

This document sets out concepts for a bill to address a specific issue: protection of surface owners. This document was distributed to the Legislative Committee of the Marcellus Shale Advisory Commission for discussion. This draft is for discussion purposes only and does not necessarily represent the positions of the O'Malley Administration, any Department of the Administration, or the members of the Advisory Commission.

Concepts for a Surface Owners Protection Act

1. This act applies to parcels of land in Maryland where different persons hold the mineral rights and the surface rights.
2. The legislature determines that exploration for and development of oil and gas reserves in this State should not occur at the expense of surface owners.
3. It is the purpose of this act to require those who hold mineral rights to minimize damage to the surface, and to provide compensation to surface owners for damages to the surface, arising from oil and gas operations that occur after the effective date of this act.
4. After the effective date of this act, before performing any physical act in furtherance of exploration and production, including entering onto the property to perform testing, road building or site preparation, the mineral rights owner or his lessee or agent must, with respect to any land on which or under which he intends to drill:
 - a. Disclose in writing, to each person having surface rights, the plan of work for exploration and production in sufficient detail to enable the recipient to evaluate the effect on the surface of the planned activities, including site preparation, drilling, hydraulic fracturing, installation and operation of temporary and permanent equipment, re-fracking, and site closure and reclamation;
 - b. Offer in writing to discuss with each person having surface rights the plan of work and the proposed surface activities, including: the placement of well pads; roads, pipelines, and points of entry; control of noise; hours of truck traffic; and a method of placing a monetary value on any damages caused by the activity, including lost income, damage to a water supply, damage to real and personal property, and diminution in value, if any, of the surface; and provide notice of how the surface owner can contact the mineral rights owner to arrange the meeting.
5. The mineral rights owner shall comply with the surface owner's reasonable requests regarding the placement of well pads, roads, pipelines, and points of entry; control of noise; and hours of truck traffic.
6. If the parties reach agreement on these issues, the terms shall be recorded in a legally enforceable document.
7. If the parties do not reach agreement on these issues:

- a. Except for the issue of a method for placing a monetary value on any damages caused by the activity, if the parties do not reach agreement on these issues within 90 days after receipt of notice by the surface owner, any party, pursuant to Title 3, Subtitle 2 of the Maryland Courts and Judicial Proceedings Article, may petition the Circuit Court where the land is located to appoint an arbitrator to make decisions regarding the open issues, which shall be recorded in a legally enforceable document.
- b. If all the parties agree to refer the issue of a method for placing a monetary value on any damages to the arbitrator, the arbitrator may make a decision on that issue, which shall be recorded in a legally enforceable document.
- c. The costs of the arbitration shall be borne equally by the parties unless the arbitrator, for cause, divides the cost differently.

8. No agreement between the parties, or decision by an arbitrator, shall limit the ability of the Department of the Environment to place in a permit conditions which the Department deems reasonable and appropriate to assure that the operation shall fully comply with the requirements of Title 14, Subtitle 1 of the Environment Code, and provide for public safety and the protection of the State's natural resources.

9. The mineral rights owner shall be obligated to pay the surface owner compensation for:

- a. 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 such drilling operation, to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained;
- b. the market value of agricultural production destroyed, damaged or prevented from reaching market;
- c. damage to improvements to the property constructed prior to the commencement of the permitted activity;
- d. any damage to a water supply in use prior to the commencement of the permitted activity;
- e. the cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality; and
- f. 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 actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

10. Any surface owner, to receive compensation under this act, shall notify the mineral rights owner of the damages sustained by the person within two years after the

date that the mineral rights owner files notice that reclamation is commencing. Such notice shall be given to surface owners by registered or certified mail, return receipt requested, and shall be complete upon mailing.

11. Unless the parties extend the time by written agreement, within sixty (60) days after receipt by the mineral rights owner of the notification of claim, the mineral rights owner 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.

12. If the surface owner accepts the offer, the mineral owner shall pay the damages within sixty (60) days of acceptance of the offer.

13. If the surface owner rejects the offer, the surface owner may:

- a. bring an action for compensation in the circuit court of the county in which the well is located, or
- b. elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the mineral rights owner, to have the compensation finally determined by arbitration.

14. Settlement negotiations, offers and counter-offers between the surface owner and the mineral rights owner shall not be 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.

15. Nothing in this act shall be construed to diminish in any way the common law remedies, including a civil action for damages, of a surface owner or any other person for the unreasonable, negligent or otherwise wrongful exercise of the mineral rights owner's right, whether express or implied, to use the surface of the land for the benefit of the mineral rights owner. Nothing in this act shall be construed to deny the mineral rights owner's express or implied right to use the surface of the land for the benefit of the mineral rights owner.

16. A mineral rights owner shall be entitled to offset compensation agreed to and paid or awarded to a surface owner against any compensation for the same damages sought by or awarded to the surface owner through the assertion of common law.

17. The remedies provided by this act shall not preclude any person from seeking other remedies allowed by law.