

Clarification on Surface Rights Board (SRB) Decisions: Section 36 of the *Surface Rights Act* & the *Bankruptcy Insolvency Act*

Over the past year, many landowners have come to the Farmers' Advocate Office (FAO) with questions around the Surface Rights Board's (SRB) decisions relating to PetroGlobe under section 36 of the *Surface Rights Act*. This article serves to provide clarification on the SRB's decisions.

Section 36 of the *Surface Rights Act* enables landowners who have not received their annual rental to apply to the SRB for a recovery of rentals. The SRB must terminate a company's rights to a site prior to directing payment from General Revenue.

In *PetroGlobe vs. Lemke 2014 ABSRB 401*, the *Bankruptcy Insolvency Act* precluded the SRB from proceeding with the section 36 application. Section 69 (1) (1) of the *Bankruptcy Insolvency Act* states that "no creditor has any remedy against the insolvent person or insolvent person's property, or shall commence or continue any action..."

In *Lemke*, the SRB was not able to take the action of terminating the rights to the site based on the unpaid rentals that had accrued before the assignment into bankruptcy.

Payment of rentals from General Revenue was approved in two later decisions relating to PetroGlobe (*Portas v. PetroGlobe Inc. 2015 ABSRB 807* and *Rodin vs. PetroGlobe 2015 ABSRB 737*). Several facts distinguish the cases from each other, and the following clarification was offered by the SRB:

- In *Portas*, the SRB decided that it had the authority to proceed with claims for unpaid rentals that became due and payable after the assignment into bankruptcy. The SRB was able to terminate the operator's rights to the site based on the unpaid rentals.
- In *Rodin*, the landowner made a section 36 application for rentals that accrued before and after the company's assignment into bankruptcy. The SRB was able to terminate the company's rights to the site as a result of the unpaid 2014 rentals, which accrued after the assignment into bankruptcy. Since the rights were terminated, they were able to direct payment for the 2013 rentals in addition to the 2014 rentals.

For more information, you may contact the FAO through 310-FARM (3276) or the SRB through their toll-free number by dialing 310-0000 and then (780) 427-2444.

LEMKE

Unpaid Rentals

Assignment into
Bankruptcy

Cannot Terminate
Rights to the Site
Due to Bankruptcy
or Receivership

RODIN

Unpaid Rentals

Assignment into
Bankruptcy

Unpaid Rentals

Can Terminate
Rights to the Site
Based on Unpaid
Rentals
Accrued After
Assignment into
Bankruptcy

Minister of
Environment and
Parks May
Direct Payment from
General
Revenue

PORTAS

Assignment into
Bankruptcy

Unpaid Rentals

Can Terminate
Rights to the Site
Based on Unpaid
Rentals
Accrued After
Assignment into
Bankruptcy

Minister of
Environment and
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Farmers' Advocate Office
www.farmersadvocate.gov.ab.ca
farmers.advocate@gov.ab.ca
310-FARM (3276)

Surface Rights Board (SRB)
www.surfacerrights.alberta.ca
srb.lcb@gov.ab.ca
780 (427-2444)

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