

The PIOGA Press

The monthly newsletter of the
Pennsylvania Independent Oil & Gas Association
April 2022 • Issue 144

Pennsylvania is one step closer to joining RGGI

On April 4, the Pennsylvania Senate failed by one vote to reach the two-thirds majority needed to override Governor Tom Wolf's January 10 veto of Senate Concurrent Regulatory Review Resolution 1, which was intended to block the Department of Environmental Protection's regulation to join the Regional Greenhouse Gas Initiative (RGGI). However, the following evening, April 5, the Commonwealth Court issued a stay preventing the Legislative Reference Bureau from publishing the regulation as a final, immediately effective rule in the *Pennsylvania Bulletin* and scheduling a hearing for May 4 on litigation that DEP initiated in February to force publication of the final regulation.

RGGI is the nation's first regional, market-based cap-and-trade program, designed to reduce carbon dioxide emissions from fossil-fuel-fired electric power generators with a capacity of 25 megawatts or greater that send more than 10 percent of their annual gross generation to the electric grid. Regulated sources must hold allowances equal to their CO2 emissions over a three-year compliance period. Each allowance is equal to one short ton of CO2. Regulated sources may purchase state-issued allowances at quarterly auctions or through secondary markets and can use allowances issued by any RGGI state to comply. Regulated sources may also use offsets awarded for certain environmental projects to meet a maximum of 3.3 percent of their allowances.

Authors:



Kevin Garber



Gina Falaschi

—
Babst Calland

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Other RGGI developments

In addition to the accompanying Babst Calland report on the failed attempt to override the governor's veto of a concurrent resolution disapproving the RGGI rulemaking and the court-ordered stay on publishing the final regulation, here are other recent developments regarding the Governor Wolf's push to join the Regional Greenhouse Gas Initiative.

New IFO analysis

The Senate Community, Economic and Recreational Development Committee and the Senate Environmental Resources and Energy Committee held a joint public hearing March 29 to discuss the economic impacts of RGGI. One of the most interesting pieces of testimony came from the state's Independent Fiscal Office (IFO).

The impartial analysis from the IFO estimates that Pennsylvania's joining RGGI could nearly quadruple new electricity costs for Pennsylvania consumers.

IFO Director Matthew Knittel said Pennsylvania could spend upwards of \$781 million annually on emissions credits at the RGGI auctions—nearly four times the amount anticipated by the Wolf administration's taxpayer-funded 2020 analysis used to justify Pennsylvania's participation in RGGI. The IFO also warned lawmakers

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One step closer *Continued from page 1*

If the rule is published in the *Pennsylvania Bulletin* before July 1, the partial year emissions cap for Pennsylvania would be 40.7 million tons of CO₂ for the remainder of 2022. The total annual emissions cap would gradually decline to 58 million in 2030. Affected units would need to start monitoring emissions on July 1, 2022, to be able to purchase allowances for CO₂ emitted on or after that date.

RGGI operates on a three-year compliance schedule whereby only partial compliance is required within the first two years, and then full compliance is required after the end of the third year. The current RGGI three-year compliance period began in 2021, so 2021 and 2022 are interim compliance years while 2023 is a full compliance year. If the regulation is published before

Other RGGI news *Continued from page 1*

that “those costs would be pushed through to final customers.”

“Growing evidence from economists and environmental scientists suggest that RGGI will devastate Pennsylvania’s energy industry, dramatically increase energy costs for every consumer and produce no material gains in reducing greenhouse gas emissions,” said Senator John Yudichak (I-Luzerne).

Yudichak and Senator Gene Yaw (R-Lycoming) had requested an audit by the IFO of the modeling completed by ICF International and used by the Department of Environmental Protection to tout RGGI’s supposed economic and environmental benefits.

When Wolf signed the 2019 executive order that would force Pennsylvania into the regional carbon tax program, auction clearing prices—the amount energy producers pay to buy “credits” to offset their emissions—would be only \$3.24 per short ton in 2022. At that time, taxpayer-funded analysts insisted prices would stay under \$4 through 2030. The auction clearing price set on December 1, however, exceeded \$13 per short ton, more than four times what the department estimated and 40 percent above the September 8 clearing price alone.

The IFO said this spike in clearing prices casts doubt on every projection the former analysis made. For example, net generation from coal and natural gas—two sources of carbon emissions targeted by RGGI—will likely grow 16 percent, not the flat rate assumed by ICF, to account for increased demand.

The IFO analysis also concluded that emissions reductions between 2008 and 2020 for the 10 RGGI states were comparable to non-participating states—a fact that unravels the entire premise for joining the program in the first place, Yaw said.

Legislation on the move

The House of Representatives on March 30 approved

July 1, regulated sources must acquire 50 percent of the necessary CO₂ allowances by March 1, 2023, and acquire 100 percent of their allowances by March 1, 2024. The allowance price was \$13.50 at the last RGGI auction on March 11, 2022.

Litigation to challenge the regulation is expected after it is published in the *Pennsylvania Bulletin*, which cannot occur until after the May 4 hearing following the Commonwealth Court’s April 5 stay of publication.

Editor’s note: *On Thursday, April 7, DEP appealed to the Pennsylvania Supreme Court the Commonwealth Court order blocking publication of the RGGI rulemaking. The question presented to the high court for review is, “Did the Commonwealth Court err as a matter of law in issuing an injunction, without argument or a hearing, enjoining and restraining the LRB’s publication of the RGGI Regulation, a ministerial duty mandated by statute?” ■*

legislation by a vote of 126-72 prohibiting Pennsylvania from joining RGGI without approval by the General Assembly. Wolf vetoed similar legislation previously, but lawmakers say this time they are offering a solution.

House Bill 637 was amended not only to carry a new name—formerly the “Pennsylvania Carbon Dioxide Cap and Trade Authorization Act,” and now the “Energy Sustainability and Investment Act”—but it now provides \$250 million in COVID relief money to be spent on the following:

- \$125 million for development of carbon dioxide and methane reduction technologies for electric generation and manufacturing, securing federal funds for a regional hydrogen hub and battery storage and methane abatement projects from plugging abandoned natural gas wells.

- \$62.5 million for sewer and water infrastructure and stormwater mitigation projects, including riparian planting for carbon dioxide reduction.

- \$62.5 million for assisting workers and communities impacted by electric generation or manufacturing plant closures.

“Part of my original intent with HB 637 was to recognize RGGI’s threat to a diversified energy portfolio. I’ve now crafted an amendment that makes a good bill better through creation of the Energy Sustainability and Investment Act. In addition to addressing RGGI’s damaging impact on Pennsylvanians, my legislation recognizes the need for investment in the future of areas like Indiana County that are feeling the effects of market-driven pressures on fossil-fuel based energy,” said Rep. Jim Struzzi (R-Indiana) in a statement after the bill was amended.

HB 637 now goes to the Senate. Wolf’s office said he opposes the bill. The House also advanced Senate Bill 119 Wednesday, which also requires legislative approval to join a cap-and-trade program. It still needs a third vote before it would go to the governor’s desk.

—PIOGA staff report

Oil and Natural Gas: The Foundation for Society

PIOGA Spring Meeting



Thanks to all who helped make our April 6 event a big success. For more scenes from the day's activities, be sure to visit the Photo Galleries section at pioga.org.



Some of the day's speakers included (clockwise from above left): State Senator Gene Yaw; the ESG panel moderated by Michael Flowers of Steptoe & Johnson, along with Donald Racey of Engage Energy & Industrial Consulting, Matt Tourigny of Deep Well Services and Olayemi Akinkugbe of CNX Resources; James Lee of Susquehanna Polling & Research; Asim Haque of PJM Interconnection; and William Watson of Shell Polymers' Beaver County cracker facility.





PIOGA recognized longtime Environmental Committee co-chair Paul Hart (right) of Diversified Energy Corp. for his service. Hart is relinquishing co-chair duties due to work obligations but will continue to lend his expertise to the committee. Here, he receives a plaque from Dan Weaver, PIOGA President & Executive Director.



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EQB approves final rule reducing VOC emissions from oil & gas facilities

On March 15, the Environmental Quality Board (EQB) voted 17 to 2 to approve a final regulation intended to reduce emissions of volatile organic compounds (VOC) from existing oil and natural gas facilities. The two dissenting votes came from members representing the General Assembly who echoed PIOGA's concern that the rulemaking does not comply with the provisions of Act 52 of 2016, which requires the EQB to promulgate separate rulemakings for conventional oil and gas operations.

The regulation, which has been under development since early 2019, adopts what is known as reasonably available control technology requirements (RACT) and RACT emission limits for new and existing oil and natural gas sources of VOCs. By reducing VOC emissions, methane emissions are also reduced as a co-benefit. The rule would require oil and gas operators that produce above a certain threshold to use leak detection and repair (LDAR) equipment to identify and address leaks, as well as employ other equipment designed to reduce emissions.

See the January 2022 issue of *The PIOGA Press* for more information about the rulemaking. The final rule-

making and associated documents, along with a presentation given by the Department of Environmental Protection, can be found under the March 15 meeting on EQB's webpage.

DEP indicated it identified 5,039 owners or operators of approximately 31,149 facilities which may be affected by this final-form rulemaking. Approximately 3,834 of those owners or operators may meet the definition of small business.

The department believes the overall cost to industry will be approximately \$31.7 million per year, with about \$20.3 million annually in savings of recovered natural gas (based on \$1.70/mcf).

The rulemaking next will be considered by the Independent Regulatory Review Commission (IRRC) on May 19. PIOGA has expressed a number of concerns about the proposal (see the January newsletter mentioned above) and, with the help of the Environmental Committee, will be developing comments ahead of IRRC consideration of the rulemaking in May.

Particularly disappointing is DEP's response to objections that Act 52 requires the department (via the EQB) to promulgate separate regulations for conventional oil and gas operations. The comment response document included in the package of material presented at the March 15 EQB meeting stated:

In response, the Board clarifies that Act 52 does not apply to this final-form rulemaking and therefore, the Board is not required to develop a separate rulemaking and regulatory analysis form for the requirements for conventional oil and gas wells. . . . Looking at section 1207(b) outside of the context of Act 52, **it is not clear what the term "concerning conventional oil and gas wells" means** or how to determine whether a rulemaking undertaken by the Board must comply with this requirement. . . . Based on the plain language of this section, **it is also not clear what "any rulemaking" means**, especially relative to "concerning conventional oil and gas wells." **The plain language of section 1207(b) provides no bounds on what activities are controlled by this requirement and how the Board determines whether "any rulemaking" must comply with this section.** (*Emphasis added.*)

PIOGA contends that DEP is simply trying to create ambiguity when none exists in the context of Act 52.

Watch for a further report covering PIOGA's comments to IRRC as well as action by the commission. ■



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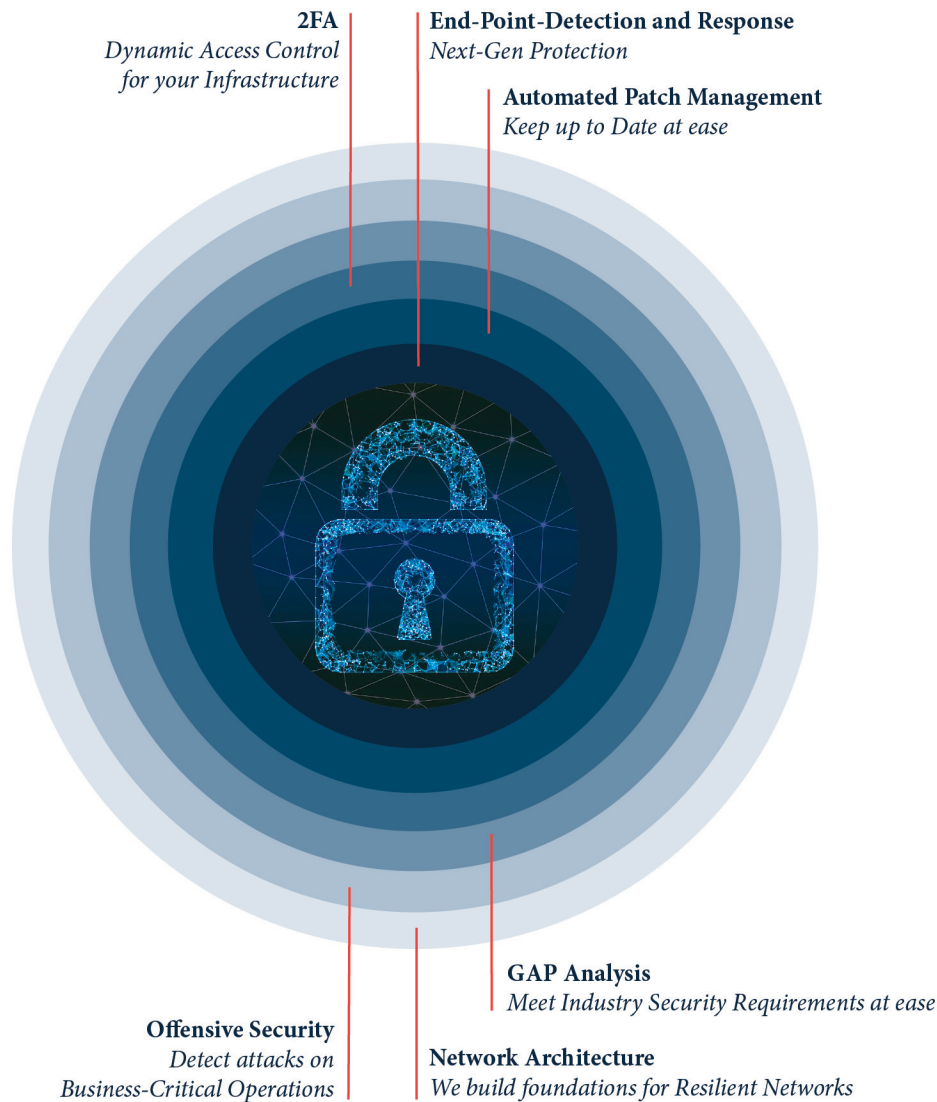


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Several critical legal issues emerge from comments on EPA's methane proposal

The U.S. Environmental Protection Agency's highly anticipated November 2021 Clean Air Act (CAA) proposal regulating methane and volatile organic compound (VOC) emissions from the oil and gas sector drew a reported 400,000 individual submissions. Through the methane proposal (*Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*, 86 Fed. Reg. 63,110 (Nov. 15, 2021)), EPA seeks to expand the current VOC and methane emissions regulations that apply to new, modified, and reconstructed sources within the crude oil and natural gas production sector that were promulgated by EPA in 2012 (40 C.F.R. Part 60, Subpart OOOO) and 2016 (40 C.F.R. Part 60, Subpart OOOOa). In addition, the methane proposal includes the first nationwide methane emissions guidelines for existing sources within the oil and gas sector.

It is no surprise that EPA received a significant number of comments on the methane proposal, especially considering the relatively brief and tumultuous history of the agency's regulation of methane emissions from the oil and gas sector under the CAA. The commenters' views on the proposal differ considerably. Many commenters, primarily those representing the oil and gas industry and certain states, raised serious legal concerns and also questioned the technical aspects and propriety of several key components of issues with the proposal. On the other hand, commenters from other states, local governments and environmental groups urged EPA to impose even more stringent requirements, beyond those included in the methane proposal. Several key themes and legal issues emerged from these comments. This article highlights some of the potentially pivotal legal issues raised by commenters, including those related to EPA's proposed community-based monitoring program.

Comments addressing legal issues related to EPA's methane proposal

Commenters raised numerous legal issues with the methane proposal, ranging from foundational issues on whether the CAA allows EPA to regulate methane emissions from the oil and gas in this manner to legal concerns about the way EPA is proposing to regulate specific sources in the proposal. In particular, several com-

Authors:



Gary
Steinbauer



Christina
Puhnaty
—
Babst Calland

menters assert that the methane proposal compounds EPA's previous error in failing to make the requisite findings required by the CAA to regulate methane emissions from the oil and gas sector and EPA's legal authority to regulate emissions from sources in the transmission and storage segment.

The legal issues surrounding EPA's addition of methane to Subpart OOOOa and the transmission and storage segment to Subparts OOOO and OOOOa were raised previously when EPA promulgated Subpart OOOOa in 2016 and in subsequent legal challenges that are currently stayed. Notably, the Trump administration finalized a rule in September 2020 removing methane from Subpart OOOOa and the transmission and storage segment from Subparts OOOO and OOOOa, but in June 2021 Congress rescinded this rule using its Congressional Review Act authority. The House of Representatives issued a report that accompanied its disapproval of the Trump administration's rule. Notably, in the House's report, it openly disagreed with the interpretation of the CAA advanced by the Trump administration to support the removal of methane from Subpart OOOOa.

Commenters on the methane proposal, however, suggested that the House's report is of limited import and the sole effect of Congress' action was limited to rescinding the Trump administration's rule and preventing EPA from promulgating a substantially similar rule in the future. In other words, these commenters state that EPA must still meet the CAA requirements for regulating methane emissions from the oil and gas sector, suggesting that these long-standing legal issues are unlikely to resolve themselves.

Several commenters also raise three additional legal issues with the methane proposal that could prove to be critical:

- **Due process and fair notice.** Many commenters took issue with the listed applicability date of November 15, 2021, for the new CAA § 111(b) performance standards included in the methane proposal. When EPA published the methane proposal it did not provide proposed regulatory text for the proposed new CAA § 111(b) performance standards or CAA § 111(d) emission guidelines for existing sources. Therefore, several commenters questioned EPA's use of the *Federal Register* publication date as having any legal import, given the importance of the proposed regulatory text in understanding proposed legal obligations and governing statutory language.

- **Modification definitions.** Commenters also took issue with EPA's proposed source-specific definitions of "modification" for the new proposed requirements for centralized production facilities, tanks and tank batteries, and well liquids unloading. Section 111 of the CAA defines a "modification" as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." 42 U.S.C. § 7411(a)(3). EPA, however, proposes to promulgate

source-specific “modification” definitions for the above-referenced sources or facilities that, some commenters argue, are inconsistent with the CAA’s definition of “modification.”

• **“Legally and practicably enforceable limits.”** On page 92 of the 154-page methane proposal, EPA proposes to create a new definition to “clarify” the term “legally and practicably enforceable limits” as it relates to the regulation of storage vessels in the oil and gas sector. This term embodies the long-established and applied concept of allowing sources to account and take credit for emission reductions when assessing applicability of air regulatory requirements. This concept is used across several major CAA stationary source programs and is not specific to EPA’s CAA regulations for the oil and gas sector. Several commenters urged EPA to issue a broad-based rulemaking should it wish to clarify this key term by regulation.

While many commenters have raised critical threshold legal concerns with EPA’s methane proposal, other commenters, particularly those from certain states and environmental groups, not only expressed support for the underlying legal interpretations advanced by EPA in the proposal, but encouraged EPA to expand the proposal further to impose more stringent requirements and regulate additional sources of methane and VOC emissions.

Comments on the proposed community-based monitoring program

In the methane proposal, EPA directly solicits input and comments on how to design and implement a program through which communities could use methane detection systems to identify large emissions events and provide that information to facility owners and operators. According to EPA, data and information collected in this community-based monitoring program would be used to require operators to investigate emissions events over a defined emissions threshold, conduct a root cause analysis and take appropriate action

to mitigate the emissions. EPA’s proposed community-based monitoring program is novel. We are unaware of any other CAA regulations that expressly allow and authorize third-parties to monitor and measure emissions and use this data and information to force action by the regulated facility.

While some states, including Pennsylvania, and environmental groups voiced support for the proposed program and offered implementation suggestions, industry group commenters in particular raised several legal concerns with the conceptual program. One industry group questioned EPA’s authority to directly allow, by regulation, the proposed community-monitoring program, noting that the information-gathering authority provided to EPA in CAA § 114 is limited to certain types of entities, none of which would cover a third-party community-member. Other commenters noted that EPA’s proposed community-monitoring program would encourage trespass and unsafe practices, as well as raise significant data validation concerns.

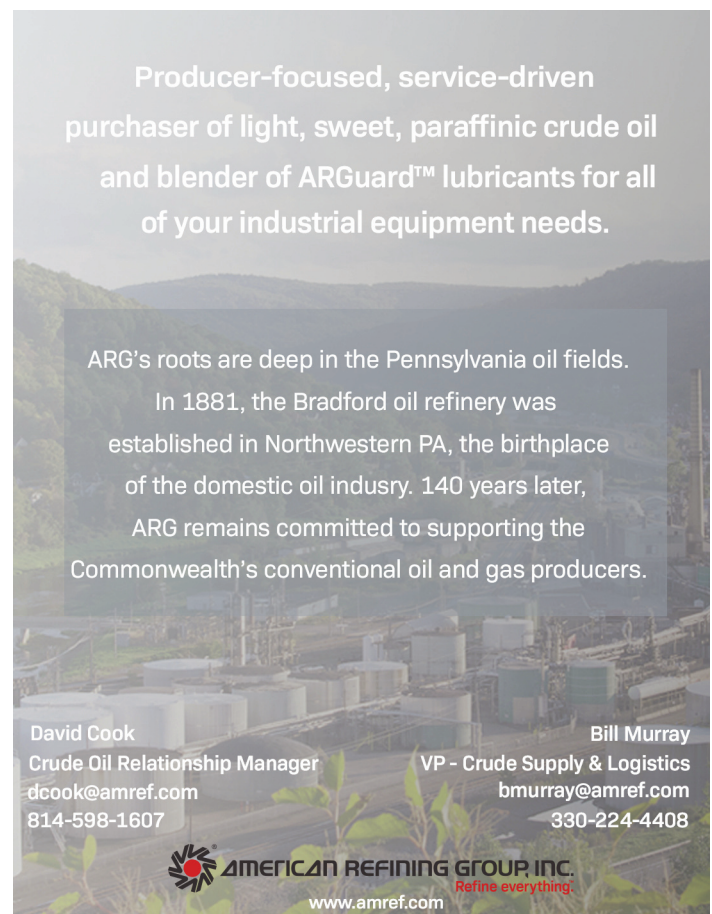
Conclusion

The widely divergent views on the legality of EPA’s methane proposal suggest that future litigation is inevitable. Because EPA has indicated that it will release a supplemental proposal, which is expected to include the proposed regulatory text, stakeholders should know soon whether EPA will change or alter course in an effort to subdue potential challengers. ■



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Due now: Membership directory updates and advertising

We are getting ready to publish the 2022-2023 PIOGA Membership Directory & Service Guide, and one of the biggest tasks is to make sure each member company's information is correct—including the mailing address, phone numbers, website and individual contacts within the company.



The main contact of each member company recently received a letter showing all of their information in our membership database and requesting that the form be returned with any updates **no later than May 2**.

If you are the primary contact and haven't already reviewed the information, please do so now. For individual contacts shown, it is particularly important that email addresses be included, as most of our communications with members are done electronically.

If you did not receive the letter or have questions, contact Deana McMahan at 724-933-7306 ext. 23 or deana@pioga.org.

Make your company stand out. Elsewhere in this issue is information about advertising opportunities in the directory (*see page 16*). Three *affordable* sizes of ads are available in the Preferred Suppliers section of the book. For new members in particular, this is an excellent opportunity to let everyone know who you are and what services you have to offer.

All of the premium positions have been sold, but there is unlimited space available in the Preferred Suppliers section. For questions about advertising, or to reserve your space, contact Debbie Oyler at 724-933-7306 ext. 22 or debbie@pioga.org. **Ad material and payment must be received by May 2.** ■



Financial Wellness

PIOGA members are invited to take part in a free webinar on Tuesday, April 26, from noon to 1 p.m. as representatives from member company Utilities Employees Credit Union talk about how your financial health can affect your physical health. The presentation will cover UECU's CueltUp Financial Wellness Platform, products and services, and how UECU can help PIOGA members. To RSVP today, see Events at members.pioga.org.



JUST THE FACTS



A dose of reality for the ‘Just quickly produce more U.S. energy’ crowd

The April edition of PIOGA’s Just the Facts series is a little slow off the block due to our Spring Meeting, but we can tell you that it addresses a misconception we’ve heard a lot lately. Russia’s invasion of Ukraine in late January had immediate ripple effects on the global energy market, causing prices to spike and stunning many U.S. officials.

The nationwide spike in gasoline prices predictably turned to impassioned pleas for U.S. oil and gas companies to increase production as rapidly as possible. Biden administration officials urged the industry to do “whatever it takes” to increase production quickly, and said the country’s “strong domestic energy infrastructure” can support fast-tracking natural gas transportation.

If it were only that simple.
While the three Appalachian Basin states already

produce more natural gas than any region in the country—with much more in proven reserves—the obstacles for Pennsylvania to somehow “instantly” produce more gas and help ease consumer anxiety about energy are considerable. Our Just the Facts for this month talks about impediments to raising capital, regulatory burdens and lack of predictability from all levels of government, and, of course, roadblocks to an expanded natural gas infrastructure.

Much work needs to be done nationally and in Pennsylvania to get to a “whatever it takes” approach to easing high prices and addressing energy shortages both here and abroad.

Be sure to watch your email or check the Latest News and Blog section at pioga.org for the whole story. As always, we encourage you to share the facts with friends, colleagues and family.



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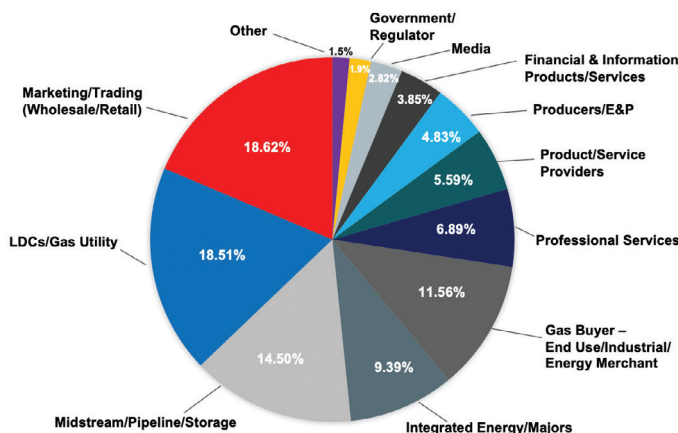


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Industry comments on draft beneficial-reuse general permit

PIOGA has concurred with formal comments submitted to the Department of Environmental Protection by the Marcellus Shale Coalition on the draft of a new general permit known as WMGR163 for temporary facilities that process and beneficially reuse oil and gas liquid wastes for no more than 180 consecutive days. The two associations cautioned that without changes, the new permit will be of little use to industry.

DEP was directed to create the permit by a provision included in the state's FY 2021-2022 budget package. The proposed general permit has a narrower scope than the similar WMGR123 that also applies to treatment and reuse facilities for liquid oil and gas wastes (*February PIOGA Press, page 12*). WMGR163 allows facilities to operate no more than 180 consecutive days and is focused on oil and gas liquid waste transported to a well site where it is used to hydraulically fracture another well.

In comments filed March 15, the MSC made the following points about the draft:

- The draft permit restricts operations to one calendar year and one consecutive 180-day period, but Act 70 of 2021 does not state that a general permit for a temporary facility can be good only for a single year.
- As currently written, WMGR163 is not consistent with the legislative intent of Act 70 and provides little if any value to the regulated community. For WMGR163 to be utilized by operators, MSC recommended that the review time be shorter and more reliable than has been

the experience under WMGR123. Like other general permits for temporary activities, the permit review time should be a maximum of 60 business days, and the permit should be good for at least two years.

- The permit should be amended to include the definition of "beneficial use" as found in 25 Pa. Code §287.1. Moreover, DEP should recognize that the use of evaporators onsite constitutes a beneficial use and should be eligible for coverage under the permit. The MSC pointed out that the use of an evaporator—which returns water to the natural hydrogeologic cycle—is obviously a beneficial use and advantageous to the environment.

- The MSC recommended adding language to the definition of "Processing" to limit it only to storage specifically associated with processing activities.

The MSC also commented on several specific provisions of the draft general permit, including questioning DEP's imposition of a 1-million-gallon limit on storage; asking DEP to clarify conditions that cause "public nuisances"; recommending that language be included allowing the permittee to store other operators' wastes similar to their own, whether comingled or not; and asking the department to consider reducing the amount of duplicative waste reporting required.

PIOGA's March 15 comments stated: "PIOGA agrees with and supports the comments of the Marcellus Shale Coalition (MSC), and emphasizes that, unless the changes requested by the MSC are made, this permit is not likely to be used by our industry." ■



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Ohio Supreme Court decision provides further clarity on the common law distinction between a reservation and an exception

On February 15, the Supreme Court of Ohio issued its decision in *Peppertree Farms, L.L.C., et al. v. Thonen, et al.*, 2022-Ohio-395 (2022), providing further clarity on the common law distinction between a “reservation” of a property interest and an “exception” to a conveyance. The court concluded that the deeds creating the severed oil and gas rights contained an exception of said rights from the transfer of the property, instead of a reservation of said rights that would have required words of inheritance prior to March 25, 1925.

On March 25, 1925, the Ohio General Assembly abrogated the common law distinction between a reservation and an exception whereby words of inheritance, such as “the grantors and their heirs, successors and assigns,” were no longer required to retain, or pass on, a fee simple interest in land. However, prior to March 25, 1925, words of inheritance were required to create a fee simple interest in a reservation or conveyance of an estate. Otherwise, the interest reserved or conveyed was limited to that of a life estate and the interest expired upon the death of the interest holder. If the interest created was an exception, rather than a reservation, then no words of inheritance were required to create a fee simple estate.

In *Peppertree*, the severance language at issue was contained in two deeds made prior to 1925 and, as such, the courts were called to determine whether the interest created was a reservation or an exception, resulting in either a life estate or a fee simple interest, respectively. In 1916, W. T. and Katherine Fleahman conveyed two tracts of land in Monroe County, Ohio, to W. A. Gillespie, using the following severance language: “Grantor W. T. Fleahman excepts and reserves from this deed the one half of the royalty of the oil and gas under the above described real estate” (the “W. T. Fleahman Interest”). Mary Fleahman then acquired W. A. Gillespie’s interest and executed a deed in 1920, stating, “the 3/4 of oil Royalty and one half of the gas is hereby reserved and is not made a part of this transfer” (the “Mary Fleahman Interest”). Mary Fleahman then conveyed her rights to the oil and gas royalty to W. T. Fleahman. The Stark County Court of Common Pleas held that the language contained in both deeds constituted reservations rather than exceptions, and therefore words of inheritances were required to create a fee-simple interest.

On appeal to the Fifth District Court of Appeals, the appellants argued that the severance language contained in the above-described deeds were that of excep-

Authors:



Andrea Riedel



Bill O'Brien

—
Steptoe & Johnson, PLLC

tions rather than reservations and, therefore, words of inheritance were not required in order to create a fee simple interest. In its decision, the appellate court cited to *Chesapeake Exploration L.L.C. v. Buell*, 2015-Ohio-4551 (2015), finding that the interest reserved in the aforementioned deeds could most properly be characterized as reservations, as “when minerals are severed from the surface estate, two and new separate estates are created[.]” As the language in the instruments reserved new interests unto the grantors, rather than merely excepting them from the grant, the appellate court overruled the first assignment of error. As such, the Fifth District Court of Appeals affirmed the prior decision, stating that “[b]oth reservations explicitly indicate the grantors were reserving interests unto themselves, not merely excepting them from the grant. The Mary Fleahman Interest and the W. T. Fleahman Interest created new, severed oil and gas interests.”

The Supreme Court of Ohio accepted the appeal from the Fifth District Court of Appeals in order to determine, most importantly, whether as a matter of law, an oil and gas severance prior to 1925 using the words “excepts and reserves” or “reserved and is not made part of this transfer” in an instrument conveying real property is the retention of an existing interest or the creation of a new property interest.

The Supreme Court disagreed with the lower courts and held that the language contained in both deeds constituted an exception rather than a reservation. The court stated that because the oil and gas was already in existence at the time of the conveyance, a fee simple property interest existed in the unaccrued oil and gas royalties that the grantors could except from the transfer of the real estate. The conveyances did not create the oil and gas royalty interest, but rather excluded or withheld said interest from the operation of the conveyance, thereby constituting an exception. The grantors owned a fee-simple interest that was inheritable and, therefore, words of inheritance were not required to retain more than a life estate in the excepted interest in the oil and gas royalties.

Furthermore, in response to *Peppertree*’s assertion that W. T. Fleahman and Mary Fleahman retained an interest only in oil and gas royalties which are personal property interests and therefore the reservation of the same created new property rights, the court again disagreed and held that, at the times that W. T. Fleahman and Mary Fleahman each conveyed the property, they owned an existing real-property interest in unaccrued royalties from the production of oil and gas. This interest could properly be severed from both the surface and the mineral estate and, therefore, their property rights in the partial interest to the oil and gas were absolute. ■

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PHMSA announces requirements for new pipeline shutoff valves

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) on March 31 announced a new rule the agency said is intended to help improve pipeline safety, reduce methane emissions, and protect the public by requiring the installation of remotely controlled or automatic shut-off valves—or alternative equivalent technologies—on new and replaced onshore natural gas, carbon dioxide and other hazardous liquid pipelines.

The requirements will apply to pipelines 6 inches in diameter or greater. Pipeline operators installing these valves also will be required to comply with new performance standards for the operation of those valves requiring their closure to isolate a ruptured pipeline segment as soon as practicable (but no more than 30 minutes) after rupture identification. Faster shutdown times will help improve safety by allowing faster access to emergency first responders who respond to fires and injuries, PHMSA said in announcing the rule.

The final rule also requires operators to ensure their emergency response plans contain written procedures

for timely identification and mitigation of ruptures on their systems, as well as to include procedures for engaging public safety officials (such as 9-1-1 call centers, fire, police, and other first responders).

The final rule addresses congressional mandates from the Pipeline Safety Act of 2011 and recommendations from both the National Transportation Safety Board and a study conducted by the Government Accountability Office.

PHMSA published a Notice of Proposed Rulemaking (NPRM) in February 2020 for the expanded use of automatic and remotely controlled shutoff valves. The comments and information collected in response to the 2020 NPRM assisted PHMSA in completing the final rule. The final rule was submitted to the *Federal Register* on March 31 and will become effective 180 days following its date of publication.

For more information, go to www.phmsa.dot.gov/news/phmsa-final-rule-pipeline-valve-installation-and-rupture-detection-standards-federal-register. ■

Biden administration, CISA, FBI and NSA respond to cybersecurity threats to critical infrastructure posed by Russia

On March 21, President Biden issued a statement in response to evolving intelligence that Russia is exploring options for malicious cyberattacks against the United States. The statement highlights the measures taken by the administration to strengthen cyber defenses within the federal government and, to the extent that it has authority, within critical infrastructure sectors.

Authors:



Justine Kasznica



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— Babst Calland —

Additionally, President Biden called on private sector critical infrastructure owners and operators to accelerate and enhance their cybersecurity measures, urging them to take advantage of public-private partnerships and initiatives, including those administered by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA). Appended to President Biden's statement was a Fact Sheet (www.whitehouse.gov/briefing-room/statements-releases/2022/03/21/fact-sheet-act-now-to-protect-against-potential-cyberattacks), which outlines specific steps that companies can take to bolster cybersecurity across the nation, and refers readers to various resources compiled by CISA, as part of a cybersecurity campaign.

In November, the Biden administration began ramp-

Continues on page 20

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Safety Committee Corner

First-aid/CPR/AED certification PIOGATech update

The Safety Committee hosted a PIOGATech and certification class February 24 on first-aid/CPR/AED. An intimate group of industry professionals gathered for the in-person training that covered first-aid in the field, AED training and CPR certification.

The five-hour class was taught by Bill Zelnis and Jason Harding of CNX Resources. Certification was completed through the American Red Cross.

PIOGA extends a personal thank-you to our instructors and to Safety Committee Co-Chairs Eric Staul and Wayne Vanderhoof for putting this training together. ■



Dave Cook (left) and Eric Staul try out their CPR skills. Our next PIOGATech is May 17 and will cover Well, Pad & Pipeline Development Considerations.

Klapkowski named acting DEP oil and gas chief

Kurt Klapkowski has been named Acting Deputy Secretary for Oil & Gas Management by the Department of Environmental Protection. He replaces Scott Perry, who parted ways with the agency in February.



Prior to his appointment as acting deputy, Klapkowski served as Director of the Bureau of Oil and Gas Planning and Program Management since March of 2012. As bureau director, he oversaw the coordination of DEP's development of policy, technical guidance, regulatory and legislative documents, as well as providing ongoing education and outreach to the public and regulated communities.

From January 1994 to March 2012, Klapkowski served as Assistant Counsel in DEP's Bureau of Regulatory Counsel for a variety of programs, including Storage Tanks, Land Recycling Program, the Office of Pollution Prevention and Compliance Assistance, Oil and Gas Management, Hazardous Waste Management and Nuclear Safety.

At this point in the Wolf administration, it is not anticipated that a new deputy secretary will be named until after a new governor is elected in November. ■

Members talk about the value of PIOGA membership

New Pig Energy has been a member of PIOGA since 2011. We joined to help oil and gas operators protect on-site workers from slips and falls and the environment from spills. PIOGA and its committees provide invaluable information on changing regulatory requirements and safety issues. Frequent networking and educational events bring the industry together to discuss opportunities and challenges. This timely sharing of information is what has enabled us to continue to design new products to address environmental and safety concerns.

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**Beth Powell, President
New Pig Energy**

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See more from the March 9 event in the Photo Galleries section at pioga.org.



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Student

Cyber threats *Continued from page 15*

ing up its cybersecurity and defense measures in response to Russian President Vladimir Putin's escalating aggression toward Ukraine. On January 11, CISA, the Federal Bureau of Investigation (FBI) and the National Security Agency (NSA) issued Alert AA22-011A, "Understanding and Mitigating Russian State-Sponsored Cyber Threats to U.S. Critical Infrastructure" (www.cisa.gov/uscert/ncas/alerts/aa22-011a) which provided an overview of Russian state-sponsored cyber operations; commonly observed tactics, techniques and procedures (TTPs); detection actions; incident response guidance; and mitigations. The administration, CISA, FBI and NSA continued to monitor the level of risk posed by Russia, which recently escalated based on intelligence indicating that Russia is planning cyberattacks against the United States in response to economic sanctions that the United States has imposed.

What is Shields Up?

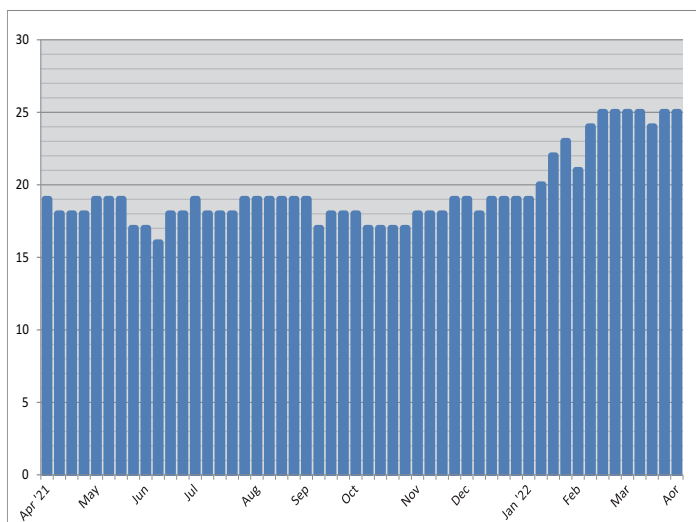
Shields Up is a cybersecurity campaign formed out of the combined efforts of CISA and the FBI to help organizations prepare for, respond to and mitigate the impact of cyberattacks by Russia. Although the campaign is focused on critical infrastructure, CISA has emphasized that all organizations, regardless of sector or size, must be prepared to defend against and respond to disruptive cyber incidents.

On March 22, CISA hosted an Unclassified Broad Stakeholder Call to brief attendees on the escalating threat of cybersecurity attacks by Russia. Jen Easterly

Continues on page 22

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices



Natural Gas Futures Closing Prices

Month	Price
May	\$6.705
June	6.784
July	6.839
August	6.833
September	6.835
October	6.826
November	6.906
December	7.070
January 2023	7.169
February	6.985
March	6.260
April	4.750

Prices as of April 11

Sources

American Refining Group: www.amref.com/Crude-Prices-New.aspx

Ergon Oil Purchasing: www.ergon.com/crudeoil

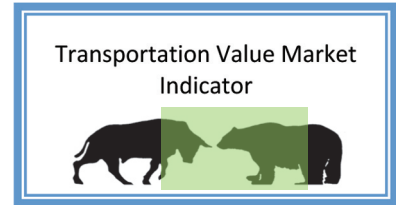
Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG

Baker Hughes rig count: bakerhughesrigcount.gcs-web.com/na-rig-count

Appalachian fixed price moving averages: David Marks, BHE Eastern Energy Field Services

Northeast Pricing Report — March 2022

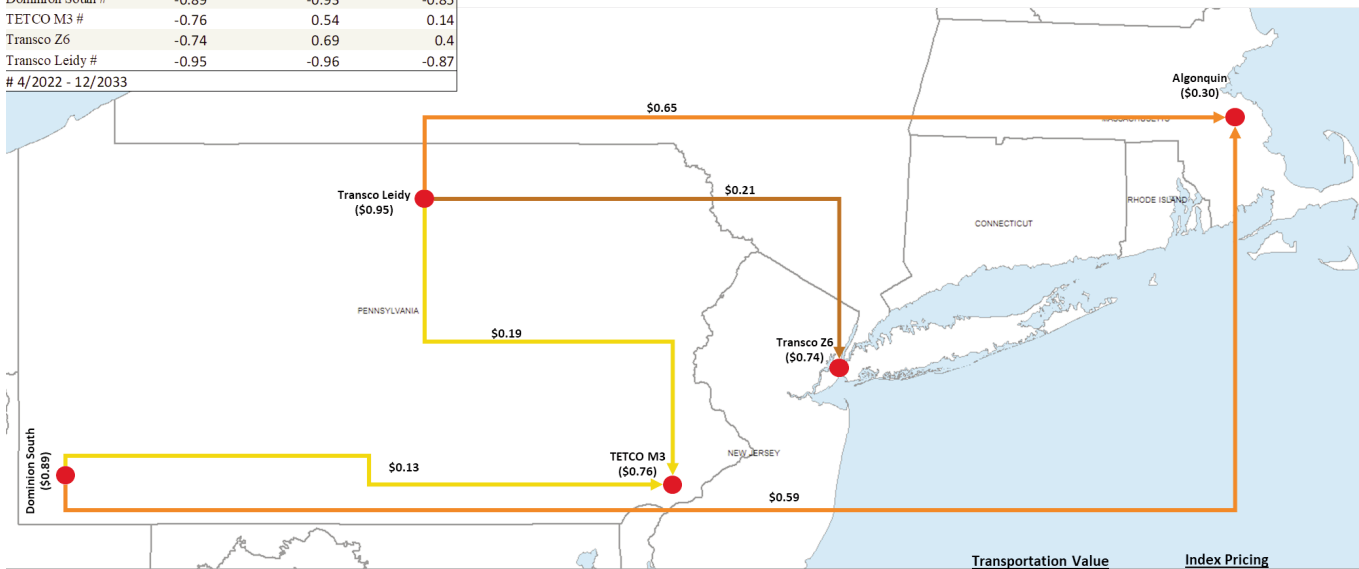
Front month trading for all locations continues to drop for the second month in a row. New England pricing was hit hard again, decreasing another \$3.93 per MMBtu. Transco Z6 and TETCO M3 decreased similar amounts at \$0.38 and \$0.30 per MMBtu. For one-year trading, every location increased. Algonquin increased the most by \$1.36 per MMBtu, then TETCO M3 and Transco Z6 by \$0.37 and \$0.47 per MMBtu. Transco Leidy and Dominion South had slight increases of \$0.08 and \$0.07 per MMBtu. For long-term pricing, Algonquin increased a substantial \$0.60 per MMBtu. Transco Z6 and TETCO M3 gained \$0.14 and \$0.06 per MMBtu. Transco Leidy and Dominion South decreased \$0.06 and \$0.05 respectively.



Provided by Bertison-George, LLC
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Transportation values continue to slide as well for April. Dominion South and Transco Leidy to Algonquin are valued at \$0.59 and \$0.65 per MMBtu representing an 87% and 85% drop from last month. Transco Leidy to Transco Z6 decreased \$0.20 per MMBtu or 49% from last month. Dominion South to TETCO M3 decreased \$0.17 per MMBtu. Transco Leidy to TETCO M3 fell another \$0.12 per MMBtu. TETCO M3 to Transco Z6 fell the least by \$0.08 per MMBtu.

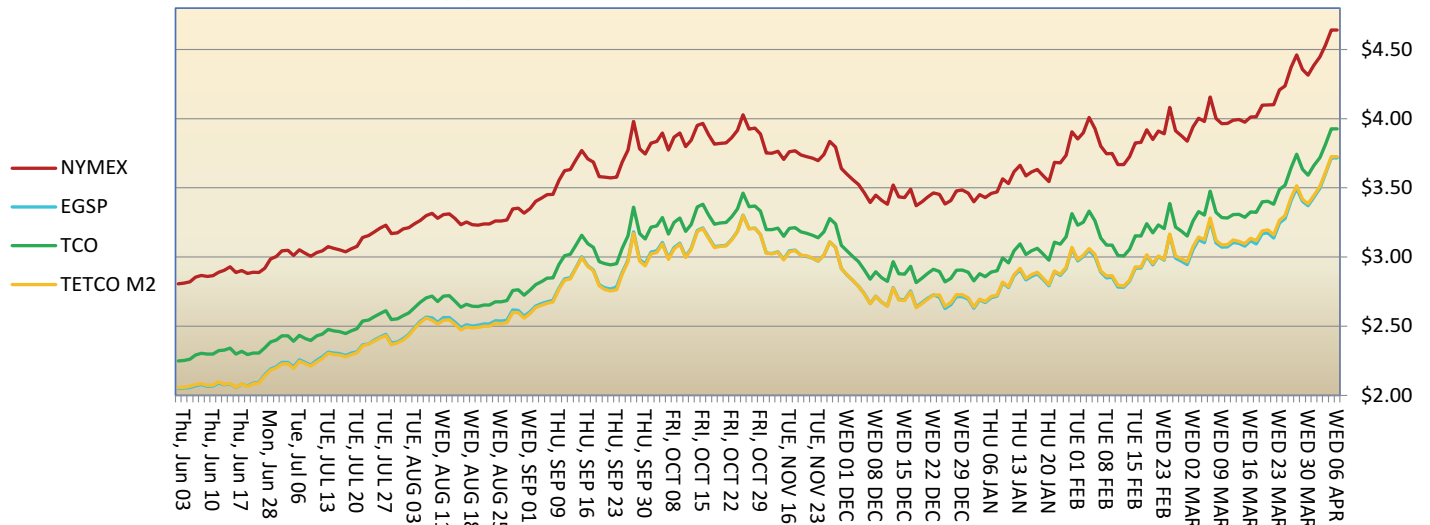
Natural Gas Basis Future Pricing			
Location	Pricing Term		
	4/2022	4/2022-3/2023	4/2022-12/2027
Algonquin	-0.3	5.72	2.79
Dominion South #	-0.89	-0.93	-0.85
TETCO M3 #	-0.76	0.54	0.14
Transco Z6	-0.74	0.69	0.4
Transco Leidy #	-0.95	-0.96	-0.87



Pricing as of March 31, 2022 Future contract only; Source ICE End of Day Report

Transportation Value: High (orange arrow), Middle (brown arrow), Low (yellow arrow)
Index Pricing: Increasing (black circle), Decreasing (red circle)

12-Month Appalachian Fixed Price Moving Averages



Spud Report: February-March*



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
Bald Hill Oil	2	2/28/22	053-30944*	Forest	Howe Twp
		3/7/22	053-30945*	Forest	Howe Twp
Beech Resources LLC	3	2/1/22	081-21917	Lycoming	Lycoming Twp
		2/1/22	081-21918	Lycoming	Lycoming Twp
		2/1/22	081-21919	Lycoming	Lycoming Twp
BKV Opr LLC	4	2/1/22	131-20644	Wyoming	Washington Twp
		2/1/22	131-20642	Wyoming	Washington Twp
		2/1/22	131-20643	Wyoming	Washington Twp
		2/1/22	131-20645	Wyoming	Washington Twp
Blackhawk Energy LLC	1	2/21/22	083-57355*	McKean	Hamilton Twp
		2/23/22	053-30956*	Forest	Howe Twp
Cameron Energy Co	3	2/23/22	053-30955*	Forest	Howe Twp
		2/23/22	053-30956*	Forest	Howe Twp
		3/7/22	053-30955*	Forest	Howe Twp
Chesapeake Appalachia LLC	6	2/15/22	015-23702	Bradford	Overton Twp
		2/15/22	015-23701	Bradford	Overton Twp
		2/15/22	015-23703	Bradford	Overton Twp
		2/24/22	015-23706	Bradford	Wilmot Twp
		2/24/22	015-23705	Bradford	Wilmot Twp
		2/24/22	015-23704	Bradford	Wilmot Twp
Coterra Energy Inc	5	2/23/22	115-22802	Susquehanna	Middletown Twp
		2/23/22	115-22803	Susquehanna	Middletown Twp
		3/15/22	115-22907	Susquehanna	Springville Twp
		3/15/22	115-22908	Susquehanna	Springville Twp
		3/15/22	115-22909	Susquehanna	Springville Twp
EQT ARO LLC	10	2/15/22	081-21914	Lycoming	Cascade Twp
		2/15/22	081-21915	Lycoming	Cascade Twp
		2/22/22	059-28170	Greene	Jackson Twp
		2/22/22	059-28171	Greene	Jackson Twp
		2/22/22	059-28172	Greene	Jackson Twp
		2/22/22	059-28173	Greene	Jackson Twp
		2/22/22	059-28068	Greene	Jackson Twp
		2/22/22	059-28167	Greene	Jackson Twp
		2/22/22	059-28168	Greene	Jackson Twp
		2/22/22	059-28169	Greene	Jackson Twp
Jett Oil LLC	2	2/3/22	123-48592*	Warren	Pleasant Twp
		2/25/22	123-48593*	Warren	Pleasant Twp
Kylander Oil Inc	2	2/22/22	123-48627*	Warren	Glade Twp
		3/10/22	123-48629*	Warren	Glade Twp
MSL Oil & Gas Corp	4	2/24/22	083-57341*	McKean	Hamilton Twp
		3/1/22	083-57338*	McKean	Hamilton Twp
		3/4/22	083-57340*	McKean	Hamilton 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
Pennhills Resources LLC	1	3/10/22	083-57339*	McKean	Hamilton Twp
		2/11/22	083-57346*	McKean	Hamilton Twp
PVE Oil Corp Inc	1	2/24/22	083-57260*	McKean	Sergeant Twp
Range Resources Appalachia	12	2/26/22	003-22626	Allegheny	Findlay Twp
		2/26/22	003-22627	Allegheny	Findlay Twp
		2/26/22	003-22628	Allegheny	Findlay Twp
		3/17/22	081-21920	Lycoming	Lewis Twp
		3/17/22	081-21922	Lycoming	Lewis Twp
		3/17/22	081-21923	Lycoming	Lewis Twp
		3/17/22	081-21921	Lycoming	Lewis Twp
		3/17/22	081-21924	Lycoming	Lewis Twp
		3/8/22	125-28978	Washington	Buffalo Twp
		3/8/22	125-28981	Washington	Buffalo Twp
		3/9/22	125-28979	Washington	Buffalo Twp
		3/9/22	125-28980	Washington	Buffalo Twp
Seneca Resources Co LLC	8	2/1/22	047-25118	Elk	Jones Twp
		2/1/22	047-25119	Elk	Jones Twp
		2/1/22	047-25121	Elk	Jones Twp
		2/2/22	047-25116	Elk	Jones Twp
		2/2/22	047-25117	Elk	Jones Twp
		2/2/22	047-25120	Elk	Jones Twp
		2/3/22	047-25123	Elk	Jones Twp
		2/3/22	047-25122	Elk	Jones Twp
STL Resources LLC	3	2/10/22	035-21329	Clinton	Grugan Twp
		2/10/22	035-21330	Clinton	Grugan Twp
		2/10/22	035-21331	Clinton	Grugan Twp
SWN Prod Co LLC	5	2/1/22	115-22936	Susquehanna	Lenox Twp
		2/2/22	115-22937	Susquehanna	Lenox Twp
		3/15/22	115-22975	Susquehanna	Middletown Twp
		3/16/22	115-22977	Susquehanna	Middletown Twp
		3/17/22	115-22976	Susquehanna	Middletown Twp

	March*	February	January	December	November	October
Total wells	21	51	65	49	62	76
Unconventional Gas	15	41	54	39	58	62
Conventional Gas	0	0	0	0	0	0
Oil	6	9	6	7	4	7
Combination Oil/Gas	0	1	5	3	0	7

* Note: Due to database problems at DEP last month, it appears the March report may be incomplete. We will check and run it again next issue if necessary.

Cyber threats *Continued from page 20*

(Director of CISA), Matt Hartman (Deputy Executive Assistant Director of Cybersecurity of CISA) and Tonya Ugoretz (Deputy Assistant Director of the FBI Cyber Division) addressed attendees, focusing their comments on the Shields Up campaign and highlighting most important actions that organizations can take to prevent, detect and respond to possible cyberattacks. A condensed list of these actions includes:

1. Familiarize yourself with your networks and actively patrol systems, including informational and operational technology, for perceived threats or unexpected events (identified TTPs, malware signatures, etc.).
2. Regularly scan public-facing programs, systems and software for vulnerabilities.
3. Secure your systems and credentials by using complex passwords, two-factor authentication, encryption, patching, etc.
4. Maximize resilience to cyberattacks by strengthening security of operating systems, software and

firmware, and by scheduling automatic updates of these systems.

5. Prepare a cyber incident response plan that includes FBI contact information for reporting, as well as contact information for an incident response firm and outside legal counsel.

6. Report any incidents immediately and maintain a low threshold for reporting.

In addition to the foregoing broad, categorical guidance and advice, the Shields Up website (www.cisa.gov/shields-up) has valuable resources to assist those in the private sector with the development and implementation of enhanced security measures. These resources include technical guidance, a catalog of known exploited vulnerabilities, a catalog of free cybersecurity services and tools provided by the federal government, a catalog of free cyber hygiene services, a ransomware guide, and many other preparedness and response resources. ■

Calendar

PIOGA events

Information: www.pioga.org > PIOGA Events

Sporting clays networking event

The Promise Land Sporting Clays Club, Freeport

PIOGATech: Well, Pad and Pipeline Development

Considerations

May 17, RLA Learning & Conference Center, Cranberry Twp.

Oil Patch Classic Golf Outing

June 16, Wanango Country Club, Reno

PIOGATech: safety topic TBA

August 3, venue TBA

25th Annual Divot Diggers Golf Outing

August 18, Tam O'Shanter Golf Course, Hermitage

PIOGATech: Water and Waste Management

September 15, venue TBA

Fall Festival and Marcellus to Manufacturing

October 19, venue TBA

Annual Meeting and clay shoot

October 20, venue TBA

Annual Oil & Gas Tax and Accounting Seminar

November 16, venue TBA

PIOGATech: Air Quality

December 15, venue TBA

Mix, Mingle & Jingle Holiday Party

December 15, venue TBA

Other events

LDC Gas Forum Northeast

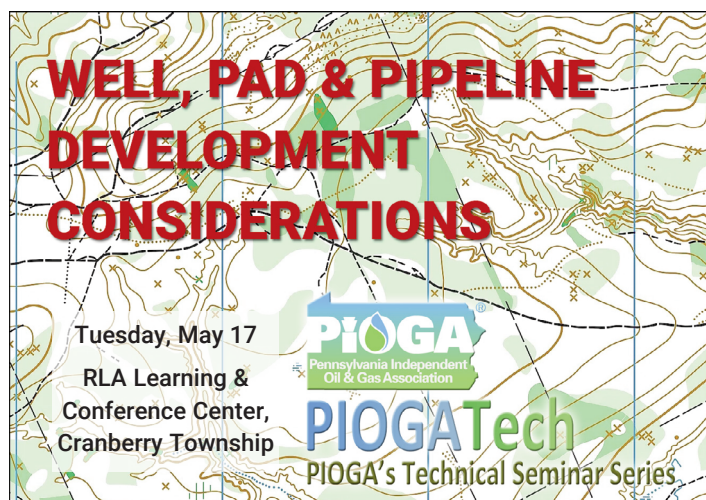
June 13-15, Boston. \$125 discount for PIOGA members
Info: pioga.org/event/2022-ldc-gas-forum-northeast

Ohio Oil & Gas Association Annual Meeting

June 21, Columbus, OH
Info: www.ooga.org/event/2021-annual-meeting

GO-WV Summer Meeting

August 7-9, The Greenbrier, White Sulphur Springs, WV
Info: gowv.com/events/2022-summer-meeting-registration



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Pennsylvania Independent Oil & Gas Association

115 VIP Drive, Suite 210, Wexford, PA 15090-7906
724-933-7306 • fax 724-933-7310 • www.pioga.org

Harrisburg Office (Kevin Moody)

212 Locust Street, Suite 300, Harrisburg, PA 17101
717-234-8525

Northern Tier Office (Matt Benson)

167 Wolf Farm Road, Kane, PA 16735
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