



Oil and Gas Division

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Department of Mineral Resources

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North Dakota Industrial Commission

www.oilgas.nd.gov

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NOTICE TO SURFACE OWNERS CONCERNING THE RIGHT OF COMPENSATION FOR DAMAGES CAUSED BY OIL AND GAS OPERATIONS

This form is furnished to advise you of your rights and options as a surface owner or tenant under North Dakota law. This form as well as information disclosing the plan of operations contemplated by the mineral developer are intended to assist you in evaluating the effect such activity will have on the use of your property. You are responsible for negotiating the terms of any agreements. If you need advice or assistance in making a settlement, you should consult private counsel.

North Dakota Century Code Reference

North Dakota Century Code (NDCC) Chapter 38-11.1 provides that all persons should be justly compensated for injury to their persons or property, and interference with the use of their property caused by oil and gas development.

Oil and gas development means the drilling, completion, production, or other operations associated with an oil and gas well which require entry upon the surface estate.

The law provides that surface owners and their tenants are entitled to compensation from the mineral developer for: 1) lost land value, 2) lost use of and access to the land, and 3) lost value of improvements if any, caused by oil and gas drilling operations.

Payments contemplated under this section of law cover only land directly affected by drilling operations.

Notice Requirements

Before entering your land for inspection, staking, surveying, taking measurements, or evaluating possible routes and sites the mineral developer must provide you at least seven (7) days notice by registered mail or hand delivery. You and the mineral developer may mutually agree to waive this seven (7) day notice requirement.

Except for geophysical exploration activities, which are governed by NDCC Chapter 38-08.1, the mineral developer must provide you notice by registered mail or hand delivery of the contemplated oil and gas drilling operations at least twenty (20) days prior to the start of the drilling operations. This notice must sufficiently disclose the plan of work and operations for you to be able to evaluate the effect of drilling operations on the use of your property. You and the mineral developer may mutually agree to waive this twenty (20) day notice requirement. If the mineral developer plans to begin drilling operations within twenty (20) days of the termination date of the mineral lease, the required notice may be given at any time prior to the start of drilling operations.

If a mineral developer fails to give notice as provided above, you may seek relief in the court of proper jurisdiction and you may receive punitive as well as actual damages.

Distance from occupied dwelling

For wells permitted on new well pads built after July 31, 2013, the mineral developer must give any owner of a permanently occupied dwelling written notice of proposed facilities personally or by certified mail, return receipt requested, and addressed to your last known address listed with the county property tax department. The owner of a permanently occupied dwelling within one thousand feet of the proposed well may request that the commission require all flares, tanks, and treaters utilized in connection with the permitted well be located at a greater distance from the occupied dwelling than the oil and gas well head. You must submit your written comments to the commission within five (5) business days of receiving notice from the mineral developer.

Offer to settle damages

The mineral developer must make a written offer of settlement at the time the notice of contemplated drilling operations is given, unless you and the mineral developer have mutually agreed otherwise in writing. You may accept or reject any offer so made. Final agreement on the amount of compensation for damages does not have to be reached before the mineral developer begins drilling operations, and may be best negotiated after it is determined whether the well is commercial.

You may accept or reject any offer made. If you reject the offers of the mineral developer you may bring a court action seeking proper compensation. If the amount of compensation awarded by the court is greater than that offered by the mineral developer you will be awarded reasonable attorney fees, court costs, and interest on the amount of compensation from the day drilling is commenced.

Notification of Injury

Any person seeking compensation for damage and disruption or loss of production must notify the mineral developer within two (2) years after the injury occurs or would be apparent to a reasonable person and any claim for relief for compensation brought under this chapter must be commenced within the six (6) year limitation period provided in section 28-01-16 of the North Dakota Century Code.

Damage and disruption payments

The amount of compensation for damages from drilling operations may be determined by any formula mutually agreeable between the surface owner and the mineral developer. Compensation for damages caused by drilling operations must be calculated as a single sum. When determining damages you must consider the period of time during which the loss will occur.

Within one (1) year after a compensation offer made under section 38-11.1-08 is rejected, either the mineral developer or surface owner may involve the North Dakota mediation service or other civil mediator. The cost of the mediator must be mediated between the parties. If the parties are unable to reach an agreement regarding the cost of the mediator each party shall pay an equal portion of the mediator's compensation. The North Dakota mediation service may mediate disputes related to easements for oil and gas related pipelines and associated facilities.

Any reservation or assignment of payment to someone other than the surface owner or tenant is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation, the tenant is entitled to recover from the surface owner that portion of the payments attributable to the tenant's share of the damages.

Loss of production payments

The mineral developer must pay you for the loss of agricultural production and income caused by oil and gas production and completion operations. The amount of compensation may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages you must consider the period of time during which the loss will occur and payments must be made annually unless you elect to receive a single lump sum payment.

Any reservation or assignment of payment to someone other than the surface owner or tenant is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation, the tenant is entitled to recover from the surface owner that portion of the payments attributable to the tenant's share of the damages.

Inspection of well site

You, or an adjacent landowner, may request the state department of health to inspect and monitor the well site on your land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated the state department of health will issue appropriate orders to protect your health, welfare, and property.

Pipelines constructed after August 1, 2011

Upon receipt of a written request, the commission must provide the owner or tenant of real property the location and other information available to the commission regarding underground gathering pipelines constructed after August 1, 2011 located within the bounds of the real property owned or leased by that property owner or tenant.

Surface and underground water supplies

NDCC Chapter 38-11.1 further provides protection of your surface and underground water supplies for domestic, agricultural, industrial, or other beneficial use. If you own an interest in real property and obtain all or part of your water supply for any beneficial use from an underground source, you may have a claim against a mineral developer for disruption or diminution in water quality or quantity proximately caused by drilling operations. This law does not apply if water can reasonably be acquired under the changed conditions and the changed conditions are the result of the legal appropriation of water by the mineral developer.

You may have a claim for damages against the mineral developer provided that:

- 1) The water supply is disrupted or diminished in quality or quantity on real property you own within one-half (1/2) mile of where geophysical exploration activities are, or have been conducted, or within one (1) mile of an oil and gas well site, and
- 2) A certified water quality and quantity test has been performed within one (1) year preceding the start of drilling operations, and
- 3) A claim for damages is filed within six (6) years from the time damage was discovered or should have been reasonably discovered.
- 4) Damages to person or property resulted from lack of ordinary care by the mineral developer or from a nuisance caused by drilling operations.

No tract of land is obligated to receive water contaminated by drilling operations on another tract of land. The owner has a claim against the mineral developer to recover damages resulting from natural drainage of such waters onto a tract of land.

Other remedies and limitations

The remedies provided by this law do not prohibit you from seeking other legal remedies.

This law does not apply to damages resulting from the operation, maintenance, or use of a motor vehicle upon a highway.

Effective 1st day of August, 2013.

/s/ Lynn D. Helms

Lynn D. Helms
Director