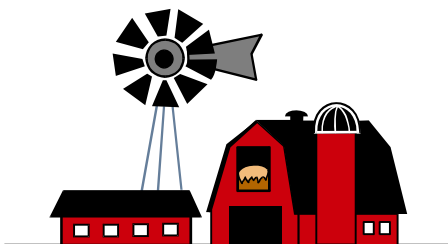
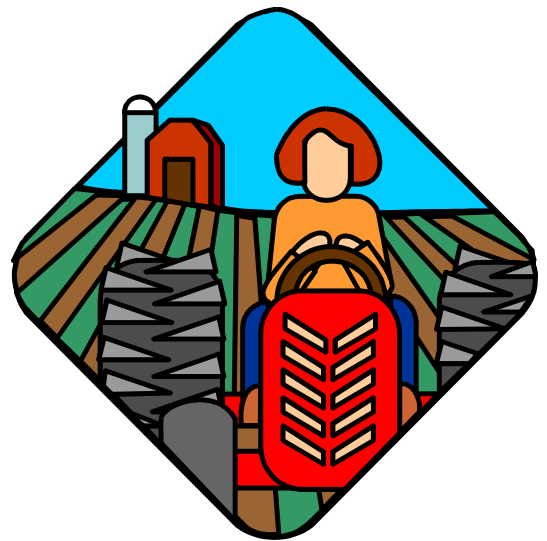
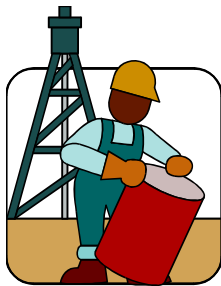




OIL AND GAS COMMISSION

SURFACE RIGHTS IN BRITISH COLUMBIA

A Guide to the Legislation and Regulations for the
Oil and Gas Industry
10 July, 2001



This Guide will be updated annually as legislative and regulatory changes occur

Acknowledgement

This edition is an up dated version of the original booklet of the same title prepared by Harvey W. Sasaki, P.Ag. and published in 1988 by the Ministry of Agriculture and Fisheries.
The major change to the document is the addition of pipelines. |

STAKEHOLDER RELATIONS AND COMMUNICATIONS BRANCH

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A Guide to the Legislation and Regulations for the Oil and Gas Industry 11 July, 2001

Introduction

1.1 Objective

The objective of the guide is to outline the petroleum and natural gas exploration, production and pipeline transportation processes as it relates to the property rights of a landowner, and in particular to surface rights, right-of-entry, statutory rights of way, mediation and arbitration and expropriation. It provides a guide to the legislation and regulations governing the petroleum and natural gas industry in British Columbia.

NOTE: This guide is not the law, but only a summary of the legislation and regulations pertaining to surface rights and the petroleum and natural gas industry in British Columbia. Although every effort has been made to avoid errors, this brochure may contain errors, or legislation referred to in the brochure may change after the brochure is printed and distributed. This brochure is not a substitute for the legislation or for legal advice. If there is a discrepancy between this Guide and the legislation and regulations, the legislation and regulations are the final authority.

1.2 Land Ownership rights in relation to oil and gas developments

When a person purchases a parcel of land, the sale conveys to the new owner all of the rights of private property. Those rights are essentially those which were conveyed in the original Crown grant when the title was passed from the Crown to the original private owner. In that original transaction, the Crown may have withheld certain rights. Title to most private lands does not include the right, title or interest to geothermal resources, minerals, coal, petroleum or gas that may be found in or under the land.

Section 50 - "Exceptions and reservations", of the *Land Act* identifies the interests, rights, privileges and titles currently reserved by the Crown upon disposition of Crown land.

The majority of petroleum and natural gas rights in the Province of British Columbia are owned by the Crown in the Right of the Province. A small percentage of petroleum and natural gas rights are privately owned as a result of being included with Crown grants of surface lots issued prior to 1891. This primarily occurred in areas of early settlement. The Federal Government holds title to a very small portion of British Columbia petroleum and natural gas rights by virtue of various Federal-Provincial agreements.

The exploration for, and the development and production of, Provincially owned petroleum and natural gas resources is regulated under the *Petroleum and Natural Gas Act*. The disposition of the petroleum and natural gas rights, by the Ministry of Energy and Mines for the Province, grants companies the right to explore for, develop and produce petroleum and natural gas resources. The Province receives payments for the sale of those rights through a competitive bidding process, and from royalties on the sale of any petroleum and natural gas produced and sold. The funds received by the Province are used to support Provincial programs to benefit all British Columbians.

The activities associated with the exercise of the rights by the companies affect and may disrupt the normal use of the surface of the lands. The *Petroleum and Natural Gas Act* also sets out the rules and regulations governing the exploration, development and production of the petroleum and natural gas resources of the Province. The *Pipeline Act* establishes the rules and regulations for transportation of oil and gas by pipelines, including the taking of land and the expropriation of private land. The Oil and Gas Commission is responsible for administering the *Pipeline Act*, as well as the portions of the *Petroleum and Natural Gas Act* which deal with exploration, development and production activities.

For companies designated as natural gas utility companies, the *Gas Utility Act* provides the rules for expropriating land.

For Federally regulated pipelines, the National Energy Board (NEB) is the regulator and their governing legislation set out the procedure for taking of lands. The NEB should be contacted directly for details of their processes for pipelines under their jurisdiction.

1.3 Builders Lien Act

Under section 3 (1) of the *Builders Lien Act*, a builders lien may be filed against the land for work done on an “improvement”, such as a pipeline or production facility, if the improvements are done with the prior knowledge of the owner, even if the owner has not requested them. However, section 3 (2) also provides that a lien may not be filed against the land if a “notice of interest” form as set out in the Builders Lien Forms Regulation (B.C. Reg. 1/98) is filed with the Land Titles Office. The "notice of interest" provides that the owner's interest in the land is not bound by a lien claimed under the *Builders Lien Act* for an improvement on the land unless that improvement is undertaken at the express request of the landowner.

Landowners should be aware of the *Builders Lien Act* and if appropriate, make arrangements to have a notice of interest filed with the Land Title Office for a project that may be proposed on their land. This subject may also be addressed in a surface land agreement negotiated with a company.

1.4 Definitions

To assist in the use of the Guide, specific terms related to surface rights and petroleum and natural gas exploration and development have been defined. These terms are used throughout the text. Specific references to sections of legislation have also been highlighted to aid in future reference.

Expropriate – means the taking of land by an expropriating authority under an enactment without the consent of the owner.

Geophysical Exploration—the investigation of the subsurface by seismic, gravimetric, magnetic, electric or geochemical operations.

Lessee—in the context of a surface lease, usually the petroleum company who acquires the right to use the property, or portion thereof, of the landowner from whom a lease is obtained.

Lessor— in the context of a surface lease, usually the landowner who rents real property, or conveys or leases the right of the use of real property, to a petroleum company for purposes of exploring for or producing petroleum and/or natural gas.

Seismic Approval— an approval by the Oil and Gas Commission, of an application from a company to conduct a seismic program under the *Petroleum and Natural Gas Act*.

Surface Lease—any agreement entered into by an owner or occupant with a company under which the surface of the land may be used for any purpose, or for which a right-of-entry order can be granted and which provides for the payment of compensation (rental or otherwise). A surface lease is registerable under the *Land Title Act*

2 Oil and Gas Activities

2.1 Surface Rights

The *Petroleum and Natural Gas Act* recognizes that the entry, occupation or use of privately held lands may be necessary to explore for, develop or produce the Province's petroleum and natural gas. The *Act* outlines the process by which the entry, occupation and use of private land by petroleum companies is permitted. Additionally, the *Act* provides for compensation to be paid by the petroleum company for the entry on the land. In the case of continuing use of the land, the *Act* provides for the payment of an annual rent.

When a petroleum company requires land for their operations, the landowners will be approached by either a land agent or surveyor to discuss the project and obtain consent to do a survey of the area required. This is notwithstanding the right, specified in the *Trespass Act*, of a British Columbia Land Surveyor to carry out a legal survey. When an area has been surveyed, a land agent representing the company will contact the landowner to discuss the proposed project and negotiate a Surface Lease for any above ground structures or a seismic (geophysical) project, or an Easement (Right-of-Way) Agreement for the below ground structures which may be required by the company.

2.1.1 Seismic Projects

The right of access to private land for seismic operations is entirely subject to agreement between company and landowner. The seismic operation may entail a survey of the proposed line and clearing away of any obstacles, so trucks and equipment can drive along the line. The actual conduct of the project may include the drilling of shallow, small diameter "shot holes" and the detonation of a small explosive charge at the bottom of the holes, or the use of truck-mounted vibrator equipment. After the project has been completed, the company representative should return to ensure any damage that might have occurred is repaired or to arrange to compensate the landowner and to obtain a release. Payments to the landowner may include a lump sum consideration plus any crop loss, paid for the rights granted prior to entry. Compensation for damages will normally be paid after the seismic recording has been completed.

2.1.2 Surface Lease

When a company has determined the location upon which it wishes to conduct an operation, a land agent for the company will contact the landowner to discuss the project, have the location surveyed if not already done, and negotiate an agreement. This agreement is referred to as a Surface Lease and is a legal and binding contract which specifies the terms and conditions of the use of the surface of the land. The Surface Lease is a grant by the landowner to the company of a right to enter onto the land to drill a well or construct and maintain any above ground structures necessary for the petroleum company's operations (i.e., wellsite, battery). The surface lease should specify any conditions necessary to describe the responsibilities and commitments by both the operator and landowner, including the payment of compensation. The Surface Lease Regulation, BC Reg 497/74, prescribes the minimum content of a Surface Lease. It must be noted that the prescribed content and conditions should not be construed to be limiting.

A standard Surface Lease agreement form has been developed jointly by the Canadian Association of Petroleum Landmen and landowners in the Peace River area. The standard Surface Lease agreement should be considered to be a guide and modified to reflect the needs of each situation.

2.1.2.1 Renegotiation of a Surface Lease

By statute, the rental provisions of a Surface Lease may be renegotiated every five years. Notice must be given by prescribed form to the petroleum company, by registered mail at its address for service as shown in the Surface Lease, on or after the 5th anniversary of the Surface Lease. Procedures for the renegotiation of a Surface Lease are set out in section 11- "Renegotiation" and section 12 - "Arbitration" of the *Petroleum and Natural Gas Act*. If an agreement has not been reached 8 months after the notice was sent, either party may apply to the Mediation and Arbitration Board for an Arbitration hearing. The forms are available at the Board office in Fort St. John.

2.1.2.2 Termination of a Surface Lease

The Surface Lease Regulation, B.C. Regulation 497/74 specifies four terms and conditions that every Surface Lease must contain. Two sections specify conditions for termination of a Surface Lease. Section 1. (c) provides that a lease may be terminated by the grantor, if a default on payment of rentals continues for ninety days after demand for payment has been made. Section 1. (d) provides that the lessee may terminate the lease on or after the second anniversary date of the lease, upon not less than ninety days notice to the grantor. Additionally, a lease may be terminated upon the mutual agreement of all involved parties.

2.2 Mediation and Arbitration

As previously indicated, the *Petroleum and Natural Gas Act* allows for mutual agreement through the private negotiation of a surface lease between landowners and petroleum companies. If private negotiations fail to produce a satisfactory agreement for both parties, the *Act* establishes a Mediation and Arbitration Board, which makes orders and rulings respecting entry, occupation conditions and compensation of land required for exploring for, developing, producing or storing petroleum and natural gas. The role of the

Board is to ensure that when agreements cannot be reached between a petroleum company and a landowner, the company can acquire access to its petroleum and natural gas rights and that surface owners are fairly compensated as a result.

Upon proper application and after conducting a hearing, the Board may issue an order authorizing entry upon the land, that details the terms and conditions for both the company and landowner. The procedures for application for mediation and arbitration are set out in section 16 “Application for mediation and arbitration”, of the *Petroleum and Natural Gas Act*. Most surface leases in British Columbia are negotiated and therefore never go before the Mediation and Arbitration Board. If both parties are aware of their legal rights and obligations, and conduct themselves in a responsible manner, an agreement can usually be negotiated. A negotiated agreement is more likely to serve the needs of both the landowner and the petroleum company while minimizing hardship to both.

2.2.1 Mediation

Mediation is the intervention by the Board to promote settlement or compromise. Upon receipt of an application under section 16 - “Application for mediation and arbitration” of the *Petroleum and Natural Gas Act*, the Board Administrator will contact both parties and attempt to determine the issue(s) and facilitate an agreement. If the Administrator is not successful, the Chair of the Mediation and Arbitration Board will appoint a Mediator, to inspect the property and conduct a Mediation hearing. The mediator will attempt to resolve the problems and issues that are preventing the parties from reaching agreement. If mediation fails, the mediator may issue a Right-of-Entry Order. Outstanding issues are then subject to an Arbitration hearing. Procedures for mediation hearings are outlined in section 18 - “Mediation hearing” of the *Petroleum and Natural Gas Act*.

2.2.2 Right-of-Entry

The agent for the petroleum company may apply to the Mediation and Arbitration Board for a Right-of-Entry Order pursuant to section 16 - “Application for mediation and arbitration” of the *Petroleum and Natural Gas Act* when a landowner refuses to grant a Surface Lease. The Right-of-Entry Order grants a company the right to enter, occupy or use a specified area for purposes such as drilling or development of petroleum and natural gas. Before making an Order, the mediator will conduct a hearing between the landowner and the company. Through mediation, the mediator will attempt to have the parties reach an agreement. In the event of failure to reach an agreement, the Mediator may issue a Right-of-Entry Order. While granting the petroleum company the right-of-entry to the land, the *Petroleum and Natural Gas Act* specifies that the Mediator must order the applicant to pay to the landowner a partial payment for loss or damage caused, for the entry to the land. These requirements are contained in section 19 - “Entry, occupation or use order”, of the *Petroleum and Natural Gas Act*.

It is important to note that the *Petroleum and Natural Gas Act* specifies that a petroleum company must acquire a Surface Lease or Right-of-Entry Order before entering upon private land. The Surface Lease or Right-of-Entry Order should be filed with the Registrar of Land Titles as a charge against the Land Title. This charge is the legal claim and notice of the petroleum company’s interest in the land.

2.2.3 Arbitration

Arbitration is the hearing and determination of a dispute by the Board with respect to the lump sum compensation and annual rent to be paid to the owner and/or occupants of the land. During arbitration, the Board accepts evidence and hears arguments from the involved parties before considering compensation. Procedures for arbitration hearings are set out in section 20 - "Arbitration hearing", of the *Petroleum and Natural Gas Act*.

In determining the amount of compensation, section 21 - "Determining amount", of the *Petroleum and Natural Gas Act* specifies items that the Board may consider.

Application for arbitration may also be made pursuant to section 12 - "Arbitration: other provisions", of the *Petroleum and Natural Gas Act* when rental provisions are not renegotiated under section 11 - "Renegotiation", within 6 months after the expiration of the notice.

2.2.4 Certificate of Restoration (CoR)

Section 84 - "Certificate of restoration" of the *Petroleum and Natural Gas Act* specifies that a well, test hole or production facility is deemed not to be abandoned until a CoR has been issued by the Oil and Gas Commission. Before a company can terminate its Surface Lease or Right-of-Entry Order with the landowner, it must remove all equipment, restore all affected lands and apply for a CoR from the Commission. The application must be accompanied by a *Waste Management Act* Site Profile, which is used to determine if a location may be contaminated. If the potential for contamination exists, further investigation of the location will be ordered and if contamination exists, it must be remediated to the appropriate standards. The Commission may issue the CoR when the company files a signed release from the landowner or upon satisfactory examination by the Commission. For wellsite developments within the Agricultural Land Reserve, confirmation is required from the Land Reserve Commission that the reclamation of the development is complete prior to the issuance of a CoR.

3 Pipelines

3.1.1 Agreement

The successful development of a well and subsequent production of petroleum and/or natural gas may require additional facilities such as pipelines. This usually requires a new taking of land and therefore the negotiation of a new agreement between the landowner and company.

The agreement concerning the right of way for the pipeline will be registered by the company under the *Land Title Act* as a Statutory Right of Way. The agreement spells out the rights and responsibilities that a company has regarding the right of way including the right to enter onto land to construct and maintain a pipeline or lines and necessary facilities and the payment of compensation to the landowner. For surface facilities not on a well site, the method of compensation may have an annual component to it. Any above ground pipeline facility constructed in connection with the pipeline should be considered. The procedure in negotiating an agreement is similar to that outlined under the Surface Lease Section. The provisions of an agreement may include compensation for damage due

to pipeline maintenance, the number of pipelines under the agreement, ownership of the pipeline when a company wants to abandon it and any other appropriate matter.

Agreement not reached

When an agreement with a landowner cannot be reached, the following means of appropriating land are prescribed by the *Pipeline Act*;

- 1. Flow Lines** – The landowner or company may apply to the Mediation and Arbitration Board, as described above. Flow lines are defined in the *Pipeline Act*, and connect wellheads with batteries or facilities that may or not be on the well lease, or to other pipelines.
- 2. All other pipelines** – The *Pipeline Act* refers to Part 7 of the *Railway Act* which describes a process for taking land including such things as offer and notification to landowner, registering documents with the Land Titles Office, and referring compensation matters to the Expropriation Compensation Board.

Gas Utility Act

The *Gas Utility Act* grants a gas utility company a right to expropriate land using the *Expropriation Act* if an agreement with the landowner is not achieved. It also allows the gas utility company in urgent circumstances, to apply to the BC Utilities Commission to take land immediately and within a reasonable time, refer the matter to the Expropriation Compensation Board to determine compensation to the landowner. Gas utility companies in the Province include BC Gas, Centra Gas and Pacific Northern Gas.

Federally Regulated Pipelines

Questions regarding the construction and operation of federally regulated pipelines should be referred to the National Energy Board.

4 Agricultural Land

For land within the Agricultural Land Reserve in the oil and gas producing areas of the Province, General Order 293/95, made by the Agricultural Land Commission, outlines soil sampling requirements in addition to the terms and conditions for exemption from the formal approval process under the *Agricultural Land Reserve Act*. The Land Reserve Commission, as it pertains to agricultural land, has a duty to protect the agricultural values of the land. In disputes between a landowner and a company put before the Land Reserve Commission, the preservation of agricultural values will be foremost.

5 Additional References

5.1 Legislation

As previously indicated, the *Petroleum and Natural Gas Act* is the primary legislation regulating petroleum and natural gas exploration, development and production in British Columbia as is the *Pipeline Act* for oil and gas pipelines. In addition, there is other

legislation, which may or may not be included in the listing below, that may pertain to exploration, well drilling and pipelines on agricultural land. For specific information, refer to the pertinent legislation, copies of which can be obtained from the Queen's Printer.

Agricultural Land Reserve Act (formerly the ***Agricultural Land Commission Act***)

Administered by: Ministry of Sustainable Resources Management, Provincial Land Reserve Commission.

Builders Lien Act

Administered by the Ministry of Competition, Science and Enterprise

Gas Utility Act

Administered by the British Columbia Utilities Commission

Heritage Conservation Act

Administered by the Ministry of Community, Aboriginal and Women's Rights and in part by the Oil and Gas Commission

Land Title Act

Administered by the Ministry of Sustainable Resources Management

Land Survey Act

Administered by the Ministry of Sustainable Resources Management

Pesticide Control Act

Administered by the Ministry of Water, Land and Air Protection

Petroleum and Natural Gas Act

Administered in part by Ministry of Energy and Mines, and in part by the Oil and Gas Commission.

Pipeline Act

Administered by the Oil and Gas Commission

Soil Conservation Act

Administered by the Ministry of Agriculture, Food and Fisheries

Trespass Act

Administered by the Ministry of Attorney General

Waste Management Act

Administered by the Ministry of Water, Land and Air Protection and in part by the Oil and Gas Commission

Water Act

Administered by the Ministry of Sustainable Resources Management and in part by the Oil and Gas Commission

Weed Control Act

Administered by the Ministry of Agriculture, Food and Fisheries

5.2 Standard Forms

There are a number of forms currently in use, which pertain to surface rights. A brief description of each is provided in the following list.

5.2.1 Standard Surface Lease Agreement

A standard surface lease agreement was prepared jointly by representatives of the BC Agricultural community and the petroleum industry. This form may be used as a basis of a Surface Lease Agreement. Circumstances may vary and as such, this model agreement should be used with discretion and consideration given to the addition or deletion of clauses and terms and conditions as the situation requires.

A copy of the standard lease agreement can be obtained from most of the BC-based and industry associations listed in the following section titled Contacts.

5.2.2 Notice to Lessee

This form is used by the landowner to provide notice to the petroleum company for a rental renegotiation as per section 11 - "Renegotiation" of the *Petroleum and Natural Gas Act*. Refer to the section on Renegotiation of a Surface Lease, above.

5.2.3 Application for Arbitration

This form is used by the landowner or his agent to apply for arbitration of a rental renegotiation pursuant to section 12 - "Arbitration" of the *Petroleum and Natural Gas Act*. Refer to the section on Arbitration, above.

5.2.4 Application for Mediation and Arbitration and Permission to Enter

This form is used by the petroleum company when applying for Right-of-Entry onto deeded land when:

- (a) an impasse has developed between the landowner and company, and consent is not obtainable; or
- (b) the company and landowner mutually agree that entry should be by way of Board Order rather than a signed lease agreement.

Landowners use this form when applying for damages which occurred during the entering, occupation or use of the land.

Upon receipt of the application, a mediator, appointed by the Chair of the Board, investigates the request, including discussions with surface owner and petroleum company and on-site inspection, and tries to resolve the impasse. Refer to the section on Mediation and Arbitration, above.

CONTACTS

Oil and Gas Commission

Headquarters – 200, 10003-110 Avenue, Fort St. John, BC V1J 6M7 Ph. 250 261 5700
Branch office –Box 9329 Stn Prov Govt, Victoria B.C. V8W 9N3 Ph- 250 952 0296

Provincial Land Reserve Commission

4940 Canada Way, Burnaby B.C. V5G 4K6 Ph 604 660-7000

Canadian Association of Petroleum Producers

2100, 350-7th. Avenue S.W., Calgary, Alta. T2P 3N9 Ph. 403 267-1100

Canadian Association of Petroleum Landmen

1900,500-4th. Avenue S.W., Calgary, Alta. T2P 2V6 Ph. 403 237-6635

Mediation and Arbitration Board

10142 – 101 Avenue, Fort St. John, BC V1J2B3 Ph. 250 787-3403

National Energy Board

444 Seventh Ave. SW, Calgary, Alberta T2P 0X8 Ph. 403 292-4800

National Farmers' Union –National Office

2717 Wentz Avenue, Saskatoon, SK. S5K4B6 Ph. 360 652-9465

North Pine Farmers' Institute

Box 6234 Fort St. John B.C. V1J 4H8 Ph. 250 785 6893