The PIOGA Press

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Wolf revives severance tax proposal, this time for workforce assistance efforts

As the state continues to try to mount an economic comeback nearly a year into the coronavirus pandemic, Governor Tom Wolf on January 28 proposed a multi-billion-dollar investment in workforce development initiatives designed to aid workers impacted throughout the course of the pandemic.

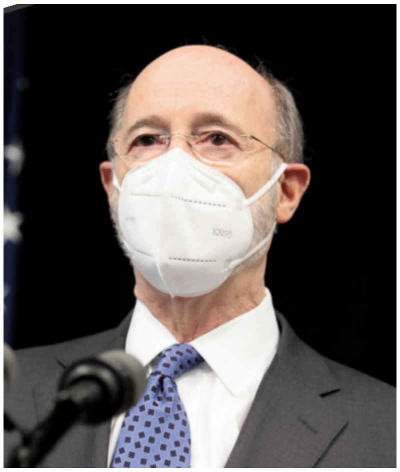
The proposal would invest billions into workforce development initiatives, including job training and "rapid" re-employment assistance, according to Wolf. The program would be funded through a bond issue paid back using revenue from a severance tax on natural gas, an idea that will sound familiar to those who have monitored Wolf's past budget proposals.

"To get Pennsylvanians back on track from the disruptions that this pandemic is causing, we need to make major—major—targeted investments to strengthen our economy, to support workers and small businesses, to rebuild our infrastructure and do everything we can to help all Pennsylvanians build a path to financial security," Wolf said.

A severance tax, however, has long been a key priority that has eluded Wolf, with the Republican-controlled General Assembly often dismissing Wolf's attempts to enact one.

In 2019, Wolf proposed using $4.5 billion in severance tax revenue to fund infrastructure improvements, broadband accessibility and other capital investments in his "Restore Pennsylvania" plan, but the legislation has never received a committee vote.

Wolf suggested that enacting a severance tax could be one of the fastest ways to implement the types of workforce development programs that he is proposing. Wolf didn't offer a concrete figure at what the new bond issue could look like, but pointed to the $4.5 billion bond that he sought with his Restore PA plan.



Governor Tom Wolf outlines his legislative priorities on January 28.

"It would produce a lot of money and we need a lot of money," Wolf said. "That's going to help us come out of this pandemic faster than pretty much anything else we can do."

In addition to investments in workforce development, Wolf also expressed a desire to increase the state's minimum wage, legalize recreational marijuana, lower the Corporate Net Income Tax and close the Delaware Loophole, banning gifts to public officials, and placing limits on contributions to political campaigns.

Wolf's legislative agenda was met with resistance from Republican leaders and some Democrats, who worried about the impact that a severance tax could have on the state's economy.

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PIOGA statement on Wolf's severance tax proposal

Association President and Executive Director Dan Weaver issued the following statement on February 3, the day Governor Tom Wolf formally released his fiscal year 2021-2022 state budget proposal—a spending plan that again would reloy on a natural gas severance tax, this time aimed at funding a workforce development scheme:

"Governor Wolf's attempt to once again masquerade a job-killing severance tax as a post-COVID economic relief program is a proposal that will not generate significant revenue for the Commonwealth, while taking singular aim at a segment of the state's economy struggling with low commodity prices and infrastructure bottlenecks impacting markets to the east and north.

"The triple threat of these challenges, the pandemic and a severance tax would continue the steady decline of our industry and the tax revenue the governor is hoping for, as evidenced by the 25 percent drop in impact fees this year. The governor also recently said that, 'Pennsylvanians, unlike pretty much every other state including some very conservative states in the country, have not really taken advantage of that wealth.' That is simply untrue. Mineral rights owners have very much taken advantage of that wealth, as did the Commonwealth, when it leased state land and collected tens of millions of dollars in lease bonuses and royalty payments from the natural resources owned collectively by all Pennsylvanians, including significant leasing by Governor Ed Rendell. The fact is that Governor Wolf is the one who has prevented all Pennsylvanians from taking full advantage of Pennsylvania's wealth of public natural resources."

Take action

This is the seventh year in a row Governor Wolf has called for a natural gas severance tax as part of his state budget proposal, and once again the natural gas and oil industry must rise up against what would be a job-killing tax.

More than 500,000 Pennsylvanians owe their employment, directly or indirectly, to our industry. As dollars invested in our industry are sucked away by the seemingly insatiable appetite for government spending, fewer wells will be drilled. This tax will cost jobs, destroy economic growth and impact all segments of our industry—producers, suppliers, vendors and professional service providers. In addition, fewer wells mean less production, resulting in higher natural gas prices that will hit Pennsylvania industries and consumers in the pocketbook, further stressing the Commonwealth's post-pandemic recovery and ultimately revenue generated by other state taxes. Fewer wells also equate to reduced royalties for Pennsylvania landowners.

Your state representative and senator need to understand that this tax jeopardizes your job. To find out how to contact your elected officials, visit pioga.mmp2.org/my-government and click on My Officials.

Severance tax *Continued from page 1*

Representative Pam Snyder (D-Greene), who chairs the House Democrats' Southwest Delegation, has been a vocal supporter of the natural gas industry due to its prevalence in her district. Snyder said that because the industry is crucial to local economies in the western part of the state, the severance tax would effectively resemble a tax on the state's economic recovery.

"Targeting a single industry with another layer of taxes—our oil and gas industry that employs tens of thousands of Pennsylvanians—is a nonstarter," Snyder said in a statement. "This industry was deemed an essential industry by Governor Wolf last year, has produced the materials to manufacture the PPE that allowed us to respond to the pandemic, and is now producing the byproducts that are fueling the manufacturing, storage and distribution of the vaccine to Pennsylvanians."

House Majority Leader Kerry Benninghoff (R-Centre) also criticized Wolf's agenda. He said that the Wolf Administration should have one focus and one focus alone: vaccine distribution.

"The governor and his administration should have no other top priority than getting Pennsylvanians vaccinated. Pennsylvania ranks near the bottom of the country in terms of vaccine deployment efficiency, and the confusing and short-sighted guidance from the administration has caused significant public angst," Benninghoff said in a statement. "Getting vaccines into the arms of Pennsylvanians is the most significant key to getting Pennsylvania back to normal and beginning to solve many of the problems the governor outlined today."

"Otherwise, this announcement was as disappointing as it was unsurprising," Benninghoff said, adding that Wolf's wish list "outlined the continuation of his tax and spend pattern of picking winners and losers."

Wolf, however, contended that his 2021 agenda would remove barriers to employment and set Pennsylvania on a path to recovery.

"As governor, my goal is to lower barriers, reduce the barriers for every Pennsylvanian and to advocate for policies that help Pennsylvanians succeed," he said. "We want to take steps to get Pennsylvania back on track from the pandemic, we want to build on bipartisan progress that we've already made and we want to change the culture of Harrisburg politics to increase accountability."

—The PLS Reporter

PIOGA takes issue with RGGI proposal in formal comments

Department of Environmental Protection regulations that would enable Pennsylvania's participation in the Regional Greenhouse Gas Initiative (RGGI) drew more than 13,000 responses before the public comment period closed on January 14. The proposal, championed by Governor Tom Wolf, would impose a shrinking cap on carbon dioxide emissions from electric generators.

PIOGA was among those taking the opportunity to provide input on the proposal, and our comments make the following major points:

• Pennsylvania's participation in RGGI without authorization by the General Assembly is unlawful.

• Pennsylvania's Air Pollution Control Act (ACPA) does not authorize the regulation of CO2.

• Neither the ACPA nor Pennsylvania's Uniform Interstate Air Pollution Agreements Act authorizes the state to participate in RGGI through this rulemaking.

• The proposed mandatory CO2 emission allowance fees constitute taxes that the legislature has not authorized.

• Assuming that reducing current CO2 emissions is sound policy and that becoming part of the multi-state cap-and-trade program without legislative authorization is lawful, joining RGGI is not in Pennsylvania's best interests.

On November 7, the Environmental Quality Board (EQB) published notice of its proposal to amend 25 Pa. Code Chapter 145 (relating to interstate pollution transport reduction) to add Subchapter E (relating to CO2 budget trading program) to establish a program to limit the emissions of carbon dioxide from fossil fuel-fired electric generating units with a nameplate capacity of 25 megawatts or more. Adoption of this proposal would enable Pennsylvania's participation in RGGI, a regional CO2 budget trading program established among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont and Virginia (joining in 2021).

PIOGA comments

PIOGA's comments stated that without regard to whether the Commonwealth's participation in RGGI is sound policy—which it is not—the proposal is unlawful because there is no valid Pennsylvania legislative authorization for various aspects of the proposal.

In particular, PIOGA stated that the state's Air Pollution Control Act does not authorize the regulation of carbon dioxide, and no Pennsylvania court has ever held that CO2 constitutes air pollution or is a greenhouse gas (GHG) under the APCA.

Even assuming the APCA authorizes DEP's regulation of CO2, neither the APCA nor the Uniform Interstate Air Pollution Agreements Act (UIAPAA) provides the necessary legislative authorization for Pennsylvania to participate in RGGI. Section 4004(24) of the APCA merely authorizes DEP to "formulate" interstate air pollution control agreements *for consideration by the General Assembly*.

PIOGA also asserted that the regulation's mandatory CO2 emissions allowance fees constitute taxes that the legislature has not authorized. The association's comments cited testimony delivered at a hearing on the RGGI proposal by the House Environmental Resources and Energy Committee in which attorney Anthony R. Holtzman explained the difference between a "tax" and a regulatory "fee," emphasizing that the latter is merely intended to cover the cost of administering a regulatory scheme. By contrast, the allowance trading program at the heart of RGGI is expected to generate $300 million annually, which would be greatly in excess of administering the program.

"That the 'investment' of the auction proceeds is the primary purpose of this proposed rulemaking—and not a significant or meaningful reduction of "CO2 emissions in this Commonwealth" or regionally, nationally or globally—is shown by the relatively small, estimated reductions in CO2 emissions in Pennsylvania, the RGGI states, nationally and globally," PIOGA stated.

That the proposed regulations are primarily intended to raise revenue is also shown quite clearly by the fact that there is no discussion in the proposal's preamble or Regulatory Analysis Form (RAF) regarding how or whether reducing CO2 emissions through RGGI will improve or even affect Pennsylvania climate and precipitation. "The obvious conclusion is that adopting the regulations will have no effect on climate change in Pennsylvania," the association pointed out.

Further, Section 9.2(a) of the APCA limits disbursements of the revenue arising from the auctioning of allowances, from DEP's Clean Air Fund "for use in the elimination of air pollution." Distributing revenue for the wide range of energy efficiency and renewable energy projects discussed in the rulemaking's preamble, such as upgrading appliances and weatherizing buildings, does not fall within this authority.

Not in Pennsylvania's best interests

Assuming for the sake of argument that reducing current CO2 emissions is sound policy and joining RGGI without legislative authorization is lawful, joining RGGI is not in Pennsylvania's best interests. PIOGA offered these points to bolster that contention:

• Pennsylvania's CO2 emissions have decreased without RGGI. CO2 emissions from fossil-fuel-fired electric generating facilities in 2018 were roughly 33 percent below 2005 emissions. Pennsylvania emissions have declined at about the same rate since approximately 2005 as they have in the RGGI states.

• Pennsylvania natural gas is the foundation for reducing GHG emissions. GHG emissions from the electricity production sector decreased approximately 38 percent from 2005 to 2017 at a time when natural gas was overtaking coal as the primary generation source.

• Pennsylvania is an energy producing and net-energy exporting state, unlike all other RGGI states. Our generation will decline under RGGI because generators will be operating in a higher-cost environment as compared to generators in neighboring Ohio and West Virginia.

• Predicted Pennsylvania CO2 emissions reductions with RGGI are trivial.

• Joining RGGI would cause Pennsylvania electricity generation to migrate to non-RGGI neighboring states, resulting in significant economic losses to Pennsylvania.

• Joining RGGI would significantly increase Pennsylvania energy prices to manufacturers and industrial users.

• Natural gas is essential to the reliability and resiliency of the electric grid with increased use of wind and solar energy.

• Oil, natural gas and coal all are essential to life as we know it, and essential for the foreseeable future.

Finally, PIOGA pointed out that DEP has not appropriately considered the effects of its proposal on small business—something required under the Regulatory Review Act (RRA). PIOGA asserted that a more thorough analysis of the projected increased cost of electricity to Pennsylvania's industrial and commercial customers is

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JUST THE FACTS

PIOGA Just the Facts #1: Did you catch it?

As we know, 2021 will be a challenging year for natural gas and oil production in the U.S., with a significant focus on federal actions and policies that will make the delivery of our energy resources more difficult and costly. Each month, PIOGA will provide a summary of the facts on an issue of importance to our industry for members to share with their employees, colleagues, and even our friends, family and neighbors.

The first of this series debuted at the beginning of February and is titled, "**Changing the Climate Change Trajectory: How Natural Gas and Oil are Part of the Solution.**" If you missed seeing it in your email inbox, visit the Latest News and Blog section of pioga.org, where you'll also find a link to a pdf version you can print or share.

We all have a stake in making a strong case for state and federal policies that encourage domestic energy production rather than stifle it. We encourage you to share the facts regarding the role of natural gas and oil in climate change. Be on the lookout for more every month this year.

March 25 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 for 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. 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 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 appearance, 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. For registration and more information, visit the PIOGA Events section at pioga.org. ■

PIOGA board welcomes new HDR Engineering representative

Brandon Walker, PE has been named as the representative for HDR Engineering on the PIOGA Board of Directors. Brandon is a 2003 graduate of the University of Pittsburgh with a degree in civil and environmental engineering. For 18 years, he has predominantly worked as an engineering and environmental consultant in the oil and gas industry, mainly with midstream facility and pipeline design and permitting. Recently, he joined the HDR Pittsburgh team as Oil and Gas Section Leader, and he is enjoying working daily with a great group of engineers, designers and scientists. Aside from work, Brandon spends the majority of time raising his four daughters one dad joke at a time, playing hockey and woodworking.

Thoughts on joining the PIOGA Board: "I feel that given the political climate and the uncertainty in the market, it is essential for professionals to stay active and engaged with a well-established organization like PIOGA. As our region and country continue to work toward energy independence, we can continue to show that exploration, production, and use of our local natural resources are done efficiently, effectively and safely."

Thanks for your involvement!

As Brandon comes aboard, our thanks go out to Sara Blascovich from HDR for her long service to PIOGA and the Board of Directors.

"Sara has been an active member and board member for close to 13 years and her enthusiasm and energy will be missed on the board. We wish Sara all the best in her new role at HDR and thank her for her leadership and engagement with PIOGA," said Dan Weaver, President & Executive Director. ■

New guidance for unconventional natural gas operators following settlement relating to 25 Pa. Code Chapter 78a

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By order entered on January 6, the Commonwealth Court of Pennsylvania approved a partial settlement by and between the Marcellus Shale Coalition (MSC), as the underlying petitioner, and the Commonwealth's Department of Environmental Protection (DEP) and Environmental Quality Board (EQB), the underlying respondents, which will result in clarification surrounding the regulation of unconventional wells under 25 Pa. Code Chapter 78a. Order Granting Application for Relief, *The Marcellus Shale Coal. v. Dep't of Envtl. Prot.*, 573 MD 2016 (Pa. Commw. Ct., Jan. 6, 2021).

Specifically, there was agreement to make program improvements regarding onsite processing of waste, well development impoundments, centralized impoundments, well site restoration, spill remediation and waste reporting. The timeline for implementation of these program improvements is generally between "as soon as possible" and 12 months from the date the court dismissed certain counts in the lawsuit (i.e., January 6, 2021). Specifically, the parties submitted the proposed partial settlement on December 8, 2020, which relates to Counts III – VIII of MSC's petition. Stipulation for Settlement, *MSC. v. DEP.*, 573 MD 2016 (Pa. Commw. Ct., Dec. 8, 2020). The entirety of Count I, pertaining to public resources, and portions of Count II, pertaining to the area of review, survive the partial settlement and will continue to work through the litigation process. *See* Petition for Review, *MSC. v. DEP.*, 573 MD 2016 (Pa. Commw. Ct., Oct. 13, 2016).

DEP started the process of updating its oil and gas regulations in 2011. In 2014, the regulations known as 25 Pa. Code Chapter 78 were split into two sections with Chapter 78 addressing conventional oil and gas drilling operations and Chapter 78a pertaining to unconventional oil and gas drilling, particularly drilling in the Marcellus Shale formation. The legislature and Governor Wolf eliminated the proposed rule changes to Chapter 78 for conventional well drilling in June of 2016. On October 8, 2016, the EQB promulgated the regulations relating to unconventional drilling operations under 25 Pa. Code Chapter 78a by publication in the *Pennsylvania Bulletin*. 46 Pa.B. 6431.

The MSC immediately commenced the current litigation against DEP and EQB filing its petition on October 13, 2016, under the Commonwealth Court's original jurisdiction in the nature of a complaint seeking declaratory and injunctive relief challenging the validity and enforcement of the new regulations for unconventional drilling operations under Chapter 78a. *See* Petition. The Commonwealth Court, with subsequent affirmation from the Pennsylvania Supreme Court, granted the request for injunctive relief regarding centralized impoundments, public resources, and well operators' area of review obligations. *MSC. v. DEP.*, 646 Pa. 482, 185 A.3d 985 (2018).

Settlement

The partial settlement focuses on program enhancements in the areas of onsite processing, well development impoundments, centralized impoundments, well site restoration, spill remediation and waste reporting. Partial Settlement at 5 – 15. Over the course of the next 12 months, DEP is required to update its forms and FAQs with regard to these areas. *Id.* The Partial Settlement details the specific forms and FAQs that are required to be updated. *Id.* For example, DEP will be required to include the following FAQ which would be applicable in the event of a spill, subsequent remediation by the operator within 90 days, and submission of an appropriate final report demonstrating attainment of the applicable standard:

> Question: Will public notice be required?
>
> Answer: Public notification to the municipality and the public via the newspaper notice, and publication in the Pennsylvania Bulletin are not required for background or Statewide health standard remediations if the final report demonstrating attainment of the standard is submitted within 90 days of the release.

Id. at 13 – 14. Further, the interpretations expressed within the updated forms and FAQs will "provide a framework within which the [DEP] will exercise administrative discretion in the future," although DEP "reserves the discretion to deviate from the interpretations if circumstances warrant." *Id.* at 5. DEP must also provide industry training relating to the updated forms and FAQs. In order to promote an orderly transition, certain compliance deadlines relating to centralized impoundments were also extended by six months and three years. Specifically, the regulation with the extended deadlines would read:

> (a) An operator using a centralized impoundment as of October 8, 2016, shall close the centralized impoundment in accordance with this section or obtain a permit in accordance with Subpart D, Article IX (relating to residual waste management). The closure plan shall be submitted electronically to the Department through its web site for review and

approval no later than [*April 8, 2017* now extended six months to *June 7, 2021*]. The operator shall properly close the centralized impoundment in accordance with the approved plan or obtain a permit in accordance with Subpart D, Article IX no later than [*October 8, 2019* now extended 3 years to *January 8, 2024*]. 25 Pa. Code § 78a.59c.

Finally, with regard to spill remediation, DEP will update its compliance database to show when multiple citations are the result of one incident.

Conclusion

By entering into the partial settlement, DEP and EQB sought to "clarify existing statutory regulatory requirements in its forms and other documents as well as to review its efficiency and consistency in implementing these existing statutory and regulatory requirements." *Id.* at 2. The MSC entered into the partial settlement in order to provide "clarity and consistency" and ensure "the development of natural gas resources in the Commonwealth provides effective protection of the environment, health, safety and well-being of the com-

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munities in which its members operate." *Id.* at 2-3. Operators of unconventional wells may wish to closely monitor these regulatory changes to determine the impact on their operations. ■

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Pennsylvania PPP update regarding exemption of forgiven funds

The following is from PIOGA member company Arnett Carbis Toothman:

For purposes of the Corporate Net Income Tax, Pennsylvania taxable income is based upon federal taxable income. Pennsylvania law does not include an add back to or deduction from federal taxable income for forgiveness of a Paycheck Protection Program (PPP) loan. Therefore, in conformity with federal tax law, Pennsylvania corporations will not be required to add back PPP funds forgiven, and expenses incurred within the taxable year will be deductible.

Because this is not the case for personal income taxes (PIT), pass-through entities such as partnerships and S-corporations must include the PPP forgiven loans as taxable income for PIT purposes. State Representative George Dunbar (R-Westmoreland) is preparing to reintroduce legislation that would exempt the forgiven PPP funds from personal state income taxes. The Pennsylvania Institute of Certified Public Accountants, which supports this measure, has worked closely with Dunbar in crafting the legislation.

Last session, Representative Dunbar attempted to pass House Bill 2497, which would have exempted from state income tax the forgiveness of indebtedness related to the Paycheck Protection Act. The bill had been approved by the House of Representatives but died in the Senate.

Stay tuned for further updates regarding the development of the bill.

Late update: On February 5, the Pennsylvania House and Senate unanimously passed Senate Bill 109 and Governor Wolf signed the bill into law. Senate Bill 109 provides for the nontaxability for Pennsylvania personal income tax purposes of loans forgiven under the federal Paycheck Protection Program. As previously mentioned, passthrough entities, such as partnerships and S-corporations, follow personal income tax rules and now will not include forgiven PPP loans as taxable income.

In addition, SB 109 establishes the Hospitality Industry Recovery Program, the Rental and Utility Assistance Grant Program, and other measures to provide immediate assistance to citizens of Pennsylvania who have suffered economic loss due to the COVID-19 pandemic. ■

Members talk about the value of PIOGA

VALUE

With PIOGA, you have a voice where it matters, at a price you can afford, and you receive insight and assistance with items important to you and your business.

ALWAYS EVOLVING, ALWAYS CHANGING

The Kriebel Family has been involved in the production of natural gas and oil for almost 50 years. It is not surprising that there have been significant changes over that period of time in many areas, from drilling technology and production recovery to government regulations and industry taxation. Some of these changes have been positive and allowed our industry to grow, and others have been burdensome and restrictive to that growth.

ACCESS TO THE PROFESSIONALS

A changing industry is one of the main reasons we became a member of PIOGA over 30 years ago. We realized that we couldn't afford to hire the professionals necessary to help us deal with those changes, but a PIOGA membership would provide us with access to those professionals. Those professionals include legal representation in matters that affect our industry, legislative professionals who have a direct connection in Harrisburg, and accountants who specialize in oil and gas tax matters. In addition, PIOGA's staff works with gas market development, regulatory monitoring, and provides educational and networking opportunities.

James E. Kriebel
Kriebel Companies

PHMSA publishes gas regulatory reform final rule

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On January 11, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule amending the gas pipeline safety regulations at 49 C.F.R. Parts 191 and 192. Adopted as part of the Trump administration's efforts to reduce or eliminate unnecessary regulatory burdens, PHMSA estimates the final rule will result in approximately $130 million in annualized cost savings for pipeline operators. Although the effective date of the final rule is March 12, the agency provided a deferred compliance date of October 1, 2021, for the new amendments.

Additional information about the final rule is provided below.

Distribution integrity management program exemptions and farm taps

• Consistent with the policy announced in PHMSA's March 2019 Exercise of Enforcement Discretion, the final rule provides operators with the option to maintain pressure regulating devices on farm taps under either the distribution integrity management program (DIMP) requirements or 49 C.F.R. § 192.740. The final rule exempts farm taps originating from unregulated production and gathering pipelines from the DIMP requirements, the overpressure protection inspection requirements in § 192.740 and the annual reporting requirements in Part 191.

• The final rule does not amend PHMSA's regulations to provide additional clarity in determining what qualifies as a farm tap or where production, gathering or transmission piping ends and distribution service line piping begins in farm tap configurations. The agency stated that these definitional issues will be addressed in a guidance document that remains under development or in a future rulemaking proceeding. In the preamble to the final rule, PHMSA emphasized that any portion of a farm tap originating from an unregulated pipeline that meets the definition of service line must still comply with all applicable Part 191 and 192 requirements. *(Editor's note: For background on PHMSA's farm tap guidance, see the May 2020 PIOGA Press, page 8.)*

• The final rule also exempts master meter operators from the DIMP requirements. PHMSA noted that it would evaluate separately whether to extend the exception to small LPG operators or all distribution operators with fewer than 100 customers.

Corrosion control

• The final rule allows operators to remotely monitor cathodic protection rectifier stations, codifying the position the agency had already taken in a 2019 interpretation. If operators remotely monitor rectifiers, operators are required to conduct a physical inspection of the rectifier annually. PHMSA also confirmed that the regulations and related interpretations do not specify a particular technology.

• The final rule extends the atmospheric corrosion control inspection interval for distribution service lines from three years to five years, not to exceed 63 months. If atmospheric corrosion is identified, the inspection interval reverts to the three-year period. Going forward, if no atmospheric corrosion is identified in a subsequent inspection, then the operator could then return to the five-year inspection interval.

• The final rule did not adopt proposals by commenters and the Gas Pipeline Advisory Committee to use remediation as an alternative to the three-year inspection interval if atmospheric corrosion has been observed. PHMSA explained that the current regulations already require remediation of atmospheric corrosion and operators can use the five-year inspection interval if no atmospheric corrosion is identified in subsequent inspections. PHMSA also clarified that operators must retain the records of the two most recent atmospheric corrosion inspections to use the five-year inspection interval in order to support that atmospheric corrosion was not identified on the service line. Finally, PHMSA clarified that consideration of corrosion risks in a DIMP plan includes atmospheric corrosion.

Reporting and information collection

• The final rule adjusts the monetary property damage threshold in the definition of an "incident" from $50,000 to $122,000 to account for inflation. This threshold had not been updated since 1984 and includes losses to the operator and third parties, but not the cost of lost gas. PHMSA committed to updating the monetary damage threshold annually based on the formula provided in newly established Appendix A to Part 191. The agency will post the updated monetary damage threshold to its website, with the new threshold becoming effective on July 1st each year.

• The final rule eliminates §§ 191.12 and 192.1009 (the requirement to submit mechanical fitting failure (MFF) reports). Operators are still required to file incident reports for MFFs that involve a failure of a mechanical joint. Operators also need to include a count of hazardous leaks involving a mechanical joint failure in its gas distribution annual reports.

Standards incorporated by reference for plastic pipe

• The final rule incorporates by reference the 2018a edition of ASTM D2513-18a, "Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing and Fittings" and adopts corresponding amendments to the plastic pipe design standards to allow a design factor of 0.40 for pipe with a diameter of 24 inches or less.

• The final rule also incorporates by reference the 2019 edition of ASTM F2620, "Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings" and corresponding amendments to the requirements for joining procedures in §§ 192.281 and 192.283 to clarify that procedures that provide an equivalent or superior level of safety to ASTM F2620 are acceptable. PHMSA agreed with commenters that 0.099 is an acceptable minimum wall thickness for 1-inch CTS Pipe.

Test factor for pressure vessels

• In response to a 2015 petition for reconsideration, PHMSA amended § 192.153(e) to allow pressure vessels that were tested in accordance with the 1.3 times MAOP test factor after July 14, 2004, to continue operating without retesting.

• Pre-fabricated units and pressure vessels meeting the 1.3 test factor installed after July 14, 2004, are not subject to the strength testing requirements of § 192.505(b) as long as the components were installed before October 1, 2021 (the compliance deadline for the final rule). Likewise, these same components are not subject to the duration requirements of § 192.505(c) and (d) as long as they have been tested for duration consistent with § 192.153(a) and (b).

• Pre-fabricated units and pressure vessels installed on or after October 1, 2021, must be tested for the duration specified in §§ 192.505(c), 192.505(d), 192.507(c), or 192.509, as applicable.

• PHMSA also adopted its proposal to accept pre-installation manufacturer pressure tests, with certain conditions, for newly manufactured pressure vessels installed after October 1, 2021. If the manufacturer pressure test is used, the operator must inspect the pressure vessel after it has been placed into service in accordance with the new requirements in § 192.153(e). In response to comments regarding pressure vessels temporarily used on a pipeline facility, PHMSA is also accepting pre-installation manufacturer pressure tests or a prior test so long as the component is promptly removed after the task is complete. The agency also adopted requirements pertaining to the pressure vessels that are temporarily removed from a pipeline facility and reinstalled at that location or a different location.

Other amendments

• The final rule adopted a change to § 192.229(b), which provides that welders may not weld with a welding process they have not engaged in within the last six months, by extending the time frame to seven-and-a-half months.

• The final rule extends the allowance for testing fabricated units and short segments of pipe prior to installation if a post-installation test is not practicable, which is currently permitted for steel pipelines that operate at a stress level greater than 30 percent SMYS, to steel pipelines that operate at a stress level less than 30 percent SMYS and at or above 100 psi. The final rule does not extend the pre-testing provisions to pipelines operating below 100 psi, service lines, or plastic pipelines. The final rule removes "hydrostatic" from the new § 192.507(d) to allow for the use of test media other than water. ■

Common OSHA COVID-19 violations

The following comes from PIOGA member company RETTEW.

As COVID-19 continues to be a threat, OSHA is doing its due diligence to help protect workers. OSHA recently released its most frequently cited COVID-19 standards violations. As of the end of last year, OSHA had cited 300 worksites and proposed nearly $4 million in penalties for coronavirus-related violations since the beginning of the pandemic. To raise awareness of these violations within your company, consider using the accompanying Toolbox Talk to conduct a safety meeting.

While OSHA has not issued specific COVID-19 standards, employers are required to comply with existing standards that encompass pandemic-related safety risks. The Occupational Safety and Health Act's General Duty Clause, for example, requires employers provide a work environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm." OSHA has also released guidelines for limiting worker exposures to the coronavirus (www.osha.gov/coronavirus). The most frequently cited pandemic-related requirements are listed below.

• Provide a medical evaluation before a worker is fit-tested or uses a respirator.

• Perform an appropriate fit test for workers using tight-fitting respirators.

• Assess the workplace to determine if COVID-19 hazards are present or likely which would require the use of a respirator and/or other personal protective equipment (PPE).

• Establish, implement and update a written respiratory protection program with required worksite-specific procedures.

• Provide an appropriate respirator and/or other PPE to each employee when necessary for employee protection. Ensure the respirator and/or PPE is the correct type and size.

• Train workers to safely use respirators and/or other PPE in the workplace, and retrain workers as necessary based on workplace changes.

• Store respirators and other PPE so they are protected from damage, contamination, and deformation of the facepiece and exhalation valve, if applicable.

• Within eight hours of being informed, report to OSHA any fatality that occurs within 30 days of a work-related incident.

• Keep required records of work-related fatalities, injuries and illness. ■

Safety Committee Corner

Toolbox TALK

REDUCE COVID-19 CASES

Everyone can work together to help reduce the number of COVID-19 cases. Take the following measures when working during the COVID-19 Pandemic.

- Stay home when you're sick!
- Remember, face coverings are NOT considered respirators!
- Check if a medical evaluation and/or fit testing are needed before you wear a respirator.
- Know your company's COVID-19 policy or program.
- Wear a face covering when in public, even if you are working outside, and use extra care when working around others.
- Clean your face covering according to the manufacturer's recommendations or wash regularly with laundry detergent.
- Wash your hands frequently with soap and water for at least 20 seconds.
- Use hand sanitizer containing at least 60% alcohol when soap and water are unavailable.
- Work remotely or stagger shifts when possible.
- Do not use another worker's phone, desk, tools, or equipment.
- Regularly clean and disinfect surfaces, equipment, and regular touch points.
- Use EPA-approved cleaning chemicals labeled to mitigate the spread of COVID-19.
- Follow the manufacturer's instructions for cleaning and disinfection products.
- Always report safety and health concerns to Safety or Human Resources.
- If you feel unsafe, stop work!
- Do your research before traveling between states, and find out if there are any travel restrictions for entering a state or returning from a state.
- When traveling, try not to enter restaurants or other establishments. If you do enter, wear a face covering and minimize the time you spend there.

Date:

ATTENDANCE RECORD

SUPERVISOR:

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CREW MEMBERS PRESENT:

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COMMENTS/FEEDBACK:

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Comprehensive Safety Training Center • Industrial Hygiene • Program Development & Management • Safety Oversight

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RETTEW

New Nationwide Permit 12 released by Army Corps of Engineers

By Armando F. Benincasa
Steptoe & Johnson PLLC

The United States Army Corps of Engineers has completed its rulemaking and released a pre-publication version of its final rule reissuing and modifying 12 existing nationwide permits (NWPs) and issuing four new NWPs. One reissued permit is NWP 12, used to construct utility lines for the transport and/or delivery of water, sewer, electricity, gas, and telecommunications services.

The final rule splits the previous NWP 12 into three new permits:

• NWP 12 relating to the construction of oil or natural gas pipelines

• NWP 57 relating to the construction of electric or telecommunication utility lines

• NWP 58 relating to the construction of water and sewer lines

The action taken by the Corps impacts only the NWPs specifically addressed in the final rule, leaving the remaining 40 NWPs previously issued in 2017 unchanged.

The Corps also reduced the number of conditions that trigger the need for filing a pre-construction notification (PCN) prior to commencing construction activities pursuant to NWP 12. A PCN continues to be required where the Endangered Species Act (ESA) or the National Historic Preservation Act is potentially impacted, but a PCN is now also required for NWP 12 for all oil and gas pipelines which extend beyond 250 miles in total length, regardless of impacts.

Importantly, the final rule specifically sets forth how the Corps satisfies its duties under the ESA when issuing the new NWPs and specifically those related to pipeline construction. The final rule includes the Corps' new biological assessment which concludes that the new NWPs have no effect on listed species and designated critical habitat. The assessment Is key to addressing deficiencies identified by a federal district court when it enjoined the use of NWP 12 for authorization of the Keystone pipeline.

The new NWPs were published in the *Federal Register* on January 13 and become effective on March 15. All of the NWPs and related documents can be found at www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits. ■

PUC announces impact fee schedule for 2020

Unconventional producers will pay $5,200 less per horizontal well in impact fees for the 2020 calendar year, according to a notice from the Pennsylvania Public Utility Commission in the January 30 *Pennsylvania Bulletin.* The change in the impact fee schedule was triggered by the decline in the average price for natural gas in 2020.

A first-year horizontal well will incur a fee of $40,500, down from $45,700 for the 2019 calendar year. The impact fee is levied on non-stripper unconventional wells (producing more than 90,000 cubic feet in any given month) for the first 10 years of their lives.

Year of Well	Horizontal	Vertical—Producing
1	$40,500	$8,100
2	$30,400	$6,100
3	$25,400	$5,100
4-10	$10,200	$2,000

According to an estimate published in January by the Independent Fiscal Office *(January PIOGA Press, page 12)*, the lower fee schedule and fewer new wells coming online will result in a decline of $55.9 million in revenue collected from the tax for 2020.

Fees for the previous calendar year must be paid by producers by April 1 and are to be distributed by the PUC by July 1 to municipalities, counties and a variety of state programs. ■

DEP launches Chapter 102 electronic permitting

The Department of Environmental Protection is finalizing development and testing of an electronic permitting system for Chapter 102 permit applications for stormwater discharges associated with construction activities. The system went live in late January and is accessed through DEP GreenPort.

DEP says the Chapter 102 ePermit system will save time for applicants, county conservation district staff and DEP reviewers. One of the overall goals of DEP's ePermitting effort is to improve the efficiency of submission and reviews of permit applications and Notices of Intent (NOIs) and allow faster responses to applicants regarding permit submission, review and issuance.

The system will also include online payment of certain fees for applications, will reduce the expense of printing design drawings and make information available in real-time to the public (which will increase transparency). DEP and county conservation districts are still accepting paper applications, although DEP expects to eventually replace paper applications with electronic submission.

DEP's Bureau of Clean Water administers the statewide Erosion and Sediment Control (E&S) program under Pennsylvania Code Title 25 (Environmental Protection) Chapter 102. Chapter 102 requires a permit from DEP for construction activities involving one or more acres of earth disturbance, timber harvesting and road maintenance activities involving 25 or more acres of earth disturbance, and oil and gas and other activities involving five or more acres of earth disturbance.

The initial release of the Chapter 102 ePermit system will include new NOIs for coverage under the PAG-02 General NPDES Permit for Stormwater Discharges Associated with Construction Activities and NOIs for PAG-02 amendments of coverage for applications that were originally processed in the ePermit system.

PIOGA notes that these changes are under DEP's Bureau of Clean Water and do not affect the current ePermitting system for ESCGPs under the Office of Oil and Gas. The new ePermit is for NPDES permits.

Visit DEP's Chapter 102 ePermit website for information on trainings and other resources. ■

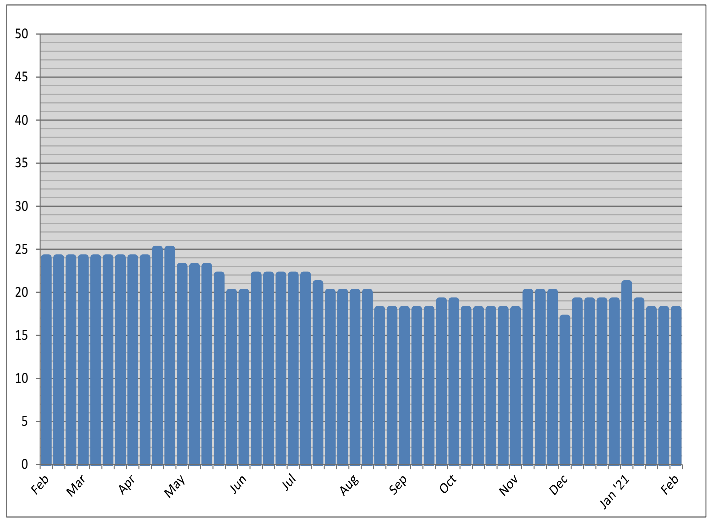
New PIOGA members — *welcome!*

Bucks Fabricating
3547 Perry Highway, Hadley, PA 16130
800-233-0867 • bucksfab.com
Allies & Providers—one-stop shop for hauling products, from standard, in-stock roll-off containers to custom items such as poly boxes, frac tanks and more

Penneco Environmental Solutions, LLC
6608 Route 22, Ste 301, Delmont, PA 15626
724-468-6014 • www.pennecoenvironmentalsolutions.com
Allies & Providers—specializing in safe wastewater disposal

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices

Natural Gas Futures Closing Prices

Month	Price
March	$2.975
April	2.910
May	2.938
June	2.980
July	3.028
August	3.037
September	3.029
October	3.041
November	3.103
December	3.213
January 2022	3.294
February	3.225

Prices as of February 10

Sources

American Refining Group: www.amref.com/Crude-Prices-New.aspx
Ergon Oil Purchasing: www.ergon.com/crudeoil
Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG
Baker Hughes rig count: bakerhughesrigcount.gcs-web.com/na-rig-count
Appalachian fixed price moving averages: David Marks, BHE Eastern Energy Field Services

Northeast Pricing Report — February 2021

Transportation Value Market Indicator

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

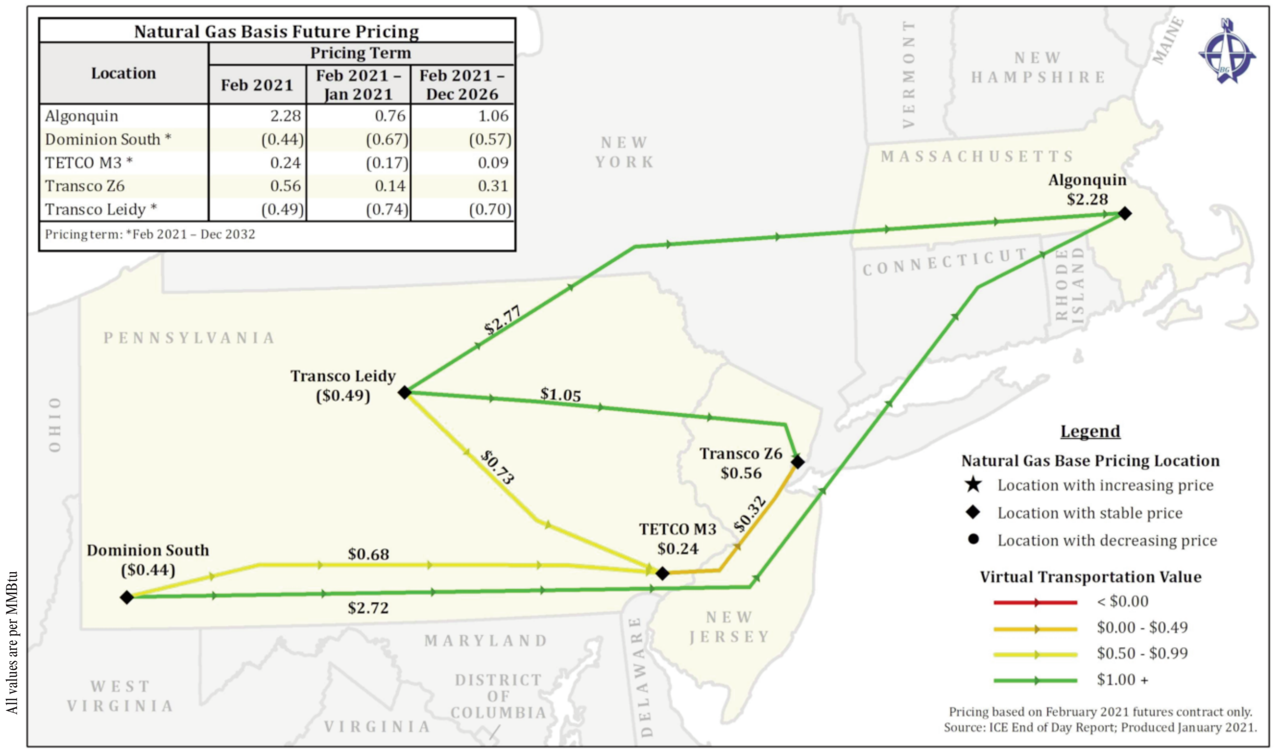
Front-month and one-year term trading was mixed. Dominion South and Transco Leidy were both up by $0.14 and $0.12 per MMBtu. Every other trading point decreased. TETCO M3's decrease of $0.27 per MMBtu was the steepest decline. While the one-year trading term was mixed, volatility was low. Transco Z6 had the largest increase of $0.08 per MMBtu. Both Dominion South and Transco Leidy decreased $0.02 per MMBtu. Every point went down in long-term trading. Algonquin's drop was significant for long-term trading at $0.13 per MMBtu. Transco Z6 decreased $0.07 per MMBtu which was the second largest decline.

Nearly every transportation route dropped. TETCO M3 to Transco Z6 was the only route that had an increase of $0.06 per MMBtu. Dominion South and Transco Leidy to TETCO M3 had the greatest declines of $0.41 and $0.39 per MMBtu. Transco Leidy to Transco Z6 also had a significant reduction of $0.33 per MMBtu. While not completely unheard of, decreases of this magnitude in the middle of winter are highly unusual.

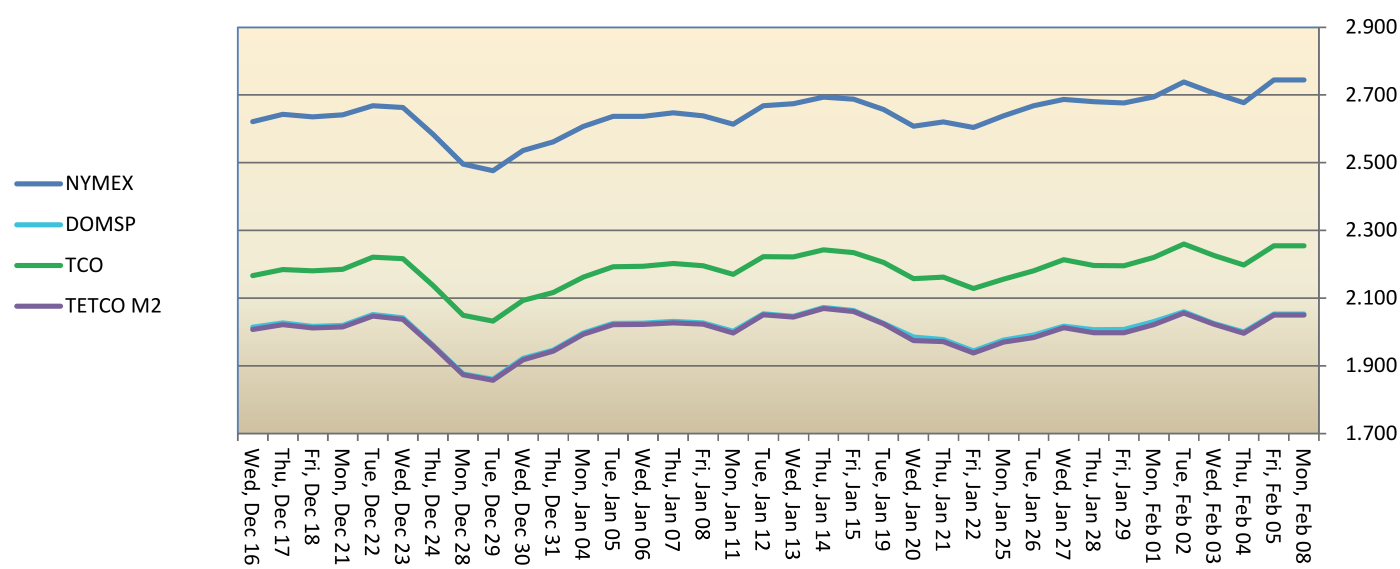
Natural Gas Basis Future Pricing

Location	Pricing Term: Feb 2021	Pricing Term: Feb 2021 – Jan 2021	Pricing Term: Feb 2021 – Dec 2026
Algonquin	2.28	0.76	1.06
Dominion South *	(0.44)	(0.67)	(0.57)
TETCO M3 *	0.24	(0.17)	0.09
Transco Z6	0.56	0.14	0.31
Transco Leidy *	(0.49)	(0.74)	(0.70)

Pricing term: *Feb 2021 – Dec 2032



36-Month Appalachian Fixed Price Moving Averages



Spud Report: January 2021

The data show below comes from the Department of Environmental Protection. A variety of interactive reports are available by going to the Office of Oil and Gas Management page at 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
Cabot Oil & Gas Corp	15	1/23/21	115-22366	Susquehanna	Forest Lake Twp
		1/23/21	115-22367	Susquehanna	Forest Lake Twp
		1/23/21	115-22365	Susquehanna	Forest Lake Twp
		1/4/21	115-22735	Susquehanna	Jessup Twp
		1/4/21	115-22737	Susquehanna	Jessup Twp
		1/4/21	115-22736	Susquehanna	Jessup Twp
		1/29/21	115-22744	Susquehanna	Rush Twp
		1/29/21	115-22745	Susquehanna	Rush Twp
		1/29/21	115-22738	Susquehanna	Rush Twp
		1/29/21	115-22739	Susquehanna	Rush Twp
		1/29/21	115-22740	Susquehanna	Rush Twp
		1/29/21	115-22741	Susquehanna	Rush Twp
		1/29/21	115-22742	Susquehanna	Rush Twp
		1/29/21	115-22743	Susquehanna	Rush Twp
		1/29/21	115-22746	Susquehanna	Rush Twp
Cameron Energy Co	1	1/6/21	053-30917*	Forest	Howe Twp
Chesapeake Appalachia LLC	5	1/28/21	115-22816	Susquehanna	Rush Twp
		1/14/21	131-20582	Wyoming	North Branch Twp
		1/21/21	131-20624	Wyoming	North Branch Twp
		1/21/21	131-20623	Wyoming	North Branch Twp
		1/22/21	131-20625	Wyoming	North Branch Twp
Chief Oil & Gas LLC	5	1/5/21	015-23641	Bradford	Franklin Twp
		1/5/21	015-23642	Bradford	Franklin Twp
		1/5/21	015-23644	Bradford	Franklin Twp
		1/5/21	015-23643	Bradford	Franklin Twp
		1/5/21	015-23645	Bradford	Franklin Twp
Curtis & Son Oil Inc	1	1/8/21	123-48493*	Warren	Pine Grove Twp
Olympus Energy, LLC	5	1/12/21	003-22543	Allegheny	Elizabeth Twp
		1/12/21	003-22533	Allegheny	Elizabeth Twp
		1/12/21	003-22541	Allegheny	Elizabeth Twp
		1/13/21	003-22577	Allegheny	Elizabeth Twp
		1/13/21	003-22576	Allegheny	Elizabeth Twp
Range Resources Appalachia	10	1/27/21	125-28898	Washington	Amwell Twp
		1/27/21	125-28899	Washington	Amwell Twp
		1/27/21	125-28896	Washington	Amwell Twp
		1/27/21	125-28897	Washington	Amwell Twp
		1/27/21	125-28900	Washington	Amwell Twp
		1/27/21	125-28895	Washington	Amwell Twp
		1/9/21	125-28876	Washington	Jefferson Twp
		1/9/21	125-28874	Washington	Jefferson Twp
		1/9/21	125-28875	Washington	Jefferson Twp
		1/9/21	125-28879	Washington	Jefferson Twp
Seneca Resources Co LLC	4	1/25/21	117-22084	Tioga	Delmar Twp
		1/25/21	117-22083	Tioga	Delmar Twp
		1/25/21	117-22085	Tioga	Delmar Twp
		1/25/21	117-22086	Tioga	Delmar Twp
SWN Prod Co LLC	3	1/25/21	015-23625	Bradford	Stevens Twp
		1/26/21	015-23627	Bradford	Stevens Twp
		1/27/21	015-23626	Bradford	Stevens Twp

	January	December	November	October	September	August
Total wells	**49**	**24**	**50**	**45**	**58**	**23**
Unconventional Gas	47	20	45	34	51	19
Conventional Gas	0	0	0	0	0	0
Oil	1	3	5	11	7	4
Combination Oil/Gas	1	1	0	0	0	0

RGGI objections *Continued from page 5*

required in view of DEP's failure to do what is required by the RRA.

Legislative and other comments

Members of the General Assembly also have formally registered their objections to the RGGI proposal, with many making the same arguments as PIOGA.

In a joint letter, the legislature's top four officials—Speaker of the House Bryan Cutler, House Majority Leader Kerry Benninghoff, Senate President Pro Tempore Jake Corman and Senate Majority Leader Kim Ward—emphasized that not only would adoption of the regulation harm the citizens of Pennsylvania and the energy industry, but DEP lacks the authority to promulgate the rule. The legislative leaders asserted that the mechanism at the core of the regulation is a tax and not a fee, and only the General Assembly can levy a tax. Further, the APCA does not give DEP authority to control carbon dioxide emissions, and while DEP may work with other states to formulate interstate air pollution control compacts, ultimate approval of any such agreements lies with the legislature.

The legislative leaders also strongly expressed their concerns about the economic impacts on Pennsylvanians of adopting the RGGI regulation.

Comments submitted by the House Environmental Resources and Energy Committee reiterated DEP's lack of statutory authority to join RGGI and impose a tax in the guise of a fee. The committee also pointed out that DEP violated the APCA's mandate to hold public hearings within impacted communities (DEP held a series of open virtual hearings), argued that the modeling on which the regulation is based is obsolete, noted that Pennsylvania's CO2 emissions are declining significantly without RGGI and warned that the economic and fiscal risks of participation in RGGI are very real.

Comments from the House Environmental Resources and Energy Committee urged the Independent Regulatory Review Commission to disapprove the proposed regulations, again making the point that DEP lacks authority under the APCA and that the program's fee is in reality a tax. The House committee made note that all other RGGI states except New York joined the initiative after specific legislative authorization.

RGGI-related provisions in the governor's budget

The FY 2021-2022 state budget proposed by Governor Wolf on February 3 would create an Energy Communities Trust Fund to provide direct support to dislocated workers and communities experiencing impacts from the closure of existing power plants. The fund would be financed by a portion of the expected $300 million in revenue generated by the sale of allowance under Pennsylvania's RGGI program. ■

Calendar of Events

PIOGA events

Information and updates: pioga.org > PIOGA Events

Axes & Ales Networking Event
February 18, Lumberjaxes, Millvale

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
Augst 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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