FRASCELLA & PISAURO, LLC.
ATTORNEYS AT LAW

Thomas P. Frascella*
Michael L. Pisauro, Jr.*

* Admitted in NJ & PA

Suite 209
100 Canal Pointe Boulevard
Princeton, New Jersey 08540
609-919-9500
609-919-9510 (fax)

May 22, 2006

Staff Working Group
Regional Greenhouse Gas Initiative

RE: RGGI Model Rule

Dear RGGI:

Please be advised that I represent the New Jersey Environmental Lobby (NJEL). NJEL membership represents individuals, other environmental groups and business throughout the State of New Jersey. Please accept the following as NJEL's comments to the proposed model rule.

As you are well aware, combating global warming is the greatest challenge and most important activity this and future generations face and engage in. The effects of global warming have been felt over the last several years and will continue to worsen in the future. We applaud the group and the States which have joined RGGI in this important first step in addressing global warming.

Before commenting on specific sections of the model rule, NJEL would like to provide general comments that should guide the implementation of the model rule. Given the

seriousness of global warming we must insure that all caps are stringent. We must also insure that if exceptions to the cap are allowed that they do not defeat the overall goal of RGGI. Exceptions must be few and truly not sources of meaningful emissions. While the model rule should be flexible and encourage efficiency, offsets and retirement of greenhouse gas allowances, this encouragement and flexibility should not be a loophole for entities to double dip. If these projects would have been engaged in due to other regulatory requirements or as required by consent orders, judicial/administrative orders or other legal settlements, the entity should not receive the benefits under RGGI. Additionally, the entity should have the burden of proof that it would not have engaged in the activity but for the RGGI rules in order to qualify.

NJEL's comments to specific provisions of the rule are below:

§XX-1.4(b) Exempting facilities that supply ten percent of their gross generation to the "grid" is a potential loophole which does not take into consideration on the actual amounts of greenhouse gases produced by these facilities. Without knowing that the actually contributions these facilities make to GHGs it may be an area where reductions should be made. Further, the rule is not clear on whether these facilities' emissions were calculated in generating the cap. It would be counter to the intent of RGGI for these facilities to be used in calculating in setting the baseline and determining the cap while at the same time removing them for compliance.

§XX-1.4(b)(3)(iii). We support the burden of proof requiring owners and operators prove that they met the restrictions on the percentage of annual gross generation. This places the burden on the party with the easiest access to the data.

§XX-1.5(c)(2). NJEL supports the method of calculating a violation at each ton emitted in excess of the budget.

§XX-5.3. There does not appear to be a workable definition of "Strategic Energy Purpose" within the rule itself, nor does it reference any outside statute or regulation for a definition. This is a potential area where individual states can create a loophole which will undermine the purpose of RGGI. The rule should define "Strategic Energy Purpose," for those programs which truly mitigate against environmental harms and not for purposes that will run counter to RGGI.

§XX-5.3(c). While we support this section's rewarding a facility for early reductions, the rule should be clarified. It would be inappropriate to reward a facility's reduction which in realty was caused by past exceedance of permit requirements or compliance with consent orders, court orders or other administrative/judicial remedies. If the reduction is caused by a plant exceeding their emission levels during the baseline period then they reduce the emissions during 2006, 2007 and 2008, the reductions should be considered merely compliance with the law and not rewarded under this section.

§XX-10.3(b). The relationship of this section to that of §XX-10.3(d)(1) is not completely clear. As long as an entity does not receive credits for retirement of greenhouse gas allowances that were required under foreign law or treaty, then NJEL supports this provision. To the extent that credit can be obtained for actions that were required anyway, this section would defeat the purpose of RGGI. Further, NJEL does have some concern on the ability of RGGI officials to confirm, audit or otherwise monitor compliance with retirements in a foreign country.

§XX-10.3(d)(1). We strongly support this provision in the model rule. A credit should be given only to those projects that are truly additional projects and not projects which are otherwise required by law; a settlement agreement, consent order or other judicial/administrative remedy/order. The purpose of the offset should be to reward those who go above and beyond the

requirements of RGGI and not allow those merely meeting legal requirements to “double dip.” NO credit should be given to projects that were funded by benefits charge funding or other incentives.

§XX-10.7(a)(ii) and (iii). As noted above in our comments to §XX-10.3(b) we are concerned over a RGGI officials’ ability to confirm offset projects in countries other than the U.S. If the existence or effectiveness of offsets cannot be effectively audited and confirmed, NJEL argues no additional allowance should be awarded under this section.

Again we would like to thank the states and the working group on putting together a program that will be a model for other regions and the federal government.

Very truly yours,

Michael L. Pisauro, Jr.