

Pennsylvania Joins RGGI

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After a lengthy rulemaking process, the Pennsylvania Department of Environmental Protection's (PADEP) CO₂ Budget Trading Program rule was published in the *Pennsylvania Bulletin*. See 52 Pa. Bull. 2471 (Apr. 23, 2022). As previously reported in Vol. XXXVI, No. 4 (2019) of this *Newsletter*, on October 3, 2019, Governor Tom Wolf signed Executive Order No. 2019-07, "Commonwealth Leadership in Addressing Climate Change Through Electric Sector Emissions Reductions," directing PADEP to initiate a rulemaking to join the Regional Greenhouse Gas Initiative (RGGI). RGGI is the country's first regional, market-based cap-and-trade program designed to reduce carbon dioxide (CO₂) emissions from fossil fuel-fired electric power generators with a capacity of 25 megawatts or greater that send more than 10% of their annual gross generation to the electric grid. The CO₂ Budget Trading Program links Pennsylvania's program to RGGI.

Following approval of the rule by the Environmental Quality Board (EQB) in July 2021 and approval by the Pennsylvania Independent Regulatory Review Commission in September 2021, the final form rulemaking was submitted to the Pennsylvania House and Senate Environmental Resources and Energy standing committees. Both houses of the legislature passed Senate Concurrent Regulatory Review Resolution 1 (S.C.R.R.R.1), which disapproved of the rulemaking, and Governor Wolf vetoed the resolution on January 10, 2022. See Vol. 39, No. 1 (2022) of this *Newsletter*. The Governor's veto sent the resolution back to the legislature, where each chamber had 30 calendar days or 10 legislative days, whichever was longer, to attempt a veto override. The legislature needs a veto-proof two-thirds majority to override a veto and block a regulation. On April 4, 2022, the Pennsylvania Senate failed by one vote to reach the two-thirds majority vote needed to override Governor Wolf's veto of S.C.R.R.R.1.

However, while S.C.R.R.R.1 was pending in the legislature, on November 29, 2021, the EQB submitted 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.R.1 was still pending before the House of Representatives. On February 3, 2022, Patrick McDonnell, Secretary of PADEP and Chairperson of the EQB, filed suit in commonwealth court seeking to compel the Legislative Reference Bureau to publish the EQB's final-form rulemaking for the CO₂ Budget Trading Program. See *McDonnell v. Pa. Legislative Reference Bureau*, No. 41 MD 2022 (Pa. Commw. Ct. filed Feb. 3, 2022). On February 25, 2022, Senator Yaw's office also announced that Pennsylvania Senate leaders petitioned to intervene in the lawsuit.

On April 5, 2022, the commonwealth court issued a stay preventing the Legislative Reference Bureau from publishing the EQB's final-form rulemaking for the CO₂ Budget Trading Program, pending further order of the court. Because no hearing was held on the stay, it was dissolved by operation of Pa. R. Civ. P. 1531(d) after five days.

The Legislative Reference Bureau subsequently published the rule on April 23, 2022. Two days later a group of stakeholders filed a petition for review of the rule and an application for preliminary injunction in the commonwealth court. See *Bowfin KeyCon Holdings, LLC v. PADEP*, No. 247 MD 2022 (Pa. Commw. Ct. filed Apr. 25, 2022). The court held a hearing on the preliminary injunction on May 10 and 11, 2022, and a ruling is expected early this summer.

If the commonwealth court does not grant the application for preliminary injunction, compliance obligations under the rule will begin July 1, 2022. Regulated sources must hold allowances equal to their CO₂ emissions over a three-year compliance period. Each allowance is equal to one short ton of CO₂. Regulated sources may purchase state-issued allowances at quarterly auctions or through secondary markets and can use allowances issued by any RGGI state to comply. Affected units would need to start monitoring emissions on July 1, 2022, to be able to purchase allowances for CO₂ emitted on or after that date. RGGI operates on a three-year compliance schedule whereby only partial compliance is required within the first two years, and then full compliance is required after the end of the third year.

The current RGGI three-year compliance period began in 2021, so 2021 and 2022 are interim compliance years and 2023 is a full compliance year. Regulated sources must acquire 50% of the necessary CO₂ allowances by March 1, 2023, and acquire 100% of their allowances by March 1, 2024. The allowance price was \$13.50 at the last RGGI auction on March 11, 2022. The partial year emissions cap for Pennsylvania would be 40.7 million tons of CO₂ for the remainder of 2022. The total annual emissions cap will gradually decline to 58 million in 2030.

Further information regarding the rule can be found on PADEP's RGGI webpage at <https://www.dep.pa.gov/Citizens/climate/Pages/RGGI.aspx>.

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