



February 18, 2021

Patrick McDonnell
Secretary
Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

In response to your letter of February 10th, we would like to submit the following for the record. First, we had several questions regarding the proposed rulemaking of the Environmental Quality Board’s CO2 Budget Trading Program. We placed calls prior to the close of the public comment period to the contacts listed: Virendra Trivedi, Chief, Division of Permits, Bureau of Air Quality, (717) 783-9476 and Jennie Demjanick, Assistant Counsel, Bureau of Regulatory Counsel, (717) 787-7060. As of today, we still have received no follow-up call from the Department of Environmental Protection (DEP). This is not uncommon for this agency as we have had a lack of response on other issues as well. The lack of follow up left our questions unanswered in advance of the public comment period deadline and negatively impacted our ability to provide meaningful feedback. These issues could have been resolved if we simply had a call back from the Department. Even after the comment period closed, DEP should have responded so it did not further allow others to repeat any potential incorrect information.

Due to the lack of response from DEP, PNA acknowledges that we did incorrectly comment that it appeared there were not public notices placed. We will correct the public record that DEP did publish 12 notices; however, we believe the public notices may be inconsistent with the requirements of the law. The Air Pollution Control Act requires public notice to be provided “in newspapers of general circulation **in the region of the Commonwealth affected.**” While DEP did place a few ads for the virtual hearings, the ads were not published in each of Pennsylvania’s 67 counties. **The regulations at issue impact all Pennsylvanians.** Large areas of the Commonwealth did not benefit from printed public notices including the following counties:

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|-----------|------------|------------|--------------|--------------|
| Adams | Clarion | Greene | Monroe | Susquehanna |
| Armstrong | Clearfield | Huntingdon | Montgomery | Tioga |
| Beaver | Clinton | Jefferson | Montour | Union |
| Bedford | Columbia | Juniata | Perry | Venango |
| Bradford | Crawford | Lancaster | Philadelphia | Warren |
| Butler | Elk | Lawrence | Pike | Washington |
| Cambria | Fayette | Luzerne | Potter | Wayne |
| Cameron | Forest | McKean | Schuylkill | Westmoreland |
| Carbon | Franklin | Mercer | Snyder | Wyoming |
| Centre | Fulton | Mifflin | Sullivan | York |
| Chester | | | | |

Governor Wolf states that "Climate change is the most critical environmental threat confronting the world, and power generation is one of the biggest contributors to greenhouse gas emissions. Given the urgency of the climate crisis facing Pennsylvania and the entire planet, the commonwealth must continue to take concrete, economically sound and immediate steps to reduce emissions. RGGI will give us that opportunity to better protect the health and safety of our citizens."

You state that "Climate change isn't an issue that only the residents of coastal states are concerned about. Climate change has led to more flooding, more heat and respiratory illnesses, more vector-borne diseases and pests, and more disruptions to agricultural systems right here in Pennsylvania."

As you acknowledge, these regulations will have a major impact on all Pennsylvanians, and we believe DEP should have provided more widespread public notice consistent with the intent of the law. The recent failure by another agency to publish notice for victims' rights showcases the reason that public notices are more important than ever. The DEP regulations will impact all 12 million Pennsylvanians, but DEP placed only a few notices and held virtual-only public hearings both of which may have excluded many Pennsylvanians. You stated that you received over 14,000 comments; however, that only represents about .001% of Pennsylvanians and it is our understanding the majority of comments received were form letters.

Public notices inform the community about life-changing government actions before those actions are taken. In-person hearings allow Pennsylvanians a chance to witness and participate in the formation of public policy. The APCA was passed in 1960 long before virtual technology existed. We believe the statute clearly implies "in-person" public hearings even though it is not specifically stated, and we believe in-person public meetings are the gold standard for public participation. As a result of COVID-mitigation efforts, the lack of public access has highlighted numerous issues with virtual-only/phone-in public meetings, including the many Pennsylvanians who do not have reliable access to the Internet.

Online-only processes eliminate access for nearly 25% of Pennsylvanians who do not use the Internet at all. Moreover, approximately 27% of seniors do not use the Internet at all, and 41% of seniors do not have broadband access at home. Lower Internet usage rates continue among rural residents, minorities, lower income individuals and the disabled as well. Furthermore, a recent Penn State study found that 95% of Pennsylvania's land area lacks access to broadband internet, equating to more than 50% of the population. Online notices and virtual public meetings were simply inaccessible to many Pennsylvanians who will be impacted by these regulations. Newspapers are the primary channel for communicating matters of such critical public importance to those residents.

Finally, we are disheartened and dismayed that you would suggest this could be an intentional act on our part to provide any disinformation. That suggestion is absent of any truth and beyond the pale, especially since DEP never responded to our initial questions, which were prior to the comment deadline and still has not responded. PNA does not have a position on the substance of the underlying regulations, we are only concerned with the process by which those regulations are enacted. PNA works hard to provide timely, accurate feedback on proposed legislation and policies in this case and every other where media rights or government transparency is at issue.

During this COVID-19 pandemic, government should be more transparent, not less. We believe DEP has fallen short on transparency in this matter by not responding to our questions about the proposed regulations, by failing to post the videos from the virtual hearings, by holding virtual-only public hearings and by failing to publish widespread public notice. DEP can – and should – do better for ALL Pennsylvanians since the impact of these regulations is

significant. The people of Pennsylvania rely on government to do its job properly, but DEP's actions in this matter could undermine public faith in the agency.

We regularly work with state agencies to facilitate access to media and promote public awareness on important issues, and we would be very happy to assist DEP in the future. For example, we have facilitated statewide conference calls with the Governor's Office as well as the Secretary of the Department of Health to promote programs and initiatives and we recently worked with the Secretary of the Department of General Services to ensure smooth access for media covering the Capitol. We would have been happy to help DEP promote its efforts and we would have gladly facilitated access to newspapers across the Commonwealth.

We take our jobs representing the fourth estate and acting as a check and balance for the government very seriously. Transparency is always important to proper government function, but it is especially critical during times of crisis. We look forward to working with DEP as we represent media organizations and the communities they serve.

If you feel the need to follow up further or if we can be of any assistance moving forward, please feel free to reach out via phone. Thank you.

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CC: The Pennsylvania Environmental Quality Board
The Pennsylvania House of Representatives Environmental Resources and Energy Committee
The Pennsylvania Senate Environmental Resources and Energy Committee
The Independent Regulatory Review Commission