

Section 2

Before the Project Starts



2. Before the Project Starts

The best opportunity to influence the details of a project is before its application has been submitted to the Alberta Energy Regulator. The pre-application stage is the time when you can try to minimize impacts to you and your family, as the project is more likely to be influenced at this stage. If the project is on your land, you should carefully consider the surface lease agreement to ensure it reflects your concerns and demands, and captures what you have agreed upon with the company. If a project is not on your land, the company may not be required to directly notify you about a project but you can still raise any concerns you have with the company and the Alberta Energy Regulator before they happen.

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Before a company can submit an application to the Alberta Energy Regulator (AER) for an oil and gas project, it must notify or consult affected *residents* and *landowners* in the region as part of its participant involvement program. When you hear about a proposed project, you can use this guide to find out more about issues that may be important to you, so that you can articulate your concerns during this pre-application stage. The company must wait 14 days for those who were notified to raise concerns before it can submit its application to the Regulator.

If you own or live on the land where the proposed development lies, the company will approach you about surface rights access, which gives you some ability to *negotiate* additional measures above and beyond the requirements that the company is obligated to follow.

Depending on the type of project, you may or may not be notified of the project application, even if you believe you are affected by the decision. If you were not originally included in the participant involvement program and weren't notified personally, make sure that you raise your concerns with both the company and the Regulator, and submit a *pre-application concern* (see Appendix E Glossary for definitions). The company must show the Regulator that it has addressed (or attempted to address) your concerns.

In many cases, landowners/*occupants* and companies do manage to negotiate an agreement. If the company and those potentially affected by their operations are unable to agree before an application is submitted to the Regulator, they can use the AER's *Alternative Dispute Resolution* program to help facilitate their discussion. After the company submits its application, you can also raise your concerns formally through a *statement of concern* and ask the Regulator to make a decision on the application through a *hearing*. If the negotiations fail, or the company does not negotiate in good faith, you can form a group to meet and negotiate with the company as a collective, or use the media to raise awareness about your concerns and increase the likelihood that the company will address them.

Throughout every step of the process, it is important to keep a paper trail of all your interactions with the company, including when you found out about the project, when company representatives were on your land, and any complaints or statements of concern you file. Additionally, keep track of any costs you incur, including time spent researching the project application, time inspecting your property after a company has entered, and damages to fences or trees, etc. An example cost chart is included in Appendix D.

The initial steps of the regulatory process are summarized in Figure 1.

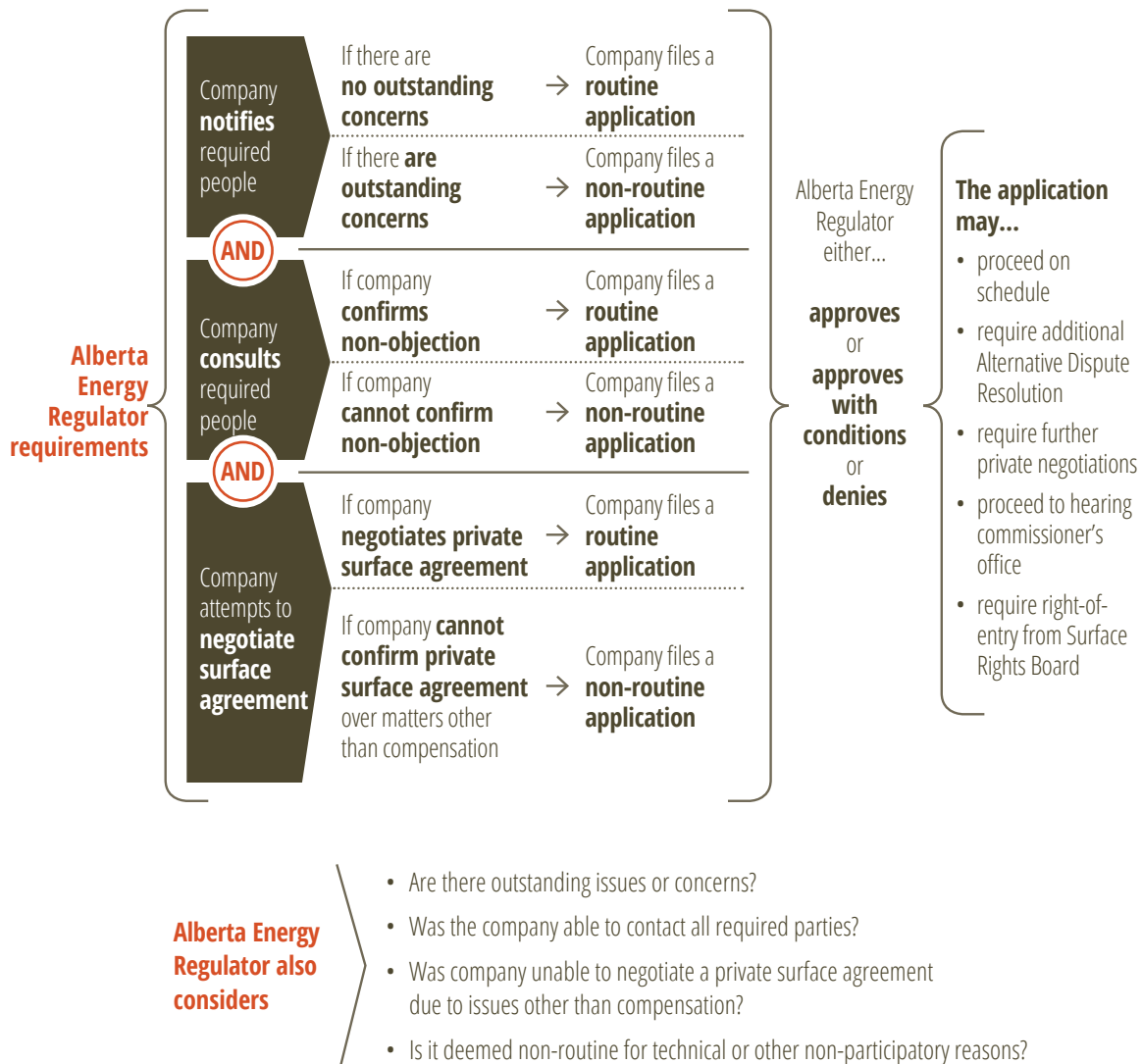


Figure 1. Notification and approval process

2.1 Public consultation, notification and involvement

The AER requires the energy industry to inform and consult all those “whose rights may be *directly* and *adversely affected* by the proposed application”.¹ There is no formal

¹ AER, Directive 056; Energy Development Applications and Schedules (2014) section 2.1. AER Directives are available at AER, “Directives.” <http://www.aer.ca/rules-and-regulations/directives/>

definition of who may be directly and adversely affected, but the company will likely interpret this to mean those who are described in the minimum consultation and notification requirements, outlined in the AER's Directive 056 and summarized in Table 1 below. The AER encourages those who may or may not be directly affected to engage with the company early, ideally while the company is in the pre-application phase.² As a landowner, it is important that you maintain a certain degree of participation throughout the life cycle of a project.

Section 2 of Directive 056 sets out how a company is expected to consult or notify the public about a proposed well, pipeline or other oil and gas facility.³ There are further special requirements for the notification of those living within the *emergency planning zone* of a *sour gas* well or pipeline (see Section 5.4), set out in Directive 071.⁴ Appendix 11 of Directive 056 describes the entire participant involvement process. Minimum consultation and notification requirements are also summarized here in Table 1.

2.1.1 Required consultation and notification

For **consultation**, the applicant company (or the representative *land agent*) is obliged to conduct a face-to-face meeting or telephone conversation with landowners in the required consultation area. Consultation implies a two-way process: not just informing people, but also listening to their concerns and responding to them. The company must provide an information package about the proposed project, and the relevant AER information brochures and packages as specified in Directive 056 (see Section 4.3 for details, applicable to all types of development). When consulting, the company must also obtain a confirmation of nonobjection, which does not necessarily have to be in writing. A surface rights agreement signed by landowners or occupants is a form of nonobjection.

Notification involves, at a minimum, sending people and/or local authorities a written notice about the proposed project and an information letter from the AER. Additionally, the company must offer copies of relevant AER publications and brochures (including some of those supplied to the consulted landowners), and must be available either in person or by telephone to answer any questions. Companies will send the materials to

² AER, Directive 056, section 2.1.

³ AER, Directive 056, section 2.

⁴ AER, Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry (2009).

the address on the land titles, so to ensure that you receive the proper notification confirm that the address on your land titles are up to date.

After the company completes its notifications, they must wait 14 days to allow notified parties to raise concerns about the application before the company can apply to the AER. If the company does not receive the required confirmation of *non-objection*, or if they are aware of outstanding concerns from those they notified or from other people, they may still submit their application to the AER but they must apply through the *non-routine application* process, and send a copy of the public notice of application directly to the concerned party. This provides an opportunity for the concerned parties to file a statement of concern, as the AER will not make a decision on the application until the filing deadline in the application notice has passed. If there are no outstanding concerns, objections, or other technical reasons designated by the AER that require a company to file through a non-routine route, then the company may be permitted to submit a routine application. In this case, typically, no deadline for statements of concern is outlined in the application notice, and the AER may proceed to make a decision on the application immediately.

Since notification requirements differ depending on the size and type of a project or facility, in some instances you may be consulted and informed as a nearby landowner, while in others you may have to find the information yourself. Table 1 below is a summary of relevant consultation and notification requirements to landowners, residents⁵ and occupants⁶. This table is not comprehensive, and does not summarize additional parties that may be consulted or notified, such as local authorities, urban authorities and airports. Consult the AER's Directive 056 or direct more specific questions to the AER's *stakeholder* engagement group for more details on the AER's notification and consultation requirement.

⁵ A resident is defined by the AER as a person occupying a residence on a temporary or permanent basis.

⁶ An occupant is defined by the AER as “a person other than the owner who is in actual possession of land; a person who is shown on a certificate of title or by contracts as having an interest in the land that confers a right to occupy the land; in the case of Métis land, a person having a right or interest in land recorded on the Métis title register pursuant to the Métis Settlements Land Registry Regulation; the holder of a permit for a coal mine.”

Table 1. Summary of the minimum consultation and notification requirements under the AER, outlined in Directive 056

Single well, multiwell pad, commercial or source water well (Category B well)⁷ No hydrogen sulphide (H ₂ S)	
Consult	Landowners and occupants (regarding consultation on well site location and well site access) Residents within 200 m Residents within 300 m (if continuous flaring for single oil wells)
Notify	Landowners within 100 m <i>Freehold</i> coal rights owners or <i>lessees</i> Crown disposition holders
Single well and Multiwell pad (Category C well) Contains > 0.00 mol/kmol H ₂ S, release rate less than 0.3 m ³ /s	
Consult	Landowners and occupants (regarding consultation on well site location and well site access) Landowners within 100 m (regarding consultation on the <i>setback</i>) Residents within 200 m or residents within the Emergency Planning Zone (whichever is greater)
Notify	Freehold coal rights owners or lessees Crown disposition holders
Single well (Category D well) H ₂ S release rate between 0.3 and 2.0 m ³ /s	
Consult	Landowners and occupants (regarding well site location and well site access); Landowners within 500 m (regarding consultation on the <i>setback</i>) Residents within 200 m or residents within the Emergency Planning Zone (whichever is greater)
Notify	Freehold coal rights owners or lessees Crown disposition holders
Single well (Category E well) H ₂ S release rate greater than 2.0 m ³ /s	
Consult	Landowners and occupants (regarding well site location and well site access); Landowners within 1.5 km (regarding consultation on the <i>setback</i>) Residents within the Emergency Planning Zone
Notify	Freehold coal rights owners or lessees Crown disposition holders

⁷ The category types of wells are determined by hydrogen sulphide (H₂S) content, H₂S release rate, and proximity to the public. These are outlined further in Directive 056.

Proximity critical well (Category E well)	
H ₂ S release rate between 0.01 and 0.1 m ³ /s	
Within 500 m of an <i>urban centre</i> (project will be filed as a non-routine application)	
Consult	Landowners and occupants (regarding well site location and well site access) Landowners within 100 m (regarding consultation on the setback) Residents within 200 m or residents within the Emergency Planning Zone (whichever is greater)
Notify	Freehold coal rights owners or lessees Crown disposition holders
Proximity critical well (Category E well)	
H ₂ S release rate between 0.1 and 0.3 m ³ /s	
Within 1.5 km of an urban centre (project will be filed as a non-routine application)	
Consult	Landowners and occupants (regarding well site location and well site access) Landowners within 100 m (regarding consultation on the setback) Residents within 200 m or residents within the Emergency Planning Zone (whichever is greater)
Notify	Freehold coal rights owners or lessees Crown disposition holders
Proximity critical well (Category E well)	
H ₂ S release rate between 0.3 and 2.0 m ³ /s	
Within 5 km of an urban centre (project will be filed as a non-routine application)	
Consult	Landowners and occupants (regarding well site location and well site access) Landowners within 500 m (regarding consultation on the setback) Residents within 200 m or residents within the Emergency Planning Zone (whichever is greater)
Notify	Freehold coal rights owners or lessees
Facility for an exempt single well (Category B facility)⁸	
If deemed non-routine through objections/concerns	
Less than 0.01 mol/kmol H ₂ S in inlet stream	
Consult	Landowners and occupants Residents within 300 m
Notify	Crown disposition holders
Gas processing plant, multiwell gas battery, multiwell oil battery, compressor station, gas fractionation plant, multiwell bitumen battery (Category B facility)	
Less than 0.01 mol/kmol H ₂ S in inlet stream	
Consult	Landowner, occupants Residents within 500 m

⁸ Exempt single well facilities are described in AER, Directive 056, section 5.5.1.

Notify	Landowners and occupants within 1.5 km Crown disposition holders
Oil satellite (multiwell), bitumen satellite (multiwell) (Category B facility)	
Less than 0.01 mol/kmol H ₂ S in inlet stream	
Consult	Landowner, occupants
Notify	Crown disposition holders
Injection/disposal facility (water or enhanced oil recovery (EOR)), custom treating facility, straddle plant (Category B facility)	
Less than 0.01 mol/kmol H ₂ S in inlet stream	
Consult	Landowner, occupants Residents within 500 m
Notify	Landowners and occupants within 1.5 km Crown disposition holders
Gas processing plant, gas battery (single or multiwell), oil battery (single or multiwell), compressor station (Category C facility)	
Less than 1 tonne per day of sulphur inlet	
Consult	Landowner, occupants Residents within 1.5 km
Notify	Landowners and occupants within 2.0 km Residents within the Emergency Planning Zone (if more than 0.1 mol/kmol of H ₂ S) Crown disposition holders
Oil satellite (single or multiwell), bitumen satellite (single or multiwell) (Category C facility)	
Less than 1 tonne per day of sulphur inlet	
Consult	Landowner, occupants
Notify	Residents within the Emergency Planning Zone (if more than 0.1 mol/kmol of H ₂ S) Crown disposition holders
Gas processing plant, gas battery (single or multiwell), oil battery (single or multiwell), bitumen battery (single or multiwell), compressor station (Category D facility)	
More than 1 tonne per day of sulphur inlet	
Consult	Landowner, occupants Residents within 1.5 km
Notify	Landowners and occupants within 3.0 km Residents within the Emergency Planning Zone (if more than 0.1 mol/kmol of H ₂ S)
Oil satellite (single or multiwell), bitumen satellite (Single or multiwell) (Category D facility)	
More than 1 tonne per day of sulphur inlet	
Consult	Landowner, occupants
Notify	Crown disposition holders Residents within the Emergency Planning Zone (if more than 0.1 mol/kmol of H ₂ S)

Natural gas or oil effluent pipeline (Category B or C Pipeline)	
Non-sour or sour service (up to 10 mol/kmol H ₂ S)	
Consult	Landowners and occupants on the <i>right-of-way</i>
Notify	Residents within 200 m (for larger pipelines) Residents within the Emergency Planning Zone (if more than 0.1 mol/kmol of H ₂ S) Crown disposition holders
Pipeline tank farm, oil loading/unloading terminal, compressor station, pump station (Category B Pipeline)	
Pipeline downstream facilities	
Consult	Landowners and occupants on the right-of-way Residents within 500 m
Notify	Landowners, occupants within 1.5 km Residents within the Emergency Planning Zone (if more than 0.1 mol/kmol of H ₂ S) Crown disposition holders
Natural gas or oil effluent pipeline, high vapour pressure (HVP) pipelines (Category D Pipeline)	
Level 1 – 4 gas pipelines (more than 10 mol/kmol H ₂ S)	
Consult	Landowners and occupants on the right-of-way (and within 100 m for Level 2, 3, 4 natural gas pipelines)
Notify	Landowners, occupants and residents within 500 m (and within 1.5 km for level 3 or 4 pipelines, or within 200 m for HVP pipelines) Residents within the Emergency Planning Zone (if more than 0.1 mol/kmol of H ₂ S) Crown disposition holders

This is only a summary of information relevant for rural residents and landowners, and is not exhaustive. To ensure the accuracy of these requirements and for other consultation and notification requirements, refer to the most updated version of Directive 056.⁹

2.1.2 Involvement by others

The notification radius for a given project is only a minimum; the industry itself is expected to determine if more people in the area have an interest and should be involved.¹⁰ People living outside the consultation or notification radius, or beyond the proposed emergency planning zone (in the case of a sour gas related project), may also have concerns. A company must try to deal with all questions, concerns and objections during the public involvement process before they file their application, even if the objections are from people considered outside the minimum radius or likely to not be

⁹ AER, Directive 056, tables 5.1, 5.2, 6.1, 6.2 and 7.1.

¹⁰ AER, Directive 056, section 2-2.

considered directly and adversely affected.¹¹ A company may reach a broader public by holding an open house or other public meeting, and advertising it in the local media. An open house can last several hours, giving members of the public the chance to come at any time and potentially meet one-on-one with company representatives. The same information should be provided as the people in the participant involvement program received, such as the specific details of the project application. While they let you view the company's displays and ask their staff questions, open houses do not always provide the best opportunity for you to learn about the concerns of others in your community. If possible, ask the company to host a public meeting where everyone can ask questions and hear the company's response together.

If you are not directly notified by a company about development, you may find out about a project before an application is submitted by talking with your neighbours, looking for survey stakes, or seeing public notifications posted in local newspapers. You can also review mineral lease sales maps to see which companies have purchased mineral leases in your area.¹²

2.1.3 Addressing your concerns before the application

In order to receive an *expedited* project approval, the company has to confirm for the AER that consultation with the required parties has taken place and that they have dealt with the concerns of those who have been notified and/or consulted on the application, and of any others outside these groups who have concerns that the company is aware of. If the company is not obligated to notify you at this stage of the process and isn't engaging with you in consultations, you can still submit a 'pre-application concern' through the AER's stakeholder engagement specialists.¹³ This notifies the AER that there are outstanding concerns and should ensure the company engages with you, all in the time period before an application is submitted to the Regulator.

If there are any outstanding objections to their plans, or the company was not able to secure a surface lease or a confirmation of non-objection from the required persons, stating that they have no outstanding concerns, the company must notify the AER and

¹¹ AER, Directive 056, section 2.3.3.

¹² This map is quite primitive and can be difficult to load and navigate. It is recommended you use Internet Explorer or Firefox as a internet browser. You can zoom into your region to see which leases are nearby. Alberta Energy, "Interactive Maps".
<http://www.energy.alberta.ca/OurBusiness/1072.asp>

¹³ Different than the standard AER contact lines: stakeholder.engagement@aer.ca

file a *non-expedited* (also known as a *non-routine*) *application*, which includes a summary of the outstanding concerns or issues.¹⁴ Additionally, the AER may require the application to be filed as non-expedited for technical reasons. If the company enters the non-expedited or non-routine process, the AER will not make a decision on the application until the statement of concern filing deadline has passed.¹⁵

Even if you have submitted a pre-application concern, you must submit a statement of concern when the company files their application, as the pre-application is not considered as part of the decision. The AER will then review the problems and decide whether to issue a licence, encourage a dispute resolution process to find a solution between the two parties, or hold a regulatory hearing. If the application was submitted as a routine application, the notice of application may not include a filing deadline for a statement of concern, and you should expect that the AER will make a decision on the application quickly. If the AER makes a decision before you can submit your statement of concern, you can ask the Regulator to reconsider its decision (Section 11.1.9), or request a regulatory appeal (Section 11.2).

For more information on submitting a statement of concern, see Section 2.5 below.

2.1.4 Specific concerns to raise

If you think that operations could affect your water supply, you should ask the company to complete a comprehensive water test before development starts, with a test immediately after *drilling* has finished and six months after. These tests should be followed by documented annual tests and inspections of your water sources (Sections 8.4.1 and 8.4.2). Specify what you would like to be tested, to ensure that the testing covers the types of contaminants that may affect you. This will likely differ for each region, underlying geology, company and technology. Some basic tests may not be comprehensive enough to identify contaminants of concern, so it is best to do your research and ask for advice. If you are worried about health effects of air emissions from a nearby *flare* (Section 8.2), you may be able to ask the company to install more efficient technology, or capture additional gas that the Regulator does not require them to *conserve*. For any concern, you should file a pre-application concern, followed by an official statement of concern once the application has been submitted.

¹⁴ AER, Directive 056, Section 2.3.3.

¹⁵ The statement of concern filing deadline is listed in the Notice of Application, but may be up to 30 days from when the application was submitted to the Regulator.

People are sometimes concerned about the proximity of sour gas developments to their homes due to impacts to their health and safety (Section 4.6.2), or decreasing property values.¹⁶ Companies are required to define an emergency planning zone around a sour gas development. The size of the zone depends on the concentration of hydrogen sulphide (H₂S) in the gas and the release rate of the gas. Landowners and residents within the zone must be consulted and notified during the development phase, and must be notified if impacted during any sour gas event. Companies must also collect names of susceptible residents so that these can be given early notification of any emergency and evacuated before a general evacuation is called (Section 4.6.1 and Section 7.2).¹⁷ See Section 4.6 for more information on emergency response plans.

The AER has improved their proliferation requirements to limit excess sour gas developments. Before a company applies to construct a new pipeline or processing facility, it must contact other *operators* in the area to investigate whether it is feasible to upgrade a facility or form a partnership with existing operators instead of constructing a new facility.¹⁸ During the consultation and notification period, you can ask the company how it plans to meet these AER requirements.

2.1.5 Notification after application submission

A Public Notice of Application must be made for all applications submitted to the AER. Depending on the project, this may be advertised in your local newspaper or through some other form. The Notice of Application includes details and supporting documentation about the project such as the nature of the activity applied for, the legal land location, contact details for the company, and the deadline for filing a statement of concern. Applications will be available to view at the AER's Public Notice of Application tool¹⁹ for 30 days after the date they were filed, even if a decision was made on the

¹⁶ Peter Boxall, Wing Chan and Melville McMillan, "The Impact of Oil and Gas Facilities on Rural Residential Property Values: A Spatial Hedonic Analysis," *Resource and Energy Economics*, 27 no. 3 (2005). <https://ssrn.com/abstract=894562>

¹⁷ For information on who is consulted and who is only notified, see AER, Directive 071, section 4.3.

¹⁸ AER, Directive 056, section 5.9.3.

¹⁹ AER, "Public Notice of Application." [http://search.aer.ca/pnoa-en/search/theme/pnoa?fq\[\]=feed_str:all&sort=recent](http://search.aer.ca/pnoa-en/search/theme/pnoa?fq[]=feed_str:all&sort=recent)

application before 30 days.²⁰ A company is also expected to send the notice of application to anyone who has raised concerns about the project. You may also find additional information about a project before or after it is approved on the Integrated Application Registry.²¹

The AER publishes various notices and decisions on its website, and there are several places where you may find information about an application. For more information about the AER website, see Section A.2.6.

2.2 Direct negotiations with a company (for issues other than compensation)

As a landowner or member of the affected public, it is advisable that you try and resolve issues with a company in a non-adversarial manner, even if you don't agree with the proposed project. This is the best attitude to have when starting negotiations, and will increase your credibility with the AER should negotiations fail and dispute resolution is pursued. Entering the conversation with a more adversarial approach may make it harder for you to successfully negotiate any terms you wish to include and potentially lead to a less-than-ideal outcome for you.

Depending on the type of development proposed for your land, you should closely consult the relevant section in this guide (See Section 4 for oil and gas wells, Section 5 for pipelines, or Section 6 for batteries, gas compressors and other facilities) to ensure you fully understand the potential implications. Each section has a series of questions for you to ask the company. You should be careful to consider the potential worst-case impacts, and try to negotiate with companies to ensure that these are minimized or negated.

Many times the company will approach you with a standard lease agreement, but you should take the time to negotiate additional clauses to protect yourself from impacts you identify. For example, if you are concerned about the impacts of increased traffic, you can negotiate to have the company plant trees along the road of concern to act as a windbreak and protect you from dust. If the company plans to flare, you can negotiate

²⁰ Expedited, also known as routine applications, do not have a deadline for a statement of concern, but the Regulator may make a decision as soon as they have been processed by the AER.

²¹ Alberta Energy Regulator, "Integrated Application Registry."
https://dds.aer.ca/iar_query/FindApplications.aspx

to ensure the company gives you additional advance notice of each flaring event, or notice of flaring in the case where you otherwise may not have been notified.

When negotiating with a company, keep the following in mind:

- Keep track of all the time you have spent on the negotiation process, including researching the company or project, attending meetings, or dealing with anything related to the impacts on your property. It helps establish how you are directly affected, and the cost of your time to remain engaged. (See sample cost tracking table in Appendix D.)
- Take some time before negotiations start to outline the most critical issues for you, and your bottom-line objectives in a negotiated agreement.
- For successful negotiation, both parties must be able to obtain some of their objectives and be willing to reach an agreement. Recognize that some give and take may be necessary, especially since not cooperating may shut down conversations and be counterproductive in protecting your interests.
- Be polite. Even if you disagree with what the company is doing, or with your neighbours' actions, it does not help to be adversarial.
- Get everything in writing. This applies both to individual landowners, who should include everything that is agreed to in the lease agreement, and to others who are not actually leasing the land. If you have a verbal agreement or telephone conversation with a company representative, ask them to confirm it in writing. At the same time, write down what you believe has been agreed to, and if the company does not send you its own written statement, ask the representative to confirm your record of what was said. The representative can endorse your record by putting their signature on it. If they will not do this, you will have to continue negotiating. You might need to give a copy of this correspondence to the AER (or, in some cases, the Surface Rights Board) if negotiations later fail or if it represents a change from what the company initially negotiated for.
- Ask the company to explain anything you do not understand. If something they have written is ambiguous, ask for written clarification. If the company does not provide it, contact the AER or other regulatory body and ask them to get clarification for you.
- Keep your own record of all telephone conversations with the company and with the regulators.
- Be persistent. If the company does not respond to your concerns the first time, keep asking.

- If, as an individual landowner or group, you find that direct negotiations with a company are not progressing, consider using the Alternative Dispute Resolution process (Section 2.4.1).
- Continue to negotiate where possible even if the Alternative Dispute Resolution process has not worked and a hearing has been called. The company may be prepared to compromise rather than incur the costs and delays of holding a hearing. Of course, it is also important to remember not to get involved in argument and not to make threats, as this may undermine your credibility and effectiveness in the negotiations.
- Avoid any deal that makes agreement on all of the issues of concern conditional upon your agreeing not to participate in a hearing. Occasionally it may not be possible to resolve all issues. However, a public hearing will be shorter and more focused if some issues have been eliminated. This benefits all the parties involved: you, the company and the AER.
- Decide if it is better to negotiate as a group. Suggestions for setting up a group are given in Section 2.7.
- Remember that the land agent is only a representative of the company, and cannot bind the company unless the company agrees to terms.

2.3 Signing the lease agreement

If you do not object to the project plan, or all your issues have been resolved and you decide to withdraw any objection, you, as a landowner, will be ready to sign the lease agreement. You would likely benefit by seeking advice from a lawyer or surface rights consultant before you sign, if one has not already been involved during negotiations. These expenses are usually considered reasonable, and you should ensure the company compensates you for these costs.

Be sure to read the agreement carefully and study the map of the survey that outlines the area where the company wants access. Never sign a lease without first reading the lease agreement, even if you have discussed the details with the land agent. You will be committing your property to a project that may have implications on your land for decades, so it is important to ensure, to the best of your ability, that the lease agreement protects the interests of your family and your neighbours and the health of your land for as long as the project will exist. See Section 4.5 (for oil and gas wells), Section 5.3 (pipelines and right-of-way) and Section 6.5 (for batteries, gas compressors, and other facilities) to help ensure you are asking the right questions to protect your interests.

Before signing a lease, read Section 10 (Compensation and Surface Rights Access).

A land agent is required to leave a copy of the proposed surface lease or right-of-way agreement with the *owner* for at least 48 hours (excluding holidays) for review before negotiations can resume.²² An owner is defined as anyone who has the “right to dispose of an interest in land” and includes:

- the fee simple owner
- a person who has a registered interest in the land (includes a person who has an interest in Crown land)
- anyone who is in possession or occupation of the land.²³

However, a company may ask if you wish to sign a waiver, so that you can sign the agreement straight away. It is highly recommended that you take the 48-hour period to review the proposed agreement. If you sign the waiver and the agreement without taking the 48 hours to review it, you should be absolutely sure about all aspects of the lease agreement and should have resolved all issues. If you need more than 48 hours to study the agreement, advise the company and take it.

At least 48 hours after the proposed agreement was given, the company could apply for a licence from the AER and then a *right-of-entry order* from the Surface Rights Board. Before the company applies for a right-of-entry order, according to the Land Agent Licensing Regulation, the land agent must resume or attempt to resume negotiations after the 48-hour period.²⁴ However, in practice, the company may not attempt to resume negotiations with you. When applying to the Surface Rights Board, the company will refer to the last offer (not necessarily the last best offer), and the reasons why it was refused.

If there are outstanding concerns, the AER will encourage companies and landowners to use dispute resolution to try to reach an agreement before filing an application. Even if the company files an application, it will take some time for the company to get a licence or a hearing, during which time negotiations can continue.

²² See Alberta, Land Agents Licensing Act, RSA 2000, c L-2, s 17.

http://www.qp.alberta.ca/1266.cfm?page=L02.cfm&leg_type=Acts&isbncln=9780779774609

²³ See Land Agents Licensing Act, s 1(f).

²⁴ Alberta, Land Agents Licensing Regulation, 227/2001, s 9.

http://www.qp.alberta.ca/1266.cfm?page=2001_227.cfm&leg_type=Regs&isbncln=978077976846

Remember that the agreement is written by the company and has their interests in mind, so you should study it carefully to make sure it meets your needs. The company will probably use a lease based on the one issued by the Canadian Association of Petroleum Landmen. There are different versions of this lease agreement and, even if it looks similar to one you have signed before, it is important to read it completely. If you do not agree with any clause, get advice (see below), discuss it with the land agent, and decide if you need to amend it or strike it out. A lease agreement should say exactly what the company is required to do, as this will reduce problems later. It would be wise to add an addendum to your agreement with additional clauses to address actions the company will be required to do as per your negotiations.

The lease agreement may include a clause that will allow the company to reduce the annual lease rent once surface structures have been removed from the site and the site *reclaimed*, but before the *reclamation certificate* has been issued. The Surface Rights Act makes no provision for such a reduction in compensation so you are not obliged to agree to such a clause.

Some, if not most, agreements may have an additional “delay” clause that would allow the company to drill any time up to 365 days. This may mean that payment will not be paid until the company actually enters the property to drill.

Registering your agreement (Private Surface Agreement Registry)

Once a lease agreement is signed by both parties, it becomes a binding legal agreement on the current owner and all future owners of the land, if it is assigned to them.²⁵ The company will register the lease agreement with the Land Titles Office. You should make sure to register your written contract with the AER as a *private surface agreement* (PSA) on the Private Surface Agreements Registry.²⁶ Although this will require you to disclose the amount of compensation you agreed to, the AER does not review the terms or details of the agreement unless there is a request for an order to comply by an owner or occupant of the land (known as a Section 64 request). Additionally, if you enter into a new agreement with a company, you may also register it.

²⁵ Land may sometimes be sold without including the rights associated with the surface lease. In this case, the former landowner, not the new purchaser, receives the surface rights payments from the company.

²⁶ AER, “Private Surface Agreements Registry.” <http://www.aer.ca/applications-and-notices/private-surface-agreements-registry>

Confidentiality

You **should not** agree to a confidentiality clause with the company in your surface rights agreement. While this clause will not prevent you from registering the agreement on the PSAR (the Responsible Energy Development Act²⁷ allows agreements to be registered even if a confidentiality provision exists)²⁸, such a clause will prevent you from speaking out about any concerns you may have, publicly or even just with your neighbours.

Getting advice

If you, as the landowner or occupant, are uncertain about any of the terms of the lease, it is important to get advice; you can contact your lawyer, the Farmers' Advocate Office (Section A.4), a landowner or surface rights consultant, the Alberta Surface Rights Federation (Section B.4.3), or other landowner groups or associations in your area (Section 13).

If you have outstanding concerns about the well site or operation you should not sign the agreement and should contact the AER (Section A.2). The company must have the landowner's approval of the location before it can obtain a drilling licence from the AER without applying for a right-of-entry order (Section 10.3), so the AER needs to know if there are problems. Companies must operate in an environmentally and technically acceptable manner, interfering as little as possible with the use of the land, but the AER staff cannot ensure this unless they are alerted to potential problems by the landowner.

While most rights of entry are negotiated directly with the landowner, some landowners join a surface rights group in an attempt to bargain collectively. The Alberta Surface Rights Federation (Section B.4.3) will tell you if there is a group in your area. Some people join *synergy groups*, where government, industry and landowners come together to deal with issues (Section 2.6). The AER can tell you if there is a synergy group in your area or you can check the Alberta Synergy website.²⁹

²⁷ Alberta, Responsible Energy Development Act, SA 2012 c R-17.3, s 64 (2).

http://www.qp.alberta.ca/1266.cfm?page=r17p3.cfm&leg_type=Acts&isbncln=9780779784073

²⁸ AER, "Private Surface Agreement Registry Q & A." <https://www.aer.ca/about-aer/what-we-do/q-and-a-psar>

²⁹ Synergy Alberta, <http://www.synergyalberta.ca>

2.3.1 Enforcing the lease

If an issue arises from the surface agreement and you believe the company has failed to comply with a term or condition in your agreement, you can file a private surface agreement with the AER (described above), and submit a section 64 request under the Responsible Energy Development Act (REDA) (Section C.1). After receiving the request, the AER will forward a copy to the company who will be asked to respond. If the Regulator determines that the company has not complied with the conditions of the agreement, the Regulator can order the company to comply.³⁰ For more information see the AER's *EnerFAQs: How to Register a Private Surface Agreement*.³¹

If a company fails to comply with the terms of the lease agreement, and you do not have a registered private surface agreement, you should still inform the AER. This includes telling the AER if the company ignores a special condition that was agreed to in writing between you and the company.³² Even if the complaint falls outside the jurisdiction of the Regulator, they will help determine whether the company is in compliance with the regulations, and what route is best to help pursue your concerns with the company.

2.4 Alternative dispute resolution

2.4.1 Working with the Alberta Energy Regulator

If you need help with negotiations, you can ask the Alberta Energy Regulator (AER) to facilitate your meetings with land agents or company representatives. They have trained staff who can act as facilitators at everything from informal “kitchen table” meetings to more formal discussions between you and the company.

If direct negotiations fail, parties can use the Alternative Dispute Resolution (ADR) process. The ADR process is an alternative to the hearing process, which can be

³⁰ Alberta, Responsible Energy Development Act.

³¹ AER, *EnerFAQs: How to Register a Private Surface Agreement* (2015). <http://www.aer.ca/about-aer/enerfaqs/enerfaqs-psa>

³² Occasionally it may be possible to request a hearing by the AER, if the issue relates to a matter that the Regulator might have written into a licence, had there been a hearing. For example, if the company agreed in writing not to test a well by flaring, but then conducts a flare that causes harm, you may ask the Regulator to conduct a hearing under section 39 of the Energy Resources Conservation Act.

expensive and require a considerable time and financial commitment from all parties. The process may be used for any disputes related to energy development in Alberta (projects under the jurisdiction of the National Energy Board use a similar process, see Section 2.4.2.). The ADR process may involve *facilitation*, *mediation*, negotiation, *arbitration* or a combination of these strategies (see Appendix E Glossary for definitions). The ADR process isn't limited to issues within the jurisdiction of the AER, so in some cases this process may enable a broader range of issues and resolution than what the AER can typically regulate, such as compensation. The process can be used at any point in the project life cycle, from the project planning phase until after the project is complete. Typically, the ADR program is voluntary, unless required by hearing commissioners after an application has been recommended for a hearing.

The AER will attend ADR meetings to facilitate and provide regulatory and other information, or act as mediators or negotiators. Mediation is helpful when situations are too complicated or controversial to be settled through facilitation alone. Mediation is usually provided by trained AER mediators; however, in some cases the AER may recommend, or you can request, a neutral third-party mediator who has experience with the energy industry. Those involved in a dispute can select an external mediator, either from the list on the AER website,³³ or from the ADR Institute of Alberta (Section B.1.2).

Before full mediation through the ADR program is pursued, negotiating parties should consider engaging in a preliminary Alternative Dispute Resolution (PADR) meeting. This preliminary meeting will decide who will take part in the discussions, the issues to be discussed, how the mediator will be selected, the role of advisors (such as AER staff, lawyers and technical experts), what options are available to resolve the dispute, and how costs will be allocated. One of the principles of the PADR program is that the industry participants should cover the nominal costs of the preliminary meeting, including direct third-party costs incurred by landowners and public. Anyone considering using PADR or ADR should read the AER's guidelines.³⁴

³³ AER, "ADR Third-Party Mediators." <https://www.aer.ca/applications-and-notice/adr-third-party-roster>

³⁴ AER, *Manual 004: Alternative Dispute Resolution Program and Guidelines* (2013). <https://www.aer.ca/documents/manuals/Manual004.pdf>

The AER's Alternative Dispute Resolution process has existed in some form or another since the early 2000s. In 2014, the ADR program resolved 90% of its cases fully or partially.³⁵

If you want to work in good faith to resolve issues with the company, but it seems that negotiations may be lengthy and involve considerable time reviewing and writing documents, it is not unreasonable to ask the company to provide partial or even full compensation. When a company reimburses some or all of the costs, individuals and groups can be more effectively involved in the process, and the company demonstrates that it is willing to cooperate and shoulder the responsibility for inconveniencing landowners.

Although there are no formal cost recovery guidelines, the AER works with parties to determine cost recovery. You should ensure that you agree in writing with the company what they will cover for costs. Usually, the AER will facilitate this conversation at the beginning of the ADR process (such as the preliminary ADR meeting), to ensure that costs do not remain the focus of the conversation for too long. Like the cost recovery program in the hearing process, costs might include your time and expenses, such as long-distance telephone charges and photocopying. If travel is involved, mileage, meals and accommodation costs should be recorded. Where possible, receipts should be obtained for all the expenses, and you should keep track in writing the time needed for all discussions, meetings or research. In the case of small groups and coalitions, it may be best to ask the company to pay the group for time involved, leaving the group to allocate the fund based on the relative contribution of time from its members.

You may want to get a sense of the company's past compliance history, as a good track record may give you more confidence in the outcome of negotiations and the project as a whole. You can view their publicly available compliance record on the AER's Compliance Dashboard.³⁶ The compliance dashboard will include more recent incidents under the AER, but you may need to contact the AER Inquiries line to get a more complete history. You can also contact Environment and Parks information services, which may be able to give you a summary of a company's environmental compliance record before the creation of the AER. Although the AER boasts a high compliance

³⁵ AER, *ADR Annual Summary for 2014*. <http://www.aer.ca/documents/reports/ADRAnnualReport-2014.pdf>

³⁶ AER, "Compliance Dashboard." <http://www1.aer.ca/ComplianceDashboard/index.html>

rate,³⁷ much of the enforcement system relies on self-reporting and it is not unheard-of for companies to breach, unintentionally or otherwise, rules and requirements.

It is important to know that the ADR process is confidential. This allows parties to speak freely, and to determine appropriate solutions to the issues at hand without being hampered by concerns about confidential information being shared outside the group. However, this may limit your ability to speak about some of your issues in public, including in subsequent hearings related to the conversation, or to share with your neighbour for their conversations with the same company. All parties to the ADR process must agree to allow any resolutions from the process to be unbound by the ADR confidentiality clause in order for you to speak publicly about it.³⁸

If the application has been submitted, yet you feel that a company is not seriously trying to minimize potential impacts, you can ask the AER to hold a hearing by submitting a statement of concern after the application has been submitted to the Regulator (Sections 2.5 and 11.1). If a hearing is recommended, but the hearing commissioners feel that you have been less than cooperative in trying to resolve the issue outside of a hearing, they have the power to deny you cost reimbursement for the hearing process. Therefore, you should make a reasonable effort to address your concerns through negotiation or the ADR process before deciding to pursue a hearing.

2.4.2 Working with the National Energy Board

If there are difficulties concerning the location of an interprovincial pipeline, timing and method of construction, or protection of the land associated with that pipeline, you and the company can use the National Energy Board (NEB) Appropriate Dispute Resolution process (which is a similar process to the AER's Alternative Dispute Resolution process, discussed above).³⁹ You and the company can also use this dispute resolution process, if you wish, to discuss the amount of compensation to be paid for the use of land or damage caused by construction or maintenance of the pipeline. However, as the NEB does not have a mandate to decide compensation, if the company

³⁷ AER, "How does the AER Regulate the Oil and Gas Industry?" 2015. <https://www.aer.ca/about-aer/spotlight-on/unconventional-regulatory-framework/how-does-the-aer-regulate-the-oil-and-gas-industry>

³⁸ Alberta, Alberta Energy Regulator Rules of Practice, 99/2013, s 7.7. http://www.qp.alberta.ca/documents/Regs/2013_099.pdf

³⁹ NEB, *Appropriate Dispute Resolution: Guidelines* (2003). <https://www.neb-one.gc.ca/bts/ctr/g/gnnb/pprprtdsptrsltn/2003adrguidelines-eng.pdf>

and landowner cannot come to an agreement using the NEB process, they have to ask the Minister of Natural Resources to appoint a negotiator or an arbitration committee. The arbitration committee can, among other things, decide whether the company must pay compensation in a lump sum, or as annual or periodic payments.⁴⁰ If the NEB Appropriate Dispute Resolution process fails, matters will be dealt with at an NEB hearing (Section 11.4).

More information about the NEB, pipeline regulations, and your rights as a landowner can be found in the NEB landowner's guide.⁴¹

2.5 When the application is filed: submitting a statement of concern

If negotiations have failed and you want the AER to formally address your concerns (other than compensation) after the company has submitted their application, the next step is to submit a statement of concern to the AER. If the AER is aware of any outstanding concerns, the company is required to submit their application through the non-expedited process, and the AER will not make a decision on an application until after the filing deadline outlined in the notice of application has passed.⁴² The notice of application will also outline other relevant information about the proposed project, and what you specifically need to address in your statement of concern. Companies are expected to send the notice of application to anyone who has outstanding concerns from the pre-application process. For example, anyone who submitted a pre-application concern should receive a notice of application. It is important for you to submit a statement of concern at this stage of the process if you want to trigger a formal process and ensure your concerns are still considered by the Regulator, because the Regulator is very unlikely to recommend an application for a hearing if no statements of concern have been submitted.

⁴⁰ Canada, National Energy Board Act, SC 1985, c N-7, s 98. <http://laws-lois.justice.gc.ca/eng/acts/n-7/FullText.html>

⁴¹ NEB, *Pipeline Regulation in Canada: A Guide for Landowners and the Public* (2010). <https://www.neb-one.gc.ca/prtcptn/Indwnrgd/index-eng.html>

⁴² Notice of applications are found on the AER website, and may also be issued in public newspapers in your area.

When submitting a statement of concern, you need to concisely explain why you believe you are both directly and adversely affected by the Regulator’s decision; the nature of your objection to the application; and the outcome you are looking for.⁴³ To try and ensure the AER accepts your statement of concern and your request for a hearing, you should clearly establish the connection between the concern you’d like addressed, and how it may negatively impact you. It is helpful to be precise, and to “spell it out” for the AER. What may seem like an obvious connection between the project and the issue of concern won’t necessarily be obvious to those reviewing your statement of concern, and the AER won’t consider facts that aren’t brought before it. Include all relevant details to establish why the project or a specific element of a project is connected to the concern you are expressing. For example, if you are concerned about flaring, it may help to include a map that outlines where the potential flare stack may be located in relation to your house, where you spend time in your garden, where animals are located, or where your children play outside. If you believe that the close proximity of the project to where you spend your time will exacerbate a health issue, clearly outline this.

In addition to the details about your concern, you need to include other relevant details, such as your contact information and your location relative to the location of the proposed energy resource activity. It is important to submit your objections within the filing period. The AER will consider your statement of concern when reviewing the application, and, if your statement of concern meets the requirements, assess whether it will hold a hearing.

You can review recent participatory and procedural decisions from the AER on their website. You will likely only find decisions on statements of concern that have not been recommended for a hearing,⁴⁴ but these may give you a good sense of how the AER decides who is directly and adversely affected as these decisions briefly outline the reasoning for not recommending the application for a hearing.⁴⁵ Currently, the AER has a fairly narrow interpretation of who is directly and adversely affected — typically people who are not the direct landowners or immediately next to a project have a difficult time establishing that they are directly and adversely affected.

Statements must be submitted in writing; calling the Regulator does not count as submitting a statement. Statements of concern must be submitted individually by each

⁴³ Alberta Energy Regulator Rules of Practice, s 6(1).

⁴⁴ This is the current practice of the AER at time of writing.

⁴⁵ AER, “Participatory/Procedural Decisions”. <http://www.aer.ca/applications-and-notices/decision-reports/participatory-procedural-decisions>

concerned party, or as a single submission on behalf of a group by one designated representative under the group name (see Section 2.7 below for more information on working with groups).

You must submit your statement within 30 days of the notice of the application, or by the date specified in the notice (which will be less than 30 days). The AER must wait for the period for filing a statement of concern to pass before they will approve a project, unless a project is submitted as a “routine application”. Companies are allowed to fill a routine application if they do not require regulatory leniency, and if there are no outstanding concerns.⁴⁶ If the Regulator does not receive any statements of concern, they likely will not hold a hearing. If the Regulator has already made a decision on an application, then they may not consider a statement of concern, so it is important to submit your statement as soon as possible.⁴⁷

Any statement of concern you submit will become part of the public record, so you should not include personal, medical, financial, or other information that you wish to remain confidential. If you have information that may aid in making your case that you are directly and adversely affected but that you wish to keep confidential, it may help for you to indicate that this additional relevant information is available but confidential and that you would reveal it to the Regulator at a later time. You may wish to contact the AER’s stakeholder engagement team to determine the best way to include this information.

Consult the AER’s *EnerFAQ: Expressing Your Concerns* for more information about statements of concern.⁴⁸

If the project is already approved and it is too late to submit an official statement of concern, you can submit a request for a Regulatory Appeal or a request for an reconsideration (see Section 11.2 or 11.1.10).⁴⁹

⁴⁶ Exceptions, including routine applications, are described in Alberta Energy Regulator Rules of Practice, s. 5.2(2).

⁴⁷ Alberta Energy Regulator Rules of Practice, s. 6.2(1c).

⁴⁸ AER, *EnerFAQs: Expressing Your Concerns* (2015). <http://www.aer.ca/about-aer/enerfaqs/enerfaqs-expressing-your-concerns>

⁴⁹ AER, *Upstream Oil and Gas Facility Complaint Form*. http://www.aer.ca/documents/liability/Complaint_form.pdf

2.6 If all dispute resolution fails

Sometimes it is not possible to reach agreement, even through a combination of negotiation, facilitation, or mediation. If this is the case, the company or landowner can ask the AER to consider holding a hearing (Section 11), or apply for a right-of-entry order through the Surface Rights Board (described in more detail in Sections 10.3.1 and 11.3.1)

If you are thinking about asking the Regulator to hold a hearing, you need to have strong evidence of the damage that an energy development could potentially cause you or your family, or reasons why it is not in the public interest to allow the project to proceed. While the AER has rarely prohibited a development, it may attach conditions to licences that address concerns that the hearing board had with the application. You will likely get a more satisfactory resolution of problems if you try to negotiate and then, if necessary, ask the AER to facilitate or arrange mediation through the ADR process, rather than do nothing and simply refuse access.

Occasionally a landowner may be so strongly opposed to a proposed development that they are unwilling to attempt negotiation. If that is the case, it is important to consider the implications. If a landowner refuses to negotiate and makes it clear from the start that “No means No,” the company will inform the AER when they submit their application. The AER may suggest that the landowner should negotiate with their facilitator or with a third-party mediator, but if this is still unsuccessful, the company may ask the AER for a hearing. If a landowner has not tried to resolve the issues through negotiation or explained to the AER why any anticipated *adverse effects* cannot be handled through negotiation, the AER may dismiss the objection and approve the application without a hearing. If a hearing is triggered, the hearing panel may not grant costs to the landowner if they believe that the issue should have been dealt with through the ADR process. Thus, before taking this stand it is crucial for a landowner to consider their chances of securing all of their demands at a hearing, given the fact that the AER has made very few decisions that actually prohibit development.

If, after weighing the above considerations, you do decide to fight an application, you will need to make a strong case. You may also want to garner the support of as many surrounding neighbours as possible. Each person should write a clear statement of concern to the AER, sending a copy before the deadline to the AER, as outlined in the Notice of Application. Copies should also be sent to the company proposing the development, the relevant MLA, the energy and environment critics for opposition parties, and relevant media. If the application is non-routine (for example when there

are outstanding issues that the operator has identified), you should have 30 days to submit a statement of concern, in which you can suggest that the project be considered by a hearing. The AER has full discretion for when a hearing is triggered, but is most likely to decide to trigger a hearing when one or multiple parties, considered by the Regulator to be directly and adversely affected, makes their case that the issue is best resolved by hearing.

Adequate preparation for a hearing, including obtaining legal counsel and arranging appropriate technical expert witnesses, is essential; Section 11 provides more information on hearings.

2.7 Forming a group with landowners and concerned citizens

Working as a group with other landowners and concerned persons and sharing your time, energy and knowledge can strengthen your position when negotiating with a company or taking part in a dispute resolution process.

If you have concerns about the proposed development that have not been resolved in initial discussions with the company, you may want to get in touch with your neighbours. Inform them about the proposed project and invite them to join you if they share similar concerns. This may involve no more than arranging to attend an open house together or negotiating with the company as a group.

In addition to forming a group to work on your local issue, it is a good idea to find out if there is a group working on oil and gas related issues in your region. Regional groups may have a specific or unique mandate, and some may have affiliations with other organizations such as surface rights groups. For example, it might be worthwhile to contact your local airshed group, if you have concerns about the impacts of flaring.

Local and regional groups and individuals also participate in synergy groups. The AER and the Canadian Association of Petroleum Producers encourage the development of synergy groups, where local people work together with representatives of the government and companies to exchange information and resolve issues. There are dozens of synergy groups in Alberta; you can find out if there is one in your area by contacting the AER or checking the Alberta Synergy website.⁵⁰ The Alberta Surface

⁵⁰ Synergy Alberta. <http://www.synergyalberta.ca/>

Rights Federation can tell you if there is a surface rights group in your area. Appendix B provides contact information for various organizations and groups that can offer advice.

Starting a group

If you decide to form a new group, contact as many people as possible, especially if you would like to influence the details of a project before they are finalized, or if you plan to submit a statement of concern when the company files their application with the AER. You may find some people reluctant to join, even if they have concerns about a project, because they do not want to create a fuss or are afraid of potential implications of being vocal about their concerns. Others who do not understand the issues might join if you take the time to explain. Some may assist behind the scenes, even if they are unable to play a public role. Always respect the views of others; you want to find allies, not create enemies. Be aware that you might face backlash, perhaps from neighbours who stand to gain financially from the proposed activity. Remain calm and recognize that there will be opposing views within any community, especially surrounding the potential issues with oil and gas development.

Once you have a core group committed to working on the issue, you need to list your concerns and decide how you want them addressed. It is best to start by negotiating directly with the company, preferably in face-to-face meetings (Section 2.2). It may help to have a facilitator or mediator to help with these discussions. However, if negotiation through the ADR process is unsuccessful, you may want to hold a public meeting, contact public figures, start petitions or bring your grievances further into the public sphere by engaging the media (Section 2.8).

In some cases, the AER and the company will encourage you to negotiate as a group. If you negotiate as a group, consider engaging a single representative or advocate for the group as a whole, so that they can advocate for a cohesive approach. This may be difficult if you don't share the same concerns as other people, but it is likely in everyone's best interest to agree on common issues and what you would like to be done. However, companies have at times discouraged groups from negotiating together, saying that they prefer to work with individual landowners so that they can address specific issues. If you wish to ensure that the company negotiates with your group, it is important to have a clear idea of what solutions are possible for your concerns, and to maintain a sense of professionalism about the process to ensure that the company takes your group seriously.

When you form a group, it is not essential to establish a formal organization, such as a legally chartered society or association. Working through the legal and bureaucratic

steps of establishing a society can take a lot of time and energy away from the key task of dealing with the proposed energy project. Since you will need to provide an address for correspondence with the AER and company, identify individuals who can act as contacts for the group and someone to be responsible for handling any money collected.

While it isn't necessary, there are some benefits to establishing a formal organization. In the unlikely event that a company decides to sue, they will likely sue the organization rather than individual citizens; the organization may become bankrupt but not its individual members.

In the future, the AER may move to more regional approvals, approving large projects or multiple projects at once rather than approving projects one by one. In these instances, it will likely benefit people in the area to coordinate together to amplify any concerns they have with the approvals, outcomes or process. Although this AER approval process is in its preliminary stages, if the AER does begin approving projects using an area-based or regional-based process, coordinated groups from the project area will become even more important.

Meetings

If a group has a formal meeting with the company, try to get an independent person to take minutes so that you do not have to rely solely on the company minutes. It is helpful if the minutes reflect the discussion, rather than only the assumed conclusions. Action items should be listed separately. It may be useful to record the meeting as an addition to the minutes; note that it is sometimes difficult to get a clear recording of all speakers.

Make sure that everyone receives a copy of the written minutes so they can read them carefully before the next meeting. Watch for errors of omission or emphasis, as well as for inaccuracies in what is actually reported. It is important to go through the minutes at the next meeting to give everyone an opportunity to raise issues; if anyone disagrees with something reported, they should ask for the minutes to be amended. You must ensure that minutes are accurate before they are signed. The company may use the minutes as evidence if negotiations fail and there is a hearing.

If you plan a public meeting, be sure to check the sports calendar and other local events so you select a date that will ensure maximum attendance. Invite as many people as you can by telephone or email, but also advertise the meeting in the media (Section 2.8.2). It is a good idea to invite the company and the AER (or, if appropriate, the Farmers' Advocate or the Surface Rights Board) so they can hear everyone's point of view. Also

invite local municipal councillors and, if there is a health issue, an official from Alberta Health Services.

Meeting logistics

- Plan the meeting carefully so everyone who is involved knows what needs be done.
- Give adequate notice of the meeting and send out a reminder (by phone or email) to key people on the day before.
- Put out seats for the number of people you expect to attend; however, keep some reserves on-hand.
- Provide refreshments and allot time for brief breaks if the meeting will be lengthy (over an hour).
- Arrange to ‘pass the hat’ before the coffee break, with a request for donations to help pay for room rental and other expenses. Do not leave this until the end of the evening as some people may leave early.
- Choose a capable person to act as the meeting facilitator. Decide who will effectively present your group’s concerns and point of view.
- Draw up a clear agenda and keep to it. If people want to raise other issues, allow for a open-floor question period at the end.
- Consider what medium you will use to present your case (slideshow, hand written/created materials, or solely an oral presentation).
- Arrange for someone to take minutes.
- As people arrive, or during the course of the evening, invite them to sign a list, giving their name, address, email, and telephone number, so you can contact them about future developments.

At the start of the meeting, the facilitator should introduce any guests and propose an agenda. Then the spokesperson for the core group — who should not be the same person as the facilitator — should explain why the meeting has been called, and outline the group’s main concerns and questions. At the appropriate time, members of the public should be invited to give their views. Ask them to give their names when they speak. The company, the AER, or other government body and any other guests should be invited to express their views if they wish. At the end of the meeting, the facilitator should call on a representative from the core group to outline any next steps, such as a formal meeting with the company to review ideas put forward that evening, and invite people to volunteer their help.

Meeting followup

If the AER or company does not attend the meeting, it is a good idea to inform them of the conclusions reached at the meeting, communicate any outstanding concerns, and possibly provide them with a copy of the minutes. The group may also want to send a copy to the media (Section 2.8), or perhaps bring a contentious issue to the broader public by writing in to the local paper, posting on social media, or providing local media with an interview.

Much of the work in negotiating with a company will be done by the smaller core group. How often you hold public meetings will depend on the circumstances, but such a meeting will probably only be necessary if there is a major development or change in the process, for example, if a hearing is called.⁵¹

You may also want to set up a fundraising committee as it is unlikely that you will get enough from passing the hat at a meeting to cover all your costs. Some people may prefer to help with fundraising rather than write letters, get involved with negotiations or prepare evidence for a hearing.

To keep other local people informed, you could issue a short newsletter, send media releases, or set up a group website. You could also ask the company if they will set up a website on which they post notices of meetings and minutes of the meetings they have with you.

2.8 Involving the media

2.8.1 The role of the media

The media can help you reach a wider public, which in turn will make other residents aware of the proposed project and your concerns. This can help build support for your activities and increase the chance of successful negotiations with the company.

Media attention can also ensure that the AER (or other government or regulatory body) is aware of and involved in your issue. It is important that you keep the regulators informed about developments in case the media asks them to comment. The greater the publicity and concern about an issue, the more attention it will likely receive.

⁵¹ For more information about AER hearings, see Section 11.1.

You may also find media useful if all attempts at alternative dispute resolution has failed. Many companies are concerned about their public image and want to avoid negative publicity.

“Media” includes the following:

- Social media (Facebook, Twitter, and locally relevant blogs)
- Local, regional and national newspapers.⁵² Do not forget the free local papers that focus on advertising but also often carry news items or event information
- Online news sources
- Magazines dedicated to sectors such as agricultural producers and the oil and gas industry
- Local and regional radio stations
- Community and regional television stations

If you are planning a meeting, the media can help you reach a wider public. Your local paper or radio station may make free public service or community announcements. The local paper will likely publish a letter to the editor about your activities. In addition, you may want to place an advertisement in local newspapers, or announce the meeting date and purpose through social media channels (local Facebook groups, community blogs, local websites). You will likely have to share the cost of some of these activities amongst yourselves, but if you “pass the hat” at a meeting, you may get enough to cover some of the costs.

Find out how soon you need to submit a notice or advertisement when fixing the date of the meeting. Media often have an advertising deadline several days or weeks prior to publishing. The advertisement should appear at least a week before the event or meeting date. You can suggest to a newspaper the page on which you would like the advertisement placed, but they may not be able to meet your wishes.

2.8.2 Issuing a media release

If you have a message to get out, distributing a media release can be very helpful. It should not be long, but should consider the following:

- Decide what your main message is and state this clearly in the first sentence.
- Include a brief outline of your key concerns and your desired outcome.

⁵² You can obtain information about local newspapers from the Alberta Weekly Newspaper Association at 780-434-8746, info@awna.com, or www.awna.com.

- If you want to let people know you are holding a meeting, remember to include information on:
 - What is taking place
 - Why it is being held
 - When it is being held
 - Where it is being held
 - Who will be attending and who has been invited
- At the bottom of the release, put one or more contact names with phone numbers, email addresses and website if applicable so that anyone interested can contact you for more information.
- Put a short title at the top of the release — something eye-catching, but not overly sensational — and the date it is being released.
- Keep the release brief — less than a page. If you want to provide more information, put it in a “backgrounder” on a separate sheet that follows the news release. A backgrounder usually has factual information rather than opinions. Use bullets to clearly identify each new point.
- If you want to send the release to media in advance of your official public announcement, you can send it “under embargo.” Write in bold type at the top of the news release that it is “Under embargo until (date and time),” and the media should respect this and not publish the information before the specified time. Sending out a release early, under embargo, gives the media an opportunity to contact you to get more information before the news breaks.
- Find out in advance what the deadline is for your local newspaper. The deadline for a weekly paper is likely to be two or three days before it appears in print. You may want to time the announcement (or the date of the embargo) for the day that your local paper is published, so they can run the story at the same time as it appears in a regional paper or on local radio.
- A service like the Alberta Weekly Newspapers Association can deliver a release to nearly all provincial weekly papers in a matter of hours.⁵³

When your news release is ready, email, fax or deliver it to your local and regional newspapers, radio and TV stations. Contact information for press releases, letters to the editor and advertising managers can often be found online.⁵⁴

⁵³ Alberta Weekly Newspapers Association, “Press Release Service.” <http://www.awna.com/press-release-service>

⁵⁴ ABYZ Newslinks lists media contact information: <http://www.abyznewslinks.com/canadab.htm>

As all media outlets get large numbers of news releases, it is a good idea to follow up the release with a phone call. You may want to call a few media contacts before sending out the release to give them some background to the story. It is worthwhile offering to meet with local media to explain the situation and give them more details. You may need to inform them about the issues that concern you, such as the health implications of sour gas wells and flaring, or the risk of water well contamination. By giving them background information you have gleaned from the AER, Farmers' Advocate or Surface Rights Board, you will help them put your story in context. For example, if you are concerned about a potential leak, you might want to draw their attention to the number of leaks and spills that occur in Alberta each year as reported by the AER.⁵⁵ Many journalists do not have time to research all aspects of an issue themselves, but will be happy to use background information you have gathered from legitimate sources.

Don't forget to send a copy of your news release to both the company and the regulatory body dealing with the issue (such as the AER or Surface Rights Board). You might want to specifically address the release to the attention of the person in the company or board dealing with your concerns. It is not only a courtesy to inform the company and board; it will also enable them to be better prepared to respond to the media if they know in advance what you are saying.

It is also a good idea to send a copy of the release to your local elected representatives. They should be sent a separate invitation if you are inviting them to the meeting, but they will also be interested in seeing your release.

2.8.3 Talking to the media

Some important things to remember when dealing with the media:

- If being interviewed, stick closely to your message, referring to your news release as a reminder. It is helpful to write your talking points down in advance to help articulate the message. If you have additional points you want to raise, think about them in advance and talk about the most important things first; the paper may not have space to fully articulate all of your points.
- Try to anticipate the type of questions you are likely to be asked and think about your responses in advance.

⁵⁵ AER, *Pipeline Performance in Alberta 1990-2012*, Report 2013-B (2013).
<https://www.aer.ca/documents/reports/R2013-B.pdf>


- Always be polite and never refer to the company or any individuals in a defamatory way. Even if your frustration is warranted, showing it openly will generally not help you build public support for your position and could lead to a lawsuit. Do not get drawn into sensationalizing the issue by a member of the media, as they are looking for the most quotable material and this may not help your cause.
- Consider asking the media to include a contact telephone number or email address (do not use your primary private one) in any feature they write or present, so other people can get in touch with you. They will not always do this, but it's worth asking.
- The media will probably want to talk to the company to hear its side of the story or issue. Give any journalist who interviews you the name and number of the person in the company they should talk to. This will not only save them time, but also increase the chance that they will get the company's viewpoint quickly and run your story.
- Build up a good relationship with key journalists. If they run a good story, call to thank them. Keep them informed about any developments so that you may be able to rely on them to report the situation without issuing further news releases. However, be careful to come across as a useful source and not a pest. Contact them when there are new developments or new information that relates to what they have expressed interest in or covered before.

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