

## **I. States requiring written consent**

### Ohio

ORC Ann. 1509.27

No surface operations or disturbances to the surface of the land shall occur on a tract pooled by an order without the written consent of or a written agreement with the owner of the tract that approves the operations or disturbances.

### West Virginia

W. Va. Code § 22C-9-7(b)(1)

When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of a drilling unit, the interested persons may pool their tracts or interests for the development and operation of the drilling unit. In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, the commission shall set a hearing and provide notice to all interested parties. Each notice shall describe the area for which an order is to be entered in recognizable, narrative terms; contain such other information as is essential to the giving of proper notice, including the time and date and place of a hearing. After the hearing, the commission shall enter an order pooling all tracts or interests in the drilling unit for the development and operation thereof and for sharing production therefrom. Each such pooling order shall be upon terms and conditions which are just and reasonable and *in no event shall drilling be initiated on the tract of an unleased owner without the owner's written consent.*

## **II. States providing a hearing in case of surface owner objection**

### Tennessee

Tenn. Code Ann. § 60-1-209(a)

(1) No later than the filing of the application with the board for a permit to drill and prior to initiating any site preparation, the applicant shall give notice by certified mail, return receipt requested, of the applicant's intent to drill to the property owner or owners of the surface of the land to be drilled or to be affected by the surface disturbances listed in subdivision (a)(3). (2) The property owners to be notified under this section shall be the property owners of record in the property tax assessor's office in the county where the property is located. (3) The notice shall include the proposed location of the oil or gas well site, the proposed location of all new ingress and egress, the location of all diversions, drilling pits, dikes, and related structures and facilities, the location of proposed storage tanks and all other surface disturbances. (4) The notice shall state that the property owner and applicant have fifteen (15) working days from the date of mailing to discuss the location of surface disturbances in connection with the drilling operation. *It shall also state that if the property owner and applicant are unable to resolve differences*

*regarding the location of surface disturbances, either or both may request in writing a hearing before the supervisor or the supervisor's designee. The notice shall provide the name and address of the supervisor.*

### Colorado

OGCC Rule 318 (applies to unitization)

The Director may grant an operator's request for a well location exception to the requirements of this rule or any order because of geologic, environmental, topographic or archaeological conditions, irregular sections, a surface owner request, or for other good cause shown provided that a waiver or consent signed by the lease owner toward whom the well location is proposed to be moved, agreeing that said well may be located at the point at which the operator proposes to drill the well and where correlative rights are protected. If the operator of the proposed well is also the operator of the drilling unit or unspaced offset lease toward which the well is proposed to be moved, waivers shall be obtained from the mineral interest owners under such lands. If waivers cannot be obtained from all parties and no party objects to the location, the operator may apply for a variance under Rule 502.b. *If a party or parties object to a location and cannot reach an agreement, the operator may apply for a Commission hearing on the exception location.*

### **III. States requiring good faith negotiations for surface use and damages**

#### Montana

Mont. Code Ann. § 82-10-504

(1) (a) *The surface owner and the oil and gas developer or operator shall attempt to negotiate an agreement on damages.* The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by oil and gas operations. (b) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration must be given to the period of time during which the loss occurs. (c) At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation. (d) The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner must be compensated by a single sum payment for harm caused by exploration only. (e) The payments contemplated by this subsection (1) may cover only land directly affected by oil and gas operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption. A person may not reserve or assign damage and disruption compensation apart from the surface estate except to a tenant of the surface estate.

(2) An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner.

New Mexico

NM Stat. Ann. § 70-12-5

A. Prior to initial entry upon the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements and general evaluation of proposed routes and sites for oil and gas operations, the operator shall provide at least five business days' notice by certified mail or hand delivery to the surface owner.

B. No less than thirty days before first entering the surface of the land to conduct oil and gas operations, an operator shall, by certified mail or hand delivery, give the surface owner notice of the planned oil and gas operations. The notice shall include: (1) sufficient disclosure of the planned oil and gas operations to enable the surface owner to evaluate the effect of the operations on the property; (2) a copy of the Surface Owners Protection Act [70-12-1 NMSA 1978]; (3) the name, address, telephone number and, if available, facsimile number and electronic mail address of the operator and the operator's authorized representative; and (4) a proposed surface use and compensation agreement addressing, at a minimum and to the extent known, the following issues:

(a) placement, specifications, maintenance and design of well pads, gathering pipelines and roads to be constructed for oil and gas operations; (b) terms of ingress and egress upon the surface of the land for oil and gas operations; (c) construction, maintenance and placement of all pits and equipment used or planned for oil and gas operations; (d) use and impoundment of water on the surface of the land; (e) removal and restoration of plant life; (f) surface water drainage changes; (g) actions to limit and effectively control precipitation runoff and erosion; (h) control and management of noise, weeds, dust, traffic, trespass, litter and interference with the surface owner's use; (i) interim and final reclamation; (j) actions to minimize surface damages to the property; (k) operator indemnification for injury to persons caused by the operator; and (l) an offer of compensation for damages to the surface affected by oil and gas operations.

C. The notices required by this section shall be given to the surface owner at the address shown by the records of the county clerk at the time the notice is given. If legal title and equitable title are not held by the same person, notice shall be given to both the holder of legal title and to the holder of equitable title at the addresses shown by the records of the county clerk at the time the notice is given.

D. Upon receipt of the notice required by Subsection B of this section, *the surface owner may: (1) accept the proposed surface use and compensation agreement within twenty days; or (2) reject the proposed surface use and compensation agreement; provided that, failure to accept the proposed agreement within twenty days shall be deemed to be a*

*rejection by the surface owner. If the proposed agreement is rejected, the surface owner may enter into negotiations with the operator, including, if the parties agree, binding arbitration or mediation.*

### Wyoming

Wyo. Stat. § 30-5-402(f)

*After providing the notice of proposed oil and gas operations to the surface owner, 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. 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 established pursuant to W.S. 11-41-101 et seq. may be requested through the Wyoming agriculture and natural resource mediation board.*