April 9, 2018

Virginia Department of Environmental Quality
Air Pollution Control Board
Re: Regulation for Emissions Trading [9 VAC 5 - 140]
1111 East Main Street, Suite 1400
P.O. Box 1105
Richmond, VA 23218

RGGI States' Comments on Proposed Virginia Regulation for Emissions Trading

The nine states participating in the Regional Greenhouse Gas Initiative (RGGI) are pleased to submit these comments on key program elements identified in Virginia's proposed regulation for emissions trading, including the regulatory compatibility of Virginia's proposal with RGGI's existing 2017 Model Rule.

The RGGI states applaud Virginia's progress towards implementing a market-based program to reduce greenhouse gas emissions. In considering Virginia's potential participation in our existing RGGI market, the RGGI states recognize many benefits of an expanded trading market, including increased economic efficiency and mitigation of the possibility of emissions leakage. Participation in RGGI has helped our nine states create jobs, save money for consumers, and improve the public health, while reducing power sector emissions and transitioning to a cleaner energy system. If implemented successfully, expanded RGGI participation will serve to amplify these benefits.

The RGGI states recognize the importance of ensuring that any new entrant into the RGGI market is fully compatible with our existing program. In studying Virginia's potential compatibility, topics to be considered include the alignment of key program elements, consistency in the use of regulatory language (such as the definitions of particular terms), and comparable stringency of the program as a whole.

The comments below focus primarily on regulatory compatibility. These regulatory compatibility comments are important for Virginia to meet the definition of a RGGI Participating State as set forth in the 2017 Model Rule, and to ensure the full fungibility of allowances. According to the Model Rule, a RGGI Participating State must have established a corresponding CO_2 Budget Trading Program regulation, and the revisions proposed below will help ensure that any final Virginia regulation may be considered a corresponding regulation from a regulatory standpoint.

Virginia has proposed a starting 2020 state budget of 33-34 million tons. The RGGI states recognize the importance of Virginia's allowance budget in establishing the stringency of Virginia's program and its impact on the overall stringency of the regional program. The RGGI states' considerations are informed by our track record of successfully reducing emissions faster than expected at the time of RGGI's initial program design. Due in part to Virginia's newly planned investments in complementary programs such as energy efficiency and clean and renewable energy, Virginia is likely to have similar opportunities to achieve greater reductions than expected. As such, the RGGI states encourage Virginia to take this into account when setting an allowance budget. Virginia could realize a measure of climate leadership by adopting a lower starting allowance budget than currently set forth in proposed regulation. Setting Virginia's initial budget at an appropriately ambitious level is particularly important given the nature of the consignment auction to private entities.

1. Make the definition of "allowance" consistent:

The Virginia proposed rule states at 6020 C, p. 932:

"Allowance" means an allowance up to one ton of CO_2 purchased from the consignment auction in accordance with Article 9 (9VAC5-140-6410 et seq.) of this part and may be deposited in the compliance account of a CO_2 budget source.

The RGGI states suggest that the above definition be replaced by the following, in order to be consistent with the definition of "CO_2 allowance" in the 2017 Model Rule referenced below. This change would help ensure the proper functioning of the RGGI allowance market, including for purposes of tracking of allowances to be used for regulatory compliance with the RGGI program.

"CO_2 allowance" means a limited authorization by the [REGULATORY AGENCY] *or a participating state under the CO_2 Budget Trading Program to emit up to one ton of CO_2, subject to all applicable limitations contained in this Part.*

2. Make the treatment of offsets consistent:

The Virginia proposed rule is currently silent regarding the potential use of CO_2 offset allowances. The RGGI states recommend that the Virginia rule specify that CO_2 offset allowances will be accepted for compliance, up to a maximum 3.3% of any entity's compliance obligation.

The RGGI states intend to amend the 2017 Model Rule to clarify the limit on offset allowance use. The RGGI states recommend inclusion of the following regulatory language on offsets, in order to be consistent with the to-be-amended 2017 Model Rule:

For CO_2 offset allowances, the number of CO_2 offset allowances that are available to be deducted in order for a CO_2 budget source to comply with the CO_2 requirements of [Section XX] *for a control period,* *initial control period, or an interim control period may not exceed 3.3 percent of the CO_2 budget source's CO_2 emissions for that control period or initial control period, or may not exceed 3.3 percent of 0.50 times the CO_2 budget source's CO_2 emissions for an interim control period, as determined in accordance with* [Subparts XX].

The RGGI states further suggest that a definition of "CO_2 Offset Allowance" will be necessary to support inclusion of the offset language offered above. The 2017 Model Rule defines "CO_2 offset allowance" as:

CO_2 offset allowance. A CO_2 allowance that is awarded to the sponsor of a CO_2 emissions offset project pursuant to section XX-10.7 and is subject to the relevant compliance deduction limitations of section XX-6.5(a)(3).

Note that these recommendations pertain to the fungibility and acceptance of CO_2 offset allowances for compliance under the RGGI trading program. The RGGI states leave it up to Virginia's discretion whether Virginia wishes to establish state-specific offset protocols, and to issue CO_2 offset allowances to qualifying projects within the state. Currently the Virginia proposed rule does not provide for the issuance of CO_2 offset allowances.

3. Make the definition of "CO_2 Budget Trading Program" consistent:

The Virginia proposed rule states at 6020 C, p. 933:

"CO_2 Budget Trading Program" means the Regional Greenhouse Gas Initiative (RGGI), a multi-state CO_2 air pollution control and emissions reduction program as a means of reducing emissions of CO_2 from CO_2 budget sources.

The RGGI states suggest that the above definition be replaced by the following, in order to be consistent with the definition of "CO_2 Budget Trading Program" in the 2017 Model Rule referenced below. Because this defined term is part of the regulatory definition of "Participating State," this change would help ensure that Virginia is considered a RGGI Participating State and that Virginia-issued allowances are fully fungible across the RGGI program:

"CO_2 Budget Trading Program" means a multi-state CO_2 air pollution control and emissions reduction program established pursuant to this Part and corresponding regulations in other states as a means of reducing emissions of CO_2 from CO_2 budget sources.

4. Make the CCR and ECR trigger prices consistent:

The Virginia proposed rule states at 6020 C, p. 933:

Beginning in 2020 and each calendar year thereafter, the CCR trigger price shall be 1.025 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent. The CCR trigger price in calendar year 2021 shall be $13.00. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1A.

The RGGI states note that the 2017 Model Rule modifies the CCR trigger price trajectory after 2020. The 2017 Model Rule states that the RGGI CCR will be $13.00 in 2021 and increase by 7% per year in the years following. To be compatible, RGGI states suggest the following for Virginia's rule:

The CCR trigger price in calendar year 2020 shall be $10.77. The CCR trigger price in calendar year 2021 shall be $13.00. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1A.

Virginia's proposed rule displays a list of CCR trigger prices in Table 140-1A. These prices differ from those shown in the RGGI 2017 Model Rule by one cent, for the prices starting in 2024 and ending in 2030. A revised table of CCR trigger prices consistent with the 2017 Model Rule is shown below:

2020	*$10.77*
2021	*$13.00*
2022	*$13.91*
2023	*$14.88*
2024	*$15.92*
2025	*$17.03*
2026	*$18.22*
2027	*$19.50*
2028	*$20.87*
2029	*$22.33*
2030	*$23.89*

Likewise, Virginia's proposed rule displays a list of ECR trigger prices in Table 140-1B. These prices differ from those shown in the 2017 Model Rule by one cent, for the years 2026, 2029, and 2030. A revised table of ECR trigger prices consistent with the 2017 Model Rule is shown below:

2021	*$6.00*
2022	*$6.42*
2023	*$6.87*
2024	*$7.35*
2025	*$7.86*
2026	*$8.41*
2027	*$9.00*
2028	*$9.63*
2029	*$10.30*
2030	*$11.02*

5. Clarify the definition of "conditional allowance:"

The Virginia proposed rule states at 6020 C, p. 934:

"Conditional allowance" means an allowance allocated by the department to CO_2 budget sources and to DMME. Such conditional allowance shall be consigned by the entity to whom it is allocated to the consignment auction…after which the conditional allowance becomes an allowance to be used for compliance purposes.

The RGGI states suggest a change to the final clause of this section, to clarify the relationship between a conditional allowance and a CO_2 allowance. The suggested clause is as follows:

"…after which the conditional allowance becomes a CO_2 allowance once it is sold to an auction participant."

A similar issue exists in 6430, p. 959, where the Virginia proposed rule states:

At the completion of the consignment auction, a conditional allowance shall become an allowance used for compliance purposes.

The RGGI states suggest a change to this language, to clarify the relationship between a conditional allowance and a CO_2 allowance. The suggested clause is as follows:

At the completion of the consignment auction, a conditional allowance sold at auction shall become a CO_2 allowance.

6. Revise an erroneous minimum reserve price:

The Virginia proposed rule states at 6020 C, p. 936:

"Minimum reserve price" means, in calendar year 2020, $2.00.

The minimum reserve price for RGGI auctions in 2020 will be $2.32. The RGGI states recommend correcting this number in order to be compatible with the 2017 Model Rule.

7. Make the definition of "receive" consistent:

The Virginia proposed rule states at 6020 C, p. 936:

"Receive" or "receipt of" means, with regard to CO_2 allowances, the movement of CO_2 allowances by the department or its agent from one COATS account to another, for purposes of allocation, transfer, or deduction.

The RGGI states suggest that this definition should match the updated definition in the 2017 Model Rule, as shown:

"Receive" or "receipt of" means, when referring to the [REGULATORY AGENCY] *or its agent, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the* [REGULATORY AGENCY] *or its agent in the regular course of business."*

8. Define "agent" in general terms:

The Virginia proposed rule states at 6020 C, p. 936:

"RGGI, Inc." means the 501(c)(3) non-profit corporation created to support development and implementation of the Regional Greenhouse Gas Initiative (RGGI). Participating RGGI states use RGGI, Inc., as their agent to conduct the consignment auction, and operate and manage COATS.

The RGGI states recommend deleting the definition of RGGI, Inc., while retaining the general concept of an agent designated to conduct auctions and manage allowance tracking.

9. Clarify the definition of "State:"

The Virginia proposed rule states at 6020 C, p. 937:

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

In clarifying the "conventional meaning" of the word "State," RGGI states recommend that Virginia's rule should also incorporate the broader 2017 Model Rule definition:

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

Also, the RGGI states recommend that the broader term "State" not be used in the Virginia regulation where the more specific term "Participating State" would be more appropriate. Where the term "Participating State" is used in the 2017 Model Rule, this term should also be used in the Virginia regulation instead of "State." This would help avoid unnecessary confusion and ensure compatibility.

10. Specify the retirement of unsold conditional allowances:

The Virginia proposed rule states in 6200 A & B, p. 944:

A. The department may retire undistributed CO_2 allowances at the end of each control period. B. The department may retire unsold CO_2 allowances at the end of each control period.

The RGGI states recommend that conditional allowances should not be allowed to be transferred, except to be sold at auction, retired, or withheld as part of an ECR trigger event. Accordingly, this phrase should reference undistributed and unsold "conditional allowances" instead of "CO_2 allowances":

Undistributed or unsold conditional allowances shall not be transferred, with the exception of a transfer to consign them to auction, retire them, or withhold them in the event of an ECR trigger event. The department may retire undistributed conditional allowances at the end of each control period. B. The department may retire unsold conditional allowances at the end of each control period.

A similar issue exists in 6210 E, p. 945, where the Virginia proposed rule states:

The department will convert and transfer any CO_2 allowances that have been withheld from any auction or auctions in the prior year into the Virginia ECR account…The department will withhold CO_2 ECR allowances as follows.

The RGGI states suggest that in the above section, "conditional allowances" should replace "CO_2 allowances." RGGI states also note that the clause "in the prior year" has been removed from the 2017 Model Rule, and recommend its removal here:

The department will convert and transfer any conditional allowances that have been withheld from any auction or auctions into the Virginia ECR withholding account…The department will withhold CO_2 ECR allowances as follows.

11. Revise auction timing requirements, using specific terminology:

The Virginia proposed rule states in 6210 I, p. 946:

Timing requirements for CO_2 allowance allocations shall be as follows.

> *1. By May 1, 2019, the department will submit to RGGI, Inc., the CO_2 conditional allowance allocations, in a format prescribed by RGGI, Inc., and in accordance with 9VAC5-140-6215 A and B, for the initial control period (2020).*
>
> *2. By May 1, 2020, and May 1 of every third year thereafter, the department will submit to RGGI, Inc., the CO_2 allowance allocations, in a format prescribed by RGGI, Inc., for the applicable control period, and in accordance with 9VAC5-140-6215 A and B.*

Consistent with the 2017 Model Rule and the recommendations made above, the RGGI states suggest that this section should remove references to RGGI, Inc. and replace with "its agent."

The RGGI states also suggest that this section should replace "CO_2 conditional allowance" and "CO_2 allowance" with "conditional allowance":

Timing requirements for CO_2 allowance allocations shall be as follows.

> *1. By May 1, 2019, the department will submit to its agent the conditional allowance allocations, in a format prescribed, and in accordance with 9VAC5-140-6215 A and B, for the initial control period (2020).*
>
> *2. By May 1, 2020, and May 1 of every third year thereafter, the department will submit to its agent, the conditional allowance allocations, in a format prescribed, for the applicable control period, and in accordance with 9VAC5-140-6215 A and B.*

12. Ensure that applicability is consistent with respect to fuels:

The Virginia proposed rule states in 6020 C, p. 935:

"Fossil fuel-fired" means the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 10% of the annual heat input on a Btu basis during any year.

The RGGI states note that this definition is inconsistent with and less stringent than the 2017 Model Rule, which sets a threshold of 5% of the annual heat input on a Btu basis during any year. States recommend that applicability provisions of the Virginia rule be consistent and at least as stringent as those of the 2017 Model Rule. This change is necessary in order to ensure that Virginia's regulation is a corresponding CO_2 Budget Trading Program regulation, such that Virginia can be considered a RGGI Participating State.

13. Ensure that applicability is consistent with respect to combined heat and power:

The Virginia proposed rule states in 6040 B, p. 938:

Exempt from the requirements of this regulation is any fossil fuel power generating unit owned by an individual facility and located at that individual facility that generates electricity and heat from fossil fuel for the primary use of operation of the facility.

This provision of the Virginia proposed rule does not set a threshold for what constitutes "primary use of operation of the facility." In the 2017 Model Rule, facilities that provide less than 10% of their power output to the grid are exempted from compliance obligations. The RGGI states suggest that the Virginia rule consistently adopt this 10% threshold. As stated above, the RGGI states recommend that applicability provisions of the Virginia rule be consistent and at least as stringent as those of the 2017 Model Rule. This is necessary in order to ensure that Virginia's regulation is a corresponding CO_2 Budget Trading Program regulation, such that Virginia can be considered a RGGI Participating State.

14. Clarify the allocation of CCR allowances:

The Virginia proposed rule states in 6210 D.1, p. 945:

The department will initially allocate…CO_2 CCR allowances for calendar year 2020.

RGGI states suggest that Virginia clarify how the CCR provisions will work.

15. Clarify that compliance includes the "initial control period:"

The Virginia proposed rule states in 6260 A, p. 951:

CO_2 allowances that meet the following criteria are available to be deducted in order for a CO_2 budget source to comply with the CO_2 requirements of 9VAC5-140-6050 C for a control period or an interim control period.

This section mentions requirements for both a "control period" and an "interim control period." However, the Virginia proposed rule includes a third type of control period, the "initial control period." This "initial control period" includes only the year 2020, as a means of synchronizing with the RGGI states' compliance schedule. RGGI states suggest that the "initial control period" should also be mentioned here, to specify that compliance requirements apply in 2020:

CO_2 allowances that meet the following criteria are available to be deducted in order for a CO_2 budget source to comply with the CO_2 requirements of 9VAC5-140-6050 C for an initial control period, a control period, or an interim control period.

16. Clarify the "quarterly pro rata basis" for consigning allowances to auction:

The Virginia proposed rule states in 6430, p. 959:

[C]onditional allowances shall be consigned by the CO_2 budget source…or DMME to each auction on a quarterly pro rata basis in accordance with procedures specified by the department.

The RGGI states understand the "quarterly pro rata basis" to mean that generators must consign one quarter of their yearly total of conditional allowances at each auction, rather than distributing the consigned amount over the quarterly auctions at their own discretion. RGGI states suggest that this language be made more explicit in the Virginia rule:

One quarter of the annual conditional allowance allocation shall be consigned by the CO_2 budget source…or the holder(s) of a public contract with DMME to each auction in accordance with procedures specified by the department.

17. Conclusion:

Expanding the RGGI trading market brings many benefits provided that compatible programs can be established. Making the changes outlined above to Virginia's regulation will help to ensure compatibility so that, as a regulatory matter, Virginia can be considered a RGGI Participating State.

The RGGI states are excited by the prospect of Virginia's potential participation in the RGGI program, and applaud Virginia's plans for investment in complementary programs such as energy efficiency and clean and renewable energy. We see an opportunity for Virginia to realize a measure of climate leadership by adopting a lower starting allowance budget than the 33-34 million tons currently set forth in Virginia's proposed regulation.

The RGGI states' comments have been informed by productive conversations with Virginia state staff and Agency Heads. States hope to continue the discussions in the future as Virginia makes further refinements to this proposed rule. The RGGI states are available to assist Virginia in addressing these comments as the state continues towards the development of a compatible program.

Sincerely,

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