



Chapter 9

Protecting Private Pipeline Easements from Encroachments

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§ 9.01. Introduction.

In light of the proliferation of private and public land development and the diminution of the American rural landscape, private easements are perhaps some of the most valuable of a pipeline company’s assets. With the expansion of the United States population and corresponding sprawl of public and private construction, encroachments upon pipeline easements have become an increasing problem for pipeline companies charged by federal and state authorities with the safe operation and maintenance of their often high-pressure pipelines. Encroachments on pipeline easements—ranging from foliage to permanent construction within

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a right-of-way—threaten the safe operation and maintenance of pipelines by precluding proper monitoring and prohibiting essential access for maintenance and repair which is necessary to avoid a potentially catastrophic pipeline failure.

Given the gravity of the potential consequences resulting from unremedied encroachments, it is essential that pipeline companies take proactive measures to protect their private pipeline easements from all encroachments. This chapter will discuss some of the legal and practical issues involved in protecting private pipeline easements. Section 9.02 will examine how courts determine the exact scope of a company's pipeline easement. Section 9.03 will discuss issues relating to pipeline easement protection litigation such as choosing both a forum and the appropriate form of the action. Finally, Section 9.04 will discuss some of the practical measures a company can take on a business level in order better to protect its pipeline easements.

§ 9.02. Scope of the Pipeline Easement.

In assessing an oil and gas company's ability to protect its pipeline easement, it is important to first determine the scope of the easement. The extent and exact parameters of a private pipeline easement are predominately determined by the written conveyance document granting the easement.² Easement and right-of-way agreements are construed pursuant to well-established contract principles.³ Where a conveyance instrument is unambiguous it is interpreted in conformance with its clear terms.⁴ If there is an ambiguity, the courts interpret the language of the

² See, e.g., *Scherger v. Northern Natural Gas Co.*, 575 N.W.2d 578, 580 (Minn. 1998); *Northern Natural Gas Co. v. Knop*, 524 N.W.2d 668, 670 (Iowa Ct. App. 1994); *Chevron Pipe Line Co. v. DeRoest*, 858 P.2d 164, 167 (Or. Ct. App. 1993); *Mid-America Pipeline Co. v. Lario Enter., Inc.*, 942 F.2d 1519, 1525 (10th Cir. 1991); *Boland v. Natural Gas Pipeline Co. of Am.*, 816 S.W.2d 843, 844 (Tex. Ct. App. 1991).

³ See *Scherger*, 575 N.W.2d at 580; *Hamlin v. Pandapas*, 90 S.E.2d 829, 833 (Va. 1956).

⁴ *Id.*; see also *Hobgood v. Koch Pipeline Southeast, Inc.*, 769 So. 2d 838, 843 (Miss. Ct. App. 2000); *Tide-Water Pipe Co. v. Blair Holding Co.*, 202 A.2d 405, 412-13 (N.J. 1964).