

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 437

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO THE PRODUCTION OF OIL OR GAS; ENACTING THE SURFACE OWNERS PROTECTION ACT; STATING CERTAIN DUTIES OWED BY OIL AND GAS OPERATORS TO SURFACE OWNERS; REQUIRING NOTICE TO THE SURFACE OWNER OF OIL OR GAS OPERATIONS; REQUIRING A BOND OR OTHER SURETY IN CERTAIN CIRCUMSTANCES; PROVIDING A CAUSE OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Surface Owners Protection Act".

Section 2. APPLICABILITY.--The Surface Owners Protection Act applies to private fee surface land only.

Section 3. DEFINITIONS.--As used in the Surface Owners Protection Act:

A. "oil or gas operations" means all activities

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1 associated with exploration, drilling or production of oil or
2 gas through final reclamation of the affected surface;

3 B. "operator" means a person with the legal right
4 to conduct oil or gas operations and includes the agents,
5 employees and contractors of that person;

6 C. "reclaim" means to make reasonable efforts to
7 restore the surface directly affected by oil or gas operations
8 to the condition that existed prior to oil or gas operations,
9 or as otherwise agreed to in writing by the operator and
10 surface owner;

11 D. "surface owner" means a person who holds legal
12 or equitable title, as shown in the records of the county
13 clerk, to the surface of the property on which oil or gas
14 operations are to take place; and

15 E. "surface use and compensation agreement" means
16 an agreement between an operator and a surface owner specifying
17 the rights and obligations of the surface owner and the
18 operator concerning oil or gas operations.

19 Section 4. COMPENSATION AND LIABILITY FOR OIL OR GAS
20 OPERATIONS.--

21 A. An operator shall compensate the surface owner
22 for damages caused as a direct result of the operator's oil or
23 gas operations. The operator shall not be responsible for
24 allocating compensation between the surface owner and any
25 tenant.

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1 B. An operator has a duty to reclaim all surface
2 directly affected by the operator's oil or gas operations.

3 Section 5. NOTICE OF OPERATIONS--PROPOSED SURFACE USE AND
4 COMPENSATION AGREEMENT--OFFER TO NEGOTIATE.--

5 A. Prior to initial entry upon the land for
6 activities that do not disturb the surface, including
7 inspections, staking, surveys, measurements and general
8 evaluation of proposed routes and sites for oil or gas
9 operations, the operator shall provide at least five business
10 days' notice by certified mail or hand delivery to the surface
11 owner.

12 B. No less than thirty days before first entering
13 the surface of the land to conduct oil or gas operations, an
14 operator shall, by certified mail or hand delivery, give the
15 surface owner notice of the planned oil or gas operations. The
16 notice shall include:

17 (1) sufficient disclosure of the planned oil
18 or gas operations to enable the surface owner to evaluate the
19 effect of the operations on the property;

20 (2) the name, address, telephone number and,
21 if available, facsimile number and electronic mail address of
22 the operator and the operator's authorized representative; and

23 (3) a proposed surface use and compensation
24 agreement addressing, at a minimum, the following issues:

25 (a) placement, specifications,

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1 maintenance and design of well pads, gathering pipelines and
2 roads to be constructed for oil or gas operations;

3 (b) terms of ingress and egress on the
4 surface of the land for oil or gas operations;

5 (c) construction, maintenance and
6 placement of all pits and equipment used or planned for oil or
7 gas operations;

8 (d) use and impoundment of water on the
9 surface of the land;

10 (e) removal and restoration of plant
11 life;

12 (f) surface water drainage changes;

13 (g) erosion control and actions to limit
14 and effectively control precipitation runoff and erosion;

15 (h) control and management of noise,
16 weeds, dust, traffic, trespass, litter and interference with
17 the surface owner's use;

18 (i) interim and final reclamation; and

19 (j) an offer of compensation for damages
20 to the surface resulting from the oil or gas operations.

21 C. The notices required by this section shall be
22 given to the surface owner at the address shown by the records
23 of the county clerk at the time that the notice is given. If
24 legal title and equitable title are not held by the same
25 person, notice shall be given to both the holder of legal title

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1 and to the holder of equitable title at the addresses shown by
 2 the records of the county clerk at the time that the notice is
 3 given.

4 D. Upon receipt of the notice required by
 5 Subsection B of this section, the surface owner may, within
 6 twenty days of receiving the notice, accept the proposed
 7 surface use and compensation agreement, including the offer of
 8 compensation.

9 E. Notices required by the Surface Owners
 10 Protection Act shall be deemed to have been received five days
 11 after mailing by certified mail or immediately upon hand
 12 delivery.

13 Section 6. ENTRY WITHOUT AGREEMENT--BOND.--If, after
 14 thirty days from a surface owner receiving notice pursuant to
 15 Subsection B of Section 5 of the Surface Owners Protection Act,
 16 no surface use and compensation agreement has been entered
 17 into, the operator may enter the surface owner's property and
 18 conduct oil or gas operations after posting a bond or other
 19 surety with the oil conservation division of the energy,
 20 minerals and natural resources department. Pursuant to rules
 21 of the oil conservation commission, the bond or surety shall
 22 be:

23 A. for the benefit of the surface owner; and

24 B. in an amount equal to the greater of:

25 (1) the compensation, as estimated by the

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1 operator, for damages; or

2 (2) two thousand five hundred dollars (\$2,500)
3 per well site.

4 Section 7. CAUSE OF ACTION.--In an action brought
5 pursuant to the Surface Owners Protection Act, the court may
6 award the prevailing party attorney fees if:

7 A. the operator conducted oil or gas operations
8 without providing notice as required by Subsection B of Section
9 5 of the Surface Owners Protection Act;

10 B. the operator conducted oil or gas operations
11 without a surface use and compensation agreement and without
12 posting a bond or other surety as required by Section 6 of the
13 Surface Owners Protection Act;

14 C. in posting a bond or other surety pursuant to
15 Section 6 of the Surface Owners Protection Act, the operator
16 failed to exercise good faith in estimating the compensation
17 that would be owed to the surface owner for damages; or

18 D. the operator conducted oil or gas operations
19 outside the scope of a surface use and compensation agreement
20 and, when entering into the agreement, had reason to believe
21 that oil or gas operations would be conducted outside the scope
22 of the agreement.

23 Section 8. EMERGENCY SITUATIONS.--Notwithstanding any
24 provision of the Surface Owners Protection Act to the contrary,
25 no notice, surface use and compensation agreement or bond shall

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1 be required for operations to protect health, safety or the
2 environment in emergency situations.

3 Section 9. TEMPORARY PROVISION--APPLICABILITY.--The
4 provisions of the Surface Owners Protection Act apply to all
5 oil or gas operations commenced on or after July 1, 2006
6 except:

7 A. maintenance or ongoing production activities
8 related to an oil or gas well producing or capable of producing
9 oil or gas on June 30, 2006 for which the operator has a valid
10 permit from the oil conservation division of the energy,
11 minerals and natural resources department, provided that
12 reentries, workovers and other oil or gas operations requiring
13 a drilling rig or additional waste pits conducted on such a
14 well are subject to that act if the activities disturb
15 additional surface; and

16 B. oil or gas operations conducted within the scope
17 of an agreement, entered into prior to July 1, 2006, between a
18 surface owner and an operator that sets forth the rights and
19 obligations of the parties in respect to surface activities
20 conducted by the operator.

21 Section 10. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2006.

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