

NEGOTIATING SURFACE RIGHTS AND RIGHT-OF-WAY AGREEMENTS

This information is intended to provide Strathcona County landowners with basic information regarding their rights and the procedures associated with oilfield activities on private land. Most commonly, an energy company will approach a private landowner or occupant to negotiate either a surface right lease for a wellsite or a right-of-way agreement for a pipeline.

In Alberta, both landowners and companies have rights. Most land in the province has two separate titles. The owner of the surface title has full control of the land's surface and the ability to work it. The owner of the title to the minerals under the land has the right to explore for and produce oil and gas. In exercising its right to work and remove minerals, the company bears the responsibility of providing you, as the landowner, with information about the oilfield activity, of ensuring that the drilling and production activity is carried out in a way that is environmentally and technically acceptable, and of ensuring that its operations minimize, as much as possible, interference with use of the land.

Steps in the Lease and Right-of-Way Process

Survey

In the case of a wellsite, if oil and gas development looks promising on or near your lands, the company will need to survey the land to select a location for the wellsite and access road. In the case of a pipeline, the pipeline route will be surveyed and a plan of survey completed. Under Section 14 of the *Surface Rights Act* and Section 16 of *Surveys Act*, surveyors have the right to undenied access to the land for survey work related to oilfield activity. The company or its agent however, must make a reasonable attempt to notify you of its intent to conduct the land survey. Also the company is liable for any damage caused in conducting the survey.

Initial Contact by Company

If a company considers your land to be a suitable location for a wellsite or a pipeline, the company or an independent land agent will present you with a proposed surface lease or right-of-way agreement. Under Section 17 of the *Land Agents Licensing Act*, the land agent is required to leave a copy of the proposed agreement with the landowner for at least 48 hours (excluding Sundays and holidays) for review before negotiations can begin. A landowner is considered to be anyone who has a right to dispose of the interest in the land and includes an occupant of the land. The waiting period is to protect you, as the landowner, so you can carefully study the details of the agreement and prepare for negotiations with the company.

It is possible for the landowner to waive the 48 hour waiting period. If you chose to do so, you should be absolutely sure you are satisfied with all aspects of the agreement.

The landowner is not required to sign the lease immediately following the 48 hour period. If you require more than 48 hours to consider the agreement, advise the company and take the necessary time.

Location of Development

In your negotiation of a surface lease or right-of-way agreement, it is important to agree on the exact location of the wellsite or pipeline route. Be sure to review the company's survey plan to properly identify the exact location under consideration. If the proposed location would significantly impact on your land use or otherwise have an adverse affect on your land, you will need to bring this to the company's attention and try to negotiate a reasonable alternative. In the case of wellsite, you may ask the company whether directional drilling would be an appropriate solution, by which the well would be drilled diagonally instead of vertically.

The Energy Resources Conservation Board (ERCB) requires the landowner's approval of the location before issuing a license to the company. If you and the company are unable to agree on a suitable location, the ERCB can assist with dispute resolution. The dispute may be settled informally through mediation or with a formal hearing.

Agreement Considerations

A surface lease and right-of-way agreement will set out the terms and conditions that will govern the future relationship between you and the company. Once the agreement is signed, it becomes a binding legal agreement on the current owner and all future owners of the land if the agreement is assigned to them. Therefore, it is essential that the lease be as comprehensive as possible and tailored to deal with your specific circumstances.

Your negotiations will include the issue of compensation. In the case of a wellsite, annual compensation is to be reviewed every five years. For pipelines, compensation is generally a one time payment. More recently however, landowner groups and associations have been lobbying for annual compensation during the currency of a pipeline right of way agreement as well. If you and the company cannot agree on compensation for right of entry, the company can apply to the Surface Rights Board. The Board will usually grant the company a right of entry order and then determine appropriate compensation. This will be done at a hearing.

The agreement should also cover reclamation of the site once oilfield activities have ended. When reclamation is complete, the company will apply to Alberta Environment for a reclamation certificate, which is issued when the company meets the Alberta Environment criteria. At that time, the company can terminate the agreement or right of entry order.

Until an agreement has been signed and the first-year compensation paid in the case of a wellsite or the entry fee for a pipeline, a company is not allowed on your property,

except for surveying purposes. Also, if the land is rented, the company must obtain consent from both the occupant and the landowner.

Remember that the agreement presented to you by the land agent is prepared by the company and has primarily its interests in mind. Be sure to consider it carefully to ensure your interests are met as well. It may be useful to consult with a lawyer familiar with surface rights and right-of-way issues that can help you with the negotiations. Also, you may wish to contact the Farmer's Advocate office, a surface rights consultant, the Alberta Surface Rights Federation, or other landowner groups or associations for further information and consultation.

Please see Appendix 1a for a checklist of considerations the landowner should review when considering a surface lease or right-of-way agreement. The checklist is provided for information purposes only and may not apply to or address the specific situation or concerns of a landowner. If you and the company add any additional conditions or amendments to the agreement, be sure they are made in writing.

Right of Entry Order from the Surface Rights Board

Instead of signing an agreement, some landowners prefer requesting a right of entry order from the Surface Rights Board, although they and the company agree on all issues. A reason for this preference is that the right of entry order can be reviewed and updated should circumstances change. Also, a landowner can return to the Board, instead of going to Court, should a company fail to comply with the conditions set out in the right of entry order. In the case of a pipeline right-of-way, the landowner can go to the Board with a claim for compensation for any damages which occurred during construction.

For Further Information or Clarification

Several useful publications which address surface lease or right-of-way negotiations include:

When the Oil Patch Comes to Your Backyard (Pembina Institute)

Available from the Strathcona County Engineering and Environmental Planning

ERCB Publications

Available from the ERCB website (www.ercb.ca)

- **EnerFAQs 7: Proposed Oil and Gas Development: A Landowner's Guide**
- **ERCB Brochure: Understanding Oil and Gas Development in Alberta**

Publications from the Farmers' Advocate Office

Available on the Alberta Government website (www.agric.gov.ab.ca)

- **Pipelines in Alberta**
- **Negotiating Surface Rights**

Useful contacts include:

<p>Strathcona County Engineering and Environmental Planning Phone: 780-416-6739 www.strathcona.ab.ca</p>
<p>Farmers' Advocate Office Provides information and assists with dispute resolution for related farming community matters.</p> <p>305, 7000 – 113 Street Edmonton, Alberta T6H 5T6 Phone: toll free dialing 310-3276 Fax: 780-427-3913 www1.agric.gov.ab.ca/\$department/deptdocs.nsf/all/ofa2621</p>
<p>Alberta Surface Rights Board Provides information on entry and compensation related to oilfield activities.</p> <p>18th Floor, 10020 – 101A Avenue Edmonton, Alberta T5J 3G2 Phone 780-427-2444 (toll free by first dialing 310-0000) Fax: 780-427-5798 www.surfacerights.gov.ab.ca</p>
<p>Alberta Environment Main Floor, 9820 – 106 Street Edmonton, Alberta T5K 2J6 Phone: 780-427-2700 (toll free by first dialing 310-0000) Fax: 780-422-4086 environment.alberta.ca</p>
<p>Energy Resources Conservation Board <i>Head office:</i> 640 – 5th Avenue SW Calgary, Alberta T2P 3G4 Phone: 403-297-8311 (toll free by first dialing 310-0000) Fax: 403-297-7336 <i>St. Albert field office:</i> Main Floor, Sir Winston Churchill Avenue St. Albert, Alberta T8N 3A3 Phone: 780-460-3800 (24-hour emergency phone #) Fax: 780-460-3802 www.ercb.ca</p>