



The PIOGA press

The monthly newsletter of the Pennsylvania Independent Oil & Gas Association

July 2017 • Issue 87

Pennsylvania Supreme Court turns down PIOGA appeal

Leaves standing Commonwealth Court ruling on public resource provisions

In a one-sentence ruling, the Pennsylvania Supreme Court on June 20 denied PIOGA’s appeal of a 2016 decision by the Commonwealth Court that upheld the Department of Environmental Protection’s use of provisions of Act 13 PIOGA asserted were declared invalid and unenforceable in the December 2013 *Robinson Township v. Commonwealth* decision.

The Supreme Court gave no reason for turning down the association’s appeal in *PIOGA v. Department of Environmental Protection*, stating only that the September 1, 2016, Commonwealth Court decision was affirmed. PIOGA General Counsel Kevin Moody said the court’s summary action is explained by a decision issued the same day declaring unconstitutional the decisions of the executive and legislative branches to transfer royalties in the Oil and Gas Lease Fund to the General Fund to help balance the State budget (see accompanying article).

“The *PEDF* decision basically transforms the *Robinson Township* plurality opinion into a majority holding, and seems to go even further by apparently removing the distinction between a ‘public’ trust and a private trust in holding that the royalties remain part of the *corpus* of the Environmental Rights Amendment public natural resources trust that cannot be spent on the public’s general welfare, which is permissible under the public trust doctrine,” Moody said.

In *Robinson Township*, the Supreme Court majority determined Section 3215(b)(4)—which granted waivers from statutory setbacks from wetlands and U.S. Geological Survey “solid blue lined” streams, springs or bodies of water—to be unconstitutional because it, along with Sections 3215(d), 3303 and 3304, forced municipalities to enact zoning ordinances that violate the substantive due process rights of their citizens. The majority then determined that that the entirety of Section 3215(b), as well as subsections (c) and (e), are “incapable of execution” in accordance with the legislative intent underlying the Section 3215 decisional process and thus cannot be severed from unconstitu-

tional Section 3215(b)(4) and are therefore invalid and unenforceable, and enjoined their application and enforcement.

Accordingly, PIOGA asserted that the Supreme Court majority in *Robinson Township* invalidated and enjoined nearly all provisions of Act 13’s Section 3215, which includes Sections 3215(c) and (e) authorizing DEP to consider impacts of oil and natural gas wells on certain public resources and impose conditions to mitigate harmful impacts. PIOGA argued that the Supreme Court majority found the provisions of Section 3215—except

(Continues on page 19)

Supreme Court reexamines the Environmental Rights Amendment

The Pennsylvania Supreme Court has rejected the long-standing test for analyzing claims brought under Article I, Section 27 of the Pennsylvania Constitution, commonly known as the Environmental Rights Amendment (ERA). In its June 20, decision in *Pennsylvania Environmental Defense Foundation (PEDF) v. Commonwealth*, the Supreme Court set aside the test from *Payne v. Kassab* that has been used since 1973, and held that the Commonwealth’s oil and gas rights are “public natural resources” under the ERA and that any revenues derived from the sale of those resources must be held in trust and expended only to conserve and maintain public natural resources.

The Supreme Court’s opinion in *PEDF* is an important step in the ongoing judicial reexamination of the ERA. However, the

impact of the court’s decision on environmental and land use issues beyond the relatively narrow facts of this case remains unclear.

Factual background

A statutory special fund in Pennsyl-

(Continues on page 3)

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Scenes from the Pig Roast and Summit 6	Impact of Northeast Supply project. 16
Thank you, sponsors and vendors 7	Coleman approved to second PUC term . . . 16
EPA halts stay of methane rule. 8	PIOGA Member news. 17
Harrisburg update 11	New PIOGA members 19
Impact fee payments top \$1.2 billion 12	Oil & Gas Trends 20
Call for safety article submissions 13	June Spud Report. 22
Upcoming PIOGATech training 13	Calendar of Events 23
Court strikes down aggregation decision . . . 14	PIOGA contacts 23
How PA residents benefit from natural gas . . 15	
Alternative Fuel Grants availability 16	



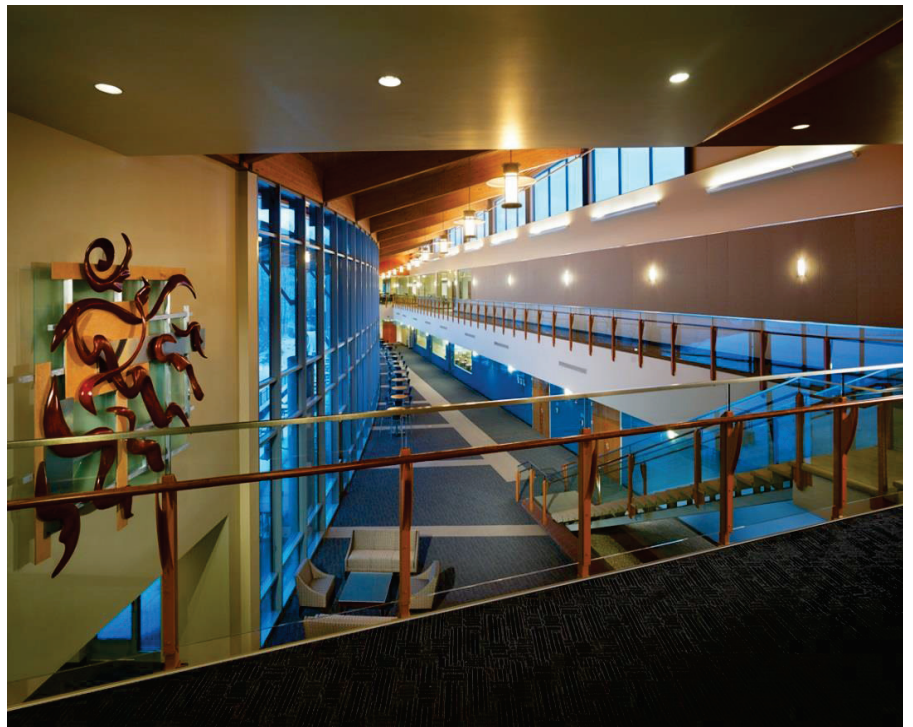
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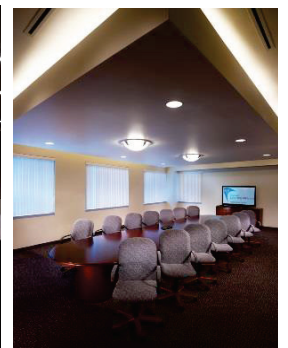
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Environmental Rights Amendment: *Continued from page 1*

vania known as the Oil and Gas Lease Fund holds all rents and royalties from oil and gas leases of Commonwealth land. The lease fund was originally required by statute to be used “exclusively used for conservation, recreation, dams, or flood control.” In 1995, the Pennsylvania Department of Natural Resources (DCNR) became the entity responsible for making appropriations from the lease fund for projects. Between 2009 and 2015, the Pennsylvania General Assembly made a number of budgetary decisions related to the lease fund, including the enactment of Sections 1602-E and 1603-E of the Fiscal Code, which transferred control over the royalties from oil and gas leases from the DCNR to the General Assembly and required that there could be no expenditures of money in the lease fund from royalties unless that money was transferred to the General Fund by the General Assembly.

PEDF brought claims challenging Sections 1602-E, 1603-E, and the General Assembly’s transfer/appropriations from the lease fund, among other things, in the Commonwealth Court. The basis of these claims was the ERA, which provides: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

The Commonwealth Court held the Fiscal Code provisions or the appropriations by the General Assembly of lease fund money to the General Fund did not violate the ERA,

and *PEDF* appealed to the Supreme Court. The Supreme Court heard oral argument on two “overarching issues”: (1) the proper standards for judicial review of government action and legislation under the ERA, and (2) the constitutionality of Section 1602-E, Section 1603-E and the General Assembly’s transfers/appropriations from the lease fund under the ERA. The Supreme Court reviewed these pure questions of law *de novo*.

Standard of judicial review for challenges under the ERA

In the 1973 decision *Payne v. Kassab*, the Commonwealth Court set out a three-part balancing test to be applied when determining whether a Commonwealth action violates the ERA. While the Pennsylvania Supreme Court affirmed the Commonwealth Court’s decision in that case without adopting the *Payne v. Kassab* test, it has been used by courts since 1973 to analyze constitutional challenges brought under the ERA.

In its landmark 2013 decision in *Robinson Township v. Commonwealth (Robinson II)*, the Supreme Court discussed the application of the ERA with respect to a number of challenges to Act 13 of 2012, the updated version of Pennsylvania’s Oil and Gas Act, and strongly criticized the three-part *Payne v. Kassab* balancing test. However, the *Robinson II* opinion was a plurality, and courts have subsequently treated the plurality opinion as persuasive only, including the Commonwealth Court in *PEDF*.

In *PEDF*, the Supreme Court, in an opinion authored by Justice Christine Donohue and joined by Justices Debra McClosky Todd, Kevin M. Dougherty and David N. Wecht, rejected the *Payne v. Kassab* test as the standard to be used when analyzing challenges under the ERA, finding that the test “is unrelated to the text of Section 27 and the trust principles ani-




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mating it” and “strips the constitutional provision of its meaning.” The Supreme Court instead determined that the “the proper standard of judicial review lies in the text of Article I, Section 27 itself as well as the underlying principles of Pennsylvania trust law in effect at the time of its enactment.”

The Supreme Court went on to more fully develop a new standard in the context of *PEDF*'s challenge to legislative action, and in doing so frequently relied on the three-justice plurality decision in *Robinson II*. The court found that the text of the ERA grants citizens of the Commonwealth two separate rights: (1) the right to “clean air and pure water, and to the preservation of natural, scenic, historic and esthetic values of the environment”, and (2) the right of “common ownership by the people, including future generations, of Pennsylvania’s public natural resources.”

The trust doctrine

In its discussion of the second right granted under the ERA, the Supreme Court also found that the ERA establishes a public trust, with Pennsylvania’s natural resources as the corpus of that trust and the Commonwealth as the trustee. The trustee obligation is vested in “all agencies and entities of Commonwealth government, both statewide and local,” and the people are the named beneficiaries of the trust.

Relying again on the *Robinson II* plurality, the court reiterated that this trust requires the government to “conserve and maintain the corpus of the trust” and that as trustee, the Commonwealth has duty to act “with prudence, loyalty and impartiality” toward the corpus of the trust. The court found that the trust imposes “two basic duties on the Commonwealth as the trustee”: (1) a “duty to prohibit the degradation, diminution, and depletion” of public natural resources, and (2) a duty to “act affirmatively via legislation to protect the environment.”

Appropriations from the lease fund

Pursuant to these duties imposed on the Commonwealth by the ERA, the court found that trust assets may be used “only for purposes authorized by the trust or necessary for the preservation of the trust,” and further held that the assets of the trust created by the ERA “are to be used for conservation and maintenance purposes.” The court further held that the General Assembly has discretion to determine how the revenue generated from the sale of the trust assets is directed when used for those purposes.

Regarding the use of royalties from leased oil and gas on Commonwealth property, the Supreme Court reversed the Commonwealth Court and held that Sections 1602-E and 1603-E of the Fiscal Code, both of which relate exclusively to royalties, were unconstitutional because they permit the trustee to use the trust for “non-trust purposes.” The court further found unconstitutional any further Fiscal Code amendments which transfer the “proceeds from the sale of trust assets to the General Fund.” The Supreme Court remanded the case to the Commonwealth Court to determine whether up-front bonus payments (and other rev-

enue streams) are also part of the corpus of the trust, because the record was insufficiently developed regarding the purpose of these payments. The court indicated that the Commonwealth Court must first determine whether these other revenue streams belong in the corpus of the ERA trust under “Pennsylvania trust principles.”

Justice Max Baer issued a concurring and dissenting opinion, joined in the dissenting portion by Justice Thomas G. Saylor. Justice Baer would have found that the ERA does not impose private trust duties on the Commonwealth, but rather creates a public trust which would not require money from the sale of natural resources to remain in an environmental trust, but could be used “for the general benefit of the public.” He asserted that the focus of ERA is “on the natural resources themselves, not the money gained from those resources.” The dissent argued that although proceeds from the sale of natural resources may be used for public purposes other than conservation, “the Commonwealth must act in a trustee-like capacity” in regard to natural resources.

Is the ERA self-executing?

The court majority opinion briefly addressed whether the ERA is self-executing or whether it requires implementing legislation to be effective. Citing *Robinson II*, the court confirmed that the public trust provisions of the ERA are self-executing. That is, “the second and third sentences of Section 27 do not require legislative action in order to be enforced against the Commonwealth in regard to public property.” The Supreme Court did not address whether the ERA is self-executing for purposes of enforcement against private property.

What’s next?

By rejecting the *Payne v. Kassab* test for matters involving constitutional challenges arising under the ERA, the Pennsylvania Supreme Court has discarded a test that has been used for more than 40 years and replaced it with a standard based on the “text of Article I, Section 27” and “the underlying principles of Pennsylvania trust law.” The Supreme Court’s decision in *PEDF* deals with governmental owned assets, and it is unclear how this new standard will be applied to state and local regulation of private natural resources, including oil and gas development, which is not addressed in the opinion. Some of these issues may be resolved in *Gorsline v. Bd. of Supervisors of Fairfield Twp.*, which is currently pending before the Pennsylvania Supreme Court. ■

Babst Calland will continue tracking developments related to the ERA and the new standard set out by the Supreme Court. For more information regarding issues relating to land use and municipal implications of the Supreme Court’s ruling, contact Blaine A. Lucas (412-394-5657 or blucas@babstcalland.com) or Krista M. Staley (412-394-5406, kstaley@babstcalland.com). For more information regarding impact of the court’s ruling on environmental regulatory matters, contact Kevin J. Garber (412-394-5404, kgarber@babstcalland.com) or Jean M. Mosites (412-394-6468, jmosites@babstcalland.com).





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Scenes from PIOGA's 2017 Pig Roast, Product & Equipment Roundup and Leadership Summit & Operators Forum



Above: A new feature was the Power of Women in Energy Lunch.





Clockwise from bottom left: Economic development officials from Beaver, Washington and Lycoming counties provide their views on the natural gas industry during a panel discussion at the Leadership Summit. Jim Shorkey of the Shorkey Auto Group shares his formula for personal and business success. Jennifer Hoffman of Huntley & Huntley Energy Exploration talks about industry challenges during the Operators Forum. Cleveland Browns fan Cole Stearns (right) was the winner of a Pittsburgh Steelers tailgating kit drawn by former Steeler Craig Wolfley.

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EPA proposes two-year stay of methane regulation

Less than two weeks after ordering a 90-day stay over parts of proposed rules governing new sources of methane emissions from the oil and natural gas industry, the U.S. Environmental Protection Agency (EPA) announced last month it is considering extending the stay by two years.

The EPA said it was taking steps to ensure portions of the agency's 2016 New Source Performance Standards (NSPS) for the energy industry "do not take effect while the agency works through the reconsideration process." To ensure that there is no gap in the stay during the reconsideration process, the agency said it was proposing an additional three-month stay to serve as a bridge between the 90-day administrative stay the agency issued on May 31 (*June 2017 PIOGA Press, page 3*), and the two-year stay proposed on June 13.

At issue are the fugitive emissions, pneumatic pump and professional engineer certification requirements outlined in updates to the NSPS, which the agency first unveiled during the Obama administration. The NSPS was designed to reduce methane, volatile organic compounds (VOC) and toxic air pollutants.

In April, the EPA said it would reconsider the rules to comply with an executive order (EO) signed by President Trump on March 28. The EO included a directive for EPA to immediately

Update: Appeals court orders EPA to move ahead with methane rule

A federal appeals court in Washington ruled on July 3 that the head of the Environmental Protection Agency overstepped his authority in trying to delay implementation of an Obama administration rule requiring oil and gas companies to monitor and reduce methane leaks.

In a split decision, the three-judge panel from the U.S. Court of Appeals for the District of Columbia Circuit ordered the EPA to move forward with the new requirement that aims to reduce planet-warming emissions from oil and gas operations.

EPA Administrator Scott Pruitt announced in April that he would delay by 90 days the deadline for oil and gas companies to follow the new rule, so that the agency could reconsider the measure. The American Petroleum Institute, the Texas Oil and Gas Association and other industry groups had petitioned Pruitt to scrap the requirement, which had been set to take effect in June.

Last month, Pruitt announced he intended to extend the 90-day stay for two years. A coalition of six environmental groups opposed the delay in court, urging the appeals judges to block Pruitt's decision.

In a detailed 31-page ruling, the court disagreed with Pruitt's contention that industry groups had not had sufficient opportunity to comment before the 2016 rule was enacted. The judges also said Pruitt lacked the legal authority to delay the rule from taking effect.

EPA spokeswoman Amy Graham said the agency was reviewing the court's opinion and examining its options. The EPA could seek to appeal the matter to the Supreme Court.

—Associated Press



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review regulations on energy sources, and then to either suspend, revise or rescind them.

In mid-May, an appellate court granted the administration's request to delay a series of lawsuits over the proposed rules to give the EPA more time to review them. The U.S. Court of Appeals for the District of Columbia agreed to temporarily hold several consolidated lawsuits pending further review of the lead case. A coalition of six environmental groups filed a lawsuit against EPA Administrator Scott Pruitt over his decision to issue the 90-day administrative stay (*see update*).

EPA built the NSPS on VOC emission reduction requirements for new oil and gas wells that the agency first unveiled in 2012. Those requirements called for a two-phase process to reduce VOCs: requiring flaring followed by "green completions," a term that means deploying equipment to capture and sell natural gas emissions that are otherwise lost. ■



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Harrisburg update

Senate approves PA One Call bill

The state Senate unanimously approved legislation last month giving oversight of Pennsylvania's call-before-excavating program to the Pennsylvania Public Utility Commission. Senate Bill 242 also requires that operators of unconventional natural gas production and gathering lines participate in the Pennsylvania One Call System.

However, under a PIOGA-supported amendment operators of "stripper well" lines would continue to be exempt from mandatory PA One Call participation. The bill defines stripper well lines as those with a nominal inside diameter of no more than 8 inches and serving wells that produce on a daily average no more than 15 barrels of oil or 90,000 cubic feet of gas.

SB 242 was sponsored by Senator Lisa Baker (R-Luzerne). Chief among the changes is assigning enforcement powers to the PUC, a shift Baker says makes sense because the agency already regulates the utilities participating in PA One Call. Currently the Department of Labor and Industry is responsible for enforcement. An important companion to the oversight structure is the creation of a Damage Prevention Committee that will work in conjunction with the PUC to promote industry best practices and collect accident data in order to achieve a stronger safety record with our underground utility lines.

All Class 1 pipelines, located in more rural areas, that carry unconventional oil or natural gas would be included in PA One Call, as would conventional oil or natural gas pipelines with a diameter greater than 8 inches. Other implementations in the bill include new mapping enhancements to better locate existing underground lines plus those of new construction.

"This bill is a substantial improvement. It is building upon a solid law that we have and it will provide responsible and reasonable action," Baker said in a statement.

The legislation is before House Consumer Affairs Committee. Lawmakers must act before December 31 to reauthorize the PA One Call program. PIOGA members have complained about the costs of participating in One Call, and the association will push for reforms to the system to be considered as reauthorization legislation moves forward in the House of Representatives.

Bill would require legislative approval of costly regulations

State regulations estimated to cost the Commonwealth, its political subdivisions or the private sector more than \$1 million annually would require legislative approval before they could take effect under SB 561, which passed the Senate in mid-June.

The proposal would revise the regulatory review process so that the House and Senate would have to act to adopt economically significant regulations, instead of the current process that allows the legislature to simply review and object to regulations. SB 541 also directs the Independent Fiscal Office to verify a proposed regulation's estimated costs to the public and private sector.

The Senate passed the measure 29-20 and it was then assigned to the State Government Committee

in the House.

Last year, the Independent Regulatory Review Commission, which determines whether regulations are in the public interest and comply with state laws and rulemaking requirements, examined 43 final regulations and voted to disapprove only three of them, the *Pittsburgh Post-Gazette* reported. The Chapter 78 rules for unconventional natural gas surface operations were among the regulations adopted last year with an estimated cost greater than \$1 million.

Budget half-done

As anyone who has balanced a checkbook knows, a budget contains two halves—income and expenses. The Pennsylvania General Assembly dealt with the expense portion when it sent a \$32-billion spending plan to the governor on June 30, the deadline for adopting a budget each year.

However, as this issue of *The PIOGA Press* was being finalized, lawmakers had not yet approved the revenue part of the package. Leaders of the Republican-controlled legislature have said a natural gas severance tax, as called for by Governor Tom Wolf, is not part of the discussions, but at the same time they must address a deficit of more than \$2 billion.

GOP leaders continue to oppose new and expanded taxes and reportedly are looking at such revenue as borrowing against a tobacco settlement fund, expanding gambling, further reforming liquor sales and potential funding transfers. PIOGA and its allies remain vigilant to attempts to impose an industry-killing severance tax. ■

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Impact fee payments top \$1.2 billion

The Pennsylvania Public Utility Commission announced last month how the \$173.2 million in impact fees collected from natural gas producers for 2016 will be distributed among municipalities, counties, and environmental and infrastructure programs throughout the Commonwealth.

While it marks the third consecutive year that the total amount of the tax on unconventional wells has decreased due to a decline in drilling and low natural gas prices, the big news is that the fee now has generated more than \$1.2 billion since taking effect under Act 13 of 2012. Significantly, the majority of the money goes directly to the places where shale-gas activity is occurring, rather than being drained off by Harrisburg, as a severance tax would be.

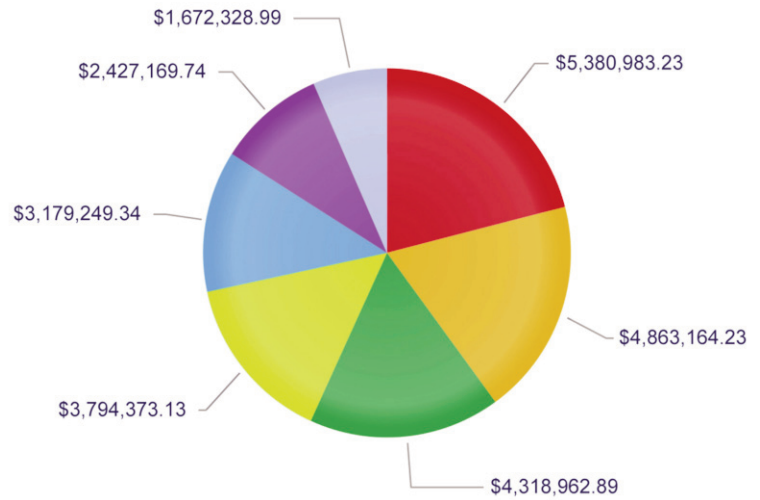
Most of the money—about \$93 million of the amount collected for 2016—goes to county and municipal governments, while smaller amounts are earmarked for environmental improvement programs, roadway repairs and water and sewer infrastructure upgrades.

The top year for the impact fee so far was 2013, when \$225.7 million was paid by unconventional gas producers. The 2016 total was \$14.5 million lower than for 2015.

The accompanying charts come from the PUC's Act 13 website (go to www.puc.state.pa.us and look under the Natural Gas heading) and show the top paying producers, top recipients, and how counties and local governments are spending the money. The PUC said it expected to distribute the 2016 payments in July. ■

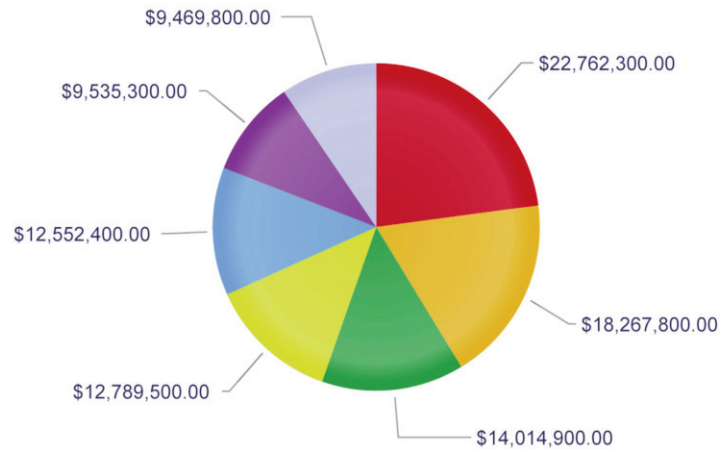
Top Receiving Counties for 2016

-
 Washington
 -
 Susquehanna
 -
 Bradford
 -
 Greene
 -
 Lycoming
 -
 Tioga
 -
 Butler



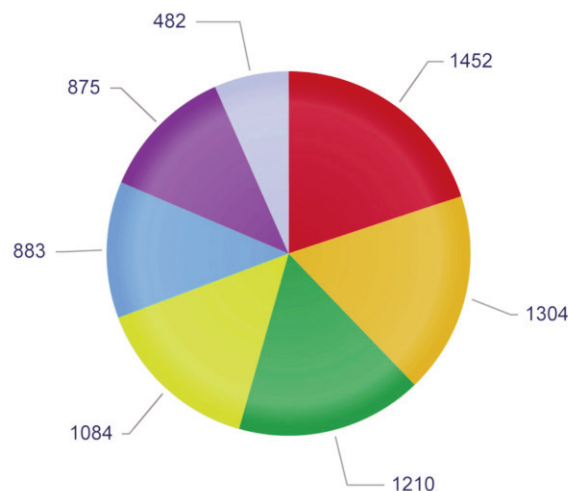
Top Producer Payments for 2016

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 -
 EQT PRODUCTION CO
 -
 CHESAPEAKE APPALACHIA LLC
 -
 SWN PRODUCTION COMPANY, LLC
 -
 CABOT OIL & GAS CORP
 -
 REPSOL OIL & GAS USA, LLC
 -
 SENECA RESOURCES CORP



County Well Count Breakdown for 2016

-
 Washington
 -
 Susquehanna
 -
 Bradford
 -
 Greene
 -
 Tioga
 -
 Lycoming
 -
 Butler



Let's talk about safety!

Safety is a vital to our industry. Not only do we owe it to our employees to ensure they make it safely through the work day to return home unharmed, but poor safety performance has an adverse effect on a company's finances due to increased workers compensation and insurance costs, legal expenses, and reputation. On a wider scale, safety-related incidents hurt our industry in the public eye and provide ammunition for critics.

A priority of PIOGA's Safety Committee is to ensure there is a safety article in each issue of *The PIOGA Press*. The Safety Corner section of the newsletter covers regulatory developments, information resources, statistical trends, advice and best practices, and incident sharing. We hope you regularly read these articles and find them useful to your own operations.

The committee wants to invite any and all PIOGA members to contribute to our month space in the newsletter. In addition to an article specifically written for this publication, you could consider:

- An article from a company newsletter or magazine.
- A presentation delivered internally or at a conference or other gathering.
- Company training documents.
- Reports of incidents experienced your company. These would be intended to briefly describe what occurred, lessons

Upcoming training:

Aboveground Storage Tanks, Secondary Containment for ASTs and Silica – Monitoring, Safety, Regulations and You

PIOGA's Environmental Committee is pleased to host this training in conjunction with our partner Laurel Oil & Gas Corporation, a GZA GeoEnvironmental, Inc. owned company. It takes place Thursday, July 27, in Wexford.

Storage of oil, condensate and produced water in aboveground storage tanks (ASTs) is common in our industry and an accepted practice. However, here in the Northeast, where we have to deal with "exceptional quality" or high quality" waters, they can pose a huge liability if not inspected, repaired and contained within state-approved secondary containment.

Meanwhile, silica (frac sand) poses health hazards during loading and unloading, both at the terminal, "sand-silo storage" at your completion company's yard and on your location during completion operations. Silicosis can be prevented by monitoring the areas of loading and unloading of silica and using proper PPE based on the monitoring results.

Attend this PIOGATEch seminar to hear from industry experts on both of these important subjects. Learn the regulations governing aboveground storage tanks and the secondary containment necessary to satisfy state requirements. Also learn about monitoring silica dust at your facility or wellsite and the protection necessary to keep your people safe.

The five-hour class will cover these topics:

- Safety Minute...or 5
- Aboveground Storage Tanks PA/WV Regulations and Requirements

Safety Committee Corner

learned and steps taken to prevent such occurrences in the future. Any information that potentially identifies your company would be omitted.

With any of the material, we would be happy to help edit or revise it in a way to make it appropriate to the PIOGA audience and to preserve confidentiality if desired.

Want to submit or suggest something? Please contact Carol Delfino, chair of the Safety Committee's newsletter subcommittee, at cdelfino@se-env.com or PIOGA newsletter editor Matt Benson at matt@pioga.org.

Get more involved

If safety is part of your job description, the PIOGA Safety Committee invites you to get involved. The group meets every other month on the second Wednesday at the Regional Learning Alliance in Cranberry Township (next meeting is August 10).

To learn more about what the committee does, use the Members Only link at the top of our homepage, www.pioga.org, then select Committees and click on "learn more" under the Health & Safety Committee heading. If you're ready to sign up now, email Deana McMahan at deana@pioga.org and ask to be added to the Safety Committee distribution list. ■

- Secondary Containment and SPCC Plans for ASTs
- Portable Air Monitoring Instrumentation Talk and Demo
- Silica, Air Quality and Monitoring
- OSHA Silica Standards, an EHS Perspective

For more information and a link to online registration, visit the PIOGA Events section at www.pioga.org. ■

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Court strikes down DEP/EHB emissions aggregation decision

In a ruling that the Air Quality/Emissions Subcommittee of PIOGA's Environmental Committee described as significant and favorable to the industry, the Commonwealth Court last month turned aside a Department of Environmental Protection order that forced emissions from a well pad and a compressor station to be combined for air permitting.

National Fuel Gas Midstream v. DEP involved a Lycoming County compressor station owned and operated by NFG Midstream Trout Run, LLC, a subsidiary of National Fuel Gas Midstream Corporation, and a Marcellus Shale well pad belonging to Seneca Resources Corporation. National Fuel Gas Midstream and Seneca Resources both are wholly owned subsidiaries of National Fuel Gas Company. The Seneca well pad delivered gas to Trout Run's Bodine compressor station.

Under the Pennsylvania Air Pollution Control Act and the federal Clean Air Act, major sources of air pollution require plan approvals to construct and then permits to operate. "Minor" sources may emit under state-only permits. Pennsylvania's regulations authorize DEP to exempt certain emission sources from regulation; Exemption 38 exempts natural gas wells—including the wells at issue in this case—under certain conditions. The compressor station was below the emissions threshold for a state-only permit, and the operator sought approval under the streamlined general permit GP-5.


Regulators may aggregate two or more facilities so that they are considered a single source and possibly qualify for the more stringent permitting requirements. To determine whether aggregation is warranted, a three-prong test is used. The facilities must be: (1) under same industrial grouping, (2) on one or more contiguous or adjacent properties and (3) under the control of the same person or persons under common control.

In this instance, DEP demanded that as part of Trout Run applying for a GP-5 for the compressor station, emissions for Seneca's well pad be aggregated, despite the pad being exempt from permitting requirements. The department contended that the corporate relationship between the companies satisfied the "common control" prong of the aggregation test simply because National Fuel Gas Company was the parent company of all of the entities involved. When Trout Run and NFG Midstream appealed to the Environmental Hearing Board (EHB), that panel took a less categorical approach than DEP, but found control because the parent company had the power to "influence" the operations of NFG Midstream and Seneca.

In its June 2 decision, the Commonwealth Court reversed the EHB order. The court found that the test for "control" is the ability to direct operations of the facility, not just the ability to influence them.

Under the facts of this case, where one facility is exempt from permitting requirements but its emissions are still being aggregated with another facility for purposes of that facility's permit, DEP is required to either demonstrate National Fuel Gas Company's direct involvement in the operations of the well pad and the compressor station or "pierce the corporate veil by showing that the two entities are the alter ego of one another or their parent," the court wrote.

"This approach is in accordance with well-settled corporate



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law principles and consistent with case law imposing liability for environmental violations discussed above,” the panel of three judges continued. “Furthermore, such an approach addresses the genuine concern... [about] the effect of aggregating an exempt source with a non-exempt one and the enforcement problems that would undoubtedly ensue as a result.”

The court vacated the EHB’s order and directed the board to reconsider the matter by applying the correct interpretation of the term “common control.” ■

Study shows how Pennsylvanians benefit from natural gas use

API Pennsylvania last month released a study on the benefits natural gas brings to the state in terms of consumer savings, family-sustaining jobs and economic growth. The study shows that all 50 states benefit from natural gas produced domestically, including non-producing states

“Natural gas is critical to our way of life in Pennsylvania,” said Executive Director Stephanie Catarino Wissman. “Over the past decade, our state has experienced massive growth in clean-burning natural gas production due to technological innovations and industry investment, helping create jobs and strengthen our state’s economy.”

The study by ICF International examined the economic benefits and opportunities from the entire natural gas value chain, including the production of natural gas, its transportation and end uses like power generation and manufacturing.

Natural gas benefited Pennsylvanians in 2015 in the following ways:

- Supported 178,100 (or 3.1 percent of the) jobs in the state
- Contributed \$24.5 billion to the state’s economy

“From power generation for homes and businesses that benefit from affordable and reliable electricity, to the industry’s skilled workforce that produces natural gas, to pipelines and the workers who build them, the advantages of natural gas are wide-ranging,” said American Petroleum Institute President and CEO Jack Gerard.

The study found that consumers in all 50 states will save an estimated \$655 by 2040 from natural gas production, transportation and other uses such as electricity generation.

Other report highlights on the benefits of natural gas production, its transportation and end uses throughout the value chain include:

- By 2040, consumers across the country will save an estimated \$100 billion, or \$655 per household, from the increased use of natural gas throughout our economy—from manufacturing to generating affordable electricity.

- In 2015, the natural gas supply chain supported 3 percent of the U.S. economy, including direct, indirect and induced activities and jobs associated with natural gas.

- In 2015, natural gas supported more than 4 million jobs across the country from production to end uses like manufacturing. That number is expected to rise to 6 million jobs by 2040.

The full study containing Pennsylvania’s state specific information is available on API’s website at www.api.org/~media/Files/Policy/Natural-Gas-Solutions/API-Natural-Gas-Industry-Impact-Report.pdf. ■

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Ben Taylor
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Alternative fuels grant availability

The Department of Environmental Protection has announced an opportunity to apply for grants under the Alternative Fuels Incentive Grant (AFIG) Program to improve the Commonwealth's air quality and reduce consumption of imported oil through the use of domestic alternative fuels that will help the state's economy and environment. DEP is seeking applications for innovative, advanced fuel and vehicle technology projects.

Approximately \$5 million in grants will be available for school districts, municipal authorities, political subdivisions, nonprofit entities, corporations, limited liability companies or partnerships incorporated or registered in the Commonwealth to support:

- 50 percent of incremental cost expenses relative to retrofitting vehicles to operate on alternative fuels as a bi-fuel, dual-fuel, hybrid or dedicated vehicle.
- 50 percent of incremental cost expenses to purchase bi-fuel, dual-fuel, hybrid or dedicated vehicles.
- The cost to purchase and install the necessary fleet refueling or home-refueling equipment for bi-fuel, dual-fuel, hybrid or dedicated vehicles.
- The cost to perform research, training, development and demonstration of new applications or next-phase technology related to alternative fuel vehicles.

Instead of one deadline for acceptance of applications for the year, AFIG now has multiple submission periods during which prospective applicants may submit applications for consideration. For more information, visit the program's webpage at www.dep.pa.gov/Citizens/GrantsLoansRebates/Alternative-Fuels-Incentive-Grant/Pages. ■

Northeast Supply Enhancement Project expected to have \$327 million impact

Williams Partners L.P. recently released the results of a comprehensive study authored by researchers at Rutgers University analyzing the economic impact of the proposed Northeast Supply Enhancement project—a nearly \$1 billion energy infrastructure investment designed to increase natural gas deliveries to New York City in time for the 2019-20 winter heating season.

According to researchers at the Edward J. Bloustein School of Planning and Public Policy, the design and construction of the Northeast Supply Enhancement project will generate approximately \$327 million in additional economic activity (GDP) in Pennsylvania, New Jersey and New York. In addition, the project will directly and indirectly generate 3,186 jobs during the one-year construction period, resulting in an estimated \$234 million in labor income.

"This broad analysis conducted by Rutgers University researchers clearly shows the economic ripples that are created by such a significant investment in the region's energy infrastructure," said Phil Beachem, president of the NJ Alliance for Action.

In Pennsylvania alone, the design and construction of the

project will generate \$63.6 million in additional economic activity, including 499 direct and indirect jobs during construction, \$45.6 million in labor income, and \$3.9 million in local and state taxes.

Once operational, the pipeline's economic impact is projected to result in approximately \$11.1 million in additional annual local property taxes paid by Williams to local municipal and county governments. The complete economic impact analysis is available at www.northeastupplyenhancement.com.

The Rutgers University study was commissioned by Williams, which operates the Transco pipeline and currently transports about 50 percent of the natural gas consumed in New Jersey and New York City.

Filed with the Federal Energy Regulatory Commission in March 2017, the Northeast Supply Enhancement project is a proposed expansion of the existing Transco pipeline to increase natural gas deliveries to National Grid—the largest distributor of natural gas in the northeastern U.S.—in time for the 2019-20 heating season. Once complete, the project will help meet the growing natural gas demand in the Northeast, including the 1.8 million customers served by National Grid in Brooklyn, Queens, Staten Island and Long Island.

The project has been designed to consist of approximately 10 miles of pipe in Pennsylvania, three miles of pipe in New Jersey, 23 miles of pipe offshore in New Jersey and New York state waters, a new compressor facility in New Jersey as well as additional horsepower at an existing Pennsylvania compressor facility. ■

Coleman approved to second PUC term

The state Senate has unanimously approved John F. Coleman Jr. to a second full five-year term as a member of the Pennsylvania Public Utility Commission.

During his hearing before the Senate Consumer Protection & Professional Licensure Committee, Coleman underscored his commitment to ensuring safe and reliable utility service, along with the need to strike a balance in Commission actions. He cited ongoing work by the PUC in several key areas, including proposed enhancements to the Pennsylvania One Call Law; infrastructure build-out for the state's natural gas industry and enhanced cyber and physical security for vital infrastructure; exploration of new energy technologies; and addressing the growing need for the next generation of highly skilled utility workers. He also underscored the importance of the Commission's customer-education program related to energy choice, including in-person events across the state; collaborative outreach with legislators and community groups; and the PUC's shopping websites which provide consumers with the tools they need to make informed decisions about choosing electric generation suppliers and natural gas suppliers.

Coleman serves as co-chair of the Natural Gas Access and Expansion Task Force established by the National Association of Regulatory Utility Commissioners and is a member of its Pipeline Safety Committee. He is a member of the board of the Mid-Atlantic Conference of Regulatory Utilities Commissioners. He serves as a board member for the Organization of PJM States Inc. ■

PIOGA Member News

Babst Calland Report focuses on resurgence, challenges to Appalachian Shale industry

The law firm of Babst Calland has released its seventh annual energy industry report, entitled The 2017 Babst Calland Report – Upstream, Midstream and Downstream: Resurgence of the Appalachian Shale Industry; Legal and Regulatory Perspective for Producers and Midstream Operators. This annual review of shale gas development activity acknowledges the continuing evolution of this industry in the face of economic, regulatory, legal and local government challenges.

In this report, Babst Calland attorneys provide perspective on issues, challenges, opportunities and recent developments in the Appalachian Basin and beyond relevant to producers and operators.

In general, the oil and gas industry has rebounded during the past year through efficiency measures, consolidation and a resurgence of business opportunities related to shale gas development and its impact on upstream, midstream and downstream industries. As a result, many new opportunities and approaches to regulation, asset optimization and infrastructure are underway. Increased spending during the past year has led to a significantly higher rig count in the Appalachian Basin enabling growth in the domestic production of oil and gas as other shale plays across the country experience reductions.

The shale gas industry continues to provide the tristate region with significant economic opportunities through employment and related revenue from the development of well sites, building of pipelines necessary to transport gas to market, and new downstream opportunities being created for manufacturing industries due to the volume of natural gas and natural gas liquids produced in the Appalachian Basin. Shell's progress from a year ago to construct an ethane cracker plant in Beaver County, represents just one example of the expanding downstream market for natural gas. Many other manufacturing firms are expected to enter the region and establish businesses drawn by the energy and raw materials associated with natural gas and natural gas liquids from the Marcellus and Utica shales.

The report also highlights changes that have occurred during the past year in the political landscape that are expected to affect the energy industry. The Trump administration is signaling a fundamental shift in the energy policies established by the Obama administration. New executive orders and policies have been issued that promise to lead to more pipeline development, reduced federal oversight of the oil and gas industry and increased access to oil and natural gas reserves.

The 74-page report contains six sections, each addressing key challenges for oil and gas producers and midstream operators:

- Business Issues: Adapting to the New Price Environment.
- State and Federal Governments Remain Active in a Changing Regulatory Landscape.
- Pipeline Safety Legislative and Regulatory Developments Continue to Shape the Industry.
- Litigation Trends.
- Local Government Law and Regulations Continue to Spawn Debate and Legal Challenges.

- Downstream Opportunities.
- To request a copy, contact info@babstcalland.com.

ARG adds Breitigam to leadership team

American Refining Group Inc. has added David Breitigam to its leadership team as vice president of environmental, health and safety.

Breitigam comes to ARG from Marathon Petroleum Co., where he spent 12 years in its EHS ranks, eventually being named corporate refining health, environmental, safety and security manager. He also brings experience as Innovene Inc.'s (formerly BP Chemicals) senior industrial hygienist/safety professional and Brush Wellman's managing industrial hygienist, and from Centrex Corp.'s environmental safety and security division in Findlay, Ohio.

Breitigam will oversee ARG's organizational compliance with local, state and federal environmental, health and safety regulations, including process safety management. Tasked with representing ARG in external affairs related to environmental matters, he will remain up to date of any changes to rules and regulations to which ARG may be subject. He earned a bachelor of science in environmental health from Bowling Green State University and completed a master's degree in occupational health at the Medical College of Ohio in Toledo. He is a certified safety professional and industrial hygienist and also holds the Prosci® change-management certification. ■

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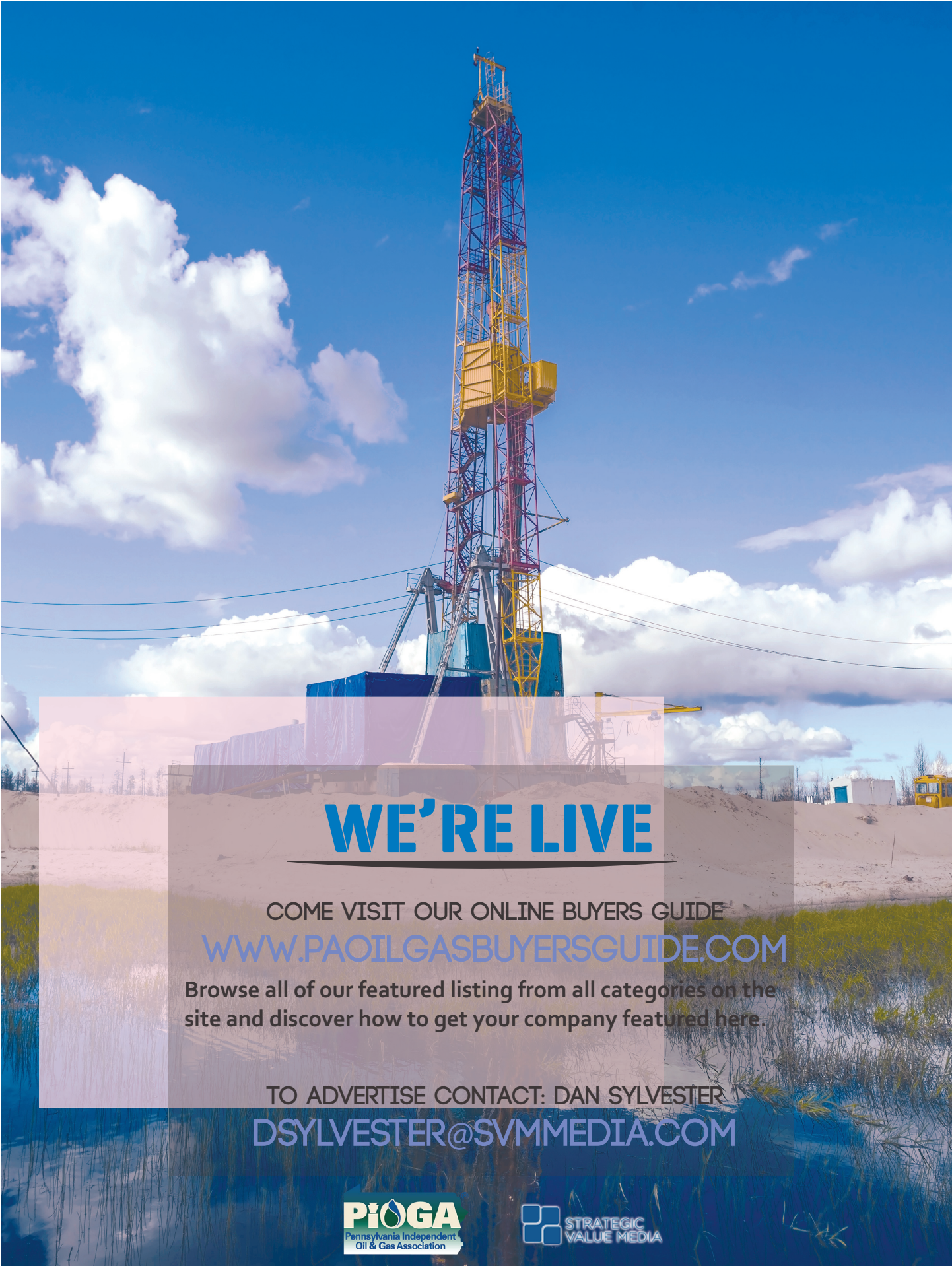
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PIOGA Supreme Court ruling: *Continued from page 1*

subsection (a)—to comprise an inextricably linked decisional process and so enjoined the use of those provisions. DEP, on the other hand, argued that Section 3215(c) stood alone and could be applied apart from the other invalidated provisions of Section 3215.

PIOGA asked the Commonwealth Court to enforce the majority's injunction by ruling that DEP does not have any authority to require operators, as part of the well permit process, to satisfy the requirements of DEP's Pennsylvania Natural Diversity Index (PNDI) Policy concerning impacts to the public resources identified in Section 3215(c) because DEP also has no authority to impose conditions—and had not developed the necessary standards—to mitigate impacts DEP deemed “harmful” because of the invalidity of Section 3215(e). Without standards established in accordance with Section 3215(e), PIOGA argued that DEP would have unbridled discretion in imposing conditions.

Despite PIOGA's showing that the public resources identified in Section 3215(c) are adequately protected by other statutes operators must satisfy, the Commonwealth Court majority found that “DEP's authority under Section 3215(c) to consider the impact that a proposed well will have on public resources, those listed and unlisted, is extant, limited only by the portion of the Supreme Court's mandate ... that enjoins its application and enforcement with respect to the water source setback and waiver provisions set forth in Section 3215(b).” The court's use of the precise term “extant”—which means “in existence; still existing; not destroyed or lost”—shows that the Commonwealth Court majority, which relied heavily on the *Robinson Township* plurality opinion, accepted DEP's new argument that Section 3215(c) stands alone from the other invalidated provisions of Section 3215. Moody said that “the Supreme Court's summary acceptance in our appeal of the Commonwealth Court majority's reliance upon the *Robinson Township* plurality opinion, which relied on the Environmental Rights Amendment, is consistent with its *PEDF* decision.” ■

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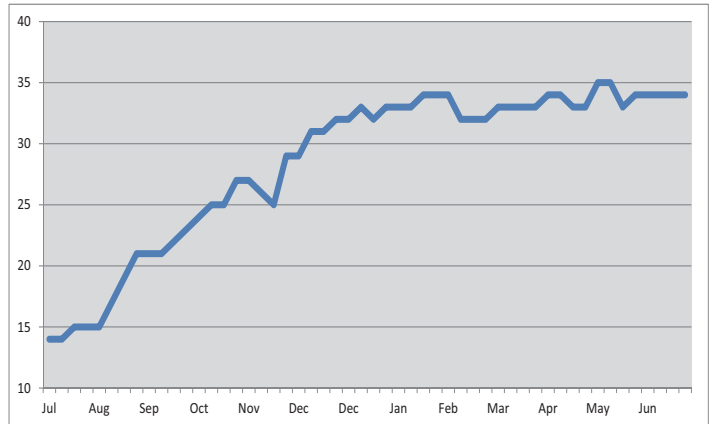


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Pennsylvania Rig Count



Sources

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 Ergon Oil Purchasing: www.ergon.com/prices.php
 Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG
 Baker Hughes rig count: phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-reports
 NYMEX strip chart: Emkey Energy LLC, emkeyenergy.com

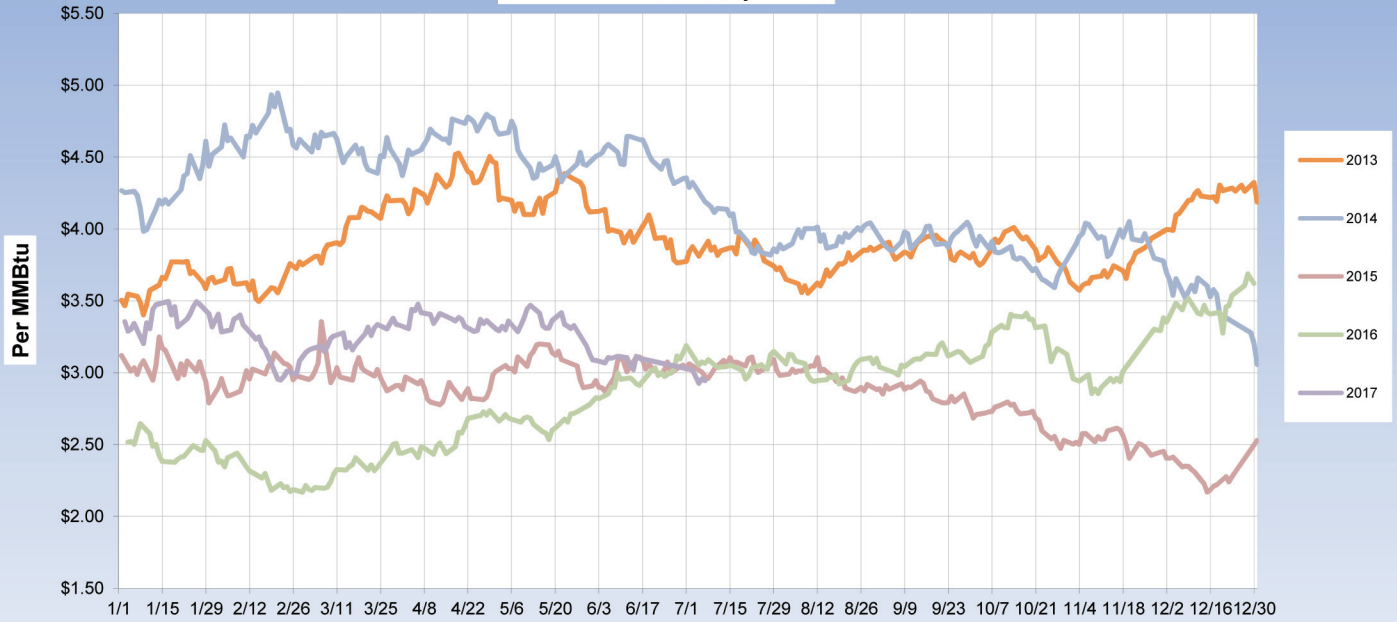
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NYMEX Annual Strip Price



Natural Gas Futures Closing Prices

Month	Price	Month	Price
August 2017	\$2.899	February	3.209
September	2.877	March	3.140
October	2.912	April	2.781
November	2.971	May	2.750
December	3.123	June	2.793
January 2018	3.218	July	2.811

Prices as of July 7

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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
Blackhawk Energy LLC	3	6/12/17	083-56919	McKean	Wetmore Twp
		6/21/17	083-56918	McKean	Wetmore Twp
		6/28/17	083-56917	McKean	Wetmore Twp
Bull Run Energy LLC Cameron Energy Co	4	6/14/17	083-56860	McKean	Wetmore Twp
		6/8/17	123-48072	Warren	Sheffield Twp
		6/16/17	123-48073	Warren	Sheffield Twp
		6/26/17	123-48075	Warren	Sheffield Twp
Catalyst Energy Inc	3	6/30/17	123-48074	Warren	Sheffield Twp
		6/21/17	121-46146	Venango	Cranberry Twp
		6/29/17	121-46148	Venango	Cranberry Twp
Chief Oil & Gas LLC	4	6/26/17	121-46147	Venango	Franklin City
		6/15/17	015-23308*	Bradford	Wilmot Twp
		6/15/17	015-23309*	Bradford	Wilmot Twp
Elder Oil & Gas Co EQT Production Co	6	6/15/17	015-23307*	Bradford	Wilmot Twp
		6/1/17	115-22269*	Susquehanna	Lathrop Twp
		6/26/17	031-25692	Clarion	Perry Twp
		6/7/17	059-27147*	Greene	Morgan Twp
Hilcorp Energy Co JKLM Energy LLC	1	6/23/17	125-27925*	Washington	East Finley Twp
		6/23/17	125-27926*	Washington	East Finley Twp
		6/23/17	125-27927*	Washington	East Finley Twp
		6/23/17	125-27928*	Washington	East Finley Twp
		6/23/17	125-27929	Washington	East Finley Twp
		6/4/17	073-20541*	Lawrence	North Beaver Twp
PA Gen Energy Co LLC Range Resources Appalachia	2	6/30/17	105-21887*	Potter	Sweden Twp
		6/30/17	105-21888*	Potter	Sweden Twp
		6/27/17	081-21685*	Lycoming	Gamble Twp
Range Resources Appalachia	13	6/22/17	125-28205*	Washington	Amwell Twp
		6/22/17	125-28206*	Washington	Amwell Twp
		6/23/17	125-28204*	Washington	Amwell Twp
		6/7/17	125-28216*	Washington	Buffalo Twp
		6/7/17	125-28174*	Washington	Buffalo Twp
		6/7/17	125-28179*	Washington	Buffalo Twp
		6/7/17	125-28176*	Washington	Buffalo Twp

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

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 an unconventional well.

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
Repsol Oil & Gas USA LLC	10	6/7/17	125-28178*	Washington	Buffalo Twp
		6/7/17	125-28175*	Washington	Buffalo Twp
		6/30/17	125-28188*	Washington	Robinson Twp
		6/30/17	125-28186*	Washington	Robinson Twp
		6/30/17	125-28187*	Washington	Robinson Twp
		6/30/17	125-28190*	Washington	Robinson Twp
Rice Drilling B LLC	15	6/5/17	015-23359*	Bradford	Pike Twp
		6/6/17	015-23360*	Bradford	Pike Twp
		6/7/17	015-23356*	Bradford	Pike Twp
		6/9/17	015-23352*	Bradford	Pike Twp
		6/9/17	015-23353*	Bradford	Pike Twp
		6/9/17	015-23354*	Bradford	Pike Twp
		6/9/17	015-23355*	Bradford	Pike Twp
		6/9/17	015-23357*	Bradford	Pike Twp
		6/9/17	015-23358*	Bradford	Pike Twp
		6/9/17	015-23361*	Bradford	Pike Twp
		6/9/17	059-27352*	Greene	Center Twp
		6/10/17	059-27356*	Greene	Center Twp
		6/10/17	059-27353*	Greene	Center Twp
		6/12/17	059-27347*	Greene	Center Twp
		6/12/17	059-27354*	Greene	Center Twp
Seneca Resources Corp	13	6/12/17	059-27351*	Greene	Center Twp
		6/13/17	059-27348*	Greene	Center Twp
		6/13/17	059-27349*	Greene	Center Twp
		6/13/17	059-27355*	Greene	Center Twp
		6/14/17	059-27350*	Greene	Center Twp
		6/5/17	125-27909*	Washington	Amwell Twp
		6/5/17	125-27911*	Washington	Amwell Twp
		6/5/17	125-27912*	Washington	Amwell Twp
		6/5/17	125-27913*	Washington	Amwell Twp
		6/6/17	125-27910*	Washington	Amwell Twp
		6/7/17	047-24984*	Elk	Jones Twp
		6/7/17	047-24982*	Elk	Jones Twp
		6/7/17	047-24986*	Elk	Jones Twp
		6/7/17	047-24988*	Elk	Jones Twp
		6/8/17	047-24987*	Elk	Jones Twp
		6/9/17	047-24980*	Elk	Jones Twp
		6/9/17	047-24983*	Elk	Jones Twp
6/9/17	047-24985*	Elk	Jones Twp		
6/9/17	047-24975*	Elk	Jones Twp		
6/9/17	047-24981*	Elk	Jones Twp		
6/10/17	047-24990*	Elk	Jones Twp		
6/3/17	081-21684*	Lycoming	Gamble Twp		
6/20/17	081-21682*	Lycoming	Gamble Twp		
SWEPI LP	1	6/1/17	117-21904*	Tioga	Deerfield Twp
SWN Production Co LLC	2	6/2/17	115-22300*	Susquehanna	Jackson Twp
		6/2/17	115-22301*	Susquehanna	Jackson Twp
Weldbank Energy Corp	4	6/2/17	123-48003	Warren	Mead Twp
		6/13/17	123-48076	Warren	Mead Twp
		6/17/17	123-48077	Warren	Mead Twp
		6/22/17	123-48078	Warren	Mead Twp

	June	May	April	March	February	January
Total wells	84	67	92	85	64	58
Unconventional Gas	67	60	90	71	60	57
Conventional Gas	0	0	0	0	0	0
Oil	16	7	2	14	4	1
Combination Oil/Gas	1	0	0	0	0	0

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Calendar of Events

PIOGA Events

PIOGATech: Aboveground Storage Tanks, Silica – Monitoring, Safety, the Regulations and You

July 27, The Chadwick Banquet Center, Wexford

20th Annual Divot Diggers Golf Outing

August 24, Tam O'Shanter Golf Club, Hermitage

Annual Membership Meeting

October 5, location TBA

Tax & Accounting Seminar

November 30, location TBA

Industry events

IOGANY Summer Meeting

July 12-13, Peak'n Peak Resort, Clymer, NY

Info: www.iogany.org/events

IOGA West Virginia Summer Meeting

August 6-8, The Greenbrier, White Sulphur Springs, WV

Info: iogawv.com/

Ohio Oil & Gas Association Summer Meeting

August 7-8, Zanesville (OH) Country Club

Info: www.ooga.org

IPAA Annual Meeting

November 8-10, The Ritz-Carlton, Naples, FL

Info: www.ipaa.org/meetings-events

→ More events: www.pioga.org

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