

This Document prepared by
and when recorded return to:
Brad Krabel
BP Products North America Inc.
150 W. Warrenville Road
Building 605 – 3rd floor
Naperville, Illinois 60563

BP File: 4000 - 439
DATABASE # 6488

PERMITTED FACILITIES AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2011, by and between **BP Products North America Inc.**, a Maryland corporation, with a mailing address of 150 W. Warrenville Road, Building 605 – 3rd floor, Naperville, Illinois 60563 (hereinafter referred to as "BP"), and **The City of Rochelle, Illinois**, an Illinois municipal corporation, with a mailing address of City Hall, 420 North 6th Street, Rochelle, Illinois 61068, (hereinafter referred to as "ROCHELLE");

WITNESSETH:

WHEREAS, by the following instrument recorded in the records of Ogle County, Illinois, granted unto Standard Oil Company, predecessor of BP, a certain right-of-way easement (hereinafter referred to as "Easement"), together with and including the right to lay, maintain, operate, repair, replace and remove pipelines and all necessary fixtures, equipment and appurtenances thereto, (hereinafter referred to a "Pipeline Facilities"), in over through and across the following described lands, (hereinafter referred to as the "Original Easement Property"):

<u>INSTRUMENT</u>	<u>DATED</u>	<u>GRANTORS</u>	<u>GRANTEE</u>	<u>RECORDED</u>
Right of Way Contract	August 29, 1946	Charles T. Dunn, et al	Standard Oil Company (predecessor of BP)	Book 15 (Misc) Page 323

**The West 1/2 of the North West 1/4, Section 32,
Township 40N, Range 2E, Ogle County, Illinois**

together with the right of ingress and egress to and from said Original Easement Property; and

WHEREAS, Standard Oil Company, an Indiana corporation, did assign its rights, title and interests in the Easement to the American Oil Company, a Maryland corporation, on December 31, 1960, said Assignment of Rights of Way filed as Document Number 347341, in Book 43, Page 303 in the records of Ogle County; and

WHEREAS, the American Oil Company did change its name to Amoco Oil Company on December 31, 1972; and

WHEREAS, Amoco Oil Company did change its name to BP Products North America Inc. on October 1, 2001; and

WHEREAS, pursuant to the Easement, a pipeline was or pipelines were constructed together with other associated facilities (such pipeline and associated facilities being collectively referred to as "Pipeline Facilities") and installed over, through and across the above described Original Easement Property and is presently maintained and operated as part of the pipeline system of BP; and

WHEREAS, the Easement was amended and limited to a strip of land (hereinafter called the "Easement Strip") 50 feet in width by an Agreement and Partial Release (hereinafter called the "Defining Agreement") dated March 22, 2011, executed by BP Products North America Inc. as grantor, unto Prologis Land LLC it's successors and assigns, as grantee, said Agreement being recorded as Instrument No. 201101102129; and

WHEREAS **The City of Rochelle** has requested BP to consent to the installation of a railroad spur track (hereinafter called "Permitted Facilities"), in the location more specifically shown on the Exhibit "A" attached hereto and made a part hereof, and in conformity with the plan and profile shown on Exhibit B attached hereto and made a part hereof, which would be within the Easement Strip.

NOW, THEREFORE, in reliance on the aforesaid representation and the mutual covenants herein contained, notwithstanding any of the provisions of the Easement and the Defining Agreement which prohibit such construction within the Easement Strip, BP hereby consents and agrees, insofar as it has the lawful right so to do, to the construction and maintenance of the Permitted Facilities within the Easement Strip, in conformity with Exhibit A and Exhibit B, subject to the following terms and conditions:

- 1) The foregoing grant is subject and subordinate to the prior and continuing right and obligation of BP to use and maintain its entire pipeline right of way in the performance of its duties under applicable regulations, and is also subject to the right and power of BP to construct, maintain, repair, renew, use, operate, change, modify or relocate pipelines and other facilities upon, along or across any or all parts of said right of way, all or any of which may be freely done at any time or times by BP, all subject to the further agreements set forth herein. The foregoing grant is also subject to all outstanding superior rights (including those in favor of telegraph and telephone companies, lessees of said right of way, and others) and the right of renewals and extensions of the same and is made without covenant of title or for quiet enjoyment.
- 2) After installation of the Permitted Facilities, prior to the commencement of any maintenance work in connection with the Permitted Facilities in the vicinity of the Easement that involves excavation, modification of grade, use of heavy construction machinery, or addition or removal of railroad tracks (each defined as "Railroad Work") (whether of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal), ROCHELLE shall submit plans to BP setting out the method and manner of handling the Railroad Work and shall not proceed with the Railroad Work until such plans have been approved by BP.

BP agrees to review such plans within a reasonable time after receipt of same, and shall respond to ROCHELLE by approving the plans, disapproving the plans but detailing the steps necessary to gain BP approval, or specifying the information missing from the plans that is necessary for BP to make a decision. BP shall have the right, if it so elects, to provide such support and protection as it may deem necessary for the safety of the Pipeline or pipelines during the time such Railroad Work is being done and, in the event BP provides said support and/or protection, ROCHELLE shall pay to BP, within thirty (30) days after bills shall have been rendered therefore, all expense incurred by BP in connection therewith, which said expense shall include all assignable costs plus seventeen and one-half per cent (17.5%) to cover elements of expense not capable of exact ascertainment, if any.

- 3) ROCHELLE shall notify BP at least seventy-two (72) hours in advance of the commencement of any Railroad Work upon said right of way; *provided, however*, that such advance notice shall not be required in cases of emergency where it is necessary for ROCHELLE to enter upon said right of way for the purpose of immediate necessary repairs or maintenance.
- 4) As used in this Paragraph 4, "BP" includes other pipeline companies using BP's property at or near the location of the Permitted Facilities and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including BP's officers, agents, and employees, ROCHELLE's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including ROCHELLE's property, damage to the pipeline, pipeline accessories, equipment, or other property of BP, or property in its care or custody).
 - a. **ROCHELLE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BP FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:**
 - b. **THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PERMITTED FACILITIES OR ANY PART THEREOF;**
 - c. **THE PRESENCE, OPERATION, OR USE OF THE PERMITTED FACILITIES; OR**
 - d. **ROCHELLE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT NEGLIGENCE OF BP, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, BP'S NEGLIGENCE.**
 - e. **NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BP SHALL NOT BE LIABLE TO ROCHELLE FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF PRODUCTION OR OTHER DAMAGES ATTRIBUTABLE TO BUSINESS INTERRUPTION) ARISING IN CONNECTION WITH THIS AGREEMENT.**

5) All costs and expenses for constructing, operating, maintaining and removing the Permitted Facilities shall be borne solely by ROCHELLE, its successors and assigns.

6) **In cases of emergency ROCHELLE will immediately call BP's emergency number at:**

(800) 584-6482

to report the situation or at such other number as from time to time may be established by BP.

7) BP may, at its sole discretion, elect to have a representative on site during ROCHELLE's excavation or construction activities in close proximity to BP's Easement and ROCHELLE herein acknowledges that BP's representative shall have full authority to stop any of ROCHELLE's excavation or construction related activities in close proximity to BP's Easement if BP's representative, in his/her sole discretion, feels ROCHELLE's activities could result in damage to BP's pipeline.

8) ROCHELLE shall immediately cease work and notify BP if BP's pipeline is struck by any means of earth disturbing equipment so BP can inspect its pipeline, and if required, make all necessary repairs.

9) ROCHELLE shall require its contractor to follow the construction procedures as indicated on the attached Exhibit C when working within the Easement Strip.

10) The Permitted Facilities shall be constructed and at all times maintained, repaired, renewed and operated in such a manner as to cause no interference whatsoever (except as may otherwise be agreed by BP and ROCHELLE) with the constant, continuous and uninterrupted use of the Pipeline and the Easements, and nothing shall be done, or suffered to be done, by ROCHELLE at any time that would in any manner impair the safety thereof. In the event that the BP site representative believes that the construction of the Permitted Facilities is not being completed in accordance with either the Plans or with the requirements of Exhibit E, the BP site representative shall have the right to stop construction of the Permitted Facilities as set forth in Paragraph 7 hereof.

11) Except for cases where an emergency situation exists and BP must either (i) take immediate action with respect to the Pipeline to prevent injury to or death of persons or of damage to or destruction of the Pipeline or the Permitted Facilities, or (ii) respond to the aftermath of an accident or damage to the Pipeline, in the event that BP intends to engage in an activity with respect to the Pipeline that is reasonably expected to interfere with the use or operation of the Permitted Facilities, then BP shall, as soon as is reasonably possible in advance of the planned activity, notify ROCHELLE of the specific activities proposed by BP and the ways in which such activities are expected to interfere with the Permitted Facilities. ROCHELLE shall then work with BP to discuss the possible methods of completing the proposed activity to achieve the goals of BP while not creating interference with the operation of the Permitted Facilities. In such event that ROCHELLE does not respond within 15 days after submittal of the planned activity, BP shall proceed with work as needed. While BP will work with the

ROCHELLE to the extent reasonably possible, BP reserves the right to perform any activity necessary with respect to the Pipeline in the method and manner that in its sole discretion BP deems to be the best alternative to continue the safe operation of the Pipeline; however, BP agrees not to unreasonably refuse to use the alternative proposed by ROCHELLE if such alternative is, in the sole discretion of BP, (i) no less safe than the original BP proposal, (ii) would result in no longer disruption in the operation of the Pipeline than the original BP proposal and (iii) would not require BP or BP contractors to engage in activities that they were either not qualified for or not trained in. In the event that BP uses the alternative proposed by ROCHELLE, ROCHELLE shall be obligated to reimburse BP for the increase in cost of the activities relating to the Pipeline that result from the existence of the Permitted Facilities when compared to the cost that would have been incurred if the Permitted Facilities were not present, within thirty (30) days of receiving a statement from BP setting forth the detail of each specific cost item and a calculation of the portion of such cost that is requested to be paid by ROCHELLE, along with copies of all relevant third-party invoices.

- 12) Upon ROCHELLE's notice to BP that ROCHELLE intends to abandon, or has abandoned, the Permitted Facilities, ROCHELLE shall, at its sole expense remove the Permitted Facilities and shall restore, to the satisfaction of BP, said right of way to as good condition as it was in at the time of the construction of such Permitted Facilities; and if ROCHELLE fails to do so, BP may do such work of removal and restoration at the expense of ROCHELLE. In the event of the removal of the Permitted Facilities or any portion thereof by BP, BP shall in no manner be liable to ROCHELLE for any damage sustained by ROCHELLE for or on account of such removal, and such removal shall in no manner prejudice or impair any right of action for damages, or otherwise, that BP may have against ROCHELLE.
- 13) ROCHELLE shall not sublet, in whole or in part, the rights hereby granted and shall not assign this Agreement without written consent of the BP, which shall not be unreasonably withheld. It is agreed that any transfer or assignment of this Agreement or any of the rights hereby granted, whether voluntary, by operation of law, or otherwise, without such consent, in writing, shall be absolutely void and, at the option of the BP, shall terminate this Agreement.
- 14) In the event the Permitted Facilities cause BP to incur additional costs and expenses relating to any future maintenance, removal, replacement or relocation of its Pipeline, said additional costs and expenses shall be paid by ROCHELLE, its heirs, successors, grantees, and assigns, within 30 days after BP's completion of said work and presentation of appropriate documentation of such additional costs and expenses.

All notices shall be sent by United States registered or certified mail, return receipt requested, and shall be addressed to the parties at the address first mentioned above or at such other address as the parties may direct.

The Easement and the Defining Agreement shall remain in full force and affect except as modified and changed by this Agreement.

If any one or more of the provisions of this Agreement, or the applicability of any such provisions to a specific situation shall be invalid or unenforceable, the validity and enforceability of all other applications of such provisions shall not be affected.

The covenants contained in this Agreement shall constitute covenants running with the land and shall be binding upon and insure to the benefit of the parties hereto, their personal representatives, heirs, successors, and assigns.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

BP Products North America Inc.

By: _____

Name: _____
please print

Title: _____

BP Agent
Approval

THE CITY OF ROCHELLE, an Illinois municipal corporation

By: _____
DAVID S. PLYMAN, City Manager

Attest: _____
BRUCE MCKINNEY, City Clerk

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS:
COUNTY OF _____)

Before me, _____, a Notary Public in and for said County and State, on this day personally appeared **DAVID S. PLYMAN**, who is the City Manager of **The City of Rochelle, Illinois**, an Illinois municipal corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed and as his free act and deed.

Given under my hand and seal of office this _____ day of _____, 2011

By: _____
Notary Public

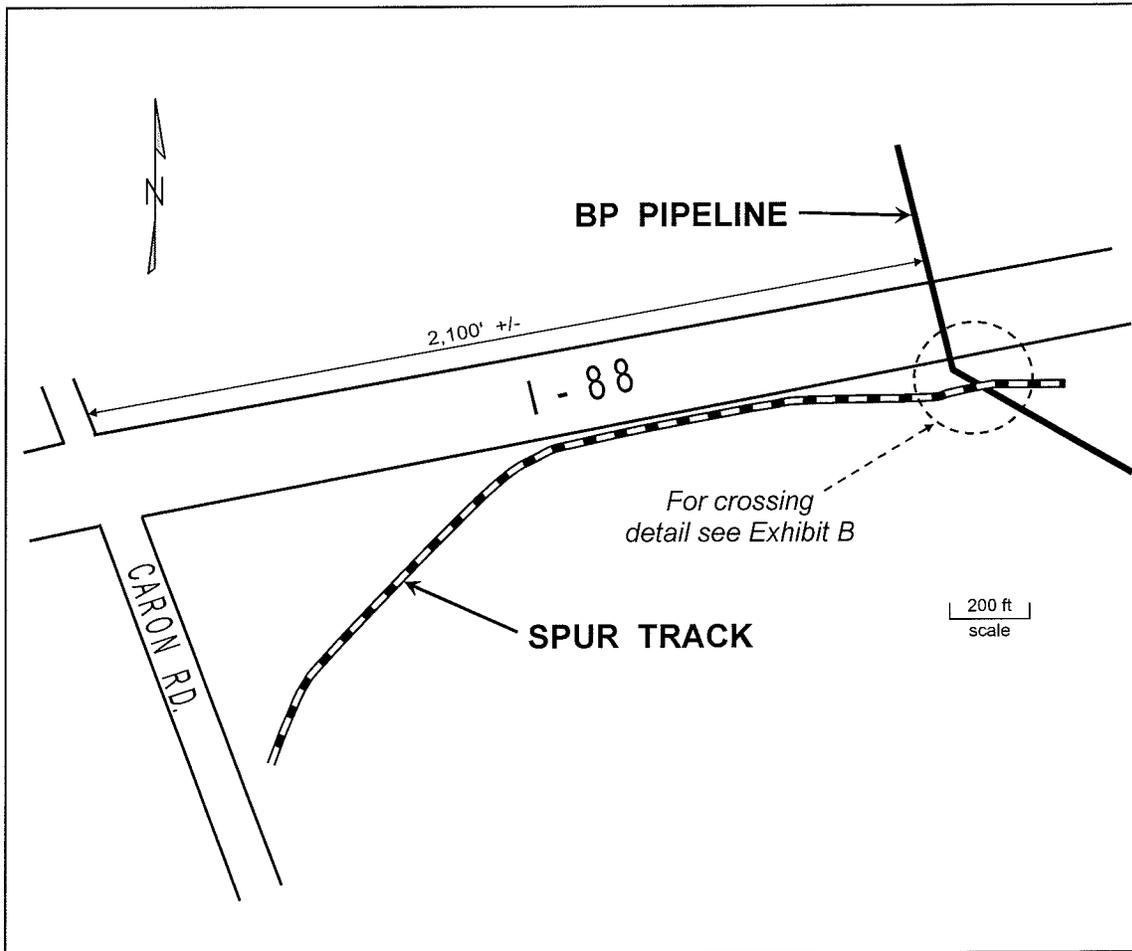
ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS:
COUNTY OF _____)

Before me, _____, a Notary Public in and for said County and State, on this day personally appeared _____, who is the _____ for **BP Products North America Inc.**, a Maryland corporation, and acknowledged to me that he/she executed said instrument for the purposes and consideration therein expressed and as the act of said corporation.

Given under my hand and seal of office this _____ day of _____, 2011

By: _____
Notary Public



LOCATION DRAWING

EXHIBIT A

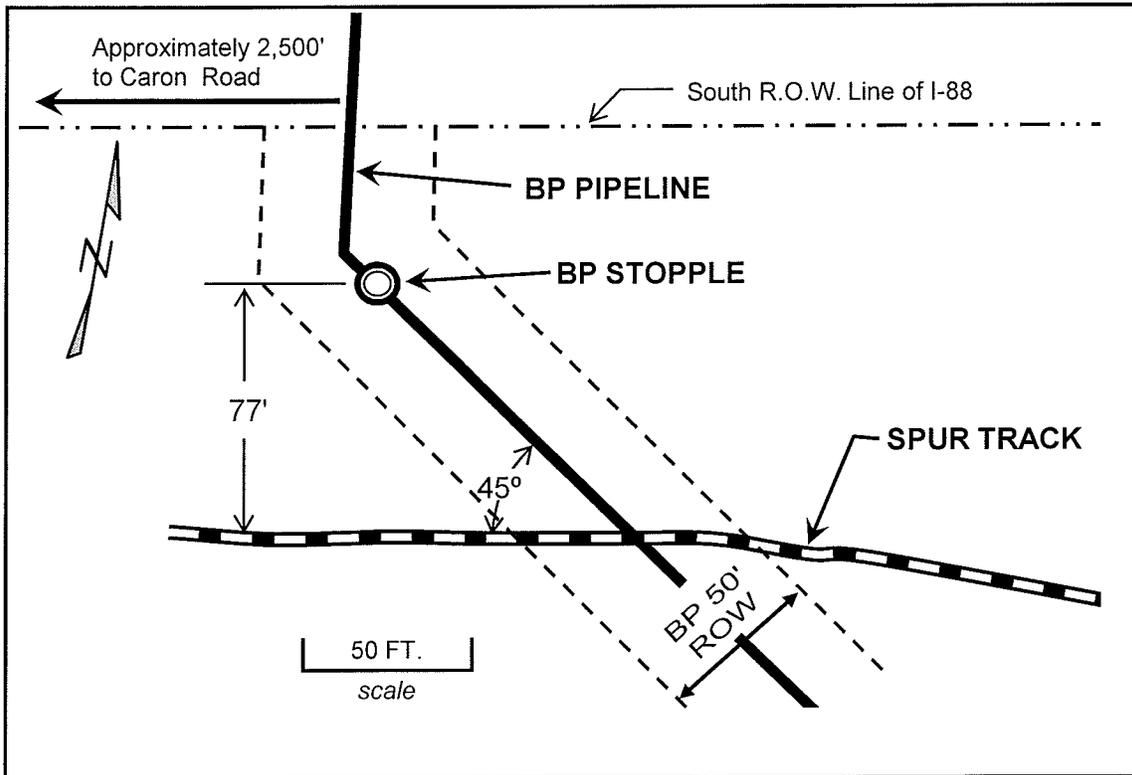
Attached to and becoming a part of this Agreement between
BP Products North America Inc. and the City of Rochelle

Section 32 - T40N - R2E

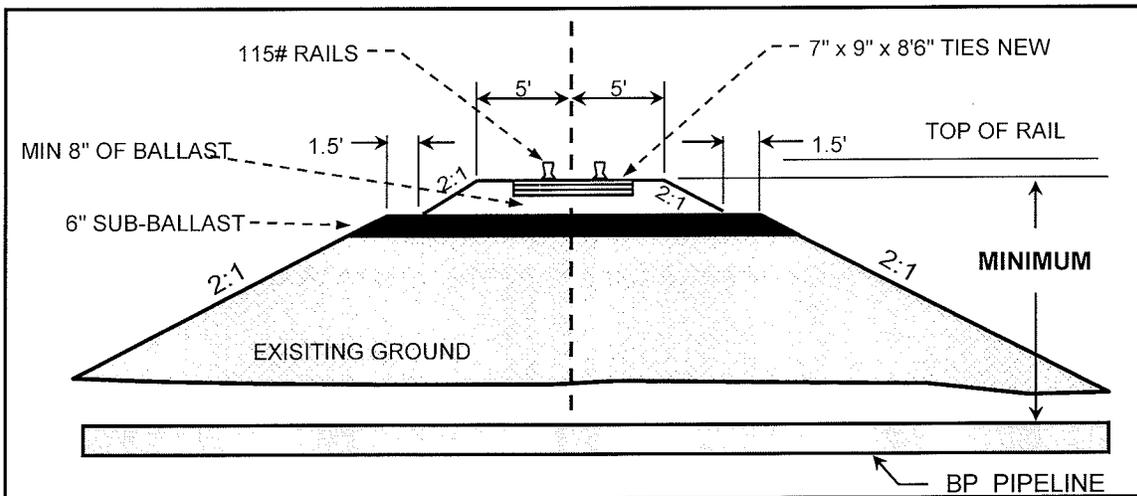
Ogle County

Rochelle, Illinois

BP Ref: 4000 - 439 / Log # 6488



PLAN



PROFILE

EXHIBIT B

Attached to and becoming a part of this Agreement between
 BP Products North America Inc. and the City of Rochelle
 Section 32 - T40N - R2E
 Ogle County, Illinois
 BP Ref: 4000 - 439 / Log # 6488

EXHIBIT C

Attached to and becoming a part of this agreement between
BP Products North America Inc. and The City of Rochelle, Illinois

Excavation Specific Requirements

- No excavation or construction activity will be permitted in the vicinity of a pipeline until all appropriate communications have been made with BP's field operations and the Right-of-Way Department. A formal engineering assessment may be required.
- There shall be no excavation or backfilling within the pipeline right-of-way for any reason without a representative of BP on site giving permission.
- In some instances, excavation and other construction activities around certain pipelines can be conducted safely only when the pipeline operating pressure has been reduced. Contractors are therefore cautioned that excavation which exposes or significantly reduces the cover over a pipeline may have to be delayed until the reduced operating pressures are achieved.

General Construction Activities

- The contractor shall not be permitted to transport construction materials or equipment longitudinally over the pipeline.
- Where it is necessary for construction equipment (*i.e.*, tractors, backhoes, dump trucks, etc.) or equipment transporting construction materials to cross the pipeline, the crossing of the pipeline right-of-way shall be at, or as near to, a 90° angle as is feasible.
- To gain access to the job site, the contractor shall submit a plan indicating where construction equipment will cross the pipeline, along with the depth of the pipe at the crossings, any proposed ramping over the pipeline, together with the following specifications for the equipment: type and weight of equipment; for track equipment – track width and length; for wheeled equipment – number of axles (single or tandem axles). BP will perform a stress factor calculation to determine if the equipment can safely cross the pipeline. If crossing of the pipeline is allowed, special measures may need to be taken to ensure the integrity of the pipeline.
- No track type construction equipment shall be permitted to pivot or turn directly over the top of the pipeline.
- A scraper or pan type tractor shall not be used for removal of soil within ten feet (10') of the centerline of the pipeline. Rubber tire or small track type equipment is an acceptable alternative.
- A sheepsfoot roller shall not be used for compaction purposes within five feet (5') or directly above the centerline of the pipeline.
- No vibratory rollers shall be used within three feet (3') of the centerline of the pipeline until the compacted cover over the pipeline has reached a depth of three and one-half feet (3 ½').