

**What Land/Surface Owners Should Know
When a Landman Shows Up
And Wants an Easement/Right of Way
To Put a Pipeline Across Your Land.**

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Introduction.

The author intends this paper to be a general guide and checklist of points that a land/surface owner should consider when deciding whether to sign a pipeline right-of-way agreement, and if so, what provisions to negotiate into the agreement and what to get paid for signing. There are some provisions that the company has to have in the agreement as a practical matter. However, unlike consumer sales contracts and loan papers in which most of the language is controlled by a consumer protection statute or rule somewhere, none of the language in the agreement is required by or controlled by any law known to the author. It is instead a legal free for all with the company's form carefully drafted by the company's lawyer for the company's benefit. And the effects of signing a pipeline agreement are much more important and long lasting than any consumer contract except perhaps a mortgage. So, land/surface owners need to be much more careful and take steps to protect themselves, when they are signing a pipeline agreement than they would when they sign documents in their role as consumers.

Because this is a general guide and checklist, it is not intended as legal advice in any one person's situation, even though it was authored by a lawyer. If you are not sure whether you need legal advice in your situation, you should at least ask a lawyer that question. It is highly recommended that if you negotiate on your own, either with or without the advice of a lawyer on the side, that you have a lawyer look over the final language proposed to you by the company before you sign it. Think of the fee that you pay to a lawyer for advice and to review the language as a form of insurance. You have insurance on your house in case something goes wrong. You have insurance on your car in case something goes wrong. It is worth it to you to pay a lawyer a fee to help you anytime you negotiate with an oil and gas or pipeline company as insurance to make sure that nothing will go wrong in the first place, because once you sign the agreement it is probably too late to fix problems later.

This is the author's first effort at a paper on pipelines. If you find errors in this paper, or if you have more suggestions or other information that might be useful to others, please report them to the author so changes can be made in a future version. Also, the oil and gas industry is going through a period of relatively rapid change. If the date of this paper is some period of time prior to the date you are reading it, you might want to check for a newer addition or updates. They will be made available on the web site of the West Virginia Surface Owners Rights Organization (www.wvsoro.org).

Typically someone who works directly for a company that wants to have the pipeline will come to your door and want you to sign the agreement. Sometimes that is a drilling company that wants to move gas from its own wells. Sometimes it is just a company that does pipelines. Sometimes the company that wants to have the pipeline will hire yet a third kind of company to try to get people to sign the agreements for the pipeline. It does not matter much to you whether it is a drilling company or a pipeline company or even a company they hire that sends a landman to your door. The advice is pretty much the same. So this paper will use just use the term "company".

Generally the person who comes to your door, no matter whether it is the company that wants to own the pipeline, or the company that works for that company, is called a “landman” or “lease agent”. This paper will use the term “landman”.

What kind of *pipelines* are we talking about?

This paper is specifically about natural gas pipelines. Generally, natural gas pipelines fall into three broad categories. First there are the gathering pipelines that gather the gas from a well or collection of the wells for the producer(s). Second, there are transmission pipelines that take the gas to utilities that sell it to the general public and businesses. Third, there are distribution pipelines that gas utilities use to supply the gas to consumers and businesses.

This paper is about the first two kinds of pipelines. The third kind of pipelines, gas utility company pipelines, are beyond the scope of this paper. However, in rural West Virginia some gathering and transmission pipelines are used for delivering gas to rural consumers and can fall, or be made to fall, under the jurisdiction of the West Virginia Public Service Commission as a regulated gas utility. If you are having a problem with gas pipelines that deliver gas to you for your personal use, either from a regulated public utility or a gathering pipeline, call the Public Service Commission or the Consumer Advocate of the Public Service Commission in Charleston.

Determining where pipelines stop being gathering lines and start being transmission lines is not easy. This is done differently by the Federal Energy Regulatory Commission for its purposes, the Occupational Safety and Health Administration for its purposes, the federal Department of Transportation for safety purposes, the Public Service Commission of West Virginia for its purposes, etc. There is only one distinction between the two lines that is relevant to a land owner who has been approached by a landman who wants to buy a pipeline right-of-way. That one important distinction is that for transmission lines the company has the right to take the pipeline right of way by eminent domain/condemnation proceedings in the event the land/surface owner will not willingly sign a right-of-way agreement. Fortunately the vast majority of natural gas pipelines are gathering pipelines and the company does not have the right to obtain a pipeline right of way by eminent domain/condemnation. If the surface/land owner will not sign an agreement for a gathering pipeline, the company has to go around.

Even if the company does have the right to condemn a right-of-way across your property, the company really would prefer not to use that power. They can get some bad publicity for condemning rights of way on people’s land. It is also a lot more work for them. They are also going to have to pay lawyers to bring the suit. It will also slow them down some. (However, in condemnation law suits that the companies bring, there are ways in which the company can get the right to go ahead and start laying the line, leaving the longer process of determining the amount of money the surface/landowner will be paid to later in the law suit.)

Other than the condemnation power, most of the issues discussed in this paper are relevant to the agreement for a right-of-way for both gathering or transmission pipelines. Therefore, and for the reasons in the previous paragraph, even if the landman says the company has the right to use

eminent domain (and there is some bluffing going on out there), it is recommended that the surface owner approach the process in the same way. For that reason, this paper will assume generally that the surface owner has been approached about a gathering pipeline by a company without the power to use eminent domain to condemn a right of way for the pipeline. Where the fact that the company has power of eminent domain makes an important difference, this paper will point out those differences.

The Federal Energy Regulatory Commission (FERC) has materials for citizens on the building of interstate transmission lines and the condemnation powers that go along with that. We suggest you look on their web site for their latest materials if that is what is coming to you, and some of their materials may be helpful to others.

What pipeline *agreements* are we talking about?

This paper is about the agreements that companies try to get surface/landowners to sign in order to get permission to put a pipeline *across* the surface/landowner's property. This will be a pipeline that will move gas from the property of a neighbor where the line will come on to your property to the property of another neighbor where the line will leave your property. It is an agreement for a pipeline that is moving gas that did *not* come out of the mineral tract that underlies the surface/landowner's land. (However, sometimes if there is a gas well on the tract of mineral land that underlies the surface/landowner's property, gas from that well will be added into the pipeline that will run across your property.)

There paper is not about pipeline agreements that are included in lease agreements. Lease agreements that companies get mineral owners to sign so the company can drill gas wells always include agreements for the company to have gathering lines that take the gas from the gas well on the property to market off the property covered by the lease. (And if the agreement did not, the courts would interpret the right to do that into the lease.) If a landman comes to you to sign a lease to drill a gas well that authorizes pipelines, that agreement is different than the agreements this paper is focusing on – though you may learn some things in this paper that will be useful in that situation.

Frequently leases have provisions int them that authorize pipeline that are not just pipelines to market from wells on the property being leased. Frequently lease agreements to drill gas wells also authorize pipelines to move gas *across* the leased property. Scratch that out before you sign. IF you want to agree to a pipeline across your property you can. But it should be a separate agreement and you should get extra money for it. You should read over any lease very carefully before you sign it, and it is best to talk to a lawyer about it.

A company drilling a new well under an old lease may come to you even though the old lease already authorizes a gathering pipeline. They may be offering to pay you some money to sign something just to keep good relations – or they may be wanting to add/sneak something in that they did not get in the original lease. Read anything you sign carefully and maybe have a lawyer compare the original lease with the new document that they want you to sign.

Sometimes the driller has the right to put a pipeline across the surface owner even if the gas well is not on that surface owner's property. This is true if *at the time the deed was made that separated the surface from the minerals* the surface owner's property was part of the same tract of land that the gas well was later drilled on. If the driller says this is why they can put a pipeline across you, they are probably right, but insist on seeing the chain of title and maps and lease, etc., to make sure this is true.

Frequently surface owners ask, "Why does a driller have the right to put a gathering pipeline authorized by a drilling lease across my surface land when the gas well is not being drilled on my surface land." This is a somewhat different issue than pipeline agreements for pipelines that take gas *across* your land. However the question comes up so often it will be explained here. Suppose at the time that the ownership of the minerals was separated from ownership of the surface (or at the time the lease to drill a well was signed if the same person owns the minerals and surface) that the tract was 100 acres. The mineral owner (and his or her lessee/driller) has the right to put a pipeline across any of the 100 acres to get to a well anywhere on the 100 acres. Suppose later the surface was divided up into five 20 acre tracts. That does not change the mineral owner's right to cross any of the 100 acres with a pipeline to get to a well. So even if the well is only on one of the 20 acre tracts, the mineral owner still has the right to cross the any of other 20 acre tracts that were part of the original 100 acre tract with his pipeline if he needs it, unfortunately. The same thing would be true if a lease was signed before the minerals and surface was separated, or even if a lease was signed and then the 100 acres was divided into five 20 acre tracts of surface and mineral. If the lease was signed for 100 acres, dividing up the property later does not keep the mineral owner (and his or her lessee/driller) from putting a pipeline across all of the 100 acres that was included in the lease.

So this paper is not about the gathering pipeline agreements included in leases. Stated differently, this paper is not about the company's right to move gas that came *from* the minerals under the surface owner's land. This paper is about agreements to build pipelines to move gas *across* the land/surface owner's tract.

As a general rule, if the gas the company wants to move through their pipeline did not come from the mineral tract under the surface owner, then the company has to get an agreement from the owners of the surface to lay and use the pipeline. This is true if you are the fortunate surface owner who also owns the minerals. It is also true if you are only the surface landowner and do not own any interest in the minerals. This sort of pipeline right of way is one of the few times you are going to have the opportunity to control the destiny of your land and maybe get some money from the pipeline company.

Because this paper applies to agreements to lay pipelines that move gas across the land whether you own just the surface or both the surface and a mineral interest in the land, this paper has been calling you the land/surface owner. That is awkward so the paper will start using just the term "landowner". But it applies to you even if you just own the surface.

Just what is a pipeline agreement/right-of-way/easement?

In order to get what it wants from you, the company that wants to build a pipeline will want you to sign a paper document and have your signature notarized. The paper the company is asking you to sign is the deal they are making with you. We will call the paper they bring to you the “agreement”. It is not important to you whether the paper calls itself a right-of-way or an easement or a deed of easement or whatever. What is important is that you do not sign any agreement if there are things you do not want in it, and that absolutely everything you bargained with the company for is in writing in whatever you sign. Read what you sign carefully, and maybe have a lawyer read it for you too. It is also important that you date your signature and get a signed copy before the company man leaves with it, or drive to somewhere/someone that has a photocopier or a computer/scanner before you let loose of it.

If you have concerns about the form or the format, you should talk to a lawyer. If the company is pressing you to sign something that is not complete and is saying, “Oh, we’ll take care of that; don’t worry about it,” or “some blanks can be filled in later,” or that they have a notary who will notarize your signature later -- all of that is a problem. Not only could one of those blanks or unwritten understandings be a problem for you later, but you are dealing with a company that will not do things the right way, you are probably dealing with a company that is more likely to cause you problems later. West Virginians like to be polite and get along. If you run into someone like this you can still be polite. Politely tell them to “Get along, now”, you will talk to someone else.

Pipeline laying overview.

West Virginia has laws with some requirements for the burying of gathering pipelines. See 35 Code of State Regulations 4-16.7. (See the website of the West Virginia Surface Owner's Rights Organization under "Advice for Common Situations" for a link to these rules.) This Rule requires pipelines to be buried when “practical and reasonable”, but there appear to be exceptions that could be possible loopholes, and the author is not familiar with real world application or enforcement of this Rule.

Some gathering pipelines have been laid on top of the ground. This is particularly true for smaller gathering pipelines. It costs money to bury pipelines, so digging a hole for a two-inch pipeline is often not seen as worth it by the company. This is particularly true through forested areas because laying pipelines there is even more difficult and burying it will do damage to tree roots and trees, etc. On the other hand, timbering in a forest that has pipelines on top the ground is considerably more dangerous, even though it is easy to tell where the line is. Timbering through forest with pipelines buried in the ground is also dangerous, and one should always know where those pipelines are. Gathering pipelines provided for in an oil and gas lease for drilling a well on the property are often required by the lease to be buried below plow depth upon request of the person signing a lease and their successors.

If a pipeline with less than 350 pounds of pressure develops a leak it will -- leak. If it has more than 350 pounds of pressure inside it and it leaks, the leak will rip open and there will be a

catastrophic failure and very possibly an explosion. Those with more than 350 pounds of pressure should be buried -- deeply.

For that reason and others, the bigger the pipeline, the more likely it is the company wants to bury the pipeline. Particularly when the company wants to bury the pipeline, the company will need a temporary right-of-way to work in while burying the pipeline. That temporary right-of-way is wider than the permanent right-of-way. The important point here is you need to think of what is important to you both during the construction/wider right-of-way phase and during the permanent, though somewhat narrower phase. For a small gathering line the right of way may be only a few feet. For a big transmission line the permanent right-of-way may be 20 to 30 feet in width. The construction easement could be 50 feet in width or even 50 feet on each side of the pipeline. It varies a lot. Read what they want to do and make sure it is OK by you, or if it is not, try to negotiate something different.

The final permanent right-of-way will have the most lasting impact on your land. It will be a swath on which trees cannot be grown, upon which your surface use is otherwise limited. Although fires and explosions, etc. of permanent pipelines are rare, they have happened. This most often occurs when someone is using excavating equipment and pierces the line. This danger of pipelines is relevant to you for that reason, and also for the reason that fear of such problems may decrease the value of your property.

Some pipelines, usually the smaller gathering pipelines, if they are buried, are simply dropped in a ditch. Larger pipelines go deeper and in bigger ditches and have something called “cathodic protection”, which will be explained later, that makes laying them a more complicated process. Also, the bigger pipelines can’t just be bent around corners and over hills and horizontal changes of direction. They have to be cornered and welded.

How many pipelines?

The author has seen language in agreements, particularly in older agreements, allowing the company to place more than one pipeline on the property. Sometimes it says the second pipeline has to be laid next to the first pipeline, but sometimes it says the second pipeline can be placed anywhere. You want to agree to one pipeline at a time and be paid for each pipeline the company wants. If you end up wanting to sign an agreement for the first pipeline, and the company insists that they have to have an agreement for additional pipelines, insist on some provision providing you compensation for additional pipelines as they are placed on your land.

The company is likely to insist that the company can come in when the (first) pipeline gets old and replace it (unless maybe it’s just a small gathering pipeline to one well). So you will probably have to agree to that if you want to sign an agreement, but at least insist on compensation for the damage done to your land when they do replace the line, by either paying you the same damages again (probably not the best idea because of inflation) or setting up a process to determine damages.

Where will the pipeline be?

Do not sign an agreement that lets them put the pipeline wherever they want to. There are bound to be places on your land which have better uses for you than as a pipeline – a home site etc. You don't want them putting the pipeline there. The company may come to you first with a general idea of where the pipeline is going to be, but insist they need to do a study to make sure exactly where the pipeline goes and that it is a suitable place. This can be a bit of a conundrum. You want to know exactly where the pipeline goes; they may need some flexibility to study where exactly it will go, but will not want to spend the money doing a study that unless the company has a written commitment from you to let the pipeline go through somewhere. It's probably best to tell them orally that you will agree to allow them to do their survey (perhaps for a small fee), and once the company knows exactly where they can and cannot put it, sign the full agreement. Always start with what you want. If there are places you do not want it, say so right away. Or if there are places that will take extra value from the land if used for a pipeline, let them know that land will cost them a premium.

For a variety of reasons, you want to make sure whatever you finally sign has a map that is specific enough to be clear that they are not putting the pipeline where you do not want it. You may have trouble getting this for a small gathering line, but the company should have no problem giving you one for a larger gathering line or transmission line. And the best thing is to have a survey of the pipeline that will be recorded at the courthouse with the agreement so that its location can always be found. Also make sure that wherever it is, its location will either be obvious (in the center of a path of permanently cleared trees) or that it will be marked with monuments. You do not want somebody with a backhoe to not know where it is and cause a serious problem. And you do not want to unknowingly build a building or a pond on it or do other things that the agreement will probably prohibit. And if they use plastic lines, make sure they stretch a wire along the line so it can be found later with metal detector.

If you have coal under your property or some other potential future use for where the pipelines are that is significant, you may want to put a provision in the agreement that says they have to move the pipelines if you ask them to. They may agree to this provision, but they will almost certainly insist that the provision requires you pay for the move. If you want to be able to move the pipelines, you will almost certainly have to agree to pay for moving the pipelines.

What else will the company on your land want besides the pipeline?

Read the language of the agreement carefully to see what, besides the pipeline itself, the company wants to be able to put on your land. If it talks about "compression," this could be a compressor station. That's a big deal. You may not want a compressor station. If you don't mind having a compressor station, you probably ought to get paid extra for a compressor station. As a general rule, do not sign an agreement that allows for compressors or other kinds of treatment facilities. Most often they will let you cross that out and initial it or take it out of the agreement. If not, the company may not be sure what they are doing which is not good, or they may really have a plan for a compressor there and not want to tell you. If the company is not sure what they are doing, tell them to come back when they are sure. If they do want a compressor, and it's OK by you,

then negotiate an extra fair price for that. We know of one landowner who owned property where the company really wanted a compressor. He got \$250,000.00 and guarantees that they would enclose it so it would not be noisy.

Many larger pipelines have something called “cathodic protection.” In order to prevent the pipeline from rusting, the company puts a very slight electrical charge on it. This requires them to be extra careful as they bury the pipeline because they have to insulate the pipeline from the ground with insulation and wrapping, etc. After they lower the pipeline in and bury it, they have to make sure that when they drop the rocks on it, they don’t ruin that insulation. Then they have to have a way to get electricity to the pipeline. If their pipeline is big enough, they’re going to have to have this, and you are going to have to agree to it. The good news is that it is very minimal additional disturbance to your land.

There is other equipment they may want. Most of it is probably small and would not make much of a difference to you. Junctions with other pipelines are probably not a big deal. Pig catchers that let them intercept devices that they shoot through the pipelines to service them fall in between. Nothing like a compressor, but more than a junction. You should get some extra money for whatever they want. Ask them how big whatever they want could possibly be and make sure the agreement says they can’t put anything in bigger than what they said they needed. And get some extra compensation.

What runs through the pipelines?

You are probably being approached by a gas company that will almost certainly use it for transporting natural gas. We have not heard of a company wanting to transport anything else through a pipeline they originally got for natural gas. The author has not heard of anything else having been put through those pipelines. If there is anything on the horizon, it would be compressed, liquified carbon dioxide that results from carbon sequestration at power plants, etc. When the original of this pamphlet was written, the power industry and others are seriously studying taking the carbon dioxide out of smokestacks and pumping it deep down in the ground, and if there isn’t a good formation directly under the power plant, they may need to pipe it somewhere else. This has died down for the 2014 edition, but may come back. You may think this is a worthwhile use of a pipeline across your land, but right now the author does not know enough about the process or its dangers, or its value, to make a recommendation that it is OK to sign an agreement that allows for carbon to be pumped through the gas pipeline.

With the Marcellus Shale horizontal well revolution, lots of companies also want water lines for the massive amounts of water that they want to frac their wells. We have less experience with these pipelines, but see nothing much different in what should be in an agreement or how they should be priced. It may be more important to get a clear end date to rights of way for these lines.

Read the agreement carefully and see what is included and excluded. Do not agree to broad language that could include anything other than natural gas and its constituents and things incident to the use of the line for natural gas.

Temporary Impositions.

The pipeline agreement, particularly for larger/buried lines, will usually set out a width for a cleared right of way for the life of the pipeline. That permanent right of way can have no trees, buildings etc. in it. However, the agreement will usually provide a wider cleared right-of-way as they are laying the pipeline for them to do their work in laying the pipeline.

Some issues you need to think about are relevant to this point in time while they are laying the pipeline. Are you going to be able to get access to your house while the pipeline is being built if the pipeline ditch crosses your access road or driveway? Maybe it's not a problem, but think about it. And if it is important to you, make sure that you can put buildings etc. inside the temporary width once the pipeline is laid, even if you will never be able to put one in the permanent cleared way.

Construction of the right of way and laying of the pipeline has to cause some mess. Most worrisome is a heavy rainstorm while the vegetation has given way to mud. Erosion and sedimentation will follow unless the company has complied with appropriate practices. There may be general "storm water" permits given out by the DEP that have requirements for practices to stop erosion and sedimentation. Make sure they agree to comply with the requirements for one of these permits.

Roads.

The agreement language the company proposes will almost certainly give it the right to access the right-of-way both during the construction phase and after it is installed. It is obvious they will need access to the entire right-of-way while they are constructing it. After it has been installed, they will need to come by and check on it and perhaps maintain the pipeline, and perhaps maintain the right-of-way, and maybe some day replace it.

The question is, can they do that only by traveling along and on the right-of-way itself. Or, can they use your roads that you already have there; or can they create new roads that are not on the right-of-way in order to get access to the right-of-way. You will have to agree, of course, that they can travel on and along the right-of-way itself. It is their right-of-way and they need to get there somehow. But you do not have to agree that they can use your roads or make other new roads to get access across other parts of your land to their right of way. You may not want them to cross your land with roads elsewhere because the company will create a mess when they do that. You may win that negotiation. Or the company might insist that the pipeline right-of-way goes up and down such steep mountains that the company could not get up and down roads if they were built there on the right of way itself. If that is true, those roads would probably cause such erosion, it may be wise to

let them use a different road. But make sure you know where those roads will be or that you have some consent or approval of their later location.

If you are going to agree to let them use roads other than roads on the pipeline right-of-way itself, there are lots of things to think about. Does the company only need roads for the temporary period while they are constructing the pipeline? If that is so, will they need them again when the company replaces the pipeline? If you are going to agree to roads, what kinds of roads do you want to agree to? If you prefer not to have a road at all, insist that the company only make narrow roads. Or since there is going to be a road there anyway, would you like a nice wide graveled road that will open up your property for your use and maybe develop another part of your land. Would you rather them come steeply up a hill, taking out fewer trees but leaving a road that is more likely to cause erosion problems? Or would you prefer them to use a gentler road up the mountain that will be longer and will take out more trees, but be less likely to cause erosion and therefore be better to travel on later. These are all things for you to think about and negotiate if you can. There is additional information about roads from other sources, including the website of the West Virginia Surface Owners Rights Organization.

Along with roads can come gates. Do you fence in animals, or fence out people? If you do not have fences do you at least want gates on the road to prevent unauthorized people from coming on. The company will probably agree to gates on any road on their right-of-way or that they make. Make sure everyone has a key or that the gate is locked with a chain and a series of padlocks with everyone having a key to one of the padlocks. The company may say that gates don't make a difference, that people just get around them or tear them down. Any gate is like any lock. A really prepared and determined person can get through it. But the better the lock or the gate, the fewer people will be determined enough or prepared enough to get through it. Perhaps just moving the gate from where their road intersects the public road back to a choke point where it is hard to get around could make a difference. Maybe a farm gate is enough in your area; maybe a pipe gate with serious pipe fencing on either side to prevent going around the gate is more appropriate in your area.

Figure out what you want and insist on it and you will probably get it. But do not take a fancy gate instead of something important.

“Reclamation.”

True reclamation would be returning the land to its original contour and vegetation. What is usually called “reclamation” these days just means preparing the road for the way it is going to be while the pipeline is there. This includes decisions like what kind of construction in terms of slope up and down the hill, and whether to in-slope, out-slope or crown roads – particularly those that go along the side of hills. It includes the placement of broad base dips or the less desirable alternative, water bars, and the even less desirable side ditches and culverts required for in-sloped or crowned roads. It also includes choosing re-vegetation species such as Kentucky Fescue 31, which will grow on a rock and quickly prevent erosion, but which is disliked by farmers and sometimes even dangerous to stock. Or would you rather have wildlife seed, or native seed re-vegetation? The company will likely agree to your choice on this.

Figure out what you want and demand or negotiate for it. Again, there are materials on the West Virginia Surface Owners' Rights Organization web site and other places on these subjects.

Maintenance.

Ask what the company plans do to maintain the right-of-way. If the company will want to keep large trees from growing, will the company come along every couple of years brushhog the right-of-way or send guys with huge weed eaters. Will the company use herbicides, and are you happy with that? If so will the company spray it from trucks or helicopters? Ask what the company intends to do and, if it's okay with you, make sure it's in the agreement. Make sure that things that are not OK are prohibited by the agreement.

Access.

Does the company have to let you know they are coming onto the right-of-way or not? It may depend on the purpose. You should insist that the company give you notice when they are going to show up with the bulldozers, etc. , and they will probably agree (but the maintenance department will forget later). You should ask, and the company may agree, to let you know any time their guy is going to come by on a four-wheeler to check it out. Whether the company agrees probably depends on the company, the particular pipeline in question, and the terrain. Negotiate what you want and can.

You are going to have to tolerate some strangers coming onto your land while the pipeline is being constructed and maintained. Some landowners have even gone so far as to insist that the company have the names of those people. The company might not be able or willing to agree to that, but the company should agree that their employees cannot do anything on your land except what is necessary to build a pipeline. There's no reason for people working on the pipeline to have a fishing pole or a firearm or use your land for any other purpose.

Surface restrictions and uses.

Will you be able to build a farm road across the pipeline? Will you be able to haul timber across the pipeline? How close to the pipeline will you be able to build an equipment shed or home or place a factory built home. Read the language of the agreement carefully. If there is a very general, broad restriction, you may not be happy with that.

The company may justifiably worry about the weight of log trucks and have reasonable requirements for you to contact them and put weight spreading materials over the pipeline before you come across with a log truck. You should try to get the company to agree to pay for that because they should and because they are more likely to overdo the requirements if you are the one that has to pay for them.

You probably don't want to put a building too close to the pipeline, but you may need to put one somewhere near there. If you will not be permitted to put one within the permanent right-of-way width, will you be allowed to put one within the wider temporary right-of-way width. What about ponds? What about trees? Decide what you may want some day. Don't give them more than the company really needs, and negotiate the best you can.

You want to be sure to tell them where you want permanent crossings for your access roads and driveways, etc. so the company can sufficiently deck their pipeline to allow your crossing of the pipeline. If they tell you that is not necessary, make sure it says that in the agreement.

Title warranty.

Some agreements the author has seen say that the surface owner signing the agreement warrants "generally" the title. That means if the company fouls up their title search and gets sued by somebody who owns some fractional interest in your surface, that you are liable for the damages caused by the problem and would even have to pay for their lawyer to defend the lawsuit. Try not to give them any warranty at all. If you have to give them a warranty, give them a "special" warranty that just means you are guaranteeing that you didn't screw up the title. If the company insists on a general warranty, do not sign it.

Liability.

There are two kinds of liability that are an issue. The first is whether the company will be liable to you if the company causes more disturbance or problems on your surface than was foreseen or contemplated when you signed the agreement. The agreement will almost always provide an amount of damages decided in advance for damage to your property. You will almost certainly have to agree to that. That should only be payment for what the company reasonably needed to do to lay the pipeline. What if they back a bulldozer into your garage. What if they come across a pipeline that no one knew about and it causes an explosion that sets the forest on fire. What if one of their workers brings his hunting rifle to shoot at a deer and hits a person instead. Make sure that what you sign only agrees to the damage that was foreseen or contemplated, or some similar language. Some agreements the author has seen do say that the company will pay for "extra ordinary" damages in addition to the agreed damages. That may be a little too far but it is better than nothing. "Out of the ordinary" would be better.

The second kind of liability is if their work causes damage to somebody else. Many agreements have a provision that "indemnifies" you. It says the company will hold you harmless and defend you if the company does something wrong and a third party sues you. That is all well and good, but it almost never ever happens that the landowner gets sued. So, agree to that language, but don't make it a trade for anything else that you really want. And do not think that this language covers the same thing as the previous paragraph.

Will this affect my ability to get insurance?

If you currently have some kind of insurance for the property you need to be cognizant of how having the pipeline might affect your insurance. We do not know much about this, and it may vary a lot depending on whether you are just talking about homeowner's insurance or broader coverage. Our advice is to call your insurance company and ask. And if having this pipeline will increase the cost of insurance, get a provision in the agreement that requires the pipeline company to pay you for the increased cost of insurance. And if they balk, you might ask them to identify for you an insurance company that will not raise your rates.

Abandonment/how long does the right-of-way last?

This may not be an issue in your lifetime; these pipelines will be there for a long time. But at some point, decades or even centuries from now, the company will probably stop using this pipeline or its replacement. When that happens, their right to use the right-of-way should stop. Make sure there is something in the agreement that defines abandonment. Something like, "If the pipeline is not used to transport natural gas for a period of two years," then the pipeline is abandoned. You can be flexible on the language, but you want everything to have an end.

The first thing to worry about is what if you sign the agreement and something happens and the pipeline is never built. How long does the right-of-way last then? You may state that the right to use your land terminates if the company doesn't build the pipeline within five years. Similar language has existed in oil and gas drilling leases for years. Rarely is that language seen in pipeline agreements.

Removal.

If the pipeline ever is abandoned, you want to be sure that the company has the obligation to remove all of the above-ground valves and equipment housings and so on.

If it is a pipeline on top the ground, you may want it pulled out, although that would cause some disturbance as the company brought the equipment in to do that. Or it might be okay with you to leave it there so long as it is cut in enough places that anything explosive or otherwise dangerous in the pipeline will vent out so that it won't cause a problem if somebody accidentally cuts or breaks it with a bulldozer or a backhoe.

If it is a buried pipeline, taking it out of the ground probably will cause a huge amount of surface disturbance, but you may want that. On the other hand, just leaving it there to rust and eventually collapse may only cause an eventual small dip in the surface the size of the pipe. You may prefer that. What you surely want even if the pipeline is left in the ground, is that the pipeline is disabled and vented in a way that nothing explosive or dangerous can build up in the pipeline in case it is breached or somebody builds a campfire on top of it. And as described above you want some kind of monuments to show where it is/was.

How much should I get paid?

Note to August, 2014 edition: This pamphlet was originally written in May of 2010. Since then the Marcellus Shale horizontal drilling revolution has caused a sea change in the oil and gas patch. Most of the rest of this pamphlet is still relevant. However, pricing has changed. A conventional vertical gas well to a sand formation costs \$300,000.00 to drill. A horizontal shale well costs \$3 Million to \$6 Million to drill -- and they put 6 or more on a pad. They pay that much more to drill because they get that much more gas out to sell. They routinely brag that over the life of a horizontal well, for every 1000 feet of horizontal well bore they will get more than 2 Billion cubic feet of gas, which is 2 Million MCF, and an MCF of gas sells for at least \$3.00. The "\$1 per inch per foot" standard urged below is obsolete for the gas and water pipelines that Marcellus Shale horizontal drillers are seeking. Unfortunately the industry is in such flux that it is hard to give a standard. We have heard of surface owners getting \$15, \$25, \$28, \$50 and \$66 per foot. As explained more below, the most important factor is not what it is worth to you to allow a pipeline, but what it is worth to the driller, which is mostly about what it would cost to go around you. So communicate with your neighbors as advised below, and get what it is worth to the pipeline company.

This is the first question almost everyone asks. It is dealt with almost last here because there are other equally, if not more important, things involved in a pipeline agreement. People understand money, pretty much. This paper makes sure you understand the other things, too -- the things you maybe did not know or think to ask about -- before we talk about money. So now that you have a greater understand of what it means to agree to a pipeline across your land, assuming it is still OK with you and you are willing to allow the pipeline, it is time to talk about money.

Start by asking yourself the most important question to you regarding how much you should get. How much would the company have to give you in order for you to tolerate having a pipeline across your land? What is the loss of value to you for having a pipeline on you land? Figure that out. Do not agree to less than that.

That is only the starting point. Because this transaction is not just about what it is worth to you; it is also about what it is worth to the company. Odds are that the value of having the pipeline across your land is worth a lot more to them than it is to you, unless the company has the power of eminent domain to condemn the pipeline. Lots of money is going to be made selling the gas that crosses your land. It may not be the landman that makes it, or even the pipeline company that makes it, but lots of money is going to be made. Of course the pipeline has to cross lots and lots of other people's land, and the gas has to be got out of the ground and treated, etc. etc. , but clearly this pipeline is worth more to them than it is to you.

So, what is the value to them? We think a good rule of thumb of what it is worth to them is \$1 per inch of diameter of the pipeline multiplied by the number of feet that the pipeline crosses your

land. So, if a two-inch pipeline crosses your land for 1,000 feet, $\$1 \times 2 \text{ inches} \times 1,000 \text{ feet} = \$2,000$. A 24-inch pipeline would be \$24 times the number of feet that crosses your land.

The author has advised several people who have negotiated pipeline rights-of-way. When the landowner states this rule of thumb, the people working for the company who are negotiating these rights-of-way universally deny that is a good rule of thumb. Some of them say they have never paid more than \$5 per foot for a pipeline right-of-way. And, indeed, that may have been all that they had to pay people in the past. Those would be people who were thinking too much about what the right-of-way was worth to themselves and not what it might be worth to the company. Unfortunately, this historical pricing has become somewhat ingrained in the industry. This can mean that the landman talking to you does not have the authority to agree to that much, and they have to go up the chain of command, who may not want to hear from them. And they may need more in their budget to pay you that much, more than the company wants to put in their acquisition budget. Pipeline business plans may have been predicated on surface owners agreeing to pipelines based on the value to the surface owner. However, again, except in the case of condemnation, we think that sellers should only sell something based primarily on what it is worth to the buyer if that is higher than what it is worth to the seller. That is the way every market economy works.

The author, however, has good reason to believe that "\$1 per inch per foot" is what pipelines are worth to companies. When a company has to have a pipeline and has to have a right-of-way from a particular surface owner, and the surface owner knows all that and knows what they are doing, then the companies have agreed to that amount or nearly that amount. They companies have agreed to even more than that when the surface owner is very large and it is really hard to lay the pipeline around him. That is probably not you. But, if the company has to come across your land, that rule of thumb or something approaching it is what you should be able to get. Unfortunately, the lower price they have gotten away with before may have become so imbued in their culture they just won't ever agree to that much, so you may have to agree to less than \$1 an inch per foot (but only if the amount they are offering is equal to or more than it is worth to you). If they are offering enough money to you and that amount is more than it is worth to you, and the deal makes you enough money, you may want to do it.

Ultimately, the value to the company of getting an agreement to put a pipeline across your land is what it would cost them to go around you, if they can go around you. If the company can go around you on the neighbor's land, even if it's longer, if the neighbor will take \$5 an acre, then that may be where the company will go. And that may be fine by you. So think about their alternative costs to help inform your negotiating also.

It is suggested that you go talk to your neighbors. Tell them what you know. Let them read this. It may be that you and your neighbors can unite on a set price the company will have to pay if they want to come across you or your neighbors. Or you could be less fortunate, with less agreeable neighbors, and end up in a bidding war between you and your neighbors. At least your neighbors will be better educated, and the bidding should go higher.

There are other factors you can look at that may give you arguments for more money. You could ask in addition that the company pay you for the value of the timber (and get the timber

appraised now, on the stump, before it gets cut down). They will counter that for the price you want, the price of the timber should be included.

Another such factor is the actual value of your land. You might want to get an appraisal of how much your land is worth per acre and how many acres the company is actually taking. That can be an argument, though you probably want to do much better than that.

And remember, whatever agreement you sign should only be compensation for the foreseen, contemplated damage to your land, and not for negligence or for doing more damage than was necessary.

It was a common practice, and still is, for companies to offer an hour of free bulldozer work or some truckloads of limestone as a form of compensation. That is still an OK thing to get. It would cost you a lot to get a bulldozer out there, and they already have one there. And they have a bulk deal on limestone probably. But do not take that and give up the real compensation or other things that you want to which you should be entitled.

Unfortunately, all of the above discussion about how much the pipeline is worth to them does not matter so much if, in fact, the company does have the power of eminent domain to use condemnation to put in the pipeline on your property.

Eminent domain/condemnation value.

If the company says that it does have eminent domain power, start by making sure it really does have the power of condemnation. They probably do, but we have known land men to lie. There are no qualifications to become a landman or landwoman, and no licensing of these folks. Get something from them that shows they, in fact, have eminent domain in your situation.

If you are in an eminent domain situation, then the value of the property to them is the difference between the value of your property without the pipeline running across it and the value of the property with a pipeline running across it, plus the hassle and bad PR to them of going through a condemnation proceeding against you. Do not agree to a lower amount just because they're willing to start a condemnation proceeding. And what neighbors are accepting as the amount per foot is not as important in a condemnation proceeding because the company does not have to go around you. Even though the standard for compensation is the difference in value of the land with and without the pipeline (plus the hassle to them), you have some things to argue about. Argue they need to use the highest and best use of your land when determining the difference in value. Argue that the market value of your land will go way down not just because you are losing some useful acreage, but because people are worried about pipelines blowing up -- because they have blown up. Even though the company doesn't think it's likely that the pipeline will blow up, the important thing is that people who would buy your land think it might have a chance to blowup, which reduces the market value.

Make sure the claims you make about the potential of the pipeline to diminish the value of your land are sensible. Making crazy claims will get discounted by the condemnation process if it goes all the way through, but making good claims will be considered, so make sure your good arguments are considered even without going through a condemnation proceeding. What you should probably settle for is a difference between the values and added onto that, some of the value to them of not having the hassle of going through a condemnation proceeding. Do not add in all of the value to them of going through a condemnation proceeding because then they will go to a condemnation proceeding. Plus ask for some things like gates and dozer work. If you end up in the condemnation proceeding because the company is legitimately low-balling you, then it really is time to see a lawyer. You may not want to pay a lawyer or be able to afford a lawyer to represent you through the whole proceeding, but you at least need to talk to a lawyer familiar with condemnation proceedings to at least head you in the right direction.

Taxes.

Some of the money the company pays you for laying pipelines can be determined to be a payment to you for the value of the land they are taking. Some of the payment can be payments to you to compensate you for the damages they are doing to your land. There is a difference for income tax purposes. Money that the company pays you for the value of the land they take is probably income, and taxable as such. Compensation to you for the damages to your land is not taxable as income; however, it might reduce the “basis” of your land for capital gains purposes if you ever sell it in a non-exempt transaction that realizes capital gain. Some surface owners have negotiated a division of the money they are to receive from the company between payment for the value of the land and damages that is favorable to them for their tax treatment. Tax advice is way beyond the scope of this paper. You should consult a tax professional to see the extent to which, if any, of this is lawful behavior and the specific effects on your tax situation. The author only points out that it has happened.

Miscellaneous suggestions.

Take your time. Know what you are signing. If you are not comfortable, at least pay a lawyer for his time to read it and tell you what it says. If a company is in a particular hurry, it is either because they don’t want you to have time to get educated about what you can negotiate into an agreement, or they have gotten themselves in a mess, and you are in a better bargaining position than you think. Your future use of the land and your children and grand children and great-grandchildren, or someone’s great-grandchildren, will be dealing with the effects of this agreement. Take your time and be careful before you sign such an important document.

Some other general advice given to surface owners and to people who are signing gas leases applies here. You can read that advice on the website of the West Virginia Surface Owners Rights Organization. Things like: Don’t get in a shouting match with the person you are talking to. Ask to speak to their supervisor if you can’t get along with them. The supervisor doesn’t want to hear from you, really, so that might give some incentive to the person you are talking to for treating you

right. If not, insist on talking to the supervisor. If the person you are talking to will not give you the supervisor's name and number, then instead of working from the bottom up, work from the top down. Find the company on the Internet and call the company president or chair of the board and ask them the name of the guy's supervisor and work your way down.

Keep a journal of who you talk to, what they said, and their phone numbers and so on. Over time, this will become a jumble to you if you do not keep a record.

Take pictures of your land before the pipeline starts. Take lots of pictures from different angles, from close up and from far back. Digital pictures are great for this. You do not have to print them. Just have them on a disk in case you need them.

The person from the company who comes to you will give you their first offer in terms of money and provisions. He or she will almost certainly have been given authority to make a number of changes. He may not be given authority to make all the changes you want. The changes he does not have authority to give you will be harder to get. It will require him to go up the ladder, maybe as far as the company lawyer. When negotiating pipeline leases, unlike negotiating gas leases, where the company has a little more freedom to go somewhere else, you have a little more power to get them to take changes up the ladder because they probably do want to put the pipeline across your property. But if you ask too much and cause them too much hassle, they can try to go around you.

Conclusion.

Decide what you want -- what your bottom line is, and don't go below it. Don't be rushed. Understand what you are signing before you sign it. Consider not just the value to you, but the value to the company when deciding how much money to ask for and get. Get together with neighbors. Get what you can. Don't expect to get everything that you want. Think of the future and your stewardship of the land for the sake of the land and future generations of it's inhabitants.