

Surface Rights in Manitoba

- A Guide for Land Owners,
Occupants and Operators



SURFACE RIGHTS IN MANITOBA

A GUIDE FOR LAND OWNERS, OCCUPANTS AND OPERATORS

This booklet is intended to be helpful to land owners, occupants and operators in understanding Surface Rights legislation and the duties and responsibilities of The Surface Rights Board.

If you have particular questions on Surface Rights or *The Surface Rights Act* which are not answered in this booklet, please call in person or write to The Surface Rights Board.

Communication with any individual member of the Board is discouraged. All contact with the Board should be made through the Board Administrator.

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The material in this booklet is general in nature and should never be viewed as a substitute for legal advice.

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1. Definitions

Readers are cautioned to refer to either *The Surface Rights Act* and/or *The Oil and Gas Act* for the precise definitions if required.

Agreement

Means an agreement between an operator and an owner or occupant relating to a lease or to surface rights, but does not include a lease.

Battery Site

Means that portion of the surface of land, other than a well site or roadway, required for access to and to accommodate separators, treaters, dehydrators, storage tanks, surface tanks, surface reservoirs, pumps and other equipment, including above ground pressure maintenance facilities, that are necessary to measure, separate or store prior to shipping to market or disposal, or necessary to produce, the fluids, minerals and water, or any of them, from wells.

Lease

Means a lease of surface rights and includes a mineral lease where surface rights are included in the mineral lease.

Mineral

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

Natural Gas

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

Occupant

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

Mineral Rights

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

Operator

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

Owner means

- (a) The person or the executor, administrator, successor or other legal or authorized representative of that person, other than a mineral owner unless the mineral owner is also the owner of the surface of the land, in whose name a certificate of title has been issued under *The Real Property Act* or an instrument is registered under *The Registry Act* or

- (b) In the case of Crown land, the department of the government of the province or other body administering the land, or
- (c) The successor in interest or assignee under a bona fide agreement for sale or otherwise from an owner as defined in clause (a) or (b).

Power Line

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

Right of Entry

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

Roadway

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

Service Line

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

Surface Rights Means

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

The Surface Rights Board

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

Well Site

Means that portion of the surface of land required for the conduct of exploring, developing, or producing operations of a well. (Refer to *The Oil and Gas Act* for the precise definition of a well).

2. Mineral Rights - Surface Rights - Service Lines

Under *The Surface Rights Act*, whoever holds the mineral rights is entitled to access the land, to work and remove the minerals. To gain access, operators must enter into a leasing agreement with the owner who holds title to the land and the occupant who leases the land.

If a leasing agreement cannot be negotiated, the operator may apply to The Surface Rights Board for an order permitting access to the land. Please refer to Section 9(a) of this Guide titled Types of Hearings: Right of Entry.

3. Negotiating a Surface Rights Lease

In Manitoba, a large majority of the leases between operator and owners/occupants result from free and open negotiations. The lease agreed upon legally secures for the operator the surface of the land for extracting minerals.

In return, the operator will compensate the owner or occupant for loss of the land used in connection with mineral extraction.

Compensation will be in the form of a “first year payment” and subsequent “annual payments” for the balance of the lease.

An employee or agent of the company holding the mineral rights will approach the landowner with a surface lease. This will have a sketch or map attached to it which shows the area the company wishes to lease, and also shows the compensation that the company is prepared to pay for the surface rights.

Landowners are advised to take sufficient time to review the lease to be sure the terms and conditions are fully understood, and to identify points which will require negotiation.

NOTE: Compensation may be an issue. Property owners/occupants may find it helpful to use the criteria for compensation set out in *The Surface Rights Act*. They are described and discussed under Section 9(b) of this Guide titled Types of Hearings: Compensation.

THE ACT SPECIFICALLY REQUIRES A MINIMUM OF THREE (3) DAYS BEFORE A SURFACE LEASE CAN BE SIGNED BY THE OWNER/OCCUPANT AND IS MEANT TO ENSURE THE LANDOWNER HAS TIME TO CONSIDER THE OFFER MADE AND TO OBTAIN ADVICE, IF NECESSARY. THIS TIME PERIOD MAY BE WAIVED BY OWNER/OCCUPANT. (APPROVED WAIVER FORM ATTACHED, AS ATTACHMENT 2)

The following are a number of questions and issues that may arise during negotiation of a surface lease:

- How much of the surface of the land will be needed, and where will the well be located?
- Are there alternative locations to the oil company’s preferred site?
- How will the company access the site? Are there alternate routes?
- When will the operation start – and when will it finish?
- Will any construction be needed before the drilling starts? And what about after, will more construction be necessary?
- Who’s going to control the weeds during drilling and production phases?

- If no mineral is found and the well is abandoned, what surface restoration will be carried out – and when? And, what if the well produces for the length of the lease? How will the land’s surface be restored then?
- If the well is a producer, what surface equipment may be required? Where will it be placed on the leased area?
- Will a service line or power line be needed and, if so, what are the intended routes? Will the power line be overhead or underground?

It is advisable to do an on-site inspection of the land in question so the operator can be shown any areas of special concern. These may include fences or gates, livestock, or wells. Discuss all concerns with the operator and come to some agreement that can be formally included in the lease. All concerns should be addressed by the company prior to signing the lease agreement since a contract with the operator is binding once the property owner/occupant has signed the lease.

Should any party to the lease feel, at any time, that the terms of the lease have been violated, they should first try to resolve all differences themselves. However, if they are unsuccessful, an application may be made to The Surface Rights Board.

4. The Surface Rights Act

(Hereinafter referred to as “*The Act*”)

The purpose of *The Act* is to:

Provide for a comprehensive procedure for acquiring and utilizing surface rights;

Provide for the payment of just and equitable compensation for the acquisition and utilization of surface rights;

Provide for a procedure for the maintenance, preservation and restoration of the surface of the land used in connection with surface rights; and

Provide for the resolution of disputes between operators and owners/occupants arising out of the entry upon, use or restoration of the surface of the land.

5. The Surface Rights Board

(Hereinafter referred to as “the Board”)

The Board is a quasi-judicial body made up of a minimum of three members appointed by the province.

The Board is charged with administering and enforcing *The Act* and one of its main functions is to determine compensation where the parties are unable to agree.

The Board has the authority to gather, or have gathered for its use, any information deemed necessary to fulfill this role.

The Board is an impartial body, responsible for hearing all sides, and from the evidence, making decisions within the framework of *The Act*.

Communication with any member of the Board is discouraged. All contact with the Board should be made through the Board Administrator.

6. Application to The Surface Rights Board

An operator, owner or occupant may apply to the Board for a determination of any dispute that may arise in regards to:

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

When an application is filed with the Board, the applicant (operator, owner or occupant) **MUST**:

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

7. Mediation

Mediation services are available prior to any hearing being held to settle any or all matters in dispute.

With the consent of the parties, the Board may designate a member and the Board Administrator to attempt to mediate the dispute. Where attempts to mediate a dispute are unsuccessful, a hearing will be scheduled to consider the application.

8. Hearings

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

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

Procedures before the Board are kept as informal as possible. Presenters need not hire legal counsel. They may feel free to ask questions regarding, not only the case before the Board, but about procedural matters as well. However, it must be kept in mind that the Board acts in a quasi-judicial capacity and its decisions are subject to review by the Court of Appeal on a point of law.

Decisions of the Board are a matter of public record and board orders can be obtained by contacting the Administrator to the Board or visiting our web site at: www.manitoba.ca/minerals.

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

a) Evidence

There is to be a complete and full exchange between the parties, at least five days before the hearing, of all documents that a party intends to rely upon in evidence, including comparable leases, expert reports, sketches, surveys, etc.

Failure to exchange may result in the document(s) being inadmissible.

Issues are to be confirmed at the commencement of the hearing.

All claims must be proven by proper evidence. Parties should address the evidence to the various matters stipulated in Section 26(1) of *The Act*. If no evidence is led on a given matter, the Board, in considering that matter, may be unable to make an award. However, parties may consent to an amount for a given matter or a party can suggest the Board award an amount, which has been established by past Board decisions or by the market place (comparable leases). Evidence can be led to increase or decrease that amount.

b) Site Visitation

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

c) Costs

The Board has the authority to award costs of and incidental to participation in any of its proceedings, including awards in advance where appropriate. These costs should be for such legal, appraisal and other expenses that a party has incurred for the purpose of preparing and presenting a claim to the Board.

In requesting costs, a party should make a claim with the Board Administrator including detailed records of time and money spent in preparing for, and attending the hearing. Such records submitted shall also be provided to the other party.

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

i)When the amount of compensation offered by the operator, prior to the hearing, is less than 90% of the amount awarded by the Board, the Board shall increase the award to the owner/occupant, by any amount they consider just and reasonable to cover the costs.

ii)When the amount of compensation offered by the operator, prior to the hearing, is more than an amount awarded by the Board, the Board shall not award costs of any kind to the owner/occupant.

Offers of settlement made by an operator are not to be disclosed in the application or at any time during the hearing. The operator shall provide the amount of the declined final offer in a sealed envelope, to the Board Administrator immediately BEFORE the hearing. The offer will only be disclosed to Board members AFTER the decision on compensation has been finalized.

9. Types of Hearings

a) Right of Entry

If a property owner/occupant refuses to allow access to the surface of the land, the operator has the right to apply to the Board for a Right of Entry Order. The Board will verify that the operator has the mineral rights and, as such, is entitled to explore for and develop those rights.

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

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

b) Compensation

The Act states that where parties are unable to agree upon compensation, the Board shall determine the amount payable. The court has recognized the use in the industry of two methods of calculation of compensation. The “empirical” method applies a value to each factor set out in Section 26(1) of *The Act*. The “global” method is more widely used because it is recognized that it is difficult to assess and quantify accurately each factor set forth in Section 26(1). Using this method, the Board looks at whether a proposed site is a typical well site. A typical well site is one that does not present any special conditions that would make it unduly costly for a farmer to farm the land on which the site is located, and is within the Manitoba average of between two and four acres. The Board relies heavily on freely negotiated comparable leases as a proxy to determine the market value of a surface lease.

The Board will normally award “first year compensation” and “annual compensation”. First year compensation will include compensation for the value of the land to be used in connection with surface rights as well as those other elements which may apply as set forth below:

i) Value of land having regard to its present use before allowance of surface rights;
Whenever possible, the Board will seek to determine present value by evidence of comparable land sales, sufficiently close to the subject land in time, location, use, soil, climate, road access, proximity to towns and other significant factors which may affect value. The actual price paid on the sale may be obtained from the transfer on file in the Land Titles Office. Usually two or three comparable sales, when available are sufficient to assist the Board in determining the value of land in the vicinity.

ii) Loss of use of land or an interest therein as a result of granting surface rights;
The purpose of loss of use compensation is to replace as near as possible the net income which the owner/occupant could reasonably have expected to realize. Clear, accurate records offered AS EVIDENCE greatly assist the Board in determining loss of use compensation.

iii) Area of land that is or may be damaged by the operations of the operator;
This is not usually a factor which will affect initial compensation because such damages have not occurred and may never occur. There is adequate protection in *The Surface Rights Act* should damages occur in the future.

iv) Increased costs to the owner/occupant, if any, by reason of the works and operations of the operator;

v) The adverse effect caused by the right of entry to the remaining land by reason of severance, if any;
Compensation should equal the value of the extra time and costs needed to farm two units or to farm around several additional corners. Owners/occupants may be compensated for extra costs in time, material, machinery wear and tear, etc., when facts are offered as EVIDENCE at the hearing.

vi) The nuisance, inconvenience, disturbance or noise to the owner and occupant or to the remaining land, that might be caused by, arise from or is likely to arise from or in connection with the operations of the operator, and damage, if any, to any adjoining land of the owner and including damage to or loss of crop, pasture, fence or livestock and like or similar matters;
Evidence under this heading may include the cost of time spent in surface lease negotiations. A well site on the home quarter may result in higher compensation, if owners/occupants consider the additional noises or odours, than those in a more distant site. The problem of trespassing by unauthorized persons should be considered. This will become more difficult to control if the well site is in an isolated area.

vii) When applicable, an increase in the amount awarded by the addition of interest;
Interest is clearly a compensation factor only where there is a delay in payment of the compensation after the operator has been on the land and exercised his rights under a lease agreement or Board Order. It is in the best interest of both parties to keep the terms of the lease current, and the Board will use its discretion to determine the rate and amount of interest awarded, if any.

viii) Any other evidence that may be relevant to assist the Board to recognize any circumstances that may be peculiar to a particular situation including:

a) The cumulative effect, if any, of surface rights previously acquired, by the operator or by other operators, for additional sites with respect to the subject lands, and

b) The terms of a comparable lease agreement that a party offers as evidence for consideration. All parties have the right to submit leases as evidence in any compensation hearing. Once comparable leases have been selected, copies must be circulated to the other parties as previously described, as they will form part of the evidence to the hearing. Copies of most surface rights leases are filed with the Board and may be inspected, or copied by any person. Recent Board Orders may also be available on the web-site.

c) Three Year Review of Annual Compensation

Under *The Act*, owners/occupants and operators may not apply to the Board for a review of compensation within three years following the date the lease was signed OR the date on the Board Order if compensation was determined in this manner.

Once the three-year anniversary date has passed, application for a compensation review may be submitted and the Board will set a hearing date.

Evidence similar to that required for the compensation hearing should be gathered as grounds for this hearing.

d) Abandonment, Restoration and Rehabilitation Procedures

The Board and Petroleum Branch have jointly issued Information Notice 03-01 (Attachment 1) which outlines recommended procedures and requirements for an operator to follow upon abandonment of a well or battery, and restoration and rehabilitation of the site. The recommended procedures provide for the landowner's involvement throughout the entire process.

Definitions for this part:

Abandonment means

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

Restoration

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

Rehabilitation

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

Procedure for Abandonment of a Well or Battery

Prior to abandoning a well or battery, the operator must obtain approval to do so from the Director of the Petroleum Branch. Upon receipt of an application, the registered surface owner of the site is notified by the District Office of the Petroleum Branch.

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

Procedure for Restoration of the Site

As soon as conditions permit, the operator is required to clean up and contour the site suitable for use and to the owner/occupants satisfaction. The operator should then approach the owner/occupant for a release acknowledging that the site is ready for use (see Appendix "A"). The acknowledgement should indicate that the operator remains responsible for any further rehabilitation of the site that may be necessary based on crop or plant growth compared to the surrounding land, and any future claims for damage compensation. It should further acknowledge right of access to the operator to achieve any further rehabilitation that may become necessary.

When the Acknowledgment of Restoration (Appendix "A") is requested, the parties should negotiate any annual compensation that may be required pending the complete rehabilitation. Otherwise, the original agreement will remain in affect until an Abandonment Order has been issued.

Where an operator has restored a site and the owner refuses to provide an Acknowledgement of Restoration, the operator's recourse is to file an application with the Board for a review of annual compensation or an Abandonment Order. If the Board finds that the operator has restored the site in accordance with *The Act*, an Abandonment Order may be made retroactive to the date of application.

Where the Board makes an Abandonment Order, it shall consider any compensation due if the abandonment deprived the owner/occupant of using the land for the current crop year. It shall also provide that the operator is responsible for any further rehabilitation required and that the operator has right of access to the site for such purposes.

The Act also authorizes the Board, in its discretion, to provide the owner/occupant compensation in lieu of restoration. This provision will only be used where there is some compelling reason that restoration cannot be completed.

Procedure for Rehabilitation of the Site

When a well is license or a battery permitted, the operator is required to provide to the Petroleum Branch a performance deposit to ensure the operation and abandonment of the site is done in accordance with *The Oil and Gas Act* and Regulations. Once a site has been rehabilitated the operator may make application to the Petroleum Branch for a "Certificate of Abandonment" (Appendix B) that exempts the site from performance deposit requirements. This application must include a signed release from the owner. This "release" is not to be confused with an "Acknowledgement of Restoration" discussed in the previous section.

Where a site has been rehabilitated and an operator has not previously applied to the Board for an Abandonment Order and the operator is unable to obtain a signed release from the owner, the operator may make application to the Board for an Abandonment Order. This application should include any "Acknowledgement of Restoration" that may have been executed.

If the site is previously covered by a Board Abandonment Order and the owner refuses to sign a release, the application for Certificate of Abandonment must be accompanied by the Abandonment Order that has been fully complied with by the operator. Upon receipt of a

completed application and, provided a Petroleum Inspector confirms that plant or crop growth on the site is comparable to the surrounding land and no money is owed to the Crown, the Petroleum Branch may issue a Certificate of Abandonment.

The operator remains liable for the costs of any repair or rehabilitation required within six years of the issuance of a Certificate of Abandonment.

Removal of Caveats

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

e) Other matters that *The Act* authorizes:

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

Tortious Act:

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

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

This may also include a party that has no well sites on its property (e.g. spill from neighboring land).

Owners/occupants are to notify the Board in writing within 90 days after discovering the loss or damage. They are to describe the “tortious act” and claim an amount for compensation. The Board will send a copy of the notice to the operator.

Weed Control:

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

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

10. Appeals of Surface Rights Board Orders

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

- a) that the Board failed to observe a principle of natural justice;

- b) that the Board acted beyond OR refused to exercise its jurisdiction, or;
- c) that the Board made any other error of law.

Parties may choose to consult legal counsel to determine whether there are grounds for an appeal.

ATTACHMENTS

ATTACHMENT 1

Manitoba

Industry, Trade and Mines

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Winnipeg MB R3G 3P2
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INFORMATIONAL NOTICE 03-01

June 18, 2003

Re: Abandonment, Restoration and Rehabilitation Procedures

Introduction

This informational notice, issued jointly by The Surface Rights Board ("the Board") and the Petroleum Branch of the Department Industry, Trade and Mines ("the Branch") replaces Informational Notices 93-6 and 90-1. The purpose of this notice is to update and clarify recommended procedures and requirements of an operator upon abandonment of a well or battery, restoration and rehabilitation of the site.

It should also be noted that operators and owners are free to negotiate any alternate arrangement regarding release of surface rights on abandonment of a well or battery. Any questions regarding the appropriateness of such arrangements should be directed to the Secretary of the Board.

Definitions

In this notice,

"abandonment" means

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

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

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

Abandonment of a Well or Battery

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

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

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

Restoration of the Site

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

When restoration is complete, the operator may approach the owner of the site for an acknowledgement that the site has been restored and is ready for use by the owner. The acknowledgement should indicate that the operator remains responsible for any further rehabilitation of the site that may be necessary based on crop or plant growth on the site compared to the surrounding land. The acknowledgement should further indicate that the operator has right of access to the site for the purpose of any further rehabilitation that may be necessary. The operator remains responsible for future claims for crop loss or damages until rehabilitation has been achieved.

Appendix A provides a form of an "Acknowledgement of Restoration" considered appropriate by the Board. A downloadable version of this form is available on the Board's website at: www.manitoba.ca/minerals.

Unless alternate arrangements are made between the operator and the owner, the effect of an Acknowledgement of Restoration is, subject to subsection 39(2) and Section 42 of the SRA, to reduce normal compensation (i.e. annual surface rentals) in respect of the site.

Subsection 39(2) of the SRA provides:

Additional compensation

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

Section 42 of the SRA provides:

Removal of caveats

42 Notwithstanding any provision of this Part, the obligation of an operator with respect to compensation shall continue unabated until all caveats or other instruments registered by the operator against the land under The Real Property Act and The Registry

Act with respect to the surface rights have been discharged, released or quitclaimed, as the case may be.

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

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

Clause 39(1)(c) of the SRA provides authority for the Board, in an Abandonment Order, to provide for compensation to the owner in lieu of restoration. Generally, but subject to the Board's discretion, this provision will only be utilized by the Board where there is some compelling reason that restoration cannot be completed. The Board anticipates that such circumstances will be very rare.

Rehabilitation of the Site

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

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

When a well is licensed, the operator is required to provide to the Branch a performance deposit to ensure operation and abandonment of the well and rehabilitation of the site in accordance with the OGA and the Regulation. Once a site has been rehabilitated the operator may make application to the Branch for a "Certificate of Abandonment" that exempts the site from performance deposit requirements under the Regulation. Appendix B is a sample application form for a Certificate of Abandonment. A downloadable version of this form is available on the Branch's website www.manitoba.ca/minerals.

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

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

As an alternative to plant growth monitoring, in situations where the probability of soil damage is very limited, a Petroleum Inspector may accept soils analyses that, in the opinion of a qualified soils scientist, indicate soil conditions on the abandoned site are comparable to that of the surrounding land. A Petroleum

Inspector should be consulted prior to proceeding in this manner. All costs associated with the sampling and analyses are to be borne by the operator.

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

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

A Certificate of Abandonment is required for all wells that have been issued a well licence including canceled locations. The operator is required to obtain a surface release signed by the owner for a canceled location even if the only activity has been surveying of the wellsite.

Where a site has been rehabilitated, but the owner refuses to sign a release, the operator's recourse is to file with the Board an application under Section 37 of the SRA for an Abandonment Order. Any such application should include any "Acknowledgement of Restoration" that may have been executed.

Surface Rights on Seizure

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

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

Contacts

District offices of the Branch are located in Virden (phone (204)748-4260 and Waskada (204) 673-2472.

Any communications with The Surface Rights Board should be directed to the Secretary to the Board, Barb Miskimmin at (204) 945-0731.

THE SURFACE RIGHTS BOARD

THE PETROLEUM BRANCH

Original signed by T.A. Cowan

Original signed by L.R. Dubreuil

ATTACHMENT 2

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

I/We _____,
(Name of Owner(s) or Occupant(s))

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

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

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

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

Witness

Landowner

Witness

Landowner

APPENDICES

APPENDIX "A"

ACKNOWLEDGEMENT OF RESTORATION

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

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

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

Dated this _____ day of _____, 20__.

Witness

Landowner

APPENDIX "B"



APPLICATION FOR CERTIFICATE OF ABANDONMENT

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

Licence No:

Permit No:

_____ (well or battery name and location)

Surface Owner: _____ (name and address)

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

Check "Yes" or "No"

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

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

_____ (company name)

_____ (address)

_____ (Date)

_____ (Company Representative's Signature)

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

For Department Use Only

APPENDIX "C"

ACKNOWLEDGEMENT OF REHABILITATION RELEASE

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

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

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

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

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

Dated this _____ day of _____, 20____

Witness

Releasor

Witness

Releasee