

Eminent Domain FAQs

What is eminent domain?

Eminent domain is the power of the government to take private property belonging to its citizens. It can also be called “condemnation” or, in some states, “expropriation.” The 5th Amendment to the U.S. Constitution ends with the statement, “...[N]or shall private property be taken for **public use**, without just compensation.”¹

The Illinois Constitution provides that “Private property shall not be taken or damaged for **public use** without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.”²

What constitutes public use?

Originally governments permitted eminent domain to be used only for true public uses, such as roads, bridges, parks, and public buildings. The courts authorized a slight expansion of the power when they allowed private companies like railroads and public utilities to take property for the laying of railroad tracks and transmission lines.³

The US Supreme Court ruled in *Berman vs. Parker* (1954) that a governmental body can take privately held, unblighted property from an owner as part of a redevelopment plan. An integrated urban renewal plan was established as a “public purpose”. Thus, “public use” came to mean “public purpose”.⁴

Can eminent domain be used to take my property and give it to another private party?

In *Kelo vs. City of New London*, the US Supreme Court extended this public purpose to include use of eminent domain to acquire private property for private economic development projects.⁵

How have fossil fuel interests changed laws for private gain?

Recent efforts by fossil fuel interests have successfully modified laws in several states.

- In response to the efforts of Enbridge Inc., a Canadian fossil fuel company, to increase the capacity of an existing pipeline, in 2015 the Dane County WI Zoning and Land Committee instituted a requirement that pipelines provide adequate insurance to guarantee complete clean up in the event of a spill. Just three months later, the WI state legislature inserted a last-minute state budget provision prohibiting towns and counties from imposing additional insurance requirements.⁶
- In Illinois (2015) a McLean County judge issued a ‘directed verdict’ bypassing the normal eminent domain jury trial process to allow construction to begin immediately on the Enbridge SAX pipeline. Landowners who had been unable to reach an agreement on

¹ [Constitution - 5th Amendment Article 5\(pdf\)](#)

² [Illinois Constitution, Article I](#), Section 15: Right of Eminent Domain

³ [Illinois Eminent Domain Practice \(2016 edition\)](#)

⁴ [Summary of Berman vs. Parker](#)

⁵ [Summary of Kelo v. New London](#)

⁶ [State budget provision exempts Enbridge from Dane County insurance requirement](#)

were scheduled for jury trials, as required by Illinois law. Enbridge sought and received an injunction granting it the right to access the landowners' property to begin construction. Landowners lost on appeal.⁷

Do landowners have to go to trial to obtain compensation? If not, why do they?

Pipeline companies generally approach landowners individually to negotiate compensation for an easement on their property. For agricultural land, compensation usually includes a component designed to address loss of productivity, as the mixing of soil layers and compaction often affect productivity.

Landowners may elect to go to trial for a number of reasons, only some of which are listed here. The landowner may be unable to reach a negotiated settlement with the pipeline company, due to disagreement about the value of the property and/or potential losses. In some circumstances the building of a pipeline may destroy a family business, such as that of the Halloran family, which lost its syrup business after the removal of 90% of the maple trees on its property.⁸ Landowners may be unwilling to take the risks associated with a pipeline on their property.

What are the risks?

Every pipeline comes with a risk of failure. A recent analysis of Enbridge Line 5, which runs from Superior WI under the Straits of Mackinac to Sarnia, Ontario, Canada, determined it had had at least 29 leaks spilling more than 1 million gallons of oil and gas liquids.⁹

The largest and most expensive inland oil spill occurred in July, 2010, dumping an estimated 850,000 gallons of tar sands oil into Talmadge Creek near Marshall, MI, which feeds into the Kalamazoo River which then flows towards Lake Michigan. The National Transportation Safety Board's investigation concluded that the probable cause of the rupture was corrosion fatigue cracks that "were made possible by pervasive organizational failures at Enbridge..."¹⁰

Can oil spills be completely cleaned up?

As the fossil fuel industry moves to more extreme forms of oil extraction such as tar sands, various chemicals are added to permit the tar sands to be pumped through pipelines to refineries and ports for export. Often referred to as diluted bitumen, the spilled material has some very different characteristics from the conventional crude for which first responders are trained. The added chemicals evaporate, leaving behind a heavier goo that sinks in water...Until there is more toxicological research specifically targeting diluted bitumen, the acute, chronic, sub-lethal and longer-term toxicities of diluted bitumen relative to conventional crude oils will be poorly known.¹¹

⁷ [Landmark Eminent Domain Decision Allows Construction to Commence Prior to Jury Trial on Just Compensation](#)

⁸ [Maple syrup trees cut to make way for the Constitution Pipeline](#)

⁹ [Spills on Aging Enbridge Pipeline Have Topped 1 Million Gallons, Report Says](#)

¹⁰ [NTSB Accident Report, Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release](#)

¹¹ [National Academies of Sciences, Engineering, and Medicine, Spills of Diluted Bitumen](#)