Guidelines for
Clean Energy Manufacturing Incentive Grant

Purpose:

The Clean Energy Manufacturing Incentive Grant (CEMIG) may be used to provide an incentive for a clean energy manufacturer to grow in the Commonwealth of Virginia. This is a discretionary program in which grants are negotiated and offered to eligible entities as an economic development incentive to encourage these eligible entities to locate or expand in Virginia instead of another state or country. CEMIG awards may only be awarded to competitive projects and are awarded at the Governor's discretion.

CEMIGs are intended to be performance grants and are not intended to serve as front-end funding or financing to assist with initial infrastructure costs. Flexibility with respect to the timing of the payment of the grants is intended to take the variable job creation and capital investment timelines of eligible entities into consideration.

Statutory Eligibility:

There are different criteria for eligibility for a CEMIG depending on where the project locates and its sector:

- In general, the clean energy manufacturer must make capital investments of at least $50 million AND must create and maintain at least 200 new full-time jobs that pay at least the prevailing average annual wage in the chosen locality.
- If the clean energy manufacturer is locating to or expanding in a fiscally stressed locality, the above thresholds may be reduced at the discretion of the Governor.
- Clean energy manufacturers that are wind energy suppliers must make capital investments of at least $10 million AND must create and maintain at least 30 new full-time jobs that pay at least the prevailing average wage in the chosen locality. These thresholds may not be reduced. Further, a wind energy supplier may only be eligible for a CEMIG if it will support a new or existing clean energy manufacturer in the wind energy industry located in Virginia.

A clean energy manufacturer that has an active CEMIG, but separately meets the investment threshold and employment requirements for a new project, may be considered for an additional grant. For an investment occurring in phases or stages, however, the Commonwealth will consider as one project a phased-in investment if: (i) the entire investment is announced at one time, (ii) the phases are clearly related in one project, and (iii) the entire investment proceeds normally to completion, without extraordinary delays. If these conditions are met, the negotiated amount will reflect the entire single investment.

If the clean energy manufacturer participates in another discretionary production grant program sponsored by the Commonwealth for a project (such as a grant authorized under the Virginia Investment Partnership Act), it shall not be eligible for a CEMIG for that project.

Ongoing VEDP projects will be eligible for consideration for a CEMIG, but only if the capital investments and job creation have not yet been publicly announced. Capital investments and job creation made with no prior VEDP involvement, and/or investments and jobs previously announced, committed or begun will not be eligible for consideration for a CEMIG.

Definitions:

"Biodiesel fuel" means a fuel composed of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D6751.

"Biofuels" means neat biodiesel fuel, neat green diesel fuel, or neat ethanol fuel that is not blended with a traditional fuel such as gasoline or diesel.

"Capital investment" means an investment in real property, tangible personal property, or both, within the Commonwealth that is capitalized.

"Commonwealth" means the Commonwealth of Virginia.

"Clean energy manufacturer" means (i) a manufacturer whose primary function is to manufacture or assemble equipment, systems, or products used to produce renewable or nuclear energy, or products used for energy conservation, storage, or grid efficiency purposes, so long as the manufacturer is not a public service corporation as defined in Virginia Code § **56-1** that recovers its costs pursuant to Virginia Code § **56-585.1**, or (ii) a producer of biofuels.

"*Fiscally stressed locality*" means a locality with an annual average unemployment rate for the most recent calendar year for which such data is available that is at least 1.25 times greater than the final statewide average unemployment rate for that calendar year. Whether a locality will qualify as a fiscally stressed locality will be determined by the Partnership on the date the Partnership provides a proposal to an eligible entity indicating that a CEMIG is being offered. Once so determined, that status will not change through the pay-out of the CEMIG.

"Fund" means the Clean Energy Manufacturing Incentive Grant Fund established pursuant to Virginia Code § **59.1-284.26**.

"*Net present value of benefits to Virginia"* means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and new full-time jobs created, over a period following the completion of the capital investment not to exceed 20 years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any CEMIG grant, for such capital investment during that period.

"New full-time job" means employment (i) of an indefinite duration created as the direct result of capital investment, (ii) for which the average annual wage is at least equal to the prevailing average annual wage in the locality where the clean energy manufacturer is to locate or expand, (iii) for which the standard fringe benefits are paid by the clean energy manufacturer, and (iv) that requires a minimum of either 1,680 hours per year or 35 hours of any employee's time per week for the entire normal year of such manufacturer's operations. For the purposes of this definition, a "normal year" consists of a minimum of 48 weeks. Positions that are seasonal or temporary and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs. Other positions, including those of indefinite duration, and supplemental employees of affiliates, subsidiaries, joint ventures, contractors, or subcontractors may be considered new full-time jobs only if so designated in the performance agreement.

If there are existing jobs at the firm's facility (or at a contractor's facility, if applicable), it is expected that the performance agreement will state the number of existing jobs and will require that the new full-time jobs be in addition to the existing jobs.

"*Performance agreement*" means a memorandum of understanding or other agreement between the Commonwealth and the grantee memorializing the performance expected from the grantee and the anticipated grant payments from the Commonwealth.

"*VEDP*" means the Virginia Economic Development Partnership Authority.

"Virginia Code" means the Code of Virginia of 1950, as amended.

"Wind energy supplier" means a basic sector manufacturer, installer, operator, or other type of provider that directly supports a clean energy manufacturer in the wind energy industry located in the Commonwealth.

Award Process:

The eligible entity must submit a letter to the President and CEO of VEDP detailing:

1. The amount and timing of the capital investment;

2. The number of new full-time jobs expected to be created by the capital investment and a timeline for their creation;

3. (A) The wages expected to be paid for the new full-time jobs, (B) a summary of the expected fringe benefits package to be provided by the eligible entity to a typical employee (the statute requires standard fringe benefits), and (C) the amount by which the wages exceed the prevailing average wage for the locality;

4. The amount of other incentives requested of, or offered by, the Commonwealth and the locality, including grants, tax credits or exemptions, and other cost-avoidance incentives;

5. General corporate information about the eligible entity, including date of establishment, tenure and nature of presence in Virginia, any amount of previous capital investment and/or existing employment, and specific information indicating the importance of the facility to the economy of the locality or region; and

6. Other factors as may be presented and demonstrated by the eligible entity that might affect the calculation of the net present value of benefits to Virginia. Specifically, applicants may present marginal corporate income (or analogous) tax revenues to Virginia attributable to the investment for which the grant is made. If accepted, these revenues would be included in the calculation of the net present value of benefits to Virginia.

Together with the letter from the eligible entity described above, the eligible entity may be asked to provide three years of historical financial statements, covering the three years prior to the application, and three years of pro forma financial statements, covering the three years following the application. If the eligible entity has been in business less than three years, it may be asked to provide the historical financial statements that may be available.

Using the above data, VEDP will determine the expected return on invested capital to the Commonwealth with respect to the project. VEDP may independently validate or verify any figures or information provided by an eligible entity, or request further information or certifications from or on behalf of the eligible entity. The discount rate applied will be based initially on the 20-year Treasury Bill rate and then will factor in the relative risk of the individual project, as determined by the VEDP. Sales and use tax and other applicable tax revenues accruing to the Commonwealth in connection with the investment will be included in the calculation. This calculation will subtract all direct fiscal benefits provided by the Commonwealth, such as training grants, Governor's Opportunity Fund (GOF) grants, Enterprise Zone grants, Tobacco Region Opportunity Fund grants or Community Development Block Grants. If marginal income tax revenues are used in the calculation, then Virginia tax credits will be factored in, as well. The negotiated amount of the CEMIG will be based on this calculation.

Once negotiated and agreed upon, the amount, timing, terms and conditions of a CEMIG shall be reflected in a performance agreement to be executed by the eligible entity no later than 120 days after the public announcement by the Governor. Any delay caused by the eligible entity in entering into a performance agreement by such deadline may cause VEDP to withdraw the CEMIG.

Limits, Verifications and Payouts for CEMIG:

No more than $36 million of CEMIGs may be awarded and outstanding at any given time.

It is expected that no single CEMIG will exceed $9 million.

It is expected that each CEMIG will be paid in at least two annual installments, but no more than six. It is expected that a four-year payout will be the norm.

It is expected that the CEMIG annual installments will be begin to be paid no earlier than the fiscal year following the end of the calendar year in which the eligible entity has met its performance targets under the performance agreement.

For projects with significant state or regional interest, the Governor may approve CEMIGs in excess of $9 million, payable in less than two annual installments and/or payable as early as the date that the performance agreement is executed.

The performance agreement will require the eligible entity to provide annual notice to VEDP of the grantee's progress on meeting or maintaining, as applicable, its performance targets. Such annual report will be due by April 1 of each year, covering performance by the eligible entity through the end of the prior calendar year. Failure to meet the filing deadline may render the eligible entity ineligible to receive its CEMIG annual installment in the next fiscal year.

The performance agreement will contain an end-date – a performance date – by which the performance targets must have been originally achieved. It is VEDP's strong preference that this will be three years – and no more than five years – from the date the performance agreement is signed, but extensions will be considered on a case-by-case basis and shall be determined solely at VEDP's discretion.

Conditions to Payouts of CEMIG Grants; Assignment; Reductions:

CEMIG payments are subject to annual appropriation by the Virginia General Assembly and are subject also to the conditions that (A) the capital investment and new full-time jobs remain substantially in place during the payment period, and (B) the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the original achievement of the performance targets. If the capital investment and new full-time jobs do not remain in place or if the facility is no longer so operated, the grantee shall provide immediate notice to VEDP.

An eligible entity participating in the CEMIG grant program may not assign its rights or obligations under a performance agreement without the express written approval of VEDP. VEDP will consider an assignment of rights and obligations in the event that there is a transfer to a parent company, subsidiary or sister entity, there is no net effect on new full-time job creation and capital investment, and the net present value of benefits to Virginia will remain substantially the same.

If the CEMIG grantee does not achieve by the performance date the appropriate statutory minimum capital investment and new full-time job creation requirements, no CEMIG payment will be made or, if one or more installments have been paid before the performance date, the grantee must repay all CEMIG amounts paid.

If the CEMIG grantee achieves by the performance date the appropriate statutory minimum capital investment and new full-time job creation requirements, but does not achieve at least 50% of the capital investment target or at least 50% of the new full-time jobs target stated in the performance agreement, no CEMIG grant payment will be made or, if one or more installments have been paid before the performance date, the grantee must repay all CEMIG amounts paid.

If the CEMIG grantee achieves by the performance date the appropriate statutory minimum capital investment and new full-time job creation requirements and achieves between 50% and 100% of the targeted capital investment and new full-time job creation requirements, the total CEMIG to be paid shall be diminished proportionately, but will still be paid out on the schedule provided in the performance agreement, so long as the capital investment and new full-time jobs remain in place during the payment period and the facility continues to operate throughout the payment period at substantially the same level as existed at performance date. For this purpose, in the performance agreement, the CEMIG shall be allocated between the capital investment goal and the new full-time job creation goal. Generally, the CEMIG will be allocated one-half to the capital investment goal and one-half to the new full-time job creation goal. If the grantee achieves, say, 60% of its capital investment goal and 75% of its new full-time job creation goal, the CEMIG will be diminished proportionately to 60% of that portion allocable to the capital investment plus 75% of that portion allocable to new full-time jobs created.

If the actual average annual wages paid for the new full-time jobs exceed the target average annual wages promised by the CEMIG grantee by at least 20%, then the new full-time job creation requirement may be reduced at VEDP's sole and absolute discretion, provided that the actual aggregate payroll paid by the CEMIG grantee for the new full-time jobs is at least equal to the aggregate payroll that would have been paid were the average annual wages promised in the performance agreement to have been paid. The amount of the reduction, if any, will depend upon the net present value of benefits to Virginia derived from the grantee's facility.

If there are insufficient moneys in the fund to pay all CEMIG payments due to intended recipients, the provisions of paragraphs E. and F. of Section 59.1-284.27 of the Virginia Code shall govern the distribution of the available funds.

Miscellaneous Provisions:

If the Virginia General Assembly deposits federal funds into the CEMIG fund, and if the expenditure of those federal funds would require compliance by the grantee with various federal legal requirements, those federal legal requirements will be deemed to be read into the performance agreement.

The CEMIG provisions described in these guidelines reflect the CEMIG provisions in the Virginia Code as of July 1, 2011. Changes made by the General Assembly in the applicable provisions of the Virginia Code will be read into, and will be deemed to amend, these guidelines. As necessary, VEDP will provide the CEMIG grantees with written notice of any such changes.

To assist VEDP with its return on invested capital analysis for projects that receive discretionary economic development incentives, it is expected that the performance agreement will contain a provision substantially to this effect: With each annual progress report, the eligible entity shall report to VEDP the amount paid by the eligible entity in the prior calendar year in Virginia corporate income tax. VEDP represents to the eligible entity that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.