



RENEWABLE ENERGY SYSTEMS

Best Practices to Protect Private Drainage Systems

Landowners are stewards of their land, and when they support renewable energy projects, their top priority is to ensure that the land will remain arable in the future. Privately controlled drainage systems were implemented throughout Indiana to help increase crop yields and improve soil quality. These systems are important to the long-term health of the soil, water quality, and economic livelihoods of farmers, so it is imperative that these drainage systems are protected throughout the development and operation of renewable energy projects.

Many private lease agreements between a renewable energy applicant, owner, developer, and/or operator (“Company”) and a private landowner generally include protections for private drainage systems. The Wind or Solar Company should always be responsible for repairs of field tiles that are damaged because of the construction, access, maintenance, or restoration activities associated with their facilities on private property. These protections should include damage by employees’, agents’, contractors’, and subcontractors’ activities, studies, or surveys performed during the term of a lease agreement.

Below are examples of additional language that a landowner should anticipate in a private lease agreement.

Best Practices for Lease Agreements

The Company shall repair damaged tile as soon as practicable using a qualified field tile repair contractor mutually agreed upon in advance, at the Company’s expense. The Company should provide the landowner, if requested, the GPS location of each broken field tile and a photograph of each broken tile before and after the repair.

In the event the Company does not complete any repairs, the lease agreement should allow the landowner to select a qualified field tile repair contractor to complete the repairs, and the Company shall reimburse the landowner for all reasonable costs.

Every attempt should be made to repair broken field tile soon after the damage occurs; however, some damage may not be noticed until after the renewable energy project is fully constructed and operational. The private lease agreement should address repairs and cost reimbursements to be made following the completion of construction in the same manner as during construction within a designated time.

Special Considerations for Solar Leases:

- A Solar Project typically utilizes large areas of land, and may disrupt more controlled drainage systems and may require the Company to modify the drain tile on specific properties.
- The solar lease agreement may state that the Company has the right to modify the drain tile system on the property as necessary.
- Any modifications made by the Company should not adversely affect the drainage on the property or the surrounding lands.
- The Company should be responsible for correcting any adverse effects to the drainage on the property or surrounding lands caused by the Company's activities and should cover all costs associated with such repairs.