

# Lawyers, courts look ahead to pipeline opposition action



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With one proposed natural gas pipeline through Franklin County on hold and another pipeline through Otis State Forest expected to go ahead at the end of July, opponents may be planning to launch civil disobedience actions.

And the region's legal system is getting prepared.

About 200 people connected with between 20 and 25 affinity groups coordinated by the Sugar Shack Alliance have been trained in nonviolent protest techniques, with additional trainings planned for next weekend in Leverett and in June in Windsor, according to Cate Woolner of Northfield, a member of the groups' "spokescouncil."

She said she doubted that the groups will wait for the "stay" on a Berkshire Superior Court decision that gave Tennessee Gas Pipeline Co. the go-ahead to access land along its Connecticut Expansion Project path in Sandisfield to end on July 29 before they protest the company's decision to proceed with its 13.4-mile pipeline looping project.

The groups, which make their decisions by consensus, haven't yet decided when or how to take action, she said, although their members are committed to nonviolent action for which they require members to have training.

Meanwhile, Ashfield attorney Stewart "Buz" Eisenberg, said he plans to meet with representatives of the Berkshire District Attorney's Office and the Berkshire County Bar Association about an effort to facilitate the legal process if there are arrests or mass arrests of peaceful protesters.

"I will be talking with the district attorney and with the clerk court and hope to arrange onsite bail reviews and arraignments so we don't clog up the courts," said Eisenberg, who along with Northampton attorney William Newman is arranging a team of pro-bono lawyers, including

themselves, to represent anyone arrested for nonviolent acts of civil disobedience regarding the pipeline.

Eisenberg had already met with Northwestern District Attorney David Sullivan and his assistants, along with Greenfield District Court Clerk Kenneth Chaffee and, after conferring with Franklin County Bar Association President Leslie Powers, was preparing letters asking members to volunteer for what were expected to be Northfield direct actions when the pipeline company announced last month that it was suspending plans for its Northeast Energy Direct project planned through Franklin County.

Eisenberg said he's already met with Berkshire District Court Judge William Rota to discuss the possibility of a process of arraigning many protesters at the site, which is likely to be in Otis State Forest or elsewhere along the Connecticut Expansion route in Sandisfield.

Although many pipeline opponents have been motivated by protecting their own property and their communities from of the threat of a natural gas pipeline," said Eisenberg, whose own property is among those that would be affected, "the majority are offended by 'fracked' gas, and (many of) those people still wish to engage in activism ... to convey the message they don't want fracked gas expanded in Massachusetts. I know there's a large community of protesters who are still willing to make their voices heard through mostly peaceful, nonviolent protest."

By alerting the court clerk and DA just before an action is to be launched, and having the clerk and DA notify local and state police, Eisenberg said, arraignments and bail arrangements could be handled on site, possibly disposing of cases immediately, "so we don't have a quagmire, so there's not a burden to the court, not a burden to the jails, not a burden to the police. It's in recognition of the fact that these are good citizens exercising their First Amendment rights, with a little trespass here and there."

As a possible sign of things to come, Ashfield builder Will Elwell, who spearheaded building of a Thoreau-inspired log cabin along the NED pipeline route in March, on Thursday called together volunteers to begin making similar cabins that can be erected along the pipeline route in Sandisfield.

"The felling of this tree IS for the common good!" Elwell wrote in an announcement of Thursday's action. "The felling of old growth Hemlock trees in Otis State Forest IS NOT! We need to show FERC (the Federal Energy Regulatory Commission) what 'common good' means!" — a reference to FERC's federal power to authorize interstate projects that it determines are for the common good.

Eisenberg said there was no plan for dealing with mass civil disobedience that could otherwise leave peaceful protesters in jail over an entire weekend awaiting arraignment, but that he hoped to have forms to people in advance so they can have them filled out for police and the courts to facilitate the process.

Eisenberg, who is not part of any protest or its planning, said he hopes that there's no attempt by participants to engage in any malicious behavior.

"They're doing it out of citizenship," he said of the expected protests, which are seen as a direct action to halt climate change. "Civil disobedience has served this country well. I'm proud to represent people who are trying to make an unequivocal statement that this can't keep going on. We're running our of time."

New NED?

In another action related to the pipelines, a coalition of environmental groups has noted to the state Supreme Judicial Court it believes the NED project could be resurrected.

Northeast Energy Solutions, a legal coalition of environmental organizations and land trusts, including Franklin Land Trust, this week advised the Supreme Judicial Court, where it is appealing a state Department of Public Utilities case related to the NED project, that the company may reconfigure its proposed pipeline.

TGP parent Kinder Morgan has only stated it has suspended further work and expenditures” on the project, NEES lawyer Vincent DeVito, but neither the company, the DPU, nor the Berkshire and Columbia Gas companies has officially confirmed that it has been canceled, terminated, or rescinded, he wrote.

Berkshire Gas, in a recent DPU filing, has said it’s engaged with TGP to explore “a possible amendment of their arrangement in order to determine whether some other agreement may achieve their mutual objectives,” DeVito noted in Tuesday’s NEES filing declaring that the case is not moot and the DPU’s decision on long-term contracts should be returned to the department for reconsideration.

DeVito wrote that he believes there is “a solid chance” that “the parties may reach an alternative or amended agreement as a result of their ongoing negotiations which might allow them to proceed with some variation of the NED Project.”