

When the Landman Comes Calling



Don't Sign Anything Until You Are Absolutely Sure

A Special Preview for
CAEPLA Supporters

In an upcoming Landowner Journal publication, CAEPLA's staff looks at the relationship between land agents and landowners. As a prelude to that publication, this electronic preview is being provided to CAEPLA supporters and associate members.

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Whatever You Do, Don't Sign Anything Until You Are Absolutely Sure You Know Exactly What You Are Signing

■ by CAEPLA Staff

A land agent shows up at your door, saying the company he works for wants to drill a well on your land, or run a pipeline across it. He talks about the energy industry a wee bit—how much it is growing and how many people it employs. He may have a farm background; he talks easily about crops and cropping practices.

In the midst of your discussion, the land agent says you can get a cheque from the oil company. If it's a surface lease his company wants, he'll talk about a once-a-year cheque. If it's a pipeline easement, he'll tell you that after the pipeline is in the ground and the cheque in the bank, you won't even know the pipeline is there.

Before you agree to anything, or sign anything, think about what's going on: Over the previous months and many years when you've been in your shop doing maintenance on equipment, fixing fence, working in the field, or doing yard work, this fellow has been hobnobbing with other land agents. The topic of discussion where you go to socialize is usually something about cropping opportunities, grain markets, machinery, or cattle prices.

The topic of discussion where he goes is usually what it takes to get people like you to sign surface



lease agreements and easement contracts with companies like the one that pays him. There are books and manuals land agents read and study that teach them how to get your signature on a piece of paper, with the least amount of trouble, resistance, and cost.



As a landowner, don't assume that the land agent who shows up at your door is there because the company he works for is associated with Santa Claus or because he is obligated to act in your best interest.

Ask yourself this question: "If the best farmer is considered to be the guy who grows the biggest and best crop at the least cost per acre, how do you think the land agent business measures who's the best land agent?" We promise you this: It is definitely not on the basis of the more money they pay people like you when they show up at your door wanting your signature on a lease agreement or right-of-way.

When we say this, don't think that we are trying to be unfair, or inappropriately dump on people who work as land agents. That's not why we are saying this. There are many professional land agents. What we are saying is as a landowner, don't assume that the land agent who shows up at your door is there because the company he works for is associated with Santa Claus, or because he is obligated to act in your best interest. The reason the land agent is at your door is because he wants to sell you something.

An energy company land agent is a salesman in exactly the same way as the guy who stops by to sell you a few pounds of fish, a new

pickup, or an accident insurance policy. Don't get it in your head that he is there to represent you, or do you any favours. He doesn't work for you. And the only reason he would offer you money is because you have something his boss wants. His job is to sell you on the idea that you should give that thing to his boss at a price his boss wants to pay.

Generally speaking, our belief at CAEPLA is that you should sell it to him. We are in favour of development. But, and this is a huge "but," make sure you know exactly what you are signing—and selling—before you sign anything. Your signature on a piece of paper could obligate even your great-grandchildren to the terms of a legal agreement. So know what you are getting you and your family into.

Don't accept the idea from a land agent that there is such a thing as a standard offer. Most people would never buy a new pickup for the first price a car salesman puts on the desk. So why would you bite at the first price a land agent throws



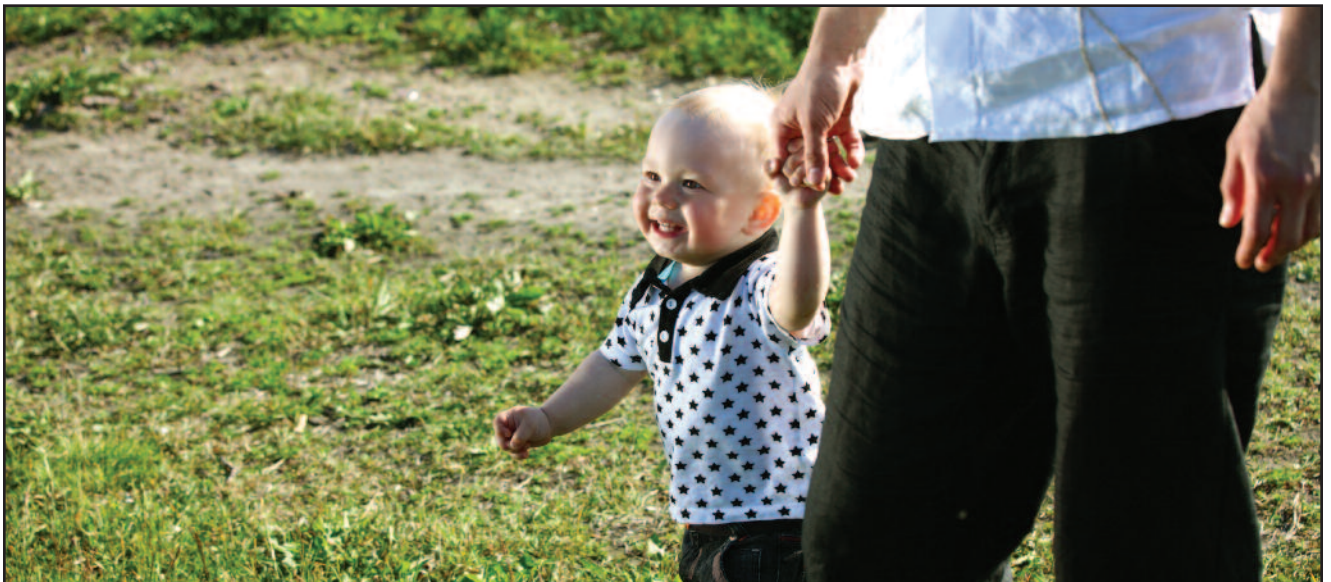
Most people would never buy a new pickup for the first price a car salesman puts on his desk. Why would you bite at the first price a land agent throws your way?

your way? Remember, a land agent is a salesman. And the minute he has your signature on a surface lease or easement agreement, the sale has been made. You bought and he sold—even though you will end up getting some compensation

out of the arrangement, you are still the buyer.

Don't expect that a land agent will tell you everything you want to know. He won't. He is not going to tell you that the contract he signed earlier that morning with a landowner who lives ten miles away, may have been 30% higher, or 50% higher, than the offer he just put in front of you.

If it is a federally regulated pipeline the land agent wants you to sign for, he is likely not going to tell you that after the pipeline is in the ground you are legally and financially liable every time you drive farm equipment across the easement without first getting written permission from the company. Nor is he going to tell you about the problems and costs you may face when the day for abandoning the pipeline finally rolls around. He likely won't mention anything about the fact that you won't be able to legally dig a hole deeper than 11.8 inches within a 260-foot corridor running the width of the entire easement. He certainly will not tell you about all the landown-



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terms of the signed easement agreement will be trumped by the new rules. In other words, you lose.

We doubt you will be told that there are many landowners who as far back as ten years ago have had federally-regulated pipelines imposed upon them, who suffered loss, damage, and adverse effect, including the loss of livestock, that to this day have never been paid. Don't expect that the land agent who works for the energy company is going to tell you this when he is trying to get you to sign an agreement.

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ers in western Canada who receive substantial annual compensation for pipeline easements on their land, if he is not offering you that same kind of annual compensation.

At CAEPLA, we have never heard of a land agent telling a landowner

that after a federally-regulated easement agreement is signed, every time the federal regulator (the National Energy Board) changes the rules in favour of the energy companies without consulting the landowner, which it has definitely done in the past, the

Also, don't expect a land agent to tell you about the advantage some energy companies might take of you when the word "approximate" is used in a contract. Norm and Bunny are a couple from northern Alberta who signed an agreement with a pipeline company, in which the route was designated as "approximate." The couple signed the agreement only after the company assured them that it would run the pipeline easement on the far north end of the home quarter. Their yard site is at the south end.

What actually happened is that the company ran the easement right through their corrals and calving



Above photo: Standing on top of the easement looking north toward the tree line where the pipeline was supposed to be buried, and where the pipeline company originally said it'd be placed.

Norm and Bunny (right) signed the agreement only after the company assured them that it would run the pipeline easement on the far north end of the home quarter. Their yard site is at the south end. What actually happened is that the company ran the easement right through their corrals and calving pens, which are on the south end of the quarter next to their yard.



pens, which are on the south end of the quarter next to their yard site. That means they can no longer legally dig a post hole deeper than 11.8 inches anywhere within a 260-foot zone, plus every time they drive equipment over the pipeline without written permission, they hold liability in the event of any damage because they are breaking the law.

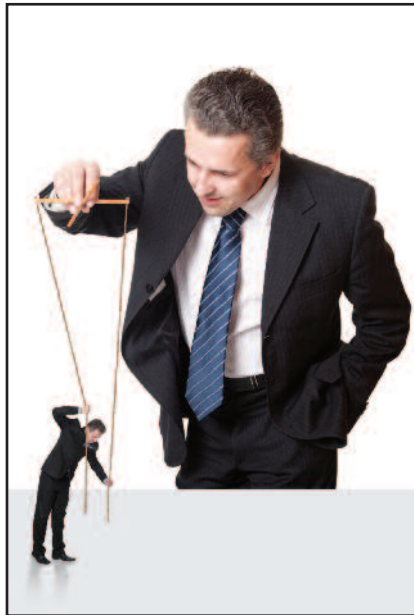
Putting the pipeline easement through the corrals destroyed their farm site's value as a cattle operation. (Who wants to buy a cow/calf operation that sits atop a pipeline easement?)

Norm and Bunny say that the company removed valuable logs from their land, brought noxious weeds in on its construction equipment that contaminated pastureland, and the couple also had an all-weather water supply destroyed. The pipeline company also wrecked one of their dugouts, which led to a horrendous problem with their yard site that resulted in the death of several animals the following spring.

When the couple vehemently complained to the energy company, the land agent they dealt with got out the contract they had signed, circled the word "approximate" when it came to the actual location of the pipeline, and then told the farm couple that they were out of luck.

"The wording of the agreement means we can put it anywhere on the quarter we like," he told them.

When the couple filed a complaint with the federal regulator—the National Energy Board (NEB)—about what they saw as the unethical and dishonest practices they had been forced to address, a representative of the National Energy Board



Many people in the community openly refer to the bureaucrats who run the National Energy Board as "puppets," and to the energy companies that pull their strings as the "puppet masters."

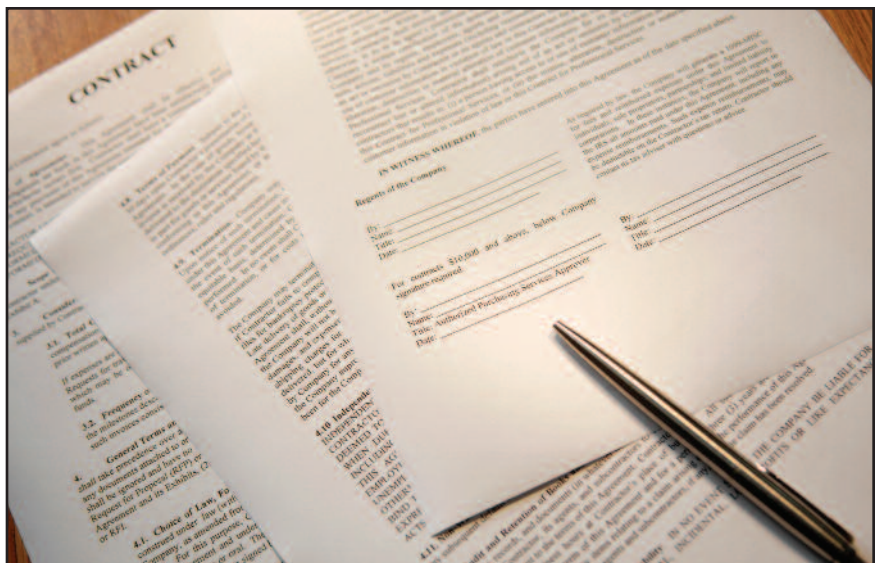
showed up at their farm, chauffeured by a representative of the very company they had been fighting with for so long, in a vehicle with the company's logo emblazoned on the side.

The message that was sent by the NEB to the entire community was loud and clear.

Nothing was or has ever been resolved. To date Norm and Bunny have never been compensated for their losses. The pipeline has now been in the ground ten years. Many people in the community where they live openly refer to the bureaucrats who run the National Energy Board as "puppets," and to the energy companies that pull their strings as the "puppet masters."

Today Norm and Bunny understand that for years, the federal regulator (National Energy Board) openly referred to the pipeline company as its "partner." When the federal regulatory bureaucrat showed up in their yard, chauffeured and escorted by the very company that had been abusing them and their land, they began to understand exactly what it means when the federal regulator says it is in a partnership with the energy and pipeline companies it regulates.

What many landowners don't understand about the National Energy Board, is that while it has absolute control over whether it will grant an energy company access to their



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land, even against their wishes, it nevertheless insists that it has nothing to do with the terms of any financial agreements.

The NEB falsely claims the financial considerations are a private matter between the landowner and the energy company. Quite frankly, it's all bureaucratic doublespeak and bull#*%.

Ask yourself this: If the energy company and a landowner have not reached a financial agreement before the NEB grants the company legal entry and ongoing access to that farmer's land, what in the world would possibly motivate the company to seek a financial settlement or negotiate in good faith after it has access, and after the regulator keeps insisting that it has nothing to do with any financial considerations?

Your Signature and Its Implications

The bottom line is never sign a thing, even a permission to survey, unless you know exactly what it is that you are signing, and unless you fully understand the implications of what you are signing.

For example, if you grant permission to a pipeline company, in writing, to survey your land, the company can present the signed document to the regulator as proof that you want the project to take place on your property. Nowhere have you actually said that, or approved of any terms, yet by signing a consent to survey that is exactly what you are inadvertently doing.

This is the reason energy companies will offer a landowner some small amount of money if he or she signs a document, that in writ-



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positioning with the regulator, so at some future date it can more readily force its agenda, at whatever final price it wants to pay landowners. By offering \$500 or \$1,000 up front to the landowner for permission to survey, it gains the leverage and positioning it wants with the regulatory regimes it quite readily knows how to massage and manipulate.

If you have a story to tell, we'd love to hear from you:

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When the Landman Comes Calling

■ by Dave Core with Notes from CAEPLA Staff

A farmer from south Saskatchewan called our office recently. He owns land along the route of a proposed new federally-regulated pipeline. One end of the pipeline will be at Empress, Alberta. From there it will pass right across southern Saskatchewan, then turn south to end near Tioga, North Dakota.

The man had heard me speak at a CAEPLA landowner meeting, and knew that at that meeting, I strongly suggested that when a land agent shows up at the door, landowners should think long and hard about signing anything unless they know exactly what the implications might be.

It's not a matter of being anti-land agent or anti-development. CAEPLA as a landowner association is very much in favour of development. My point at the meeting was that every landowner should know the full implications of his signature on something before he puts pen to paper. A landowner's signature is his property, the same way a quarter section, a house, or a pickup truck are property.

"Don't give your signature away too easily," is some of the best advice we can give landowners.

Easement Agreements

If it is a pipeline easement agreement that a land agent wants you to sign, the list of things to consider before you ink a deal includes:

What will happen at the point of abandonment? Will the pipe be removed? Who will pay when it is removed? Upon abandonment, if the pipe will not be taken out by the company, why not, and how will leaving it in the ground affect your property values over the long term? If it is a large diameter pipe and the company wants to leave it in the ground after it is decommissioned or abandoned, who will be responsible when at some point it finally collapses and leaves a depression?

What about crossing rights and liabilities? If the easement is federally regulated, will the pipeline company, in writing, grant you blanket crossing permission under Section 112 of the NEB Act? What about the thickness of the pipe and depth at which it will be buried?

Think about possible contamination liabilities: Will the company, in writing, fully release you even after the pipeline has been officially decommissioned or aban-

doned from all costs related to contamination? If it is not in the contract that it will, don't assume that you are without obligation.



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Does the contract compel the pipeline company—under financial penalty—to tell you if and when there is a spill or contamination on your land? If it doesn't, what makes you think the company will tell you if there is a spill? Make sure there is a timeline for being informed too, such as 24 hours.

What will the implications be if the company goes out of business and you end up with contamination on your property? Does the contract compel the pipeline company—under financial penalty—to tell you if and when there is a spill or contamination on your land? If it doesn't, what makes you think the company will tell you if there is a spill? Make sure there is a timeline for being informed too, such as 24 hours. And remember, if there is no penalty in the contract for the company not informing you about a contamination or spill, as well as a penalty that keeps climbing the longer it delays telling you, what makes you think it will tell you?

Will there be annual fees paid to the landowner, or a linear payment? How about the cleanliness of the equipment to be used during construction to protect against noxious

weeds? Do you want to specify in the contract that equipment has to be sterilized to protect against noxious weeds, clubroot, etc.?

Any number of these above issues can easily affect the value of your land.

Additionally, whatever the land agent agrees to at the kitchen table, make sure you get it in writing. If it is not in writing, what the land agent tells you or what you think the land agent tells you, is of zero value—absolutely none.

And don't think the way you walk through this contract evaluation and signing process doesn't matter. At some point it will matter—a lot; if not to you then to your kids or grandkids. If you have ever in life bought something—a car, a truck, a piece of equipment—

where you signed too fast and the next day you knew you had made a mistake, then you know what I am talking about.

Remember, a land agent is a salesman! When he is talking with you, telling you all about what the company is going to do for you, or how much it will pay you, don't forget that.

Surface Leases

If it's a surface lease the land agent is asking you to sign, think about land stewardship and your responsibilities in this regard. What will the impact of the lease and the well or wells be on soil structure including your top soil; will there be bare dirt erosion—water and wind over bare dirt will have an impact, including on any roads that might be built; if there is native range that is to be gone over remember that it can never be replaced; depending on the circumstances, a berm on a surface lease might be necessary and justified (hold back salt water and other contaminants); if you are dealing with multiple wells on a pad site the traffic will be much higher than on a single well; also, expect that some of the traffic may go off site; if you need the well site fenced, make sure it says so in the contract.

Know where the well is to be located and its proximity to roads and other important factors on your land; if the well is to be on the home quarter, you will want to know the proximity of the site in relation to your house and any water wells or natural springs; be sure to get a water test done on every well and spring before anything happens and prior to any drilling occurring; in the contract, make sure you include a clause

that ensures water quality monitoring for at least two years after the drilling, and for two more years after every time the well is fracked.

Write into the contract that the cost of water monitoring is to be paid by the company—your objective here is to test for migrant gas—even though the company might be drilling for oil, assume that natural gas is going to be present.

You would be surprised how many people there are who get bubbly water or can light their well water on fire after there has been fracking nearby. Realize that many wells nowadays are going to be fracked over and over. You will likely want to write into the contract that if and when the company fracks a well, that you have to be notified. And be sure that there is an escalating penalty if you are not informed.

Remember, a provision in a contract where there is no consequence for non-compliance is not a provision. It's nothing more than sentimentality. If you want to know what kind of chemicals the company will use under your land when it is doing a fracking job you can ask that too. You may want to know if they are pushing diesel fuel or other toxic products under your place. The fact is there are some chemicals these companies are using, including many that are toxic, that they will not disclose.

When you are pondering compensation, think about the impact of



At the energy company's expense, be sure to get a water test done on every well and spring prior to any drilling occurring; in the contract, demand a clause that ensures water quality monitoring for at least two years after the drilling, and for two more years after every time the well is fracked.

added traffic on your roads; the control of weeds on the lease needs to be considered—most landowners won't want to look after weeds on the company's well site at their own expense; if the company expects you to control its weeds be sure to charge an appropriate amount—don't do it for free and don't under value your time.

Think about how a well or multiple wells will affect your farming. For example, if you end up with a 400- or 500-metre road across your land leading to a well or pad site, you are going to be bumping against that road a whole lot in the coming years—every time you seed, spray,

harvest, etc. How many extra turns are you going to make on that field over a period of thirty years, and how much extra diesel are you going to burn doing it? Why should you pay for that added cost, however small or large you think it might be?

Some landowners end up with unbelievably difficult angles they have to farm around because of the way a site has been located. If the site is fenced it may be even more awkward. If you are dealing with difficult situations like this be sure that you demand appropriate compensation. The oil company is in business to make money—and makes lots of it. Your arrangement with them is a business arrangement, so think like a businessman, including how you value your time.

Increasingly, landowners are demanding that the energy company pay them for

their time during the negotiation process. The land agent doesn't work for free, neither does the land agent's boss or the president of the oil company. You have more money invested and are a bigger businessman than the land agent who is coming to see you, likely even more than the owner of the land agent company he works for. (Huge numbers of land agents don't work for the energy companies they seemingly represent. They work for independent land agent companies that contract their services to energy companies.)

When it comes to compensation, ask yourself how the project will



When companies sell gas stations in town where underground fuel tanks have been, the site has to be clean and without contamination. Some sites cost \$30,000, \$50,000, \$100,000 or more to clean up. If you have an underground pipeline on your land that will be moving petroleum products for several decades under high pressure, don't think the possibility of contamination and future cost for clean-up will automatically be zero.

affect your property value. The minute you get a pump jack on your land, in one fell swoop your property has gone from pristine agricultural land to industrial land. And don't think that can't cost you money over the long haul. In many parts of the prairies there are European investors coming in who want to buy pristine farmland—no pumps, no pipelines, and no hydro corridors. And they will pay for it. When it comes to land that is closer to urban areas, there are numerous stories out there of landowners whose property values plummeted after a pipeline or a few pump jacks appeared, or because a pipeline or well was on the land.

The Effect on Land Values

If you are a developer and you can buy one of two pieces of land that are side by side near a city, and one of the two has buried pipelines or a couple of abandoned wells, while the other is pristine, which one would you rather buy? If the de-

veloper buys the pristine land there is no risk of liability or additional cost. If he buys the land with the pipes and wells, as soon as he acquires ownership he could hold an obligation related to remediation and any possible contamination discovered at a later date.

When companies sell gas stations in town where underground fuel tanks have been, the site has to be clean and without contamination. Seepage in underground tanks at these sites is common. Some sites cost \$30,000, \$50,000, \$100,000 or more to clean up. If you have an underground pipeline on your land that will be moving petroleum products for several decades under high pressure, don't think the possibility of contamination and future cost for clean-up will automatically be zero.

If the land agent is trying to get you to sign off on an easement for a federally-regulated pipeline, and it is your first federally-regulated

pipeline, be aware that you will very likely end up with more pipes. You could get two, three, maybe even five or six. Many landowners have that many.

A federally-regulated corridor is going to affect your land value whether you like it or not, despite the fact that the land agent will likely tell you that it won't. Think of the easement he wants from you in terms of an energy corridor that over the long haul will have numerous pipelines in it. The issues you will have to address at some point will include abandonment and possible contamination.

Tax Hungry Municipal Councillors

The landowner who called me also mentioned that the reeve of his local RM (Rural Municipality), was telling everyone to just sign everything the pipeline company wants because none of it will matter in the long run. He says they

will all be dead by the time any of the issues become a problem.

The situation the landowner described is that the pipeline company is proposing to build part of the line along municipal roads in many areas.

Some local officials, without even thinking it through, are quickly saying yes. What these reeves and councils might want to consider is the liability implication of the 200-foot control zone (in addition to the actual easement) which would automatically include the entire roadway and neighbouring private frontages, including any and all fences and fence lines. Under federal law, no landowner would be able to dig deeper than 11.8 inches anywhere within that 260-foot control zone (assuming a 60-foot easement) and no municipal worker would be able to grade, dig a hole, or even drill a place for a road sign without first getting written permission from the pipeline company.

On top of all that, these junior officials should realize that Section 112 of the National Energy Board Act says every time someone drives on or across a federally-regulated pipeline, which includes the movement of all farm equipment, grain trucks, graders, and snow ploughs, written permission must first be obtained from the pipeline company. If permission is not obtained, the driver of the equipment or vehicle is legally and financially liable in the event of any damage, seepage or leaking. As pipelines age, this could become an acute problem.

The land agent will likely tell you that you are not liable when you drive equipment over pipelines. He will claim that the company allows



What these reeves fail to consider is the liability associated with the 200-foot control zone (in addition to the actual easement) which would automatically include activities on the entire roadway and neighbouring private frontages, including any and all fences and fence lines on private property.

“normal” farming over the pipeline. Many pipeline companies have been saying this for some time. But it is not true. You are liable for damage, seepage, and leaking on the basis of Section 112. The National Energy Board has stated in writing that landowners are liable, even for low-risk activities over or across pipelines, when they are crossed without first obtaining permission.

If the land agent insists you are not liable, ask him to explain Section 112 of the Act to you as well as the NEB’s statement. (You can find Section 112 of the NEB Act at the CAEPLA website, in back issues of newsletters, or by searching the CAEPLA website using the search function on the navigation bar.)

Putting federally-regulated pipelines along municipal roads, means every landowner in the municipality who enters a field with

equipment off of that road, holds legal and financial liability for the integrity of the pipeline every single time he or she drives across it or across the ditch it’s in. Why would any elected official or reeve want to put all the landowners in his or her district in that kind of a situation?

Any reeve who does such a foolish thing, may want to think about buying a whole lot of liability insurance to cover his or her backside, because in the event of an accident—and accidents do unfortunately happen—you can bet there will be a lawsuit against any municipal official or council members whose fingerprints are on a decision that foisted liability onto individual landowners without informing those landowners, and without fully understanding the implications of what they agreed to on behalf of the municipality.