

DRAFT GUIDELINES FOR PIPELINE CONSTRUCTION ON DEC ADMINISTERED STATE LAND

4/19/07

This document provides guidelines for the development of Temporary Revocable Permit Special Conditions for the construction of oil and gas pipelines on State Forests and Wildlife Management Areas (State Land).

Pipeline construction on State Land is subject to ECL statutory authority and to the terms and conditions of the Lease Contract. This authority is only exercised through a valid lease, as provided in:

- ECL 23-1101 (2 c) “[All oil and gas leases must:] contain provisions for the termination of such lease by reason of the lessee’s failure to so explore or operate.”
- Article 5E of the lease contract states “All tools, derricks, boilers, boiler houses, buildings, pipelines, pumping and drilling equipment, tanks, engines and machinery, and the casing of all dry or exhausted wells, shall remain the property of the Lessee, and shall be removed at any time prior to or within ninety (90) days after termination of the Lease”.

When a request to construct a pipeline is received, the Department of Environmental Conservation (hereinafter referred to as the Department) must first determine if the applicant has a legal right to install the pipeline on State Land. Authorizing the construction of any utility on State Land, constitutes the granting of a real property interest. The Department has the authority, in some instances, to permit the construction of oil and gas related pipelines on State Land, if a valid mineral Lease exists on the property to be crossed. (The only other cases where the Department can permit the construction of a utility line is where: a deeded access route exists; State legislation has authorized a specific route across State Land; or subject to an order by the Federal Energy Regulatory Commission). If the applicant holds a valid Oil and Gas Lease on such State Land to be crossed and the pipeline exclusively serves wells on that same property or wells in the spacing order including the State Forest, the legal right to construct a pipeline exists. If the State Land Lease Holder (hereinafter referred to as the Lessee) wishes to construct a pipeline across State Land to serve wells located on other lands, it must be demonstrated that resources beneath leased State Land are being drained by those wells serviced by the pipeline or, that the State Land is part of a spacing unit for the well(s) being drained.

If it is determined that a legal right to construct a pipeline on State Land exists, the Department will require the Lessee to obtain a Temporary Revocable Permit (TRP) with Special Conditions attached to guide the construction project, site restoration and future maintenance activities in compliance with the State Environmental Quality Review Act (SEQR). The Lessee will also be required to provide the Department with a performance bond. Additionally, the Regional Land Manager shall notice the TRP in the Environmental Notice Bulletin (ENB) for public comment for 15 days. Following the close of the 15 day period, the Regional Land Manager shall prepare a summary of public comments and if warranted, revise the TRP terms. A number of different versions of the Department’s Oil and Gas Lease have been in use over the years. In the current Lease, Article 10, section C (5) states that, “All access roads to drilling sites and all pipelines

shall be constructed and subsequently maintained on routes selected and designated by the Department and in a manner approved by Department". Older Leases contain different language that must be consulted when developing the Special Conditions.

On Wildlife Management Areas the pipelines and associated structures must not interfere with the purpose for which the land was acquired as outlined in the Code of Federal Regulations (50 CFR 80, Sections 80.14 and 80.18) that governs federal aid programs.

In identifying potential pipeline routes, the Tract Assessment Map prepared for the Lease sale shall be consulted. To the extent possible, the route of any pipeline must lie within areas where surface disturbance is permitted according to the map and, where possible and appropriate, along existing roads. Disturbances may be permitted within the Exclusion Areas (sensitive areas identified in the Tract Assessment), at the discretion of the DEC Regional Forester on State Forests or the DEC Regional Wildlife Biologist on Wildlife Management Areas (hereinafter referred to as the Surface Manager). In such instances, Special Conditions shall be developed to minimize impacts as appropriate. If a Tract Assessment Map has not been created, then the potential pipeline route will be examined by the Surface Manager and Special Conditions will be developed using the same criteria that are used in the development of Tract Assessment Maps, to minimize impacts from pipeline construction. In all instances, the New York Natural Heritage Program's element occurrence database will be queried by the Department to determine the presence of State and federally listed plant and animal species and their critical habitats to avoid detrimental impacts to at risk species and ecologically critical habitats.

Temporary Revocable Permits shall include the following Special Conditions:

1. The Lessee will be charged for the cost of marketable timber removed or seriously damaged and for the loss of future timber growth on the site. The loss will be assessed at 160% of the marketable timber's value. (60% for the loss of future growth = 3% growth per year for a 20 years period). Additional requirements will be added for stockpiling logs and limiting the amount of time forest products may be stored on site.
2. The depth of the pipeline must be addressed. Since State Lands are mostly working forests, a minimum pipeline depth of 4 feet will be required unless otherwise approved in writing by the Surface Manager. Hardened crossings will be provided by the Lessee during construction and as needed in the future, in locations designated by the Surface Manager.
3. Public motor vehicle access must be limited by the Lessee during construction and over the life of the pipeline. Barriers will be placed as directed by the Surface manager. Gates must meet Department specifications for construction and visibility. Gate keys will be provided to the Surface Manager. The use of large boulders or earthen berms may also be considered. Maintenance of all barriers will be the Lessee's responsibility.
4. Best Management Practices and Storm Water Regulations must be followed for all phases of construction. Clauses requiring the use of settling ponds, filter fabric, and water bar spacing by % grade, must be incorporated into the Special Conditions as appropriate for the specific site being developed.

5. The Lessee must be required to provide additional pipeline crossings for Department management activities such as timber harvesting and recreation infrastructure development for the life of the pipeline. Hardened crossings must be provided by the Lessee within 30 days of receiving a written request from the Department.
6. The conservation of excavated topsoil must be addressed including temporary storage locations and final restoration. Woody material, including stumps, must be separated from the topsoil during excavation. The temporary storage and final disposal of woody debris must also be addressed.
7. A performance bond shall be provided to the Department in an amount commensurate with the activity being permitted. (In no case will this bond be less than \$10,000.00.) The same forms of performance bonds accepted in Department Timber Sale Contracts can be accepted in the TRP. The Timber Contract language related to bonding is to be inserted into the Special Conditions. Upon successful reclamation of the site, to the satisfaction of the Surface Manager, the bond will be released.
8. The Lessee shall be required to re-vegetate the disturbed area with a specially formulated seed mixture with the seeding rate and mulching specifically addressed in the condition. Seeding must be successful prior to releasing the performance bond. The “standard for the industry” is to judge the seeding successful with coverage at or above 70% of the area. For late season seeding, two performance bonds are recommended. A large one for the majority of the work that could be released at the completion of construction and a secondary one to insure seeding success.
9. Within 30 business days of work completion and prior to the release of the performance bond, the applicant will supply the Department with GIS data that locates and describes all features installed on State Land including the depth and size of pipe, valves, headers, construction material, gates, berms. This data is to be supplied to the Surface Manager in ESRI shapefile format, projected into NAD 83, zone 18 UTM meters, (or in any other form deemed acceptable to the Surface Manager) and accompanied by attributes which describe the feature installed, the size, capacity or dimension, construction material, and in the case of underground features, the depth of such installation.
10. Any work associated with pipeline construction that occurs outside the pipeline corridor must be authorized by the Department in writing.
11. The Department reserves the right to suspend construction activities during periods of wet weather or in the case of non-compliance with these Special Conditions.
12. In the interest of public safety, any open trenches or significant hazards will be fenced at any time during suspension of work on the site, big game hunting season and holiday weekends.

13. Terms must be added to address future pipeline maintenance. Herbicide use will not generally be permitted. The Bureau Chief, on a case by case basis, may approve the targeted application of herbicide, such as with a cut stump application. All approvals will be through the TRP process pursuant to 6 NYCRR Section 190.9. Herbicide applications must be conducted by a properly licensed applicator and only after SEQR review has been completed.
14. Prior to the Lease termination, the Lessee will be required to cut the pipeline at DEC boundary lines, properly flush it to remove any flammable contents and then cap the cut ends. (“Cut, Flush and Cap” in industry terms). Additional restoration actions may be required. All rights to the temporary pipeline corridor are extinguished when the Lease is terminated. (The only legal authority the Department has to allow the pipeline’s use is in the legislation related to the Lease.)
[We will work with the PSC and the Oil and gas Industry to address existing pipelines that remain on State land where leases have been terminated.]
15. The standard liability insurance provisions in the Department’s TRP Policy will apply except that the limits of the policy must not be less than \$1,000,000 for each occurrence and at least \$3,000,000 in aggregate.

Other conditions may be added on a case by case basis, as applicable.

Where the Public Service Commission (PSC) is involved with establishing pipeline routes the Region must submit the same Special Conditions in their response to the PSC’s Notice of Intent (NOI). The PSC usually works with the Department’s Division of Environmental Permits (Permits) with respect to the NOI. It is important for the Surface Manager to communicate effectively with Permits to ensure that all of the State’s interests are considered, in particular the State’s real property interests. Department staff should ensure through the NOI process that PSC is alerted to circumstances in which the applicant does not possess a real property right (such as a lease) to install a pipeline on State Land. In the event the anticipated life of the pipeline will exceed the term of the lease on Department lands, an alternate pipeline route that does not utilize State Lands must be developed. A TRP will still be required in these cases.