



Issue 22, 2019

● [Environmental Groups Accuse Multiple Mining Sites of Violating Federal Regulations](#)

"Allegations of 'egregious' violations of the federal Clean Water Act and the Surface Mining Control and Reclamation Act could be included in forthcoming lawsuits against operators of more than a dozen facilities in West Virginia and other states."

Why this is important: Environmental groups, including the Sierra Club, have sent 60-day notices of intent to sue to dozens of mines, preparation plants, power plants, and chloride plants in West Virginia and other coal states, alleging Clean Water Act and Surface Mining Control and Reclamation Act violations. Notices were also sent to the West Virginia Department of Environmental Protection and the U.S. Environmental Protection Agency. The companies and agencies have 60 days to come into compliance. The Sierra Club was joined by five environmental groups--the WV Highlands Conservancy, WVA Rivers Coalitions, Ohio Valley Environmental Coalition and Appalachian Voices--in sending the notices of intent to sue. --- [Mark E. Heath](#)

● [Court Rules with Antero, but Doesn't Set New Standards for Gas Drilling](#)

"The West Virginia Supreme Court sided with Antero Resources in a case brought by Harrison County landowners, but it did not fully close off the ability of residents to use the courts to limit the effects of West Virginia's growing natural gas industry."

Why this is important: The Supreme Court of Appeals of West Virginia's decision in *Andrews v. Antero* involves the interplay between the rights of the dominant mineral estate and the subservient surface estate in the horizontal drilling era. Citing precedent, the Court held that before a surface estate holder is entitled to assert a nuisance claim against the mineral estate for horizontal drilling activities, the surface estate has the burden to demonstrate that (1) the mineral estate's activities were not reasonably necessary to develop the mineral estate and (2) such activities substantially burdened the surface estate. The yardstick for measuring whether activities substantially burdened the surface estate is destruction of the surface. West Virginia case law has long established inconvenience to a surface estate is not enough to eclipse the dominant mineral estate's implied development rights. The decision does not create new law and is accompanied by a dissenting opinion. Nonetheless, it sets a very high bar for surface owners to assert nuisance claims related to development of the underlying mineral estate. --- [Matthew P. Heiskell](#)

● [Consumers to Pay One More Time for Mitchell Power Station Transfer](#)

"Rates for electricity are scheduled to go up one more time next year in connection with the transfer of ownership involving the Mitchell Power Station in Moundsville."

Why this is important: Once again, American Electric Power is seeking from the Public Service Commission an electric rate increase for its captive customers in West Virginia, this time related to Wheeling Power Company's acquisition of a share of the Mitchell Power plant in a prior proceeding. Although this rate increase as proposed is relatively small at about 1.5 percent, it comes on the heels of multiple rate increases over the past several years that have nearly doubled the rates West Virginia customers pay to AEP, including manufacturing and industrial customers. Most recently, AEP's rates increased by nearly \$45

million earlier this year. In addition, the article notes the proposed rate increase seeks to comport with a prior settlement regarding the Mitchell plant, but that settlement did not specify how such costs were to be recovered. Accordingly, AEP's proposal in this case to utilize an existing "Construction Surcharge" for the rate increase is questionable, and it may also raise concerns regarding more recent rate change settlements that preclude certain rate changes until July 2020 at the earliest. The current AEP proposal is for new rates to be effective in January 2020. The case will be litigated before and decided by the PSC. --- [Derrick Price Williamson](#)

● [US DOE Invests \\$39 Million to Improve Existing Coal-Fired Fleet](#)

"The US Department of Energy's Office of Fossil Energy has selected 17 projects to receive approximately \$39 million in federal funding for cost-shared research and development under the funding opportunity announcement: 'Improving Efficiency, Reliability, and Flexibility of Existing Coal-Based Power Plants'."

Why this is important: The U.S. Department of Energy has announced it will spend \$39 million to improve the coal-fired electrical generation fleet. The goal is to fund projects that would improve the heat rate of coal-fired electric generation plants by at least 5 percent from the 2017 average of 31 percent. Increasing heat rates would help make these electrical plants more competitive in today's electric market. --- [Mark E. Heath](#)

● [Demand for Natural Gas to Grow in Next Five Years](#)

"After another record year, global demand for natural gas is set to keep growing over the next five years, driven by strong consumption in fast-growing Asian economies and supported by the continued development of the international gas trade."

Why this is important: As indicated in several prior editions of *Currents*, the global market is central to the continued development of our nation's cheap shale gas reserves. In order to establish the U.S.'s dominant role in this market, federal and state governments must partner in efforts to promote the permitting and construction of LNG export terminals. Such efforts should focus on new facilities on the Atlantic and Pacific seaboards due to their proximity to valuable import markets in Europe and Asia. --- [William M. Herlihy](#)

● [Almost All U.S. Coal Production Consumed for Electric Power](#)

"In 2018, of the more than 755 million short tons of coal produced in the United States, the electric power sector consumed 636 million short tons."

Why this is important: The U.S. produced 755 million tons of coal last year. The vast majority--636 million tons--was used for electric generation. Industrial customers used 50 million short tons and the remaining 115 million short tons were exported. The U.S. began exporting coal in 1949 and exports continue to grow in importance as coal-fired electric generation plants in the U.S. have closed. --- [Mark E. Heath](#)

● [China's May Coal Imports Climb 8.6 Percent from Month Before](#)

"China's May coal imports rose 8.6% from the month before to 27.47 million tonnes, customs data showed, the highest level since January as power utilities boosted purchases ahead of summer."

Why this is important: Chinese coal imports rose 8.6 percent to 27.47 million tons last month. That amount is the highest import total by the world's largest coal user since January 2019, when the country imported 33.5 million tons. The increase could help a weak thermal export market. Steam coal prices have been depressed due to weak European demand and excess supply. -- [Mark E. Heath](#)

● [EIA Energy Statistics](#)

Here is a round-up of the latest statistics concerning the energy industry.

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Natural Gas Weekly Update

Natural Gas Futures Prices

COAL

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