



WEST CENTRAL STAKEHOLDERS

LANDOWNER GUIDE: UNDERSTANDING PIPELINES, SETBACKS

OBJECTIVE

This document is intended as a general guideline for landowners. West Central Stakeholders strongly encourages landowners to get more information on any specific concerns, questions or issues they may have related to pipelines or any other oil and gas related activity.

BACKGROUND

Pipelines are often referred to as the invisible highway. Approximately 700,000 kilometres of pipelines – long enough to circle the earth's equator 17 times – link supply and demand of petroleum products in Canada. About half of Canada's pipelines are located in Alberta.

Pipelines are the safest and most efficient means of transporting crude oil and natural gas from producing fields to refineries and processing plants and of distributing petroleum products and natural gas to the consumer. They have recorded far fewer incidents than other modes of transportation.

Pipelines in Alberta are regulated by one of two regulatory bodies. The Energy Resources Conservation Board (ERCB) regulates provincially. Federally the National Energy Board regulates all pipelines not covered by the ERCB, including pipelines travelling across provincial boundaries. This document primarily speaks to pipelines under provincial regulation (ERCB jurisdiction). For information specific to federally regulated pipelines, please see the NEB website www.neb-one.gc.ca/clf-nsi/rsftyndthnvrnmnt/sfty/rfrncmtrl/pplnrgltncnd-eng.pdf.

Status of Pipelines

Pipelines can exist in several different states: operating, suspended or abandoned.

Operating pipelines: are in use to transport various raw or processed gas or oil products.

Suspended pipelines: a state of being temporarily not in active service. A pipeline in this state can be reinstated and returned to service.

Abandoned pipelines: Converting a pipeline to a condition that can be left indefinitely without further attention and will not damage freshwater supplies, potential petroleum reservoirs or the environment. Involves purging all fluids and capping the ends of the pipeline.

Pipeline removal

Removal of a pipeline, following proper abandonment, is rare. Removal of a pipeline further disturbs soil and presents the potential for adverse environmental effects.

A landowner may request the company remove an abandoned pipeline if leaving the line in the ground impacts the landowner.

At the landowner's request, the ERCB can review a company's pipeline license, to determine if the pipeline causes an adverse effect and should be removed. If the landowner cannot get the agreement of the company the pipeline act allows the landowner to request the ERCB consider if the movement of the pipeline would be in the public interest and further, the ERCB can determine who should pay the costs of removal or moving the pipe.

OVERVIEW OF A PIPELINE PROJECT

During the past few decades, people in communities affected by proposed or existing pipeline industry activities have become increasingly involved in the decision-making process related to the development or operation of pipelines. These days, landowners have access to many sources of information about pipelines both in print and on line. One very good source is through the Farmer's Advocate Office. The following is based on their publication "*Pipelines in Alberta – What Farmers Need to Know*"

An energy company conducts an initial assessment of pipeline route, in consultation with landowners and government departments.

- The landowner is contacted by the company to obtain consent for the proposed pipeline location.
- Once the pipeline location is established, the landowner and company negotiate a pipeline easement or right-of-way agreement.

- The company registers a caveat on the landowner's land title.
- The company obtains government approvals (from Alberta Environment, Energy Resources Conservation Board or National Energy Board).
- Compensation is paid.
- Pipeline construction begins.
- If problems arise during or after pipeline construction, there are several agencies that may be able to help. Alberta Environment (AENV) should be contacted about conservation and reclamation issues. The Energy Resources Conservation Board (ERCB) should be contacted for technical and safety concerns. (See the contact list at the end of this publication.)
- Generally, one crop year after installation of a pipeline the company and landowner settle any damage claims.
- The company retains the right, under the right-of-way or easement agreement, for re-entry to inspect or repair the pipeline.
- The company is responsible for surface damage caused by its activities on or off the right-of-way. For example, you may want to address future erosion, rocks or slumping and how it will be rectified.
- Once the company stops using the pipeline, it may apply to the Energy Resources Conservation Board to abandon the pipeline. The company may then apply to Alberta Environment for a reclamation certificate.
- The energy company's caveat could then be removed from the landowner title.
- The landowner can request the removal of an abandoned pipeline by applying to the ERCB.

NEGOTIATING FOR A RIGHT-OF-WAY AGREEMENT

As of January 1, 1977, the Surface Rights Act grants pipeline and utility companies the right to gain entry on to lands to lay down and construct pipelines, power lines and telephone lines. Granting a right-of-way means conveyance of limited specified rights; the grantor remains the owner and retains all rights not yielded to the grantee. A right-of-way agreement, most commonly used to legally secure access for pipelines, is negotiated and registered against the title by way of caveat.

The negotiations concerning a right-of-way agreement involve three major issues: the nature of the rights that will be granted, the compensation payable for these rights, and the provisions concerning liability and compensation for damages arising from the exercise of the rights granted. The company will approach the landowner with an agreement and an attached plan of survey. The agreement, drafted by the company, is drawn up to enable and protect the company's operations and installations. The landowner should negotiate amendments or additional clauses that apply to his circumstances and protect his interests. Make sure the additional clauses or amendments are in **writing**.

Agreements can vary greatly. Many clauses are broadly written to cover things that might occur. The agreement should be studied carefully and signed only

when the intent of each clause is understood. Moreover, the company has drawn up the agreement with its operation in mind.

If the landowner and company cannot agree on location, the company can ask the Energy Resources Conservation Board to provide dispute resolution. This may be as simple as involving the local Energy Resources Conservation Board, or as complex as a hearing before the ERCB. Prior to issuing the permit, the ERCB takes into account the concerns of the landowner, as well as the requirements of the company. A dispute involving compensation may be taken to the Surface Rights Board and a Right-of-Entry order may be granted to the company.

Landowners should consider completing a farm plan before negotiations begin. A farm plan can detail future plans for land including business plans such as a market garden or future subdivision plans. This information enables landowners to better plan with oil and gas companies where a proposed project should be located in order to work within the farm plan and the company's plans. Keep in mind that pipelines are not likely to be removed in the future. Before purchasing any property, landowners should also be aware of any pipelines or other underground facilities, including abandoned facilities.

RIGHTS OF THE LANDOWNER

The following points are typically included in right-of-way agreements and cover areas for discussion with the company.

Location of pipeline

The pipeline route will be surveyed and a Plan of Survey completed. The plan must be attached to the Right-of-Way Agreement. Surveyors have the right to undenied access to the land through both Section 14 of the Surface Rights Act and Section 16 of the Surveys Act. The company or its agent should make a reasonable attempt to notify you prior to the survey. They are also liable for any damage caused by the survey.

The pipeline route chosen by the company is not cast in stone. If you have a concern with the route chosen, negotiate an alternative route prior to signing or agreeing to the location. If you and the company are unable to negotiate a satisfactory location, you have the right to object. Contact your nearest Energy Resources Conservation Board field office.

Right-of-entry

If you and the company cannot agree on compensation the company may apply to the SRB for a Right-of-Entry. If the SRB grants the company this order, the company has the legal right to come onto the land to install and operate the pipeline. Prior to commencing construction, the company must pay you 80 per cent of their offer. Any additional compensation, in an amount determined by the SRB, is payable following the hearing.

If both parties reach a settlement prior to the SRB hearing, a private right of way agreement can still be signed and the hearing cancelled.

Temporary workspace

It is sometimes necessary for the company to acquire temporary workspace adjacent to the right-of-way. Compensation for temporary access is negotiable. The landowner may request that all required workspace be included in the right-of-way agreement and not as part of a separate temporary access agreement. In addition to any other negotiated compensation, the landowner is entitled to be compensated for damages. Temporary workspace is included in the right-of-way when the company applies for a Reclamation Certificate.

Topsoil, compaction and weeds

The agreement should specify conditions for removal or non-removal of topsoil, leaving the land as near as possible to its original condition following construction. Alberta Environment has established criteria for handling topsoil. These criteria must be followed.

As many vehicles and heavy equipment will be travelling on your land during the pipeline construction, you should discuss procedures to be taken by the operator to strip and conserve topsoil on the right-of-way.

You may also wish to discuss the company's practice for the prevention of spreading weeds from one area to another.

Additional pipelines

Some agreements contain clauses relating to the construction of additional pipelines. This allows the company the right to place additional pipelines in the right-of-way. In this type of agreement, prior to construction of the additional line, the company must pay the appreciated difference in the land value of the area used or a minimum of \$50 per acre. An entry fee would not be payable, damages would be payable.

The intent of the granting clause in the most commonly used right-of-way agreement today is that only one construction operation would be allowed on a right-of-way. During this one construction operation more than one pipeline may be installed. You may request that the easement be limited to one pipeline by adding a clause similar to the following: "This right-of-way agreement is for the construction and laying of one (1) pipeline." Should the company come back and request an additional pipeline, it would have to negotiate a separate right-of-way agreement.

For more information about your specific situation, contact the Farmers' Advocate Office.

Above ground structures

Under the Surface Rights Act, above ground structures (appurtenances) relating

to the pipeline require a separate agreement, a surface lease.

Other concerns

Other concerns you may have can be addressed and, if necessary, added to the agreement with the company or to a separate letter of intent signed by the company.

Compensation

Under Alberta legislation, landowners and occupants of land are entitled to receive compensation for allowing a pipeline to be installed on their land. The categories of compensation for a right-of-way include the following:

- entry fee – \$500 per acre, for each acre of land in the easement or right-of-way agreement; minimum \$250, maximum \$5,000.
- value of land rights taken – value to body of rights impacted by pipeline right-of-way.
- general disturbance – compensation for the time involved in negotiating the right-of-way agreement and other inconveniences related to the installation of the pipeline. It is common to lump the value of the land and general disturbance together.
- damages – compensation for loss of crop or pasture and adverse effect such as having to farm around an open pipeline trench or relocate livestock.

The entry fee and compensation for the value of the land must be paid before the company installs the pipeline.

Compensation for damages, which may include nuisance and inconvenience, is usually paid one crop season after installation so that the extent of damages can be properly assessed.

The company requires a release from the landowner or occupant relating to the settlement of damages on or off the pipeline right-of-way.

Compensation is also paid when water or sewage pipelines, power transmission lines or telephone lines are installed on your land. To make rural gas distribution affordable, rural gas utilities are not required to pay right-of-entry compensation. Customarily, rural landowners allow gas distribution lines on their property for a nominal one-dollar fee and payment of crop damages.

Rented Private land

A Right-of-Way Agreement or Right-of-Entry must be completed before the company installs the pipeline. The company must also obtain the consent of the occupant or lessee once the landowner has consented.

The landowner is entitled to receive the entry fee and compensation for the value of land. The occupant is generally entitled to receive compensation for damages and may also be entitled to a portion of the nuisance and

inconvenience compensation. The amount of compensation each person is to receive is negotiated between the landowner and the occupant. In the case of a right-of-entry, the SRB determines compensation payable to the landowner and occupant.

Crown land

For questions regarding the use of crown land please contact the local Alberta Sustainable Resources Development office (see contacts).

SETBACKS

Setback — a minimum distance established through the combined efforts of local authorities and regulators to provide a buffer between buildings and pipelines.

Setbacks are determined based on numerous factors including type of gas (sweet or sour), pressure, proposed surface development (ie one home versus a subdivision), size of pipeline etc.

In Alberta, setbacks are regulated by the ERCB, National Energy Board (NEB) and municipalities. Setbacks also vary between federally and provincially regulated pipelines.

Make sure you understand the setbacks associated with the project the company is proposing before signing an agreement. When negotiating the location of a pipeline, ask what the setbacks will be and understand how that may impact future plans.

GROUND DISTURBANCE/SAFE EXCAVATION

If you are planning to carry out a Ground Disturbance anywhere, you **must** search for pipelines for a distance of 30m beyond the entire perimeter of the area in which you plan to dig and call Alberta One-Call at 1-800-242-3447 to request the location of any buried services. This is a free service. Alberta One-Call requires two full working days notice to locate buried services.

"Ground disturbance includes such activities as excavating, digging, trenching, plowing, drilling, tunnelling, auguring, backfilling, blasting, stripping topsoil, levelling, removing peat, quarrying, clearing grading or pounding posts."

These actions are all defined as "ground disturbances" in the Pipeline Act and the Pipeline Regulation.

ERCB regulations list 2 situations that do not qualify as ground disturbances:

- 1) land disturbances of less than 30 cm that do not reduce the pipeline cover to less than that when first installed
- 2) normal cultivation that does not exceed 45cm depth

National Energy Board Pipeline Crossing Regulations require you to obtain pipeline company approval to do any excavation, construction or installation of a facility *within the pipeline right of way* as well as to complete any excavation using power operated equipment or explosives within the 30 metre safety zone. The safety zone extends 30 metres from the edge of the right of way on each side. The 30 metre safety zone is just a safety zone, and does not preclude development.

Other methods to search for pipelines:

- call the ERCB or NEB to check area records for the existence of pipelines
- check with local utility providers
- check the land title for the easements or right of way
- look for pipeline warning signs near the site
- look for wells, tanks, valve stations and meter stations which might indicate the presence of pipelines
- look for ground settling from previous work
- talk to nearby residents and landowners

ADDITIONAL RESOURCES

Much valuable information is contained in brochures and FAQs offered by the Energy Resources Conservation Board.

[EnerFAQs 01](#) What is the Energy Resources Conservation Board?

[EnerFAQs 02](#) Having Your Say at an ERCB Hearing - This EnerFAQs explains the purposes of Energy Resources Conservation Board (ERCB) public hearings

[EnerFAQs 03](#) Inspections and Enforcement of Energy Developments in Alberta - safe and efficient development of Alberta's energy resources are the rules and standards by which energy facilities must operate

[EnerFAQs 05](#) Explaining ERCB Setbacks - This EnerFAQs explains setbacks in the energy industry, how they are determined, and how they may affect Alberta citizens and their communities.

[EnerFAQs 07](#) Proposed Oil and Gas Development: A Landowner's Guide - When oil and gas companies propose development on or near your property, you want to be aware of your rights as a landowner your options

[EnerFAQs 09](#) The ERCB And You: Agreements, Commitments, and Conditions

[EnerFAQs 10](#) Public Health and Safety: Roles and Responsibilities of Agencies that Regulate Upstream Oil and Gas

[EnerFAQs11](#) All About Appropriate Dispute Resolution (ADR)

[EnerFAQs13](#) Emergency Response Preparedness in the Energy Industry

Farmer's Advocate Office

www.farmersadvocate.gov.ab.ca
305, 7000 - 113 Street
Edmonton AB T6H 5T6
Telephone 310-FARM (3276)
Fax 780-427-3913
Email: farmers.advocate@gov.ab.ca

[Ag-Info Centre 310-FARM \(3276\)](#)

Surface Rights Board

www.surfacerights.gov.ab.ca

Phone: (780) 427-2444

between the hours of 8:15 am to 12 noon and 1:00 pm to 4:30 pm

Email: srb.lcb@gov.ab.ca

Fax: (780) 427-5798

18th Floor

Phipps-McKinnon Building

10020 - 101A Avenue

Edmonton AB T5J 3G2

Energy Resources Conservation Board

www.ercb.ca

Red Deer Field Centre

(403) 340-5454

National Energy Board

www.neb.gc.ca

444 Seventh Avenue, SW

Calgary, Alberta T2P 0X8

Landsinfo@neg-one.gc.ca

403-292-4800

Toll Free: 1-800-899-1265

Canadian Association of Petroleum Producers

www.capp.ca

Small Explorers and Producers Association of Canada

www.sepac.ca

Canadian Association of Petroleum Landmen

www.landmen.ca

Canadian Energy Pipeline Association

www.cepa.com

Pembina Institute – booklet “When the Oilpatch Comes to Your Backyard”

www.pembina.org

Alberta Environment

www.environment.alberta.ca

Central Region Office, Red Deer
#304, Provincial Building
4920 – 51 Street
Red Deer, Alberta T4N 6K8
Phone: (403) 340-7052
Fax: (403) 340-5022

Clearwater County

www.county.clearwater.ab.ca
4340 – 47 Ave
Box 550
Rocky Mountain House, Alberta T4T 1A4
Phone: 403-845-4444
Fax: 403-845-7330

Alberta Association of Surface Land Agents

www.aasla.com

Alberta Sustainable Resource Development

www.srd.alberta.ca
Information Centre
Main Floor, Great West Life Building
9920 108 Street
Edmonton Alberta Canada T5K 2M4
Tel (Edmonton local): 780 944-0313
Toll Free: 1 877 944-0313
Fax: 780 427-4407
Email: srd.infocent@gov.ab.ca

Alberta One-Call

www.alberta1call.com
1-800-242-3447
Phone: (403) 531-3700
Fax: (403) 531-3703
Email: info@alberta1call.com
Mailing Address:
104, 4242 7 Street SE
Calgary, Alberta T2G 2Y8

West Central Stakeholders

403-846-9583
www.westcentral.synergyalberta.ca
email: westcentral@synergyalberta.ca