Empire State Forest Products Association

The people behind New York's healthy forests and quality wood products
www.esfpa.org

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Basil Seggos
Commissioner
NYS Department of Environmental Conservation

Doreen Harris
President
NYS Energy Research & Development Authority

Dear Commissioner Seggos and President Harris:

On behalf of the Empire State Forest Products Association and our members we are pleased to submit our comments on the ***New York Cap-and-Invest (NYCI) Pre-Proposal Outline***. We have participated in the stakeholder outreach that both your agencies have been undertaking over the past year and want to commend you on the level and extent of outreach that your department's have engaged in. In our experience in the regulatory arena in New York, we have not seen such an open and engaged outreach effort and you all deserve credit in undertaking such a task. We look forward to continuing in developing the NYCI program as well as advancing New York's historic Climate Leadership & Community Protection Act (CLCPA).

The Empire State Forest Products Association (ESFPA) represents over 350 member businesses, industries and landowners engaged in forest resource production and stewardship of New York's 19 million acres of forest. In total, $22.8 billion dollars in annual industry production and nearly 100,000 jobs are attributable to operations of various industries within the forest related sectors. There are over 200,000 private forest landowners who also depend on sound forest and timber management and production to help them keep their forests as forests.

From a climate perspective, our forests are the lungs of New York and sequester over 26 million metric tons (MMT) of Carbon Dioxide (CO_2e) on an annual basis. In addition, our wood products manufacturing sector produces wood products used by society that sequester an additional 1.5 MMT of CO_2e annually. In total our forests and wood products account for 87% of all annually sequestered and stored CO_2e in New York. More importantly they do so while adding a host of co-benefits regarding substitution for otherwise fossil fuel intensive energy resources and substances as well as climate benefits related to landscape scale resiliency unparalleled by any other land cover in New York. Not to forget the aesthetic, biodiversity, recreational and wildlife benefits our forests provide to all New Yorkers.

While we support and have continued to work with New York policy makers on the CLCPA and its implementing regulations and programs, we believe that New York forests and the sustainable wood products derived from them have been underrepresented and under accounted for in efforts to date. Our forests and the wood products derived from them are a major ecological, social, and economic resource to the people of New York and going forward they can, and in fact must be, a significant part of the formula for addressing climate change and its impacts on New York.

We remain committed to collaborating with you as we address our climate challenges in a way that acknowledges our forests and wood products as a natural climate solution and a solution that is affordable and provides jobs and economic opportunity for thousands of New Yorkers going forward.

We are presenting our comments following the outline of the NYCI Pre-Proposal as provided in the Contents of the report.

The Mandatory Greenhouse Gas Reporting Program (forthcoming 6 NYCRR Part 253)

The proposed reporting regulation, 6 NYCRR Part 253, should align with existing federal and state emission regulations and reporting thresholds as much as possible and avoid mission creep under NYCI. For stationary industrial sources, we do not see the justification to go beyond U.S. EPA GHG Reporting Program requirements and existing DEC regulatory requirements at this time. While it may be useful to look at aligning reporting within existing regulated sources we would caution undue impacts on regulated entities and added costs.

The proposals states that "third party verification is anticipated for the most significant GHG source emissions." The need for such verification is not clear and seems beyond other regulatory reporting requirements in DEC programs. The cost and practicality of available "verifiers" seems questionable and unnecessary.

<u>Type of GHG Emission Sources</u>

Under *Minor Modifications* we continue to take exception to the accounting for biogenic combustion GHG emissions for industrial sources. While the CLCPA does require NY to account for all GHG emission sources in its emissions accounting, we do believe that the CLCPA section 75-0101 8 and 11 would allow the Department to treat biogenic sources aligned with other international and national jurisdictions.

Other jurisdictions such as the IPCC, California, Washington, and Quebec do not include biogenic CO2 emissions in their accounting and New York should remain consistent with other accounting systems. We have and continue to point out that biogenic CO2 emissions are net zero in the full life cycle emissions calculations of carbon sequestration and storage within New York's forests. While we are not asking for an "off-set" we are asking for consideration of the balancing of emissions within the sector and showing that in the accounting. In addition, acknowledging the substitution benefit of biogenic energy sources, in most instances displacing fossil fuels.

The ***Scoping Plan*** supports the "strategic use of bioenergy derived from biogenic waste, agriculture and forest residues, and limited purpose grown biomass" and NYCI should reflect this.

At a minimum, New York should recognize the use of biomass residuals in the manufacturing of wood products as a renewable and carbon beneficial energy source. We do not object to the accounting of other GHG in bioenergy emissions (e.g., N2O, CH4). By excluding biogenic CO2 emissions from calculations and methodologies in the NYCI program, New York will align with globally and nationally accepted GHG accounting.

The Cap-and-Invest Program

Obligated Sectors and Entities

We are non-committal at this point as to whether the electric sector is included or excluded from NYCI. Our concern either way is how obligated sources may be impacted if the electric sources are excluded from NYCI? How can we be assured that emission obligations in the electric sector are not born by other obligated NYCI participants. Should the electric sector not meet their 70 x 30 and 100 x 40 obligations how will those obligations be proportioned among all parties in both the electric sector and the obligated and non-obligated NYCI participants?

We are also concerned as to how electricity consumption by obligated sources will be calculated and accounted for. This concern arises in looking at EITE calculations and allocations for electricity consumed in the manufacturing process. Is there an accurate means by which Obligated NYCI participants can receive allocations or their equivalent through electric consumed in manufacturing processes?

We reiterate our comments above on biogenic fuels. As noted we do believe that under the CLCPA and within this NYCI program biogenic fuels can be excluded from the emissions obligations.

We would also like clarification that the "Emissions from wood burning in residential homes" includes cord wood, wood chips and high-density wood pellets.

Establishing the GHG Emissions Cap and Allowance Budget

Setting the 2025 GHG Emission Cap and *GHG Emission Cap Trajectory*

Our initial suggestion is to support the "Projection Method." We do, however, have concerns in setting this initial cap. First is the COVID factor. The 2019 – 2021 period has a significant fluke in measurements of GHG consumptions that are going to be difficult to account for over the first few years.

Second, is the lag in emissions accounting and reporting in setting and adjusting the Cap. In our read we are and will remain 2 years behind in emissions reporting. As we approach 2025 and move forward in the first few years we will be adjusted significantly. When do we actually believe we will have accurate 2025 benchmarks and just how/when do we believe we will accurately be able to report on achieving 2030 targets? When one looks at compliance obligations and potential penalties these vagaries in reporting and accounting will become significant.

Third, how are we factoring emission reductions, or lack thereof, from deployment of renewable energy generation (offshore/onshore wind and solar) and storage (battery or other). As we can see from projections for renewable energy and storage there will be a lag anticipated for targets in 2030 and 2040 and obligated as well as unobligated sources could be dramatically impacted by shortcomings.

Recent state modeling a projections for accelerated deployment of renewables and storage and other means of emission reductions are coming under question and there is uncertainty as to their meeting expected CLCPA targets. Should these initiatives fail to deliver, NYCI will be hampered by a shortfall of necessary allowances and unbridled price fluctuations, mostly increases. The net effect could be significant impacts on the state's manufacturing community and the state's overall economy. What if any relief is anticipated and how will stakeholders be engaged in the process of realignment?

Emission-Intensive and Trade-Exposed Industries

Emissions Intensity

The CLCPA and Climate Scoping Plan both call for consideration in avoiding "leakage: and the Scoping Plan calls for the identification of "Energy Intensive" and Trade Exposed (EITE) industries that could be subject to leakage of both emissions and jobs. Globally and nationally there has been consideration of both "Energy Intensive" as well as "Emission Intensive" industries in determining EITE industry sectors and facilities. We would recommend that both be used in factoring overall sensitivity in New York.

It has also been proposed that EITE sensitivity would only be applied to obligated sources under NYCI. We do, however, know that there are several non-obligated sources in New York who are extremely EITE sensitive and subject to leakage. In the wood products sector, we would note that sawmills have not met the emissions threshold for obligated sources, yet these industrial facilities are extremely sensitive to energy price fluctuations and highly competitive global and domestic trade markets. We believe there should be some means (appeal or otherwise) for non-obligated sources to be treated as EITE industries and have some allowance allocation or some other relief.

Regarding leakage in general, it is not clear that leakage will take into consideration domestic (i.e., inter-state) competition and leakage. Competition between states is as significant in the wood products sector as it is between countries, and this should be factored in for EITE leakage potential.

Consignment of EITE Allowances

We are not onboard with the consignment approach on industrial EITE allowances. Trade exposure can occur if a domestic market involves significant out-of-state or foreign imports or if in-state producers largely export to places (domestically or internationally) without carbon pricing or pricing aligned with New York. In such cases, in-state producers are not likely to be able to pass costs along to consumers, thus providing a rationale for free allocations.

NYCI Program Consideration to Ensure No Disproportionate Impacts in Disadvantaged Communities.

As proposed, NYCI is suggesting that the program needs to demonstrate that it does "not result in a net increase in co-pollutant emissions or otherwise disproportionately burden Disadvantaged Communities (DACs). In addition, the Climate Act requires DEC to prioritize measures to maximize net reductions of both GHG and co-pollutant emissions in DACs."

We have two overall concerns about these provisions. First, there must be a clear definition of "co-pollutants." Under the CLCPA co-pollutants are "hazardous pollutants produced by greenhouse gas emission sources." Hazardous Air Pollutants (HAPs) are listed in DEC and EPA regulations and are limited to toxic pollutants. Often people reference non-toxic pollutants as "co-pollutants" and if they are something other than HAPs DEC should specify the list and the statutory basis for listing them as HAPs.

Second, we are concerned with the complexity of setting facility specific emission caps on obligated entities within NYCI who are located adjacent to or near DACs. As noted in the proposal there are several parallel/complementary programs and requirements within DECs regulatory framework to address co-pollutants and disproportionate impacts on DACs. To attempt to address these concerns in NYCI could be confusing and redundant in the operation of those provisions.

As a practical matter the NYCI analysis should be limited to air emission factors of GHG and co-pollutants. The DAC criteria documents look at specific "environmental burdens" including potential exposures from a variety of factors and sources including traffic density, proximity to wastewater discharges, powerplants, landfills and a number of other unrelated factors such as housing vacancies, public transportation, etc., none of which relate to the GHG or co-pollutant sources which are part of NYCI. How will one NYCI obligated entity geographically adjacent or "near" (difficult to define) effectively participate in an equitable carbon pricing program if it is uniquely constrained by the DAC requirements under NYCI?

In our comments under DAR -21, DEP 23-1 and on statutory changes in the 2023 Siting Law we have expressed the preference that DAC "burden reports" and subsequent mitigation strategies should be developed by the state where a comprehensive analysis of the "environmental burdens" including sources and potential exposure factors could be documented. From there mitigation strategies for sources (point, mobile and other) as well as adaptation measures (flooding, housing, health care transit, etc.) could be identified and implemented. We still believe this could be a better strategy than placing the burden for DAC remediation on the reactionary permitting process. NYCI proceeds could also be part of the resources directed to address these strategies.

Other Comments

Linking with Other Jurisdictions

ESFPA supports the idea of linking NYCI with other jurisdictions such as having New York participate in a multi-state or better yet national cap and invest program. Our concern, however, is that the CLCPA as currently written is not amenable to a multi-jurisdictional approach for emissions reporting and accounting and the scope of covered emissions as noted in our comments here and elsewhere. We would support working towards a multi-state or national cap and invest program if we could reach

consensus on alignment of the breadth and depth of policy and regulation which such a program would require.

Enforcement Mechanism

Unlike other major regulatory programs established in the Environmental Conservation Law, the CLCPA does not have specific enforcement provisions related to regulated entities. As proposed the NYCI program would be amendments to 6 NYCRR Part 252 and 6 NYCRR Part 253 both of which are under Article 19 – Air Pollution Control. Article 19 imposes significant civil enforcement penalties with initial violations of $18.000 and additional continuing penalties of $15,000 per day. We would recommend that DEC adopt through regulation or statute separate CLCPA enforcement to reflect compliance requirements and challenges under the CLCPA. Suh enforcement should reflect the practicability of violators to meet emission and energy reduction/switching objectives rather than merely financially penalize them.

ESFPA appreciates the opportunity to submit these comments and would welcome the opportunity to discuss them further.

For More Information Contact:

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