



Province of Alberta

SURFACE RIGHTS ACT

Revised Statutes of Alberta 2000
Chapter S-24

Current as of December 9, 2009

Office Consolidation

© Published by Alberta Queen's Printer

Queen's Printer Bookstore
Main Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Copyright of the Alberta Statutes, Alberta Regulations and the Alberta Gazette, whether in print or electronic format, belongs to the Government of Alberta. No person may use, reproduce, store or transmit copies for any purpose other than personal use, study or research, use in legal proceedings or for providing legal advice, without the consent of the Alberta Queen's Printer.

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2009 cA-31.5 s73 repeals and substitutes s3(7).

2009 c53 s173 amends ss14(3), 26.

Regulations

The following is a list of the regulations made under the *Surface Rights Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	<i>Amendments</i>
Surface Rights Act		
Surface Rights Act General.....	195/2007 254/2007
Surface Rights Act Rules of Procedure and Practice.....	196/2007	

SURFACE RIGHTS ACT

Chapter S-24

Table of Contents

1	Definitions
2	Application of Act
3	Surface Rights Board
6	Annual report
8	Powers and duties of Board
10	Member absent
11	Signing of orders, etc.
12	Right of entry
13	Right of entry for conservation scheme
13.1	Right of entry for reclamation under EPEA
14	Surveys
15	Application for right of entry order
16	Rights conferred by order
17	Entry on Crown land before survey
18	Joint use of land
19	Entry fee
20	Prepayment of compensation
21	Exemption
22	Payment to Board
23	Compensation
24	Inspection
25	Determining compensation
26	Appeal of compensation order
27	Review of rate of compensation
28	Termination of right of entry order
29	Rehearings
30	Settlement of disputes
31	Copies of orders
32	Certified copy as evidence
33	Filing of order in Court

- 34 Registration of order in land titles office
- 35 Order need not show jurisdiction
- 36 Compensation
- 37 Board exempt from fees
- 38 Unauthorized land use
- 39 Costs
- 40 Service of documents
- 41 Regulations

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “Board” means the Surface Rights Board;
- (b) “compensation order” means an order providing for the payment of compensation and made
 - (i) under this Act or a former Act, or
 - (ii) by the Board of Public Utility Commissioners or a district court judge under regulations established pursuant to *The Provincial Lands Act*, RSA 1942 c62, prescribing the conditions under which right of entry may be obtained on land;
- (c) “Crown” means the Crown in right of Alberta;
- (d) “former Act” means *The Right of Entry Arbitration Act*, SA 1947 c24, *The Right of Entry Arbitration Act, 1952*, SA 1952 c79, *The Right of Entry Arbitration Act*, RSA 1955 c290 and RSA 1970 c322, the *Surface Rights Act*, SA 1972 c91 and RSA 1980 cS-27, *The Water, Gas, Electric and Telephone Companies Act*, RSA 1942 c260 and RSA 1955 c361, *The Expropriation Procedure Act*, SA 1961 c30 and RSA 1970 c130, and *The Expropriation Act*, SA 1974 c27;
- (e) “minerals” means all naturally occurring minerals and, without restricting the generality of the foregoing, includes gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, oil, asphalt, bituminous sands, oil sands, natural gas, coal, anhydrite, barite, bauxite, bentonite, diatomite, dolomite, epsomite, granite, gypsum, limestone, marble, mica, mirabilite, potash, quartz rock,

rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl, but does not include

- (i) sand and gravel or clay and marl that belong to the owner of the surface of land under the *Law of Property Act*, or
 - (ii) peat on the surface of land and peat obtained by stripping off the overburden, excavating from the surface, or otherwise recovered by surface operations;
- (f) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (g) “occupant” means
- (i) a person, other than the owner, who is in actual possession of land,
 - (ii) a person who is shown on a certificate of title under the *Land Titles Act* as having an interest in land,
 - (iii) an operator granted right of entry in respect of land pursuant to a right of entry order, or
 - (iv) in the case of Crown land, a person shown on the records of the department or other body administering the land as having an interest in the land;
- (h) “operator” means
- (i) the person or unincorporated group of persons having the right to a mineral or the right to work it, or the agent of such a person or group of persons, or
 - (ii) with reference to a pipeline, power transmission line or telephone line, the person empowered to acquire an interest in land for the purpose of the pipeline, power transmission line or telephone line under the *Pipeline Act*, the *Hydro and Electric Energy Act* or the *Water, Gas and Electric Companies Act*, as the case may be;
- (i) “owner” means
- (i) the person in whose name a certificate of title to land is issued under the *Land Titles Act*, or

- (ii) if no certificate of title to the land is issued, the Crown or other body administering the land;
- (j) “pipeline” means
 - (i) a pipeline as defined in the *Pipeline Act* and to which that Act applies, or
 - (ii) mains, pipes or other devices
 - (A) that are required for conveying, transmitting, supplying or distributing gas or water or sewage services, and
 - (B) to which sections 30 to 32 of the *Water, Gas and Electric Companies Act* apply;
- (k) “power transmission line” means
 - (i) a transmission line as defined in the *Hydro and Electric Energy Act* and to which that Act applies, or
 - (ii) wires, conductors, poles or other devices
 - (A) that are required for conveying, transmitting, supplying or distributing electricity, and
 - (B) to which sections 30 to 32 of the *Water, Gas and Electric Companies Act* apply;
- (l) “respondent” means an owner or occupant named as a respondent in an application to or in an order of the Board;
- (m) “right of entry” means the right of entry, user and taking of the surface of land;
- (n) “right of entry order” means an order granting right of entry and made
 - (i) under this Act or a former Act, or
 - (ii) by the Board of Public Utility Commissioners or a district court judge under regulations established pursuant to *The Provincial Lands Act*, RSA 1942 c62, prescribing the conditions under which right of entry may be obtained on land;
- (o) “surface lease” means a lease or other instrument under which the surface of land is being held for any purpose for which a right of entry order may be made under this Act and that provides for payment of compensation;

- (p) “telephone line” means wires, conductors, poles or other devices
- (i) that are required for conveying, transmitting, supplying or distributing telephone services, and
 - (ii) to which sections 30 to 32 of the *Water, Gas and Electric Companies Act* apply;
- (q) “vacant Crown land” means the surface of land owned by the Crown and in which no other person has any interest.
1983 cS-27.1 s1;1987 c2 s8;1988 c31 s21;1990 c29 s27

Application of Act

2(1) This Act applies to all land in Alberta except land within the geographic area of a Metis settlement.

(2) If there is a conflict between this Act and anything contained in any grant, conveyance, lease, licence or other instrument, whether made before or after the coming into force of this Act, with respect to right of entry in respect of the surface of any land incidental to any operations concerning mining, drilling, pipelines, power transmission lines or telephone lines, this Act prevails.

1983 cS-27.1 s2;1990 cM-14.3 s288

Surface Rights Board

3(1) The Surface Rights Board established under the *Surface Rights Act*, RSA 1980 cS-27, is continued.

(2) The Board shall consist of the members appointed by the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council shall designate one member as chair and may designate one or more of the other members as vice-chair.

(4) The Lieutenant Governor in Council may fix the remuneration that is payable to the chair and the Board members.

(5) The chair may

- (a) select a member or convene a panel of members to deal with a particular matter or class or group of matters, and
- (b) designate a member to chair a panel convened under clause (a).

(6) The member selected or panel convened pursuant to subsection (5) may perform the functions of the Board in respect of the particular matter or class or group of matters for which the member

was selected or the panel was convened and when performing any of those functions has all the powers and jurisdiction of the Board.

RSA 2000 cS-24 s3;2009 c31 s2

4 and 5 Repealed 2009 c31 s3.

Annual report

6 The Board shall submit to the Minister in the month of January in each year a report

- (a) showing briefly all applications dealt with during the previous year and how they were disposed of, and
- (b) respecting any other matters the Minister requests.

1983 cS-27.1 s6

7 Repealed 2009 c31 s4.

Powers and duties of Board

8(1) The Board shall keep records of its proceedings.

(2) The Board may make rules

- (a) governing its business meetings,
- (b) governing the procedure and practice for its proceedings,
- (c) respecting the selection of a member and the convening of a panel for the purposes of section 3(5),
- (d) respecting the service of applications, notices, orders or other documents,
- (e) providing for the resolution of matters before the Board through settlement meetings, mediation or other alternative dispute resolution processes, including rules governing the practice and procedure for those processes,
- (f) respecting the examination of real or personal property under section 24, and
- (g) respecting any other matter that the Board considers advisable.

(3) In conducting proceedings, the Board

- (a) is not bound by the rules of law concerning evidence;

- (b) may enter on and inspect, or authorize any person to enter on and inspect, any land, building, works or other property;
- (c) has the rights, powers and immunities conferred on a commissioner under the *Public Inquiries Act*.

(3.1) In conducting proceedings, the Board is not bound to hold oral hearings but may instead, subject to the principles of natural justice, make decisions on the basis of written submissions.

(3.2) The Board may adopt as its decision in proceedings a settlement reached by the parties to the proceedings through an alternative dispute resolution process provided for in rules made under subsection (2)(e).

(4) The Board has any other powers and duties assigned to it by the Lieutenant Governor in Council.

RSA 2000 cS-24 s8;2009 c31 s5

9 Repealed 2009 c31 s6.

Member absent

10 Where proceedings are conducted by the Board or a panel of the Board and a member or members of the Board or panel do not attend for any reason on any day or part of a day, the other members of the Board or panel may, if they constitute a quorum, continue the proceedings as fully and effectively as though the member or members were present.

RSA 2000 cS-24 s10;2009 c31 s7

Signing of orders, etc.

11(1) Any order, direction or other document issued or made by the Board may be signed on behalf of the Board by the chair or any other member of the Board, whether or not the person so signing participated in any proceedings giving rise to the order, direction or document.

(2) An order, direction or other document purporting to be signed by the chair or a member of the Board on behalf of the Board shall be admitted in evidence as proof, in the absence of evidence to the contrary,

- (a) that the order, direction or document is the act of the Board, and
- (b) that the person signing it was authorized to do so,

without proof of the appointment or signature of the person so signing as chair or a member of the Board, as the case may be.

1983 cS-27.1 s11

Right of entry

12(1) No operator has a right of entry in respect of the surface of any land

- (a) for the removal of minerals contained in or underlying the surface of that land or for or incidental to any mining or drilling operations,
- (b) for the construction of tanks, stations and structures for or in connection with a mining or drilling operation, or the production of minerals, or for or incidental to the operation of those tanks, stations and structures,
- (c) for or incidental to the construction, operation or removal of a pipeline,
- (d) for or incidental to the construction, operation or removal of a power transmission line, or
- (e) for or incidental to the construction, operation or removal of a telephone line,

until the operator has obtained the consent of the owner and the occupant of the surface of the land or has become entitled to right of entry by reason of an order of the Board pursuant to this Act.

(2) Notwithstanding anything contained in a grant, conveyance, lease, licence or other instrument, whether made before or after the commencement of this Act, and pertaining to the acquisition of an interest in a mineral, an operator does not obtain the right of entry in respect of the surface of any land unless the grant, conveyance, lease, licence or other instrument provides a specific separate sum in consideration for the right of entry of the surface required for the operator's operations, but this subsection does not apply in a case where the operator, prior to July 1, 1952, has for any of the purposes referred to in subsection (1) exercised the right of entry in respect of the surface of land in accordance with the provisions of a grant, conveyance, lease, licence or other instrument.

(3) The Board may make an order granting right of entry in respect of the surface of

- (a) the land in which the operator or the operator's principal has the right to a mineral or the right to work a mineral, and

- (b) any other land that is necessary
 - (i) for a road to connect the operator's mining or drilling operations located on adjacent land and to permit the operations to be operated jointly, and for the tanks, stations and structures to be used in the operations,
 - (ii) to give the operator access to the operator's mining or drilling operations from a public roadway or other public way, and egress from the operations to the public roadway or other public way, or
 - (iii) in the case of oil sands operations,
 - (A) for a road or roads to give the operator additional access to and egress from the operations,
 - (B) for the disposal of overburden incidental to the operations, or
 - (C) for the disposal of tailings and other materials resulting from the operations,

irrespective of whether the owner or occupant of the other land is the owner or occupant of the surface of the land in which the operator or the operator's principal has the right to the mineral or the right to work the mineral.

(4) When

- (a) a licence has been obtained to drill a well for the removal of a mineral contained in or underlying the surface of a tract of land, and
- (b) the orifice of the well will be located outside the tract,

the Board may make an order granting right of entry in respect of the surface of land outside the tract in the same manner and to the same extent as if the land were within the tract, irrespective of whether the owner or occupant of the surface of the land outside the tract is the owner or occupant of the surface of land within the tract.

1983 cS-27.1 s12;1987 c2 s8

Right of entry for conservation scheme

13(1) When the surface of any land is required for the drilling or operating of a well, or for the necessary installations at or pipelines to or from a well, the Board may make an order granting right of entry in respect of the surface of the land where the well is to be used for the purpose of

- (a) repressuring, recycling or pressure maintenance in a petroleum or natural gas field, pool or area,
- (b) the storage or disposal of
 - (i) natural gas,
 - (ii) processed or treated natural gas, or
 - (iii) products of petroleum or natural gas,
- (c) the storage and disposal of water or any other substance produced from or to be injected in an underground formation, or
- (d) obtaining water for any operation mentioned in clause (a), (b) or (c).

(2) When right of entry has been acquired by an operator under a right of entry order for any purpose mentioned in subsection (1), the operator has right of entry in respect of the surface of the land for any of the purposes mentioned in section 12(1).

(3) When right of entry has been acquired by an operator under a right of entry order for any purpose mentioned in section 12(1), the operator has right of entry in respect of the surface of the land for any of the purposes mentioned in subsection (1) of this section.

(4) The provisions of this Act governing right of entry in respect of the surface of land for any purpose mentioned in section 12(1) apply insofar as they are applicable to an application or an order for right of entry in respect of the surface of land for any of the purposes mentioned in subsection (1) of this section.

1983 cS-27.1 s13

Right of entry for reclamation under EPEA

13.1(1) Where a person who is an operator within the meaning of section 134(b) of the *Environmental Protection and Enhancement Act*

- (a) has received notice under section 139(2) of that Act that the reclamation certificate issued under Part 6 of that Act has been cancelled,
- (b) has a duty under section 137 of that Act to effect reclamation, within the meaning of that Act, of land that has been affected by the working of a mineral or an activity related to a pipeline, and

- (c) does not have the consent of the owner or occupant of the surface of the land or any other legal authorization to access the surface of the land for that purpose,

the Board may make an order granting right of entry to that person in respect of the surface of the land for the purpose of enabling that reclamation.

(2) The Board may make an order under subsection (1) granting right of entry to a successor of a person described in that subsection.

(3) A person granted an order under this section has all the rights and obligations under this Act of an operator.

2005 c47 s2

Surveys

14(1) Notwithstanding section 12(1) and (2) but subject to subsection (2) of this section, an operator proposing to undertake any of the operations mentioned in this Act, or any person employed or engaged by the operator, may enter on any Crown or other land for the purpose of

- (a) making surveys or examinations on the surface of the land for fixing the site of the operation, and
- (b) setting out and ascertaining those portions of the surface of the land that are incidental to or necessary for the operation.

(2) An operator or any person employed or engaged by the operator who desires to enter on any land other than vacant Crown land for any of the purposes mentioned in subsection (1) shall make a reasonable attempt to give notice of it to the person in possession of the land before entering on it and the operator is liable to the owner or the occupant of the land, as the case may be, for any damage caused by the operator or that other person.

(3) The Court of Queen's Bench may, on application by the operator by way of originating notice, make any order that may be necessary to enable the operator or any person employed or engaged by the operator to exercise the operator's or other person's rights under subsection (1).

1983 cS-27.1 s14

Application for right of entry order

15(1) When the surface of any land required by an operator for any of the purposes mentioned in this Act is owned by the Crown or any other person, and the operator cannot acquire the consent of

the owner and the occupant as required by section 12, the operator may apply to the Board for a right of entry order in respect of the surface of the land that may be necessary for the performance of the operator's operations.

- (2)** An application for a right of entry order must be in the prescribed form and be accompanied with
- (a) a copy of the most recent written offer made by the operator to the respondent and evidence satisfactory to the Board that the offer has been refused, and
 - (b) any other information required by the regulations.
- (3)** Where the Board receives an application and the operations in respect of which the application is made require a licence, permit or other approval from the Alberta Utilities Commission or the Energy Resources Conservation Board, the Surface Rights Board may request the Alberta Utilities Commission or the Energy Resources Conservation Board to provide it with a copy of the licence, permit or other approval together with any other information in the possession of the Alberta Utilities Commission or the Energy Resources Conservation Board that is relevant to the right of entry, and the Alberta Utilities Commission or the Energy Resources Conservation Board, as the case may be, shall forthwith comply with the request.
- (4)** On receipt of an application under subsection (1), the Surface Rights Board may, if it considers it appropriate to do so, make a right of entry order
- (a) on the operator filing with the Board a letter of consent in the prescribed form signed by the respondents, or
 - (b) not less than 14 days after the date of service by or on behalf of the Board on the respondents of
 - (i) a notice in the prescribed form, and
 - (ii) a copy of the application.
- (5)** When the Board receives an objection after the serving of the notice referred to in subsection (4)(b)(i), the Board may hold a hearing with respect to the application and objection at a time and place that the Board considers advisable.
- (6)** Where the Board makes a right of entry order under this section, it

- (a) shall describe the portion of the surface of the land that is necessary for the performance of the operator's operations, and
- (b) may make the order subject to any conditions it considers appropriate,

but where the activity the operator proposes to engage in is the subject of a licence, permit or other approval granted by the Alberta Utilities Commission or the Energy Resources Conservation Board, and a copy of the licence, permit or other approval has been provided to the Surface Rights Board pursuant to subsection (3), the Surface Rights Board shall ensure that the right of entry order is not inconsistent with the licence, permit or other approval.

RSA 2000 cS-24 s15;2007 cA-37.2 s82(29)

Rights conferred by order

16(1) A right of entry order vests in the operator,

- (a) unless otherwise provided in the order, the exclusive right, title and interest in the surface of the land in respect of which the order is granted, other than
 - (i) the right to a certificate of title issued pursuant to the *Land Titles Act*, and
 - (ii) the right to carry away from the land any sand, gravel, clay or marl or any other substance forming part of the surface of the land,

and

- (b) to the extent necessary for the operator's operations, the right to excavate or otherwise disturb any minerals within, on or under the land without permission from or compensation to the Crown or any other person with respect to those minerals.

(2) When an operator in the operator's application represents that subsidence of the surface of the land may result from the mining of coal, the order of the Board may grant the right to disturb or interfere with the surface of the land irrespective of whether the operator will enter on the surface in conducting the operator's operations.

1983 cS-27.1 s16

Entry on Crown land before survey

17(1) When the right of entry required by an operator relates to vacant Crown land or land held of the Crown under a disposition

that does not contemplate the issue of a certificate of title, the application for a right of entry order may be accompanied with a plan or map satisfactory to the Board showing

- (a) the proposed location of the land in which the right of entry is required with its approximate dimensions and coloured or outlined in red, and
- (b) the quarter sections, or what would be the quarter sections if the land were surveyed under the *Surveys Act*, in which the land is situated.

(2) The Board may make an order granting the operator right of entry in respect of so much of the surface of any quarter section shown on the plan or map accompanying the application as may be necessary for the operator's operations, and the order may

- (a) stipulate that a further plan satisfactory to the Board or a plan of survey of the surface of the land, or any part of it, in which right of entry has been acquired by the operator, be submitted to the Board within a specified time, and
- (b) prescribe other terms and conditions.

1983 cS-27.1 s17

Joint use of land

18(1) Notwithstanding anything in this Act, an operator who has been granted a right of entry order under section 17 may enter into an agreement with any other person with respect to the use of the surface of the land referred to in the order for so long as the order is in effect.

(2) When the other person referred to in subsection (1) is not himself or herself an operator and is unable to reach an agreement pursuant to subsection (1) with the operator under the right of entry order, that person may apply to the Board to have the right of entry order amended for the purpose of conferring rights on the applicant with respect to the use by the applicant of all or part of the surface of the land to which the right of entry order relates.

(3) The Board may grant an application under subsection (2) only if it is satisfied that

- (a) the land can be used by the applicant and the operator without undue interference with the operator's operations, and
- (b) having regard to all the circumstances, it is fair and proper to grant the application.

(4) When the Board grants an application under this section, it shall

- (a) amend the right of entry order for the purpose of conferring on the applicant the rights in respect of the use of the land that it considers appropriate in the circumstances, and
- (b) make an order determining the compensation payable by the applicant to the operator for those rights.

(5) When an application is granted under this section, the applicant shall not be made a respondent under the order.

1983 cS-27.1 s18

Entry fee

19(1) An operator who proposes to exercise a right of entry on land, other than land owned by the Crown, for any of the purposes mentioned in section 12(1) or 13(1) shall pay

- (a) to the lessor of the land, where the right of entry is to be exercised pursuant to a surface lease, or
- (b) to the respondent or to the Board under section 22, where the right of entry is to be exercised pursuant to a right of entry order

an entry fee as provided in subsection (2).

(2) The entry fee referred to in subsection (1) is an amount equal to the lesser of

- (a) \$5000, or
- (b) \$500 per acre granted to the operator, or a proportionate amount, not to be less than \$250, where the land granted to the operator is less than one acre,

calculated in respect of each titled unit of the respondent that contains land that is granted to the operator.

(3) Subsections (1) and (2) do not apply where

- (a) the surface lease was entered into, or
- (b) the right of entry order was made

before July 4, 1983.

(4) Subject to section 14, the operator shall not exercise the operator's right of entry until the money required by this section to be paid has been paid.

(5) An entry fee payable pursuant to this section is in addition to any compensation payable in respect of the right of entry.

1983 cS-27.1 s19

Prepayment of compensation

20(1) The operator shall pay to the respondent or to the Board under section 22, as part payment of the compensation payable to the respondent, a sum of money equal to 80% of the compensation offered in the written offer filed with the application in respect of the first compensation year of the term of the right of entry order and, subject to section 14, the operator shall not exercise the operator's right of entry until the money has been paid.

(2) Subsection (1) does not apply where the right of entry order was made before July 4, 1983.

(3) A payment made under subsection (1) must be based on the factors set out in section 25(1) to the extent that those factors are within the knowledge of or reasonably available to the operator.

1983 cS-27.1 s20

Exemption

21 Sections 19 and 20 do not apply to an operator that is

- (a) a distributor as defined in the *Gas Distribution Act*,
- (b) an association as defined in the *Rural Electrification Loan Act* that constructs or operates works as defined in that Act, or
- (c) an operator of a local distribution system and is exempted under the regulations.

1983 cS-27.1 s21;1994 c31 s10;1998 c26 s13

Payment to Board

22(1) Where the operator is unable to agree with the respondents

- (a) as to which of the respondents is to receive all or part of the entry fee referred to in section 19(1), or the part payment of compensation referred to in section 20(1), or
- (b) as to the percentage of the entry fee or part payment that each respondent is to receive,

the operator shall pay the money to the Board.

- (2) Where money is paid to the Board under subsection (1),
- (a) the Board shall, in the case of a part payment of compensation, deal with it in accordance with section 25(6), and
 - (b) in the case of an entry fee, the Board shall, at the time it makes a compensation order, determine entitlement to the entry fee and pay it to the person entitled to it.
- (3) A respondent may appeal a determination under subsection (2)(b) as to the amount of the entry fee payable to any of the respondents or the person to whom the entry fee is payable, or both, in the same way as if the determination were a compensation order under section 23.

1983 cS-27.1 s22

Compensation

23 On making a right of entry order, the Board shall, in accordance with its rules, hold proceedings to determine the amount of compensation payable and the persons to whom it is payable.

RSA 2000 cS-24 s23;2009 c31 s8

Inspection

24 The Board may, in connection with proceedings to determine the amount of compensation, of its own volition or on the written request of any of the parties to the proceedings, conduct an examination of any real or personal property in respect of which a compensation order may be made in order to determine the amount of compensation payable.

RSA 2000 cS-24 s24;2009 c31 s9

Determining compensation

25(1) The Board, in determining the amount of compensation payable, may consider

- (a) the amount the land granted to the operator might be expected to realize if sold in the open market by a willing seller to a willing buyer on the date the right of entry order was made,
- (b) the per acre value, on the date the right of entry order was made, of the titled unit in which the land granted to the operator is located, based on the highest approved use of the land,

- (c) the loss of use by the owner or occupant of the area granted to the operator,
- (d) the adverse effect of the area granted to the operator on the remaining land of the owner or occupant and the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator,
- (e) the damage to the land in the area granted to the operator that might be caused by the operations of the operator, and
- (f) any other factors that the Board considers proper under the circumstances.

(2) Where the right of entry order to which the compensation relates is made on or after July 4, 1983, the Board may, in determining the compensation payable, ignore the residual and reversionary value to the owner or occupant of the land granted to the operator.

(3) Where an owner or purchaser of land is required to relocate the owner's or purchaser's residence as a result of the making of a right of entry order, the Board shall, on application and after determining the amount of compensation payable, determine the additional amount that, in the opinion of the Board, is necessary in order to enable the owner or purchaser to relocate the owner's or purchaser's residence in accommodation that is at least equivalent to the accommodation on the land in respect of which the right of entry order is made.

(4) In fixing the additional amount of compensation under subsection (3), the Board shall include the increase in cost between the date on which the right of entry order was made and the time when the new accommodation can reasonably be obtained.

(5) In making a compensation order, the Board may also determine the amount of compensation payable by the operator

- (a) for damage caused by or arising out of the operations of the operator to any land of the owner or occupant other than the area granted to the operator, if those operations were incidental to the operations of that operator on the area granted to the operator under the right of entry order,
- (b) for the loss of or damage to livestock or other personal property of the owner or occupant caused by or arising out of the operations of the operator, and
- (c) for time spent or expense incurred by the owner or occupant in recovering any of the owner's or occupant's

livestock that have strayed due to an act or omission of the operator,

and shall determine the person to whom the compensation is payable.

(6) When the Board makes a compensation order, it shall offset the amount paid as part payment of compensation to the respondent under section 20 or to the Board under section 22 against the total compensation it determines to be payable to the respondent, and

- (a) in a case where the money was paid to the respondent under section 20,
 - (i) if the amount the Board determines to be payable exceeds the amount paid, it shall order the operator to pay the difference to the respondent, and
 - (ii) if the amount paid exceeds the amount the Board determines to be payable, it shall order the respondent to pay the difference to the operator, and
- (b) in a case where the money was paid to the Board under section 22,
 - (i) if the amount the Board determines to be payable exceeds the amount paid, it shall pay to the respondent the money paid to the Board and order the operator to pay the difference to the respondent, and
 - (ii) if the amount paid exceeds the amount the Board determines to be payable, it shall pay to the respondent the money the respondent is entitled to and refund the difference to the operator.

(7) In determining the amount of compensation payable, the Board may fix certain amounts payable in the manner and over the periods the Board decides.

(8) Notwithstanding any other Act, if no thoroughfare exists on a road allowance prescribed under the *Surveys Act* and no disposition of the road allowance has been made to any person, an operator has the right to use the road allowance for the purpose of gaining access to the operator's drilling or mining operation without payment of compensation to the Crown or to the municipal corporation having the direction, control and management of the road allowance.

(9) The Board may order the operator to pay interest on any or all of the compensation payable on and from the date the right of entry

order was made, at the Bank of Canada rate on the date the right of entry order was made.

1983 cS-27.1 s25

Appeal of compensation order

26(1) The operator or any respondent named in a compensation order may appeal a compensation order made under this Act to the Court of Queen's Bench as to the amount of compensation payable or the person to whom the compensation is payable or both.

(2) In this section, "compensation order" includes

- (a) an order of the Board to amend a compensation order in respect of the amount of compensation payable or the person to whom it is payable, and
- (b) an order of the Board for the replacement of a compensation order, if the new compensation order results in a change as to the amount of compensation payable or the person to whom the compensation is payable.

(3) The party appealing shall

- (a) within 30 days after the date on which that party receives a copy of the compensation order, file a notice of appeal in the office of the clerk of the Court in the judicial district in which the land is situated, and
- (b) not later than 10 days after the filing of the notice of appeal, serve the Board and the other parties to the compensation order appealed from or their respective solicitors with a copy of the notice of appeal with particulars of the filing endorsed on it.

(4) The Board, on being served with a copy of the notice of appeal, shall forthwith transmit to the clerk of the Court a certified copy of

- (a) the application for the right of entry order,
- (b) the right of entry order,
- (c) the compensation order appealed from, and
- (d) the reasons given by the Board for its decision in making the compensation order.

(5) The clerk of the Court, on receiving the certified copies of the documents referred to in subsection (4), shall

- (a) set down the appeal for hearing at the next sittings of the Court, and

- (b) within 10 days after the appeal has been set down for hearing, notify the Board and the parties or their respective solicitors of the date of the hearing.
- (6)** An appeal to the Court shall be in the form of a new hearing.
- (7)** The Court
 - (a) has the power and jurisdiction of the Board in determining the amount of compensation payable and the person to whom the compensation is payable,
 - (b) shall determine the amount of compensation payable and the person to whom the compensation is payable,
 - (c) shall
 - (i) confirm the order of the Board, or
 - (ii) direct that the compensation order be varied in accordance with its judgment,
 - and
 - (d) shall make directions as to costs of the appeal in accordance with subsection (9).
- (8)** By leave of a judge of the Court of Appeal, any party may appeal from the judgment of the Court of Queen's Bench to the Court of Appeal and the rules and practice applicable to appeals to the Court of Appeal apply, except as to costs.
- (9)** The costs of an appeal under this section,
 - (a) when the appeal is by the operator, are payable by the operator on a solicitor and client basis regardless of the result of the appeal, unless the Court finds special circumstances to justify it to award costs on any other basis, or
 - (b) when the appeal is by the owner or occupant,
 - (i) if the appeal is successful, are payable by the operator on a solicitor and client basis, and
 - (ii) if the appeal is unsuccessful, are payable on a party and party basis to the party, if any, that the Court in its discretion may direct.
- (10)** A judgment of the Court of Queen's Bench or the Court of Appeal shall be served on the Board, and the Board without any

further proceedings shall vary its order in accordance with the judgment.

RSA 2000 cS-24 s26;2009 c31 s10

Review of rate of compensation

27(1) In this section,

- (a) “lessor” means a party to a surface lease who is entitled to receive compensation under that surface lease;
- (b) “operator” means an operator who is obligated to pay compensation under a surface lease to a lessor, or who is obligated to pay compensation under a compensation order to a respondent;
- (c) “parties” means,
 - (i) with respect to the review or fixing of a rate of compensation under a surface lease, the operator and the lessor, and
 - (ii) with respect to the review or fixing of a rate of compensation under a right of entry order, the operator and the respondent;
- (d) “rate of compensation” means the amount of compensation payable on an annual or other periodic basis under a surface lease or compensation order in respect of the matters referred to in section 25(1)(c) and (d).

(2) For the purposes of this section,

- (a) the term of a compensation order shall be computed from the date the original right of entry order to which it relates was made, and
- (b) the term of a surface lease shall be computed from the effective date of the lease.

(3) This section applies to compensation orders and surface leases

- (a) that provide for the payment of compensation on an annual or other periodic basis, or
- (b) that do not provide for the payment of compensation on an annual or other periodic basis but relate to major power transmission line structures as defined or designated in the regulations.

(4) An operator shall give a notice to the lessor or respondent, as the case may be,

- (a) on or within 30 days after the 4th anniversary of the date the term of the surface lease commenced or the right of entry order was made, as the case may be, where the term of the surface lease commenced or the right of entry order was made on or after July 1, 1983, or
 - (b) where the term of the surface lease commenced or the right of entry order was made before July 1, 1983, on or within 30 days after July 1, 1987.
- (5) A notice under subsection (4) shall state
- (a) that the operator wishes to have the rate of compensation reviewed,
 - (b) that the lessor or respondent, as the case may be, has a right to have the rate of compensation reviewed, or
 - (c) where no rate of compensation has been fixed, that the lessor or respondent, as the case may be, has a right to have a rate of annual compensation fixed,

in respect of the compensation years of the term subsequent to the year in which notice is given.

(6) If either party indicates pursuant to a notice under subsection (4) that that party wishes to have the rate of compensation reviewed or fixed, the parties shall enter into negotiations in good faith for this purpose.

(7) When the parties agree on a rate of compensation

- (a) under a surface lease, the parties shall amend the lease in accordance with their agreement or enter into a new lease, and
- (b) under a compensation order, the parties shall notify the Board in writing of the rate agreed on and the Board shall vary the compensation order accordingly.

(8) If, by the end of the compensation year in which the notice is given, the parties cannot agree on a rate of compensation, the party desiring to have the rate of compensation reviewed or fixed may make an application to the Board for proceedings to be held to determine the rate of compensation.

(9) An application pursuant to subsection (8) shall set out

- (a) the name and address of the operator,
- (b) the name and address of the lessor or respondent, as the case may be,

- (c) the rate of compensation under the surface lease or compensation order, and
- (d) the amount the applicant believes to be a reasonable and fair rate of compensation,

and the application shall be accompanied with a copy of the surface lease, if applicable, and any other documents or material the applicant considers to be relevant to the application.

(9.1) The Board may by notice in writing require an applicant to provide any additional information that the Board considers necessary for its proceedings by the time specified in the notice.

(10) Repealed 2009 c31 s11.

(11) The Board shall hold proceedings to determine the rate of compensation and, as soon as it is convenient afterwards, shall make an order fixing, confirming or varying the rate of compensation payable commencing on the anniversary date of the surface lease or compensation order, as the case may be, next following the date notice was given under subsection (4).

(12) An order under subsection (11) may be appealed as though it were a compensation order under section 23.

(13) With respect to the review or fixing of a rate of compensation under a surface lease, when the Board makes an order varying or fixing the rate of compensation, the order operates to amend the surface lease in respect of the rate of compensation under it, notwithstanding anything contained in the surface lease.

(14) The operator shall give a notice that complies with subsection (5) to the other party on or within 30 days after every 5th anniversary date after the date notice should have been given under subsection (4) for as long as the surface lease or right of entry order, as the case may be, is in effect and subsections (6) to (13) apply to that notice.

(15) If the operator fails to give a notice required by subsection (4) or (14), the lessor or respondent, as the case may be, may within a reasonable time after the failure, give a notice to the operator stating that the lessor or respondent wishes to have the rate of compensation reviewed or fixed and in that case

- (a) subsections (6) to (13) apply,
- (b) the Board may, notwithstanding subsection (11), make its order as to the rate of compensation effective from the same date it would have been effective if the operator had given notice as required by subsection (4) or (14), and

- (c) the Board may make any order regarding the payment of interest that it considers appropriate.

RSA 2000 cS-24 s27;2009 c31 s11

Termination of right of entry order

28(1) If, at any time after the expiration of 2 months from the date of a right of entry order, the operator has not commenced to use or has ceased to use the surface of the land or any part of it, the operator, the owner or the occupant may request the Board for an order terminating the right of entry order as to that land or part of it.

(2) Repealed 2009 c31 s12.

(3) The Board may make an order terminating the right of entry order as to the land or any part of it.

(4) The Board shall not terminate the right of entry order as to the land or any part of it until a reclamation certificate has been issued for that land in any case to which Part 6 of the *Environmental Protection and Enhancement Act* applies.

(5) When a reclamation certificate has been issued under Part 6 of the *Environmental Protection and Enhancement Act* as to the land or any part of it held under the right of entry order, the Board may, without any inquiry, make an order terminating the right of entry order entirely or as to the part of the land to which the reclamation certificate relates, as the case may be.

(6) Notwithstanding anything in subsection (1), (2) or (3), if it is indicated to the Board that the termination of a right of entry should be considered, the Board

(a) repealed 2009 c31 s12,

(b) may, if the circumstances in the opinion of the Board so warrant, make an order terminating the right of entry order as to the land or any part of it.

RSA 2000 cS-24 s28;2009 c31 s12

Rehearings

29 The Board may

(a) rehear an application before deciding it;

(b) review, rescind, amend or replace a decision or order made by it;

(c) repealed 2009 c31 s13;

- (d) notwithstanding anything in this Act, and with or without a hearing, amend a compensation order to show as a respondent a person who is neither an owner or occupant of the land concerned, and to make compensation payable to that person, when the Board is satisfied that that person is legally entitled to receive the compensation that would otherwise be payable to an owner or occupant.

RSA 2000 cS-24 s29;2009 c31 s13

Settlement of disputes

30(1) Subject to subsections (2) to (4), the Board may hold proceedings and make an order with respect to a dispute between the operator and an owner or occupant who are parties to a surface lease or the operator and an owner or occupant under a right of entry order as to the amount of compensation payable by the operator

- (a) for damage caused by or arising out of the operations of the operator to any land of the owner or occupant other than the area granted to the operator,
- (b) for any loss or damage to livestock or other personal property of the owner or occupant arising out of the operations of the operator whether or not the land on which the loss or damage occurred is subject to the surface lease or right of entry order, or
- (c) for time spent or expense incurred by an owner or occupant in recovering any of the owner's or occupant's livestock that have strayed due to an act or omission of the operator whether or not the act or omission occurred on the land that is subject to the surface lease or right of entry order.

(2) The Board has jurisdiction to determine a dispute under this section only if

- (a) the application is made in writing to the Board by a party to the dispute within 2 years from the last date on which damage is alleged to have occurred,
- (b) in the case of an application made before July 1, 2001, the amount of compensation claimed by the owner or occupant does not exceed \$5000, and
- (c) in the case of an application made on or after July 1, 2001, notwithstanding that the damage in respect of which the application is made may have arisen before, on or after July 1, 2001, the amount claimed by the owner or occupant does not exceed \$25 000.

(3) This section does not apply to a claim for compensation the amount of which may be determined by the Board under section 25.

(4) An order under this section may be appealed by the operator or the owner or occupant as though the order were a compensation order under section 23.

RSA 2000 cS-24 s30;2001 c12 s2;2009 c31 s14

Copies of orders

31 When the Board makes an order under this Act it shall, as soon as is convenient afterwards, give a copy of the order to the parties to the proceeding in which the order was made.

1983 cS-27.1 s34

Certified copy as evidence

32 A copy of an order of the Board, certified as a true copy by a member of the Board, an employee of the Board authorized to perform that function or the Board's solicitor, shall be admitted in evidence as proof, in the absence of evidence to the contrary, of the order by the Board, without any proof of the appointment or authority of the person so certifying or the authenticity of that person's signature or any other proof.

RSA 2000 cS-24 s32;2009 c31 s15

Filing of order in Court

33(1) A certified copy of a right of entry order may be filed in the office of the clerk of the Court of Queen's Bench.

(2) A right of entry order filed under subsection (1) may be enforced by a civil enforcement agency in the same manner as a writ of possession issued on the order of the Court of Queen's Bench.

(3) A certified copy of a compensation order may be filed in the office of the clerk of the Court of Queen's Bench.

(4) On payment of the fees prescribed by law, a compensation order filed under subsection (3) shall be entered as a judgment of the Court and may be enforced according to the ordinary procedure for enforcement of a judgment of the Court.

1983 cS-27.1 s36;1994 cC-10.5 s156

Registration of order in land titles office

34(1) An order of the Board or a certified copy of it may be filed with the Registrar of Land Titles and, on payment of the proper fee,

the Registrar shall register the order and endorse a memorandum of its registration on the certificate of title to the land affected.

(2) When a certificate of title to land is endorsed with a memorandum of the registration of an order of the Board and a notice is given to the Registrar of Land Titles by a member of the Board stating that no part of the land described in the certificate is, according to the records of the Board, affected by the order referred to in the memorandum, the notice may be registered by the Registrar without fee, and on registration the endorsement of the memorandum on the certificate of title shall be cancelled.

1983 cS-27.1 s37;1996 c32 s5(47)

Order need not show jurisdiction

35 An order of the Board need not show on its face that any proceedings were taken or notice given or that any circumstances existed necessary to give the Board jurisdiction to make the order.

1983 cS-27.1 s38

Compensation

36(1) In this section, “operator” means any person who, at the time of non-payment under a surface lease, right of entry order or compensation order, became liable to pay the money in question because that person

- (a) was an approval or registration holder who carried on an activity on or in respect of specified land pursuant to an approval or registration,
- (b) carried on an activity on or in respect of specified land other than pursuant to an approval or registration,
- (c) was the holder of a licence, approval or permit issued by the Energy Resources Conservation Board for purposes related to the carrying on of an activity on or in respect of specified land,
- (d) was a working interest participant in a well or other energy development on, in or under specified land, or
- (e) was the holder of a surface lease or right of entry order for purposes related to the carrying on of an activity on or in respect of specified land,

and includes a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in clause (a), (b), (c), (d) or (e) who was so liable and any person acting as principal or agent of any person referred to in or after clauses (a) to (e).

(2) Words and expressions used in subsection (1)(a) to (e) that are defined in the *Environmental Protection and Enhancement Act* shall be construed in accordance with that Act.

(3) Where any money payable by an operator under a compensation order or surface lease has not been paid and the due date for its payment has passed, the person entitled to receive the money may submit to the Board written evidence of the non-payment.

(4) On receiving the evidence, if the Board considers that it satisfactorily proves the non-payment, the Board shall send a written notice to the operator demanding full payment.

(5) If the notice under subsection (4) is not complied with, the Board may, by written order served on the operator,

- (a) suspend the operator's right to enter the site affected by the compensation order or lease, and
- (b) after giving the operator written notice of its intention to do so, terminate all the operator's rights under the right of entry order or lease relating to the site that is subject to the claim under this section,

without affecting any of the operator's obligations in regard to the site, including those under this section, or any other person's rights as against the operator, and on the basis that the lease or compensation order remains in place for purposes of shutting-in, suspension, abandonment and reclamation of the site.

(6) If the operator's rights have been terminated under subsection (5)(b) and full payment has still not been made, the Board may direct the Minister to pay out of the General Revenue Fund the amount of money to which the person referred to in subsection (3) is entitled.

(7) If the Minister has made a payment under subsection (6) and the person who received the payment provides evidence of a subsequent non-payment of compensation by the operator in relation to the same site, the Board may direct the Minister to make any further payments due under subsection (6), without any further application of subsections (3), (4) and (5), until the transfer or reclamation of the site is complete.

(8) The Board may direct the Minister not to make any further payments due under subsection (6) if it considers that the person entitled to receive them is refusing access for operations, abandonment or reclamation allowed by law.

(9) Where the Minister pays money under subsection (6) or (7),

- (a) the amount paid and any expenses incurred, whether by the Crown or by a private agency, in collecting or attempting to collect the money owing, constitute a debt owing by the operator to the Crown, and
- (b) a written certificate issued by or on behalf of the Minister certifying the payment of the amounts referred to in clause (a), including expenses, may be entered as a judgment of the Court of Queen's Bench for those amounts and enforced according to the ordinary procedure for enforcement of a judgment of that Court.

RSA 2000 cS-24 s36;2006 c23 s75

Board exempt from fees

37(1) Every Registrar of Land Titles and every department of the Government shall furnish without charge to the Board any certificates and certified copies of documents that the Board requests in writing.

(2) The Board or a person authorized in writing by the Board may search at any time in the public records of a land titles office without charge.

1983 cS-27.1 s40

Unauthorized land use

38 Notwithstanding the *Petty Trespass Act*, a person who, in the exercise of a right of entry, enters on, uses or takes any of the surface of land in contravention of this Act

- (a) is deemed to have committed a trespass, and
- (b) is liable in damages or otherwise for the trespass to any person who is the owner or the occupant entitled to the possession of the surface of the land.

1983 cS-27.1 s41

Costs

39(1) The costs of and incidental to proceedings under this Act are in the discretion of the Board.

(2) and **(3)** Repealed 2009 c31 s16.

(4) The costs may include all preliminary costs of the respondent necessarily incurred in reaching a decision whether to accept the compensation offered by the operator.

(5) When

- (a) the Board makes a right of entry order, and

- (b) the owner or occupant refuses to allow the operator to enter on and use the land to which the operator is entitled as described in the order,

the operator may apply to the Board to deduct from the compensation payable under the compensation order the costs incurred by the operator in and incidental to obtaining entry on and use of the land pursuant to the right of entry order.

- (6) The amount of costs, if any, to be deducted under subsection (5) is in the discretion of the Board.

RSA 2000 cS-24 s39;2009 c31 s16

Service of documents

40(1) and (2) Repealed 2009 c31 s17.

- (3) Where an application, notice, order or any other document is to be given to or served on the Crown, it shall be given to or served on

- (a) a Deputy Minister of the department charged with the administration of the land to which the application, notice, order or other document relates, and
- (b) a Deputy Minister of another department, where the title to the land to which the application, notice, order or other document relates indicates that another department has an interest in the land.

RSA 2000 cS-24 s40;2009 c31 s17

Regulations

41 The Minister may make regulations

- (a) defining or designating major power transmission line structures for the purposes of section 27;
- (b) regarding matters with respect to which a surface lease must make provision, and regulating the content of those provisions;
- (c) prescribing forms for the purposes of this Act;
- (d) for the purposes of section 15(2)(b) respecting information that must accompany an application for a right of entry order;
- (e) repealed 2009 c31 s18;

- (f) exempting operators for the purposes of section 21(c) and defining local distribution system for the purposes of the exemption;
- (g) establishing any procedural provisions for the purposes of section 36.

RSA 2000 cS-24 s41;2009 c31 s18