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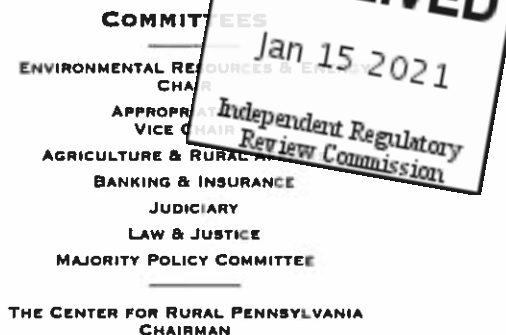
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Senate of Pennsylvania

January 14, 2021



Honorable Patrick McDonnell  
 Chairman, Environmental Quality Board  
 Rachel Carson Building, 16th Floor  
 P.O. Box 2063  
 Harrisburg, PA 17105-2063

**RE: Proposed Rulemaking: CO2 Budget Trading Program (#7-559) Comments**

Dear Chairman McDonnell:

I write to you today with concern over the Proposed Rulemaking: CO2 Budget Trading Program (#7-559) and the Wolf Administrations' directive to participate in the Regional Greenhouse Gas Initiative (RGGI). This is yet another example of a unilateral action taken by the Governor to circumvent the 253 members of the State Legislature.

I will begin by saying that I do not feel the proposed RGGI regulation has been properly promulgated. At the September 15, 2020 EQB meeting, of which I am a member, the agenda items included the proposed regulation (Annex A), the Preamble, the Regulatory Analysis Form (RAF) and the forms needed to carry out the program. However, the EQB voted on only Annex A at the direction of Board counsel. ([See page 13, Minutes of September 15, 2020 meeting](#)). Accordingly, the regulations were not promulgated in accordance with applicable law.

Act 245-1970 created the Department of Environmental Resources (Department) and its various advisory boards and administrative boards, including the EQB. The EQB has the power and duty to "formulate, adopt and promulgate" regulations for the Department (71 P.S. §510-20). There is no authority granted to the Department to adopt regulation. Therefore, any steps or procedures required by law when promulgating regulations must be carried out by the entity with the power to adopt regulations.

The Regulatory Review Act (RRA) set out the procedures that must be followed when proposing regulations. It required that the "agency" submit a copy of the regulation and the Regulatory Analysis Form (RAF) to IRRC and the oversight committee and prescribes content of the RAF (71 P.S. §745.5). The RRA defines agency to include departments and departmental administrative boards (71 P.S. §745.3). Since only the EQB and not the Department has the power to promulgate regulations, it is the EQB that must adhere to these requirements.

Likewise, the Commonwealth Documents Law (CDL) requires that an agency promulgating a regulation give public notice of its intent and include the text of the regulation and an explanation. (45 P.S. §1201).

Typically, the Preamble provides the explanation. The CDL also defines “agency” to include departmental administrative boards.

As noted, the EQB did not vote to accept the Preamble or the RAF. Putting aside the fiction that the EQB actually “formulates” the regulations or accompanying documents, it is clear that the EQB did not approve or ratify what the Department had drafted. Thus, the sole entity with rulemaking authority did not follow the requirements of the RRA or CDL. I feel that this warrants further review.

As Chairman of the Senate Environmental Resources and Energy Committee, I have convened several hearings on RGGI. The bottom line – there remains numerous unanswered questions to what joining RGGI would mean for electric ratepayers, lower income households, businesses and industry – and even the environment.

Each of the three statutorily mandated advisory committees - Air Quality Technical Advisory Committee, the Citizens Advisory Committee, and the Small Business Compliance Advisory Committee - rejected submission of the proposed regulation to the EQB. In each instance the Department failed to amend the proposed regulation to address the numerous issues raised by members of each.

The Department chose to ignore the recommendations of technical advisory committees composed of experts in a myriad of fields including air quality. Why would the EQB also choose to reject those experts that voluntarily serve on these important advisory boards?

Joining RGGI would simply drive Pennsylvania industry to Ohio and West Virginia - along with Pennsylvania jobs – and produce no reduction in emissions. Let’s give credit where credit is due. Many of our state industries are already decreasing CO2 and greenhouse gas emissions on their own, without government mandates. Our air is cleaner today than at any time since the dawn of the industrial revolution over 200 years ago.

Referring back to the Preamble, the Department has said, working with the Public Utility Commission, that it has engaged with PJM Interconnection to promote the integration of the RGGI program in a manner that preserves orderly and competitive economic dispatch within PJM and minimizes emissions leakage. The Department has also said it has been an active participant in PJM’s Carbon Pricing Senior Task Force (CPSTF) which was established to discuss potential process or rule changes necessary to integrate a regional or sub-regional carbon pricing mechanism into PJM’s wholesale electricity markets.

Can the Department specifically point to sections of the proposed regulation that are intended to minimize or mitigate leakage? If such leakage was mitigated, given that Pennsylvania hosts just about 25% of the installed fossil fuel generation in PJM, why does the ICF modeling fail to show a commiserate decrease in carbon dioxide emissions across the regional grid?

Since the execution of the Executive Order, the world economy, and certainly Pennsylvania’s economy, has been dramatically reshaped with the ongoing COVID-19 pandemic. Since March 2020, we have witnessed 20% of our workforce apply for unemployment compensation benefits, and to date, our state has not fully reopened. Workers, families, and communities are suffering through no fault of their own.

Additionally, we are deeply concerned that the economic impacts caused by COVID-19 will continue into the foreseeable future. Should this Administration continue on the current regulatory path to implement a carbon dioxide budget trading program it will only add to that suffering as power plants and the businesses that supply them will likely be forced to shut down, and the communities that they support will experience additional unnecessary pain. Communities, such as those in Western Pennsylvania and other parts of the state with fossil fuel plants, are already suffering under the effects of the pandemic. These very same communities are the ones to suffer exponentially more if a carbon dioxide trading program proceeds in Pennsylvania.

There is a clear push by well-funded environmentalists to have Pennsylvania join the RGGI program in order to spur "clean" energy development using RGGI proceeds. I would like to point out that the "green energy" sector would not be possible without fossil fuels. Anyone who thinks that windmills and solar panels miraculously appear on the mountainside clearly ignore and misunderstand the manufacturing process. How is steel made to produce windmills? Coal. How is machinery made to harvest those rare earth minerals for production of solar panels? Fossil Fuels.

From an energy perspective, Pennsylvania is the "engine" powering the RGGI states. Joining RGGI would allow states like New York and New Jersey to dictate Pennsylvania's energy policy. As I said many times when the Governor issued his Executive Order, I have to pause when a plan is put forth that joins us into a compact with states that thumb their nose at Pennsylvania energy. New York and New Jersey have both banned new pipelines that would allow our natural gas to flow to large markets like New York City and Boston whose ratepayers currently have to rely on foreign imports from Russia to supply their demand.

I urge this Administration to cease all action on the proposed CO2 Budget Trading Program (#7-559) regulation and begin to engage the Legislature and all industry sectors that stand to be greatly impacted by this proposal.

Sincerely,



GENE YAW  
SENATOR