

May 17, 2018

Clubroot and Energy/Utility Developments

About Clubroot

Clubroot is a serious soil-borne disease that affects crops in the cruciferous family by reducing yield and quality. Clubroot was first identified in canola crops in Alberta in 2003. The visible signs of clubroot are galls or clubs that form on the roots, which can impede nutrient and water uptake. Depending on the stage of infection, visible above-ground symptoms may include stunted growth and wilted plants. Clubroot can cause devastating yield losses, so canola fields should be scouted regularly and carefully.

Clubroot can be very difficult to control. The spores can remain dormant for many years before affecting a crop, and can be spread through the movement of contaminated soil, wind or water erosion. Studies have shown that most clubroot infestations in Alberta begin at field access points, which suggests that contaminated equipment and machinery is the most common way that the disease is spread. Landowners and occupants need to be proactive with sanitation measures to prevent the spread of clubroot as the resting spores are extremely long lived and may survive in soil for up to 20 years.

Regulatory Control Measures

In 2007, clubroot was added as a “pest” under the *Alberta Agricultural Pests Act*. All landowners have an obligation to take active measures to prevent clubroot; control and destroy existing clubroot infestations; and, control any matter that contributes to the spread of clubroot. These obligations also extend to occupants, which may include oil, gas and utility leases and right-of-ways.

The Best Management Practices in the Alberta Clubroot Management Plan¹ from Alberta Agriculture and Forestry are designed to help minimize the spread of clubroot through proactive measures to prevent the spread of the pathogen and prolong the durability of clubroot-resistant canola varieties.

Some strategies for clubroot prevention include using clubroot-resistant seed varieties and a 4 year crop rotation, controlling volunteer canola and other hosts, and practicing good sanitation (cleaning and disinfecting any equipment that enters a field). For cleaning equipment and machinery, the basic standard is to remove large clumps of dirt, pressure or steam wash, and disinfect with 1-2% bleach water mixture. Disinfecting is an important step as it works to exterminate spores, thereby limiting reproductive ability.

Other best practices include establishing an area with grass near the field exit, using soil conservation practices to reduce erosion, and minimizing vehicle/equipment traffic to and from fields. Landowners and occupants should avoid the use of straw, hay or greenfeed, silage and manure from infested or suspicious areas, and avoid the use of common untreated seed. Canola fields should be inspected regularly to watch for signs of the infestation.

The *Agricultural Pests Act* is enforced at the municipal level. A municipality may have additional policies surrounding clubroot enforcement that provide a further level of protection.

¹ Best Management Practices in the Alberta Clubroot Management Plan
[https://www1.agric.gov.ab.ca/\\$Department/deptdocs.nsf/all/agdex11519](https://www1.agric.gov.ab.ca/$Department/deptdocs.nsf/all/agdex11519)

Energy/Utility Developments

Landowners with energy or utility developments are often concerned about the spread of clubroot. A landowner may request pre and post construction soil testing in their negotiations, but they should be aware that this can only confirm the presence of clubroot – it cannot definitively confirm the absence of clubroot.

For landowners along a transmission or pipeline route, it can be beneficial to request wash stations at the property boundaries. Self-contained washing units may be a good option as it can be challenging to dispose of contaminated water. Some landowners negotiate with the company to determine a rate at which the landowner will oversee, inspect or approve the washing process, lease construction, or pipeline/transmission line installation. Other landowners may prefer to have a third party consultant supervise these activities at the cost of the company.

Under the Alberta Clubroot Management Plan, energy and utility operators are responsible for taking measures to prevent the disease from being established and minimizing the further spread of clubroot. This includes:

- cleaning equipment when leaving infested sites or areas;
- removing or stockpiling topsoil on leases where clubroot is present before moving other equipment on-site;
- avoiding equipment traffic during wet conditions in infested areas; and,
- preparing and following clubroot protocols for staff and contractors.

While a site is being constructed, operating, or being reclaimed, the basic clubroot prevention measure is to remove large lumps of soil from equipment before it enters the land. Risk adverse producers may ask for additional steps such as power-washing, misting disinfectant, or disinfectant footbaths or footwear covers.

The Canadian Association of Petroleum Producers (CAPP) has a Best Management Practices ² publication that provides a resource for its members. It is similar to the Best Management Practices provided by Alberta Agriculture and Forestry. Adherence with the practices outlined by CAPP is voluntary for members. As a landowner, you may request to see a company's clubroot prevention policy.

Landowners who are negotiating with energy or utility companies should be aware that clubroot prevention is not enforceable by the Alberta Energy Regulator (AER) or the Alberta Utilities Commission (AUC) unless it is stipulated in the conditions listed on the licence or approval. Clubroot is enforced at the municipal level. To have clubroot prevention conditions listed on the licence or approval, the matter would need to be brought forward in a hearing. Landowners are encouraged to utilize experts to design the clubroot prevention strategy to ensure adequate protection is put in place. Conditioning the licence or approval works for new or proposed developments, but cannot retroactively be requested for existing developments.

A landowner who negotiates clubroot strategies into their energy agreement (for an oil and/or gas well, pipeline or facility) may submit a copy of their surface lease or right-of-way agreement to the AER's Private Surface Agreements Registry (PSAR). This option is not available to

²Canadian Association of Petroleum Producers, Best Management Practices
<https://www.capp.ca/publications-and-statistics/publications/139848>

agreements negotiated prior to November 2013. It also excludes orders granted by the Surface Rights Board (SRB). Once a surface agreement has been registered with the AER, the landowner can make a request to the AER under section 64 of the *Responsible Energy Development Act* (REDA) if they feel condition is not being adhered to. The AER encourages landowners to first try to contact the company to resolve the issue directly. When a section 64 request has been submitted, the AER can issue an Order to Comply if it is determined that a term or condition is not being followed. If it is determined the company has complied with the agreement, the AER will not issue an order.³

A landowner who negotiates clubroot strategies into their transmission or utility pipeline right-of-way agreement may contact the Alberta Utilities Commission (AUC) if they believe the company has failed to comply with a term or condition of the agreement. The AUC's Consumer Relations Team can be contacted by phone at 780-427-4903 (for toll free access dial 310-0000 first) or by email at consumer-relations@auc.ab.ca. From there, the inquiry may be sent to the Market Oversight and Enforcement Division for investigation.

Clubroot and the Surface Rights Board (SRB)

ATCO Electric Ltd. v Welsh is an interesting Surface Rights Board (SRB) decision relating clubroot prevention. In this compensation dispute, a power transmission line was constructed by ATCO Electric Ltd. in lands formerly used for annual field crops. Prior to the presence of industry on the lands, the landowners were concerned about clubroot and had established a prevention strategy. Having observed the operator not following their requested practices during construction, the landowners decided not to farm the right-of-way and leave a buffer zone around it. The landowners felt that the operator had "almost certainly" introduced clubroot as a result of their failure to clean equipment. Taking the land out of production and establishing a buffer zone were precautionary measures.

The landowner presented photographs of dirty equipment to the SRB as well as testimony from a plant pathologist to support their argument. The operator presented evidence that indicated that there was no current clubroot infestation. The panel determined that the landowners' fears concerning clubroot contamination were reasonable and that their actions to mitigate were prudent. In light of this, the panel determined that the loss of production in the right-of-way and a buffer zone were compensable (under sections 25 (1) (c) and (d) of the *Surface Rights Act* respectively). A landowner seeking to make such a claim to the SRB should obtain legal advice.

To call the SRB toll-free from anywhere in Alberta, dial 310-0000 and then enter (780) 427-2444. The SRB can also be reached by email at srb.lcb@gov.ab.ca.

Contact

Farmers' Advocate Office

310-FARM (3276)

www.farmersadvocate.gov.ab.ca

³ Alberta Energy Regulator, Private Surface Agreements Registry
<http://www.aer.ca/about-aer/enerfaqs/enerfaqs-psa>