



February 28th, 2020

Joint Public Comments on Regional Transportation Climate Initiative Draft Memorandum of Understanding

The Climate Justice Alliance and its allies, restate their concerns, and strong opposition to the Transportation and Climate Initiative (TCI)'s proposed model of "Cap and Invest." Having a plan to address the fossil fuel emissions of the transportation sector at the local, regional, and national levels –as well as at the global level– is a vital step towards mitigating the risks of localized pollution, and its negative health impacts as well as those of climate change. However, the proposed model set forth by TCI to "cap (Trade) and invest" has regional implications that will not result in adequate emissions reductions, and will continue to exacerbate Environmental Justice burdens in frontline communities¹.

The recently released draft TCI MOU continues to leave many questions on the table, and does not inspire confidence in the potential success of the proposed policy framework. In our previous comments to the draft framework, we outlined our principled opposition of market based systems that rely on the trading of carbon to reduce emissions. It appears that the TCI administrators have ignored our previous comments raising serious concerns about the intent of seeking public comment. Is it the intention to create the illusion of transparency and engagement without a real intent of incorporating structural feedback, or to meaningfully review and incorporate the feedback and recommendations from those most impacted by greenhouse gas (GHG) emissions?

Currently, between the Regional Greenhouse Gas Initiative (RGGI) and TCI as it stands, roughly half of the region's GHG footprint will be covered by a cap-and-trade system. This

¹ Cushing, L. J., Wander, M., Morello-Frosch, R., Pastor, M., Zhu, A., & Sadd, J. (2016). *A Preliminary Environmental Equity Assessment of California's Cap-And-Trade Program*. 18.



paves the way for an increased expansion of cap-and-trade's pollution markets under economy-wide emissions standards.

Summary of Major Concerns & Critiques:

- **TCI conveners have failed to provide a transparent process that incorporates an accountability structure to ensure that it reflects a policy model with equity and justice at its core.** We've engaged in its current process and have observed how the cap-and-trade model has been advertised since the beginning of TCI's public engagement process in 2018, disguised as a "cap-and-invest" model.
- **The draft MOU does not provide a guarantee that revenues generated will be safeguarded for investments in renewable transportation technology or public transportation investments.** Therefore, if one state in the region determines that their money would be best spent on a highway widening project, rather than equitable public transportation (for example), they would be able to do so with no regulating mechanism to prevent it.
- **The draft MOU does not provide a guarantee that investment of revenues will be made in frontline communities.** How will these investments be designed and implemented? Will they be secured at the regional level to prevent the States' aleatory use of revenues? The MOU does not protect revenues from "raiding" to meet general and/or unrelated, or counterproductive expenses. For example, we oppose using revenues for the expansion of car centric infrastructures, ie. highways.
- **The draft MOU fails to provide clarity on the regulated entities, or "State Fuel Suppliers."** It fails to outline which fuels suppliers will be required to purchase allowances and their number throughout each state and the region. More information about how these State Fuel Suppliers will interact with one another as they cross jurisdictional boundaries is needed. The final MOU should include a complete inventory of the State Fuel Suppliers and covered sources.
- **The draft MOU does not propose a concrete emissions cap, which is concerning at this phase of the proposal's development.** If not stated in the MOU – when, how



and who makes this decision? It should be a focus of the MOU to provide consistency and accountability across the region.

- **The draft TCI MOU fails to include biofuels and natural gas among the “Affected Fuels”.** Polluters could choose cheaper alternatives to reduce emissions, like transitioning their transportation fleets to biofuels or natural gas, rather than electrification for example. This would perpetuate our dependence on fossil fuel infrastructure like pipelines or other polluting and hazardous means to produce those fuels, i.e. fracking, or on destructive agribusiness models for production of biofuels.
- **We strongly oppose the use of Cost Containment Reserve, banking, trading and offsets as market stabilization mechanisms.** These mechanisms would allow polluters to continue their current operations without ensuring interventions to reduce emissions. Banking creates the serious risk that emissions will rise above the cap in later years, making the “cap” part of cap-and-invest toothless. This is happening in California’s cap-and-trade system, where banked allowances threaten to significantly weaken emissions reductions over the next decade.
- **The draft TCI MOU fails to provide clarity on the use and function of Program linking.** The final MOU must explain in depth how program linking would work and what benefits are expected. Our current questions include whether revenue generated by the TCI program will be used to fund other programs, and if revenues from other programs could be spent to meet the TCI emissions targets? Program linking is of particular concern as it pertains to existing State legislation like the New York State Climate Leadership and Community Protection Act (CLCPA). The proposed framework must make it clear that member states, as well as local, tribal, and other governments, are free to set standards that are more stringent than TCI.

General comments:

- How have, and will, the Signatory Jurisdictions evaluate and incorporate Public Input? What accountability structures are currently in place –and will be put in place– to ensure MOU compliance?



- The MOU does not include language outlining Climate Justice and Just Transition concerns for low-income, frontline and Environmental Justice communities as it relates to the transportation sector.
- The Signatory Jurisdictions don't recognize and commit to invest in eliminating –not merely mitigating– the impacts on low-income frontline and Environmental Justice communities.
- The Signatory Jurisdictions don't commit to collaborate on the establishment of a regional program to transition to a fossil fuel free and renewable energy transportation sector.
- We strongly oppose the Model Rule's provision of flexibility to the market through cost-containment mechanisms, banking and/or trading of allowances, and offsets. These mechanisms perpetuate environmental racism and compromise emissions abatement overall.

Comments on the Model Rule for Establishment of the TCI Program:

- Do "Affected Fuels" include all which are stored, handled, and sold by the Regulated Entities within the Participating Jurisdiction?
- Why are "Enterers" not required to hold allowances to cover the sale of Affected Fuel to Regulated Entities within the Participating Jurisdictions?
- How is Linking permitted and where does it occur? What is the intention behind permitting linking?
- How will compliance obligations be calculated?

Closing comments:

While we appreciate the opportunity to provide public comments to the TCI Draft MOU, we're skeptical of the TCI working group's consideration. While we have seen the use of "equity" as a token item, and included as an abstract consideration within TCI's goals, we continue to stress the need for policy mechanisms that prioritize a Just Transition. We also stress that a Just Transition is a process to move away from extractive mechanisms that includes the continued



use of fossil fuels, and the perpetuation of environmental racism. A “Cap and Trade” structure, disguised as a “Cap and Invest” model with a goal of equitable investments will not address the radical shifts needed to address the climate crisis. We demand a process that is transparent and accountable to the constituencies that this initiative will impact.

Sincerely,

Climate Justice Alliance - *National*

UPROSE - *New York*

New York City Environmental Justice Alliance (NYC-EJA) - *New York*

Ironbound Community Corporation (ICC) - *New Jersey*

Demos - *New York*

THE POINT Community Development Corporation - *New York*

El Puente - *New York*