

The PIOGA Press

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Pennsylvania Independent Oil & Gas Association
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Conventional producers sue to halt VOC rulemaking

EQB withdraws final rule, says it will be resubmitted

PIOGA has joined with the state's two conventional oil and gas producers' associations in a lawsuit before the Commonwealth Court to halt implementation of regulations controlling emissions of volatile organic compounds (VOCs) from existing oil and gas operations. PIOGA, the Pennsylvania Grade Crude Oil Coalition (PGCC) and the Pennsylvania Independent Petroleum Producers (PIPP) charge that the Environmental Quality Board (EQB) and the Department of Environmental Protection have failed to follow a law requiring that rulemakings concerning conventional oil and gas wells and unconventional wells must be promulgated separately.

In a pair of April 25 filings, the associations ask the Commonwealth Court to immediately halt final publication of the rulemaking known as "Control of VOC Emissions from Oil and Natural Gas Sources" unless the scope of the rule is clarified to apply only to unconventional wells, well sites and associated equipment and emissions sources. EPA estimates that only 14 percent of well site fugitive emissions come from sites with lower-producing wells—those that produce less than 15 barrels of oil equivalent (boe) a day.

The regulation, which has been under development since early 2019 even though the federal guidelines driving the rulemaking were issued in 2016, adopts what is known as reasonably available control technology requirements (RACT) and RACT emission limits for new and existing oil and natural gas sources of VOC emissions. The rule would require oil and gas operators that produce above the 15 boe/day threshold to use leak detection and repair (LDAR) equipment to identify and address leaks, as well as employ other equipment designed to reduce emissions (*January PIOGA Press, page*

1). DEP estimates the rule will cost the oil and gas industry \$31.7 million annually, but EQB did not separately and independently attribute the amounts to conventional oil and gas wells and unconventional wells.

By a vote of 17-2, the EQB on March 15 approved the final regulation and submitted it to the Independent Regulatory Review Commission (IRRC), which was scheduled to consider the final rule at its May 19 public meeting. However, on May 4 EQB withdrew, without explanation, the final rule from IRRC's consideration at that meeting, stating that the "rulemaking will be resubmitted at a later time."

The significance of Act 52

Section 7(b) of Act 52 of 2016 provides that:

Future rulemaking — Any rulemaking concerning conventional oil and gas wells that the Environmental Quality Board undertakes after the effective date of this act shall be undertaken **separately and independently of unconventional wells** or other subjects and **shall include a regulatory analysis form** submitted to the Independent Regulatory Review Commission **that is restricted to the subject of conventional oil and gas wells.** (*Emphasis added*)

Pennsylvania's conventional oil and natural gas wells

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What the candidates for Pennsylvania governor say about energy

With Pennsylvania's primary election day coming up on Tuesday, May 17, there is a crowded field of candidates for governor. Or at least there is on the Republican side, with nine candidates who will appear on the ballot. There's only one candidate on the Democratic side—the current attorney general, Josh Shapiro.

Energy is an important topic in this election—both for our industry and to Pennsylvanians as whole. To help our members make their decision, we invited each candidate to answer several questions about energy and our industry. In addition to the Democrat Shapiro, on the GOP side we reached out to the campaigns of Lou Barletta, Jake Corman, Joe Gale, Charlie Gerow, Melissa Hart, Doug Mastriano, William McSwain, Dave White and Dr. Nche Zama. Answers/statement from those who responded are below.

Lou Barletta (www.loubarletta.com)



1. What is your position on fossil fuels, particularly with regard to Pennsylvania?

Drill baby drill! Fossil fuels are Pennsylvania's future. I believe in an "All of the Above" energy

strategy, including coal, oil and natural gas, and as Governor, I would ensure that our producers have the friendliest regulatory climate in America to grow and create jobs. The economic benefits of fossil fuel development are undeniable: the industry employs nearly half a million Pennsylvania workers; Pennsylvanians see an average savings of up to \$2,000 on their energy bills; and the state's Impact Fee generates more than \$2 billion in revenues directly benefitting all 67 counties. Not only does fossil fuel development represent a pathway forward for Pennsylvania's economy and workforce, it is also environmentally friendly. The Appalachia region has the lowest methane emissions of shale plays globally. Pennsylvania producers are leading the way, as over 90 percent of the water used in fracking is recycled or reused and over half a billion dollars are generated annually through our Impact Fee for environmental protection. Rather than seek to impose additional taxes and regulations on the energy industry, I would streamline permitting processes and lower costs so that the industry can do what it does best—grow, hire workers and produce clean, affordable energy for Pennsylvania families and businesses.

2. What would be your energy policy, including the development of necessary infrastructure such as pipelines?

I recently released my energy policy plan, which includes supporting the expanded use of pipelines, removing Pennsylvania from the job-killing Regional Greenhouse Gas Initiative (RGGI), reforming the

Department of Environmental Protection (DEP), allocating grant money for broadband and energy infrastructure, promoting Pennsylvania's abundant rare earth elements, creating performance-based environmental incentives, and investing in workforce development, including career and technical education. The full plan can be found on my website at www.LouBarletta.com.

The first thing I would do as Governor is remove Pennsylvania from the Regional Greenhouse Gas Initiative, or RGGI. It is ludicrous for Pennsylvania's Governor and Attorney General to put our Commonwealth in a program that will eliminate thousands of good-paying jobs and kneecap our ability to be a global leader in energy production. Energy security is economic security for Pennsylvania families and national security for America. RGGI turns over control of our economic future to a group of states that do not share our values—states in New England, for instance, have imported Russian natural gas—nor have the energy supply we do.

Pennsylvania was blessed with more natural gas under our feet than nearly every state and most countries. But having all this energy under our feet and not building pipelines is like being in college and having a keg of beer without a tap. What good is it? Pipelines are the safest and most efficient way to transport energy. As Governor, I would greenlight new pipelines and support existing ones to unleash the full potential of Pennsylvania's natural resources and protect the United States from potential geopolitical conflicts. This includes:

- Expanding pipeline capacity through faster and more reliable permitting, which is the key to increasing responsible natural gas production.
- Supporting efforts like HB 1947 that prohibit municipalities from discriminating against utility service providers based on the type of energy source. This will prevent an unworkable patchwork of restrictions that could deny residents and businesses access to a variety of affordable energy options.
- Standardizing regulatory definitions to ensure consistent application of rules to prevent unelected bureaucrats from interpreting statutes inconsistently.
- Creating performance-based environmental incentives and prioritize existing state dollars available to incentivize innovation to address the environmental challenges facing our Commonwealth.
- Creating a reliable business environment for energy and manufacturing employers by allowing companies to deduct Net Operating Losses against other sources of income to offset initial upfront investments.

3. What is your position on natural gas usage/markets and liquified natural gas (LNG) exports?

We must increase access to as many markets as possible for LNG exports. Doing so will drive increased investment in Pennsylvania, which in turn will lower prices and create economic growth and jobs for Pennsylvanians. This current moment in history, when

the world is finally realizing the dangers of reliance on foreign energy from places like Russia, underscores the urgency of expanding American LNG exports for the sake of economic and national security. Unfortunately, the Biden Administration has taken steps to limit access to markets by using its regulatory power (through FERC) to slow-roll and stop new and pending pipeline projects and the expansion and creation of LNG export terminals. As the second largest gas producing state, Pennsylvania could—and should—be a leader in supplying the world with low-cost, low emissions energy. But we need the infrastructure to get it to market, and we need a government that will not stand in the way.

4. What is your view on the regulatory body with oversight of the oil and gas industry in Pennsylvania—the Department of Environmental Protection?

It's become a sad joke that DEP in Pennsylvania now stands for "Don't Expect Permits." DEP failures should not hinder a business' ability to grow and expand. When I'm governor, that changes. I will reform the DEP, lead the agency into the 21st Century, and improve and speed up the permitting process. The first steps I would take include:

- Digitizing the DEP permitting process, which is currently conducted only on paper.
- Instituting a mandatory turnaround time to approve permits.
- Authorizing third-party reviews for permitting where DEP has failed. If DEP misses a deadline, an employer will have the option to pay for a third party to review and approve a permit.
- Creating a task force to do a thorough review of existing regulations over coal, oil and gas, and other energy policies put in place by the current administration. This will identify and repeal unnecessary burdensome regulations that prevents these industries from operating efficiently while also identifying programs that worked in order to improve best practices.

Jake Corman (www.cormanforpa.com)



1. What is your position on fossil fuels, particularly with regard to Pennsylvania?

Pennsylvania is home to the greatest deposits of natural gas in the world. Pennsylvania's energy development is the backbone of our economy. Thousands of

Pennsylvanians go to work every day in our energy sector. Almost every product that consumers use today contains some form of natural gas byproduct. Pennsylvania can be the world leader in natural gas production and under the Corman administration we will be.

I truly believe in Pennsylvania's energy economy. It is why I have fought so hard over my career for sound energy policies, including leading the fight to stop Governor Wolf from entering the Commonwealth into the Regional Greenhouse Gas Initiative, and fighting for

commonsense permitting reform.

Energy jobs will continue to lead our economy for generations to come and with those great jobs, Pennsylvania will have great schools and great communities.

2. What would be your energy policy, including the development of necessary infrastructure such as pipelines?

Part of my platform for governor has been furthering the development of Pennsylvania's energy economy. Energy has always been at the heart of our economy and we need to expand and lead upon this in the 21st Century. We need to ensure that Pennsylvania's natural gas can get to the market through the significant expansion of our pipeline network. Building upon this necessary infrastructure will ensure that Shell's Pennsylvania Petrochemical Complex and the future Luzerne County Nacero facility are just the beginning of the Pennsylvania Energy Economy.

Pennsylvania is also in a unique position to have an international port in The Port of Philadelphia. We need to be able to transport our natural gas efficiently, effectively and safely through pipelines to The Port of Philadelphia where we can refine and export Pennsylvania LNG to International markets.

3. What is your position on natural gas usage/markets and liquified natural gas (LNG) exports?

As our governor, I would do all that I could to encourage the export of LNG. Bringing Pennsylvania's natural gas to international markets opens Pennsylvania's economy to the world. Ensuring that Pennsylvania has a vibrant economy for future generations solely depends on how we manage and promote the production and usage of our natural gas resources.

By significantly increasing the Commonwealth's pipeline infrastructure and partnering with Pennsylvania business and industry, we can lead the United States to Energy Independence and be THE world leader in energy production.

4. What is your view on the regulatory body with oversight of the oil and gas industry in Pennsylvania—the Department of Environmental Protection?

Previous administrations, including the Wolf administration, have used the Department of Environmental Protection (DEP) as a way to hinder and ultimately prevent the development of natural gas in the Commonwealth. DEP has stifled more investment in Pennsylvania than any other Commonwealth agency many times over. We need a DEP that will work with industry and ensure that the rules are being followed, and that investment is flowing into the Commonwealth. Under the Corman administration, DEP will be responsive to permit requests and will render a decision on all permits within 45 business days. Permits that have not been decided within that timeframe will be deemed approved. The Corman administration will provide adequate oversight to ensure that our natural resources are being developed responsibly. We will ensure that our DEP lives up to its true mission which is environment protection, where permits are processed quickly and inspection and compliance is based upon the permits

and are not left to ambiguous interpretations.

Joe Gale (www.joegale.com)



Gale submitted the following comments made during a gubernatorial debate.

Our nation should do everything possible to become energy independent. Frankly, we should not rely on foreign nations that hate us for energy

and that's what's happening. And Pennsylvania can lead the way to reach the goal of energy independence. We have an abundance of God-given natural gas, right under our feet, and its untapped potential and we should fully utilize natural gas industry in Pennsylvania. We have so much of it we can actually export it to other regions of the world. We can lead the way and create thousands of new jobs, it will drive down utility costs and it will also keep us safe. It becomes a national security matter when it comes to our natural gas industry. We cannot rely on foreign nations to supply our energy, we have to do it here in Pennsylvania. And to think that we don't tap into our natural resources is mindboggling. That's common sense and I would do away with any regulations that hinder that, we need to tap into that.

Q: One of the challenges we face with exporting natural gas is that Pennsylvania doesn't have enough pipelines to get it to a port that can liquefied it and send overseas. What do you do about that?

We need to grow our natural gas industry. We need to build pipelines across Pennsylvania so we can export it and benefit our economy and benefit our residents here in Pennsylvania. So, part of the natural gas boom is also building pipelines, that's how you transport it and also to be liquefied. It's untapped potential power. Windmills, electric vehicles is not the solution—that's just politics. We need to fix the problem and we can do it by tapping into our natural gas industry.

Charlie Gerow (www.charlieforgovernor.com)



1. What is your position on fossil fuels, particularly with regard to Pennsylvania?

The Democrats' war natural gas echoes through every area of our economy, killing jobs, raising

prices and crippling Pennsylvania's working families. I coined the term a "Gold Mine Beneath our Feet" referring to the trillions of cubic feet of Pennsylvania natural gas. As governor, I'll unleash our natural gas industry to reach its full potential.

2. What would be your energy policy, including

the development of necessary infrastructure such as pipelines?

I'll push for the development of pipelines to get our natural gas from the rigs to the market. Throughout the past 15 years I've worked to promote numerous pipeline projects in Pennsylvania and know the tactics used by extreme environmentalists to block them. I'll use the full force of the governors' office to get pipelines built.

3. What is your position on natural gas usage/markets and liquified natural gas (LNG) exports?

Natural gas should be fueling Pennsylvania's economy from homes to manufacturing. I believe that Pennsylvania could build at least two more cracker facilities. Pennsylvania natural gas should be among the state's number one exports. We should be supplying Europe with Pennsylvania natural gas and stop their reliance on Russian natural gas.

4. What is your view on the regulatory body with oversight of the oil and gas industry in Pennsylvania—the Department of Environmental Protection?

Under the Wolf Administration the DEP has been major impediment to the growth of the natural gas industry by delaying or blocking drilling permits and being hostile to the industry. It will be worse under a Governor Shapiro. Under my administration, DEP will be a partner with the industry but also ensuring that safety and environmental protections are in place. I'll also remove Pennsylvania from the ill-conceived and improperly enacted Regional Greenhouse Gas Initiative (RGGI), which is an additional tax on Pennsylvanians imposed by Tom Wolf.

Melissa Hart (www.hartforpa.org)



1. What is your position on fossil fuels, particularly with regard to Pennsylvania?

I support continuing and increasing development of fossil fuels in PA. It is clear from our experience here in

PA that the technologies that have been developed in all areas of fossil fuel development have much improved safety, environmental impact and cost.

Coal production and its use in energy production are underutilized in this country. After advances in mining and burning technology, this resource has become a viable, safe and important source of energy. Overreaction and negative press has been damaging to the continued levels of the use of this resource.

The methane gas available for use in energy production which can be found in PA coal beds is also a viable and safe source for fuel. Its development is and should continue as a resource in PA. Drilling for this gas as a fuel source is also a way to relieve the concerns of some who view it as a contaminant.

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RGGI moves to the courts

With publication in the April 23 *Pennsylvania Bulletin*, regulations enabling the Commonwealth's participation in the Regional Greenhouse Gas Initiative became final. But the legal battles are just heating up over Governor Tom Wolf's unilateral effort to impose what amounts to a carbon tax on Pennsylvania's fossil fuel power plants.

As we reported in the April *PIOGA Press*, the Commonwealth Court issued a stay preventing the Legislative Reference Bureau from publishing the regulation as a final, immediately effective rule and scheduled a hearing for May 4 on litigation that the Department of Environmental Protection initiated to force publication of the final CO2 cap-and-trade regulation. The stay came about after a group of Senate Republican leaders intervened and requested a preliminary injunction to halt publication of the rulemaking.

However, the stay was dissolved during the week of April 23 due to a quirk in the court's rules related to the timing of hearings, and the rulemaking was published as final in the *Bulletin*.

On April 25, a coalition of owners of coal-fired power plants, a coal industry trade group and labor unions filed suit in Commonwealth Court saying the regulation

is "patently unlawful." They argue the rules amount to an unauthorized tax and go beyond the scope of the state's air pollution law. They also argue the regulation is causing them "immediate and irreparable" harm because it will make their power plants less competitive, potentially leading to closures, job losses and decreased demand for Pennsylvania coal.

Even though the intervention on the part of legislators is now moot after the rule was published as final, that filing also raises many of the same challenges as the coal industry suit. Meanwhile, the owner of a pair of Pennsylvania nuclear generating plants and a hydroelectric facility is seeking to intervene in defense of Wolf's RGGI rulemaking. The company contends any delay will harm it and other power producers that emit little to no carbon dioxide when they generate electricity. Further, they claim delays "would deprive the general public of the immediate environmental and health benefits" of the regulation as well as revenue from the program. A number of activist groups also are seeking to intervene in support of the regulation.

As this newsletter was being finalized, the Commonwealth Court scheduled a hearing for May 10 to consider the industry petitioners' challenge.

Environmental groups pay for Pennsylvania's economic destruction with Russia's money and other 'assumptions' we can make based on campaign contributions

By Senator Gene Yaw

Critics of pro-energy policies love nothing more than to hold up campaign contributions from fossil fuel interests as evidence that the recipients' support hinges solely on greed.

There's often zero acknowledgement of the flipside of that argument: environmental lobbyists and political action committees (PACs) exist too, their money often comes from shadowy sources and their agenda aligns with geopolitical adversaries committed to the demise of western Democratic nations, the United States chief among them.

I support the United States and I am very proud of Pennsylvania's position in energy production in this country. I like to think that is why people support me. Energy is the key to a viable and resilient economy. Does anyone really care about the environment when they don't know where their next meal is coming from or whether they can afford to pay bills?

So yes, I've accepted donations from energy compa-

Guest Commentary

nies and political action committees. And yes, I agree that Pennsylvania's abundance of fossil fuels is an economic asset that should be regulated with precision, not a dirty and shameful malignancy to be hacked off with little regard for the consequences. I'd believe those things with or without a single campaign contribution in my name.

Some of my colleagues who disagree with me accept donations from the green lobby and its associated PACs. I'm certain their support for the Regional Greenhouse Gas Initiative (RGGI) is rooted in their personal beliefs and the backing of their constituency—not a \$1,500 contribution from the Natural Resources Defense Council or the Sierra Club or the League of Conservation Voters.

And certainly, it has nothing to do with weakening American gas and oil production to strengthen resource-rich countries like Russia or China, as was suggested to the Senate Environmental Resources and Energy Committee back in 2018.

Nearly four years before Russia launched its full-scale invasion of Ukraine, a reporter from the *Daily Signal* testified that environmental advocacy groups who ran successful anti-fracking campaigns in New York were bankrolled by a California-based funding incubator that took millions from the Russian government and Vladimir Putin.

Perhaps had those groups been less successful, Pennsylvania natural gas could be supplying the western European nations that want to dump Russian imports without creating an energy crisis. At least we'd be supplying New York and New England, but Putin's money prevented that, too.

And I cannot erase the mental picture of certain so-called environmentalists cheering the demise of the New Fortress liquified natural gas (LNG) project in Bradford County when western Europe desperately needs our help offsetting the Russian stranglehold on the supply of natural gas. Is that really something to be proud of?

Staking out what is stated to be moral high ground is a shortsighted tactic, but one that happens often on the progressive left. Take RGGI, for example, a quarterly auction in which 11 states bid for credits to offset the carbon emissions generated by their power sector.

Pennsylvania, by executive fiat and without any legislative input, on April 23 became the 12th state to join RGGI. The administration's own estimates, released in January, suggest the program will generate more than \$400 million in annual revenue for Pennsylvania, paid for by electricity consumers of all types.

This represents a de facto carbon tax on power generators and will leave thousands of workers unemployed. Independent analysts also believe it will raise energy costs by double digits for residents, including many on low and fixed incomes who already feel the squeeze of record-high inflation.

So, when confronted with lacking justification for their position, either from an economic or environmental perspective, RGGI supporters fall back on the unscientific stance that we have a "moral obligation" to join. Anyone who disagrees is nothing more than a fossil fuel company shill with dollar signs in their eyes and a lump of a coal beating in their chest.

There's never any nuance. There's never any recognition that air flows freely and indiscriminately across state lines. RGGI does nothing to stop emissions from power plants in Ohio or West Virginia from floating into Pennsylvania. It does, however, close plants, unemploy thousands and decimate communities across this state—and for what? Less than one percentage point in reduced carbon emissions.

It is sad to see us waste time chasing the non-existent benefits of RGGI while the Department of Environmental Protection estimates as many as 200,000 orphaned gas wells—built more than 50 years ago—continue emitting methane, a greenhouse gas 34 times more destructive to our atmosphere than carbon dioxide, into the air we breathe every single day.

I care about our environment, and I support policies that offer creative and collaborative solutions to the problems we face—such as bills I cosponsored to clean up streams, implement carbon capture and sequestration, and cap orphan gas wells. These proposals engage industry to address climate concerns without levying unconstitutional taxes or eliminating jobs.

Like it or not, energy is intrinsically tied to the history,

culture and prosperity of Pennsylvania. We cannot separate ourselves from this reality, no matter how many hatchets this administration throws at it.

Don't be fooled by one-sided rhetoric that paints critics as cartoonishly greedy or conspiratorial ghouls. Seek out media that tells the whole story, not just the side they want to be heard. Remember that old adage about making assumptions. And never forget—energy builds the economy upon which we all rely! ■

Pennsylvania Senator Gene Yaw represents the 23rd District consisting of Bradford, Lycoming, Sullivan, Susquehanna and Union counties. He serves as chairman of the Senate Environmental Resources and Energy Committee.

House passes energy-related bills

The state House of Representatives last month approved several pieces of legislation intended to spur oil and gas production in response to high fuel prices and Russian aggression. The bills mostly accomplish this goal by removing roadblocks such as prohibiting the Delaware River Basin Commission's (DRBC) ban on hydraulic fracturing and renewing leasing in state-owned forests.

Among the bills passed in mid-April and sent on to the Senate for consideration were:

- House Bill 2450 (Fritz, R, Susquehanna)—amends the Delaware River Basin Compact to provide more voting power to Pennsylvania, which has the most land area within the basin of the four states that are part of the DRBC.
- HB 2451 (Fritz)—clarifies that it is not within the DRBC's authority to promulgate rules and regulations that impede or interfere with the operation or control of projects, structures, or facilities constructed or used in connection with hydraulic fracturing.
- HB 2458 (White, R, Philadelphia)—creates a task force to study the economic feasibility, financial impact and the security necessities involved in turning the Port of Philadelphia into a liquified natural gas (LNG) export terminal.
- HB 2461 (Owlett, R, Tioga)—requires the Department of Conservation and Natural Resources to establish a program to lease the subsurface rights under state lands for oil and gas development. There is currently a moratorium on new leasing imposed early in the first term of Governor Tom Wolf.

Representative White's LNG bill has some bipartisan support (although it is opposed by activist groups), so it is unclear whether it might ultimately earn the governor's approval if it gets to his desk. Given the poor relationship between the Republican majority of the General Assembly and Governor Wolf, the other three pieces of legislation would likely face vetoes if approved by the Senate. ■

Coming June 16: The Oil Patch Classic



Join us on Thursday, June 16, for our inaugural Oil Patch Classic golf outing and steak fry celebrating the oil and gas industry near the birthplace of the petroleum industry in Pennsylvania. This event is in honor of all the men and women who made this industry what it is today.

The event takes place at the scenic Wanango Country Club in Reno, located between Oil City and Franklin. Our title sponsor for the day is American Refining Group.

For all the details—including registration, times and sponsorship opportunities—visit the PIOGA Events section at www.pioga.org, or watch your email.

We hope you come and enjoy a day of golf and camaraderie with the great folks in Pennsylvania's oil and gas industry.



And don't forget the 25th Annual Divot Diggers Golf Outing on August 18!

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Environmental Committee leadership changes



Paul Hart



Ken Fleeman



Angelo Albanese

Paul Hart of Diversified Energy Company, the long-time co-chair of PIOGA's Environmental Committee, announced recently he is stepping down from his leadership position with the committee due to work obligations.

"Paul's depth of knowledge about the oil and gas industry and his steady leadership style have been a tremendous asset to PIOGA and a benefit to our entire industry here in Pennsylvania," said PIOGA President & Executive Director Dan Weaver. "It's a testament to Paul that our Environmental Committee is such an effective and well-respected group."

The good news is that Paul intends to continue to be involved in the committee as a "regular" member. PIOGA's thanks go out to Paul and we extend our appreciation for his continued involvement.

As Paul steps down, his co-chair **Ken Fleeman**, formerly of ABARTA Oil & Gas Co., is stepping up as chairman of the Environmental Committee.

"Ken, too, has many years of hands-on experience with the industry and is well-versed in the many complicated issues that come before the committee," Weaver said. "We're certainly in good hands going forward."

Assuming the role of vice chairman is **Angelo Albanese of Diversified Energy**. Angelo is an EHS Air Specialist with Diversified in western Pennsylvania and has spent more than seven years in the industry. He has experience in water hauling, spill remediation, waste disposal, E&S/SPCC inspections, NORM/TENORM and compliance analysis.

Prior to the oil and gas industry, he was a sergeant in the Marine Corps, trained as a Topographic Intelligence Analyst. Being forward deployed in support of OIF, OEF-SE Asia and humanitarian aid missions, he led teams who provided in-depth analysis of Iraqi insurgent trends and tactics, tracked smugglers via drone in the southern Philippines, and worked with the Philippine Department of Environment and Natural Resources during a 2006 mudslide which claimed upward of 1,000 lives.

Angelo earned an MBA from Waynesburg University and a B.S. in Safety & Environmental Management from Slippery Rock University. He interned with the Department of Conservation and Natural Resources as part of the Harrisburg Internship Semester and worked with local EMS, police and fire departments during his time with Butler County Community College as a facilitator of virtual disaster simulations. ■



It was a fine day for a clay shoot on May 5 at the Promise Land Sporting Clays Club in Freeport. Thanks to our sponsors and to all who came out to shoot. For more scenes from the day, visit the Photo Galleries section at pioga.org. Our next networking event is the Oil Patch Classic Golf Outing on June 16 at the Wanango Country Club near Oil City (see page 9).



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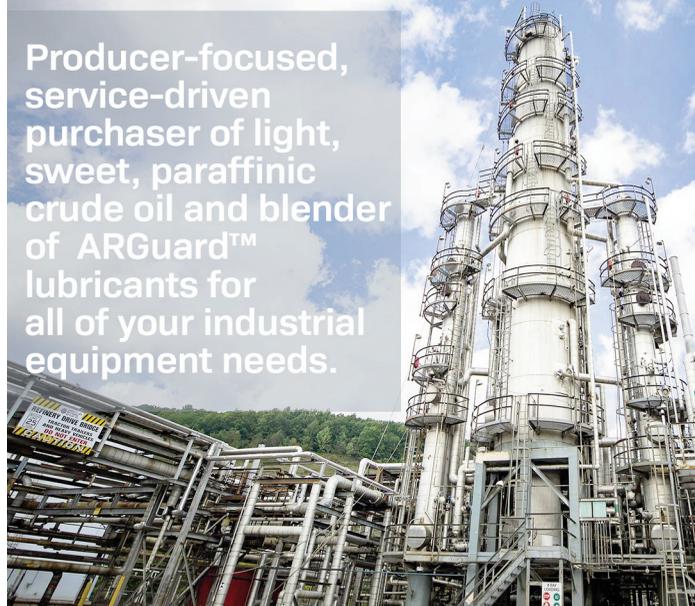
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ARG's roots are deep in the Pennsylvania oil fields. In 1881, the Bradford oil refinery was established in Northwestern PA, the birthplace of the domestic oil industry. 140 years later, ARG remains committed to supporting the Commonwealth's conventional oil and gas producers.

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Commonwealth Court continues to reject validity challenges to zoning ordinances authorizing oil and gas development

What is a “substantive validity challenge?”

Under Pennsylvania law, the question of *where* certain uses are permitted to occur is fundamentally a local issue. By delegation of the police power through the Municipalities Planning Code, 53 P.S. §§10101 *et seq.*, local governments are vested with the power to adopt zoning ordinances and zoning maps outlining what uses are allowed in what areas within their boundaries. Zoning ordinances are presumed to be valid, and the decision as to where specific uses are permitted is largely within the discretion of the local governing body.

A party challenging the substance of a zoning ordinance bears a heavy burden of proving the provisions are “arbitrary, and unreasonable, and have no substantial relationship to promoting its public health, safety, and welfare.” When reviewing these types of challenges, courts are required to balance the public interest to be served with the confiscatory or exclusionary impact of the ordinance on individual property rights. Although property owners frequently challenge the substantive validity of ordinances they feel are too confiscatory, objectors have also challenged ordinances for being too permissive of a certain use—alleging that they fail to have the required connection to public health, safety or welfare.

Act 13, *Robinson II* and challenges under the ERA

In 2012, the Pennsylvania General Assembly enacted Act 13, a comprehensive update to the former Oil and Gas Act. Shortly thereafter, the Pennsylvania Supreme Court was tasked with considering the impact of the Article I, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment (ERA) on Act 13, in which a plurality of the court ultimately invalidated certain provisions of Act 13 limiting the authority of local governments to regulate oil and gas development.¹ This decision triggered a wave of challenges from objectors arguing local ordinances are substantively invalid because they fail to place sufficient restrictions on oil and gas uses or allow them in allegedly incompatible zoning districts. To date, these types of claims have been consistently rejected by local zoning hearing boards, Common Pleas Courts and the Pennsylvania Commonwealth Court. The body of case law

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—
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following *Robinson II* makes it clear that—as is the case with any type of use regulated by local zoning—*where* oil and gas development occurs is squarely within the purview of the municipality, while *how* it occurs is a state regulatory matter.

Recently, the Commonwealth Court reiterated these principles in *Murrysville Watch Committee v. Municipality of Murrysville Zoning Hearing Board*.² On January 24, the court affirmed the decisions of the Westmoreland County Court of Common Pleas and the Murrysville Zoning Hearing Board, denying a challenge to the oil and gas regulations in the municipality’s zoning ordinance. On February 23, the objectors filed a petition for allowance of appeal with the Pennsylvania Supreme Court. As we await a decision from the court on whether it will hear the appeal, *Murrysville Watch* offers an opportunity to revisit the courts’ treatment of substantive validity challenges to oil and gas zoning ordinances, an issue which they have addressed with remarkable consistency.

Where to permit oil and gas development remains a local issue

As noted above, *Robinson II* opened the door to ERA-type substantive validity challenges, resulting in the Supreme Court’s decisions in *Gorsline v. Fairfield Township*³ and *Robinson IV*⁴ and several Commonwealth Court decisions including *Frederick v. Allegheny Township Zoning Hearing Board*,⁵ *Delaware Riverkeeper Network v. Middlesex Township Zoning Hearing Board*⁶ and *Protect PT v. Penn Township*.⁷ A brief overview of the decisions in these cases is helpful in analyzing how courts can be expected to treat these types of challenges moving forward.

A. *Frederick v. Allegheny Township Zoning Hearing Board*:

The ordinance: The zoning ordinance in Allegheny Township, Westmoreland County allowed oil and gas wells as a use by-right in all zoning districts, with some additional requirements. While it did not expressly require any setbacks for oil and gas development, application of the state-mandated 500-foot setback between a well-head and an existing building left less than 50 percent of the township available for development. Objectors brought a validity challenge, arguing the ordinance violated substantive due process and the ERA.

The analysis: The challenge was denied by both the local zoning hearing board and Westmoreland County Common Pleas Court. The *en banc* Commonwealth Court affirmed on appeal. In analyzing the ERA claim, the Commonwealth Court addressed the Supreme Court’s 2017 ruling in *Pennsylvania Environmental Defense Foundation v. Commonwealth*,⁸ in which the Supreme Court held challenges raised under the ERA should be decided in accordance with its text. Noting the precise duties imposed upon local governments by the ERA are unclear, the Commonwealth Court decided the relevant standard to be whether the governmental action “unreasonably impairs” the environmental values implicated. However, it also found the Supreme Court’s

holding in *Robinson II* did not authorize municipalities to act beyond the scope of their enabling legislation and that they were not authorized to replicate the environmental oversight the General Assembly conferred upon the Department of Environmental Protection or other state agencies.

B. Delaware Riverkeeper Network v. Middlesex Township Zoning Hearing Board:

The ordinance: The Middlesex Township, Butler County zoning ordinance allowed oil and gas well site development as a use by-right in some zoning districts and as a conditional use in other zoning districts. However, when other ordinance limitations were applied, less than 30 percent of the township was available for drilling.

The analysis: After a complicated procedural history, the Commonwealth Court, in an unpublished opinion, affirmed the decisions of the zoning hearing board and Common Pleas Court. The Commonwealth Court quoted liberally from its earlier decision in *Frederick*, and similarly concluded that the ordinance violated neither substantive due process nor the ERA.

C. Protect PT v. Penn Township:

The ordinance: The Penn Township, Westmoreland County zoning ordinance established an overlay district in which natural gas operations were authorized by special exception. The overlay district covered 55 percent of the township's land mass and, after the application of setbacks, left 9.64 percent of the township available for development. The challengers argued that unconventional natural gas drilling was a heavy industrial use incompatible with the underlying agricultural and residential zoned areas, rendering the zoning ordinance invalid.

The analysis: On appeal, the Commonwealth Court held the objectors failed to establish that unconventional natural gas development posed any substantial actual risk to the environment or health of township residents. The court found the trial court properly determined that the ordinance, which permitted oil and gas development in specific and targeted areas of the township that are rural and not densely populated, did not violate the ERA or due process.

D. Murrysville Watch Committee v. Municipality of Murrysville Zoning Hearing Board

The ordinance: The Municipality of Murrysville, Westmoreland County zoning ordinance authorized oil and gas wells as a conditional use in an overlay district, which encompassed portions, but not all, of the rural residential zoning district. The ordinance also imposed a setback of 750 feet from the edge of a well pad to "protected structures." Application of these geographic limitations, along with the ordinance's steep slope restrictions, left only five percent of Murrysville's land mass available for unconventional oil and gas development. Objectors argued the ordinance violated substantive due process because unconventional oil and gas drilling allegedly is an industrial land use incompatible with the stated purpose of the underlying residential zoning district. In a related argument, objectors contended that

the overlay constituted an unconstitutional spot zone because certain portions of the rural residential zone were included in the overlay, while other portions were not.

The analysis: Relying heavily on both *Frederick* and *Protect PT*, the Commonwealth Court concluded the objectors failed to introduce any evidence of incompatibility and instead observed the municipality, through the multi-year efforts of a task force, had balanced its goal of economic development with its obligation to protect the health, safety and welfare of property owners within the overlay district. The court also noted the ordinance contained extensive additional substantive regulations and review processes applicable to oil and gas development. The court denied the objectors' ERA claim, looking again to *Frederick* and *Protect PT*, concluding that the objectors did not prove that the challenged ordinance "unreasonably impairs" citizens' rights under the ERA. Finally, the objectors asserted that the overlay violated the equal protection rights embodied in Article III, Section 32 of the Pennsylvania Constitution, on the basis that only the oil and gas industry was granted an overlay in residentially zoned areas and that residents of the rural residential district are not treated equally. The court rejected this claim, finding that the municipality had a rational basis for creation of the overlay district, based on available acreage and population density.⁹

Via *Frederick*, *Delaware Riverkeeper*, *Protect PT* and *Murrysville Watch*, the Pennsylvania Commonwealth Court has developed a cohesive body of case law affirming the authority of Pennsylvania municipalities to authorize oil and gas development within their boundaries. To date, the Pennsylvania Supreme Court has declined to hear appeals in *Frederick*, *Delaware Riverkeeper* and *Protect PT*. The industry would hope to see a similar result from the Supreme Court in *Murrysville Watch*. ■

Blaine A. Lucas is a Shareholder in the Public Sector and Energy and Natural Resources groups of Pittsburgh Law Firm Babst Calland. Anna S. Jewart is an associate in Babst Calland's Public Sector group and focuses her practice on zoning, subdivision, land development and general municipal matters.

¹ *Robinson Twp. Washington County v. Com.*, 83 A.3d 901 (Pa. 2013)

² No. 579 C.D. 2020 (Jan. 24, 2022)

³ 186 A.3d 375 (Pa. 2018)

⁴ 147 A.3d 536 (Pa. 2016)

⁵ 196 A. 3d 677 (Pa. Cmwlt. 2018)

⁶ No 2609 C.D. 2015, 2019 WL 2605850 (Pa. Cmwlt. 2019)

⁷ *Protect PT v. Penn Twp. Zoning Hearing Bd*, No. 1632 C.D. 2018, 2019 WL 5991755 (Pa. Cmwlt. Nov. 14, 2019)

⁸ 161 A.3d 911 (Pa. 2017).

⁹ The Commonwealth Court also found that the objectors failed to demonstrate the challenged ordinance violated the Pennsylvania Municipalities Planning Code, 53 P.S. §§10101 *et seq.*, or that it was inconsistent with the municipality's comprehensive plan.

Ohio Supreme Court upholds royalty owner rights in abandonment cases

By a unanimous decision in the Supreme Court of Ohio upheld the rights of two oil and gas royalty holders against attempts to have such rights deemed abandoned by the current surface owners of the properties in Monroe County, Ohio. The decision was issued by the court on March 24 in the matters of *Fonzi vs. Brown* and *Fonzi vs. Miller*.

In oil and gas rich regions, it is often the case that prior owners of properties long ago separated the oil and gas rights from the surface rights in the property, by selling the surface rights but reserving to themselves all or a part of the oil and gas interests. Under the Ohio Dormant Mineral Act (DMA), surface owners seeking to develop oil and gas on their property can use a statutory process to claim those reserved rights for themselves, where there has been no oil and gas development or activity in the preceding 20 years.

To do so, however, the surface owners first must make reasonable efforts to locate the interest holders or their heirs and serve them notice of the claim of abandonment. If they cannot locate the holders after a reasonable search, the surface owners are permitted to publish notice in the local newspaper.

The notice provision is a key component of the DMA, as the same statute that provides the surface owners an opportunity to take oil and gas rights, also provides the interest holders the opportunity to preserve those rights and prevent an abandonment by filing a “notice to preserve” within 60 days of the date of the surface owners’ notice.

In the *Fonzi* cases, the surface owners limited their search for the holders to the Monroe County records where the properties are located. They asserted that they could not find the holders and accordingly published notice in their local paper. Because the holders did not respond to the notice (not having seen the notice published in Monroe County), the surface owners filed documents declaring the interests abandoned and now owned by them.

The question in these cases is: how hard do the surface owners need to look for the interest holders? “We

Comments from PIOGA General Counsel Kevin J. Moody:

While this decision involves Ohio law, PIOGA and its members have been involved in the development of Pennsylvania law addressing the question of “How hard do the surface owners need to look for the interest holders?” As a result of an investigation by former PGE General Counsel Craig Mayer of 124 quiet title actions initiated in seven counties in northeast Pennsylvania during January 2008 through November 2012, PIOGA and some members assisted Craig’s submission of recommendations to the Pennsylvania Supreme Court’s Civil Procedure Rules Committee. These recommendations addressed the lack of search standards for service by PA Rule of Civil Procedure No. 430 by surface owners seeking to acquire title to severed subsurface oil, gas and mineral rights, which enabled what we believed were inequitable and unlawful results.

While the committee was considering our recommendations, the Pennsylvania Supreme Court accepted a case for review (No. 72 MAP 2015) involving the question addressed by the Ohio court: *Sisson v. Stanley*, 109 A.3d 265 (Pa.Super. 2015). PIOGA submitted an amicus brief in support of the heir of the oil and gas owner because the legal sufficiency of the surface owners’ efforts to locate the oil and gas owner was the issue. Similar to the Ohio case, in *Sisson* the surface owners’ affidavit submitted to support service by publication was facially deficient. The deficiency was their failure to state they searched local estate records when the affidavit stated they believed the oil and gas owner to be deceased. After oral argument, our Supreme Court dismissed the appeal as “improvidently granted,” meaning the court should not have accepted the case. But the reasons why? We certainly don’t know why, but we believe the case did not present the issue the court thought it did when it granted review.

On December 17, 2016, (46 Pa.B. 7933) and January 14, 2017, (47 Pa.B. 178) amendments to PA Rules of Civil Procedure Nos. 410, 430, 1064 and 1065 relating to actions to quiet title involving subsurface mineral, oil or natural gas rights were published, effective January 1, 2017.

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have never argued that a surface owner is required to turn over every stone to find the interest holders or their heirs," said Mark Fischer of the Pittsburgh firm Yukevich, Marchetti, Fischer & Zangrilli, who argued the case. "We only insisted that a reasonable search be performed and that, when the surface owners have information about where the holders might be located, they must follow up on that information." The Supreme Court agreed:

"Requiring that a surface owner exercise reasonable diligence is not tantamount to requiring the owner to engage in futile or vain acts. Surface owners are not required to do the impossible and locate undiscoverable holders; instead, they must exercise reasonable diligence in attempting to identify and locate the holders of the mineral interest. In cases like those before us today, the issue is not whether the surface owner could have located all mineral-rights holders by exercising reasonable diligence. Instead, the question is whether the surface owner did exercise reasonable diligence. If the surface owner did not exercise reasonable diligence, then the

mineral rights could not have been deemed abandoned under the DMA."

In these cases, in the very deeds in which the Fonzi reserved their rights, it was plainly indicated that these holders lived in Washington County, Pennsylvania. Despite this knowledge, the surface owners did not make any attempts to search in Washington County. As it happens, there was ample evidence in the records of Washington County with respect to the location of the Fonzi's heirs. The court found that these efforts were not sufficient under the DMA and therefore the Fonzi heirs continued to own the oil and gas interests reserved by their parents.

"These are valuable property rights," said Fischer. "The court was right to require surface owners to demonstrate their own reasonable efforts to locate holders before they can seize these rights." The court's decision in *Fonzi* will provide substantial direction to Ohio trial courts in future cases involving the DMA. ■

Yukevich, Marchetti, Fischer & Zangrilli is a Pittsburgh firm focusing on commercial and business law, including oil and gas matters.

Special offer for PIOGA members at LDC Gas Forum Northeast

The 27th annual LDC Gas Forum Northeast takes place in Boston June 13-15. As one of a six-part series, this event focuses on northeast U.S. natural gas markets. Several hundred leading market professionals representing stakeholders spanning the commercial natural gas value chain convene at the Forum for 2½ days of insight, networking and deal-making.

Northeast U.S. natural gas markets are in transition. Winter weather brought significant price escalation. LNG imports into Boston continue. Expansion of natural gas infrastructure to meet demand has met with fierce resistance. Moratoriums have been declared for new natural gas connections. LNG exports to serve global markets are growing. And most significantly, the push to "decarbonize" traditional energy sources and increase use of renewable energy (RSG, RNG, H2, etc.) gains momentum. Demands are placed on operators to adopt ESG goals in their planning. Independent certification of carbon content of energy sources is becoming an expectation. Carbon capture schemes are being introduced. Capital markets' appetite for oil and gas is evolving.

These market conditions translate into potential for volatility and the need for informed decisions on structuring commercial arrangements into the future.

The LDC Gas Forums, US-Mexico Natural Gas Forum and Gulf Coast Energy Forum series now consists of six annual events each focused on the key natural gas market regions across North America. This is where buyers and sellers meet to conduct business. Much more than simply conferences, the Forums are a venue that deliver insights on critical issues affecting natural gas markets, but in addition provide participants



opportunities to meet with industry counterparts to complete commercial business transactions.

Timely panel discussions featuring key industry authorities focus on important questions facing buyers, sellers, transportation operators and other market stakeholders in competitive energy markets. Topics addressed include Supply & Demand, Financial Outlook, Pipeline/Storage/LNG Infrastructure Projects, LNG Export Markets, Mexico Export Markets, Gas/Electric Coordination, Regulatory Updates, Gas Buyer Insights, Risk Analysis and Hedging Strategies, and Global Energy Geopolitics.

Participants at the Forums include market leaders, decision makers and subject matter experts, representing all segments of the commercial value chain including utilities, industrial gas consumers, producers, pipelines, marketers, key product and service providers, as well as regulators and analysts. Vast networking opportunities give you access to your clients, prospects, and peers to further explore relevant issues in your region.

PIOGA members: Register for the Northeast Forum at tinyurl.com/3pcv2zme with discount code NEPIO-GA125 for \$125 off! Or visit www.ldcgasforums.com. ■

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Governor candidates *Continued from page 5*

The opportunity for drilling both conventionally and unconventionally for all fuel gas and oil is an economic boon for the state. I am supportive of the industry across the board, and of both small and large organizations' exploration and production.

I have visited different gas well sites in western PA, and worked with landowners and companies as an attorney to make sure that all parties benefit from their leases and royalties. It is a clear economic win for producers and consumers. This clean burning fuel provides an environmental win for PA as well.

2. What would be your energy policy, including the development of necessary infrastructure such as pipelines?

I believe that the current administration here in PA and in DC have been a nightmare for those of us who see growing energy production as the key to our economic and security strength. My goal will be to make the connections that will allow the exploration, production and delivery of oil and gas to grow. This includes allowing some exploration on public lands, encouraging landowners to utilize their land for production if they choose to and making the connections from the fields to the markets by working with pipeline developers instead of against them.

3. What is your position on natural gas usage/markets and liquified natural gas (LNG) exports?

I would like to expand our gas liquification infrastructure and make connections to our ports (mainly Philadelphia and Lake Erie) for export of this energy. My vision is to free the market from overregulation so that PA can be a high-production and low-consumer-cost energy state.

This resource is a great opportunity for more energy related jobs than just for producers. The delivery and export infrastructure will add value and more jobs for Pennsylvanians. The lower cost of energy here opens the door to growth in many other areas, especially manufacturing—as a feedstock for petrochemicals and plastics, and also as a more economical energy source than will be available in other states for other manufacturing.

4. What is your view on the regulatory body with oversight of the oil and gas industry in Pennsylvania—the Department of Environmental Protection?

The DEP under the current administration has become an obstacle to oil and gas development. I believe that the legal structure that was put into place for the unconventional exploration industry was reasonable but should certainly be reviewed as it has been in place for a decade. The current administration has a record of overreach and the regulatory environment has become a brick wall in many cases. This is especially true regarding the construction of pipelines to allow the growth of production to be successful and profitable. I would review both the regulatory environment and the law regarding its practical effect on the industry.

Dr. Nche Zama (www.zamaforpa.com)



1. What is your position on fossil fuels, particularly with regard to Pennsylvania?

Fossil fuels are an essential building block for so many things that are necessary to support our way of life and economy. Most people know that fossil fuels are used for electric generation which in turn lights up our homes and businesses. Not many people understand that fossil fuels and their byproducts are used in a variety of applications to make plastic, clothing and grow food. I recently visited a conventional oil well and was very impressed with the operations and how they are proactive in protecting the environment while doing so. Pennsylvania needs to support our fossil fuel industry by reducing its overall tax burden and unnecessary regulations. This industry provides good family-sustaining jobs and contributes hundreds of millions of dollars to our economy. We need to educate Pennsylvanians and the rest of the world about how vital fossil fuels are to our way of life and the extraordinary efforts that are put into the exploration, production and transportation of fossil fuels.

Yes! The Zama administration will focus on making Pennsylvania the energy leader in every respect. We will develop the energy industry to be the envy of the world. Strong energy. Strong Environment. Clean Water. We will do it right, and everyone will benefit!

2. What would be your energy policy, including the development of necessary infrastructure such as pipelines?

In order to have energy security we need to look at all forms of energy whether it is using fossil fuels, digesters, wind, solar and hydropower. There is room in the market for all, but the government should not be picking winners and losers in energy generation. The current Governor is picking the losers by imposing a fee on fossil fuels used to make electricity by joining RGGI. By imposing the fee, which is essentially a tax, he is playing Robin Hood by taking money from one group of people and giving it to another. But unlike in Robin Hood, the people or companies he is giving it to are not the poor, but rich companies who promote "clean energy," which is in their own self-interest. On day one I would sign an Executive Order to start the process to take Pennsylvania out of RGGI. Furthermore, just as I relied on a team when completing surgeries, I would establish a team of industry and interested parties to review existing laws, regulations and government subsidies to see which ones should be modified, continued or revoked.

We are blessed to have so many natural resources under our feet, but we need to extract the energy and get it to market. By utilizing best available technology

and management practices, we can be assured that extraction can be done and energy can be transported while protecting everyone and the environment. People who oppose new pipeline construction probably do not realize that “according to the Pipeline and Hazardous Materials Safety Administration (PHMSA), there were 92,407 miles of pipelines carrying natural gas and liquid petroleum products in Pennsylvania in 2017. That distance is equivalent to 151 round trips between Philadelphia and Pittsburgh on the Pennsylvania Turnpike, or more than three trips around the globe at the equator” (www.fractracker.org/2018/07/pennsylvania-pipelines-pollution). We have been using pipelines to transport natural gas for over 100 years safely. In fact, using pipelines is safer than any other form of transportation. Therefore, I would support additional pipeline development by reviewing current regulations for adjustments.

I want Pennsylvania to be a global leader in research for clean energy for all forms of energy. We will pull resources together to make Pennsylvania universities the epicenter of energy research.

3. What is your position on natural gas usage/ markets and liquified natural gas (LNG) exports?

As many of you know, I grew up in Africa where energy and electricity is not widely available or affordable. Our nation participates in many worldwide programs and affairs such as feeding the poor, NATO and unfortunately wars when necessary. However, it should be our duty to help developing nations afford clean natural gas to grow their economies as well as to provide light in the darkness so other children like me have the opportunity to study. Therefore, I would encourage the use of pipelines to transport natural gas to our ports and to increase the exportation of fossil fuels. I would also work with surrounding states to develop a pipeline infrastructure to deliver natural gas to them and their ports.

Unfortunately, it is not always feasible to use pipelines but we can still meet the demand by utilizing LNG and transporting it in trucks. Some manufactures use LNG to switch their fuel source and save hundreds of thousands of dollars on their energy bills. Switching fuel source for our vehicles and fleets to CNG helps to reduce air pollution and should be encouraged.

The Zama administration will help lead efforts to develop new markets for Pennsylvania energy exports. I have done free pediatric heart surgeries on five continents and there is a need for abundant and affordable energy on every continent. I will help make Pennsylvania energy #1.

4. What is your view on the regulatory body with oversight of the oil and gas industry in Pennsylvania—the Department of Environmental Protection?

Checks and balances are needed in all aspects of life whether it is the government, business or healthcare. The legislature passed Act 78 and other laws outlining the development of natural gas to ensure operators could conduct business while protecting the environment and have a stable regulatory environment. These



laws provide a framework for DEP to follow when providing its oversight. Unfortunately, I have heard from so many on the campaign trail about how the DEP has been overstepping its authority as evident from their actions on RGGI. As Governor, I will select a Secretary of DEP that will abide by the law and rein in staff who promote their own agendas.

I will assemble a business environment team whose focus will be to identify current and/or proposed regulations that hamper economic growth and go beyond their statutory authority. In addition, the regulatory process needs to be streamlined to reduce paperwork and especially the amount of time it takes to get a permit. The amount of time to obtain a permit or the results of an inspection should be consistent and not be determined by whether you operate in the Northeast or Southwest or what inspector shows up at the site. Simply put, the Zama administration is going to modernize the approval processes for all government functions. We're going to stop delaying companies and regions that have strong environmental protections and excellent compliance track records. Yes, we are going to focus on excellence in all things, including permitting, compliance and track records.

Responses were not received from these candidates:

Doug Mastriano (www.doug4gov.com)

William McSwain (billmcswain.com)

Josh Shapiro (joshshapiro.org)

Dave White (www.davewhiteforgovernor.com) ■

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Producer

VOC rulemaking lawsuit *Continued from page 1*

differ substantially from their unconventional counterparts in many ways—the well site footprint, associated equipment, production volumes and, in this case, VOC emissions. It's only proper that regulations consider the two types of operations separately, as has been the stated public policy of the Commonwealth since the enactment of Act 126 of 2014 and reconfirmed by Act 52 in 2016.

PIOGA, PGCC and PIPP assert in the April 25 Commonwealth Court petition that the EQB, the entity that formally promulgates DEP's regulations, "failed to undertake the VOC Rule separately and independently of unconventional wells or other subjects when it adopted the proposed rule for publication in the *Pa. Bulletin* on May 23, 2020, and has proceeded with its unlawful rulemaking to this day."

Additionally, the EQB did not make RACT determinations for VOC emissions sources related to conventional oil and gas wells separately and independently of those for unconventional wells.

Further, as part of the rulemaking package the board failed to submit a regulatory analysis form (RAF) restricted to the justification for, and impact of, the rule on conventional oil and gas wells, "and the failure to provide that statutorily required information to IRRC and the public continues to this day," the three associations told the court.

Previous PIOGA and PGCC comments

This is not the first time the industry has objected that EQB, acting through DEP, is not complying with Act 52 with this rulemaking. When EQB published the proposed VOC rule for public comment in May 2020, PIOGA submitted comments highlighting the department's noncompliance with Act 52. Similarly, PCGG submitted comments concluding that based on its understanding of Section 7(b) of Act 52, the proposed rule would not apply to conventional oil and gas operations, and provided this concise explanation of the basis for the associations' lawsuit:

The procedural failure to treat the conventional industry via a separate regulatory framework and the consequential failure to properly interface with the industry, has corrupted the rule-making process, at least to the extent the process purports to relate to the conventional oil and gas well industry. That corruption is a bell that cannot be unrung no matter what comments PGCC submits today and no matter what

response DEP might provide to those comments. Indeed, the substantive comments PGCC submits, below, are necessarily handicapped because PGCC lacks the benefit of interface with DEP to understand the applicability of the proposed rule, its scope, what conditions DEP assumed to arrive at cost estimates, what data, if any, DEP has assembled relative to conventional oil and gas industry emissions, and the like, and DEP lacks the interface with the industry to have appropriately discussed need, costs, prevailing conditions, data, alternatives and the like.

Despite these objections, the EQB on March 15, 2022, approved the rulemaking without limiting the scope to preclude its application to the conventional industry.

Flawed reasoning for disregarding Act 52

Indeed, in the comment and response document prepared ahead of consideration of the final rule, the EQB uses reasoning and arguments that fall apart under even minimal scrutiny. For example, the EQB discounts the applicability of the 2016 law, by attempting to distinguish a "well" from a "well site" in a misplaced effort to avoid Act 52's unambiguous mandate. "But the plain meaning of the phrase 'concerning conventional oil and gas wells' is clear and unambiguous, and it must include well sites, as a well cannot exist without a well site," the three associations state in the petition to the Commonwealth Court. EQB also mistakenly relies upon provi-



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sions of Act 52 applicable to the PA Crude Development Advisory Council (CDAC) and DEP to try to limit the scope of the clear language of the provisions applicable only to EQB.

“Act 52 plainly requires EQB rulemakings concerning both conventional oil and gas wells and unconventional wells to be undertaken in a manner that separately and independently address the differences between the two types of wells,” the producer groups assert.

The producers’ filing also points out there is no conflict between the EQB’s obligations under Act 52 and its obligations under the federal Clean Air Act (CAA) and the U.S. Environmental Protection Agency’s 2016 Oil and Gas Control Technique Guidelines (CTG) that were the impetus for Pennsylvania’s VOC rulemaking. The CAA and the EPA’s 2016 CTG allow and require consideration of alternatives within source categories.

“EQB could have complied with both federal substantive law under the CAA and the 2016 O&G CTG and Pennsylvania procedural law mandated by Section 7(b) of Act 552 and the RRA, but it chose not to do so,” the associations state. “The failure of EQB to formulate the regulations required by the CAA and the 2016 O&G CTG in a timely manner to avoid the imposition of federal sanctions is the fault of EQB—not the Conventional Producers and their members—and does not excuse EQB’s failure to comply with the mandated of Section 7(b) of Act 52.”

The three associations ask that the Commonwealth Court declare the VOC rulemaking unlawful to the extent that it applies to conventional oil and gas wells, well sites and associated equipment and emission sources as well as to immediately halt final implementation of the regulation if its applicability is not limited to unconventional wells, well sites and associated equipment and emission sources.

A hearing on the associations’ requests for expedited relief and a preliminary injunction against publication of the final rule as it is now written was scheduled for May 10 in Commonwealth Court.

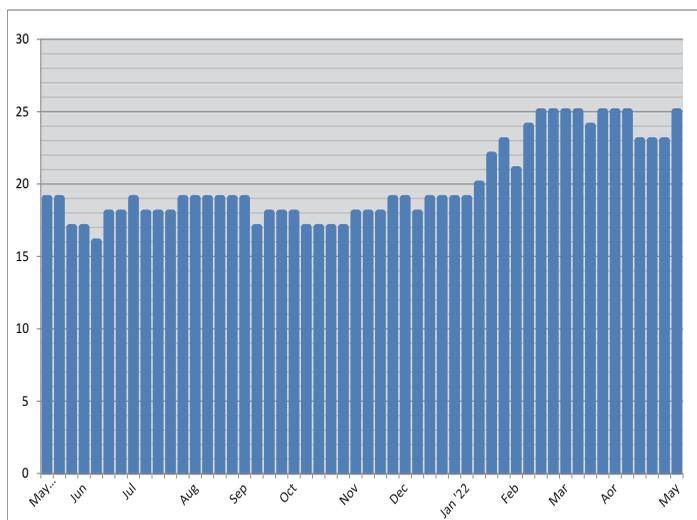
On May 5, DEP/EQB filed an answer to the association’s requests. PIOGA General Counsel Kevin Moody had these comments on that filing: “It doesn’t answer the factual statements in our petition, and it addresses issues involved in the 2016 PIPP litigation concerning the 2014 Fiscal Code provision that required separate regulatory treatment for conventional wells, and even attaches a copy of the judge’s decision in that litigation. But it doesn’t help the court’s consideration of our requests because it doesn’t address the issues involved in *this* litigation.”

On May 6, the associations and DEP/EQB asked the court to continue the May 10 hearing and stay all deadlines concerning the hearing, as DEP is reevaluating the final rulemaking and intends to resubmit it to EQB. The May 6 joint filing also asks the court to require the associations and DEP/EQB to file, no later than June 3, a status report regarding their settlement discussions.

PIOGA, PIPP and PGCC are represented by PIOGA member Babst Calland in this action. ■

Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices



Natural Gas Futures Closing Prices

Month	Price
June	\$7.030
July	7.108
August	7.125
September	7.090
October	7.122
November	7.217
December	7.354
January 2023	7.453
February	7.139
March	6.199
April	4.570
May	4.411

Prices as of May 9

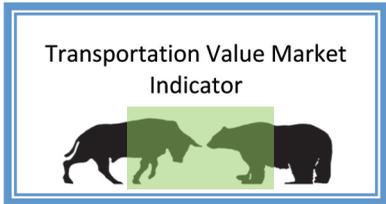
Sources

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
 NYMEX strip chart: Mid American Natural Resources

Northeast Pricing Report — April 2022

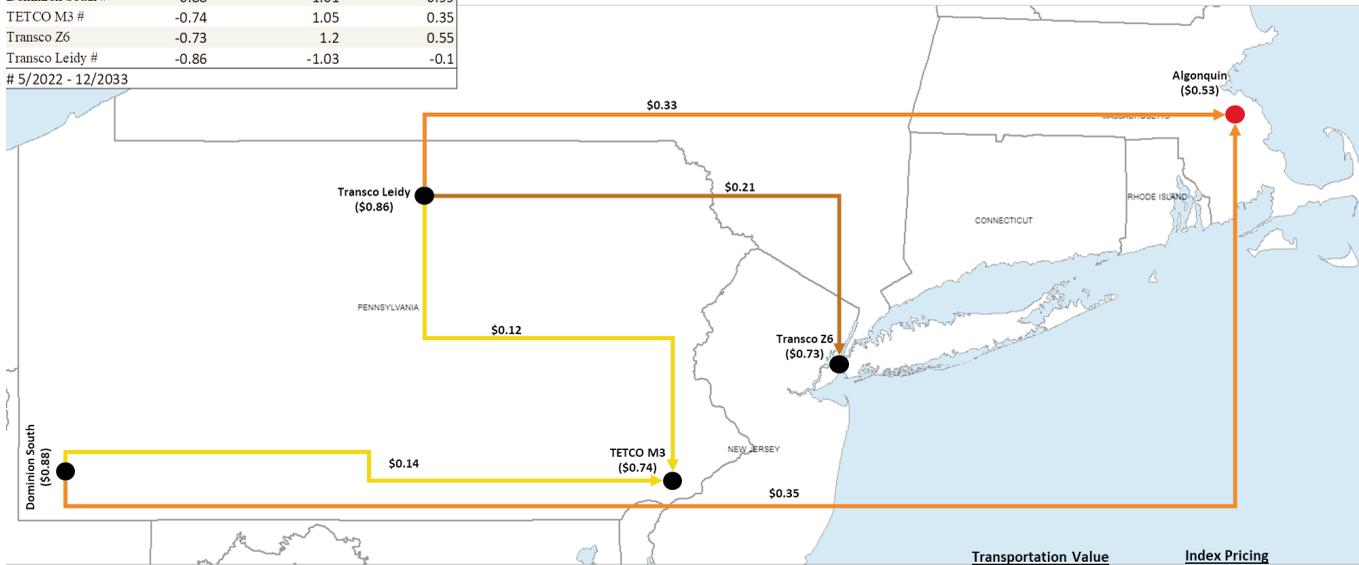
The only pricing point that decreased in front month trading was Algonquin, which decreased \$0.23 per MMBtu. Surprisingly though, none of the other indices increased substantially. Transco Leidy gained the most at \$0.09 per MMBtu. One-year trading, however, saw a significant increase for Transco M3 and Z6. Both increased \$0.51 per MMBtu. Dominion South and Transco Leidy decreased by \$0.08 and \$0.07 per MMBtu. Long-term pricing had some unusually substantial changes. Dominion South had an unexpectedly significant decrease of \$0.14 per MMBtu, while Transco Leidy increased \$0.77 per MMBtu. Algonquin increased \$0.36 per MMBtu. TETCO M3 gained \$0.21 per MMBtu.

Transportation values continue to drop for the third month in a row. Dominion South to TETCO M3 managed an increase of \$0.01 per MMBtu. Transco Leidy to Algonquin decreased at \$0.32 per MMBtu. Dominion South to Algonquin also decreased a sizeable amount at \$0.24 per MMBtu. Transco Leidy to Transco Z6 and TETCO M3 lost \$0.08 and \$0.07 per MMBtu, respectively. However, TETCO M3 to Transco Z6 decreased a mere \$0.01 per MMBtu.



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

Location	Natural Gas Basis Future Pricing		
	Pricing Term		
	5/2022	5/2022-4/2023	5/2022-12/2027
Algonquin	-0.53		5.74
Dominion South #	-0.88	-1.01	-0.99
TETCO M3 #	-0.74	1.05	0.35
Transco Z6	-0.73	1.2	0.55
Transco Leidy #	-0.86	-1.03	-0.1
# 5/2022 - 12/2023			

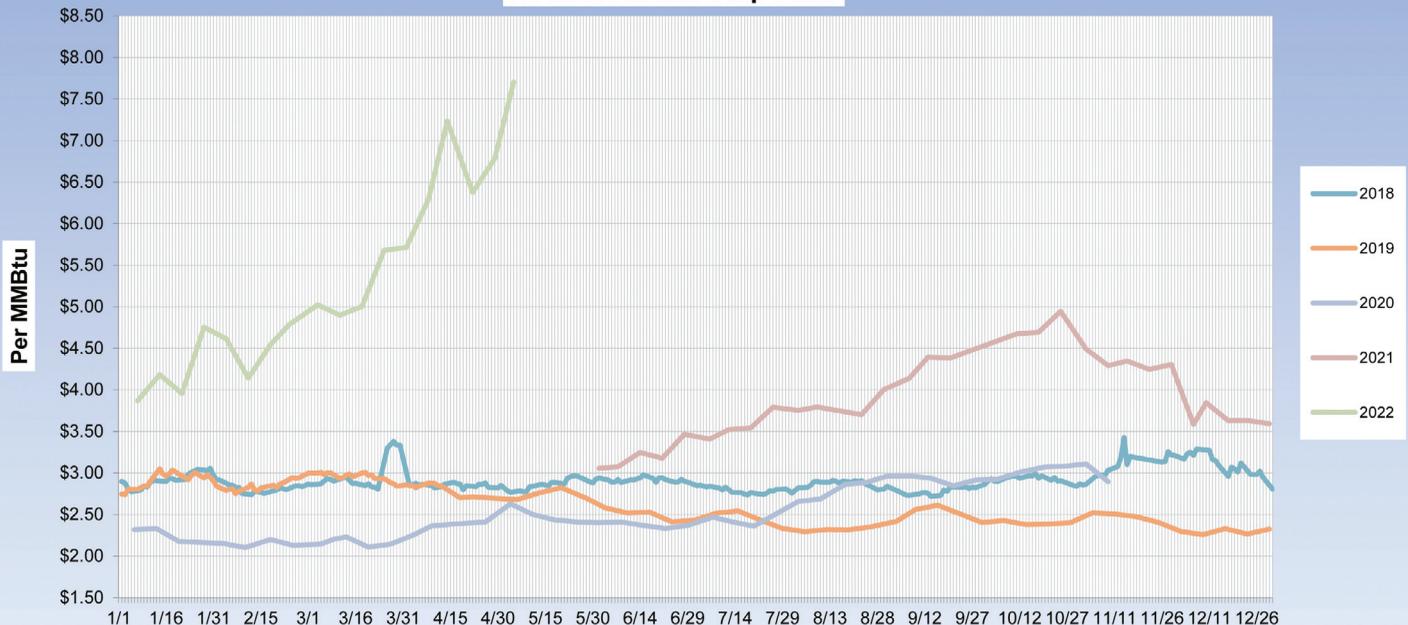


Pricing as of April 27, 2022 Future contract only; Source ICE End of Day Report

Transportation Value
→ High
→ Middle
→ Low

Index Pricing
● Increasing
● Decreasing

NYMEX Annual Strip Price



Spud Report: March*-April



The data show below comes from the Department of Environmental Protection. A variety of interactive reports are

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY		
Apex Energy (PA) LLC	2	4/8/22	129-29139	Westmoreland	Hempfield Twp		
		4/8/22	129-29138	Westmoreland	Hempfield Twp		
B&B Resources	2	4/12/22	123-48618*	Warren	Pleasant Twp		
		4/26/22	123-48619*	Warren	Pleasant Twp		
Bald Hill Oil	2	3/7/22	053-30945*	Forest	Howe Twp		
		3/17/22	053-30946*	Forest	Howe Twp		
Bearcat Oil Co LLC	1	4/27/22	123-48522*	Warren	Mead Twp		
		3/1/22	083-57377*	McKean	Hamilton Twp		
Blackhawk Energy LLC	3	3/11/22	083-57378*	McKean	Hamilton Twp		
		4/27/22	083-57376*	McKean	Hamilton Twp		
		3/7/22	053-30955*	Forest	Howe Twp		
Cameron Energy Co	4	3/23/22	053-30954*	Forest	Howe Twp		
		3/30/22	053-30951*	Forest	Howe Twp		
		4/19/22	053-30952*	Forest	Howe Twp		
Chesapeake Appalachia LLC	18	4/4/22	015-23622	Bradford	Leroy Twp		
		4/4/22	015-23647	Bradford	Leroy Twp		
		4/4/22	015-23646	Bradford	Leroy Twp		
		4/13/22	015-23720	Bradford	Leroy Twp		
		4/13/22	015-23721	Bradford	Leroy Twp		
		4/13/22	015-23687	Bradford	Leroy Twp		
		4/27/22	015-23724	Bradford	Monroe Twp		
		4/27/22	015-23725	Bradford	Monroe Twp		
		4/28/22	015-23726	Bradford	Monroe Twp		
		4/28/22	015-23688	Bradford	Monroe Twp		
		4/29/22	015-23728	Bradford	Monroe Twp		
		4/29/22	015-23727	Bradford	Monroe Twp		
		4/21/22	113-20454	Sullivan	Elkland Twp		
		4/21/22	113-20453	Sullivan	Elkland Twp		
		3/26/22	115-22862	Susquehanna	Auburn Twp		
		3/26/22	115-22863	Susquehanna	Auburn Twp		
		3/26/22	115-22861	Susquehanna	Auburn Twp		
		Coterra Energy Inc	19	3/26/22	115-22860	Susquehanna	Auburn Twp
4/14/22	115-22659			Susquehanna	Brooklyn Twp		
4/14/22	115-22661			Susquehanna	Brooklyn Twp		
4/14/22	115-22660			Susquehanna	Brooklyn Twp		
4/14/22	115-22662			Susquehanna	Brooklyn Twp		
4/14/22	115-22663			Susquehanna	Brooklyn Twp		
4/14/22	115-22671			Susquehanna	Brooklyn Twp		
3/25/22	115-22951			Susquehanna	Gibson Twp		
3/25/22	115-22952			Susquehanna	Gibson Twp		
3/25/22	115-22953			Susquehanna	Gibson Twp		
3/25/22	115-22954			Susquehanna	Gibson Twp		
3/25/22	115-22955			Susquehanna	Gibson Twp		
4/28/22	115-22966			Susquehanna	Gibson Twp		
4/28/22	115-22967			Susquehanna	Gibson Twp		
4/28/22	115-22968			Susquehanna	Gibson Twp		
4/28/22	115-22969			Susquehanna	Gibson Twp		
EQT Prod Co	8			4/28/22	115-22970	Susquehanna	Gibson Twp
				3/15/22	115-22907	Susquehanna	Springville Twp
		3/15/22	115-22908	Susquehanna	Springville Twp		
		3/15/22	115-22909	Susquehanna	Springville Twp		
		4/20/22	059-28176	Greene	Jackson Twp		
		4/20/22	059-28177	Greene	Jackson Twp		
		4/21/22	059-28180	Greene	Jackson Twp		
		4/21/22	059-28181	Greene	Jackson Twp		
		4/21/22	059-28182	Greene	Jackson Twp		
		4/21/22	059-28183	Greene	Jackson Twp		
		4/21/22	059-28178	Greene	Jackson Twp		
		4/21/22	059-28179	Greene	Jackson Twp		
INR Opr LLC	1	4/20/22	063-37537	Indiana	Armstrong Twp		
		4/28/22	123-48628*	Warren	Clarendon Boro		
Kylander Oil Inc	8	3/10/22	123-48629*	Warren	Glade Twp		
		3/18/22	123-48534*	Warren	Glade Twp		
		3/25/22	123-48537*	Warren	Glade Twp		
		3/31/22	123-48621*	Warren	Glade Twp		
		4/1/22	123-48538*	Warren	Glade Twp		
		4/14/22	123-48625*	Warren	Glade Twp		
		4/22/22	123-48661*	Warren	Glade Twp		
		4/7/22	123-48524*	Warren	Pleasant Twp		
MSL Oil & Gas Corp	4	4/13/22	123-48520*	Warren	Pleasant Twp		
		3/1/22	083-57338*	McKean	Hamilton Twp		
Olympus Energy, LLC	3	3/4/22	083-57340*	McKean	Hamilton Twp		
		3/10/22	083-57339*	McKean	Hamilton Twp		
		3/28/22	083-57337*	McKean	Hamilton Twp		
Olympus Energy, LLC	3	3/21/22	003-22616	Allegheny	Elizabeth Twp		
		3/21/22	003-22618	Allegheny	Elizabeth Twp		

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
PVE Oil Corp Inc	3	3/21/22	003-22617	Allegheny	Elizabeth Twp
		3/31/22	083-57261*	McKean	Sergeant Twp
		3/31/22	083-57252*	McKean	Sergeant Twp
Range Resources Appalachia	10	3/31/22	083-57253*	McKean	Sergeant Twp
		3/18/22	081-21922	Lycoming	Lewis Twp
		3/19/22	081-21920	Lycoming	Lewis Twp
Repsol Oil & Gas USA LLC	14	3/19/22	081-21923	Lycoming	Lewis Twp
		3/19/22	081-21921	Lycoming	Lewis Twp
		3/20/22	081-21924	Lycoming	Lewis Twp
		3/8/22	125-28978	Washington	Buffalo Twp
		3/8/22	125-28981	Washington	Buffalo Twp
		3/9/22	125-28979	Washington	Buffalo Twp
		3/9/22	125-28980	Washington	Buffalo Twp
		3/31/22	125-28960	Washington	Nottingham Twp
		4/18/22	015-23740	Bradford	Armenia Twp
		4/18/22	015-23736	Bradford	Armenia Twp
		4/18/22	015-23737	Bradford	Armenia Twp
		4/18/22	015-23738	Bradford	Armenia Twp
		4/18/22	015-23739	Bradford	Armenia Twp
		4/25/22	115-22918	Susquehanna	Rush Twp
Seneca Resources Co LLC	13	4/25/22	115-22934	Susquehanna	Rush Twp
		4/25/22	115-22935	Susquehanna	Rush Twp
		4/25/22	115-22938	Susquehanna	Rush Twp
		4/25/22	115-22939	Susquehanna	Rush Twp
		4/25/22	115-22940	Susquehanna	Rush Twp
		4/25/22	115-22941	Susquehanna	Rush Twp
		4/25/22	115-22942	Susquehanna	Rush Twp
		3/26/22	117-22155	Tioga	Ward Twp
		3/22/22	081-21925	Lycoming	Gamble Twp
		3/22/22	081-21926	Lycoming	Gamble Twp
		3/22/22	081-21933	Lycoming	Gamble Twp
		3/22/22	081-21935	Lycoming	Gamble Twp
		3/23/22	081-21929	Lycoming	Gamble Twp
3/23/22	081-21930	Lycoming	Gamble Twp		
Snyder Bros Inc	8	3/23/22	081-21932	Lycoming	Gamble Twp
		3/24/22	081-21936	Lycoming	Gamble Twp
		3/24/22	081-21937	Lycoming	Gamble Twp
		3/24/22	081-21934	Lycoming	Gamble Twp
		3/25/22	081-21927	Lycoming	Gamble Twp
		3/25/22	081-21928	Lycoming	Gamble Twp
		3/25/22	081-21931	Lycoming	Gamble Twp
		4/22/22	005-31411	Armstrong	South Buffalo Twp
		4/25/22	005-31422	Armstrong	South Buffalo Twp
		4/25/22	005-31423	Armstrong	South Buffalo Twp
SWN Prod Co LLC	4	4/25/22	005-31424	Armstrong	South Buffalo Twp
		4/25/22	005-31425	Armstrong	South Buffalo Twp
		4/26/22	005-31426	Armstrong	South Buffalo Twp
		4/26/22	005-31427	Armstrong	South Buffalo Twp
		4/26/22	005-31428	Armstrong	South Buffalo Twp
		3/15/22	115-22975	Susquehanna	Middletown Twp
		3/16/22	115-22977	Susquehanna	Middletown Twp
		3/17/22	115-22976	Susquehanna	Middletown Twp
Whilton, Brooks A	1	3/7/22	117-22163	Tioga	Westfield Twp
		4/21/22	123-48517*	Warren	Mead Twp

* Note: Due to database problems at DEP, the March information published last month was incomplete. This report contains the full spud list for March.

	April	March*	February	January	December	November
Total wells	69	61	51	65	49	62
Unconventional Gas	57	43	41	54	39	58
Conventional Gas	0	0	0	0	0	0
Oil	12	18	9	6	7	4
Combination Oil/Gas	0	0	1	5	3	0

Calendar

PIOGA events

Information: www.pioga.org > **PIOGA Events**

PIOGATech: Well, Pad and Pipeline Development Considerations

May 17, RLA Learning & Conference Center, Cranberry Twp.

Oil Patch Classic Golf Outing

June 16, Wanango Country Club, Reno

Pins & Pints/Summer Bowling Bash

July 21, Zone 28, Harmarville

PIOGATech: safety topic TBA

August 3, venue TBA

25th Annual Divot Diggers Golf Outing

August 18, Tam O'Shanter Golf Course, Hermitage

PIOGATech: Water and Waste Management

September 15, venue TBA

Fall Festival and Marcellus to Manufacturing

October 19, venue TBA

Annual Meeting and clay shoot

October 20, venue TBA

Annual Oil & Gas Tax and Accounting Seminar

November 16, venue TBA

PIOGATech: Air Quality

December 15, venue TBA

Mix, Mingle & Jingle Holiday Party

December 15, venue TBA

Other events

LDC Gas Forum Northeast

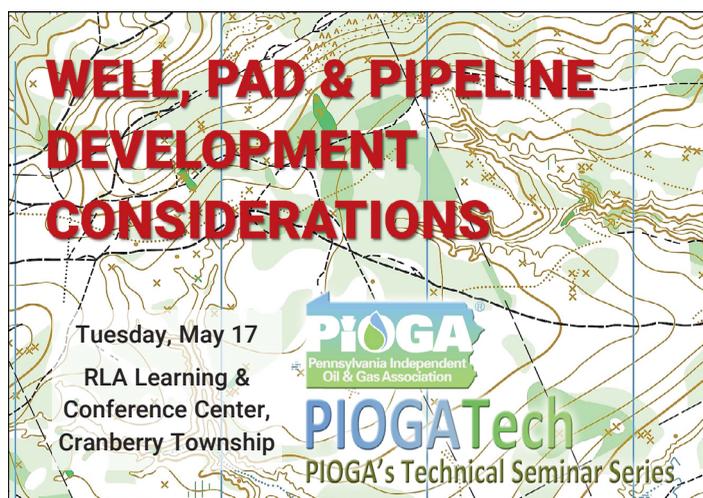
June 13-15, Boston. \$125 discount for PIOGA members
Info: pioga.org/event/2022-ldc-gas-forum-northeast

Ohio Oil & Gas Association Annual Meeting

June 21, Columbus, OH
Info: www.ooga.org/event/2021-annual-meeting

GO-WV Summer Meeting

August 7-9, The Greenbrier, White Sulphur Springs, WV
Info: gowv.com/events/2022-summer-meeting-registration



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