

The PIOGA Press

The monthly newsletter of the
Pennsylvania Independent Oil & Gas Association
August 2019 • Issue 112

Mixed decision from Commonwealth Court in ongoing challenge to Chapter 78a regulations

Pennsylvania's Commonwealth Court found in favor of industry on two points and took the side of the Department of Environmental Protection on two other issues in a case that began in late 2016 challenging aspects of regulations aimed at unconventional operations, and is not yet finished. The court's 91-page decision in *Marcellus Shale Coalition v. DEP* was issued on July 22 and addressed sections of Chapter 78a regulations that:

- Require an operator to identify and monitor abandoned wells within a certain radius of a proposed drilling location.
- Establish new requirements for impoundments used for storing water.
- Set standards for restoring well sites after drilling.
- Increase the frequency of reports operators must submit to DEP.

The Commonwealth Court granted summary relief for the MSC on the first and third of those matters and partial summary relief for DEP on the second and last points.

However, the court's decision must be read and understood with these three points in mind. First, while DEP sought partial summary relief on six counts of the MSC's petition—Counts II (area of review regulation), III (on-site processing regulation), IV (well development impoundment and centralized impoundment regulations), V (site restoration regulation), VI (spill remediation regulation) and VII (waste reporting regulation)—the MSC sought summary relief on only three counts of its petition—Counts III, V and VI. Second, summary relief

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Relief possible from extraordinarily high retainage rate on Goodwin gathering system pipelines

The proposed settlement in a Pennsylvania Public Utility Commission (PUC) proceeding involving the change in control of Peoples Natural Gas Company and Peoples Gas Company from an investment management firm to the Aqua America water and wastewater utilities offers hope for con-

ventional producers on the Goodwin gathering system pipelines of relief from the extraordinarily high annual retainage rate (85 percent) they've had to pay since



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Chapter 78a decision *Continued from page 1*

is appropriate only when there are no disputed issues of material fact and it is clear that the applicant is entitled to the requested relief under the law. Third, our Supreme Court has held that a legislative rule regulation, as distinguished from an interpretive rule regulation, is “valid and binding upon courts as a statute so long as it is (a) adopted within the agency’s granted power, (b) issued pursuant to proper procedure, and (c) reasonable.” *Tire Jockey Serv., Inc. v. Dep’t of Env’tl. Res.*, 915 A.2d 1165, 1186 (Pa. 2007). The court addressed and resolved all three parts of the *Tire Jockey* test only with respect to the cross-applications for relief on Count V (site restoration regulation). The other applications for relief either required the court to address only the first part of the test (DEP’s application)—Counts II (area of review regulation), III (on-site processing regulation), IV (well development impoundment and centralized impoundment regulations) and VII (waste reporting regulation)—or did not require the court to address the *Tire Jockey* test at all because the court concluded there is no current hardship justifying pre-enforcement judicial intervention (VI (spill remediation regulation)).

Background

In October 2016, the MSC filed a petition with the Commonwealth Court seeking pre-enforcement review of several provisions of then-newly promulgated regulations governing unconventional well operations. In June 2018, the Pennsylvania Supreme Court affirmed a November 2016 Commonwealth Court preliminary injunction of three of the challenged regulations concerning public resources, existing centralized impoundments and area of review. The injunction as to the centralized impoundment and areas of review provisions remains in place (*June 2018 PIOGA Press, page 5*).

In August 2018, the Commonwealth Court invalidated, by summary judgment in favor of the MSC, the substantive aspects of the public resources regulations relating to special concern species, playgrounds, common areas of school property, and new public resource agencies (*September 2018 PIOGA Press, page 1*). The court held that DEP’s definition of special concern species exceeded the agency’s statutory authority under Act 13 and that the definition of playgrounds and common areas of a school’s property were impermissibly overbroad. The Supreme Court quashed DEP’s subsequent appeal of this ruling as premature. The MSC and DEP argued cross-motions in the Commonwealth Court for summary relief on some of the remaining provisions of the challenged regulations in October 2018.

Commonwealth Court’s July 22 decision

Area of review. Section 52a of the Chapter 78a regulations requires a well operator to identify and monitor all active, inactive, orphan, abandoned, and plugged and abandoned wells that have a well bore path within 1,000 feet of both the vertical and horizontal portions of the operator’s well bore. Sections 73(c) and (d) impose

advance notice, visual monitoring and remediation obligations in the event that stimulation of the well causes communication with or alteration of one of the wells identified in the area of review survey. In the case of an incident involving communication with an orphan, abandoned or plugged well, the operator is obligated to plug the altered well or adopt it and place it into production.

The court found that DEP “failed to identify any statutory authority to justify regulations that impose entry, inspection, and monitoring obligations with respect to wells on the lands of others and over which the stimulating well operator has no control, particularly in the absence of any actual pollution or threatened pollution on those lands attributable to the stimulating well operator’s activities.”

Impoundments. The court noted that well development impoundments store “surface water, fresh groundwater and other fluids approved by the Department” to be used in drilling operations, while centralized impoundments, by contrast, store wastewater generated from drilling activities.

Section 59b establishes new registration, construction, security and restoration standards for well-development impoundments. Under the regulations, preexisting well-development impoundments must come into compliance with the new standards or be restored to certain preconstruction conditions. The MSC argued that DEP lacks authority under Act 13 of 2012 to promulgate regulations applicable to impoundments off well sites.



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The court said the DEP had the power to impose new standards on impoundments at drilling sites under laws other than Act 13. However, the court's statement that the MSC's Count IV "seeks a declaration of invalidity based only on its view that Act 13, in isolation, does not authorize the Department to regulate 'freshwater impoundments off well sites, including well development impoundments'" is incorrect, as the MSC's challenge also seeks relief under the second and third parts of the *Tire Jockey* test. The court's decision under the first part of the *Tire Jockey* test leaves undecided the MSC's challenge under the Pennsylvania Constitution's prohibition on special laws targeting specific entities or industries. The court said that both DEP and the MSC failed to present evidence and legal argument that the oil and gas industry needed its own regulations regarding impoundments when compared to other industries that use similar impoundments.

"We cannot dispose of a special law constitutional challenge without comparing how one class of impoundment is treated when compared to another," Judge P. Kevin Brobson wrote in the court's opinion. "Only by making this comparison can we determine whether the disparate treatment is rational under the appropriate legal test."

Section 59c requires a well operator using a centralized impoundment either to close the centralized impoundment pursuant to standards set forth in the regulation or to obtain a permit under the Residual Waste Management regulations. The court noted that the Solid Waste Management Act (SWMA) generally regulates the storage, transportation, processing, and disposal of residual waste, and imposes a permitting requirement on only residual waste processing or disposal facilities, but not on *storing* residual waste. However, the court also noted that the storage of residual waste is addressed in Chapter 299 of the Residual Waste Management regulations and requires impoundments "that seek to store residual waste in a surface impoundment must hold a valid permit under The Clean Streams Law, not the SWMA, and must comply with the DSEA [Dam Safety and Encroachments Act] Regulations." Accordingly, the court held that the challenged provisions fall within DEP's authority under Section 402(a) of The Clean Streams Law.

Site restoration. Under Section 65 of the Chapter 78a regulations, operators must restore a site within nine months of completing drilling operations and "remove all drilling supplies, equipment, primary con-

tainment and secondary containment not necessary for production or needed to safely operate the well."

As mentioned above, this is the only request for summary relief in which the court addressed and resolved all three parts of the *Tire Jockey* test. The MSC argued that Section 3216 of Act 13 requires removal of supplies and equipment not "needed for production." It does not impose an obligation to reduce the footprint of a well site based on safety. DEP, meanwhile, pointed to language in the act stating, "Within nine months after plugging a well, the owner or operator shall remove all production or storage facilities, supplies and equipment and restore the well site."

The court concluded that DEP has the statutory authority to create regulations implementing the site restoration requirements of Section 3216. "The question that remains, however, is whether the site restoration regulation is consistent with the site restoration mandates of Section 3216 of Act 13," the court stated.

What the court did find in conflict was the requirement that an operator restore an area to approximate original contours (AOC) within nine months after completion of drilling. "This requirement is inconsistent with the statute, which requires post-drilling restoration to AOC only where the well operator seeks an extension of the 9-month restoration period," the court wrote.

Monthly waste reporting. Section 121(b) requires an operator to report on a monthly basis the amount and types of waste and the methods of waste disposal or reuse. The MSC countered that the requirement conflicts with the Unconventional Well Report Act, which mandates monthly production reporting but does not mention waste reporting, and also conflicts with residual waste management regulations which require only a biennial report of waste production.

The court, however, was unpersuaded, pointing out that the Solid Waste Management Act clearly gives DEP "broad authority to prescribe the nature and frequency of reporting obligations for regulated waste handling activities." But as mentioned above, the court addressed only the first part of the *Tire Jockey* test because the MSC did not cross move for summary relief.

Remaining issues. The court determined that it was not necessary to address the parties' arguments concerning the *Tire Jockey* test with respect to the spill remediation regulation (Count VI), Section 66c) because there is no current hardship justifying pre-enforcement judicial intervention, siding with DEP. The court also sided with DEP on the challenge to the provision related to the processing of residual waste at drilling sites (Count III, Section 58(f)), finding no ambiguity in Section 3273.1(a) of Act 13 and concluding that that DEP and the MSC "appear to adopt the same reading of Section 78a.58(f), which does not, in our view, conflict with our reading of Section 3273.1(a). Accordingly, there was no controversy for the court to resolve under the Declaratory Judgments Act.

While the decision puts some matters to rest, it appears that additional proceedings are likely but it is not yet what those proceedings will be. ■

Link up with us:

PA Independent Oil & Gas
Association (PIOGA)



▶ Wednesday, August 21 – Water and Waste Management Training



PIOGATech PIOGA's Technical Seminar Series

The Chadwick, 10545 Perry Highway, Wexford
Registration 8:00 a.m. • Training 8:30 a.m. - 4:15 p.m.

Registration fee includes breakfast, lunch
and continuing education units (CEUs)

*Hosted by PIOGA's Environmental Committee, along with
our partners TD Connections, Babst Calland, Diversified
Gas & Oil and CEU partner Wilkes University*

**Join industry experts to learn about the latest developments
for unconventional and conventional operations**

UIC Wells Technical Discussion — John Conrad, Lluvia Systems (Bear Lake Properties)
Hear the challenges and successes of locating UIC wells in PA.

Storage Options & Permitting Hurdles — Wendy Pelky, ARM Group, and John McCollums, PVR
The WMGR123 permit's 10-year renewal process has begun. Learn of the proposed changes.

Legal Updates — Jean Mosites and Kevin Garber, Babst Calland
Get the latest legal updates on waste and water issues.

Best Practices for Spills and Clean-ups — Kirk Elkin, Diversified Gas & Oil
Learn the latest issues and regulatory challenges.

PA Department of Environmental Protection Panel:

▶ **Update on Policy Development, Permitting, Fees, Proposed Regulations** — Scott Perry, Deputy Secretary, Office of
Oil & Gas Management

▶ **TENORM, Waste and Air** — Dave Allard, Acting Deputy Secretary, Air, Waste, Remediation
*A discussion on the Draft Guidance Document on Radiation Protection Plans and an update on the TENORM study
revisited.*

Water Treatment Technical Panel — Greg Miller, De Nora Water Technologies / Kendra II, Inc., and Paul Kleinen, Energy
Water Solutions

*Learn how technology providers are using produced water as a raw material to create beneficial use products and hear the
in's and out's of evaporation technology operating in PA.*

Alternatives in Transportation — James Guttman, Guttman Energy
Here how barging and railroad can provide alternatives to trucking.

Water Sharing Trends — Teresa Irvin McCurdy, TD Connections
What is new in water sharing?

Operator Panel

Moderator: Teresa Irvin McCurdy, TD Connections. Panelists: Nik Kadenas, Alta Resources; Paul Hart, Diversified Oil and
Gas; and others

*The roundtable will touch on conventional, unconventional and midstream challenges in managing produced water. Submit
your questions in advance or at the seminar.*

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▶ Thursday, August 22 – 22nd Annual Divot Diggers Golf Outing

Tam O'Shanter of Pennsylvania Golf Course, 2961 South Hermitage Road, Hermitage



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to register and sponsor**

Don't miss our fall event at Seven Springs!

We are excited about what's lined up for our September 24 and 25 Fall Conference, Equipment & Vendor Show and Golf/Clay Shoot at beautiful Seven Springs Mountain Resort!

The conference agenda on the facing page provides a look at the strong program and great group of speakers

Save the date: PIOGA Annual Meeting

Join us on the morning of Tuesday, October 15, at The Chadwick in Wexford for PIOGA's 2019 Annual Membership Meeting. The event is an excellent opportunity to catch up on the association's activities of the past year, learn our priorities for the coming year and offer input to the organization's leadership.

The meeting will run from 9 to 11 a.m., and there is no fee to attend. Watch your email or the PIOGA Events section at pioga.org for registration and other information.

Special sponsorship opportunity. To help defray the meeting costs and put your company name in front of the membership, we are offering a \$750, nonexclusive sponsorship package that includes logo recognition on the PIOGA website, emailings promoting the event and printed event signage. Additionally, if interested a company representative can offer a brief introduction of their company and have a display table at the event. Contact Danielle Boston at danielle@pioga.org or 724-933-7306 ext. 28 if interested.



we have secured, capped off by former Pittsburgh Steelers quarterback Charlie Batch.

Afterward, the fun and networking begin. Starting at 3 p.m. and running until 9, we will feature vendors and equipment both indoors and out. There will also be carnival-themed fun, including axe throwing, carnival games (winners receive tickets for a chance to win a big prize!), a caricature artist, ice carving, DJ with karaoke, barbecue dinner, free beer and more.

The next morning, we will offer golf and sporting clays competition, both finishing up by 2 p.m.

More information, including details about exhibit space and sponsorships, is available by visiting the PIOGA Events section at pioga.org.

Make your plans today and we'll look forward to seeing you there! ■



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**2019 Fall Conference, Outdoor Equipment & Vendor Show
Golf Outing & Clay Shoot
Seven Springs Mountain Resort
September 24 & 25**

**Tuesday, September 24
Conference Agenda**

- 10:00 am **Conference Registration Opens**
- 11:00 – 11:10 am **Conference Open & Welcome**
Gary Slagel, PIOGA Board Chair and Dan Weaver, President and Executive Director, PIOGA
- 11:10 – 11:40 pm **Opening Keynote Speaker – Grand Ballroom**
Robert “Rusty” Hutson, Jr.
Co-Founder & Chief Executive Officer, Diversified Gas & Oil
- 11:45 – 12:45 pm **Lunch**
- 1:00 – 2:50 pm **Breakout Sessions (Sunburst or Snowflake Rooms)**

<u>Operations Breakouts</u>	<u>Corporate/Management Breakouts</u>
<p align="center">1:00 – 1:30 pm</p> <p>CFA Grant Program Overview for Well Plugging Seth Pelepko, PA DEP Division Manager for Well Plugging and Subsurface Activities David Ochs, Member of PA Grade Crude Development Advisory Council (CDAC) and Kriebel Companies</p> <p align="center">1:40 – 2:10 pm</p> <p>An Operator, a Consultant, and a Regulator Walk into a Room: A “How-To Guide on PADEP’s e-Permitting System for Air Quality Permits from Varying Perspectives” Stephanie Friel, EIT, Sr. Staff Engineer at Langan Engineering and Environmental Services Devin Tomko, P.E., Air Quality Engineer at PA DEP Kristin Ryan, Environmental Manager at Equitrans Midstream</p> <p align="center">2:20 – 2:50 pm</p> <p>Modern Transactions and Historical Clauses <i>The effect of legacy agreements on current interest conveyances</i> Daniel McLane, Esq., Member at Eckert Seamans</p>	<p align="center">1:00 – 1:30 pm</p> <p align="center">  The Do’s & Don’ts of Being a Mentor and Being Mentored Sara Blascovich, HDR Inc and PoWER Member </p> <p align="center">1:40 – 2:10 pm</p> <p align="center">The New World of Digital Marketing in the Oil & Gas Industry Clark Johnson, Client Development at 535 Media, LLC</p> <p align="center">2:20 – 2:50 pm</p> <p align="center">Navigating Pennsylvania’s Medical Marijuana Act in the Energy Industry Zack Bombatch, Esq., Associate at Steptoe & Johnson PLLC</p>

- 3:00 – 3:30 pm **Closing Keynote – Grand Ballroom**
Charlie Batch, Former NFL Quarterback for the Pittsburgh Steelers and Founder of the Batch Foundation



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EPA publishes decision and supplemental information regarding the ban on unconventional wastewater discharges to POTWs

On July 5, the U.S. Environmental Protection Agency (EPA) published its “Decision on Supplemental Information on the Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category” in the *Federal Register*. 84 Fed. Reg. 32094-01. After its review of the financial impacts of the 2016 rule banning discharges of wastewater by unconventional oil and gas developers (UOG rule) to publicly owned treatment works (POTWs), EPA decided not to revise the UOG rule.

EPA, however, clarified that stripper wells, as defined in the federal effluent limitations guidelines in 40 C.F.R. Part 435 Subpart F, are not within the scope of the UOG rule, which was adopted under Subpart C (Onshore category). Stripper wells, under this definition, include oil wells that produce 10 barrels or less of crude oil per well per calendar day and which are operating at the maximum feasible rate of production.

Background

The UOG rule, promulgated on June 28, 2016, prohibits the discharge of unconventional oil and gas wastewater to POTWs; that is, it applies a “zero discharge” standard. In its preamble to the rule, EPA stated that the new standard would protect the operational integrity of POTWs and their receiving streams, as POTWs are not typically equipped to treat UOG wastewater. EPA further noted that, according to its analysis, the rule’s requirements reflected existing industry practices and would not lead to additional costs for operators. EPA did not analyze the cost to industry when it adopted the UOG rule.

The preamble also stated that the scope of the rule was limited to the discharge of wastewater from the extraction of “unconventional oil and gas.” In Pennsylvania, however, Act 13 defines unconventional wells as a gas well producing from a shale formation below the base of the Elk formation that can only be produced through hydraulic fracturing. All other wells in Pennsylvania are conventional, as defined in 25 Pa. Code Chapter 78. Given the new definition by EPA that includes all oil and gas produced from shale and tight formations, the UOG rule subjected both Pennsylvania’s unconventional

and conventional operators to the rule.

In its development of the UOG rule, EPA failed to recognize the current and historical industry practice for Pennsylvania’s conventional operators to discharge their wastewater to POTWs. After promulgation of the rule, EPA was informed of its error and extended the compliance deadline to August 29, 2019, for existing sources that had been legally discharging to POTWs prior to publication of the UOG rule. For all other subject facilities, the ban on discharges to POTWs remained in place.

Challenges to the UOG rule

In November 2016, the Pennsylvania Grade Crude Oil Coalition (PGCC) filed a petition for review of the UOG rule in U.S. Court of Appeals for the Third Circuit. *Pennsylvania Grade Crude Oil Coalition v. U.S. Env’tl. Prot. Agency*, No. 16-4064 (3rd Cir., Nov. 8, 2016). PGCC alleged multiple errors in EPA’s development of the rule, including the agency’s conclusion that no facilities subject to the rule discharged to POTWs and EPA’s failure to account for costs imposed on operators subject to the rule. PGCC sought revisions or clarifications to the UOG rule’s definition of “unconventional oil and gas” such that conventional operators would be excluded from coverage and the rule would be consistent with Pennsylvania law.

EPA recognized the gap in its development of the UOG rule and filed a motion for voluntary remand, without vacating the rule. EPA sought time to consider additional evidence, develop the record, and take follow-up action as necessary. The court granted EPA’s motion but retained jurisdiction over the matter pending the outcome of EPA’s actions on remand. In parallel, PGCC also petitioned EPA for a rulemaking and an administrative stay of enforcement of the rule. EPA declined to stay enforcement and referenced the extended 2019 deadline for compliance as sufficient accommodation to Pennsylvania conventional operators.



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Decision on supplemental information

As summarized in its decision, EPA spent about two years gathering and analyzing new data and information obtained through information requests sent to nine Pennsylvania conventional operators that had been discharging to POTWs when the UOG rule was published in 2016.

EPA reevaluated the state data it had previously relied on to conclude that unconventional operators did not

discharge to POTWs. With a corrected understanding of the data, EPA determined that in 2016, 22 entities discharged at least some of their wastewater to POTWs. EPA then evaluated wastewater management alternatives, concluding that options existed for each of the 22 operators (e.g., a centralized waste treatment facility or underground injection control (UIC) well). Finally, EPA estimated the potential costs for the 22 entities to send their wastewater to the nearest management alternative (thus complying with the UOG rule). Based on 2016 numbers, EPA determined that the total costs of the UOG Rule for the 22 entities would be between \$33,000 and \$65,000.

EPA did not reconsider or conduct any analysis of the propriety of the scope of the UOG rule, which captures all wells producing from both shale and tight formations.

Conclusion

Based on its financial analysis, EPA concluded “that the zero discharge of pollutants standard is technologically available, economically achievable and has acceptable non-water quality environmental impacts.” By August 29, 2019, conventional operators may no longer send wastewater to POTWs and will have to find alternative ways to manage wastewater, which may be difficult given the scarcity of UIC wells in Pennsylvania and limitations on beneficial uses of brine. PIOGA’s Environmental Committee will continue to monitor this issue. ■

DEP touts increased permitting and inspection efficiency in 2018 annual oil and gas report

The Department of Environmental Protection released its 2018 Oil and Gas Annual Report last month, emphasizing that internal restructuring and continued expansion of electronic tools increased the agency's permitting and inspection efficiency while also increasing the overall strength of DEP's oversight.

"Governor Wolf and DEP have made permitting and inspection efficiency a priority—reducing overall permit backlog by more than 90 percent since 2016 and improving inspection efficiency while ensuring compliance with our environmental regulations," DEP

Secretary Patrick McDonnell said in a news release.

The report is only available online and can be found at www.depgis.state.pa.us/2018OilGasAnnualReport/index.html. The graphics-heavy nature of the report and lack of useful navigation tools to jump from one topic to another can make it tedious for the user to scroll through.

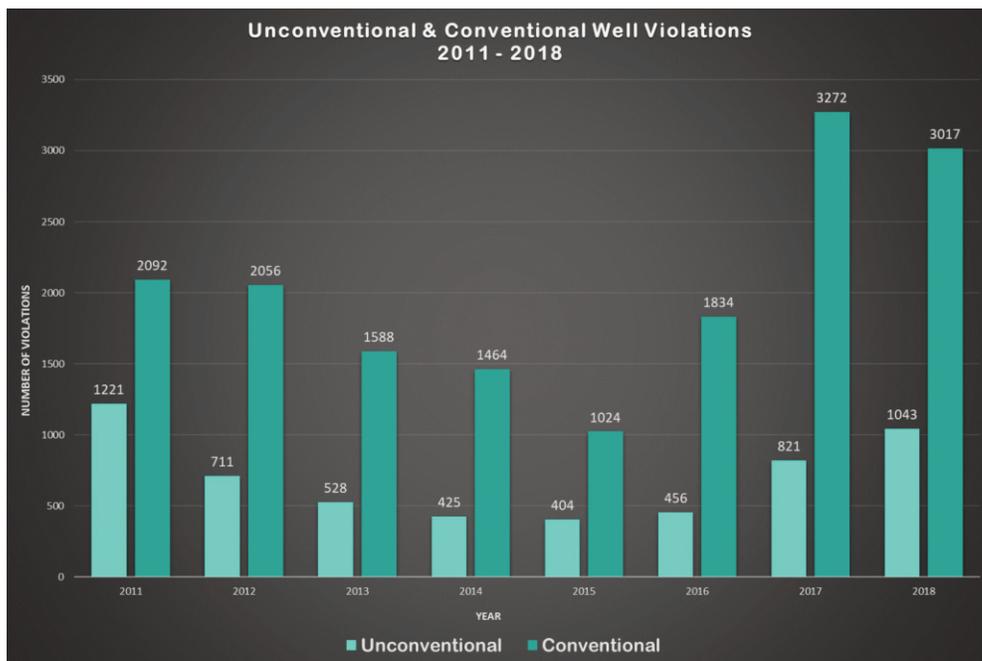
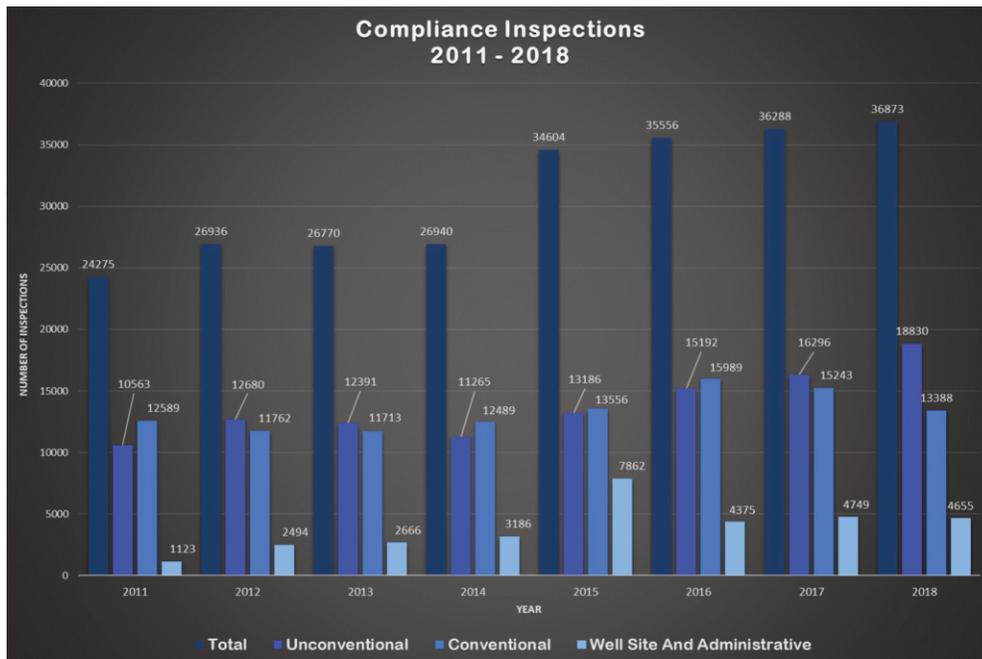
The report notes that DEP personnel completed 36,873 compliance inspections at conventional and unconventional well sites last year, about 585 more than in 2017. The surface activities inspection process moved to tablet computers, making it much more efficient and getting the results to operators and the public faster. All inspections now are done electronically.

The year also brought advancements in permitting, the department reported. DEP launched an updated Erosion and Sediment Control General Permit, known as ESCGP-3, in electronic format and provided training on both the new requirements and the electronic application. This surface-activities permit is the second permit to go online, following the subsurface well-drilling e-permit, which rolled out in 2017.

Electronic permit applications eliminate DEP data entry, ensure that applications are complete when submitted and enable operators to pay permit fees online, DEP said.

In addition, DEP simplified its internal oil and gas permit review structure statewide, grouping personnel into surface and subsurface programs for enhanced communications and teamwork. By the end of the year, average review time for the ESCGP had dropped to 157 days in the southwest and 85 days in the rest of the state. The average time to review well-drilling permit applications shortened to about 39 days statewide. Across DEP, permit backlog has been reduced from more than 8,700 in early 2016 to just 635 in June 2019. Inspection efficiency has also improved by approximately 20 percent through the use of portable tablets and other technological improvements.

DEP issued 1,868 unconventional well permits in 2018, about 160 fewer than the previous year. Sustained low commodity prices coupled with longer wellbores contributed to a decline in permit applications. An interactive map



shows well drilling locations by county.

Unconventional well operators produced 6.1 trillion cubic feet of natural gas, an increase of 0.8 Tcf over 2017 and the largest volume of natural gas produced in Pennsylvania in a single year.

Through a comprehensive outreach program, DEP assisted operators in achieving a record high 97 percent submission rate for required emergency response plans in 2018, capping several years of effort to increase compliance in this area.

The interactive, multimedia annual report offers several levels of data: the year in review; deeper detail and historical data; and educational overviews of drilling and the regulatory process statewide. For example, users can compare how much gas was produced over the past 10 years, and drill down to see production by individual well.

What's next for 2019?

In the report, DEP lists these initiatives for this year:

Proposed oil and gas fee rulemaking. A rulemaking initiated in May 2018 would increase the current well permit application fees from \$5,000 for a nonvertical unconventional well and \$4,200 for a vertical unconventional well, to \$12,500 for all unconventional well permit applications. The fee structure for conventional wells remains unchanged. The Environmental Quality Board adopted the proposed rulemaking with two opposing votes. The proposed rulemaking was published in the *Pennsylvania Bulletin* in July 2018 with a 30-day public comment period. Following the comment period, the attorney general completed its review of the proposed rulemaking and the Independent Regulatory Review Commission provided comment to DEP. DEP is preparing a comment/response document and intends to advance the final proposed rulemaking in 2019.

Prioritized review of ESCGP-3 permits. The Office of Oil and Gas Management intends to change the current permit review process for ESCGP-3 authorizations. Instead of conducting an expedited review, DEP will provide administrative priority to proposed development that will result in superior environmental outcomes. DEP will convene a workgroup to explore and identify environmentally superior practices. A secondary goal for the workgroup is to develop the administrative process by which projects are prioritized for review. The workgroup will begin in 2019 and is expected to continue working throughout the year.

Post Construction Stormwater Management (PCSM) Model Plan. Earth disturbance activities that require permit coverage under Chapter 102 must have a written PCSM Plan detailing how the project will include best management practices and construction techniques that will manage stormwater runoff rate, volume and water quality. The department intends to develop a model PCSM Plan for use by preparers to assist in the development of complete and consistent PCSM Plans. The model PCSM Plan will also provide consistent information for DEP oil and gas district staff who are responsible for the review of PCSM Plans.

Geologic Hazard Mitigation Plan. In accordance with erosion and sediment control requirements under Chapter 102.4, as well as the ESCGP-3, an operator must perform environmental due diligence including, but not limited to, the investigation and identification of the naturally occurring geologic formations and soil conditions, as well as prior surface and subsurface uses. The intent of the Geologic Hazard Mitigation Plan is to provide a consistent approach to geologic hazard mitigation investigation and reporting. DEP intends to establish guidelines for the development of Geologic Hazard Mitigation

Data management improvements. DEP intends to continue enhancing existing electronic applications and develop new applications to increase transparency to the public and regulated community and improve efficiency for DEP staff. Proposed projects include:

- Continued enhancements to the recently released ePermitting application to include ESCGP-3 and well permit application submissions.
- Development of a mobile application for field staff that provides oil and gas mapping capabilities.
- Development of a mobile survey collection application that provides staff an opportunity to collect additional information in an electronic format.
- Enhancements to the eSubmission application to allow additional forms and files to be submitted to the DEP electronically.
- Development of a means to electronically receive gas storage field and underground mine data to better coordinate the interface of both activities.

Also, DEP will continue to develop and implement standard processes for applying statistics to evaluate trends and identify potential environmental impacts. Finally, the oil and gas program will evaluate well integrity, deepest fresh groundwater and gas migration datasets to better inform future regulatory improvement initiatives.

Legacy well modernization. Several legacy well initiatives are planned for 2019 that include enhanced external stakeholder outreach through social media and workgroups, development of a technical guidance document for addressing legacy wells, upgrading the DEP legacy well website to reflect a Story Map format and the exploration of supplemental funding mechanisms to address the inventory of unplugged orphan and abandoned wells in Pennsylvania.

Engagement of natural gas, gas storage and coal industries. DEP will continue to advance the progress of technical workgroup efforts between coal operators, natural gas operators, and federal and state regulatory officials with a goal of publishing a final technical guidance document related to ensuring the integrity of unconventional wells drilled in chain pillars and other areas adjacent to longwall mining areas. DEP also plans to establish a technical workgroup that includes gas storage operators to modernize an assortment of regulatory coordination functions relevant to natural gas storage. ■

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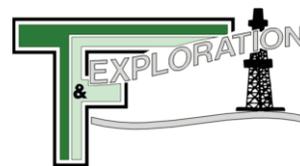
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Use of Oil and Gas Lease Fund money for state budget purposes clarified – for now

In a July 29 decision, the Commonwealth Court held that one-third of the proceeds constituting bonuses and rental payments received from payments due under leases for the extraction and sale of oil and gas on state forest lands are not part of the corpus of the trust created by Pennsylvania Environmental Rights Amendment (ERA) and thus can be used for General Fund, or “non-trust,” purposes. That means two-thirds of these proceeds remain part of the trust corpus and therefore may be used only for “trust purposes,” which is to “conserve and maintain [Pennsylvania’s public natural resources] for the benefit of all the people.”

The court’s decision comes on remand from the Pennsylvania Supreme Court in the Pennsylvania Environmental Defense Foundation (PEDF) lawsuit challenging the constitutionality under the ERA of the General Assembly’s transfers of funds from the Oil and Gas Lease Fund to the General Fund, which, as its name suggests, provides money for most state government operations. The challenged transfers were approved by Governor Rendell to help balance the 2009-10 and 2010-11 state budgets, but Governors Corbett and Wolf also approved similar transfers to help balance state budgets, which must be done each fiscal year.

In its June 20, 2017 decision, the Pennsylvania Supreme Court held the transfers of *royalties* from the Oil and Gas Lease Fund for the 2009-10 budget were “facially unconstitutional” under the ERA. The unconstitutional General Fund transfers included an appropriation to the Department of Conservation and Natural Resources (DCNR) “to carry out the purposes set forth in the [Lease Fund Act].” The Supreme Court remanded the case to the Commonwealth Court to determine whether bonuses and rental payments set forth in the Commonwealth’s oil and gas leases are compensation for the sale of natural resources and therefore part of the ERA trust corpus, or income that may be used for General Fund purposes. None of the legislative enactments before the Commonwealth Court indicate whether the funds transferred are from royalties, rents, or bonus bid payments, or some combination of the three.

The Commonwealth Court’s decision contains much legal discussion concerning the following:

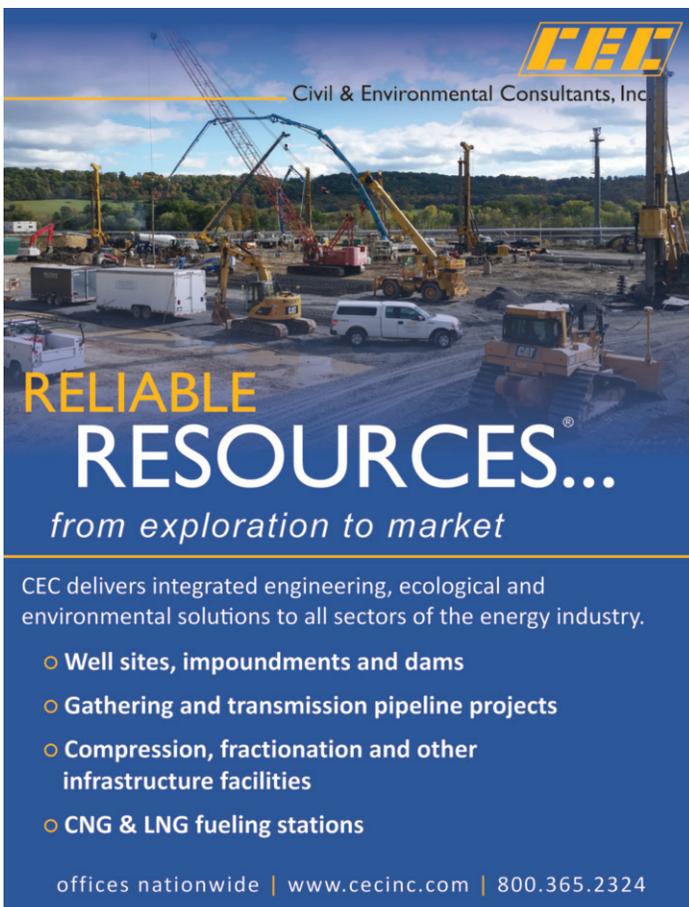
- Fundamentals of Oil and Gas Leases: “A Lease is a Contract”; “Interests Conveyed”; “Consideration” (Rentals & Bonuses); and “Duty to Explore and Drill”
- Pennsylvania Trust Law: “Common Law” (Basic Trust Elements & Waste and the Open Well Doctrine) and “Statutory Law”
- Testator’s Intent

The decision also includes a discussion of the “State Forest Oil and Gas Leases” involved and other evidence the parties provided to explain the nature and purpose of the bonus and rental payments. A presentation of these discussions would make this article too lengthy and is not necessary because the public statements of PEDF’s attorney show that the organization will be appealing this decision, so it will not be the last word on this issue. Attorneys or others who are interested in these discussions should read the decision.

What is necessary is the basis for the Commonwealth Court’s decision resulting from the legal discussions:

Based upon the evidence presented and our review of Pennsylvania’s trust law in effect in 1971, we conclude that bonus and rental payments are not for the severance of natural resources. Rather, these payments are consideration for the exploration for oil and gas on public land. More particularly, the rentals secure the lessee’s right to enter the property for exploratory and development purposes and the rents accrue based on mere passage of time, not the production of oil or gas. The purpose of the bonuses is to determine the highest bidder for the award of the lease. The bonuses are consideration for the execution of the lease, and not consideration for severance of the mineral.

Though bonuses and rental payments are made in anticipation of extraction, these payments relate directly to the lessee’s ability to secure the lease and the right to explore for



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oil and gas on the property. As demonstrated by the evidence presented, the Commonwealth is entitled to keep this money regardless of production, even when the lease is terminated. Thus, we conclude that these payments were received as rent or payment on a lease and were not “received as consideration for the permanent severance” of natural resources from the land.

The Commonwealth Court determined that the Pennsylvania trust law in effect in 1971 governing allocation of the bonus and rental proceeds is Section 9 of the Act of July 5, 1947, P.L. 1283, the “Principal and Income Act of 1947,” which directs the one-third/two-thirds allocation.

Noteworthy is the Commonwealth Court noting that the resolution of this case “is not necessarily restricted to money in the Lease Fund or DCNR’s ability to use that money,” quoting the Supreme Court’s *PEDF* opinion:

DCNR is not the only agency committed to conserving and maintaining our public natural resources, and the General Assembly would not run afoul of the constitution by appropriating trust funds to some other initiative or agency dedicated to effectuating Section 27. By the same token, the Lease Fund is not a constitutional trust fund and need not be the exclusive repository for proceeds from oil and gas development.

The Game Commission and the Fish and Boat Commission are two other state agencies that have the duty to conserve and maintain Pennsylvania’s public natural resources.

So now we all wait for the PEDF appeal and the Pennsylvania Supreme Court’s decision, which is not expected for quite a while, as the high court took over two years to decide the first PEDF appeal. ■

Incentives for gas service expansion signed into law

The state’s Pipeline Investment Program, or PIPE, provides grants to construct the “last mile” of natural gas distribution lines to business parks, existing manufacturing and industrial enterprises, which in turn will result in the creation of new jobs while providing access to natural gas for residents. Legislation expanding the program was signed into law at the end of June as part of the state’s fiscal year 2019-2020 budget package.

The PIPE legislation, sponsored by Representative Jonathan Fritz (R-Susquehanna/Wayne), originally was part of a group of eight House bills dubbed “Energize PA” and intended to leverage the Commonwealth’s energy resources to spur investment in economic expansion (*May PIOGA Press, page 1*). House Speaker Mike Turzai and fellow Republicans offered the package as an alternative to Governor Wolf’s “Restore Pennsylvania” proposal to use a natural gas severance tax for \$4.5 billion in spending on a wide range of infrastructure and other projects (*February PIOGA Press, page 1*).

As enacted, Fritz’s PIPE expansion:

- Opens existing grants to large residential conversion projects and combined heat and power applications.
- Increases the maximum grant amount from \$1 million to \$1.5 million.
- Provides for an additional \$500,000 grant for tapping projects.
- Directs the Commonwealth Financing Authority to develop streamlined guidelines to expedite applications for grants of \$75,000 or less.

“By expanding the PIPE grant program and completing the natural gas distribution lines, more jobs will be created, more money will be pumped back into our economy, and manufacturers, businesses and local resi-

dents will have equal access to low cost, clean-burning natural gas,” the representative explained.

Entities eligible for PIPE grants include economic development organizations, businesses, municipalities, hospitals and school districts. For more information visit dced.pa.gov/programs/pipeline-investment-program. ■

Update: PA justices to consider no-hire agreements between businesses

The Pennsylvania Supreme Court will address the question, “Are contractual no-hire provisions which are part of a services contract between sophisticated business entities enforceable under the law of this Commonwealth?”

In the March *PIOGA Press*, Megan Harmon of Schnader Harrison Segal & Lewis LLP wrote about the trend among federal agencies, state governments and court decisions to question whether no-poach employment provisions are still acceptable. On July 24, the Pennsylvania Supreme Court announced it will hear the appeal in *Pittsburgh Logistics Systems Inc. v. BeeMac Trucking LLC*.

The court is expected to either confirm the demise of employee non-solicitation clauses in commercial transactions or breathe life back into such provisions. Guidance from the court about the scope of valid practices for using these clauses would be helpful for businesses and other employers subject to Pennsylvania law.

Harmon’s *PIOGA Press* article includes practical take-aways for what employers can do—even while this appeal is being heard—to protect their employee talent.

Commonwealth Court again rejects a challenge to an ordinance authorizing oil and gas development in non-industrial zoning districts

The argument that the Pennsylvania Constitution compels municipalities to classify natural gas extraction from shale formations as a “heavy industrial use” and therefore mineral development cannot occur in agricultural and rural residential zoning districts was roundly rejected by both the Commonwealth Court and the Supreme Court in the case of *Frederick v. Allegheny Township Zoning Hearing Board*, 196 A.3d 677 (Pa. Cmwlth. 2018) (*en banc*), *appeal denied*, ___ A.3d ___ (Pa., No. 449 WAL 2018, filed May 14, 2019). Nevertheless, opponents of natural gas development continue to be undeterred and refuse to give up this mantra. Attacks on municipalities’ legislative decisions on where natural gas development is appropriate within their own borders are still playing out in several Western Pennsylvania communities, with opponents seeking just one judicial decision that will breathe life into this moribund concept. With the June 26 decision from the Commonwealth Court in *Delaware Riverkeeper Network v. Middlesex Township Zoning Hearing Board*, No. 2609 C.D.



Robert Max Junker, Esq.

Babst Calland
Attorneys at Law

2015 (Pa. Cmwlth. June 26, 2019) (unreported decision), this tenuous theory was put on life support and yet its few remaining proponents stubbornly refuse to acknowledge the inevitable demise.

Middlesex Township is a rural community in Butler County. In 2014, the Board of Supervisors enacted a zoning ordinance amendment to expressly provide for the use and regulation of oil and gas operations within the township. The board decided that oil and gas well site development should be a permitted use by right in the rural residential, agricultural, residential agricultural and the restricted industrial districts; should be allowed as a conditional use following a public hearing in the commercial districts; and should not be permitted in certain other districts.

R.E. Gas Development, LLC applied for and received a zoning permit authorizing construction and operation of a well site on the farm owned and operated by Robert G. Geyer in the residential agricultural district. Opponents to the well site, led by the out-of-town Delaware Riverkeeper Network and Clean Air Council, challenged the validity of Middlesex’s zoning ordinance and appealed the permit claiming that the zoning ordinance was invalid under the Pennsylvania Constitution for three reasons. First, the objectors claimed the ordinance was not a valid exercise of the township’s police power because it was not designed to protect the health, safety, morals and public welfare in violation of Article 1, Section 1 of the Pennsylvania Constitution. Second, they argued that injecting incompatible industrial uses into a non-industrial zoning district was irrational and again in violation of Article 1, Section 1. Third, the objectors asserted that permitting the Geyer well site in the residential agricultural district unreasonably infringes on the objectors’ rights under Article 1, Section 27 of the Pennsylvania Constitution to clean air, pure water and a healthy local environment. After nine nights of hearings, the Middlesex Township Zoning Hearing Board denied the objectors’ challenge and appeal. The Court of Common Pleas of Butler County likewise denied the appeal.

This case presents an interesting and unusual background at a time when other judicial decisions were trying to make sense of the post-*Robinson Township II* legal landscape. The Commonwealth Court first addressed this case in an unpublished opinion filed June 7, 2017

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("Middlesex I"). The court found that the objectors did not meet their heavy burden to prove that the zoning ordinance was unconstitutional. In a brief mention, the court analyzed the Article 1, Section 27 claims under the three-part *Payne v. Kassab* test for reviewing government action that impacts the environment, and concluded that zoning ordinance was valid. The objectors appealed to the Supreme Court. At the time, the Supreme Court was considering but had not yet decided the *Gorsline v. Fairfield Township* case. That case had been accepted by the Supreme Court to address the question of whether natural gas development was fundamentally incompatible with residential zoning. Around the same time, the Supreme Court decided the *PEDF* case regarding the Commonwealth's use of funds generated from the leasing of state forest and park lands for oil and gas exploration and extraction and expressly overruled the *Payne v. Kassab* test for claims under Article 1, Section 27. In an unusual move, the Supreme Court entered an order stating that it would not consider the Delaware Riverkeeper Network's appeal until *Gorsline* was decided.

As it turned out, the Supreme Court did not address the constitutional questions accepted for review in *Gorsline* and instead only reversed the well pad approval there on narrow evidentiary grounds. But the court did conclude *Gorsline* by observing that "this decision should not be misconstrued as an indication that oil and gas development is never permitted in residential/agricultural districts, or that it is fundamentally incompatible with residential or agricultural uses." The Supreme Court recited this quotation when it directed the Commonwealth Court to reconsider the *Middlesex I* decision in light of *PEDF* and *Gorsline*.

Returning to case on remand, the Commonwealth Court quoted heavily from its first opinion. It also now had the benefit of its opinion in *Frederick*, and found that case controlled the disposition of the Delaware Riverkeeper Network's substantive due process claims. As in *Frederick*, the evidence considered by the Zoning Hearing Board could not be disturbed. The testimony and evidence showed that Middlesex had a long history of oil and gas development, which was viewed as an integral part of agricultural preservation and agriculture in general. The ordinance struck a careful balance between limiting suburban sprawl and benefitting agricultural preservation.

On the Article 1, Section 27 claim, the court again referred to *Frederick* and the interpretation of *PEDF* as expressed therein. The court found that the Zoning Hearing Board made proper conclusions with respect to environmental concerns. The board acted in its role as trustee for future generations by helping to preserve agricultural resources by permitting oil and gas development in agricultural areas. Oil and gas activities were excluded from exclusively residential districts, but the Zoning Hearing Board noted that "oil and gas drilling provides a financial mechanism by which the free market can preserve agriculture." The Commonwealth Court held that based on *Frederick* and the Supreme Court's

decision in *PEDF*, that the Middlesex zoning ordinance did not violate Article 1, Section 27.

On July 26, the objectors continued the fight, filing a Petition for Allowance of Appeal with the Supreme Court.

The *Delaware Riverkeeper* decision is just the latest in a series of similar attacks that have been severely blunted by *Frederick*. The Commonwealth Court has scheduled oral argument in October to address these same claims in an appeal of a challenge to the Penn Township, Westmoreland County zoning ordinance that was rejected by the Westmoreland County Common Pleas Court. This month, the Murrysville Zoning Hearing Board is expected to render its decision in a validity challenge to Murrysville's use of a zoning overlay district for mineral extraction. Finally, Washington County Common Pleas Court has scheduled a hearing for December of this year on a challenge to the Robinson Township, Washington County zoning ordinance. The irony is that Robinson Township was the named petitioner in the challenge to the provisions of Act 13 limiting the authority of local governments to regulate oil and gas development. After succeeding in having the Supreme Court invalidate those provisions, Robinson's ordinance is now being challenged based on that decision for having an ordinance which objectors claim is too permissive with regard to the regulation of oil and gas development.

All of these substantive validity challenges do reveal one truth. Active engagement with the community and local officials must continue if the industry hopes to capture the momentum from the string of successes in the Supreme Court and Commonwealth Court. Confronting this narrative that natural gas development must be relegated to industrial areas cannot occur only in appellate courtrooms. By conducting safe operations, minimizing temporary inconveniences and by shouldering the burden of a defense when opponents attack local decisions, the energy sector can partner with local officials to optimize the rights of property owners to develop their mineral interests.

In all of the cases discussed in this article, an attorney for a production company stood with the municipal solicitor to defend the ordinance. This type of cooperation should be celebrated as a counterpoint to media portrayals trying to paint the industry and local government as constant adversaries. ■

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Take a facility tour with the PIOGA Market Development Committee

PIOGA members are invited to join the Market Development Committee for tours of a pair of northeast Pennsylvania facilities that rely heavily on natural gas. Late in the afternoon of September 11, the committee will visit the NG Advantage facility in Springville and the next morning they will tour the nearby Proctor & Gamble plant in Mehoopany.

Space is limited and an RSVP is required with Joyce Turkaly (joyce@pioga.org) to tour either or both facilities. Those participating in the Proctor and Gamble tour must sign and return a confidentiality disclosure agreement by August 30.

The NG Advantage tour will be from 4 to 5 p.m. on Wednesday the 11th. A dinner is being planned for that evening for anyone who cares to join.

Members will gather at the Proctor & Gamble facility at 9:15 a.m. on Thursday the 12th. The tour will be followed by a brief Market Development Committee meeting, with everything wrapping up by noon.

Proctor & Gamble's largest U.S. manufacturing facility is in Mehoopany. The facility manufactures such brands as Bounty, Pampers, Luvs and Charmin.

Two on-site natural gas-fired cogeneration turbines supply all of the plant's electric power, and the hot air discharges from the turbines are used to dry paper at the paper machines. Backup electric power is purchased from NextEra Energy and transmitted and distributed by Penelec. Natural gas wells on the property enable P&G to buy all its energy locally. Additional gas is purchased from UGI Energy Services and distributed by UGI Penn Natural Gas; CNG is used in all P&G's trucks.

Additional information about the tours and lodging can be found by going to PIOGA Meetings in the Events section of pioga.org. ■



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PIOGA at the Corn Dog Open. Congratulations to PIOGA Board Member Jack Crook of Diversified Gas and Oil on hosting his annual Corn Dog Open for Make-A-Wish. PIOGA was pleased to partner once again by raising funds with our beverage stand. This year we sold lemonade and bloody Marys and raised \$679! PIOGA also gave an additional donation.

BURN by Rocky Patel, July 10

We had a great time, thanks to all who participated and to our sponsors. Visit the galleries section at pioga.org for more photos.



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Goodwin retainage rate *Continued from page 1*

January 2014 after Peoples acquired the system as part of Peoples acquisition of Equitable Gas Company (EGC). Prior to this, the Goodwin system was owned and operated by an unregulated affiliate of EQT Corporation (EQT Gathering, LLC) that imposed a monthly retainage rate reflecting actual volumes of lost and unaccounted for gas (LUGF). During 2009-2012 these monthly retainage rates ranged from 49 percent to 93 percent, with a one-time high of 158 percent (November 2011).

Background

The Goodwin system is composed of three unconnected pipelines in Greene and Washington counties and consists of approximately 250 miles of pipeline delivering gas directly to approximately 775 customers of the Peoples Equitable Division or Equitable Division customers served from Peoples' distribution facilities that are fed by the Goodwin system.

The Tombaugh system, which is also located in Greene and Washington counties and was also acquired by Peoples as part of the EGC acquisition, consists of approximately 105 miles of pipeline delivering gas directly to approximately 770 Equitable Division customers or Equitable Division customers served from distribution facilities that are fed by the Tombaugh system. However, prior to the Peoples acquisition, Tombaugh was owned by Equitrans, L.P. and operated subject to a Federal Energy Regulatory Commission (FERC) approved tariff.

Peoples-EGC acquisition December 2013 settlement

The PUC approved Peoples' acquisition of EGC in December 2013 in accordance with a unanimous settle-

ment. The Goodwin and Tombaugh systems were transferred to an unregulated Peoples affiliate (PNG Gathering, LLC) but Peoples is responsible for the ongoing operation and management of these systems. The settlement included some relief for the conventional producers on the Goodwin system. Because of the extraordinarily high LUGF on the Goodwin system, Peoples agreed to impose gathering charges on only the producers' net deliveries rather than on their gross deliveries, as EQT had done. This meant that since January 2014 these conventional producers no longer had to pay gathering charges on their delivered volumes that were lost or unaccounted for by Peoples, even though Goodwin would continue to be unregulated by either the PUC or FERC.

Per the December 2013 settlement, EQT provided \$5 million for Peoples to assess the Goodwin and Tombaugh systems and develop and implement an initial plan, in conjunction with the PUC's Gas Safety Division, to address improvements to the systems. After completing the assessment, the settlement required Peoples to estimate the funds necessary to provide safe and reliable service from these systems and develop a recommendation whether to proceed with rehabilitation of all or some of these systems. After consultation with the Gas Safety Division and the statutory advocates [Office of Consumer Advocate (OCA) and Office of Small Business Advocate (OSBA)], Peoples was required to present its plan to the PUC and PIOPA.

Aqua America-Peoples acquisition proceeding and proposed settlement

Peoples was in the process of completing the assessment when Aqua America and Peoples initiated the proceeding for PUC approval of Aqua America's acquisition of control over the Peoples companies. The OCA and

the PUC's Bureau of Investigation and Enforcement (I&E) took the position that the safety and reliability concerns with service on the Goodwin and Tombaugh systems should be resolved in the Aqua America-Peoples proceeding. However, these parties disagreed on whether abandonment of some customers served by these systems could be necessary and appropriate and in the public interest, with the I&E supporting abandonment under certain circumstances and the OCA opposing any abandonment. PIOGA agreed with the OCA's position.

Discussions among the parties resulted in a non-unanimous proposed settlement in which Peoples agreed to rehabilitate the Goodwin and Tombaugh systems over a seven-year period. As the pipelines are replaced and placed in service, they will become regulated under the PUC's jurisdiction and classified as distribution pipeline. The proposed settlement also provides additional relief for the conventional producers from the extraordinarily high LUGF on the Goodwin system, which ranged between 81.5 percent and 83.5 percent annually during 2016-2018, an increase over the annual levels prior to Peoples' acquisition despite Peoples' efforts to improve the system with the funds provided by EQT per the December 2013 settlement. The 85 percent fixed annual retainage rate imposed by Peoples since January 2014 exceeded the actual LUGF and was imposed solely on the conventional producers' deliveries and not on the deliveries from the interstate pipelines.

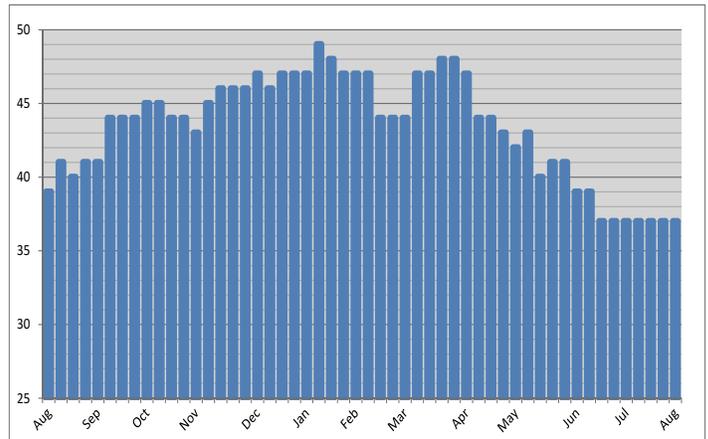
In the proposed settlement, Peoples has agreed to a gradual reduction of the annual 85 percent retainage rate on Goodwin based on the rate of annual pipeline replacement. In other words, the annual retainage rate will be set so that the *percentage rate of decline* (14.29 percent, based on the seven-year replacement timeframe) will match the same year-over-year percentage rate of decline in removing old pipe from the Goodwin system. This will result in the retainage rate consistently decreasing annually from 85 percent in year 1 to near 0 percent by year 7, subject to the currently effective systemwide producer retainage charges, now a minimum 2 percent. Peoples has also agreed to conduct semiannual reviews of actual Goodwin LUGF levels and, if a LUGF decline trend is evident, to make interim adjustments to the effective retainage rate to reflect the actual Goodwin LUGF level for the interim rolling 12-month period.

The PUC's I&E opposes the settlement generally and the Goodwin/Tombaugh provisions specifically, while the OSBA also opposes the settlement generally and the inclusion of the Goodwin/Tombaugh issues in this proceeding at all.

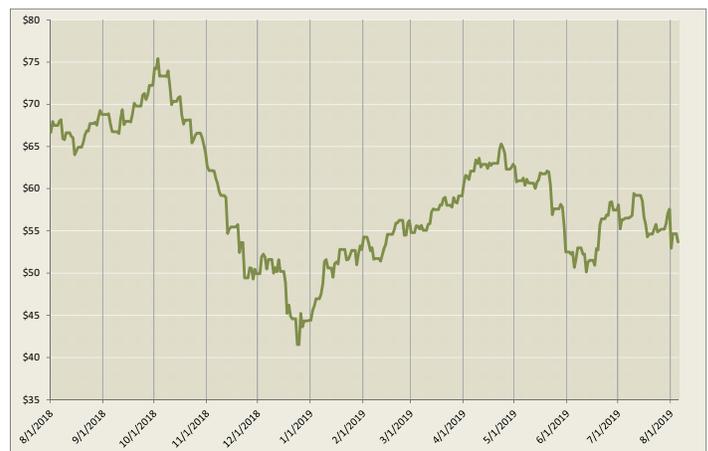
The proposed settlement is presently before a PUC administrative law judge for issuance of an initial decision that will be reviewed by the PUC. There is no deadline for either action. The filings can be accessed on the PUC's online docket at www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2018-3006061. ■

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices



Natural Gas Futures Closing Prices

Month	Price
September 2019	\$2.097
October	2.112
November	2.199
December	2.394
January 2020	2.520
February	2.496
March	2.430
April	2.253
May	2.244
June	2.282
July	2.332
August	2.336

Prices as of August 7

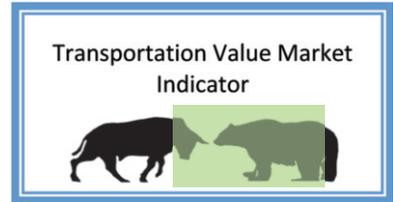
Sources

American Refining Group: www.amref.com/Crude-Prices-New.aspx
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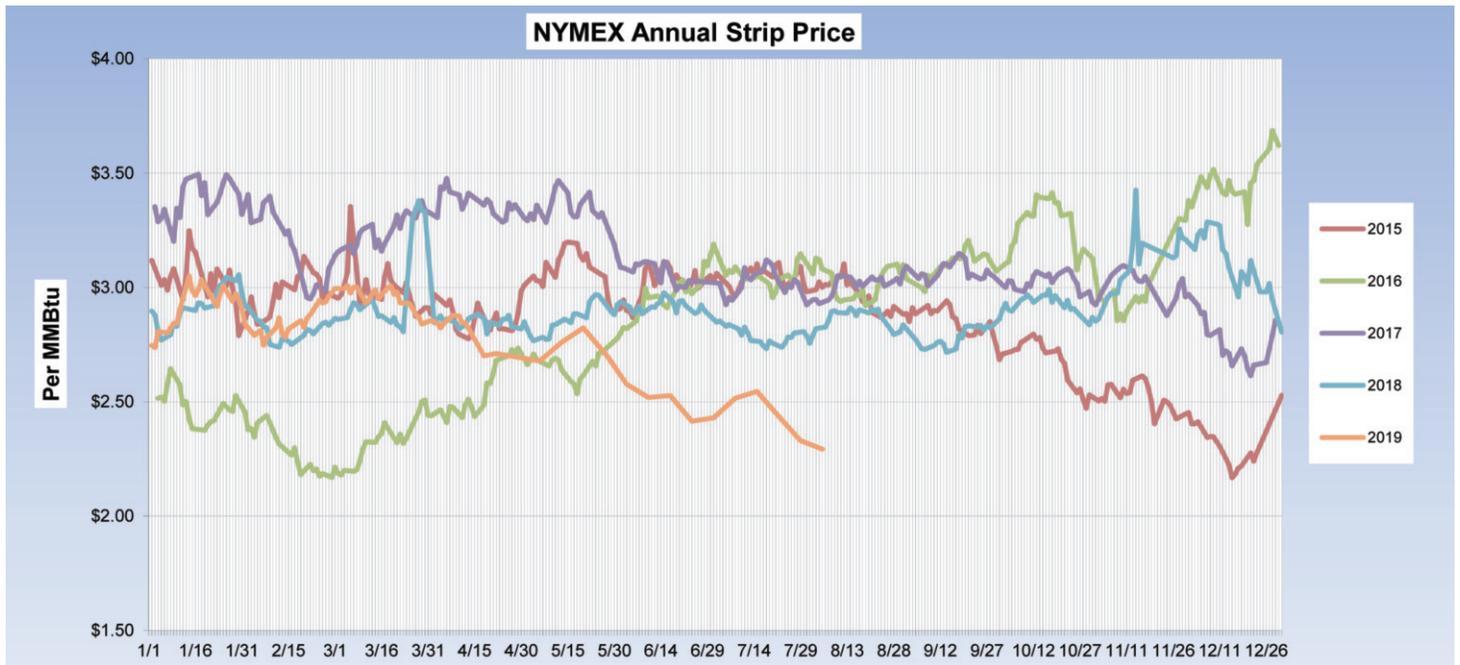
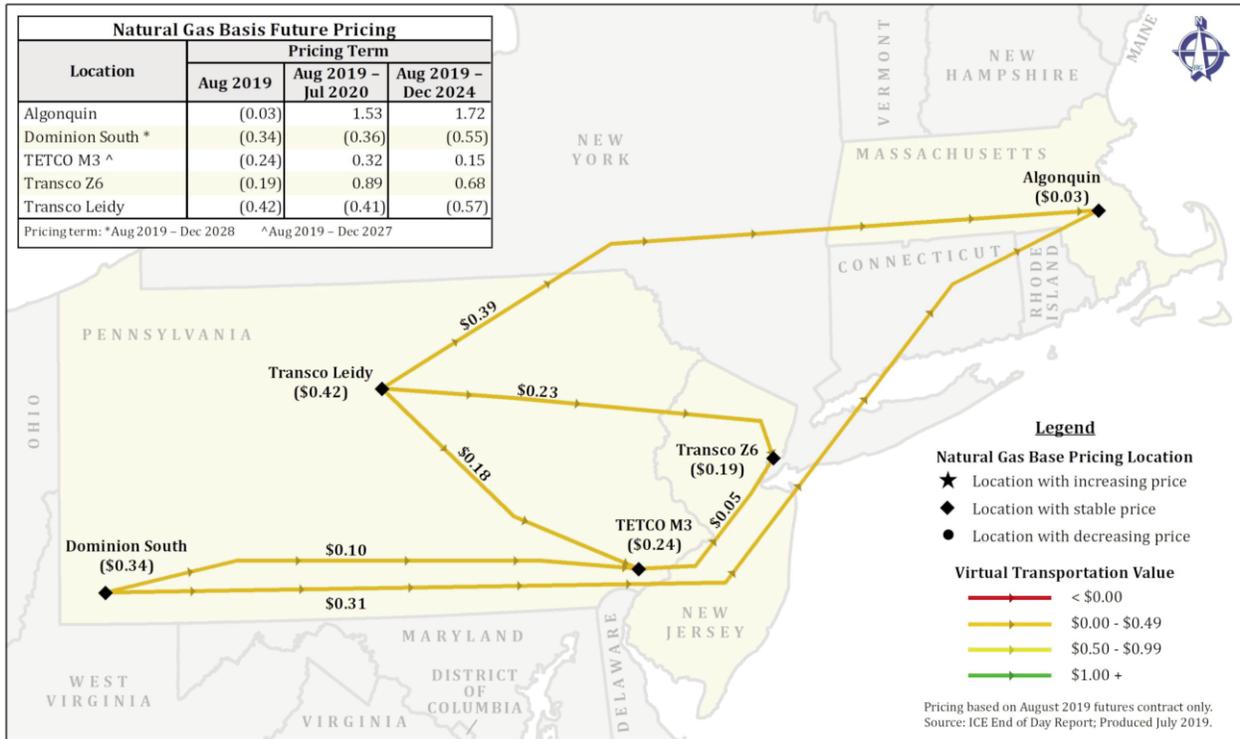
Northeast Pricing Report – August 2019

The price movement for each trading point was mixed. Additionally, we saw very low volatility. For the front month, Transco Leidy was down the largest amount of \$0.03 per MMBtu, while Algonquin increased the most at \$0.09 per MMBtu. For the one-year term, Transco Leidy increased the most at \$0.03 per MMBtu and Algonquin decreased the most at \$0.02 per MMBtu. The greatest decrease for the full trading term was Dominion South at \$0.04 per MMBtu. Both TETCO M3 and Transco Leidy had the greatest increase of \$0.01 per MMBtu.

Most transportation values increased for July. However, Dominion South to TETCO M3 stayed flat for the month. TETCO M3 to Transco Z6 decreased slightly by \$0.01 per MMBtu. Transco Leidy to Algonquin increased for the third month in a row at \$0.12 per MMBtu, which was the greatest jump for all the transportation routes for the third month in a row as well. All other transportation routes increased \$0.06 per MMBtu.



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Spud Report: July 2019



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
ARD Opr LLC	7	7/14/19	081-21801	Lycoming	Cascade Twp
		7/15/19	081-21740	Lycoming	Cascade Twp
		7/17/19	081-21802	Lycoming	Cascade Twp
		7/19/19	081-21800	Lycoming	Cascade Twp
		7/24/19	081-21808	Lycoming	Cascade Twp
		7/24/19	081-21809	Lycoming	Cascade Twp
		7/24/19	081-21810	Lycoming	Cascade Twp
Autumn Ridge Energy LLC	6	7/8/19	123-48255*	Warren	Mead Twp
		7/10/19	123-48256*	Warren	Mead Twp
		7/15/19	123-48257*	Warren	Mead Twp
		7/18/19	123-48258*	Warren	Mead Twp
		7/24/19	123-48259*	Warren	Mead Twp
		7/31/19	123-48260*	Warren	Mead Twp
		7/16/19	131-20598	Wyoming	Meshoppen Twp
BKV Opr LLC	3	7/16/19	131-20599	Wyoming	Meshoppen Twp
		7/16/19	131-20597	Wyoming	Meshoppen Twp
Blackhawk Energy LLC	4	7/8/19	083-57198*	McKean	Wetmore Twp
		7/15/19	083-57178*	McKean	Wetmore Twp
		7/18/19	083-57177*	McKean	Wetmore Twp
		7/22/19	083-57176*	McKean	Wetmore Twp
Bull Run Resources LLC	1	7/3/19	083-57123*	McKean	Lafayette Twp
Cameron Energy Co	3	7/9/19	123-48221*	Warren	Sheffield Twp
		7/18/19	123-48222*	Warren	Sheffield Twp
		7/29/19	123-48223*	Warren	Sheffield Twp
Chesapeake Appalachia LLC	9	7/17/19	015-23456	Bradford	Wilmot Twp
		7/18/19	015-23455	Bradford	Wilmot Twp
		7/19/19	015-23457	Bradford	Wilmot Twp
		7/20/19	015-23497	Bradford	Wilmot Twp
		7/25/19	131-20561	Wyoming	Meshoppen Twp
		7/25/19	131-20562	Wyoming	Meshoppen Twp
		7/26/19	131-20563	Wyoming	Meshoppen Twp
		7/26/19	131-20581	Wyoming	Meshoppen Twp
		7/26/19	131-20581	Wyoming	Meshoppen Twp

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
Chevron Appalachia LLC	8	7/27/19	131-20590	Wyoming	Meshoppen Twp
		7/4/19	051-24693	Fayette	German Twp
		7/15/19	051-24695	Fayette	German Twp
		7/18/19	051-24692	Fayette	German Twp
		7/19/19	051-24690	Fayette	German Twp
		7/21/19	051-24694	Fayette	German Twp
		7/25/19	051-24691	Fayette	German Twp
		7/26/19	051-24697	Fayette	German Twp
		7/29/19	051-24696	Fayette	German Twp
		7/31/19	015-23465	Bradford	Overton Twp
Chief Oil & Gas LLC	8	7/31/19	015-23466	Bradford	Overton Twp
		7/31/19	015-23467	Bradford	Overton Twp
		7/31/19	015-23471	Bradford	Overton Twp
		7/31/19	015-23468	Bradford	Overton Twp
		7/31/19	015-23469	Bradford	Overton Twp
		7/3/19	059-27863	Greene	Center Twp
		7/3/19	059-27864	Greene	Center Twp
		7/3/19	059-27865	Greene	Center Twp
		7/3/19	059-27866	Greene	Center Twp
		7/15/19	009-20090	Bedford	Mann Twp
Columbia Gas Trans	1	7/17/19	123-48254*	Warren	Glade Twp
	1	7/17/19	123-48254*	Warren	Glade Twp
DR&D Co	3	7/9/19	003-22559	Allegheny	Forward Twp
		7/9/19	003-22560	Allegheny	Forward Twp
		7/9/19	003-22521	Allegheny	Forward Twp
EQT Prod Co	1	7/22/19	113-20423	Sullivan	Shrewsbury Twp
	1	7/19/19	083-57140*	McKean	Wetmore Twp
Exco Resources PA LLC	1	7/15/19	105-21943	Potter	Summit Twp
	1	7/15/19	105-21943	Potter	Summit Twp
Howard Drilling Inc	2	7/25/19	123-48379*	Warren	Glade Twp
	2	7/25/19	123-48379*	Warren	Glade Twp
JKLM Energy LLC	1	7/31/19	123-48380*	Warren	Glade Twp
	1	7/31/19	123-48380*	Warren	Glade Twp
Kylander Oil Inc	2	7/3/19	123-48213*	Warren	Sheffield Twp
	2	7/3/19	123-48213*	Warren	Sheffield Twp
Mead Oil LLC	2	7/10/19	123-48209*	Warren	Sheffield Twp
	2	7/10/19	123-48209*	Warren	Sheffield Twp
PennEnergy Resources LLC	6	7/8/19	019-22825	Butler	Connoquenessing
		7/8/19	019-22826	Butler	Connoquenessing
		7/9/19	019-22827	Butler	Connoquenessing
		7/9/19	019-22828	Butler	Connoquenessing
		7/10/19	019-22829	Butler	Connoquenessing
		7/10/19	019-22830	Butler	Connoquenessing
		7/30/19	083-57190*	McKean	Mount Jewett
		7/25/19	083-57192*	McKean	Sergeant Twp
		7/10/19	125-28718	Washington	Amwell Twp
		7/10/19	125-28735	Washington	Amwell Twp
Range Resources Appalachia	7	7/11/19	125-28721	Washington	Amwell Twp
		7/11/19	125-28717	Washington	Amwell Twp
		7/11/19	125-28720	Washington	Amwell Twp
		7/12/19	125-28716	Washington	Amwell Twp
		7/12/19	125-28719	Washington	Amwell Twp
		7/12/19	015-23481	Bradford	Springfield Twp
		7/12/19	015-23476	Bradford	Springfield Twp
		7/12/19	015-23477	Bradford	Springfield Twp
		7/12/19	015-23478	Bradford	Springfield Twp
		7/12/19	015-23479	Bradford	Springfield Twp
Repsol Oil & Gas USA LLC	11	7/16/19	117-22044	Tioga	Ward Twp
		7/19/19	117-22042	Tioga	Ward Twp
		7/20/19	117-22040	Tioga	Ward Twp
		7/21/19	117-22031	Tioga	Ward Twp
		7/22/19	117-22041	Tioga	Ward Twp
		7/23/19	117-22036	Tioga	Ward Twp
		7/25/19	125-28737	Washington	Somerset Twp
		7/25/19	125-28739	Washington	Somerset Twp
		7/25/19	125-28740	Washington	Somerset Twp
		7/27/19	125-28738	Washington	Somerset Twp
SWN Prod Co LLC	1	7/12/19	115-22666	Susquehanna	Jackson Twp
	1	7/12/19	115-22666	Susquehanna	Jackson Twp

	July	June	May	April	March	February
Total wells	96	64	93	58	59	92
Unconventional Gas	73	45	83	44	49	82
Conventional Gas	0	0	0	0	0	0
Oil	22	19	8	14	9	10
Combination Oil/Gas	0	0	0	0	1	0
Storage	1	0	2	0	0	0

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Calendar of Events

PIOGA events

PIOGA event info: pioga.org/event

PIOGATech: Water and Waste Management

August 21, The Chadwick, Wexford

Divot Diggers Golf Outing

August 22, Tam O'Shanter Golf Course, Hermitage

Fall Conference, Equipment & Vendor Show and Golf/Clay Shoot

September 24-25, Seven Springs Mountain Resort, Champion

Annual Membership Meeting

October 15, The Chadwick, Wexford

PIOGATech: Safety Risk Management

October 17, Location TBA

Halloween Theme Networking Event

November 1, Location TBA

Marcellus to Manufacturing Conference

November 7, Energy Innovation Center, Pittsburgh

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

IOGAWV Sports Weekend

September 13-14, Bridgeport Country Club, Morgantown, WV
iogawv.com

Shale Insight

October 22-24, David L. Lawrence Convention Center, Pittsburgh
shaleinsight.com

IPAA Mid-Year Meeting

November 6-8, The Fairmont, Georgetown, MD
www.ipaa.org/events

OOGA 2020 Annual Meeting

March 4, Columbus, OH
www.ooga.org/events

PIOGA Centennial knife

To commemorate PIOGA's 100th anniversary, we commissioned this knife from W.R. Case & Sons Cutlery Company in Bradford. The limited edition, collector quality knife and wooden display box feature the Centennial logo. It makes a great gift! Get yours before they're gone at members.pioga.org.



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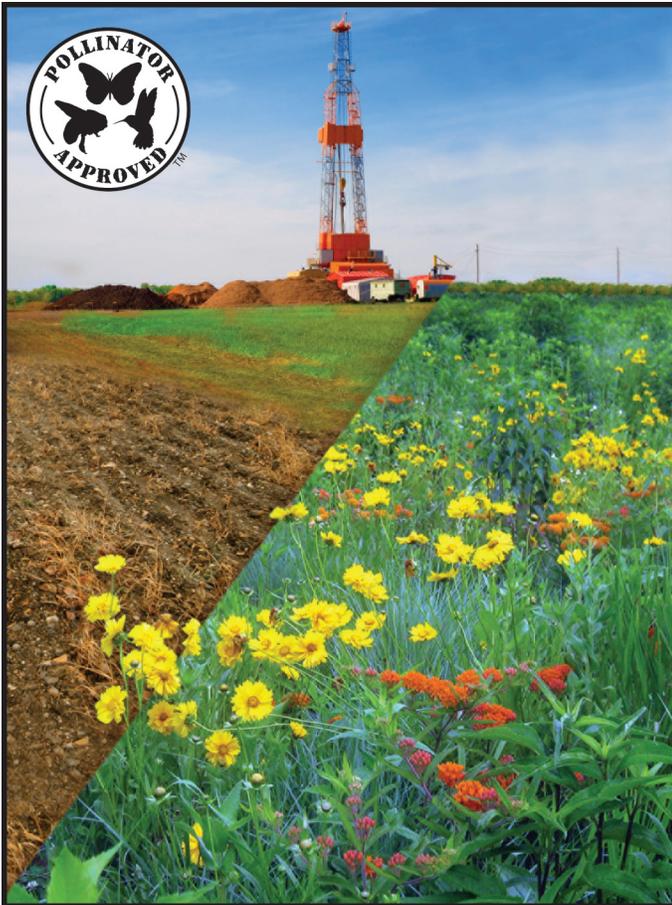


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