: Jobs created by low-carbon transportation investments funded by TCI program proceeds will be subject to the prevailing wage provisions of the Davis-Bacon Act and Service Contract Act.

- ***Low-carbon transportation investments funded by TCI-P program proceeds will aim to source a high percentage of components from US-based manufacturers.***

We recommend re-writing this bullet as follows: Low-carbon transportation investments funded by TCI program proceeds will, at a minimum, adhere to the sourcing requirements of the federal Buy-America law and provide additional incentives and/or prioritization of local manufacturing.

- ***Low-carbon transportation investments funded by TCI-P program proceeds, where applicable, will aim to provide for workforce development that creates economic opportunities for people of color and low-income communities.***

We recommend changing as follows: Low-carbon transportation investments funded by TCI-P program proceeds, where applicable, will aim to provide for workforce development **and training** that create economic opportunities for people of color, low-income **and other disadvantaged** communities and include pre-apprenticeship and apprenticeship programs.

We also recommend adding the following bullet point after the above point:

- ***TCI-P procurement policies will adhere to a best value framework and include disclosure and evaluation of high-road labor standards, and enforcement of bid commitments and transparency.***

As an example of statutory language describing such an appropriate procurement policy, see [Section 2605 of the INVEST Act](#) (page 945) which the House passed as its version of the Surface Transportation Authorization legislation [although note that the Senate version--Investment and Infrastructure Jobs Act--does not contain that language].

- ***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.***

We recommend strengthening this bullet point as follows: Low-carbon transportation investments funded by TCI program proceeds will aim, where appropriate, to prioritize employers with targeted and local hire policies in place including “Ban the Box” or “Fair

Chance” to help enable previously incarcerated job applicants to make it past the first screen of hiring processes. **In addition, program proceeds will provide incentives to employers who affirmatively commit to recruiting and hiring previously incarcerated job applicants and other disadvantaged job applicants who are otherwise qualified.**

For an example of legislative language authorizing the use of local and targeted hire provisions see Section 25019 of the Infrastructure and Investment Jobs Act recently passed by the Senate.

We also recommend adding two additional bullets as follows:

- TCI-P jurisdictions commit to consider the use of project labor agreements/community workforce agreements in connection with construction projects funded by TCI-P program proceeds in order to promote economy and efficiency and where using a PLA would protect the government’s proprietary interest in the project and is otherwise lawful.
- TCI-P jurisdictions commit to consider the use of labor harmony/community benefits agreements as part of their TCI-P investment policies in order to promote economy and efficiency and where using such an agreement would protect the government’s proprietary interest in the project and is otherwise lawful.

The Draft is seriously deficient in not providing any policies to ensure a just transition. As we point out in our May 7 submission, the transition to a low or zero-carbon transportation system will create new job opportunities but it will also result in some job displacement that will have a significant impact on workers, small business owners, and communities. TCI-P jurisdictions must commit to ensuring that there are policies in place to address that impact. We recommend the following language:

- TCI-P jurisdictions should work together to develop just transition programs that among other elements (1) identify workers, small businesses and communities who may be negatively impacted by the decarbonization of the transportation sector, and (2) develop programs that minimize job displacement and protect workers and communities from harm.

4. Coordinating Public Engagement and Implementation Plans to Replace Diesel Trucks and Buses with Zero-Emissions Vehicles

We recommend adding the following:

TCI-P jurisdictions recognize that the transition to widespread electrification of medium and heavy duty vehicles will affect workers in that industry. Accordingly, TCI-P jurisdictions commit to implement job security measures for any worker displaced or potentially displaced by the transition and training programs to ensure that workers currently operating and maintaining diesel vehicles are trained to work on electric vehicles. TCI-P jurisdictions also commit to developing policies that will incentivize for the manufacture of electric vehicles and their component parts in the Region.

5. Equitable Electric Vehicle Corridor Planning

There are job and labor implications to electric vehicle corridor planning in addition to other equitable considerations. As we invest in the installation of electric charging infrastructure, we must ensure that there are labor standards and worker protections that accompany these investments. In general, the standards set forth in Section 2 (Ensuring High-Quality Domestic Jobs and Workforce Development) should apply to these jobs as well. Of particular interest for the Region could be whether significant investment in the infrastructure could provide the opportunity to attract employers who manufacture the charging stations or any of the component parts.

Sincerely,

Archplan Inc.

Bikemore

Central Maryland Transportation Alliance

Chesapeake Physicians for Social Responsibility

Climate Law & Policy Project

Climate Reality Montgomery County chapter

Coalition for Smarter Growth

Elders Climate Action DC-Maryland-Virginia chapter

Greenbelt Climate Action Network

Indivisible Howard County

Labor Network for Sustainability

Maryland Conservation Council

Maryland League of Conservation Voters - Chispa Maryland

Maryland Sierra Club

Oncologists United for Climate & Health

Rails-to-Trails Conservancy

Unitarian Universalist Legislative Ministry of Maryland, Climate Change Task Force