



When Enbridge Knocks, Be Prepared

SOME THINGS TO CONSIDER BEFORE SIGNING A PIPELINE EASEMENT*

For many people, trying to negotiate an easement on their own can prove to be a very uncomfortable and stressful experience. You don't know what you don't know, while the pipeline company does this on a daily basis. Remember, the pipeline company is looking out for its own interests and that interest is getting as much from you for as little as possible. Their agents may try to intimidate and deceive you into signing a contract quickly, before you have a chance to completely understand the full consequences of what property rights you are giving up – not only today, but forever. They may tell you that their initial offer will be reduced if you don't sign right away. They may tell you that all of your neighbors have already signed contracts or that you are getting a better offer than they did to pressure you into signing. If you refuse to sign, the pipeline company may even threaten to sue you- oftentimes for hundreds of thousands of dollars, without any basis to do so.

Hiring an attorney to represent you in negotiations can be of great benefit to you. However, finding a good attorney with experience in these issues can be difficult- and **very** expensive.

This is where the Wisconsin Easement Action Team (WEAT) comes in. Please read the additional information on this site for a full description of what benefits WEAT and our attorney can offer to landowners.

1. What is an easement?

An easement is a limited right to use the land of another for a specific purpose. Unlike a sale of land, an easement contemplates a continuing and long-term relationship between the landowner and the easement holder (the "Pipeline Company"). It is important to realize that constructing structures or planting trees is not allowed in the easement area, among other restrictions on the future use of your property.

2. How will my payment be determined?

The pipeline company typically pays the landowner in price per foot or per acre for farm land of the property that the pipeline passes. The price is based on the length of the easement. The variations in offers by the pipeline company to different landowners can exceed 500%.

3. How will damage to my land or property be addressed?

In many cases, damage to the land not taken – that is everything outside of the easement itself - can exceed the value of the land that the pipeline actually passes through. These damages include crop damage due to loss of productivity in future years, compaction, soil mixing, erosion, loss of access and the ability to develop the land through which the pipeline passes for nonagricultural purposes, loss in value of structures that the pipeline is located near, loss of future development potential, and damages due to fear of pipeline leaks or explosions. In these cases, the damages are, of course, aggravated if the pipeline is passing near an occupied structure or a residence.

4. How wide will the easement be? Will a “temporary” workspace be required?

Landowners should negotiate two easements. First, there is the permanent pipeline easement. This easement lasts until the pipeline is abandoned. Pipeline companies usually ask for a 50-foot-wide easement. Second, there is the “temporary” construction easement that gives the company more space, in addition to the pipeline easement, in order to construct the pipeline. The width of this easement generally ranges from 20 to 40 feet. This easement should end at a specified date (often at the end of construction). It is important to be fairly and justly compensated for both such easements. Sometimes “temporary” can mean years to be informed!

5. Easement area access

The landowner should try to limit the ability of the company’s employees and representatives to access the easement area. For example, the landowner could limit access to certain hours of the day or request some form of notice. In addition, the agreement should state the permitted route of ingress and egress, i.e. access to the easement area.

6. Third-party easements

The landowner should specify two things. First, he or she should restrict the company’s ability to assign easements to third parties across the easement area. This prevents another company from using the easement without your permission. Second, the landowner should reserve the right to grant certain additional easements to third parties across the easement area. Another company may want an easement across the pipeline easement in the future.

7. Easement agreement for single line

The landowner should make the easement agreement pertain to only a single pipeline. Without this provision, the company could place more pipelines along the same route without having to secure another easement.

8. Restrictions on activities outside the easement area

Landowners should restrict all activities to the Easement Area and require written authorization before any company employees or personnel can venture outside that area.

9. Easement area restoration

The landowner should make the company restore any damaged land due to the construction or operation of the pipeline. This could include reseeding or other landscaping. This could also include specific payments for loss of trees, crops, structures, etc.

10. What other companies/contractors will be working on my property?

Landowners should require the identification of any independent or subcontractors that the company intends to use during construction.

11. Damages caused by contractors

The landowner should make the pipeline company strictly liable for any and all damage caused by the company’s employees or the company’s contractors. The pipeline company will point to its lowest-bid contractors and the game of who is responsible for what will be played, and you are likely to lose unless you protect yourself on the front end during negotiations.

12. Landowner's rights and restrictions to use easement area

The landowner should try to retain his or her ability to use and enjoy the easement area once construction has finished. There may be some rights that the landowner will want to expressly reserve such as the right to build parking lots, driveways, landscaping, etc.

13. Landowner indemnification

The company should indemnify (not hold liable) the landowner from the actions or omissions of the independent or subcontractors during both the construction and operations period.

14. Identification of pipeline company contact

The company should provide the contact information of a pipeline company contact person to the landowner. In addition, the company should provide the landowner with 30 days' notice if the contact person will change.

15. Written timetable for construction

The landowner should be provided with a timetable for preliminary construction, pipe installation, and property restoration.

16. What materials will the pipeline carry?

Landowners should try to limit the materials allowed to be used in the pipeline to only crude oil and should try to exclude other, more harmful, materials, such as hazardous chemicals or sewage.

17. How large will the pipe be?

Landowners should specify the diameter of the pipeline to be used so that the company cannot replace the pipeline with a larger one at a later date.

18. How far below the surface will the pipe be buried?

Most easement agreements offer a depth of thirty-six inches (36") underground. However, in order to protect the landowner's future development options, they should request a minimum of forty-eight inches (48"). In fact, Ohio model regulations require a minimum depth of 36"-48" depending on the type of soil involved. They require even deeper construction if subsurface drainage systems or tiles exist along the pipeline route.

19. Will there be any surface facilities built on my property, and if so, where will it (they) be located?

Pipelines require some surface facilities. Unless the easement states differently, the company can place facilities wherever they want. Therefore, landowners should restrict the existence, number and location of surface facilities such as pump stations or booster stations as much as possible.

20. Removal of structures

The landowner should require the company to remove its structures and pipeline if the pipeline is abandoned. Without such a provision, the company can leave its old structures on your land, which reduces the future use and value of the property.

21. Define abandonment

The company should define “abandonment” in the easement agreement. This will help avoid disputes in the future. Such provisions often define abandonment as a minimum period of time when the pipeline is no longer being used. Ideally, there will be a provision forcing the pipeline company to remove the pipeline after its useful life ends.

22. Types of roads that can cross the easement area

The landowner should specify which kinds of roads he or she can build across the easement without the company’s permission. This will help the landowner maximize the property’s future use.

23. Identification of stream crossings

The company should identify all streams that it intends to cross, including a detailed statement of how it intends to cross the stream, and a statement regarding the stream restoration.

** This information is intended for general informational purposes only. It is not meant to address specific issues that landowners may encounter when negotiating an easement with a pipeline company. It is not a substitute for legal advice and guidance.*