

Surface Rights in Manitoba

**A Guide for Landowners,
Occupants and Operators**



(Revised: December 2019)

This guide is for landowners, occupants and operators, to provide knowledge about Surface Rights legislation and the duties and responsibilities of The Surface Rights Board.

Please direct any questions about Surface Rights or The Surface Rights Act directly to the Board Administrator of The Surface Rights Board, not to Board members.

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Information in this guide is general in nature and is not a substitute for legal advice.

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1. Mineral Rights - Surface Rights - Service Lines

Under The Surface Rights Act, whoever holds the mineral rights is entitled to access the land, to work and remove the minerals. To gain access, operators must enter into a leasing agreement with the owner who holds title to the land and with the occupant who leases the land. If the negotiation of a leasing agreement is not achieved the operator may apply to **The Surface Rights Board** for an order permitting access to the land. (See: Types of Hearings: Right of Entry, p. 7).

2. Negotiating a Surface Rights Lease

In Manitoba, a large majority of the leases between operator and owners/occupants result from free and open negotiations. The lease agreed upon legally secures for the operator the surface of the land for extracting minerals. In return, the operator will compensate the owner or occupant for loss of the land used in connection with mineral extraction. Compensation will be in the form of a “first year payment” and subsequent “annual payments” for the balance of the lease.

An employee or agent of the company holding the mineral rights will approach the landowner with a surface lease. This will include a sketch or map indicating the area the company wishes to lease and compensation the company is prepared to pay for surface rights.

Landowners should take sufficient time to review the lease to ensure terms and conditions are fully understood, and to identify areas for negotiation.

NOTE: Compensation may be an issue. Property owners/occupants may find it helpful to use the criteria for compensation set out in The Surface Rights Act (See: Types of Hearings: Compensation, p 7).

THE ACT SPECIFICALLY REQUIRES A MINIMUM OF THREE (3) DAYS BEFORE A SURFACE LEASE CAN BE SIGNED BY THE OWNER/OCCUPANT. THE PURPOSE IS TO HELP ENSURE THE LANDOWNER HAS TIME TO CONSIDER THE OFFER MADE AND TO OBTAIN ADVICE, IF NECESSARY. THIS TIME PERIOD MAY BE WAIVED BY OWNER/OCCUPANT. (See Attachment 2, p. 18)

The following questions/issues may arise during negotiation of a surface lease:

- How much of the land surface will be needed, and where will the well be located?
- Are there alternative locations to the oil company’s preferred site?
- How will the company access the site? Are there alternate routes?
- When will the operation start? When will it finish?
- Will construction be needed before drilling starts? Will more construction be necessary afterwards?
- Who is responsible for weed control during drilling and production phases?
- If no mineral is found and the well is abandoned, what surface restoration will be carried out, and when?
- If the well produces for the length of the lease, how will the land’s surface be restored?
- If the well is a producer, what surface equipment may be required, and where will it be placed on the leased area?
- Will a service line or power line be needed? If so, what are the intended routes? Will the power line be overhead or underground?

An on-site inspection of the land in question is advised to show the operator any areas of special concern such as fences or gates, livestock or wells. All concerns with the operator should be discussed and an agreement made which can be formally included in the lease.

All concerns should be addressed by the company prior to signing the lease agreement, since a contract with the operator is binding once the property owner/occupant has signed the lease.

If a party to the lease at any time feels the terms of a lease are in violation, the parties should make every attempt to resolve any differences. If this approach is not successful, application to The Surface Rights Board can take place.

3. The Surface Rights Act

("The Act") The purpose of The Act is to provide:

- A comprehensive procedure for acquiring and utilizing surface rights
- Payment of just and equitable compensation for the acquisition and utilization of surface rights
- A procedure for the maintenance, preservation and restoration of the surface of the land used in connection with surface rights
- Resolution of disputes between operators and owners/occupants arising out of the entry upon, use, or restoration of the surface of the land

4. The Surface Rights Board

("the Board")

- The Board is a quasi-judicial body made up of a minimum of three members appointed by the province and charged with administering and enforcing The Act. One of the Board's main functions is to determine compensation in situations where parties are unable to agree. The Board has the authority to gather, or to have gathered for its use, any information deemed necessary to fulfill its role.
- The Board is an impartial body, responsible for hearing all sides, and from the evidence, making decisions within the framework of The Act.

NOTE: All contact with the Board takes place through the Board Administrator.

5. Application to the Surface Rights Board

An Operator, Owner or Occupant may apply to the Board for the determination of a dispute that may arise about the following:

- a) Surface rights are required
- b) Compensation for surface rights
- c) Interpretation of a lease or agreement
- d) The exercise of any right or the performance of any obligation under a lease or agreement
- e) Any other matter where The Act authorizes an application (e.g. tortious acts, weed control, etc.)

When an Operator, Owner or Occupant files an application to the Board, they shall:

- Send a notice to the other party(ies) advising that an application to the Board has been made

- Send a copy of the notice to the Board accompanied by proof that the notice has been delivered by providing a copy of the receipt from Canada Post or an affidavit of personal service on the other party(ies)
- Include in the notice:
 - a description and plan or sketch of the land showing the location of the affected area and showing proposed or existing wells and facilities of the operator
 - a statement of the nature of the dispute
 - the nature of the order being sought
 - the applicant's address for service

6. Mediation

Mediation is an informal, confidential conflict-resolution process that provides parties an opportunity to discuss any issues or misunderstandings, and to find areas of agreement. Mediation services are available prior to holding any hearing to settle any or all matters under dispute. With the consent of the parties, the Board may designate a member and the Board Administrator to attempt to mediate the dispute.

In a mediation, each party involved should be prepared to:

- Produce any information deemed helpful to support your position
- Explain any issues under dispute
- Discuss the basis of your position
- Listen to the other party and try to understand their perspective
- Collaborate to resolve your dispute

If attempts to mediate a dispute are not successful, scheduling of a Board hearing may take place to consider the application.

7. Hearing Procedures

- The Act currently does not provide a timeframe for the Board to schedule a hearing to consider an application. The Board however, will generally hold a hearing within 30 days of receipt of any application.
- Once a hearing date is fixed, the Board will issue a notice of hearing not less than 14 days before the date for the hearing.
- The Board will render a decision on the application not more than 30 days after the conclusion of the hearing, unless all parties to the matter otherwise agree.

What happens at a hearing of the Surface Rights Board:

- The Applicant (or Applicant's solicitor) will present the case, calling any necessary witnesses.
- The other party (Respondent) has the right to cross-examine the witnesses.
- Once the Applicant has completed their case, the Respondent may present evidence, calling witnesses as required.
- The Board will reserve its decision and send copies of its written decision to the owner and/or occupant, and to the operator and their legal counsel (if so requested), within 30 days.

Procedures taking place before the Board are as informal as possible. Presenters do not need to hire legal counsel. Presenters are free to ask questions regarding the case before the Board as well as procedural matters.

The Board acts in a quasi-judicial capacity. Board decisions are subject to review by the Court of Appeal on a point of law. Decisions of the Board are a matter of public record.

Board orders are available by contacting the Board Administrator or by visiting the Surface Rights Board web site at: www.gov.mb.ca/iem/board/srboard.html.

How to Prepare for a Hearing

- Familiarize yourself with the Surface Rights Act and its sections applicable to your matter
- Determine your position and the rate of compensation if applicable
- Gather your evidence and prepare your argument, pointing to supporting evidence
- Keep negotiating with the other party before considering an SRB mediation;
- Review the other party's evidence and prepare questions that you want to ask
- Review your materials thoroughly understanding that the other party and/or the Board may ask questions based on information you provide.

The Board will refer to The Act and criteria to be examined in arbitrating surface rights disputes. The Act provides the authority for the Board to govern the practice and procedures in the hearing process. These procedures relate to:

a) Evidence

- Complete and full exchange between the parties is required at least five days before the hearing, including all documents that a party intends to rely upon in evidence, comparable leases, expert reports, sketches, surveys, etc.
- Failure to exchange may result in document(s) being inadmissible.
- Issues are to be confirmed at the commencement of the hearing.
- All claims must be proven by proper evidence. Parties should address the evidence to the various matters stipulated in Section 26(1) of The Act. If evidence is not led on a given matter, the Board, in considering the matter, may be unable to make an award.
- Parties may consent to an amount for a given matter, or a party can suggest the Board award an amount, which has been established by past Board decisions or by the market place (comparable leases). Evidence can be led to increase or decrease that amount.

b) Site Visitation

The Board may, on its own initiative, or at the request of either party, inspect the site.

c) Costs

- The Board has the authority to award costs of and incidental to participation in any of its proceedings, including awards in advance where appropriate. These costs should be for such legal, appraisal and other expenses that a party has incurred for the purpose of preparing and presenting a claim to the Board.
- In requesting costs, a party should make a claim with the Board Administrator including detailed records of time and money spent in preparing for and attending the hearing.
- Records submitted should be provided to the other party.

See “Compensation: Sample Evidence for a Hearing” for additional detail on samples of evidence to prove costs.

Except as described below, costs shall be at the discretion of the Board.

- When the amount of compensation offered by the operator, prior to the hearing, is less than 90% of the amount awarded by the Board, the Board shall increase the award to the owner/occupant, by any amount they consider just and reasonable to cover the costs.
- When the amount of compensation offered by the operator, prior to the hearing, is more than an amount awarded by the Board, the Board shall not award costs of any kind to the owner/occupant.

Offers of settlement made by an operator are not to be disclosed in the application or at any time during the hearing.

The operator shall provide the amount of the declined final offer in a sealed envelope, to the Board Administrator immediately BEFORE the hearing. The offer will be disclosed to Board members only AFTER the decision on compensation has been finalized.

8. Types of Hearings

a) Right of Entry

If a property Owner/Occupant refuses to allow access to the surface of the land, the operator has the right to apply to the Board for a Right of Entry Order.

A right of entry may include:

- The site where the well is to be drilled and any access road into the well site
- Construction and operation of a battery site or other above ground facilities
- Installation of a flow line (includes compensation for period of installation)
- Installation of a pipeline (includes compensation for period of installation)

The Board will verify that the operator has the mineral rights and, as such, is entitled to explore for and develop those rights. There is usually little to dispute in this area.

Time and costs of a hearing can be avoided if parties agree that the operator is the party entitled to exercise the mineral rights. The owner/occupant may then wish to consent to the operator entering the lands, subject to payment of satisfactory interim compensation before consent is granted. If such an arrangement cannot be made, the Board will arrange an early hearing date or arrange for mediation.

NOTE: If the application is for an order permitting **BOTH** right of entry **AND** compensation, the Board will set an early date to hear the question of right of entry only. If right of entry is ordered, the Board may award partial compensation at that time, and determine final compensation at a later hearing.

b) Compensation

Compensation is paid to the landowner or occupant for having a well site, battery site and/or an access road on his or her land.

The Board will award “first year compensation” and “annual compensation.”

- First year compensation is normally greater than the annual rent for subsequent years.
 - First year compensation will include compensation for the value of the land to be used in connection with surface rights. Also included are other elements as set forth in Section 26(1). This is to compensate the landowner for his or her time and effort in negotiating the lease, the nuisance, inconvenience, disturbance or noise by the drilling and/or construction operations, and the company’s utilization of the entire lease area.
 - Annual compensation is less, as normally only a portion of the lease area is used by the company. The landowner is permitted by the operator to farm the lease area it is not using. There is also much less noise and inconvenience to the landowner.
- The Act states that where parties are unable to agree upon compensation, the Board shall determine the amount payable. There are two recognized methods of calculating compensation used in the industry: global and empirical method.
- The “empirical” method applies a value to each factor set out in Section 26(1) of *The Act*.
 - The “global” method is more widely used because it is recognized that it is difficult to assess and quantify accurately each factor set forth in Section 26(1).
 - Using this method, the Board looks at whether a proposed site is a typical well site. A typical well site is one that does not present any special conditions that would make it unduly costly for a farmer to farm the land on which the site is located, and is within the Manitoba average of between two and four acres. Special conditions relate to any of the factors set out in Section 26(1).
 - The Board also relies heavily on freely negotiated comparable leases as a proxy to determine the market value of a surface lease.

Section 26(1) Factors:

- **Value of land** having regard to its present use before allowance of surface rights; Whenever possible, the Board will seek to determine present value by evidence of comparable land sales, sufficiently close to the subject land in time, location, use, soil, climate, road access, proximity to towns and other significant factors that may affect value. The actual price paid on the sale may be obtained from the transfer on file in the Land Titles Office. Usually two or three comparable sales, when available are sufficient to assist the Board in determining the value of land in the vicinity.
- **Loss of use of land** or an interest therein as a result of granting surface rights; The purpose of loss of use compensation is to replace as near as possible the net income an owner/occupant could reasonably have expected to realize.

Clear, accurate records offered AS EVIDENCE greatly assist the Board in determining loss of use compensation.

- **Area of land** that is or may be damaged by the operations of the operator; This is not usually a factor affecting initial compensation since such damages have not occurred and may never occur. There is adequate protection in *The Surface Rights Act* should damages occur in the future.
- **Increased costs** to the owner/occupant, if any, by reason of the works and operations of the operator;
- The **adverse effect** caused by the right of entry to the remaining land by reason of severance, if any; Compensation should equal the value of the extra time and costs needed to farm two units or to farm around several additional corners. Owners/occupants may be compensated for extra costs in time, material, machinery wear and tear, etc., when facts are offered as evidence at the hearing.
- The **nuisance, inconvenience, disturbance or noise** to the owner and occupant or to the remaining land that might be caused by, (arise from, or likely to arise from, or in connection with the operations of) --the operator. **Damage, if any, to any adjoining land** of the owner (including damage to or loss of crop, pasture, fence or livestock and like or similar matters). Evidence under this heading may include the cost of time spent in surface lease negotiations. A well site on the home quarter may result in higher compensation, if owners/occupants consider the additional noises or odors than those in a more distant site. Trespassing by unauthorized persons can be considered, but is difficult to control if a well site is situated in an isolated area.
- When applicable, an increase in the amount awarded by the **addition of interest**. Interest is clearly a compensation factor only where there is a delay in payment of the compensation after the operator has been on the land and exercised his rights under a lease agreement or Board Order. It is in the best interest of both parties to keep the terms of the lease current, and the Board will use its discretion to determine the rate and amount of interest awarded, if any.
- Any other evidence that may be relevant to assist the Board to recognize any circumstances that may be peculiar to a particular situation including:
 - The **cumulative effect**, if any, of surface rights previously acquired, by the operator or by other operators, for additional sites with respect to the subject lands.
 - The terms of a **comparable lease agreement** that a party offers as evidence for consideration. All parties have the right to submit leases as evidence in any compensation hearing. When comparable leases have been selected, copies must be circulated to other parties and will form part of the evidence to the hearing. Copies of most surface rights leases are filed with the Board and may be inspected, or copied by any person.

c) Three Year Review of Annual Compensation

Under The Act, Owners/Occupants and Operators may not apply to the Board for a review of compensation within three years following the date the lease was signed, **OR** the date on the Board Order, if compensation was determined in this manner. With the passing of the three-year anniversary date, application for a compensation review may be submitted and the Board will set a hearing date. Evidence should be gathered (similar to that required for the compensation hearing), as grounds for this hearing.

d) Abandonment, Restoration and Rehabilitation Procedures

The Board and Petroleum Branch have jointly issued Information Notice 03-01, which outlines recommended procedures and requirements for an operator to follow up on abandonment of a well or battery, and restoration and rehabilitation of the site. The recommended procedures provide for the landowner's involvement throughout the entire process.

Definitions for this part:

Abandonment

- (a) In respect of a well, the downhole plugging of the well in accordance with the Drilling and Production Regulation under The Oil and Gas Act ("the Regulation") and includes all operations to abandon the well up to and including backfilling around the well after cutting the casing and welding a cap over the end of the casing; or
- (b) In respect of a battery, the removal of all equipment from the site.

Restoration

The clean-up and contouring of a site, (including any application of topsoil, required to return the site as closely as possible to its original condition and to render the site ready for use by the owner), but does not include rehabilitation.

Rehabilitation

Any activities required on the site after restoration is complete to return the land to productivity comparable to the surrounding land.

Procedure for Abandonment of a Well or Battery

- Prior to abandoning a well or battery, the operator must obtain approval from the Director of the Petroleum Branch.
- Upon receipt of an application the registered surface owner of the site is notified by the Petroleum Branch.
- After approval to abandon a well or battery has been granted, the operator is required to notify the
- Petroleum Branch at least 24 hours prior to commencing abandonment. In most cases, a Petroleum Inspector will witness all or part of the abandonment operation.

Procedure for Restoration of the Site

(See: Appendix A, Acknowledgement of Restoration)

- When conditions permit, the operator is required to clean up and contour the site suitable for use and to the owner/occupant's satisfaction.

- The operator should then approach the owner/occupant for a release acknowledging that the site is ready for use. The acknowledgement should indicate that the operator remains responsible for any further rehabilitation of the site that may be necessary based on crop or plant growth compared to the surrounding land, and any future claims for damage compensation.
- It should further acknowledge right of access to the operator to achieve any further rehabilitation that may become necessary.
- When Acknowledgment of Restoration is requested, the parties should negotiate any annual compensation that may be required pending the complete rehabilitation. If not requested, the original agreement remains in effect until the issuance of an Abandonment Order.
- Where an operator has restored a site and the owner refuses to provide an Acknowledgement of Restoration, the operator's recourse is to file an application with the Board for a review of annual compensation or an Abandonment Order.
- If the Board finds that the operator has restored the site in accordance with The Act, an Abandonment Order may be made retroactive to the date of application.
- Where the Board makes an Abandonment Order, it shall consider any compensation due if the abandonment deprived the owner/occupant of using the land for the current crop year. It shall also provide that the operator is responsible for any further rehabilitation required and that the operator has right of access to the site for such purposes. The Act also authorizes the Board, in its discretion, to provide the owner/occupant compensation in lieu of restoration. This provision will be used only when a compelling reason is put forward that restoration cannot be completed.

Procedure for Rehabilitation of the Site

- When a well is licensed or a battery permitted, the operator is required to provide to the Petroleum Branch a performance deposit to ensure the operation and abandonment of the site takes place in accordance with *The Oil and Gas Act* and Regulations.
- Once a site is rehabilitated, the operator can apply to the Petroleum Branch for a "Certificate of Abandonment" (Appendix B) exempting the site from performance deposit requirements. This application must include a signed release from the owner.
- This "release" is not to be confused with an "Acknowledgement of Restoration" discussed in the previous section.
- Where a site is rehabilitated and an operator has not previously applied to the Board for an Abandonment Order, and where the operator is unable to obtain a signed release from the owner, the operator may make application to the Board for an Abandonment Order.
- This application should include any "Acknowledgement of Restoration" that may have been executed.
- If the site is previously covered by a Board Abandonment Order and the owner refuses to sign a release, the application for Certificate of Abandonment must be accompanied by the Abandonment Order that has been fully complied with by the operator.
- Upon receipt of a completed application and, provided a Petroleum Inspector confirms that plant or crop growth on the site is comparable to the surrounding land and no money is owed to the Crown, the Petroleum Branch may issue a Certificate of Abandonment. The operator remains liable for the costs of any repair or rehabilitation required within six years of the issuance of a Certificate of Abandonment.

Removal of Caveats

The obligation of an operator with respect to compensation continues until all caveats or other instruments registered by the operator against the land and pertaining to the surface rights have been removed.

e) Other matters that The Act authorizes:

The Act provides for a means of redressing damages that may occur off-site. Where agreement cannot be reached, any party may apply to the Board for an order to comply or to determine additional compensation amounts.

- **Tortious Act:**

May be defined as a wrongful, **injurious** or illegal act that results in:

- loss or damage to the land that is NOT situated within the surface rights acquired or to be acquired by an operator, and
- b) any other loss or damage suffered by the owner/occupant that arises out of the “tortious act”.

This may include damage to or loss of crop, pasture, fence, or livestock and similar matters. This may also include a party that has no well sites on its property (e.g. spill from neighboring land). Owners/Occupants **must notify the Board in writing within 90 days** after discovering the loss or damage and must describe the “tortious act” and claim an amount for compensation. The Board will send a copy of the notice to the operator.

- **(ii) Weed Control:**

Unless the owner/occupant and the operator otherwise agree, operators are responsible for controlling weeds on the site of the surface rights lease each year, **BEFORE** they have matured to seed. If the operator fails to comply, the owner/occupant may enter onto the surface rights’ site and destroy the weeds **AFTER** giving the operator seven (7) days notice **OR** the owner/occupant may apply to the Board for an order requiring the operator to comply.

The Board may order the operator to cut down or root out and destroy the weeds within a time period specified in the order **OR**, if the owner/occupant has already controlled the weeds on the site, the Board may order compensation. (Refer also to the provisions of The Noxious Weeds Act).

9. Appeals of Surface Rights Board Orders

A Board Order may be appealed within one month of the date of the Order to the Court of Appeal on the following grounds that:

- the Board failed to observe a principle of natural justice;
- the Board acted beyond OR refused to exercise its jurisdiction; or
- the Board made any other error of law.

Parties may choose to consult legal counsel to determine if grounds exist for an appeal.

ATTACHMENTS

ATTACHMENT 1

Manitoba

Industry, Trade and Mines

INFORMATIONAL NOTICE 03-01 June 18, 2003

Re: Abandonment, Restoration and Rehabilitation Procedures

Introduction

This informational notice, issued jointly by The Surface Rights Board ("the Board") and the Petroleum Branch of the Department Industry, Trade and Mines ("the Branch") replaces Informational Notices 93-6 and 90-1. The purpose of this notice is to update and clarify recommended procedures and requirements of an operator upon abandonment of a well or battery, restoration and rehabilitation of the site; It should also be noted that operators and owners are free to negotiate any alternate arrangement regarding release of surface rights on abandonment of a well or battery. Any questions regarding the appropriateness of such arrangements should be directed to the Board Administrator.

Definitions

In this notice,

"**abandonment**" means

(a) in respect of a well, the downhole plugging of the well in accordance with the Drilling and Production Regulation under The Oil and Gas Act ("the Regulation") and includes all operations to abandon the well up to and including backfilling around the well after cutting the casing and welding a cap over the end of the casing; or

(b) in respect of a battery, the removal of all equipment from the site.

"**restoration**" means the clean up and contouring of a site, including any application of topsoil, required to return the site to as nearly as possible to its original condition and to render the site ready for use by the owner, but does not include rehabilitation;

"**rehabilitation**" means any activities required on the site after restoration is complete to return the land to productivity comparable to the surrounding land.

Abandonment of a Well or Battery

Prior to abandoning a well or battery, the operator must obtain approval to do so from the Branch. Abandonment applications are reviewed to confirm the abandonment program complies with the regulation and that any special downhole or other surface conditions are addressed. Additional information may be requested as necessary.

Upon receipt of an application to abandon a well or battery, the District Office of the Branch notifies the registered surface owner of the site.

After approval to abandon a well or battery has been granted, the operator is required to notify the District Office of the Branch at least 24 hours prior to commencing abandonment. In most cases a Petroleum Inspector will witness part of the abandonment operation.

Restoration of the Site

As soon as weather and ground conditions permit after abandonment of a well or battery, the operator is required to clean up and contour the site of the well or battery in accordance with Section 58 of the Regulation. This is equivalent to restoration of the site under Section 36 of The Surface Rights Act ("the SRA").

When restoration is complete, the operator may approach the owner of the site for an acknowledgement that the site has been restored and is ready for use by the owner. The acknowledgement should indicate that the operator remains responsible for any further rehabilitation of the site that may be necessary based on crop or plant growth on the site compared to the surrounding land. The acknowledgement should further indicate that the operator has right of access to the site for the purpose of any further rehabilitation that may be necessary. The operator remains responsible for future claims for crop loss or damages until rehabilitation has been achieved. Appendix A provides a form of an "Acknowledgement of Restoration" considered appropriate by the Board. Unless alternate arrangements are made between the operator and the owner, the effect of an Acknowledgement of Restoration is, subject to subsection 39(2) and Section 42 of the SRA, to reduce normal compensation (i.e. annual surface rentals) in respect of the site.

Subsection 39(2) of the SRA provides:

Additional compensation

39(2) Where an abandonment occurs at a time when, as a result thereof, the owner, or occupant, if any, is deprived of making use of the land for the current crop year, the board may order the operator to pay the owner or occupant, if any, additional compensation or may order that compensation payments continue for an additional year.

Section 42 of the SRA provides:

Removal of caveats

42 Notwithstanding any provision of this Part, the obligation of an operator with respect to compensation shall continue unabated until all caveats or other instruments registered by the operator against the land under The Real Property Act and The Registry Act with respect to the surface rights have been discharged, released or quitclaimed, as the case may be.

Where an operator has restored a site in accordance with this notice and the owner refuses to provide an Acknowledgement of Restoration, the operator's recourse is to file with the Board an application under Section 37 of the SRA for an Abandonment Order. If the Board finds that the operator has restored the site in accordance with the SRA, any Abandonment Order may be made retroactive to the date of application.

Where the Board makes an Abandonment Order under subsection 39(1) of the SRA, it shall provide in the order that the operator is responsible for any further rehabilitation required and that the operator has right of access to the site for such purposes.

Clause 39(l)(c) of the SRA provides authority for the Board, in an Abandonment Order, to provide for compensation to the owner in lieu of restoration. Generally, but subject to the Board's discretion, this provision will only be utilized by the Board where there is some compelling reason that restoration cannot be completed. The Board anticipates that such circumstances will be very rare.

Rehabilitation of the Site

Once a site has been restored and returned to use there may continue to be negative effects on crop or plant growth for some time. The operator is responsible under Section 59 of the Regulation to fully rehabilitate the site and under The Oil and Gas Act ("the OGA") for claims for crop loss or damages during rehabilitation.

Petroleum Branch inspectors inspect each site after it has been restored. Restored sites are then re-inspected on the request of the operator (made in its annual rehabilitation report required to be submitted to the Branch under Section 103 of the Regulation) or if the operator indicates in its report, that the site has been fully rehabilitated. As a minimum the Branch will ensure a restored site is inspected at least once every three years to determine if the company's rehabilitation activities are effective.

When a well is licensed, the operator is required to provide to the Branch a performance deposit to ensure operation and abandonment of the well and rehabilitation of the site in accordance with the OGA and the Regulation. Once a site has been rehabilitated the operator may make application to the Branch for a "Certificate of Abandonment" that exempts the site from performance deposit requirements under the Regulation. Appendix B is a sample application form for a Certificate of Abandonment.

An application for a Certificate of Abandonment must be made to the appropriate District Office and be accompanied by a surface release signed by the owner indicating that the owner is satisfied with the rehabilitation of the site. Any remaining modifications to the original condition of the site (e.g. lease road left in place) should be clearly authorized in writing by the surface owner. This "release" is in addition to any Acknowledgement of Restoration that the owner may have signed.

Upon receipt of a complete application and provided a Petroleum Inspector confirms that plant or crop growth on the site is comparable to the surrounding land, a Certificate of Abandonment will be issued subject to confirmation that there are no outstanding debts to the Crown under the OGA in respect of the site. If upon inspection, it is found that the site has not been adequately rehabilitated, a Certificate of Abandonment will not be issued even though the surface owner may have released the operator or accepted payment in lieu of rehabilitation. In such cases, the Petroleum Branch may hold the operator liable for further rehabilitation. In such situations, the operator may apply to the Minister under subsection 119(6) of the OGA (Minister may relieve operator from application)

As an alternative to plant growth monitoring, in situations where the probability of soil damage is very limited, a Petroleum Inspector may accept soils analyses that, in the opinion of a qualified soils scientist, indicate soil conditions on the abandoned site are comparable to that of the surrounding land. A Petroleum Inspector should be consulted prior to proceeding in this manner. All costs associated with the sampling and analyses are to be borne by the operator.

The Certificate of Abandonment exempts the operator from any ongoing rehabilitation of the site. However, should damage recur within 6 years of the date that the Certificate of Abandonment was issued, the operator remains liable for further rehabilitation. Where damage recurs after the six year limitation period, the Abandonment Fund Reserve Account under the OGA may be used to address the situation. The issuance of a Certificate of Abandonment does not affect any application of the SRA.

Where, after abandonment of a well, there remains a non-abandoned well or oil and gas facility on the same site covered under the same surface lease, a Certificate of Abandonment for the abandoned well or facility will be issued upon application.

A Certificate of Abandonment is required for all wells that have been issued a well licence including canceled locations. The operator is required to obtain a surface release signed by the owner for a canceled location even if the only activity has been surveying of the wellsite. Where a site has been rehabilitated, but the owner refuses to sign a release, the operator's recourse is to file with the Board an application under Section 37 of the SRA for an Abandonment Order. Any such application should include any "Acknowledgement of Restoration" that may have been executed.

Surface Rights on Seizure

Part 15 of the OGA sets out an enforcement mechanism to address instances where an operator is in contravention of that Act. The enforcement mechanism can lead to a seizure order, issued by the Minister authorizing the Director to seize and take over the control of a well or facility and take such action as considered necessary to abandon or otherwise dispose of the well or oil and gas facility.

Section 183 of the OGA provides that any surface rights held by the operator of the well or facility are vested in the Crown and that the Crown is not liable for any penalty, debt or other obligation incurred by the operator prior to seizure. However, where the Director has seized a well or facility and that well or facility remains unabandoned or has not been transferred to another operator on the next anniversary date of the surface lease pertaining to the site, the Director shall cause to be paid the annual rental as set out in the surface lease.

Contacts

District offices of the Branch are located in:

Viriden: (204)748-4260

Waskada: (204) 673-2472.

Communications with The Surface Rights Board should be directed to the Board Administrator: (204) 945-1119.

THE SURFACE RIGHTS BOARD
Original signed by T.A. Cowan

THE PETROLEUM BRANCH
Original signed by L.R. Dubreuil

ATTACHMENT 2

VOLUNTARY THREE-DAY WAIVER FORM (Subsection 18(1) The Surface Rights Act)

I/We _____, (Name of Owner(s) or Occupant(s))
of _____ in the **Province of Manitoba**, hereby consent to
waive the three day waiting period pursuant to subsection 18(2) of The Surface Rights Act on
L.S.D. _____ WPM.

It is understood that execution by me/us of this consent does not in any way affect my/our
rights to compensation.

It is further understood that the signing of this consent form is voluntary and I/we acknowledge
that by waiving this requirement, I am/we are foregoing the opportunity to seek legal advice and
other pertinent information prior to the signing of the lease.

Dated at _____ in the Province of Manitoba this _____ day of _____, 20 ____ .

Witness Landowner

Witness Landowner

APPENDICES

APPENDIX "A"

ACKNOWLEDGEMENT OF RESTORATION

I/We, _____, registered owner(s) of _____, do hereby acknowledge that the well/battery/other site operated by _____ known as: _____ has been properly restored to my/our satisfaction. I/We further acknowledge that the site is now available for use. Commencing with the date of this acknowledgement, the annual rental compensation will be reduced to _____, subject to Subsection 39(2) and Section 42 of The Surface Rights Act.

I/We understand that _____, or any successor, remains liable for full rehabilitation of the site in accordance with the provisions of The Oil and Gas Act, and I/we hereby grant _____, or any successor, right-of-entry to the site for the purposes of rehabilitation. In addition, I/we hereby grant right of access for the purpose of inspection of crop growth to Petroleum Inspectors employed by the Petroleum Branch.

This acknowledgement does not affect any future claims for crop loss or damage.

Dated this _____ day of _____, 20__.

Witness Landowner

APPENDIX "B"

APPLICATION FOR CERTIFICATE OF ABANDONMENT

In compliance with The Oil and gas Act and the drilling and Production Regulation, application is hereby made for a Certificate of Abandonment for:

Licence No:

Permit No:

_____ (well or battery name and location)

Surface Owner: _____ (name and address)

Details of Restoration and Rehabilitation Program Completed:
(Note: If roadway or other surface improvements to be left in, owner's consent in writing must accompany application)

Check "Yes" or "No"

A release signed by the surface owner indicating the owner is satisfied with the restoration and rehabilitation of the site is attached. Yes
No

An abandonment order of The Surface Rights Board that has been fully complied with is attached. Yes
No

_____ (company name)

_____ (address)

(Date) _____ (Company Representative's Signature)

For assistance in completing this form, contact the Virden Inspection Office at (204) 748-4260 or the Waskada Inspection Office at (204) 673-2472

For Department Use Only

APPENDIX "C"

ACKNOWLEDGEMENT OF REHABILITATION RELEASE

I/WE, _____, registered owner(s), (hereafter called the Releasor(s), of _____, do hereby remise, release and forever discharge _____ (hereafter called the Releasee) its servants, agents, employees, contractors, successors and assigns from all causes of action, debts, contracts, claims and demands whatsoever which against the said Releasee, I/we ever had or now have by reason of any cause, matter or thing whatsoever existing up to the present time by reason of the said Releasee carrying on drilling and working operations for the recovery of petroleum and natural gas upon the following lands: L.S.D. _____ W.P.M.

PROVIDED, HOWEVER, that I/we do not hereby release or discharge the Releasee, from any future claims which may arise for damage for the said lands or adjacent lands, which damage results from the former drilling and working operations of the Releasee within and upon the said lands.

AND I/WE HEREBY ACKNOWLEDGE that the said Releasee has cleaned up and restored its wellsite situated upon the above-mentioned lands, to my/our satisfaction.

THIS RELEASE is binding upon the heirs, executors, administrators, successors, officers, directors and assignees, as the case may be, of the Releasor and the Releasee.

AND I/WE FURTHER AGREE to the surrender and termination of all surface rights between _____ and the Releasee.

Dated this _____ day of _____, 20____

Witness

Releasor

Witness

Releasor

GLOSSARY

This is a reference guide for definitions. Readers should refer to The Surface Rights Act and/or The Oil and Gas Act for precise definitions.

Agreement

An agreement between an Operator, Owner or Occupant related to a lease or to surface rights, (but does not include a lease).

Battery Site

Portion of the surface of land (other than a well site or roadway) required for access and to accommodate: separators, treaters, dehydrators, storage tanks, surface tanks, surface reservoirs, pumps and other equipment, (including above-ground pressure maintenance facilities), and necessary to measure, separate or store (prior to shipping to market or disposal); or necessary to produce the fluids, minerals and water from wells.

Lease

A lease of surface rights (includes a mineral lease where surface rights are included in the mineral lease).

Mineral

Oil and natural gas, or either of them, and any other substance that the Lieutenant Governor in Council may by order declare to be a mineral.

Natural Gas

A mixture containing methane, other paraffinic hydrocarbons, nitrogen, carbon dioxide, hydrogen sulphide and minor impurities, or some of them, which is recovered or recoverable at a well from an underground reservoir, and which is gaseous at the conditions under which its volume is measured or estimated, and includes all fluid hydrocarbons that are not oil.

Occupant

For a parcel of land, a 'person' other than an owner who is in actual and lawful possession of the land.

Mineral Rights

For a parcel of land, rights to search for and produce oil and gas found in or under the land.

Operator

A person with the right to conduct any operation for the purpose of exploring for a mineral, or for drilling a well for the production of a mineral, and includes any person who has the control and management of a well.

Owner

- a) The person or the executor, administrator, successor or other legal or authorized representative of that person, other than a mineral owner, (unless the mineral owner is also the owner of the surface of the land), in whose name a certificate of title has been issued under
- b) The Real Property Act or an instrument is registered under The Registry Act or In the case of Crown land, the department of the government of the province or other body administering the land.
- c) The successor in interest or assignee under a bona fide agreement for sale or otherwise from an owner as defined in clause (a) or (b).

Power Line

An electric power line or that portion thereof that is constructed or is to be constructed for the purpose of any operations for or incidental to the drilling for, producing or recovering a mineral.

Right of Entry

The right to enter, use, occupy or take the surface of any land. Right of entry is granted by lease negotiated between the owner and occupant and the operator or by an order of The Surface Rights Board granting an operator the use of a certain area of the land surface for the purpose of extracting minerals.

Roadway

That portion of the surface of land required for access to a site.

Service Line

A pipe or conduit of pipes or ancillary equipment, including a flow line, used for the transportation, gathering or conduct of a mineral or water, or other fluid in connection with the producing operations of an operator.

Surface Rights

- a) The land or any portion thereof or any interest therein, except oil and gas rights within the meaning of The Oil and Gas Act, or a right of entry thereon, required by an operator for the purpose of exploring for, developing, producing or transporting a mineral, or
- b) The right to establish, install or operate any machinery equipment or apparatus for use for or in connection with the drilling, completion or producing operations of a well on a well site, or
- c) The right or obligation to condition, maintain, or restore the surface of land where the land has been or is being held incidental to, or in connection with the exploring for, developing or producing a mineral, or the land has been held, or is being held incidental to or in connection with: the laying, constructing, operating, maintaining or servicing of a battery site, service line, roadway or power line.

The Surface Rights Board

Is referred to as “the Board”, and is the body appointed pursuant to Section 6(1) of The Surface Rights Act to ensure the rights of owners or occupants and operators are maintained, to ensure compliance with The Surface Rights Act, and to mediate and settle disputes arising between operators, owners or occupants.

Well Site

That portion of the surface of land required for the conduct of exploring, developing, or producing operations of a well.