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May 22, 2006

Regional Greenhouse Gas Initiative
Staff Working Group
rggicomm@gw.dec.state.ny.us

Re: Comments on the RGGI Draft Model Rule

Dear Members of the Staff Working Group and Environmental Agency Heads,

On behalf of the Adirondack Council, I write to comment on the Draft Model Rule for the Regional Greenhouse Gas Initiative (RGGI). The Adirondack Council is an 18,000 member not-for-profit advocacy organization working to ensure the ecological integrity and wild character of New York's six-million acre Adirondack Park. Located in northern New York, the Adirondack Park is a combination of roughly half private and half public lands. It contains over one million acres of true Wilderness and the largest assemblage of old growth forest east of the Mississippi River. The Adirondack Park encompasses one-fifth of New York's land mass and the public Forest Preserve has been protected by the State Constitution for over 100 years.

Global climate change will have serious implications for the ecological integrity of the Adirondack Park, as well as the rest of New York State and the nation. Climate is changing at rates much more rapid than native species can adapt. Various computer models predict different temperature increases, but the New England Regional Overview produced by the New England Regional Assessment Group for the U.S. Global Change Research Program in 2001 suggested that a regional temperature increase of 6-10 degrees Fahrenheit over this century can be expected.

If warming occurs at the rate that the Regional Assessment Group predicts, the Adirondack Park will be a very different place. The Park could completely lose its High Elevation Boreal Biome, that precious 85 or so acres that houses such Pleistocene survivors as Lapland Rosebay, Alpine Bilberry, Diapensia, Bearberry Willow, Bigelow Sedge, and Alpine Holygrass. The Low Elevation Boreal Biome, replete with species and habitats found few other places south of Canada, including Spruce Grouse, Canada Jay, Black-backed and Three-toed Woodpeckers, and extensive Black and

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The mission of the ADIRONDACK COUNCIL is to ensure the ecological integrity and wild character of the ADIRONDACK PARK.

extensive Black and White Spruce and Tamarack bogs could also be lost. Some of the less known but quite sensitive species including many butterflies, dragonflies, amphibians, and reptiles may be driven out of the Adirondack Park if significant warming occurs. Some studies have shown that it is possible that the Park may gradually lose Northern Hardwoods, as emblematic cold-adapted species such as Sugar Maple, American Beech, and Yellow Birch are displaced by the more southerly oaks and hickories -- dimming our autumnal foliage displays. As the climate becomes more favorable for them, exotic species will continue to creep northward and increased infestations of devastating invasive species including Hemlock Woolly Adelgid, Asian Long-horned Beetle, and Sirex wood wasps will diminish the integrity of our forest ecosystems.

Not only will the ecological integrity of the Adirondack Park be lost if global climate change progresses unchecked, but the entire region will be different. The tourism-based economy, on which the Park residents depend to sustain themselves, may be lost. Less snow will impact the ski facilities, a huge tourist draw for which the region is renowned. Many local communities also depend on the revenue generated by snowmobilers to sustain businesses during the winter months.

If hardwood tree species are pushed out by northward movement of southern species and the fall foliage displays are diminished, another tourism draw is lost. For the Adirondack Park the RGGI is also an economic issue, as it is for the power producers. If RGGI and other efforts (perhaps action by the federal government to regulate CO₂ emissions in the future) are unsuccessful, the ecological health, public health, and economy of the Adirondacks are at risk.

With this in mind, the Council applauds the agency heads from all of the RGGI states, as well as the members of the staff working group for their tireless efforts to establish the nation's first regional program to reduce emissions of carbon dioxide (CO₂). While we believe that the proposed level of cuts to emissions of CO₂ is relatively modest, the Council understands that it is a politically and technologically feasible first step towards mitigating one of mankind's most pressing issues. This program will certainly serve as a model for the entire nation while our leaders in Washington, D.C. debate action that can be taken throughout the country to mitigate emissions which cause global climate change. Furthermore, this program will be a model for the success of using regional cooperation to tackle pressing environmental issues while protecting economic markets.

While we are extremely supportive of this initiative, the Adirondack Council respectfully submits the following comments, some of which we believe could be useful in making the RGGI an even stronger program.

CO₂ Allowance Allocations:

Allocation for Consumer Benefits or Strategic Energy Purposes - § XX-5.3 (Page 40)

The Adirondack Council believes that the amount of allowances required to be allocated for consumer benefits or strategic energy purposes in the model rule (25%) is too low. During

the New York State Stakeholder and Regional Stakeholder processes the generators who will be required to comply with RGGI regulations openly spoke about how even if they were given allowances, they would build the price of that allowance into their cost when bidding for dispatch. If the public is going to be charged for the allowances required under this program, the allowances should be sold to the companies, and all of the proceeds should go towards funding additional programs to further reduce emissions of greenhouse gases. By allocating the allowances for this purpose, the RGGI program will have a more significant environmental benefit.

Early Reduction CO2 Allowances - § XX-5.3 (c) (Page 40-42)

We are also concerned with the model rule's section on early reduction allowances (ERAs) for projects which reduce emissions of CO2 that are completed between 2006 and 2008. Nowhere in the model rule does it state that a source that has reduced emissions due to a legal settlement resulting in a consent decree can not use those reductions to earn ERAs. The Adirondack Council believes that any and all reductions in CO2 emissions that result from a consent decree should not be eligible for ERAs, regardless of whether the consent decree was issued for a violation of CO2 emissions levels, or for other pollutants such as nitrogen oxides or sulfur dioxide. If a company has signed a consent decree, they have admitted they are guilty of breaking the law, and are agreeing to do work to remediate environmental damage they have caused. Operating a business in a manner that does not comply with the environmental laws of a state or the nation is not something that should be rewarded under the RGGI program. The Council strongly objects to allowing reductions resulting from a consent decree to be rewarded with ERAs. The model rule should be amended to explicitly state that reductions created through compliance with a consent decree are not eligible for ERAs.

We are discouraged that the ERAs will come out of a separate allocation, and are not part of each state's allocation. This means that additional allowances are being created, and the CO2 emissions cap will be artificially inflated. The Council suggests that ERAs be allocated as part of each state's budget for the first year of the program (2009).

Exemptions - § XX-1.2 (af) (Page 11) and § XX-1.4(b) (Page 19)

The model rule defines fossil fuel-fired as "With regard to a unit: the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 50 percent of the annual heat input on a BTU basis during any given year." (§XX-1.2 (af) p. 11) Under this definition, if a source uses biomass as more than 50% of its fuel mix, that source is exempt from the program. (Since the program applies to fossil fuel-fired units, given the definition of unit (§ XX-1.2 (bg)) and the applicability language in § XX-1.4 (a).) The Adirondack Council is concerned with this exemption because the percentage does not seem based in science, but rather is an arbitrary number. Using at least 50% biomass fuel mix is a good start in moving towards carbon neutral unit operation, however, this allows the remainder of the fuel mix at a plant to be derived from fossil fuels and create emissions that would go unchecked under the RGGI. We believe that the CO2 emissions cap would be stronger if the biomass exemption were either taken out of the model rule, or only

applied to the portion of the emissions that are created by the biomass fuel. This would ensure that units using a biomass-fossil fuel mix would have to account for the emissions created by the fossil fuels they burn. This approach would mirror that found in New York's Renewable Portfolio Standard, which states that only the biomass portion of the generation from a co-fired unit counts towards the state's renewable energy generation goal.

The model rule also gives participating states the option of exempting units that, due to their permit conditions, supply less than 10% of the electricity they generate to the grid. The Adirondack Council urges that this optional exemption be removed from the model rule before it is finalized. Exempting fossil fuel-fired units simply because they do not contribute significant energy towards the region's supply seems counterintuitive. The goal of the RGGI is to reduce emissions of greenhouse gases, not just from the supply side, but also from the demand side. These units are producing CO₂ emissions during operation just as the utility units that provide energy to the grid, and therefore should be required to comply with the same regulations. Industry must play a role in ensuring that we take comprehensive action to mitigate global climate change, especially since some industrial units are extremely large and contribute a significant amount of CO₂ emissions.

Offsets – Subpart XX-10

With regards to the offsets "additionality" issues, the Adirondack Council supports the current draft of the model rule and agrees that if a project is receiving funding from the Systems Benefits Charge, Renewable Portfolio Standard, or other incentives, it should not be eligible as a RGGI offset project. We agree with the Staff Working Group rationale (see memorandum on the draft model rule from RGGI State Working Group issued on March 23, 2006, which can be viewed at http://www.rggi.org/docs/cover_memo_to_public_review_draft_4.4.pdf.) which states that these projects are being undertaken through existing regulatory programs. Therefore, reductions produced by such projects would happen without the existence of RGGI.

RGGI offset allowances should only be given to projects that are "real, *surplus*, verifiable, permanent, and enforceable" as the Memorandum of Understanding signed by all participating states commits. The Adirondack Council asks that this specific language be added to the model rule to strengthen and clarify the intent at the beginning of Subpart XX-10 on offsets.

"Re-opener"

The Adirondack Council has a final suggestion that may improve the effectiveness of RGGI and ensure that the cap level is maintained at an appropriate level throughout the program. We believe that market forces and previous experience with sulfur dioxide allowances show that greater reductions can (and should) be achieved. We suggest that during 2009, the first year of the program, discussions are reopened and modeling is continued so that current (2006-2009) emissions levels can be accurately assessed and the cap level can be adjusted to reflect actual conditions. Furthermore, as the RGGI progresses, markets for CO₂ allowances are successfully

established, and data show that emissions are indeed declining while prices remain stable or only marginally increase, the Council would like to see the RGGI reduce the cap beyond 10%.

Thank you for the opportunity to comment on the RGGI. The Adirondack Council stands ready to support the RGGI during the final phases of the model rule's adoption, as well as the New York State Regulatory Process. We commend the members of the State Working Group for their hard work and determination during what was a complicated and trying, yet pioneering, process.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Ottney", written in a cursive style.

Jessica Ottney
Legislative Associate