



**Comments of Citizens for Pennsylvania's Future (PennFuture)
in Support of Pennsylvania's Proposed CO₂ Budget Trading Program**
January 14th, 2021

PennFuture expresses its support for the proposed rulemaking process to establish a CO₂ Budget Trading Program in Pennsylvania and to implement that program in cooperation with the existing Regional Greenhouse Gas Initiative (RGGI) auction mechanism.

Clean Air and a healthy environment is not only the right of every Pennsylvania citizen it is literally our property, for which the Commonwealth has a constitutional duty to conserve and maintain.¹ For too long, fossil fuel power plants have been permitted to dump carbon pollution in our air without consequences and without compensation. The proposed plan represents a first step to cap emissions of this dangerous pollutant and establishes an auction-based price for allowances that will incentivise innovation and help support the transition to clean renewable generation.

A free pass for polluters is not permissible

State and federal legislation and regulations clearly establish that carbon dioxide is a *regulated pollutant*. Pennsylvania's Air Pollution Control Act (APCA), Section 502 of the Clean Air Act (CAA), and Pennsylvania's existing air quality regulations all define that term to include those compounds regulated under CAA sections 111 or 112.² The Affordable Clean Energy (ACE) rule, finalized in 2019,³ specifically regulates greenhouse gases—including carbon dioxide—under section 111(d) of the CAA thus including carbon dioxide in the list of regulated pollutants.

The CAA further requires that permit programs under Title V establish emissions fees of not less than \$25 per ton of each regulated pollutant for up to 4,000 tons of each.⁴ Pennsylvania's own regulations require each Title V source to pay an emission fee of \$85 per ton on the first 4,000 tons of regulated pollutants emitted from the facility.⁵ To the best of our knowledge, no facility has remitted this required fee with respect to CO₂ emissions and no action has been taken to enforce this provision.

¹ Pa. Const Art. I § 27

² See: Section 6.3(m) of the Act of January 8, 1960, P.L. 2119, 42 U.S.C. § 7661a(b)(ii), and 25 Pa. Code § 127.705(c). (note: The, now repealed, Clean Power Plan regulated CO₂ under section 111(d) prior to ACE)

³ 84 Fed Reg. 32520 (July 8, 2019).

⁴ 42 U.S.C. § 7661a(b).

⁵ 25 Pa. Code § 127.705(a)

The fact that there is a clear statutory requirement to regulate and collect fees from these sources belies the claims made by Rep. Darryl Metcalfe and others⁶ that the Environmental Quality Board (EQB) and the Department of Environmental Protection (DEP) lack the authority for such action.

Reducing Emissions

With more than a third of Pennsylvania's energy-related carbon pollution coming from the electric generation sector,⁷ it's critical that we do our part to address these emissions if we are going to achieve the carbon reductions the Intergovernmental Panel on Climate Change (IPCC) has determined are necessary to avoid the worst effects of climate change.⁸

While the US Energy Information Administration (EIA) reports declines in energy-sector CO₂ emissions over the past years, and short-term declines may continue through 2021, this will be followed by increases through 2050.⁹ The expanding use of fracked gas for generation offsetting coal emissions has largely been responsible for apparent progress, but few remaining coal facilities and increasing retirements of nuclear generation will result in a net increase in emissions if action isn't taken. We can't drill our way to reaching then necessary greenhouse gas emissions reduction targets and any claim that business-as-usual is good enough is a recipe for failure.

Targeting Investment

While the Air Pollution Control Act (APCA) specifically authorizes the DEP to expend money from the Clean Air Fund to reduce air pollution, it has significant flexibility in targeting exactly what projects are funded. We recognize that DEP need not specify planned expenditures in this rulemaking, but we encourage the department to prioritize those programs that reduce carbon emissions including emissions from transportation and industrial sources. We also encourage the department to give special attention to projects that benefit environmental justice communities, workers and communities impacted by the failure of the fossil fuel industry, and low-income ratepayers.

Remove the waste-coal set aside program

While we support the rule, we recognize there is room for improvement. For example, while the purpose of the CO₂ Budget Trading Program is to reduce carbon pollution, the proposal takes the unprecedented and unwarranted step to further subsidize one particular category of fossil fuels generation—waste coal.

⁶ Letter from the House Environmental Resources and Energy Committee to the Independent Regulatory Review Commission (Jan 12, 2021).

⁷ US EIA, 2017 State Energy-Related Carbon Dioxide Emissions by Sector, (*available at: <https://www.eia.gov/environment/emissions/state/>*)

⁸ IPCC, Special Report: Global Warming of 1.5 °C, (*available at: <https://www.ipcc.ch/sr15/>*)

⁹ US EIA, Annual Energy Outlook (January 29, 2020).

This highly-polluting source already benefits from preferential treatment. In 2016 Pennsylvania passed a Coal Refuse Energy and Reclamation Tax Credit¹⁰ that provides \$4 in tax credits per ton of coal refuse processed up to a total of \$10 million in tax credits in each fiscal year. Then, in 2019, the legislature revisited the program and expanded it to \$20 million in available tax credits.¹¹ (A separate bill was introduced that would further raise the credit to \$45 million.¹²) If the facility doesn't use that credit, it can be carried forward for fifteen tax years, or in some cases, transferred to another entity that wouldn't qualify for the credit in its own right.

Waste coal was provided an additional subsidy through the Alternative Energy Portfolio Standards Act in 2004 when it was included as a Tier II resource.¹³ As of 2019, waste coal appears to have been paid nearly \$2.6 million for Tier II credits under this program. In late 2020, the legislature revised this program to limit the amount of Tier II credits from out of state generation that can be used for compliance purposes.¹⁴ As a result, future subsidies for waste coal are expected to be greater than they were at the time the proposal was developed.

The industry claims they are providing a service in remediating waste coal piles that pollute the land and water, but there is no requirement that generators prioritize the most polluting sources or make a determination that burning the waste coal is the best alternative in any particular case. In fact, because we do not yet know the magnitude of existing subsidies, it is impossible to demonstrate that further hand-outs are consistent with the commonwealth's trust responsibilities to conserve and maintain our public natural resources for the benefit of Pennsylvania's citizens. This additional subsidy should be removed until a comprehensive analysis demonstrates that it is actually necessary.

Ensure the integrity of voluntary emissions reductions

An additional avenue to improve the proposal would be to include a set-aside for voluntary emissions reductions. Currently many Pennsylvania residents take action to install clean renewable generation like solar energy or to make use of the existing consumer electric choice programs to buy renewable energy for their homes and businesses. An unfortunate side-effect of this is that their purchase can create room under the emissions cap for dirty fossil fuel sources to increase their emissions. Maryland¹⁵ and Massachusetts¹⁶ both provide examples of such a voluntary renewable energy set aside account can be implemented and Pennsylvania should follow their lead.

The Time to Act is Now

¹⁰ Act of July 13, 2016, P.L. 526, No. 84

¹¹ Act of Jun. 28, 2019, P.L. 50, No. 13

¹² SB 618 of 2019 (Argall).

¹³ Act of Nov. 30, 2004, P.L. 1672, No. 213.

¹⁴ Act of Nov. 23, 2020, P.L. ___, No. 114.

¹⁵ Md. Code Regs. 26.09.04.03.

¹⁶ 310 CMR 7.70(5)(c)1.a.iii.

Climate change is one of the greatest threats we face as a nation and society. Here in Pennsylvania, we are already seeing stronger storms and more frequent flooding, and severe weather is expected to get worse.

In proposing this program, Governor Wolf and the Department of Environmental Protection have begun to address this responsibility. The proposed CO₂ Budget Trading Program provides a clear plan to begin to address Pennsylvania's carbon pollution problem.

Taking steps to address the climate crisis isn't just a good idea, it's what people want. A recent poll showed that about 70 percent of Pennsylvania residents want more action on climate change. Unfortunately, fossil fuel polluters and their allies in the legislature continue to ignore this constitutional mandate and spread misinformation in an attempt to block or delay this important program.

We ask that the Department and the EQB resist these cynical attempts by fossil fuel interests to block progress and proceed with the proposed rule.

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