Maine State Legislature
Augusta, Maine 04333

August 21, 2008

Tom Tietenberg, trustee
P. Anderws Nixon, trustee
Stephen L. Diamond, trustee
Energy and Carbon Savings Trust
c/o Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333

Dear Trustees:

First, we want to thank you for serving as Trustees of the Energy and Carbon Savings Trust Fund. It seems like a short time ago we were intently engaged with a number of colleagues collaborating in the design of Maine's approach to RGGI.

As sponsors of LD 1851, we wish you well as you begin developing a dependable structure that ensures auction-generated funds are awarded and distributed to achieve crucial energy efficiency initiatives, particularly in the electric sector. In addition, we want to emphasize the importance of directing the majority of the funds (at least 85% according to statute) toward reductions in electricity consumption.

The additional objective of fossil fuel conservation measures was very deliberately limited in LD 1851 to 15% of the Trust. The reasoning behind this limitation is that the RGGI program applies only to electrical generators. Using the proceeds of the sale of CO2 allowances under the RGGI program to reduce electricity consumption will play a role in meeting the program goal of 10% reduction in greenhouse gas emissions from the affected sources and it can offset increases in electricity costs.

That being said, we recognize the currently pressing issue of high fuel prices and a possibly pending home heating crisis in the coming winter. With this potential crisis in mind, we support the immediate use of RGGI funds, in an amount not to exceed the legislative limit of 15% per year, to put in place fossil fuel efficiency measures, within

the confines of the legislative mandate. We recommend that the Trust rapidly ramp-up distribution of funds while at the same time putting into place thoughtful and careful procedures for distribution of the funds over the long-term.

Sincerely,

Representative Ted Koffman, Co-Chair
Joint Standing Committee on Natural Resources

Senator Phil Bartlett, Co-Chair
Joint Standing Committee on Utilities and Energy

Cc: Department of Environmental Protection Commissioner David Littell
MPUC Commissioner Sharon Reishus
MPUC Commisioner Vendean Vafiades
MPUC Commissioner Jack Cashman
Bureau of Air Quality Director Jim Brooks

AMERICAN LUNG ASSOCIATION®
of Maine

Testimony of the American Lung Association of Maine
Energy Carbon and Savings Trust
Public Meeting
August 21, 2008

The American Lung Association of Maine is pleased to submit comments at this important and timely public meeting. For the past several years we have been very active in collaborations regarding this issue, including with state agencies (such as the Public Utilities Commission, the Department of Environmental Protection, Department of Education, the Maine State Housing Authority) as well as with non governmental partnerships such as the Maine Partners for Cool Communities, and private-public partnerships such as the Maine Green Schools Project.

The American Lung Association of Maine supports a policy that would allow The Energy Carbon and Savings Trust to disburse funds before the allocation rules are finalized. In particular, we support funds directed towards increasing energy efficiency in schools and homes, with respect to both electric energy savings and fuel savings. Such projects, while responding to pressing energy related needs, also have longer term benefits in terms of reducing energy consumption and greenhouse gas emissions.

There is a great need for school energy efficiency investments to reduce energy consumption and GHG emissions this coming year. School operational costs are a significant tax burden and schools are extremely interested in reducing energy use. Homeowners also face unprecedented increases in their operational budgets, as high energy prices dramatically affect their fuel and transportation costs, along with other fundamental needs such as food and medicines.

Should the Trust contract with an existing organization, which presumably could act much more quickly, to fulfill the role of program administrator for this interim period?

We believe that Efficiency Maine (EM) has done an excellent job in providing assistance to Maine's homes, businesses, schools, and municipalities as they enact measures reduce their energy demand. EM is, in our view, the best candidate to administer this program in the near term, and possibly the longer term as well. Also, while we recognize that the mandate of the EM programs have focused largely on electrical energy savings, we believe that there is a critical need for the State of Maine to expand that capacity to reduce ***fuel- related*** energy demand, as well continuing and expanding electrical projects.

How should disbursements proceed with respect to the 15% allotment on reducing fossil fuel use?

We would very much like to see a focus on emission reduction projects in schools, as well as in the residential sector. Schools have tremendous unmet needs for fuel use improvements and continue to seek additional electricity incentive funds from Efficiency Maine.

The following analysis of GHG reduction opportunities in the School sector provides an overview of current efforts to quantify the need for investing in school energy efficiency improvements as a strategy for significant reductions in greenhouse gas emissions and taxes.

The Maine Green Schools Project identified unmet needs in energy efficiency in Maine schools:

(A collaboration facilitated by Maine DEP and Maine Energy Education Program, supported by the American Lung Association and Maine School Management Association)

- Eleven School districts (comprised of 55 schools & buildings) completed a baseline energy analysis in the first year of the GHG Energy Use Survey - to estimate their districts GHG emissions. MEEP staff provided technical assistance and energy spreadsheet tracking tools.
- Established a baseline energy profile to see where schools use energy. Future savings can be measured against the baseline to show progress.
  - **56%** of emissions generated from stationary fuel use (oil/propane/natural gas/kerosene)
  - **29%** of emissions generated from electricity use
  - **15%** of emissions generated from school fleet fuel use

Of particular interest here is that over half of the GHG emissions were associated with stationary fuel use, thus supporting the need for efficiency programs to extend beyond electrical efficiency alone. Furthermore, approximately 56% of home energy consumption is taken up by space heating in homes with inefficient shell and heating systems, a percentage that could be reduced to 36% through effective weatherization.

Funding uses.

In the case of both schools and residences, an energy audit is the key initial step to effective energy efficiency. It is important to emphasize that energy auditing procedures endorsed by the State of Maine recognize the critical important of a whole building systems approach. Through a whole building systems approach, energy efficiency recommendations are done within the context of ensuring safe and healthful indoor environments.

Schools

An EPA grant to Maine Green Schools awarded nine participating school districts to have a $1,400 Walk-Through Energy Audit (or put towards and energy project if the facilities manager was already familiar with energy auditing techniques). Efficiency Maine is administering this program.

- Energy audits provide an analysis of schools' energy use,
- Audits highlight inefficiencies that could benefit from a retrofit technology,
- Audits identify cost effective investments for the school to prioritize. The facilities manager also gains knowledge and understanding to apply in the evaluation of additional school buildings.

A more detailed cost analysis is achieved through an engineering audit. A walk-through energy audit (at $1400/school) is not as thorough as an Engineering audit which provides details on cost-effectiveness (at $4-5,000/school).

In addition, we support effective training programs for school facilities managers, such as the Building Operators Certification Program, which increases the in house capacity in schools to conduct walkthrough audits and to incorporate energy efficiency into the school's ongoing operations and maintenance plan.

Energy Efficiency investment in schools is a sound choice for the RGGI Public Benefits Program and is greatly needed.

TAXPAYER SAVINGS: Reducing energy operational costs in schools will save taxpayers money! The proportion of a school budget directed to energy costs is growing disproportionately; this hurts schools and the taxpayers that foot the bills.

UNMET NEED FOR FUEL SAVINGS: The baseline energy profiles documented that there is a lack in energy investment funds for Maine schools to address building envelope improvements and for projects resulting in decreased facility fuel use and fleet fuel use.

INEFFICIENCIES: The Maine Green Schools study documented that many schools have antiquated HVAC systems, old windows, inefficient lighting and appliances, under-insulated walls and ceilings. The 11 districts that participated in the Maine Green Schools GHG survey have documented energy investment needs (see list below)

CAPITAL CONSTRAINTS: Schools reported being limited by funding constraints; even investments with very quick paybacks are unattainable to many districts because of the upfront costs to retrofit. This is further demonstrated by the recent overwhelming success of Efficiency Maine's 2008 School Budget Booster Initiative.

- Doubling the incentives for schools resulted in a 10-fold increase in applications. (the 2008 Budget Boosters million dollar program will result in $1.1 million savings annually; an 8mil kWh reduction.)
- Huge Interest to reduce school energy costs - The program ran out of funds after only 3 months

- (EM generally sees 25 applications from schools in 3 months, this program had 255)

RENEWABLE ENERGY: Once schools have become energy efficient, renewable energy options can make financial sense.

Efficiency Maine's capacity to support school energy projects is extremely beneficial to implementing a project of this type.

- EM has been successful in providing financial incentives for electrical efficiency projects in schools
- Expanding their role to provide incentives for fuel related savings would be extremely beneficial to Maine schools and taxpayers.
- EM has the administrative structure in place to handle the applications, technical support and contracted services involved in energy investment projects.
- EM is a familiar resource to schools already, having their role expand to cover building envelope, fuel saving projects and renewable energy projects makes sense

The Maine Green Schools Project partners are seeking opportunities to expand this support of schools.

Priorities include both energy audits and retrofit opportunities in collaboration with the Efficiency Maine Program. Listed below (next page) is a first look at the types of energy efficiency opportunities that schools need additional assistance to accomplish. This list may be adjusted as the energy audits are completed and schools set priorities for retrofit projects.

Homes

Energy efficiency programs also exist at the residential level, through the Community Action Programs and the Maine Home Performance program. We consider energy efficiency a priority need in this sector as well. Energy efficiency is not only cost effective and can achieve significant energy savings. Homeowners considering new heating systems should do weatherization beforehand to ensure that these new systems are probably sized to the home's heating load.

The American Lung Association of Maine is currently working with a wide variety of state and regional partners in implementing a household survey to assess how Maine people are responding to high energy prices. We would be happy to share the results of this survey with the Trust when they become available this fall.

Summary of energy investment wish-list for 11 Maine Green School Survey participating school districts

Fuel Savings	-Install CO_2 sensors & variable frequency drives -Gas fired convection boilers -Zoned Direct Digital Control (DDC) systems -Removal and replacement of all univents and steam systems -Tankless hot water heaters
Electric & Lighting	-Quantum Lighting system that controls all district buildings -Dual technology occupancy sensors -Daylight Harvesting -Removal of all metal halides & replace with T-5 fluorescents
Renewable Energy	-Explore Geothermal heating/cooling options -Investigate wind potential on site -Install photovoltaic demonstration projects -Install solar thermal panels to preheat hot water -Replace oil boilers with wood pellet furnace

School Districts that participated in year-one of the ME Green Schools GHG Energy Use Survey: Bath Public Schools, Lewiston Public Schools, Mid Coast School of Technology, Raymond School Department, Connor Consolidated School, Waldo County Technical Center, and MSAD 3, 8, 9, 48 and 56.

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Comments of the
Industrial Energy Consumer Group
In response to
Questions from the Energy and Carbon Savings Trust
August 21, 2008

The Industrial Energy Consumer Group, which was the only business trade association involved in the negotiations which led to the passage of Maine's implementing statute for the regional Greenhouse Gas Initiative and the creation of the Energy and Carbon Savings Trust, is pleased to submit comments in response to the questions posed in an email dated August 13, 2008 from Jean Guzetti, RGGI Coordinator, Maine PUC. The IECG is an incorporated Maine trade association which represents medium and large Maine energy consumers on state, regional and federal energy matters.

As a preliminary matter, the IECG notes that the energy price "crisis" cited by the Trust in the Guzetti e-mail is not a crisis with regard to the purposes of the Trust. However, the IECG is willing to support, both conceptually and as part of a stakeholder work group, the rapid development of interim rules and procedures to allow the Trust to function this winter prior to adoption of permanent rules. This support is wholly dependent upon the Trust ensuring that any such interim approach operates completely according to the terms and purposes of the Trust as provided by the enabling statute, 35 M.R.S.A. §10008. The IECG will oppose any effort to weaken or ignore the statutory direction provided in the Trust's enabling statute.

Trust Question 1

Can the Trust legally disburse funds before it has adopted final rules and possibly before it has secured the services of a program administrator, and if so, should it accomplish this through the adoption of emergency rules or simply by relying on the criteria in the statute? If the Trust may legally do so, should it take emergency action to make funds available this winter?

The Trustees, as all trustees, have broad powers to effectuate the terms and purposes of the trust they are charged with administering. Maine's Uniform Trust Code, 18-B MRSA Part 1, et seq., provides that trustees have both general and specific powers and duties. Under 18-B MRSA §815, a trustee has the general powers conferred by the terms of the trust as well as "any other powers appropriate to achieve the proper investment, management and distribution of the trust property." 18-B MRSA §815.1.B (2). This general power of management and disposition may be limited by the terms of the trust.

Here, where the Trustees clearly have the power to "invest" Trust assets in order to reduce greenhouse gases and reduce fossil fuel combustion; they should be entitled to do so even before final rules have been adopted, as long as those investments or other expenditures satisfy the terms and purpose of the Trust.

The IECG notes that the legislature considered the question of how to staff and administer the Trust when it passed the Trust's enabling legislation. It specifically considered and rejected having any existing state agency act as the Trust administrator. The Trust should heed the legislative direction clearly provided and seek options other than utilizing existing state agencies as an interim administrator. The IECG also notes that all state agencies have been asked to do more with less resources in recent years. Their plates are all full. The Trust should not burden any agency with additional work, even in the short term, when other options are available.

The IECG will submit written comments to the Trust concerning the long-term administrative structure separately. For purposes of responding to the emergency noted by the Trust, an interim structure as discussed above is adequate and appropriate, as long as that interim structure administers the Trust as laid out above.

Trust Question 3

If disbursements are to proceed this fall, can and should the Trust expend more than 15% of the funds derived from the first auction (in September) on reducing fossil fuel use in anticipation that the revenue that would be forthcoming in the five subsequent auctions could be used disproportionately for reduction of electricity usage, thereby allowing the Trust to meet the 15% limit for the year? If so, should the focus of the fossil fuel reductions be on the residential sector?

There is no clear statutory requirement forcing the Trust to expend funds received at each auction in accordance with the 85/15 split provided in 35 MRSA §10008.6.B. In fact the statute implies that this split is an annual requirement. The IECG believes that the 85/15 split was intended to, and should, be treated as an annual requirement. This is consistent with other annual requirements elsewhere in the statute (35 MRSA §10008.6.G - administrative costs; §10008.6.K – Energy Conservation Board staff support; §10008.6.L - DEP research support). This also ensures that for the critical first years of the Trust, it will in fact meet its primary obligation under the 85/15 split. If the Trust wishes to treat the 85/15 split in a different manner, it should seek clarification or further direction from the legislature.

With regard to the second question in this section, at 35 MRSA §10008.D, the enabling statute does provide that the Trustees "may target bid competitions in areas or to participants as they consider necessary, ***as long as the requirements of paragraph B are satisfied*** [emphasis added]." As noted above paragraph B contains the 85/15 split; the preference for high benefit-to-cost ratio projects; and the preference for projects with the lowest cost per unit of emissions or kilowatt-hour saved.

Natural Resources Council of Maine

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August 21, 2008

Comments by NRCM to the RGGI Trust

Dylan Voorhees, Clean Energy Director

Thank you for allowing me to provide some comments in response to your questions. This is an exciting moment for someone who has worked for several years on the creation and adoption of RGGI in Maine—and especially as an advocate for the use of auction revenues, in a careful and deliberate way, to fund much needed energy efficiency investments.

I will make most of my comments in direct response to your questions but I would like to make two introductory comments (as well as some final recommendations).

First, be assured that the Legislature chose you, not the Public Utilities Commission (PUC), or Department of Environmental Protection (DEP) or other state agencies for good reason. Despite any rumor to the contrary, legislatures do not create new institutions lightly. I would suggest, with all respect to the excellent staff at those agencies, that this reflects an inherent desire to introduce some independent decision-making into our carbon and efficiency strategy. This clearly does not mean that you should not make every effort to utilize best practices in Maine and from efficiency programs elsewhere which have been running successfully—and improving—for a decade or more.

Second, it is a little unfortunate that external factors put you in the position of holding your first meeting to discuss the maximum flexibility you can apply to the laws and expectations in order to respond to an "emergency". There is no time to waste in this area, that is clear—we all wish we had been here five years ago. Yet you should proceed deliberately and keep your eyes focused on the long-term, overall goals of your institution.

Question 1: Emergency disbursement of funds

I don't offer you a legal opinion on this matter. I believe emergency rules are probably a fair option for you to consider. The statutory criteria were not written to provide the level of detail needed to carefully disperse millions of dollars. They do little more than direct you to use a benefit-cost test. As you know, that requires significant more interpretation, which should be done openly and methodically even if it is done expeditiously on an interim basis. That is what rules are for.

As I will elaborate on under question 3, I think it is inadvisable to spend money in excess of a million dollars without independent professional assistance of some kind; independent meaning a non-interested party who answers directly to you.

I don't believe the Trustees should be acting in "emergency mode". Please remember that although the RGGI Trustees may be able to make positive contributions to the home heating situation, it is not their primary responsibility to keep people warm this winter. That is the responsibility of the legislature, the Governor and his agencies.

Question 3: Use of 15% for fossil fuels

The short answer the first 15% question is "yes", you can spend more than 15% of the first auction's revenues on fossil-fuel savings. The statue suggests that the 15% actually applies to the *three year* compliance period. It should be relatively easy to justify spending your *first* 15% of auction revenue of the course of a year, provided you use a relatively conservative estimate (i.e. using the reserve price) of your annual revenue. Even if revenue were low for some reason (i.e. unsold allowances), you would legally have two additional years to complete that true-up.

On the question of sectors, the residential sector clearly has a compelling need for energy efficiency. But all sectors are hurting from high energy costs, and all sectors have important energy and carbon saving opportunities. It is also generally difficult to split a small amount of money three ways (residential, commercial, industrial) and still have effective spending. Until Maine devotes more significant resources to energy efficiency, you will be stuck with the challenge of spending limited money in a field where huge levels of investment are needed and cost-effective. If you do determine that you can safely spend only $1 million dollars on fossil fuels in the first year and are reluctant to send few dollars in every direction, I think you could clearly justify spending that money in the residential sector. That should certainly not be a foregone conclusion.

Question 2: Trust administration, interim and long-term

I would like to answer some of these questions with an apparent contradiction. I think you should focus much of your attention on the creation of a well developed administrative structure—at the same time, your first meeting may not be the best time to wade into the challenging questions of an ultimate structure for the Trust. I suggest you revisit the long-term question in the not-to-distant future.

I do believe that hiring a staff program administrator is not your only option, including in the interim. You could contract for a program administrator to help with rules (whether your full rules or emergency rules), initial planning, and drafting and evaluating any RFP's you may need to disperse program funds. You clearly will benefit from professional expertise, whether it is staff or a consultant. You should not limit yourself to existing public institutions. I would suggest that the Public Utilities Commission is likely the only public entity that could provide this kind of program administration expertise. However it may be preferable to chart a more independent course for your highest level of expertise. There are many private sector consultants with extensive efficiency experience that you could employ, provided they are clear of conflicts of interest.

[redacted]

On your administrative structure I would like to make a few additional broad points. First, program administration is not the same as program delivery. There are many qualified entities that can delivery energy efficiency programs or projects, from public entities like Maine State Housing Authority, to private companies, to large industrial consumers themselves. Fewer are qualified to administer your funds, meaning assisting you with high level budgeting, planning and evaluation of "bids" for projects or programs. It is quite important that the Trust retain staff or contracted expertise to play this role separately from any entity awarded money.

Second, you should focus on your plan, your budget and your rules (especially for evaluation), rather than the details of how efficiency monies are spent. Let the market (and accumulated expertise from the efficiency world) work with you to make those determinations.

Finally, you are directed to use predominantly "competitive bidding" to disperse your funds. I encourage you to use a broad definition of bidding, and to learn from a range of efficiency programs about how bidding works best. Bidding could range from bids for single efficiency projects that produce pre-determined energy/carbon savings to bids for more comprehensive programs, such as a small business program, with a fuller set of criteria for deliverables.

Overall recommendations

1. Understand the difference between efficiency administration and delivery. Learn about different models and from successful programs elsewhere.

2. Find expert help as soon as possible to help with overall planning, rulemaking and administration. Make it your own help.

3. Use strong, clear criteria (even if they are simple or borrowed from PUC rules) for cost-effectiveness and maintain control over applying them.

4. Distinguish explicitly between interim and long-term course of action so that you are not forced to conform to precedents you did not wish to set.

5. Rely on the Energy Conservation Board to help you with longer-term planning, such as an energy efficiency potential study, overall planning and budgeting, input on full rules (e.g. evaluation criteria).