

July 30, 2018

Advisory: FAO Warns Landowners About Actions that Contradict the Surface Rights Act

The Farmers' Advocate Office (FAO) has been contacted by numerous landowners regarding requests or actions taken by companies in the oil and gas industry. 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.

Specifically, we have heard reports that:

- 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 are stating economic hardship and believe reducing annual surface lease rentals will contribute to a strong economic health of the company
- Companies have stopped paying full annual rentals upon beginning (or claiming to begin) the reclamation process.

Landowners should be aware that:

- 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* entitles landowners to the opportunity to negotiate with industry in good faith.
- A landowner is under no obligation to accommodate the changing financial circumstances of a company.
- 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.
- 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.
- 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*. Prior to a company making their application for reclamation to the Alberta Energy Regulator (AER), they must disclose the full application to the landowner and provide 30 days to review. The reclamation process will not be complete without industry consultation being initiated with the landowner.

The FAO first issued a similar advisory March 15, 2016, however with an increase in landowner concerns we are issuing this second reminder. 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 Section 36 Recovery of Rentals process you can reach the Surface Rights Board at 780-427-2444 or by e-mail at srb/lcb@gov.ab.ca

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