

Penn State **Extension**

Natural Gas Pipeline Right-of-Ways: Understanding Landowner Rights and Options

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Pipeline infrastructure provides a crucial link between natural gas wells in the Marcellus Shale and the processors and consumers who use that gas. Landowners across Pennsylvania are increasingly being asked to lease land for pipeline right-of-ways. This article provides information about pipeline construction and maintenance requirements, the leasing process, and issues landowners might consider when negotiating their right-of-way agreements.

Natural Gas Pipeline Right-of-Ways

by Dave Messersmith

What is a pipeline right-of-way?

A pipeline right-of-way is a strip of land over and around natural gas pipelines where some of the property owner's legal rights have been granted to a pipeline operator. A right-of-way agreement between the pipeline company and the property owner is also called an easement and is usually filed in the county Register & Records office with property deeds. Rights-of-ways and easements provide a permanent, limited interest in the land that enables the pipeline company to install, operate, test, inspect, repair, maintain, replace, and protect one or more pipelines within the designated easement. The agreement may vary the rights and widths of the right-of-way, but generally, the pipeline company's rights-of-way extend 25 feet from each side of a pipeline unless special conditions exist.



Laying pipeline

Property Use Restrictions

If you are negotiating a right-of-way easement on your property, you should be aware of the pipeline operator's guidelines for property use and construction near natural gas pipelines and equipment. Generally, property owners are prohibited from installing any structures, storing anything that could be an obstruction, or planting trees or shrubs along the right-of-way. Unauthorized building or

planting in the pipeline right-of-way is known as right-of-way encroachment.

Pipeline operators will regularly conduct aerial and ground inspections to check right-of-way conditions, test for leaks, install and maintain pipeline markers and to clear brush that restricts access to the right-of-way or visibility during inspections. Rights-of-way are kept clear of trees, brush and other obstructions so the pipeline operator can safely operate, inspect, maintain and repair its pipelines.

Normal gardening and agricultural activities are generally acceptable. However you should never dig or construct anything within the easement without first having a pipeline representative mark the pipeline, stake the right-of-way and explain the company's construction guidelines. Although pipeline markers are located along the path of a gas pipeline, they only identify the general location of the pipeline.

Negotiating a Right-of-Way Agreement

Easement agreements are formal legal agreements granting the operator long-term use of the right-of-way. A change in ownership of the property does not alter the easement agreement. Because easement agreements are legally binding contracts, landowners are encouraged to have the contract reviewed by an attorney who is knowledgeable in Pennsylvania oil and gas law and experienced in reviewing right-of-way agreements before entering into any contract.

Many aspects of a pipeline easement are negotiable. Typically a pipeline representative will present the landowner with a pre-printed agreement. This document can serve as a starting point for a two-way negotiation, or it can be fully accepted or rejected by the landowner. You can make changes to the easement by creating an addendum that is approved by both parties.

Below is sampling of considerations that may be included in a pipeline agreement or addressed with an addendum:

- Establish the width of the permanent easement and time line for completion of construction.
- Define the nature and width of the temporary construction easement.
- Require identification of any independent and sub-contractors that the pipeline company will use and make the pipeline company responsible and liable for all acts on your property by independent and sub-contractors.
- Require the pipeline company to indemnify (not hold legally liable) the landowner from the acts and omissions of the independent and sub-contractors.
- Define and limit access to both permanent and temporary easements.
- Specify payments for trees, crops, and other plants damaged during the installation of the pipeline.

- Specify re-seeding requirements of easements, such as the types of grasses and other improvements.
- State the amount of time following completion of construction for surface restoration to be completed.
- Identify all stream crossings, state methods of stream crossings, and require restoration of stream crossings after construction.
- Require the landowner be provided an “as constructed” survey of the easement with an official seal by the surveyor within a stated period of time following completion of construction.
- Specify replacement or installation of fencing and gates, stating which gates will have locks and nature of the locks.
- Limit number of keys or number of persons with lock combinations.
- Identify the named person at the pipeline company who will be the landowner’s contact. Require the pipeline company to give 30 days prior notice to landowner of any change in contact person or contact information.
- Define access post-construction to the easement with specific method and location of all access roads and methods.
- Prohibit or limit surface accessories to the pipeline.
- Require minimum depth to top of buried pipeline and require that this minimum depth be maintained at all times.
- Terminate the lease by stated number of days of no use of the pipeline.
- Define “abandonment” of the pipeline as a termination of easement event and require the pipeline company to remove all abandoned pipeline.
- Require prior landowner consent for any assignment of the easement to another party.
- Limit the easement to one pipeline of a stated diameter, with no right to install additional pipelines and no right to increase the diameter of the pipeline.
- Require the same post-construction restoration of surface for pipeline repairs as for original construction.
- Reserve the right to seek surface damages for pipeline repairs as for the initial installation.
- Confirm whether gas to be transported will be scented or unscented.
- Ensure that the permanent and temporary easements are by metes and bounds descriptions and

with official surveys – pre-construction and post-construction (as-built survey).

- Choose an alternative dispute resolution method that makes it the cheapest, quickest, and least burdensome way to resolve conflicts between landowner and the pipeline company.
- Consider what surface uses by the landowner will be prohibited, if any, on the easement.

Value of Rights of Way

Payments to landowners for granting right of way easements can be quite variable between pipeline operators and from location to location. Most payments involve a set dollar amount per linear foot (or per ‘rod’ which is 16.5 feet). In Pennsylvania, easement agreements have ranged from less than \$5.00 per linear foot to more than \$25.00 per linear foot. Some pipeline operators will also offer a ‘signing bonus’ (a fixed dollar amount for signing an easement agreement) in addition to the payment per linear foot. Be sure to get the amount and terms of payments in writing before signing an easement agreement.

Right of Condemnation or Eminent Domain

In Pennsylvania, eminent domain or right of condemnation generally only applies to transmission lines, or lines moving gas between two or more states (interstate pipelines).

Individual gathering lines (pipelines running between well sites, compressor units and metering stations) are not subject to eminent domain, and the pipeline operator must negotiate easements with each individual landowner along the pipeline route.

There is a provision in Pennsylvania that allows operators of a ‘public utility’ (defined as a provider of a public utility including water, sewer, electricity, communication, as well as natural gas) to use eminent domain to secure easements. In the event of an eminent domain proceeding, the landowner is to be compensated by the court or regulatory authority at a fair market value for the easement.

Extension’s Role

Penn State Cooperative Extension provides educational resources for landowners about Marcellus shale and the natural gas leasing and exploration process. County Extension offices may host an educational workshop, discuss leasing arrangements, or refer you to regulatory or legal specialists. Although extension educators cannot provide legal advice, they can provide additional insights about leasing and right-of-way considerations. If you have questions, contact your county's [Penn State Extension office \[http://extension.psu.edu/counties\]](http://extension.psu.edu/counties) .
