

Notice of Consultation: Enforcement of Payment of Surface Rights Compensation

Background

The Ministry of Energy and Resources (ER) is consulting with stakeholders on proposed changes to *The Surface Rights Acquisition and Compensation Act* (SRACA) and *The Oil and Gas Conservation Act* (OGCA). The proposed changes aim to enhance the ability of the Saskatchewan Surface Rights Board of Arbitration (the Board) and ER to enforce payment of compensation owing pursuant to a surface lease or a Board order.

The Process

Stakeholders are invited to review and provide written comment on the proposed legislative amendments by May 6, 2022. Feedback received will be reviewed by ER and may be considered by the Legislature of Saskatchewan at a future date.

Summary of Proposed Changes

Proposed amendments to the SRACA aim to enhance the ability of the Board to enforce payment of compensation owing pursuant to a surface lease or Board order, including:

- Issuing an order for payment of arrears of annual compensation payable pursuant to the terms of a surface lease or Board compensation order;
- A requirement for the Board to notify ER of non-compliance with an order for payment.

Supporting amendments to the OGCA will allow ER to take possible further enforcement action against a licensee if the Board's collection order is not complied with. This includes:

- Establishing compliance with an order of the Board to be an obligation of the holder of a licence issued pursuant to the OGCA; and
- Clarifying ER's ability to suspend a licence or licences if the requirements of the Act or the regulations thereunder are not complied with.

As well, proposed amendments to the SRACA feature several other changes intended to update the legislation, including the elimination of overlap between the SRACA and the OGCA with respect to the abandonment and reclamation of oil and gas sites and other potential priorities as identified.



Review of Proposed Legislative Changes

ER is seeking written comments in relation to the above proposals. Further details on these proposals are attached to this notice in Appendix A.

Please direct any written comments or questions about the proposed changes to the ER Service Desk at er.servicedesk@gov.sk.ca.

The deadline for submitting written comments is **May 6, 2022**.



APPENDIX A

1. Power for the Board to hear cases regarding delinquent surface rights compensation and to issue orders demanding payment of the arrears

Background:

The Board is currently unable to provide direct assistance to landowners in recovering unpaid surface lease rentals. At present, the Board conducts hearings for matters such as the rights required by a mineral rights holder (i.e. operator) to enter upon the surface of the land, damage claims, compensation for well sites and flowline easements and rental reviews. However, the SRACA does not grant powers to the Board to conduct hearings in relation to delinquent rentals or issue orders demanding payment of unpaid rentals. A landowner's only recourse is to pursue amounts owing through the courts. Similarly, the Board does not have the ability to enforce the terms and conditions of its own compensation orders.

Proposed Legislative Amendments:

To assist landowners in recovering delinquent surface rights compensation, an amendment to the SRACA is proposed to enable the Board to issue orders enforcing the payment of annual rentals owing under a surface lease or a Board order. A landowner may make an application containing evidence of non-payment satisfactory to the Board and if the Board determines that a non-payment situation exists it may issue an order upon an operator demanding payment of the arrears. For example, an application:

- may not be made before (3/6/12/[?]) months after the date on which the compensation was due; and
- may not claim more than one year's worth of overdue compensation.

If an operator subsequently provides evidence satisfactory to the Board that it has complied with the order within the specified time frame, the Board may cancel the order. Failing this, the Board will notify ER that an operator has not complied with the order within the specified time frame.

Questions for Consideration:

1. *How will these proposed legislative amendments impact you?*
2. *Is the general framework relating to applications (timeframe, etc.) appropriate? Why or why not?*
3. *Are there any other implications you wish to raise if these proposed legislative amendments are adopted?*

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2. Establishing compliance with an order of the Board to be an obligation of a licensee under the OGCA

Background:

The Board's issuance of an order discussed in item #1 is meant to encourage payment of arrears of surface rights compensation, though it would not affect a licensee's operations as regulated by ER. Suspension of an oil and gas licensee's operations under section 12 of the OGCA is a mechanism that generally motivates them to take positive actions on many issues relating to non-compliance with the OGCA or the regulations thereunder. However, ER currently has no authority under the OGCA to sanction a licensee because it is delinquent in its surface lease compensation obligations.

Proposed Legislative Amendment:

To support the Board in its planned new surface rights compensation enforcement role, it is proposed that the OGCA be amended to make compliance with an order of the Board to be an obligation of a licensee, which will include an order outlined in item #1. Upon notification by the Board that such an order has not been complied with, ER would have the discretion pursuant to sections 11 and 12 of the OGCA to take possible enforcement action for non-compliance with the Act. In connection with this, an amendment to the OGCA would clarify ER's ability to suspend a licence or licences issued pursuant to the OGCA.

Please note that the enforcement measures outlined in items #1 and #2 are intended to prompt payment by an operator and would not guarantee the recovery of arrears of surface rights compensation.

Questions for Consideration:

1. *How will this proposed legislative amendment impact you?*
2. *Will suspension of a licence or licences be an effective means of prompting payment of delinquent surface rights compensation? Why or why not?*
3. *Are there any other implications you wish to raise if this proposed legislative amendment is adopted?*

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3. Housekeeping Amendments

While the primary scope of the proposed legislative changes is outlined in items #1 and #2, ER has identified some miscellaneous changes to the SRACA to update the legislation. Some of them support the amendments outlined in items #1 and #2 while others relate to changes in terminology, removal of redundant sections and the modernization of others.

Also proposed is the removal of those sections of the SRACA dealing with abandonment and reclamation of surface lease sites (sections 55-59). The SRACA came into force in 1968, and these sections reflect the general absence of laws at that time related to the final restoration of well and facility sites. Since that time, comprehensive regulations under the OGCA have been developed to govern this process. The role of the Board contemplated by these sections duplicates the robust, science-based site reclamation process carried out by ER. These sections will be replaced by a provision establishing that the end of a right-of-entry shall coincide with the issuance of an Acknowledgement of Reclamation by ER pursuant to the OGCR and the regulations thereunder.

Question for Consideration:

1. *How will the proposed legislative amendments discussed in paragraph #2 above impact you?*

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4. Are there any other comments you would like to make regarding:

- The proposed amendments to the SRACA?
- Other future amendments to the SRACA you would like to see?
- General Comments?