



## Alternative Energy Report

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### **Legislature Returns, Marcellus Shale on Radar**

The House and Senate both returned to Harrisburg on Tuesday, attempting to tie up several loose ends prior to the start of budget season, which officially kicks off on February 7 with the Governor's Budget Address.

Senate Pro Tempore Joe Scarnati said that he wants an agreement struck on the Marcellus Shale package before the Governor gives his address, or at the very least prior to the start of budget hearings. Corbett said that he sees progress on negotiations which were started last year. Administration and legislators have told ERG that there has been resolution on many issues, but some disagreements remain.

Corbett and House GOP leaders want the fees to total \$160,000 over a 10-year period per well. The Senate has proposed a fee that starts at \$50,000 per well, and over 20 years, comes to \$360,000 per well.

ERG was told that a compromise plan could reduce the Senate fee to \$260,000 per well over 10 years, and depending on the number of wells drilled, the state could see initial revenues of up to \$150 million, according to estimates.

In exchange for an increase in the fee, the Senate would consider allowing the fees to be imposed by counties, something the governor and House had insisted upon. But the Senate is seeking an override option that would allow 50 percent of municipalities in a given county to overrule the county commissioners in the event that the commissioners vote not to impose fees. And the Senate has asked that a state agency – the PUC in current drafts – collect the funds and handle initial disbursements.

The percentages of funds being used for shale region projects, and the amounts distributed to statewide or non-shale region projects are still being considered. And it is still unknown if the package will tackle the issues of new leases on state forestland, and the higher revenues coming from currently leased state lands. The Corbett Administration has not yet announced its plans for future state land leases for Marcellus Shale drilling.

Another issue remaining on the table is that of the eventual provisions over zoning. Resolving disputes over local zoning ordinances the natural gas industry believes are unfair is likely to remain under the authority of the attorney general, but other proposals are still being circulated. ERG would note that similar provisions were included for agricultural and agribusiness operations in the ACRE program. Under that law, ACRE program, the attorney general has authority to review local ordinances pertaining to agricultural operations and can file a lawsuit to challenge the legality of any ordinance.

Patrick Henderson, the governor's energy executive, said the governor's office seeking a "proper balance" on the zoning measure.

"There are a lot of very positive aspects to both HB 1950 and SB 1100. We are seeking to find a proper balance – one that avoids frivolous lawsuits and avoids ordinances which run contrary to state law and infringe on property

rights," Henderson said this week. "We are also seeking legislation that will insist upon high, uniform standards for the drilling industry while respecting the proper role of local governments in the decision making process."

### **ERG Celebrates Fifth Anniversary**

ERG Partners and PA Energy Resources Group celebrated our 5th anniversary as a joint venture in government relations, lobbying and strategic consulting on Thursday. In those five years, we have been privileged to be part of major state policy initiatives, incredible projects, wonderful clients and the forefront of alternative energy issues.

Our joint efforts have resulted in more than 20 Pennsylvania energy projects being funded or expanded, with in excess of \$60 million in state and federal funding.

To our clients, the many public officials, staff and friends who have made our venture a success, Thank You!

### **Marcellus Shale Well Safety Bill Headed to Governor's Desk**

SB 995, sponsored by Sen. Lisa Baker (R-Bradford) would require operators of new and existing oil and gas wells to provide GPS information to counties and emergency responders and develop response plans for accidents and spills. The bill was approved on final passage in the Senate this week and is headed to the Governor's desk.

"Senate Bill 995 fills a gaping information hole," said Baker. "When something goes wrong, having emergency information posted at the site, and a plan that is shared with key emergency personnel, are vital parts of a risk reduction plan."

The bill specifies that operators are to post signs at the well site bearing their GPS coordinates so firefighters, ambulance crews and hazmat teams know where wells and access roads are located and also to register those coordinates with county and state officials.

The Department of Environmental Protection is directed to write regulations on an emergency basis to implement the bill, avoiding the state's normal Independent Regulatory Review Commission processes that often take years for final approval.

### **Budget Hearings Scheduled**

The annual budget hearings begin the week following Corbett's budget address. Budget hearings of interest are available [here](#).

### **Independent Office: PA's Economic Outlook Remains Bleak**

The Pennsylvania Independent Fiscal Office has released its first assessment of the state's fiscal condition and projected revenues, and determined that the state has a long way to go in making a full economic recovery.

Despite a recent history of high unemployment numbers, lack of consumer confidence, and lending conditions, IFO Director Matthew Knittel remains optimistic, as he explained that these segments of the economic are slowly turning around.

However, the IFO projected that overall collections will fall short of official expectations for this fiscal year. Deputy Director Mark Ryan said that only the sales and use tax shows the possibility of collecting anticipated revenues, meaning the states two remaining major revenue sources – personal income tax and corporation tax – will fall short.

Ryan went on to say that there is optimism for the fiscal year estimate, noting that revenues for the next six months could slightly underperform and still come in at or ahead of overall estimates by fiscal year-end.

IFO foresees corporation tax revenues remaining low, and has placed their primary concern on continued weakened personal income tax (PIT) collections.

Historically, the PIT is the largest source of revenue for the state. High unemployment rates are likely to blame for low PIT collections, despite slow decreases in overall state unemployment numbers.

Building on the poor numbers, the state's revenues are expected to continue trending downward as the state's population continues to age and the workforce declines.

### **State Redistricting Maps before State Supreme Court**

Eleven challenges have been filed with the state Supreme Court against the state's Final Reapportionment Plan, and the court has scheduled oral arguments on all 11 petitions just one day before the state's primary election process is set to begin – January 23 at 9:30 a.m. While the court has promised a quick decision, the primary process, which starts with candidates circulating petitions and collecting signatures in support of their campaign, cannot formally begin until the court confirms the new state House and state Senate district maps that will be used for the next 10 years.

The court complaints challenge the legislative maps from various angles. One suggests another set of maps that better reflect the requirements established in the state constitution. Another one addresses dividing boroughs unnecessarily and along racial lines, while a third complaint questions why a Democratic incumbent's district was moved across the state.

Political experts have said that historically, challenges to redistricting plans have largely been unsuccessful.

### **House Committee Holds Solar Share AEPS Hearing**

The House Consumer Affairs Committee held a hearing on House Bill 1580 last week. The bill, sponsored by Rep. Chris Ross (R-Chester) amends the Alternative Energy Portfolio Standards Act, temporarily increasing solar Tier One requirements and limiting the credits to in-state solar companies that directly distribute solar generated electricity to an in-state distribution system, closing the state's borders for acceptable projects and SRECs.

Ross has been working with the solar industry for more than a year in an attempt to shore up the value of Solar Renewable Energy Credits in the state. SRECs have dropped by more than 200 percent, making it extremely difficult to finance new systems and payoff existing systems.

Bill supporters who testified - mostly owners of Pennsylvania solar energy companies - said doing nothing will put many small companies out of business and cause many workers to lose their jobs. Opponents argued the state should not be picking winners, and rhetorically asked when enough is enough, citing the state's carve out for solar under AEPS and targeted grants of more than \$200 million in taxpayer dollars to promote the industry. Others voiced concern that the state would be continuing to artificially manipulate the market instead of allowing the marketplace to work.

Ross said the legislation simply addresses "a specific imbalance" in the current SREC market, stemming from an oversupply of solar energy in Pennsylvania, and said he would have further amendments to the bill that would make mandated purchases neutral in the long run. His amendment would include a

4.5 percent increase in solar purchase requirements between 2012 and 2016, and a mandated decrease of 4.5 percent between 2019 and 2026.

The PUC provided written opposition to the bill, citing increased costs for consumers and undermining wholesale market competition. The Commission also expressed a desire to see the competitive market work, and opposed continuing changes to the rules under which the state's electric markets plan and operation. Finally, the PUC said it was convinced that the bill as written is unconstitutional, and a violation of the Commerce Clause. [MORE...](#)

### **State Supreme Court Declines to Hear Appeal on Local Control of Gas Drilling**

The Pennsylvania Supreme Court has declined to hear an appeal of a case involving rules established by Fayette County for well sites, including a prohibition on their location within the flight path of airport runways or within 200 feet of homes.

This means that the extent to which local counties and towns can set limits on gas drilling operations within their boundaries will remain a gray area of the law.

"Penneco Oil Co., Range Resources and the Pennsylvania Independent Oil & Gas Association filed an appeal of the lower court ruling, hoping the state's highest court would clarify what rules municipal and county governments can apply to drilling," the Pittsburgh Tribune-Review reported.

It is highly likely that the court's decision to not hear the appeal will lead to additional legal challenges by drilling companies. There is the potential that the natural gas regulatory package the General Assembly is currently working on will bring clarity to the issue; however, expect to see a variety of legal challenges for years to come.

### **NJ Lawmakers Accept 1-Year Fracking Ban**

The New Jersey Legislature has accepted Gov. Chris Christie's recommendation for a one-year ban on hydraulic fracturing, the drilling process for most natural gas wells, rather than continue to pursue a permanent ban.

The Senate and Assembly accepted Christie's conditional veto of legislation banning fracking outright late Monday. The governor returned the bill to the Legislature in August with the recommendation that the ban be lifted in a year, rather than be made permanent.

Environmentalists had hoped the Democratic-controlled Legislature would try to override the governor's conditional veto. The legislation is largely symbolic because there's not enough natural gas to drill for under New Jersey.

However, opponents say New Jersey could have sent a message about the importance of ensuring water quality by enacting an outright ban. [Click here to view a copy of the legislation](#) and the governor's conditional [veto message](#).

### **EPA: Pennsylvania Second Leading Producer of US Greenhouse Gases**

The EPA said last week that Pennsylvania ranks second behind Texas as a leading producer of greenhouse gases in the United States. Nationwide, the report said the electric industry is responsible for the bulk of U.S. pollution. The information was included in data recently released from the government's first public catalog of individual polluters.

Power plants accounted for 72 percent of the greenhouse gases reported to the U.S. Environmental Protection Agency for 2010. Twenty mostly coal-fired

power plants in 15 states were among the worst polluters.

Congress had required industries to report their greenhouse gas emissions as part of a 2008 spending bill. Until now, the agency has only estimated greenhouse gas emissions by industry sector.

The other top greenhouse gas-emitting states in descending order were Florida, Ohio, Indiana, Illinois, Kentucky, Louisiana, Georgia and Missouri.

## **FEDERAL NEWS**

### **Obama Rejects Rapid Approval of Keystone Pipeline**

As predicted, President Obama rejected the approval of the Keystone XL pipeline, signaling that the debate on the pipeline set to stretch from Canada to Texas, is far from over.

Russ Girling, president of TransCanada, the pipeline's builder, said the company would reapply for permitting and asked for the application to be processed in time to get the pipeline online by 2014.

Obama said House Republicans forced his decision by including a provision in last month's legislation for a short-term extension to the payroll tax cut that required him to either issue a permit to allow the 1,700-mile pipeline to be built or explain why it was not in the national interest by Feb. 21. Republicans noted that the permitting process has been ongoing for years.

Obama said he rejected the permit application now based on the State Department's recommendation, which concluded there wasn't enough time to vet alternate pipeline routes.

"This announcement is not a judgment on the merits of the pipeline, but the arbitrary nature of a deadline that prevented the State Department from gathering the information necessary to approve the project and protect the American people," Obama said in a statement.

Republicans have responded to the statement, saying that Obama is simply maneuvering and playing politics. This issue will surely remain a hot ticket item during 2012 presidential debates.

The decision may have impacts beyond the loss of expected employment and jobs for small businesses. Canadian Prime Minister Stephen Harper said publicly on Wednesday that as a result of the decision, Canada will now seek to "diversify" its portfolio - more than likely in the form of sale of the crude to China, which Harper has said before Canada would do. TransCanada President Russ Girling said today that "plans are already under way on a number of fronts to largely maintain the construction schedule of the project."

### **Recent "Fracking Disposal Quakes" Could End RCRA Exemption**

Activists are seizing upon a series of earthquakes in Ohio believed to be caused by a disposal well used to store wastewater from hydraulic fracturing for natural gas in their efforts to urge EPA to reverse its long-standing exemption of oil and gas wastewater from hazardous waste regulation. The groups, including the Natural Resources Defense Council (NRDC), say that if EPA ends the exemption, it will force the wastewater to be disposed of in more strictly regulated hazardous waste (Class I) disposal wells, rather than as Class II wells, whose rules do not currently require consideration of possible seismic effects.

Though wastewater disposal to wells regulated by EPA's underground injection control (UIC) program is not used in all oil and gas producing states because

of geological differences, it is generally regarded by the agency and industry as the preferred option for accommodating the massive volumes of waste produced by booming hydraulic fracturing, or fracking operations.

NRDC representatives are now pointing to the Ohio quakes to argue that wastewater disposal from fracking and other drilling operations needs to be more strictly regulated. To do this, they are urging EPA to act on their petition seeking to end its long-time RCRA exemption for certain wastes, including produced water, from oil and gas production. The agency's exemption stems from its 1988 regulatory determination that the wastes should not be characterized as hazardous wastes under RCRA. Because of EPA's determination, wastewater from drilling operations can be disposed in Class II wells, rather than the more strictly regulated Class I wells.

In September 2010, NRDC filed a petition calling on EPA to reverse its determination and end the RCRA exemption, though EPA has yet to respond. In the petition, NRDC argues that hazardous waste rules, under RCRA subtitle C, are "necessary to ensure safe management of these wastes throughout their life cycle from cradle to grave, including generation, transportation, treatment, storage and disposal."

### **Court Vacates EPA Stay of Boiler Air Rules, Little Short-Term Effect**

Last week the US District Court for the District of Columbia vacated and remanded EPA's indefinite stay of its controversial boiler and incinerator air rules, after finding the agency failed to adequately justify the delay. The ruling is seen as a victory for activists, despite the fact that EPA is slated to amend the rules in April, well before they take effect as early as 2014.

The court's ruling suggests EPA could issue such a stay in the future if it follows proper procedures.

Judge Paul Friedman ruled that the agency's self-imposed stay of the air rules is unlawful because the agency did not meet a four-part test that it was bound to use. He said the agency erred in failing to base its stay on pending legal challenges to those rules, as required under section 705 of the Administrative Procedure Act (APA). The ruling means that EPA's boiler air toxics rule and a related emissions rule for commercial and industrial solid waste incinerators (CISWI) are once again in effect, though existing facilities do not have to comply with the rules until 2014 or 2015 at the earliest. As such, it should have little short term effect given the 2014-2015 compliance date. EPA has announced plans to revise and delay those deadlines to 2015 or 2016.

The American Forest & Paper Association (AF&PA) issued a statement saying the ruling reinforces the need to pass legislation delaying the rules in order to give EPA time to "fully analyze and prepare a new rule." House Energy and Commerce Committee Chairman Fred Upton (R-MI), said that the Senate should pass the bill "so we can put an end to the uncertainty and finally get the EPA to move forward in a way that protects jobs."

EPA issued the final boiler and CISWI rules in February 2011, alongside an announcement it would reconsider several aspects of the rules to address industry concerns that the rules are unachievable. In May the agency then issued a stay that halted the rules' implementation pending the outcome of either the lawsuit, or the reconsideration, depending on which occurs first. EPA proposed revised versions of the combustion rules in December, and has told the district court in briefs that it intends to issue final versions by April 2012.

The Sierra Club and Earthjustice had sued over the stay in the district court, saying EPA lacked authority under APA to issue the stay, and also arguing that the Clean Air Act does not allow stays pending reconsideration longer than

three months.

### **Wind Tax Credit Set to Expire Later this Year**

A wind energy tax credit that helped create thousands of jobs in Pennsylvania is set to expire later this year.

Jon Goldstein, director of public affairs for the American Wind Energy Association, said 19 manufacturing plants in Pennsylvania make components for wind turbines, and those facilities support as many as 4,000 jobs. Pennsylvania ranks 16th nationally in total wind capacity installed, he said. Nationally, Goldstein said, the wind energy industry supports about 75,000 jobs.

"We've been seeing manufacturing facilities spring up here in the United States because the components we use are so costly to transport because of their enormous size," Goldstein said. And the driving force behind wind-energy projects that support those manufacturing jobs has been the renewable energy production tax credit (PTC), he said.

The federal PTC is a per-kilowatt-hour tax credit for electricity generated by renewable energy facilities, such as wind farms, and sold during the taxable year. It's in effect for the first 10 years of a facility's operation.

The credit is 2.2 cents per kilowatt hour for wind, geothermal and closed-loop biomass producers, and 1.1 cent per kilowatt hour for other eligible technologies.

The credit for wind energy producers is set to expire at the end of 2012, and the credit for other renewable energy producers is set to expire at the end of 2013.

## **GRANTS**

### **Deadline Approaching for Small Business Innovation Research Opportunity**

The application deadline is nearing for phase I funding for the Department of Energy's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) awards, which help small businesses develop technologies with a strong potential for commercialization and job creation. The deadline for applications is January 31, 2012 at 11:59 p.m. EST. Click [here](#) for more information.

### **DOE Announces \$3 Million Funding for Superior Energy Performance Demonstrations**

Industrial facilities around the United States are testing the elements of Superior Energy Performance with federal assistance. These demonstrations began in Pennsylvania in 2011 and will continue to roll out throughout 2012. Support teams are working with facilities that agree to demonstrate the adoption of sustainable energy management strategies and systems.

Three Pennsylvania Companies have become demonstration sites: General Dynamics in Scranton, Traco in Cranberry Township, and World Kitchen in Charleroi. DOE announced Thursday that it is still accepting applications in Pennsylvania.

Facilities interested in becoming a demonstration site should contact Ralene Molina Kreiser at PennTAP, at [rxm174@psu.edu](mailto:rxm174@psu.edu). To find out if your facility is eligible and ready to participate, review the desired [list of characteristics](#).

## **EVENTS**

### **PBEA to Host Open Meeting to Kick-Off Association**

The Pennsylvania Biomass Energy Association (PBEA) will hold its first public membership meeting on February 2 to formally kick-off the Association. The PBEA is an industry-driven association created to promote sustainable biomass use for heat and power applications and advocate for state and federal programs to support biomass thermal and power projects.

The meeting will run from 10am – 2pm at Harman Stoves, 352 Mountain House Road, Halifax.

PBEA board members will discuss the benefits of becoming a member, and companies will have an opportunity to help shape the Association's 2012 priorities and action items. Following the meeting, learn more about residential biomass by joining us on a tour of Harman Stoves.

There is no cost to attend. Lunch will be provided. Everyone in attendance is invited to participate in a tour of the Harman Stoves facility following the meeting. Tours last roughly 45 minutes.

Click [here](#) and RSVP today. If you are unable to attend, but your company would like to join PBEA (or for additional information), please contact Melissa at [mbritcher@supportpabiomass.org](mailto:mbritcher@supportpabiomass.org) or (717) 233-8606, ext. 3.

### **LEED® Green Associate, Feb. 2, 9, and 16, Bristol, Pa**

This course will prepare you to take the LEED Green Associate certificate exam. Course will be led by instructor Bruce Offner, Resource Dynamics/Green Building Education. Course No. WTMCO 3550 GJA1. Cost is \$350 per person. Course will be held at Bucks County Community College - Green Jobs Academy, 310 George Patterson Blvd, Suite 108, Bristol PA, from 6-9pm February 2, 9, and 16. To register, contact Continuing Education (215) 968-8409, and select option 2, or contact the Green Jobs Academy at (215) 788-3594 or visit [www.bucks.edu/green](http://www.bucks.edu/green).

### **3rd Annual Marcellus Midstream Conference & Exhibition, March 19-21, Pittsburgh**

The Conference & Exhibition will focus on the opportunities surrounding the building out of the infrastructure needed in non-traditional petroleum-producing regions. Network with CEOs, CFOs, COOs, E&P and pipeline operators, pipeline schedulers and others from the gas storage, processing, and pipeline industries alongside capital providers and deal-makers. More than 1,400 attendees registered in 2011. Click [here](#) to view the conference agenda.

### **Calendar of Events**

Click [here](#) to view more energy-related events.

### **NEWS CLIPS**

[DEP's Marcellus Shale drilling numbers do not add up](#)  
[Perdue Biomass Boiler Operation Proposed](#)  
[BP And Sempra To Develop Two U.S. Wind Farms](#)  
[Corbett fires conservation official](#)  
[Sen. Casey Urging Shell to Locate Plant in Pa.](#)

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