

# The P*IOGA* Press

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Pennsylvania Independent Oil & Gas Association  
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## Legislative update

### Well bonding, plugging funds allocation and energy choice bills go to the governor for consideration

Two pieces of legislation favorable to the oil and gas industry and energy consumers arrived on the governor's desk during the week of July 4.

One—House Bill 2644, sponsored by Representative Martin Causer (R-McKean)—directs how the Department of Environmental Protection can spend federal funds for plugging orphan wells. It also provides consistency and predictability for conventional oil and gas well operators by fixing the bond amounts as determined by the General Assembly rather than allowing the Environmental Quality Board (EQB) to implement bonding increases via regulation.

The second bill—SB 275, sponsored by Senator Gene Yaw (R-Lycoming)—ensures consumers are not restricted in their choice of energy sources by municipalities.

Under HB 2644, 80 percent of the funds to be received by Pennsylvania for orphan well plugging under the federal Infrastructure Investment and Jobs Act would go to the Department of Environmental Protection's existing orphan well plugging program and 20 percent to a new oil and gas well plugging grant program within DEP. Under the new program a qualified contractor could receive a grant of \$10,000 or \$20,000 to plug a well, depending on the depth. DEP may increase the grant amounts if it finds it is not receiving an adequate number of applications.

The bill also defines who is a "qualified well plugger" eligible for grants and specifies that those who plug wells under the provisions of the legislation are immune from civil liability except for damages resulting from gross negligence or willful misconduct.

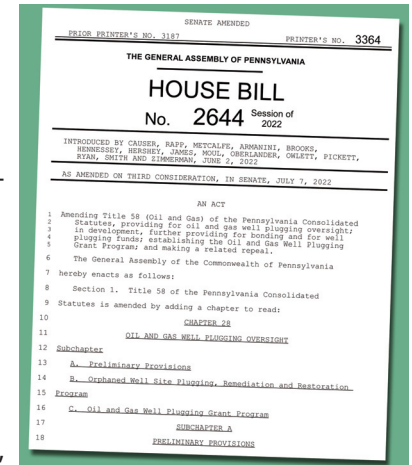
#### Well bonding

HB 2644 designates the power to set oil and gas well

bonds to the legislature, which, Representative Causer said in his sponsorship memo, "would provide consistency and predictability for conventional oil and gas well operators by fixing the bond amounts as determined by the General Assembly, rather than allowing the Environmental Quality Board to implement bonding increases via regulation."

He continued: "Regulatory certainty is critical to ensuring that currently producing wells do not become orphan wells due to small, local operators going bankrupt. Further, many of the conventional oil and gas operators are well-positioned to use their expertise to assist the Commonwealth by participating in the new plugging grant program."

Last November, the EQB accepted a pair of rulemaking petitions filed by activist groups calling for conventional well bonds to be increased from \$2,500 per well, or a blanket bond of \$25,000 for 10 or more wells, to



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# The Supreme Court narrows EPA's authority to regulate greenhouse gas emissions

By Kevin Garber, Varun Shekhar, Gina Falaschi and Marley Kimelman  
Babst Calland

*This article is an excerpt of **The 2022 Babst Calland Report**, which represents the legal perspective of Babst Calland's energy attorneys addressing the most current business and regulatory issues facing the energy industry. To view the full report, go to [reports.babstcalland.com/energy2022](https://reports.babstcalland.com/energy2022).*

On June 30, the United States Supreme Court held, in *West Virginia v. EPA*, that the U.S. Environmental Protection Agency may not force existing coal-fired power plants to shift their electricity generation to cleaner sources under Section 111(d) of the Clean Air Act, thereby narrowing EPA's authority to regulate greenhouse gas emissions from power plants.

West Virginia and a coalition of states, power companies and coal interests petitioned the Supreme Court to review the D.C. Circuit's 2021 invalidation of the Trump administration's 2019 Affordable Clean Energy rule, which had replaced the Obama administration's 2015 Clean Power Plan. Under the Clean Power Plan, EPA calculated rate-based (amount of carbon dioxide emitted per megawatt hour generated) and mass-based (total amount of carbon dioxide emitted per year) targets for each state through application of three "building blocks" that were deemed to constitute the "best system of emission reduction...adequately demonstrated" (BSER) under Section 111(d) of the Clean Air Act: (1) improvements to heat rates (a measure of heat input to power output efficiency) achieved at individual power generation facilities; (2) shifting power generation to natural gas-fired or combined cycle facilities; and (3) increased power generation from renewable and zero-emitting sources. The latter two "building blocks" constituted the Clean Power Plan's designed "generation shifting." EPA projected that this BSER would drive down electricity derived from coal-fired sources from 38 percent of the nation's overall generation in 2014 to 27 percent by 2030.

The Supreme Court held that EPA exceeded its authority under Section 111(d) of the Clean Air Act because Congress did not clearly authorize generation shifting regulations to constitute BSER under the statute. The court found EPA's program presented a "major questions" issue, the resolution of which is to be determined by determining whether Congress so "specifically and clearly" empowered regulatory agencies through legislation to make sweeping, economy-wide changes. Here, the court found it "highly unlikely that Congress would leave" to "agency discretion" the decision of how much coal-based generation there should be over the coming decades. The court stated that the statutory term "best system of emission reduction" did not give the agency the authority to require widespread generation shifting as a means to reduce

CO2 emissions because "the word [system] is an empty vessel" and "[s]uch a vague statutory grant is not close to the sort of clear authorization required by our precedents." The court concluded that a "decision of such magnitude and consequence [i.e., the amount of coal-based generation] rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body."

The decision has significant implications for the Biden administration's focus on climate change specifically and for administrative law generally. For example, it is very unlikely that EPA may adopt a federal carbon cap-and-trade program administratively without Congressional authorization.

The court's reasoning, while not necessarily binding, should also be persuasive in states that try to adopt wide-ranging climate change programs administratively based on state law, like the Pennsylvania Regional Greenhouse Gas Initiative (*see the accompanying article below*), where state statutes do not provide such authority. ■

## Court blocks Pennsylvania's carbon emissions plan

A state court temporarily blocked Pennsylvania from participating in a regional carbon pricing program to combat climate change, ruling on July 8 in favor of coal-related interests that argue the administration of Governor Tom Wolf is seeking to impose an unlawful tax.

Commonwealth Court granted a preliminary injunction that prohibits the Wolf administration from "implementing, administering, or enforcing" the carbon-pricing policy, which is meant to curb power plants' emissions of carbon dioxide and has long been the centerpiece of the Democratic governor's plan to fight global warming.

The Wolf administration said it will appeal to the state Supreme Court.

Wolf made Pennsylvania the first major fossil fuel state to adopt a carbon pricing policy, in which power plants fueled by coal, oil and natural gas are required to buy a credit for every ton of carbon dioxide they emit. Pennsylvania is one of the nation's biggest polluters and power producers.

The Power Pa Jobs Alliance, a coalition of industry and labor groups, said that power plant operators would have started paying what it called the "carbon tax" on Friday had the court not issued its injunction. It contends the carbon policy will impose higher electricity

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## EQB approves VOC rulemaking—for unconventional wells only

As anticipated, on June 14 the Environmental Quality Board approved a revised final version of the Department of Environmental Protection's regulations controlling emissions of volatile organic compounds for unconventional wells and facilities only.

The rulemaking previously included conventional oil and gas operations, but the EQB withdrew the rule before it could be considered as final by the Independent Regulatory Review Commission (IRRC) on May 19 (*June PIOGA Press, page 1*). Prompting the withdrawal, according to DEP, was an objection raised by the Republican majority of the House Environmental Resources and Energy Committee that the regulation did not comply with provisions of Act 52 of 2016 requiring that rulemakings concerning conventional oil and gas operations be undertaken separately. PIOGA, the Pennsylvania Grade Crude Oil Coalition and the Pennsylvania Independent Petroleum Producers also had filed suit in the Commonwealth Court to halt the rulemaking because DEP and EQB did not follow the requirements of Act 52.

The EQB vote on June 14 to approve the regulation as it applies to unconventional operations was 15-3, with one abstention. Representatives of Senator Gene Yaw (R-Lycoming) and Representative Daryl Metcalfe (R-Butler) and John St. Clair, a representative of DEP's Citizens Advisory Council, voted no. James Welty, also a member of DEP's Citizens Advisory Council and a repre-


sentative of the Marcellus Shale Coalition, abstained from the vote. Welty said he did not vote on the regulation because he felt the original final regulation voted on by the EQB in March, which he supported, should be presented to the IRRC for action.

DEP officials said the requirements in the forthcoming rule for conventional well sites will be essentially the same as those in the earlier combined rule. Glendon King, the executive director of the House Environmental Resources and Energy Committee, who was voting in place of committee Chairman Metcalfe at the June EQB meeting, indicated he had significant concerns that DEP intends to fast-track the rule for conventional well sites instead of starting the rulemaking process over from the beginning.

"To the extent that the department is considering pulling two separate final regulations out of a single proposed regulation, it couldn't more clearly violate the text and intent of the Regulatory Review Act and how the regulatory process is supposed to work in Pennsylvania," King said.

DEP staff told the EQB a regulatory package covering conventional oil and gas operations should be sent to the board for action as soon as possible, but likely in September. DEP said it is still evaluating whether to bring the conventional rule back to the EQB as a proposed or final regulation. The department has been working against a deadline that could mean loss of federal highway funding if both portions of the regulation are not in place by mid-December.

The IRRC is due to consider the unconventional-only regulation on July 21. ■



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# Carbon capture and sequestration forecast for Pennsylvania by a look at West Virginia's recent CCS statute

In May, West Virginia passed House Bill 4491<sup>1</sup> pertaining to carbon dioxide capture and sequestration (CCS), a pertinent element of blue hydrogen energy production.<sup>2</sup> The CCS statute imposes requirements for the operation of injection wells used in an underground CCS storage process. Pennsylvania is following closely behind, as Senator Gene Yaw (R-Lycoming) is planning to introduce similar legislation that would be known as the Pennsylvania Geologic Storage of Carbon Dioxide Act.<sup>3</sup>

The Pennsylvania bill would establish a framework for CCS operations in Pennsylvania, like the West Virginia CCS statute being discussed here has for West Virginia.<sup>4</sup> According to Senator Yaw's memorandum, the proposed legislation would establish a "legislative intent to facilitate carbon capture in Pennsylvania; designate property rights around storage sites in deep geologic formations; assign state regulatory authority of CCS facilities in Pennsylvania; specify the regulatory and permitting process within the existing federal structure; and create a cash fund sustaining regulatory operations, minimizing impact to taxpayers."<sup>5</sup> The inclusion of such provisions in the proposed Pennsylvania bill would make it very similar to the West Virginia CCS statute.

Pennsylvania Governor Tom Wolf has been vocal about establishing a hydrogen and carbon storage hub for Pennsylvania.<sup>6</sup> The area's abundance of natural gas and existing expertise to produce the same has drawn interest from companies like Shell, Equinor and EQT, who have stated that a hydrogen hub project could drive down carbon emissions.<sup>7</sup> Further, the Infrastructure Investment and Jobs Act of 2021 allocates \$8 billion for at least four hydrogen hubs across the country.<sup>8</sup> Shell's cracker plant in Beaver County is expected to be among the first to use a carbon sequestration hub that could be operational by 2027.<sup>9</sup> CCS operations are pivotal to blue hydrogen production, which could be the next logical step in Pennsylvania for low-carbon energy production due to existing natural gas production and its related infrastructure.

In light of Senator Yaw's proposed legislation, a high-level review of the West Virginia CCS statute may provide insight into the proposed bill in Pennsylvania.

First, the West Virginia CCS statute does not address

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or provide any eminent domain rights, which could be a significant challenge for any CCS project. Accordingly, CCS projects, in West Virginia, must generally be formed using voluntary contracts with owners of the underlying pore space. Examples of such contracts include deeds, leases and easements. However, if a CCS operator is not able to obtain voluntary agreements with all pore space owners within the project area, the CCS statute does provide an option to move forward without the vested rights from all of the pore space owners. Specifically, the CCS statute provides that if after good faith negotiation and searching, the operator cannot locate or reach an agreement with all necessary pore space owners but has a written agreement with at least 75 percent of the parties with an interest in the pore space of the parcel, or in the case of collective storage, 75 percent of the acreage in the project area, all of the pore space for which voluntary agreements have not been reached will be statutorily included within the proposed storage facility, subject to certain other conditions set out in the CCS statute.<sup>10</sup>

CCS operations cannot be conducted on the surface of any tract of land belonging to a non-consenting owner, except for seismic studies and in cases of emergencies.<sup>11</sup> If an operator is unable to reasonably negotiate with a surface owner for the right to conduct a seismic study on lands owned by the surface owner, the West Virginia Oil and Gas Conservation Commission is permitted to authorize entry on such lands.<sup>12</sup> In that case, the "operator shall notify the owner or owners 15 days prior to entry, pay the surface owner just and reasonable compensation," and repair damages to the surface and any damage resulting from their entry.<sup>13</sup>

A primary issue in developing carbon storage facilities is determining ownership of the pore space. This issue is complicated when there is a severed mineral estate, as to whether the surface owner or the mineral owner holds the rights to the pore space. Importantly, the CCS statute provides that title to pore space in all strata underlying the surface of lands and waters is vested in the owner of the overlying surface estate.<sup>14</sup> Presumptively, the Pennsylvania bill would also address the issue of pore space ownership, as indicated in Senator Yaw's aforementioned memorandum. Once the proper parties have been identified, the CCS operator could then move forward with acquiring the necessary rights.

There are at least three primary methods of obtaining the rights of storage in pore space, and each has its own advantages and disadvantages. The first option for acquiring pore space rights is through an outright purchase by deed from the surface owner. Generally, a purchase will have fewer restrictions than a lease. However, a CCS operator in West Virginia would need to also purchase the surface estate because the West Virginia CCS statute prohibits any severance of the surface estate from the pore space.<sup>15</sup> Importantly, the CCS statute does not affect transactions that took place before May 30, 2022, but the terms of such transactions must be "clear and unambiguous upon the face of the instru-

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ments which severed pore space from title to the surface estate."<sup>16</sup>

Further, the CCS statute goes on to provide "a rebuttable presumption that for all transactions prior to [May 30, 2022]..., that the pore space remains vested with the surface owner, unless there was a clear and unambiguous reservation, conveyance, and/or severance of the pore space from the surface upon the face of the instruments."<sup>17</sup> Purchasing the entire surface estate may be more expensive compared to other acquisition methods making it economically less attractive to the CCS operator.

The second acquisition avenue is through a CCS-specific lease of the pore space, like a traditional oil and gas lease, which remains permissible under the CCS statute.<sup>18</sup> Leasing may be easier in Appalachia, where property owners have more familiarity with these types of contracts. Pore space leases may also be less expensive for the operator than the outright purchase of the surface estate. However, leases typically are limited by a term of duration.

The third acquisition method is a subsurface easement. This method may be advantageous because it may be less expensive than a deed or a lease, and the easement could be drafted to have either a temporary or perpetual term. However, the fact that easements are considered non-possessory gives the operator less rights than it would obtain by a deed.

Beyond property rights, a CCS operator must also consider the permanent nature of carbon dioxide sequestration projects and the allocation of liabilities throughout the lifecycle of the project. The most significant difference between the subsurface storage of natural gas and the storage of carbon dioxide is the permanency of carbon dioxide storage. To mitigate the liability risks and costs over the project's lifetime, the solution embodied in the West Virginia CCS statute, and other similar legal models enacted in other parts of the country and world, is to allocate liability differently at various stages of the lifecycle: site selection, operation, closure and post-closure.<sup>19</sup> Generally, the CCS operator bears all liabilities during site selection, operation, and closure periods. However, the CCS statute permits the operator to seek a completion certificate ten years after the end of injections, whereby responsibility for the CCS project would be transferred to the state.<sup>20</sup>

The CCS statute also requires that the operator pay certain fees allocated to the Carbon Dioxide Storage Facility Trust Fund, primarily "a fee on each ton of carbon dioxide injected for storage."<sup>21</sup> This fund is designated for the "anticipated expenses associated with the long-term monitoring and management of closed storage facilities."<sup>22</sup>

It is also important to understand the liabilities associated with CCS operations. First, an operator should be prepared to address general liabilities that may arise for damages caused by CCS operations. These liabilities can largely be managed by traditional insurance.<sup>23</sup> Second, administrative liability may arise when a CCS operator is subject to state or federal regulations, such as the Safe



Drinking Water Act and Clean Air Act. Again, these administrative liabilities can largely be managed through insurance or self-insurance.<sup>24</sup> Third, there is potential for liability from greenhouse gas emissions in the event of a carbon dioxide leak from the CCS project, which could result in, among other things, a loss of emissions credits.<sup>25</sup> Unlike the liabilities associated with general or administrative matters discussed above, there appears to be a current lack of insurance options for addressing greenhouse related liabilities.<sup>26</sup>

As the importance of lower carbon sources of energy continues to grow, carbon capture and sequestration projects combined with blue hydrogen production projects may be an attractive option to promote clean energy in the Appalachian region. Accordingly, the West Virginia CCS statute may provide a potential roadmap for Pennsylvania and other states to consider when it comes to advancing clean energy initiatives.

*The authors thank Morgan Null, a Summer Associate at Steptoe & Johnson PLLC, for her contributions to this article.*

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<sup>1</sup> See W. Va. Code § 22-11B-1, *et seq.*

<sup>2</sup> Blue hydrogen is typically produced from methane utilizing a carbon capture or carbon use component. Without such a carbon capture or carbon use component, hydrogen produced from methane is designated as grey hydrogen.

<sup>3</sup> Senator Gene Yaw, *Senate of Pennsylvania Session of 2021-2022 Regular Session Memorandum*, Pennsylvania State Senate (March 30, 2022), [www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20210&cosponId=37118](http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20210&cosponId=37118).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Anya Litvak, "Pennsylvania Gov. Tom Wolf vows aggressive push to establish a hydrogen and carbon storage hub in the region," *Pittsburgh Post-Gazette* (May 16, 2022), [www.post-gazette.com/business/power-source/2022/05/16/pennsylvania-gov-tom-wolf-hydrogen-carbon-sequestration-storage-hub-climate-energy-southwestern-natural-gas-shell-cracker-petrochemical-plant-beaver/stories/202205160087](http://www.post-gazette.com/business/power-source/2022/05/16/pennsylvania-gov-tom-wolf-hydrogen-carbon-sequestration-storage-hub-climate-energy-southwestern-natural-gas-shell-cracker-petrochemical-plant-beaver/stories/202205160087).

<sup>7</sup> *Id.*

<sup>8</sup> See 42 U.S.C. § 16161a.

<sup>9</sup> Litvak, *supra* note 6.

<sup>10</sup> W. Va. Code § 22-11B-19(a)(2) and 22-11B-19(c)(2).

<sup>11</sup> W. Va. Code § 22-11B-19(a)(3) and 22-11B-19(c)(6).

<sup>12</sup> W. Va. Code § 22-11B-19(a)(3)(b).

<sup>13</sup> *Id.*

<sup>14</sup> W. Va. Code § 22-11B-18(a) (stating "[t]itle to pore space in all strata underlying the surface of lands and waters is vested in the owner of the overlying surface estate.")

<sup>15</sup> W. Va. Code § 22-11B-18(c) (stating "[t]itle to pore space may not be severed from title to the surface of the real property overlying the

pore space" and that "[a]n instrument or arrangement that seeks to sever title to pore space from title to the surface is void and unenforceable.")

<sup>16</sup> W. Va. Code § 22-11B-18(d).

<sup>17</sup> *Id.*

<sup>18</sup> W. Va. Code § 22-11B-9.

<sup>19</sup> Ian Havercroft, *Lessons and Perceptions: Adopting a Commercial Approach to CCS Liability*, Global CCS Institute (2019), [www.globalccsinstitute.com/wp-content/uploads/2019/08/Adopting-a-Commercial-Approach-to-CCS-Liability\\_Thought-Leadership\\_August-2019.pdf](http://www.globalccsinstitute.com/wp-content/uploads/2019/08/Adopting-a-Commercial-Approach-to-CCS-Liability_Thought-Leadership_August-2019.pdf).

<sup>20</sup> W. Va. Code § 22-11B-12.

<sup>21</sup> W. Va. Code § 22-11B-16.

<sup>22</sup> W. Va. Code § 22-11B-15.

<sup>23</sup> Havercroft, *supra* note 17.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

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## Final WMGR163 beneficial-use general permit published

The Department of Environmental Protection on June 25 published the final version of a new general permit known as WMGR163 for temporary facilities that process and beneficially reuse oil and gas liquid wastes.

DEP was directed to create the permit by a provision in the state's FY 2021-2022 budget package. WMGR163 has a narrower scope than the similar WMGR123 that also applies to treatment facilities for liquid oil and gas wastes. 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.

The draft version of WMGR163 was published for comment in January. PIOGA concurred with formal comments submitted by the Marcellus Shale Coalition cautioning that without changes the new permit would be of little use to industry (*April PIOGA Press, page 12*).

In the June 25 *Pennsylvania Bulletin* notice, DEP said it had revised the provisions of the final WMGR163 as follows:

- The duration of coverage for authorizations under WMGR163 has been changed from one year to two years, during which permittees can operate only for a maximum of one year. A permittee's coverage will automatically expire one year from date they begin receiving or processing waste, or two years from the date of permit issuance, whichever is less. Additionally, permittees are only authorized to operate for a maximum of 180 consecutive days at any one time during the period of coverage.

- The definition of "operate" was revised for clarity, to ensure that a permittee's operational period doesn't begin prior to oil and gas liquid waste being received or processed at a permitted location.

- Former Condition C.1., which limited the storage capacity of operation under WMGR163, was deleted, as it may ultimately have hindered the ability for permittees to function in the manner intended by the language in Act 70.

- Former Condition C.5. (now Condition C.4.) was revised to clarify that once a permittee has ceased receiving and processing waste, closure and post-closure activities must occur.

- Former Condition C.8. (now Condition C.7.) was

revised to clarify that DEP-approved Radiation Protection Action Plans must be immediately accessible at the facility at any point while the facility is operating.

- Former Condition C.26. (now Condition C.25.), which requires permittees to demonstrate compliance with 25 Pa. Code, Subpart C, Article III (relating to air resources), pertaining to air emissions, was revised to allow permittees to demonstrate that they are exempt from DEP Air Quality permitting for open-top storage tanks or any other air contamination sources in accordance with the aforementioned regulations. This condition was also revised to clarify that permittees are not authorized to store oil and gas liquid waste in impoundments.

- Condition E.2. was revised to eliminate redundancies in reporting requirements for WMGR163 permittees that process or transfer solely their own oil and gas liquid waste.

- Condition F.1. was revised to clarify that permittees seeking renewal under WMGR163 must submit a statement to the department at least 180 days before the expiration date of the base general permit certifying that the information contained in the original application has not changed since permit issuance. If original permit issuance is within 180 days of the expiration date of the base general permit, the certification statement is not necessary.

- Condition F.3. was revised to clarify that permittees may apply for coverage under WMGR163 at a site where prior WMGR163 coverage was issued; however, the subsequent coverage cannot be issued until the prior permittee has successfully completed closure and post-closure.

The final permit and DEP's comment response document can be found at [www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=370758](http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=370758). Questions should be directed to DEP's Chris Solloway at [csolloway@pa.gov](mailto:csolloway@pa.gov) or 717-787-7381. ■



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## JUST THE FACTS



### Produce, but don't drill: What is the Biden administration's oil & gas policy?

Comments from several Biden administration officials in recent weeks about energy policy point to general confusion and a profound misunderstanding about oil & gas. This confusion and misunderstanding at the highest levels of government, in turn, make it clear that oil and natural gas advocates need to continue to provide the basic facts—to a large segment of the general population—about the steps to produce, refine or process, and transport these energy sources.

In this month's *Just the Facts* some of these noted confusing and contradicting statements/topics are further discussed. Statements from the current administration about price gouging, gasoline production, oil

refining and land leasing are highlighted. These inconsistent and inaccurate statements/topics are debunked by educated and verified sources.

Public education about the economic realities of global energy markets is critical, along with the need for policies that encourage investment in domestic oil and gas production and infrastructure development. PIOGA will continue to work with members and allies to deliver those messages.

To read more from this month's *Just the Facts*—and to share it with friends and colleagues—visit the Latest News and Blog section at [pioga.org](http://pioga.org).

### DEP finalizes guidance on radioactivity monitoring

By Teresa Irvin McCurdy

#### TD Connections

The Department of Environmental Protection's Bureau of Radiation Protection on June 11 published the final technical guidance document (TGD) on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities. This TGD assists the regulated community with the development of Radiation Protection Action Plans as required in regulation.

The primary revisions amend the document to include guidance for the oil and gas industry in response to new provisions in 25 Pa. Code Chapter 78a (relating to unconventional wells) requiring unconventional oil and gas operators to comply with the TGD. In addition, outdated and redundant information is removed; guidance is provided for nonsolid waste recycler operations; environmental modeling guidance is improved; and radiation protection standards are compiled in one place for subject facilities. You can find the final document TGD and its comment response document at <https://bit.ly/3ONWEgx>.

Here are a few highlights of the requirements:

1. RP Action Plans required for processing residual waste on a well site become part of the operator's approved alternative waste management practice(s) and any revisions to approved alternative waste management practice(s) for processing residual waste on a well site may require revising the RP Action Plan.

2. An operator shall have portable radiation monitors

capable of determining the radiation exposure or dose rate and presence of radiological contamination on a vehicle that has caused an alarm. Upon a confirmed exceedance of the alarm level in subsection 4(c) of Appendix A: Summary of DEP's Solid Waste and Oil and Gas Radiation Monitoring Regulations, a radiological survey of the driver and vehicle shall be performed.

3. An operator shall notify DEP immediately and isolate the vehicle when radiation dose rates of 2 mrem/hr or greater are detected in the cab of a vehicle, 50 mrem/hr or greater are detected from any other surface, or contamination is detected on the outside of the vehicle.

4. Outlines daily and annual reporting requirements.

5. Provides guidelines for radiological monitoring and characterization of equipment in Appendix D.

6. Appendix E provides Guidelines for RP Action Plans for detection and handling of radioactivity at solid waste facilities and oil and gas well sites. It states that plans should be prepared by individuals having at a minimum the following qualifications: 1) Two years of on-the-job training in health physics, or one year of on-the-job training in health physics plus one year of formal college-level study in health physics, physics, chemistry, biology, engineering or radiation science; and 2) Experience with radiation detection and measurement, and in developing radiation safety procedures and plans.

The plan should be reviewed annually and updated

periodically by the permittee. Revisions should be submitted to DEP for review and approval for any changes to approved alternate waste management practices for radioactive materials generated from processing resid-

ual wastes on a well site, or through a permit modification for facilities operating under a permit issued under the municipal or residual waste regulations. ■

## PUC pays out second-highest amount ever in impact fees

In June, the Pennsylvania Public Utility Commission (PUC) posted detailed information about this year's distribution of last year's unconventional well impact fees generated by natural gas producers. The PUC collected a total of \$234 million in Act 13 impact fees. This is the second-highest amount raised and distributed since the beginning of the program in 2012.

The Act 13 impact fee schedule is based on the age of an unconventional well, whether it is vertical or horizontal well, the average annual NYMEX natural gas price and there also can be an inflation-based adjustment. Impact fees are paid in April for the prior calendar year and distributed in July. Counties and municipalities that host wells are expected to receive more than \$129 million in early July.

The main driver behind the increased impact fee included a higher fee schedule, which is estimated to have added nearly \$100 million to the PUC's collections, according to the state's Independent Fiscal Office (IFO). The average NYMEX prices jumped to \$3.84/MMBtu in 2021, compared with \$2.08 in 2020.

Due to the gas prices being between \$3.00 and \$4.99, the impact fee schedule increased by \$10,000 per horizontal well compared to CY2020 levels. The rates for 2021 also included the statutorily required inflationary adjustment (6.6 percent) to the fee schedule due to the year-over-year increase in wells spud. Combined, these factors are expected to have an impact of +\$98 million, according to the IFO.

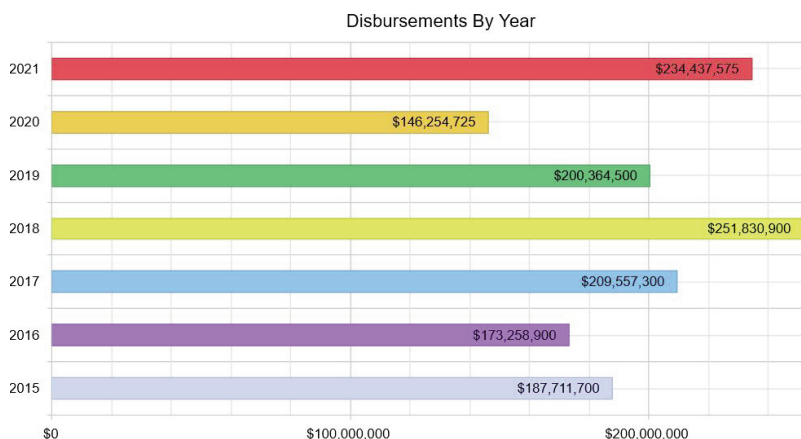
At the same time, the aging population of Pennsylvania's unconventional wells that move down a tier on the payment schedule are anticipated to have an impact of -\$10.4 million. This impact for CY 2021 is largely driven by nearly 3,200 wells that entered operating year 11 for the first time, in which they pay half the fee amount they paid in operating year 10.

### IFO predicts 2022 impact tax will be highest on record

The IFO also is fresh out with an estimate for how much the impact fee will raise this year (to be distributed next year). The IFO says it thinks, based on the price of natural gas and pickup in drilling, that PA will land its biggest impact fee haul ever.

This year (2022), like last year (2021), IFO is offering up two scenarios for how much money the state will receive in impact fee revenues next year.

Once scenario is based on natural gas prices averaging \$6.00/MMBtu or more on the NYMEX, and the other



scenario assumes gas prices will average between \$5.00-\$5.99/MMBtu.

If the price of natural gas on the NYMEX for calendar year 2022 averages \$6.00/MMBtu or above, impact fee revenue elevates to the highest level and will result somewhere around \$258.7 million. That is the IFO's most likely scenario.

If the price of natural gas this year ends up being between \$5.00-\$5.99/MMBtu, the calculations change, and the state will realize \$245.3 million in impact fee revenue. ■

## PIOGA Member News

### 2022 Babst Calland Report highlights legal and regulatory challenges and opportunities for the U.S. energy industry

Law firm Babst Calland has published its 12th annual energy industry report, *The 2022 Babst Calland Report – Legal & Regulatory Perspectives for the U.S. Energy Industry*. Each of our nation's energy sectors is impacted by local, state and federal policies, many of which are addressed in this inclusive report on legal and regulatory developments for the energy industry in the United States.

*The Babst Calland Report* represents the timely and insightful perspectives of the firm's energy attorneys on some of the most critical issues facing the industry, including climate change, cybersecurity, ESG and environmental justice, hydrogen and carbon capture

sequestration, pipelines, and renewables.

Joseph K. Reinhart, shareholder and co-chair of Babst Calland's Energy and Natural Resources Group, said, "The U.S. energy industry, and the U.S. economy as a whole, is reacting to shifting market forces and potential significant new changes in laws and regulations. Importantly, Russia's invasion of Ukraine earlier this year and the resulting worldwide shortage of oil and gas has spotlighted the world's continued reliance on fossil fuels and reinforced the value of America's relative

energy independence even as the nation and the world continue to seek alternative energy sources."

This edition of *The Babst Calland Report* also features commentary from Senator Joe Manchin (D-WV), Chairman of the U.S. Senate Energy and Natural Resources Committee, who spoke with Babst Calland energy clients at a special briefing on May 26 called "A Perspective on U.S. Energy Policy with Senator Joe Manchin."

To request a copy of *The 2022 Babst Calland Report*, go to [reports.babstcalland.com/energy2022-2](https://reports.babstcalland.com/energy2022-2). ■

## Market Development Committee visits Sunnyside Energy Park

Bob Beatty and his family hosted PIOGA's Market Development Committee on June 9 in Punxsutawney for a committee meeting and lunch at CH4 USA, LLC and then a visit to nearby Sunnyside Energy Park. More than 25 committee members and PIOGA staff took part.

Bob described how he got into the LNG refueling infrastructure business and his interest in virtual pipelines, which eventually led to the purchase and development of the Sunnyside complex. Located 12 miles northwest of Punxsutawney, Sunnyside encompasses about 400 acres with conventional natural gas wells and access to move gas off the property. The complex includes equipment to create compressed natural gas (CNG) and liquified natural gas (LNG) and to fill tank trucks with either. Gas also can be delivered to a pipeline when there is no call for CNG or LNG.

Bob said the aim was to provide a cradle-to-grave approach to supplying CNG and LNG—producing natural gas, turning it into CNG and LNG onsite, and delivering it via virtual pipeline to end users. At Sunnyside,

essentially everything is modular and portable, and much of the operation is highly automated. The facility, he emphasized, proves that small-scale LNG and CNG are possible and profitable.

Virtual pipelines—moving product by truck—have been around for a century when it comes to liquid fuels but are just getting started with natural gas. Virtual pipelines give access to stranded supply and provide service to stranded markets. We've finally convinced utilities that we aren't the enemy and can actually augment their services, Bob noted. He is involved in the development of a mobile fueling station for UMPC vehicles.

The Market Development Committee thanks Bob and his family for their hospitality and for the detailed look at this interesting and innovative facility. ■



*PIOGA Market Development Committee members learn about the trailer-mounted LNG processing unit at Sunnyside Energy Park.*

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[pioga.org/publication\\_file/2022\\_PIOGA\\_Partners\\_flyer.pdf](http://pioga.org/publication_file/2022_PIOGA_Partners_flyer.pdf)

## Court blocks RGGI *Continued from page 3*

costs on consumers. The group called Friday's ruling a "significant win for working families."

The regulation at issue committed Pennsylvania to the Regional Greenhouse Gas Initiative, a multistate consortium that sets a price and declining limits on carbon dioxide emissions from power plants run by fossil fuels. The Wolf administration estimates that the initiative will reduce Pennsylvania's carbon dioxide emissions by up to 225 million tons through 2030.

The court's decision is "yet another roadblock and stalling tactic from RGGI opponents," said Jessica O'Neill, an attorney for PennFuture, an environmental group. She contended that Pennsylvania's participation in the carbon pricing program "will unquestionably save lives by improving air quality and is necessary to cut Pennsylvania's significant carbon footprint from the power sector."

Commonwealth Court said the plaintiffs — power plants, labor unions and coal mine owners — had "raised a substantial legal question" about whether the program imposes an unlawful tax, since taxing power rests with the General Assembly, not the executive branch. It did not rule on the merits of the case.

Wolf has long maintained the state can regulate carbon dioxide under an existing law dealing with air pollution.

—Michael Rubinkam, Associated Press

## CO2 Coalition lawsuit on social cost of carbon

On June 22, a group of experts called on a U.S. appeals court to follow the science when it comes to carbon regulation, asserting that President Biden's Social Cost of Carbon (SCC) rule is not only an abuse of power, but also "scientifically invalid."

The CO2 Coalition filed an amicus brief with the U.S. Court of Appeals for the Fifth Circuit, noting, "There is overwhelming scientific evidence that fossil fuels and CO2 provide enormous social benefits," and asking that the rule be blocked pending a trial court hearing.

The lawsuit before the appeals court—*Louisiana v. Biden*—seeks to stop the use of "temporary rules" that are implemented by presidential order. The Biden administration's SCC rule directs regulators to include the purported projected "global cost" of every ton of carbon dioxide emissions from a wide array of projects where federal funding or approvals are needed, from transportation, to housing, to energy and infrastructure.

The brief says that a district court's preliminary injunction should be reinstated because the technical document supporting the SCC and President Biden's executive order imposing the regulation are scientifically invalid. A glaring omission in the administration's proposed regulation are the benefits of carbon dioxide and of the fossil fuels whose burning in the generation of



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electricity and industrial processes emit the gas.

The brief notes that warmth and moderately higher carbon dioxide levels in recent decades have correlated with an overall greening of Earth and record crop harvests. The brief states the benefits of carbon dioxide are not being considered, despite a congressional directive that both pros and cons are to be considered.

The brief says that the president's order violates a congressional directive requiring that benefits as well as costs be included in environmental considerations and that it exceeds the president's authority by unilaterally creating new law.

The CO2 Coalition, based in Arlington, Va., is an organization of approximately 95 scientists and researchers engaged in educating thought leaders, policy makers, and the public about the important contribution made by carbon dioxide to people's lives and the economy. ■

## IRS announces a mid-year increase in the standard mileage rate

The Internal Revenue Service (IRS) has released a statement announcing that the standard mileage rate will increase by four cents as of July 1, taking the standard mileage rate up to 62.5 cents per mile.

The standard mileage rate is used to deduct eligible business trips in a vehicle on tax returns and, due to the soaring price of fuel, the move by the IRS is seen as a way of cushioning the blow. While fuel costs are a significant factor in the mileage figure, other items enter into the calculation of mileage rates, such as depreciation and insurance and other fixed and variable costs.

The optional business standard mileage rate is used to compute the deductible costs of operating an automobile for business use in lieu of tracking actual costs. This rate is also used as a benchmark by the federal government and many businesses reimburse their employees for mileage.

Taxpayers have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

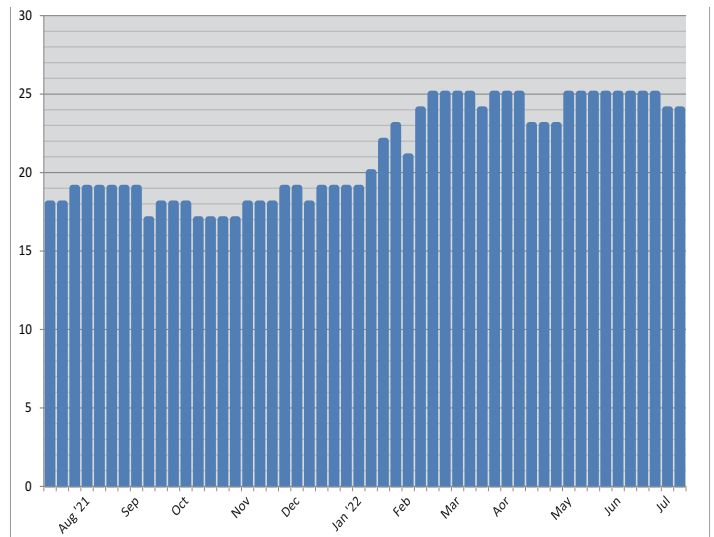
### Mileage rate changes

Purpose	Rate 1.1.22 through 6.30.22	Rate 7.1.22 through 12.31.22
Business	58.5	62.5
Medical/Moving	18	22
Charitable	14	14

The PLOGA Tax Committee wanted to inform PLOGA members of this IRS change. For more information visit [www.irs.gov/newsroom/irs-increases-mileage-rate-for-remainder-of-2022](http://www.irs.gov/newsroom/irs-increases-mileage-rate-for-remainder-of-2022).

## Oil & Gas Dashboard

### Pennsylvania Rig Count



### Penn Grade Crude Oil Prices



### Natural Gas Futures Closing Prices

Month	Price
August	\$6.188
September	6.180
October	6.144
November	6.343
December	6.371
January 2023	6.474
February	6.213
March	5.490
April	4.591
May	4.500
June	4.551
July	4.570

Prices as of July 8

### Sources

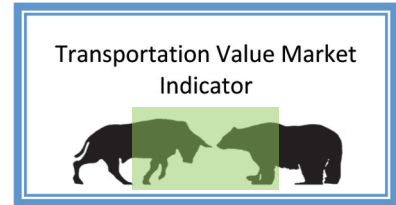
American Refining Group: [www.amref.com/Crude-Prices-New.aspx](http://www.amref.com/Crude-Prices-New.aspx)  
 Ergon Oil Purchasing: [www.ergon.com/crudeoil](http://www.ergon.com/crudeoil)  
 Gas futures: [quotes.ino.com/exchanges/?r=NYMEX\\_NG](http://quotes.ino.com/exchanges/?r=NYMEX_NG)  
 Baker Hughes rig count: [bakerhughesrigcount.gcs-web.com/na-rig-count](http://bakerhughesrigcount.gcs-web.com/na-rig-count)  
 NYMEX strip chart: Mid American Natural Resources



# Northeast Pricing Report — July 2022

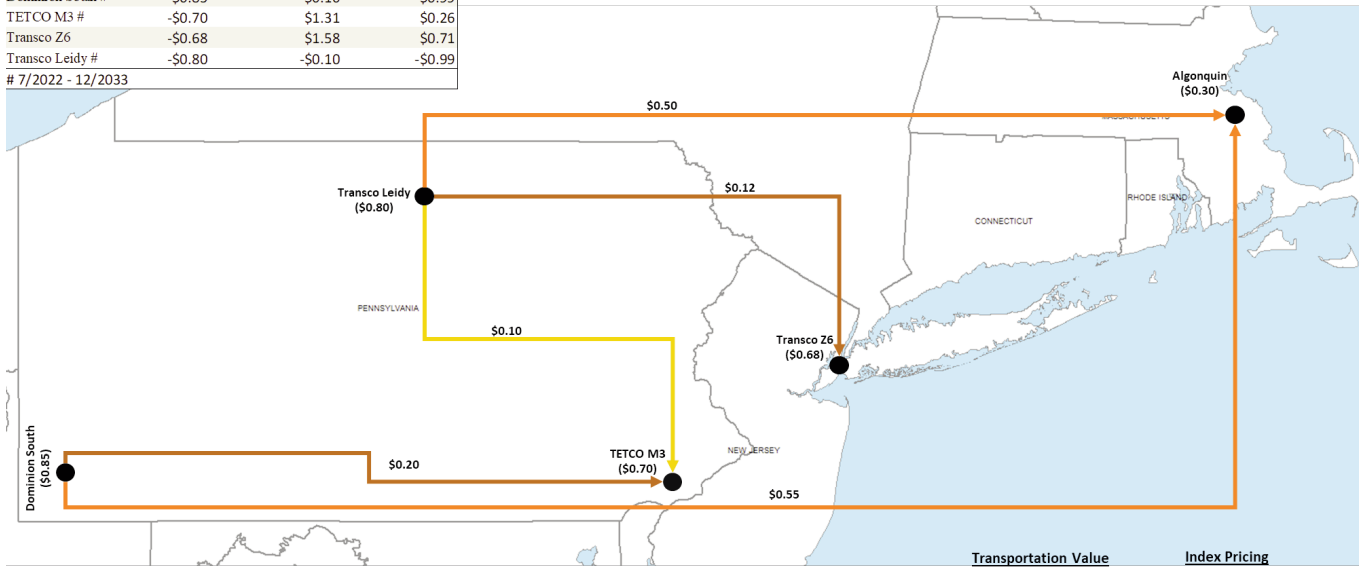
While the change in pricing amongst all the terms were mixed, front-month pricing is starting to heat up. All locations saw increases between \$0.12 and \$0.20 per MMBtu. Algonquin soared the greatest, while Transco Leidy increased the least. For the rolling one-year term, Algonquin and Transco Leidy increased the most at \$1.35 and \$0.94 per MMBtu respectively. Transco Z6 decreased the most at 0\$.14 per MMBtu. For the rolling one-year average, Algonquin rose \$0.30 per MMBtu. Significant strength in winter pricing based on expected shortages is driving prices higher. TETCO M3 decreased the most at \$0.07 per MMBtu.

Value continues to come back to the transportation market. Dominion South to Algonquin increased the most at \$0.55 per MMBtu. Transco Leidy to Algonquin increased nearly the same amount at \$0.50 per MMBtu. Dominion South to TETCO M3 raised by \$0.15 per MMBtu. Transco Leidy to Transco Z6 improved \$0.12 per MMBtu. Transco Leidy to TETCO M3 increased \$0.10 per MMBtu. TETCO M3 to Transco Z6 had the smallest increase at only \$0.02 per MMBtu.



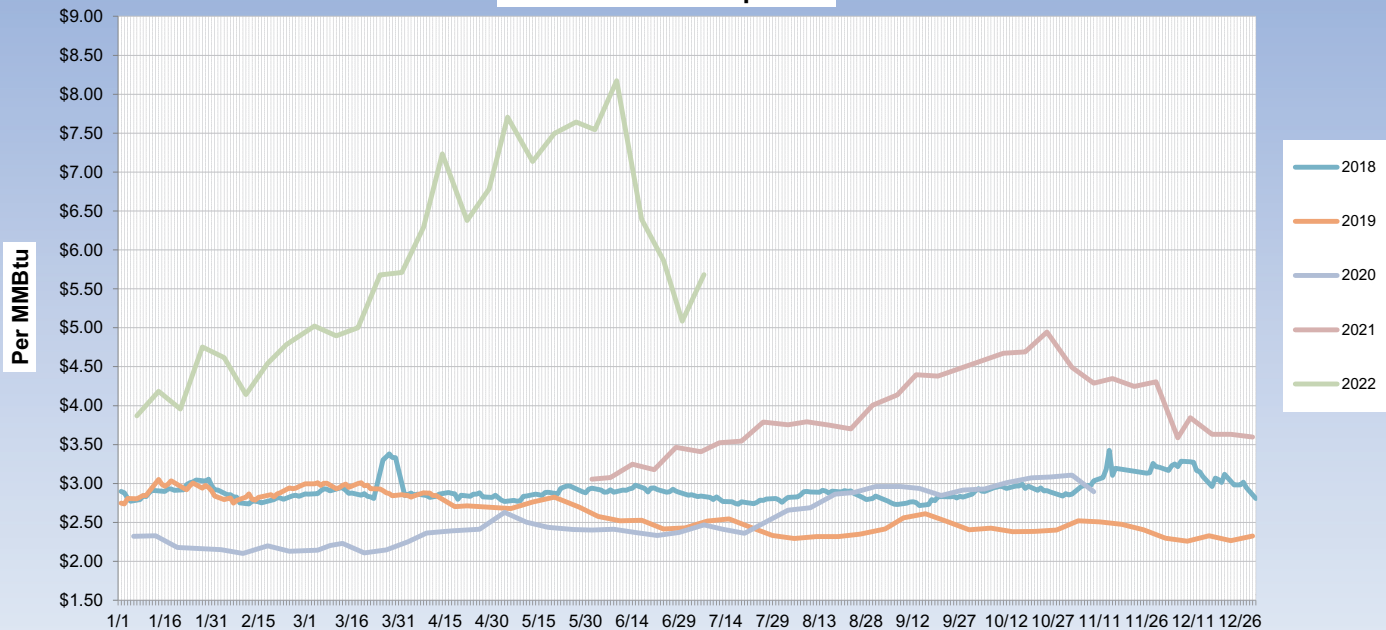
Provided by Bertison-George, LLC  
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Location	Natural Gas Basis Future Pricing		
	Pricing Term		
	7/2022	7/2022-6/2023	7/2022-12/2027
Algonquin	-\$0.30	\$7.00	\$3.37
Dominion South #	-\$0.85	-\$0.10	-\$0.99
TETCO M3 #	-\$0.70	\$1.31	\$0.26
Transco Z6	-\$0.68	\$1.58	\$0.71
Transco Leidy #	-\$0.80	-\$0.10	-\$0.99



Pricing as of June 28, 2022, Future contract only; Source ICE End of Day Report

## NYMEX Annual Strip Price



# Spud Report: June



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
Apex Energy (PA) LLC	6	6/6/2022	129-29149	Westmoreland	Hempfield Twp
		6/7/2022	129-29147	Westmoreland	Hempfield Twp
		6/15/2022	129-29148	Westmoreland	Hempfield Twp
		6/22/2022	129-29150	Westmoreland	Hempfield Twp
		6/25/2022	129-29152	Westmoreland	Hempfield Twp
	6/28/2022	129-29151	Westmoreland	Hempfield Twp	
BKV Opr LLC	1	6/13/2022	131-20641	Wyoming	Tunkhannock Twp
Blackhawk Energy LLC	1	6/14/2022	083-57379*	McKean	Hamilton Twp
Cameron Energy Co	3	6/7/2022	053-30986*	Forest	Kingsley Twp
		6/20/2022	053-30985*	Forest	Kingsley Twp
	6/29/2022	053-30984*	Forest	Kingsley Twp	
Chesapeake Appalachia LLC	4	6/9/2022	113-20456	Sullivan	Forks Twp
		6/9/2022	113-20455	Sullivan	Forks Twp
		6/15/2022	113-20457	Sullivan	Forks Twp
		6/15/2022	113-20458	Sullivan	Forks Twp
CNX Gas Co LLC	2	6/19/2022	059-28205	Greene	Richhill Twp
		6/19/2022	059-28204	Greene	Richhill Twp
Coterra Energy Inc	2	6/20/2022	115-22991	Susquehanna	Auburn Twp
		6/20/2022	115-22989	Susquehanna	Auburn Twp
Curtis Oil Inc	2	6/13/2022	053-30992*	Forest	Howe Twp
		6/22/2022	053-30991*	Forest	Howe Twp
Daniel P Hornburg	2	6/27/2022	123-48673*	Warren	Pleasant Twp
		6/1/2022	123-48533*	Warren	Sheffield Twp
INR Opr LLC	2	6/1/2022	063-37541	Indiana	Armstrong Twp
		6/17/2022	063-37539	Indiana	Armstrong Twp
Olympus Energy, LLC	3	6/14/2022	129-29142	Westmoreland	Upper Burrell Twp
		6/14/2022	129-29134	Westmoreland	Upper Burrell Twp
		6/15/2022	129-29146	Westmoreland	Upper Burrell Twp
PA Gen Energy Co LLC	2	6/28/2022	117-22162	Tioga	Liberty Twp
		6/29/2022	117-22170	Tioga	Liberty Twp
		6/27/2022	019-22852	Butler	Connoquenessing
PennEnergy Resources LLC	7	6/27/2022	019-22901	Butler	Connoquenessing
		6/27/2022	019-22899	Butler	Connoquenessing
		6/27/2022	019-22900	Butler	Connoquenessing
		6/28/2022	019-22902	Butler	Connoquenessing

available by going to the Office of Oil and Gas Management page at [www.dep.pa.gov](http://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	4	6/28/2022	019-22903	Butler	Connoquenessing
		6/28/2022	019-22904	Butler	Connoquenessing
		6/20/2022	053-30962*	Forest	Howe Twp
		6/23/2022	053-30963*	Forest	Howe Twp
	6/28/2022	053-30966*	Forest	Howe Twp	
	6/2/2022	083-57332*	McKean	Hamilton Twp	
Range Resources Appalachia	4	6/11/2022	125-28969	Washington	Amwell Twp
		6/12/2022	125-28972	Washington	Amwell Twp
		6/12/2022	125-28973	Washington	Amwell Twp
	6/12/2022	125-28974	Washington	Amwell Twp	
Repsol Oil & Gas USA LLC	5	6/13/2022	015-23740	Bradford	Armenia Twp
		6/14/2022	015-23737	Bradford	Armenia Twp
		6/15/2022	015-23736	Bradford	Armenia Twp
		6/16/2022	015-23738	Bradford	Armenia Twp
		6/17/2022	015-23739	Bradford	Armenia Twp
		6/9/2022	005-31430	Armstrong	Boggs Twp
Snyder Bros Inc	4	6/9/2022	005-31431	Armstrong	Boggs Twp
		6/10/2022	005-31432	Armstrong	Boggs Twp
	6/13/2022	005-31433	Armstrong	Boggs Twp	
SV Abs Interest Wetmore Proj	1	6/29/2022	083-57393*	McKean	Wetmore Twp
SWN Prod Co LLC	2	6/24/2022	015-23749	Bradford	Herrick Twp
		6/25/2022	015-23750	Bradford	Herrick Twp
William Southwell & Son Oil	2	6/20/2022	123-48560*	Warren	Conewango Twp
		6/29/2022	123-48559*	Warren	Conewango Twp
		6/13/2022	123-48543*	Warren	Sheffield Twp
Wilmoth Interests Inc	3	6/6/2022	123-48545*	Warren	Sheffield Twp
		6/20/2022	123-48540*	Warren	Sheffield Twp

	June	May	April	March	February	January
<b>Total wells</b>	<b>62</b>	<b>65</b>	<b>69</b>	<b>61</b>	<b>51</b>	<b>65</b>
Unconventional Gas	44	40	57	43	41	54
Conventional Gas	0	0	0	0	0	0
Oil	17	17	12	18	9	6
Combination Oil/Gas	1	8	0	0	1	5

## Legislative update *Continued from page 3*

\$38,000 per well—supposedly to reflect the actual cost of plugging abandoned wells (*December 2021 PIOGA Press, page 1*). A second petition seeks to increase the bond for an unconventional well to \$83,000 from the current tiered system that ranges from \$4,000 to \$10,000 per well. The EQB directed DEP to study the rulemaking petitions and make recommendations. No action by DEP has been forthcoming.

Under the bill, as amended in the Senate, the per-well bond for wells that are not unconventional wells would be set at \$2,500, and only the General Assembly would have the authority to revise conventional well bond amounts for the next 10 years. An operator may file a blanket bond of \$25,000 for all of its wells. Starting six months after the effective date of the legislation, for each conventional well drilled by an operator, the bond amount for the operator would increase by \$1,000, with the total blanket bond not to exceed \$100,000.

Additionally, the blanket bond increase of \$1,000 is to be waived by DEP if the operator provides evidence that within the previous 365 days the operator plugged an orphan well at its own expense for which the operator was not the responsible party.

Another related bill, HB 2578 sponsored by Representative James Struzzi (R-Indiana), would require DEP to award contracts for oil and gas well plugging to Pennsylvania companies before considering out-of-state firms. The measure passed the House on June 20 and was referred to the Senate Environmental Resources and Energy Committee.

## Protecting energy choices

SB 275, meanwhile, prevents Pennsylvania's 2,500-plus municipalities from banning access to certain utilities such as natural gas. The "fuel neutral" proposal ensures no choice, including renewable energy, is discriminated against.

"This will preserve access to reliable (utility service), no matter where residents live, and prevent a chaotic patchwork of regulations that ultimately undermine statewide environmental and energy policies," Yaw said. "It also reaffirms what many local and statewide officials, including the Pennsylvania Public Utility Commission, already understand to be true: municipalities do not have the authority to restrict energy sources."

Cities across the nation have already taken steps to ban natural gas in newly constructed buildings. The short-sighted climate policy prioritizes ideological purity over sound energy policy that's inclusive of all energy options residents may want—or need—to access, Yaw said.

Specifically, SB 275 directs that a municipality may not:

- Adopt a policy that restricts or prohibits—or has the effect of restricting or prohibiting—the connection or reconnection of a utility service based on the type of source of energy to be delivered to an individual consumer within the municipality.
- Discriminate against a utility service provider based on the nature or source of the utility service provided for an individual consumer.

As of the time this issue was being finalized, the governor had not indicated his intentions to sign or veto either of the bills. ■

## Calendar

### PIOGA events

Information: [www.pioga.org](http://www.pioga.org) > **PIOGA Events**

#### Pins & Pints/Summer Bowling Bash

July 21, Zone 28, Harmarville

#### 25th Annual Divot Diggers Golf Outing

August 18, Tam O'Shanter Golf Course, Hermitage

#### PIOGATech: Water and Waste Management

September 15, Bella Sera, Canonsburg

#### PIOGA Annual Membership Meeting

October 6, virtual event

#### Marcellus to Market (M2M) Conference

October 19, Hollywood Casino at The Meadows, Washington

#### Fall Clay Shoot

October 27, West Penn Sportsmen's Club, Murrysville

#### Annual Oil & Gas Tax and Accounting Seminar

November 16, virtual event

#### PIOGATech: Air Quality

December 15, The Chadwick, Wexford

#### Mix, Mingle & Jingle Holiday Party

December 15, The Chadwick, Wexford

### Other events

#### IOGANY 41st Annual Summer BBQ and Golf Outing

July 14, Holiday Valley, Ellicottville, NY

Info: [iogany.org](http://iogany.org)

#### OOGA Summer Meeting

August 1, New Albany Country Club, New Albany, OH

Info: [www.ooga.org/event/2022-summer-meeting](http://www.ooga.org/event/2022-summer-meeting)

#### GO-WV Summer Meeting

August 7-9, The Greenbrier, White Sulphur Springs, WV

Info: [gowv.com/events/2022-summer-meeting-registration](http://gowv.com/events/2022-summer-meeting-registration)

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