

**Summary of state and federal surface damage regulations**

Prepared for the HB790 Subcommittee by Joe Kolman, research analyst, Sept 1, 2005

Note: For the sake of brevity, statutes are paraphrased. Please refer to complete text for exact language and other provisions not included here.

	Applicable damages	Notice of operations	Surface bond	Settlement of disagreements	Injury notification	Other provisions
Montana	Compensate surface owner for loss of ag production and income, lost land value and lost value of improvements caused by drilling operations. Damages determined by mutually agreeable formula 82-10-504	Operator must notify surface owner 10-90 days before drilling. Disclose plan of work, operations 82-10-503		If person seeking compensation receives a written rejection, rejects the offer of the oil and gas developer or operator, or receives no reply, that person may bring an action for compensation in the district court of the county in which the damage was sustained. 82-10-508	Within 2 years of date of injury or when damages become apparent to reasonable man. 82-10-506	Mitigation agreement required for CBM wells producing ground water that is source for appropriation rights or permits to appropriate under Title 85, chapter 2. Agreement offer to each appropriator for ground water and for which the point of diversion is within: 1 mile of the CBM well; or 1/2 mile of a well adversely affected by the CBM well. Agreement must address reduction or loss of water resources and must provide for prompt supplementation or replacement of water. The mitigation agreement is not required to address a loss of water well productivity that does not result from a reduction in the amount of available water because of production of ground water from the CBM well. 82-11-175
North Dakota	Compensate surface owner for loss of ag production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. Damages determined by mutually agreeable formula.	At least 20 days. Must advise of surface owner's rights and options under the chapter, including right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide.		If the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in court of proper jurisdiction. If compensation awarded by the court is greater than offered by the mineral developer, the court shall award the person seeking compensation reasonable attorney's fees, any costs assessed by the court, and interest on the amount of the final compensation awarded by the court from the day drilling is commenced.	Within 2 years of date of injury or when damages become apparent to reasonable man.	If quality or quantity of water used for domestic, livestock or irrigation within 1 mile of a well, and a certified water test was completed within 1 year preceding drilling, the owner is entitled to recover costs to re-establish that quantity or quality of water. Action must be brought within 6 years of discovery. A landowner adjacent to a drilling operation whose land receives contaminated water may file a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.
South Dakota	Damages for loss of agricultural production, lost land value, and lost value of improvements caused by mineral development. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer.		The Board of Minerals and Environment shall require the furnishing of a surface restoration bond when the landowner or lessee is not a party to the oil or gas leasing agreement in the amount of \$2,000 per well or \$10,000 blanket to restore the premises, insofar as possible, to condition prior to drilling. This includes surface property of the landowner or lessee, both real and personal, and the ingress to and the egress from such real property.	If the person seeking compensation receives a written rejection, rejects the offer of the mineral developer, or receives no reply, that person may bring an action for compensation in the court of proper jurisdiction.	Within 2 years after the injury becomes apparent or should have become apparent to a reasonable man.	
Wyoming	The oil and gas operator and the surface owner shall attempt good faith negotiations to reach a surface use agreement for the protection of the surface resources, reclamation activities, timely completion of reclamation of the disturbed areas and payment for damages caused by the oil and gas operations. Damages for loss of production and income, loss of land value and loss of value of improvements caused by oil and gas operations.	For non surface-disturbing activity, 5 days notice. For drilling operations 30 -180 days. Must include plan of work including facility locations, location of roads, wells, well pads, seismic locations, pits, reservoirs, power lines, pipelines, compressor pads, tank batteries and other facilities.	If no waiver or agreement is reached, must post at least \$2,000 per well or, after consultation with surface owner, a blanket bond. Surface owner may object to amount or type of bond.	At any time in the negotiation, at the request of either party and upon mutual agreement, dispute resolution processes including mediation or arbitration may be employed or the informal procedures for resolving disputes may be requested through the Wyoming agriculture and natural resource mediation board. If the surface owner who submits notice of damages receives a written rejection or counter offer or rejects an offer or counter offer from the oil and gas operator, the surface owner may bring an action for compensation for damages in the district court in the county where the damage was sustained.	If the oil and gas operator has commenced oil and gas operations in the absence of any agreement for compensation for all damages, a surface owner shall give written notice to the oil and gas operator and the commission of the damages sustained by the surface owner within 2 years after the damage has been discovered, or should have been discovered through due diligence, by the surface owner. Civil action must be brought within 2 years after damage discovered.	

	Applicable damages	Notice of operations	Surface bond	Settlement of disagreements	Injury notification	Other provisions
Oklahoma	Prior to entering the site with heavy equipment, the operator shall negotiate with the surface owner for the payment of any damages which may be caused by the drilling operation.	Before entering site for drilling, operator must give notice by certified mail. Within 5 days of delivery of notice of intent to drill, parties must enter good faith negotiations to determine surface damages.	Every operator shall file a corporate surety bond, letter of credit from a banking institution, cash, or a certificate of deposit with the Secretary of State in the sum of \$25,000 for the benefit of the surface owners and shall ensure that such security is in a form readily payable to a surface owner awarded damages in an action brought pursuant to this act. Additional bond may be required.	The operator selects one appraiser, the surface owner selects one appraiser, and the two appraisers select a third appraiser for appointment by the court. Once the operator has petitioned for appointment of appraisers, the operator may enter the site to drill. The appraisers make a valuation and determine the amount of compensation to be paid by the operator to the surface owner. Appraisers report to the court. The operator and the surface owner shall share equally in the payment of the appraisers' fees and court costs. Either party may appeal the findings of the court.		Treble damages may be awarded if: (1) the operator willfully and knowingly drills before giving notice or without the agreement of the surface owner; (2) the operator fails to keep posted the required bond; (3) operator fails to notify the surface owner, prior to entering, or fails to come to an agreement and does not ask the court for appraisers. Habitable structures may not be located less than 125 feet from wells or 50 feet from other operating equipment unless agreed to by developer and surface owner.
Tennessee	(1) Lost income or expenses from not being able to use or access land for prior use. (2) market value of crops destroyed, damaged or prevented from reaching market, (3) damage to water supply in use prior to operations, (4) cost of repair of personal property (5) the diminution in value of surface lands and other property after completion of the surface disturbance determined according to the actual use made thereof by the surface owner immediately prior to the commencement of operations.			Surface owner may select court or parties may agree to arbitration. If the amount awarded by arbitration or the court is greater than offered by developer, surface owner also awarded reasonable attorney fees, costs of expert witnesses, any other costs legally assessed, plus interest since drilling started. In binding arbitration, compensation to surface owner determined by a disinterested arbitrator chosen by the surface owner and developer from a list of arbitrators approved by the American Arbitration Association. Hearings conducted as provided in title 29, chapter 5, part 3. Each party pays 1/2 arbitrator cost.	Surface owner shall notify by certified mail the oil and gas developer of the damages sustained by the person within 3 years after the injury occurs.	
West Virginia	(1) Lost income or expenses from not being able to use or access land for prior use. (2) market value of crops destroyed, damaged or prevented from reaching market, (3) damage to a water supply in use prior to operations, (4) cost of repair of personal property, and (5) diminution in value of surface lands and other property after completion of the surface disturbance determined according to the actual use made thereof by the surface owner immediately prior to the commencement of operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.			Surface owner may bring action in circuit court or elect to binding arbitration. Surface owner and developer each choose one arbiter and those two arbiters select a third. The arbiters shall hold hearings, take testimony and receive exhibits as necessary to determine the amount of compensation. However, no award of compensation shall be made unless the panel of arbitrators has first viewed the surface estate in question. Each party shall pay the compensation of such party's arbitrator and one half of the compensation of the third arbitrator, or such party's own court costs as the case may be.	Surface owner shall notify the oil and gas developer of the damages within 2 years after the date that the oil and gas developer files notice that reclamation is commencing. Notice shall be given to surface owners by registered or certified mail, return receipt requested, and shall be complete upon mailing.	
Illinois	Only applicable if surface owner does not consent in writing to drilling. Mineral and surface ownership must be severed. Surface owner entitled to reasonable compensation for damage to growing crops, trees, shrubs, fences, roads, structures, improvements and livestock caused by drilling and subsequent production. Compensation for negligent acts causing measurable damage to productive capacity of the soil.	At least 8 days. If surface owner agrees to discuss an agreement, topics include: road placement, access points, construction and placement of pits, restoration of fences, use of waters on surface lands, removal of trees and surface water drainage changes caused by drilling operations.		Failure to agree upon, or make compensation required, shall not prevent drilling. Operator shall pay surface owner no later than 90 days after completion of the well. Surface owner may seek compensation in the circuit court; If the operator fails to tender payment within the 90 days or payment is not reasonable, surface owner entitled to reasonable compensation and attorney's fees. If operator relies on a third party appraiser or fair market value, such amount shall be conclusively deemed to be reasonable, and there shall be no award of attorney's fees.		Operator must plug well, restore surface and any improvements to a condition as near as practicable to condition prior to drilling. Surface owner and operator may waive requirement subject to the approval of the department that the waiver is in accordance with its administrative regulations.
Kentucky	Only applicable if surface owner does not consent in writing to drilling. Surface owner entitled to reasonable compensation for damages to growing crops, trees, shrubs, fences, roads, structures, improvements and livestock caused by the drilling and subsequent production. Compensation for negligent acts causing measurable damage to productive capacity of the soil.	At least 8 days. If surface owner agrees to discuss an agreement, topics include: road placement, access points, construction and placement of pits, restoration of fences, use of waters on surface lands, removal of trees and surface water drainage changes caused by drilling operations.		Failure to agree upon, or make compensation required, shall not prevent drilling. Operator shall pay surface owner payment no later than 90 days after completion of the well. Surface owner may seek compensation in circuit court; If the operator fails to tender payment within 90 days or payment is not reasonable, surface owner entitled to reasonable compensation and attorney's fees. If operator relies on a third party appraiser there shall be no award of attorney's fees.		Operator must plug well and restore surface and any improvements thereon to a condition as near as practicable to their condition prior to drilling. Surface owner and operator may waive requirement subject to the approval of the department that the waiver is in accordance with its administrative regulations.

