

The PIOGA Press

The monthly newsletter of the
 Pennsylvania Independent Oil & Gas Association
 May 2019 • Issue 109

Turzai unveils legislative package to ‘Energize PA’

As the antithesis of Governor Wolf’s “Restore Pennsylvania” package, which would impose a natural gas severance tax to leverage \$4.5 billion in spending on infrastructure and other projects (*February PIOGA Press, page 1*), House Speaker Mike Turzai on April 29 unveiled a legislative package dubbed “Energize PA” that leverages the state’s energy resources to spur investment in economic expansion.

The Allegheny County Republican was joined by members of the House Republican Caucus, Washington County Chamber of Commerce, representatives International Brotherhood of Electrical Workers, and the Pennsylvania Chamber of Business and Industry to unveil a multi-bill legislative package intended to support investment in Pennsylvania’s manufacturing base by building on its position as a leader in energy development. The components of Energize PA were developed out of a review conducted by the Pennsylvania Chamber of ways in which Pennsylvania’s energy resources could be utilized to better support the Commonwealth’s economy. Energize PA was touted as the next step to build

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Rebranding efforts lead to new website, tagline, membership packet and color scheme

Our trade organization might be over 100 years old, but we’re on the cutting edge as an association and leading Pennsylvania’s oil and gas industry and we wanted our “look” to reflect this new vision and focus for the association.

Over recent past months, PIOGA staff have been “refreshing” our website, public outreach materials, membership packet and creating a new tagline that fully represents who we are as an entity in 2019.

Updated website: www.pioga.org

Our freshened website showcases the association, the benefits of membership and provides timely news

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PIOGA rebranding *Continued from page 1*

and advocacy information impacting the industry. This user-friendly website is full of resources that members and the public can take advantage of including some of the following:

- About PIOGA – Association, Board & Staff
- Member Benefits & Services
- Online Buyers' Guide
- Members Only Log-In
- News/Resources
- Events
- Advertising Opportunities
- Get Involved/Advocacy
- Education Pages
- Career Center
- Photo Gallery

Check out the new website and let us know what you think. Drop us a line at info@pioga.org to give us your thoughts, suggest further improvements or to let us know if something isn't working quite right. Remember to bookmark it so you can visit frequently!

New tagline: “Serving the industry for over a century—conventional to shale and beyond”

Since the shale revolution started here in 2008, PIOGA has been at the forefront in representing the *full* oil and gas industry—conventional and shale producers and downstream interests as well, now that this segment is rapidly growing due to our industry. The new tagline represents the evolution of PIOGA as a trade association over these 100 years.

Educational fact sheets

We also have updated our educational fact sheets for use by our members, legislators and the public to continue our efforts on education about our industry. Knowledge is power and spreading the word about what we do, how we operate, how we protect the environment, job opportunities and economic impact to the state is critical to our success. All of these fact sheets can be downloaded on pioga.org under Education.

The following fact sheets (shown below) are available:

- PA's Traditional Oil & Gas Industry
- Exploration & Production Process

- Oil and Gas from Shale Resources
- Environment & Safety
- Hydraulic Fracturing Process
- Pennsylvania's Natural Gas: Clean Energy to Power Your Life and Home (2018)
- The Marcellus Shale: Pennsylvania's Home-Grown Energy Source
- Landowners FAQ
- Careers in the Oil & Gas Industry

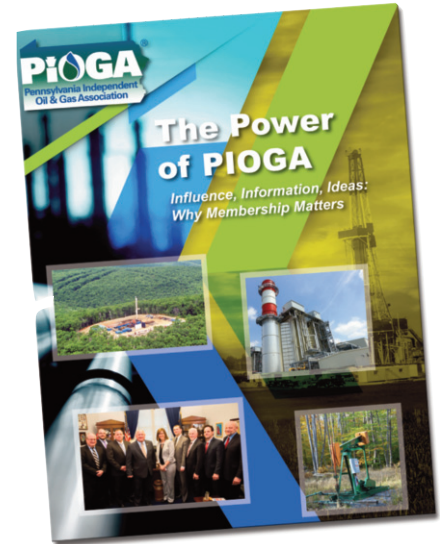
New membership benefits packet: “The Power of PIOGA Influence, Information, Ideas: Why Membership Matters”

Do you know a potential new member who would benefit from a membership in PIOGA? If so, you can provide them *The Power of PIOGA* packet that explains in detail how PIOGA membership is not just a great value, but is also an important tool to help companies succeed in today's fast-changing world of energy production and usage.

The packet tells how PIOGA is working effectively on behalf of its members and how companies can maximize their membership through involvement in committees, participating in programs, and taking advantage of discounts and other exclusive services.

Contact Deana McMahan at deana@pioga.org if you'd like us to mail a membership packet to a potential new member or you can go to www.pioga.org > Join PIOGA to obtain an electronic version to email to them.

PIOGA is changing and adapting to the new industry that has emerged. We are pleased to offer these resources to our members and hope you will take advantage of these valuable resources. ■



Advisory committee recommends moving ahead with new air reg

The Department of Environmental Protection's Air Quality Technical Advisory Committee (AQTAC) voted April 11 to recommend the department proceed with a proposed regulation to reduce emissions of volatile organic compounds (VOC) from existing oil and gas well sites and related facilities.

The rules, which would apply to both conventional and unconventional operations, are based on a federal Control Technique Guideline (CTG) for oil and gas facilities which are used to develop a Reasonably Available Control Technology (RACT) standard in Pennsylvania. In addition to reducing VOC emissions, the rule as a "co-benefit" would also lower methane emissions from storage tanks, pneumatic controllers and pumps at natural gas processing plants, other midstream facilities and well sites (*January PIOGA Press, page 8*).

DEP estimates as many as 80 percent of conventional oil and gas wells and approximately 6 percent of unconventional wells would be exempt from the leak detection and repair provisions of the rule due to a low-production well exemption. However, the burden to evaluate and document that a well is exempt would be on the operator, and associated exemption determinations would be required to be retained on file. Similar exemptions would be available for certain storage vessels, again with a burden on the operator to evaluate and document on an ongoing basis.

The April 11 AQTAC meeting was the first time the full text of the proposal was discussed, and it ended in a divided vote to proceed following what one blog post described as a "lively" discussion. Representatives of environmental groups expressed their disappointment with the proposal, stating that as drafted the rule would result in the capture of only 21 percent of methane emissions.

DEP has been discussing the proposal with various advisory committees. PIOGA's Environmental Committee is taking opportunities to engage with the department as it prepares to go before the Environmental Quality Board to begin the formal rulemaking process. ■

To the PIOGA Membership:

I know that if you were at the Spring Meeting in Pittsburgh you are concerned about what is happening in my B&R lawsuit and how it has affected me personally. I have decided to post my story and any updates on my website. I can only hope this does not happen to any one of you. Be alert, the Commonwealth is in attack mode. You can see my story and updates at www.bandresources.com.

—Richard Campola, B&R Resources, LLC



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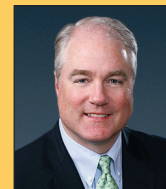
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EQB approves cap-and-trade petition for evaluation

Wolf announces new climate action plan that endorses cap and trade for electric generators and tighter methane standards for oil and gas industry

The Environmental Quality Board (EQB) on April 16 voted to evaluate a proposed rulemaking that would impose a far-reaching cap-and-trade program for reducing greenhouse gas emissions (GHG) in Pennsylvania. As reported in the April issue of *The PIOGA Press*, the regulations would impact many sectors of Pennsylvania's economy—including oil and gas—with the goal of reducing GHG emissions to carbon neutrality by 2052.

Meanwhile, Governor Wolf and a group of legislators on April 29 announced an update to the state's climate action plan that among other things endorses a cap-and-trade program for the electricity sector, maintains nuclear generation at current levels, reduces methane emissions from oil and natural gas operations, and increases recovery and use of methane from coal mines, agriculture, wastewater and landfills.

Cap-and-trade petition

The petition, in the form of a fully drafted 407-page rulemaking, was submitted in February by the Clean Air Council, Widener Commonwealth Law School Environmental Law and Sustainability Center, and more than 100 other groups. The initial cap for GHG emissions would be equal to 97 percent of 2016 levels, declining by 3 percent per year. A wide variety of facilities would be required to purchase or trade for allowances for each metric ton of reportable GHG emissions per year attributable to their operations in Pennsylvania.

At the EQB's April 16 meeting, state Representative Daryl Metcalfe, a board member and chair of the House Environmental Resources and Energy Committee, categorized the petition as an effort to circumvent the General Assembly and said there is a need to study the economic impact before taking any action to accept the petition for study. His motion to table further action was defeated 5-14.

The EQB then voted by the same 14-5 margin to accept the petition for evaluation. Department of Environmental Protection officials indicated the study will look into the economic and fiscal impacts of the proposal and the effectiveness of the program being suggested, including an evaluation of alternatives that may be less costly.

Acceptance of the petition started a 60-day clock for DEP to return to the EQB with its recommendations. However, the time frame is likely to be extended because of the complexity of assessing the proposal.

Reactions

Senator Gene Yaw, chairman of the Senate Environmental Resources and Energy Committee and one of the four EQB members who joined Representative Metcalfe in voting not to accept the petition, issued this statement after the meeting:

"I have serious concerns with respect to the rulemaking petition.... Quite frankly, the Pennsylvania Department of Environmental Protection does not have the statutory authority to undertake such a rulemaking regulating greenhouse gas emissions. This action intrudes on the General Assembly's exercise of powers, and I believe action on this rulemaking would set a dangerous precedent moving forward.

"Any revenues collected through this carbon pricing scheme would essentially impose an unconstitutional tax, a tax which has not been authorized by the General Assembly. I'd echo the concerns expressed by the Pennsylvania Chamber of Business and Industry. Have the petitioners, or those supporting this measure, given any consideration to the impacts this petition would have on our workforce, our economy, our residents and households? This petition would have far-reaching consequences on our economy, consumer costs and job creators which have not been adequately considered by the department.

"I believe there are ways to reduce carbon emissions and my committee will continue to focus on those technologies moving forward, but we do it in a way that's responsible and sensitive to our system of government. I'm open to ways on what that may look like. This rulemaking petition is an overreach. I have voted 'no' and will explore all options to ensure that the department and EQB adhere to our rule of law."

Pennsylvania Chamber President and CEO Gene Barr cautioned, "This regulation, if enacted, would be among the costliest and sweeping regulatory programs ever implemented by state government. As evidenced by the deliberations of the Environmental Quality Board today, many questions remain unanswered—including the

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underlying constitutionality of the Department of Environmental Protection's authority to implement such a measure. It is imperative the department proceed deliberately and carefully weigh the costs, legality and effectiveness of this proposal."

Prior to the April 16 EQB meeting, PIOGA and 14 other organizations joined with the Chamber in a four-page letter to the board raising a wide range of concerns about the impact the regulation would have on virtually every sector of Pennsylvania's economy and the Commonwealth itself.

Climate action plan update

On April 29, Governor Wolf was joined by several lawmakers in announcing an update to the Pennsylvania Climate Action Plan. The update, developed by DEP, includes a goal that by 2025 GHG emissions would be reduced by 26 percent from 2005 levels and a net reduction of 80 percent by 2050. The targets are in line with the goals established in the 2015 United Nations Paris climate accord. Wolf joins 24 other governors in announcing their intention to adopt the Paris commitments.

The plan outlines 100 actions, 15 of which—such as increasing renewable energy and the use of electric vehicles—would reduce emissions 21 percent by 2025. The updated plan specifically endorses a cap-and-trade program for the electric sector, maintaining nuclear generation at current levels, and increasing wind and solar generation.

Among other things, the plan also recommends reducing the upstream impacts of fossil fuel energy production and increasing production and use of alternative fuels such as methane from coal mines, agriculture, wastewater and landfills.

For the oil and gas industry, the plan says reductions "can be achieved through both mandatory and voluntary reductions, an approach which has proven effective in the past." The document cites Wolf's 2016 Methane Reduction Strategy and indicates the updated plan update will continue with the steps outlined in the 2015 version of the climate action plan, including:

- Expand verification of methane emission data reported to DEP by operators.
- Continue to investigate and quantify methane emissions from plugged and abandoned wells, including wells plugged by DEP, through partnerships between DEP, academia and citizen-science groups.
- Expand the use of remote-sensing technologies to identify fugitive and non-fugitive emission sources throughout the present and historical areas of operating, abandoned, and plugged oil and natural gas wells.
- As a result of these surveys and results, develop a source emissions inventory and recommendations for developing and enhancing programs to minimize and eliminate methane emissions, expanding on what DEP already includes in the state GHG inventory.

The 231-page Pennsylvania Climate Action plan can be found on DEP's website, www.dep.pa.gov. ■



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This memorial golf outing and steak fry returns to one of the finest golf courses in Northwestern Pennsylvania, the Wanango Country Club on the outskirts of Oil City.

Golf Tournament - 10:00 a.m.

The golf tournament is in a scramble format, with registration at 9 a.m. and a shotgun start at 10. We plan a variety of contests on the course. Lunch will be provided to all golfers and beverages will be available on the course. The golf package includes cart and green fees, skill prizes, lunch and beverages during play, then a delicious steak fry picnic when you return to the clubhouse. Mulligans will be available for purchase at registration.

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Steak Fry Dinner Only

If you want to come for the dinner only, join us at 3 p.m. for drinks. After golf, the Wanango Country Club will serve us a sumptuous New York Strip Steak Fry with baked potato and a variety of side dishes to satisfy every palate. Dinner is at 4 p.m.

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Registration and fees for the day's options are priced separately.

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- Golf & Steak Fry Dinner for Members and Guests - \$150 per person
- Golf & Steak Fry Dinner for Nonmembers - \$175 per person
- Steak Fry Dinner Only for Members and Guests - \$60 per person
- Steak Fry Dinner Only for Nonmembers - \$75 per person

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Golf/Dinner Registration deadline is May 28.

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This annual golf outing and steak fry is in honor of longtime PIOGA and POGAM board member Ted Cranmer, who passed away in 2016. The success of the Wanango outing was one of Ted's passions for 10 years, and the event raised thousands of dollars to benefit the association's mission. We are pleased to continue to honor Ted's legacy with this event and hope you come and enjoy a day of golf and camaraderie with the great folks in the PA oil and gas industry.

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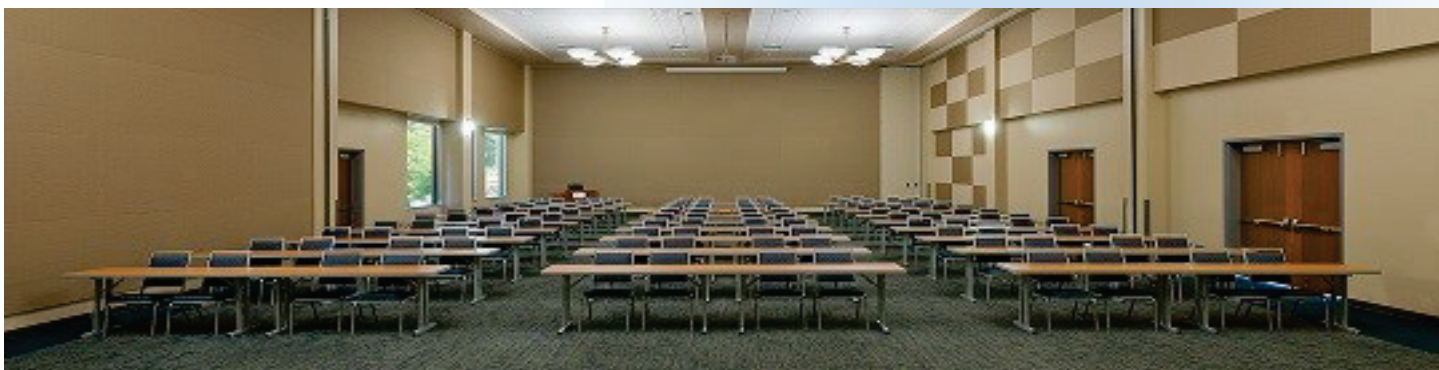
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A look back: PIOGA Spring Meeting



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Trump executive order puts spotlight on DOT LNG rules

On April 10, President Donald Trump signed an executive order, "Promoting Energy Infrastructure and Economic Growth." In addition to outlining U.S. policy toward private investment in energy infrastructure and directing the U.S. Environmental Protection Agency to take certain actions to improve the permitting process under the Clean Water Act, the executive order instructs the U.S. Department of Transportation (DOT) to update the federal safety standards for liquefied natural gas (LNG) facilities.

The executive order notes that DOT originally issued those safety standards nearly four decades ago and states that the current regulations are not appropriate for "modern, large-scale liquefaction facilities[.]" Accordingly, the executive order directs DOT to finalize new LNG regulations within 13 months, or by no later than May 2020, an ambitious deadline given the complex issues involved and typical timeframe for completing the federal rulemaking process.

Why does dot regulate LNG safety?

The LNG industry has a long history in the United States. The first LNG plant went into service in West Virginia in the World War I era, and a commercial liquefaction plant in Cleveland, Ohio, went into operation in the 1940s. In 1944, the Cleveland plant experienced an LNG



Keith J. Coyle, Esq.

Babst Calland
Attorneys at Law

tank failure that led to a fatal explosion and fire and resulted in extensive property damage. The first commercial shipment of LNG by vessel occurred 15 years later, in 1959, when the *Methane Pioneer* sailed from Louisiana to the United Kingdom. Several large-scale LNG terminals were constructed during the late 1960s and 1970s in places like Alaska, Louisiana, Georgia, Maryland, and Massachusetts, a period that coincided with DOT's initial efforts to establish federal safety standards for LNG facilities.

In the Natural Gas Pipeline Safety Act of 1968, Congress authorized DOT to prescribe and enforce minimum federal safety standards for gas pipeline facilities and persons engaged in the transportation of gas. Acting pursuant to the authority provided in the 1968 act, DOT promulgated interim federal safety regulations for LNG facilities in the early 1970s. The interim regulations required operators to comply with the 1972 edition of the National Fire Protection Association Standard 59A (NFPA 59A), a consensus industry standard for the production, handling and storage of LNG, as well as DOT's new federal safety standards for gas pipeline facilities.

After issuing the interim regulations, DOT initiated a new rulemaking proceeding to establish permanent federal safety standards for LNG facilities. DOT relied on NFPA 59A in developing those standards, including the concept of requiring an operator or governmental authority to exercise control over the activities that occur within a specified distance of an LNG facility. These distances, known as "exclusion zones," were designed to protect the public from unsafe levels of thermal radiation and vapor gas dispersion in the event of an LNG incident. DOT proposed to require that operators calculate the dimensions of an exclusion zone using certain mathematical models and other parameters.

While DOT's LNG rulemaking proceeding was still underway, Congress passed the Pipeline Safety Act of 1979. In addition to expanding DOT's authority to regulate hazardous liquid pipeline facilities, the 1979 law included

a rulemaking mandate directing DOT to finalize the new regulations for LNG facilities. DOT satisfied that mandate in August 1980 by issuing the original version of federal safety standards for LNG facilities. The regulations, codified at 49 C.F.R. Part 193, incorporated the 1979 edition of NFPA 59A by reference and included siting requirements for LNG facilities based on the exclusion-zone approach. Other provisions addressed design, construction, operation, maintenance, security and fire protection.

DOT left the original Part 193 regulations in place for the next two decades as unfavorable market conditions significantly reduced domestic interest in LNG development, particularly for large-scale terminals. In 2000, DOT responded to a rulemaking peti-

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tion from NFPA by repealing many of its substantive regulations and deferring to the comparable provisions in the 1996 edition of NFPA 59A. In subsequent industry standards updates, DOT incorporated the 2001 edition and 2006 editions of NFPA 59A into Part 193. No other significant changes to the LNG regulations have occurred since DOT issued the original federal safety standards in 1980.

Why is President Trump focusing on DOT's LNG regulations?

DOT's LNG-related activities have increased significantly in recent years, primarily in response to the rapid growth of U.S. natural gas resources and renewed interest in domestic LNG projects. In the Obama administration, DOT issued several significant letters of interpretation dealing with the Part 193 siting requirements and approved the use of two alternative vapor gas dispersion models for calculating exclusion zone distances. DOT also issued a series of frequently asked questions on its website providing operators with guidance on LNG issues and created a process for reviewing design spill determinations for proposed LNG projects. In August 2018, DOT and the Federal Energy Regulatory Commission (FERC), the federal agency that exercises economic regulatory and limited safety jurisdiction over LNG terminals and facilities under the Natural Gas Act of 1938, executed a Memorandum of Understanding (MOU) to improve interagency coordination. Under the MOU, DOT is responsible for issuing a let-

ter of determination on whether a proposed FERC-jurisdictional LNG project complies with the Part 193 regulations.

The April 10 executive order seeks to build on these recent efforts by directing DOT to update the Part 193 regulations by no later than May 2020. DOT will need to consider several important issues during the rulemaking process, such as whether to incorporate more recent additions of NFPA 59A into Part 193 by reference, whether changes should be made to the exclusion zone approach in the siting regulations and whether to address a new rulemaking mandate for small-scale LNG facilities that Congress included in the 2016 reauthorization of the Pipeline Safety Act.

Finishing the rulemaking process by the deadline provided in the executive order will be extremely difficult. DOT has not yet issued a notice of proposed rulemaking, and the proceeding is likely to generate significant public interest. Industry has made tremendous technological advances in the four decades since DOT's last comprehensive review of its LNG regulations, and public interest and other advocacy groups have also become very active in recent proceedings related to new LNG projects. These factors, when combined with the ordinary time horizon for completing DOT rulemaking proceedings and upcoming presidential election, suggest that extraordinary efforts would be needed to issue a final rule in the next 13 months. ■

PIOGA Well Plugging and Legacy Well Workshop

On April 25, a PIOGATech seminar was conducted on oil and gas well plugging and legacy well issues at Clarion University in front of approximately 120 attendees. The discussions involved numerous industry experts to discuss the mechanics of well plugging, the regulatory and legal issues, the current work that is being conducted by the Pennsylvania Crude Development Advisory Committee (CDAC) in order to tackle a significant issue in Pennsylvania, and ended with a panel discussion featuring two oil and gas operators, a well plugging contractor, and a representative from the regulatory community. The presenters and panelists included:

- Dave Ochs – Kriebel Group
- Jean Mosites – Babst Calland
- Dave Hill – Dave Hill Drilling (*shown at right*)
- Seth Pelepko – Pennsylvania Department of Environmental Protection
- Ken Fleeman – ABARTA Energy
- Mike Hillebrand – Huntley & Huntley Exploration
- Arthur Stewart – Cameron Energy
- Marty Comini – Keystone Wireline
- Bruce Jankura – Pennsylvania Department of Environmental Protection
- Jeff Walentosky from Moody and

Associates, Inc. acted as host and facilitator of the day-long seminar on behalf of PIOGA.

Attendees received five professional development hour credits from Wilkes University for completing the seminar. PIOGA thanks all of the presenters and panel participants, along with the attendees for their engagement and productive discussions during the seminar. PIOGA would also like to thank Clarion University of Pennsylvania for its hospitality and the use of the theater facility for the event. ■



EPA releases interpretive statement excluding releases to groundwater from NPDES program

On April 23, the U.S. Environmental Protection Agency published a notice of availability of an interpretive statement concluding that releases of pollutants to groundwater should be categorically excluded from Clean Water Act (CWA) permitting requirements. 84 Fed. Reg. 16810. The notice opens a 45-day public comment period, ending on June 7. EPA is requesting comments on its analysis and rationale and is also soliciting input on additional actions that may be needed to provide further clarity and regulatory certainty on whether the National Pollutant Discharge Elimination System (NPDES) permit program regulates releases of pollutants to groundwater.

With the

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issuance of the interpretive statement, EPA has reinjected itself into the ongoing debate, federal circuit court split and pending U.S. Supreme Court case over whether the CWA's NPDES permit program regulates point source discharges that travel through groundwater before reaching a jurisdictional surface water. The interpretive statement and the related, ongoing judicial decisions are of interest to the natural gas industry, among other industries, given the potential implications related to leaks/spills from pipelines, impoundments and other structures.

Interpretive statement content and reasoning

EPA describes the interpretive statement as the agency's "most comprehensive analysis" of the CWA's text, structure and legislative history in relation to whether the NPDES permit program regulates point source releases to groundwater. Most of the 63-page interpretive statement discusses EPA's legal analysis of the statutory provisions that implement and enforce the NPDES permit program, the forward-looking, information-gathering statutory provisions that explicitly reference groundwater, and the relevant legislative history. Based on its analysis of this information, EPA concludes that Congress deliberately chose to exclude discharges of pollutants to groundwater from the NPDES permit program, even when those pollutants are conveyed to a jurisdictional surface water via groundwater.

While EPA's conclusion is based primarily on its legal interpretation of the CWA, the policy-based rationale supporting its conclusion is that groundwater is extensively regulated under other federal and state statutory regimes. With respect to state laws and regulations that limit discharges to groundwater, EPA notes that several states have laws in place to protect groundwater. On the federal side, EPA notes that the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation and Liability Act all regulate groundwater quality to some extent. According to EPA, these federal and state laws and regulations are sufficient to protect groundwater.

Conflict with existing circuit court opinions and pending Supreme Court appeal

EPA's position in the interpretive statement differs from the two legal theories that emerged from the 2018 Fourth and Ninth Circuit Court decisions addressing whether the CWA regulates point source discharges that travel through groundwater before reaching a jurisdictional surface water. Unlike the decisions of the Fourth and Ninth Circuits and EPA's prior statements that have been construed as advocating a different interpretation, EPA now unequivocally states that any release of a pollutant to groundwater does not fall within the ambit of the CWA. Thus, EPA has rejected the "direct hydrological connection" legal test established by the Fourth Circuit in *Upstate Forever v. Kinder Morgan*¹ and the "fairly traceable" legal test established by the Ninth Circuit in *Hawai'i*

¹ *Upstate Forever v. Kinder Morgan Energy Partners*, 887 F.3d 637 (4th Cir. 2018).

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Wildlife Fund v. County of Maui.² EPA will, therefore, apply the interpretive statement in all jurisdictions, other than those 14 states (including West Virginia, Virginia and Maryland) and other territories within the Fourth and Ninth Circuits.³ The decisions of the Fourth and Ninth Circuits will stand until further clarification by the U.S. Supreme Court, which agreed to hear the *County of Maui* appeal approximately two months ago.

In the Ninth Circuit's *County of Maui v. Hawai'i Wildlife Fund* decision, the court affirmed the district court's decision that the county was liable under the CWA for injecting treated sanitary wastewater into separately permitted underground wells after the plaintiffs demonstrated that the discharge ultimately reached the Pacific Ocean. On appeal, the Supreme Court will be deciding "whether the CWA requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater." The court granted the county's petition for review after the United States filed an *amicus* brief, in which it noted that EPA would soon be publishing what we now know is the interpretive statement.

It is unclear what role, if any, EPA's interpretive state-

² *Hawai'i Wildlife Fund v. County of Maui*, 881 F.3d 754 (9th Cir. 2018).

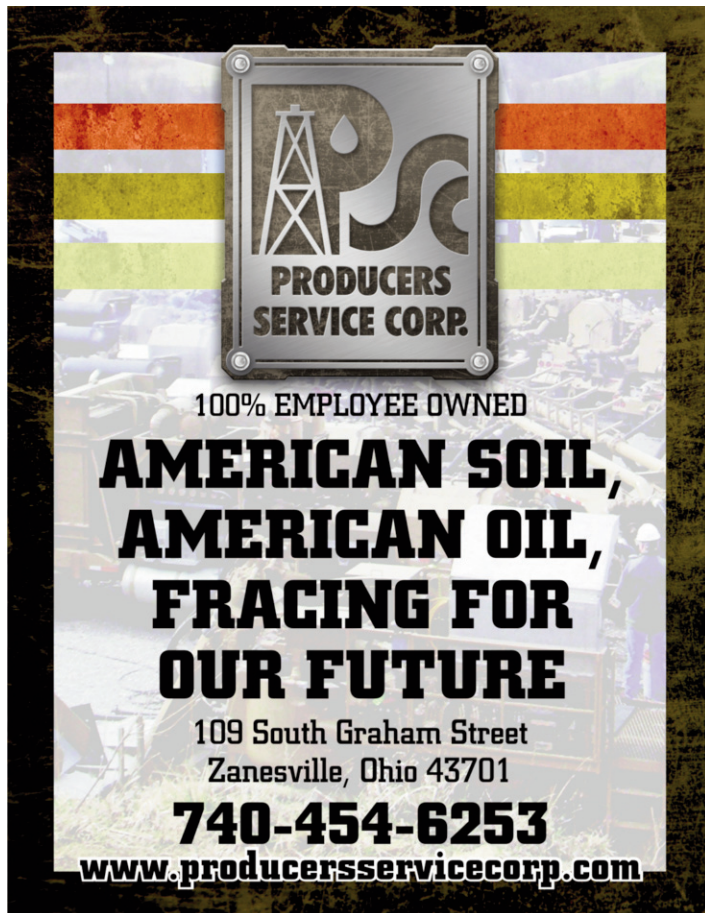
³ In addition, although EPA's interpretation would lead to the same result, EPA also rejected what it describes as the "terminal point source" theory of liability adopted by the Sixth Circuit in the companion cases: *Kentucky Waterways Alliance & Sierra Club v. Kentucky Utilities Company*, 905 F.3d 925 (6th Cir. 2018) and *Tennessee Clean Water Network v. Tennessee Valley Authority*, 905 F.3d 436 (6th Cir. 2018). We have evaluated these decisions in *Environmental Alerts* available on Babst Calland's website (www.babstcalland.com).

ment will play in the *County of Maui* matter. The county's merits brief currently is due before the close of the public comment period on the interpretive statement. It is also unclear whether EPA will finalize any rulemaking or take any more formal administrative action before the Supreme Court renders its decision, likely in 2020 after oral arguments are heard this fall.⁴ Furthermore, the level of deference, if any, the Supreme Court will give EPA on its position in the interpretive statement is unclear, particularly because the position articulated in the interpretive statement is inconsistent with the position that the United States, on behalf of EPA, took in an *amicus* brief filed when the *County of Maui* case was previously heard by the Ninth Circuit.

In the meantime, regulated parties outside the Fourth and Ninth Circuits now have additional support to defend against lawsuits alleging that the CWA regulates point source discharges that travel through groundwater before reaching a jurisdictional surface water. ■

Babst Calland is actively monitoring this interpretive statement and the related judicial decisions. If you have questions regarding this issue, please contact Lisa M. Bruderly at 412-394-6495 or lbruderly@babstcalland.com or Gary E. Steinbauer at 412-394-6590 or gsteinbauer@babstcalland.com.

⁴ In another related federal appeal, the plaintiff environmental groups in the *Tennessee Clean Water Network* matter recently requested that the Supreme Court review the Sixth Circuit's decision denying CWA liability. The petition, however, requests that the Court hold the petition pending resolution of the *County of Maui* matter.



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EPA determines that revisions to Subtitle D regulations for oil and gas wastes are unnecessary

In May 2016, various environmental groups, including the Environmental Integrity Project and the Natural Resources Defense Council, filed a lawsuit in federal court alleging that the United States Environmental Protection Agency failed to evaluate its regulations for managing wastes associated with oil and gas development activities as non-hazardous under Subtitle D of the Resource Conservation and Recovery Act (RCRA).¹ The suit alleged that EPA had a non-discretionary duty under RCRA to periodically review and, if necessary, revise its Subtitle D regulations for solid waste disposal facilities and state solid waste management plans with respect to oil and gas development wastes. It further alleged that EPA had not done so since 1988 and that EPA should be ordered to conduct a subsequent review. The 1980 Bentsen Amendment to RCRA² had exempted oil and gas wastes from regulation under RCRA Subtitle C as hazardous waste and permits regulation of such wastes under Subtitle D as non-hazardous. Earlier, EPA had declined a 2010 petition by NRDC requesting E&P waste be regulated as hazardous under Subtitle C.

¹ *Env'tl. Integrity Project v. McCarthy*, No. 1:16-CV-00842-JDB (D.D.C. May 4, 2016).

² 42 U.S.C. Section 6921(b)(2).

The May 2016 lawsuit was resolved in December 2016 through the entry of a consent decree in which EPA agreed to either propose revisions to its Subtitle D regulations for oil and gas wastes or make a determination that revision of such regulations is unnecessary by April 23, 2019.³ On April 23, EPA determined that revising its Subtitle D regulations was not necessary.⁴

To arrive at its determination, EPA examined regulatory programs in states such as Pennsylvania accounting for the vast majority of oil and gas production in the United States. EPA reviewed current waste management practices, waste characteristics, and E&P waste release/spill incidents in these states. The agency found

³ *Envtl. Integrity Project*, No. 1:16-CV-00842-JDB (D.D.C. December 28, 2016).

⁴ EPA, "Management of Oil and Gas Exploration, Development and Production Wastes: Factors Informing a Decision on the Need for Regulatory Action," April 2019 (available at www.epa.gov/sites/production/files/2019-04/documents/management_of_exploration_development_and_production_wastes_4-23-19.pdf).

that: 1) uncontrolled releases of oil and gas wastes are uncommon; 2) human error, non-compliance with existing state regulations and equipment failure are the primary cause of releases; and 3) recent releases that had been identified were well contained and addressed onsite. Concluding that state regulations address E&P wastes appropriately and incorporate many of the criteria EPA believes are important components of waste management programs, EPA decided not to revise its Subtitle D regulations.

The environmental groups who originally filed suit in 2016 have since criticized EPA's determination⁵ and might pursue judicial review of EPA's determination.

—Jean M. Mosites, *Babst Calland*

⁵ Environmental Integrity Project, "EPA Refuses to Update Safeguards to Protect Public from Oil and Gas Wastes," April 23, 2019, available at www.environmentalintegrity.org/news/epa-refuses-to-update-safeguards-to-protect-public-from-oil-and-gas-wastes.

Safety Committee Corner

The oil and gas industry's commitment to workplace safety

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

Mark Green, a member of API and a retired newspaper journalist, wrote an article in *Energy API*, referencing API's new comprehensive Workplace Safety Report. This report noted the decline of the industry's incidence rate of occupational injuries and illnesses and showed that the rate is significantly lower than the rate of the rest of the U.S. private sector. The industry's safety initiative has been successful, and OSHA has incorporated many of the API's recommended practices into its own standards



The oil and gas industry's job-related injuries and illnesses of 1.7 incidences per 100 fulltime workers is well below the private sector's rate of 2.8 incidences per 100 fulltime workers.

Comparing the oil and gas industry sector incident rates to other US segments, it was noted that pipeline

transportation is a very safe way to deliver natural gas and oil products. The incidence rate of pipeline transportation is 0 as compared to others that range from 0.7 to as high as 4.6 for transportation and warehousing.

The full article and graphical descriptions can be found at www.api.org/news-policy-and-issues/blog/2019/01/17/report-shows-industrys-commitment-to-workplace-safety. ■

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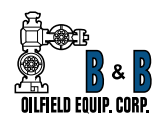


**Promised
Land
clay shoot**



Rain was in the forecast, but it held off for PIOGA's first sporting clays event of 2019 on April 30 at Promised Land Sporting Clays Club in Freeport. Thanks to all of our great sponsors and to the nearly 75 shooters who took part. Our next networking event is the June 3 Ted Cranmer Memorial Golf Outing and Steak Fry at Wanango Country Club (see page 8). Visit the Photo Gallery section at www.pioga.org for more pictures from the clay shoot.

**CLAY SHOOT
SPONSORS**



Legislative reception

A dozen PIOGA Producer and Board of Directors members hosted legislators at a reception on April 30 in the Capitol Rotunda. PIOGA members had the opportunity introduce themselves to freshmen legislators and members of the Oil and Gas Caucus and Energy and Environmental Resources committees. Conversations ranged from current regulatory challenges to cap-and-trade to severance tax to nuclear bailout and other challenges. In the photo, from left to right, are Senator Scott Hutchinson, Jim Kriebel and Milissa Bauer of Kriebel Companies, and Brad Gray and Jack Crook of Diversified Gas and Oil.

New/returning PIOGA members Welcome, and welcome back!

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Energize PA *Continued from page 1*

upon the benefits that natural gas development has already provided to Pennsylvanians.

“Energize PA builds on our history—one that is steeped in energy production, innovation and manufacturing,” Turzai said. “We are a hardworking, resilient people here in Pennsylvania. This package will energize our economy so that folks have family-sustaining jobs.”

Among the bill sponsors present were representatives Aaron Kaufer (R-Luzerne), Natalie Mihalek (R-Allegheny/Washington), Joshua Kail (R-Beaver/Washington), Jonathan Fritz (R-Susquehanna/Wayne), Tarah Toohil (R-Luzerne), Eric Nelson (R-Westmoreland), Mike Puskaric (R-Washington/Allegheny) and Tim O’Neal (R-Washington).

House Bill 1100 (Kaufer) mirrors the existing Pennsylvania Resource Manufacturing Tax Credit that was established during the 2012-13 budget. This legislation would help large manufacturers using Pennsylvania-produced methane in their operations.

HB 1101 (Mihalek) would increase the percentage rate cap for net loss deductions, otherwise known as net operating loss, that a business may carry forward. The current percentage is 40, and the bill increases that to 45 percent in taxable year 2020 and 50 percent in taxable year 2021.

HB 1102 (Kail) creates the Keystone Energy Enhancement Act (KEEA) to develop 10-year tax free zones to encourage investment in Pennsylvania manufacturing locations with a particular focus on investments in energy related industries, such as petrochemicals and other downstream uses of Pennsylvania’s natural gas.

HB 1103 (Fritz) would expand Pipeline Investment Program grants. Manufacturers will have a significant competitive advantage in production costs and

Pennsylvania communities will be able to attract new manufacturing enterprises with readily available access to natural gas.

HB 1104, (Toohil) would require the Department of Community and Economic Development to establish a registry for abandoned manufacturing sites throughout the state. By establishing this registry, a one-stop shop for available industrial properties, the state is making it clear that Pennsylvania is open for business and wants that business.

HB 1105 (Nelson) would further incentivize businesses to remediate properties that pose health and safety risks.

HB 1106 (Puskaric) requires all environmental permits be acted upon within 30 days of receipt and deems a permit application as being approved if a completed permit is not acted upon within the timeframes established in the legislation.

HB 1107 (O’Neal) creates a new independent entity responsible for reviewing and acting on permit requests so that the Department of Environmental Protection can focus on enforcing state statutes and regulations, and promulgating rules and regulations.

“The right public policies combined with the right cooperation from the private sector can generate a \$60 billion increase in Pennsylvania GDP, support the addition of 100,000 new jobs and potentially increase state revenues by \$2 to \$3 billion,” Turzai said.

Legislative action in the House

While the Energize PA proposals all are freshly introduced and have yet to be considered, several Republican-backed regulatory reform measures potentially of interest to the industry have seen movement recently in the House of Representatives. Among them:

- **HB 414**—requires that any erosion and sediment control permit application submitted by a licensed engi-

neer be approved within 20 days of receipt, unless administratively incomplete or fails to comply with Chapter 102 requirements. Other E&S submissions must be approved within 45 days. The bill passed the Environmental Resources and Energy Committee and is before the full House.

- **HB 430**—authorizes the General Assembly to repeal any regulation at any time by concurrent resolution, with review by the governor. Passed the House and is before the Senate Intergovernmental Operations Committee.

- **HB 509**—requires state agencies to create tracking programs for permit applications and establish a system of third-party permit reviews for applications subject to delays in review. Passed the House and is before the Senate Intergovernmental Operations Committee.

- **HB 762**—mandates that agencies designate a regulatory compliance officer tasked with being accessible to the regulated community and working with them to explain regulations and resolve noncompliance issues before imposing penalties. Passed the House and is before the Senate Intergovernmental Operations Committee.

- **HB 806**—requires the General Assembly to vote on a concurrent resolution to approve any “economically significant regulation,” defined as having an impact on the state, municipalities and/or the business community in excess of \$1 million per year, for that regulation to go into effect. Passed the House and is before the Senate Intergovernmental Operations Committee.

- **HB 1055**—establishes the Independent Office of the Repealer within the Independent Regulatory Review Commission with the power to identify existing statutes and regulations which may be appropriate for modification, revision or repeal because they are unreasonable, unduly burdensome, detrimental to economic well-being, duplicative, in conflict with another statute or regulation, or defy a commonsense approach to government. The office would report to the legislature annually with recommendations for changes to statutes and regulations. The bill also implements a one-in, two-out model for new regulations: For every new regulation added, two must be repealed. The 100-97 vote by the House was not a constitutional majority needed to send the bill on to the Senate, so it does not move on at this point. ■

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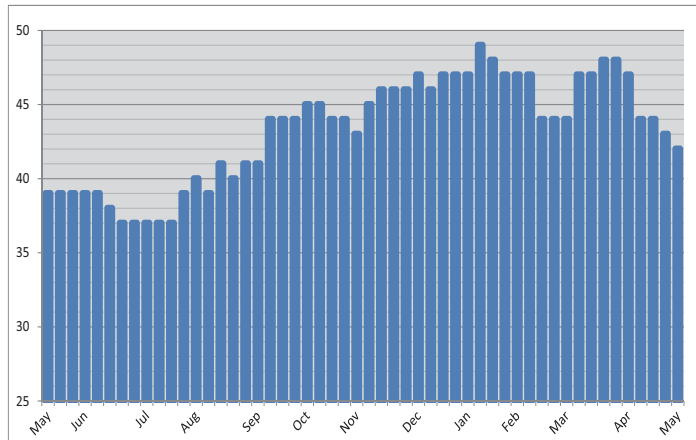
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Pennsylvania Rig Count



Penn Grade Crude Oil Prices



Natural Gas Futures Closing Prices

Month	Price
June	\$2.524
July	2.557
August	2.576
September	2.572
October	2.607
November	2.687
December	2.852
January 2020	2.932
February	2.894
March	2.778
April	2.545
May	2.514

Prices as of May 6

Sources

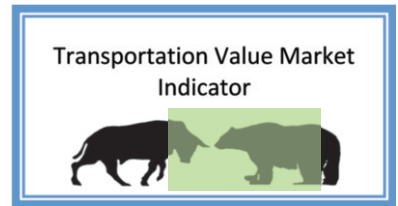
American Refining Group: www.amref.com/Crude-Prices-New.aspx
 Ergon Oil Purchasing: www.ergon.com/prices.php
 Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG
 Baker Hughes rig count: phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-report-sother
 NYMEX strip chart: Nucomer Energy, LLC, emkeyenergy.com

Northeast Pricing Report – May 2019

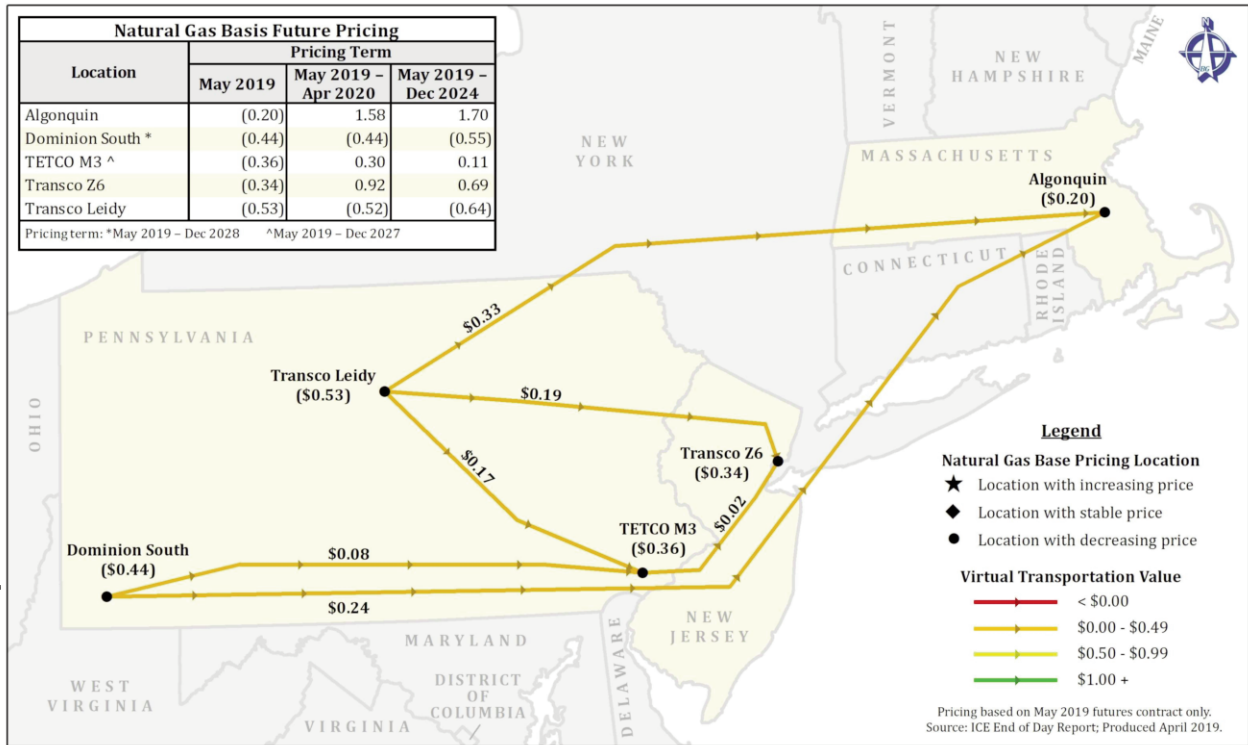
Pricing at all trading points for all term periods has decreased since April. The largest decreases have been for the front month term. Algonquin decreased the most at \$0.43 per MMBtu. The rest of the trading points decreases ranged from \$0.15 to \$0.24 per MMBtu. For the one-year term, trading was tight as well. The most significant decrease was Transco Leidy, which was \$0.24 per MMBtu. TETCO M3 decreased a minimal of \$0.04 per MMBtu. Long-term trading decreased even less. Algonquin had the biggest decrease of \$0.10 per MMBtu, while Transco Z6 decreased the least at \$0.01 per MMBtu.

While the commodity prices all decreased, transportation was mixed. Both routes (Dominion South and Transco Leidy) had decreased the most at \$0.27 and \$0.19 per MMBtu respectively. However, Transco Leidy to TETCO M3 had the largest increase of \$0.09 per MMBtu. While the difference may only be \$0.09 per MMBtu, it's a 113% increase from the previous month. On a percentage basis, it's the largest increase of any transportation routes.

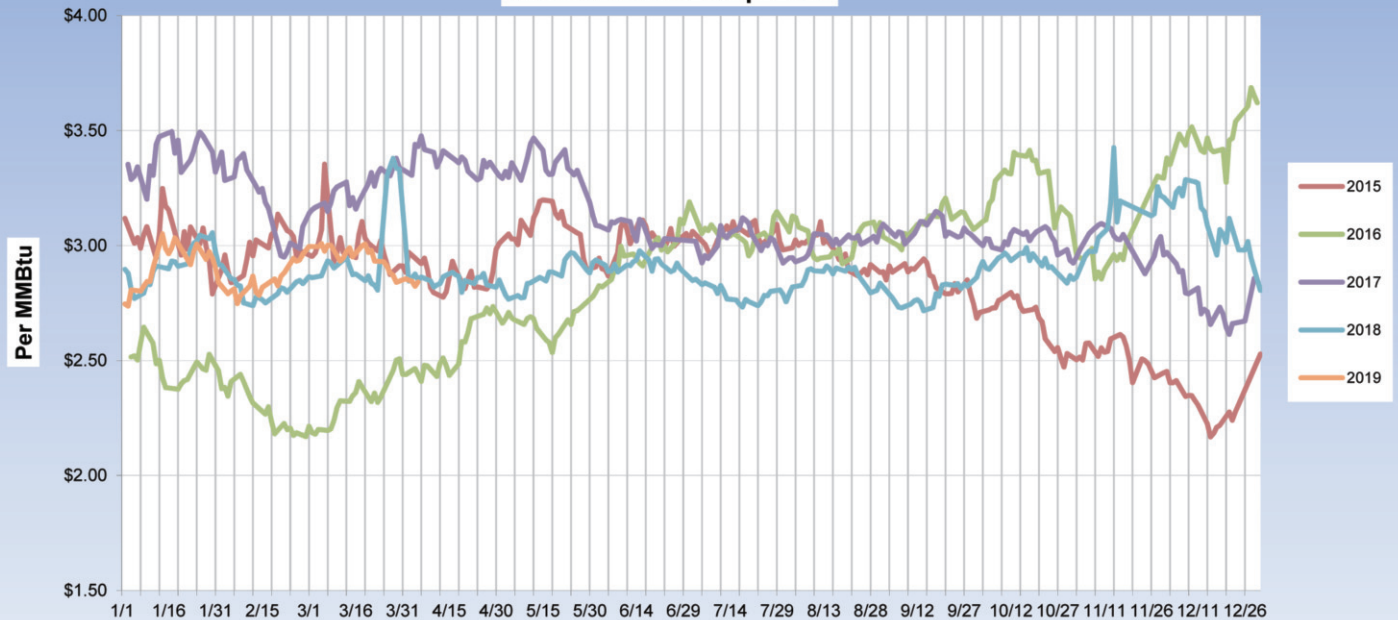
The increase to TETCO M3 could be an indication of the new gas fired generation facility coming on line.



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NYMEX Annual Strip Price



Spud Report: April 2019



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

available at 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
BKV Opr LLC	5	4/26/19	131-20584	Wyoming	Washington Twp
		4/26/19	131-20583	Wyoming	Washington Twp
		4/26/19	131-20586	Wyoming	Washington Twp
		4/26/19	131-20587	Wyoming	Washington Twp
		4/26/19	131-20585	Wyoming	Washington Twp
Blackhawk Energy LLC	3	4/19/19	083-57107*	McKean	Wetmore Twp
		4/24/19	083-57115*	McKean	Wetmore Twp
		4/29/19	083-57111*	McKean	Wetmore Twp
Cameron Energy Co	1	4/4/19	123-48202*	Warren	Sheffield Twp
Chesapeake Appalachia LLC	2	4/12/19	131-20565	Wyoming	Meshoppen Twp
		4/13/19	131-20564	Wyoming	Meshoppen Twp
Chief Oil & Gas LLC	5	4/22/19	081-21772	Lycoming	McNett Twp
		4/22/19	081-21773	Lycoming	McNett Twp
		4/22/19	081-21775	Lycoming	McNett Twp
		4/22/19	081-21776	Lycoming	McNett Twp
		4/22/19	081-21774	Lycoming	McNett Twp
EQT Prod Co	6	4/12/19	125-28695	Washington	W Bethlehem Twp
		4/12/19	125-28696	Washington	W Bethlehem Twp
		4/12/19	125-28697	Washington	W Bethlehem Twp
		4/12/19	125-28700	Washington	W Bethlehem Twp
		4/12/19	125-28698	Washington	W Bethlehem Twp
		4/12/19	125-28699	Washington	W Bethlehem Twp
Evergreen Resource Co	1	4/30/19	123-48188*	Warren	Glade Twp
Howard Drilling Inc	2	4/18/19	083-56925*	McKean	Wetmore Twp
		4/24/19	083-56929*	McKean	Wetmore Twp
Range Resources Appalachia	9	4/23/19	125-28712	Washington	Morris Twp
		4/23/19	125-28713	Washington	Morris Twp
		4/24/19	125-28710	Washington	Morris Twp
		4/24/19	125-28711	Washington	Morris Twp
		4/25/19	125-28707	Washington	Morris Twp
		4/25/19	125-28708	Washington	Morris Twp
		4/25/19	125-28709	Washington	Morris Twp
		4/1/19	125-28643	Washington	Smith Twp

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY	
Repsol Oil & Gas USA LLC	5	4/1/19	125-28641	Washington	Smith Twp	
		4/1/19	117-22010	Tioga	Bloss Twp	
		4/1/19	117-22009	Tioga	Bloss Twp	
		4/1/19	117-22008	Tioga	Bloss Twp	
		4/1/19	117-22006	Tioga	Bloss Twp	
Rice Drilling B LLC	11	4/4/19	059-27819	Greene	Center Twp	
		4/4/19	059-27815	Greene	Center Twp	
		4/4/19	059-27816	Greene	Center Twp	
		4/4/19	059-27817	Greene	Center Twp	
		4/2/19	059-27823	Greene	Franklin Twp	
		4/2/19	059-27827	Greene	Franklin Twp	
Russ Holden Well Svc	2	4/4/19	123-47964*	Warren	Watson Twp	
		4/29/19	123-47965*	Warren	Watson Twp	
	1	4/22/19	115-22641	Susquehanna	New Milford Twp	
	Wilmoth Interests Inc	5	4/2/19	123-48278*	Warren	Mead Twp
			4/8/19	123-48275*	Warren	Mead Twp
			4/10/19	123-48274*	Warren	Mead Twp
	4/16/19	123-48273*	Warren	Mead Twp		
	4/19/19	123-48272*	Warren	Mead Twp		

	April	March	February	January	December	November
Total wells	58	59	92	75	55	90
Unconventional Gas	44	49	82	72	42	78
Conventional Gas	0	0	0	0	1	0
Oil	14	9	10	2	8	12
Combination Oil/Gas	0	1	0	1	4	0

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Calendar of Events

PIOGA events

PIOGA event info: pioga.org/event

Ted Cranmer Memorial Golf Outing and Steak Fry

June 3, Wanango Country Club, Reno

PIOGATech: Water and Waste

August 21, The Chadwick, Wexford

Divot Diggers Golf Outing

August 22, Tam O'Shanter Golf Course, Hermitage

Cigar Networking Event

July TBA, BURN, Pittsburgh

Fall Conference / Annual Meeting

September 24-25, Seven Springs Mountain Resort, Champion

PIOGATech: Safety Risk Management

October 17, Location TBA

Halloween Theme Networking Event

November 1, Location TBA

Marcellus to Manufacturing Conference

November 7, Location TBA

Annual Oil & Gas Tax and Accounting Seminar

November 20, Location TBA

PIOGATech: Air Quality Compliance

December 17, The Chadwick, Wexford

Holiday Mixer

December 17, The Chadwick, Wexford

Other association & industry events

DUG East Energy Trivia Night

May 16, All Star Sports Bar and Grill, Canonsburg
dugeast.com

Energy & Mineral Law Foundation 40th Annual Institute

June 9-11, Washington, DC
www.emlf.org

DUG East

June 18-20, David L. Lawrence Convention Center, Pittsburgh
dugeast.com

IPAA Midyear Meeting

June 24-26, Colorado Springs, CO
www.ipaa.org/events

IOGANY Annual Summer BBQ

July 11, Peek'n Peak Resort & Conference Center Findley, NY
www.iogany.org

OOGA Summer Meeting

July 16, Glenmoor Country Club, Canton, OH
www.ooga.org

IOGAWV Summer Meeting

August 4-6, The Greenbrier, White Sulphur Springs, WV
iogawv.com

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