

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1155 Session of
2009

INTRODUCED BY GEORGE, BELFANTI, BOBACK, CARROLL, CONKLIN,
GOODMAN, HORNAMAN, GIBBONS, HALUSKA, JOSEPHS, KORTZ, MUNDY,
MURPHY, MYERS, PETRARCA, SIPTROTH, WANSACZ, SOLOBAY, THOMAS,
WALKO AND WHEATLEY, MARCH 31, 2009

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MARCH 31, 2009

AN ACT

1 Providing for duties of oil and gas well operators, for notice
2 of operations and surface use and compensation agreement, for
3 entry without surface use compensation agreement, for
4 restriction on issuance of permits for wells, for attorney
5 fees and costs and for emergency situations.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Surface
10 Owners' Protection Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Department." The Department of Environmental Protection of
16 the Commonwealth.

17 "Gas." Fluid, either combustible or noncombustible, which is
18 produced in a natural state from the earth and which maintains a

1 gaseous or rarified state at a standard temperature of 60
2 degrees Fahrenheit and a pressure of 14.7 PSIA, manufactured
3 gas, byproduct gas or any mixture of gases.

4 "Oil" or "petroleum." Hydrocarbons in liquid form at a
5 standard temperature of 60 degrees Fahrenheit and a pressure of
6 14.7 PSIA.

7 "Oil or gas operations" or "operations." Activities
8 affecting land or water sources, no matter how slight, that are
9 associated with oil or gas exploration or production, including,
10 but not limited to:

11 (1) Construction, installation, maintenance or removal
12 of oil or gas wells.

13 (2) Construction, installation, maintenance or removal
14 of pipelines and equipment for gas, oil or water.

15 (3) Installation, maintenance and removal of all access
16 or service roads.

17 (4) Installation, maintenance or removal of oil or gas
18 production or storage equipment and facilities.

19 (5) Rework of oil and gas wells.

20 (6) Plugging of oil or gas wells.

21 (7) Actions taken to reclaim well sites.

22 (8) Actions taken regarding road and pipeline rights-of-
23 way.

24 "Person." Any natural person, association, partnership,
25 corporation, political subdivision or agency of the Federal or
26 State Government or other legal entity.

27 "Reclaim." To restore any portion of land affected by oil or
28 gas operations to the same or substantially similar condition
29 that existed prior to oil or gas operations, or as otherwise
30 agreed to in a memorialized agreement between the operator and

1 the landowner or tenants.

2 "Surface." The uppermost portion of the earth's crust,
3 including land and aquatic features.

4 "Surface owner." A person who holds legal or equitable title
5 to the surface of a parcel of real property.

6 "Surface use and compensation agreement." An agreement
7 written, signed and notarized between a surface owner and an
8 operator stipulating the location of proposed oil or gas wells,
9 access roads and any other uses of the surface during oil or gas
10 exploration and production. An oil or gas operation lease
11 agreement entered into by a surface owner and an operator, which
12 pays the surface owner at least a one-eighth royalty on gas or
13 oil extracted from areas under the surface of the surface
14 owner's real property, shall be deemed a surface use and
15 compensation agreement for the purposes of this act.

16 "Tenant." A person who occupies a parcel of real property
17 belonging to the surface owner in subordination to the surface
18 owner's title and with the surface owner's assent, expressed or
19 implied.

20 "Water sources." Rivers, streams, creeks, rivulets,
21 impoundments, ditches, water courses, storm sewers, lakes,
22 dammed water, ponds, springs or all other bodies of surface
23 water, or parts thereof, whether natural or artificial, within
24 or on the boundaries of the surface owner.

25 "Well." A borehole drilled or being drilled for the purpose
26 of or to be used for producing, extracting or injecting any gas,
27 petroleum or other liquid related to oil or gas production or
28 storage, including brine disposal, but excluding boreholes
29 drilled to produce potable water to be used as such. The term
30 does not include a borehole drilled or being drilled for the

1 purpose of or to be used for systems of monitoring, producing or
2 extracting gas from solid waste disposal facilities, as long as
3 the wells are subject to the act of July 7, 1980 (P.L.380,
4 No.97), known as the Solid Waste Management Act, and do not
5 penetrate a workable coal seam. The term also does not include a
6 borehole drilled or being drilled for the purpose of or to be
7 used for degasifying coal seams if the following conditions are
8 satisfied:

9 (1) The borehole is used to vent methane to the outside
10 atmosphere from an operating coal mine.

11 (2) The borehole is regulated as part of the mining
12 permit pursuant to the act of June 22, 1937 (P.L.1987,
13 No.394), known as The Clean Streams Law, and the act of May
14 31, 1945 (P.L.1198, No.418), known as the Surface Mining
15 Conservation and Reclamation Act.

16 (3) The borehole is drilled by the operator of the
17 operating coal mine for the purpose of increased safety.

18 (4) The borehole is used to vent methane to the outside
19 atmosphere pursuant to a federally funded or State-funded
20 abandoned mine reclamation project.

21 "Well operator" or "operator." The person designated as the
22 well operator or operator on the permit application or well
23 registration. Where a permit or registration was not issued, the
24 term shall mean any person who owns, manages, leases, controls
25 or possesses any well or coal property, or any person who
26 locates, drills, operates, alters or plugs any well or
27 reconditions any well with the purpose of production from the
28 well.

29 Section 3. Duties of operators.

30 (a) Nonlease extraction agreements.--Except to the extent

otherwise provided in a surface use and compensation agreement duly executed by a surface owner and an operator, where oil or gas are not leased for extraction from the surface owner by the operator in a lease paying at least a one-eighth royalty to the surface owner, an operator shall:

(1) Compensate fully the surface owner for damages resulting in any diminution in value of the real property and any real estate upon the tract, including, but not limited to:

(i) Lost agricultural production and income.

(ii) Lost timber production.

(iii) Lost land value.

(iv) Lost use of and access to the surface owner's land or water sources.

(v) Lost value of property improvements caused by operations.

(2) Reclaim entirely the surface affected by oil or gas operations within nine months of the cessation of extracting oil or gas from any well on a surface owner's tract of land.

(b) Compensation.--An operator shall not be responsible for negotiating or allocating compensation between the surface owner and any tenant, except that an operator shall compensate fully any tenant of the surface owner for any diminution in value of leasehold improvements, made by said tenant, damaged as a result of the operator's oil or gas operations.

Section 4. Notice of operations and surface use and compensation agreement.

(a) Prior to entry.--No less than 15 business days prior to initial entry upon a tract of land for activities that will not disturb the surface, including inspections, staking, surveys,

1 measurements and general evaluations of proposed routes and
2 sites for oil or gas operations, an operator shall provide
3 notice by certified mail to the surface owner of each tract on
4 which the operator proposes activity as well as a statement
5 citing deeds, leases, rights-of-way, easements and other rights
6 relating to the right of access of the operator to the tract of
7 land.

8 (b) Prior to application.--Prior to submission of an
9 application for a permit to the department under section 201 of
10 the act of December 19, 1984 (P.L.1140, No.223), known as the
11 Oil and Gas Act, and no less than 45 days before entering the
12 surface of the land to conduct any oil or gas operations, an
13 operator shall, by certified mail, provide the surface owner
14 with notice of the planned operations. Copies of the notice
15 shall also be sent to surface owners within a one-half mile
16 radius of each proposed well site. The notice shall include:

17 (1) Sufficient disclosure of the planned operations,
18 including topographical and underground maps of the relevant
19 areas, permits and materials submitted by the operator to
20 obtain permits to enable the surface owner to evaluate the
21 effects the operations might have on the lands of the surface
22 owner.

23 (2) A copy of this act and a copy of the Oil and Gas
24 Act.

25 (3) The name, address, telephone number and, if
26 available, facsimile number and electronic mail address of
27 the operator and the authorized representative of the
28 operator.

29 (4) Information regarding required or recommended
30 predrilling surveys and other provisions relating to:

1 (i) Protection of water sources.
2 (ii) Well location restrictions.
3 (iii) Casing, cementing and plugging plans for wells
4 and production-related horizontal boreholes under the Oil
5 and Gas Act.

6 (5) A proposed surface use and compensation agreement
7 addressing, to the extent known, the following:

8 (i) Placement, specifications, maintenance and
9 design of well pads, gathering pipelines, water
10 pipelines, storage facilities for water, oil or gas,
11 compressor stations, pump stations, meter pits and roads
12 to be constructed and other facilities of every type to
13 be constructed and utilized either temporarily or
14 permanently for operations.

15 (ii) The proposed frequency of ingress and egress
16 across or under the surface of the land for operations,
17 including pipelines, and the routes for the same.

18 (iii) Construction, maintenance and placement of
19 pits used or planned for operations.

20 (iv) Use and impoundment of water on the surface of
21 the land.

22 (v) Removal and restoration of the species of plant
23 life existing prior to commencement of any operations on
24 areas to be impacted by those operations.

25 (vi) Surface water drainage changes.

26 (vii) Plans and actions to limit and effectively
27 control precipitation runoff, sedimentation and erosion.

28 (viii) Control and management of noise, weeds, dust,
29 traffic, trespass, litter and other interferences with
30 the use and enjoyment of the surface by the surface owner

1 or tenant.

2 (ix) Interim and final proposals to reclaim the
3 surface.

4 (x) Plans or actions to be undertaken to minimize
5 damages to the surface.

6 (xi) Operator indemnification for injury to persons
7 or properties other than that of the surface owner when
8 caused by the operations.

9 (xii) Efforts to restrict access to the land of the
10 surface owner by third parties utilizing the access roads
11 and rights-of-way of the operator.

12 (xiii) An offer of compensation for damages to the
13 surface affected by operations.

14 (6) A plat that shows:

15 (i) The tract of land upon which each well is to be
16 located.

17 (ii) The name of the surface landowner of record and
18 lessor, if any.

19 (iii) The name of all surface landowners or water
20 purveyors whose water supplies are within one-half mile
21 of the proposed well location.

22 (iv) The location of water sources.

23 (v) Placement of well pads, gathering pipelines,
24 water pipelines, storage facilities for oil, gas or
25 water, compressor stations, meter pits and pump stations
26 and roads to be constructed for oil and gas operations.

27 (vi) Placement of pits and equipment used or
28 planned, and use and impoundment of water on the surface
29 of the land.

30 (vii) The workable coal seams, if any, underlying

1 the tract of land upon which the well is to be drilled or
2 altered, which are to be cased off in accordance with
3 section 207 of the Oil and Gas Act.

4 (viii) The name of the owner of record or operator
5 of known underlying workable coal seams, if any.

6 (ix) The acreage in the tract to be drilled.

7 (x) The proposed location of each well determined by
8 survey.

9 (xi) The courses and distances of the proposed well
10 locations from two or more permanent identifiable points
11 or landmarks on the tract boundary corners.

12 (xii) The proposed angle and direction of a well, if
13 the well is to be deviated substantially from the
14 vertical course.

15 (xiii) The number or other identification to be
16 given to the wells.

17 (c) Persons to be notified.--The notices required under this
18 section shall be sent to the surface owner at the address shown
19 by the property tax records at the time the notice is given. If
20 the property tax records for the county or the records in the
21 recorder's office for the county where the property is located
22 disclose that legal and equitable title of the land are not held
23 by the same person, notice shall be given to both the holder of
24 the legal title and to the holder of the equitable title at the
25 addresses shown by the property tax records at the time the
26 notice is given.

27 (d) Surface owner options.--Upon receipt of the notice
28 required under subsection (b), the surface owner may:

29 (1) agree to the proposed surface use and compensation
30 agreement within 45 days of receipt; or

1 (2) reject the proposed surface use and compensation
2 agreement and enter into a mutually acceptable surface use
3 and compensation agreement that sets forth the rights and
4 obligations of the parties.

5 (e) Presumption of receipt.--Notices to the surface owners
6 required under this act shall be deemed to have been received 15
7 days after mailing by certified mail.

8 Section 5. Entry without surface use and compensation
9 agreement.

10 (a) Requirements.--If, after 45 days from the date on which
11 a surface owner receives notice under section 4(b), no surface
12 use and compensation agreement has been executed by the operator
13 and surface owner, the operator may file applications for
14 permits with the department for the oil or gas wells proposed to
15 be located on the surface owner's property after depositing a
16 surety bond, letter of credit from a banking institution, cash
17 or certificate of deposit with a Pennsylvania surety company or
18 financial institution for the benefit of a surface owner in an
19 amount equal to the greater of:

20 (1) 120% of the operator's best compensation offer as to
21 each oil or gas production facility's location; or

22 (2) \$250,000 per production facility location.

23 (b) Release.--The surety bond, letter of credit, cash or
24 certificate of deposit shall only be released by the surety
25 company or financial institution back to the operator if:

26 (1) the surface owner provides an affidavit that
27 compensation for use of and damages to the surface owner's
28 land have been paid in full to the surface owner;

29 (2) the surface owner and the operator have executed a
30 surface use and compensation agreement or otherwise agreed

1 the surety should be released;

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

5 (4) all wells on the land of the surface owner have been
6 plugged and abandoned in accordance with law and the operator
7 has not conducted oil or gas operations on the property of
8 the surface owner for a period of four years.

9 Section 6. Restriction on issuance of permits for wells.

10 The department shall not issue new permits or renew existing
11 permits for wells where an operator is not complying with the
12 terms of this act. The department may resume issuing permits to
13 the operator only when the operator demonstrates to the
14 department it is in compliance with this act.

15 Section 7. Attorney fees and costs.

16 (a) General rule.--In an action brought under this act, if a
17 court finds that compensation is owed under section 3, the court
18 may also award the prevailing party attorney fees and costs if:

19 (1) the operator conducted operations without providing
20 notice as required under section 4(b);

21 (2) the operator conducted operations without a surface
22 use and compensation agreement and before either depositing
23 or maintaining a bond or other surety as required under
24 section 5;

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

30 (4) the surface owner failed to exercise good faith in

1 complying with the provisions of this act or the terms of a
2 surface use and compensation agreement.

3 (b) Clear and convincing evidence standard.--In an action
4 brought under this act, if a court finds that compensation is
5 owed under section 3, the court may also award the prevailing
6 party attorney fees, costs and treble damages if the court
7 finds, by clear and convincing evidence, that:

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

11 (i) without giving notice as required under section
12 4(b); or

13 (ii) without a surface use and compensation
14 agreement with the surface owner and before depositing a
15 bond or other surety under section 5; or

16 (2) either the surface owner or the operator willfully
17 and knowingly violated the terms of a surface use and
18 compensation agreement between them.

19 Section 8. Protection of water supplies.

20 (a) Restoration and replacement.--A well operator who
21 affects a public or private water supply by pollution or
22 diminution shall restore or replace the affected supply with an
23 alternate source of water adequate in quantity and quality for
24 the purposes served by the supply.

25 (b) Investigation requests.--A landowner or water purveyor
26 suffering pollution or diminution of a water supply as a result
27 of the drilling, alteration or operation of an oil or gas well
28 may so notify the department and request that an investigation
29 be conducted. Within ten days of the notification, the
30 department shall investigate the claim and shall, within 45 days

1 following notification, make a determination. If the department
2 finds that the pollution or diminution was caused by the
3 drilling, alteration or operation activities, or if the
4 department presumes the well operator responsible for pollution
5 under subsection (c), then the department shall issue orders to
6 the well operator necessary to assure compliance with subsection
7 (a). The orders may include orders requiring the temporary
8 replacement of a water supply where it is determined that the
9 pollution or diminution may be of limited duration.

10 (c) Presumption.--Unless rebutted by one of the five
11 defenses established under subsection (d), it shall be presumed
12 that a well operator is responsible for the pollution of a water
13 supply that is within 2,500 feet of the oil or gas well, where
14 the pollution occurred within six months after the completion of
15 drilling or alteration of the well.

16 (d) Defenses.--In order to rebut the presumption of
17 liability established under subsection (c), the well operator
18 must affirmatively prove one of the following five defenses:

19 (1) The pollution existed prior to the drilling or
20 alteration activity as determined by a predrilling or
21 prealteration survey.

22 (2) The landowner or water purveyor refused to allow the
23 operator access to conduct a predrilling or prealteration
24 survey.

25 (3) The water supply is not within 2,500 feet of the
26 well.

27 (4) The pollution occurred more than six months after
28 completion of drilling or alteration activities.

29 (5) The pollution occurred as the result of some cause
30 other than the drilling or alteration activity.

1 (e) Preservation of defenses.--Any operator electing to
2 preserve its defenses under subsection (d)(1) or (2) shall
3 retain the services of an independent certified laboratory to
4 conduct the predrilling or prealteration survey of water
5 supplies. A copy of the results of the survey shall be submitted
6 to the department and the landowner or water purveyor in a
7 manner prescribed by the department.

8 Section 9. Remedies not exclusive.

9 The remedies provided by this act are not exclusive and do
10 not preclude a person from utilizing any other remedies allowed
11 by statute, common law, deed or contract.

12 Section 10. Emergency situations.

13 Notwithstanding any provision of this act to the contrary, no
14 notice, surface use and compensation agreement or bond shall be
15 required in emergency situations for activities determined by
16 the department to be necessary to protect public health and
17 safety or the environment.

18 Section 20. Effective date.

19 This act shall take effect in 120 days.