

Blue Ridge Environmental Defense League

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LANDOWNER RIGHTS

Survey Process

A landowner has the right to refuse entry by sending a certified written letter denying entry prior to the date of entry. This will not necessarily prevent surveying, as the company can request a court order to enter the property. If you do not send a letter refusing entry, then the company has the right to enter the property to survey, assess, or perform other inspections.

If a landowner refuses entry, a gas company can file a bill of complaint to prevent interference on any landowner who has threatened right of way agents or has refused permission to survey. A local officer will serve the papers, which will also include the notice of hearing at which the landowner can present his/her position. The contents of the temporary injunction (which is similar to a temporary restraining order) are solely up to the judge, but it may be possible that the judge would incorporate landowner's requests if deemed reasonable. Estimated time for a hearing to be held after the bill of complaint is filed is about a month.

If a landowner chooses to talk to the land agent (which does not require giving permission to survey), they can ask for information about the project, their rights as a landowner, a map of the whole pipeline, a timeline for each step of the process as well as identify and state significant features of the property that need to be avoided, such as wells, wetlands and cemeteries. Typically there will be four groups surveying to place the line and do environmental and archeological assessments: flagging crew, mappers, environmental team, and one person to test for electrical conductance.

For almost two years residents of Schoharie County have faced the possibility that a large, high-pressure natural gas pipeline would cut through the heart of the County while landowners in its path would face the seizure of their property under eminent domain or be forced to settle for a small one-time payment in exchange for giving up control of their property to Constitution Pipeline Company forever. At the same time many read news stories about the terrible safety record of the very companies proposing to build the pipeline, with almost monthly reports of fires and explosions, all to facilitate the export of fracked gas to Canada and ultimately overseas. The residents of the County organized and published this message to the residents of the County:

“The only way to stop them is to refuse to allow them to survey, to refuse to sign your rights away. Constitution is in trouble because the residents of our region have said no in large numbers. So far Schoharie County has been stronger than the drillers and the pipeline companies. We need to continue to be strong and not allow the dangerous industrialization of our rural communities.”

The approach of Schoharie County is based on the belief that the citizens still have control over their own destinies, and that if they unite, those citizens do have the power to resist huge corporations that use big government to further the interests of the corporation and not the interests of the citizenry.

Acquisition/Optioning

Negotiating fees for easements typically begins after a certificate has been filed by FERC; however this process has been streamlined by changes in the certification process. Negotiation could begin after surveying is complete and prior to certification. The landowner will be given a percentage of the fee as deposit to hold the option, which will be picked up if FERC grants the certificate.

Sensitive Sites

To register an archeological site, sketch in the site boundaries on a topo map, provide a description of the artifacts and site, identify distance from water, and document the artifact. Do not tell the agent where the site is; just let him know about it. Some environmental classifications offer protection to land but may not ultimately prevent pipeline siting. Other state protected sites: endangered species, historical property or remains, burial grounds, wetlands. Wells, spring heads, cemeteries, crop lands and access to fields, fence lines and gates, outbuildings, and other special plantings, such as a memorial garden, can be avoided by informing agent of their location.

Eminent Domain

The “right of eminent domain for construction of pipelines”¹ allows a gas company and their agents permission to enter your property after following a process of notification consisting of: A) a certified letter requesting permission to enter your property, stating the date of inspection, and made no less than 15 days prior to the date of entry and B) a notice of intent to enter sent by certified mail stating date of entry and made 15 days prior to the date of mailing of the notice of intent to enter. A natural gas company may use motor vehicles, self-propelled machinery, and power equipment on property **only** after receiving the permission of the landowner or his agent. Though this is a federal statute, note that: “The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States.”²

Land Use

The land may be used for most residential, commercial, or agricultural purposes provided this usage does not interfere with the safe operation, maintenance, inspection, and repair of the pipeline or obstruct access to and along the right of way. All usage must have the written permission of the pipeline company.

Permanent structures cannot be placed on the right of way/easement because they obstruct access and impair the Company’s ability to safely operate and maintain the pipeline. These include: Buildings, Houses, Trailers, Mobile homes, Poles, Decks, Tool sheds, Trees, Shrubs, Garages, Swimming pools (neither above ground nor below ground), Septic tanks and leach fields (septic tank lines), or other structures that obstruct or impede access to the right of way.

Excavation is not allowed within the pipeline’s right of way without Company’s representative present. All excavation work within two feet of the pipeline must be performed by hand, directly over and under pipelines, with a Company representative present, who will determine the safe digging distance.

Mats, timber bridges or other protective materials deemed necessary by the pipeline company will be placed over pipeline facilities for the duration of any loading. Protective materials will be purchased, placed and removed at no cost to the pipeline company, i.e., the landowner will have to bear the cost to gain access to his or her own land. The right of way must be restored to its original condition. A preliminary engineering review will be performed for all roads, streets, driveways, etc., proposed on the pipeline company’s right of way. Driveways, highways, roads and streets crossing a pipeline facilities must cross at an angle as close to 90 degrees as possible. All crossings must be over straight pipe and at locations free of any crossovers. Parallel occupancy of the right of way is not permitted.

Septic tanks, liquid disposal systems, and hazardous waste disposal systems are not allowed on the rights of way. This includes discharge from sewage disposal systems, the discharge of any hydrocarbon substance, the discharge or disposal of any regulated waste, or any other discharge that may prove damaging or corrosive to the pipeline.

Deep Plowing (>16”) is not permitted. The extension service claims tillage for corn is typically 5-8’ with 8’12” required for soils that are heavy textured, poorly drained, cold, or compacted by heavy equipment. Landscaping in the vicinity of the pipeline is limited to lawn and low-growing (less than five feet tall at maturity), shallow-rooted shrubbery. Planting of shrubbery is not permitted closer than five feet on either side of each pipeline. Trees are not permitted.

Pipeline markers. Installation of pipeline markers is mandated by federal law to assist in identifying the location of pipeline facilities. Landowners should ensure that all temporary and permanent pipeline markers installed by the pipeline company are protected and maintained at all times during construction. Permanent markers damaged or removed by landowners will be replaced by the pipeline company at the landowner’s expense. Work will not be allowed to commence until sufficient pipeline markers are in place

Rights of way

Pipeline companies maintain clear pipeline rights of way to ensure that its operations remain as safe as possible. For regular maintenance or during emergency situations, the pipeline company must have unrestricted entry and access to all of its facilities at all times. A clear right of way provides easy identification and monitoring of pipeline facilities, which is imperative in preventing third-party damage. Pipeline personnel shall have access to the right-of-way at any time.

¹ <http://www.law.cornell.edu/uscode/text/15/717f>

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