

The PIOGA Press

The monthly newsletter of the
Pennsylvania Independent Oil & Gas Association
January 2023 • Issue 153

PIOGA Giving

PIOGA Contributing to the Community!

PIOGA is proud to announce we raised \$1,000 from our basket raffle for the Dollar Energy Fund to assist families pay for their utility bills, a food donation to the North Hills Food Bank and a toy donation to Lighthouse Foundation. PIOGA extends a huge THANK YOU to all the members and staff that contributed this year to make this holiday season happier for those in need. Together we are strong and can accomplish remarkable things!



Partnering with The Lighthouse Foundation to spread holiday cheer

For the seventh year, PIOGA staff partnered with member company Print King to collect toys for our area's children through The Lighthouse Foundation. Every year, PIOGA staff step up in a big way to ensure no child goes without this holiday season. "As many families continue to struggle to make ends meet, the PIOGA staff recognizes the importance to a child of opening a present that contains a new toy or fun game and I'm proud of the PIOGA staff for their commitment to this effort," said Dan Weaver, president and executive director. Staff once again gave generously and appreciate the opportunity to donate to The Lighthouse Foundation that is doing great work on behalf of impoverished individuals and families in northern Allegheny and Butler Counties.

To learn more, go to www.thelighthouse-pa.org.



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Final 2022 PIOGATech held on Air Quality Compliance

On December 15, the Environmental Committee hosted their final PIOGATech training of the year focusing on Air Quality Compliance. The training was the eighth technical session over the past six years to address air quality compliance and the ever-changing regulations that our industry must comply with. Now more than ever, air quality compliance is a major focus federally and at the state level. The oil and gas industry must be prepared. A group from the oil and gas industry participated in the six-hour training that provided participants with an overview of the air quality regulations affecting the oil and gas industry. In addition, participants were able to learn about Air Permitting issues, incident response air monitoring considerations, BTEX reduction and elimination, advancements in methane detection/monitoring solutions and financial impacts of the IRA. The day wrapped up with a

discussion on EPA's proposed methane supplement. The group had a firsthand demonstration on detecting methane leaks using OGI cameras and a drone hosted by CleanAir Engineering and Civil & Environmental Consultants.

Thank you to Babst Calland, Civil and Environmental Consultants, Inc., CleanAir Engineering, Diversified Energy Company, Project Canary, Sommer Energy Technologies, SpiralX, and Spilman Thomas & Battle for putting together a truly relevant program and for providing their expertise on this important topic for our members.



See photos below from event - More photos are available for viewing at PIOGA's online photo gallery - <https://pioga.org/about/photo-galleries/>



Kris Macoskey from CEC, Inc. kicks off the day's training



Ali Lashgari from Project Canary discussing advancements in methane detection.



CleanAir Engineers – Methane Emissions Leak Detection demonstration



MIX, MINGLE & JINGLE



PIOGA's Holiday Party

On December 15th, PIOGA held the annual Mix, Mingle & Jingle Holiday event at The Chadwick in Wexford. Check out the pictures below! More photos are available for viewing at PIOGA's online photo gallery - <https://pioga.org/about/photo-galleries/>





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We Asked, You Answered, We Listened

In October 2022, PIOGA sent an online survey to all members. This survey served as a catalyst to better understand and better serve our membership.



The staff at PIOGA analyzed the survey responses and made changes that will be implemented starting this month, January 2023.

PIOGA is a member-driven organization and ultimately exists because of our membership. The survey gave our staff direct insight into the members concerns and needs. A majority of the survey responses indicated that members would like to reconstruct the committee meetings. Members showed concern over the committee meeting schedules, the committee impact and need for in-person meetings.

The below list showcases some of the survey responses, followed by the committee meeting changes and updated schedule.

Survey Responses:

Q: Engagement/Participation (if you do not engage in committee meetings – explain)

- 60% of respondents stated “lack of time”
- 37% of respondents stated “no existing committee that meets my interests/needs”
- The remaining respondents stated the “committee meetings are not held at a convenient time/location” and “don’t feel the committee’s work is relevant”

Q: How do you prefer to attend a committee meeting?

- 43% of respondents stated “In Person”
- 20% of respondents stated “Webinar”

- 14% of respondents stated “Conference Call Only”

- When given the option 60% of respondents selected “All of the above depending on schedule”

Q: If you do not attend committee meetings in person, can you share why you prefer attending virtually and is there something that might entice you to attend in person?

- The majority of respondents stated that it is more efficient to attend virtually and suggested scheduling all committee meetings on the same day to assist with scheduling and travel.

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PIOGA Member Benefit

Did you know as a PIOGA member you are entitled to one-on-one time with a seasoned professional attorney!



Kevin Moody, Esq., General Counsel & Vice President of Government Affairs at PIOGA, has been providing legal counsel to the association and its members since April 2011. First as outside counsel for 11 years and now General Counsel.

Moody is the core legal and business advisor to our association, bringing a broad skillset and industry knowledge to the resolution of matters affecting our industry, association, and members. He manages PIOGA's legal representation in litigation in state and federal courts, including personally representing PIOGA in most of our litigation, as well as PIOGA's trademarks.

How General Counsel Can Benefit You

Moody can provide legal advice and guidance to members on industry matters involving: public utility mergers/acquisitions & rates, terms and conditions of service; state and federal pipeline safety laws and regulations; PA One Call; Act 13 impact fees; Pennsylvania's Environmental Rights Amendment; zoning; Home Rule Charters; state regulatory agencies (DEP, DCNR, Game Commission, Fish & Boat Commission, PennDOT); federal regulatory agencies (EPA, DOE, FERC, Army Corps of Engineers, US Coast Guard, Forest Service); multistate/federal regulatory agencies (SRBC, DRBC); state and federal rulemakings; as well as issues involving oil and gas leases, royalties, taxes, and bankruptcy.

Contacting Moody can save members possibly hundreds of dollars in legal fees - these savings can repay the cost of their membership dues!

To contact Kevin Moody – kevin@pioga.org
717.234.8525 ■

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CHANGES - Committee Meetings

The 2nd Wednesday of each month our committees will meet on the same day (Market Development and Environmental Committees monthly and Safety Committee quarterly)

Wednesday Schedule:

9 am – 10:30 am – Market Development

10:45 am – 12:30 pm – Environmental

12:30 pm – 1:30 pm – Lunch (provided to those who attended two or more meetings on travel dates only)

1:30 pm – 2:45 pm – Safety (this meeting will only take place on a quarterly basis)

We will be meeting at PIOGA office (call-in option) for a majority of the year with a travel date every quarter. The virtual/call-in option will NOT be available on travel dates. Travel days will be in-person only meetings

Travel days will allow for meetings to be held in other regions of the state and offer a more educational/hands-on meeting experience

Committee Schedule for 2023: (** indicates no virtual/call-in option available. Travel date)

January 11 – PIOGA

February 8 – PIOGA

March 8 – The Chadwick, Wexford **

April 12 – PIOGA

May 10 – PIOGA

June 14 – American Refining Group (brief meeting and a tour) **

July – Everyone take off for summer break (unless a virtual meeting is requested by committee)

August 9 – PIOGA

September 13 – CEC, Inc. Monroeville **

October 11 – PIOGA

November 8 – PIOGA

December 13 – CNX, Southpointe **

PIOGA committee chairs and staff are hoping to see more people in-person in 2023! The committee meetings are a lot more collaborative and valuable when are members are in the same room. In-person attendance allows for better opportunities to network and brainstorm on industry issues, insights, and opportunities. On the following page (page 8) of the newsletter, is an article that lists the reasons why in-person meetings are important.

We are encouraging all members to join on the first Travel Day in March! Come participate, meet our Committee Chairs, and have lunch on us!

Please contact Deana McMahan at deana@pioga.org or 724-933-7306 ext. 23 if you are interested in joining a committee or have any questions. ■

Continues on page 8 - Benefits of In-Person Meetings

Face-To-Face Meetings: 9 Benefits and Why They're Important

Article by Indeed Editorial Team – published in April 2021 and updated in August 2022. For the complete article: [Face-To-Face Meetings: 9 Benefits and Why They're Important | Indeed.com](#)

In the digital age, you may wonder why face-to-face meetings are still relevant. Despite technological advancement, many businesses continue to opt for face-to-face, or in-person, meetings for various reasons: They facilitate more effective communication, help build strong relationships and increase engagement. If you want to lead, organize, or contribute to better workplace communication, learning how to conduct a productive face-to-face meeting can help you achieve your goals.

In this article, we discuss why face-to-face meetings are important today and explore their benefits.

The face-to-face meeting

Face-to-face meetings are important because businesses are built on relationships. While digital communication has advanced significantly in recent years, face-to-face meetings can still be critical components of building a strong culture, developing rapport with clients, and connecting with people on a deeper level.

Benefits of face-to-face meetings

Face-to-face meetings continue to be a popular option for businesses because of the many benefits they provide. Meeting face to face with coworkers, clients and colleagues can improve your ability to do the following:

1. Interpret nonverbal cues

Sometimes, the most important information isn't communicated through words. Meeting face to face allows you to interpret micro-behaviors such as facial expressions and gestures that can help you gauge how interested other people are in the conversation and give you insight into how they may be feeling.

You can use these nonverbal cues to guide your responses and the conversation. For example, if you're in a meeting with a client who

keeps checking their watch, you may choose to use a more exciting tone or change the topic to recapture their attention.

2. Come up with ideas

Collaboration happens more naturally when people can share ideas in person. Face-to-face meetings also make it easier for participants to tell when someone stops talking, so they may feel more confident adding in their own ideas.

It can also give participants the ability to visually illustrate their ideas on a whiteboard or piece of paper to make sure everyone understands their vision.

3. Limit technology issues

While technology certainly has its benefits, being able to hold a meeting without experiencing camera or audio difficulties, internet connection issues or other technical challenges can save time and limit stress.

4. Build new relationships

Strong relationships are the key to long-term business success. Meeting clients, coworkers and colleagues in person provides a sense of human interaction, which can help build trust and make it easier to form deeper connections.

5. Engage in purposeful small talk

Small talk often gets overlooked in digital communications but taking the time to ask someone how their day is going or what they have planned for the weekend can show them that you care and help you find common interests that can strengthen your relationship.

It may also help you gather information that could be useful for a future project or proposal.

6. Address sensitive issues

When you need to address a sensitive issue, meeting in person can help you explain the

Continues on page 9

problem clearly without any misinterpretation. It can also be easier to express empathy and understanding, which may help you work through the issue together.

7. Communicate effectively

Face-to-face meetings make it easier to communicate effectively by providing participants with nonverbal cues and the ability to ask questions. This decreases the likelihood of misinterpreted texts, emails, or other communications. Consider meeting face to face to increase clarity in your organization.

8. Limit distractions

It's often easier to obtain someone's full attention when you are in the same environment. Face-to-face meetings encourage participants to stay focused, limit outside distractions and decrease the urge to multitask. Schedule a face-to-face meeting for important topics that require everyone's full attention.

9. Increase engagement and participation

Face-to-face meetings can increase engagement and participation by encouraging clients, coworkers, and colleagues to be fully present. When participants can see each other in person during a meeting, they are often more likely to contribute to the conversation. ■

PIOGA's Moody Named to the Government Relations Power 100 List

When it comes to government relations PIOGA continues to inform our members on the latest federal and state government news, along with representing member's interests on key industry issues. PIOGA's staff and committees work with regulators to achieve workable solutions to problems. One staff member Kevin Moody, Esq., General Counsel & Vice President of Government Affairs, deserves a huge congratulations on being named to the Government Relations Power 100 List by The City & State (cityandstatepa.com)



In City & States January 16th issue, Moody will be recognized as one of the top 100 professionals who operates at the intersection of politics and policy by working with elected officials at the municipal, county, state and federal levels. Moody helps to form legislation that benefits both industry organizations and Pennsylvanians in general. The individuals on this list have been selected through a process that involves research by their editorial staff and input from their 19-person City & State Advisory Board. ■

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www.pioga.org

Space Heater Safety Tips

Heating equipment is the second leading cause of home fires in the United States. More than 65,000 home fires are attributed to heating equipment each year. These fires result in hundreds of deaths, thousands of injuries and millions of dollars in property damage.

Portable electric space heaters can be a convenient source of supplemental heat for your home in cold weather. Unfortunately, they can pose significant fire and electric shock hazards if not used properly. Fire and electrical hazards can be caused by space heaters without adequate safety features, space heaters placed near combustibles, or space heaters that are improperly plugged in.

Safety should always be a top consideration when using space heaters. Here are some tips for keeping your home safe and warm when it's cold outside:

Make sure your space heater has the label showing that it is listed by a recognized testing laboratory.

Before using any space heater, read the manufacturer's instructions and warning labels carefully.

Inspect heaters for cracked or broken plugs or loose connections before each use. If frayed, worn or damaged, do not use the heater.

Never leave a space heater unattended. Turn it off when you're leaving a room or going to sleep, and don't let pets or children play too close to a space heater.

**SPACE
HEATER
SAFETY**



Space heaters are only meant to provide supplemental heat and should never be used to warm bedding, cook food, dry clothing or thaw pipes.

Install smoke alarms on every floor of your home and outside all sleeping areas and test them once a month.

Proper placement of space heaters is critical. Heaters must be kept at least three feet away from anything that can burn, including papers, clothing and rugs.

Locate space heaters out of high traffic areas and doorways where they may pose a tripping hazard.

Plug space heaters directly into a wall outlet. Do not use an extension cord or power strip, which could overheat and result in a fire. Do not plug any other electrical devices into the same outlet as the heater.

Place space heaters on level, flat surfaces. Never place heaters on cabinets, tables, furniture, or carpet, which can overheat and start a fire.

Always unplug and safely store the heater when it is not in use.

Article from Electrical Safety Foundation International -
<https://www.esfi.org/space-heater-safety-tips-2/> ■

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Become a 2023 PIOGA Partner

2023 PIOGA PARTNER LEVELS	Yearly Sponsorship Amount	Networking Events (5-7 per year) Comp tickets	Golf Events (2 per year) Comp tickets	Clay Events (2 per year) Comp tickets	PIOGA Meetings (1-2 per year) Comp tickets	Committee/ PIOGATech (4-6 per year) Comp tickets	Advertising discounts	Logo Recognition, website, newsletter, printed signage
KEYSTONE	\$10,000	2	2	2	2	2	30%	YES
EXECUTIVE	\$7,500	2			2	2	20%	YES
MEETINGS	\$5,000				4		10%	YES
GOLF	\$4,000		4					YES
CLAYS	\$4,000			4				YES
COMMITTEE/ PIOGATECH	\$3,500					2		Committee meetings, PIOGA Press and eWeekly
ENGINEER	\$2,500							PIOGA Meetings, PIOGA Press and eWeekly
DRILLER	\$1,500							PIOGA Meetings and PIOGA Press

We are pleased to announce the 2023 PIOGA Partners Program. The program was launched five years ago in response to member requests for a “one stop” yearlong event sponsorship option for budgetary purposes. The program also offers unique opportunities – like the Committee Partner—to both support the association’s work and make your company stand out all year long.

We also continue to offer traditional event-by-

event sponsorships.

The various Partner levels and their benefits are shown in the accompanying table. If you have any questions or are ready to sign on now, contact Debbie Oyler at debbie@pioga.org or 724-933-7306 ext. 22.

And finally, a big thank-you to the members who were 2022 PIOGA Partners. We greatly appreciate your support! ■

Don't forget your 2023 PIOGA dues

For most PIOGA members, now is the time to renew your membership for 2023. The 2023 dues renewal invoices have been sent via email and regular mail and were directed to the main contact of your company membership.

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 about how to increase the value of your membership, such as participating PIOGA committees and taking advantage of member discounts.

Thank you in advance for continuing to be a PIOGA member in 2023 and beyond. Questions about your membership? Contact Debbie Oyler, Director of Member Services, at debbie@pioga.org or 724-933-7306 ext. 22. ■

PIOGA asks PUC to reconsider its determination that all Class 1 gas gathering lines are subject to PA Act 127 registration and assessments

On December 8, 2022, the Pennsylvania Public Utility Commission (PUC) entered an order concerning PHMSA's Final Gas Gathering Rule published November 15, 2021 in the federal Register* which represented the culmination of a decade-long rulemaking by establishing new safety standards for previously unregulated onshore gas gathering lines. The Final Rule was the subject of an article by Babst Calland in the December 2021 issue of the PIOGA Press.*

The PUC's order* was issued to clarify "its jurisdiction over Class 1 gas gathering lines and certain liquified natural gas (LNG) facilities under the Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 et seq. or "Act 127" pursuant to PHMSA's Final Rule. Act 127 provides that amendments to Federal pipeline safety laws and regulations shall have the effect of amending or modifying the Commission-enforceable pipeline safety standards, effective 60 days after the effective date of the federal amendments, that is as of July 15, 2022.

The PUC's order (p.6) describes the two new categories of gathering lines created by the Final Rule, Type C lines and Type R lines:

- Type C lines are gathering lines in Class 1 locations that are 8.625 inches or greater in diameter and are (1) metallic, with a maximum allowable operating pressure (MAOP), producing a hoop stress of 20% or more of specified minimum yield strength; (2) metallic, with an MAOP greater than 125 psig if the hoop stress is unknown; or (3) non-metallic, with an MAOP greater than 125 psig.
- Type R lines are gas gathering pipelines in Class 1 or Class 2 locations with a diameter of less than 8.625 inches or operating below the

pressure or stress level criteria in the regulations.

A Class 1 location is an offshore pipeline or an onshore pipeline that has 10 or fewer buildings intended for human occupancy within a 1-mile-long class location unit. 49 C.F.R. § 192.5.

The PUC determined (Order, p.5) that the Final Rule extended federal regulation to all Class 1 gas gathering lines:

Type R lines are a catch-all category for the Part 191 reporting-only regulated onshore gas gathering lines in Class 1 or Class 2 locations that do not meet the definitions of Type A, Type B, or Type C lines. (Order, p.7)

[T]he Commission now has jurisdiction and authority under Act 127 to oversee a pipeline operator that owns or operates a Type C or Type R line and enforce its compliance with applicable Part 191 and Part 192 Federal pipeline safety laws, as implemented in 49 C.F.R. Subtitle B, Ch. 1, Subch. D (relating to pipeline safety). (Order, p.12)

Accordingly, the PUC ordered that all pipeline operators in Pennsylvania that own or operate a Class 1 gas gathering line: (i) by May 15, 2023 and by March 15th of each year thereafter, provide by email to the PUC's Bureau of Investigation & Enforcement Safety Division a copy of their Part 191 Annual Report filed with PHMSA; (ii) by March 31, 2023 and on March 31st of each year thereafter, file with the Commission an Annual Act 127 Registration Form; and (iii) pay their Act 127 annual assessment based on the pipeline operator's current Annual Registration Form within 30 days of the postmark date of the invoice. (Order, pp.15-16)

The Act 127 annual assessment covers the Commission's total costs of running its pipeline safety program, as adjusted to exclude costs otherwise reimbursed by the Federal

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**JUST
THE
FACTS**



The Pathway to Making Pennsylvania the Keystone to America's Energy Future

As Pennsylvania turns the page on a new year, including the inauguration of a new governor and the swearing in of about 50 new members of the legislature, it makes sense to take a fresh look at a number of important and positive energy developments in the Commonwealth that have the potential to grow the state's economy, provide jobs and improve our country's energy security. The benefits to Pennsylvania of a strong energy sector cannot be underestimated, and in turn can be realized, with policies that recognize this importance and value.

Some of these opportunities are immediately apparent, others can be achieved in the short-term

and a few are projected for the future, but they can continue to make the Commonwealth one of the nation's leaders in energy production, manufacturing and promising technologies.

Policy makers in Pennsylvania and the U.S. as a whole need to recognize the important role oil and natural gas play in our modern society – as an energy source and as the essential ingredients to thousands of important products – and take the steps to ensure our country can remain the dominant producer of these commodities.

To read more from this month's Just the Facts – and to share it with friends and colleagues – visit the Latest News and Blog section at pioga.org.



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PUC *Continued from page 12*

Government. So for what the PUC has described as the “newly jurisdictional Class 1 gas gathering pipeline operators,” the PUC has concluded that it “must determine an appropriate annual assessment based on intrastate regulated onshore gathering pipeline miles to collect the pipeline operator’s portion of the Commission’s gas pipeline safety program.” (Order, p.13) (emphasis added)

On December 23, 2022, PIOGA asked the PUC to reconsider its determination that new Type R reporting-only gas gathering lines are “regulated onshore gathering lines” under the Federal pipeline safety laws, and therefore “regulated under Federal pipeline safety laws” and subject to Act 127 registration and assessment. The basis for PIOGA’s request is that, under the Federal pipeline safety laws, the term “regulated onshore gathering lines” means gathering lines that are safety-regulated under Part 192 of the Federal regulations and do not include gathering lines that are subject only to reporting under Part 191.

PIOGA pointed out that PHMSA imposed the Part 191 reporting requirements on Type R lines under its administrative information gathering authority, 49 U.S.C. § 60117(b), and created the new Type C regulated onshore gathering line category under its substantive rulemaking authority, 49 U.S.C. § 60102(a)(2), and per 49 U.S.C. §§ 60101(a)(21) and (b). PHMSA’s administrative information gathering authority states: “The Secretary may require owners and operators of gathering lines to provide the Secretary information pertinent to the Secretary’s ability to make a determination as to whether and to what extent to regulate gathering lines.” PIOGA pointed out that PHMSA made this clear in the Final Rule:

This information-gathering process is precisely what the NPRM proposed—to gather information on all gathering lines that would enable PHMSA to make informed judgments about the need for, and scope, of potential regulation.

*Congress intended that the Secretary have the authority to request information from operators of **unregulated gathering lines** in order to help determine “what additional gathering lines should be regulated.” PHMSA seeks to obtain information regarding current risks to people, property, and the environment due to **unregulated rural gathering lines** to determine whether rural gathering lines are presenting unacceptable risk **that would warrant additional regulations**. The information contained in annual and incident reports submitted by operators under part 191 would reasonably help achieve this objective. [citing Federal Register 86, p. 63275 (emphasis added)]*

Accordingly, PIOGA asked the PUC to determine that Type R lines in Class 1 locations are not regulated onshore gathering lines subject to Act 127, pointing out that Type R lines do not implicate the PUC’s gas pipeline safety program and therefore should not have to pay any portion of the costs of that program.

While answers to PIOGA’s reconsideration request, which can be found here:

<https://www.puc.pa.gov/pcdocs/1768682.pdf>, must be filed within 10 days after service of the request, there is no deadline for the PUC to act on the request. ■

*** (Links - notated in article by *)**

Register - (<https://www.govinfo.gov/content/pkg/FR-2021-11-15/pdf/2021-24240.pdf>)

PIOGA Press Reference - (PHMSA releases long-awaited final rule for onshore gas gathering lines, https://pioga.org/publication_file/PIOGA_Press_140_December_2021.pdf, p.7)

PUC’s Order Reference - available at <https://www.puc.pa.gov/pcdocs/1767166.pdf>,



PIOGA Member Profile: *Share Your Story!*



Welcome to PIOGA! We would like to offer you the opportunity to introduce yourself to other members via our monthly newsletter, *The PIOGA Press*. The PIOGA Profile section of the newsletter gives members a chance to share information about their company and the products and services they offer to others in Pennsylvania's oil and natural gas industry. We encourage you to take advantage of this free member service.

PIOGA Profile submission guidelines

- Include a brief history of your company. When and where was the company founded, and by whom? Is the company new to the oil and gas industry in general or to Pennsylvania?
- Describe the products and services you offer specifically for the oil and gas industry. Do you have a product in particular that sets your company apart from the competition, or a new product you would like to highlight?
- If applicable, tell how the business has been positively impacted by Pennsylvania's oil and gas industry? Have you expanded, added employees or opened new locations?
- Include a website address and/or phone for readers to use.
- Your submission may be a maximum of 400-450 words and should be provided as a Word document. Please use minimal formatting—bold and italic fonts are fine, as are bulleted or numbered lists. Your submission is subject to editing for length, clarity and appropriateness.
- Include your company logo or a photo. Images should be high-resolution (300 dots/pixels per inch or higher) and in any common graphics format. Please include identifications for any people or products in a photo. Send image files separately, not embedded in your document.
- All material should be emailed to **Meghan Keely, PIOGA Director of Internal Communications, at meghan@pioga.org**. Your submission will be confirmed on receipt, and we will use submissions in the order in which they are received. This is a free service to our member companies and publishing dates are at the discretion of PIOGA. If you have questions or want to follow up on a submission, email Meghan or call 814-671-2484.

Interested in submitting articles, news releases or advertising for *The PIOGA Press*? Contact Meghan Keely at the email address or phone number shown above.

EPA and the Corps Finalize (the Next) New Definition of WOTUS

Published by Babst Calland - Authored by Lisa M. Bruderly, Esq.

Babst Calland
Attorneys at Law



Projects involving oil or natural gas development or pipeline construction require U.S. Army Corps of Engineers (Corps) permitting for impacts from crossing, or otherwise disturbing, federally regulated streams and wetlands. The extent of required federal permitting is dependent on the definition of “waters of the United States” (WOTUS), which determines federal jurisdiction under the Clean Water Act (CWA). Typically, the more impacts to federally regulated streams and wetlands, the more likely the permitting will cause project delays and increase expenses.

As one of their last actions for 2022, U. S. EPA and the Corps (the Agencies) released a pre-publication notice of a new definition of WOTUS on December 30, 2022. The new definition will become final 60 days after publication in the Federal Register .

Although the Agencies have promoted this final rule as establishing a “durable definition” that will “reduce uncertainty” in identifying WOTUS, this definition does not appear to provide much-needed clarity. Rather, generally speaking, the new definition codifies the approach that the Agencies have already been informally utilizing to determine WOTUS, which entails relying on the definition of WOTUS from the late 1980s, as interpreted by subsequent U. S. Supreme Court decisions (e.g., *Rapanos v. United States*, 547 U.S. 715 (2006)). The Agencies reverted back to this definition in August of 2021, when the U.S. District Court for the District of Arizona vacated the definition of WOTUS promulgated by President Trump’s administration, referred to as the Navigable Waters Protection Rule (NWPR).

The Agencies’ current approach to interpreting WOTUS relies heavily on both of the frequently discussed tests identified in the *Rapanos* decision. In *Rapanos*, Justice Antonin Scalia issued the plurality opinion, holding that WOTUS would

include only “relatively permanent, standing or continuously flowing bodies of water” connected to traditional navigable waters, and to “wetlands with a continuous surface connection to such relatively permanent waters” (i.e., adjacent wetlands). Justice Anthony Kennedy, however, advanced a broader interpretation of WOTUS in his concurring opinion, which was based on the concept of a “significant nexus,” meaning that wetlands should be considered as WOTUS “if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered water.”

President Biden’s new definition directly quotes and codifies these tests as regulations that may be relied upon to support a WOTUS determination. Publication of this definition, at this time, is likely a preemptive move by the Agencies in advance of the Supreme Court’s impending decision in *Sackett v. EPA*, a case in which the Court is considering whether the Ninth Circuit “set forth the proper test for determining whether wetlands are ‘waters of the United States.’” Some have speculated that the U. S. Supreme Court’s opinion may support a more narrow interpretation of WOTUS than is currently being implemented by the Agencies. If true, this inconsistency would create even more uncertainty in identifying WOTUS.

While this new WOTUS definition may not, conceptually, be a significant change to how the Agencies approach regulating streams and wetlands, the new definition could expand how the Agencies evaluate whether a wetland is “adjacent” to a WOTUS and whether a waterbody will “significantly affect” a WOTUS, both of which would support federal jurisdiction of the

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Articles of Interest

Link to Article : <https://www.pennlive.com/news/2023/01/meet-the-2023-24-pa-general-assembly-diversity-historic-firsts-and-a-doc-in-the-house.html>

Meet the 2023-24 Pa. General Assembly: Diversity, historic firsts and a doc in the House

Article was published by PennLive.com on January 3, 2023. Authored by Jan Murphy.

The official start of Pennsylvania's 2023-24 legislative session gets underway Tuesday with the most diverse complement of members ever and marking several historic firsts.

More lawmakers who are Black, Latino or South Asian will be taking the oath of office and women will assume notable leadership roles for the first time.

The legislature starts work short four members with the death of Allegheny County Democrat Rep. Tony DeLuca and the resignations of three members.

Former Allegheny County Democratic Reps. Summer Lee and Austin Davis will soon be sworn in as a member of Congress and lieutenant governor, respectively. Columbia County Republican Sen. John Gordner vacated his seat to become counsel to incoming Senate President Pro Tempore Kim Ward, R-Westmoreland County.

Those seats will be filled in upcoming special elections when the winners will join a collection of lawyers, business owners, community activists, health care professionals, a former professional basketball player, and farmers who make up the new legislature.

Who are the members of the new General Assembly? Here are some fast facts:

Oldest member: It appears we have a tie. Both Lycoming County Republican Sen. Gene Yaw and Bradford County Republican Rep.-elect Tina Pickett begin the session with 79 years of life experience behind them.

Youngest member: The state constitution establishes 25 as the minimum age for a senator and 21 for a representative. In the House, the youngest member is incoming Luzerne County Republican Rep.-elect Alec Ryncavage

who only became eligible for a House seat in March when he turned 21. In the Senate, incoming Lehigh County Democrat Sen.-elect Nick Miller ranks as the youngest. He is 28 years old.

Longest serving member: The dean among Senate Democrats is Philadelphia's Vincent Hughes, who has served in the chamber since 1994. Among Senate Republicans, Luzerne County Sen.-elect Lisa Baker, who took office in 2006, holds the title. In the House Democratic caucus, Northampton County Rep.-elect Robert Freeman, has logged 34 years in office. Among House Republicans, Centre County Rep.-elect Kerry Benninghoff has a quarter century of service under his belt.

Number of newbies: There are a lot of new faces in the General Assembly, including five new Republicans and one new Democrat in the 50-member Senate and 23 new Republicans and 26 new Democrats in the 203-member House.

20th Century Club: Membership in this "club" is limited to those whose legislative service began before the turn of the century. The House now has only six members and the Senate, has five members, although two more may qualify for having started in the House before 2000.

Women members: A record 79 women will be seated in the legislature, topping the 73 women seated in the last session. There are eight women in the Senate Republican caucus and eight in the Democratic caucus and 35 in the House Democratic Caucus and 28 in the House Republican Caucus.

Partisan breakdown: The Senate begins the session with 27 Republicans and 22 Democrats (one vacancy) while in the House, it begins with

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Harrisburg Update

The following update was written by Gmerek Government Relations, Inc.



While there has been much attention focused on Washington, DC, over the last few days with the inability of the U.S. House of Representatives to select a Speaker of the House of Representatives and begin the new legislative session, the start of the new 2023-2024 legislative session in Pennsylvania has created some historic firsts, some drama, and leaves many questions unanswered. As a result, we wanted to provide you the following update with our view of what is going on in Harrisburg:

In the Senate, Senator Kim Ward (R-Westmoreland) was unanimously elected as the first female to lead the Chamber. Additionally, with Lieutenant Governor John Fetterman's resignation on January 3 to take the oath of office as Pennsylvania's U.S. Senator, Senator Kim Ward was sworn in as Lieutenant Governor, an office she will hold until Austin Davis is sworn in on January 17. Also, the Senate Republicans and Democrats announced their leadership teams for the new legislative session. Those leadership teams, which we have provided to you in the past, were selected in internal caucus deliberations last year, but officially announced as part of the record for the new session. While most of the mood for the day was festive and bipartisan, the political partisanship surfaced when the Senate began to consider resolutions establishing the operating and administrative rules for the new 2023-2024 session. Several Democratic members proposed amendments to the rules offered by the Senate Republicans, such as expanding workplace protections on sexual harassment to include all individuals working in the Senate, extending the statute of limitations for filing a complaint from one to five years, and clarifying provisions on confidentiality and transparency and mandating public reporting of members expenses, etc. None of the proposed amendments was voted, but instead

referred to a committee for further review on a party-line vote, with Senate Republicans voting for the referral of the proposed amendment and the Senate Democrats opposing the referral and demanding a floor vote on the proposed amendment.

In the House of Representatives, January 3 was a day of uncertainty and drama as the House Democrats attempted to adjourn the House of Representatives until after a series of Special Elections are held.....that would clarify the balance of power in the Chamber. It failed by a vote of 100 to 100 with one Republican voting with the Democrats.

Since the House Republicans have 101 members (to 99 for the Democrats), they could have or should have been able to elect one of their own as Speaker, whether that would be for the next month or the next several months. However, they were not able to do that. So, the question is, what is the deal that was made...or more importantly, what deal did the Republican Leaders, Democrat Leaders, and Representative Mark Rozzi think they made? Republicans believe they made an agreement that Speaker Rozzi will be an Independent and that Republicans will continue to control the legislative calendar in an evenly split 101-101 Chamber. There are also legislators, Republicans and Democrats, who believe the deal was for equal representation on all House Committees. There is also a belief among some members and staff that Speaker Rozzi is a short-term Speaker and that Democrats will seek to reorganize upon establishing a Democrat constitutional majority after the three Special Elections are conducted. And, the Republican who nominated Representative Mark Rozzi also claimed that the House Republicans wrote the speech that Representative Mark Rozzi gave upon taking the oath as Speaker of

Continues on next page

the House of Representatives. Speaker Rozzi himself said that he would hire Republicans and Democrats as his staff and that he would call balls and strikes fairly. However, with several days having passed since the House of Representatives elected a Speaker, there are still no operating rules for the House of Representatives, Committee Chairs have not been assigned, and the Chamber has yet to even set the Session schedule for the spring legislative calendar.

What is interesting about Representative Rozzi's ascension from a member of the Democratic Caucus who did not have enough seniority to be a Committee Chair to now leading the Chamber was the fact that 16 members of the House Republican Caucus, including the entire House Republican leadership team, voted for Representative Rozzi over one of their own colleagues, Representative Carl Walker Metzgar (R-Somerset), as Speaker. The final vote was 115 to 85 for Representative Rozzi.

Those Republicans who voted for Rozzi were:

1. Bryan Cutler (R-Lancaster)- Republican Leader
2. Tim O'Neal (R-Washington)- Whip
3. Seth Grove (R-York)- Appropriations Committee Chair
4. George Dunbar (R-Westmoreland)- Caucus Chair
5. Josh Kail (R-Beaver/Washington)- Policy Committee Chair
6. Sheryl Delozier (R-Cumberland)- Caucus Administrator
7. Martina White (R-Philadelphia)- Caucus Secretary
8. Jim Gregory (R-Blair)
9. Doyle Heffley (R-Carbon)
10. Joe Hogan (R-Bucks)
11. Andrew Kuzma (R-Allegheny/Washington)
12. Kristin Marcell (R-Bucks)
13. Tom Mehaffie (R-Dauphin)
14. Donna Oberlander (R-Clarion/Armstrong/Forest)
15. Stephenie Scialabba (R-Butler)
16. Kathleen Tomlinson (R-Bucks)

Democratic leaders have been quick to point out to the media and their members that Representative Rozzi was recently reelected as a Democrat and will remain a Democrat. That's important because it will determine which party has a constitutional majority and control the House of Representatives in the short-term and throughout the session, as more members are planning to run for other seats outside of the House.....be they local seats back home or, in one case, a House member who wants to run for Senator Gordner's open Senate seat. Also, Speaker Rozzi's first action as Speaker was to issue two writs of election for the open Allegheny County House districts for Tuesday, February 7 as the election date for both seats, which was against what Bryan Cutler had issued, but similar to what Joanna McClinton had issued. So, it matters if Speaker Rozzi is an Independent or Democrat and it matters whether they reached an agreement as to who would control the chamber until the situation may change numerically. Will committees be controlled by Republicans since they have a 101 to 99 majority...or 101 to 98 majority if Speaker Rozzi changes his registration to Independent? Will committees be of equal number? Will the House reorganize after the three Special elections in order to elect Representative McClinton as the Speaker? These issues as to what was or was not agreed to is a growing question in Harrisburg. The bottom line? The fireworks have not ended.....and we believe that, perhaps, they are just beginning. For example, the courts need to issue a ruling in the lawsuit over the timing of the 3 Special Elections in Allegheny County, one which both Representatives McClinton and Cutler agree will occur on February 7 and the two in which there is no agreed upon date, but which Allegheny County is prepared to conduct on February 7. And we are curious to see if the House will come back to session next week, the week of January 9, and be able to vote on the opera-

Continues on page 20

Harrisburg *Continued from page 19*

tional rules of the House for the coming session.

On a final note, Governor-elect Shapiro continues to appoint his staffers and, as he does, we will continue to send you notices of these new staffers.... most of whom we know. What has been interesting so far is that there have only been a few holdovers from the Wolf Administration to join the Governor-elect's executive staff team. We also understand that the departmental secretaries and other high-ranking members of the Shapiro/Davis Administration will be announced this week and on through into next week. In fact, the first such announcement as a Cabinet Secretary came this morning, when Governor-elect Shapiro announced that Al Schmidt, a former Republican Philadelphia Elections Commissioner, will be his nominee as Secretary of the Commonwealth and serve as Pennsylvania's chief election official.

Update (1.9.23)

On Monday (1/9), the House of Representatives tried to convene because Governor Wolf called them into special session to pass a constitutional amendment that would open a two-year window for adult victims of childhood sexual abuse to file lawsuits.

When the House gathered, the first question was the rules of operation of the House as we noted in our update to you last week (above update/article) when we suggested that they might not be able to pass rules. They couldn't.

So, the House went out of session, and we now hear they may not be able to go back into session until those special elections are held... perhaps in February. We say perhaps in February, because the Court has still not ruled if all three will be in early February.

At the same time, Representative Gregory, who nominated his friend Representative Rozzi to be Speaker, today sent Speaker Rozzi a letter asking that he resign. Link([https://pioqa.org/publication_file/Speaker Rozzi Letter.pdf](https://pioqa.org/publication_file/Speaker_Rozzi_Letter.pdf)) to letter that was

sent by Representative Gregory to Speaker Rozzi.

Meanwhile, the Senate had a short session on Monday (1/9) and Governor-elect Shapiro nominated three more people to Cabinet positions:

1. Kahlid Mumim - Education Secretary
2. Nancy Walker - Labor & Industry Secretary
3. Neil Weaver - Secretary of Administration ■

Retail Energy Provider Marathon Energy Announces Rebrand, Changes Company Name to Energo!

Woodside, NY (January 4, 2023) - Marathon Energy, a full-service independent retail energy provider based in Woodside, New York, announced today it is changing its company name to Energo and unveiled a new logo. This change is in response to its accelerated growth, and only impacts the company name and logo. There is no change in ownership and in no way impacts or changes customer accounts.



“For us, “Energo” reflects our continuous forward movement – embracing innovation while evolving and pivoting on the go”, stated Jerry Drenis, President and CEO of Energo. “Since our beginning, nearly three decades ago, our entrepreneurial spirit and unparalleled customer service has driven us to innovate and expand. Therefore, as we prepare for the future, we want to embrace our evolution, transformation and growth with a refreshed look and feel”, Drenis added.

“The transition to Energo is an initial step in a new and exciting chapter of our company” stated Drenis. “We’re thrilled to introduce the uniqueness that Energo brings to the market – providing full-service energy solutions to customers on the go”.

The company’s journey started in 1995 with a vision to provide heating oil and mechanical services to customers in the New York City Metro Area – a company based on reliability, integrity, and service. Today, the company’s geographic reach has stretched beyond N.Y.C., serving customers throughout New York, New Jersey, Pennsylvania, and Maryland. Their service offerings have expanded providing a full suite of energy products including heating oil, diesel, gasoline, natural gas, electricity, propane, renewable energy, and other value-added services. Their team has also grown and consists of highly talented and experienced energy experts and professionals – some of the best in the business.

Today’s announcement marks another milestone in the evolution of the company. In 2018, the company extended their reach into Upstate New York, Eastern Pennsylvania, and New Jersey through a transaction with BlueRock Energy, as well as the purchase of Ambassador Fuel in the Bronx. In 2020, the company expanded into Western New York and Western Pennsylvania with the acquisition of certain assets and the customer book of National Fuel Resources, Inc.

About Energo

Energo, formerly Marathon Energy, is a full-service independent retail energy provider serving customers throughout New York, New Jersey, Pennsylvania, and Maryland. The company offers a wide variety of energy solutions. From heating oil to propane, natural gas to electricity, diesel, gasoline, renewable energy, and other value-added services, Energo is a one-stop-shop for energy solutions. For more information, visit energo.com.

Pa. General Assembly *Continued from page 17*

101 Republicans and 99 Democrats (three vacancies).

Among the firsts: The House will seat its first Indian American member, Rep.-elect Arvind Venkat, D-Allegheny County, and its first out lesbian, Rep.-elect La'Tasha Mayes, D-Allegheny County. In the Senate, Sen. Kim Ward, R-Westmoreland County, will become the first female to serve as president pro tempore in Pennsylvania. Sen. Amanda Cappelletti, who is expecting a baby this spring, is believed to be the first sitting senator to give birth while in office.

Other fun facts:

- Sen.-elect Greg Rothman, R-Cumberland County, is serving in the same chamber where his third cousin, Lancaster County Sen. John Galen Homsher, was president pro tempore in 1923-25 and 1935-36.

- Sen. Scott Martin, R-Lancaster County, is related to the famed General Omar Bradley, who commanded all U.S. ground troops from the invasion of Normandy till the end of World War II.

- Sen.-elect Pat Stefano, R-Fayette County, has been a member of the Molinaro Marching Band of Connellsville for 39 years. The band originated as the St. Rita Italian Marching Band in 1913 and will be 110 years old.

- The maternal grandfather of Sen. Scott Hutchinson, R-Venango County, emigrated from Ukraine to work in the coal mines of Clearfield County.

- Firefighting is in the blood of Sen.-elect Frank Farry, R-Bucks County. He is a third generation firefighter from both sides of his family and has served as a firefighter for over three decades, including the past 22 years as a fire chief.

- Sen.-elect Lisa Baker's Pennsylvania roots go back to 1682. The Luzerne County Republican's ancestors, the Buckman family, arrived at the colony of Pennsylvania aboard

"The Welcome" with William Penn.

- Sen.-elect Camera Bartolotta, R-Washington County, was an actress/extra while in college in California and appeared on "Cheers," "Love Boat," "TJ Hooker" and "A-Team," among other TV shows.

- Sen. Vincent Hughes, D-Philadelphia, is married to Emmy Award-winner Sheryl Lee Ralph, whose acceptance speech last year for her role in the TV show "Abbott Elementary" drew as much attention as her performance on the hit show.

- Rep.-elect Milou Mackenzie, R-Northampton County, and her son, Rep.-elect Ryan Mackenzie, R-Lehigh County both won reelection. They are the only known mother and son duo to serve in the legislature.

- There is a doctor in the House. Rep.-elect Arvind Venkat, D-Allegheny County is an emergency room physician and professor of medicine at Drexel University.

- Three House members are being sworn in with eyes on other offices. They are: Rep.-elect Lynda Schlegel Culver, R-Northumberland County, who is the GOP nominee for the open 27th state senatorial district seat; Rep.-elect Amen Brown, D-Philadelphia, who has announced his candidacy for Philadelphia mayor; and Rep.-elect Sara Innamorato, D-Allegheny County, who announced her interest in becoming Allegheny County executive. ■

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OLD REPUBLIC INSURANCE GROUP

Halloran Philanthropies gives \$700,000 to Pitt-Bradford for new building



Halloran Philanthropies has given a gift of \$700,000 to the University of Pittsburgh at Bradford to be used to complete the construction of and purchase specialized equipment for the new George B. Duke Engineering and Information Technologies Building.

The gift will be used in part to equip the fluid dynamics lab and makerspace, two of several unique and innovative spaces in the new building, with several pieces, including a wind tunnel and 3D printing and scanning for rapid prototyping.

“When our father Harry Halloran Jr. passed nearly one year ago, he left a rich legacy of philanthropy, vision and entrepreneurship,” said Brian Halloran, executive director of Halloran Philanthropies and one of Harry’s four sons.

Neil Halloran added, “Our father was a businessperson, a philanthropist, a big thinker and a kind soul. He pursued so many interests, launched so many ventures and impacted so many lives. Harry was always enthusiastically supportive of efforts to promote economic growth in Bradford, especially when it involved entrepreneurship and technological innovation.”

In that spirit, Halloran Philanthropies gears its giving toward business tools and educational programs to empower individuals who can make a difference.

These new labs, as well as the rest of the building, will open to students when the spring semester starts on Jan. 9. The Duke Building will be home to the university’s two new engineering technology majors — mechanical engineering technology and energy engineering technology — as well as the existing programs of computer information systems and technology, energy science and technology, and information systems.

“We are deeply grateful to the Halloran family for their generosity and continuing support of our programs,” said Rick Esch, Pitt-Bradford’s president. “Halloran Philanthropies, which was founded by Harry Halloran Jr., has been a long-time and generous supporter of our campus. The Hallorans specifically chose to support these two spaces because Harry was actively involved in the renewable energy field and was passionate about the kinds of innovation that will occur in these two areas.”

The fluid dynamics lab and makerspace will be complementary spaces, allowing students to take their understanding of engineering principles and apply them throughout the process — from theory, simulation, design, prototype, development, manufacturing, and in situ validation. For example, students studying the optimization of steam turbine impeller design will be able to generate 3D printed prototypes of the design, verify simulation results in a wind tunnel, then manufacture a scaled model and validate the efficiency of the new design by implementing it into an actual Rankine cycle steam turbine power generation model equipped with data acquisition hardware.

Additionally, the makerspace will provide valuable opportunities to the community by filling a vital gap in resources for start-up manufacturers as well as established industries looking to enhance capabilities within product research and development. This community benefit also will enhance our students’ exposure to entrepreneurial endeavors and provide more opportunities to work with industry on projects, internships, and co-ops.

“Halloran Philanthropies uses a proven, multi-pronged approach that has boosted economies across the U.S. by putting in place what is

needed for entrepreneurs to put their ideas to work locally,” Brian Halloran said.

He added, “Pitt-Bradford is one of several critical components in building a flourishing entrepreneurial ecosystem in Bradford and McKean County. A successful ecosystem must combine entrepreneurship education, community engagement, investment opportunity, local institutional support and access to broader networks.”

Jon Giberson, president and chief operating officer at American Refining Group Inc. (ARG), said, “ARG’s Bradford refinery marked 25 years of ownership by the Halloran family this year and these principles Brian and Neil have identified are the foundation for how we approach business and corporate citizenship.

“This grant strengthens an already well-established and mutually beneficial partnership between Pitt-Bradford and our area’s businesses and industries, not just ARG,” Giberson added.

In addition to the makerspace and fluids dynamics lab, the new building will house several other innovative and specialized areas:

- A circuit lab with bench space for soldering, function generators, analog and digital microcontrollers, spectrum analyzer, and oscilloscopes.
- A measurements lab where students will be able to work with sensors and automation in a space containing programmable logic controllers, wireless sensing hardware, ultrasonic flaw detectors, and more.
- A machine shop with computer-controlled plasma cutter, CNC milling machines and lathes, variable speed drill presses, band saws, machine presses, disc and belt grinders, welders, and rapid prototype machines.
- A strength and materials lab, where students can test, measure, and destroy their creations by pulling, pushing, and hitting them with a compression/tension tester and a dynamic fatigue tester as well as testers for impact, hardness, and torque.

- An expanded Systems, Networks and Projects Lab — known as a SNAP Lab — to enable students to practice setting up small computer and data operation centers.

- A FLEX Lab to give students the space they need to gather data, perform analyses, and create virtual and scaled prototypes for new products and services.

- A virtual reality lab equipped with a presentation platform and a huge screen on which students can present projects as well as an 18-foot ceiling to allow for hanging sensors and cameras.

The building also will include several areas where students from different academic disciplines can collaborate, challenge and inspire each other, and turn their ideas to reality, including a two-story atrium, study rooms and a project lab.

A dedication for the Duke Building will be held March 31, which will give residents the opportunity to tour the new building and see the unique labs where students are working on innovative projects. ■



Halloran Philanthropies announced its \$700,000 gift to Pitt-Bradford on Tuesday at the American Refining Group Inc. (ARG) holiday dinner. Shown are (from left) ARG President and COO Jon Giberson, ARG Board of Directors Chairman Neil Halloran and Halloran Philanthropies Executive Director Brian Halloran.

WOTUS *Continued from page 16*

stream/wetland. The preamble to the new definition includes lengthy discussion regarding adjacent wetlands. In addition, the new definition of “significantly affect” enumerates five factors to be assessed and five functions to be considered in evaluating whether a potentially unregulated water will have a “material influence” on a traditionally navigable water. Factors include distance from the traditionally navigable water, hydrologic factors (e.g., frequency, duration, magnitude of hydrologic connection) and climatological variables (e.g., temperature and rainfall). Functions include contribution of flow, retention and attenuation of runoff and provision of habitat and food resources for aquatic species in traditionally navigable waters. Both the factors and the functions are broad and open to interpretation, which could lead to the Agencies asserting jurisdiction over more waterbodies.

The new definition also codifies that the effect of the potentially regulated water must be evaluated “alone or in combination with similarly situated waters in the region,” which will likely broaden how the Agencies evaluate the potential regulation of ephemeral and isolated waterbodies.

If the fate of the new WOTUS definition follows the same path as President Obama’s Clean Water Rule and President Trump’s Navigable Waters Protection Rule, the new definition will be challenged quickly after it becomes effective. These challenges may result in the stay or vacatur of the new definition. If this occurs, the Agencies may, again, revert back to the current definition of WOTUS.

Babst Calland will continue to follow these and other Clean Water Act developments. If you have any questions about these developments, contact Lisa Bruderly at 412-394-6495 or lbruderly@babst-calland.com. ■

Members talk about the value of PIOGA membership

Pipeliners Local 798 is a labor organization chartered on November 21, 1949. We provide skilled labor to the integral pipeline projects necessary to grid reliability in the United States. Our PIOGA membership allows labor and industry to join as a united front. A united front is essential to combat those who will stop at nothing to attack the natural gas industry. PIOGA membership has allowed me to speak in front of the Pennsylvania House of Delegates Environmental Resources and Energy Committee about pipeline's economic and environmental benefits. Opportunities like this are crucial to us so we can let politicians know that their decisions directly affect our members and their work prospects.

Another benefit of PIOGA membership is the ability to attend the various conferences they sponsor throughout the year. These events allow us to meet industry leaders we wouldn't usually have access to. Local 798's goal is to prove to these folks that we provide the highest level of qualified, skilled labor to build the safest and most efficient pipelines in the world. Our PIOGA membership puts us in the rooms and puts names to faces so we can engage those who might have a lower opinion of unions overall. We want to alter that viewpoint, and through our partnership with PIOGA, change is attainable, and for that, we are thankful. — David Butterworth, Business Agent, Pipeliners Local 798

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EPA Adopts Updated Phase I Environmental Site Assessment Standard that Addresses PFAS and Other Emerging Contaminants

Babst Calland Environmental Alert - Published January 4, 2023. Author - Matthew C. Wood, Senior Counsel

On December 15, 2022, the U.S. Environmental Protection Agency (EPA) published a final rule amending its All Appropriate Inquiries (AAI) Rule to incorporate ASTM International's E1527-21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (Final Rule).[1] The Final Rule – effective February 13, 2023 – allows parties conducting due diligence to utilize the E1527-21 standard to satisfy the AAI requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), for the purpose of obtaining liability protections when acquiring potentially contaminated properties. Specifically, "bona fide prospective purchasers," "contiguous property owners," and "innocent landowners" can potentially obtain CERCLA liability protection by complying with the AAI Rule. More broadly, however, other regulating bodies, such as states, often require or recommend using the E1527 standard for evaluating potentially contaminated properties prior to purchase.

The Final Rule's publication ends months of speculation and confusion about when and how EPA would address E1527-21 and its prior version, E1527-13. After ASTM issued E1527-21 in November 2021, EPA published an applicable direct final rule (and accompanying proposed rule, requesting comments on the direct final rule) in March 2022 incorporating E1527-21 into the AAI Rule, but also allowing parties to continue to use E1527-13 to satisfy AAI requirements. Many commenters opposed this approach, predicting confusion about which standard to use and pointing out that ASTM would eventually do away with E1527-13. In response to these comments, EPA withdrew the direct final rule in May 2022. The Final Rule addresses these concerns by removing the AAI Rule's reference to the E1527-13 standard one year from the Final Rule's publication in the Federal Register, i.e., December 15, 2023. Until then, any Phase I Environmental Site Assessment (ESA) conducted using E1527-13

will be considered compliant under the AAI Rule.

Among its many updates, E1527-21 adds definitions for certain terms (e.g., "significant data gap") and updates other definitions for clarity and consistency (e.g., "recognized environmental condition"); it explains how long a Phase I ESA remains viable (no more than 180 days prior to property acquisition, or up to one year if certain components are updated); and expands the scope of the subject property's historical review to include adjoining properties. One of the most notable and potentially significant updates is E1527-21's discussion of "emerging contaminants," or "substances not defined as hazardous substances under CERCLA," which includes discussion of how and whether to address per- and polyfluoroalkyl substances (PFAS).

Specifically, E1527-21 categorizes PFAS and emerging contaminants not identified as hazardous under federal law as outside the scope of the E1527-21 standard. E1527-21 notes, however, that when such substances are defined as hazardous under applicable state law, and a Phase I ESA is being performed to satisfy federal and state requirements, analysis of such substances may be addressed in the Phase I ESA as "Non-Scope Considerations." Non-Scope Considerations are potential environmental conditions at a property that might not give rise to CERCLA liability but may be relevant to a potential purchaser's decision to acquire the subject property. Based on property-specific factors, a potential purchaser may also direct the environmental professional conducting the Phase I ESA to include analysis of PFAS or other emerging contaminants to provide a more fulsome understanding of potential risks associated with the subject property. Importantly, E1527-21 advises that when an emerging contaminant is designated a CERCLA hazardous substance, that contaminant must be evaluated within the scope of the Phase I ESA.

Continues on the bottom of page 30

RACT III IS ILLEGAL – AND SO WAS RACT II

Article written by Ken Komoroski, Partner, Earth & Water Law

What has been going on at the Pennsylvania Department of Environmental Protection (DEP) Bureau of Air Quality (BAQ)? Certainly, the majority of the DEP managers and counsel, many of whom I have worked with for decades, are principled regulatory officials performing a difficult job and they are performing it well. But something appears to be very rotten in Harrisburg.

In the past few years, my clients (and many others) have been experiencing a series of attempts by BAQ to impose contrived new restrictions, including attempted new Best Available Technology (BAT) restrictions on existing sources – without the facility modifications occurring that could potentially trigger such new restrictions. BAQ has even been trying to incorporate new restrictions in stack test protocols and just last year performed a poorly designed “Methane Flyover Project” - using technology and measurement methods that overstated emissions by 100% – with a goal of forcing additional emissions reductions without legal authority. (The DEP’s Methane Flyover Project data was so bad that the disclaimer associated with the project acknowledges the data’s uselessness.)

BAQ has been targeting the oil and gas industry with these efforts, although others are being affected as well, including coal, timber processing, chemicals, landfills, energy production and wood treating. (I have learned much of this through Right-To-Know Law (RTKL) submissions I have made. Interestingly, I had to appeal the DEP’s initial refusal to respond to the RTKL requests – which DEP was then ordered to unrefuse.)

WHY IS RACT III UNLAWFUL?

Adding further insult, DEP is now attempting RACT III. In the 1990s, existing major sources of volatile organic compounds (VOCs) and Nitrous Oxides (NOx) and certain other sources

of VOCs were required to implement Reasonably Available Control Technology (RACT) pursuant to the federal Clean Air Act (CAA).

Nitrous Oxides (NOx) and certain other sources of VOCs were required to implement Reasonably Available Control Technology (RACT) pursuant to the federal Clean Air Act (CAA).

In preamble language to the proposed RACT III rule, PADEP attempted to explain its purported re-re-RACT authority:

The EPA's final rules to implement the 2008 and 2015 8-hour ozone NAAQS require states with areas classified as "moderate" nonattainment or higher to submit a demonstration, as a revision to the SIP, that their current regulations fulfill 8-hour ozone RACT requirements for all control technique guideline (CTG) categories and all major non-CTG sources. See 80 FR 12264 (March 6, 2015) and 83 FR 62998 (December 6, 2018). . . . Therefore, a re-evaluation of what constitutes RACT for affected sources must be fulfilled each time the EPA revises a NAAQS. . . . State regulations to control emissions of NOx and VOCs from major stationary sources will be reviewed by the EPA to determine if the provisions meet the RACT requirements of the CAA and its implementing regulations designed to attain and maintain the ozone NAAQS. Therefore, the Commonwealth must submit a SIP revision to demonstrate how it will attain and maintain the 2015 8-hour ozone standard in the nonattainment areas.

The EPA's past implementation of regulations for revised NAAQS ozone standards have required OTR states to submit RACT SIP revisions based on the timeframe provided in section 184 of the CAA as measured from the effective date of designations made for those revised NAAQS, rather than from

Continues on next page

November 15, 1990. This requirement was first codified in 40 CFR 51.916 (relating to what are the requirements for an Ozone Transport Region under the 8-hour NAAQS?) for the 1997 8-hour ozone NAAQS, later codified for the 2008 8-hour ozone NAAQS in 40 CFR 51.1116 (relating to requirements for an Ozone Transport Region) and most recently codified for the 2015 8-hour ozone NAAQS in 40 CFR 51.1316 (relating to requirements for an Ozone Transport Region). Under these provisions, states in the OTR are required to submit SIP revisions addressing the RACT requirements of section 184 of the CAA not later than 2 years after the effective date of designations for nonattainment areas for the revised 2015 8-hour ozone NAAQS, or by August 3, 2020. (Emphasis added.)

I have underlined a DEP statement in the first quoted paragraph above. DEP made up this “Therefore” statement. It can be found nowhere in the federal regulations or preamble. It is also interesting that no other state of which I am aware has done/attempted a RACT II or RACT III. For example, the Connecticut Department of Energy & Environmental Protection explains on its website:

“Under the Clean Air Act (CAA), a new nonattainment designation by the U.S. Environmental Protection Agency (EPA) for a National Ambient Air Quality Standard (NAAQS), requires DEEP to adopt RACT for:

- (1) all volatile organic compound (VOC) sources covered by a control technique guideline; and
- (2) all major non-CTG sources of oxides of nitrogen (NO_x) and VOC.” (Emphasis added.)

DEP claims that the federal regulations found at 40 CFR 51.1116 require its re-re-RACT effort. However, these federal regulations only require that major sources of NO_x and VOCs not previously required to implement RACT but whose Air Quality Control Region (AQCR) designation changes from attainment of the ozone National Ambient Air Quality Standards (NAAQS) to non-

attainment must then – for the first time – implement RACT. That isn’t and cannot be the case for any part of Pennsylvania because its Ozone Transport Region (OTR) designation causes the entire Commonwealth to be considered moderate non-attainment for ozone (for which NO_x and VOCs are the precursors). By EPA’s own admission, this CAA caveat to require RACT for newly designated areas was always anticipated to be for a very limited universe of existing sources. Any major new source or major modification of an existing source of NO_x or VOCs must implement Lowest Achievable Emission Rates (LAER) for New Source Review (NSR) purposes or Best Available Control Technology (BACT) for Prevention of Significant Deterioration (PSD) purposes. Existing sources are to be left alone unless they find themselves in a new non-attainment AQCR.

(By the way, you may find it interesting to know that several facilities ignored DEP’s RACT II because of advice that DEP lacked authority, with no consequences of which I am aware. Furthermore, if DEP is required to implement re-RACT and re-re-RACT, why was no other state required to do so and have not all other states done so?)

For RACT III vs. RACT II, PADEP is trying to put more lipstick on the pig by attempting to “promulgate” re-re-RACT as a regulation and not as a policy. Perhaps DEP is doing so because in Pennsylvania (with some exceptions) there is generally no ability to judicially challenge a rule when it becomes effective. One must typically await DEP’s attempted enforcement of the regulation to judicially challenge the endeavor. Certainly, this forces companies to engage in a game of “chicken” with DEP. If companies ignore RACT III, PADEP will either stay quiet or begin an increasing level of intensity of threatened and possibly actual attempted enforcement. (If you cannot take the heat, stay out of the kitchen, but don’t blame the cook for the quality of your meal.)

Continues - top of page 30

To put it another way, RACT was a one-shot deal in Pennsylvania.

The federal CAA and regulations required RACT initially for existing sources in moderate non-attainment areas for ozone. Each state was permitted to develop its own RACT program. The Pennsylvania RACT program allowed for control technology guidelines (CTGs) that established NO_x RACT for certain categories of existing sources and required case-by-case RACT determinations for all other NO_x and VOC major existing sources.

Thus, implementation of new RACT II or RACT III controls is not required OR permitted to be required in Pennsylvania. Contrary to DEP's claims, when EPA promulgates new ozone standards, it only requires the state to certify that its programs are compliant and that is all that other states have done. New RACT plans are to be submitted only in non-OTR areas if the area has fallen into ozone non-attainment status.

Ken Komoroski was a partner for more than 20 years at two of the largest and most prestigious law firms in the world, K&L Gates and later Morgan, Lewis & Bockius, before moving his practice to E&W Law. <https://www.earthandwatergroup.com/our-professionals/ken-komoroski/>



Next month's PIOGA Press – an article on why RGGI is wrong for PA, is counter-productive and why the new Pennsylvania Governor would be wise to keep his promise and keep PA out of RGGI. ■

EPA *Continued from page 27*

One commenter to the March 2022 direct final rule and proposed rule said that the emerging contaminants section threatened to lead to premature CERCLA liability for landowners and prospective buyers and requested a formal notice and comment period for the E1527-21 standard. Other commenters requested specific modifications to certain E1527-21 defined terms. In response, EPA noted in the Final Rule that E1527-21 is not an EPA regulation that it has authority to modify and that such requests should be directed to ASTM for consideration. Further, EPA said that because use of the E1527-21 standard is not required for complying with the AAI Rule, i.e., compliance can be achieved using other methods, the agency found no reason not to recognize E1527-21 as compliant with the AAI Rule. EPA's response to comments document is available [here](#).

With respect to PFAS, the timing of the Final Rule's publication is particularly relevant to parallel rule-making. In September 2022, EPA published a proposed rule designating PFOA and PFOS – the most common and well-studied PFAS – as CERCLA hazardous substances. The comment period for that proposed rule ended on November 7, 2022, and the final version is expected to be published in 2023. If EPA designates PFOA and PFOS as CERCLA hazardous substances as expected, they will fall within the scope of E1527-21. The same will apply to any other PFAS that EPA designates as CERCLA hazardous substances, which the agency has indicated it is considering via a future rulemaking.

Although many states have been regulating PFAS for years under various regulatory programs, similar efforts by the federal government are more recent. In addition to the Final Rule and the anticipated PFOA and PFOS CERCLA hazardous substance rule, EPA is also in the process of developing a proposed national drinking water regulation for PFOA and PFOS and is also considering regulatory actions to address other PFAS. These changes and others likely to occur in the coming months and years underscore the importance of understanding the various risks associated with PFAS contamination and how to comply with current and forthcoming requirements. ■

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pioga.org/publication_file/2022_PIOGA_Partners_flyer.pdf

Oil & Gas Dashboard

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 Baker Hughes rig count: bakerhughesrig-count.gcs-web.com/na-rig-count
 NYMEX strip chart: Mid American Natural Resources
 Basis futures values: BHE Eastern Energy Field Services

Penn Grade Crude Oil Prices

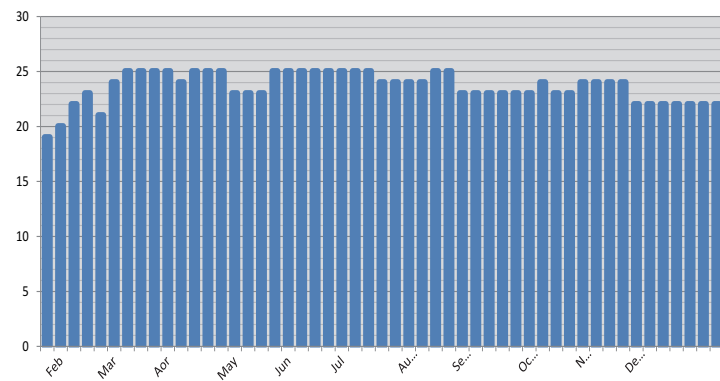


Natural Gas Futures Closing Prices

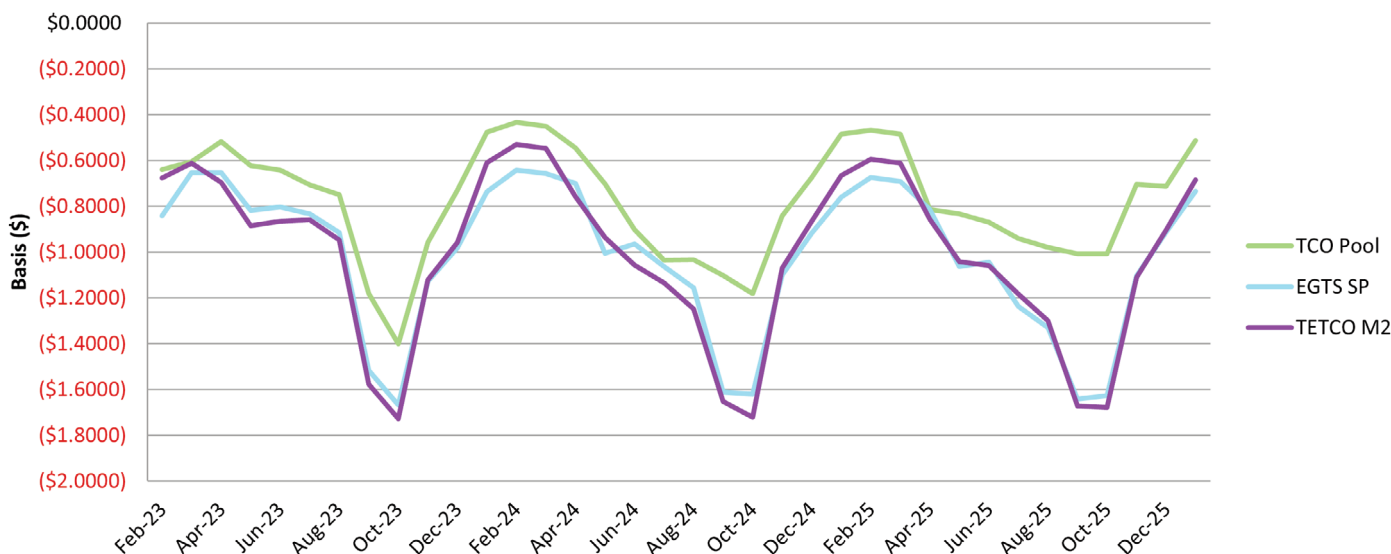
February 2023	4.155
March	3.776
April	3.671
May	3.671
June	3.833
July	3.939
August	3.973
September	3.924
October	3.992
November	4.323
December	4.732
January	5.030

Prices as of November 9

Pennsylvania Rig Count



Basis Futures Values



Northeast Pricing Report — December 2022

Natural gas futures continue to fall due to the current and trending mild weather in the Northeast. However, the demand markets in the Northeast continue to see rising prices. Only continued mild weather will hold off any spikes in prices as seen in recent years. Algonquin had only a \$1.98 per MMBtu increase from December. TETCO M3 and Transco Z6 had the greatest boost in pricing, growing by \$4.83 and \$4.07 per MMBtu. Dominion South and Transco Leidy both decreased by \$0.29 and \$0.08 per MMBtu. The rolling 12-month prices decreased for all pricing points. Algonquin dropped the most by \$.26 per MMBtu. The smallest dips came from Dominion South and Transco Leidy, both losing \$0.04 per MMBtu. For the full term trading period, Algonquin decreased the most by \$0.60 per MMBtu, while TETCO M3 saw an increase of \$0.05 per MMBtu.

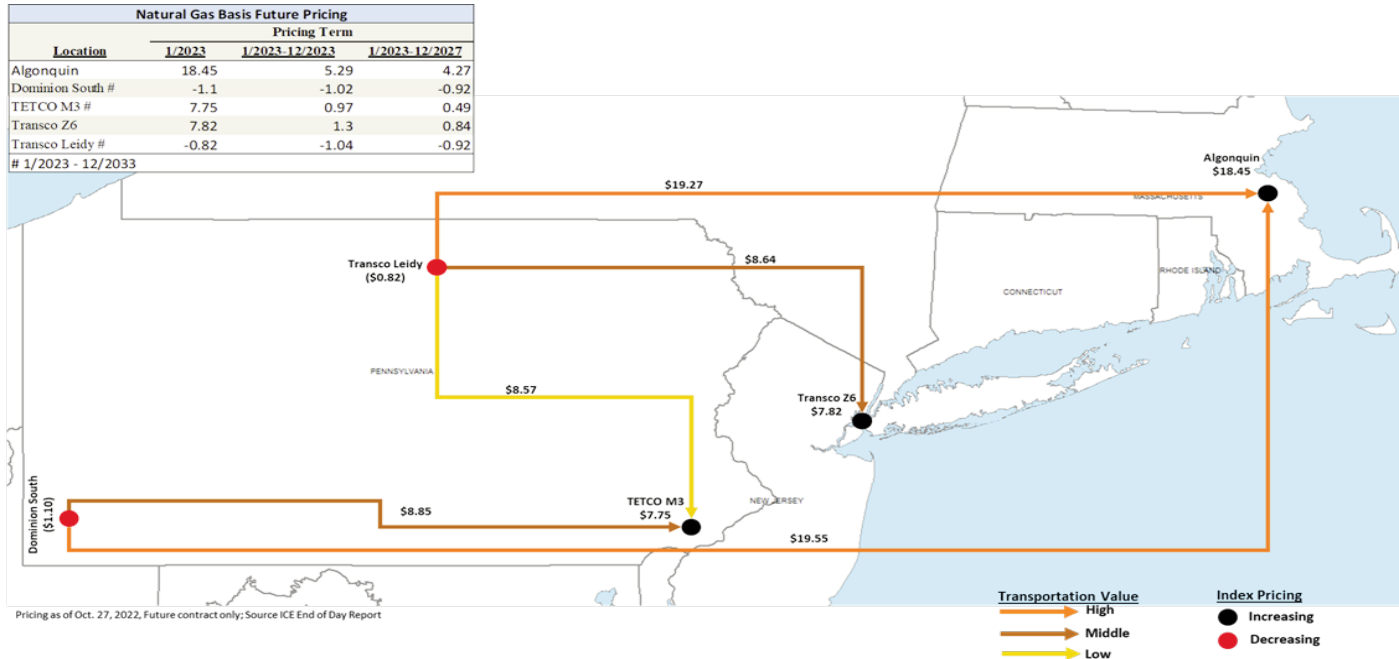
Every transportation value saw their worth rise. This month the routes to the Philadelphia and New York areas had the greatest increases. The Dominion South and Transco Leidy routes to these markets grew from \$5.12 to \$4.91 per MMBtu respectively. Meanwhile, the transportation value to Algonquin only increased between \$2.27 and \$2.206 per MMBtu.

Transportation Value Market Indicator

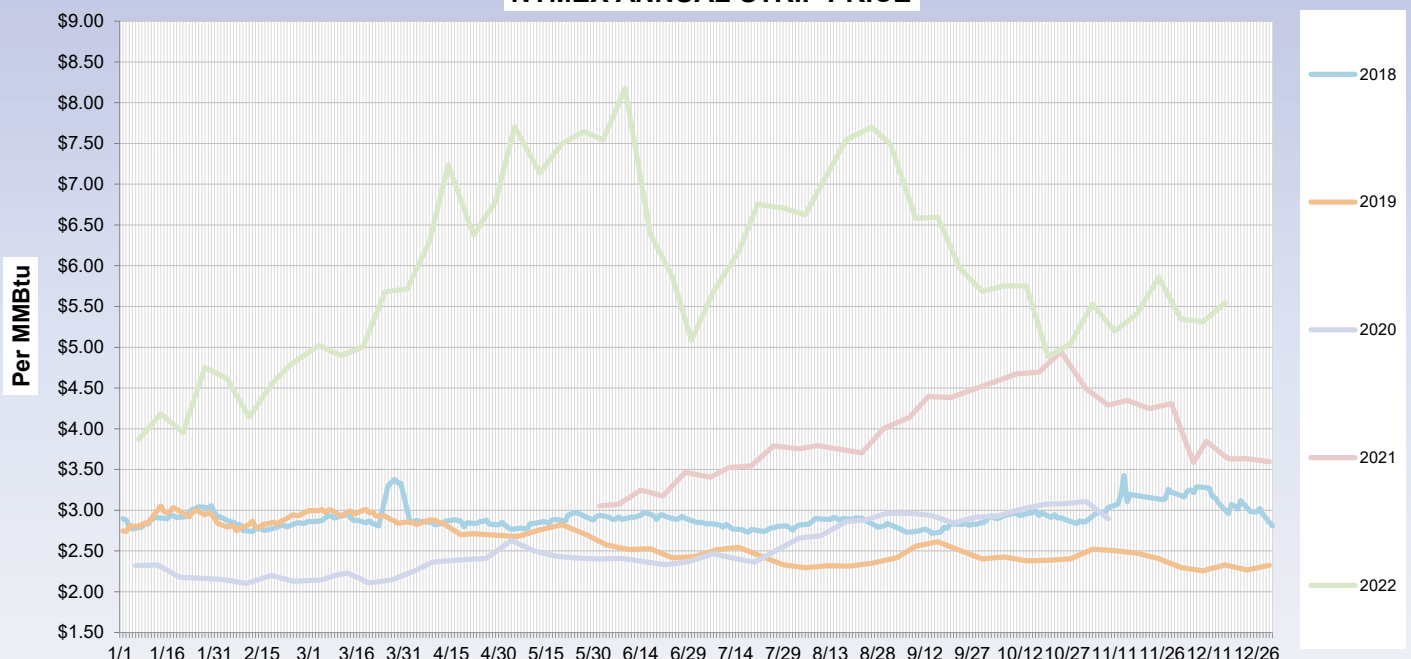


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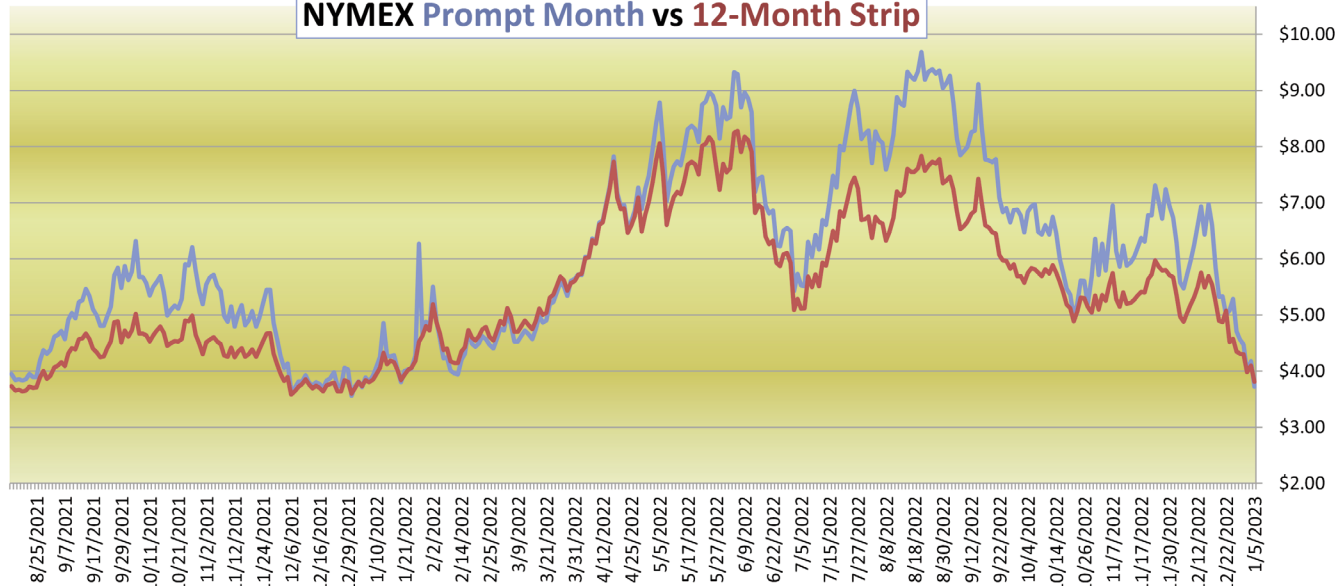
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NYMEX ANNUAL STRIP PRICE



NYMEX Prompt Month vs 12-Month Strip



Spud Report: December

The data shown 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	Date	API#	County	Municipality
Cameron Energy Co. **	1	12/22/22	123-48715	Warren	Sheffield Twp
Chesapeake Appalachia LLC	6	12/5/22	015-23784	Bradford	Smithfield Twp
		12/5/22	015-23783	Bradford	Smithfield Twp
		12/12/22	015-23799	Bradford	Tuscarora Twp
		12/12/22	015-23798	Bradford	Tuscarora Twp
		12/12/22	015-23800	Bradford	Tuscarora Twp
CNX Gas Co LLC	5	12/12/22	015-23801	Bradford	Tuscarora Twp
		12/3/22	059-28255	Greene	Richhill Twp
		12/3/22	059-28254	Greene	Richhill Twp
		12/19/22	129-29198	Westmoreland	Bell Twp
		12/19/22	129-29197	Westmoreland	Bell Twp
Coterra Energy Inc.	6	12/19/22	129-29196	Westmoreland	Bell Twp
		12/15/22	115-23011	Susquehanna	Brooklyn Twp
		12/15/22	115-23012	Susquehanna	Brooklyn Twp
		12/15/22	115-23013	Susquehanna	Brooklyn Twp
		12/8/22	115-23032	Susquehanna	Dimock Twp
		12/8/22	115-23033	Susquehanna	Dimock Twp
		12/8/2022	115-23034	Susquehanna	Dimock Twp
Gas & Oil Mgmt Assn Inc. **	2	12/30/22	123-48644	Warren	Pleasant Twp
		12/15/22	123-48643	Warren	Pleasant Twp
LLC Inflection Energy (PA) LLCs	5	12/26/22	081-21962	Lycoming	Gamble Twp
		12/26/22	081-21961	Lycoming	Gamble Twp
		12/26/22	081-21963	Lycoming	Gamble Twp
		12/26/22	081-21964	Lycoming	Gamble Twp
		12/26/22	081-21965	Lycoming	Gamble Twp
KCS Energy Inc. **	1	12/28/22	123-48714	Warren	Watson Twp
Lola Energy Petroco LLC	4	12/19/22	019-22932	Butler	Allegheny Twp
		12/19/22	019-22933	Butler	Allegheny Twp
		12/19/22	019-22934	Butler	Allegheny Twp
		12/19/22	019-22935	Butler	Allegheny Twp
		12/19/22	019-22936	Butler	Allegheny Twp
Mead Oil LLC **	2	12/29/22	123-48615	Warren	Cherry Grove
Range Resources LLC	5	12/15/22	123-48616	Warren	Cherry Grove
		12/17/22	125-29032	Washington	Morris Twp
		12/17/22	125-29033	Washington	Morris Twp
		12/17/22	125-29035	Washington	Morris Twp
		12/17/22	125-29036	Washington	Morris Twp
		12/18/22	125-29034	Washington	Morris Twp

Operator	Wells	Date	API#	County	Municipality
Russ Holden Well SVC **	2	12/6/22	123-48721	Warren	Watson Twp
		12/14/22	123-48722	Warren	Watson Twp
Seneca Resources Co LLC	6	12/20/22	117-22164	Tioga	Covington Twp
		12/21/22	117-22165	Tioga	Covington Twp
		12/21/22	117-22166	Tioga	Covington Twp
		12/21/22	117-22167	Tioga	Covington Twp
		12/21/22	117-22168	Tioga	Covington Twp
		12/21/22	117-22169	Tioga	Covington Twp

	Dec.	Nov.	Oct.	Sept	Aug	July
Total wells	45	75	73	58	91	96
Unconventional Gas	37	59	52	34	60	73
Conventional Gas	0	0	0	0	0	0
Oil	8	14	14	19	22	20
Combination Oil/Gas	0	2	7	5	9	3

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January 18, Webinar

Cigar Event

February 16. Burn, Pittsburgh

PIOGATech - Fundamentals of Safety Leadership for Oil and Gas Workers and Encouraging Safety Leadership Skills and Safety Leaders as Mentors in the Short Service Employee Program

February 23, Holiday Inn Express & Suites, Pittsburgh SW/Southpointe

2023 Spring Meeting

March 22 - 23. Rivers Casino, Pittsburgh.

Other events

Gas & Oil Association of West Virginia - 2023 Winter Meeting. January 18-19.
<https://gowv.com/events/2023-winter-meeting/>

IPAA Private Capital Conference - January 19.
<https://www.ipaa.org/events/private-capital-conference-2023/>

30th Anniversary NAPE Summit Week - February 1-3.
<https://napeexpo.com/summit>

AADE Operators Forum - February 9.
<https://upstreamcalendar.com/events/aade-operators-forum/>

ABGPA 1st Quarter Lucheon - February 14.
<https://abgpamidstream.org/calendar/1609/>

MSC's Oil and Gas Spill Remediation Training - February 16. <https://pioga.org/event/mscs-oil-and-gas-spill-remediation-training/>

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