

# The PIOGA Press

The monthly newsletter of the  
Pennsylvania Independent Oil & Gas Association  
May 2021 • Issue 133

## Senators vow to reject all PUC nominees until Wolf withdraws RGGI order

Senate Republicans have told Governor Tom Wolf they will block appointments to the Pennsylvania Public Utility Commission (PUC) unless he ends his unilateral effort to join a multistate climate initiative to cut carbon dioxide emissions from power plants.

The Republicans, who object to the Democratic governor's move to join the Regional Greenhouse Gas Initiative (RGGI), said in a letter to Wolf on April 21 that they will reject his PUC nominations until he withdraws his executive order directing the Department of Environmental Protection to put in place rules enabling Pennsylvania to participate in the CO2 cap-and-trade program.

"We do not take this position lightly," said the letter signed by all 27 GOP senators along with Senator John Yudichak, an Independent from Luzerne County who caucuses with the Republicans.

Here's the text of the Senate letter:

Governor Wolf,

We are writing to you with regard to your recent appointment to the Pennsylvania Public Utilities Commission (PUC). As you are

aware, the Senate of Pennsylvania is currently reaching the deadline to approve or deny your recent appointment. Confirmation of gubernatorial appointments is a constitutional duty we take very seriously. With regard to this specific appointment, the Senate Majority has serious issues with your recent actions related to the Regional Greenhouse Gas Initiative (RGGI).

The Constitution of Pennsylvania is more than just words on a page to all of us. We consider it the operations manual for the entire Commonwealth. Three co-equal branches of government are the foundation to both equal representation and check and balances, that have faithfully served Pennsylvanians since our inclusion into the Union in 1787.

For months, the General Assembly has been expressing concern regarding your excessive use of executive orders and the rulemaking process to achieve substantial policy changes rather than vetting them through the legislative process set forth in the Constitution.

In our view, one of the most brazen executive actions was your unilateral inclusion of

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Pennsylvania into RGGI without legislative approval. The Independent Regulatory Review Commission (IRRC) even went as far to call for a one-year moratorium on your actions and questioned what authority you possess to enter into this pact without legislation. To that point, the Commonwealth entered into other multi-state agreements, such as the Chesapeake Bay Commission, the Delaware River Basin Commission and the Susquehanna River Basin Compact only after the General Assembly passed authorizing legislation that the Governor signed into law.

Further, three Department of Environmental Protection (DEP) advisory panels have rejected the proposal, yet the Environmental Quality Board (EQB) still processed with developing regulations associated with RGGI. It is our understanding that the EQB plans to advance these regulations this summer, despite a clear constitutional requirement for involvement by the General Assembly.

In lieu of this subversion of the constitutional process, and short of arguing this in a judicial setting, we are presented with very few options to reinstitute proper checks and balances in this particular situation. Therefore, we will be exercising our legislative authority to reject all future PUC nominees until you withdraw your executive order related to Pennsylvania's inclusion in RGGI.

We do not take this position lightly. The PUC has significant oversight in energy and rate regulation, and they have already actively participated with the EQB by engaging PJM Interconnection *"to promote the integration of this program in a manner that preserves orderly and competitive economic dispatch within PJM and minimizes leakage."*

If you believe that RGGI has value to the Commonwealth, then you should be confident to have it vetted properly through the legislative process. The current path to circumvent this process betrays both proper representation of our citizens, and any merit to this program that you may think exists. We are willing to participate in discussing this program through our committees and on our legislative floor, but we will not sit idly by and watch you ignore the foundations that built this state.

Thank you for your time and consideration in this matter. We are available to engage further on this issue if you so choose; however,

*Continues on page 16*

## **RGGI and COGA bills win committee approval**

A bill blocking the Wolf administration from joining the Regional Greenhouse Gas Initiative without legislative approval and another measure establishing a separate regulatory program for the conventional oil and gas industry have both advanced from committee in the General Assembly.

On April 27, the Senate Environmental Resources and Energy Committee reported out Senate Bill 119 (Pittman, R-Indiana), prohibiting the Department of Environmental Protection from enacting regulations joining the Regional Greenhouse Gas Initiative (RGGI—or any similar pact—without specific legislative approval.

"A carbon tax is a major energy and fiscal policy initiative, and if such a tax is to be imposed on Pennsylvania employers, we believe it should be approved by the General Assembly," Senator Joe Pittman, the committee's vice chairman, said after the vote. "Beyond the fiscal impact on Pennsylvania manufacturers, coal and gas electric generation, consumers, and future economic investments made in our state, it also creates serious constitutional questions of checks and balances between co-equal branches of government."

The committee's majority chair, Senator Gene Yaw (R-Lycoming), observed, "If Pennsylvania joins RGGI, it would be the only major energy-producing state in the compact and the resulting carbon tax on employers engaged in electric generation would devastate that industry and cost thousands of jobs."

The approval of SB 119 came on a party-line vote of seven Republicans in favor and four Democrats against. The bill now moves to the full Senate for consideration. A companion House version, HB 637 (Struzzi, R-Indiana) has not been brought up yet for consideration. SB 119 mirrors the language of SB 950 and HB 2025 that were introduced during the last legislative session. The governor vetoed HB 2025—which had received bipartisan support in both chambers—last September (*October 2020 PIOGA Press, page 1*).

### **Conventional Oil and Gas Act**

On May 4, the House Environmental Resources and Energy Committee approved HB 1144 (Causer, R-McKean), which would create the Conventional Oil and Gas Act (COGA), a regulatory scheme separate from the Oil and Gas Act of 2012, which was written to address the shale-gas industry as it began to ramp up in Pennsylvania.

The bill was reported out on a near-party-line 16-9 vote, with Representative Pam Snyder (D-Greene) joining the committee's Republicans to advance the bill to the House floor.

"This bill is something that this committee has worked on for many, many years," Representative

*Continues on page 18*



## Changing the Narrative in Energy Perception and Policy



### PIOGA Spring Meeting & Exhibition



Not only do we have an excellent lineup of speakers and relevant topics, but this will be one of the first in-person events of 2021 after more than a year of “virtual everything.” The meeting will take place in the new, expansive event space at Rivers Casino, and all CDC and Pennsylvania Department of Health COVID-19 protocols will be followed. The day features the conference, lunch, an exclusive exhibitor area, reception and other networking opportunities, plus casino time. You don’t want to miss it!

Registration opens at 8 a.m., with the conference kicking off at 9 and running until 5 p.m. The networking reception and casino time is from 5 to 7 p.m.

#### Speakers and topics

**Opening Speaker: Overcoming These Challenging Times** – Dr. Kevin Elko, nationally renowned performance consultant and bestselling author  
**Appalachian Basin Energy Forecast and Overview** – Charles Schliebs, Stone Pier Capital Advisors, LP  
**Regulatory Review – Technical Guidance**

**Document and FAQ Updates** – Joe Kelly and Steve Brokenshire, Pennsylvania Department of Environmental Protection

**Keynote Speaker: Nicholas Deluliis, President and CEO, CNX Resources Corporation**

**A Message from the Chair of the U.S. Senate Energy and Natural Resources Committee** – Senator Joe Manchin III of West Virginia

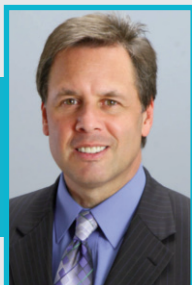
#### Federal Updates:

**A New Day in Washington, D.C.**

– Ryan Ullman, Independent Petroleum Association of America  
**Pipeline Pitfalls – Legal Challenges & Obstacles** – Jean Mosites and Kevin Garber, Babst Calland  
**Solutions to**



#### Featured speakers



Dr. Kevin Elko



Nicholas Deluliis



Representative Bryan Cutler



## Moving Gas – Virtual Pipeline Opportunities

**Panel** – David Kailbourne, REV LNG, LLC; Sara White, Pivotal LNG; Enrico Biasetti, NG Advantage; and Robert Beatty, Insightfuel

**New Market Projects: KeyState Natural Gas**

**Synthesis & Carbon Storage** – Perry Babb, KeyState Natural Gas Synthesis, LLC

**Closing Speaker: Pennsylvania State Updates** – Representative Bryan Cutler, Speaker of the House

## Visit the exhibitors and win!

Our popular Exhibitor Passport game is back. Visit the vendors to get your visa stamps and you'll be eligible to win an "Around the Burgh" prize package that includes dinner at Hyde Park, an overnight stay at the Hyatt, a Segway tour for two and two club-level seats to a 2021 Pittsburgh Pirates baseball game.

### Exhibitors (as of April 29)

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Appellation Construction Services, LLC

Aqua-Clear, Inc.

DynaEnergetics US Inc.

ECI and PIC Appalachia

Eastcom Associates Inc.

EFCO USA Valve Repair & Testing Equipment

GeoStabilization International

Horizontal Wireline Services

Kratch Corp.

New Pig Energy



One AquaSource, Inc.

Precision Pipeline Equipment, Inc.

RJR Safety, Inc.

SherTech LLC

Women's Energy Network – Greater Pittsburgh Chapter  
Zimmerman Steel & Supply Co.

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## Announcing the 2021 Ted Cranmer Memorial Outing!

**T**he Ted Cranmer Memorial Golf Outing and Steak Fry is back to its traditional date for 2021—and it's right around the corner! Due to COVID restrictions last spring, we had to postpone the popular event to early October. Now it's back to the first Monday in June, which for 2021 is the 7th.

This annual golf outing and steak fry is in honor of our long-time PIOGA and POGAM board member who passed away in 2016. The success of the Wanango outing was one of Ted's passions for 10 years, and the event raised thousands of dollars to benefit the association's mission. We are pleased to continue to honor Ted's legacy with this event and hope you come and enjoy a day of golf and camaraderie with the great folks in Pennsylvania's oil and gas industry.

As always, the event takes place at one of the finest golf courses in Northwestern Pennsylvania, the Wanango Country Club on the outskirts of Oil City. We also welcome back American Refining Group as our title sponsor and remind you that a variety of sponsorships are available.

If you don't care to golf, you can always come and join the golfers for the reception and delicious steak fry right after the outing. Check out the event page at [pioga.org](http://pioga.org) > PIOGA Events for full details and registration.



# Pennsylvania Supreme Court holds abandonment analysis improper where oil and gas lease provided remedies for conduct at issue

In a 6-1 decision, the Pennsylvania Supreme Court reversed the lower courts and held that a decision finding an oil and gas lease to be abandoned pursuant to the equitable doctrine of abandonment was improper where the lease provided remedies for the allegedly wrongful conduct of the lessee.

"Analysis of the trial court and Superior Court opinions in this case reveals an essential initial step was skipped to determine whether the case properly sounded in equity as to be resolvable employing the equitable doctrine of abandonment," the Supreme Court majority wrote. "Injunctive relief will lie where there is no adequate remedy at law.' ... Absent from the analysis of the trial court or the Superior Court is any inquiry as to whether Appellees demonstrated that their remedy under a breach of contract action is inadequate."

In *SLT Holdings v. Mitch-Well Energy*, the trial court had granted summary judgment in favor of the lessor, finding that the lessee, by allegedly failing either to produce in paying quantities from the wells drilled on the leased acreage or otherwise make requisite payments pursuant to the lease, had abandoned the lease. The Superior Court affirmed, relying heavily on the trial court's analysis, despite the lessee's arguments that:

- Material facts were disputed;
- The leases required advance notice of breach and opportunity to cure prior to termination, which notice was not provided; and
- The leases expressly allowed the lessee to retain certain acreage around the completed wells if the leases terminated.

The Supreme Court granted allowance of appeal to determine whether the grant of summary judgment was improper where wells were drilled and no testimony

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—  
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was taken regarding the lessee's good faith production decision under *T.W. Phillips Gas & Oil Co. & v. Jedlicka*. The Supreme Court then directed the parties also to address two specific cases and the doctrine of abandonment.

In determining that the lower courts erred in granting and affirming summary judgment, the Supreme Court majority noted the oil and gas leases at issue contained numerous provisions relevant to the question of whether the leases remained valid in light of the lessee drilling only two wells (when the terms of the leases provided for at least 200 wells) and failing to pay any royalty or other payment for nearly two decades. These provisions included:

- The lease term;
- Rental payment;
- Continuing payments;
- Shut-in royalty payment;
- Default/election of remedies;
- Drilling commitment; and
- Minimum payments.

Accordingly, the lower courts erred in granting equitable relief pursuant to the doctrine of abandonment because relief was available at law pursuant to the terms of the leases.

The Supreme Court rejected the lower courts' reliance on the Supreme Court's *Aye v. Philadelphia Co.* decision from 1899 and on the *Jacobs v. CNG Transmission Corp.* federal decision from 2004. As to *Aye*, the Supreme Court held that decision was inapplicable because it addressed abandonment only after the court determined there was an "inadequate remedy under the terms of the lease." Further, abandonment is a question of intention, not performance or lack thereof.

As to *Jacobs*, the Supreme Court held that the lower courts had failed to recognize the abandonment discussion contained therein was dicta, an argument advanced by the court in the alternative if the lease terms did not provide a remedy at law.

While the Supreme Court understood that there may be overlap between a claim of lease termination and lease abandonment, it stressed that "there must be a determination of the inadequacy of a remedy at law before equitable relief under the doctrine of abandon-

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## PIOGA's participation in the case

**P**IOGA participated in this case for the benefit of its producer and royalty owner members because of its potential to authorize courts to avoid looking first to the terms of the oil and gas leases to resolve lease disputes by allowing claims of abandonment even when the leases address the subject of the dispute. There's a saying that students hear in law school "Bad facts make bad law." There were certainly bad facts in this case, on both sides—no oil produced or payments made in lieu of production for over 16 years, but no action taken by the royalty owners per the leases during this time either. These facts arouse sympathy and support for a remedy that may not be what correct application of the law requires, hence the saying above.

As PIOGA stated in its *amicus* reply brief:

Oil and gas leases are to be operated for the mutual benefit of both parties according to the provisions to which the parties have expressly agreed. As the express provisions are for the parties' mutual benefit, both parties must be required to adhere to them and the courts should enforce the parties' compliance. That is all PIOGA is trying to do by its participation in this matter.

Our Supreme Court recognized what was at stake, stating that "[t]his case brings into focus the remedies available to, and duties imposed upon, . . . lessors . . . under two oil, gas, and mineral rights leases granted to lessee."

So, this is case in which bad facts nonetheless made good law.

—Kevin J. Moody, General Counsel, PIOGA

ment is an issue. Appellees never explain why their bargain for remedy of termination under Paragraph 12 of the lease is unavailable or inadequate. Neither did the trial court or Superior Court provide such explanation."

The Supreme Court determined that a remand was necessary to allow the lower courts to review the alternative arguments being raised as those arguments had not been addressed in the first instance—including whether notice of breach was provided to the lessee or whether a recorded affidavit of non-production suffices as such notice. The court noted that another issue possibly to be addressed is whether the appellees waited too long to bring their claim. "By pursuing an equitable remedy, Appellees effectively attempt to bypass the notice requirement and avoid any statute of limitations attendant with such delay." "Even if equitable relief was facially available to Appellees in this case, given their own years of inac-

tion their right to an award could be problematic."

Concluding that the leases were not silent as to the alleged breaches raised by the lessors, the Supreme Court determined that "[i]t was incumbent upon the trial court to address Appellees [sic] motion for summary judgment to determine if an adequate remedy at law existed through a contract analysis of the specific provisions of the leases in question, including the obligation for Appellees to provide notice of default and opportunity to cure, the prescribed exclusive remedy for breach, and any retained rights Appellant may have in the event of termination."

In his lone dissent, Justice David Wecht agreed with the majority that equitable relief of abandonment was not appropriate but dissented from the remand, concluding that the lower court record contained enough factual stipulations or was devoid of questions of fact as to enough elements to uphold the trial court's decision on alternative grounds. He would have affirmed the lower court decision effecting a termination of the lease and remanded to address the conversion claim, the declaratory judgment question and any remedies available to either party.

This decision reinforces that both lessors and lessees should look first to the terms of their leases—both to determine what requirements are necessary to maintain the leases in effect and to determine what legal theories can be pursued to challenge the on-going enforceability of those leases. As the Supreme Court held, the equitable abandonment doctrine—and allegations relevant thereto—should be relegated to those rare cases where the lease at issue does not address the specific conduct or lack thereof that is at issue. ■

*Jeremy Mercer is a litigator focused on energy, with an emphasis on oil and gas litigation. Kevin Meacham is a litigator who advises and represents companies in complex matters arising out of business and contractual disputes, toxic torts, governmental investigations and industrial accidents.*



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## **This month's fact sheet: Governor Wolf's severance tax is *still* a bad idea!**

**Y**ear after year, PIOGA members and staff have fought Governor Wolf and certain members of the Pennsylvania General Assembly in their desire to impose a severance tax on unconventional natural gas production. This budget year is no different, with Wolf proposing to tax the industry as part of a "Back to Work PA" COVID-response effort and legislation being introduced calling for a variable-rate tax on natural gas production.

These bipartisan efforts, typically proposed by elected officials far from the state's energy-producing areas, are clear evidence this fight is not over. It is imperative that in the weeks ahead leading up to passage of a state budget we continue to present the facts about the negative impact any additional tax on our industry would have on jobs, economic growth and energy production in the Commonwealth. PIOGA encourages members to contact legislators and colleagues to encourage them to oppose additional energy taxes.

To assist in that effort, the May edition of our Just the Facts series delves into just what a bad idea a severance tax is. Our fact sheet discusses how Pennsylvania's current tax burden and business climate stack up nationally (not particularly well) and examines the misleading argument that Pennsylvania "is the only natural-gas-producing state without a severance tax." We also illustrate how the unconventional natural gas impact fee—a tax by another name—has generated more than \$2 billion since its inception as part of the Oil and Gas Act of 2012. Finally, the fact sheet points out that energy production in Pennsylvania is already struggling under sustained low commodity pricing, high regulatory costs and infrastructure bottlenecks.

We encourage you to download this month's Just the Facts and share the information with colleagues, friends, family and, of course, those who represent us in Harrisburg. Go to the Latest News and Blog section of [pioga.org](http://pioga.org).

## **PIOGATech report: Spill Discovery, Reporting and Remediation**

**T**he Environmental Committee hosted a PIOGATech on April 27 addressing Spill Discovery, Reporting and Remediation. Due to continuing COVID-19 restrictions on large gatherings it was held virtually. The virtual training brought together close to 50 industry professionals focusing on spill management topics, current challenges and spill control products.

The technical training featured speakers from the Pennsylvania Department of Environmental Protection, Babst Calland, Diversified Gas & Oil, Moody and Associates, New Pig Energy, and Snyder Brothers, covering topics that included an overview of current regulations, legal considerations and liabilities, cleanup operations, site sampling, and waste disposal.

The day closed out with an Operators Roundtable discussion moderated by Ken Fleeman in which Kirk Elkin from Diversified Gas & Oil, Todd Kunselman of Snyder Brothers, and DEP's Steve Brokenshire and Don Hegburg provided feedback and insights on how companies are managing compliance.

Our special thanks go out to all the presenters and to our planning partners that included Ken Fleeman, Kevin Garber from Babst Calland, Kirk Elkin from Diversified Gas & Oil, Jeff Walentosky and Mark Miller from Moody and Associates, Beth Powell from New Pig Energy, and Todd Kunselman from Snyder Brothers. Save the date for our next PIOGATech on July 22, with a safety topic to be announced. ■



*Ken Fleeman, Kirk Elkin and Todd Kunselman*

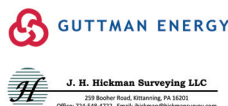
## Clay shoot at Promise Land



It was a glorious day for a clay shoot on May 6 at Promise Land Sporting Clays in Freeport. We thank all those who made it possible, including our sponsors shown below. For more scenes from the day, visit the Photo Galleries section at [pioga.org](http://pioga.org)



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# U.S. Senate passes joint resolution disapproving Trump oil and gas methane rule

On April 28, 2021, the U.S. Senate passed a joint resolution, known as S.J. Res. 14,<sup>1</sup> retroactively revoking a Trump administration rule<sup>2</sup> revising Obama-era Clean Air Act New Source Performance Standards for the Crude Oil and Natural Gas Industry at 40 C.F.R. Part 60, Subparts OOOO and OOOOa (NSPS) that were initially promulgated in 2012 and 2016.<sup>3</sup> The joint resolution, if enacted into law, would reinstate Obama administration rules regulating the methane emissions from the oil and natural gas industrial sector, including the production, processing, transmission and storage segments.

## The Trump administration's Policy Amendments rule

The joint resolution takes aims at a specific Trump administration rule published in the *Federal Register* on September 14, 2020. Referred to as the "Policy Amendments," the rule resulted in four key changes to these NSPS, which were promulgated in 2012 and 2016.

*First*, the Policy Amendments removed the transmission and storage segment, including transmission compressor stations, pneumatic controllers and underground storage vessels. In removing the transmission and storage segments from regulation under the NSPS, the U.S. Environmental Protection Agency (EPA) found that the segments were improperly regulated because the statutory-mandated finding that sources contribute significantly to air pollution was not made when the segments were added to the industrial sector and the NSPS in 2012 and 2016.

*Second*, the Policy Amendments rescinded the methane emission requirements for the production and processing segments of the sector, which include various emission sources at well sites, gathering and boosting compressor stations, and natural gas processing plants.

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*Third*, by removing the methane limits on the production and processing segments, the Policy Amendments eliminated the Clean Air Act (CAA) requirement to regulate methane emissions from existing sources from within these segments.

*Fourth*, as an alternative basis for rescinding the limits on methane emissions, the Policy Amendments concluded that the 2016 rule adding methane limits was the product of an insufficient finding that did not satisfy CAA standards. While the Policy Amendments rule resulted in surgical deletions and revisions to the NSPS, it was based upon the Trump administration's views and interpretations regarding the scope of the CAA's NSPS provisions and how they are to be applied to previously unregulated sources and air pollutants.

Notably, the joint resolution left a companion rule promulgated by the Trump Administration known as the "Technical Amendments"<sup>4</sup> untouched.

## Congressional Review Act-based revocation

To revoke the Policy Amendments rule, the Senate invoked its authority under the Congressional Review Act (CRA). The CRA grants Congress the authority to overturn a federal regulation in its entirety by simple majority votes within specified time periods after the rule is promulgated. Although the CRA is not limited to use in presidential administration changes, it typically is used after such a change as an oversight mechanism for so-called "midnight rules."

The most potent aspect of a CRA resolution disapproving a federal regulation is that the federal agency may not reissue the rule in "substantially the same form" or issue a "new rule that is substantially the same," "unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule."<sup>5</sup> The CRA does not define "substantially the same" and is silent on who is responsible for making a determination on whether a new rule is "substantially the same." For amendments to existing rules, like the Policy Amendments rule, a CRA joint resolution revokes the amendments and leaves the previously existing rule in place.<sup>6</sup>

S.J. Res. 14 passed by a vote of 52-42, with Republican Senators Susan Collins (Maine), Lindsay Graham (South Carolina), and Rob Portman (Ohio) joining Democratic Senators in approving the resolution. Several Republican Senators, including Patrick Toomey (Pennsylvania), did not vote on the joint resolution. The day before the Senate's vote, the Biden administration urged the Senate to invoke its CRA authority stating that "the oil and gas sector is the largest industrial source of methane emissions" and that "addressing methane pollution from this and other sectors is an urgent and

<sup>1</sup> S.J. Res. 14, 117<sup>th</sup> Cong. (2021).

<sup>2</sup> "Oil and Natural Gas Sector: Emissions Standards for New, Reconstructed, and Modified Sources Review," 85 Fed. Reg. 57018 (Sept. 14, 2020).

<sup>3</sup> "Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Final Rule," 77 Fed. Reg. 49490 (August 16, 2012); "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule," 81 Fed. Reg. 35824 (June 3, 2016).

<sup>4</sup> "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration," 85 Fed. Reg. 57398 (Sept. 15, 2020).

<sup>5</sup> 5 U.S.C. § 801(b)(2).

<sup>6</sup> See 5 U.S.C. § 801(f).

essential step” to “effectively mitigate climate change.”<sup>7</sup>

### Unresolved questions about CAA regulation of methane emissions and compliance

Although a CRA revocation of the Policy Amendments is not yet final, it likely is only a matter of time before a Democratically controlled House of Representatives votes to pass the joint resolution and President Biden signs the resolution into law. Legally, a CRA-disapproved rule is treated “as though such rule had never taken effect.”<sup>8</sup> As such, upstream and midstream operators would be well-advised to revisit the 2012 and 2016 NSPS rules and evaluate compliance with their requirements. Practically, reinstituting the methane requirements of the 2016 NSPS should have very little impact on production and processing facilities currently subject to the 2016 NSPS, as the methane reductions in the 2016 NSPS rule were incidentally achieved through volatile organic compound (VOC) control requirements. Transmission and storage facilities, where but for the Policy Amendments the 2012 and 2016 NSPS currently would apply, should review and prepare to comply with the originally promulgated rules.

If finalized, a CRA-based revocation of the Policy Amendments rule will raise significant questions. Ideally, EPA would provide guidance to affected facilities, particularly for transmission and storage facilities constructed, modified or reconstructed sources after September

14, 2020, in reliance on the Trump administration’s rule concluding that the 2016 NSPS did not apply to such sources. In addition, EPA most likely will need to issue a *Federal Register* notice reinstating the 2012 and 2016 NSPS as originally promulgated. Affected facilities will want to look closely at any *Federal Register* notice issued by EPA, especially any effective date for reinstating the 2012 and 2016 NSPS.

Congressional revocation of the Policy Amendments rule may also revive currently stayed multi-party litigation over the 2012 and 2016 NSPS. It would also revive EPA’s obligation under section 111(d) of the CAA to regulate methane emissions from existing sources within the oil and natural gas source category. Beyond that, Congress’ likely repudiation of the Trump administration’s interpretations in the Policy Amendments rule may also have lasting impacts on the regulation of greenhouse gas emissions from the oil and natural gas and other industrial sectors regulated under section 111 of the CAA. ■

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<sup>7</sup> Executive Office of President, Office of OMB, Statement of Administration Policy (April 27, 2021).

<sup>8</sup> 5 U.S.C. § 801(f).

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# National Safety Stand-Down to prevent falls in construction

By Wayne Vanderhoof, RJR Safety Inc.

PIOGA Safety Committee co-chair

Fatalities caused by falls from elevation continue to be a leading cause of death for construction employees, accounting for 401 of the 1,061 construction fatalities recorded in 2019 (BLS data). Those deaths were preventable.

Preventing falls can mean the difference between life and death. You can prevent such deaths by planning to get the job done safely, providing the right fall protection equipment and training all workers to use the equipment safely. Many construction workers—as well as workers in our industry—perform tasks at a height that requires protection from fall hazards. Having a serious injury or death occur at work affects everyone at a worksite. A fall can occur in a split second without any time for the worker to react.

The National Safety Stand-Down raises fall hazard awareness across the country in an effort to stop fall fatalities and injuries. This year's Stand-Down was scheduled for May 3-7, though it can be conducted through June 31st.

A Safety Stand-Down is a voluntary event for employers to talk directly to employees about safety. Any workplace can hold a stand-down by taking a break to focus on fall hazards and reinforcing the importance of fall

## Safety Committee Corner

prevention. Employers of companies not exposed to fall hazards also can use this opportunity to have a conversation with employees about the other job hazards they face, protective methods, and the company's safety policies and goals. It can also be an opportunity for employees to talk to management about fall and other job hazards they see.

Anyone who wants to prevent hazards in the workplace can participate in the Stand-Down. In past years, participants included commercial construction companies of all sizes, residential construction contractors, sub- and independent contractors, highway construction companies, general industry employers, the military, other government participants, unions, employer's trade associations, institutes, employee interest organizations, and safety equipment manufacturers.

OSHA is partnering with key groups to assist with this effort, including the National Institute for Occupational Safety and Health, the National Occupational Research Agenda, OSHA approved state plans, state consultation programs, the Center for Construction Research and Training, the American Society of Safety Professionals, the National Safety Council, the National Construction Safety Executives, the U.S. Air Force, and the OSHA Training Institute Education Centers.

The website for the Stand-Down is [www.osha.gov/stop-falls-stand-down](http://www.osha.gov/stop-falls-stand-down). There are many, many resources available for use during your Stand-Down including toolbox talks, videos, handouts and lesson plans. ■



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Social media icons: Facebook, LinkedIn, Twitter, Instagram, YouTube.

Logo: A circular logo with the text 'POLLINATOR APPROVED' around a central graphic of a butterfly.

## PIOGA member discount for LDC Gas Forum Northeast

The 26th Annual Northeast Forum is the premier event where 600-plus of the natural gas industry's leaders gather in Boston for three days of networking, insights and deal making. The 2021 event takes place July 19-21.

Got an eye for networking? Networking is at the heart of the Forums. There are multiple opportunities to meet and connect with people through scheduled networking activities and before/after/in-between sessions. It is hard *not* to meet people! Got an eye for today's news? Hear valuable and unique insights from the newsmakers and leaders of the industry.

PIOGA members can register at [www.ldcgasforums.com/ne](http://www.ldcgasforums.com/ne) with discount code NEPIOGA125 for \$125 off. Gas buyers attend for free (see gas buyer qualifications at [www.ldcgasforums.com/ne\\_qualifications](http://www.ldcgasforums.com/ne_qualifications)).

For information, contact Christy Coleman at [ccoleman@accessintel.com](mailto:ccoleman@accessintel.com) or 713-343-1873. ■

### CNX commits \$30 million to broaden path to middle class in local communities

CNX Resources Corp. last month announced a substantial, multi-year community investment in the tri-state region. The \$30 million commitment spans six years and reinforces the company's focus on local, underserved communities and populations. Previously, the company released comprehensive goals related to its 'hire local' supply chain and sourcing efforts and Diverse Business Enterprise (DBE) spend initiatives.

"While everyone is talking about sustainability and Environmental, Social and Governance (ESG) these days, too few are delivering tangible and measurable results. We are on a mission to change the trajectory of our region and to improve the lives of our neighbors in communities left behind by a system focused on talk and abstract concepts rather than real outcomes. This commitment is not about words; it's about the people who make western Pennsylvania and the broader Appalachian region such a special place to live, work and raise a family," said CNX President and CEO Nicholas J. Deluliis.

Deluliis continued, "Our industry is the lifeblood of

the regional economy and the foundation of our social fabric. For us to succeed, we need healthy communities to provide a resilient workforce. These are not hand-outs; they are investments that will provide returns for our local communities and our ownership for years to come. This is what sustainability and ESG mean to CNX."

The community investment pillars associated with CNX's \$30 million commitment include food insecurity; health and wellness of children, the elderly and individuals with disabilities; broadband and information technology access; criminal justice and recidivism reduction; domestic violence awareness and services; the opioid epidemic and societal impact; career awareness and technical/vocational training; and water quality safety and awareness.

Initial signature project commitments are to include \$1 million for broadband access in rural Greene County, \$400,000 for career training for students/graduates of the recently announced regional mentorship academy, \$200,000 for the Jerome Bettis Cyber Bus Project to support technology needs in disadvantaged school districts and \$100,000 for House of Life of Pittsburgh for returning citizen re-entry.

### SWCA Environmental Consultants acquires California consulting firm

SWCA Environmental Consultants announced it has acquired Sycamore Environmental Consultants, an envi-



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ronmental consulting services, compliance and permitting firm based in Sacramento, California.

Sycamore provides environmental permitting support to public and private sectors and specializes in public infrastructure, transportation, linear features projects such as transmission lines and pipelines, renewable energy, telecommunications, and general and specific plan projects. This acquisition adds to SWCA's presence in California, allowing the company to better serve clients throughout the West. It also deepens SWCA's roster of technical and scientific experts, particularly CEQA/NEPA experts, planners and biologists.

SWCA is a nationwide environmental consulting firm providing a full spectrum of environmental services focusing on planning, natural and cultural resource management, permitting, regulatory compliance, water resources, and ecological restoration. ■

## New/returning PIOGA members Welcome, and welcome back!

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## Members talk about the value of PIOGA

Chemstream is a provider of state-of-the-art chemicals for the completion, drill out and production phases of a successful completion. PIOGA has been standing by our industry for many years with many obstacles to overcome. The last year, especially, was difficult for the oil and gas industry. We have been a proud member for many years and I have served on the Board of Directors. Believe me when I say that PIOGA is a necessary and an integral champion of our industry, educating our representatives and informing PIOGA members concerning upcoming legislation.

PIOGA keeps its members informed about the decisions that affect us out of Harrisburg. As a retired Board member, I know that PIOGA is very concerned about their members and the issues facing us today. We are not through with increased regulation. Therefore, I am glad that we support PIOGA in their daily mission to represent us when we are out doing our jobs harvesting this abundant, affordable and reliable resource.

PIOGA also gives its members many opportunities to network with members and associates to talk with old friends and to meet new ones. Thanks, PIOGA!

**Bob Garland**  
Chemstream Inc.

## PIOGA Centennial commemorative knife closeout sale!

As part of PIOGA's 2018 celebration of 100 years of working together as a trade association on behalf of Pennsylvania's crude oil and natural gas industry, we commissioned a commemorative knife from W.R. Case & Sons Cutlery Company.

The collector-quality knife and wooden storage box feature PIOGA's 100th Anniversary logo. It's a great collector's piece and also makes a unique gift for coworkers, industry colleagues and petroleum history enthusiasts. Only 100, individually numbered knives were made.

The knives originally sold for \$100. We're making the last few available for just \$75. To get yours before they're all gone, email Deana McMahan at [deana@pioga.org](mailto:deana@pioga.org) today! ■



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until we can reach any agreement with your removal of Pennsylvania from RGGI and submit the compact for deliberation through the General Assembly, we will not be confirming any PUC nominees.

The move is significant because two seats held by Democrats on the five-member commission have expired, and without new appointments, control of the PUC will flip to a 2-1 Republican majority soon. The commission has significant influence over the Commonwealth’s energy policy.

A Wolf spokesperson denounced the Republican threat to hold PUC appointments “hostage” as a “reckless precedent,” and said Wolf will not pull back on his efforts to enter RGGI.

The governor in 2019 signed an executive order to join the regional market-based program to reduce greenhouse gases from electric generation, a system that rewards power plants that emit little or no carbon dioxide and penalizes fossil-fuel generators. Eleven other states have joined RGGI—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont and Virginia.

The plan would impose limits on greenhouse gas emissions that tighten each year, requiring power plants that emit carbon dioxide to pay increasingly higher prices for emissions allowances.

The administration continues to have the RGGI regulations on a fast track. DEP posted the final-form rule on its website in early May, ahead of consideration this month by the Air Quality Technical Advisory Committee and the Citizens Advisory Council. DEP is scheduled to present the final regulation to the Environmental Quality Board for action in July.

In addition to representing a \$500 million tax on Pennsylvanians, the GOP cites studies that predict there will be little reduction in overall emissions. Power generation will move to more competitive fossil-fuel plants in other states not affected by the emissions caps, a migration of emissions known as “leakage” and referenced in the April 21 Senate letter.

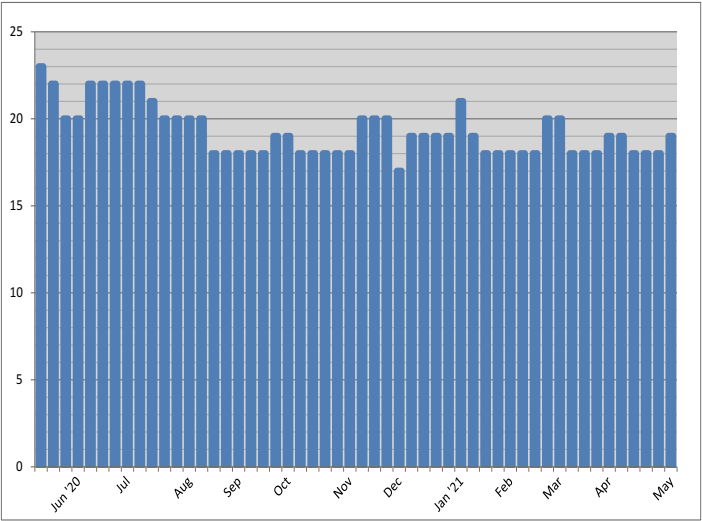
The senators and others contend that Wolf should get the consent of the General Assembly to join any multistate agreement. Wolf last year vetoed legislation that would force a legislative vote on joining the initiative. The legislation was reintroduced this session as Senate Bill 119 (along with a companion House version). On April 27 SB 119 won the approval of the Senate Environmental Resources and Energy Committee on a party-line vote (*see accompanying article*).

The PUC’s current vacancies began last year when Commissioner Andrew Place, a Democrat, resigned at the end of his term. Wolf nominated Hayley Book, a senior adviser on energy and climate at the DEP who has been Wolf’s RGGI point person, to fill the vacancy in

*Continues on page 18*

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices



Natural Gas Futures Closing Prices

Month	Price
June	\$2.989
July	3.031
August	3.037
September	3.020
October	3.035
November	3.090
December	3.212
January 2022	3.290
February	3.216
March	3.009
April	2.614
May	2.560

Prices as of May 7

Sources

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

## Northeast Pricing Report – May 2021

Front-month trading for all trading points decreased from April. Transco Leidy fell \$0.97 and \$0.34 per MMBtu respectively, representing a 120% drop in value. The one-year rolling term was mixed. Algonquin increased \$0.25 per MMBtu. TETCO M3 was flat, while Transco Leidy decreased \$0.18 per MMBtu. The long-term trading period had minor changes since April. Algonquin increased \$0.06 per MMBtu. All other points decreased between \$0.03 and \$0.05 per MMBtu. There's little indication of fundamentals greatly impacting pricing for the rest of the month. A slight increase in gas usage for storage fill and weather-related demand may provide some support for pricing over the month.

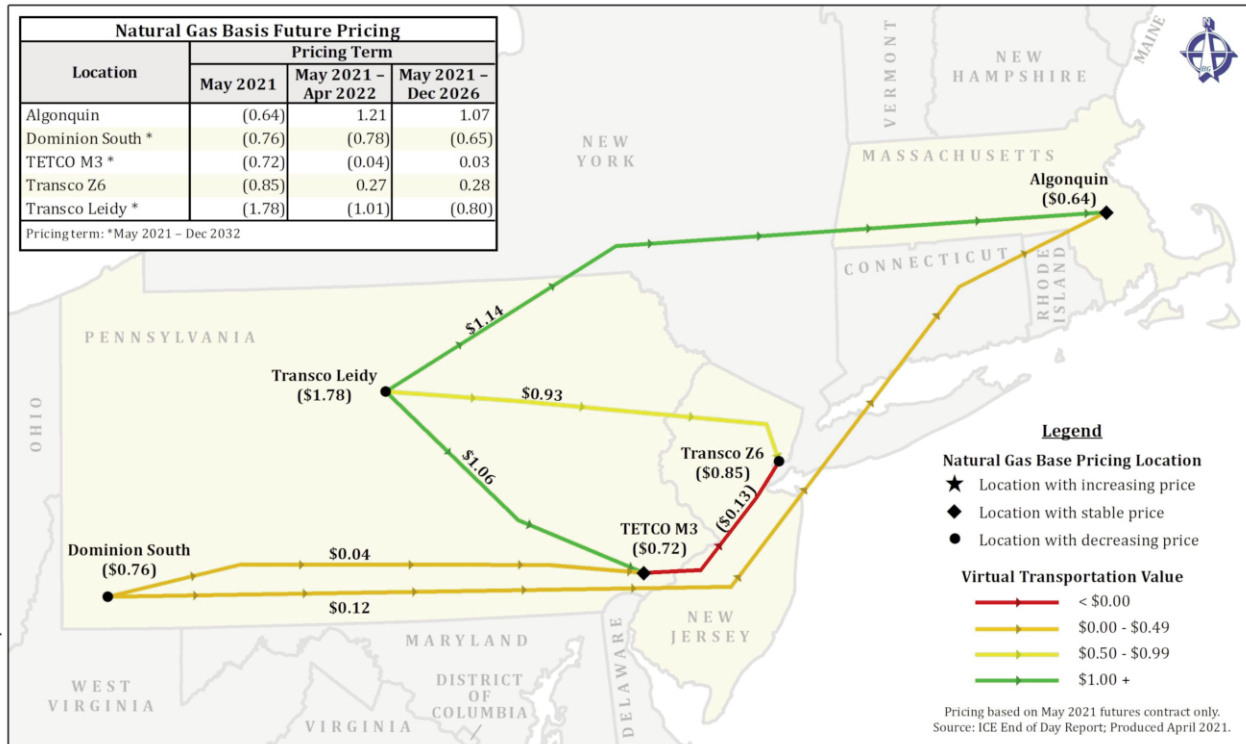
Transportation routes were mixed for May. TETCO M3 to Transco Z6 had another negative value of \$0.13 per MMBtu. Based on Dominion South's continued strengthening, the transportation value to Algonquin was only \$0.12 per MMBtu, which was down another \$0.22 per MMBtu from April. Transco Leidy to TETCO M3 had the largest increase of \$0.84 per MMBtu. Transco Leidy to both Transco Z6 and Algonquin had increases of \$0.72 and \$0.66 per MMBtu, respectively.

### Transportation Value Market Indicator

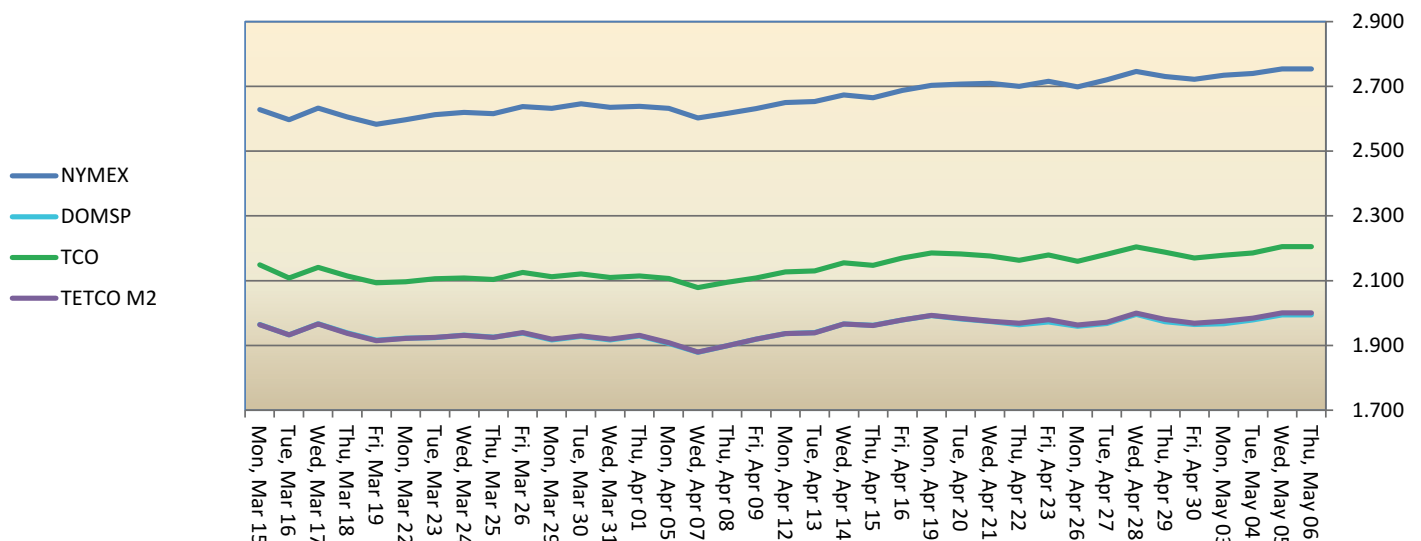


Provided by Bertison-George, LLC

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## 36 - Month Appalachian Fixed Price Moving Averages



# Spud Report: April 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](http://www.dep.pa.gov) and choosing Report from the menu. The table is sorted by operator and lists the total wells reported as drilled last month. **Spud** is the date drilling began at a well site. The **API number** is the drilling permit number issued to the well operator. An asterisk (\*) after the API number indicates a conventional well.

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
B&B Resources	2	4/13/21	123-48495*	Warren	Pleasant Twp
		4/19/21	123-48496*	Warren	Pleasant Twp
Bull Run Resources LLC	1	4/30/21	123-48407*	Warren	Sheffield Twp
Cabot Oil & Gas Corp	7	4/21/21	115-22837	Susquehanna	Gibson Twp
		4/21/21	115-22838	Susquehanna	Gibson Twp
		4/21/21	115-22811	Susquehanna	Gibson Twp
		4/21/21	115-22839	Susquehanna	Gibson Twp
		4/21/21	115-22840	Susquehanna	Gibson Twp
		4/30/21	115-22809	Susquehanna	Gibson Twp
		4/30/21	115-22810	Susquehanna	Gibson Twp
Chesapeake Appalachia LLC	4	4/1/21	015-23651	Bradford	Wilmot Twp
		4/1/21	015-23652	Bradford	Wilmot Twp
		4/16/21	131-20632	Wyoming	Meshoppen Twp
		4/16/21	131-20631	Wyoming	Meshoppen Twp
Chief Oil & Gas LLC	9	4/1/21	015-23663	Bradford	Franklin Twp
		4/1/21	015-23668	Bradford	Franklin Twp
		4/1/21	015-23669	Bradford	Franklin Twp
		4/1/21	015-23670	Bradford	Franklin Twp
		4/1/21	015-23671	Bradford	Franklin Twp
		4/1/21	015-23672	Bradford	Franklin Twp
		4/1/21	015-23628	Bradford	Franklin Twp
		4/1/21	015-23673	Bradford	Franklin Twp
		4/1/21	015-23674	Bradford	Franklin Twp
CNX Gas Co LLC	1	4/1/21	059-28079	Greene	Richhill Twp
EQT Prod Co	8	4/1/21	059-28094	Greene	Springhill Twp
		4/1/21	059-28097	Greene	Springhill Twp
		4/1/21	059-28026	Greene	Springhill Twp
		4/26/21	059-28012	Greene	Whiteley Twp
		4/26/21	059-28108	Greene	Whiteley Twp
		4/26/21	059-28109	Greene	Whiteley Twp
		4/26/21	059-28110	Greene	Whiteley Twp
		4/26/21	059-28111	Greene	Whiteley Twp
Greylock Prod LLC	4	4/15/21	059-27940	Greene	Greene Twp
		4/16/21	059-27909	Greene	Greene Twp
		4/16/21	059-27912	Greene	Greene Twp

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
		4/17/21	059-27941	Greene	Greene Twp
Kylander Oil Inc	3	4/7/21	123-48490*	Warren	Glade Twp
		4/13/21	123-48492*	Warren	Glade Twp
		4/19/21	123-48514*	Warren	Glade Twp
Lindell & Maney LLC	1	4/6/21	123-48438*	Warren	Brokenstraw Twp
Range Resources Appalachia	3	4/21/21	125-28612	Washington	Hopewell Twp
		4/21/21	125-28611	Washington	Hopewell Twp
		4/22/21	125-28613	Washington	Hopewell Twp
Seneca Resources Co LLC	14	4/6/21	023-20282	Cameron	Shippen Twp
		4/6/21	023-20280	Cameron	Shippen Twp
		4/6/21	023-20283	Cameron	Shippen Twp
		4/6/21	023-20284	Cameron	Shippen Twp
		4/7/21	023-20281	Cameron	Shippen Twp
		4/7/21	023-20285	Cameron	Shippen Twp
		4/7/21	023-20286	Cameron	Shippen Twp
		4/16/21	047-25100	Elk	Jones Twp
		4/16/21	047-25101	Elk	Jones Twp
		4/16/21	047-25096	Elk	Jones Twp
		4/16/21	047-25097	Elk	Jones Twp
		4/16/21	047-25098	Elk	Jones Twp
		4/17/21	047-25099	Elk	Jones Twp
		4/17/21	047-25102	Elk	Jones Twp
Snyder Bros Inc	4	4/28/21	005-31379	Armstrong	South Buffalo Twp
		4/28/21	005-31380	Armstrong	South Buffalo Twp
		4/28/21	005-31381	Armstrong	South Buffalo Twp
		4/28/21	005-31382	Armstrong	South Buffalo Twp
Wilmoth Interests Inc	1	4/6/21	123-48484*	Warren	Mead Twp

	April	March	February	January	December	November
Total wells	62	67	44	49	24	50
Unconventional Gas	54	55	41	47	20	45
Conventional Gas	0	0	0	0	0	0
Oil	8	12	3	1	3	5
Combination Oil/Gas	0	0	0	1	1	0

## Senate RGGI letter *Continued from page 16*

August. The Senate did not act on the nomination during last year's session, and Wolf resubmitted Book's name in January.

A second five-year term, now held by Vice Chairman David Sweet, another Democrat, expired on April 1. Wolf has not reappointed Sweet or nominated a replacement. Under state law, Sweet can remain in the seat for up to six months after his term expires if a successor has not been appointed by the Senate.

## Wolf withdraws cabinet nominations

At the beginning of May, the governor withdrew the nominations of seven of his cabinet members in reaction to the Senate ultimatum over PUC nominations. A spokesperson for Wolf said the acting officials could continue to do their jobs without Senate confirmation.

"At this time, the governor has withdrawn several of his nominations because the Wolf administration will not let its cabinet officials be held hostage by the Senate Republicans' insistence to halt progress on policy issues that are important to Pennsylvania's citizens. The individuals will continue to serve in an acting capacity. The title of 'acting' does not impact their ability to do

the job in any way," said Lyndsay Kensinger, a spokeswoman for the governor.

Among the cabinet-level positions involved were adjutant general, secretary of state, secretary of education, secretary of labor, secretary of human services, secretary of health and physician general. ■

## RGGI and COGA bills *Continued from page 3*

Martin Causer, the bill's prime sponsor, said during the committee hearing. "(It is) certainly something that I think is very important."

Representative Daryl Metcalfe (R-Butler), the majority chair of the committee, said the bill "provides safety that we need" for the environment and communities while also "ensuring small business owners are able to continue operations."

Last session, the General Assembly approved COGA legislation (SB 790), only to have it vetoed by Governor Wolf in November (*December PIOGA Press, page 1*). The minority chairman of the House Environmental Resources and Energy Committee, Greg Vitali (D-Chester), commented during the May 4 session that the

Wolf administration would prefer to reach agreement with industry over the Chapter 78 regulatory package which is now in draft form. ■

## Calendar of Events

### PIOGA events

**Event information:** [pioga.org/events/pioga-events](http://pioga.org/events/pioga-events)

#### Spring Meeting & Exhibition

May 19, Rivers Casino, Pittsburgh

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

June 7, Wanango Country Club, Reno

#### Cigar Dinner Networking Event

July 15, BURN by Rocky Patel, Pittsburgh

#### PIOGATech: Safety Topic TBA

July 22, venue TBA

#### PIOGATech: Water & Waste Management

August 18, venue TBA

#### 24th Annual Divot Diggers Golf Outing

August 19, Tam O'Shanter of Pennsylvania, Hermitage

#### Annual Membership Meeting and Fall Sports Outing

September 15-16, venue TBA

#### Pins & Pints 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

### Other events

#### Ohio Oil & Gas Association Annual Meeting

June 21-23, Columbus, OH. Info: [www.ooga.org](http://www.ooga.org)

#### The Great Gathering (GGVII)

July 14, Washington Wild Things Park, Washington

Info: [www.greatgathering2021.com](http://www.greatgathering2021.com); PIOGA member discount

#### LDC Gas Forum Northeast

July 19-21, Boston. Register at [www.ldcgasforums.com/ne](http://www.ldcgasforums.com/ne) using discount code NEPIOGA125 for \$125 off

## Spread the word!

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