LANDOWNER INFORMATION FOR PIPELINE EASEMENTS
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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 x 1500 = 150,000 sq feet
• 43,560 sq feet/acre
• 150,000/43560 = 3.44 acres
• If paid $5 per linear foot = 1500 x $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](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