

Eminent Domain: Can a Gas Company Put a Pipeline Across My Land If I Do Not Agree?

Second Update Note 10/19/2014. After this page was originally posted, we heard of copies of letters to landowners citing West Virginia Code Section 54-1-3 and claiming that section of code allows surveyors etc. to come on to people's land before an eminent domain proceeding has been started or finished. This is a section of West Virginia's Eminent Domain laws – sometimes called “condemnation” laws. As explained below, we believe that an interstate pipeline may be controlled by Federal laws or statutes, and even if this State statute applies, the West Virginia Eminent Domain laws may only be exercised for a “public purpose”. West Virginia cases deciding whether natural gas or oil pipelines are for a public purpose are very old and generally were often considering the kind of regulated utility gas companies that supply gas directly to consumers and businesses – a true public purpose. The cases were not for companies involved in the exploration and production and transportation side of oil and gas which is a private business. We think the distinction is important not only to keep citizens' property from being taken when they don't want to give it up, but because citizens are compensated for condemned party only at the value of the property to the citizen (albeit its highest and best use to that citizen, which may be more valuable than its current use), and that a private company negotiating with a citizen for its private purpose should have to pay what the use of the property is worth to the company (which is a whole lot more).

Our advice to the public on this web page is not changed much from our advice before. But understand that if you end up in Court, a judge may rule that the pipeline in question is for a public purpose.

Also note that West Virginia's trespass laws do allow a surveyor who is surveying boundary lines to come on to property as long as they do no damage. However, pipeline surveyors are not doing boundary lines, and the kind of “survey” they are doing is not always a licensed surveyor or engineer with a transit and level, but often a more general survey looking for environmental, archeological, topographical and geological issues.

Third Update Note 10/23/2014. We have added the paragraphs (or ends of paragraphs) indicated by “[New 10/23/2014]” about how to deal with confrontations at property lines, and encouraging people to as a group negotiate for annual payments for the easement, instead of one-time payments.

As a general rule, no. A company locating a huge “interstate transmission” pipeline can eventually use eminent domain to force a pipeline on you. But their authority to do that only comes after the company proposes the pipeline, the Federal Energy Regulatory Commission holds public “scoping” meetings in your area, and then issues an order allowing the use of eminent domain for the pipeline. (While the company is considering where to put the pipeline

and preparing its application to the Federal Energy Regulatory Commission, the company may come to you and ask for permission to come on to your land. They may have eminent domain powers in the future, but (*subject to the Update Note above*) you can refuse them permission to come on to your land until they get an order from the Federal Energy Regulatory Commission (“FERC”) *or an order from a judge declaring that the purpose is a “public purpose”.*)

Importantly, a gas driller/producer/operator does NOT have the power of eminent domain to lay its “gathering” lines from its gas wells to compressor stations or market etc., or for its water lines for production etc. *We believe that is clearly a private, not public, purpose.*

A local utility *with rates regulated by the Public Service Commission* placing pipelines to provide natural gas to residences etc. *is exercising a public purpose and will most likely* have the power of eminent domain but it is unusual for that to happen these days. Eminent domain is not generally used *by such an entity* to just to run a line to one house *though that too is possibly legal.*

An INTRAsate pipeline company may argue that it can use West Virginia’s general eminent domain statute, but that is also unusual. *We think the most important distinction is whether the rates are regulated and whether the pipeline can be used to move gas that belongs to other companies.*

Our Advice:

If someone comes to you and says they have eminent domain rights for a pipeline across you, and if you do not want a pipeline across you, tell them to come back with the order or other written document that establishes their eminent domain authority. They are very unlikely to return with such a document. If they do, get a copy and show it to a lawyer, or maybe send it to us. *And if they say they have a right to come on to the property as noted in the Update Note above, tell them that they may believe they are doing this for a “public purpose”, but they are not a judge or federal agency, and you do not think so. So they need to get a court to say that it is a public purpose and show that to you.*

[New 10/23/2014] If they try to come on to your land any way (which would surprise us) after you have told them to leave (or in face of “no trespassing” signs etc.), call the sheriff or State Police. Tell them that you have asked them to leave because they do not have anything in writing from a court that gives them the right to be there, and that it is your position that they have no right to be there. Show them this page if you want. Almost always the law enforcement officer arriving at a scene like this will see his or her job as keeping the peace. The officer will separate the potential combatants (meaning the landman has to leave) and tell them to get lawyers.

[New 10/23/2014] If the landman threatens to call the police on you for blocking his or her entry, offer the landman your cell phone to make the call and proceed as per the advice in the preceding paragraph. Whatever happens, don’t you breach the peace or make verbal or physical threats to do so.

[New 10/23/2014] If you get a letter giving you notice that they are coming on to your land, or asking permission to do so, send them a letter back (return receipt) saying what we say above. You do not think that they have the right to come on to your land. You are giving them a notice not to come on to your land which makes any unauthorized entry after receipt of the letter the crime of trespass. Tell them if they want to come on to your land despite your letter, they should take you to court. (That way if months later they go for a temporary restraining order or preliminary injunction, you or your lawyer can say they were told months ago to take you to court and waited months to do so, so they do not have a right to wait for months and then claim there is irreparable harm necessary for a temporary or preliminary injunction.

This may lead to them threatening to sue you or actually suing you to get access for the survey (though we would be surprised). But if they do, and if all you do is get served and never respond then all you can do is lose, which would put you in the same position as if you let them on in the first place. However, we recommend that if you are sued, you should get a lawyer if you can. You might first contact us. We might know of a group that is getting legal representation for a group of landowners in your position. If you can't get a lawyer, don't be intimidated. The lawyers may try to intimidate you, but the Judge will be fair. File an answer in the law suit and show up at any hearings -- and just say you do not think they should be able to take your land because it is not a public enough purpose, and they should not be able to just pay you the land's value to you, they should pay you the value of the right of way to the company.

And if your ultimate goal is to keep them off your land entirely, you may not want to get bogged down in the surveyor dispute. Get with others, and get a lawyer, and think of the long term strategy that is best for that goal which may or may not include disputing the surveyor.

In the Meantime:

Be sure to read [our publication](#) on about the negotiating the different kinds of pipeline right of ways. *[New 10/23/2014] In particular, if you decide to negotiate, we are urging everyone to get together and insist on yearly, not one-time, payments for the pipeline right of way. Remember you should always negotiate for what having the easement is worth to the company, not what the loss of land is worth to you – though be aware that if a court does determine that the pipeline is for a public purpose and entitled to use eminent domain laws, the court may only give you what the land is worth to you at its highest and best use.*

See our attempt to explain the [complicated overlapping jurisdiction over pipelines](#) of federal and state agencies.

Look to see what [other pipeline materials on our web site](#) might be relevant to your situation.

Excerpt from [Eminent Domain Statute](#).

For more on [trespass laws](#).

Who Regulates What About Which Pipelines?

Note: As you can see by reading below, this is a very complicated question. We have done our best to summarize it below. If you have questions, feel free to contact the agencies listed below, or maybe even us if that does not work. As a general rule the agencies dealing with larger pipelines are at the top of our list, while the smallest pipelines are at the bottom. There are links to many of the agencies identified below elsewhere on our website.

Federal Energy Regulatory Commission (FERC)

Interstate transmission pipeline need and placement (including “eminent domain”).
Interstate transmission pipeline rates.

Federal Department of Transportation (DOT), Pipeline & Hazardous Material Safety Administration (PHMSA).

Safety: If it is an interstate transmission line (Sometimes by agreement, State PSC acts on their behalf).

If 70 occupied structures within 1000 feet of one mile of pipeline length.

State Public Service Commission (PSC)

InTRAsate transmission pipeline

Rates: If transporting for 3rd party.

(Gathering systems may be intrastate pipelines past the compressor.)

Statutes only (not PSC)

Eminent domain for public utilities for "public" purpose (residential distribution pipeline placement etc.) (Maybe not for individual residences).

State PSC residential distribution rates and cutoffs.

Public utilities.

Producer serving over 25.

Gathering line serving over 25, but maybe if under 25 and causes trouble.

Master meter (wholesale) purchasers who distribute and sell to others.

State PSC safety Intrastate transmission.

Master meter over 25 (buy wholesale and sell).

State Department of Environmental Protection (DEP) Division of Water & Waste Management (DWWM). Construction practices controlled by State “stormwater” “general” permit.

State DEP Office of Oil and Gas (OOG). Burying of gathering lines.

Leaking gathering lines.

County Commissions and Floodplain Coordinators

The installation of pipeline facilities, and perhaps even the laying of the pipeline itself may require a floodplain permit from your local County.