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PEDF litigation appears to be nearing the last stage

Constitutionality of using Oil and Gas Lease Fund money for at least some operating expenses of environmental agencies must still be resolved

By Kevin Moody
PIOGA General Counsel & Vice President for Government Relations

In our November 2020 newsletter, we reported that the constitutionality of using Oil and Gas Lease Fund money for operations of state environmental agencies, such as the Department of Conservation and Natural Resources (DCNR) and the Department of Environmental Protection (DEP), was still not resolved after the October 22, 2020, Commonwealth Court decision that the transfers of $110 million from the Lease Fund in 2017 and 2018 to DCNR were not unconstitutional under the Environmental Rights Amendment (ERA). That observation was also based on the then-pending Pennsylvania Environmental Defense Fund (PEDF) appeal of the Commonwealth Court's decision on remand from the first PEDF appeal to the Supreme Court challenging the Commonwealth Court's decision rejecting PEDF's trust fund arguments, which the Supreme Court had reversed and remanded.

On July 21, the Pennsylvania Supreme Court ruled in PEDF's favor in that second appeal (64 MAP 2019), setting the stage for our Supreme Court's consideration, on PEDF's third appeal (65 MAP 2020), of the issues decided in that October 22 Commonwealth Court decision. In its July 21 decision, the high court ruled that the transfer of hundreds of millions of dollars from leasing land in Pennsylvania state forests for oil and natural gas drilling to fill holes in the state budget in 2009 and 2010 were unconstitutional.

The 2009-2010 transfers were all to the General Fund for general operations of various state agencies, whereas the $110 million transfers to DCNR in 2017-2018 were more specific:

2017
$50,000,000 for general operations
$7,739,000 for state parks operations
<u>$3,552,000</u> for state forests operations
$61,291,000

2018
$37,045,000 for general operations
$7,555,000 for state parks operations
<u>$4,198,000</u> for state forests operations
$48,798,000

PEDF's third appeal also challenges the constitutionality of transfers from the Lease Fund to other funds: Keystone Recreation, Parks and Conservation Fund; Marcellus Legacy Fund; Environmental Stewardship Fund; and Hazardous Sites Cleanup Fund.

The Supreme Court's July 21 decision on PEDF's second appeal relied primarily upon the court's decision on PEDF's first appeal, which PEDF primarily relied upon in its challenge to the 2017-2018 DCNR transfers and transfers to the other funds. As the Supreme Court's July 21 decision rejected the basis for the Commonwealth Court's October 22 decision upholding the constitutionality of the 2017-2018 DCNR and other

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RGGI focus shifts to IRRC and legislature

With the Environmental Quality Board's (EQB) July 13 approval of regulations implementing a so-called "cap and invest" program to limit carbon dioxide emissions from fossil fuel-fired electric power-plants in Pennsylvania, the focus of efforts to stop Governor Tom Wolf's unilateral push to join the Regional Greenhouse Gas Initiative (RGGI) now moves to the Independent Regulatory Review Commission (RGGI) and the state legislature.

The EQB, made up primarily of members of the administration, voted 15-4 to approve the final rulemaking. As one of those voting no, Representative Daryl Metcalfe (R-Butler), chairman of the House Environmental Resources and Energy Committee, argued both that the regulation itself is not legal and that the EQB meeting violated Pennsylvania's Sunshine Act.

"Please understand what each EQB members who voted to advance Wolf's economy-crippling RGGI scheme have done," Metcalfe stated. "First, this scheme is unconstitutional and illegal because it creates a tax without legislative approval. Second, [Department of Environmental Protection] Secretary McDonnell convened a hybrid in-person/virtual meeting that did not provide access for the public to attend as required under the Sunshine Law. DEP also violated the law by not holding in-person hearings on the regulation to fully engage the affected communities."

Metcalfe offered six motions during the meeting to address these issues, but they were all voted down by the same 15-4 margin.

DEP describes RGGI as a "cap and invest" program that sets a regulatory limit on CO2 emissions from fossil fuel-fired electric generating units (EGU) and permits trading of CO2 allowances to effect compliance with the regulatory limit. RGGI provides a "two-prong" approach to reducing CO2 emissions from fossil fuel-fired EGUs. The first is a declining CO2 emissions budget while the second prong involves investment of the proceeds resulting from the auction of CO2 allowances to further reduce CO2 emissions. Each of the 11 participating RGGI states establishes its own annual CO2 emissions budget which sets the total amount of CO2 emitted from fossil fuel-fired EGUs in a year. PIOGA and other critics contend that Wolf's RGGI push is an executive power grab that would be devastating to Pennsylvania energy producers and communities *(see accompanying article about this month's Just the Facts installment).*

Expressing disapproval

Following EQB approval, the RGGI rulemaking goes to IRRC for consideration at the commission's September 1 meeting. There is some hope that IRRC may not act as a rubber stamp.

PIOGA events in September

Birds & BBQ

Tuesday, September 14
West Penn Sportsmen's Club
Murrysville

Register now for this new event at a new-to-us venue. Choose the morning or afternoon flight, with a barbecue picnic in between. We hope to see you there!

Annual Membership Meeting & Reception

Wednesday, September 15
The Chadwick, Wexford

Join together with other PIOGA members to hear about the work of the association on legislative, regulatory and public education matters that impact your business.

Find out more at pioga.org > PIOGA Events

Earlier in the rulemaking process, IRRC highlighted several concerns about the proposal and recommended a delay in implementation beyond DEP's planned date of January 2022. IRRC's comments in February pointed to criticisms that Pennsylvania's Air Pollution Control Act (APCA) does not authorize the regulation of carbon dioxide and that no Pennsylvania court has ever held that CO2 constitutes air pollution or is a greenhouse gas under the APCA. Also, neither the ACPA nor the Uniform Interstate Air Pollution Agreements Act provides the necessary legislative authorization for Pennsylvania to participate in RGGI. Finally, opponents assert that the regulation's mandatory CO2 emissions allowance fees constitute a tax that the legislature has not authorized rather than a permissible regulatory fee.

The House and Senate Environmental Resources and Energy committees have the ability to formally provide input at this stage in environmental rulemakings as "standing committees." The House committee on July 28 voted to send a letter of disapproval to IRRC and the Senate's counterpart was expected to do the same on August 18.

The House Environmental Resources and Energy Committee disapproval letter to IRRC stated: "Unfortunately, DEP has ignored the vast majority of concerns raised by [IRRC's February comments] and those raised by countless other commentators during the public comment period. Instead of taking the regulatory review process seriously and deliberatively engaging with the issues that have been raised, DEP has chosen to attempt to finalize a substantively similar regulation to the regulation that it proposed.

"The speed with which DEP has rejected most concerns and brought this regulation back to the EQB, and now to you, after the close of the comment period is an indication of how little DEP values this vital process that we are now participating in. This is particularly true considering the number of comments that they received."

The letter also asserted:

• DEP and the EQB (the entity that formally promulgates regulations on behalf of DEP) violated the law during the process by failing to hold public hearings in affected communities and by holding the July 23 meeting in an office building not currently open to the public.

• The APCA requires that interstate air pollution control agreements be submitted to the General Assembly for approval, which has not happened with the RGGI regulation. Additionally, RGGI functions as an interstate agreement or compact, which must receive the consent of the United States Congress, which RGGI has not received.

• The IRRC's February comments indicated that the regulation falls withing the scope of the criterion under the Regulatory Review Act of a policy decision of such substantial nature that it requires legislative review. "By attempting to promulgate this regulation, DEP and the EQB have vastly overreached in their role as part of the executive branch of government and are instead making a serious policy decision here, which is the purview of the General Assembly," the House committee wrote.

• The legislature of every other RGGI state has authorized their state to join the consortium. Not only has that not happened in Pennsylvania, but here a majority of the General Assembly has "explicitly spoken to reject it."

• The General Assembly, when enacting the APCA—which is cited as DEP's authority for joining RGGI—"did not envision a RGGI-type program bringing billions of dollars into the Clean Air Fund established under the statute, dollars which could be spent at the discretion of the Secretary of the DEP outside of the typical budgetary process," the House committee told IRRC.

""This final regulation is unacceptable, and we respectfully request that you disapprove this regulation as it is not in the public interest," the committee said in its letter to IRRC. "We again urge the EQB and DEP to withdraw this final regulation."

What you can do

In the August edition of PIOGA's Just the Facts series, we urge members to contact their state representative and senator to support pursing every available legislative and potential legal action to halt adoption of the RGGI regulations. It's important that lawmakers hear from constituents about how they and other citizens will be negatively impacted.

At the same time, PIOGA encourages members to submit comments to IRRC ahead of the September 1 meeting. The deadline for doing so is Monday, August 30. Watch your email or check the Latest News and Blog section at pioga.org for more information. ■

JUST THE FACTS

RGGI: Devastating policy for Pennsylvania

As the article on the preceding two pages states, the fight over Governor Wolf's unilateral efforts to force Pennsylvania into the 11-state Regional Greenhouse Gas Initiative (RGGI), first announced in October 2019, enters an important new phase with the September 1 meeting of the Independent Regulatory Review Commission (IRRC) to consider the regulation, as well as potential legislative and legal action to block or slow Wolf's rush to join RGGI.

PIOGA has joined a strong coalition of RGGI opponents and consistently spoken out against this proposal, which will have a devastating impact on fossil-fuel electricity generators, including natural gas-powered facilities. The process used by the Wolf Administration to force the state into RGGI is counter to the state constitution, and the negative effects it will have on electricity rates and jobs–especially in the western part of the state–make it a disastrous policy for the Commonwealth.

Our August edition of PIOGA's Just the Facts series, titled "Regional Greenhouse Gas Initiative: Executive Power Grab = Devastating Policy for Pennsylvania Energy Producers & Communities," provides useful facts about RGGI, what is ahead in this battle and actions we encourage members to take at this time. The fact sheet points out that Pennsylvania is the only state not to seek legislative authorization before joining RGGI and the fees imposed under the program would amount to a tax, which only the legislature has the power to levy.

Furthermore, with the use of more natural gas for generating electricity, Pennsylvania already has reduced its carbon dioxide emissions ahead of the governor's state goal of lowering CO2 levels by 26 percent between 2005 and 2026. RGGI will mean higher electricity costs for Pennsylvanians and tip the scales against developing new natural gas power plants in the Commonwealth. Meanwhile, investors can instead build generating facilities with ample supplies of natural gas in Ohio and West Virginia, avoiding Pennsylvania's new RGGI carbon tax and feeding our need for electricity.

What can you do? PIOGA urges members to reach out now to their state legislators to ask them to help stop the rush to RGGI. Visit the Latest News and Blog section at pioga.org to download this month's Just the Facts, share it with others and take action.

New waste general permit included in state budget package

A provision included in the state's budget package for the 2021-2022 fiscal year directs the Department of Environmental Protection to create a general permit for the transfer, storage or processing of oil and gas liquid at temporary facilities which will be in operation for no more than 180 days.

The legislative language stipulates that the permit must be consistent with Section 102 of the Solid Waste Management Act and 25 Pa. Code § 287.641, which deals with what must be included in a general permit.

The provision also says that 25 Pa. Code § 287.641(d) is not to apply in the case of this new permit. Subsection (d) states that, "The Department may impose the determination of applicability condition described in subsection (c) on general permits for beneficial use or processing activities other than those described in that subsection if the Department determines that the condition is necessary to prevent harm or a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth."

The new general permit will be available for short-term storage of produced water, which should be a less onerous application/approval process than the WMGR123. The new WMGR123 issued in 2021 added a requirement for DEP to make determinations of applicability, rather than just allowing applicants to register for the general permit. Removing this procedural hurdle should ease the process for the new permit.

The general permit is to be submitted by DEP for final publication by July 1, 2022.

The provision was included in the Administrative Code portion of budget legislation at the request of the Marcellus Shale Coalition. ■

Cast your vote! 2021 PIOGA Board of Directors candidates

Ballots are being distributed for the eight positions that will be filled in the 2021 election for the PIOGA Board of Directors. Below are profiles of the 13 members who are candidates for this year's election. (Note that (R) accompanying a candidate's name indicates an incumbent running for reelection.) The elected board members will serve a three- year term, 2021-2024, commencing with the 2021 Annual Membership Meeting on September 15.

Per the bylaws change approved last year, ballots are being sent electronically. The primary representative of each PIOGA member company receives one electronic ballot. To be counted, ballots must be received by the PIOGA office by 5 p.m. on September 10. Candidates are elected by a simple majority of the returned ballots. The eight candidates receiving the most votes will be elected. If you have questions or did not receive your electronic ballot or need to request a hardcopy ballot to be mailed to you, please contact Danielle Boston, PIOGA Director of Administration, at danielle@pioga.org.

BHE Eastern Energy Field Services
David Marks *(R)*

David Marks has been employed in energy for 44 years, beginning with Geosource (Houston) and Wildrose (Calgary) managing North American exploration for 12 years. David has spent the last 31 years marketing gas and power, commercial services and gas technologies, beginning with Consolidated Natural Gas in Pittsburgh, and including Allegheny Energy in Greensburg PA, Dominion Energy in Clarksburg WV, and Berkshire Hathaway Energy in Pittsburgh.

David currently manages a portfolio of more than 200 Appalachian Basin producers at Eastern Energy Field Services, a BHE company in Pittsburgh. David is on the board of directors for PIOGA, and a member of OOGA, GOWV, PIOGA and SOOGA and co-chairs PIOGA's Market Development Committee. He also serves as a consultant to endusers, municipalities and energy brokers, and promotes natural gas technologies through his business development role at EEFS.

David is the executive producer of the Laugh & Learn Sessions on Energy and Public Policy, a public forum that discusses all aspects of energy in our region. He has produced 20 forums in the Pittsburgh region since 2008 and has served on energy panels at California State University, the Pennsylvania Independent Oil & Gas Association, the Southeast Ohio Oil & Gas Association, The Marcellus Shale Coalition, and the Appalachian Basin Gas Processors Association. In 2011 and 2012 David served on Allegheny County's Energy & Environment Vision team under the leadership of County Executive Richard Fitzgerald. For the past ten years David also volunteers as an instructor for Junior Achievement's Careers in Energy curriculum across southwestern Pennsylvania.

David earned a B.S. in accounting with a minor in mathematics from The University of Pittsburgh, with focused studies in geology and geophysics. He has earned certification in geophysical surveying, utility management and the PJM Interconnect capacity auction.

BLX, Inc.
Stanley Berdell *(R)*

Stan Berdell is the President of BLX, Inc., a privately owned and operated company established in 1989. The company is an independent producer of natural gas and operates wells & leases in the Appalachian Basin. They were the first independent producer to drill and produce Marcellus Shale wells in Western PA. In addition, Stan is the managing partner of Redmill Drilling, Kinzua Oil, LLC. and Mt. Pleasant Enterprises, all of which operate wells in Western PA. BLX, Inc. has been a member of PIOGA for 15+ years.

Stan is very active in his community, serving with the YMCA board, school board, and he is running for his fourth term on the PIOGA board.

Civil & Engineering Consultants, Inc.
Rick Celender, RLA, C.E.T., CPESC, CPSWQ

I am a Vice President and Registered Landscape Architect/Civil Engineering Technologist at Civil & Environmental Consultants, Inc. (CEC) Pittsburgh office. I have more than 30 years' experience in pipeline, well pad, compressor station, processing/fractionation plant design/permitting, stormwater BMP maintenance/inspection, ESCGP, NPDES permitting, and civil engineering consulting. I have been fortunate to have been asked to present on topics ranging from stormwater maintenance/inspection, erosion control practices, and unmanned aerial vehicle operations to PIOGA, Municipal Governments, the American Public Works Association, the Pennsylvania Association of Conservation Districts (PACD), the MSC, the PADEP, Oil/Gas Operators, Lawrence County Career & Technical Center (Jay Parsons runs a top notch O&G program!), and other organizations. I am an accredited instructor for the CPESC (Certified Professional Erosion/Sedimentation Control) exam review, I'm the West Virginia CPESC State Representative, and I'm a member of the EnviroCert International Strategic Advisory Council. I'm a Certified Professional in Storm Water Quality (CPSWQ), have my OSHA Confined Space Entry and Rescuer Certification (29CFR1910.146), Wetland Delineator Certification (IWEER), and I'm certified through the National Institute for Certification in Engineering Technologies. I lead CEC's Unmanned Aerial Vehicle (UAV) program (LDAR - Optical Gas Imaging (OGI) inspection, topography, etc.), I'm a member of the Marcellus Shale UAV Committee, and I have been privileged to have the opportunity to coordinate with state and federal regulatory officials related to the integration of UAV/robotic technologies for permitting and inspection purposes. I am a long time PIOGA supporter (Love the cigar events!), been a volunteer firefighter/rescue technician for 30 years, and I am looking forward to an opportunity to work more closely with the PIOGA Board and its membership.

Chemstream Oilfield Services
Robert Garland

Bob Garland is the currently Technical Sales for Chemstream Oilfield Services out of Homer City, PA. He has been involved in the Oil and Gas Industry since 1981 starting with a position as an open hole logging engineer out in North West Texas for Gearhart Industries. Since that point he has held several positions as operations manager and sales, predominantly in the Northeast U.S. While serving in many roles his experience has covered well logging, cementing, hydraulic fracturing, and now well equipment, logistics, and services. He received his Bachelor of Science Degree in Civil Engineering from Michigan State University and his Master's in Business Administration from Robert Morris University. Bob is also a Veteran of the US Navy.

He has been a member of the Society of Petroleum Engineers (SPE) throughout his career and have served in many roles within the local Pittsburgh Chapter and had the distinct pleasure of serving for three years as the Eastern North American Regional Manager on the International Board of Directors for SPEI. He has had the pleasure to be on several speaker's bureaus and discuss the O&G Industry with a wide variety of organizations.

Diversified Energy Company PLC
Paul Espenan, CSP *(R)*

With more than 30 years knowledge as an EHS professional and over two decades of exposure in the oil and gas industry, Mr. Espenan brings a wealth of experience to his role with Diversified as Vice President of Environmental, Health and Safety. After starting his career as a legal assistant in Environment and Occupational Law, Paul has since held various EHS positions at Halliburton, Burlington Resources, and LINN Energy and most recently served as President of the EHS Management Consulting firm, Inspiritus Group. Paul's main passion of getting people home safely has led him to focus on transformational leadership and positively influencing corporate culture across all organizational levels. Paul, a Certified Safety Professional (CSP), received a Bachelor of Science degree in Environmental Health at Louisiana State University and a Master of Science degree in Environmental Science at the University of Texas at Dallas. Paul's recent focus has been on the active growth of Diversified through acquisitions. Paul has strong experience in air emissions, GHG, and ESG matters.

Frantz & Associates
Joseph Frantz, Jr.

Joe started Frantz & Associates two years ago to perform executive level consulting for the oil and gas industry. He is active and working as a Senior Executive Advisor for ResFrac and Deep Well Services. He is also on the Advisory Board of Unicorn Holdings. Joe retired two years ago from Range Resources at the Corporate level. During his almost ten years with Range, he was VP of Engineering and the VP of Engineering Technology. He also worked with the Investment Relations group. Before Range, Joe was President and CEO of Unbridled Energy Corp., an oil and gas exploration company where he also participated on their Board. Over his career, Joe has worked in the drilling, completion, production, reservoir and facility engineering departments with large and small operators and as a consultant. Joe has worked in Appalachia since 1990 and been involved with IOGA, PIOGA and the MSC. Joe participated as a Range liaison in the MSC since its inception and was Chair of the Drilling, Completion, Facility, and Production Committee and then the Research Collaborative Committee. Joe is on the GEMS Board at Penn State and recently completed his Board Roles for the Society of Petroleum Engineers International as a Regional Director and with the United Way of Washington County. Joe graduated in 1981 with a B.S. in Petroleum and Natural Gas Engineering from Penn State and is a Registered Professional Engineer. He has authored and co-authored numerous industry papers.

Freedom Energy Resources LLC
Sam Fragale *(R)*

Sam Fragale is Co-Founder, President & CEO of Freedom Energy Resources LLC which is a company engaged in the exploration and development of oil and gas assets currently in the Williston Basin, with a focus on conventional oil and gas. Prior to the creation of Freedom Energy Resources LLC, Sam worked in oil and gas industry for over 30 years for companies such as Chief Oil & Gas, LLC as Senior VP Operations directing their Marcellus operations in Northeast PA. His team was directly responsible for increasing production from 40 MMc/d to 850 MMcf/d with over a BCF/d of capacity. During his 20-year tenure with Phillips Production Company/Phillips Drilling Company as Sr. Vice President/President & COO he was responsible for the drilling of over 3000 conventional wells. He directed the transformation of the company into a Marcellus Shale operator which resulted in the sale of the company to Exxon/Mobil in June 2011 for $1.7 Billion. He started his career working for Shell Offshore Inc. as a Reservoir Engineer.

Sam is a former Member of Technical Advisory Board for the PA Dept. of Environmental Protection and currently serves on the PIOGA's Executive Committee as Vice Chairman.

Kriebel Companies
James Kriebel *(R)*

James Kriebel is president and chief executive officer of the Kriebel Companies which operate over 1700 wells in western Pennsylvania. He graduated from the University of Miami with a bachelor's degree in Business Administration. Mr. Kriebel, a native of Clarion County, and his family, have been involved in natural resource development in western Pennsylvania for over 40 years.

Jim is an active participant in the natural gas industry. He serves on the Board of Directors of the Pennsylvania Independent Oil & Gas Association of Pennsylvania, and also serves as a member of the Executive, Legislative, Membership, and Market Development Committees. Jim is a member of the Society of Petroleum Engineers and the Independent Petroleum Association of America. In his local community, Mr. Kriebel serves on the Finance Committee for the Trinity Point Church of God in Clarion and is a Board member of the Clarion Community Foundation and Clarion Hospital Authority.

Long Ridge Energy Generation
Len Paugh

Len Paugh brings more than 30 years of oil and gas experience to his role as the Head of Gas Development for Long Ridge Energy. His current responsibilities include development of Long Ridge's gas assets, midstream and marketing of the gas for the power plant. Len is also heavily involved in the alternative energies program at Long Ridge. Prior to his involvement with Long Ridge, Len was a principal at the Peters Management Group, a unique technical and operational consulting firm with specialization in multiple industries including coal, mineral processing, oil & gas and power generation. Prior to founding PMG, Len was a founding member and Chief Operating Officer for Mountaineer Keystone and MK Midstream. Prior to MK, Len was the Operations Manager for PA and WV for Range Resources. While at Range, Len lead the team developing the discovery wells in the Marcellus Shale. While at Range, Len's responsibilities included the day-to-day operations of drilling 250+ wells per year, operating 5,000 wells, 2,500 miles of pipeline, 30 compressor stations and a staff of over 150 people with annual budgets in excess of $100MM. Len holds a Bachelor of Science Degree in Petroleum and Natural Gas Engineering from West Virginia University.

NG Advantage, LLC
Enrico Biasetti *(R)*

Enrico "Rico" Biasetti is Chief Executive Officer of NG Advantage LLC. An accomplished leader, Biasetti joined NG Advantage in 2016. He brings more than 25 years of energy industry and executive management experience, as well as financial expertise to his role with the company.

Previously, Biasetti served as President and Chief Operating Officer of Biogenic Reagents/Michigan Renewable Carbon, a company that manufactured carbon from renewable biomass which he co-founded.

Before Biogenic, he was General Manager of the $25 million Sustainable Division of Cliff Natural Resources. In his various roles he served customers which include Alcoa, Nucor, and Philip Morris. Biasetti's early career was focused on business development in energy services to industrial markets, commodity trading, risk management, and M&A.

He received his Bachelor of Arts in Finance from Salem State University, Salem, Massachusetts and earned his Master of Business Administration in Finance from Northeastern University, Boston, Massachusetts. Biasetti is a Licensed Steam Engineer and successfully completed the Leadership Acceleration Program at the University of Notre Dame, South Bend, Indiana. He has also served on the Board of Directors for the Pennsylvania Independent Oil & Gas Association (PIOGA) since 2018.

Steptoe & Johnson PLLC
Gary Slagel *(R)*

Gary Slagel is a Government Affairs Specialist with Steptoe and Johnson PLLC. Gary works out of Steptoe's Canonsburg Pennsylvania office and represents clients on legislative and regulatory issues impacting the natural gas and coal industries. Gary was formerly employed in various positions with Consol Energy and CNX Gas including Senior Advisor, Environmental Affairs and Director of Government Affairs. Gary is chairman and executive committee member of the Pennsylvania Independent Oil and Gas Association and the former chair of the Marcellus Shale Coalition's Regulatory Committee. He is the former Chairman of the West Virginia Oil and Natural Gas Association's Marcellus Shale Alliance and a member of the Independent Petroleum Association of America's Environmental and Safety Committee. He was appointed to and served as a member of the Pennsylvania Department of Environmental Protection's Oil and Gas Technical Advisory Board from 1990 until 2015 and was appointed to and served on Governor Corbett's Marcellus Shale Advisory Commission. Gary is also on the board of STRONGER (State Review of Oil and Natural Gas Environmental Regulations) as an industry representative. In 2016 he received an Energy Leadership Award by the Pittsburgh Business Times for his accomplishments with both the coal and natural gas industries.

Gary previously served as chairman of both the Pennsylvania Coal Association and the Virginia Coal Association. He served on the North Allegheny Board of School Directors from 1990 to 1998, the last two years as President of the Board. He earned a private pilot's license and frequently enjoyed flying with his father, Gilbert, in his Cessna 182 before his father passed in 2011.

His greatest joys are his wife, Joyce, and his sons Matthew and Mark and their wives, Adriane and Janet and his grandchildren, Arlo, Siena, Josie and Oscar.

TD Connections, Inc.
Teresa McCurdy *(R)*

Teresa started TD Connections in January 2013 to provide personalized consulting services with a focus in the energy sector to guide clients through the government and regulatory process and assist them with their public relations needs. Utilizing years of connections and experience, Teresa helps her clients either get legislation passed or defeated, a permit pushed through an agency, change proposed regulatory language, or interact with state and local officials. Although government funding is more limited, there are still opportunities for state assistance that she helps clients maneuver through the process to get funds to start or grow your business.

Many people in the natural gas industry know Teresa as a former consultant for Hydro Recovery. She served as their Sr. VP of Business Development, Government and Public Relations, where she recommended strategies in the business and government/public sectors to create win-win opportunities for both Hydro and its' clients, natural gas operators and vendors. She assisted Hydro in working with the PA DEP in drafting the WMGR123 permit as the first permittee of a centralized wastewater treatment plant and in permitting their mobile treatment systems such as their patented mobile evaporator/crystallizer and dissolved air floatation (DAF) unit.

However, her core focus has always been supporting her clients in the energy industry by keeping them abreast of legislative and regulatory issues. She can be found attending various PA DEP meetings, other agency meetings, conferences, and legislative meetings. She has been the Subcommittee Chair of the PIOGA's Environmental Committee since 2011 and served on PIOGA's board since 2018. She also served as the Vice Chair for two years of the MSC's Water Resources and Waste Management Committee.

Teresa has been very active in PIOGA, which includes utilizing some of her connections to set up meetings and advance PIOGA's positions at DEP meetings and in the legislature. She has also played an instrumental role in the yearly PIOGATech Water and Waste Management Trainings.

She was a writer for the Northeast ONG paper (formerly the ONG Marketplace) providing commentary and interviewing legislators and top staff in the Governor's Administration. She has written for the Pennsylvania Business Central which also publishes the Marcellus Business Central and Women In Business. Teresa has been honored by being named the "Top 100 People in 2016 and 2017" and "Women Making A Difference 2017 and 2021."

In the business development realm, she has used the above knowledge and connections to help various businesses make connections. Her company has partnered with another firm to offer utility rate analysis to ensure that customers are paying the best available rate for electricity and natural gas, which may include an audit of past usage to determine if a refund is owed.

Prior to starting her own business, she worked for lobbying firm in

Harrisburg representing various clients in all sectors, but still with a majority of her time focused on energy. She got her start in Harrisburg by first working for a 50-state legislative tracking company and then starting a state legislative tracking company with a colleague. That legislative tracking service, myPLS, is used not only by lobbyists but by the state legislature and Administration.

Washington Energy Company and Oil & Gas Management, Inc. Josh Hickman

Josh Hickman is the Chief Operating Officer and Board Member of American Energy Partners, Inc., (stock symbol OTC: AEPT). AEPT's multiple oil and gas subsidiaries, **Oil & Gas Management, Washington Energy Company**, Freedom Oil and Gas and Gilbert Oil and Gas, together control over 560 shallow oil and gas wells and over 50,000 acres of shallow leases. Other subsidiaries support the energy industry in Pennsylvania through services and education. Those companies are Hickman Geological Consulting, Oilfield Basics and Hydration of PA.

Mr. Hickman began his career with Consol Energy and was responsible for the company's 1.6 million acres of oil and gas rights across the Central and Eastern United States. After participating in the Consol spinout of CNX Gas, Mr. Hickman moved to Cabot Oil and Gas as lead geologist for their West Virginia assets which included 630,000 acres of land and 3,500 active wells. During this time, Mr. Hickman was also tasked as the lead Utica Shale geologist at the company. This position included the creation of a geologic model with over 10,000 wells and oversight of exploration activities in this shale. Prior to AEPT, Mr. Hickman served as Chief Geologist at EdgeMarc Energy Holdings where he oversaw the technical due diligence and communication of value required to select 60,000 acres to build the foundation of the company's position.

Mr. Hickman is the Founder and Chairman of Young Professionals in Energy (YPE) Pittsburgh, now the Energy Leaders Network. Also, Mr. Hickman has received notable awards in the region including the Energy Leadership Award by the Pittsburgh Business Times. Mr. Hickman has been featured as an expert on Oil and Gas Industry matters in regional news publications, radio broadcasts, and speaking engagements. In his spare time, Mr. Hickman donates his time to the Boy Scouts of America.

Mr. Hickman earned a Bachelor of Science in Geology from Radford University, a M.Sc. Geology from the University of South Carolina, and an MBA from Pennsylvania State University and has his Professional Geologist certification in the State of Pennsylvania.

I am honored to have been nominated for the Board of Directors. As someone who has been involved with the tremendous work PIOGA does and has built relationships with the dedicated team of professionals that serve this organization, and the companies that support PIOGA through their membership and sponsorship, I am excited at the prospect of lending my experience to this post. I have dedicated my career to the oil and gas industry as a professional geologist and business leader. I understand the value this industry brings to our community and economy. PIOGA is on the forefront of policy advocacy, community involvement, and provides world class training and educational resources. As a member of the Board of Directors, I will work hard to further the mission of PIOGA and serve as a trusted advocate for this region's Oil and Gas industry.

Thanks to all who turned out for the event on July 15. Visit the Photo Galleries section at pioga.org for more photos.

Congressional action restores Obama methane rules

On June 30, President Biden signed into law a joint resolution of Congress repealing a Trump administration rule that removed methane as a pollutant regulated under the Clean Air Act (CAA) in the oil and gas industry. As a result, the Obama administration's 2016 New Source Performance Standard rule springs back into place for onshore oil and gas operations.

Here is background from *The 2021 Babst Calland Report* (reports.babstcalland.com/the-2021-babst-calland-report-1), written before the joint resolution was approved by Congress and sent to the president for approval:

> In September 2020, the Trump administration published two companion rules revising CAA New Source Performance Standards (NSPS) for the Crude Oil and Natural Gas Industry at 40 C.F.R. Part 60, Subparts OOOO and OOOOa, that were initially promulgated during the Obama administration. The companion Trump administration rules are known as the "Policy Amendments" and "Technical Amendments" rules. The Policy Amendments revised NSPS Subparts OOOO and OOOOa to: (1) exclude emission sources in the transmission and storage segments; (2) rescind methane emission limits for the production and processing segments; (3) eliminate the CAA § 111(d) requirement for EPA to regulate methane emissions from existing sources in the production and processing segments (because methane emission limits would no longer apply); and (4) finalize EPA's position that CAA § 111 requires it to determine that a pollutant significantly contributes to dangerous air pollution before it can be added to an existing NSPS. The Technical Amendments imposed less onerous fugitive emissions monitoring requirements and provided additional compliance options and flexibility. Perhaps most significantly, the Technical Amendments reduced fugitive emissions monitoring frequencies at compressor stations and eliminated fugitive emissions requirements for low production well sites.
>
> The Policy Amendments and Technical Amendments rules were immediately challenged by environmental groups and states, which filed petitions with the D.C. Circuit Court of Appeals. Officials from the Biden administration advised this court of the Executive Order requiring EPA to review and potentially rescind these rules. As a result, the court stayed these lawsuits.
>
> More recently, Congress has invoked its authority under the Congressional Review Act (CRA) to disapprove (i.e., revoke) the Policy Amendments rule. On March 25 and 26, 2021, respectively, joint resolutions revoking the Policy Amendments were introduced in both the U.S. Senate and House of Representatives. On April 28, 2021, the Senate passed its joint resolution. The House Energy and Commerce Committee voted to approve the House's joint resolution on June 10, 2021, and with Democrats in control of the House, passage into law likely is just a matter of time. Importantly, if successful, this revocation would mean that that the rule would be treated as if it never took effect, and EPA would be barred from promulgating a substantially similar rule unless such rule is expressly authorized by a subsequently enacted law.
>
> Revocation of the Policy Amendments rule will pave the way for EPA to promulgate emission guidelines for methane from existing sources in the oil and natural gas industrial sector. Pursuant to an executive order requires EPA to propose "comprehensive standards of performance and emission guidelines for methane and volatile organic compound [VOC] emissions from existing operations in the oil and gas sector, including the exploration and production, transmission, processing, and storage segments, by September 2021."
>
> While the Policy Amendments rule likely will be revoked under the CRA, neither the Senate nor the House joint resolution mentions the Technical Amendments rule. Consequently, absent further Congressional action, Executive Order 13990 requires EPA to consider publishing a proposed rule suspending, revising or rescinding the Technical Amendments rule by September 2021.

What does it mean?

As mentioned above, the CRA resolution affects only the Policy Amendments. With passage of the resolution, it is as though the Policy Amendments never took effect. Methane is again subject to regulation under Subpart OOOOa. The production, processing, transmission and storage sectors are again subject to both VOC and methane emission standards. However, the 2020 Technical Amendments are unaffected by the resolution and remain in place—at least until the EPA proposes its rulemaking next month.

On the same day that Biden signed the CRA, the EPA issued a "Questions and Answers" document that addresses what the regulated community is to do now that the 2020 Policy Rule has disappeared. The document and other resource material can be found at www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry.

Here's a sampling of the Q&A:

What is the primary impact of the CRA resolution of disapproval of the 2020 Policy Rule?

The primary impact that the rule is treated as never having taken effect. As a result, the 2012 and 2016 NSPS requirements that the rule repealed came back into effect immediately upon enactment of the joint resolution. Any new, modified or reconstructed facility that would have, but for the 2020 Policy Rule, been subject to the 2012 or 2016 NSPS will immediately become subject to those NSPS.

How does the CRA resolution affect sources in the transmission and storage segment?

Sources that commenced construction, reconstruction or modification after September 18, 2015, are subject to the methane and VOC requirements in the 2016 NSPS (40 CFR part 60, subpart OOOOa). Sources that commenced construction, reconstruction or modification after August 23, 2011, and on or before September 18, 2015, are subject to the VOC requirements in the 2012 NSPS (40 CFR part 60, subpart OOOO). Because the 2020 Technical Rule was finalized after the 2020 Policy Rule (and after transmission and storage was removed from the source category), sources in the transmission and storage segment are not subject to the 2020 Technical Rule and must comply with the 2012 or 2016 NSPS, as applicable.

How does the CRA resolution affect sources in the production and processing segments of the industry?

Sources that commenced construction, reconstruction or modification after September 18, 2015, are subject to the methane requirements in the 2016 NSPS (40 CFR part 60, subpart OOOOa) and the VOC requirements in the 2020 Technical Rule (40 CFR part 60, subpart OOOOa, as amended on September 15, 2020).

My source commenced construction, reconstruction or modification between September 14, 2020, and June 30, 2021. With what requirements do I need to comply? Does the CRA resolution of disapproval provide for a deadline by which I must comply with the standards?

While the CRA resolution does not explicitly address the deadline by which an operator must comply with the standards, the CRA states that "[a]ny rule that takes effect and later is made of no force or effect by enactment of a joint resolution ... *shall be treated as through such rule had never taken effect."* (emphasis added). The EPA expects owners and operators of regulated sources to take immediate steps to comply with the applicable 2012 and 2016 standards.

Will the EPA take enforcement against sources that are not in compliance with the CRA-reinstated standards?

"Facilities subject to the CRA-reinstated standards have an obligation to comply, and those obligations are subject to enforcement," the document states. "The EPA focuses its enforcement resources on the most problematic oil and gas sources. The EPA is aware of the circumstances and equities created by the CRA resolution of disapproval and will consider such circumstances and equities on a case-by-case basis when determining whether a response to any noncompliance with applicable standards is appropriate."

Now that the CRA resolution has disapproved the 2020 Policy Rule, the methane requirements of the 2016 NSPS are back in effect. As a result, some sources are subject to requirements for their methane emissions that differ from the requirements for their VOC emissions. Which requirements should these sources comply with?

The 2016 NSPS contained identical requirements for the control of methane and VOC emissions. However, the 2020 Policy Rule rescinded the methane requirements from all affected facilities in the production and processing segments, and the 2020 Technical Rule revised the VOC requirements for some of the affected facilities in these same segments. For example, the 2020 Technical Rule created a new subcategory of "low production well sites" for sites with total production below 15 barrels of oil equivalent per day and exempted such well sites from leak detection and repair requirements for VOC emissions.

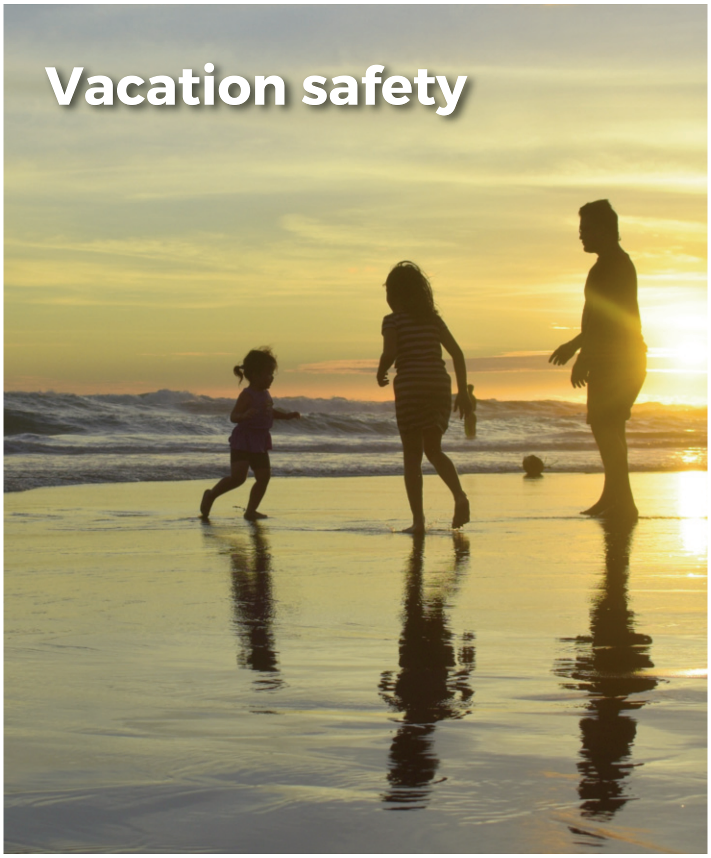
Because the CRA resolution reinstates the methane standards in the 2016 NSPS while having no effect on the 2020 Technical Rule, the enactment of the CRA resolution will cause some sources in the production and processing segments to be subject to two sets of standards–one for methane based on the 2016 NSPS, and one for VOC based on the 2020 Technical Rule. Low production well sites, for example, now are subject to semiannual methane leak detection and repair requirements under the 2016 NSPS even while they continue to be exempt from leak detection and repair for VOC emissions under the 2020 Technical Rule. Such affected facilities may either choose to comply with both sets of standards, which in most cases do not conflict, or to comply with the more stringent standards, which are those in the 2016 NSPS. In this case, compliance with the more stringent 2016 NSPS also results in compliance with the 2020 Technical Rule.

Next steps

As mentioned previously, EPA anticipates issuing a proposed rule in September 2021 that will further explain the impact of the CRA resolution of disapproval of the 2020 Policy Rule, and propose appropriate changes to resolve any discrepancies in regulatory requirements between the 2016 NSPS and 2020 Technical Rule.

Led by our Environmental Committee, PIOGA continues to be closely involved is this issue as part of a coalition of oil and gas trade associations. ■

Safety Committee Corner



By Wayne Vanderhoof, RJR Safety Inc.
Co-chair, PIOGA Safety Committee

As I prepare for an upcoming family vacation, I have developed a short list of items to consider when planning. These items are in random order and some may apply to your situation and some may not. You can and should consider which items you would add to this list that would be applicable to your own vacation plans.

The vacation being planned includes grandparents, parents and young children ages one to eight years old. I am one of the grandparents. One of my biggest concerns is our vacation includes bodies of water and the potential for drowning. To keep this from happening, there are many things that the adults can do. The best advice I am giving myself and others is to "Pay Attention" to the kids when around the water. It is easy to get caught up in a book or magazine or a conversation and lose track of one of the kids. It may be that the parents and grandparents take turns being designated to specifically watch the kids while the others relax. Then switch off so everyone gets a chance to relax. Another part of this is having the kids close enough to touch or "within arms-length" so that they can be easily corralled in one area.

I read an interesting point on drowning victims in that they do not usually thrash and yell for too long of a time. They more so will become tired and just try to survive by laying their head back with their mouth and nose up toward the sky gasping for air. One other recommendation is that of a life jacket or floaties, whether in the ocean or pool or lake or on a boat, for kids that cannot swim or that are more adventurous than the other kids.

Regardless of where you go on vacation, there may be wildlife, from bears to alligators to sharks to raccoons to skunks and insects and many others. For the land animals, it is recommended to not feed or harass them or leave food or garbage out and inviting to the wildlife. As far as insects, have the appropriate safe repellant used per the instructions provided by the manufacturer. Always check for ticks on your body when finishing activities in the woods. Know what snakes to stay away from (my recommendation is all of them), as some are venomous and some are not. If a member of the vacation party is allergic to insect bites, others should know this and know what to do in case of an emergency. For sharks, stay away from where they may feed, such as a fishing pier or where there are fish schooling or jumping out of the water. Pay attention to the flags and signs posted as a warning for sharks or jellyfish or other marine life. Know the colors of the flags that may be posted as different colors mean different warnings.

We never want to have a medical emergency on a vacation, however they do happen, so we must plan for them. It is important to know if your personal health insurance covers medical expenses outside of a certain geographic area or if you can purchase additional medical insurance while on vacation. Once you get to your destination, learn where urgent care and/or emergency care are available, learn and post the emergency numbers on the fridge, and post the address of where you are by the emergency number.

It is important to plan the traveling trips or manage the journey. My advice is to not trust your GPS and phone apps completely. They could lead you to roads that no longer exist or not take you the best or most efficient route, as many people have the devices set for the "shortest" route based on time or miles. As old-fashioned as it sounds, write down the directions, turn-by-turn, as a backup plan or have paper maps. It is not a bad idea to have some "extra" snacks and water available just in case the trip takes longer than planned. Include in the travel time, additional time for food, fuel and bathroom breaks. Other things that may cause delays include construction projects, unplanned or unknown detours, unplanned closing of a road, or inclement weather. Planning the journey or trip is very important. Provide someone not going on the trip with the information so they can contact you if needed.

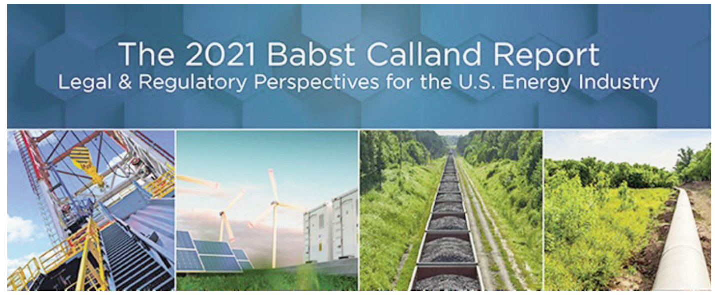
Another part of the planning is the packing of a vehicle with all of the "stuff" that will be needed. Many times we overpack. Know the limits of your vehicle. If you are packing the back of an SUV, do not place anything where it will obstruct your view out the windows, back, window or when using rearview mirrors. If you are using the top of your car, know the weight limit that can be placed on the roof with or without a rack. It is important to understand the capacity of the rooftop carrier, hard or soft type, it is not "unlimited." Know how to correctly tie down and secure the carrier and other items to the roof of the vehicle or secure items in the back of an open-bed pickup truck. Do not climb onto the roof of your vehicle to force closed the carrier; if necessary, properly use a ladder. Always remember that anything that is loaded on top of the vehicle changes the center of gravity and may change the stability of the vehicle; for example, the vehicle may sway more than expected when a tractor-trailer passes. The driver needs to be aware that this may happen and to not overcorrect when a swaying side to side is felt.

One last item that I am going to address as it is personally concerning to me as I have not had to worry about kids in my vehicle for a long, long time (as I mentioned, I am one of the grandparents on our trip), is that of leaving a kid in the vehicle—as in, I "forgot" they were there. One suggestion is called the teddy-bear system, where a teddy bear is placed in the child's safety seat when not in use by a child. When the child is buckled in, move the teddy bear to the front seat as a reminder that the back seat is occupied. I liked this tip from an article titled "10 Surprising Summer Vacation Safety Tips" by Muriel Barrett at www.allianztravelinsurance.com/travel/planning/ten-summer-safety-tips.htm.

While there are many other recommendations that can be made, I think this is enough to get you started. Enjoy your vacation regardless of how long it is or where it is because you earned and deserve this vacation! ■

The 2021 Babst Calland Report
Regional developments

This is another excerpt from **The 2021 Babst Calland Report**, *which represents the collective legal perspectives of Babst Calland's energy attorneys addressing the most current business and regulatory issues facing the oil and natural gas industry. The full report is available online at reports.babstcalland.com/the-2021-babst-calland-report-1.*



Appalachian Storage Hub

As has been chronicled in earlier editions of this white paper, the explosive growth of natural gas production from the Marcellus and Utica shale formations in the Appalachian region starting in 2010 produced strong economic gains for West Virginia, Pennsylvania and eastern Ohio for several years.

In addition, much of that gas is relatively "wet"—meaning that it has a high proportion of natural gas liquids (NGLs) such as ethane, propane, butanes and natural gasolines (pentanes) that are used as petrochemicals in various manufacturing industries. Regional leaders, seeking to capitalize on the vast natural gas resources of those shales, began to stress the importance of developing local businesses that use NGLs—rather than allowing plastics manufacturing and other uses to accrue in other areas.

In 2017, the American Chemistry Council published a report suggesting that the buildout of the petrochemical industry in Appalachia could support the construction of as many as five ethane crackers. Among other factors, the report described that a key to the development of petrochemical manufacturing presence in the area would be the establishment of an Appalachian Storage Hub (ASH) that would act as a conduit for the production and sale of NGLs, storing massive quantities of the liquids and connecting the storage facilities to end users via pipelines. U.S. Senators Shelley Moore Capito and Joe Manchin of West Virginia, along with Senator Rob Portman of Ohio, introduced legislation intended to promote the goal of establishing an ASH. In 2018, the U.S. Department of Energy's National Energy Technology Laboratory (located in Morgantown, West Virginia, and led by Project Director Brian Anderson) published the "Ethane Storage and Distribution Hub in the United States Report to Congress," outlining the potential benefits of an ASH and ranking the most likely methods of building such a facility based on the geology, topography and other relevant regional factors. As recently as November 17, 2020, Senator Manchin wrote to DOE Secretary Dan Brouillette, seeking an update on the department's efforts at preparing a report addressing the proposed ASH, as called for in the Fiscal Year 2020 Energy and Water bill.

Today, we find that Mr. Anderson has been appointed as the Executive Director of the Biden's administration Interagency Working Group (IWG) on Coal and Power Plant Communities and Economic Revitalization. The NETL website offers no discussion of planned updates to the 2018 study, and the prospect of development of an ASH backed by DOE-guaranteed loans would seem to be directly at odds with most if not all of President Joseph R. Biden, Jr.'s plans to move swiftly away from the use of fossil fuels in our energy mix. Speaking at a recent meeting of the Ohio River Valley Institute, Finance Professor Kathy Hipple of Bard College's MBA in Sustainability program commented that the recent major shift in the plastics market away from single-use plastic products, as well as China's 2018 decision to stop importing plastics waste and recycled material, have created considerable concerns about the growth projections for the plastics industry, which only creates a further cloud on the development of an ASH anytime in the foreseeable future.

In short, while unforeseen events have a way of changing the outlook for the natural gas industry (including NGLs), for now it appears that the development of an ASH to support a robust plastics manufacturing industry in our region is firmly on the back shelf.

Carbon capture and storage

The federal government is trying to incentivize the development of carbon capture and storage (CCS) to inject captured carbon dioxide from emissions into underground geologic formations by expanding tax credits for qualifying projects. The Bipartisan Budget Act of 2018 expanded Section 45Q of the tax code to increase the CCS project credit value (so long as the project started within seven years of enactment), reduce the minimum eligibility threshold, allow for the transfer of credit and expand the program to include carbon oxides, rather than just carbon dioxide.

In January 2021, the Treasury Department and IRS issued final regulations regarding the Section 45Q credit. These regulations provide procedures to determine adequate CCS security measures, exceptions for determining to whom the credit is attributable, procedures to allow third-party taxpayers to claim the credit, standards for measuring carbon oxide and conditions that allow smaller carbon capture facilities to be aggregated for purposes of claiming the credit.

Some states are also working together to incentivize the development of CCS projects. For example, on October 1, 2020, seven states– Kansas, Louisiana, Maryland, Montana, Oklahoma, Pennsylvania and Wyoming—signed a memorandum of understanding committing to establish and implement a regional CO_2 transport infrastructure plan. Under the MOU, the signatory states will establish a coordination group to develop an action plan that will include policy recommendations for and barriers to CO_2 transport infrastructure deployment. This action plan is set for release in October 2021.

Other states are taking more direct action. In March 2021, the North Dakota Legislature passed, and the governor signed, a bill exempting CO_2 that is either stored underground or injected into old oil fields to boost production, a process known as "enhanced oil recovery," from sales tax. A number of CCS projects are already underway in North Dakota.

Wyoming is looking to use CCS to extend the use of traditional fossil fuels including coal. The governor of Wyoming requested a study and the state partnered with the U.S. Department of Energy to evaluate the potential opportunities for retrofitting existing power plants with CCS technology. The study showed CCS retrofits can provide significant benefits, including reduced carbon dioxide emission, reduction in consumer cost, increased employment benefits, and higher state and local revenue.

In addition to funding studies, the Department of Energy has also provided federal funding for research into air capture technologies and other CCS-related technologies. As technology and infrastructure development for both capture and transportation improves, and with the availability to tax incentives, an increase in CCS projects is anticipated in the coming years. ■

Small-scale Towanda LNG facility marks Pivotal LNG's expansion to Northeast

Pivotal LNG's newest liquefied natural gas (LNG) facility, Towanda LNG, marks the company's first expansion into the Northeast and Mid-Atlantic market. Entering service in January 2021, Towanda LNG has already produced more than 1 million gallons of LNG and has supported a wide range of customers across Pennsylvania and the broader region.

Located in the heart of the Marcellus Shale gas production region, the Wyalusing facility broke ground in Spring 2019. In December 2020, ahead of the officially declared in-service, the facility supplied LNG to support the bunkering of a marine vessel at the Port of Hamilton in Ontario, a first on the Great Lakes and a major milestone in the evolution of the regional shipping industry. With a production capacity of 50,000 gallons per a day and approximately 180,000 gallons of onsite storage, Towanda LNG provides affordable and reliable LNG supplies to customers ranging from commercial and industrial users to local gas utilities and power generation facilities.

"Given its location and capabilities, Towanda LNG is truly well-positioned to provide more customers access to the region's cost-advantaged natural gas supplies. Since the first LNG bunkering at the Port of Hamilton, Towanda LNG has already supplied LNG for several other marine vessel bunkerings," said Roger Williams, Vice President of Commercial LNG and Gas Development at BHE GT&S. "In addition to LNG supply, Pivotal LNG also offers turnkey solutions including mobile LNG tanks with vaporizers. We're dedicated to working with our customers to find a solution to their fueling needs. Towanda LNG is a great addition to Pivotal's already well-established LNG network in the Southeast."

With this latest expansion, Pivotal LNG is now able to offer customized solutions to customers utilizing LNG from three facilities along the eastern United States: the Trussville LNG facility in Alabama, the JAX LNG facility in Florida and the Towanda LNG facility in Pennsylvania. The three plants have a combined storage capacity of approximately 7 million gallons and 230,000 gallons per day of liquefaction capacity, which is further backed by a portfolio of additional LNG supply points, a fleet of LNG tankers and decades of operational experience. With a lower carbon footprint than most petroleum fuels, Pivotal LNG is supporting companies working to reduce carbon emissions while also reducing their energy costs.

REV LNG, with its extensive history of supplying LNG and virtual pipeline services in the Northeastern United States, is supporting the transportation and marketing services for the Towanda LNG facility. "The REV team is proud to team up with BHE GT&S and Pivotal LNG in bringing the Towanda LNG facility to market," said David Kailbourne, CEO of REV. "With the proximity of the facility to the growing Northeast and Mid-Atlantic markets, we look forward to providing new customers access to a lower cost and cleaner fuel supply." ■

PIOGA Member Profile

PROSHARE SERVICES

Proshare Services, a Pittsburgh-based consulting firm that specializes in strategic planning and innovative solutions for businesses, features a full range of safe, well-executed engineering, procurement, and construction (EPC) services to support clients in the oil and gas, utilities, renewables, energy, and commercial construction industries. With a proven track record of delivering capital efficiency and project certainty to clients across diverse industries, Proshare Services' comprehensive services help businesses streamline operations, meet project schedule and cost requirements, and facilitate effective mobilization of skilled teams and advanced methodologies.

"Our team's proven process begins with the outcome in mind. Fueled by our relentless pursuit to deliver optimal results, we align our capabilities to our clients' objectives to create a lasting impact," said Danielle Baughman, President, Proshare Services.

Proshare Services is a one-stop shop for EPC and design-build services with success stemming from building a talented team of industry professionals and maintaining lasting, meaningful relationships with stakeholders. Through a holistic approach, the firm's consultants work with companies to implement solutions that deliver projects on time and within budget. Built upon values of integrity and trust, Proshare Services ensures efficiency without sacrificing safety. By conducting thorough analysis with stakeholders, the firm ensures they are cultivating an environment where employees can thrive.

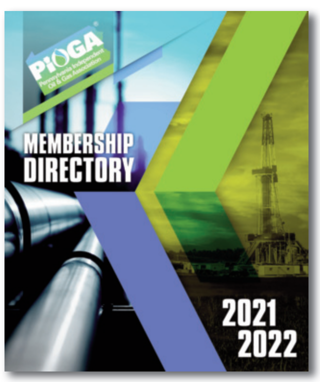

Danielle Baughman

"With decades of progressive experience, our team has defined exactly what is needed to drive optimal results," said Scott Gorg, Project Lead Professional, Proshare Services. "We consistently achieve best-in-class execution while ensuring safety remains the top priority."

Proshare Services is certified as a diverse supplier and recognized as a national Women's Business Enterprise by the Women's Business Enterprise National Council. To get started with a complimentary consultation, visit www.proshareservices.com or call 412-532-9441.

2021-2022 directories are out!

We are pleased to announce that the 2021-2022 Membership Directory has been mailed and we hope that by now it has reached your mailbox. One copy of the directory has been provided to each member company. If your company has multiple locations listed, one additional copy has been provided to those locations also.



The hardcopy directory, published once a year, is the main guide for our association members seeking to contact one another and a resource for companies looking to find services or products from other PIOGA member companies. Please be sure to visit the Select Suppliers section of the directory to locate companies that are eager to support your operations.

An electronic version of the directory is available on our Members Only website. Use the Directories menu at members.pioga.org. The Directories section of the Members Only site also allow you to search our frequently updated database for members individually, by company or by member type. ■

New/returning PIOGA members
Welcome, and welcome back!

Aimbridge Hospitality
1006 Sutherland Drive, Robinson Township, PA 15205
724-779-2268 • www.aimbridgehospitality.com
Allies & Providers—hotel and resort management

CME Engineering LP
975 Georges Station Road, Greensburg, PA 15601
724-672-4800 • www.cmemgmt.com
Allies & Providers—civil, mining, and environmental engineering services as well as permitting, surveying and construction testing and inspection

Denora Water Technologies
1110 Industrial Blvd., Sugar Land, TX 77406
281-240-6770 • www.denora.com
Allies & Providers—water treatment company servicing the offshore, onshore oil and gas, industrial, and municipal markets with market-leading onsite disinfection generation, filtration and electrochlorination products

Key Energy Services
28 Karl's Lane, Mill Hall, PA 17751
570-377-0180 • www.keyenergy.com
Allies & Providers—leading edge energy production solutions and services

Oil & Gas Lease Fund *Continued from page 1*

fund transfers, there is no doubt that the Supreme Court will rule in favor of PEDF a third time and hold that the 2017-2018 transfers to DCNR for general operations as well as the transfers to the other funds were an unconstitutional use of ERA trust fund revenues for non-trust purposes. The question is whether the high court will invalidate the full amount of the transfers for state parks operations and state forests operations.

As PIOGA has argued throughout this PEDF litigation, which began in 2012, there is a valid basis—in the Supreme Court opinions and PEDF filings—for allowing ERA trust fund revenues to be used for the operating expenses attributable to the state employees who do the actual "conserving and maintaining" of our public natural resources required by the ERA. In its decision on PEDF's first appeal, the court stated:

> We also clarify that the legislature's diversion of funds from the Lease Fund (and from the DCNR's exclusive control) does not, in and of itself, constitute a violation of Section 27 [the ERA]. As described herein, the legislature violates Section 27 when it diverts proceeds from oil and gas development **to a non-trust purpose without exercising its fiduciary duties as trustee**. The DCNR is not the only agency committed to conserving and maintaining our public natural resources, and **the General Assembly would not run afoul of the constitution by appropriating trust funds to some other initiative or agency dedicated to effectuating Section 27**.... However, if proceeds are moved to the General Fund, **an accounting is likely necessary to ensure that the funds are ultimately used in accordance with the trustee's obligation to conserve and maintain our natural resources**. (Emphasis added)

About two weeks after the Supreme Court's decision and remand to Commonwealth Court, PEDF filed an application asking the Commonwealth Court to declare unconstitutional the $61,291,000 transfers to DCNR in 2017, which had not been enacted when PEDF filed its lawsuit in 2012 in Commonwealth Court (228 MD 2012). In that filing, PEDF argued:

> If the Commonwealth can use our public natural resources for general operating expenses, including salaries and expenses, even assuming it is argued that the employees' salaries and expensed are related to "conserving and maintaining" public natural resources, then no constitutional protection of the actual public natural resources will exist. The Commonwealth can and will argue that most, if not all, of DCNR employees are working to conserve and maintain our State Parks and Forests. The Department of Environmental Protection employees are also arguably working to conserve and maintain the public natural resources of our clean air and pure water. Other agencies also have obligations that could be viewed, under this interpretation, to be conserving and protecting our public natural resources, including both statewide and municipal entities.... **The proceeds of the sale of trust assets must be directly related to conserving those resources**. (Emphasis added)

Notwithstanding its "directly related" statement, PEDF asked Commonwealth Court to find the 2017 transfers to DCNR "to be unconstitutional, and to direct the Commonwealth to abstain from using the corpus of the public natural resource trust **to operate Department of Conservation and Natural Resources and/or any other state agency or part thereof**. (Emphasis added).

However, in its initial brief in its third Supreme Court appeal, PEDF acknowledged some significant facts and made some legal conclusions that contradict its 2017 "abstain" request to Commonwealth Court: (emphasis added)

- DCNR is the Commonwealth agency with the statutory authority, and the scientific knowledge and expertise, **to conserve and maintain our State Forests and Parks...in compliance with Section 27**.
- **To comply with its Section 27 trustee duties**, DCNR developed a strategic plan, entitled Penn's Woods, Sustaining Our Forests, to manage our State Forest based on the science of ecosystem management.
- DCNR's ability to use the OGLF [Oil and Gas Lease Fund] is vital **to meeting its statutory and constitutional duties**.
- When DCNR and its predecessors made the decisions to lease State Forest land for oil and gas extraction and sale, they did so with the knowledge that they would control the proceeds from such leases **to carry out the actions necessary to conserve and maintain our State Forest and Park public natural resources under the authority of the 1955 OGLF Act**.
- **To accomplish its Section 27 mission** to conserve and maintain our State Forest through ecosystem management, as articulated in its strategic plan, **DCNR must control the proceeds** from the conversion of these trust assets to maintain the corpus of our State Forest and Park trust through actions, such as the following [:]

  —**purchasing** subsurface mineral rights on these public lands currently in private ownership
  —**acquiring** additional lands with high value habitat
  —**restore** the soil, hydrology, habitats and other natural elements of our State Forests
  —**fully assess** the degradation and diminution of our State Forest air, surface water and groundwater resources from past, present and future

resource extraction activities and **implement projects** to fully restore the quality of these resources **—restore** abandoned mine lands and plug abandoned and orphaned oil and gas wells on State Forest and Park land in northcentral Pennsylvania

Allowing DCNR to lease State Forest land for the extraction and sale of valuable minerals, including oil and gas, and giving DCNR the power and authority to exercise control over the OGLF **worked in tandem** to enable DCNR to lease State Forest land for oil and gas extraction **in compliance with its constitutional duties under Section 27**.

DCNR was appropriated all funds in the OGLF and given sole responsibility to decide which projects to approve and lands to acquire for such purposes. **These safeguards limited the use of the OGLF to purposes that benefited the State Forest and Park public natural resources converted to generate the OGLF**.

Finally, in its July 21 decision, the Supreme Court used the 1955 OGLF Act to describe the "circumstances under which the trust is to be administered" (emphasis added):

> Those circumstances include that, at the time of the ERA's enactment, the Commonwealth was already generating revenue, including income, by leasing mineral rights. The Commonwealth established the Oil and Gas Lease fund in 1955 and the General Assembly required that all rents and royalties generated by leasing minerals be "**exclusively used for conservation, recreation, dams, or flood control** or to match any Federal grants which may be made for any of the aforementioned purposes." *PEDF II*, 161 A.3d at 919 (quoting statute). That was still the case in 1971, and it remained the case through 2009 when revenues soared as a result of leasing lands within which the Marcellus Shale lies. From the perspective of the settlors, **the ERA was enacted when the Commonwealth was already devoting the revenues generated by mineral leases to conservation purposes**. Redirecting those revenues to non-trust purposes is inconsistent with the backdrop against which the ERA was enacted.

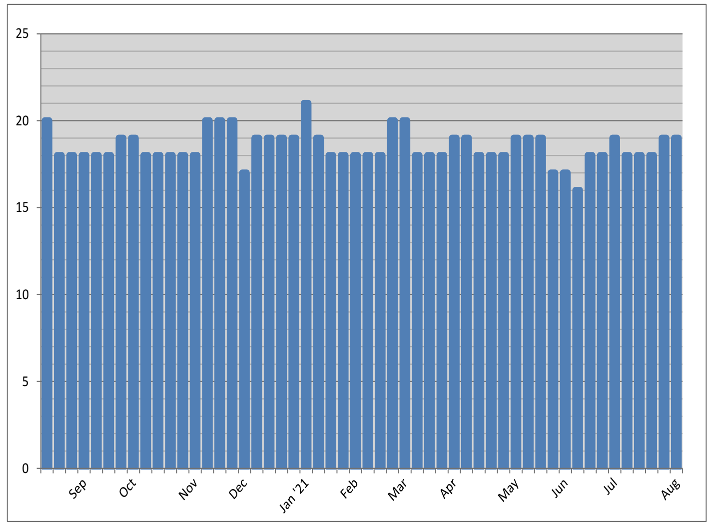
These facts and legal conclusions are significant because they show that the "conserving and maintaining" of public natural resources do not occur without human activity. The Introduction of the DCNR strategic plan touted by PEDF as complying with its Section 27 trustee duties, *Penn's Woods, Sustaining Our Forests*, describes how the plan was developed:

> To capitalize on this juncture, the department undertook a strategic planning effort to address the issue of long-term sustainability of our forest resources. This planning process relied heavily on extensive public input. This

Continues on page 22

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices

Natural Gas Futures Closing Prices

Month	Price
September	$4.039
October	4.050
November	4.122
December	4.233
January 2022	4.300
February	4.220
March	3.942
April	3.334
May	3.255
June	3.287
July	3.319
August	3.330

Prices as of August 9

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 — August 2021

Transportation Value Market Indicator

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

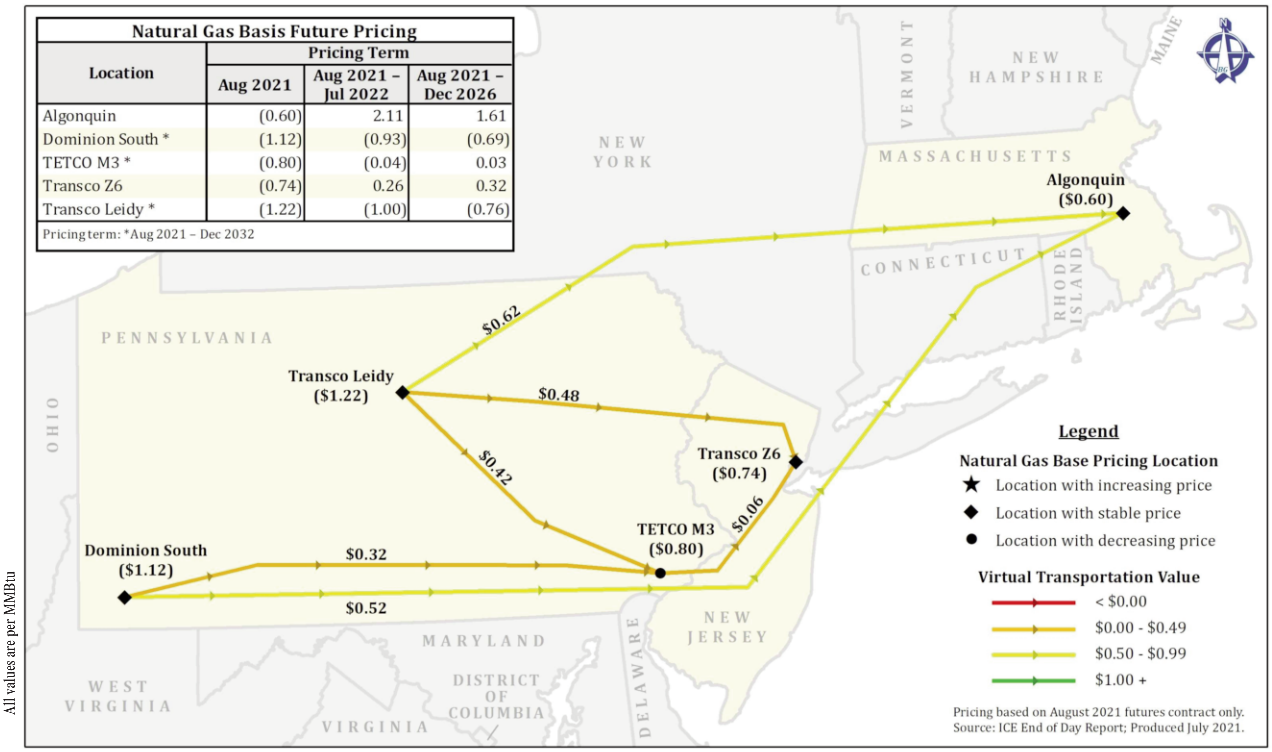
Each index point had a mixed bag across all trading periods. Front-month trading ended down as summer temperatures did not impact demand as expected. The demand areas of Algonquin, Transco Z6, and TETCO M3 decreased the most at $0.31, $0.26 and $0.28 per MMBtu, respectively. The one-year term volatility was not substantial across any of the trading points. Algonquin was the lone point that increased at $0.43 per MMBtu. TETCO M3 had the largest decrease of $0.13 per MMBtu. For the most part, full term trading period saw very little change from July. Algonquin, which rose by $0.27 per MMBtu, was the only point that had a significant difference.

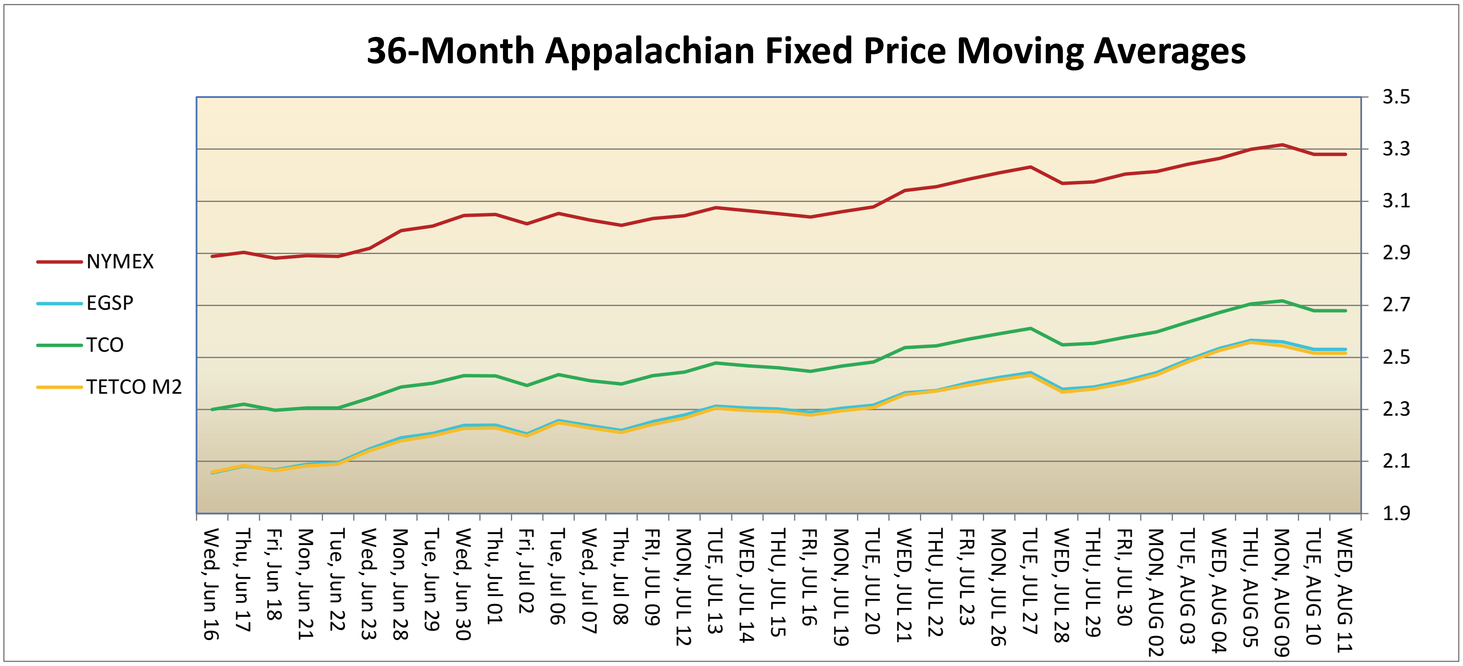
The only transportation route that increased for August was TETCO M3 to Transco Z6, increasing by only $0.02 per MMBtu, which represented a 50% rise in value. Transco Leidy and Dominion South to Algonquin dropped by $0.19 and $.13 per MMBtu, respectively. Transco Leidy to TETCO M3 also decreased by $0.16 per MMBtu. Dominion South to TETCO M3 had the smallest decrease of $0.10 per MMBtu.

Natural Gas Basis Future Pricing

Location	Pricing Term: Aug 2021	Aug 2021 – Jul 2022	Aug 2021 – Dec 2026
Algonquin	(0.60)	2.11	1.61
Dominion South *	(1.12)	(0.93)	(0.69)
TETCO M3 *	(0.80)	(0.04)	0.03
Transco Z6	(0.74)	0.26	0.32
Transco Leidy *	(1.22)	(1.00)	(0.76)

Pricing term: *Aug 2021 – Dec 2032





Spud Report: July 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
Blackhawk Energy LLC	3	7/9/21	083-57228*	McKean	Wetmore Twp
		7/26/21	083-57237*	McKean	Wetmore Twp
		7/30/21	083-57230*	McKean	Wetmore Twp
Cabot Oil & Gas Corp	4	7/7/21	115-22844	Susquehanna	Springville Twp
		7/7/21	115-22846	Susquehanna	Springville Twp
		7/7/21	115-22847	Susquehanna	Springville Twp
		7/7/21	115-22845	Susquehanna	Springville Twp
Cameron Energy Co	3	7/12/21	053-30927*	Forest	Kingsley Twp
		7/21/21	053-30926*	Forest	Kingsley Twp
		7/1/21	123-48456*	Warren	Mead Twp
Chesapeake Appalachia LLC	9	7/19/21	015-23694	Bradford	Tuscarora Twp
		7/19/21	015-23693	Bradford	Tuscarora Twp
		7/19/21	015-23692	Bradford	Tuscarora Twp
		7/10/21	115-22855	Susquehanna	Auburn Twp
		7/10/21	115-22851	Susquehanna	Auburn Twp
		7/10/21	115-22853	Susquehanna	Auburn Twp
		7/10/21	115-22854	Susquehanna	Auburn Twp
		7/11/21	115-22850	Susquehanna	Auburn Twp
		7/11/21	115-22852	Susquehanna	Auburn Twp
CNX Gas Co LLC	6	7/29/21	125-28938	Washington	East Finley Twp
		7/29/21	125-28937	Washington	East Finley Twp
		7/29/21	125-28936	Washington	East Finley Twp
		7/29/21	125-28935	Washington	East Finley Twp
		7/29/21	125-28934	Washington	East Finley Twp
		7/29/21	125-28933	Washington	East Finley Twp
Elder Oil & Gas Co	1	7/29/21	031-25734*	Clarion	Perry Twp
KCS Energy Inc	2	7/8/21	123-48408*	Warren	Watson Twp
		7/21/21	123-48409*	Warren	Watson Twp
MSL Oil & Gas Corp	4	7/6/21	083-57210*	McKean	Hamilton Twp
		7/8/21	083-57208*	McKean	Hamilton Twp
		7/14/21	083-57209*	McKean	Hamilton Twp
		7/21/21	083-57207*	McKean	Hamilton Twp
PA Gen Energy Co LLC	6	7/2/21	117-22109	Tioga	Union Twp
		7/6/21	117-22108	Tioga	Union Twp
		7/8/21	117-22107	Tioga	Union Twp
		7/9/21	117-22106	Tioga	Union Twp
		7/10/21	117-22092	Tioga	Union Twp
		7/12/21	117-22091	Tioga	Union Twp
Pennhills Resources LLC	2	7/27/21	083-57284*	McKean	Wetmore Twp
		7/30/21	083-57279*	McKean	Wetmore Twp
Range Resources Appalachia	11	7/28/21	125-28888	Washington	Amwell Twp
		7/28/21	125-28887	Washington	Amwell Twp
		7/28/21	125-28890	Washington	Amwell Twp
		7/28/21	125-28889	Washington	Amwell Twp
		7/29/21	125-28884	Washington	Amwell Twp
		7/29/21	125-28885	Washington	Amwell Twp
		7/29/21	125-28886	Washington	Amwell Twp
		7/7/21	125-28944	Washington	Cross Creek Twp
		7/7/21	125-28945	Washington	Cross Creek Twp
		7/8/21	125-28946	Washington	Cross Creek Twp
		7/9/21	125-28947	Washington	Cross Creek Twp
SWN Prod Co LLC	1	7/22/21	115-22875	Susquehanna	Forest Lake Twp
Whilton Brooks A	1	7/20/21	123-48516*	Warren	Mead Twp

	July	June	May	April	March	February
Total wells	**53**	**56**	**32**	**62**	**67**	**44**
Unconventional Gas	37	43	23	54	55	41
Conventional Gas	0	0	0	0	0	0
Oil	14	13	9	8	12	3
Combination Oil/Gas	2	0	0	0	0	0

Oil & Gas Lease Fund *Continued from page 20*

input included the Citizen's Advisory Council report, These Woods Are Ours, a meeting with special interest groups in Harrisburg, two meetings with resource professionals, 25 public meetings throughout the state and hundreds of individual letters and discussions.

These activities of DCNR employees seems to "be directly related to conserving those [public natural] resources" as argued by PEDF in its 2017 application two weeks after the Supreme Court's remand on PEDF's first appeal. Similarly, the DCNR employees with the scientific knowledge and expertise necessary, according to PEDF, to conserve and maintain state forests and parks in compliance with the ERA Section 27 seem to "be directly related to conserving those [public natural] resources."

In addition, the DCNR employees tasked with carrying out the actions authorized by the 1955 OGLF Act, which both PEDF and the Supreme Court have acknowledged conserve and maintain state forest and state park public natural resources, seem to "be directly related to conserving those [public natural] resources" as argued by PEDF in its 2017 application. Moreover, presumably DCNR has entered into contracts with non-governmental entities for OGLF projects, which would provide for the use of OGLF funds to pay these non-governmental entities for the labor, materials and equipment needed to carry out these projects that the Supreme Court has determined were devoted to conservation, or trust, purposes.

Finally, the purchasing, acquiring, restoring, assessing and implementing activities described in PEDF's initial brief in its third Supreme Court appeal as necessary to accomplish DCNR's Section 27 mission to conserve and maintain our State Forest through ecosystem management seem to "be directly related to conserving those [public natural] resources" as argued by PEDF in its 2017 application.

It's not clear how the Supreme Court will dispose of PEDF's third appeal beyond rejecting Commonwealth Court's holding that Lease Fund transfers for the Commonwealth's general budgetary expenses are constitutional under the ERA. The court may determine that the record is not sufficiently developed on the question of what operating expenses of DCNR or DEP employees are "directly related to conserving [and maintaining] those [public natural] resources," which PEDF acknowledged in its 2017 application is the appropriate test to determine whether expenditures are for trust purposes and therefore constitutional under the ERA.

Briefing in this appeal was completed in May, about two weeks before the Supreme Court issued its decision on PEDF's second appeal. So, the parties did not have the benefit of that decision, which has brought the issues in the third appeal into sharper focus, when preparing their briefs. No matter how the court decides to dispose of the issue addressed in this article, it is clear that the end of this litigation is within sight. ■

Calendar of Events

PIOGA events

Event information: pioga.org/events/pioga-events

PIOGATech: Water & Waste Management
August 18, The Chadwick, Wexford

24th Annual Divot Diggers Golf Outing
Augst 19, Tam O'Shanter of Pennsylvania, Hermitage

Birds & BBQ Sporting Clays
September 14, West Penn Sportsmen's Club, Murrysville

Annual Membership Meeting & Reception
September 15, The Chadwick, Wexford

Pins & Pints Networking Event
October 21, Zone 28, Pittsburgh

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

GO-WV Sports Weekend
September 17-18, Bridgeport & Morgantown, WV
Info: www.gowv.com/events

KOGA Fall Meeting
September 20, Mount Vernon, IN
Info: members.kyoilgas.org

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