PROTECTING YOUR WATER AND PROPERTY FROM PIPELINE DEVELOPMENT

I. Background on the Falcon Pipeline

Shell’s Falcon Pipeline runs through Ohio, West Virginia, and Pennsylvania, carrying ethane (a natural gas liquid, and a by-product of natural gas development) to the Shell Cracker Plant in Monaca, PA. The ethane will be used to make plastic pellets used in plastics manufacturing. About 43.6 miles of the Falcon pipeline will be located in Ohio. The pipeline in Ohio has two parts: 1) a 10 inch diameter steel pipeline that will run 11 miles from the existing MarkWest facility in Cadiz to a junction point located 2-miles southeast of Scio; and 2) a 12 inch diameter steel pipeline that will stretch from the Utica East Ohio plant in Scio to a junction site located 4 miles southwest of Shell’s cracker plant that is currently under construction in Monaca, PA.

Because Falcon is carrying ethane and not natural gas, it is regulated differently than an interstate natural gas pipeline, but what you can do to protect your private property rights is often similar no matter what type of pipeline crosses your property.

II. Problems seen with Other Pipelines

Ohio, West Virginia, and Pennsylvania already have a good deal of pipelines, including natural gas pipelines and natural gas liquids pipelines. While pipelines are the safest option for transporting natural gas and natural gas liquids, landowners have still experienced problems during and after pipeline construction. These problems include:

- Loss or contamination of private drinking water supply
- Flooding from improperly restored or maintained sites
- Sinkholes
- Landslides (also called “slips”)
- Spills and inadvertent returns (release of drilling fluids onto land and water; in some cases releases have been millions of gallons of fluid released)
- Increased acid mine drainage

1 Disclaimer: This guide is for educational purposes only and DOES NOT constitute legal advice. This material is NOT intended to be a substitute for seeking legal advice and representation. Every circumstance is unique, therefore if you need legal advice, you should contact an attorney who can speak with you about your specific situation. Providing this guide does NOT create an attorney-client relationship with us.
III. Baseline Testing – Know Where You Stand In Case Harm Occurs

A. Water

If someone’s drinking water is diminished or contaminated during pipeline construction, having information about water quantity and quality prior to construction can help show that Shell is responsible.

Shell is not required under Ohio law or existing permits to conduct pre-drill surveys prior to pipeline construction for landowners along the pipeline route. In Pennsylvania, the PA Department of Environmental Protection required Shell to conduct a pre- and post-construction water supply testing for those properties within a certain radius of the project. Ohio Environmental Protection Agency did not include similar requirements in the permits issued to Shell for the Ohio side of the pipeline. Shell is required to list any surface waters and wells within 100 feet of the ROW on its stormwater pollution prevention plan (SWP3). Shell is required to keep this document on site and the Ohio EPA can request access to it at any time. The public can also request a copy of the SWP3 through the Ohio EPA.

Since 1945, in Ohio, drillers are required to file a well log with the state when they complete a water well. This well log provides information about the well including depth of the water well, how the well was constructed, the surrounding geologic formations, and the efficiency of the well. Ohio’s Department of Natural Resources keeps these log records. You can access them online at ohiodnr.com/water/maptechs/wellogs/appNEW or at 614-265-6740. This means, if your well was drilled after 1945, there is always some level of information about your well that you can obtain through state records.

In addition to these records, it is a good idea to get a water survey done for your drinking water supply by an Ohio Certified Lab. It is also a good idea to have other surface water on the property tested, particularly if the surface water is used for livestock or for any type of recreation. Below are some Ohio-certified labs that can do the water testing:
Cardinal Environmental Lab, LLC  
2870 Salt Springs Rd.  
Youngstown, OH 44509  
330-797-8844 or 800-523-0347

Coshocton Environmental Testing LLC  
709 Main St.  
Coshocton, OH 43812  
740-622-3328 or 800-870-6570

Ream & Haager Laboratories, Inc.  
179 West Broadway St.  
Dover, OH 44622  
330-343-3711

Summit Environmental Technologies, Inc.  
3310 Winn St.  
Cuyahoga Falls, OH 44223  
330-253-8211

The following are good parameters to test for:

**Inorganics**
- Alkalinity
- Chloride
- Specific Conductivity (Field and Laboratory)
- pH (Field and Laboratory)
- Sulfate
- Total Dissolved Solids
- Total Suspended Solids
- Turbidity
- Bromide

**Metals:**
- Barium
- Calcium
- Total Magnesium
- Total Manganese
- Total Iron
- Potassium
- Sodium

**Organics**
- VOCs/BTEX
- Ethane, Methane, Propane
- Total Coliform/E.Coli

A water test for these parameters typically costs around $400. Fair Shake Environmental Legal Services has a limited amount of funding to support baseline water testing. If you are having trouble finding the funds to pay for water testing, please contact Fair Shake Environmental Legal Services at **234-571-1970**. Applications for funding will be considered based on an individual’s income and number of individuals in the household.
B. Soil

If you currently use or expect to use your land within the pipeline Right-of-Way and surrounding areas for grazing or agriculture, it is good idea to have a soil test done. After a pipeline company has restored a pipeline Right-of-Way, the soil make-up of the Right-of-Way can be different. This can lead to problems for grazing and growing. Having a soil test before construction can be used to prove Shell caused the change in soil makeup.

Photographing the Right-of-Way and land surrounding it can also be useful to document the types of vegetation existing soil is currently able to support, contours of land, and location of low-lying wet areas. These photographs can help demonstrate that Shell caused changes to soil. For reliable documentation it is helpful to take images from the same place with the same camera over a regular frequency of time.

C. Land

If you find yourself in a situation where your land has been changed beyond the limits of the pipeline Right-of-Way, once again, you will need to photograph your property. Photograph not only those areas in the Right of Way, but those areas surrounding and nearby the Right-of-Way. If a landslide from the Right of Way causes damage to neighboring fields, you want to have photographs of what the original site looked like. Ideally, photographs of areas along the pipeline route will be taken under various conditions (clear, during rain, after storms and at different times of day (day and night). It is also good to have notes describing the areas photographed. All notes and pictures should note the date and time they were taken.

IV. Preventing contamination of your water supply

Lessons learned from other pipelines tell us that there are some things a landowner can do to protect their drinking water supply during pipeline construction.
A. Do not use your water well during drilling

If you live within roughly a mile of an HDD site and use a private drinking water well, you should avoid using it while drilling is occurring.

The combination of the pressure from your well’s pump and pressure from the drill going into the same water source greatly increases the risk of drilling fluid contamination to your well.

When talking about its Mariner East natural gas liquids pipeline, Sunoco stated that, “non-use of the water wells during drilling activities is the best protective measure” for landowners trying to protect their water supplies.

Find out if you live near a horizontal direction drill site by putting your address into Fractracker’s map:

https://maps.fractracker.org/latest/?appid=5fe5ebc57ebb41dcbb04325d8dfa

B. Make friends with Local Workers

Approaching workers near you in a friendly, non-confrontational manner can make your life much easier. They may be able to provide you with additional information such as drilling schedules or be more receptive to complaints.

V. Identifying Violations

In order to detect any problems on your property it is critical that you check your property regularly. This means getting out and scouting your property for changes. Look for changes along the Right-of-Way as well as in areas surrounding the Right-of-Way. This is important to do regularly before, during, and following construction.
When scouting your property, you may see violations associated with construction. Below are some common examples:

**Erosion and Sediment Control Violations**

<table>
<thead>
<tr>
<th>Violation</th>
<th>What it Looks Like</th>
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<tbody>
<tr>
<td><strong>Filtration Failure</strong>: When water from a construction site is going to flow into a waterway, it generally needs to be filtered first so extra sediment and mud is not added to the waterway. On-site filtration is often accomplished through use of “compost filter socks”, which are long tubes, up to a couple feet in a diameter, that the water runs through. Sometimes the compost filter socks are in the wrong place and the water gets around them, or dirty water flows over the top of them without being filtered.</td>
<td></td>
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<tr>
<td><strong>Containment Failure</strong>: When construction is disrupting groundwater, causing it to surface where it normally wouldn’t, or at an abnormally high volume, the contractors will often try to contain the water on site. This is done by creating a pool-like enclosure, usually built from hay bales or something similar. Sometimes the water emerges from the ground faster than can be contained and the containment overflows, flooding the surroundings, or running into stormwater drains or waterways.</td>
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Drilling Fluid Spills

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<td><strong>Drilling Fluid Spill</strong>: These can occur at any point during horizontal directional boring. A contractor will need to contain the drilling fluid during the event of an inadvertent return or spill. They will also need to remove the drilling fluid if it enters a stream or wetland. The drilling fluid may look somewhat like mud but will often have an almost silver shine or sheen to it as well, which distinguishes it from normal sediment.</td>
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VI. Documenting violations

We have already told you of the importance of documentation, yet we bring it up once more because it is commonly brushed off. Please take this advice seriously, you will not regret it. You need to be able to show the others what has changed, and good evidence is the best way to do that. Here are some examples of helpful ways to document your problems:

- Taking video
- Taking photographs
- Write down notes of time of day
- Write down notes of location: ideally this would be address and coordinates, but it is also helpful to describe the location in relationship to other features or addresses
- Write down notes describing what you see
- If possible, write down notes describing the direction the camera is pointed when taking each photo or video
- If violation is ongoing, keep a journal or calendar where you write down what is happening with the situation each day, noting dates and times
VII. Reporting violations, concerns, and where to direct questions

Who should I contact regarding violations, concerns, or questions?

Many different agencies are involved in regulation of pipelines, including the regulation of the Falcon pipeline. Many different agencies are also involved in responding to the types of problems that can be caused by pipeline construction. In general, below are the agencies to report to for different situations:

Ohio EPA

- To report drilling fluid spills, inadvertent returns, containment failures, filtration failures, and other spills call:
  o Ohio EPA 24-hr Spill Hotline: 1-800-282-9378 or 646-224-0946
  o Southeast District Office: 1-800-686-7330 or 740-385-8501
  o Public Interest Center: 614-644-2160
  o Public Involvement Coordination for Southeast District: Jessie Johnson: 614-644-2160

- To report dirt and sediment coming off the construction site and entering waterways so that it looks murky or muddy, call:
  o Southeast District Office: 1-800-686-7330 or 740-385-8501
  o Public Interest Center: 614-644-2160
  o Public Involvement Coordination for Southeast District: Jessie Johnson: 614-644-2160

- To report noxious odors and air emissions, call:
  o Southeast District Office: 1-800-686-7330 or 740-385-8501
  o Public Interest Center: 614-644-2160
  o Public Involvement Coordination for Southeast District: Jessie Johnson: 614-644-2160

- To report water discharging at or near a construction site that is orange or red/rust colored (this may be acid mine drainage), call:
  o Southeast District Office: 1-800-686-7330 or 740-385-8501
  o Public Interest Center: 614-644-2160
  o Public Involvement Coordination for Southeast District: Jessie Johnson: 614-644-2160
Local Health District

- To report changes to private water supply (loss of water supply, less water supply, or changes in water quality), call:
  o Harrison County Health Department: 740-942-2616
  o Jefferson County General Health District: 740-283-8530

Public Utilities Commission

- To report safety concerns, and for questions, comments, and complaints regarding pipeline operation, call:
  o 1-800-686-PUCO (7826)

Office of Pipeline Safety, U.S. Dept. of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA)

- For questions regarding pipeline safety, call:
  o Community Liaisons
    ▪ Karen Gentile
      karen.gentile@dot.gov
      Phone: (609) 433-6650
    ▪ Ian Woods
      ian.woods@dot.gov
      Phone: (609) 468-9478
  o PHMSA Central Region Office: 847-294-8580

Local First Responders

- For emergency response, always dial 911 and contact your local first responders for assistance

Ohio Department of Natural Resources

- To report gas-related emergencies (pipelines or other infrastructure), call:
  o ODNR’s 24-hr One-Call Emergency Notification System: 1-844-OHCALL1 (1-844-642-2551)
  o Emergency Operations and Response Manager, Scott King 614-265-6671
  o Harrison County Field Inspector: Kyle Newbrough 740-617-6645; Backup Inspector: Dylan Pendleton: 330-204-1603
  o Jefferson County Field Inspector: Dylan Pendleton: 330-204-1603; Kyle Newbrough 740-617-6645

- To report water discharging at or near a construction site that is orange or red/rust colored (this may be acid mine drainage), call:
  o Harrison County Field Inspector: Kyle Newbrough 740-617-6645; Backup Inspector: Dylan Pendleton: 330-204-1603
  o Jefferson County Field Inspector: Dylan Pendleton: 330-204-1603; Kyle Newbrough 740-617-6645
- To report concerns regarding abandoned mine subsidence, call:
  o Division of Resource Management: **614-265-6633**

**County Engineer**

- To report concerns and ask questions regarding impacts to roads, ditches, bridges, culverts, and work in county right-of-way, call:
  o Harrison County: **740-942-8867** (after hours road-related emergencies call Sheriff at **740-942-2197**)
  o Jefferson County: **740-283-8574**

If you are unsure who to call about a given circumstance, you are always welcome to call Fair Shake Environmental Legal Services (234-571-1970), and we can typically advise you as to which agencies you should call.

**Making Effective Complaints; Increasing the Chance of Agency Response**

In general, following up on any complaint increases the chances that the agency will send out an investigator to look into the potential violation or other concern.

For complaints to Ohio EPA and ODNR, to increase the likelihood of the agency sending out an inspector it is good to follow this protocol:

- submit a photo/video/other documentation of violation/concern with your complaint
- Ask for your complaint ID number
- Call the next day to ask the status of your complaint, and site to the complaint ID number

If you lack photo/video/other documentation of the violation/concern, it is still important that you report the violation/concern.

For other agencies, it is also helpful to submit a photo/video/other documentation of violation/concern with your complaint and to follow-up on the complaint the following day by calling the agency.
In general, if an agency is no responsive to your concern, it is important that you keep calling and submitting complaints. This creates a public record of the issues you are having. Having that public record can be beneficial if you have to prove your claim in court. Repeated calls/emails/written complaints can also lead to agency action.

**Ohio EPA’s Verified Complaint Process**

If you think Shell is violating Ohio’s environmental laws and you are having trouble getting Ohio EPA to address the issue, you may consider submitting a verified complaint. This is a sworn and notarized complaint describing the violations you have witnessed. When Ohio EPA receives a verified complaint, they are required to promptly begin an investigation to see whether a violation has happened.

A Citizen's Guide to Filing A Verified Complaint is available here:


Fair Shake Environmental Legal Services can also help people file verified complaints.

**VIII. Calling an attorney**

If agencies are not responding to your complaints and negotiations with Shell have been ineffective, it may be time to contact an attorney. Fair Shake Environmental Legal Services is a nonprofit organization committed to ensuring everyone has access to the legal system to protect their private property rights. You can always call our Ohio office 234-571-1970 to inquire about whether an attorney may be able to help with your situation.
IX. References

Falcon’s Stormwater Permit, the document that governs the protections that must be in place during pipeline construction and restoration of the pipeline right-of-way, is available here:


Falcon’s 401 Certification, the document that states the project will and must comply with all Ohio’s water quality laws and standards, is available here:


Falcon’s 404 Permit, issued by the U.S. Army Corp of Engineers, which governs Falcon’s dredging and filling of wetlands, is available here:


Ohio Department of Agriculture’s Pipeline Standard and ConstructionSpecifications includes guidelines and best practices for pipeline construction, and is available here:


These materials were created by Fair Shake Environmental Legal Services in partnership with Mountain Watershed Association and FracTracker Alliance with generous support by the New World Foundation.

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