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September 26, 2023

Anita Bonds, Chair, MWCOG Metropolitan Washington Air Quality Committee  
(MWAQC)  
Takis Karantonis, Chair, MWCOG Climate, Energy and Environment Policy Committee  
(CEEPC)  
Committee Members, MWAQC  
Committee Members, CEEPC  
777 North Capitol St. N.E.  
Suite 300  
Washington, DC 20002

RE: Concerns Over Delays in Addressing Environmental Justice, the Draft State  
Implementation Plan (SIP) MWAQC will be asked to Approve and the Need to  
Strengthen MWCOG Climate Change Goals

Chairwoman Bonds, Chairman Karantonis, MWAQC members, CEEPC members:

This letter is the letter mentioned in my comments to MWAQC for the September 27,  
2023 MWAQC meeting at noon. This letter is also being submitted to CEEPC as written  
public comment for their 10:00 meeting on the 27th. Both MWAQC and CEEPC have  
interest in the four issues I am commenting on ... environmental justice (EJ), clean air  
and the region's clean air plan, climate change and the Title VI/civil rights complaint.

I will start by apologizing up front for the tone of my letter and how my communications  
have evolved from collegial and polite in late 2022 to being more direct and less  
collegial in September of 2023. I have serious concerns over the way COG staff  
appears to want to minimize public input and participation. You should ask to be  
briefed on the way public comment and participation has been handled and become  
more difficult since late 2022.

### Environmental Justice

On the 27th, both Committees will receive a briefing on what has taken place since May  
24, 2023 to act on the unanimously approved motion by the MWAQC Chair to

expeditiously adopt a stand-alone regional plan to address environmental justice and how MWAQC air quality plans and TPB transportation plans are allowing, actually enabling, high-risk, air quality hotspots in environmental justice communities of color to get worse. Although MWAQC, CEEPC, and MWCOG appear to want to ignore the issue, what is happening is clear cut institutionalized, systemic environmental racism.

It is my opinion that the elected membership of MWAQC, CEEPC and MWCOG do not fully understand this as they appear to not have been adequately briefed on the issue by COG staff and public input on this issue has been ignored.

The briefing you will see today (which is similar to recent briefings provided to MWAQC TAC and ACPAC) was thrown together after my somewhat negative August 24, 2023 letter\*<sup>1</sup> to MWAQC asking what has the COG staff done for the last quarter of a year to implement the vigorously supported and unanimously approved motion ... again, made by the Chair ... to **“expeditiously”** develop and adopt an environmental justice plan.

As you will see in the briefing:

- No input was sought from leaders and residents who breathe the unhealthy air in the environmental justice areas. This kind of immediate input was highlighted by the Chair during the May 24 MWAQC meeting,
- The framework that I provided to MWAQC in a letter\* dated June 1, 2023 was never even discussed or considered. This framework includes significant input from environmental justice communities and experts, like Dr. Sacoby Wilson and Vernice Miller.
- The briefing is very general and includes a lot of “feel good” concepts and buzzwords like, “EJ toolkit” (which is mostly borrowed from other organizations' work and has never actually been used by anyone), “EJ Resource Guide” and “equity lens”.

What the briefing does not include is any discussion of anything that is action oriented ... things that will actually reduce risk to the residents and the children who have to breathe the air in these already overburdened communities. Maryland is implementing a very action oriented EJ plan in several high profile EJ communities. The Maryland Department of the Environment (MDE) effort involves:

- Building real partnerships and trust with these communities ... in general, government has very low credibility in these areas,

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<sup>1</sup> All of the other letters ... that are mentioned in this letter ... that are marked with an \* ... are attached

- Taking immediate action using existing authorities to reduce air pollution risks in these communities, and
- Working to rethink the legacy of government actions dumping high polluting transportation projects and dirty industrial plants on environmental justice communities over and over and over. This legacy has been built over the last 100 years and will not get better until state and local governments rethink the very difficult issue of how business-as-usual land-use and zoning decisions are made.

MDE was not even asked by COG staff to provide a briefing on their EJ effort and plan to TAC. In their June and July meetings, TAC did not even mention the MWAQC Chair's action requesting that a regional EJ Plan be developed and implemented expeditiously. Public comment\* was provided for these meetings requesting that the issue be made a priority. Over the past year, I have on multiple occasions offered to help set up a panel, involving MDE, EJ community leaders and other local EJ experts.

The bottom line ... the issue has been ignored for a quarter of a year.

I urge you to charge the COG staff to establish a subcommittee (as provided for in the MWAQC ... and I believe CEEPC ... bylaws) to move forward more expeditiously. I will volunteer to be on the subcommittee. The Subcommittee should reach out to communities and local EJ experts immediately, discuss the EJ framework document that was sent to MWAQC, ask for a briefing from MDE and then bring back a much more robust, action-oriented regional environmental justice plan for your next set of meetings. Again, I will volunteer my time to help with this.

### Air Pollution and Air Quality Plans

During agenda item #5 of the 9/27 MWAQC meeting, MWAQC will be asked to approve a revised regional air quality plan, called the SIP, to submit to EPA. I urge you to ask the COG staff to again revise the draft SIP to be responsive to public comments and to ensure that the SIP is consistent with the public health protection goals that I believe are critical to the vast majority of MWAQC and CEEPC members.

The SIP you will be asked to approve to be sent to EPA, as currently drafted, can be summarized as a SIP that:

**Sacrifices public health protection** to make the transportation planning process easier and to relieve the transportation planning community from implementing additional emission control measures.

Is this what MWAQC and CEEPC want?

There are common sense, effective transportation emission control measures that could be adopted, implemented and reserved/banked to address the problems that the transportation community is worried about. Examples include environmental performance contracting for transportation projects, offset requirements for transportation projects similar to the offset requirements already in place for stationary sources and the creation of a “rainy day” credit bank of extra transportation emission reductions to be used when unexpected problems surface.

My guess is that neither MWAQC nor CEEPC members clearly understand that the proposed SIP is about sacrificing public health protection to benefit transportation planning. Several examples that demonstrate that the proposed SIP is sacrificing public health for transportation include:

1. The draft SIP does not require that in implementation of the plan, state and local governments may not create environmental justice problems or make existing environmental justice problems worse. This is happening right now.

Comments\* submitted to MWAQC and the states recommended that the following language be added to the SIP to ensure that the public health protection for residents and their children who live in environmental justice communities of color is not made worse.

- “A core requirement of this SIP is that the emission reduction measures contained in the SIP directly or indirectly, and the implementation of those measures will not create or make worse environmental justice problems in already overburdened communities of color, or other environmental justice communities. The SIP should also include detailed descriptions of how MWAQC jurisdictions and the States plan to enforce that core element.”

During the May 24, 2023 MWAQC meeting, several MWAQC members argued “why wouldn’t we put this in the SIP ... even if it is not in explicit EPA guidance at this time”. This is a very good question.

Business-as-usual implementation of many measures in the plan will generate significant region-wide health benefits for the residents of the region ... the primarily white residents of the region. This is great. Unfortunately these benefits, because of very old policies on land-use and zoning, are sometimes achieved at the expense of the health of already overburdened communities of color in the region.

The draft SIP package does not discuss inclusion of the proposed language above at all. At a minimum, shouldn't the response to comments document at least discuss why that language was rejected? Again, during the debate on this issue during the May 24, 2023 MWAQC meeting, there was considerable support from some members of MWAQC to include language similar to the suggestions as it appeared to be the right thing to do ... whether it was or was not explicitly required in current (but soon to be revised) EPA guidance.

Failure to include language like the language that was proposed, in essence, means that MWAQC is OK with allowing the implementation of the SIP to increase the public health risks in environmental justice communities of color. I do not believe this is what MWAQC or CEEPC would want.

During the summer, I submitted several other important documents\* on this issue. On July 10, 2023, I wrote to EPA and federal transportation agencies on the need to ensure that implementation of federally approved air quality and transportation plans do not create high-risk environmental justice problems in already overburdened communities of color. MWCOG, CEEPC and others were copied.

Also on July 10, 2023, I submitted a Title VI (civil rights) complaint\* to MWCOG on ignoring the well documented problem of systemic, institutionalized environmental racism being allowed in federally required and approved air quality and transportation plans. These plans do not require that implementation of the plan will not create EJ problems or make EJ problems worse. The air quality and transportation plans should include such a requirement as current transportation projects in multiple EJ communities are already making existing EJ problems worse. Both of the July 10, 2023 letters/documents are attached. They were also sent to MWAQC TAC..

On August 15, 2023 and September 2, 2023 I submitted comments to Virginia\* and the District\* as part of the public hearing process on the proposed SIP. These comments are attached.

2. The draft SIP is almost 100% about establishing new mobile budgets with something called "Safety Margins". The safety margins in the SIP have nothing to do with providing greater public health protection. They should be called "Transportation Buffers that will increase emissions and decrease public health

protection so that the transportation planning process does not have to find additional emission reductions”.

Safety margins is a very misleading term. There are many other ways to address the “uncertainties” associated with new models and other technical changes. The real question is should future changes in mobile emissions or growth be handled by allowing for less public health protection or by finding more, readily available, emission reductions in the transportation sector to ensure that public health protection is maintained. Again, the “Safety Margin” provisions of the SIP sacrifice public health protection to ensure that the transportation planning process does not need to find more emission reductions.

I do not think this is what MWAQC or CEEPC would want?

3. The draft SIP does not require that policy makers should be allowed to look at the full benefits of different transportation strategies as they are deciding what projects to put into regional transportation plans. Greenhouse gas emission reduction information should be made available to policy makers and the public during the process of discussing and debating what measures will be in the next TIP or CLRP ... not after those decisions are already made (this is the current practice).

For example ... If two packages of strategies are being considered (assume one package is very heavy on technology while the other is based on technology and strategies to reduce VMT) shouldn't the greenhouse gas reduction benefits from each package of strategies be made available to policy makers so that climate change goals can be considered as the two strategies are debated?

This would be a major change for the transportation planning community ... but it would clearly result in greater transportation emission reduction measures, better public health protection and a better regional action plan to address the urgent problem of climate change.

This issue is one that, I believe, CEEPC would also be very interested in fixing.

There are also, I believe, some procedural issues with the draft SIP package. It has not even been reviewed by MWAQC TAC. The response to comments is also not at all responsive to the comments that were submitted to the states as part of their public hearing process. In addition, the package does not address or even mention the EPA

legal analyses on the use of SIPs and other state and federal authorities as a tool to begin to make progress on environmental justice.

I am also very concerned that the COG staff seems to believe they have been charged by MWAQC and CEEPC to develop the regional air quality plan or SIP by simply meeting minimum federal requirements and guidance ... not doing what is needed to protect public health. Is this what MWAQC and CEEPC want?

### Climate Change

On May 24, 2023 and June 1, 2023 I submitted letters\* to CEEPC on the need to update the weak climate change goals that are now being used to guide TPB as they develop a greenhouse gas emission reduction strategy for the region. As is now commonly understood, transportation related emissions are the largest contributor to the climate change problem (and the ozone problem) in the Washington region.

The June 1, 2023 letter provided a recommendation on what strengthened climate change goals for the region might look like. There has been no response to these letters. This issue was not discussed at the TAC meetings in June, July and September. It's now been a quarter of a year and it appears that the issue has not even been discussed. In essence, nothing has happened.

There is a true sense of urgency associated with the need to update the region's climate change goals. The science is clear ... deeper and faster GHG reductions are critical. There is also an issue specific to the MWCOG region that adds to that urgency. Again, the most significant contributors to the region's GHG emissions are mobile sources and other transportation related emission sources. The MWCOG TPB is currently developing and implementing a plan to reduce GHG emissions. Transportation strategies are often very expensive, are sometimes irreversible and often take years to phase in emission reductions. Because of this, having the right goals and timing is absolutely imperative.

If weak goals are used to guide the TPB plan, it is likely that important strategies involving VMT reductions and other travel demand management concepts will not be considered.

The Chesapeake Climate Action Network (CCAN) also submitted comments\* on this issue for the TPB meeting on September 20, 2023.

### The Title VI Civil Rights Complaint

I also need to mention the strengthened Title VI, civil rights complaint that is being prepared. My comments\* from the 9/20/23 TPB meeting on this issue are attached. I have also attached comments\* submitted by three national EJ experts who are working specifically on EJ issues in the Washington DC area. They have been joined by other EJ experts and have also submitted comments\* to MWAQC and CEEPC in advance of the back-to-back meetings on September 27th.

In closing, I urge you to move more quickly to finalize and implement a robust, action oriented EJ Plan and to ask staff and TAC to revise the final draft SIP submittal to be responsive to public comment and to ensure that the SIP is consistent with the public health protection policies that MWAQC and CEEPC feel are critical.<sup>2</sup>

Respectfully,

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Cc: MWAQC Members  
Kate Stewart, Chair, MWCOG BOD  
Reuben Collins, Chair, TPB  
Clark Mercer, MWCOG  
Takis Karantonis, Chair, CEEPC  
Era Pandya, Chair, ACPAC  
Julie Kimmel, Vice Chair, ACPAC  
Tom Ballou, Chair MWAQC TAC  
Rick Conrad, MWCOG Title VI Officer  
Dr. Sacoby Wilson, UMCP CEEJH  
Parisa Norouzi, EmPower DC  
Dr Janet Phoenix, MD, MPH, Chair, DC Asthma Coalition  
Eric Schaefer, EIP

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<sup>2</sup> As background, My name is Tad Aburn. In October of 2022, I was the Chair of MWAQC TAC. For the past 10 years I was the MDE Air Director and an MWAQC member. I have helped write and have submitted over 30 SIPs to EPA over my career. I was also the State Chair of the National Association of Clean Air Agencies (NACAA) Criteria Pollutant Committee for over ten years. This is a national Committee that worked directly with EPA on all SIP policies and guidance. I am now retired ... and doing volunteer work for overburdened communities in Prince George's County.



Leah Kelly, EIP

Anne Havemann, CCAN

Adam Ortiz, Regional Administrator, USEPA

Cristina Fernandez, USEPA

Angus Welch, USEPA

