

EQB Petition to Create Economy-Wide GHG Auction-Cap-and-Trade Program

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Rulemaking Petitioner Filed With EQB

- Seeks adoption of regulation establishing economy-wide auction-cap-and-trade program.
 - <https://www.calltothebar.org/petition-to-keystone-state-seeks-carbon-pricing-as-climate-change-solution/>
 - Filed November 27, 2018, supplemented and refiled March 1, 2019.
 - 192 Petitioners, including 22 environmental, 8 municipal, 26 businesses and investment organizations, 11 educational (11), 33 faith-based (including PA Council of Churches), 7 community organizations (7) and 97 individual Petitioners on 104 entries.

Evidence of Damage from Climate Disruption Increasing Since EPA 2009 Finding

Summary of New Evidence Since the Endangerment Finding
new evidence for impacts in areas included in and emergent beyond the EF

	Impacts Areas Included in EF		
	Confidence in Impacts	Evidence of More Severe or Pervasive Impacts	Emergent Impacts Beyond the EF
Public Health	↑	↑	↑
Air Quality	↑	↑	↑
Food Production and Agriculture	↑	↑	↑
Forestry	↑	↑	
Water Resources	↑	↑	↑
Sea Level Rise and Coastal Areas	↑	↑	
Energy, Infrastructure and Settlements	↑		
Ecosystems and Wildlife	↑	↑	
Ocean Acidification			↑
Violence			↑
National Security			↑
Economic Wellbeing			↑

P. B. Duffy et al.,
Science,
10.1126/science.aat
5982 (2018).

Social Cost of Carbon Measures Damage

- 2016 federal interagency task force
 - Average cost = \$42/ton of emissions, with 95th percentile \$123/ton.
 - Cost increases as action delayed = 2050 increased to \$69/ton and \$212/ton.
- Recent study - \$48/ton considering only US damages. Ricke, et al., *Country-level social cost of carbon*, 8 Nature Climate Change 895 (2018).
- Litterman – likely greater if factor in risk

Slide 3

RM1 Robert McKinstry, 12/29/2018

2018 IPCC Report

- Showed that a 2 degree C rise in temperature will have severe impacts that can be avoided at 1.5 degrees C, with more catastrophic impacts on current trajectory.
- To avoid worst impacts, world emissions must be reduced by 40% from 2010 levels by 2030 and reach neutrality around 2050.
 - At a minimum PA emissions must do same.
- Requires at a minimum a cap descending at this rate.

Enforceable Constitutional Duty

- Robert B. McKinstry, Jr. & John C. Dernbach, *Applying the Pennsylvania Environmental Rights Amendment Meaningfully to Climate Disruption*, 10 Mich. J. Env't'l & Admin. L 102 (201_).
- Article I, § 27 creates duty to conserve climate from undue disruption by GHG pollution.
- Economy-wide auction-cap-and-trade program going with cap consistent with IPCC report will provide framework for conservation.
- Regulation authorized by Pa APCA.
- Approach consistent with *Funk* decision.

Importance of Uniform Cap with Leakage Control



The Regulation

- Based on California regulation for its program with Quebec and Ontario, and possibly Oregon
- Regulates at three points:
 - Larger facilities subject to federal reporting regulation must surrender allowances equal to emissions
 - Fossil fuel distributors must surrender allowances equal to emissions caused by combustion of their products
 - Imported electricity

The Cap

- **Basis – 2016 emissions reduced by 3% of 2016 emissions, with reductions in the presumptive cap starting in 2018.**
 - If program starts in 2020, the initial cap = 91% of 2016 emissions, and if it starts in 2021, the initial cap = 88% of 2016 emissions.
- **Will achieve necessary reductions per 2018 IPCC report: 45% reduction from 2010 levels by 2030, going to zero about 2050 (2052).**

Reporting

- **The federal Mandatory Reporting of Greenhouse Gases Regulation set forth in 40 C.F.R. pt 98 incorporated by reference and made applicable to PA**
- **Baseline report – report PA related emissions from 2016 federal report within 60 days of publication of final rule in PA Bulletin**
- **Annual reports serve as basis for allowance surrender**

Auction

- **Most allowances auctioned**
 - All auctioned after 20 years
- **Reserve price**
 - \$10, increasing 10% plus inflation until it reaches CA
 - Below RGGI CCR trigger
- **Unsold allowances moved to CCR or retired**
- **CCR at CA release – above social cost of carbon**
- **Both advance auctions and current auctions**
 - Schedule to be established consistent with CA

Structure Avoids Past Mistakes

- **Mistakes cause other programs to become non-constraining**
 - Cap set too high or price set too low
 - Cap doesn't decrease and tax/price doesn't increase
- **Reserve price checks cap if cap too low and cap checks price if price too low, and excess allowances retired**
- **Reserve increases, while cap decreases**
- **Cap coincides with environmentally established end points**
 - Regulation can be more readily amended to adapt to changing conditions

Direct Distribution

- **Entities subject to leakage apply to DEP for direct distribution**
 - Equal to best performer in sector, but if leakage for poor performers, others in sector get same rate
 - 5% reduction per year
 - Reduced if close or reduce production
- **Limited to industrial sector - electricity generators and fossil fuel distributors ineligible**

Leakage Prevention

- **Interstate electricity**
 - Automatic connection to RGGI
 - Requires surrender of allowance from imported electricity unless PJM adopts carbon adder
- **Intersectoral**
 - Economy-wide - Deep decarbonization requires electrification of building, industrial, and transportation sectors.
- **Industry – Provision of direct allowances**

Linkage and Trading

- Allowances may be freely traded or banked
- Automatic to RGGI, CA-QE-ON, VA or linked programs if they accept PA allowances
- Transition – Accept RGGI allowances for first 3-5 years even if RGGI does not accept PA allowances

Federal Program – Waiting for Godot

- No time to wait – No federal program for at least two years and cannot know structure of federal program
- Can readily integrate with federal program if administrative
 - Could submit as SIP even under current proposal
- If federal tax
 - Can Integrate by giving full or partial credit for federal payment in bids
 - Tax alone unlikely to be as effective as this program

Why Better than Tax

- Can implement administratively without legislation
 - Legislation will require regulations
 - Both will require a supporting monitoring and reporting structure
- Tax and cap-and-trade with auction two sides of coin, with reserve price get a coin with two heads
 - Tax does not guarantee necessary reductions
- Leakage a problem with a state tax
 - Can create incentive for industry while preventing leakage
 - Trading can create a uniform price

Support Piling Up – Policy

- Executive Order 2019-01 *Commonwealth Leadership in Addressing Climate Change and Promoting Conservation and Sustainable Governance* (Jan. 8, 2019) – Proposed Regulation necessary to achieve goals.
- PA part of *Transportation & Climate Initiative Statement* (Dec. 18, 2018) – proposed rule represents implementation mechanism.
- Pennsylvania Independent Fiscal Office report of “structural budget deficit” – we cite Pa. Const. Art. VIII, § 13 and *PEDF* as providing further mandate.
- Nuclear caucus report suggests four solutions, including carbon pricing.
 - Pricing only mechanism that can be implemented without legislation
 - Strange bedfellows – only solution palatable to opposing groups
- Gerrard Dernbach, *Legal Pathways to Deep Decarbonization* – 1,000 mechanisms – GHG pricing part of every sectoral recommendation.

Support Piling Up - Scientific

- IPCC Report and U.S.G.R.P *Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States* came out as went to press.
- New scientific or other argument supporting action released weekly since November 27.
- U.S. level social cost of carbon of \$48/ton.
- Science article showing increased and additional impacts beyond EPA's 2009 endangerment finding.

Future Schedule

- April 16 – Presentation to Board. Must accept unless narrowly circumscribed criteria of 25 Pa. Code 23.5.
- June 15 – DEP report due unless more time needed.
- July 15 – Petitioners' response.
- If Department recommends denial – first EQB meeting after July 30.
- If DEP recommends regulatory amendments - DEP rulemaking package due Dec. 15, 2019.