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April 9, 2015

#### NEWS CLIPS

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[Pennsylvanians Don't Believe Humans Causing Global Warming](#)

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[Shell to Buy BG Group in \\$69.7 Billion Takeover](#)

[MD Proposing Legislation to Create State Climate Change Commission](#)

[North America's Largest Locomotive Shop to Get Energy Makeover](#)

[Toomey Partners With Feinstein to Repeal Costly Energy Mandate](#) (Op-ed)

#### **Hearings Finished, Now the Negotiations Begin/Wolf Predicts June 30 Deadline Will Be Missed**

The House and Senate completed their budget hearings with the Wolf Administration agency heads last week, and appear ready to get serious about looking at the budget itself. But even before the first formal meetings among the House and Senate Leadership and the Governor, it appears all parties expect a contentious couple of months before the June 30 deadlines for a balanced state budget.

Gov. Wolf proposed a series of new taxes, which his team continues to insist must be looked at holistically. The context of the proposal is to increase state programs and funds, increase taxes, and "change how Harrisburg works." It's effective public rhetoric, especially as it promises reductions in vilified property taxes, but none of the legislators we've talked to gives the integrated proposals much realistic chance of actually getting done as the Governor wants.

This week, House Speaker Mike Turzai said the House leadership has been talking to the Governor's staff, but that serious discussions must now take place. The suggestion is that the Wolf Administration's proposals are not serious, and must be reconsidered. The House is insistent on passing liquor privatization as a budget funding matter as well as political ideology. Senate Majority Leader Jake Corman said last week that unless and until the Wolf Administration works with the General Assembly to resolve state pension costs, the Senate will be unwilling to consider any other revenue enhancements.

## EVENTS

**April 13, 2015**

### **The PBEA Operation Plan and Board of Directors Meeting**

Please contact [Amanda Lane](#) for more information.

**April 15, 2015**

### **Agricultural Advisory Board**

9 a.m. until 1 p.m.

DEP Southcentral Regional Office

909 Elmerton Avenue, Harrisburg.

Contact: Tom Juengst, [tjuengst@pa.gov](mailto:tjuengst@pa.gov).

**April 15, 2015**

### **PA Biomass Energy Association: Spring Biomass Tour**

For more information [click here](#). To register, email [sjw246@psu.edu](mailto:sjw246@psu.edu)

**April 16-17, 2015**

### **Northeast Biomass Heating Expo 2015**

Cross Insurance Arena

Portland, ME

More [information](#)

**April 22, 2015**

### **DOE Webinar "Biofuels for the Environment and Communities"**

1:00 pm - 2:00 pm

[Register for the webinar](#)

**April 22-23, 2015**

### **Renewable Energy Policy Forum**

The Westin Washington D.C.

City Center

Washington, D.C.

To [register](#)

**May 12-13, 2015**

### **Smart Cities 2015**

Charlotte, NC

More [information](#)

Governor Wolf on Tuesday said he doubts the state will enact the next fiscal year's budget by the June 30 deadline, and we agree, expecting a long and partisan fight in the Capitol. "I'm planning on spending the summer here," Wolf quipped in an interview, adding, "And the fall, and the winter." ([More](#))

### **DEP Extends Public Comment Period, Schedules More Public Hearings on Environmental Protection Performance Standards at Oil and Gas Well Sites**

The Pennsylvania Department of Environmental Protection (DEP) is providing more opportunity for the public to comment on revisions to the Environmental Protection Performance Standards at Oil and Gas Well Sites (Chapter 78 and 78a). DEP is extending the current public comment period by an additional 15 days, to 45 days, and adding three public hearings.

This public comment period opened April 4, and has been extended from 30 days to 45 days, and will close on May 19. In addition, DEP will hold three public hearings, including two in the northern tier, and one in the southwest. Exact times and locations for these hearings will be announced as they are confirmed. ([More](#))

### [More State News](#)

### [Regional News](#)

[NY to Offer \\$160 Million in Clean Energy Funds](#)

### [Federal News](#)

[Obama Calls for ANWR Wilderness Designation](#)

### **More State News**

#### **Wolf Nominates Reese for Treasurer**

This week, Gov. Tom Wolf nominated Timothy Reese, a Montgomery County venture capitalist, to replace former Treasurer Rob McCord, who resigned and pleaded guilty to extortion.

Reese, 51, is a managing partner of Forge Intellectual Capital and founder of a minority investment network. He would serve the remainder of McCord's term through January 2017, if confirmed by a two-thirds Senate vote. He is on the advisory board of the Securities and Exchange Commission.

**June 2-4, 2015**  
**Energy Ocean**  
**Conference & Exhibition**  
Portland, Maine,  
Contact [Jason Smith](#)  
(713) 343-1886.

**June 15-18, 2015**  
**2015 BIO International**  
**Convention**  
Pennsylvania Convention  
Center, Philadelphia, PA  
Global biotech community.  
More information available  
at  
[convention.bio.org/register](http://convention.bio.org/register).

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The Wolf administration believes Reese would be the first black state treasurer. Wolf described Reese as "a proven leader with a diverse financial background," noting his work as a consultant, entrepreneur and investor.

"His outstanding management experience and fiscal expertise, along with a passion for promoting financial literacy, will help bring stability to the treasury and refocus the department on its core mission," Wolf said.

Treasury is the custodian of more than \$96 billion in taxpayer funds. The office directly manages about \$17.3 billion investments, including more than \$3 billion in college savings plans, according to a 2013-14 statement. The office - with a \$36 million operating budget and 340 employees - oversees a program for people to obtain unclaimed property. It investigates loss, theft or fraud with commonwealth checks, and maintains an electronic library of state contracts.

### Former DCED Secretary Against Wolf's Proposed Severance Tax

At a recent natural gas panel discussion organized by House Speaker Mike Turzai, former DCED Secretary Dennis Yablonsky told the audience that the natural gas severance tax, as proposed, is "simply too much."

According to Yablonsky, the tax carries a 15 percent effective rate. This is based in part on the provision that the industry would be taxed based on a rate of five percent of its value, which is being set at a base value of \$2.97 per thousand cubic feet. This rate is well above the current market price for natural gas.

"I believe, at that rate, we would see further capital investment reductions and further layoffs," he said. "I don't think any of us want that."

Turzai too, criticized the Wolf tax saying, "I think it is designed to shut down the industry."

He believes that the current impact fee levied on the industry is the "appropriate approach," and should not be replaced with a severance tax.

Several other industry leaders echoed the refrain that Pennsylvania needs to tax the natural gas community as is appropriate. Dr. Anusha Kothandaraman, director of strategy for Braskem, said the growth in natural gas production is helping to keep energy costs in the United States low, thus making the US attractive to foreign companies who now deal with higher energy costs.

Yablonsky followed up Kothandaraman's remark noting

that the Allegheny Conference on Community Development, of which he is CEO, is in early talks with a number of foreign firms looking to locate near areas with low cost energy supplies.

### **Judges Sides With PP&L in Solar Metering Case**

U.S. District Court Judge David Cercone threw out a lawsuit filed by Sunrise Energy, LLC claiming that Allentown-based PP&L exercised unfair competition and violated U.S. Constitutional protection of equal rights when it denied Sunrise's application for a solar farm as part of PP&L's territory in eastern Pennsylvania.

At the core of the lawsuit, is the state's ever evolving net metering policy, which was created in 2004 as part of the Alternative Energy Portfolio Standards Act. Net metering is a concept in which utility companies pay its customers who generate excess electricity at the same price per kilowatt hour as it charges them. The net metering policy was created to encourage the public to purchase and install their own renewable generating sources, mainly solar panels.

In February 2014 the PA Public Utility Commission (PUC) created recommendations to make the net metering policy clearer. The PUC recommended that renewable energy sources be limited to no more than 110 percent of the customer's annual consumption. This, effectively, has created the distinction between merchant generators and customer generators.

Sunrise Energy submitted a total of three applications to PP&L for a solar farm. The first application was denied and the remaining two were sent to the PUC for their review and determination. While the two applications were under review by the PUC, Sunrise Energy filed their suit in May 2014. As part of their argument, the cited a solar farm they own in Washington County that provides 950 kilowatts annually to the West Penn Power distribution system.

In his ruling, Cercone wrote that Sunrise Energy's arguments came up short and that PPL's actions were not those of the state, as would be required to prove a Constitutional rights violation.

### **DEP to Host Public Meeting and Public Hearing on PPL's Power Line Permit Applications**

The Pennsylvania Department of Environmental Protection (DEP) will host a public meeting followed by a public hearing regarding PPL Electric Utilities, Inc.'s (PPL) application for a National Pollutant Discharge Elimination System Permit (NPDES) and a Water Obstruction and Encroachment Permit for construction

of the proposed West Pocono-North Pocono 230kV Transmission Line. The meeting and hearing will be held on Thursday, April 23 from 6 to 10 P.M. at the Thornhurst Township Volunteer Fire Company, 351 Old River Road, Thornhurst, PA 18424.

The proposed 20.1-mile power line will run from Buck Township, Luzerne County through Thornhurst, Clifton and Covington townships in Lackawanna County.

The public meeting will take place from 6 to 7 P.M. with questions from the public, followed by the public hearing from 7 to 10 P.M. to receive testimony from those in attendance. Staff from both the department and PPL will be on hand to answer questions and listen to testimony.

"The meeting and hearing will give the public a chance to get answers to questions they might have about the project and to voice their opinions," said Mike Bedrin, DEP Northeast Regional Office Director. "This is an opportunity for the public to be heard on the project."

The DEP received an NPDES permit application on October 27, 2014, and a Water Obstruction and Encroachment Permit application on September 29, 2014 for the transmission line project. The public comment period for the application began on Saturday, February 28 2015, with a notice published in the PA Bulletin. The public comment period will be open through Thursday, May 7th at 4PM.

Those persons interested in making written comments on both applications can do so by sending them to Joseph J. Buczynski, P.E., Environmental Program Manager, Waterways and Wetlands Program, 2 Public Square, Wilkes-Barre, PA 18701 or by email at [jbuczynski@pa.gov](mailto:jbuczynski@pa.gov)

A copy of the permit application can be viewed at DEP's Northeast Regional Office (NERO) in Wilkes-Barre. Those wishing to make an appointment to view the documents can do so between the hours of 8 A.M. and 4 P.M. by calling 570-826-2511.

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## **Regional News**

### **NY to Offer \$160 Million in Clean Energy Funds**

New York State Energy Research and Development Authority (NYSERDA) will be soliciting project applications for a competitive program in an effort to

build and expand renewable energy projects around the state. This funding will support significant private investment in renewable energy sources such as wind farms, fuel cells, biomass facilities, renewable biogas and the upgrading of small- to medium-sized hydropower projects that provide power to the electric grid.

According to Gov. Cuomo, "This funding is a crucial resource for the development of New York's clean energy infrastructure, and by supporting large scale projects we are ensuring that the grid can meet the needs of a growing economy."

As part of the State's Reforming the Energy Vision (REV) strategy, this funding is being made available to support public-private sector partnerships in clean energy projects. Funding will be administered competitively, and proposals will improve energy affordability and reliability, while also expanding new economic development opportunities and protecting the environment.

REV calls for creating a cleaner, more reliable and more affordable energy system in New York State.

Contracts for these projects will be awarded for a term of up to 20 years. Recognizing the maturation of fuel cell equipment, for the first time ever, fuel cell projects will also be eligible for 20-year contracts.

Applications for qualifications must be submitted by May 8, 2015. Cuomo's plan calls for NYSERDA to notify qualified candidates by June 2, with project proposals due by June 17. The announcement of winners is anticipated in July.

### **MD Senate Passes Fracking Moratorium**

In a 45-2 vote, the Maryland state Senate passed a bill that would prohibit fracking until October 2017. The bill also requires the promulgation of regulations on the practice of fracking to be completed by October 2016.

The leading Senate opponent of a moratorium, George Edwards of Garrett County, voted for the bill after initially opposing the delay. Edwards called the bill 'a good first step' and said it would take at least two years for a company to get a fracking permit even if it applied now.

Recently, the Maryland state House had passed a stricter version of the bill that called for a required health study and a longer ban on the practice.



The bill now has to go back to the state House for approval before being sent to Gov. Hogan who has not released an opinion on the proposed legislation.

### **NJ Theme Park to Build Largest Solar Farm**

New Jersey's Six Flags Great Adventure is working with KDC Solar to build a 90-acre, 21.9 megawatt solar farm on an undeveloped parcel of land east of the park. This will be the largest solar farm in the state and would produce about 98 percent of the park's needed energy.

"We are continually searching for new ways to operate more efficiently and enhance our role as good stewards of the environment," said the park's president John Fitzgerald. "Solar power will significantly reduce our reliance on harmful fossil fuels."

While the park will need to remove around 18,000 trees from the proposed site, it has announced that, along with KDC Solar, they will be planting around 25,000 trees over a period of seven years.

The announcement of the solar farm has garnered support and excitement from Jackson Township and Environment New Jersey.

Jackson township councilman Kenneth Bressi noted that the solar farm will be taxed at a higher rate and that it shows the community that Six Flags intends to stay around for the long term.

Environment New Jersey's solar campaign organizer, David Beavers, is enthusiastic about both the solar farm and the replanting of trees. "This is going to be the biggest installation in New Jersey, which is going to be a huge step in the right direction," he said. "Hearing that they are going to be replanting those trees, it definitely sounds like it's going to be a worthwhile initiative."

It is estimated the project will take 16-18 months to complete.

### **OH Supreme Court Rules Against State EPA**

In a case being closely monitored by many, the Ohio Supreme Court recently ruled that the State Environmental Protection Agency cannot impose pollution limits on waterways without first following state rule making that calls for public notice, comment and hearings.

The ruling stems from the Ohio EPA's recent limits placed on a wastewater treatment plant in Fairfield

County. County Commissioners claim they were denied the opportunity to weigh in on the new stricter limits imposed on the plant. The EPA argues they are required to set limits similar to those of the federal Clean Water Act.

However, Chief Justice Terrence O'Donnell disagreed with the ruling, citing his concern that it would invalidate the 1,800 water pollution limits already in place and "will delay attempts to protect the state's bodies of water from pollutants by requiring the Ohio EPA to go through lengthy rulemaking procedures."

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## **Federal News**

### **Obama Calls for ANWR Wilderness Designation**

Last Friday, President Obama formally sent Congress his recommendations to set aside a majority of Alaska's Arctic National Wildlife Refuge (ANWR) as wilderness, finalizing a request first announced by the White House in January. The protections would ban oil and natural gas drilling across some 12 million acres, a level of protection that has drawn - and will likely continue to draw - staunch opposition from Republicans in Congress.

"Based on the best available science and extensive public comment, the Service's preferred alternative recommends 12.28 million acres - including the Coastal Plain - for designation as wilderness," Obama's letter reads. "This area is one of the most beautiful, undisturbed places in the world. It is a national treasure and should be permanently protected through legislation for future generations."

As the letter states, ANWR, an area that comprises about 19 million acres, is home to some of the most diverse wildlife in the Arctic, providing critical habitat for gray wolves, polar bears, caribou, and over 200 species of migratory birds.

But the area also houses a reserve of energy resources, prompting some in Congress to suggest that it should remain open to development. The Coastal Plain alone is estimated to contain some 5.7 billion barrels of recoverable oil.

A "wilderness" designation is the highest level of



protection the government can bestow upon a region: it prohibits the development of permanent roads and commercial enterprise within the area. But only Congress can designate areas as wilderness, and Congress in recent years has been hesitant to exercise its powers in this way, with some 30 proposals still awaiting Congressional approval. Obama's proposed protections for ANWR are almost certain to face the same gridlock when they arrive before Congress.

With Sen. Lisa Murkowski (R-AK) chairing the Energy Committee and Republicans controlling the House and the Senate, Congressional action on Obama's proposal is unlikely.

There may be a hearing in the Senate Energy and Natural Resources committee, chaired by Sen. Murkowski. Drilling proponents don't have the 60 votes needed to open up the plain, so it is unlikely the Senator will push for a vote on that. But even IF Congress moved to support drilling, the president would almost certainly veto the bill.

Murkowski was among multiple lawmakers - especially those from Alaska - who voiced opposition to Obama's official recommendation to protect ANWR.

"The vast majority of Alaskans do not support creating new wilderness in ANWR, so I am disappointed to see the Obama administration is continuing to press the issue," Murkowski said. "A congressional designation of the coastal plain as wilderness will not happen on my watch."

Murkowski has previously called opening up the ANWR a "top priority," but has voiced concern that the Republican-controlled Congress won't be able to accomplish this on its own. It's "not a given that we can advance an ANWR initiative to successful passage," Murkowski said.

"You've got a president that is pretty committed to drawing a line in the sand," she said. "That doesn't mean we won't push it and push it very hard."

On March 4, the Alaska State Legislature unanimously passed a bill that opposes the president's plans for protecting the ANWR.

For the time being, the U.S. Fish and Wildlife Service will manage the proposed area in ANWR as though it is designated wilderness. Even without Congressional approval, that's still a shift in management of the area that Manuel described as "significant," as now there will

be more wildlife monitoring and any oil development will be off-limits.

Opening ANWR to drilling has been debated in Congress for decades. In 1995, Congress approved a measure that would have allowed drilling in the ANWR, but it was vetoed by President Clinton. Congress tried again in 2005, with the Senate voting 51-49 to open the ANWR to oil and gas drilling, but the measure was eventually taken out of the budget.

### **Cost vs. Benefits Argued in Supreme Court Over EPA Power Plant Rule**

Oral arguments were heard in the case of *Michigan v EPA* over "whether the Environmental Protection Agency unreasonably refused to consider costs in determining whether it is appropriate to regulate hazardous air pollutants emitted by electric utilities."

The regulation being argued is a key part of the Obama Administration's climate change agenda that would require coal fired power plants to install equipment necessary to reduce mercury and other air pollutants. Several energy utilities and states presented testimony to highlight that the EPA acted improperly when it set mercury and air toxics standards in 2012. They argued that the estimated reductions in mercury emissions, valued at up to US\$6 million per year, is very small compared to the estimate cost of \$9.6 billion to implement the changes necessary to achieve the standards.

Another part of the debate centers on the interpretation of Section 112 of the Clean Air Act, which directs the EPA to issue regulations that are "appropriate and necessary" to address air pollution. Is a large cost to low benefit initiative "appropriate" under this Section?

The justices seem divided over this as well. Scalia leans toward the argument that the Clean Air Act would be meaningless if it did not provide for such considerations. Chief Justice Roberts feels that the government has tied its own hands by not considering factors such as these when making its decision.

Those justices with a more liberal leaning argued that the estimated health benefits greatly outweigh the larger cost of implementing and that the Court should defer to the EPA's interpretation.

The administration issued the final rules on mercury emissions in December 2011, with a compliance date of April 2015. A ruling on the Supreme Court case is expected by July.

## **EPA's Clean Power Plan Has Harvard Professors Sparring**

In its efforts to limit the amount of greenhouse gas emissions, the EPA instituted its Clean Power Plan. The Plan sets targets for each of the 50 states, which can be reached through a number of ways, including using coal-fired power plants less, increasing the usage of natural gas and renewable energy, and finding ways to become more energy efficient. Naturally, this has drawn criticism from many, declaring the EPA has overstepped its regulatory authority.

Harvard Law professor Laurence Tribe's testimony before the House Committee on Energy and Commerce's Subcommittee on Energy and Power on March 17 clearly placed him on the side declaring the Plan as "unconstitutional."

Tribe immediately came under fire from his Harvard Law school colleagues Jody Freeman and Richard Lazarus. The Freeman/Lazarus op-ed published on Harvard Law Today the day after Tribe's testimony began a cyber sparring between the professors that lasted the remainder of the month.

The following is a timeline that provides links to the Tribe's testimony and the op-eds issued by both sides.

- March 17, [Prof. Larry Tribe testified](#) to the House Committee on Energy and Commerce's Subcommittee on Energy and Power arguing that the Clean Power Plan is unconstitutional.
- March 18, Jody Freeman and Richard Lazarus respond in op-ed, titled "[Is the President's Climate Plan Unconstitutional?](#)"
- March 20 op-ed from Prof. Tribe titled "[Why EPA's Climate Plan Is Unconstitutional](#)"
- March 21 op-ed from Profs. Freeman and Lazarus: "[A rebuttal to Tribe's reply](#)"
- March 22 [further reply from Prof. Tribe](#)
- March 27 [follow up from Profs. Freeman and Lazarus](#)
- March 29 [final rebuttal from Prof. Tribe.](#)