



INFORMATIONAL NOTICE 03-01

June 18/ 2003

Re: Abandonment, Restoration and Rehabilitation Procedures

Introduction

This informational notice issued jointly by The Surface Rights Board ("the Board") and the Petroleum Branch of the Department Industry, Trade and Mines ("the Branch") replaces Informational Notices 93-6 and 90-1. The purpose of this notice is to update and clarify recommended procedures and requirements of an operator upon abandonment of a well or battery, restoration and rehabilitation of the site.

It should also be noted that operators and owners are free to negotiate any alternate arrangement regarding release of surface rights on abandonment of a well or battery. Any questions regarding the appropriateness of such arrangements should be directed to the Secretary of the Board.

Definitions

In this notice,

"**abandonment**" means

- (a) in respect of a well, the downhole plugging of the well in accordance with the Drilling and Production Regulation under The Oil and Gas Act ("the Regulation") and includes all operations to abandon the well up to and including backfilling around the well after cutting the casing and welding a cap over the end of the casing; or
- (b) in respect of a battery, the removal of all equipment from the site.

"**restoration**" means the clean up and contouring of a site, including any application of topsoil, required to return the site to as nearly as possible to its original condition and to render the site ready for use by the owner, but does not include rehabilitation;

"**rehabilitation**" means any activities required on the site after restoration is complete to return the land to productivity comparable to the surrounding land.

Abandonment of a Well or Battery

Prior to abandoning a well or battery, the operator must obtain approval to do so from the Branch. Abandonment applications are reviewed to confirm the abandonment program complies with the regulation and that any special downhole or other surface conditions are addressed. Additional information may be requested as necessary.

Upon receipt of an application to abandon a well or battery, the District Office of the Branch notifies the registered surface owner of the site.

After approval to abandon a well or battery has been granted, the operator is required to notify the District Office of the Branch at least 24 hours prior to commencing abandonment. In most cases a Petroleum Inspector will witness part of the abandonment operation.

Restoration of the Site

As soon as weather and ground conditions permit after abandonment of a well or battery, the operator is required to clean up and contour the site of the well or battery in accordance with Section 58 of the Regulation. This is equivalent to restoration of the site under Section 36 of The Surface Rights Act ("the SRA").

When restoration is complete, the operator may approach the owner of the site for an acknowledgement that the site has been restored and is ready for use by the owner. The acknowledgement should indicate that the operator remains responsible for any further rehabilitation of the site that may be necessary based on crop or plant growth on the site compared to the surrounding land. The acknowledgement should further indicate that the operator has right of access to the site for the purpose of any further rehabilitation that may be necessary. The operator remains responsible for future claims for crop loss or damages until rehabilitation has been achieved.

Appendix A provides a form of an "Acknowledgement of Restoration" considered appropriate by the Board. A downloadable version of this form is available on the Board's website at www.gov.mb.ca/itm/mrd/board/srboard and on the Branch's website at www.gov.mb.ca/itm/petroleum.

Unless alternate arrangements are made between the operator and the owner, the effect of an Acknowledgement of Restoration is, subject to subsection 39(2) and Section 42 of the Act, to reduce normal compensation (i.e. annual surface rentals) in respect of the site.

Subsection 39(2) of the SRA provides:

Additional compensation

39(2) Where an abandonment occurs at a time when, as a result thereof, the owner, or occupant, if any, is deprived of making use of the land for the current crop year, the board may order the operator to pay the owner or occupant, if any, additional compensation or may order that compensation payments continue for an additional year.

Section 42 of the SRA provides:

Removal of caveats

42 Notwithstanding any provision of this Part, the obligation of an operator with respect to compensation shall continue unabated until all caveats or other instruments registered by the operator against the land under The Real Property Act and The Registry Act with respect to the surface rights have been discharged, released or quitclaimed, as the case may be.

Where an operator has restored a site in accordance with this notice and the owner refuses to provide an Acknowledgement of Restoration, the operator's recourse is to file with the Board an application under Section 37 of the SRA for an Abandonment Order. If the Board finds that the operator has restored the site in accordance with the SRA, any Abandonment Order may be made retroactive to the date of application.

Where the Board makes an Abandonment Order under subsection 39(1) of the SRA, it shall provide in the order that the operator is responsible for any further rehabilitation required and that the operator has right of access to the site for such purposes.

Clause 39(1)(c) of the SRA provides authority for the Board, in an Abandonment Order, to provide for compensation to the owner in lieu of restoration. Generally, but subject to the Board's discretion, this provision will only be utilized by the Board where there is some compelling reason that restoration cannot be completed. The Board anticipates that such circumstances will be very rare.

Rehabilitation of the Site

Once a site has been restored and returned to use there may continue to be negative effects on crop or plant growth for some time. The operator is responsible under Section 59 of the Regulation to fully rehabilitate the site and under The Oil and Gas Act ("the OGA") for claims for crop loss or damages during rehabilitation.

Petroleum Branch inspectors inspect each site after it has been restored. Restored sites are then re-inspected on the request of the operator (made in its annual rehabilitation report required to be submitted to the Branch under Section 103 of the Regulation) or if the operator indicates in its report, that the site has been fully rehabilitated. As a minimum the Branch will ensure a restored site is inspected at least once every three years to determine if the company's rehabilitation activities are effective.

When a well is licensed, the operator is required to provide to the Branch a performance deposit to ensure operation and abandonment of the well and rehabilitation of the site in accordance with the OGA and the Regulation. Once a site has been rehabilitated the operator may make application to the Branch for a "Certificate of Abandonment" that exempts the site from performance deposit requirements under the Regulation. Appendix B is a sample application form for a Certificate of Abandonment . A downloadable version of this form is available on the Branch's website www.gov.mb.ca/itm/petroleum.

An application for a Certificate of Abandonment must be made to the appropriate District Office and be accompanied by a surface release signed by the owner indicating that the owner is satisfied with the rehabilitation of the site. Any remaining modifications to the original condition of the site (e.g. lease road left in place) should be clearly authorized in writing by the surface owner. This "release" is in addition to any Acknowledgement of Restoration that the owner may have signed.

Upon receipt of a complete application and provided a Petroleum Inspector confirms that plant or crop growth on the site is comparable to the surrounding land, a Certificate of Abandonment will be issued subject to confirmation that there are no outstanding debts to the Crown under the OGA in respect of the site. If upon inspection, it is found, where it is feasible to rehabilitate the site and the site has not been adequately rehabilitated, a Certificate of Abandonment will not be issued even though the surface owner may have released the operator or accepted payment in lieu of rehabilitation. In such cases, the Petroleum Branch may hold the operator liable for further rehabilitation.

As an alternative to plant growth monitoring, in situations where the probability of soil damage is very limited, a Petroleum Inspector may accept soils analysis that, in the opinion of a qualified soils scientist, indicate soil conditions on the abandoned site are comparable to that of the surrounding land. A Petroleum Inspector should be consulted prior to proceeding in this manner. All costs associated with the sampling are to be borne by the operator.

The Certificate of Abandonment exempts the operator from any ongoing rehabilitation of the site. However, should damage recur within 6 years of the date that the Certificate of Abandonment was issued, the operator remains liable for further rehabilitation. Where damage recurs after the six year limitation period, the Abandonment Fund Reserve Account under the OGA may be used to address the situation. The issuance of a Certificate of Abandonment does not affect any application of the SRA.

Where, after abandonment of a well, there remains a non-abandoned well or oil and gas facility on the same site covered under the same surface lease, a Certificate of Abandonment for the abandoned well or facility will be issued upon application.

A Certificate of Abandonment is required for all wells that have been issued a well licence including canceled locations. The operator is required to obtain a surface release signed by the owner for a canceled location even if the only activity has been surveying of the wellsite.

Where a site has been rehabilitated, but the owner refuses to sign a release, the operator's recourse is to file with the Board an application under Section 37 of the SRA for an Abandonment Order. Any such application should include any "Acknowledgement of Restoration" that may have been executed.

Surface Rights on Seizure

Part 15 of the OGA sets out an enforcement mechanism to address instances where an operator is in contravention of that Act. The enforcement mechanism can lead to a seizure order, issued by the Minister authorizing the Director to seize and take over the control of a well or facility and take such action as considered necessary to abandon or otherwise dispose of the well or oil and gas facility.

Section 183 of the OGA provides that any surface rights held by the operator of the well or facility are vested in the Crown and that the Crown is not liable for any penalty, debt or other obligation incurred by the operator prior to seizure. However, where the Director has seized a well or facility and that well or facility remains unabandoned or has not been transferred to another operator on the next anniversary date of the surface lease pertaining to the site, the Director shall cause to be paid surface rentals in the amount that would have been due by the operator if seizure had not taken place.

Contacts

District offices of the Branch are located in Virden (phone (204)748-4260 and Waskada (204) 673-2472.

Any communications with The Surface Rights Board should be directed to the Secretary to the Board, Barb Miskimmin at (204) 945-0731.

THE SURFACE RIGHTS BOARD

THE PETROLEUM BRANCH

(Presiding Member)

(Director)