

Who Owns Abandoned Pipelines?

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I recently received a call from a landowner on whose land a pipeline was buried. On this particular tract of land in central Texas, the pipeline in question was only 300 feet in length. The right-of-way, or easement, was no longer mowed or otherwise maintained. Signs along the right-of-way were down or in disarray.

The landowner had done some detective work and found through the Texas Railroad Commission Pipeline Safety Office that the line had, in fact, been abandoned and in the past had been used as part of a 60-mile and longer crude line for a major pipeline company. He persisted and contacted someone at the pipeline company who acknowledged ownership of the line even though it was deemed abandoned by state regulatory authorities. The landowner said he wanted to ascertain the idleness or abandonment of the pipeline because he had plans to build on that parcel and the pipeline presence would interfere somewhat with, or at least complicate, the building process.

The pipeline company indicated it would study the matter. An environmental subcontractor then called the landowner with the pipeline company's solution. The subcontractor had been instructed by the pipeline company to remove the pipeline if the landowner was willing to pay for the \$51,000 expense of removal. The landowner then asked me what I would charge to do the same job and I told him \$1,000-1,500 as it looked to be about a day's worth of work.

Unfortunately, the landowner was not able to hire our company because the abandoned pipeline was still the property of the pipeline company. The issue was ownership. The pipeline company claimed ownership but did not assume responsibility for maintenance or removal of the pipeline. For some reason, the pipeline company determined that the landowner ought to be responsible for removal expenses and that a qualified environmental company of its choosing ought to be used for the removal. Why was this? Was there an unknown environmental hazard?

A dictionary definition for abandonment means to "give up entirely." Defined in terms of federal regulations, abandonment means "permanently removed from service." In federal pipeline safety jargon, an abandoned pipeline is a pipeline that is "physically separated from its source of gas and is no longer maintained," or in another federal agency glossary, "no longer connected to the system and is no longer maintained. The pipeline can be abandoned in place, by removal, or



Figure 1: Poor markings and signage on out of use pipeline.

sold." In still another set of federal guidelines, abandoned property means "a property that, because of its general disrepair or lack of activity, a reasonable person could believe that there is intent on the part of current owners to surrender their rights to the property." All of these definitions apply to gas and hazardous liquid pipelines that are interstate and fall under federal jurisdiction.

However, there are no guidelines for abandoned crude oil pipelines that fall under the jurisdiction of the Interstate Commerce Commission, and, presumably, the agencies that have succeeded to that federal agency's role since it was abolished in 1995, as common carriers.

At the state level, there are no abandonment guidelines or definitions for intrastate gas, liquids, or oil pipelines, and there are no abandonment guidelines or definitions for intrastate oil or gas-gathering systems. Any mention of abandonment of pipeline procedures follows federal guidelines of disconnecting from active gas service and purging of any hazardous substance.

Individual state guidelines generally follow federal guidelines if they have any guidelines at all. (Texas is one of the few that addresses the issue whatsoever.) However, the federal government has no guidelines, criteria, or regulations to determine ownership of abandoned pipelines.



Figure 2: Right-of-way overgrowth, poor maintenance on 'idled' pipeline.



Figure 3: Encroachment reigns when out of use pipelines are not patrolled by ROW agents.

The pipeline in central Texas was an oil pipeline, so if it were abandoned responsibly, it would have been purged of any hazardous substance as suggested, but not necessarily mandated, by Texas guidelines. Again, why would an environmental company need to be involved in the take-up process? Are there other issues that the pipeline owner did not disclose?

On further investigation, the landowner in Texas found other areas where the same line had been cut and removed, and the pipeline company continued to own the easement, but obviously did not feel a responsibility to maintain the right-of-way or to “give up entirely” the right-of-way easement to the landowner. The Texas landowner now has a pipeline to nowhere.

Searching For Abandoned Pipelines

Out-of-use, uneconomic and abandoned pipelines are not on the priority list of any business development or asset manager. They simply don't provide substantial profit outlook and are generally identified as liabilities. That said, most gatekeepers of this sector in a pipeline company simply sweep the issue aside and do not address it. The reasons for this include:

- Possible environmental problems,
- Possible opportunity for future use,
- No company policy regarding this kind of property,
- Ignorance of potential profits, and
- Ignorance of potential liabilities.

The search for abandoned pipelines often begins when a landowner or other interested party notes that a pipeline easement is not being maintained and begins asking questions. Very few states keep track of abandoned pipelines. The Federal Energy Regulatory Commission publishes and approves guidelines for abandoning pipelines but does not continue oversight after the pipeline has been abandoned and abandonment criteria have been met.

In searching for abandoned pipelines to purchase or otherwise obtain, the firm, Pipeline Equities, will check its own data base and old pipeline maps from the archives of defunct pipeline companies as well as any geologic and landowner maps showing oil and gas wells and leases.

It is necessary to know as much information as possible about an abandoned pipeline

because most pipeline companies will say any out-of-use line is only temporarily idled, even if has been out of use for 20 years. I have asked about the presence or availability of abandoned lines at several companies, and the answer is almost always, “No, we don't have any.” Even when I have evidence of a company owning 3,000 miles of abandoned lines, I have received the same response. There seems to be a reluctance to talk about abandoned pipelines, even if you can find someone with any knowledge about them. I have found that in major companies that utilize pipelines, there are few policies for dealing with these issues.

One company I was dealing with was prompted to actually order an inventory to determine what pipelines they really had. When I made an offer to buy the abandoned and out-of-use pipelines, the company replied that they did not have a policy regarding the disposition of these properties. They did hire interns and produced an inventory of the idled or abandoned lines. Once they found out what their inventory consisted of, they had to determine what their policy for these idled pipelines would be. The policy determination, in this case, was the same as it had always been and is with most companies — leave them alone and do nothing. This is the existing policy for



Figure 4: Example of out-of-use pipeline that has migrated to the surface through erosion and other factors.

many major pipeline companies.

Why? There are no advocates within the structure of most companies. Business development officers don't want to bother with what might be determined to be liabilities. Operations lacks the time or inclination. Environmental does not have the authority, and — by now — right-of-way departments are outsourced. No one really cares. Abandoned or idled pipelines are out of sight and out of mind.

Fixtures

An interesting aspect of this and other

cases is the “fixture” nature of the pipeline. According to attorneys, if the pipeline company has given up the easement via formal recording back to the landowner, then the pipeline company would also be “giving up entirely” the ownership of the pipeline which has become a fixture to the easement. Attorneys say legal opinions have stated that pipelines and appurtenances to pipelines are part of the package of, or fixtures to, the easements they are on. Somewhat like a toilet, sink, and bathtub belong to a bathroom. The fixtures stay, and if the easement reverts to a landowner, the pipeline reverts as well.

More often than not, this transfer is never done on a formal basis and the ownership remains in the name of the original grantor (the pipeline company) until someone takes the initiative to clear it up. It would probably take a court order in each (county) jurisdiction.

Right-Of-Way Agreements

Ultimately, ownership is determined, first, by contract. That is to say that the original right-of-way agreement or contract is the law. Attorneys say other legal developments have determined that abandonment by giving up entirely can be accomplished if it can be determined that “intent to abandon” is present or “cessation of usage” is evident. The presence of either of these conditions may change ownership of the pipeline and easement despite the language of the original contract. Again, this change in ownership might require a court order in each jurisdiction.

These agreements or contracts between grantor (landowner) and grantee (pipeline owner) generally have the following four parts, but agreements over 50 years old only contain the first three parts:

1. Amount of compensation.
2. Description of the right-of-way or the description of the land the pipeline traverses. An example of a description from an agreement written in Texas in 1927 states, “..... through the following described lands situate in Crane County and State of Texas, to wit: across Sections 7-8-13-12-11 & 20 in Block B-21 Public School Lands and across Sections 19-20-28 & 29 in Block B-26 Public School Lands.”
3. Rights of the grantee. In this same 1927 Texas agreement, the boilerplate language that was used (and which is still the mainstay language of right-of-way agreements today) would state that the landowner hereby grants the pipeline company “... the right-of-way to lay, maintain, operate and remove a pipe line for the transportation of oil and gas, and to erect, maintain, operate and remove a telegraph or telephone line, together with the right of ingress and egress, on, over and through the following described lands situate.....”

4. Term of the contract. This is a more recent addition to right-of-way agreements and is usually “ten years,” “upon cessation of usage,” or “within twenty four months after cessation of usage.” In the case of the 1927 Texas agreement, the absence of a specified term gives the grantee/pipeline owner the rights to the easement and pipe line in perpetuity. Many old right-of-way agreements were unintentionally written in perpetuity without a termination date.

A pipeline right-of-way is really no different than any other kind of easement, and therein lies some interesting comparisons and — in some cases precedent for extinguishing or canceling agreements, even ones that were written to have a perpetual term.

Abandoning Pipelines

Why the language of abandonment in the regulations? The simple explanation: the



Figure 5: Another example of out-of-use pipeline that has migrated to the surface through erosion and other factors.

pipeline company is no longer responsible for taking care of the pipeline according to regulations as if it were an active viable pipeline. That means pipeline companies no longer have to worry about regulatory fly-bys to verify if the right-of-way can be seen from the air.

The Texas Railroad Commission is responsible for fly-bys in Texas and ceases fly-by activity when a pipeline is designated as abandoned. Once a pipeline is designated as abandoned, pipeline owners and operators no longer incur the expense of maintaining easements with expensive mowing and caretaking. And, they no longer have to paint posts and put up new signs to mark the pipeline. All of these responsibilities are expensive and time-consuming.

Another huge bonus for abandoning a pipeline is reduction of taxes or total elimination of ad valorem, school, county and other jurisdictional levies. Generally speaking, taxes are almost non-existent for abandoned pipelines. But still, if a landowner wants to claim the pipeline on his or her property, the pipeline company will likely claim it is their property and explain that the pipeline is only "idled" as opposed to a "given up entirely" type of abandonment.

In the case of our friend in central Texas, he can have the easement returned, but not the pipeline fixture. He must pay the price of a pipeline company approved contractor with environmental supervision standing by in order to make his own land usable. This was not the way it was supposed to be. So,

abandonment of pipelines can mean many things to many people.

During the course of allowing an idled, abandoned, or out-of-service pipeline to deteriorate, other changes occur as a result of the lack of care and maintenance. Easements are allowed to grow up and out. Trees sprout and grass grows. Neighbors and landowners begin encroachment activity and the problems are compounded. When it is evident that a pipeline right-of-way is not being maintained, the signal goes out that no one cares, and encroachment begins. Structures are built, and seemingly squatters' rights are the rule of the day on ill-maintained rights of way.

The business of some salvage companies is the removal and recycling of out-of-use pipelines. For the most part, pipeline companies are not interested in the business of recycling as they have determined there are too many environmental risks to allow shallow pocket pipeline recovery companies the run of a right-of-way. The safest bet is to let it lie rather than take a chance that a pipeline recovery company might uncover some surprises that no one wants to deal with.

The call our company received from the Texas landowner is only one example. We field an average of three calls per week from property owners seeking a way to get rid of a piece of pipeline that is interfering with a construction or excavation project. Other calls involve inquiries about restoring easements that are clouding title.

Court Determination

The following are several factors a court or jurisdiction might consider in determining whether an easement or right-of-way (including the buried pipeline) has been canceled, extinguished and thus effectually reverted to the landowner:

1. Whether the line is merely idle or is completely abandoned.
2. The length of time the line has been idled or abandoned.
3. Whether the grantee company continues to maintain, test and/or patrol the line.
4. Whether the company continues to show the line and/or the easement as an asset in its records and/or continues to pay taxes on the line and/or the easement.
5. Whether there are other lines in the same easement which have not been idled or abandoned.
6. Whether the company has constructed or acquired new lines on other routes which make the idle or abandoned line and the easement in which it runs unnecessary.
7. Whether the company has idled or abandoned the facilities at either end of the line, thereby making it unlikely that the line would be returned to service.
8. Whether it is cost-prohibitive to return the line to service.
9. Whether the company has released or abandoned other segments of the easement, thereby making it impossible to use the line or a replacement line at some future time.
10. The company plans for future use of the line or replacement line in the same easement or corridor.

Conclusion

The grantee company's obligation to release an easement containing an idle pipeline upon the request from a landowner will first depend on the specific provisions of the contract or instrument granting the easement. This instrument is almost always the right-of-way agreement. If that contract or instrument does not specify a term or condition for reversion of the easement, then it will depend on whether the landowner can establish that the purpose for which the easement was granted has ceased or that the grantee company can no longer use the easement for its intended purpose.

The reality is that most landowners are not going to go to the expense and time to prove this. Pipeline companies know this and quietly deal with incidents one at a time with special attention given to larger parcel owners along the right-of-way. The idea that a landowner with a quarter-mile section of pipeline on his property is going to file suit against a major pipeline company is unlikely. However, if the landowner is desperate to sell that property or needs to build on the land, he or she will seek a remedy somewhere.

Be warned, pipeline operators: there are too many hungry plaintiff's lawyers and tree huggers out there. In addition there are many landowners that are weary of warehousing obsolete pipelines for pipeline companies. In Texas, a bill will be introduced in the coming legislative session that will require pipeline companies to get permission from each landowner before abandoning a pipeline on their property. In addition, the companies will have to account for all dormant pipelines previously idled or abandoned. This type of legislation might signal the end to the practice of "in-place" abandonment of pipelines.

If we really don't like federal and state regulations, why not be pro-active and clean up our mess before we get called in?

The central Texas rancher continued in his attempts to have the pipeline company remove the 330-foot pipeline segment from his property. He did get a concession of a price reduction from \$51,000 to \$37,000 for the take-up by the environmental company approved by the pipeline operator. At this point he went to a lawyer who found that most pipelines of that vintage were coated with a material containing asbestos. The lawyer found a case regarding an abandoned jet fuel pipeline with asbestos coating in Maine. A local court determined that the line did cause contamination under a town and possibly was a problem for the local water supply and health of future generations. The attorney for the Texas rancher noted that the pipeline in question was located over the Edwards Aquifer for a 40-mile stretch. In-place abandonment of pipelines is no longer an option.

For case law, Code of Federal Regulation and other references for this article, e-mail davidhowell@pipelineequities.com. P&GJ