

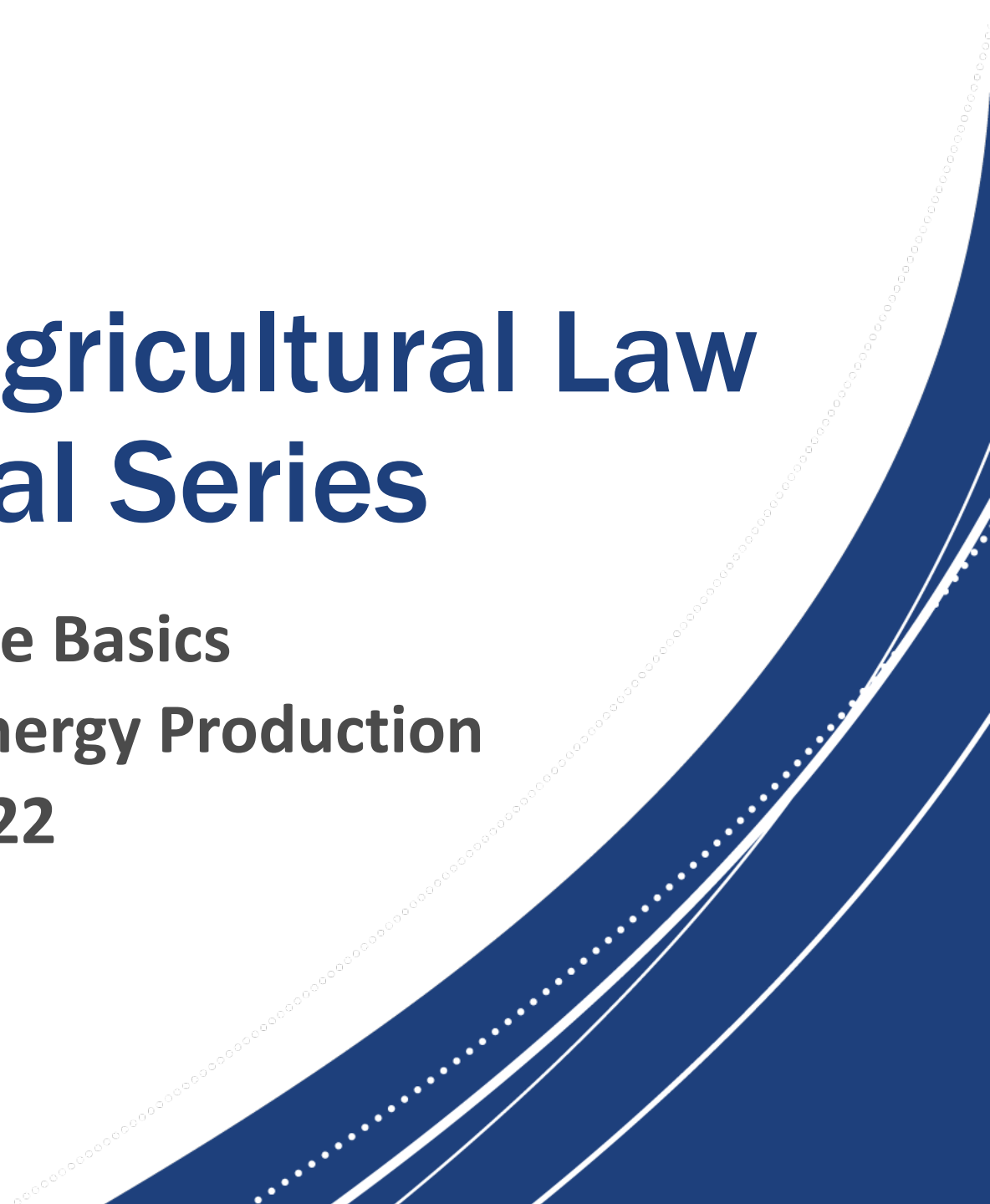


PennState Law

Center for Agricultural
and Shale Law

Understanding Agricultural Law Educational Series

**Understanding the Basics
of Leasing Farmland for Energy Production
May 20, 2022**





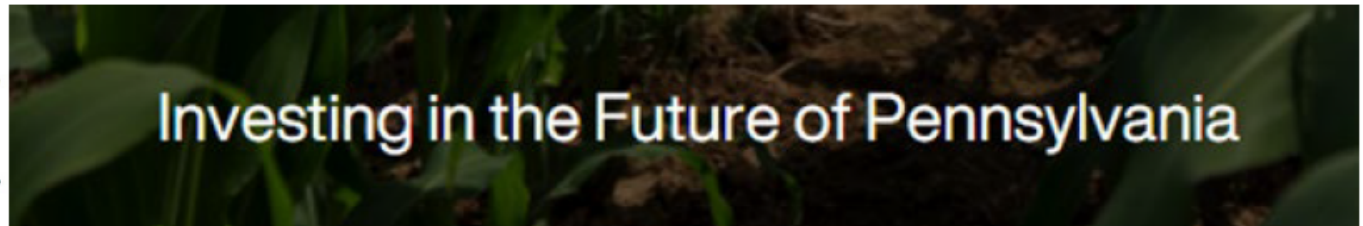
Understanding Agricultural Law

A Legal Educational Series for General Practice Attorneys and Business Advisors Representing Agricultural and Rural Clients

This webinar series is specifically tailored to creating subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.



Understanding Agricultural Law Webinar Series



Established as part of the 2019 Pennsylvania Farm Bill, the [Agricultural Business Development Center](#) supports [Farm Transitions](#), linking farmers to the next phase of their life and their farm's future; [Beginning Farmers](#), providing advice and counsel to the next generation of agricultural producers; [Risk Management](#), providing information on crop insurance and other opportunities for risk management; and [Financial Assistance](#), connecting farmers with low-interest loan options and reimbursable grant programs. This initiative seeks to build the "ag literacy" and competency of the existing network of legal, engineering, accounting, and other disciplines of business advisors available to farmers.



Understanding Agricultural Law Webinar Series

April 29, 2022, 12 noon – 1 pm ET.

Understanding the Basics of Agricultural Labor Laws – Every area of labor and employment law seems to have its own unique rules for agricultural workers. Learn about them in one webinar session that better prepares you to advise your clients competently about what they need to know. Increase your understanding of the Fair Labor Standards Act, OSHA, child, migrant and seasonal labor laws, the H-2A program, and much more.

May 20, 2022, 12 noon – 1 pm ET.

Understanding the Basics of Leasing Farmland for Energy Development - The present and future will see many agricultural/rural landowners faced with tough decisions about land use and income opportunities presented by energy transitions. Gain an understanding of the ins and outs of leasing for gas and solar development to better serve current clients and build your skill set to take advantage of a growing market for professional advice in this area.

June 24, 2022, 12 noon – 1 pm ET.

Understanding the Basics of Local Land Use Regulation of Agriculture – To properly represent agricultural clients in land use regulation matters requires more specialized knowledge every year about ag structures and operations and the soil, stormwater and nutrient management requirements that apply. There are also some unique laws in Pennsylvania protective of agricultural uses, the understanding of which can make you invaluable to your clients.



Center for Agricultural and Shale Law

<https://aglaw.psu.edu>

- Agricultural Law Weekly Review
- Shale Law Weekly Review
- Agricultural Law Virtual Resource Rooms
- Shale Law Virtual Resource Rooms
- Agricultural Law Issue Tracker
- Shale Law Issue Tracker
- Agricultural Law Podcast
- Social Media
 - Twitter, Facebook, LinkedIn
- Presentations
- PA Ag Mediation Program



Our Website



The screenshot shows the website for the Center for Agricultural and Shale Law. The browser address bar displays `aglaw.psu.edu`. The website header includes the PennState Law logo, the center's name, a "SUBSCRIBE FOR UPDATES" button, and a search bar. The navigation menu contains links for HOME, ABOUT THE CENTER, EVENTS, PUBLICATIONS, RESEARCH BY TOPIC, WATCH OR LISTEN, MEDIATION, and LEGAL CLINIC. The main content area features a large image of a golden field with a path leading into the distance, overlaid with the text "Welcome to the Center for Agricultural and Shale Law". Below this, there are sections for "Agricultural Law Weekly Review" with sub-sections for "Week Ending April 16, 2021" and "Week Ending April 9, 2021". The "Week Ending April 16, 2021" section includes a paragraph about COVID-19's impact on the Farmer to Families Food Box Program and a "Read More" link. The "Week Ending April 9, 2021" section includes a paragraph about an antitrust settlement in a peanut class action suit. On the right side of the page, there is a "Tweets by @AgShaleLaw" section showing two tweets with links to related news articles. At the bottom right, there is a Facebook widget for the "Penn State Center for Agricultural and Shale Law" with 163 likes and a "Send Message" button.



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PENNSYLVANIA RIGHT TO FARM ACT

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STATUTES AND REGULATIONS

CASE LAW

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Case Law

The following resources represent a collection of court filings and judicial opinions regarding the Pennsylvania Right to Farm Act. Furthermore, the decisions may be viewed via an online legal database using the mentioned docket number.

This list of cases is not exhaustive.

Branton v. Nicholas Meat, LLC

Superior Court of Pennsylvania, No. 536 MDA 2016

- **Opinion** (Apr. 4, 2017) (holding that RTFA's "lawful" requirement under § 954(a) is satisfied if an agricultural operation "substantially complies with relevant federal, state, and local laws." The court stated that "a lawful use is not rendered unlawful simply because an owner may have been cited for an infraction for noncompliance in connection with the use." Nevertheless, the court ruled that while the application and storage of food processing waste are normal agricultural operations under RTFA, the construction of a 2,400,000-gallon storage tank was a "substantial change" to the agricultural operation. As a result, because the suit was brought within one year of the change, the case was not barred under RTFA)

Burlingame v. Dagostin

Luzerne County Court of Common Pleas, No. 2015-02092



HOME » ISSUE TRACKERS » AGRICULTURAL LAW ISSUE TRACKERS

Agricultural Law Issue Trackers

Penn State Law's Center for Agricultural and Shale Law is making available a research tool – the Issue Tracker – aimed at simplifying the historical developments relevant to selected agricultural legal topics by documenting relevant federal and state legislative, regulatory and litigation/judicial proceedings in a reverse chronological timeline format. The Issue Tracker also supplements legal developments, as appropriate, with relevant actions and statements of stakeholders directly involved.



Agricultural Antitrust



Bioengineered Food Disclosure



Cell-Cultured Food Regulations



CERCLA / EPCRA Reporting



COVID-19

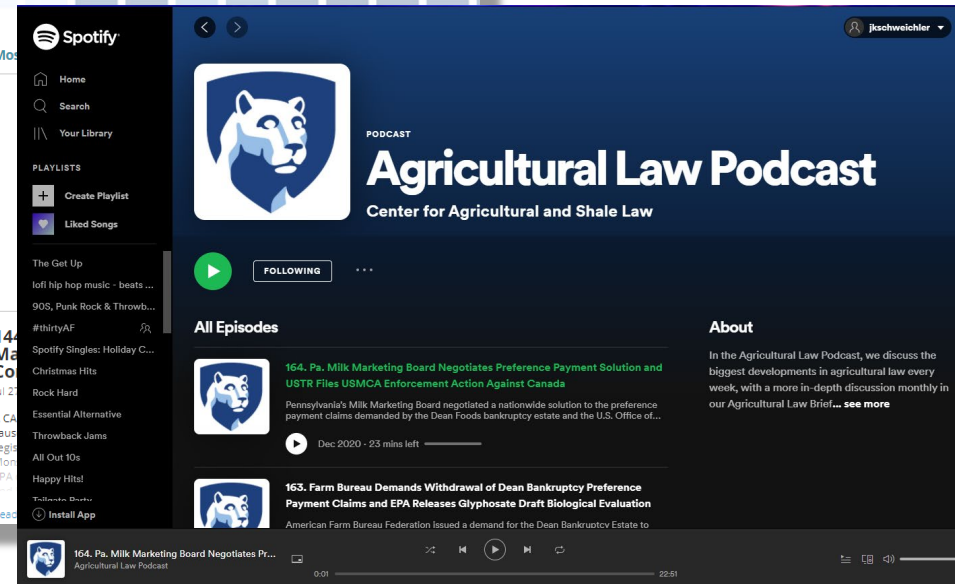
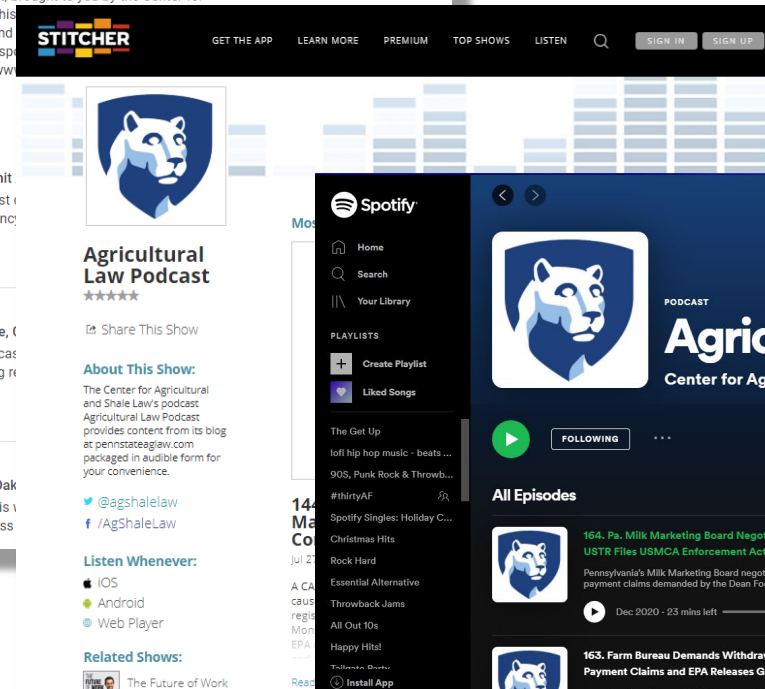
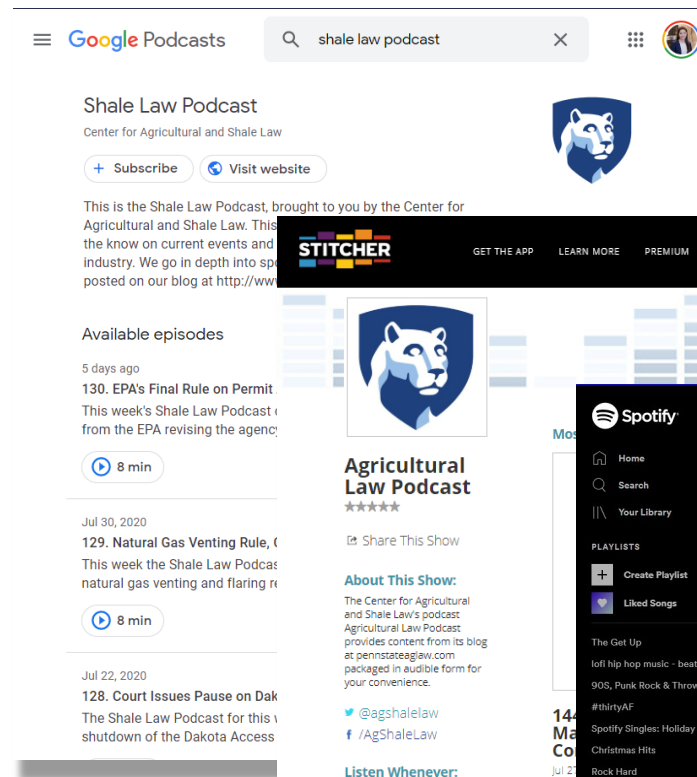


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Our Podcasts are also Available on:

- Apple Podcasts
- Spotify
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- Stitcher





Pennsylvania Agricultural Mediation Program

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Understanding Agricultural Law

- **This webinar will be recorded.**
- Use the Q&A feature for questions.
- CLE credits:
 - Link will be posted in the chat
 - Please fill out form
 - Listen for code word
 - Questions?
 - Email: jks251@psu.edu



Understanding the Basics of Leasing Farmland for Energy Development

May 20, 2022

Presenters: Ross Pifer and Brook Duer,
Center for Agricultural and Shale Law

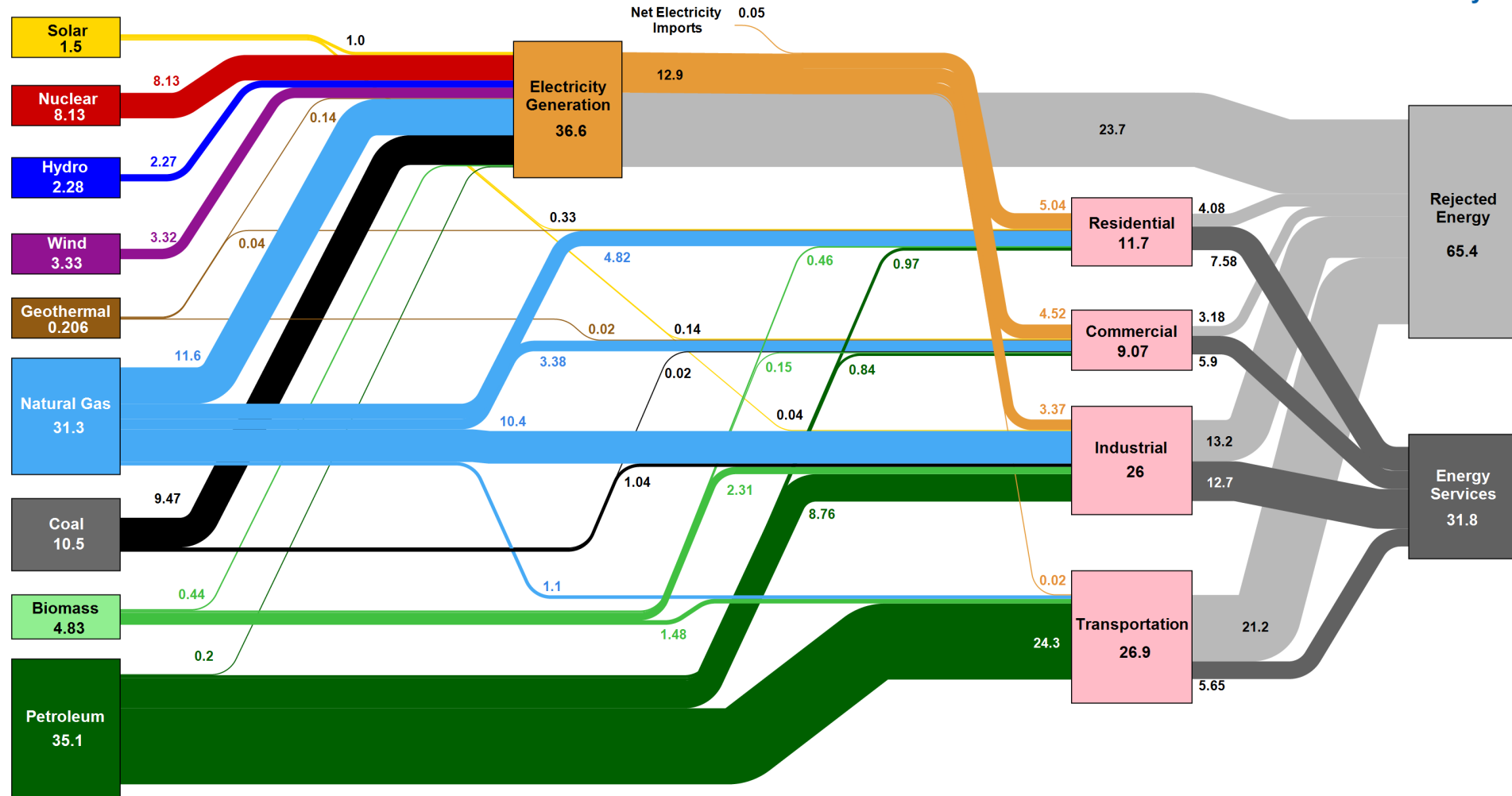


Overview of Today's Presentation

- Part I – Ross Pifer (approx. 15 minutes)
 - **Energy Law Generally**
 - **Natural Gas Leasing**
- Part II – Brook Duer (approx. 30 minutes)
 - **Solar Development**
 - **Wind Development**



Estimated U.S. Energy Consumption in 2021: 97.3 Quads



Source: LLNL March, 2022. Data is based on DOE/EIA MER (2021). If this information or a reproduction of it is used, credit must be given to the Lawrence Livermore National Laboratory and the Department of Energy, under whose auspices the work was performed. Distributed electricity represents only retail electricity sales and does not include self-generation. EIA reports consumption of renewable resources (i.e., hydro, wind, geothermal and solar) for electricity in BTU-equivalent values by assuming a typical fossil fuel plant heat rate. The efficiency of electricity production is calculated as the total retail electricity delivered divided by the primary energy input into electricity generation. End use efficiency is estimated as 65% for the residential sector, 65% for the commercial sector, 21% for the transportation sector and 49% for the industrial sector, which was updated in 2017 to reflect DOE's analysis of manufacturing. Totals may not equal sum of components due to independent rounding. LLNL-MI-410527



Energy Systems – Agricultural Role

- Production (Upstream)
 - Use of agricultural commodities
 - Use of agricultural by-products
 - Use of agricultural land
- Transportation / Transmission (Midstream)
- Distribution / Delivery (Downstream)
 - Consumption of fuel, electricity, inputs (fertilizer and pesticides)



eia Year-over-year summary

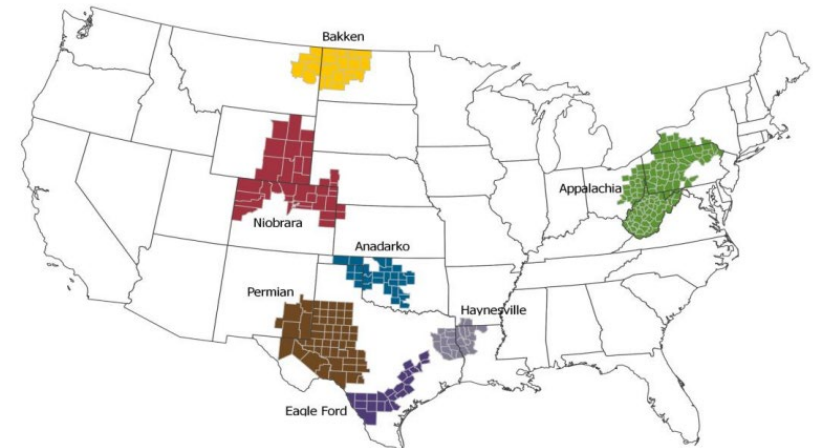
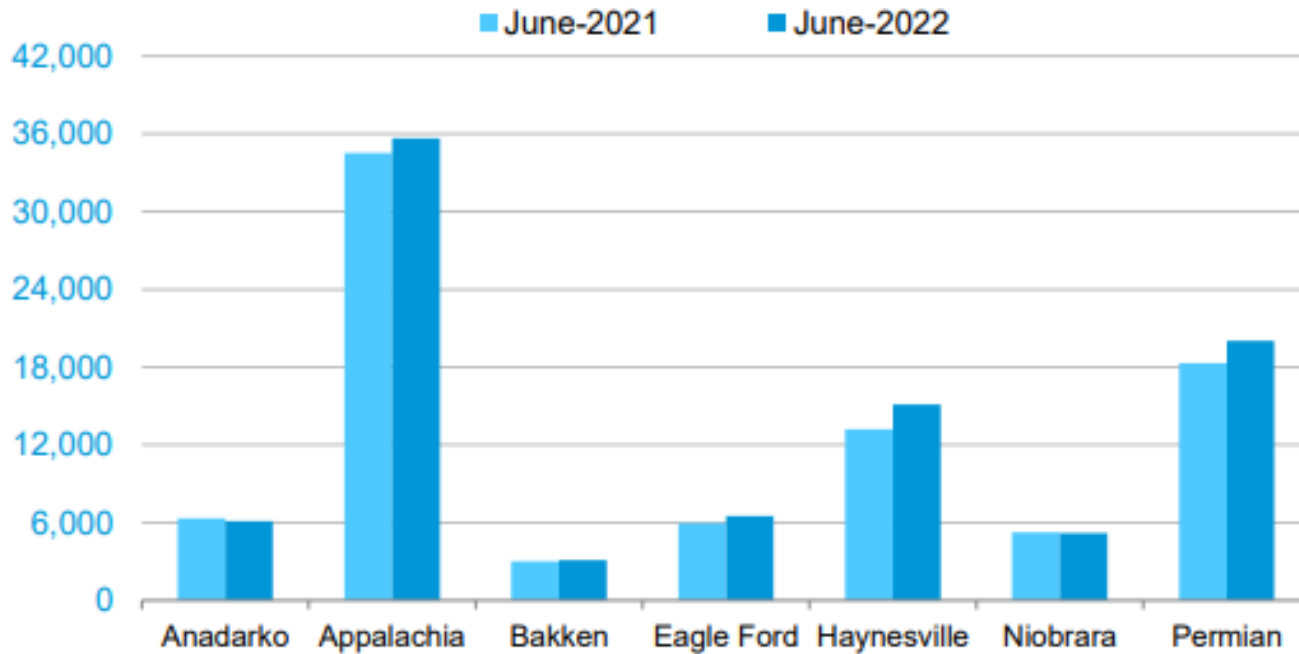
Drilling Productivity Report

May 2022

drilling data through April
projected production through June

Natural gas production

million cubic feet/day



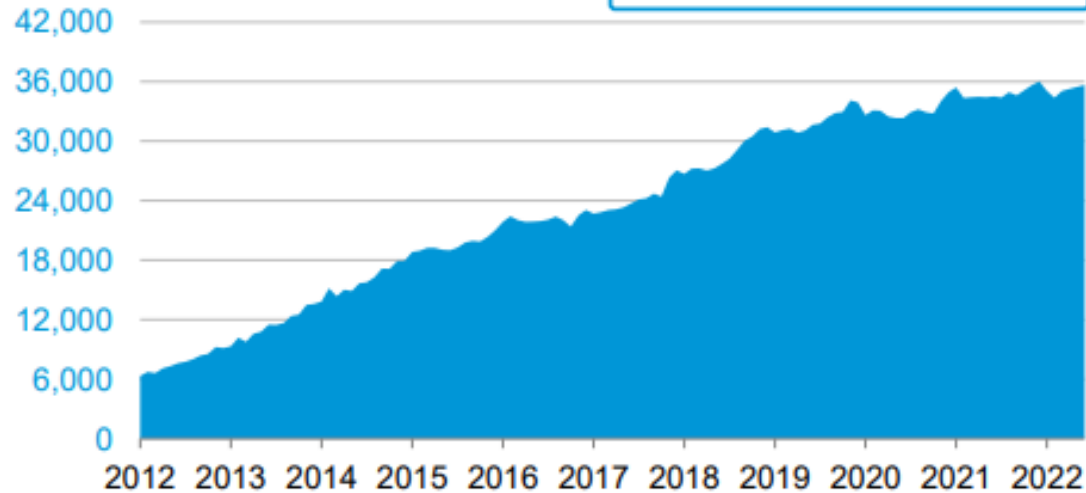


eia Appalachia Region Drilling Productivity Report

May 2022

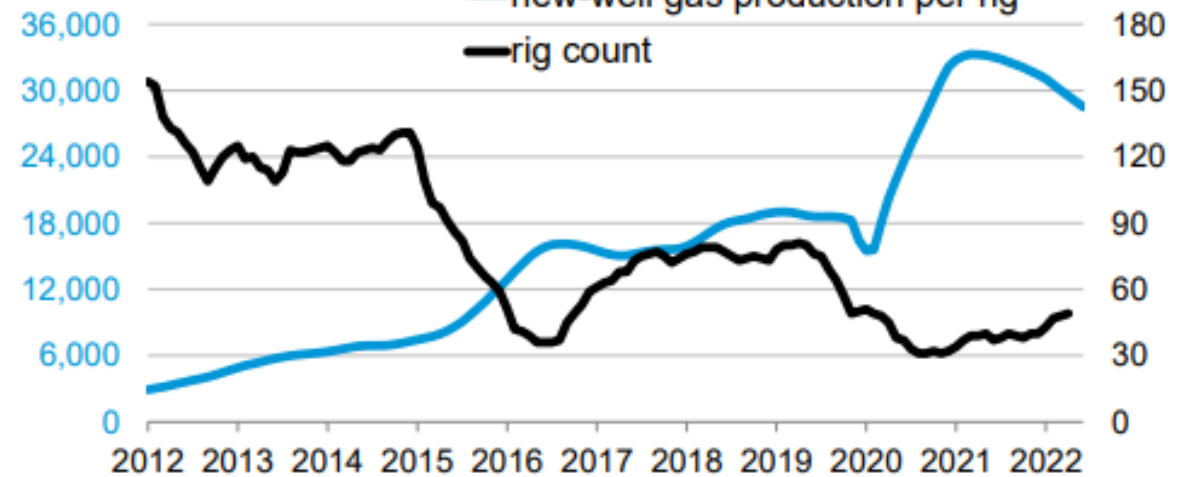
drilling data through April
projected production through June

**Appalachia Region
Natural gas production**
million cubic feet/day



Gas +194 ↑
million cubic feet/day
month over month

**Appalachia Region
New-well gas production per rig**
thousand cubic feet/day



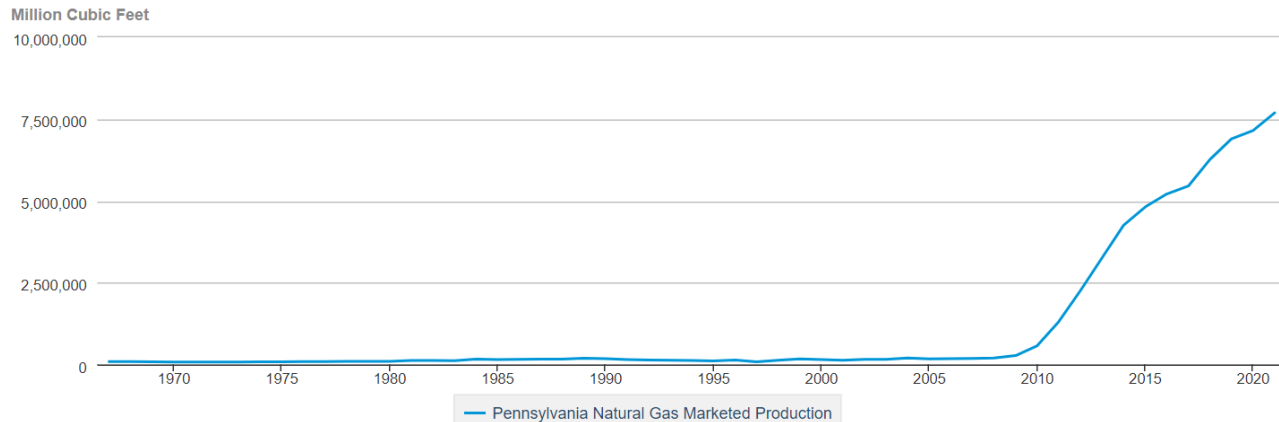


Pennsylvania Natural Gas Marketed Production (Million Cubic Feet)

Decade	Year-0	Year-1	Year-2	Year-3	Year-4	Year-5	Year-6	Year-7	Year-8	Year-9
1960's								89,966	87,987	79,134
1970's	76,841	76,451	73,958	78,514	82,637	84,676	89,386	91,717	97,763	96,313
1980's	97,439	122,454	121,111	118,372	166,342	150,234	159,889	163,318	167,089	191,774
1990's	177,609	152,500	138,675	132,130	120,506	111,000	135,000	80,000	130,317	174,701
2000's	150,000	130,853	157,800	159,827	197,217	168,501	175,950	182,277	198,295	273,869
2010's	572,902	1,310,592	2,256,696	3,259,042	4,257,693	4,812,983	5,210,209	5,453,638	6,264,832	6,896,792
2020's	7,148,295	7,692,658								

Pennsylvania Natural Gas Marketed Production

[DOWNLOAD](#)



Source: U.S. Energy Information Administration



Natural Gas Leasing – Key Questions/Issues

- Lease formation
- **Is this lease still valid?**
- **Rights to use the surface estate**
 - **competing priority among various right holders**
- Royalties
 - Appropriate deductions



Habendum Clause

- Specifies duration of lease
- Example – “This lease is valid for 5 years and so long thereafter as oil or gas is produced from the property.”
- **Primary term** – “This lease is valid for 5 years . . .”
- **Secondary term** – “. . . and so long thereafter as oil or gas is produced from the property.”



What's Keeping this Lease in Effect?

- During the Primary Term:
 - Proper payment of delay rental payments
 - Possible extension of primary term
- During the Secondary Term:
 - Actual production (capability of production in some jurisdictions)
 - Substitute for production
 - Provided by lease terms
 - Provided by common law doctrine



What's Keeping this Lease in Effect?

- Substitutes for Production:
 - Shut-in royalties
 - Temporary cessation of production
 - Operations / Dry hole clause(s)
 - Force majeure
 - Pooling



Lease Validity – Pennsylvania Legislation

- Recording of Surrender Documents from Oil and Natural Gas Lease Act – 58 P.S. §§ 901-905 (Act 152 of 2014)
 - Imposes obligation on lessee to record surrender document
 - Provides process for lessor to record an affidavit of termination, expiration or cancellation
- Temporary Cessation of Oil and Gas Wells – 72 P.S. § 1610-E (Act 44 of 2017)
 - Temporary cessation exists when landowner accepts royalty or fails to object to drilling of new well within 90 days after notice provided



Right to Surface Estate

- *Belden & Blake v. DCNR*, 600 Pa. 559 (2009)
 - Surface estate owned by state; mineral rights owned privately.
 - Belden had right to extract oil and gas within Oil Creek State Park.
 - DCNR would not permit surface access without coordination agreement.
 - Belden filed suit, claiming implied easement to use surface estate.



***Belden & Blake v. DCNR* (Pa. 2009)**

- **Subsurface estate is dominant over surface estate.**
 - *Chartiers Block Coal Co. v. Mellon* (Pa. 1893).
- **Subsurface estate owner entitled to reasonable use of surface estate.**
- Burden is on surface estate owner to challenge reasonableness of use.
- Government holds no greater rights than private landowner re: surface use.



Right to Surface Estate

- Consider interplay between/among:
 - Oil and gas lease
 - Agricultural lease
 - Solar lease
 - Pipeline right of way
 - Other granted easements
 - Future development plans



Understanding Agricultural Law

- Code word - Energy