

SENATE FILE NO. SF0090

Wyoming Surface Owners' Accommodation Act.

Sponsored by: Senator(s) Decaria, Burns and Mockler and Representative(s) Berger and Landon

A BILL

for

1 AN ACT relating to mines and minerals; creating the Wyoming
2 Surface Owners' Accommodation Act; providing notice,
3 compensation and remedies to surface owners for loss due to
4 oil and gas development as specified; requiring financial
5 assurance as specified; providing definitions; establishing
6 a statute of limits as specified; specifying applicability
7 of the act; and providing for an effective date.

8

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

10

11 **Section 1.** W.S. 30-5-401 through 30-5-411 are created
12 to read:

13

14

ARTICLE 4

15

SURFACE OWNERS' ACCOMMODATION ACT

16

1 **30-5-401. Short title; application.**

2

3 This act shall be known and may be cited as the "Wyoming
4 Surface Owners' Accommodation Act".

5

6 **30-5-402. Definitions.**

7

8 (a) As used in this act:

9

10 (i) "Financial assurance" means a surety bond,
11 cash deposit, certificate of deposit, bank letter of credit
12 or other form of financial security deemed acceptable by
13 the Wyoming oil and gas conservation commission;

14

15 (ii) "Oil" and "gas" mean as defined in W.S.
16 30-5-101(a) (vii);

17

18 (iii) "Oil and gas operator" means a person
19 engaged in drilling or producing wells for oil and gas;

20

21 (iv) "Oil and gas operations" means the surface
22 disturbing activities associated with drilling, producing
23 and transporting oil and gas, including the full range of

1 development activity from exploration through production
2 and reclamation of the disturbed surface;

3

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

10

11 (vi) "Surface" means the land on which oil and
12 gas operations occur, and any adjacent affected lands;

13

14 (vii) "Surface owner" means any person who holds
15 an interest of record in the surface estate and any person
16 in possession of the surface who holds an unrecorded
17 interest in the surface estate, excluding adverse claimants
18 without adjudicated title and also excluding the state of
19 Wyoming, when the state holds record title to the surface
20 estate and all of the underlying mineral estate;

21

22 (viii) "Tangible improvement" means any
23 structure, enclosure or any other man-made addition to the
24 surface;

1

2 (ix) "This act" means W.S. 30-5-401 through
3 30-5-411.

4

5 **30-5-403. Notice of drilling operations.**

6

7 (a) Before entering upon a site for oil or gas
8 operations, the oil and gas operator shall give to the
9 surface owner a written notice of its proposed oil and gas
10 operations on the surface owner's property. This notice
11 shall be given to the surface owner at the address shown by
12 the records of the county where the surface is located at
13 the time notice is given.

14

15 (b) The notice shall be sent to the surface owner by
16 certified or registered mail, return receipt requested, or
17 by personal notice, at least sixty (60) days before
18 commencement of the initial oil and gas operations, unless
19 waived, in writing, by the surface owner.

20

21 (c) The notice shall disclose, to the extent known,
22 the proposed plan of work and oil and gas operations to
23 enable the surface owner to evaluate the effects of the
24 plan of work and of oil and gas operations on the surface

1 owner's use of the property. The notice shall include, but
2 not be limited to:

3

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

6

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

12

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

16

17 (iv) An offer to discuss with the surface owner
18 the proposed plan of work and oil and gas operations prior
19 to commencement of drilling operations;

20

21 (v) A copy of this act.

22

23 (d) The oil and gas operator shall not engage in
24 work, location of facilities and access routes or

1 operations substantially and materially different from
2 those disclosed to the surface owner in accordance with
3 this section, without first providing additional notice
4 disclosing proposed changes in the plan of work and oil and
5 gas operations and scheduling a meeting with regard to the
6 proposed changes in accordance with subsection (c) of this
7 section.

8

9 (e) Prior to giving the notice specified in
10 subsection (a) of this section, access to the surface for
11 any nonsurface disturbing activities including inspections,
12 surveys, measurements and general evaluation shall be
13 preceded by forty-eight (48) hours verbal or written notice
14 to the surface owner or the surface owner's designated
15 agent.

16

17 (f) After giving the notice specified in subsection
18 (a) of this section, the oil and gas operator shall be
19 permitted reasonable access to the surface to conduct
20 inspections, surveys, measurements and general evaluation
21 of proposed routes and sites for oil and gas development,
22 provided that no material surface disturbance shall occur
23 without approval by the surface owner or compliance with
24 the provisions of this act.

1

2 **30-5-404. Surface damage and reclamation**
3 **negotiations.**

4

5 (a) The oil and gas operator and surface owner shall
6 enter into good faith negotiations to reach an agreement
7 regarding:

8

9 (i) Compensation to the surface owner for
10 damages, if any, that may be caused by the oil and gas
11 operations; and

12

13 (ii) Reclamation requirements.

14

15 (b) Specific matters to be negotiated, damages,
16 compensation, terms and conditions of payment, mitigation,
17 methods of enforcement and any other terms material to the
18 parties shall be left to the parties to identify and
19 negotiate to their mutual satisfaction.

20

21 **30-5-405. Compensation to surface owner for damages.**

22

23 An oil and gas operator shall compensate the surface owner
24 for all reasonable damages resulting from its oil and gas

1 operations on the surface owner's property. Factors that
2 may be considered, as appropriate in a specific case,
3 include, but are not limited to, loss of agricultural
4 production and income, loss of land value, loss of land
5 use, loss of value of improvements, damage to aquifers and
6 water supplies, costs of surface reclamation and loss due
7 to inability to implement uses planned previous to the
8 notice requirements of this act.

9

10 **30-5-406. Evidence of notice; financial assurance.**

11

12 (a) Prior to the Wyoming oil and gas conservation
13 commission approval of an application for permit to drill,
14 the oil and gas operator shall certify to the commission
15 that a notice has been provided in accordance with W.S.
16 30-5-403 and provide certification of one (1) of the
17 following:

18

19 (i) An agreement between the surface owner and
20 the oil and gas operator pursuant to W.S. 30-5-404 has been
21 reached;

22

23 (ii) A waiver from the surface owner for access
24 to the surface while negotiations continue has been

1 received by the oil and gas operator; or

2

3 (iii) Financial assurance has been provided by
4 the oil and gas operator pursuant to subsection (b) of this
5 section.

6

7 (b) If an agreement authorized under W.S. 30-5-404
8 has not been reached and the surface owner has not provided
9 a waiver, the oil and gas operator shall provide financial
10 assurance to the Wyoming oil and gas conservation
11 commission in an amount determined by the commission to be
12 sufficient to pay damages reasonably expected to occur to
13 acreage to be disturbed and tangible improvements thereto,
14 but not less than five thousand dollars (\$5,000.00) per
15 well, provided that the commission may set a statewide
16 financial assurance amount, not less than five hundred
17 thousand dollars (\$500,000.00) to be deposited by an oil
18 and gas operator for all of its oil and gas operations in
19 the state. The surface owner may petition the court with
20 proper jurisdiction to increase the amount of the financial
21 assurance. The court may require an increase in the amount
22 of financial assurance upon proof that the financial
23 assurance is not likely to be sufficient to cover
24 reasonable damages to the surface owner from the oil and

1 gas operations.

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3 (c) This act shall not be construed to limit the
4 amount of damages payable to a surface owner to the amount
5 of financial assurance provided under subsection (b) of
6 this section.

7

8 (d) The financial assurance shall be posted separate
9 from any other form of financial surety required by law.

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11 (e) All or part of the financial assurance, at the
12 direction of the Wyoming oil and gas conservation
13 commission or a court with proper jurisdiction, shall be
14 paid to the surface owner for damages or to complete
15 reclamation required by this act if the oil and gas
16 operator fails to:

17

18 (i) Compensate the surface owner as provided in
19 an agreement entered into pursuant to W.S. 30-5-404;

20

21 (ii) Pay damages to a surface owner to which he
22 may be entitled under subsection (b) of this section; or

23

24 (iii) Complete reclamation within the time

1 agreed or a reasonable time.

2

3 (f) The financial assurance shall be released at the
4 oil and gas operator's request after:

5

6 (i) The oil and gas operator and surface owner
7 certify that an agreement has been signed pursuant to W.S.
8 30-5-404 and both parties agree to have the financial
9 assurance released;

10

11 (ii) The oil and gas operator certifies that oil
12 and gas operations are concluded and the Wyoming oil and
13 gas conservation commission has confirmed reclamation has
14 occurred, however, prior to releasing any financial
15 assurance under this paragraph, the commission shall notify
16 the surface owner in writing and provide a period of not
17 less than forty-five (45) days for the surface owner to
18 submit evidence of uncompensated damages or to otherwise
19 show cause why the commission should not release the
20 financial assurance; or

21

22 (iii) The oil and gas operator provides a signed
23 statement from the surface owner that reclamation has been
24 satisfactorily completed and all damages have been paid.

1

2 (g) Upon compliance with the requirements of
3 subsection (a) of this section, the oil and gas operator
4 shall be permitted entry upon the surface and shall be
5 entitled to commence oil and gas operations in accordance
6 with the oil and gas operator's right to develop the
7 minerals.

8

9 **30-5-407. Minimizing damages.**

10

11 All oil and gas operations shall be conducted in a manner
12 that minimizes damages to the surface, consistent with
13 reasonable methods of development commonly deemed
14 acceptable in oil and gas operations. After completion of
15 the oil and gas operations, the oil and gas operator shall
16 complete reclamation of the surface directly affected by
17 the oil and gas operations, as reasonably practicable, to
18 the condition that existed prior to the oil and gas
19 operations, unless otherwise agreed to by the surface owner
20 and the oil and gas operator under W.S. 30-5-404.

21

22 **30-5-408. Remedies cumulative.**

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24 The remedies provided by this act do not preclude any

1 person from seeking other remedies allowed by law, nor does
2 it diminish rights previously granted by law or contract.

3

4 **30-5-409. Waiver.**

5

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

9

10 **30-5-410. Statute of limitations for civil action;**
11 **notice of damages to oil and gas operator.**

12

13 A surface owner entitled to bring an action for damages
14 under this act, or to seek any other remedy at law for
15 damages caused by oil and gas operations, shall bring such
16 action within two (2) years after the damage has been
17 discovered, or should have been discovered through due
18 diligence, by the surface owner.

19

20 **30-5-411. Attorney's fees and costs.**

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22 In the event of legal action between the surface owner and
23 the oil and gas operator, the prevailing party may be
24 awarded reasonable attorney's fees and costs.

1

2 **Section 2.** Any written surface use agreement or
3 consent in effect prior to the effective date of this act
4 shall not be subject to the provisions of this act.

5

6 **Section 3.** This act is effective immediately upon
7 completion of all acts necessary for a bill to become law
8 as provided by Article 4, Section 8 of the Wyoming
9 Constitution.

10

11

(END)