



Floyd County Court Judge Rules Against State in RGGI Appeal November 2024

On November 18, Circuit Court Judge C. Randall Lowe issued an [opinion](#) in the appeal of the Administration's decision to withdraw the Commonwealth from RGGI (the Regional Greenhouse Gas Initiative), ruling that Governor Youngkin's effort to withdraw Virginia from RGGI was illegal "and therefore void as a matter of law."

Judge Lowe held that the "Neither the RGGI Act nor any other statute grants Respondents the authority to repeal the RGGI Regulation, and therefore the complained-of agency action is not in compliance with statutory authority." (see pdf p. 4 of the attached Opinion). Distinguishing earlier case law, the Judge found that the language of the RGGI Act includes: (i) a "duty" (the requirement in VA Code §10.1-1330(A)) for DEQ, without any action by the Air Board, to adopt regulations to implement the Act and (ii) a "power" (the authority given to the DEQ Director in VA Code §10.1-1330(B) to manage an auction program) which "renders compulsory the exercise of the power the statute grants." (pdf p. 4)

Judge Lowe concluded that: "...the only body with the authority to repeal the RGGI Regulation would be the General Assembly. This is because a statute, the RGGI Act, requires the RGGI regulation to exist. If Respondents had merely amended the RGGI Regulation in ways that were not inconsistent with the RGGI Act, it is doubtful that their authority to do so could be challenged. But that is not what happened here." (pdf p. 5)

We expect the Administration to appeal the Circuit Court opinion.