



GROUP AGAINST SMOG & POLLUTION
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January 14, 2021

VIA EMAIL: RegComments@pa.gov

Environmental Quality Board

P.O. Box 8477

Harrisburg, PA 17101-2301

Re: Proposed Rulemaking/CO₂ Budget Trading Program

Dear Sir or Madam:

Please accept these comments regarding the Proposed Rulemaking for the CO₂ Budget Trading Program, which I am submitting on behalf of the Group Against Smog and Pollution (“GASP”). According to the Notice published in the November 7, 2020 Pennsylvania Bulletin, the Environmental Quality Board is accepting comments submitted on or before January 14, 2021.

Thank you for your attention to these comments.

Very truly yours,

/s

John K. Baillie
Senior Attorney

**COMMENTS OF THE GROUP AGAINST SMOG AND POLLUTION
REGARDING THE ENVIRONMENTAL QUALITY BOARD'S
PROPOSED RULEMAKING TO ESTABLISH A CO₂ BUDGET TRADING PROGRAM**

The Environmental Quality Board (the “EQB”) is generally authorized to classify sources of air pollution in Pennsylvania¹ and to adopt regulations that prevent, control, reduce, and abate air pollution from such sources.² Carbon dioxide is an air pollutant³ that is already having a pronounced negative impact on public health and welfare, and will have an increasingly pronounced negative impact on public health and welfare in the future if carbon dioxide pollution is not addressed now.⁴ Fossil fuel-fired electric generating units (“EGUs”) with nameplate capacities at or above 25 Megawatts (“MW”) are a significant source of carbon dioxide pollution.⁵

Accordingly, it is clear under the Air Pollution Control Act⁶ that the EQB may adopt rules to control and reduce carbon dioxide emissions from fossil fuel-fired EGUs. Indeed, given the EQB’s description of the serious nature of the threat that carbon dioxide emissions pose to the public health and welfare, it is well past time for the EQB to do so. The EQB must ensure that the Proposed Rulemaking⁷ conforms fully with the Air Pollution Control Act’s requirements; if it cannot, the Administration should propose legislation that will accomplish the

¹ 35 P.S. § 4005(a)(3).

² See 35 P.S. § 4005(a)(1).

³ See *Massachusetts v. Environmental Prot. Agency*, 549 U.S. 497, 528-29 (2007).

⁴ See 50 Pa. B. 6212, 6212-14 (discussing “Climate Change Impacts and the Greenhouse Effect,” “Climate Change Impact Assessments,” and the “Immediate Action [] Needed to Address this Commonwealth’s Contribution to Climate Change”).

⁵ See Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories, 86 Fed. Reg. 2542, 2553 (Jan. 13, 2021).

⁶ The Air Pollution Control Act is codified at 35 P.S. §§ 4001 – 4015.

⁷ The Proposed Rulemaking was published at 60 Pa. B. 6212 (Nov. 7, 2020).

Proposed Rulemaking’s goals of reducing Pennsylvania EGUs’ carbon dioxide emissions and encouraging the development of energy efficiency and renewable energy projects in Pennsylvania.

I. THE EQB SHOULD DETERMINE AND DESCRIBE THE PUBLIC HEALTH AND WELFARE BENEFITS FROM REDUCTIONS OF EMISSIONS OF ALL POLLUTANTS THAT WOULD ACCRUE TO PENNSYLVANIA FROM THE PROPOSED RULE

In its Proposed Rulemaking, the EQB asserts that Pennsylvania’s participation in the Regional Greenhouse Gas Initiative (the “RGGI”) will result in a decrease of “harmful NO_x, SO₂ and particulate matter (PM) emissions, as well as ground level ozone pollution,”⁸ more specifically, an estimated reduction of NO_x emissions by 112,000 tons and SO₂ emissions by 67,000 tons within ten years following Pennsylvania’s entry into the RGGI.⁹ The EQB further asserts that such reductions in pollution will result in public health benefits including “decreased incidences of asthma, respiratory illness and hospital visits, [and] avoidance of lost work and school days due to illness,” with particular impact in low income and environmental justice areas and morbidity and mortality from the novel coronavirus, as well as such economic benefits as “job creation and worker training” and “future electric bill savings.”¹⁰ The Proposed Rulemaking states that in the first year of Pennsylvania’s participation in the RGGI alone, the auctions of carbon dioxide allowances will yield about \$300 million in proceeds that would be available for energy efficiency and renewable energy programs in the Commonwealth,¹¹ and that consumer electric costs will ultimately fall in Pennsylvania as a result of the program, after an

⁸ 50 Pa. B. 6212, 6220 (Nov. 7, 2020).

⁹ *See id.*, at 6226.

¹⁰ *Id.*, at 6220.

¹¹ *Id.*, at 6228.

initial short term increase.¹² However, the EQB makes no attempt to quantify expected public health benefits that will accrue to Pennsylvanians specifically from the Proposed Rulemaking, despite the fact that it is citizens of the Commonwealth who will bear the brunt of whatever costs Pennsylvania's participation in RGGI entails.¹³

The public health benefits that will accrue to Pennsylvanians from reductions in emissions of all air pollutants that accompany Pennsylvania's participation in the RGGI are certain to be real, substantial, local, and immediate. The EQB should quantify such benefits, perhaps based on the experiences of other states that are already participating in the RGGI, and use that quantification to better demonstrate that the benefits from the Proposed Rulemaking will exceed its costs.

II. THE PROPOSED RULEMAKING SHOULD SPECIFY THE CRITERIA THAT WILL BE USED TO EVALUATE AIR POLLUTION ELIMINATION PROJECTS FUNDED BY ANY UNUSED CO₂ ALLOCATIONS FOR WASTE COAL PLANTS

The Proposed Rulemaking would set aside carbon dioxide allowances for waste coal plants, to ensure that such plants could continue to operate and thereby reduce the amount of waste coal piles in Pennsylvania, and the air and water pollution and safety concerns they produce.¹⁴ Under section 145.342(j) of the proposed regulation, undistributed carbon dioxide allowances from the set aside for waste coal plants could be auctioned, and the proceeds of the auction made available for projects that eliminate air pollution, "including:"

- (i) Encourage and foster promotion of energy efficiency measures.
- (ii) Promotion of renewable or noncarbon-emitting energy technologies.

¹² *Id.*, at 6230.

¹³ *See id.* The Proposed Rulemaking does discuss the findings of several studies regarding the public health and economic benefits produced by the RGGI, however, none of those benefits are attributed specifically to Pennsylvania. *See id.*, at 6226.

¹⁴ *See id.*, at 6217. The regulation authorizing the set aside would be codified at 25 Pa. Code § 145.342(i).

(iii) Stimulation or reward of investment in the development of innovative carbon emissions abatement technologies with significant carbon reduction potential.¹⁵

These criteria are too vague. The Department of Environmental Protection (“DEP”) and the EQB already should have identified the types of energy efficiency and renewable energy projects that will provide the most benefit per dollar, as well as the communities in Pennsylvania that are in the most need of investment in energy efficiency and renewable energy resources. The regulation should describe such projects and communities so that the proceeds of auctions of carbon dioxide allowances are targeted there.

III. THE PROCEEDS FROM AUCTIONS OF CARBON DIOXIDE ALLOWANCES FOR SOURCES IN ALLEGHENY AND PHILADELPHIA COUNTIES MUST BE DEPOSITED WITH THE ALLEGHENY COUNTY HEALTH DEPARTMENT AND PHILADELPHIA AIR MANAGEMENT SERVICES, RESPECTIVELY, TO FUND ENERGY EFFICIENCY AND RENEWABLE ENERGY PROJECTS IN ALLEGHENY AND PHILADELPHIA COUNTIES

Section 6.3(g) of the Air Pollution Control Act provides:

Any fees imposed under this section in areas with approved local air pollution control programs shall be deposited in a restricted account established by the governing body authorizing the local program for use by that program to implement the provisions of this act for which they are responsible. The governing body shall annually submit to the department an audit of the account in order to insure the funds were properly spent.

Allegheny and Philadelphia Counties both have approved local air pollution control programs, the Allegheny County Health Department (“ACHD”) and Philadelphia Air Management Services (“AMS”), respectively. Accordingly, fees imposed on fossil fuel-fired EGUs in Allegheny and Philadelphia Counties for carbon dioxide allowances under the Proposed Rulemaking must be deposited in restricted accounts administered by ACHD and AMS, to use on energy efficiency and renewable energy projects in those counties.

¹⁵ Proposed 25 Pa. Code § 145.342(j)(3), at 50 Pa. B. 6212, 6244.