



## **Agricultural Producers Association of Saskatchewan Response to Enforcement of Payment of Surface Rights Compensation May 6, 2022**

The Agricultural Producers Association of Saskatchewan (APAS) welcomes this opportunity to provide feedback to the Notice of Consultation entitled, “Enforcement of Payment of Surface Rights Compensation”

The non-payment of compensation for oil and gas infrastructure on farmland has been a growing concern for Saskatchewan farmers and ranchers. APAS welcomes the proposals to enhance the Board of Arbitration and Ministry of Energy and Resources authority to enforce the payment of overdue compensation. While we maintain support for a comprehensive review of the legislation in the future, APAS Representatives see these proposed changes as an important step in the right direction. Saskatchewan producers are a key partner in the development of the province’s resources. These changes will help promote responsible development while improving relations within the agriculture and resource sectors.

APAS Representatives have provided feedback and recommendations to the Notice of Consultation proposals (Issue #1 and #2). They have also provided additional recommendations concerning outstanding payments from non-operating / insolvent companies (Issue #3) and other changes we would like to see introduced as interim measures until a more comprehensive review of the Act is undertaken (Issue #4).

### **Issue #1: Power for the Board to hear cases regarding delinquent surface rights compensation and to issue orders demanding payment of the arrears**

- **Ensure that landowners have full access to the documents required to provide evidence of non-payment when applying for recovery of compensation:**

Appendix A of the consultation document indicates that landowners will be required to provide evidence of non-payment with their application. This could include copies of lease agreements, amendments, and any other documentation specified in future policy or board procedure.

Land ownership in the province is diverse, and landowners may not have access to the required documents for a variety of reasons. We do not believe that the inability to locate or recover files within personal records should prevent an application to the Board for overdue compensation. Therefore, we would like to ensure that any evidence specified by Board or Ministry policy includes documents and files that are recoverable through Board or company records. We noted that Section 30 of Act



already requires operators to file copies of surface agreements with the Board within 30 days.

- **Eliminate proposed limit on 1 years worth of overdue payment and allow landowners to claim compensation for entire period of non-payment:**

The consultation document proposes a one year limit on the collection of payment arrears. The rationale for this limit is unclear, and APAS is requesting the legislation be amended to enable landowners to recover compensation for the entire period of non-payment.

- **Maintain terms of compensation throughout the application and collection process:**

In consultation with APAS members, there were questions raised about the possibility of having compensation reduced as a result of applying for payment recovery. These questions relate to more general concerns about how the financial considerations of licensees can often influence lease negotiations, rather than the loss of use, adverse effect, and other compensation factors listed in the legislation.

APAS would like clarification to confirm that a change in compensation values would only be considered through a separate review process. We also encourage the Ministry and Board to help improve transparency in the negotiation process by helping to promote greater awareness about how compensation factors are used in the Act and arbitration hearings to determine lease values.

## **Issue #2: Establishing compliance with an order of the Board to be an obligation of a licensee under the OGCA**

- **Direct regulator to apply enforcement action that will compel compliance while ensuring the process is transparent and accountable to applicants:**

There are concerns that licensees will often prioritize payments based on lease productivity, with unproductive or inactive wells more likely to go into arrears. Licensing restrictions that apply to non-producing wells are unlikely to encourage compliance with the Board order. Appendix A of the consultation document states that the regulator has discretion over enforcement action. Therefore, we wish to emphasize the importance of enforcement approach that is effective at both deterring incidence of non-payment and for the recovery of arrears. We also encourage the Ministry to ensure that applicants are provided timely information and updates so they can track their applications and consider their options throughout the claims process.



### **Issue #3: Outstanding payments from non-operating / insolvent companies**

- **Use the Licensee Liability Rating (LLR) program to collect sufficient security deposit to cover compensation costs from time of abandonment to reclamation:**

The proposed changes are a step in the right direction and will help collect payments from operating companies that are in arrears. However, because the Ministry intends to use licensing suspensions as the primary enforcement action, a significant risk of payment default remains when dealing with companies who are insolvent or no longer interested in maintaining their operating license. The 2014 draft legislation included a proposed “Delinquency Fund” to cover compensation owed to landowners from delinquent and insolvent companies. While we understand this type of change is not under consideration at the time, APAS would still like to see the Ministry address this gap within the current review.

As an alternative to the fund-based model, APAS is proposing changes to the LLR program so that the costs of compensation from the time of abandonment to reclamation are reflected in the liability factor that is used to determine licensee security deposits. We feel there are many benefits to this approach. Landowners will receive ongoing compensation for the loss of use and adverse effect of having abandoned infrastructure on their land. The increased costs of security deposits would also be based on individual company risk. This approach would further encourage timely reclamation of orphaned wells and other infrastructure as means of reducing licensing costs on the industry.

### **Issue#4: Additional interim changes**

- **Remove the current \$1,000 limit on damages from the legislation**

The \$1,000 limit on damages in legislation is inconsistent with today’s costs and assets values. We recommend removing this limit from the legislation and establishing a more realistic value in regulations.

- **Introduce amendments to require operators to notify surface lease holders of eligibility to initiate compensation review**

Introducing a requirement for licensees to notify surface leaseholders of pending compensation review is an important change that we would like to see introduced with the proposed legislative amendments. Western Canada’s energy development sector is highly integrated, and this requirement would make Saskatchewan’s legislation more consistent with Alberta’s surface rights act. Many Saskatchewan licensees are



already fulfilling this requirement as part of their Alberta operations. As indicated above, APAS Representatives feel it is very important that landowners can access the documents and information required to file an application for recovery of compensation. These notices would help improve access to the most current documents without having to seek the information through a request for Board or company records.

## **Conclusion**

The APAS oil and gas subcommittee is available to discuss these recommendations and the Ministry's approach to regulation and surface rights in more detail. The proposed changes are a step in the right direction. However, APAS Representatives are still interested in participating in a more comprehensive review of surface rights legislation in the future, especially in relation to the potential for new forms of mineral and resource development to occur in the province.

For immediate questions about this submission, please feel free to contact the APAS Policy Manager at [policy@apas.ca](mailto:policy@apas.ca)