

Summary of Consultation: Surface Rights Compensation Payment Enforcement Tools

The Ministry of Energy and Resources (ER) held public consultations with stakeholders on proposed changes to *The Surface Rights Acquisition and Compensation Act* (SRACA) and *The Oil and Gas Conservation Act* (OGCA) from April 6, 2022, to May 6, 2022. The proposed changes, outlined at [this link](#), focus on enhancing 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. Feedback on the proposed amendments was received from oil and gas industry associations, municipal and agricultural organizations, and individual landowners.

Feedback Highlights

The proposed changes feature an amendment to the SRACA to enable the Board to hear cases relating to delinquent surface rights compensation and to issue orders on an operator demanding payment. A landowner may make an application containing evidence of non-payment to the Board and if the Board determined that a non-payment situation exists it could issue an Order for Payment upon an operator with terms and conditions. In connection with this, the OGCA is to be amended to establish compliance with an order of the Board to be an obligation of the holder of a licensee under the OGCA. Failure to comply with an order of the Board, including the proposed Order for Payment could result in sanctions under the OGCA, including licence suspensions.

Comments from stakeholders indicated general support for these proposals. Key items raised include:

- The need to make applications to the Board and the Board process for addressing such applications as administratively simple as possible.
- That the application by a landowner to the Board regarding non-payment should be allowed to be made no less than three months and no more than one year from the anniversary date the surface lease payment was due. A three-month waiting period would allow an operator to make good on a payment unintentionally delayed. Generally, feedback suggested a three- to six-month range before which an application could be brought forward would be reasonable.
- Licence suspensions should not be limited to the site where non-payment occurred but should include other licenses held by an operator, including producing sites. Suspending a license on a site where non-payment is already occurring is not a deterrent as such sites often are non-producing.
- There should be no limit on the amount of surface lease payment arrears to be claimed in an application.

ER also requested feedback on housekeeping amendments to the SRACA, particularly the repeal of sections 56-59 of the SRACA dealing with abandonment and reclamation of surface lease sites. ER would like to clarify that the repeal of those sections in no way impacts upon a landowner's ability to voice their concerns and provide input into the restoration of an oil and gas site. These sections duplicate the science-based requirements of the OGCA and its regulations regarding the abandonment and reclamation of an oil and gas site, which apply to all such sites in the province once they have reached their end-of-life. Landowners may voice concerns and offer input on the quality of site restoration through ER's Acknowledgement of Reclamation process. The Board has not used the provisions in the SRACA dealing with abandonment and reclamation of surface lease sites since the OGCA and its robust site restoration requirements came into force.

As well, ER solicited feedback on other aspects of the amendments featured in the consultation document and on other future amendments to the SRACA. Stakeholder comments received and ER's responses to these are outlined below:

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| <ul style="list-style-type: none"> Maximum award by the Board for off-lease damages relating to tortuous acts (currently \$1,000) should be increased. <p>ER Comment: ER may consider future amendments to facilitate an increase in the damage limit that was established in 1968.</p> |
| <ul style="list-style-type: none"> Will these changes address non-payment on land used for windmills and solar structures? <p>ER Comment: The SRACA is meant to regulate the relationship between differing property interests, namely landowners and the holders of rights to minerals (oil, gas and potash). Use of lands for energy infrastructure such as wind turbines and solar structures does not involve a conflict between two different property estates. A proponent of such infrastructure must negotiate with a landowner for a lease and a landowner must use the courts if they have trouble collecting payment per the agreement.</p> |
| <ul style="list-style-type: none"> The Board should be able to hear cases involving minerals besides oil, gas, and potash. <p>ER Comment: ER may look in the future to amend regulations under the SRACA to include hydrogen, lithium, and potentially other minerals as "minerals" as defined under the SRACA, which would therefore be subject to the rules as prescribed in the SRACA.</p> |
| <ul style="list-style-type: none"> A new drilling licence should not be given to a company owing money to landowners. <p>ER Comment: Establishing compliance with an order of the Board to be a licensee obligation under the OGCA will allow ER to possibly refuse issuing further licences to an operator if they fail to comply with a Board order. Licence suspension as per section 12(2)(d) of the OGCA deprives a licensee of the right to produce oil and gas further to section 12.2(a) of the OGCA. Thus, this renders a licensee ineligible to hold or to be issued a licence per 12(1)(a)(ii)(B) of <i>The Oil and Gas Conservation Regulations, 2012</i>.</p> |

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| <ul style="list-style-type: none"> The proposed Order for Payment process does not address non-payment of damage claims or any one-time payments (e.g., compensation for a flowline right of way). <p>ER Comment: All matters of compensation able to be brought before the Board on which the Board can make an order of compensation would be covered by the proposed provisions.</p> |
| <ul style="list-style-type: none"> Operators should not have the ability to use the proposed Order for Payment process to try to reduce rental amounts owing. <p>ER Comment: The proposed process is intended to deal strictly with non-payment of compensation already agreed to (through a lease or Board order) and shall not be used to renegotiate rentals. A separate process for a review of annual rentals (to be used by a landowner or an operator) is already provided for in sections 77 and 78 of the SRACA.</p> |
| <ul style="list-style-type: none"> Provisions for suspension of licences should extend to unpaid municipal property taxes. <p>ER Comment: The SRACA governs the relationship between mineral rights owners and landowners. The Board does not have authority to order payment of arrears of municipal taxes, which are levied under separate legislation.</p> |
| <ul style="list-style-type: none"> The seven-day period in which to object to a right of entry application is too short and should be extended. Province should adopt system/fund for rental recovery, where those funds may be used to pay landowners for surface access while an oil and gas site is in the orphan well program. Operators should be responsible for notifying landowners periodically about their eligibility for a review of annual compensation. Surface leases filed with the Board as required by the SRACA should be made public. Operators should be responsible for notifying landowners periodically about their eligibility for a review of annual compensation. The Board should have the ability to award costs to landowners and their representatives for all types of hearings, not only right-of-entry and compensation hearings. <p>ER Comment: ER may examine these proposals as part of a future examination of the SRACA.</p> |

ER would like to thank all who provided comments and participated in the review of the proposed amendments to the SRACA and the OGCA.

