



**Subject: Pennsylvania NewsMedia Association Comments on Proposed Rulemaking of the Environmental Quality Board's CO2 Budget Trading Program**

January 14, 2021

Environmental Quality Board  
Rachel Carson State Office Building  
16th Floor  
400 Market Street  
Harrisburg, PA 17101-2301

The Pennsylvania NewsMedia Association, which represents more than 300 print, digital and related organizations as members, welcomes the opportunity to provide comments on the proposed rulemaking of the Environmental Quality Board's CO2 Budget Trading Program. First, we must raise concerns about the rulemaking process. There appears to have been a lack of public notice for the public meetings held on the rulemaking process.

Section 7(c) of our Commonwealth's Air Pollution Control Act (ACPA) requires as follows:

Notice to the public of the time and place of any public hearing shall be given at least thirty (30) days prior to the scheduled date of the hearing by public advertisement in a newspaper or newspapers of general circulation in the region of the Commonwealth affected.

We cannot locate any publication for these meetings with the exception of the original notice in the Pennsylvania Bulletin and the Department of Environmental Protection's website. The ACPA contains the public notice requirement to ensure that the public is adequately informed that there will be a hearing on any proposed rules which affect the abatement of air pollution. Without this notice, it is quite possible that many stakeholders, interested parties and the general public missed out on attending, submitting comments, and learning from these hearings. Public notice requirements facilitate public access and increase transparency and accountability in the regulatory and policy-making process and agencies must strictly comply with their mandates. We also have concerns about the fact the meetings were held virtually when the ACPA expressly requires in-person public meetings. We recognize and appreciate the importance of COVID mitigation requirements, and we appreciate the ability to participate remotely, but we must point out that virtual-only settings can exclude significant numbers of Pennsylvanians who do not have access to the internet. Moreover, the ACPA requirement for in-person public meetings is clear and unambiguous. We recommend extending the public comment deadline and holding additional, properly noticed in-person meetings consistent with the ACPA and in compliance with necessary COVID mitigation health policies.

Additionally, many sections within the proposed rulemaking are not complete and include vague, general summaries, and this impedes PNA's – and all interested parties' – ability to provide public comments. This proposed rulemaking differs greatly from most proposed rulemakings because a majority of proposed sections do not contain any definitive language, but rather simply a general statement as to what each

section will cover. For instance, Section 7(c) of the APCA cited above is an example of a complete section regarding notice. However, the Proposed Rulemaking's section on notice reads as follows:

*§ 145.404. Auction notice*

This section proposes to establish the requirement for notice to be provided of each CO<sub>2</sub> allowance auction and the required contents of the notice.

There is no indication of the method or content of notice or the timeline regarding notice. It is simply a general note that there should be a notice section in this place. The vast majority of the proposed rules themselves are written in this manner with this vague language. More concerning is the fact that the public cannot ascertain which sections they might want to weigh in on when they have no language by which to tell whether these sections might affect their interests.

Finally, we would like to propose two edits to the sections on notice and recordkeeping. First, we would recommend that the notice section be consistent with the requirements of the Newspaper Advertising Act for public notice so that the public is adequately informed of the auction. We suggest the following language to put this notice in line with similar law:

At least thirty (30) days prior to any scheduled auction the board shall give notice thereof, not less than once in two (2) newspapers of general circulation in the county, if so many are published therein, and once in the legal journal, if any, designated by the court for the publication of legal notices. Such notice shall set forth (1) the time and date of such auction, (2) the place of such auction, (3) the terms and procedure of the auction, and (4) a description of what is being auctioned.

We further recommend that the section on recordkeeping reference the Right to Know Law in order to ensure public access and accountability:

*§ 145.375. Recordkeeping and reporting*

This section proposes to establish recordkeeping and reporting requirements including monitoring plans, certification applications and quarterly reports. The board shall be a commonwealth agency and records, including but not limited to monitoring plans, certification applications and quarterly reports, shall be subject to the act of February 14, 2008 (P.L. 6, No. 3), known as the Right-to-Know Law.

Thank you very much for your time and consideration.

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