

Options for surface damage & agreement statutes

Staff Note: *The committee requested an outline be compiled that included options from statutes in other states as well as public comments received during the past few months. These are options culled from those sources. This version of the outline is intended to be more user-friendly than the prior version.*

Notice of transfer of mineral lease

- a. Mineral owner or developer notify surface owner.
- b. County clerk notify surface owner (possible fiscal impact).
- c. Federal or state minerals, agency notifies (possible fiscal impact).
- d. Other
- e. No action

Notice for surface activity

- a. Between 10 and 90 days (MT)
- b. 20 and 180 days
- c. At least 20 days (ND)
- d. 1 year
- e. 5 days for non-surface disturbing activity, 30 to 100 days for drilling. (WY)
- f. Other
- g. No action

Components of initial notice

- a. Disclose work plan to extent surface owner can evaluate possible effects on land. (MT).
- b. Work plan, including – but not limited to - facility locations, roads, access points, wells, seismic locations, pits, reservoirs, power lines, pipe lines compressor pads, tank batteries. (WY).
- c. Copy of landowner rights under state/federal law and regulations. (ND)
- d. Other
- e. No action

Obligation to negotiate surface damage agreement

- a. Parties required to enter into "good faith" negotiations (WY)
- b. Lessee agrees to make satisfactory adjustment with surface owner for damages. (DNRC)
- c. Parties may sign a waiver, forgoing further actions under surface damage statutes.
- d. Other
- e. No action

Items that may be negotiated or waived

- a. Road placement and quality, access points and times of access (KY)
- b. Onsite water impoundments, quality and disposal of produced water, construction and placement of pits (HB790 & KY)
- c. Use of waters on surface lands (KY)
- d. Weed control, restoration of surface and facilities -- fences, trees, and grasses.
- e. Reclamation activities, reclamation time line, and damages. (KY & IL)
 - i. Operator must plug well, restore surface and any improvements near as possible to pre-drilling condition
 - ii. May be waived by surface owner and operator if in accordance with appropriate agency regulations.
- f. Other
- g. No action

If no agreement reached

- a. Drilling may proceed subject to later damage claims. (IL & KY)
 - i. Operator must pay within 90 days of well completion
 - ii. If fail to pay, surface owner entitled to compensation and attorney fees.
- b. Parties may agree to mediation at any time (WY)
- c. Other
- d. No action

Surface damages that be compensated

- a. Loss of agriculture production and income, land value, improvements (MT)
- b. Any damages. (OK & AR)
- c. Lost income, market value of crops, damage to water supply, value of surface land, cost to repair personal property. (WV)
- d. Crops, trees, shrubs, fences roads, structures, improvements, livestock, productive capacity of soil. (KY & IL)
- e. Other
- f. No action

Method of compensation

- a. Lump sum or surface owner may elect to receive annual payments; except for exploration wells must be lump sum. (MT)
- b. Any manner mutually agreed to by parties. (IL)
- c. Lump sum
- d. Annual payments
- e. Other
- f. No action

If no agreement on damages

- a. Court action (MT).
- b. Mediation if agreed to by both parties (WY).
- c. Arbitration
 - a. Each party selects 1 appraiser who selects a 3rd. (DNRC)
 - b. Parties agree on 1 appraiser. (TN)
- d. Other
- e. No action

Enforcement of surface agreement violations

- a. Montana Board of Oil and Gas Conservation
- b. Courts
 - i. Treble damages if: (OK)
 - 1. Operator drills before agreement or w/o notice
 - 2. Fails to keep required bond
 - 3. Fails to notify landowner, fails to ask for appraiser
- c. Other
- d. No action

Surface bonding

- a. No additional surface bond (MT)
- b. Required (OK)
- c. Required only when no agreement in place (BLM & WY)
- d. Other
- e. No action

Surface bond terms (if surface bond required)

- a. \$2,000 per well or blanket. Landowner may object. (WY)
- b. \$2,000 per well, \$10,000 blanket (SD)
- c. \$25,000. (OK).
- d. At least \$1,000. (BLM)
- e. Other
- f. No action

Bond based on activity type

- a. Conventional oil and gas or CBM
- b. Amount of produced water
- a. Quality of produced water
- b. Water disposal method: discharge, irrigation, impoundment (BLM), reinjection
- c. Other
- d. No action

Handling appeals, holding bond, changes to bond (if bond required)

- a. MBOGC
- b. Independent arbiter
- c. Other agency
- d. Other
- e. No action

Who may appeal bond (if bond required)

- a. Surface owner
- b. Mineral developer
- c. Either surface or mineral holder
- d. Other
- e. No action

Location of habitable structures

- a. No drilling within 200 feet of residence or barn w/o consent (DNRC)
- b. Not located w/in 125 feet of wells or 50 feet of other equipment (OK)
 - i. May be waived by agreement of landowner and operator
- c. Other
- d. No action

Water wells affected by drilling operations

- a. Offer mitigation agreement to water right/permit holder within 1 mile of CBM well or ½ mile of water well affected by CBM well. Not required to address loss of water quantity not related to production of groundwater by CBM development (MT)
- b. Well owner may recover costs to reestablish quality or quantity of water if drilling operation is within one mile of well, a certified water test completed 1 year prior to drilling and the action brought within 6 years of discovery. (ND)
- e. Landowner adjacent to drilling operation whose land receives water may file claim against mineral developer to recover damages resulting from natural drainage of waters contaminated by drilling operations. (ND)
- f. Other
- g. No action