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March 31, 2023

**Via Electronic Mail at [karen.sabasteanski@deq.virginia.gov](mailto: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: Comments on Proposed Amendment and Repeal of 9 VAC 5-140  
Regulation for Emissions Trading**

Dear Ms. Sabasteanski:

On behalf of the Virginia Manufacturers Association (VMA), please find the enclosed comments on the above-referenced Proposed Rule. VMA strongly supports the repeal of this regulation, as discussed in our comments. It is a significant issue of importance to VMA's membership. 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 Proposed Amendment and Repeal of 9 VAC 5-140  
Regulation for Emissions Trading**

The Virginia Manufacturers Association (VMA) submits these comments concerning the Proposed Regulation for the Amendment and Repeal of 9 VAC 5-140 Regulation for Emissions Trading (Proposed Repeal) for your consideration. VMA strongly supports the Proposed Repeal, 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 regulations and taxes on energy.

Environmental management and the making and moving of energy, products, and people are linked. Economic prosperity, environmental protection, business consumption and human health are interdependent necessities of the U.S. economy. Federal and state-administered climate programs and policies designed to address global warming should carefully balance these competing necessities by applying rigorous scientific and economic standards.

VMA's electric generating unit (EGU) members are directly impacted by the requirements of 9 VAC 5-140 Regulation for Emissions Trading, commonly known as the Virginia Regional Greenhouse Gas Initiative (RGGI) rule. In addition, larger manufacturing members are subject to air permitting requirements under these provisions. However, *all of our members* have been and, without this repeal, will continue to be negatively affected by RGGI due to the staggering costs it imposes upon Virginia electricity ratepayers. VMA has been an active opponent of Virginia joining RGGI since its inception, foreshadowing the cost burden, ineffectiveness of the program, and unlawful hidden extra-territorial tax on Virginians. We applaud the Youngkin Administration's efforts to reveal the ineffectiveness for reduction of CO<sub>2</sub> and the overly burdensome costs of RGGI and proceed with the repeal of 9 VAC 5-140 (the RGGI rule) for the following reasons:

1. RGGI is unnecessary and redundant to decarbonize Virginia's electricity generation. It is important to note that CO<sub>2</sub> emissions in Virginia have steadily dropped.<sup>1</sup>

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<sup>1</sup> Greenhouse gases, including CO<sub>2</sub>, have declined from power generation sources in the Commonwealth from 2005 to 2010 based on DEQ greenhouse gas baseline inventories. DEQ reports an even lower comparative CO<sub>2</sub> average from 2016-2019 of 30.1 MMTCO<sub>2</sub>e (metric tons) in comparison to 2010 baseline levels of 33.7 MMTCO<sub>2</sub>e. See Virginia Greenhouse Gas Baseline Inventory, Nov. 2021 at Table 15, <https://www.deq.virginia.gov/home/showpublisheddocument/12631/637725680589830000>; Virginia 2016-2019 Average Greenhouse Gas (GHG) Inventory, <https://www.deq.virginia.gov/home/showpublisheddocument/16357/638018796919770000>

2. RGGI does not operate like a Clean Air Act regulation and contravenes the Code of Virginia.
3. RGGI is an economically harmful and non-transparent tax on electric utility consumers.
4. Virginia has the means and opportunity to address resiliency infrastructure in other ways that will be significantly more effective than RGGI.

We appreciate your consideration of the following comments in support of the repeal.

## **II. RGGI is Unnecessary and Redundant to Decarbonize Virginia’s Electricity Generation.**

In 2020, the Virginia General Assembly adopted the Virginia Clean Economy Act (VCEA) establishing the Commonwealth’s climate goals and energy generation policies.<sup>2</sup> The law sets 2045 and 2050 CO<sub>2</sub> emissions goals for the Commonwealth’s electricity generation and emissions. To achieve this goal, the VCEA requires fossil fuel electric generating unit shutdowns and mandates renewable electricity generation technologies. The VCEA also establishes an energy efficiency standard to achieve energy efficiency savings annually. The Act accomplished this by mandating electric utility participation in a renewable portfolio standard (RPS) program with annual goals for the sale of renewable energy. The Virginia Department of Energy projects that Virginia is on schedule to meet these goals.<sup>3</sup>

The Virginia Energy Plan (October 2022)<sup>4</sup> shows Virginia’s generation mix between 1990 through 2025. Significant changes are projected, as mandated by the VCEA from 2020 through 2045. The 2045 generation mix does not include coal or gas-fired generation. Further, the [2022 Virginia Energy Plan](#) states that, “[P]rior to joining the Regional Greenhouse Gas Initiative (RGGI), the Commonwealth had organically reduced its carbon emissions rate by more than 43%.”<sup>5</sup> Thus, *without RGGI*, Virginia’s electricity generation mix is undergoing dramatic decarbonization. RGGI by contrast does not mandate a change in generation mix that is necessary to truly impact CO<sub>2</sub> emissions. Figure 9 from the Virginia Energy Plan depicts these projections in Virginia.

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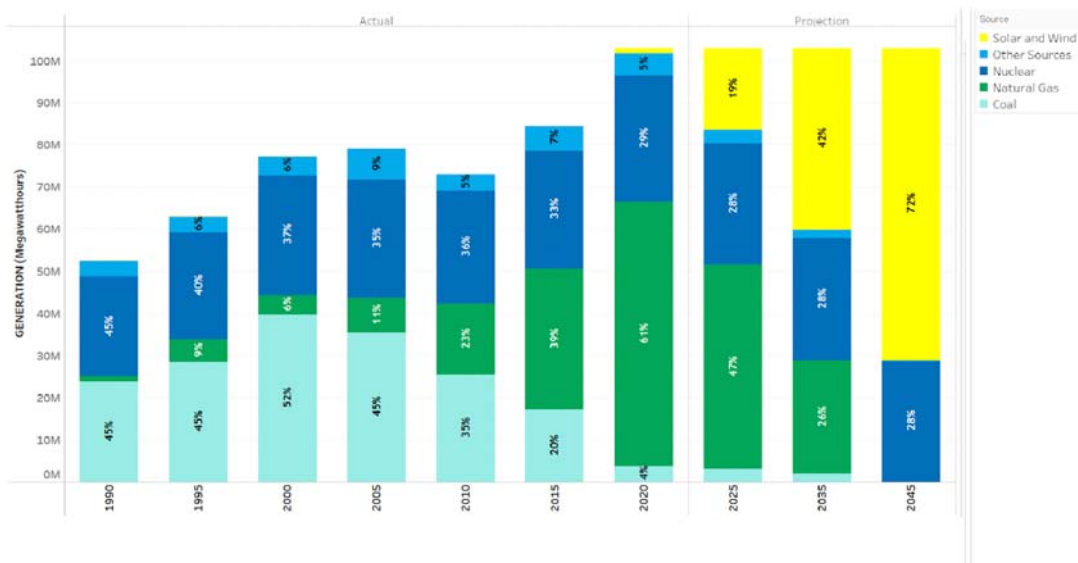
<sup>2</sup> See Virginia Department of Energy summary of key VCEA requirements: <https://energy.virginia.gov/renewable-energy/documents/VCEASummary.pdf>

<sup>3</sup> DEQ RGGI Report at 13.

<sup>4</sup> Virginia Energy Plan, Oct.3, 2022 (the Virginia Energy Plan) at [https://energy.virginia.gov/public/documents/2022\\_Virginia\\_Energy\\_Plan.pdf](https://energy.virginia.gov/public/documents/2022_Virginia_Energy_Plan.pdf)

<sup>5</sup> *Id.* at 4.

Figure 9. Virginia Total Annual Energy Generation by Source and Future Portfolio Growth<sup>20</sup>



The Virginia Energy Plan also confirms the staggering increases in electricity costs that Virginians should expect to finance the new generation assets (e.g., renewables, battery storage) that must be built to replace retiring fossil fuel units. The Plan cites Dominion Energy’s Integrated Resource Plan 2021 (IRP) for support. In 2022, Dominion Energy<sup>6</sup> updated IRP’s cost estimates in Figure 2.5.1. The estimates in 2022 are *higher* than the estimates from the 2021 IRP. The estimates in Figure 2.5.1 do not consider the costs of RGGI participation, but these costs can be seen in Figure 2.6.1 of the 2022 Dominion Energy IRP Supplement, *infra*.<sup>7</sup> With these data in hand and the VCEA in place, it is unclear what RGGI will accomplish other than to further increase energy costs and potentially result in greater “leakage” of carbon emissions.

The State Corporation Commission also recognized the necessity and redundancy of RGGI in a recent litigated case before the Commission:

RGGI requirements and the associated costs are in addition to the requirements and associated costs of the VCEA which, among other things, requires participation by Dominion and Appalachian Power Company (“Appalachian”) in RPS programs . . . . It is appropriate, however, to note potential costly duplications that may impede realization of the General Assembly’s intent. The VCEA plainly states that the RPS program requirements for Dominion shall be 100% by 2045. Thus, it remains unclear whether the significant cost required for participation in an additional cap-and-trade program — which is expected to cost customers billions of dollars - are necessary for Dominion’s and Appalachian’s

<sup>6</sup> Dominion Energy is the power generator in Virginia with the most assets subject to RGGI.

<sup>7</sup> See Dominion Energy 2022 Update to the 2020 IRP (Sept. 1, 2022) at <https://cdn-dominionenergy-prd-001.azureedge.net/-/media/pdfs/global/company/2022-va-integrated-resource-plan.pdf?la=en&rev=4549a78d3a3a49fdb4850432fdbc9492> (the 2022 Dominion Energy IRP Supplement).

ratepayers to bear in order to achieve the General Assembly's carbon reduction objectives?<sup>8</sup>

VMA concurs with the Commission's conclusions regarding redundancy, which are supported by the projections in the Virginia Energy Plan. There is no need to have two programs in Virginia to accomplish the same end goal.<sup>9</sup>

**Figure 2.5.1: Residential Bill Projection  
(1,000 kWh per Month)**

	Plan B – Company Methodology <sup>1</sup>			Plan B – Directed Methodology		
	Projected Bill	CAGR Dec 2019	CAGR May 2020	Projected Bill	CAGR Dec 2019	CAGR May 2020
Dec. 31, 2019	\$122.66			\$122.66		
May 1, 2020	\$116.18			\$116.18		
Year End 2030	\$165.64	2.8%	3.4%	\$185.81	3.8%	4.5%
Year End 2035	\$177.48	2.3%	2.7%	\$213.36	3.5%	4.0%
<b>Total Bill Increase (May 2020-2035)</b>	<b>\$61.30</b>			<b>\$97.18</b>		

Note: (1) Derived using the system resources selected in Alternative Plan B incorporating the Company Methodology for the purposes of the future billing analysis, including forecasted sales growth, forecasted class allocation factors, and a design capacity factor for solar resources.

Figure 2.5.1 shows Dominion Energy's projections for its rates in Virginia without RGGI participation. The bill increases range based on methodology applied from \$61.30 to \$97.18. The same figure projected slightly lower cost increases in the 2021 IRP. The 2022 IRP provides sensitivity analyses that project increases if Virginia does not exit RGGI in Figure 2.6.1.

**Figure 2.6.1:  
2022 Update Sensitivities on Virginia in RGGI**

Plan	NPV Total (\$B)		Approximate CO <sub>2</sub> Emissions from Company in 2047 (Metric Tons)	
	Base Plan	Va. in RGGI	Base Plan	Va. in RGGI
Plan A	\$68.1	\$71.6	18.9	17.0
Plan B	\$83.7	\$85.9	5.1	5.0
Plan C	\$77.2	\$79.4	4.9	4.9
Plan D	\$88.9	\$90.9	0	0
Plan E	\$88.1	\$90.1	0	0

Figure 2.6.1 of Dominion Energy's 2022 IRP update provides an estimate of the net present value cost in cost per billion of RGGI participation. The same Plan B alternative used for the residential bill projection would cost Virginians \$2.2 billion if the Commonwealth continues in the program. Therefore, Virginia's Energy Plan and Dominion Energy concur that energy prices will substantially increase due to VCEA commitments, even without a high RGGI price tag applied. There is no need to pay for two decarbonization programs that purport to achieve the same goal.<sup>10</sup>

<sup>8</sup> SCC, Petition of Virginia Electricity and Power Company, [Case No. PUR-2020-00169](#) (Yagdmann concurrence) (Aug. 4, 2021) at 12-16.

<sup>9</sup> As we discuss *infra*, RGGI is not designed to achieve that goal.

<sup>10</sup> SCC, Petition of Virginia Electricity and Power Company, [Case No. PUR-2020-00169](#) (Yagdmann concurrence) (Aug. 4, 2021) at 12-16.

### III. RGGI Does Not Operate Like a Clean Air Act Regulation and Violates the Code of Virginia.

RGGI is presented as an environmental regulatory solution to reduce CO<sub>2</sub> emissions from the power sector that leads to climate change. Yet, it stands in stark contrast to the VCEA. RGGI does not mandate or even incentivize regulated utilities to make CO<sub>2</sub> emission or generation changes in Virginia.

#### A. What Does RGGI Not Do?

RGGI is not based on scientific studies or analysis. Typical Clean Air Act programs set emissions limitations in metrics such as tonnage caps or emissions rates from stationary sources. These limitations are devised based upon years of scientific study, primarily by EPA. Environmental regulations are commonly based on health-based risk exposure studies to determine levels for safe exposure to a pollutant, based on the mode of contact (e.g., drinking water, breathing air, or dermal contact). For example, National Ambient Air Quality Standards (NAAQS) are based on years of planning using a science policy workshop and development of an Integrated Science Assessment (ISA) that is a comprehensive scientific evaluation. EPA conducts a risk exposure assessment and then a policy assessment (PA). An independent body (Clean Air Scientific Advisory Committee or CASAC) provides advice to EPA. Finally, the process goes through notice and comment rulemaking. Through this process, NAAQS and other air regulations are developed via science and proceed through years of development and peer review before they are finalized. The final result sets a definable numeric standard.<sup>11</sup>

Unlike this process, RGGI is not based on underlying technical studies that support a goal or standard. There are no health-based carbon risk exposure studies to humans underlying RGGI. RGGI goals are also not tied to climate change studies. RGGI does not follow a metric that is aligned with positive scientific impacts on Virginia's environment, such as reductions in sea level rise, lower temperatures, or meteorologic changes (fewer severe weather changes). There is no current federal or state atmospheric measurement of CO<sub>2</sub> concentrations in Virginia. CO<sub>2</sub> is not a criteria pollutant under the Clean Air Act and therefore has no CO<sub>2</sub> National Ambient Air Quality Standard (NAAQS). Therefore, there are no regulatory ambient air monitors that measure CO<sub>2</sub> concentrations in Virginia.<sup>12</sup>

Instead of science, RGGI, Inc. conducts periodic program reviews in which participating states review the regional CO<sub>2</sub> allowance budget for all states. The program review considerations in 2017 were:

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<sup>11</sup> For further discussion of the NAAQS standard setting process, see EPA's website:

<https://www.epa.gov/criteria-air-pollutants/process-reviewing-national-ambient-air-quality-standards>

<sup>12</sup> Virginia Energy Consumer Trust, [2021 Virginia Natural Resources Scorecard](#) at 8; see generally, EPA Interactive Map of Air Quality Monitors, <https://www.epa.gov/outdoor-air-quality-data/interactive-map-air-quality-monitors>

- Retrospective analyses of CO2 emissions trends;
- Electricity sector and CO2 emissions modeling;
- Macroeconomic modeling;
- Customer electricity bills analyses; and
- Stakeholder engagement and comments.<sup>13</sup>

Absent from this list is any scientific analysis to identify the appropriate CO2 reduction threshold to achieve any measurable impact on climate change or to reach a defined endpoint of success.

Under RGGI, Virginia utilities have no carbon tonnage limit or CO2 emissions limitation, only an allocation and a target. State and regional budgets do not function as limits. RGGI also does not regulate ambient emissions of CO2.<sup>14</sup>

RGGI is not designed to achieve a specific CO2 reduction goal or measurable environmental result. Even – hypothetically – if RGGI achieves CO2 reductions, there is absolutely no evidence as to whether and how much those reductions will achieve the changes Virginians seek, such as lowering the sea level rise or impeding global warming. This concern points to the lack of *causation* between RGGI and any concrete measure of performance. Many factors exist that contribute to sea level rise, global warming, and meteorological changes. Wild fires are a significant contributor to the release of CO2.<sup>15</sup> Other factors include out-of-state and international CO2 emissions, mobile source emissions, and land subsidence (sinking), such as in the Chesapeake Bay region.<sup>16</sup> Consequently, it is not surprising that RGGI is not tied to any tangible climate change results due to the complexity of the causation equation.

## B. What Does RGGI Do?

RGGI requires Virginia electric utilities to acquire carbon allowances for every ton of carbon emitted. That is the extent of RGGI's emissions requirements for Virginia utilities.<sup>17</sup> Consequently, EGUs in Virginia may emit as much CO2 as they wish as long as they buy an allowance per ton of CO2 emitted – i.e., pay a tax.

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<sup>13</sup> See RGGI 2016 Program Review: Principles to Accompany Model Rule Amendments (Dec. 19, 2017) at [https://www.rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Principles\\_Accompanying\\_Model\\_Rule.pdf](https://www.rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Principles_Accompanying_Model_Rule.pdf)

<sup>14</sup> While CO2 can be measured by continuous emissions monitors (CEMS) at EGU stacks, the measurement of CO2 at an individual source's stack is a very small piece of the equation. It ignores other sources of CO2 that contribute to the levels of CO2 in ambient air such as vehicle emissions that are the largest source of CO2 emissions by sector. See EPA data on carbon emissions by sector: <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

<sup>15</sup> See <https://csl.noaa.gov/factsheets/csdWildfiresFIREX.pdf>

<sup>16</sup> See discussion on the factors for sea level rise in the Chesapeake Bay region: <https://education.nationalgeographic.org/resource/sea-rise-and-storms-chesapeake-bay/>

<sup>17</sup> See <https://www.deq.virginia.gov/air/greenhouse-gases/carbon-trading> ("To comply with the regulations, power generators must reduce emissions to meet the cap or buy additional allowances

Regulated Virginia electric utilities are reimbursed by passing through allowance costs in electricity bills to all customers – Virginia’s residents, businesses, and industry. However, in some RGGI states, electric utilities cannot seek reimbursement for RGGI allowances. Those utilities are incented to emit less CO2 by dispatch of lower carbon emitting resources. This is not true in Virginia.

By design, Virginia’s application of RGGI does not reduce CO2 emissions, despite RGGI’s messaging. Virginia electric utility EGUs are not constrained by a RGGI limit or tonnage restriction like other Clean Air Act programs, nor do they have an incentive to dispatch lower CO2 emitting assets due to RGGI. RGGI has no measure of success or objective to meet. Rather, RGGI is a taxation system to collect money. It is not an environmental regulation that sets a standard (emissions limit); a means to achieve it (control device); and a method of measurement for emissions (ambient monitor). RGGI has none of these things.

C. RGGI Depends Upon the Co-benefits of Other Actual Clean Air Act Programs, Fuel Switching, Reduced Economic Activity, and the Perception it is a Cap and Trade Program.

RGGI claims CO2 emissions reductions from the Mercury & Air Toxics Program (MATS), fuel switching from coal, state-specific carbon reduction programs, company-initiated carbon reduction commitments, and reduced economic activity. RGGI, Inc. states, “Since its inception, RGGI emissions have reduced by more than 50%—twice as fast as the nation as a whole . . . .”<sup>18</sup> In reality, RGGI takes credit for emissions reductions from other air programs or initiatives that caused coal units to shut down. EPA’s air toxics program for utilities, MATS, finalized in 2012, caused utility owners to make retirement decisions rather than install expensive controls. Lower CO2 replacement generation has been built to cover the demand (natural gas and renewables). Other rules have caused EGU fleetwide retirements due to the expense of compliance, such as coal ash requirements and effluent limitation guidelines. It is impossible to parse what CO2 emission reductions, if any, RGGI has actually produced on its own.

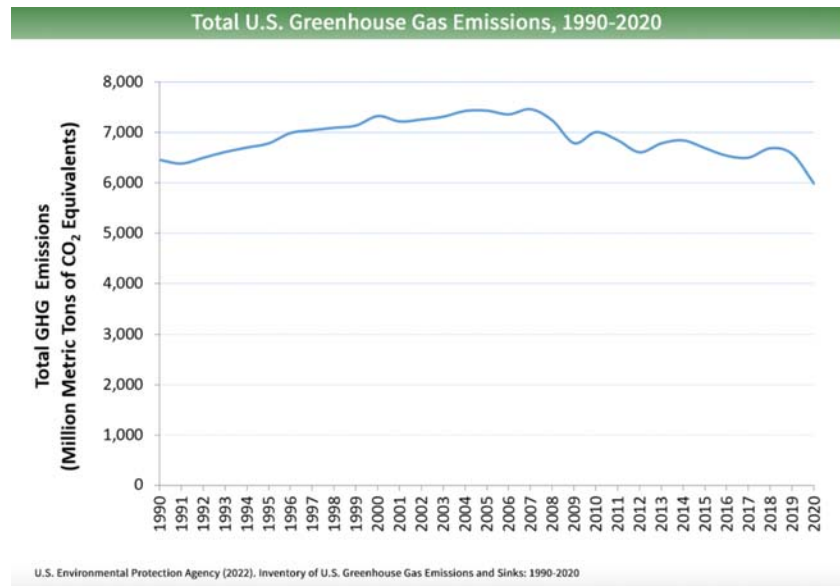
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through an auction administered by RGGI, Inc. which is the managing non-profit organization for the RGGI program.”).

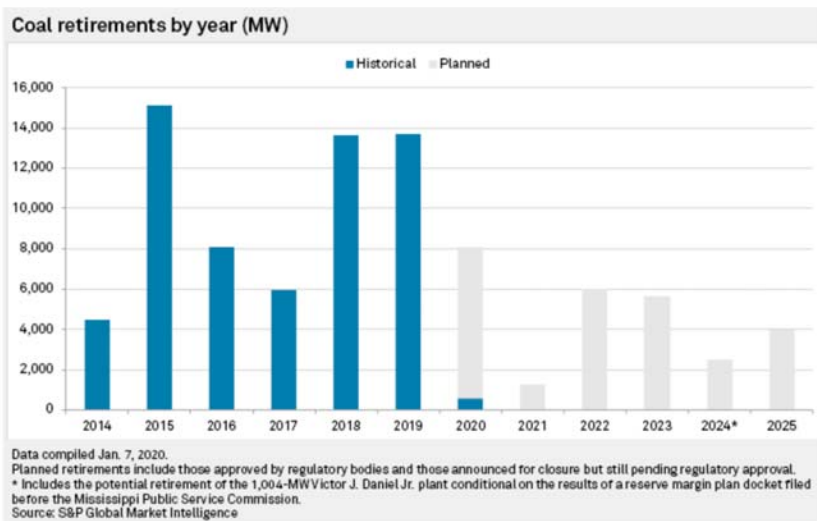
<sup>18</sup> RGGI 101 Fact Sheet at

[https://www.rggi.org/sites/default/files/Uploads/Fact%20Sheets/RGGI\\_101\\_Factsheet.pdf](https://www.rggi.org/sites/default/files/Uploads/Fact%20Sheets/RGGI_101_Factsheet.pdf)





Source: EPA website<sup>19</sup>



Source: S&P Global (2020)<sup>20</sup>

*EPA states on its webpage, "Since 1990, gross U.S. greenhouse gas emissions have decreased by 7%. From year to year, emissions can rise and fall due to changes in the economy, the price of fuel, and other factors. In 2020, U.S. greenhouse gas emissions decreased 11% compared to 2019 levels. The sharp decline in emissions was primarily from CO<sub>2</sub> emissions from fossil fuel combustion and was largely due to the coronavirus (COVID-19) pandemic-related reductions in travel and economic activity, including a 13% decrease in transportation emissions driven by less travel due to the COVID-19 pandemic. Electric power sector emissions decreased 10% due to a slight decrease in electricity demand from the COVID-19 pandemic and a continued shift from coal to less carbon-intensive natural gas and renewables."*

When matching up the country’s greenhouse gas emissions inventory with EGU coal retirements, a trend can be drawn, although there are many factors that impact emissions, which EPA notes. It is misleading to suggest that RGGI independently caused CO<sub>2</sub> emissions decreases without any data to draw this conclusion.

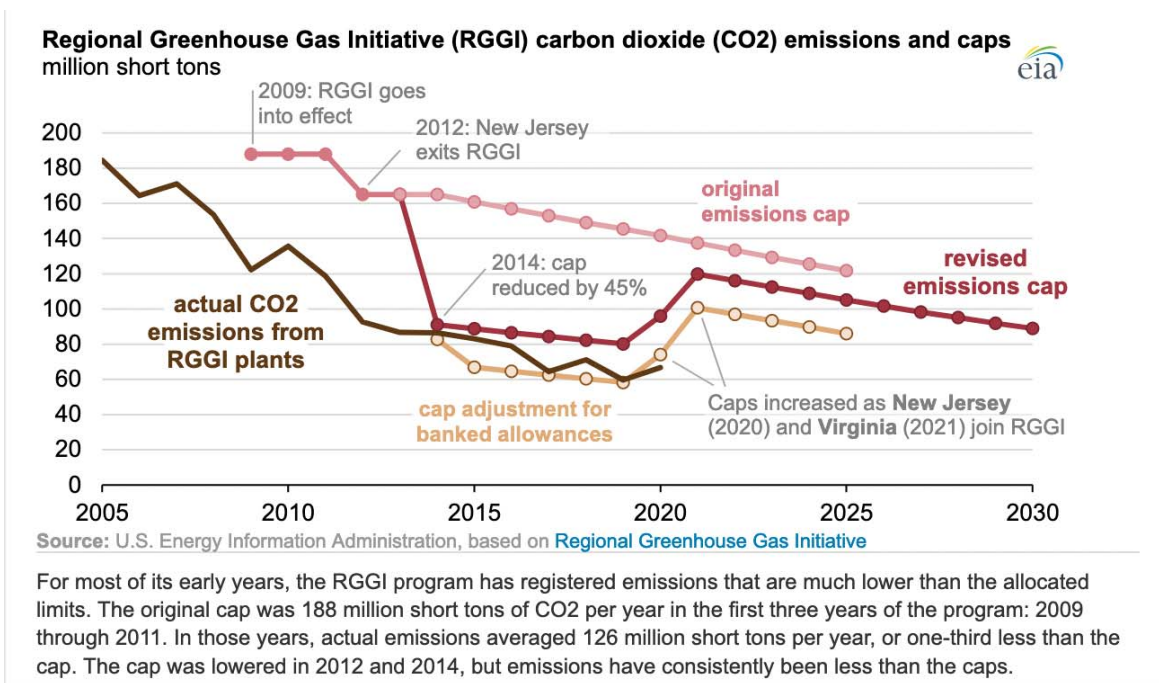
RGGI does not establish a CO<sub>2</sub> emissions limit in Virginia. RGGI has no state tonnage limits. Each RGGI state, however, does have a budget. It is easy to confuse state emissions “budgets” for emissions “caps.” A budget is the number of allowances

<sup>19</sup> See <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

<sup>20</sup> See <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-power-generators-set-for-another-big-year-in-coal-plant-closures-in-2020-56496107>

that RGGI puts into the quarterly regional allowance auctions based on estimates of CO2 emissions from Virginia. Virginia utilities may emit more CO2 than the Virginia budget. RGGI does not cap utility emissions with a state budget.

RGGI has a “regional cap” for participating states during program review. Like the state budgets, it also does not operate as a cap in practice. Participating states review current emissions trends against the level of the cap and other EGU data – balancing the allowance price range defined by the Emissions Containment Reserve (ECR) and Cost Containment Reserve (CCR) concepts working together. The program articulates a general goal to move the regional cap downward, although there is no justification in science for the steepness of that trajectory. Participating states make a policy decision in the program review. In the past, the regional budget (cap) has been set at a level *above* the actual CO2 emissions of EGUs. This graphic, prepared by EIA, illustrates the historical gap between RGGI state CO2 emissions and the RGGI regional cap.



Source: EIA, *Today in Energy* (Mar. 23, 2021).<sup>21</sup>

To summarize, Virginia has no state tonnage limit on CO2 emissions. The RGGI regional cap has not historically curtailed emissions. RGGI is fundamentally a costly tax on electricity.

D. CO2 Reduction Leakage May Negate RGGI Benefits.

CO2 reduction is a national and international problem because emissions do not know state boundaries. Regulating greenhouse gas emissions on a regional basis does

<sup>21</sup> <https://www.eia.gov/todayinenergy/detail.php?id=47256>

not make sense. Ambient emissions do not stop at the borders of RGGI states. Rather, ambient carbon blends in the atmosphere internationally. The RGGI program stops its reach at state borders. A federal and global approach is the best fit given the nature of ambient emissions. This spring EPA plans to release two greenhouse gas programs under Clean Air Act Section 111(b) and (d) for new, modified, and existing power plant units.<sup>22</sup> In addition, EPA recently released the final Good Neighbor Federal Implementation Plan, which is likely to cause further coal plant retirements with greenhouse gas co-benefits beginning in 2026.<sup>23</sup>

RGGI struggles with “leakage,” which underscores how a regional program is an ill-fit solution to a global objective. RGGI defines leakage as:

*[T]he 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.*<sup>24</sup>

The concept assumes that RGGI membership causes this generation shift, principally due to increasing compliance prices that disincentivize dispatch by Regional Transmission Organizations (RTOs). For example, PJM Interconnection, an RTO with jurisdiction in Virginia, may dispatch less expensive EGUs with higher CO2 emissions from a coal-fired power 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.

Leakage may cause RGGI states to become net importers of electricity from lower cost non-RGGI assets. CO2 leakage is a well-known flaw in the regional design. RGGI prepares regular reports that examine metrics including how much electricity RGGI states import from non-RGGI states to meet demand.<sup>25</sup>

Recent data shows that RGGI is likely causing generation shifting to out-of-state-sources. RGGI states composed three out of the five top states importing electricity

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<sup>22</sup> EPA is presently working on two federal greenhouse gas rules under Clean Air Act, Section 111(b) and (d). Unified Agenda, Fall 2022 at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2060-AV09> and <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2060-AV10>

<sup>23</sup> <https://www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs>

<sup>24</sup> 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](https://www.rggi.org/sites/default/files/Uploads/Electricity-Monitoring-Reports/2018_Elec_Monitoring_Report.pdf)).

<sup>25</sup> See, e.g., CO2 Emissions from Electricity Generation and Imports in the Regional Greenhouse Gas Initiative: 2019 Monitoring Report, June 15, 2022 [https://www.rggi.org/sites/default/files/Uploads/Electricity-Monitoring-Reports/2019\\_Elec\\_Monitoring\\_Report.pdf](https://www.rggi.org/sites/default/files/Uploads/Electricity-Monitoring-Reports/2019_Elec_Monitoring_Report.pdf)

from out of state (Maryland, Delaware, and Massachusetts), based on 2019 EPA data.<sup>26</sup> Delaware had the lowest state-wide annual CO2 emissions of any state in 2019. That demand was met by importing electricity into the state.

Akin to leakage in the trading market, CO2 leakage from industry will also occur as the price of electricity and regulatory compliance costs for self-generation climb. This reduced demand translates into reduced emissions for utilities, but it is also a false positive for the stated purpose of RGGI. Many of these energy intensive trade exposed (EITE) industries can simply relocate to more favorable states or nations and their CO2 emissions will continue to contribute to global CO2 levels, thus, negating some claims of CO2 reductions in RGGI states.<sup>27</sup> Joseph E. Aldy and William A. Pizer's important research on CO2 leakage found that, "energy-intensive manufacturing industries are more likely to experience decreases in production and increases in net imports than less intensive industries."<sup>28</sup>

From a macro perspective, an increase in CO2 emissions in non-RGGI states is contrary to the global CO2 reduction goal that knows no state boundaries. Higher non-RGGI emissions cancel out any emissions reductions within the RGGI footprint. In contrast, programs like the VCEA have more traction by defining specific renewable portfolio standards. CO2 leakage highlights a significant deficiency in the stated benefit of the RGGI program.

#### E. RGGI Contravenes Virginia Air Pollution Control Law

For years it has been the policy of the Commonwealth to avoid the imposition of regulatory requirements on its citizens and businesses that are more restrictive than applicable federal requirements unless a cogent showing of necessity supports a more stringent Virginia rule.

This principle is codified in the Virginia Air Pollution Control Law. The Virginia Code states in Section 10.1-1308.A:

[A] description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.<sup>29</sup>

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<sup>26</sup> 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>.

<sup>27</sup> Joshua Schneck\*, Brian Murray\*, Jan Mazurek\*, and Gale Boyd†, Nicholas Institute for Environmental Policy Solutions, "Protecting Energy-Intensive Trade-Exposed Industry," Primer NI PR HR-8, October 2009.

<sup>28</sup> Joseph E. Aldy and William A. Pizer, Journal of the Association of Environmental and Resource Economists, "The Competitiveness Impacts of Climate Change Mitigation Policies," Volume 2, Number 4.

<sup>29</sup> Va. Code § 10.1-1308.A.

VMA is encouraged by this effort to repeal the RGGI rules as it restores the longstanding approaches employed within Virginia regulations. Once repealed, any such future regulation should be deferred to the appropriate time and approach determined by the U.S. Congress.

Va. Code § 10.1-1308.E also only empowers DEQ to adopt CO2 emission regulations for “covered units.” The Virginia Electric Utility Regulation Act defines a “covered entity” as “a provider in the Commonwealth of an electric service not subject to competition but does not include default service providers.”<sup>30</sup> RGGI regulations improperly require sources that are not “covered units,” to apply for and obtain a DEQ permit.<sup>31</sup> There is no statutory authority to support imposing RGGI applicability and permitting requirements on industrial sources that are not covered entities. Even exempt industrial sources must obtain permits.<sup>32</sup>

## **V. RGGI is an Illegal, Economically Harmful, and Non-Transparent Tax on Electric Utility Consumers.**

### **A. RGGI Taxes Violate the Virginia Constitution.**

Virginia Constitution, Article X, Section 7 states that, “All taxes, licenses, and other revenues of the Commonwealth shall be collected by its proper officers and paid into the State Treasury. No money shall be paid out of the State treasury except in pursuance of appropriations made by law.” The power to tax is given only to the General Assembly. No specific delegation to tax has occurred with respect to DEQ or utilities.<sup>33</sup> DEQ and utilities are not proper officers to collect this tax as defined by the Constitution. RGGI tax revenue is also not properly paid out of the State Treasury through General Assembly’s appropriations process.<sup>34</sup> Therefore, the RGGI tax is illegal.<sup>35</sup>

### **B. RGGI Taxes Harm Virginia’s Electric Utility Consumers and Economic Competitiveness.**

All Virginians are paying for the increased costs associated with RGGI.<sup>36</sup> Since regulated utilities are allowed to obtain reimbursement from customers for the cost of

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<sup>30</sup> Va. Code § 56-576.

<sup>31</sup> 9 VAC 5-140-6040 (broadly defining applicability to include any fossil fuel-fired unit).

<sup>32</sup> 9 VAC 5-140-6040(B).

<sup>33</sup> The power to tax is given only to the General Assembly, which must *expressly* delegate that power to tax. *Wise County Bd. of Supvrs. v. Wilson*, 250 Va. 482, 463 S.E.2d 650 (1995).

<sup>34</sup> The Virginia Constitution requires that taxes be paid into the treasury. Va. Constitution, Article X, Section 7. The Clean Energy and Community Flood Preparedness Act, which allowed DEQ to establish a cap and trade program, circumvents the Virginia’s taxation requirements by directing funds outside of the normal appropriations process. Va. Code § 10.1-1330.

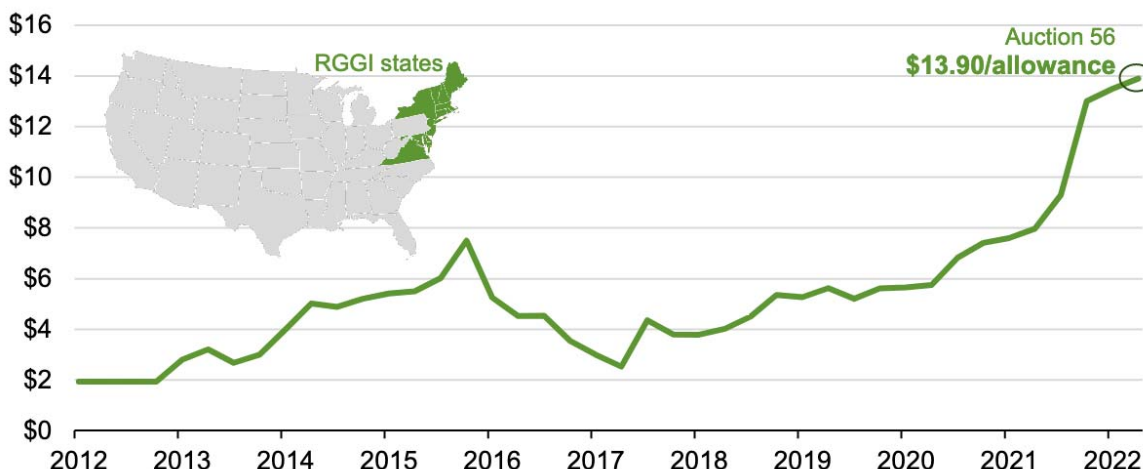
<sup>35</sup> *Wise Cty. Bd. of Supvrs. v. Wilson*, 250 Va. 482, 463 S.E.2d 650 (1995).

<sup>36</sup> Virginia Code, Section 56-585.1 A 4 (allowing utilities to recover environmental compliance costs).

RGGI allowances, they are able to get riders approved by the Virginia State Corporation Commission (SCC). Previously, the SCC approved RGGI compliance costs to be paid by customers in bills, as a RGGI Rider.<sup>37</sup> On December 14, 2022, a Petition was submitted for approval of a new RGGI Rider by the SCC.<sup>38</sup> If approved, as it has been in the past, the RGGI Rider will appear on residential and commercial bills as a direct cost to be paid by all electricity users. Yet customers have no control whatsoever as to which generation assets are dispatched and therefore how much carbon is emitted. But Virginia’s economy must support and foot the bill.<sup>39</sup> We agree with the observation that, if RGGI decreased CO2 emissions, the program would be better suited to other RGGI states (e.g., Massachusetts, New Hampshire, Connecticut) with more deregulated markets than in Virginia, in which customers have a choice.<sup>40</sup>

RGGI is becoming even more expensive. Auction prices were at an all-time high in the June 1, 2022 auction with a clearing price of \$13.90 per ton. Subsequent auctions have remained at elevated prices between \$12.50 and \$13.45. The EIA tracks how RGGI participation costs have been steadily increasing.

**Regional Greenhouse Gas Initiative (RGGI) allowance clearance price (Mar 2012–Mar 2022)**   
dollars per allowance (one allowance = one short ton of carbon dioxide)



Data source: U.S. Energy Information Administration, based on data from the [Regional Greenhouse Gas Initiative](#)

The 56th [Regional Greenhouse Gas Initiative](#) (RGGI) quarterly auction, held June 1, 2022, resulted in a record-high clearing price of \$13.90 per ton for CO<sub>2</sub> emissions allowances, surpassing the previous quarter’s clearing price (\$13.50 per ton) by 3% and the June 2021 clearing price (\$7.97 per ton) by 74%. Allowance prices set in the RGGI auctions have been increasing since the June 2017 auction, which cleared at \$2.53 per ton.

Source: EIA, *Today In Energy* (Sept. 8, 2022).<sup>41</sup>

<sup>37</sup> DEQ RGGI Report at 5-6.

<sup>38</sup> Petition of Virginia Electric and Power Company, For revision and reinstatement of rate adjustment clause: Rider RGGI, pursuant to § 56-585.1 A 5 e of the Code of Virginia, PUR-2022-00070 (Dec. 14, 2022) (DOM Petition) at <https://www.scc.virginia.gov/docketsearch/DOCS/7p%24r01!.PDF>

<sup>39</sup> DEQ RGGI Report at 16.

<sup>40</sup> See <https://quickelectricity.com/deregulated-energy-states/> (providing an overview of energy deregulation on a state-by-state basis).

<sup>41</sup> <https://www.eia.gov/todayinenergy/detail.php?id=53759>

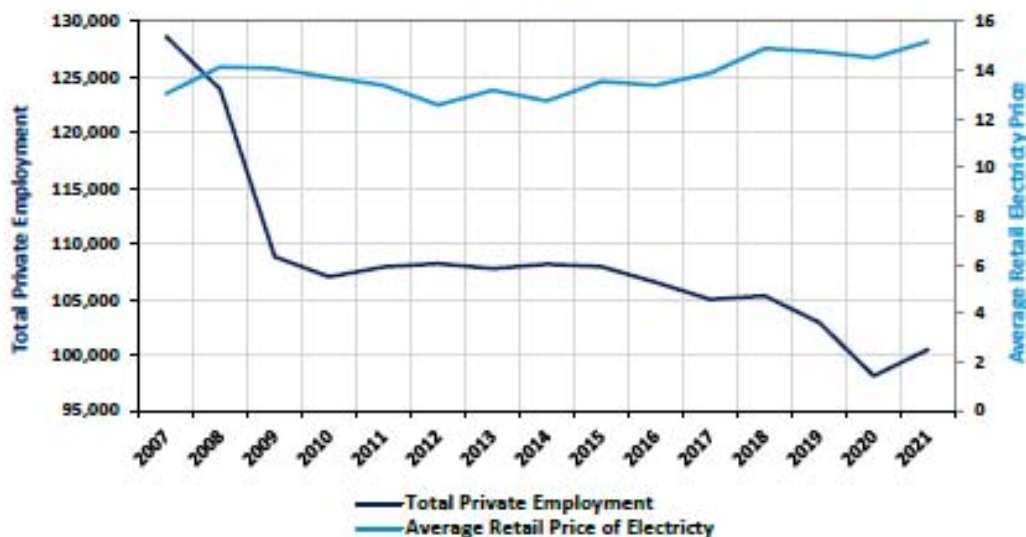
Dominion Energy projects the RGGI cost to comply is \$723 million from 2021 through December 2023. Of that amount, \$373 million is the estimated price tag for August 1, 2022 through December 31, 2023.<sup>42</sup> For a high-usage, high-load factor industrial customer, the increase could be more than \$80,000 each month, which is the equivalent to 12 full-time production positions with full health benefits, paid time off, and retirement.

Obviously, a \$723 million hit to the Virginia economy will have lasting impacts. Specifically, retirees on fixed incomes and those in persistent poverty cannot afford RGGI and other ratepayers cannot afford for their costs to be shifted to them. Unemployed Virginians are also at risk, particularly as the US economy continues to weaken, as evidenced by the recent plant closure and layoff announcements at Tysons and Woodwick.<sup>43</sup> As such, it is essential to keep energy affordable for all Virginians but especially during sensitive economic times.

Energy intensive trade exposed (EITE) industries are particularly sensitive to taxes and regulations that drive up the price of electricity. Massachusetts' economic experience is a warning to the rest of the states. RGGI has, in part, resulted in a loss of nearly 30,000 EITE industry jobs in that state since they joined in 2007.<sup>44</sup>

### Massachusetts

Figure 7: EITE Total Private Employment vs Average Retail Electricity Price for Industrial Customers – 2007 to 2021<sup>7</sup>



<sup>42</sup> DOM Petition at 6.

<sup>43</sup> See <https://www.vec.virginia.gov/warn-notices>

<sup>44</sup> Mangum Economic Consulting, Dr. Fletcher Mangum, EITE Industry Assessment, February 2023; see also <https://www.mass.gov/regional-greenhouse-gas-initiative-rggi>

As RGGI increases the cost to do business in Virginia, these electricity cost increases result in lost profits or increased manufactured good costs for consumers or both. This cycle further contributes to inflation. Additionally, RGGI costs make it harder for Virginia economic development as it is a regulatory disincentive for new manufacturers to expand into the Commonwealth. Virginia industry is already saddled with higher costs to do business due to the costs of the VCEA and other environmental compliance programs that increase electricity costs. Virginia facilities must contend with electricity riders to cover these other programs on their regulated-utility bills.

As has been the case in other RGGI states, VMA projects a loss of EITE industries and reduced manufacturing sector economic development over time unless the trajectory of electricity costs is reversed.

C. RGGI makes Virginia less financially independent and charges unnecessary fees.

Virginia loses control over its own money in several respects. RGGI program reviews<sup>45</sup> dictate key program elements such as state budgets, allowance pricing rules, and other rules that shape the program. These elements translate into dollars to participate in the program (allowance costs). Virginia has only one vote among states.

RGGI costs are driven substantially higher by third-party investors. Allowances that Virginia utilities must purchase cost more due to investor participation in the market. Private market brokers and entities purchase allowances to sell them at a profit or retire them. In 2022, Virginia received approximately \$295 million in revenue from RGGI. However, only a little over \$151 million of that total was attributed to entities subject to RGGI, like Dominion Energy and other utilities in the state, that must purchase allowances for compliance.<sup>46</sup> These data show that third-party stakeholders substantially increase the amount of the direct tax that Virginians pay for RGGI participation.

RGGI is not free – RGGI, Inc. charges a fee, while Virginia’s agencies extract an additional 5% for administrative and programmatic costs. RGGI, Inc. charges states their proportionate share of its operating budget per contract.<sup>47</sup> RGGI, Inc. posted its operating budget for 2023. It identifies approximately \$3.3 million in program personnel

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<sup>45</sup> See <https://www.rggi.org/program-overview-and-design/program-review> (visited Oct. 21, 2022).

<sup>46</sup> The 2022 total Virginia revenue value and portion attributed to compliance entities are calculated numbers based on the RGGI Auction Results from 2022 by cumulating the results from the 2022 Auctions and applying the percentage attributed to compliance entities. For Auction Results, see <https://www.rggi.org/auctions/auction-results>

<sup>47</sup> See Virginia’s RGGI Contract at [https://www.rggi.org/sites/default/files/Uploads/RGGI-Inc-Documents/State-Contracts/VA\\_Contract.pdf](https://www.rggi.org/sites/default/files/Uploads/RGGI-Inc-Documents/State-Contracts/VA_Contract.pdf)



and expenses to run the program for this year.<sup>48</sup> The 2023 budget is the most expensive since the inception of the program. Virginia has the second largest allowance budget in the program with 22.6% of the total budget. Using this value, Virginia's bill for RGGI, Inc. for *one year* is around \$726,000. This payment cumulates over successive years.

The Virginia Clean Energy and Community Flood Preparedness Act (CECFP) provides that the Department of Environmental Quality (DEQ) shall keep 3% of the revenue from RGGI for administrative duties and programming. The Department of Housing and Community Development keeps 2% of the revenue for administration and programming. In 2022, Virginia generated \$295 million in auction revenue.<sup>49</sup> Five percent of the revenue equates to roughly \$14.75 million that Virginia agencies are using for these purposes.

Roughly \$14 million in sunk costs into RGGI serve no purpose for Virginians but to perpetuate a program that is not a good fit. Virginians will benefit from recouping these fees, which can be spent on in-state needs like coastal resiliency, energy efficiency, and help to underprivileged communities. Exiting RGGI will restore the Commonwealth's independence and avoid unnecessary fees.

## **VI. Virginia Should Address Resiliency Infrastructure Directly.**

Virginia can address resiliency infrastructure without RGGI.<sup>50</sup> A Resiliency Infrastructure Investment Fund (RIIF), modeled after the Water Quality Improvement Fund (WQIF), and funded with a percentage of each year's budget surplus, would better address transparent, dedicated, and long-term climate related flood mitigation and resiliency infrastructure.

The Commonwealth's Virginia Coastal Resilience Master Plan specifically identifies the risks and infrastructure projects needed to mitigate sea level rise in coastal areas.<sup>51</sup> The General Assembly has time to refocus its efforts around RIIF for the 2024 General Assembly and the next state budget. This would also ensure that transparent, dedicated, and long-term funding is appropriated from the Virginia General Fund only to local government. It would also guarantee that all funds are annually reported and traced for performance by the State Treasurer, Auditor of Public Accounts, DEQ, and Virginia Department of Planning and Budget.

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<sup>48</sup> [https://www.rggi.org/sites/default/files/Uploads/RGGI-Inc-Documents/Budgets-Finances/RGGI\\_2023\\_Budget\\_Website.pdf](https://www.rggi.org/sites/default/files/Uploads/RGGI-Inc-Documents/Budgets-Finances/RGGI_2023_Budget_Website.pdf)

<sup>49</sup> See RGGI Cumulative Allowances and Proceeds (Virginia), [https://www.rggi.org/sites/default/files/Uploads/Auction-Materials/Cumulative-State-Charts/VA\\_Proceeds\\_by\\_Auction.xlsx](https://www.rggi.org/sites/default/files/Uploads/Auction-Materials/Cumulative-State-Charts/VA_Proceeds_by_Auction.xlsx)

<sup>50</sup> Virginia General Assembly 2020 Session, Chapter 1280.

<sup>51</sup> See Virginia Coastal Resilience Master Plan, <https://www.dcr.virginia.gov/crmp/plan>

## **VII. Conclusion.**

VMA supports the Commonwealth of Virginia's exit from Regional Greenhouse Gas Initiative. The reason for our support stems from four principal issues:

1. RGGI is unnecessary and redundant to decarbonize Virginia's electricity generation.
2. RGGI does not operate like a Clean Air Act regulation and violates the Code of Virginia.
3. RGGI is an economically harmful and non-transparent tax on electric utility consumers.
4. Virginia already addresses resiliency infrastructure directly.

We welcome any questions from Virginia DEQ or any member of the State Air Pollution Control Board. We look forward to further engagement on these issues.