

Summary of Revised Survey Law § 56-49.01. Right of entry upon property

The revision of § 56-49.01 (enacted in 2004) is intended to remedy a poorly written, ambiguous statute that has caused much confusion and consternation, resulting in substantial litigation.

The revision summarized here attempts to remedy the ambiguities in a manner more favorable to landowners and add additional provisions to create a more even playing field between gas pipeline corporations and individual landholders. As such it preserves the right-of-entry, under specified procedures, while protecting landowners property rights and ensuring timely and effective remedies for violations of those rights.

1. The right of entry to survey shall be provided only to a gas pipeline company that has received **public use certificate** from the **Virginia State Corporation Commission**, which requires the following: The natural gas company has
 - . submitted a proper application to the regulatory authority;
 - . notified potentially affected landowners of the potential surveys and public use certification application by certified mail;
 - . set forth a prima facie case that the proposed pipeline or facility would be for public use. (There shall be no public use if the proposed facility is significantly designed for *foreign commerce* or if the proposed facility will not provide natural gas to *public utilities or citizens of the Commonwealth of Virginia*;

If the Commission provides certification, it must reasonably considered and responded to the written comments and/or objections by the affected landowner.

As a last resort, landowners may seek **judicial review** of State Corporations grants of public use by appealing to the **State Supreme Court**.

1. **Corporations** provided with a public use certificate may enter only after a formal request for permission to survey has been sent to the landowner
 - . By certified mail in a timely manner (no less than 21 days prior to requested date of entry),
 - . Sets forth a description of each type of survey and each type entity/or agent proposed to conduct the survey.
 - . Indicate the time and location where the first entry will occur, the duration of the survey.
1. An entry not complying with these conditions shall be deemed a **trespass**, requiring the company to pay treble demonstrated damages to property.
1. Landowners wishing to challenge entry may seek immediate, temporary **injunctive relief from trespass** in **circuit court** seeking an expedient evidentiary hearing wherein, if the landowner prevails, he/she will be entitled to (1) a trespass penalty of \$500 per day per individual entering or attempting to enter the property and (2) any costs and attorney fees.