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October 26, 2022

Via Electronic Mail at karen.sabasteanski@deq.virginia.gov

Ms. Karen G. Sabasteanski
Department of Environmental Quality
1111 East Main Street, Suite 1400
P.O. Box 1105
Richmond, VA 23218

Re: VMA Comments on the Amendment and Repeal of 9 VAC 5-140 Regulation for Emissions Trading NOIRA

Dear Ms. Sabasteanski:

On behalf of the Virginia Manufacturers Association (VMA), please find the enclosed comments on the above-referenced NOIRA. VMA strongly supports this rulemaking to amend and repeal 9 VAC 5-140 and end Virginia's participation in the RGGI Program. We appreciate your consideration of VMA's comments.

Please feel free to contact Brett Vassey (804-709-1322) or me should you have any questions.

Very Truly Yours,

Liz Williamson

Attachment

cc: Mr. Brett A. Vassey, President and CEO, VMA *(via email)*

Virginia Manufacturers Association
Comments on the Amendment and Repeal of 9 VAC 5-140
Regulation for Emissions Trading NOIRA

The Virginia Manufacturers Association (VMA) submits these comments concerning the Notice of Intended Regulatory Action (NOIRA) for the Amendment and Repeal of 9 VAC 5-140 Regulation for Emissions Trading (RGGI Repeal NOIRA) for your consideration. VMA strongly supports the RGGI Repeal NOIRA, as more fully discussed below.

I. The Virginia Manufacturers Association.

VMA represents the 6,700 manufacturers across the Commonwealth that employ over 230,000 individuals. Virginia's manufacturing sector contributes $47 billion to the gross state product and accounts for over 80% of the state's goods exports to the global economy. The manufacturing sector is also energy-intensive and particularly sensitive to the costs associated with environmental regulation and taxes on energy.

There is an inextricable linkage between environmental management and the making and moving of energy, products, and people. As such, economic prosperity, environmental protection, business consumption and human health are interdependent necessities of the U.S. economy. Federal and state-administered EPA programs and policies to regulate the economy in order to slow or stop global warming should carefully balance these competing necessities through rigorous scientific and economic standards.

As such, our members are active participants in State Air Pollution Control Board (Air Board) rulemaking and permitting processes. Members hold and comply with air permits for their facilities across the Commonwealth. This requires regular engagement with the Virginia Department for Environmental Quality (DEQ) on permit compliance, inspections, and reporting. Our larger manufacturing members are subject to air permitting requirements under 9 VAC 5-140 Regulation for Emissions Trading, commonly known as the Virginia Regional Greenhouse Gas Initiative (RGGI) Rule (the Rule). This Rule is the subject of the RGGI Repeal NOIRA.

II. VMA Supports Ending Virginia's Participation in RGGI.

Greenhouse gas emissions within the Commonwealth are dropping and are expected to continue to drop with or without RGGI. CO2 emissions from the electricity sector have reduced from 42.11 million metric tons in 2007 to 26.92 million metric tons in 2019 without any regulatory driver.[1] Virginia's participation in RGGI has impacted the entire VMA membership either directly, with compliance requirements, or by substantially increasing the cost to conduct business in the Commonwealth. Virtually all of our members have seen significant operational cost increases due to high electricity tariffs from RGGI pass-through compliance costs. These costs significantly affect the

[1] Virginia Department of Energy, VA Greenhouse Gas Emissions from Power Production, 2022.

competitiveness of our member companies. Further these costs will not result in actual reductions in greenhouse gas emissions – Virginia's Renewable Portfolio Standards (RPS) will govern electric power emissions. For these reasons and others outlined herein, VMA ardently supports this rulemaking to repeal RGGI.

1. RGGI levies a direct, unnecessary tax on all Virginians.

RGGI membership comes at a high cost and an uncertain benefit. Utilities must purchase an allowance for each ton of carbon emitted. The State Corporation Commission (SCC) has approved the pass-through of the allowance costs directly to residential and commercial ratepayers. Customers have no opt-out opportunity. As a result, all Virginians that use electricity must bear the cost of the RGGI program, which is substantial. Executive Order 9 (EO-9) estimates that ratepayers must pay between $1 to 1.2 billion over the next four years.[2] Our membership shoulders a substantial proportion of RGGI costs due to the commercial rate structure and electricity requirements to run a manufacturing facility. These facilities are the backbone of Virginia's economy, providing the jobs that fuel the state's economy.

Virginia is highly ranked as a competitive southern state for manufacturing. RGGI participation jeopardizes this preeminent competitive position.[3] Increased energy costs inflate Virginia manufacturers' cost of operation, a burden not shared by most of the states with which Virginia manufacturers compete. When compared to non-RGGI states, Virginia's competitive advantage is threatened. Cost and regulatory burden is a constant consideration, as the Commonwealth competes for new businesses to locate in the state and existing manufacturers decide whether to stay.

2. RGGI is an unnecessary, duplicative regulatory program in Virginia.

Virginia is strongly committed to expanding the role of renewable energy in power generation. Virginia's electric utilities are moving rapidly to expand generation from renewable resources. Virginia is already among the nation's leading states in this effort. Further, manufacturers have and are expected to continue to explore innovative ways to reduce carbon footprints.

In fact, the Virginia Clean Economy Act (VCEA) establishes the Commonwealth's climate goals. The VCEA is a comprehensive law to directly address the

[2] "Virginia Carbon Trading Rule and Regional Greenhouse Gas Initiative (RGGI) Participation Costs and Benefits," Virginia Department of Environmental Quality (Mar. 11, 2022) (DEQ RGGI Report).
[3] Cato Institute Working Paper: A Review of the Regional Greenhouse Gas Initiative, Aug. 10, 2017, pp. 8-10. The Cato Institute study found that from 2007 (pre-RGGI) to 2014 the economies of the five non-RGGI comparison states grew 2.5 times faster than the RGGI states. Rather it is clear that even as the economy was recovering from the recession of 2008, industry was leaving the RGGI states.

Commonwealth's energy policies and to legislate change. The VCEA sets a 2045 net-zero carbon emissions goal for the state's economy. To achieve this goal, the VCEA requires fossil fuel electric generating unit shutdowns and adds incentives for renewable generation. The VCEA also establishes an energy efficiency standard to achieve energy efficiency savings annually. The Act requires utility participation in a RPS program with annual goals for sale of renewable energy. The Virginia Department of Energy projects that Virginia is on schedule to meet the 2045 net-zero goal.[4]

RGGI is an ineffective solution to climate goals. In comparison to the VCEA, RGGI does not mandate or even incentivize utilities to make generation changes. RGGI does not cap utility emissions with a state budget. It does have a RGGI cumulative regional cap for all RGGI allowances, which is the only true "cap" in the program. As a result, the Virginia RGGI budget does not operate as a not-to-exceed cap to curtail emitting carbon.[5] In summary, a costly pass-through revenue program is unnecessary to promote the continued rapid growth of renewable energy generation in the Commonwealth.

3. Virginia does not need RGGI to invest in strategic energy policies, infrastructure, and resilience programs in the Commonwealth.

Virginia has and continues to effectively develop and implement direct, cost-effective programs to address the reported effects of climate change in Virginia. RGGI, Inc. promotes the reinvestment of auction revenue in state programs addressing resiliency, energy efficiency, low-income communities, and other beneficial interests. However, the dollars that Virginia's citizens and businesses spend on RGGI would be much better spent directly on resiliency programs and initiatives with a tangible impact on communities in the Commonwealth. VMA supports legislative efforts to address these needs outside of the RGGI construct.

A direct funding program is greatly preferable to RGGI. The Clean Energy and Community Flood Preparedness Act (CECFPA) directs most of the RGGI auction proceeds to assist with flooding from severe weather events and energy efficiency programs.[6] However, using the RGGI platform comes at a large cost and loss of independence. First, fees are higher with no benefit whatsoever to Virginians. RGGI, Inc. charges a fee to administer the program, and DEQ collects an additional charge to

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[4] DEQ RGGI Report at 13.
[5] *See* https://www.deq.virginia.gov/air/greenhouse-gases/carbon-trading (visited Oct. 18, 2022) ("To comply with the regulations, power generators must reduce emissions to meet the cap or buy additional allowances through an auction administered by RGGI, Inc. which is the managing non-profit organization for the RGGI program.").
[6] Virginia Code § 10.1-603.25; § 10.1-1330.

cover the program expenses and administrative costs. Virginia's utilities also must employ environmental professionals to undertake detailed, comprehensive compliance efforts required for RGGI participation.

Aside from costs, Virginia loses control over its own money. RGGI states conduct a RGGI program review every three to four years, which results in revisions to the RGGI model rule that sets the program rules until the next program review.[7] That review can substantially impact the allowance costs of the program, not to mention the fundamental rules of participation. Virginia has only one vote among the RGGI states in this review process.

In addition, on an implementation level, outside influences affect the costs of RGGI to Virginians. RGGI allowance costs are often driven higher by private market brokers and entities that purchase allowances to sell, often at a profit, or retire them. For example, in 2021, Virginia received $227 million in revenue from RGGI. However, only a little over $129 million of that total was attributed to compliance entities, such as Dominion Energy or other utilities in the state, that purchased the allowances for compliance.[8] The 2021 RGGI compliance year illustrates the influence of third-party entities on the RGGI program and how third-party stakeholders ultimately increase the amount of the direct tax that Virginians pay for RGGI participation. In summary, exiting RGGI will restore the Commonwealth's independence. Virginia will be able to deliberately target resiliency and energy policy goals and address them without administrative fees, outside influences and with certainty.[9]

4. Virginia's carbon emissions are already rapidly dropping, without regard to RGGI.

CO2 emissions in Virginia are dropping. There are many reasons for this trend. First, conversion and retirement of coal-fired generation to natural gas and renewable generation has directly impacted Virginia's carbon footprint.[10] DEQ documented the energy transition that took hold in 2011-2012 with a series of coal-fired plant retirements and fuel conversions. These power sector changes contributed to declining carbon emissions at a CO2 emissions rate of 43% lower per unit of electricity between 2010 and 2020.[11] This decline is faster than the nation as a whole and comparable to the RGGI states. These statistics illustrate that carbon emissions can be addressed without

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[7] *See* https://www.rggi.org/program-overview-and-design/program-review (visited Oct. 21, 2022).
[8] The 2021 total Virginia revenue value and portion attributed to compliance entities are calculated numbers based on the RGGI Auction Results from 2021 by cumulating the results from the 2021 Auctions and applying the percentage attributed to compliance entities. For Auction Results, see https://www.rggi.org/auctions/auction-results (visited Oct. 26, 2022).
[9] Virginia General Assembly 2020 Session, Chapter 1280.
[10] DEQ RGGI Report, Table 3 at 14.
[11] DEQ RGGI Report at 10.

a costly regional carbon trading program. In addition, citizens and businesses are becoming more energy efficient. Virginia is already among the nation's leaders in reducing CO2 emissions. This trend began prior to RGGI membership in 2021. These data suggest that RGGI is not needed to achieve Virginia's climate goals.

5. Carbon emissions are not a regional problem.

CO2 emissions are a global problem. VMA has consistently articulated that regulating greenhouse gas emissions on a regional basis does not make sense. CO2 does not stop at the borders of RGGI states but coalesces in the atmosphere across states and internationally. Unlike CO2 emissions, RGGI requirements are confined to state borders. Concepts such as "leakage," cut against a regional model.[12] For example, a Regional Transmission Organization (RTO), such as PJM Interconnection, may dispatch less expensive electric generating units with higher CO2 emissions from a power generating plant located in a non-RGGI state in place of an electric generating unit with lower CO2 emissions on the other side of the state border in a RGGI state. The result is that RGGI states may become net importers of electricity from lower cost non-RGGI assets. Recent data supports this result. Using EPA 2019 emissions data, three out of the five top states importing electricity from out of state were RGGI states (Maryland, Delaware, and Massachusetts).[13] Delaware had the lowest state-wide annual CO2 emissions of any state in 2019, which was likely influenced by importing electricity into the state to satisfy customer demand. Plainly, a regional approach is not the solution to a global problem, which is best left to a consistent federal approach.[14]

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[12] RGGI, Inc. describes leakage as: "'Emissions leakage' is the concept that the RGGI CO2 compliance obligation and related CO2 compliance costs for electric generators could result in a shift of electricity generation from CO2-emitting sources subject to the RGGI CO2 Budget Trading Program to CO2-emitting sources not subject to RGGI. Key to this concept is that the cause of such a shift would be due to the RGGI CO2 Budget Trading Program rather than other factors that influence electric power sector CO2 emissions." CO2 Emissions from Electricity Generation and Imports in the Regional Greenhouse Gas Initiative: 2018 Monitoring Report, Mar. 11, 2021 at Appendix D (https://www.rggi.org/sites/default/files/Uploads/Electricity-Monitoring-Reports/2018_Elec_Monitoring_Report.pdf).

[13] Benchmarking Air Emissions of the 100 Largest Electric Power Producers in the United States, July 2021 at 3 (https://www.sustainability.com/globalassets/documents/mjba-archive/reports/benchmarking-air-emissions-results-2021.pdf (visited Oct. 26, 2022)).

[14] EPA is presently working on a federal greenhouse gas rule under Clean Air Act, Section 111(d). Unified Agenda, Spring 2022 at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=2060-AV10 (visited Oct. 21, 2022).

6. RGGI does not incentivize Virginia utilities to shift generation away from carbon-emitting assets, unlike other carbon reduction initiatives in the Commonwealth.

In Virginia, customers bear increased costs associated with RGGI, rather than utilities.[15] For example, the SCC approved that RGGI compliance costs would be passed through to customers in what is commonly called a RGGI Rider.[16] The RGGI Rider appeared on residential and commercial bills as a direct cost to be paid by the Commonwealth's electricity users. With customers paying the RGGI Rider, the RGGI program does not incentivize Virginia utilities to shift their generation mix away from fossil fuels.[17] RGGI is better suited to other RGGI states (e.g., Massachusetts, New Hampshire, Connecticut) with more deregulated markets than in Virginia.[18] In short, the Virginia energy market structure is not a conducive compliment to the RGGI regulatory approach.

III. Conclusion.

Regulations should maintain an appropriate balance between environmental protection and economic development, be based on exemplary science, consider cost-benefit analysis and comparative risk assessments in the regulatory process, and allow for flexible and performance-based approaches. Energy policies should ensure sustainable economic growth in manufacturing, with an emphasis on reliable supply at affordable prices. Tax policies should lower the overall effective tax rate on manufacturers. RGGI does not meet any of these public policy tests.

As such, the VMA requests your consideration of these six key points that are essential to manufacturers. RGGI is a duplicative, unnecessary, and ineffective program for Virginians. We support and encourage any rulemaking to withdraw from the program and repeal 9 VAC 5-140 Regulation for Emissions Trading. We look forward to continued engagement in this process and invite any questions concerning these comments.

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[15] Virginia Code, Section 56-585.1 A 4 (allowing utilities to recover environmental compliance costs).
[16] DEQ RGGI Report at 5-6.
[17] DEQ RGGI Report at 16.
[18] *See* https://quickelectricity.com/deregulated-energy-states/ visited Oct. 21, 2022 (providing an overview of energy deregulation on a state-by-state basis).