Doing What's Right

Ethics and the right of way professional

BY M. VINCENT CRUCIANI, RWA

U.S. Supreme Court Justice Potter Stewart once noted that, "Ethics is knowing the difference between what you have a right to do and what is right to do."

Ethical conduct is at the forefront of winning the hearts and minds of landowners everywhere. This is especially true in the Marcellus Shale region of Northeast Pennsylvania, where I work as a land representative. This is an area in which shale development is relatively new to many people. It arrived with the onset of hydraulic fracturing over the last decade and is developing at a rapid pace.

Over the last few years, fear of the unknown, combined with negative imagery propagated by the media, have cast land professionals in a negative stereotype. Thus, perceptions of the landman being both cunning and fleeting, as depicted by Matt Damon's character in the 2012 movie "Promised Land," are an easy sell to a community that has limited experience with the energy industry.

With this background serving as an operational reality in the Marcellus Shale region, it is vital that we establish mutually beneficial long-term relationships with landowners. To secure this relationship, right of way agents must demonstrate a level of professionalism that is synonymous with an ethical approach. It is important that we discuss ethics with our colleagues and conduct ourselves on an ethical platform by striving to do what is right. Here are four important attributes that I believe right of way agents must demonstrate as ethical professionals.

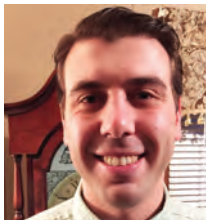
Be Informed: In order to have a candid, productive conversation with a landowner, agents must have a fundamental understanding of the agreement they are presenting. This means being able to accurately articulate what the ramification of each contract provision means for both parties. By understanding the literal and substantive content of the agreement, the agent can establish credibility and gain the landowner's trust.

Uphold Candor: The most essential element of ethical behavior is honesty. This does not mean that the right of way agent must reveal every detail or tactical strategy when conducting a negotiation with a landowner. But when speaking with landowners, agents must be straightforward with the information they are providing. An ethical professional would never use deceit, whether directly or through omission, as a tool for achieving expedient objectives. A landowner must have a clear understanding of what they are agreeing to, and it is the agent's responsibility to provide a reasonable explanation that is void of false pretenses.

Accurate Delivery: Ethical behavior requires that right of way agents only agree to terms and stipulations that can actually be performed by the company they represent. This requires detail and precision when communicating any contractual information to the performing company so that they are adhered to properly. Once the contract is signed, it is essential that that terms and conditions are adhered to by the organization represented.

Timely Follow-up: Right of way agents often come and go as projects are initiated and then come to completion in various phases. However, there are also those companies that may have a permanent presence in areas where they own rights of way and easements. In these cases, there may be an in-house land representative that's involved throughout the project build-out and also remains in an operational capacity to manage the right of way asset. It is that land representative's responsibility to ensure that the continued and proper upkeep and maintenance is conducted.

Ethical professionals understand that it is disingenuous to treat landowners simply as a means to an end for acquiring land rights. Therefore, maintaining positive long-term relationships is imperative. These relationships prove invaluable when inevitable maintenance or encroachment issues arise on the right of way long after the project is completed. ✪



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