

# Analysis of an Amendment of the Petroleum and Natural Gas Act to Include Regulations Regarding Surface Leases

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## Abstract

This paper analyses the negative impacts, legislation, and regulations surrounding surface leases. Landowners should be provided with the information to receive fair compensation for the natural resources below the surface of their land. Negotiations between landowners and companies that own the undersurface rights create a document called a surface lease. The Petroleum and Natural Gas Act provides legislation concerning the publication of surface leases and penalties for surface leases that have not been submitted. Although the legislation is in place, there are no regulations to enforce the legislation. Without these regulations, it is difficult to establish a comparable value for the negative impacts of surface leases.

## Introduction

Many landowners do not realize that when they purchase a property, they own the rights to only the surface of the property. Although they have the highest interest in the land, called the fee simple interest, the government owns the undersurface rights. The Crown, or the provincial government, owns the rights to the natural resources found below the surface of the land. The government is able to sell these undersurface rights to the oil and gas industry. Once the undersurface rights have been sold, landowners must comply and negotiate with the purchasing company. Although the company now owns the undersurface rights, a surface lease or right of way must be negotiated to allow the company access to the natural resources. The landowner still maintains the highest interest in the land, but now another interest is created and remains on the title of the property.

Surface leases have a negative impact on the value, utility, and aesthetics of land. Landowners who do not have previous experience with these types of negotiations can find it difficult to get fair compensation for the negative impacts of surface leases. These negative impacts include the construction of well sites, and with income producing properties, the loss in income during the construction. In order to establish a comparable value for these negative impacts, previously negotiated leases can be used to determine fair compensation.

## **Purpose of the Study**

Although the Petroleum and Natural Gas Act requires the registration of surface leases to the Surface Rights Board, there is currently no penalty for unregistered leases. Previously negotiated leases are available for analysis at the Surface Rights Board office located in Richmond, British Columbia. The majority of landowners affected by the Petroleum and Natural Gas Act are located in Northern British Columbia, which limits the accessibility of this information. The purpose of this study is to analyze the current availability of resources and the benefits of an online source providing previously negotiated surface leases.

## **Scope of the Study**

The report will discuss the following topics:

- Negative impacts of surface leases on land
- Current legislation to assist in the negotiation of surface leases
- Regulations to enforce the legislation

## **Sources and Methods**

The assessment included the following elements:

- Discussions with the Farmer's Advocacy
- Discussions with the Chair of the Surface Rights Board
- Research into the Petroleum and Natural Gas Act

## Assessment of the Current Legislation

### Negative Impacts of Surface Leases

When appraising the fair market value of a property, the most commonly used approach is a Direct Comparison Approach that is based on the principle that an informed purchaser would pay no more for a property than the cost of acquiring another existing and equivalent property. When a property has a surface lease, it is recognized as a negative impact and must be adjusted accordingly by the appraiser. The lease represents another interest in the land and is registered to the title.

A large part of the negative impact to land value is the aesthetics. A well site is not attractive and usually has a detrimental effect on the property value. Also, if the site is not on the property line, access roads will be required and service vehicles will be a constant. Because of these external factors, quiet enjoyment of the property is limited.



Well Site in Northern British Columbia  
[http://www.cbc.ca/daybreaksouth/news/2012/08/01/  
glut-of-natural-gas-hurts-northern-bc-economy/](http://www.cbc.ca/daybreaksouth/news/2012/08/01/glut-of-natural-gas-hurts-northern-bc-economy/)

A surface lease on farmland can be a detriment to the owners. The lease decreases the amount of land for crops and often the transportation vehicles bring in foreign

weeds that are noxious and chemically resistant, which is troublesome for crops.

Plant diseases can also be brought in through service vehicles.

Well sites come with a number of safety concerns. If an accident occurs, the operator is only required to inform you if it occurs off the lease. Sour gas wells, from H<sub>2</sub>S gas, are extremely dangerous and can lead to chronic health problems.

### **Petroleum and Natural Gas Act**

The Petroleum and Natural Gas Act outlines the legislation in place regarding the registration and publication of surface leases. Although the legislation is in place, there are no regulations set out to reinforce the current legislation. In 2010, amendments were made to the Petroleum and Natural Gas Act to include Sections 178, 179, 180, and 181. In regards to the legislation, the board refers to the Surface Rights Board and the right holder refers to the company that has purchased the undersurface rights.

## Legislation Regarding the Publication of Surface Leases

The Petroleum and Natural Gas Act at Section 178 (1) (4) states:

(1) “A right holder who holds a right of entry under a surface lease must submit to the board, not more than 90 days after the date the right holder acquires the right of entry.

(4) The board may publish prescribed information derived from a surface lease or agreement submitted to the board in a form and manner the board considers appropriate, including on the internet or by other electronic means.”

Although the legislation is in place, there are currently no regulations outlining the publication. The legislation is intended to help inform landowners on fair compensation by providing previously negotiated surface leases for comparison. Without regulations on what information can be released, how the information is processed, and the format of the information, the Surface Rights Board is unable to publish this information. The public does have access to these leases at the Surface Rights Board Office located in Richmond, BC. The Farmer’s Advocacy, located in Dawson Creek, BC, does have access to surface leases but are unable to print the documents.



## Legislation Regarding Submission of Surface Leases

The Petroleum and Natural Gas Act Section 179 (1) states:

(1) “Subject to any regulations, if the board is satisfied that a right holder has failed to submit a surface lease or agreement as required under section 178 (1) or (2), the board, without prior notice, may impose an administrative penalty on the right holder in an amount that does not exceed the prescribed amount.”

The Petroleum and Natural Gas Act Section 180 (1) states:

(1) “If the board is satisfied that a right holder has failed to submit a surface lease or agreement as required under section 178 (1) or (2), the board, without prior notice, may suspend the right of entry under the surface lease until the surface lease or amending agreement has been submitted to the board.”

The legislation is intended to enforce submission of negotiated surface leases. There are no regulations in place outlining an administrative penalty. Although regulations are not necessary to enforce Section 180, the Surface Rights Board would use this section as a final step if the administrative penalty were not effective.

The Petroleum and Natural Gas Act Section 181 (e) (f) states:

“Without limiting section 133, the Lieutenant Governor in Council may make regulations relation to the following:

(e) prescribing information or classes of information that the board may publish under section 178 (4);

- (f) the administrative penalty referred to in section 179, including the maximum amount of the penalty.”

The Act sets out how regulations are created, but since the amendment in 2010 there has only been discussion about regulations.

### **Regulations Enforcing the Legislation**

In 2012, the Ministry of Energy and Mines released a “Consultation Paper on Information Sharing by the Surface Rights Board”. The paper outlines the regulatory process, background information, and ministry intentions. In regards to publication regulations the paper states:

“The Ministry intends to recommend the introduction of a regulation that would allow the Board to publish the following information from the surface leases it collects:

- The location and size of the surface lease;
- The subsurface rights holder being granted the right of entry, occupation or use at the location;
- Compensation rates including rents paid under the surface lease; and,
- Terms and conditions of the surface lease agreement – including non-monetary compensation.”

The paper intended to open discussions regarding publication regulations but made no indication as to whether administrative penalties would be included in these regulations.

The Farmer's Advocacy assists in negotiating fair compensation for landowners. They provide some surface lease information on their website through an interactive map to help assist in establishing a comparable value.



Surface Lease Values Map  
[http://www.farmersadvocate.ca/leases\\_sales/surface\\_leases/](http://www.farmersadvocate.ca/leases_sales/surface_leases/)

Without publication regulations, the Farmer's Advocacy is unable to bring the lease documents in as evidence when entering into arbitration. It is difficult to determine how many surface leases are actually submitted to the Surface Rights Board without regulations on an administrative penalty. As stakeholders, the Farmer's Advocacy, among others, responded positively to the paper released by the Ministry of Energy and Mines and made recommendations towards an administrative penalty.

## Conclusions and Recommendations

The Farmer's Advocacy outlined possible regulations in their "Submission in Response to the Ministry of Energy and Mines Consultation Paper on Information Sharing by the Surface Rights Board" released in April 2012.

### Publication Regulations

The first recommendation made by the Farmer's Advocacy states that surface leases are public information and all information contained in them should be accessible through a searchable electronic database.

### Administrative Penalty Regulation

An Administrative Penalty Regulation is needed to enforce the submission of surface leases. In the response paper, the Farmer's Advocacy states that an Administrative Penalty of \$25,000 should be adequate to ensure companies comply with the legislation with this amount doubling with additional offences.

### Retroactive Regulations

Amendments to the Petroleum and Natural Gas Act were made in 2010. Therefore, the Publication Regulation and Administrative Penalty Regulation should be considered retroactive to October 4, 2010. A 60-day grace period will allow the submission of retroactive surface leases that have not been submitted to the Surface Rights Board.

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