

The PIOGA Press

The monthly newsletter of the
Pennsylvania Independent Oil & Gas Association
March 2019 • Issue 107

Baker again introduces DRBC ‘taking’ legislation

As the Delaware River Basin Commission (DRBC) continues to consider whether to permanently ban hydraulic fracturing in a 13,500-square-mile area covering four states—including Pennsylvania’s northeastern tip—state Senator Lisa Baker (R-Luzerne) has again introduced legislation that would make such an action an act of taking by eminent domain that would require the DRBC to compensate owners of natural gas rights.

A de facto moratorium on natural gas development has existed in the basin for several years. In December 2017, the DRBC formally proposed amendments to its regulations to prohibit high-volume hydraulic fracturing in the watershed, holding extensive hearings on the proposal. In April 2018, the commission posted the comments it received on the proposal, but has not yet set a timetable for finalizing the regulation.

Affected property owners are located primarily in Wayne and Pike counties—in Baker’s district. Her legislation last year was reported out of the Senate Environmental Resources and Energy Committee less than two weeks after being introduced, but died in the Senate Appropriations Committee at the end of session. This year’s version, introduced February 19, is Senate Bill 305 and again has been referred to the Environmental Resources and Energy Committee.

Baker’s sponsorship memo for the bill explains:

“For years, landowners in the Delaware River drainage basin have lived under a gas drilling moratorium imposed on them by the Delaware River Basin Commission (DRBC). This moratorium has prevented impacted landowners from realizing the economic benefits that accrue to landowners in nearly every other part of Pennsylvania.

*Happening in
Harrisburg*

Furor over proposed special fund transfers

Governor Tom Wolf’s 2019-20 budget proposal is a feel-good affair—mostly. While he still wants a natural gas severance tax, it’s “separate” from the budget (see below). The plan includes a 2.79-percent



increase in spending, including more for education, with no new taxes or tax increases. As legislative budget hearings have gotten under way, however, there has been an outcry over the governor’s proposed transfer of \$80 million from special funds to cover some of the costs of running the Department of Environmental Protection and the Department of

Conservation and Natural Resources.

The report below from the news service Capitolwire provides perspective on the relationship between the

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Special funds *Continued from page 1*

proposed special fund transfers and this year's version of a natural gas severance tax which would fund a host of infrastructure projects. For more, see page 1 of February's *Practical Operator*.

Wolf proposes environmental funding shifts

Governor Tom Wolf's budget for Fiscal Year 2019-20 proposes to tap millions of dollars from special funds to support the basic operations of two key environmental agencies, the Department of Environmental Protection and the Department of Conservation and Natural Resources.

Shifting significant financial support for the two agencies from the state's General Fund to several special funds is a tactic adopted by previous governors with varying degrees of success, though Wolf had been trying to reduce reliance on some of those funds, in particular the Oil and Gas Lease Fund.

Wolf's plan this year is a bit different in that it appears to be connected to his proposal for \$4.5 billion in state borrowing for the "Restore Pennsylvania" infrastructure initiative which includes environmental projects. The governor would use revenue from enactment of a state severance tax on natural gas production to pay off the new debt.

Both proposals would require legislative approval to take effect.

Wolf's proposed budget intends to shift \$80 million from long-existing special funds to pay a portion of operating costs at DEP and DCNR. These funds include the Growing Greener or (Environmental Stewardship) Fund, Keystone Fund, Oil and Gas Lease Fund and Recycling Fund.

A former DEP secretary finds a definite cause-and-effect between the fund transfers and the severance tax/infrastructure plan.

"The net result of this proposal is to make the passage of Governor Wolf's \$4.5 billion Restore Pennsylvania much more important to maintain state support for community-based projects to restore watersheds, reduce the impacts of flooding and water quality impacts from stormwater, support conservation efforts by farmers, increase efforts to preserve open space, increase recreational opportunities, and deal with the increasing backlog of maintenance and infrastructure replacement projects in State Parks and forests," wrote David Hess in the PA Environment Digest Blog of the governor's proposed budget.

Wolf spokesman J.J. Abbott said the infrastructure proposal is "separate" from the state budget.

"While separate and apart from the budget,

the proposed budget anticipates passage of the Governor's Restore Pennsylvania infrastructure plan, which will provide significant new funding to enable new environmental projects and new recreational opportunities across the state, including infrastructure and maintenance in the state parks, creation and revitalization of new local parks, and funding for new hiking, biking and ATV trail projects," he wrote.

Wolf has been lobbying for passage of the infrastructure plan at stops around the Commonwealth. House GOP leaders have criticized the plan saying it was developed without the input of the General Assembly, arguing tax hikes and increased debt aren't a recipe for growing the economy, and asserting there aren't enough votes to pass the proposal.

DEP's \$137 million state budget reflects a 13 percent or \$20.8 million drop in General Fund support to be replaced by shifts from special funds, according to an analysis by the House Democratic Appropriations Committee.

The environmental stewardship fund would be tapped to support several interstate commissions, conservation districts and the Chesapeake Bay agricultural abatement program. DEP would receive \$10 million from the Recycling Fund to support operations.

DCNR's \$85 million state budget reflects a 30 percent or \$37 million decrease in General Fund support, the committee said. That is offset by use of \$50 million in special funds.

These include \$30 million from the Keystone Fund to support DCNR operations and an increase in oil and gas lease fund money to support the state parks and forests appropriations, the committee added.

The environmental stewardship fund would be tapped to support heritage parks, as well as parks and forests infrastructure projects.

On the other hand, the budget proposes to shift \$26 million in debt service payments from the environmental stewardship fund to a restricted account into which General Fund tax revenue will be transferred to pay for an existing Growing Greener II bond issue.

"Removing Growing Greener bond payments (\$26 million) from the Environmental Stewardship Fund frees this funding to return to financing new environmental priorities as originally intended," said Abbott. "This debt service cost will now be paid by off-the-top General Fund Personal Income Tax revenue."

Senate Appropriations Chairman Pat Browne, R-Lehigh, welcomed the fund transfers at DEP and DCNR in remarks following the governor's budget address. Pennsylvania needs to use money that has gone unspent in previous years given its weak state revenue collections, Browne said.

—Robert Swift, *CapitolWire*

Opposition to tapping special funds

After announcement of the budget proposal, the special-fund transfers soon came up against a chorus of opposition. On February 28, all of Pennsylvania's major hunting, fishing and wildlife groups sent a joint letter to members of the House and Senate opposing the use of money from the environmental funds to balance the budget.

"We appreciate the need for the Commonwealth to properly fund the Departments of Environmental Protection (DEP) and Conservation and Natural Resources (DCNR). The work of those agencies is critical to ensuring healthy fish and wildlife habitat and plentiful outdoor recreational opportunities," the groups wrote. "However, these resources should come from the General Fund—not from dedicated sources established to support local, on-the-ground projects that conserve and restore our waters, set aside natural lands, and support state parks and recreation."

That letter followed similar cries of opposition from environmental, recreation and mine-reclamation interests.

Interestingly, only one entity complained about the proposed use of additional Oil and Gas Lease Fund money in the budget. Revenue from oil and gas leasing on state lands (except Game Lands) goes into the fund, to be used exclusively for conservation, recreation, dams, or flood control. Since 2009, money from the Oil and Gas Lease fund also has been transferred to the General Fund as part of the budget process. Governor

Wolf's latest budget proposal would transfer an additional \$21 million from the fund—going from \$48.6 million in the current budget to \$69.6 million for FY 2019-20—to cover DCNR's administrative operations.

The Pennsylvania Environmental Defense Fund (PEDF), already challenging how Oil and Gas Lease Fund revenue can be spent, now is including the most recent proposed transfers from the Oil and Gas, Keystone, Environmental Stewardship and Hazardous Sites Cleanup funds in its court filings.

In June 2017, PEDF prevailed before the Pennsylvania Supreme Court, which decided that transfers from the Oil and Gas Lease Fund to the General Fund and other programs are unconstitutional because the General Assembly and the governor were not acting as trustees for Pennsylvania's natural resources under the state Constitution's Environmental Rights Amendment (Article I, Section 27). The case was remanded to Commonwealth Court determine a remedy consistent with the Supreme Court's decision.

"The Respondents have given no indication that they contemplated, let alone reasonably exercised their duties as the trustee of the environmental public trust created by Section 27," the PEDF said of the proposed fund transfers in the FY 2019-20 budget proposal.

It will be interesting to watch what happens with the proposed special fund transfers as the budget process progresses between now and the end of June when a spending play for FY 2019-20 must be in place. ■



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Mason Ender, BTU Analytics

From Paris to Pennsylvania — Cap and Trade and Climate Change

Kevin Garber, Esq. and Jean Mosites, Esq., Babst Calland

Can Customizing Production Technologies Stop Oil Production Declines?

Martin Shumway, Locus Bio Energy Solutions

Pennsylvania Regulatory Overview

Scott Perry, Esq. PA Department of Environmental Protection

Lunch Keynote Address: The Moral Case for Fossil Fuels

Don Watkins, Center for Industrial Progress

Cybersecurity, Energy Security & Emergency Response

Kathleen Marks, U.S. Department of Energy/CESER

Cracks in the Corporate Shield: Individual Liability for Corporate Violations

Jon Beckman, Esq. and Brian Pulito, Esq., Steptoe & Johnson PLLC

Cove Point LNG Exports

Patrick Brennan, ST Cove Point, Marine Terminal Department

Reclaiming Your Stranded Assets with CNG Virtual Pipeline

Gregory Morse, NG Advantage

The Power of PIOGA

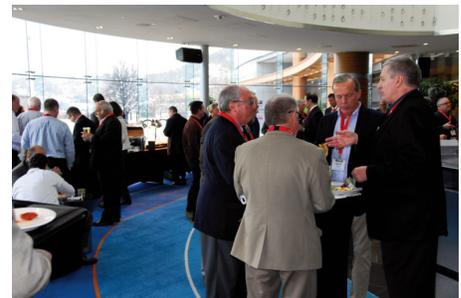
Dan Weaver, PIOGA

Find out more and register today at www.pioga.org > PIOGA Events

Join us for the Pennsylvania Independent Oil & Gas Association's Spring Meeting. This annual daylong program features presentations and discussions on issues that are key to the industry, delivered by experts on the topics they are addressing.

Take advantage of early bird discounts by registering by March 22. You don't want to miss this event!

Plenty of Networking Opportunities



Members finding members: PIOGA directories

One of PIOGA's most popular member benefits is our membership directory. Members obviously find value in being able to identify and reach out to other members. The annual hard-copy directory is popular as a handy, portable reference tool, while the online version is always up to date and has powerful search capabilities. Below is information about both of these member resources.



2019-2020 Membership Directory (hardcopy)

Planning is underway for the 2019-2020 Membership Directory, which will be available by early summer for all members. Please check your mailbox for the **Membership Directory Update letters** arriving in 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 receive the benefits of PIOGA membership. Please remember that *full* members (all member categories except Associate and Royalty) may list up to 20 employees under the company membership account. Thank you in advance for your review and return of the membership directory letters.

If you are interested in marketing your products and services to other PIOGA members, please note the accompanying information about directory advertising opportunities. A variety of sizes and special positions are available.

Remember that you don't need to wait until the yearly membership listing letter arrives to alert us if your company has a new address or a new colleague you'd like to add to your account. Please contact Deana McMahan at deana@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 that you (and your colleagues) are receiving all PIOGA correspondence and that other members have access to your updated information too.

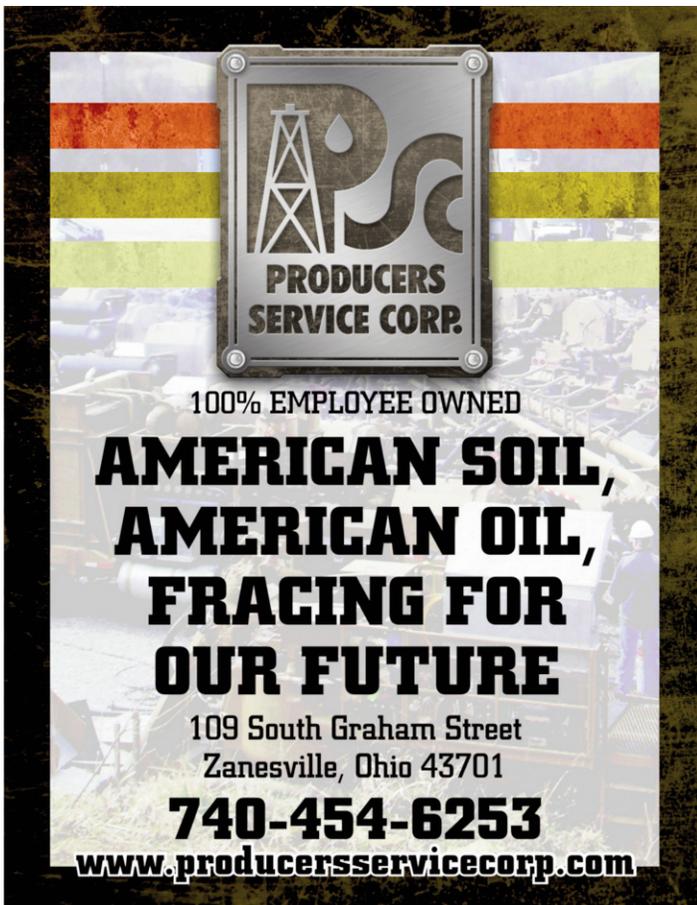
Online in the Members Only area

Have 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, go to www.pioga.org, click on Members Only at the top of the page and sign in using your account login and password. Once you are on the Members Only homepage look at the top menu for Directories.

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, click on Producer members to pull all members 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 to inquire. ■



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Capitol connections

A PIOGA contingent had the opportunity to participate in the Independent Petroleum Association of America's annual Congressional Call Up in Washington, D.C., during the week of March 4. The group had had 11 meetings with the Pennsylvania delegation—10 with House members and staff and one with the legislative director for Senator Pat Toomey. The group covered a variety of topics, including climate change, the economic impacts of onerous regulations and pipelines. Members of IPAA and cooperating state trade associations like PIOGA met with a total of 113 Senate and House members or their staff.

Shane Kriebel of Kriebel Companies has participated in a number of the IPAA Call Ups and noted that the meetings on Capitol Hill went well.

"It was great to educate all of them—particularly the two first-term freshmen we met with—on the issues that we face in Pennsylvania, such as the methane rule and blanket-style regulation," he commented.



Shown above are (from left) Jim Kriebel, Kriebel Companies; Dan Weaver, PIOGA; Sara Blascovich, HDR, Inc.; Shane Kriebel, Kriebel Companies; and Teresa McCurdy, TD Connections, Inc. ■

Discussing DEP's draft methane rule



On February 27, PIOGA in conjunction with the Pennsylvania Grade Crude Oil Coalition and the Pennsylvania Independent Petroleum Producers held an informational meeting at Clarion University. The topic discussed was the Department of Environmental Protection's draft CTG-RACT rule and the effect it would have on operators. Meghan Barber from ALL4 Inc. led the discussion with Roy Rakiewicz lending support remotely. There were over 60 people in attendance. The three trade associations will continue to communicate with each other and their producer members as the rule proceeds.



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Opportunity now available to comment on proposed rule revising definition of ‘Waters of the United States’

On February 14, the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers opened a 60-day public comment period on the proposed rule to revise the definition of “waters of the United States” (WOTUS) under the Clean Water Act (CWA) by publishing the proposed rule in the *Federal Register*.¹ The comment period is scheduled to end April 15, although this date may be extended. The publication comes more than two months after the agencies released the proposed revised definition of WOTUS to the public on December 11.

Comments provided on the proposed new WOTUS definition must be considered by the two agencies prior to promulgation of the new definition. Oil and gas companies as well as other regulated parties are encouraged to provide their input during the public comment process.

Less WOTUS would reduce federal permitting and compliance requirements

The agencies proposed the revised WOTUS definition to provide more predictability and certainty in identifying federally regulated waters.² Overall, the proposed WOTUS definition is generally regarded as being less stringent than previously proposed definitions. For the oil and gas industry, the new proposed definition of WOTUS could reduce the federal CWA permitting and compliance obligations associated with the construction and maintenance of well sites and pipelines.

Under the proposed new definition of WOTUS, only those waters or features with a “continuous surface connection” to an otherwise traditionally navigable water (i.e., river, lake, or other waterbody that supports or has supported navigation) would be subject to federal jurisdiction. The proposed definition of “tributary” would be limited to streams with perennial or intermittent flow during a “typical year,” and would exclude ephemeral streams and features that flow only in direct response to precipitation. In addition, wetlands would

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Babst Calland
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be federally jurisdictional only if they touch or have a direct hydrological surface connection to another federally jurisdictional water in a typical year. Finally, ditches would not be considered WOTUS unless they function as a traditionally navigable water (e.g., the Erie Canal), are constructed within and meet the newly proposed definition of “tributary,” or are constructed in a newly defined “adjacent wetland” and also meet the definition of “tributary.”

The approach taken with the newly proposed definition of WOTUS stands in stark contrast to that taken when WOTUS was last defined in 2015. The 2015 definition identified WOTUS as including waterbodies with a “significant nexus” to a downstream water, and defined tributaries as including channelized waterbodies with defined beds and banks and ordinary high-water marks, even if their flow only was in direct response to precipitation. Under the 2015 WOTUS definition, certain wetlands are subject to federal jurisdiction even though they may not directly abut an otherwise federally jurisdictional water.

The more expansive 2015 WOTUS definition is in effect in Pennsylvania and 21 other states, as a result of various ongoing lawsuits challenging the 2015 definition and the Trump administration’s initial unsuccessful efforts to temporarily suspend the 2015 definition. Unless and until the 2015 definition is enjoined in Pennsylvania or otherwise suspended, Pennsylvania’s oil and gas industry will remain subject to broader CWA permitting and compliance obligations and requirements.

Comments being accepted on all aspects of proposed new WOTUS definition

The agencies are seeking comments on all aspects of their proposal, including the six categories of waters that categorically would be considered to be WOTUS, the 11 categories of waters or features that would not be considered to be WOTUS, and the newly proposed definitions of the terminology referenced in the proposal, such as “tributary” and “adjacent wetland.” Each of these terms will define the CWA permitting and compliance obligations and requirements for well sites, pipelines, and other construction activities by the oil and gas sector. Comments in the form of support for the proposed definitions, questions about their meaning and application, or first-hand, on-the-ground observations or experiences can all be submitted to the agencies.

Some of the issues on which the agencies request comment deal with policy choices underlying the proposed narrower scope of federal jurisdiction under the CWA. For example, the agencies request comment on whether the “significant nexus” test must be a component of the proposed WOTUS definition. The agencies also seek input on whether the definition of “tributary” should include waters contributing either perennial or intermittent flow to a traditionally navigable water, or whether the definition should be limited to perennial waters.

In addition to the more fundamental and policy-based aspects of the rule, the agencies have specifically

¹ 84 Fed. Reg. 4154 (Feb. 14, 2019).

² For a detailed description of the proposed revised definition of WOTUS and other issues, please see our article in the January 2019 edition of *The PIOGA Press*.

requested comments on a slew of issues related to implementation of the proposed new WOTUS definition. As an example, the proposed rule requests comment on tools that can be used to identify and distinguish perennial and intermittent flow regimes from ephemeral flow regimes. These tools include, in addition to visual field observations, desktop tools such as hydrologic modeling and other publicly available resources. Similarly, the agencies request comment on how they can establish an approach whereby states, tribes and federal agencies could establish a geospatial data set of WOTUS that would be readily accessible to regulated parties for use in identifying jurisdictional waters under the CWA. The use of these tools and other means of identifying and distinguishing between jurisdictional and non-jurisdictional waters will be critical if and when the proposed new WOTUS definition becomes final.

Public comment period another step in the long road to revising definition of WOTUS

As previously noted, the proposed new definition of WOTUS does not bring any immediate changes to the

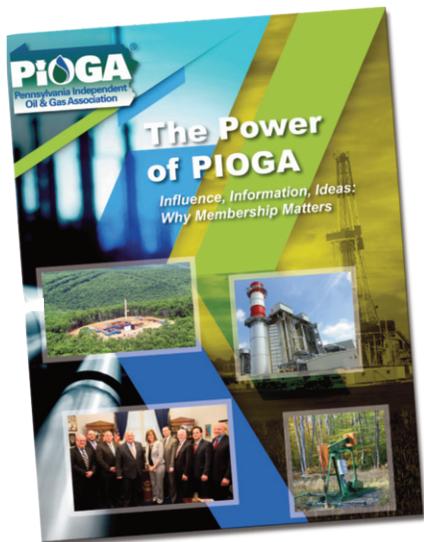
CWA regulatory landscape and instead is the next step in what could be a long road to redefine WOTUS. The public comment period affords oil and gas companies the opportunity to shape what ultimately could be included in the WOTUS definition.

Babst Calland is actively monitoring this rulemaking and evaluating its potential effect on oil and gas activities in Pennsylvania. The proposed new definition and issues on which the agencies request feedback are included in 66 pages of the *Federal Register*. The notice covers a wide array of topics, only some of which are set forth above and in our prior articles in *The PIOGA Press*. ■

If you have questions about the proposed rule and how it may impact your operators or public comment process, please contact Lisa M. Bruderly at 412-394-6495 or lbruderly@babstcalland.com or Gary E. Steinbauer at 412-394-6590 or gsteinbauer@babstcalland.com.

The Power of PIOGA: How to add value to your membership

Two years ago, we put together a packet of information that we called “What has PIOGA done for you? What can PIOGA do for you?” The packet was mailed to all members and included information about the many things PIOGA is involved with and how companies can add value to their membership by participating in committees, attending events and other means.



We have just finished updating the packet and have refocused it somewhat as a member-recruitment tool to

let companies know about the advantages of PIOGA membership as they consider joining the association. It’s now called “The Power of PIOGA - Influence, Information, Ideas: Why Membership Matters.” We still think it’s still a must-read for members too. You can find an electronic version by clicking on the Join PIOGA link at the top of our homepage, www.pioga.org.

We encourage you to share the link with prospective members, or provide Deana McMahan (deana@pioga.org) with their name and address and we will be happy to mail them a hard copy of the packet. ■

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Supreme Court turns down PIOGA reconsideration request

On March 7, the Pennsylvania Supreme Court denied PIOGA's request that the court reconsider its December 28, 2018 decision that the word “any” in the Act 13 impact fee “stripper well” definition means “each” and “every” rather than “one” as PIOGA and Snyder Brothers argued (*February PIOGA Press, page 1*).

The court did, however, grant Snyder Brothers' request for a remand so the Commonwealth Court can consider the lawfulness of the Pennsylvania Public Utility Commission's imposition of penalties and interest on the disputed, unpaid fees. The absence of a refund mechanism in Act 13 is central to that issue because producers have no choice but not to pay disputed fees—once paid, they are gone.

OSHA update

By Wayne Vanderhoof, CSP, RETTEW
PIOGA Safety Committee Chairman

Representatives from the OSHA Pittsburgh area office provided an update on the agency's latest national and regional initiatives during the PIOGA Safety Committee's February 13 meeting at the RLA Learning and Conference Center in Cranberry Township. Taking part were Chris Robinson, Area Director, and David Rhoades, Compliance Safety & Health Officer.

Mr. Robinson provided an overview of current Secretary of Labor Alexander Acosta, saying his direction to OSHA is to focus on enforcement and cooperative programs. The nominee for Assistant Secretary, Scott Mugno, currently the VP for Safety, Sustainability and Vehicle Maintenance at FedEx Ground in Pittsburgh, is still awaiting confirmation by Congress.

The 2019 increase in penalty levels, based on the annual rate of inflation, has taken rates to \$13,260 per violation and up to \$132,598 per violation for more serious violations. It was also noted that OSHA's annual regulatory agenda is posted on the agency website (www.osha.gov).

Two items specifically yet briefly discussed were the silica standard and the crane standard that had sections of the regulations with recent effective dates. Sections within the crane standard were changed to define and

Safety Committee Corner

specify what is a certified and qualified operator. A section on the OSHA website for the crane standard and the FAQs were updated with the recent regulation changes.

We were reminded that the annual OSHA 300A annual summary for 2018 was to be posted from February 1 through April 30. It was noted that the recent change to the regulation requiring companies with 250 or more employees to upload their OSHA recordkeeping forms changed so that only the OSHA 300A form be uploaded and not the OSHA 300 log. The OSHA 300A is required to be signed by the highest executive available on the site/company for which the OSHA 300A identifies. This also means that, the majority of the time, the safety professional is not the highest executive and should not be the one to sign the OSHA 300A.

Mr. Robinson emphasized that reporting fatalities and catastrophes are easiest when done online via the OSHA website, as it gives the report a time stamp and is forwarded to the correct area office. We were reminded that a fatality must be reported within eight hours of the employer becoming aware of the fatality and within 24 hours of an employee being admitted to a hospital as an inpatient.

OSHA directive CPL 02-00-124 for the Multi-Employer Citation Policy was initially aimed at the construction



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industry but is being applied by OSHA to oil and gas sites where there are multiple contractors/subcontractor relationships that have one or more creating, exposing, correcting, and/or controlling employers in regard to hazards in the workplace.

The order of priority in which OSHA decides to conduct inspections are, first, any imminent danger situations, then investigations into fatalities and/or catastrophes, which was interestingly defined as two or more inpatient hospitalizations where it used to be there or more. The next priority is employee complaints or referrals, which OSHA must address within five days with a call to the employer or an inspection of the site. The next priority is investigating severe injuries (amputations or loss of an eye) reported by the requirements to report such work-related injuries. The next priority is conducting programmed inspections, then follow-up inspections. The last priority would be emergency response to “significant events,” such as natural disasters or acts of terrorism to assist with the safety of the responders.

There are two national emphasis programs from OSHA that pertain significantly to the oil and gas industry—Process Safety Management (CPL 03-00-021) and Trenching & Excavation (CPL 02-00-161). In Region 3, which includes Pennsylvania and West Virginia (Ohio is in Region 5) the regional emphasis programs include logging in West Virginia, oil and gas service industry, and tree trimming and clearing operations.

Several OSHA Initiatives were reviewed and noted that each has its own page on the OSHA website. The initiatives are Protecting Whistleblowers and Heat Stress Prevention, which was mentioned by the area director as something that could, in the future, become a violation under the General Duty Clause. Other Initiatives include the Fall Prevention Stand Down in May, the Trench Safety Stand Down in June, Safe and Sound week, and the regional initiative on Focus Four campaign in the construction industry. It was noted that trench-related fatalities nationally increased every year from 2012 to 2017 in all applicable industries.

OSHA's top 10 Violations for FY 2018 were reviewed and are available to view on the OSHA website. The speakers handed out the most frequently cited standards, nationally, from January 1, 2017, through January 1, 2019, for the oil and gas industry for the Extraction/

NGL Extraction NAICS codes 211111 and 211112, Support Activities for O&G Operations NAICS code 213112 and 213111, and O&G Pipeline and Related Structures Construction NAICS code 237120.

Local general statistic from the Pittsburgh Area Office were provided for the Construction and General Industries showing that from 2004 through 2018 falls and struck-by vehicles/equipment/materials were the number 1 and 2 causes of fatalities in the Construction Industry. In the General Industry for the same period the top two causes of fatalities were reversed—struck-by vehicles/equipment/materials and falls, respectively.

A brief explanation of the OSHA consultation program through Indiana University of Pennsylvania and West Virginia University was provided, with information available on the OSHA website.

It was interestingly relayed that there are 13 counties in the Pittsburgh Area Office's responsibility and there are 13 compliance safety and health officers (inspectors) assigned to the office, so there are no “extra resources.” We were also reminded that every area office has one person specifically assigned to provide compliance assistance during office hours. It was also explained that in general for the investigations resulting from the required reporting of severe injuries (amputations or loss of an eye) or inpatient hospitalizations, OSHA will send letters in two-thirds of the cases to the employers asking for an explanation then for the remaining one-third of these situations OSHA will conduct an onsite investigation.

At the time of this presentation, the Pittsburgh office was investigating two incidents specific to the oil and gas industry. One was a leg injury in a pipeline welding operation and the other was related to a device released in a trench where there was no cave-in protection. The incidents were not described further as they are active investigations. Generally, the Pittsburgh office is receiving a significant number of finger amputation reports from the area's oil and gas industry employers. The causes seem to be placing fingers and hands in the wrong place, such as between pipe or between two parts on a piece of equipment. Other situations of concern to the area office regarding the oil and gas industry include improperly using rough terrain forklifts and front loaders with forks. These two pieces of equipment are being used to lift contrary to the manufacturer's requirements, using slings on one fork or lifting items that are close to or exceeding the capacity of the equipment, where a crane should be used instead.

The presentation by OSHA was closed with praise for the oil and gas industry for doing such in-depth incident investigations and root cause analysis that is, per the area director some of the best they see among all industries. Our industry goes above and beyond meeting standards many times when implementing corrective actions resulting from the root cause analysis. OSHA appreciates the extra effort! ■



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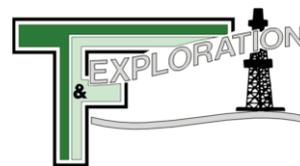
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No-poach employment provisions – are they still acceptable?

By Megan E. Harmon
Schnader Harrison Segal & Lewis LLP

For years, the oil and gas industry, along with other sectors of the economy, has experienced a chronic shortage of qualified labor. In this era of low unemployment and lack of skilled workers with adequate training, employers are understandably protective of their workforce investments.

So when it's time to add new talent, you will advertise for positions, maybe pay a recruiter, invest in employee training and have ramp-up time before new hires are fully functional—all at significant effort and cost. In order to protect your investment in these employees, you may ask customers to agree to contract provisions prohibiting them from hiring your workers without your consent.

These types of restrictions have become commonplace and are a safe and standard practice, right? Well... maybe not anymore. A recent Pennsylvania court decision, which follows a series of federal litigation and policy actions, should cause employers to consider no-poach employment provisions in a new light. Such matters can be tricky and involve employment and/or antitrust issues, so business leaders should work closely with legal counsel.

Phase I—legal actions impacting competing businesses

In 2016, the U.S. Department of Justice (DOJ) and the Federal Trade Commission—the enforcers of antitrust laws—issued official guidance proclaiming that agreements amongst “competitors” to limit or fix terms of

employment may violate antitrust laws if the agreements constrain individual decision-making regarding wages, salaries or benefits. According to the regulators, free competition leads to innovation, lower prices, better products, higher wages and better terms of employment. Arrangements between competitors not to hire each other's employees may constitute a “per se” violation of antitrust laws. Bad from the get-go.

The genesis of this guidance was the High-Tech Employee Antitrust Litigation, which involved Adobe Systems, Inc., Apple, Inc., Google, Inc., Intel Corp., Intuit, Inc., Lucasfilm, Ltd., Microsoft Corporation and Pixar. This massive case, which eventually settled, alleged that these various organizations each had agreements with one or more of the other parties containing restrictive provisions that essentially prohibited the organization from cold calling on the other's employees to recruit or solicit them directly for employment.

In a similar high-profile class action case against the University of North Carolina and Duke University, the plaintiff, an individual, brought a lawsuit when she was denied a position by UNC, allegedly due to an agreement between the universities not to hire each other's faculty. This case settled as well.

Since the issuance of the federal guidance, the antitrust agencies have taken additional enforcement action against competitive employers who had agreed not to poach each other's employees. However, the guidance is clear that it does not address the legality of specific restrictive terms contained in employer/employee agreements, including non-competes.

In 2018, the antitrust division of the DOJ filed suit against Knorr-Bremse AG and Westinghouse Air Brake Technologies Corp. (Wabtec). DOJ asserted these two large rail equipment suppliers, and eventually a third company purchased by Wabtec, conspired to “not poach” each other's employees. The suit was settled by the issuance of an injunction in which the companies agreed not to continue such behavior.

These various settlements did little to compensate the aggrieved employees. Class actions soon followed to correct these alleged wrongs as well.

Phase II—legal actions impacting franchise businesses

State governments have instituted investigations and class action litigation involving franchisors and restrictions contained in their franchise agreements prohibiting the poaching of employees between franchisees. Such provisions were added to these agreements so that all franchisees bear the costs and risks of training, and so that a franchisee could not simply set up shop and hire another organization's staff. In 2018, the Attorneys General in eleven states,



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including Pennsylvania, launched investigations into these issues. As of July last year, seven franchise organizations agreed to drop no-poaching clauses from their franchise agreements. A number of franchisors and franchisees have settled class action suits involving these claims.

In contrast, federal policy under the DOJ appears to make a distinction between the franchise no-poach agreements and no-poach agreements between competitors. According to DOJ policy, in the franchise context these arrangements are more akin to what is known as vertical restraints, which include arrangements between supply side organizations. DOJ does not see these arrangements as “per se” violations of the law, but they are reviewed under a standard of “rule of reason”. This standard considers whether there is justification for the anti-competitive restriction that outweighs the alleged harm done by such restrictions, in other words whether the restraint is “unreasonable.”

The ultimate outcome of these franchise issues has not been determined, including what justifications will be acceptable for such no-poach restrictions.

Phase III-recent court decisions in Pennsylvania

Pennsylvania businesses should take special note that courts in the Commonwealth recently have decided no-poaching issues for the first time. In *Pittsburgh Logistics Systems Inc. v. BeeMac Trucking LLC et al.*, the Superior Court of Pennsylvania upheld the lower court decision of the Beaver County Court of Common Pleas and invalidated a no-poaching agreement between the companies. Further appeals could occur.

The *Pittsburgh Logistics Systems* case involves a logistics company (arranging shipping) and a trucking company it utilized to ship its customers’ goods. The agreement between the companies was non-exclusive and contained a non-solicitation as to customers and a non-solicitation as to employees. The lawsuit occurred because four logistics company employees left to work for the trucking company. The logistics company sought an injunction against the trucking company and the former employees to stop the prohibited behavior. The lower court and the appellate court both upheld the customer non-solicit, but determined the no-hire provision violated public policy by “preventing persons from seeking employment with certain companies without receiving additional consideration for the prohibition or even having any input regarding or knowledge of the restrictive provision.”

The decisions of both courts did not discuss issues involving the protection of the investment in employees or the use of no-poach agreements in other kinds of commercial contracts. The courts summarily dismissed any rationale for having an employee no-poach agreement between companies, instead finding that avoiding the loss of clients was the ultimate purpose of the relevant restrictions and was addressed by the customer non-solicitation.

The Superior Court concluded that such no-hire provision “exceeds the necessary protection [the logistic

company] needs to secure its business, and is void as a matter of public policy.” In the court’s view, these types of restrictions should be dealt with between the employer and employee, not between competing businesses. In Pennsylvania, it appears as though agreements between businesses not to steal customers may be enforceable, but agreements not to steal employees may no longer hold up.

Takeaways

Businesses using no-poaching agreements have a lot to consider in light of these various developments. In fact, in the two latest Pennsylvania legislative sessions, bills have been introduced to restrict non-compete provisions in the employment context both for low-income workers and also for all workers except for owners in the sale of a business.

Organizations with agreements governed by Pennsylvania law should review the terms of these types of restrictions in commercial contracts and take appropriate steps to protect their interests. If the *Pittsburgh Logistics Systems* decision holds up, companies may need to consider options for protecting investment in employees within the context of employer/employee agreements rather than in commercial agreements with customers. For example, employers could ask employees to acknowledge upon hiring that subsequent employment with a customer or competitor is prohibited, similar to a non-compete, whether or not the customer is a direct or indirect competitor. Employers that invest in employee training may want to consider having workers agree to a pay-back plan if they leave employment before there is a return on that investment. At a minimum, the parties to restrictive no-poach agreements should clearly spell out in their contracts that the interest they seek to protect is the significant investment in employees, along with the other interests of the client or customer.

In short, don’t rely solely on your customer arrangements to protect your employee talent. ■

Megan E. Harmon is a partner in the Pittsburgh office of Schnader Harrison Segal & Lewis LLP. She is co-chair of the firm’s Mergers and Acquisitions Practice Group and also co-chairs the Energy & Environmental Practice Group. She is a member of the Firm’s Executive Committee. Harmon concentrates her practice in counseling businesses including transformative transactions, mergers, acquisitions and dispositions, project development, and public-private partnerships, and has extensive experience in contract negotiations, finance, compliance matters, employment issues and procurement. She can be reached at mharmon@schnader.com.



As markets mature, so do we

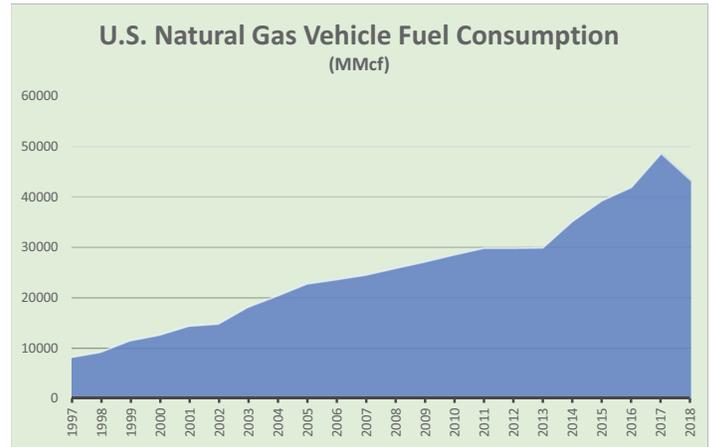
By Joyce Turkaly
Director, Natural Gas Market Development

It was only five short years ago when most discussions that started with alternative fueling and project development ended on a debate between chicken or egg theories, and did the chicken get to the other side? Fast forward to February 12, 2019...

I joined forces with Transportation Energy Partners for their annual Energy Independence Summit in D.C. Policy stability and certainty for investors in the broad array of alternative fuels, vehicles and technologies were highlighted during congressional meetings. Tax incentives for alternative fuels, vehicles and infrastructure expired at year end 2017. In early 2018, Congress approved tax reform and the only vehicle credit that was preserved was for electric vehicles; other alternative fuels were omitted.

My mission was clear—to highlight the success of many PIOGA members directly involved in this sector and their ongoing progress and completion of fueling and infrastructure projects in Pennsylvania. Further warranted was to make the request for ongoing funding to keep advancing markets. One of the requests for action was to provide \$50 million to the Clean Cities program, including \$30 million in competitive deployment grants.

The Clean Cities programs are an integral part of the Vehicle Technologies Office within the Department of Energy (DOE). All Clean Cities Coalitions are tasked with reducing greenhouse gas emissions and foreign oil imports and stimulating economic development. Pennsylvania has two Clean Cities Coalitions and two executive directors who combine like efforts from an east/west perspective: splitting our state down the middle are Rick Price in Western Pennsylvania and Tony Bandiero, Eastern PA. Their offices do much of the education and leg work when it comes to grant applications and interfacing with both natural gas and electric utili-



ties as well as vehicle vendors and the diverse fuel suppliers that serve this “alternative” market—from bio-diesel, CNG and LNG, propane, electric and hydrogen to renewable natural gas.

According to the DOE, there are more than 1.8 million alternative fuel vehicles in the U.S. and 70,000 alternative fueling stations. Of all the downstream sectors for natural gas, the current state of the alternative vehicle market is viewed as a small fraction of the total American fleet. Building a station often means providing anchor tenants to support the CAPEX and to steadily recover the investment in hopefully a shorter period.

Alternative-fueled shippers in Pennsylvania include UPS, Frito Lay, FedEx, Giant Eagle, Honda and others, as well as school bus and public transit and shuttle buses. Bluebird, for example, sold its 1,000th propane school bus in Pennsylvania last year—representing 9 percent of the total U.S. deployed—terrific news at a time when our producers need more end-use outlets. Most refuse companies have found that they can run their fleet more competitively on CNG, either from natural gas or landfill gas, saving as much as \$50,000/month for a mid-sized operator. The investment in either station or fleet pays for itself faster than most people originally believed.

About 160,000 vehicles are supported by 1,824 fueling stations that are connected by 2.5 million miles of natural gas pipelines. Throughout Pennsylvania, there are currently 84 CNG and LNG stations; 61 percent of these are public stations.

Complimenting PIOGA's Market Development Committee, DOE's Clean Cities Program (cleancities.energy.gov) is the agency's only initiative focused on the deployment of alternative fuels, vehicles and infrastructure. From 2006 through 2015, the Clean Cities has leveraged \$207.3 million in program funding to \$2.2 billion in public and private investment in alternative fuels deployment projects; for every federal dollar invested, \$10.60 is returned.

For more information or to deploy equipment or services to this market, please contact me at joyce@pioga.org. ■

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DRBC legislation *Continued from page 1*

“Now, the DRBC, with support from the Wolf administration, is turning that moratorium into a permanent ban. As a matter of policy, this action seems a serious misjudgment. As a matter of fairness, it is even worse, for it slams the door of opportunity on affected landowners by significantly diminishing the value of their property. In my judgment, such deprivation of property rights constitutes a “taking” just the same as if the property were condemned for a transportation project or for any other public use.

“As a result, this economic justice proposal declares that a ban implemented by the DRBC will constitute a taking that must be paid for by the DRBC. The legislation will provide that impacted landowners will be entitled to compensation calculated in the same manner as is used to determine value in any other eminent domain action.”

Joining Baker in sponsoring SB 305 are Senate President Pro Tempore Joe Scarnati and senators Martin, Bartolotta, Phillips-Hill, Yaw, DiSanto, Vogel, Folmer, J. Ward, Hutchinson and Regan. ■

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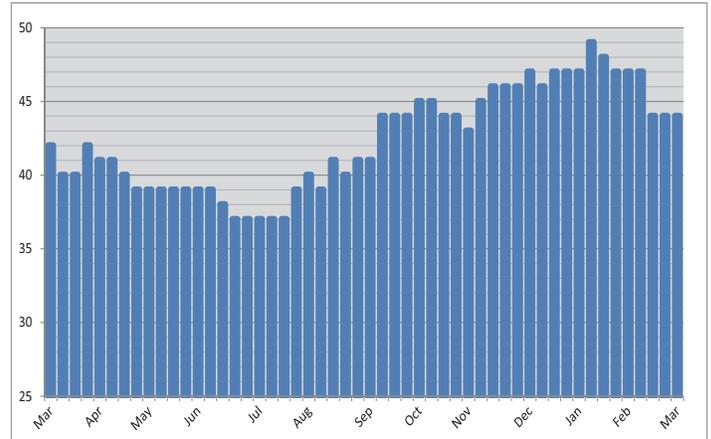
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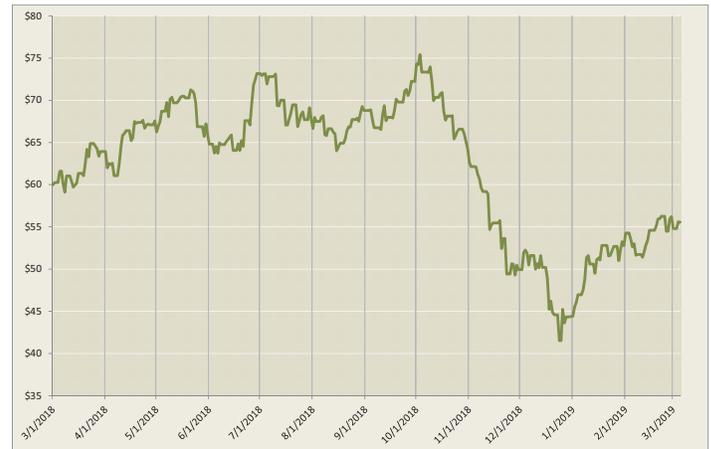
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Oil & Gas Dashboard

Pennsylvania Rig Count



Penn Grade Crude Oil Prices



Natural Gas Futures Closing Prices

Month	Price
April	\$2.863
May	2.868
June	2.908
July	2.953
August	2.972
September	2.957
October	2.970
November	3.007
December	3.135
January 2020	3.217
February	3.144
March	3.006

Prices as of March 7

Sources

American Refining Group: www.amref.com/Crude-Prices-New.aspx

Ergon Oil Purchasing: www.ergon.com/prices.php

Gas futures: quotes.ino.com/exchanges/?r=NYMEX_NG

Baker Hughes rig count: phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-report-sother

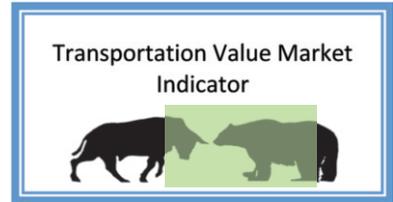
NYMEX strip chart: Nucomer Energy, LLC, emkeyenergy.com

Northeast Pricing Report – March 2019

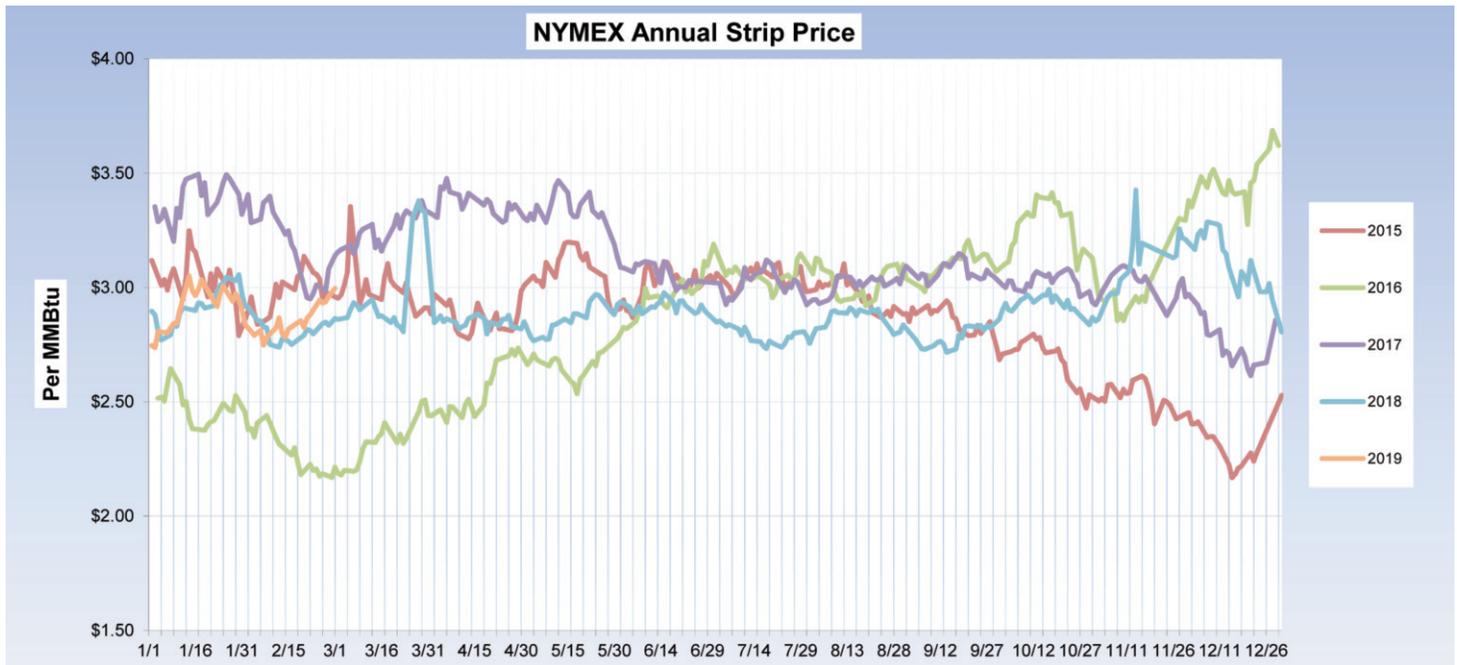
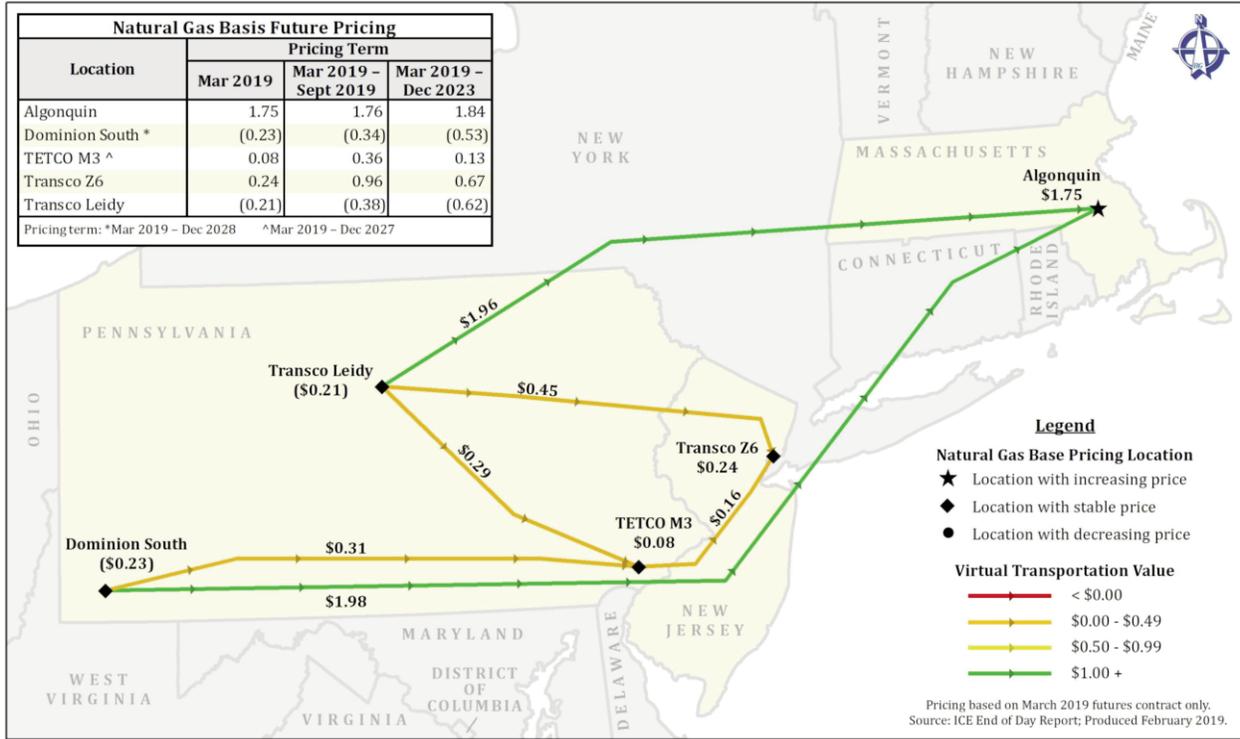
Short-term pricing has dropped dramatically for the three eastern most trading points. Transco Z6 and Algonquin decreased \$3.73 and \$2.84 per MMBtu respectively. TETCO M3 did not decline as dramatically but was still a significant drop of \$1.49 per MMBtu. Transco Leidy declined a minor \$0.03 per MMBtu and Dominion South actually increased \$0.01 per MMBtu. For the one-year trading term, all trading points were up mildly ranging from \$0.15 to \$0.06 with TETCO M3 and Dominion South respectively. The entire trading period saw only minor changes. Dominion South and Transco Leidy increased \$0.07 per MMBtu, whereas Algonquin decreased \$0.06 per MMBtu.

All transportation values decreased substantially from February. Transco Leidy to Transco Z6 dropped \$3.70 per MMBtu. Dominion South to Algonquin and Leidy to Algonquin both declined by \$2.85 and \$2.81 respectively. The smallest decrease was Dominion to TETCO M3, which was \$1.50 per MMBtu.

The EIA storage report indicated that supplies of natural gas fell by 166 Bcf for the week ending Feb. 22. That was lower than the 171 Bcf decline forecasted. Total stocks now stand at 1.539 Tcf, down 154 Bcf feet from a year ago and 424B below the five-year average.



Provided by Bertison-George, LLC
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Spud Report: February 2019



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

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
ARD Opr LLC	6	2/8/19	081-21777	Lycoming	Cogan House Twp
		2/8/19	081-21782	Lycoming	Cogan House Twp
		2/8/19	081-21779	Lycoming	Cogan House Twp
		2/8/19	081-21780	Lycoming	Cogan House Twp
		2/8/19	081-21778	Lycoming	Cogan House Twp
		2/8/19	081-21781	Lycoming	Cogan House Twp
Bull Run Resources LLC	2	2/19/19	083-57145*	McKean	Keating Twp
		2/22/19	083-57144*	McKean	Keating Twp
Cabot Oil & Gas Corp	19	2/9/19	115-22525	Susquehanna	Auburn Twp
		2/9/19	115-22549	Susquehanna	Auburn Twp
		2/9/19	115-22524	Susquehanna	Auburn Twp
		2/9/19	115-22526	Susquehanna	Auburn Twp
		2/9/19	115-22528	Susquehanna	Auburn Twp
		2/9/19	115-22527	Susquehanna	Auburn Twp
		2/9/19	115-22530	Susquehanna	Auburn Twp
		2/9/19	115-22529	Susquehanna	Auburn Twp
		2/27/19	115-22555	Susquehanna	Auburn Twp
		2/27/19	115-22552	Susquehanna	Auburn Twp
		2/27/19	115-22551	Susquehanna	Auburn Twp
		2/27/19	115-22553	Susquehanna	Auburn Twp
		2/27/19	115-22554	Susquehanna	Auburn Twp
		2/27/19	115-22556	Susquehanna	Auburn Twp
		2/27/19	115-22557	Susquehanna	Auburn Twp
		2/27/19	115-22558	Susquehanna	Auburn Twp
		2/9/19	115-22603	Susquehanna	Gibson Twp
		2/9/19	115-22604	Susquehanna	Gibson Twp
	Chesapeake Appalachia LLC	4	2/17/19	015-23458	Bradford
		2/18/19	015-23459	Bradford	Tuscarora Twp
		2/19/19	015-23460	Bradford	Tuscarora Twp
		2/15/19	131-20571	Wyoming	Windham Twp
		2/9/19	115-22605	Susquehanna	Gibson Twp
CNX Gas Co LLC	3	2/1/19	059-27789	Greene	Richhill Twp
		2/1/19	059-27790	Greene	Richhill Twp

available at www.dep.pa.gov/DataandTools/Reports/Oil and Gas Reports.

The table is sorted by operator and lists the total wells reported as drilled last month. **Spud** is the date drilling began at a well site. The **API number** is the drilling permit number issued to the well operator. An asterisk (*) after the API number indicates a conventional well.

OPERATOR	WELLS	SPUD	API #	COUNTY	MUNICIPALITY
EQT Prod Co	1	2/13/19	003-22477	Allegheny	Forward Twp
	1	2/27/19	083-56924*	McKean	Wetmore Twp
Howard Drilling Inc	1	2/27/19	083-56924*	McKean	Wetmore Twp
JKLM Energy LLC	2	2/12/19	105-21932	Potter	Allegany Twp
		2/15/19	105-21925	Potter	Ulysses Twp
KCS Energy Inc	4	2/11/19	123-48231*	Warren	Watson Twp
		2/15/19	123-48230*	Warren	Watson Twp
		2/20/19	123-48233*	Warren	Watson Twp
		2/25/19	123-48232*	Warren	Watson Twp
PennEnergy Resources LLC	5	2/23/19	019-22621	Butler	Jefferson Twp
		2/23/19	019-22319	Butler	Jefferson Twp
		2/24/19	019-22620	Butler	Jefferson Twp
		2/24/19	019-22747	Butler	Jefferson Twp
PVE Oil Corp Inc	3	2/13/19	083-57148*	McKean	Sergeant Twp
		2/20/19	083-57094*	McKean	Sergeant Twp
		2/25/19	083-57098*	McKean	Sergeant Twp
Range Resources Appalachia	5	2/25/19	125-28619	Washington	Robinson Twp
		2/25/19	125-28621	Washington	Robinson Twp
		2/25/19	125-28618	Washington	Robinson Twp
		2/25/19	125-28620	Washington	Robinson Twp
		2/25/19	125-28622	Washington	Robinson Twp
Repsol Oil & Gas USA LLC	3	2/26/19	117-22047	Tioga	Ward Twp
		2/26/19	117-22048	Tioga	Ward Twp
		2/26/19	117-22049	Tioga	Ward Twp
Rice Drilling B LLC	11	2/27/19	059-27803	Greene	Aleppo Twp
		2/27/19	059-27804	Greene	Aleppo Twp
		2/27/19	059-27801	Greene	Aleppo Twp
		2/27/19	059-27802	Greene	Aleppo Twp
		2/6/19	125-28644	Washington	Somerset Twp
		2/6/19	125-28645	Washington	Somerset Twp
		2/9/19	125-28646	Washington	Somerset Twp
		2/9/19	125-28647	Washington	Somerset Twp
		2/10/19	125-28649	Washington	Somerset Twp
		2/11/19	125-28650	Washington	Somerset Twp
Seneca Resources Co LLC	13	2/6/19	081-21789	Lycoming	Lewis Twp
		2/6/19	081-21784	Lycoming	Lewis Twp
		2/7/19	081-21783	Lycoming	Lewis Twp
		2/7/19	081-21787	Lycoming	Lewis Twp
		2/8/19	081-21785	Lycoming	Lewis Twp
		2/8/19	081-21788	Lycoming	Lewis Twp
		2/8/19	081-21790	Lycoming	Lewis Twp
		2/8/19	081-21786	Lycoming	Lewis Twp
		2/14/19	081-21719	Lycoming	Lewis Twp
		2/25/19	083-57158	McKean	Sergeant Twp
		2/25/19	083-57159	McKean	Sergeant Twp
		2/25/19	083-57160	McKean	Sergeant Twp
	Snyder Bros Inc	7	2/18/19	005-31309	Armstrong
		2/18/19	005-31310	Armstrong	East Franklin Twp
		2/18/19	005-31311	Armstrong	East Franklin Twp
		2/18/19	005-31312	Armstrong	East Franklin Twp
		2/18/19	005-31313	Armstrong	East Franklin Twp
		2/28/19	005-31332	Armstrong	Washington Twp
		2/28/19	005-31333	Armstrong	Washington Twp
SWN Prod Co LLC	3	2/23/19	015-23462	Bradford	Stevens Twp
		2/24/19	015-23463	Bradford	Stevens Twp
		2/19/19	115-22606	Susquehanna	Franklin Twp

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	February	January	December	November	October	September
Total wells	92	75	55	90	104	76
Unconventional Gas	82	72	42	78	85	54
Conventional Gas	0	0	1	0	0	0
Oil	10	2	8	12	13	22
Combination Oil/Gas	0	1	4	0	6	0

Calendar of Events

PIOGA events

PIOGA event info: www.pioga.org/events

Axes & Ales Networking Event

March 13, LumberJaxes, Pittsburgh

Spring Meeting

April 10, Rivers Casino, Pittsburgh

PIOGATech: Well Construction

April 25, location TBA

Ted Cranmer Memorial Golf Outing and Steak Fry

June 3, Wanango Country Club, Reno

Divot Diggers Golf Outing

August 22, Tam O'Shanter Golf Course, Hermitage

Other association & industry events

The Great Energy Gathering VI

March 20, Hilton Garden Inn Pittsburgh/Southpointe
www.greatgathering2019.com

IPAA Midyear Meeting

June 24-26, Colorado Springs, CO
www.ipaa.org/events

IOGANY Annual Summer BBQ

July 11, Peek'n Peak Resort & Conference Center Findley, NY
www.iogany.org

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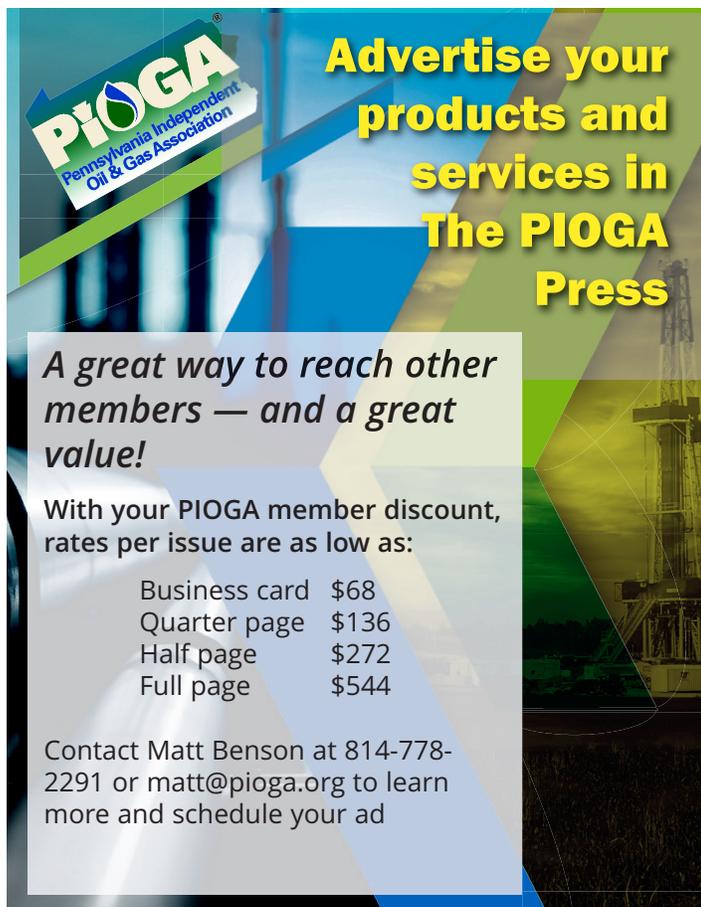
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