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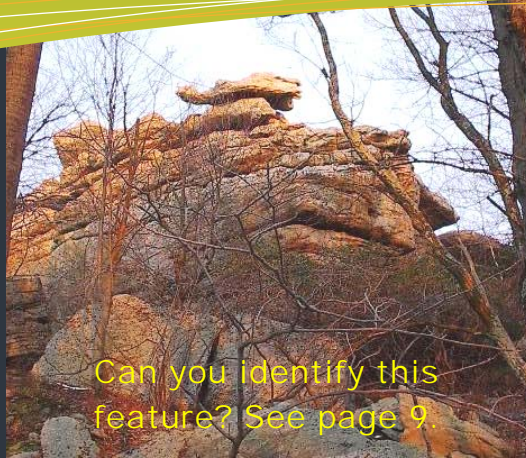
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Can you identify this
feature? See page 9.

this issue

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Message from the President

ON THE AGENDA FOR 2010

In January, PCPG's Board of Directors completed the Strategic Planning process we began last November by agreeing on a meaningful direction for the organization. We articulated our ideas in our revised Vision and Mission statements:

Vision: The premier organization for the advancement of the ethical and professional practice of geology and allied sciences.

Mission: We advance the practice of geology and allied science and the success of our members through advocacy, education and networking.

Note that PCPG is not solely for professional geologists. We recognized that PGs don't work in a vacuum. We collaborate with skilled and experienced allied environmental professionals to deliver successful projects. Implicit in our mission statement is the fact that a successful member can be a corporate or an individual member.

With the requirements for CEUs beginning with the 2011 license renewal cycle, it's easy to see that many courses that are required for the PG are also good for the professional development of the environmental professional. Developing courses that folks want takes time and we are ramping up this year in anticipation. In the works are plans or proposals for at least 17 courses, seminars and associated networking events, the most we have offered in any one year. Watch for a list of offerings after April 1st and a preview of some upcoming courses is provided on Page ____.

Gone from the 2010 agenda are Board meetings as you may have come to know them. Through the strategic planning process, it became obvious that we were trying to pack too much into our meetings; PCPG business, information for the membership and after meeting networking. Instead we will hold three meetings, including our annual meeting which will be moved from December to January.

Continued on Page 9



Governmental Affairs Committee Tracks Key Legislation

- Donald R. Wagner, P.G. (Governmental Affairs Committee Chairperson)

As noted in our last newsletter, the Governmental Affairs Committee (“GAC”) is closely following two proposed DEP regulatory packages, one involves proposed revisions to 25 Pa Code Chapter 250 (the regulations implementing Pennsylvania’s Land Recycling and Environmental Remediation Standards Act, more popularly known as “Act 2”) and the other involves the proposed Uniform Environmental Covenants Act (“UECA”) regulations. Both proposed regulations were recently published in the *Pennsylvania Bulletin* for public comment. PCPG will be submitting comments on these regulatory packages **and encourages all members that are involved in cleanups under Chapter 245 (regulated storage tanks) or Chapter 250 (the Act 2 program) to review the proposed regulations and to submit their comments to the Environmental Quality Board (“EQB”) on the proposed regulatory packages.**

The proposed regulations were published in the March 6, 2010 issue of the *Pennsylvania Bulletin* and can be accessed via the Internet at:

Act 2 revisions: www.pabulletin.com/secure/data/vol40/40-10/432.html

UECA regulations: www.pabulletin.com/secure/data/vol40/40-10/433.html

A more readable format can be obtained by accessing an electronic copy of the March 6th PA Bulletin at www.pabulletin.com/secure/data/vol40/40-10/40-10.pdf (the proposed rulemakings are at pages 1297 through 1386 and the Act 2 revisions are much more readable in the PDF).

Comments on the proposed regulations should be submitted to the EQB by U.S. Mail (EQB, P.O. Box 8477, Harrisburg, PA 17105-8477), electronically to RegComments@state.pa.us or otherwise delivered to the EQB at the Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301. ***The public comment period for both regulatory packages ends on April 5, 2010.***

While PCPG supports both regulatory packages, there are two important issues that PCPG believes need to be revised before these regulations are published in final form...the DEP’s arbitrary treatment of methyl tert butyl ether (“MTBE”) in groundwater and the timing on submittal of draft environmental covenants.

MTBE Standard

The proposed Act 2 revisions include several changes to the Medium Specific Concentration (“MSC”) tables, predominantly driven by a change in the U.S. EPA’s Risk Assessment Guidance for Superfund (“RAGS”). One very important concern, however, is the DEP’s proposed arbitrary derivation of the groundwater MSCs for MTBE. At the September 1, 2009 Cleanup Standards Scientific Advisory Board (“CSSAB”) meeting, the DEP circulated proposed changes to the MSCs that were calculated based on human health risk factors in accordance with the equations set forth in Act 2, without regard to aesthetic considerations such as taste or odor thresholds. The proposed groundwater MSCs for MTBE presented at that meeting were 190 µg/L (residential) and 960 µg/L (non-residential).

The DEP subsequently deleted the risk-based groundwater MSCs for MTBE and kept the MTBE MSC at 20 µg/L for both residential and non-residential used aquifers. The current MSC for MTBE is based on conservative factors because, at the time of its initial inclusion on the MSC tables, the DEP and the CSSAB believed there were insufficient toxicological data available to generate a risk-based number in the manner specified by Act 2 and its implementing regulations. PCPG understands that the DEP’s proposal to keep the

(continued on Page 4)



EPA Announces 2011 - 2013 Enforcement Initiatives

-- From the EPA Website.

On February 22, 2010, EPA announced new enforcement goals and the National Enforcement Initiatives for fiscal years 2011 - 2013. Note that the "National Enforcement Priorities" were renamed "National Enforcement Initiatives" in response to stakeholder feedback that the term "National Priorities" implied that EPA's many other enforcement activities were of lesser significance programmatically or environmentally. This is not the case.

During the 2011 - 2013 fiscal years, EPA will use National Enforcement Initiatives to address the following six environmental and public health problems:

- Keeping raw sewage and contaminated stormwater out of our nation's waters;
- Preventing animal waste from contaminating surface and ground waters;
- Cutting Toxic Air Pollution that Affects Communities' Health;
- Reducing Widespread Air Pollution from the Largest Sources, especially the Coal-Fired Utility, Cement, Glass, and Acid Sectors;
- Reducing pollution from mineral processing operations; and
- Assuring energy extraction sector compliance with environmental laws

More information about the EPA's National Enforcement Initiatives can be found on the EPA's website at the following link: <http://www.epa.gov/compliance/data/planning/initiatives/index.html>

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Governmental Affairs Committee Report

(CONTINUED FROM PAGE 2)

MTBE MSC at 20 µg/L is based solely on the EPA's odor threshold. By so doing, the DEP is disregarding the specific intent embodied in Act 2 to calculate risk-based cleanup standards protective of human health and the environment based on sound science. Under Act 2, the hierarchy for establishing an MSC is as follows: (i) use the EPA Maximum Contaminant Level ("MCL") if one exists; (ii) in the absence of an MCL, use the EPA's lifetime Health Advisory Level ("HAL"), if one exists; (iii) in the absence of an MCL or lifetime HAL, calculate the MSC using the risk-based equations set forth in the regulations. Since MTBE does not have an MSC or lifetime HAL, calculations using risk-based equations indicate MTBE MSCs of 190 µg/L (residential) and 960 µg/L (non-residential) as originally proposed by the DEP in September 2009.

The CSSAB unanimously opposed the arbitrary treatment of MTBE by the DEP, noting that many other regulated substances have taste and odor thresholds well below their current MSCs. Despite the CSSAB's objection, the DEP kept the MTBE MSC at 20 µg/L in the recently published draft regulations. PCPG supports the CSSAB's position in objecting to the arbitrary establishment of an MSC for any regulated substance. We urge our membership to submit comments to the EQB voicing opposition to the DEP's proposed use of aesthetic considerations to establish an MSC, since aesthetic considerations are not health-based criteria as required by Act 2. PCPG views the arbitrary treatment of MTBE as a real threat to the credibility and integrity of the Act 2 program. To disregard the legislative mandate for calculating MSCs and to arbitrarily select a standard based on any criteria other than those criteria specifically set forth in Act 2 creates a dangerous precedent and subjugates objective science to the whim of personal, poorly-defined and subjective criteria.

Timing of Draft Environmental Covenant Submittals

As with the proposed Act 2 revisions, PCPG supports the proposed UECA regulations. However, as mentioned in PCPG's 4th Quarter Newsletter, we are concerned with the proposed timing of draft environmental covenant ("EC") submittals to the DEP for review. For site-specific cleanups, the proposed regulations would require the submittal of a draft EC at the Cleanup Plan or Remedial Action Plan ("RAP") stage. At our 4th Quarter Annual Meeting, many PCPG members in attendance expressed concern with this timetable, noting that (i) the ultimate requirements for the EC will not be known until the remediation is completed, i.e., at the Final Report or Remedial Action Completion Report ("RACR") stage; (ii) the DEP case manager will not have the information required to properly evaluate the draft EC until the Final Report or RACR is prepared; (iii) often, conditions change between the RAP/ Cleanup Plan stage and the Final Report or RACR submittal; and (iv) negotiating and drafting an EC takes time and money, and requiring it at the Cleanup Plan/RAP stage will result in duplicative work because it will likely need to be revised based on the remedial outcome.

Given that the Cleanup Plan/RAP is a conceptual approach to remediation, the PCPG believes it would save limited DEP resources and improve efficiency to require that the remediator identify whether they intend to rely on any activity and/or use limitations to achieve the selected remediation standard in the Cleanup Plan/RAP. If so, they then must identify the properties that will require an EC and clearly indicate what activity and use limitations are proposed to achieve the selected standard. It would also be appropriate to advise the DEP at this stage whether a waiver of the requirement for an EC will be requested and the basis for the waiver request. In so doing, the remediator is providing the DEP with the conceptual approach to the remediation, without wasting time drafting, negotiating and reviewing an EC that will most likely need to be revisited when the remediation is completed.

(continued on Page 12)



UPCOMING EVENTS

March 23, 2010

**USTIF 101: A Tank Owner's
Guide to the USTIF Program**
Malvern, PA

March 31, 2010

**Act 2 Tool Kit:
Fate & Transport Modeling**
Malvern, PA

April 19 - 21, 2010

**Business of
Brownfields Conference**
(sponsored by the Engineers'
Society of Western PA)
Pittsburgh, PA
www.eswp.com/brownfields

May 5 – 6, 2010

**Pennsylvania Water
Symposium**
**Groundwater & Surface
Water: A Single Resource**
State College, PA
<http://agsci.psu.edu/pa-water-symposium>

May 20, 2010

**2nd Quarter
PCPG Board Meeting**
Middletown, PA

May 23 – 25, 2010

The 46th Forum
Geology of Industrial Minerals
Middletown, PA
www.46thindustrialminerals.org

September 16, 2010

**3rd Quarter
PCPG Board Meeting**
Middletown, PA

Don't forget to check the
"Continuing Education" link
on PCPG's [home page](#)
frequently for up to date
information on upcoming
educational opportunities.

DEP Provides Comment Overview for Proposed Stormwater Regulation Amendments

- *Louis F. Vittorio, P.G.*

PCPG was recently invited to meet with John Hines (Deputy Secretary, Water Management) and Glenn Rider (Director of Watershed Management) concerning the public comments that DEP received in November 2009 for the proposed amendments to 25 PA Code Chapter 102 (Erosion and Sediment Control and Stormwater Management). A link to the regulations and the comments previously provided to DEP by PCPG were included in our 4th Quarter 2009 Newsletter.

DEP was tasked with going through over 1300 comments received from citizens, environmental groups, academia, industry and various government groups, and providing a course of action for the proposed Chapter 102 amendments. During our meeting on February 16, 2010, the DEP outlined their proposed changes to the draft regulations, including:

- 1) Deletion of the Permit-by-Rule Provisions;
- 2) Riparian Buffers - Additional protections for High Quality waters and inclusion of waiver and variance options;
- 3) PCSM Requirements – Clarification of performance standards and long term O&M;
- 4) Incorporation of Federal Requirements – regarding small construction and timber sites;
- 5) Program Fees - Overall increase, but tiered based on project size; and
- 6) Agricultural Requirements - Animal heavy use area E&S provisions.

A detailed summary of the changes and the proposed regulation modifications can be found on the DEP's [Water Resources Advisory Committee website](#).

During our meeting, PCPG again stressed the importance of hydrogeological site characterization, especially in light of recent EHB rulings and the scrutiny received on projects within HQ and EV watersheds. Although this is not part of the current regulation, PCPG will continue to work with DEP and propose incorporation of hydrogeological site characterization within policy documents and within forthcoming revisions to the BMP manual.

PCPG again encourages our members to read the proposed regulations, as they will impact the timing and cost of project approvals for site development and/or expansion. DEP anticipates submitting the final regulations to the Environmental Quality Board by mid June, followed by a final comment period with regulation enactment expected by late summer or fall of 2010.

If you have any question regarding PCPG's recent meeting with the DEP or if you would like to be involved in the regulatory interface process, please contact me directly, via email ([Louis Vittorio e-mail](#)).



MFS, Inc., v. DeLazara, et al

- Don Wagner, P.G.

As many of our readers may already know, on March 4, 2010, a federal jury awarded \$6.5 million in damages to MFS, Inc. in a lawsuit it had brought against four employees of the Northeast Regional Office of Pennsylvania's Department of Environmental Protection (DEP) for alleged violations of the company's constitutional rights (*MFS, Inc. v. DiLazaro, E.D. Pa., No. 08-cv-2508, 3/4/2010*). In its complaint, MFS contended that the DEP personnel acted outside the scope of their employment, violating its constitutional rights of free speech and due process by improperly enforcing environmental laws.

In the days following the verdict, the Internet has been buzzing with commentary on the potential fall-out from the verdict. Obviously, DEP is concerned by the verdict and has indicated it will try to have it thrown out. The current DEP Secretary, John Hanger, has also publicly indicated that if the verdict is upheld, the state will pay the costs the jury awarded against the individual defendants.

Some commentators and journalists have expressed fears that the jury verdict will have a chilling effect on DEP staff, that fear of a similar lawsuit will cause DEP officials and personnel to be reluctant to initiate enforcement actions against companies or individuals that violate environmental laws and may undermine the DEP's ability to effectively enforce the Commonwealth's environmental laws and regulations. From my brief review of the comments posted online in response to one article published in a Philadelphia newspaper, it seems that many of the commentators supported the verdict and shared a common theme, objecting to what could be generalized as overzealous regulators that pursue personal vendettas against individuals or corporations.

In my roughly 23 years of experience as an environmental professional (first as an environmental consultant and now as an attorney who concentrates his practice on environmental law), I have found that the vast majority of DEP officials and staff that I have had the pleasure of working with are genuinely concerned with doing the right thing — of conscientiously, professionally and ethically executing their responsibilities within the DEP. I have unfortunately experienced a rare occasion where it seemed to me that the individual regulator was a bit overzealous, causing me to question whether there were personal motives behind that person's actions. Perhaps a bit more frequently, I have also experienced situations where the individual regulator was attempting to require an individual or corporation to take actions which arguably were not required by applicable laws or regulations, or instances where regional staff were placing additional requirements on a regulated entity that seemed to conflict with clear policies established by the Department's central office. But, as I have noted, such instances have always been the exception and not the rule.

Several people have asked whether I believe the verdict will materially adversely affect the DEP's ability to administer environmental laws and regulations or to initiate enforcement against individuals or corporations that have violated those laws; whether it will cause DEP personnel and officials to be hesitant to pursue environmental compliance. I don't think it will. Every court decision and jury verdict must be interpreted in light of, and is inherently limited by, the underlying facts presented in the case. Here, the actions complained of, at least with respect to some of the individual defendants, appear to be extraordinary circumstances. It seems to me, however, that a more likely outcome of the verdict will be that (i) regulated entities may be more likely to aggressively assert constitutional rights when faced with questionable enforcement actions that materially affect their business or property rights; (ii) DEP staff, officials and counsel may be more likely to pay more attention to establishing a record to justify enforcement actions; and (iii) at a minimum, I would expect that DEP officials and counsel may develop

(Continued on next page)



internal review mechanisms to evaluate the basis and review the appropriateness of agency enforcement actions, though that is certainly easier said than done in an era when the DEP has suffered workforce and budgetary cutbacks due to the economy.

To be fair, the regulated community has also suffered budget cutbacks and workforce reductions, creating an environment where both sides—the regulators and the regulated—are being asked to get more done with fewer people. From that perspective, perhaps the fallout from the MFS verdict may have some positive affect on improving the efficiency of the regulatory process.

(Note: Don Wagner is a licensed Professional Geologist in Pennsylvania and a licensed attorney, practicing with the law firm of Stevens & Lee, P.C. in Reading, Pennsylvania. He also serves on the PCPG Board of Directors and chairs our Governmental Affairs Committee)

CONGRATULATIONS to Kathy Horvath!!!

Kathy was the first person to correctly identify the image on Page 11 of the 4th Quarter 2009 PCPG Newsletter that did not belong. She will be receiving a prize from the PCPG Treasure Chest.

(FYI...the image that did not belong was that of Grover Emrich and retired State Representative Carole Rubley.)

Check out Page 9 of this Newsletter for another opportunity to win some PCPG swag.



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PCPG Member Survey Findings

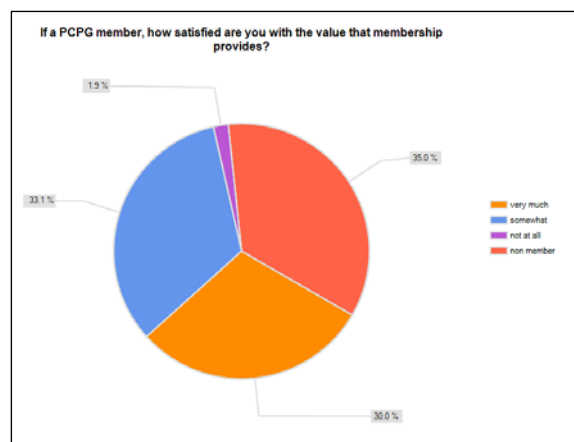
-Jim LaRegina, P.G.

A survey invitation was recently emailed to approximately 1,300 participants, including all PCPG members. A total of 166 folks responded, for a 13% return rate. It may not seem like a lot but it's a fairly typical return rate for these types of surveys. When we first ran a similar survey in 2006, the return rate was 30% based on 263 invitations. Note however, that in 2006 PCPG membership was limited to corporate, firm-level memberships only and not the current structure that includes both corporate and individual members.

The results of our recent online survey have given PCPG some useful information to better serve the needs of Pennsylvania's geologic and allied science community. The results tell us what we are doing well as an organization, where improvement is warranted and what new opportunities our members are (or aren't) pursuing. The survey had a total of 15 questions, and the responses to four of them with the most impact are discussed below. We plan to make this an annual survey as a report card on how we are doing as well as what we need to be doing for our members.

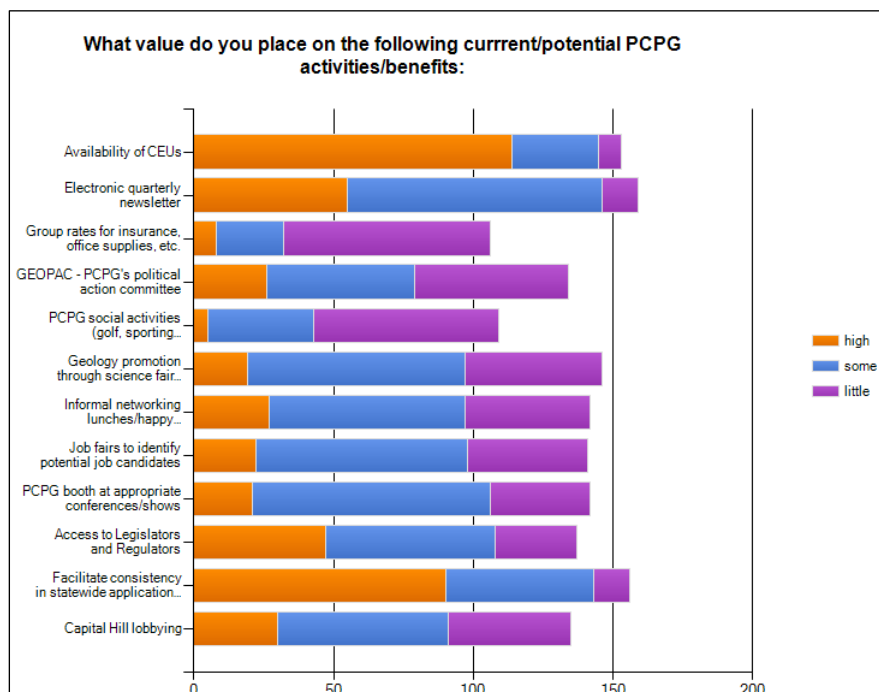
1. PCPG Value

As shown on the pie chart to the right, approximately one third of the 166 respondents were very satisfied with the value PCPG provides (orange); a second third was somewhat satisfied (blue); and only 2 percent (3 respondents) were not satisfied (pink). One third of the respondents were non-members. It is our goal to show an increase in satisfaction for the 2011 Survey, such that the largest majority of members are very satisfied with their membership. We believe member programs and activities planned for 2010 should help us reach that goal.



2. Where Does PCPG Value Lie

The following bar graph illustrates the number of respondents for the various PCPG activities/benefits included in the survey, and the color within each bar shows the value the respondents placed on each one. Of all the benefits that PCPG membership provides, the survey showed the two activities/benefits that are of highest value (orange) to members are PCPG's educational offerings that provide continuing education units (CEUs) and PCPG's position to facilitate consistency in the statewide application of regulations and policy.



Of all the benefits that PCPG membership provides, the survey showed the two activities/benefits that are of highest value (orange) to members are PCPG's educational offerings that provide continuing education units (CEUs) and PCPG's position to facilitate consistency in the statewide application of regulations and policy.

The graph shows that almost 70% of respondents valued CEUs. That compares to only 30% in 2006.

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MESSAGE FROM THE PRESIDENT (continued from Page 1)

Board members maintain momentum between meetings through standing monthly conference calls and energized committees. I invite our members to consider participate in one of four standing committees – Membership, Education, Governmental Affairs or Communications. Increasing network opportunities are also planned to be held both in conjunction with educational offerings and as stand-alone events across the state.

The most visible change will be a new website with enhanced capabilities including e-commerce, discussion forums and a blog. It will not only help provide more timely information, it will also enable PCPG to operate more efficiently. Look for the new website on April 1st.

Did I mention the Marcellus Shale?

Jim LaRegina, P.G.
President

Were you able to guess the image on Page 1? Well, neither was your editor. I found this very cool image entitled “Eagle Rock Rocks” in my image directory but cannot locate the source of the image or the exact location of this structure (did you know there are several Eagle Rocks in Pennsylvania?). The first person that can correctly identify the location of this structure and the source of the image will win a prize from the PCPG Treasure Chest. Please [email me](#) with the correct information.

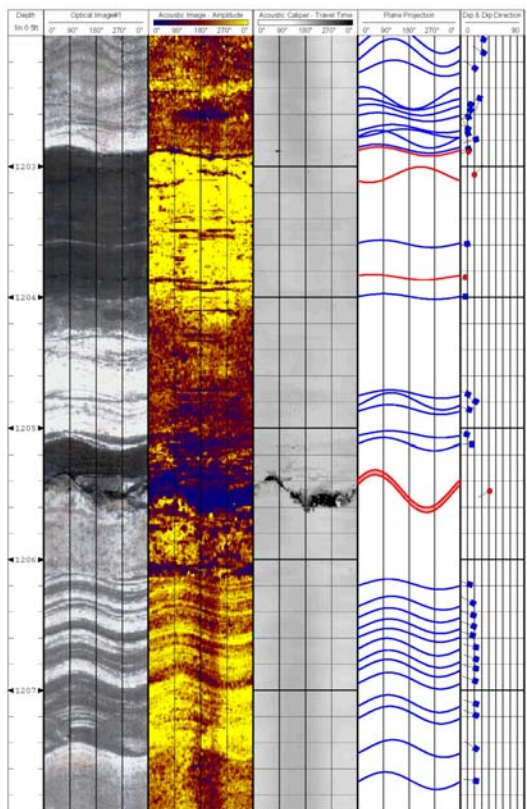


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PCPG Members Survey

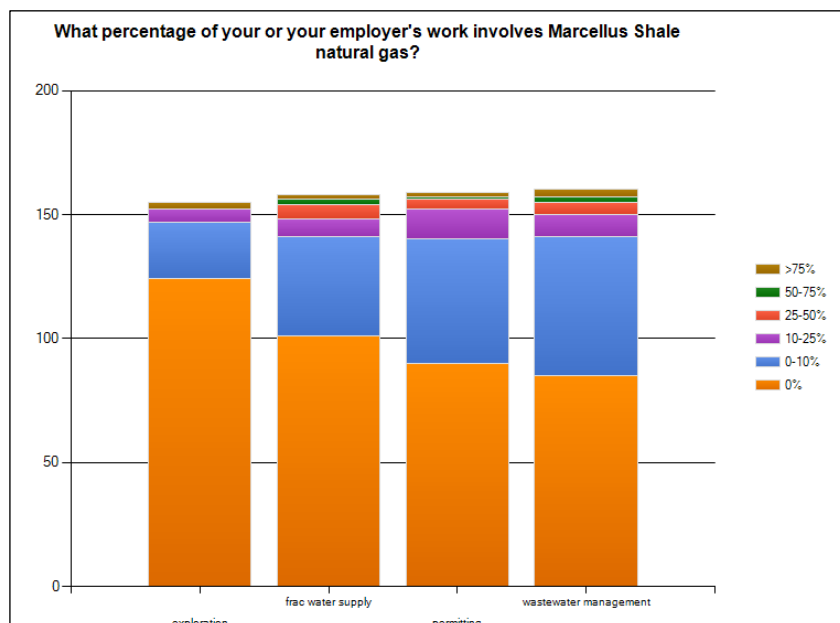
(CONTINUED FROM PAGE 8)

With the 2011 license renewal period approaching, clearly the geologic community will be looking to PCPG to provide relevant, cost effective and convenient courses. With respect to facilitating consistency across the Commonwealth within the regulatory programs we work, 55% of the respondents saw this as an important benefit. In 2006, 52% saw this as the single highest benefit that PCPG provides.

The foundation for these highly regarded benefits is based in our educational and networking offerings. New for 2010 is PCPG's Tool Kit series of courses designed to provide you with the knowledge and tools that apply to everyday project needs but also CEUs when the time comes. We need your support now in developing new courses so that you have a catalog of courses to choose from beginning with the 2011 renewal cycle.

3. New Opportunities

Development of the Marcellus shale gas play is just beginning and is projected by some to last at least 50 years. As illustrated on the bar graph below, about 30% to 50% of the survey respondents indicated that they



are already actively involved with Marcellus projects in the areas of permitting, frac water supply and wastewater management. Conversely, that leaves at least 50% of respondents who are not yet offering Marcellus services (orange) to their clientele.

The majority of those working in the Marcellus however report that it makes up less than 10% of their work. Clearly there is a big opportunity here for others to enter the field as well as to increase their share of the work.

There are other opportunities, as well, if requests for new PCPG courses are any indication of the types of projects folks are working on. In addition to requests for typical courses in geology, hydrogeology and fate and transport modeling, the following topics were suggested more than a few times: geothermal/alternative energy, surface water hydrology, report writing and GIS.

4. What the Numbers Don't Tell

Thirty one folks took the time to tell us what was on their mind. Thank you! A review of the responses revealed three common themes: 1) the importance of PCPG provided CEUs and professional networking, 2) raising awareness of the importance of geology and allied sciences to both schools and society, and 3) creating an increased presence in Western Pennsylvania.

Continuing education credits are on folks' minds and PCPG is on its way to providing eligible courses. Increasing awareness of what we do was also a key point that was raised in this year's strategic planning session and is on our radar for 2011. With two Board members representing Western Pennsylvania, with CEUs requirements coming and with the Marcellus opening up new opportunities, we hopefully have a good start to offer more to the geologists and allied scientists in Western Pennsylvania.



PCPG Congratulations Newly Licensed Geologists

Source: Registration Board for Professional Engineers, Land Surveyors and Geologists

The PCPG would like to extend our congratulations to the following individuals who passed the October 2009 ASBOG exam and were recently issued a Professional Geologist license in Pennsylvania:

David Adams
Edward Barefield
William Bradfield
Ryan Fandray
Carson Jones
Matthew Machusick
Victoria Miller
Daniel O'Rourke
Cristina Ramacciotti
Jeffrey Thomas
Lisa Weimer
Mark Wildmann

Roger Bajorek
Tammy Bellman
Marc Chartier
William Gottobrio
Jason Kohl
Amy Martinez
Alison O'Brien
Katherine Potter
John St. Clair
Robert Watson
Lisa Whited
Pamela Yarborough

Good Luck in your geology career!

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Governmental Affair Committee Report (CONTINUED FROM PAGE 4)

Troy Conrad, Director of the DEP Land Recycling Program, was at PCPG's December 2009 meeting to discuss the proposed EC regulations. Thanks to feedback from PCPG members in attendance concerning this timing issue, it appears that the DEP may reconsider the timing of draft EC submittals. However, there was insufficient time to change the proposed regulations before submittal to the EQB. Therefore, the regulatory package as published for comment does not yet include the change recommended by PCPG. Accordingly, PCPG urges its membership to provide comments to the EQB requesting this change.

DEADLINE FOR 2nd QUARTER 2010 NEWSLETTER IS JUNE 1, 2010

For more information, contact our PCPG Newsletter Editor and Communications Committee Chairperson, Kelly Lee Kinkaid, P.G., by [E-mail](#) or by telephone at 610-375-9301.

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