

A September foreshadowing: EQB adopts the proposed RGGI rulemaking and the governor vetoes House Bill 2025

September saw Pennsylvania take two major steps toward locking the Commonwealth into the Regional Greenhouse Gas Initiative (RGGI). On September 15, the Environmental Quality Board (EQB) voted 13-6 to adopt proposed cap-and-trade regulations to limit carbon dioxide emissions from fossil-fuel-fired electric generating units greater than 25 megawatts capacity. Nine days later on September 24, Governor Wolf vetoed House Bill 2025 that would have prohibited the Department of Environmental Protection from taking any action to control or limit CO₂ emissions without General Assembly approval.

Since it seems unlikely at this point that the General Assembly will be able to stop the administration's effort to adopt RGGI regulations by the end of 2021, the next several months will be critical to comment on, shape or oppose these regulations.

The proposed RGGI regulations

Governor Wolf's October 3, 2019, Executive Order No. 2019-07 directed DEP to develop a proposed rulemaking to abate, control or limit CO₂ emissions from fossil fuel-fired electric power generators (EGU) and present it to the EQB by July 31, 2020. The deadline later was extended to September 15, 2020. As presented to and considered by the EQB on September 15, the proposed RGGI regulations would amend 25 Pa. Code Chapter 145 (relating to interstate pollution transport reduction) and add Subchapter E (relating to a budget trading program) to establish a program to limit the emissions of CO₂ from a fossil-fuel-fired EGU with a nameplate capacity of 25 MW or greater that sends more than 10 percent of its annual gross generation to the electric grid. The proposed rulemaking is intended to reduce CO₂ emissions as a contributor to adverse climate change and establish a CO₂ budget trading program that can link with similar regulations in the 10 Northeast and Mid-Atlantic states that comprise RGGI.

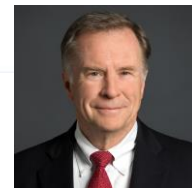
The proposed rule establishes an initial emissions budget of 78M tons of CO₂ in 2022 that declines by roughly 3 to 4 percent per year to 58M tons in 2030. DEP anticipates this will reduce CO₂ emissions in Pennsylvania by approximately 31 percent compared to 2019, an expected 188M ton reduction overall. The declining annual emissions budget is equivalent to the CO₂ allowance budget (i.e., the number of CO₂ allowances available each year). The number of available allowances decreases each year along with the emissions budget. One CO₂ allowance provides authorization to emit one ton of CO₂. EGUs and other sources affected by the rule must submit allowances for every ton of emitted, and may trade CO₂ allowances within Pennsylvania or with participating RGGI states to meet the regulatory obligation.

DEP estimated that as of the end of 2019, 57 CO₂ budget sources (i.e., facilities with one or more budget units) with 140 CO₂ budget units (EGUs) would have a compliance obligation under this proposed rulemaking. Based on announced closures and future firm capacity builds resulting from the dynamic nature of the electricity generation sector, DEP projects that 62 CO₂ budget sources with 150 CO₂ budget units will have compliance obligations by January 1, 2022, the intended implementation date of a final regulation. DEP also estimates that around 99 percent of Pennsylvania's power sector CO₂ emissions would be covered under this proposed rulemaking.

The EQB September 15 meeting

Before the September 15 EQB meeting, DEP had solicited input from its Air Quality Technical Advisory Committee (AQTAC) on three occasions, at meetings on February 13, April 16 and May 7. AQTAC declined to concur with the proposed regulation, as did DEP's Citizens Advisory Council. The Senate and House Environmental Resources & Energy (ERE) Committees held information meetings on RGGI and HB 2025 on June 23 and July 21, respectively. Witnesses from the regulated

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community at these hearings commented that, among other things, the RGGI regulations are unnecessary because Pennsylvania is on pace to reduce CO₂ emissions commensurate with policy goals in the absence of RGGI; lack statutory authority and would impermissibly divert auction proceeds outside the Clean Air Fund; will result in the immediate retirement of Pennsylvania coal-fired EGUs, especially those in Indiana County, with employment losses upward of 18,000 jobs; will increase retail electricity prices; do not satisfactorily address the problem of leakage, pushing increased generation and job growth to Ohio and West Virginia; will not result in any measurable reduction of United States or global CO₂ emissions; will not spur meaningful growth of renewable energy sources; and are ill-timed in view of economic conditions created by the COVID-19 pandemic.

The September 15 EQB meeting lasted nearly four hours and saw heated debate at times. Many of the comments made during the ERE committee hearings were voiced again at the EQB meeting. In addition, House ERE Chair Metcalfe questioned whether the proposed regulations are an unlawful tax that only the General Assembly may impose. Senate ERE Chair Yaw observed that RGGI is not a good fit for Pennsylvania because, as an energy exporting state, it has very little in common with the RGGI states, each of which is a net energy importer. Nevertheless, EQB voted to adopt the package as a proposed rule with a 60-day public comment period including five virtual public hearings. EQB voted down proposed amendments to lengthen the comment period to 180 or 120 days, to table the matter until the advisory councils concur with the regulations and to hold at least one in-person public hearing in Indiana County.

The 60-day public comment period will begin upon publication of the proposed regulations in the *Pennsylvania Bulletin*, which could occur in late October or November. Interested parties and the regulated community should begin preparing comments and testimony now to submit during the abbreviated comment period. Before the regulation is finalized, a cost-effectiveness analysis will be required under Pennsylvania's Regulatory Review Act, Commonwealth Attorneys Act and the Climate Change Act. The Wolf administration intends to have final regulations in effect on or before January 1, 2022.

House Bill 2025

Representative Jim Stuzzi (R-Indiana) and a bipartisan group of House members introduced HB 2025 in November 2019 to require DEP to obtain General Assembly approval of any measure or action to abate, control or limit CO₂ emissions, including joining RGGI or establishing a separate greenhouse gas cap-and-trade program. If DEP intended to propose such a measure, HB 2025 would have

required the agency to solicit public comment for at least 180 days, hold public hearings in those locations where regulated sources of CO₂ emissions would be directly economically affected by the proposal, and carefully analyze the effect of the measure on the cost of electricity at the wholesale, retail and industrial level, cost implications to municipalities and private industry, and prices of goods and services, productivity or competition. Senator Joe Pittman (R-Indiana) introduced an identical bipartisan bill in the Senate at the same time. In essence, these two bills were intended to give Pennsylvanians through their elected officials a voice in whether to regulate CO₂ emissions and how to do it.

HB 2025 was reported out of the House ERE Committee on June 9 and passed the full House by a bipartisan vote of 130-71, just a few votes short of a two-thirds majority in favor. The Senate approved it on September 9 by a 33-17 bipartisan vote and sent it to the governor.

Governor Wolf vetoed HB 2025 on September 24. Returning the bill without his approval, the Governor stated that the legislation is “extremely harmful to public health and welfare as it prevents [DEP] from taking any measure or action to abate, control or limit CO₂ emissions, a greenhouse gas and major contributor to climate change impacts, without prior approval of the General Assembly.”

The governor remarked that the Regulatory Review Act and the Air Pollution Control Act “afford the opportunity for extensive public participation, including public comment and public hearings, in the rulemaking process.” Given that the administration is determined to have final RGGI regulations promulgated by the end of next year, as evidenced by the governor's veto of HB 2025 and the fact that all 11 of the EQB members who are secretaries or executive directors of state agencies or commissions voted in favor of the proposed rulemaking and against a longer public comment period, it remains to be seen whether public comment can or will change the trajectory of the RGGI regulations.