DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
Minerals & Mining Program
2050 West Main, Suite #1, Rapid City, SD 57702-2493
Telephone: 605-773-4201, FAX: 605-394-5317

**FORM 9**

# CERTIFICATE OF NOTIFICATION AND NEGOTIATION WITH SURFACE OWNER/SURFACE LESSEE

Surface Owner/Lessee _____

Surface Owner/Lessee Address of Record _____

Well Name/Project Description_____

Township _____ Range _____ Section _____County _____

Date Surface Owner/Lessee Notified and Served with All Three Pages of this Form _____

In accordance with SDCL 45-5A, I hereby certify,

1) I notified the above listed surface owner or lessee of the proposed drilling operations, sufficiently disclosing the plan of work and operations so as to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property;
2) I included with this notice a copy of all three pages of this form, advising the surface owner of his or her rights and options under SDCL 45-5A; and
3) That to the best of my knowledge and belief, an agreement regarding compensation for damages to livestock and surface land resulting from drilling operations on the described property has been or is being negotiated with the surface landowners or lessees, as listed above.

Operator Name: _____

| _____ | _____ | _____ |
|---|---|---|
| Signature | Title | Date |

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## RIGHTS OF SURFACE OWNERS AFFECTED BY OIL & GAS OPERATIONS

(Taken from SD Codified Law Chapter 45-5A)

**45-5A-4**. Compensation to surface owner for losses—Determining damages--Payment. The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner 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. In determining damages, consideration shall be given to the period of time during which the loss occurs and the surface owner may elect to be paid damages in annual installments over a period of time. However, the surface owner shall be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section shall only cover land directly affected by mineral development. Payments under this section for lost land value shall be paid only to the title holder of such land. Any reservation or assignment of such compensation apart from the surface estate except to a lessee of the surface estate is prohibited.

**45-5A-4.1**. Treble damages for failure to negotiate in good faith. If any mineral developer fails or refuses to conduct good faith negotiations with the surface owner to determine damages pursuant to § 45-5A-4, whether or not arising out of an existing contract or lease, the court, in any subsequent litigation arising out of the mineral developer's failure or refusal to negotiate in good faith, may, at its discretion, award treble damages on all or part of any recovery by the surface owner.

**45-5A-5**. Notice to surface owner of proposed surface disturbing development activities. The mineral developer shall give the surface owner written notice of proposed surface disturbing mineral development activities at least thirty days before the date operations are commenced. Surface disturbing activities include well site construction, road building, grading, excavation, demolition, and related activities. This notice shall be given to the record surface owner at the surface owner's address as shown by the records of the county register of deeds at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice shall be a form prepared by the Department of Environment and Natural Resources advising the surface owner of his or her rights and options under this chapter.

**45-5A-5.1**. Notice to surface owner and surface lessee prior to entry on land for mineral exploration activities. A mineral developer shall provide the surface owner, and surface lessee, if any, with at least seven days notice by registered mail to the address shown by the records of the county treasurer at the time the notice is given or by hand delivery prior to entry on the land for mineral exploration activities that do not disturb the surface such as surveying and well staking. This notice shall include:

(1) The name, address, and telephone number of the mineral developer or the mineral developer's designee;
(2) An offer to discuss the proposed exploration plan with the surface owner, and surface lessee if any, before the exploration operations begin; and
(3) A diagram of the approximate location or the proposed drilling site. The notice required by this section is deemed to be received by the surface owner and surface lessee immediately, if hand delivered, and seven days after mailing if sent by registered mail. The notice required by this section is in addition to the notice required by § 45-5A-5.

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**45-5A-5.2**. Damages for failure to provide notice. The surface owner, and surface lessee, if any, may seek actual and punitive damages in the court of proper jurisdiction if the mineral developer fails to provide the notice required by § 45-5A-5.1.

**45-5A-5.3**. Exception to notice requirement. The provisions of §§ 45-5A-5 to 45-5A-5.2, inclusive, do not apply if the mineral developer and surface owner or surface lessee have an existing use agreement or contract regarding the property at issue.

**45-5A-6**. Responsibilities of developer. The mineral developer is responsible for all damages to property, real or personal, resulting from the lack of ordinary care by the mineral developer. The mineral developer is also responsible for all damages to property, real or personal, resulting from an interference caused by mineral development.

**45-5A-7**. Time for notice of damages to developer. The affected surface owner, to receive compensation, pursuant to §§ 45-5A-8 and 45-5A-9, shall notify the mineral developer, in writing, of the damages sustained by the affected surface owner within two years after the injury becomes apparent or should have become apparent to a reasonable person.

**45-5A-8**. Offer of settlement by developer. Unless both parties provide otherwise by written agreement, within sixty days after the mineral developer receives notice of damages the mineral developer shall make a written offer of settlement to the person seeking compensation for the damages. The person seeking compensation may accept or reject any offer so made within sixty days of receipt.

**45-5A-9**. Action for compensation. 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.

**45-5A-10**. Other remedies not precluded. Any remedy provided by this chapter does not preclude any person from seeking other remedies allowed by law.