

27 THINGS TO CONSIDER BEFORE SIGNING A PIPELINE EASEMENT taken from a variety of sources.

**Note: This is for general information 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. For example, on West Dryden Road, some have drinking water wells near the surface that could be harmed by pipelines, although this is not addressed in the general information below.*

Best advice is, if you are going to negotiate an easement, get the help of a qualified attorney.

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%. [Penn State Extension mentions \$5 to \$25 per foot; a NY lawyer has mentioned \$85 per foot.]

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.

5. Width of the Easement and Temporary Construction Easement

Landowners should get two easements. First, there is the permanent pipeline easement. This easement should last only until the pipeline is abandoned. [The W. Dryden Road easement is for 15 feet, but where it starts and how far onto each property is not specified according to “metes and bounds” or by a diagram.] Second, there should be a temporary construction easement that specifies the space the company needs to construct the pipeline. This easement should end at a specified date (often at the end of construction). [Lawyers also advise that landowners require the pipeline company to diagram specifically on a site map exactly where the easement and pipes will go and to require the easement be described in “metes and bounds” in the document. The Landowner should require the company to record the entire easement document including drawings and site maps with the County recorder as a condition to signing the easement.]

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. Purpose, Number, and Size of Pipeline

The purpose, number and size of each pipeline should be specified in the easement. This is so the company cannot pretend it has one purpose and change to another without the landowner's permission and without paying the value to them of one kind of line for another. Each kind of line has a separate value to the company and should pay accordingly to the landowner. This is also so the landowner knows how many lines are actually going into his/her property and so the company cannot substitute a larger line or a line for a different purpose at a later date. If the pipeline is to serve only the landowners along the line, it is a "distribution line." If it is going to carry methane to others, it is a "transmission line." A transmission line is much more valuable to a company than a distribution line, and landowners be paid the value of the kind of line that is going in their property. If a landowner is willing only to accept a distribution line to serve the landowner and his/her neighbors, the landowner can specify "no transmission lines."

8. Materials/Substances Permitted in Pipeline

Landowners should try to limit the materials allowed to be used in the pipeline to only methane ("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 so that, when the pipe leaks, the smell will warn the landowner.

9. Damages Caused by Contractors

The company will use contractors and sub-contractors to do its work whether it is installing and maintaining the the gas line or working on the above ground buildings and appliances that come with the pipeline. The landowner should insist that the company agree in the easement document to be strictly liable for any and all damages it, its contractors and sub contractors cause to the landowner. This should apply to anyone to whom the company sells or assigns any of its interests in the easement.

10. Landowner Indemnification

The company should be required to pay for and indemnify the landowner from the actions or omissions of the anyone the involve in installing or working on anything that the company installs or maintains as part of the gas pipe project for as long as easement lasts.

11. Identification of Contractors

Landowners should require the identification of any independent or subcontractors that the company intends to use for constructing or maintaining the gas pipe or any of its other installations.

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, contractors, sub-contractors, 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. Destruction of Crops, Landscaping, etc.; Compaction & Area Restoration; Prohibiting Biocides

The company should restore any area which it damages during installation or maintenance to the condition it was in before the company's work or it should compensate the landowner for the loss. The easement should include that the company will restore any damaged land to as good or better condition before construction or maintenance activities including compacting the soil over the pipe so it does not depress or cave in. This could include reseeding or other landscaping. This could also include specific payments for loss of tress, crops, etc. The easement should specify that biocides cannot be used by the company or its contractors, etc. so that crops or landscaping can be grown in the future.

15. Easement Agreement for Single Line (See 7, above.)

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 negotiate and pay for 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 or driveways 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. Driveways and Roadways Across the Pipe

The company should guarantee that any road or driveway on the landowner's property which it modifies or disrupts to install or maintain the pipe is restored so that it can be used for normal purposes for as long as the easement lasts.

21. 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.

23. Third-Party Easements

The company will want to be able to sell or let other companies use the easement. These kinds of sales or "assignments" can be highly profitable to the company that first gets an easement from a landowner. Therefore, the landowner should refuse or restrict the company's ability to sell or

“assign” easements to third parties. This prevents another company from using the easement without your permission and can mean that the landowner gets to share fairly in the real value of the easement. Second, the landowner should reserve to him or herself 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.

24. Written Timetable for Construction

The landowner should be provided with a timetable for construction and installation. The pipe company should pay the landowner if the schedule is not met and the landowner is damaged or inconvenienced in a significant way.

25. Define Abandonment

The company and landowner should agree on a definition for “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.

26. Removal of Structures

The easement 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.

27. 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. Require New York law be applied, and all proceedings be in Tompkins County, New York.