

February 21, 2019

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 Re-Proposed Virginia Regulation for Emissions Trading

The nine states participating in the Regional Greenhouse Gas Initiative (RGGI) are pleased to submit these comments on Virginia's re-proposed regulation for emissions trading. The RGGI states continue to applaud Virginia's important steps towards implementing a market-based program to reduce greenhouse gas emissions, and note that the re-proposed rule addresses many of the points on which the RGGI states commented when Virginia proposed the original version of the rule. In particular, the RGGI states recognize that this revised rule contains a reduced starting CO₂ allowance budget; a change in line with the RGGI states' earlier comments that opportunities existed to make the rule more ambitious. The RGGI states find that a 2020 starting budget at or below the proposed 28 million short tons demonstrates comparable stringency with the existing program.

Aside from the starting budget, the RGGI states note other aspects of program design which remain important in ensuring that any new entrant's participation in the RGGI market is fully compatible with our existing program. The RGGI states require that each participating state promulgate a CO₂ budget trading program regulation that is consistent with the RGGI 2017 Model Rule. In Virginia's re-proposed CO₂ budget trading program regulation, the language specifying Virginia's base budget reductions between 2030 and 2040 is inconsistent with the RGGI 2017 Model Rule. Accordingly, the RGGI states strongly urge Virginia to adopt a consistent budget trajectory to the other participating states.

In the event that Virginia, or any participating state, wishes to effect changes in the region's long-term cap trajectory, the appropriate vehicle is the periodic RGGI program review process. Through this process, the participating states consider an appropriate trajectory for continued emissions reduction and arrive at a consensus decision supported by discussion, analysis, and stakeholder engagement. In previous program reviews, the states have twice reached consensus on plans to secure additional long-term emissions reductions. The participating states have committed to commencing the next program review by 2021.

As a regulatory matter, the RGGI states also note that terms, definitions, and other regulatory details should be internally consistent within Virginia's regulation, and those details should also be consistent with the 2017 Model Rule. The changes outlined below would ensure that Virginia's currently proposed regulation is fully compatible and consistent with the 2017 Model Rule, and will enable Virginia to be considered a RGGI Participating State as a regulatory matter. The page numbers reference the re-proposed rule that was included in Volume 35, Issue 12 of the Virginia Register of Regulations published on February 4, 2019.

As the RGGI states have previously emphasized, the participating states recognize the many benefits of an expanded trading market, including increased economic efficiency and mitigation of the possibility of emissions leakage. Participation in RGGI has helped the participating states create jobs, save money for consumers, and improve 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.

1. Revise the definition of a "conditional allowance."

The Virginia proposed rule states at 6020 C, p. 1412:

"Conditional allowance" means an allowance allocated by the department to CO₂ budget sources or 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 a CO₂ allowance once it is sold to an auction participant. A conditional allowance may also be contained in the CCR and may be auctioned.

The RGGI states suggest the following modification. This includes correcting the pluralization of "sources," and striking the last sentence. This sentence is redundant in that there already exists a separate definition for "conditional CCR allowance."

"Conditional allowance" means an allowance allocated by the department to a CO₂ budget source or to DMME. Such conditional allowance shall be consigned by the entity to which it is allocated to the consignment auction...A conditional allowance becomes a CO₂ allowance once it is sold to an auction participant.

2. Use consistent terminology to refer to conditional allowances.

The Virginia proposed rule states at 6020 C, p. 1409:

"Allocate" or "allocation" means the determination by the department of the number of CO₂ conditional allowances allocated to a CO₂ budget unit or to the Department of Mines, Minerals and Energy (DMME) pursuant to...."

The RGGI states suggest that "CO₂" should be removed from "CO₂ conditional allowances" in order to match the regulation's definition of "conditional allowance."

Note that this error also appears in the following sections:

- 6020 C "Allocation year."
- 6215 B.1, B.2, B.3.
- 6220 A.
- 6250 A.1.

3. Use the term "conditional allowances" where applicable.

The Virginia proposed rule states at 6020 C, p. 1409:

"Allowance auction" or "auction" means an auction in which the department or its agent offers CO₂ allowances for sale.

The RGGI states suggest that in this usage, the term "CO₂ allowances" should be replaced with "conditional allowances." According to the definitions in the proposed rule, the allowances would become CO₂ allowances only after they have been sold.

Note that this error also appears in the following sections:

- 6020 C "CO₂ emission containment reserve allowance"
- 6020 C "CO₂ emission containment reserve trigger price"
- 6020 C "Reserve price"
- 6020 C "Undistributed CO₂ [sic] allowances"
- 6020 C "Unsold CO₂ [sic] allowances"
- 6020 C "Virginia CO₂ Budget Trading Program adjusted budget"
- 6020 C "Virginia CO₂ Budget Trading Program base budget"
- 6210 H, H.3
- 6211 heading
- 6215 heading, A
- 6250 heading, B, C
- 6420 A.1, A.5, B.1

4. Update regulatory language to be consistent with the definition of a conditional allowance.

The Virginia proposed rule states at 6190 B, p. 1422:

The department will allocate conditional allowances to CO₂ budget units and to DMME. After a conditional allowance has been consigned in an auction by a CO₂ budget unit and the holder of a public contract with DMME...the conditional allowance becomes an allowance to be used for compliance purposes.

The RGGI states recommend that in this definition, the phrase “an allowance to be used for compliance purposes” should be replaced with “a CO₂ allowance once it is sold to an auction participant” in order to match the definition of a conditional allowance.

The department will allocate conditional allowances to CO₂ budget units and to DMME. After a conditional allowance has been consigned in an auction by a CO₂ budget unit or the holder of a public contract with DMME...the conditional allowance becomes a CO₂ allowance once it is sold to an auction participant.

5. Revise the definition of a “CO₂ CCR allowance.”

The Virginia proposed rule states at 6020 C, p. 1411:

“CO₂ cost containment reserve allowance” or “CO₂ CCR allowance” means a [conditional] CO₂ allowance that is offered for sale at an auction for the purpose of containing the cost of CO₂ allowances. CO₂ CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Virginia CO₂ Budget Trading Program base and adjusted budgets. CO₂ CCR allowances are subject to all applicable limitations contained in this part.

The RGGI states suggest that the definition should be revised in line with the following. This reflects the fact that conditional CCR allowances become CO₂ cost containment reserve allowances after being sold at auction.

“CO₂ cost containment reserve allowance” or “CO₂ CCR allowance” means an allowance that has been sold at an auction for the purpose of containing the cost of CO₂ allowances. CO₂ CCR allowances are subject to all applicable limitations contained in this part.

6. Revise the definition of a “conditional CCR allowance.”

The Virginia proposed rule states at 6020 C, p. 1412:

“Conditional CCR allowance” means a CCR allowance that may be offered for sale when the CCR is triggered. If any CCR allowances are unsold, they shall be returned to the CCR account and may be offered for sale in future auctions during the same year.

The RGGI states suggest the following modification.

“Conditional CCR allowance” means an allowance that may be offered for sale when the CCR is triggered. If any conditional CCR allowances are unsold, they may be offered for sale in future auctions during the same year. Conditional CCR allowances offered for sale at an auction are separate from and additional to conditional allowances allocated from the Virginia CO₂ Budget Trading Program base and adjusted budgets. Conditional CCR allowances are subject to all applicable limitations contained in this part.

7. Use the term “conditional CCR allowance” consistently with the revised definition.

The Virginia proposed rule states at 6020 C, p. 1411:

"CO₂ cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO₂ CCR allowances are offered for sale at an auction....

The RGGI states recommend that the term "CO₂ CCR allowance" should be replaced with "conditional CCR allowance," per the revised definition.

Note that this error also appears in the following sections:

- 6020 C "Virginia CO₂ Budget Trading Program adjusted budget"
- 6020 C "Virginia CO₂ Budget Trading Program base budget"
- 6210 B, C, C.1, C.2, C.3
- 6410 A.1, A.2, B, B.1, B.2, B.3, B.4, B.5

8. Revise the definition of "allocate" or "allocation."

The Virginia proposed rule states at 6020 C, p. 1409:

"Allocate" or "allocation" means the determination by the department of the number of CO₂ conditional allowances allocated to a CO₂ budget unit or to the Department of Mines, Minerals and Energy (DMME) pursuant to...."

The RGGI states recommend that the definition of "allocate or "allocation" be revised in line with the following to avoid using the word "allocate" within the definition.

"Allocate" or "allocation" means the determination by the department of the number of conditional allowances recorded in the conditional allowance account of a CO₂ budget unit or the Department of Mines, Minerals and Energy (DMME) pursuant to...."

9. Define the term "conditional allowance account."

In the Virginia proposed rule, sections 6230 A and 6250 A.1 refer to a "conditional allowance account," but there is no corresponding definition in section 6020 C.

The RGGI states recommend defining the "conditional allowance account" as a general COATS account established by the department for CO₂ budget sources and DMME or its contractor where conditional allowances allocated to CO₂ budget sources and DMME are held until auction.

10. Refer to DMME's account as a "conditional allowance account."

The Virginia proposed rule states at 6230 A, p. 1427:

Upon receipt of a complete account certificate of representation...the department or its agent will establish a conditional allowance account and a compliance account for each CO₂ budget source and a conditional compliance account for DMME for which the account certificate of representation was submitted.

The RGGI states note that DMME would not need a compliance account, and recommend revising this term to refer to a “conditional allowance account.”

Upon receipt of a complete account certificate of representation...the department or its agent will establish a conditional allowance account and a compliance account for each CO₂ budget source for which an account certificate of representation was submitted, and a conditional allowance account for DMME.

11. Remove reference to a “CCR account.”

The Virginia proposed rule states at 6020 C, p. 1412:

“Conditional CCR allowance” means an allowance that may be offered for sale when the CCR is triggered. If any CCR allowances are unsold, they shall be returned to the CCR account and may be offered for sale in future auctions during the same year.

The RGGI states recommend the below language.

“Conditional CCR allowance” means an allowance that may be offered for sale when the CCR is triggered. If any conditional CCR allowances are unsold, they may be offered for sale in future auctions during the same year.

12. Clarify the workings of the Virginia Consignment Auction Account.

6210 A and C refer to “the Virginia Consignment Auction Account” and “the Virginia Auction Account,” respectively. Neither term is defined in section 6020 C.

The RGGI states recommend that, if there will be a single auction account for Virginia consignors, the term “Virginia Consignment Auction Account” should be defined in section 6020 C. The proposed rule should also stipulate the following:

- Conditional allowances and conditional CCR allowances allocated for a calendar year will be automatically transferred to the Virginia Consignment Auction Account to be consigned to auction.
- Following each auction, all conditional allowances sold at the auction will be transferred from the Virginia Consignment Auction Account to winning bidders’ accounts as CO₂ allowances.
- Conditional CCR allowances sold at auction will be transferred to winning bidders’ accounts as CO₂ CCR allowances. Unsold conditional CCR allowances will remain in the Virginia Consignment Auction Account to be re-offered for sale at auction within the same calendar year. Conditional CCR allowances remaining unsold at the end of the calendar year in which they were originated will be made unavailable for sale at future auctions.

13. Use the phrase “initial control period” to refer to Virginia’s first year of participation.

The Virginia proposed rule states at 6020 C, p. 1409:

"Adjustment for banked allowances" means an adjustment applied to the Virginia CO₂ Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts...that are in addition to the aggregate quantity of emissions from all CO₂ budget sources in all of the participating states at the end of the control period in 2020 and as reflected in the CO₂ Allowance Tracking System on March 17, 2021.

The RGGI states suggest that the above definition be replaced by the text below. The term “control period” should be replaced by “initial control period,” to match the definition of the period from January 1, 2020 to December 31, 2020. The March 17, 2021 date should also be changed to March 15, 2021, in order to match the RGGI Model Rule.

- Note that the “March 17, 2021” error also appears in section 6210 E on page 203.

"Adjustment for banked allowances" means an adjustment applied to the Virginia CO₂ Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts...that are in addition to the aggregate quantity of emissions from all CO₂ budget sources in all of the participating states at the end of the initial control period in 2020 and as reflected in the CO₂ Allowance Tracking System on March 15, 2021.

14. Include the term “initial control period” when referencing requirements for any control period.

The Virginia proposed rule states at 6020 C, p. 1410:

“CO₂ allowance deduction” or “deduct CO₂ allowances” means the permanent withdrawal of CO₂ allowances by the department or its agent from a COATS compliance account to account for the number of tons of CO₂ emitted from a CO₂ budget source for a control period or an interim control period...”

The defined term “initial control period” should be included when referencing requirements for a control period. This note also applies to the following sections:

- 6020 C “CO₂ allowance deduction”
- 6020 C “CO₂ allowance transfer deadline”
- 6020 C “CO₂ budget emissions limitation”
- 6020 C “Compliance account”
- 6020 C “Excess emissions”
- 6020 C “Ton” or “tonnage”
- 6050 C (The RGGI states recommend including a new subsection to address initial control period.)
- 6050 D
- 6170 A
- 6200 A, B
- 6260 A, A.1, A.2, A.3, B, B.1, C.1, C.2, D (The RGGI states recommend including a new subsection to address initial control period.)

15. Correct an error in the definition of a “control period.”

The Virginia proposed rule states at 6020 C, p. 1413:

"Control period" means a three-calendar-year time period. The first control period is from January 1, 2021 to December 31, 2023, inclusive. The first two compliance years of each control period are each defined as an interim control period, beginning on January 1, 2022.

The RGGI states recommend that the control period from 2021 through 2023 be referred to as the “fifth control period” in order to align with the term used in the existing program. It can be clarified that the fifth control period is the first control period in which Virginia will participate. In addition, the interim control period start date should say “2021.”

"Control period" means a three-calendar-year time period. The fifth control period is from January 1, 2021 to December 31, 2023, inclusive, which is the first control period of Virginia's participation in the CO₂ Budget Trading Program. The first two calendar years of each control period are each defined as an interim control period, beginning on January 1, 2021.

The RGGI states again thank Virginia state staff and Agency Heads for the productive conversations that have informed these comments. Expanding the RGGI trading market brings many benefits, provided that compatible programs can be established. Making the changes to Virginia’s regulation outlined above will help to ensure compatibility, so that, as a regulatory matter, Virginia may be considered a RGGI Participating State. The RGGI states remain ready and available to assist Virginia in addressing these comments as the state continues in the development of a compatible program.

Sincerely,



Katie Dykes
Commissioner-designee
Connecticut Department of Energy and
Environmental Protection



Dallas Winslow
Chairman
Delaware Public Service Commission



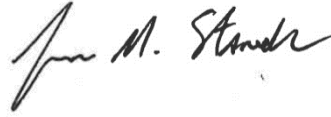
Shawn Garvin
Secretary
Delaware Department of Natural Resources and
Environmental Control



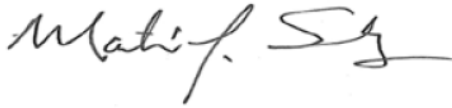
R. Bruce Williamson
Commissioner
Maine Public Utilities Commission



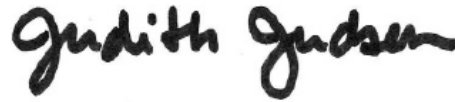
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Secretary
Maryland Department of the Environment



Jason M. Stanek
Chairman
Maryland Public Service Commission



Martin Suuberg
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Protection



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Peter Walke
Deputy Secretary
Vermont Agency of Natural Resources



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Vermont Public Utility Commission