

QUESTIONS AND ANSWERS

Delegation Agreement for Oil and Gas Uses in the Agricultural Land Reserve Peace River Regional District and Northern Rockies Regional Municipality

July 2013

GENERAL QUESTIONS

Q: What is the Agricultural Land Reserve (ALR)?

The ALR is a provincial zone where agriculture is recognized as the priority use, farming is encouraged and non-farm uses are regulated. Agricultural lands are designated as an agricultural land reserve under the Agricultural Land Commission Act (ALCA). Section 20(1) says “A person must not use agricultural land for a non-farm use unless permitted under this Act.”

Q: What is the Agricultural Land Commission (ALC)?

The ALC is the body of appointed individuals who make up the administrative tribunal (and the staff that support the appointed individuals) and administer the ALR boundary and non-farm uses within.

Q: What is a non-farm use in the ALR?

A non-farm use is any use of land other than the farming of land, plants and animals or any other similar activity designated as a farm use by the Agricultural Land Reserve Use, Subdivision and Procedure Regulation (Regulation), and includes a farm operation.

Any non-farm use of ALR land that is not designated in the Regulation as a farm use or identified as a use permitted in an ALR is prohibited by Section 20(1), unless that use is otherwise allowed under the ALCA. All oil and gas developments and activities are non-farm uses.

Q: What is a delegation agreement?

Under Section 26 of the ALCA, the ALC can enter into an agreement to allow certain governments or authorities to exercise the ALC’s power to decide applications for non-farm use. Such agreements may also exempt a non-farm use in a specified area from the requirement of an application for permission for non-farm use on certain conditions. The ALC has exercised power to enter into an agreement with the BC Oil and Gas Commission (OGC) relating to certain oil and gas non-farm uses within the ALR in the Peace River Region. This means the OGC acts as the ALC and makes decisions guided by the ALCA and regulations.

Q: Is this agreement limited to the Peace River Regional District (PRRD) and Northern Rockies Regional Municipality (NRRM) region of British Columbia?

Yes. An application must be filed with the ALC for all oil and gas developments outside of the PRRD and NRRM.

Q: Does the agreement cover other non-farm uses on ALR land?

No. Any non-farm uses on ALR lands not identified in the agreement must be allowed through an application to the ALC submitted via the local government.

Q: Does the agreement apply to Crown lands in the ALR?

Yes. The boundaries of the Agricultural Land Reserve are based on the agricultural capability of the soil, not on the current use or ownership of the land. The ALR includes Crown land and there is no differentiation in treatment of Crown land from private land. For non-farm uses permitted under the ALCA, Schedule A and B reporting is required for both Crown and private land.

If there is an agricultural lease on the Crown land, then the lease holder is considered the land owner for oil and gas surface use agreements and consulting on Schedule A and B reports.

Q: Are National Energy Board (NEB) projects subject to this agreement?

No, as they are federal jurisdiction. However, the ALC requests that all NEB projects reclaim ALR lands to the same agricultural standard as other oil and gas developments on ALR land.

RECLAMATION

Q: Does the company have an obligation to restore agricultural land even where a surface land owner wants to retain the development?

Yes. The company is responsible for reclaiming the land in accordance with the terms of the agreement and/or permission for non-farm use. If a surface land owner has an agricultural reason for not wanting the land reclaimed, they should provide evidence in writing to the oil and gas company. The company can then use this information to prepare its Schedule A, Appendix II Rationale and/or Schedule B for submission to the OGC. Examples of legitimate farm related uses could be leaving an access road in place for farm use or not reclaiming a surface lease in order to build a farm building. If the use is for non-farm related purpose, the surface land owner must submit an application to the ALC.

Q: How long does a company have to restore land disturbed by the installation of a pipeline and submit the required Schedule B Report to the OGC?

The company must complete reclamation and submit its Schedule B report within 24 months of the date of pipeline installation.

Q: How long does a company have to restore land disturbed by oil and gas activities and ancillary activities (other than pipeline installation) and submit the required Schedule B Report to the OGC?

For all oil and gas activities and ancillary activities other than the installation of a pipeline, the company must complete reclamation and submit its Schedule B report within 24 months of the date that the use of the area of land disturbed by the activity is no longer required.

Q: Who is responsible for ensuring erosion does not occur on or off the wellsite?

The oil and gas company must ensure as a condition of use that the activities occurring on the well lease or off as a result of the non-farm use are not negatively affecting adjacent lands off the lease area including water run-off, soil erosion and water pooling.

Q: Who reviews the Schedule B reports and determines if reclamation requirements have been met?

OGC staff review the Schedule B to determine if reporting is complete and appropriate reclamation has taken place.

Q: What happens if a pipeline trench subsides following reclamation?

The oil and gas company is responsible for repairing the problem.

Q: If not enough topsoil and subsoil is available to reclaim a site, can I bring in soil from offsite?

Soil cannot be imported without permission under the ALCA. If the site was prepared properly, adequate soil should be available for reclamation purposes.

COMPLIANCE AND ENFORCEMENT

Q: What action can the OGC take if conditions for exemption or application approval are not adhered to (including reporting and reclamation)?

Failure to comply with the conditions of a permit issued under OGAA or the terms of an exemption or approval for oil and gas use on ALR lands may result in the OGC acting under the provisions of OGAA or the ALCA. Provisions of the ALCA include issuing a stop work order, prescribing additional remedies to restore the land, seeking a court order or levying a penalty if the ALCA is contravened and if the soil is not adequately reclaimed or protected.

ACCESS ROADS

Q: Are access roads included when calculating the combined area of new and existing oil and gas uses?

Yes. Access roads administered under OGAA are calculated into the combined new and existing oil and gas use.

Q: Are access roads on public rights-of-way or road allowance included when calculating the combined area of new and existing oil and gas uses?

No. The use of existing or unconstructed public rights-of-way, administered by the Ministry of Transportation and Infrastructure (MOTI), for access is encouraged because these routes minimize impacts on farm operations.

Q: Do winter only access roads require a Schedule A and soil stripping?

No, as long as the access road is used only under frozen conditions and the site is exited prior to spring thaw. Approval for multi-season or more permanent access is required via the delegation agreement and appropriate soil stripping as well as Schedule A reporting. See Schedule A for list of exceptions to Schedule A reporting requirements.

REPORTING

Q: Is Schedule A and B reporting required for geophysical exploration?

No. The agreement does not require Schedule A and B reporting for geophysical exploration. Land disturbance from geophysical exploration is normally limited to the time period of the activity. The Geophysical Exploration Regulation under OGAA contains restoration obligations, including, at Section 11, a requirement that where geophysical exploration work causes damages to any land or property, the operator take immediate steps to prevent further damage and repair the damage as soon as possible.

Q: Is Schedule A and B reporting required for electric power lines?

No. Placement of electric power lines adjacent to existing access roads is encouraged to limit impacts on farming practices. When power lines are built adjacent to access roads, the impact should be low (as with buried power lines). However, power lines not adjacent to access roads require an ALCA application to the OGC and impact on agricultural use will be taken into account.

Q: Must site assessment and reclamation reports be filed with the land owner?

Yes. Land owners are directly affected by the proposed developments, and they must be consulted about construction methods and reclamation plans while preparing the Schedule A report. As set out in the delegation agreement, the OGC and surface land owner must receive a copy of the Schedule B assessment.

Q: What remedial options are available when the reclamation of a surface lease does not meet the criteria set out in Schedule B?

The qualified professional completing the Schedule B assessment will identify ways to remedy outstanding problems. If the action is unsatisfactory, OGC staff will respond and inspect the site and may consult with a professional agrologist on what actions should be taken in consultation with the land owner. If there is not a satisfactory outcome, the OGC has the authority under OGAA and the ALCA for compliance and enforcement actions.

Q: Does this agreement affect developments constructed under old ALC General

Orders (General Order 4473/76 in effect from 1976 to 1982; General Order 132/82 in effect from 1982 to 1995 and General Order 293/95 in effect from 1995 to 2004)?

Yes. The reclamation requirements set out in Schedule B of this agreement will be used to assess the reclamation of existing developments. General Order 132/82 required that the surface lease be restored “to its original or better topographical and soil condition prior to the issuance of a Certificate of Restoration by the Ministry of Energy, Mines and Petroleum Resources”. Because the reclamation criteria weren’t as detailed in this General Order, a more flexible review of the Schedule B will be necessary. However, it is expected that the sites be reclaimed as close as possible to the current required standards. Developments initiated during the effective period of General Order 293/95 will be reviewed using the current standards for reclamation. All Schedule B reports (including for developments that occurred prior to the delegation agreement) are to be submitted to the OGC for review.

APPLICATIONS UNDER THE ALCA

Q: What oil and gas non-farm uses may be the subject of an application for permission for non-farm use to the OGC?

An application for permission for non-farm use may be submitted to the OGC where the proponent of the activity is an operator and the proposed non-farm use is:

- Identified with an X in Column 2 of Appendix I, but does not meet one or more of the requirements set out in article 4.2 and 4.3 of the Agreement; or
- Identified with an X in Column 3 of Appendix I.

Q: When is an application for permission for non-farm use submitted for decision by the ALC?

Applications for permission for non-farm uses identified in article 9 and 10 of the delegation agreement will need to be submitted to the ALC for a decision. These applications are submitted via the regular ALCA non-farm use process to local government.

The delegation agreement is limited in that it only applies to the oil and gas sector. It is limited to “operators” (article 9); and “producers” (article 10) for a waste storage, treatment or disposal facility. “Operator” and “producer” are defined in the definitions section of the agreement. For example, a proposed non-farm use for a camp, borrow site, or water storage site, etc., by a non-operator, is outside this agreement and these applications are submitted via the regular ALCA non-farm use process to local government. Likewise a non-farm use proposal for a waste storage, treatment, or disposal facility by a non-producer is also outside this agreement.

Q: What is the local government’s role (regional or municipal) related to the ALC application process?

Standard ALCA process involves local government partners. All applications for non-farm use in the ALR are submitted to the local government first. Local governments review the application and determine if they will forward the application to the ALC for decision with or without a recommendation or comment. Local government zoning plays

a role in determining land use and a proposed use may require rezoning at the local level.

Oil and gas non-farm use applications to the OGC, that are identified with an X in Column 2 of Appendix I, will be referred to local government and the Ministry of Agriculture for comments. Any identified concerns or issues will be considered by the OGC when making a decision on an ALC non-farm use application.

Q: Is an approval from the OGC required before construction can begin?

Yes. Where an application under the ALCA is required as per Appendix I Column 3 to be submitted to the OGC for a decision, construction cannot occur until a decision is rendered and the activity receives the appropriate approvals under OGAA.

Q: If an application is required for a use not covered by the delegation agreement, should it be mailed directly to the ALC?

No. As with all other non-farm use ALR applications, the application is submitted to the local government first.

Q: How long does the application process via the local government to the ALC take?

The ALC usually will make a decision on an application within 90 days of receiving an application from the local government. However, on occasion weather may prevent the ALC from viewing the property in the field thus requiring additional time.

EXEMPTIONS UNDER THE ALCA

Q: Who determines if an oil and gas use is exempted from application? Who reviews the reporting to determine that an exempted use has met the conditions of exemption?

If an oil and gas development meets the criteria set out in Article 4 of the agreement and is listed in Column 2 of Appendix I, then the use does not need to make an application under the ALCA. OGC staff will review submissions to confirm they meet the criteria in the agreement. For all uses that meet the criteria for exemption, all conditions as set out in Article 4 must be met.

AREA AND EXTENT OF OIL AND GAS DEVELOPMENT

Q: What does 'combined total area occupied by existing and proposed oil and gas activities' mean in Appendix I?

Where the soil surface has been disturbed by oil and gas developments and has not yet been reclaimed to an appropriate agricultural standard and/or where buildings or structures occupy the land surface. This is the area that cannot be used for agricultural production. Direction on area calculations is provided in Appendix I.

Q: Are pipelines included when calculating the 20 hectare per section threshold?

No. Only activity surface leases and access roads that do not have an accepted Schedule B reclamation report on file and any proposed new use should be calculated. A good rule of thumb is if the surface soil cannot currently be used for agricultural purposes, it should be included in the calculation.

Q: What if the total disturbed area is not provided?

If the total disturbed area on a section is not provided, then an ALC application to the OGC will be required.

RECLAMATION SPECIALIST

Q: Does a qualified professional need to be involved, even if a land owner waives this requirement?

Yes. The owner of the oil and gas development is responsible for the reclamation, and therefore, is required to have a qualified professional prepare a Schedule A and B report.

Q: What type of qualifications should a reclamation specialist have?

“Qualified Specialist” means a member in good standing of a profession regulated in British Columbia who is recognized by that profession as being qualified to practice in the areas of soils and reclamation of oil and gas development sites and who possesses an appropriate combination of formal education, knowledge, skills and experience to conduct a technically sound and rational assessment in these areas of practice.

It is recommended the reclamation specialist be an agrologist who is a member of the BC Institute of Agrologists. There may also be members of other professions who are qualified for this area of practice.

Regardless, the qualified specialist must have completed post-secondary courses in soil science and land reclamation; and agriculture if an agricultural assessment is required.

Q: Is a reclamation specialist required for every development?

Yes. The advice of a reclamation specialist should be sought for every development where a Schedule A or B is required and their recommendations should form part of the reclamation plan submitted as part of the Schedule A report.

Q: Does the OGC have access to a Professional Agrologist?

Yes. The OGC has professional agrologists on staff and where questions arise regarding the business of agriculture, Ministry of Agriculture staff may be contacted for information and input.

FILING OF REPORTS

Q: Should copies of the Schedule A and B reports be provided to the surface land owner?

Yes. Surface land owners must be consulted during the development of the Schedule A reclamation plan and it is required as part of the delegation exemption that a copy of the reports (Schedule A and B) be provided to the surface land owner.

Q: Is surface land owner sign-off on reclamation good enough?

No. Surface land owner sign-off does not mean the land is appropriately reclaimed. While surface land owners have an important role to play and should be satisfied with the reclamation so they are able to farm the land (assuming it is being farmed), they are not considered experts in reclamation standards or measurement. A Schedule B report authored by a qualified specialist must be submitted to the OGC for review and confirmation that reclamation standards have been met. This reporting is a condition of approval for oil and gas use and the responsibility of the oil and gas company to ensure the land is appropriately reclaimed.

RECLAMATION STANDARDS

Q: If the alignment of the pipeline does not follow the centerline of the right-of-way, should the samples be from the centerline?

No. The intent of this reclamation requirement is to assess the disturbed ground which has been replaced over the buried pipeline. The alignment of pipelines does not always follow the centerline of a right-of-way, and therefore the procedures described in Schedule B have been clarified to ensure the disturbed ground is sampled.

Q: Does the density of the subsoil need to be measured at each well site?

No. The measurement of subsoil compaction will only be required where drainage problems and other possible restrictions on agricultural productivity have occurred. Remedial measures may be required if the standard in Schedule B is exceeded.

The measurement of the compaction of subsoil is difficult, and may be unreliable unless the sampling density is high and conducted under different soil moisture conditions.

The best approach is to prevent these problems from developing by ensuring subsoil compaction is addressed in every reclamation plan.