

The P*i*OGA Press

April 2022 • Issue 144

Pennsylvania is one step closer to joining RGGI

On April 4, the Pennsylvania Senate failed by one vote to reach the two-thirds majority needed to override Governor Tom Wolf's January 10 veto of Senate Concurrent Regulatory Review Resolution 1, which was intended to block the Department of Environmental Protection's regulation to join the Regional Greenhouse Gas Initiative (RGGI). However, the following evening, April 5, the Commonwealth Court issued a stay preventing the Legislative Reference Bureau from publishing the regulation as a final, immediately effective rule in the *Pennsylvania Bulletin* and scheduling a hearing for May 4 on litigation that DEP initiated in February to force publication of the final regulation.

RGGI is the nation's first regional, market-based cap-and-trade program, designed to reduce carbon dioxide emissions from fossil-fuel-fired electric power generators with a capacity of 25 megawatts or greater that send more than 10 percent of their annual gross generation to the electric grid. 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. Regulated sources may also use offsets awarded for certain environmental projects to meet a maximum of 3.3 percent of their allowances.

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If the rule is published in the *Pennsylvania Bulletin* before July 1, 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 would gradually decline to 58 million in 2030. 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 while 2023 is a full compliance year. If the regulation is published before July 1, regulated sources must acquire 50 percent of the necessary CO₂ allowances by March 1, 2023, and acquire 100 percent of their allowances by March 1, 2024. The allowance price was \$13.50 at the last RGGI auction on March 11, 2022.

Litigation to challenge the regulation is expected after it is published in the *Pennsylvania Bulletin*, which cannot occur until after the May 4 hearing following the Commonwealth Court's April 5 stay of publication.