

## **National Capital Region Transportation Planning Board**

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### MEMORANDUM

March 2, 2007

To: Transportation Planning Board Technical Committee

From: Michael J. Clifford  
Systems Planning Applications Director

Subject: Upcoming Air Quality Conformity Assessment of 2007 Constrained Long Range Plan (CLRP) and FY2008 – 13 Transportation Improvement Program (TIP)

This memo transmits a draft scope of work for the upcoming air quality conformity assessment of the 2007 CLRP and FY2008 – 13 TIP, along with some material related to a recent court decision which could have a bearing on the work scope.

### **Draft Work Scope**

Projects being advanced for inclusion in the plan and program are now being assembled for documentation and public comment. The draft conformity scope, contained as Attachment A, identifies the work tasks required to assess conformity of the plan and program with respect to ozone, carbon monoxide and PM2.5 requirements. The schedule for the work effort is contained as Exhibit 2 within the scope and includes adoption of the plan, program and conformity assessment at the November 21, 2007 TPB meeting.

### **Court Decision**

On December 22, 2006 the US Court of Appeals for the DC Circuit ruled against EPA's "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard" (contained in the November 29, 2005 Federal Register), vacating the regulations and remanding the matter to EPA. Attachment B contains a summary on the ruling prepared by COG's legal counsel. (The full court decision may be found on COG's web site at: [www.mwcoq.org/environment/air/documents.asp](http://www.mwcoq.org/environment/air/documents.asp)).

While much of EPA's Implementation Rule concerns areas other than mobile sources, air quality conformity assessment criteria could also be affected as the court decision

addressed EPA's previous revocation of the 1-hour ozone standard. A summary of the court decision released by the Association of Metropolitan Planning Organizations (AMPO) states the following: "In the 2004 rule, EPA determined that conformity determinations would no longer be required for the 1-hour NAAQS. The Court found that 1-hour conformity is a "control" in relation to the anti-backsliding provisions and remains an applicable requirement that must be maintained. The Court dismissed EPA's claim that doing conformity for both standards at the same time would be overly burdensome and confusing."

Region 3 EPA staff report that EPA legal staff have not yet determined whether to appeal the court's decision (EPA has until March 22, 2007 before this decision must be made). Possible impacts upon the conformity process, and hence the draft work scope, therefore, are yet to be determined. Such impacts would likely affect only the conduct of the study, rather than the outcome of the air quality conformity assessment. For example, we could be required to execute emissions calculations methods relating to the 1-hour ozone standard in addition to the 8-hour standard.

Attachments (2)

**AIR QUALITY CONFORMITY ASSESSMENT:  
2007 CONSTRAINED LONG RANGE PLAN AMENDMENTS AND  
FY2008-2013 TRANSPORTATION IMPROVEMENT PROGRAM**

**SCOPE OF WORK**

**I. INTRODUCTION**

Projects solicited for the 2007 Constrained Long Range Plan (CLRP) and the FY2008-2013 Transportation Improvement Program (TIP) are scheduled to be finalized at the April 18, 2007 TPB meeting. This scope of work reflects the tasks and schedule designed for the air quality conformity assessment leading to adoption of the plan and program on November 21, 2007. This work effort addresses requirements associated with attainment of the 1-hour and 8-hour ozone standards (volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) as ozone precursor pollutants), and fine particles (PM<sub>2.5</sub>) standards (direct particles and precursor NO<sub>x</sub>), as well as maintenance of the wintertime carbon monoxide (CO) standard.

The plan and program must meet air quality conformity regulations: (1) as originally published by the Environmental Protection Agency (EPA) in the November 24, 1993 Federal Register, and (2) as subsequently amended, most recently on March 10, 2006, and (3) as detailed in periodic FHWA / FTA and EPA guidance. These regulations specify both technical criteria and consultation procedures to follow in performing the assessment.

This scope of work provides a context in which to perform the conformity analyses and presents an outline of the work tasks required to address all regulations currently applicable.

**II. REQUIREMENTS AND APPROACH**

**A. Criteria** (See Exhibit 1)

As described in the 1990 Clean Air Act Amendments, conformity is demonstrated if transportation plans and programs:

1. Are consistent with most recent estimates of mobile source emissions,
2. Provide expeditious implementation of TCMs, and
3. Contribute to annual emissions reductions.

Assessment criteria for ozone, CO, and PM<sub>2.5</sub> are discussed below.

DC, Maryland, and Virginia state air agencies, working through the Metropolitan Washington Air Quality Committee (MWAQC), are scheduled to submit 8-hour ozone SIP budgets to EPA by June 15, 2007. These new budgets will provide the basis for the ozone season emissions budget comparison element of the conformity assessment.

The region is in maintenance for mobile source wintertime CO and, as in prior conformity assessments, is required to show that pollutant levels do not exceed the approved budget.

Criteria and procedures for demonstrating conformity with respect to PM2.5 in the interim period before SIPs are filed differ from ozone or wintertime carbon monoxide assessments in that there are no existing budgets which can be applied. In this case EPA allows for an assessment that shows emissions in “action” scenarios are no greater than those in a 2002 base. This criterion was established and applied, with the concurrence of MWAQC, in the past PM2.5 conformity assessments. Emissions will be inventoried for yearly totals instead of on a daily basis.

**B. Approach** (See Table 1 – Summary of Technical Approach)

The analytical approach is similar to that applied and documented in the October 18, 2006 air quality conformity assessment of the 2006 CLRP and the FY2007-2012 TIP. Exceptions are the use of the forthcoming 8-hour ozone budgets, as mentioned above, and the use of the updated travel demand model, Version 2.2. In addition to the highlighted elements below, explicit inputs include: a summary list of major policy and technical input assumptions, shown as Attachment A; and all transportation network elements which will be finalized at the April 18, 2007 TPB meeting.

**TABLE 1 – Summary of Technical Approach**

	<b>Ozone</b>	<b>Wintertime CO</b>	<b>PM2.5</b>
<b>Pollutant:</b>	VOC, NOx	CO	Direct particles, Precursor NOx
<b>Budget:</b>	Existing 1-hour ozone budgets & NEW 8-hour ozone budgets	Approved wintertime CO emissions budget	Budget not yet set - Use Reductions from base 2002 inventory
<b>Emissions Analysis Time-frame:</b>	Daily	Daily	Annual
<b>Geography:</b>	1-hour ozone area (MSA) 8-hour ozone area (MSA less Stafford)	DC, Arl., Alex., Mont., Pr. Geo.	MSA less Stafford and Calvert counties
<b>Network Inputs:</b>	Regionally significant projects		
<b>Land Activity:</b>	Round 7.1		
<b>Modeled Area:</b>	Expanded Cordon (2191 zone)		
<b>Travel Demand Model:</b>	Version 2.2		
<b>Mobile Model:</b>	MOBILE6.2 emissions factors, consistent with the procedures utilized to establish the VOC and NOx mobile source emissions budgets	MOBILE6.2 Consistent with procedures used to establish the budget	MOBILE6.2 'Seasonal' approach
<b>Emissions Factor Refinements:</b>	Refinements developed as part of the recent SIP development and conformity assessments include: use of 2005 vehicle registration data for all jurisdictions; use of hourly temperatures, relative humidity, barometric pressure and NOx rebuild effects.		

### **III. CONSULTATION**

1. Execute TPB consultation procedures (as outlined in the consultation procedures report adopted by the TPB on May 20, 1998).
2. Participate in meetings of MWAQC, its Technical Advisory Committee and its Conformity Subcommittee to discuss the scope of work activities, TERM development process, and other elements as needed; discuss at TPB meetings or forums, as needed, the following milestones:
  - CLRP / TIP Call for Projects
  - Scope of work
  - TERM proposals
  - Project submissions: documentation and comments
  - Analysis of TERMS, list of mitigation measures
  - Conformity assessment: documentation and comments
  - Process: comments and responses

### **IV. WORK TASKS**

1. Receive project inputs from programming agencies and organize into conformity documentation listings (endorsement of financially constrained project submissions scheduled for April 18, 2007)
  - Project type, limits, NEPA approval, etc.
  - Phasing with respect to forecast years
  - Transit operating parameters, e.g. schedules, service, fares
  - Action scenarios
2. Utilize Round 7.1 Cooperative Forecasts
  - Households by auto ownership, population and employment
  - Zonal data files
3. Prepare forecast year highway, HOV, and transit networks
  - Update GIS highway database
  - Filter database to create 2008, 2009, 2010, 2020, and 2030 highway networks
  - Rebuild networks for modeling
  - Update / edit transit files
  - Update fares, as necessary
4. Prepare 2002 emissions factors and emissions estimates
  - Develop and apply Mobile6.2 emission factors (ozone, PM2.5, winter CO)
  - Calculate emissions (daily for ozone season VOC and NOx; daily for winter CO; yearly for PM2.5 direct particles and precursor NOx)

5. Prepare 2008 travel and emissions estimates
  - Execute travel demand modeling
  - Develop and apply Mobile6.2 emission factors (ozone, PM2.5, winter CO)
  - Calculate emissions (daily for ozone season VOC and NOx for ozone standard requirements; daily for winter CO; yearly for PM2.5 direct particles and precursor NOx)
6. Prepare 2009 travel and emissions estimates
  - Tasks as in year 2008 analysis
7. Prepare 2010 travel and emissions estimates
  - Tasks as in year 2009 analysis
8. Prepare 2020 travel and emissions estimates
  - Tasks as in year 2010 analysis
  - Apply “transit constraint” using 2010 levels (unless additional funding is identified to enable removal of peak period capacity constraints in the core part of the Metrorail system)
9. Prepare 2030 travel and emissions estimates
  - Tasks as in year 2020 analysis
10. Identify extent to which TIP and plan provide for expeditious implementation of TCMs contained in ozone state implementation plans and emissions mitigation requirements of previous TIP and CLRP commitments (TERMs)
  - In the CLRP / TIP Call for Projects document staff identified previous TCM and TERM commitments and requested a status report from the implementing agencies
  - Staff will review these reports as they are received and update the TERM tracking sheet that was included in the October 18, 2006 air quality conformity report
  - The status reports and the updated TERM tracking sheet will be included in the air quality conformity report.
11. Coordinate / analyze emissions reductions associated with CMAQ and similar projects
  - Obtain project-specific emissions reductions from programming agencies
  - Summarize daily ozone season VOC and NOx reductions for each milestone year
  - Analyze current TERMs for yearly direct PM2.5 and precursor NOx PM2.5 pollutant reductions; explore additional TERMS
  - With oversight from the Travel Management Subcommittee, as needed, propose and analyze additional measures for their emissions benefits, costs, cost effectiveness, and other evaluation criteria

12. Analyze results of above technical analysis
  - Reductions from 1990 (ozone season VOC and NO<sub>x</sub> and winter CO) and 2002 base (ozone season VOC and NO<sub>x</sub>, winter CO, and PM<sub>2.5</sub>)
  - 1-hour and 8-hour ozone season VOC and NO<sub>x</sub> budgets and winter CO emissions budgets
  - With oversight from the Travel Management Subcommittee, the Technical Committee and the TPB, identify and recommend additional measures should the plan or program fail any test and incorporate measures into the plan
  
13. Assess conformity and document results in a report
  - Document methods
  - Draft conformity report
  - Forward to technical committees, policy committees
  - Make available for public and interagency consultation
  - Receive comments
  - Address comments and present to TPB for action
  - Finalize report and forward to FHWA, FTA and EPA

## **V. SCHEDULE**

The schedule for the execution of these work activities is contained within the air quality conformity schedule in Exhibit 2. The time line shows completion of the analytical tasks, preparation of a draft report, public and interagency review, response to comments and action by the TPB on November 21, 2007.

# Exhibit 1

## Conformity Criteria

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### All Actions at all times:

Sec. 93.110	Latest planning assumptions.
Sec. 93.111	Latest emissions model.
Sec. 93.112	Consultation.

### Transportation Plan:

Sec. 93.113(b)	TCMs.
Sec. 93.118 and/or Sec. 93.119	Emissions budget and /or Interim emissions.

### TIP:

Sec. 93.113(c)	TCMs.
Sec. 93.118 and/or Sec. 93.119	Emissions budget and /or Interim emissions.

### Project (From a Conforming Plan and TIP):

Sec. 93.114	Currently conforming plan and TIP.
Sec. 93.115	Project from a conforming plan and TIP.
Sec. 93.116	CO, PM10, and PM2.5 hot spots.
Sec. 93.117	PM10 and PM2.5 control measures.

### Project (Not From a Conforming Plan and TIP):

Sec. 93.113(d)	TCMs.
Sec. 93.114	Currently conforming plan and TIP.
Sec. 93.116	CO, PM10, and PM2.5 hot spots.
Sec. 93.117	PM10 and PM2.5 control measures.
Sec. 93.118 and/or Sec. 93.119	Emissions budget and/or Interim emissions

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### **Sec. 93.110 Criteria and procedures: Latest planning assumptions.**

The conformity determination must be based upon the most recent planning assumptions in force at the time of the conformity determination.

### **Sec. 93.111 Criteria and procedures: Latest emissions model.**

The conformity determination must be based on the latest emission estimation model available.

### **Sec. 93.112 Criteria and procedures: Consultation.**

Conformity must be determined according to the consultation procedures in this subpart and in the

applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450.

**Sec. 93.113 Criteria and procedures: Timely implementation of TCMs.**

The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

**Sec. 93.114 Criteria and procedures: Currently conforming transportation plan and TIP.**

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

**Sec. 93.115 Criteria and procedures: Projects from a plan and TIP.**

The project must come from a conforming plan and program.

**Sec. 93.116 Criteria and procedures: Localized CO, PM10, and PM2.5 violations (hot spots).**

The FHWA/FTA project must not cause or contribute to any new localized CO, PM10, and/or PM2.5 violations or increase the frequency or severity of any existing CO, PM10, and /or PM2.5 violations in CO, PM10, and PM2.5 nonattainment and maintenance areas.

**Sec. 93.117 Criteria and procedures: Compliance with PM10 and PM2.5 control measures.**

The FHWA/FTA project must comply with PM10 and PM2.5 control measures in the applicable implementation plan.

**Sec. 93.118 Criteria and procedures: Motor vehicle emissions budget**

The transportation plan, TIP, and projects must be consistent with the motor vehicle emissions budget(s).

**Sec. 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle budgets**

The FHWA/FTA project must satisfy the interim emissions test(s).

**NOTE:** See EPA's conformity regulations for the full text associated with each section's requirements.



Schedule for the 2007 Financially Constrained Long-Range Plan (CLRP) and FY 2008 – 2013 Transportation Improvement Program (TIP)

January 2007	Transportation Agencies Begin Submitting Project Information through On-Line Database
February 23, 2007	<u>DEADLINE:</u> Transportation Agencies Complete On-Line Project Submissions
March 2, 2007	Technical Committee reviews Plan and TIP Project Submissions and draft Scope of Work for the Air Quality Conformity Assessment
March 15, 2007	Plan and TIP Project Submissions and draft Scope of Work Released for Public Comment at the Citizens Advisory Committee (CAC)
*March 21, 2007	TPB Briefed on Project Submissions and draft Scope of Work
April 14, 2007	Public Comment Period Ends
*April 18, 2007	TPB Reviews Public Comments and is asked to Approve Project Submissions and draft Scope of Work
*September 19, 2007	TPB Receives Status Report on the Draft Plan, TIP and Conformity Assessment
October 11, 2007	Draft Plan, TIP and Conformity Assessment Released for Public Comment at Citizens Advisory Committee (CAC)
*October 17, 2007	TPB Briefed on the Draft Plan, TIP and Conformity Assessment
November 12, 2007	Public Comment Period Ends
*November 21, 2007	TPB Reviews Public Comments and Responses to Comments, and is Presented the Draft Plan, TIP and Conformity Assessment for Adoption

\*TPB Meeting

## **WORK SCOPE ATTACHMENT A**

### **POLICY AND TECHNICAL INPUT ASSUMPTIONS AIR QUALITY CONFORMITY ANALYSIS OF 2007 CLRP AND FY2008-2013 TIP**

#### 1. Land Activity

- Round 7.1 Cooperative Forecasts

#### 2. Policy and Project Inputs

- Highway, HOV and transit projects and operating parameters
- Financially constrained project submissions to be advanced by the TPB on 4/18/2007

#### 3. Travel Demand Modeling Methods

- Version 2.2 Travel Model
- All HOV facilities at HOV-3 in 2010
- Transit “capacity constraint” procedures (2010 constrains later years)

#### 4. Emissions Factors

- Update emissions factors methods originally developed and applied in the 2006 CLRP conformity process: MOBILE6.2, 2005 registration data, VMT mix specific to each analysis year
- Refinements based upon new methods developed for SIP analysis
- Seasonal PM2.5 factors for total directly emitted particles and precursor NOx
- No oxygenated fuels assumed for wintertime carbon monoxide conditions

#### 5. Emissions Modeling Methods / Credits

- Updated post-processor methods to reflect EPA guidance associated with Mobile6.2 model release updates for local road speed profiles in rural areas
- Yearly PM2.5 emissions (total PM2.5 and precursor NOx) using latest seasonal traffic adjustments and above emissions factors
- Offline emissions analyses

#### 6. Conformity Assessment Criteria

- Emissions budgets for ozone precursors and wintertime CO
- EPA conformity regulations stating the transportation conformity rule amendments for PM2.5 requirements to demonstrate emissions are no greater than a 2002 base case.
- Analysis years: 2008, 2009, 2010, 2020, and 2030

## ATTACHMENT B

### **EPA's Eight-Hour Rule Vacated**

On December 21, 2006, the U.S. Court of Appeals for the District of Columbia Circuit ruled that EPA's 8-hour ozone implementation Rule treats ozone nonattainment areas unequally. The Court also found the Rule allows "backsliding" by nonattainment areas for the 1-hour standard. *South Coas Air Quality Management District v. Environmental Protection Agency, et al.*, Nos. 04-1200; 04-1201.

On both grounds the Court ordered the Rule vacated and the matter remanded to EPA for further action consistent with the Court's opinion. (In addition to these two primary substantive questions, the Court ruled on a number of procedural issues raised by intervening parties. These questions are not addressed here.)

The Rule in question, promulgated in 2004, announced a new approach to the regulation of ozone under the Clean Air Act. EPA announced that its "one-hour" standard would be withdrawn in favor of the "eight-hour standard" mandated by the Act, and required to be issued by a previous consent decree.

The procedure designed by EPA in transitioning from one standard to the other results in treating nonattainment areas differently when the area is in nonattainment under both the new eight-hour standard and the now-revoked one-hour standard. The issue of unequal treatment will not likely affect the Metropolitan Washington Region Nonattainment Area.

### **Possible Impact on the Washington Metropolitan Region**

The Metropolitan Washington Region, however, could be affected by the decision relating to "backsliding." The Clean Air Act (Sec. 172) says there should be no weakening of controls when a primary air quality standard is relaxed. EPA and the Court interpret this action to apply when the air quality standard is made more stringent.

Areas classified as nonattainment under the one-hour ozone standard such as the Washington region are not allowed to remove the controls such as penalties, rate of progress milestones, or contingency plans that were part of a previous one-hour ozone SIP.

EPA made an exception with New Source Review (NSR), a permitting process for major facilities such as power plants that restricts major modifications and new construction based on an area's air quality classification. EPA maintained that NSR is not a "control," and could, therefore, be weakened. The court disagreed with EPA's interpretation and said that NSR was designed to limit ozone levels.

Under the 1-hour ozone standard, which the 2004 Rule revoked effective in June 2005, the Washington region was classified as a "Severe" nonattainment area and the states were required to adopt NSR permitting thresholds that expanded the number of facilities

regulated. A facility with the ability to emit 25 tons or more became regulated under this provision. With the new 8-hour ozone classification of “Moderate,” however, the number of facilities could be reduced to those with the ability to emit 100 tons or more.

If the opinion stands, Washington Metropolitan Region facilities will continue to be regulated under the more restrictive 25 ton standard.

Another example given by the court affects the Section 185 penalty required for Severe nonattainment areas. The court said that the penalty for failure to attain (Section 185) is a control that must be retained to avoid backsliding. Again, if the opinion stands, The Region must continue its Section 185 penalties.

EPA has received an extension of time to take further court action to March 22, when it may file a motion for reconsideration. EPA has not commented or responded to the court’s decision. Under the decision EPA has until May 30 to review and propose to retain or revise the 8-hour ozone standard.