WEST VIRGINIA CODE CHAPTER 22 ARTICLE 6B

WV Legislature

§22-6B-1. Legislative findings and purpose; applicability.

(a) The Legislature finds the following:

(1) Exploration for and development of oil and gas reserves in this state must coexist with the use, agricultural or otherwise, of the surface of certain land and that each constitutes a right equal to the other.

(2) The surface owner of lands on which horizontal wells are drilled shall be compensated for damages to the surface of the land pursuant to the provisions of this article.

(b) The Legislature declares that the public policy of this state shall be that the compensation and damages provided in this article for surface owners may not be diminished by any provision in a deed, lease or other contract of conveyance entered into after December 31, 2011.

(c) It is the purpose of this article to provide constitutionally permissible protection and compensation to surface owners of lands on which horizontal wells are drilled from the burden resulting from drilling operations commenced after January 1, 2012. This article is to be interpreted in the light of the legislative intent expressed herein. This article shall be interpreted to benefit surface owners, regardless of whether the oil and gas mineral estate was separated from the surface estate and regardless of who executed the document which gave the oil and gas developer the right to conduct drilling operations on the land. Section four of this article shall be interpreted to benefit all persons.

(d) The provisions of this article apply to any natural gas well, other than a coalbed methane well, drilled using a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines, gathering lines and roads or uses more than two hundred ten thousand gallons of water in any thirty-day period. Article seven of this chapter does not apply to any damages associated with the drilling of a horizontal well.

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§22-6B-2. Definitions.

In this article:

(1) "Drilling operations" means the actual drilling or redrilling of a horizontal well commenced subsequent to the effective date of this article, and the related preparation of the drilling site and access road, which requires entry, upon the surface estate;

(2) "Horizontal drilling" means a method of drilling a well for the production of natural gas that is intended to maximize the length of wellbore that is exposed to the formation and in which the wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to parallel a particular geologic formation;

(3) "Horizontal well" means any well site, other than a coalbed methane well, drilled using a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines, gathering lines and roads, or uses more than two hundred ten thousand gallons of water in any thirty-day period;

(4) "Oil and gas developer" means the person who secures the drilling permit required by article six-a of this chapter;

(5) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(6) "Surface estate" means an estate in or ownership of the surface of a particular tract of land overlying the oil or gas leasehold being developed; and

(7) "Surface owner" means a person who owns an estate in fee in the surface of land, either solely or as a co-owner.

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§22-6B-3. Compensation of surface owners for drilling operations.

(a) The oil and gas developer is obligated to pay the surface owner compensation for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation, or to which access is prevented by the drilling operation, to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained, measured from the date the operator enters upon the land and commences drilling operations until the date reclamation is completed;

(2) The market value of crops, including timber, destroyed, damaged or prevented from reaching market;

(3) Any damage to a water supply in use prior to the commencement of the permitted activity;

(4) The cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality; and

(5) The diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued determined according to the market value of the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.

(b) Any reservation or assignment of the compensation provided in this section apart from the surface estate except to a tenant of the surface estate is prohibited.

(c) In the case of surface lands owned by more than one person as tenants in common, joint tenants or other co-ownership, any claim for compensation under this article shall be for the benefit of all co-owners. The resolution of a claim for compensation provided in this article operates as a bar to the assertion of additional claims under this section arising out of the same drilling operations.

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§22-6B-4. Common law right of action preserved; offsets.

(a) Nothing in section three or elsewhere in this article diminishes in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of the developer's mineral interest.

(b) An oil and gas developer is entitled to offset compensation agreed to be paid or awarded to a surface owner under section three of this article against any damages sought by or awarded to the surface owner through the assertion of common law remedies respecting the surface land actually occupied by the same drilling operation.

(c) An oil and gas developer is entitled to offset damages agreed to be paid or awarded to a surface owner through the assertion of common-law remedies against compensation sought by or awarded to the surface owner under section three of this article respecting the surface land actually occupied by the same drilling operation.

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§22-6B-5. Notification of claim.

Any surface owner, to receive compensation under section three of this article, shall notify the oil and gas developer of the damages sustained by the person within two years after the date that the oil and gas developer files notice that final reclamation is commencing under section fourteen, article six-a of this chapter. The notice of reclamation shall be given to surface owners by registered or certified mail, return receipt requested, and is complete upon mailing. If more than three tenants in common or other co-owners hold interests in the lands, the oil and gas developer may give the notice to the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing the notice and information the secretary prescribes by rule.

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§22-6B-6. Agreement; offer of settlement.

Unless the parties provide otherwise by written agreement, within sixty days after the oil and gas developer received the notification of claim specified in section five of this article, the oil and gas developer shall either make an offer of settlement to the surface owner seeking compensation, or reject the claim. The surface owner may accept or reject any offer so made: Provided, That the oil and gas developer may make a final offer within seventy-five days after receiving the notification of claim specified in section five of this article.

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§22-6B-7. Rejection; legal action; arbitration; fees and costs.

(a)(1) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within seventy-five days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either: (i) Bring an action for compensation in the circuit court of the county in which the well is located; or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section seven, article six-a of this chapter, to have his, her or its compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

(2) Settlement negotiations, offers and counter-offers between the surface owner and the oil and gas developer are not admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common law remedies.

(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in the party's notice of election under this section to the oil and gas developer; the second arbitrator shall be chosen by the oil and gas developer within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators shall immediately submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county in which the surface estate lies.

(c) The following persons are considered interested and may not be appointed as arbitrators: Any person who is personally interested in the land on which horizontal drilling is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest or who is the owner of, or interested in, the land or the oil and gas development of the land. A person is not considered interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district or municipal corporation in which the land is located, or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take testimony and receive exhibits necessary to determine the amount of compensation to be paid to the surface owner. However, no award of compensation may be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may

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be made but is not required.

(e) Each party shall pay the compensation of the party's arbitrator and one half of the compensation of the third arbitrator, or each party's own court costs as the case may be.

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§22-6B-8. Application of article.

The remedies provided by this article do not preclude any person from seeking other remedies allowed by law.

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