

May 1, 2019

Advisory: Still an Issue in 2019!! Landowner Rights for Annual Rental Payment Reductions and the Surface Rights Act

Numerous landowners have contacted the Farmers' Advocate Office (FAO) regarding requests or actions taken by companies in the oil and gas industry to reduce annual rental payments or not pay any rent. We believe that additional landowners have been impacted, and we encourage affected landowners to contact the FAO to ensure that their rights are recognized, understood and protected as some actions may contradict the *Surface Rights Act (SRA)*.

Specifically, we have heard reports that:

- Landowners are being sent letters imposing unilateral rental reductions citing: "Companies are under severe financial strains resulting from several factors beyond its direct control. A few of these factors include:
 1. the ongoing and unprecedented low price of natural gas,
 2. extremely high Rural Municipal Taxes
 3. the high cost of operations, and
 4. costs of surface lease rentals."
- Landowners are being informed that the annual compensation for their surface leases will be decreased due to clauses relating to change of use or reclamation/surrender. This is occurring both on the surface lease agreement anniversary date and mid-term.
- Companies have stopped paying full annual rentals upon beginning (or claiming to begin) the reclamation process.

Landowners should be aware that:

- A landowner has recourse to obtain compensation for unpaid or reduced rentals through the Surface Rights Board (SRB) under section 36 of the *Surface Rights Act* at any time during the 5 year term.
- A landowner has the right to a 5 year review of the rate of compensation. A company cannot unilaterally decide to reduce the amount of compensation provided to a landowner. Section 27 (6) of the *Surface Rights Act (SRA)* entitles landowners the opportunity to negotiate with industry in good faith; negotiations must be honest, fair and engage both parties.
- A landowner is under no obligation to accommodate the changing financial circumstances of a company.
- The *Surface Rights Act* supersedes any clause in a negotiated agreement.
- The amount of compensation paid to a landowner in the annual rental is clearly negotiated at the time of signature.
- The amount provided for annual rental is based on a landowner's **Adverse Effect** and **Loss of Use**, not the state of the industry. Adverse Effect reflects the alterations made to a landowner's business practices as well as the time, stress, and inconvenience experienced by a landowner as a result of the presence of a surface disturbance. Loss of Use is provided to compensate a landowner for the inability to use and benefit from a portion of their land on an ongoing basis.

- Cashing a cheque of a reduced amount does not necessarily imply acceptance of the amount.
The FAO has developed template letters to assist landowners asserting their rights to the company. Copies are available by contacting the FAO at 310- FARM (3276).
- Companies are responsible for paying the annual rental on a surface lease until a Reclamation Certificate is issued under section 144 of the *Environmental Protection and Enhancement Act*. Landowners (all parties on file) and occupants (renters) must be engaged throughout the reclamation process. Operators are required to provide all landowners and occupants a complete copy of the reclamation certificate application package the same day they make a reclamation application to the Alberta Energy Regulator (AER). If a landowner has concerns with the condition of a reclaimed site, they can file a Statement of Concern (SOC) with the AER.

A Surface Rights Board (SRB) decision makes an important statement about the unilateral reduction of surface lease rentals in Alberta. On August 15, 2015, the SRB issued the decision ***Duel Energy Inc. v Gallagher, 2016 ABSRB 688 (CanLII)*** In this case, the operator had submitted that they “only pay for leases with active wells on them.” The panel disagreed, stating:

“Payment of compensation is not at the discretion of the operator. The Panel directs the parties to [Section 27](#) of the [Surface Rights Act](#). When lessors and operators enter into surface lease agreements, lessors are entitled to five-year reviews. Compensation is to be negotiated---and if the parties cannot agree, “the party desiring to have the compensation reviewed or fixed may make an application to the Board for proceedings to be held...”

The FAO first issued a similar advisory March 15, 2016 about actions that contradict the *Surface Rights Act (SRA)*, however with an increase of landowner concern we issued subsequent reminders. We recommend that landowners who have been affected by these types of issues contact the FAO.

For more information, contact the FAO through the Ag Info Centre at 310-FARM (3276) or by e-mail at farmers.advocate@gov.ab.ca

For more information on the ***Surface Rights Act (SRA) Section 36 Recovery of Rentals*** process you can reach the Surface Rights Board at 780-427-2444 or by e-mail at srbpcb@gov.ab.ca or visit their website at <https://surfacerights.alberta.ca/ApplicationTypes/RecoveryofRentals.aspx>

Advice from the Farmers' Advocate Office (FAO) is provided is for general information only. This information may not be relied upon as legal advice or as substitute for it. You are responsible for applying any general information provided to your particular situation, if appropriate, and deciding upon a course of action. The Farmers' Advocate Office and Alberta Agriculture and Forestry make no warranty, expressed or implied, and do not assume any legal liability or responsibility for the accuracy, completeness, or usefulness of any information provided to you. For all important business and personal matters, you should consider obtaining independent legal and other professional advice to properly assess and understand your options and obligations.