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Pennsylvania oil and gas producers take note: Five key changes in EPA's proposed methane rule

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Babst Calland

On November 2, the U.S. Environmental Protection Agency (EPA) released its highly anticipated proposal to expand existing and create new regulations related to greenhouse gas (in the form of methane) and volatile organic compound (VOC) emissions from the oil and gas sector. The proposed rule is entitled *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*. The proposal, if finalized, will lead to more stringent Clean Air Act (CAA) emission limitations and other work practice requirements related to emissions of methane and VOCs from new and existing sources within the crude oil and natural gas production sector, including producers in Pennsylvania.

Brief overview of the methane proposal

The methane proposal is comprised of three distinct actions proposed under sections 111(b) and (d) of the CAA: (1) proposed amendments to the existing methane and VOC requirements in Subpart OOOOa of the New Source Performance Standards (NSPS) in 40 CFR Part 60; (2) a proposed new NSPS to be included in new Subpart OOOOb, regulating emissions of methane and VOCs from new, modified and reconstructed sources within the oil and gas sector; and (3) nationwide methane emission guidelines (EGs) for existing sources within the oil and gas sector in new Subpart OOOOc.

EPA's proposed amendments to the current requirements in Subpart OOOOa are primarily in response to Congress' June 2021 revocation of regulatory amendments made by the EPA during the Trump administration. The new proposed NSPS to be included in Subpart OOOOb would expand the existing requirements in Subpart OOOOa and regulate additional sources of methane and VOC emissions within the oil and gas sector, establishing the "best system of emission reduction" for affected sources that are new, modified, and reconstructed after the effective date. The proposed EGs in new Subpart OOOOc are a set of presumptive methane emission standards that would apply nationwide to various existing sources within the crude oil and natural gas sector. The proposed EGs in new Subpart OOOOc, if finalized, would *not* apply immediately to affected sources. Rather, the EGs are intended to guide states in the creation of their own plans to implement the EGs, which would be submitted to EPA for review and approval similar to the state implementation plan process created under section 110 of the CAA.

When it released the 577-page methane proposal, EPA did not provide proposed regulatory text for proposed new Subparts OOOOb and OOOOc. Rather, the methane proposal includes EPA's summary of and justification for the proposed regulations in these new sub-

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Methane rule *Continued from page 1*

parts. EPA states that it will issue a supplemental proposal seeking "additional public input" when it releases the proposed regulatory text for Subparts OOOOb and OOOOc.

Key changes in EPA's methane proposal

The following five key changes in the methane proposal could significantly impact the majority of crude oil and natural gas producers in Pennsylvania.

1. Shift from production to overall site-level baseline methane emissions for determining LDAR applicability and monitoring frequency at well sites. In a departure from the existing low-production well site exclusion from LDAR in Subpart OOOOa, 40 CFR § 60.5397a(1), EPA now proposes to abandon using production volume as a basis for excluding equipment at well sites from LDAR requirements. Instead, EPA proposes to require LDAR for equipment at well sites based on total site-level baseline methane emissions. Well sites with total site-level baseline methane emissions less than 3 tons per year (tpy) would be excluded from LDAR monitoring requirements, provided that these well sites demonstrate that methane emissions do not exceed 3 tpy through an on-site specific survey. Well sites with total site-level baseline methane emissions exceeding 3 tpy would be required to perform quarterly LDAR monitoring, although EPA is co-proposing a semiannual LDAR monitoring frequency for well sites with total site-level baseline methane emissions between 3 and 8 tpy and quarterly LDAR monitoring for well sites with total site-level methane emissions above 8 tpy.

2. Significant expansion of storage vessel regulations. As part of the methane proposal, EPA proposes to expand its regulation of oil and gas-related storage vessels under both Subparts OOOOb and OOOOc. Currently, Subpart OOOOa storage vessel regulations are limited to VOC emissions and based on a VOC potential to emit (PTE) of 6 tpy for a single storage vessel. Under Subpart OOOOb, EPA is proposing to include the same 6 tpy PTE applicability threshold, expand it to include methane, and apply it to a single storage vessel or the aggregate potential emissions from a "tank battery," *i.e.,* a group of storage vessels that are adjacent and receive fluids from the same operation or are manifolded together. As for storage vessels at existing facilities, EPA is proposing to regulate existing tank batteries with potential methane emissions of 20 tpy or more. Combined with EPA's proposal to narrowly redefine instances where legally and practically enforceable limitations are in place to limit the PTE for a single or group of storage vessels below the 6 tpy applicability threshold, EPA's proposal is likely to increase the number of regulated storage vessels and require that methane and VOC emissions from newly regulated storage vessels be reduced by 95 percent using a vapor recovery device or combustor.

3. First-time requirements for new and existing oil wells with associated gas. For the first time, EPA proposes to require that associated gas from oil wells be routed immediately to a sales line. Currently, there are

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Emissions facts – perspectives, regulations and tax policies

By Joe Baran, Principal
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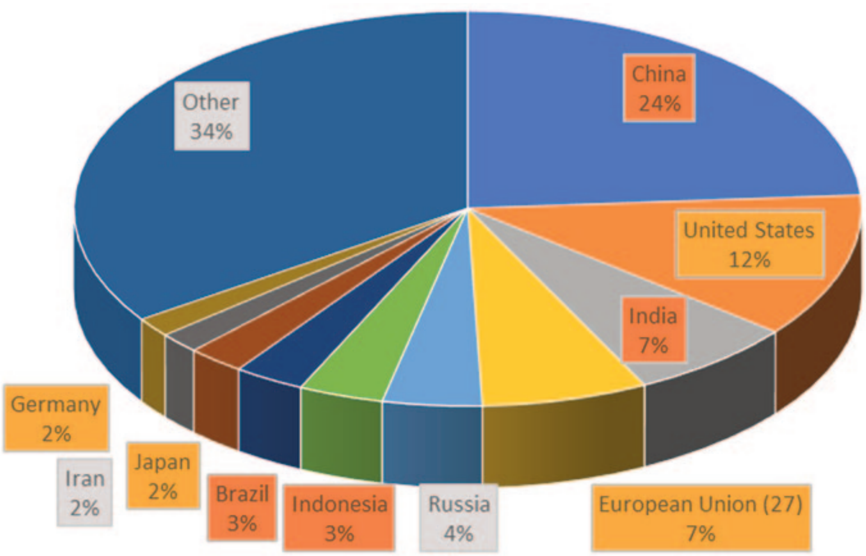
It is important to understand how emissions in general are emitted, first from a global perspective and from a national one. Without knowing how the problem is created, any proposal to fix a problem will likely fail.

Emissions consist of methane, carbon dioxide, nitrous oxide and fluorinated gasses. As many experts will agree, reducing emissions is a global problem. As shown below, as of 2018 the U.S. produced 12 percent of the world's total greenhouse gas emissions. China emitted double that amount at 24 percent. The EU, Russia and India are substantial emissions producers as well. That leaves 184 other countries that compose the remaining 34 percent of the total global CO2 emissions. Combined, China and "Others" emit 58 percent of the total amount. The percentage boxes are shaded to correspond with the Overall Climate Action Tracker Ratings as of September 2021.

Global Share of Total Greenhouse Gas Emissions – 2018

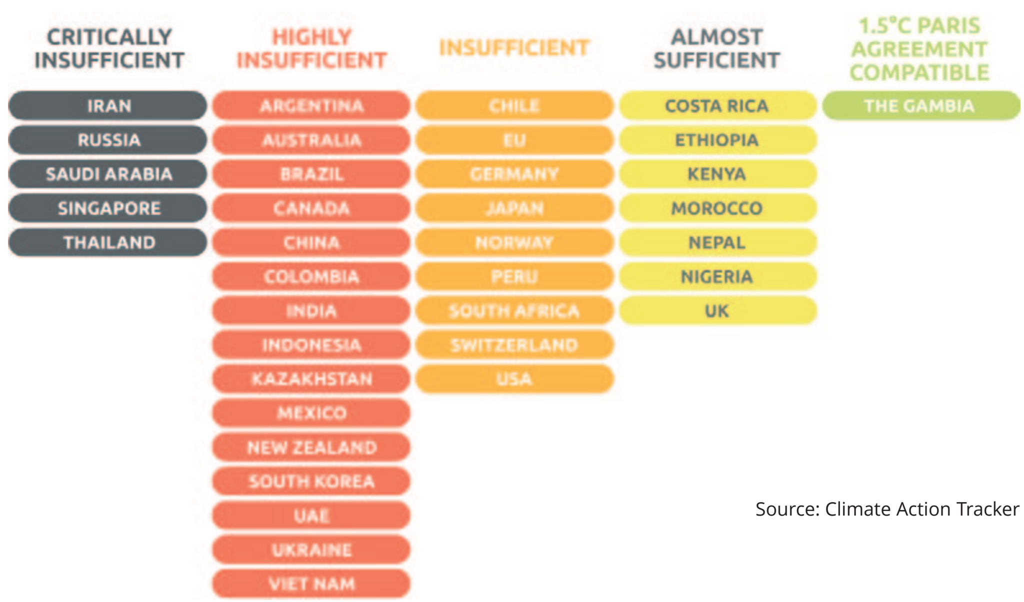


Source: ourworlddata.org

A lot has been made of the 2015 Paris Climate Agreement (PCA). When it was reached, it was celebrated as the future driving force to reduce global emissions. On the surface, it was a major achievement to have so many countries agree to one document. However, the big question was how each country would operate going forward to achieve the goals set out in the PCA. As I had predicted in a December 2015 article, "The Paris Agreement – Details and Insights," the results have not been good. The following graphic shows there is a total of one country that is comfortably looking like it will meet its goals and only seven that have regulations in place that will allow them to almost meet theirs. Many countries have not addressed their standards since they were initially adopted. Based on its performance, the Paris Climate Agreement has been a huge failure to date.

U.S. perspective

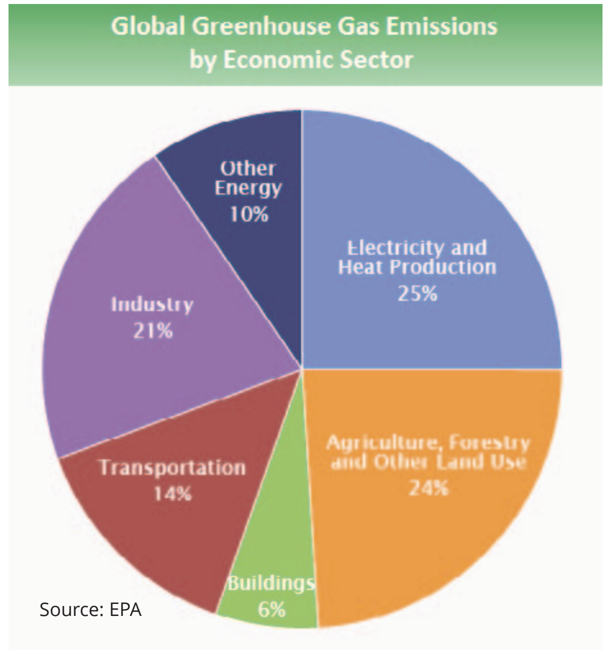
The U.S. is listed in the chart at right as insufficient. With that, I wanted to start to drill down to an industry level. Looking into which industries cause emissions, we see that power/heat production, agriculture and industry make up 70 percent of the global greenhouse gas emissions. Most people would look at the distribution below and conclude that a more inclusive approach to reduce emissions would be appropriate.



Source: Climate Action Tracker

According to the U.S. Environmental Protection Agency, "energy" is responsible for 83 percent of CO2 emissions in the U.S. It's interesting to note that total energy production has increased by 43 percent from 1990 to 2019. However, emissions from energy are up only 1 percent from 1990-2019. In comparison, agriculture and industry emissions are up 13 percent and 8 percent, respectively. Waste and land use industries are down significantly during that same period.

With the U.S. becoming more and more energy intensive, a 1 percent increase in energy emissions seems to be minimal. The question for agriculture and industry is, are they less efficient or is the increase due to an increase in production?



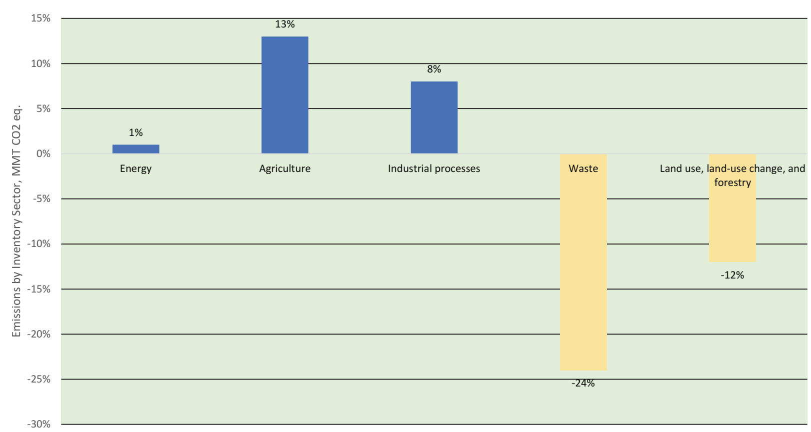
Changes and impacts on U.S. emissions

What causes such disparity in emissions across the country? Political alignment would be one of the first reasons most people would think of. While the political alignment may have changed from 1990, the data shows that nearly all states have decreased their energy-related CO_2 emissions from since 1990. The data also shows that state political alignment has generally not impacted CO_2 emissions reduction. Out of the top 10 states, four are split between political parties as governor and their legislatures, three are fully Republican and three are fully Democrats. However, for the 10 worst states, five are fully Republican, four are fully Democrats, and one is non-partisan.

There are several points that jump out from the map below. Most interesting is that Washington and Oregon are two of the worst performing states, yet politicians from this area are the most progressive in their environmental platforms. How can they be taken seriously when their own state has issues? Another point that is interesting is that Texas had only a 2 percent increase in CO_2 emissions. Much of the general public would have thought that Texas was a main culprit for emissions of all types. However, Texas has had a significant increase in renewable energy since 2010. Just as surprising is Oklahoma, with a 24 percent decrease. Lastly, the rust belt through New England is reducing their energy-related CO_2 emissions. The two exceptions are Illinois with a 4 percent increase and Rhode Island with an interesting 400 percent increase.

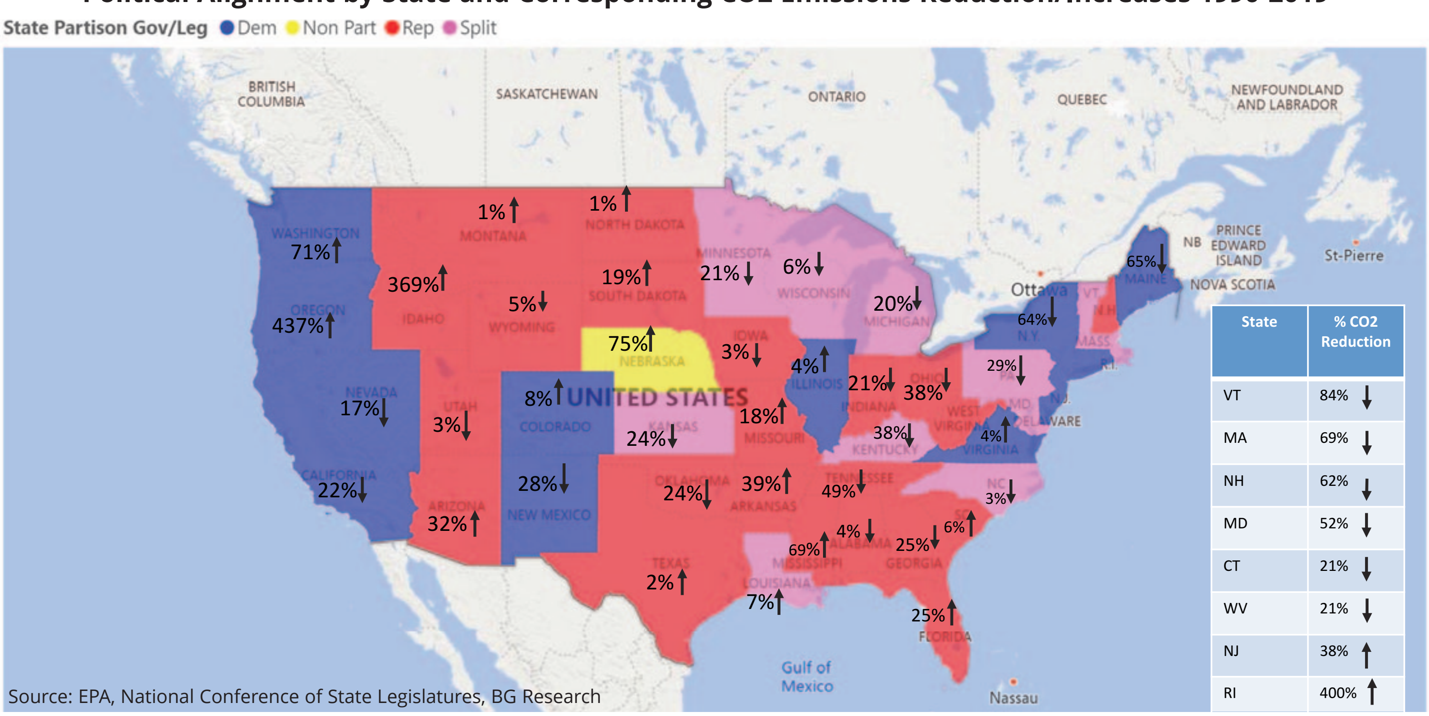
There are many people who say that the oil and gas industry is the main cause for all emissions. If you take the top oil and gas producing states, only Colorado, North Dakota and Texas

Emission Reduction/Increases by Inventory Sector 1990-2019



Source: EPA

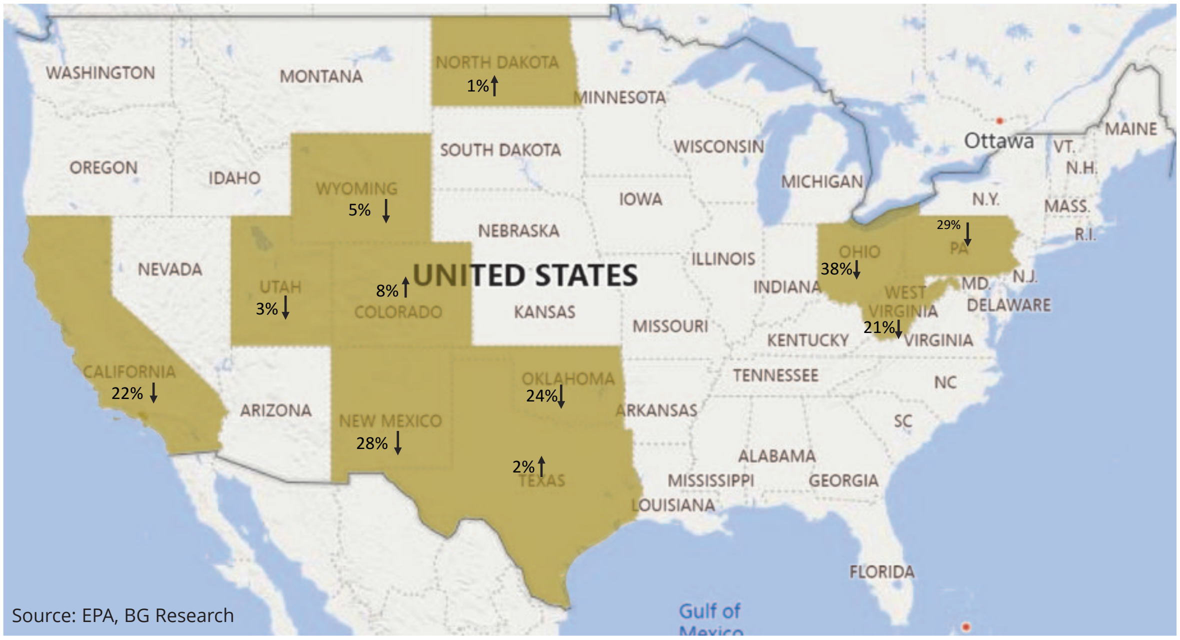
Political Alignment by State and Corresponding CO2 Emissions Reduction/Increases 1990-2019



State	% CO2 Reduction
VT	84% ↓
MA	69% ↓
NH	62% ↓
MD	52% ↓
CT	21% ↓
WV	21% ↓
NJ	38% ↑
RI	400% ↑

Source: EPA, National Conference of State Legislatures, BG Research

Top Oil and Gas Producing States and Corresponding Emissions Reductions/Increases 1990-2019

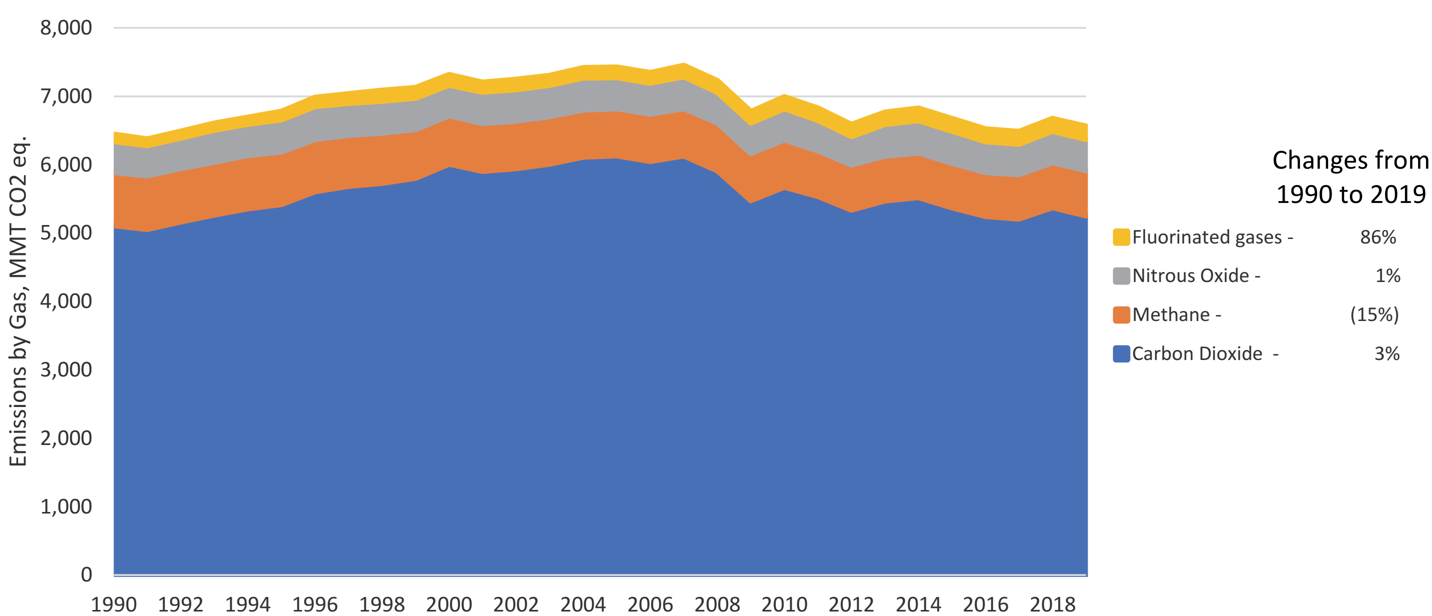


have increased their energy-related CO_2 emissions by 8 percent, 1 percent and 2 percent, respectively, since 1990. The other eight states have made solid reductions to their emissions. In those states from 2010-2019, energy-related CO_2 emissions have been reduced by 16 percent, 8 percent and 13 percent.

Regulation and tax policies

Now politicians want to focus on methane emissions and to add a carbon tax on oil and natural gas to adjust for the social cost of utilizing each fuel. This tax would add the equivalent of $1,800/ton or ~$35 per Mcf. Citibank has stated their projection is $1,680 per ton or $32.5 per Mcf, which would equate to an 8.5 percent impact to earnings. But there's no mention of taxing other industries such as agriculture or transportation. Details of what the taxes would be utilized for are scarce as well. What guarantee is there to the American taxpayer that what politicians spend the money on will reap benefits? What guarantee is there that money will be spent on valid projects? What guarantee is there that the tax mechanism is calculated fairly?

As difficult as it is to admit the Green New Deal actually provided a 360-degree formula addressing emissions on all segments of society. Nothing else about it was realistic, but it did aim for an inclusive cause-and-effect approach. The *Methane Emissions Reduction Act* does none of that. In essence it tells one industry it needs to pay an additional tax and that the government will decide what that money is spent on. The social cost will be paid by one industry, in one single country, with no direct benefit to the citizens. In fact, total methane emissions in the U.S. have decreased



since 1990 as shown in the chart below. Methane is the only category of emissions to do so.

Based on my regulatory background, there are many ways of paying for costs, even societal costs. Increased environmental regulation can target specific bad actors. In the beginning of the paper, the global perspective was reviewed. To be a world leader we need to develop a wholistic, replicable and fair model for the rest of the world to follow.

A few of the cornerstone policy changes to achieve that type of model would be:

• Support the emission testing and measurement technology sector in the development of advanced technology.

• Support energy efficiency technology in the effort to use less energy across all segments of society.

• Incentivize not punish all industries to minimize their emissions.

• Support small companies (which employ 59 million people according to the Small Business Association) to adapt new technology.

Simply taxing a specific industry and providing an additional revenue stream for politicians to spend is not the answer. It will not result in new technology, utilization of that technology or leadership to the rest of the world. ■

Where are we at with RGGI?

Efforts continue on at least two fronts in the General Assembly to halt Pennsylvania's entry into a multistate compact known as the Regional Greenhouse Gas Initiative (RGGI) dedicated to reducing carbon dioxide emissions by placing restrictions on fossil fuel-powered electricity generators.

On September 1, the Independent Regulatory Review Commission (IRRC) voted 3-2 to approve a rulemaking by the Department of Environmental Protection creating the CO2 cap-and-trade program *(September PIOGA Press, page 1).* This was the last major regulatory hurdle in the Wolf administration's unilateral push to join RGGI. The program sets a price and declining limits on CO2 emissions from power plants.

Pennsylvania would be 12th member of RGGI and the only state to enter the program without legislative approval. The General Assembly's Republican majority opposes Governor Tom Wolf's attempt to bypass the legislature with the RGGI rulemaking and argues, among other things, that the fees imposed under the program amount to a tax that only the legislature has the power to authorize.

A tool lawmakers can use to block final implementation of a regulation is a concurrent resolution disapproving the rulemaking. Such resolutions were introduced in both chambers following IRRC approval of the RGGI rulemaking. The Senate was first to approve its version, doing so on October 27. The measure passed by a vote of 32-18, with three Allegheny County Democrats—Jim Brewster, Wayne Fontana and Lindsey Williams—joining the chamber's Republicans.

Once adopted by the Senate, the House of Representatives has 30 calendar days or 10 legislative days, whichever is later, to adopt the concurrent resolution.

On November 8, the House Environmental Resources and Energy Committee approved the concurrent resolution by a 16-9 margin. Representative Pam Snyder of Greene County was the only Democrat to vote for the adoption of the resolution.

Based on the current legislative schedule of the House of Representatives, the 10th legislative day will not occur until the House from the holiday recess in January. Once approved, the concurrent resolution would go to Governor Wolf, where it faces a certain veto. It doesn't appear likely that enough Democrats would join with Republicans to make an override attempt successful. Such a vote must pass by a two-thirds majority.

Lawmakers ask AG to intervene

Meanwhile, Republican leaders in both the state House and Senate sent a letter to Attorney General Josh Shapiro last month calling on him to review the statutory authority and constitutionality of the RGGI regulation. The letter argues that RGGI violates the Air Pollution Control Act (APCA) and "imposes an unconstitutional tax on two-thirds of Pennsylvania's electricity generation capacity."

Call for member input

DEP guidance on notification requirements for spills, discharges, etc.

PIOGA's Environmental Committee is seeking your input to help develop comments regarding the Pennsylvania Department of Environmental Protection's Draft Technical Guidance: Guidance on Notification Requirements for Spills, Discharges, and other Incidents of a Substance Causing or Threatening Pollution to Waters of the Commonwealth (383-4200-003). The comment period is open until December 15.

In order to provide substantive comments on behalf of the oil and gas industry, we need your input, which should include examples of how this would adversely affect your operations, the pros and cons of the proposed language, and suggested language changes.

For instance, the TGD states that "Section 91.33(a) does not provide threshold amounts of specific substances that trigger notification requirements. This is because the location and characteristics of spills, discharges, or other incidents are not known in advance and their impact cannot be predicted prior to an incident occurring." Although we can appreciate there may be many factors that could affect whether a spilled substance would be harmful to Waters of the Commonwealth, proposing such broad language is likely to lead to various interpretations by operators and DEP inspectors that may lead to otherwise avoidable conflicts or result in a Notice of Violation for not reporting a spill based on your interpretation.

The department uses a few examples of when to report a spill, but in the end recommends that when in doubt to report all spills. DEP Oil and Gas has its own spill reporting requirements for brine, but it is not clear how the proposed language may affect those regulations.

Please review the proposed TGD by visiting DEP's eLibrary at www.depgreenport.state.pa.us/elibrary and search for document 383-4200-003. We ask that you then provide comments to Jeff Walentosky (jwalentosky@moody-s.com), Todd Kunselman (todd.kunselman@snydercos.com) or Teresa Irvin McCurdy (teresa@tdconnections.com) **before December 1.**

Your participation ensures that our efforts best represent the priorities of PIOGA's membership.

—Paul Hart and Ken Fleeman, Co-chairs
PIOGA Environmental Committee

"We are pursuing legislative disapproval of the RGGI regulation because overwhelming, bipartisan majorities in both the Senate of Pennsylvania and Pennsylvania House of Representatives oppose the Department of Environmental Protection (DEP)/EQB's RGGI regulation," the letter stated.

The letter cites the Commonwealth Attorneys Act as the basis for Shapiro's involvement. It states that the Office of Attorney General "shall review for form and legality, all proposed rules and regulations of Commonwealth agencies before they are deposited with the Legislative Reference Bureau," and that "if the Attorney General determines that a rule or regulation is in improper form, not statutorily authorized or unconstitutional, he shall notify in writing within 30 days after submission the agency affected, the Office of General Counsel, and the General Assembly through the offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives of the reasons for the determination."

The letter concluded: "We believe your office is well-positioned to protect blue-collar jobs and communities from suffering job losses and ensure ratepayers are not subjected to massive electric rate increases. In addition, disapproving this regulation would protect the Commonwealth from almost certain litigation that will be expensive and time-consuming."

A spokesperson from Shapiro's office said the attorney general is only permitted to review the form and legality of regulations, similar to reviews of state contracts.

Is Shapiro really against RGGI?

Interestingly, Shapiro, who is running as a Democratic candidate for governor, announced just before the end of October that he was breaking with Wolf over RGGI. in a statement, Shapiro suggested that Wolf's RGGI plan does not stand up to the charges that it will hurt Pennsylvania's energy industry and greatly increase electric prices while doing little to curtail greenhouse gases.

"We need to take real action to address climate change, protect and create energy jobs and ensure Pennsylvania has reliable, affordable and clean power for the long term," Shapiro said in the statement. "As governor, I will implement an energy strategy which passes that test, and it's not clear to me that RGGI does."

Shapiro's statement came just as he prepared to address union leaders from the pipeline trades who planned to question him about his position on RGGI.

At least one industry watcher doubts Shapiro's sincerity and believes the anti-RGGI stance is nothing more than a campaign ploy to woo union support in his bid for governor in 2022. In a post on his Marcellus Drilling News website, Jim Willis pointed out that Shapiro's actions as AG belie his words as he criminally prosecutes both a pipeline built by union labor and producers that supply natural gas for union-built power plants.

"When asked directly about RGGI, an issue important to trade union members, Shapiro prevaricates," Willis wrote. "He won't commit. He makes sounds like maybe he doesn't like RGGI, but don't let that fool you. If RGGI goes into effect under Tom Wolf's watch, Shapiro will not lift a finger to overturn it. You can bank on that. Money-back guarantee.

"And yet Shapiro is trying to convince union members maybe, just maybe, he would overturn RGGI. Again, DON'T BELIEVE IT! Shapiro is lying to you! To your face! How many times will you be suckered by Democrats like Shapiro?"

Either way, the RGGI saga is far from over. ■

Infrastructure bill clears Congress

The controversial $1.2 trillion infrastructure bill Congress sent to President Biden for his signature earlier this month includes $4.7 billion to plug orphan and abandoned oil and gas wells across the nation.

The legislation sets aside a maximum of $25 million for each state to be spent on plugging. As PIOGA has reported, the Pennsylvania Department of Environmental Protection has been gearing up its plugging program in anticipation of this money. Part of this effort by DEP includes surveying the industry to identify contractors interested in providing plugging-related services. (Contact the PIOGA office to participate in the survey.)

Watch for more information as this initiative gets rolling. ■

PIOGA Pennsylvania Independent Oil & Gas Association

JUST THE FACTS

Global influences on oil and natural gas prices

As the northern hemisphere heads into the winter heating months—as well as a holiday season with a pent-up demand for travel—families and businesses are experiencing an uptick in prices for oil, gasoline and natural gas. These fuels have already increased in price in the United States, with even greater sticker shock expected in other parts of the world.

The fact is that oil and natural gas are global commodities, and the cost for those products is driven by similar global factors extending far beyond the efforts of producers to exploring for and develop those products. The November edition of PIOGA's Just the Facts series discusses factors including global oil production and OPEC, geopolitical and weather factors, and the similar factors driving natural gas prices.

The bottom line: The basic forces of supply and demand play the dominant role in determining global energy prices. At the same time, the negative impacts of poor policies, regulatory overreach and resistance to new infrastructure on energy economics in the U.S. cannot be ignored. Pennsylvania and other energy-producing states in the Appalachian Basin are capable of meeting an increased demand for natural gas in the Northeast, but are forced to battle opposition to projects that will safely deliver affordable energy to families and businesses in those states.

You can find this and previous monthly installments of Just the Facts by visiting the Latest News and Blog section of www.pioga.org. You'll also find downloadable versions that we encourage you to share with colleagues, friends and family.

Senate acts on royalty owner and energy choice bills

The state Senate acted last month on two pieces of legislation of interest to the industry—one meant to help royalty owners better understand the components of the payments they receive from lessors and make it easier to seek additional information, and the other prohibiting municipalities from adopting policies that discriminate against particular types of energy used in utility service.

Senate Bill 806 (Yaw, R-Lycoming), known as the Oil and Gas Lease Act, aims to ensure that royalty owners are afforded a clear and distinct assessment of payments made to them through oil and gas lease agreements. The legislation would not impact lease agreements, but it would require entities making payments to landowners to provide more description, clarity and uniformity on their royalty check statements. Additionally, SB 806 would provide a remedy if a landowner makes inquiries to a natural gas operator that are not addressed in a timely matter.

PIOGA favors the bill, except for one troublesome provision. The bill requires that royalty payments be made no later than 120 after the first sale or oil, natural gas or natural gas liquids, and thereafter within 60 days after the end of the month when the production is sold. PIOGA producer members have told us the 60-day requirement is unrealistic. As SB 806 continues through the General Assembly, we are working with lawmakers to develop amendment language that satisfies both producers and their royalty owner partners.

After being approved by the Environmental Resources and Energy Committee on September 28, SB 806 was brought up for consideration by the full Senate on October 19 and rereferred to the Appropriations Committee.

Senate Bill 275 (Yaw) places decisions regarding restrictions on the use of any energy source in housing and commercial energy applications solely within the purview of the state. This is intended to ensure that all Pennsylvania businesses and homeowners have the opportunity to access energy, whether natural gas, solar, wind, geothermal or something else. Further, this legislation would be a step forward in developing a statewide policy addressing all forms of energy.

Senator Yaw's sponsorship memo explaining the rationale behind the bill states, "Energy policies, if any, throughout the United States vary greatly. Some states leave major energy policy decisions to the lowest municipal level. With over 2,500 municipal entities in Pennsylvania, such a potential scenario would create a policy founded on an unworkable patchwork of restrictions and further deny residents access to differing energy resources. Given the importance of all energy sources to Pennsylvania, it is simply prudent government policy for the state to preempt this field."

SB 275 cleared the Senate on October 27 by a 35-15 margin, with six Democrats and the chamber's lone independent member joining the full Republican delegation in support of the measure. It has been referred to the House Local Government Committee for consideration. ■

Annual Oil & Gas Tax and Accounting Seminar

Thursday, November 17
Virtual Event

Registration closes Friday, November 12!
www.pioga.org > PIOGA Events

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Pennsylvania Supreme Court rejects de facto taking of coal

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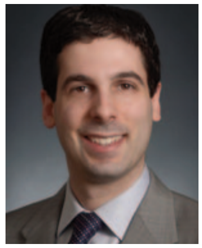

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In the March 2020 issue of *The PIOGA Press,* Glenn Thompson of Steptoe & Johnson PLLC, reported on *PBS Coals, Inc. v. Department of Transportation*, 206 A.3d 1201 (Pa. Cmwlth. 2019), wherein the Pennsylvania Commonwealth Court resurrected coal companies' de facto taking claim by reversing the trial court's dismissal of the Pennsylvania Department of Transportation's preliminary objections. Earlier this year, on January 20, in *PBS Coals, Inc. and Penn Pocahontas Coal Co. v. Commonwealth of Pennsylvania, Department of Transportation*, 244 A.3d 386 (Pa. 2021), the Pennsylvania Supreme Court reversed the Commonwealth Court's decision, reinstated the trial court's determination that no de facto taking occurred and remanded to the Commonwealth Court with direction to remand to the trial court for consideration of the coal companies' claim for consequential damages.

Factual background

In 2006, Penn Pocahontas Coal Company (Penn Coal) leased its unmined coal rights to a 73-acre tract known as Parcel 55 to PBS Coals, Inc. The surface of that tract is owned by private citizens. Parcel 55 is accessed exclusively over a series of private rights-of-way across adjoining parcels. In 2010, PennDOT acquired, through a deed in lieu of condemnation, a strip of land on neighboring Parcel 54. That acquisition cut off the possibility of west-to-east access to Parcel 55.

Procedural background and issues

Penn Coal and PBS Coals filed a petition under 26 Pa. C.S. § 502(c) of the Pennsylvania Eminent Domain Code alleging a de facto taking. A de facto taking occurs when an "entity clothed with the power of eminent domain substantially deprives an owner of the use and enjoyment of his property"[1] without the filing of a declaration of taking. The coal companies asserted that the coal under Parcel 55 was now isolated and not capable of being mined. PennDOT filed preliminary objections that asserted a de facto taking did not occur, because the coal companies were not deprived of the beneficial use and enjoyment of their property. In support, PennDOT argued that because the companies did not apply for mining permits for Parcel 55 their damages were speculative. The coal companies responded that the loss of access because of the neighboring parcel condemnation was itself a taking, which directly caused the loss of the coal.

The trial court concluded that no taking had occurred because there was alternative access to highways for the coal companies and the ability to obtain a surface mining permit was speculative and uncertain and thus incapable of supporting a claim of taking. The trial court considered the likelihood that the coal companies would obtain a mining permit for Parcel 55; experts testified that there was no evidence that the coal companies conducted any stream-and-wetland impact studies or whether there was sufficient neutralization of acid mine drainage from the property. Additionally, the experts identified two prior negative experiences with PBS Coals on a neighboring property in the 1970s that would cause serious impediments to the issuance of a surface mining permit for Parcel 55.

The Commonwealth Court, in *PBS Coals, Inc. v. Department of Transportation*, 206 A.3d 1201 (Cmwlth. 2019), reversed and remanded, agreeing with the coal companies' arguments that the land was now landlocked and alternative access to highways did not exist. The Commonwealth Court also held that any questions concerning the likelihood of securing a mining permit was a matter of damages and thus irrelevant as to whether a taking had occurred. PennDOT petitioned the Pennsylvania Supreme Court for review of the case, which was granted.

Pennsylvania Supreme Court analysis

The Pennsylvania Supreme Court noted that "[a] landowner alleging a de facto taking is under a heavy burden to establish that such a taking has occurred."[2] It further stated that "[d]etermining whether a taking has occurred almost always turns on the facts, and as a result takings jurisprudence generally rejects *per se* rules."[3] The court held that the ability of the coal companies to secure a mining permit was properly addressed by the trial court as a component of the taking analysis and "the coal companies must establish that the coal is legally mineable. Otherwise, the coal companies would receive a windfall."[4]

The court further explained that PennDOT's highway condemnation of a neighboring parcel "would be the immediate and necessary consequence of the coal companies' inability to use and enjoy their coal estate if a mining operation existed, or could be commenced with

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1 *PBS Coals, Inc. and Penn Pocahontas Coal Co. v. Commonwealth of Pennsylvania, Department of Transportation*, 244 A.3d 386, 390 (Pa. 2021), (citing *Conroy-Prugh Glass Co. v. PennDOT,* 321 A.2d 598, 599 (Pa. 1974); accord *McElwee v. SEPTA*, 948 A.2d 762, 764 (Pa. 2008)).

2 *PBS Coals, Inc. and Penn Pocahontas Coal, Co. v. Commonwealth of Pennsylvania, Department of Transportation*, 244 A.3d 386, 397 (Pa. 2021), (citing *Miller & Son Paving. v. Plumstead Township,* 717 A.2d 483, 485 (Pa. 1998)).

3 *Id.* at 398.

4 *Id.* at 403.

a permit, on the property."[5] But since the coal estate presently sat idle and thus may not be mined, the highway had not resulted in any deprivation to the coal companies. The high court agreed with the trial court's legal conclusion that the coal companies had failed to establish that a permit was reasonably likely to issue and, as such, held that any taking was "purely speculative and conjectural."[6]

The court also stated, however, that consequential damages are available even if a taking has not occurred and remanded the case to the Commonwealth Court with direction to remand to the trial court for consideration of the coal companies' claim for consequential damages.

[5] *Id.* at 406.
[6] *Id.* at 408.

Implications of decision

The fact pattern and issues involved in the *PBS Coals, Inc.* case could arise in oil and gas drilling operations if property adjoining a pad site is condemned and is the only means to access the pad site. *PBS Coals, Inc.* suggests that a de facto taking suit by an operator could be unsuccessful if oil and gas operations on the landlocked parcel are speculative and conjectural. After *PBS Coals, Inc.*, a court could potentially find the lack of a drilling permit as evidence that oil or gas development is speculative. However, it is more likely that a Pennsylvania court would find a de facto taking was imposed upon a landlocked oil and gas operator if significant steps are made to drill the well, including issuance of a drilling permit. ■

Don't forget to renew your PIOGA membership for 2022!

For the large majority of PIOGA members, now is the time to renew your membership for the coming year. If your membership is due by the end of 2021, the main contact for your company is receiving a renewal packet in the mail this month.

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

If you would like to know more about how we are working together on behalf of the entire Pennsylvania oil and gas industry, please take a few minutes to read a summary of our activities at pioga.org/publication_file/PIOGA_Overview_and_Accomplishments.pdf. You'll also find suggestions for how you can increase the value of your membership, such as participating in committee activities and taking advantage of PIOGA member discounts.

We thank you in advance for continuing to be a PIOGA member in 2022 and beyond. Questions about your membership? Contact Debbie Oyler, Director of Member Services, at debbie@pioga.org or 724-933-7306 ext. 22. ■

Holiday gift idea!

Only a few of the 100 custom Case knives PIOGA commissioned for our Centennial celebration are remaining. They make a great gift for the industry colleague or petroliana afficianado on your holiday shopping list—or even as a gift to yourself! The cost is just $75 for this collector's piece. Contact Deana McMahan at deana@pioga.org to place your order today!

Popular vote for best costume at the October 21 event went to Erin Matthews of CEC as a Jurassic Park employee (above left). The pink unicorn was not eligible!

PIOGATech report: Handling Flammable Liquids & Vapors

The Safety Committee hosted a PIOGATech on October 26 on Handling Flammable Liquids and Vapors. Due to continuing COVID-19 restrictions with some companies, it was a hybrid training event with some people participating in person and some joining virtually. A small, intimate group of industry professionals gathered to learn about the hazards and risks of condensate and vapors.

The five-hour technical training featured speakers from Spirit Energy Services, OWS Acquisitions Company, CNX Resources and RJR Safety, Inc., covering topics that included coded vessels, condensate hazards, truck transfer safety and flash fire risk assessments. The day closed with great real-time stories from Andrew Perine of CNX Resources and lots of questions from the group.

Our special thanks go out to all the presenters and to our planning partners that included Wayne Vanderhoof of RJR Safety, Inc., Chris Veazey of OWS Acquisitions Co., Alex Duncan of Spirit Energy Services and Andrew Perine of CNX Resources. We also would like to thank Ken Fleeman for running the virtual portion of this training event.

The final PIOGATech of 2021 takes place December 16 and will address air quality topics. ■

Andrew Perine of CNX Resources.

New PIOGA members — *welcome!*

Nick Allyn
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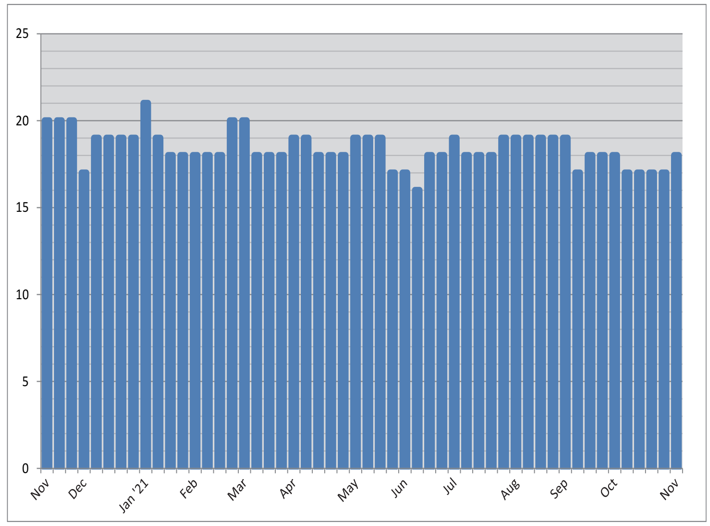
Student

Custos IQ LLC
618 Beaver Street, Ste. 210, Sewickley, PA 15143
412-749-6900 • www.custosiq.com
Allies & Providers—managed security service provider (MSSP), offering cyber security services, including but not limited to GAP analysis, penetration testing, compliance assessment and IT-infrastructure consulting

Williams
2000 Commerce Drive, Park Place Corporate Center II, Pittsburgh, PA 15275
412-849-9626 • williams.com
Allies & Providers—natural gas gathering, processing and transmission

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices

Natural Gas Futures Closing Prices

Month	Price
December	$4.962
January 2022	5.061
February	4.940
March	4.700
April	3.968
May	3.899
June	3.925
July	3.973
August	3.972
September	3.954
October	3.979
November	4.070

Prices as of November 10

Sources

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

Northeast Pricing Report — October 2021

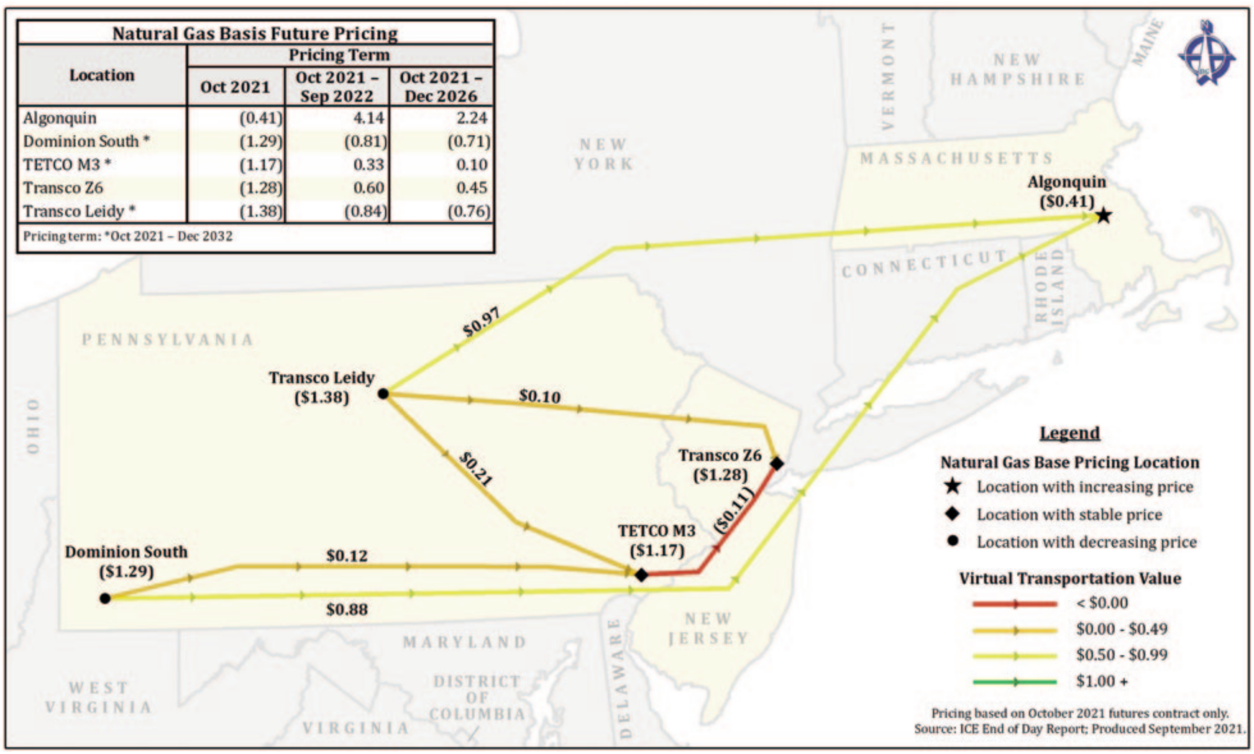
Although the Henry Hub has been strengthening, basis prices have been mixed. All Northeast basis locations front-month pricing decreased, except for Algonquin. Transco Z6 had decreased the most at $0.44 per MMBtu, and Algonquin increased by $0.20 per MMBtu. The one-year term showed substantial volatility. Algonquin increased the most at $1.54 per MMBtu. Transco Leidy and Dominion South decreased by $0.04 and $0.05 per MMBtu respectively. The full term trading period saw some volatility from September. Algonquin increased a considerable amount of $0.43per MMBtu. Transco Z6 also increased by $0.07 per MMBtu. However, Dominion South decreased by $0.03 per MMBtu.

Transportation Value Market Indicator

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

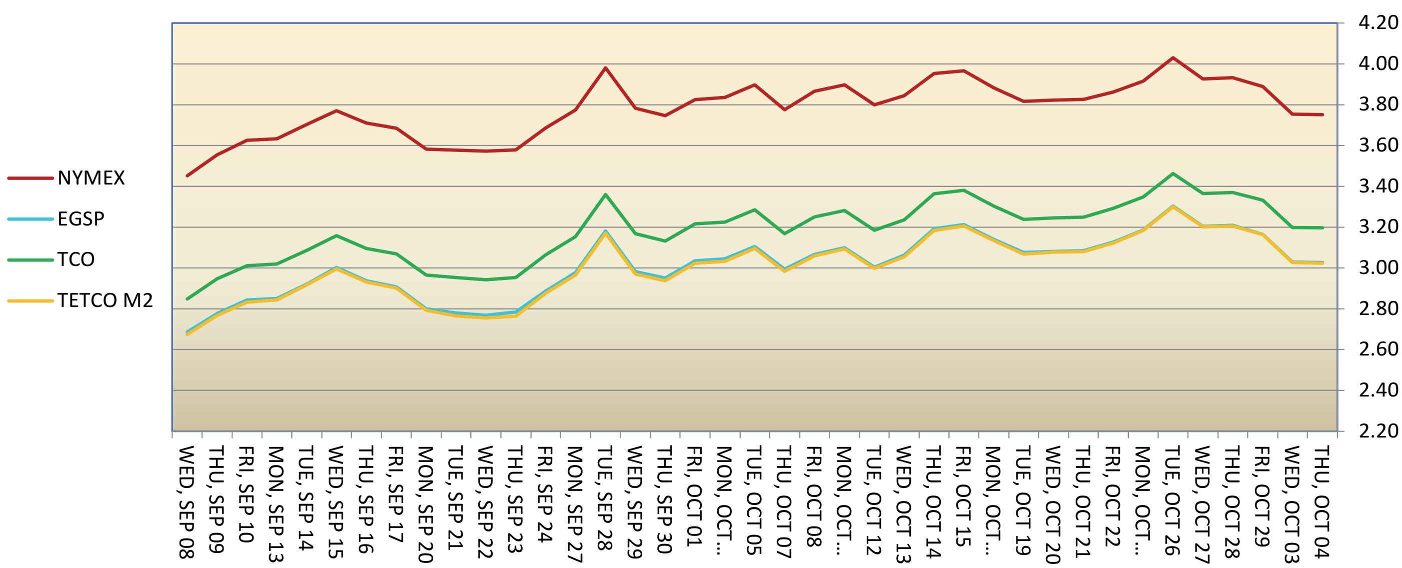
Transportation values were mixed as well. Transco Leidy and Dominion South to Algonquin increased $0.60 and $0.56 per MMBtu respectively. TETCO M3 to Transco Leidy Z6 decreased the most at $0.12 per MMBtu. All other transportation routes had only minor changes.

All values are per MMBtu



Natural Gas Basis Future Pricing			
Location	Pricing Term		
	Oct 2021	Oct 2021 – Sep 2022	Oct 2021 – Dec 2026
Algonquin	(0.41)	4.14	2.24
Dominion South *	(1.29)	(0.81)	(0.71)
TETCO M3 *	(1.17)	0.33	0.10
Transco Z6	(1.28)	0.60	0.45
Transco Leidy *	(1.38)	(0.84)	(0.76)
Pricing term: *Oct 2021 – Dec 2032			

36-Month Appalachian Fixed Price Moving Averages



Spud Report: October 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
Anderson Energy Svcs	1	10/26/2021	123-48590*	Warren	Pleasant Twp
Cameron Energy Co	1	10/6/2021	123-48506*	Warren	Sheffield Twp
Chesapeake Appalachia LLC	6	10/27/2021	015-23699	Bradford	Herrick Twp
		10/27/2021	015-23698	Bradford	Herrick Twp
		10/28/2021	015-23697	Bradford	Herrick Twp
		10/22/2021	113-20446	Sullivan	Colley Twp
		10/22/2021	113-20447	Sullivan	Colley Twp
		10/23/2021	113-20440	Sullivan	Colley Twp
Chief Oil & Gas LLC	6	10/11/2021	113-20441	Sullivan	Forks Twp
		10/11/2021	113-20442	Sullivan	Forks Twp
		10/11/2021	113-20439	Sullivan	Forks Twp
		10/11/2021	113-20443	Sullivan	Forks Twp
		10/11/2021	113-20445	Sullivan	Forks Twp
		10/11/2021	113-20444	Sullivan	Forks Twp
CNX Gas Co LLC	10	10/1/2021	059-28144	Greene	Richhill Twp
		10/1/2021	059-28143	Greene	Richhill Twp
		10/1/2021	059-28142	Greene	Richhill Twp
		10/1/2021	059-28138	Greene	Richhill Twp
		10/1/2021	059-28137	Greene	Richhill Twp
		10/2/2021	059-28141	Greene	Richhill Twp
		10/2/2021	059-28140	Greene	Richhill Twp
		10/2/2021	059-28139	Greene	Richhill Twp
		10/7/2021	059-28149	Greene	Richhill Twp
		10/8/2021	059-28148	Greene	Richhill Twp
Coterra Energy Inc	15	10/1/2021	115-22888	Susquehanna	Bridgewater Twp
		10/1/2021	115-22889	Susquehanna	Bridgewater Twp
		10/1/2021	115-22890	Susquehanna	Bridgewater Twp
		10/1/2021	115-22891	Susquehanna	Bridgewater Twp
		10/1/2021	115-22878	Susquehanna	Bridgewater Twp
		10/28/2021	115-22895	Susquehanna	Bridgewater Twp
		10/28/2021	115-22896	Susquehanna	Bridgewater Twp
		10/28/2021	115-22897	Susquehanna	Bridgewater Twp
		10/28/2021	115-22898	Susquehanna	Bridgewater Twp
		10/28/2021	115-22899	Susquehanna	Bridgewater Twp
		10/28/2021	115-22900	Susquehanna	Bridgewater Twp
		10/28/2021	115-22901	Susquehanna	Bridgewater Twp
		10/28/2021	115-22902	Susquehanna	Bridgewater Twp
		10/28/2021	115-22830	Susquehanna	Bridgewater Twp
		10/28/2021	115-22831	Susquehanna	Bridgewater Twp
Curtis & Son Oil Inc	1	10/7/2021	123-48494*	Warren	Sugar Grove Twp
Curtis Oil Inc	2	10/5/2021	053-30930*	Forest	Howe Twp
		10/13/2021	053-30931*	Forest	Howe Twp
Greylock Prod LLC	4	10/14/2021	059-28134	Greene	Whiteley Twp
		10/14/2021	059-28135	Greene	Whiteley Twp
		10/15/2021	059-28136	Greene	Whiteley Twp
		10/16/2021	059-28100	Greene	Whiteley Twp
Howard Drilling Inc	2	10/11/2021	083-57264*	McKean	Wetmore Twp
	3	10/19/2021	083-57263*	McKean	Wetmore Twp
Minard Run Oil Co		10/1/2021	053-30940*	Forest	Howe Twp
		10/7/2021	053-30941*	Forest	Howe Twp
		10/12/2021	053-30939*	Forest	Howe Twp
PennEnergy Resources LLC	4	10/11/2021	007-20636	Beaver	Economy Boro
		10/11/2021	007-20637	Beaver	Economy Boro
		10/12/2021	007-20638	Beaver	Economy Boro
		10/12/2021	007-20639	Beaver	Economy Boro
Pennhills Resources LLC	1	10/5/2021	083-57333*	McKean	Hamilton Twp
Pierce & Petersen	3	10/1/2021	123-48549*	Warren	Glade Twp
		10/22/2021	123-48548*	Warren	Glade Twp
		10/28/2021	123-48555*	Warren	Glade Twp
Repsol Oil & Gas USA LLC	9	10/22/2021	117-22132	Tioga	Hamilton Twp
		10/22/2021	117-22134	Tioga	Hamilton Twp
		10/22/2021	117-22136	Tioga	Hamilton Twp
		10/22/2021	117-22138	Tioga	Hamilton Twp
		10/22/2021	117-22140	Tioga	Hamilton Twp
		10/23/2021	117-22133	Tioga	Hamilton Twp
		10/23/2021	117-22135	Tioga	Hamilton Twp
		10/23/2021	117-22137	Tioga	Hamilton Twp
		10/23/2021	117-22139	Tioga	Hamilton Twp
Snyder Bros Inc	8	10/26/2021	005-31407	Armstrong	Kittanning Twp
		10/26/2021	005-31403	Armstrong	Kittanning Twp
		10/26/2021	005-31404	Armstrong	Kittanning Twp
		10/26/2021	005-31405	Armstrong	Kittanning Twp
		10/26/2021	005-31406	Armstrong	Kittanning Twp
		10/27/2021	005-31399	Armstrong	Kittanning Twp
		10/29/2021	005-31409	Armstrong	Kittanning Twp
		10/29/2021	005-31408	Armstrong	Kittanning Twp

	October	September	August	July	June	May
Total wells	**76**	**59**	**52**	**53**	**56**	**32**
Unconventional Gas	62	43	35	37	43	23
Conventional Gas	0	0	1	0	0	0
Oil	7	6	14	14	13	9
Combination Oil/Gas	7	10	2	2	0	0

Methane rule *Continued from page 3*

no NSPS requirements that apply to emissions from venting associated gas from oil wells. In situations where gas-producing oil wells do not have access to a sales line, associated gas would need to be used on-site as a fuel source, used for another purpose that a purchased fuel or raw material would service, or be routed to a flare or other control device achieving 95 percent reduction of methane and VOC emissions. Under the methane proposal, any new or existing oil well producing associated gas would be regulated, regardless of production volumes.

4. Zeroing out emissions from new and existing pneumatic controllers. Currently, under Subpart OOOOa, affected pneumatic controllers located anywhere except for onshore natural gas processing plants are allowed to have a bleed rate of 6 standard cubic feet per hour. 40 CFR § 60.5390a(c). Furthermore, intermittent vent natural gas-driven pneumatic controllers are not regulated under Subpart OOOOa, regardless of their location. Under Subpart OOOOb, EPA proposes to regulate single natural gas-driven continuous and intermittent bleed pneumatic controllers regardless of location. All these affected pneumatic controllers would be required to meet a new zero emission rate for VOCs and methane. Lastly, EPA proposes to remove an exemption in Subpart OOOOa that applies to affected pneumatic controllers with a bleed rate greater than the applicable standard based on functional needs, including response time, safety and positive actuation, so long as such pneumatic controllers are tagged with the month and year of installation. *Id.* § 60.5390a(a).

5, Zeroing out or controlling emissions from liquids unloading. Described as an "episodic high-emitting source," EPA proposes to regulate methane and VOC emissions from liquids unloading. More specifically, each liquids unloading event at an existing affected well site would be considered a modification triggering the requirements in proposed Subpart OOOOb, eliminating the need to regulate liquids unloading at existing well sites under proposed Subpart OOOOc. EPA is proposing to require liquids unloading operations be performed with _zero_ methane or VOC emissions. Where it is not safe to perform liquids unloading operations with zero emissions, EPA proposes to require best management practices to minimize methane and VOC emissions.

The methane proposal is expected to be published in the *Federal Register* on November 15, starting a 60-day public comment period. In addition to the five key changes noted above, EPA is specifically requesting comments on whether to add requirements related to: (1) abandoned and plugged wells, tank trunk loading operations and pipeline "pigging" operations; and (2) improving performance and minimizing malfunctions at flares. ■

Babst Calland is tracking the methane proposal closely, particularly as it affects Pennsylvania oil and natural gas producers. If you have any questions or would like additional information, please contact Gary Steinbauer at 412-394-6590 or gsteinbauer@babstcalland.com, Gina Falaschi at 202-853-3483 or gfalaschi@babstcalland.com, or Christina Puhnaty at 412-394-6514 or cpuhnaty@babstcalland.com.

Members talk about the value of PIOGA:

Patriot Exploration Corporation, an independent oil and gas operator, has been a proud member of PIOGA for almost 20 years. Over that time, PIOGA has constantly kept us up to date on Pennsylvania's ever-changing regulatory environment. PIOGA also has aggressively represented and defended our interests in the state legislature. Just as important, PIOGA provides us with events and opportunities to meet with and discuss current issues with other industry leaders. All of these services are supported by a highly experienced and friendly staff who are always available and willing to help. Patriot highly recommends a PIOGA membership to anyone currently active in Pennsylvania's oil and gas industry.

Jake Stilley
Patriot Exploration Corp.

Calendar of Events

PIOGA events

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

Annual Oil & Gas Tax and Accounting Seminar
November 17, virtual event

PIOGATech: Air Quality Technical Seminar
December 16, The Chadwick, Wexford

Mix, Mingle & Jingle Holiday Party
December 16, The Chadwick, Wexford

Pennsylvania Independent Oil & Gas Association
115 VIP Drive, Suite 210, Wexford, PA 15090-7906
724-933-7306 • fax 724-933-7310 • www.pioga.org

Harrisburg Office (Kevin Moody)
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717-234-8525

Northern Tier Office (Matt Benson)
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814-598-3085

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