

AN ACT

RELATING TO THE PRODUCTION OF OIL AND 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 AND GAS OPERATIONS; REQUIRING A BOND OR OTHER SURETY IN CERTAIN CIRCUMSTANCES; PROVIDING FOR THE AWARD OF TREBLE DAMAGES IN CERTAIN CIRCUMSTANCES.

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:

- A. private fee surface land; and
- B. leasehold interests in any land on which oil and gas operations are conducted when the tenant incurs damages to leasehold improvements as a result of oil and gas operations.

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

A. "oil and gas operations" means all activities affecting the surface owner's land that are associated with exploration, drilling or production of oil or gas, through final reclamation of the affected surface;

B. "operator" means a person with the legal right

to conduct oil and gas operations and includes the agents, employees and contractors of that person;

C. "reclaim" means to substantially restore the surface affected by oil and gas operations to the condition that existed prior to oil and gas operations, or as otherwise agreed to in writing by the operator and surface owner;

D. "surface owner" means a person who holds legal or equitable title, as shown in the records of the county clerk, to the surface of the real property on which the operator has the legal right to conduct oil and gas operations;

E. "surface use and compensation agreement" means an agreement between an operator and a surface owner specifying the rights and obligations of the surface owner and the operator concerning oil and gas operations; and

F. "tenant" means a person who occupies land or premises belonging to another in subordination to the owner's title and with the owner's assent, express or implied.

#### Section 4. COMPENSATION FOR OIL AND GAS OPERATIONS.--

A. An operator shall compensate the surface owner for damages sustained by the surface owner, as applicable, for loss of agricultural production and income, lost land value, lost use of and lost access to the surface owner's land and lost value of improvements caused by oil and gas operations.

The payments contemplated by this section only cover land

affected by oil and gas operations.

B. An operator shall not be responsible for allocating compensation between the surface owner and any tenant, except that an operator shall compensate a tenant of the surface owner for any leasehold improvements damaged as a result of the operator's oil and gas operations if the improvements are approved and authorized by the surface owner. The compensation shall equal the cost of repairing or replacing the improvements.

C. An operator shall reclaim all the surface affected by the operator's oil and gas operations.

Section 5. NOTICE OF OPERATIONS--PROPOSED SURFACE USE AND COMPENSATION AGREEMENT.--

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

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

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

(2) a copy of the Surface Owners Protection Act;

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

(4) a proposed surface use and compensation agreement addressing, at a minimum and to the extent known, the following issues:

(a) placement, specifications, maintenance and design of well pads, gathering pipelines and roads to be constructed for oil and gas operations;

(b) terms of ingress and egress upon the surface of the land for oil and gas operations;

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

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

(e) removal and restoration of plant life;

(f) surface water drainage changes;

(g) actions to limit and effectively

control precipitation runoff and erosion;

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

(i) interim and final reclamation;

(j) actions to minimize surface damages to the property;

(k) operator indemnification for injury to persons caused by the operator; and

(l) an offer of compensation for damages to the surface affected by oil and gas operations.

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

D. Upon receipt of the notice required by Subsection B of this section, the surface owner may:

(1) accept the proposed surface use and compensation agreement within twenty days; or

(2) reject the proposed surface use and compensation agreement; provided that, failure to accept the

proposed agreement within twenty days shall be deemed to be a

rejection by the surface owner. If the proposed agreement is rejected, the surface owner may enter into negotiations with the operator, including, if the parties agree, binding arbitration or mediation.

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

F. The operator and the surface owner may enter into a mutually acceptable agreement that sets forth the rights and obligations of the parties with respect to the surface activities conducted by the operator.

Section 6. ENTRY WITHOUT AGREEMENT--BOND.--If, after thirty days from a surface owner receiving notice pursuant to Subsection B of Section 4 of the Surface Owners Protection Act, no surface use and compensation agreement has been entered into, the operator may enter the surface owner's property and conduct oil and gas operations:

A. after depositing a surety bond, letter of credit from a banking institution, cash or a certificate of deposit with a New Mexico surety company or financial institution for the benefit of the surface owner in the amount of ten thousand dollars (\$10,000) per well location. The surety bond, letter of credit, cash or certificate of deposit shall only be released by the surety company or financial

institution if:

(1) the surface owner provides notice that compensation for damages has been paid;

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

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

(4) all wells have been plugged and abandoned and the operator has not conducted oil and gas operations on the surface owner's property for a period of six years; or

B. after posting a blanket surety bond, letter of credit from a banking institution, cash or a certificate of deposit with a New Mexico surety company or financial institution in the sum of twenty-five thousand dollars (\$25,000) subject to the following criteria:

(1) the surety company or financial institution shall hold the corporate surety bond, letter of credit, cash or certificate of deposit for the benefit of the surface owners of this state and shall ensure that such security is in a form readily payable to a surface owner awarded damages in an action brought pursuant to the Surface Owners Protection Act;

(2) the bond, letter of credit, cash or certificate of deposit shall remain in full force and effect as long as the operator continues oil and gas operations in New Mexico;

(3) the bond, letter of credit, cash or certificate of deposit shall not be released until six years after the operator has deposited with the surety company or financial institution a certified statement from the oil conservation division of the energy, minerals and natural resources department that, according to the records of the division, the operator is not the operator of record of any well in New Mexico and does not hold any outstanding drilling permits in New Mexico; and

(4) in the event that, pursuant to a judgment, all or a portion of the bond, letter of credit, cash or certificate of deposit has been used to pay a surface owner, the operator shall immediately post additional security so that the total amount posted equals twenty-five thousand dollars (\$25,000) and, if the operator does not post the additional security, the surety or financial institution shall publish notice to that effect in a paper of general circulation in each county of the state in which oil or gas is produced.

Section 7. DAMAGES.--In an action brought pursuant to the Surface Owners Protection Act, if the court finds that



compensation is owed under Section 3 of the Surface Owners Protection Act, the court may also award the prevailing party:

A. attorney fees and costs if:

(1) the operator conducted oil and gas operations without providing notice as required by Subsection B of Section 4 of the Surface Owners Protection Act;

(2) the operator conducted oil and gas operations without a surface use and compensation agreement and before depositing a bond or other surety as required by Section 5 of the Surface Owners Protection Act;

(3) the operator conducted oil and gas operations outside the scope of a surface use and compensation agreement and, when entering into the agreement, knew or should have known that oil and gas operations would be conducted outside the scope of the agreement; or

(4) the surface owner failed to exercise good faith in complying with the provisions of the Surface Owners Protection Act or the terms of a surface use and compensation agreement; or

B. attorney fees, costs and treble damages if the court finds, by clear and convincing evidence, that:

(1) the operator willfully and knowingly entered upon the premises for the purpose of commencing the drilling of a well:

(a) without giving notice of the entry

as required by Subsection B of Section 4 of the Surface Owners Protection Act; or

(b) without a surface use and compensation agreement with the surface owner and before depositing a bond or other surety pursuant to Section 5 of the Surface Owners Protection Act; or

(2) either the surface owner or the operator willfully and knowingly violated the surface use and compensation agreement.

Section 8. REMEDIES NOT EXCLUSIVE.--The remedies provided by the Surface Owners Protection Act are not exclusive and do not preclude a person from seeking other remedies allowed by law.

Section 9. EMERGENCY SITUATIONS.--Notwithstanding any provisions of the Surface Owners Protection Act to the contrary, no notice, surface use and compensation agreement or bond shall be required in emergency situations for activities to protect health, safety or the environment.

Section 10. TEMPORARY PROVISION--APPLICABILITY.--The provisions of the Surface Owners Protection Act apply to all oil and gas operations commenced on or after July 1, 2007 except:

A. maintenance and ongoing production activities related to an oil or gas well producing or capable of producing oil or gas on June 30, 2007 for which the operator

has a valid permit from the oil conservation division of the energy, minerals and natural resources department, provided that:

(1) reentries, workovers and other oil or gas operations are subject to that act if the activities disturb additional surface; and

(2) the duty to reclaim, as stated in Subsection C of Section 3 of that act, is applicable to such a well that is not plugged and abandoned on July 1, 2007; and

B. oil and gas operations conducted within the scope of an agreement, entered into prior to July 1, 2007, between a surface owner and an operator that sets forth the rights and obligations of the parties with respect to surface activities conducted by the operator.

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. \_\_\_\_\_