



Testimony for CO2 Budget Trading Program Regulation

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Good evening. I'm Richard Marcil, a Harrisburg resident and a student at Widener University Commonwealth Law School here in Harrisburg. I'm speaking this evening as a representative of Widener's Environmental Law and Policy Society. The Society is a student organization that educates students and the community about local, national, and global environmental issues. It also provides students with opportunities to become involved in issues, and to learn about career opportunities in environmental law. The Society strongly supports the proposed RGGI regulation because it will help our state and our nation mitigate the harmful impacts of climate change while creating important job opportunities in Pennsylvania.

Over the summer, I conducted research into how RGGI states use the funds they raise through auctions of carbon allowances. My research considered the enacting legislation and regulations of all current RGGI member states as well as publicly available data from the RGGI organization to identify best practices in RGGI revenue investment. I will include the paper along with my written statement.

The regulation under consideration today wisely capitalizes on the lessons and experiences of those other states. Specifically, the planned investments in greenhouse gas abatement, renewable energy, and energy efficiency are consistent with three of the four major categories of investment of RGGI auction proceeds, as well as with the expenditure provisions circumscribing Pennsylvania's Clean Air Fund.

While the fourth major category employed by other RGGI states-- direct subsidization of low-income consumer electric bills -- is not included in Pennsylvania's investment mix, other measures that support environmental justice principles are. The RGGI program

must be implemented so as to ensure that energy efficiency measures, access to renewable energy sources, and GHG abatement efforts promote social equity and benefit our poorest and most vulnerable citizens. For this reason, the regulation should explicitly allow for RGGI funds to be invested in outreach, education, and worker retraining. While current RGGI member states contribute little to no funds toward these areas, they are nevertheless crucial if Pennsylvania is to ensure a “just transition” from an economy and energy generation model based on extractive industries to one based on clean energy.

Additionally, Pennsylvania should not allow transfers of RGGI proceeds into the general fund. Such transfers are discouraged by the RGGI model legislation and would inspire a negative public reaction, as they did in New York, Connecticut, and New Jersey. Moreover, transfers to the general fund would be inconsistent with RGGI’s primary purpose and goal -- fighting climate change.

I will close simply by echoing a few points that have already been made more eloquently by others. First, RGGI is constitutionally mandated under Article I, Section 27 of the Pennsylvania Constitution. The Constitution places a trustee responsibility on the state to conserve and maintain Pennsylvania’s natural resources for the benefit of all people. Consistent with this mandate, it is incumbent upon the state at all levels of government to ensure clean air and a clean atmosphere. The proposed RGGI regulation enhances the state’s ability to fulfill its duty as trustee, and should therefore be approved.

Second, research has demonstrated that “[i]n RGGI states . . . CO2 emissions from power plants have fallen by 45 percent from a base level measured from 2006-2008,” and “about half of [those] reductions [are] attributable directly to the RGGI program.” In other words, RGGI works.

Third, RGGI is an engine for economic growth.

A 2018 study from Analysis Group found RGGI netted about \$1.4 billion in economic value added between 2015-2017. It said RGGI compliance led to overall job gains. Those jobs include workers who perform efficiency audits and who install

energy efficiency measures in [residential] and commercial buildings, and staff performing training on energy issues. DEP projections show a net increase of 27,000 jobs under RGGI.

Finally, RGGI must only be a first step. The DEP must fight climate change not only by minimizing GHG emissions from power plants, but also from the transportation, industrial, and agricultural sectors.

I thank you for allowing me the opportunity to testify today and for proposing this important regulation. I yield the remainder of my time.

Allocations of Funds Under Pennsylvania's Regional Greenhouse Gas Initiative Program¹

Richard Marcil

Introduction

This paper will examine useful ways to utilize the funds collected via Pennsylvania's RGGI program. Utilizing a comparative methodology, I will examine spending in RGGI member states and consider the ways in which Pennsylvania could adopt these states' spending and programmatic approaches.

In the first part, I will provide background exploring the development of the RGGI rule in Pennsylvania. In the second part, I will explore what the RGGI model rule calls for and will summarize the ways in which states have generally preferred to spend the funds they have collected through RGGI auction sales. Next, I will explore each RGGI state's legal authority for spending their respective funds and the types of expenditures they make. In the fifth part, I will turn to Pennsylvania and consider the Commonwealth's RGGI regulation in more detail, with an eye toward whether any of the expenditures in other states are appropriate in light of the Clean Air Fund regulation. Finally, I will conclude and briefly summarize my major findings.

I. Legal and Administrative Background

The Regional Greenhouse Gas Initiative (RGGI) is an initiative of 10 Northeastern states that have created individual, but complementary, programs "to reduce greenhouse gas emissions from the power sector while generating economic growth."² The states achieve this goal by implementing a cap-and-trade program on carbon dioxide emissions from electric power plants in participating states.³

¹ Written Summer 2020 for an independent study course at Widener University Commonwealth School of Law. My deepest thanks to Professor John Dernbach and Rob Altenburg for their assistance and feedback. Any errors are my own.

² DEP, *What's RGGI?*, <https://www.dep.pa.gov/Citizens/climate/Pages/RGGI.aspx> (last visited July 24, 2020). Virginia is slated to join in 2021 as the 11th RGGI member state.

³ The program can be implemented by legislation or regulation. DEP joined RGGI through regulation.

The cap-and-trade program under RGGI sets a cap on total CO2 emissions from electric power generators in their states. To show compliance with the cap, power plants must purchase a credit for each ton of CO2 they emit on a quarterly basis. These purchases are made at auctions conducted by RGGI.⁴

In October 2019, Pennsylvania Governor Tom Wolf issued Executive Order 2019-07, which ordered the DEP to begin a rulemaking process that will allow Pennsylvania to participate in RGGI.⁵ The DEP was initially ordered to develop a plan and present it to the Environmental Quality Board by July 31, but in June, the deadline was extended to September 15.⁶ DEP developed a RGGI regulation consistent with the state's Regulatory Review Act.⁷ The regulation was presented to the Air Quality Technical Advisory Committee on February 13, 2020; the committee moved to hear more analysis and justification for RGGI prior to voting on the program itself.⁸ On May 7, 2020, the AQTAC considered whether RGGI should move to the EQB for consideration.⁹ The vote was tied, so the Committee did not forward the proposed rulemaking to the EQB.¹⁰ The regulation was also presented to the Citizens Advisory Council on May 19, 2020 with the request that it be

⁴ Commonwealth of Pennsylvania, Office of the Governor, *Governor Wolf Takes Executive Action to Combat Climate Change, Carbon Emissions*, Oct. 3, 2019,

<https://www.governor.pa.gov/newsroom/governor-wolf-takes-executive-action-to-combat-climate-change-carbon-emissions/>.

⁵ *Id.*; Pa. Exec. Order 2019-07 (Oct. 3, 2019).

⁶ Commonwealth of Pennsylvania, Office of the Governor, *Governor Wolf Reaffirms Commitment to Combat Climate Change, Provides Update on RGGI Process* (June 22, 2020),

<https://www.governor.pa.gov/newsroom/governor-wolf-reaffirms-commitment-to-combat-climate-change-provides-update-on-rggi-process/>.

⁷ Rob Altenburg, *It's Time to Move the RGGI Rulemaking Process Forward*, PennFuture Blog (May 14, 2020), <https://www.pennfuture.org/Blog-Item-Its-Time-to-Move-the-RGGI-Rulemaking-Process-Forward>.

⁸ Air Quality Technical Advisory Committee Meeting Minutes 14 (February 13, 2020), <http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Advisory%20Committees/Air%20Quality%20Technical%20Advisory%20Committee/2020/4-23-20/Meeting%20Minutes%20for%202-13-2020%20AQTAC.pdf>.

⁹ Air Quality Technical Advisory Committee Meeting Minutes 13-14 (May 7, 2020), <http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Advisory%20Committees/Air%20Quality%20Technical%20Advisory%20Committee/2020/8-13-20/MEETING%20MINUTES%20FOR%2005.07.2020.pdf>.

¹⁰ *Id.*

forwarded to the Environmental Quality Board, but the CAC declined to recommend proposing the rulemaking to the EQB.¹¹

The collection of funds is not the focus of this paper, but it is worth considering briefly whether DEP will be assessing a tax or collecting a fee. The difference between a tax and a fee is often unclear.¹² The legal test stated in McQuillin's Law of Municipal Corporations also applies to states:

In determining whether a charge imposed by a local government is a valid regulatory fee or an unconstitutional tax, courts will apply a three-part test. First the courts consider whether the primary purpose of the legislation in question is to "regulate" the fee payers or to collect revenue to finance broad-based public improvements that cost money, second, the courts determine whether the money collected from the fees is segregated and allocated exclusively to regulating the entity or activity being assessed, and third, the courts ascertain whether a direct relationship exists between the rate charged and either a service received by the fee payers or a burden to which they contribute. ... A regulatory fee is enacted for purposes broader than the privilege to use a service or to obtain a permit; rather, regulatory programs are for the protection of the health and safety of the public.¹³

Since RGGI is a regulatory scheme and auction revenues are used only in connection with activities intended to safeguard "the health and safety of the public" against the harm associated with CO2 emissions, RGGI auction revenues meet the conditions necessary to be considered fees. Moreover, under *City of Philadelphia v. SEPTA*, "The common distinction is that taxes are revenue-producing measures authorized under the taxing power of government; while license fees are regulatory measures intended to cover the

¹¹ Minutes of Webex Meeting of Citizens Advisory Council 10-11 (May 19, 2020), http://files.dep.state.pa.us/PublicParticipation/Citizens%20Advisory%20Council/CACPortalFiles/Meetings/2020_06/Minutes%20of%20CAC%20Meeting%205.19.20.pdf.

¹² Eben Albert-Knopp, *The California Gas Charge and Beyond: Taxes and Fees in a Changing Climate*, 32 Vermont L. Rev. 217, 227 (2007) (noting that "it is often difficult to squarely distinguish a tax from a fee since many assessments will have some characteristics of both"); Erin Scharff, *Green Fees: The Challenge of Pricing Externalities Under State Law*, 97 Neb. L. Rev. 168, 185 (2018) (noting that "whether a given levy is categorized as a tax or a user fee often determines whether the levy is valid. Unfortunately, the law distinguishing taxes from user fees is far from clear. ... Across the country, state courts have struggled to define these boundaries"); Hugh Spitzer, *Taxes v. Fees: A Curious Confusion*, 38 Gonzaga L. Rev. 335, 336 (2003) (noting that "Washington case law concerning the distinction between taxes and fees has been murky and confusing, primarily because the courts often resort to a simplistic dichotomy between taxes and regulatory fees").

¹³ 9 McQuillin Mun. Corp. § 26:17 (3d ed. 2020).

cost of administering a regulatory scheme authorized under the police power of government.”¹⁴

RGGI auction revenues are elicited by the state, not by a municipality, but there is no reason why the distinction identified by McQuillin and *City of Philadelphia v. SEPTA* should not also adhere at the state level. And since RGGI revenues are primarily “intended to cover the cost of administering a regulatory scheme,” rather than produce revenue under the state’s taxing power, those revenues are fees, not taxes.¹⁵

Whether the funds are treated as a tax or fee, it remains unclear how the DEP will be allowed to allocate those funds. As Mark Szybist of the Natural Resources Defense Counsel has explained:

The DEP's preliminary draft provides for proceeds to be deposited into Pennsylvania's Clean Air Fund established under the state Air Pollution Control Act. Since that law already clearly requires use of the monies in the fund "in the elimination of air pollution," the DEP's completed regulatory

¹⁴ *City of Philadelphia v. Southeastern Pennsylvania Transp. Auth.*, 303 A.2d 247, 251 (Pa. Cmwlth. 1973). The court subsequently defines license fees as charges “imposed by the sovereign, in the exercise of its police power, upon a person within its jurisdiction for the privilege of performing certain acts and which has for its purpose the defraying of the expense of the regulation of such acts for the benefit of the general public; it is not the equivalent of or in lieu of an excise or a property tax, which is levied by virtue of the government’s taxing power solely for the purpose of raising revenues.” (quoting *National Biscuit Company v. Philadelphia*, 374 Pa. 604, 615-16 (1953)).

¹⁵ See also *Thompson v. City of Altoona Code Appeals Bd.*, 934 A.2d 130, 133 (Pa. Cmwlth. 2007) (“A license fee is distinguishable from a tax[,] which is a revenue producing measure characterized by the production of a high proportion of income relative to the costs of collection and supervision”); *Greenacres Apartments, Inc. v. Bristol Township*, 85 Pa.Cmwlth. 572 (1984) (“A licensing fee, of course, is a charge ... imposed pursuant to a sovereign's police power for the privilege of performing certain acts, and which is intended to defray the expense of regulation. It is to be distinguished from a tax, or revenue producing measure, which is characterized by the production of large income and a high proportion of income relative to the costs of collection and supervision”); Albert-Knopp, *The California Gas Charge* at 221, 225 (noting that regulatory fees “serve regulatory purposes in one of two ways. They may do so directly by ‘deliberately discouraging particular conduct by making it more expensive.’ Or they may aid regulation indirectly by ‘raising money placed in a special fund to help defray the agency's regulation-related expenses.’ They may take the form of, among other things, burden-offset charges or inspection, processing, and licensing fees.” (quoting *San Juan Cellular Tel. Co. v. Pub. Serv. Comm'n of P.R.*, 967 F.2d 683, 685 (1st Cir. 1992)). Taxes, conversely, “are the primary means by which most governments acquire their funds” and “raise revenue to finance general government services and functions; this revenue is placed into a general fund from which all branches of government may draw. ... Because taxes are imposed arbitrarily and used generally, there is no assurance that tax dollars will benefit any given taxpayer. Due to this non-correspondence between money spent and benefit received, taxes are subject to heightened passage requirements that are not imposed upon fees”).

proposal is unlikely to go into more detail. Eventually, however, the DEP will need to clarify what kinds of projects and activities qualify for funding.¹⁶

II. How are Auction Funds Spent?

The RGGI model rule acknowledges that while “Allocation provisions will vary from state to state ... at least 25 percent of the allocations will go to a consumer benefit or strategic energy purpose.” This allocation is, in practice, only a suggestion, traditionally memorialized among the member states through a nonbinding memorandum of understanding.

“The use of auction proceeds varies by state, consistent with enabling legislation, regulation and policy.”¹⁷ But RGGI states “invest the majority of auction proceeds toward energy efficiency initiatives, renewable energy deployment, direct greenhouse gas emissions reductions strategies, and direct bill assistance for low-income ratepayers.”¹⁸ Only two states, Delaware and Maryland, devote funds to all four of these categories.

The following table was developed with the most recent (2018) Investment of RGGI Proceeds report.¹⁹ Percentages are based on states’ cumulative (all-time) expenditures, and may not total 100 percent due to rounding. Data on New Jersey is unavailable because it has only recently rejoined RGGI. New Jersey’s anticipated expenditures, however, are explored below in Part III.

¹⁶ Mark Szybist, *What’s Next for Pennsylvania and RGGI*, NRDC Expert Blog (April 15, 2020), <https://www.nrdc.org/experts/mark-szybist/rggi-pennsylvania-update>.

¹⁷ Sarah Cullinan, Pavel Darling, Paul J. Hibbard, and Susan F. Tierney, *The Economic Impacts of the Regional Greenhouse Gas Initiative on Nine Northeast and Mid-Atlantic States* 17 (April 17, 2018), https://www.analysisgroup.com/globalassets/uploadedfiles/content/insights/publishing/analysis_group_rggi_report_april_2018.pdf.

¹⁸ Connecticut Dept. of Energy and Environmental Protection, *Regional Greenhouse Gas Initiative (RGGI)* (last updated October 2019), <https://portal.ct.gov/DEEP/Air/Climate-Change/Regional-Greenhouse-Gas-Initiative-RGGI>; RGGI, Inc., *The Investment of RGGI Proceeds in 2017* 5 (October 2019), https://www.rrgi.org/sites/default/files/Uploads/Proceeds/RGGI_Proceeds_Report_2017.pdf.

¹⁹ RGGI, Inc., *The Investment of RGGI Proceeds 2018* 12-39 (July 2020), https://www.rrgi.org/sites/default/files/Uploads/Proceeds/RGGI_Proceeds_Report_2018.pdf.

State	Energy Efficiency	Renewable Energy	GHG Abatement Efforts	Administrative Expenses ²⁰	Energy Bill Assistance
CT	64%	28%		7.7%	
DE	71%	10%	7%	8%	5%
ME	82.6%			4.9%	12.5%
MD	29%	8%	9%	6%	48%
MA	81%		14%	5%	
NH	43%			3%	54%
NY	58%	24%	11%	7%	
RI	77%	13%	1%	9%	
VT	96.4%			3.7%	

These expenditures are themselves a subset of total proceeds. Seven percent of proceeds are actually transferred to various state general funds.²¹ Another six percent of proceeds are designated as future committed, meaning they

²⁰ Includes both expenses related to state-level administration as well as investments in RGGI, Inc.

²¹ *Id.* at 13. Transfers to the general fund are discouraged by the RGGI model rule and by the negative responses such moves have engendered. A recent Congressional Research Service report, for instance, notes that environmental groups were critical when New York and New Jersey “transferred auction proceeds to address state budget deficits.” Congressional Research Service, *The Regional Greenhouse Gas Initiative: Background, Impacts, and Selected Issues* 11 (updated July 16, 2019) (citing Sierra Club Press Release, *Additional \$10 Million in Clean Energy Funding Diverted* (April 23, 2013), <https://www.sierraclub.org/new-jersey/press-releases/0472>). And after Connecticut transferred more than \$28 million from the state’s RGGI fund, environmental nonprofits sued. Save the Sound Press Release, *Legislative Theft of Efficiency Funds Moves Forward as Legal Briefs Filed* (July 23, 2018), <https://www.savethesound.org/2018/07/23/press-release-legislative-theft-of-efficiency-funds-moves-forward-as-legal-briefs-filed/>. The suit was ultimately dismissed. Mary Fitzpatrick, *Energy-related Transfers to the General Fund* (November 7, 2018), <https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0304.pdf>.

could have been invested in 2019 or beyond.²² The remainder of the funds are investments devoted to the various categories outlined in the table above.

As the table illustrates, all states spend some program money on energy efficiency. The average expenditure on energy savings is 66.9 percent of total funds, while the median is 71 percent.

States may or may not devote funds toward the other three major expense categories. Five states spend RGGI auction monies on renewable energy. Overall—inclusive of all nine states—the average expenditure is 9.2 percent and the median is 8 percent. The average among those states that actually devote funds toward renewable energy programs, however, is 16.6 percent, with a 13 percent median.

Five states devote funds to GHG abatement efforts. Overall, the average contribution is 4.7 percent and the median contribution is just 1 percent. Among those states that actually allocate money for GHG abatement initiatives, the average is 8.4 percent while the median is 9 percent.

Bill assistance is the purpose toward which the fewest RGGI states devote auction funds. Overall, the average allocation is just 13.3 percent, and the median is zero. But an average of 29.9 percent of auction funds are devoted to bill assistance programs by states that undertake them; the median allocation in these states is 30.3 percent.

All states necessarily have to spend some money on administrative costs as well. The average expenditure on administrative costs is 6.1 percent, while the median is 6 percent. The administrative expenditure totals in the table above include the 1 percent expenditure paid to RGGI, Inc., the 501(c)(3) non-profit corporation that supports the development and implementation of RGGI.

III. State-by-state Analysis

Having explored how most states spend their funds, we will now turn to the legal and regulatory authority that enables state spending decisions.

²² *Id.* at 13, 41.

In most states, these allocation values are set by a combination of statute or regulation.

Connecticut

In Connecticut, as in many other RGGI states, the RGGI program was implemented by a statute that offers only a vague notion of how funds should be invested, and more specific spending priorities are determined by regulation.

Connecticut General Statute § 22a-200c, which established Connecticut's RGGI program, orders the state's Department of Energy and Environmental Protection to "invest the proceeds ... in energy conservation, load management, and Class I renewable energy programs. In making such investments, the Commissioner of Energy and Environmental Protection shall consider strategies that maximize cost effective reductions in greenhouse gas emission."

Actual spending priorities are set by Connecticut's Department of Energy and Environmental Protection in accordance with Section 22a-174-31 of the Department's regulations, which addresses control of carbon dioxide emissions.²³ Subsection (f)(6) of that regulation delineates the distribution of auction proceeds.

The regulation provides specific allocations for the auction revenues. But these allocations are only made of the funds below a certain cap that increases annually by 2.5 percent.²⁴ The current cap is approximately \$40.59 million. To date, however, Connecticut has not allocated any funds towards ratepayer relief.²⁵

The regulation requires investment of 7.5 percent of proceeds below the cap to be retained "for use in accordance with section 22a-200c(c) of the Connecticut General Statutes," which implements the state's Air Pollution Control Act.²⁶ Another 23 percent of the proceeds below the cap are

²³ Conn. Agencies Regs. § 22a-174-31 (2020).

²⁴ Conn. Agencies Regs. § 22a-174-31(f)(j) (2020).

²⁵ RGGI, Inc., *The Investment of RGGI Proceeds 2018* 15 (July 2020), https://www.rggi.org/sites/default/files/Uploads/Proceeds/RGGI_Proceeds_Report_2018.pdf.

²⁶ Conn. Agencies Regs. § 22a-174-31(f)(6)(A) (2020).

“transferred to an account held by the Connecticut Green Bank for the Clean Energy Fund. These funds are to be used to support the development of Class I renewable resources,”²⁷ defined by § 16-1(a)(20) of the General Statutes of Connecticut to mean electricity derived from solar power; wind power; a fuel cell; or geothermal sources, among others. But the lion’s share of auction funds—69.5 percent of auction revenues below the cap—are devoted to energy efficiency programs administered by the state’s electric utilities.²⁸

However, because Connecticut has transferred millions in auction revenues to its general fund, actual allocations are at odds with those prescribed by regulation.²⁹ In 2013, for instance, the legislature moved \$5 million from the RGGI account to the general fund “for the fiscal year ending June 30, 2015.”³⁰ In 2016, it did the same thing to the tune of \$3.3 million for the 2017 fiscal year.³¹ And in 2017, the legislature transferred \$10 million from the RGGI account to the general fund “for the fiscal years ending June 30, 2018, and June 30, 2019.”³²

As a result, in 2018, almost all (over 92 percent) of revenues raised through RGGI auctions were transferred to the general fund.³³ To date, 64 percent of RGGI auction funds have been put toward energy efficiency programs.³⁴ The state has devoted 28 percent of its RGGI revenues toward clean and

²⁷ Conn. Agencies Regs. § 22a-174-31(f)(6)(B) (2020).

²⁸ Conn. Agencies Regs. § 22a-174-31(f)(6)(C) (2020). The regulation allows for the withholding of “any portion of the funds” transferred to the Wallingford Electric Division and the Connecticut Municipal Electric Energy Cooperative for energy efficiency if they do not make “a full and accurate accounting of the use of all such funds” in their respective annual reports detailing the prior year’s use of RGGI auction funds. In addition, the regulation allocates only 69.5 percent “less any amount of revenue refunded pursuant to subsection (j),” which allows for some auction revenues to be refunded to the state’s Public Utilities Regulatory Authority under certain conditions. And Connecticut General Statute § 22a-200c allows the Commissioner of Energy and Environmental Protection to adopt regulations

²⁹ *The Investment of RGGI Proceeds 2018* at 15; Mary Fitzpatrick, *Energy-related Transfers to the General Fund* (November 7, 2018), <https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0304.pdf>.

³⁰ 2013 Conn. Pub. Acts 13-184 § 105.

³¹ 2016 Conn. Pub. Acts 16-3 § 181 (May Spec. Sess) (amending Conn. Gen. Stat. § 22a-200c).

³² 2017 Conn. Pub. Acts 17-2 § 682 (June Spec. Sess).

³³ *The Investment of RGGI Proceeds 2018* at 15. According to RGGI data, over \$15 million of auction proceeds in 2018 were transferred to the general fund; this far exceeds the \$10 million required for diversion by 2017 Conn. Pub. Acts 17-2 § 682. It is unclear why these amounts are at variance with one another.

³⁴ *The Investment of RGGI Proceeds 2018* at 12-39.

renewable energy. The remainder has been put towards administrative expenses. In Connecticut overall, RGGI proceeds “fund home energy audits, discounted lighting products, and incentivize the construction of more energy efficient homes. RGGI also supports lighting retrofit projects for commercial and industrial facilities, helping businesses save energy and money. Additionally, RGGI proceeds enable low-interest financing for clean and renewable projects.”³⁵

Delaware

Delaware’s RGGI program is authorized by the Delaware Code Title 7 §§ 6043-47. Section 6046 addresses auction revenues, and directs the secretary of Delaware’s Department of Natural Resources and Environmental Control to spend “[a]ll proceeds associated with the auction of CO2 allowances” on “public benefit purposes as defined herein.”³⁶ It also requires auction funds to be placed “in an interest bearing account with all interest directed to the account to carry out the purposes” of the statute.³⁷

The statute is very specific about the amount of money allocated for each purpose:

- “Sixty-five percent of the CO2 allowance proceeds shall be directed to the Sustainable Energy Utility (SEU).”³⁸ The SEU program helps citizens improve the energy efficiency of their homes and businesses by replacing old equipment with newer, more efficient models; financing building upgrades; and providing guidance for energy efficient building construction and design, among other services.³⁹ It also supports renewable energy projects and energy financing.⁴⁰
- “A total of 15% of the CO2 allowance proceeds shall be directed to low-income consumers, of which 10% shall be directed to the federally funded and state-administered Weatherization Assistance Program (WAP), and up to 5% shall be directed to the federally funded and

³⁵ Clean Energy Economy, *Explore RGGI in Your State*, <https://www.cleanenergyeconomy.us/explore-rggi-states/#rggi-connecticut> (last accessed August 30, 2020).

³⁶ Del. Code Ann. tit. 7, § 6046(a) (2020).

³⁷ Del. Code Ann. tit. 7, § 6046(b) (2020).

³⁸ Del. Code Ann. tit. 7, § 6046(c)(1) (2020). Per Del. Code Ann. tit. 7, § 6046(c)(3) (2020), this amount can be adjusted each year by a committee..

³⁹ Delaware Sustainable Energy Utility, *DESEU*, <https://www.energizedelaware.org/home/deseu/> (last visited June 30, 2020).

⁴⁰ Del. Code Ann. tit. 7, § 6046(c)(1) (2020).

state-administered fuel assistance (Low Income Home Energy Assistance Program or LIHEAP) programs.”⁴¹ These funds have been a useful investment for Delaware: for every \$1 invested in weatherization assistance, \$2.50 in benefits were realized.⁴²

- “Ten percent of CO2 allowance proceeds shall be directed to Greenhouse Gas Reduction Projects, selected by the Secretary following a periodic competitive proposal process.”⁴³ These projects must realize “reductions in greenhouse gases across the state through a competitive grant program open to all applicants.”⁴⁴ The program has provided grants to a broad variety of GHG emissions reduction projects, including those that provide organizational or community-wide GHG emissions audits; land use planning and transportation; transportation system efficiency; green infrastructure, sequestration, and resource conservation; local economic reinforcement; outreach and education campaigns; and various others that have the potential to reduce GHG emissions.⁴⁵
- “[U]p to 10% of CO2 allowance proceeds” are to be spent on “[e]xpenses for running the RGGI program.”⁴⁶ These expenses are to be paid first, prior to any other distribution of funds.⁴⁷

Consistent with the statute, Delaware has cumulatively spent 71 percent of its auction revenues on direct bill assistance, 10 percent on clean and renewable energy, 7 percent on GHG abatement efforts, 5 percent to direct bill assistance.⁴⁸

Delaware’s Department of Natural Resources and Environmental Control promulgated a corresponding regulation in 2018. The regulation primarily

⁴¹ Del. Code Ann. tit. 7, § 6046(c)(2) (2020). Per Del. Code Ann. tit. 7, § 6046(c)(3) (2020), this amount can be adjusted each year by a committee..

⁴² *Id.*

⁴³ Del. Code Ann. tit. 7, § 6046(c)(4) (2020).

⁴⁴ *Id.*

⁴⁵ Delaware Department of Natural Resources and Environmental Control, Delaware Greenhouse Gas Reduction Grant Program: Eligible Project Table, <http://www.dnrec.delaware.gov/ClimateChange/Documents/eligibleprojecttable.pdf> (last accessed July 21, 2020).

⁴⁶ Del. Code Ann. tit. 7, § 6046(c)(5) (2020).

⁴⁷ *Id.*

⁴⁸ *The Investment of RGGI Proceeds 2018* at 17.

addresses the structure of CO2 allowance auctions, and refers back to the statute on the issue of how auction proceeds are to be spent.⁴⁹ Overall, RGGI funds in Delaware are “directed to Delawareans, local governments, businesses, nonprofits and others across a wide spectrum of energy efficiency and clean energy investments.”⁵⁰

Maine

In Maine, RGGI expenditures are governed by two statutes, rather than by a statute and a regulation, as is the case in many other states. The RGGI program was established in 2008 under Maine Revised Statutes Title 38, Chapter 3-B § 580-B. The statute primarily addresses the basic structure of the auction program and establishes certain set-asides for select industries.⁵¹ It does not address the way in which funds are to be spent except by reference to the statute that does so, Maine Revised Statutes Title 35-A, Part 8, Chapter 97 § 10109.⁵²

Section 10109(3-A) addresses payments to so-called “affected customers,” which are essentially large manufacturers that consume a lot of energy.⁵³ These affected customers were awarded a share of the auction funds “in proportion to their retail purchase of electricity as measured in kilowatt-hours

⁴⁹ 7-1000-1147 Del. Admin. Code § 11.3.3 (2018) (“Proceeds associated with the sale of all of State of Delaware’s CO2 Allowances, whether sold in a multistate or a Delaware State CO2 Allowance Auction shall be generated and appropriated as provided for in 7 Del C Chapter IIA Regional Greenhouse Gas Initiative and CO2 Emission Trading Program”).

⁵⁰ Delaware Department of Natural Resources and Environmental Control, *Delaware and the Regional Greenhouse Gas Initiative (RGGI)* 3, http://www.dnrec.delaware.gov/Air/documents/Delaware%20and%20the%20Regional%20Greenhou se%20Gas%20Initiative_FAQ%202013_FINAL.pdf (last visited Aug. 15, 2020).

⁵¹ Me. Rev. Stat. Ann. tit. 38 § 580-B (2020).

⁵² Me. Rev. Stat. Ann. tit. 38 § 580-B(7) (2020) (“Revenue resulting from the sale of allowances must be deposited in the Regional Greenhouse Gas Initiative Trust Fund established under Title 35-A, section 10109”).

⁵³ Me. Rev. Stat. Ann. tit. 35-A § 10109(3-A) (2019). Affected customers are defined in the statute as “a customer who is not primarily in the business of selling electricity, is receiving service at a transmission or subtransmission voltage level as defined in section 10110, subsection 6 within the electrical utility transmission system administered by an independent system operator of the New England bulk power system or a successor organization and is an energy-intensive manufacturer, as defined in reports prepared by the U.S. Energy Information Administration.” The statute goes on to explain that “The commission may also determine that a manufacturer not defined as an energy-intensive manufacturer in reports prepared by the U.S. Energy Information Administration is an affected customer if that manufacturer meets the other requirements of the definition under this subsection.”

for the prior calendar year” up through the 2019-20 fiscal year.⁵⁴ If they spent their disbursement on “an efficiency measure approved by the trust in the fiscal year in which it is received,” they would “receive \$1 of assistance from the trust for every \$3 of the disbursement plus any additional customer funds that are applied by the affected customer toward the cost of the approved efficiency measure.”⁵⁵

The next part of the section lays out the purposes to which remaining auction revenues can be put, including “measures, investments, loans, technical assistance and arrangements that reduce electricity consumption, increase energy efficiency or reduce greenhouse gas emissions and lower energy costs at commercial or industrial facilities and for investment in measures that lower residential heating energy demand and reduce greenhouse gas emissions.”

The amount expended on each type of project is largely made at the discretion of the board of Efficiency Maine (EM),⁵⁶ an independent trust organization that seeks to “lower the cost and environmental impacts of energy in Maine by promoting cost-effective energy efficiency, conservation, and alternative energy systems.”⁵⁷ EM receives funds from a variety of Maine’s alternative energy and energy efficiency programs, and is permitted to “use RGGI funds for energy conservation programs that reliably reduce electricity consumption or GHG emissions.”⁵⁸

⁵⁴ *Id.*

⁵⁵ *Id.* This award is contingent upon “the total of assistance from the trust and the disbursement allocated by the commission under this subsection for that customer for that fiscal year” not exceeding “65% of the total measure cost.”

⁵⁶ Me. Rev. Stat. Ann. tit. 35-A § 10109(4)(A) (2019) (“The measures that lower residential heating demand must be fuel-neutral and may include, but are not limited to, energy efficiency improvements to residential buildings and upgrades to efficient heating systems that will reduce residential energy costs and greenhouse gas emissions, as determined by the board.”); Me. Rev. Stat. Ann. tit. 35-A § 10109(4)(C) (2019) (“The board may target bid competitions in areas or to participants as they consider necessary, as long as the requirements of paragraph A are satisfied”); Me. Rev. Stat. Ann. tit. 35-A § 10109(4)(E) (2019) (“The size of a project funded by the trust fund is not limited as long as funds are awarded to maximize energy efficiency”). The only specific allocations in the statute are the limits on administrative costs (capped at \$800,000 per year, subsection (4)(F)) and research “to develop new categories for carbon dioxide emissions offset projects” (capped at \$100,000 per year, subsection(4)(J)).

⁵⁷ *FY2018 Annual Report 2* (2018), <https://www.energymaine.com/docs/EMT-FY18-Annual-Report.pdf>.

⁵⁸ *Id.* at 3.

Since joining RGGI, Maine has realized over \$94 million in auction revenues.⁵⁹ Almost all (over 80 percent) of those revenues were directed toward energy efficiency improvements⁶⁰ that save consumers \$5 for every \$1 invested.⁶¹ A little over 12 percent of the revenues have been put toward direct bill assistance, and the remainder have been devoted towards administrative costs.⁶²

Maryland

Maryland's RGGI expenditures are governed by a broad regulation and a pair of more specific statutes. The authorizing statute—Md. Code Ann., Envir. § 2-1002—requires “all of the proceeds from the sale of Maryland allowances under the Regional Greenhouse Gas Initiative” to “be deposited in the Maryland Strategic Energy Investment Fund [SEIF] under § 9-20B-05 of the State Government Article.”⁶³ The SEIF pools funds from a number of sources,⁶⁴ but “RGGI auction proceeds are the primary component.”⁶⁵ In 2016, for instance, RGGI funds accounted for over \$40 million of the \$56.9 million in the SEIF.⁶⁶

The SEIF statute itself is the most specific source for the allocation of RGGI funds. It requires at least 50 percent of RGGI proceeds received by the SEIF “be used for the Electric Universal Service Program and other electricity assistance programs.”⁶⁷

⁵⁹ RGGI Advocates, *Explore RGGI in Your State*, <https://www.cleanenergyeconomy.us/explore-rggi-states> (last accessed July 13, 2020).

⁶⁰ *The Investment of RGGI Proceeds 2018* at 21.

⁶¹ *Explore RGGI in Your State*.

⁶² *The Investment of RGGI Proceeds 2018* at 21.

⁶³ Md. Code Ann., Envir. § 2-1002(g)(5) (LexisNexis 2020).

⁶⁴ Md. Code Ann., State Gov't § 9-20B-05(e) (LexisNexis 2020).

⁶⁵ Md. Dep't of the Env't, *Progress Through RGGI*, <https://mde.maryland.gov/programs/Air/ClimateChange/RGGI/Pages/RGGIProgress.aspx> (last visited July 24, 2020).

⁶⁶ Md. Energy Admin., *Maryland Strategic Investment Fund: Report on Fund Activities FY 2016* 30, (2016).

⁶⁷ Md. Code Ann., State Gov't § 9-20B-05(g)(1) (LexisNexis 2020).

It further requires at least 20 percent of funds “be credited to ... energy efficiency and conservation programs, projects, or activities and demand response programs, of which at least one-half shall be targeted to the low and moderate income efficiency and conservation programs account.”⁶⁸ This part of the statute has important social justice implications, as the low-income participants in these programs and projects receive their respective home upgrades at no cost.⁶⁹

At least 20 percent of RGGI funds are credited to clean and renewable energy programs, including “renewable and clean energy programs and initiatives; energy-related public education and outreach; and climate change and resiliency programs.”⁷⁰

The final expense category, administrative expenses, allows expenditures of up to 10 percent of auction revenues, but not more than \$5 million.⁷¹

On this final category, administrative expenditures, Maryland is within statutory guidelines. In 2018, the state spent 6 percent of RGGI revenues on administration and 1 percent on RGGI, Inc., and its all-time administrative expenses (including both RGGI, Inc. costs and direct administrative costs) total just 6 percent of its auction investments.

Unfortunately, it seems Maryland may not be entirely complying with its RGGI statute. Official data from the most recent (2018) RGGI, Inc. investment report indicates that just 9 percent of funds were devoted to clean and renewable energy in 2018,⁷² far below the minimum 20 percent required by statute. Perhaps this inadequacy is explained by the fact that RGGI reporting differentiates between “clean and renewable energy” and “GHG abatement” categories. If Maryland treats these as one category, that would bring them into statutory compliance, with a total of 26 percent of funds allocated to these two areas.⁷³

⁶⁸ Md. Code Ann., State Gov’t § 9-20B-05(g)(2) (LexisNexis 2020).

⁶⁹ Md. Code Ann., State Gov’t § 9-20B-05(g)(2)(i) (LexisNexis 2020).

⁷⁰ Md. Code Ann., State Gov’t § 9-20B-05(g)(3) (LexisNexis 2020).

⁷¹ Md. Code Ann., State Gov’t § 9-20B-05(g)(4) (LexisNexis 2020).

⁷² *The Investment of RGGI Proceeds in 2018* at 23.

⁷³ *Id.*

Harder to explain is the fact that Maryland reported a contribution of only 41 percent of RGGI revenues to direct bill assistance in 2018, and even the all-time donations to this category amount to just 48 percent of state RGGI proceeds.⁷⁴ But the statute calls for at least 50 percent of RGGI proceeds received by the SEIF “be used for the Electric Universal Service Program and other electricity assistance programs.”⁷⁵ There are no apparent other categories that could have absorbed these expenditures.

The regulation offers no additional clarification. Title 26, Subtitle 9 of the Code of Maryland Regulations states that “proceeds of the auction shall be placed in the Fund,”⁷⁶ which is defined elsewhere in the same subtitle as “any fund authorized by the legislature to hold proceeds from the auction of CO2 allowances for any of the uses identified in this subtitle.”⁷⁷ These funds are to be used by the Department “for climate change programs.”⁷⁸

Maryland’s apparent nonconformity with its RGGI laws likely means that the state is siphoning proceeds into its general fund. To date, Maryland has devoted 29 percent of its revenues to energy efficiency; 8 percent to clean and renewable energy; 9 percent to GHG abatement; 48 percent to direct bill assistance; and the remainder to administrative costs.⁷⁹

Massachusetts

Legal authority for RGGI in Massachusetts derives from two regulations and a statute. The statute, Mass. Gen. Laws ch. 21A, § 22, established the state’s RGGI program and provides the five uses towards which RGGI auction funds may be devoted:

1. “[T]o reimburse a municipality in which the property tax receipts from an electric generating station ... are reduced due to full or partial decommissioning of the facility or other change in operating status of

⁷⁴ *Id.*

⁷⁵ Md. Code Ann., State Gov’t § 9-20B-05(g)(1) (LexisNexis 2020).

⁷⁶ Md. Code Regs. 26.09.04.03(A), (C) (2020).

⁷⁷ Md. Code Regs. 26.09.01.02(B)(60) (2020).

⁷⁸ Md. Code Regs. 26.09.04.03(A), (D) (2020).

⁷⁹ *The Investment of RGGI Proceeds in 2018* at 23.

- the facility if such action also reduces the commonwealth's greenhouse gas emissions from the electric generator sector”;
2. “[T]o fund the green communities program established in section 10 of chapter 25A”;
 3. “[T]o provide zero interest loans to municipalities, which are not green communities under section 10 of chapter 25A for energy efficiency projects”;
 4. “[T]o promote energy efficiency, conservation and demand response; and”
 5. “[T]o reimburse the commonwealth for costs associated with the administration of the cap and trade program.”⁸⁰

The statute further says that the proceeds are to be placed in the RGGI Auction Trust Fund and allocated “in a proportion to be determined by the department of energy resources.”

The Department of Energy Resources’ CO2 Budget Trading Program Auction Regulation, 225 Mass. Code Regs. 13.06, echoes these spending priorities but does not actually determine the proportions according to which RGGI funds should be spent.⁸¹

One additional amendment to the state’s Air Pollution Control regulations, while notable for language that attends to environmental justice communities, offers little additional guidance on expenditures. It reads, in relevant part:

Proceeds of [RGGI] auctions shall be paid to the Department [of Environmental Protection] and deposited in a segregated account and administered by a Trustee appointed by [the Executive Office of Energy and Environmental Affairs (EEA)] and the Department. The funds shall be expended to further the goals of M.G.L. c. 21N by supporting programs or projects to reduce greenhouse gas emissions in order to mitigate the impacts of climate change including, but not limited to, clean energy and vehicle electrification projects; programs and projects to support adaptation to the impacts of climate change; mitigation or adaptation programs or projects involving communities that are

⁸⁰ Mass Gen. Laws ch. 21A, § 22(c) (2020).

⁸¹ 225 Mass Code Regs. 13.06(10) (2020).

already adversely impacted by air pollution including, but not limited to, environmental justice communities; and for the administration of any such programs or projects. Auction proceeds may also be used for the administration of 310 CMR 7.74. Auction proceeds shall be expended at the direction of the Trustee, in consultation with EEA and the Department. The Trustee, EEA and the Department may consult with and enter into agreements with other agencies within the EEA Secretariat to assist in the administration and expenditure of auction proceeds.⁸²

Without firm guidelines on expenditures, the Massachusetts DOER enjoys wide latitude to spend RGGI funds on statutorily appropriate programs. Since its first auction in 2008, the state has collected over \$500 million from RGGI auctions.⁸³ The majority of these funds (over 80 percent) have been committed to energy efficiency efforts.⁸⁴ GHG abatement efforts have received 14 percent.⁸⁵ The remainder has been put towards administrative costs.

New Hampshire

New Hampshire's RGGI program was established by a broad statute, and an accompanying statute provided the program with more specific spending directives. The broad, authorizing statute, N.H. Rev. Stat. Ann. § 125-O:21, ordered the state's Department of Environmental Services to "establish and enforce a CO2 emissions budget trading program consistent with this subdivision that shall be in substantial accordance with the RGGI program."⁸⁶ It also required "[r]evenues from the sale of allowances" to be "deposited in the energy efficiency fund established under RSA 125-O:23."⁸⁷

⁸² 310 Mass. Code Regs. § 7.74(6)(h)(1)(i) (2020). The statute referenced in this excerpt, Mass. Gen. Laws 21N, is the state's Climate Protection and Green Economy Act; section 7 of the Act authorizes the DOER to "consider the use of market-based compliance mechanisms to address climate change concerns" but does not directly address RGGI or expenditures under Massachusetts' RGGI program.

⁸³ *The Investment of RGGI Proceeds in 2018* at 26.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ N.H. Rev. Stat. Ann. § 125-O:21(I) (2019).

⁸⁷ N.H. Rev. Stat. Ann. § 125-O:21(III) (2019).

RSA 125-O:23, in turn, established the energy efficiency fund and developed some broad spending priorities for RGGI auction revenues. The first cost accounted for is “the department’s cost of administering” the energy efficiency fund and “the state’s share of the costs of the RGGI regional organization.”⁸⁸ No specific amount is referenced; rather, the statute only states that some “portion of the fund moneys shall be used to pay” for these administrative expenses.⁸⁹

Under RSA 125-O:23(II), all amounts in excess of the threshold price of \$1 for any allowance sale are to be rebated to all retail electric ratepayers in the state on a per-kilowatt-hour basis.⁹⁰

RSA 125-O:23(III) mandates that at least 15 percent of any funds remaining go toward a “low-income core energy efficiency program,” and up to \$2 million annually “to utility core programs for municipal and local government energy efficiency projects.”⁹¹ It also calls for the remainder to go towards “all-fuels, comprehensive energy efficiency programs administered by qualified parties.”⁹² A subsequent regulation refers back to the statute in addressing the allocation of auction proceeds.⁹³

Given this statutory landscape, it’s unsurprising that 54 percent of all RGGI funds collected in New Hampshire have been directed towards bill assistance.⁹⁴ Slightly over 40 percent of funds have been used for energy efficiency programs.⁹⁵ The remainder—just 3 percent—is used for administrative costs.

New Jersey

⁸⁸ N.H. Rev. Stat. Ann. § 125-O:23(I) (2020).

⁸⁹ *Id.*

⁹⁰ N.H. Rev. Stat. Ann. § 125-O:23(II) (2020).

⁹¹ N.H. Rev. Stat. Ann. § 125-O:23(III)(a), (b) (2020).

⁹² N.H. Rev. Stat. Ann. § 125-O:23(III)(c) (2020).

⁹³ N.H. Code Admin. R. Ann. Env-A 4802.05 (2020).

⁹⁴ *The Investment of RGGI Proceeds in 2018* at 29.

⁹⁵ *Id.*

New Jersey withdrew from RGGI in 2012 but rejoined earlier this year.⁹⁶ Legal authority for New Jersey’s program derives from the state’s Global Warming Response Act. The Act commits “the State to dedicate to consumer benefit purposes up to 100 percent of the revenues derived from the auction or other sale of allowances” and establishes the Global Warming Solutions Fund, into which all “moneys received as a result of any sale, exchange or other conveyance of allowances through a greenhouse gas emissions allowance trading program” are to be credited.⁹⁷

The fund itself is administered according to N.J.S.A 26:2C-51, which allocates 60 percent of revenues to the New Jersey Economic Development Authority (EDA) for “grants and other forms of financial assistance to commercial, institutional, and industrial entities to support end-use energy efficiency projects,” including “energy efficiency and renewable energy applications” to “develop combined heat and power production and other high efficiency electric generation facilities, to stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction or avoidance potential,” and “to develop qualified offshore wind projects.”⁹⁸

Another 20 percent of funds are awarded to the Board of Public Utilities “to support programs that are designed to reduce electricity demand or costs to electricity customers in the low-income and moderate-income residential sector with a focus on urban areas.”⁹⁹

The state’s Department of Environmental Protection receives the last 20 percent of auction revenues. Of those funds, 10 percent are “to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions,”¹⁰⁰ and 10 percent are “allocated to the department to support programs that enhance the stewardship and restoration of the State’s forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases.”¹⁰¹

⁹⁶ C2ES, *Regional Greenhouse Gas Initiative (RGGI)*, <https://www.c2es.org/content/regional-greenhouse-gas-initiative-rggi/> (last visited July 24, 2020).

⁹⁷ N.J. Stat. Ann. § 26:2C-45 (West 2020); N.J. Stat. Ann. § 26:2C-50 (West 2020).

⁹⁸ N.J. Stat. Ann. § 26:2C-51 (West 2020).

⁹⁹ N.J. Stat. Ann. 26:2C-51(b)(2) (West 2020).

¹⁰⁰ N.J. Stat. Ann. § 26:2C-51(b)(3) (West 2020).

¹⁰¹ N.J. Stat. Ann. § 26:2C-51(b)(4) (West 2020).

All of these allocations, however, are only made from the funds remaining after administrative costs are subtracted—a total of up to 8 percent annually.¹⁰²

Under the new program, most of the funds (60 percent) will be administered through the EDA, while the other two agencies will each receive 20 percent of the remaining funds.¹⁰³ Central to the state's RGGI investment plans is a focus on environmental justice and electrification initiatives.¹⁰⁴ More specifically, the state plans to devote its auction revenues to four main areas:

- 1) Catalyzing clean, equitable transportation (expected to receive three quarters of the state's RGGI funds);¹⁰⁵
- 2) Promoting blue carbon in coastal habitats (expected to receive 10 percent of RGGI funds);¹⁰⁶
- 3) Enhancing forests and urban forests (expected to receive 10 percent of RGGI funds);¹⁰⁷ and
- 4) Creating a New Jersey green bank (expected to receive 15 percent of RGGI funds).¹⁰⁸

During New Jersey's original tenure in RGGI, it invested in much the same way. The state devoted 60 percent of auction revenues to energy efficiency, combined heat and power facilities, renewable energy, and GHG reduction technology development.¹⁰⁹ Another 20 percent of funds were used to assist

¹⁰² N.J. Stat. Ann. § 26:2C-51(c) (West 2020).

¹⁰³ N.J. Dep't of Env'tl. Prot., NJ & RGGI: An Introduction to NJ Re-Entering the Regional Greenhouse Gas Initiative 19 (Mar. 29, 2018), <https://www.state.nj.us/dep/aqes/docs/rggipresentation.pdf>.

¹⁰⁴ N.J. Dep't of Env'tl. Prot., Murphy Administration Announces Public for Developing New Jersey's RGGI Strategic Funding Plan (Oct. 25, 2019), https://www.nj.gov/dep/newsrel/2019/19_0088.htm.

¹⁰⁵ N.J. Dep't of Env'tl. Prot., New Jersey RGGI Strategic Funding Plan 2020-2022 7, <https://nj.gov/rggi/docs/rggi-strategic-funding-plan.pdf> (last accessed July 12, 2020).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ N.J. Dep't of Env'tl. Prot., *Meeting New Jersey's 2020 Greenhouse Gas Limit: New Jersey's Global Warming Response Act Recommendations Report* 37 (December 2009), https://www.state.nj.us/dep/sage/docs/njgrwa_final_report_and_appendices_dec2009.pdf.

low- and moderate-income ratepayers.¹¹⁰ And the remaining 20 percent was evenly divided between programs for local governments to implement measures to reduce GHG emissions and programs to enhance opportunities for natural carbon sequestration through the restoration of forests and tidal marshes.¹¹¹

New York

In New York, legal authority for RGGI derives from two regulations, one promulgated by the Department of Environmental Conservation and the other by the State Energy Research and Development Authority (SERDA). The former authorizes the state's CO₂ cap-and-trade program at a general level, and says nothing about how auction funds are to be spent.¹¹² The latter commits New York to RGGI, specifically, and delineates particular spending priorities.

Part (c) of the SERDA regulation states that “The proceeds of the CO₂ Allowances Auctions will be placed into a segregated [SERDA] funding account, and shall not be commingled with other Authority funds.”¹¹³ The funds in that account are to be used “to promote and implement programs for energy efficiency, renewable or non-carbon emitting technologies, and innovative carbon emissions abatement technologies with significant carbon reduction potential,” as well as for reasonable administrative costs associated with the RGGI program.¹¹⁴ At least once per year, SERDA is to “convene a group of stakeholders representing a broad array of energy and environmental interests to advise it on how to best utilize said funds to achieve” RGGI goals.¹¹⁵

Along with Massachusetts and Rhode Island, New York may have the least restrictive spending requirements under its RGGI laws. The state has allocated 58 percent of its auction revenues to energy efficiency; 24 percent to

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² N.Y. Comp. Codes R. & Regs. tit. 6, § 242-1 to 10 (McKinney 2020).

¹¹³ N.Y. Comp. Codes R. & Regs. tit. 21, § 507.4(c) (2020).

¹¹⁴ N.Y. Comp. Codes R. & Regs. tit. 21, § 507.4(d) (2020).

¹¹⁵ N.Y. Comp. Codes R. & Regs. tit. 21, § 507.4(e) (2020).

clean and renewable energy; 11 percent to GHG abatement; and 7 percent to administrative costs.¹¹⁶

Rhode Island

Actual expenditures of Rhode Island's auction funds are governed by 23 R.I. Gen. Laws § 23-82-6 (2020), which states that "The proceeds from the auction or sale of the allowances shall be used for the benefit of energy consumers through investment in the most cost-effective available projects that can reduce long-term consumer energy demands and costs."¹¹⁷ Such projects include the promotion of energy efficiency and conservation, the promotion of renewable non-carbon emitting energy technologies, cost-effective direct rate relief for consumers, and associated administrative costs. The allocation of RGGI funds towards each of these approved project categories is "determined annually by the [Rhode Island Office of Energy Resources] in consultation with the [Energy Efficiency and Resources Management Council] and the [Renewable Energy Coordinating Board]."¹¹⁸

Rhode Island established its RGGI program through two air pollution control regulations, 250-RICR-120-05-46 and 250-RICR-120-05-47. The former "establish[ed] the Rhode Island component of the CO2 Budget Trading Program," while the latter "establish[ed] rules for administration of the distribution of CO2 allowances."¹¹⁹ Neither addresses how auction funds are to be spent.

Between 2008 and 2018, 77 percent of RGGI funds were directed towards energy efficiency programs.¹²⁰ About 13 percent of auction funds went to clean and renewable energy investments.¹²¹ Less than 1 percent went to greenhouse gas abatement initiatives, and the remainder went to administrative costs.¹²²

¹¹⁶ *The Investment of RGGI Proceeds in 2018* at 33.

¹¹⁷ 23 R.I. Gen. Laws § 23-82-6(a) (2020).

¹¹⁸ *Id.*

¹¹⁹ 250-120 R.I. Code R. §§ 05-46.1.1, 05-47.1.1 (2020).

¹²⁰ *The Investment of RGGI Proceeds in 2018* at 36.

¹²¹ *Id.*

¹²² *Id.*

Vermont

Vermont's RGGI program has a unique tripartite arrangement. The state has a detailed CO2 budget trading program authorized by regulation (12-031-002 Vt. Code R. § I-23-10) as well as a general statute (30 V.S.A. § 255) recognizing Vermont's participation in RGGI while also offering some limited guidance for disbursing auction proceeds. But a significant amount of spending allocations are also determined by an order issued by the state's Public Utility Commission (PUC).

The statute, 30 V.S.A. § 255, contains both specific and general guidance for how auction revenues are to be utilized.

The most specific provision of the statute, 30 V.S.A. § 255(d), says that "net proceeds above costs from the sale of carbon credits shall be deposited into the Electric Efficiency Fund." These funds "shall be used ... to help meet the building efficiency goals established under 10 V.S.A. § 581 by delivering heating and process-fuel energy efficiency services to Vermont consumers who use such fuel."¹²³

30 V.S.A. § 255(c)(2)(B) calls on the PUC to "establish a process to allocate 100 percent of the Vermont statewide budget of tradable power sector carbon credits to one or more trustees acting on behalf of consumers" that "provide[s] funds to defray the reasonable costs of the program trustee or trustees and Vermont's pro rata share of the costs of the RGGI regional organization." The statute also mandates the Public Utility Commission to "optimize the revenues received from the management and sale of carbon credits for the benefit of Vermont energy consumers and the Vermont economy."¹²⁴ Finally, the statute emphasizes that the PUC should "ensure that carbon credits allocated under this program and revenues associated with their sale remain public assets managed for the benefit of the State's consumers, particularly benefits that will result from accelerated and sustained investments in energy efficiency and other low-cost, low-carbon power, or heating system or building envelope investments."¹²⁵

The PUC's role is mostly ministerial, but remains unique among RGGI states. The statute calls for "the Public Utility Commission, by rule or order" to

¹²³ 30 V.S.A. § 255(d) (2020).

¹²⁴ 30 V.S.A. § 255(c)(2)(C) (2020).

¹²⁵ 30 V.S.A. § 255(c)(2)(F) (2020).

“establish a process to allocate 100 percent of the Vermont statewide budget of tradable power sector carbon credits to one or more trustees acting on behalf of consumers.”¹²⁶ The PUC subsequently issued just such an order outlining the ways in which the trustee was to disburse auction funds.

First, costs associated with the trustee and administrative costs are to be paid.¹²⁷ Next, the Agency of Natural Resources (ANR) and Department of Public Service (DPS) can seek the “reasonable administrative costs associated with their administration of RGGI” and “request funds to ‘stimulate or support investment in the development of innovative carbon emissions abatement technologies that have significant carbon reduction potential.’”¹²⁸ Next, the PUC and the Advisory Committee may also seek reasonable administrative costs, and the Advisory Committee may also choose to fulfill ANR and DPS funding requests.¹²⁹ Finally, the Advisory Committee can file comments before funds are disbursed to the ANR or DPS.¹³⁰ The remaining auction proceeds are “deposited into the Electric Efficiency Fund.”¹³¹

Pursuant to the PUC order, Vermont has devoted 77 percent of its total auction revenues to energy efficiency; 13 percent to clean and renewable energy; 1 percent to GHG abatement; and 9 percent to administrative expenses.¹³²

The regulation referred to at the outset offers no guidance on spending auction revenues. Instead, it lays out general provisions and structures the auction process.

IV. Pennsylvania in Context

How can Pennsylvania spend the money it receives from RGGI auctions? The current draft regulation states that the DEP “will retain control over the

¹²⁶ 30 V.S.A. § 255(c)(2) (2020).

¹²⁷ Vt. Public Utility Commission, *Order Implementing the Regional Greenhouse Gas Initiative Auction Procedures* 6-7 (2019).

¹²⁸ *Order* at 7 (quoting 30 V.S.A. § 255(c)(2)(G)).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *The Investment of RGGI Proceeds in 2018* at 36.

proceeds associated with the sale of all of Pennsylvania CO2 allowances, whether sold in a multistate or Pennsylvania CO2 allowance auction and will credit the proceeds to the Clean Air Fund.”¹³³ The Clean Air Fund was established in 1974 pursuant to the Air Pollution Control Act (APCA), which grants the DEP authority to implement the provisions of the CAA in Pennsylvania.¹³⁴ The Fund is to “be administered by the department for use in the elimination of air pollution.”¹³⁵ The APCA’s specific policy goals include protecting “the air resources of the Commonwealth to the degree necessary for the (i) protection of public health, safety and well-being of its citizens; (ii) prevention of injury to plant and animal life and to property; (iii) protection of the comfort and convenience of the public and the protection of the recreational resources of the Commonwealth; (iv) development, attraction and expansion of industry, commerce and agriculture.”¹³⁶

Disbursements from the Clean Air Fund are governed by 25 Pa. Code § 143.1. Under the regulation, funds are “disbursed at the discretion of the Secretary [of the DEP] for use in the elimination of air pollution.”¹³⁷ The regulation then denotes a number of examples of paradigmatic actions that qualify as useful “in the elimination of air pollution.”¹³⁸ These include:

- (1) Purchase and operation of equipment for the purpose of air monitoring and for the purpose of collecting and analyzing data on air quality and air contaminant emissions.
- (2) Purchase and operation of other equipment for the purpose of laboratory analyses of air pollutants, field studies of air pollutants or their effects, enforcement of air pollution control regulations, and office and administrative support.
- (3) Purchase of contractual services and consultation from firms or individuals with air pollution or other relevant expertise.

¹³³ Pennsylvania Department of Environmental Resources, Air Quality Technical Advisory Committee, *Draft Proposed Rulemaking: Chapter 145: Interstate Pollution Transport Reduction, Subchapter E: CO2 Budget Trading Program* 82 (proposed Feb. 13, 2020) (to be codified at § 145.401(e)), http://files.dep.state.pa.us/PublicParticipation/Citizens%20Advisory%20Council/CACPortalFiles/Meetings/2020_02/Draft%20PRN%20CO2%20Budget%20Trading%20Annex%20A%201-30-20.pdf.

¹³⁴ 25 Pa. Code § 143; Air Pollution Control Act, 35 Pa. Cons. Stat. § 4001.

¹³⁵ 35 Pa. Cons. Stat. § 4009.2(a) (2020).

¹³⁶ Air Pollution Control Act § 2 (2020).

¹³⁷ 25 Pa. Code § 143.1(a).

¹³⁸ 25 Pa. Code § 143.1(b).

(4) Purchase of materials or services and travel necessary for personnel training and for provision of information and educational materials on air pollution to schools, colleges, institutions and citizens.

(5) Extraordinary costs of litigation arising out of the enforcement of the air pollution laws of the Commonwealth such as the printing of briefs and records.

(6) Payment, in whole or in part, of the costs of a public project necessary to abate air pollution whether or not the exclusive purpose of that project is the abatement of air pollution. For projects where multiple purposes will be served, monies from the Clean Air Fund may be used to cover that proportion of the total expense that is estimated to be attributable to abate the air pollution portion of the project.¹³⁹

Many of these categories are consistent with the ways in which RGGI funds have been spent in other states. This section will examine whether and how other RGGI states are already spending their auction funds in similar ways.

(1) Purchase and operation of equipment for the purpose of air monitoring and for the purpose of collecting and analyzing data on air quality and air contaminant emissions.

This expenditure is similar to Part V of New Hampshire's 125-O:23, which calls for annual reports from all qualified parties who receive funding for "all fuels, comprehensive energy efficiency programs" under Part III(c).¹⁴⁰ These reports must include, among other things, "measurement and verification data that corroborate projected savings," as well as "[r]esulting actual and projected energy savings by fuel type and associated CO₂ emissions reductions."¹⁴¹ While the statute doesn't go so far as to say that the recipients of funds for the all-fuels program are authorized to use the funds they receive to buy and operate air monitoring equipment, such expenditures are implicitly validated -- after all, how can a reporting entity provide "actual" data on CO₂ emissions reductions without access to the appropriate equipment?

Another provision that allows investments in and operating air quality monitoring equipment is Maine's Title 35-A, Part 8, Chapter 97 § 10109, which permits the Attorney General to seek funds for costs associated with "the tracking and monitoring of allowance trading activity and managing and

¹³⁹ *Id.*

¹⁴⁰ N.H. Rev. Stat. Ann. § 125-O:23(V) (2019).

¹⁴¹ N.H. Rev. Stat. Ann. § 125-O:23(V)(b), (c) (2019).

evaluating the trust's funding of conservation programs.”¹⁴² This provision can be construed to permit the purchase of air monitoring equipment so as to ensure allowances have actually been traded (i.e., air polluters are not emitting more than permitted based on whatever their cap is).

Finally, RGGI, Inc. reports that many states utilize RGGI funds for GHG abatement efforts, the category which seems to best encompass this first expense provision of the regulation.

This is equally true for the second expense provision in the Pennsylvania regulation, which authorizes the:

(2) Purchase and operation of other equipment for the purpose of laboratory analyses of air pollutants, field studies of air pollutants or their effects, enforcement of air pollution control regulations, and office and administrative support.

This grab-bag provision authorizes expenditures for three purposes:

- 1) the purchase and operation of other equipment for the purpose of lab analyses;
- 2) enforcement; and
- 3) office and administrative support.

The aforementioned provision in the Maine statute, § 10109 (granting funds to the Attorney General), ticks many of these boxes as well: it could include lab or field analysis of air pollutants, and it was itself technically an administrative provision.¹⁴³ And while it does not actually contain an enforcement provision, the Attorney General is probably not investing in air monitoring equipment merely to satisfy their own curiosity.

It is important to note, however, that applying Pennsylvania’s pre-existing regulation to RGGI would yield an unusual result: the explicit inclusion of funds for enforcement. Only one other state -- New Hampshire -- makes mention of its enforcement powers in its RGGI laws. And New Hampshire doesn’t prioritize enforcement as a spending category; rather, it incorporates

¹⁴² Me. Rev. Stat. Ann. tit. 35-A § 10109(4)(F)(2) (2019).

¹⁴³ Me. Rev. Stat. Ann. tit. 35-A § 10109(4)(F)(2) (2019).

enforcement as an aspect of developing a carbon emissions budget trading program.¹⁴⁴

Less unusual is the inclusion of administrative costs overall as a category of expenditure. All RGGI states use some portion of auction funds for administrative costs. This keeps the programs solvent and prevents them from needing to later dip into the general fund or raise taxes.

(3) Purchase of contractual services and consultation from firms or individuals with air pollution or other relevant expertise.

This category above could also be useful. One appropriate expenditure under this category might include energy efficiency audits for private or commercial / industrial ratepayers. The open-ended phrase “other relevant expertise” also contains useful possibilities. It might include, for instance, construction firms or developers who specialize in green building design or energy efficiency upgrades for homes and businesses.

This funding area, however, could open the door to abuse. That’s likely why New Jersey has specified by statute that “No fund moneys shall be used ... to contract with outside consultants.”¹⁴⁵

On the other hand, Pennsylvania will not be alone in authorizing RGGI funds for contractual services and consultation. Maine, for instance, provides a mechanism by which “[e]xpenditures from the trust fund relating to conservation of electricity and mitigation or reduction of greenhouse gases must be made predominantly on the basis of a competitive bid process for long-term contracts, subject to rules adopted by the board.”¹⁴⁶

Anxieties over potential abuse in Pennsylvania, however, are misplaced. The DEP utilizes an open bidding system maintained by the Department of

¹⁴⁴ N.H. Rev. Stat. Ann. § 125-O:21(I), (VII) (2019).

¹⁴⁵ N.H. Rev. Stat. Ann. § 125-O:23(I) (2019).

¹⁴⁶ Me. Rev. Stat. Ann. tit. 35-A, §10109(4)(B) (2020).

General Services (DGS) for supply contracts between \$10,000 and \$20,000, and for service contracts over \$10,000.¹⁴⁷

Still, it would instill greater confidence in the fairness of the RGGI project if Pennsylvania's regulation included language ensuring that all contracts -- not just those overseen by the DGS -- were offered and accepted in a fair and open process. Pennsylvania should therefore amend its regulation to adopt language similar to that adopted by Maine would achieve that end.

(4) Purchase of materials or services and travel necessary for personnel training and for provision of information and educational materials on air pollution to schools, colleges, institutions and citizens.

Outreach, education, and job training are not high priorities for RGGI states. A 2018 analysis found that only 2 percent of all RGGI funds were devoted to these expense categories.¹⁴⁸

A notable exception is Maryland, which includes "grants to training funds and other organizations supporting job training for deployment of energy efficiency and energy conservation technology and equipment" within its definition of "energy and conservation programs."¹⁴⁹ And starting in 2021, it will also encourage "career paths in the clean energy industry" by offering \$1.25 million in grants for pre-apprenticeship job training programs, \$6 million in grants for youth apprenticeship job training programs, and \$750,000 in grants for job training that targets veterans and formerly incarcerated people.¹⁵⁰

While Maryland remains an outlier among RGGI states in this respect, Pennsylvania is right to join in investing in personnel training and outreach

¹⁴⁷ DEP, *Contracts, Supplies & Equipment*, <https://www.dep.pa.gov/Business/OtherPrograms/Bonding/ContractsSuppliesEquipment/Pages/default.aspx> (last accessed Aug. 23, 2020).

¹⁴⁸ Paul Hibbard, et. al., *The Economic Impacts of the Regional Greenhouse Gas Initiative on Nine Northeast and Mid-Atlantic States* 5 n.7 (2018),

https://www.analysisgroup.com/globalassets/uploadedfiles/content/news_and_events/news/analysis_group_rggi_report_april_2018_executive_summary2.pdf.

¹⁴⁹ Md. Code Ann., State Gov't § 9-20B-05(h)(1)(vii) (LexisNexis 2020).

¹⁵⁰ Md. Code Ann., State Gov't § 9-20B-05(f)(10) (LexisNexis 2020).

materials. Maryland produces more coal than any other RGGI state.¹⁵¹ It also produces more natural gas than any RGGI state except for New York.¹⁵² These dubious honors are likely why the state recognizes the need for retraining and outreach investment.

When Pennsylvania formally joins RGGI, it will become the coalition's leading producer of both coal and natural gas. To ensure a "just transition" in Pennsylvania -- one that allows the state to move towards a sustainable energy economy while providing workers (especially those who have been displaced by the decline of the fossil fuel industry) with new jobs and fair wages -- retraining and outreach expenditures will be crucial.

Retraining investments will not only provide jobs but also insulate RGGI from political backlash as opponents seek to paint the program as a job-killer. Critics have attacked RGGI as such for months.¹⁵³

And in the short term, investment in retraining is wise in light of the damage wrought by COVID-19 pandemic. Since clean energy is already a major job creator in the state,¹⁵⁴ it makes sense to capitalize on its proven track record of success to simultaneously accelerate the shift away from fossil fuels while rebuilding the state's shattered economy.

In addition to job retraining investments, outreach efforts will be equally necessary to educate the public as to why RGGI is necessary and to promote the alternative job opportunities that RGGI will make available.

¹⁵¹ Energy Information Administration, *Ranking: Coal Production, 2018*, <https://www.eia.gov/state/rankings/#/series/48> (last accessed Aug. 22, 2020).

¹⁵² Energy Information Administration, *Rankings: Natural Gas Marketed Production, 2018*, <https://www.eia.gov/state/rankings/#/series/47> (last accessed Aug. 22, 2020).

¹⁵³ Rachel McDevitt, *Pa. Lawmakers Hear From Industry, Environmental Advocates on Impact of Cap-and-trade Program*, Statelmpact Pennsylvania (June 24, 2020), <https://stateimpact.npr.org/pennsylvania/2020/06/24/lawmakers-hear-from-industry-environmental-advocates-on-impact-of-cap-and-trade-program/>.

¹⁵⁴ Rachel McDevitt, *Report: Clean Energy Jobs Among Fastest-growing in State from 2017-2019*, Statelmpact Pennsylvania (Aug. 20, 2020), <https://stateimpact.npr.org/pennsylvania/2020/08/20/report-clean-energy-jobs-among-fastest-growing-in-state-from-2017-2019/>.

(5) Extraordinary costs of litigation arising out of the enforcement of the air pollution laws of the Commonwealth such as the printing of briefs and records.

This provision addresses another category of administrative expenses. None of the other RGGI rules address anything pertaining to the costs of litigation. But as mentioned above, all states make allocations for administrative costs in their legal frameworks.

Legal practitioners have found that while agencies traditionally “use coercive enforcement power granted by state laws and regulations to deter violations, [] state agencies have increasingly used cooperation with companies as a strategy for achieving environmental compliance.”¹⁵⁵ Agencies like the DEP have a fair deal of leeway in determining “whether or not a company is in ‘compliance,’” a question that “often depends on the company's good-faith efforts and the ongoing bargaining relationship with the agency.”¹⁵⁶

As a result of DEP’s discretionary authority, litigation costs should comprise only a minuscule part of RGGI revenue expenditures.

(6) Payment, in whole or in part, of the costs of a public project necessary to abate air pollution whether or not the exclusive purpose of that project is the abatement of air pollution. For projects where multiple purposes will be served, monies from the Clean Air Fund may be used to cover that proportion of the total expense that is estimated to be attributable to abate the air pollution portion of the project.

This category, within the RGGI context, is clearly a GHG abatement effort. GHG abatement is another area toward which not all states contribute auction revenues. In New Jersey, up to 60 percent of net revenues could be devoted towards “investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction or avoidance potential.”¹⁵⁷ New York, similarly, makes specific allocation of

¹⁵⁵ Stephen Matzura, *Annual Survey of Pennsylvania Administrative Law: Environmental Law: Eureka Stone Quarry, Inc. v. Department of Environmental Protection: Justifying the DEP's Use of the Air Pollution Control Act Compliance Docket* 19 Widener L.J. 439, 439 (2010).

¹⁵⁶ *Id.* at 439-40.

¹⁵⁷ N.J. Stat. Ann. § 26:2C-51 (West 2020).

RGGI allowance proceeds for “innovative carbon emissions abatement technologies with significant carbon reduction potential.”¹⁵⁸ In Vermont, the Public Utility Commission’s plan to establish a process to allocate the state’s carbon credits to a trustee must, “where practicable, support efforts ... to stimulate or support investment in the development of innovative carbon emissions abatement technologies with significant carbon reduction potential.”¹⁵⁹ Altogether, five states have track records of investing RGGI auction proceeds in GHG abatement efforts.

Funds allocated for these purposes may be used to support “clean transportation and electric vehicle programs,” as well as technology, research, and development programs¹⁶⁰ This category also includes “[c]limate change policy research.”¹⁶¹

All of these investment categories could be pursued in Pennsylvania under the provision quoted above. But in Pennsylvania, a threshold question is: “What is a public project?”

There has been only one case referencing 25 Pa.Code § 143.1, and it did not explore the meaning of “public project.”¹⁶² Nor does the definition section of Article III, wherein 25 Pa.Code § 143.1 is located, contain such a definition.¹⁶³

It does, however, define “project” as “[a] physical change in or change in the method of operation of an existing facility, including a new emissions unit.”¹⁶⁴ “Facility,” in turn, means “[a]n air contamination source or a combination of air contamination sources located on one or more contiguous or adjacent

¹⁵⁸ N.Y. Comp. Codes R. & Regs. tit. 21, § 507.4(d) (2020).

¹⁵⁹ Vt. Stat. Ann. tit. 30, § 255(c)(2)(G) (2020). The “where practicable” language has allowed Vermont to spend absolutely nothing on GHG abatement efforts up until now. RGGI, Inc., *The Investment of RGGI Proceeds in 2018* 39 (2020).

¹⁶⁰ RGGI, Inc., *The Investment of RGGI Proceeds in 2018* 10 (2020).

¹⁶¹ *Id.*

¹⁶² *Com. Dep’t of Env’tl. Res. v. Pennsylvania Power Co.*, 490 Pa. 399, (1980) (holding that DEP’s effort to hold a regulated entity civilly liable for violating a technology forcing sulfur dioxide emission regulation was constitutional).

¹⁶³ 25 Pa. Code § 121.1 (2020).

¹⁶⁴ *Id.*

properties and which is owned or operated by the same person under common control.”¹⁶⁵

Unfortunately, these definitions don’t make sense in the context of 25 Pa.Code § 143.1; the regulation was clearly not meant to subsidize air contamination sources. Since the definitional section allows for the disregard of its definitions if “the context clearly indicates otherwise,”¹⁶⁶ as it does here, this cannot be the operational definition.

Because neither the relevant regulations nor the cases addressing it delineate what constitutes a public project for purposes of disbursements from the Clean Air Fund, it is necessary to look for answers in other contexts. One option is to resort to the Pennsylvania Statutory Construction Act, which applies to administrative rules¹⁶⁷ and allows a court to interpret a statute using the ordinary meanings of its words unless those words are defined differently.¹⁶⁸ The ordinary meanings of words are found in the dictionary, so a court applying the Act could use the dictionary definitions of “public” and “project” to establish the contours, at least, of what a public project is under 25 Pa.Code § 143.1.

Another potential source for understanding what “public project” means is the actual expenditures made from the Clean Air Fund. Unfortunately, the DEP does not distinguish the particular regulatory provision(s) under which an expenditure is made, so it is not possible to tease out a definition of “public project” by looking at actual DEP expenditures.

The next source is to consider other legal and regulatory definitions of “public project” within Pennsylvania. Prevailing wage laws are useful here. These laws require that workers on public projects be paid the prevailing wages in that industry in the place where the project is located. Pennsylvania’s Prevailing Wage Act says that a “public work” refers to the

construction, reconstruction, demolition, alteration and/or repair work other than maintenance work, done under contract and paid for in whole or in

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ 1 Pa. Code § 1502(a)(1)(ii) (2020).

¹⁶⁸ *Id.* § 1903(a) (2020).

part out of the funds of a public body where the estimated cost of the total project is in excess of twenty-five thousand dollars (\$25,000), but shall not include work performed under a rehabilitation or manpower training program.¹⁶⁹

To recapitulate the rule, a public project (“public work”) under this definition requires the satisfaction of four elements:

- (1) there must be certain work;
- (2) the work must be under contract;
- (3) the work must be paid for in whole or in part with public funds; and
- (4) the estimated cost of the total project must be in excess of \$25,000.

The benefit of this definition is that it echoes the existing regulation quoted above: disbursements from the Clean Air Fund can be used “in whole or in part” for a public project, which is in turn defined as a project paid for “in whole or in part” from public funds. It may be tautological, but the bottom line here is that an appropriate project under both the regulation and the Prevailing Wage Act is one funded partly or entirely by public monies.

And while it’s no problem for RGGI projects to be contracted out, limiting public works to only “construction, reconstruction, demolition, alteration and/or repair work” valued at more than \$25,000 yields a GHG abatement regime quite different than that of other RGGI states. While Pennsylvania’s regional neighbors engage in development of carbon emissions abatement technologies, clean transportation and electric vehicle programs, and related research and development programs, interpreting “public project” through the lens of the Prevailing Wage Act would mean that this provision would only be good for large-scale infrastructure projects -- utility-scale wind or solar installations, grid-connected battery storage facilities, subways and light rail, EV recharging stations, and so on.

Of course there is nothing stopping DEP from developing its own definition that would conform to a more common-sense notion of public project as simply a project intended to benefit the public generally, paid for (partly or wholly) with public funds, and owned (partly or wholly) by a public entity.¹⁷⁰

¹⁶⁹ 43 Pa. Cons. Stat. § 165-2(5) (2020).

¹⁷⁰ Roland Nikles, *“Is It Public, or Is It Not?” What to Watch for When Public and Private Become Entwined, and Why It Matters*, *Procurement Law*, 5, 8 (2011) (explaining that when considering whether a project is or is not public, “courts tend to look at three factors: the nature of a project’s

Such a definition would include both all the projects allowed under the Prevailing Wages Act definition as well as projects in which the total cost was less than \$25,000. This option would be preferable, since it could encompass those projects developed under the prevailing wage law as well as those developed under other RGGI states' GHG abatement regimes.

While these six categories are useful for expending RGGI proceeds in ways consistent with the practices of other states, § 143.1(b) allows DEP to go further. It includes a catch-all that would allow disbursement to almost any similar program, including direct bill assistance. The text of that subsection provides:

For the purpose of this chapter, the full and normal range of activities of the Department shall be considered to contribute to the elimination of air pollution []. Disbursement of Clean Air Fund monies may therefore be made for, *but may not be limited to* [emphasis added], the following purposes...

The six uses outlined above then follow the ellipsis.

The only major category of expenditures by current RGGI member states that might not be explicitly authorized under the Clean Air Fund regulation is direct bill assistance. The Fund's regulation requires the DEP to disburse funds "for the elimination of air pollution."¹⁷¹ But it could be argued that maintaining stable energy prices for ratepayers while transitioning to clean, renewable energy is an expenditure necessary for the elimination of air pollution.

ownership, the source of funds or financing, and the use to which the project will be put. As a general rule, whenever (a) a public entity directly or indirectly owns or will own part or all of a construction project, (b) a public entity disburses funds for, assumes debt on behalf of or any financial risk for, or guarantees a construction project, or (c) a construction project is being built for a public use, these are red flags that the project may be subject to some or all of the laws that typically govern public works projects." [Emphasis original.]; *Sullivan v. Faras-RLS Group, Ltd.*, 795 F. Supp. 305*, 306*-07* (D. Ariz. 1992) (Under the Miller Act, public works include "any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public." (quoting *United States ex rel. Noland Co. v. Irwin*, 316 U.S. 23, 29 (1941))).

¹⁷¹ 25 Pa. Code § 143.1(a).

In any case, the planned investment scenario laid out by the DEP envisions spending 31 percent of RGGI proceeds on energy efficiency, 31 percent on GHG abatement, and 32 percent on clean and renewable energy investments.¹⁷² (The remainder, presumably, will go towards administrative costs.) Given the foregoing analysis, these investment goals should be well within reach.

V. Conclusion

The RGGI model rule does not impose binding requirements on member states as to how they spend their auction revenues. But through both statute and regulation, member states have found creative and useful ways to spend revenues raised through allowance auctions on initiatives that maximize CO2 reductions.

Many of these expenditure categories are identical from state to state, though the amount of funds devoted to each varies. These categories include GHG abatement, clean and renewable energy, energy efficiency, and energy bill assistance. Additionally, all states use auction funds to cover the costs of administering their respective programs.

Pennsylvania's draft RGGI regulation allocates the proceeds of the auction to the state's Clean Air Fund,¹⁷³ the disbursements of which are governed by 25 Pa. Code § 143. This regulation provides six paradigmatic examples of expenditures consistent with "the elimination of air pollution."¹⁷⁴ It also provides a catch-all provision that allows "the full and normal range of activities" of the DEP to "be considered to contribute to the elimination of air pollution."¹⁷⁵ The breadth of this language grants the DEP significant leeway in how it can spend RGGI auction revenues. This freedom to develop and shift spending priorities will be crucial for Pennsylvania as it seeks to recover from the economic harm inflicted by COVID-19 and move away from fossil fuels in a sustainable manner.

¹⁷² Pennsylvania Department of Environmental Resources, Air Quality Technical Advisory Committee, *Draft Proposed Rulemaking (Slideshow)* 22, <http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Advisory%20Committees/Air%20Quality%20Technical%20Advisory%20Committee/2020/5-7-20/AQTAC%20PA%20CO2%20Budget%20Trading%20Program.pdf>.

¹⁷³ *Draft Proposed Rulemaking* at 82.

¹⁷⁴ 25 Pa. Code § 143.1 (2020).

¹⁷⁵ *Id.* § 143.1(b).

Appendix: Selected State Statutes and Regulations

Connecticut

Section 22a-174-31

(f)(6) Distribution of auction proceeds. Not later than December 31, 2014 and December 31 of each year thereafter, proceeds derived from the sale of CO₂ allowances or CO₂ CCR allowances held in the Connecticut Auction Account shall be distributed as specified in subparagraphs (A) to (D), inclusive, of this subdivision:

(A) Seven and one-half (7.5) percent of auction proceeds, less any amount of revenue refunded pursuant to subsection (j) of this section, shall be retained by the commissioner for use in accordance with section 22a-200c(c) of the Connecticut General Statutes;

(B) Twenty-three (23) percent of proceeds from auctions, less any amount of revenue refunded pursuant to subsection (j) of this section, shall be transferred to an account held by the Connecticut Green Bank for the Clean Energy Fund. Proceeds are to be used to support the development of Class I renewable energy sources. The amount of proceeds to be transferred to CEF shall be determined based on the following criteria:

(i) Not later than October 31, 2009 and October 31 of each year thereafter, CEF may apply for such funds on forms prescribed by the commissioner; and

(ii) The commissioner shall transfer funds to CEF provided that CEF demonstrates such funds will be committed within twelve months from the date of receipt to support the development of Class I renewable energy sources and further provided that for the prior year ending June 30 there is no more than ten million dollars unallocated;

(C) Sixty-nine and one-half (69.5) percent of proceeds from auctions, less any amount of revenue refunded pursuant to subsection (j) of this section, shall be distributed as follows:

(i) From January 1, 2014 to June 30, 2015, inclusive, proceeds shall be transferred under this subdivision as follows:

(I) Four and one one-hundredths (4.01) percent shall be transferred to an account held by the Connecticut Municipal Electric Energy Cooperative (CMEEC) for use in supporting energy efficiency programs, provided that the commissioner shall not transfer any funds to CMEEC for any calendar year for which the report required by subparagraph (D) of this subdivision is not received by April 30 of such calendar year, and further provided that the commissioner may withhold the transfer of any portion of the funds to CMEEC if the report filed by CMEEC fails to provide a full and accurate accounting of the use of all such funds;

(II) Two and twenty-four one-hundredths (2.24) percent shall be distributed to the Wallingford Electric Division (WED) for use in supporting energy efficiency programs, provided that the commissioner shall not transfer any funds to WED for any calendar year for which the report required by subparagraph (D) of this subdivision is not received by April 30 of such calendar year, and further provided that the commissioner may withhold the transfer of any portion of the funds to WED if the report filed by WED fails to provide a full and accurate accounting of the use of all such funds;

(III) Up to one million two hundred and fifty thousand dollars (1,250,000) shall be transferred, quarterly, to accounts held by Connecticut Light & Power (CL&P) and United Illuminating (UI) and overseen by the EEB for use in supporting energy efficiency programs. Such proceeds shall be allocated as follows: one million (1,000,000) dollars into an account held by CL&P and overseen by the EEB and two hundred and fifty thousand dollars (250,000) into an account held by UI and overseen by the EEB;

(IV) In the event that there are any excess proceeds under this subparagraph after the distributions specified in subclause (I) to (III), inclusive, of this clause have been made, such excess proceeds shall be transferred to the Connecticut Green Bank pursuant to section 22a-200c of the general statutes to be used to support energy efficiency programs, provided that the total amount of such proceeds transferred to the Connecticut Green Bank under this subdivision shall not exceed twenty-five million four hundred thousand (25,400,000) dollars, and further provided that such proceeds may be allocated to the Connecticut Green Bank on a pro-rated quarterly basis; and

(V) In the event that there are any excess proceeds under this subparagraph after the distributions specified in subclause (I) to (IV), inclusive, of this clause have been made, such excess proceeds shall be distributed to the CL&P account and the UI account for use in supporting energy efficiency programs, according to the following allocation: eighty (80) percent of such proceeds shall be transferred into an account held by CL&P and overseen by the EEB, and twenty (20) percent of such proceeds shall be transferred into an account held by UI and overseen by the EEB.

(ii) On and after July 1, 2015, proceeds shall be transferred under this subdivision as follows:

(I) Seventy-five (75) percent of such proceeds shall be transferred into an account held by CL&P and overseen by the EEB to be used to support energy efficiency programs;

(II) Eighteen and three-fourths (18.75) percent shall be transferred into an account held by UI and overseen by the EEB to be used to support energy efficiency programs;

(III) Four and one one-hundredths (4.01) percent shall be transferred to an account held by CMEEC to be used to support energy efficiency programs, provided that the commissioner shall not transfer any funds to CMEEC for any calendar year for which the report required by subparagraph (D) of this subdivision is not received by April 30 of such calendar year, and further provided that the commissioner may withhold the transfer of any portion of the funds to CMEEC if the report filed by CMEEC fails to provide a full and accurate accounting of the use of all such funds; and

(IV) Two and twenty-four one-hundredths (2.24) percent shall be distributed to WED for to be used to support energy efficiency programs, provided that the commissioner shall not transfer any funds to WED for any calendar year for which the report required by subparagraph (D) of this subdivision is not received by April 30 of such calendar year, and further provided that the commissioner may withhold the transfer of any portion of the funds to WED if the report filed by WED fails to provide a full and accurate accounting of the use of all such funds.

(D) CMEEC and WED shall each provide a full accounting of the use of funds transferred to the respective CMEEC and WED accounts in accordance with

the provisions of subparagraph (C) of this subdivision. Such accounting shall be submitted in the form of a report to the commissioner, and the chairperson of the Energy Efficiency Board. CMEEC shall also submit a copy of its report to the chief elected officials in any municipality served by CMEEC municipal utilities not later than April 30, 2014 and annually thereafter through the year following the date of the final expenditure of any funds received pursuant to subparagraph (C) of this subdivision.

Delaware

Title 7, Chapter 60, Subchapter II-A § 6046: Auction Revenue

(a) All proceeds associated with the auction of CO₂ allowances shall be directed to public benefit purposes as defined herein.

(b) The Secretary shall hold any and all auction proceeds in an interest bearing account with all interest directed to the account to carry out the purposes set forth herein.

(c) The Secretary shall direct auction proceeds to the following uses:

(1) Sixty-five percent of the CO₂ allowance proceeds shall be directed to the Sustainable Energy Utility (SEU), established in § 8059 of Title 29. The SEU shall apply these funds to further the goals and activities of the SEU including, but not limited to, the promotion of energy conservation, energy efficiency, renewable energy, and energy financing pursuant to § 8059(f)(3) of Title 29.

(2) A total of 15% of the CO₂ allowance proceeds shall be directed to low-income consumers, of which 10% shall be directed to the federally funded and state-administered Weatherization Assistance Program (WAP), and up to 5% shall be directed to the federally funded and state-administered fuel assistance (Low Income Home Energy Assistance Program or LIHEAP) programs. Participants in the LIHEAP program funded pursuant to this section shall also participate in the WAP program within 2 years of receiving assistance through LIHEAP, subject to funding availability. These programs are administered by the Division for State Service Centers in the Delaware Department of Health and Social Services.

(3) Percentage allocations of funds to the SEU and low-income consumers may be reviewed and adjusted annually by a committee comprised of the Secretary of the Department of Natural Resources and Environmental Control (DNREC), who shall serve as committee chair, the Chair of the Board of the SEU, and the program managers of the state WAP and LIHEAP.

(4) Ten percent of CO₂ allowance proceeds shall be directed to Greenhouse Gas Reduction Projects, selected by the Secretary following a periodic competitive proposal process. The Secretary shall utilize an advisory body

composed of electric generators, environmental advocates, legislators and such others as the Secretary may find useful in developing guidelines for the proposal process and in soliciting and ranking of projects. Projects must result in quantifiable and verifiable reductions in Greenhouse gas emissions in Delaware not otherwise required by federal or state law and not receiving funding from any other state sources.

(5) The Secretary shall use up to 10% of CO2 allowance proceeds as detailed in subsection (d) of this section. Expenses for running the RGGI program shall be met first, prior to distribution of funds as outlined above.

(d) The Secretary of DNREC shall use annual auction proceeds to implement the cap-and-trade program, monitor emissions, allowances and offsets, and pay any expenses associated with the program including, but not limited to, expenses related to auctioning and tracking of allowances. This may include contracting with RGGI Inc., paying of dues to RGGI Inc., or transferring funds to RGGI Inc. should DNREC determine it appropriate for RGGI Inc. to undertake any action related to implementation of the program. Any auction proceeds directed to the Secretary of DNREC may also be used to fund climate change activities designed to reduce greenhouse gas emissions from all sectors of Delaware's economy and to maintain a public information program to educate Delawareans about the impacts of climate change on Delaware, and for any administrative costs associated with support of the SEU not otherwise provided for under § 8059 of Title 29.

76 Del. Laws, c. 262, § 1; 78 Del. Laws, c. 290, § 176; 79 Del. Laws, c. 395, § 1.;

Maine

Title 35-A, Part 8, Chapter 97 §10109: Regional Greenhouse Gas Initiative Trust Fund

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Carbon dioxide allowance" has the same meaning as in Title 38, section 580-A, subsection 2. [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. "Trade association aggregator" means an entity that gathers individual members of a trade association together for the purpose of receiving electrical efficiency services or bidding on electrical efficiency contracts. [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. "Trust fund" means the Regional Greenhouse Gas Initiative Trust Fund established in subsection 2. [PL 2009, c. 372, Pt. B, §3 (NEW).]

[PL 2009, c. 372, Pt. B, §3 (NEW).]

2. Establishment of Regional Greenhouse Gas Initiative Trust Fund. The Regional Greenhouse Gas Initiative Trust Fund is established and is the successor to the fund that was established under former section 10008. The trust fund is established to support the goals and implementation of the carbon dioxide cap-and-trade program established under Title 38, section 580-B. The trust fund is established as a nonlapsing fund administered by the trust for the purposes established in this section. The trust is authorized to receive, and shall deposit in the trust fund and expend in accordance with this section, revenue resulting from the sale of carbon dioxide allowances, pursuant to Title 38, section 580-B, and any forward capacity market or other capacity payments from the regional transmission organization that may be attributable to projects funded by the trust under this section. The trust fund may not be used for any other purpose and money in the trust fund is considered to be held in trust for the purposes of benefiting consumers.

A. The trustees have a fiduciary duty to the customers of the State's transmission and distribution utilities in the administration of the trust fund. Upon accepting appointment as a trustee, each trustee must acknowledge the fiduciary duty to use the trust fund only for the purposes set forth in this section. [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. The trustees shall ensure that the goals and objectives of the trust fund, as established in this section and in rules adopted by the trust, are carried out. The trustees shall represent the interests of the trust fund in the development of the triennial plan. [PL 2009, c. 372, Pt. B, §3 (NEW).]

[PL 2009, c. 372, Pt. B, §3 (NEW).]

3. Ceiling on energy efficiency spending.

[PL 2013, c. 369, Pt. A, §14 (RP).]

3-A. Payments. The trust shall transfer funds, to the extent funds are available, to the commission each year during fiscal years 2017-18, 2018-19 and 2019-20 in accordance with this subsection to be used by the commission for disbursements to affected customers. An affected customer who uses the entire disbursement received by that customer toward an efficiency measure approved by the trust in the fiscal year in which it is received must receive \$1 of assistance from the trust for every \$3 of the disbursement plus any additional customer funds that are applied by the affected customer toward the cost of the approved efficiency measure as long as the total of assistance from the trust and the disbursement allocated by the commission under this subsection for that customer for that fiscal year does not exceed 65% of the total measure cost.

For the purposes of this subsection, "affected customer" means a customer who is not primarily in the business of selling electricity, is receiving service at a transmission or subtransmission voltage level as defined in section 10110, subsection 6 within the electrical utility transmission system administered by an independent system operator of the New England bulk power system or a successor organization and is an energy-intensive manufacturer, as defined in reports prepared by the U.S. Energy Information Administration. The commission may also determine that a manufacturer not defined as an energy-intensive manufacturer in reports prepared by the U.S. Energy Information Administration is an affected customer if that manufacturer meets the other requirements of the definition under this subsection.

A. The commission shall direct funds to be disbursed quarterly during fiscal years 2017-18, 2018-19 and 2019-20 for the benefit of affected customers in proportion to their retail purchase of electricity as measured in kilowatt-hours for the prior calendar year. The total amount to be disbursed from the fund, to the extent those funds are available, must be \$2,500,000 in fiscal year 2017-18, \$2,500,000 in fiscal year 2018-19 and \$1,000,000 in fiscal year 2019-20. [PL 2017, c. 282, §1 (AMD).]

B. During fiscal years 2017-18, 2018-19 and 2019-20, an affected customer who receives a disbursement under this subsection is not eligible to receive financial or other assistance from the trust fund established in this section except as allowed under this subsection. This ineligibility does not apply to any trust program opportunity notices issued before July 1, 2016 or to any affected customer that elects in writing to the commission prior to October 1, 2017 to not receive a disbursement under this subsection for the full period of fiscal years 2017-18 to 2019-20. The commission shall reduce the total amount to be disbursed under paragraph A as necessary to reflect the share

of load represented by affected customers electing to opt out. [PL 2017, c. 282, §1 (AMD).]

C. The commission shall include in its annual report pursuant to section 120, subsection 7 to the joint standing committee of the Legislature having jurisdiction over public utilities matters a description of the commission's activities in carrying out the requirements of this subsection, a list of affected customers receiving disbursements, a list of those who elected to use the disbursements toward efficiency measures and the results of the activities under this subsection. [PL 2015, c. 498, §1 (NEW).]

[PL 2017, c. 282, §1 (AMD).]

4. Expenditures; projects. Except for transfers required under subsection 3-A and other costs authorized in accordance with this chapter, funds in the trust fund must be expended in accordance with this subsection.

A. Trust funds must be allocated for measures, investments, loans, technical assistance and arrangements that reduce electricity consumption, increase energy efficiency or reduce greenhouse gas emissions and lower energy costs at commercial or industrial facilities and for investment in measures that lower residential heating energy demand and reduce greenhouse gas emissions. The measures that lower residential heating demand must be fuel-neutral and may include, but are not limited to, energy efficiency improvements to residential buildings and upgrades to efficient heating systems that will reduce residential energy costs and greenhouse gas emissions, as determined by the board. The trust shall ensure that measures to reduce the cost of residential heating are available for low-income households as defined by the trust. When promoting electricity cost and consumption reduction, the trust may consider measures at commercial and industrial facilities that also lower peak capacity demand. Subject to the apportionment pursuant to this subsection, the trust shall fund conservation programs that give priority to measures with the highest benefit-to-cost ratio, as long as cost-effective collateral efficiency opportunities are not lost, and that:

(1) Reliably reduce greenhouse gas production and heating energy costs by fossil fuel combustion in the State at the lowest cost in funds from the trust fund per unit of emissions; or

(2) Reliably increase the efficiency with which energy in the State is consumed at the lowest cost in funds from the trust fund per unit of energy saved. [PL 2019, c. 69, §1 (AMD).]

B. Expenditures from the trust fund relating to conservation of electricity and mitigation or reduction of greenhouse gases must be made predominantly on the basis of a competitive bid process for long-term contracts, subject to rules adopted by the board under section 10105. Rules

adopted by the board to implement the competitive bid process under this paragraph may not include an avoided cost methodology for compensating successful bidders. Bidders may propose contracts designed to produce greenhouse gas savings or electricity conservation savings, or both, on a unit cost basis. Contracts must be commercially reasonable and may require liquidated damages to ensure performance. Contracts must provide sufficient certainty of payment to enable commercial financing of the conservation measure purchased and its installation. [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. The board may target bid competitions in areas or to participants as they consider necessary, as long as the requirements of paragraph A are satisfied. [PL 2009, c. 372, Pt. B, §3 (NEW).]

D. Community-based renewable energy projects, as defined in section 3602, subsection 1, may apply for funding from the trust to the extent they are eligible under paragraph A. [PL 2013, c. 369, Pt. A, §16 (AMD).]

E. The size of a project funded by the trust fund is not limited as long as funds are awarded to maximize energy efficiency and support greenhouse gas reductions and to fully implement the triennial plan. [PL 2009, c. 372, Pt. B, §3 (NEW).]

F. No more than \$800,000 of trust fund receipts in any one year may be used for the costs of administering the trust fund pursuant to this section. The limit on administrative costs established in this paragraph does not apply to the following costs that may be funded by the trust fund:

(1) Costs of the Department of Environmental Protection for participating in the regional organization as defined in Title 38, section 580-A, subsection 20 and for administering the allowance auction under Title 38, chapter 3-B; and

(2) Costs of the Attorney General for activities pertaining to the tracking and monitoring of allowance trading activity and managing and evaluating the trust's funding of conservation programs. [PL 2009, c. 372, Pt. B, §3 (NEW).]

G. In order to minimize administrative costs and maximize program participation and effectiveness, the trustees shall, to the greatest extent feasible, coordinate the delivery of and make complementary the energy efficiency programs under this section and other programs under this chapter. [PL 2009, c. 372, Pt. B, §3 (NEW).]

H. The trust shall consider delivery of efficiency programs by means of contracts with service providers that participate in competitive bid processes for reducing energy consumption within individual market segments or for particular end uses. [PL 2009, c. 372, Pt. B, §3 (NEW).]

I. A trade association aggregator is eligible to participate in competitive bid processes under this subsection. [PL 2009, c. 372, Pt. B, §3 (NEW).]

J. Trust fund receipts must, upon request by the Department of Environmental Protection, fund research approved by the Department of Environmental Protection in an amount of up to \$100,000 per year to develop new categories for carbon dioxide emissions offset projects, as defined in Title 38, section 580-A, subsection 6, that are located in the State. Expenditures on research pursuant to this paragraph are not considered administrative costs under paragraph F, subparagraph (1). [PL 2013, c. 369, Pt. A, §17 (AMD).]
[PL 2019, c. 69, §1 (AMD).]

5. Effective date. This section takes effect July 1, 2010.

[PL 2009, c. 372, Pt. B, §3 (NEW).]

New Jersey

N.J.S.A 26:2C-45: Findings, declarations relative to reduction of greenhouse gas emissions.

1. The Legislature finds and declares that New Jersey should implement cost-effective measures to reduce emissions of greenhouse gases, and that emissions trading and the auction of allowances can be an effective mechanism to accomplish that objective.

The Legislature further finds and declares that entering into agreements or arrangements with appropriate representatives of other states may further the purposes of P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.).

The Legislature further finds and declares that any carbon dioxide emissions allowance trading program established in the State to reduce emissions of greenhouse gases should provide both incentives to reduce emissions at their sources and funding or other consumer benefit incentives to reduce the demand for energy, which in turn would reduce the generation and emission of greenhouse gases.

The Legislature further finds and declares that funding consumer benefit purposes will result in reduced costs to New Jersey consumers, decreased energy use, decreased greenhouse gas emissions, and substantial and tangible benefits to the energy-using business sector.

The Legislature further finds and declares that efforts to reduce greenhouse gas emissions in New Jersey must include complementary programs to reduce greenhouse gas emissions from electricity generated outside of the State but consumed in New Jersey, and that one measure that may be most effective in doing so is the adoption of a greenhouse gas emissions portfolio standard as authorized pursuant to the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.) and section 38 of P.L.1999, c.23 (C.48:3-87).

The Legislature further finds and declares that energy efficiency and conservation measures and increased use of renewable energy resources must be essential elements of the State's energy future and that greater

reliance on energy efficiency, conservation, and renewable energy resources will provide significant benefits to the citizens of this State.

The Legislature further finds and declares that public utility involvement and competition in the renewable energy, conservation and energy efficiency industries are essential to maximize efficiencies and the use of renewable energy and that the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) should be implemented to further competition.

The Legislature further finds and declares that any emissions allowance trading program established in the State to reduce emissions of greenhouse gases should transition to any federal program enacted by the federal government that is comparable to the emissions allowance trading program established in New Jersey.

The Legislature therefore determines that it is in the public interest to establish a program that authorizes the State to dedicate to consumer benefit purposes up to 100 percent of the revenues derived from the auction or other sale of allowances pursuant to an emissions allowance trading program and to authorize the Commissioner of Environmental Protection and the President of the Board of Public Utilities to further the purposes of P.L.2007, c.340 (C.26:2C-45 et al.) and the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.), by participating with other states in the formation and activity of a separate legal entity established for the purpose of furthering the Regional Greenhouse Gas Initiative.

N.J.S.A 26:2C-50 "Global Warming Solutions Fund."

6. There is established in the Department of the Treasury a special, nonlapsing fund to be known as the "Global Warming Solutions Fund." The fund shall be administered by the State Treasurer and shall be credited with:

a. moneys received as a result of any sale, exchange or other conveyance of allowances through a greenhouse gas emissions allowance trading program;

b. such moneys as are appropriated by the Legislature; and This is a courtesy copy of the Air Pollution Control Act as found in the N.J Legislative Statutes. 95

c. any return on investment of moneys deposited in the fund.

N.J.S.A 26:2C-51 Coordination in administration of programs; use of moneys

7.a. The agencies administering programs established pursuant to this section shall maximize coordination in the administration of the programs to avoid overlap between the uses of the fund prescribed in this section.

b. Moneys in the fund, after appropriation annually for payment of administrative costs authorized pursuant to subsection c. of this section, shall be annually appropriated and used for the following purposes:

(1) Sixty percent shall be allocated to the New Jersey Economic Development Authority to provide grants and other forms of financial assistance to commercial, institutional, and industrial entities to support end-use energy efficiency projects and new, efficient electric generation facilities that are state of the art, as determined by the department, including but not limited to energy efficiency and renewable energy applications, to develop combined heat and power production and other high efficiency electric generation facilities, to stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction or avoidance potential, to develop qualified offshore wind projects pursuant to section 3 of P.L.2010, c.57 (C.48:3-87.1), and to provide financial assistance to manufacturers of equipment associated with qualified offshore wind projects. The authority, in consultation with the board and the department, shall determine:

(a) the appropriate level of grants or other forms of financial assistance to be awarded to individual commercial, institutional, and industrial sectors and to individual projects within each of these sectors;

(b) the evaluation criteria for selecting projects to be awarded grants or other forms of financial assistance, which criteria shall include the ability of the project to result in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand, provided, however, that neither the development of a new combined heat and power production facility, nor an increase in the electrical and thermal output of an existing combined heat and power production facility, shall be subject to the requirement to demonstrate such a measurable reduction; and

(c) the process by which grants or other forms of financial assistance can be applied for and awarded including, if applicable, the payment terms and conditions for authority investments in certain projects with commercial viability;

(2) Twenty percent shall be allocated to the board to support programs that are designed to reduce electricity demand or costs to electricity customers in the low-income and moderate-income residential sector with a focus on urban areas, including efforts to address heat island effect and reduce impacts on ratepayers attributable to the implementation of P.L.2007, c.340 (C.26:2C-45 et al.). For the purposes of this paragraph, the board, in consultation with the authority and the department, shall determine the This is a courtesy copy of the Air Pollution Control Act as found in the N.J Legislative Statutes. 96 types of programs to be supported and the mechanism by which to quantify benefits to ensure that the supported programs result in a measurable reduction in energy demand;

(3) Ten percent shall be allocated to the department to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions, including but not limited to technical assistance to local governments, and the awarding of grants and other forms of assistance to local governments to conduct and implement energy efficiency, renewable energy, and distributed energy programs and land use planning where the grant or assistance results in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand. For the purpose of conducting any program pursuant to this paragraph, the department, in consultation with the authority and the board, shall determine:

(a) the appropriate level of grants or other forms of financial assistance to be awarded to local governments;

(b) the evaluation criteria for selecting projects to be awarded grants or other forms of financial assistance;

(c) the process by which grants or other forms of financial assistance can be applied for and awarded; and (d) a mechanism by which to quantify benefits; and

(4) Ten percent shall be allocated to the department to support programs that enhance the stewardship and restoration of the State's forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases.

c. (1) The department may use up to four percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the department in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L.2007, c.340 (C.26:2C-55).

(2) The board may use up to two percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the board in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L.2007, c.340 (C.26:2C-55).

(3) The New Jersey Economic Development Authority may use up to two percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the authority in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases.

d. The State Comptroller shall conduct or supervise independent audit and fiscal oversight functions of the fund and its uses.

N.J.S.A 26 :2C-52 Guidelines, priority ranking system for allocation of funds

8. a. Within one year after the date of enactment of P.L.2007, c.340 (C.26:2C-45 et al.), the department, in consultation with the New Jersey Economic Development Authority and the board, shall adopt, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), guidelines and a priority ranking system to be used to assist in annually allocating funds to eligible projects or programs pursuant to subsection b. of section 7 of P.L.2007, c.340 (C.26:2C-51). b. The guidelines and the priority ranking system developed pursuant to this section for selecting projects or programs to be awarded grants or other forms of financial assistance from the fund shall include but need not be limited to an evaluation of each eligible project or program as to its predicted ability to:

(1) result in a net reduction in greenhouse gas emissions in the State or in greenhouse gas emissions from electricity produced out of the State but consumed in the State or net sequestration of carbon;

(2) result in significant reductions in greenhouse gases relative to the cost of the project or program and the reduction of impacts on ratepayers attributable to the implementation of P.L.2007, c.340 (C.26:2C-45 et al.), and the ability of the project or program to significantly contribute to achievement of the State's 2020 limit and 2050 limit established pursuant to the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et al.), relative to the cost of the project or program;

(3) reduce energy use;

(4) provide co-benefits to the State, including but not limited to creating job opportunities, reducing other air pollutants, reducing costs to electricity and natural gas consumers, improving local electric system reliability, and contributing to regional initiatives to reduce greenhouse gas emissions; and

(5) be directly responsive to the recommendations when submitted by the department to the Legislature pursuant to section 6 of the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-42).

Maryland

Md. Code Regs. 26.09.04.03: Consumer Energy Efficiency Account

A. The Department shall establish the Consumer Energy Efficiency Account, referred to in this subtitle as the Account, as described in COMAR 26.09.02. Each allowance to be auctioned shall be identified by its serial number as described in COMAR 26.09.02.

B. The Department shall administer the Account in such a manner that allowances allocated to the Account or transferred to it from the Limited Industrial Exemption Set-aside Account, the Long Term Contract Set-aside Account, the Voluntary Renewable Set-aside Account, the Clean Generation Set-aside Account, or the CO Allowance Contingency Account may be offered for sale in CO allowance auctions as described in COMAR 26.09.02.

C. The proceeds of the auction shall be placed into the Fund.

D. The Department shall use the proceeds it receives from the Fund for climate change programs.

§ 2-1002. Emission standards

(g) Participation in the Regional Greenhouse Gas Initiative. --

(1) In this subsection, "allowance" means one ton of carbon dioxide that may be bought, sold, traded, or banked for use under the Regional Greenhouse Gas Initiative.

(2) Not later than June 30, 2007, the Governor shall include the State as a full participant in the Regional Greenhouse Gas Initiative among Mid-Atlantic and Northeast states.

(3) The State may withdraw from the Initiative, as provided in the December 20, 2005 memorandum of understanding of the Initiative, at any time after January 1, 2009, if the General Assembly enacts a law to approve the withdrawal.

(4) If the Regional Greenhouse Gas Initiative expires and there is a successor organization with the same purposes and goals, the Governor is encouraged to join the State in the successor organization.

(5) Notwithstanding § 2-107 of this title, all of the proceeds from the sale of Maryland allowances under the Regional Greenhouse Gas Initiative

shall be deposited in the Maryland Strategic Energy Investment Fund under § 9-20B-05 of the State Government Article.

(6) If the State's participation in the Regional Greenhouse Gas Initiative ceases for any reason, the Governor shall report to the General Assembly, in accordance with § 2-1257 of the State Government Article, regarding:

- (i) Why participation ceased; and
- (ii) A plan to reduce carbon dioxide emissions from power plants in the State that considers the use of Maryland grown, native, warm season grasses as a possible method of reducing carbon emissions.

§ 9-20B-05. Maryland Strategic Energy Investment Fund

(a) Fund established. -- There is a Maryland Strategic Energy Investment Fund.

(b) Purpose. -- The purpose of the Fund is to implement the Strategic Energy Investment Program.

(c) Administration. -- The Administration shall administer the Fund.

(d) Status; management. --

(1) The Fund is a special, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

(2) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(e) Composition. -- The Fund consists of:

- (1) all of the proceeds from the sale of allowances under § 2-1002(g) of the Environment Article;
- (2) money appropriated in the State budget to the Program;
- (3) repayments and prepayments of principal and interest on loans made from the Fund;
- (4) interest and investment earnings on the Fund;

- (5) compliance fees paid under § 7-705 of the Public Utilities Article;
- (6) money received from any public or private source for the benefit of the Fund; and
- (7) money transferred from the Public Service Commission under § 7-207.2(c)(3) of the Public Utilities Article.

(f) Use. -- The Administration shall use the Fund:

- (1) to invest in the promotion, development, and implementation of:
 - (i) cost-effective energy efficiency and conservation programs, projects, or activities, including measurement and verification of energy savings;
 - (ii) renewable and clean energy resources;
 - (iii) climate change programs directly related to reducing or mitigating the effects of climate change; and
 - (iv) demand response programs that are designed to promote changes in electric usage by customers in response to:
 - 1. changes in the price of electricity over time; or
 - 2. incentives designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized;
- (2) to provide targeted programs, projects, activities, and investments to reduce electricity consumption by customers in the low-income and moderate-income residential sectors;
- (3) to provide supplemental funds for low-income energy assistance through the Electric Universal Service Program established under § 7-512.1 of the Public Utilities Article and other electric assistance programs in the Department of Human Services;
- (4) to provide rate relief by offsetting electricity rates of residential customers, including an offset of surcharges imposed on ratepayers under § 7-211 of the Public Utilities Article;
- (5) to provide grants, loans, and other assistance and investment as necessary and appropriate to implement the purposes of the Program as set forth in § 9-20B-03 of this subtitle;
- (6) to implement energy-related public education and outreach initiatives regarding reducing energy consumption and greenhouse gas emissions;

(7) to provide rebates under the Electric Vehicle Recharging Equipment Rebate Program established under § 9-2009 of this title;

(8) to provide grants to encourage combined heat and power projects at industrial facilities;

(9) subject to subsections (f-1) and (f-3) of this section, to provide \$ 7,000,000 in funding for access to capital for small, minority, women-owned, and veteran-owned businesses in the clean energy industry under § 5-1501 of the Economic Development Article, allocated in annual increments as follows:

(i) \$ 200,000 in fiscal year 2021;

(ii) \$ 500,000 in fiscal year 2022;

(iii) \$ 500,000 in fiscal year 2023;

(iv) \$ 1,000,000 in fiscal year 2024; and

(v) \$ 1,200,000 in each fiscal year from 2025 through 2028;

(10) subject to subsections (f-2) and (f-3) of this section, to invest in pre-apprenticeship, youth apprenticeship, and registered apprenticeship programs to establish career paths in the clean energy industry under § 11-708.1 of the Labor and Employment Article, as follows:

(i) \$ 1,250,000 for grants to pre-apprenticeship jobs training programs under § 11-708.1(c)(3) of the Labor and Employment Article starting in fiscal year 2021 until all amounts are spent;

(ii) \$ 6,000,000 for grants to youth apprenticeship jobs training programs and registered apprenticeship jobs training programs under § 11-708.1(c)(5) of the Labor and Employment Article starting in fiscal year 2021 until all amounts are spent; and

(iii) \$ 750,000 for the recruitment of individuals, including veterans and formerly incarcerated individuals, to the pre-apprenticeship jobs training programs and the registered apprenticeship jobs training programs under § 11-708.1 of the Labor and Employment Article starting in fiscal year 2021 until all amounts are spent; and

(11) to pay the expenses of the Program.

(f-1) Reversion of unspent money to Fund.

(1) Any funding provided under subsection (f)(9) of this section that is not spent in a given fiscal year shall revert to the Fund in the following fiscal year.

(2) Funding that is provided for access to capital for small, minority, women-owned, and veteran-owned businesses under subsection (f)(9) of this section shall be used to provide grants to eligible fund managers to provide investment capital, including equity and similar investments, and loans to small, minority, women-owned, and veteran-owned businesses in the State in the clean energy industry.

(3) Eligible fund managers receiving grants under subsection (f)(9) of this section may use a portion of the money received to pay ordinary and reasonable expenses for administrative, actuarial, legal, marketing, and technical services and management fees.

(4) The Administration may provide additional funding for the purposes stated in subsection (f)(9) of this section.

(f-2) Payment to workforce development programs. -- An \$ 8,000,000 payment for workforce development programs under subsection (f)(10) of this section starting in fiscal year 2021 shall be derived from the Renewable Energy, Climate Change account of the Fund.

(f-3) Use of funding under subsections (f)(9) and (10). -- Funding under subsection (f)(9) and (10) of this section for access to capital, investment, promotion, or implementation should be directed only to businesses that agree to create and maintain jobs that promote family-sustaining wages, employer-provided health care with affordable deductibles and co-pays, career advancement training, fair scheduling, employer-paid workers' compensation and unemployment insurance, a retirement plan, paid time off, and the right to bargain collectively for wages and benefits.

(g) Proceeds received from sale of allowances from Regional Greenhouse Gas Initiative. -- Proceeds received by the Fund from the sale of allowances under § 2-1002(g) of the Environment Article shall be allocated as follows:

(1) at least 50% shall be credited to an energy assistance account to be used for the Electric Universal Service Program and other electricity assistance programs in the Department of Human Services;

(2) at least 20% shall be credited to a low and moderate income efficiency and conservation programs account and to a general efficiency and conservation programs account for energy efficiency and conservation programs, projects, or activities and demand response programs, of which at least one-half shall be targeted to the low and moderate income efficiency and conservation programs account for:

- (i) the low-income residential sector at no cost to the participants of the programs, projects, or activities; and
- (ii) the moderate-income residential sector;
- (3) at least 20% shall be credited to a renewable and clean energy programs account for:
 - (i) renewable and clean energy programs and initiatives;
 - (ii) energy-related public education and outreach; and
 - (iii) climate change and resiliency programs; and
- (4) up to 10%, but not more than \$ 5,000,000, shall be credited to an administrative expense account for costs related to the administration of the Fund, including the review of electric company plans for achieving electricity savings and demand reductions that the electric companies are required under law to submit to the Administration.
- (h) Energy efficiency and conservation programs. --
 - (1) Energy efficiency and conservation programs under subsection (g)(2) of this section include:
 - (i) low-income energy efficiency programs;
 - (ii) residential and small business energy efficiency programs;
 - (iii) commercial and industrial energy efficiency programs;
 - (iv) State and local energy efficiency programs;
 - (v) demand response programs;
 - (vi) loan programs and alternative financing mechanisms; and
 - (vii) grants to training funds and other organizations supporting job training for deployment of energy efficiency and energy conservation technology and equipment.
 - (2) Energy-related public education and outreach and renewable and clean energy programs and initiatives under subsection (g)(3)(i) and (ii) of this section include:
 - (i) production incentives for specified renewable energy sources;
 - (ii) expansion of existing grant programs for solar, geothermal, and wind programs;
 - (iii) loan programs and alternative financing mechanisms; and
 - (iv) consumer education and outreach programs that are designed to reach low-income communities.

(h) Energy efficiency and conservation programs. --

(1) Energy efficiency and conservation programs under subsection (g)(2) of this section include:

- (i) low-income energy efficiency programs;
- (ii) residential and small business energy efficiency programs;
- (iii) commercial and industrial energy efficiency programs;
- (iv) State and local energy efficiency programs;
- (v) demand response programs;
- (vi) loan programs and alternative financing mechanisms; and
- (vii) grants to training funds and other organizations supporting job training for deployment of energy efficiency and energy conservation technology and equipment.

(2) Energy-related public education and outreach and renewable and clean energy programs and initiatives under subsection (g)(3)(i) and (ii) of this section include:

- (i) production incentives for specified renewable energy sources;
- (ii) expansion of existing grant programs for solar, geothermal, and wind programs;
- (iii) loan programs and alternative financing mechanisms; and
- (iv) consumer education and outreach programs that are designed to reach low-income communities.

Massachusetts

Section 22: Carbon dioxide cap and trade program

Section 22. (a) As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Allowance", an authorization to emit a fixed amount of carbon dioxide.

"Cap and trade program", a policy approach for controlling emissions from a group of emitting sources, such as electric generating stations, at a total cost that is expected to be lower than if sources were regulated individually by setting an overall cap or maximum amount of emissions from all regulated sources per compliance period that will achieve the desired environmental effects; provided, however, that a certain number of authorizations to emit in the form of emissions allowances shall be created, issued and made available to persons, companies, organizations or other entities through a sale by auction or direct allocation; and provided further that the total number of allowances made available in a compliance period shall not exceed the cap.

"Department", department of environmental protection.

"RGGI" or "Regional Greenhouse Gas Initiative", the Memorandum of Understanding dated December 20, 2005 , and any amendments thereto and the corresponding Model Rule and any amendments thereto that establishes a cap and trade program within the northeast region of the United States and other regions to the extent that the Memorandum of Understanding is amended.

(b) The department, in consultation with the department of energy resources, shall adopt rules and regulations establishing a carbon dioxide cap and trade program to limit and reduce the total carbon dioxide emissions released by electric generating stations that generate electric power. The rules and regulations shall comply with RGGI and permit the holders of carbon dioxide allowances to trade them in a regional market to be established through the RGGI.

(c)(1) The department shall provide, by regulation that all allowances issued under the program shall be offered for sale by auction. The proceeds recovered from the allowance auctions shall be deposited in the RGGI

Auction Trust Fund established in section 35II of chapter 10. The proceeds shall be used without further appropriation for the following purposes only and shall be in a proportion to be determined by the department of energy resources with the approval of the secretary:

[Clause (i) of paragraph (1) of subsection (c) effective until December 31, 2019 and applicable by 2008, 169, Secs. 113 and 114. See 2011, 68, Sec. 135 and 2012, 209, Sec. 37.]

(i) to reimburse a municipality in which the property tax receipts from an electric generating station including, for the purposes of this clause, payments in lieu of taxes and other compensation specified in an agreement between a municipality and an affected property owner, are reduced due to full or partial decommissioning of the facility or other change in operating status of the facility if such action also reduces the commonwealth's greenhouse gas emissions from the electric generator sector under the goals established under chapter 21N; provided, however that the amount of such reimbursement shall be determined by calculating the difference between the amount of the tax receipts, including payments in lieu of taxes or other compensation paid by the electric generating station in the current tax year and the amount of the tax receipts, including payments in lieu of taxes or other compensation paid by the electric generating station in the year prior to the full or partial decommissioning or other change in operating status of the facility; provided further, that no reimbursement shall be made if, in a tax year, the aggregate amount paid to a municipality by the owner of an electric generating station including, but not limited to, payments in lieu of taxes and other compensation, exceeds the aggregate amount paid to that municipality by that owner in the year prior to the full or partial decommissioning or other change in operating status of the facility. After full or partial decommissioning or other change in operating status of the facility, the electric generating station's tax obligation shall be based, on an annual basis, on tax receipts, including payments in lieu of taxes or other compensation that have been negotiated in good faith by the electric generating station and municipality on or before January 30 of the current tax year; provided however, that if the electric generating station and municipality have not negotiated in good faith payments in lieu of taxes and other compensation in the nature of property tax payments by said January 30, then the facility's tax obligation shall be determined by an independent third party assessor paid by said facility, but selected jointly by the municipality and the facility, or if they are unable to arrive at a joint selection, by the department of revenue. The municipality shall be entitled to reimbursement for the difference between the amount called for in such assessment and the amount of the tax receipts, including payments in lieu of taxes or other compensation paid in the year prior to the full or partial decommissioning or other change in operating status of the facility, provided

that such independent assessment is filed with any request for funds under this clause. Payments from the fund shall be prioritized so that the first payments from the fund shall be made to municipalities under this clause.

(ii) to fund the green communities program established in section 10 of chapter 25A;

(iii) to provide zero interest loans to municipalities, which are not green communities under section 10 of chapter 25A for energy efficiency projects;

(iv) to promote energy efficiency, conservation and demand response; and

(v) to reimburse the commonwealth for costs associated with the administration of the cap and trade program.

(2) Notwithstanding this section, the department may set aside up to 1 per cent of the commonwealth's annual allocation of allowances to support the voluntary green power market which enables electricity consumers to support the development of renewable resources.

(d) The department of energy resources shall adopt regulations governing the auction of allowances. The department of energy resources may hire an independent contractor determined by the office to be qualified to conduct the auction in a manner that ensures the efficiency of the auction, or may provide for participation in a regional auction.

(e) The responsibilities created by establishing a carbon dioxide cap and trade program shall be in addition to any other responsibilities imposed by any other general or special law or rule or regulation and shall not diminish or reduce any power or authority of the department, including the authority to adopt standards and regulations necessary for the commonwealth to join and fully participate in a multistate program at any stage in the development and implementation of such a program intended to control emissions of carbon dioxide or other substances that are determined by the department to be damaging or altering the climate.

(f) Notwithstanding any general or special law or rule or regulation to the contrary, the state comptroller shall grant a permanent waiver or exemption from any applicable charges or assessments made against the proceeds from the auction of allowances under this section by the office of the comptroller under its authority under sections 5D of chapter 29.

(g) Notwithstanding any general or special law or regulation to the contrary, any information required by the department of energy resources or the department of any party participating in the cap and trade program, with the exception of any emission, offset and allowance tracking information required for compliance with the cap and trade program, shall be maintained for the sole and confidential use of the commonwealth, the department, the department of energy resources and their agents. This information shall not be deemed to be a public record as defined in clause Twenty-sixth of section 7 of chapter 4 and shall not be subject to demand for production under section 10 of chapter 66. Aggregates of such information may be prepared and such aggregates shall be public records. All information collected under this section may be shared with other states which afford such information similar protection from public disclosure.

225 CMR 13.06: CO Allowance Auction Procedures

(1) The implementation of any auction conducted pursuant to 225 CMR 13.00 may be transferred by DOER to an agent deemed qualified by DOER to conduct such auction, provided that such agent shall perform all such duties under the direction and oversight of DOER.

(2) The auction format shall be a Sealed Bid, Uniform Price Auction.

(3) Prior to the end of each Control Period or Interim Control Period, CO allowances in a 2 quantity equal to the number of CO Allowances allocated to the Auction Account for such 2 Control Period will be available for sale. Such CO allowances will be available for sale by 2 allocation year. DOER may require that allowances are sold in minimum lot sizes. In such event, such lot sizes shall be published in the Auction Notice pursuant to 225 CMR 13.07(1). No more than 50% of the allowances from an allocation year may be available for sale in advance of the respective allocation year, up to four years in advance of such allocation year.

(4) DOER shall post a calendar of proposed auction dates on the CO₂ Allowance Auction Website. The calendar shall include the auction format and the number of allowances and allocation years of allowances to be auctioned at each auction. DOER may periodically modify the contents of the calendar, provided that the information relevant to the next scheduled auction shall be fixed no later than 45 calendar days prior to such auction, consistent with 225 CMR 13.06(1).

(5) Auctions of CO₂ allowances shall be held with a reserve price. DOER is not obligated to sell CO allowances if the reserve price is not met. 225 CMR: DEPARTMENT OF ENERGY RESOURCES 13.06: continued

(6) Auctions of CO Allowances shall include a Cost Containment Reserve and a CCR Trigger price. CO₂ CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of CO allowances available for purchase at the auction, not including any CCR allowances.

(7) Auctions of CO₂ Allowances shall include an Emissions Containment Reserve and an ECR Trigger price shown in 225 CMR 13.03: Table 2. Starting in calendar year 2021 and each year thereafter, CO allowances shall be withheld from sale at an auction in accordance with the following:

(a) CO₂ allowances shall be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price shown in 225 CMR 13.03: Table 2.

(b) If the CO ECR trigger price is met, then the maximum quantity of CO allowances that may be withheld from that auction will be equal to the quantity shown in 225 CMR 13.06(7): Table 4, minus the total quantity of CO₂ allowances that have been withheld from any prior auction in that calendar year.

(c) CO allowances withheld from the auction because the ECR trigger price was met shall not be resold in any future auction.

(8) No bidder, including any affiliate or agent of such bidder, shall purchase more than 25% of the allowances offered for sale in any one auction. Such limitation shall not be increased by CCR allowances, and shall be published in the Auction Notice pursuant to 225 CMR 13.07.

(9) DOER may periodically evaluate the auction program performance and may retire any previous allocation year allowances that were offered for sale by auction but were not sold and still remain in the Massachusetts Auction Account.

(10) Proceeds of such auctions shall be deposited into a special revenue account established on the books of the Commonwealth for such purpose, and shall thereafter be available for expenditure by DOER subject to the approval of the Secretary of the Executive Office of Energy and Environmental Affairs. The proceeds of the auctions shall be used:

(a) to reimburse a municipality in which the property tax receipts from an electric generating station are reduced, as set forth in M.G.L. c. 21A, § 22(c)(1)(i);

(b) to fund the green communities program established in M.G.L. c. 25A, § 10;

(c) to provide zero interest loans to municipalities, which are not green communities under M.G.L. 25A, § 10, for energy efficiency projects;

(d) to promote energy efficiency, conservation and demand response; and

(e) to reimburse the commonwealth for costs associated with the administration of the cap and trade program.

310 Mass. Code Regs. § 7.74(6)(h)(1)(i)

Proceeds of [RGGI] auctions shall be paid to the Department [of Environmental Protection] and deposited in a segregated account and administered by a Trustee appointed by [the Executive Office of Energy and Environmental Affairs (EEA)] and the Department. The funds shall be expended to further the goals of M.G.L. c. 21N by supporting programs or projects to reduce greenhouse gas emissions in order to mitigate the impacts of climate change including, but not limited to, clean energy and vehicle electrification projects; programs and projects to support adaptation to the impacts of climate change; mitigation or adaptation programs or projects involving communities that are already adversely impacted by air pollution including, but not limited to, environmental justice communities; and for the administration of any such programs or projects. Auction proceeds may also be used for the administration of 310 CMR 7.74. Auction proceeds shall be expended at the direction of the Trustee, in consultation with EEA and the Department. The Trustee, EEA and the Department may consult with and

enter into agreements with other agencies within the EEA Secretariat to assist in the administration and expenditure of auction proceeds.

New Hampshire

125-O:21 Carbon Dioxide Emissions Budget Trading Program

I. The department shall establish and enforce a CO₂ emissions budget trading program consistent with this subdivision that shall be in substantial accordance with the RGGI program.

II. The program shall include a statewide budget allowance total for each year calculated as follows:

2019 4,184,333 minus FCPBA minus SCPBA

2020 4,079,725 minus FCPBA minus SCPBA

2021 3,960,999 minus TBA

2022 3,842,274 minus TBA

2023 3,723,549 minus TBA

2024 3,604,823 minus TBA

2025 3,486,098 minus TBA

2026 3,367,373

2027 3,248,648

2028 3,129,922

2029 3,011,197

2030 and thereafter 2,892,472

III. The department shall make available for sale at one or more auctions all of the budget allowances for a given year, except for those granted or reserved under RSA 125-O:22, VI and RSA 125-O:25. The department may also make available for sale at one or more auctions a portion of future year budget allowances. Such auctions may be conducted in coordination with other states. Revenues from the sale of allowances shall be deposited in the energy efficiency fund established under RSA 125-O:23.

III-a. Budget allowances that are required to be made available for sale at auction under paragraph III, but remain unsold, shall not be retired by the department, and may be used for cost containment purposes under RSA 125-O:29.

IV. [Repealed.]

V. [Repealed.]

VI. The department and the commission shall report on an annual basis to the air pollution advisory committee under RSA 125-J:11 and the legislative oversight committee to monitor the transformation of delivery of electric services under RSA 374-F:5, on the status of the implementation of RGGI in New Hampshire, with emphasis on the prices and availability of RGGI allowances to affected CO₂ sources, consumer protection mechanisms, and the trends in electric rates for New Hampshire businesses and ratepayers. The report shall include but not be limited to:

- (a) The number of allowances sold in the RGGI program and the type of entities purchasing allowances;
- (b) The number of unsold allowances in the RGGI program;
- (c) The available price data of allowances from the regional auction and secondary markets;
- (d) Market monitoring reports;
- (e) The CO₂ emissions by affected source, state, and RGGI region;
- (f) The spending of revenues from auction allowances by each RGGI state; and
- (g) [Repealed.]
- (h) The status of any proposed or adopted federal CO₂ cap and trade program, the impact on New Hampshire's RGGI program, and recommendations for any proposed legislation necessary to accommodate the federal program; and
- (i) Effectiveness of allowance price control and consumer protection mechanisms, including, but not limited to, cost containment reserves, cost thresholds, and consumer rebates.

VII. The department may establish and enforce the CO₂ emissions budget trading program in cooperation and coordination with other states or countries that are participating in regional, national or international CO₂ emissions trading programs with the same or similar purpose including:

- (a) Entering into any agreement or arrangement with the representatives of other states, including the formation of a for-profit or non-profit corporation,

any form of association or any other form of organization, in this or another state; and

(b) Participating in any such corporation, association, or organization, and in any activity in furtherance of the purposes of this subdivision, in any capacity including, but not limited to, as directors or officers.

VIII. Any actions taken under this subdivision by the department or the commission shall not constitute a waiver of sovereign immunity and shall not be deemed consent to suit outside of New Hampshire.

125-O:23. Energy Efficiency Fund and Use of Auction Proceeds

I. There is hereby established an energy efficiency fund. This nonlapsing, special fund shall be continually appropriated to the commission to be expended in accordance with this section. The state treasurer shall invest the moneys deposited therein, as provided by law. Income received on investments made by the state treasurer shall also be credited to the fund. All programs supported by these funds shall be subject to audit by the commission as deemed necessary. A portion of the fund moneys shall be used to pay for commission and department costs to administer this subdivision, including contributions for the state's share of the costs of the RGGI regional organization. No fund moneys shall be used by the commission or the department to contract with outside consultants. The commission shall transfer from the fund to the department such costs as may be budgeted and expended, or otherwise approved by the fiscal committee of the general court and the governor and council, for the department's cost of administering this subdivision.

II. All amounts in excess of the threshold price of \$1 for any allowance sale shall be rebated to all retail electric ratepayers in the state on a per-kilowatt-hour basis, in a timely manner to be determined by the commission.

III. All remaining proceeds received by the state from the sale of allowances, excluding the amount used for commission and department administration under paragraph I, shall be allocated by the commission as follows:

(a) At least 15 percent to the low-income core energy efficiency program.

(b) Beginning January 1, 2014, up to \$2,000,000 annually to utility core programs for municipal and local government energy efficiency projects, including projects by local governments that have their own municipal utilities.

Funding elements shall include, but not be limited to, funding for direct technical and project management assistance to identify and encourage comprehensive projects and incentives structured to assist municipal and local governments funding energy efficiency projects. In calendar years 2014, 2015, and 2016, any unused funds allocated to municipal and local government projects under this paragraph remaining at the end of the year shall roll over and be added to the new calendar year program funds and continue to be made available exclusively for municipal and local government projects. Beginning in calendar year 2017, and all subsequent years, funds allocated to municipal and local government projects under this paragraph shall be offered first to municipal and local governments as described in this paragraph for no less than 4 full calendar months. If, at the end of this time, municipal and local governments have not submitted requests for eligible projects that will expend the funds allocated to municipal and local government projects under this paragraph within that program year, the funds shall be offered on a first-come, first-serve basis to business and municipal customers who fund the system benefits charge.

(c) The remainder to all-fuels, comprehensive energy efficiency programs administered by qualified parties which may include electric distribution companies as selected through a competitive bid process. The funding shall be distributed among residential, commercial, and industrial customers based upon each customer class's electricity usage to the greatest extent practicable as determined by the commission. Bids shall be evaluated based on, but not limited to, the following criteria:

- (1) A benefit/cost ratio analysis including all fuels.
- (2) Demonstrated ability to provide a comprehensive, fuel neutral program.
- (3) Demonstrated infrastructure to effectively deliver such program.
- (4) Experience of the bidder in administering energy efficiency programs.
- (5) Ability to reach out to customers.
- (6) The validity of the energy saving assumptions described in the bid.

IV. The electric division of the commission shall conduct a competitive bid process for the selection of programs to be funded under subparagraph III(c), with such funding to begin January 1, 2015. The commission may petition the governor and council to extend existing contracts until such time as the competitive bids are approved by the governor and council, but in no event later than July 1, 2015. The competitive bid process shall be repeated every 3 years thereafter. Before extending any existing program, public comment on the proposed extension shall be accepted.

V. Each entity receiving funding under subparagraph III(c) shall file an annual report on the performance of the entity's program. The commission shall establish the format, content, and the methodologies used to provide the content of the reports. The commission shall make use of, as applicable and appropriate, the monitoring and verification requirements used in the natural gas and electric utility core programs. The annual reports shall be delivered to the governor, the president of the senate, the speaker of the house of representatives, the chairmen of the senate and house standing committees with jurisdiction over energy matters, and the chairman of the public utilities commission. The reports shall include, but not be limited to, the following:

- (a) Program expenditures, including direct customer installation costs.
- (b) Resulting actual and projected energy savings by fuel type and associated CO2 emissions reductions.
- (c) Any measurement and verification data that corroborate projected savings.
- (d) The number of customers served by the programs.
- (e) Other data as required by the commission in order to determine program effectiveness.

N.H. Code Admin R. Ann. Env-A 4802.05: Auction Proceeds

- (a) As required by RSA 125-O:21, III, the proceeds of CO2 allowance auctions shall be deposited into the energy efficiency fund established under RSA 125-O:23.
- (b) The proceeds of the CO2 allowance auctions shall be used as specified in RSA 125-O:23.

New Jersey

N.J.S.A 26 :2C-50 "Global Warming Solutions Fund."

6.. There is established in the Department of the Treasury a special, nonlapsing fund to be known as the "Global Warming Solutions Fund." The fund shall be administered by the State Treasurer and shall be credited with:

- a. moneys received as a result of any sale, exchange or other conveyance of allowances through a greenhouse gas emissions allowance trading program;
- b. such moneys as are appropriated by the Legislature; and
- c. any return on investment of moneys deposited in the fund.

N.J.S.A 26 :2C-51 Coordination in administration of programs; use of moneys.

7. a. The agencies administering programs established pursuant to this section shall maximize coordination in the administration of the programs to avoid overlap between the uses of the fund prescribed in this section.

b. Moneys in the fund, after appropriation annually for payment of administrative costs authorized pursuant to subsection c. of this section, shall be annually appropriated and used for the following

purposes:

(1) Sixty percent shall be allocated to the New Jersey Economic Development Authority to provide grants and other forms of financial assistance to commercial, institutional, and industrial entities to support end-use energy efficiency projects and new, efficient electric generation facilities that are state of the art, as determined by the department, including but not limited to energy efficiency and renewable energy applications, to develop combined heat and power production and other high efficiency electric generation facilities, to stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction or avoidance potential, to develop qualified offshore wind projects pursuant to section 3 of P.L.2010, c.57 (C.48:3-87.1), and to provide financial assistance to manufacturers of equipment associated with qualified offshore wind projects. The authority, in consultation with the board and the department, shall determine:

- (a) the appropriate level of grants or other forms of financial assistance to be awarded to individual commercial, institutional,

and industrial sectors and to individual projects within each of these sectors;

(b) the evaluation criteria for selecting projects to be awarded grants or other forms of financial assistance, which criteria shall include the ability of the project to result in a measurable reduction of the emission

of greenhouse gases or a measurable reduction in energy demand, provided, however, that neither the development of a new combined heat and power production facility, nor an increase in the electrical and thermal output of an existing combined heat and power production facility, shall be subject to the requirement to demonstrate such a measurable reduction; and

(c) the process by which grants or other forms of financial assistance can be applied for and awarded including, if applicable, the payment terms and conditions for authority investments in certain projects with commercial viability;

(2) Twenty percent shall be allocated to the board to support programs that are designed to reduce electricity demand or costs to electricity customers in the low-income and moderate-income residential sector with a focus on urban areas, including efforts to address heat island effect and reduce impacts on ratepayers attributable to the implementation of P.L.2007, c.340 (C.26:2C-45 et al.). For the purposes of this paragraph, the board, in consultation with the authority and the department, shall determine the types of programs to be supported and the mechanism by which to quantify benefits to ensure that the supported programs result in a measurable reduction in energy demand;

(3) Ten percent shall be allocated to the department to support programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions, including but not limited to technical assistance to local governments, and the awarding of grants and other forms of assistance to local governments to conduct and implement energy efficiency, renewable energy, and distributed energy programs and land use planning where the grant or assistance results in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand. For the purpose of conducting any program pursuant to this paragraph, the department, in consultation with the authority and the board, shall determine:

- (a) the appropriate level of grants or other forms of financial assistance to be awarded to local governments;
- (b) the evaluation criteria for selecting projects to be awarded grants or other forms of financial assistance;
- (c) the process by which grants or other forms of financial assistance can be applied for and awarded; and
- (d) a mechanism by which to quantify benefits; and

(4) Ten percent shall be allocated to the department to support programs that enhance the stewardship and restoration of the State's forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases.

c. (1) The department may use up to four percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the department in

administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L.2007, c.340 (C.26:2C-55).

(2) The board may use up to two percent of the total amount in the fund each year to pay for

administrative costs justifiable and approved in the annual budget process, incurred by the board in

administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases including any obligations that may arise under subsection a. of section 11 of P.L.2007, c.340 (C.26:2C-55).

(3) The New Jersey Economic Development Authority may use up to two percent of the total amount in the fund each year to pay for administrative costs justifiable and approved in the annual budget process, incurred by the authority in administering the provisions of P.L.2007, c.340 (C.26:2C-45 et al.) and in administering programs to reduce the emissions of greenhouse gases.

d. The State Comptroller shall conduct or supervise independent audit and fiscal oversight functions of the fund and its uses.

New York

Part 507.4: The Energy Efficiency and Clean Energy Technology Account

(a) The Authority will establish and administer the Account in accordance with the provisions of 6 NYCRR Part 242-1.2(35) and 242-5.3(a).

(b) The Authority will administer the Account in such a manner that allowances allocated to the Account by the Department from the CO2 Budget Trading Program base budget will be made available for sale in CO2 Allowance Auctions as described in this Part.

(c) The proceeds of the CO2 Allowance Auctions will be placed into a segregated Authority funding account, and shall not be commingled with other Authority funds.

(d) The proceeds of the CO2 Allowance Auctions will be used by the Authority to promote and implement programs for energy efficiency, renewable or non-carbon emitting technologies, and innovative carbon emissions abatement technologies with significant carbon reduction potential, and for reasonable administrative costs incurred by the Authority in undertaking the activities described in Part 507 and for administrative costs, auction design and support costs, and program design and support costs associated with the CO2 Budget Trading Program, whenever incurred.

(e) At least annually, the Authority shall convene an advisory group of stakeholders representing a broad array of energy and environmental interests to advise it on how to best utilize said funds to achieve the goals of the Account.

Rhode Island

§ 23-82-6. Use of auction or sale proceeds.

(a) The proceeds from the auction or sale of the allowances shall be used for the benefit of energy consumers through investment in the most cost-effective available projects that can reduce long-term consumer energy demands and costs. Such proceeds may be used only for the following purposes, in a proportion to be determined annually by the office in consultation with the council and the board:

(1) Promotion of cost-effective energy efficiency and conservation in order to achieve the purposes of § 39-1-27.7;

(2) Promotion of cost-effective renewable non-carbon emitting energy technologies in Rhode Island as defined in § 39-26-5 and to achieve the purposes of chapter 39-26 entitled "Renewable Energy Standard";

(3) Cost-effective direct rate relief for consumers;

(4) Direct rate relief for low-income consumers;

(5) Reasonable compensation to an entity selected to administer the auction or sale; and

(6) Reasonable costs of the department of environmental management and office of energy resources in administering this program, as well as other climate change, energy efficiency, and renewable program efforts of the department of environmental management and office of energy resources, which shall not in any year exceed three hundred thousand dollars (\$300,000) or ten percent (10%) of the proceeds from sale or auction of the allowances, whichever is greater. Administrative funds not expended in any fiscal year shall remain in the administrative account to be used as needed in subsequent years. The office of energy resources shall have the ability to apply administrative funds not used in a fiscal year to achieve the purpose of this section. The funds deposited into the administrative funds account shall be exempt from the indirect cost recovery provisions of section 35-4-27.

(b) Any interest earned on the funds so generated must be credited to the fund. Funds not spent in any fiscal year shall remain in the fund to be used for future energy efficiency and carbon reduction programs.

(c) Annually, the office, in consultation with council and board, shall prepare a draft proposal on how the proceeds from the allowances shall be allocated. The draft proposal shall be designed to augment and coordinate with existing energy efficiency and renewable energy programs, and shall not propose use of auction proceeds for projects already funded under other programs. The proposal for allocation of proceeds in subsections 23-82-6(1), (2) and (3) shall be one that best achieves the purposes of the law, namely, lowering carbon emissions and minimizing costs to consumers over the long term. The office shall hold a public hearing and accept public comment on the draft proposal in accordance with chapter 42-35 (the "Administrative Procedure Act"). Once the proposal is final, the office shall authorize the disbursement of funds in accordance with the final plan.

(d) The office shall prepare, in consultation with council and board, a report by April 15th of each year describing the implementation and operation of RGGI, the revenues collected and the expenditures, including funds that were allocated to the energy efficiency and renewable energy programs, and the individuals, businesses and vendors that received funding, made under this section, the statewide energy efficiency and carbon reduction programs, and any recommendations for changes to law relating to the state's energy conservation or carbon reduction efforts. The report shall be made public and be posted electronically on the website of the office of energy resources and shall also be submitted to the general assembly.

Vermont

30 V.S.A. § 255: Regional coordination to reduce greenhouse gases

(a) Legislative findings. The General Assembly finds:

(1) There is a growing scientific consensus that the increased anthropogenic emissions of greenhouse gases are enhancing the natural greenhouse effect, resulting in changes in the earth's climate.

(2) Climate change poses serious potential risks to human health and terrestrial and aquatic ecosystems globally, regionally, and in Vermont.

(3) A carbon constraint on fossil fuel-fired electricity generation and the development of a CO₂ allowance trading mechanism will create a strong incentive for the creation and deployment of more efficient fuel-burning technologies, renewable resources, and end-use efficiency resources and will lead to lower dependence on imported fossil fuels.

(4) Absent federal action, a number of states are taking actions to work regionally to reduce power sector carbon emissions.

(5) Vermont has joined with at least six other states to design the Regional Greenhouse Gas Initiative (RGGI), and, in 2005, Vermont's Governor signed a memorandum of understanding (MOU) signaling Vermont's intention to develop rules and programs to participate in RGGI.

(6) It is crucial to manage Vermont's implementation of RGGI and its consumption of fossil fuels for residential and commercial heating, and industrial processes, so as to maximize the State's contribution to lowering carbon emissions while:

(A) minimizing impacts on electric system reliability and unnecessary costs to Vermont energy consumers; and

(B) minimizing the costs and the emissions resulting from the use of petroleum-based fuels for space heating and process heating for residential, commercial, and industrial purposes.

(7) The accelerated deployment of low-cost process, thermal, and electrical energy efficiency, the strategic use of low- and zero-carbon generation, and the selective use of switching fuel sources are the best means to achieve these goals.

(8) It is crucial that funds made available from operation of a regional carbon credits cap and trade system be devoted to the benefit of Vermont energy consumers through investments in a strategic portfolio of energy efficiency, weatherization, and low-carbon generation resources.

(b) Cap and trade program creation.

(1) The Agency of Natural Resources and the Public Utility Commission shall, through appropriate rules and orders, establish a carbon cap and trade program that will limit and then reduce the total carbon emissions released by major electric generating stations that provide electric power to Vermont utilities and end-use customers.

(2) Vermont rules and orders establishing a carbon cap and trade program shall be designed so as to permit the holders of carbon credits to trade them in a regional market proposed to be established through the RGGI.

(c) Allocation of tradable carbon credits.

(1) The Secretary of Natural Resources, by rule, shall establish a set of annual carbon budgets for emissions associated with the electric power sector in Vermont that are consistent with the 2005 RGGI MOU, including any amendments to that MOU and any reduced carbon cap resulting from a subsequent program review by RGGI, and that are on a reciprocal basis with the other states participating in the RGGI process.

(2) In order to provide the maximum long-term benefit to Vermont consumers, particularly benefits that will result from accelerated and sustained

investments in energy efficiency and other low-cost, low-carbon power system, building envelope, and other investments, the Public Utility Commission, by rule or order, shall establish a process to allocate 100 percent of the Vermont statewide budget of tradable power sector carbon credits to one or more trustees acting on behalf of consumers in accordance with the following principles. To the extent feasible, the allocation plan shall accomplish the following goals:

(A) minimize windfall financial gains to power generators as a result of the operation of the cap and trade program, considering both the costs that generators may incur to participate in the program and any power revenue increases they are likely to receive as a result of changes in regional power markets;

(B) employ an administrative structure that will enable program managers to perform any combination of holding, banking, and selling carbon credits in regional, national, and international carbon credit markets in a financially responsible and market-sensitive fashion, and provide funds to defray the reasonable costs of the program trustee or trustees and Vermont's pro rata share of the costs of the RGGI regional organization;

(C) optimize the revenues received from the management and sale of carbon credits for the benefit of Vermont energy consumers and the Vermont economy;

(D) minimize any incentives from operation of the cap and trade program for Vermont utilities to increase the overall carbon emissions associated with serving their customers;

(E) build upon existing regulatory and administrative structures and programs that lower power and heating costs, improve efficiency, and lower the State's carbon profile while minimizing adverse impacts on electric system reliability and unnecessary costs to Vermont energy consumers, and minimizing the costs and the emissions resulting from the use of petroleum-based fuels for space heating and process heating for residential, commercial, and industrial purposes;

(F) ensure that carbon credits allocated under this program and revenues associated with their sale remain public assets managed for the benefit of the State's consumers, particularly benefits that will result from accelerated and

sustained investments in energy efficiency and other low-cost, low-carbon power, or heating system or building envelope investments;

(G) where practicable, support efforts recommended by the Agency of Natural Resources or the Department of Public Service to stimulate or support investment in the development of innovative carbon emissions abatement technologies that have significant carbon reduction potential.

(d) Appointment of consumer trustees. The Public Utility Commission, by rule, order, or competitive solicitation, may appoint one or more consumer trustees to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of Vermont energy consumers. The net proceeds above costs from the sale of carbon credits shall be deposited into the Electric Efficiency Fund established under subdivision 209(d)(3) of this title. These funds shall be used by the entity or entities appointed under subdivision 209(d)(2)(B) of this title to help meet the building efficiency goals established under 10 V.S.A. § 581 by delivering heating and process-fuel energy efficiency services to Vermont consumers who use such fuel.

(e) Reports. On or before January 15 of each year, commencing in 2007, the Department of Public Service in consultation with the Agency of Natural Resources and the Public Utility Commission shall provide to the House Committees on Commerce and Economic Development, on Energy and Technology, and on Natural Resources, Fish, and Wildlife and the Senate Committees on Finance and on Natural Resources and Energy a report detailing the implementation and operation of RGGI and the revenues collected and the expenditures made under this section, together with recommended principles to be followed in the allocation of funds. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(f) State action off-sets. The State's negotiators to RGGI shall advocate for and negotiate to adjust the rules of the program, as needed, so that greenhouse gas reductions resulting from State investments and other public investments and investments required by State law will not be prohibited from being eligible for off-sets under the program. (Added 2005, No. 123 (Adj. Sess.), § 1; amended 2007, No. 92 (Adj. Sess.), § 18; 2007, No. 209 (Adj. Sess.), § 13b; 2009, No. 54, § 105, eff. June 1, 2009; 2009, No. 1 (Sp. Sess.),

§ E.235.2, eff. June 2, 2009; 2011, No. 47, § 20c, eff. May 25, 2011; 2013, No. 50, § E.700; 2013, No. 89, § 4; 2013, No. 142 (Adj. Sess.), § 50; 2017, No. 113 (Adj. Sess.), § 173e.)

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5. The Trustee shall collect auction proceeds and disburse these funds as directed by the Commission, using the following process:

(a) The costs associated with the Trustee and the administrative costs paid to RGGI, Inc. shall be reimbursed by RGGI auction proceeds, pursuant to 30 V.S.A. § 255(c)(2)(B).

(b) The Agency of Natural Resources (“ANR”) and the Department of Public Service (“Department”) shall have the opportunity to request that appropriate and reasonable administrative costs associated with their administration of RGGI be paid from the auction proceeds and to request funds to “stimulate or support investment in the development of innovative carbon emissions abatement technologies that have significant carbon reduction potential,” pursuant to 30 V.S.A. § 255(c)(2)(G).

(c) Subject to the opportunity for comment provided under subsection (d) below, the Commission may decide to use auction proceeds to pay the Commission’s reasonable administrative costs associated with its administration of RGGI.

(d) The Advisory Committee shall have the opportunity to file comments before the Commission disburses any auction proceeds to ANR, the Department, or itself to defray reasonable administrative costs associated with the administration of RGGI, or to fund any requests made pursuant to 30 V.S.A. § 255(c)(2)(G) by the Department or ANR.

(e) Minus any funds disbursed pursuant to subparagraphs (a)-(d), above, the remaining auction proceeds shall be deposited into the Electric Efficiency Fund created by 30 V.S.A. § 209(d)(3), in accordance with 30 V.S.A. § 255(d).