

LANDOWNER INFORMATION FOR PIPELINE EASEMENTS

10-30-14

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Background/Goals

- My experience
 - Negotiated oil and gas leases, rights of way and easements while in private industry
- Goal: Landowners learn from other landowner experiences
- Goal: Landowners learn their options
- Goal: Make informed decisions

Easement Definition

- The right to use the real property of another for a specific purpose. Legal title to the underlying land is retained by the original owner for all other purposes.
- Both sides want a win-win agreement



Easement or Right of Way?

- Both easement and ROW can have definite term of years
- Easement usually runs with the land (perpetual)
 - If perpetual: one easement payment for forever
- If the agreement has no expiration date it is probably perpetual
- Landowner goal to reserve as much of current use of surface after line installed
- IN THIS PRESENTATION RIGHT OF WAY AND EASEMENT ARE INTERCHANGEABLE

The Easement Contract: Location

- Goal = Grantor (landowner) and Grantee (company) mutually agree
- Includes eminent domain situations
- Location can be negotiated
 - Example: in current farm road, along property line, use existing unused fence line etc.
- Neighbors can work together with company to site pipeline
- If entire neighborhood wants a certain route, more leverage with company to change route

Easement Contract; Land Legal Description

- If description is for entire property, pipeline can be placed anywhere
- Limit legal description to a metes and bounds description of easement area only
- Easement offer should include legal description and map indicating line location, other landmarks
- As built survey in metes and bounds needed

The Easement/ROW Contract

- Compensation:
 - Usually per linear foot; can be by the rod (16.5 feet)
 - Example \$5 per linear foot or \$82.50 per rod
 - Length not width determines payment amount; 30 foot width pays same as 50 foot width
 - Larger lines usually pay more than smaller (30" vs 6" dia)
 - Landowners desire only necessary width
 - Should be paid before construction commences

The Easement/ROW Contract

- Compensation continued
- Should negotiate 3 payments:
 - Easement contract
 - Temporary workspace
 - Surface damages

The Easement/ROW Contract

- Surface Damages
 - Paid in addition to easement fee
 - Pays for crop loss, damage to future soil productivity
 - Can require re-seeding pasture, deep ripping cropland
- Drainage tile and other repairs:
 - Landowner negotiate local contractor instead of contractor hired by company



Determining Acreage Involved

- Example: 100 foot wide easement that utilizes a length of 1500 feet
- $100 \times 1500 = 150,000$ sq feet
- 43,560 sq feet/acre
- $150,000 / 43560 = 3.44$ acres
- If paid \$5 per linear foot = $1500 \times \$5 = \7500
- $\$7500 / 3.44$ acres = $\$2,180.23$ /acre

Scope of Use

- States activities allowed on easement
- If agreement states “pipelines” an additional line can be added in future with no payment to landowner; can state single pipeline
- If states “replace” line can be replaced in future without another easement payment
 - Receive surface damages
- If agreement states it includes surface facilities or appurtenances you will not be paid for any above ground structures; can be paid separately for these



Exclusive vs Non-Exclusive

- If company's use is "exclusive" (allows them to grant additional easements)
 - Only company can use easement area
 - Prevents future overlap of easements w/o their permission
 - Can prevent landowner from using surface
 - Prevents additional future easements on that land
 - If another pipeline installed by different company in future, Grantee, not landowner is paid easement fee

Exclusive vs Non-Exclusive Easement

- A perpetual, exclusive easement means company exclusively uses easement land forever
- Non-exclusive:
 - Landowner retains right to use easement area subject to rights of easement holder
 - Allows landowner to grant other uses of affected land
 - Example: you want to place a buried water line; can use part of the easement which makes more efficient use of land



The Easement/ROW Contract

- Temporary work space
 - Extra area outside easement for construction only
 - 50% compensation of contracted easement common
 - Example: 50 foot wide easement with 25 feet of temporary work space. Uses 75 feet until construction complete
 - Temporary should terminate when construction complete

The Easement/ROW Contract

- Depth- at least 36” and 48” not uncommon
- Written time-table for construction so owner can plan his activities
- Define abandonment: Example: discontinued use for 12 consecutive months
- Define termination upon abandonment and removal of easement from public records
- Allowable uses of landowner: row cropping, grazing, “for any and all purposes that do not interfere with Grantees use”

The Easement/ROW Contract

- Indemnification of and defense of landowner for Grantees and their subcontractors operations
- Dispute resolution: arbitration instead of litigation
- Pipeline removed or left in place upon abandonment?
- Surface facilities removed upon abandonment or termination?



The Easement/ROW Contract

- Restoration:
 - Address both permanent and temporary areas
 - Should be restored to condition prior to easement
 - If you have specific guidelines; state in contract; examples: deep ripping, seeding to certain species of grass, etc.
 - Reserve right to use landowner approved contractors; example tile repair
 - Sometimes landowner negotiates right to be restoration contractor using recognized custom rates



1929 Crude Oil and Petroleum Act Provisions

- Provides procedure for dealing with and compensating landowner for easements
 - 483.2a: Surveyor notify landowner in writing before survey
- Authorizes condemnation of private property
 - Except if no public interest involved
- An offer of easement shall include:
 - Anticipated physical impact of construction on landowner property

1929 Crude Oil and Petroleum Act

Provision continued

- Offer of easement shall include:
 - Written assurance drainage tile damage repair or replace to pre-construction condition
 - Includes surface drains such as waterways
 - Written assurance topsoil will be separated and replaced
 - Method property was appraised (usually market)
 - For cropland: Estimate of value of loss of productivity based on historic yields – landowner provide documentation of yields if requested



1929 Crude Oil and Petroleum Act

Provision continued

- Payment made for all damages incurred because of pipeline construction
- Operator may maintain a clear right of way with no additional compensation to landowner
- Pipeline company shall make good faith effort to minimize physical impact and economic damage
- Landowner has further rights under Uniform Condemnation Procedures Act and a copy of act

1929 Crude Oil and Petroleum Act

Provision continued

- Before a company can exercise eminent domain, must file in office of MPSC acceptance of provisions of this act and detailed plat showing route
- Uniform Condemnation Procedures Act requires payment of actual damages incurred during survey and other due diligence by company
- MI Public Service Commission regulates

Income Tax Considerations

- Temporary easement \$ normally considered ordinary income
- Tax basis – easement value = capital gain income; lower tax rate than earned income
 - \$3000/ac basis - \$2,500/ac easement = \$500/ac capital gain
 - \$200/ac basis - \$2,500/ac easement = \$2300/acre gain
- Consult qualified tax counsel

MSUE Landowner Resources on the website:

- http://msue.anr.msu.edu/program/info/oil_and_gas
- Grant of Easements: Information for Landowners (Curtis Talley and Attorney Michael Daray)
- Crude Oil and Petroleum Act of 1929
- Right of Way (ROW) info for Landowners (2009)
- Michigan DNR Right of Way Fee Schedule
- Nonexclusive Pipeline Easement example
- Sample Pipeline Easement and Right of Way Agreement- Ohio

Summary

- Understand short and long term implications of agreement before signing
- Use qualified experts for assistance
- Work with company to meet your goals