



## SERCNote #6

### Pastures and Pipelines

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As the development of shale energy resources continues in eastern Ohio, pipelines and related infrastructure are spreading across the landscape at a fast pace. New gathering lines now extend out to wells that have come on line in recent years. In addition, intrastate and interstate transmission pipelines are being built so that more natural gas can move from settings where that fuel is extracted to distribution networks serving homes, businesses, and other end-users.



Though much of this infrastructure is constructed to the satisfaction of rural landowners, complete with the restoration of pastures and fields planted to crops, complaints are registered from time to time. In some cases, dissatisfaction can be traced to landowners’ attempts to negotiate with pipeline companies on their own, without legal counsel. Complaints can also result because landowners’ instructions to their attorneys are inadequate. Based on observations in Guernsey County and the surrounding region, I have a few ideas to share about avoiding needless conflict.

Before signing any sort of an agreement with a pipeline company, a landowner should insist on the pinpointing of the temporary work area. A good option is to ask the company for a plat showing the area’s location and dimensions. Beginning and ending dates for construction and installation can and should be negotiated and written into the agreement, along with the total number of days for completing the entire project. Also to be spelled out are entry and exit points for the landowner’s fields, types of gates to be utilized, as well as who is responsible for maintaining gates and fences.

Unless agricultural operations are suspended entirely during pipeline installation, a specific place for farm equipment to cross through the construction area needs to be identified. It is also possible that springs, ponds, and streams may be affected, in which case an appropriate remedy must be identified. As with other points of agreement with the pipeline company, anything not put in writing will be difficult to enforce.

The company’s activities may have an impact on farming operations and therefore can be described and limited in the right-of-way grant. For example, if no hunting, fishing, loitering, lodging, camping, or similar activities by the company or its contractors or guests ought to be prohibited, the landowner’s attorney should make this restriction clear. Parking of vehicles, trucks or other equipment necessary for



construction may also be limited to the period of construction, if likewise described in the agreement. For some farms, preserving esthetics is important. If a landowner does not want the easement area to be used as a storage area or staging area, for example, this should be agreed to in writing.

Agreements with a pipeline company need to be clear about the company's responsibilities for land restoration. A landowner may want to describe what locations are to be replanted, the seeding method to be used, and seeding rates. It may be helpful to provide a description of how the area is to be mulched and what water diversion practices should be employed. Practices such as silt fences and water bars can be an obstacle when a field needs to be mowed or clipped, so the contract must identify when obstacles should be removed and land is restored as well as who is responsible for this work. The Division of Soil and Water Conservation at the Ohio Department of Natural Resources has published a document titled "Pipeline Standard and Construction Specification" that addresses restoration issues in detail.

A landowner ought to stipulate in writing that he or she, not the firm building the pipeline, has the final say about the completeness of restoration. The landowner also needs a company contact and telephone number for the sake of regular consultation as reseeding and other kinds of reclamation are happening. Consequences for non-compliance must be written into the agreement as well.

Even after pipeline construction and initial land reclamation, the impact on crop yields and timber harvests can continue, perhaps for a long time. Recognizing this, a landowner must consider earnings that might be lost over many years when negotiating with a pipeline company. It is possible for soils covering a buried line to become infested with weeds or to erode. If this outcome occurs, what procedure is to be followed and for how many years after construction do the company's responsibilities for remediation last? Proper weed control is occasion-sensitive and is best accomplished in a timely manner. Although not recommended, some farmland owners lump all "appurtenances" – including though not limited to drips, valve, piping and metering equipment – together in one document. All of these measures may require fencing, some kind of reseeding, and long-term plans for weed control.

The landowner may also want to retain and reserve the right to continue using the surface of the easement, provided there is no interference with the operation and maintenance of the pipeline. Rights to put in gardens, graze livestock, and plant crops can be reserved. Additionally, it may be important to reserve the right to install drainage ditches or put in a road across the easement, either in support of current farm operations or in anticipation of expanded operations.

Finally, nothing lasts forever. Some landowners may want to describe what triggers the end of an agreement. To eventually clear the farm title of encumbrances, landowners may want to consider only granting the use of the easement for a specific term. In addition, any language that appears to give rights to the company in perpetuity or exclusively needs to be considered carefully.

More information about specific topics, such as pipelines' impact on pastures, is available at <http://serc.osu.edu/extension>. Remember to put everything in writing and never sign anything without talking to an attorney.

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