

Ministry of Energy and Mines Consultation Paper on Information Sharing by the Surface Rights Board

Table of Contents

(1) Introduction	1
(2) Background Information	2
(2.1) Subsurface Resources.....	2
(2.2) Access to Private Land.....	2
(2.2.1) Surface Leases.....	2
(2.2.2) The Surface Rights Board	2
(2.2.3) Mediation and Arbitration	2
(2.2.3) Right of Entry Order	3
(2.2.4) Surface Lease Disputes	3
(3) Ministry Intentions	3
(4) Providing Comments.....	4
(5) Glossary.....	4

(1) Introduction

This Paper presents a proposal for a regulation intended to improve the public’s access to information from surface leases and right of way agreements held by the Surface Rights Board (the Board). The proposal would result in the online publishing of information derived from the surface leases that the Board collects. Public input is being sought on what information should and should not be published, and how any published information should be presented.

This Paper is intended for the purposes of consultation only. The power to enact a regulation rests entirely with the Lieutenant Governor-in-Council and no assurance is provided with respect to when or whether a regulation will be made, or as to its content.

The British Columbia Ministry of Energy and Mines (“the Ministry”) is considering a regulation under the *Petroleum and Natural Gas Act* (“PNG Act”).

The regulatory process consists of six stages:

- (a) Scoping – Identifying potential regulatory changes;
- (b) Ministry Consultation Paper – This Paper outlines the Ministry’s regulatory intent;
- (c) Consultation – hearing from interested parties and the general public via responses to this Consultation Paper, and other means as required;
- (d) Drafting – preparing legal language for consideration by the Minister of Energy and Mines (“the Minister”) and the Lieutenant Governor-in-Council (Cabinet);
- (e) Decision – by the Lieutenant Governor-in-Council on whether to make the regulatory changes; and
- (f) Implementation – informing all parties affected by the changes (government staff, companies, organizations and individuals) of the new regulatory requirements, enabling effective implementation if the Lieutenant Governor-in-Council decides to enact the regulatory changes.

The purpose of this Paper is to provide relevant background information, describe the proposed regulatory changes and solicit comments. The discussion questions included in the Paper are not intended to limit the scope for comments during the consultation process.

This Paper makes reference to sections of the *PNG Act* and other British Columbia statutes as they existed at the time of writing. If there is disparity between this Paper and a statute being referenced, the statute should be taken to be correct. Where this Paper uses the term “surface lease” it includes a right of way agreement.

(2) Background Information

(2.1) Subsurface Resources

Under the Canadian Constitution, provinces have jurisdiction over the management of natural resources. In British Columbia, the Province has not included subsurface rights with most land grants issued since 1891. This means that most landowners in the province do not own the rights to resources such as petroleum and natural gas beneath their land.

These “subsurface resources” are owned by the Crown (the provincial government). The Crown has a responsibility to manage and develop natural resources for the benefit of all citizens.

The Province can issue the time-limited right to explore for, develop, or produce a Crown-owned subsurface resource on private land. A rights holder must make arrangements to enter and occupy private land to access a subsurface resource, and must compensate the landowner for any loss or damage caused by their activities.

In British Columbia, Crown-owned petroleum and natural gas resources are managed through tenure agreements (“tenures”). A tenure provides the rights to petroleum and natural gas resources at a specific location. The Ministry currently manages more than 14,700 petroleum and natural gas tenures covering just over 9.5 million hectares.

A petroleum and natural gas tenure grants the rights to a Crown-owned resource. A rights holder wishing to undertake oil and gas activities (work to actually explore for, develop or produce petroleum or natural gas) must apply for and receive the applicable permits and approvals from the Oil and Gas Commission (OGC).

(2.2) Access to Private Land

The PNG Act sets out the rules governing access to private land to develop petroleum and natural gas resources. Under the PNG Act any person entering, occupying or using private land for petroleum and natural gas related activities must have either a surface lease with the landowner, or a right of entry order issued by the Board.

(2.2.1) Surface Leases

In most cases, a rights holder seeking to access petroleum or natural gas resources on private land will enter into a surface lease with the landowner. A surface lease sets out the terms and conditions that a rights holder must comply with when using the private land, along with rents to be paid by the rights holder to the landowner for access to their land.

A rights holder who enters into or amends a surface lease with a landowner is required by the PNG Act to submit a copy of the surface lease, along with other relevant information, to the Board within 90 days.

Under the terms of the PNG Act, any surface lease in the possession of the Board is available for public inspection at its headquarters during regular office hours. The headquarters of the Board is located at: Suite 10, 10551 Shellbridge Way, Richmond, British Columbia.

(2.2.2) The Surface Rights Board

On occasion, a rights holder and a landowner are unable to agree on the terms of a surface lease. When this happens, either the landowner or the rights holder may refer the case to the Board. The Board is an independent quasi-judicial administrative tribunal established under the PNG Act. The Board’s role is to settle disputes between rights holders and landowners over compensation and terms of access to the land.

The Board does not have a role in the regulation or review of proposed oil and gas activities (regulated by the OGC), or the disposition of subsurface rights (conducted by the Ministry).

(2.2.3) Mediation and Arbitration

When a rights holder and a landowner are unable to agree on the terms of a surface lease, the Board will mediate between them. If the parties are unable to reach agreement through mediation, the board has the authority to resolve the dispute through arbitration.

(2.2.3) Right of Entry Order

A rights holder that has been unable to negotiate a surface lease with a landowner can apply to the Board for a right of entry order. If a right of entry order is issued, it authorizes the rights holder to enter private land to undertake oil and gas activities, related activities, or to comply with an order of the OGC.

A right of entry order issued by the Board sets partial compensation and is conditional on payment of this compensation by the rights holder to the landowner. The right of entry order can also include other terms and conditions set by the Board – similar to what would be included in a surface lease.

The final compensation to the landowner and other terms and conditions remain open for discussion and final settlement through the Board's mediation and arbitration processes.

Prior to issuing a right of entry order, the Board may require that a rights holder demonstrate that they have received the required permits or authorizations issued by the OGC for their planned oil and gas activities. This ensures that a rights holder has the authorizations necessary to actually make use of the right of entry order.

(2.2.4) Surface Lease Disputes

The Board also has the authority to resolve disputes between rights holders and landowners over compliance with the terms of an existing surface lease or the renegotiation of a surface lease.

(3) Ministry Intentions

The regulatory changes proposed in this Paper are intended to improve the public's access to information on surface leases while balancing the need to protect individuals' privacy. At present, landowners often lack information on the compensation rates or lease terms common in their area. This can put them at a disadvantage during surface lease negotiations compared to better informed petroleum and natural gas rights holders.

The proposals outlined in this Paper represent the next step in the Province's ongoing efforts to improve the relationship between landowners and rights holders through enhanced fairness and transparency.

The 2007 BC Energy Plan, a Vision for Clean Energy Leadership (the Energy Plan) set out 55 policy actions designed to ensure a secure, reliable supply of affordable energy for the Province in an environmentally responsible way. Policy action 54 of the Energy Plan was to: "Improve working relationships among industry and local communities and landowners by clarifying and simplifying processes, enhancing dispute resolution methods, and offering more support and information". As part of this policy action, the Ministry committed to develop a publicly accessible registry of surface leases to improve transparency.

The Energy, Mines and Petroleum Resources Statutes Amendment Act, 2010 added new provisions to the PNG Act related to the Board, including a clause that allows electronic information sharing. This clause provides the statutory authority for the proposed regulatory changes discussed in this Paper.

Section 178 (4) of the PNG Act allows the Board to "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". Section 181 (e) of the PNG Act gives the Lieutenant Governor-in-Council the authority to prescribe "information or classes of information that the board may publish under section 178 (4)".

This means that the Province (in the form of the Lieutenant Governor-in-Council) can pass a regulation to specify what information from the surface leases that the Board collects can be published. Once the Province has specified what information can be published, the Board can publish it on the internet.

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 Ministry believes that the publication of this information would improve landowners' understanding of the compensation, terms and conditions common in their area. This would be expected to aid the negotiation of surface leases and, ultimately, to reduce the number of disputes that are referred to the Board.

The Ministry does not intend to allow the Board to publish the name or personal information of the landowner or the occupant of the surface lease location.

Discussion Questions:

Is the proposed information to be shared appropriate? What information should or should not be published?

In what format should the information be made available? How should the information be presented?

(4) Providing Comments

Responses to this Paper are being solicited until **April 2, 2012**.

The discussion questions included in this Paper are designed to gather input on key points which will guide the Ministry's regulatory drafting. The discussion questions are not intended to limit the scope for public consultation. Comments on all aspects of the proposed regulatory changes are welcome.

Comments will be treated confidentially by Ministry staff, however, please note that

comments you provide and information that identifies you as the source of those comments may be subject to a request under the *Freedom of Information and Protection of Privacy Act*.

This Paper can be accessed at:

<http://www.empr.gov.bc.ca/TITLES/OGTITLES/OTHERPUBLICATIONS/Pages/default.aspx>

Interested parties are invited to submit comments in writing to:

Email PNG.PolicyComments@gov.bc.ca

Mail:

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Thank you for your time and consideration.

(5) Glossary

The Board: The Surface Rights Board (formerly the Mediation and Arbitration Board)

Landowner: a person registered in the land title office as the registered owner of the land or as its purchaser under an agreement for sale, or a person to whom a disposition of the land has been issued under the Land Act, but does not include the government

The Ministry: The Ministry of Energy and Mines

OGC: The Oil and Gas Commission

PNG Act: The *Petroleum and Natural Gas Act*

Rights Holder: the person or company who has received the right to explore for, develop or produce from a crown-owned subsurface resource through a tenure agreement

Subsurface Resource: Can include petroleum, natural gas, coal, minerals or geothermal resources. This Paper deals specifically with petroleum and natural gas

Surface Lease: an agreement (including a right of way agreement) between a landowner and a rights holder governing use of private land for

the purposes of accessing or developing a subsurface resource