



# The PIOGA press

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## Snyder Brothers/PIOGA stripper well case: Second time around is a charm

In a casehinging on the meaning of the word “any,” the Commonwealth Court on March 29 sided with PIOGA and member company Snyder Brothers, Inc. in a case involving payment of the Act 13 impact fee on vertical Marcellus wells that met the definition of “stripper well.” The decision means the company is not liable for the nearly \$500,000 the Pennsylvania Public Utility Commission (PUC) said the company owed in impact fees, penalties and interest. It also provides clarity going forward for other operators with unconventional stripper wells, which are exempt from the impact fee.

The appeal of the PUC’s June 2015 ruling was unusual in that the full Commonwealth Court (*en banc*) twice heard oral argument on the case—in November 2015 and again this February. PIOGA General Counsel Kevin Moody explained that Commonwealth Court typically resolves cases within three to six months of oral argument. However, the court gained three new judges since the original argument, and Moody concluded the court was having a difficult time with the case and wanted it reargued for the benefit of the new judges.

In their February arguments Moody and counsel for Snyder Brothers emphasized that the court’s statutory interpretation need not go beyond the common and approved usage of the word “any” because the commission had consistently interpreted the word to mean “one”—which is the PIOGA/Snyder Brothers meaning—and that in *none* of the five orders issued to implement the impact fee had the commission ever determined that the word “any” or the definitions of “stripper well” and “vertical gas well” were unclear or ambiguous. So there was no need to resort to additional statutory interpretation rules such as the necessity of the statute, the object to be attained, circumstances under which it was enacted and the mischief to be remedied because this additional analysis is required only when the statute is determined to be unclear or ambiguous.

Moody said that just as during the first oral argument, in the February argument the judges focused on the meaning of the word “incapable” in the stripper well definition and whether pro-

ducers could manipulate production to avoid paying the tax.

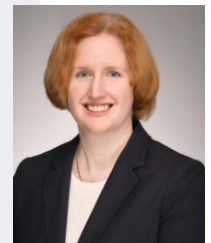
“We were better prepared to respond to these questions this time because the incapability of these wells to produce and whether producers can manipulate production, either as a general matter or with respect to these wells, had not been contested issues in the PUC proceeding,” Moody reported. “In fact, the only testimony concerning the incapability or capability of wells to produce came from Snyder Brothers’ witness, who testified that Snyder Brothers produced all of its wells, including the wells at issue, to the maximum amount they could produce and that if a particular well did not produce more than 90,000 cubic feet of natural gas per day during any given month, that well was incapable of producing more.” He added that this testimony was not contradicted.

*(Continues on page 21)*

## Trump administration focuses on energy regulations

By **Brianne K. Kurdock, Esq.**  
**Babst Calland**

The opening days of the Trump administration have seen a flurry of activity focused on regulations affecting the oil and gas industry. President Donald Trump has issued a series of executive orders and presidential memoranda aimed at reducing regulations that impact the energy industry. Congress has also used its authority under the Congressional Review Act (CRA) to repeal several recently issued regulations. While the industry has largely applauded these moves, environmental groups have signaled they intend to challenge these actions aggressively in court.



### Executive actions and presidential memoranda

On January 20, the new White House chief of staff issued a regulatory freeze memo instructing executive branch agencies to (1) withdraw rules that had been sent to the *Federal Register* but had not yet been published; (2) refrain from send-

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## Trump environmental regulation: *Continued from page 1*

ing new rules to the *Federal Register* for publication until a senior official appointed by the administration had reviewed the contents of the rule; and (3) extend the effective date for those rules that had been published prior to Inauguration Day but had not yet taken effect.

On January 24, President Trump issued memoranda calling for the expedited review and approval of the Keystone XL Pipeline and Dakota Access Pipeline projects, which had been blocked or stalled during the previous administration. The president also directed the secretary of commerce to develop a plan within 180 days for using materials and equipment produced in the United States in all new, repaired or replaced pipelines.

On January 30, the president issued an executive order entitled “Reducing Regulations and Controlling Regulatory Costs” (informally known as “the Two-for-One Order”). The Two-for-One Order requires agencies to identify two regulations for repeal for every new regulation the agency proposes or promulgates. The Two-for-One Order also establishes cost caps for regulatory action. The net incremental cost cap for the remaining portion of fiscal year 2017 is zero, and the Office of Management and Budget (OMB) is directed to set the cost caps for future fiscal years. In other words, federal agencies cannot advance a new rule between January 20 and September 30 (the end of the current fiscal year) without first identifying two regulations for repeal under the Two-for-One Order, and the net incremental costs for new regulations must be zero.

On February 2, the Office of Information and Regulatory Affairs (OIRA), a division of the OMB, issued interim guidance to agencies on how to implement the Two for One Order. OIRA made several clarifications in the interim guidance:

- The guidance narrowed the application of the Two-for-One Order to *significant* rulemakings and guidance documents.
- Agencies do not have to comply with the Two-for-One Order if a statute or court decision requires otherwise.
- The Two-for-One Order does not apply to independent agencies (*i.e.*, the Federal Energy Regulatory Commission), but those agencies are encouraged to identify existing regulations that could be repealed or revised to reduce costs.
- Agencies can use the savings acquired from regulations repealed by an act of Congress (*i.e.*, Congressional Review Act resolutions) to offset the costs of new rules.
- Agencies can pair two rules from different divisions within the agency to achieve the required cost-savings. The rules repealed do not have to bear a substantive connection to the one that is being issued.
- Agencies are prohibited from using the regulatory impact analysis (RIA) created during the original rulemaking process. The RIA used to support the costs or proposed savings must be based on ongoing costs.

On March 28, the president issued the “Promoting Energy Independence and Economic Growth” executive order. The president directed agencies to review existing regulations that potentially burden the “development or use of domestically produced energy resources.” Of particular note, the president directed the Environmental Protection Agency (EPA) to review the Clean Power Plan final rule and the Emission Standards for New, Reconstructed and Modified Sources final rule. The president also rescinded the Council on Environmental Quality’s August

2016 final guidance, which urges agencies to consider the effects of greenhouse gas emissions in their National Environmental Policy Act reviews. Finally, the president rescinded the six technical documents that the previous administration had relied on to support the Social Cost of Carbon, the framework to determine the benefits of reducing carbon emissions. (*See related article on page 4.*)

### Congressional Review Act

Congress has used its authority under the CRA to pass joint resolutions of disapproval nullifying regulations finalized in the waning days of the Obama administration. The CRA allows Congress to take expedited action to overrule regulations issued by federal agencies within the previous 60 legislative days. To date, Congress has introduced 15 joint resolutions seeking to overturn a regulation finalized between June 13, 2016, and January 3, 2017. Of the 13 joint resolutions that have passed both houses of Congress, President Trump has signed eight into law. By comparison, prior to 2017 Congress had successfully used the CRA only once.

Several of these resolutions are of interest to the energy industry. The president has withdrawn the Department of Interior’s Stream Protection Rule, which would have imposed new limitations on coal mining operations; an Occupational Safety and Health Administration rule that would have made recordkeeping requirements a continuing obligation; and a Securities and Exchange Commission rule that would have required oil companies to disclose operations in foreign countries.

In February, the House of Representatives passed a joint resolution withdrawing the Bureau of Land Management’s rule establishing emission limits on oil and gas companies operating on public land. However, the Senate has yet to pass this resolution. Congress is also reviewing the EPA’s final rule amending the accident prevention and emergency response requirements of the Risk Management Program. The March 30 deadline to introduce new joint resolutions has now passed; however, Congress has until approximately May 9 to vote on the remaining joint resolutions.

### Environmental non-governmental organization response

Environmental groups have already instituted lawsuits challenging several of these presidential and congressional actions. On February 8, Public Citizen, Natural Resources Defense Council and the Communications Workers of America filed suit in the U.S. District Court for the District of Columbia seeking declaratory and injunctive relief from the Two-for-One Order. Other groups have expressed an interest in seeking judicial reviewing of some of the other recent actions, including the executive order related to the Clean Power Plan final rule. ■

*If you have questions regarding the regulatory developments or challenges described in this article, please contact Brianne K. Kurdock at 202-853-3462 or bkurdock@babstcalland.com.*



## IPAA attends President Trump's energy order signing ceremony

By Barry Russell, President & CEO  
Independent Petroleum Association of America.

**O**n March 28, I had the opportunity to attend President Donald Trump's signing ceremony of the Energy Independence Executive Order, which includes a number

of IPAA recommendations made to the transition team and new administration. Also attending were Vice President Pence, Interior Secretary Zink, Energy Secretary Perry and EPA Administrator Pruitt. It was an honor to represent IPAA at the signing event and we're pleased IPAA is being recognized as playing a vital role in strengthening our nation's energy security and getting

Americans back to work. The executive actions include:

- Withdrawing the social costs of carbon executive order, a concept that had been used to justify new regulations in the Obama administration.
- Rescinding the National Environmental Policy Act (NEPA) guidance on greenhouse gases that made climate change a consideration in the permitting process.
- Ordering the Bureau of Land Management (BLM) to review the hydraulic fracturing rule that attempted to limit the practice on federal and tribal lands.
- Reviewing the new source standard for methane from new oil and gas operations.
- Reviewing the BLM's venting and flaring regulations.
- Revoking the presidential memorandum on mitigating the impacts on natural resources from development and encouraging related private investment.

**The Social Cost of Carbon.** The concept was never authorized by Congress and never adopted using the Administrative Procedure Act. It is based on questionable processes to calculate the impact of carbon reductions on climate changes. A court decision supported use of the Social Cost of Carbon, but the underlying issues of congressional authorization and proper development through the Administrative Procedure Act remain. Reconsideration of such a significant process to justify a wide range of regulations is wholly appropriate and responsible.

**Greenhouse gases.** The NEPA guidance on greenhouse gases released by the Council on Environmental Quality inappropriately expands the scope of NEPA reviews beyond the projects being reviewed by permitting agencies. It is a thinly disguised effort to slow or prevent projects by subjecting them to address emissions issues beyond their capacity to manage. Rescinding it resets the NEPA process to a status more consistent with its original intent.

**Hydraulic fracturing rule.** Reviewing the BLM hydraulic fracturing rule is entirely consistent with issues raised by IPAA

and others in litigating this regulation. It is a rule that is a solution in search of a problem. States have effectively regulated well construction, including hydraulic fracturing, on sites operating on BLM lands for decades. And they will continue to do so. This regulation creates a duplicative set of requirements that will

delay or stop BLM resource development with no environmental benefit.

**Methane New Source Performance Standard.** Stopping and reviewing the Environmental Protection Agency (EPA) Subpart OOOOa methane New Source Performance Standard (NSPS) is appropriate. Much of the justification for this NSPS relies on the Social Cost of Carbon and significant



aspects of it are not cost effective, based on technologies that do not meet the NSPS criteria—particularly when well production begins its natural decline. Further review of this NSPS will conclude that it needs substantial restructuring and revision.

**Venting and flaring.** Stopping and reviewing the BLM venting and flaring regulations related to methane emissions is entirely appropriate. This regulation requires emissions controls on existing sources on BLM lands. These requirements are based on EPA new source requirements that have not been demonstrated as cost effective for existing sources. And, most of the existing sources on BLM lands are low producing, economically vulnerable wells that cannot sustain the additional costs. The rule also creates a methane emission “budget” that fails to recognize the infeasibility of capturing methane in many crude oil production operations. A fair assessment of this regulation will conclude that it is inappropriate and without environmental merit.

**Forest and Wildlife Service mitigation.** Revoking the presidential memorandum on “Mitigating the Impacts on Natural Resources from Development and Encouraging Private Investment” will stop federal agencies like the Forest Service and Fish & Wildlife Service from being required to adopt no-net-loss approaches to minimize and provide compensatory mitigation for impacts of projects they approve.

These important actions couldn't have been made possible without the support and involvement of IPAA members in the process. In early March, dozens of our members and staff conducted more than 150 meetings with congressional offices to outline IPAA's priorities (*see related item about PIOGA's participation*). And we continue to meet with the new executive appointees within the administration to extend this string of success.

I will continue to keep you updated on developments in Washington. Once again, thank you for your support. ■



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## DEP issues two disposal well permits, sues host municipalities

The Department of Environmental Protection approved two long-anticipated permits for underground injection control (UIC) wells in Grant Township, Indiana County, and Highland Township, Elk County. On the same day, the department filed challenges in the Commonwealth Court against both townships' home rule charters that purport to make the department's action of granting the permits unlawful and authorize the townships to fine the department for the actions.

The wells will be operated PIOGA member Pennsylvania General Energy Company (PGE) in Indiana County and by Seneca Resources Corp. in Elk County. In both cases, the companies are converting existing gas wells into UIC wells.

"After a thorough review, DEP determined that both applications meet all regulations, are sufficient to protect surface water and water supplies, and would abate pollution," Acting DEP Secretary Patrick McDonnell said.

In addition to the permit applications, DEP reviewed Erosion and Sedimentation Control and Post Construction Stormwater Management plans, Control and Disposal plans, and the applications submitted to the U.S. Environmental Protection Agency (EPA), as well as the permits issued by the EPA for the wells.

Due to public concerns about seismic activity related to UIC wells that has occurred in other states, DEP applied special conditions to the permits to ensure early detection if even minor seismic events occur. These conditions include:

- Installation of a seismometer and continuous recorder with operating, calibration, service, and maintenance information at the disposal well site; and the contact information for the responsible person in charge of conducting seismic monitoring activities.
- Verification that data is captured at the disposal well site and provided to the Incorporated Research Institutions for Seismology (IRIS) Network in real time.
- Description of installation to allow for optimal seismic event identification and location.
- Submission of a tectonic seismic event contingency plan that includes monitoring, reporting and mitigation provisions.
- Provision for updating the seismic monitoring and mitigation plan, retaining seismic event data and equipment records, and submitting reports on the use of monitoring equipment.

In addition, these wells are permitted at much lower pressures, and in formations farther from the "basement" rock that is more prone to seismic activity, than the wells in other states that have been linked to seismic occurrences.

### DEP home rule charter challenges

Both Highland and Grant townships first adopted so-called "community bill of rights" ordinances and then home rule charters (HRCs) developed by the Community Environmental Legal Defense Foundation (CELDF) that include prohibitions against disposal of oil and gas related produced water. Seneca and PGE individually have challenged the township enactments in federal court, with PIOGA as a participant in the Grant Township case.

Now DEP has weighed in legally on the matter as well because the townships' HRCs go beyond invalidating the companies' constitutionally protected rights to also invalidating the permitting decisions by the department and the EPA.

Jim Willis, the editor of the website Marcellus Drilling News ([marcellusdrilling.com](http://marcellusdrilling.com)), has a knack for cutting right to the heart of issues like this. Here's how he explains justification for DEP's litigation:

"The so-called Home Rule Charters under which both townships reorganized have provisions in them that govern/regulate injection wells. There are fines and punishments for violating those regulations, and (unbelievably), language that specifically prevents the DEP from authorizing the injection wells. DEP, by issuing permits for the injection wells, is technically in violation of the charters and (theoretically) would have to pay fines, etc. So the DEP, upon granting the permits for the wells, also filed a "Complaint Seeking Declaratory and Injunctive Relief"—a lawsuit asking Pennsylvania Commonwealth Court to find the injection well provisions (i.e. the oil and gas regulations) that are in the Home Rule Charters to be unconstitutional."

The lawsuits charge that the HRC provisions targeting the government violate the Oil and Gas Act of 2012, the Solid Waste Management Act and other provisions of state law that lay out the Commonwealth's powers and duties to protect the environment. The lawsuits emphasize that the companies have met all the legal requirements for approval of the permits.

In its filings, DEP points out that the Commonwealth enjoys sovereign immunity against being sued and asks the court to grant a temporary (or preliminary) injunction against each township to prevent each from invoking its HRC provisions targeting the government, to declare those charter provisions void and unenforceable, and to prevent the townships from levying fines against DEP under those provisions while the litigation proceeds.

A hearing on both preliminary injunction petitions was scheduled for April 12 in Harrisburg.

The radical CELDF responded this way in a news release: "Let's be clear: Our state agencies, tasked with 'environmental protection,' are legalizing harmful activities by issuing permits to corporations with histories of violations. And, they are doing so against the will and sovereign law of the people who live in the community. Equally egregious, those state agencies are now suing communities who dare to stand up to unjust laws that privilege corporate interests above the communities' health and safety. The meaning of 'corporate-state' has never been more clear; it is painfully obvious whose interests our state agencies serve."

In addition to CELDF, residents in both communities as well as environmental advocates have accused the department of siding with the industry in filing these lawsuits. This criticism is unwarranted and untrue and misses the point. PIOGA's General Counsel Kevin Moody posted comments online to articles stating what the DEP lawsuits are actually about:

Elected officials' first duty is to obey the Pennsylvania and U.S. constitutions. DEP's lawsuits were not filed "for industry"—they were filed simply to uphold the rule of law in our republican form of government. They are unprecedented because the position of Grant Township and CELDF is unprecedented—a right to local self-government that is superior to state and federal law. Our country could not function if each municipality became its own sovereign nation, free to decide

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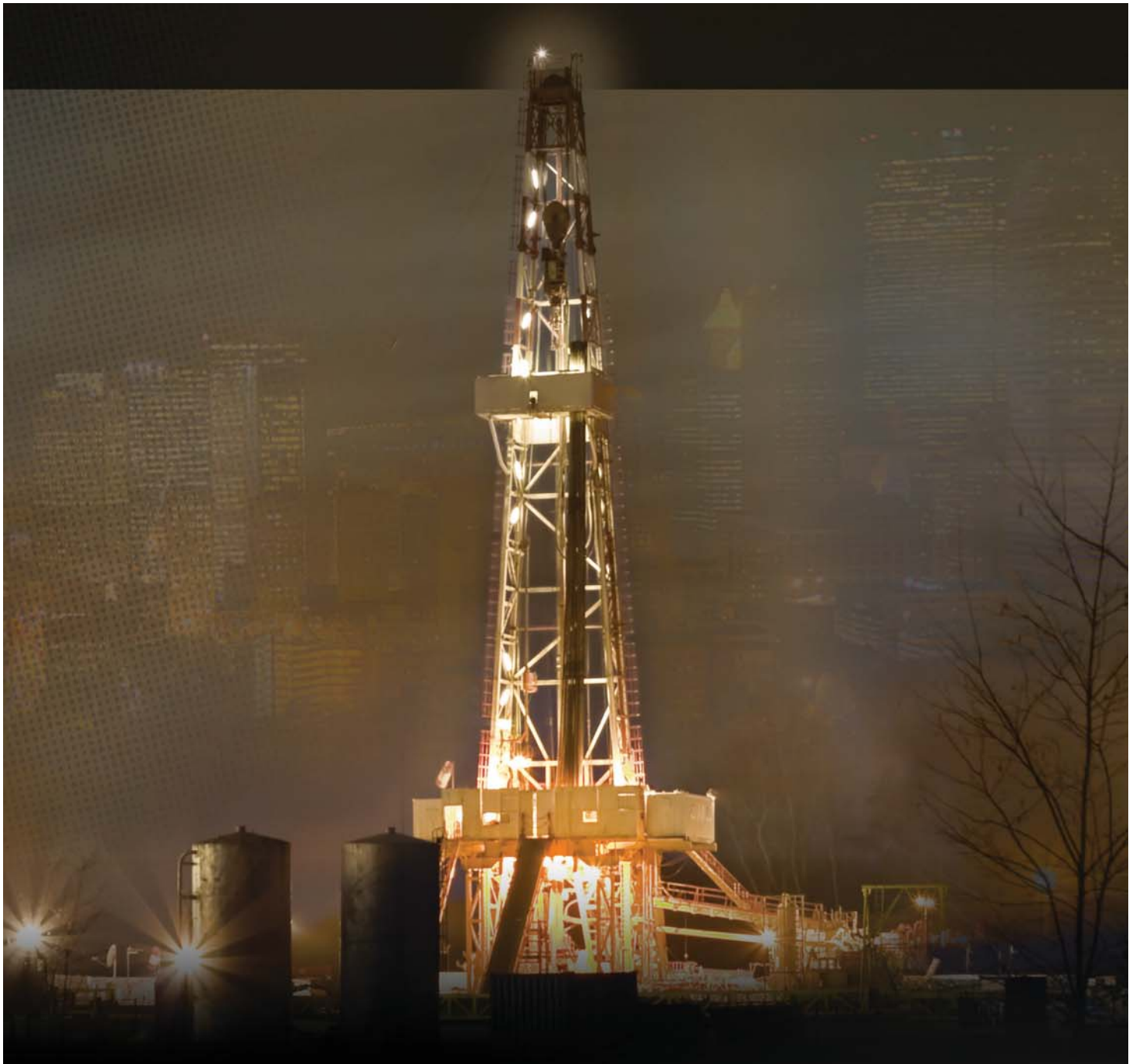
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which state and federal laws are lawful within its boundaries. This attack on the rule of law is not limited to environmental issues. Just check out CELDF’s website. And there’s nothing mysterious or questionable about the timing of these lawsuits. These home rule charters declare DEP’s issuing these permits to be unlawful and authorize the townships to fine DEP for these declared unlawful actions. That’s why these lawsuits were filed the same day the declared unlawful actions were taken.

**Ongoing industry challenges**

Both communities are involved in ongoing federal lawsuits by industry related to their attempts to ban the injection wells, but with different perspectives.

Seneca Resources initially challenged Highland Township’s CELDF-authored community bill of rights ordinance which also banned wastewater disposal wells, settling that case after a new board of supervisors repealed the ordinance. However, residents in a 2016 referendum approved the home rule charter, also drafted by CELDF, with the same anti-disposal-well provisions as the ordinance. Seneca sued the township again in November 2016 over the HRC. The supervisors have responded that that they believe the charter is—just as the ordinance was—unconstitutional and unenforceable, but they have no power to repeal it.

On the other hand, Grant Township continues to defend its actions. PGE challenged Grant Township’s CEDLF-developed ordinance in August 2014 and, after a federal judge threw out some provisions of the ordinance in October 2015 as unlawful under Pennsylvania second class township law, the people of the township—as an attempted “end-around” the judge’s October 2015 decision—about three weeks later adopted the HRC with the same anti-disposal-well provisions as the ordinance. The federal magistrate judge rejected the township’s request to dismiss the case because of the repeal of the ordinance and adoption of the HRC, so PGE continues to pursue recovery of damages and legal fees incurred as a result of the ordinance.

On March 31, the federal magistrate judge issued an opinion that sets the stage for a trial on PGE’s damages claim. The judge denied summary judgment for the township on its counterclaim against PGE for violating the township’s claimed right to superior local self-government and instead granted summary judgment to PGE and dismissed the township’s counterclaim.

The judge also granted summary judgment to PGE on its claims regarding the U.S. Constitution: (i) Fourteenth Amendment Equal Protection Clause challenge (Count II—there is no evidence of a rational relationship between the disparate treatment of corporations and individuals under the ordinance and the stated goals of the ordinance in protecting the environment and health); (ii) First Amendment Petition Clause challenge (Count III—the ordinance shuts the courthouse door to litigants, which it cannot constitutionally do, by limiting access to courts only through approved “community meetings”); and (iii) Fourteenth Amendment Substantive Due Process challenge (Count IV—the provisions of the ordinance “demonstrate irrational and arbitrary behavior, which acknowledges lan-

guage contrary to existing law and takes the purpose outside of the original point of the Ordinance.”). Although summary judgment was denied as to PGE’s Count V (Fourteenth Amendment Procedural Due Process challenge) and Count VI (Article I Contract Clause challenge), PGE has the opportunity to prove at trial that it has the protected property interests necessary to support these challenges.


PIOGA is a party in the Grant Township case and is directly challenging the people’s right to enact an ordinance or HRC that allows to local government unit to pick and choose what state and federal law is valid within the boundaries of the municipality. In her March 31 opinion and order, the federal magistrate judge dismissed the township’s counterclaim against PGE because the township had failed to establish that PGE was a “state actor” for purposes of liability under 42 U.S.C. § 1983. Accordingly, the judge did not address “whether the Township’s purported constitutional right to local community self-government has been violated” by PGE.

However, whether the township’s purported constitutional right to local community self-government superior to state and federal law exists in the first place is the issue squarely presented by PIOGA’s motion to dismiss the township’s counterclaim against PIOGA, which is the same as the township’s counterclaim against PGE. The judge stated that she would resolve PIOGA’s motion to dismiss by separate order, which PIOGA anticipates will be happen sooner rather than later. ■


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## Something new for the Pig Roast

The two-day summer gathering we commonly refer to as the PIOGA Pig Roast is always one of our most popular events. This year we are mixing things up a bit to make it an even more attractive event for our members and guests.

One thing not changing is the venue—beautiful Seven Springs Mountain Resort in Champion. The lush, green surroundings and top-notch facilities make Seven Springs a wonderful destination. This year, the event takes place June 28-29.

Clues to what's different for 2017 can be found in the event name. We're calling it the **PIOGA Pig Roast, Product & Equipment Roundup and Operators Forum & Leadership Summit**.

On Wednesday the 28th, in addition to golf, sporting clays, the Pig Roast and other fun activities, the Product & Equipment Roundup will provide vendors with the opportunity to show off their wares in a relaxed environment.

On Thursday the 29th we will present something new in place of the usual technical conference: the Operators Forum & Leadership Summit that will run from 8:30 a.m. to 3 p.m. Here are the speakers and topics we have confirmed so far:

- *Public Engagement Strategies and Gaining Public Support to Overcome Opposition*, John Davies, CEO, Davies Public Affairs
- Lunch Speaker, Craig Wolfley, NFL veteran, *Team Building and Pulling Toward a Unifying Goal*
- *The Business of BUSINESS! Maximizing the opportunities before us!* Jim Shorkey, Shorkey Auto Group and Results from Thinking



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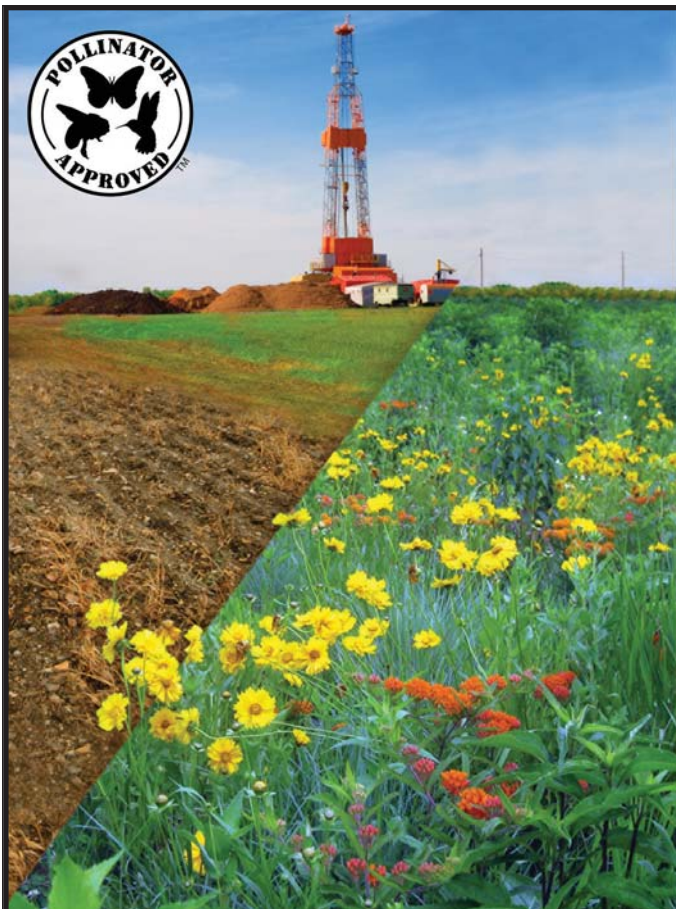
- Panel discussion: *Economic Developments and Community Challenges around the State*
- Operators Forum featuring executives from a varied group of Pennsylvania oil and gas producers.

Check the PIOGA Events section at [www.pioga.org](http://www.pioga.org) as we confirm more speakers and other activities that will once again make this a must-not-miss event.

### Summer outing to honor Ted Cranmer

Before the Pig Roast comes PIOGA's first event of the summer—the Ted Cranmer Memorial Summer Picnic and Golf Outing. Taking place on June 5 at scenic Wanango Golf Club between Franklin and Oil City, the event has been renamed in honor of the long-time PIOGA and POGAM board member who passed away in December. The success of the Wanango outing was one of Ted's passions for 10 years, and the event raised thousands of dollars to benefit the association's mission. We are pleased to honor Ted's legacy with the renaming of the summer picnic and golf outing.

Watch your email or check the PIOGA Events section of the website for registration to be released soon. ■



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## In the networking spirit

More than 60 people turned out on March 22 for the PIOGA Whiskey Tasting & Networking Mixer at Parlay Lounge at the Meadowlands in Washington. PIOGA members and guests sampled Liberty Pole Spirits, enjoyed delicious appetizers, got to know one another better and, for nonmembers, had an opportunity to learn more about the association and its work. Our thanks to event sponsors Oil & Gas Safety Supply and Universal Well Services and to door prize sponsors Stream-Flo and Oil & Gas Safety Supply. Watch your email or the PIOGA Events section of the website for more of these fun networking events.

## No impact anticipated in Pennsylvania for endangered bumble bee listing

Once common and abundant across 28 states from Connecticut to South Dakota and two Canadian provinces, the rusty patched bumble bee has experienced a swift and dramatic decline since the late 1990s. The population has plummeted by nearly 90 percent, leaving small, scattered populations in 13 states and one province. Effective March 21, the bee is now listed as endangered by the U.S. Fish and Wildlife Service (USFWS).

Since 2000, rusty patched bumble bees have been reported in Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and Wisconsin, and Ontario, Canada. Some populations are so small that it is unclear whether they still exist.

Causes of the decline in rusty patched bumble bee populations, according to the USFWS, are believed to be loss of habitat; disease and parasites; use of pesticides that directly or indirectly kill the bees; climate change, which can affect the availability of the flowers the bees depend on; and extremely small population size. Most likely, a combination of these factors has caused the decline in rusty patched bumble bees.

The USFWS imposed a freeze on the bumble bee's listing in February, just one day before federal protections were set to take effect. The delay stemmed from a January 20 White House

memo instructing agencies to withdraw or freeze a broad array of rules issued by the Obama administration to protect public health and the environment. The American Petroleum Institute was among organizations that petitioned the agency to extend the freeze through January 2018. The Trump administration, however, reversed its freeze order for the bee and allowed the listing to take effect on March 21.

What will be the impact of the listing in Pennsylvania? "For now, there won't be any impact," said Bruce Snyder of Firecherry Consulting, Inc., who monitors species issues for PIOGA's Environmental Committee. "The USFWS considers historical data on the bee for the last 10 years. No one has found the bee in Pennsylvania since 2004. So nothing will be put in PNDI (the Pennsylvania Natural Diversity Inventory) and therefore no impact."

Snyder noted, though, that it is unclear what would happen if there is a sighting in Pennsylvania of the rusty patched bumble bee. The specific site would go into the state's PNDI system, but it's not certain how officials would handle the remainder of the state, including whether a current siting would prompt a statewide survey.

Information about the listing can be found at [www.fws.gov/midwest/Endangered/insects/rpbb](http://www.fws.gov/midwest/Endangered/insects/rpbb). ■

## Water & Waste Management Training coming up on April 20

Join us on Thursday, April 20, at Aquatech International in Canonsburg to hear from industry experts about the approved and proven techniques for management of water and waste from the well site. Obtain a comprehensive overview of industry protocols for site preparation, transporting, treating, recycling, reuse, processing and disposing of wastes.

The five-hour class runs from 9 a.m. to 3 p.m. and will cover the following topics:

- Water Management Trends and Industry Practices
- Types of Fluids Associated with Oil & Gas Exploration & Production; Water Treatment & Disposal



- Solid Waste Management
- DEP & SRBC Review Status of Best Management Practices, Storage & Mine Influenced Water
- Regulatory Framework
- Operator Panel on Economics of Water Management

The registration fee includes continuing education credits (CEUs) and lunch. The deadline to register is Monday, April 17. Please visit the PIOGA Events section at [www.pioga.org](http://www.pioga.org) for more. ■

# Perspective

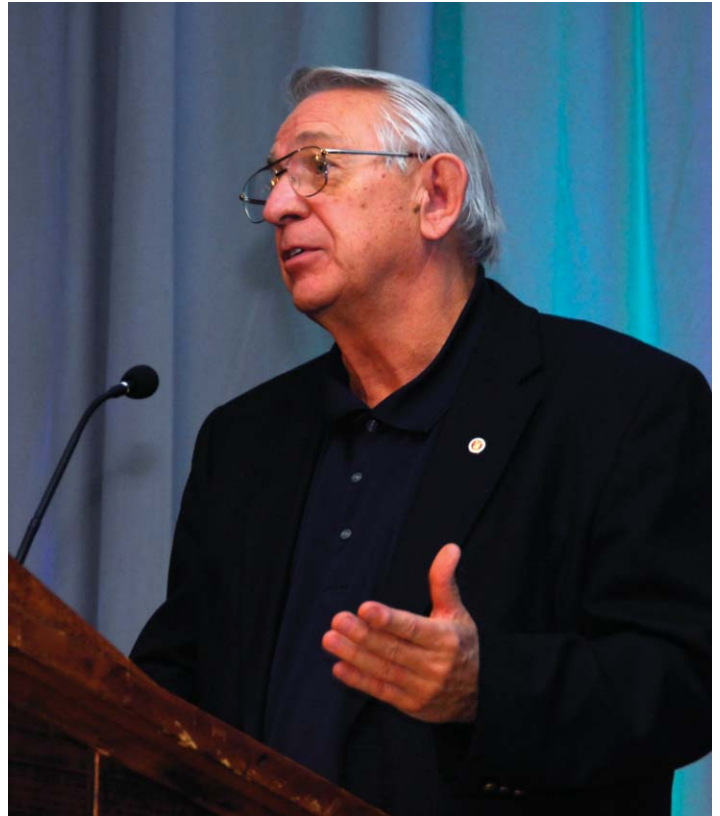
*Craig Mayer recently retired from Warren-based oil and gas producer Pennsylvania General Energy after serving as in-house counsel since March 2004. He joined the board of the Pennsylvania Oil & Gas Association (POGAM) in 2004 and continued on the PIOGA board following POGAM's merger with the Independent Oil & Gas Association of Pennsylvania in 2010. At the time of his retirement, he was the PIOGA board secretary. Lisa McManus has replaced Craig as PGE board representative. We thank Craig for his years of highly involved service to POGAM and PIOGA.*

## By Craig Mayer

Following retirement and stepping down from the PIOGA Board of Directors, I was asked to provide my views on the issues facing the oil and gas industry and to discuss some of my background in the industry. Actually, that began 70 years ago—for it was at least then that I was to begin to benefit from the extraordinary progress humanity was experiencing in freeing itself from the often cruel and always random and indifferent forces of nature. It is a progress that began in 1859 with the commercial discovery and harnessing of the power of oil and natural gas hydrocarbons and with it humankind's giant advances in medicine, agriculture, art, transportation and construction were made possible. Indeed, it was largely—perhaps only—because America could produce and supply almost 70 percent of the oil that was needed to lubricate and fuel the planes, ships, and tanks that secured the defeat of the Axis powers in 1945 that I was born into a world that would allow for the free expression of one's views.

Coincidentally, the origin of my direct involvement in the industry is illustrative and of central importance in the challenge that our industry faces. It was in the summer of 2003 while I was at my campground in Bedford County—30 acres of forested land running alongside the Raystown Branch of the Juniata River—when an oil and gas landman stopped by and offered to lease my development rights. It was with this freedom to lease my rights, which includes the very reasonable expectation that permits could be timely obtained and the resources developed, that the shale revolution was possible. Without this, the energy renaissance with all the potential that it holds for the prosperity and security of our nation and that is now being experienced in Pennsylvania and across the nation could not have occurred. Technological advancements in petroleum engineering and the 60-year-old hydraulic fracturing process would not matter for they could never have been employed.

Keep in mind that it has been only in the United States where, unlike almost all of the rest of the world and contrary to the repeated references to “our resources” by severance tax proponents, oil, gas and mineral rights are not owned by a central government that the shale revolution has occurred. Closer to home, Pennsylvania fortunately has taken advantage of and is poised to take further advantage of this energy revolution with new manufacturing initiatives and, hopefully, the development of world-class energy export capabilities at the Port of Philadelphia. Sadly, for the citizens and property owners in the neighboring states of Maryland and New York, where the political class has succumbed to unfounded fears and imposed bans on oil and gas



development activity, their economic future is less promising.

The fundamental challenge our industry faces is captured in the closing sentence of a law journal article I recently wrote, titled “A Study in the Abuse of Power – The United States Forest Service’s illegal efforts to seize control of private mineral estates underlying Pennsylvania’s Allegheny National Forest.” It was published in 2015 as part of the Energy and Mineral Law Institutes Annual Institute Proceedings. That sentence states: “What seems to have been lost on those who plot for government control of private lands and de facto seizure of oil and gas rights is appreciation that in our democracy respect for private property and a citizen’s right to make the decisions about how their property is to be used are cornerstones of freedom and essential to the prosperity of our nation.”

This was stated much better in the well-known book *The Road to Serfdom* written by University of Chicago economic and political philosopher Professor Friedrich A. Hayek. Writing in 1944 about the factors that gave rise in the early 20th century to the totalitarian states in Europe, Professor Hayek observed:

What our generation has forgotten is that the system of private property is the most important guaranty of freedom, not only for those who own property, but scarcely less for those who do not. It is only because the control of the means of production is divided among many people acting independently that nobody has complete control over us, that we as individuals can decide what to do with ourselves. If all the means of production were vested in a single hand, whether it be nominally that of “society” as a whole or that of a dictator, whoever exercises this control has complete power over us.

Who can seriously doubt that a member of a small racial or religious minority will be freer with no property so long as fellow-members of his community have



property and are therefore able to employ him, than he would be if private property were abolished and he became owner of a nominal share in the communal property? Or that the power which a multiple millionaire, who may be my neighbor and perhaps my employer, has over me is very much less than that which the smallest *fonctionnaire* possesses who wields the coercive power of the state and on whose discretion it depends whether and how I am to be allowed to live or to work? And who will deny that a world in which the wealthy are powerful is still a better world than one in which only the already powerful can acquire wealth?

My hope for the Chapter 78a litigation against the Department of Environmental Protection, a hope that was realized in the Allegheny National Forest litigation when the federal courts recognized and enjoined the U.S. Forest Service's illegal activity, is that the state courts will do likewise to similar DEP initiatives. Chief among these are the Public Resources regulations that appear in Sections 78a.15(f) and (g). Among the many faults of these provisions, two stand out. First, is DEP's inser-



**Tom Yarnick retires.** The March 16 Board of Directors meeting was Tom Yarnick's last. He has retired after a 39-year career with XTO Energy/Exxon. We thank Tom for his long service to the industry and PIOGA and wish him the best in his future endeavors. Shown here at the March board meeting are (from left) PIOGA President & Executive Director Dan Weaver, Yarnick and Chairman Gary Slagel.

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tion of multiple new agencies, entities and individuals into the well-permitting decision process, which effectively turns the function of applying for a permit into a communal enterprise of uncertain outcome and duration. Second is DEP's adoption of open-ended definitions and terms that operate to grant itself unbounded authority.

As a result of court challenges to these Public Resources regulations, DEP has responded in its legal briefings with the assertion that it now possesses—and indeed has long possessed—a far reaching and omnibus power. A power that applies and is exercisable not only for the regulation of oil and gas well permitting, but for any activity that the department interprets as falling within its newly revealed self-delegated duty to protect all of Pennsylvania's "public resources." It claims that its power emanates from multiple sources to include the Pennsylvania Constitution and that it may declare whatever it sees fit as a "public resource." It has also chosen to delegate some of this power to the agencies, government bodies and individuals it has designated as "public resource agencies." Not only will DEP identify its own "public resources," but it will recognize what these newly designated entities might identify as a "public resource" and through its coercive police powers protect such "resources" from any threatening activity—however that might be defined by the DEP.

With the department's penchant for infinitely elastic interpretations of its open-ended terms, virtually anything—animal, mineral, vegetable, person, place or activity—could fall within the purview of this newly claimed power. Without exaggeration, DEP is effectively claiming to be a coequal branch of government with special insights and powers over "public resources"

that supplant and supersede the authority of the legislature, the courts, municipal governments, and the remaining agencies and offices in the executive branch of government.

In conclusion, my sincere hope is that many aspects of the Chapter 78a regulations—particularly the Public Resource regulations—will be recognized for what they are—an assault on the established system of private property—and that they will not become law. The erosion of private property rights along with the individual freedoms that accompany property ownership manifests itself increasingly through federal and state administrative agencies in the form of more and evermore intrusive regulations, rules, policies, guidance and instructions. The Chapter 78a regulations are but one example.


Simply put, the most challenging issues facing our industry are those of recognition and resolve. First, industry leaders must identify harmful legislative and regulatory developments. Second, they must then marshal the means and resolve to oppose them. ■

## PIOGA at the IPAA Congressional Call-Up



PIOGA was represented by three members, two board members and two staff members at this year's Independent Petroleum Association of American Congressional Call-Up, held March 6 in Washington, D.C. We had the opportunity to meet with the staff of both of Pennsylvania's senators, the staff of seven House members and two members directly. The main topics of discussion were tax reform, environmental regulation and endangered species.

Shown above with Pennsylvania Congressman Glenn "GT" Thompson (fourth from left) are (from left) Gary Slagel, Steptoe & Johnson; Dan Weaver, PIOGA; Ben Wallace, Penneco Oil Company; Milissa Bauer, Kriebel Companies; John Busovsky, Thompson's legislative director; Kevin Moody, PIOGA; Shane Kriebel, Kriebel Companies; and Jim Kriebel, Kriebel Companies. ■




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**Safety Committee Corner**

**Benzene exposure a concern for oil and gas workers**

By Carol C. Delfino, CIH, CSP  
SE Technologies, LLC

**B**enzene is a colorless to light-yellow liquid with an aromatic odor that, when workers are exposed to high levels for a short period of time, causes central nervous system depression. However, when workers receive a high chronic exposure, it causes bone marrow depression that can lead to leukemia.

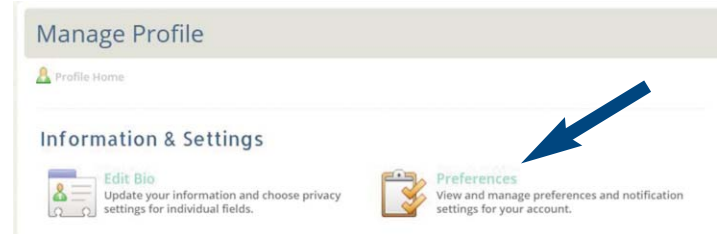
According to a recent study by the National Institute of Occupational Safety and Health (NIOSH), workers on oil and gas sites where hydraulic fracturing occurs have been exposed to high levels of benzene. The study examined exposure risks for oil and gas workers during the phase known as flowback. Workers must open the hatches of the tanks on well sites to inspect the contents, which include oil, wastewater or chemicals used in high-volume hydraulic fracturing.

NIOSH has a Recommended Exposure Level (REL) for benzene of 0.1 part per million (ppm) per 8-hour Time Weighted Average (TWA). The study included 17 samples taken while workers opened the hatches to the tank. 15 of 17 samples were over the 0.1 REL.

For more information, visit [www.ishn.com/articles/105223-some-fracking-workers-exposed-to-high-levels-of-benzene](http://www.ishn.com/articles/105223-some-fracking-workers-exposed-to-high-levels-of-benzene). ■

**Getting the most from the PIOGA Members Only area and your preferences**

**D**o you know you have the ability to control your preferences and how many emails you receive from PIOGA's membership system? There is an option to review your preferences in the Members Only section of PIOGA's website. Simply log in, go to Manage Profile on the left side of your profile page and click on Preferences (see below).



Once you open your preferences, you can review the options for when you want to receive an email from the system or not. Please note, we currently are not using the Career Center function of the system because we have a Career Center on the [pioga.org](http://pioga.org) website.

For members who are on a PIOGA committee, you may want to be alerted when a new member joins the committee. If you want to be informed, click on under Groups – **Email me when someone joins a group of which I am a member** and you will get an email. If you prefer not to get an email, simply uncheck the box and you will no longer receive that email.

See below for all the options to customize your preferences. ■

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## PIOGA Member Profiles

### Introduce your company

Introduce your company and tell other members what you offer to Pennsylvania's oil and gas industry. The guidelines for making a PIOGA Member Profile submission are:

- Include a brief history of your company. When and where was it founded, and by whom? Is the company new to the oil and gas industry in general or to Pennsylvania?
- Describe the products and services you offer specifically for the oil and gas industry. Do you have a product in particular that sets your company apart from the competition?
- If applicable, tell how the business been positively impacted by Pennsylvania's oil and gas industry. Have you expanded, added employees or opened new locations?
- Include a website address and/or phone number.
- Your submission may be a maximum of 400-450 words and should be provided as a Word document. Use minimal formatting—bold and italic fonts are OK, as are bulleted or numbered lists. Your submission is subject to editing for length, clarity and appropriateness.
- Include your company logo or a photo. Images must be high-resolution (300 dots/pixels per inch or higher) and in any common graphics format. Please include identifications for any people or products in a photo. Send image files separately, not embedded in your document.

Email material to Matt Benson at [matt@pioga.org](mailto:matt@pioga.org). This is a free service to our member companies and publishing dates are at the discretion of PIOGA. If you have questions, email Matt or call 814-778-2291.



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## Where in the World is the PIOGA outreach team?

### PIOGA participates in Carnegie Mellon University's Energy Week

By Joyce Turkaly

Director of Natural Gas Market Development

*"Our greatest natural resource is the minds of our children"*

—Walter Elias Disney

Why is it important for PIOGA to participate with academia, you may ask? Many professors have held professional positions in either federal or state roles and have transitioned to universities to further their work and shape the minds of young people. As industry we can easily fill our days, weeks and months with work demands; however, participating at the university level allows industry to gauge the "thought discussions" and monitor to some degree proposed new technologies that will help shape future markets. I was invited to participate in a roundtable discussion on "Research" day as part of CMU's Energy Week in late March. Along with PIOGA members Bob Beatty of "O" Ring CNG and Gary Slagel of Steptoe and Johnson, we took to Oakland for a 2½-hour discussion on technical innovation, policy, and shale gas development.

#### Law and Policy Forum

Energy week speakers on Law and Policy Forum Day discussed laws and regulations governing the production and transportation of oil and gas, decentralization of the electric utility industry, and de-carbonization of electric generation. Various panels highlighted policy discussions, the role of the Pennsylvania Public Utility Commission (PUC), the role of the Federal Energy Regulatory Commission (FERC), and U.S. Energy Information Administration (EIA) statistics from the most recently published Annual Energy Outlook.

Many of our producer and marketer members rely on the EIA data for both short term and long term projections on supply and



*Bob Beatty, chair of PIOGA's Pipeline and Gas Market Development Committee, makes a point while flanked by board chair Gary Slagel and staff member Joyce Turkaly. (Photo courtesy Carnegie Mellon University)*

demand. Howard Gruenspecht, EIA acting administrator, shared data and statistics from the Annual Energy Outlook ([www.eia.gov/outlooks/aeo/pdf/0383\(2017\).pdf](http://www.eia.gov/outlooks/aeo/pdf/0383(2017).pdf)). Referring to the left side of the Y axis of data as the "Nonfiction" section of the library and the right side as the "fiction" side, Howard admitted that much of the projected data in the modeling (right of the Y) is based on variables like faster or slower economic growth, supply and demand outlooks, as well as various fuel pricing scenarios are direct key factors in analyzing projections versus outcomes. "There are no facts about the future," he commented.

In the transportation sector, the U.S. EIA believes energy consumption has probably peaked, given that the effects of improved efficiency have outweighed increased activity. On a positive note for downstream demand, industrial energy use appears to be growing in most of the cases EIA looked at, which is a change from the recent past, driven in part by energy advantages here relative to locations outside of the United States and the advantage of shale gas and tight oil. Calling Pennsylvania the epicenter because of the direct correlation between natural gas liquids production on Industrial demand growth. Total industrial energy consumption growth averages nearly 1 percent per year from 2016-40 in the reference case, the highest growth rate of any demand sector, as economic growth exceeds efficiency gains. (See the EIA graph at the top of the opposite page.)

#### Markets as well as policy matter

Recognizing that electricity consumption or use has been relatively flat in the U.S. over the past 15 years, minor variations, such as new policies, changes in consumer behavior or preferences and breakthroughs in technology, while not considered in the EIA AEO study, are widely debated at the university level. PIOGA's Pipeline and Natural Gas Committee under our Gas and Electric Subcommittee has monitored the impact of the CPP



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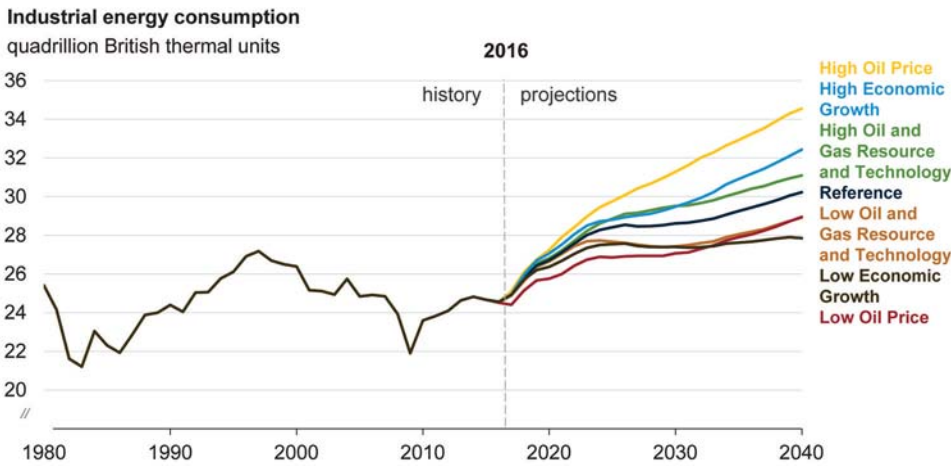
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on the natural gas wholesale and retail markets.

Rather than look with or without the Clean Power Plan Policy, the EIA is looking at the generation mix and if natural gas is available. Some of the EIA’s assumptions include the more abundant natural gas view; nuclear trailing off; capacity additions where they see a lot of solar, gas and wind; gas surpassing coal; coal has more persistence; significant reduction in nuclear capacity; and renewables grow dramatically, but at a much slower pace if gas is tied largely to the generation mix.

EIA’s Gruenspecht declared, “Nuclear is the challenge, it’s the biggie.” On the generation scenarios, the EIA is penciling in a significant reduction in nuclear capacity and the agency has timed the announced retirements and the subsequent longer term licensed renewals with the data. How much nuclear we generate in in this country is dependent upon the existing capacity. Typically, nuclear units are licensed for 40 years and to date some have received a 20-year extension. Given that the first plants were built around 1970, it will be 2030 for the first plants to be 60 years old. During the second phase (license renewal) of what may look like another extension, the EIA knows which units are not competitive without this renewal factor. EIA predicts that beyond 2040 an additional 11.7 GW will represent nuclear retirements.

Food for thought continued throughout the day with possible effects of deep de-carbonization. The Obama administration put out a strategy that relied on electrifying a lot of things. Renewables going big versus going small were discussed. On the technology side, what role does battery storage and micro grids play? Some of the markets are discussing expanding the market area and certain areas “laying off” the grid; California is expanding the market area because it has to lay off this renewable generation so it is reliant on the grid to make renewables work or the flip side would be, “NO, you have to have battery storage at your house.”

The traditional electricity paradigm (generation follows load) and the wholesale and retail markets were discussed around such things are rooftop solar and residential adoption here in Pennsylvania. A Duquesne Light representative spoke on how her company is managing the distribution system and meeting customer needs by taking into account making load more responsive to variable generation. DLC has 2,800 MW load on system, 9MW of solar. Stressing the importance of working with regulators to determine what is best for customers, DLC is receiving on average 40 applications/week, 98 percent of which are for roof-

top solar, a number that has doubled in the past four years and has led for an increased need expand the both staff and procedures in the distribution and planning department. Most solar customers she mentioned are not selling back into the grid; the panels are designed to meet residential consumption.

**“I see Pennsylvania as a leader”**

—Gladys Brown, Chairwoman, Pennsylvania Public Utility Commission

Throughout her keynote address, Brown asserted “our role as PAPUC regulators is balancing the needs of utilities and the consumers we are there to protect.” She

said that the main reason for the Electric Choice Act of 1996 was to provide consumers with choice at a time when Pennsylvania’s electric rates were 15 percent higher than the rest of the nation.

She affirmed that natural gas generation has been benefitting Pennsylvania. When asked about state implementation plans around clean air policies, she explained the interaction between the PUC and DEP as secondary, given that DEP is the state’s “air regulator.” DEP has primary authority over a state plan and this is something that Brown admitted that they continue to review. Jointly, they filed comments to implement a state plan with the overarching goal being reliability and affordable rates to consumers. Brown said that when the PUC introduced AEPS Act in 2004, requiring that electric distribution companies procure renewable generation on an incremental basis was an important

factor in state numbers are fast approaching 14 percent, wherein the goal is 18 percent by 2021. When asked if Pennsylvania would have met CPP targets in its prior form (the U.S. Supreme Court stayed implementation of the plan in February 2016) she said, “We would have already met that goal with natural gas.”

#### “Our work affects people where they live”

—Colette Honorable, Commissioner, Federal Energy Regulatory Commission

It did not take long to realize that the scope of Honorable’s keynote would be about the process behind each transmission line or transmission pipeline project. In no uncertain terms did she express the need for vigilance in safety and the importance of the public weighing in with their opinions on the dockets. Regarding transmission lines and pipes, she said that engaging the public and hosting open houses in advance of the pre-filing is critical. “It’s important in any infrastructure development effort that we have the ability to plan a route to be constructed in a way that’s in the public interest,” she said.

Stating that FERC takes a “risk based approach” because as a mid-sized government agency (1,500 employees) FERC does not

have enough time, money or manpower to fix every concern. She said it’s imperative that utilities know their systems and prepare proper and consistent reporting. An area that is “not sleepy,” according to her, is the natural gas pipeline construction certification. Recognizing the 12-18 month timeline (after the pre-filing process) she offered nothing more by way of improved process steps other than to state that they have to prioritize the rights of every landowner.

Like the state utilities, FERC is experiencing increases in renewables and gas-fired generation and the agency is compelled to make the right infrastructure decisions. FERC oversees wholesale energy and capacity markets. Honorable recognized that rules may need to change and adapt to the times. She contended that Pennsylvania is embracing fuel diversity. She touched on work that still needs to be done to address tensions between federal and state jurisdiction, citing that some states are no longer vertically integrated: States’ options for regulating their own electricity systems will be governed in part by two recent Supreme Court decisions that addressed the different roles of states and the federal government in regulating the electric grid. ■

## Western PA cracker plant forum

PIOGA’s executive director, Dan Weaver, kicked off a full-day forum entitled “Regional Impact of the Petrochemical Cracker Plant on Western PA” on March 8 in Titusville. Advising the audience to listen for collaboration and opportunities befitting their respective companies, the forum provided practical examples and best practices of how to strengthen existing regional partnerships while identifying opportunities to increase industry engagement by understanding the tools it takes to provide ancillary services and products in and around the Beaver County area.

Team Pennsylvania collaborated with the Department of Community & Economic Development (DCED) to host an agenda geared to the northwest Pennsylvania business community. Subject matter experts were on hand from the Louisiana chemical and workforce sectors to speak about first steps in recognizing the potential of the cracker facility, spinoff products and services, and the building blocks of talent and workforce potential. Speaking on behalf of the Louisiana Chemical Association, Dan Borne said for every one job at Shell, there is an 8.3 multiplier of ancillary or supply chain benefit.



Hundreds of small- to medium-sized business owners attended the event.

PIOGA’s Pipeline and Natural Gas Market Development Committee (PGMD) is intimately involved with our partners at DCED; the full report *Prospects to Enhance Pennsylvania’s Opportunities in Petrochemical Manufacturing* can be found on the PIOGA Members Only site in the PGMD Portal page. (Not a committee member? You can log onto our site and join or contact Tracy Zink at [tracy@pioga.org](mailto:tracy@pioga.org) for more information.) ■

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## Stripper well decision: *Continued from page 1*

In a 5-2 opinion on March 29, the court reversed a PUC order issued June 11, 2015. The commission had contended that Kittanning-based Snyder Brothers failed to identify and pay impact fees for 24 vertical Marcellus Shale wells in 2011 and 21 wells in 2012. The company and PIOGA argued that Act 13's definition of a stripper well—an "unconventional gas well incapable of producing more than 90 Mcf/d during any calendar month"—meant that the company did not have to pay the fees and charges if the well *failed to reach* the 90 Mcf/d threshold for *any single month* during the reporting period. The PUC, however, declared that the definition meant Snyder Brothers owed the fees on wells that *produced more than* the threshold amount of gas during *at least one month* of the year.

The PUC argued that because "any" in the definition of a stripper well rendered the entire definition ambiguous—because "any" could mean either "one or another taken at random" or "every" month—the commission initially, and the court in this appeal, was required to engage in full-blown statutory construction to determine its meaning.

"For example, if a well produces gas in excess of an average of 90 Mcf/d for 11 months of the year, but falls below the threshold in the twelfth month, the well would be exempt from the Act 13 impact and administrative fees," the PUC wrote in its order. "As a result, the community impacted by the significant levels of drilling, collection and distribution of gas from that well might not receive financial disbursements as Act 13 had intended."

Commonwealth Court disagreed. Writing for the majority, Judge Patricia McCullough said, "We conclude that the word 'any' in the term 'stripper well' unambiguously means 'any' or 'one' and not 'all' or 'every.'" The majority stated that "[i]t is the General Assembly's duty to write the laws and the General Assembly could have easily replaced the word 'any' with the term 'every' if it so intended," and that the court was not authorized to rewrite the statute to do so.

The majority also rejected the notion that its interpretation would result in communities not receiving financial disbursements as Act 13 had intended, concluding that the General Assembly made the policy choice reflected in the stripper and vertical gas well definitions—and that policy decision was the General Assembly's to make. Moody added that "the court's decision does not reference the discussion in the legislative record that supports the rejection of this notion. This was the only legislative discussion concerning stripper wells and, in response to the observation that communities subject to the 'refracking' of wells—with the moving of trucks and water—may not receive any fee if the refracked well produced less than 90,000 cubic feet, Representative Brian Ellis stated: 'Stripper wells were never considered—I mean, they have been exempt regardless if they are refracked or not.'"

Judge Michael Wojcik, joined by Judge Joseph Cosgrove, wrote in a dissenting opinion that the majority's interpretation of the law would encourage operators to suppress production during one month to avoid paying impact fees for the year. However, the majority considered this point and wrote that "such unscrupulous behavior by a well producer would naturally come with the risk of civil penalties and fines under Act 13's enforcement provisions. Moreover, the record clearly shows here that [Snyder Brothers] submitted records of well operation which reflected it

had consistently operated the wells to full capacity. This representation was never challenged by the Commission. We therefore conclude, contrary to the Commission, that Petitioners' interpretation would not thwart or undermine the purpose of Act 13 or permit well producers to escape its requirements."

The persuasiveness of the dissenting opinion is undermined by its incorrect statement of PIOGA's and Snyder Brothers' position as "the term 'any' in the definition means 'all,' 'each,' or 'every' so that a well is only subject to the Act 13 impact fees if its production level exceeds the specified statutory minimum in every month." As correctly stated by the majority: "Petitioners [Snyder Brothers and PIOGA] contend that 'any' is an unambiguous term and that its plain usage in the vernacular 'means 'one'—it does not mean 'each and every' or 'all.''" (SBI's brief at 17; accord PIOGA's brief at 29.)

Vertical shale wells are exempt from the impact fee if they qualify as stripper wells as early as the year in which they are spud. Horizontal wells must pay the impact fee for three years after spudding regardless of the volume of production, but can qualify as stripper wells beginning in the fourth year if production declines below 90 Mcf/d.

Moody stated, "It was difficult waiting so long for this decision, but I was always confident that the court would get it right. I believe the court's careful and detailed threshold plain language analysis will hold up on appeal, but I would be surprised if our Supreme Court agrees to hear an appeal because the court's analysis and conclusion are sound and well supported as a matter of law." ■

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# 2016 oil and gas activity recap

## Wells drilled by county

County	Conventional	Unconventional	2016 Total	2015 Total
Allegheny	0	14	14	23
Armstrong	0	8	8	12
Beaver	0	13	13	4
Bradford	0	17	17	43
Butler	0	31	31	88
Cambria	0	0	0	3
Cameron	0	1	1	17
Centre	0	0	0	1
Clarion	1	0	1	4
Clinton	0	3	3	2
Crawford	0	0	0	1
Elk	0	13	13	42
Erie	0	0	0	2
Fayette	0	0	0	15
Forest	4	0	4	28
Greene	0	100	100	103
Lawrence	0	0	0	7
Lycoming	0	3	3	17
McKean	23	17	40	95
Mercer	0	0	0	25
Potter	0	16	16	6
Sullivan	0	6	6	4
Susquehanna	0	84	84	152
Tioga	0	31	31	17
Venango	13	0	13	70
Warren	50	0	50	107
Washington	1	137	138	161
Westmoreland	0	3	3	5
Wyoming	0	7	7	16
<b>Totals</b>	<b>92</b>	<b>504</b>	<b>596</b>	<b>1,070</b>

## 2016 shale gas production tops 5 Tcf

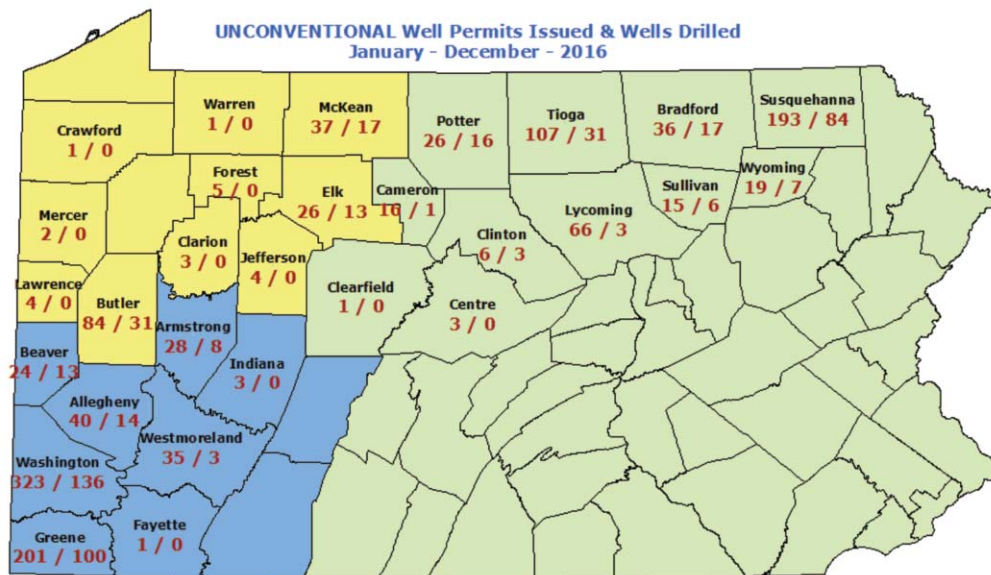
Natural gas production from unconventional formations in Pennsylvania increased by 10 percent in 2016, topping 5.05 Tcf. That's up from 4.6 Tcf in 2015, according to statistics from the Pennsylvania Department of Environmental Protection and the U.S. Energy Information Administration. Pennsylvania's total natural gas production for 2016, including conventional wells, was 5.26 Tcf.

Crude oil production was 6.18 million barrels last year, reversing a long trend of increasing production. In 2015, 6.99 million barrels were produced.

The graphs at right give a broad look at production.

### What types of wells were drilled?

Unconventional	
Horizontal	504
Vertical	0
Conventional	
Oil	90
Gas	1
Combined oil & gas	1



Unconventional Permits Issued - 1310 / Unconventional Wells Drilled - 503



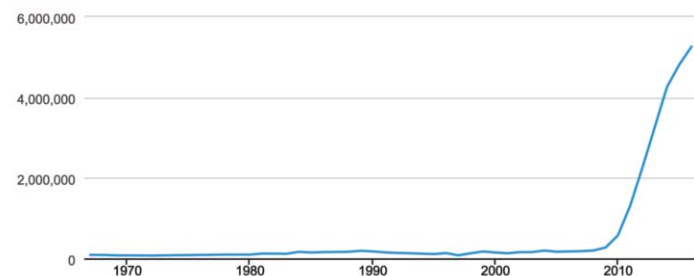
## Wells drilled by operator

Operator	Conventional	Unconventional	Total
Apex Energy (PA) LLC	0	3	3
Bald Hill Oil	4	0	4
Branch John D	3	0	3
Cabot Oil & Gas Corp	0	42	42
Cameron Energy Co	16	0	16
Catalyst Energy Inc	13	0	13
Chesapeake Appalachia LLC	0	7	7
Chief Oil & Gas LLC	0	14	14
DR&D Co	1	0	1
EQT Production Co	0	122	122
Gas & Oil Mgmt Assoc Inc	6	0	6
David L Hill	1	0	1
JKLM Energy LLC	0	16	16
KCS Energy Inc	12	0	12
MDS Energy Dev LLC	0	4	4
MSL Oil & Gas Corp	2	0	2
Open Flow Gas Supply Corp	3	0	3

Operator	Conventional	Unconventional	Total
Palo Michael A	1	0	1
PennEnergy Resources LLC	0	15	15
Range Resources Appalachia LLC	1	73	74
RE Gas Dev LLC	0	21	21
Red Jacket Energy LLC	8	0	8
Repsol Oil & Gas USA LLC	0	27	27
Rice Drilling B LLC	0	48	48
Rick & Sons Oil LLC	4	0	4
Seneca Resources Corp	0	31	31
Snyder Bros Inc	0	4	4
Stateside Energy Group LLC	9	0	9
SWEPI LP	0	18	18
SWN Production Co LLC	0	32	32
Vantage Energy Appalachia LLC	0	4	4
Vantage Energy Appalachia II LLC	0	20	20
Weldbank Energy Corp	8	0	8
XTO Energy Inc	0	3	3
<b>Totals</b>	<b>92</b>	<b>504</b>	<b>596</b>

### Pennsylvania Natural Gas Gross Withdrawals

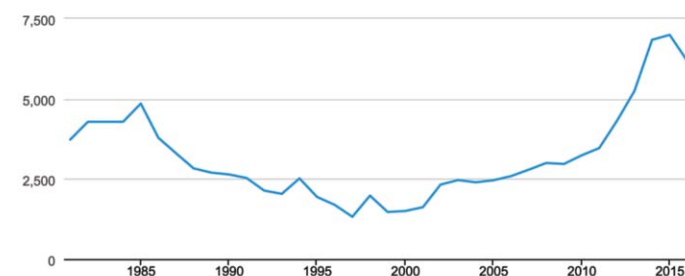
Million Cubic Feet



Source: U.S. Energy Information Administration

### Pennsylvania Field Production of Crude Oil, Annual

Thousand Barrels



Source: U.S. Energy Information Administration

## Report projects up to \$3.7 billion in Pennsylvania petrochemical investments

A new study of Pennsylvania's natural gas-related opportunities suggests the state could realize as much as \$3.7 billion in new investment from the petrochemical industry. Much of the potential \$2.7 billion to \$3.7 billion of investments forecast by IHS Markit's *Prospects to Enhance Pennsylvania's Opportunities in Petrochemical Manufacturing* study would come from natural gas liquid (NGL) processing facilities, pipelines and storage facilities.

The study predicts that Pennsylvania's NGL assets provide the opportunity to attract as many as four additional cracker plants along with petrochemical and plastics manufacturing. According to the study, production of both natural gas and NGL will continue to increase through at least 2030, with the Marcellus and Utica shale as a key contributor to ongoing growth.

The report was commissioned by the Team Pennsylvania Foundation to identify and evaluate the opportunities for petrochemical and plastics manufacturing in Pennsylvania based on natural gas resources available in the Marcellus and Utica plays.

"Pennsylvania has a once-in-a-generation opportunity to develop and implement a strategy that will cultivate a manufacturing renaissance and transform our economy across the Commonwealth," said Governor Wolf in a statement accompanying the release of the report. "The foundation for building a diverse and robust petrochemical and plastics industry was initiated with the decision by Shell Chemicals to invest in Pennsylvania—and we must ensure that we make the most of this chance to create good paying jobs for Pennsylvanians."

According to the study, natural gas from the Marcellus and Utica shale accounted for a quarter of all natural gas produced in the U.S. in 2015 and is

expected to account for more than 40 percent by 2030. Additionally, 40 percent of the natural gas produced is rich in NGLs, more than 70 percent of which is ethane and propane that can be used in basic petrochemical production and plastics manufacturing. Pennsylvania has a significant base of existing plastics manufacturers as potential customers which IHS noted will benefit from significant reductions in feedstock costs because of their close proximity to these resources.

Calling the study "a roadmap that will help us jump start our strategy to attract that investment," Department of Commerce and Economic Development Secretary Dennis Davin pointed to the following key priorities for his agency: proactively engaging stakeholders to bring the right decisionmakers and resources to the table; attracting additional infrastructure investments and petrochemical and plastics manufacturers, as well as retaining and growing Pennsylvania's existing industry; developing pad-ready sites throughout the state to encourage investment opportunities; streamlining the development timeline and addressing potential critical infrastructure bottlenecks; and training a workforce with the right skill sets to fill future jobs created by the industry.

In addition to Pennsylvania's abundant supply of low-cost natural gas and NGL resources, the study also stated that Pennsylvania's other competitive advantages—including location and close proximity to customers, existing plastics manufacturing base, robust transportation infrastructure and experience with Shell—position Pennsylvania to successfully advance this economic opportunity.

The Latest News section of PIOGA's website includes links to the IHS report and executive summary, along with DCED information about the Shell project. ■

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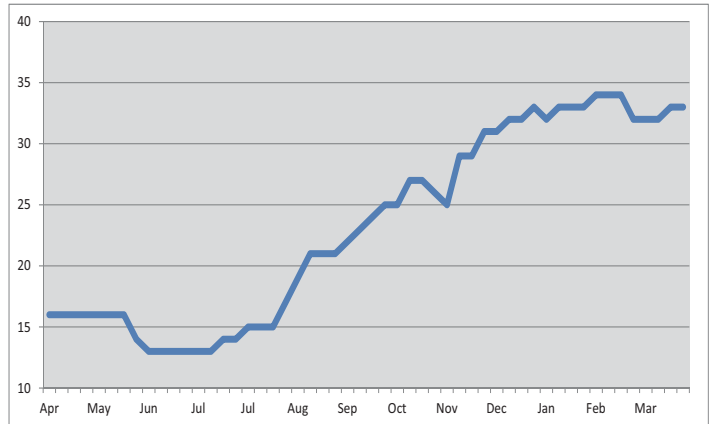


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## Oil & Gas Trends

### Pennsylvania Rig Count



### Sources

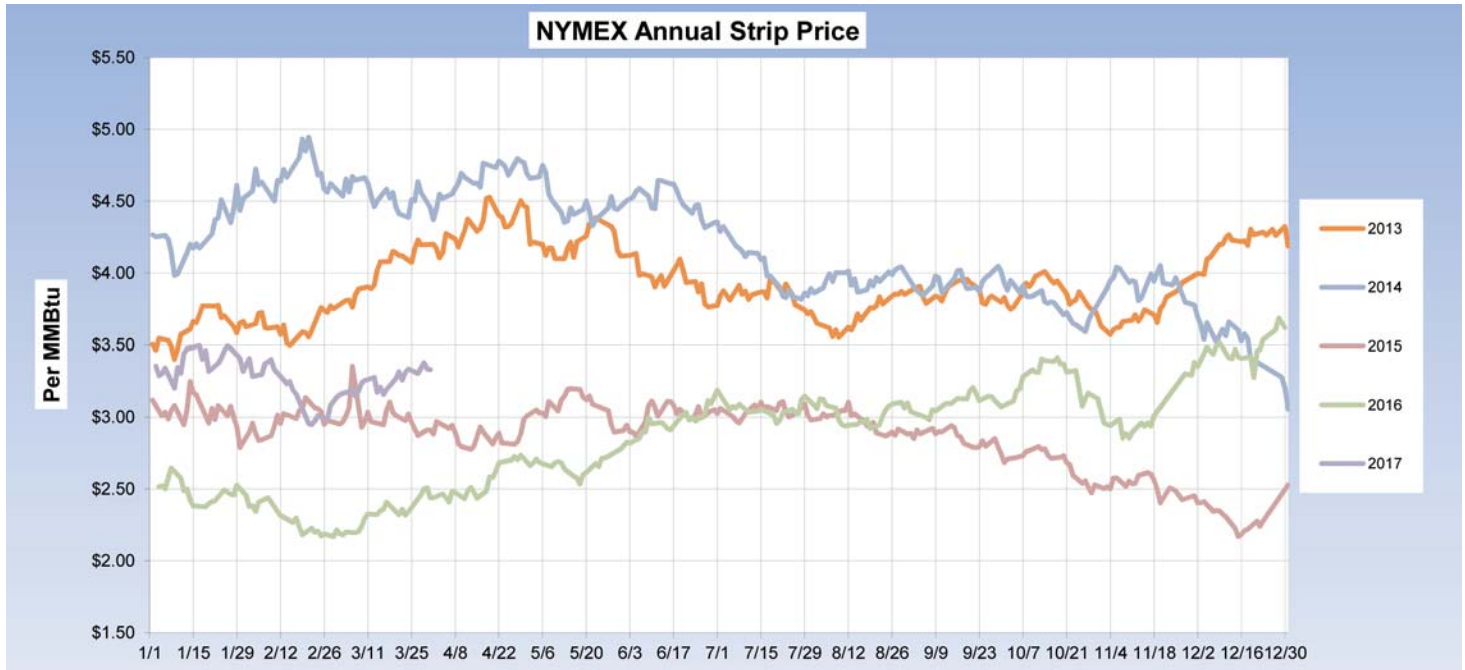
American Refining Group: [www.amref.com/Crude-Prices-New.aspx](http://www.amref.com/Crude-Prices-New.aspx)  
 Ergon Oil Purchasing: [www.ergon.com/prices.php](http://www.ergon.com/prices.php)  
 Gas futures: [quotes.ino.com/exchanges/?r=NYMEX\\_NG](http://quotes.ino.com/exchanges/?r=NYMEX_NG)  
 Baker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

### Penn Grade Crude Oil Prices



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**Natural Gas Futures Closing Prices**

Month	Price
May 2017	\$3.307
June	3.379
July	3.448
August	3.488
September	3.473
October	3.468

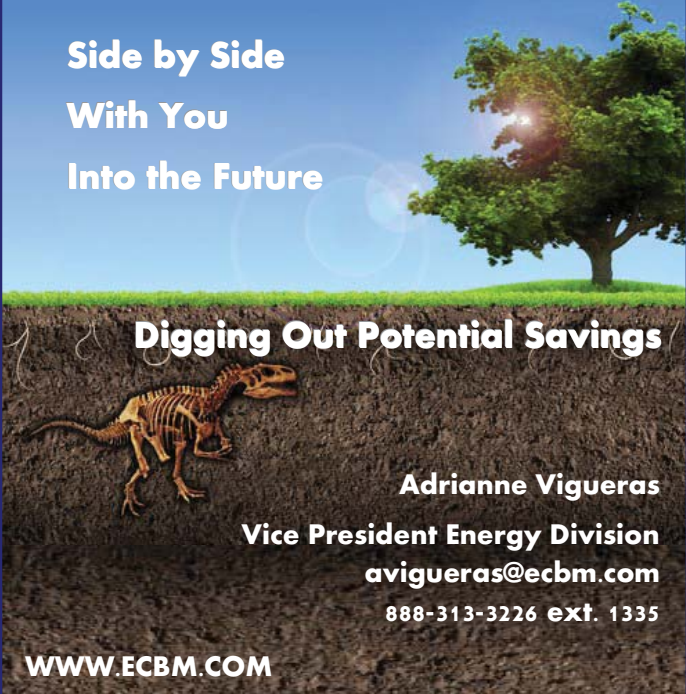
November	3.511
December	3.637
January 2018	3.693
February	3.639
March	3.553
April	2.924

Prices as of April 7



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# Spud Report: March



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
William H Brawand	2	3/9/17	047-24978	Elk	Jones Twp
		3/20/17	047-24979	Elk	Jones Twp
Cameron Energy Co	1	3/3/17	123-48039	Warren	Sheffield Twp
Chesapeake Appalachia LLC	4	3/22/17	131-20539*	Wyoming	Forkston Twp
		3/20/17	131-20540*	Wyoming	North Branch Twp
		3/20/17	131-20541*	Wyoming	North Branch Twp
		3/1/17	131-20528*	Wyoming	Windham Twp
Chief Oil & Gas LLC	8	3/20/17	015-23304*	Bradford	Overton Twp
		3/21/17	015-23301*	Bradford	Overton Twp
		3/22/17	015-23302*	Bradford	Overton Twp
		3/23/17	015-23299*	Bradford	Overton Twp
		3/1/17	113-20366*	Sullivan	Forks Twp
		3/1/17	113-20365*	Sullivan	Forks Twp
		3/29/17	113-20377*	Sullivan	Forks Twp
		3/29/17	113-20378*	Sullivan	Forks Twp
CNX Gas Co LLC	2	3/5/17	129-28935*	Westmoreland	Washington Twp
		3/5/17	129-28936*	Westmoreland	Washington Twp
EQT Production Co	18	3/3/17	059-27381*	Greene	Center Twp
		3/3/17	059-27327*	Greene	Center Twp
		3/3/17	059-27326*	Greene	Center Twp
		3/7/17	059-27324*	Greene	Center Twp
		3/7/17	059-27323*	Greene	Center Twp
		3/7/17	059-27322*	Greene	Center Twp
		3/7/17	059-27325*	Greene	Center Twp
		3/25/17	059-27170*	Greene	Center Twp
		3/25/17	059-27268*	Greene	Center Twp

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
		3/25/17	059-27266*	Greene	Center Twp
		3/25/17	059-27269*	Greene	Center Twp
		3/25/17	059-27270*	Greene	Center Twp
		3/25/17	059-27271*	Greene	Center Twp
		3/1/17	125-28119*	Washington	Nottingham Twp
		3/1/17	125-28120*	Washington	Nottingham Twp
		3/1/17	125-28121*	Washington	Nottingham Twp
		3/17/17	125-28181*	Washington	W Bethlehem Twp
		3/17/17	125-28177*	Washington	W Bethlehem Twp
Inflection Energy (PA) LLC	1	3/20/17	081-21660*	Lycoming	Heppburn Twp
		3/1/17	031-25689*	Clarion	Perry Twp
Laurel Mountain Production	4	3/3/17	031-25686*	Clarion	Perry Twp
		3/7/17	031-25690*	Clarion	Perry Twp
		3/8/17	031-25685*	Clarion	Perry Twp
		3/6/17	083-56776	McKean	Lafayette Twp
MSL Oil & Gas Corp	3	3/15/17	083-56778	McKean	Lafayette Twp
		3/24/17	083-56779	McKean	Lafayette Twp
		3/2/17	083-56908	McKean	Sergeant Twp
PVE Oil Corp Inc	5	3/6/17	083-56909	McKean	Sergeant Twp
		3/8/17	083-56911	McKean	Sergeant Twp
		3/10/17	083-56912	McKean	Sergeant Twp
		3/15/17	083-56914	McKean	Sergeant Twp
		3/13/17	125-27997*	Washington	N Strabane Twp
Range Resources Appalachia	4	3/13/17	125-27995*	Washington	N Strabane Twp
		3/13/17	125-27998*	Washington	N Strabane Twp
		3/13/17	125-28000*	Washington	N Strabane Twp
RE Gas Dev LLC	4	3/20/17	019-22563*	Butler	Adams Twp
		3/21/17	019-22556*	Butler	Adams Twp
		3/22/17	019-22555*	Butler	Adams Twp
		3/25/17	019-22595*	Butler	Adams Twp
Rice Drilling B LLC	6	3/30/17	125-28129*	Washington	Somerset Twp
		3/30/17	125-28134*	Washington	Somerset Twp
		3/30/17	125-28130*	Washington	Somerset Twp
		3/30/17	125-28131*	Washington	Somerset Twp
		3/30/17	125-28132*	Washington	Somerset Twp
		3/30/17	125-28133*	Washington	Somerset Twp
Seneca Resources Corp	4	3/31/17	081-21633*	Lycoming	Gamble Twp
		3/31/17	081-21634*	Lycoming	Gamble Twp
		3/31/17	081-21636*	Lycoming	Gamble Twp
		3/31/17	081-21635*	Lycoming	Gamble Twp
Snyder Bros Inc	4	3/8/17	005-31261*	Armstrong	South Buffalo Twp
		3/8/17	005-31262*	Armstrong	South Buffalo Twp
		3/8/17	005-31263*	Armstrong	South Buffalo Twp
		3/8/17	005-31264*	Armstrong	South Buffalo Twp
Stateside Energy Group LLC	3	3/21/17	083-56920	McKean	Lafayette Twp
		3/27/17	083-56921	McKean	Lafayette Twp
		3/30/17	083-56922	McKean	Lafayette Twp
SWN Production Co LLC	9	3/8/17	015-23280*	Bradford	Stevens Twp
		3/9/17	015-23286*	Bradford	Stevens Twp
		3/24/17	115-22271*	Susquehanna	Franklin Twp
		3/25/17	115-22273*	Susquehanna	Franklin Twp
		3/2/17	115-22109*	Susquehanna	Great Bend Twp
		3/3/17	115-22142*	Susquehanna	Great Bend Twp
		3/4/17	115-22111*	Susquehanna	Great Bend Twp
		3/5/17	115-22110*	Susquehanna	Great Bend Twp
XTO Energy Inc	3	3/21/17	115-21848*	Susquehanna	Great Bend Twp
		3/1/17	019-22575*	Butler	Butler Twp
		3/1/17	019-22576*	Butler	Butler Twp
		3/1/17	019-22577*	Butler	Butler Twp

	March	February	January	December	November	October
Total wells	85	64	58	65	63	64
Unconventional Gas	71	60	57	60	56	59
Conventional Gas	0	0	0	1	1	0
Oil	14	4	1	4	6	5



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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 Operators Forum & Leadership Summit**  
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 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)

## Pennsylvania 811

A Privately funded non-profit Pennsylvania Corporation



Can you answer these questions?

Who is digging near your underground lines?

Whose underground lines are you digging near?

Let Pennsylvania One Call System help you answer these questions.



**Pennsylvania One Call: the Keystone of Damage Prevention**

### PROTECT YOUR EMPLOYEES

Before you Dig Call...



Dial 8-1-1 or 1-800-242-1776 not less than 3 business days before digging.

**PROTECT YOUR FACILITIES**  
Before someone else Digs, JOIN!

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**Safe Digging is no accident.**  
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