

Section 1

Getting Started



1. Getting Started

1.1 What this guide provides

The intent of the new Landowners' Guide is to provide all parties with access to a common body of information about citizens' rights in Alberta as they relate to oil and gas development. This guide is for landowners, those who rent land, people who do business related to land (real estate professionals, etc.), oil and gas companies and their employees, and members of the public who have an interest in the responsible development of oil and gas. It outlines what to expect with oil and gas development as well as ways to get involved in planning and decision-making processes to ensure the responsible development of oil and gas. It provides information on legally required minimum standards that apply to any company engaged in resource development activities. The guide also suggests ways you can encourage a company to adopt best practices to reduce possible impacts of energy development on air, land and water quality.

This guide can help those unfamiliar with the regulations, activities, etc. related to oil and gas development to quickly understand how the system works and what their rights are. It provides accessible answers to these complex questions:

- If a permit agent knocks at your door and says a company wants to conduct seismic exploration on your land, how do you decide whether to grant permission?
- If a land agent tells you a company plans to drill a well or put a pipeline on your land, what do you need to know before you start negotiations? How do you decide whether any special conditions are needed in a surface lease or right-of-entry agreement?
- If there are plans to build a well or pipeline near your home, is the company obliged to tell you or consult with you?

This guide does not act as legal advice, and cannot take the place of legal advice. Although the guide should give you a good sense of where to start and what issues to consider, we would encourage you to seek out help from one of the numerous contacts described in Appendix B, or a consultant or lawyer familiar with land and surface rights issues with oil and gas development.

1.2 How to find what you need

The content is organized to help readers quickly find the information they need. A detailed index is included.

Section 2 focuses on the many elements that you need to know before activity has started, such as when you should be notified about planned activities, how to engage a company about your concerns, and how to engage with others.

Several chapters outline the activities and relevant details related to the initial stage of resource development, from exploration for oil or gas to the location and construction of wells, pipelines and facilities. Sections 3, 4, 5 and 6 each contain a series of questions that you may want to ask before signing a permit, lease or right-of-way agreement. Section 7 addresses emergencies, while Section 8 describes issues that may arise during operations and some potential impacts on land, air or water. Section 9 outlines the requirements for abandoning wells and reclaiming land.

While Sections 3 to 9 primarily address the physical environment, later chapters provide information and advice on dealing with administrative issues, including compensation for surface rights access and right-of-entry orders (Section 10). The public hearing process is outlined in Section 11.

Appendix A provides contact information for a range of government departments and boards, and Appendix B for lawyers, professional bodies and non-profit organizations. The remaining appendices contain a summary of government legislation (Appendix C), a handy example checklist of costs you should keep track of (Appendix D), and a glossary (Appendix E). Words that are defined in the glossary are italicized the first time they appear in a section. Text boxes throughout the document highlight information of special importance or interest.

In this document we use the words “landowners” and “residents” as specific terms, although for brevity we may only refer to landowners in the text. While all major terms are defined in the glossary (Appendix E) it is helpful to clarify three of these here.

A **landowner** is the person or persons whose name(s) appears on the certificate of title to the land issued under the Land Titles Act.¹

¹ All Alberta government acts and regulations are available on the government website at <http://www.qp.alberta.ca/>

A **resident** is person occupying a residence on a temporary or permanent basis. Although similar and often used interchangeably, an occupant is the person, other than the owner, who has certain rights to the land. The occupant may also be referred to as the tenant. The occupant may be in actual possession of the land or be shown as a person who has an interest in the land (which may be noted by a caveat on a certificate of title under the Land Titles Act). In the case of government-owned land, such as a Crown grazing lease, the occupant is the person shown in the records to have an interest in the land. Sometimes the occupant on a Crown lease is also referred to as the lessee. The AER distinguishes between landowners, occupants, residents and Crown disposition holders, which is important in the context of who a company is obligated to consult or notify before they submit an application (see Section 2.1).

An **operator** is the person or company that has the right to conduct surveys or extract the oil, gas or other minerals. In this document we use the term “company” as well as operator.

1.3 A note on mineral rights

Most Albertans do not own the minerals that lie under the surface of their land. This guide focuses on the rights of landowners and others who lease or occupy the land but do not own the mineral rights. Those belonging to the minority who actually own the mineral rights on their land (as indicated on their legal mineral title) should conduct additional research before starting negotiations or entering into an agreement with any company seeking access to their mineral rights. They may find it helpful to contact the Freehold Owners Association who has many resources about freehold mineral rights (Section B.3.7). While the ownership issues are different, much of the general information in this guide will still be relevant.

Those who own or legally occupy land have specific rights with respect to development on their land. As well, the Alberta Energy Regulator (AER) requires a company to consult or notify certain groups adjacent to development who may be directly and adversely affected by oil and gas activity (see, for example, Section 2.1). People who can demonstrate that they may be directly and adversely affected are entitled to submit a statement of concern to the AER; this may allow you to be involved in the regulatory process to bring forward changes or issues that could change the project. Regardless of the AER processes and requirements, if you want more information and/or want to see changes to some development near to you, you should reach out to the company as well as the AER.

Consultation and notification requirements for Aboriginal and Métis people are managed differently than requirements for landowners and occupants, and are primarily handled through the AER's aboriginal consultation unit in collaboration with the Aboriginal Consultation Office.² While the general environmental information presented is relevant irrespective of land ownership, there are other pieces of legislation that govern consultation and development of oil and gas on Aboriginal land, and these are outside the scope of this guide.

An individual's rights vary according to the activity in question. For example, an individual's rights with respect to seismic lines or surveying are different from those that pertain to drilling an oil or gas well. In geophysical operations on private land the landowner or occupant can refuse entry, while in other cases they can negotiate but have no right to refuse entry.³ It is thus important to be aware of your rights for specific circumstances.

1.4 A note on the new Alberta Energy Regulator

The regulation of the oil and gas industry has changed significantly in the last decade. Previously, several ministries and bodies were involved in approving energy resource projects. In 2013, the new Alberta Energy Regulator was set up as a “one-stop shop” to create a more streamlined process for upstream oil, gas and coal development within Alberta and to remove overlapping jurisdictions. Its responsibilities include applications for exploration and development; inspections, compliance, and environmental protection; and reclamation, remediation and abandonment. Appendix A outlines how different government bodies are involved in the regulation of the industry.

The Responsible Energy Development Act (REDA) has fundamentally changed how the oil and gas industry is regulated in Alberta. The new Regulator now has responsibility for both environmental management and energy development — mandates that were previously the responsibility of two different government bodies. Project proponents are no longer required to seek approvals from multiple provincial authorities. This has resulted in a streamlined process where projects are often approved faster and with fewer guaranteed opportunities for public involvement in a formal process such as a hearing.

² AER, “Aboriginal Consultation.” <http://www.aer.ca/rules-and-regulations/by-topic/aboriginal-consultation>

³ This does not apply to agricultural leases on Crown land.

There are very few examples in the regulations where the Regulator is required to hold a hearing and thus far, the Regulator has recommended very few applications for a hearing. This may be due in part to the fact that the AER has been given considerably more discretion to determine when a hearing will be held for a project approval, and that it is not obligated to hold a hearing under most circumstances. Generally there is a better chance to resolve concerns through negotiation and dispute resolution as this usually results in less cost, less time, and less frustration for all parties. But hearings can be a tool for considering larger, more complex concerns in depth and can be useful in situations where parties can not come to a resolution. However as a result of changes to the AER requirements to hold hearings and the resulting reduction in hearings, landowners or others who consider themselves to be directly and adversely affected have had a considerable reduction in their bargaining power and ability to get unwilling companies to come to mutually satisfactory outcomes.

The AER has rolled out many internal efforts to engage stakeholders such as landowners and nearby residents earlier and in less formal ways to avoid a lengthy hearing. There is a greater emphasis by the Regulator for companies to build relationships before a project begins, and to resolve conflicts through their Alternative Dispute Resolution process (Section 2.4). Because of this, as a person who may be impacted by development nearby, you are more likely to influence a project outcome by building relationships with the company in the early stages of a project's development, before the company applies to the AER for their approval. If these discussions don't lead to a satisfactory outcome but the company applies to the AER anyway, and the AER sees that you have acted in good faith, it is more likely that the project will be recommended for a hearing should that be necessary. If the AER doesn't believe you have acted in good faith, REDA's regulations provide the AER with the discretion to dismiss your request for a hearing, and you may be left with fewer opportunities to address your concerns.

1.5 General advice when dealing with oil and gas development

When researching and discussing this guide with Albertans, we heard some key pieces of advice. We heard this advice from landowners, industry, regulators, etc and was informed from their experiences and lessons learned from discussions that went well and those that didn't go well. These nuggets of advice may help ensure you are ready when the land agent comes knocking.

Build relationships

Building and maintaining relationships with company representatives, AER staff, and neighbours who are also affected and interested may help ensure you are informed about any upcoming activities. After a project is underway, it is helpful to get to know your local AER field inspector, to build trust and familiarity and to help ensure that they can investigate promptly when issues arise.

The relationship with your neighbours can be a great asset. If your neighbours have experienced oil and gas development on their land, they may be able to help you understand what types of impacts or changes you might expect with similar activities, what additional information you should ask the oil and gas companies for, and what to consider when signing your surface lease agreement. Neighbours can act as an early notification network so you are aware of the activity in the area, or they can keep you updated about what a company has proposed to them, so you can compare notes if the company approaches you. Additionally, if you haven't already engaged a third party to help in your negotiations, neighbours can attend any discussions with the company and provide an additional perspective about what the company representative told you. While neighbours often shy away from discussing topics of money and compensation, it might be worth breaching that subject. The company is already aware of what compensation has been negotiated for similar projects nearby, so unless you are communicating with your neighbours who have negotiated similar agreements, the company representative will know more than you about the range of compensation that could be offered. Section 10 also provides insight into negotiating compensation, and we've included an example cost chart in Appendix D.

Engage early: as soon as you know

The best time to influence the details of a project is well before the company is ready to submit their application to the AER. It is often difficult to find out about specific projects that may be proposed in your area until the projects are well underway and you begin to see the stakes in the ground. However, if you begin seeing development in a nearby section of land, it may indicate that broader development is planned for your area. You should take the time to reach out to company representatives, talk to your neighbours, and contact the AER to find out more details about the project and potential oil and gas activity in your area.⁴ If you believe the project may affect you,

⁴ You can reach out to the AER's stakeholder engagement team through the AER's general inquiries line, at 1-855-297-8311 or inquiries@aer.ca.

make your concerns known to the company as soon as you can, and contact the AER and submit a pre-application concern so that the issue is flagged with the Regulator (Section 2.1.3 and 2.5).⁵

If you don't make your concerns known to the company, and the company is not aware of any outstanding concerns, they are permitted to submit an expedited or routine application to the AER. This may result in you losing the opportunity to submit a statement of concern, as the AER is not obligated to set and wait for a filing deadline to lapse before making a decision on an application.

Be diligent

When you go into negotiations or consultations, make sure to “tie up your horse”, even if you feel like negotiations have gone well and you have developed a good deal of trust with the company representatives. Move to get the outcomes from good discussions put down on paper and included in your surface lease. If a company commits to an additional measure, confirm with the company the extent of that commitment and the consequences for lapsing on their commitment, and put that in writing as well. Also consider that, while things may be going well now, it is important that there is an established process for conflict resolution (what will both parties do if negotiations break down). Get this included in the surface lease as well.

Don't feel shy about asking as many questions as you can to better understand the company's position, and make it a habit to follow up and fact check what they tell you. Make sure to ask:

- What are the company's plans future development?
- How does this project fit in with these plans, and other development in the area?

Many sections throughout this guide contain questions that you should ask, but these are just a handful to get you started. The more questions you ask, the better positioned you are to negotiate. There are other sources of information if you don't understand something that a company has told you and if this Landowners' Guide or a neighbour doesn't have the answer for your questions. The Farmers' Advocate Office (Section A.4) and the AER's stakeholder engagement team (Section A.2.4) may be able to help address your questions.

⁵ Note that if the company does submit an application and you feel your concern is unresolved, you must still submit a statement of concern.

Contact any local groups in the area, such as a nearby synergy group (Section B.4.1), and ask if best practices have been developed for the area that you can encourage the company to abide by. Throughout this guide, we have also described additional measures you can discuss with the company that act as best practices. The AER may also be able to walk you through some additional best practices. If a company agrees to follow a best practice, again: put it in writing.

Compensation for your time and energy should be in the agreement from the start. Keep track of the time spent researching, negotiating with company representatives, visiting the well site, or fixing damages. We've included example cost trackers in Appendix D, which should give you an idea of what records to keep.

Know your future plans

Even if a land agent hasn't yet knocked on your door, you should be prepared with an understanding of what your future plans are for your land. For example, if you have plans to subdivide your land for your children when they inherit your land, understanding how a well or pipeline may affect these plans is crucial. Wells and pipelines have setbacks that may limit the locations where you can build a residence (section 3.1.2 and 4.4), so you may be surprised to find out that when it comes time to build, your ideal location for a new home is not an option. Or, the proposed house location may be outside a setback, but be located downwind of one of the oil or gas facilities on your land.

Taking some time to even preliminarily determine what your plans are will allow you to identify and communicate how development may impact your future plans. If you are committed enough to the idea of subdividing, it might be worth approaching your municipality now to get the process started and on paper. In general, the more details you can provide about your situation, the more strongly you can make your case when negotiating with a company or submitting a statement of concern. In a statement of concern, it is crucial to clearly explain how a proposed development directly and adversely affects you, so it is not enough to state that you are concerned because you may one day subdivide your land or build a home. For example, explain that the proposed project location limits where you have already assessed you'll put a future house, and show the potential locations you are left with and why they are not satisfactory. It may seem that you are outlining obvious facts, but as one person put it, when making your case: "if you're talking about a pig, you need to take a picture of your pig."

Find the win-win

In negotiating theory, it is important to know your best alternative to a negotiated agreement.⁶ In other words, you need to understand the best you can do if a company isn't cooperative with you, and the best the company can do if you don't cooperate with them. This outlines your bargaining power when negotiating a surface lease or in consultations with a company proposing a project nearby.

The more you prepare for negotiations with this in mind, the better the outcomes you are likely to achieve. If your demands to the company don't compare to a company's alternatives, negotiations are likely to fail. In practice, that may mean the company will seek a right-of-entry order from the Surface Rights Board and compensation may be set in a compensation hearing. However most companies are likely interested in negotiation first — they could be inclined to ensure the relationship with you is on good terms, and it saves them time and money. Understanding when your demands pass this threshold where it is no longer beneficial to continue negotiating helps ensure they stay at the table.

Clarity on your own alternatives is important. Unless you are a freehold mineral rights owner, you are negotiating with little control over access to the Crown-owned oil and gas beneath your feet. You need to understand what alternatives you are left if negotiations break down.

1.6 Finding the right government board, agency or department

You may need to be contact with several government departments or agencies related to development nearby to you. The roles of these and other government bodies are described in Appendix A. Here we provide a quick reference list, in alphabetical order, of some of the government bodies you may want to contact and the most important phone numbers. The table indicates the section where each board, department, etc. is described, but they are referred to in many sections throughout the guide.

⁶ A “best alternative to a negotiated agreement” or BATNA is a concept coined by Roger Fisher and William Ury in *Getting to Yes: Negotiating Without Giving In* (1981).

Quick reference list for selected government bodies

Alberta Energy Regulator (AER)	Section A.2	
	Regulates oil and gas wells, provincial pipelines and facilities (does not deal with compensation)	
	Handles conservation, reclamation and contaminant remediation for oil and gas development	
	General Inquiries:	403-297-8311
	Toll-free:	1-855-297-8311
	Energy/Environmental Emergency & Operational Complaint Number (24 hrs)	1-800-222-6514
Alberta Environment and Parks (AEP)	Section A.3	
	Conducts environmental monitoring and develops environmental policies (NOT responsible for regulating oil and gas development).	
	Toll Free:	310-3773
Farmers' Advocate Office (FAO)	Section A.4	
	Provides advice on lease agreements and negotiations, and offers water well restoration or replacement program	
	General Inquiries	310-3276
National Energy Board (NEB)	Section A.12	
	Regulates interprovincial and international pipelines	
	General Inquiries	1-800-899-1265 or 403-292-4800
	For a pipeline emergency, Transportation Safety Board's 24-hour hot line	819-997-7887
	All other emergencies related to a NEB-regulated company's operations, facility or activity	403-807-9473
Registrar of Land Agents	Section A.7	
	Handles questions about land agents (housed within Alberta Labour)	
	General Inquiries	780-415-4600
Surface Rights Board (SRB)	Section A.3.1	
	Addresses compensation issues and right-of-entry orders	
	General Inquiries	780-427-2444

All Government of Alberta staff and Members of the Legislative Assembly (MLAs) can be reached toll-free from anywhere in the province by first dialling the Alberta Government RITE line at 310-0000, then entering the area code and number you wish to reach. If you do not know who to call, you can dial 310-0000 and then press "0" to get the operator. Tell the operator the subject you are calling about and ask to be connected

to the right person. If you do not have a touch-tone telephone, stay on the line. The Government of Alberta publishes a telephone directory of staff and MLAs as well as department information.⁷


⁷ Alberta Government, “Government staff directory.” <http://www.alberta.ca/staff-directory.cfm>

Landowners' Guide to Oil and Gas Development

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