



Environmental Defense Fund Petitions the Colorado Air Quality Control Commission to Promulgate Greenhouse Gas Cap and Trade Regulations

By: [Chris Colclasure](#)

On December 23, 2020, the Environmental Defense Fund (EDF) petitioned the Colorado Air Quality Control Commission (AQCC or Commission) to consider promulgating greenhouse gas (GHG) [cap and trade regulations](#). Unlike ordinary regulations, which impose requirements or limits on individual sources of emissions, trading programs restrict the total emissions from multiple sources or industries. States allocate or sell allowances for a predetermined amount of emissions. The total number of allowances is capped and normally declines over time to reduce total emissions. Operators must obtain and surrender sufficient allowances for their emissions or face penalties. Operators can buy or sell emissions allowances in a trading market, a feature that is intended to minimize total compliance costs.

EDF asserts that its proposed cap and trade program will provide a backstop to guarantee GHG reductions consistent with Colorado's goals under House Bill 19-1261 of reducing GHG emissions 26% by 2025, 50% by 2030 and 90% by 2050 from a 2005 baseline. A rulemaking hearing on this petition could occur as soon as May 2021.

Summary of EDF's Proposal

Starting in 2022, EDF's proposal applies to the facilities or entities listed below that emit or are responsible for GHG emissions of 25,000 metric tons of carbon dioxide equivalent (mtCO_{2e}) or more per year. Oil and gas production, transmission and storage are not specifically covered by the proposal but their engines or combustion equipment may be covered.

- Petroleum refineries
- Natural gas processing plants
- Electricity generation facilities and importers to Colorado (there is no applicability threshold for electricity imports)
- Natural gas utilities and intrastate pipelines that distribute directly to end users
- Suppliers and importers of gasoline (more specifically, reformulated blendstock for oxygenate blending) or distillate fuel oil Nos. 1 or 2, including suppliers of blended fuel
- Liquefied petroleum gas producers (refiners and fractionators), importers, and suppliers of blended LPG
- Suppliers and importers of LNG or CNG
- Carbon dioxide suppliers
- Production or manufacturing of cement, glass, hydrogen, iron, steel, lead, lime, nitric acid, pulp and paper
- Self-generation of electricity
- Stationary combustion equipment, such as boilers, turbines and engines

EDF proposes a program where covered entities must surrender one allowance or emissions offset credit per mtCO₂e they emit or are responsible for. Fuel suppliers are responsible for the downstream GHG emissions that would result from full combustion of the fuel.

A new Colorado Climate Board would allocate some tradeable GHG allowances to certain covered entities. The Board would place a percentage of allowances in a reserve account to be made available only if the allowance auction price rises above a defined level. All remaining allowances, up to a statewide cap, would be allocated to eligible projects that reduce emissions, mitigate or adapt to climate change, or benefit eligible non-covered entities including disproportionately impacted communities and Indian tribes.

Covered entities allocated no allowances or an insufficient number of allowances must purchase the difference in a state-run auction or through trading, or use GHG offset credits.

Offset credits may be generated in Colorado for certified GHG reductions or removal, which may include carbon sequestration. Up to 6% of a covered entity's compliance obligation may be satisfied with offset credits. GHG emission reductions or removals must be real, additional, quantifiable, permanent, verifiable, and enforceable.

The cap and trade program would initially be limited to Colorado. If the Commission later approves a linkage with an external GHG trading program, GHG allowances and offset credits may move across state boundaries.

Process

AQCC rules allow anyone to petition for a rulemaking hearing. EDF asked the Commission to put a "request for hearing" on the agenda for its February 2021 monthly meeting. The Commission has discretion over whether and when to grant a hearing. Rulemaking hearings are normally held 3 months after the request, so the Commission could act on EDF's proposal in May 2021.

Industry and members of the public may become parties to a rulemaking hearing. Parties may submit written materials, testimony, and expert witnesses in support of or opposition to the proposal. Parties may also file alternative proposals. GHG cap and trade programs are far-reaching and any cap and trade rulemaking is likely to involve a large number of parties.

Next Steps

The Commission will likely schedule a request for hearing to decide whether to initiate a formal rulemaking process and hearing, but the timing is uncertain. Governor Polis has [publicly opposed cap and trade](#), but the Commission is not bound by his preferences. The Commission may ask EDF to gather feedback from affected entities. Members of the public will have an opportunity to submit written comments on any request for hearing.

Please contact [Chris Colclasure](#) for additional information.