



Delivered via e-mail to prrd.dc@prrd.bc.ca

May 29, 2020

Mr. Brad Sperling,
Chair, Peace River Regional District
Box 810
1981 Alaska Ave.
Dawson Creek, B.C. V1G 4H8

Dear Mr. Sperling,

Re: Response to PRRD letter on unmaintained oil and gas sites

Thank you for your letter regarding invasive plants on unmaintained oil and gas sites before they are designated orphan sites.

Your letter poses some questions for the Commission:

1. What is the Commission's current policy and/or strategy for addressing the issue of invasive plants on Abandoned Sites; and
2. Are costs of controlling invasive plants incurred by landowners on an Abandoned¹ Site eligible for compensation from the Commission if that site is later designated an Orphan Site? More specifically, whether the costs of invasive plant control conducted by the Regional District on a site added to a land owner's property taxes would be eligible for compensation respecting an orphan site under section 46 of the *Oil and Gas Activities Act* (OGAA).

Question 1

With regard to your first question, a permit holder is responsible for the management and control of invasive plants on its sites, whether or not operations at the sites are active. If a permit holder is not maintaining its sites in accordance with regulatory requirements, the Commission may take enforcement action under the *Oil and Gas Activities Act* and related enactments.

For sites that are inadequately maintained, the Commission can order the permit holder to take the appropriate steps to assure compliance. Where the permit holder fails to comply with an order, the Commission has the ability to ensure compliance up to and including performing the work and recovering associated costs.

¹ As per your letter, the term "Abandoned" is understood to refer to oil and gas sites where the permit holder is not maintaining the site with respect to weed control and management. For this letter these sites will be referred to as "inadequately maintained" sites.

The Commission acknowledges the PRRD's concerns regarding this matter and would welcome a more efficient approach to ensuring that invasive plants and weed growth are managed appropriately. Andy Johnson, Vice President, Operations (Andy.Johnson@bcogc.ca) will be in contact with you to arrange a meeting to discuss how the Commission and the PRRD may work more closely together on this matter to ensure all sites of concern are managed appropriately.

Question 2

The Commission can only designate a site an orphan if the company is insolvent or if the operator cannot be identified or located. If the operator's sites are subject to bankruptcy or receivership proceedings and not yet designated an orphan, then the receiver or trustee has responsibilities for those sites until the sites are transferred to a new permit holder or the receiver or trustee is discharged by the court.

As you note in your letter, section 46(1) of OGAA states that "On application by a land owner on whose land the commission expends money in accordance with section 45, the Commission may make payments from the fund *to compensate the land owner for the loss of use of his or her land* as a result of the failure by the permit holder or former permit holder referred to in section 45(2) to restore the land, subject to the maximums, conditions and limitations prescribed by regulation." Under section 46(2), for the purposes of "determining the amount of compensation to be paid to a land owner under subsection (1), the commission may consider any payments due to the land owner or a previous land owner under a surface lease with respect to the site."

The reference to "use of land" under section 46(1) encompasses activity that may be conducted on the land. Compensation may be provided under section 46 in relation to an orphan site for the land owner's inability to use the land, for example for farm use, as result of the failure to restore the land. Claims for compensation for other potential impacts related to a land owner's interest in land are beyond the scope of section 46(1). Compensation for costs of invasive plant control conducted by the Regional District on a site added to land owner's property taxes would not constitute compensation for the loss of use of the land, and accordingly would not be eligible for compensation under section 46 of OGAA.

In closing, I want to thank you for your letter outlining your concerns regarding the control and management of invasive plants on oil and gas sites. We look forward to working with the PRRD to find solutions to this matter that ultimately sees invasive species and weeds effectively controlled and managed more effectively.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ken Paulson', is positioned above the printed name.

Ken Paulson, P.Eng
EVP and Chief Operating Officer



PEACE RIVER REGIONAL DISTRICT

April 15, 2020

BC Oil and Gas Commission
PO Box 9331, Stn Prov Govt,
Victoria, BC V8W 9N3

To Whom It May Concern:

I write to you on behalf of the Board of the Peace River Regional District on the subject of invasive plants on unmaintained oil and gas activity sites before they are designated orphan sites by the Commission.

Many of our constituents have oil and gas activity being conducted on their properties, for which they receive compensation from permit holders ("Operators") conducting that activity. The relationship between landowner and Operator is usually governed by the terms of a surface lease. Where an Operator is insolvent or cannot be located, the Commission may designate that site an orphan site (an "Orphan Site"). However, in the interim period between when a site is designated an Orphan Site and the Operator essentially ceases to perform its obligations with regard to the site (both to the Commission and to the landowner), the site's status sits in a limbo between active and being designated orphaned. For the purposes of this letter, these sites will be described as "Abandoned Sites".

The Regional District is concerned that a gap in enforcement and cost burden currently exists regarding Abandoned Sites, and is seeking the Commission's input on the following questions:

1. What is the Commission's current policy and/or strategy for addressing the issue of invasive plants on Abandoned Sites; and
2. Are costs of controlling invasive plants incurred by landowners on an Abandoned Site eligible for compensation from the Commission if that site is later designated an Orphan Site?

Control of invasive plants on Abandoned Sites

Control of invasive plants is a concern for all British Columbia, and a joint responsibility of the Province and local governments. Both the *Weed Control Act*, RSBC 1996 c 487 and the Regional District's Invasive Plant Control Bylaw 2121, 2014 (the "Control Bylaw") create private duties for occupiers and owners to prevent the growth of and control invasive plants on property they have control over. Operating under the Control Bylaw, the Regional District is the level of government primarily responsible for invasive plant control within its boundaries. If either an owner or an occupier fails to comply with various compliance and enforcement measures available to it under the Control Bylaw, Regional District staff ultimately has the power to enter onto a property and conduct invasive plant control. The Regional District is then entitled to add the actual costs of that work onto the property taxes of the landowner.

This leaves both the Regional District and our constituent landowners in a difficult position. If an Operator is truly delinquent in their duty to maintain an oil and gas activity site, enforcement action by the Regional District is unlikely to be successful. Any costs of control will be passed on to the landowner as the person who is responsible for property taxes of the land in question. It also places the landowner in a difficult position, as they

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PLEASE REPLY TO:



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are (in most cases) bound by a surface lease that does not allow them to enter the leased area or may not otherwise face risk of injury entering onto an active oil and gas activity site to conduct invasive plant control.

The Commission does undertake routine maintenance on Orphan Sites once designated, including performing invasive plant control and other maintenance.¹ Considering this, the Regional District is inquiring whether the Commission has any policy or strategy in place to assist landowners who face a responsibility to control invasive plants growing on their properties but do not have the authority to act.

Compensation for costs of invasive plant control

The Commission has a regime to compensate landowners for losses incurred before a site is designated an Orphan Site. Before making any further enforcement decisions, the Regional District would like to know whether the costs of invasive plant control conducted by the Regional District on an Abandoned Site added to a landowner's property taxes would be eligible for compensation from the Commission under that regime. The relevant sections are as follows.

Section 46(1) of the *Oil and Gas Activities Act*, SBC 2008 c 36 ("OGAA") states:

On application by a land owner on whose land the commission expends money in accordance with section 45, the commission may make payments from the fund to compensate the land owner for the loss of use of his or her land as a result of the failure by the permit holder or former permit holder referred to in section 45 (2) to restore the land, subject to the maximums, conditions and limitations prescribed by regulation.

Section 29(3) of the *Oil and Gas Activities Act General Regulation*, BC Reg 274/2010 (the "OGAA Regulation") states that if a site is designated an Orphan Site under section 45(2) of the Act:

- (a) the maximum compensation to be paid with respect to the period before the designation of the site is \$50 000, and
- (b) the compensation to be paid with respect to the period from the designation of the site to the date of issuance of a certificate of restoration for the site or a determination referred to in section 45 (5) (c) of the Act being made is either
 - (i) the annual payment under the surface lease, or
 - (ii) if there is no surface lease with respect to the land, an annual payment determined by the commission as reasonable compensation for the landowner's loss referred to in section 46 (2) of the Act.

If the Commission can confirm that the above provisions are broad enough to include these costs, it would help to clarify an area of significant uncertainty for both the Regional District and our constituent landowners.

We thank you in advance for your time and for your responses to our inquiries. We anticipate the number of Abandoned Sites will increase given particularly devastating effects of the COVID-19 pandemic on the oil and gas sector. We hope to work with the Commission in developing a fair and sustainable solution for all stakeholders.

Yours truly,



Brad Sperling
Chair

¹ BC Oil and Gas Commission, *2017/18 and 2018/19 Orphan Site Reclamation Fund Annual Report*, page 11. Other site administration includes surface water pump off, berm and/or erosion repair, garbage cleanup and weed spraying.