

## Penn Grade Crude advisory council begins operation

**E**ight months after being created by Act 52 of 2016, the Pennsylvania Crude Development Advisory Council (CDAC) held its first meeting late last month in Harrisburg. The meeting focused on reviewing the group’s purpose, reviewing proposed bylaws, and discussing action items and workgroups.

The Pennsylvania Crude Development Advisory Council was created by the same legislation that erased the Chapter 78 revisions to rules applying to surface operations for conventional oil and gas wells (*July 2016 PIOGA Press, page 1*).

Under Act 52, the council is to assist the Department of Environmental Protection in:

- (1) examining and making recommendations regarding existing technical regulations promulgated under the Oil and Gas Act;
- (2) exploring the development of a regulatory scheme that provides for environmental oversight and enforcement specifically applicable to the conventional oil and gas industry;
- (3) providing written comments on new DEP policy that will impact the conventional oil and gas industry; and
- (4) reviewing and commenting on the formulation and drafting of all technical regulations proposed under the Oil and Gas Act.

Beyond regulatory review and recommendations, the council is charged with promoting the long-term viability of the conventional industry, providing institutional support for the conventional industry by ensuring effective cooperation and communi-

cation among governmental agencies and the academic and research community, and recommending appropriate measures relating to the promotion and development of the conventional industry. The council will also develop a plan to increase Pennsylvania Grade crude oil production in an environmentally responsible way and form a joint working group with DEP to

explore and develop an environmentally responsible and economically viable production water management option.

The Department of Community and Economic Development, rather than DEP, is designated with providing the council with administrative support.

The 17-member council includes the following members:

- Dennis Davin, secretary of the Department of Community and Economic Development.
- Patrick McDonnell, acting secretary, Department of Environmental Protection.
- Senator Scott Hutchinson, appointed by the Senate president pro tempore.
- Representative Martin Causer, appointed by the speaker of the House of Representatives.
- Representative Ryan Bizzarro, appointed by the House minority leader.
- Two representatives of PIOGA— David Ochs of the Kriebel Companies and Burt Waite, recently retired from Moody & Associates.
- Two representatives of the Pennsylvania Independent

Petroleum Producers—Mark Cline of Cline Oil, and Joe Thompson, Devonian Resources.

- Two representatives of the Pennsylvania Grade Crude Oil Coalition—Bruce Grindle of Oil & Gas Management, and Arthur Stewart, Cameron Energy Company.

- Two representatives of refineries of

*(Continues on page 4)*



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### **Penn Grade council:** *Continued from page 1*

Penn Grade crude oil—Nick Andreychek of Ergon Refinery and Robert Esch, American Refining Group.

- One representative of a nonprofit corporation which promotes the history and economic benefits of the conventional oil and gas industry—John R. Phillips, Oil Region Alliance of Business, Industry and Tourism.
- One representative of academia who is a geologist with expertise in petroleum geology—Dr. Terry Engelder, Penn State University.
- One representative of academia who is a hydrologist—Dr. Richard Parizek, Penn State University.
- One position remains vacant—the person to be appointed by the Senate minority leader.

Stewart was chosen chairman and Cline vice chair (assuming the bylaws provision remains unchanged).

### **Action items**

The CDAC plans to prioritize its focus on these items:

- Increased conventional oil and gas production, looking in particular at economic incentives and waste treatment solutions.
- Management of production water and wastewater.
- Abandoned wells and well plugging, including incentives for plugging or rehabilitating orphan wells, increasing efficiencies, new technology and temporary plugging.



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The council intends to create workgroups or committees to address production and wastewater management; increased conventional oil and gas production; abandoned wells and well plugging; and economics/education.

Reflecting on the CDAC's first meeting, PIOGA rep Ochs said, "I'm encouraged by the level of enthusiasm displayed by everyone present. My expectations are very high at this point."

The council intends to meet every three months, with the next scheduled for May 18 in Harrisburg. ■

## **Legislative pushback against Wolf's severance tax**

When lawmakers began hearings late last month on Governor Tom Wolf's proposed fiscal year 2017-18 state budget, the governor's third try at a natural gas severance tax received a cold reception.

Wolf is calling for a 6.5-percent severance tax. The Act 13 local impact fee/tax on unconventional wells would be retained, and producers would be allowed to tax a tax credit for impact fee payments. Legislation fleshing out the proposal has not been offered.

Initial budget hearings in late February before the Appropriations committees of the House of Representatives and Senate included considerable testimony about the severance tax from the Independent Fiscal Office and the Department of Revenue.

House Appropriations Committee Chairman Stan Saylor said taxing a particular industry could lead to the loss of jobs to other states. "We have to keep in perspective our economy, what taxes we put in place and how it affects job creation here in the future," he said. "We have a spending problem, not a tax problem."

Lawmakers also were skeptical that with today's gas prices the proposed tax would generate the nearly \$300 million estimated by the governor.

"I know quite a few drillers back home that would love to see an Mcf more than double over the next two to three years, but they're not terribly optimistic that's going to happen," said Representative Jeff Pyle (R-Armstrong).

The three weeks of budget hearings are a prelude to the real work on the budget that will occur as the June 30 deadline nears for putting a new budget in place. ■



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## PIOGA's membership directory always available to members—online and hardcopy

### Online in the Members Only area

**H**ave you been utilizing the PIOGA membership directory in the Members Only area of the website to find colleagues and new contacts? We wanted to remind you this online resource is always available if you are searching for a contact. To find the directory, just sign in using your account login and password and once you are on the Members Only homepage look at the top menu for Directories.

Once you are on the membership directory page:

1. If you are trying to view **all PIOGA members** in a certain membership category, click on the link for that corresponding category. So, if you are searching for a particular Producer member, you click on Producer members to pull all members that are in this category. Please note that this search will pull all member companies in that category including **the MAIN contact only** of that company.

2. If you are trying to find a specific employee from a certain company (not just the main contact), click on the link that states **Membership - ALL Contacts**, input the company name and hit continue. This search will pull all contacts in the PIOGA database from that company.

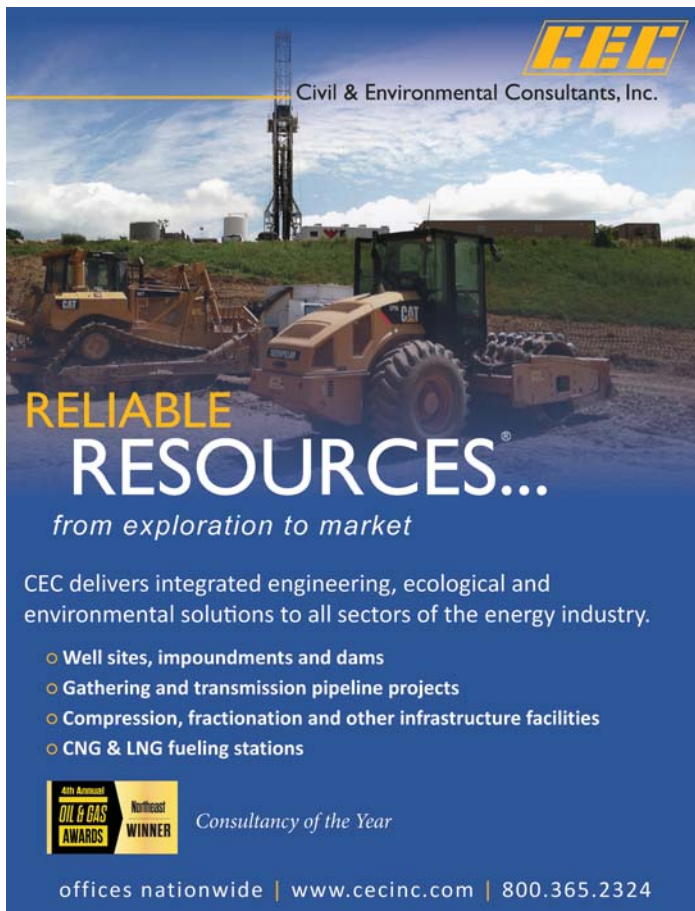
Also, please note that if you don't see your company or a certain company in the directory that could mean its membership account is overdue or "suspended" and they will no longer be listed in the directory until their membership is active or "unsuspended" again. If you think your company should be listed and you don't see it in the directory, please contact [danielle@pioga.org](mailto:danielle@pioga.org) to inquire.

### 2017-2018 Membership Directory (hardcopy)

Planning is underway for the 2017-2018 membership directory, which will be available by early summer for all members. Please check your mailbox for the **Membership Directory Update letters** that should arrive early March. The letters were mailed to the **main company** contact. We ask that you thoroughly review your membership listing and make any necessary revisions and return to PIOGA by **April 1**.

The directory listing will include your company name, address, phone number, fax number and website. Additionally, all company contacts will be listed. This is also the time to remove any employees who are no longer with your company and to add new employees you would like to be listed and get the benefits of PIOGA membership. Please remember that **full** members (all member categories except Associate and Royalty) can list up to 20 employees under the company membership account. Thank you in advance for your review and return of the membership directory letters.

Lastly, you don't need to wait until the yearly membership listing letter arrives to alert us if your company has a new address or new colleagues you'd like to add to your account. Please contact Tracy Zink at [tracy@pioga.org](mailto:tracy@pioga.org) throughout the year with any changes to your membership account. We want to have the most up-to-date information so we can ensure you and others in your company are receiving all PIOGA correspondence and that other members have access to your updated information too. ■



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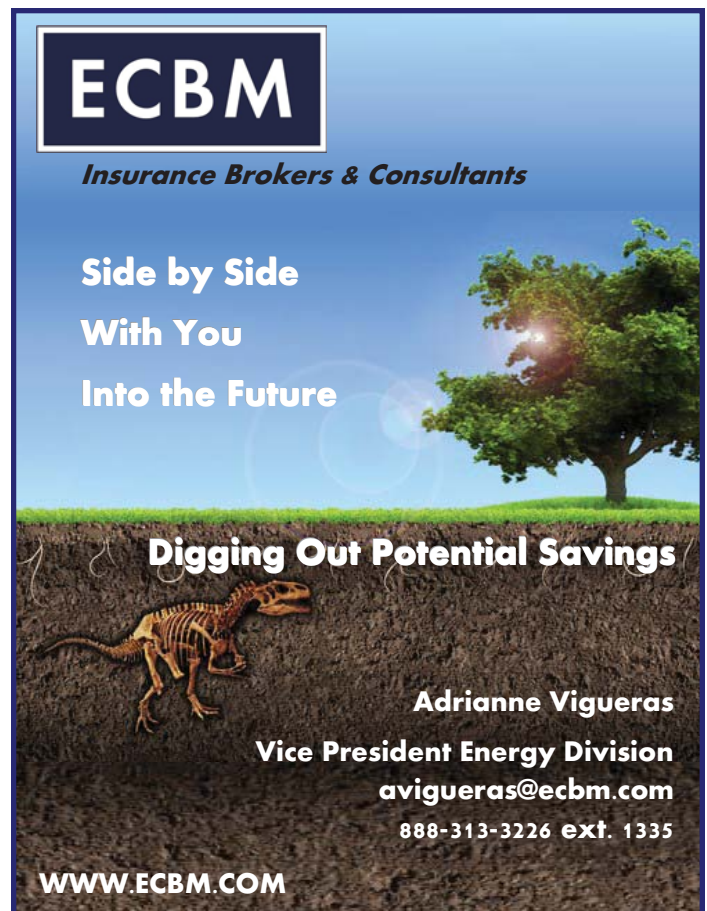
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# HACKED!

## Is your company prepared?

By Adrienne Vigueras, Vice President  
ECBM Insurance Brokers and Consultants

The World Wide Web has created a portal that allows hackers right into your business as if they just walked through the door. You are hearing it more and more: “We have been hacked!” Target, Sony, TJ Maxx have all been there. Because of their size and the number of customers that were affected, they received a tremendous amount of publicity when it happened. What is not as well known are the many small to medium sized businesses that experience a cyber breach. Sixty percent of small and medium businesses go out of business within six months after a breach.\*

Large retailers are not the only targets. As we have seen recently, it can be universities, utilities, government facilities and any online business. There are short-term and long-term ramifications of a cyber-attack on any business. Being unprepared for such an incident will make a business more susceptible to closure. There are levels of preparedness, such as upgrading firewalls and protocol before and after a breach. There is also a viable insurance solution.

### Short term damages:

1. When a company has been breached, it needs to notify each of its customers. Since most companies have credit card, license numbers and in some cases Social Security numbers in their systems, it is understandable that customers can be very upset. The company’s immediate responsibility is notification and credit monitoring. The cost of these breach-related expenses can be approximately \$150 to \$400 per file. A small to medium sized company may not be able to recover from so large an expense.

2. If the company is a utility the initial damages are widespread and affect whole communities. A powerless community is a vulnerable one. Can you imagine a community with no power for schools, grocery stores, security systems, banks or hospitals? What will you do without traffic lights?

3. Exploration and development companies that are hacked can lose control of their drilling capabilities and can be victims of accidents that can cause environmental harm.

4. Depending on the extent of the breach, a company may be forced to shut down all or part of its operations to address the incident. Finding and fixing the initial vulnerability can be a process. This will cause an immediate loss of income.

5. Legal fees can be extensive and an immediate cost.

6. The loss of customers in the short term is a distinct possibility.

7. Loss of reputation that can take years to build is a common short term effect.

8. If the company is a public entity, drop in stock price can be an immediate loss.

### Long term damages:

1. Loss of trust from customers and consumers at large can affect a company long term.



2. Long term damage to your brand can be significant and unquantifiable. Although there can be many reasons a brand drops off, lack of trust on the part of the consumer is one of them.

3. Threat of class action suits is viable.

4. Future plans for growth or any mergers and acquisitions may be put on hold until a level of security can be achieved.

### Insurance solution

The insurance industry has responded to the cyber risk crisis with new products in the last couple of years. Initially there were only two carriers that offered coverage. At this time there are over 40 carriers offering coverage. Unlike general liability or property insurance, cyber insurance does not have a standard policy. Therefore, it is imperative to analyze your own risk before you go shopping for a policy. There are basic coverages that should be in every policy, such as:

**Cyber and privacy liability**—pay on behalf all sums should the insured become legally obligated to pay for third party claims arising out of a hacking attack, virus or security breach, regardless of who caused the claim.

**Regulatory actions**—pay all costs, expenses and resulting fines and penalties as a result of a regulatory investigation.

**Breach notification costs**—pay on behalf all sums for any obligation to notify any third party of a breach of privacy, provide credit monitoring or conduct a security audit of the insured’s computer systems to identify the source and scope of the breach.

**Cyber extortion**—reimburse any ransom the insured is required to pay if unable to mitigate a threat to prevent access to the insured’s computer system or the party hosting the insured’s data, introduce a virus into insured’s computer system, reveal insured’s confidential information or information entrusted to insured, or damage insured’s reputation by posting false and defamatory comments about the insured on social media sites.

**System damage**—pay on behalf the insured’s rectification costs in retrieving, restoring, or replacing any computer programs, computer systems or data that has been lost or damaged.

**System business interruption**—reimbursement for the insured’s reduction in profit during a system outage as a direct result of a cyber peril affecting the insured’s or a cloud computer provider’s computer systems.

**Media**—pay on behalf sums the insured is legally obligated to pay arising from media content or user generated content for defamation, intellectual property rights infringement, invasion of rights of privacy or media content liability. Media content is not limited to electronic content and user generated content includes content posted on social networks by others. It does not include



## ECBM and PIOGA to present lunch-and-learn webinar on cyber risks to the energy industry

PIOGA member and insurance specialist ECBM is offering a free webinar, "How the Energy Industry Is a Bigger Target for Hackers and What You Can Do about It," from noon to 1 p.m. on Wednesday, April 19.

This introduction to risks and insights for cyber security and protection for the energy industry will incorporate what the panelists have seen in case studies and have experienced in their practice. The discussion will include takeaways such as how to reduce the risk of a cyber-attack and ways to create an action plan to be able to act quickly if one does occur.

Register at [info.ecbm.com/cyber-risks-energy-registration](http://info.ecbm.com/cyber-risks-energy-registration). The session also will be recorded with the ability to offer on-demand replays.

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**Computer crime**—coverage for theft or fraudulent manipulation of money or other financial/digital assets from the insured's bank accounts or corporate credit cards by electronic means

**Identity theft**—coverage for fraudulent use or misuse of the insured's electronic identity

**Telephone hacking**—coverage for the insured's telephone system being hacked by a third party.

**Phishing scams**—coverage for reimbursement costs of the insured in the event of fraudulent electronic communications or websites designed to impersonate the insured or any of its products

After the basic coverage, you can tailor the additional endorsements to be germane to your company. The "devil is in the details" when it comes to cyber insurance. In the case of Sony, it had cyber insurance, but was not covered for the type of breach the company experienced.

I have heard from some clients that they find the detailed application a little daunting. Your broker should be able to help walk you through it. It is imperative that the underwriters receive correct and complete information. It will help with the development of the specific policy you are seeking as well as making sure of accurate rating. Insurance on its own is not the panacea for cyber risk. It must be used in conjunction with risk management.

The insurance industry is still evolving in this area. Once there are more companies using cyber insurance, the industry will have statistical information on claims. They can use this to develop products that can address the specifics of the risks involved.

If you have any questions regarding this topic, please feel free to contact me at [aviguerras@ecbm.com](mailto:aviguerras@ecbm.com) or 610-668-7100 ext. 1335. ■

*\*U.S. House Small Business Subcommittee on Health and Technology, "Protecting Small Businesses Against Emerging and Complex Cyber-Attacks"*

## Threatened & endangered species training



More than 40 people participated last month in PIOGA's threatened and endangered species training, organized by the Environmental Committee in conjunction with industry partners Civil & Environmental Consultants, Firecherry Consulting, Wildlife Specialists, the Independent Petroleum Association of America, and Wilkes University and held at CEC's offices in Pittsburgh. Our thanks to the organizers, speakers and participants in this informative and useful program. The event was part of PIOGA's ongoing Technical Seminar Series.

Watch your email or check [www.pioga.org](http://www.pioga.org) for details about the Environmental Committee's April 20 training on water and waste management, sponsored by Fluid Recovery Services. Additionally, the Safety Committee is planning confined space training in late May. ■



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## Pointers from the frontlines on arbitrating an oil and gas dispute before the American Arbitration Association

Having conducted a number of oil and gas arbitrations before the American Arbitration Association (AAA), this article is intended to provide some thoughts on the process for those who may become involved in such proceedings. While this article references the AAA, these recommendations are offered for consideration regardless of the forum. As with all litigation, there are unlimited issues that could be addressed in an article such as this and it would be impossible to meaningfully cover more than a select few.

Sophisticated oil and gas companies typically have agreements requiring that all disputes arising out of those agreements should be addressed in arbitration. The preference for arbitration has often been driven by the presumed efficiencies of the arbitration process. Further, oil and gas companies tend to agree that the unique and specialized nature of the industry makes the resolution of a dispute better situated in a process conducted by an arbitrator having actual knowledge and expertise in oil and gas. Thus, the controlling arbitration provisions in many oil and gas agreements have specified that an arbitration be conducted before the AAA.

### The boilerplate arbitration provision and applicable rules

Oil and gas agreements are commonly no different from other extensively negotiated and exhaustively drafted commercial agreements in that they often include a boilerplate arbitration provision. While not intended as criticism, business lawyers charged on both sides with closing a substantial commercial oil and gas deal may often overlook or be unfamiliar with the practical realities of litigation when it comes to the drafting of an arbitration provision. Business lawyers for good reason are well-versed and focused on the discrete commercial terms and conditions unique to the oil and gas industry and the pending deal. To get that deal done, they may have focused substantial attention on the specific business terms yet resort to the easy “cut and paste” insertion of a boilerplate arbitration provision. Thus, after a dispute has arisen, the parties could be stuck with a boilerplate arbitration provision that was not meaningfully negotiated or considered.

It is not uncommon then for farmout or operating agreements to include boilerplate arbitration provisions such as the following:

The parties agree that any controversy or dispute arising out of or involving this agreement will be addressed before the American Arbitration Association in accordance with the rules then followed by the AAA and to be held in Pittsburgh, Pennsylvania. The losing party shall reimburse the winning party for all of its legal fees and for all other costs associated with the arbitration.

With such a generalized provision, the first issue is what rules actually apply? Of the AAA's available rules, the only ones that are really applicable are the Commercial Arbitration Rules. In

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fact, Commercial Rule R-1(a) states that in those domestic commercial disputes where the applicable rules are not specified in an arbitration provision, the AAA's Commercial Rules shall apply.

The AAA will apply its “Large, Complex Commercial Dispute” procedures for any claim in excess of \$500,000. Conversely, the AAA's “Expedited Procedures” will apply when the claims are less than \$75,000.

These rules are available on the AAA's website ([www.adr.org](http://www.adr.org)) for comparison. The parties can always agree on what rules should apply to a particular case and inform the

AAA accordingly. In addition, it is important to note that the parties can also modify the applicable rules by written agreement before an arbitrator is appointed. Once an arbitrator has been appointed, the Commercial Rules cannot be modified without his or her consent. *See Commercial Rule R-1(a).*

### Be selective with the appointment of a qualified arbitrator

The AAA has a national roster of distinguished and qualified individuals who have expressed an interest in serving as an arbitrator for all types of disputes.<sup>1</sup> It is beyond dispute that the oil and gas sector is unique with terminology, practices, financial modeling, and expectations that may not be thoroughly appreciated and readily understood by those who have not had first-hand experience in the sector. For obvious reasons then, a qualified arbitrator who understands the economics of the industry as well as the language and intent of such agreements as a farmout or an operating agreement, or the evolving law on post-production deductions, is crucial. Concerns have arisen that some seeking to serve as arbitrators have overstated their actual oil and gas experience in order to be considered. This is not to say that many are not qualified and capable arbitrators. Rather, caution is given that oil and gas clients and their attorneys should not be surprised that an initial roster of proposed arbitrators may be disappointing. Regrettably, there is a perception that some may have chosen to insert the key words “oil and gas” in their biographical work experience descriptions in order that the AAA will identify and include them in the initial proposed roster for an oil and gas arbitration. Of course, parties should also be prepared to receive an initial roster from the AAA that will include some very qualified oil and gas candidates.

If an initial roster is provided by the AAA with perceived deficiencies in the qualifications and/or experience of the candidates, it will become necessary for the parties and their attorneys to work with one another to address the problem. Experience has shown that the AAA is receptive when the parties jointly request a new roster and/or provide additional criteria for the inclusion of additional candidates. For those who may be inexperienced with the AAA, there is no requirement that you must choose from a dissatisfactory roster of AAA candidates. If the parties desire to have an eminently qualified and well-versed individual who is not on the AAA roster serve as the arbitrator, they can insist that the AAA abide by that decision. Upon such an election, the AAA will continue to administer the case and the chosen arbitrator will have to provide the AAA's required conflict disclosures and take the required oath. Reaching an early agreement on a qualified and respected oil and gas attorney to handle

the dispute should be a relatively easy matter.

### Discovery considerations

Commercial Rule R-22(a) provides that the arbitrator “shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute.” In the context of an oil and gas case, an exchange of documents under Commercial Rule-22(b) is typically the efficient and cost-effective way to proceed. Because there are typically no depositions, some parties seek additional discovery in the form of “limited” interrogatories and often try to persuade the arbitrator that they will “narrow” the issues for the hearing. This is rarely the case. Sophisticated oil and gas companies often have been parties to a subject agreement for many years and presumably know all of the pertinent facts arising out of their business relationship at issue in the dispute. Unless there is a truly compelling need or unique circumstances, parties should not plan on additional forms of traditional discovery in arbitration.

### Recovering the full measure of damages

One area that warrants careful consideration is the necessary steps to properly claim and recover the full measure of damages. As an example, consider an arbitration in which the claimant is a working interest holder in a natural gas well and claims that the respondent operator has improperly deducted gathering fees and marketing fees from the sale of the gas. In such situations, the operator typically issues a distribution statement to the working interest holder several months following the sale. Thus, a statement received in June will reflect only net distributions from sales through the preceding April. If the working interest owner claims in the arbitration that the operator has taken improper deductions, the working interest owner will not have an up-to-date damage calculation because of the time lag in the issuance of the distribution statements. This facet of the oil and gas industry highlights the discussion above concerning the importance of appointing a truly qualified oil and gas arbitrator who understands this about the business.

Because the AAA typically requires the parties to exchange their exhibits, including damage summaries, approximately 30 days before the hearing, the working interest owner will not have up-to-date distribution statements to bring its damages claim current through the date of the hearing.<sup>2</sup> Accordingly, after offering evidence as to why the nature or amount of the deductions was improper, the claimant working interest owner should be prepared to explain to the arbitrator why the damage claim is not current or “final” and why the claimant must be allowed to supplement the damage calculation upon receipt of the subsequent distribution statements from the operator.

It is therefore recommended that in such situations in which the calculation of total damages will be subject to a time lag, claimants and their attorneys must inform the arbitrator during the hearing (and in a written submission filed with the AAA for extra measure) that they desire to leave the record of the proceedings open under Commercial Rule R-39 if necessary to supplement the calculation of damages. If the parties are to submit post-hearing submissions of proposed findings of fact, etc., the claimant can use the submission to further add to its damages with the appropriate supporting documentation.<sup>3</sup>

This may not entirely protect the claimant’s full claim for

damages after the record has closed. This is because the arbitrator typically will have 30 days to issue an award after the record has been closed. *See, Commercial Rule R-45.* During those 30 days, the calculation of the claimant’s damages could continue to grow from the continued deductions taken from the ongoing production and sale of the gas from the well. Yet, after the record has been closed, the claimant will not have a formal process to supplement the calculation of those additional damages. If the arbitrator ultimately holds that the deductions were improper, the claimant and its attorney should be given fair opportunity to supplement the claim for damages with the additional deduction amounts that were disclosed in distribution statements that were unavailable during the hearing or in time for the post-hearing submissions. It is for this very reason that a claimant and its attorney should make it clear before, during and after the hearing that they seek an interim, and not a final, award under Commercial Rule R-47(b).

It is further recommended that claimants and their attorneys in an oil and gas case involving claims of improper deductions should offer to submit a detailed proposed order for the arbitrator to understand the continuing potential accumulation of damages from the ongoing production. Thus, under Commercial Rule R-47(a), a claimant and its counsel should submit a proposed order initially directing specific performance from the operator and/or precluding the challenged deductions after the date of the award. The proposed order should also provide for continuing jurisdiction by the arbitrator to receive additional evidence of the claimant’s deduction damages under Commercial Rule R-47(b). Upon submission of a calculation of the most up-to-date damages, the final award can then be issued under Commercial Rule R-47(c). Indeed, for those agreements that also provide for an award of attorneys’ fees such as in our example above, any party seeking to make such a claim may want to follow a procedure such as this because they will: (a) not know who was the “winning” party until after an interim award has been issued, and (b) the total attorneys’ fees incurred will not be known or quantified until after the hearings have concluded. A structured interim award process provides a procedural mechanism for the submission of attorneys’ fees claims to the arbitrator to be included in the final award. ■

<sup>1</sup> If the arbitration provision does not specify the number of arbitrators, the AAA will appoint only one arbitrator under Commercial Rule R-16.

<sup>2</sup> Parties and their attorneys should be familiar with Commercial Rule R-6, “Changes of Claim,” which provides that a party can change the amount of any claim or counterclaim in writing “at any time prior to the close of the hearing or by the date established by the arbitrator.”

<sup>3</sup> Alternatively, a party may submit an application to reopen the hearing under Commercial Rule R-40 *before* the award has been issued. There is some risk in this because the request is a matter for the arbitrator’s discretion. In fact, in the absence of consent of all parties, no such application will be granted if it would “prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement.”



## The Act 142 amendments and altered landscape of the Pennsylvania Mechanics' Lien Law for oil and gas construction projects

The Pennsylvania Mechanics' Lien Law, 49 P.S. § 1101 et seq., provides contractors a powerful legal remedy for recovering payment owed for work performed on a construction project; they can impose a lien against the property on which their work was performed, clouding the owner's title. As a result of Act No. 142's amendments to the lien law, effective December 31, 2016, project owners, general contractors, and subcontractors have been evaluating their business practices to ensure compliance with the amended lien law and the subsequent launch of the online State Construction Notices Directory.

Prior to the creation of the directory, there was no streamlined system for owners and general contractors to track subcontractors and suppliers on a project site. This created a lack of certainty with respect to what parties may have lien rights against a property site. The directory (located at [www.scnd.pa.gov](http://www.scnd.pa.gov)) helps owners and general contractors track work performed by subcontractors, sub-subcontractors and suppliers.

### Required notices under the act

The act creates a more structured notice procedure for owners and contractors on "searchable projects" (projects consisting of the construction, alteration or repair of an improvement costing at least \$1.5 million). Specifically, the act permits four new types of filings within the directory: (1) Notice of Commencement, (2) Notice of Furnishing, (3) Notice of Completion and (4) Notice of Nonpayment.

An owner (or an agent of the owner) is required to file a Notice of Commencement to trigger compliance with the act. A Notice of Commencement should be filed before any labor, work or materials are furnished for the project and must contain: (1) the full name, address and email address of the contractor; (2) the full name and location of the project; (3) the county in which the project is located; (4) a "legal description" of the property, including the tax identification number of each parcel included in

the project; (5) the full name, address and email address of the project owner; (6) if applicable, the full name, address and email address of the surety for any performance and payment bonds, and the bond numbers; and (7) the "unique identifying number" assigned the notice by the directory.

The owner must post this notice on the project site, make reasonable efforts to ensure it remains posted during the project, and ensure the notice is made part of the contract documents provided to all subcontractors. Contractors must include a provision in each of their subcontracts warning their subcontractors that the failure to file a Notice of Furnishing will forfeit the right to file a mechanics' lien.

If an owner files a Notice of Commencement, first- or second-tier subcontractors or suppliers must file a Notice of Furnishing within 45 days after first performing work or first providing materials on the job site, containing: (1) a general description of the labor or materials furnished; (2) the full name and address of the person supplying the services; (3) the full name and address of the person who contracted for the services; and (4) a description sufficient to identify the project. The directory will automatically send a copy of all Notices of Furnishing filed on a project to the project owner. The notices will be sent to the email address provided in the Notice of Commencement. The failure to timely file a Notice of Furnishing will result in a loss of lien rights. Just as important, the filing of a Notice of Furnishing does not absolve a subcontractor of strictly complying with the remaining requirements and deadlines for prosecuting a lien claim, as set forth in the lien law.

The act also permits (but does not require) an owner to file a Notice of Completion within 45 days of the "actual completion" of work on the project, for informational purposes. Additionally, subcontractors are permitted (but not required) to file a Notice of Nonpayment when they have not received payment in full for work or materials provided.

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### Practical implications of the amended lien law to oil and gas projects

The directory provides obvious benefits to owners and general contractors. Nevertheless, there is still much unknown with respect to how the act will impact energy infrastructure projects. Although the case law is not completely settled, it appears from the text of the lien law—and the body of case law developed from it to date—that many well pad development and pipeline construction projects are likely subject to the lien law. For example, a Pennsylvania appellate court has held that a "well for the production of gas, oil or other volatile or mineral substance" falls within the definition of a "structure or other improvement" governed by the lien law, so long as the well involves "the erection

or construction of a permanent improvement.”

Additionally, lien rights can attach to subsequent “substantial additions” to an existing improvement (i.e., a previously constructed well pad or pipeline). Another Pennsylvania court opinion held the addition of plastics-making machinery to a preexist-

***“The directory provides obvious benefits to owners and general contractors. Nevertheless, there is still much unknown with respect to how the act will impact energy infrastructure projects.”***

ing plant was a “substantial” enough addition for the associated work to be covered by the lien law. This suggests that activities such as the installation of additional surface facilities or the erection of infrastructure necessary to tie a well into a pipeline are subject to the lien law.

For owners of oil and gas projects, the greatest amount of confusion to arise from the act will likely relate to providing a “legal description” of the property in the Notice of Commencement, and complying with the act’s posting requirements. In the directory, many owners have merely provided a single address as the “legal description.” This approach may not be practical or feasible for a pipeline construction project, where numerous parcels, deeds and easement agreements or eminent domain condemnations contribute to the scope of the “legal description” of the property. For these projects, owners might

consider drafting a description of the property that includes the start and end points of the pipeline and provide a complete list of counties within which the pipeline will be situated. Additionally, owners should carefully consider how to comply with the act’s requirement to “conspicuously post” a copy of the Notice of Commencement at the project site. Given the transient nature of a given work site on a pipeline construction project, owners may consider posting the Notice of Commencement in their office trailers and any trailers belonging to their contractor.

As for their contracts, owners should contractually require contractors (and their subcontractors) to include a provision in each of their subcontracts, and for any subsequent subcontracts entered, warning their subcontractors that the failure to file a Notice of Furnishing will forfeit the right to file a mechanics’ lien. Contractors should require their subcontractors to include the same warning in their contracts with sub-subcontractors.

Given the current new face of the lien law and some of the uncertainties with respect to the lien law’s application to oil and gas projects, it is impossible to predict with certainty how courts will treat some of the filings submitted in the directory, and the representations made therein. Nevertheless, owners and contractors should take steps to ensure their business practices and construction contracts strictly conform to the act’s new requirements. ■

*For additional information about developments described in this article, contact David E. White at 412-394-5680 or [dwhite@babstcalland.com](mailto:dwhite@babstcalland.com) or Esther Soria Mignanelli at 412-394-6422 or [emignanelli@babstcalland.com](mailto:emignanelli@babstcalland.com).*

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## EPA withdraws methane information collection request

The U.S. Environmental Protection Agency has withdrawn the information collection request (ICR) for the oil and gas industry, PIOGA's Air Quality/Emissions Subcommittee reports. EPA is withdrawing both operator survey (Part 1) and the facility survey (Part 2). The official notice can be found at [www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/oil-and-gas-industry-information-requests](http://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/oil-and-gas-industry-information-requests).

The withdrawal is effective immediately, which means owners and operators are no longer required to respond to the ICR. The EPA has stated it intends to assess the need for the information requested through the ICR process. The withdrawal comes following EPA's receipt of a letter from 11 states that expressed concern regarding the ICR and the impact that it was having on affected oil and gas operations in their respective states.

Please contact Jim Elliott at 717-791-2012 or Roy Rakiewicz at 610-933-5246 ext. 127 with questions.

### IPAA statement

Independent Petroleum Association of America (IPAA) Executive Vice President Lee Fuller issued the following statement on the EPA action:

"IPAA is encouraged by the EPA's decision to withdraw its information collection request for oil and natural gas operators. While this information-gathering effort should have been a real opportunity for the decision-makers at EPA to better understand the complexities of the U.S. oil and natural gas industry, which

ended up not being the case. The exercise imposed significant costs on companies to produce additional paperwork and added unnecessary burdens on producers' technical teams to prepare and submit rushed comments under enormous time constraints. IPAA welcomes the EPA's announcement as it brings meaningful relief to independent producers across the nation and demonstrates that creating American jobs and developing U.S. energy is a high priority for the Trump administration."

Last October, IPAA and the American Exploration & Production Council (AXPC) outlined industry's concerns in formal comments to the EPA. In August 2016, IPAA, AXPC, and 47 additional oil and natural gas industry trade associations, including PIOGA, urged the EPA to work with the industry on its recent information-gathering request, allowing for a better and more thorough understanding of oil and natural gas operations. ■

## New iPad app makes DEP oil and gas site inspections more efficient

The Department of Environmental Protection has announced the launch of an iPad app for electronic field inspections at oil and gas production sites.

The app, developed in partnership with the Department of Transportation, enables DEP staff to conduct electronic inspections of all surface activities at oil and gas sites, including erosion and sedimentation, waterways encroachment, waste management, and spill cleanup. Until now, inspections have been performed with clipboards and paper forms.

DEP said the app will make the inspection process more accurate and efficient, thanks to improved data quality, easier photo documentation, elimination of duplicate entry, electronic supervisor approval and other features. The number of oil and gas field inspections that DEP staff can perform yearly will also increase.

Electronic inspections also mean surface inspection results will appear sooner, since results enter the DEP database and are posted on the agency's oil and gas mapping web site within days, rather than weeks.

All 46 oil and gas surface activities inspection staff were to be using the app by the end of February. DEP is also developing a similar app for its 32 oil and gas subsurface activities inspectors.

The app will be configured for other DEP programs, with the goal of equipping 350 inspectors by 2020, allowing the department to realize an estimated \$3.6 million in productivity savings once implemented. ■

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## Lifetime Achievement Award for Lou



PIOGA's recently retired president and executive director Lou D'Amico was honored at the Northeast Oil & Gas Awards gala on March 2 with a Lifetime Achievement Award. Our congratulations go out to Lou (shown above accepting the award and below with his wife, Almeda) for being recognized with this much-deserved honor. He was introduced by guest of honor Christopher Guith of the U.S. Chamber of Commerce's Institute for 21st Century Energy. Also receiving honors was PIOGA member McCutcheon Enterprises, Inc. for Oilfield Services Company of the Year. The complete list of award winners is at [www.oilandgasawards.com/northeast-2017](http://www.oilandgasawards.com/northeast-2017).



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Map labels: Michigan, Indiana, Ohio, Pennsylvania, West Virginia, Virginia, Carolina, South, Conn., N.J., Maryland.

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 Rome trough (pink)  
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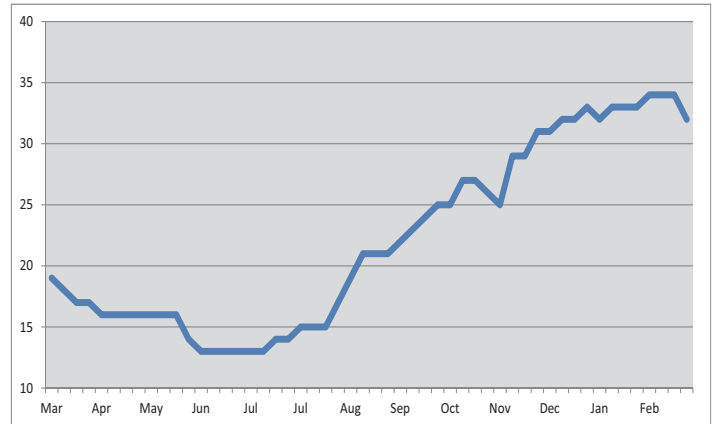
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## Oil & Gas Trends

### Pennsylvania Rig Count



#### 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-reports&other](http://phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-reports&other)  
 NYMEX strip chart: Emkey Energy LLC, [emkeyenergy.com](http://emkeyenergy.com)



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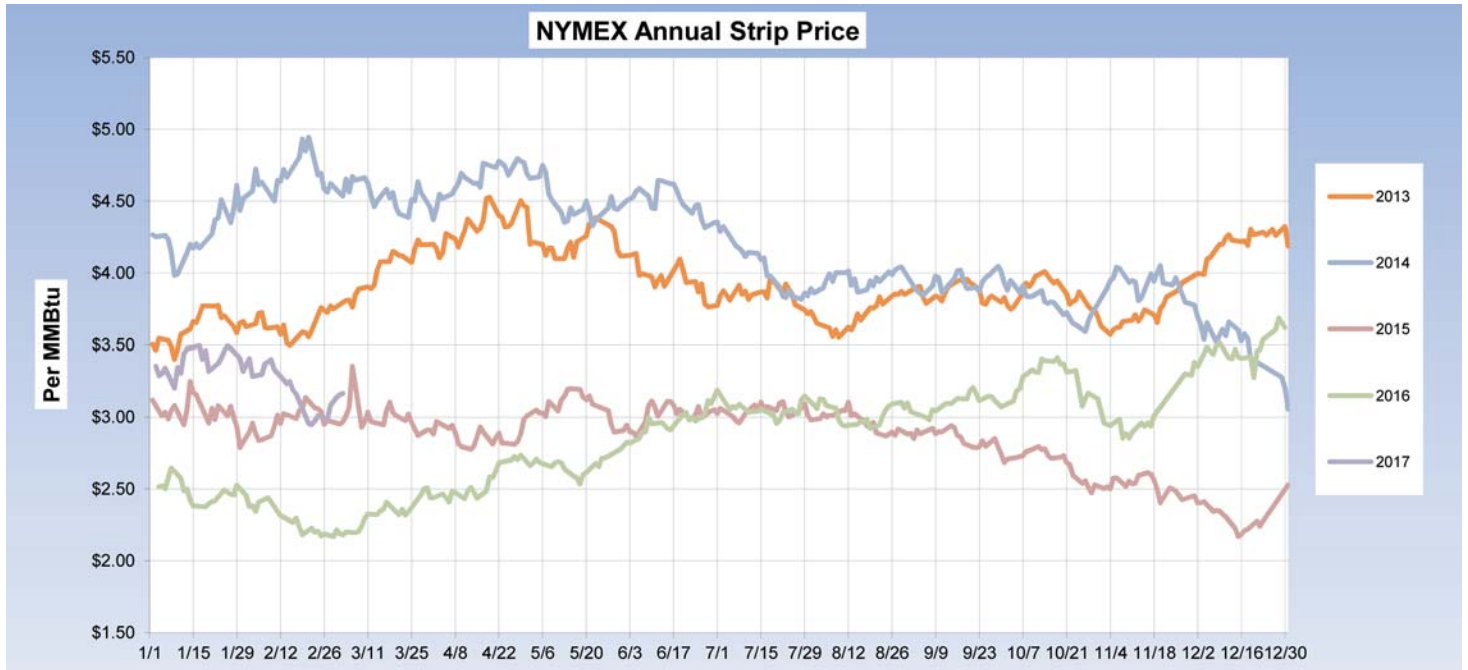
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April 2017	\$2.850	October	3.130
May	2.940	November	3.216
June	3.019	December	3.329
July	3.088	January 2018	3.417
August	3.143	February	3.413
September	3.109	March	3.329

*Prices as of March 7*

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# Spud Report: February



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
Apex Energy (PA) LLC	2	2/17/17	129-28931*	Westmoreland	Salem Twp
		2/18/17	129-28930*	Westmoreland	Salem Twp
Cabot Oil & Gas Corp	12	2/20/17	115-22253*	Susquehanna	Harford Twp
		2/20/17	115-22254*	Susquehanna	Harford Twp
		2/20/17	115-22255*	Susquehanna	Harford Twp
		2/20/17	115-22256*	Susquehanna	Harford Twp
		2/20/17	115-22257*	Susquehanna	Harford Twp
		2/20/17	115-22258*	Susquehanna	Harford Twp
		2/20/17	115-22259*	Susquehanna	Harford Twp
		2/20/17	115-22260*	Susquehanna	Harford Twp
		2/20/17	115-22261*	Susquehanna	Harford Twp
		2/20/17	115-22250*	Susquehanna	Harford Twp
Cameron Energy Co EQT Production Co	10	2/21/17	123-47976	Warren	Sheffield Twp
		2/15/17	059-27218*	Greene	Washington Twp
		2/15/17	059-27219*	Greene	Washington Twp
		2/24/17	059-27275*	Greene	Washington Twp
		2/24/17	059-27290*	Greene	Washington Twp
		2/24/17	059-27291*	Greene	Washington Twp
		2/24/17	059-27294*	Greene	Washington Twp
		2/24/17	059-27295*	Greene	Washington Twp
		2/24/17	059-27296*	Greene	Washington Twp
		2/24/17	059-27297*	Greene	Washington Twp
JKLM Energy LLC	6	2/11/17	105-21875*	Potter	Ulysses Twp
		2/11/17	105-21876*	Potter	Ulysses Twp
		2/11/17	105-21877*	Potter	Ulysses Twp
		2/11/17	105-21878*	Potter	Ulysses Twp
		2/11/17	105-21879*	Potter	Ulysses Twp
		2/11/17	105-21880*	Potter	Ulysses Twp
MSL Oil & Gas Corp	1	2/6/17	083-56777	McKean	Lafayette Twp
PennEnergy Resources LLC	4	2/22/17	007-20491*	Beaver	New Sewickley
		2/22/17	007-20495*	Beaver	New Sewickley
		2/23/17	007-20496*	Beaver	New Sewickley

available at [www.dep.pa.gov/DataandTools/Reports/Oil and Gas Reports/Pages](http://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	
PVE Oil Corp Inc Range Resources Appalachia	10	2/23/17	007-20497*	Beaver	New Sewickley	
		2/28/17	083-56913	McKean	Sergeant Twp	
		2/14/17	125-28147*	Washington	Amwell Twp	
		2/14/17	125-28145*	Washington	Amwell Twp	
		2/14/17	125-28144*	Washington	Amwell Twp	
		2/14/17	125-28152*	Washington	Amwell Twp	
		2/14/17	125-28148*	Washington	Amwell Twp	
		2/14/17	125-28149*	Washington	Amwell Twp	
		2/14/17	125-28146*	Washington	Amwell Twp	
		2/28/17	125-28153*	Washington	Robinson Twp	
Rice Drilling B LLC	5	2/22/17	125-28161*	Washington	Somerset Twp	
		2/23/17	125-28157*	Washington	Somerset Twp	
		2/23/17	125-28158*	Washington	Somerset Twp	
		2/23/17	125-28159*	Washington	Somerset Twp	
		2/24/17	125-28160*	Washington	Somerset Twp	
		2/24/17	123-47962	Warren	Watson Twp	
Russ Holden Well Svc Snyder Bros Inc	4	2/13/17	005-31281*	Armstrong	East Franklin Twp	
		2/13/17	005-31282*	Armstrong	East Franklin Twp	
SWN Production Co LLC	5	2/13/17	005-31283*	Armstrong	East Franklin Twp	
		2/13/17	005-31270*	Armstrong	East Franklin Twp	
		2/22/17	117-21872*	Tioga	Liberty Twp	
		2/22/17	117-21873*	Tioga	Liberty Twp	
		2/23/17	117-21871*	Tioga	Liberty Twp	
XTO Energy Inc	2	2/18/17	131-20537*	Wyoming	Forkston Twp	
		2/18/17	131-20538*	Wyoming	Forkston Twp	
		2/16/17	019-22565*	Butler	Center Twp	
		2/21/17	019-22583*	Butler	Connoquenessing	
<b>Total wells</b>	<b>February</b>	<b>January</b>	<b>December</b>	<b>November</b>	<b>October</b>	<b>September</b>
Unconventional Gas	64	58	65	63	64	70
Conventional Gas	60	57	60	56	59	49
Oil	0	0	1	1	0	1
	4	1	4	6	5	20

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## Calendar of Events

### PIOGA Events

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

**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

**7th Annual Cost-Effective Produced Water Management Marcellus & Utica 2017**

March 29-30, Pittsburgh, PA

Info: [www.shale-water-marcellus-utica.com](http://www.shale-water-marcellus-utica.com)

**IPAA Midyear Meeting**

June 21-23, The Ritz-Carlton, Laguna Niguel, CA

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

**IOGANY Summer Meeting**

July 12-13, Peak'n Peak Resort, Clymer, NY

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

**IOGA West Virginia Summer Meeting**

August 6-8, The Greenbrier, White Sulphur Springs, WV

Info: [iogawv.com/](http://iogawv.com/)

**Ohio Oil & Gas Association Summer Meeting**

August 7-8, Zanesville (OH) Country Club

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

**IPAA Annual Meeting**

November 8-10, The Ritz-Carlton, Naples, FL

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

► **More events: [www.pioga.org](http://www.pioga.org)**

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