

**COMMONWEALTH OF VIRGINIA
CLEAN POWER PLAN FOR GREENHOUSE GASES**

STAKEHOLDER GROUP MEETING MINUTES

**SECOND FLOOR CONFERENCE ROOM
629 EAST MAIN STREET, RICHMOND, VIRGINIA
NOVEMBER 12, 2015**

Members Present:

Malcolm Woolf, Advanced Energy Economy	Scott Curver, Doswell/LS Power
John Hendricks, AEP	Walton Shepherd, NRDC
Donald Ratliff, Alpha Natural Resources	James Wright, ODEC
Julie Caiafa for Will Poleway, Birchwood	Greg Kunkel, Tenaska
Kris Gaus, Cogentrix	John Morrill, VACO
Michael Van Brunt, Covanta	Irene Kowalczyk, VMA
Lenny Dupuis, Dominion	Dr. Jalonne White-Newsome, We Act

Department of Environmental Quality:

David K. Paylor, Director	Michael G. Dowd, Air Division
Ann M. Regn, Office of Public Information	Karen Sabasteanski, Regulatory Affairs

The meeting began at approximately 1:35 p.m.

Meeting Purpose: This stakeholders group has been established to advise and assist the Commonwealth on elements that could be included in the state compliance plan to meet the final U.S. Environmental Protection Agency (EPA) Clean Power Plan (CPP) rule for the control of greenhouse gases. The purpose of this meeting is for DEQ to coordinate and facilitate discussions of this group in an effort to find common ground and elements that could be recommended to the Administration for consideration in the state compliance plan for the Commonwealth.

Welcome and Introductions: Mr. Paylor made a number of introductory remarks. The group's purpose is primarily advisory to the Administration. Every effort will be made to achieve consensus with the understanding that there are many options and choices. However, even if consensus is reached, the content of the final plan is nevertheless the Governor's prerogative. After today, alternates should not attend as continuity of discussion is important.

Ms. Regn welcomed the group. Members introduced themselves individually. Ms. Regn then provided general guidelines for discussions (see Attachment A).

FOIA Requirements: Ms. Berndt discussed Virginia Freedom of Information Act (FOIA) requirements as they pertain to this group's meetings (see Attachment B).

Clean Power Plan Overview: Mr. Dowd provided a broad overview of CPP basics: EPA's final plan requirements, how EPA addressed Virginia's comments, Virginia's goals, compliance options, a timeline, details on plan and plan components, and questions for the group to consider as it moves ahead (see Attachment A).

Work Plan/Group Discussion: The group discussed initial reactions to Question 1 (see Attachment B): What are the benefits and issues of each plan and what is the preferred path? Some needs for additional information to be provided by DEQ and group members were identified.

Next Steps/Future Meetings: Ms. Regn wrapped up the meeting. Future meetings are scheduled for December 15, 2015, January 22, 2016, February 12, 2016, and March 11, 2016.

The meeting adjourned at approximately 3:35 p.m.

Attachments

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**COMMONWEALTH OF VIRGINIA
CLEAN POWER PLAN
STAKEHOLDER GROUP
November 12, 2015**

AGENDA

1:30 – 2:00

WELCOME/ INTRODUCTIONS

David Paylor / Ann Regn

2:00 – 2:10

FOIA REQUIREMENTS

Cindy Berndt

2:10 – 2:40

CLEAN POWER PLAN OVERVIEW

Mike Dowd

2:40 – end

WORK PLAN/ GROUP DISCUSSION

GUIDELINES FOR DISCUSSIONS

1. Listen actively with an open mind.
2. Speak from your own experience instead of generalizing.
3. Be respectful and focus on the issue or the idea, not the speaker.
4. Be concise and speak only once on a particular issue. Weigh in with new or different information to share *after* everyone else has had an opportunity to speak.
5. Simply note your agreement with what someone else has said; it is not necessary to repeat it.
6. Present options for solutions at the same time you present the problems you see.
7. Be courteous and speak one at a time; interruptions and side conversations are distracting and disrespectful to the speaker.
8. Come prepared.
9. Turn off all devices.
10. Stay positive; a negative attitude hinders the group's ability to reach agreement.

BASICS OF EPA'S FINAL CLEAN POWER PLAN

- ▶ Final Plan released on August 3, 2015
- ▶ Published in Federal Register on October 23, 2015
- ▶ Employs different method to develop state goals than the proposed rule
- ▶ Uses the proposal's first three building blocks
 - BB1 – Increased power plant efficiency
 - BB2 – Shift of generation to NGCC
 - BB3 – Increase renewable energy
- ▶ Fourth proposed building block (energy efficiency) is not included in developing final rule's state targets
- ▶ EE can be used for compliance purposes

FINAL PLAN BASICS

- ▶ **Uses regional generation and emission data to develop standard emission rates for coal and natural gas**
 - 1,305 lbs/MWh for coal plants
 - 771 lbs/MWh for natural gas combined cycle plants (NGCC)
- ▶ **Uses these rates and 2012 generation mix to develop state specific goals**
 - For Virginia: Coal (1,305 lbs/MWh * 31%) + NGCC (771 lbs/MWh * 69%) = 934 lbs/MWh
- ▶ **VA's interim goal set at 1,047 lbs/MWh beginning in 2022**
- ▶ **Final compliance still required by 2030**

HOW THE FINAL PLAN ADDRESSED VA'S COMMENTS

- ▶ **Equity** – the final rule uses national standards that reduces inequity between state goals.
- ▶ **State goals** – the final rule reduces differences in state goals and any resulting economic disadvantages between Virginia and its neighbors.
- ▶ **Interim targets** – the final rule delays the interim compliance period to 2022 and raises the previously front loaded VA interim goal to avoid the compliance “cliff.”
- ▶ **Mass limits** – the final rule provides both rate and mass limits for states to use.
- ▶ **Reliability** – the final rule provides a reliability safety value to address emergency situations and optional set-asides to assist single source assets.

VIRGINIA GOAL IN DETAIL



Goal Calculation Viewer

State Goal Rates

To calculate state goals in the final CPP, the EPA calculates the affected fleet rate for states assuming that all likely affected baseline sources meet the respective category-specific emission performance rates presented while generating at the same baseline generation total. For each state, EPA calculated an average of the category-specific fossil steam and NGCC rates, weighting by the state's baseline generation levels for each source category. These blended state rates reflect the total emission rate from likely affected units in the state if they operated at baseline generation levels while meeting the category-specific rates.

$$\text{State Goal Rate}_{\text{YEAR}} = (\text{Fossil steam source category rate} * \text{Fossil steam baseline share of affected generation}) + (\text{NGCC source category rate} * \text{NGCC baseline share of affected generation})$$

Select a state/year below to view calculation for that combination

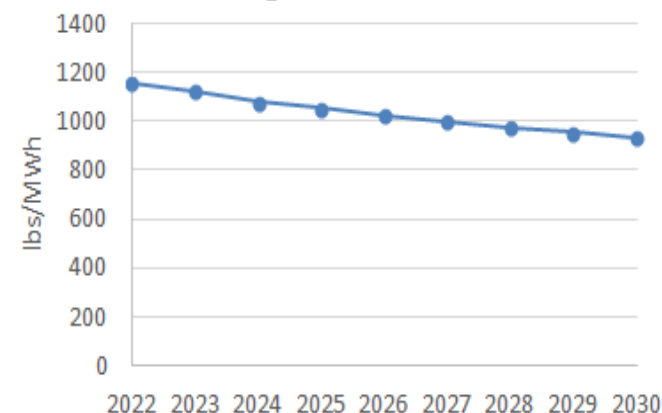
State: Year:

$$\begin{aligned} \text{Final (2030)} \\ \text{Virginia Goal Rate} &= (1,305 \text{ lbs/MWh} * 31\%) + (771 \text{ lbs/MWh} * 69\%) \\ &= 934 \text{ lbs/MWh} \end{aligned}$$

Virginia Interim Goal Rate
(2022-2029) = 1,047 lbs/MWh

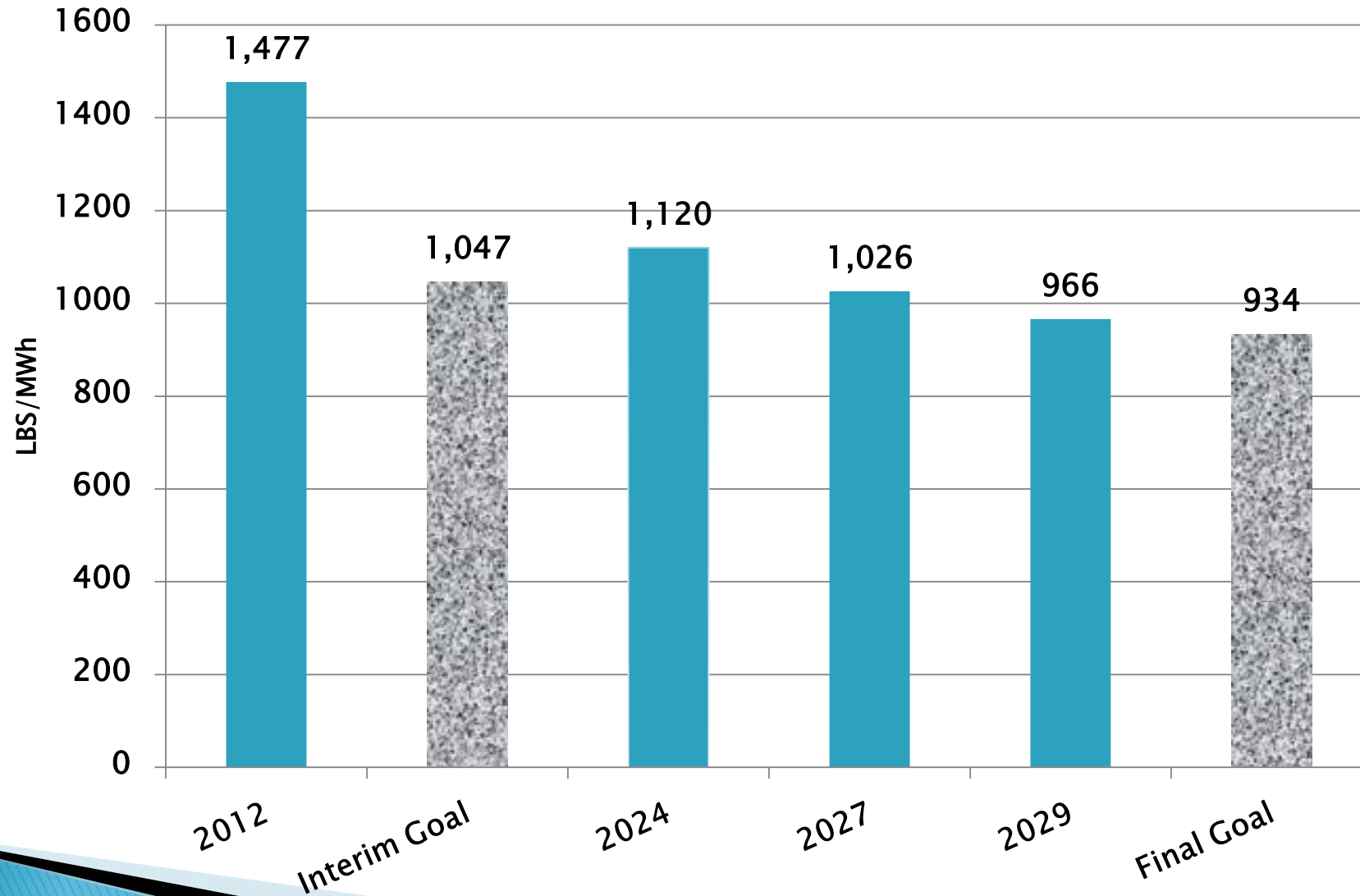
Virginia Final Goal Rate
(2030) = 934 lbs/MWh

Virginia Goal Rate

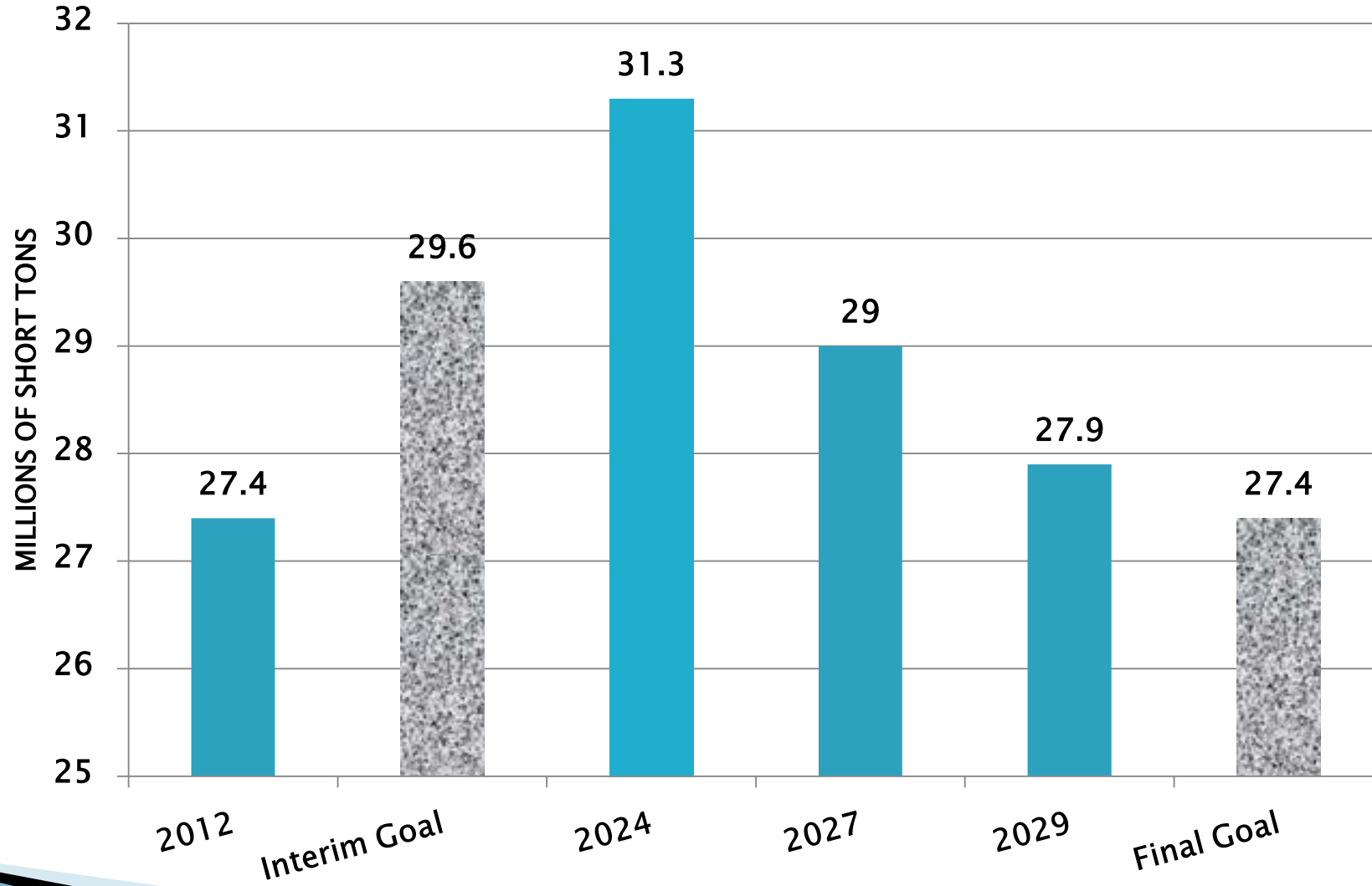


The calculated yearly goal rates are not prescriptive. Rather, they are used to establish the Interim and Final Goal Rates that states

VIRGINIA EMISSION RATE GOALS



VIRGINIA MASS EMISSION GOALS



STATE COMPLIANCE OPTIONS

- ▶ State can develop a compliance plan subject to EPA timetables and approval
 - Flexibility w/in CPP guidelines
 - Myriad issues to address
- ▶ State can adopt an EPA model rule
 - Presumptively approvable
 - Proposed by EPA on 10/23 for rate and mass approaches and open to public comment
 - Final some time next year
- ▶ States that do not develop and implement an approved EPA compliance plan will have one imposed on them and implemented by EPA
 - No flexibility or state control
 - Proposed by EPA on 10/23 for rate and mass approaches and open to public comment
 - Final some time next year

STATE COMPLIANCE TIMELINE

- ▶ **September 6 , 2016 – Initial submittal with optional extension request**
- ▶ **September 6, 2017 – Progress report for states with extensions**
- ▶ **September 6, 2018 – Final state plans**
- ▶ **July 1, 2021 – Milestone status report**
- ▶ **January 1, 2022 to December 31, 2024 – First interim compliance period**
- ▶ **January 1, 2025 to December 31, 2027 – Second interim compliance period**
- ▶ **January 1, 2028 to December 31, 2029 – Third interim compliance period**
- ▶ **July 1, 2030 – Interim period compliance demonstration**
- ▶ **July 1, 2032 and every three years forward – Final compliance demonstration**

PLANS AND PLAN COMPONENTS

- **Initial Plan or Extension Request due September 2016**
 - Identify final plan approaches under consideration and describe progress made to date
 - Explain why additional time is needed to submit a final plan
 - Demonstrate opportunity for public comment, including “meaningful engagement” with “vulnerable communities”
 - Include a non-binding statement of intent to participate in the Clean Energy Incentive Program

PLANS AND PLAN COMPONENTS

- **Progress report due September 2017**
 - Summarize status of each component of the final plan
 - Commit to a plan approach, including draft or proposed legislation and regulations
 - Provide updated roadmap with a schedule and milestones for completing the final plan, including updates to community engagement undertaken and planned

PLANS AND PLAN COMPONENTS

- **Final plan due September 2018**
 - Identification of affected EGUs
 - Emission standards or a federally enforceable backstop if necessary
 - Identification of monitoring, reporting, and recordkeeping requirements for each affected EGU
 - Process, contents, and schedule for state reporting
 - Subject to formal 30-day public comment period and mandatory hearing

VIRGINIA'S PUBLIC PARTICIPATION APPROACH

- Informal 60-day public comment period (August 13 – October 13)
- Listening sessions in all 6 Regions (September – October)
- Greenhouse gas web page (ongoing)
- RSS feeds (ongoing)
- Meet with stakeholders (ongoing)
- Facilitated stakeholder process

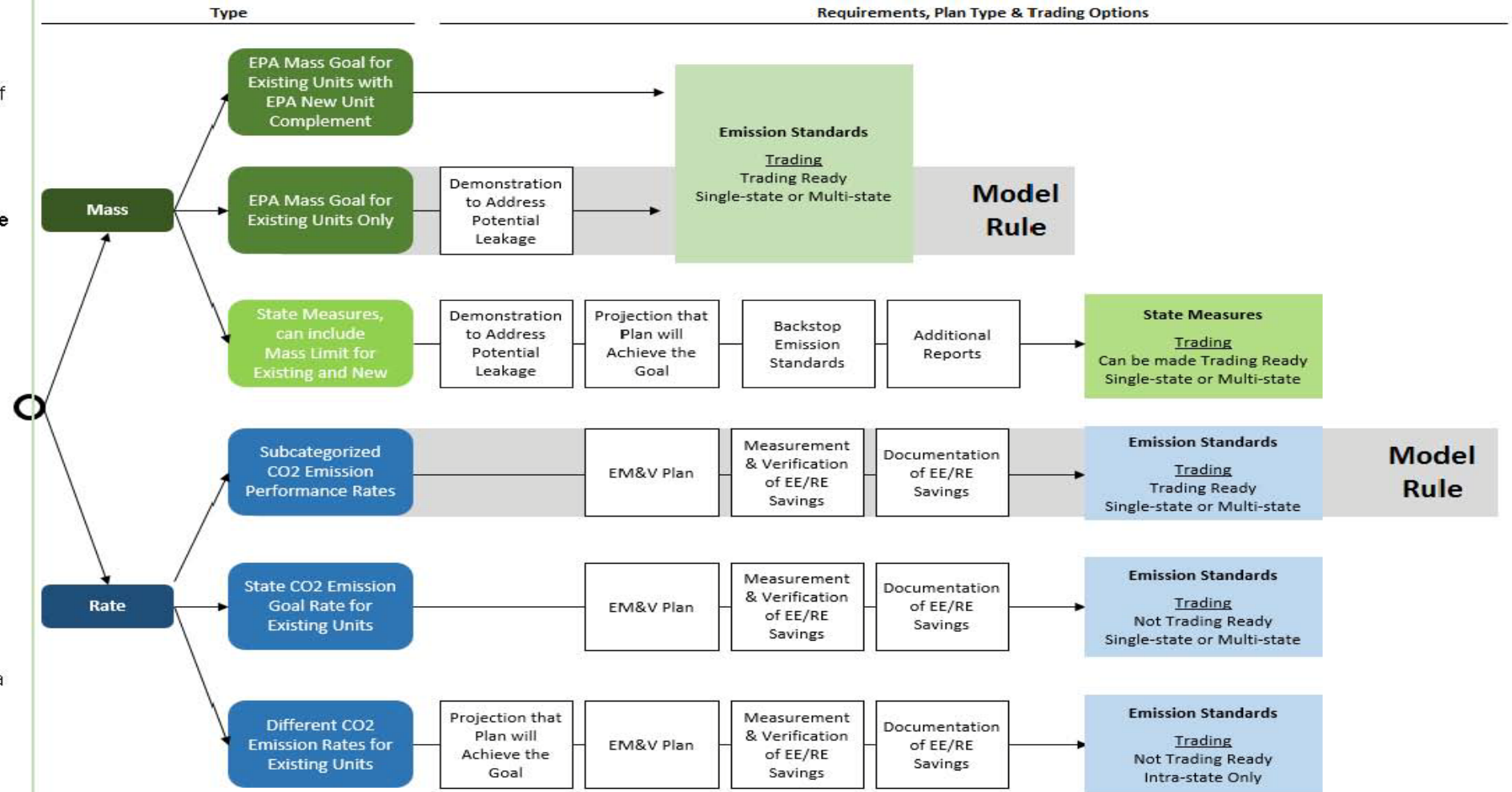
STATE COMPLIANCE PLAN OPTIONS

- ▶ **The two main compliance plan options are:**
 - A state emissions standard plan, or
 - A state measures plan
- ▶ **Under an emissions standard plan:**
 - Use established overall rate or mass goals or specific rate/mass goals for specific sources
 - Can include only existing or existing & new sources
 - Can participate in intra or interstate trading facilitated by EPA
 - Compliance is determined at the “stack” through monitoring
 - Rate based program would require generation and tracking of “emission reduction credits” from RE and EE projects
- ▶ **Under a state measures plan:**
 - Include a mixture of measures to be implemented by the state including RE and EE standards and other measures
 - States choosing this option must also adopt a federally enforceable “backstop”



More State Options, Lower Costs

- This chart shows some of the compliance pathways available to states under the final Clean Power Plan. Ultimately, it is up to the states to choose how they will meet the requirements of the rule
- EPA's illustrative analysis shows that nationwide, in 2030, a **mass-based approach is less-expensive** than a rate-based approach (\$5.1 billion versus \$8.4 billion)
- Under a mass-based plan, states that anticipate continuing or expanding investments in energy efficiency have unlimited flexibility to leverage those investments to meet their CPP targets. EE programs and projects do not need to be approved as part of a mass-based state plan, and EM&V will not be required
- For states currently implementing mass-based trading programs, the "state measures" approach offers a ready path forward
- Demand-side energy efficiency is an important, proven strategy that states are already widely using and that can substantially and cost-effectively lower CO2 emissions from the power sector



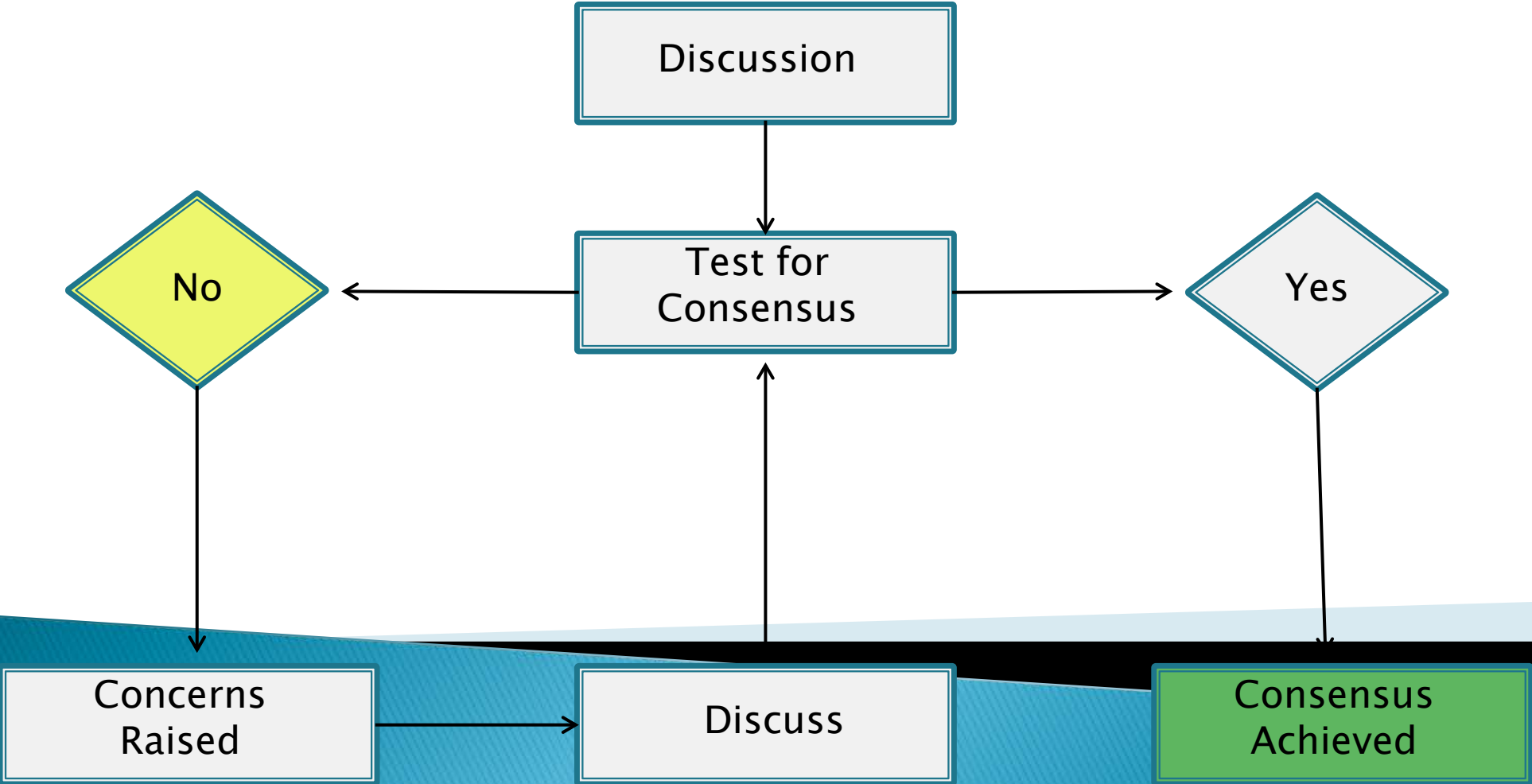
QUESTIONS FOR GROUP DISCUSSION

- ▶ Two general approaches are provided in the rule for compliance
 - Source performance standards plan, or
 - State measures plan
- ▶ Question 1 – What are the benefits and issues of each approach and what is the preferred path? (Meeting 1)
- ▶ Question 2 – What general mechanism should be used to implement the preferred compliance plan? (Meetings 2–3)
- ▶ Question 3 – What specific mechanisms should be included in the compliance plan? (Meeting 4)
- ▶ Question 4 – What other issues should be addressed and how? (Meeting 5)

QUESTIONS FOR GROUP DISCUSSION

- ▶ **Factors to consider during group discussions:**
 - Compliance with federal requirements
 - Compliance deadlines
 - Cost effectiveness
 - Electric rate impacts
 - Low income and vulnerable communities impacts
 - Reliability and asset impacts
 - State and regional interactions
 - Plan implementation and administration
 - Others?

DISCUSSION AND CONSENSUS PROCESS



QUESTIONS FOR GROUP DISCUSSION

- ▶ Question 1 – What are the benefits and issues of each plan and what is the preferred path? (Meeting 1)
- ▶ Emission standard plan
 - An emissions standard plan would be based on the source performance standard established in the final EPA rule for affected coal and natural gas units using federally enforceable requirements solely on these units. This could be accomplished in a several ways from direct application of these standards to the affected sources to various emission trading programs and allocation options. Renewable energy and energy efficiency programs could supplement and support source compliance.
- ▶ State measures plan
 - A state measures plan would rely on state adopted or supported mechanisms such as renewable portfolio standards and/or energy efficiency standards to meet the state goal. Such a plan could also rely on a state initiated and administered trading program like the Regional Greenhouse Gas Initiative (RGGI). This option may require state legislative authority, and the adoption of a federal trading rule “backstop.”

MEETING WRAP-UP

- ▶ Next Steps / Future Meetings
 - December 15, 2015
 - January 22, 2016
 - February 12, 2016
 - March 11, 2016
- ▶ Homework – to be determined

FREEDOM OF INFORMATION ACT (FOIA)

The Virginia Freedom of Information Act (FOIA) ensures ready access to public records and free entry to meetings where the business of the people is being conducted. It is to be liberally construed to promote an increased awareness of governmental activities and afford every opportunity to citizens to witness the operations of government. It is largely a procedural act setting forth the procedures that a public body must follow in conducting an open meeting and convening in a closed meeting and guiding a user as to how to make or respond to a FOIA request for public records.

THINGS TO REMEMBER

The good news is that DEQ as the coordinator for the group will be the custodian of the records of the group and ensure that compliance with meeting notice requirements of FOIA.

When responding to an email, never hit reply to all.

One on one email, discussion and meetings are not a meeting under FOIA. More than 2 members of the body gathering to discuss the business of the group is a meeting under FOIA and must be noticed.

Any material you would like the group to receive should be sent to DEQ for distribution.

Questions on meetings contact Cindy M. Berndt; cindy.berndt@deq.virginia.gov; 804-698-4378
 Questions on records contact DEQ FOIA Officer, Diana Adams, deqfoias@deq.virginia.gov, 540-574-7886, and/or review the DEQ FOIA Policy available on the web at
<http://www.deq.virginia.gov/ConnectWithDEQ/FreedomofInformationAct.aspx>

WHAT IS A MEETING UNDER FOIA? A "meeting" is defined as "meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body" where the business of the public body is being discussed or transacted.

MAY A PUBLIC BODY CONDUCT A MEETING BY CONFERENCE CALL OR OTHER ELECTRONIC METHOD? State public bodies may conduct such meetings under specified circumstances. Special conditions and requirements apply before electronic methods may be utilized.

IF IT IS A MEETING, WHAT DOES FOIA REQUIRE?

1. Notice of the meeting must be given at least three working days prior to the meeting; must contain the date, time, and location of the meeting; and if a state public body includes at least one member appointed by the Governor, the notice must also indicate whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.
2. The meeting must be open to the public; and
3. Minutes of the meeting must be taken and preserved.

WHERE TO POST THE NOTICE? FOIA requires that all public bodies post notice of the meeting on their own websites and on the Commonwealth Calendar website.

MAY THE PUBLIC OR MEDIA RECORD THE MEETING? Yes. Any person may photograph, film, record, or otherwise reproduce any portion of a meeting required to be open, but may not interfere with the proceedings.

WHEN MUST AGENDA MATERIALS BE AVAILABLE TO THE PUBLIC/MEDIA? At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting must be made available for public inspection at the same time the packets or materials are furnished to the members of the public body.

MUST ALL VOTES OF A PUBLIC BODY TAKE PLACE IN AN OPEN MEETING? Yes. Any and all votes taken to authorize the transaction of any public business must be taken and recorded in an open meeting. A public body may not vote by secret or written ballot.

IS IT A FOIA VIOLATION TO POLL MEMBERS OF A PUBLIC BODY? No, nothing in FOIA prohibits separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business. Such contact may be done in person, by telephone, or by electronic communication, provided the contact is done on a one-on-one basis.

EMAIL & MEETINGS: The use of email can blur the line between correspondence and a meeting under FOIA. Email is similar to traditional paper correspondence in many ways and is a written form of communication that is by definition a record under FOIA. However, from a practical perspective, email is often used as a substitute for a phone call and can be used to communicate quickly with multiple people at once, making it more akin to a meeting.

The use of email by public officials is clearly allowed by FOIA. One member of a public body may individually email other members, even if the email relates to public business. Questions arise based on the manner in which a recipient responds to an email addressed to three or more members of a public body. If a recipient chooses "reply to all," then three or more members of a public body will see not only the initial email, but also another member's response. Other members could then, in turn, respond to the email or the ensuing responses. In the end, three or more members of a public body could have used the chain of email to discuss, and possibly reach a conclusion about, a matter relating to the transaction of public business.

Based on the possibility of email being more akin to a meeting and on recent court decisions, keep in mind the following tips:

1. Remember the underlying principle of the open meeting provisions of FOIA: the public has the right to witness the operations of government. If you question whether your email communication might lead to the deliberation of public business by three or more members of a public body in real time (i.e., has an element of simultaneity), then you may be better served by saving that communication for a public meeting.
2. If you receive an email sent to three or more recipients who are members of the same public body, and you wish to respond, choose "respond to sender" instead of "respond to all." One-on-one communications are clearly allowed under FOIA, and this will avoid an email discussion among three or more members.

WHAT IS A PUBLIC RECORD UNDER FOIA? A "public record" is any writing or recording, in any format, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. For example, public records may be in the form of handwritten notes, typewritten documents, electronic files, audio or video recordings, photographs, or any other written or recorded media.

WHO MAY REQUEST RECORDS UNDER FOIA? Citizens of the Commonwealth; Representatives of newspapers and magazines with circulation in the Commonwealth; and Representatives of radio and television stations broadcasting in or into the Commonwealth.

HOW LONG DOES A PUBLIC BODY HAVE TO RESPOND TO A REQUEST? A public body must respond to a request within five working days of receipt of the request, with some exceptions.