

The PIOGA Press

The monthly newsletter of the
Pennsylvania Independent Oil & Gas Association
July 2019 • Issue 111

An on-time budget and a flurry of state legislative action in June

State lawmakers approved and Governor Tom Wolf signed a fiscal year 2019-2020 budget ahead of the statutory June 30 deadline. There are no tax increases or new taxes—including no severance tax for now—in the \$33.9-billion spending plan. However, at least one provision of interest to the industry was included in the final package.

Completion of the budget was the culmination of a busy month of legislative activity in Harrisburg. Lawmakers have gone home for their summer recess and won't be back until September. Below is a wrap-up of some of the highlights related to the oil and gas industry.

Restore Pennsylvania. The governor's plan to use a severance tax on unconventional natural gas to leverage \$4.5 billion for a multitude of capital projects—including blight remediation, broadband internet access, storm preparedness and infrastructure-based projects—was not a part of the budget process (*February PIOGA Press, page 1*). In recent months, Wolf has toured Pennsylvania promising virtually something for everyone as part of the proposed initiative.

The legislation to implement Restore Pennsylvania was introduced in early June as House Bill 1585 and Senate Bill 725. To pay back the \$4.5 in borrowing (estimated at over \$8 billion once interest is accounted for), the legislation would impose a severance tax ranging from 9.1 cents/Mcf to 15.7 cents, depending on the price of natural gas.

Legislative leaders said the proposal would not be considered until fall at the earliest, but Democrats in the House of Representatives briefly talked of initiating a process known as a discharge petition, which would remove a bill that has been in committee at least 15



days and put it to a vote by the full chamber. With 99 cosponsors to HB 1585, it seemed within the realm of possibility that the other three votes needed to pass a bill in the House could be found.

Ultimately, nothing occurred before the legislature went home for the summer, but PIOGA will keep mem-

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Legislative update *Continued from page 1*

bers informed of any developments in the fall.

Energize PA. As a no-tax alternative to Restore Pennsylvania and as a way to take advantage of the state's energy resources to spur investment in economic expansion, House Speaker Mike Turzai and a group of fellow Republicans offered a package of bills known as "Energize PA" in late April (*May PIOGA Press, page 1*).

Two of the eight bills were approved on June 11 by the House Finance Committee:

- HB 1100 establishes the Energy and Fertilizer Manufacturing Tax Credit to subsidize the use of methane in the production of ammonia, urea and methanol at the rate of 5 cents per gallon of qualified product. There is no limit on the total tax credits that could be granted.

- HB 1103 provides Pipeline Investment Program Grants to extend "last mile" natural gas service to large residential conversion and combined heat and power projects under the existing Commonwealth Financing Authority PIPE Program.

Language mirroring HB 1103 found its way into the fiscal code legislation that is part of the budget package. As approved, the maximum grant available through the PIPE program increases from \$1 million to \$1.5 million. The measure also allows large residential conversion projects and combined heat and power applications to apply for the grants. Grants currently are available to businesses, hospitals, municipalities, counties and school districts.

Pipeline emergency response. The Senate Consumer Protection and Professional Licensure Committee on June 19 overwhelmingly reported out two pieces of legislation dealing with pipeline emergency response. The bills are among a large number of proposals before the General Assembly stemming from pipeline issues primarily in Southeast Pennsylvania.

SB 284 would mandate that pipeline operators provide emergency response plans to the Pennsylvania Public Utility Commission which could be confidentially shared with county emergency services agencies for the purpose of coordinating a response to a pipeline incident.

SB 258, meanwhile, requires pipeline operators to meet annually with county emergency management officials to provide, at minimum, specific pipeline safety information including identification of facilities, products and pressure transported, emergency contact information for the operator, and information on how to recognize, report and respond to a release.

SB 258 was amended in committee to take out provisions designating high consequence areas of population concentrations for special attention under emergency plan notification procedures, while SB 284 was amended to clarify that the bill does not apply to local natural gas distribution companies. Both go next before the full Senate for consideration.

Drilling across units. The Senate Environmental Resources and Energy Committee on June 25 approved

SB 694, which creates a process and accounting mechanism allowing for well bores to cross multiple units, provided the operator has the right to drill wells on the units. The bill also would require an operator to proportionately allocate the production and royalty payments across the various members of the units.

The rationale behind the proposal, according to one analysis, is that the typical lease used by unconventional operators defines a drilling unit as 640 acres or one square mile. Those leases never contemplated that laterals would eventually extend well beyond a mile. The bill would give operators who own adjoining leases the ability to drill across units without the need to reopen leases.

SB 694 now is up for consideration by the full Senate. A House version, HB 247, was reported from that chamber's Environmental Resources and Energy in March, but has advanced no further.

Reporting spills and discharges. Although not aimed specifically at the oil and gas industry, SB 619 is of interest. The measure, which passed the Senate 26-24 on June 26 and is before the House Environmental Resources and Energy Committee, amends the Clean Steams Law to address accidental discharges or spills that may enter the waters of the Commonwealth.

The legislation would establish a clear, practical reporting obligation similar to the laws of other states. It would require a discharger to notify the Department of Environmental Protection of any unauthorized discharge that may cause a violation of water quality criteria under Chapter 93 or that is reportable under federal requirements. It would further clarify that accidental discharges that do not cause a violation of numeric water quality criteria do not constitute pollution or subject the discharger to penalties.

According to the co-sponsorship memo associated with SB 619, "PA DEP currently interprets this regulation to require a discharger to notify PA DEP of all unauthorized spills of any substance, even when the quantity spilled is very small and poses no risk of harm to persons or the environment. As confirmed by decisions of Pennsylvania courts, the purpose of the Clean Streams Law is to regulate and control potentially harmful discharges, not to impose an impractical and unnecessary requirement on every business and individual in the Commonwealth to report every drop spilled at their facilities or homes."

Conventional Oil and Gas Act. Legislation creating the Conventional Oil and Gas Act (COGA) was introduced last month by Representative Martin Causer (R-McKean) in the House and by Senate President Pro Tempore Joe Scarnati (R-Jefferson) in that chamber. The legislation creates a regulatory framework appropriate for the conventional industry, separate from Act 13 of 2012, which was written to address matters related to unconventional operations. Last session, COGA passed the House, but stalled in the Senate in large part because of threats it would be vetoed by Governor Wolf

Continues on page 22

Major title issues in Pennsylvania, West Virginia and Ohio:

Allocation wells, royalty disputes, frac hits and water rights

This article is an excerpt of The 2019 Babst Calland Report, which represents the collective legal perspective of Babst Calland's energy, environmental and pipeline safety attorneys addressing the most current business and regulatory issues facing the oil and natural gas industry. A full copy of the report is available by writing info@babst-calland.com.

Pennsylvania

Emerging trend of allocation wells and cross unit drilling in the Appalachian Basin

Allocation wells and cross unit drilling have the potential to create more economic wells using longer laterals, while overcoming unit size limitations commonly found in oil and gas leases. An allocation well is a lateral wellbore that crosses multiple lease boundaries of tracts that have not been pooled or unitized. Similarly, cross unit drilling involves laterals that traverse multiple units.

The use of allocation wells and cross unit drilling in Texas and Oklahoma has evolved out of legislation, administrative rulings and case law. Allocation drilling and cross unit drilling are not yet widely used in the

Appalachian Basin, but as drilling technology evolves it is likely that operators will look to the feasibility of employing that technology across the basin.

The biggest risk with allocation wells in the Appalachian Basin is the lack of specific authority under most standard Appalachian Basin leases granting the operator the authority to drill allocation wells. Consequently, possible claims might be asserted challenging an operator's transportation of non-native gas across leased lands or the commingling of native and non-native gas produced from separate units or leases. Another issue associated with the potential use of allocation wells is determining the appropriate method of allocating production royalties between the different lessors. Absent an agreement between the lessors, there is no comprehensive guidance in the Appalachian Basin for the appropriate method for allocation of royalties between lessors from production via an allocation well.

There are signs that these risks and unanswered questions will be addressed in the near future. In 2019, House Bill 247 was introduced in the Pennsylvania House of Representatives which provides for a process and accounting method for allocation wells. Similarly, operators in Texas and Oklahoma are beginning to obtain production sharing agreements from the various lessors that explicitly govern how payments will be made via production from an allocation well. This is a



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practice that could work in the Appalachian Basin if operators include allocation well language in a standard lease form or amend existing leases to allow for allocation wells.

Briggs v. Southwestern Energy

In November 2018, the Pennsylvania Supreme Court agreed to hear the appeal of the Superior Court's decision in *Briggs v. Southwestern Energy Production Company*, which held that the rule of capture does not preclude liability for trespass due to hydraulic fracturing. The Supreme Court's acceptance of the appeal and the court's rephrasing of the question it will decide has led the Pennsylvania Independent Oil & Gas Association, Pennsylvania Chamber of Commerce, American Petroleum Institute and other industry groups to file friend of the court briefs advocating that the decision be overturned. The Supreme Court reframed the issue as:

Does the rule of capture apply to oil and gas produced from wells that were completed using hydraulic fracturing and preclude trespass liability for allegedly draining oil or gas from under nearby property, where the well is drilled solely on and beneath the driller's own property and the hydraulic fracturing fluids are injected solely on or beneath the driller's own property?

On January 30, 2019, Southwestern Energy filed its brief with the court. In addition, various amicus briefs

were filed in support of overturning the Superior Court's decision. The Briggs' brief was filed on April 3, 2019, and reply briefs are expected to follow. Oral argument has yet to be scheduled.

Interpretation of oil and gas reservations in conveyances

The holding in a recent Superior Court unpublished decision, *Julia v. Huntley*, is a reminder that exception and reservation clauses should be specific and any restrictions or limitation to an interest should be clearly expressed. The *Julia* court resolved a deed interpretation issue on whether a 1931 exception and reservation of an oil and gas interest applied only to the lease then in effect or to all subsequent leases. The court held that the reserved interest survived the expiration of subsequent 1933 lease recited in the deed.

The oil and gas reservation stated that the conveyance was "made subject to the terms, conditions and stipulation of a certain lease entered into by the said William E. Huntley with Northern Pa. Development Co." and reserved to the grantor, and his heirs, "one-half of any and all royalties and income or return from any oil or gas which may be produced on or from the premises hereby conveyed."

On appeal, the plaintiff argued that the deed only reserved one-half of the royalty payments from the oil and gas produced under the *then existing* lease. Ultimately, the Superior Court disagreed, holding that the reservation clause successfully reserved to the



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grantor one-half of the royalties under *any future* lease. By the intentional placement of the word “and” between the clauses “one half of any and all royalties” and “income or return from any oil or gas,” the grantor intended to reference circumstances in *addition* to the lease, i.e., royalties and oil and gas rights. The court further reasoned that if the grantor had sought to limit the reservation to the then existing lease, he would have included “language reflecting that intent.”

West Virginia

Co-tenancy reform implementation begins

Development of co-owned properties has often been delayed or even avoided because West Virginia courts long followed a minority position requiring 100 percent consent from co-owners. To alleviate that constraint, the legislature passed HB 4268, entitled the “Co-Tenancy Modernization and Majority Protection Act,” which went into effect on July 1, 2018. The act permits operators to develop certain mineral tracts with less than 100 percent consent from co-owners by providing a statutory defense to claims of trespass and waste where the specific requirements and procedures of the act are followed. The act applies solely to the formation targeted for development. If additional formations are developed later, the operator must also comply with the act as to those formations.

Eligibility under the act is determined by three criteria, including whether: (1) the tract has seven or more “royalty owners;” (2) the operator has made “reasonable efforts” to negotiate with all royalty owners to develop the tract; and (3) the operator has secured consent to develop the oil and gas from at least three-fourths of the royalty owners. Consent to develop typically means obtaining a lease, but can also include acquiring fee title, subleases, farmouts and other joint venture arrangements.

The act addresses both unwilling royalty owners and unknown or unlocatable owners. For unwilling owners, the operator is required to give the unwilling owner a final lease offer and provide notice of their right to elect either a production royalty or to participate in development. The operator must then send a final lease offer which advises that if the lease offer is not accepted, the operator is proceeding under the act and sets forth the owner’s election rights. The owner then has 45 days to either accept the lease offer or elect either a production royalty or to participate in development. An owner who doesn’t respond is deemed to have elected a production royalty.

Owners who elect to share in production receive their pro rata market share of revenue and costs to be calculated once their share of production is double their share of the costs. These owners are also subject to, and benefit from, the terms governing participation in deep wells under W.Va. Code §22C-9-7(b)(5)(B). Owners who elect or are deemed to have elected a production royalty are entitled to the highest royalty rate paid to other co-owners of the tract and to a bonus based on a

net weighted average of bonus, rentals and other non-royalty payments. The owner is also entitled to the most favorable lease terms granted to other owners.

Finally, there are certain lease provisions which may not be enforced against a nonconsenting co-owner including arbitration, choice of law, title warranty, injection wells and storage rights. In essence, a statutory lease is created under the terms set by the act. A non-consenting owner who doesn’t agree with the terms of the production royalty has 30 days from the end of the election period to file an appeal to the Oil and Gas Conservation Commission. Although the act does not require that the operator record its development plan, an operator filing of some form is beneficial to put third parties on notice of the targeted formation.

For unknown or unlocated owners, the election process does not apply, and those owners are automatically provided a production royalty. The operator is required to search certain sets of public records and other sources to attempt to identify and/or locate owners.

Although not required, it is recommended that these efforts be documented by affidavit or other means to demonstrate compliance with the Act.

In summary, the act is a positive step forward for operators in developing co-owned properties.

Clarity on title issues involving tax sales

An analysis of tax sales and the interests that they convey is critical to determining correct oil and gas ownership. A relatively common problem arises when the tax sale involves an interest that is assessed multiple times.

Since 2016, the West Virginia Supreme Court of Appeals has issued three opinions stemming from the duplicate assessment of oil and gas interests located in Harrison County. Most recently, in *L&D Investments, Inc. v. Mike Ross, Inc.*, the court reaffirmed long-standing precedent holding that in the case of two assessments of the same land under the same claim of title, the state can only require one payment of taxes under either assessment.

In *L&D Investments*, the oil and gas underlying a parcel was severed from the surface in 1903 and conveyed through various instruments to several parties. From 1946 through 1999, 100 percent of the interest was assessed under one “master assessment.” In 1988, the county assessor’s office reworked its real property assessments to include production-based assessments for the same properties that were also subject to the master assessment in the personal property tax books. As to those properties where the personal property assessment could not be matched with a real property assessment, a double assessment occurred.

In 2000, taxes under the master assessment became delinquent and the tax lien was purchased at tax sale by the respondent. At the time of the tax sale, L&D Investments’ predecessors were paying the production-based tax assessments for the owners’ undivided interests in the mineral tract.



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The court found that the production-based assessments were double assessments because they covered the same interests encompassed by the master assessment. Since L&D Investments' predecessors continuously paid the production-based assessments, the court held that those payments were all that the state could require and ruled that the tax deed issued to respondent was void as a matter of law. Further, the court held that L&D Investments' claims were not time barred by W.Va. Code §11A-4-4 because tax sales that are the result of duplicate assessments are not subject to a statute of limitations.

Ohio

Dundics and landman registration statute

On September 25, 2018, the Ohio Supreme Court ruled in *Dundics v. Eric Petro. Corp.* that independent landmen, who acquire oil and gas leases on behalf of operators, are required to be licensed real estate brokers under O.R.C. §4735.01(A) since an oil and gas lease constitutes "real estate" as defined in O.R.C. §4735.01(B). The court found that the statute was unambiguous as to the definition of "real estate" and "real estate broker," and it did not provide for an exception for independent landmen. The court stated that determining whether a landman should be required to be a licensed real estate broker is a policy decision for the Ohio General Assembly and not the court's responsibility to create an exception that clearly does not exist in the statute.

Following the *Dundics* decision, the Ohio General Assembly acted in response to the ruling and passed SB 263, effective March 19, 2019. SB 263 revised O.R.C. §4735 to specifically exclude from the licensed real estate broker requirement an "oil and gas land professional" employed by a person or company for which they are performing his or her duties or a professional that complies with the conditions of O.R.C. §4735.023(A). The statute defines an oil and gas land professional as a

"person regularly engaged in the preparation and negotiation of agreements for the purpose of exploring for, transporting, producing, or developing oil and gas mineral interests, including, but not limited to, oil and gas leases and pipeline easements."

It also requires an independent professional to register annually with the superintendent of real estate and pay an annual fee set, which shall not exceed \$100. O.R.C. §4735.023. In order to register with the superintendent, the professional must provide evidence of membership in good standing in a professional organization with an established set of performance and ethics standards. Additionally, prior to beginning negotiations with a landowner, the professional is required to disclose that he or she is a registered oil and gas land professional and a member of a landman professional organization, but is not a licensed real estate broker.

Under this new legislation, a registered, independent landman is no longer required to be a licensed real estate broker in order to acquire oil and gas leases. However, this exception does not apply to fee simple transactions involving oil and gas rights, which continue to require the landman to be a licensed real estate broker.

Developments in Marketable Title Act and Dormant Mineral Act

Ohio's Marketable Title Act (MTA) continues to be a contentious statute for disputes involving ownership of oil and gas. The MTA extinguishes various property rights, including severed oil and gas rights, existing prior to the root of title (i.e., the most recent instrument of record older than 40 years) unless an exception applies. As to the exceptions, the MTA provides a mechanism that allows an owner to actively preserve a severed interest from extinguishment. In addition, even with no action by its owner, MTA preserves a severed interest specifically identified in the record chain of title of the individual claiming the extinguished interest. This past year, Ohio courts have applied the MTA to both severed fee and royalty interests, but have undertaken drastically different approaches to whether those interests were extinguished under the statute.

On December 13, 2018 the Supreme Court in *Blackstone v. Moore* determined that a severed royalty interest had not been extinguished under the MTA because the surface owners' root of title specifically referenced the severed interest. While the Supreme Court refrained from establishing a bright-line rule as to what information was necessary to distinguish a general reference from a specific reference, the court instead looked to whether the reference to

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Gas is good

A recap from Boston LDC Forum

By Joyce Turkaly

Director of Natural Gas Market Development

Companies are more diverse than what their name would imply. Take BP, for example: the company is not simply producing petroleum in Britain. I'm not suggesting that BP listen to me and start an all-out marketing campaign to rebrand a new name; however, it's helpful for PIOGA members who don't work exclusively in the upstream to pay attention to some distinct differences. A "major" company like a Shell, BP or Chevron deals in upstream, midstream and downstream. Traditionally speaking, this means they explore for and produce oil and gas, transport product to a refinery, then refine it into fuels and petrochemicals with gasoline stations being one option for downstream sales. By contrast, the "independents" generally deal in upstream and then they either sell the oil and gas somewhere along the midstream; whether that is to a midstream pipeline company or at a utility interconnection.

At the LDC Forum held in Boston this June, getting access to downstream markets was the focus. I'm not going to spend too much time telling you the *why* behind the past six years of pipeline infrastructure impasse—or talk about the governor of New York, etc. However, one person's problem in this market has become another person's solution. At the LDC Forum virtual pipeline opportunities have presented a favorable economic business case; to take gas from a gathering line, compress it and deliver via truck to these markets lacking pipeline infrastructure...voila! This can be as a temporary peaking day load, or a baseload volume to get gas to a demand center. The virtual pipeline economics work well for the Northeast, given that deliveries to Algonquin, Transco 5 and Transco 6 delivery points will continue to experience future seasonal volatility. Virtual LNG deliveries are essentially competitive within a 400-500-mile radius, while CNG deliveries appear competitive at 175-250 miles.

PIOGA's Market Development Committee discusses opportunities for members to get involved in all aspects of moving stranded gas to downstream markets. Last November, we invited David Kailbourne, CEO of REV LNG, to speak at PIOGA's Marcellus to Manufacturing event. He provided some insight into the success his company is experiencing as a result.

Dominion Energy seeks new markets

Dominion Energy announced a newly formed subsidiary called Dominion Modular Holdings, Inc. Gary Courts, CEO, spoke in Boston of a newly formed virtual pipeline company called NiCHE, a joint venture between Dominion Modular Holdings and REV LNG. Chris Barros of ODIN, the EPC for this project, commented that they broke ground in June and hope to target November 4 as the commissioning date. Chart will provide the tanks for

onsite LNG storage. The gas will be sourced from a SWN field, gathered at the Angelina compressor station and enter the Howard Energy gathering system. The gas will be treated and cryogenically cooled, or vaporized, and shipped via REV's existing fleet of LNG tankers. The project appears to be a 50,000 gallon or 4,200 Dth/d equivalent. Dominion's initial goal is to support end use needs until Constitution gets built. NiCHE is the first of three projects that DMH, Inc. hopes to champion as part of new business efforts.

Mr. Courts also shared that Dominion has invested \$250 million in an anaerobic digester project in the Carolinas with Smithfield Foods where they will be processing pig manure into renewable energy; a process he told me that is 99 percent methane.

Speaking confidently, Donald Raikes, SVP, Gas Transmission Operations, Dominion commented on Atlantic Coast Pipeline (ACP) and how Dominion is dealing with project work amidst the court delays. You may know that two of their federal permits or authorizations have been taken to court. First, the Fish and Wildlife Service gave Dominion a permit and a coalition of environmental groups questioned the due diligence of Fish and Wildlife to grant the permit, questioning essentially the biological opinion (the potential to threaten an endangered species). Second, the Forest Service gave them a permit to cross the Appalachian Trail. Given that

PIOGA creating CDAC Advisory Workgroup

On behalf of PIOGA's Environmental Committee, we are reaching out to the membership for interested parties and expertise in forming a new workgroup. We are setting up the CDAC Advisory Workgroup, which will assist PIOGA's two representatives (Dave Ochs and Burt Waite) as they address various issues under consideration by the PA Grade Crude Development Advisory Council (CDAC). You can read more about CDAC's role, participants and responsibilities at dced.pa.gov/pa-grade-crude-development-advisory-council.

The workgroup is looking for members to offer up expertise and experience to help our representatives develop concepts and ideas to address significant industry issues such as legacy wells and well plugging initiatives, production water and water disposal solutions, and thoughts on education and economic outreach.

An initial organizational meeting/call is planned for mid-July to help determine a direction for the workgroup and to start providing support to our PIOGA representatives. If you have questions or interest in joining this workgroup, please reach out to Jeff Walentosky at jwalentosky@moody-s.com as soon as possible. He will be chairing and facilitating the workgroup's efforts.

At the Boston LDC Forum: Dominion Energy's Donald Raikes (left) and Dawn Constantin (right) of BP Energy.



the trail is 2,500 miles long and runs along the East Coast, it's hard not to cross if you are originating a project from the Utica to the demand centers along the route. A coalition of the environmental groups again, questioned the ability of the Forrester Service to grant Dominion the permit, stating the National Park Service should do that; the Park Service cannot do this without authorization from Congress.

FACT: Dominion will not cross the Appalachian Trail, the HDD is a mile long and 800 feet underneath the Appalachia Trail. In practice, Don commented, they would need 1/10 of a mile, but to ensure a higher level of environmental stewardship they stated a mile, again with no impact to the Appalachian Trail or the Blue Ridge Parkway. Dominion intends to file for a re-hearing to the U.S. Supreme Court and expects ACP Phase I in service Q4 2020 and Phase II in service 2021.

BP's perspective

BP is widely respected and recognized for publishing accurate data and energy sector insights while factoring global challenges in producing and delivering various types of energy. Dawn Constantin, SVP Marketing & Regulatory Affairs, BP Energy Co., provided highlights from newly published data contained within *The 2019 Energy Outlook*, a comprehensive energy overview. Ms. Constantin compared such hot topics from just five years ago in contrast to today. Historically speaking, the EPA Clean Air Act, U.S. shale production, and the Polar Vortex were 2014 hot topics. Now, fast forward to present day and our hot topics have evolved into the Green New Deal, U.S. shale CAPEX, and LNG exports. As summarized in the report, all indicators: oil production, crude exports, NGL production, LPG exports, U.S. dry production, pipeline expansion projects in Mexico and to move gas to Mexico as well as the commissioning of LNG export facilities are all up.

As the Mexican border crossing pipelines and most of Mexico's domestic pipeline expansions have been completed, Mexico's demand portfolio is projected to be capped at 8-9 Bcf/d. Natural gas in the form of LNG is being used to displace dirtier fuels. It is interesting to note that both Mexico and Canada share a similar demand profile.

For more info on BP's *Energy Outlook*: www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/energy-outlook/bp-energy-outlook-2019.pdf

Driven by growth in the LNG export sector, the U.S. is a net gas exporter. If you recall the amount of gas the nation exported was 0 Bcf/d five years ago. Currently, Cheniere is the largest purchaser of natural gas shipping roughly 85 percent of all total LNG tanker exports from either Corpus Christi or Sabine Pass. There are fewer hurdles today to get LNG export agreements to non-free trade countries approved and this speaks to future growth.

Five or more years ago, applications that contained environmental assessment clearance and commercial maturity held their position until the Department of Energy (DOE) either approved or denied the preceding application. Volumes were clearly part of the application and I recall some 32 Bcf of project applications in "back-log" status within the first 24 months. Producers in Pennsylvania who needed outlets to these markets were frustrated and it was apparent early on that DOE and the Federal Energy Regulatory Commission did not make great dance partners. Our legislators tried to make a positive difference by suggesting legislation that would hold DOE to a more expedient turn around. Today, we have revised DOE procedures in place and the export market shows signs of growth. DOE proposes to dispense with conditional approvals and only issue public interest determinations for projects that have completed their environmental assessments required by the National Environmental Policy Act in coordination with FERC construction approvals (or MARAD depending on jurisdiction).

Approximately 3 Bcf/d is coming online in 2019 and an additional 2.6 Bcf/d next year, for a total LNG export capacity of 7.5 Bcf/d by 2020. The stability of Henry Hub prices provides fuel buyers certainty. Being long production has diminished market pricing volatility in most basins. As a buyer, especially for fuel, all indices project LNG to be capped at \$12/Dth; not withholding federal tariffs as tariffs would impact cargo destinations. U.S. LNG export plants shipped approximately 1.1 Tcf of natural gas in 2018. ■

Annual Petrochemical Conference lends more thought to the region

By Joyce Turkaly

Director of Natural Gas Market Development

Charlie Schliebs, Managing Director of Stone Pier Capital and PIOGA member, served as MC for the Fourth Annual Petrochemical Conference, held at the David L. Lawrence Convention Center in Pittsburgh in June. The event organizers hosted concurrent talks on the chemical industry and power generation projects. I heard nothing but good news around the potential for petrochemicals in Appalachia. With the Shell ethane cracker in Monaca well under construction and the abundance of natural gas liquids here in the basin, everyone is poised to see where the next facility will be built. On June 3, Bechtel signed on as EPC for the U.S. subsidiary of PTT Global Chemical also known as PTTGC America. The Ohio site is situated along the Ohio River in Mead Township, Belmont County, and project financing is in place. This project will be a \$10-billion ethane cracker with derivatives production. It is currently permitted and roughly 6,000 workers will be needed during construction with a permanent workforce of 550. PTTGC has till the end of this year to announce FID (pttgcbelmontcountyoh.com).

In case you were wondering, the Shell cracker is noted to be the single most expensive project in the U.S. at approximately \$19 billion.

Shell representative Chris Howell talked through the master plan and provided some project updates. He noted the onsite power generation at 286 MW for start-up and redundancy with 100 MW excess power to export. The quench tower that is 300 feet high and 30 feet in diameter is now fully erected. The silos that will contain the 30 some various grades of polyethylene are being constructed locally. There are currently 140 cranes on site.

American Chemistry Council (ACC) CEO Cal Dooley spoke to the Appalachian Storage Hub as complimentary to the Gulf Coast capacity, pointing out the impact that Hurricane Harvey had on the Gulf Coast, taking roughly 70 percent of assets offline for weeks. Here in Appalachia he spoke to the petrochemical renaissance that could be realized saying that 100,000 jobs are possible. ACC analyzed a scenario based on 350,000-400,000 BPD of available ethane by 2025. Assuming storage and pipeline infrastructure is built, there is a potential for \$35.8 billion in new chemicals and plastics manufacturing investment in the quad-state region of Pennsylvania, Ohio, West Virginia and Kentucky. Within 300 miles of Pittsburgh, he went on to say, by 2040 the Appalachian footprint could realize \$300 billion in revenue, projecting 900,000 workers within the radius of what would appear to be 7,500 downstream businesses.



Shell's Chris Howell provides an update on construction of the Beaver County cracker plant.

Speaking to the competitiveness of the U.S., Dooley said, "Looking at it in a national context, anything that increases the supply of the feedstock and potential energy is good for the entire chemical industry."

The Department of Energy's Steven Winberg, Assistant Secretary, and Dr. Brian Anderson, Director National Energy Technology Lab, provided DOE data from both the office of Fossil Fuels and NETL in two separate presentations. Both demonstrated strong federal support for grants and research dedicated to the Appalachian states in mid- and downstream efforts on a coordinated economic development front for technology, energy and agriculture needed to catalyze private sector investment.

The West Virginia Development Office had a booth at the two-day event; they shared that many interested partners are not simply from China, but that there are *many* foreign companies. Under consideration are petrochemical projects that do not need wet gas necessarily but perhaps feedstock such as ethanol and urea. Given the development potential of small to mid-sized projects, Bechtel announced that they are moving people to our region; a new business unit called Agilus will soon be relocating here.

The path forward includes establishing an Appalachian petrochemical industry that will enhance U.S. energy and manufacturing security. Many of these discussions began more than ten years ago and still today, there is more work to be done.

Contact me with any questions or comments at joyce@pioga.org. ■



PIOGA comments on draft EPA produced water study

In May 2018, the U.S. Environmental Protection Agency announced the initiation of its *Study of Oil and Gas Extraction Wastewater Management*. The agency conducted an outreach effort to gather input from state, tribal, industry, academic, environmental, public health and other entities for the study. This included meeting with individual entities, accepting written input through a public docket and hosting a national public meeting in October 2018 to report on what EPA had learned to date and to provide stakeholders an additional opportunity to provide input. PIOGA was a participant in the process.

The draft *Study of Oil and Gas Extraction Wastewater Management* was developed using the feedback the agency received from these engagements and comments submitted to the public docket, and the document was released this May. The EPA offered a public comment period that ran until July 1, and the agency will finalize the study this summer. EPA indicates it will determine at that time what, if any, future agency actions are appropriate to encourage the beneficial reuse of oil and gas extraction wastewater under the

Clean Water Act (CWA); this could include regulatory and/or non-regulatory approaches.

Information is available at www.epa.gov/eg/study-oil-and-gas-extraction-wastewater-management.

PIOGA comments

With the involvement of staff and members of the Environmental Committee, PIOGA developed comments to submit by the July 1 deadline. As an organization that represents both conventional and unconventional operators as well as service providers involved in the treatment, recycling and disposal of produced water, PIOGA believes it has a unique perspective on the issues raised in the EPA's study. At the same time, PIOGA members are "directly and significantly impacted" by the study, the association wrote.

One point emphasized from the outset was that EPA should refer to "produced water" and not "wastewater" in the title and throughout the study. "The terms are not synonymous," PIOGA said, later pointing out: "With the reuse and recycling of produced water, it is important for all stakeholders to recognize that this water should not be recognized or regulated as a waste."

PIOGA also highlighted a dichotomy with the industry in Pennsylvania. Active unconventional exploration and production companies are reusing their produced water either within their own completion operations or shar-



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Date:	Wednesday August 21
Location:	The Chadwick, Wexford
Time:	8:30 a.m. - Registration 9:00 a.m. to 4:00 p.m. - Training (Breakfast and Lunch provided)
Fee:	\$125 for PIOGA members \$200 for nonmembers Fee includes: Continuing Education Units (CEU's), breakfast and lunch

ing it with other E&P companies. Meanwhile, conventional operators and less active unconventional producers have significant water management issues and limited treatment or disposal options.

“PIOGA encourages the EPA and the Pennsylvania Department of Environmental Protection to look at all available options to provide the natural gas industry regulatory flexibility through the permitting of facilities or treatment/discharge options (i.e., road spreading of brine),” the association said in its comments. “The current environment in the Commonwealth of Pennsylvania is that there are not many acceptable options available and what options that are available are cost prohibitive for conventional and unconventional operators. The oil and gas industry and our water treatment partners believe there are available and effective water treatment technologies that exist and we are looking for more buy-in from state and federal regulators on implementing these technologies.”

PIOGA’s also commented on specific portions of the draft study. Here’s a selection:

- EPA should acknowledge in a statement of policy that the beneficial reuse of produced water is desired and supported by current federal regulations—even though PIOGA understands that reuse/recycling is outside of the scope of this draft study of management options under the Clean Water Act.
- PIOGA encouraged EPA to revisit 40 CFR Part 435 (Oil and Gas Effluent Guidelines) in reference to the broader discharge of produced water. “In times or areas of decreased hydraulic fracturing activity for unconventional operators or for conventional operations that do not have much new activity, it is imperative to find new options to treat produced water and discharge the effluent,” the association wrote. PIOGA further suggested removing the ban of direct discharges and discharges to publicly owned treatment works (POTWs) and replacement with effluent limit guidelines (ELGs).
- Produced water characteristics are discussed in the study, along with various additives that are used in the drilling and stimulation process. PIOGA said a statement should be added indicating the volume of additives to water used for drilling and stimulation are minimal compared to the overall water volume produced during the life of the well. In addition, many of these “additives” are chemicals found in common household items. The study should focus more on the characteristics coming out of the ground rather than what is put downhole.
- PIOGA recommended using information from FracFocus in this study and future documents as a reference. It is important that there is open communication between all stakeholders on potential additives used during the drilling and stimulation process. It is concerning to say the least (and disingenuous at worse) that some state agencies claim they do not know about the additive constituents, the association commented.
- Similarly, the study asserts that state agencies indicate little is known about produced water. PIOGA countered that industry provides large amount of data to the states, including volumes of flowback and produced

water, location of generation and location of use or disposal, analysis. In Pennsylvania, this information is reported to DEP via Form 26R, so if the department wants to compile that information, it already has all of the necessary data.

- The association indicated that the study should include separate sections addressing regional produced water issues. The produced water management issues are far different for operators in Appalachia versus operators in more arid regions of the United States.
- The study asserts that state agencies indicated there would be a public perception challenge associated with allowing discharge to surface waters. PIOGA responded: “If this is the attitude of the EPA and state agencies, it will be difficult—if not impossible—to have a truthful public discussion regarding discharges to surface water. The EPA should support the discharge of treated produced water by leading an education initiative that includes state and federal agencies and all stakeholders to inform the public that the best available technology (BAT) is being used, companies with discharge permits are required to conduct testing frequently, and official inspections are done regularly in ALL industries—not just oil and gas—that discharge under the CWA. This would help combat a poor public perception about the discharge of treated water. The EPA should not simply accept uninformed public perception as a basis for any action, or non-action.”
- The study states that the oil and gas industry is looking for EPA to “solve” its water-management problems. “While the industry is looking for solutions and more options and regulatory flexibility for produced water management and wastewater disposal,” PIOGA wrote, “the industry is looking to be treated similarly to other industries by creating ELGs that will help all stakeholders, rather than being held to a higher standard based on fear and politics instead of data and technology.” ■

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PUC distributes nearly \$252 million in impact fees; largest amount yet

The Pennsylvania Public Utility Commission late last month released detailed information about this year's distribution of impact fees on unconventional natural gas wells totaling \$242.9 million.

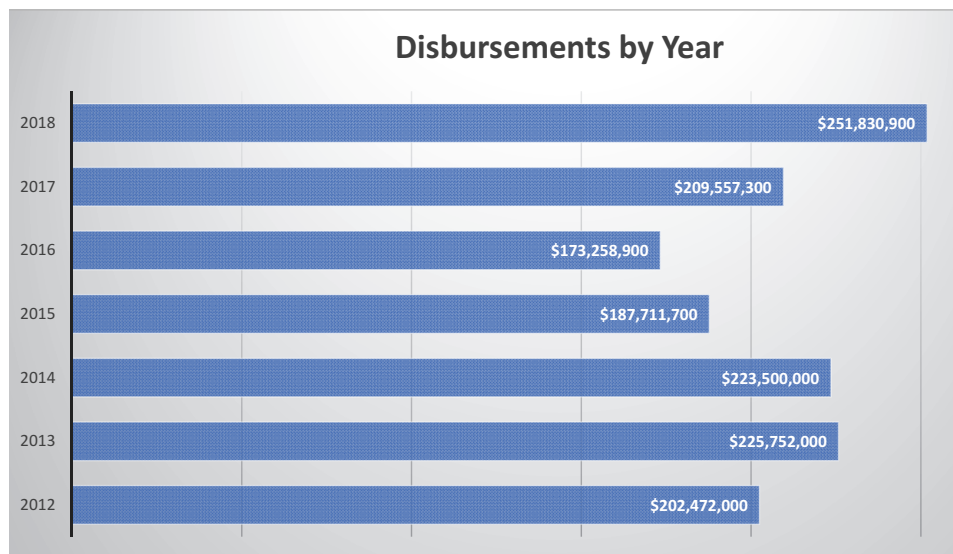
Additionally, another \$8.8 million is being distributed to municipalities and counties where producer payments had been withheld during a long-running court case involving PIOGA and member company Snyder Brothers, Inc. concerning the definition of a stripper well (*January 2019 PIOGA Press, page 1*). Because of the unique circumstances surrounding this issue, and the potential financial impact on municipalities where the disputed wells were located, the commission felt it was important to thoroughly calculate the stripper well collections and allocate the corrected well distributions to the municipalities that did not receive those impact fees during the years the well status had been disputed.

Taken together, the PUC is distributing a total of \$251.8 million in impact fees—\$42.3 million more than the prior year. Over the past eight years the PUC has collected and distributed almost \$1.7 billion to communities across Pennsylvania.

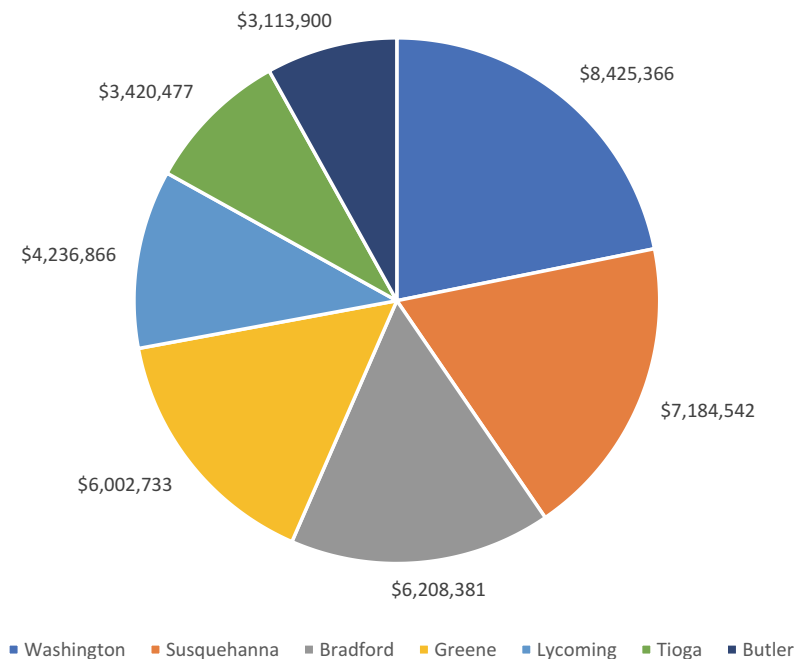
County and municipal governments directly affected by drilling will receive a total of \$134.7 million for the 2018 reporting year. Additionally, \$89.8 million will be transferred to the Marcellus Legacy Fund, which provides financial support for environmental, highway, water and sewer projects, rehabilitation of greenways, and other projects throughout the state. Also, \$18.4 million will be distributed to state agencies, as specified by Act 13.

The increase for the 2018 reporting year was driven primarily by an increase in the number of Pennsylvania wells paying impact fees for this year (9,560 compared to 8,518 last year), the PUC indicated. The price of natural gas has remained relatively constant over the past year and did not impact the well fee calculations.

Extensive details regarding the impact fee distribution are available on the PUC's Act 13 website (www.act13-reporting.puc.pa.gov/Modules/PublicReporting/Overview.aspx) including specifics on funds collected and distributed for each year since 2011. Visitors can search and download statistics such as distributions to individual municipalities or counties; allocation and usage of those funds based on reports submitted by various municipalities; eligible wells per county/municipality; and payments by producers.



Top Receiving Counties for 2018



The PUC is responsible for implementing the collection and distribution of the unconventional gas well fee established by Act 13 of 2012.

IFO perspectives

The PUC's announcement was followed closely by a report from the state's Independent Fiscal Office (IFO) detailing the factors behind the collections for the 2018 reporting year and projecting what the 2019 revenue will look like.

The primary reasons cited by the IFO for the increase include:

- Revenue attributed to new wells exceeded the declining revenues from older wells that have been in production and pay a lower impact fee amount. Net impact: \$26.5 million.

- The Pennsylvania Supreme Court decision in *Snyder Brothers Inc., v. PUC* ended disputed payments. Net impact: \$8.9 million.

- Late payments and changes in the exempt status of wells resulted in the capturing of additional revenues. Net impact: \$6.9 million.

The IFO estimated the effective tax rate for the 2018 reporting year was 2.2 percent, which was 0.6 percent lower than for 2017. The reason for the lower effective rate was that the rise in the market value of unconventional natural gas production for 2018 more than offset the \$42.3 million increase in impact fee collections.

2018 marked the lowest effective tax rate for the impact fee. The highest was 6.2 percent for 2015. In calculating the effective rate, the IFO factors in annual natural gas production as reported to the Department of Environmental Protection, the average of spot prices at the Dominion South and Leidy trading hubs, and estimated average post-production costs paid by producers of \$0.80/Mcf.

Looking ahead to the 2019 reporting year (with payments due to the PUC in April 2020), the IFO offers two scenarios.

One assumes no change in the current impact fee schedule—which is keyed to the average annual NYMEX price at the Henry Hub—and anticipates an increase in collections of \$9.6 million.

The other would trigger a decrease in the fee schedule if average NYMEX prices fall below \$3.00 per MMBtu for the year and would result in a decline in impact rev-

enue of \$37.1 million. “Based on current and projected prices, this scenario is more likely to occur,” the IFO indicates. ■

Cap-and-trade petition update

The Department of Environmental Protection last month informed the Environmental Quality Board it intends to hire a consultant to review the petition for a statewide cap-and-trade program and deliver a report early next year.

The EQB accepted the climate cap-and-trade petition for study in April. The proposal, running to more than 400 pages, calls for eliminating greenhouse gas emissions from all major sources by 2052 in Pennsylvania and would impact virtually every sector of the state’s economy, including oil and gas (*May PIOGA Press, page 6*).

DEP said at the EQB’s June 18 meeting it was in the process of putting out a request for proposals for a consultant to review the petition and determine costs and benefits overall and by major economic sectors. Also included will be an evaluation of the program structure and carbon pricing system proposed in the petition.

In the *May PIOGA Press*, we also reported that Governor Tom Wolf was seeking to join a regional consortium of Northeastern and Mid-Atlantic states that

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sets a price and caps on greenhouse gas emissions from fossil fuel-fired power plants. Published reports last month indicated that the governor had reached out to the Republican-controlled legislature about adding authorization into the state's budget for fiscal year 2019-2020, which ultimately did not come to pass.

An Associated Press article reported (prior to the conclusion of the budget process):

In the past, Wolf's office has said Pennsylvania has broad authority to regulate air pollution, including carbon emissions, although it said that using that authority to impose an emissions cap would be susceptible to a court challenge.

Winning legislative backing could give the Wolf administration additional legal protection to write regulations under its existing air pollution control authority to require power plants to buy credits for carbon dioxide emissions and to allow the credits to be traded in the consortium's market.

Separate legislation would be required to

spend the money raised by auctioning emissions allowances, the Wolf administration has said.

In consortium states, owners of power plants fueled by coal, oil or natural gas with a capacity of 25 megawatts must buy a credit for every ton of carbon dioxide they emit.

That gives them an incentive to lower their emissions while making non-emitting plants—such as nuclear plants, wind turbines and solar installations—more cost competitive in power markets, said Jackson Morris, a climate and clean energy specialist for the New York-based Natural Resources Defense Council.

Selling the credits would net Pennsylvania hundreds of millions of dollars annually. With dozens of coal and natural gas-fired power plants, Pennsylvania would be, by far, the biggest emissions state in the consortium.

Expect to hear more about joining the Regional Greenhouse Gas Initiative and cap-and-trade legislation when lawmakers return to work in the fall. ■

State regulatory takings can be challenged immediately in federal court

By Jon C. Beckman and Kevin M. Gormly
Steptoe & Johnson, PLLC

A recent 5-4 decision by the United States Supreme Court may open the federal forum to those seeking to challenge state or local regulations.

In *Knick v. Township of Scott*, No. 17-647, 2019 WL 2552486 (U.S. June 21, 2019), the Supreme Court held that a property owner has an actionable Fifth Amendment takings claim when the government takes his or her property without paying for it and may bring that claim in federal court under § 1983 rather than first seeking relief in state court. In so holding, the court overruled *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), which held that plaintiffs with takings claims must avail themselves of the state procedures for just compensation before filing an action in federal court.

In *Knick*, Rose Mary Knick owned a 90-acre parcel in Scott Township, Lackawanna County, Pennsylvania, containing a small family cemetery. The township notified her that she was in violation of an ordinance requiring

her to open the cemetery to the public, even though the cemetery was on private property. The Supreme Court concluded that the holding of *Williamson County* created a Catch-22: The plaintiff "cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court. The federal claim dies aborning."

The court ruled that a property owner has a claim for violation of the Fifth Amendment Takings Clause as soon as a government takes his property for public use without paying for it. The court further held that the taking itself is the constitutional violation, not the failure of the government to compensate the property owner after the taking. Furthermore, the court noted that the Fifth Amendment constitutional protections may be raised without "exhaustion of state remedies." Section 1983 guarantees a federal forum for claims of unconstitutional treatment by state officials—a regulatory taking fits that mold.

Recent efforts by state and local governments in Pennsylvania to regulate energy development are well documented. Under *Williamson County*, a challenger to such regulations had to go through state court first. Now, under *Knick*, while actions may still be commenced in state court, it may be possible for challengers of regulations on energy development to avail themselves to the federal courts. ■

If you have questions about how this decision may impact your business, please contact Jon Beckman (814-333-4913 or jon.beckman@steptoe-johnson.com) or Kevin Gormly (724-749-3105 or kevin.gormly@steptoe-johnson.com).

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EPA releases Clean Water Act

Section 401 guidance

The Environmental Protection Agency (EPA) released guidance June 7 on Section 401 of the Clean Water Act (CWA) that provides recommendations to clarify and streamline the oil and natural gas infrastructure permitting process.

The Clean Water Act Section 401 Certification Guidance for Federal Agencies, States, and Authorized Tribes covers statutory and regulatory timelines for review and action on CWA Section 401 certification, the appropriate scope of CWA Section 401 certification conditions, and information within the scope of state or authorized tribe's CWA Section 401 review.

The guidance stems from Executive Order 13868, which was signed by President Trump in April in an effort to accelerate approvals for natural gas infrastructure. With the order, Trump took aim at state authority over water quality certifications, which have stymied, among other things, natural gas pipeline projects in New York.

Section 401 of the CWA gives states and authorized tribes a direct role in federal permitting and licensing processes, but "outdated federal guidance and regulations...are causing confusion and uncertainty and are hindering the development of energy infrastructure," Trump said.

The EPA was tasked with determining whether any CWA provisions should be clarified, taking into account "federalism considerations" and the "appropriate scope" of water quality reviews. Trump directed the EPA administrator to issue guidance that would supersede current guidance, with final rules to be issued by May 2020.

EPA said the new guidance would "prompt greater investment in and certainty for national infrastructure projects," while continuing to protect local water quality. Industry representatives applauded the agency's action.

"When an infrastructure project requires federal authorization, Section 401 of the Clean Water Act provides states and tribes the opportunity to certify or deny that any discharges from the project to regulated waters will comply with applicable federal water quality standards. The statute recognizes the distinctive roles of the federal and state governments in the environmental review of infrastructure projects," said Don Santa, CEO

of the Interstate Natural Gas Association of America.

"Recently, however, the balance between those roles has been disrupted and some states have viewed Section 401 as a means of determining which interstate pipeline projects are in the public interest and which are not...EPA's guidance is needed to restore efficient and consistent implementation of Section 401 reviews."

Alan Armstrong, CEO of Tulsa-based Williams, also cheered release of the EPA guidance.

"Many states provide sufficiently clear guidelines for preparing and processing Section 401 applications, but in other cases the process and scope of review is much less clear. Recent uncertainty that has arisen around the Section 401 process has generated confusion and ambiguity, while not necessarily ensuring water quality. Having the EPA issue this guidance to clarify and conform the Section 401 review process will enable all energy infrastructure operators to be better prepared to comply with this statutory program," Armstrong said.

The new guidance, which replaces EPA's previous interim guidance issued in 2010, also provides recommendations to federal agencies, states and authorized tribes to promote early collaboration and coordination through the 401 certification process.

EPA said it intends to propose regulations that may help further clarify and streamline CWA Section 401 certifications.

— David Bradley, *Natural Gas Intelligence*

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API publishes 'Rules to Live By' booklet

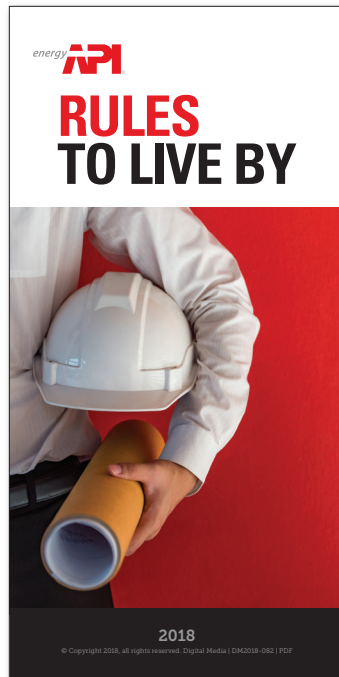
The American Petroleum Institute's booklet *Rules to Live By* covers some of the most critical safety hazards that have caused worker loss of life within the industry. They are intended as simple, concise reminders to workers and supervisors of important safety guidelines and what steps can be taken to mitigate certain hazards.

The information contained in *Rules to Live By* is pulled largely from API's E&P Onshore Operations Safety Handbook, API Recommended Practice 54 – Recommended Practice for Occupational Safety for Oil and Gas Well Drilling and Servicing Operations, and API Recommended Practice 74 - Recommended Practice for Occupational Safety for Onshore Oil and Gas Production Operations. It is intended to reinforce worker safety practices and promote a safe workplace for oil and gas workers. API's *Rules to Live By* are not intended to replace or supersede existing regulations, standards or requirements set forth by a company or regulator.

The 22-page publication covers:

- Stop work authority
- Job safety checklist
- Hazard recognition and communication
- Typical hazards at an oil and gas worksite
- Using lock out / tag out for energy isolation
- Hot work permitting
- Safe driving
- Lifting and hoisting
- Confined space entry
- Trenching and excavation
- Working at heights

The booklet can be downloaded at www.api.org/oil-and-natural-gas/health-and-safety/worker-and-worksitesafety-resources/worker-safety-rules-to-live-by. ■



UGI subsidiary to acquire Columbia Midstream Group

UGI Corporation announces that its subsidiary, UGI Energy Services, LLC, has signed a definitive agreement to acquire the equity interests of Columbia Midstream Group LLC, (CMG) from a subsidiary of TC Energy Corporation for approximately \$1.275 billion.

CMG holds five gathering systems, with capacity of roughly 2,675,000 MMBtu/day and 240 miles of pipeline located in the southwestern core of the Appalachian Basin. The acquisition significantly expands UGI's midstream portfolio and provides an opportunity to invest an additional \$300 million to \$500 million over the next five years at attractive returns. The company expects the transaction to be EPS neutral in fiscal year 2020, and accretive beginning in fiscal year 2021 excluding transaction and integration costs.

"We are very pleased to announce this important transaction as we continue to build a midstream business of scale," said John L. Walsh, President and Chief Executive Officer of UGI. "This transaction expands our midstream capabilities in the prolific gas producing region of the Southwest Appalachian Basin and provides an initial investment into both wet gas gathering and processing. The CMG assets fit nicely into our strategy and further support our long-term commitments to shareholders of 6-10 percent adjusted EPS growth and 4 percent dividend growth."

The transaction is expected to close in UGI's fiscal fourth quarter and is subject to customary regulatory and other closing conditions. ■

New PIOGA members – welcome!

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Major title issues *Continued from page 8*

the severed interest included details and particulars to accurately describe the interest. Because the root of title in *Blackstone* identified the type of interest created and identified to whom the interest was originally reserved, the court found that the reference was sufficiently specific to preserve the interest under the MTA.

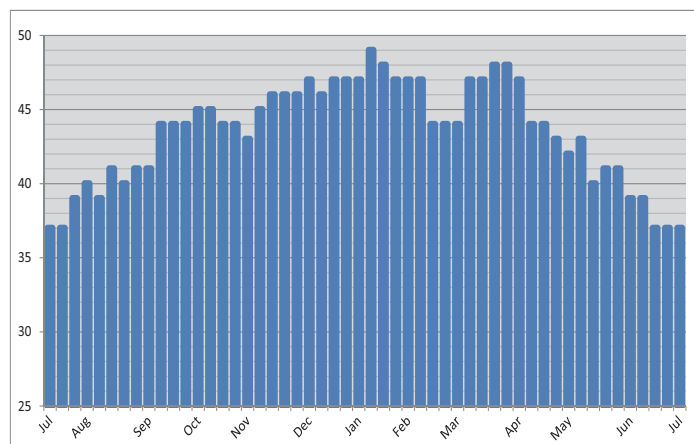
The Seventh District Court of Appeals recently issued two opinions which appear to divert from the Supreme Court's holding in *Blackstone*. Tasked with determining whether the roots of title contained sufficiently specific references to preserve severed mineral interests from extinguishment under the MTA, in *Soucik* and *Mellott* the Seventh District held that because the roots of title contained exceptions, the surface owners were precluded from claiming the mineral interest had been extinguished under the MTA. The Seventh District even held that a perfunctory exception to oil and gas "as heretofore reserved" in the root of title barred the surface owner from claiming title to the mineral interest. These decisions appear to disregard the *Blackstone* holding requiring a reference to include sufficient details and particulars accurately describing the interest.

Ohio courts also continue to address claims to minerals by surface owners under the Ohio Dormant Mineral Act (DMA). In *Soucik* and *Mellott*, the Seventh District confirmed that for a surface owner's DMA attempt to avoid being declared void, the surface owner must attempt service by certified mail on the holders of the mineral interest. If, after "reasonable due diligence" the surface owner is unable to locate the holders of the mineral interest, then service of notice by publication may be utilized. While refraining from establishing a bright-line rule, the court looked to see if surface owners searched probate and deed records, Ohio Department of Natural Resources records, and conducted an internet search. Additionally, the Seventh District made it clear that, if challenged, the surface owner must be prepared to present their efforts to locate holders in the form of an affidavit before proceeding with notice by publication. The decision calls into question previously completed DMA attempts where notice was served through publication only.

With the likelihood of *Soucik* and *Mellott* being appealed, the Ohio Supreme Court will probably have an opportunity to address the apparent conflict between its holding in *Blackstone* and the holdings in *Soucik* and *Mellott*. Although not squarely at issue in *Blackstone*, the Supreme Court may also address the potential conflict between the MTA and DMA and whether both statutes can be utilized by a surface owner to claim severed mineral interests. ■

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices



Natural Gas Futures Closing Prices

Month	Price
August 2019	\$2.399
September	2.371
October	2.396
November	2.485
December	2.667
January 2020	2.770
February	2.735
March	2.651
April	2.418
May	2.393
June	2.450
July	2.464

Prices as of July 6

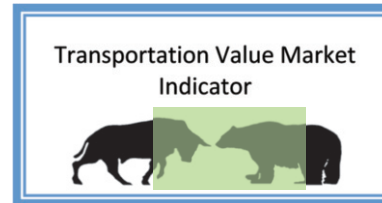
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American Refining Group: www.amref.com/Crude-Prices-New.aspx
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 Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG
 Baker Hughes rig count: phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-report-sother
 NYMEX strip chart: Nucomer Energy, LLC, emkeyenergy.com

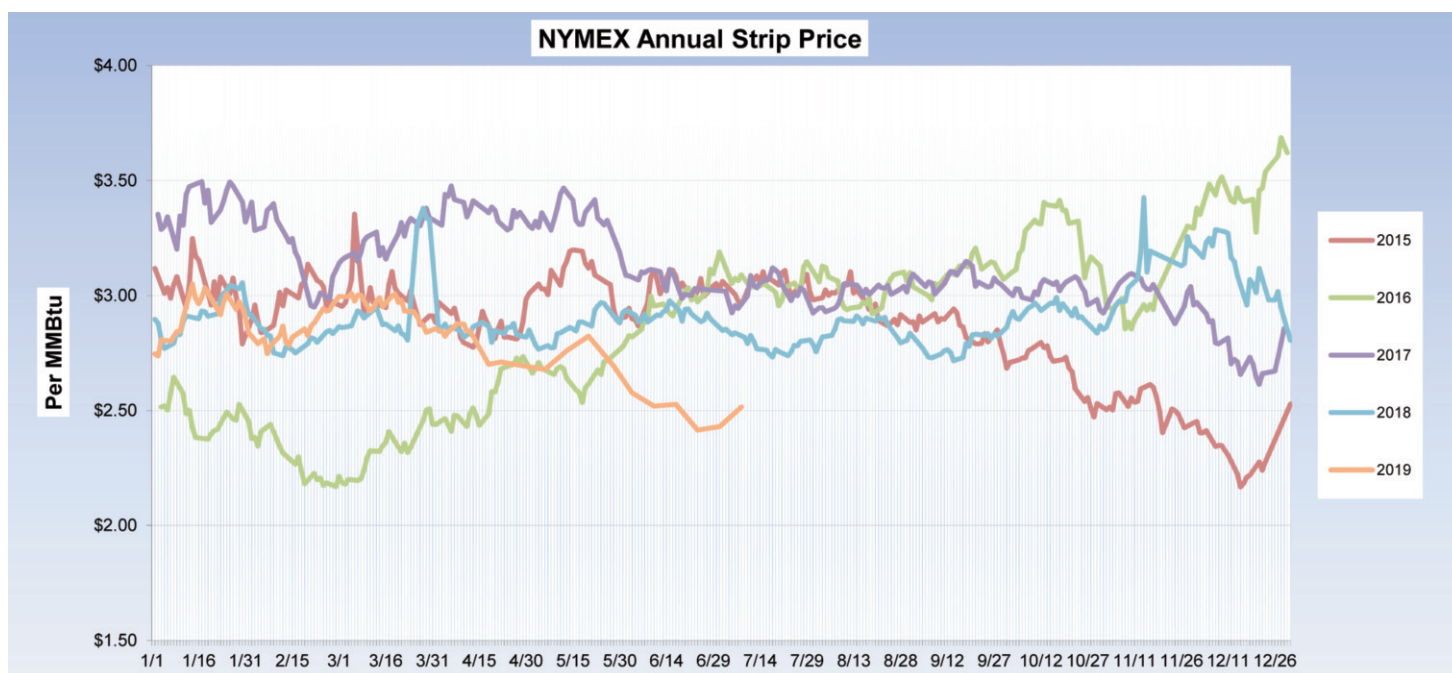
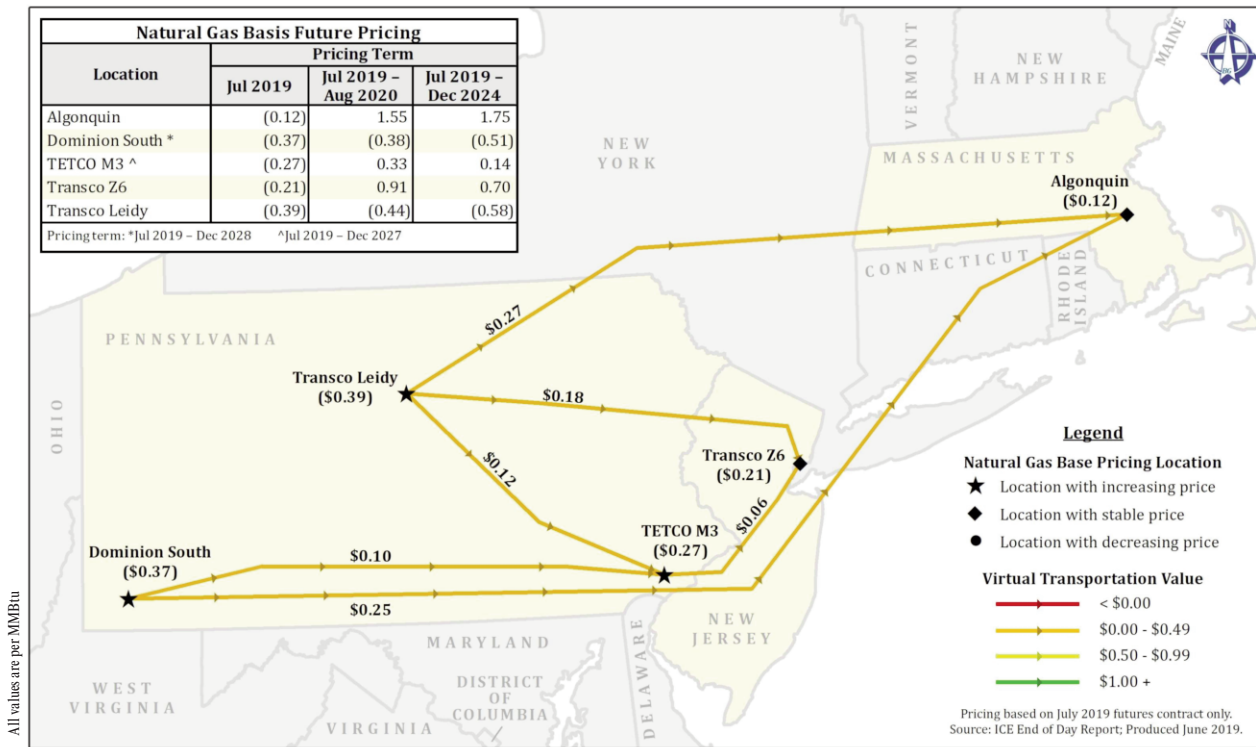
Northeast Pricing Report – July 2019

For the summer period there was a slightly higher than normal volatility. Algonquin had the highest gain of \$0.18 per MMBtu. The rest of the trading points had healthy gains between \$0.08 and \$0.13 per MMBtu. Both the one-year term and long-term trading periods saw little change. Algonquin's one-year term actually dropped \$0.01 per MMBtu while the other trading points increased from \$0.01 to \$0.06 per MMBtu. The long-term period showed little change. Transco Z6 was flat and Transco Leidy increased the most at \$0.04 per MMBtu.

All transportation values increased for July. Transco Leidy to Algonquin increased \$0.10 per MMBtu, which was the greatest jump for all the transportation routes. Dominion South to Algonquin was slightly lower at \$0.09 per MMBtu. And Dominion South to TETCO M3 only increased \$0.01 per MMBtu, which marks the second month in a row that this particular route has increased.



Provided by Bertison-George, LLC
www.bertison-george.com



Spud Report: June 2019



The data show below comes from the Department of Environmental Protection. A variety of interactive reports are

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY	
BF Adventures LLC	3	6/10/19	123-48243*	Warren	Mead Twp	
		6/14/19	123-48244*	Warren	Mead Twp	
		6/24/19	123-48245*	Warren	Mead Twp	
BKV Opr LLC	4	6/13/19	131-20591	Wyoming	Washington Twp	
		6/13/19	131-20595	Wyoming	Washington Twp	
		6/13/19	131-20592	Wyoming	Washington Twp	
		6/13/19	131-20593	Wyoming	Washington Twp	
William H Brawand	2	6/18/19	047-25053*	Elk	Jones Twp	
		6/24/19	047-25054*	Elk	Jones Twp	
Bull Run Resources LLC	3	6/3/19	053-30875*	Forest	Howe Twp	
		6/10/19	053-30877*	Forest	Howe Twp	
		6/13/19	053-30876*	Forest	Howe Twp	
Cameron Energy Co	1	6/28/19	123-48219*	Warren	Sheffield Twp	
	Chesapeake Appalachia LLC	8	6/13/19	115-22631	Susquehanna	Rush Twp
		6/13/19	115-22634	Susquehanna	Rush Twp	
		6/13/19	115-22632	Susquehanna	Rush Twp	
		6/17/19	115-22633	Susquehanna	Rush Twp	
		6/2/19	131-20575	Wyoming	Mehoopany Twp	
		6/4/19	131-20569	Wyoming	Mehoopany Twp	
		6/4/19	131-20567	Wyoming	Mehoopany Twp	
Chevron Appalachia LLC	8	6/18/19	051-24701	Fayette	German Twp	
		6/18/19	051-24704	Fayette	German Twp	
		6/19/19	051-24698	Fayette	German Twp	
		6/19/19	051-24699	Fayette	German Twp	
		6/20/19	051-24700	Fayette	German Twp	
		6/20/19	051-24702	Fayette	German Twp	
		6/21/19	051-24703	Fayette	German Twp	
		6/21/19	051-24705	Fayette	German Twp	
	CNX Gas Co LLC	4	6/24/19	059-27830	Greene	Richhill Twp
			6/24/19	059-27832	Greene	Richhill Twp

available at www.dep.pa.gov/DataandTools/Reports/Oil and Gas Reports.

The table is sorted by operator and lists the total wells reported as drilled last month. **Spud** is the date drilling began at a well site. The **API number** is the drilling permit number issued to the well operator. An asterisk (*) after the API number indicates a conventional well.

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
Mead Oil LLC	4	6/24/19	059-27831	Greene	Richhill Twp
		6/24/19	059-27833	Greene	Richhill Twp
		6/6/19	123-48210*	Warren	Sheffield Twp
		6/12/19	123-48208*	Warren	Sheffield Twp
MSL Oil & Gas Corp	6	6/19/19	123-48212*	Warren	Sheffield Twp
		6/27/19	123-48211*	Warren	Sheffield Twp
		6/19/19	083-57119*	McKean	Hamilton Twp
		6/24/19	083-57117*	McKean	Hamilton Twp
		6/27/19	083-57116*	McKean	Hamilton Twp
		6/5/19	083-57150*	McKean	Lafayette Twp
PennEnergy Resources LLC	7	6/7/19	083-57151*	McKean	Lafayette Twp
		6/12/19	083-57149*	McKean	Lafayette Twp
		6/10/19	019-22740	Butler	Winfield Twp
		6/10/19	019-22813	Butler	Winfield Twp
		6/11/19	019-22808	Butler	Winfield Twp
		6/11/19	019-22809	Butler	Winfield Twp
		6/12/19	019-22810	Butler	Winfield Twp
Range Resources Appalachia	1	6/12/19	019-22811	Butler	Winfield Twp
		6/12/19	019-22812	Butler	Winfield Twp
		6/17/19	125-28731	Washington	Morris Twp
Rockdale Marcellus LLC	4	6/6/19	117-22060	Tioga	Union Twp
		6/9/19	117-22059	Tioga	Union Twp
		6/10/19	117-22057	Tioga	Union Twp
		6/11/19	117-22058	Tioga	Union Twp
SWN Prod Co LLC	9	6/8/19	115-22664	Susquehanna	Jackson Twp
		6/8/19	115-22668	Susquehanna	Jackson Twp
		6/9/19	115-22665	Susquehanna	Jackson Twp
		6/9/19	115-22667	Susquehanna	Jackson Twp
		6/10/19	115-22666	Susquehanna	Jackson Twp
		6/10/19	115-22670	Susquehanna	Jackson Twp
		6/4/19	117-21876	Tioga	Liberty Twp

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	June	May	April	March	February	January
Total wells	64	93	58	59	92	75
Unconventional Gas	45	83	44	49	82	72
Conventional Gas	0	0	0	0	0	0
Oil	19	8	14	9	10	2
Combination Oil/Gas	0	0	0	1	0	1
Storage	0	2	0	0	0	0

Legislative updatge *Continued from page 3*

if it reached his desk.

The House version, HB 1635, is essentially identical to last session's bill. SB 790, however, differs in several respects, including area of review, remedial action in case of communication with another well, consideration of potential impact on public resources as part of the permitting process, well control emergency response, grants for well plugging and beneficial use of produced water. The Senate bill also mandates a \$5 million General Fund appropriation to DEP to regulate conventional wells and directs the governor to submit future budgets with an appropriation of not less than \$5 million for conventional well regulation.

PIOGA strongly supported last year's COGA proposal and will continue to work to ensure passage of this important legislation.

If you would like more information about any of these bills or PIOGA's position on them, please contact us. ■

Calendar of Events

PIOGA events

PIOGA event info: pioga.org/event

PIOGATech: Water and Waste

August 21, The Chadwick, Wexford

Divot Diggers Golf Outing

August 22, Tam O'Shanter Golf Course, Hermitage

Fall Conference

September 24-25, Seven Springs Mountain Resort, Champion

PIOGATech: Safety Risk Management

October 17, Location TBA

Halloween Theme Networking Event

November 1, Location TBA

Marcellus to Manufacturing Conference

November 7, Location TBA

Annual Oil & Gas Tax and Accounting Seminar

November 20, Location TBA

PIOGATech: Air Quality Compliance

December 17, The Chadwick, Wexford

Holiday Mixer

December 17, The Chadwick, Wexford

Other association & industry events

IOGANY Annual Summer BBQ

July 11, Peek'n Peak Resort & Conference Center Findley, NY
www.iogany.org

OOGA Summer Meeting

July 16, Glenmoor Country Club, Canton, OH
www.ooga.org

IOGAWV Summer Meeting

August 4-6, The Greenbrier, White Sulphur Springs, WV
iogawv.com

IOGAWV Sports Weekend

September 13-14, Bridgeport Country Club, Morgantown, WV
iogawv.com

Shale Insight

October 22-24, David L. Lawrence Convention Center,
Pittsburgh
shaleinsight.com

IPAA Mid-Year Meeting

November 6-8, The Fairmont, Georgetown, MD
www.ipaa.org/events

PIOGA Centennial knife

To commemorate PIOGA's 100th anniversary, we commissioned this knife from W.R. Case & Sons Cutlery in Bradford. The limited edition, collector quality knife and wooden display box feature the Centennial logo. It makes a great gift! Get yours before they're gone at members.pioga.org.



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