

Temporary Work Space

Landowners often enter into agreements for temporary work space (TWS) associated with energy development. The title of the agreement, “Temporary Workspace Agreement” infers that the taking is somewhat temporary in nature.

Pursuant to Section 144 of the Environmental Protection and Enhancement Act (EPEA), TWS does not terminate until a reclamation certificate issues. Part 6 of EPEA requires all specified land to be reclaimed. “Specified land” is land that is being used for or held in connection with the construction, operation and reclamation of an oil or gas well, battery, oil production site and pipeline. Land acquired under a TWS agreement is designated “specified land” and is subject to the same requirements to conserve, reclaim and obtain a reclamation certificate as those for a permanent pipeline right-of-way.

At the reclamation stage of a lease or pipeline, an Operator is compelled to declare all surface disturbances to Alberta Environment, including land held under a TWS agreement. A copy of the Reclamation Certificate application and the Operator’s contact information must be provided to the landowner at least 30 days prior to submitting the application to Environment. No central repository compiles records of areas granted for TWS on deeded lands. Landowners often may be the only person that has information on initial surface disturbance on areas held under a TWS agreements.

Prior to reclamation and usually within one year of completion of construction of a pipeline, the company will approach the landowner to sign a Damage release “forever discharging” the company of financial and other obligations associated with the TWS area. Signing the release, does not relieve the operator of his duty to reclaim the work space area.

Industry liability for surface reclamation issues (topography, vegetation, soil texture, drainage etc.) is 25 years from the date the reclamation certificate issues, not, the date the damage release was executed. A energy company is required to resolve any reclamation issues that arise within the 25 year period following the issuance of the reclamation certificate. Liability reverts to the provincial Government after the 25 year period has expired.

In the majority of cases, reclamation certificates for temporary work space do ***not issue until the associated energy development is abandoned and reclaimed***. An extended period of time may elapse from the time a landowner signs the “Damage Release”, and the date the Reclamation Certificate issues by Alberta Environment. Landowners should keep records of areas held under work space agreements to ensure that the work space area is reclaimed at the time the pipeline is abandoned.

Temporary takings on Crown land are granted under a Temporary Field Authority or a Right of Entry Order, when an Operator cannot acquire the Occupant’s consent. Sustainable Resource Development (SRD) issues a reclamation certificate or Letter of Clearance usually within one year of the issuing the disposition for the temporary taking.

The Surface Rights Board grants Right of Entry for work space as permanent pipeline right-of-way. Work area under a Right of Entry Order will not terminate until the associated pipeline is abandoned and reclaimed.

Companies can apply for Exemptions from having to Obtain a Reclamation Certificate. For example, if a pipeline crosses a well site and the well site is being reclaimed, Alberta Environment can issue an

Exemption to the Operator of the well site for the overlapping pipeline area. The company with the overlapping development then becomes responsible for reclamation of the overlapping portion.

The same principle applies to overlapping linear developments. If a company installs a pipeline with adjacent work space; and another parallel line is installed which overlaps the work space from the first development; an exemption may be granted to the Operator of the first line for the overlapping area.

From 1985 to 1995, approximately 129 Reclamation Certificates were issued by Alberta Environment for Temporary Work Space.

From 2002 to 2010, 3 Reclamation Certificates were issued for Temporary Work Space and 96 Certificates were issued for overlapping exemptions.

Landowners can contact Alberta Environment at 780-427-2711 to confirm if a reclamation certificate or overlapping exemption issued for any work space areas on reclaimed developments on their lands.

For more information contact Carol Goodfellow, Ass't Farmers' Advocate at 780-427-2350.

Temporary vs. Permanent Nature of Workspace

When a right of entry order is granted by the Surface Rights Board that includes work space, the work space is granted as permanent right of way, due to the fact the work space area will not be reclaimed until the associated development is also reclaimed.

Under a Right of Entry Order the Surface Rights Board has historically awarded a 100% the land value of the right of way for compensation, due to the permanent nature of the work space. The Board does not distinguish between the value paid for compensation on the right of way from the value paid for work space.

Industry practice under private agreements is to offer the landowner 50% land value of the right of way.

In 2013 a case proceeded to Court of Queen's Bench on appeal of a Surface Rights Board Decision, whereby the Operator argued work space should be paid at a lesser or reduced value (50% value of the ROW). The Surface Rights Board, in their decision held that a valuation of 100% land value was warranted as, "temporary workspaces are no longer temporary.". The courts upheld the Surface Rights Board decision stating that the permanent nature of work space

The Court confirmed that the work space remains in the permanent possession of the Operator until a Reclamation Certificate issues as some rights are retained by the Operator. The Courts elected not to define what rights are retained by the Operator.

Terasen Pipelines (Corridor) Inc v R&M Schroter Enterprises Ltd, 2013 ABQB 482