

WORKING DRAFT

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HOUSE BILL NO.

Split estates-procedures for oil and gas operations.

Sponsored by: HDRAFT

A BILL

For

AN ACT relating to oil and gas operations; establishing requirements prior to commencing oil and gas operations on split estates; providing an exception; requiring notice, good faith negotiation and surface use agreements or financial assurances, as specified; authorizing compensation to surface owners for damages due to oil and gas operations; providing definitions; providing a statute of limitations; specifying applicability of the act; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 30-5-401 through 30-5-410 are created to read:

ARTICLE 4

1 ENTRY TO CONDUCT OIL AND GAS OPERATIONS

2

3 **30-5-401. Definitions.**

4

5 (a) As used in this act:

6

7 (i) "Commission" means the Wyoming oil and gas
8 conservation commission and its authorized employees;

9

10 (ii) "Compensate" and "compensation" mean
11 monetary payment or other consideration that may include
12 the furnishing of materials, labor or equipment;

13

14 (iii) "Oil" and "gas" mean as defined in W.S.
15 30-5-101(a)(vii);

16

17 (iv) "Oil and gas operations" means the surface
18 disturbing activities associated with drilling, producing
19 and transporting oil and gas, including the full range of
20 development activity from exploration through production
21 and reclamation of the disturbed surface;

22

1 (v) "Oil and gas operator" means a person
2 engaged in oil and gas operations, his designated agents,
3 contractors and representatives;

4
5 (vi) "Reclamation" means the restoring of the
6 surface directly affected by oil and gas operations, as
7 closely as reasonably practicable, to the condition that
8 existed prior to oil and gas operations, or as otherwise
9 agreed to in writing by the oil and gas operator and the
10 surface owner;

11

12 (vii) "Surety bond or other guaranty" means as
13 defined in W.S. 30-5-101(a)(x);

14

15 (viii) "Surface owner" means any person who owns
16 an interest of record in the surface estate of the land on
17 which oil and gas operations occur, as identified by the
18 records of the county clerk of the county in which the land
19 is located. "Surface owner" does not include any person or
20 governmental entity that owns all of the surface estate and
21 all of the underlying oil and gas estate;

22

23 (ix) "This act" means W.S. 30-5-401 through 30-
24 5-410.

1

2 **30-5-402. Entry upon land for oil and gas operations**
3 **and non-surface disturbing activities; notice; process;**
4 **surety bond or other guaranty; negotiations.**

5

6 (a) Any oil and gas operator having the right to any
7 oil or gas underlying the surface of land may locate and
8 enter the land for all purposes reasonable and necessary to
9 conduct oil and gas operations to remove the oil or gas
10 underlying the surface of that land. The oil and gas
11 operator shall have the right at all times to enter upon
12 the land for non-surface disturbing activities reasonable
13 and necessary to determine the feasibility and location of
14 oil and gas operations to extract the oil and gas
15 thereunder. The oil and gas operator shall first comply
16 with the provisions of this act and shall reasonably
17 accommodate existing surface uses. The oil and gas
18 operator may reenter and occupy so much of the surface of
19 the land thereof as may be required for all purposes
20 reasonable and necessary to conduct oil and gas operations
21 on the land.

22

23 (b) An oil and gas operator may enter to conduct non-
24 surface disturbing activities, including inspections,

1 staking, surveys, measurements and general evaluation of
2 proposed routes and sites for oil and gas operations.
3 Prior to initial entry upon the land for non-surface
4 disturbing activities, the oil and gas operator shall
5 provide at least five (5) days notice to the surface owner.
6 Prior to any subsequent entry upon the land for non-surface
7 disturbing activities not previously discussed, the oil and
8 gas operator shall provide notice to the surface owner.

9

10 (c) Entry upon the land for oil and gas operations
11 shall be conditioned on the oil and gas operator providing
12 the required notice, attempting good faith negotiations
13 and:

14

15 (i) Securing the written consent or waiver of
16 the surface owner for entry onto the land for oil and gas
17 operations;

18

19 (ii) Obtaining an executed surface use agreement
20 providing for compensation to the surface owner for damages
21 to the land and improvements as provided in W.S. 30-5-
22 405(a);

23

1 (iii) Securing a waiver as provided in W.S. 30-
2 5-408; or

3

4 (iv) In lieu of complying with paragraph (i) or
5 (ii) of this subsection, executing a good and sufficient
6 surety bond or other guaranty to the commission for the use
7 and benefit of the surface owner to secure payment of
8 damages. The amount of the bond or other guaranty shall be
9 determined pursuant to W.S. 30-5-404.

10

11 (d) Before entering upon the land for oil or gas
12 operations, the oil and gas operator shall give to all the
13 surface owners a written notice of its proposed oil and gas
14 operations on the land. This notice shall be given to the
15 surface owners at the address shown by the records of the
16 county where the land is located at the time notice is
17 given.

18

19 (e) The notice of proposed oil and gas operations
20 shall sufficiently disclose the plan of work and operations
21 to enable the surface owner to evaluate the effect of oil
22 and gas operations on the surface owner's use of the land.
23 The notice shall be given no more than one hundred twenty
24 (120) days nor less than thirty (30) days before

1 commencement of any oil and gas operations on the land.

2 The notice shall include, but is not limited to:

3

4 (i) The proposed dates on which planned
5 operations shall commence;

6

7 (ii) To the extent reasonably known at the time,
8 the proposed facility locations and access routes related
9 to the proposed oil and gas operations, including locations
10 of roads, wells, well pads, seismic locations, pits,
11 reservoirs, power lines, pipelines, compressor pads, tank
12 batteries and other facilities;

13

14 (iii) The name, address, telephone number and,
15 if available, facsimile number and electronic mail address
16 of the oil and gas operator and his designee, if any;

17

18 (iv) An offer to discuss and negotiate in good
19 faith any proposed changes to the proposed plan of work and
20 oil and gas operations prior to commencement of oil and gas
21 operations;

22

23 (v) A copy of this act.

24

1 (f) After providing the notice of proposed oil and
2 gas operations to the surface owner, the oil and gas
3 operator and the surface owner shall attempt good faith
4 negotiations to reach a surface use agreement for the
5 protection of the surface resources, reclamation
6 activities, timely completion of reclamation of the
7 disturbed areas and payment for damages caused by the oil
8 and gas operations. At any time in the negotiation, at the
9 request of either party and upon mutual agreement, dispute
10 resolution processes including mediation, arbitration or
11 the informal procedures for resolving disputes established
12 under article 6 of the Wyoming Eminent Domain Act may be
13 employed.

14

15 (g) The oil and gas operator shall not engage in
16 work, location of facilities and access routes or oil and
17 gas operations substantially and materially different from
18 those disclosed to the surface owner in accordance with
19 this section, without first providing additional notice
20 disclosing proposed changes and offering to schedule a
21 meeting to comply with the requirements of subsection (f)
22 of this section.

23

1 **30-5-403. Application for permit drill; additional**
2 **notice.**

3

4 (a) When submitting an application to the commission
5 for a permit to drill, the oil and gas operator shall file
6 a statement with the commission, including the surface
7 owner's name, contact address, telephone number and any
8 other relevant and necessary contact information known to
9 the oil and gas operator, certifying that:

10

11 (i) Notice of proposed oil and gas operations
12 was provided to the surface owner;

13

14 (ii) The parties attempted good faith
15 negotiations as required under W.S. 30-5-402(f) to reach a
16 surface use agreement;

17

18 (iii) The oil and gas operator has met the
19 conditions of W.S. 30-5-402(c), specifying how the
20 conditions have been met.

21

22 (b) The surface use agreement between the oil and gas
23 operator and the surface owner shall not be filed with the
24 oil and gas conservation commission and the terms of the

1 agreement shall not be required as a condition of approval
2 of an application for a permit to conduct oil and gas
3 operations.

4

5 **30-5-404. Surety bond or guaranty; approval;**
6 **objections; release of surety bond or guaranty.**

7

8 (a) The surety bond or other guaranty required under
9 W.S. 30-5-402(c)(iv) shall be executed by the oil and gas
10 operator, or a bonding company acceptable to the
11 commission. Other forms of guaranty acceptable by the
12 commission under article 1 of this chapter may be submitted
13 by the oil and gas operator in lieu of a surety bond.

14

15 (b) The surety bond or other guaranty shall be in an
16 amount of not less than two thousand dollars (\$2,000.00)
17 per well site on the land. At the request of the oil and
18 gas operator, the commission may establish a blanket bond
19 or other guaranty in an amount covering oil and gas
20 operations as identified by an oil and gas operator in the
21 written notice required under W.S. 30-5-402(d). The
22 minimum amount of the bond or other guaranty specified in
23 this subsection is not intended to establish any amount for
24 reasonable and foreseeable damages.

1

2 (c) Within seven (7) days following receipt of the
3 surety bond or other guaranty, the commission shall notify
4 the surface owner of receipt of the surety bond or other
5 acceptable guaranty, including a description of the amount
6 and the type of the bond or guaranty and provide to the
7 surface owner a copy of the statement required under W.S.
8 30-5-403(a). If at the expiration of thirty (30) days after
9 receipt of the notice by the surface owner, he makes no
10 objection to the amount or the type of the surety bond or
11 guaranty, the commission shall approve the surety bond or
12 guaranty. If the surface owner objects to the amount or
13 the type of the surety bond or guaranty, the commission
14 shall give immediate consideration to the surety bond or
15 guaranty and accompanying papers filed by the oil and gas
16 operator in support of the surety bond or guaranty amount
17 and the type of surety bond or guaranty submitted, shall
18 render a final decision as to the acceptability of the
19 amount and type of the surety bond or guaranty and shall
20 notify the parties of the decision. Proof of any
21 additional surety bond or guaranty required by the
22 commission shall be filed with the commission within thirty
23 (30) days of the commission's final decision. Any
24 aggrieved party may appeal the final decision of the

1 commission to the district court in accordance with the
2 Wyoming Administrative Procedure Act.

3

4 (d) Upon receipt of an acceptable surety bond or
5 other guaranty by the commission, and receipt of all
6 required regulatory approvals to secure a drilling permit,
7 the oil and gas operator shall be permitted entry upon the
8 land to conduct oil and gas operations in accordance with
9 terms of any existing contractual or legal right.

10

11 (e) Any surety bond, other guaranty or blanket bond,
12 as applicable, for surface damages to particular lands will
13 be released by the commission after:

14

15 (i) Compensation for damages has occurred;

16

17 (ii) Agreement for release by all parties;

18

19 (iii) Final resolution of the judicial appeal
20 process for any action for damages and all damages have
21 been paid; or

22

23 (iv) The oil and gas operator certifies in a
24 sworn statement that the surface owner has failed to give

1 the written notice required under W.S. 30-5-406(a) or has
2 failed to bring an action for damages within the required
3 time period.

4

5 (f) Prior to the release of any applicable bond or
6 other guaranty, the commission shall make a reasonable
7 effort to contact the surface owner and confirm that
8 compensation has been received, an agreement entered into
9 or that the surface owner has failed to give written notice
10 required or failed to bring a timely action for damages.
11 The commission may, in its sole discretion, release any
12 surety bond, other guaranty or blanket bond related to
13 particular lands if the oil and gas operator shows just
14 cause for the release.

15

16 (g) Any surety bond or guaranty executed under this
17 section shall be in addition to the surety bond or guaranty
18 required under W.S. 30-5-104(d)(i)(D) for reclamation and
19 compliance with rules and orders of the commission.

20

21 **30-5-405. Surface damage and disruption payments; penalty**
22 **for late payment.**

23

1 (a) The oil and gas operator shall pay the surface
2 owner as follows:

3

4 (i) A sum of money or other compensation equal
5 to the amount of damages sustained by the surface owner for
6 loss of production and income, lost land value and lost
7 value of improvements caused by oil and gas operations;

8

9 (ii) The amount of damages and method of
10 compensation may be determined in any manner mutually
11 agreeable to the surface owner and the oil and gas
12 operator. When determining damages, consideration shall be
13 given to the period of time during which the loss occurs;

14

15 (iii) The payments contemplated by this
16 subsection shall only cover land directly affected by oil
17 and gas operations. Payments under this subsection are
18 intended to compensate the surface owner for damage and
19 disruption. No person shall reserve or assign that
20 compensation apart from the surface estate except to a
21 tenant of the surface estate.

22

23 (b) An oil and gas operator who fails to timely pay
24 an installment under any annual damage agreement negotiated

1 with a surface owner is liable for payment to the surface
2 owner of twice the amount of the unpaid installment if the
3 installment payment is not paid within sixty (60) days of
4 receipt of notice of failure to pay from the surface owner.

5

6 **30-5-406. Surface damage negotiations; notice of**
7 **damages to oil and gas operator; right to bring action.**

8

9 (a) If the oil and gas operator has commenced oil and
10 gas operations in the absence of any agreement for
11 compensation for all damages, a surface owner shall give
12 written notice to the oil and gas operator and the
13 commission of the damages sustained by the surface owner
14 within two (2) years after the damage has been discovered,
15 or should have been discovered through due diligence, by
16 the surface owner.

17

18 (b) Unless both parties provide otherwise by written
19 agreement, within sixty (60) days after the oil and gas
20 operator receives notice of damages pursuant to subsection
21 (a) of this section, the oil and gas operator shall make a
22 written offer of settlement to the surface owner as
23 compensation for damages. The surface owner seeking

1 compensation for damages under this section may accept or
2 reject any offer made by the oil and gas operator.

3

4 (c) If the surface owner who submits a notice as
5 required under subsection (a) of this section receives no
6 reply to his notice, receives a written rejection or
7 counter offer or rejects an offer or counter offer from the
8 oil and gas operator, the surface owner may bring an action
9 for compensation for damages in the district court in the
10 county where the damage was sustained.

11

12 **30-5-407. Remedies cumulative.**

13

14 The remedies provided by this act do not preclude any
15 person from seeking other remedies allowed by law, nor does
16 this act diminish rights previously granted by law or
17 contract.

18

19 **30-5-408. Waiver.**

20 A surface owner may waive any rights afforded under this
21 act by providing a written waiver of rights to the oil and
22 gas operator, identifying which rights have been waived.

23

1 **30-5-409. Statute of limitations for civil action.**

2

3 A surface owner entitled to bring an action for damages
4 under this act, or to seek any other remedy at law for
5 damages caused by oil and gas operations, shall bring such
6 action within two (2) years after the damage has been
7 discovered, or should have been discovered through due
8 diligence, by the surface owner. The limitation on
9 bringing an action under this section shall be tolled for a
10 period of four (4) months, if a written demand for
11 compensation for damages is timely submitted by the surface
12 owner under W.S. 30-5-406.

13

14 **30-5-410. Applicability.**

15

16 This act shall not apply to a public utility regulated
17 by the Wyoming public service commission or to a natural
18 gas pipeline regulated by the federal energy regulatory
19 commission.

20

21 **Section 2.** Any written surface use agreement,
22 consent, prior regulatory approval or judicial order or

1 decree in effect prior to the effective date of this act
2 shall not be subject to the provisions of this act.

3

4 **Section 3.** This act is effective July 1, 2005.

5

6

(END)