



September 9, 2020

Dear Senator:

On behalf of NRDC and our more than 90,000 Pennsylvania members and supporters, I urge you to vote NO on HB 2025 and SB 950 when they come to a floor vote today.

NRDC's opposition is explained at length in a [blog](#) I posted in June; I've pasted the text at the bottom of this letter. In short, **we oppose HB 2025 and SB 950 because it would strip the DEP of its power to regulate carbon dioxide emissions not just from the power sector (e.g., through the proposed carbon limits regulation that the Environmental Quality Board [will decide](#) on September 15, whether to move into a formal rulemaking process), but from all sectors.**

In case there is any doubt about this, here is the operative language of the bill, which is unambiguous:

Section 4. Regulation of greenhouse gas emissions.

- (a) Prohibition.--Except for a measure that is required by Federal law, the department may not adopt a measure or take any other action that is designed to abate, control or limit carbon dioxide emissions, including an action to join or participate in a State or regional greenhouse gas cap-and-trade program, including the RGGI, nor may the department establish a greenhouse gas cap-and-trade program, unless the General Assembly specifically authorizes such a measure or action by statute that is enacted on or after the effective date of this section.*
- (b) Submission to General Assembly.--If the department proposes a measure of action under subsection (a), the department shall submit the proposed measure or other proposed action to the General Assembly as provided under section 5.*

What does this mean? In the immediate term, it means that the DEP would be barred from initiating a rulemaking process for its carbon limits regulation and Pennsylvania would not participate in the Regional Greenhouse Gas Initiative. In the longer term, it would block DEP from any "action" – note that this term is extremely broad, going beyond the promulgation of regulations – to limit carbon dioxide from the power sector, the transportation sector, the industrial sector, or the commercial sector.

HB 2025 and SB 950, then, are drastic pieces of legislation. They are premised on a rejection of the idea that Pennsylvania has to take any policy action to reduce greenhouse gas emissions and address climate change.

We understand that you may have concerns about the impacts of RGGI on Pennsylvania's remaining coal-fired power plants. And we strongly support legislative efforts to help the workers at those plants, and the communities that depend on them, through economic stimulus and transition assistance.

In fact, **such stimulus and assistance will be necessary whether or not Pennsylvania participates in RGGI.** Over the last decade, Pennsylvania's [coal-fired power fleet](#) has been decimated by competition with cheaper, more efficient gas-fired plants, and gas plants will continue to drive coal plant retirements with or without RGGI. RGGI would only accelerate the process.

HB 2025 and SB 950 would not help coal communities and workers when the retirements ultimately occur. [Senate Bill 15](#) would, by directing the DEP to proceed with a carbon limits regulation and directing a quarter of the proceeds from RGGI allowance auctions into worker and community transition.

No matter how many times some members may claim that HB 2025 and SB 950 are just about "giving the legislature a voice," there is no way around the fact that these bills strip the DEP of its authority to regulate carbon dioxide. Of course, a future General Assembly *could* decide to give that authority back. But if the authors of these bills were serious about the legislature's playing a constructive role in cutting greenhouse gas emissions, it would direct a legislative process for doing so *now* – not set out a process to be used *if* the legislature decides to tackle climate change later.

I would be happy to discuss any of these issues, if you would like to talk before the bills come to a vote on the floor.

Thank you very much

Sincerely,

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HB 2025 Is About Posturing. PA Needs Good Carbon Policy.

June 08, 2020 Mark Szybist

[House Bill 2025](#), which the Pennsylvania House Environmental Resources and Energy Committee will advance this week, bears the Orwellian title, "the Pennsylvania Carbon Dioxide Cap and Trade Authorization Act." In fact, the purpose of the bill is to strip the state Department of Environmental Protection ([DEP](#)) of its existing legal authority to regulate carbon dioxide from power plants and implement a "cap-and-invest" regulation that allows participation in the Regional Greenhouse Gas Initiative ([RGGI](#)).

This blog explains what HB 2025 would do, why House Republicans are moving it despite the [certainty of a veto](#) if it reaches Governor Wolf's desk, and how the bill's sponsors could advance good policy for Pennsylvanians by embracing RGGI and [its benefits](#) – along with complementary clean energy and economic policies – rather than engaging in harmful climate denial and political posturing.

What HB 2025 Would Do

HB 2025 does three main things:

- First, it "finds," wrongly, that the DEP lacks authority to regulate carbon pollution from the power sector and embeds two false premises in other "findings": that a cap-and-invest regulation would impose a tax on carbon (it wouldn't), and that RGGI is an interstate compact (it's not).

- Second, the bill prohibits the DEP from adopting a carbon dioxide regulation "unless the General Assembly specifically authorizes such a measure or action" through separate legislation after the enactment of HB 2025.
- Third, HB 2025 establishes an onerous process for the DEP to follow in developing a carbon dioxide regulation if, some day in the future, the General Assembly should authorize the DEP to develop such a regulation.

HB 2025 Is a Prequel, not a Policy

HB 2025 states that the DEP lacks authority to regulate carbon dioxide while simultaneously prohibiting the DEP from developing a regulation. Logically, that makes no sense. Sense, however, is not the point. The point is to give legislators a flag that says, "I'm stopping RGGI" while socializing claims that legislators will make later (assuming HB 2025 doesn't pass) in a lawsuit that seeks to prevent the DEP from implementing a RGGI regulation.

That future lawsuit will likely argue, among other things: (1) that the Pennsylvania Air Pollution Control Act (APCA) does not authorize the DEP to establish a cap-and-invest regulation for carbon pollution, (2) that the DEP's regulation would be an illegal tax on carbon, and (3) and that RGGI is an "interstate compact."

None of these claims have merit, and NRDC is confident that they would fail if made in court. While the APCA's decades-old definition of "air contaminant" does not explicitly include "greenhouse gases" (GHG), the law is written to enable DEP to protect public health by conferring broad authority to regulate gases and other dangerous air pollutants. GHGs fit squarely within this definition and their dangers to the Commonwealth are beyond dispute.

Under the Pennsylvania constitution, only the General Assembly has the authority to levy taxes, but requiring power plants that emit carbon pollution to buy allowances for that pollution is very different from taxation. And while interstate compacts require approval by the U.S. Congress, RGGI is a much looser arrangement than a compact, and is clearly allowable under the Pennsylvania Uniform Interstate Air Pollution Agreements Act.

Scoring Points v. Serving Pennsylvanians

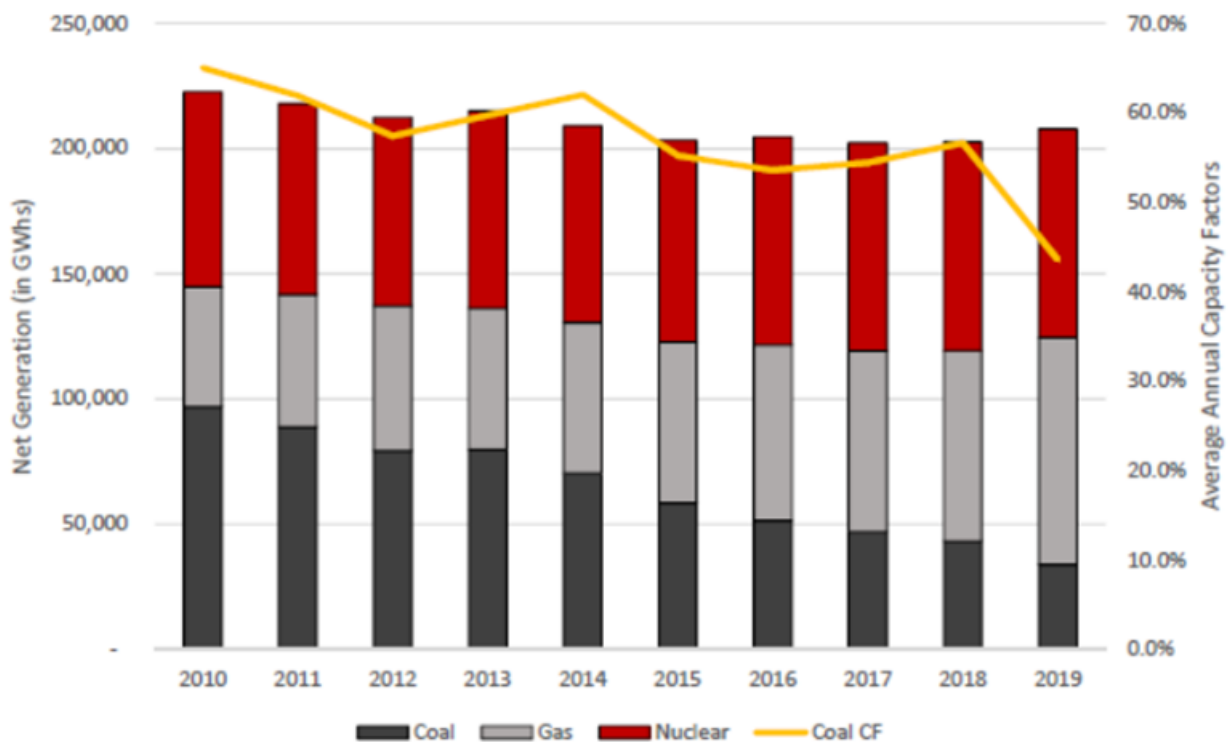
Most of HB 2025 is dedicated to prescribing a new and onerous process for the DEP to follow in developing a carbon limits regulation.

The outlined process is not serious, both because it depends upon the passage of future legislation to allow carbon regulation and because it completely ignores the *existing* onerous process for developing DEP regulations, which features prominent roles for the [Environmental Quality Board](#), the [Independent Regulatory Review Commission](#), the Attorney General, and the [legislature itself](#), in addition to the DEP and its advisory committees.

But again, the point of HB 2025 is not to make good policy; it's to score political and messaging points against Governor Wolf and the DEP. The bill seeks to do that by requiring the DEP to itemize every possible cost of RGGI while largely ignoring its benefits. This one-sided approach seeks to mask the pollution reductions, job creation, and economic development that RGGI has driven. The program's benefits to consumers have far exceeded its costs, with consumers [saving](#) over a billion dollars on their energy bills as a result of RGGI-funded investments in energy efficiency and clean renewable energy.

Some of HB 2025's sponsors represent districts with coal-fired power plants. They are right to be concerned about the impact of a carbon-limits regulation on those plants, because as I [recently discussed](#), carbon limits would likely hasten the closure of Pennsylvania's remaining coal plants.

But as I also pointed out, those plants are expected to close soon even without RGGI or any other government regulation, because new, efficient gas-fired power plants are coming online and out-competing the old coal plants. While HB 2025's sponsors may not want to admit it (because of their support for gas), gas is killing coal in Pennsylvania. Indeed, coal workers talk openly about wanting to see more gas plants built, so that they can work there when their current jobs disappear.



Since 2010, 9,139 MW of coal plants have closed in Pennsylvania and the remaining plants have operated at lower and lower "capacity factors." Capacity factor is a measure of how often plants operate and a determinant of profitability.

Rather than wasting time on messaging bills like HB 2025, the General Assembly should take actions that will actually help the workers and communities affected by the closure of coal plants. With the climate crisis worsening, it also must act to cut carbon pollution from power plants. It could do both if legislators embraced RGGI *and* were to use some of the program's auction proceeds to support coal workers and economic development in communities, while also investing in communities of color and low-income communities.

If legislators do these things while also (1) **strengthening** the renewables targets in the Alternative Energy Portfolio Standards Act and the efficiency standards in Act 129 and (2) also expanding clean energy outside the power sector, e.g., by **expanding transportation electrification**, and (3) adopting more equitable **fiscal** and **labor** policies, it could create a more vibrant and sustainable clean energy economy in Pennsylvania. That would be acting in the service of Pennsylvanians, rather than seeking to block climate action and score political points.