The PIOGA Press

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Pennsylvania Independent Oil & Gas Association
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Energy perspectives in a new administration

Babst Calland's Energy and Natural Resources practice leaders outline some of the challenges ahead for the energy industry in light of presidential executive orders, climate change policies, renewable alternatives, and the nation's pipeline safety program

As appeared in the Pittsburgh Business Times

Joseph Reinhart

Jean Mosites

Keith Coyle

An overabundance of domestic fossil fuels, coupled with pandemic-driven stay-at-home orders and other travel restrictions, already had dampened the growth prospects of the nation's oil and gas industry through most of 2020. And that was before the presidential election.

Now President Joe Biden, in his first months in office, has set into motion a climate change agenda with major proposed changes to the nation's energy policies and environmental regulations. Amid all of this anticipated change, it is vital to consider the forewarnings, the risks and the legal implications for the energy industry. Having a preventative or even a proactive mindset about the legal and regulatory implications for any energy business may be one of the most important steps that can be taken at this very dynamic time.

So what can the energy industry—and local economies—expect amidst a charged political climate aiming to increase environmental regulations and usher in an era of "green," renewable energy?

"De-fossilizing" the country—political emphasis on renewable energy

"I think most people are aware of the fact that there has been a significantly different perspective brought to Washington than from the Trump administration," said attorney Joseph Reinhart, a shareholder with Pittsburgh law firm Babst Calland, who serves as co-chair of the firm's Energy and Natural Resources practice. "For example, we had the Trump administration putting into place executive orders that were intended to expedite permitting of infrastructure to foster the domestic development of oil and gas and coal.

"You have almost the exact opposite going on now, with the regulatory freeze," he continued. "You've got the Biden administration, which campaigned essentially on de-fossilizing the whole country and coming in with a whole host of different people and practices that are intended to go the other way, if you would, in terms of energy development...And every sign at this point is that now there's going to be a heavy emphasis on different types of energy, particularly renewable energy, with much less attention devoted to fostering the develop-

Continues on page 3

Changing the Narrative in Energy Perception and Policy

PIOGA Spring Meeting & Exhibition

Pennsylvania's oil and gas story has unfolded over 150 years and can be categorized as a story of perseverance, resilience and innovation. The importance of our industry cannot be denied and Pennsylvania continues to be at the center of debate surrounding oil and natural gas extraction and energy independence.

After a challenging year that impacted our businesses and personal lives that included a pandemic, historically low commodity prices, a contentious election and many regulatory/legislative hurdles for our industry, join us for this year's Spring Meeting & Exhibition, where you will hear from experts addressing today's key challenges in the areas of regulatory, legislative, market development and business climate.

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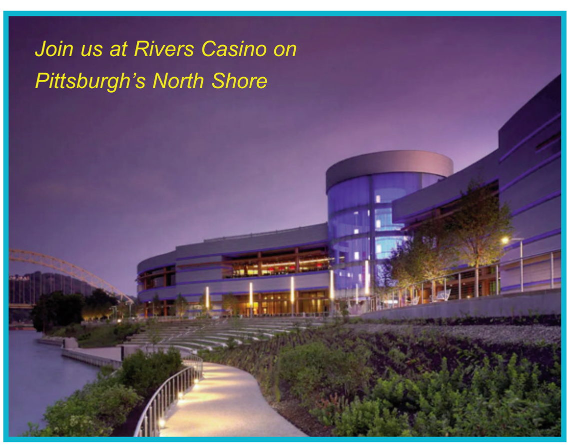
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Energy perspectives *Continued from page 1*

ment of oil and gas."

Reinhart was one of three attorney colleagues who participated recently in a discussion with the *Pittsburgh Business Times* on "Energy Perspectives in a New Administration." Babst Calland, one of the region's largest law firms, also has one of the region's largest energy and natural resources law practices.

Reinhart suggested that the energy industry can expect major changes because of the built-in perspectives of a new cabinet coming into the Biden administration.

"It's going to be very significant because, in addition to having new executive orders and memoranda forecasting a freeze or reversal of key regulations, you don't want to underestimate the effect of assigning people with a much different perspective on the energy industry to manage important federal agencies that oversee industry," he said. "For example, when you look at the Interior Department secretary nominee, you have Deb Haaland taking over who has stated that fracking is a danger to the air we breathe and the water we drink. Obviously, any decision that involves oil and gas development that would fall under her jurisdiction is going to be influenced by that perspective."

Climate change agenda across the federal government

Attorney Jean Mosites, a shareholder with Babst Calland's Environmental and Energy and Natural Resources practices, agreed with Reinhart but emphasized that the administration's overriding climate change agenda likely will effect significant changes across the entire federal government.

"With this priority on climate change and the approach that this administration is taking, the entire federal government is to be geared to accomplish climate change goals," Mosites said. "So people in the departments of the Interior and Energy, but also in Treasury and Commerce—every department and every agency—are going to have someone coordinating a focus on procurement, so that federal dollars are spent differently, away from fossil fuels and toward renewables, in permitting, in policies and in every way they can. It'll be something we've never seen before, this type of coordination across the entire federal government."

Sweeping changes, perhaps—but not overnight

Still, Mosites noted, the energy industry can expect such regulatory changes to take considerable time in many cases, with the exception of the president's early executive orders to immediately stop certain fossil fuel-related activities.

"There were some executive orders issued right away that said stop any regulation that you can," she said, "but if something has been published and is effective, you have to go through a longer process to be able to revoke or reverse those [regulations.] And that was one of the things that the Trump administration struggled with because they wanted to reverse and revoke some of the Obama administration's regulations and ended up in litigation over many of them for alleged failures to follow administrative processes.

"But the process requires that you really take steps that take a long time," Mosites added, "so on the regulatory front, we're not going to see anything immediate unless it was really not effective yet."

The administration's effect on states

Meanwhile, Mosites also suggested that state governments likely will not "wait around" for the federal government to fully address climate change.

"Regional, state and local initiatives are still going to matter to the state and local governments," she said. "We're also seeing infrastructure investment in fleets for electrical vehicles. Building codes are going to be changing for appliances and buildings. And in some places, we've seen bans on natural gas hookups, for example. So there are a variety of actions that can be taken."

Asked specifically about the 10-state Regional Greenhouse Gas Initiative (RGGI), which Pennsylvania Governor Tom Wolf is pushing Pennsylvania to join, Mosites responded: "It remains to be seen what the pros and cons would be. There's really no consensus on whether or not that should move forward. It's really uncertain whether it will have an effect on climate change because the emissions in Pennsylvania have dropped pretty dramatically over the last 10 years without RGGI, with more use of natural gas, as opposed to coal."

Tightening regulations on oil and gas pipelines

Attorney Keith Coyle, a D.C.-based shareholder with Babst Calland's Pipeline and HazMat Safety, as well as Energy and Natural Resources, practices, expressed his own concerns with the new administration over oil and gas pipeline regulations, driven by environmental safety fears. "And that," he said, "likely will lead to greater federal regulation down the road."

"We're going to see much greater emphasis on climate change and other environmental issues when it comes to pipeline regulation," Coyle told the *Pittsburgh Business Times.* "I do think that, with the ice storm-related power grid events that recently took place in Texas, we need to be careful and deliberative on how we proceed when it comes to changes to energy regulation. We all want to make sure that we're doing everything we can to make sure we have safe and reliable energy transportation in this country.

"Pipelines are going to play a key part of that," Coyle continued. "I have not read any analysis or study that shows we're in a position where we can operate a modern society—where we have light and power and water—without pipelines. They're a critical and necessary part of this country's energy infrastructure. I hope the new administration remembers the critical part that pipelines and energy transportation itself plays and

Continues on page 18

Regulatory review panel says RGGI implementation should be delayed

In formal comments issued February 16, the Independent Regulatory Review Commission (IRRC) questioned many aspects of Governor Tom Wolf's plan to join the Regional Greenhouse Gas Initiative (RGGI) and recommended that implementation of the proposed regulations be delayed.

"This additional time would allow the regulated community an opportunity to adjust their business plans to account for the potential increased costs associated with Pennsylvania joining RGGI," the IRRC said in a nine-page document. Currently, the administration wants to enter the multi-state program, which would impose a shrinking cap on carbon dioxide emissions from electric generators, on January 1, 2022.

The IRRC's recommendation received the reaction you would expect from Wolf's Department of Environmental Protection, with a spokesman telling *The Indiana Gazette* that "while the administration will consider the IRRC's recommendations, any delays will also mean a delay in combating climate change and reducing air pollution, including co-pollutants such as (nitrogen oxide) that are impacting health."

The delay in implementation, however, was only one of several issues that IRRC raised about the proposed regulations. In fact, many of the same concerns were highlighted in PIOGA's formal comments filed in mid-January *(February PIOGA Press, page 4)* and in comments submitted by individual state legislators and legislative committees. Noted in the IRRC comments were objections raised by members of the General Assembly that:

• The Environmental Quality Board (EQB, the entity that formally proposes and adopts regulations for DEP) lacks statutory authority under the Air Pollution Control Act (APCA) to promulgate the regulation.

• The proceeds generated through the CO2 credit auction process are not a fee under the APCA but rather are an illegal tax.

• DEP violated the APCA's mandate for public hearings to be held in impacted communities, and the department's virtual hearings excluded citizens without internet access or broadband capability.

• The proposal will have a negative fiscal impact on the Commonwealth's economy. Also, the coal industry, fossil-fuel-fired generators, large industrial users of electricity, small businesses, labor unions and individuals will be harmed financially.

• CO2 is not an "air pollutant" as defined by the APCA. The proposal does not prevent or reduce greenhouse gases because generation will shift to fossil-fuel-fired facilities in other states and emissions from those facilities will enter Pennsylvania. As a result of this "leakage," any reduction in pollution would be insignificant, thus failing to meet the APCA's standard that regulations must produce a meaningful reduction of "air pollution."

• The modeling used by the EQB to justify the rulemaking is outdated and does not provide an accurate estimate of the regulation's economic impact. The modeling also does not account for leakage.

• The federal government is moving forward with its own climate change policies.

• The potential costs of the rulemaking outweigh any meaningful benefits that may result, especially during the time of the COVID-19 pandemic.

The IRRC also raised the question of whether this regulation represents a policy decision of such substantial nature that it requires legislative review. The commission went on point out that the General Assembly passed—and the governor vetoed—a bill last year that would have required legislative approval before the Commonwealth could enter into a carbon trading program like RGGI. Further, 10 of the 11 states participating in RGGI are doing so with legislative approval.

The commission spent considerable space in its comments on the issue of whether the agency has the statutory authority to promulgate the regulation. In the end, the IRRC asks the EQB to "provide a point-by-point analysis of why this proposal is within the statutory authority granted by the APCA and also consistent with the intent of the General Assembly when that statute was enacted."

The IRRC noted that the carbon-trading program could produce $300 million for the Clean Air Fund in the first year alone and cost approximately $15 million to administer. The commission directed the EQB to "explain how this process of collecting proceeds and distributing funds of this magnitude is consistent with the intent of the General Assembly when the APCA was enacted" and agreed with comments from the Pennsylvania Office of Consumer Advocate that DEP should seek further authority for broader use of the proceeds.

In light of other concerns raised by commenters, the IRRC also asked EQB to explain how the benefits of the rulemaking outweigh the costs, particularly in light of already-declining greenhouse gas emissions from fossil-fuel-powered electric generators and anticipated leakage of emissions from non-RGGI neighboring states. The IRRC urged EQB to share the underlying assumptions and data used for its modeling and address issues raised about the validity of that data. Regarding economic costs, the commission asked the EQB to address concerns about the economic and fiscal impacts of the regulation and, in accordance with the Regulatory Review Act, requested that the agency provide estimates on the costs to the regulated community of complying.

Finally, before recommending the one-year delay in implementing the regulation, the IRRC asked the EQB to address less intrusive alternatives methods of achieving the goal of reducing CO2 emissions. One would be to allow the "status quo," as the Commonwealth already is on the path to lower emissions. The other option suggested would be a "gradually declining CO2 emissions budget without the exorbitant costs proposed by this submission."

The IRRC's recommendations and requests are merely that—recommendations and requests. However, they add to the growing number of advisory groups and other entities throwing up red flags about Governor Wolf's unilateral rush to join RGGI.

Reactions

PIOGA President & Executive Director Dan Weaver said this about the IRRC's February 16 comments:

"The Pennsylvania Independent Oil & Gas Association applauds today's recommendation by the Independent Regulatory Review Commission to delay any further action on Governor Wolf's unilateral decision to force Pennsylvania into the Regional Greenhouse Gas Initiative. Simply put, joining RGGI is not in the Commonwealth's best interest, a fact that the members of IRRC recognized in today's decision.

"Economically, this program would result in the loss of thousands of good-paying jobs at fossil fuel electric generating facilities around the state by taxing those facilities and tipping the scale in favor of more expensive renewable sources. Environmentally, it would have little impact on the quality of Pennsylvania's air, as the electricity we demand would be generated in states to the west that will never join RGGI and whose emissions will drift to the east into our state. Pragmatically, it is a fact that "Pennsylvania has already reduced CO2 emissions from fossil fuel generation by almost 40 percent in the last dozen years. And, legally, the governor's efforts to join RGGI without authorization from the General Assembly, which has been raised by dozens of organizations, business groups and individual companies, is unlawful.

The members of the IRRC recognized these factors in recommending that the Wolf administration delay a final decision before addressing these crucial concerns about this ill-advised program. They should be commended for taking action."

Representative Jim Struzzi, whose RGGI-blocking legislation was vetoed last year by Wolf, described the IRRC comments as “a clear statement that RGGI is wrong for Pennsylvania and is the latest in a line of advisory boards to offer a negative commentary on what should now be labeled a bad idea that should be put to rest. The governor is trying to skirt the General Assembly and shove Pennsylvania into a job-killing, taxpayer-penalizing multi-state compact and potentially make our state the only one to do so without legislative approval. I have been and remain steadfast in my opposition to RGGI.”

Struzzi has reintroduced legislation, House Bill 637, requiring public comment and consideration by the General Assembly before Pennsylvania enrolls in RGGI.

Where are we at in the process?

We are in the *proposed rulemaking* stage with RGGI. DEP has finished taking formal written comments and comments made at a series of virtual public hearings. After the close of the public comment period, IRRC had 30 days to submit its comments, which occurred February 16. DEP will now review all comments received and make any changes the department believes may be necessary based on those comments. DEP also will draft a comment response document addressing the comments and any changes that were made as a result.

The next step will be the *final-form rulemaking.* DEP will present its final rule and associated documents for approval by the EQB. If approved, the package will then be delivered to the IRRC and the standing committees of the legislature (the Environmental Resources and Energy committees in the House and Senate). The IRRC will schedule the rule to be considered at an upcoming meeting, and input will be accepted by the commission from the public and the standing committees.

If IRRC approves of the rule, the attorney general reviews it for legality and form, and if found acceptable, the final rule is published in the *Pennsylvania Bulletin*. If IRRC disapproves of the rule, the DEP has 40 days to deliver a report back to IRRC. The DEP can make changes to the rule in response to IRRCs comments, but is not required to do so. The IRRC will consider the rule again at another meeting and the standing committees will have more time to act; the IRRC cannot, however, block a rule from continuing to finalization. ■

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Current and past issues are always available by clicking on the News & Resources tab at pioga.org.

JUST THE FACTS

Just the Facts #2: Is renewable energy up to the job?

At the beginning of March, we released the second in our monthly "Just the Facts" series of talking points for members of our industry. This time we address the hotly debated question, "Can the U.S. Meet its Electricity Demand with 100 Percent Renewable Energy?"

The answer, of course, is an emphatic *No.* The PIOGA fact sheet looks at issues related to land use, intermittency, and cost and subsidies. A chart from the U.S. Energy Information Administration illustrates the powerful role natural gas played to fill the electricity-generation gap during last month's deep freeze in Texas.

Visit the Latest News and Blog section at pioga.org for a copy of the fact sheet. We've also included a downloadable version that you can print or forward to share with employees, colleagues, family, neighbors and legislators to help spread the facts about the role of natural gas and oil in meeting the energy needs of Pennsylvanians and the nation.

PIOGATech
PIOGA's Technical Seminar Series

Coming March 25: '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 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.

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 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. ■

Attention, all cigar aficionados!

If you are looking for a unique venue to host clients, hold a meeting or just relax, then PIOGA's latest collaboration might be for you. Join PIOGA's Cigar Club at BURN by Rocky Patel in Pittsburgh and enjoy luxurious ambience, premium cigars, high end spirits and delicious food.

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- 15 percent all other cigar brands and accessories, excluding specials.
- Waived entrance fee for the card holder and up to four guests (excludes special events).
- Free entry to most BURN cigar events and one entry to PIOGA cigar event at BURN.
- Your own personalized cedar locker tray.

For more information or to join, email Dan Weaver at dan@pioga.org or call him at 724-814-7270. ■

Our 2021 networking events get under way!

Everyone had a great time on February 18 at Lumberjaxes in Millvale. Thanks to all who participated and to our sponsors. For more scenes from the evening, visit the Photo Galleries section at pioga.org.

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DRBC formalizes hydraulic fracturing ban

Rules to be developed regulating inter-basin wastewater and water transfers

On February 25, the Delaware River Basin Commission (DRBC) voted to ban high-volume hydraulic fracturing for natural gas in the four-state Delaware River watershed. The action itself comes as no real surprise, only that it took so long to finalize.

The DRBC has had a temporary moratorium on fracking since 2010. In November 2017, the commission proposed an amendment to its rules to make the prohibition permanent and took public comment on the matter. Since then, all has been quiet, except for a statement in April 2018 saying the commission had no timetable for final action on the proposal.

The DRBC is a compact made up of Pennsylvania, New York, New Jersey and Delaware, along with a federal representative from the U.S. Army Corps of Engineers. The commission oversees matters involving water quality and water supply in the 13,539-square-mile Delaware Basin. For all but Pennsylvania, where the Marcellus Shale extends to the very northeastern tip of the Commonwealth, the matter of banning natural gas development is a moot point. The other three states either have no oil and gas activity, or in the case of New York, already banned high-volume hydraulic fracturing.

The representatives of all four states voted in favor of the ban. The Coast Guard member abstained, saying he hadn't had the time to coordinate with the Biden administration.

Pennsylvania's vote to impose the ban was particularly disappointing, as was the statement from Governor Tom Wolf: "Having supported this effort since I was a candidate for governor of Pennsylvania, I am proud to join with other DRBC commissioners in preserving the water resources of this unique region for generations to come,"

The commission listed the following as the determinations that led to the decision to impose the ban. Essentially everything can be refuted based on experience here in Pennsylvania in the neighboring Susquehanna River Basin, as managed by the Susquehanna River Basin Commission. We are reprinting these bullet items verbatim.

- As the scientific and technical literature and the reports, studies, findings and conclusions of other government agencies reviewed by the commission have documented, and as the more than a decade of experience with HVHF (high volume hydraulic fracturing) in regions outside the Delaware River Basin have evidenced, despite the dissemination of industry best practices and government regulation, HVHF and related activities have adversely impacted surface water and groundwater resources, including sources of drinking water, and have harmed aquatic life in some regions where these activities have been performed.
- The region of the Delaware River Basin underlain by shale formations is comprised largely of rural areas dependent upon groundwater resources; sensitive headwater areas considered to have high water resource values; and areas draining to DRBC Special Protection Waters.
- The geology of the region in which shale formations potentially containing natural gas are located in the basin is characterized by extensive geologic faults and fractures providing preferential pathways for migration of fluids (including gases).
- If commercially recoverable natural gas is present in the Delaware River Basin and if HVHF were to proceed in the basin, then:
  - Spills and releases of hydraulic fracturing chemicals, fluids and wastewater would adversely impact surface water and groundwater, and losses of well integrity would result in subsurface fluid (including gas) migration, impairing drinking water resources and other uses established in the comprehensive plan.
  - The fluids released or migrating would contain pollutants, including salts, metals, radioactive materials, organic compounds, endocrine-disrupting and toxic chemicals and chemicals for which toxicity has not been determined, impairing the water uses protected by the comprehensive plan.
  - HVHF activities and their impacts would be dispersed over and adversely affect thousands of acres of sensitive water resource fea-

PIOGA's reaction to the DRBC ban:

"For more than 10 years, the member states of the Delaware River Basin Commission have ignored the facts about natural gas development in Pennsylvania through an ill-advised moratorium on drilling in a small section of Pennsylvania that is within the basin.

"The DRBC's action continues to show that pressure from a small number of activists and politicians can drown out science and a decade of successful natural gas drilling in other areas of the Commonwealth, including the neighboring Susquehanna River Basin, which has seen thousands of wells drilled within its large geographical area and has consistently found no impact to water resources.

"The mantra of "listening to the science" has been a frequent talking point in recent months on a number of health and environmental issues facing our nation. We learned with the DRBC's decision that the phrase can be nothing more than lip service. This decision robs landowners of their property rights, and they should give every consideration to mounting legal challenges to fight for those rights.

Comment from State Senator Gene Yaw (R-Lycoming):

"The DRBC ban is not just an assault on a highly regulated industry that employs thousands of Pennsylvanians, but it's another example of neighboring state's dictating our energy policy. The commission is using New York's failed policies to institute a ban on development. Pennsylvania has robust rules and regulations in place to protect our environmental resources, which have allowed for the safe development of natural gas in our state. This action serves to undermine economic development and job growth in the region and statewide."

tures, including, among others, forested groundwater infiltration areas, other groundwater recharge locations and drainage areas to Special Protection Waters, where few existing roads are designed to safely carry the heavy industrial traffic required to support HVHF, prevent dangerous spills or provide access to remediate spills that occur.

This isn't the end of the story. The formal ban came a month after a federal judge set an October trial date to hear a long-running challenge from landowners to the drilling moratorium, which is now a permanent ban. Pennsylvania Republican lawmakers, along with Damascus Township in Wayne County, also filed a separate federal legal action last month alleging that the moratorium illegally usurps the state legislature's authority to govern natural resources.

Coming next: Wastewater regulations

Along with the fracking ban, the commission also adopted a resolution directing DRBC staff to propose regulations no later than September 30 addressing transfers of water and wastewater out of and into the Delaware River Basin. The resolution indicates the rules are to address, and the public notice is to seek comment on, the following:

- Conditions under which an exportation of water from the basin may be approved or prohibited;
- Conditions under which an importation of wastewater into the Basin may be prohibited; and
- Any other provisions concerning inter-basin transfers of water and wastewater that commenters believe are necessary and appropriate to protect the public health or to preserve the waters of the basin for uses in accordance with the DRBC's comprehensive plan.

The final rule and related documents are at www.state.nj.us/drbc/about/regulations/final-rule_hvhf.html. ■


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All WMGR123 permit holders open to public comment

By Teresa Irvin McCurdy
TD Connections, Inc.

The Waste Management General Permit WMGR123 was developed in 2010 by the Department of Environmental Protection as a general permit to provide a consistent framework to permit the treatment and storage of Marcellus/Utica fracturing fluids for beneficial reuse. In less than two years, the permit was revised to clarify sections of the conditions as well as to broaden some definitions to treat other materials generated by the industry.

Like other general permits, the permit expires in 10 years unless it is renewed. In the beginning of 2020, DEP began the process to renew the general permit. DEP held stakeholder meetings with industry, environmental groups and its own regional departments across the state. It also held a 60-day public comment that was published in the *Pennsylvania Bulletin.*

On December 19, the department published a notice in the *PA Bulletin* outlining a summary of the changes that were made to the WMGR123 and that those changes would become effective January 4, 2021.

On February 4, the Center for Coalfield Justice, Mountain Watershed Association, Clean Air Council, Environmental Integrity Project, Earthworks and PennFuture, along with two concerned citizens, questioned the procedures used to provide public notice for the renewed coverage of 49 existing facilities operating under WMGR123. In addition, several news stories appeared in the *Pittsburgh Post-Gazette* on the issue. In response, although DEP believes it properly gave public notice, the department entered into a stipulation of settlement with these parties on February 16 to hold a 60-public comment period for the renewed coverage of the existing 49 facilities that hold a WMGR123 permit. The public comment period will NOT consider changes to the WMGR123 permit itself but rather on the individual facilities. DEP has furthermore agreed to respond to any public comments within 180 days of the close of that comment period. Based on the public comments, and if it deems appropriate, DEP will make modifications to the previously approved WMGR123 authorizations.

The original WMGR123 language listed the "Registration Requirements" which did not require a public comment period and its Permit Decision Guarantee only provided the department 45 days to complete its review. However, due to the complexities of applications and bonding requirements, DEP wanted a longer timeframe to complete the review. Therefore, the department changed the permit from a simple "Registration" to a "Determination of Applicability" (DOA).

During the public comment, several commentators had requested a public comment period for all applications and renewals so that people in the communities affected by these facilities would have a chance to provide comments. In the department's comment response document, it outlined that no additional public comment was needed as the DOA change already requires a 60-day public comment period to be published in the *PA Bulletin* for individual permittees.

In DEP's comment response document, it specifically responded to requests for additional public comment, stating: "Pennsylvania's residual waste regulations set forth requirements for public involvement when a person or municipality requests coverage under a general permit for the beneficial use of waste. WMGR123 requires applicants to submit a Determination of Applicability (DOA) prior to processing or beneficially using oil and gas liquid waste pursuant to the terms and conditions of WMGR123. The DOA includes submission of a robust application in which operating plans, facility maps, documentation of insurance, bonding calculations, and other records documenting the proposed facility's compliance with the residual waste regulations are submitted for DEP's review and approval. In accordance with 25 Pa. Code § 287.642 (relating to determination of applicability), DEP publishes a notice in the *Pennsylvania Bulletin* for administratively complete applications that provides instructions for interested persons or municipalities to submit comments, recommend revisions to, or advocate approval or disapproval of the application. Interested persons may also request that DEP hold a public meeting or public hearing on a DOA under a general permit. The *Pennsylvania Bulletin* can be accessed electronically anywhere there is internet access, or for smart phone users, where a cellular signal exists, and citizens can sign up to receive emails that notify them when an application is pending in their county location."

Furthermore, DEP explained, "In addition, 25 Pa. Code § 287.641(g) (relating to inclusion in a general permit) states that a person or municipality that applies to DEP for a DOA under a general permit, shall submit a copy of the application to the host municipality and the appropriate county, county planning agency and county health department, if one exists, at the same time that the person or municipality files the DOA with DEP. The host county, municipality, or applicable county planning agency and county health department can also opt to provide information regarding the application to individuals within their respective jurisdictions."

Additionally, DEP acknowledged that there is a list of renewals that are being appealed by the environmental groups, but not on the basis of lack of public notice. (If you are interested the list of renewals being appealed, please contact Teresar at teresa@tdconnections.com.) To date only one appeal has been docketed on the Environmental Hearing Board's website.

What does this mean for industry? More public scrutiny and most likely more delays in obtaining needed permits. It is important to note that industry should make their voices heard during the upcoming public comment period to support these WMGR123 facilities that it relies on to operate. It is not enough for an association to make comments on behalf of industry but rather employees and vendors need to be heard as individual citizens as well.

Furthermore, some are asking if this creates a dangerous precedent by possibly opening up more general permits to more public scrutiny. ■

Pennsylvania businesses stymied by veto of House Bill 1737

Authors:

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Glenn Thompson

—

Steptoe & Johnson, PLLC

As Pennsylvania's businesses attempt to stay afloat in the midst of the COVID-19 pandemic, the Pennsylvania House of Representatives and Senate threw them a proverbial lifeline by passing House Bill 1737; however, on November 30, Governor Tom Wolf cut off that lifeline by vetoing the bill.

In May 2020, Governor Wolf issued an executive order that protected health care workers and owners of real estate donated for COVID emergency services from liability against COVID-related lawsuits. HB 1737 would have temporarily extended those civil liability protections to hospitals, nursing homes, schools and certain small businesses. More specifically, the bill provided that such entities would not be subject to civil claims for damages or personal injuries related to an actual or alleged exposure to COVID-19 absent a showing, by clear and convincing evidence, of gross negligence, willful misconduct or intentional infliction of harm. The bill further provided that a good faith act or omission made in compliance with public heath directives would not be considered gross negligence, willful misconduct or intentional infliction of harm.

Liability protection is a real concern for small business owners. According to a survey by the National Federation of Independent Businesses, the nation's leading small business advocacy organization, 68 percent of small business owners were moderately or very concerned about increased liability because of the novel coronavirus. In order to address these concerns, more than a dozen states have passed legislation similar to HB 1737. In Pennsylvania, the bill was backed by nearly 80 associations representing schools, child-care providers and small businesses. In a letter to Governor Wolf in support of the bill, they urged that "[f]or the foreseeable future, employers will be subject to strict workplace health and safety requirements and those who adopt these precautions should proceed with confidence knowing they will not be targeted with frivolous, and potentially devastating, litigation." House and Senate Republicans supporting the bill also argued that the threat of widespread litigation would be yet another barrier to businesses looking to stay open or to reopen their doors.

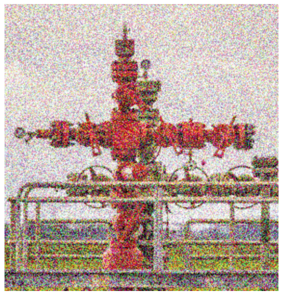
Despite these pleas, Governor Wolf sated, in support of his veto, that the liability protections were too broad, and the bill would encourage businesses to disregard safety protocols. However, proponents of the bill felt that it was narrowly tailored, and cited the fact that it would not have absolved businesses from claims of gross negligence, fraud or willful misconduct.

In the wake of the governor's veto, Pennsylvania businesses face uncertainty created by the possibility of lawsuits over alleged exposure to the coronavirus on their premises. There are, however, other limited protections. In addition to the May order, Governor Wolf issued another executive order in early November which provides immunity to businesses enforcing then-Secretary of Health Rachel Levine's mask mandate. However, that executive order is limited to businesses engaged in essential emergency services that maintain in-person operations and are open to the public. Additionally, the federal Public Readiness and Emergency Preparedness Act protects those entities and individuals who are engaged in the development, manufacture, testing, distribution and/or administration of medical countermeasures to the coronavirus. While these protections are helpful, they do not reach the majority of schools and other small businesses that would have been protected by the bill.

Given the delays and difficulties in rolling out the various COVID-19 vaccines and the ever-increasing number of coronavirus mutations, Pennsylvania businesses face difficult decisions regarding whether to open their doors to the public and risk the possibly of being sued over exposure to the virus, or remain closed and suffer the financial consequences. ■

At Steptoe & Johnson PLLC, our COVID-19 Response Team is ready, willing and able to assist clients with pandemic-related questions and provide proactive advice to minimize disruption and market risks. You may direct any such questions to Travis Irwin at travis.irwin@steptoe-johnson.com.

Pennsylvania natural gas production at an all-time high



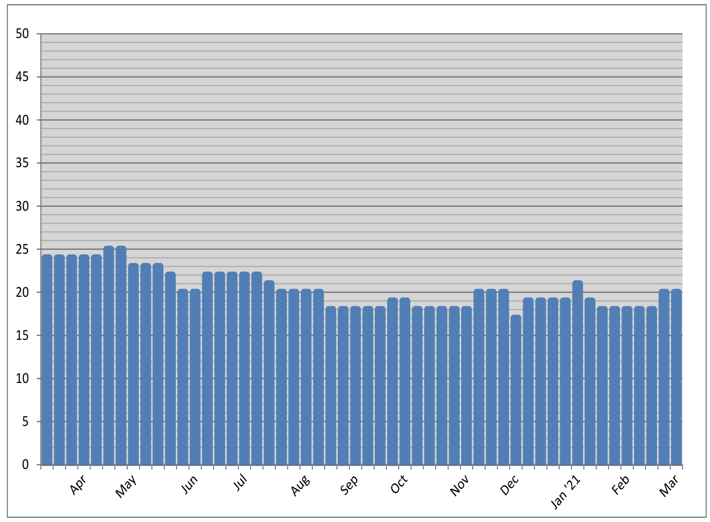
The most recent quarterly report from the state's Independent Fiscal Office (IFO) shows that Pennsylvania natural gas production increased by 5.5 percent in 2020 compared to the year before. While the percentage increase has slowed from the double-digit rates of production growth in recent years, it is notable that the 6.6 trillion cubic feet produced in 2020 is Pennsylvania's highest volume ever.

Market conditions in 2020, including low commodity prices and a continuing need for more takeaway infrastructure out of the Appalachian Basin, meant that fewer wells were drilled in Pennsylvania, a trend that will likely continue for the immediate future.

What is clear from the steady production increases we are seeing, however, is that producers are becoming increasingly efficient at drilling, completing and recovering natural gas as the Marcellus and Utica plays mature. This is reflected in total natural gas production from shale wells in 2020's fourth quarter, at 1.8 Tcf, which is the largest volume ever produced in a single quarter in the state. ■

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices

Natural Gas Futures Closing Prices

Month	Price
April	$2.695
May	2.731
June	2.788
July	2.843
August	2.865
September	2.854
October	2.866
November	2.927
December	3.044
January 2022	3.125
February	3.059
March	2.878

Prices as of March 10

Sources

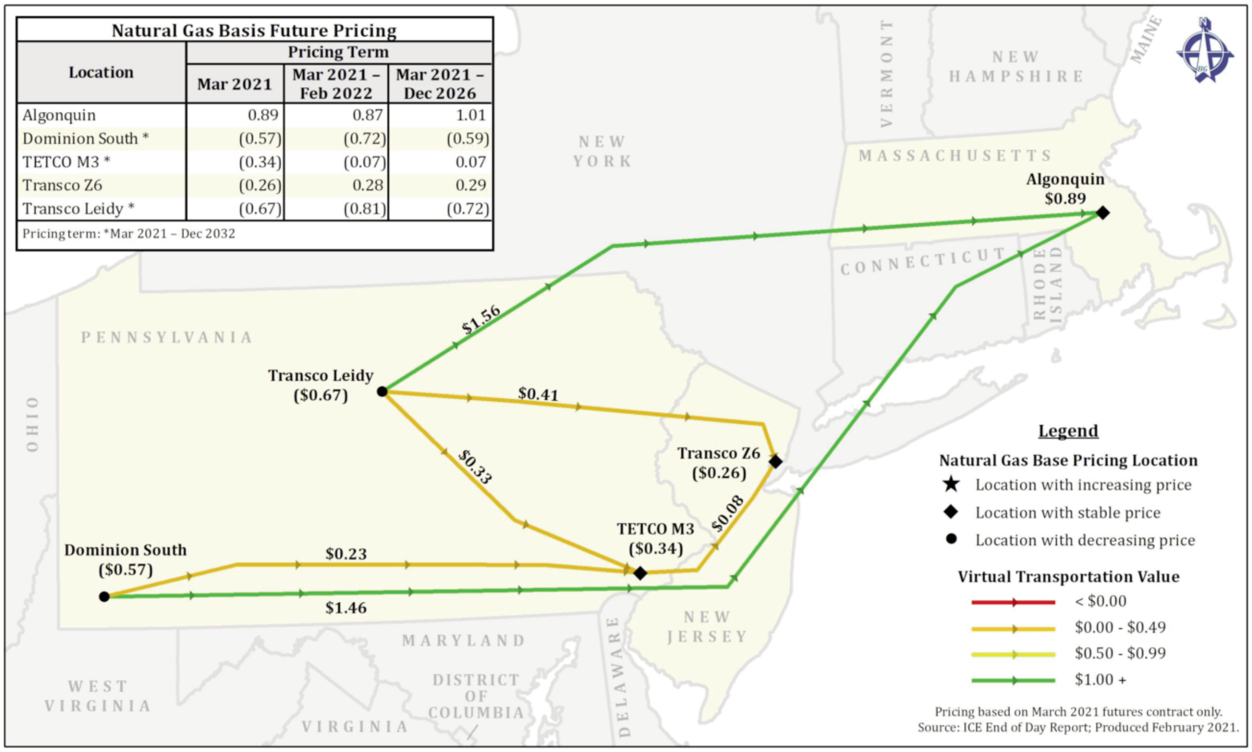
American Refining Group: www.amref.com/Crude-Prices-New.aspx
Ergon Oil Purchasing: www.ergon.com/crudeoil
Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG
Baker Hughes rig count: bakerhughesrigcount.gcs-web.com/na-rig-count
Appalachian fixed price moving averages: David Marks, BHE Eastern Energy Field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

Northeast Pricing Report — March 2021

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

The winter impact is starting to wane. Front-month trading for Algonquin and Transco Z6 has dropped off a cliff, decreasing $1.39 and $0.82, respectively. The Algonquin movement represented a 61% decrease from February. TETCO M3 has fallen significantly as well at $0.58 per MMBtu. Even Dominion South and Transco Leidy dropping by $0.13 and $0.18 per MMBtu. One-year trading was a mixed bag. Transco Z6 and Algonquin saw some improvement at $0.14 and $0.11 per MMBtu, correspondingly. Transco Leidy and Dominion South both continued to drop at $0.07 and $0.05 per MMBtu. Algonquin decreased the most in full-term trading by $0.05 per MMBtu. All the rest of the trading points decreased a consistent $0.02 per MMBtu.

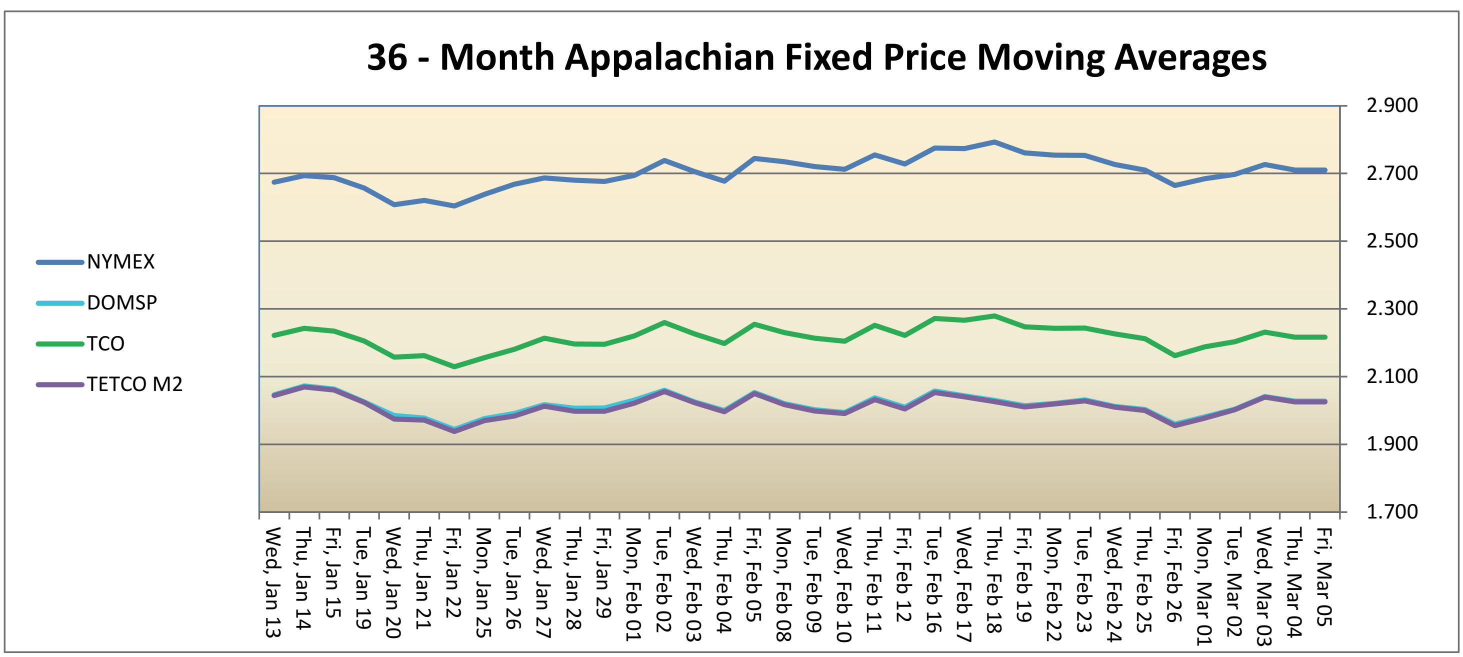
All transportation routes dropped. Dominion South and Transco Leidy to Algonquin had the largest decreases of $1.46 and $1.56 per MMBtu, respectively. TETCOM M3 to Transco Z6 had the lowest decrease of $0.08 per MMBtu. While not a significant value, it represented a 75% decrease from February.



Natural Gas Basis Future Pricing

Location	Pricing Term: Mar 2021	Mar 2021 – Feb 2022	Mar 2021 – Dec 2026
Algonquin	0.89	0.87	1.01
Dominion South *	(0.57)	(0.72)	(0.59)
TETCO M3 *	(0.34)	(0.07)	0.07
Transco Z6	(0.26)	0.28	0.29
Transco Leidy *	(0.67)	(0.81)	(0.72)

Pricing term: *Mar 2021 – Dec 2032



Spud Report: February 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
ARD Opr LLC	9	2/17/21	081-21881	Lycoming	McIntyre Twp
		2/17/21	081-21882	Lycoming	McIntyre Twp
		2/17/21	081-21883	Lycoming	McIntyre Twp
		2/17/21	081-21884	Lycoming	McIntyre Twp
		2/17/21	081-21885	Lycoming	McIntyre Twp
		2/17/21	081-21877	Lycoming	McIntyre Twp
		2/17/21	081-21878	Lycoming	McIntyre Twp
		2/17/21	081-21879	Lycoming	McIntyre Twp
		2/17/21	081-21880	Lycoming	McIntyre Twp
Blackhawk Energy LLC	2	2/19/21	083-57229*	McKean	Wetmore Twp
		2/25/21	083-57235*	McKean	Wetmore Twp
Cabot Oil & Gas Corp	6	2/22/21	115-22783	Susquehanna	Springville Twp
		2/22/21	115-22782	Susquehanna	Springville Twp
		2/22/21	115-22778	Susquehanna	Springville Twp
		2/22/21	115-22779	Susquehanna	Springville Twp
		2/22/21	115-22780	Susquehanna	Springville Twp
		2/22/21	115-22781	Susquehanna	Springville Twp
Chesapeake Appalachia LLC	6	2/28/21	015-23659	Bradford	Overton Twp
		2/17/21	015-23597	Bradford	Tuscarora Twp
		2/17/21	015-23594	Bradford	Tuscarora Twp
		2/17/21	015-23595	Bradford	Tuscarora Twp
		2/18/21	015-23598	Bradford	Tuscarora Twp
		2/18/21	015-23596	Bradford	Tuscarora Twp
Range Resources Appalachia	10	2/5/21	003-22612	Allegheny	Frazer Twp
		2/6/21	003-22582	Allegheny	Frazer Twp
		2/6/21	003-22583	Allegheny	Frazer Twp
		2/6/21	003-22584	Allegheny	Frazer Twp
		2/2/21	125-28898	Washington	Amwell Twp
		2/2/21	125-28899	Washington	Amwell Twp
		2/3/21	125-28896	Washington	Amwell Twp
		2/3/21	125-28895	Washington	Amwell Twp
		2/4/21	125-28897	Washington	Amwell Twp
		2/4/21	125-28900	Washington	Amwell Twp
Seneca Resources Co LLC	6	2/10/21	083-57266	McKean	Norwich Twp
		2/10/21	083-57267	McKean	Norwich Twp
		2/10/21	083-57269	McKean	Norwich Twp
		2/10/21	083-57270	McKean	Norwich Twp
		2/11/21	083-57268	McKean	Norwich Twp
		2/11/21	083-57271	McKean	Norwich Twp
SWN Prod Co LLC	4	2/5/21	117-22072	Tioga	Liberty Twp
		2/6/21	117-22075	Tioga	Liberty Twp
		2/7/21	117-22074	Tioga	Liberty Twp
		2/8/21	117-22073	Tioga	Liberty Twp
Wilmoth Interests Inc	1	2/17/21	123-48485*	Warren	Mead Twp

	February	January	December	November	October	September
Total wells	**44**	**49**	**24**	**50**	**45**	**58**
Unconventional Gas	41	47	20	45	34	51
Conventional Gas	0	0	0	0	0	0
Oil	3	1	3	5	11	7
Combination Oil/Gas	0	1	1	0	0	0

Energy perspectives *Continued from page 3*

making sure that we all stay safe."

That said, Coyle did suggest that the Biden administration likely will place greater regulatory focus on pipeline leak detection and repairs with regard to the nation's network of energy pipelines.

"There was a rulemaking mandate that was included in a recent piece of federal legislation directing firms to come up with some new regulatory requirements for pipeline leak detection and repair," Coyle said. "And I think we'll also see a focus in that regard and in other respects, to gas gathering lines."

The benefits of energy impact fees

There's another close-to-home concern to consider when it comes to tightening the screws on the oil and gas industry, particularly in regions like southwestern Pennsylvania: impact fees. So said Reinhart, who explained that many local municipalities, especially in Washington and Greene counties, receive much-needed impact fees from energy companies. Such fees, he said, offset local taxes and help fund regional economic development efforts that create jobs.

"You know, many municipalities in our region get a significant amount of revenue from oil and gas development," Reinhart said. "I think the danger when we talk about oil and gas is that people visualize an oil well or pipeline and they don't really think about the overall consequences of natural gas development on the economy, particularly here in southwestern Pennsylvania."

"It's never as bad as you think"

While the new presidential administration has set its course for a clean-energy agenda driven by climate change and promises significant changes to laws and regulations, Reinhart is quick to remind energy executives and counsel to assess the overlapping legal and regulatory challenges posed by federal, state and municipal authorities and establish a strategy that takes into consideration the critical legal, business and financial implications going forward.

"There are a lot of folks in our practice groups that have been through several of these administration changes at the state and federal levels, and it's never as bad as you think or as good as it could get," Coyle said. "So I think we're all prepared to help counsel our clients through these times." ■

For more information on the topics discussed in this article, contact Joseph Reinhart at jreinhart@babstcalland.com, Jean Mosites at jmosites@babstcalland.com or Keith Coyle at kcoyle@babstcalland.com.

Calendar of Events

PIOGA events

Information and updates: pioga.org > PIOGA Events

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: Well Construction Topics
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

LDC Gas Forum Northeast
July 19-21, Boston. *Register at www.ldcgasforums.com/ne using discount code NEPIOGA125 for $125 off*

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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