

PROPOSED RECOMMENDATIONS ON NOTICE OF SUBSURFACE ENTRY

Background: Current North Carolina law requires that gas operators provide any surface owner notification at least 30 days in advance of entering a property to initiate any activity that will disturb the surface. (G.S. 113-420(b).) It provides that gas operators provide a 14-day notice in advance of entering a property to initiate activities that will not disturb the surface. (G.S. 113-420(a).) The latter provision could be read to require a notice be provided in the case of an entry to the subsurface. However, it seems more likely that the provision was intended and would be understood by a court to mean that a 14-day notice be provided prior to an entry onto the surface to conduct a non-surface-disturbing activity such as surveying. As a result, current law would appear to not address the issue of notice of subsurface entry that is part of the drilling process.

Surface owners could benefit significantly from receiving notice of subsurface entry to provide them the opportunity to complete any water quality or other environmental testing that they desired to complete in addition to the baseline testing required by the state. Mineral rights owners also would benefit because it would provide them an indication that drilling is imminent so that they can begin to be attentive to receiving payments from the gas production and to monitoring reporting of their contribution to well costs. For owners of compelled mineral rights and for surface owners who own the surface above these compelled mineral estates and the remaining subsurface rights, these benefits are even greater. Such surface owners and compelled mineral rights owners are likely to have had less time to make such preparations than their neighbors who leased their mineral rights months if not years before the pooling order is issued.

Providing advance notice to landowners and mineral rights owners also is not likely to place any appreciable burden on gas operators. Gas operators likely will have surface and mineral rights owners' names and addresses from their leasing efforts and their research for preparing the plats for their applications to designate production units. Even if not, the availability of this information online or at a central location within each county would make gathering it administratively easy.

Finally, providing and receiving notice promotes good relations between operators and surface owners or mineral rights owners in the production unit, which will facilitate resolution of any later disputes. While entry to the subsurface may not be as apparent as a surface entry to a general observer, to many landowners, particularly those who have been compelled into the unit, it will feel just as intrusive.

Recommendation 1:

~~Gas~~~~o~~Operators shall provide written notice between 30 days and six months prior to initiating drilling in the production unit containing the compelled mineral estate to the following parties: (i) ~~to~~ owners of compelled mineral rights who were required to be provided notice of the compulsory pooling process, (ii) ~~and to~~ owners of surface estates above the compelled mineral rights whose names are recorded as surface owners with the county Register of Deeds at the time that the application for a mandatory pooling order was filed, (iii) owners of surface estates above the compelled mineral rights that provide the Operator with a request for notice subsequent to a pooling order, (iv) each holder of a mortgage lien against the compelled property that has recorded the lien with the county Register of Deeds at the time that the application for a mandatory pooling order was filed, and (v) each mortgage lien holder against a compelled property that subsequent to a pooling order requests a notice and provides the Operator a copy of a recorded lien against the compelled property.

Recommendation 2:

The Compulsory Pooling Study Group recommends to the Mining and Energy Commission that it study and consider ~~adopting~~ a regulation or ~~recommending~~ a statutory requirement ~~that gas that applies Recommendation 1 to all~~ Operators with respect to all properties within a production unit ~~provide all mineral rights owners and corresponding surface owners written notice between 30 days and six months prior to initiating drilling in the production unit.~~