



# CONSERVATION LAW FOUNDATION

September 16, 2008

Steve Diamond, Chair  
Energy & Carbon Savings Trust  
c/o Maine PUC  
[Jean.Guzzetti@Maine.Gov](mailto:Jean.Guzzetti@Maine.Gov)

Re: Draft Emergency Rule for Allocation of Money for Fossil Fuel Programs

Dear Mr. Diamond,

The Conservation Law Foundation is pleased to submit the following supplemental comments in addition to our public testimony in support of the Energy and Carbon Savings Trust's (RGGI Trust or Trust) Draft Emergency Substantive Rules for Allocation of Money for Fossil Fuel Programs.

## I. Purpose and Findings

We recommend that the emergency basis for the proposed rule include a discussion of the climate crisis as well as the energy crisis. According to the most recent study by the International Panel on Climate Change, there is a "very high likelihood" (defined as greater than 90% chance) that human activities are causing measureable, unprecedented, and dangerous warming of the earth's atmosphere.<sup>1</sup> To avert the most catastrophic impacts of global warming, the IPCC and most studies show that we must drastically reduce anthropogenic emissions of greenhouse gasses (GHGs).<sup>2</sup> The foremost of these pollutants, carbon dioxide (CO<sub>2</sub>), has a very long atmospheric life, on average 50-100 years.<sup>3</sup> Thus, CO<sub>2</sub> emissions must be evaluated on a cumulative basis: current year emissions must be added to emissions from previous years with the understanding that each increase adds to GHG-reductions required in future years. Programs that provide early and accelerated reductions in GHG emissions are therefore among the most powerful and important tools available to reduce the threat of climate change and should be one of our highest and most urgent priorities.

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<sup>1</sup> IPCC, *Climate Change 2007: Synthesis Report Summary for Policymakers*, at 5-14 (Nov. 2007). Available at [http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr\\_spm.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf).

<sup>2</sup> *Id.*, passim. See also J. Hansen, *Climate Tipping Points: the Threat to the Planet*, 2008, [http://www.columbia.edu/~jeh/2008/illwesleyan\\_20080219.pdf](http://www.columbia.edu/~jeh/2008/illwesleyan_20080219.pdf).

<sup>3</sup> American Geophysical Union, [http://www.agu.org/eos\\_elec/99148e.html](http://www.agu.org/eos_elec/99148e.html).

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In terms of the energy crisis, we concur with the Trust's findings. Maine has approximately 477,000 homes and 51,000 apartments – of which 80 percent are heated with heating oil.<sup>4</sup> The average statewide annual consumption of residential heating oil is 630 gallons per home or over 6.3 million barrels per year.<sup>5</sup> Although the price of heating oil recently dropped to \$4.00 per gallon, that is still a dollar more than last year.<sup>6</sup> Price-protected plans for the coming season, where available, remain on the order of \$4.85 per gallon. At those rates, it will cost the average Maine household over \$3,000 to get through the coming winter, which is \$1,160 more than last year. Statewide, high oil prices will cost Maine residents about \$1.3 billion in total – or an additional \$550 million that will be diverted from our local economy and instead flow directly out of the state.<sup>7</sup> These prices represent a severe economic burden that threatens the health and welfare of Maine families and, because of both fuel prices and the impact to the Maine economy, of Maine businesses.

The climate and the fossil fuel energy crises are inextricably linked. Residential heating and cooling is responsible for up to 20% of the region's GHG emissions.<sup>8</sup> On a BTU basis, residential heating oil is the most carbon intensive of all available fuels other than coal, which is not generally used in Maine, and thus is a primary target for GHG reductions in the state.<sup>9</sup> Recent studies in Maine and neighboring states show that there is both tremendous potential and a very great need for efficiency and weatherization programs to reduce energy costs and GHG emissions.<sup>10</sup> Further, it is clear by any analysis that these programs have very high benefit to cost ratios and that emergency

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<sup>4</sup> The Governor's Pre-Emergency Energy Task Force Preliminary Report, at 7 (August 2008).

<sup>5</sup> EIA, Fuel Oil Consumption and Expenditures in U.S. Households by End Uses and Census Region, 2001. Available at [http://www.eia.doe.gov/emeu/recs/byfuels/2001/byfuel\\_fo.pdf](http://www.eia.doe.gov/emeu/recs/byfuels/2001/byfuel_fo.pdf).

<sup>6</sup> See Maine Energy Office at <http://www.maineenergyinfo.com/oil/index.html>.

<sup>7</sup> Similar cost increases face those who heat with kerosene, natural gas and propane. See *id.* at <http://www.maineenergyinfo.com/energytrenddata.html>.

<sup>8</sup> Conservation Law Foundation, *New England's Down Payment on the Future* at 5 (2008).

<sup>9</sup> EPA, Unit Conversions, Emissions Factors, And Other Reference Data (2004). Available at <http://www.epa.gov/climatechange/emissions/downloads/emissionsfactorsbrochure2004.pdf>.

<sup>10</sup> The Governor's Pre-Emergency Energy Task Force Preliminary Report, for example, estimated there is an 18 percent achievable savings potential for heating oil use in Maine, which would produce total lifetime savings of \$1.8 billion. See Preliminary Report at 7. See also Josef Associates, *Maine Weatherization Program Evaluation*, at 5 (Dec. 2006); GDS Associates, Inc., *Vermont Energy Efficiency Potential Study for Oil, Propane, Kerosene and Wood Fuels*, at 6 (Jan. 16, 2007). The GDS study found that in Vermont, which is very similar to Maine in terms of both climate and building stock, the technical potential for reductions in heating oil use and GHG emissions is about 30 percent. The study estimated that at \$1.74 per gallon, the cost effective achievable savings in homes heated with oil was above 10% as a statewide average. Those however, are statewide averages and are now significantly outdated given recent increases in fuel prices. Vermont further estimates that a 10-15 year, \$30-\$60 million weatherization and efficiency program could reduce statewide fossil fuel use and energy bills by 25 percent, total annual statewide GHG emissions by 6-10%, and save Vermont consumers \$1.5 billion over the life of the program. See Regulatory Assistance Project, *Affordable Heat: A Whole-Buildings Efficiency Service for Vermont Families and Businesses*, at 1-11 (Jan. 2008) ("RAP Study").

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allocations by the Trust for fossil fuel weatherization and efficiency programs will comply with statutory criteria at 35-A M.R.S.A. § 10008(6)(B).<sup>11</sup>

Given the dual nature of the climate and energy crisis, we recommend that the “Purpose” and “Findings” sections of the emergency rule be expanded to cover both emergencies. That is, the purpose should be to allow for expenditures by the RGGI trust, prior to adoption of its final major substantive rules, on projects that will accelerate GHG reductions while also reducing the severe economic burden upon Mainers and Maine businesses caused by the high costs of fossil fuels. Recommended language on this and other suggestions is attached to these comments.

### II. Qualified Applicants and Funding Criteria.

The emergency facing Maine, as defined above, is based upon the climate and economic impacts of the state’s high dependency on fossil fuels during the winter. The emergency in terms of economic impact is clearly greatest for low income families that will be unable to afford to purchase sufficient heating oil to keep their homes habitable this coming winter.<sup>12</sup> So long as allocations from the trust stay within the statutory limit of 15% of total revenues over the three year RGGI control period, see 35-A M.R.S.A. § 10008(6)(B), CLF believes that the GHG reduction opportunities in this sector are significant and will fully meet the Trust’s statutory cost benefit requirements.

Many Maine businesses also face severe economic impacts from the energy crisis and we believe that “any person,” including commercial or industrial enterprises should be allowed to apply for emergency funding. All applicants, however, must compete on basis of same emergency criteria of “speed and need.” That is, as a prerequisite, all applicants must fully demonstrate (1) the ability to deliver early and accelerated GHG reductions, and (2) to provide immediate relief for the severe economic and home heating crises facing many Maine residents and businesses this winter. Viable fossil fuel efficiency programs that do not meet these criteria – for example commercial or industrial projects that have not yet finalized engineering and procurement planning, or which cannot begin construction in time – should be encouraged to apply for funding under the Trust’s forthcoming major substantive rules.

In a related vein, we note that the draft rules at § 4(C)(1)(c) would restrict eligibility to programs that currently lack funding to be “fully implement[ed].” This is consistent with general provisions in the RGGI model rule that seek to ensure funding only goes to programs that provide “additional” GHG reductions and do not represent windfall profits or assist free riders. In order to clarify this provision and to ensure that RGGI funds are used as intended, we recommend broadening this concept to require that funding be “in addition to and not displace” any existing funding. Additionally, we note that pursuant to statute, the Trust should also consider in § 4(D) the ability of projects to satisfy collateral efficiency opportunities. See 35-A M.R.S.A. § 10008(6)(B).

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<sup>11</sup> Maine State Housing Authority reports that with fuel prices of \$2.50 per gallon, its weatherization programs on average save \$2.16 for every \$1 invested. Josef Associates, Maine Weatherization Program Evaluation, at 6 (Dec. 2006). Studies in Vermont show that low income weatherization assistance returned \$1.98 in energy savings for every dollar invested (2005 dollars), and as much as \$5.03 when non-energy benefits are included. RAP Study at 15.

<sup>12</sup> See Governor’s Pre-Emergency Energy Task Force Preliminary Report at 1.

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### III. Cost-Effectiveness Test

The draft emergency rule proposes to evaluate cost effectiveness solely using a modified societal test, which would include total program benefits/costs including both non-resource benefits and ongoing customer costs. CLF agrees with other commenters that the complexity of measuring and verifying non-resource costs makes them ill suited for an emergency rule designed for rapid deployment. More importantly, however, in addition to cost effectiveness, pursuant to statute the Trust must prioritize those projects that deliver the “lowest cost in trust funds per unit of emissions.” 35-A M.R.S.A. § 10008(6)(B)(1). Therefore, we recommend a two stage process in which all projects must first meet a threshold cost effectiveness test based upon a limited Modified Societal Test, and then priority for funding should be established based upon the Trust cost for each ton of carbon reduced by the program.

### IV. Conclusion

CLF appreciates the opportunity to provide comments on this important rule. Please contact us if we can provide additional information or answer questions.

Sincerely,



Steve Hinchman,  
Staff Attorney  
Conservation Law Foundation