

# The PIOGA Press

The monthly newsletter of the  
Pennsylvania Independent Oil & Gas Association  
February 2018 • Issue 94

## PIOGA requests addition to IRRC final-form regulation to ensure agencies provide all forms as part of proposed rulemakings

PIOGA is seeking a revision to recently proposed final-form regulation of the Independent Regulatory Review Commission (IRRC) that would ensure state agencies fully comply with the Regulatory Review Act (RRA) when submitting proposed rulemakings to IRRC for review. In particular, PIOGA wants IRRC to compel agencies to comply with the requirement of the RRA that copies of all forms, guidance documents and instructions that will be required for implementation of the regulations be included as part of a *proposed* rulemaking.

In response to comments by PIOGA and others on this point concerning IRRC's October 2015 proposed rulemaking, in December 2016 IRRC adopted a resolution stating that it is unclear under the RRA whether an agency's failure to include such forms with the Regulatory Analysis Form (RAF) was intended to be addressed by IRRC in its comment or intended to constitute "faulty delivery of the regulation." The resolution also stated that the 30-year-old requirement to submit the forms "did not contemplate future technological advances that now make electronic transmissions and reporting customary." Accordingly, IRRC stated its belief that "the spirit of Section 5(a)(5) can be met by requiring a promulgating agency to submit with the regulatory package a paper or electronic version of the required forms." So the commission adopted the following "clarification" policy:

Failure to include copies of forms that will be required by a regulation with a Regulatory Analysis Form, in a format acceptable by the Commission as referenced above, will be

*Continues on page 8*

## Administration announces plan to reduce backlogs, improve oversight and modernize permit process

Governor Tom Wolf and the Department of Environmental Protection have announced the administration's plan to reduce permit backlogs, modernize permitting processes, and better utilize technology to improve both oversight and efficiency.

The action, announced January 26, is a result of a yearlong effort to identify and implement strategies that will help DEP meet the goals of its Permit Decision Guarantee, while continuing to issue strong permits with strict environmental protections. Wolf also announced the administration will bolster DEP staffing, which has been deeply eroded in past budget cuts, to boost these efforts.

"Working with Secretary McDonnell, I tasked DEP with looking at ways to reduce backlogs and wait times responsibly, so that we could meet the ambitious goals of the Permit Decision Guarantee, while providing even stronger environmental protections for our citizens,"

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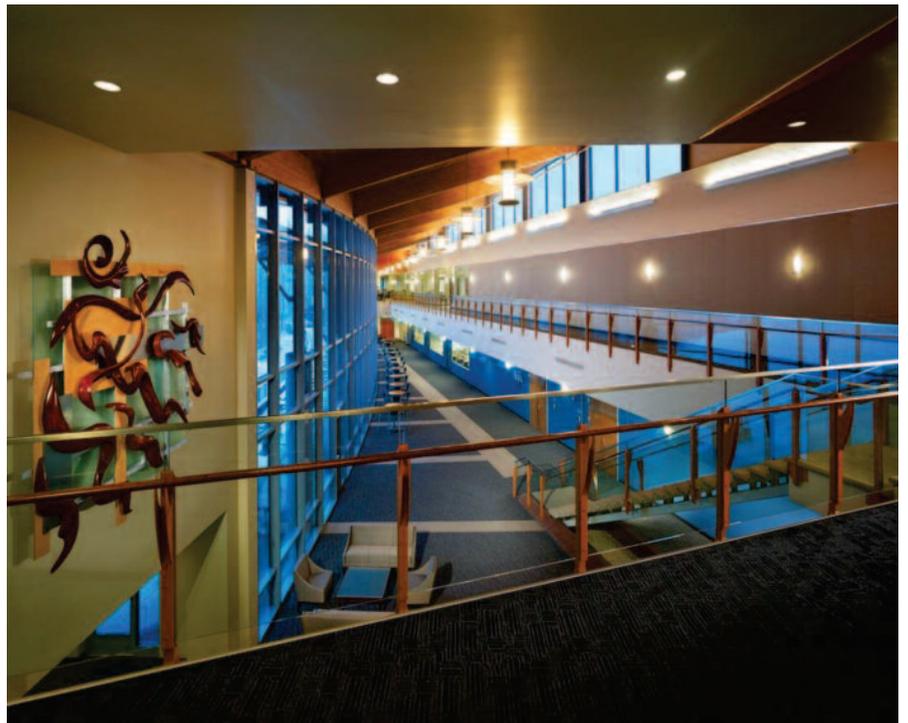
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## Permitting reform *Continued from page 1*

Wolf said in a news release announcing the program. "Secretary McDonnell and his team have implemented a number of changes and the results have been remarkable."

To capitalize on the success to date, DEP will continue to implement new approaches to its permitting processes by simplifying bureaucratic and outdated procedures, while continuing its mission of protecting the environment. New initiatives include:

- Expanding the e-permitting system to include several key development permits, reducing the time spent trading paper between DEP and industry.
- Creating a new analytics program that helps managers track progress on open permit applications, allowing them to know how long permits have been in the system.
- Releasing new review processes and registration practices for key development permits for clarification on what is needed to complete an application and make it easier to apply for these permits.
- Supporting commonsense legislation that will bring the permit process in line with the industry it is engaged with, such as extending permit terms and allowing multi-well pad permitting.

Following a comprehensive review across programs, DEP implemented several new initiatives to streamline processes and modernize practices, including an innovative new permit review approach to shrink review timelines of the Erosion and Sediment Control General Permit (ESCGP) to under 100 days while reducing backlogs for well permits in the Southwest Region. Since implementing the new approach, DEP's Southwest District Office reduced its permit review timeline for the ESCGP by over 220 days and has cut its permit backlog in half.

Since the summer of 2017, the department has reduced the overall permit backlog by more than 6,000 permits. Additional efficiencies implemented include:

- Rotating pending permits to regions with the capacity to review additional applications.
- Reallocating positions within the Office of Oil and Gas Management to equalize the permit review workload and improve permit review consistency.
- Providing updated technical guidance documents and improved permit application forms and instructions to clarify regulatory requirements to permit applicants and facilitate the submission of adequate permit applications.
- Targeting new hires in key permit review areas.

DEP emphasized that since 2006 it has assumed significant new responsibilities for the oversight of the natural gas sector and water and air programs. In that same period, the department has repeatedly suffered from staffing cuts. DEP's staff has been reduced by 43 percent since 2006. This has led to long wait times for permits and a large backlog, the agency said.

The governor will propose \$2.5 million in his 2018-19 budget for additional staffing at DEP to allow the

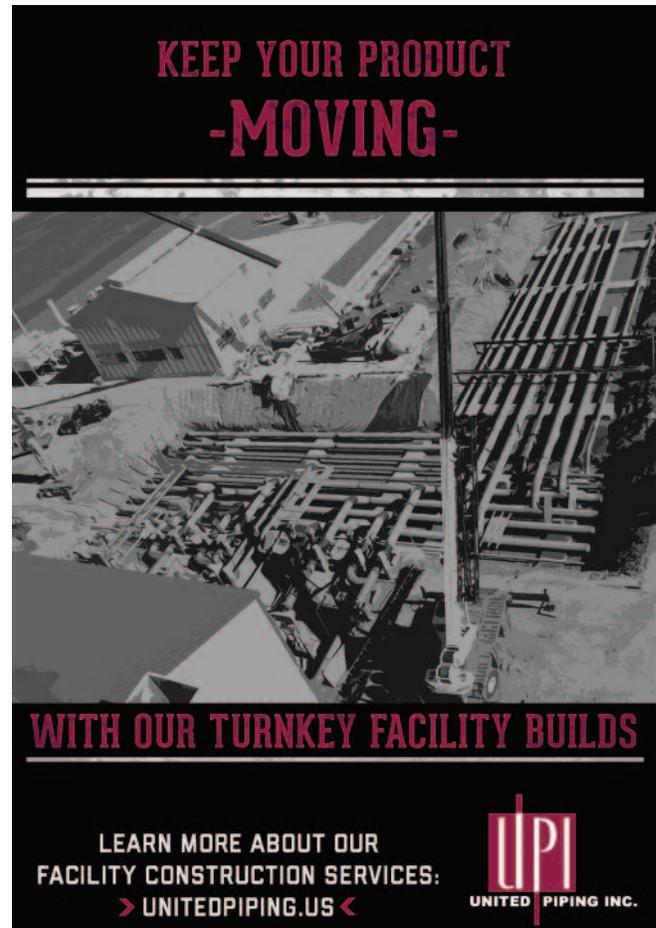
department to hire new employees in high priority positions across programs and regional offices.

The permitting reforms are detailed more thoroughly in a four-page white paper which can be found by Googling *DEP permitting white paper*. Not mentioned in the DEP announcement but included in the white paper is the department's plan to request an increase in the well permit fee from \$5,000 to \$12,500. ■

## Senate resolution calls for investigation into DEP permitting

The Senate has approved a resolution directing the bipartisan, bicameral Legislative Budget and Finance Committee to conduct an investigation into the environmental permitting programs administered by the Department of Environmental Protection. Specifically, the investigation called for under Senate Resolution 226 is to look into permitting in DEP's Erosion and Sediment Pollution Control Program and the Water Obstruction and Encroachment Program.

The Legislative Budget and Finance Committee also is directed to work with stakeholders, including local and county governments that help to administer these programs, in an effort to provide a summary of DEP's actions and recommendations for improving the pro-



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gram. Senator John Yudichak (D-Luzerne), the resolution's primary sponsor, noted that it enjoys broad bipartisan political support and the support of the business

community and environmental organizations. It was adopted on February 6.

SR 226 states, "Municipalities and industry and business communities that perform activities subject to environmental regulation and permitting have raised concerns about the cost, economic impairment and missed opportunities for job creation resulting from instances of inconsistent review of environmental permit applications and unreasonable delays in environmental permit review and issuance by the Department of Environmental Protection."

The resolution goes on to emphasize that while DEP has made strides in addressing permitting problems, "[c]ontinued concerns expressed by stakeholders on all sides of the environmental permitting process deserve the attention of the General Assembly, which may be addressed through an independent, thorough and impartial performance evaluation." ■



## Water & Waste Management Training

Hosted by PIOGA's Environmental Committee

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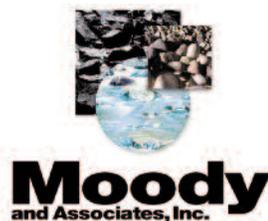
get-it-all-done-at-once approach to sponsoring. With that in mind, we have launched the 2018 PIOGA Partners program. The seven levels of sponsorship offer something for everyone's budget, all offering a variety of perks and types of recognition for your company.

We hope you will consider signing on to be a PIOGA Partner as a way of supporting the work of your association. Of course, we will also continue to offer event-by-event sponsorships throughout 2018. Shown here are our Partners so far.

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### Meeting Partners:

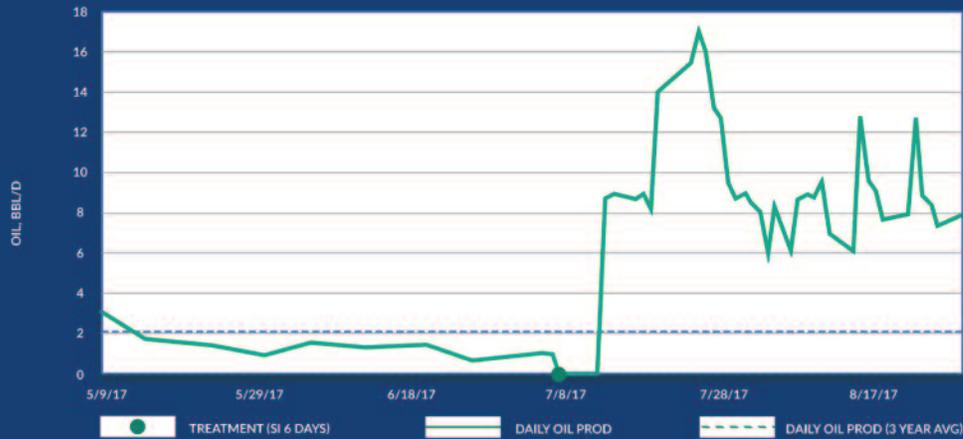


To learn more about the program, go to [www.pioga.org/publication\\_file/PIOGA-Partners-2018.pdf](http://www.pioga.org/publication_file/PIOGA-Partners-2018.pdf).

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# 2018 Spring Meeting



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**Program: 9:15 a.m. - 5:15 p.m.**

**Networking Reception & Casino Time: 5:15 - 7 p.m.**

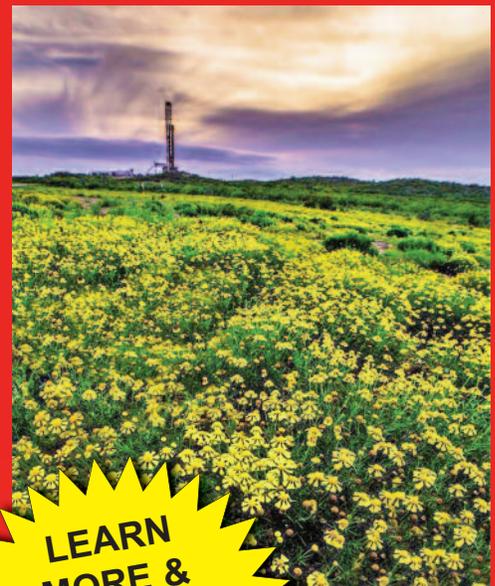
## Speakers & Topics

- **Forge the Future Initiative**, Morgan O'Brien, Peoples Natural Gas
- **Appalachian Basin Energy Forecasting and Economic Outlook**, Mason Ender, BTU Analytics
- **Underground Injection Program in Pennsylvania**, U.S. Environmental Protection Agency
- **Inconvenient Facts**, Gregory Wrihstone, Geologist and Author
- **Keynote Luncheon Address** — **Steven Winberg**, Assistant Secretary for Fossil Energy, U.S. Department of Energy
- **Legacy Wells Overview and Management**, Dr. Terry Engelder, Professor Emeritus, Penn State University; and Seth Pelepko and Harry Wise, PA Department of Environmental Protection
- **Case Law on Leaseholds**, Steptoe and Johnson, PLLC
- **Burner Tip Opportunities, Expanding Midstream Panel:** Erika Young, Enbridge; Brandon Martin, Dominion Energy Transmission, Inc.; Keefe Long, UGI Energy Services, Inc.
- **Pennsylvania Legislative Update**, PA House Speaker Mike Turzai

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## Final-form regulation *Continued from page 1*

deemed to be a faulty delivery of the regulation under Section 5(a)(5) of the Regulatory Review Act and shall result in the regulation being returned as incomplete to the promulgating Board, Commission, or Agency.

In supplemental comments to IRRC's proposed rulemaking, PIOGA urged the commission to include the policy above as part of its final-form regulations. As an example of the importance of enforcing this requirement of the RRA, PIOGA pointed to the Department of Environmental Protection's Chapter 78/78a rulemaking and DEP's failure to include its proposed forms and other documents as part of the proposed rulemaking package. The association also noted a January 2017 Commonwealth Court decision, *Lester v. DEP*, that highlighted the legal significance of forms agencies use to enforce their regulations. In that case, one of the judges opined that "the language on DEP's storage tank forms does not clearly communicate the responsibilities and potential liabilities under the Storage Tank Act and the applicable regulations that would arise by designating oneself as an 'operator' on such forms."

IRRC issued its final-form regulations on December 13, 2017, without incorporating the language from its December 2016 policy statement.

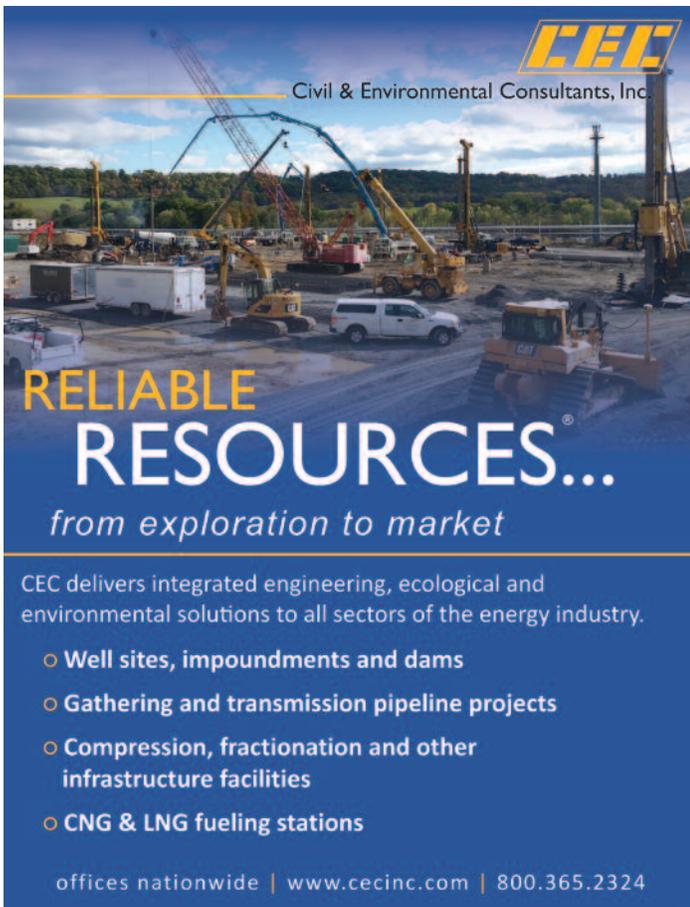
In a January 26, 2018, comment letter to IRRC, PIOGA requested that the commission provide additional time for a review of the final-form regulation by the House

State Government Committee, the Senate Rules and Executive Nominations Committee and the Joint Committee on Documents (JCD, which reviews IRRC's regulations as IRRC reviews other agencies') for inclusion of the language requested by the association.

Another January 26, 2018, comment letter to the above House and Senate legislative oversight committees and the JCD further detailed the rationale for PIOGA's request.

"An agency's forms and instructions as well as 'guidance' documents are significant for the day-to-day implementation of a regulation and have the potential to expand and alter obligations created by the regulations themselves," PIOGA wrote. "Compliance with this straightforward RRA requirement is essential for the RRA process to work as intended by the General Assembly. IRRC's failure to uniformly enforce compliance with this requirement by allowing these documents to be developed or provided after the close of the proposed rulemaking public comment period or, even worse, after promulgation of a final-form rulemaking as with the Department of Environmental Protection's (DEP) recently promulgated Chapter 78 regulations causes irreparable harm to interested stakeholders, the agency's legislative oversight committees, IRRC and, ultimately, the public."

PIOGA explained that DEP's RAF for the proposed Chapter 78 regulation contained absolutely **no** forms despite the department's statements that "[t]hese proposed regulations include new planning, reporting and



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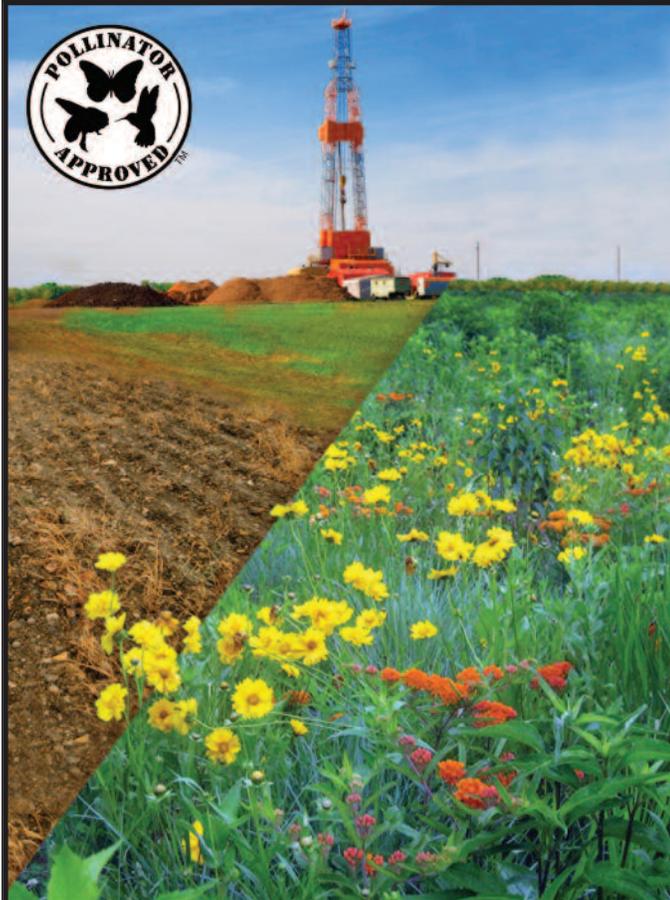
record keeping requirements” and “[t]he regulated community will need to meet new reporting requirements in these proposed regulations.” In DEP’s final-form rule-making RAF the list of new reporting requirements ran to 30 bullet items. With that final-form RAF the department did provide a number of reporting forms and instructions—but all marked “Draft”—and included no technical guidance documents, stating that all forms and guidance documents would be made available prior to adoption of the final rule.

The association’s comment letter to the oversight

committees and the JCD explained why IRRC’s statements and belief supporting its December 2016 policy were legally incorrect even though IRRC came to the legally correct conclusion—failure to include the forms constitutes faulty delivery of a proposed regulation—and requested that this conclusion be stated in the final-form regulation. The letter went on to state that despite DEP’s assurance, PIOGA is unaware that DEP finalized any forms before IRRC’s approval of the Chapter 78/78a regulations in April 2016. After the final rule was adopted on October 16, 2016, the department was *still* developing forms, instructions and guidance documents to implement *new* requirements in the final rule—and continues to do so today.

“In a massive rulemaking such as [the Chapter 78/78a regulations] with significant new requirements, compliance with Section 5(a)(5) was even more essential for all interested parties to be able to fully understand and provide informed comments on the proposed regulation,” PIOGA wrote.

The House State Government Committee held an informational hearing on January 30 to hear IRRC’s presentation on its final-form regulation. Committee members took the opportunity to question IRRC representatives about PIOGA’s request and the Marcellus Shale Coalition’s request that IRRC include the Advanced Notice of Final Rulemaking process in its final-form regulations. How these requests will be resolved is not known as this article goes to press. ■



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# Tackling regulatory overreach

State lawmakers and business leaders from across the Commonwealth joined together last month to announce the introduction of the House State Government Committee's Regulatory Overreach Report and five pieces of legislation intended to rein in over-regulation.

"The Regulatory Overreach Report is a compilation of the findings from a series of public hearings that I convened to gather testimony from various employers, organizations and experts on state regulatory policy," said House State Government Committee Chairman Daryl Metcalfe (R-Butler). "Without question, this report clearly demonstrates that it's long past time for the legislature to avenge the ever-increasing injustices of Pennsylvania's restrictive regulatory environment. Overregulation caused by unelected government bureaucrats is killing family-sustaining jobs, strangling opportunity and crippling economic growth."

Dr. James Broughel from the Mercatus Center at George Mason University in Virginia testified last year that Pennsylvania has more than 153,000 regulatory restrictions that stretch across every industry operating within the Commonwealth. Overregulation not only puts Pennsylvanians at serious risk of losing jobs to other states where regulatory compliance is less onerous, it can even weaken the effectiveness of legitimate health and safety regulations already in place.

Another significant finding from these public hearings is that Pennsylvania's Regulatory Review Act, of which the House State Government Committee has oversight, does not give the legislature any authority to repeal a regulation without the governor's approval. Not surprisingly, regulations created under the administration of both Republican and Democrat governors have been piling up for decades.

Sponsored by House Majority Policy Committee Chairman Kerry Benninghoff (R-Centre/Mifflin), **House Bill 1792** would give the Pennsylvania General Assembly the ability to initiate the repeal of any state regulation in effect by concurrent resolution.

**HB 209**, introduced by Representative Kristin Phillips-Hill (R-York), would establish the Independent Office of the Repealer to undertake an ongoing review of existing regulations; receive and process recommendations; and make recommendations to the General Assembly, the governor and executive agencies for repeal. Additional provisions of this legislation would both establish a moratorium on new regulatory burdens and create a process for sunseting existing regulations by placing a cap on the number of regulations and requiring the repeal of existing regulations when promulgating new ones.

As a mechanism to improve Pennsylvania's regulatory culture by stopping bad regulations before implementation, Representative Dawn Keefer (R-York/Cumberland) has introduced **HB 1237**, which would require the General Assembly to vote on a concurrent resolution to

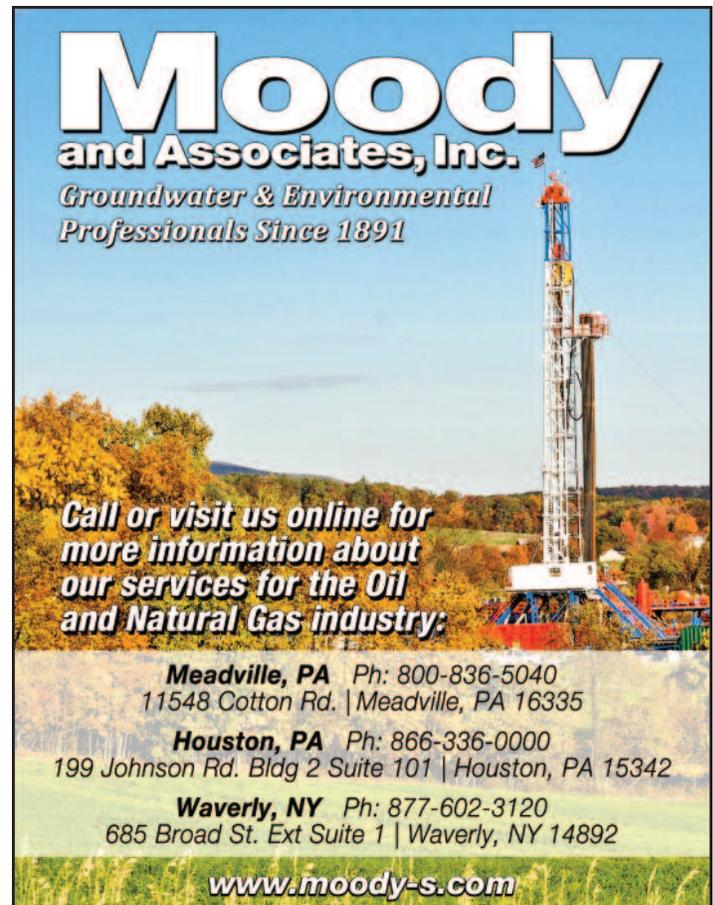
approve an economically significant regulation (which has an annual fiscal impact totaling \$1 million or more on the government or private sector) in order for that regulation to go into effect.

With permits processed at a significantly slower pace and Pennsylvania losing business whenever there is uncertainty in the permitting and regulatory environment, Representative Greg Rothman (R-Cumberland) has sponsored the Pennsylvania Permit Act. **HB 1959** would require state agencies to create and develop a navigable online permit tracking system; cite specific legal authority for permit denial and provide guidance for correcting deficiencies; establish timelines for completion notifications; and allow certain permit reviews to be transferred to third-party reviewers.

Lastly, **HB 1960**, sponsored by Rep. Brian Ellis (R-Butler) would require each agency to appoint a regulatory compliance officer to better educate the regulated community regarding implementation for any new regulation and the requirements prior to the effective date.

The House State Government Committee 2017-18 Regulatory Overreach Report is available for review at [www.repmetcalfe.com](http://www.repmetcalfe.com) (look for the button at the top right).

PIOGA is supporting this initiative. ■



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# PIOGA/PGCC/PIPP workshop for legacy well operators

To begin a dialogue on well plugging and other issues confronting Pennsylvania's legacy well operators, PIOGA along with the Pennsylvania Grade Crude Oil Coalition and the Pennsylvania Independent Petroleum Producers will host a Legacy Well Workshop on February 27 at Clarion University in Clarion.

The purpose of the workshop is to engage member operators of PGCC, PIOGA and PIPP in discussions regarding issues being experienced regarding legacy wells and well plugging activities. It is the expectation of this workshop that operator members can share experiences (positive and negative) and help provide insight to further conversations that members of the Pennsylvania Grade Crude Development Advisory Council have already started with the Department of Environmental



Protection. The industry organizations hope that these conversations are truly the first steps in developing long-term solutions for the legacy well problem that plagues Pennsylvania and other states in Appalachia.

It will be an open forum with leaders from each industry organization being a "facilitator" to provoke the conversations. The forum will be 4½ hours long (9:30 a.m. to 2 p.m.), including a 45-minute lunch. While this forum will involve only member operators, each industry organization may have a small team of other members, such as legal counsel and consultants, assist in the overall discussions.

Additionally, organizers have developed a brief questionnaire to provide operators with the opportunity to provide input on well plugging and other legacy well issues. For links to the survey and registration, please contact Deana McMahan at [deana@pioga.org](mailto:deana@pioga.org).

There is no cost to participate, but an RSVP is required no later than February 20. **Registration is open only to producers/operators.** ■

## Let us help get your gas flowing

Getting everyone's natural gas flowing has been the goal of the PA PES (Production Enhancement Service) program on the Peoples Natural Gas system since 2001. With noted decreases in production, we need to know where the conventional production is going. At times, low market prices can drive down producer volumes via deliberate shut-ins; however, system operations can also affect flow.

As part of the PES program, the Project Review Committee (PRC) exists to help alleviate system problems. The PRC is made up of producer and Peoples representatives. The committee reviews issues related to the pipeline system and recommends maintenance projects, system improvements and other solutions.

When production is down, or meters are shut in voluntarily, we would like to know. Information helps us select, schedule and monitor projects to keep gas flowing.

PIOGA wants to hear from producers about issues they are having so that we can serve as a clearing-house for information that will help the PRC identify projects. Please use the Contact link on our homepage ([www.pioga.org](http://www.pioga.org)) to provide the following information:

**Producer/Operator Name:** (required)  
**Contact email** (required)  
**Contact phone** (required)  
**Producer Operated (P.O.) meter #** (required)  
**Line #**  
**GPS or Coordinate**  
**General Comments** (What is your Issue?)

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# The Clean Water Rule is delayed in response to U.S. Supreme Court decision

On February 6, the U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers published a final rule delaying implementation of the Obama administration's 2015 Clean Water Rule (CWR)—a landmark rule revising the definition of “waters of the United States” (WOTUS) that arguably expanded the scope of the federal government's authority under several regulatory programs, including those associated with wastewater discharges and dredge/fill activities under the Clean Water Act (CWA).

The February 6 final rule delays implementation of the CWR until February 6, 2020. 83 Fed. Reg. 5200. The final rule delaying implementation of the CWR is a significant step in the Trump administration's efforts to reconsider the Obama administration's revised definition of WOTUS. Meanwhile, the pre-2015 WOTUS regulatory regime, which has been criticized by many as inefficient and inconsistent, remains in place.

## Supreme Court decision forced agencies to quickly delay applicability of CWR

The agencies' rule delaying implementation of the CWR was finalized less than two weeks after the U.S. Supreme Court's decision in *National Association of Manufacturers v. Department of Defense, et al.*, No. 16-299 (Jan. 22, 2018) (*NAM*), which started a countdown for the expiration of a nationwide judicial stay of the CWR. In *NAM*, the Supreme Court held that federal district courts, as opposed to federal appellate courts, were the appropriate forums for the legal challenges to the CWR. Once the Supreme Court's decision takes effect, the nationwide stay of the CWR, imposed by the U.S. Court of Appeals for the Sixth Circuit in October 2015, will be lifted and more than a dozen federal district lawsuits challenging the CWR will be revived.

After it was finalized in June 2015, more than 100 parties, including industry groups and 31 states, filed lawsuits challenging the CWR in both federal district courts and federal appellate courts across the country. Many of the challengers argued that the federal district courts had jurisdiction to hear the lawsuits, while the agencies and other parties took the position that lawsuits over the CWR belonged in federal appellate court. These legal challenges temporarily proceeded on separate tracks, leading one federal district court judge in North Dakota to stay the CWR in 13 states west of the Mississippi River. *North Dakota v. U.S. EPA*, No. 3:15-cv-59 (D.N.D. August 27, 2015) (staying the CWR in Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota and Wyoming). The Sixth Circuit issued its nationwide stay of the CWR on October 9, 2015, and subsequently issued a split decision holding that it had

exclusive jurisdiction to hear the lawsuits challenging the CWR. *In re: U.S. Dept. of Defense and U.S. EPA Final Rule: Clean Water Rule*, 817 F.3d 261 (6th Cir. 2016).

In *NAM*, the Supreme Court reversed the Sixth Circuit's decision and found that specific language of the CWA required the legal challenges to the CWR to be heard in federal district courts. The Supreme Court's decision turned primarily on its interpretation of specific language in the CWA governing judicial review of certain EPA actions. 33 U.S.C. § 1369(b)(1). Rejecting the federal government's proposed interpretations of the CWA, the court held that the CWR did not fall within the eight categories of EPA actions that can be challenged directly in federal courts of appeal. Although the Supreme Court acknowledged that its decision could lead to conflicting outcomes in the federal district courts, it held that the applicable statutory language was clear, and the justices were unpersuaded by the federal government's judicial efficiency and national uniformity arguments.

## Rule delaying implementation of the CWR gives agencies time for rollback plan

The agencies justified the rule delaying implementation of the CWR based on concerns that, without a delay, the federal district court challenges to the CWR would likely lead to inconsistencies, uncertainty, and confusion among regulated parties and the public. According to the agencies, the rule delaying implementation of the CWR “establishes a framework for an interim period that avoids these inconsistencies, uncertainty, and confusion,” while the agencies reevaluate the CWR as required by a February 28, 2017, executive order issued by President Donald Trump. President Trump's executive order required the agencies to withdraw the CWR and rescind or revise the CWR's definition of WOTUS as appropriate and consistent with the law.

The agencies are engaged in a two-step process to review and potentially revise the CWR. Step One of this process would rescind the CWR and replace it with the previous regulatory text. On July 27, 2017, the agencies issued a proposed rule that would complete Step One. The public comment period for the Step One rule closed on September 27, 2017, resulting in what the agencies described as a “large volume” of comments. The agencies currently are reviewing these comments and have not yet finalized the Step One rule. In addition, the agencies have indicated that Step Two of the process will include a proposed rule addressing, and requesting public comment on, potential substantive changes to

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the definition of WOTUS. The agencies have not yet proposed a rule that would start Step Two of the review process.

Within hours of its issuance, environmental groups and a multistate coalition filed lawsuits asking federal district courts in New York and South Carolina to vacate the agencies' final rule delaying implementation of the CWR. The specific language and justification for the final rule delaying implementation of the CWR has sparked debate among legal scholars on whether it will hold up in court. The lawsuits challenging the delay in implementing the CWR almost certainly will be followed by litigation by environmental groups, states, and potentially other parties over the rules issued by the agencies to complete Step One and Step Two of the agencies' review process.

### **Expect continued regulatory uncertainty**

While the agencies and challengers continue to battle over the Trump administration's efforts to roll back the CWR, industry and other regulated parties will be subject to a pre-2015 WOTUS regulatory regime that previously contributed to significant uncertainty over the scope of the agencies' authority under CWA programs

that impact industry, including oil and gas. As the agencies noted in the final rule delaying implementation of the CWR, the prior WOTUS regulatory regime was implemented through the agencies' applicable guidance documents and was based on two tests established by the Supreme Court in a fractured 2006 decision in *United States v. Rapanos*, 547 U.S. 715 (2006). Many are critical of the pre-2015 regulatory regime for its case-by-case approach to determining whether an activity (e.g., construction activities related to oil and gas exploration, processing and transmission) is subject to review and approval by the agencies. Complicating matters further, federal courts throughout the country have interpreted the *Rapanos* decision differently and disagreed on the appropriate test that must be used to define a WOTUS. As the Trump administration proceeds with its efforts to roll back the CWR and potentially redefine WOTUS, industry and other regulated parties will be forced to continue operating in an uncertain legal landscape. ■

*For more information, contact Lisa M. Bruderly at 412-394-6495 or lbruderly@babstcalland.com, or Gary E. Steinbauer at 412-394-6590 or gsteinbauer@babstcalland.com.*

## **Senate considers resolution ending leasing moratorium on state lands**

The Senate Environmental Resources and Energy Committee on January 30 adopted a resolution directing Governor Tom Wolf to end the moratorium on non-surface disturbance natural gas drilling on state forest land to allow the Department of Conservation and Natural Resources (DCNR) to enter into new gas leases.

Sponsored by Representative Camera Bartolotta (R-Washington), Senate Resolution 104 notes that reauthorizing drilling to occur on the 1.5 million acres that are located within the Marcellus Shale region could generate in excess of \$100 million in lease and royalty revenues.

One of Wolf's first official acts as governor in January 2015 was to reinstate a 2010 moratorium imposed by Governor Ed Rendell on new oil and gas leasing of state forest and park lands. In May 2014 Governor Tom Corbett amended the moratorium to allow leasing on state-owned lands, provided that the natural gas could be accessed with no additional long-term surface disturbance on state lands or if the drilling could occur horizontally from adjacent private lands.

In response to emails that the committee received in opposition to the resolution, Senator Gene Yaw (R-Lycoming) said that concerns regarding new roads, pipelines and other impacts associated with new drilling are misguided. Yaw noted that "non-surface" impact means that a proposed well project cannot result in new roads or other surface disturbances.

SR 104 passed the Environmental Resources and Energy Committee on a party-line vote, with Democrats unanimously opposed.

In a statement following passage, Bartolotta pointed out that prior to the governor's moratorium, DCNR received \$413 million in upfront bidding revenue for shale gas-specific leases. Since the first shale gas lease in 2008, the department has received more than \$545 million in royalty payments. These numbers do not include the additional tax revenue and jobs supported by this responsible natural gas development. Funds directly generated from these leases will go to fund important environmental education programs throughout the state.

"Lifting the moratorium is a responsible way to ensure there's substantial funding for environmental programs, additional tax revenue for the state and it supports job opportunities, all without taking another penny away from taxpayers," she said.

The resolution goes to the full Senate for its consideration. If adopted, it is essentially a statement of Senate policy and carries no legal or statutory authority for the governor to act.

A spokesman for the governor told the *Pittsburgh Post-Gazette* that the administration continues to oppose opening more state forests to drilling. "Natural gas development is vital to Pennsylvania's economy, but so is the economic and environmental viability of our parks and forests," he said. "Governor Wolf believes we currently have the right balance."

# Multi-well pad drilling, simultaneous operations introduce unique risks

By Carol Delfino, CIH, CSP  
SE Technologies, LLC

U.S. oil and gas operators are doing more and more multiple-well pad drilling. The ability to drill multiple wells on a single pad provides numerous operational and economic advantages to operators. However, for all the benefits that pad drilling and simultaneous operations can generate for oil and gas companies, they also present unique safety challenges and risks.

Drilling and completion operations on a traditional single-well site typically take place in sequential order, beginning with site preparation and moving to drilling, stimulation, completion and finally production. Each stage has its own unique safety hazards.

Simultaneous operations introduce several of these hazards onto the well site at the same time. One part of the pad brings risks associated with drilling or completion, while another brings perils related to well stimulation, flowback or even production. Operators must juggle the risks in a well's lifecycle all at the same time.

The design of a pad is just as important as its operations, especially for a multi-well site. Greater well spac-

ing on the pad can give emergency response crews more room to operate in the event of a fire or a blowout. The installation of remote shutoff valves can mitigate the possibility of an incident spreading to a nearby neighborhood.

A multi-well pad site requires more equipment and oversight than a single-well pad. It also requires significantly more people to be on site. This can lead to additional exposures as site activities increase.

Communication among multiple crews is crucial on a multi-well pad site. Contractors must be aware of each other's activities at all times. The complexity of these site makes and emergency response plans much more challenging to develop.

Therefore, contractor selection is most important. The contractor must be experienced on multi-well pad sites and have a history of safe work practicing procedures. Experienced people, clear communication and properly maintained equipment are what make a successful multi-well pad location successful.

For more information, please refer to this article: [www.travelers.com/iw-documents/business-insurance/american-oil-gas-reporter-12-14.pdf](http://www.travelers.com/iw-documents/business-insurance/american-oil-gas-reporter-12-14.pdf). ■

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## Wanted: Safety Committee speakers

PIOGA's Safety Committee serves as a forum to improve the safety performance of Pennsylvania's oil and gas industry through the exchange and communication of best practices, education and training, incident review and sharing, and by identifying and communicating industry trends. Toward these goals, the committee is seeking PIOGA subject matter experts interested in making presentations on safety-related topics at the group's meetings.

Potential topics include regulatory matters, best practices, training, legal issues and industry trends. Speakers would have approximately an hour. "Sales pitches" will not be considered.

The committee meets every other month on the second Wednesday at the Regional Learning Alliance in Cranberry Township, just prior to, and at the same location as, the monthly meeting of the Environmental Committee. The next meeting is February 8.

To discuss potential presentations, please contact committee Chairman Wayne Vanderhoof of RJR Safety Inc. at [wayne@rjrsafety.com](mailto:wayne@rjrsafety.com) or 724-809-4234.

# IFO projects \$46.1 million increase in impact fees for 2017

When unconventional operators turn in their 2017 Act 13 impact fee payments by the April 1 deadline, the state's Independent Fiscal Office (IFO) estimates the total will come to nearly \$219.4 million—the third highest amount since the inception of the tax and an increase of \$46.1 million over payments for the 2016 calendar year.

Proceeds from the impact fee are distributed to local governments and agencies to provide for infrastructure, emergency services, environmental initiatives and various other programs. Over the past seven years, the tax has generated more than \$1.4 billion. The top year was 2013, when \$225.7 million was collected.

The IFO's estimate, released late last month, cites two primary reasons for the increase in 2017:

- **Statutory fee schedule.** The fee schedule is based on the average annual NYMEX price of natural gas. Because the average price exceeded \$3.00, the fee schedule was adjusted upward. (The annual fee schedule is set by the Pennsylvania Public Utility Commission, which had not yet announced the official rates for 2017 either at the time the IFO issued its report or when this issue of *The PIOGA Press* was finalized.) The net result is an estimated increase of \$43.4 million.

- **New wells offset aging wells.** The fee is highest in the first year of a well and declines as the well ages. Revenue from 812 wells spud in 2017 offset reduced collections from older wells and wells with declining production that shifted them into the exempt stripper category. The anticipated net is an increase of \$2.7 million.

Approximately 8,600 shale wells are subject to the tax and about 2,300 are exempt because they have been plugged or produce too little gas to qualify. The IFO estimate of exempt wells was not adjusted to reflect the potential impact of the Snyder Brothers/PIOGA lawsuit, currently before the state Supreme Court, challenging the PUC's interpretation of a low-producing stripper well.

**Effective tax rate.** The IFO also calculates the effective tax rate by dividing annual impact fee revenues by the total market value of unconventional natural gas production (using a weighted average of spot prices at the Dominion South and Leidy trading hubs and factoring in post-production costs). For 2017, the effective tax rate of the impact fee is estimated at 2.9 percent, down from a 4.5-percent rate in 2016.

## PUC adjusts impact fee upward

The Pennsylvania Public Utility Commission has adjusted the unconventional well impact fee upward for the 2017 calendar year, with first-year horizontal wells paying \$5,400 more than the previous year and newly drilled vertical wells \$1,000 more than for 2016.

Act 13 of 2012 directs the PUC to adjust the fee annually based on the average NYMEX Henry Hub price for the year and the Consumer Price Index (CPI) for the region—but only if the number of unconventional wells spud increases over the previous year. In 2017, 786 wells were spud, compared to 503 in 2016. The higher number of wells, coupled with an average Henry Hub price increase to \$3.11 enabled the PUC to move the impact fee to the next higher fee schedule, shown below.

The notice appeared in the February 3 *Pennsylvania Bulletin*. Impact fee payments by unconventional operators are due April 1. Additional information is available on the PUC's Act 13 impact fee website, accessible via [www.puc.state.pa.us](http://www.puc.state.pa.us).

Year of well	Horizontal well	Vertical well
1	\$50,700	\$10,100
2	\$40,500	\$8,100
3	\$30,400	\$6,100
4 thru 10	\$20,300	\$4,100

The effective tax rate has ranged as high as 6.9 percent (2015) to as low as 2.4 percent (2014). The biggest swings in the rate, according to the IFO, are due to changes in natural gas pricing. ■

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## Impact Fee Annual Effective Tax Rates

Calendar Year	Impact Fee Revenues	Unconventional Production (MMcf) <sup>1</sup>	Price of Gas (\$/Mcf) <sup>2</sup>	Market Value <sup>3</sup>	Annual ETR
2013	\$225,752	3,102,900	\$2.70	\$8,381,100	2.7%
2014	223,500	4,070,700	2.33	9,506,000	2.4
2015	187,712	4,596,900	0.59	2,722,400	6.9
2016	173,259	5,094,100	0.75	3,843,400	4.5
2017	219,371	5,349,500	1.40	7,480,300	2.9

Note: Dollar amounts in thousands. MMcf is million cubic feet.

<sup>1</sup> Production data through November 2017. December 2017 is estimated by the IFO.

<sup>2</sup> Net of post-production costs, which were estimated to be \$0.80 in 2017.

<sup>3</sup> Does not include natural gas liquids (condensate).

Source: Independent Fiscal Office

# DEP launches outreach promote to abandoned well plugging

The Department of Environmental Protection is encouraging private-sector partners to become Good Samaritans by participating in a program that helps plug abandoned oil and gas wells statewide. The program protects them from liability for their role in helping reduce the health, safety and environmental hazards of these wells.

“Our 150-year history of oil and gas drilling, much of it before environmental regulations were implemented, has left Pennsylvania with a challenging legacy: plugging thousands of abandoned wells that were left open,” said DEP Secretary Patrick McDonnell. “We encourage private-sector groups or individuals to take advantage of the Environmental Good Samaritan Act to help reduce risk and improve the local environment for many Pennsylvanians.”

The Environmental Good Samaritan Act of 1999 protects groups and individuals who volunteer to imple-

ment qualifying environmental remediation projects from civil and environmental liability. The act does not provide immunity for injury or damage that may result from reckless, unlawful or grossly negligent acts or omissions.

While the act historically has been used for mine reclamation, DEP first applied it to two oil and gas well projects in 2017. Cameron Energy plugged a well in Warren County that had been discharging crude oil to the ground and nearby streams, and Chemtrade Logistics plugged a leaking gas well in Elk County. These projects are estimated to have saved DEP \$60,000 to \$85,000, in addition to administrative cost savings related to contract development and management.

Three more project proposals are currently under review, and DEP welcomes others.

The agency has developed online training ([www.youtube.com/watch?v=k8ZHi3giZVM](http://www.youtube.com/watch?v=k8ZHi3giZVM)) to walk volunteers through the process of submitting a project proposal and applying for the liability protection. In addition, the eFACTS environmental database and Oil and Gas Mapping Tool have been updated to provide an inventory of Environmental Good Samaritan project proposals for abandoned wells in Pennsylvania.

Volunteers enjoy reduced liability, and can develop the land at or near the well site more quickly than if they had to wait for DEP to plug the well, given limited state funding.

Questions about well plugging through the Environmental Good Samaritan Act can be addressed by contacting the DEP Bureau of Oil and Gas Planning and Program Management or the district office where the project is located. ■

## Wolf renews call for severance tax

Governor Tom Wolf's FY2018-19 budget proposal again includes a natural gas severance tax. In his February 6 budget address, Wolf advocated for a severance tax like the one passed last year by the Senate, which he said would generate just under \$250 million.

The tax legislation approved by the Senate would impose a levy of 2-3.5 cents per Mcf depending on the annual NYMEX average price for natural gas. The impact fee would be retained on top of the new tax. The House is considering a version of the tax as well.

"Year after year, the legislature has rightfully rejected calls for an additional tax on natural gas production in the Common-

*Continues on page 22*

## 2018 PIOGA Buyers' Guide is LIVE!

PIOGA is pleased to announce that our 2018 PIOGA Buyers' Guide is LIVE at [www.pioga.org](http://www.pioga.org)! The Buyers' Guide is an interactive "one-stop shop" for our members looking for products and services needed for oil and gas operations, and over the past three years we have received many positive comments about this resource available to PIOGA members.

The 2018 version of the Buyers' Guide features updated and expanded company and product listings, in addition to other valuable information relating to the PIOGA members and other industry professionals now have an easy way to browse for goods and services.

"The PIOGA Buyers' Guide has really become a great online resource for purchasing goods and services in the oil and gas industry, connecting our members together for a more efficient way to find what your company is looking for," said Dan Weaver, PIOGA's president and executive director.

Our partnership with Strategic Value Media (SVM) has allowed PIOGA to provide more options to our members to advertise their products and services. All PIOGA Service Provider and Professional Firm members automatically receive a *complimentary* listing in the Buyers' Guide, but your company can work with the SVM staff to discuss options of upgrading your listing. There are many options that the SVM staff can discuss with you as you determine how much you would like to advertise. Additionally, there are new categories and subcategories that you can list your company in.

**Service Providers/Professional Firms:** Please take a minute to review your Buyers' Guide listing. If you would like to request any changes or to upgrade your listing, please email [pioga-advertise@svmmedia.com](mailto:pioga-advertise@svmmedia.com).

If your company or business has not yet taken advantage of this exceptional opportunity to highlight your products and services in the Guide, it is not too late! To learn more about advertising your products or services

in this exclusive member benefit please email [pioga-advertise@svmmedia.com](mailto:pioga-advertise@svmmedia.com). ■

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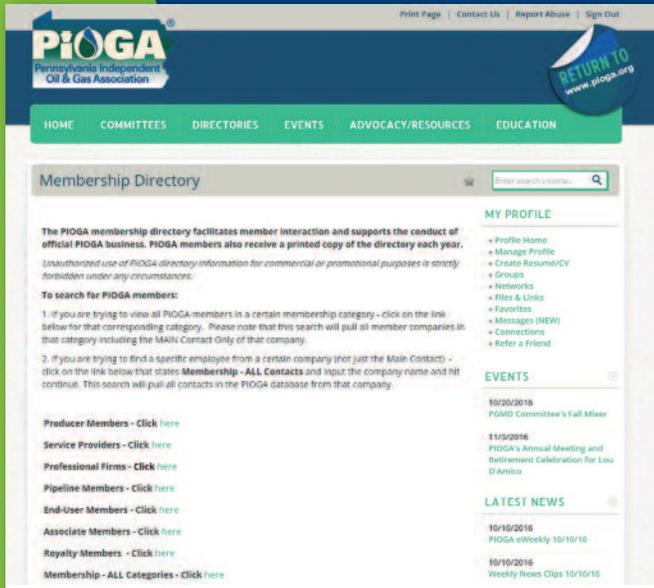


### **Pins & Pints!**

*Our inaugural mixer of 2018, and our first bowling event ever, was great fun. The January 18 event at Main Event in Robinson Township was sponsored by PG2, Inc. and Stream-Flo USA, LLC. Thank you!*



# Are you taking advantage of PIOGA's online Members' Only system?



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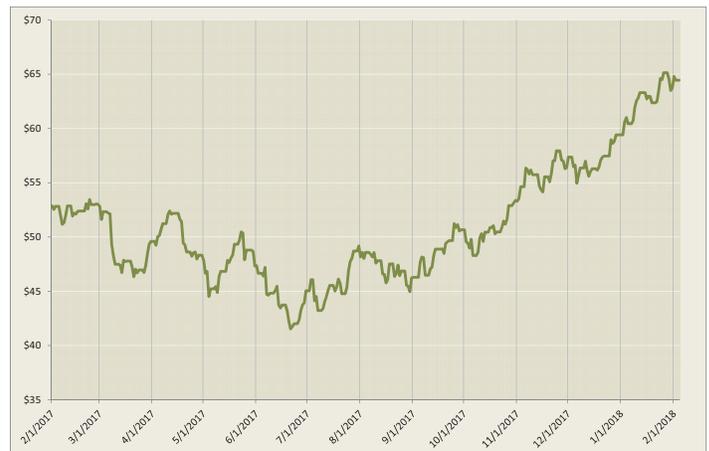
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## Oil & Gas Dashboard

### Pennsylvania Rig Count



### Penn Grade Crude Oil Prices



### Natural Gas Futures Closing Prices

Month	Price
March	\$2.761
April	2.732
May	2.743
June	2.777
July	2.817
August	2.829
September	2.815
October	2.825
November	2.867
December	3.004
January 2019	3.107
February	3.062

Prices as of February 6

### Sources

American Refining Group: [www.amref.com/Crude-Prices-New.aspx](http://www.amref.com/Crude-Prices-New.aspx)  
 Ergon Oil Purchasing: [www.ergon.com/prices.php](http://www.ergon.com/prices.php)  
 Gas futures: [quotes.ino.com/exchanges/?r=NYMEX\\_NG](http://quotes.ino.com/exchanges/?r=NYMEX_NG)  
 Baker Hughes rig count: [phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-reportsoter](http://phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-reportsoter)  
 NYMEX strip chart: Emkey Energy LLC, [emkeyenergy.com](http://emkeyenergy.com)

# Northeast Pricing Report – February 2018

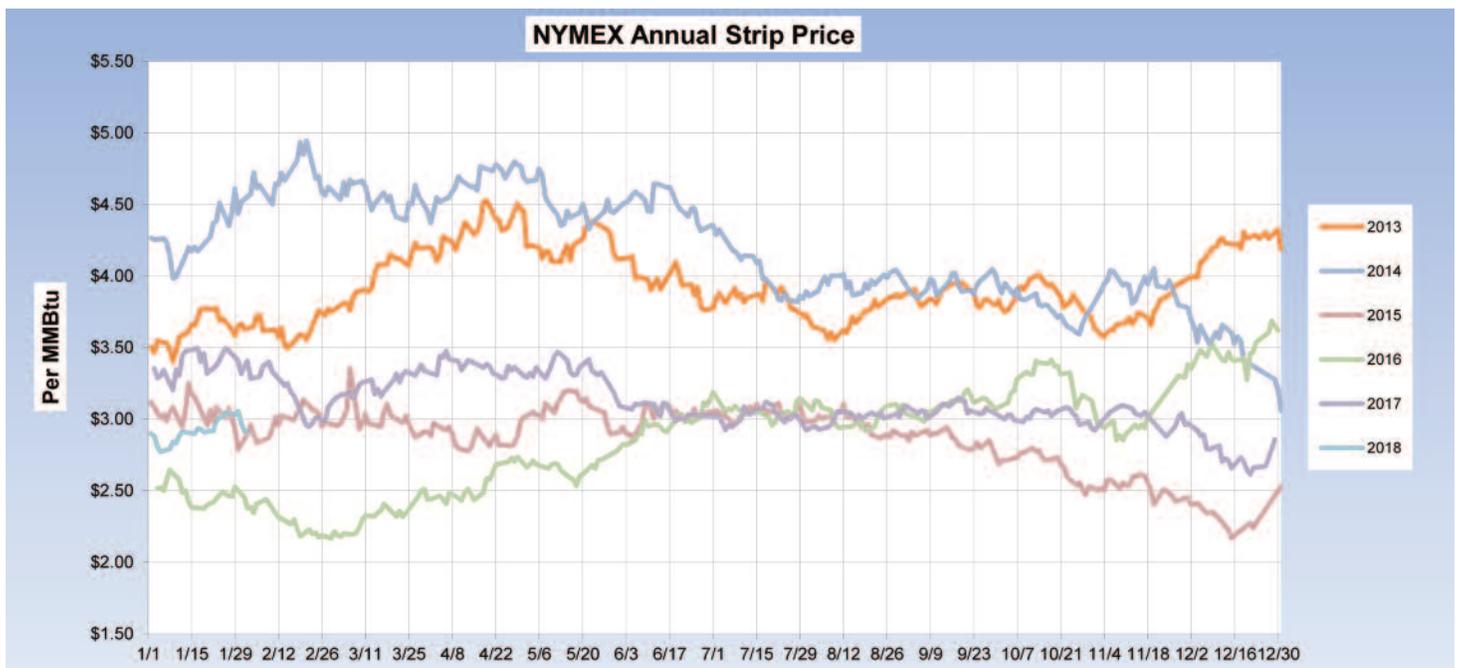
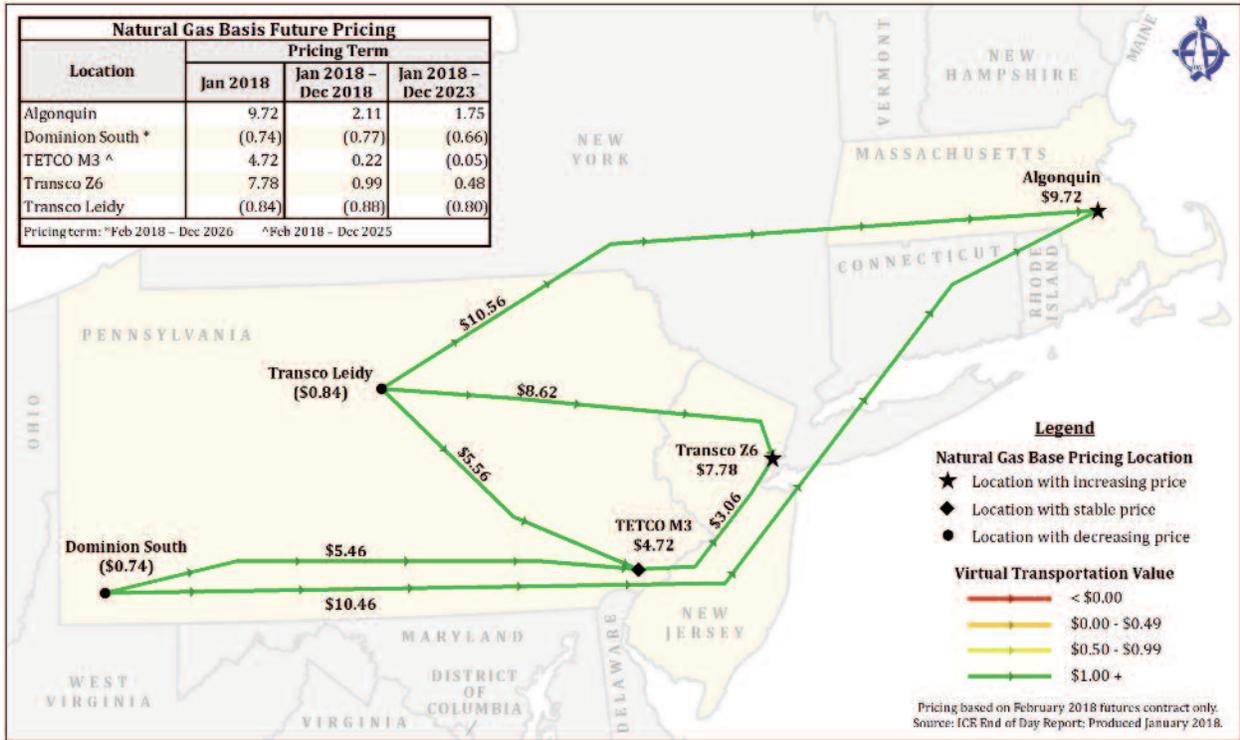
For front month and one-year trading, the supply areas of Transco Leidy and Dominion South have seen pricing decreases. However, areas of demand TETCO M3, Transco Z6, and Algonquin, continued to see significant increases. Transco Z6 and TETCO M3 saw increases of \$3.03 per MMBtu and \$2.25 per MMBtu respectively. Trading over the entire trading term was mixed. The largest increase was \$0.015 for Algonquin and the largest decrease was \$0.10 for Transco Leidy.

For the third straight month, transportation saw dramatic increases. Access to the TETCO M3 and TETCO Z6 was especially impacted. Transportation from Leidy to Transco Z6 and TETCO M3 increased \$3.36 and \$2.58 per MMBtu respectively. Dominion South to TETCO M3 increased \$2.53 per MMBtu. All other transportation routes had increases that ranged from \$0.78 to \$0.97 per MMBtu. Total transportation values from Dominion South and Leidy to Algonquin have a total of \$10.46 and \$10.56 per MMBtu respectively.

Both basis and transportation values have been higher this winter season than they have been previously.



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



# Spud Report: January



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
Blackhawk Energy LLC	3	1/8/18	083-56951*	McKean	Hamilton Twp
		1/23/18	083-56954*	McKean	Hamilton Twp
		1/29/18	083-56955*	McKean	Hamilton Twp
Cabot Oil & Gas Corp	11	1/24/18	115-22332	Susquehanna	Brooklyn Twp
		1/24/18	115-22329	Susquehanna	Brooklyn Twp
		1/24/18	115-22330	Susquehanna	Brooklyn Twp
		1/24/18	115-22331	Susquehanna	Brooklyn Twp
		1/24/18	115-22334	Susquehanna	Brooklyn Twp
		1/24/18	115-22333	Susquehanna	Brooklyn Twp
		1/8/18	115-22419	Susquehanna	Springville Twp
		1/8/18	115-22420	Susquehanna	Springville Twp
		1/8/18	115-22421	Susquehanna	Springville Twp
		1/8/18	115-22422	Susquehanna	Springville Twp
		1/8/18	115-22423	Susquehanna	Springville Twp
Cameron Energy Co	1	1/3/18	123-48085*	Warren	Sheffield Twp
Chesapeake Appalachia LLC	3	1/31/18	015-23387	Bradford	Monroe Twp
		1/17/18	131-20545	Wyoming	Meshoppen Twp
		1/23/18	131-20544	Wyoming	Meshoppen Twp
Chevron Appalachia LLC	1	1/8/18	059-27538	Greene	Greene Twp
Curtis Oil Inc	1	1/22/18	053-30835*	Forest	Howe Twp
EM Energy PA LLC	8	1/20/18	019-22710	Butler	Allegheny Twp
		1/22/18	019-22709	Butler	Allegheny Twp
		1/24/18	019-22706	Butler	Allegheny Twp
		1/26/18	019-22707	Butler	Allegheny Twp
		1/27/18	019-22711	Butler	Allegheny Twp
		1/28/18	019-22708	Butler	Allegheny Twp

available at [www.dep.pa.gov/DataandTools/Reports/Oil and Gas Reports](http://www.dep.pa.gov/DataandTools/Reports/Oil and Gas Reports).

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
PennEnergy Resources LLC	6	1/29/18	019-22712	Butler	Allegheny Twp
		1/30/18	019-22713	Butler	Allegheny Twp
		1/3/18	007-20513	Beaver	New Sewickley Tw
		1/4/18	007-20514	Beaver	New Sewickley Tw
		1/4/18	007-20515	Beaver	New Sewickley Tw
		1/4/18	007-20516	Beaver	New Sewickley Tw
PVE Oil Corp Inc	2	1/15/18	083-56910*	McKean	Sergeant Twp
		1/19/18	083-56915*	McKean	Sergeant Twp
Range Resources Appalachia	7	1/31/18	003-22428	Allegheny	Findlay Twp
		1/31/18	003-22430	Allegheny	Findlay Twp
		1/31/18	003-22429	Allegheny	Findlay Twp
		1/19/18	125-28457	Washington	Smith Twp
		1/24/18	125-28458	Washington	Smith Twp
Repsol Oil & Gas USA LLC	6	1/27/18	125-28459	Washington	Smith Twp
		1/27/18	125-28460	Washington	Smith Twp
		1/2/18	117-21964	Tioga	Ward Twp
		1/2/18	117-21963	Tioga	Ward Twp
Rice Drilling B LLC	8	1/2/18	117-21965	Tioga	Ward Twp
		1/2/18	117-21966	Tioga	Ward Twp
		1/2/18	117-21967	Tioga	Ward Twp
		1/2/18	117-21968	Tioga	Ward Twp
		1/26/18	059-27441	Greene	Whiteley Twp
		1/26/18	059-27438	Greene	Whiteley Twp
		1/26/18	059-27443	Greene	Whiteley Twp
		1/26/18	059-27444	Greene	Whiteley Twp
		1/26/18	059-27445	Greene	Whiteley Twp
		1/26/18	059-27439	Greene	Whiteley Twp
		1/26/18	059-27440	Greene	Whiteley Twp
		1/26/18	059-27442	Greene	Whiteley Twp
SWEPI LP	4	1/23/18	117-21923	Tioga	Middlebury Twp
		1/24/18	117-21920	Tioga	Middlebury Twp
		1/24/18	117-21921	Tioga	Middlebury Twp
		1/25/18	117-21922	Tioga	Middlebury Twp
SWN Production Co LLC	6	1/24/18	015-23382	Bradford	Stevens Twp
		1/16/18	115-22378	Susquehanna	New Milford Twp
		1/17/18	115-22403	Susquehanna	New Milford Twp
		1/18/18	115-22402	Susquehanna	New Milford Twp
		1/19/18	115-22379	Susquehanna	New Milford Twp
Wilmoth Interests Inc	1	1/20/18	115-22377	Susquehanna	New Milford Twp
		1/8/18	123-48126*	Warren	Sheffield Twp
		1/24/18	019-22697	Butler	Connoquenessing
XTO Energy Inc	3	1/10/18	019-22687	Butler	Summit Twp
		1/10/18	019-22689	Butler	Summit Twp

	January	December	November	October	September	August
<b>Total wells</b>	<b>71</b>	<b>67</b>	<b>79</b>	<b>114</b>	<b>84</b>	<b>66</b>
Unconventional Gas	63	63	70	91	78	58
Conventional Gas	0	0	0	0	1	0
Oil	8	4	9	23	5	8
Combination Oil/Gas	0	0	0	0	0	0

## Severance tax *Continued from page 18*

wealth. We encourage them to reject this proposal once again, and allow natural gas development and pipeline construction to continue to grow and provide economic opportunities, jobs and energy savings for Pennsylvanians," PIOGA President & Executive Dan Weaver said in response to the governor's proposal.

He added: "To propose another burden on our industry on the same day as an announcement by the state Department of Environmental Protection to increase well permitting fees by 250 percent is more evidence that the Wolf administration is seeking to punish Pennsylvania's energy producers and job creators." ■

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## Calendar of Events

### PIOGA events

Info: [www.pioga.org/events](http://www.pioga.org/events)

#### Cigar Dinner Networking Event

February 22, The Lot at Edgewater, Oakmont

#### Legacy Well Workshop

February 27, Clarion University, Clarion

#### Spring Meeting

March 21, Rivers Casino, Pittsburgh

#### PIOGATech: Water & Waste Management Training

April 26, Aquatech International Corp., Canonsburg

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

June 4, Wanango Golf Club, Reno

#### 21st Annual Divot Diggers Golf Outing

August 23, Tam O'Shanter Golf Club, Hermitage

#### Fall Oktoberfest and Annual Meeting

October 17-18, Seven Springs Resort, Champion

### Other association & industry events

#### OOGA Winter Meeting

March 7-9, Hilton Columbus at Easton, Columbus, OH

Info: [www.ooga.org](http://www.ooga.org)

#### IPAA Midyear Meeting

June 25-27, Austin, TX

Info: [www.ipaa.org/events](http://www.ipaa.org/events)

#### IOGANY Summer Meeting

July 11-12, Peek n' Peak, Clymer NY

Find more events at [www.pioga.org](http://www.pioga.org) >>

### Coordinator/Instructor:

#### CAT / Ariel Natural Gas Compressor Program

Central Pennsylvania Institute of Science and Technology (CPI) - F/T PS faculty position w benefits. Responsibilities include student and industry-specific training, curriculum development, adjunct identification, coordination, supervision, and overall operations and growth of CPI's Natural Gas Compression (NGC) – CAT/Ariel Emphasis AST Degree Program. Prefer minimum 3 years' hands-on experience with diesel engines, hydraulics, electronics, mechanical and electrical systems. Compression/natural gas compressor experience and understanding of automated industrial systems and processes required. Degree required; prefer from related technical field. Applicant must be proficient with computer and software applications. Send cover, resume and minimum 3 professional references to **Attn: VP Post-Secondary Education, CPI, 540 N. Harrison Rd., Pleasant Gap, PA 16823; [ttaylor@cp.edu](mailto:ttaylor@cp.edu)**.

Act 34, 114 and 151 clearances and PA child reporting certificate will be required of the successful applicant. Position advertised until filled. EOE.

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- ▶ **Ted Cranmer Memorial Golf Outing and Steak Fry**  
June 4 / Wanango Golf Club, Reno
- ▶ **21st Annual Divot Diggers Golf Outing**  
August 23, Tam O'Shanter Golf Club, Hermitage
- ▶ **Fall Oktoberfest and Annual Meeting**  
October 17-18 / Seven Springs Mountain Resort, Champion
- ▶ **Annual Oil & Gas Tax and Accounting Seminar**  
November 28 / Location TBA

## **PLUS:**

- ▶ **PIOGATech technical training on critical environmental and safety topics**
- ▶ **Mixers and other fun networking events**

*Mark your calendars and watch your email for more information*