

Landowners: Know Your Rights

Voluntary Easements, Eminent Domain, and “Carbon Pipelines”

Do I have to sign a voluntary easement?

No. There is nothing in Nebraska law that requires a landowner to sign a voluntary easement.

What is a voluntary easement?

A voluntary easement means that the landowner is agreeing, without requiring the pipeline company (e.g. Summit, Navigator, Tallgrass) to go through eminent domain, to give it a right to construct the pipeline on the landowner's property. The voluntary easement may give the company broader rights than it would get through eminent domain or it may provide for a lower payment than the landowner would get through eminent domain.

How does the eminent domain process work?

Eminent domain requires the pipeline company to go through a legal procedure to determine the rights of the landowner, particularly the amount of compensation for taking the easement. The determination would first be made by a committee of local landowners and local people familiar with real estate in your county. The case can then be appealed to a court jury of local people to review the compensation determined by the committee.

What options do I have?

You do not have to sign a voluntary easement. If you do not sign a voluntary easement, it is possible the company may be able to use the authority of eminent domain to take you to court and condemn your property for use to construct and permanently store the pipeline, and retain access to your property (sometimes, the terms even say “in perpetuity” = forever) to maintain the pipeline. In Nebraska, the eminent domain process dictates a hearing before a local county judge with the pipeline company and you and your attorney, where the value of your property to be taken would be assessed by a county assessor and determined to be fair by a jury of peers. This hearing is only to negotiate the value of the land to be taken, and a landowner may not argue against their land being taken during condemnation.

Can the pipeline company use eminent domain?

It is unclear in Nebraska and other states whether carbon pipeline companies may use eminent domain -- as many statutes only refer specifically to “oil,” “gas” or “hazardous liquids” pipelines, while carbon transport is a grey area. In Iowa, eminent domain is granted only if the Iowa Utilities Board grants a permit to construct the pipeline.

Will I get more money for a voluntary easement rather than eminent domain?

Not necessarily. You need to do your homework to make sure the voluntary easement is giving you a fair price. It is also possible that eminent domain will award compensation for impacts that are not considered in the voluntary easement.

How will my land be impacted?

Based on the experience with Dakota Access, the fertility of cropland can be adversely impacted for several (or perhaps many) years. A [2021 Iowa State University study](#) found “extensive soil disturbance from construction activities had adverse effects on soil physical properties, which come from mixing of topsoil and subsoil, as well as soil compaction from heavy machinery.” “Overall, in the first two years, we found the construction caused severe subsoil compaction, impaired soil physical structure that can discourage root growth and reduce water infiltration in the right-of-way,” said the lead soil physicist on the project. “They also found changes in available soil water and nutrients. The team found ***crop yields in the right-of-way were reduced by an average of 25% for soybeans and 15% for corn during the first and second crop seasons***, compared to undisturbed fields.”

- **WATCH:** Video presentation with Iowa landowners’ attorney Janet Holmes, documenting with slides the soil damage witnessed during construction of the Dakota Access pipeline: https://www.youtube.com/watch?v=t_fiqcyllzo

What is Carbon Capture and Storage (CCS)?

CCS is very complicated but when you boil it down, the basic premise is that it captures the carbon and stores it underground (CCS) or it captures the carbon and uses it for industrial purposes. These “carbon pipelines” are being offered as false climate solutions, as they could be utilized for enhanced oil recovery -- essentially used to help extract even more oil and gas to be burned, instead of helping to reduce overall carbon emissions. *Read more:* [Carbon Capture & Storage + CO2 Pipelines: Not a Climate Solution](#)

If the pipeline is approved, what will be in the pipeline and what are the risks if it ruptures?

The pipeline will contain highly pressurized liquid CO₂. If the pipeline breaks, CO₂ causes risks to humans and animals. At concentrations between 2 and 10%, CO₂ can cause nausea, dizziness, headache, mental confusion, increased blood pressure and respiratory rate. Above 8% nausea and vomiting appear. Above 10%, suffocation and death can occur within minutes. Contact with the cold gas can cause freezing of exposed tissue. Moisture in the air can lead to formation of carbonic acid that can irritate the eyes. CO₂ is heavier than air and will accumulate in low lying areas.

- **VIDEO:** *Watch this [video](#) of a controlled CO₂ pipeline leak and explosion on a small, 8-inch pipeline at a test facility in Europe:*

<https://www.dnv.com/oilgas/laboratories-test-sites/dense-phase-spadeadam-video.html>

- **“The Gassing of Sartia”** ([Huffington Post, August 2021](#)): Read about what happened in 2020 when a CO₂ ruptured pipeline in Mississippi ruptured, sickening dozens of people, some collapsing in their homes or vehicles with “white foam coming out of their noses and mouths, their clothes stained with urine and excrement,” others scrambling out of paralyzed vehicles “disoriented and wandering around in the dark,” and eventually sent 49 local residents to rural hospitals.

What did we learn from the Dakota Access pipeline eminent domain process and pipeline construction?

Many landowners who signed voluntary easements later regretted their decision. They found that Dakota Access representatives had misled them. In addition, the landowners described threats and intimidation that had been used to get them to sign voluntary agreements. And during construction, the Dakota Access contractors did unacceptable damage to the property, especially in terms of destroying the fertility of the farmland. A [2021 Iowa State University study](#) found “extensive soil disturbance from construction activities had adverse effects on soil physical properties, which come from mixing of topsoil and subsoil, as well as soil compaction from heavy machinery.” “Overall, in the first two years, we found the construction caused severe subsoil compaction, impaired soil physical structure that can discourage root growth and reduce water infiltration in the right-of-way,” said the lead soil physicist on the project. “They also found changes in available soil water and nutrients. The team found ***crop yields in the right-of-way were reduced by an average of 25% for soybeans and 15% for corn during the first and second crop seasons***, compared to undisturbed fields.”

Why are permanent easements a problem?

A permanent easement preempts the landowner’s future plans for the property. Any easement over a property limits what a landowner can do on the property, such as requiring no structures or trees on the easement. The easement may affect what gets built nearby. The right to an easement allows representatives of the easement company to have access to the property 24 hours a day, without notice, using motorized equipment on the easement or flying above the property.

How can we start organizing?

****Important** Do not sign a voluntary agreement.**

Once you sign a voluntary easement, you cannot reverse that decision. During the Keystone XL and Dakota Access campaigns, many landowners objected to voluntary easements but many landowners acted alone, rather than in a unified group. Acting alone allowed Dakota Access to use intimidation tactics to pick off the landowners one at a time, while in Nebraska during the Keystone XL fight, a group of nearly 100 landowners formed a legal co-op (Nebraska Easement Action Team), never signed easements, and had their land that was seized via eminent domain in the courts returned to them at the end of their decade-long fight. Landowners have more power if they work together and object to the voluntary easements together. Along with other landowners in Nebraska, landowners opposed to carbon pipelines are currently organizing together across Iowa, Minnesota, South Dakota, North Dakota, and Illinois.

- **Speak to a landowners’ attorney:**
Domina Law Group: Brian Jorde, attorney: 402-493-4100
<https://www.dominalaw.com>
- **Speak to a fellow landowner:**
Tom Genung: 402-984-7548 tom@nebraskaeasement.org

You are not alone! Contact your neighbors and let them know your concerns.

If you would like to set up a call to learn more about the eminent domain process and how to fight it, please contact Nebraska Easement Action Team chair and fellow Nebraska landowner in Holt County, Tom Genung: 402-984-7548 or tom@nebraskaeasement.org