

DCNR's Response Document – for comments received to-date regarding right-of-way (ROW) development on State Forest and State Park lands

The following is a summary of comments that the DCNR received in response to changes proposed to the agency's review and administration of right-of-way proposals across State Forest and State Park lands.

Comments were received from the following:

Allegheny Defense Project

Audubon Pennsylvania

Craft Master Manufacturing, Inc.

IOGA (Independent Oil & Gas Association of Pennsylvania), Marcellus Shale Committee and POGAM (Pennsylvania Oil & Gas Association) – filed jointly

Juniata Valley Audubon

Keystone Trails Association

North Coast Energy

Pennsylvania Forest Products Association

Seneca Resources Corporation

Sierra Club Pennsylvania Chapter

The Nature Conservancy, Pennsylvania Chapter

Several individuals, not representing any formal organization

Many comments were of a similar nature and have therefore been paraphrased below. The Department was seeking comments related to its process for evaluating right-of-way proposals, and responses are provided relative to those comments.

Comment: Several comments were received with respect to the fact that certain individual special interest groups were not invited as “stakeholders” to the Department’s June 17, 2009 meeting.

Response: DCNR anticipated that there would be widespread interest in the information provided at the June 17 meeting. Unfortunately, due to space limitations of the selected meeting location, it was necessary to limit invitees to representatives of a wide range of

constituent interest groups. Those representatives were then requested to go back and disseminate the information presented by the DCNR to their representative groups and individuals. The same information presented at the meeting was also made available publicly on the DCNR's website, except for draft copies of the ROW agreement, as those documents were still under legal review. Invitations to attend the June 17 meeting were also extended to several other representative stakeholders, but some invitees did not attend or RSVP the invitation for a variety of reasons. The Department believes that all interest groups have been given an equitable opportunity to comment via the DCNR website, even if they were not able to be present at the June 17 meeting. Comments can continue to be submitted anytime using the link on the website.

Comment: Several comments were made with respect to the fact that all right-of-way development should be prohibited in PA State Parks, State Forest Natural Areas, State Forest Wild Areas, etc.

Response: The Department has identified areas such as these as undesirable development areas and will work with a ROW applicant to have them avoided. However, if a right-of-way project falls under the jurisdiction of the Federal Energy Regulatory Commission (FERC), it's possible that FERC could mandate a right-of-way crossing (via eminent domain) through such areas if it's deemed to be a matter of national energy interest. DCNR anticipates that both FERC and ROW development companies would attempt to avoid those areas identified as undesirable. However, the possibility exists that such a situation would ultimately be determined to be unavoidable, and therefore the DCNR cannot outright exclude ROW development in such areas.

Comment: A request was made for the Bureau of Forestry to include certain hiking trails and their viewsheds as "undesirable zones" for ROW development.

Response: The proximity of a proposed ROW project to such trails and the viewsheds from the trails would be part of the Bureau's project evaluation process, and the presence of the trails would be addressed as part of the Environmental Review document. However, on those state forest lands where the Commonwealth does not own the subsurface rights, its control over the surface may be limited based on the rights of the subsurface owner to access the underlying minerals, oil and/or natural gas.

Comment: That the term of a right-of-way agreement should be greater than 35 years.

Response: The DCNR's proposed primary term for a main transmission pipeline is 20 years; the proposed primary term for a marketing/gathering pipeline is a maximum of 10 years. Section 318(c) of Act 1995-18, an Act creating the DCNR, gives the Department the power to lease rights-of-way to owners of real property abutting State forest lands under the jurisdiction of the Department for a period of not more than 35 years.

Comment: The Contractor Integrity Provisions and Nondiscrimination/Sexual Harassment Provisions (exhibits to the right-of-way agreements) are unnecessary.

Response: Both types of provisions are required to be included with all Commonwealth contracts, and have been in use for many years.

Comment: A recommendation was made that the on-site crew leader of the logging contractor(s) hired by the ROW developer be trained under the PA Sustainable Forest Initiative (SFI), in order to support local loggers and to ensure the Bureau of Forestry's FSC certification.

Response: Large project ROW clearing is a specialized activity that requires certain equipment and experience that in-state loggers generally do not have. Clearing a ROW across the type of steep terrain often characteristic of state forest land is dangerous work that is required to be completed in both a safe and efficient manner. Several out-of-state contractors specialize in this type of work and provide their services to the companies constructing the ROW project through a bid process. It is also not the position of the Department to make recommendations to ROW construction companies about the contractors they hire to perform this type of operation.

The company constructing the ROW pays the Commonwealth double-damages for the timber removed, which then becomes the property of the owner (i.e., the pipeline company). In many cases, the owner sells or gives this material to local loggers.

Comment: A recommendation was made that DCNR should optimize the utilization of saw timber and pulpwood produced from ROW clearing efforts by encouraging the marketing of such material to forest product companies, to support manufacturing ops and wood energy projects.

Response: The Bureau of Forestry wholly supports optimal utilization of timber resources cleared from ROW construction projects. The Bureau recommends and encourages ROW applicants to engage local wood product operators and consumers in the use of these materials.

Comment: Concerns were expressed regarding the anticipated increased time and cost of using specialty seed mixes together with tree and shrub plantings with respect to revegetation following pipeline construction.

Response: All major pipeline ROW construction projects across State Forest lands since 1986 have been required to revegetate temporary staging areas and the ROW itself as per a revegetation plan that includes trees, shrubs, and herbaceous seed. All tree and shrubs are readily available from nurseries, and should not cause any delays in construction. The ROW is required to be seeded to satisfy erosion and sedimentation prevention requirements. The current price of seed mix is approximately \$10.00 per pound, and is also readily available.

Successful revegetation of the ROW is the expected standard.

Comment: Concern was expressed relative to the costs and requirements of monitoring and management of invasive species.

Response: Many other state and Federal agencies require invasive plant management before, during, and after ROW construction. Monitoring and controlling for invasive plant species for ROW development is not a new initiative. The effects of non-native invasive plant species on ecosystems are being directly observed in areas previously disturbed.

Earth disturbance and the moving of equipment between job sites are mechanisms for the introduction of many new species into areas not previously impacted by invasive plant species. Monitoring studies for a recent pipeline just constructed in PA have documented four new invasive plant species in the newly-constructed pipeline ROW that were not there prior to the ROW construction.

Comment: A concern was raised that if a designated timber crossing area was incorporated into a current-day pipeline ROW project, and if the location of that designated timber crossing wasn't clearly and permanently marked, other areas over the pipeline might be used inadvertently, leading to a possibly unsafe situation. Furthermore, incorporating a current-day timber crossing into pipeline construction might be premature in terms of not being able to anticipate how logging equipment which might be in use decades from now would be so different as to render a current-day designed timber crossing as inadequate, again leading to a potentially unsafe condition.

Response: To the best of the Bureau's ability, we will anticipate future ROW crossing needs and as per the contract, make the construction/establishment of these crossings a part of the contract. Granted, we do not know what the physical equipment use may become, but we do know what it is currently and what it will be in the near term. We are addressing this need. These crossings could be used for other activities, such as motorized recreational trails. The crossing design criteria should include permanent designation. Not all crossings can be anticipated in advance, and will have to be negotiated if and when the time comes. Safety must always be a consideration.

Comment: Questions were asked about the way in which the new guidelines may impact or apply to a necessary modification of an existing ROW license agreement.

Response: The terms and conditions of existing Rights-of-Way Agreements are specific to the use, dimensions, size and type of infrastructure currently in place. Any proposed modification to those terms and conditions would nullify the existing agreement and require re-application for ROW. Additionally, whenever an older ROW agreement needs to be updated in order to accommodate an increased pipeline diameter or ROW width for example, then the entire ROW

agreement will be subject to updating, including fees.

Comment: Several requests were made regarding clarification of terminology in the Bureau's guidance documents, such as the terms "clear need" and "justification" with respect to the selection a particular ROW route.

Response: The Conservation and Natural Resources Act (act of June 28, 1995, P.L. 89, No. 18) provides DCNR with the following authority to grant rights-of-way for pipelines or transmission corridors:

Section 302. Forests

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(b) Utilization and protection. The department has the following powers and duties with respect to the utilization and protection of State forest lands:

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3. To grant rights-of-way through State forests to individuals or corporations who may apply therefore when it shall appear to the department that the grant of a right-of-way will not so adversely affect the land as to interfere with its usual and orderly administration, and when it shall appear that the interests of the Commonwealth or its citizens will be promoted by such grant. Right-of-way, as used in this subsection, is hereby construed to include rights of passage and haulage for any lawful purpose, also rights of flowage or transmission for any lawful purpose.

(71 P.S. § 1340.302(b)(3))

In addition Article 1, Section 27 of the Pennsylvania Constitution states: *"Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people."*

The Bureau of Forestry has an obligation to balance the need for suitable corridors for transporting energy products with the need to sustainably manage the land with which it is entrusted for its many resources, uses, and values. As such, all proposed rights-of-way on State Forest land should clearly illustrate how the interests of the Commonwealth or its citizens will be promoted by granting the request for right-of-way across State Forest lands.

Comment: Clarification was requested with respect to when the Bureau's large project review process needs to be followed.

Response: The criteria that will trigger a large project review are highly variable. The Bureau cannot give a brief response as to exactly what will trigger a large project review. As ROW requests increase in complexity, a large project review will likely be triggered. The Bureau hopes to minimize the number of these types of reviews, but will always do what is in the best interest of the forest resources it manages. The Bureau invites any operator to contact the Bureau's Operations Section by phone at 717-787-2014, or email to RA-ForestOperations@state.pa.us

as early as possible in the planning process so that a determination on the need for a large project review can be made.

Comment: Concerns were expressed regarding the receipt of a timely response from DCNR for new ROWs or modifications to existing ones, to meet industry's needs and timeframes.

Response: The Bureau will make every effort to respond to requests in a reasonable amount of time factoring in our inherent staffing limitations and review process requirements. Criteria such as the length and width of the proposed ROW and the resultant impact to the forest, the need for possible noise mitigation implementation, and PNDI review results are just some of the many items which will be carefully and thoroughly reviewed by the Bureau.

The Bureau is sensitive to timeframes, but our primary responsibility is to the citizens of the Commonwealth; timeframes are a secondary concern. Incomplete applications or applications sent to the wrong address will result in delays.

Comment: Concern was expressed for the increase in ROW fees.

Response: The use of Pennsylvania State Forest lands for the transmission of natural gas through pipelines, the transmission of electricity through elevated cables and towers, and other uses such as TV cable, communication cable, and water transmission has been a standard practice since the creation of the state forest system well over 100 years ago. As such, it has been deemed well and proper by the enabling legislation for DCNR, as the successor to the original Department of Forests and Waters, that the issuance of any right-of-way across state forest lands [Act 1995-18, Chapter 3, Section 302(b) (3)] would be in the best interests of the Commonwealth and not adversely affect the forest lands administration or environmental values. To this end, the Department has established a process for the review and approval of all proposed right-of-way projects on state forest lands and has provided for fees for the issuance of right-of-way agreements to compensate the Commonwealth for damages and the occupation of state lands. These fees take the form of timber damages, right-of-way rentals, road use fees and other fees that are typically charged on an annual and one-time basis to maintain the right-of-way agreement in effect.

As a part of the 2009 right-of-way project process, it was deemed necessary for the Department to review its fee schedule for the annual rental rate for its right-of way agreements and apply the current rates being assessed on surrounding private lands as the proper level of compensation to the Commonwealth for the use of its state forest lands for passage. The then-applicable rate schedule was devised in the 1950's and had not been substantially updated since that time. Therefore, the newly established and adopted right-of-way rental rates have been essentially taken from the surrounding private lands rates, which have been fully studied and published in periodic articles in the Oil & Gas Journal, as information pieces on the state of the pipeline industry, wherein the majority of the data has been acquired from the Federal Energy Regulatory Commission, which is empowered as the sole authority over gas transmission pipelines and gas marketing in the United States. The critical data that was used to establish the current rental rate

schedule adopted by the department was taken from the following sources:

2006 Oil & Gas Journal, "US Gas Carriers 2005 Net Incomes Climb; Construction Costs Plummet"; September 11, 2006; Christopher E. Smith, Pipeline Editor.

2008 Oil & Gas Journal, "Natural Gas Pipeline Profits Surge; Oil Flat"; September 1, 2008; Christopher E. Smith, Pipeline Editor.

2009 Oil & Gas Journal, "Pipeline Profits, Capacity Expansion Plans Grow Despite Increased Costs"; September 14, 2009; Christopher E. Smith, Pipeline Editor.

Within these data sources are described the four major cost components of any large diameter (>12") pipeline project, which are; (1) Labor, (2) Materials, (3) Right-Of-Way and Land, and (4) Administration and Engineering. The ROW and Land data were used as presented and applied to the Department's license agreement for right-of-way on state forest lands in all categories of passage.

Comment: A question was raised as to whether the ROW application and evaluation process being used for State Forest lands will also be applied to State Park lands, and whether similar process evaluation documents will be posted on the web or otherwise made available in the future.

Response: The Department does not have authority to grant rights-of-way for natural gas pipelines or other energy transmission corridors through State Parks. Applicants seeking approval from the Federal Energy Regulatory Commission (FERC) for such corridors should contact the Department as early in the FERC process as possible to discuss options, if any, that may be available. To the extent FERC approves a location within a State Park, the Department will seek land of equivalent value to the park to replace the land utilized for the pipeline project unless the applicant is using a right-of-way that was in existence when the park land was acquired. Any use of an existing right-of-way will be limited to its terms.