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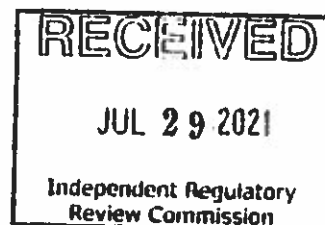
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ENVIRONMENTAL RESOURCES AND
ENERGY COMMITTEE
CHAIRMAN

July 28, 2021

Independent Regulatory Review Commission
333 Market St
Harrisburg, PA 17101



Dear Commissioners:

As members of the House Environmental Resources and Energy Committee, we write to you to express our disapproval of final Environmental Quality Board (EQB) Regulation #7-559 (IRRC #3274) pursuant to Section 5.1(j.2) of the Regulatory Review Act (RRA).

The majority of the Committee voted in favor of sending you this letter disapproving of the regulation regarding the Regional Greenhouse Gas Initiative (RGGI). As the standing House Committee with legislative oversight over the Department of Environmental Protection (DEP), it is our role to ensure that regulations proposed by DEP through the EQB are consistent with the intent of the Acts on which they are based and proposed in a manner consistent with the law, a standard which this regulation utterly fails. We renew the many objections we raised in our letter to you when this regulation was at the proposed stage and for the sake of brevity we will focus this letter mainly on the regulatory process and the proper roles of the executive and legislative branches of government.

Unfortunately, DEP has ignored the vast majority of concerns raised by your letter and those raised by countless other commentators during the public comment period. Instead of taking the regulatory review process seriously and deliberatively engaging with the issues that have been raised, DEP has chosen to attempt to finalize a substantively similar regulation to the regulation that it proposed. The speed with which DEP has rejected most concerns and brought this regulation back to the EQB, and now to you, after the close of the comment period is an indication of how little DEP values this vital process that we are now participating in. This is particularly true considering the number of comments that they received.

DEP and the EQB have already committed clear violations of the law during this regulatory process. As we mentioned at the proposed stage, DEP failed to hold the in-person meetings in communities impacted by this regulation that it was required to hold under the Air Pollution Control Act (APCA). In addition, the EQB's meeting to approve this regulation was held in violation of the Sunshine Act, which requires that meetings of government bodies be open to the public. The EQB's meeting was held in the Rachel Carson State Office Building while the building was closed to the public. The fact that the meeting was being streamed on the internet may have been acceptable to satisfy the requirements of

the law when the COVID disaster declaration was in place, but at the time of the EQB's meeting, the declaration had been terminated, meaning that meeting was clearly violative of the law.

These violations of the law during the process were entirely avoidable if DEP was not in such a rush to finalize the regulation, a rush that diminished the public's ability to interface with the government entity proposing to regulate them. These provisions of the law which were not complied with were put in place to protect the public, particularly those in communities which will be drastically impacted by a regulation or government action, and to allow their voices to be heard, something which we are sure must be important to you considering the work that you do. DEP has shown a contempt for the law and proper process throughout the development of this rulemaking and has rejected required engagement with communities and industry who will be devastated by this regulation at every turn.

In addition to DEP's inability to follow the law during the regulatory process, there is of course the fact that the EQB and DEP do not have the authority to promulgate this regulation and this attempt to do so is not supported by statute and violates our state Constitution. Based on the enormous revenue that will be generated from it, RGGI's auction mechanism clearly represents a tax which only the General Assembly may enact under the Constitution of Pennsylvania. The APCA also requires that interstate air pollution control agreements be "submitted" to the General Assembly for its approval, which has not happened here. Additionally, RGGI functions as an interstate agreement or compact, which must under the United States Constitution receive the consent of the United States Congress, which RGGI has not received.

As you mentioned in your letter to the EQB, this regulation falls within the scope of the criterion under the RRA of a policy decision of such a substantial nature that it requires legislative review. The severe manner by which this regulation would reshape Pennsylvania's energy policy and the overwhelming public interest in this issue clearly illustrate this point. By attempting to promulgate this regulation, DEP and the EQB have vastly overreached in their role as part of the executive branch of government and are instead making a serious policy decision here, which is the purview of the General Assembly.

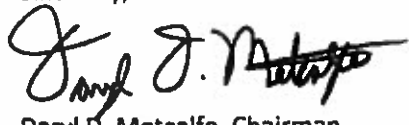
The state legislature in every other state which is a part of RGGI has spoken in a clear manner to allow their state to join RGGI. Considering the bipartisan legislation that has moved through the General Assembly regarding RGGI and comments submitted to this regulation by legislators opposing RGGI, not only has the General Assembly not authorized this action, but it instead has explicitly spoken to reject it. Furthermore, as you touch on in your letter to the EQB, the General Assembly when enacting the APCA, which is cited by DEP as the authority for joining RGGI, did not envision a RGGI-type program bringing billions of dollars into the Clean Air Fund established under the statute, dollars which could be spent at the discretion of the Secretary of the DEP outside of the typical budgetary process.

Though we as the standing committee have chosen to focus on the process and authority for the regulation in this letter, please know that we support the comments offered which illustrate the tremendous economic devastation which RGGI would cause if this regulation is promulgated. We stand with our residents, businesses, schools, and local governments who will be harmed when this regulation shuts industries and devastates communities. We stand with the union community in Pennsylvania which has spoken up en masse to protect their jobs and our great heritage as an energy producing state.

We stand with small business owners and employees whose livelihoods will be impacted by this regulation. We stand with low-income Pennsylvanians who do not want to see an increase in their electric bills.

This final regulation is unacceptable and we respectfully request that you disapprove this regulation as it is not in the public interest. We again urge the EQB and DEP to withdraw this final regulation. We, the undersigned members of the House Environmental Resources and Energy Committee, write this letter to draw your attention to our disapproval of this regulation and our concerns and respectfully ask for your consideration.

Sincerely,



Daryl D. Metcalfe, Chairman
Environmental Resources & Energy Committee



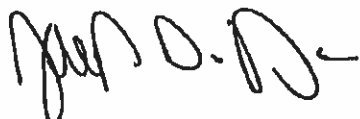
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76th Legislative District



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49th Legislative District



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Rep. R. Lee James
64th Legislative District



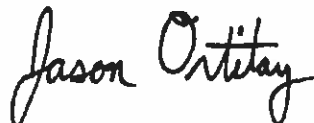
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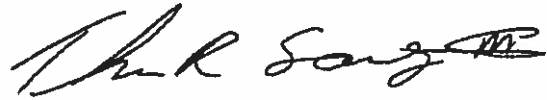
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DDM:pn

Cc: Environmental Quality Board
Department of Environmental Protection