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Franz Litz, Esq.
New York Regional Greenhouse Gas Initiative
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

Re: Regional Greenhouse Gas Initiative:
New York's Pre-Proposal Draft Rule

Dear Mr. Litz:

The Environmental Law Committee of the New York City Bar Association (the "Committee") respectfully submits its comments to the pre-proposal draft rule released by the Department on December 5, 2006 to implement the Regional Greenhouse Gas Initiative ("RGGI") in New York. The Members of the Committee are drawn from the private, public and non-profit sectors, and represent diverse viewpoints with respect to environmental matters in New York State and the City of New York.

The Committee strongly supports the RGGI, and is particularly very pleased with the leadership shown by the State of New York in fostering this important effort. The Committee also appreciates the Department's efforts to facilitate early input by releasing a pre-proposal draft of New York's RGGI rule.

The Committee supports New York's pre-proposal rule as it mirrors the RGGI Model Rule. The Committee limits its comments to a New York-specific provision that deals with allowance allocation. New York proposes to utilize a "100% auction allocation method" to distribute carbon dioxide allowances. The Committee is not taking a position on the Department's decision to embrace a 100% auction method to allocate allowances, but the Committee recommends that the Department expand upon the rationale provided in support of this approach (which focuses on the wholesale market) because a significant amount of generation services are tied up in bilateral contracts (power purchase agreements) that fall outside the New York Independent System Operator bidding process utilized in the wholesale market.

The Committee is concerned, however, that the pre-proposal draft rule lacks sufficient detail regarding how the proceeds of the annual auction will be used. According to the pre-proposal draft rule, the Department will utilize an “energy efficiency and clean energy technology account so that all allowances for each allocation year will be sold in an open and transparent allowance auction or auctions” each year. See Section 242-5.3(a)(3). The rule then states that the “proceeds of the auction will be used to promote the purposes of the energy efficiency and clean energy technology account.” Id. Although the rule provides a general description of the goals of the program and explains how the Department would allocate allowances in the event it is “unable to carry out the sale by auction” (i.e., by focusing on allocations to “energy efficiency service providers”), the rule lacks sufficient details regarding how the Department will utilize the proceeds of a successful auction. As the proceeds could be substantial, it is imperative that the rule incorporate detailed provisions governing how these proceeds will be utilized consistent with New York’s goal of reducing greenhouse gas emissions. By way of example only, proceeds could be utilized to provide small subsidies to projects that reduce or eliminate carbon dioxide emissions, and the rule could describe the application process to obtain such subsidy. In sum, specifics concerning both the process and targets for utilizing auction proceeds should be incorporated into the draft rule.

Thank you in advance for considering these comments on the pre-proposal draft rule. The Committee looks forward to commenting on New York’s formal draft rule when it is issued.

**New York City Bar Association
Environmental Law Committee**

By: 
Christine Fazio, Esq.
Chair