

## Farm Management

# Carefully study that lease

**I**n the past few years, wind leases have become popular in Ohio, and in the last year, oil and gas leases have seen a resurgence. A major gas line went through southern Ohio recently, and a new pipeline is under way in northern Ohio. Landowners are being asked more often than ever to lease their land or provide easements for various projects. A careful evaluation of these leases and easements is

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critical to protect landowners.

It is always a good idea to seek legal counsel when reviewing easements and leases — particularly the more complex documents like wind leases, oil and gas

leases, and large project easements. The purpose of this article is to discuss how farmers should analyze these documents.

Most attorneys with a real-estate practice can provide a good analysis of the economics and general provisions of a lease or easement. However, a farmer needs to be able to analyze a lease or easement in an additional manner: How will it affect the farm? Here are a few examples:



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■ Large underground projects like a high-pressure gas line will require a wide and deep trench. The standard easement will require the gas company to fill in the trench and probably put the topsoil back.

A farmer should require additional provisions to protect the farming operation. Any tile installed across the trench should be rigid PVC to avoid sagging when the trench settles. Crop damage payments should be required for several years after the project is completed to account for soil compaction. The pipeline should be placed deep enough to avoid tillage, including deep ripping.

■ Wind leases typically require placement of a wind tower, auxiliary building and access road. The placement of the tower and building is usually at the discretion of the wind company. However, the farmer can typically include a provision so he or she retains some control as to where the access road goes. Crop damage formulas commonly use a Dec. 1 date for establishing crop prices.

■ Oil and gas leases include free gas for the landowner. The free gas is often limited to residential use. The farmer should try to get free gas for the farming operation, specifically for grain dryers and heated shops.

The farmer also should have some say in where pipelines, tank batteries and roads are located.

It is important to realize that all easements and leases are negotiable. There is a common misperception that if a utility company has eminent domain authority, then the landowner has no bargaining power. This is not true. The landowner has the ability to negotiate the price and terms of any easement. A utility company or government agency is required by law to negotiate with the landowner. Eminent domain is invoked by the utility company only after negotiations between the utility company and landowner have failed.

The compensation offered the landowner for the easement is typically at the heart of the negotiation. Ohio law requires that the value offered the landowner be based on an appraisal. That is, the utility company or government agency must base its monetary offer to the landowner on an appraisal. The landowner should request a copy of the appraisal to evaluate its quality and completeness. The appraisal should include the value of fences, crops, timber, structures and other causes of devaluation.

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