

Notice of Proposed Regulatory Amendments: *The Surface Rights Acquisition and Compensation Regulations*

Background

The Ministry of Energy and Resources (ER) is consulting with stakeholders on proposed amendments to *The Surface Rights Acquisition and Compensation Regulations* (SRACR). Changes to these regulations are necessary to support amendments to *The Surface Rights Acquisition and Compensation Act* (SRACA) and *The Oil and Gas Conservation Act* (OGCA) contained in Bill No. 95, which is currently before the Legislative Assembly of Saskatchewan. Further details on Bill No. 95 may be found at [this link](#).

The Process

Stakeholders are invited to review and provide comments on the proposed regulatory changes from **February 24 to March 24, 2023**. Following this four-week consultation period, ER will review feedback received in the preparation of a final draft to be presented for consideration by the Lieutenant Governor in Council.

Summary of Proposed Changes

Bill No. 95 features new authority for the Surface Rights Board of Arbitration (Board) to hear cases and to issue compliance orders on operators for the payment of delinquent surface rights compensation owed to landowners. It also creates an obligation in the OGCA for the holder of a licence issued under the OGCA to comply with the Board's "Order for Payment" and for licencees to provide to ER proof of compliance with such an order in the "prescribed manner". As well, to modernize the SRACA, Bill No. 95—among other things—authorizes the maximum amount for Board awards for off-lease damages to be moved out of the SRACA and into regulations.

Specifically, the main proposed regulation changes include:

- A requirement for an operator to prove compliance with the Board's Order for Payment by demonstrating that payment has been made by the operator and accepted by the landowner;
- Increasing the maximum amount for off-lease damage awards by the Board from the current \$1,000 to \$30,000; and
- Adding helium and lithium to the listing of minerals for which the Board may adjudicate surface access besides oil, gas and potash.

Given the age of the SRACR and the nature of the changes proposed, ER intends to repeal and replace the existing regulation with a new regulation.



Review of Draft Regulations

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 comments or questions about the proposed amendments to:

ER Service Desk at er.servicedesk@gov.sk.ca

The deadline for submitting written comments is **March 24, 2023**.

APPENDIX A
THE SURFACE RIGHTS ACQUISITION AND COMPENSATION REGULATIONS, 2023

Existing Section/Wording	Proposed New Section/Wording	Explanation
<p>Title</p> <p>1 These regulations may be cited as <i>The Surface Rights Acquisition and Compensation Regulations</i>.</p>	<p>Title</p> <p>1 These regulations may be cited as <i>The Surface Rights Acquisition and Compensation Regulations, 2023</i>.</p>	<p>The existing regulations came into force in 1982 and have not changed since then. To facilitate regulatory modernization and drafting, the existing regulations will be repealed and replaced by new regulations named for the year they are to come into force.</p>
<p>Interpretation, “Act”</p> <p>2 In these regulations, “Act” means <i>The Surface Rights Acquisition and Compensation Act</i>.</p>	<p>Definitions</p> <p>2 In these regulations:</p> <p>“Act” means <i>The Surface Rights Acquisition and Compensation Act</i>.</p> <p>“minister” means the minister responsible for the administration of the applicable regulatory amendment.</p>	<p>Section title updated to reflect current legislative drafting standards.</p> <p>Also, the term “minister” has been added for the purposes of new section 5.</p>
<p>Potash is mineral</p> <p>3 For the purposes of clause 2(e) of the Act, “mineral” includes potash.</p>	<p>Definition of “mineral”</p> <p>3 For the purposes of clause 2(e) of the Act, “mineral” includes:</p> <p>a) a subsurface mineral as defined in <i>The Subsurface Mineral Tenure Regulations</i>; and</p> <p>b) helium</p>	<p>The new regulations will expand the list of mineral commodities for which the Board may adjudicate surface access to include lithium and helium in addition to oil, gas and potash.</p> <p>Lithium as contemplated here means lithium dissolved within subsurface brines and potash is potassium chloride (a compound of potassium and chlorine). ER’s definitions of “potash” and “lithium” are currently contained within the definition of “subsurface mineral” in <i>The Subsurface Mineral Tenure Regulations</i> (SMTR), which is “...all natural mineral salts of boron, calcium, lithium, magnesium, potassium, sodium, bromine, chlorine, fluorine, iodine, nitrogen, phosphorus and sulfur, and their compounds, occurring more than 60 metres below the surface of the land.” Hence, the SMTR definition of “subsurface mineral” will be incorporated in these regulations for the purposes of defining “potash” and “lithium”.</p>

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<p>NEW</p>	<p>Maximum board award for loss or damage re tortious act</p> <p>4 For the purposes of subsection 63(5) of the Act, the prescribed amount is \$30,000.</p>	<p>The prescribed maximum amount for off-lease damages awards by the board—as contemplated by section 63 of the SRACA—aligns with the current monetary limit that may be claimed under <i>The Small Claims Act, 2016</i> (\$30,000).</p> <p>The current \$1,000 limit for an award by the Surface Rights Board for damages incurred through a “tortious act” has been the same since 1968 and is no longer practical. The proposed \$30,000 limit for damage awards reflects the reality of today’s circumstances and will allow the Board to intervene in cases having significance for Saskatchewan landowners.</p> <p>Operators and landowners may seek redress through the Court of King’s Bench for damage claims exceeding \$30,000.</p>
<p>NEW</p>	<p>Proof of payment re subsection 86.1(8) of the Act</p> <p>5 For the purposes of subsection 86.1(8) of the Act, an operator shall provide proof to the minister, in a form and manner approved by that minister, that payment has been issued by the operator and has been accepted by the owner.</p>	<p>Pursuant to section 86.1 of the Act, the onus is on the operator to produce evidence satisfactory to ER that it has complied with an order for payment issued under that section within the required timeframe.</p> <p>These regulations establish that an operator shall provide to ER proof of compliance with such an order by demonstrating that it has both been made by the operator and received by the landowner. The approved format of proof will be established by ER but could include copies of receipts, cheques, bank statements, electronic transfers, etc.</p> <p>If satisfactory evidence of compliance with the board’s order for payment is provided within the required timeframe, the operator will not be subject to possible further sanctions by ER pursuant to the OGCA.</p>

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<p>Repeal</p> <p>4 Saskatchewan Regulations 271/69 are repealed.</p>	<p>RRS c S-65 Reg 1 repealed</p> <p>6 <i>The Surface Rights Acquisition and Compensation Regulations</i> are repealed.</p>	<p>A formality to repeal the existing regulations.</p>
<p>NEW</p>	<p>Coming into force</p> <p>7 (1) These regulations come into force on the day on which section 1 of <i>The Surface Rights Acquisition and Compensation Amendment Act, 2023</i> comes into force.</p> <p>(2) If these regulations are filed after the day on which section 1 of <i>The Surface Rights Acquisition and Compensation Amendment Act, 2023</i> comes into force, these regulations come into force on the day on which they are filed with the Registrar of Regulations.</p>	<p>This provision specifies when these regulations are to come into force, which is no sooner than the date that <i>The Surface Rights Acquisition and Compensation Amendment Act, 2023</i> will take effect.</p>