

## National Capital Region Transportation Planning Board

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July 5, 2012

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

Re: Proposed Revisions to the Maryland Chapter 26 Conformity Regulation

Dear Mr. Mosier:

On Friday July 20, 2012, the Maryland Department of the Environment (MDE) is planning to hold a meeting to obtain comments from stakeholder groups on additional requirements that MDE is proposing to incorporate into Chapter 26 Conformity of the Code of Maryland (COMAR). This letter provides comments and questions on this proposal which have been prepared by the staff of the National Capital Region Transportation Planning Board (TPB), the metropolitan planning organization (MPO) for the Metropolitan Washington Region.

The purpose of Chapter 26 Conformity of the COMAR is described in Section .01 Purpose and Scope as:

“to implement Section 176c of the Clean Air Act (CAA), as amended (42 U.S.C. Section 7401 et seq.), and the related requirements of 23 U.S.C. Section 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT) and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53).”

The TPB is responsible for making conformity determinations on transportation plans and programs for the Washington region in accordance with the conformity regulations promulgated by the Environmental Protection Agency (EPA). The TPB devotes significant staff resources each year to carrying out these determinations. Mobile emissions budgets are set for the Washington region in State Implementation Plans for pollutants regulated under the National Ambient Air Quality Standards (NAAQS), with extensive technical review and public comment. Following formal adequacy findings by EPA, these mobile emissions budgets are used by the TPB in making conformity determinations, also with extensive technical review and public comment.

The TPB has made numerous conformity determinations over the past two decades, typically once every year and sometimes more frequently. Without exception, these determinations have received approval by the US Department of Transportation (USDOT), in consultation with the EPA, with respect to both procedural and technical requirements. Chapter 26 Conformity of the COMAR has been an important part of this process, as described in Section .01 Purpose and Scope: "This Chapter sets forth policy, criteria, and procedures for demonstrating and assuring conformity of these activities to an applicable implementation plan developed pursuant to Section 110 and part D of the CAA."

The additional reporting requirements that MDE is proposing to incorporate into Chapter 26 Conformity, which would require the commitment of additional staff resources by MPOs like the TPB, raise a number of significant procedural and substantive questions which need to be addressed, as detailed below.

Carbon Dioxide: Given that the purpose of Chapter 26 Conformity concerns "demonstrating and assuring conformity of these activities to an applicable implementation plan," what is the basis for including carbon dioxide emissions in the additional reporting requirements when these emissions are not subject to CAAA conformity requirements, and consequently are not included in any "applicable implementation plan"? More specifically, how can MDE propose that "the long-term planning targets shall be 10 percent lower than the emissions estimates for the last and second to last horizon years from the SIP analysis" when no emissions estimates for carbon dioxide are provided in any existing or proposed SIP analysis?

MDE's proposed additional reporting requirements include absolute numbers described as "carbon dioxide budgets" for the Washington region of 12.3 million metric tons per year for 2030 and 7.3 million metric tons per year in 2040. Are these numbers intended to be the long-range planning targets, and, if so, shouldn't they be labeled as such, rather than as "budgets"? These numbers are clearly not based on any SIP analysis, since as noted above no estimates for carbon dioxide are provided in any existing or proposed SIPs. The numbers appear to be based on estimates developed in the TPB's "What Would It Take?" scenario analysis, which used land activity and transportation networks from the 2009 Constrained Long Range Plan (CLRP) and the Mobile 6.2 emissions model. These estimates are currently being updated using the 2012 CLRP and the MOVES model. Why does MDE propose including absolute numbers in a state regulation using emissions analyses that will soon be out-of-date?

Nitrogen Oxide: Nitrogen oxide budgets for on-road mobile sources are developed in accordance with EPA's conformity regulations and incorporated into state implementation plans for both ozone and fine particle pollution, with different geographic areas and seasonal factors for each case. The proposed MDE additional reporting requirements state that long-term planning targets would be established using emissions analyses from the "last ozone SIP submitted to EPA". For the Washington metropolitan region, the last ozone SIP submitted to EPA was dated May 2007. This SIP has not been acted on by EPA, except for an adequacy finding for the reasonable further progress budgets which the TPB is currently using for conformity analyses. The emissions analysis for this SIP was based on fleet mix data and a travel demand model that have since been updated, and the analysis used the EPA Mobile 6.2 emissions model which is now being phased out in favor of EPA's new MOVES model. The last horizon year in this SIP analysis was 2030. Why does MDE propose setting long-term planning

**Mr. Randy E. Mosier**

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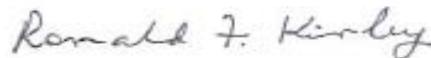
targets using emissions analyses in the last ozone SIP submitted to EPA, when these analyses are now out-of-date with regard to fleet mix assumptions, the models used, and the horizon year?

MDE's proposed additional reporting requirements include absolute numbers described as "nitrogen oxide budgets" for the Washington region of 28.71 tons per day in 2030 and 29.19 tons per day in 2040. Are these numbers intended to be the long term planning targets, and, if so, shouldn't they be labeled as such, rather than as "budgets"? Rather than using "the emissions analyses that form the basis for mobile source emissions budgets in the last ozone SIP submitted to EPA", as stated in the preamble, MDE appears to have based these numbers on out-year forecasts from the TPB's conformity report for the 2011 CLRP, dated November 16, 2011. This 2011 report will shortly be superseded by a new conformity report for the 2012 CLRP, scheduled to be adopted by the TPB on July 18, 2012. Why does MDE propose including absolute numbers in a state regulation using emissions analyses that are subject to regular updates? Shouldn't the content of this regulation be limited to "policy, criteria, and procedures", as described in .01 Purpose and Scope in Chapter 26?

An alternative approach: The TPB is continuing to study various strategies for reducing carbon dioxide emissions using the goals in the 2008 COG Climate Change Report, which are based on scientific evidence on global warming from the Intergovernmental Panel on Climate Change (IPCC). The TPB is also studying the cost-effectiveness of numerous transportation emission reduction measures for achieving additional reductions in nitrogen oxide emissions. As an alternative to trying to incorporate additional requirements into Chapter 26 Conformity of the COMAR using soon-to-be-superseded analyses, TPB staff suggests that MDE participate in ongoing TPB studies. These studies provide the opportunity to analyze potential additional reductions in carbon dioxide and nitrogen oxide emissions with the latest data and technical methods, and with the participation and support of all of the interested stakeholders.

Thank you for considering the comments of TPB staff on this matter.

Sincerely,



Ronald F. Kirby  
Director, Department of  
Transportation Planning