

# The PIOGA Press

The monthly newsletter of the  
Pennsylvania Independent Oil & Gas Association  
November 2018 • Issue 103

## Conventional oil and gas legislation comes up short

As time was running out on the legislative session, an all-but-certain veto by Governor Tom Wolf kept legislative leaders and industry associations from pushing for a final vote on a bill creating a separate statute for conventional oil and gas operations.

House Bill 2154, known as the Conventional Oil and Gas Act (COGA), was the legislative priority in the latter half of the General Assembly's two-year session for PIOGA, the Pennsylvania Grade Crude Oil Coalition and the Pennsylvania Independent Petroleum Producers. Sponsored by Representative Martin Causer (R-Cameron/McKean/Potter), the legislation would have removed most facets of conventional operations from Act 13 of 2012—created in response to the rapid growth of the unconventional natural industry at that time—and placed them under an updated version of the original Oil and Gas Act that was enacted in 1984.

"Many of the regulations developed in response to Act 13 of 2012 were not reasonable or relevant for the conventional oil and gas industry," Causer said after the House Environmental Resources and Energy Committee approved his bill at the end of April. "The conventional operators aren't asking for zero regulation, they just want fair regulation and that's what this bill aims to do."

Requirements related to unconventional operations and gas storage would remain under Act 13, while COGA would take the framework of the 1984 law and adds provisions that address how oil and gas regulation should interact with the Solid Waste Management Act, including the beneficial use of brine and wastewater treatment and disposal. The legislation also addresses and incentivizes voluntary plugging of orphan wells. Other updates to the original Oil and Gas Act deal with permitting, notice obligations, site restoration, spill remediation, inspections, enforcement and penalties.

HB 2154 earned House approval in June and was voted out by the Senate Environmental Resources and

*Continues on page 3*

## Commonwealth Court upholds ordinance allowing drilling in all zoning districts

On October 26, the Pennsylvania Commonwealth Court published an *en banc* opinion in *Frederick v. Allegheny Township Zoning Hearing Board, et al.*, No. 2295 C.D. 2015, 2018 WL 5303462

(Pa. Cmwlth. Oct. 26, 2018)

rejecting a challenge to the validity of the Allegheny Township, Westmoreland County, zoning ordinance. The court addressed the contention of oil and gas industry opponents that an unconventional natural gas well pad can be permitted only in an industrial zoning district. After reviewing the detailed record developed in the substantive validity challenge decided by the township Zoning Hearing Board and addressing recent Pennsylvania

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Energy Committee in late September and the Appropriations Committee in mid-October. HB 2154 likely would have had enough votes to pass the full Senate in the final days of the session, but continued opposition by the governor and the Department of Environmental Protection convinced the legislative leadership not to bring the bill to the floor for a final vote and ultimately what most believed would be a veto.

PIOGA Executive Director Dan Weaver expressed frustration that the badly needed measure came up short, largely due to the administration's refusal to engage with industry over the legislation.

"We put in countless hours educating representatives and senators about the need for this legislation, and now we will have to start from scratch in a new session in 2019 and hope for a better outcome," Weaver said. "The Department of Environmental Protection told lawmakers over and over again that the bill was unworkable in its current form, but despite many requests they have never sat down with industry or lawmakers to discuss exactly what they think would be acceptable."

Similarly, Senate Energy and Environmental Resources Committee Chairman Gene Yaw commented in the media that legislators working on the bill have had "very limited success in getting real answers from DEP." Yaw was the primary sponsor of a Senate companion to HB 2154.

In 2016, legislation was enacted striking down a proposed DEP regulatory update that many criticized as an inappropriate cut-and-past of rules written for unconventional operations and directing the department to start over again. DEP has not yet proposed a new set of Chapter 78 regulations for conventional surface operations or given an indication of what the rules might look like.

"Our conventional operators are badly in need of a regulatory scheme that is appropriate to the size and scope of what they do," Weaver said. "We can only hope they are able to hang on until we can accomplish something either through new legislation or sensible regulations."

### **No severance tax**

This has been a year in which legislation of interest to PIOGA failed to pass—which isn't always a bad thing, as characterized by the perennial issue of a severance tax on natural gas. More than a dozen standalone bills were introduced this session imposing a severance tax, but the governor's budget annual proposed budget has been the main focal point for this type of legislation.

However, the FY2018-19 budget came together with little political acrimony and no serious push for new or increased taxes, thanks to a positive revenue outlook for the Commonwealth and a desire not to stir things up in a year in which the governorship, all 203 seats in the House of Representatives and half of the 50 Senate districts were up for election.

## **PIOGA Senate letter**

In an October 15 letter to all members of the Senate—delivered when it still appeared HB 2154 would be brought up for a vote—PIOGA's Kevin Moody pointed to specific provisions of the legislation to counter misstatements by opponents that the bill represented "wholesale unraveling" of protections established by Act 13 provisions.

In particular, the letter explained that COGA includes multiple incentives to promote the voluntary adoption, permitting or plugging or orphan wells and also provides for monitoring during hydraulic fracturing to address the potential for communication between wells. Further, bonding requirements under COGA are more stringent than Act 13 by deleting provisions for collateral bonds; COGA does not alter current obligations under Act 13 to monitor well integrity; and COGA's public resource provisions all DEP to consider impacts to the habitats of species listed as threatened or endangered, and other public resources continue to be protected under the relevant statutes and regulations for those resources.

Finally, COGA provides for the replacement of water supplies to meet Safe Drinking Water Act standards or be comparable to the quality of water before it was impacted by oil and gas operations. "The conventional industry, composed almost entirely of small businesses, should not be held to an unreasonable standard that would require them to provide an *improved* water supply, a windfall to a landowner whose water did not meet SDWA standards in the past," Moody told senators.

It also helped that after two years of decline, revenue from the Act 13 impact fee on unconventional wells was up again and brought in \$209.6 million for local communities and state programs. Unfortunately, the severance tax is a fight PIOGA will fight again in 2019, particularly as the state's inherent revenue problems have not been solved.

### **Other legislation**

As the legislative session was drawing to a close, the House Environmental Resources and Energy Committee announced it planned to consider SB 138, one of several landowner-rights measures that had seen movement early in the two-year session. The bill gave royalty owners the ability to inspect producer records to ensure proper payment, but of concern to PIOGA, it also would require that operators make royalty payments within 60 days of production.

"Some of our members pointed out that it can be a considerable time following production before they even know what price they will receive, let alone receive payment from a purchaser," Weaver said. "We raised our concerns about that part of the bill as written and offered a more workable compromise keyed to when the producer receives payment."

The committee chair pulled the bill from the calendar so the compromise could be discussed with the original sponsor, but time ran out on further consideration.

PIOGA also was monitoring several pipeline-related bills, which have become a hot topic as infrastructure has expanded in Pennsylvania. One such measure that saw movement at the end of the session was SB 652, which established penalties for trespassing on 21 types of facilities defined as “critical infrastructure”—including

several of interest to the association’s membership, such as pipelines, compressor stations, well sites and refineries.

The bill was amended in committee in the House to change the focus from trespassing to vandalizing after concerns were raised about the possible impact on free speech rights by those protesting pipelines. Subsequently, it was not brought up for a vote by the full chamber. ■

## Online Buyers’ Guide update: If you’ve received calls ‘from’ PIOGA...

Last month we announced that our partner in PIOGA’s online Buyer’s Guide, Strategic Value Media (SVM), was beginning to reach out to Service Provider and Professional Firm members to discuss opportunities for enhancing their complimentary listing as well as advertising opportunities to make their business more visible to oil and gas professional searching for specific products and services. If you received a call lately from someone you didn’t recognize saying they were “from” or “with” PIOGA, it was most likely a representative of SVM.

To avoid confusion, we have emphasized that they let you know up front they are calling from Strategic Value Media in partnership with PIOGA.

The Buyers’ Guide provides users with an efficient way to browse for goods and services and offers com-

panies exceptional visibility by showcasing their products and services to a targeted, industry-specific buyer group. All PIOGA Service Provider and Professional Firm members receive a complimentary listing in the guide, with the PIOGA logo to indicate your company is a member.

The Buyers’ Guide is accessible through the PIOGA website, [www.pioga.org](http://www.pioga.org) (look for the link at the very top of the page) and will be updated soon. We encourage you to take advantage of this exceptional opportunity to highlight your products and services in the Buyers’ Guide. To learn more about advertising your products or services in the Buyers’ Guide, email [pioga-advertise@svmmedia.com](mailto:pioga-advertise@svmmedia.com). ■

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## Dues notices are going out!

Here’s a quick heads-up that 2019 dues invoices for most PIOGA members will start going into the mail the middle of this month. Although membership currently runs 12 months from the time a company joins, it previously was based on the calendar year. As a result, most members’ renewals come up this time of year.

We appreciate prompt payment of your dues and look forward to serving you for another year. If you have questions, please contact Debbie Oyler, Director of Member Services, at [debbie@pioga.org](mailto:debbie@pioga.org) or 724-933-7306 ext. 22. ■

**SAVE THE DATE!**

**PIOGA  
Spring Meeting  
April 10, 2019  
Rivers Casino, Pittsburgh**

## Air Quality Compliance Training

Hosted by:

**PIOGA's Environmental Committee**

### Location Information

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 News/Events > PIOGATech Air Quality Compliance.

**Deadline to Register  
 December 10, 2018**

**Date:** Tuesday, December 18, 2018

**Location:** The Chadwick

**Time:** 9:30 AM - Registration & Breakfast  
 10:00 AM to 4:00 PM -Training  
 Breakfast and lunch provided

**Fee:** \$100 for PIOGA Members  
 \$150 for Non-Members

Fee includes Continuing Education Units (CEUs) and breakfast/lunch.

PIOGA's Environmental Committee is pleased to host this training in conjunction with our partners **CleanAir, ALL4 and Civil & Environmental Consultants, Inc. (CEC)**

### Air Quality Compliance Training

This course is designed to provide a basic understanding of the factors that influence air emissions, an overview of the regulations as they relate to oil and gas operations, compliance, and testing methods.

**The five-hour class will cover the following topics:**

Overview of Air Quality Regulations Affecting Oil and Gas Industry - ALL4
Overview of New Source Review (NSR) - CEC
Optical Gas Imaging: Practical Considerations and New Developments - CleanAir
Subpart OOOOa Overview - What's Going On? - ALL4
Ambient Pollutant Monitoring: What's Next? - CleanAir
"Other" Requirements (RICE, Subpart W, etc.) - ALL4/CEC
Demonstrations <ul style="list-style-type: none"> <li>• Optical Gas Imaging Instrumentation and Best Practices</li> <li>• Next Generation Air Monitoring Equipment</li> <li>• Cloud-Based Impact Assessment and Source Identification Tools</li> </ul>
VOC Testing Considerations at Oil and Gas Operations - CleanAir
Pennsylvania - Centric Air Quality Requirements - ALL4
Managing Compliance Panel Discussion - CleanAir, CEC, ALL4, Jim Elliott



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# 2018 Annual Meeting report

PIOGA's Annual Membership Meeting provides an opportunity for members to learn what the association has accomplished over the past year and what the organization will focus on going forward, Chairman Gary Slagel said in his opening remarks at the October 18 event, held the morning following the Oktoberfest Conference at Seven Springs.

Most of the meeting was taken up with reports from committee leaders and association staff, but one important item of business occurred as well. Members unanimously approved a bylaws amendment changing the composition of the Board of Directors. Section 3.3 required that at least two-thirds of the board be made up of Producer members. As amended, a majority of the board now must be Producer members.



*Board Chairman Gary Slagel addresses the Annual Meeting*

Slagel explained that the two-thirds requirement precluded some of the association's very involved members from serving on the board. At the same time, many oil and gas producers have found their workload makes it difficult for them to have time to serve on the board. Slagel emphasized that PIOGA remains a producer-oriented organization while also recognizing that the association continues to evolve to attract different types of members involved in Pennsylvania's energy industry.

The change was endorsed earlier in the year by PIOGA's Executive Committee and Board of Directors after considerable deliberation.

President and Executive Director Dan Weaver provided an overview of the association's status, thanking staff for their efforts and emphasizing that they are accomplishing more with fewer people. Weaver also predicted a busy legislative year for the organization, pointing in particular to the expected return of severance tax and royalty owner rights legislation. He encouraged members to talk with their legislators about issues important to them and their companies.

## Committee reports

Leading off the committee reports was Safety Committee chairman Wayne Vanderhoof of RETTEW. He noted the group meets every other month and attracts about 10-25 participants, depending on the topic being presented. He called for more member involvement in the committee to help provide input on topics for meetings and PIOGATech trainings.

Co-chair Paul Hart of Fluid Recovery Services, LLC

## Board election results

Congratulations to the following member companies and their representatives on their election to three-year terms on the PIOGA Board of Directors, effective with the November 15 board meeting:

- Stan Berdell, BLX, Inc.\*
- Enrico Biassetti, NG Advantage LLC
- Jack Crook, Diversified Gas & Oil\*
- Sam Fragale, Freedom Energy Resources LLC\*
- James Kriebel, Kriebel Companies\*
- David Marks, Dominion Energy Field Services
- Teresa Irvin McCurdy, TD Connections, Inc./Hydro Recovery LP
- Cliff Simmons, Stream-Flo USA, LLC
- Gary Slagel, Steptoe and Johnson PLLC\*

\*Reelected

## Our thanks to Jim Hoover

Jim Hoover of Phoenix Energy Production, Inc. (at left in the photo) has ended his stint on the Board of Directors. We thank him for his service to the association.



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Also: PIOGA Pipeline & Gas Market Development Committee, 2 - 4 p.m.

described the Environmental Committee as one of the best in the industry, marveling at the range of matters the group efficiently addresses at its monthly meetings and emphasizing that the meetings also serve as an open forum for discussion of issues. The key to the committee's success, he said, is that it is a team effort—both on the part of members and staff.

"It's about making a difference," Hart concluded about the committee's work.

The committee's other chairman, Ken Fleeman of ABARTA Energy, covered the committee-organized PIOGATech training sessions held thus far in 2018 and those coming up. He also commented on involvement by committee members and the association in efforts to find solutions to issues surrounding well plugging.

Weaver provided the Tax Committee report on behalf of Don Nestor of Arnett Carbis Toothman, LLP, who was unable to attend. The committee works to keep members abreast of important topics such as the federal Marginal Well Credit and also organizes the annual Oil & Gas Tax and Accounting Seminar.

Chairman Bob Beatty of InsightFuel and Robert Beatty Oil & Gas described the Pipeline and Gas Market Development Committee as "probably PIOGA's most diverse committee" as it pursues new and expanded markets for Pennsylvania-produced natural gas. "We have to start thinking outside the box to connect producers to burner tips," he said, noting that the group alternates traditional monthly meetings with field trips to help educate members.

Joyce Turkaly, Director of Natural Gas Market Development, discussed her work with the PGMD Committee and noted that one of her primary roles is helping to open doors for members. She also put in a plug for the PIOGA Power of Women's Energy Roundtable (PoWER), which will continue to offer lunch-and-learn webinars on various topics.

Beatty, who also chairs the Membership Committee, talked about the member incentive program initiated in 2018. Those who bring in new members received a credit equal to 10 percent of the new company's dues that can be used to offset the existing member's dues, toward event registrations or for advertising in *The PIOGA Press* or PIOGA eWeekly. PIOGA saw growth in 2018 with the help of the program, he noted. ■



*Monte Carlo Night is always a bit hit!*



# Scenes from the Oktoberfest, Conference & Annual Meeting



Above, Mike Atchie of Williams makes a point about building grassroots support for projects during a panel discussion among operators, pipelines and end-users. Above right, political analyst Terry Madonna gives his predictions for the midterm elections. Below, Katy Klaiber talks about challenges and accomplishments from the first decade of Pennsylvania shale development. Bottom, representative of Penn Power Group chat with attendees.




# Become a PIOGA Partner for 2019

Building off the success of this year's program, we are pleased to announce the 2019 PIOGA Partners. The program was launched in 2018 in response to member requests for a "one stop" yearlong event sponsorship option for budgetary purposes. The program also offers unique opportunities—like the Committee Partner—to both support the association and make your company stand out. We also continue to offer traditional event-by-event sponsorships.

The various Partner levels are described below. If you have questions or are ready to sign on now for 2019, contact Debbie Oyler at [debbie@pioga.org](mailto:debbie@pioga.org) or 724-933-7306 ext. 22.

**☑ Keystone Partner, \$10,000**

Your company's logo will be recognized as an official PIOGA Partner at all events, in the monthly *PIOGA Press*, PIOGA eWeekly and on the rotating slides on PIOGA's homepage. Plus, you receive two tickets to all PIOGA events (Spring Meeting, PIOGATechs, networking events, golf outings, sporting clay outings and the Summer Meeting). In addition, you will be eligible to submit an article highlighting your company in *The PIOGA Press* and receive a 30 percent discount off advertising rates in *The PIOGA Press* and eWeekly for one year. Over 10,000 monthly impressions.

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**☑ Meetings Partner, \$5,000**

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**☑ Golf Partner, \$4,000**

Your logo will be recognized as an official PIOGA Partner at golf events, in *The PIOGA Press* and the PIOGA eWeekly. Plus, four entries at all three PIOGA golf events (Ted Cranmer Memorial, Divot Diggers and Summer Meeting outing) and a tee & green sign at each event. Up to 6,000 monthly impressions.

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An advertisement for ECBM (Effective Cost Based Management). The top part features the company logo: "ECBM" in large, bold letters with a green circular arrow around the "C", followed by "EFFECTIVE COST BASED MANAGEMENT" in smaller text. Below the logo, the text reads "INSURANCE BROKERS &amp; CONSULTANTS". The background of the ad is a landscape with a green field, a large tree, and a blue sky. In the foreground, a dinosaur skeleton is shown partially buried in the ground, with its head and front legs visible. The text "Side by Side With You Into the Future" is written in white. Below that, "Digging Out Potential Savings" is written in white. At the bottom, the name "Adrienne Viguera" is listed as Vice President Energy Division, with her email "aviguera@ecbm.com" and phone number "888-313-3226 ext. 1335". The website "WWW.ECBM.COM" is at the very bottom.

# Water law update: Recent developments expected to affect the natural gas industry

Recent developments regarding two facets of Clean Water Act (CWA) regulation could affect natural gas pipeline siting/permitting and exploration and production activities in Pennsylvania and elsewhere. The first issue is the ongoing challenge to define “waters of the United States,” with the definition recently changing in Pennsylvania. The second issue is the concept of Clean Water Act liability extending to releases to groundwater that eventually make their way to surface water (known as the “conduit” theory of liability).

## Definition of “water of the United States”

It is widely known that in 2015 the Obama administration promulgated a new definition of the term “water of the United States” (WOTUS) in a rule commonly referred to as the Clean Water Rule (CWR). Industry and states promptly filed lawsuits challenging the CWR as an unlawful expansion of the types of waters subject to regulation under the CWA. Among other issues, the expanded definition increased the types of waters that were subject to U.S. Army Corps of Engineers and Environmental Protection Agency (EPA) jurisdiction. With the increased scope of federal jurisdiction, a pipeline

project or exploration and production activities could impact a larger quantity of waters that were now considered to be regulated and require more complicated, costly and time-consuming permitting under Section 404 of the CWA. In some instances, a project could not be permitted due to the extent of impacts.

Almost immediately after the CWR was issued, lawsuits challenged it. Until 2018, the CWR was stayed (i.e., suspended) throughout the United States based on a nationwide injunction issued by the Sixth Circuit Court of Appeals. The nationwide judicial stay was lifted following a decision by the U.S. Supreme Court on January 22, 2018, which invalidated the Sixth Circuit’s nationwide injunction, holding that the federal trial courts, rather than federal appellate courts, had original jurisdiction to hear the lawsuits challenging the CWR. *Nat’l Ass’n of Mfrs. v. DOD*, 138 S. Ct. 617 (2018). As a result of the Supreme Court’s decision, the CWR remained stayed in 13 states based upon a previous injunction issued by a federal district court judge, but was expected to come



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into effect in the remainder of the country when the Sixth Circuit vacated its preliminary injunction. To delay the implementation of the CWR, EPA and the Corps finalized a rule adding a CWR applicability date of February 6, 2020. This so-called "Suspension Rule" was intended to give the agencies time to reconsider the CWR and again re-define WOTUS, as they had been directed to do by Executive Order 13778 issued by President Donald Trump in February 2017.

The Suspension Rule remained in effect, and the CWR remained stayed nationwide, throughout much of 2018, until, on August 16 a South Carolina district court overturned it on procedural grounds and imposed a nationwide injunction on the Suspension Rule. *See S.C. Coastal Conserv. League v. Pruitt*, 318 F. Supp. 3d 959 (D.S.C. 2018).

Following the South Carolina district court's decision, other federal district courts subsequently enjoined the CWR in various states. As of October 31, the CWR (and the 2015 definition of WOTUS, is in effect in 22 states, including Pennsylvania, Ohio, New York, Maryland, New Jersey and the New England states. In contrast, the Corps' and EPA's 1986 and 1988 regulations and related guidance will continue to define the scope of federal jurisdiction for now in the remaining 28 states.

For now, and unless the South Carolina district court's decision is overturned or temporarily stayed, the state-dependent definition of WOTUS could have significant and immediate permitting, compliance, and enforcement implications for natural gas production, processing and pipeline projects.

Within states like Pennsylvania, where the CWR currently is in effect, developers may be faced with more complicated, lengthy and expensive CWA Section 404 permitting actions and mitigation obligations. In instances where delineations have been completed but permits have not been issued, the change in regulatory definition may result in additional site evaluations or application revisions or both. In addition, interstate proj-

ects will require state-specific consideration of the different definitions of WOTUS, realizing that certain streams and wetlands may be regulated as WOTUS in one state but not in a neighboring state.

Against this backdrop of an inconsistent regulatory patchwork where the scope of the CWA varies by state, the agencies are pressing forward with their plans to repeal the CWR and potentially redefine WOTUS. The anticipated timetable for the agencies to repeal the CWR and recodify the pre-2015 regulatory definition of WOTUS is late 2018. Concurrently, the agencies have been developing a separate rule which would redefine WOTUS and have indicated that this rule will be proposed in March 2019, a four-month delay from previously announced plans.

### Groundwater conduit theory

Another recent development involves the potential expansion of CWA liability for pollutants entering groundwater. In 2018, three federal appellate courts issued conflicting decisions in five separate citizen suits alleging that CWA liability extends to discharges of pollutants that reach WOTUS via hydrologically connected groundwater. The basic yet fundamental question in each of these, and several other pending district court cases, is whether CWA liability can be asserted when a "point source" discharge travels through groundwater, serving as a "conduit," before ultimately reaching a jurisdictional surface water.

Under the current legal landscape, the Fourth and Ninth Circuits have ruled that CWA liability extends to such discharges. The tests for liability in the two courts differ, with the Fourth Circuit adopting the "direct hydrological connection" test and the Ninth Circuit adopting the "fairly traceable" test. On the other hand, the Sixth Circuit has rejected the "direct hydrological connection" rationale and ruled that the groundwater "conduit" theory is inconsistent with the plain language of the CWA. The courts have also examined the meaning of "point

source," defined under the CWA as a "discernible, confined, and discrete conveyance" 33 U.S.C. § 1362(14). Pennsylvania is located in the Third Circuit, which has not, yet, issued any opinions directly addressing the "conduit" theory.

With varying results and areas of focus, the "conduit" theory of CWA liability recently has been raised in citizen suits by environmental groups in a variety of different contexts, including the following:

- The Ninth Circuit found that separately permitted wastewater injection wells with a dye-tracer confirmed hydrological connection (through lava tubes) to the Pacific Ocean are regulated under the CWA. *Hawai'i Wildlife Fund v. County of Maui*, 886 F.3d 737 (9<sup>th</sup> Cir. 2018).

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- The Fourth Circuit found that allegedly ongoing contamination seeping through groundwater from a previously repaired gasoline pipeline rupture is regulated under the CWA. *Upstate Forever v. Kinder Morgan Energy Partners*, 887 F.3d 637 (4<sup>th</sup> Cir. 2018).

- The Fourth Circuit also found that coal ash settling ponds and landfills are not “point sources” or “discernible, confined, and discrete conveyances” and therefore are not regulated under the CWA. *Sierra Club v. Virginia Electric Power Co.*, 903 F.3d 403 (4<sup>th</sup> Cir. 2018).

- The Sixth Circuit found that seepage of pollutants from coal ash ponds/impoundments that migrated through karst topography to nearby surface water is not regulated by the CWA. *Kentucky Waterways Alliance v. Kentucky Utilities Co.*, 905 F.3d 925 (6<sup>th</sup> Cir. 2018); *Tennessee Clean Water Network v. Tennessee Valley Auth.*, 905 F.3d 436 (6<sup>th</sup> Cir. 2018).

Similar to the existing legal landscape regarding the definition of WOTUS, the conflicting decisions of the Fourth, Sixth, and Ninth Circuits over the viability of the groundwater “conduit” theory result in an arguably broader scope for CWA liability in the 14 states and two territories within the Fourth and Ninth Circuits and a narrower scope of CWA liability in the four states within the Sixth Circuit. The clear split among these circuits on the scope of CWA liability increases the likelihood that the Supreme Court will weigh in on this important issue. In fact, the defendants in the *Upstate Forever v. Kinder Morgan* and *Hawai'i Wildlife Fund v. County of Maui* matters have already filed petitions for a writ of certiorari seeking Supreme Court review.

Natural gas, oil and other hazardous liquid pipeline operators could be specifically affected by the “conduit” theory decisions, as evident by the ruling in *Upstate Forever v. Kinder Morgan*. The *Upstate Forever* decision has the potential to significantly expand the scope of the CWA to cover a wide range of unplanned and unintentional discharges that reach surface waters through complex underground pathways. Furthermore, allowing CWA citizen suits to continue after the source of the discharge has been stopped increases exposure for entities that have taken actions to correct a leak or to address residual groundwater contamination through remediation.

Notwithstanding the differences in opinion among these federal appellate courts, as a result of the Sixth Circuit decisions regulated parties in CWA lawsuits now have recent persuasive precedent to rely upon when facing allegations of an unauthorized discharge under the CWA from ponds, impoundments, lagoons, landfills and other similar sources.

## Conclusion

In the midst of the ongoing litigation over the CWR, the agencies' recent efforts to roll back the CWR and redefine WOTUS, and the clear split among federal appellate courts on the legitimacy of the groundwater “conduit” theory, companies engaged in natural gas pipeline siting/ permitting and exploration and production activities face an evolving scope of CWA regulation,

with state-by-state differences and likely changes due to future judicial decisions and executive actions. ■

*Babst Calland will continue to monitor these significant legal developments under the CWA. If you have questions about the topics discussed in this article or how they may impact your operations and compliance obligations, contact Lisa M. Bruderly at 412-394-6495 or lbruderly@babstcalland.com, or Gary E. Steinbauer at 412-394-6590 or gsteinbauer@babstcalland.com.*

## DEP launches two oil and gas electronic permits

The Department of Environmental Protection announced it has launched electronic permits for well drilling and erosion and sediment control at oil and gas sites to provide operators a more efficient and convenient permitting process and faster response from DEP.

The department says the permit review process will take less time because operators can pay permit fees online, DEP data entry duplication is eliminated and the e-permit system ensures applications are administratively complete when submitted, which has been a challenge in permitting across regulated communities.

The well-drilling e-permit covers new applications, renewals and alterations. It replaces an older, less robust electronic tool, called eWell. The new electronic Erosion and Sediment Control General Permit 3 (ESCGP-3) covers five or more acres of earth disturbance and is a key development permit. It replaces the ESCGP-2, which was a paper form.

Operators can access the new e-permits through DEP GreenPort at [www.depgreenport.state.pa.us](http://www.depgreenport.state.pa.us) (registration is required for first-time users). Paper ESCGP-3 applications and eWell applications will continue to be accepted during a testing period of the new e-permits, which is expected to last until the end of December. Operators who'd like to provide feedback on the new e-permits can call the Office of Oil and Gas Management at 717-783-9438.

The well-drilling and ESCGP-3 e-permits are the latest electronic tools in DEP's continuing efforts to use technology solutions to improve customer service, reduce paper-driven processes and further protect the environment, the department emphasized. In addition, the agency has developed online processes to digitize grants systems, modernize facility inspection processes, and archive content for access by both staff and the public. ■

# Fatigue

By Carol C. Delfino, CIH, CSP  
SE Technologies, LLC

Fatigue is more than just being tired. It is a feeling of so much exhaustion that functioning normally is not possible. Fatigue can be dangerous especially if you are operating machinery or vehicles, as these activities require a lot of concentration. According to one study, 20 percent of motor vehicle accidents occur due to fatigue. Fatigued employees are three times more likely to be involved in accidents due to their fatigue. Most people fail to effectively gauge their fatigue level because fatigue interferes with our ability to think and access our level of impairment.

Fatigue can be physical or mental, or both at the same time.

Physical fatigue occurs when the muscles are so exhausted that they cannot perform at their best any longer. This can have a serious negative effect on work. The onset is usually gradual. The degree of physical fatigue depends on age, physical fitness and medical conditions.

Mental fatigue is a decrease in your capacity to think clearly. It typically sets in after a period of prolonged mental activity or simulation. The onset is gradual. The degree of mental fatigue also depends on a person's health and how much they have been able to rest.

Each of these types of fatigue also can be acute or

## Safety Committee Corner

chronic. Acute fatigue is severe and has a sudden onset of symptoms. It is caused by short-term sleep deprivation or short periods of heavy physical or mental strain. This type of fatigue usually does not last long and can be reversed by a good night's sleep and relaxation. Chronic fatigue syndrome is a constant, prolonged and severe state of tiredness or sleepiness that cannot be remedied by sleep and interferes with a person's everyday activity. The symptoms last longer than six months and they often become worse over time.

Causes of fatigue are insufficient sleep, chronic diseases and conditions, diabetes, cardiovascular disease, obesity, depression, and sleep apnea. There are also several lifestyle factors that contribute to fatigue, such as working extended shifts without rest in between, emotional concerns, alcohol and caffeine consumption, family issues, and social obligations.

Signs of fatigue are yawning frequently, red eyes, sensitivity to light, headaches, muscle and joint pain, poor work performance, moodiness, and delayed response. These symptoms vary from person to person, but if you are aware of them it can save lives.

Fatigue can be prevented by maintaining a regular cycle of sleep, exercising regularly, drinking plenty of water regularly, maintaining your weight and eating balanced meals. ■



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# Increase your engagement with a PIOGA committee

As emphasized in the Annual Meeting report elsewhere in this issue, the chairs of PIOGA's committees are always looking for more member involvement. Our committees are where the association's work gets done and where tangible value is added to your membership. PIOGA has five committees: Environmental, Pipeline and Gas Market Development, Legislative, Safety, and Tax. These groups are all about finding solutions to challenges and exploring new opportunities.

Below you will find brief descriptions of what each committee does. If you or someone on your staff would like to become involved, contact Deana McMahan at [deana@pioga.org](mailto:deana@pioga.org) to be placed on the email list for that particular committee. You will receive all committee notices and will have access to the committee's area of PIOGA's Members Only website.

## Environmental Committee

The Environmental Committee is made up of company leaders and technical experts from a variety of backgrounds, working to stay informed about environmental and regulatory issues and engage directly with government regulators on public policy development and implementation. That's no small task as the committee deals with issues involving state government entities including the Pennsylvania Department of Environmental Protection, Fish and Boat Commission, Game Commission, Department of Conservation and Natural Resources, and on the federal level the U.S. Environmental Protection Agency, Fish and Wildlife Service, Army Corps of Engineers, as well as the Susquehanna and Delaware River Basin Commissions.

The committee is divided into four highly active subcommittees: Erosion and Sedimentation, Waterways and Endangered Species; Air Quality and Emissions; Water, Waste Management and Recycling; and Well Construction. Workgroups are created to address particular matters of concern. Several installments of PIOGA's Technical Seminar Series are organized each year by the committee and its subcommittees.

Chaired by Paul Hart of Fluid Recovery Service, LLC and Ken Fleeman of ABARTA Energy, the Environmental Committee meets the second Wednesday of each month at the RLA Learning and Conference Center in Cranberry Township.

## Pipeline and Gas Market Development Committee

The focus of the PGMD Committee is to expand the markets for Pennsylvania-produced natural gas in electric generation, alternative-fuel vehicles, commercial applications, exports, industrial demand, distribution demand, and natural gas conversions from other fuels. The group also monitors and supports PIOGA intervention in proceedings before the Pennsylvania Public Utility Commission and Federal Energy Regulatory Commission. PIOGA has a staff member, Joyce Turkaly,



Members of the Pipeline and Gas Market Development Committee tour a natural-gas-fired power plant near Williamsport.

tasked specifically with natural gas market development, and she works closely with the committee.

PGMD members find themselves involved in a wide range of activities, from participating in public hearings in support of pipelines and other projects to working with the region's electric grid coordinator, PJM, and

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many things in between.

The committee is led by Robert Beatty Jr. of Insight-Fuel and Beatty Oil & Gas. Meetings are held the second Thursday of each month, with some occurring at the PIOGA offices in Wexford and others comprising educational field trips to places such as CNG fueling stations, LNG facilities, training centers and more.

### Legislative Committee

One of the most important functions of a trade association is government relations. The Legislative Committee focuses on the lawmaking process primarily in Harrisburg but also in Washington, D.C., in conjunction with the Independent Petroleum Association of America. The duties of the Legislative Committee, working closely with PIOGA staff and our government relations firm, include:

- Assisting with developing PIOGA's legislative agenda.
- Reviewing legislation and recommending positions and actions to be taken on bills.
- Following through on calls for action by contacting legislators and encouraging PIOGA members to be active in legislative issues.



*PIOGA's Joyce Turkaly participated at the Beaver County Energy and Advanced Manufacturing Day hosted by the Beaver County Chamber and Community College of Beaver County on October 25. Approximately 900 middle school students visited industry representatives to learn about workforce opportunities and education pathways in energy. Students visiting the PIOGA table were able to play "Pay the Producer." Joyce demonstrated that energy must come from somewhere to keep us warm and light our homes, but how many of think about the role of the producer? "Educating the students through this interactive game allowed me to informally survey the students to gauge how their thoughts and opinions are formed," she said. "I learned as much or more than they did!"*

- Assisting with plans for lobby days, legislative conferences and legislative fund raising.
- Helping to educate membership on legislative issues through *The PIOGA Press*, PIOGA conferences, the association's website and other forums.

The committee meets by conference call on the first Thursday of each month. Chairs are Ben Wallace of Penneco Oil Company, Inc. and Kevin Gormly of Steptoe & Johnson, PLLC.

### Safety Committee

The mission of the PIOGA Safety Committee is to serve as a forum to improve Pennsylvania oil and gas industry safety performance through the exchange and communication of best practices, education and training, incident review and sharing, and to identify and communicate industry trends. The group meets every other month on the second Wednesday (just before the Environmental Committee) at the RLA Learning and Conference Center in Cranberry Township. The chairman is Wayne Vanderhoof of RETTEW.

### Tax Committee

The committee is responsible for monitoring and reporting federal, state and local tax developments. The Tax Committee hosts the Oil & Gas Accounting and Tax Update seminar held late each year. Don Nestor of Arnett Carbis Toothman, LLP is the group's chair. Meetings are scheduled as needed. ■

## Alternative-fueling grant availability

The Department of Environmental Protection has announced the availability of Alternative Fuels Corridor Infrastructure Grants under the federal Fixing America's Surface Transportation (FAST) Act for federally designated corridors. Applications will be accepted between November 9 and February 8 for refueling facility projects within 5 roadway miles of the following corridors in Pennsylvania: I-76, I-276, I-376, I-476, I-79, I-90, I-95 and I-80.

Project awards of up to \$500,000 will be available to install public-use electric, hydrogen, propane and compressed natural gas refueling infrastructure. Eligible project infrastructure must be publicly accessible 24/7; incorporate roadway signage compliant with the FAST Act; offer an open and common payment platform; feature standardized nozzles and connectors; be co-located with convenient consumer amenities at safe locations; and provide travelers with measures of assurance that the fuel will be available during their planned stop.

More information on this grant program will be posted on DEP's Alternative Fuels Incentive Grant webpage ([www.dep.pa.gov/citizens/grantsloansrebates/alternative-fuels-incentive-grant/pages/default.aspx](http://www.dep.pa.gov/citizens/grantsloansrebates/alternative-fuels-incentive-grant/pages/default.aspx)). Questions should be directed to Josh Dziubek at [jdziubek@pa.gov](mailto:jdziubek@pa.gov) or 717-783-8411. ■



### Schoenecker to resign from ARG

American Refining Group Inc. has announced that President and Chief Operating Officer Jeannine T. Schoenecker will resign sometime in early 2019 following her husband Brett's recent diagnosis of ALS, or Lou Gehrig's disease. The Schoeneckers celebrated 22 years of marriage in September.

"ARG has been an amazing extended family for me for the past 20 years. ARG has supported me and together we have accomplished some amazing things. I now must focus my time on my immediate family. Brett has to be my top priority," she continued. "Brett and I will make this journey together, starting with doing many of the things we have always hoped and planned to do together."

Ms. Schoenecker will continue in her role until the end of March unless a successor can be identified sooner.

### Steptoe & Johnson earns top rankings

Steptoe & Johnson PLLC is ranked first nationally in mining law in the 2019 *U.S. News & World Report* "Best Law Firms" for the second consecutive year. In addition to the national ranking in "Best Law Firms," the firm was ranked top in the nation in Energy Law by the authors of *The Best Lawyers in America*®.

Firms included in "Best Law Firms" are recognized for professional excellence by leading lawyers and clients. A first-tier designation reflects the high level of respect a firm has earned among its clients and peers. Steptoe & Johnson received first tier rankings in practice areas including energy law, appellate, labor law, insurance law, education law, professional malpractice law, and others.

In addition, *U.S. News and World Report* ranked more than 30 of the firm's practice areas top tier in specific metropolitan areas. *U.S. News & World Report* "Best Law Firms" is a companion publication of *The Best Lawyers in America*®. Best Lawyers listed 95 Steptoe & Johnson attorneys for 2019.

### Wesolowski joins Ergon

Joe Wesolowski has joined the Ergon family to work for Ergon Oil Purchasing as a Crude Oil Buyer. He worked in the industrial electrical industry for over 14 years for the Hite Corporation, based out of Altoona and servicing the energy, commercial building and residential building industries. His roles with Hite included customer service, counter sales representative, inside sales representative, outside sales representative and key account manager. In his new role with Ergon Oil Purchasing, Wesolowski will work with producers in Ohio and Pennsylvania. ■

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Supreme Court decisions on shale gas drilling, the court in a 5-2 decision rejected this “one size fits all” proposition. It found that state law empowers municipalities to determine where well sites are appropriate and compatible with other land uses within their boundaries.

### **Background**

In 2010, the township Board of Supervisors enacted a zoning ordinance amendment that allowed oil and gas well operations in all zoning districts as a use permitted “as of right,” provided the applicant satisfied numerous specified standards to protect the public health, safety, and welfare. A use permitted “as of right” requires administrative approval; it does not require public notice or a hearing.

In 2014, CNX Gas Company, LLC applied to the township for a zoning permit to develop an unconventional well pad (Porter Pad) in the R-2 Agricultural/Residential Zoning District and submitted all the information required by the 2010 ordinance. Once CNX received the zoning permit, three nearby individuals (the objectors) appealed to the board. They challenged the granting of the permit and raised a substantive validity challenge to the 2010 ordinance. The objectors claimed that based on the Pennsylvania Supreme Court’s decision in *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (*Robinson Township II*), the ordinance violated substantive due process and Article 1, Section 27 of the Pennsylvania Constitution, commonly known as the Environmental Rights Amendment (ERA), because it allowed an allegedly industrial use in a residential/agricultural zoning district.

During three nights of hearings before the board, the objectors presented Dr. John Stoltz and Steven Victor as expert witnesses. The board found that neither expert was credible. CNX and landowners presented testimony and called Professor Ross Pifer as an expert on the interplay between the oil and gas industry and agricultural and rural communities in the Commonwealth of Pennsylvania. The board found Professor Pifer credible.

The board’s written decision contained numerous findings of fact related to the qualities and characteristics of the township, its long history of oil and natural gas development, and the specific operations that would take

place as the Porter Pad is developed. The board rejected the objectors’ claims that the Porter Pad would have an adverse effect on public health, safety, welfare or the environment. The board likewise rejected the objectors’ reading of *Robinson Township II*, ultimately concluding that the 2010 ordinance is valid. On appeal to the Westmoreland County Court of Common Pleas, President Judge Richard McCormick affirmed the board’s decision.

### **The Commonwealth Court *en banc* opinion**

President Judge Mary Hannah Leavitt authored the majority opinion, joined by Judge Renee Cohn Jubelirer, Judge P. Kevin Brobson, Judge Anne E. Covey and Judge Michael H. Wojcik. Judge Patricia A. McCullough and Judge Ellen Ceisler authored separate dissents.

The court majority first addressed the objectors’ substantive due process claim. Judge Leavitt acknowledged that the objectors did not challenge the board’s detailed findings of fact as being unsupported by substantial evidence, and that the board’s credibility determinations were binding on the court. The court pointed out that although the objectors advanced various concerns about natural gas development in their brief, they had not presented credible evidence to substantiate these claims before the board. Instead, the objectors merely expressed generalized and speculative concerns about the construction and operation of the Porter Pad. Reviewing its recent decisions in *Gorsline v. Board of Supervisors of Fairfield Township*, 123 A.3d 1142 (Pa. Cmwlth. 2015), *reversed on other grounds*, 186 A.3d 375 (Pa. 2018) and *EQT Production Company v. Borough of Jefferson Hills*, 162 A.3d 554 (Pa. Cmwlth. 2017), *petition for allowance of appeal granted in part*, 179 A.3d 454 (Pa. 2018), the court reiterated that objections to construction activities and mere speculation of possible harm are insufficient to sustain an objector’s burden.

In addressing the objectors’ repeated use of the term “industrial” to describe natural gas wells, the court observed that the objectors did not present any evidence to the board “on what they meant by ‘industrial’ or the significance of that term.” The court cited to its recent decision in another ordinance validity challenge for the proposition that oil and gas drilling, like farming, is not a heavy industrial use but instead is a use traditionally exercised in agricultural areas, containing temporary components of an industrial use.<sup>[1]</sup> As a result, the court agreed with the board that the ordinance does not violate substantive due process.

Next, the court addressed the objectors’ contention that the ordinance violates the ERA, specifically its first sentence, which states that “[t]he people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.” In this regard, the objectors reiterated the same argument they made under the due process clause—that

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[1] *Delaware Riverkeeper Network v. Middlesex Township Zoning Hearing Board*, Nos. 1229, 1323, and 2609 C.D. 2015, 2017 WL 2458278 (Pa. Cmwlth. June 7, 2017) (unreported), *vacated and remanded*, 190 A. 3d 1126 (Pa. 2018) (*per curiam*). *Delaware Riverkeeper* is discussed in more detail in the last section of this article.

oil and gas is an incompatible “industrial use” that degrades the local environment. The objectors also asserted that the Supreme Court’s interpretation of the ERA in *Robinson Township II* required the township to engage in an undefined pre-action environmental impact analysis before enacting the 2010 ordinance.

In analyzing these ERA claims, the Commonwealth Court acknowledged the Pennsylvania Supreme Court’s 2017 ruling in *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911 (Pa. 2017) (*PEDF*). In *PEDF*, the Supreme Court rejected the three-part test for measuring compliance with the ERA enunciated by the Commonwealth Court in *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973)<sup>[2]</sup> and instead ruled that challenges raised under the ERA should be decided in accordance with its text.<sup>[3]</sup> Acknowledging that the “precise duties imposed upon local governments by the first sentence of the [ERA] are by no means clear,” the Commonwealth Court ascertained the relevant standard, based on *Robinson Township II* and *PEDF*, to be whether the governmental action “unreasonably impairs” the environmental values implicated by the ERA. However, the Commonwealth Court found that *Robinson Township II* “did not give municipalities the power to act beyond the bounds of their enabling legislation” and that “[m]unicipalities lack the power to replicate the environmental oversight that the General Assembly has conferred upon [the Department of Environmental Protection] and other state agencies.”

The court also observed that Section 3302 of the Oil and Gas Act preempts municipalities from regulating “how” drilling takes place, and that a municipality may only use its zoning powers to regulate “where” mineral extraction occurs. The Commonwealth Court concluded the objectors failed to prove that the township’s legislative decision expressed in the ordinance allowing gas wells in all zoning districts “unreasonably impairs” their rights under the ERA, particularly when the record (and the board’s findings) showed how long natural gas development has safely coexisted within rural communities, how the land can be returned to its original state once the wells are completed and how energy extraction can support the agricultural use of land.

The court next addressed the objectors’ claim that the ordinance violated several provisions of the state’s zoning enabling legislation, i.e. the Pennsylvania Municipalities Planning Code (MPC). Once again, the court pointed out the conclusory nature of the objectors’ argument that oil

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[2] Under the *Payne v. Kassab* test, the court reviewing governmental action considers: “(1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth’s public natural resources? (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum? (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?”

[3] The Commonwealth Court originally heard oral argument in *Frederick* before a three-Judge panel on November 14, 2016. On January 3, 2018, the Court entered an order directing the parties to file supplemental briefs addressing the impact of *PEDF*. The Court heard oral argument *en banc* on February 7, 2018.

and gas drilling is incompatible with rural uses. The MPC sets forth the detailed public process that a municipality must follow when it amends its zoning ordinance. However, the objectors claimed that *Robinson Township II* added a level of analysis requiring the township to undertake pre-enactment environmental, health and safety studies in order to satisfy the township’s obligations under the ERA. The Commonwealth Court rejected this claim and agreed with the board that such an argument is a novel construction without any foundation under Pennsylvania law.

In its conclusion, the majority opinion recognized that municipalities, if they do elect to utilize their discretion to enact land use regulation in the first place, must balance the interests of landowners in the use and enjoyment of their property with the public health, safety, and welfare. The objectors’ contention that the ordinance will result in oil and gas development anywhere and everywhere in the township is tempered by the significant setback requirements in Act 13 that remain in effect. In fact, the board found that these requirements eliminated shale gas development from more than 50 percent of the land in the township. The court returned to the “where” versus “how” distinction declared by the Supreme Court and noted that a zoning ordinance expressing legislative decisions regarding where a land use can occur must be affirmed unless clearly arbitrary and unreasonable.

The penultimate paragraph in the majority’s opinion is worth noting here: “objectors’ objectives in this litigation are confounding. Were they to succeed in invalidating [the ordinance], then they release oil and gas operators from the ordinance conditions that relate to noise, lighting, hours, security and dust. Absent [the ordinance], CNX’s permit could be invalidated. However, CNX would no longer need a ‘zoning compliance permit’ to operate the Porter Pad.”

### Dissenting opinions

Judge McCullough dissented and would remand the case back to the board to receive additional evidence as to how the ordinance is compatible with the ERA. Reading *Robinson Township II* in concert with *PEDF*, Judge McCullough believed that if it was unconstitutional for the General Assembly to permit natural gas development in all zoning districts, so too must it be unconstitutional for the township to do so through its zoning ordinance. Significantly, she would switch the burden of proof in a substantive validity challenge and require the township to make an evidentiary showing to prove that the ordinance did not violate the ERA. She also opined that the ordinance “should be subjected to strict scrutiny and analysis in the same manner that courts provide to other fundamental rights.”

Judge Ceisler filed a separate dissent noting that although she agreed with much of the majority’s reasoning, she did not agree with the conclusion that the ordinance does not violate the ERA. She would find that the ordinance facially violates the ERA and does not comport with the township’s duties as the environmental trustee of all the public natural resources within its domain.

## What's next?

The objectors do not have an automatic right to appeal this decision to the Pennsylvania Supreme Court. However, within 30 days of the Commonwealth Court decision, they can petition the Supreme Court to consider the case. If the Supreme Court declines to take the case, the Commonwealth Court decision will remain as controlling law. If the Supreme Court accepts the appeal, the parties will brief and argue the case before the court.

On the same day it heard oral argument in *Frederick* (November 14, 2016), the same panel of the Commonwealth Court (Judges Leadbetter, McCullough, and Wojcik) heard argument in *Delaware Riverkeeper Network v. Middlesex Township Zoning Hearing Board*—another substantive validity challenge to a municipality's decision to allow shale drilling in areas beyond industrial zoning districts. On June 7, 2017, the Commonwealth Court decided *Delaware Riverkeeper* in an unreported opinion, affirming the validity of the challenged ordinance. *Delaware Riverkeeper Network v. Middlesex Twp. Zoning Hearing Bd.*, No. 1229 C.D. 2015, 2017 WL 2458278 (Pa. Cmwlth. June 7, 2017). As part of its analysis there, the Commonwealth Court applied the three-part *Payne v. Kassab* test for measuring compliance with the ERA. However, as discussed above, on June 20, 2017 the Supreme Court decided *PEDF*, which rejected *Payne v. Kassab* as the applicable test.

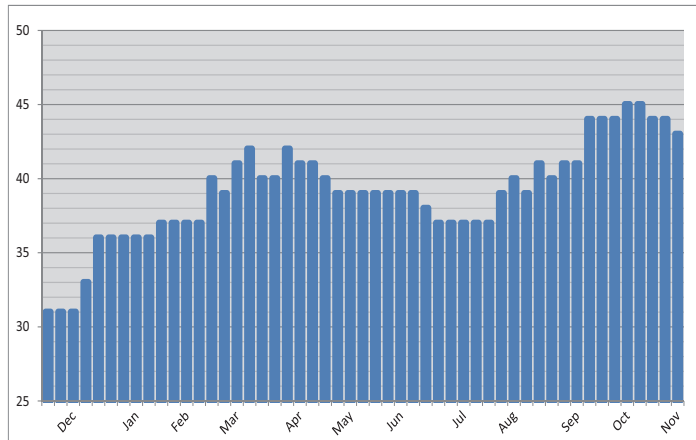
In addition, on June 1, 2018, the Supreme Court issued its opinion in *Gorsline*, referenced above. Although the Supreme Court, in a 4-3 decision, reversed Fairfield Township's approval of a conditional use for an unconventional gas well pad, it did so on narrow grounds related to the "savings clause" language of the zoning ordinance there, specifically whether the well pad was "similar" to other uses in the applicable zoning district. However, the *Gorsline* majority concluded with language rejecting the objectors' contention that oil and gas development was "incompatible" with uses in rural and agricultural districts, thus recognizing that zoning decisions are inherently local matters and local municipalities are empowered to "permit oil and gas development in any or all of its zoning districts." In addition, the *Gorsline* majority cautioned that its narrow holding "should not be misconstrued as an indication that oil and gas development is never permitted in residential/agricultural districts, or that it is fundamentally incompatible with residential or agricultural uses." *Gorsline*, 186 A.3d at 389.

On August 3, 2018, Supreme Court vacated and remanded *Delaware Riverkeeper*, directing the Commonwealth Court to reconsider its decision in light of *PEDF* and the above-quoted language in *Gorsline*. A decision from the Commonwealth Court is pending. ■

*Babst Calland* represented CNX in this matter. For more information regarding issues relating to land use and municipal implications of the Commonwealth Court's decision, contact Blaine A. Lucas at 412-394-5657 or [blucas@babstcalland.com](mailto:blucas@babstcalland.com) or Robert Max Junker at 412-773-8722 or [rjunker@babstcalland.com](mailto:rjunker@babstcalland.com).

## Oil & Gas Dashboard

### Pennsylvania Rig Count



### Penn Grade Crude Oil Prices



### Natural Gas Futures Closing Prices

Month	Price
December 2018	\$3.558
January 2019	3.569
February	3.427
March	3.100
April	2.756
May	2.720
June	2.742
July	2.776
August	2.778
September	2.757
October	2.772
November	2.824

Prices as of November 8

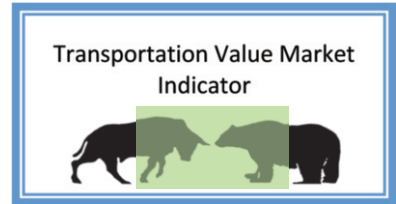
### Sources

American Refining Group: [www.amref.com/Crude-Prices-New.aspx](http://www.amref.com/Crude-Prices-New.aspx)  
 Ergon Oil Purchasing: [www.ergon.com/prices.php](http://www.ergon.com/prices.php)  
 Gas futures: [quotes.ino.com/exchanges/?r=NYMEX\\_NG](http://quotes.ino.com/exchanges/?r=NYMEX_NG)  
 Baker Hughes rig count: [phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-report-sother](http://phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-report-sother)  
 NYMEX strip chart: Emkey Energy LLC, [emkeyenergy.com](http://emkeyenergy.com)

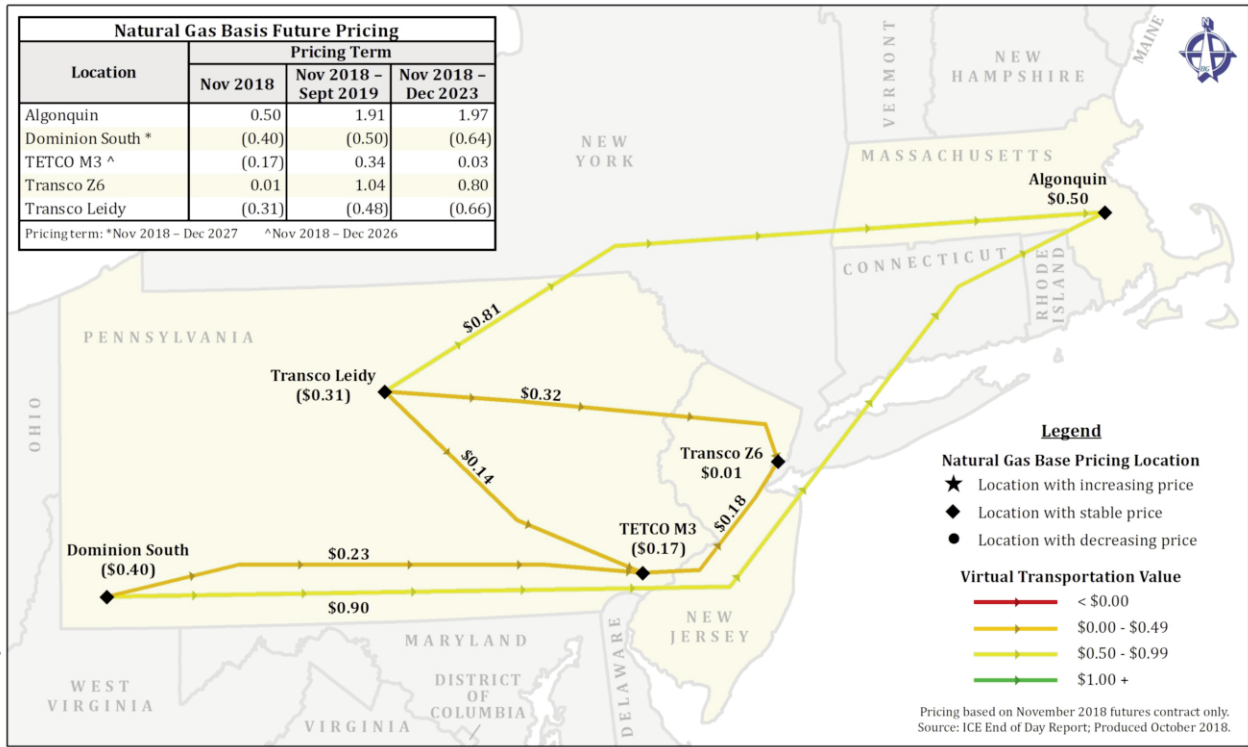
# Northeast Pricing Report – November 2018

Winter is starting to take over for November pricing. Every trading point has increased since October. Algonquin had the lowest increase of \$0.06 per MMBtu, while Transco Z6 had the highest of \$0.38 per MMBtu. With temperatures stabilizing, there may well be a reversal for December. One-year term pricing traded opposite of the front month term. TETCO M3 was flat, however all other trading points decreased. Algonquin saw the largest decrease of \$0.27 per MMBtu. The full-term trading period was mixed across the board. There was very little volatility with the largest increase being Transco Leidy which increased by \$0.02 per MMBtu, and Algonquin and Transco Z6 decreasing identical \$0.03 per MMBtu.

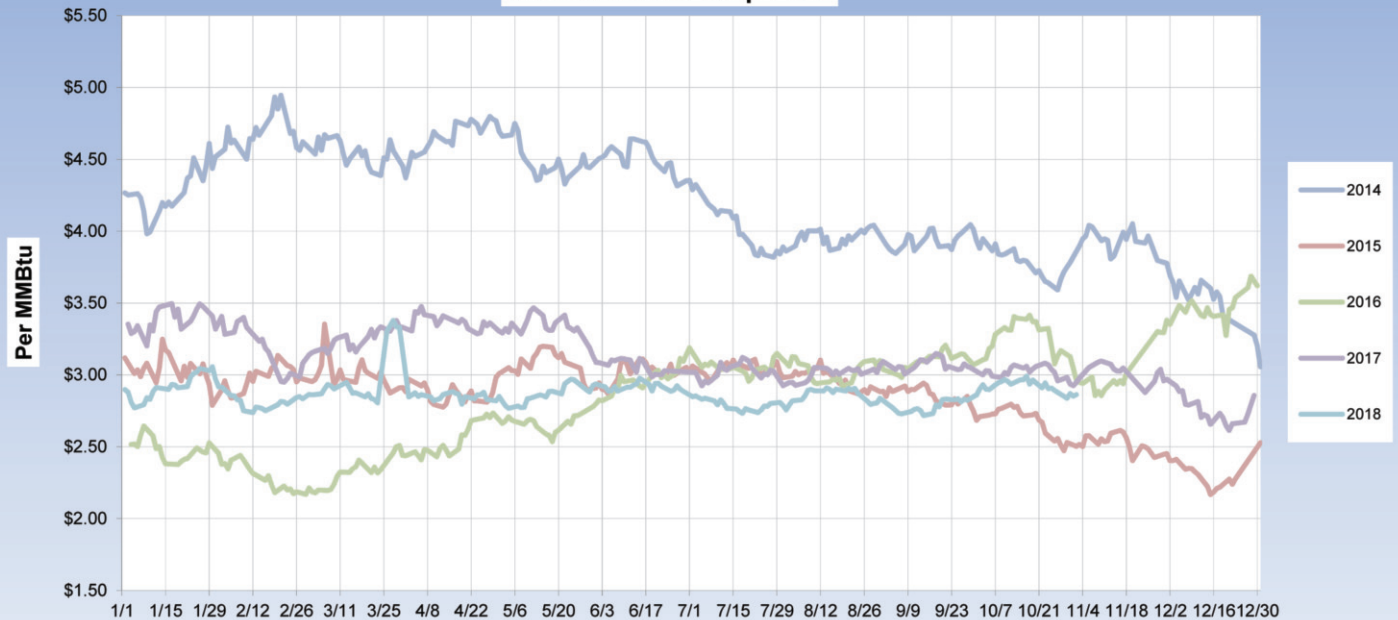
Transportation values continue to be mixed. Dominion South and Leidy to Algonquin were the only two transportation routes that decreased. The decreases were not significant though at \$0.14 and \$0.15 per MMBtu respectively. None of the other transportation routes increased significantly either. The increases ranged from \$0.07 to \$0.17 per MMBtu. Transco Leidy to Transco Z6 had the largest increase of \$0.17 per MMBtu.



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



## NYMEX Annual Strip Price



# Spud Report: October 2018



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
ARD Operating LLC	4	10/26/18	081-21754	Lycoming	Cascade Twp
		10/26/18	081-21755	Lycoming	Cascade Twp
		10/26/18	081-21756	Lycoming	Cascade Twp
		10/26/18	081-21741	Lycoming	Cascade Twp
Cabot Oil & Gas Corp	14	10/28/18	115-22514	Susquehanna	Bridgewater Twp
		10/28/18	115-22515	Susquehanna	Bridgewater Twp
		10/28/18	115-22516	Susquehanna	Bridgewater Twp
		10/28/18	115-22517	Susquehanna	Bridgewater Twp
		10/28/18	115-22518	Susquehanna	Bridgewater Twp
		10/28/18	115-22519	Susquehanna	Bridgewater Twp
		10/5/18	115-22538	Susquehanna	Springville Twp
		10/5/18	115-22531	Susquehanna	Springville Twp
		10/5/18	115-22532	Susquehanna	Springville Twp
		10/5/18	115-22534	Susquehanna	Springville Twp
		10/5/18	115-22533	Susquehanna	Springville Twp
		10/5/18	115-22535	Susquehanna	Springville Twp
		10/5/18	115-22536	Susquehanna	Springville Twp
		10/5/18	115-22537	Susquehanna	Springville Twp
Cameron Energy Co	3	10/3/18	123-48137*	Warren	Sheffield Twp
		10/16/18	123-48139*	Warren	Sheffield Twp
		10/30/18	123-48190*	Warren	Sheffield Twp
Chesapeake Appalachia LLC	9	10/19/18	015-23394	Bradford	Tuscarora Twp
		10/11/18	015-23435	Bradford	Wilmot Twp
		10/12/18	015-23436	Bradford	Wilmot Twp
		10/11/18	115-22546	Susquehanna	Auburn Twp
		10/12/18	115-22548	Susquehanna	Auburn Twp
		10/13/18	115-22547	Susquehanna	Auburn Twp
		10/3/18	131-20554	Wyoming	Windham Twp
10/4/18	131-20556	Wyoming	Windham Twp		
Chevron Appalachia LLC	9	10/23/18	051-24671	Fayette	German Twp
		10/23/18	051-24672	Fayette	German Twp
		10/23/18	051-24674	Fayette	German Twp
		10/23/18	051-24666	Fayette	German Twp
		10/23/18	051-24667	Fayette	German Twp
		10/23/18	051-24673	Fayette	German Twp
		10/23/18	051-24668	Fayette	German Twp
		10/23/18	051-24669	Fayette	German Twp
		10/23/18	051-24670	Fayette	German Twp
		10/4/18	059-27735	Greene	Morris Twp
CNX Gas Co LLC	10	10/12/18	059-27667	Greene	Richhill Twp
		10/12/18	059-27668	Greene	Richhill Twp
		10/12/18	059-27669	Greene	Richhill Twp
		10/12/18	059-27670	Greene	Richhill Twp
		10/12/18	059-27671	Greene	Richhill Twp
		10/29/18	125-28534	Washington	East Finley Twp

available at [www.dep.pa.gov/DataandTools/Reports/Oil and Gas Reports](http://www.dep.pa.gov/DataandTools/Reports/Oil and Gas Reports).

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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
		10/29/18	125-28536	Washington	East Finley Twp
		10/29/18	125-28537	Washington	East Finley Twp
		10/29/18	125-28538	Washington	East Finley Twp
		10/15/18	053-30868*	Forest	Howe Twp
Curtis Oil Inc	3	10/23/18	053-30867*	Forest	Howe Twp
		10/30/18	053-30866*	Forest	Howe Twp
		10/29/18	059-26994	Greene	Franklin Twp
EQT Production Co	5	10/29/18	059-27602	Greene	Franklin Twp
		10/29/18	059-27603	Greene	Franklin Twp
		10/15/18	059-27595	Greene	Washington Twp
		10/15/18	059-27596	Greene	Washington Twp
Jett Oil LLC	1	10/19/18	123-48053*	Warren	Pleasant Twp
		10/8/18	105-21919	Potter	Pike Twp
JKLM Energy LLC	6	10/9/18	105-21920	Potter	Pike Twp
		10/10/18	105-21921	Potter	Pike Twp
		10/11/18	105-21922	Potter	Pike Twp
		10/3/18	105-21924	Potter	Ulysses Twp
		10/4/18	105-21923	Potter	Ulysses Twp
		10/9/18	123-48152*	Warren	Glade Twp
		10/26/18	123-48007*	Warren	Brokenstraw Twp
		10/1/18	053-30874*	Forest	Howe Twp
		10/8/18	053-30873*	Forest	Howe Twp
		10/15/18	053-30872*	Forest	Howe Twp
Minard Run Oil Co	6	10/22/18	053-30871*	Forest	Howe Twp
		10/26/18	053-30870*	Forest	Howe Twp
		10/31/18	053-30869*	Forest	Howe Twp
		10/2/18	121-46170*	Venango	Cranberry Twp
		10/8/18	121-46166*	Venango	Cranberry Twp
		10/25/18	007-20555	Beaver	Independence Tw
		10/25/18	007-20556	Beaver	Independence Tw
Range Resources Appalachia	6	10/25/18	007-20557	Beaver	Independence Tw
		10/26/18	007-20560	Beaver	Independence Tw
		10/26/18	007-20558	Beaver	Independence Tw
		10/27/18	007-20559	Beaver	Independence Tw
		10/26/18	117-22011	Tioga	Covington Twp
		10/26/18	117-22012	Tioga	Covington Twp
Repsol Oil & Gas USA LLC	10	10/26/18	117-21997	Tioga	Covington Twp
		10/26/18	117-22013	Tioga	Covington Twp
		10/26/18	117-21993	Tioga	Covington Twp
		10/26/18	117-22014	Tioga	Covington Twp
		10/26/18	117-21994	Tioga	Covington Twp
		10/26/18	117-22015	Tioga	Covington Twp
		10/26/18	117-21996	Tioga	Covington Twp
		10/26/18	117-21995	Tioga	Covington Twp
		10/17/18	059-27481	Greene	Center Twp
		10/17/18	059-27482	Greene	Center Twp
Rice Drilling B LLC	6	10/17/18	059-27483	Greene	Center Twp
		10/17/18	059-27484	Greene	Center Twp
		10/17/18	059-27485	Greene	Center Twp
		10/17/18	059-27486	Greene	Center Twp
		10/17/18	059-27487	Greene	Center Twp
		10/17/18	059-27488	Greene	Center Twp
Rick & Sons Oil LLC	2	10/1/18	123-48129*	Warren	Mead Twp
		10/9/18	123-48130*	Warren	Mead Twp
Seneca Resources Corp	2	10/3/18	081-21714	Lycoming	Lewis Twp
		10/3/18	081-21715	Lycoming	Lewis Twp
SWN Production Co LLC	4	10/1/18	115-22398	Susquehanna	Jackson Twp
		10/2/18	115-22344	Susquehanna	Jackson Twp
		10/12/18	117-22026	Tioga	Liberty Twp
		10/13/18	117-22025	Tioga	Liberty Twp

	October	September	August	July	June	May
Total wells	104	76	69	99	87	79
Unconventional Gas	85	54	51	89	75	72
Conventional Gas	0	0	0	0	0	0
Oil	13	22	13	9	12	7
Combination Oil/Gas	6	0	5	0	0	0

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Info: [www.pioga.org/events/category/pioga-events](http://www.pioga.org/events/category/pioga-events)

#### Oil & Gas Tax and Accounting Seminar

November 15, RLA Learning and Conference Center,  
Cranberry Township

#### PIOGATech: Air Quality Issues

December 18, The Chadwick, Wexford

#### Mix, Mingle and Jingle Holiday Party

December 18, The Chadwick, Wexford

#### Spring Meeting

April 10, 2019, Rivers Casino, Pittsburgh

#### Ted Cranmer Memorial Golf Outing and Steak Fry

June 3, 2019, Wanango Country Club, Reno

#### Divot Diggers Golf Outing

August 22, 2019, Tam O'Shanter Golf Course, Hermitage

### Other association & industry events

#### IPAA Annual Meeting

November 11-13, New Orleans, LA  
Info: [www.ipaa.org/events/annual-meeting-2018](http://www.ipaa.org/events/annual-meeting-2018)

#### IOGAWV Winter Meeting

January 22-23, Charleston, WV

Find more events at [www.pioga.org](http://www.pioga.org)

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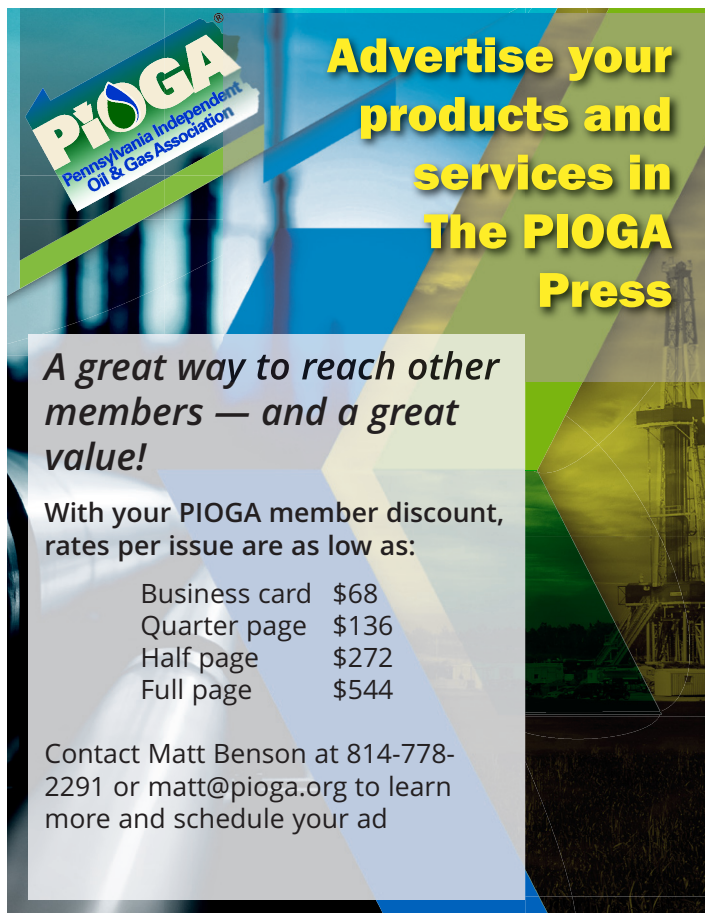
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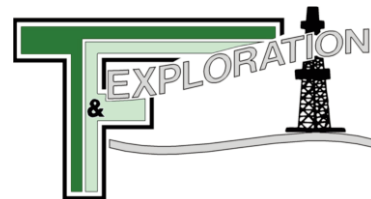
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