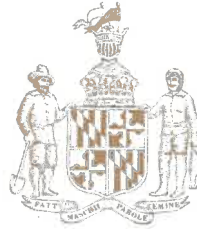


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January 10, 2020

The Honorable Carol L. Krimm
Maryland House of Delegates
422 House Office Building
Annapolis, Maryland 21401

Dear Delegate Krimm:

You have asked whether State proceeds from the sale of allowances under the Regional Greenhouse Gas Initiative (“RGGI”) may be used to fund carbon capture programs, the Maryland Healthy Soils Program, and regenerative agriculture programs. Specifically, you have asked whether such programs qualify as “climate change” programs under State Government Article (“SG”), § 9-20B-05(g)(3).

In my view, the programs you have identified, as described below, qualify as “climate change” programs under SG § 9-20B-05(g)(3). Accordingly, a portion of RGGI proceeds may be used to fund those programs, subject to the State budget process.

State law provides that proceeds from the sale of RGGI allowances (“RGGI proceeds”) are to be deposited in the Maryland Strategic Energy Investment Fund (“SEIF”). Environment Article, § 2-1002(g)(5). SEIF’s governing statute, SG § 9-20B-05, sets forth the various purposes for which money in SEIF may be used. One of those purposes is to “invest in the promotion, development, and implementation of ... climate change programs directly related to reducing or mitigating the effects of climate change.” SG § 9-20B-05(f)(1)(iii).

As to the RGGI proceeds deposited into SEIF,¹ SG § 9-20B-05(g) governs how those funds shall be allocated. Among the required allocations, at least 20% of RGGI proceeds shall be credited to a renewable and clean energy programs account for (1) renewable and clean energy programs and initiatives; (2) energy-related public education and outreach; and (3) “climate change and resiliency programs.” SG § 9-20B-05(g)(3).

¹ In addition to RGGI proceeds, other funds, including compliance fees paid by electric suppliers under the State’s Renewable Energy Portfolio Standard Program, are deposited into SEIF. SG § 9-20B-05(e).

Carbon Capture

Carbon capture or carbon sequestration broadly refers to the practice of capturing and storing carbon dioxide that otherwise would be released into the atmosphere, with the goal of reducing global climate change.² Geologic carbon sequestration involves the storage of carbon dioxide in underground geologic formations. Biologic carbon sequestration involves the storage of carbon dioxide within biological systems, such as vegetation, soils, woody products, and aquatic environments.³

Maryland Healthy Soils Program

The Maryland Healthy Soils Program was established by Ch. 373 *Laws of Maryland* 2017. The purpose of the Program is to encourage agricultural practices that improve the health, yield, and profitability of the soils of the State; increase biological activity and carbon sequestration in the soils of the State; and promote the widespread use of healthy soils among Maryland farmers. “Healthy soils,” as defined in State law, refers to the continuing capacity of soil to function as a biological system, increase organic matter, improve soil structure and water and nutrient holding capacity, and “[s]equester carbon and reduce greenhouse gas emissions.” Agriculture Article, § 2-1901. Research has identified management of soils on agricultural lands as “a key climate mitigation and adaptation strategy.” *Kristin B. Byrd, et al.* 2019 *Environ. Res. Lett.* 14, 104001.⁴

Regenerative Agriculture

There does not seem to be any generally-accepted definition of “regenerative agriculture”; however, it appears that the term commonly refers to farming practices aimed at improving soil diversity and increasing the capacity of soil to absorb carbon dioxide. *GreenBiz.com: The Fight to Define Regenerative Agriculture*, Jim Giles, April 24, 2019.⁵

It is my view that carbon capture programs, the Maryland Healthy Soils Program, and regenerative agriculture programs, as described above – all of which are aimed at reducing

² https://www.usgs.gov/faqs/what-carbon-sequestration?qt-news_science_products=0#qt-news_science_products

³ https://www.usgs.gov/faqs/what-s-difference-between-geologic-and-biologic-carbon-sequestration?qt-news_science_products=0#qt-news_science_products

⁴ Available at: <https://iopscience.iop.org/article/10.1088/1748-9326/ab3ca4>

⁵ <https://www.greenbiz.com/article/fight-define-regenerative-agriculture>

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atmospheric carbon dioxide – would qualify as “climate change” programs for which RGGI proceeds may be used pursuant to SG § 9-20B-05(g)(3).

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Stamper", with a long horizontal flourish extending to the right.

David W. Stamper
Assistant Attorney General