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The PIOGA press

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Fighting a severance tax will again be PIOGA's legislative priority

"More of the same" is anticipated as the Pennsylvania General Assembly begins a new session. At the top of PIOGA's legislative priority list is fighting a natural gas severance tax, which has already made its way into Governor Tom Wolf's proposed budget for the third year in a row.

Other issues unresolved in the legislature's last two-year session—such as changes to the PA One Call law and royalty owner rights proposals—will again demand PIOGA's involvement.

In his February 2 budget address, Wolf called for a 6.5-percent severance tax. The administration's budget proposal summary called it a "competitively structured severance tax on natural gas to generate new revenue to support future education investment while sustaining growth and maximizing economic gain from the commonwealth's natural resource." Under the proposal, the local impact fee on unconventional wells would remain and operators would be allowed tax credit for impact fee payments. The administration says the tax would generate just under $294 million this fiscal year.

PIOGA President & Executive Director Dan Weaver described the proposed tax this way: "The governor and state lawmakers who are seeking again to impose a severance on natural gas production are ignoring a fundamental market reality with this ill-advised proposal: the low energy prices that people across the state are enjoying continue to translate into very difficult times for natural gas producers that would be made far worse with an additional tax burden."

Last year, the governor called for a tax on unconventional gas production of 5 percent plus 4.7 cents per Mcf. The tax would have included a floor price of $2.97/Mcf, so that producers would continue to pay a tax on that price event when actual natural gas prices dipped below the floor.

In addition, there have been two standalone severance tax bills introduced as of early February:

• House Bill 113, sponsored by Republican Representative Kate Harper of Montgomery County, would establish a 3.5-percent severance tax on natural gas on top of the existing impact

(Continues on page 4)

Court ruling shows need for agencies to provide forms with proposed rulemakings

A Commonwealth Court ruling last month involving who is legally responsible for removing underground storage tanks highlights the importance of the requirement that as part of a proposed rulemaking agencies provide copies of all forms they will use to implement and enforce regulations. The court decision comes at a time when the Independent Regulatory Review Commission (IRRC) is engaged in a rulemaking concerning its own regulations implementing the provisions of the Regulatory Review Act (RRA).

In *Lester v. DEP,* the Department of Environmental Protection's Environmental Hearing Board (EHB) found Andrew Lester to be the "operator" of four underground gasoline and diesel fuel storage tanks that DEP had ordered removed at his father's Warren County service station. In making its argument, DEP relied heavily on various forms that Lester had signed to support its position that he met the definition of an operator under the Storage Tank Act and its regulations. The EHB explained that it was not clear that Lester understood the nature of the forms or that his designation as "operator" on the forms would impose legal obligations on him, but the board nevertheless ruled that he was indeed the

(Continues on page 19)

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Legislative outlook: *Continued from page 1*

fee. Half of the revenue collected from the tax would go to the Public School Employees Retirement Fund to reduce unfunded liabilities and half would fund Pennsylvania State Police operations. The bill has been referred to the House Environmental Resources and Energy Committee.

• Senate Bill 245 would levy a 5-percent severance tax that would fund a program that would allow students to attend a state university with no money down. After graduating, load recipients would pay back the loan interest-free. SB 245 was sponsored by Senator Daylin Leach, a Democrat representing portions of Delaware and Montgomery counties. It is before the Senate Education Committee.

As this session of the General Assembly gets up to speed, several other lawmakers have been circulating sponsorship memos for severance tax proposals to try to get other legislators to sign on as cosponsors for bills they intend to introduce. Last session, more than a dozen pieces of legislation were introduced proposing various versions of a severance tax.

PIOGA will be calling on members to become involved in this important fight as the General Assembly crafts a state budget for the 2017-18 fiscal year.

One Call changes

As we reported in a session wrap-up in the November *PIOGA Press,* Governor Wolf signed legislation in November extending authorization for the PA One Call Law for one year, through December 31, 2017. Efforts to end the long-standing exemption of oil and gas gathering lines from mandatory participation in the call-before-excavating program and the high cost of participating in PA One Call were concerns for many of PIOGA's conventional operators, and the one-year reauthorization provides time to seek a solution to those issues.

We have already seen reintroduction of one of the PA One Call bills from last year. SB 242, offered by Senator Lisa Baker, a Republican representing northeast Pennsylvania, would transfer oversight of the law from the Department of Labor and Industry to the Pennsylvania Public Utility Commission and eliminate all current exclusions and exemptions. Legislation is expected to be introduced soon in the House which would transfer administration of the law from the Department of Labor and Industry and retain the exclusion for the production and gathering lines of the conventional oil and gas industry.

Royalty owner legislation

The Senate has already passed a pair of bills that deal with royalty owner rights—SB 138 and 139, sponsored by Senator Gene Yaw, a Republican from Williamsport.

SB 138 provides royalty interest owners the opportunity to inspect records of the gas producer to verify proper payment. All information provided by the gas company would be confidential in nature and could not be disclosed to any other person. In addition, the bill requires that proceeds from production of oil and gas shall be paid within 60 days of production. SB 148, meanwhile, would prohibit a producer from retaliating against a royalty owner by terminating the lease agreement or ceasing development because a landowner questions the accuracy of the royalty payments. The measures are before the House Environmental Resources and Energy Committee.

Last session the bills passed the Senate, but were not acted on by the House. PIOGA is working on suggested amendments to SB 138 regarding the 60-day time frame for royalty payments.

PIOGA also anticipates reintroduction of legislation amending the Guaranteed Minimum Royalty Act to prohibit the deduction of post-production costs from royalty payments, including existing lease agreements. The controversial legislation gained considerable attention as the session ran out late last year.

Learn more, get involved

To learn more about any piece of legislation, go to www.legis.state.pa.us and use the Find Legislation tool. If you would like to contact your state representative or senator, go to www.pioga.org > Resources > Get Involved. ■

PIOGA statement on Governor Wolf's proposed severance tax:

The governor and state lawmakers who are seeking again to impose a severance on natural gas production are ignoring a fundamental market reality with this ill-advised proposal: the low energy prices that people across the state are enjoying continue to translate into very difficult times for natural gas producers that would be made far worse with an additional tax burden.

This is the same market reality that existed during the last discussion about imposing an additional tax on natural gas production, and that will exist for the near future. This market reality means that a 6.5-percent severance tax rate would have a huge detrimental impact on natural gas development and jobs, while raising very little revenue to make even the slightest dent in Pennsylvania's current and projected budget deficits.

The Appalachian Basin is in a long-term negative pricing environment that has a potential to be reversed with greatly expanded pipeline capacity that will take at least a few years to resolve under a best-case scenario. Pennsylvania's current unconventional drilling rig count of 33 is about one-third more than Ohio's 21, while West Virginia continues to struggle, in part due to that state's additional severance tax that was enacted a few years ago.

The best that can be said is that we are holding onto our rigs and our jobs by our fingernails by being as smart and efficient as possible in our operations. All of that will change for the worse with any type of severance tax, without any significant effect on reducing the state budget deficit.

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Scenes from the Winter Meeting

February 1 / Rivers Casino

Thanks to all who took part in our 2017 Winter Meeting—speakers, sponsors, exhibitors and, of course, the approximately 250 conference attendees. By all accounts, the meeting was a big success. Here's what one participant had to say: "That was one of the best PIOGA meetings in a long time. The topics were very relevant and interesting. Some great ideas from the speakers too."

PIOGA Cigar Dinner

More than 50 people turned out for the cigar dinner on January 19 at Mallorca Restaurant in Pittsburgh. Stay tuned: PIOGA is planning more of these popular networking events for 2017.

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2016 impact fee revenue declines by $13.1 million

Act 13 impact fee revenue for the 2016 calendar year is expected total $174.6 million, a decline of $13.1 million compared to 2015. Payments for the previous calendar year from unconventional well operators are due to the Pennsylvania Public Utility Commission each April 1.

Proceeds from the impact fee are distributed to local governments and state agencies to provide for infrastructure, emergency services, environmental initiatives and various other programs. Over the past six years, the impact fee has generated more than $1 billion. The top year was 2013, when the fee brought in $225.7 million.

One reason for the decline in revenue, according to a report released last month by the Independent Fiscal Office, is that fewer new wells were drilled in 2016 to offset lower payments paid by aging wells. The impact fee is on a sliding scale based on the age and type of well (vertical or horizontal). In 2016, 503 new shale wells were spud, paying the highest fee, while there were almost 10,000 wells that had been in operation two or more years and paid smaller amounts. This factor accounted $9.6 million of the $13.1 million decline.

The IFO attributed the remaining $3.5 million decline to wells producing below the 90 Mcf threshold to qualify as a stripper well exempt from the impact fee. Just over 1,900 wells are now classified as stripper wells.

Effective tax rate. This impact fee is in reality a tax on unconventional wells, and the IFO report puts the effective tax rate at 5 percent for 2016. That's a drop of 1.9 percent from the previous year, due to higher natural gas prices in 2016 and a decline in impact fee revenues.

The 2015 effective tax rate of 6.9 percent was the highest in the history of the impact fee. The lowest rate was 2.4 percent in 2014. ■

Impact fee schedule unchanged

The Pennsylvania Public Utility Commission has left the 2016 calendar year fee schedule unchanged for unconventional well impact fee payments. The announcement appeared in the February 4 *Pennsylvania Bulletin.*

Act 13 of 2012 directs the PUC to adjust the fee 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. Because the number of new wells declined from 784 in 2015 to 484 in 2016, the CPI adjustment was not applicable.

The fee schedule for the 2016 calendar year is shown below. Impact fee payments by operators of unconventional wells are due April 1. Additional information is available on the PUC's Act 13 impact feel webpage, accessible at www.puc.state.pa.us.

Year of operation	Horizontal Well	Vertical Well
1	$45,300	$9,100
2	$35,200	$7,000
3	$30,200	$6,000
4 thru 10	$15,100	$3,000

Well Count and Estimated Collections for 2016

Operating Year[1]	Number of Wells[2]	Number of Exempt Wells[3]	Number of Wells Subject to Fee	Fee Amount[4]	Estimated Collections
1	503	-	503	$45,300	$22,800,000
2	784	6	778	35,200	27,400,000
3	1,371	18	1,353	30,200	40,600,000
4 +	7,450	1,882	5,568	15,100	82,800,000
Subtotal	10,108	1,906	8,202		173,600,000
Late/Disputed Fees					1,000,000
Total					**174,600,000**

[1] Wells in operating year 4 or greater are subject to the same fee amount.
[2] Represents the number of wells that have been spud, including both horizontal and vertical wells.
[3] Includes wells exempt from the fee based on production level or plugged status.
[4] Represents the fee for horizontal wells. The fee for vertical wells is 20 percent of the amount shown.

Impact Fee Annual Effective Tax Rates

Calendar Year	Impact Fee Revenues	Unconventional Production (MMcf)[1]	Price of Gas ($/Mcf)[2]	Market Value[3]	Annual ETR
2011	$204,210	1,064,000	$3.40	$3,612,900	5.7%
2012	202,472	2,042,700	1.93	3,937,200	5.1
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	174,600	5,097,000	0.69	3,501,000	5.0

Note: Dollar amounts in thousands. MMcf is million cubic feet.
[1] Production data through November 2016. December 2016 is estimated by the IFO.
[2] Net of post-production costs, which were $0.87 in 2016.
[3] Does not include natural gas liquids (condensate).

Tables: Independent Fiscal Office

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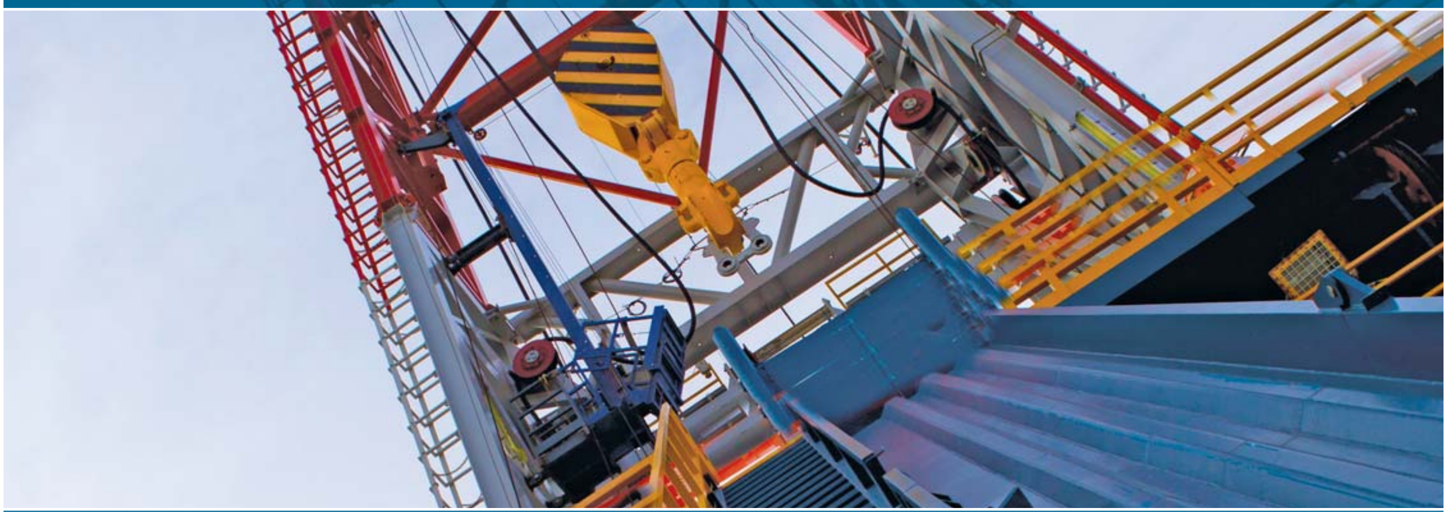

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An ounce of prevention: Employer-employee agreements

Your company has worked hard to stay competitive in the oil and gas industry—developing a robust customer list, inventing cutting-edge industry techniques and strategizing to ensure successful reactions to rapidly-changing market conditions. Jane is a valued member of your organization, an important leader in your sales group and a part of your strategic planning team. One day, Jane walks into your office and asks for a few minutes of your time. Jane informs you that she is pursuing other opportunities and gives her two weeks' notice.

You thank Jane for her efforts on behalf of the company and wish her well, but after she leaves you begin to feel panicked. You've trusted Jane with your customers and with confidential company information. What happens if she goes to work with a competitor? If she then calls your customers and asks them to move their business to her new employer? If she discloses confidential information, allowing her new employer to steal your competitive advantage?

Advance planning increases business protection and employer control

Now imagine that in response to Jane's resignation you thank her and wish her well, and then remind her of her post-employment obligations as contained in the non-compete and confidentiality agreement she signed when she began working at the company. Jane may respond that she's moving forward with the agreement in mind and tell you about her exciting new opportunity in a different field.

If instead Jane expresses her intent to violate the agreement or gives a non-committal response, you are prepared. You immediately develop a course of action to protect your company, by engaging with Jane and/or her new employer and enforcing your rights under the agreement.

Having an agreement like Jane's in place requires advance planning. In Pennsylvania, restrictive covenants such as non-competition and non-solicitation agreements are enforceable if they are (1) part of an employment relationship between the parties and supported by adequate consideration; (2) reasonably necessary to protect the business interests of the company; and (3) reasonably limited in duration and geographic scope.

Although confidentiality agreements are frequently included as part of employer-employee agreements, they are not technically considered restrictive covenants. As a result, Pennsylvania courts have held that companies may require employees to enter into confidentiality agreements without consideration and without regard for the reasonableness of the agreement's geographic scope or duration.

No universal approach

Restrictive covenant agreements offer companies a valuable tool to protect their business interests, but there is no one-size-fits-all approach regarding the specific restrictions an agreement will contain. The most common types of provisions in employer-employee agreements are non-competition, non-solicitation and non-disclosure or confidentiality provisions.

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As a general matter, non-competition provisions place restrictions on the type and location of an employee's future work and future employers, for a specified period of time. Non-solicitation provisions prevent employees from contacting or doing business with entities such as customers or suppliers for a specified period of time. Non-disclosure or confidentiality provisions restrict employees from using or disclosing confidential business information such as customer lists, financial data, trade secrets and business processes or methods—essentially any business information that is not publicly available and provides a company with a competitive advantage. Although Pennsylvania and federal law provide certain protections to trade secrets, confidentiality provisions can protect information a business considers to be confidential that does not necessarily qualify as a trade secret.

Companies may want to use different agreements for different types of employees. For example, a company may choose to have all employees sign a basic confidentiality agreement, but utilize an additional agreement containing restrictive covenants for key employees who have contact with customers and suppliers, access to financial data and strategic planning or access to proprietary industrial and scientific information. Restrictive covenant agreements are not just for employees who have an employment contract for a particular term, but are equally available for at-will employees.

Restrictions must be reasonable and relate to protectable business interests

Pennsylvania courts will not uphold a restrictive covenant agreement to prevent a former employee from competing simply for a company's economic advantage. Employers should approach restrictive covenant agreements by examining what protectable business interests are at stake and what type of agreement is reasonable to protect those interests. Some examples of protectable business interests in Pennsylvania are trade secrets, confidential information and customer goodwill.

A restrictive covenant agreement must also be reasonably limited in geographic scope and duration. Although a court will make its decision based upon the facts of each particular case, Pennsylvania courts have upheld non-competition agreements that are closely tied to the geographic area of the employee's duties and the company's customers. Non-solicitation provisions are typically given more geographic latitude, because non-solicitation agreements only prevent an individual from engaging in business with specific customers and entities. As to duration, Pennsylvania courts have generally upheld restrictive covenants with a post-employment term of one year to two years as reasonable and depending on the particular circumstances may uphold a longer post-employment term.

Although they are frequently a part of employer-employee agreements that contain restrictive covenants, non-disclosure or confidentiality agreements are not themselves technically considered "restrictive covenants" in Pennsylvania. Rather, they are agreements that protect the property rights of a company in its business information. Therefore they are not limited by the reasonableness criteria (geographic scope and duration) that apply to non-competition or non-solicitation provisions.

Employee must receive consideration for entering into restrictive covenant agreement

Courts in Pennsylvania will also refuse to enforce a restrictive covenant agreement containing non-competition and non-solicitation provisions if the employee did not receive adequate consideration in exchange for signing the agreement. Pennsylvania considers entering into a restrictive covenant as part of the commencement of employment (i.e., as a condition of hiring) to be adequate consideration.

Unlike some other states, Pennsylvania does not view continued employment alone as sufficient consideration. Therefore, companies who wish to enter into restrictive covenants with existing employees must provide those employees with additional consideration. The adequacy of that consideration is evaluated based upon the specific facts of a particular case, but is usually composed of some combination of a raise, promotion and/or bonus.

No consideration required for confidentiality agreements

Non-disclosure or confidentiality agreements are not restrictive covenants, and new or existing employees need not be provided with consideration in exchange for signing such agreements. Companies can require employees to sign confidentiality agreements at any time during the employment relationship. In fact, in 2016 the Commonwealth Court of Pennsylvania ruled that one company's existing employees who were terminated after refusing to sign a confidentiality agreement were ineligible to receive unemployment compensation benefits.

In *Greenray Indus. v. Unemployment Comp. Bd. of Review*, a company informed its employees that continued refusal to sign a confidentiality agreement would result in termination of their employment. The Commonwealth Court held that the employees' refusal to sign amounted to a refusal to accept an offer of continued employment, equivalent to a resignation, and denied them unemployment compensation on the basis the employees had voluntarily left work without cause "of a necessitous and compelling nature."

The future applicability of the *Greenray* ruling will depend on the particular facts and circumstances of each individual case. However, companies should strongly consider using confidentiality agreements to emphasize to employees (1) what information a company considers as confidential business information and (2) that the company explicitly expects all employees to maintain the confidentiality of that information.

Best practices

If they do not have one already in place, companies should consider requiring existing employees to sign a confidentiality and non-disclosure agreement. Such an agreement can then be integrated into a new employee on-boarding process so that all employees are covered, with the goal of maintaining the confidentiality of a company's confidential business information.

Companies should also consider whether non-competition and/or non-solicitation restrictive covenants are appropriate for new or existing employees, particularly key employees. Any employer-employee restrictive covenant should be tailored to the particulars of your company's business, and consideration is easiest to establish at the time new employees are hired. Prospective employees should be notified during the hiring process if a non-competition or non-solicitation agreement will be required as a condition of employment. Restrictive covenants may not prevent employee departures, but when employees like Jane depart such agreements can help protect a company's customer relationships, confidential information and trade secrets. ■

Molly E. Meacham is a shareholder in the Employment and Labor, Litigation, and Energy and Natural Resources groups of law firm Babst Calland. For more information about employment and labor challenges in the oil and gas industry, contact her at 412-394-6614 or mmeacham@babstcalland.com.

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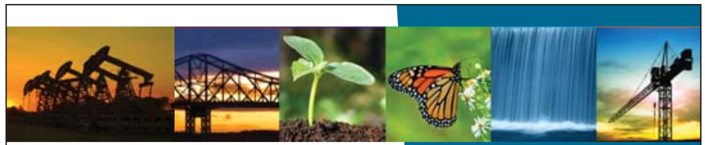

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DEP actions

DEP opens comment period for general permits to regulate methane

The Department of Environmental Protection has opened a 45-day public comment period for input on two general permits and revisions to an air quality permit exemption for reducing methane and other pollutants at natural gas well sites and compressor stations. The comment period runs until March 21.

DEP said in a release that the proposals were drafted after discussions with industry stakeholders, environmental professionals and residents over the past year following Governor Tom Wolf's announcement of his initiative to reduce methane emissions from the oil and gas industry. The proposals can be found at www.elibrary.dep.state.pa.us/dsweb/View/Collection-13330.

The proposed General Permit 5A (GP-5A) and the revised General Permit 5 (GP-5) establish updated best available technology requirements for the industry regarding air emission limits, source testing, leak detection and repair, recordkeeping and reporting requirements. Facilities that would be regulated under the new GP-5A include unconventional natural gas well site operations and remote pigging stations above the exemption threshold, which are used for maintenance on pipelines and are not located at another natural gas facility. The proposed GP-5 revisions would affect compressor stations, transmission stations and processing plants.

PIOGA's Environmental Committee will be drafting written comments, but those interested in submitting their own comments can do so via the department's online e-Comment tool or by email to ecomment@pa.gov. Written comments should be submitted to The Policy Office, Department of Environmental Protection, Rachel Carson State Office Building, PO Box 2063, Harrisburg, PA 17105-2063. ■

DEP rejects proposed revisions to well construction methods in coal mining areas

The Department of Environmental Protection reviewed a study proposing changes to existing requirements for coal mine pillars, as well as alternative methods for constructing natural gas wells where coal is mined underground, and found that the study did not provide results supporting changes.

"Natural gas extraction is increasingly intersecting with longwall mining, particularly in southwestern Pennsylvania," said DEP Acting Secretary Patrick McDonnell. "While new drilling methods may make extraction more efficient, coal miners' safety remains our primary concern. For this reason, DEP stands by the established regulatory benchmarks that we believe better protect miner safety and maintain the integrity of gas wells."

Coal mine pillars are columns of coal or rock left in place in the mine to support overlying rock and furnish protection for gas wells drilled in the permitted area of a mine. Currently, the size of pillars suitable for ensuring the integrity of gas wells and miners' safety is specified by the Joint Coal and Gas Committee report, first published in 1957.

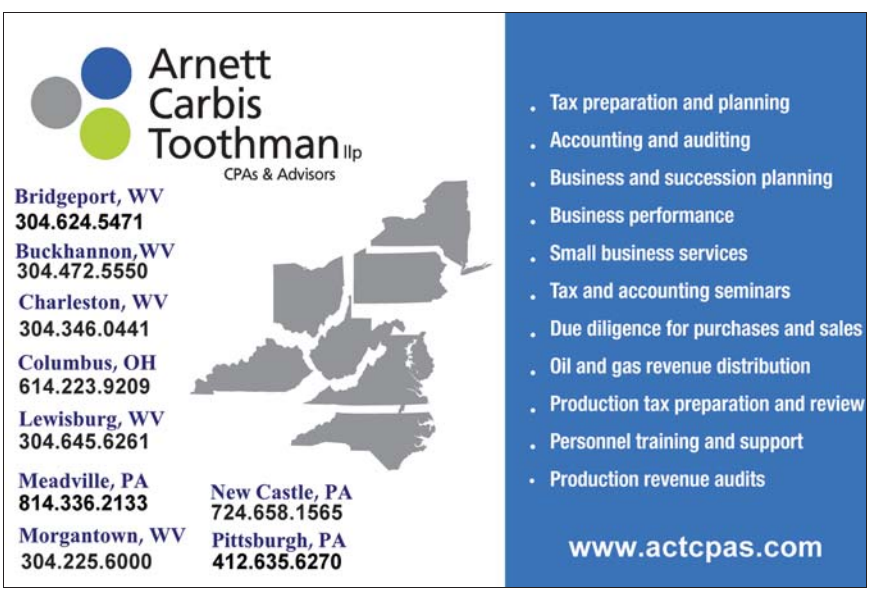
The new industry-agency study, titled the Gas Well Pillar Study Update, is the result of Act 2 of 2011, which called for a review of the 1957 study in light of modern longwall mining methods and their impact on natural gas well development. The study was conducted by the John T. Boyd engineering consulting firm in cooperation with DEP, the Pennsylvania Coal Alliance and the Marcellus Shale Coalition. It was also reviewed by the federal Mine Safety and Health Administration, which shared DEP's concerns.

The appropriate size of coal pillars around active, inactive and plugged oil and gas wells, along with well clusters, was examined to ensure the integrity of the well and to support the coal seam. Any additional criteria that should be considered when approving pillars around an oil or gas well that penetrates a workable coal seam were also examined.

Field tests were conducted in 2013 and 2014 at CONSOL's Enlow Fork Mine in Washington County to create a model to measure the impacts of ground movements related to longwall panel removal and the resulting potential for damage of typically constructed shale gas wells. Results showed that subsidence-related deformation could occur if a support pillar is not suitably sized.

"Our analysis of the new study recommendations concluded that they could not be implemented as an appropriate alternative to the 1957 coal pillar study," McDonnell said. "Should new data or methodologies be developed in the future, DEP will analyze their impact on the safety of our miners and the integrity of gas wells." Under the existing approach, there have been no incidents to date where drilling a natural gas well has compromised an active mining operation.

DEP's review of the Gas Well Pillar Study Update is available at www.elibrary.dep.state.pa.us/dsweb/View/Collection-13194. ■



Changes to DEP waste reporting

The Department of Environmental Protection is revising the procedure for reporting waste in its Oil and Gas Electronic Reporting application. Some of the changes will impact only unconventional operators while some will impact both conventional and unconventional well operators. The changes are summarized below.

Unconventional well operators

The new monthly waste reporting requirement, which can be found in 25 Pa Code Section 78a.121, will begin to be implemented for the January 2017 reporting period. The first monthly waste report will be due 45 calendar days after the end of the reporting period (March 17). In addition, changes to the definition of a few Oil and Gas waste codes (Produced Fluid–802, Unused Fracturing Fluid Waste–805, Servicing Fluid–808, Spent Lubricant Waste–809 & Filter Socks–812) will also begin for the January reporting period. The waste code definitions are at www.elibrary.dep.state.pa.us/dsweb/View/Collection-9697.

Waste will be reported separately from production beginning in 2017. Operators will select the disposition method first and then be presented with a list of facilities that are permitted for the disposition method. For example, if the disposition method of landfill is selected, only those facilities that are landfills will be available to choose from. In accordance with 78a.121(b), the waste report must include the specific facility or well site where the waste was disposed of or reused. A new disposition method of "reuse at a well pad" will be added to the waste report.

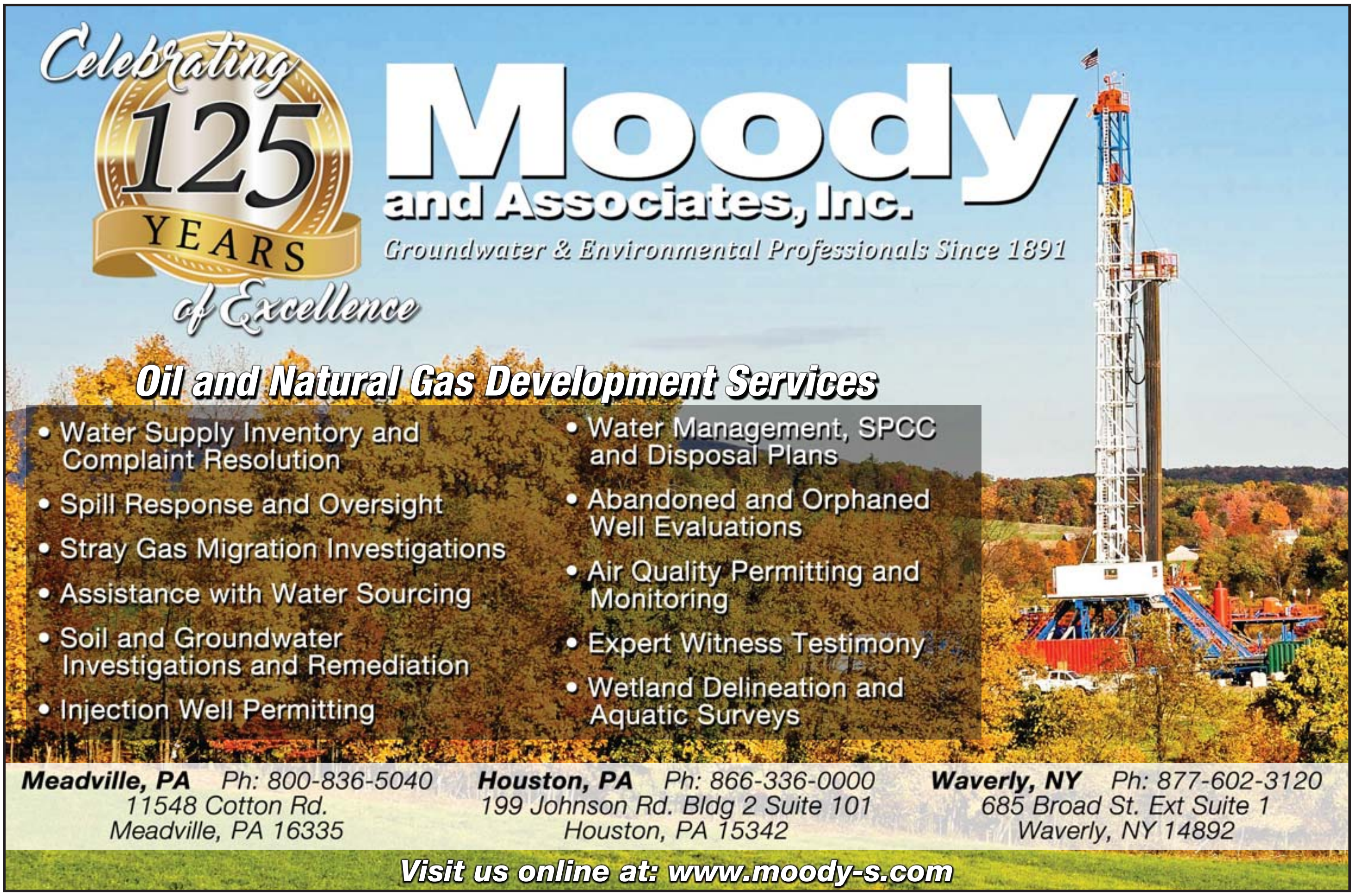
Operators will be presented with a list of well pad names and IDs for spreadsheet waste reporting. For the manual entry of waste reporting, operators will be able to filter the well pad list by operator, county and municipality.

Conventional well operators

While the reporting frequency has not changed for conventional operators, changes to waste reporting will be implemented for the January-December 2017 reporting period, due in February 2018. The January-December 2016 report has not changed. The definition of a few Oil and Gas waste codes (Produced Fluid–802, Unused Fracturing Fluid Waste–805, Servicing Fluid–808, Spent Lubricant Waste–809 & Filter Socks–812) were changed beginning January 1, 2017. The waste code definitions are at www.elibrary.dep.state.pa.us/dsweb/View/Collection-9697.

For the 2017 reporting period, operators will select the disposition method first and then be presented with a list of facilities that are permitted for the disposition method. For example, if the disposition method of landfill is selected, only those facilities that are landfills will be available to choose from.

DEP held a webinar on the changes on January 31 and expected to make it available for viewing on its website. If you have questions, contact DEP's Paul Howard at phoward@pa.gov or 717-783-0474. ■



Where in the World is the PIOGA outreach team?

Philadelphia Energy Hub buzz

By Joyce Turkaly
Director, Natural Gas Market Development

A Keystone Energy Forum hosted by Steamfitters Local 420 entitled "How Does the Philadelphia Energy Hub Impact You?" focused on the current and future collaboration of labor and management partnerships, education and training of the workforce, as well as infrastructure development.

The welcome and overview was provided by Anthony Gallagher of Steamfitters Local 420, Tim Brink of Mechanical & Service Contractors of Eastern Pennsylvania and Stephanie Wissman of API-PA. Gallagher said, "Social issues get taken care of when people are working." Wissman added that given a political environment that is "pro energy growth," 1.9 million direct jobs will be created by 2035.

The Oil & Gas Petrochemical Career study API commissioned can be found at www.api.org/~/media/Files/Policy/American-Energy/EnergyWorks-Primer-High.pdf.

A serious ongoing concern of many in industry, including economic development teams throughout Pennsylvania counties, has been the lack of support for pipeline access and infrastructure projects to get product to market, creating family sustaining jobs. Delta subsidiary, Monroe Energy's Coby Stewart spoke to the 18.3 multiplier (a Department of Labor & Industry stat) for every one refinery job generated. "Pipelines secure the future, secures the jobs" he said. 600 trades/crafts worked at the former Conoco Phillips site that Delta acquired in 2012.

The Steamfitters portion of the agenda focused on the union's rigorous training, as well as on-the-job (independent oversight), in relation to inspection of pipeline welds. Thousands of people who have been through the program have been deployed to work for Sunoco on the Mariner East 1 and Mariner East 2 projects. Joe McGinn of Sunoco Logistics called on the audience, many of whom represented political seats in the Pennsylvania legislature to "stand up if we truly believe in this." Sunoco Logistics has invested $3 billion in both projects.

Commissioner Robert Powelson of the Pennsylvania Public Utility Commission spoke to how the consumer benefits of access to reliable supply translates and how that translates into retail pricing. Remarking that while prices spiked during the Polar Vortex in 2014, when spot prices to markets in New England and NYC (M-2, M-3 TETCO) climbed as high as $55-$60/Dth, while Transco–Leidy Hub here in Pennsylvania rose only slightly in to the high $4.00 range during the same event. Commenting that natural gas is also responsible for a 28 percent reduction in nitrogen oxides, sulfer oxides and mercury, he stated that the benefits are obvious, further stating that it is going to take political resolve to address the lack of infrastructure and access for all consumers to affordable and reliable natural gas.

Erin Vizza of the Council for Growth, Philadelphia Chamber of Commerce, stated that without additional pipeline, Pennsylvania runs the risk of companies looking to locate their headquarters elsewhere. Given the attendees from political office, it would appear that there is bipartisan legislative support for future development of the natural gas midstream and downstream in Southeastern Pennsylvania. After the panel discussions, attendees were invited to a tour of the Steamfitters training facility. For more information on the Steamfitters and training, click on Training Center at www.lu420.com.

Marcellus and Utica Midstream Conference and Exhibition

Hart Energy's midstream conference returned to the David L Lawrence in January. A combination of end-use markets such as power generation and midstream connections were discussed.

Keynote Alan Armstrong, president and CEO of Williams, said his company expects to invest $12 billion in the Marcellus and Utica regions over the next three years. Addressing the needs of upstream producers, a panel representing DTE Gas Storage, Stonehenge Energy Resources and Tallgrass spoke to each of their projects. DTE predicts further consolidation of E&P and midstream companies to occur over the next 12-18 months; Tallgrass, a majority owner of REX pipeline spoke to expanding its portfolio to include LDCs in addition to producers. All in all projections were robust to move upward of 8 Bcf/d from the region to markets west. Declines in the numbers of DUCs were noted as a contributing factor to rising spot prices. Compared to 2016, liquids (propane and ethane) are double in price; an emphasis on enhanced profitability for these plays was noted. A new political paradigm and confidence in price signals would suggest more drilling in 2017—this was the underlying theme of the conference.

Given that chemical producers are looking to take advantage of low natural gas and natural gas liquids prices, Greg Haas, Stratas Advisors, provided a world view of polyethylene and polypropylene stats. The abundance here in the Appalachian basin is changing world views from a competitive landscape; making ethylene with naphtha requires five times more feedstock. According to a graph, Asian naphtha holds its margin until 2025, then begins to go negative. Stratas estimates that 90 percent of the 12 MMT of new capacity would be processed in the Gulf.

Perhaps one of the longest midstream operators working in the Utica region is M-3 Midstream LLC. President and CEO Frank Tsuru said the timeline for infrastructure would occur over the next 24 months, with 25 projects expected to increase takeaway totaling 17 Bcf. Two projects are known as the Appalachian Gathering System, in both Washington and Greene counties; and the Utica Ohio Midstream System, gathering and processing with a central NGL hub in Harrison County, Ohio. Currently 55-60 percent of the NGL barrel is ethane; by 2020 ethane demand is expected to outpace supply.

Our own Dan Weaver spoke on PIOGA's outlook for the industry. Referring to being in a dark hole last year, Dan said we are now starting to see some sky. Speaking to increases in rig count and the historical NYMEX price outlook, a brighter 2017 is what PIOGA expects. ■

Potter Township gives final approval for Shell cracker plant

The Potter Township Board of Supervisors approved a permit on January 18 for Shell Chemical Appalachia to build a petrochemical complex in that Beaver County municipality.

The supervisors voted unanimously to approve the conditional use permit for the company during a standing-room-only meeting, the Pittsburgh Post-Gazette reported. Countering the previous week's hearing at which opponents held signs asking the supervisors to deny the application, this time supporters lined the back of the room with placards that said, "Family supporting jobs for Beaver County" and "Environmentally responsible growth."

The supervisors said they wanted Shell to conduct monthly noise studies, on-demand traffic analyses and occasional lighting studies and said they would consult with the company on those demands.

The approval followed a 10-hour hearing in mid-December at which Shell officials and attorneys went over everything the company had submitted to the township. After that, residents and opponents of the plant expressed their concerns about the application, some asking for more documentation and others wanting the whole project scrapped. PIOGA provided oral and written comments in support of the project *(January PIOGA Press, page 8)*.

The company plans to build an ethane cracker and three polyethylene units that will produce small plastic pellets that serve as the building blocks of plastics manufacturing. Shell will also build a natural gas power plant, three pipelines—for ethane, natural gas and nitrogen—a rail yard, and several buildings on the land that was once occupied by a zinc smelter. Construction is to begin in 2018 and will employ about 6,000 workers at its peak, Shell has said. When operational, the petrochemical complex will have 600 permanent employees. ■

Safety Committee Corner

Oil and gas deaths fell last year

An article written by Pamela Kina in *E&E News* reported that federal data indicates there were fewer deaths for oil and gas workers on the job in 2015 than in any other year since 2008. The Bureau of Labor Statistics showed in its National Census of Fatal Occupational Injuries that "(d)eadly injuries in hydrocarbon extraction, drilling and support fell 38% from 144 to 89 last year." This drop indicated to the industry and many advocacy groups that the decline was due to the fact that implemented safety programs are beginning to show their positive effects.

Eric Brooks, director of OSHA's Bismarck, North Dakota, office believes that it is a combination of a slowdown period in oil and gas that has resulted in companies reducing their workforce and more effective safety programs, the *E&E News* article said. This OSHA office presents this information to the industry and urges them to use this time to "reload and reboot their safety systems form the ground up." Being diligent in this will enable companies to have a strong safety culture once the industry is in full production again.

OSHA has distributed to its regional administrators new guidelines on enforcement of upstream oil and gas operations. There were 18 hazards highlighted. These guidelines go hand in hand with other administrative efforts by OSHA in the oil and gas industry.

MEET-U needs you

The Friends of Drake Well, Inc.'s Mobile Energy Education Training Unit (MEET-U) program is looking for volunteers. This educational outreach program is staffed by certified educators and makes trips to schools, fairs, festivals, community and industry events throughout the year with a 44-foot-long-long trailer shown above and the "MEET-U in the Classroom" program. Volunteers are afforded the opportunity to visit many interesting places, participate in numerous enjoyable and unique events, and meet thousands of people.

As a volunteer you will assist the MEET-U staff and fellow volunteers with lessons and projects to educate students and the public on energy history, production, consumption, development, conservation, current trends and alternate energy sources. The program travels mainly across the northern and western regions

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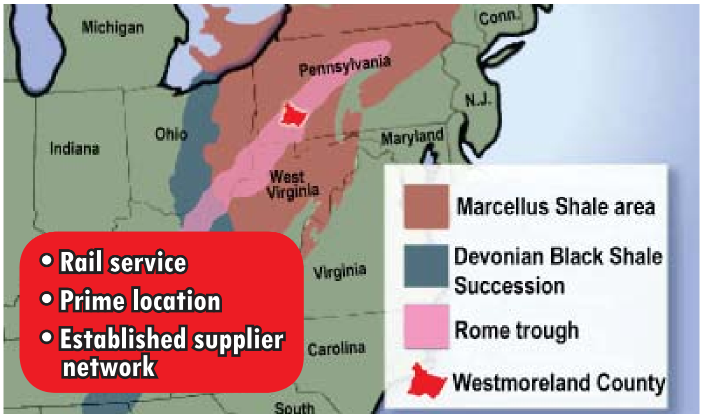

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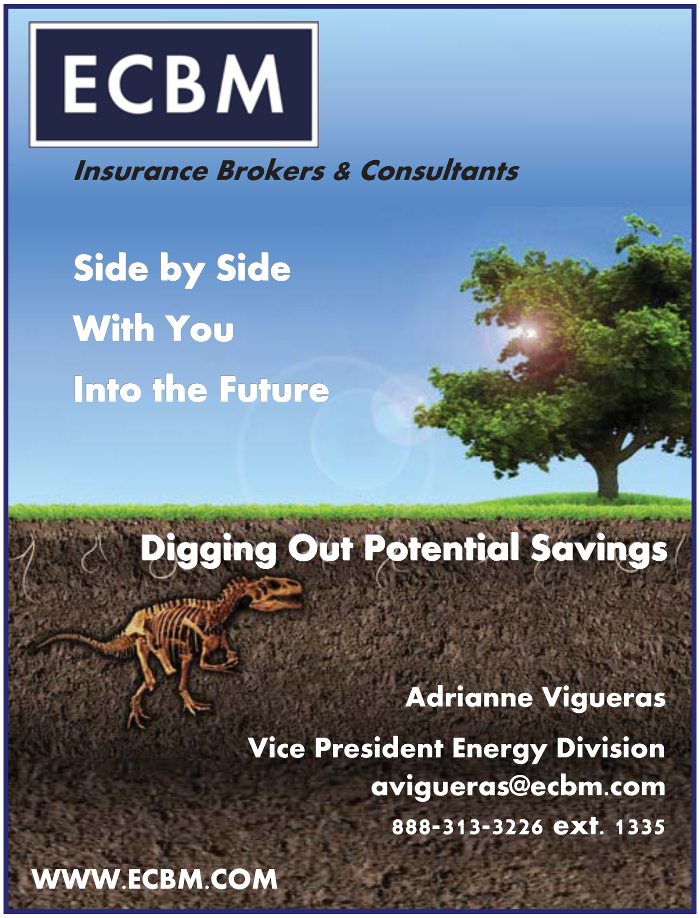

of Pennsylvania and occasionally ventures into southwestern New York, eastern Ohio and northern West Virginia. Traveling with MEET-U can sometimes mean early mornings, late nights and the occasional overnight trip. Lodging and most meals are provided.

In 2016 MEET-U visited 23 schools and was part of several other events for children including two trips to the Carnegie Science Center. MEET-U also visited 11 fairs and festivals across the state during the spring and summer months. In total they attended 58 events and saw nearly 12,000 people including over 8,000 students ranging from kindergarten to 12th grade. The program's summer and fall schedule includes everything from county fairs and community festivals to the Erie Tall Ships Festival, summer camps, and several oil and gas industry functions.

If you are interested in volunteering, contact Lee Deeter at 814-827-2797 or meetunit@gmail.com for more information. ■

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SLA Exploration, LLC
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724-762-6015
Oil & Gas Producer

PIOGA Member Profile

Penn E&R has provided professional petroleum and natural gas services to the northeast North American region shale gas industry (including unconventional shale gas plays such as the Marcellus, Utica and Point Pleasant) in Pennsylvania, Ohio and West Virginia for over a decade. The company, which was founded in 1996 by Edgar N. Putman and Dominic J. Spinozzi, is a subsidiary of Penn Color, Inc. and is headquartered in Hatfield, Pennsylvania.

Our staff has experienced all aspects of conventional and unconventional natural gas exploration, from land valuation and acquisition through well completion and production. We understand the fluid nature of the industry and the need for immediate responsive service and work closely with regulators to ensure our clients' needs are met while maintaining compliance with industry rules and regulations.

Penn E&R's team of experienced personnel can provide oil & gas development companies with a broad range of technical services designed to support oil and gas operations, including:

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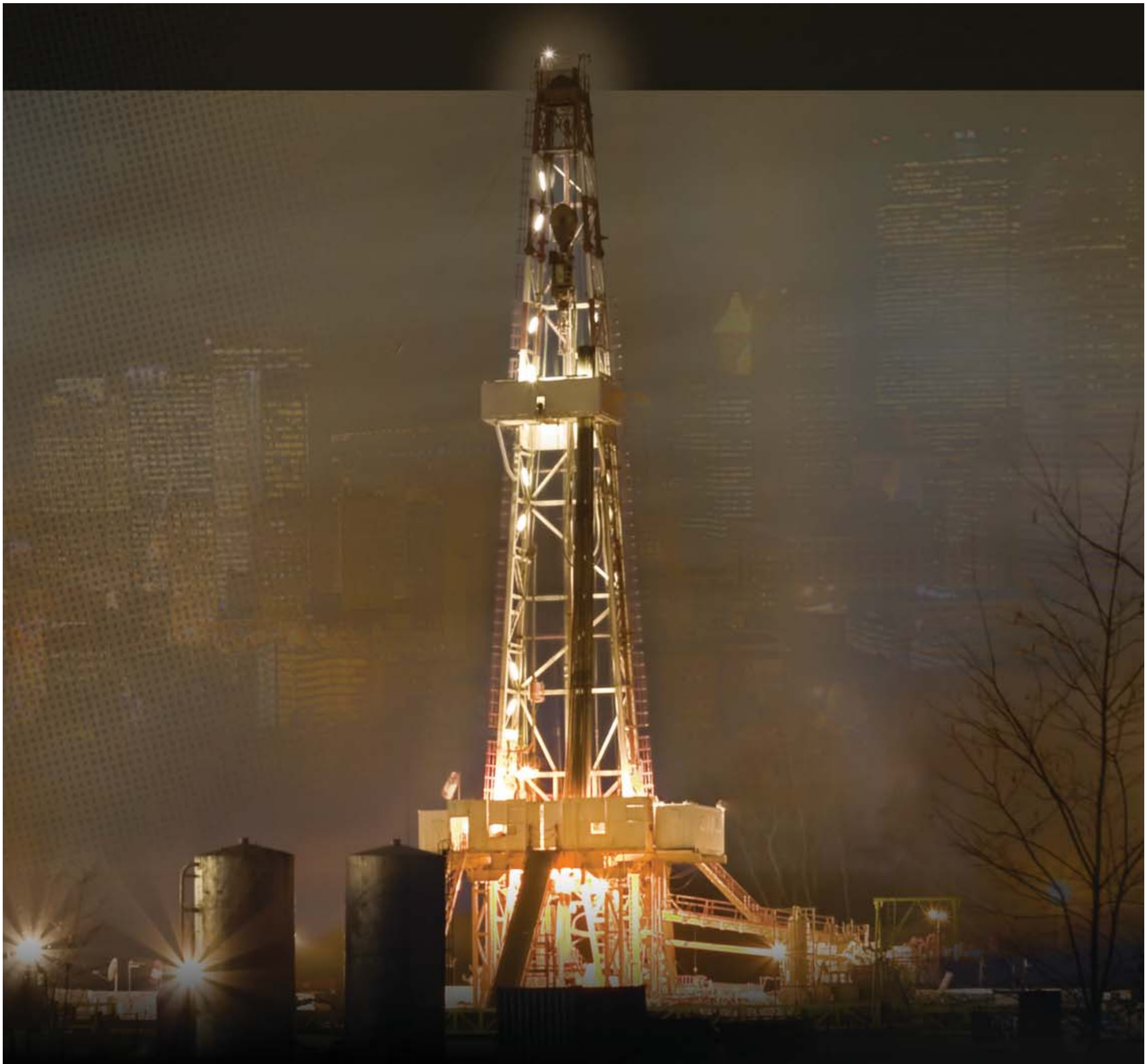
- Water withdrawal permitting and design
- Impoundment design/permitting
- Pipeline permitting
- E&S designs and control installations
- Wetland delineation
- Regulatory compliance
- Incident response and closeout
- Environmental consulting
- Safety auditing and training

At Penn E&R, we are dedicated to providing responsive, cost-effective and personal service to our clients. If you are interested in learning more about the services we can provide, call 215-997-9000 or visit our website at www.penn-er.com.



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Rulemakings and forms: *Continued from page 1*

operator and was responsible for closing the tanks.

Although the Commonwealth Court denied Lester's appeal, the decision demonstrates the legal significance of forms that agencies use. In recently filed supplemental comments to IRRC's ongoing rulemaking, PIOGA highlighted the court's comments regarding DEP's reliance on the various forms that Lester signed and the questions raised whether it was clear the he understood the legal implications of designating himself as operator on the forms.

PIOGA pointed out that Judge Renée Cohn Jubelirer concurred in affirming the EHB's determination but wrote separately to express her concern that "similar to the EHB's, 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, as Andrew Lester did at times in this case." The judge described the problems with the forms at issue and stated she would have required "the EHB to more thoroughly consider the confusing nature of the forms" if EHB and the court had relied on the forms to the exclusion of the other evidence in the record upon which the EHB relied.

The association also commented that the *Lester* decision squarely supports an IRRC policy adopted December 15, 2016, and recommends that it be implemented in the final IRRC rulemaking. The policy states:

> 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… will be 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.

"There is no credible reason why agencies cannot comply with RRA Section 5(a)(5)," PIOGA wrote in its January 17 comments to the IRRC. "The implementation forms and their instructions, technical guidance documents (TGDs), guidelines, etc., must be based upon the proposed regulations—which are developed under the control of the agencies. Of course the RRA anticipates there may be changes to a proposed regulation, but that does not provide a reason for agencies or IRRC to ignore or excuse noncompliance with RRA Section 5(a)(5)."

IRRC's discussion leading to the adoption of the policy at its December 15 meeting is illuminating. Commissioner Murray Ufberg and IRRC Chief Counsel Leslie Johnson discussed the difference between questions concerning forms actually submitted (subject of IRRC comments) and no forms submitted (whole regulatory package will be rejected). Commissioners Ufberg and George Bedwick and the chief counsel noted that the Regulatory Review Act itself requires the submission of the forms with the proposed regulatory package so that the policy is not demanding anything more than is required by the law. Finally, Bedwick stated: "With the oil and gas Chapter 78 regulations, we received a lot of legislative comments referencing the fact that the forms were not included." Accordingly, both Bedwick and the chief counsel stated that the policy is intended to put agencies on notice that they must provide the forms at the beginning of the rulemaking process.

As part of DEP's recent Chapter 78/78a, Subchapter C rulemaking, the oil and gas industry objected that—as acknowledged by Commissioner Bedwick—*none* of the forms DEP would use to implement the new rules were provided with either the proposed regulations or the revised proposed regulations (through the informal Advance Notice of Final Rulemaking process), and that nearly all the forms were incomplete even up until the time the Environmental Quality Board and IRRC approved the final-form regulations. PIOGA challenged that the department was in violation of the Regulatory Review Act because of the failure to supply all associated forms as part of the rulemaking.

The IRRC's ongoing rulemaking, which must be completed by December 2017, implements the provisions of the Regulatory Review Act to update and clarify definitions, explain when documents are to be delivered, describe what information should be included in a rulemaking's preamble, and provide clarification to existing regulatory review procedures and ensure consistency with the RRA. PIOGA commends IRRC for recognizing the problem with agencies not submitting the forms and for adopting the policy to correct the problem. ■

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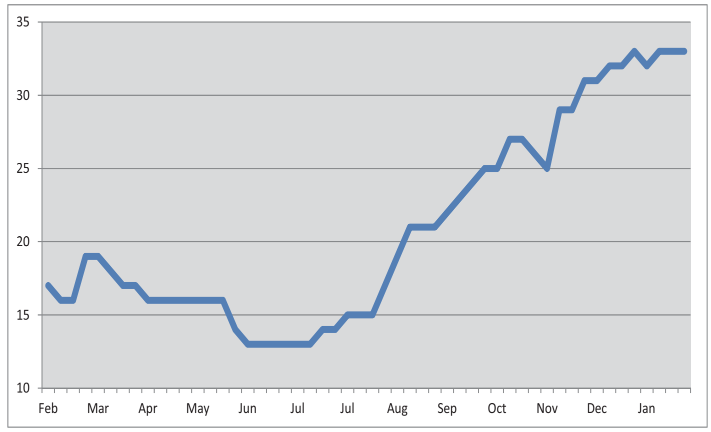

Sources

American Refining Group: www.amref.com/Crude-Prices-New.aspx
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Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG
Baker Hughes rig count: phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-reportsother
NYMEX strip chart: Emkey Energy LLC, emkeyenergy.com

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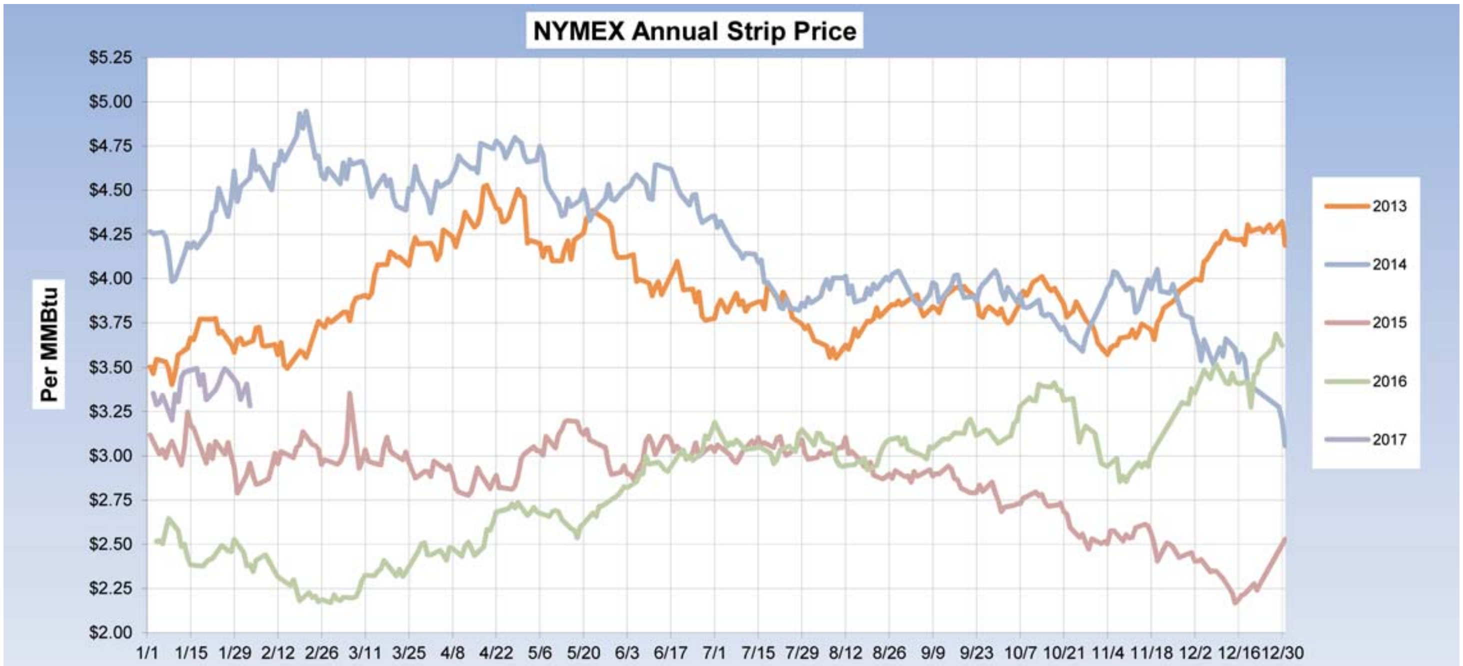

Natural Gas Futures Closing Prices

Month	Price
March 2017	$3.143
April	3.212
May	3.269
June	3.339
July	3.385
August	3.393
September	3.381
October	3.385
November	3.457
December	3.586
January 2018	3.681
February	3.652

Prices as of February 8

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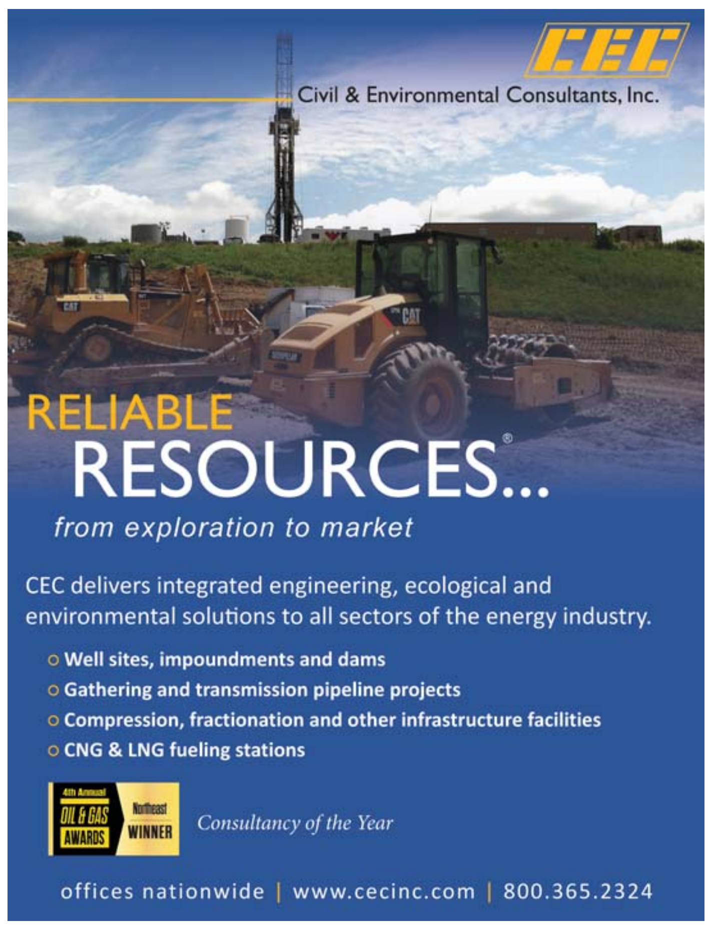

Spud Report: January

The data show below comes from the Department of Environmental Protection. A variety of interactive reports are available at www.dep.pa.gov/DataandTools/Reports/Oil and Gas Reports/Pages.

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 an unconventional well.

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
Cabot Oil & Gas Corp	4	1/1/17	115-22130*	Susquehanna	Jessup Twp
		1/1/17	115-22137*	Susquehanna	Jessup Twp
		1/1/17	115-22131*	Susquehanna	Jessup Twp
		1/1/17	115-22133*	Susquehanna	Jessup Twp
Chesapeake Appalachia LLC	2	1/9/17	131-20529*	Wyoming	Windham Twp
		1/10/17	131-20531*	Wyoming	Windham Twp
Chief Oil & Gas LLC	4	1/10/17	113-20360*	Sullivan	Cherry Twp
		1/11/17	113-20361*	Sullivan	Cherry Twp
		1/24/17	113-20363*	Sullivan	Cherry Twp
		1/24/17	113-20362*	Sullivan	Cherry Twp
EQT Production Co	17	1/31/17	003-22390*	Allegheny	Forward Twp
		1/31/17	003-22392*	Allegheny	Forward Twp
		1/31/17	003-22393*	Allegheny	Forward Twp
		1/31/17	003-22394*	Allegheny	Forward Twp
		1/31/17	003-22395*	Allegheny	Forward Twp
		1/31/17	003-22396*	Allegheny	Forward Twp
		1/31/17	059-27276*	Greene	Center Twp
		1/31/17	059-27277*	Greene	Center Twp
		1/31/17	059-27278*	Greene	Center Twp
		1/9/17	117-21787*	Tioga	Duncan Twp
		1/9/17	117-21788*	Tioga	Duncan Twp
		1/9/17	117-21789*	Tioga	Duncan Twp
		1/9/17	117-21786*	Tioga	Duncan Twp
		1/9/17	117-21790*	Tioga	Duncan Twp
		1/9/17	117-21791*	Tioga	Duncan Twp
		1/6/17	125-27993*	Washington	W Bethlehem Twp
		1/6/17	125-27994*	Washington	W Bethlehem Twp
Howard Drilling Inc	1	1/30/17	083-56871*	McKean	Wetmore Twp
Inflection Energy (PA) LLC	2	1/31/17	081-21656*	Lycoming	Eldred Twp
		1/31/17	081-21657*	Lycoming	Eldred Twp
PennEnergy Resources LLC	6	1/19/17	007-20489*	Beaver	Economy Boro
		1/19/17	007-20498*	Beaver	Economy Boro
		1/20/17	007-20494*	Beaver	Economy Boro
		1/20/17	007-20499*	Beaver	Economy Boro
		1/1/17	019-22181*	Butler	Clearfield Twp
		1/2/17	019-22591*	Butler	Clearfield Twp
Range Resources Appalachia	10	1/12/17	125-28055*	Washington	Smith Twp
		1/13/17	125-28008*	Washington	Smith Twp
		1/13/17	125-28050*	Washington	Smith Twp
		1/14/17	125-28066*	Washington	Smith Twp
		1/14/17	125-28051*	Washington	Smith Twp
		1/15/17	125-28065*	Washington	Smith Twp
		1/17/17	125-27594*	Washington	Smith Twp
		1/18/17	125-27592*	Washington	Smith Twp
		1/18/17	125-27593*	Washington	Smith Twp
		1/19/17	125-28067*	Washington	Smith Twp
SWEPI LP	6	1/10/17	117-21889*	Tioga	Sullivan Twp
		1/10/17	117-21891*	Tioga	Sullivan Twp
		1/11/17	117-21886*	Tioga	Sullivan Twp
		1/11/17	117-21887*	Tioga	Sullivan Twp
		1/11/17	117-21890*	Tioga	Sullivan Twp
		1/12/17	117-21888*	Tioga	Sullivan Twp
SWN Production Co LLC	6	1/10/17	115-22266*	Susquehanna	New Milford Twp
		1/11/17	115-22264*	Susquehanna	New Milford Twp
		1/12/17	115-22265*	Susquehanna	New Milford Twp
		1/6/17	117-21844*	Tioga	Liberty Twp
		1/18/17	117-21774*	Tioga	Liberty Twp
		1/24/17	125-27809*	Washington	West Finley Twp

	January	December	November	October	September	August
Total wells	**58**	**65**	**63**	**64**	**70**	**66**
Unconventional Gas	57	60	56	59	49	48
Conventional Gas	0	1	1	0	1	0
Oil	1	4	6	5	20	18

Calendar of Events

PIOGA Events

Info: www.pioga.org/events

PIOGAtech Threatened & Endangered Species Training
February 23, Civil & Environmental Consultants, Inc. offices Pittsburgh

Ted Cranmer Memorial Summer Picnic and Golf Outing
June 5, Wanango Golf Club, Reno

Pig Roast, Product & Equipment Roundup and Technical Conference
June 28-29, Seven Springs Mountain Resort, Champion

20th Annual Divot Diggers Golf Outing
August 24, Tam O'Shanter Golf Club, Hermitage

Industry events

IPAA Congressional Call-Up
March 6-8, Washington, DC
Info: www.ipaa.org/meetings-events

OOGA Winter Meeting
March 8-10, Hilton Columbus at Easton, Columbus, OH
Info: oogawintermeeting.com

7th Annual Cost-Effective Produced Water Management Marcellus & Utica 2017
March 29-30, Pittsburgh, PA
Info: www.shale-water-marcellus-utica.com

IPAA Midyear Meeting
June 21-23, The Ritz-Carlton, Laguna Niguel, CA
Info: www.ipaa.org/meetings-events

IOGANY Summer Meeting
July 12-13, Peak'n Peak Resort, Clymer, NY
Info: www.iogany.org/events

IOGA West Virginia Summer Meeting
August 6-8, The Greenbrier, White Sulphur Springs, WV
Info: iogawv.com/

Ohio Oil & Gas Association Summer Meeting
August 7-8, Zanesville (OH) Country Club
Info: www.ooga.org

IPAA Annual Meeting
November 8-10, The Ritz-Carlton, Naples, FL
Info: www.ipaa.org/meetings-events

➤ **More events: www.pioga.org**

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