

# The PIOGA Press

The monthly newsletter of the  
Pennsylvania Independent Oil & Gas Association  
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## President signs law reauthorizing federal pipeline safety program

**O**n December 27, President Donald J. Trump signed the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (2020 PIPES Act) into law. Adopted as part of a broader federal spending and COVID-19 relief package, the signing of the 2020 PIPES Act represents the culmination of a multi-year effort to reauthorize the nation's federal pipeline safety program. The prior reauthorization of the federal pipeline safety program, enacted in the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (2016 PIPES Act), expired on September 30, 2019.

The 2020 PIPES Act authorizes general funding for the Pipeline and Hazardous Materials Safety Administration's (PHMSA) gas and hazardous liquid pipeline safety programs of \$156.4 million for fiscal year 2021, \$158.5 million for FY 2022, and \$162.7 million for FY 2023, with additional amounts authorized in each of these fiscal years from the Oil Spill Liability Trust Fund for hazardous liquid pipeline safety and the user fee program for underground gas storage facilities. The 2020 PIPES Act also prescribes specific funding amounts that PHMSA must use for certain activities, including for recruitment and retention of federal pipeline safety personnel, operational expenses, and federal grant programs.

In addition to authorizing funding levels through FY 2023, the 2020 PIPES Act contains several amendments

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to the federal pipeline safety laws. Some of the key changes are highlighted below.

Title I of the 2020 PIPES Act:

- Establishes a new three-year program for advancing pipeline safety technologies, testing and operational practices.
- Adds an operator's self-disclosure to the list of factors that PHMSA must consider in assessing administrative civil penalties.
- Recognizes additional due process protections for PHMSA enforcement proceedings, including that:
  - An operator be allowed to request that matters of fact and law be resolved in a consent agreement and consent order.
  - An operator and PHMSA be permitted to convene meetings for purposes of reaching a settlement or simplification or other disposition of issues.
  - The case file in an enforcement action include all pertinent agency records.
  - An operator be allowed to reply to PHMSA's post-hearing submissions and request that a hearing be held on an expedited basis.
  - PHMSA carry the burden of proof, presentation, and persuasion in an enforcement proceeding.
  - PHMSA issue a post-hearing recommendation

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# Don't forget your 2021 dues

For the large majority of PIOGA members, now is the time to renew your membership for 2021 if you haven't done so already.

PIOGA membership has always been a great value, worth far more than the amount you pay in dues. For more than a century, PIOGA and our predecessor associations have prided ourselves on our role of bringing together a widely diverse range of companies, individuals and interests to collaborate for the benefit of the entire industry. As stated on our website's homepage, Working together, we help members accomplish that which they cannot achieve alone. What you can be sure of is that PIOGA is working harder than ever to advocate for Pennsylvania's oil and gas industry. Understanding the interconnectedness of all facets of the industry is crucial to the success of our industry. Coming together to work on today's challenges is imperative and effectively communicating to our stakeholders is paramount.

PIOGA understands the struggles our oil and natural gas producers are dealing with today. On top of the continuing coronavirus pandemic, our industry is chal-

lenged by persistently low commodity pricing, geopolitical pressures impacting U.S. markets, and restrictive and costly legislative and regulatory obstacles adversely affecting the demand for our products as well as our operations. Further, we are embarking on a new federal administration that could well be openly hostile to our industry, bringing on a new set of challenges.

If you would like to know more about how we are working together on behalf of the entire Pennsylvania oil and gas industry, please take a few minutes to read this summary of our activities—[pioga.org/publication\\_file/2021\\_Annual\\_Dues\\_Renewal\\_Ltr\\_and\\_Assoc\\_Update.pdf](https://pioga.org/publication_file/2021_Annual_Dues_Renewal_Ltr_and_Assoc_Update.pdf). You'll also find suggestions for how you can increase the value of your membership, such as participating in committee activities and taking advantage of PIOGA member discounts.

Thank you in advance for continuing to be a PIOGA member in 2021 and beyond. Questions about your membership? Contact Debbie Oyler, Director of Member Services, at [debbie@pioga.org](mailto:debbie@pioga.org) or 724-933-7306 ext. 22. ■

## PIOGA's online Buyers' Guide is live!

*The Buyers' Guide is an interactive "one-stop-shop" for our members looking for products and services needed for oil and gas operations.*

PIOGA is pleased to announce the 2020-21 edition of PIOGA Buyers' Guide, the premier resource of relevant products and services for oil and gas professionals, is now available via the PIOGA website at [www.pioqa.org](http://www.pioqa.org).

The 2020-21 version of the Buyers' Guide features updated and expanded company and product listings, in addition to other valuable information relating to the oil and gas industry. PIOGA members and other industry professionals now have an easy way to browse for goods and services.

"Now, more than ever, having a virtual presence is crucial to reach potential clients. Since we cannot get together physically due to the pandemic, the PIOGA Buyers' Guide provides a platform for your business to get noticed by companies looking for certain services/products they need in a safe and efficient way," said Dan Weaver, PIOGA's President and Executive Director.

It's not too late to upgrade! Our partnership with Strategic Value Media (SVM) has allowed PIOGA to provide more options to our members to advertise their products and services. If your business has not yet taken advantage of this exceptional opportunity to highlight your products and services in the guide, it's not too late! To learn more about advertising your products or

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PIOGA Allies & Providers: Please take a minute to review your Buyers' Guide listing. If you would like to request any changes or to upgrade your listing- please email [pioqa-advertise@svmmedia.com](mailto:pioqa-advertise@svmmedia.com). As a reminder, Allies & Providers members receive a complimentary basic listing in the Buyers' Guide, but your company can work with the SVM staff to discuss options of upgrading your listing in the Buyers' Guide to get more visibility or to be placed in a category.

**Did you know?** A portion of the proceeds from the Buyers' Guide comes back to PIOGA to help sustain our association. An investment in the Buyers' Guide is not only an investment for your company, but an investment in PIOGA too. We thank you! ■

### Choose how you get your news



If you now receive a printed copy of *The PIOGA Press* in the mail each month but prefer to read it online only, please email Deana McMahan at [deana@pioqa.org](mailto:deana@pioqa.org) to opt out of the hard-copy version.

Current and past issues are always available by clicking on the News & Resources tab at [pioqa.org](http://pioqa.org).



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## Air Quality Compliance PIOGATech report



The Environmental Committee hosted its fifth-annual Air Quality Compliance PIOGATech on December 15, and due to continuing COVID-19 restrictions on large gatherings it was held virtually. Even though the training was different this year, that didn't impact the timely and valuable content delivered by this year's speakers. The virtual training brought together more than 60 industry professionals who focus on air quality and compliance management to discuss priority topics and current challenges.

The technical training featured new speakers from the Pennsylvania Department of Environmental Protection, All4 Inc., Civil & Environmental Consultants, Babst Calland, CleanAir Engineering and SE Technologies covering topics that included an overview of current regulations, an introduction to ProMax software for emission estimates, air dispersion modeling, a proposed rulemaking status update on the existing source rule for control of VOCs from oil and gas operations, permitting case studies, information on the Regional Greenhouse Gas Initiative (RGGI), and post-election updates.

The day closed with an Operators Roundtable moderated by Jean Mosites, with Alex Pavick from Peoples Natural Gas Company, Joe Harrick from JKLM Energy and Kirk Elkin from Diversified Gas & Oil providing feedback and insights on how their companies are managing compliance.

Our special thanks go out to all the presenters and to our planning partners: Kris Macoskey and Amanda Black from CEC, Inc., Volker Schmid and Ali Lashgari from CleanAir Engineering, Roy Rakiewicz and Christine Chinofsky from All4 Inc., Jean Mosites and Kevin Garber from Babst Calland, and Meghan Yingling and Monty Saron from SE Technologies. Save the date for the first PIOGATech of 2021 on February 25, Regulatory Update — E&S and Encroachments. ■



## Upcoming PIOGATech: ‘Reasonable Suspicion Training and Addressing Substance Use and Mental Illness in a Virtual World’

The COVID-19 pandemic changed the landscape of the workplace in 2020 and the foreseeable future. More employees are working remotely now than ever before. These new challenges have led to a significant increase in employee substance use and mental illness across. Substance use and mental illness are sensitive topics that can be difficult for employers to address at any time, but remote employees present a unique challenge, especially as it pertains to “reasonable suspicion” drug and alcohol testing.

Join us on March 25 for a half-day webinar, organized by PIOGA’s Safety Committee, that addresses these issues. The course instructor will be Ryan West, Manager, Corporate Trainings & Business Development, and Chemical Addiction Specialist, with Greenbriar Treatment Center.

The first portion of this virtual training teaches supervisors and managers how to appropriately identify and effectively respond to suspected employee impairment. Participants will learn:

- The four rules for responding to suspected employee impairment.
- How to identify personal barriers that inhibit the

## Safety Committee Corner



reporting process.

- The most common drugs of abuse and their signs of impairment.
- How to conduct an effective, non-confrontational conversation with an employee suspected of impairment.

The second part of the training will equip employers with an essential framework to effectively address employee substance use and mental illness in a virtual world. Participants will be able to:

- Identify changes in a remote employee’s appear-



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ance, behavior and performance that are concerning.

- Effectively respond to employee problems while maintaining professional boundaries.
- Maximize the benefit of an EAP for employee illness prevention and treatment.
- Determine what changes should be made to an

existing drug and alcohol policy and testing procedures.

A certificate of completion will be provided and you can earn continuing education units. Watch your email for registration and more information, or check the PIOGA Events section at [pioga.org](http://pioga.org). ■

## Become a 2021 PIOGA Partner

We are pleased to announce the 2021 PIOGA Partners program. The program was launched in 2018 in response to member requests for a “one stop” yearlong event sponsorship option for budgetary purposes. The program also offers unique opportunities—like the Committee Partner—to both support the association’s work and make your company stand out all year long.



We also continue to offer traditional event-by-event sponsorships.

The various Partner levels and their benefits are shown in the accompanying table. If you have questions or are ready to sign on now for 2021, contact Debbie

Oyler at [debbie@pioga.org](mailto:debbie@pioga.org) or 724-933-7306 ext. 22.

Our list of 2021 PIOGA Partners so far are shown on the opposite page. Thank you for your support! ■

2021 PIOGA Partner Levels	Yearly Sponsorship Amount	Networking Events (5-7/yr.) Comp Tickets	Golf Events (3/yr.) Comp Tickets	Clay Events (3/yr.) Comp Tickets	PIOGA Meetings (1-2/yr.) Comp Tickets	PIOGATech Seminars (5-7/yr.) Comp Tickets	Advertising Discount*	Logo Recognition Website, Newsletter, Printed Signage
Keystone	\$10,000	2	2	2	2	2	30%	Yes
Executive	\$7,500	2			2	2	20%	Yes
Meetings	\$5,000				4		10%	Yes
Golf	\$4,000		4					Yes
Clays	\$4,000			4				Yes
Committee	\$3,000							Committee meetings, PIOGA Press and eWeekly
Engineer	\$2,500							PIOGA meetings, PIOGA Press and eWeekly
Driller	\$1,500							PIOGA meetings, PIOGA Press and eWeekly
* PIOGA Press and PIOGA eWeekly only								

## Superior Court appears to end, for now, ‘trespass-by-frac’ litigation that jeopardized rule of capture

On December 10, the Superior Court affirmed, without an opinion, the August 8, 2017, opinion and order of the Court of Common Pleas of Susquehanna County that granted summary judgment to Southwestern Energy Production Company, now known as SWN Production Company, LLC., holding that the lessors’ (the Briggses) claims for trespass, conversion and punitive damages failed as a matter of law because of the rule of capture.

The Pennsylvania Supreme Court’s January 22, 2020,

decision confirming “that the rule of capture immunizes oil and gas owners or their lessees when hydraulic stimulation activities conducted within the boundaries of the leased premises allegedly drain oil or natural gas from adjacent properties” also remanded the case to the Superior Court to determine whether the Briggses had alleged a trespass by physical intrusion. (See “*State Supreme Court reinstates rule of capture,*” by George A. Bibikos, Esq., Managing Member, GA BIBIKOS LLC, *The PIOGA Press*, February 2020).

On remand, the parties submitted briefs on the remand issue, but the Superior Court, which had initially reversed the trial court’s grant of summary judgment to Southwestern, this time simply affirmed without opinion the trial court’s opinion and order. The trial court had noted “a dispute between the parties...as to the exact



nature of Plaintiffs' trespass claim":

Defendant asserts that Plaintiffs base their claim solely on the fact that Defendant has drilled gas wells "too close" or "nearby" Plaintiffs' property.... Meanwhile, Plaintiffs assert that the placement of Defendant's wells is not at the heart of their claim, but rather their trespass claim, and by extension their other claims, rest on the removal of gas from under their property by the well that is "too close" to their property line.

The trial did not decide which party's interpretation was correct "because assuming *arguendo* that Plaintiffs' broader assertion is right, their claim still fails as a matter of law." The trial court held that the Plaintiffs' claims failed because Southwestern removed the gas through legal and permissible means, so title to the gas vested in Southwestern. The Superior Court's *per curiam* affirmation of the trial court's opinion and order shows that on remand the Superior Court agreed.

Attorney Bibikos had identified "several takeaways" from our Supreme Court's January 2020 decision concerning the issue remanded to the Superior Court:

Third, the court seemingly imposed a more heightened pleading standard for trespass-by-frac claims. The opinion explains that plaintiffs must allege an actual physical intrusion with specific facts. Although the court stated that plaintiffs can do so "on information and belief," they cannot rely on general pleadings or assumptions about fractures necessarily causing drainage even if they cross subsurface boundaries.

Fourth, if plaintiffs survive the pleading stage, they will be compelled to prove with expert testimony on a case-by-case basis that a physical intrusion actually occurred.

Finally, the court only expressly identified two types of potential "physical intrusions" that may support a trespass claim: laterals

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crossing subsurface boundaries (i.e., a slant hole) or propelling proppants or fluids across adjacent property lines. The court did not expressly state that fractures alone (excluding proppants or fluids) qualify as a “physical intrusion” even if they cross subsurface boundaries.

The deadline for the Briggses to request the

Pennsylvania Supreme Court to hear their appeal of the Superior Court’s affirming the trial court’s decision was January 8. As of the date of preparation of this article, January 11, the court docket sheets did not show that an appeal request had been filed.

So, it appears that this litigation is ended, but the takeaways noted by Attorney Bibikos offer guidance to litigants concerning “trespass-by-frac” claims. ■

## Proposed changes to Chapter 105 regulations now open for comment

**T**he Environmental Quality Board (EQB) is seeking comments on a proposal to change more than 30 provisions in the Department of Environmental Protection’s Chapter 105 regulations addressing dam safety and waterway management.

According to a notice in the December 5 *Pennsylvania Bulletin*, the proposed rulemaking would amend Chapter 105 to:

- Add structures and activities eligible for a permit waiver and clarify existing waivers;
- Add antidegradation and cumulative impacts subsections to the applicant information requirements and revise existing information requirements for better clarity and organization;
- Provide a new option for dam owners to satisfy proof of financial responsibility obligations;
- Amend the environmental assessment section to add application information requirements specific to

environmentally beneficial projects;

- Amend the wetland replacement criteria section to update provisions relating to the compensatory mitigation framework for unavoidable impacts to aquatic resources and their aquatic resource functions;
- Add notice of transfer requirements for the owners of dams eligible for a permit waiver;
- Add new structures and activities that may be exempt from submerged lands licensing charges; and
- Require periodic inspections by high hazard dam owners and update the application information requirements for projects seeking to discharge dredged or fill material into aquatic resources.


The notice indicates the proposed rulemaking also would amend various sections of Chapter 105 to further clarify existing requirements, delete or update obsolete requirements and correct previously identified typographical errors. The proposal adds or revises definitions to support these revisions.

An alert from PIOGA member Babst Calland noted that the revisions are expected to create expansive new requirements, almost certainly increasing the time and effort required to complete individual/joint Chapter 105 permit applications.

“These new requirements, if promulgated, will also likely increase DEP application review times, particularly at the outset when the agency and the regulated community are becoming familiar with the new requirements,” Babst Calland wrote. “Additionally, revised compensatory mitigation criteria could expand the extent of mitigation required for a project. On the other hand, the addition of six new permit waivers means that certain projects may no longer be required to obtain a Chapter 105 permit.”

The public comment period remains open until February 3, and PIOGA’s Environmental Committee has been reviewing the proposed rulemaking in anticipation of submitting formal comments.

The last comprehensive revisions to the wetland permitting provisions of Chapter 105 occurred in 1991. ■



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# U.S. Fish & Wildlife Service finalizes 'habitat' definition under Endangered Species Act

By Robert Stonestreet  
Babst Calland

On December 16, the United States Fish and Wildlife Service adopted a final regulation to define the term "habitat" for use when designating "critical habitat" areas under the Endangered Species Act (ESA). 85 Fed Reg 81411. The ESA already defines the term "critical habitat," which in general means areas designated as essential to preserve or promote recovery of threatened or endangered species regardless of whether those species are actually present in the area. The term "habitat," however, is not itself defined in the ESA or pre-existing regulations.

The Service proposed two potential "habitat" definitions in August 2020 for public comment. In the final rulemaking, the Service chose to adopt a "habitat" definition markedly different than the two definitions proposed for public comment back in August. The adopted definition reads as follows:

For the purposes of designating critical habitat only, habitat is the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species.

According to the Service, abiotic means "derived from non-living sources such as soil, water, temperature, or physical processes" and the term biotic means "derived from living sources such as a plant community type or prey species." The preamble portion of the *Federal Register* entry notes that the phrase "resources and conditions" is intended to clarify that habitat "is inclusive of all qualities of an area that can make that area important to the species."

Compare that definition to the two definitions proposed for public comment on August 5, 2020, which appear below:

**Primary Proposed Definition:** The physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas with existing attributes that have the capacity to support individuals of the species.

**Alternate Proposed Definition:** The physical places that individuals of a species use to carry out one or more life processes. Habitat includes areas where individuals of the species do not presently exist but have the capacity to support such individuals, only where the necessary attributes to support the species presently exist.

The Service noted that the revised version of the adopted definition takes into account the approximately 48,000 public comments submitted to the agency.

This rulemaking was a response to litigation over

what areas the Service could designate as critical habitat that is not occupied by a listed species. *Weyerhaeuser Co. v. United States Fish and Wildlife Service*, 139 S. Ct. 361 (2018). In *Weyerhaeuser*, the Service designated an area as critical habitat for a species even though that species could not survive in the area under current conditions. The Service reasoned that the area was once occupied by the species, and certain modifications could be made in the future that would allow the species to return to the area. The United States Supreme Court ruled that the Service could not designate an area as critical habitat for a listed species that was not "habitat" for that species in the first place—i.e. an area where the species could survive.

The Service seems to acknowledge that the adopted "habitat" definition would preclude the type of designation at issue in *Weyerhaeuser*. In response to comments that the proposed definition would improperly preclude areas that require restoration from being designated as critical habitat, the Service noted that "habitat, whether occupied or unoccupied, must still have (currently or periodically) the resources and conditions necessary to support one of the life processes for the species." According to the Service, "the definition respects the statutory text by distinguishing between habitat and areas that are not habitat (but can become habitat in the future, whether by virtue of restoration activities or because of other changes)."

The regulation becomes effective on January 15 and will apply only to proposed critical habitat rulemakings published in the *Federal Register* after that date. ■

*If you have questions about the regulation, or the Endangered Species Act in general, please contact Robert M. Stonestreet at [rstonestreet@babstcalland.com](mailto:rstonestreet@babstcalland.com) or 681-265-1364.*



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# EPA issues draft guidance for ‘functional equivalent’ test for point source discharges to surface water through groundwater

By Lisa Bruderly and Tim Bytner  
Babst Calland

On December 10, the U.S. Environmental Protection Agency (EPA) issued for public comment its draft guidance regarding the U.S. Supreme Court’s *County of Maui* “functional equivalent” analysis within the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program (85 Fed. Reg. 79489). The comment period closed on January 11.

In *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020), the Supreme Court held that an NPDES permit is required in instances when a point source discharge of a pollutant through groundwater to a navigable water is the “functional equivalent” of a direct pollutant discharge from a point source into a navigable water. Babst Calland discussed the Supreme Court’s April 23, 2020, decision and its far-reaching implications in the May 2020 *PIOGA Press* article “Potential Clean Water Act liability extends to discharges to groundwater that reach surface water.”

The Supreme Court offered a non-exclusive list of seven factors to consider on a case-by-case basis:

- Transit time;
- Distance traveled;
- Nature of the material through which the pollutant travels;
- Extent to which the pollutant is diluted or chemically changed as it travels;
- Amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the

point source;

- Manner by or area in which the pollutant enters the navigable waters; and
- Degree to which the pollution (at that point) has maintained its specific identity.

## Emphasis on threshold requirements for NPDES permits

The draft guidance stresses that the *County of Maui* decision did not change the structure of the NPDES permit program, and, at most, only adds another step in determining whether an NPDES permit is required under a limited number of scenarios. In fact, EPA devotes much of the eight-page draft guidance to discussing the following two threshold conditions that trigger NPDES permitting:

1. An actual discharge of a pollutant to a water of the United States must occur; and
2. The discharge of a pollutant must be from a point source.

The draft guidance emphasizes that unless both of these thresholds are met, the “functional equivalent” analysis is not necessary, concluding that “[o]nly after it is established that an actual discharge of pollutants from a point source to waters of the United States via groundwater occurs (or will occur) would there be a need to consider the Supreme Court’s ‘functional equivalent’ analysis.”

## Consideration of identified factors

Although the seven factors in the *County of Maui* decision were not extensively discussed, the draft guidance does briefly address how transit time and distance traveled may affect the “functional equivalent” evaluation. For example, EPA reaffirmed that permitting authorities cannot assume that all releases “near a water of the United States” are the functional equivalent of a direct discharge to that water. Instead, the draft guidance suggests that where there are indications that a discharge

of pollutants through groundwater has reached navigable waters, the permitting authority should consider conducting a technical analysis (e.g., an evaluation of hydraulic conductivity and/or hydraulic gradient) to understand whether there is either an actual discharge of a pollutant to a navigable water or the functional equivalent of such a discharge.

The draft guidance recognizes that what happens to the discharged pollutant over time and distance is also “critical” to the “functional equivalent” analysis. For example, the pollutant composition and/or concentration that reaches the navigable water may differ from the composition/concentration of the discharge “through chemical or biological interaction with soils, microbes, plants



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and their root zone, groundwater, or other pollutants, or simply through physical attenuation or dilution,” such that the discharge through groundwater may not be the functional equivalent of a direct discharge.

### Introduction of an eighth factor

EPA introduces an eighth factor to consider in performing a “functional equivalent” analysis: the design and performance of the system or facility from which the pollutant is released. EPA includes this factor because a facility or system may be designed or operated in a way that significantly changes the composition and/or concentration of pollutants that reach navigable water, thereby affecting whether the pollutant released by the point source is the “functional equivalent” of the pollutant that enters the surface water. For example, a system may be designed to “promote dilution, adsorption or dispersion of the pollutant, thereby affecting the extent to which the pollutant is chemically changed, the amount of pollutant entering the water of the United States relative to the amount of the pollutant that leaves the point source, and the degree to which the pollutant has maintained its specific identity at the point it reaches a water of the United States.” Facilities with a

storage or treatment system (e.g., a septic system or settling pond) may be less likely to require a NPDES permit because the function of the system could prevent the functional equivalent of a discharge of pollutants to waters of the United States.

### “Functional equivalent” test still evolving

The “functional equivalent” analysis is factually dependent and can be determined only on a case-by-case basis. The draft guidance does not provide any “hard and fast” rules that the regulated community can rely on to assess whether a point source discharge that enters a navigable water through groundwater would require a NPDES permit. Continued uncertainty and differences in the application of the analysis among the regulatory agencies and/or jurisdictions are nearly certain, especially with the possibility that the incoming Biden administration may revise or rescind the draft guidance. ■

*Should you have questions regarding the draft guidance, please contact Lisa Bruderly at 724- 910-1117 or lbruderly@babstcalland.com or Tim Bytner at 412-394-6404 or tbytner@babstcalland.com.*

## DEP revises and renews WMGR123 general permit

The Department of Environmental Protection has revised and renewed its general permit authorizing the processing, transfer and beneficial use oil and gas liquid waste to develop or hydraulically fracture an oil or gas well. The updated WMGR123 permit became effective January 4.

According to a notice in the December 19 *Pennsylvania Bulletin*, The revisions to WMGR123 consist of the following:

- Clarification to the proposed definitions for “processing,” “transfer” and “oil and gas liquid waste.”
- Minor updates to clarify the difference between a “unit” which pertains to structures used to contain de-wasted oil and gas liquid waste, and a “facility” which pertains to an operation that processes or transfers oil and gas liquid waste.
- Minor updates to terminology referencing de-wasted material and oil and gas liquid waste.
- Removal of proposed conditions that allowed for WMGR123 permittees processing oil and gas liquid waste to meet Appendix A limits for de-wasting to request a reduced sampling and analysis frequency and reduced parameter list.
- Addition of standard language that would allow for clearances provided by the Pennsylvania Natural Heritage Program to be considered during a Pennsylvania Natural Diversity Inventory (PNDI) review.
- Addition of language that would allow Radiation Protection Actions Plans to be maintained in an elec-

tronic format on sites where an office or building is not located onsite, provided the plan is available at the facility at all times, and to allow for electronic copies of the plan to be provided to DEP upon request.

- Addition of language to allow all records that are required to be maintained by permittees to be maintained in either hard copy or an electronic format.
- Inclusion of minor updates to references to the Oil and Gas Act (58 Pa.C.S. 2301-3504 (relating to oil and gas)).
- Inclusion of a minor clarification to Condition C.22., relating to inspection requirements for WMGR123 operations located on a well pad that are not actively processing or transferring (storing) oil and gas liquid waste.
- Addition of two conditions that would require DEP notification of the beginning of construction activities and certification of equipment installation at WMGR123 operations prior to processing or transfer, as requested by regional office staff.
- Addition of Condition C.27 that states permittees are not authorized to use open-top storage tanks or any other air contamination sources under the terms of WMGR123 unless the facility demonstrates that the open top tanks or sources comply with 25 Pa. Code Subpart C, Article III (relating to air resources), pertaining to air emissions.
- Addition of Condition E.3. that would require permittees to immediately notify the department in the event that the maximum volume of processed and

unprocessed oil and gas liquid waste utilized in approved bonding calculations is exceeded.

For a copy of the updated WMGR123 and DEP's comment-and-response document developed as part of the revision process, go to the department's eLibrary search

page at [www.dep.greenport.state.pa.us/elibrary/Search](http://www.dep.greenport.state.pa.us/elibrary/Search) and enter 2540-PM-BWM0522 in the document number box. Questions may be directed to DEP's Chris Solloway at [csolloway@pa.gov](mailto:csolloway@pa.gov) or 717-787-7381. ■

## 2020 impact fee revenue expected to decline to an all-time low

Revenue from the Act 13 impact fee—a tax collected on unconventional natural gas wells—is expected to drop to an all-time low of \$144.85 million for the 2020 calendar year, according to an estimate by the state's Independent Fiscal Office (IFO). That's a decline of \$55.9 million from the 2019 amount and 42 percent less than the record \$251.83 million collected for 2018.

The steep decline for 2020 is attributable to low natural gas prices, triggering an automatic adjustment in the fee schedule, as well as fewer newer unconventional wells being drilled. The fee is structured so that wells pay less as they age. Consequently, the existing population of shale-gas wells generates less in impact taxes if not offset by revenue from new wells.

Proceeds from the impact fee are distributed to local governments and state agencies to provide for infrastructure, emergency services, environmental initiatives and various other programs. Local governments receive funds based on the number of wells located within their

boundaries or their proximity to jurisdictions where natural gas extraction took place. Of the \$144.85 million anticipated to be collected for 2020 and distributed by the Pennsylvania Public Utility Commission in mid-2021, the IFO estimates \$75.87 million will go to counties, municipalities and housing (a decline of \$33.3 million from calendar year 2019); Marcellus Legacy Fund, \$50.58 million (-\$22.2 million); commonwealth agencies, \$10.5 million (no change); and county conservation districts, \$7.89 million (no change).

The primary reasons for the decrease in collections cited in the IFO report include:

- **Lower fee schedule.** The average annual price of natural gas on the New York Mercantile Exchange for CY 2020 was \$2.08 per MMBtu. Due to the price dropping below \$2.25, the impact fee schedule decreased by \$5,000 per horizontal well compared to CY 2019 levels. Estimated impact: -\$52.1 million.

- **New and existing wells.** The net impact of (1) reduced collections from aging wells that pay lower fees and wells that become exempt offsetting fees from new wells and (2) any payments for the prior year that were not received in time for disbursement. Estimated impact: -\$3.8 million.

### Effective tax rate

The IFO also calculates an unofficial effective tax rate (ETR) for the impact fee each year, with the 2020 rate increasing to 3.3 percent from the 2019 rate of 2.1 percent. This is the first time the rate has topped 3 percent in the past four years.

The ETR is equal to annual impact fee revenues divided by the total market value of unconventional natural gas production. The market value is equal to the product of (1) the annual average regional hub price of natural gas net of post-production costs and (2) the total production from all unconventional wells.

The ETR computation for CY 2020 uses these data:

- Annual production of 7.0 Tcf. This figure is based on statewide well production data published by the Department of Environmental Protection through October.

- An annual average hub price of \$1.43 per Mcf, prior to the deduction of post-production costs. This price is a weighted average of spot prices at the Dominion South and Leidy trading hubs.

- Post-production costs of \$0.80 per Mcf. This amount reflects costs for gathering, processing and transporting gas to markets. Such costs are deducted to approximate

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the value of gas at the wellhead, the point at which other states levy severance taxes.

The higher ETR “is due to a significant reduction in the market value of natural gas more than offsetting the decrease in estimated impact fee collections. Market value is projected to decline by 52.9 percent from the prior year, due to a 54.2 percent decline in the regional price of gas. The projection assumes that CY 2020 production expands by 2.6 percent over 2019, the weakest production growth on record,” the IFO report said. ■

## PIOGA Member News

### PSC announces joint marketing agreement with eFrac

**P**roducers Service Corp (PSC) and eFrac Well Services, LLC announce they have entered into a partnership to jointly market the current Tier2, dual-fuel and Tier 4 fracturing fleets and services of PSC along with the developed technologies for electric fracturing fleets and services from eFrac. The companies envision this agreement as leveraging the existing business infrastructure, reputation for industry leading HSE, service delivery and customer focus of PSC with the emerging demand for ESG technologies from the E&P industry.

“We are fully aware of the evolving requirements of our customer base toward Tier 4 and dual-fuel-based fracturing fleets that has been accelerated by the recent dramatic downturn of our industry due to COVID-19 demand destruction,” Frank Leeper, PSC President, said. “Partnering with eFrac and their highly respected leadership gives PSC access to industry leading designs and technologies they have developed and tested moving forward to ensure our customer base has access to fully electric fracturing fleet technologies under the culture of excellence we have built over the years for service delivery. We are excited to move forward with eFrac and their team as our industry begins to improve from what has been an extremely challenging year.”

Founded in 1981, PSC is a 100-percent employee-owned provider of conventional fracturing and acidizing services along with large-scale high pressure high-rate

shale fracturing services in both the Appalachian and MidCon basins with facilities in Zanesville, Ohio, and Hennessey, Oklahoma, and sales offices in Houston, Texas. Headquartered in Houston, eFrac is a next-generation well completions company offering electric-powered hydraulic fracturing services, overlaid with smart technologies, provided in a more productive, safe and environmentally-friendly manner.

### EWS announces patent on technology for treating produced water at well pads

Energy Water Solutions (EWS), a scalable oil field services organization whose focus is evaporative technologies for the oil and gas and industrial markets, announces it has received a U.S. patent recognizing the innovative and unique methods used in the company's proprietary VOX (Vaporization in a Box) evaporative technology and the breakthrough nature of its performance in the field.

EWS' VOX™ technology is currently used in the oil and gas production market. The VOX 4 product not only offers cost effective evaporation of produced water, it also benefits from its extremely low emissions profile enabling streamlined permitting. Its modular nature provides operators the ability to quickly scale up or down based on the well pad needs. The VOX's superior performance and the ability to quickly penetrate the produced water market with its build/own/operate (BOO) operating model, motivated EWS to pursue a patent to protect its unique technology.

The patent covers the overall containerized system—the wastewater feed, drip manifold, packing and tray system, and integrated air system. All of these components make up the VOX technology. Altogether, the patent contains 99 claims and is valid until November 2031. While the produced water market is large, the company continues to work on additional applications for the VOX technology to expand the company's ability to serve a broader market.

### Crouse Joins Steptoe & Johnson

Douglas Crouse has joined the Charleston office of Steptoe & Johnson. His practice will focus on energy and natural resources law. Crouse has more than a decade of experience representing energy companies in state and federal courts. He joins Steptoe & Johnson after serving as counsel for the West Virginia Legislature for standing and joint interim committees, including the Joint Committee on Government and Finance, Legislative Services Division. In that role, he provided legal opinions and research and assisted with bill drafting. Prior to that, he practiced with a West Virginia law firm where he defended coal operators in numerous environmental matters, including Clean Water Act citizen suits, as well as administrative appeals before the West Virginia Environmental Quality Board. ■

## New PIOGA member — welcome!

### JMM Resources, LLC

PO Box 822, Indianola, PA 15051

412-794-8379 • maa@jmmresources.com

Producer

# DOE Fossil Energy

## year in review

**By Steven Winberg**  
**Assistant Secretary for Fossil Energy**  
**U.S. Department of Energy**

This year tested the limits of what we could achieve! We were stretched beyond what we ever imagined possible, but we proved our resilience and determination. I am proud of all that we have accomplished, given the challenges we faced this year.



We worked together to fulfill our mission: to ensure our nation's access to safe, secure, reliable and affordable fossil energy as well as to our strategic petroleum reserves.

We remained focused on developing advanced fossil energy technologies that ensure American energy dominance, create jobs, and enhance the Nation's economy.

As Acting Under Secretary of Energy and Assistant Secretary for Fossil Energy, it is my pleasure to share the Fossil Energy 2020 accomplishments that have helped power and strengthen our nation this past year.

### **Record high LNG exports keep U.S. a global leader**

- In 2020, liquified natural gas (LNG) exports from the U.S. reached new all-time highs and will reduce our trade deficit by as much as \$12 billion. The U.S. ranks among the top three LNG exporters in the world.

- We finalized a policy statement in July 2020 to allow LNG export authorizations to be extended through December 31, 2050, on an opt-in basis. With this policy, DOE is seeking to assure the long-term success of U.S. LNG exporters and provide them with additional regulatory certainty.

### **Oil and natural gas research**

- We released the report entitled *U.S. Oil and Natural Gas: Providing Energy Security and Supporting Our Quality of Life*. This report focused on the important benefits the growth in oil and gas production brings to the

United States (*see accompanying article*).

- At the president's direction, we assessed economic opportunities associated with natural gas liquids and documented those findings in the report *The Appalachian Energy Petrochemical Renaissance*.

- Through our 17 oil and gas field labs and our gas hydrates work, we made remarkable scientific and technical advances that enable increased petroleum recovery from reservoirs while simultaneously reducing environmental impacts.

- In 2020, we completed the Crude Oil Characteristics Research Study, and delivered it to Congress. The study concluded that unconventional oil, such as the Bakken crude, is not more hazardous than conventional oils, and that no new rail transport regulations were needed.

### **Carbon capture, utilization and storage (CCUS) research advances**

- We're funding more than 100 R&D projects to address the technical challenges to CCUS commercialization.

- We awarded approximately \$176 million this year to support the development and advancement of CCUS technologies.

### **Coal for the 21st century programs move forward**

- We established the Division of Minerals Sustainability to help secure a U.S. minerals supply chain to support the power industry, the U.S. manufacturing base, and our national defense.

- We announced \$122 million in federal funding for cost-shared research and development under the Carbon Ore, Rare Earth, and Critical Minerals (CORE-CM) Initiative for U.S. basins.

- We continued developing the coal-fired power plant of the future, to achieve zero- or even net-negative CO<sub>2</sub> emissions using biomass, and we invested \$116 million in net-zero carbon electricity and hydrogen plants.

- We researched how coal can be transformed into new building materials with superior strength and distinctive properties.

### **NETL research tackles challenges**

NETL is the National Science and Technology Laboratory for cutting-edge fossil energy research. This year, the lab:

- Received a 2020 R&D100 Award for developing a

### **DOE downloads:**

#### ***U.S. Oil and Natural Gas: Providing Energy Security and Supporting Our Quality of Life***

[www.energy.gov/fe/articles/us-oil-and-natural-gas-providing-energy-security-and-supporting-our-quality-life](http://www.energy.gov/fe/articles/us-oil-and-natural-gas-providing-energy-security-and-supporting-our-quality-life)

#### ***The Appalachian Energy Petrochemical Renaissance***

[www.energy.gov/sites/prod/files/2020/06/f76/Appalachian%20Energy%20and%20Petrochemical%20Report\\_063020\\_v3.pdf](http://www.energy.gov/sites/prod/files/2020/06/f76/Appalachian%20Energy%20and%20Petrochemical%20Report_063020_v3.pdf)

#### ***Fossil Energy Roadmap***

[www.energy.gov/sites/prod/files/2020/12/f81/EXEC-2018-003779%20-%20Signed%20FE%20ROADMAP\\_dated%2009-22-20\\_0.pdf](http://www.energy.gov/sites/prod/files/2020/12/f81/EXEC-2018-003779%20-%20Signed%20FE%20ROADMAP_dated%2009-22-20_0.pdf)



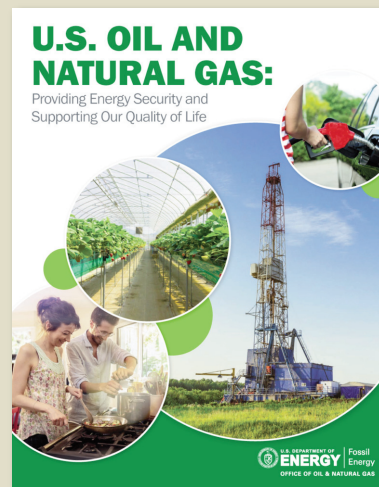
## **U.S. Oil and Natural Gas:** **Providing Energy Security and Supporting Our Quality of Life**

The U.S. Department of Energy has published this detailed summary of the broad benefits realized over the past 20 years through the increased production of oil and natural gas in the country, linked below. The joint effort of the agency's Office of Oil and Natural Gas and the National Energy Technology Laboratory focuses on the positive impacts to the economy, the environment and consumers with the shale revolution, along with current and future technological achievements that will keep the U.S. at the forefront of energy production.

The report covers many of the topics that PIOGA members and allies have been promoting for years, along with a few additional facts of similar importance:

- **Energy consumption.** Oil and natural gas make up almost 70 percent of the total energy used annually in the United States.
- **Meeting electricity demand and efficiency.** "Fast Ramp-Up" natural gas electric generating facilities are capable of reaching 100 percent power capacity in just 30 minutes.
- **Increased safety and gas efficiency.** Advanced plastics account for 50 percent of a car's total volume, and only 10 percent of a vehicle's weight.
- **Benefits to consumers.** The average family of four is saving \$2,500 annually in total energy costs through low-cost natural gas supplies and electricity and lower gasoline prices, thanks to shale development in the U.S.
- **Employment.** Oil and natural gas production accounts for more than 896,000 jobs in the U.S., including 158,000 direct jobs and 738,000 indirect jobs.
- **Labor production and efficiency.** The labor productivity index for the oil and natural gas industry, measured as output per work hour, more than doubled between 2008-2018, from 93 to 202.

The report can be found via the link on the opposite page or in the Latest News and Blog section of the PIOGA website. We encourage you to review it and consider sending along to your friends and colleagues to share the success story of American energy production.



game-changing process that converts feedstocks of domestic coal into graphene, used to build stronger roads and bridges and manufacture various high-tech products. This award is given to the 100 most technologically significant innovations introduced into the marketplace in the past year.

- Made several advances in extracting rare earth elements (REEs), including a collaboration that developed flexible REE extraction methods from low-rank coal ash.

### **Strategic Petroleum Reserve (SPR) proves it's mission-ready**

- The SPR executed DOE's first Exchange for Storage Program, storing roughly 18.3 million barrels of crude oil, beginning at the onset of the COVID-19 pandemic. The Exchange for Storage Program was used to partially alleviate the crude oil storage shortfall by providing available cavern space to small and mid-sized U.S. oil producers. By industry estimates, the Exchange for Storage Program was the equivalent of bringing two mid-size refineries online at a time when producers had limited market options for their production.

- We also signed an agreement with the government of Australia to store 1.5 million barrels of crude oil at the SPR, to help Australia fulfill its IEA member requirement to hold oil in reserve for emergencies that disrupt global oil markets.

### **Hydrogen research advances, to enable a low-carbon economy**

- We continued research on carbon-neutral and even carbon-negative hydrogen production using gasification and reforming technologies, large-scale hydrogen transport infrastructure, large-scale onsite and geological hydrogen storage, and hydrogen use for electricity generation, fuels, and manufacturing. DOE released a detailed report, *Hydrogen Strategy Enabling A Low-Carbon Economy*.

- We announced up to \$2 million in federal funding for cost-shared research and development projects to enable gasification of blended coal, biomass and plastic wastes, to produce hydrogen with potential for net-negative carbon dioxide emissions.

This is just a snapshot of FE's many accomplishments over the last year. Continue to check out FE's website ([www.energy.gov/fe/office-fossil-energy](http://www.energy.gov/fe/office-fossil-energy)) and sign up for FE news alerts to keep up to date with FOAs, selections, new studies, blogs, infographics and more. Additionally, access the recently released *Fossil Energy Roadmap*. ■

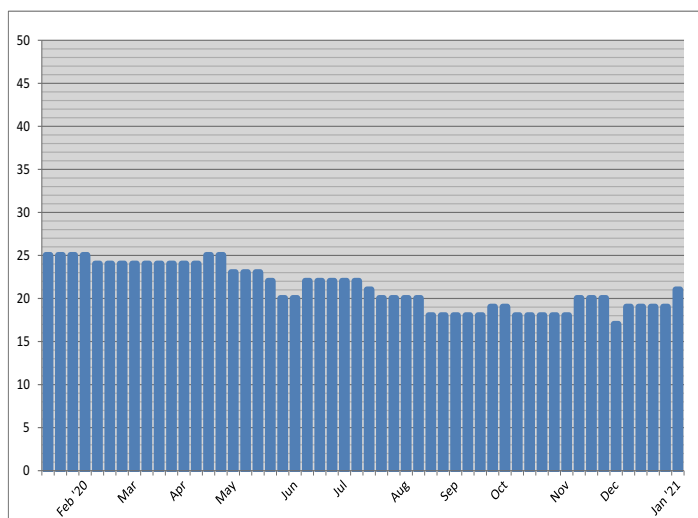
## Pipeline safety *Continued from page 1*

- not later than 30 days after the deadline for any post-hearing submission of a respondent.
- PHMSA issue an order within 120 days of the filing of a petition for reconsideration.
- An operator be allowed to ask PHMSA to issue a declaratory order to resolve issues of controversy or uncertainty.
- Requires PHMSA to notify the public of an enforcement hearing and provides that the agency will make formal hearings, as defined in 49 C.F.R. § 190.3, open to the public. Currently, PHMSA's enforcement cases, with the exception of a hearing on an emergency order, are conducted informally and do not qualify as formal hearings.
- Directs PHMSA to post the charging and responsive documents related to an enforcement action along with the decision or order on its website. For the most part, PHMSA has already been posting these materials on its website.
- Requires PHMSA to issue a final rule within two years that clarifies the applicability of the pipeline safety regulations to idle pipelines, which are defined as pipelines that have ceased normal operations and will not resume service for at least 180 days, have been isolated and purged, or contain small, non-hazardous volumes of gas.
- Directs PHMSA to issue a final rule within three years updating the federal safety standards for the operation and maintenance of large-scale liquefied natural gas facilities, other than peak shaving facilities.
- Following the submission of a report to Congress and subject to the appropriation of necessary funding, authorizes PHMSA to create the National Center of Excellence for Liquefied Natural Gas Safety.
- Requires PHMSA to issue a final rule within 90 days establishing new minimum federal safety standards for onshore gas gathering lines.
- Orders PHMSA to issue new leak detection and repair program rules within one year for operators of regulated gas gathering lines, gas transmission lines and gas distribution lines.
- Requires each operator to amend its operation and maintenance plan within one year to meet the leak detection and repair program requirements of 49 U.S.C. § 60102(q).
- Directs PHMSA to review each operator's operation and maintenance plan within two years of the act and not less than five years thereafter. This review may be included as a part of a regularly scheduled inspection.
- Requires PHMSA to make a determination on whether to advance the rulemaking proceeding for updating the class location requirements.
- Directs PHMSA to enter into an agreement with the National Academy of Sciences to complete a study within two years relating to the installation of auto-

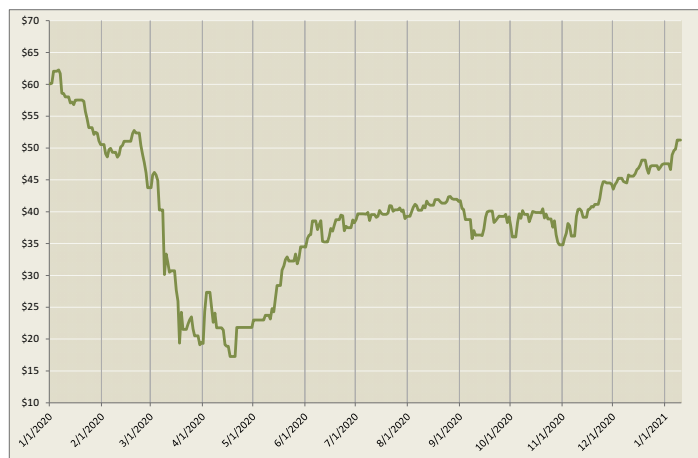
*Continues on page 18*

## Oil & Gas Dashboard

### Pennsylvania Rig Count



### Penn Grade Crude Oil Prices



### Natural Gas Futures Closing Prices

Month	Price
February	\$2.700
March	2.653
April	2.655
May	2.674
June	2.729
July	2.795
August	2.818
September	2.803
October	2.825
November	2.882
December	3.007
January 2022	3.095

*Prices as of January 8*

#### Sources

American Refining Group: [www.amref.com/Crude-Prices-New.aspx](http://www.amref.com/Crude-Prices-New.aspx)  
Ergon Oil Purchasing: [www.ergon.com/crudeoil](http://www.ergon.com/crudeoil)  
Gas futures: [quotes.ino.com/exchanges/?r=NYMEX\\_NG](http://quotes.ino.com/exchanges/?r=NYMEX_NG)  
Baker Hughes rig count: [bakerhughesrigcount.gcs-web.com/na-rig-count](http://bakerhughesrigcount.gcs-web.com/na-rig-count)  
Appalachian fixed price moving averages: David Marks, Eastern Energy Field Services, a subsidiary of BHE GT&S



## Northeast Pricing Report – December 2020

All trading points continued to be mixed across all trading terms. Front month trading increased for each location, mainly influenced by winter fundamentals. Long-term trading continues to be suppressed. Transco and Algonquin saw the greatest increases of \$0.62 and \$0.56 per MMBtu. However, Dominion South only increased \$0.01 per MMBtu. For the one-year trading term, every trading point decreased in value. Transco Z6 decreased the most at \$0.31 per MMBtu. Dominion South decreased the least at \$0.11 per MMBtu. The length of contract trading saw some significant drops for long-term trading. Transco Z6 decreased by \$0.10 per MMBtu, which represents a 72% decrease from November's pricing.

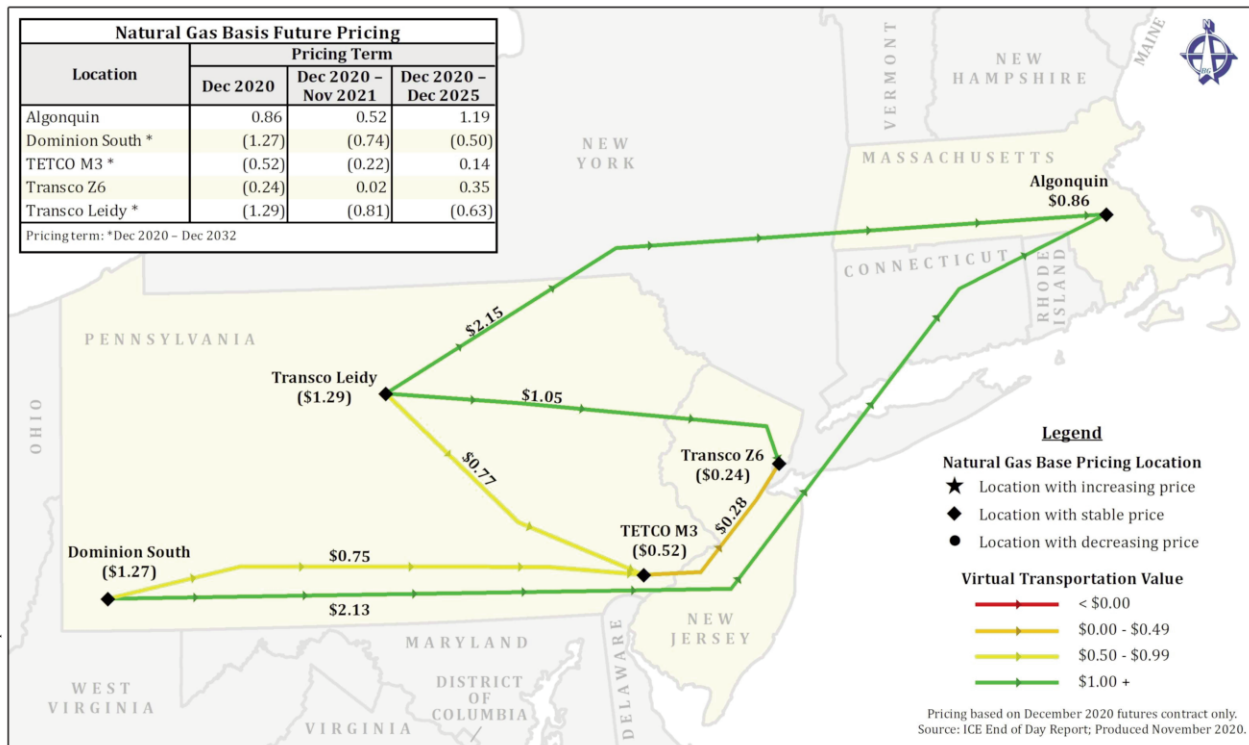
Transportation values continue to increase going into winter. Transco Leidy to Transco Z6 had the greatest increase of \$0.59 per MMBtu. Dominion to Algonquin and Transco Leidy to Algonquin were not far behind with increases of \$0.59 and \$0.53 per MMBtu respectively.

### Transportation Value Market Indicator

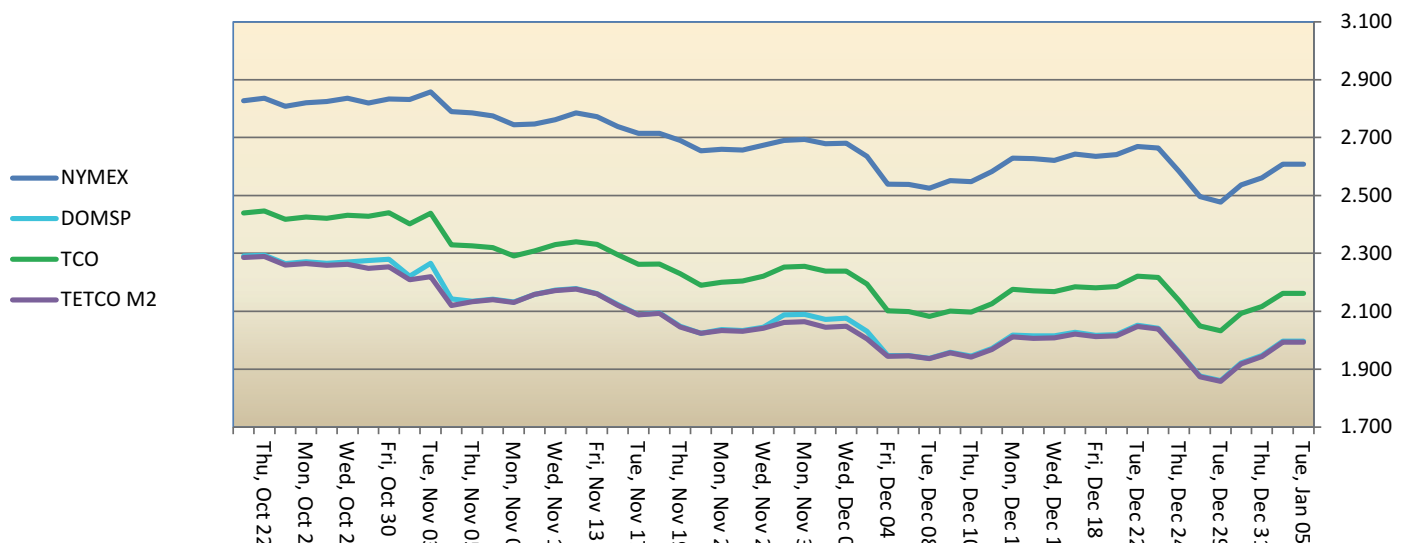


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[www.bertison-george.com](http://www.bertison-george.com)



## 36-Month Appalachian Fixed Price Moving Averages



# Spud Report: December 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	5	12/26/20	115-22790	Susquehanna	Brooklyn Twp
		12/26/20	115-22786	Susquehanna	Brooklyn Twp
		12/26/20	115-22787	Susquehanna	Brooklyn Twp
		12/26/20	115-22788	Susquehanna	Brooklyn Twp
		12/26/20	115-22789	Susquehanna	Brooklyn Twp
Cameron Energy Co	3	12/2/20	053-30919*	Forest	Howe Twp
		12/10/20	053-30916*	Forest	Howe Twp
		12/21/20	053-30915*	Forest	Howe Twp
		12/2/20	015-23638	Bradford	Wyalusing Twp
		12/2/20	015-23637	Bradford	Wyalusing Twp
Chesapeake Appalachia LLC	8	12/7/20	131-20626	Wyoming	Braintrim Twp
		12/7/20	131-20628	Wyoming	Braintrim Twp
		12/8/20	131-20627	Wyoming	Braintrim Twp
		12/18/20	131-20618	Wyoming	Windham Twp
		12/28/20	131-20589	Wyoming	Windham Twp
		12/28/20	131-20588	Wyoming	Windham Twp

available by going to the Office of Oil and Gas Management page at [www.dep.pa.gov](http://www.dep.pa.gov) and choosing Report from the menu. 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
PennEnergy Resources LLC	5	12/2/20	019-22853	Butler	Winfield Twp
		12/2/20	019-22854	Butler	Winfield Twp
		12/3/20	019-22855	Butler	Winfield Twp
		12/3/20	019-22857	Butler	Winfield Twp
		12/4/20	019-22856	Butler	Winfield Twp
Pennhills Resources LLC	1	12/23/20	083-57239*	McKean	Wetmore Twp
Range Resources Appalachia	2	12/17/20	125-28866	Washington	Independence Tp
		12/17/20	125-28867	Washington	Independence Tp

	December	November	October	September	August	July
<b>Total wells</b>	<b>24</b>	<b>50</b>	<b>45</b>	<b>58</b>	<b>23</b>	<b>43</b>
Unconventional Gas	20	45	34	51	19	41
Conventional Gas	0	0	0	0	0	0
Oil	3	5	11	7	4	2
Combination Oil/Gas	1	0	0	0	0	0

## Pipeline safety *Continued from page 16*

matic or remote-controlled shutoff valves on existing gas transmission lines in high consequence areas and existing hazardous liquids pipelines in commercially navigable waterways or unusually sensitive areas.

- Defines the terms “certain coastal waters” and “coastal beach” and requires PHMSA to complete an outstanding rulemaking mandate for these areas from the 2016 PIPES Act within 90 days.
- Requires each hazardous liquid pipeline operator to implement procedures that assess potential impacts by maritime equipment or other vessels, including anchors, anchor chains or any other attached equipment.
- Amends the reporting obligation for safety-related condition reports to require an operator to submit the report to the secretary of transportation, the appropriate state authority and the tribe where the subject of the report occurred. If there is no state authority, the operator must submit the report to the governor of the relevant state.

Title II of the 2020 PIPES Act, also known as the Leonel Rondon Pipeline Safety Act, contains several amendments to the federal pipeline safety laws in response to a September 2018 gas distribution incident in the Merrimack Valley, Massachusetts. In particular, Title II of the 2020 PIPES Act:

- Requires PHMSA to issue regulations within two years amending the integrity management program, emergency response plan, operation and maintenance manual and pressure control recordkeeping requirements for gas distribution operators.
- Directs PHMSA to submit a report to Congress within three years on the implementation of pipeline safety management systems within the gas distribution industry.
- Orders PHMSA to issue regulations within 180 days

requiring that at least one qualified agent of a gas distribution operator be present at a district regulator station or other site to monitor and prevent overpressurization during certain construction projects, unless the district regulator station has a monitoring system and the capability for remote or automatic shutoff.

- Mandates that PHMSA issue regulations within one year that require gas distribution operators to assess and upgrade district regulator stations.

The product of an agreement reached in the waning days of the current session of Congress, the 2020 PIPES Act does not contain several amendments proposed during earlier phases of the legislative process. The 2020 PIPES Act does not eliminate PHMSA's obligation to consider the costs and benefits of changes to the pipeline safety regulations or prohibit the use of direct assessments as part of a pipeline operator's integrity management program. The act does not change the *mens rea* (or mental state) requirement in the criminal statute or expand the list of prohibited activities covered under the criminal provision. Nor does the act authorize the use of administrative law judges in PHMSA enforcement actions, increase the amount of civil penalties that can be imposed for violations of the pipeline safety laws or regulations, or authorize the filing of mandamus actions challenging PHMSA's failure to perform nondiscretionary duties.

The task of implementing the provisions in the 2020 PIPES Act will fall on the incoming administration of President-elect Joseph R. Biden. Having emphasized environmental issues during the 2020 campaign, including efforts to address climate change through reductions in greenhouse gas emissions, the Biden administration will have the opportunity to advance these commitments in addressing the rulemaking mandates in the 2020 PIPES Act, particularly the new leak detection and



repair program requirements. The Biden administration's policy preferences and appointees for key positions will influence the implementation of the 2020 PIPES Act as well. President-elect Biden has already announced that Pete Buttigieg, the former mayor of South Bend, Indiana, will be his nominee to serve as the next secretary of the U.S. Department of Transportation, although a potential nominee for PHMSA administrator may not be announced until later this year. ■

## Calendar of Events

### PIOGA events

Information and updates: [pioga.org](http://pioga.org) > PIOGA Events

#### Axes & Ales Networking Event

February 18, Lumberjaxes, Millvale

#### PIOGATech: Regulatory Update — E&S and Encroachments

February 25, webinar

#### Clubs & Cocktails Networking Event

March 18, Topgolf, Bridgeville

#### PIOGATech: Reasonable Suspicion Training and Addressing Substance Use and Mental Illness in a Virtual World

March 25, webinar

#### PIOGATech: Environmental Topic TBA

April 22, venue TBA

#### Clay Shoot Networking Event

May 6, Promise Land Sporting Clays, Freeport

#### Spring Meeting & Exhibition

May 19, Rivers Casino, Pittsburgh

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

June 7, Wanango Country Club, Reno

#### Cigar Dinner Networking Event

July 15, BURN by Rocky Patel, Pittsburgh

#### PIOGATech: Safety Topic TBA

July 22, venue TBA

#### PIOGATech: Water & Waste Management

August 18, venue TBA

#### 24th Annual Divot Diggers Golf Outing

August 19, Tam O'Shanter of Pennsylvania, Hermitage

#### Annual Membership Meeting and Fall Sports Outing

September 15-16, venue TBA

#### Clay Shoot Networking Event

October 21, venue TBA

#### PIOGATech: Safety Topic TBA

October 26, venue TBA

#### Annual Oil & Gas Tax and Accounting Seminar

November 17, venue TBA

#### Wine Tasting Networking Event

November 18, venue TBA

#### PIOGATech: Air Quality Compliance

December 16, The Chadwick, Wexford

#### Mix, Mingle & Jingle Holiday Party

December 16, The Chadwick, Wexford

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# **PIOGA Spring Meeting & Exhibition**

**Great speaker lineup!  
Exclusive exhibitor opportunities!  
Excellent networking!**

**Wednesday, May 19  
Rivers Casino  
Pittsburgh**

***Coming up soon:***

- Axes & Ales Networking Event, February 18, Lumberjaxes, Millvale
- PIOGATech: Regulatory Update – E&S and Encroachments, February 25, webinar