

The PIOGA Press

The monthly newsletter of the
 Pennsylvania Independent Oil & Gas Association
 October 2020 • Issue 126

A September foreshadowing: EQB adopts the proposed RGGI rulemaking and the governor vetoes House Bill 2025

By Kevin J. Garber and Jean M. Mosites

September saw Pennsylvania take two major steps toward locking the Commonwealth into the Regional Greenhouse Gas Initiative (RGGI). On September 15, the Environmental Quality Board (EQB) voted 13-6 to adopt proposed cap-and-trade regulations to limit carbon dioxide emissions from fossil-fuel-fired electric generating units greater than 25 megawatts capacity. Nine days later on September 24, Governor Wolf vetoed House Bill 2025 that would have prohibited the Department of Environmental Protection from taking any action to control or limit CO₂ emissions without General Assembly approval.

Since it seems unlikely at this point that the General Assembly will be able to stop the administration's effort to adopt RGGI regulations by the end of 2021, the next several months will be critical to comment on, shape or oppose these regulations.

The proposed RGGI regulations

Governor Wolf's October 3, 2019, Executive Order No. 2019-07 directed DEP to develop a proposed rulemaking to abate, control or limit CO₂ emissions from fossil fuel-fired electric power generators (EGU) and present it to the EQB by July 31, 2020. The deadline later was extended to September 15, 2020. As presented to and consid-

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— Babst Calland



ered by the EQB on September 15, the proposed RGGI regulations would amend 25 Pa. Code Chapter 145 (relating to interstate pollution transport reduction) and add Subchapter E (relating to a budget trading program) to establish a program to limit the emissions of CO₂ from a fossil-fuel-fired EGU with a nameplate capacity of 25 MW or greater that sends more than 10 percent of its annual gross generation to the electric grid. The proposed rulemaking is intended to reduce CO₂ emissions as a contributor to adverse climate change and estab-

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M2M 2020 update

Be sure to join us for the third-annual Marcellus to Manufacturing Conference that will provide insight on safeguarding the future of manufacturing by sharing opinions and strategies around workplace safety and human resource issues.

We are excited to talk about scalable projects creating specialty chemical products from gas and hydrogen. An integral discussion focused on the feedstock for these projects will explain the geologic storage capability of natural gas liquids in combination with the U.S. Department of Energy's Petrochemical Renaissance Report and so much more!

The event happens Thursday, November 12, at Oglebay Resort and Conference Center in Wheeling, West Virginia. (Please note the change in venue.)

Presentations include:

- **Market Analysis**—Jude Clemente, TRANE
- **Petrochem Renaissance & NGL Storage**

Considerations—Chuck Zelek, U.S. Department of Energy, Office of Fossil Energy, and Dan Billman, P.G., C.P.G., Billman Geologic Consultants, Inc.

- **Legal Panel**—Adam Ennis, Esq., Marcia DePaula,

Esq., and Nelva Smith, Esq., Steptoe & Johnson, PLLC; and Paul David Burke, Esq., Huntley & Huntley, Inc.

• **Safeguarding and Securing the Future of Manufacturing**—Adam Serna, Allied Universal, and Wayne Vanderhoof, RJR Safety, Inc.

• **U.S. Steel & Domestic Energy Advantages**—Christopher J. Masciantonio, United States Steel

• **Gas to Liquids**—Greg Carr, EXTEL Gulf Process Gases, LLC

• **The Future Role of Hydrogen**—Josh Martincic, Longridge Energy, and Gregory Hackett, Ph.D., National Energy Technology Laboratory

• **LNG by Raul and for Rail**—Scott Nason, Chart, Inc.

• **Shale POWER Program**—Kathryn Klaber, Klaber Group; Matt Henderson, Henderson Consulting; and Petra Bracko Mitchell, Catalyst Connection

• **Critical Care, Critical Energy; Hospital Energy Efficiencies & CHP**—Sam McMahon, UPMC

• **Moving our Economy**—Jeff Nobers, PGH WORKS, and Betsy McIntyre, TEAM Consortium

Sponsorship and exhibitor opportunities are available.

To find out more and register by November 6, visit the PIOGA Events section at pioga.org. ■

★ ★ PIOGA endorses Donald Trump for president ★ ★

The Pennsylvania Independent Oil & Gas Association has issued the following statement regarding PIOGA's first-ever endorsement of a presidential candidate:

In the 150-year history of our industry, the contrast between candidates on energy policy has never been clearer: one candidate advocates for the elimination of hydrocarbon fuels, and the other embraces and promotes American strength through energy security. In view of his unwavering support for our industry, his decisive actions to repeal and reform stifling regulations, and for his commitment to the dedicated citizens who produce and deliver energy, the Pennsylvania Independent Oil & Gas Association is proud to announce its endorsement of Donald J. Trump for president.

IPAA launches 2020 election center

The Independent Petroleum Association of America has launched a new voter information portal on its website: the IPAA National Election Center (ipaagrassroots.org/2020-election-center). This portal is designed to help inform voters with information specifically tailored to address issues important to America's oil and natural gas producers. IPAA's National Election Center includes state election updates, voting information including how to register, where to find your polling location and candidates for your area, and candidate comparisons. PIOGA joins the IPAA in encouraging you to share this information with your colleagues and fellow employees.

"IPAA's National Election Center program focuses on participation, not party-line politics. The goal is to make information accessible to all, and to lead those in our industry to more informed decision makers in November," IPAA's Barry Russell said in announcing this election resource.

IRS updates: Form 1099 requirements for 2020 filings

The PATH Act of 2015 created two separate filing due dates for amounts reported on the same Form 1099-MISC. Specifically, 1099-MISC forms reporting amounts in Box 7 for non-employee compensation were due by January 31 of the following year, while 1099-MISC forms reporting rents, royalties or other types of income were not due until February 28 if filing by paper and March 31 if filing electronically. To minimize confusion and administrative burden caused by separate due dates for the same form, the Internal Revenue Service has changed the way non-employee compensation must be reported on Form 1099 for 2020.

1099 form changes

Beginning in 2020, payments made in the course of your trade or business to non-employees for services rendered totaling \$600 or more, as well as income earned by working interest owners, must now report in Box 1 of Form 1099-NEC. These payments were previously reported on Form 1099-MISC in Box 7.

Rental payments, including payments for a right-of-way and royalty payments, will continue to be reported on Form 1099-MISC in Boxes 1 and 2 as they have been in the past.

The 1099-NEC Form for 2020 will need to be filed on or before February 1, 2021. The filing dates for the 1099-MISC have not changed. For 2020 filings, the forms are due to the IRS by March 1, 2021, if filed by paper or by March 31 if filed electronically.

1099 Form changes—filing with the IRS

The Taxpayer First Act of 2019 changes how we file Form 1099s with the IRS:

- For the 2020 tax year, you are required to file electronically if you have 250 or more 1099 Forms (100 or more for partnerships).
- For the 2021 tax year, you are required to file electronically if you have 100 or more 1099 Forms (50 or more for partnerships).
- For the 2022 tax year, you are required to file electronically if you have 10 or more of any information reporting form (1099 or W-2) with the IRS. Failure to do so will result in substantial penalties.

While some of the information is reported on a new form, the circumstances that create a filing requirement have not changed. Business owners should be proactive in preparing to meet their Form 1099 filing requirements.

Steps to take in order to prepare for these changes forms and submission

- Request current IRS Form W-9 from vendors.
- Request for Taxpayer Identification Number and Certification from each payee covered under the reporting requirements. Ideally, Form W-9 should be completed before issuing any payments to avoid potential backup-withholding requirements.

While Form W-9 does not expire, it is important to make sure payees periodically confirm that the information on the original form has not changed.

- Check for changes to a business name, address or Taxpayer Identification Number (TIN). These changes require a new Form W-9. Additionally, if you file 1099s on paper forms, make sure you purchase the proper forms for 2020 reporting.
- If you file 1099s electronically, you should verify that your e-filing system is ready to handle this change. If you currently do not file these returns electronically, you will need to find a way to file 1099 Forms electronically. Options include but are not limited to:
- The IRS has a system called “FIRE” that you can utilize for electronically filing.
- Purchase additional software that will assist you with this filing.
- Contact a tax professional who can assist you.

Keep in mind that some states such as Pennsylvania require that copies of 1099 Forms be filed with their state tax authorities and may have tax withholding obligations on payments made to non-resident payees. Check with all states in which you do business for any filing and tax withholding requirements related to remittance of the 1099 Forms.

Also, just a reminder that all 2020 1099 Forms need to be sent to the payees before February 1, 2021.

If you have any questions or need additional assistance, please contact PIOGA Tax Committee members Bill Phillips, committee chair, of Arnett Carbis Toothman LLP at 304-624-5471 or Milissa Bauer of Kriebel Companies at 814-226-4160. ■

PIOGA's Annual Oil & Gas Tax and Accounting Seminar

This year's seminar is going virtual and will be held in conjunction with the Independent Oil & Gas Association of West Virginia and the Southeastern Ohio Oil and Gas Association. It will take place November 18 from 9 a.m. to 4:30 p.m., and as always will be presented by associates from Arnett Carbis Toothman LLP.

The following important and timely topics are on the agenda:

- General Tax Updates for 2020 – Federal and State
- Oil & Gas Industry Tax Updates for 2020
- CARES Act
- Paycheck Protection Program – Forgiveness, Tax and Accounting Considerations
- Purchase/Sale, Valuation, Succession and Estate Planning
- IT Security

Oil and gas investors, operators, royalty owners, service companies, and accounting and legal professionals will benefit from participating. Watch your email or visit pioga.org > PIOGA Events.



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Thank You, Sponsors!



PIOGA's Fall Conference last month at Seven Springs Mountain Resort was the first time many of the attendees had participated in an in-person event in as long as six months. Thanks to an excellent speaker lineup and an outdoor venue under a large tent (pictured at right) that allowed for social distancing, attendees, presenters and exhibitors alike overwhelmingly praised the event. The weather was perfect for the conference and for the sporting clays and golf that bookended the meeting. We extend our thanks to all who contributed to the event's success. For more scenes from the three days at Seven Springs, visit the Photo Galleries section at www.pioga.org.



PIOGA regulatory consultant Scott Roberts, who retired last month, was honored for his valuable assistance to the association. Here, he is presented with a plaque by Environmental Committee co-chair Paul Hart.





October virtual PIOGATech: Reasonable Suspicion Training and Medical Cannabis in the Workplace

When: Monday, October 26, 9 a.m. to 12 p.m.

Course description: This training enhances the practical application skills of supervisors and managers for identifying and responding to employee impairment. Participants will learn about the “four rules” for responding to suspected employee impairment, what “reasonable suspicion” really means, the most commonly used drugs of abuse and their signs of impairment, adulteration of urine specimens, and common barriers that prevent supervisors and managers from reporting suspected impairment, even when they know that they should. The final portion focuses on the employee confrontation, offering proven tips and techniques that boost supervisor effectiveness when informing an employee they will be drug tested. Knowledge checks are peppered throughout to increase content retention and a case vignette concludes this training to increase participant comfort and confidence with application.

A certificate of completion will be provided by the Instruction and you can earn continuing education units.

Course instructor: Ryan West, MS, CFI, Manager, Corporate Trainings & Business Development
Chemical Addiction Specialist, Greenbriar Treatment Center

Registration and more information: Learn more and register by October 22 by visiting pioga.org > PIOGA Events. ■

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IRRC echoes many of PIOGA's concerns about DEP's VOC rulemaking

The state entity that reviews proposed regulations to ensure they are in the public interest and meet all statutory requirements has raised many of the same concerns as PIOGA over a Department of Environmental Protection rulemaking to control emissions of volatile organic compounds (VOCs) from existing oil and gas sources.

In particular, the Independent Regulatory Review Commission (IRRC) asked in comments published in the September 5 *Pennsylvania Bulletin* how the proposed regulations comply with Act 52 of 2016, which requires that regulations for conventional and unconventional operations be promulgated separately; ordered the Environmental Quality Board (EQB), the entity to formally promulgate regulations on behalf of DEP, to provide a revised estimate of the cost burden of the regulations using current data; asked EQB how it would respond to the current lifting of federal requirements that mandate the VOC regulations; and asked what the impact of the rule will be on small businesses. These issues are echoed in formal comments submitted by PIOGA on July 27 (*August PIOGA Press*, page 1).

IRRC reviews all regulations formally proposed by state agencies (except for the Game Commission and the Fish and Boat Commission) to make certain that the agency has the statutory authority to enact the rule and to determine whether the regulation is consistent with

legislative intent. IRRC then considers other criteria, such as economic impact, public health and safety, reasonableness, impact on small businesses, and clarity. Agencies must consider IRRC's comments as they develop the final version of regulations.

As described in depth in the June issue of *The PIOGA Press*, what is commonly known as the "CTG RACT Rule" was published by the EQB on May 23 and is based on the U.S. Environmental Protection Agency's 2016 Control Techniques Guidelines (CTG) which provide reasonably available control technology (RACT) requirements for VOC emissions from existing oil and gas sources. The rule will impact most conventional and unconventional oil and gas operations with requirements that apply to storage vessels, natural-gas-driven pneumatic controllers, natural-gas-driven diaphragm pumps, compressors, fugitive emissions components and other equipment.

PIOGA's July 27 comments assert the regulations are inappropriate, would disproportionately impact conventional producers and fail to comply with Act 52 of 2016, requiring separate regulations for conventional and unconventional operations.

IRRC's comments

The commission looked both at the proposed regulation in broad terms and at specific provisions. These were among the broad concerns and observations:

Statutory authority. Act 52 requires any rulemaking concerning conventional oil and gas wells considered by the EQB must "be undertaken separately and independently of unconventional wells or other subjects and shall include a regulatory analysis form submitted to the Independent Regulatory Review Commission that is restricted to the subject of conventional oil and gas wells." The IRRC pointed out that lawmakers and commentators stated that the EQB has violated clear legislative directives by proposing a VOC emissions rule that includes requirements for conventional oil and gas well owners and operators, along with, not "separately and independently" from requirements for unconventional well operations. Also, the EQB has not prepared or submitted the necessary Regulatory Analysis Form (RAF) restricted to the need and impact of the rulemaking on the conventional oil and gas industry. Lawmakers request that the provisions that apply to the conventional oil and gas industry be withdrawn from the rulemaking. The IRRC directed the EQB to explain "how it has and will comply with the legislative directives of the Act."

Economic or fiscal impacts. The fiscal analysis provided by the EQB estimates that the proposed regulation will cost operators approximately \$35.3 million (based on 2012 dollars) without consideration of the economic benefit of natural gas captured because of the regulations. The value of the saved natural gas, in 2012 dollars, will yield a savings of approximately \$9.9



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million, resulting in a total net cost of \$25.4 million. These figures were based on 2012 EPA cost estimates contained in the 2016 CTG.

The IRRRC pointed out that commentators questioned the accuracy of the fiscal analysis because the supporting data is outdated and is not specific to Pennsylvania's oil and gas industry.

"We agree with the concerns raised by interested parties," the IRRRC wrote. "In order for this Commission to determine whether this rulemaking is in the public interest, the EQB must submit a revised estimate of the costs and/or savings to the regulated community using data that is current and Pennsylvania industry-specific."

Need for the regulation. Representatives from the oil and gas industry observe that no analysis has been shared by the EQB to support DEP's conclusion that the proposed requirements that are more stringent than EPA's 2016 CTG "are reasonably necessary" to achieve or maintain the National Ambient Air Quality Standards (NAAQS). Commentators question the need to exceed the 2016 CTG when Pennsylvania is near universal compliance with the 1997, 2008 and 2013 ozone standards. They explain that the state is not required to rely on the recommendations of the 2016 CTG to establish the proposed rulemaking. Instead it could make RACT determinations for a particular source on a case-by-case basis considering the technological and economic feasibility of the individual source. Section 11 of the RAF also states that DEP determined that owners and operators must conduct quarterly LDAR inspections at their facilities, as opposed to the recommended semiannual frequency in the 2016 CTG.

"We ask the EQB, with each of the examples above, to explain the need for each provision and how determinations were made, as well what data was used to justify the exemptions or more stringent regulations," the commission wrote.

Impacts on small businesses. The Regulatory Review Act requires agencies to provide a regulatory flexibility analysis and to consider various methods of reducing the impact of the proposed regulation on small business. The IRRRC pointed out that commentators do not believe that the EQB has met its statutory requirement of providing a regulatory flexibility analysis or considering how to reduce the impact the proposed regulation will have on small business. Further, it was noted that a number of commentators contend that the affected operators are indeed small businesses and that the cost burden of the regulations will not be minimal. The IRRRC asked the EQB to provide the required regulatory flexibility analysis when it submits the final-form rulemaking.

PIOGA reaction

"We are gratified that the IRRRC has validated so many of our concerns about these regulations, especially the lack of compliance with Act 52," commented PIOGA President & Executive Director Dan Weaver. "We hope DEP/EQB will rethink this costly and inappropriate set of rules." ■

Constitutionality of Oil & Gas Act and Solid Waste Management Act under the ERA still in question

DEP's rescission of UIC well permit doesn't stop Grant Township litigation

Much has happened since we last reported on litigation involving PGE's attempt to develop an underground injection well in Grant Township, Indiana County. Our April 2019 newsletter reported on the March 2019 order of the federal judge requiring Grant Township to pay PIOGA member Pennsylvania General Energy Company, LLC (PGE) nearly \$103,000 in attorneys' fees and costs as the prevailing party in that federal court litigation.

This award followed the judge's January 2018 order imposing \$52,000 in sanctions against the township's attorneys from the Community Environmental Legal Defense Fund, or CELF (primarily CELDF founder and attorney Thomas Linzey), for the "continued pursuit of frivolous claims and defenses, despite Linzey's first-hand knowledge of their insufficiency and the refusal to retract each upon reasonable requests, substantially and inappropriately prolonged this litigation, and required the Court and PGE to expend significant time and resources eliminating these baseless claims."

The township's baseless claims are predicated on the so-called "right of local self-government" superior to state and federal law advanced by CELDF and first expressed in the Grant Township "Community Bill of Rights" (CBOR) ordinance adopted in June 2014 (PGE filed suit in August 2014 and PIOGA intervened in October 2014) and then in the township's Home Rule Charter (HRC) adopted in November 2015, after the federal judge's October 2015 ruling that the CBOR ordinance violated several provisions of Pennsylvania law. The federal judge subsequently ruled, on March 31, 2017, that certain provisions of the repealed CBOR ordinance violated various provisions of the U.S. Constitution.

DEP lawsuit

This article reports on the lawsuit filed by Department of Environmental Protection (DEP) against Grant Township and its HRC.

On March 27, 2017, DEP issued the permit to PGE to develop and operate the underground injection well and also filed a lawsuit in the Pennsylvania Commonwealth Court (126 MD 2017) challenging the lawfulness of certain provisions of Grant Township's HRC. The township filed an answer, new matter and counterclaims against DEP. DEP responded with preliminary objections, some of which on May 2, 2018, the Commonwealth Court sustained, rejecting the township's claim to an inherent, fundamental, inalienable constitutional right to local self-government that is superior to state and federal laws:

Nonetheless, the Township attempts to

overcome this substantial body of authority [concerning restrictions on home rule authority] based on general principles of fundamental rights enunciated in our state and federal Constitutions and the Declaration of Independence. While our foundational documents proclaim the right of the people to self-government, this means that our citizens have the right to vote for the representatives who will make the laws that govern them and the right to change the form of their government by lawful process. **This does not mean, however, that local laws must prevail over state and federal laws, and the Township has cited not authority for any such proposition.**

Certainly, the Township has a right to enact its home rule charter, but to accept the basis of the Township's claims in Counts 1 and 2, **aside from being contrary to all relevant authority**, would mean that the doctrine of preemption would never apply. **The Township's argument is simply without basis**, and the demurrer to Counts 1 and 2 must be sustained (*emphasis added*).

However, the Commonwealth Court overruled DEP's preliminary objections to Counts 3 and 4, which claim that the HRC is a valid law under Pennsylvania's environmental rights amendment (ERA) (Count 3) and that DEP has violated the ERA "by attempting to prevent the people of Grant Township from exercising, advancing, and protecting their rights" under the ERA (Count 4). The Commonwealth Court viewed these counts as challenging the constitutionality of the 2012 Oil and Gas Act and the Solid Waste Management Act (SWMA) under the ERA. In overruling DEP's preliminary objections to these counts, the court acknowledged the township's argument that the rights under the ERA "are parallel to the rights set forth in sections 104, 105, 106, and 107 of the Charter" and the HRC is a valid exercise of the township's duty as a public trustee under the ERA, so that any limitations on home rule authority do not apply, but advised the parties of the path forward on these counts:

We cannot say that at this time that the Counterclaims asserted Counts 3 and 4 are so clearly without merit that they must be preliminarily dismissed. **Scientific and historical evidence concerning environmental issues, and evidence of DEP's actions may be necessary to fully adjudicate these Counterclaims as well as DEP's Complaint.** Accordingly, this demurrer must be overruled, and the issue must await further proceedings (*emphasis added*).

Despite the court's clear statement requiring further proceedings on Counts 3 and 4, in December 2018 DEP filed a motion to dismiss Counts 3 and 4 as not ripe for decision because the township had not exhausted available statutory remedies. *In particular, DEP stated (erroneously in PIOGA's view) that the township has the power to ban underground injection wells through a local law estab-*

lished under the authority of the Municipalities Planning Code, which the township has not done. On March 2, 2020, the Commonwealth Court denied DEP's motion:

DEP's position is without merit. First, DEP previously asserted, in its first preliminary objection, that the Township had failed to utilize a statutory remedy. While that objection cited the Township's failure to appeal General Energy's Well Permit and the present application cites a different statutory remedy (the Municipalities Planning Code), it is the same objection under a different legal theory. Even if the two claims are considered to be distinct, DEP's attempt to raise this issue in this Application is tantamount to a prohibited serial raising of objections by captioning a preliminary objection as something else. *Lexington Ins. Co. v. Commonwealth, Ins. Dep't*, 541 A.2d 834, 836 (Pa. Cmwlth. 1988) (Pa. R.C.P. No. 1028(b) provides that all preliminary objections shall be raised at one time, the purpose of which is to prevent a series of preliminary dilatory steps).

Moreover, this Court in *Grant Township I* [May 2, 2018 opinion and order] already rejected DEP's argument that the Township could not proceed with constitutional defenses to its preemption claims. **In so doing, we reasoned that if the Township was able to prevail on Counterclaims 3 and 4 at trial, then (1) the unconstitutional provisions of the Oil and Gas Act and SWMA could not serve to preempt local ordinances and DEP could be enjoined from enforcing them; and (2) an injunction could issue due to DEP's unconstitutional application of the statutes** (*emphasis added*).

The court concluded with this concise explanation of the township's counterclaims and what the court was deciding:

In sum, the Township seeks to prove that hydrofracking and disposal of its waste is so dangerous to the environment as to be in violation of the ERA, and thus that the statutes upon which DEP bases its preemption claims are constitutionally invalid. **While the Township may or may not be able to prevail on its constitutional claims, this Court has already ruled that it may attempt to do so in defense of DEP's lawsuit**, and this application for summary relief is nothing more than a collateral attack on that decision (*emphasis added*).

DEP's response

Instead of beginning to marshal scientific and historical evidence concerning environmental issues and its actions in administering and enforcing the 2012 Oil and Gas Act and the SWMA, as the court anticipated, DEP instead quickly responded to the court's March 2 decision by rescinding PGE's well permit by letter dated

March 19, 2018:

The Pennsylvania Department of Environmental Protection hereby rescinds Well Permit No. 37-063-31807-00-00 issued for the "Yanity" well in Grant Township, Indiana County (Injection Permit").

Operation of the injection well pursuant to the Injection Permit, issued on March 27, 2017 and amended on April 3, 2018, would violate a local law that is in effect. 58 Pa. C.S. § 3211(e.1)(1). Specifically, Section 301 of Grant Township's Home Rule Charter bans the injection of oil and gas waste fluids.

Therefore, the operation of the Yanity well as an oil and gas waste fluid injection well would violate that applicable law. (Emphasis added).

Section 301 of the Township's HRC is one of the sections DEP asked in three counts of its complaint the Commonwealth Court to declare unlawful and also to permanently enjoin in another count of its five-count complaint. CELDF wasted no time in issuing a press release describing DEP's action:

In an extraordinary reversal, last week, the Pennsylvania Department of Environmental Protection (DEP) revoked a permit for a frack waste injection well in Grant Township. DEP officials cited Grant Township's Home Rule Charter banning injection wells as grounds for their reversal.

....

"We are over the moon that the permit was rescinded," said Grant Township Supervisor Vice-Chair Stacy Long. "However, we know the permit should never have been issued in the first place. **We can't forget that DEP sued us for three years, claiming our Charter was invalid. Now they cite that same Charter as a valid reason to deny the industry a permit. It's hypocritical at best.** Add this to the pile of reasons Grant Township did not trust the DEP to protect our environment, and why we've had to democratically work at the local level to protect our community" (emphasis added).

So, Grant Township got what it asked for in Count 3 of its counterclaim a declaration that its HRC is a valid law but from DEP and not the court.

Effects of DEP's action

Incredibly, DEP appears not to have fully grasped the ramifications of its rescission decision, but CELDF did, as stated in its press release:

"This decision does not validate the actions of the DEP, but rather **vindicates the resistance that communities like Grant**

have engaged in to force governmental agencies into doing the right thing," says CELDF Pennsylvania Organizer Chad Nicholson. "DEP has been acting in bad faith. I'm glad they revoked the permit. But it took them too long to do what all governments should be doing: enforcing democratically-enacted local laws that protect public health and safety" (emphasis added).

So did Grant Township, as on May 4 the township supervisors sent a letter to "Fellow Municipal Officials" stating:

There is a window of opportunity to take advantage of the DEP's decision to uphold our local law. The more communities that stand up to return power to our municipalities, the more power we will have to do what's right for all of us, as the elected officials who are sworn to protect the constituents who elected us.

The effect of DEP's action is to nullify the result of PGE's five years of litigation in federal court that cost PGE hundreds of thousands of dollars, and to encourage other communities in Pennsylvania to avoid activities regulated by DEP by adopting home rule charters and simply alleging that the environmental statutes involved are unconstitutional under the ERA.

PIOGA is at a loss to understand what DEP got in return for rescinding PGE's permit. PIOGA assumed that Grant Township had agreed to withdraw its counterclaims and end the lawsuit so DEP could avoid defending the constitutionality of the Oil and Gas Act and SWMA. But PIOGA's assumption proved incorrect when the township filed a motion to dismiss DEP's lawsuit and stated that the township would continue to litigate Counts 3 and 4 of its counterclaims, according to a CELDF press release:

On September 21, 2020, Grant Township filed a motion to dismiss a lawsuit brought



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against it by the Pennsylvania Department of Environmental Protection (DEP). The DEP sued the township in 2017 for adopting a 2015 municipal Charter—a local constitution—that banned frack waste injection wells, known to contain radioactive waste and other toxic chemicals. . . .

“Of course we’re filing to dismiss,” says Grant Township Supervisor Vice-Chair Stacy Long. **“The DEP brought this on and now it’s running away? How can there be a lawsuit against the Charter if the DEP now recognizes it as valid law? They should be embarrassed at the runaround they are giving us.** The majority of our citizens here said NO to this project, knowing the adverse consequences would be our sole burden. We did the hard work and voted in a law to protect ourselves when no one else would, and here we are. **That law is still good, and a state agency recognizes it as such.**”

Grant Township is continuing its 2017 countersuit asking the court to declare that DEP has violated the Pennsylvania Constitution and Grant Township’s Charter by failing to protect the people’s right to clean air, pure water, and the preservation of the environment, and by attempting to prevent the people of the township from exercising and advancing their rights (*emphasis added*).

So, it appears that DEP will not be able to avoid defending the constitutionality of the Oil and Gas Act and SWMA after all. When DEP filed its lawsuit, PIOGA offered to assist the department by intervening, but DEP refused. Apparently, DEP expected a speedy favorable judgment from the Commonwealth Court based on the clearly unconstitutional, baseless nature of the township’s right to local self-government Home Rule Charter and did not anticipate the court’s allowing an argument founded on the ERA. By instituting litigation, refusing to allow the interested parties to intervene and then surrendering after an easy win was not forthcoming, DEP has succeeded only in emboldening this illegitimate NIMBY movement. ■

PIOGA’s amicus brief accepted in appeal involving implied covenant

Covenant to develop should not be implied in these leases

Our July newsletter reported on PIOGA’s submission of an *amicus* brief in a conventional producer’s Pennsylvania Supreme Court appeal of the Superior Court’s decision that the producer had violated the implied covenant to develop by abandoning two oil and natural gas leases (“PIOGA tries to help conventional producer retain farm out acreage”). Our September newsletter reported on PIOGA’s submission of a request to file an *amicus* reply brief (“PIOGA argues against implying a covenant to develop in producer’s appeal”). The reason for PIOGA’s request was the new position in the lessors’ brief that the express terms of the leases quantified the producer’s expected performance by requiring minimum payments “regardless of production” during the primary and secondary lease terms, obviating the need for the court to address Mitch-Well Energy’s “in paying quantities” argument based on our Supreme Court’s decision in *T. W. Phillips Gas and Oil Co. v. Jedlicka*, 42 A.3d 261 (Pa. 2012).

In its request, PIOGA noted that the lessors’ new position and reliance on the Supreme Court’s decisions in *Stoddard v. Emery*, 18 A. 339 (Pa. 1889), and *Hutchison v. Sunbeam Coal Corp.*, 519 A.2d 385 (Pa. 1986), actually support PIOGA’s position by showing show why lease termination, not abandonment, is the finding required in this matter by the express provisions of the leases, assuming *arguendo* that the producer breached or defaulted on lease obligations. PIOGA suggested that its

amicus reply brief could inform the court’s consideration of the legal issues presented in this appeal in a way not anticipated based on the record below.

In response to the court direction to respond, the lessors filed a one-page answer to PIOGA’s request stating that the rule not authorizing *amici* to file an *amicus* reply brief is understandable because the rules do provide the appellants (Mitch-Well Energy, Inc. and William Mitchell) the right to file a reply brief that “provides an opportunity to address any issues raised by Appellees in their Response Brief.” Accordingly, lessors argued that granting PIOGA’s request “is unwarranted and would be wholly duplicative of positions already staked-out by Appellants, to whom the Rules grant a full opportunity to brief issues before this Court.”

Lessors’ answer failed to acknowledge that Mitch-Well did not file a reply brief. Indeed, Mitch-Well also did not file a response either for or against PIOGA’s request to file an *amicus* reply brief. Perhaps most significantly, lessors’ answer did not directly refute PIOGA’s characterization of the new position in the lessors’ brief.

On October 1, the Supreme Court granted PIOGA’s request, so PIOGA’s *amicus* reply brief will be distributed to the justices for their consideration as they prepare for the oral argument in Pittsburgh via videoconferencing on Thursday morning, October 22, (6 WAP 2020), viewable at www.youtube.com/c/SupremeCtofPAOfficial.

Copies of all briefs filed in this appeal are available on PIOGA’s website. ■

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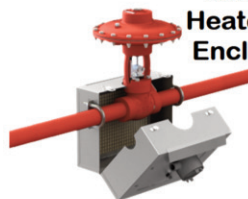


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Judge rejects claims that pipelines on leasehold cannot transport gas from neighboring lands without separate right-of-way agreement

Federal Judge Matthew W. Brann of the United States District Court for the Middle District of Pennsylvania, in *Walls v. Repsol Oil & Gas USA, LLC*, granted a motion to dismiss and rejected claims brought by landowner-lessors under an oil and gas lease asserting that the lessee was precluded under the lease from laying pipelines on their lands.¹ The landowners alleged that the lessee needed a separate right-of-way agreement to transport natural gas from lands outside the production unit in which their lease was unitized. The court disagreed. In dismissing the claims, the court found that the plain language of the lease gave the lessee the right to lay pipelines and transport gas from other lands.

Factual background

In 2002, William M. Walls, James J. Oakes and Francis X. Oakes entered into an oil and gas lease with Victory Energy Corporation, which was subsequently acquired by Repsol Oil and Gas USA, LLC.² Thereafter, Repsol unitized and pooled the lease acreage into a natural gas production unit known as the Chicken Hawk Unit. In October 2019, Repsol began constructing a pipeline on the landowners' property which would transport natural gas from not only the Chicken Hawk Unit but also foreign gas from other properties not unitized and pooled with the lease acreage. After beginning construction on the pipeline, Repsol and the landowners entered into negotiations for a separate pipeline easement, which were terminated in November 2019 after the landowners rejected Repsol's offers. Repsol nonetheless continued the installation of the pipeline and completed the same in December 2019.

Procedural background and issues

On March 12, 2020, the landowners filed a one-count complaint against Repsol in the Court of Common Pleas of Tioga County seeking declaratory judgment and alleging that (i) the construction and installation of the pipeline was not authorized by the lease and they never gave Repsol any other rights to construct the same, and

¹ *Walls v. Repsol Oil & Gas USA, LLC*, No. 4:20-CV-00782, 2020 WL 5502151 (M.D. Pa. 2020).

² *Id.* at *1.

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—
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Johnson, PLLC

(ii) the lease did not grant Repsol the right to transport foreign gas from units not containing any lease acreage or from non-neighboring lands; and as such, Repsol violated the terms of the lease.³ On May 13, Repsol removed the suit to federal court, asserting federal diversity jurisdiction and filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted.

Lease language at issue

The lease contained the following clause granting Repsol the rights of:

[d]rilling, producing, and otherwise operating for oil and gas and their constituents, including the right to conduct geophysical, seismic and other exploratory tests, and of laying pipe lines, and building tanks, roads, stations, and electric power lines, houses for valves, meters, regulators and other appliances, with all rights and privileges necessary, incident to or convenient for the operation of this land alone and jointly [sic] with neighboring lands.⁴

The court found the plain language of the lease unambiguous and therefore ascertained the intent of the parties from the written lease. The court stated that "Plaintiffs agreed to a contract granting the lessee (now Repsol) authority to perform a set number of tasks, including 'laying pipe lines.'"⁵ Furthermore, the court explained that beyond the aforesaid enumerated rights, the landowners granted Repsol "all other rights and privileges necessary, incident to or convenient for" the operation of the lease acreage and neighboring lands.⁶ Stated another way, the court said that "only the rights and privileges not specifically enumerated in the lease must be 'necessary, incident to or convenient for' the operation of the land."⁷ As a result, the court granted Repsol's motion to dismiss.

Implications of decision

Though this case is not precedential, it provides insight into one court's interpretation of pipeline rights that are often incident to an oil and gas lease. Here, the *Repsol* court found the granting clause permitted the lessee the right to lay pipelines on the lease lands, without restriction or limitation. The court found that only the "catch-all" rights *not expressly delineated* in the granting clause were limited to those "necessary, incident to or convenient for" the operation of the lease acreage. Under that finding, the court permitted foreign gas, i.e., gas not produced from the lease acreage or lands pooled therewith, to pass through pipelines constructed by the lessee on the leased premises. ■

³ *Id.*

⁴ *Id.* at *6.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at *7.

Understanding the dangers of distracted driving

The National Safety Council is recognizing the 10th anniversary of Distracted Driving Awareness Month this October, kicking off the annual observance with the release of a report that details the science behind distraction and calls on key stakeholders to make life-saving changes. The report reinforces the evidence showing that hands-free is not risk free and in-vehicle systems may not be safer options—an inconvenient truth given that in the 10 years since Distracted Driving Awareness Month was established, 25 states have banned handheld cell phone use because of the belief that hands-free use by drivers is completely safe.

Preliminary data indicates roads were deadlier for the first six months of 2020, despite less traffic because of quarantines. While causation is not yet known, reckless behaviors such as speeding, lack of seatbelts and distracted driving all play a major role in risky roadway behavior. The new report, *Understanding Driver Distraction*, recommends eliminating use of cell phones and interactive, in-vehicle technology while driving in order to help keep all drivers safe on the road.

As noted in the report, a multi-faceted approach is necessary to change driver behavior when it comes to distracted driving, including stronger laws and better enforcement. As such, primary-enforcement handheld bans are a step in the right direction. However, the report emphasizes that hands-free devices and voice-command systems still create cognitive distractions for drivers. That's why it's important for drivers to program navigation devices and music before the drive begins and avoid interacting with these or other apps until the car is safely parked.

The *Understanding Driver Distraction* report goes on to further highlight that in-vehicle infotainment systems are adding to distracted driving concerns, as these systems can divert driver attention away from the road. The report notes that just because a technology is installed in a vehicle does not mean it is safe to use while driving.

Distracted driving at work

The National Institute for Occupational Safety and Health (NIOSH) says distracted driving occurs any time you take your eyes off the road, hands off the wheel and mind off your primary task of driving safely. Any non-driving activity you engage in is a potential distraction and increases the risk of being involved in a motor vehicle crash.

Workers in many industries and occupations spend all or part of their workdays on the road. One study showed that compared with other drivers, those who were at work were more likely to be in a hurry to reach their destination, think about work, be tired or use a cell phone while driving.

NIOSH explains there are three types of distractions:

Safety Committee Corner



- Visual—reading a text message, looking up directions or “rubbernecking” at a crash site.
- Manual—reaching for something inside the vehicle, using a handheld device, adjusting the radio or other controls, or eating and drinking.
- Cognitive—talking on the phone or with a passenger, or thinking about a work or personal matter.

Talking and texting on a phone are certainly driving distractions, but texting while driving is especially dangerous because it combines all three types of distractions. Research shows that hands-free phones are as distracting as handheld phones. Your brain has limited ability to perform two tasks at the same time. When driving becomes secondary, you pay less attention to possible dangers on the road. A worker who is driving a motor vehicle while discussing a complex or contentious business-related matter over the phone at the same time may be at greater risk of being in a crash. In this situation, neither task—driving a vehicle or doing business—gets the attention it deserves.

The federal agency offers employers the following recommendations to prevent distracted driving by workers:

- Ban all phone use while driving a company vehicle, and apply the same rules to use of a company-issued phone while driving a personal vehicle.
- Require workers to pull over in a safe location if they must text, make a call or look up directions.
- Prepare workers before implementing these policies by communicating:
 - How distracted driving puts them at risk of a crash
 - That driving requires their full attention while they are on the road
 - What they need to do to comply with your company's policies
 - What action you will take if they do not follow these policies
- Consider having workers acknowledge that they have read and understand these policies.
- Provide workers with information to help them talk to their family about distracted driving.

For more resources, go to www.cdc.gov/niosh/motorvehicle/topics/distracteddriving. ■

Everything else in DEP's 2019 Oil and Gas Annual Report

Media outlets that picked up on the news release last month announcing the Department of Environmental Protection's 2019 Oil and Gas Annual Report focused primarily on the continued upward trend in natural gas production (more than 6 Bcf in 2019), and some also noted the number of drilling permits issued (1,705) and wells drilled (787).

The news release also touched briefly on the number of inspections and violations, the amount of fines and penalties collected, the continued effort to identify and plug orphan and abandoned wells, and a field study in the Cornplanter State Forest to measure methane leakage from identified orphan wells—research that “will help DEP better estimate methane emissions from the thousands of orphaned and abandoned wells in Pennsylvania,” the release said. These latter points were largely ignored by the media, as was other information presented in the web-based report (<https://arcg.is/1045OG>). Below is a look at many of those details.

Permits and drilling. Of the 1,705 drilling permits issued in 2019, 1,475 were for unconventional wells and 230 for conventional. That's down from 1,868 unconventional and 281 conventional well permits in 2018. A total of 787 wells were drilled in 2019, including 615 unconventional and 172 conventional. In 2018, the total was 917—777 unconventional and 140 conventional.

Permit review times. The average time it took to

issue a well permit in DEP's Southwest Regional Office dropped from 104 days in 2017 to 26 days in 2019 and in the Northwest Regional Office from 61 days in 2017 to 26 days in 2019. Meanwhile, for erosion and sedimentation permits, the average for issuing permits declined in the Southwest office from 118 days in 2017 to 45 days in 2019 and in the Northwest office from 51 days in 2017 to 23 days over the same period.

Inspections and violations. Last year, DEP conducted 35,324 inspections. Of that total, 18,970 involved unconventional operations and 12,027 were related to conventional. The department also found 5,496 violations—985 unconventional, 1,763 conventional and 2,748 administrative. The total number of violations was down from the 6,022 recorded in 2018. DEP noted that the growing number of administrative violations resulted from increased inspections at “linear” projects such as pipelines.

Fines and penalties. DEP collected just under \$4.1 million in fines and penalties in 2019, down slightly from \$4.2 million in 2018 and far below the record \$9.7 million in 2016. Over the past 10 years, DEP has collected about \$43.7 million related to noncompliance at oil and gas sites.

Water recycling and disposal. DEP reported that 90 percent of produced fluids are recycled and reused, 8 percent of fluids are disposed of in underground injection wells and most of the remainder of produced fluids not recycled or reused are transported to Ohio or West Virginia for underground injection well disposal.

What was new in 2019

Improvements in permit reviews. As mentioned above, DEP has improved its permit review times, which was a sore spot for the industry, particularly involving the Southwest Regional Office. The report states that in 2018, the DEP Office of Oil and Gas Management restructured its organization to improve the effectiveness and efficiency of its Surface and Subsurface Programs. Prior to this change, the permitting and inspection staff in each of the three DEP district oil and gas offices reported to a manager in each of those offices. Now, all Surface Permitting Program staff report to a single Program Manager that oversees the Surface Permitting Program. Similarly, all Subsurface Permitting Program staff report to a single Program Manager that oversees the Subsurface Permitting Program. DEP has continued its efforts toward reducing overall permit review times and started to see improvements during 2019.

Erosion and Sediment Control General Permit (ESCGP-3) Prioritized Review Workgroup. As part of the recent development of the ESCGP-3 for oil and gas activities, the Office of Oil and Gas Management intends to modify the current expedited review process. To incentivize “innovative approaches through design and implementation of environmentally enhanced Best



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Management Practices (BMPs) and superior construction practices [that] reduce environmental impacts from oil and gas operations,” DEP plans to replace the

expedited review permit process with a voluntary prioritized review process for projects that must obtain an ESCGP-3. Permit applications submitted under the prioritized review process will be given a score based on the types of BMPs and environmentally superior construction practices proposed for a project. Projects that score well will be given priority review in advance of projects that do not propose environmentally superior BMPs and construction practices.

To achieve this goal, DEP created a workgroup in 2019 to explore and identify “environmentally superior practices.” A secondary goal for the workgroup is to develop the administrative process by which projects are prioritized for review. In addition to DEP’s oil and gas staff, a variety of other state agencies and stakeholder groups participated. The process is ongoing.

New for 2020 on beyond

Well permit fees and DEP funding. As we reported in the August *PIOGA Press*, a large hike in unconventional well permit application fees took effect on August 1—a process that took more than two years to accomplish. Fees increased from \$5,000 for a nonvertical unconventional well and \$4,200 for a vertical unconventional well, to \$12,500 for all unconventional well permit applications. The permit fee structure for conventional wells remains unchanged.

Permit application fees serve as the primary source of funding for the operation of DEP’s Oil and Gas Program. Over the past several years, the number of permits has been decreasing and so too has the amount of permit fees that support the program. “Since DEP cannot predict the number of permit applications that will be received, this fee structure is unpredictable and is not a viable mechanism to fund DEP’s Oil and Gas Program,” the report stated. DEP said that in 2020 it intended work with others to develop an alternate approach to funding the DEP oil and gas program that is more predictable and sustainable.

Conventional oil and gas regulations. Act 52 of 2016 directed DEP to promulgate separate regulations for conventional and unconventional operations and halted a rulemaking involving Chapter 78 regulations that was ongoing at the time. The act also created the PA Grade Crude Oil Development Advisory Commission (CDAC), whose mission includes helping develop regulations appropriate to the conventional industry. The department reported that since 2016 it has worked with CDAC on both a regulatory scheme and proposed legislation aimed solely at the conventional industry.

“However, because legislative discussions have not

resulted in a viable product,” the report said, “DEP plans to proceed with the development of a proposed conventional oil and gas rulemaking and will likely advance the rulemaking via several concise packages in parallel during 2020.”

Concurrent underground injection control (UIC) permitting process. The federal Safe Drinking Water Act authorizes the U.S. Environmental Protection Agency (EPA) to regulate the injection of production fluids into Class II disposal wells in a manner that is protective of underground sources of drinking water. Although DEP does not maintain federal primacy to operate the UIC program, Pennsylvania regulations require DEP to issue a “change of use” to an injection/disposal permit. To ensure the well can accept the produced fluid at proposed rates and pressures, DEP then performs a geologic analysis, which considers the mechanical integrity of the well, including a review of the Casing and Cementing Plan and available well integrity data. DEP reviews the Control and Disposal Plan to confirm compliance and the Erosion and Sedimentation Control Plan to ensure compliance. DEP has also developed permit conditions that require UIC well owners to install seismic monitoring equipment to detect any low-level seismic events.

The report indicates that DEP and EPA plan to explore the possibility of changing the permit review process from a consecutive review to a concurrent review. A concurrent permit review process would allow both EPA and DEP to begin reviewing the UIC permit at the same time, thereby reducing the length of time to render a final permit decision.

And more. The report also provides updates on development of a model Post Construction Stormwater Management Plan and a Geologic Hazard Mitigation Plan, the work of the Coal-Gas Industry-Agency Stakeholder Committee, a planned Underground Natural Gas Storage Industry-Agency Workgroup, enhancements to the plugging program, improved data management and employee training initiatives. ■

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PIOGA comments on pressure barrier technical guidance document

The Department of Environmental Protection in late August published draft technical guidance document (TGD) 800-0810-003, "Guidelines for Development of Operator Pressure Barrier Policy for Unconventional Wells." The purpose of the guidelines is to inform unconventional operators of items to consider when developing the Pressure Barrier Policy (PBP) component of a Preparedness, Prevention and Contingency (PPC) plan. These guidelines have been developed to facilitate appropriate well control incident risk mitigation, according to DEP.

DEP solicited public comments on the draft TGD, and with the input of the Environmental Committee PIOGA submitted its comments on September 28. The association made the following points:

- **The TGD should be revised to provide helpful information consistent with its stated purpose rather than primarily summarizing relevant requirements of statutes and regulations.** DEP states that the purpose of this TGD "is to assist unconventional operators developing the PBP component of a Preparedness, Prevention and Contingency (PPC) plan." Yet in the few instances where the TGD could provide useful information, it is silent, PIOGA wrote.

- **The TGD does not provide guidance concerning DEP's expectations for pressure barriers when air drilling.** One example of the lack of useful information concerns air drilling portions of unconventional wells and the identification of phases that require two barriers. PIOGA believes air drilling is such an accepted practice that DEP should provide guidance concerning what it expects from the operator during those phases.

- **The TGD is prescriptive rather than optional.** Many questions in a worksheet in Section VI of the document appear to be prescriptive. PIOGA wrote that the guidance document could be simplified consistent with its stated purpose of assisting operators in developing their PBPs by a plain listing of optional "procedures" that may be considered by an operator to be part of the PBP, as the applicable regulations will establish the necessary mandates. Further, the worksheet questions reference several approvals of plans and procedures, but the TGD does not provide information concerning when these plans and procedures within the PBP are to be presented to DEP for approval, or if each plan or procedure is to receive a standalone approval.

- **DEP should approve well control organizations other than the Independent Association of Drilling Contractors and make that information publicly available.** In particular, PIOGA recommended that DEP should at least recognize and approve the International Well Control Forum as an additional accrediting organization.

- **An additional PBP contingency plan within the PPC plan is unnecessary and unreasonably burdensome.** PIOGA pointed out that both plans cover the

same content and having both creates confusion. Furthermore, the development of a PBP contingency plan appears to be an extra, unnecessary obligation being put on the operator outside of regulation.

- **The section addressing special considerations for sensitive offset environments is unnecessary and unreasonably burdensome.** Section VII goes above and beyond the obligations of an operator's PBP and above and beyond the provisions of § 78a.55(d) requiring the PBP. Additionally, "sensitive environment" and "sensitive offset environment" are not defined in the TGD or in Chapter 78a, Subchapter C or Subchapter D. Further, noting the many uses of the term "should" in the document, PIOGA states, "DEP has a tendency to utilize TGDs to impose new requirements upon operators, even if the TGD states these are only recommendations. The fulfilling the stated purpose of this TGD requires that it provide clarity to all affected parties (not limited to operators and oil and gas inspectors) to ensure complete understanding what is required distinguished from what is recommended."

- **The section dealing with incident reporting is duplicative and unnecessary.** As this section has nothing to do with a PBP, there is no reason to have it in the guidance document, PIOGA advised.

- **The purpose of Appendix A is unclear.** The appendix deals with DEP acceptance of testing practices under recently updated API Recommended Practice 53, but confusion is added with a sentence addressing utilization of "another method" and documentation of the procedure on forms provided by DEP. PIOGA asked whether DEP has developed the referenced forms, what is DEP's authority for the review-and-approval requirement and for examples of other methods not described in the set of frequently asked questions. ■

New/returning PIOGA members Welcome, and welcome back!

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New Diversity Committee chair

We welcome Deana Stephens of Steptoe & Johnson as the new chair of the PIOGA Diversity Committee.

An Associate with Steptoe & Johnson since 2012, her practice focuses in the area of oil and gas law with particular emphasis on mineral title law. Deana began her career as a prosecutor with the Allegheny County District Attorney's Office, and prior to coming to Steptoe & Johnson she worked as an abstractor for a land company.



The Diversity Committee provides a forum in which members work collaboratively to advocate and support diversity within PIOGA, as well as within Pennsylvania's oil and natural gas industry. The committee works to ensure that PIOGA provides a climate and culture that encourages social interactions that support a diverse membership of individuals involved in the oil and natural gas industry in Pennsylvania. If you'd like to become a part of the committee, send an email to Deana McMahan at deana@pioga.org.

Our thanks to the committee's outgoing chair, Jennifer Mosesso, for her work in getting the group up and running. ■

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RGGI update *Continued from page 1*

lish a CO₂ budget trading program that can link with similar regulations in the 10 Northeast and Mid-Atlantic states that comprise RGGI.

The proposed rule establishes an initial emissions budget of 78M tons of CO₂ in 2022 that declines by roughly 3 to 4 percent per year to 58M tons in 2030. DEP anticipates this will reduce CO₂ emissions in Pennsylvania by approximately 31 percent compared to 2019, an expected 188M ton reduction overall. The declining annual emissions budget is equivalent to the CO₂ allowance budget (i.e., the number of CO₂ allowances available each year). The number of available allowances decreases each year along with the emissions budget. One CO₂ allowance provides authorization to emit one ton of CO₂. EGUs and other sources affected by the rule must submit allowances for every ton of emitted, and may trade CO₂ allowances within Pennsylvania or with participating RGGI states to meet the regulatory obligation.

DEP estimated that as of the end of 2019, 57 CO₂ budget sources (i.e., facilities with one or more budget units) with 140 CO₂ budget units (EGUs) would have a compliance obligation under this proposed rulemaking. Based on announced closures and future firm capacity builds resulting from the dynamic nature of the electricity generation sector, DEP projects that 62 CO₂ budget sources with 150 CO₂ budget units will have compliance obligations by January 1, 2022, the intended implementation date of a final regulation. DEP also estimates that around 99 percent of Pennsylvania’s power sector CO₂ emissions would be covered under this proposed rulemaking.

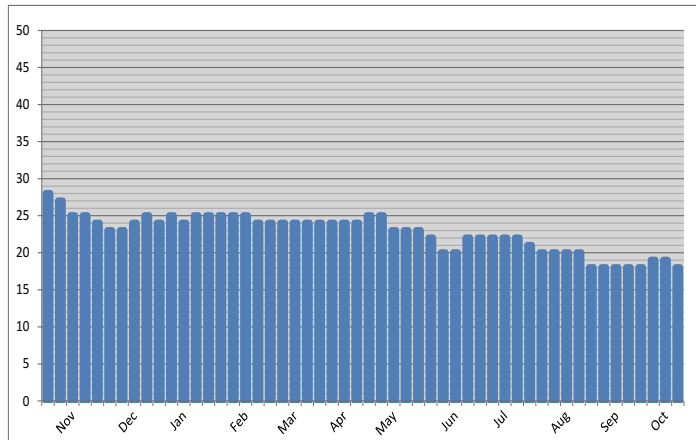
The EQB September 15 meeting

Before the September 15 EQB meeting, DEP had solicited input from its Air Quality Technical Advisory Committee (AQTAC) on three occasions, at meetings on February 13, April 16 and May 7. AQTAC declined to concur with the proposed regulation, as did DEP’s Citizens Advisory Council. The Senate and House Environmental Resources & Energy (ERE) Committees held information meetings on RGGI and HB 2025 on June 23 and July 21, respectively. Witnesses from the regulated community at these hearings commented that, among other things, the RGGI regulations are unnecessary because Pennsylvania is on pace to reduce CO₂ emissions commensurate with policy goals in the absence of RGGI; lack statutory authority and would impermissibly divert auction proceeds outside the Clean Air Fund; will result in the immediate retirement of Pennsylvania coal-fired EGUs, especially those in Indiana County, with employment losses upward of 18,000 jobs; will increase retail electricity prices; do not satisfactorily address the problem of leakage, pushing increased generation and job growth to Ohio and West Virginia; will not result in any measurable reduction of United States or global CO₂

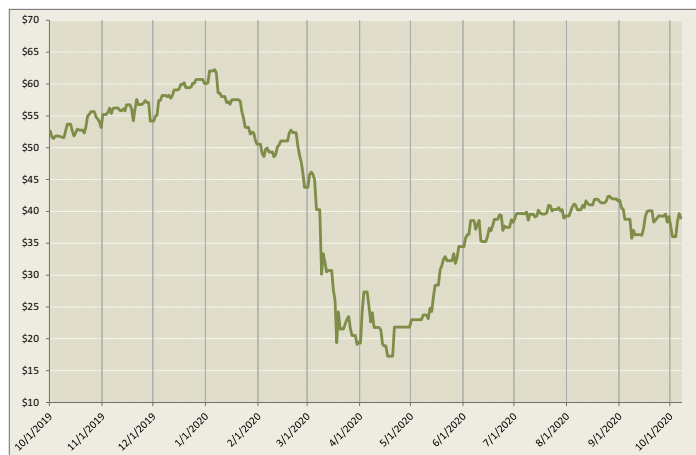
Continues on page 22

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices



Natural Gas Futures Closing Prices

Month	Price
November	\$2.724
December	3.210
January 2021	3.352
February	3.301
March	3.181
April	2.848
May	2.795
June	2.820
July	2.854
August	2.860
September	2.845
October	2.872

Prices as of October 9

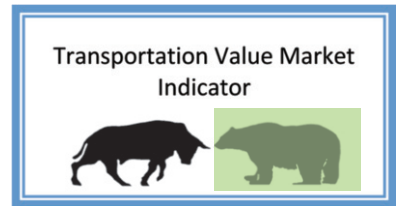
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 Baker Hughes rig count: bakerhughesrigcount.gcs-web.com/na-rig-count
 NYMEX strip chart: Nucomer Energy, LLC, emkeyenergy.com

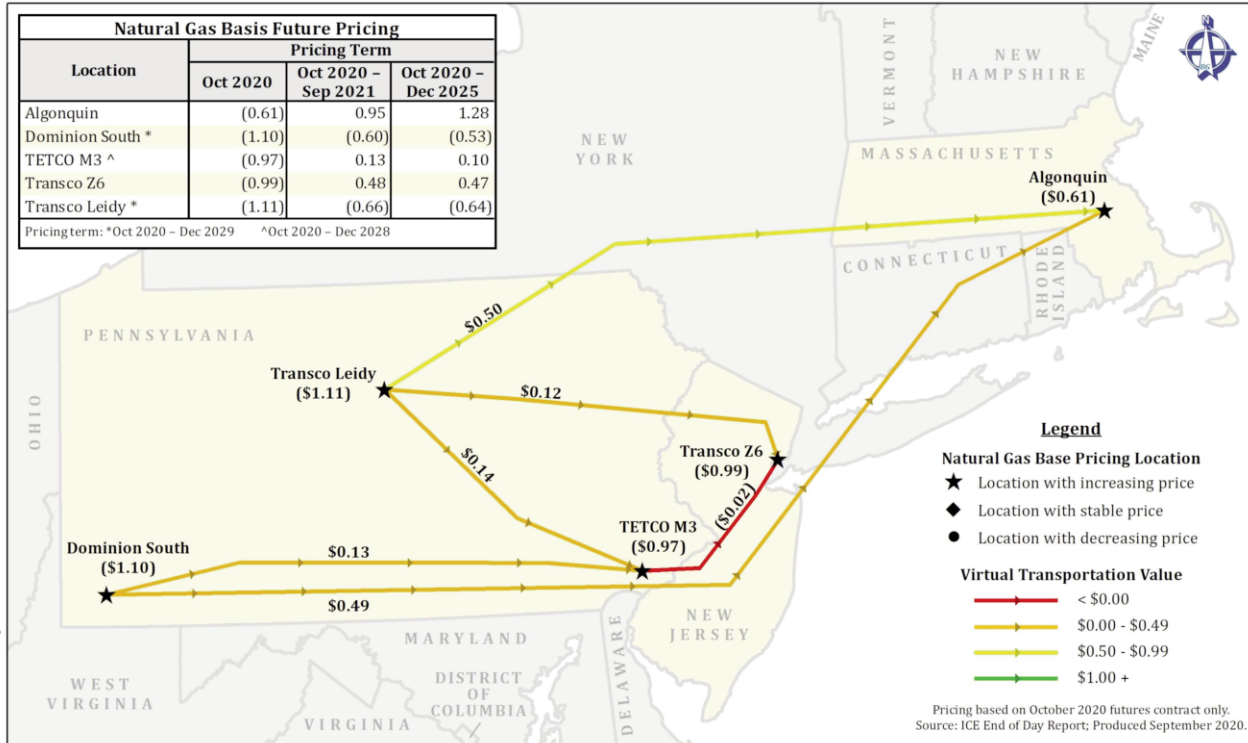
Northeast Pricing Report – October 2020

The October Henry Hub (HH) contract closed nearly \$0.42 per MMBtu lower than the first four weeks of September. While all the basis points rose, only Algonquin saw an overall increase in pricing. Algonquin's increase of \$0.45 per MMBtu was the highest growth of all the Northeast basis points. TETCO M3 grew the least at \$0.32 per MMBtu. Algonquin increased the most for both the rolling one-year term and full-term trading periods at \$0.19 and \$0.06 per MMBtu respectively. For the rolling one-year term, Transco Z6 rose the least at \$0.02 per MMBtu. For the full-term trading period, TETCO M3 was flat while all other trading points grew slightly.

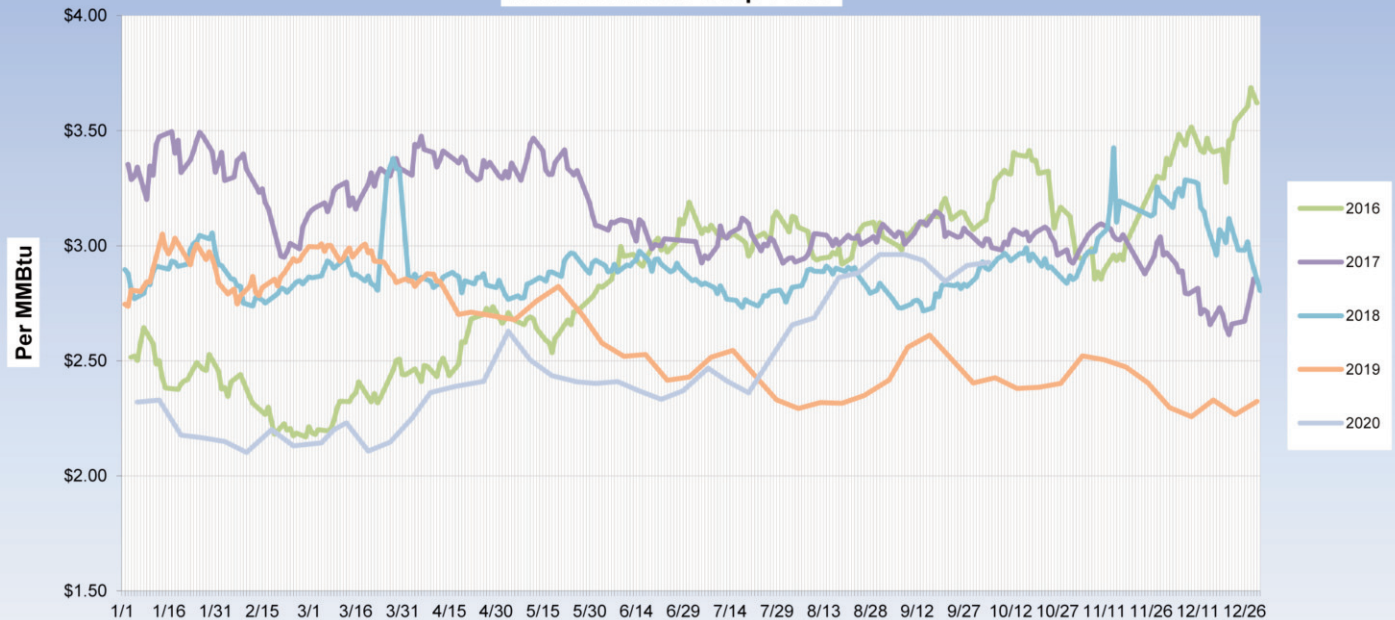
While basis pricing increased across the board, transportation value was mixed. Of the transportation routes that grew, Dominion South to Algonquin rose the most at \$0.10 per MMBtu. TETCO M3 to Transco Z6 increased the least at \$0.02 per MMBtu. Transco Leidy to TETCO M3 decreased the most at \$0.05 per MMBtu. Both Dominion South to TETCO M3 and Transco Leidy to Transco Z6 decreased \$0.03 per MMBtu.



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



NYMEX Annual Strip Price



Spud Report: September 2020



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
Cabot Oil & Gas Corp	5	9/28/20	115-22748	Susquehanna	Lenox Twp
		9/28/20	115-22757	Susquehanna	Lenox Twp
		9/28/20	115-22749	Susquehanna	Lenox Twp
		9/28/20	115-22726	Susquehanna	Lenox Twp
		9/28/20	115-22727	Susquehanna	Lenox Twp
Cameron Energy Co	2	9/21/20	123-48389*	Warren	Sheffield Twp
		9/28/20	123-48390*	Warren	Sheffield Twp
Chesapeake Appalachia LLC	6	9/10/20	015-23615	Bradford	Terry Twp
		9/11/20	015-23616	Bradford	Terry Twp
		9/15/20	015-23632	Bradford	Tuscarora Twp
		9/16/20	015-23631	Bradford	Tuscarora Twp
		9/24/20	131-20622	Wyoming	Washington Twp
Chief Oil & Gas LLC	5	9/15/20	015-23624	Bradford	Overton Twp
		9/15/20	015-23623	Bradford	Overton Twp
		9/22/20	015-23592	Bradford	Overton Twp
		9/22/20	015-23610	Bradford	Overton Twp
		9/22/20	015-23611	Bradford	Overton Twp
CNX Gas Co LLC	8	9/22/20	059-28056	Greene	Richhill Twp
		9/22/20	059-28058	Greene	Richhill Twp
		9/22/20	059-28061	Greene	Richhill Twp
		9/22/20	059-28063	Greene	Richhill Twp
		9/23/20	059-28057	Greene	Richhill Twp
		9/23/20	059-28060	Greene	Richhill Twp
		9/23/20	059-28059	Greene	Richhill Twp
		9/23/20	059-28062	Greene	Richhill Twp
		9/15/20	059-28044	Greene	Whiteley Twp
EQT Prod Co	6	9/15/20	059-28045	Greene	Whiteley Twp
		9/15/20	059-28046	Greene	Whiteley Twp
		9/15/20	059-28041	Greene	Whiteley Twp
		9/15/20	059-28042	Greene	Whiteley Twp
		9/15/20	059-28043	Greene	Whiteley Twp
INR Opr LLC	2	9/29/20	051-24722	Fayette	Springhill Twp

available by going to the Office of Oil and Gas Management page at www.dep.pa.gov and choosing Report from the menu. 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	3	9/29/20	051-24721	Fayette	Springhill Twp
		9/15/20	123-48476*	Warren	Sheffield Twp
		9/21/20	123-48475*	Warren	Sheffield Twp
MSL Oil & Gas Corp	1	9/28/20	083-57222*	McKean	Hamilton Twp
	Range Resources Appalachia	5	9/3/20	125-28828	Washington
Rice Drilling B LLC	6	9/3/20	125-28829	Washington	Amwell Twp
		9/3/20	125-28830	Washington	Amwell Twp
		9/4/20	125-28827	Washington	Amwell Twp
		9/29/20	125-28180	Washington	Buffalo Twp
		9/28/20	059-28052	Greene	Whiteley Twp
Seneca Resources Co LLC	8	9/28/20	059-28051	Greene	Whiteley Twp
		9/28/20	059-28047	Greene	Whiteley Twp
		9/28/20	059-28048	Greene	Whiteley Twp
		9/28/20	059-28049	Greene	Whiteley Twp
		9/28/20	059-28050	Greene	Whiteley Twp
		9/2/20	023-20268	Cameron	Shippen Twp
		9/2/20	023-20269	Cameron	Shippen Twp
		9/2/20	023-20271	Cameron	Shippen Twp
Wilmoth Interests Inc	1	9/2/20	023-20272	Cameron	Shippen Twp
		9/2/20	023-20273	Cameron	Shippen Twp
		9/3/20	023-20270	Cameron	Shippen Twp
		9/3/20	023-20267	Cameron	Shippen Twp
		9/3/20	023-20274	Cameron	Shippen Twp
	9/10/20	123-48399*	Warren	Mead Twp	

	September	August	July	June	May	April
Total wells	58	23	43	35	51	39
Unconventional Gas	51	19	41	34	49	36
Conventional Gas	0	0	0	0	0	0
Oil	7	4	2	1	2	3
Combination Oil/Gas	0	0	0	0	0	0

RGGI update *Continued from page 20*

emissions; will not spur meaningful growth of renewable energy sources; and are ill-timed in view of economic conditions created by the COVID-19 pandemic.

The September 15 EQB meeting lasted nearly four hours and saw heated debate at times. Many of the comments made during the ERE committee hearings were voiced again at the EQB meeting. In addition, House ERE Chair Metcalfe questioned whether the proposed regulations are an unlawful tax that only the General Assembly may impose. Senate ERE Chair Yaw observed that RGGI is not a good fit for Pennsylvania because, as an energy exporting state, it has very little in common with the RGGI states, each of which is a net energy importer. Nevertheless, EQB voted to adopt the package as a proposed rule with a 60-day public comment period including five virtual public hearings. EQB voted down proposed amendments to lengthen the comment period to 180 or 120 days, to table the matter until the advisory councils concur with the regulations and to hold at least one in-person public hearing in Indiana County.

The 60-day public comment period will begin upon publication of the proposed regulations in the *Pennsylvania Bulletin*, which could occur in late October or November. Interested parties and the regulated com-

munity should begin preparing comments and testimony now to submit during the abbreviated comment period. Before the regulation is finalized, a cost-effectiveness analysis will be required under Pennsylvania's Regulatory Review Act, Commonwealth Attorneys Act and the Climate Change Act. The Wolf administration intends to have final regulations in effect on or before January 1, 2022.

House Bill 2025

Representative Jim Stuzzi (R-Indiana) and a bipartisan group of House members introduced HB 2025 in November 2019 to require DEP to obtain General Assembly approval of any measure or action to abate, control or limit CO₂ emissions, including joining RGGI or establishing a separate greenhouse gas cap-and-trade program. If DEP intended to propose such a measure, HB 2025 would have required the agency to solicit public comment for at least 180 days, hold public hearings in those locations where regulated sources of CO₂ emissions would be directly economically affected by the proposal, and carefully analyze the effect of the measure on the cost of electricity at the wholesale, retail and industrial level, cost implications to municipalities and private industry, and prices of goods and services, productivity

or competition. Senator Joe Pittman (R-Indiana) introduced an identical bipartisan bill in the Senate at the same time. In essence, these two bills were intended to give Pennsylvanians through their elected officials a voice in whether to regulate CO₂ emissions and how to do it.

HB 2025 was reported out of the House ERE Committee on June 9 and passed the full House by a bipartisan vote of 130-71, just a few votes short of a two-thirds majority in favor. The Senate approved it on September 9 by a 33-17 bipartisan vote and sent it to the governor.

Governor Wolf vetoed HB 2025 on September 24. Returning the bill without his approval, the Governor stated that the legislation is “extremely harmful to public health and welfare as it prevents [DEP] from taking any measure or action to abate, control or limit CO₂ emissions, a greenhouse gas and major contributor to climate change impacts, without prior approval of the General Assembly.”

The governor remarked that the Regulatory Review Act and the Air Pollution Control Act “afford the opportunity for extensive public participation, including public comment and public hearings, in the rulemaking process.” Given that the administration is determined to have final RGGI regulations promulgated by the end of next year, as evidenced by the governor’s veto of HB 2025 and the fact that all 11 of the EQB members who are secretaries or executive directors of state agencies or commissions voted in favor of the proposed rulemaking and against a longer public comment period, it remains to be seen whether public comment can or will change the trajectory of the RGGI regulations. ■

Calendar of Events

PIOGA events

Information: pioga.org > PIOGA Events

Due to uncertainty surrounding the COVID-19 crisis, please check the event page for any changes to events and event dates.

Annual Meeting & Reception

October 14, virtual event

PIOGATech: Reasonable Suspicion Training and Medical Marijuana in the Workplace

October 26, virtual event

Marcellus to Manufacturing Conference

November 12, Oglebay Resort & Conference Center, Wheeling, WV

Annual Oil & Gas Tax and Accounting Seminar

November 18, virtual event

PIOGATech: Air Quality Compliance

December 15, The Chadwick, Wexford

Holiday Member Mixer

December 15, The Chadwick, Wexford

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Dan Palmer, American Refining Group, Inc.
Beth Powell, New Pig Energy
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