



STATEMENT OF PROFESSOR JOHN D. DERNBACH
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INDEPENDENT REGULATORY REVIEW COMMISSION PUBLIC HEARING
ON PROPOSED CARBON DIOXIDE BUDGET TRADING PROGRAM
September 1, 2021

My name is John Dernbach. I am Commonwealth Professor of Environmental Law and Sustainability at Widener University Commonwealth Law School. I also direct the school's Environmental Law and Sustainability Center, and am speaking today on behalf of the Center.

This Commission should approve the regulation because it is consistent with, and required by, Article I, Section 27 of the Pennsylvania Constitution.

First, the Commonwealth's constitutional duty to "conserve and maintain" public natural resources requires the Commonwealth to take meaningful action to help ensure a stable climate. The Commonwealth's trust responsibility also extends to the wide variety of other public resources that depend on a stable climate.

Second, our Supreme Court has made clear that all Commonwealth agencies are trustees under Section 27. DEP and the EQB are not the only relevant trustees in this context; this Commission is also a trustee.

Third, the Supreme Court has held that the meaning of Section 27 is to be supplemented and supported by "underlying principles of Pennsylvania trust law in effect at the time of its enactment." These include the general trust principles of prudence, loyalty, and impartiality. As a trustee under Section 27, this Commission is bound not only by the constitutional language but also by each of these principles.

The duty of prudence requires the exercise of "such care and skill as a person of ordinary prudence would exercise in dealing with his own property." Prudence requires good judgment and caution, particularly when trust resources are being threatened. Joining a well-established and effective partnership like RGGI is a prudent approach to protecting the public trust resources being adversely affected by greenhouse gas emissions.

The duty of loyalty requires the Commonwealth to manage public trust resources “so as to accomplish the trust’s purposes for the benefit of the trust’s beneficiaries.” Under Section 27, loyalty requires the trustee to manage public natural resources for the trust’s beneficiaries, and not for others. The Commonwealth would further this duty under the proposed regulation by reducing greenhouse gas emissions that are threatening public natural resources.

Finally, the duty of impartiality requires the Commonwealth to manage public natural resources “so as to give all of the beneficiaries due regard for their respective interests in light of the purposes of the trust.” Our Supreme Court held in July of this year that when the Commonwealth “acts as a trustee it must consider an incredibly long timeline and cannot prioritize the needs of the living over those yet to be born.” The regulation benefits both present and future generations.

Thank you.

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