



# When the Landman Comes Knocking

A Toolkit for BC Landowners  
Living with Oil and Gas

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October, 2004



SIERRA LEGAL  
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## A Handbook for BC Landowners Living with Oil and Gas

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October, 2004

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## **Acronyms**

ALC	Agricultural Land Commission
Board	Mediation and Arbitration Board
MEM	Ministry of Energy and Mines
MSRM	Ministry of Sustainable Resource Management
MWLAP	Ministry of Water, Land and Air Protection
OGC	Oil and Gas Commission
PNGA	<i>Petroleum and Natural Gas Act</i>

# 1

## Introduction

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Oil and gas development in British Columbia is increasing. The number of wells being drilled in BC has doubled in the past 2 years. In 2002, 643 wells were drilled in BC. This number jumped to 1,041 in 2003 and in 2004, is expected to be in the range of 1,350. And as the industry grows, more and more landowners face the prospect of exploration and production activities on their homes, ranches, farms and recreation properties.

Most of this activity is occurring in northeast BC, which holds the western tip of the Western Canadian Sedimentary Basin, the most productive source of gas in Canada for the past century. Increased development in the northeast means that new wells will be drilled closer to homes and communities than in the past.

However, as this basin matures, governments are looking for new sources of gas, such as coalbed methane.<sup>1</sup> Coalbed methane development is key to the BC government's plans to expand the oil and gas industry throughout the province.

A number of experimental or exploratory coalbed methane projects are already underway in BC, although commercial production has not yet commenced. Most of the gas potential in the province is found in the northeast and the southeast. Other coalfields exist on Vancouver Island, the south-central Interior (Hat Creek, Merritt, Princeton), Bowron River, Telkwa, and the Queen Charlotte Islands. The 11 experimental projects have resulted in approximately 40 wells being drilled in BC to date, primarily in the northeast, but also in the Elk Valley, and on Vancouver Island. Exploratory activity is also underway in Princeton and in northwest BC near Iskut.<sup>2</sup>

# 2

## Purpose of this Toolkit

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While oil and gas companies have the expertise and resources to take care of their interests when dealing with landowners, the average landowner has limited knowledge of the industry, the applicable laws, and the implications of oil and gas development for their own interests.

This Toolkit helps correct that imbalance. It provides a plain language overview of how companies acquire oil and gas rights, an explanation of the basic laws governing oil and gas exploration and production on private land, an overview of the lifecycle of an average oil or gas well, and tips on how landowners can protect their interests when dealing with oil and gas companies.

While the Toolkit has been prepared by lawyers familiar with the laws governing oil and gas development, it is not intended as legal advice for every situation. It offers general information that must be tailored to each landowner's specific needs and situation. A list of lawyers who may be able to provide more detailed advice on a specific case or issue is included as a resource at the back of the Toolkit.

People who live on the land are naturally placed to be the best stewards of the land. The purpose of this toolkit is to give people the information to do so.

## 3

# Oil and Gas Development on Private Land in BC

In general, the BC government owns all subsurface mineral rights, including oil, natural gas and coalbed methane, underneath private land in BC. This is because when the private land was first granted or sold by the government, the grant or sale expressly did not include any interest or legal right in the minerals underneath the surface. Those mineral rights stayed with the government, and the government can sell or lease those rights to oil and gas companies for development even if you own the land on the surface.<sup>3</sup>

The government also has the power to authorize the owner of subsurface rights to enter onto private land to exploit those rights. Practically speaking, once the government has sold the right to explore for and produce oil and gas underneath private property to a company, the company is virtually guaranteed access to the surface of the property.

So, in general, most landowners have no direct ownership or legal control over the oil, gas and coalbed methane resources underneath their property, because the BC government owns those resources. The following sections explain how the government permits oil and gas companies to explore for and develop those resources.

## 4

# Important Government Agencies and Laws

Oil and gas development on land is almost entirely regulated by the BC government. There are some federal laws that may apply to specific activities. For example, the federal *Fisheries Act* prohibits the harmful alteration of fish habitat, and companies that want to alter or destroy fish habitat may need an authorization from the Department of Fisheries and Oceans to do so.<sup>4</sup> However, this Toolkit focuses on the activities carried out by oil and gas companies that are regulated by BC laws and agencies and that most commonly impact landowners.

### 4.1 Key Government Agencies for Oil and Gas

#### **The Ministry of Energy and Mines**

The Ministry of Energy and Mines (MEM) is responsible for the development of, or changes to, laws, regulations, royalties, tenures, and related matters regarding the development of minerals and oil and gas in BC. It also has responsibility for developing and maintaining information regarding BC's mineral and oil and gas resources.

■ The homepage for MEM is: [http://www.gov.bc.ca/bvprd/bc/channel.do?action=ministry&channelID=-8383&navId=NAV\\_ID\\_province](http://www.gov.bc.ca/bvprd/bc/channel.do?action=ministry&channelID=-8383&navId=NAV_ID_province)

#### **The Oil and Gas Commission**

The single most important government department dealing with oil and gas in BC is the Oil and Gas Commission (OGC), which regulates all oil and gas activity in the province. The role of the OGC is to implement the legal and regulatory direction set by MEM.

Located in Fort St. John, the OGC was created in 1998 to provide the oil and gas industry with a “single window” approach to regulation. This means that, where before different agencies dealt with different aspects of an oil and gas operation, the BC government has consolidated most of the relevant regulatory powers into the OGC.

The OGC deals with virtually every part of the lifecycle of an oil or gas development after a company purchases the mineral rights. This includes: road construction and timing of road use; well site design, use and remediation; storage, use and clean up of potentially harmful substances like drilling muds and fracturing (fracking) liquids, which are often used to break up underground formations to increase gas flow; compressor and pipeline siting, use and maintenance; and site remediation and clean up.

■ The website for the OGC is: <http://www.ogc.gov.bc.ca/>

## **Other Ministries**

Several other Ministries are also authorized to play a role in oil and gas regulation. The role of these ministries is increasingly diminished as the government moves to streamline more regulatory authority with the OGC. Some of these Ministries are briefly described below.

**Ministry of Water, Land and Air Protection (MWLAP).** This Ministry is responsible for the implementation of many environmental laws in BC, including the *Environmental Management Act*, the *Wildlife Act*, the *Pesticide Control Act*, and the *Park Act*. A number of MWLAP’s legislative responsibilities have been delegated to the OGC with respect to upstream oil and gas operations. This means that much of the responsibility for approvals, compliance, and enforcement with these environmental laws lies with the OGC where the activity is oil and gas related. MWLAP still plays a role in regulating the transport of hazardous materials, the remediation of contaminated sites and emissions from large facilities. The OGC also currently relies on MWLAP conservation officers for assistance in the investigation of any offences under applicable legislation.

**Ministry of Sustainable Resource Management (MSRM).** This Ministry is responsible for information, planning and approval processes related to land use decisions in BC. Some of the legislation that it administers includes the *Agricultural Land Commission Act*, the *Fish Protection Act*, and the *Water Act*. As above, many of MSRM’s responsibilities have been delegated to the OGC as they relate to oil and gas. For example, the OGC has authority to issue approvals under the *Water Act* for oil and gas related activities.

**Ministry of Forests (MOF).** The oil and gas industry removes a large volume of trees every year to build roads, seismic lines and other infrastructure, and this Ministry used to have a significant impact on oil and gas operations by regulating the removal or use of forest resources. However, regulation and approval of oil and gas roads and well sites in forested areas has now been largely delegated to the OGC. Some of the legislation that the Ministry of Forests administers includes the *Forest and Range Practices Act* and the *Forest Act*.



## **A Comment about the Oil and Gas Regulatory Improvement Initiative**

In 2004, MEM began consultation on its Oil and Gas Regulatory Improvement Initiative, which is considering ways to further streamline oil and gas regulation within the OGC. Another possible approach is to develop “results based regulation”, where the regulation would set regulatory standards, but not prescribe a means or technology by which the standard must be achieved. The rationale is that results based regulation may reduce costs, by offering industry the opportunity to find the most cost-effective way of achieving the desired outcome. This approach could be problematic for a number of reasons of concern to landowners:

1. Results based approaches are not precautionary, and problems may not come to light until there has been a failure in the system, and harm has occurred to the environment or to human health.
2. Results based approaches will not guarantee against irreparable harm, and are not recommended for activities that can cause serious harm. This is a particular concern when dealing with toxins such as hydrogen sulphide (H<sub>2</sub>S) from sour gas wells, or for hydrocarbon contamination in water systems (such as groundwater), which are extremely difficult, if not impossible to rectify.
3. The success of results based approaches will depend on effective monitoring and enforcement systems, as rigorous inspection is required to assess the industry's impacts and ensure that it is achieving the desired objectives.

On this final item, it is noteworthy that multi-agency oil and gas compliance reviews conducted by the BC government have revealed persistent problems with compliance. While some problems are being addressed, overall non-compliance remain a challenge.<sup>5</sup> This is of particular concern given that the number of wells drilled in BC is expected to double in a two-year period. The OGC's compliance and enforcement branch is also currently understaffed, and faces serious challenges in recruiting and keeping trained enforcement staff.

## 4.2 Key Government Agencies for Landowners

There are a number of more specific agencies who may be helpful in the context of oil and gas development on private land in BC.

### **The Agricultural Land Commission**

If your land is agricultural land within BC's Agricultural Land Reserve, a company may need to seek approval from the Agricultural Land Commission before it can undertake oil and gas activities. The policy of the Agricultural Land Reserve is to allow specified oil and gas activities to proceed without an application, provided that the land is reclaimed to an equivalent agricultural capability.

As of April 2004, the Agricultural Land Commission has delegated more of its decision-making authority to the OGC. Where the landowner consents, the OGC will be authorized to make decisions independent of the ALC for:

- up to four stand-alone wells per quarter section of land;
- batteries, compressor stations, drilling and production waste handling, produced water and gas handling or processing facilities where the combined area occupied by the buildings and structures is less than 450 metres per quarter section;
- a change in the use of a surface lease to one of the above uses; or
- an electric power line not adjacent to an access road.

In some cases, companies will not even have to submit applications to the OGC for:

- seismic surveys
- pipelines and surface facilities directly related to the operation of the pipeline
- 3 stand alone wells per quarter section
- new wells on existing sites
- electric power lines adjacent to access roads

In order to be eligible for these exemptions, companies must first obtain the consent of the landowner, and complete a pre-development site assessment and reclamation plan.

- The Commission's website is: <http://www.alc.gov.bc.ca/>

### **The Mediation and Arbitration Board**

Another important agency is the Mediation and Arbitration Board (the Board), which is addressed in more detail in section 9, below. The mandate of the Board is to resolve disputes between landowners and oil and gas companies, over the terms and conditions (including rent payments) under which the companies get access to private land. The Board does this by offering mediation and arbitration services, which either the company or the landowner can request to resolve a dispute.

- The Board's website is: <http://www.em.gov.bc.ca/Subwebs/oilandgas/rights/MABoard.htm>

## **The OGC's Landowner Liaison Inspector**

Because problems with companies do occur, residents and landowners often need help from within government to understand how the system works, and to give them advice and information on how the system can help them resolve outstanding issues. In 2003, the OGC created a Landowner Liaison Inspector, who is responsible for working with landowners to understand the legal aspects of oil and gas activities, and to connect landowners, companies, agricultural producers and the OGC on matters relating to the rights and terms of entry on both private and agricultural leased lands.

■ As of September 2004, the Landowner Liaison Inspector is Kelly Cook, tel: 250-261-5753.

### **Contrast Alberta's Farmer's Advocate**

Oil and gas activity has been occurring intensively throughout Alberta for the past 50 years. In order to maintain good relationships between companies, landowners and government, Alberta created a Farmer's Advocate, which is independent from the Energy and Utilities Board, Alberta's oil and gas regulator, and housed in the Ministry of Agriculture. Despite requests from landowners, and a recommendation from the Alberta Farmer's Advocate, the OGC chose to establish a Landowner Liaison Inspector within the OGC, instead of creating an independent support mechanism for landowners.

■ The website for Alberta's Farmer's Advocate is: [www.agric.gov.ab.ca/farmersadvocate](http://www.agric.gov.ab.ca/farmersadvocate)

# 5

## Key Statutes and Regulations

The OGC is responsible for administering a range of laws found in BC statutes and regulations. A “statute”, also known as an “act”, is a bill passed by the Provincial Legislature that creates legal duties, powers and responsibilities. Many statutes give the Provincial Cabinet the power to create more detailed laws, known as regulations, that implement the broader laws stated in the statute. The main statute of interest to affected landowners is:

- *Petroleum and Natural Gas Act (PNGA)*: this is a comprehensive statute dealing with how oil and gas wells are developed. It also creates the Board.

Key regulations for landowners under this Act include:

- *Drilling and Production Regulation*: this regulation deals with well spacing, well operation, and measures to prevent well blow-outs and other accidents.
- *Oil and Gas Waste Regulation*: this regulation authorizes and sets limits for emissions and waste materials from well sites, compressors, processing facilities and other equipment.
- *Pipeline Act and Pipeline Regulation*: this statute and regulation deal with the creation and operation of pipelines.
- *Sour Pipeline Regulation*: this regulation deals specifically with pipelines that transport sour gas, and requires mandatory emergency zone setbacks from the pipeline route.
- *Surface Lease regulation*: this regulation establishes the basic terms and conditions of a surface lease.

- These statutes and regulations can be found on the web at: <http://www.ogc.gov.bc.ca/legislation.asp>.

# 6

## Overview of Oil and Gas Development

If geophysical exploration identifies a commercially viable oil or gas deposit underneath your property, the company will want to drill one or more exploratory wells and then, if feasible, move into production. This Toolkit gives a general overview of the steps in the development of a typical well, and the type of impacts each step could have on a landowner. If you want more detailed information, get a copy of a citizen’s guide to oil and gas development called *Pump It Out, or Coal Bed Methane: A Citizen’s Guide*, both produced by West Coast Environmental Law.<sup>6</sup>

Landowners are advised to get a sense of the long term development plans for your land. What may appear to be one innocuous well that will add revenue to the family budget may, or may not, be the beginning of intensive development on your land.

## 6.1 Geophysical Exploration

In order to determine if there is oil or gas below the ground, seismic surveys must first be conducted. Seismic surveys typically begin by clearing several kilometer long swaths of land, about 5 metres wide, in straight lines. Along the lines, the company will drill a series of deep “seismic holes” in which to set off dynamite charges, or use mobile machinery to set off vibrations. The vibrations are then recorded and studied to develop a profile of the subsurface formations. To develop a 3 dimensional picture of geological formations (3-D seismic), a company will clear dozens of criss-crossing seismic lines to form a grid for testing. Companies will also sometimes use large seismic trucks on existing public roads, which allows them to obtain information without necessarily entering private land.

Because seismic activity occurs on the surface, landowners are not obliged to provide access to their land for this to occur. You may, however, negotiate with a company to allow them access to your land to conduct seismic surveys.

### **Alberta Farmer’s Advocate Water Well Restoration or Replacement Program**

It is not uncommon for seismic activity to cause damage to water wells. In Alberta, landowners whose water wells are affected by geophysical exploration can apply to the Farmer’s Advocate through their Water Well Restoration or Replacement Program to have the costs of replacement or restoration covered. The Farmer’s Advocate will determine if the damage to the well was caused by the seismic activity, and will assist landowners with the costs of restoring the well, with funds provided by industry, through the Energy and Utilities Board. In 2001/2002, the Farmer’s Advocate made 47 grants, ranging from \$500 to \$21,600 to support landowners in restoring their water wells.<sup>7</sup> There is no equivalent program in BC.

## 6.2 Tenure Sales

In order to drill for oil and gas, the company must first acquire the subsurface rights to the mineral resources in a particular area. Usually subsurface rights are auctioned off to the highest bidder. In a typical process, the company will first ask MEM to auction the rights for a specific area once it has conducted seismic studies to determine if it is interested in drilling for oil or gas.

Landowners are not notified in advance of these sales, but MEM does produce pre-tenure maps of areas where it is considering selling tenures. If you are interested in knowing about future sales, you may want to contact the Titles Division of the MEM. They should be able to tell you which parcels of land in BC are being put up for mineral rights auctions. You should also ask them to provide you with notice if lands in your area are proposed for auction.

■ Information on mineral titles in BC can be found at: <http://www.em.gov.bc.ca/subwebs/Landsale/main.htm>

### **6.3 Road Building and Well Site Clearing**

Once the company owns the subsurface rights, it needs to build a well site to test for commercially viable oil and gas reserves. A road will have to be built to truck in the drilling rig, crew and other material to the well site. Road building can destroy valuable pasture or farmland, and the truck traffic can pose risks to cattle and disrupt your peace and quiet. Trucks and drilling equipment may also bring with them invasive weeds, which could affect your crops or your land if precautionary steps are not taken. At the well site, land needs to be cleared and leveled to accommodate a drilling rig, fresh water well, sump and other equipment like compressors and crew trailers.

### **6.4 Drilling**

Drilling is done with mobile, truck-mounted rigs. Depending on how close the well site is to your house, the noise and lighting used for night work can be very disruptive. Drilling muds, which are used to lubricate the drill bit when drilling through rock, are usually stored in surface sumps. Limiting access by any cattle or animals to the well site, where they might lick drilling equipment or drink contaminated drilling muds from the sump, is important. Drilling also requires use of groundwater, which can raise concerns about depletion of groundwater for domestic, agricultural or ranching uses.

### **6.5 Well Operation**

Once a well is drilled, the company will let the natural gas flow for up to 21 days to test it for rate, pressure and chemical contents of the gas reservoir. During this time they “flare”, or burn, the gas. While this burns off most of the gas, it also releases a host of chemicals into the air that may cause a decrease in local air quality.<sup>8</sup>

If a well produces sour gas containing hydrogen sulphide ( $H_2S$ ), it can be extremely dangerous –  $H_2S$  can be fatal to humans and animals at relatively low ambient concentrations. You need to satisfy yourself that the company has a reliable emergency plan in place in the event of a sour gas leak, and the resources to implement that plan. You also need to consider how the company will communicate a sour gas leak to you, and how you would evacuate your property in the event of a leak. In northeast BC, an increasing number of wells being drilled are sour gas wells.

If the company finds a viable reserve, it will reinforce the well hole and move into the production phase. This will involve adding further equipment – dehydrators, compressors, battery packs – to the well site. And if one good well is found, the company may want to drill more wells to maximize access to the reserve.

### **6.6 Pipelines**

To transport the gas to a processing plant, the company needs to build gathering or flow pipelines that feed into larger pipelines. Compressors may be needed to keep the pressure in the pipeline up. This can further disrupt farmland or pasture, and introduce another source of noise.

### **6.7 Closure and Remediation**

When the reserve is tapped out, the company is responsible for properly cleaning up the site, removing equipment, and restoring the site to the condition it was in before by grading, re-seeding etc. Some sites become “orphans” when the companies go bankrupt, change ownership or fail to honour the clean up obligations. As will be discussed below, it is important that you have a clear agreement with the company regarding site clean up

and restoration, and that you keep the OGC informed of any concerns so that they can properly monitor the company's efforts.

The OGC requires each company to post a \$7,500 reclamation bond per well. While this amount is substantially less than the actual cost of properly remediating and closing a well, the OGC advises that to date they have a relatively few incidences where companies walk away from their remediation responsibilities.

## 7

## Getting the Information You Need to Negotiate

The first approach to a landowner is usually made by a “landman” working for the company. A landman is an agent for the company whose sole purpose is to negotiate access to private land. Once you're at the stage of a landman knocking on your door, it's no longer about whether the company is going to come on your land, but how, when, where, and at what price. It's important that you take the time now to look after your interests – no one else is going to do it for you.

The company needs either a signed surface lease agreement with you, or a “right-of-entry order” from the Mediation and Arbitration Board, before it can occupy your land to produce oil and gas. Most landowners end up negotiating a lease directly with the company, and this part of the Toolkit provides tips on the negotiation process. Situations where you are unable to reach an agreement and find yourself pursuing mediation before the Board are considered below in section 9.

### Tip #1: Don't Be in a Rush

*The landman acts for the company, and protects the company's interests – not yours. Do not assume that everything he tells you is reliable, and above all do not trust that he will cut you a fair deal. You have to look out for your own interests. Some landmen will threaten to “take you to arbitration” if you won't sign a lease. Don't let this threat push you into a deal you don't want – it may be an empty threat, and there are actually some potential advantages to going to arbitration.*

Once the landman is at your door, you are at a critical juncture in your relationship with the company. Whatever deal you negotiate is going to determine how the company operates on your land, and how much it pays you, for at least five years. It's therefore important to take the time and effort to:

- **Clearly evaluate your needs, concerns and interests.** Do you want the well site as far away from your house as possible, do you have cattle that need to be protected, are you concerned about weeds being introduced to your property from the company's vehicles? Think it through.
- **Evaluate all the options.** Just because the company has a preliminary design for a road and well site, doesn't mean that no other arrangement is possible. Get them to sketch out the gas reserve and the proposed well site, and look at options, which may include directional drilling in order to minimize land impacts.

## 7.1 What's in a Lease

- **Think ahead.** You're going to live with this arrangement for anywhere from 5 to 40 years. Think now about what your needs might be in the future.
- **Negotiate for your best interests.** No one else is looking out for you, and the company is in the business to make money out of using your land. Don't feel that you have to give a poor company a break by helping out with your land – they're making good money, and some of it should go to you.

A lease is a legal document that defines your relationship with the company for as long as the lease is in effect. Any changes while the lease is in effect will generally require the company's consent, so think now about what you want in it.

Leases follow a standard format. They identify the parties and the land. They grant the company an option to lease those lands, and specify an amount for the option that the company pays when the lease is signed. The company can exercise this option by paying you a second, larger amount of money within a set period of time (for example 180 days). This amount is to compensate for the initial disturbance to the land, and is a one time only payment for the affected lease area. A fixed annual rental rate is then paid for each following year of the lease. These are the key financial parts of a lease.

### **Tip #2: Feel Free to Create Your Own Lease Terms**

*Companies use a standard surface lease form, which they may modify to suit their own needs. This is only a starting point. You can add to it, delete from it, and design it to meet YOUR needs. This can be done by adding a Schedule to the lease that contains any special terms that you have agreed to, as well as by editing the terms in the standard lease form itself. Landowners are advised to read the entire lease carefully, and not just assume that different leases contain the same terms.*

It's important to note that section 9 of the *Petroleum and Natural Gas Act* makes the company automatically liable to pay a landowner compensation for occupying and using land to explore for and develop oil and gas. The company does not have a choice as to whether it pays or not – the key issue is how much (see Section 8 for a discussion of compensation).

The lease will also deal with: the company's responsibility to properly manage and remediate their operations; your responsibility to give them access to the land covered by the lease; how and when the annual compensation can be reviewed; how and when the lease can be extended or ended. This is not an exhaustive list of terms – you are free to set any legal terms you wish in the lease.

In addition, *the Surface Lease Regulation* states four minimum requirements that must by law be in each surface lease. They are:

1. The area covered by the lease can't be used for any uses other than those specified in the lease without your consent.
2. You can't reduce the surface area covered by the lease without the company's consent.
3. If the company doesn't pay you the agreed rent, and continues to not pay you for 90 days after you have specifically asked for payment, you can terminate the lease.



## 7.2 Factors to Consider when Negotiating a Surface Lease

4. The company can terminate the lease after two years, but must give you 90 days notice of the intention to terminate.

The terms that are set out in your surface lease are extremely important, and will govern your future relationship with the company. For example, a landowner recently learned the hard way about the shortcomings of his surface lease. The lease itself allowed a single well, but contained an additional clause stating that if there was a change in use, the company merely had to notify the landowner, and not seek permission. Using this clause, the company was able to install a satellite on the site, without obtaining landowner consent.

The amount of compensation that you receive for use of your land is an important issue, and is dealt with in detail below. This section deals with other issues aside from money. Oil and gas development can affect your enjoyment and use of your property. Before agreeing to a lease, you should get as much information from the company as possible. Some of this information may be important enough for you to ask that it be included as a specific term of the lease.

1. **Well and road location and use.** Where will the road and well site be located? If those locations are not the best from your perspective, ask the landman to sketch out the reserve area and discuss alternative places to locate the well or road. This is a key issue that should be clearly identified in the lease.
2. **Start and duration of work.** When does the company expect to start drilling, and how long do they expect to drill for? Do they intend to drill 24/7? Drilling close to your home can be very disruptive, and you should try and negotiate a livable drilling schedule if that is the case, and include it in the lease.
3. **How will the road and well site be managed?** If you have cattle, you want to make sure that the company is not exposing them to harm from truck traffic or contaminants on the well site. You should discuss the use of cattleguards and fencing, as well as site maintenance and cleanliness.
4. **How will the spread of weeds onto your property be avoided?** Drilling equipment and crew trucks can transport invasive weeds onto your property. If this is a concern, you should discuss a way to limit the spread of weeds, such as requiring vehicles be cleaned or requiring the company to put down gravel.
5. **Flare testing.** Does the company expect to be flare testing? If so, at a minimum they should give you advance notice of the composition of the gas, the timing and expected duration of the testing.
6. **Is the well likely to be a sour gas well?** This is a critical issue. Companies are required to calculate the area around a well site that could be impacted by an emergency. You need to know if your house or other buildings are in that zone, and if so, discuss the company's emergency plan and satisfy yourself that it is adequate. This is particularly important with sour gas wells, as sour gas is fatal if released in sufficient quantities. You need to be fully satisfied that the company has a clear plan for dealing with the eventuality that the gas is sour. This plan must include a feasible method of alerting you to any danger, and evacuating your property if it is in the zone that could be affected by any leak or blow out. The OGC is responsible for approving emergency plans, and this may not be an appropriate issue to include in a lease.

7. **Water use.** Will the company be drilling a well, and if so how will they ensure that it will not impact your water use? You can ask for a guarantee of compensation, or “indemnity”, against any harm to or reduction in your well supply caused by the well. You should also consider whether water is in such scarce supply in some seasons, that the company’s water use should be restricted. Testing of water quality and pressure before and after drilling may be desirable.
8. **What is the full potential development plan for the site?** While the company may not know until the well has been tested, you should get an idea of how big they think the reserve is and how many well sites and pipelines they may be planning for. You want to get a sense of the long term development potential – will there be a desire to drill additional wells, or construct batteries, compressor stations or powerlines on your land in the future?
9. **Will the proposed development impair your use of your land outside the development site?** The location of a well site can impact access to and use of the land around it. A large field broken up into small parcels may require more time to harvest, well sites may change water flows and cause ponding, or patches of land between well sites and roadways may be inaccessible to machinery.
10. **What types of hazards might the drilling create?** If the company is putting drilling waste into a sump, you want the sump fenced off from any animals and you want to know how that waste will be cleaned up. If it is fracturing the rock, is it using fracturing (fracking) fluids, which could be highly toxic? You want to know how they responsibly manage those liquids, including their removal from the site. Ideally companies should use water-based fluids instead of toxic fracking fluids.
11. **How does the company plan to restore the site?** The company should be able to describe to you how they will dismantle, clean and restore a site. The lease should include a term dealing with restoration, and aim at having the site restored as nearly as possible to its original condition. If this term is in your lease, it gives you an independent right to require proper clean up that does not depend on the OGC or the small bond posted by the company.
12. **Other issues.** Perhaps you want to provide some sub-contracting services to the company, like snow plowing or tree cutting. You could ask for a first right of refusal on that work. If you’re negotiating a second lease or a lease extension, you want to make sure that any outstanding issues are dealt with before you sign the new one. Perhaps you want to build the fencing, or you want the right to inspect the well site on a regular basis. All these types of details unique to your needs (sometimes called “side benefits”) can be included in the Schedule to the lease, if you are successful in negotiating them.

## 7.3 Controlling the Use of the Site

A surface lease can also give you a degree of control over how the site is used. Some companies negotiate for a single well site, and then move batteries, dehydrators and pipe storage racks on site. Others use water when it wasn't part of the deal, or drill all night when you thought it was a daytime operation. You can try and control these activities, by including specific terms in the lease such as:

- Only the identified activity (such as one well) can occur on the site. Any further uses, or changes in use, require your consent, and may require further compensation.
- The company's hours of operation are clearly stated and limited.
- 24-hour advance notice of drilling, flaring and other significant events must be given.
- If it's a sour gas well, an H<sub>2</sub>S sensor could be installed between your house and the well site.

These are only a few examples, and you should negotiate for the outcomes that are important to you.

# 8

## Money Talks: Compensation Issues

Once you've got the information that you need and identified the issues that are important to you, you can negotiate for adequate compensation.

The company is required to compensate the landowner for the use of the land. Generally, compensation is calculated under the following headings:

- A one time entry fee that covers the initial loss of the land, as well as damage, disturbance and inconvenience caused by the activity. For example, you will have to spend time dealing with the company, reviewing proposals, and seeking advice and information. You are entitled to compensation for that time and effort. You are also entitled to the inconvenience of having road and well site construction on your land, with accompanying loss of peace and quiet, use of water resources, etc.
- An annual amount for the loss of use of the land. This compensates you for the loss of the normal use of the land occupied by the well site and road, over the life of the well site. It can be adjusted in the future, either through negotiation or by application to the Board.

Settling on an appropriate amount can be difficult. Generally, the value of the land is determined by the price the land would get if sold on an open market by a willing seller to a willing buyer. Recent sale prices for comparable land may therefore be helpful benchmarks for valuing your land. An appropriate value for loss of use can be calculated by multiplying the expected yield (in the case of farmland) for the affected area, by the value per unit of the crop harvested. However, this calculation should take into account the possible increase in value of the crop over the term of the lease. Alternatively, an average yield and price over the past five years can be calculated and applied, again with adjustments for possible changes over the term of the lease.

## 8.1 How does Compensation Work?

You should also be careful to seek compensation for any secondary losses you will suffer, where for example the location of the well site makes a further piece of your land unusable. You are entitled to full compensation for all losses you suffer.

Calculating an appropriate amount for disturbance and inconvenience is even more difficult – how do you value the impact of noise, or the hassle of taking time out of your day to deal with the landman? Keeping a diary of all the work and time you invest in dealing with the company is a good idea; it will help you keep relevant information in one place, and it creates a reliable record of the time you have spent. Then choose a reasonable hourly rate for yourself, multiply it by the time you’ve invested, and top it up for intangibles like loss of peace and quiet.

In order to get a sense of the value for landowners, we conducted a selected review of subsurface lease data for the years 1996 and 2002. We found a significant divergence in the dollar values on the leases that we reviewed. The one time entry amounts ranged anywhere between \$500 to \$20,188; the annual rents ranged from \$250 to \$5,900. The average price paid for entry in 2002 is about \$8,500, an increase of about \$1,500 from 1996; and the average annual rent in 2002 is just over \$3,000, which hasn’t changed very much since 1996.

**Table: Compensation Rates for Selected Surface Leases in Northeast BC<sup>9</sup>**

		2002	1996
<b>One time Entry</b>	Highest Amount	\$20,188	\$15,000
	Lowest Amount	\$1,820	\$500
	Average Total Amount	\$8,570	\$7,145
	Average Amount Per Acre	\$1,345	\$1,258
<b>Annual Rent</b>	Highest Amount	\$5,500	\$5,900
	Lowest Amount	\$1,000	\$250
	Average Total Amount	\$3,179	\$3,121
	Average Amount Per Acre	\$499	\$550

Given the wide range of values, this data does not provide solid guidance on appropriate compensation for specific properties. Additionally, the reliability of the 2002 data is reduced by the practice of some companies in whitening out the dollar amounts on the leases they file with the Board.<sup>10</sup> At the end of the day, the best case for compensation rests on proof of specific characteristics of the land that drive the value higher, like specialty crops or other unique uses that distinguish the land from other properties.

## 8.2 Side Benefits

Some landowners have businesses or services that they want to hire out to the companies. The lease can include terms guaranteeing a right of first refusal on work, or requiring the company to use materials or services supplied by the landowner. Typically, these types of side benefits are listed in a Schedule to the lease, and the willingness to negotiate side benefits will vary from company to company. Unlike compensation for use of land and inconvenience, the companies are not under a legal duty to negotiate side deals.

It is also important to know that the Mediation and Arbitration Board typically does not consider or enforce side benefit arrangements. Its mandate is restricted to looking at compensation for use of land and disturbance. If the side benefits are really important to you, negotiating a lease with the company is the best way to go.

### 8.3 Cooperating with Other Landowners

#### Oil and Gas Development May Affect your Property Value

Two recent studies have confirmed that oil and gas development has a negative impact on property values.

- A study commissioned by the La Plata County Commission in Colorado concluded that a proposed 350 well coalbed methane project could result in a net reduction in real estate value for affected properties of 22%.<sup>11</sup>
- A similar study conducted for the University of Alberta and Alberta's Energy and Utilities Board found that the intensity of oil and gas activity (including wells and flaring batteries) has a statistically significant negative influence on price, and could impact property values by 10%.<sup>12</sup>

Because companies often seek to develop particular locales at once, one of the best negotiating strategies is to connect with nearby landowners who may have been approached by landmen, and share information.

While the financial arrangements with companies are independent private matters, and often considered confidential by landowners, it is exactly this independence and confidentiality that can result in landowners not getting as good a deal as possible. This culture of independence means that landmen can, and do, talk to different people in different ways, in order to obtain the most favourable terms of entry for the company at the least possible price.

If people are not diligent, it is possible that a form of “divide and conquer” will prevail, which means that at the end of the day, the prices negotiated overall will be lower. Sharing information with neighbours is one means of ensuring that individual landowners are able to negotiate the best possible terms in a surface lease.

Do not feel pressured to negotiate a deal right away. Remember, the gas is under your land, it isn't going anywhere. It is important to keep in mind that at the end of the day, you and your neighbours will still live on the land and in the community, and the companies will be gone.

## 9

### Taking your Case to the Mediation and Arbitration Board<sup>13</sup>

If you can't negotiate an acceptable surface lease, the company will typically apply to the Mediation and Arbitration Board for a “right-of-entry order”. Not many lease negotiations get to this point – in 2000/2001 the Board only had 34 hearings. A right-of-entry order achieves the same result as a surface lease – it provides the company with access to your land subject to terms like compensation – but is imposed by the Board after a hearing process.

- Information on the Mediation and Arbitration Board can be found online at: <http://www.em.gov.bc.ca/subwebs/oilandgas/rights/MABoard.htm>

## 9.1 What Types of Issues Does the Board Deal with?

The Board is an independent body (meaning it is not under the direction of the OGC or other government agency) that exists to hear and settle disputes between landowners and sub-surface right holders. It is based in Fort St. John, consists of a chair and a maximum of eight other appointed members, and has a part time administrator. It deals with three primary issues:

- **The terms under which a company gets access to your land.** By issuing a right-of-entry order with terms, the Board will decide any issues that you and the company could not negotiate.
- **The renegotiation of lease terms.** After the first four years of the lease, you can give notice to the company that you wish to renegotiate the lease. If no agreement is reached within six months of that notice, you can apply to the Board for arbitration of the dispute.
- **Awards of compensation for damage to the land.** While compensation for disturbance is dealt with in both surface leases and right-of-entry orders, if the company causes damage above what was originally anticipated and you can't negotiate acceptable compensation, you can apply to the Board for arbitration.

In settling compensation matters, the *Petroleum and Natural Gas Act* (section 21(1)) states that the Board may take into account:

- the compulsory aspect of the entry, occupation or use;
- the value of the land;
- the owner's loss of a right of profit with respect to the land;
- temporary and permanent damage resulting from the entry, occupation or use;
- compensation for severance;
- compensation for nuisance and disturbance from the entry, occupation or use;
- money previously paid to an owner for entry, occupation or use; and
- any other factors the board considers applicable.

## 9.2 How Do I Apply to the Board?

Typically the company is the one who needs the right-of-entry order to get access to your land, so it is the company that will first apply to the Board. However, landowners can also initiate the mediation and arbitration process by making an application to the Board. The *Petroleum and Natural Gas Act* (section 16(2)) states that the application must be made in the form required by the Board, and you should contact the Board for the form. It also requires that you provide an affidavit with the address of each person that could be affected by the application (usually the company), and swearing that those people have been given a copy of the application. An affidavit is a written sworn statement, and can be done by a lawyer or notary public for a small fee.

You should also bear in mind that the Board's authority is limited to dealing with the terms under which a company accesses your land. If you have concerns about the operation of a well site, the OGC, and not the Board, is the place to take your concerns.

### 9.3 Do I Need a Lawyer to Participate in the Board's Process?

### 9.4 How Does the Process Work?

You do not have to hire a lawyer to represent you before the Board. The Board is used to dealing with people who represent themselves, and the process is much less formal than a court case. However, having a lawyer who is familiar with the industry can be a big help. It also takes the workload off you (though at the price of paying the lawyer). And the companies usually use lawyers before the Board.

If you do want a lawyer, we've provided names of lawyers who may be able to assist you at the back of the Toolkit. When choosing any lawyer, ask him or her whether they have experience with the Board, or with the oil and gas industry. At a minimum, you want a lawyer with courtroom experience who can act as your advocate. And get a clear quote on the cost of the work, so you have an idea of what it will cost you up front.

The Board has a three-stage process, and things get a little more formal and legalistic as you move up the levels. The Board Administrator is responsible for the first, most informal stage. After an application is filed, the Administrator will review the application to make sure that it includes all the required information, and then contact the parties to see if the points of disagreement can be resolved without going to formal mediation. This practice is in line with the Board's general philosophy that a negotiated agreement is better than an imposed settlement. This first stage is often done by phone, and there is no formal hearing yet.

If that doesn't resolve things, the next step is a mediation hearing before one member of the Board. The hearing before the mediator is done in person, and focuses on trying to resolve the issues in dispute. You should bring with you any information that you think is relevant. You can also have someone attend with you for assistance if you wish.

If the mediation is successful and the issues are resolved, the mediator will issue a right-of-entry order with terms that you and the company will both approve, and the process ends there. If the issues are not resolved, the mediator can still issue a right-of-entry order to the company. The mediator must also require the company to post money as security with the Board, and pay you not less than ½ of that security amount as pre-payment on what the Board will eventually order. The process then moves to the arbitration stage, where outstanding issues are addressed and a final order is issued.

The arbitration stage is the last and most formal stage of the process, and is the stage where having a lawyer is most useful. At least one, and up to three Board members hear each arbitration. Before an arbitration begins, parties may be required to exchange any written evidence and materials several days in advance, and give notice if they will be represented by a lawyer.

During the arbitration hearing, parties can call witnesses to give evidence under oath, and other parties can cross-examine those witnesses by asking them questions about their evidence. The Board has the power to compel witnesses to attend and to order that a party produce relevant documents. This means that you can have a company witness attend your hearing, or ask that information in the possession of the company be provided at the hearing, as long as it is relevant. Even though you've been through mediation, the arbitration is a new hearing, and you should provide evidence on all issues that remain in dispute, even if you have already provided that same evidence to the mediator.

The result of an arbitration process is a binding order setting the terms on which a company will have access to your land. There is a very limited right to appeal decisions of the Board to the BC Supreme Court on "any point or question of law raised before the board". Generally, a dispute about how much you should be compensated is not a "point or question of law", and arbitration is where that dispute ends. If you think an arbitration

## 9.5 How Can I Best Prepare for this Process?

award does contain an error of law, you should consult a lawyer for advice on whether an appeal is appropriate.

Preparation is critical to doing well in the mediation and arbitration hearing. Three key points to bear in mind are:

### **1. Know what you want**

*You should have a clear list of the issues that you are concerned about, and a clear idea of how you want them dealt with.*

### **2. Know what information you need to support your case**

*The Board is required to consider evidence when making its decisions. “Evidence” basically refers to reliable information that is relevant to, and supports, the point you want to argue, and it can be oral or written. You need to have a clear idea of what evidence you have to support what you want.*

### **3. Get your evidence and materials lined up in advance**

*The mediation and arbitration process can be confusing and intimidating for a non-lawyer. It only gets worse if you are fumbling around with your evidence. Put the time in to organize what you want to say, how you want to say it, and what evidence you have to support your argument. Write your concerns down, make lists, put together photocopies of documents you want to rely on – organize things in advance so that you can be focused during the hearing.*

When you are in the actual hearing, this advance organization will hopefully pay off by permitting you to present your case in a focused and effective manner. Some basic advocacy skills that are most relevant to the more formal arbitration process are:

1. Tell the Board at the beginning what the outstanding issues are from your point of view, and what you want to get out of the hearing. This gives the Board a bit of a “road map” to where you are going with your evidence and argument.
2. When you present your evidence, clearly explain the relevance of each witness or document so the Board knows why you are presenting the evidence.
3. When thinking about your case, try and put yourself in the place of the Board. If you were them, and didn’t know anything about your land and your concerns, what would you need to see and hear to be persuaded?
4. If the Board appears confused or distracted, do not just rush ahead with your presentation. Wait for their attention to refocus on you, and even ask if there is something they are confused about that you can help them with. Don’t be rushed or ashamed to take your time in presenting your side of the case.
5. Do not be rattled by the company’s lawyer if he or she questions you. Stick to your evidence and present it clearly and truthfully. Cross-examination is only dangerous if you are vulnerable to having your evidence destroyed – prepare well, stay calm and stick to the facts.



6. Prepare a written summary of your argument in advance, and provide it to the Board and other parties. This does not have to be fancy. Simply write down what you are seeking out of the process, and be as specific as you can. Where you are relying on specific evidence to support a point, mention that evidence in the written summary (for example, “The amount offered by the company is too low, and should be increased to X amount per year. We will show past receipts from crops grown on the affected land that support this higher amount”). You can then also use this written summary to keep yourself on track during the hearing, by making sure that you are addressing all the issues in it.
7. Don't be afraid to test the company's evidence if you have a good reason to do so. During an arbitration hearing, you have the right to ask questions of the company's witnesses through cross-examination. This is not an opportunity to harass the company or demonstrate that you are smarter than they are – those are bad reasons to cross-examine. If you think they have left something important out, or have characterized an issue in an inaccurate way, you can ask them questions to try and set the record straight. The questions can be “leading questions”, meaning questions that tend to point towards an answer. An example would be, if the company is saying in the arbitration that your property is only worth X/ha, but they previously paid your neighbour a higher amount of Y/ha for comparable land, you can put that to the company witness: “You say my property is only worth X, but you'll agree that in this letter dated A you actually paid my neighbour Y for land that is pretty much the same, right?”
8. Appear reasonable. Most of us respond well to people who we think are acting reasonably, and react poorly to people who we think are being unreasonable and demanding. The same is true of the Board. Even if you are pretty upset at what is going on, try to convey the importance of the issues in a measured and reasonable manner.

### **Alberta's Surface Rights Board**

The Alberta equivalent of BC's Mediation and Arbitration Board is the Surface Rights Board, which posts its orders on-line, allowing the public full access to its rulings. You may wish to review some of these decisions at <http://www.surfacerights.gov.ab.ca/home/>

The Mediation and Arbitration Board does not post its rulings online.

## **9.6 Costs**

The Board can order the company to pay you for part of the costs you incurred while participating in the hearing process. These include “hard costs”, like photocopying, and the cost of the time you invested. Being prepared, presenting a focused case, and acting reasonably – if you've done these things and got more from the company than it was offering, you've got a strong case for asking for payment of your costs.

Hard costs can be proven through receipts, phone bills, or other invoices. The cost of your time can be calculated by estimating the hours you've invested in the process, and

multiplying it by a reasonable hourly rate. The landman's hourly rate may also be a good rate to suggest to the Board; it's only fair that you should get paid as much as he or she did to go through the same work and hearing.

## 10

### The OGC Advisory Committee

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The OGC has established an Advisory Committee, which operates independently of the OGC, and consists of representatives of industry, local communities, the environmental community and First Nations. This Committee is created by the *Oil and Gas Commission Act*, and its mandate is to provide advice and recommendations to the OGC on policy and other matters.

One of the key responsibilities of the Advisory Committee of interest to landowners is the Request for Reconsideration process. The *Oil and Gas Commission Act* allows “interested persons”, in particular landowners, affected parties, and First Nations, to apply to the Committee to reconsider activity approvals that have been granted by the OGC. This avenue is available to you if you have concerns about a well approval. In most cases to date, requests for reconsideration of OGC decisions have been related to either a lack of consultation, or a failure to appropriately consider safety concerns in granting the approval.

Once an application has been made, the Advisory Committee will review the approval, and re-evaluate it. They will then make a recommendation back to the OGC as to whether the original approval should be overturned or not. It is important to note that this process is merely recommendatory: while the Advisory Committee can recommend that an approval be overturned, it does not have the power to do so.

Since 2000, the Advisory Committee has entertained 12 of these requests, and in 6 of them recommended the decision be reconsidered. Despite this, the OGC has gone ahead with the original approval in every case. The fact that each recommendation to overturn an approval has been declined by the OGC is of real concern to residents in northeast BC, who feel that the OGC and the BC government need to do more to address local concerns and to ensure responsible oil and gas development.

■ The Request for Reconsideration process description and forms can be found at:  
<http://www.ogc.gov.bc.ca/reconsideration.asp>

## Notes

- <sup>1</sup> *Canada's Energy Future: Scenarios for Supply and Demand to 2025*, National Energy Board, 2003, Executive Summary.
- <sup>2</sup> Statistical information in this section was obtained in conversations with Ministry of Energy and Mines officials in September 2004.
- <sup>3</sup> In some cases, land grants did include a transfer of mineral rights from the government to the landowner, and in those cases the government no longer has the right to sell or lease those mineral rights. This only happened for a very small portion of land primarily on Vancouver Island, and this Toolkit focuses on the typical scenario where the landowner does not own the subsurface mineral rights. Mineral title is also not always clear, and within the next year and a half, the BC government will be undertaking a Mineral Title Clarification Project, to address situations where mineral title is unclear. MEM will make a decision about the ownership of unclear mineral titles, and then provide the affected landowner and the public 6 months to challenge the government's allocation of title. Where there is a challenge, the government will conduct an independent review. Final title determinations will be confirmed through Cabinet orders. For further information, contact Barbara Thomson at the Ministry of Energy and Mines, Tel: 250-952-0533.
- <sup>4</sup> *Fisheries Act*, R.S.C. 1985, c. F-14, ss. 35(1) and (2).
- <sup>5</sup> See *Oil and Gas in British Columbia: 10 Steps to Responsible Development*, April, 2004, <http://www.wcel.org/wcelpub/2004/14100.pdf>.
- <sup>6</sup> See <http://www.wcel.org/issues/ogm/>.
- <sup>7</sup> Summary Tables prepared by Farmer's Advocate Office, Edmonton, Alberta, April 2004.
- <sup>8</sup> The BC government does not collect royalties on flared gas; thus, it is a free pollutant, for which locally affected communities bear the price.
- <sup>9</sup> This 1996 data is found in a summary chart available from the BC Mediation and Arbitration Board. The 2002 comparison was conducted by reviewing selected leases available through the Board. Whereas the 1996 data contains information on 62 surface leases, the 2002 data is compiled from a review of 67 surface leases, but is not as complete, because the dollar amounts were whited out of 36 of the 67 leases reviewed.
- <sup>10</sup> This is an increasing problem. Section 10 of the PNGA requires companies to file full copies of their leases with the Board. This gives the Board access to "market" information, as well as landowners who can access the Board's office. The only reason a company would white out the dollar values is to leave landowners in the dark about the going rate for leases. The more people who write to the Chair of the Board and express concern about this practice, the sooner it might change.
- <sup>11</sup> *La Plata County Impact Report*, La Plata County, Colorado, October, 2002.
- <sup>12</sup> *Impact of Oil and Gas Activity on Rural Residential Property Values*, December 16, 2003. This study was prepared by staff of the Energy and Utilities Board, the University of Alberta, Wilfred Laurier University and Alberta's Natural Resources Conservation Board.
- <sup>13</sup> The government is currently reviewing the structure, role and composition of the Mediation and Arbitration Board. Changes may arise from that review that make some of this information out-of-date after 2004.

## Lawyers Who May Be Able to Assist You

Daryl Carter  
103, 10134 – 97 Avenue  
Grande Prairie, AB T8V 7X6  
tel: 780-882-7296

Les Dellow  
201 – 1200 103 Ave.  
Dawson Creek, BC V1G 2G9  
tel: 250-782-3314

John Hope, Hope Lord  
340 – 9900 100th Ave.  
Fort St. John, BC V1J 5S7  
tel: 250-785-6555

Jim Hope-Ross  
2032 Lake Bonavista Drive SE  
Calgary, AB T2J 4B5  
cell: 403-519-6009  
fax: 403-271-1565  
email: hopeross@shaw.ca

Randolph Smythe, Pomeroy & Gentles  
9947 – 100th Ave.  
Fort St. John, BC V1J 1Y4  
tel: 250-785-6688

Rodney Strandberg  
320 – 9900 100th Ave.  
Fort St. John, BC V1J 5S7  
tel: 250-787-7760

**Please note:** the inclusion of a lawyer's name on this list is not an endorsement of that lawyer. Each lawyer on this list will have a different level of knowledge of oil and gas matters. You are responsible for forming your own opinion of which lawyer will best meet your needs.

## Other Resources

Another publication you may find helpful is the Alberta based Pembina Institute's *When the Oilpatch Comes to Your Backyard: A Citizen's Guide*. This comprehensive guide describes in detail each stage of oil and gas development including ways in which potential impacts on air, water and land can be minimized.

The Pembina Institute  
Box 7558, Drayton Valley,  
AB, T7A 1S7  
Tel: 780-542-6272  
[www.pembina.org](http://www.pembina.org)

In the United States, the Oil and Gas Accountability Project has prepared *Oil and Gas at your Door? A Landowner's Guide to Oil and Gas Development*. Written from a US perspective, this guide also contains good information on how the oil and gas industry impacts landowners, and what steps landowners can take to better understand the industry.

Oil and Gas Accountability Project  
P.O. Box 1102  
Durango, Colorado USA 81302  
Tel: 970-259-3353  
[www.ogap.org](http://www.ogap.org)

## Surface Lease Negotiation Checklist

	Yes	No	n/a	Additional Notes
<b>Company identity</b> <ul style="list-style-type: none"> <li>■ Head Office</li> <li>■ Field Staff</li> <li>■ Single number contact</li> </ul>				
<b>Project and lease explained</b>				
<b>Timing of activities (if known)</b> <ul style="list-style-type: none"> <li>■ Commencement</li> <li>■ Construction activity</li> </ul>				
<b>Site-specific considerations</b> <ul style="list-style-type: none"> <li>■ pre-construction assessment (soils, crops, etc. of quarter section)</li> <li>■ renter(s)</li> <li>■ fencing</li> <li>■ power lines (above or below ground)</li> <li>■ access road</li> <li>■ drainage</li> <li>■ temporary work space</li> <li>■ water source for drilling</li> <li>■ domestic and livestock water</li> <li>■ weed control</li> <li>■ timber salvage</li> <li>■ dust, noise, odour, traffic</li> <li>■ livestock concerns</li> <li>■ future development – landowner/company</li> <li>■ substance produced</li> <li>■ other</li> </ul>				
<b>Sour (H<sub>2</sub>S) gas (if applicable)</b> <ul style="list-style-type: none"> <li>■ emergency contact number</li> <li>■ notification plan</li> <li>■ evacuation plan</li> <li>■ sour gas monitor</li> </ul>				
<b>Topsoil handling</b>				
<b>Site reclamation</b>				
<b>Drilling waste disposal process</b>				
<b>Impact of activity on adjacent land (setbacks, etc.)</b>				
<b>Factors affecting compensation</b> <ul style="list-style-type: none"> <li>■ entry fee</li> <li>■ land value</li> <li>■ inconvenience during construction</li> <li>■ loss of use of land</li> <li>■ adverse effect on rest of quarter section</li> <li>■ compensation explained (Surface Lease Regulation under PNGA)</li> <li>■ nuisance and disturbance</li> </ul>				



Sierra Legal Defence Fund  
214 - 131 Water Street  
Vancouver, BC V6B 4M3  
Phone: 604.685.5618  
[www.sierralegal.org](http://www.sierralegal.org)



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