



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219 2000

Gregory A. Whirley
Commissioner

June 4, 2012

Randy E. Mosier, Chief
Regulations Development Division
Maryland Department of the Environment
1800 Washington Boulevard, STE 730
Baltimore, Maryland 21230

Re: Public Comments; Maryland Transportation Conformity Stakeholder Meeting
Proposed Revisions to the Maryland Chapter 26 Conformity Regulation

Dear Mr. Mosier:

The Virginia Department of Transportation (VDOT) and the Virginia Department of Environmental Quality (VDEQ) appreciate the opportunity to provide comments on the Maryland Department of the Environment's (MDE) proposed revisions to Maryland's "Chapter 26 Conformity" regulation. The proposed revisions purport to set long-term planning targets for nitrogen oxides (NO_x) and greenhouse gases (GHG) in the Metropolitan Washington, DC Ozone/PM Nonattainment Area (DC Region) at levels 10% lower than the latest emissions estimates projected for the years 2030 and 2040. Under this scheme, the National Capital Region Transportation Planning Board (TPB) would be required to prepare and distribute progress reports in conjunction with any new regional conformity determinations. For the reasons outlined below, VDOT and VDEQ strongly oppose this proposed regulation.

The TPB is a representative body serving the District of Columbia, the State of Maryland and the Commonwealth of Virginia. Indeed, fourteen members of the TPB represent the interests of the Commonwealth, including appointees from nine Virginia localities. As such, the TPB is not solely an instrument of the State of Maryland and is not subject to regulations adopted unilaterally by one of its three members.

As you may be aware, VDOT provides funding to match the federal planning funds made available to the TPB for the purpose of meeting the functions identified in its bylaws—the development of policies of regional significance and the necessary procedures for the effective implementation of 23 U.S.C. § 134 and 49 U.S.C. § 1607. Such funds rightfully support the development of air quality conformity determinations to ensure that the DC Region's Constrained Long Range Transportation Plan and Transportation Improvement

Program meet applicable federal and state air quality requirements. It is not apparent, however, that TPB resources should be dedicated to non-federally-mandated planning targets and progress reports as mandated by the proposed regulation, without the consent of all parties.

Even if this matter were before the TPB, the dedication of funds to extralegal requirements demands the proper consideration of scarce public resources. The federal requirements for metropolitan planning activities have increased and/or expanded with SAFETEA-LU, and current discussions on reauthorization of the federal transportation bill indicate new planning activities could be added. In recent years, funding for transportation projects and planning activities has decreased significantly while the resources needed to comply with the law continues to increase. As such, the limited time and funding available to the TPB should be used to undertake the federally-mandated regional planning activities that support approved land use and transportation plans and programs. It is these activities that form the basis for the development of the various State Implementation Plans and Maintenance Plans in the region.

As a matter of policy, the proposed regulation attempts to force a 10% reduction of NO_x and GHG emissions within the transportation sector at the local level, yet overlooks two important factors: efficiency and cost-effectiveness. Recent TPB analyses document that voluntary transportation control measures aimed at vehicles and/or fuels at the local level are not cost-effective at reducing vehicular emissions in the DC Region. History has shown that emission reductions from the transportation sector can be obtained most efficiently and cost-effectively from national federal control measures. Recent examples include the Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control requirements, the 2004 and 2007 Heavy-Duty Vehicle Emission Standards, and the Corporate Average Fuel Economy (CAFÉ) standards for both light and heavy-duty vehicles. As such, VDOT and VDEQ would recommend that MDE re-focus its efforts towards more cost-effective emission reduction programs administered at the federal level.

In 2008, the TPB commented on a similar proposal to use the regional conformity process for GHG emissions control. The TPB's position, as re-stated here, was that the:

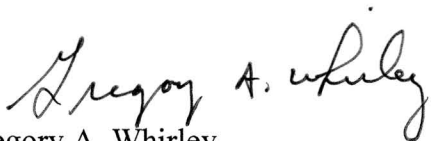
. . . conformity process is the required means of implementing the Clean Air Act within the transportation sector. On July 30, 2008, the EPA released its Advance Notice of Proposed Rulemaking (ANPR) regarding the potential application of the Clean Air Act to GHG regulation. The ANPR and accompanying interagency communications outline various considerations and issues which demonstrate that there are still significant concerns and uncertainty over whether the 1990 Clean Air Act provides an appropriate mechanism for GHG regulation. (The attached letter of July 9 from the United States Departments of Agriculture, Commerce, Transportation, and Energy is one of several interagency communications raising such concerns.) The TPB therefore does not support pursuing a regional conformity process for greenhouse gas emissions at this time, but is open to

further discussion and examination of the issue as more information becomes available about the applicability of Clean Air Act provisions for GHG regulation. Little advancement in transportation GHG emissions controls has been made since these comments were submitted.

Finally, MDE may want to note TPB's completed technical analysis that: (i) documents current and forecasted levels of GHG emissions in the DC Region; (ii) evaluates numerous control strategies available to help reduce GHG emissions attributable to the transportation sector; and (iii) examines the actions needed to help realize these reductions. This analysis was aimed at reducing GHG levels 80% below 2005 levels by 2050 and did evaluate the 2030 interim year. This work was published in 2010 in a report titled "What Would It Take?" and is located at http://www.mwcog.org/store/item.asp?PUBLICATION_ID=411. Reevaluation of this subject matter would not yield new or substantially different conclusions. Annual reports and further analyses would be duplicative and a waste of scarce taxpayer dollars.

For all the reasons listed above, VDOT and VDEQ are strongly opposed to the proposed revisions of the Maryland Chapter 26 Conformity regulation. VDOT and/or VDEQ may elect to submit additional comments prior to the close of the comment period for this proposed regulation. Thank you again for the opportunity to comment on the proposed revisions. Please feel free to contact us with any questions regarding these comments.

Sincerely,



Gregory A. Whirley
Commissioner, Virginia Department of Transportation



David K. Paylor
Director, Department of Environmental Quality

cc: Robert M. Summers, Maryland Secretary of the Environment