

## The ERCB and You: Agreements, Commitments, and Conditions

This EnerFAQs explains the role of the Energy Resources Conservation Board (ERCB) with respect to landowner-company agreements, commitments, and conditions in oil and gas development. It is a companion to [EnerFAQs 7: Proposed Oil and Gas Development, A Landowner's Guide](#); the two should be read together.

Each year in Alberta, private landowners enter into agreements with oil and gas companies that allow for the construction and operation of oil and gas projects on their lands. In the majority of cases, landowner-company agreements are clear and each party understands its rights and responsibilities. Occasionally, misunderstandings arise in regard to these private agreements, and the parties seek the ERCB's assistance in resolving their concerns through the ERCB's Appropriate Dispute Resolution (ADR) program.

### How are agreements between landowners and companies negotiated?

Landowner-company agreements may arise in a variety of circumstances. Often they are negotiated strictly between the landowner and the oil and gas company. Sometimes the ERCB may assist the parties in resolving their concerns through its facilitation process. As well, the ERCB's ADR program provides independent, third-party mediation to assist the parties to resolve their concerns. Negotiated agreements reflect commitments made by both the company and the landowner.

### What is a commitment?

A commitment is a verbal or written promise made by an oil and gas company to a landowner. Commitments may arise from promises made during negotiations between a company and a landowner or from promises made at an ERCB hearing.

Generally, commitments relate to activities or operations that are not strictly required by the ERCB's guidelines or regulations. For example, a company may commit to painting its compressor green to better blend in with the surroundings.

### Does the ERCB enforce commitments?

Commitments are basically private agreements, and the ERCB does not have the authority to enforce private agreements between a landowner and a company. The power to enforce such private agreements has been reserved to the Alberta courts.

However, the ERCB considers it important that companies meet their commitments. Failure to do so may provide grounds for the ERCB to review and possibly vary decisions related to the breached commitment. For example:

- If an intervener withdraws its objection to an application as a result of a commitment made by a company and that commitment is later breached by

the company, the ERCB may consider whether a review of its decision to grant the licence is appropriate.

- If the ERCB was influenced in its decision to grant a licence or permit by a commitment made at a hearing and that commitment was later breached, the ERCB may consider whether a review is necessary.

### What is a condition?

A condition is a requirement of the ERCB included in a licence or permit that is in addition to or expands upon existing ERCB guidelines or requirements. Generally, conditions are developed in hearings and are listed in the related decision report.

Because conditions are essentially an extension of the powers granted to the ERCB by government acts and regulations, the ERCB has the authority to enforce the breach of a condition. The company must comply with the conditions listed on its approval or it will be in breach of its approval and subject to enforcement action by the ERCB. Enforcement of an approval means enforcement of the conditions attached to that approval.

An example of a condition is requiring an operator of a pipeline on private property to mark the pipeline locations at each existing fence line and provide the landowner with an accurate drawing showing all pipeline rights-of-way on the property and the location of the pipeline within the rights-of-way.

### Why does the ERCB list conditions and commitments in some of its decision reports?

The ERCB lists conditions and commitments in decision reports to ensure that the decision and the reason why it made its decision are clear. If the ERCB decides to attach conditions to the licence or approval it issues, the decision report will explain the circumstances that led the ERCB to include these conditions. Similarly, if the commitments made by a party have influenced the ERCB's decision, it will record these commitments in the decision report.

### How does the ERCB follow up on conditions, and is the information available to the public?

If a decision report has conditions attached to the licence or approval, the ERCB will develop an action plan to ensure the appropriate and specific management of each condition within any timeframes prescribed by the condition. The progress of conditions can be followed on the ERCB Web site through a link to the specific decision report. Any supporting documentation submitted to or gathered by the Board on a condition is available through ERCB Information Services.

### Why doesn't the Board attach or include commitments made between a landowner and a company in the approval it issues?

As noted, a commitment is a private agreement between a landowner and industry. The ERCB does not have the authority to enforce private agreements; that authority is reserved for Alberta's courts. Because the Board cannot require compliance with commitments, it cannot include them in its approvals. However, as discussed in the next section, the breach of a commitment may lead to a review of the approval granted. Each party should therefore keep a copy of its agreement as a record of the commitments made.

**What is a review, and when does the ERCB conduct a review in relation to a breach of commitment?**

The ERCB has the authority to review, or take a second look at, any of its decisions. In relation to a breach of commitment, the ERCB will first consider whether the party requesting the review is “directly and adversely” affected by the Board’s decision. If the ERCB determines that the party requesting the review is directly and adversely affected by its decision to approve the company’s application, the Board will then consider whether the alleged breach of a commitment represents a change in circumstances that could lead it to change its decision.

In the ERCB’s view, the breach alleged must be significant in order to trigger a review of its decision. The ERCB emphasizes that a request for a review is a serious matter and should only be considered when all other attempts to resolve the parties’ differences have failed.

For further information on the ERCB’s review process, see [Directive 029: Energy and Utility Development Applications and the Hearing Process](#).

**Should agreements that include commitments between a company and landowners be written down?**

Yes, the parties should carefully write down each commitment made and ensure that each party receives a copy of the document. By recording the agreement in writing, each party will have a record of the commitments for reference in the event of a disagreement.

**How much detail should be included in an agreement?**

Commitments should be written so that each party clearly understands what rights and obligations the commitment creates. The objective when drafting commitments will be to clearly reflect each party’s expectations and to avoid any commitment that is vague or confusing.

For example, consider a simple commitment that states, “The company agrees to construct a fence around its well site.” When the commitment is drafted, each party may believe that it understands what obligation is created by the commitment. However, the commitment is worded in such a way that it is open to a number of reasonable interpretations. The company may understand the commitment to require the construction of a wooden fence immediately around the wellhead after it has completed all necessary testing and the associated pipeline is tied in. The landowner may expect a chain link fence to be erected around the entire lease site immediately after the well is drilled.

Commitments should be carefully drafted to ensure that they reflect each party’s expectations. With respect to the above example, an explicit commitment would describe the type of fence to be built, the size of the fence, and the timing of its construction. By including such details in the original agreement, both parties are aware of the other’s expectations, and the potential for conflict is reduced significantly.

### What information should generally be included in an agreement?

- The agreement should clearly identify the parties that will be bound by it.
- The agreement should specifically address what will happen if the company sells or transfers the facility to another party.
- The agreement should be very specific and clearly identify all expectations. Parties should avoid ambiguous commitments that have the potential for misunderstanding in the future.
- The agreement should include a discussion of how disputes about commitments will be resolved (see expanded discussion below).
- The agreement should identify specific consequences and the exact steps that will be taken in the event that one of the commitments is not met by one of the parties.
- The agreement should be signed by each party.

### What happens when parties have a dispute about commitments?

As the ERCB does not have the authority to enforce commitments, it is very important that the parties involved include a commitment relating to dispute resolution within their agreement. As noted above, the best way to avoid disputes is to ensure that the original agreement is clearly worded and effectively addresses each party's expectations.

A dispute resolution commitment should provide a company contact whom the landowner can contact in the event of a dispute and state what steps the parties will take to resolve the dispute. The company contact should have the necessary authority to make decisions relating to the implementation of the agreement.

Methods of resolving disputes about commitments include the use of a third-party mediator through the ADR process or an ERCB staff facilitator. It is the ERCB's view that a request for a review of an approval on the basis of a breached commitment should be the last resort for parties in conflict.

### Is compensation available to landowners for negotiating agreements?

The ERCB has no authority to require a company to compensate a landowner for his or her efforts in negotiating an agreement. However, the company may agree to provide compensation to the landowner as part of its agreement with the landowner.

The ERCB does have the authority to require a company to pay a party's costs if an application is considered at a hearing before the ERCB. However, in order to be eligible for cost recovery, the party must establish that he or she owns land that may be directly or adversely affected by the ERCB's decision on the company's application. The ERCB refers to such a party as a "local intervener." The ERCB's usual practice (there are exceptions) is to acknowledge only those costs incurred after the ERCB has issued a notice of hearing. It is generally the ERCB's position that until a notice of hearing has been issued, there is no certainty that a hearing will be held. The ERCB finds that in many cases the prenotice interactions between an intervener and a company relate to compensation matters, not public interest issues. However the ERCB recognizes that it is sometimes necessary for local interveners to incur costs prior to the notice and that such costs may be reasonable and directly and necessarily related to the intervention in question.

For further information on local intervener costs, see [Directive 031: Guidelines for Energy Cost Claims](#).

### What is Appropriate Dispute Resolution?

In January 2001, the ERCB implemented the Appropriate Dispute Resolution (ADR) program. The program was developed in response to requests by both the public and industry to be more directly involved and to have more control in resolving disputes involving wells, pipelines, production facilities, electrical substations, transmission lines, and other facilities in the industries regulated by the ERCB. The two main components of the ERCB's ADR program are ERCB staff facilitation and third-party assistance from ADR professional service providers and mediators. While it may not be the answer to every dispute, the ADR process has often been successful in reducing the number of issues needing to be addressed and, in some cases, eliminating the need for a formal hearing.

For further information, see the ADR page on the ERCB Web site [www.ercb.ca](http://www.ercb.ca). Parties may also contact the ERCB's Facilitation group at 403-297-5839.

### Additional Information

For additional information on the ERCB or its processes or if you have general questions about oil and gas in the province of Alberta, contact the ERCB's Customer Contact Centre: Monday to Friday (8:00 a.m. - 4:30 p.m.), at 403-297-8311.

This EnerFAQs is one in a series.

- [No. 1: What Is the Energy Resources Conservation Board?](#)
- [No. 2: Having Your Say at an ERCB Hearing](#)
- [No. 3: Inspections and Enforcement of Energy Developments in Alberta](#)
- [No. 4: All About Critical Sour Wells](#)
- [No. 5: Explaining ERCB Setbacks](#)
- [No. 6: Flaring and Incineration](#)
- [No. 7: Proposed Oil and Gas Development: A Landowner's Guide](#)
- [No. 8: Coalbed Methane](#)
- [No. 9: The ERCB and You: Agreements, Commitments, and Conditions](#)
- [No. 10: Public Health and Safety: Roles and Responsibilities of Agencies That Regulate Upstream Oil and Gas](#)
- [No. 11: All About Appropriate Dispute Resolution \(ADR\)](#)

Every year the ERCB collects, compiles, and publishes a large amount of technical data and information about Alberta's energy development and resources for use by both industry and the public. This includes data, statistics, information on regulations, policies, and decisions, and hearing materials.

Publications may either be viewed at the ERCB library or obtained from Information Services. Both are housed on the main floor of the ERCB head office in Calgary. Publications may also be downloaded free of charge from the ERCB Web site [www.ercb.ca](http://www.ercb.ca).

To obtain a print or CD copy of a specific publication, contact ERCB Information Services by phone (403-297-8190), fax (403-297-7040), or e-mail [Infoservices@ercb.ca](mailto:Infoservices@ercb.ca).

In addition, the following agency provides supplementary information, assists in the resolution of disputes on matters relating to the farming community, and provides information on farming community matters:

**The Farmers' Advocate**

305, 7000 – 113 Street

Edmonton, Alberta T6H 5T6

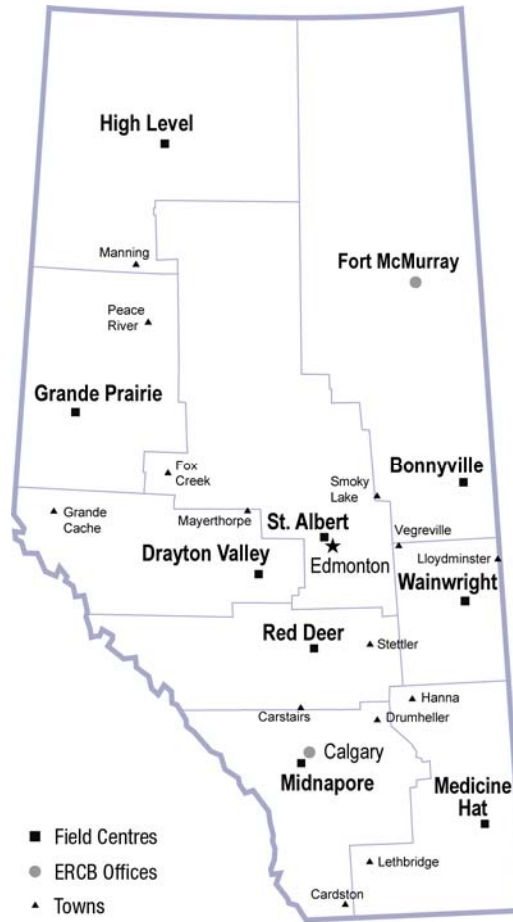
Phone: 780-427-2433 (toll free by first dialing 310-0000)

Fax: 780-427-3913

[http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/ofa2621](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/ofa2621)

## ERCB Offices

<b>Head Office</b>	403-297-8311
640 – 5 Avenue SW Calgary, Alberta T2P 3G4	
<b>Customer Contact Centre</b>	403-297-8311
<a href="mailto:Inquiries@ercb.ca">Inquiries@ercb.ca</a>	
<b>Fort McMurray Regional Office</b>	780-743-7214
2nd Floor, Provincial Building 9915 Franklin Avenue Fort McMurray, Alberta T9H 2K4	
<b>Edmonton (Alberta Geological Survey)</b>	780-422-1927



Field Centres

Bonnyville	780-826-5352
Drayton Valley	780-542-5182
Grande Prairie	780-538-5138
High Level	780-926-5399
Medicine Hat	403-527-3385
Midnapore	403-297-8303
Red Deer	403-340-5454
St. Albert	780-460-3800
Wainwright	780-842-7570

**To call the above numbers toll free, dial 310-0000.**