

1 ~~apply to horizontal wells governed by this article. In lieu~~
2 ~~thereof, the provisions of article six-b of this chapter shall~~
3 ~~provide for the compensation of surface owners for damage caused by~~
4 ~~drilling horizontal wells.~~

5 ~~(b) At least ten days prior to filing a permit application, an~~
6 ~~operator shall, by certified mail return receipt requested or hand~~
7 ~~delivery, give the surface owner notice of its intent to enter upon~~
8 ~~the surface owner's land for the purpose of drilling a horizontal~~
9 ~~well: Provided, That notice given pursuant to subsection (a),~~
10 ~~section ten of this article satisfies the requirements of this~~
11 ~~subsection as of the date the notice was provided to the surface~~
12 ~~owner: Provided, however, That the notice requirements of this~~
13 ~~subsection may be waived in writing by the surface owner. The~~
14 ~~notice, if required, shall include the name, address, telephone~~
15 ~~number, and if available, facsimile number and electronic mail~~
16 ~~address of the operator and the operator's authorized~~
17 ~~representative.~~

18 ~~(c) No later than the date for filing the permit application,~~
19 ~~an operator shall, by certified mail return receipt requested or~~
20 ~~hand delivery, give the surface owner whose land will be used for~~
21 ~~the drilling of a horizontal well notice of the planned operation.~~
22 ~~The notice required by this subsection shall include:~~

23 ~~(1) A copy of this code section;~~

24 ~~(2) The information required to be provided by subsection (b),~~

1 ~~section ten of this article to a surface owner whose land will be~~
2 ~~used in conjunction with the drilling of a horizontal well; and~~

3 ~~(3) A proposed surface use and compensation agreement~~
4 ~~containing an offer of compensation for damages to the surface~~
5 ~~affected by oil and gas operations to the extent the damages are~~
6 ~~compensable under article six-b of this chapter.~~

7 ~~(d) The notices required by this section shall be given to the~~
8 ~~surface owner at the address listed in the records of the sheriff~~
9 ~~at the time of notice.~~

10 (a) Notwithstanding sections three through eight, article
11 seven of this chapter, this section applies to horizontal wells for
12 the purpose of compensation for surface owners and to mitigate the
13 impact and loss of use of the surface where a horizontal well is
14 located.

15 (b) The operator shall compensate the surface owner for
16 damages sustained by the surface owner, for loss of agricultural
17 production and income, decrease in land value, lost value of timber
18 crops, for lost use and enjoyment of the surface, lost access to
19 the surface owner's land and lost value of improvements caused by
20 the well construction and operation.

21 (c) The operator is not responsible for allocating
22 compensation between the surface owner and a tenant. However, the
23 operator shall compensate a surface owner's tenant for any
24 leasehold improvements damaged a result of the well operations if

1 the improvements were approved and authorized by the surface owner.
2 The compensation shall equal the cost of repairing or replacing the
3 improvements.

4 (d) No later than thirty days prior to first entering the
5 surface of the land to conduct drilling operations, an operator
6 shall, by certified mail or hand delivery, give the surface owner
7 notice of the planned operation. The notice shall include:

8 (1) Sufficient disclosure of the planned operation to enable
9 the surface owner to evaluate the effect of the operations on the
10 property;

11 (2) A copy of article seven of this chapter, the West Virginia
12 Oil and Gas Production Damage Compensation Act;

13 (3) The name, address, telephone number and, if available,
14 facsimile number and electronic mail address of both the operator
15 and the operator's authorized representative;

16 (4) A copy of the provisions of this code, including section
17 nine, article twenty-one of this chapter, regarding a surface
18 owner's right to comment on permit applications and a reference to
19 the rules relating to the well work being proposed; and

20 (5) A proposed surface use and compensation agreement
21 addressing, at a minimum and to the extent known, the following
22 issues:

23 (A) Placement, specifications, maintenance and design of well
24 pads, gathering pipelines and roads to be constructed for drilling

1 operations;

2 (B) Terms of ingress and egress upon the surface of the land
3 for oil and gas operations;

4 (C) Construction, maintenance and placement of all pits and
5 equipment used or planned for oil and gas operations;

6 (D) Use and impoundment of water on the surface of the land;

7 (E) Removal and restoration of plant life;

8 (F) Surface water drainage changes;

9 (G) Actions to limit and effectively control precipitation
10 runoff and erosion;

11 (H) Control and management of noise, dust, traffic, trespass
12 and interference with the surface owner's use;

13 (I) Interim and final reclamations;

14 (J) Actions to minimize surface damages to the property;

15 (K) Operator indemnification for injury to persons caused by
16 the operator; and

17 (L) An offer of compensation for damages to the surface
18 affected by oil and gas operations.

19 (e) The notices required by this section shall be given to the
20 surface owner notified pursuant to section ten of this article.

21 (f) Upon receipt of the surface owners compensation agreement,
22 the surface owner may:

23 (1) Accept the proposed surface owners agreement within twenty
24 days; or

1 (2) Reject the proposed surface use and compensation agreement
2 and enter into negotiations with the operator, including, if the
3 parties agree, to mediation or binding arbitration.

4 (g) If the surface owner fails to enter into a surface use and
5 compensation agreement with the operator within thirty days of
6 receiving the operators proposed agreement, it shall be deemed a
7 rejection by the surface owner.

8 (h) Notwithstanding subsections (f) and (g) of this section,
9 if, after thirty days of its receipt a surface use and compensation
10 agreement has not been entered into, the operator may enter the
11 surface owner's property and instigate drilling operations by
12 depositing a surety bond, letter of credit from a banking
13 institution, cash or a certificate of deposit with a surety company
14 or financial institution in the amount of \$25,000. The secretary
15 shall provide a certified statement that, according to the records
16 of the department, the operator is eligible for release. The
17 surety bond or letter of credit from a banking institution, cash or
18 certificate of deposit shall be held for the benefit of the surface
19 owner and shall ensure that such security is in a form readily
20 payable to a surface owner awarded damages. The surety bond,
21 letter of credit from a banking institution, cash or certificate of
22 deposit may only be released if:

23 (1) The surface owner provides notice that compensation for
24 damages has been paid;

1 (2) The surface owner and the operator have executed a surface
2 use and compensation agreement or otherwise agreed that the
3 security should be released;

4 (3) There has been a final resolution of a judicial appeal in
5 any action for damages and any awarded damages have been paid; or

6 (4) All wells have been plugged and abandoned and the operator
7 has not conducted operations on the surface owner's property for
8 six years.

9 (i) Before any action for damages may be filed, the surface
10 owner shall give thirty days notice of intent to file suit. If a
11 court determines that compensation is due under this section, the
12 court may also award to the prevailing party:

13 (1) Attorney fees and costs if:

14 (A) The operator conducted oil and gas operation without
15 providing notice as required by subsection (d);

16 (B) The operator conducted operations without a surface use
17 and compensation agreement and before depositing a bond or other
18 surety as required by this section;

19 (C) The operator conducted operations outside the scope of the
20 agreement;

21 (D) The court awarded damages exceeding ten percent of the
22 last offer made by the operator prior to institution of the suit;
23 or

24 (E) The surface owner failed to exercise good faith in

1 complying with this section or the terms of the surface use and
2 compensation agreement; or

3 (2) Attorney fees costs and treble damages if the court finds,
4 by clear and convincing evidence, that:

5 (A) The operator willfully and knowingly enters upon the
6 premises for the purpose of commencing the drilling of the well
7 without giving notice of entry as required by this section or
8 without a surface use and compensation agreement; or

9 (B) Either party willfully and knowingly violated the surface
10 use and compensation agreement.

11 (j) The remedies provided by this section are not exclusive
12 and do not prohibit a person from seeking other remedies allowed by
13 law.

14 (k) This section does not prohibit activities that may violate
15 the agreement that are required in emergencies to protect health,
16 safety or the environment.

NOTE: The purpose of this bill is to require operators of natural gas wells and surface owners to enter into surface use agreements. The bill sets forth the requirements of an agreement and provides exceptions. The bill sets forth the rights and responsibilities of operators and surface owners. The bill requires operators to give notice of drilling activities. The bill requires a bond or other surety to be posted. The bill establishes a cause of action and permits damages. The bill permits activities necessary to protect health, safety or the environment.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would

be added.