



Stephen Hoffman

From: ecomment@pa.gov
Sent: Wednesday, January 6, 2021 8:56 PM
To: Environment-Committee@pasenate.com; IRRRC; environmentalcommittee@pahouse.net; regcomments@pa.gov; ntroutman@pasen.gov; timothy.collins@pasenate.com; gking@pahousegop.com; siversen@pahouse.net
Cc: c-jflanagan@pa.gov
Subject: Comment received - Proposed Rulemaking: CO2 Budget Trading Program (#7-559)

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The enclosed comment was received as part of the following testimony:

Testimony name: Public Hearing 8 (1pm) - #7-559
Testimony date: 12/11/2020 12:00:00 AM
Testimony location: WebEx

Re: eComment System

The Department of Environmental Protection has received the following comments on Proposed Rulemaking: CO2 Budget Trading Program (#7-559).

Commenter Information:

John Dernbach
 Widener Univ. Enviro. Law & Sustainability Center (jcdernbach@widener.edu)
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Comments entered:

My name is John Dernbach. I am Commonwealth Professor of Environmental Law and Sustainability at Widener University Commonwealth Law School, in Harrisburg, Pennsylvania. I also direct the school's Environmental Law and Sustainability Center, and am speaking today on behalf of the Center. The Center engages in research, advocacy, and student programs on climate change, constitutional environmental rights, and other environmental issues. The Center strongly supports the proposed RGGI regulation. The regulation would not only reduce Pennsylvania's greenhouse gas emissions; it would provide substantial economic benefits to the state in the form of auction revenues. I want to make four points. First, the proposed regulation is consistent with, and required by, Article I, Section 27 of the Pennsylvania Constitution. The Commonwealth has a constitutional duty to help ensure a stable climate because of its trusteeship responsibility for not only the atmosphere but also the wide variety of public resources that depend on a stable climate. As the Pennsylvania Supreme Court stated in 2017, the meaning of Section 27 is to be

supplemented and supported by “underlying principles of Pennsylvania trust law in effect at the time of its enactment.” These include the general trust principles of prudence, loyalty, and impartiality. All of these support the proposed regulation.

The duty of prudence requires the exercise of “such care and skill as a person of ordinary prudence would exercise in dealing with his own property.” Prudence requires good judgment and caution, particularly when trust resources are being threatened. Joining a well-established and effective partnership like RGGI is a prudent approach to protecting the public trust resources being adversely affected by greenhouse gas emissions.

The duty of loyalty requires the Commonwealth to manage public trust resources “so as to accomplish the trust’s purposes for the benefit of the trust’s beneficiaries.” Under Section 27, loyalty requires the trustee to manage public natural resources for the trust’s beneficiaries, and not for others. The Commonwealth would further this duty under the proposed regulation by reducing the greenhouse gas emissions that are threatening public natural resources.

Finally, the duty of impartiality requires the Commonwealth to manage public natural resources “so as to give all of the beneficiaries due regard for their respective interests in light of the purposes of the trust.” The proposed regulation benefits all of the beneficiaries—present and future generations—by providing economic benefits to the present generation as well as environmental and public health benefits to present and future generations.

My second point is that the proposed regulation is just one step among many that the Commonwealth must take to address climate change. The Environmental Law and Sustainability Center is one of the petitioners to the Environmental Quality Board for a cap and trade regulation to reduce greenhouse gas emissions to net zero by 2050. Professor Michael Gerrard and I have edited a book, *Legal Pathways to Deep Decarbonization in the United States*, that describes more than a thousand legal tools that federal, state, and local governments can employ to reduce greenhouse gas emissions; there are hundreds of tools at the state level alone. Among these tools are those that foster economic development and job creation in communities that are now most dependent on the fossil fuel economy. The recently proposed Marshall Plan for Middle America deserves serious consideration.

My third point is about how the auction proceeds should be expended. On this point, I want to draw your attention to the fine paper written by a student at Widener Commonwealth, Richard Marcil, entitled *Allocations of Funds Under Pennsylvania’s Regional Greenhouse Gas Initiative Program*. In that paper, he explains in detail the statutes and regulations in each RGGI state on how their share of the auction proceeds are to be expended, and provides data on dollar expenditures. He will be testifying Monday about his paper, and I strongly commend it for your consideration. The paper is a resource for you.

Finally, I want to express my appreciation to Governor Wolf, Secretary McDonnell, and the staff at DEP for their hard work in the development of this proposal. I know from prior personal experience working on major rulemakings at DEP how much work they are, and how many people are needed for a successful outcome.

Thank you.

No attachments were included as part of this comment.

Please contact me if you have any questions.

Sincerely,
Jessica Shirley

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