



IN THE PIPELINE

TEXAS PIPELINE ASSOCIATION NEWSLETTER

SUMMER 2019

FROM THE CHAIRMAN



Welcome to the summer 2019 edition of *In the Pipeline*. In this issue we will cover the outcomes of the legislative session and provide a recap of Texas Energy Day. The Clean Water Act and San Antonio's Climate Action and Adaptation Plan (CAAP) are featured and, as always, you can find new members, news briefs and our events calendar included in the issue.

With the Texas legislature now adjourned until January 2021, I want to personally thank the many, many people who showed up every day to lead our combined effort this session, most notably on the eminent domain front. We all owe a debt of gratitude to our friend and colleague Jim Cisarik, who together with Thure Cannon, took far more than his share of the burden, always the professional and always true to the consensus position of our association.

We worked tirelessly and in good faith beginning in spring 2018 to find common ground with landowner interests, only to see unworkable principles first unveiled upon bill introduction. In hearings and in the media – both traditional and social – bill proponents painted our industry in a light that is unrecognizable to those who fill our shoes. If it were not for Chairman Tom Craddick standing up for balance and common sense, we would be facing a much different future as we execute projects that are critical for Texas and the nation.

While eminent domain commanded most of our focus, we are also very pleased that the Critical Infrastructure Protection Act is now law. Lawmakers stood up for public safety by enacting criminal and civil liability provisions that apply to individuals – including their sponsoring organizations – who intentionally or knowingly damage or interrupt critical infrastructure projects and operations.

Overall, the big takeaway for me is our need to meet these false narratives head-on and continue to work proactively with our stakeholders. It may be tempting to breathe a sigh of relief with the session in the rearview mirror, but we must maintain our political engagement with legislators during the interim and into the 2020 election cycle. Put simply, we cannot rely on just a few individuals to drive sound policy, we must work to build coalitions and collaborative stakeholder groups. This will take time and resources, but through direct outreach, education and strategic and coordinated political giving, we can bolster our friends and build a base of knowledge and support in the vast middle ground of the political spectrum. To that end, together with the leadership of TPA, I hope to develop and foster a more detailed discussion on this front in the months ahead.

Please read and share this issue of *In the Pipeline*, and I look forward to our continued work together.

Don Baldrige, DCP Midstream
Chairman, Texas Pipeline Association

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MESSAGE FROM THE PRESIDENT



Friends,

Welcome to the post-Session edition of *In the Pipeline*. We hope you will find the information contained in this issue useful. Please feel free to share with your company and industry colleagues to broaden our advocacy outreach. By staying informed and vigilant, our industry will continue to thrive and meet the infrastructure needs of the state.

On May 27, the 86th Legislature adjourned Sine Die until January 2021. While the issue of eminent domain was at the forefront for our industry during Session, you will read in this edition about other issues in which TPA was involved. I want to thank the members of the Gas Caucus for their hard work and efforts on a number of issues, which led to a successful legislative session.

Regarding the issue of eminent domain, TPA worked tirelessly with industry partners and landowners to identify areas of agreement to address landowner concerns, while maintaining the ability to develop vital infrastructure projects. Numerous hours were spent negotiating; however, an agreement on a bill was never reached. Unfortunately, there are false accounts from some that there was agreed-to legislation. TPA, along with our partners in the Coalition for Critical Infrastructure, have addressed this false claim. Because this narrative is still out there, we still have work to do. As we have done for more than two years, TPA will continue to be ready and willing to work during the interim to strike a balance that allows for infrastructure to be built, while seeking remedies to legitimate landowner concerns.

We look forward to seeing you, and hopefully your family, at our July Board meeting at La Cantera in San Antonio! With Sea World, Six Flags Fiesta Texas and world-class golf courses only a short distance away, there will certainly be ample opportunities for fun to go along with what will be a very informative Board meeting. As always, please reach out to us if we may be of any assistance and thank you for all you do for industry.

All my best,
Thure Cannon



SAN ANTONIO'S CLIMATE ACTION ADAPTATION PLAN

By Christopher Ashcraft, South Texas Energy & Economic Roundtable (STEER), Acting President

Following a groundswell of criticism from the San Antonio community and business leaders, the Mayor of San Antonio rightfully canceled the vote to adopt the Climate Action Adaptation Plan (CAAP) in March 2019. *"Action and adaptation to a changing climate is too important not to get it right, and we are taking the time needed to craft a consensus document that achieves our climate goals, accounts for all perspectives and charts a course for the future,"* Mayor Ron Nirenberg said.¹ It was canceled due to its likely failure to pass and because the document did not represent a shared vision across the entire San Antonio community, but instead a one-sided voice of hand-selected constituents.

We commend the Mayor on his decision to admit that this was not a shared vision and to go back to the drawing board. The city reopened public comment through the end of April, which allowed many in the community, including our organization, to voice their concerns about how we can make this a shared plan. A revised CAAP document is scheduled for release and will restart the dialogue on what this plan should and shouldn't address. **That is why we need you, the readers of this article, to become familiar with CAAP and to create a dialogue with your locally elected San Antonio City Council leaders to make your voices heard.**

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I am Chris Ashcraft, president of the South Texas Energy & Economic Roundtable (STEER), which is an energy trade association representing the oil and natural gas industry in the South Texas region known as the Eagle Ford Shale. The membership of STEER produces in excess of 80 percent of the Eagle Ford's crude oil and natural gas. In fiscal year 2018, the oil and natural gas industry supported more than 348,000 direct jobs and paid just over \$14 billion in state and local taxes and state royalties, funding our municipalities, healthcare, state schools, roads, first responders and almost everything else we utilize in our daily lives.

The Eagle Ford Shale alone has contributed well over \$300 billion in economic impact to the South Texas region, traditionally the poorest region with the highest unemployment and worst access to healthcare prior to this energy renaissance.² For Dallas Cowboy fans, that is the equivalent of building 300 Cowboy stadiums, one of the largest and most advanced sports arenas ever built. Those stadiums would cover most of the City of San Antonio's surface area.

I am writing this article both as president of STEER and as a father to respectfully express concern with the City of San Antonio's draft Climate Action and Adaptation Plan, which includes mitigation strategies that will threaten reliable, affordable energy, increase transportation costs and put San Antonio's residents' health and economy at risk. Our members agree that working toward climate progress is a global responsibility. Oil and natural gas companies are investing heavily in new technology that will continue to make a difference in reducing air emissions and protecting the environment. In fact, the U.S. oil and natural gas industry is the leading investor in zero- and low-carbon technology, investing more than \$301.5 billion in greenhouse gas mitigating technologies between 2000-2016. That's more than double the investments by other private sector industries and the federal government, combined. Oil and natural gas companies' investments in innovation have resulted in a 14 percent reduction in methane emissions from oil and natural gas systems since 1990. Domestic natural gas production increased by 50 percent during the same period.

Natural gas, now America's leading source of electricity generation, is credited with driving U.S. carbon dioxide (CO₂) emissions to their lowest levels since 1992. The U.S. Global Change Research Program reports that North American CO₂ emissions from fossil fuel combustion have declined on average by one percent per year over the last decade, "largely

because of reduced reliance on coal, greater use of natural gas and increased vehicle fuel efficiency standards." These environmental achievements are proof that we don't have to sacrifice economic growth to protect the environment. We can and will continue to do both.

Unfortunately for San Antonio's businesses and especially its poorest residents, any plan for the city to reach "carbon neutrality" by 2050 is bound to dramatically drive up the cost of living, increase taxes and discourage entrepreneurship and business investment. We have significant concerns with the estimates in the draft plan that suggest mitigation strategies could cost more than \$14 billion between now and 2030. That total is a conservative estimate based on limited information contained in the plan, since there were no economic impact analyses conducted, and city officials have yet to share their calculation of the true cost over the next 11 years. In contrast to the city's aspirational plan, a business leader actually conducts real economic analysis and long-term planning before approving a decision. Without a clear understanding of implementation costs, there is substantial risk that families will face higher prices for electricity, housing and transportation, and local businesses, who provide high-quality jobs for San Antonio families, will have a harder time competing in the future.

From Germany to Georgetown, Texas, we have seen the negative impact of hasty shifts toward renewable energy sources. In both places, residents are struggling with electricity bills that have skyrocketed. Germany has seen a 51 percent increase in electricity costs since switching to solar and wind energy, and Georgetown residents will see an average increase of \$153 in their electricity bill this year. Other areas that have switched to an all-renewable energy plan include California, whose move to solar increased electricity costs by 24 percent from 2011 to 2017, and Denmark, where the reliance on wind energy has forced electricity costs to go up 100 percent since 1995. While it is unclear what costs will be shouldered by San Antonio families, businesses and organizations by making the changes required by the plan, we do know that increased domestic production of natural gas has brought the price of energy for the average U.S. household down by almost 15 percent in the last decade. To some of our readers, that amount of money may not seem large, but for lower-income families, like the enlisted military family I grew up in, that could mean the difference between having or not having food on the table.

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Furthermore, renewable energy sources are unreliable. Not only can solar and wind not fully meet the capacity of American energy needs, but these alternative energies can only deliver when the sun is shining or the wind is blowing because energy storage technologies have yet to be fully developed or proven. Clean natural gas, however, is the perfect energy source to balance solar and wind's unpredictability, making all three sources a great choice. While the city's plan is being cast as a long-term plan, half of the mitigation strategies are slated to begin by 2021.

On top of exorbitant electricity costs, imagine how San Antonio residents would react with a new mandate to replace their vehicle with an expensive electrical vehicle that requires a costly home-charging station. Again, the finite rare earth metals – most of which have their own environmental hazards – are mined in only a few places in the world, often under the jurisdiction of some of the worst regimes and working conditions. It is impossible to scale up mining of these rare earths in time to meet the “mandates” in CAAP. These alternative “clean” technologies currently represent less than one percent utilization in the world, with finite raw materials unable to keep up with the current need, making them extremely expensive while hurting the people from where they are mined.

Under the draft plan, we also wonder what will become of the city's future transportation plan, Connect SA, which would include dedicated lanes for compressed natural gas (CNG)-powered mass transportation. The City of San Antonio transit agency, VIA, recently built the largest CNG fueling station

in North America, which is almost complete in replacing its entire 500+ fleet of buses leading to a 97 percent reduction in emissions and an average fuel savings of \$8.5 million to tax payers; and the fuel is local!³ This type of incongruent government planning ends up wasting taxpayer dollars and hits families in the pocketbook. It's a signal that the city should step back and evaluate its climate plan with objectivity. Lastly, since when can a city government mandate what vehicle you drive or what type of stove you can cook on?

We are encouraged that engaging with the local business community appears to be a priority for the city in further development of its plan. We welcome the opportunity to be part of the process to ensure that the city's plan is based on facts, includes concrete cost estimates and funding mechanisms and is clear-eyed about the economic impact for San Antonio residents and employers. The most important voice to be heard though is you, the reader. Please sign up at the following sites to remain informed and to take action!

<https://www.steer.com>

<https://www.texansfornaturalgas.com/>

<https://saclimateready.org/>

¹ <https://www.sanantonio.gov/Department-News/ArtMID/6798/ArticleID/15275/Climate-Action-and-Adaptation-Plan-time-line-extended-for-revision-additional-public-input>

² <https://ccbr.iedtexas.org/wp-content/uploads/2017/06/efs-report-19-june-2017.pdf>

³ <https://www.viainfo.net/cng/>

86TH TEXAS LEGISLATIVE SESSION SUMMARY

By Michael Garcia, Bill Messer, PC

EMINENT DOMAIN

In the last weeks of the Session, **SB 421 by Sen. Kolkhorst (R-Brenham)** was voted from the House Land and Resource Management Committee by **Rep. Tom Craddick (R-Midland)** with industry support but without landowner group support. It was passed by the House on the Consent Calendar by a vote of 142-2. A conference committee was appointed by each chamber and Sen. Kolkhorst, who was chair of the conference committee for the Senate, did not call a meeting or offer any compromise language prior to the deadline. SB 421 died in conference committee.

The House Conference Committee offered language to address each of the three landowner group focus areas of reform:

1. Three options for an initial offer;
2. Minimum easement terms, which were acceptable by both industry and landowners; and
3. Landowner meetings to discuss projects being built.

In addition to the outline the landowners provided, the House Conference Committee also offered a bill with the following terms:

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1. Sanctions for lowball offers;
2. Instructions for the Attorney General to review and re-write the Landowner Bill of Rights in an effort to make this document more user-friendly;
3. Timelines and expectations for the Special Commissioner Process during condemnation proceedings; and
4. Notice to the County Judge of any county projects.

Additionally, **HB 2831 by Rep. Canales (D-Edinburg)** was amended by Sen. Kolkhorst on the floor with portions of her eminent domain language from SB 421. ***As a result, a conference committee was also appointed by each chamber; this bill had the same result and died.***

Lastly, **HB 1211 by Rep. Darby (R-San Angelo)** began as a construction law bill that industry was against. It was sponsored in the Senate by Sen. Kolkhorst and amended in Senate State Affairs with portions of her onerous SB 421 language. ***This bill also died, as we were successful in preventing it from being placed on the Senate Intent Calendar.***

CRITICAL INFRASTRUCTURE

On the civil justice front, we had many successes, particularly with **Critical Infrastructure Liability, HB 3557 by Rep. Chris Paddie (R-Marshall)** passed and was signed by the governor on June 14. The bill will provide a mechanism for holding a defendant who has engaged in an offense that causes damage to critical infrastructure to be held liable to the property owner for damages arising from that conduct. Additionally, it makes any organization that compensates a person for causing damage to critical infrastructure vicariously liable.

CONSTRUCTION LIABILITY

HB 1211 by Rep. Drew Darby (R-San Angelo), would have shifted liability in defects and plans from architects and engineers to the premise owner. This bill was also amended by its Senate sponsor Sen. Lois Kolkhorst with portions of her eminent domain bill.

TCEQ EXPEDITED PERMITTING

TCEQ has struggled to keep up with **Expedited Permit Applications** due to funding and staffing issues. We passed meaningful legislation; **SB 698 by Sen. Brian Birdwell (R-Granbury)** will provide TCEQ with the necessary re-

sources for additional staffing and retention for permit writers to manage expedited permit applications.

TEXAS EMISSIONS REDUCTION PLAN

Additionally, with **HB 3745 by Rep. Cecil Bell (R-Magnolia)**, we succeeded in extending funding for the **Texas Emissions Reduction Plan (TERP)** until the entire state meets attainment with the EPA National Ambient Air Quality Standards.

TAXATION

We defended successfully an effort to exclude **Natural Gas Compressor Package or Unit** from the definition of heavy equipment for purposes of special appraisal, as written in **HB 564 by Rep. Poncho Nevarez (D-Eagle Pass)**. This is a bill that had been filed in prior sessions on behalf of appraisal districts and we expect it will resurface again.

We also worked on extending the expiration date of **Chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act, in HB 3143 by Rep. Jim Murphy (R-Houston)**. Chapter 312 expires this year and needed to be extended before the end of the session. A tax abatement is a local agreement between a taxpayer and a taxing unit that exempts all or part of the increase in the value of the real property and/or tangible personal property from taxation for a period not to exceed 10 years. Tax abatements are an economic development tool available to cities, counties and special districts to attract new industries and to encourage the retention and development of existing businesses through property tax exemptions or reductions.

Next session, we will focus on extending the expiration date of **Chapter 313 of the Tax Code**, which is set to expire in 2022. Chapter 313 agreements are an appraised value limitation in which a taxpayer agrees to build or install property and create jobs in exchange for a 10-year limitation on the taxable property value for school district maintenance and operations tax (M&O) purposes.

SECURITY AND SAFETY

We saw the filing of a few drone-related bills this session. We supported **HB 3082 by Rep. Jim Murphy (R-Houston)**, which helps protect **critical infrastructure facilities from the threat of unauthorized drone use**. This bill was passed but vetoed by Gov. Abbott on June 15.

GOV. ABBOTT SIGNS CRITICAL INFRASTRUCTURE PROTECTION LEGISLATION

By Phil Gamble, The Law Office of Phil Gamble

House Bill 3557 was signed by Gov. Abbott on June 14 and offers protection to critical infrastructure facilities from protesters who impair or interrupt operations. HB 3557 will have an effective date of Sept. 1, 2019.

Petroleum refineries, chemical facilities, natural gas processing plants and compression stations, LNG terminals and oil and gas production facilities are included in the current definition of "critical infrastructure facility" in Section 423 of the Government Code. HB 3557 amends Chapter 424 of the Government Code and supplements the definition of a critical infrastructure facility to include any pipeline transporting oil or gas or the products or constituents of oil or gas and a facility or a pipeline that is under construction, including all equipment and appurtenances used during that construction.

It is a third-degree felony for a person, without the effective consent of the owner, to enter or remain on or in a critical infrastructure facility knowingly and intentionally or knowingly damage or destroy the facility. However, it is a defense that the damage caused to the facility was only superficial. It is a state jail felony, punishable by up to two years in prison, if a person, without the effective consent of the owner, intentionally or knowingly impairs or interrupts the operations of the facility. Likewise, it is a state jail felony if a person enters or remains on a critical infrastructure facility with the intent to damage

or destroy the facility. The state felony charge also allows a defense to prosecution if the actor intended to cause only superficial damage to the facility. Finally, it is a class A misdemeanor if a person, without the effective consent of the owner, enters or remains on a facility with the intent to impair or interrupt the operation of the facility.

The court may also sentence a corporation or association adjudged guilty of any of these acts to a fine not to exceed \$500,000. In addition, any defendant convicted of an offense under Chapter 424 may be ordered to make restitution to the owner of the facility in an amount equal to the value of the property on the date of the damage or destruction.

HB 3557 also provides for civil liability not only from the actor involved, but also from any organization that knowingly compensates a person for engaging in prohibited conduct on the premises of a critical infrastructure facility. Damages include actual damages and court costs, as well as exemplary damages.

Rep. Chris Paddie (R- Marshall) was the House sponsor and Sen. Brian Birdwell (R- Granbury) was the Senate sponsor. The enrolled version of HB 3557 contained several House and Senate amendments, as well as final revisions for approval by the Conference Committee. Similar legislation has been adopted in other states, including Oklahoma, Louisiana and Iowa.

ARE GROUNDWATER DISCHARGES THAT ARE HYDROLOGICALLY CONNECTED TO SURFACE WATER COVERED BY THE CLEAN WATER ACT?

By Don Lewis, Duggins Wren Mann & Romero, LLP

EPA recently weighed in on a question that both EPA and the courts have answered in differing ways over the years: Do the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) permitting requirements apply if a pollutant is discharged to groundwater and the pollutant then migrates underground to reach Waters of the United States (WOTUS)?

EPA's most recent answer was a flat "no". In an April 12, 2019 memorandum, EPA said that the CWA "is best read as excluding

all releases of pollutants from a point source to groundwater from NPDES program coverage, regardless of a hydrologic connection between the groundwater and jurisdictional surface water."

EPA reached this conclusion after considering public comments on the issue, including comments submitted by TPA, which urged EPA to conclude that pollutants that indirectly reach WOTUS through groundwater migration are not subject to NPDES permitting. TPA also said that CWA permit requirements are ill-suited

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for application to diffuse migration of pollutants through groundwater and that imposing liability under the CWA for releases to groundwater would risk improperly preempting state groundwater regulatory programs.

While EPA has clarified its view, that is not the end of the story. First, recent federal appellate decisions in citizens' suits filed in the Fourth and Ninth Circuits have taken a different view than EPA; in those cases, the courts ruled that the CWA does apply to the discharge of a pollutant that reaches WOTUS through groundwater migration. Because those decisions establish the applicable standard in states within the Fourth and Ninth Circuits, EPA's contrary view is inapplicable in a number of far-West and mid-Atlantic states.

In addition, a critical development is still on the horizon. The U.S. Supreme Court has granted certiorari in one of the two decisions referred to above: the Ninth Circuit's decision in *Hawai'i Wildlife*

Fund v. County of Maui, where the Ninth Circuit ruled that the County of Maui violated the CWA by discharging pollutants from wells into groundwater that eventually reached the ocean. The Supreme Court will address the following question: Whether the CWA requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater. The Supreme Court has yet to act on the pending request for certiorari in the Fourth Circuit case, *Kinder Morgan Energy Partners, L.P. v. Upstate Forever*.

In summary, the courts and regulators are now focusing on whether or not the CWA and the NPDES program cover discharges that reach WOTUS indirectly through groundwater migration. EPA has now clarified its view, and the Supreme Court may give some deference to EPA's interpretation. But we will not have a final, definitive answer to this important question until we see what the Supreme Court has to say in the *Maui* case, with a decision expected later this year.

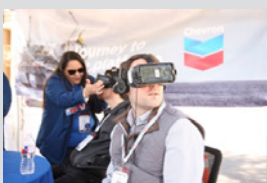
INDUSTRY NEWS

TEXAS ENERGY DAY RECAP

By Texas Oil & Gas Association (TXOGA)



February 20, 2019 – Texas Energy Day @ the Capitol was an exciting day for the Texas Oil & Gas Association (TXOGA) and Texas Energy Day sponsors, partners and participants. The Texas-sized celebration of the Texas oil and natural gas industry was a great success and nearly doubled in size from the first ever Texas Energy Day in 2017.



More than 60 companies, associations and chambers gathered to total over 700 Texans from across the state to voice their support for Texas energy. Supporters from Midland, El Paso, San Antonio, Houston and several cities in between began Texas Energy Day @ the Capitol by hearing from a few of our state's top officials, including Lt. Gov. Dan Patrick, Texas Railroad Commissioner Ryan Sitton, Texas Commission on Environmental Quality Commissioner Emily Lindley and Texas House Energy Resources Committee Chairman Chris Paddie.



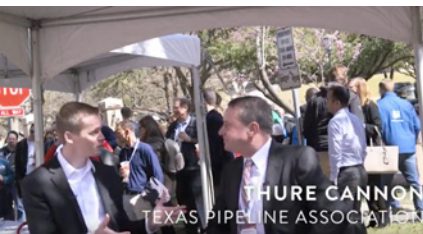
It was then on to the Texas State Capitol, where Colorado Street and the Ground Floor Rotunda were transformed into "Energy Avenue" and the "Tech Hub" for the day, and attendees and visitors were exposed to more than 20 exhibits that showcased the innovation, technological advancements and safety practices of the oil and natural gas industry. Texas Energy Day @ the Capitol attendees concluded the day with conversations with lawmakers and staff about what oil and natural gas has meant for each of them individually, as well as the absolute certainty that when oil and natural gas does well, so do all Texans. Energy supporters who couldn't attend the day sent emails and letters to their lawmakers to lend a voice to the cause online and took to social media, where #TXEnergyDay2019 quickly became a popular topic and was even trending on Twitter in Austin.



NEWS BRIEFS



TPA in the News: TPA President Thure Cannon shares his thoughts in the *San Antonio Express-News* on **San Antonio's Climate Action and Adaptation Plan (CAAP)**.



Watch Thure Cannon talk with Steve Everley of **Texans for Natural Gas** on the importance of the pipeline industry.

Leading up to and during the legislative session, the media closely covered proposed bills on eminent domain, infrastructure protection and safety, primarily with an anti-industry bias. TPA proactively participated in the coverage by creating timely and relevant messaging (in coordination with CCI) that ensured that the association's views were conveyed. Messaging appeared in the *Austin American-Statesman*, *Texas Monthly*, *San Antonio Express-News*, *Dallas Morning News*, *San Antonio Business Journal* and many others.

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NEW MEMBERS



TPA 2019/2020 BOARD MEETING DATES AND LOCATIONS

- Friday, July 12, 2019 San Antonio
- Thursday, Oct. 10, 2019 Plano
- Friday, Jan. 10, 2020 Houston

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HELP SPREAD THE WORD. IF YOU'RE ON TWITTER, PLEASE TAKE A FEW MINUTES TO SHARE THESE PRO-INDUSTRY TWEETS!

Texas Pipeline Assoc @TexasPipelines

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10:41 AM - 24 May 2019

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A recent study shows the assumption of a time-constant relationship btw methane & ethane emissions has resulted in major overestimation of an oil & gas emissions trend. @theAGU #oilandgas #pipelines #energy bit.ly/2HJd6xH

8:08 AM - 26 May 2019