

EQB Climate Petition: Pennsylvania Cap-and-Trade Fact Sheet

- Article I, Section 27 of the Pennsylvania Constitution (“the Environmental Rights Amendment”) provides: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” This requires the Commonwealth to control greenhouse gas emissions, which pose a threat to human health and the environment, and, at a minimum, to limit such emissions to the extent consistent with the social cost of carbon.
- Given the need to adopt a regulation addressing greenhouse gases, we intend to file a Petition for Rulemaking with the Environmental Quality Board (“EQB”), pursuant to Title 25, Chapter 23 of the Pennsylvania Code, to adopt a proposed regulation establishing an economy-wide auction-cap-and-trade program for Pennsylvania. Adoption of such a program has proven to be an effective means of controlling greenhouse gas emissions in other jurisdictions and would satisfy the requirement under Article I, Section 27. There is considerable legal authority and flexibility to promulgate such a regulation under the Pennsylvania Air Pollution Control Act (“APCA”).
- In two recent landmark decisions, the Pennsylvania Supreme Court confirmed that the Environmental Rights Amendment creates individual rights to a clean environment for all people, including future generations, and creates an enforceable duty for all agencies and entities of the Commonwealth government, both statewide and local, to conserve and maintain the public natural resources of the Commonwealth. Those resources should include a natural climate that is not disrupted by excessive concentrations of greenhouse gases in the atmosphere.
- Section 4005 of the APCA grants EQB the power, and imposes upon it the affirmative duty, to “[a]dopt rules and regulations, for the prevention, control, reduction and abatement of air pollution . . . which shall be applicable to all air contamination sources” and to “[e]stablish and publish maximum quantities of air contaminants.” Greenhouse gases are regulated air pollutants within the meaning of the federal Clean Air Act and the APCA.
- Accordingly, we have drafted a proposed regulation – based on the California auction-cap-and-trade program – that will be attached to the petition. If adopted, the regulation will establish a Pennsylvania program where emissions from covered sources of greenhouse gas emissions would be capped, with the cap declining each year by an amount equal to three percent of 2016 emissions starting with 2018. If the program starts in 2020, the cap that year would be 91% of the baseline. This would put Pennsylvania on track to achieve carbon neutrality by 2052, consistent with the goal established by the United Nations Framework Convention on Climate Change, as defined in the Paris Agreement.
- We are looking to recruit co-signers. Once submitted, the petition will trigger a formal process for consideration under 25 Pa. Code Chapter 23 that will require the Department of Environmental Protection (“DEP”) to review and evaluate the proposal and make recommendations to EQB on how to proceed. Our petition will be supported by a substantial legal and factual record.

Here's how our regulation would work:

- o DEP would auction or distribute allowances equal to the cap, with each allowance equal to one metric ton of CO₂e, as defined and determined under the Environmental Protection Agency's Mandatory Greenhouse Gas Reporting Rule (MRR). Sources that are required to report their emissions under the MRR, or otherwise required to report direct emissions, will be required annually to surrender a number of allowances equal to their total annual GHG emissions (in CO₂e).
- o Distributors of fossil fuels (petroleum fuel and petroleum fuel products, natural gas, propane and natural gas liquids used for fuel, and coal) will be required annually to surrender a number of allowances equal to the total annual GHG emissions (in CO₂e) that will be released into the ambient atmosphere from combustion of the fuels.
- o Sales of fossil fuels to entities required to surrender allowances based on their GHG emissions will be exempt from the requirement for the surrender of allowances. Likewise, sales of fossil fuels that for the purpose of the manufacture of products that will not release GHGs, such as plastics, will be exempt from the requirement for the surrender of allowances. No allowances need to be surrendered for biogenic CO₂ and geologically sequestered CO₂.
- o Most allowances will be distributed by auction, subject to a reserve price that will move towards the social cost of carbon and start initially at \$10/ton and increase by 10% per year plus the rate of inflation, until it reaches the California reserve price. Auctions will occur periodically. If any allowances are unsold, up to 25% will be offered at sale in the next auction (subject to the reserve price) and any allowances that are unsold for more than two years will be retired or placed in an allowance price containment reserve.
- o Industries with products (excluding fossil fuel and electricity generation) subject to international and interstate competition will be entitled to apply to DEP for the distribution of some allowances free of charge, upon a showing that this is necessary to prevent "leakage," which might result if production were moved to other states or nations that do not put a price on GHG emissions. The number of free allowances would initially be based on a company's 2018 GHG emissions and would be reduced by 5% annually. If a company closes, it would lose the right to receive allowances and, if it moves any portion of its production out of the state, the free allowances would be reduced proportionately. DEP would be entitled to distribute free allowances to new businesses subject to international or interstate competition from any unsold allowances or the containment reserve in order to assure that this program does not discourage new business formation. Allowances may be bought by any person and may be freely traded. Allowances may also be banked for future use.
- Because Pennsylvania's greenhouse gas emissions are globally significant, the proposed regulation will represent a significant step in mitigating climate disruption. Pennsylvania's total greenhouse gas emissions in 2014 exceeded all but 21 countries of the world (16 countries exceeded Pennsylvania, while 5 had emissions approximately equal to Pennsylvania).
- Based on the experience of states in the Regional Greenhouse Gas Initiative (RGGI), which is a narrower program, we anticipate that the proposed regulation will result in economic growth, including both job growth and increased gross state product.