

Marcellus Shale Update: When Gas Pipelines Explode

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At 5:00 a.m. yesterday, a portion of the newly-built Revolution pipeline exploded in Center Township, Beaver County, western Pennsylvania. Luckily nobody was hurt, but one home, two garages, a barn and several vehicles were destroyed. Nearby residents described what at first sounded like an airplane crash or a freight train, then a fireball. The fire burned out by 7:00 a.m., but parts of Interstate 376 were closed for hours and the Central Valley school district cancelled classes.

The Revolution Pipeline is a 24 inch gathering line owned by the star-crossed Energy Transfer Partners. It is used to feed ETP's Rover and Mariner East 2 pipelines. Officials believe that a mudslide occurred in the vicinity and may have caused the explosion.

ETP of course, is the same company that has had such difficulty with Mariner East 2. It is instructive that fear of moving earth in the form of sinkholes in Chester County caused the suspension of construction of Mariner East 2 earlier this year. If a mudslide was sufficient to cause such a fireball in the Revolution, then ETP has some serious explaining to do about how Mariner East 2 will be safe given the geology of Chester County.

As I've written numerous times before, ETP has done itself no favors with its dismissive attitude toward governmental oversight and regulation. Now, at perhaps the worst possible time (right before an election and with Mariner East 2 still not completed and operational) and with little to no goodwill among Pennsylvania State legislators or DEP officials, ETP must show how and why the Revolution exploded, why this won't happen again and why residents near Mariner East 2 shouldn't be suspicious of that pipeline.

The leaders of this demand for explanation should come from the industry itself. The people at the Marcellus Shale Coalition and at the major producers like Cabot, Range Resources, Chesapeake and EQT need to be insisting that all work on such important projects be done correctly, without cutting corners, with maximum transparency and giving safety ultimate priority. It is their industry that is at risk, and all of our futures. It must be the industry standard to insist that all companies use best practices and to demand that any company which fails to do so not be allowed to continue operating in Pennsylvania.

There is no risk free method of energy generation and transmission. We all know about the dangers of nuclear power. You can generate electricity by solar and wind but you need dangerous high tension wires to transmit it. Given the modern political realities regarding fracking and natural gas, however, it is in the industry's interest to show that it will not tolerate anyone who won't walk the extra mile for the safety of all Pennsylvanians.

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In more mundane legal news, last week the industry received a split decision from Pennsylvania Commonwealth Court. Ruling in the case of *Marcellus Shale Coalition v. Pennsylvania Department of Environmental Protection*, the Court struck down part of the Act 78a Regulations which stated that as part of the well-permitting process the DEP had to consider comments and recommendations submitted by municipalities.

The background is a little confusing. Previously in the *Robinson* case, the Pennsylvania Supreme Court invalidated what was known as Section 3215(d) of the regulations that said the Environmental Quality Board of the DEP “may” take such comments into account. This was considered improperly minimizing local input. The new regulation sought to cure this defect, but the Court said this fix would not work because the clause in the Act 13 Oil and Gas Law that gave the DEP the right to promulgate such regulations in the first place no longer exists.

The result of the ruling is hard to predict. The Court also said the DEP did not exceed its authority in the regulations when it allowed applicants and public resource agencies, including municipalities, to provide information that could assist the Agency in deciding whether or not to grant a permit. A lot of this seems inherently contradictory.

On the plus side for the industry, the Court ruled that the expansion of the definition of “public resources” in the Act 78a Regulations to include “common areas of a school’s property” and “playgrounds” was unlawful as it was “unduly burdensome” on the applicants. The Court noted that a McDonald’s playground or a school parking lot utilized as a playground would be covered by this definition. These uses were not of the same class or nature as a scenic river or public park.

Finally, north and east of the Pennsylvania border New York State goes to the polls today for its primary election. Two-term Governor Andrew Cuomo has run an uninspired campaign against challenger Cynthia Nixon. Ms. Nixon, known most for her role in *Sex and the City*, has forced Cuomo even more to the left than before. Specifically, Nixon proposes that New York adopt a law requiring it to obtain all of its energy through renewable sources by 2050. In her platform, Ms. Nixon criticizes the Governor by saying “his plan still won’t fully halt all new fossil fuel infrastructure.”

Cuomo’s policies already have led to a halt in the pipeline infrastructure for New York and New England, as well as a stoppage of much power plant construction. Events like today’s explosion in western Pennsylvania can only add to the pressure on natural gas proponents. Unfortunately for New York, their governmental officials have been overly optimistic in describing the current science for renewable energy. New York officials will shut down Indian Point Nuclear Power Plant by 2021. Given Massachusetts’s sad experience in predicting how it will make up the energy shortfall from mothballed nuclear plants, expect New York’s energy situation to become dire quite soon.

With Massachusetts likely to import more natural gas from Russia this winter, New Jersey and Maryland officials limiting construction of offshore wind and solar farms and Pennsylvania natural gas pipelines exploding, the time is more critical than ever to have an honest conversation on energy. It needs to be led not by Cynthia Nixon, Josh Fox or the executives at ETP but by people who recognize the pluses and minuses of all forms of energy generation, storage and transmission, and who are not afraid to ask the stupid

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questions.

ATTORNEYS MENTIONED

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