

New Jersey to Pass Statute Implementing the Regional Greenhouse Gas Initiative

by Gary L. Cutler and Andrew D. Otis

In the face of continuing failure by the federal government to enact measures to reverse the tide of global warming, eight Northeast states came together in 2003 to act on a joint legislative effort to cap and reduce emissions of carbon dioxide, the chief pollutant leading to climate change. The result was the Regional Greenhouse Gas Initiative (RGGI), a multi-state compact designed to reduce harmful emissions of carbon dioxide from power plants. New Jersey is one of the states that signed the RGGI. The other states are: New York, Connecticut, Vermont, New Hampshire, Massachusetts, Delaware and Maine. The RGGI is the first mandatory carbon dioxide cap and trade program in the U.S. While regional in its regulatory reach, the RGGI encourages national mitigation of carbon dioxide releases. The RGGI also provides a framework that other states may join, and a model for future national action.¹

The RGGI is both a cap and trade program designed to place mandatory caps on carbon dioxide emissions, ultimately reducing their level, while providing the flexibility to meet these goals through market trading in pollution allowances. Each participating state will be allotted a share of pollution allowances based on its emissions output. The states will then distribute these allowances to their carbon dioxide emitters. Because each power plant will be held to its allowances, a polluter that needs to emit carbon dioxide above its allowance will have to spend money to buy additional pollution allowances. These pollution allowances will be sold by

plants that have achieved efficiencies with respect to their maximum allowances. Pollution allowances also will be created by a number of carbon dioxide-reducing offsets, such as innovation in technology or the planting of forests. Pollution allowances and offsets will be sold to polluters in a market created and managed by the RGGI. Through this market mechanism, the RGGI will promote innovation in environmental-enhancing technology and the reclamation of forestland.

In August 2006, the RGGI published a model rule as a template for individual member states to pass consistent legislation or regulations to implement the program. New Jersey has not yet reported out a draft bill for the implementation of RGGI. As it drafts its rules and legislation, New Jersey will have to address major policy issues, such as how best to initially distribute pollution allowances to power plants. New York and Massachusetts, for example, have chosen to auction 100 percent of the pollution allowances.

The initiative estimates the cap and trade program will lead to a 35 percent reduction in emissions by the year 2020 over what would have occurred without the program. Beginning in 2009, emissions of carbon dioxide from power plants in the region will be capped at approximately current levels of 121 million tons annually. The cap will remain in place until 2015. At that time, the states will begin reducing emissions over a four-year period. At the end of that time, emissions are to be reduced by 10 percent from the 2015 level.³ In comparison, the

Kyoto Protocol, an international treaty limiting greenhouse gas emissions, aims to cap emissions by five percent below 1990 levels by 2012.⁴ The United States has refused to sign the Kyoto Protocol.

Relative to much of the rest of the United States, the RGGI states already burn relatively cleaner fuels to generate electricity. For example, the Northeast has a greater percentage of power generated by relatively clean-burning natural gas than the Southeast or Midwest.⁵ While boasting the 11th largest state population, New Jersey ranks 17th by state in terms of the amount of annual emissions of carbon dioxide.⁶ New Jersey's RGGI cap is 22,892,730 short tons of carbon dioxide.⁷

Even though the Northeast burns relatively cleaner fuel, it is hoped that the RGGI will become an example to other states. The RGGI provides an example of what can be accomplished at the multi-state level to turn back the tide of climate change. Currently, the states of California, Oregon and Washington have formed an alliance—the West Coast Governors' Global Warming Initiative—to develop, among other goals, "a market-based carbon allowance program." Together, these states rank seventh worldwide in aggregated carbon dioxide emissions. The alliance has recommended to its governors that it send observers to RGGI in the hopes of learning from it.⁸

The ingenuity of the RGGI rests in part in the numerous ways pollution allowance offsets may be created, and in the fact that the

projects leading to pollution offsets may be undertaken anywhere in the country. Pollution allowance offsets can be created by five different environment-enhancing projects: 1) landfill methane capture and destruction; 2) reduction in emissions of sulfur hexafluoride, 3) reforestation to sequester carbon, 4) reduction of carbon dioxide emissions from natural gas, oil or propane end-use combustion due to end-use energy efficiency, and 5) avoiding methane emissions from agricultural manure management operations. The flexibility of this part of the program will ensure emitters engage the least costly method to reduce carbon dioxide emissions.

At the same time, the model rule imposes limits on the percentage of its allowance that may be met by offsets. This percentage increases, however, if the price of allowances increases. If the price per allowance exceeds \$10 for a 12-month period, emitters will have an additional year to meet their obligations, may use offsets for up to 10 percent of their emissions and may use offsets from an international pollution allowance trading program, that is credits generated under the clean development mechanism of the Kyoto Protocol.⁹ The unlimited geographical scope of offset projects will help stabilize the price of offsets. This, in turn, will safeguard electricity generators' profit margins, ensuring that consumers are not gouged by the unavailability of pollution allowances.¹⁰

The RGGI builds on the success of other emissions trading programs. The allowance-tracking procedures in the model rule are very similar to the procedures and system successfully used in the sulfur dioxide trading program under the Clean Air Act of 1990. Electric power plant managers participating in that program will recognize in RGGI the use of terms such as "allowance tracking system," "compliance account" and "authorized account representative."¹¹ These managers, therefore, should have

little trouble moving from the sulfur dioxide allowance tracking system to the RGGI allowance tracking system.

The RGGI also is similar in structure to the Kyoto Protocol. The Kyoto Protocol applies to all sources of emissions, not just power plants, and six greenhouse gases, not just carbon dioxide.¹² The Kyoto Protocol requires 42 countries to limit their emissions.¹³ Like the RGGI, however, the Kyoto Protocol allows both emissions trading and offsets from other countries that do not have emissions reduction requirements.¹⁴ The largest Kyoto carbon market is in Europe, where 816 million tons of carbon dioxide equivalent were traded in 2006 at a value of 14.6 billion.¹⁵

The RGGI represents a significant effort to control the emission of greenhouse gas. The authors feel its comprehensive nature is a credit to the eight states that have passed the compact. While the RGGI demonstrates that regional cooperation can work to help solve international environmental problems, the most effective program for curtailing greenhouse gases would be a national program that involves cooperation in the international effort to limit greenhouse gas pollution. ■

ENDNOTES

1. The State of Maryland signed legislation requiring it to join the initiative by June 2007. Rhode Island, which was part of the RGGI process, ultimately did not sign the compact.
2. Regional Greenhouse Gas Initiative, *States Reach Agreement on Proposed Rules for the Nation's First Cap-And-Trade Program to Address Climate Change*, Aug. 15, 2006, press release. See <http://www.rggi.org> [for a collection of the principal RGGI documents].
3. *Id.*
4. Jeffrey Ball, In Climate Controversy, Industry Cedes Ground, *The Wall Street Journal*, Jan. 23, 2007, at A17.
5. *Id.*
6. U.S. Census 2006 Population Estimates; Michael H. Wall, The Regional Green-

house Gas Initiative And California Assembly Bill 1493: Filling The American Greenhouse Gas Regulation Void, 41 *U. Rich. L. Rev.* 567, 573-574 (2007).

7. Regional Greenhouse Gas Initiative, Memorandum of Understanding, Dec. 20, 2005, p. 3.
8. Michael H. Wall, The Regional Greenhouse Gas Initiative And California Assembly Bill 1493: Filling The American Greenhouse Gas Regulation Void, 41 *U. Rich. L. Rev.* 567, 573-575 (2007).
9. Regional Greenhouse Gas Initiative, Model Rule, §§ XX-6.5(a)(3)(ii), (iii); XX-10.3(b)(3)(1).
10. Wall, 573-575 (2007).
11. Model Rule, §XX-1.2(o), (r) and(ad).
12. The Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol) 1998, Annex A.
13. Kyoto Protocol at Annex B.
14. *Id.* Articles 12 and 14.
15. Henrick Hasselknippe, European Carbon Trade Worth 14.6 billion in 2006, *Carbon Market Europe*, Vol. 6, Issue 2 (Jan. 12, 2007).

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