

The PIOGA Press

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Pennsylvania Independent Oil & Gas Association
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EQB publishes proposed rulemaking for control of VOC emissions from existing oil and natural gas sources

Pennsylvania's Environmental Quality Board (EQB) published a proposed rulemaking in the May 23 *Pennsylvania Bulletin* entitled "Control of VOC Emissions from Oil and Natural Gas Sources." 50 Pa.B.

2633 (www.pacode-andbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-21/684.html). This proposed rulemaking would have Pennsylvania adopt reasonably available control technology (RACT) requirements and RACT emission limitations for existing oil and natural gas sources of volatile organic compound (VOC) emissions.

As proposed, the rule would apply to owners and operators of any of the following oil and natural gas sources of VOC emissions that were in existence on or before the effective date of this rulemaking: storage vessels (in all segments except natural gas distribution), natural gas-driven pneumatic controllers, natural gas-driven diaphragm pumps, centrifugal compressors and reciprocating compressors, and fugitive emission components.

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Legislative notes

House approves Conventional Oil & Gas Act

The Pennsylvania General Assembly has been busy moving legislation the past three months. Although nearly all of the bills up for consideration have dealt with the COVID-19 crisis in one way or another, there have been exceptions. By a margin of 109-93, the House of Representatives on May 27 approved Senate Bill 790, creating a separate regulatory framework for Pennsylvania's conventional oil and gas operators.

"The conventional oil and gas industry has long been a cornerstone of the economy in my district and areas across the Northern Tier, providing thousands of good, family-sustaining jobs," said Representative Martin Causer (R-McKean), who sponsored a companion version of the legislation in the House. "This bill will help preserve those jobs by removing the threat of unreasonable and unnecessary regulations from the backs of our conventional producers in favor of rules that are relevant and appropriate to these shallow-well operations.

"Just as importantly, it would help ensure this indus-

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This proposal is based on EPA's October 2016 Control Techniques Guidelines (CTG) for the Oil and Gas Industry, which provide RACT requirements for VOC emissions from existing oil and gas sources. Pursuant to the federal Clean Air Act, EPA established National Ambient Air Quality Standards (NAAQS) for six "criteria pollutants," which includes ground-level ozone. Ground level ozone is created in a photochemical reaction of oxides of nitrogen (another criteria pollutant) and VOCs in the presence of sunlight.

The federal statute requires any (i) existing major source of VOC emissions (generally more than 50 tons per year of VOC depending on location) in an ozone nonattainment area and (ii) any other source (i.e., minor sources) for which EPA has issued a CTG to implement RACT to control emissions, consistent with the issued CTG. Pennsylvania is in the northeast ozone transport region, which makes the Commonwealth nonattainment for ozone, and thus triggers RACT under federal law.

The Clean Air Act requires states to revise their State Implementation Plans to include RACT for sources of VOC emissions covered by a CTG issued by the U.S. Environmental Protection Agency. The EPA proposed withdrawing the CTG in March 2018 but has not yet taken final action; Pennsylvania has continued to develop this rulemaking to meet the CTG implementation deadline of January 2021.

Despite the potential rollback of the CTG and other federal regulations by EPA, the Pennsylvania Department of Environmental Protection explained that it moved forward with this proposed rulemaking because:

1. DEP reviewed EPA's reconsideration of the 2016

NSPS and, based on that proposed rule, modified this proposed rulemaking;

2. adoption of the proposed rule would help the Commonwealth achieve and maintain the eight-hour ozone NAAQS;

3. DEP estimates that proposed control measures would reduce VOC emissions by more than 4,000 tons per year; and

4. The rulemaking would provide consistency among all oil and gas sources for monitoring fugitive emissions.

These requirements are consistent with the leak detection and repair (LDAR) inspection requirements specified in DEP's General Plan Approval and General Operating Permit for Natural Gas Compression Stations, Processing Plants and Transmission Stations (GP-5); the General Plan Approval and General Operating Permit for Unconventional Natural Gas Well Site Operations and Remote Piggings Stations (GP-5A); and the Air Quality Permit Exemptions, Exemption 38. EQB's May 23 proposal also notes that the rulemaking is consistent with Governor Tom Wolf's strategy to reduce methane from the oil and natural gas industry because, while this rulemaking focuses on the reduction of VOC emissions, methane emissions would also be reduced as a co-benefit since both VOCs and methane are emitted from oil and gas operations.

EQB is accepting written comments regarding this proposed rulemaking until July 27. Additionally, EQB will hold three virtual public hearings regarding the proposed rulemaking on June 23, 24 and 25. ■

For additional information and assistance with draft comments, please contact Michael H. Winek at mwinek@babstcalland.com or 412-394-6538, Gary E. Steinbauer at gsteinbauer@babstcalland.com or 412-394-6590, or Gina N. Falaschi at gfasalchi@babstcalland.com or 202-853-3483.

Long-anticipated CTG RACT rule for existing oil & gas operations proposed

By Roy Rakiewicz and Katie Fritz

ALL4 LLC

On May 23, the Environmental Quality Board (EQB) formally proposed the rule "Control of VOC Emissions from Oil and Natural Gas Sources" by publication in the *Pennsylvania Bulletin*. The proposed rule, commonly referred to as the "CTG RACT Rule" was approved by Air Quality Technical Advisory Committee (AQTAC), the Small Business Compliance Advisory Council (SBCAC) and the Citizens Advisory Council (CAC) during 2019 as part of the rulemaking process. There is a 60-day public comment period associated with the proposal, with comments due on or before July 27.

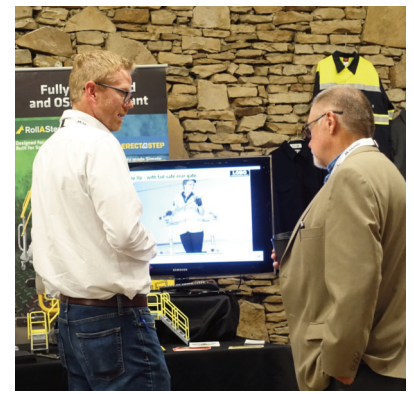
Originally envisioned to be proposed during the first quarter of 2020, the CTG RACT rule proposal was delayed primarily due to the fallout of the COVID-19 pandemic. When finalized, the rule will impact most existing oil and gas operations across the state. The pro-

posed rule is relatively unchanged from the original draft presented to AQTAC in December 2018.

The CTG RACT rule will regulate emissions of volatile organic compounds (VOC) that are associated with "existing" oil and gas operations in Pennsylvania. Existing operations are those that are existing at the time of final rule promulgation as defined in the rule. The rule will reflect what the U.S. Environmental Protection Agency (EPA) has determined is reasonably available control technology (RACT) for the control of VOC emissions from affected oil and gas sources. RACT is defined as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility."

The primary basis for the proposed CTG RACT rule is

Continues on page 17



Plans are coming together for PIOGA's Fall Conference

Also featuring Technology and Services Showcase, sporting clays, golf and Monte Carlo Night

PIOGA's Planning Committee and staff have begun work on our Fall Conference and Sports Outing, and it's shaping up to be an excellent event. It will take all place September 22-24 at beautiful Seven Springs Mountain Resort in Champion.

Here's an outline of what we have in store:

Tuesday, September 22 – Clay shoot, Technology and Services Showcase, and Welcome Reception. It's hard to imagine a PIOGA visit to Seven Springs without taking advantage of the acclaimed sporting clays facility. The morning shoot will wrap up with lunch, and then it's down the hill to the lodge complex for something new that afternoon—the Technology and Services Showcase.

Innovation and technology are what drives our industry. Without advances like 3D seismic, directional drilling and high-volume hydraulic fracturing, there would be no shale-gas revolution here in Pennsylvania. Our industry is always looking for innovative, cost-effective solutions in a wide variety of areas—whether for wastewater treatment and disposal or making wells produce more efficiently. The Technology and Services Showcase will be dedicated to featuring companies that have developed new technologies or services that are meeting the challenges of today.

There will be no cost to attend this afternoon of presentations on an array of topics of interest to our industry. These same companies will have exhibit tables on Tuesday and throughout the day on Wednesday. After the Showcase, we'll offer a Welcome Reception so you

can mingle and network.

Wednesday, September 23 – Conference, reception, dinner and Monte Carlo Night. If you're like us, you were excited about the agenda for our 2020 Spring Meeting and very disappointed that the event had to be cancelled due to COVID-19 restrictions. The good news is that we are working to bring back essentially the same speaker lineup and topics that were to be presented back on April 1. What our presenters had to say will be just as relevant in September—if not more so. We plan to roll out the full agenda in the next month.

Following the conference will be a reception, including a VIP component benefitting the PIOGA Political Action Committee, and dinner. The evening will wrap up with our always-popular Monte Carlo Night full of fun and games.

Thursday, September 24 – Golf outing. If you're a golfer, you'll want to stay for the morning's golf outing and lunch. The views from the Seven Springs fairways are hard to top!

Come for one day, two days or all three!

We know your time is a valuable resource. That's why we are structuring this event so you can tailor your participation in a way that best suits your schedule. So, take part for one, two or all three days—but please don't miss out. It's not just going to be an exceptional event, but it's also going to be a chance to catch up with your industry friends and colleagues after months of social distancing.

Watch for complete details, including sponsorship opportunities and registration. ■



Next up:

Sporting clays at Promised Land

We are *really* looking forward to our first in-person event in several months—even if it requires a little social distancing! It takes place Thursday, July 9, at Promised Land Sporting Clays Club in Freeport.

Your registration fee (\$110 for members, \$130 for nonmembers) gets you 100 clays, cart, continental breakfast and a great barbecue lunch with beer, water and soda included.

Registration opens at 9 a.m., with the shoot starting at 10. There is a \$350 sponsorship package as well.

We expect the event to fill up quickly, so please visit the PIOGA events section at pioga.org to register now.

Also be sure to check out these PIOGA events this summer:

- **PIOGATech training - Transportation Safety Regulations Compliance**, July 21, The Chadwick, Wexford
- **PIOGATech training - Water & Waste Management**, August 19, The Chadwick, Wexford
- **23rd Annual Divot Diggers Golf Outing**, August 20, Tam O'Shanter of Pennsylvania Golf Course, Hermitage



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'Agency' becomes a real issue in title washing: *Pennsylvania Game Commission vs. Thomas E. Proctor Heirs Trust*

In a recent decision, the United States District Court in the Middle District of Pennsylvania denied cross-motions for partial summary judgment that confirms, in part, established Pennsylvania law with regard to the challenge of title wash tax sales, and also may offer persuasive support to claims that "agency" between the delinquent surface owner and the purchaser at the tax sale could potentially bar joinder of the oil and gas estate to the surface estate.

Background

The plaintiff, the Commonwealth of Pennsylvania, Pennsylvania Game Commission, being the owner of several tracts of land in Sullivan and Bradford counties, including the Josiah Haines warrant, filed an action to quiet title to the subsurface estate of the warrant.¹ In 1893, the warrant was conveyed to Thomas E. Proctor and Jonathan A. Hill, the predecessors to the defendants.² In 1894, Proctor and Hill deeded the warrant to the Union Tanning Company, excepting and reserving the oil and gas thereunder.³ In 1903, the Union Tanning Company conveyed its rights in the warrant to Central Pennsylvania Lumber Company (CPLC). In 1908, Calvin J. McCauley, Jr., purchased the warrant as unseated land at a Bradford County treasurer's sale for unpaid taxes in the year of 1907.⁴ In December 1910, McCauley and his wife quit-claimed their interest in all the properties including, the warrant, to CPLC.⁵ Finally, in 1920, CPLC conveyed the warrant to the Game Commission, subject to the 1894 mineral rights exception.⁶

Both parties in March 2015 moved for a stay of the proceedings until the Pennsylvania Supreme Court decided the case of *Herder Spring Hunting Club v. Keller*,⁷ due to the likelihood that the decision would influence the outcome of their dispute, although both parties agreed that *Herder* had different facts.⁸ After the *Herder*

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case was decided in July 2016 both parties after significant discovery and trial proceedings cross-filed for partial summary judgment.⁹ Chief Magistrate Judge Susan E. Schwab issued an extensive report, recommending that the cross-motions be denied and both parties filed objections to that report.¹⁰ The objections raised four main issues which are summarized as follows: (1) whether there is a genuine factual dispute as to whether the warrant was unseated or seated, (2) whether there is a materially factual dispute as to the agency between McCauley and CPLC, (3) whether the language of the 1920 deed estopped the title wash, and (4) whether the tax sale was affected by federal due process concerns.¹¹ Although the court addressed each of these four issues, this article will focus on the discussion of the first two issues identified hereinabove (the court rejected the Proctor's arguments that the 1920 deed excepted the oil and gas and also held that the tax sale process complied with due process).

Unseated vs. seated

The first issue the court addressed was whether Judge Schwab was correct in determining there was a factual dispute as to whether the warrant was correctly classified as unseated land.¹² The designation of unseated land is important when examining basic title wash tax sale scenarios. Prior to 1947, it was Pennsylvania's practice to classify real property as either "seated," which was developed land, or "unseated," which was "wild" or undeveloped land.¹³ Each designation had implications as to the tax liability for the owner of said land.¹⁴ For land that was designated as unseated, the owner was not personally liable for the failure to pay taxes attached to the land; therefore, the only penalty for failure to pay taxes was for the land to be sold at sale. The proceeds from the sale were then used to recoup the tax delinquency.¹⁵ Whereas, if the land was seated then the property owner was personally liable for the tax on the land.¹⁶

The usual title wash tax sale fact pattern involves a tax sale of unseated land where oil, gas or any other mineral rights had been previously severed therefrom, and the commissioners were not notified of said severance resulting in the severed oil and gas owner's interest not being separately assessed. As a result, the severed oil and gas owner's interest in the property would be "washed" and title to the same passed to the purchaser at the tax sale, resulting in a fee conveyance of the surface and subsurface. Whereas, if "seated" land was sold at tax sale then the severed mineral estate,

¹ *Pennsylvania Game Commission v. Thomas E. Proctor Heirs Trust*, 2020 WL 1922628, 2 (Pa. MD. 2020).

² *Id.* at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 1-2.

⁶ *Id.* at 2.

⁷ 143 A.3d. 358 (Pa. 2016).

⁸ *Pennsylvania Game Commission v. Thomas E. Proctor Heirs Trust*, 2019 WL 6954101, 2 (Pa. M.D. 2019).

⁹ *Pennsylvania Game Commission*, 2020 WL 1922628 at 1.

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

with certain exceptions, would not be washed and remained with the severed interest owner.

The defendants argued that although the warrant was assessed and sold at the 1908 tax sale as unseated land, that it was incorrectly assessed as unseated due to the level of hemlock bark stripping that was conducted on the property.¹⁷ Although Judge Schwab agreed this evidence created a genuine dispute of material fact and the court agreed with Judge Schwab's determination, the court ultimately ruled that this point was moot because the defendants were barred from making such an argument as a matter of law.¹⁸ After an extensive discussion on the legislative history of the Act of June 3, 1885, P.L. 71, § 1 and relevant Pennsylvania case law, the court determined the Act of 1885 was enacted in part to limit attacks to the validity of a tax sale on the basis of an assessor-classification error as to whether land was seated or unseated.¹⁹ The court opined that the assessor-classification could only be challenged "in rare circumstances where (1) land was characterized and assessed as seated and then improperly sold for unpaid taxes as unseated, or vice versa; and (2) in the case of seated land being sold as unseated, there was sufficient personal property on the land to pay the taxes."²⁰ Therefore, although there was a genuine issue of material fact as to whether the warrant was seated or unseated, the defendants were barred from making such a challenge to the tax sale by the Act of 1885.²¹

Agency

The second issue the court addressed was the novel issue of agency. In her report, Judge Schwab tied her determination on the issue of agency to her determination on the issue of whether the warrant was seated or unseated.²² In her determination, the defendants had presented enough evidence to create a genuine factual dispute as to whether McCauley had operated as an agent of CPLC, such that the 1908 tax sale would have resulted in a mere redemption of the surface estate for the plaintiff's predecessor in title.²³ However, Judge Schwab further stated that the materiality of the factual dispute regarding agency was only relevant if the warrant was seated.²⁴ Judge Schwab determined that (i) if the warrant was designated as seated land, then CPLC would have been personally liable for payment of taxes, and (ii) if McCauley was operating as the agent for CPLC, then the purchase of the warrant at tax sale would only result in a redemption of the surface estate. However, if the land was unseated, then CPLC was not personally liable for payment of taxes and it did not matter whether McCauley was acting as CPLC's agent.²⁵

¹⁷ *Id.*

¹⁸ *Id.* at 9.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Pennsylvania Game Commission*, 2019 WL 6954101 at 24.

²³ *Id.* at 14, 24.

²⁴ *Id.* at 24.

²⁵ *Id.*

The court agreed with Judge Schwab's determination that the defendants had brought forth enough evidence to create a genuine factual argument as to whether McCauley had acted as CPLC's agent by purchasing the warrant at the tax sale; however, the court disagreed with Judge Schwab's determination that agency was only material if the warrant was determined to be seated land.²⁶ Judge Schwab, using an analysis similar to the court in *Herder Spring*, determined that there was no genuine factual dispute as to whether the 1907 assessment of the warrant covered the surface and subsurface estates of the warrant.²⁷ The court disagreed with Judge Schwab in dicta and distinguished the facts in the present case from the facts in *Herder Spring*.²⁸ The court stated that even if the warrant in fee had properly been offered for sale, that fact is not dispositive as to what interest was effectively sold to the purchaser at the tax sale, because of the issue of agency.²⁹ The court turned to standing Pennsylvania law stating that "one cannot, by a purchase at a tax sale caused by his failure to pay taxes which he owed the state, or which he was otherwise legally or morally bound to pay, acquire a better title, or a title adverse to that of other parties interest."³⁰ The court admitted that this law applies only where the purchaser of the land had a preexisting duty to pay taxes.³¹ The court determined that the primary issue as to agency was whether CPLC had a duty to pay the 1907 taxes on the unseated warrant.³²

The court observed that there was substantial evidence that CPLC had deliberately defaulted on its taxes, finding that the timing of CPLC's default was conveniently in the same year that CPLC completed its extensive bark-peeling activities.³³ Furthermore, the court determined after viewing the facts in the light most favorable to the defendants, it was probable that CPLC strategically defaulted on its taxes in 1907 and used McCauley as its agent³⁴ to hold the warrant for the two-year redemption period, and then quitclaim it back to CPLC.³⁵ The court recognized "[i]t is generally true that the owner of a surface or subsurface estate is not barred from obtaining better title at a treasurer's sale," but the court went on further to state that it could not find a Pennsylvania case which applied this rule to the facts

²⁶ *Pennsylvania Game Commission*, 2020 WL 1922628 at 18.

²⁷ *Id.*

²⁸ *Id.* at 13.

²⁹ *Id.*

³⁰ *Id.* citing *Powell v. Lantzy*, 34A. 450, 451 (Pa. 1896) (emphasis added) (citing *Chambers v. Wilson*, 2 Watts 495 (Pa. 1834); *Coxe v. Wolcott*, 27 Pa. 154 (1856)).

³¹ *Id.*

³² *Id.* at 13.

³³ *Id.* at 14.

³⁴ McCauley from 1904 to 1916, "purchased at tax sales more than 100 properties that were previously owned by CPLC and later quitclaimed those tracts back to CPLC. CPLC's articles of incorporation and other internal documents, as well as additional historical records predating the tax sale, identify McCauley as CPLC's 'Real Estate Agent.' McCauley also appeared as an attorney for CPLC in state court proceedings shortly after the time of purchase." *Id.* at 11.

³⁵ *Id.* at 14.

that were before it.³⁶ The court continued to indicate that it found no controlling Pennsylvania precedent as to whether CPLC owed a duty to pay 1907 taxes, and admits that its task was to predict how Pennsylvania courts would rule on the issue.³⁷ The court concluded that although an owner of unseated land did not have any personal liability for failing to pay taxes due and payable, the Commonwealth of Pennsylvania has always recognized a duty to pay such taxes.³⁸ Therefore, the court found that CPLC had a duty to pay its taxes on the unseated warrant and could not itself improve its title by purchase at a tax sale by defaulting on said taxes.³⁹ As a result, the genuine factual issue of whether McCauley had acted as CPLC's agent was material.⁴⁰ The court did not grant the defendants motion for summary judgment because it recognized that a factfinder would need to determine whether the defendants had proven that McCauley actually acted as the agent of CPLC.⁴¹

Conclusion

It appears that the court has added yet another wrinkle for oil and gas operators, landowners, and title

examiners alike in an area of Pennsylvania law that is already quite convoluted. Cases such as *Herder Spring*, among others, had started to provide some clarity in title wash cases, albeit limited to specific fact patterns. Prior to the court's opinion in this case, it is likely that a reasonable title examiner would have treated the defendants' severed oil and gas interest as being effectively title washed via the tax sale based on the facts set forth in the case and existing Pennsylvania law. However, after the ruling in the present case there is now authority, at least in federal court, that evidence of agency could have significant bearing on the ownership of highly valuable oil and gas assets.

From a title examiner's perspective, the issue of agency could possibly be difficult to analyze due to a potential lack of record notice surrounding the creation of an agency relationship. Depending on the facts, creation of an agency relationship may need to be determined by a factfinder, which could cause undue delay for oil and gas operators who are determining from which parties they need to obtain oil and gas leases to avoid legal issues such as trespass. The current case is still being litigated and there will undoubtedly be further developments on title wash tax sales. ■

³⁶ *Id.*

³⁷ *Id.* at 15.

³⁸ *Id.* at 16 citing *Herder Spring*, 143 A.3d at 366 (emphasis added) (quoting *Strauch*, 1 Watts & Serg. 15 176) and *Breich v. Coxe*, 81 Pa. 336, 346 (1876).

³⁹ *Id.* at 17.

⁴⁰ *Id.*

⁴¹ *Id.* at 18.



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Advisory committees aren't ready to buy into CO2 cap-and-trade plan

Recent votes by two of the Department of Environmental Protection's advisory committee reflect a concern that Governor Wolf is rushing ahead with regulations enabling Pennsylvania to join the Regional Greenhouse Gas Initiative (RGGI) without providing a full picture of the implications of committing the Commonwealth to the CO2 cap-and-trade program.

On May 7, DEP's Air Quality Technical Advisory Committee failed to take a position on the proposed carbon-reduction regulation covering power plants. After a long discussion of the proposal, the group voted 9 to 9 with one abstention on a motion to recommend DEP present the proposed regulation to the Environmental Quality Board (EQB) for consideration.

Members expressed concerns about the potential economic impact of the proposal, especially given that DEP has not yet completed its evaluation of the program's impact on the state's economy. The abstention came from the representative of the environmental group Earthjustice, who said he could not support the program without better provisions addressing environmental justice issues.

Then on May 19, the Citizens Advisory Council (CAC) voted 9 to 4, with one abstention, against a motion to move the proposal to the EQB to formally begin the rulemaking process.

CAC spent more than two hours hearing from more than 40 commenters for and against the proposal as part of its virtual meeting. The representative who cast the abstaining vote said he believed the public had a right to see the economic impact analysis of the proposal, which is not yet available, but acknowledged Wolf's October 2019 executive order directed DEP to present a regulation to the EQB in July regardless of what the council says.



As we reported in last month's *PIOGA Press*, the RGGI proposal has come under significant opposition from members of the legislature, particularly in light of the impact of the COVID-19 pandemic on the state's economy. More recently, state Senator Gene Yaw (R-Lycoming) issued a statement in response to the rejection by New York's and New Jersey's environmental

agencies of Williams' 400-MMcfd Transco Northeast Supply Enhancement project. In his remarks, the chair of the Senate Environmental Resources and Energy Committee also criticized the push to join RGGI.

"At the same time as our neighboring states work to stop pipeline development, our own governor pushes to join with these states by participating in the Regional Greenhouse Gas Initiative," Yaw said. "Under RGGI, those states stand to benefit from our power generation, while telling us how to produce that power.

"To participate in RGGI is to ignore the positive environmental impacts that are taking place right here in Pennsylvania, which include a dramatic reduction in carbon emissions over the past two decades. According to the U.S. Energy Information Administration, CO2 emissions from Pennsylvania's electric power sector have declined by 36 percent since 2010, thanks in large part to the increased use of natural gas for electric generation. New York and New Jersey need to follow our lead."

The House Environmental Resources and Energy Committee was scheduled to meet on June 9 to consider House Bill 2025, a bill that would bar DEP from adopting regulations for a greenhouse gas cap-and-trade program unless authorized by the General Assembly. HB 2025 also would take away the ability of Pennsylvania to join the Northeast Regional Transportation and Climate Initiative, if the administration makes the decision to join.

It's not clear that HB 2025 or its Senate companion, SB 950, could pass with veto-proof majorities, or even that enough Democrats would be willing to buck their governor by attempting to override a veto.

No matter what the advisory groups, lawmakers, labor organization or industry say, the governor is determined to see his RGGI proposal to fruition.

"The administration is not considering suspending the implementation of RGGI in Pennsylvania," Wolf's press secretary responded after a bipartisan group of 58 members of the House of Representatives signed a letter urging the governor to end the RGGI initiative.

Under the schedule used in DEP presentations, the rulemaking is to be presented to the EQB at its July 21 meeting. If approved, a formal comment period would open in September. ■

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Reopening offices during the coronavirus pandemic

By Carol Delfino, CIH, CSP
SE Technologies

As more of Pennsylvania moves from the COVID -19 red to yellow and yellow to green phases, offices are trying to reopen and finding the times to be confusing and uncertain. During the PIOGA Safety Committee meeting in May, members gave tips for opening businesses and conducting operations safely during the pandemic. Below are highlights of the discussion:

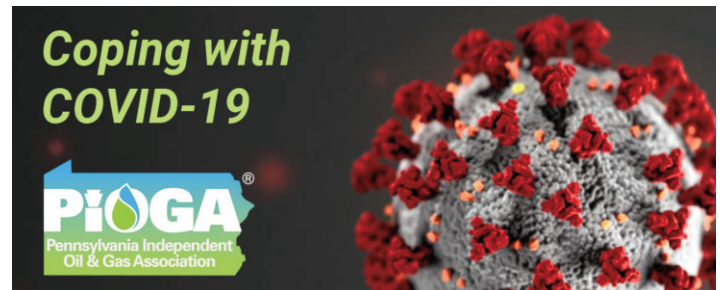
- Communication is most important. Communicate honestly and often with employees, emphasizing that things are changing rapidly and no one has all the answers.
- Encourage feedback from employees and keep the lines of communication open.
- It is important to follow mandates issued by local, state and federal governments, as well as protocols recommended by the Centers for Disease Control and other entities.
- COVID-19 should be a part of all safety discussions. Emphasize the importance of using a mask, social distancing and proper personal hygiene procedures.
- Emphasize the symptoms of the illness, the importance of temperature screenings and performing a self-check screening for symptoms

Safety Committee Corner

before coming into work.

- Have a backup plan for sourcing PPE. Nitrile gloves are the most difficult item to find right now.
- Face masks—100-percent cotton cloth works better than synthetics or blends.
- Obtaining thermometers can be a challenge.
- Travel for some companies is restricted to one day.

Developing reopening plans are challenging. Seek guidance from the CDC website (www.cdc.gov/coronavirus/2019-ncov/index.html) and the Pennsylvania Department of Health (www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx). PIOGA's COVID-19 response page (pioga.org/pioga-and-covid-19-response) also contains many useful resources. ■



Employers: Beware of fraudulent specialty contractor licenses

By Shawn A. Morgan and Ryan Loos
Steptoe & Johnson PLLC

Chemical processing, oil and gas transmission, and water industry employers are advised to double-check the validity of workers' specialty contractor licenses. Employers in industries which use workers holding specialty contractor licenses, particularly any electrician license or explosive license appearing to have been issued in West Virginia, should verify that those licenses are valid and not fraudulent.

The Pennsylvania Criminal Intelligence Center (PaCIC) has issued a request for information asking chemical, energy and water companies to report the discovery of fraudulent specialty contractor licenses to it at sp-protectpa@pa.gov or 855-772-7768.

The PaCIC reports a trend of foreign workers from Guatemala and Honduras working illegally at natural gas pipeline construction sites in Pennsylvania, West Virginia and North Carolina, but while using a false address and while in possession of fraudulently obtained West Virginia specialty licenses for electrical and explosives contractor work. It suspects such workers to be in the U.S. illegally and in possession of additional types of fraudulent identifications (driver's license, SSN, green card or consulate IDs). Because

many other states give reciprocity to West Virginia-issued specialty contractor licenses, this trend could affect companies in a broad range of industries.

Careful inspection (and re-inspection) of these specialty worker certifications can protect employers by identifying fraudulent conduct that otherwise may endanger a worksite and surrounding areas. ■

If you have concerns about the potential ramifications of your review of these specialty contractor licenses, or if you need assistance in reporting similar incidents arising outside of Pennsylvania, please contact Shawn Morgan at 304-933-8119 or shawn.morgan@steptoe-johnson.com, or Ryan Loos at 304-933-8158 or ryan.loos@steptoe-johnson.com.



IRRC (again) reschedules consideration of well permit fee increase

The Independent Regulatory Review Commission (IRRC) is expected to act June 18 on final regulations increasing the permit fee for unconventional wells to \$12,500 from \$5,000 for horizontal wells and \$4,200 for vertical wells.

The final regulation was transmitted to the IRRC on February 14 and the commission has postponed consideration of the regulation four times since then due to COVID-19 restrictions. June 18 will be the first time all of

the commissioners will be out from under stay-at-home orders since the pandemic began. The Regulatory Review Act has a provision that commissioners must be physically present to be counted toward the quorum.

Under the Oil and Gas Act, the Department of Environmental Protection may periodically adjust well permit fees to cover the cost of administering the oil and gas management program. DEP first started to develop this regulation in February 2018.

In documents explaining its rationale for seeking the fee increase, DEP said that since the last unconventional well permit application fee increase in 2014, well permit application fees have not generated the revenue needed to fund program costs because of declining numbers of applications. At the same time, the department said, the oil and gas program's workload "has increased due

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to the additional well inventory, development activity, and the need for guidance and technical tools to stay current with industry environmental standards.”

In response to the declining permit fee revenue, DEP substantially reduced oil and gas program staff and operating costs, DEP said.

“With the significant reduction in staff, the Oil and Gas Program now struggles to meet its gas storage field inspection goals, consistently achieve permit review time frames, adequately fund training opportunities for staff and provide training for the industry,” DEP continued. “Important program development initiatives, such as policies, best practices and technical guidance documents, have been put on hold indefinitely due to the lack of sufficient staff to develop and update these important pieces of the Program necessary to administer the 2012 Oil and Gas Act. In short, the program has been challenged to provide an adequate level of high-

quality service to the public and to the industry.”

The revenue projections done for the regulation were based on DEP receiving 2,000 permits a year and over the last 18 months those applications have dropped off significantly, primarily because of natural gas market conditions. In 2019, 1,705 permit applications were received, 1,478 of which were for unconventional wells.

Consideration by the IRRC is generally the last stop in the rulemaking process, prior to final publication in the *Pennsylvania Bulletin*, before a regulation takes effect.

The permit fee for conventional wells remains unchanged.

The full regulatory package—including the Regulatory Analysis Form providing DEP’s justification for seeking the permit fee increase as well as 25 pages of public comment and the department’s responses to those comments—can be found at www.irrc.state.pa.us/docs/3206/AGENCY/3206FF.pdf. ■

Ninth Circuit denies emergency motion for partial stay of Montana district court’s NWP 12 vacatur

Lisa M. Bruderly
Ben Clapp

On May 28, the Ninth Circuit denied the U.S. Army Corps of Engineers’ request for an emergency stay pending appeal of a Montana district court’s vacatur of Nationwide Permit (NWP) 12 in Northern Plains Resource Council, et al. v. Army Corps of Engineers, a challenge to the Keystone XL Pipeline. As a result of the denial, NWP 12 remains unavailable for the construction of new oil and gas pipelines. The ruling means continued permitting delays are likely for pipeline developers seeking federal authorization for stream and wetland crossings and any resulting discharge of dredged or fill material into waters of the United States under Section 404 of the Clean Water Act (CWA).

A Montana district court’s April vacatur of NWP 12 was based on the judge’s determination that the Corps failed to comply with the Endangered Species Act (ESA) when NWP 12 was last issued in 2017. The decision was interpreted as a broad vacatur of NWP 12, extending beyond permitting of the Keystone XL Pipeline. In a significant positive development for permittees proposing work on existing pipelines, on May 11 the district court narrowed the scope of its original vacatur “to the construction of new oil and gas pipelines” with NWP 12 remaining “in place

Authors:



Lisa M. Bruderly



Ben Clapp

—
Babst Calland

during remand insofar as it authorizes non-pipeline construction activities and routine maintenance, inspection, and repair activities on existing NWP 12 projects.”

For pipeline developers, however, the stay sought by the Corps represented the final possibility of continuing to conduct work under NWP 12 during the long appellate process. The Ninth Circuit denied the Corps’ request on grounds that the Corps had not demonstrated a likelihood of success on the merits or probability of

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irreparable harm if the stay was not granted.

The likely consequences of the denial are significant to pipeline developers and the producers that may have been relying on the construction of certain infrastructure. The ruling increases the possibility that construction windows will be missed for this year, resulting in potential cost overruns and liabilities for failure to meet construction milestones.

Until this matter is resolved judicially or the Corps issues a new NWP 12 consistent with the Montana district court's remand, pipeline developers will likely need to apply for an individual Section 404 permit to proceed with stream and wetland crossings, generally a far more costly and time-consuming process than receiving

authorization to work under an NWP. The timeframes for processing individual permit approvals may be further extended due to a likely influx of applications for projects that can no longer use NWP 12. Another option may be seeking coverage under a different NWP, if applicable. ■

If you have questions about the ongoing repercussions of the Northern Plains litigation or Section 404 permitting in general, please contact Lisa Bruderly at 724-910-1117 or lbruderly@babstcalland.com, or Ben Clapp at 202-853-3455 or bclapp@babstcalland.com.

EPA issues final rule to prevent states from blocking pipelines

The U.S. Environmental Protection Agency is removing a device some states have used to block construction of federally approved pipelines. In recent years, states have exercised authority under Section 401 of the Clean Water Act (CWA) that gives them the power review new projects to make sure they do not impact local water. New York has used this power several times to deny a key water quality permit for pipelines that would bring Pennsylvania-produced natural gas into that state.

Last August, the EPA announced it would update the rule "to increase the predictability and timeliness of Section 401 certification." The initiative was in response to an executive order by President Trump aimed at speeding up approval processes for energy infrastructure.

On June 1, the agency issued a final rule that EPA Administrator Andrew Wheeler explained will specify timelines for state review and require final action within one year of receiving an application. It also limits the

scope of the Section 401 review, instructing states to look only at direct effects on local water quality, not larger issues such as climate change.

"EPA is returning the Clean Water Act certification process under Section 401 to its original purpose, which is to review potential impacts that discharges from federally permitted projects may have on water resources, not to indefinitely delay or block critically important infrastructure," Wheeler said in announcing the final rule.

The final rule:

- Specifies statutory and regulatory timelines for review and action on a Section 401 certification—requiring final action to be taken within one year of receiving a certification request.
- Clarifies the scope of Section 401, including making clear that 401 certification is triggered based on the potential for a project to result in a discharge from a point source into a water of the United States. When states look at issues other than the impact on water

quality, they go beyond the scope of the Clean Water Act.

- Explains EPA's roles under Section 401.
- Reaffirms the agency's statutory responsibility to provide technical assistance to any party involved in a Section 401 water quality certification process.
- Promotes early engagement and coordination among project proponents, certifying authorities and federal licensing and permitting agencies.

Wheeler stated that the new rule applies only to future projects.

The American Petroleum Institute issued the following statement in response to the EPA action: "API believes this rule will provide a rigorous, consistent and transparent



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process for water quality certifications for energy developers and manufacturers, while ensuring that the public plays an important role in the regulatory process. We support the Clean Water Act, and though certain states have continued to go well beyond its scope for water quality certifications, we hope the addition of a well-defined timeline and review process will provide certainty to operators as they develop infrastructure projects that meet state water quality standards.”

The rule becomes effective 60 days after publication in *The Federal Register*. It is expected to be challenged by states and environmental groups.

“The 401 rule will be challenged, and there is some potential legal vulnerability,” said PIOGA member Steptoe & Johnson PLLC in a June 2 client alert. “For example, the rule takes on a 1994 Supreme Court decision that considered the scope of a state’s authority to condition a Section 401 certification and concluded that Section 401 authorizes a state to impose conditions on the activity as a whole, not just the discharge (*PUD No. 1 of Jefferson County v. Washington Department of Ecology*). There will likely be challenges that the new rule is contrary to the Supreme Court’s prior ruling. Several states have already indicated that they would challenge the rule. In addition, we may see efforts to undo the rule by a future administration or Congress.”

The 289-page final rule can be found at www.epa.gov/cwa-401. ■

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Board of Directors nominations now open

Do you have a passion for the oil and gas industry here in Pennsylvania and want to make a difference? Is your company directly impacted by the issues that surround our industry and you want to help lead the charge in how PIOGA fights on behalf of our member companies and all the employees/families that are sustained by this industry? If so, then we want you on the Board of Directors!

PIOGA is calling for the next leaders in the industry to step forward. The PIOGA board is instrumental in providing leadership and direction for the association and for the oil and gas industry in Pennsylvania. The Executive Committee of PIOGA is soliciting nominees to fill the open board seats. Nominees will serve a three-year term, 2020-2023.

Board members are the fiduciaries who steer the organization toward a sustainable future by adopting sound, ethical, and legal governance and financial management policies, as well as by making sure the association has adequate resources to advance its mission. Board members are the *Ambassadors of the Association* and represent the interests of the members and promote the growth of the association. The Board of Directors meets approximately seven times a year (bimonthly board meetings plus the Annual Meeting) and we ask directors to serve on a committee as well. The time commitment is approximately 100 hours a year attending various meetings and other association work.

According to the bylaws any **Full PIOGA Member** (*this excludes Associate, Royalty Owners, Student and Emeritus*) are eligible for nomination and election.

If you would like to nominate a candidate or candidates, or self-nominate, please email Danielle Boston (danielle@pioga.org) the name, contact information and, if possible, bio/resume of any candidates. The nomination deadline is June 30 at 5 p.m.

If you have questions or want to further discuss the role of a board member, contact Board Chairman Gary Slagel at gary.slagel@steptoe-johnson.com or President & Executive Director Dan Weaver at dan@pioga.org. ■

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PIOGA Member News

Governor recognizes New Pig for providing PPE products during coronavirus crisis

New Pig Energy was among several Pennsylvania-based businesses highlighted by Governor Tom Wolf on May 27 for stepping up to assist first responders, health care systems and life-sustaining businesses by shifting production to much needed medical equipment, products used for personal protective equipment (PPE) and sanitization during the COVID-19 pandemic.

New Pig of Tyrone in Blair County, which normally focuses on containment in the oil and gas industry, expanded its operations to supply FDA-registered, World Health Organization-formula medical-grade hand sanitizer and disposable ANSI-certified full-face shields. "These production efforts are still ongoing and are continuing to help us build our stockpile in anticipation of a resurgence," Wolf said of New Pig and the other companies that were recognized. "Whether big or small, I am grateful to every business and every worker who assisted in this effort."

Martin assumes CEO role at Larson Design Group

Larson Design Group (LDG), a national architecture, engineering and consulting firm headquartered in Williamsport, has announced a key change in top leadership. David Martin, LDG's President and COO, has assumed the CEO role from Keith Kuzio, who served for nearly 20 years as President and 15 years as CEO, during which LDG increased net revenues by 325 percent. Kuzio will transition to a leadership advisory role with the company.

As COO since 2016, Martin used his 30-plus years of experience in growing companies, both organically and through strategic acquisition, to build on Kuzio's strong track record. Martin's background encompasses operations and project management, engineering design of buildings, and infrastructure projects in the commercial, federal and institutional marketplace.

Martin, a registered Professional Engineer, holds a Bachelor of Science in Architectural Engineering from Pennsylvania State University and has completed graduate engineering and business studies at the University of South Carolina and Clemson University. A dedicated and energetic community leader, Martin is a graduate of Leadership Pittsburgh, serves as a board member for the Carnegie Science Center and is a building committee member for the Center's new PPG Science Pavilion.

Martin will lead LDG from the Pittsburgh office, while also maintaining an office at the Williamsport headquarters. ■

CTG RACT rule in depth *Continued from page 3*

the October 20, 2016, Control Technique Guideline (2016 O&G CTG) document prepared by the U.S. EPA. The VOC RACT recommendations of the 2016 O&G CTG were developed using the technical and supporting information U.S. EPA developed for 40 CFR Part 60 Subpart OOOOa – Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015 (Subpart OOOOa). As a result, the level of VOC control expressed in the 2016 O&G CTG reflects many of the limits of Subpart OOOOa. The Pennsylvania Department of Environmental Protection (DEP) also made two RACT determinations that are more stringent than the 2016 O&G CTG:

- DEP has proposed a lower potential to emit (PTE) VOC applicability threshold for storage vessels at unconventional well sites installed on or after August 10, 2013, natural gas gathering and boosting stations, natural gas processing plants, and storage vessels in the natural gas transportation and storage segment. DEP proposed this lower PTE applicability to prevent ozone attainment backsliding.
- DEP has proposed that affected owners and operators conduct monthly audio, visual and olfactory (AVO) inspections and quarterly leak detection and repair (LDAR) inspections of fugitive emissions components at affected facilities, versus semiannually at well sites and quarterly at gathering and boosting stations as recommended in the 2016 O&G CTG for fugitive emissions components at the respective oil and gas sites.

Storage vessel VOC PTE applicability threshold in tons per year (TPY)	For storage vessels located at...
≥ 6.0 TPY VOC	Conventional well sites
≥ 6.0 TPY VOC	Unconventional well sites installed prior to August 10, 2013
≥ 2.7 TPY VOC	Unconventional well sites installed on or after August 10, 2013
≥ 2.7 TPY VOC	Natural gas gathering and boosting stations
≥ 2.7 TPY VOC	Natural gas processing plants
≥ 2.7 TPY VOC	Natural gas transmission and storage segments

vessels, natural gas-driven pneumatic controllers, natural gas-driven diaphragm pumps, compressors, and fugitive emissions components at existing well sites, gathering/boosting stations and processing plants. Because the proposed rule is for “existing sources” as of the promulgation date of the rule, there are no requirements for well completions or new installations, which are otherwise regulated by 40 CFR Part 60 Subpart OOOOa, General Permit (GP) Nos. 5 and 5A, or affected by Pennsylvania Exemption No. 38(a), 38(b), or 38(c). The CTG RACT rule requirements, as proposed, are summarized below.

Storage vessels

The proposed CTG RACT rule storage vessel requirements will apply to tanks that meet the following applicability thresholds:

The PTE for each storage vessel must be determined using a generally accepted model or calculation methodology, based on maximum average daily throughput. Owners or operators of storage vessels that exceed the specified PTE thresholds must reduce VOC emissions by 95.0 percent by weight or greater by either (1) routing the VOC emissions to a control device or process through a closed vent system, or (2) equipping the storage vessel with a floating roof that meets the requirements of 40 CFR Part 60, Subpart Kb – Standards of Performance for Storage Vessels for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. There are certain exceptions and categorical exemptions to the storage vessel requirements proposed at 25 Pa. Code §§129.123(c) and (d).

The requirement to determine rule applicability to storage vessels at existing conventional well sites could be substantial based on the DEP estimated 71,000 conventional well sites in operation statewide. Conventional operators will be required to calculate the PTE of VOC emissions for each existing storage vessel at well sites and gathering and boosting stations to determine whether the vessels are subject to the control requirements of the rule. Conventional operators have the option to accept PTE emissions limitations of VOC to 6.0 TPY on storage vessels so long as actual VOC emissions are less than 4.0 TPY, which implies that VOC emissions

Help us with PIOGA comments

The Environmental Quality Board is accepting public comment on the CTG RACT rule until July 27, and the Air Quality/Emissions Subcommittee of PIOGA’s Environmental Committee is leading the development of formal comments on behalf of the association’s members. Members who may be impacted are encouraged to review the proposed rulemaking at www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-21/684.html and provide input. Comments may be directed to subcommittee co-chair Roy Rakiewicz at rrakiewicz@all4inc.com.

The proposed CTG RACT rule (25 Pa Code §§129.121 – 130) includes general provisions and applicability, definitions, requirements for affected sources along with monitoring, recordkeeping, testing and reporting provisions. The rule specifies VOC requirements for storage

from such storage vessels will need to be tracked on a rolling 12-month basis.

Natural gas-driven pneumatic controllers

The CTG RACT rule requirements will apply to natural gas-driven pneumatic controllers located prior to the point of custody transfer of oil to an oil pipeline or of natural gas to the natural gas transmission and storage segment. Owners or operators must tag all affected natural gas-driven pneumatic controllers with the compliance date and an identification number and also must ensure that the natural gas bleed rate of the controller(s) meets the following standards:

- ≤ 6.0 standard cubic feet per hour (SCFH) if located either (1) between a well head and a natural gas processing plant or (2) between a well head and a point of custody transfer to an oil pipeline.
- Zero SCFH if located at a natural gas processing plant.

Natural gas-driven diaphragm pumps

The CTG RACT rule requirements will apply to natural gas-driven diaphragm pumps located at a well site or natural gas processing plant. The RACT requirement for affected natural gas-driven diaphragm pumps is to reduce VOC emissions by 95.0 percent by weight or greater by complying with the following:

- At well sites—route the VOC emissions to a control device or process through a closed vent system.
- At natural gas processing plants—maintain a VOC emissions rate of zero SCFH.

There are certain exceptions and exemptions to the pump requirements proposed at 25 Pa. Code §§129.125 (c) and (d).

Compressors

The CTG RACT rule requirements will apply to reciprocating compressors and to centrifugal compressors using wet seals located between the wellhead and point of custody transfer to the natural gas transmission and storage segment (i.e., gathering and boosting stations). Compressors at transmission compression stations are not subject to the rule. The proposed standards for affected compressors are as follows:

- Reciprocating compressors—replace the rod packing on or before the reciprocating compressor has operated for 26,000 hours or 36 months. Alternately, the owner/operator may route the VOC emissions to a process by using a reciprocating compressor rod packing emissions collection system that operates under negative pressure and meets the requirements of 25 Pa. Code

§129.128(a).

- Centrifugal compressors using wet seals—reduce VOC emissions from each centrifugal compressor wet seal fluid degassing system by 95.0 percent by weight or greater by equipping the wet seal fluid degassing system with a cover that meets the requirements of 25 Pa. Code §129.128(a) and routing emissions through a closed vent system to a control device or a process.

There are certain exemptions to the compressor requirements proposed at §129.126(d).

Fugitive emissions components

The CTG RACT rule requirements for fugitive emissions components are proposed as follows:

For fugitive emissions components located at...	The fugitive emissions standards are...
Well sites with average production less than 15 barrels of oil equivalent per day	Not applicable
Well sites with gas-to oil ratio (GOR) < 300	Recordkeeping under 25 Pa. Code §129.130(g)(1)
Well sites with GOR ≥ 300, Natural gas gathering and boosting stations, and natural gas processing plants	Monthly AVO inspections
	Quarterly LDAR inspections

Other requirements related to fugitive emissions components under the CTG RACT rule include development of fugitive emissions monitoring plan(s), procedures for verification and operation of optical gas imaging (OGI) equipment and use of U.S. EPA Method 21 gas leak detection equipment, leak repair requirements, and options for decreased or extended LDAR inspection intervals. The frequency of required LDAR inspections may be decreased to semi-annually if less than 2 percent of fugitive emissions components are found to be leaking for two consecutive quarterly surveys.

Other requirements

Additionally, the CTG RACT rule includes extensive requirements associated with covers, closed vent systems and air pollution control devices that mostly mirror the same provisions of Subpart OOOOa. The requirements include design and certification provisions, testing provisions, operating limits, and recordkeeping provisions. The administrative requirements of the rule include monitoring, recordkeeping, and reporting and the preparation, certification, and submittal of an initial compliance report one year after the effective date of the published final rule and annually thereafter, to DEP. The preamble to the proposed rule mentions the availability of “case-by-case” RACT analyses if the owner or operator cannot meet the provisions of the proposed rulemaking, but such provisions are not explicit in the rule proposal.

Conclusion

The CTG RACT rule, when finalized, will somewhat harmonize requirements for oil and gas operations across the state. However, the breadth of the rule may disproportionately affect conventional operators due to

the sheer number of existing (> 71,000) conventional wells in operation in Pennsylvania and the age of such operations. Up to this point, DEP envisions that the well site fugitive emissions requirements will impact a handful of conventional operators based on the typically low production rates (i.e., < 15 barrels of oil equivalent per day) of existing conventional wells.

However, conventional operators will be required to evaluate the PTE of existing storage vessels associated with well sites and gathering/boosting stations and will also need to evaluate the applicability of the rule to gathering and boosting compressors, natural gas driven controllers and natural gas driven pneumatic pumps. The impact is disproportionate because most unconventional operations are currently regulated by Subpart OOOOa, GP-5 and GP-5A, or the provisions of Pennsylvania Exemption No. 38a, 38b, or 38c.

Up to this point, conventional operations have been largely unaffected by the existing oil and gas regulatory landscape. The proposed CTG RACT rule, when finalized, will alter that landscape. ■

Marginal Well Credit for 2019 natural gas production announced

PIOGA's Tax Committee wishes to notify members that the Internal Revenue Service announced May 18 in Notice 2020-34 that the Marginal Well Production Credit (MWC) for natural gas production from qualifying wells in calendar year 2019 is \$0.08 per Mcf for the first 18 Mcf of daily production.

Even though there was no MWC available for 2018 production there were credits for 2016 and 2017 production of 14 and 51 cents per Mcf, respectfully, for the first 18 Mcf of daily production from a marginal well.

The credits may be used to offset regular income tax but may not offset alternative minimum tax. Any unused credit in a year is carried back five years to obtain refunds. Any remaining unused credits are carried forward up to 20 years to offset future years' income tax.

If you have questions about this announcement or the application of these credits, please contact Tax Committee Chair Bill Phillips (bill.phillips@actcpas.com, 304-624-5471) or Marlin Witt (marlin.witt@actcpas.com, 304-346-0441), both of the Oil and Gas Industry Services Group at Arnett Carbis Toothman, LLP. ■

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Legislative notes *Continued from page 1*

try can continue to serve as a valuable energy source for homes and businesses across the Commonwealth,” he added.

Causer noted the bill, which would serve as the framework for future changes to rules impacting the conventional industry, is the latest step in a years-long fight to stop the state Department of Environmental Protection from applying regulations intended to address the unconventional industry to the smaller, conventional operations.

“The industry is struggling immensely, and a significant cause of that struggle is the lack of understanding and purposeful misrepresentation of how our conventional oil and gas operations work in a safe and environmentally conscious manner,” Causer said.

This piece of legislation, which is strongly supported by PIOGA, has been in play for a year now. It was introduced in June 2019 and won the Senate’s approval by a margin of only three votes in October. Following the House passage last month, SB 790 now goes back to the Senate for approval of amendments made in the House. The amendments removed a provision that would have allowed the resumption of spreading or produced water as a dust suppressant on dirt roads and also raised the threshold for reporting or spills of crude oil and produced water.

With Senate approval, the bill would go on to Governor Tom Wolf. We remain hopeful the governor will change his stance and ultimately sign this much-needed legislation into law.

Wolf vetoes bill pausing rulemakings during pandemic

Governor Wolf on May 19 vetoed a bill that would pause new regulations in Pennsylvania until after his COVID-19 disaster emergency declaration expires. Under SB 327, proposed regulations could not become final, and final rules could not be enacted, until 90 days after the declaration is ended by executive order or law.

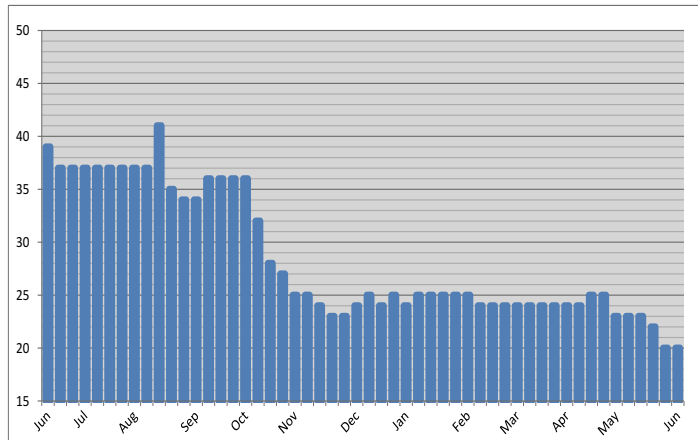
Among the proposed Department of Environmental Protection regulations that would have been affected by the pause are the permit fee increase for unconventional wells and a rule controlling emissions of volatile organic compounds from existing oil and gas facilities. Also potentially impacted would have been the administration’s plan to join the Regional Greenhouse Gas Initiative carbon cap-and-trade program. *(See articles on these topics elsewhere in this issue.)*

A spokesman for the House Republican Caucus said pausing the regulatory process is necessary to give lawmakers and government agencies time to focus on the more pressing issue of COVID-19. However, in his veto message, Wolf said the prohibition would violate the separation of powers between the legislative and executive branches and would halt an essential government operation.

Continues on page 22

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices



Natural Gas Futures Closing Prices

Month	Price
July	\$1.809
August	1.905
September	1.959
October	2.047
November	2.384
December	2.828
January 2021	2.965
February	2.927
March	2.812
April	2.495
May	2.463
June	2.494

Prices as of June 9

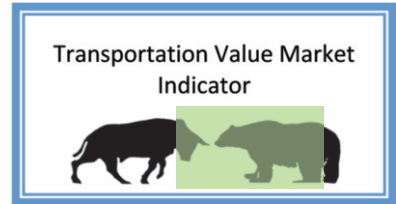
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 Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG
 Baker Hughes rig count: phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-report-sother
 NYMEX strip chart: Nucomer Energy, LLC, emkeyenergy.com

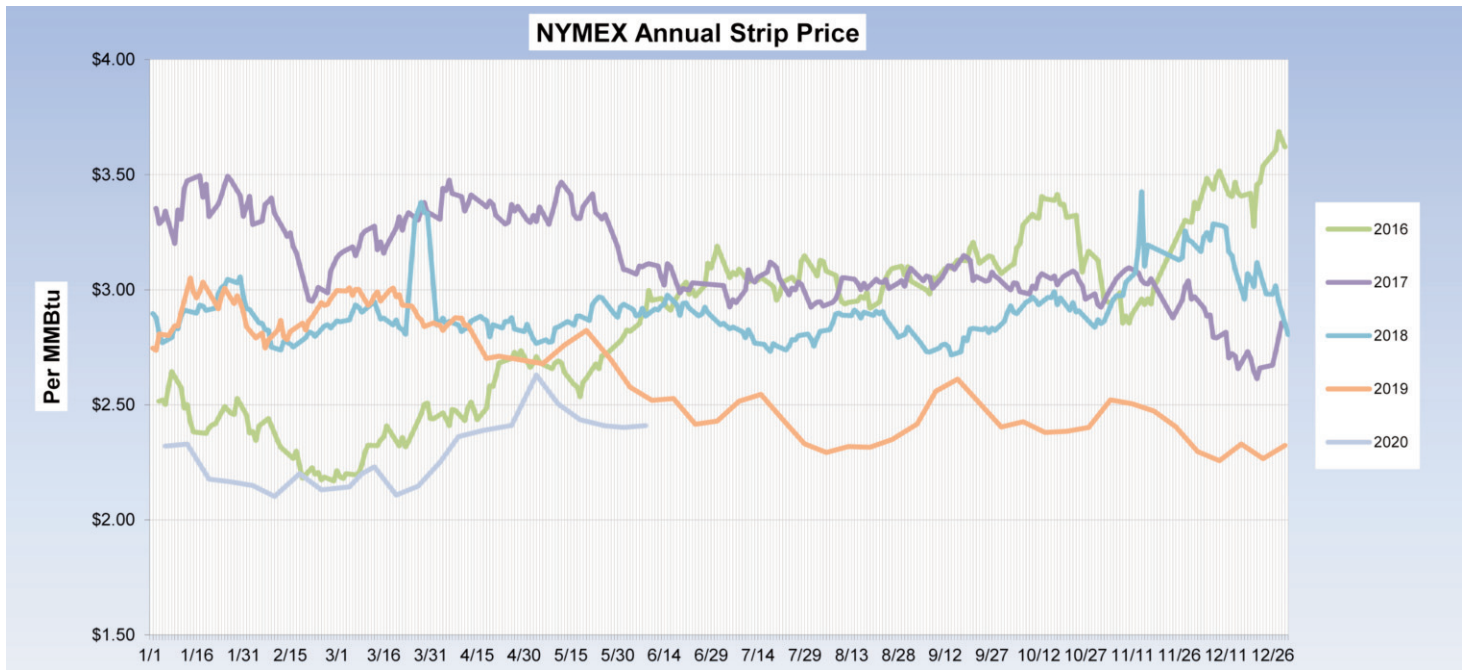
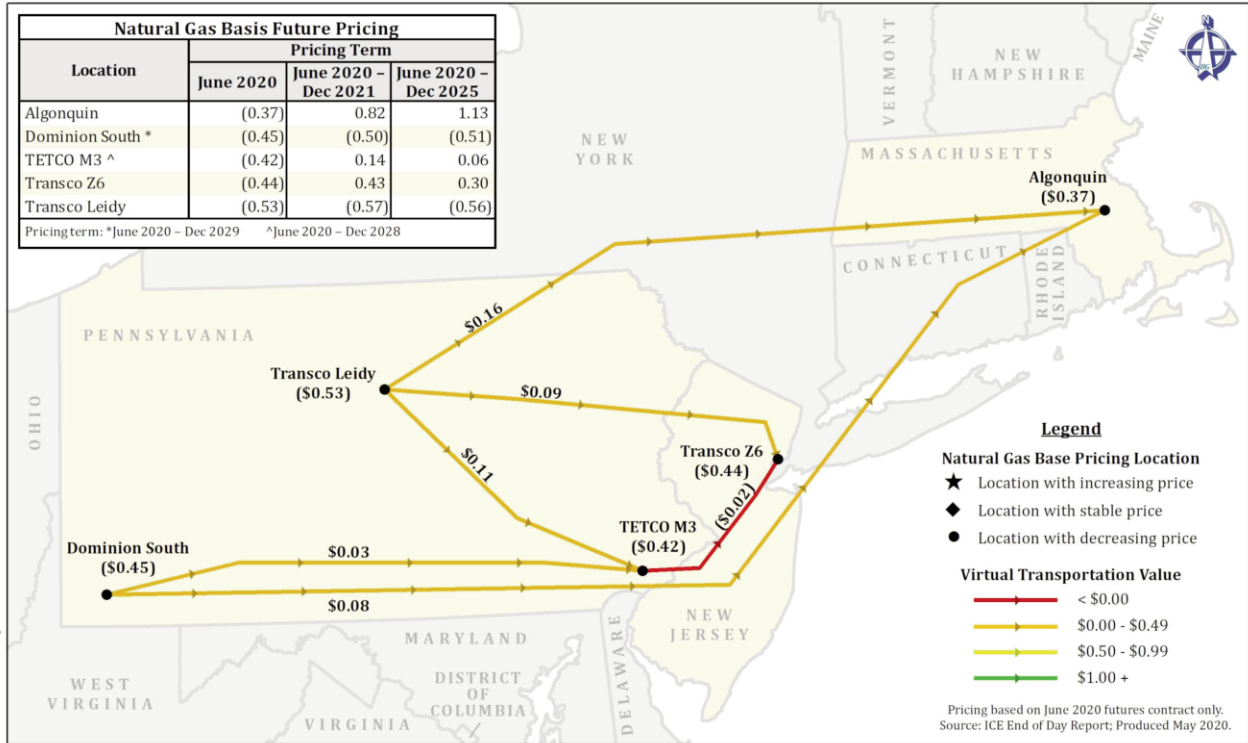
Northeast Pricing Report – June 2020

For the duration of the entire trading period term, except for minor increases, each trading point continued to slide. Algonquin had the largest decrease of \$0.19 per MMBtu. Dominion South had the lowest decrease of \$0.11 per MMBtu. For the one-year trading term, trading was very consistent. Algonquin and Transco Z6 decreased \$0.08 per MMBtu each. Dominion South had the lowest decrease again at \$0.04 per MMBtu. The full-term trading saw little change across the board. While there was not great volatility, prices show no sign of increasing significantly. More seasonal temperatures in the Northeast may help to support prices for July.

Transportation values also saw little change. Dominion South to Algonquin decreased the most at \$0.08 per MMBtu. Transco Leidy to Algonquin decreased \$0.04 per MMBtu. The net difference resulting in Transco Leidy to Algonquin having nearly double the value as Dominion South to Algonquin. Typically, there is little difference between these two transportation routes. Transco Leidy to TETCO M3 was the only transportation route that had an increase, of \$0.01 per MMBtu.



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



Spud Report: May 2020



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
Cabot Oil & Gas Corp	13	5/7/20	115-22729	Susquehanna	Dimock Twp
		5/7/20	115-22730	Susquehanna	Dimock Twp
		5/7/20	115-22731	Susquehanna	Dimock Twp
		5/7/20	115-22732	Susquehanna	Dimock Twp
		5/7/20	115-22733	Susquehanna	Dimock Twp
		5/7/20	115-22734	Susquehanna	Dimock Twp
		5/10/20	115-22712	Susquehanna	Harford Twp
		5/10/20	115-22713	Susquehanna	Harford Twp
		5/10/20	115-22714	Susquehanna	Harford Twp
		5/10/20	115-22715	Susquehanna	Harford Twp
		5/10/20	115-22716	Susquehanna	Harford Twp
		5/10/20	115-22717	Susquehanna	Harford Twp
		5/10/20	115-22718	Susquehanna	Harford Twp
Cameron Energy Co	1	5/4/20	123-48388*	Warren	Sheffield Twp
Chesapeake Appalachia LLC	9	5/21/20	015-23584	Bradford	Terry Twp
		5/21/20	015-23585	Bradford	Terry Twp
		5/13/20	015-23583	Bradford	Tuscarora Twp
		5/9/20	015-23589	Bradford	Wyalusing Twp
		5/10/20	015-23588	Bradford	Wyalusing Twp
		5/11/20	015-23590	Bradford	Wyalusing Twp
		5/12/20	015-23591	Bradford	Wyalusing Twp
		5/1/20	115-22656	Susquehanna	Auburn Twp
		5/2/20	115-22657	Susquehanna	Auburn Twp
Evergreen Resource Co	1	5/18/20	123-48189*	Warren	Glade Twp
Range Resources Appalachia	4	5/4/20	125-28818	Washington	Cecil Twp
		5/4/20	125-28819	Washington	Cecil Twp
		5/4/20	125-28817	Washington	Cecil Twp
		5/4/20	125-28816	Washington	Cecil Twp
Rice Drilling B LLC	3	5/4/20	059-27980	Greene	Whiteley Twp
		5/5/20	059-27979	Greene	Whiteley 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
Seneca Resources Co LLC	5	5/5/20	059-27978	Greene	Whiteley Twp
		5/7/20	081-21804	Lycoming	Hepburn Twp
		5/7/20	081-21799	Lycoming	Hepburn Twp
		5/8/20	081-21805	Lycoming	Hepburn Twp
		5/8/20	081-21806	Lycoming	Hepburn Twp
Snyder Bros Inc	8	5/9/20	081-21807	Lycoming	Hepburn Twp
		5/26/20	005-31362	Armstrong	Valley Twp
		5/26/20	005-31363	Armstrong	Valley Twp
		5/26/20	005-31364	Armstrong	Valley Twp
		5/26/20	005-31365	Armstrong	Valley Twp
		5/26/20	005-31361	Armstrong	Valley Twp
		5/26/20	005-31360	Armstrong	Valley Twp
		5/26/20	005-31359	Armstrong	Valley Twp
SWN Prod Co LLC	7	5/26/20	005-31342	Armstrong	Valley Twp
		5/15/20	015-23608	Bradford	Herrick Twp
		5/15/20	015-23609	Bradford	Herrick Twp
		5/15/20	015-23606	Bradford	Herrick Twp
		5/15/20	015-23607	Bradford	Herrick Twp
		5/25/20	115-22753	Susquehanna	New Milford Twp
		5/26/20	115-22752	Susquehanna	New Milford Twp
	5/27/20	115-22751	Susquehanna	New Milford Twp	

	May	April	March	February	January	December
Total wells	51	39	50	46	77	60
Unconventional Gas	49	36	45	42	74	51
Conventional Gas	0	0	0	0	0	0
Oil	2	3	3	2	3	5
Combination Oil/Gas	0	0	1	2	0	4
Disposal	0	0	1	0	0	0

Legislative notes *Continued from page 20*

Wolf wrote that the bill “inexplicably prohibits Commonwealth agencies from performing an essential governmental operation, the promulgation of regulations, until ninety days after the disaster emergency declaration is terminated unless the legislature grants permission for a regulation to advance. This prohibition is a legislative infringement on executive rule-making authority and violations the separation of powers which is critical to the proper functioning of our democracy.”

Introduced in February 2019, the measure was originally meant to create an annual survey of state facilities.

It passed the Senate 48-1 in November and went to the House, where it was amended to address a variety of matters related to the coronavirus crisis.

Interim budget approved

At the end of May, lawmakers and the administration came together to agree on an interim budget covering the next five months. The idea was to wait and see what the revenue picture looks like as the state begins to recover economically from the coronavirus and whether any additional federal assistance will be forthcoming. The good news is that the package signed into law on May 29 contains no new taxes or tax increases.

The bad news is that when budget deliberations resume late in the year, the state is anticipated to be facing a budget deficit of between \$4 billion and \$5 billion. PIOGA's lobbying firm already is hearing talk that virtually any idea for increasing revenue will be on the table. Potentially, that could include a natural gas severance tax—the one thing on the governor's original election wish list that he has yet to secure. PIOGA will remain vigilant as the budget process begins again later this year. ■

Calendar of Events

PIOGA events

Information: pioga.org > PIOGA Events

Due to uncertainty surrounding the COVID-19 crisis, please check the event page for any changes to events and event dates.

Sporting Clays Networking Event

July 9, Promised Land Sporting Clays Club, Freeport

PIOGATech: Federal Transportation Safety Regulations Refresher

July 21, The Chadwick, Wexford

PIOGATech: Water and Waste Management

August 19, The Chadwick, Wexford

23rd Annual Divot Diggers Golf Outing & Steak Fry

August 20, Tam O'Shanter of PA Golf Course, Hermitage

Fall Conference, Golf Outing and Sporting Clays

September 22-23, Seven Springs Mountain Resort, Champion

Ted Cranmer Memorial Golf Outing & Steak Fry

October 8, Wanango Country Club, Reno

Annual Meeting & Reception

October 14, location TBA

PIOGATech: Safety Topic

October 22, TBA

Annual Oil & Gas Tax and Accounting Seminar

November 18, Holiday Inn Express, Canonsburg/Southpointe

Marcellus to Manufacturing Conference

November 12, Pittsburgh location TBA

PIOGATech: Environmental Topic

December 15, The Chadwick, Wexford

Holiday Member Mixer

December 15, The Chadwick, Wexford

Other association & industry events

Ohio Oil & Gas Association Summer Meeting

July 14, Glenmoor Country Club, Canton, OH
www.ooga.org/events

The Great Gathering (GGVII)

July 15, Hilton Inn Garden Inn, Southpointe
www.greatgathering2020.com
Rescheduled from March 18; PIOGA member discount

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Ben Wallace, Penneco Oil Company, Inc.
Diversified Gas & Oil Corporation, *awaiting replacement for Jack Crook*

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we're here.

The public health and economic crisis posed by the COVID-19 pandemic will continue to have a substantial impact on cash flows and revenues. Business owners and individual borrowers must be ready to meet the resulting financial challenges, and Campbell & Levine's attorneys have over 100 years of combined experience helping its clients navigate wisely through such situations.

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Best wishes to all for good health.

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