

To the Virginia Department of Environmental Quality (DEQ)
cc: Governor Ralph S. Northam

April 9, 2018

To the Virginia Department of Environmental Quality (DEQ) and Governor Ralph Northam, the Virginia Advisory Council on Environmental Justice (ACEJ) submits these comments regarding DEQ's draft carbon reduction rule published on January 8, 2018 – the action to Reduce and Cap Carbon Dioxide from Fossil Fuel Fired Electric Power Generating Facilities.

INTRODUCTION AND BACKGROUND

Climate change affects all of us. Severe weather, worsening storms, and rising seas pose real threats to Virginians, requiring an urgent need to act. Minorities and low-income communities are disproportionately affected, often being hit first and worst. These communities are also least resilient in the face of climate change, with fewer resources to prepare, withstand, and recoup. The government must help protect environmental justice communities and provide them with sensible solutions to help them brace for future climate challenges.

Too often, government has failed these communities. The federal government is attempting to roll back the Obama administration's Clean Power Plan designed to limit the carbon pollution that is fueling stronger and more frequent climate disasters. The state legislature continues to block solutions that would similarly reduce carbon pollution and provide resources to coastal and flood-prone communities for resilience efforts. The Commonwealth can no longer afford to ignore the threats posed by climate change and abdicate its responsibility to protect its citizens, especially those most vulnerable, from environmental harm.

It is with this background and knowledge of the limits of executive authority that we support creative efforts to combat climate change, understanding that government must first, do no harm, and second, prioritize environmental justice communities in decision-making and outcomes of climate change solutions. These two principles must guide the administration's efforts going forward to ensure proper outcomes of equity and justice in its work.

At the outset we want to make clear that providing these comments is not an attempt to speak for EJ communities. Indeed, one of the founding principles of the Jemez Principles for Democratic Organizing is to let affected people speak for themselves.¹ The governor assembled the ACEJ to provide advice and counsel to the governor on EJ issues affecting communities in the Commonwealth. However, the ACEJ is not a substitute for engaging directly with members of EJ communities.

¹ <https://www.ejnet.org/ej/jemez.pdf>

On this note, we submit these comments to the DEQ and copy Governor Northam, understanding that the agency carrying out the bulk of these regulations may not be directly able to execute all of our recommendations – recommendations that directly relate to the execution of the rule itself and equity and justice concerns that may result from the rule’s implementation. We hope that the DEQ, in considering our recommendations, would be open to working cross-collaboratively among agencies and departments. We hope the governor will help lead that effort, as providing advice and recommendations to the Executive Branch on strengthening partnerships on environmental justice among governmental agencies is one of the direct charges of the ACEJ.²

A major concern that this Advisory Council has with the proposed rules is the process itself. A 90-day comment period is simply not enough time to study this complex issue and provide relevant feedback to the DEQ in order to best support underserved communities. The ACEJ asked for and would have welcomed a presentation from a DEQ official focused on equity and EJ issues to provide helpful information for the council and the public as we all began to study the proposed rule.

A lengthier comment period may have also allowed the ACEJ to invite professionals and community representatives from California or the RGGI region who are experts on the impact of carbon trading in EJ communities to speak to the council and the public before final comments are due. We hope that more open dialogue and a more intentional public effort to study impacts on EJ communities will be undertaken throughout the final rulemaking and into program implementation.

We recognize that many members of the EJ community have, for many years, either been skeptical or flatly opposed to market-based solutions to carbon reduction. We stress our lamenting of the process in part because many community members believe their voices have not been heard during program implementation in other states.³ Concerns with carbon-trading include the lack of regulation of co-pollutants, not addressing or the possibility of increasing “hotspots” as a result of implementation, equity of allowance allocation, and a general lack of public engagement. We will address these concerns in our recommendations below.

However, perhaps the most central concern from an EJ perspective is that many EJ organizations prefer guaranteed emissions reductions at the source of polluting facilities in EJ communities, an outcome that market-based solutions by nature can’t guarantee directly. However, the DEQ can structure a program, coupled with complementary policies, that with a reasonable level of confidence can produce similar outcomes that EJ groups prefer. We urge the DEQ to keep this concern at the forefront of attention as the rule is being finalized and

² <http://governor.virginia.gov/media/9657/eo-73-establishment-of-an-advisory-council-on-environmental-justice.pdf>

³ https://www.tesu.edu/watson/institute/documents/njeja_rggi_comments.pdf

implemented, and explore other ways to carbon reduction other than market-based solutions that would achieve guaranteed emissions reductions at the source of polluting facilities, which is the outcome favored most by EJ organizations.

With this background in mind, we submit the following recommendations regarding the carbon reduction proposal. We thank the DEQ and Governor Northam for their leadership in addressing carbon pollution in Virginia, and look forward to working closely together in the future to ensure that this proposal and other climate solutions are implemented equitably.

RECOMMENDATIONS

1. The DEQ should formalize rules for meaningful engagement of EJ communities throughout the design and implementation of the state’s carbon regulation program

The Clean Power Plan required states to demonstrate how they were meaningfully engaging low-income communities, tribal communities, and communities of color in its initial and final state plans. The DEQ should replicate that sentiment by setting concrete criteria on how the state plans to engage EJ communities throughout the design and implementation of the regulation.

At minimum, the DEQ should participate in a two-way dialogue for discussion on allowance allocation and the identification of potential hotspots as discussed earlier. In addition, DEQ should create a concrete plan for sharing the results of the proximity and cumulative impact analysis to the public, including a robust education and outreach plan to impacted communities via methods that are convenient and understandable to laypeople.

These methods should be intentionally targeted to “meet people where they are” in order to maximize community involvement for specific communities. A toolkit was created by community advocates in coordination with Green for All to ensure meaningful community engagement to comply with the Clean Power Plan.⁴ DEQ should use this toolkit as a guide to design its own plan for community engagement during this process.

The ACEJ further recommends the creation of a long-term plan designed to increase participation of EJ communities. Working with the executive branch and other state departments, the DEQ should formalize a process designed to gather feedback and learnings from community members affected by climate change, including creating a sustained dialogue to discuss complementary policies that may be adopted to maximize emission reductions in EJ communities. Specifically, the ACEJ recommends the DEQ to host community forums in locations that are experiencing threats from climate change, like Hampton Roads, and explain

4

https://d3n8a8pro7vhmx.cloudfront.net/greenforall/pages/7020/attachments/original/1467401106/TOOLKIT_2_-_Meaningful_Engagement.pdf

how this rule is designed to strengthen the Commonwealth's commitment to fighting climate change.

2. The DEQ should complete a robust proximity and cumulative impact analysis to determine the environment and health impacts of co-pollutant emissions and pollution from sectors not subject to the carbon cap for EJ communities

A recent assessment studying the effects of California's cap-and-trade program revealed that neighborhoods within 2.5 miles of a greenhouse-gas polluting facility had a 22% percent higher proportion of residents of color and 21% higher proportion of residents living in poverty compared to neighborhoods where the closest GHG facility is greater than 2.5 miles away.⁵ The same study finds that the greater the number of GHG facilities within a 2.5 mile radius, the greater the proportion of residents of color within those communities.

To help determine the cumulative impact of pollution to different communities in Kentucky, a recent study compared the location of the state's electrical generating units and compared the data with the location of other pollution sources, such as surface and underground mines, coal ash impoundments, oil and gas wells, the state's Coal Haul Highway System (public highways where coal was transported by vehicle), and a general traffic analysis using state-specific data from EPA.⁶

Although capping carbon emission from power facilities is the scope of the proposed rule, we must study all major sources of carbon and other forms of pollution in Virginia when determining the full scope of environmental health effects in EJ communities. For instance, while reducing carbon from the electric sector has been a major focus of numerous advocates in the state, the largest source of carbon pollution in Virginia is from the transportation sector.⁷ Other states in the region are even now launching a series of listening sessions to explore how to cut carbon from the transportation sector while improving the equity and quality of service that system can deliver⁸. Indeed, EPA has identified proximity to vehicle traffic as associated with increased exposure to toxic gases and particulate matter, which is hazardous to human health.

The cumulative impact analysis from Kentucky revealed, among other key findings, "strong relationships between exposure related health problems and vulnerable demographics, such as poverty, educational level, and certain age groups."⁹ Similar independent analysis, in coordination with other state agencies, conducted with the input of EJ stakeholders would help the state identify existing pollution hotspots and environmentally stressed communities so that the Commonwealth can design a carbon reduction program best-suited to alleviate harms to

⁵ http://dornsife.usc.edu/assets/sites/242/docs/Climate_Equity_Brief_CA_Cap_and_Trade_Sept2016_FINAL2.pdf

⁶ https://kftc.org/sites/default/files/docs/resources/empowerky_ejanalysis_documentation_20161129.pdf

⁷ <https://www.eia.gov/environment/emissions/state/analysis/pdf/table3.pdf>

⁸ <http://www.transportationandclimate.org/listening-sessions-transportation-and-climate-initiative>

⁹ <https://kftc.org/sites/default/files/docs/resources/kftc-ej-analysis-executive-summary.pdf>

those communities. The DEQ should prioritize the perspectives and feedback of community members over industry as voices from disadvantaged communities have often historically been drowned out.

If pollution hotspots are found as the DEQ examines results from its analysis, the ACEJ would urge the DEQ to create a concrete remediation plan for environmentally stressed communities identified in the analysis in order to reduce environmental hazards and otherwise lower pollution in those communities. The DEQ should solicit the input of community members and other interested stakeholders for corrective remediation of past practices.

3. The DEQ should amend its proposed rules to specify that the 5% allocation of allowances to be allocated to DMME shall be for the abatement and control of air pollution *in low-income communities*

Many environmental justice advocates have been critical of cap-and-trade regimes for its inequitable allocation of carbon allowance and general spending of resources. If revenues are going to be raised by charging polluters for their pollution, resources should be prioritized for communities who've suffered greatest from pollution.

Virginia's proposed regulatory trading regime will not allow for a full auction of allowances due to the General Assembly's refusal to authorize such a system. However, the DEQ proposes to set-aside 5% of the allowances and allocate them to DMME to assist the department in pollution abatement and control of air pollution, presumably through investments in energy efficiency and solar. Ninety-five percent of the allowances are proposed to be allocated to the polluters, which is an unacceptably high figure. If only 5% of the allowances are being directed to DMME, it must completely maximize the opportunities to assist the families and communities who've been disproportionately harmed by existing energy policy.

The ACEJ recommends DEQ amend this proposal by specifying that the DMME allocation be directed towards low-income communities for the purposes of pollution abatement and the control of air pollution. In the alternative, we recommend an open decision-making process where frontline communities have a say in how the allowances are allocated to ensure that communities who are most affected have their voices heard.

Broadly speaking, energy efficiency and solar energy will advance Virginia's goal to combat climate change and reduce harmful carbon pollution. However, the Commonwealth would benefit by using this opportunity to advance clean energy solutions in communities who need it most. Energy burdens, defined as the percentage of household spending on utilities compared to income, is significantly higher for low-income and minority families than the average household.

In Richmond, half of all low-income households and one-third of black households have more than twice the energy burden of the city's average household.¹⁰ Black, Latino, and low-

income families of all races and ethnicities pay more for utilities per square foot of housing than average households, which means there is significant potential to increase cost savings to disadvantaged communities while also reducing air pollution in the form of expanding energy efficiency and renewable energy resources.

4. The DEQ should eliminate “false solutions” and loopholes that would impair the integrity of the carbon cap

Recent studies conclude that wood and other types of biomass plants release more carbon emissions per unit of energy than modern coal plants, in addition to emitting more localized criteria pollutants that are hazardous to human health.¹¹ These plants should be fully accountable to the state carbon cap and should be identified and included in the DEQ’s proximity and cumulative impact pollution analysis.

The current RGGI program caps carbon on power facilities 25 MW or greater, leaving individual polluting facilities with generation capacities below the threshold out of the program, and allowing power facilities with multiple combustion turbines that individually fall below the threshold but are collectively greater than 25 MW also unchecked. The ACEJ recommends the DEQ to regulate these types of units holistically, and consider ways to place limits on facilities that are below the 25 MW threshold. Notably, in his January 2018 State of the State, Governor Cuomo announced that NY will begin covering sub-25 MW peaker plants in its updated RGGI regulation, a step other RGGI states can voluntarily take even though it is not required under the updated model rule.¹²

Lastly, EJ groups have long-opposed the use of carbon offsets on principle to not allow facilities to continue, or worse increase, pollution levels by engaging in a sleight-of-hand maneuver that avoids localized pollution reduction. As mentioned earlier, localized pollution reduction in EJ communities is the central concern of EJ advocates with cap-and-trade programs. The ACEJ supports the recommendation of several EJ organizations in the RGGI region to eliminate the use of offsets as a compliance option, and urge the DEQ to adopt this provision in its final rules.¹³

Adoption of these three recommendations above would help tighten existing loopholes identified by EJ organizations in RGGI and California’s cap-and-trade program and would help maintain the integrity of Virginia’s carbon cap-and-trade program.

¹⁰ http://energyefficiencyforall.org/sites/default/files/Lifting%20the%20High%20Energy%20Burden_0.pdf

¹¹ <http://www.pfpi.net/wp-content/uploads/2014/04/PFPI-Biomass-is-the-New-Coal-April-2-2014.pdf>

¹² <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2018-stateofthestatebook.pdf>

¹³ https://www.rggi.org/sites/default/files/Uploads/Program-Review/9-25-2017/Comments/Environmental_Justice_Joint_Comments.pdf

5. The DEQ should coordinate with other state agencies, localities, and community-based organizations to study the effects of the carbon regulations in coal-dependent communities to ensure a “fair and just transition” from fossil fuels to clean energy

The coalfield counties in far southwest Virginia have borne disproportionate economic and environmental burdens as coal from that area has been extracted to fuel the coal-fired power plants that are subject to the proposed regulations. Counties in southwest Virginia have been dependent on the boom-and-bust cycles of extraction for over a century. The cycles are now coming to an end, as the easily mineable coal is depleted, and the demand for coal has dwindled. Virginia’s coalfields are now left with a century of legacy pollution from mining and an economy struggling to recover. However, there is a lot of reason for hope. Community members in Virginia’s coalfields are working hard to ensure a just transition to an equitable and sustainable economy. The state owes it to the coalfield region to support that work.

To support the coalfield communities’ work on ensuring a just transition, relevant state agencies should conduct an economic analysis to identify sustainable investment and other job creation opportunities for coal communities. We urge the DEQ to be mindful of the environmental effects and the economic effects of the proposed regulation, and seek ways to partner with relevant agencies and departments to study and educate communities members of both the health and economic outcomes and opportunities that may arise because of program implementation.

CONCLUSION

We appreciate the opportunity to provide these comments to strengthen the proposed carbon rules. We can no longer wait to act on climate. We appreciate Governor Northam and the DEQ’s efforts to move Virginia towards a cleaner future. We believe implementation of these recommendations will move us forward in a more equitable fashion that will protect EJ communities.

Respectfully submitted,

The Virginia Advisory Council on Environmental Justice

(please note that these comments reflect the consensus opinion of the ACEJ as a body and does not necessarily reflect the opinion of any individual member or any member’s organizational affiliation)