



## End Abuse of our Fundamental Rights

Our fundamental rights in fee simple estate ownership of land are regularly and systemically abused to *facilitate energy development*. Abused rights include the following:

- ⇒ The **right** to be properly notified of planned energy developments on our lands
- ⇒ The **right** to participate in the administrative decision making process, including the terms and conditions of entry, by energy on our lands.
- ⇒ The **right** to apply for review (reconsideration) of flawed administrative decisions.
- ⇒ The **right** to apply for and obtain a review proceeding, in a timely manner, when circumstances materially change. Examples:
  - When the operator files for bankruptcy
  - When payments are no longer being made to a landowner
  - When operations are unsafe or otherwise regulatory non-compliant (the **right to be safe** on land not leased for energy purposes).
- ⇒ **The right of reversion:**
  - *All surface owners have the guaranteed right to have all portions of their land used for an energy activity conserved, reclaimed, and certified (guaranteed by the province) as reclaimed.*
  - *Upon reclamation certification, all rights to use the land are to revert (from the operator) back to the registered owner.*
  - *During the period of occupation, the operator **must compensate** the landowner for all associated actual losses (as opposed to estimated losses).*
- ⇒ The **right** to be properly compensated until rights revert to the registered owner.

The reality on the ground is that the Alberta Energy Regulator rarely conducts participatory proceedings. Legitimate concerns of landowners are largely ignored. Notices are poor or non-existent, and participatory rights to a fair and transparent proceeding are almost always abused.

As 50 legal professors recently noted, the Alberta government, official opposition, and Alberta senators would further erode participatory rights and destroy confidence in the rule of law.

## The Polluter Pays Principle

The principle that the polluter (and only the polluter) pays is entrenched in federal energy and environmental laws, and reflected in numerous Alberta provincial statutes.

The **right of reversion** explained above is the basis for the polluter pays principle. Safe food production is also at stake.

The foregoing is explained by the Supreme Court of Canada at para. 17 of the decision in the matter commonly referred to as "**Redwater**", cited as *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 (CanLII).

### Mitigate or Compensate

The polluter pays principle is based on other well-established principles related to compensation for losses or damages.

1. Landowners losses are to be mitigated (by the operator or regulatory bodies such as the Alberta Energy Regulator).
2. Landowners are to be compensated for any losses that cannot be mitigated, that they can prove.
3. Landowner may not profit from hosting energy on their land (losses only are recoverable).
4. EXPROPRIATION PRINCIPLES APPLY.

### Loss Mitigation Options and the New Economy

Surface owners have options they are not exercising. For example, if the Alberta Energy Regulator chooses not to cause a well licensee to post security to cover "end of life" obligations, the surface owner has the following **rights**:

- **To refuse to sign any agreement proposed by the well licensee.**
- **To seek compensation for potential damage to the land pursuant to the provisions of Subsection 25(1)(e) of the *Surface Rights Act*.**

Other options are to seek forced abandonment of a well, as confirmed in the *Redwater* matter. Forced abandonment and adherence to the polluter pays principle have the potential to rejuvenate and maintain Alberta's economy.

The founding members of the Polluter Pay Federation believe that there is no likely avenue for change through industry-captured government and regulators.

We are not willing to further waste our time and valuable resources begging regulators to change their stripes or asking government ministers for favours.

## Cooperative Self-Help and Empowerment

***The problems property owners face are urgent.***

***The time to act is now.***

Rural Alberta in particular was built on self-help and collective action. Alberta can be rebuilt using these methods.

Creation of Polluter Pay Federation offices across the province will create employment.

Forced abandonment of wells, triggered by landowner applications, will create many Alberta jobs for decades.

## Education

The proposed Federation shall educate Albertans on proper application of the polluter pays principle.

### Dispute Financing

Landowners are often out of pocket when it becomes necessary to make multiple applications to several administrative boards and/or the courts to ensure their rights are not abused.

The Federation, using funds to be recovered from industry, will financially assist landowners who engage in worthy litigation efforts with respect to matters that require adjudication.

## Lobby Efforts

The proposed Federation shall lobby government in two regards:

- For observance and enforcement of existing laws on the books (enforcement currently badly lacking).
- For new laws to improve the statutory scheme and to thwart circumvention of the polluter pays principle.

Industry effectively spends over \$50 million per year lobbying government. There must be a counterbalance to ensure the fundamental rights of landowners are no longer abused and shall never again be abused in future.

## Organizational Structure and Membership

### Members and Fees

#### Real Property Owners

Those who lease their minerals, or who host energy on their land, will be entitled to ***membership at the cost of the mineral lessee or operator.***

#### Taxpayers

By virtue of being at risk to pay for sins of polluters, taxpayers shall be entitled to membership at a low, nominal fee (or perhaps free of charge).

#### Municipalities (Including Towns and Cities)

The polluter pays principle extends to the obligation for energy operator to pay property and industrial taxes. Municipalities can benefit from membership.

### Invoicing and Collection of Fees

The Federation will invoice operators, and collect fees, on behalf of property ownership members (with the member's written permission)

### Organizing Committee

An organizing committee has been struck to consult with the potential membership. The Committee is charged with seeking input as to organizational structure.

A model that is similar to structure of a union is the initial preference.

#### Contacts:

**Regan Boychuk**

(403) 479-8637  
reganboychuk@gmail.com

**Mark Dorin**

(780) 966-0840  
MDorin@coscoesp.com

***Please Participate***

## Regional and Other Chapters

In addition to individual members, Existing Surface Rights groups, landowner associations, and others would be eligible for membership and to receive funding from the Federation.

Regions can be established or can be based on existing municipal boundaries. Voting rights can be exercised by way of regional delegates or regional directors.