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Frequently Asked Environmental Law Questions GAS WELLS & SEISMIC

Q:

A gas well is being drilled on property next to mine. The Company doing the drilling did not approach me, although I live within a half-mile of the site. Should the Company have talked to me about the well on my neighbor's property? Also, I believe they are doing some testing on my land now. My neighbor informs me that the company may also want to drill on my land. Doesn't the Company have to obtain my permission?

A:

In response to the first half of the question, the answer is no. As a neighbouring surface owner, you have no say in what your neighbour does, and the company has no obligation to talk to you. There is an exception if the well is within 100 meters of your dwelling or surface improvement, or if it threatens your water supply, in which case your consent is needed.

In response to the second half of the question concerning drilling on your land, unless you own the mineral rights, your title to your property is limited to the surface only. Someone else, most likely the Province of Alberta owns the natural gas and other minerals under your land. Traditionally an owner of minerals who did not own the surface rights was free to enter onto the surface in order to extract the minerals without this being trespass. In Alberta this has been changed.

Generally, three types of people will want access to your land, in order to examine the mineral estate beneath it: a) explorers, b) surveyors, and c) resource extraction operators. Different rules govern each.

Exploration

Explorers determine if there are any saleable resources beneath your land. Exploration activities, when done to discover oil or gas, are governed by the *Exploration Regulation* under the *Public Lands Act*. Exploration includes seismic surveys, drilling of test holes, and other techniques that may cause a surface disturbance while giving information about the subsurface. Exploration does *not* include aircraft investigations or most prospecting done by hand-held implements.

Companies cannot explore on your land without your consent. Section 3 of the *Exploration Regulation* provides that "No person shall conduct exploration on private land, except with the consent of the person having lawful possession of the land, or that person's agent." As a result, you as a surface owner have an absolute right to refuse entry to those conducting exploration, as defined above. Operators contravening the Regulation will be liable for a fine of up to \$5000, or possibly in trespass.

Surveyors

If oil or gas is found beneath your land, the next people who will want access are surveyors, who will determine the best location for wells and access roads. It is important to distinguish between surveying and exploration. Surveying refers to operations done on the surface of land, which are done for the purpose of ascertaining the physical characteristics or boundaries of the surface land. Exploration refers to activities to determine the geological conditions under the surface. The *Surveys Act* governs surface surveying, and permits a registered Alberta land surveyor and his assistants to enter private property without the consent of the owner, as long as reasonable care is taken. Private owners thus have no right to exclude surveyors. The Act does however, make the survey team liable for any damages it may cause.

Resource Extraction Operators

The *Surface Rights Act* gives private surface owners a right to exclude "operators", defined as the person or persons having the right to a mineral or the right to work it. Section 12 of the Act states that no operator

has a right of entry to the surface of land for the purpose of removing minerals or constructing structures in connection with the removal of minerals, unless a) the consent of the owner is obtained, or b) the Surface Rights Board issues a right of entry order. Board orders are quite easy to obtain. If the Board issues an order, the surface owner is entitled to compensation, which is determined at a compensation hearing before the Board.



Acknowledgements

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Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a non-profit charitable organization operating in Alberta since 1982. The Society believes in making the law work to protect the environment and in support of this objective, provides services in environmental law education and assistance, environmental law reform, and environmental law research. The Society operates the Environmental Law Centre which is staffed by four full-time lawyers.

Funding is provided to the Society in part by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Society's objectives.

For further information, pursue the following:

Environmental Law Centre Library Resources:

- WELL SITE SELECTION AND THE SURFACE OWNER / Alberta Energy and Utilities Board. – Calgary: Alberta Energy and Utilities Board, 1996.
- SURFACE RIGHTS IN ALBERTA -- Rev. ed. – Edmonton: Alberta Agriculture, Food and Rural Development, 1988.
- SEISMIC OPERATIONS AND FARMERS' RIGHTS / Alberta Agriculture, Food and Rural Development, Farmers' Advocate. – Edmonton: Alberta Agriculture, Food and Rural Development, 1995.
- SURFACE RIGHTS AND THE LAND AGENT : A Guide For Landowners and Occupants Concerning Land Agents and Surface Rights Agencies -- Edmonton : Alberta Forestry, Lands and Wildlife, 1990.
- ACCESS TO SURFACE RIGHTS FOR OIL AND GAS OPERATIONS : PAPERS DELIVERED AT AN INSIGHT CONFERENCE, JUNE 17-18, 1996 -- Toronto : Insight Press, 1996.

Websites:

- <http://borg.energy.gov.ab.ca/enviro/review/index.htm> *Environmental Regulation of Natural Gas Development in Alberta* by Alberta Energy. Provides an overview of the regulatory framework involved in the exploration, development and production of natural resources.
- <http://www.agric.gov.ab.ca/agdex/800/878-2.html> *Seismic Operations and Farmers' Rights* by the Farmers' Advocate, from the Alberta Agriculture, Food and Rural Development site.
- http://itsd-s3.agric.gov.ab.ca/ruraldev/publands/publan_13.html *About Public Lands: Consent to Access Agricultural Dispositions* by Alberta Agriculture, Food and Rural Development. Info on users who are required to obtain consent from agricultural disposition holders: when an appeal is available, when an appeal is not available, and when consent is not required.
- <http://www.agric.gov.ab.ca/ruraldev/rurallea/publan24.html> *About Public Lands: Surface Compensation on Agricultural Leases, Licenses and Permits* by Alberta Agriculture, Food and Rural Development. Information on geophysical exploration and oil and gas facilities.
- http://www.agric.gov.ab.ca/ruraldev/publands/publan_17a.html *About Public Lands: Exploration, Development and Reclamation of Oil & Gas Activities* by Alberta Agriculture, Food and Rural Development.

Contacts:

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Exploration Coordinator
Forestry, Lands & Wildlife
4 th Floor, 9915-108 Street
Edmonton, AB T5K 2C9
(780) 427-3932 | • Surveys:
Alberta Land Surveyors'
Association
14403-115 Avenue
Edmonton, AB T5M 3B8
(780) 452-7662 | • Well Sites:
Alberta Energy and Utilities
Board
640-5 th Avenue SW
Calgary, AB T2P 3G4
(403) 297-8311 |
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- Wellsites:
Surface Rights Board
18th Floor, 10020-101A
Avenue
Edmonton, AB T5J 3G2
(780) 427-2444
- Other:
Farmers' Advocate
305, 7000-113 Street
Edmonton, AB T6H 5T6
(780) 427-2433
- Other:
Canadian Association of
Oilwell Drilling
Contractors (CAODC)
Alan Laws
800, 540-5th Avenue, SW
Calgary, AB T2P 0M2
(403) 264-4311
- Relevant legislation is available from the Queen's Printer Bookstore
11510 Kingsway Avenue
Edmonton, AB T5G 2Y5
Phone 780-427-4952
Fax 780-452-0668
E-mail qp@gov.ab.ca
URL <http://www.gov.ab.ca/qp>



March 1999

The information provided is current to December 31, 1998. While every effort has been made to ensure the accuracy and timeliness of the information, the answer, of necessity, is of a general nature. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this publication.

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