



## FACT SHEET

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*Ohio State University Extension, 2120 Fyffe Road, Columbus, OH 43210*

**"Shale Oil and Gas Development" Fact Sheet Series**

# Considerations When Evaluating a Pipeline Easement Agreement

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### **What Is an Easement?**

Ownership of a piece of property may best be described as a "bundle of rights." These rights include the right to occupy, use, lease, sell, and develop the land. An easement involves the exchange of one or more of these rights from the landowner to someone who does not own the land. Easements have been used for years to provide governments, utilities, and extractive industries with certain property rights. An easement permits the holder certain rights regarding the land for specified purposes while the ownership of the land remains with the private property owner. The property owner retains ownership of the land and is responsible for any and all taxes due. The easement agreement should be filed with the county recorder where the property exists.

The easement typically limits in part or entirely the landowner's rights on the easement property. Easements can also be temporary or perpetual. This is an important distinction for tax planning purposes. If the easement is temporary the income received is treated as ordinary income. If, on the other hand, the easement is perpetual the income is taxed as capital gains income.

An easement agreement, also referred to as a right-of-way, arises by agreement by two or more parties. In the agreement the property owner is referred to as the grantor and the easement holder is the grantee.

## **A Standard Easement Agreement**

Often a landowner will be approached by a company asking for an easement to install a pipeline across their property and will be presented with a “standard” easement agreement. These agreements are typically very broad and somewhat vague, and may allow for activities to occur on a property that are not desirable to the landowner.

Included in this fact sheet is a real easement agreement a landowner was presented with for the installation of a pipeline. The names and addresses have been changed to protect privacy, but the language in the agreement has not changed. Following the agreement is a discussion of concerns a property owner should have if presented a similar document.

### **Actual Lease**

**John Smith**, whose address is 1234 Star Point Road, New Philadelphia Ohio 44663, (as "**Grantor**", whether one or more), for and in consideration of the sum of Ten Dollar (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby give, grant, sell, and convey unto **PIPELINES R US, LLC**, a limited liability company, whose address is 9876 Pipeline Road, Dallas, Texas 45305 (as "**Grantee**"), its employees, affiliates, partners, successors, assigns, contractors, and representatives, hereinafter collectively referred to as Grantee, a permanent right of way and easement to locate, lay, operate, maintain, repair, replace, and remove pipelines, with the right to make connections thereto, change the size of, re-lay such pipelines, and/or lay additional pipelines at any time, with appurtenances thereto including, but not limited to, drips, above and below ground valves and piping, metering equipment, and other necessary appurtenances, for the transportation of oil, gas, condensate, distillate, water or saltwater, or combinations or products of any one or more of said substances or any other products or substance of any nature which may be transported by means of a pipeline wherever produced on, over, through, under, and across the lands of the Grantor, with the right of ingress and egress to and from such pipelines and appurtenances, such lands of the Grantor situated in the Township of Green, Tuscarawas County, in the State of Ohio.

**Description of Right of Way** — The right of way granted by Grantor to Grantee herein shall consist of a permanent width of Ninety (90) feet, said Ninety (90) foot permanent easement is to overlay and overlap an existing 90 foot easement which exists on the Premises. The approximate route of the right of way is shown on an attached Exhibit made a part hereof. During temporary periods, Grantee shall have the right to use up to Forty (40) additional feet along and adjacent to said right of way in connection with construction, maintenance, repair, removal, replacement, and/or any other right granted herein, the location of which shall be in the discretion of Grantee. During the initial construction and further maintenance of the pipeline(s) Grantee shall have the right to utilize other additional temporary workspace as reasonably necessary at road crossings, waterways or areas with unusual construction problems.

**Timber/Brush** — Grantee shall have the right to clear and grade said permanent right of way and temporary workspace areas, including clear cutting of timber. At the discretion of the Grantee, trees, brush and stumps will be burned, chipped, buried or used to create windrow(s). In the event Grantee elects to windrow, Grantee will leave the trees, brush and stumps outside the limits of the permanent right of way and temporary workspace areas and will provide gaps in the windrow(s) in reasonable intervals. Grantee shall have the right from time to time to cut all trees, undergrowth and remove other obstructions on the Easement that, in its judgment, may injure, endanger or interfere with the use of said pipeline.

**Right of Ingress/Egress** — Grantee shall have all the rights and benefits necessary or convenient for the full enjoyment or use of the right-of-way and easement herein granted, including, without limitations: the free right of ingress and egress over and across the Property to and from said right-of-way and easement; the right to use existing or future roads over and across the Premises; the right to use any roads on adjoining lands owned

or controlled by Grantor; and the right from time to time to cut all trees and undergrowth and remove other obstructions that may injure, endanger or interfere with Grantee's access, occupancy and use of its right-of-way and easement. Grantee shall have the right to install gates in any fences crossed by the pipeline(s) in order to provide direct access to the right of way and easement. Such access gates will be kept locked and secured, and will be constructed of quality equal to the existing fence.

**Freedom from Obstructions** — Grantor agrees not to impound water or build, create, or construct any obstruction, engineering works, or other structure within twenty (20) feet of the pipeline right of way nor permit the same to be done by others. This does not apply to any structures existing at the time of the execution of this *Right of Way Agreement*. Grantor shall not change the depth of cover over the right of way area as defined above without the written consent of Grantee. At all times, Grantee shall have the right to cut, trim, remove, and otherwise control such brush, trees, weeds, or other undergrowth on or along the path of the installed pipeline and its related equipment that may, in the judgment of Grantee, interfere with the exercise of its rights granted herein.

**Use of the Premises/Duty to Repair** — Grantor shall have the right to fully use and enjoy the Premises except as may conflict with the rights granted herein to Grantee, provided that Grantor shall not inhibit or otherwise interfere with Grantee in the exercise of any of its rights herein granted. Grantee agrees to repair or replace in a timely manner any portion of Grantor's fences, gates, or roads that are damaged by Grantee during Grantee's operations and to reclaim and reseed areas disturbed by Grantee's operations.

**Right to Install Additional Pipelines in the Future** — In addition to the initial pipeline(s), Grantee has the right from time to time to install additional pipelines within the width of the permanent easement granted herein.

**Tender of Payment** — All payments to be made to the Grantor pursuant to this agreement shall be made by Grantee by check, payable and mailed or delivered to the Grantor.

**Memorandum** — Grantee may elect to file this Agreement, or a Memorandum of this Agreement, in the real property records of the county which the Premises is located. It is understood that this grant contains and expresses all the agreements and obligations of the parties hereto with respect to the rights herein granted and no covenant, agreement, or obligation not expressed herein shall be imposed upon the parties hereto, their heirs, successors and assigns, unless in writing and executed by both Grantee and Grantor.

The terms and provisions contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

This *Right of Way Agreement* is made further subject to the terms and provisions contained in that certain unrecorded *Addendum to Right of Way Agreement* by and between Grantor and Grantee herein of even date herewith.

To have and to hold such rights, privileges, and easement unto Grantee, its successors and assigns, until Grantee shall release such rights, privileges, and easement by written instrument duly recorded, and Grantor hereby binds Grantor, Grantor's heirs, successors, assigns, and legal representatives, to warrant and forever defend the easement described herein unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, the Grantor have each duly signed their names this \_\_\_\_day of March 2013.

**GRANTOR:**

\_\_\_\_\_  
Grantor Signature

## **Areas of Concern**

The agreement presented here raises several concerns for any landowner. While not an exhaustive list, below are a number of concerns any landowner should have if presented with this standard lease.

### **Opening Paragraph**

- This paragraph includes very broad wording and should raise red flags on a number of issues.
- The ability to use pipelines for “any other products” raises concerns about what those products might be.
- This lease gives the company the right to install additional lines at any time. It is suggested additional lines be negotiated separately and one at a time.
- What size is the line? As pipe size increases the payments per foot should also increase.
- Do you want above ground pipes and other items on your property? For safety reasons, it’s best that there be nothing sticking out of the ground.
- “Temporary periods” is mentioned. For how long are these temporary periods? Does this mean there could be future “temporary periods?”

### **Description of Right-of-Way**

- Is the 40 foot area a total of 40 feet, along one side, or 40 feet on each side? Or is it 20 feet on either side of the right-of-way?
- The terms “overlay” and “overlap” may be of concern. The term “overlay” generally refers to a pipeline on the same property, while “overlap” refers to pipelines laying over part of another property.
- Temporary roads are mentioned. Of what material will these be constructed? What happens to these temporary roads upon completion of the project? Would you prefer these temporary roads become permanent roads?
- “Other temporary work space” is referenced. What is this? What does it include?

### **Timber and Brush**

- It’s reasonable to expect that there will be areas where removal of timber and brush will be necessary during construction. However, as the landowner you should specify what you want done with the timber and brush. Where do you want it to be placed?
- If timber and brush are taken off-site who pays for disposal?
- Is there marketable timber on the property? Who/how is the value determined? Will you be compensated? If so, how?

### **Right of Ingress/Egress**

- This agreement allows the company to enter and exit the property at any location. It should be clearly specified where access is and is not allowed.
- It should be clearly understood that the ingress and egress are for the purposes of installing and maintaining this pipeline only.
- Do you want to allow access by any roads? Specify which can or can't be used. It is recommended that the company stay on the easement.
- Who has keys to any locks on any gates?

### **Freedom from Obstructions**

- This agreement does not specify how deep the line will be buried. A minimum of 36 inches is a must. The deeper the better.

### **Use of Premises/Duty to Repair**

- The agreement mentions the Grantee will repair gates and fences they damage. All fence and gates replaced must be of equal or greater quality.
- Specify what you do or don't want seeded upon completion of the installation. There are a number of new varieties that will out-perform and out-yield older varieties.

### **Right to Install Additional Pipelines**

- We strongly encourage landowners to negotiate for one pipeline at a time.

### **Other Considerations**

- There is no mention as to topsoil. All topsoil should be removed and placed separate from the other soil removed and be the last to be returned.
- Does this agreement allow the Grantee to sub-lease? If so, do you want to be notified if this occurs? Do you want to be notified within a specified period of time?
- There is no mention of a starting and ending date for installation. It is recommended that a reasonable time be assigned for the project to begin and end.
- There is no mention of any manner to terminate the agreement. A clause should be included that the agreement terminates if construction is not completed in a specified time period. If the installation is not completed on time a penalty should be assessed for each day the project is not complete. Consideration should also be given to a means to terminate the agreement if the line is not in use for a specified time.

- If the affected land loses its status in CAUV the grantee should be responsible for any assessments.
- A hold harmless agreement should be included. It should be understood that as the property owner you accept no responsibility for any injury to the Grantee, its employees, sub-contractors, etc.

### **Is an Attorney Necessary?**

No, an attorney is not necessary in negotiating or completing the agreement. However, it is highly recommended that landowners work closely with an attorney who has knowledge of oil and gas law.

### **Summary**

When presented with a proposal to grant an easement to a company for pipeline construction on your property the money may seem attractive, but it is important you take time to carefully review the proposal. The language in the first easement offered will generally not be favorable to the landowner. Additionally, the per foot rate offered may be less than what can be negotiated.

This fact sheet is not intended to provide, and should not be considered, legal advice. It is intended for educational purposes only.

*This fact sheet is in draft form and has been submitted to Ohio State University Extension for final publication by The Ohio State University.*