

OHIO STATE UNIVERSITY EXTENSION

**Pipeline Easements:
Initial Questions**

- Do I want this pipeline easement on my property?
 - What are the impacts of the pipeline on my property?
 - What income will I receive?

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**Pipeline Easements:
Initial Questions**

- Have I already granted pipeline easements in my oil and gas lease?

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**Pipeline Easements:
Initial Questions**

- If I don't want it, is eminent domain a legitimate possibility?

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**Pipeline Easements:
Initial Questions**

- Should I negotiate easement together with other landowners?
 - “Landowner group” negotiation approach?
 - Challenge as compared to leases:
 - Differences in properties, land uses.

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**Pipeline Easements:
Initial Questions**

- Should I involve an attorney?
 - Different roles for an attorney
 - Review the easement
 - Actively negotiate the easement
 - Represent in eminent domain proceeding

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PIPELINES AND REGULATORY JURISDICTION

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Ohio Gas Infrastructure Jurisdiction		
Project Type	Siting Jurisdiction	Safety Jurisdiction
Natural gas distribution/transmission (intrastate)*	Ohio Power Siting Board (OPSB)	PUCO
Natural gas transmission (interstate)	Federal Energy Regulatory Commission (FERC)	Pipeline and Hazardous Materials Safety Administration (PHMSA)
Production lines	Ohio Department of Natural Resources (ODNR)	ODNR
Gathering lines	Local zoning authorities	PUCO
Liquids lines	Local zoning authorities	PHMSA
Wellhead	ODNR	ODNR
Compressor stations	Certified local building departments	Certified local building departments
Processing facilities and fractionation plants	Local zoning authorities	Ohio Department of Commerce, Division of Industrial Compliance

*OPSB jurisdiction is limited to intrastate lines greater than 500 feet in length and 9 inches in diameter with a maximum allowable operating pressure of greater than 125 psi.

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PIPELINES AND EMINENT DOMAIN

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Pipelines and Eminent Domain

Can private companies use eminent domain to obtain pipeline easements?

Two avenues:

1. State authority
— [Ohio Revised Code 1723](#)
2. Federal authority

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Pipelines and Eminent Domain

- Ohio’s eminent domain power does not extend to an oil and gas development company for gathering its own gas.
 - This is not a company that is organized for the purpose of transporting gas.

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Pipeline Easements and Eminent Domain

- The pipeline company must follow Ohio’s eminent domain process and procedures.
 - Gives landowner:
 - Notice to use eminent domain
 - Appraisal of property
 - Written good faith offer of purchase
 - Must show that the pipeline is necessary.
 - Ohio Revised Code Chapter 163

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Pipeline Easements and Eminent Domain

- Federal law allows use of eminent domain for *interstate* pipelines that run between states.
 - If the company has obtained a *Certificate of Public Convenience and Necessity* from the Federal Energy Regulatory Commission.
 - And if the company can’t reach an agreement with landowner.

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The Easement Instrument: Important Terms

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Easements Generally

- Ownership of land remains with landowner.
 - As does obligation of property taxes.
- Landowner’s rights on the easement property can be entirely restricted.
- May be temporary or perpetual.
- Easement payment and income tax:
 - Temporary: ordinary income
 - Perpetual: capital gains

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Easements Generally

- An easement is a legal right to use the real property of another.
- Arises by agreement between property owner (grantor) and easement holder (grantee), and should be documented in a written legal instrument.
- Easement instrument should be filed with county recorder where property exists.
- Also referred to as a “right-of-way.”

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Easement Location

- Minimize impacts on property, farm, sensitive areas, etc.
 - May need to specifically exclude areas.
- Can it parallel property boundaries or other easements?

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Easement Location

- Ascertain location clearly.
 - Avoid a “blanket” easement.
 - Use legal descriptions and illustrations.
 - Request a post-construction survey for exact location.

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Pipeline Depth

- Clarify the required depth of the pipeline when laid beneath the land surface.
- Typical: 36 inches
- For agriculture, consider 36-48 inches to avoid conflicts with surface use.

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Pipeline Size

- Clarify size of the pipeline, or establish a maximum size.
 - Another factor to consider for payment.

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Easement Width

- Typical width:
 - 100 feet (50 feet on either side of line) often includes construction area
 - Shrinks down to about 50 feet after construction?

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Construction Rights

- Two approaches to construction:
 - Included in the pipeline easement
 - As a temporary construction easement
 - Exists during pipeline construction process
 - Terminates after construction is complete
- Important to establish clear boundaries and scope for each approach.

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Construction Timetable

- Establish a specific time period for the construction and installation of the pipeline.
 - Include timetable for temporary construction easement.
- Include remedies for failing to meet timeline.
- Include restrictions on workers during construction period.

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Construction Standards

- Incorporate ODNR standards.
- And/or establish how company will restore easement area.
 - After construction and after any future surface disturbance.
 - Specify top soil removal and replacement methods (double ditching; original topsoil).
 - Require soil enrichment—manure, compost.
 - Require reseeding—may need future years, until established.

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Crossings at Waterways

- Will pipeline cross a ditch or waterway,?
 - Consider impacts.
 - Require company to construct temporary crossings.

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Timber Impacts

- Will there be impacts on woodlands or timber stands?
- Tree removal issues:
 - By whom?
 - Best management practices
 - Rights to or payment for timber
 - Restoration

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Property Improvements

- Impacts on drainage, fencing, gates, outbuildings, storage tanks, etc.?
- Livestock containment
- Questions to consider:
 - What will be impacted?
 - How to address the impact?
 - Where to move improvements?
 - How much compensation?

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Other Structures or Facilities

- Restrict surface facilities or structures on the easement?
 - Compressor/pump stations?
- Alternatively, could limit surface facilities to certain locations.
- If allow, consider this in payment determination.

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Substances in the Pipeline

- Limit to natural gas and constituents.
- Generally prohibit other substances.
 - List specifically excluded substances like sewage, oil, wastewater.

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Number of Pipelines

- Limit the easement to a single pipeline.
- How to address the possibility of an additional line in the future:
 - Additional easement or approval.
 - Additional payment.

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Pressure in the Pipeline

- Establish maximum pressure for the line.
- Consider higher payment for higher pressure line.
 - Due to higher risks.

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Indemnification

- Require company to indemnify landowner and hold harmless against any future lawsuits that may arise.
 - “Of or arising from the easement.”
 - Due to the pipeline, equipment or any facilities, etc.

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Inspection and Maintenance

- Address how company will access the easement in the future.
- Require a notice to landowner.
 - Specify the activity that will occur and when.
- Establish a routine maintenance and inspection schedule?
- Identify times when company can't access, i.e., *harvest, planting*.

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Inspection and Maintenance

- Define the scope of access.
- Define types of maintenance that may occur.
- Address potential damages for disruptions to landowner.
 - Inspection, maintenance, repair, replacement.
 - Loss of water supply, access, soil, etc.

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Signage and Markers

- May require that landowner must agree to locations for required signage that the company must post.
- How will company mark the easement boundaries?

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Landowner's Rights of Use

- Retain broad rights to use the easement area.
 - May farm in, on and around the easement.
 - May graze animals.
 - Permit temporary structures or accessories.
- What about driveways, landscaping, parking?
- Consider all potential future uses and needs . . .

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Termination of Easement

- Define what constitutes termination of the easement.
- Require notice of termination to landowner.
- Determine company's obligations upon termination.
- Clarify landowner's rights upon termination.

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Abandonment of Easement

- Define what constitutes an abandonment of the easement by the company.
 - No construction occurs within X years of entering into easement.
 - No actual use of pipeline after X years.
- Address company's obligations:
 - For structures, facilities.
 - Remediation after removal.

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Disputes and Problems

- Fair procedure for notifying company of a problem or for handling disputes.
 - Where to direct problems.
 - Time period for addressing or remedying the problem.
 - Dispute resolution?
 - Legal remedies if fail to address problem.

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Assignment Rights

- Address procedures for assignment of rights to other companies.
 - Notice to landowner required.
 - Compliance with easement terms required.

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Amendments to Easement

- No verbal amendments.
- Establish that written agreement is required to amend the easement terms.


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Warranting Title

- Do not agree to warrant or “promise” clear title to the property.
 - Or to compensate company if a title issue arises.



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Payment for the Easement

Payment components:

- Pipeline easement
- Temporary construction easement
- Damages to landowner
- Costs to landowner

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Payment for the Easement

- Payment is based on length of pipeline run across the property.
 - Price per linear foot or linear “rod”
 - A rod is 16.5 feet.
- How does width or total acreage factor into the payment?
 - Doesn’t, unless landowner raises it.
 - Increase payment for higher width of easement?

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Payment Considerations

- Fair market value of the land
- Current rates in the area
- Amount of temporary construction use
- Loss of marketable timber
- Loss of crops
- Loss of development potential
- Soil compaction
- Interference with agricultural systems
- ... and many other factors
- ... fully examine your individual situation

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Payment Considerations

- Tax obligations
 - Permanent pipeline easement (over 30 years): capital gains income
 - Property damages: capital gains income
 - Temporary construction easement: ordinary income
- Itemized list from company can be helpful.

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Enforcing the Easement

- An easement is not self-executing!
- An easement is a “contract” between landowner and company.
- Landowner must actively assess compliance, resolve conflicts and protect interests.

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