



Questions and Answers Dealing with Pipeline Easements

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Pipelines perform an important role in this country to move fuel and other petroleum products above and below ground to destinations for use. According to the U.S. Department of Transportation, a pipeline provides the safest mode of transportation for petroleum products and reduces the quantity of refined products conveyed over highways and railway. This increases the safety of those transportation methods.

1) What is an easement?

An easement is a legal agreement that allows the holder of the easement to use property, not owned, for a specific purpose and may restrict the owner from using the land in a particular way. The acquisition of an easement does not transfer ownership of your land; it does, however, give right of access for construction and maintenance to ensure the continued safe operations of a pipeline. The agreement should be recorded and attached to the deed of the property. If the property is sold the easement “goes with the property” and the new owners continue to be bound by the easement agreement.

2) What is a right-of-way?

The term “right-of-way” is often used interchangeably with “easement”. A right-of-way is the actual strip of land granted as result of the easement agreement allowing entry or crossing of your property to install, inspect, operate, and maintain the pipeline and equipment. A right-of-way is considered to extend along, across, below and above the easement.

3) Is it necessary to have a lawyer when selling an easement?

Not mandatory, but highly recommended! Employ a competent attorney, experienced in easements, to write and /or advise you on the agreement before you sign.

4) Does an easement agreement mean that a pipeline company owns part of my property?

No. An easement agreement should be written to grant the right to install, inspect, operate, and maintain the pipeline, but does not transfer fee ownership of the land. It may, however, affect how you can use the land.

5) How long does an easement last?

Easements are perpetual and not subject to termination or expiration unless those terms are written into the agreement. Easement rights may be forfeited by a company if it removes or

abandons a right-of-way. This situation should be considered by both parties and documented in the easement agreement to describe how any termination is to be handled.

6) Why is right-of-way clearing necessary?

Right-of-way clearing is done for safety. Some companies fly above right-of-ways to inspect the route and maintain surveillance. Access for routine maintenance and repair may also be required; therefore trees or other perpetual structures could inhibit the activities. Also, in the event of an emergency unimpeded access should be available to the pipeline.

7) What is involved in the easement negotiation process?

Easement negotiations should include written, detailed discussion on payment for the easement, terms and conditions that are specific to an individual landowner's needs and/or the land being considered. Many times a company will try to be consistent and offer all landowners a "standard" agreement of what they want in the easement agreement and what they consider "fair market value" for an easement. "Standard" agreements probably do not cover all items a landowner should have in an easement agreement.

8) How wide will the easement be?

Pipeline easements vary, but companies often seek 50 feet or wider easements, with an additional 50-75 feet of temporary construction workspace. A temporary construction easement is one that terminates at construction's end or at a specified time. Landowners may want to consider allowing a wider temporary area of use, but only sell a narrower width easement.

9) How is the route of the pipeline chosen?

The selection process is designed to minimize the project's impact on the environment, landowners, and communities and is conducted in a deliberate and thoughtful manner. As the route is defined during the planning and permitting process, a number of factors including landowner concerns, environmental issues, cultural resources and constructability are considered. Paralleling existing utility easements is done where appropriate.

10) What activity will be seen after the pipeline is placed in service?

Future activities along the pipeline route consist of visual inspections by personnel flying or walking the pipeline right-of-way, watching for any natural or manmade conditions that could impact the pipe or affect its safe operation. If pipeline maintenance work is needed, landowners should be contacted in advance so that they are aware of the activity. Easement agreements should address the possibility of construction repair work and designate who is responsible for leveling, reseeding, mulching and any other activity necessary to return the right-of-way to its former condition.

11) Will a pipeline easement affect my Farm Service Agency (FSA) or Natural Resources Conservation Service (NRCS) agreements/contracts?

Maybe? Each landowner that participates in programs offered by FSA or NRCS should contact personnel at their local office to determine how, or if, an easement on your land would affect you. If repayment of funds is required on an existing contract, you should include that amount in your easement compensation.

12) Is pipeline easement payment money taxed?

The short answer is...Yes, but the amount of a payment and when payment is due is specific to each landowner's situation. Length of time land is owned and Basis, if any, in the property must be determined to compute the taxable amount. Payment from the company should clearly state how the apportioned compensation is distributed, i.e., ("Compensation for Damages" and "Compensation for the use of the Land"). Professional assistance to calculate your tax liability should be acquired.

13) Who pays the property tax on the right-of-way land if an easement is granted?

The land owner continues to pay property taxes on the right-of-way, but some states do provide a tax credit in proportion to the length of the transmission line crossing their property.

14) How much should I receive for an Easement?

Compensation should include the amount for the easement (linear foot payment in most cases), but should also include reimbursement for use of temporary construction space, if any, any loss of marketable timber or future timber growth and/or agricultural crops in a fair and equitable manner. Attorney and financial consulting fees should also be considered in an easement payment. The amount received by landowners varies greatly because so many factors are involved. Landowners are typically given a one-time payment based on fair market value for easement rights to the land. Companies primarily compensate landowners for the easement by a payment per linear foot. If paid this way, understand the calculations are not considering square feet, but only linear feet. Value per linear foot is based on the prevailing rates in the area, the property's development potential, whether timber covers the proposed easement, and other land valuation issues. An appraiser is often necessary to determine the land's value prior to and after the easement to determine a fair amount.

15) What does "Warrant Title" mean?

Some "standard" easement agreements want the landowner to warrant title for the pipeline company. Pipeline companies should have their own professionals research the title to find any potential issues. The landowner should not bear this burden.

16) If someone is injured on my property because of the pipeline (i.e., from equipment, blowout, fire etc.) who is liable?

An easement agreement should contain an indemnity provision for the landowner so they are shielded from liability for any suits related to the pipeline. This should include independent and subcontractors as well as those of the pipeline company. An attorney would be able to draft the correct language to be inserted in an agreement.

17) Can a company put a noisy compressor station on my land or have pipes sticking out of the ground?

Yes, unless language in your agreement clearly states otherwise.

18) Who regulates the installation and maintenance of the pipeline?

The regulatory agency may differ depending on the type of pipeline(s) being installed in the right-of-way. Ohio Department of Natural Resources (ODNR), the Public Utilities Commission (PUCO), the Federal Energy Regulatory Commission (FERC) and or the U.S Department of Transportation (DOT) regulates most pipelines.

19) What happens if the pipeline is no longer in use?

Your easement agreement should address this situation and make provisions for termination of the easement should this situation come about.

20) Can the easement be sold or subleased?

If not stated otherwise in the easement agreement a company could potentially trade/sell the easement or allow another company/utility to use the right-of-way for other purposes. Statements clearly defining your wishes and limitations of a company should be included in an easement agreement.

21) When will the project start and when will it end?

If a company is negotiating an easement agreement with you, they should know the approximate installation dates. This timeline should be included in the agreement and specify a starting and ending time for the construction phase.

22) Will I be reimbursed for damages or disruption due to maintenance, repairs, replacement or other activities on the right-of-way in the future?

The easement agreement should state that a company will compensate the landowner and/or tenant for damages caused by maintenance, repair, replacement or other activities related to the pipeline.

23) Can I put a limit on the number and size of the pipes being installed?

Yes...an easement agreement should state the size and number of lines allowed.

Disclaimer

Information included in this paper is not intended as legal advice and should not be relied upon as such. Seek independent legal counsel when entering into an easement agreement.