



Stephen Hoffman

From: ecomment@pa.gov
Sent: Wednesday, December 16, 2020 6:12 AM
To: Environment-Committee@pasenate.com; IRRC; environmentalcommittee@pahouse.net; regcomments@pa.gov; ntroutman@pasen.gov; timothy.collins@pasenate.com; gking@pahousegop.com
Cc: c-jflanaga@pa.gov
Subject: Comment received - Proposed Rulemaking: CO2 Budget Trading Program (#7-559)

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Re: eComment System

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

Commenter Information:

Vince Phillips
 PA Septage Management Assn. & PA State Grange (xenobun@aol.com)
 3610 Kent Drive
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Comments entered:

December 16, 2020

Governor Wolf's unilateral action to force PA to be part of the Regional Greenhouse Gas Initiative (RGGI) invites litigation because it bypassed the authority of the General Assembly which has the constitutional responsibility governing the imposition of corporation taxation. This was the subject of House Bill 2025 sponsored by Rep. Jim Struzzi (R-Indiana) and vetoed by Governor Tom Wolf. In the Governor's veto message, no mention was made of the General Assembly's authority or the legal justification behind the Governor's action. Rather, the Governor's veto message expressed frustration with "the legislation's failure to address climate change" as justification for him to act without legislative authorization to do so.

The veto message presents a general rationale to being concerned about climate change and supporting a Cap and Trade system. However rhetorically persuasive that may or not be, the underlying questions are:

- Does this particular action to become part of RGGI pass a constitutional test?
- Does this particular action give up Pennsylvania's sovereignty to a regional entity where its authority to tax corporations in Pennsylvania has not been validated by the General Assembly?
- Without constitutional or legislative authority, does the Department of Environmental Protection rule-making violate the established process for approving state regulations via the

Independent Regulatory Review Commission, etc.?

DEP should also be worried about RGGI rules that may directly conflict with established Pennsylvania law. Which rules apply -- DEP's or RGGI's?

Note the Constitution of Pennsylvania Article VIII Taxation & Finance, Section 6 Taxation of Corporations:

§ 6. Taxation of corporations.

The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the Commonwealth shall be a party. (Apr. 23, 1968, P.L.App.9, Prop. No.5)

Put another way, RGGI amounts to Pennsylvania surrendering the power to tax corporations to an unelected regional body in direct contradiction of the PA Constitution.

The issue with this proposed rule-making is not whether someone believes that climate change is or is not a clear and present danger. Rather, it is a question of whether PA decides taxation for corporations doing business in Pennsylvania or simply gives that constitutional authority away to someone else, the Regional Greenhouse Gas Initiative.

Although the Environmental Quality Board voted to move the regulatory process forward, it also ignored this question of state sovereignty. The thinking of the PA Septage Management Association and the PA State Grange is that the proposed rule should be suspended until there can be a thorough legal analysis to look at the constitutionality and case law relevant to the Governor's personal decision to enter the Commonwealth into RGGI without consultation with those who have the constitutional responsibility to make Taxing policy.

No attachments were included as part of this comment.

Please contact me if you have any questions.

Sincerely,
Jessica Shirley

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