

Governor Wolf Vetoes Legislative Disapproval of RGGI Rule

March 1, 2022

FNREL Mineral and Energy Law Newsletter

Pennsylvania- Mining

(By **Joseph K. Reinhart**, **Sean M. McGovern**, **Gina N. Falaschi** and **Christina Puhnaty**)

As previously reported, the Pennsylvania Department of Environmental Protection's (PADEP) CO₂ Budget Trading Program, or Regional Greenhouse Gas Initiative (RGGI), regulation is nearing final publication. See Vol. XXXVIII, No. 4 (2021) of this *Newsletter*. RGGI is a regional cap-and-trade program for carbon dioxide (CO₂) emissions from fossil fuel-fired electric generating units with a nameplate capacity of 25 megawatts or greater. PADEP proposes that the commonwealth join RGGI pursuant to Governor Tom Wolf's 2019 executive order.

Following approval of the regulation by Pennsylvania's Independent Regulatory Review Commission in September 2021, the final-form rulemaking was submitted to the House and Senate Environmental Resources and Energy standing committees.

The Senate Environmental Resources and Energy Committee passed a resolution disapproving the regulation and reported that resolution out of committee to the full chamber. The Senate passed Senate Concurrent Regulatory Review Resolution 1 (S.C.R.R.1), which disapproves of the rulemaking, on October 27, 2021. S.C.R.R.1 was reported by the House Environmental Resources and Energy Committee on November 8, 2021. On December 15, 2021, in a 130-70 vote, the House passed a resolution as well.

While the resolution was pending in the legislature, on November 29, 2021, the Environmental Quality Board (EQB) sub- mitted the CO₂ Budget Trading Program rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The Legislative Reference Bureau informed the EQB that it was not authorized to publish the rule because S.C.R.R.1 was still pending before the House of Representatives.

Governor Wolf vetoed the resolution on January 10, 2022, and released a veto message about the importance of the regulation. Press Release, Gov'r Tom Wolf, "Governor Wolf Vetoes Resolution That Would Hinder Pennsylvania's Ability to Address Climate Crisis" (Jan. 10, 2022). The Governor's veto sent the resolution back to the legislature, where each chamber has 30 calendar days or 10 legislative days, whichever is longer, to attempt a veto override. The legislature needs a veto-proof two-thirds majority to override the veto and block the regulation. As of this writing, neither chamber has attempted to override the veto.

In the meantime, State Senator Gene Yaw, chair of the Senate Environmental Resources and Energy Committee, wrote a letter to PADEP Secretary Patrick McDonnell to urge him to re- consider an invitation to testify before the committee at a hearing to discuss RGGI allowance prices scheduled for January 18, 2022. Letter from Sen. Gene Yaw, to Hon. Patrick McDonnell, Sec'y, PADEP (Jan 13, 2022). PADEP did not attend the hearing.

Based on the legislative calendar, the legislature has until approximately March 29, 2022, to attempt to override the Governor's veto. In the meantime, however, on February 3, 2022, McDonnell filed suit in the Commonwealth Court of Pennsylvania seeking to compel the Legislative Reference Bureau to publish the EQB's final-form rulemaking for the CO₂ Budget Trading Program in the *Pennsylvania Bulletin*. See Complaint, *McDonnell v. Pa. Legislative Reference Bureau*, No. MD 2022 (Pa. Commw. Ct. Feb. 3, 2022).

If the legislature is unsuccessful in blocking the regulation, or if the commonwealth court compels publication before the end of March 2022, it will be published in the *Pennsylvania Bulletin* as a final rule. The Office of the Attorney General already approved the regulation in December 2021. Legal challenges to the final rule are anticipated. Further information regarding the rule can be found on PADEP's RGGI webpage at

<https://www.dep.pa.gov/Citizens/climate/Pages/RGGI.aspx>.

Copyright © 2022, The Foundation for Natural Resources and Energy Law, Westminster, Colorado



PITTSBURGH, PA | CHARLESTON, WV | HARRISBURG, PA | LAKEWOOD, NY | STATE COLLEGE, PA | WASHINGTON, DC