As 2020 Begins, Pennsylvania Aggressively Regulates An Industry It Welcomed, While New York Retreats From An Industry It Rejected

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In the first three weeks of 2020, both Pennsylvania and New York handed down major administrative decisions on shale drilling matters. These decisions show both the power of state governmental involvement and its limitations.

In Pennsylvania, the Public Utilities Commission issued one of its largest fines ever, $30.6 million, against ETC Northeast Pipeline (ETC). The fine was for violations pertaining to an explosion in 2018 on ETC's Revolution Pipeline. ETC is an affiliate of Energy Transfer Partners (ETP) of Dallas, the company that has had so much difficulty with the Mariner East 2 Pipeline transporting natural gas from Western Pennsylvania to the Delaware River in the southeastern part of the State.

Patrick McDonnell, Secretary of Pennsylvania's Department of Environmental Protection (DEP), said it all in his statement:

"ETC's lack of oversight during construction of the Revolution Pipeline and their failure to comply with the DEP's October 2018 compliance order demanded serious accountability. Their inaction led directly to this unprecedented civil penalty."

Despite the size of this fine, there is hopeful news for ETC and ETP. Simultaneously with the assessment of the fine, the DEP lifted a hold on all ETP permit applications which had existed since February 2019. ETP agreed to wetlands remediation and to informing DEP inspectors when and where work would be progressing. If ETP violates these provisions, the DEP could reinstate the permit hold and issue fines of as much as $20,000 per day per violation. Hopefully, the parties here have established a relationship where work can now continue, but only according to strict standards established by the State and followed properly by the company.

McDonnell followed his actions against ETC by focusing on another target, this time an energy producer. On January 13 the DEP ordered Range Resources to address with finality issues regarding methane leaks at Range's "Harman Lewis" well in Lycoming County, Pennsylvania. "*We have attempted to resolve this in good faith but after numerous attempts, the operator still has not completely addressed these violations*," McDonnell wrote. "*We expect companies to abide by our environmental laws and regulations and they must*

be held accountable if their work results in violations that negatively impact our environment."

Range Resources, of course, had a different take on the issue. It pointed to third-party studies, and even comments from the owner of the land on which the Harman Lewis well is situated, that show that methane in the groundwater is naturally occurring. Range "strongly disagreed" with the DEP's findings, and noted that before it even dug the Harman Lewis wells in 2010, it sampled 19 water wells in that area. Four of those water wells were shown already to be contaminated by methane even before any natural gas operations commenced. Even so, Range has provided water treatment for 11 impacted water supplies.

The aggressive stance taken by the DEP could relate to a lot of things. Some in the industry attribute it to the political climate leading up to a Presidential election year. Whatever the cause, the DEP's stance is something the industry must factor in making its business decisions. Range was given two months to submit a plan to reduce the gas migration from the Harman Lewis well, which the DEP claims was caused by defective cement casing. After the Department approves the plan, Range then has four months to submit a plan to plug the well and bore a hole next to it.

Regardless of who is right or wrong about the Lycoming situation, it highlights a dichotomy that pertains to shale drilling in Pennsylvania. There are parts of the State where methane occurs naturally. In addition, Pennsylvania is one of two states in the country without statewide construction or siting standards for private drinking water wells. Many Pennsylvania residents – especially in the rural areas where shale drilling is most often found – obtain their drinking water from private wells. The potential for problems is obvious.

Random testing of water wells by the US Geological Survey in 2014 in both Lycoming County, where gas drilling is common, and Wayne County, in the Delaware River watershed where gas drilling is not permitted, found similar problems in both counties. These included the presence of radon, arsenic, and methane. While recent state gas well regulations have tightened up on pre-drill environmental baseline testing and gas well construction, the new regulations do nothing regarding the integrity of the nearby, often older water wells.

Range does not have the history of problems with the State in the same way as ETP, so it is surprising that the DEP came down so hard on Range at this time. However, it remains in everyone's best interest to finalize procedures and resolve issues, especially in the hotly disputed issue of methane contamination of old water wells, in a manner that doesn't leave each side pointing fingers at the other.

While Pennsylvania was aggressively asserting itself with an energy industry that it has welcomed, New York was backpedaling from attacking the same industry that it has rejected. On January 13, New York Attorney General Letitia James announced that her office would not appeal a ruling from the New York Supreme Court totally rejecting claims made by New York accusing Exxon of defrauding investors for issues relating to climate change. In announcing this decision, however, the Attorney General was anything but contrite. "For the first time in history," James stated, "ExxonMobil was compelled to answer publicly for their internal decisions that misled the public." James noted that the evidence in the New York state case might help Massachusetts, which also filed against Exxon (as well as others) in October claiming Exxon had misled investors with deceptive advertising.

Even in defeat, New York staked out the position of championing the environmental interests of the residents over the interests of the fossil fuel industry. New York has placed a moratorium on fracking, stopped gas pipelines from being constructed, and taken the industry to court. Simultaneously, it transports natural gas on its highways, keeps many family farmers in its southern tier without a needed source of income that could be derived from shale gas extraction in that region of the State, and has no clear source of gas supply during times of energy shortage. Time will tell whether in the long run the Pennsylvania or the New York attitude works best for the interests of the people of each State, and of their environments.

ATTORNEYS MENTIONED

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