

Goldman & Braunstein, LLP

25 THINGS TO CONSIDER BEFORE SIGNING A PIPELINE EASEMENT*

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").

2. Price Per Linear Foot or Acre

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. Some companies offer prices based on linear rod, not linear foot. When calculating, one (1) linear rod equals sixteen and one half feet (16.5'). The variations in offers by the pipeline company to different landowners can exceed 500%.

3. Damage to the Residue

In many cases, damage to the land not taken can exceed the value of the land that the pipeline actually passes. These damages include crop damage due to loss of productivity in future years, 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, 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. Pipeline Depth Below Surface

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.

**Note: The following article is intended for general guidance only. It does not address the particular issues that a landowner negotiating an easement with a pipeline company might face and it is not a substitute for legal advice and guidance that address your specific situation from your own attorney.*

5. Width of the Easement and Temporary Construction Easement

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).

6. Nature and Location of Any Surface Facilities

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 as much as possible.

7. Size of Pipeline

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.

8. Materials/Substances Permitted in Pipeline

Landowners should try to limit the materials allowed to be used in the pipeline to only natural gas, and should try to exclude other, more harmful, materials, such as sewage or crude oil. The landowner should also require that the gas be scented.

9. Landowner Indemnification

The company should indemnify the landowner from the actions or omissions of the independent or subcontractors during both the construction and operations period.

10. Identification of Contractors

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 company's employees or the company's contractors.

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. 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.

14. 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 tress, crops, etc.

15. 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.

16. 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.

17. 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.

18. 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.

19. Types of Ponds, Lakes or Tanks That Can Cross Easement Area

The landowner should specify which kinds of ponds, lakes or tanks he or she can build on the easement area without the company's permission. This will help the landowner maximize the property's future use.

20. 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.

21. 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.

22. Written Timetable for Construction

The landowner should be provided with a timetable for construction and installation.

23. 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.

24. 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 hurts the future use of the property.

25. Choose an Alternative Dispute Resolution Method

The landowner and company should agree on a method of dispute resolution in case disagreements arise at a later date. Landowners should look for a method that is cheap and efficient.

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