

Advisory 2019-4

Denying Access to a Wellsite

The Farmers' Advocate Office (FAO) has been contacted by landowners seeking clarification on why a company other than the one listed on title, the surface lease agreement, or Right of Entry Order might be leading on the abandonment and reclamation of a well site and accessing the site.

A landowner **cannot** deny access to a wellsite, even when operators have failed to make a payment or offered a unilaterally reduced annual rental payments under a private surface agreement or Right of Entry order.

Under section 36 of the *Surface Rights Act* (SRA), a landowner may apply to the Surface Rights Board (SRB) for a payment when an operator fails to make its annual rental payments or offers a unilaterally reduced payment under a private surface agreement or Right of Entry order.

Other parties who may enter the site:

The Orphan Well Association (OWA) is an independent non-profit organization that operates under the delegated legal authority of the Alberta Energy Regulator (AER). The mandate of the OWA is to safely decommission orphan oil and gas wells, pipelines and production facilities that do not have a legally or financially responsible party that can be held accountable, and restore the land as close to its original state as possible. The OWA is not responsible to pay arrears for annual rental payments that operators failed to pay. Recourse for landowners for unpaid rentals is available for unpaid rentals through the Surface Rights Board in the Section 36 application process. Through the AER, the OWA (along with their contractors) have the legal right to access and work on any well, facility, or pipeline that has been declared an orphan. The OWA does not take the place of the former operator, and they do not hold any surface lease or license for the well or infrastructure.

Working Interest Participants (WIP)

Under provincial legislation, a company with a beneficial or legally undivided share in the license are referred to as Working Interest Participants (WIP). They have received some sort of financial benefit when energy resources were being developed. When a primary licensee becomes insolvent, the AER can look to the WIP to lead on the closure, abandonment or reclamation of the site. The WIP is responsible for the cost proportionate to their share of the investment, and the rest would be covered by the Orphan Well Association (OWA). A WIP is not responsible to pay any overdue annual rental payments. Through the AER, the WIP have the legal right to access and work on any well, facility, or pipeline that has been identified in the closure or abandonment order that was issued to protect environmental and public safety.

Both the OWA and WIP will work with the landowners and communicate openly about the process and timelines that will occur. They will engage all stakeholders during the abandonment and reclamation process.

If a landowner denies the OWA, WIP's or AER access to the site, the SRB may stop all future payments as per Section 36 (8) of the SRA.

Section 36 *Surface Rights Act* (SRA)

(8) The Board may direct the Minister not to make any further payments due under subsection (6) if it considers that the person entitled to receive them is refusing access for operations, abandonment or reclamation allowed by law.

For more information, contact the FAO through the Ag Info Centre at 310-FARM (3276) or by e-mail at farmers.advocate@gov.ab.ca.