



Province of Alberta

PUBLIC LANDS ACT

EXPLORATION DISPUTE RESOLUTION REGULATION

Alberta Regulation 227/2003

With amendments up to and including Alberta Regulation 61/2012

Office Consolidation

© Published by Alberta Queen's Printer

Alberta Queen's Printer
5th Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Alberta Queen's Printer holds copyright on behalf of the Government of Alberta in right of Her Majesty the Queen for all Government of Alberta legislation. Alberta Queen's Printer permits any person to reproduce Alberta's statutes and regulations without seeking permission and without charge, provided due diligence is exercised to ensure the accuracy of the materials produced, and Crown copyright is acknowledged in the following format:

© Alberta Queen's Printer, 20__.*

*The year of first publication of the legal materials is to be completed.

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 61/2012)

ALBERTA REGULATION 227/2003

Public Lands Act

EXPLORATION DISPUTE RESOLUTION REGULATION

Table of Contents

1 Definitions

Part 1

Disputes Regarding Operational and Land Use Concerns

- 2** Local settlement officers
- 3** Provincial Exploration Review Committee
- 4** Provision of copy of exploration approval
- 5** Review of operational and land use matters
- 6** Combining requests for review
- 7** Powers of local settlement officer
- 8** Review of decision by Review Committee
- 9** Powers of Review Committee
- 10** Review does not operate as stay
- 11** Decision binding
- 12** Request for information
- 13** Procedure
- 14** Extension of time
- 15** Fees and costs
- 16** Frivolous application
- 17** Service
- 18** Offence

Part 2

Surface Rights Board

- 19** Right of entry order
- 20** Compensation order in respect of access
- 21** Delay of application
- 22** Compensation order in respect of loss or damage
- 23** Board bound by decisions under Part 1
- 24** Procedure before Board
- 25** Effect of orders
- 26** Appeal provision applicable

- 27 Expiry of right of entry order
- 28 Expiry of right to enter
- 29 Fees and costs

Part 3

Consequential, Expiry and Coming into Force

- 30, 31 Consequential
- 32 Expiry
- 33 Coming into force

Definitions

1 In this Regulation,

- (a) “Act” means the *Public Lands Act*;
- (b) “agricultural disposition” means
 - (i) a disposition under the Act that is made for agricultural purposes, not including a conveyance, assurance, sale or agreement for sale, and
 - (ii) a permit for the grazing of stock in a forest reserve that is issued under the *Forest Reserves Act*;
- (c) “agricultural disposition holder” means a person who holds an agricultural disposition;
- (d) “agricultural lease” means an agricultural disposition that is a grazing lease or a farm development lease;
- (e) “agricultural leaseholder” means a person who holds an agricultural lease;
- (f) “Board” means the Surface Rights Board;
- (g) “exploration” means
 - (i) any investigation, work or act to determine the presence of
 - (A) a mineral as defined in the *Mines and Minerals Act*,
 - (B) petroleum or natural gas, or
 - (C) peat,
 - (ii) any activity referred to in section 20(1)(a) of the Act, and

- (iii) any operation that is preparatory to or otherwise connected with any investigation, work, act or activity referred to in subclause (i) or (ii);
- (h) “exploration approval” means
 - (i) an approval for the purposes of exploration that is issued under Part 8 of the *Mines and Minerals Act*, or
 - (ii) an authorization for the purposes of exploration that is issued under section 20 of the Act;
- (i) “local settlement officer” means a person who is designated as a local settlement officer under section 2;
- (j) “operational or land use concern” means a concern of an agricultural leaseholder or an exploration approval holder that is related to the exploration approval holder’s operations on or use of the agricultural land under the exploration approval including, without limitation, a concern relating to
 - (i) setbacks for dynamite geophysical operations from groundwater sources, or
 - (ii) shothole plugging requirements;
- (k) “Provincial Exploration Review Committee” means the Provincial Exploration Review Committee established under section 3;
- (l) “Review Committee” means the Provincial Exploration Review Committee.

Part 1

Disputes Regarding Operational and Land Use Concerns

Local settlement officers

2(1) The Minister may designate persons or classes of persons who are employees of the Government and are under the Minister’s administration as local settlement officers for the purposes of this Part.

(2) A designation of a local settlement officer must describe the area in Alberta in which the local settlement officer may exercise jurisdiction under this Regulation.

(3) Notwithstanding subsection (2), where the Assistant Deputy Minister responsible for public lands considers it appropriate to do

so, the Assistant Deputy Minister may, in writing and on a temporary basis,

- (a) authorize a local settlement officer to exercise jurisdiction under this Regulation in an area notwithstanding that he or she is not designated in respect of that area, and
- (b) authorize an employee of the Government under the Minister's jurisdiction who is not a local settlement officer to exercise jurisdiction as a local settlement officer under this Regulation in an area.

(4) A person who is authorized under subsection (3)(b) shall be considered to be a local settlement officer for the purposes of this Regulation.

Provincial Exploration Review Committee

3(1) There is hereby established the Provincial Exploration Review Committee, consisting of persons who are employees of the Government under the Minister's administration and are appointed by the Minister.

(2) Where a member is temporarily absent or unable to act, the chair may designate another member to act in that member's place for the period of the absence or inability.

(3) The Minister may designate a member of the Review Committee as the chair of the Review Committee, who may act for and in the name of the Review Committee in the carrying out of any act, matter or thing that is within the power of the Review Committee.

(4) The Minister or the chair may appoint a member of the Review Committee as acting chair, and that person has all the powers and duties of the chair under subsection (3).

(5) The Review Committee shall conduct reviews of decisions in accordance with section 8.

(6) The chair may convene a panel of one or 3 members of the Review Committee to conduct a review and may appoint a designated person to chair the panel.

(7) Where a panel is convened, the panel has all the powers of the Review Committee and is subject to the same duties that the Review Committee has and is subject to, and a reference to the Review Committee shall be read as a reference to a panel.

Provision of copy of exploration approval

4(1) Where the Minister issues an exploration approval in respect of land that is wholly or partly the subject of an agricultural lease, the exploration approval holder shall, at least 5 days before carrying out any activities under the exploration approval, provide a copy of the exploration approval, or the relevant portions of it, to the agricultural leaseholder.

(2) An exploration approval holder referred to in subsection (1) shall not enter the agricultural lease land referred to in subsection (1) unless

- (a) the agricultural leaseholder consents in writing to the entry and the consent is in accordance with the terms and conditions of the exploration approval, or
- (b) the Board issues a right of entry order under Part 2.

Review of operational and land use matters

5(1) An exploration approval holder or an agricultural leaseholder may, at any time before the exploration approval holder enters the agricultural lease land, submit to a local settlement officer a request for a review of any matter related to an operational or land use concern arising out of the exploration approval.

(2) A request for review

- (a) must be in writing and be signed by the person requesting the review or the person's agent,
- (b) must be submitted to the local settlement officer not later than 7 days after the copy of the exploration approval is provided to the agricultural leaseholder under section 4(1), and
- (c) must contain
 - (i) the grounds upon which the review is requested,
 - (ii) a description of the relief sought by the person requesting the review, and
 - (iii) an address for the person requesting the review.

(3) An exploration approval holder or agricultural leaseholder who submits a request for review that complies with subsection (2) must also forthwith provide a copy of the request for review to the other party.

(4) Where a request for review is with respect to an agricultural lease that has been issued to more than one person, all of the persons to whom the agricultural lease has been issued or their agents must sign the request for review.

Combining requests for review

6 Where a local settlement officer receives more than one request for review under section 5, the local settlement officer may combine the requests for review for the purposes of dealing with them under this Regulation.

Powers of local settlement officer

7(1) Where a local settlement officer receives a request for review that complies with section 5, the local settlement officer shall review the matter and make a determination in respect of the operational or land use concerns contained in the request in accordance with this Regulation and any rules made by the Review Committee under section 13(1).

(2) On conducting a review the local settlement officer may

- (a) make any decision with respect to the operational or land use concern that the local settlement officer considers appropriate, other than a decision respecting the payment of compensation, or
- (b) refer the matter back to the person who issued the exploration approval, with directions.

(3) The local settlement officer shall provide written notice of his or her decision to the exploration approval holder and the agricultural leaseholder.

Review of decision by Review Committee

8(1) An exploration approval holder or agricultural leaseholder may request that a decision of a local settlement officer under section 7 be reviewed by the Review Committee.

(2) A request for review

- (a) must be in writing and be signed by the person requesting the review or the person's agent,
- (b) must be submitted to the local settlement officer not later than 7 days after the person received notice of the local settlement officer's decision, and
- (c) must contain

- (i) a copy of the local settlement officer's decision,
- (ii) the grounds upon which the review is requested,
- (iii) a description of the relief sought by the person requesting the review, and
- (iv) an address for the person requesting the review.

(3) An exploration approval holder or agricultural leaseholder who submits a request for review that complies with subsection (2) must forthwith also provide a copy of the request for review to the other party.

(4) Where a request for review relates to an agricultural lease that has been issued to more than one person, all of the persons to whom the agricultural lease has been issued or their agents must sign the request for review.

(5) A local settlement officer who receives a request for review that complies with subsection (2) must provide it to the Review Committee.

Powers of Review Committee

9(1) On conducting a review, the Review Committee shall consider the material forwarded to it by the local settlement officer under section 8(5), but the Review Committee may accept new information if the Review Committee considers that the new information is relevant to the matter under review.

(2) On conducting a review the Review Committee may

- (a) confirm, reverse or vary the local settlement officer's decision;
- (b) make any decision that the local settlement officer could have made;
- (c) refer the matter back to the local settlement officer, with directions.

(3) The Review Committee shall provide written notice of its decision to the exploration approval holder and the agricultural leaseholder.

Review does not operate as stay

10 Where a request for review of a decision of a local settlement officer is made under section 8, the decision of the local settlement

officer remains in effect pending the Review Committee's decision under section 9.

Decision binding

11 The exploration approval holder and the agricultural leaseholder are bound by and shall comply with a decision of a local settlement officer or the Review Committee under this Part.

Request for information

12(1) A local settlement officer or the Review Committee may by notice in writing request an exploration approval holder or an agricultural leaseholder to provide any information that the local settlement officer or Review Committee considers is necessary to enable the local settlement officer or Review Committee to carry out this Part.

(2) A person who receives a request under subsection (1) shall comply with it within 7 days after it is received.

Procedure

13(1) Subject to this section, the Review Committee may establish rules governing the procedure to be followed by local settlement officers and the Review Committee in carrying out their powers and duties under this Part.

(2) Before making a decision on a review under this Part, a local settlement officer or the Review Committee may hold preliminary discussions with the exploration approval holder and the agricultural leaseholder and any other persons the local settlement officer or Review Committee considers appropriate for the purpose of

- (a) determining any preliminary issues that are relevant to the matter under review, and
- (b) resolving the operational or land use concerns.

(3) A local settlement officer and the Review Committee may carry out a review under this Part by means of discussions, meetings, written submissions or a teleconference, or a combination of any of them, as the local settlement officer or Review Committee considers appropriate.

Extension of time

14 A local settlement officer or the Review Committee, as the case may be, may, before or after the expiry of the period of time referred to in section 5(2)(b), 8(2)(b) or 12(2), extend that period of

time in any particular case where the local settlement officer or the Review Committee is satisfied that there are sufficient grounds for doing so.

Fees and costs

15(1) A local settlement officer and the Review Committee may charge fees and costs for their services under this Part in accordance with an order of the Minister under section 9.1 of the Act.

(2) The Review Committee may make any order that it considers appropriate in respect of the parties' costs of and in respect of a proceeding before the Review Committee under this Part.

Frivolous application

16 A local settlement officer or the Review Committee may at any time dismiss an application where the local settlement officer or Review Committee considers that the application is frivolous or vexatious or without merit.

Service

17 A document that is required to be provided under section 4(1), 5, 7(3), 8, or 9(3) or a request under section 12 is sufficiently provided if it is

- (a) personally provided to the person to whom it is directed,
- (b) sent by ordinary or registered mail addressed to the person at the last known address for that person,
- (c) sent by facsimile addressed to the person at the last known facsimile number for that person, or
- (d) sent by electronic mail to the person's e-mail address.

Offence

18 A person who contravenes section 4(2) or 12(2) is guilty of an offence.

Part 2

Surface Rights Board

Right of entry order

19(1) Where an agricultural leaseholder refuses consent to entry by an exploration approval holder as set out in section 4(2), the

exploration approval holder may apply to the Board for a right of entry order.

(2) Section 17 of the *Surface Rights Act* applies, with necessary modifications, in respect of an application for a right of entry order under this Part.

Compensation order in respect of access

20(1) An agricultural leaseholder or an exploration approval holder may apply to the Board for a compensation order in respect of access to determine the amount of compensation that should be paid to the agricultural leaseholder in accordance with subsection (2).

(2) In determining whether to make a compensation order in respect of access and in determining the amount of such a compensation order the Board may consider any or all of the following factors:

- (a) the nature of the exploration program;
- (b) the amount of agricultural lease land that is used in the conduct of the exploration program and the length of time the exploration program will continue on the agricultural lease land;
- (c) the nature and degree of the disturbance to the agricultural lease land that will be caused by the operations of the exploration approval holder, including any inconvenience that may be caused to the agricultural leaseholder;
- (d) compensation orders that have been made under this section or negotiated settlements that have been made in similar circumstances in respect of other agricultural lease land;
- (e) any other factors related to clauses (a) to (d) that the Board considers appropriate.

Delay of application

21 The Board shall refuse to deal with an application under this Part until

- (a) an application under Part 1 that is pending has been finally dealt with, or
- (b) the Board is satisfied that no application under Part 1 will be made.

Compensation order in respect of loss or damage

22 An agricultural disposition holder or an exploration approval holder may apply to the Board for a compensation order in respect of any or all of the following kinds of loss or damage caused by the operations of an exploration approval holder under an exploration approval that is issued after the coming into force of this Regulation:

- (a) the destruction of or damage to crops or forage on the agricultural disposition land;
- (b) the loss of or injury to the agricultural disposition holder's livestock or other animals;
- (c) the loss of use by the agricultural disposition holder of surface or ground water that is on or under or runs through the agricultural disposition land and that was used by the agricultural disposition holder in the agricultural operation;
- (d) the destruction of or damage to buildings or improvements of the agricultural disposition holder that are on the agricultural disposition land;
- (e) any other damage to the agricultural disposition land other than the land that was the subject of the exploration approval.

Board bound by decisions under Part 1

23 The Board may not in a right of entry order or a compensation order for access under this Part make any provision that is inconsistent with

- (a) the terms and conditions of an exploration approval, or
- (b) any subsisting decision of a local settlement officer or the Review Committee under Part 1.

Procedure before Board

24(1) The following applies to proceedings before the Board in respect of an application under this Part:

- (a) the procedural provisions under the *Surface Rights Act* including, without limitation, sections 39 and 40 apply;
- (b) the regulations under the *Surface Rights Act* that apply in respect of proceedings before the Board under that Act apply;

- (c) in the event of a conflict between a provision referred to in clause (a) or (b) and a provision of this Part, the provision of this Part prevails;
- (d) an application must be in a form acceptable to and be accompanied by any information required by the Board;
- (e) before conducting a hearing, the Board may hold discussions with or convene a meeting of the exploration approval holder, the agricultural leaseholder or disposition holder and any other persons the Board considers appropriate for the purpose of
 - (i) determining any preliminary issues that are relevant to the matter, and
 - (ii) resolving the issues;
- (f) at any time the Board may dismiss an application that it considers is frivolous or vexatious or is otherwise without merit;
- (g) the Board may combine more than one application by different persons where it considers that, due to similarities between the applications, it would be advantageous to hear the applications together;
- (h) the Board may with respect to a particular applicant issue an order combining one or more of the orders under section 19, 20 or 22;
- (i) the Board may, before or after the expiry of a period of time within which something must be done in relation to proceedings under this Part, extend that period of time in any particular case where the Board is satisfied that there are sufficient grounds for doing so.

(2) Nothing in this Part prevents the Board from making rules under section 8(2) of the *Surface Rights Act* in respect of practice and procedure applicable to matters under this Part.

Effect of orders

25(1) On receiving a right of entry order or a compensation order under this Part, the exploration approval holder and the agricultural leaseholder or disposition holder shall comply with it in accordance with its terms.

(2) The provisions of the *Surface Rights Act* respecting the enforcement of the payment of money under a compensation order

under that Act apply in respect of a compensation order under this Part.

Appeal provision applicable

26 Section 26 of the *Surface Rights Act* applies in respect of a compensation order under this Part.

Expiry of right of entry order

27 A right of entry order expires

- (a) on the date that the relevant exploration approval expires or is cancelled, in a case where the right of entry has not been exercised by that date, or
- (b) where the right of entry has been exercised, on the date that the Department informs the exploration approval holder in writing that the holder's obligations under the law of Alberta to reclaim the agricultural lease land have been met.

Expiry of right to enter

28 Where no right of entry order has been made, the exploration approval holder's right to enter the agricultural lease land for exploration purposes ceases on the expiry or cancellation of the exploration approval, and after that date the exploration approval holder may enter the land only for the purposes of carrying out reclamation obligations under the law of Alberta.

Fees and costs

29 The Board may charge fees and costs for its services under this Part in accordance with an order of the Minister under section 9.1 of the Act.

Part 3 Consequential, Expiry and Coming into Force

Consequential

30 The *Exploration Regulation* (AR 214/98) is amended

- (a) by repealing section 4(1)(d) and substituting the following:

- (d) occupied public land that is the subject of a grazing lease or a farm development lease under the *Public Lands Act*, except
 - (i) with the consent of the person in possession of the land under and by virtue of the grazing lease or farm development lease, or
 - (ii) pursuant to a right of entry order issued under the *Exploration Dispute Resolution Regulation* under the *Public Lands Act*;
- (e) occupied public land, other than public land that is the subject of
 - (i) a grazing lease or farm development lease to which clause (d) applies, or
 - (ii) an agricultural disposition within the meaning of the *Public Lands Act* that is not a grazing lease or farm development lease,except with the consent of the person in possession of the public land under and by virtue of the disposition.

(b) in subsection (2) by striking out “subsection (1)(a) or (d)” wherever it occurs and substituting “subsection (1)(a), (d) or (e)”.

Consequential

31 The *Metallic and Industrial Minerals Exploration Regulation* (AR 213/98) is amended by repealing section 20(2) and substituting the following:

- (2) No person shall conduct exploration on occupied public land, except with the consent of the Minister or corporation required under subsection (1), where applicable, and
- (a) in the case of occupied public land that is the subject of a grazing lease or a farm development lease under the *Public Lands Act*, except
 - (i) with the consent of the person in possession of the land under and by virtue of the grazing lease or farm development lease, or
 - (ii) pursuant to a right of entry order issued under the *Exploration Dispute Resolution Regulation* under the *Public Lands Act*;

- (b) in the case of occupied public land, other than public land that is the subject of
 - (i) a grazing lease or farm development lease to which clause (a) applies, or
 - (ii) an agricultural disposition within the meaning of the *Public Lands Act* that is not a grazing lease or farm development lease

except with the consent of the person in possession of the public land under and by virtue of the disposition.

Expiry

32 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on March 31, 2017.

AR 227/2003 s32;61/2012

Coming into force

33 This Regulation comes into force on the date on which section 3(6)(a) of the *Agricultural Dispositions Statutes Amendment Act, 2003* comes into force.