

## Surface Owners' Protection Act: PA House Bill 1155

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On March 31, 2009, Representative George (D-74 of Clearfield County) introduced the Surface Owners' Protection Act (HB 1155) into the Pennsylvania House of Representatives. The bill was passed out of the Pennsylvania House of Representatives' Environmental Resources and Energy Committee on July 1, 2009. If enacted, the bill would require oil and gas well operators to notify surface owners prior to entering their land for operations. The bill also would encourage oil or gas operators to negotiate a surface use and compensation agreement with surface owners prior to beginning activities.

### **Notification Requirements**

The Surface Owners' Protection Act proposes changes to the notification procedures prior to entering and operating upon tracts of land. The first notification required by the bill must be issued at least 15 business days prior to initial entry upon a tract of land for oil or gas operations. The notification must be sent to the surface owner of each tract of land upon which the operator proposes oil or gas activities and inform the owner of the operator's right of access to the tract of land. This notification must precede entering the land for any activities, including inspecting, surveying, and general evaluation of the tract (HB 1155, § 4(a)).

The second notification required by the Surface Owners' Protection Act would provide the surface owner with notice of the planned operations. This notification of the operations must be provided to affected surface owners prior to applying for a well permit from the Department

of Environmental Protection, and at least 45 days before entering the surface of a tract of land for oil or gas operations. Among other things, the operator must provide the surface owner with a plat that shows where operation facilities are to be placed, surface and underground maps of the relevant areas, information relating to the protection of water resources and well locations. This second notification also must include a proposed surface use and compensation agreement to be negotiated between the surface owner and oil or gas operator. This proposed agreement should address the alterations to the tract for the purposes of oil or gas operations, as well as restoring the land upon completion of activities. The agreement also should propose an amount of compensation for the alterations to be paid by the operator. The bill requires the operator to indemnify the surface owner in the event of injury to people or property other than that of the surface owner. Last, the surface use and compensation agreement should provide an offer of compensation for damages to the surface, as affected by operations (HB 1155, § 4(b)).

After receiving the second notification, surface owners have two options to respond. First, the surface owner may agree to the proposed surface use and compensation agreement within 45 days of receipt. Second, the surface owner may reject the proposed agreement. If a surface owner rejects the agreement, he or she still maintains the right to negotiate a mutually acceptable surface use and compensation agreement with the operator (HB 1155, § 4(d)).

#### **Entry Without a Surface Use and Compensation Agreement**

If a mutually accepted surface use and compensation agreement is not attained within 45 days of the surface owner receiving the first proposal, the oil or gas operator may proceed with operations. In order to proceed with activities the operator must deposit a bond, letter of credit, cash or certificate of deposit with a Pennsylvania surety company or financial institution. The amount to be deposited must be the greater of (a) 120% of the operator's best compensation offer as to each oil or gas production facility's location, or (b) \$250,000 per production facility location. The bond is to ensure that the surface owner is compensated for the use of his or her land, and will only be returned to the operator when all of the proposed bill's requirements are met (HB 1155, §§ 5(a)-(b)).

#### **Compensation Requirements Provided Within the Bill**

If the surface owner and oil or gas operator cannot agree upon a surface use and compensation agreement, the Surface Owners' Protection Act would provide basic compensation. The proposed bill would require operators to fully compensate surface owners for

damages resulting in any diminution in value of the real property. According to the bill, such diminution includes lost agricultural production and income, lost land value, and lost use of and access to the surface owner's land or water resources. An operator also would be responsible to reclaim the entire surface affected by operations within nine months of ceasing oil or gas extraction from any well on a surface owner's land. An operator also shall compensate fully a tenant for any damages to improvements made by the tenant (HB 1155, §§ 3(a)-(b)).

### **Protection of Water Supplies**

The Surface Owners' Protection Act also would expand upon the protection of water already provided by Pennsylvania's Oil and Gas Act. Currently, under the Oil and Gas Act, if a surface owner experiences pollution of his or her water supply, an oil or gas operator is presumed to be responsible if it operated within 1,000 feet of the supply. Under the Surface Owners' Protection Act, an operator is presumed to be responsible for pollution of a water supply if it operated within 2,500 feet of the water supply. In order to rebut this presumption, the operator must affirmatively prove one of five defenses provided in the bill. Oil or gas operators who are found to be responsible for pollution or diminution are required to replace the water in quantity and quality under the bill (HB 1155, §§ 8(a)-(d)).

### **Award of Attorney Fees**

The Surface Owners' Protection Act also would provide attorney fees to prevailing parties in litigation. Under the bill, if a court finds compensation is owed under certain portions of the act, the prevailing party may be awarded attorney fees, as well as treble damages (HB 1155, §§ 7(a)-(b)).



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