

Advisory 2019-2

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

The Farmers' Advocate Office (FAO) hears concerns from landowners on requests and actions taken by companies in the oil and gas industry to reduce annual rental payments or not pay annual rent. Landowners who are affected should 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:

Letters sent to landowners to impose unilateral rental reductions claim that companies under severe financial strains result from the following:

1. An ongoing and unprecedented low price of natural gas,
2. Extremely high Rural Municipal Taxes
3. High operational costs, and
4. Other expenses i.e. the cost of the surface rental.

Through these letters, landowners are informed that annual compensation for a surface lease on their property will decrease. Change of land use, Reclamation, and surrender of the lease are noted to be the cause of the decrease.

Some companies are not paying full annual rental payments when they initiate reclamation – or, when they claim to have begun the reclamation process. Section 144 of the *Environmental Protection and Enhancement Act* requires companies to pay the annual rental on surface leases until a Reclamation Certificate¹ is issued.

Attention:

- A. Landowners have recourse to obtain compensation for reduced rentals through the Surface Rights Board (SRB) under section 36 of the SRA at **any time during the 5-year term**.
- B. Landowners have the right to a 5-year review of the compensation rate. A company cannot unilaterally reduce the compensation amount. Section 27 of the SRA entitles landowners the opportunity to negotiate with industry **in good faith**. Negotiations must be honest, fair and engage both parties.
- C. Annual Rental payments are based on

¹ Issued once the company adequately reports to the Alberta Energy Regulator (AER) the site has met the appropriate criteria for "equivalent land capability."

- i. **Adverse Effect** – The cost of avoidance of the surface lease i.e. input wastage.
 - ii. **Loss of use** – The forgone revenue of next best use i.e. opportunity cost
- D. The SRA supersedes any negotiated contract.
- E. Annual compensation is negotiated at the time of signature.
- F. A landowner is under **no obligation** to accommodate the changing financial circumstances of a company.
- G. Cashing a cheque for a reduced amount does not necessarily imply acceptance of the amount.

Summary of Decisions made by the Surface Rights Board (SRB):

On August 15, 2015, the SRB issued the decision in **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 SRA, however with an increase of landowner concern we issued subsequent reminders.

For more information, contact the FAO through the AG info Centre at 310-FARM (3276) or by email at farmers.advocate@gov.ab

For more information on the SRA Section 36 Recovery of Rentals process, you can reach the Surface Rights Board at 780-427-2444 or by email at srbxcb@gov.ab.ca or visit their website at <https://surfacerights.alberta.ca/>