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California Department of Transportation, District 7
100 South Main Street, Suite 100
Los Angeles, CA 90012

Philip A. Washington, Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 9012-2952

Re: EPA technical response for project-level transportation conformity status- Interstate 710 South

Dear Mr. Tavares and Mr. Washington:

In 2018, following publication of the Supplemental Draft EIR/EIS for the Interstate 710 (I-710) South Corridor project, Caltrans and Metro asked the EPA to consider a variation from project level transportation conformity analysis processes and requirements. Prior to this request, the transportation agencies were pursuing coordination related to required particulate matter (PM) hot-spot modeling assumptions and protocols. As an alternative, Caltrans and Metro proposed the I-710 Clean Truck Program to potentially offset the significant increase of diesel-emitting trucks that would result from the project, thereby attempting to remove the status of the project as a “Project of Air Quality Concern” and the need for a PM hot-spot analysis as part of the project-level transportation conformity determination.

The EPA recognizes the collective challenges to protecting human health while delivering transportation projects within the I-710 Corridor, an area with communities already overburdened by existing goods movement and industry in an area with the worst air quality in the United States, including some of the highest PM_{2.5} levels in the country. After thoughtful consideration, multiple interagency meetings, and good faith efforts by EPA, Caltrans and Metro to identify a potential alternative path forward for the analysis of project-level transportation conformity, the EPA ultimately concludes that a PM hot-spot analysis is necessary for the project’s transportation conformity determination. Please see the attached Technical Response supporting this position, the details of which were also shared verbally during our November 20, 2020 senior leadership meeting with Caltrans, Metro, and the Federal Highway Administration.

EPA continues to support efforts to increase clean transportation along the corridor and we remain committed to partnering with you as you evaluate pathways to advance transportation solutions while being protective of human health. I understand that our staff are already in dialogue on possible

alternatives. If you would like to speak further, please contact me at (415) 972-3183, or your staff can contact Karina O'Connor, Project Level Transportation Conformity Lead, at (775) 434-8176 or Oconnor.Karina@epa.gov.

Sincerely,

Elizabeth J. Adams, Director
Air & Radiation Division

Attachment: Technical Response

cc: Vincent Mammano, Division Administrator, FHWA
Antonio Johnson, Planning Team Leader, FHWA
Abdollah Ansari, Senior Executive Officer, Metro
Ron Kosinski, Deputy District Director, Caltrans

Technical Response: Summary of Issues for the I-710 Highway Expansion Project and I-710 Clean Truck Program

I. Introduction and Purpose

A. Purpose of this Document

On November 20, 2020, after considerable coordination between Caltrans, Metro, Federal Highways Administration (FHWA) and EPA, EPA indicated that we would not be able to concur that the proposed I-710 highway expansion project was not a project of air quality concern under the Clean Air Act transportation conformity requirements. Caltrans and Metro requested more details regarding the specific legal and technical issues that we identified with using the I-710 Clean Truck Program to avoid completion of a particulate matter (PM) hot-spot analysis to satisfy transportation conformity requirements for the I-710 expansion project. In response, this document describes in more detail why, after careful consideration and based on the information before us, EPA does not agree that the I-710 Clean Truck Program renders the I-710 project as a project that is not of air quality concern, and describes how project sponsors should proceed with meeting conformity requirements.

B. Summary of Findings

EPA is very supportive of using zero emissions truck technology on the I-710 freight corridor, but it is critical that public agencies develop a program that meets all of the regulatory requirements so that emissions will not increase and negatively impact public health in the future. This document describes why EPA does not agree that (1) the I-710 Clean Truck Program renders the I-710 project as a project that is not of air quality concern and (2) that the project does not need a PM hot-spot analysis. To summarize:

- The I-710 project requires a PM hot-spot analysis under the Clean Air Act (CAA) and EPA's transportation conformity regulations because it is a highway expansion project that would result in a significant increase in the number of diesel vehicles.
- The clear purpose of the hot-spot regulations are to implement the Clean Air Act's requirements that projects do not cause or contribute to violations of EPA's national ambient air quality standards (NAAQS), worsen existing violations, or delay attainment or other milestones.
- There is no current air quality modeling that demonstrates that the I-710 Clean Truck Program sufficiently reduces emissions such that the I-710 expansion project does not create PM NAAQS hot-spots. In fact, we expect increases in the severity of existing violations even if the proposed I-710 Clean Truck Program were to be fully implemented given dust, tire wear and brake wear.
- The transportation conformity regulation allows mitigation measures to be included as part of a hot-spot analysis for a project but does not permit mitigation measures to avoid a hot-spot analysis for a project of air quality concern.
- As a mitigation measure, the I-710 Clean Truck Program would need a federally enforceable written commitment to be relied upon for a project-level transportation conformity determination.
- The project sponsor has not utilized more recent travel activity assumptions for truck movement along the I-710 freight corridor.

- The I-710 Clean Truck Program does not meet EPA’s guidance that diesel replacement programs can be used in a conformity determination if the older diesel vehicles are scrapped.

C. Background on the Los Angeles Air Quality and the Surrounding Community

The proposed project area, 18 miles of the I-710 freeway extending north from the Ports of Los Angeles and Long Beach, serves as a primary freight corridor connecting two of the busiest container ports in the country with downtown intermodal railyards and the goods movement network extending east into the Inland Valley. The greater Los Angeles area has among the worst air quality in the United States, including some of the highest PM_{2.5} levels in the country. In 2020, EPA determined that the South Coast Air District failed to attain the 2006 PM_{2.5} NAAQS (or standard) by its December 31, 2019 attainment date and bumped up the area to Serious for the 2012 PM_{2.5} standard, requiring additional planning work by the South Coast Air Quality Management District.

The I-710 corridor accommodates a daily count of approximately 50,000 diesel-fueled freight trucks and 165,000 other vehicles running directly through, and adjacent to, numerous densely populated communities with environmental justice concerns. These low-income and minority communities are already heavily burdened by pollution from existing goods movement and industrial activity and experience health disparities, including asthma burdens. These communities are vulnerable to any increases in particulate matter emissions associated with the proposed I-710 expansion project, and have historically voiced strong concerns about air quality impacts from freight-related projects in this area, including ongoing engagement with the I-710 project. Environmental and community groups have expressed support for exclusively zero-emission truck technology and associated infrastructure for the I-710 project.

D. Background on the Transportation Conformity PM Hot-spot Requirement

Transportation conformity applies to transportation plans, transportation improvement programs (TIPs), and federally-supported transportation projects (i.e., FHWA and FTA funded or approved projects) in nonattainment and maintenance areas for transportation-related pollutants, including PM, ozone, and carbon monoxide (CO).

Section 176(c)(1)(B) of the Clean Air Act (CAA) states that federally-supported transportation projects cannot:

- (i) cause or contribute to any new violation of any standard in any area;
- (ii) increase the frequency or severity of any existing violation of any standard in any area; or
- (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. See CAA § 176(c)(1)(B).

To ensure that transportation projects meet these criteria, EPA’s transportation conformity regulations require a hot-spot analysis in PM₁₀ and PM_{2.5} areas for certain highway and transit projects. To ensure that CAA requirements are met, large projects that result in “a significant increase in the number of diesel vehicles” (40 CFR 93.123(b)(1)) need a quantitative PM hot-spot analysis. Such a project is referred to as a “project of air quality concern.” A hot-spot analysis is an estimation of likely future localized pollutant concentrations with the proposed project and a comparison of those concentrations to the relevant PM NAAQS. A hot-spot analysis assesses the air quality impacts on a scale smaller than an

entire nonattainment or maintenance area, including, for example, congested highways or freight terminals.

For a project that is not of air quality concern, the project-level conformity determination consists of verifying that there is a conforming regional transportation plan and Transportation Improvement Plan (TIP) and that the project is included in that conforming transportation plan and TIP.

The interagency consultation process must be used to develop project-level conformity determinations to meet all applicable conformity requirements for a given project. Project sponsors typically make the determination whether a highway project needs a quantitative PM hot-spot analysis through an interagency consultation process with FHWA, EPA, the State DOT, and the other state and local agencies involved.

E. I-710 and the PM Hot-spot Requirement

The proposed I-710 transportation project is an 18-mile project to increase capacity on I-710 by adding new general purpose lanes, truck by-pass lanes, and intersection improvements along this corridor. The latest iteration of the I-710 project had been determined to be a project of air quality concern since reports developed for the project's environmental documentation (such as the June 2018 modeling protocol for hot-spot modeling) showed that the project would increase heavy-duty diesel truck traffic as much as 6,900 trucks each day for some segments of I-710 (in addition to the existing 50,000 trucks and 165,000 other vehicles that drive on this highway every day).

On August 1, 2018, Caltrans requested that the EPA reconsider the I-710 project's status as a project of air quality concern (also referred to as a "POAQC"), with Caltrans' assumption that the I-710 Clean Truck Program would reduce diesel truck traffic (by funding the replacement of diesel trucks with zero emission/near zero emission (ZE/NZE) trucks).

In October 2018, Region 9 sent an email to Caltrans with an attachment with preliminary, staff-level information for a written commitment for the I-710 Clean Truck Program. In response, in October 2019, Caltrans and Metro sent a letter to EPA indicating that they did not agree that a written commitment would be required for the I-710 Clean Truck Program. EPA responded in a letter dated March 3, 2020 that we continue to believe that a written commitment describing the program was necessary. Further information regarding implementation of the I-710 Clean Truck Program was described in the June 4, 2020 Responses to Questions from USEPA/FHWA on the I-710 Clean Truck Program and the July 27, 2020 I-710 Clean Truck Program Responses to Technical Questions documents.

Caltrans' and Metro's I-710 Clean Truck Program Project Description, dated September 18, 2020, describes the major components of the I-710 Clean Truck Program and contains some information on related programs such as the Metro Countywide Clean Truck Initiative. According to this document, the I-710 Clean Truck Program would be implemented by a program administrator at the Los Angeles County Metropolitan Transportation Authority (Metro) with direction from the Metro Board of Directors and the I-710 Steering Committee with assistance from contractors and vendors. The Metro Board would have responsibility and authority for development and implementation as well as approval for any major policy decisions related to the program.

The September 18, 2020 description further states that the I-710 Steering Committee, a multi-agency group operating under the October 2019 Memorandum of Understanding, would be tasked with developing implementation details, eligibility requirements, institutional arrangements, management and administration for the program as well as identifying and obtaining funding, creating a phasing plan and comprehensive goals, and issuing quarterly reports. These roles and responsibilities are further elaborated in Appendix C of the September 2020 program description.

EPA's regulatory analysis of the approach proposed by Caltrans to reconsider the I-710 project's status as a POAQC, with Caltrans' assumption that the I-710 Clean Truck Program would reduce diesel truck traffic (by funding the replacement of diesel trucks with ZE/NZE) trucks) is based on a careful consideration of these documents as well as the NEPA documents developed for the I-710 project and information discussed in the Technical Workgroup meetings with Caltrans, Metro and FHWA. The legal and technical issues supporting EPA's decision that the proposed I-710 highway expansion project is a project of air quality concern under the Clean Air Act transportation conformity requirements, are described in more detail below.

II. Discussion

The Clean Air Act and EPA's transportation conformity rule require completion of a quantitative PM hot-spot analysis for the I-710 project because it is a project of air quality concern.

A. Statutory and Regulatory Requirements

The regulatory hot-spot analysis requirement was adopted to implement the Clean Air Act requirement that federally-supported transportation projects cannot "cause or contribute to any new violation of any standard in any area; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard of any required interim emission reductions or other milestones in any area." See CAA §176(c)(1)(B). EPA has interpreted "in any area" to include not just entire nonattainment and maintenance areas, but also the localized area surrounding a transportation project. See 75 Fed. Reg. 14260, 14274 (Mar. 24, 2010).

EPA adopted the regulatory PM hot-spot requirements in 2006, including the requirement that a hot-spot analysis be completed for expanded highway projects with a significant increase in the number of diesel vehicles. The preamble for the final rule explains that this criterion was intended to identify projects with significant PM emissions increases. See, e.g., 71 Fed. Reg. 12467, 12491 (Mar. 10, 2006) ("The final rule's criteria for hot-spot analyses targets highway and transit projects that involve a significant increase in diesel vehicle traffic, since EPA believes that directly emitted particles from diesel vehicles are the primary consideration for potential PM_{2.5} and PM₁₀ hot-spots.") The 2006 preamble also contains a lengthy discussion of the technical basis for EPA's conclusion that projects that are not of air quality concern will not increase PM emissions. *Id.* at 12471-74 and 12490-93. We further said that PM hot-spot analyses must include emissions from re-entrained road dust. *Id.* at 12494.

The I-710 highway expansion project would result in a significant increase in the number of diesel vehicles and consequently in significant PM emissions increases. Therefore, the project meets the regulatory criterion for requiring a quantitative PM hot-spot analysis. This is particularly important in light of the factual circumstances of the project. First, the greater Los Angeles area has some of the highest PM_{2.5} levels in the country with people living and working all along the I-710 corridor. In addition, the Ports of Los Angeles and Long Beach are the terminus of the I-710 and are the largest container ports in the country, with a significant portion of freight moving every day by diesel truck.

B. Need for a PM Hot-Spot Analysis for I-710

The I-710 clearly meets the relevant regulatory criterion for a PM hot-spot analysis: Caltrans' June 2018 modeling shows an additional 6,900 heavy-duty diesel vehicles per day, which is consistent with numbers EPA has concluded constitute a "significant increase" in other instances. Even if the I-710 Clean Truck Program is implemented, the project would still result in a significant increase in heavy-duty trucks, which would increase PM emissions. Consistent with SIP inventories and past conformity analyses, brake/tire wear and road dust would be significantly increased by the I-710 project, and as a result, make air quality worse in communities along the I-710 corridor.

We expect increases in the severity of existing violations even if the proposed I-710 Clean Truck Program were to be fully implemented given dust, tire wear and brake wear emissions. Given that the project would likely result in localized increases in PM in an existing nonattainment area, determining that the project is not a project of air quality concern would be inconsistent with the conformity requirement in the Clean Air Act and EPA's implementing regulations.

C. I-710 Clean Truck Program as a Mitigation Measure

It is possible that the I-710 Clean Truck Program could be used to mitigate the impacts of the I-710 expansion *as part of* a hot-spot analysis. See 40 C.F.R. § 93.123(c)(4): "...mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments...". However, mitigation measures cannot be used to *avoid* a hot-spot analysis for a project of air quality concern.

Mitigation should address a project's impact on the NAAQS in the conformity determination, which can only be determined through a hot-spot analysis with measures included, per the conformity rule and guidance. EPA addressed the inclusion of new technologies in a PM hot-spot analysis in the preamble to the March 24, 2010 final rule (75 CFR 14280):

Last, it is entirely appropriate that a hot-spot analysis include the effects of new technologies and fleet turnover that is expected to occur in a future analysis year. The conformity rule has always allowed the future effects of federal vehicle emissions standards, fleet turnover, fuel programs, and other control measures to be reflected in hot-spot analyses when they are assured to occur, because including such effects provides a reasonable estimate of future emissions that is more accurate than not including such effects.

For the emission reductions of the Clean Truck Program to be relied on for conformity, significant additional work would be necessary by the project sponsor to ensure the Clean Truck Program meets the regulatory requirements for mitigation measures, including a *written commitment* to such a measure that includes, among other things, "a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body." See 40 C.F.R. §§ 93.101 and 93.125(a).

Furthermore, under Metro's documentation, some of the final details, commitments and funding for the Clean Truck Program would be deferred to a later date as the Steering Committee sees how well the program performs in the first few years of operation. This leaves EPA with less certainty today that diesel truck traffic would not increase significantly and would limit the program from being an enforceable mitigation measure under the transportation conformity regulations. More EPA concerns on components of the I-710 Clean Truck Program and discussion on why it is a mitigation measure is included in Section IV below.

III. Modeling Issues

Another concern with Caltrans' and Metro's proposal is the lack of evidence that the I-710 Clean Truck Program would sufficiently reduce diesel vehicles on the I-710 expansion to the point where the project would no longer be of air quality concern. Under EPA regulations, mitigation would be included in the hot-spot analysis done for a project, so it can be demonstrated whether or not mitigation is sufficient for the project to meet the Clean Air Act and conformity requirements. In other words, it is important that the agencies involved understand how many truck replacements would be necessary to ensure that the proposed highway expansion does not negatively impact the PM NAAQS or interim milestones and that the public health of the people living along this corridor is protected. However, in this case, Caltrans and Metro are assuming the I-710 Clean Truck Program sufficiently reduces the number of diesel trucks such that the project no longer needs a hot-spot analysis, ignoring the need for an analysis that would support such an assumption.

As explained above, EPA's regulation requires Caltrans to perform a PM hot-spot analysis. In addition, even if the I-710 Clean Truck Program were improved to qualify as a mitigation measure, it is unclear to EPA at this time how many trucks would remain on the I-710 once the Clean Truck Program would be in effect and if that number would be sufficiently low to declare that there is not a significant increase in the number of trucks. In the last few years, there have been projects determined to need a hot-spot analysis where the daily increase in diesel trucks has been under 4,000 in California and elsewhere.

A. Review of truck travel

The estimated increases in truck traffic projected for the I-710 project is based on the I-710 travel demand forecasting model developed for the air quality analysis in the I-710 EIR/EIS, which was published in early 2017. Modeling conducted for the I-710's NEPA document estimating the number of trucks necessary to be offset is now outdated, and therefore does not satisfy the conformity requirement to use the latest planning assumptions in an analysis (40 CFR 93.110). Improved and updated modeling is needed to better understand how many trucks are still projected, both with and without the I-710 Clean Truck Program, and the air quality impacts of those levels of trucks. This analysis must be based on the latest planning assumptions, including vehicle miles traveled (VMT) per truck, to demonstrate whether or not the project would result in any new or worsened PM NAAQS violations.

The current estimate that 4,000 diesel trucks will travel two trips per day is based on a 2013 study.¹ We do not have more recent data on truck traffic so we do not know how many trucks currently travel an average of 42.5 miles each day on I-710 or if there would be at least 4,000 such trucks that could be targeted by the I-710 Clean Truck Program. Given the length of time to phase in the proposed program,

¹ Page 17 of November 15, 2013 Key Performance Parameters for Drayage Trucks Operating at the Ports of Los Angeles and Long Beach, Prepared by Andrew Papsen and Michael Ippoliti of CALSTART.

these diesel trucks may not all be on the road at the same time, and therefore, it is possible that more than 4,000 trucks (including more trucks traveling only one trip per day) may need to be replaced by the I-710 Clean Truck Program.

B. No scrappage/ No requirements for replaced vehicles

There are some program design elements which do not appear to support reduction in diesel traffic and PM emissions from the project. In order to be eligible for program funding for the I-710 Clean Truck Program, owners or operators would need to own trucks that travel “frequently” on I-710. The I-710 Clean Truck Program funds could be used to purchase additional trucks that the owners or operators agree will meet average weekday VMT thresholds within the 20-mile I-710 corridor. It is unclear what the minimum threshold would be since the stated objective of the program is to reach a target of 42.5 VMT per NZE/ZE truck per weekday “in aggregate, on average.”

EPA had previously assumed that the original trucks that are envisioned to be replaced through the I-710 Clean Truck Program (i.e., those that traveled “frequently” on I-710) would no longer be operating on the I-710 once the highway expansion is open to traffic. However, the I-710 Clean Truck Program does not include contractual restrictions or requirements to scrap the original vehicle, since, in Caltrans’ view, scrappage requirements would be considered as “barriers to program entry” by some applicants.² This approach does not appear to be consistent with EPA’s Diesel Retrofit and Replacement Guidance which discusses scrappage programs in light of parties seeking conformity or SIP credit. For more information about scrappage for truck replacements in conformity analyses, see EPA’s Diesel Retrofit and Replacement Guidance.³

Assuming that the financial incentive would be sufficient for some truck owners to accept, the I-710 Clean Truck Program could potentially incentivize *more* truck travel on I-710, for example:

- Since there is no requirement for trucks being replaced to be scrapped or in any way limited in traveling I-710, trucks being replaced could continue to operate on I-710 under the proposed program. With both the new and old trucks continuing to drive on I-710, this overall fleet expansion could increase VMT and particulate matter emissions, burdening local communities and possibly the larger nonattainment area.
- Under the proposed program, instead of relying on historical travel data, any truck owner agreeing to a minimum VMT on I-710 could receive the financial incentive, and applicants could get a higher ranking in the competition for funding “for agreeing to add additional VMT on I-710.” This aspect could incentivize more travel on I-710.
- The Program is described as having check-ins every six months to provide “early warning indicators so that corrective action can be taken by recipients to get back on track before penalties are invoked.” The only type of “corrective action” that EPA can envision would be for truckers to drive more miles on I-710. If this assumption is true, such an action could incentivize more heavy-duty truck travel on I-710.

² Pages 2-3 of July 27, 2020 I-710 Clean Truck Program Responses to Technical Questions.

³ Page 9 of March 2018 Diesel Retrofit and Replacement Projects: Quantifying and Using Their Emission Benefits in SIPs and Conformity, Guidance for State and Local Air and Transportation Agencies, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100U3LT.pdf>.

IV. Technical Issues with Program Implementation and Enforceability

EPA continues to consider the I-710 Clean Truck Program to be a mitigation measure that would need to be federally enforceable as part of a conformity determination with a PM hot-spot analysis.⁴ EPA's PM Hot-spot Guidance provides a description of the types of "mitigation and control measures that could be considered by project sponsors to reduce emissions and any predicted new or worsened PM NAAQS violations" in Section 10 of the Guidance.⁵ The first category of mitigation and control measures discussed in this document is "Retrofitting, replacing vehicles/engines, and using cleaner fuels." The proposed I-710 Clean Truck Program belongs in this category, as it is designed to replace diesel vehicles with those that use cleaner fuels. Because this program would be a mitigation measure, a written commitment⁶ is necessary for it to be relied upon in a conformity determination, per 40 CFR 93.125(a):

a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local CO, PM₁₀, or PM_{2.5} impacts. *Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations* for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by §§93.118 ("Motor vehicle emissions budget") and 93.119 ("Interim emissions in areas without motor vehicle emissions budgets") or used in the project-level hot-spot analysis required by §93.116 [emphasis added].

As noted above, in October 2018, Region 9 sent an email to Caltrans with an attachment with preliminary, staff-level information for a written commitment. In the Caltrans and Metro response letter of October 2019, Caltrans and Metro claimed that the I-710 Clean Truck Program "is not intended to mitigate air quality impacts. Rather, it has been designed in conjunction with the other elements that comprise the entire I-710 project – to improve air quality in general."

EPA does not see any distinction. The purpose of improving air quality in general does not change the fact that the I-710 Clean Truck Program is a mitigation or control measure. In fact, mitigation measures must necessarily improve air quality in order to offset a project's emissions. Section 10 of the PM Hot-Spot Guidance recognizes that there may be other programs not directly related to the project that improve air quality in general that are still mitigation measures. For example, in Section 10.2.5, EPA states: "Controlling emissions from other sources may sufficiently reduce background concentrations in the PM hot-spot analysis" and thus still count as mitigation measures.⁷

⁴ A written commitment can be enforced by EPA directly against project sponsors under section 113 of the Clean Air Act, which authorizes EPA to enforce the provisions of rules promulgated under the Act, and by citizens under section 304 of the Clean Air Act. See 58 FR 62199.

⁵ *Transportation Conformity Guidance for Quantitative Hot-spot Analyses in PM_{2.5} and PM₁₀ Nonattainment and Maintenance Areas*, EPA-420-B-15-084, November 2015, available on EPA's web site at <https://www.epa.gov/state-and-local-transportation/project-level-conformity-and-hot-spot-analyses#pmguidance>, p. 149.

⁶ As defined in 40 CFR 93.101, "Written commitment for the purposes of this subpart means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan."

⁷ Same source, Section 10.2.5, p. 152.

In the October 2019 letter, Caltrans and Metro provided several arguments, such as that the I-710 Clean Truck Program does not need a written commitment because the program is (1) a core element of the broader project, not a mitigation or control measure and (2) dependent upon a multi-agency commitment including agencies outside of Caltrans and Metro. The letter stated that if the I-710 Clean Truck Program is not successful due to future uncertainties that result in significant increases in diesel truck traffic, the program “would be subject to re-evaluation and/or supplemental documentation. Therefore the EIR/EIS is a written commitment that the Clean Truck Program is an integral part of the project.” The September 2020 document describing the Clean Truck Program contains no further discussion of a written commitment to be provided by Metro. Therefore, we assume that Caltrans and Metro’s position continues to be that they do not believe that a written commitment is necessary.

As we described in our March 3, 2020 letter, EPA’s position is that the Clean Truck Program is a mitigation measure and the EIR/EIS does not suffice as a written commitment under the requirements of EPA’s transportation conformity regulations. Caltrans’ and Metro’s proposal that the I-710 project does not need a PM hot-spot analysis depends on the I-710 Clean Truck Program reducing the number of diesel trucks. As explained above, EPA disagrees and believes the project requires a hot-spot analysis under the Clean Air Act and EPA’s implementing regulations. A program to reduce PM emissions that is necessary for a transportation project to demonstrate conformity requires a written commitment, per 40 CFR 93.125.

EPA’s October 2018 email included preliminary information for a written commitment. This paper (“Preliminary Information for the I-710 ZE/NZE Truck Deployment Program Written Commitment, October 23, 2018 – staff draft”) provided staff thoughts about the types of information that a written commitment should include per the regulatory definition in 40 CFR 93.101:

- a description of the action,
- a schedule for completion,
- a demonstration that funding has been authorized by the appropriating or authorizing body (and is surplus to what would be funded in the no-build alternative), and
- acknowledgment that the commitment is an enforceable obligation under the SIP.

We provided this document to help Caltrans consider what would be needed for the I-710 Clean Truck Program, given that at the time, there was just a mention of the program in the I-710 NEPA documentation without any detail.

To date, Caltrans and Metro have not developed a written commitment for this project. In addition, information provided to EPA thus far about the I-710 Clean Truck Program would not be sufficient to meet the regulatory definition of a written commitment as described in the following paragraphs below.

A. Description of the Action

A written commitment must contain a description of the program. (40 CFR 93.101). EPA’s October 2018 paper indicated that the written description of the program should be fairly detailed, and include information about the agency implementing the program, identification of potential participants, truck activity, data and assumptions relied upon to estimate VMT, tracking and enforcement and verification of the program parameters, scrappage of replaced vehicles, and information about the number and type of support facilities. Information provided to EPA thus far lacks detail as many aspects of the program are not described and are left to the Steering Committee to design, fund, and implement.

While Metro has authorized \$50 million and started defining the I-710 Clean Truck Program in its September 2020 document, many of the details of the program and the associated funding are undeveloped⁸ and are described as evolving as the Steering Committee reviews the program performance and adjusts the program as needed. In order to be considered a mitigation measure to support a hot-spot analysis and CAA conformity determination, the program must be well-defined and fully funded with certainty that the project will not negatively impact the PM NAAQS or interim milestones.

A critical part of the I-710 Clean Truck Program, needed to ensure that the program would reduce truck traffic to levels needed to meet the CAA requirements, is the verification and compliance components of the program. The September 2020 document describes some of the overall compliance activities that Metro anticipates would be needed to support the I-710 Clean Truck Program, for example: developing a website to track trucks deployed, funding sources, funding expenditures, and ZE/NZE VMT data within the corridor. The document also describes how truck VMT data would be collected via a GIS monitoring device, based on geofencing within the I-710 corridor and that if a recipient truck does not meet the annual VMT requirement for one year, the truck owner would be required to reimburse some or all of the funding. However, it is not clear what specific targets would be required for individual truck owners. Metro has stated repeatedly that the program would target 4,000 trucks, at 42.5 VMT per weekday, in aggregate, on average. How this aggregate estimate translates to individual contracts to be verified is unclear at this time.

In addition, an important part of the program description is what technologies are targeted by a diesel truck replacement program. This level of detail is necessary to include in the written commitment to ensure successful program implementation as well as to include the effectiveness of reducing PM emissions for such truck replacements in the PM hot-spot analysis.

The September 2020 program description identifies transition to ZE trucks as a goal and indicates that the proposed I-710 Clean Truck Program includes a feature that allows for the funding of up to 20 electric charging stations and 10 hydrogen refueling stations between 2022 and 2035. However, the I-710 Clean Truck Program would only provide 4% of the initial \$50 million in funding, i.e., \$2 million, as seed funding for infrastructure and a target of 10% ZE trucks.⁹

While inclusion of these targets is an improvement from previous documents on the I-710 Clean Truck Program, Metro has made no specific commitment to any percentage of ZE trucks.¹⁰ In fact, Metro has stated that NZE trucks satisfy the primary goal of the program to improve air quality and reduce diesel particulate matter. In addition, there is no commitment to fund electric vehicle or hydrogen refueling infrastructure since in Metro's view, it is not essential to meeting the ZE/NZE truck development

⁸ Page 12 of the September 2020 Program Description describes how the program will be developed in more detail in a I-710 Clean Truck Manual which would be developed by Metro and the I-710 Steering Committee and be updated for each deployment phase.

⁹ Pages 7-8 and 26 of September 18, 2020 I-710 Clean Truck Program, Program Description.

¹⁰ Page 3 of July 27, 2020 U-710 Clean Truck Program Responses to Technical Questions.

objectives. Under Metro's proposed program, infrastructure would be funded by partner agencies only after the Final EIR/EIS is deemed valid.

B. Schedule for Completion

A written commitment must contain a schedule for completion. (40 CFR 93.101). EPA's October 2018 paper indicated that the schedule should include a detailed (month and year) for the Program's start, opening of support facilities, the schedule for program verification, and end date. Information provided thus far lacks detailed milestones by which someone could judge whether or not the project is on schedule. The September 2020 document includes some information on the major milestones for initiation of the three phases of the program and the total number of trucks to be targeted in each phase and the expected criteria for eligibility, program documentation and compliance reporting, but no additional details or milestones are provided, and there are no specific commitments to ensure compliance with planned milestones (600 trucks by 2025, 1,700 additional trucks by 2030, and 1,700 additional trucks) given to the Steering Committee.

C. Demonstration of Funding

A written commitment must contain a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body (40 CFR 93.101). This criterion has not been met, given that only \$50 million of the estimated \$200 million in program funding has been identified. In addition, since it is not clear if 4,000 trucks would offset the I-710 project's impacts, additional funding may be needed.

Information on funding for the I-710 Clean Truck Program is described in multiple sections throughout the September 2020 document. First, under 2. Program Goals and Milestones, the document states that in March 2017, Metro identified \$200 million as a funding target for the I-710 Clean Truck Program and in April 2020, Metro's Board programmed \$50 million for the first phase of the project.¹¹ Section 9, Funding for the I-710 Clean Truck Program, also identified the \$200 million target, but indicated that this total may not be needed due a variety of factors related to costs, and indicated that Metro hopes to get the remaining \$150 million by leveraging the initial \$50 million with assistance from the I-710 Steering Committee. The project sponsors for the I-710 Clean Truck Program have not yet identified funding sources for the estimated funding target, haven't committed to the funding sources, and may not have estimated the full funding necessary to mitigate the additional diesel traffic anticipated by implementation of the project. There is no assurance or guarantee that other funding will be obtained.

As stated above, in the fall of 2018, EPA provided draft information on the major components needed to support a written commitment to the I-710 Clean Truck Program. For funding, we indicated that the demonstration of funding should include, but not necessarily be limited to:

- the level of funding for the program in each year the program is in effect,
- funding agencies and legal authority, and
- the sources of the funding, including a discussion of how the funding will be documented and enforced over the time that the program operates.

The funding sources that were mentioned in the September 2020 document were only a list of potential sources that Metro would expect the Steering Committee to investigate to leverage the limited funding that Metro has obtained. Funds from these potential sources are uncertain, and therefore, there is currently insufficient commitment that the funding necessary to support the program is available.

¹¹ Page 6 of September 18, 2020 I-710 Clean Truck Program, Program Description.

The project sponsor has the responsibility for implementing the I-710 Clean Truck Program. However, Caltrans and Metro have placed responsibility for obtaining funding with a multi-agency Steering Committee. Metro has assigned this group of representatives from different agencies the task of identifying funding opportunities for the program, though the Steering Committee has no legal responsibility for the I-710 project or the associated Clean Truck Program. The anticipated roles and responsibilities identified only assign the Metro's board responsibility to approve fiscal plans, funding levels and approval of budgets and programming of the initial \$50 million as needed for the Clean Truck Program.

EPA is concerned that \$200 million may not be enough to ensure that the I-710 expansion project would not negatively impact the PM NAAQS and public health. The September 2020 document provides an average incentive estimate of \$45,000 to \$56,000 per NZE truck that is currently being considered for the I-710 Clean Truck Program.¹² If those costs, with the other estimated costs for the Incentive Reserve, Administration and ZE Power Infrastructure, and an assumption of 10% zero emission incentives at \$150,000 to \$188,000 are extended for replacement of the full 4,000 trucks, total costs could be closer to \$300 million. Based on these assumptions, the \$50 million that was programmed by the Metro Board is less than 20% of the total funding anticipated by extension of Metro's proposed budget for the first phase. A higher per truck funding commitment would also likely be needed to provide a realistic incentive.

D. Commitment is an Enforceable Obligation

A written commitment must include an acknowledgement that the commitment is an enforceable action. (40 CFR 93.101). The responsibility for the program's implementation belongs to Metro and Caltrans as the project sponsors, per 40 CFR 93.125(b). There has been no acknowledgement thus far that the I-710 Clean Truck Program would be an enforceable commitment by Metro.

The September 2020 document describes the different groups expected to implement the I-710 Clean Truck Program. The groups include the Metro Board of Directors, the I-710 Steering Committee and Metro staff with help from contractors and vendors. The Metro proposal states that the I-710 Steering Committee would be drawn from the Countywide Clean Truck Initiative (CCTI) and representatives from selected agencies and localities with a focused interest in the I-710 corridor. The roles and responsibilities of these groups are discussed in Appendix C of the September 2020 document as well as in the Memorandum of Understanding document that Metro is relying upon to create the I-710 Corridor Air Quality Steering Committee to Implement the I-710 Clean Truck Program.

The Steering Committee is tasked with obtaining funding to implement the program and is the main group to make recommendations and suggestions to improve the program, increase program applicants and participation, and optimize NZE/ZE travel within the I-710 corridor. The Metro board can authorize course corrections for the I-710 Clean Truck Program to ensure consistency with program objectives, milestone, and NZE/ZE VMT targets, but the Steering Committee must review, advise, and make the recommendations needed for these corrective actions.

¹² The cost breakdown provided the September 2020 document, in section 10.5. Cost Breakdown – Initial Deployment Phase, indicates a low cost breakdown of \$45,000, and a high cost of \$56,000 per low NOx Certified emission truck.

However, the proposed multi-agency Steering Committee does not meet the regulation's requirements for mitigation measures in 40 CFR 93.125(b): "Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments."

Conclusion

As described in this document, EPA finds there are significant issues with this proposal that are in conflict with the Clean Air Act and the transportation conformity regulation. EPA continues to support using ZE truck technology on the I-710 freight corridor but does not accept the proposal that the I-710 Clean Truck Program eliminates the need for a PM hot-spot analysis for the I-710 project. It is critical that public agencies develop a program that meets all of the regulatory requirements so that emissions will not increase and negatively impact the PM NAAQS and public health in the future.

We appreciate the opportunity to outline our concerns and hope to continue working with you on a new direction for the I-710 project and I-710 Clean Truck Program.