

Website: <http://www.psccoalition.org/pages/landowners-rights>

Pipeline Safety Coalition

Landowner's Rights

Negotiating Pipeline Right-of-Way Agreements

Signing a ROW should be reviewed by a professional as if you were buying or selling your property on the open market. ROW agreements become amendments to your property deed. Typically, funds received by a landowner in a ROW agreement are subject to income taxes and often are required to be surrendered to your mortgage company to satisfy their lien as the first deed holder.

Considerations in Signing an Easement Agreement:

(with adaptations from and thanks to Kentucky Resources Council)

* Do not rush into a decision to grant an easement. **An easement agreement becomes part of your deed, in perpetuity.**

* Interstate gas pipelines (gas but not hazardous liquids pipelines that cross state or country boundaries) must be approved by the FERC (Federal Energy Regulation Commission) through a defined process.

Before signing an easement, you have the right to:

1) wait until the FERC issues an EA (Environmental Assessment) or EIS (Environmental Impact Statement)

2) review and comment on the EA or EIS

3) review the FERC Conditional Approval for conditions that may alter the pipeline operator's preferred/applied for route and therefore may alter terms of your proposed easement.

* Do not allow yourself to be pressured into signing an easement contract before you are ready and before all your questions have been answered *in writing*. Once an easement is granted, it is highly unlikely that you will be able to change or add terms or conditions.

* Considerations you will want to address through the negotiation process:

1) Consult an attorney and other advisors before signing anything; particularly if a company states that the alternative to signing an easement is that eminent domain will be used.

2) Do not sign an easement based on a fear that your property will be taken by condemnation if you do not. Eminent domain does NOT allow the pipeline company to take ownership of your home or land away from you.

3) Eminent domain allows the pipeline operator to purchase the use of the land inside the Right of Way in perpetuity unless you are able to specify a set period of time or can write into the agreement termination upon the time at which the pipeline ceases to be used.

4) The landowner retains ownership of the land inside the Right of Way and therefore continues to pay all taxes and insurance on the Right of Way (ROW).

5) Easements you will be asked to sign are written for the benefit of the company seeking the right to access and use your property. Consult an attorney and/or other advisors to help negotiate easement terms that protect your interests.

- 6) Once an easement is established on your land, it is easy for the pipeline company to expand the ROW to expand the size of existing pipelines and/or add new pipelines.
- 7) Payments made to landowners for an easement are considered taxable income by the IRA. You should seek advice from your accountant or tax professional.
- 8) Granting an easement may affect your insurance policy availability and rates, for which you should consult your homeowner insurance agent.
- 9) Granting an easement may affect your existing mortgage or the ability to refinance your mortgage, so the bank or other institution holding your mortgage should be consulted.
- 10) If you do not own your property outright, your mortgage company has the right to require some or all of the easement payment made to landowners be paid toward outstanding balances.
- 11) Granting an easement may affect your property value, the ability to develop your property, and the marketability of your property. Check with your realtor about the impact that granting an easement for a hazardous material pipeline or natural gas liquids pipeline may have on the value or use of your property.

Compensation:

- 1) Payment details may be specified, for example, for the easement, damages to crops, timber or other products located within or outside of the easement, impact to land value, division between the landowners and the surface tenant, duration, survey fees, legal review fees, recording fees, and taxes on payment.
- 2) Payment amounts are negotiable.

Questions to ask before you consider signing an easement: Always obtain written answers

- 1) What is the minimum depth of cover for the proposed pipeline. Minimum federal standards require 3-feet to top of pipe, 2-feet if in bedrock, but a greater depth can be negotiated. The agreement can specify that the depth of cover shall be maintained at all times, to address possible settlement or subsidence.
- 2) How many and what size of pipelines will be allowed, what can be transported in the pipeline, the maximum size and maximum pressure of pipelines can all be specified and limited in your agreement. If you do not limit the number and size of pipelines, new pipelines could be added without your permission within the ROW.
- 3) What above-ground facilities, such as test leads, markers, rectifiers, casing vents, valves and valve actuators, meter stations and pig launcher/receivers, compressor stations, will be allowed.
- 4) What rights of access across the property to the easement will be allowed, if any. The right of access to the easement can be limited, so that the company will not be able to cross your property to gain access to the easement but will be limited to using the easement itself for any monitoring, maintenance, testing and repair.
- 5) The location and dimensions of the temporary and permanent easement.
- 6) Is consent of the landowner needed before the easement can be transferred, sold, or assigned to another pipeline company by the easement holder.
- 7) What are the limitations on the use that can be made of the easement by the landowner.
- 8) Will the company participate in alternative dispute resolution for resolving disputes between the landowner and pipeline company.
- 9) Will the pipeline company incorporate all landowner requirements into the easement document.

Construction-related provisions:

- 1) Who is the point of contact during construction, who can be called day or night if there is a problem. Phone and email contact information.

- 2) What days and hours will construction activity be allowed and do those activity hours comply with local ordinances. If they do not, why and how might the construction activity be altered to comply.
- 3) Ask for copies of construction plans, including location of temporary roads, if any, disposition of brush or trees removed from right of way; the segregation, stockpiling, and restoration of topsoil and subsoil, revegetation and other, restoration requirements, the timetable for construction, location of temporary crossings across open trenches or ditches, backfilling and compaction of trenches, and stone removal and disposition, etc. Some of these details should be included in the FERC approval but ask the operator for their copy.
- 4) Ask for a blasting plan if blasting will occur, including a blasting schedule and a pre-blast survey of all buildings, wells, springs, and other structures be done to document pre-blasting conditions, followed by a post-blasting survey and an agreement to compensate for any changes occurring between those periods.
- 5) A construction bond to cover all construction-related responsibilities under the agreement, including payment for damages to crops, structures, buildings, and water supplies (including water quality testing and well yield).
- 6) A water supply replacement obligation in the event that the excavation, construction, blasting, or operation (leakage, etc.) causes loss, diminution, or contamination of water supply.
- 7) The surveying and staking of the easement prior to construction.
- 8) Compensation for any damage to trees, crops, plants, fences, etc. during construction. You may negotiate restoration above and beyond the Restoration Plan, including timeframe for restoration, types of grasses and other vegetation to be planted and numbers of trees removed (ie two for one for 6" diameter and up trees)
- 9) Pre construction survey of easement provided in hard copy.
- 10) Evidence of maintenance of casualty and liability insurance and worker's compensation insurance for personal or property damage during construction.

Operation, Maintenance, Abandonment

- 1) Access to the easement by the easement holder (i.e. if fenced, who can gain access, and does access require prior notification to the landowner). Where fencing or gates exist, what locks will be used and who will have access to the locks.
- 2) The name and information on the landowner's contact with the easement holder, including emergency contact information.
- 3) Frequency and manner of inspection and maintenance schedule.
- 4) Who bears responsibility for maintenance of right-of-way, and how it will be maintained (i.e. mowing, use of herbicides or not, etc.) ROW's do NOT have to be mowed or cleared of areas such as farm fields or natural wildlife habitats.
- 5) When the pipeline and related structures are deemed "abandoned," will the pipeline and other related structures be removed, and will the easement be revegetated and then revert to the landowner?
- 6) Mandatory termination of the easement for non-use over a defined period of time, and for failure of the company to comply with the terms of the easement.
- 7) Liability for property damage and personal injuries during operation, and abandonment.
- 8) An indemnity agreement providing that the easement holder will save and hold harmless the other party against any legal causes of action, including environmental, levied as a result of activities both on and off the land by the easement holder or agents. The indemnity could also include an obligation to pay legal fees incurred in defense of a suit, and an obligation to defend the landowner from any third-party claims associated with the operation of the pipeline or any leaks, releases, or other accidents.

- 9) Responsibility for costs of remedying any contamination from leaks or releases from the pipeline.
- 10) Repair and compensation for any damage to property or use of property from operation of pipeline, including leaks, releases or accidents.
- 11) Maintenance of non-cancellable insurance policy to insure against all risks, including property damage, personal injury, and from leaks and spills.
- 12) The obligation to repair and compensate for damages incurred during maintenance or repair of pipeline.
- 13) Stipulated penalties for any breach of easement terms and conditions by the company.