WEST VIRGINIA CODE CHAPTER 22 ARTICLE 11A

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§22-11A-1. Legislative findings.

[Repealed.]

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§22-11A-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Department" means the Department of Environmental Protection;

(b) "Carbon dioxide sequestration" means the injection of carbon dioxide and associated constituents into subsurface geologic formations intended to prevent its release into the atmosphere;

(c) "Carbon dioxide sequestration facilities" means the surface equipment used for transport, storage and injection of carbon dioxide, excluding pipelines used to transport carbon dioxide from one or more capture facilities to the sequestration injection site or sites.

(d) "Carbon dioxide sequestration site" means the underground carbon dioxide formations where the carbon dioxide is stored or is intended to be stored;

(e) "Excursion" means the migrating of carbon dioxide at or beyond the boundary of a carbon dioxide sequestration site; and

(f) "Secretary" means the Secretary of the Department of Environmental Protection.

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§22-11A-3. Prohibition of underground carbon dioxide sequestration without a permit; injection of carbon dioxide for the purpose of enhancing the recovery of oil or other minerals not subject to the provisions of this article, application to existing sequestration sites.

(a) The provisions of §22-11-1 *et seq*. of this code apply to all permits issued pursuant to this article except, where the express provisions of this article conflict with the provisions of §22-11-1 *et seq*. of this code, the express provisions of this article control.

(b) Except as set forth in subsection (c) of this section, no person shall engage in underground carbon dioxide sequestration in this state unless authorized by a permit issued by the department in accordance with §22-11-1 *et seq*. or §22-11B-1 *et seq*. of this code.

(c) The injection of carbon dioxide for purposes of enhancing the recovery of oil or other minerals pursuant to a project approved by the department shall not be subject to the provisions of this article.

(d) The provisions of this article apply to all permits issued and to all applications for permits submitted prior to the effective date of §22-11B-1 *et seq*. of this code. If the permit holder for an underground carbon dioxide sequestration facility that was granted a permit prior to the effective date of §22-11B-1 *et seq*. of this code seeks a modification of that permit after that article became effective, then the permit holder shall have the option to proceed either pursuant to the provisions of this article or the provisions of §22-11B-1 *et seq*. of this code.

(e) Any entity owning or operating an underground carbon dioxide sequestration facility which has commenced construction on or before the effective date of this article is hereby authorized to continue operating until such time as the secretary has established operational and procedural requirements applicable to such existing facilities and the entity owning or operating such facility has had a reasonable opportunity to comply with those requirements.

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§22-11A-4. General powers and duties of the secretary with respect to carbon dioxide sequestration.

[Repealed.]

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§22-11A-5. Permit application requirements and contents; permit application fees.

(a) A carbon dioxide sequestration permit application shall include:

(1) A description of the general geology of the area to be affected by the injection of carbon dioxide, including geochemistry, structure and faulting, fracturing and seals, and stratigraphy and lithology, including petrophysical attributes;

(2) A characterization of the injection zone and aquifers above and below the injection zone that may be affected by the injection of carbon dioxide, including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(3) The identification of all other drill holes and operating wells that exist or have existed within and adjacent to the proposed sequestration site;

(4) An assessment of the effect on fluid resources, on subsurface structures and on the surface of lands that may reasonably be expected to be affected by the injection of carbon dioxide, together with the measures required to mitigate those effects;

(5) The plans and procedures for environmental surveillance and excursion detection, prevention and control programs;

(6) A site and facilities description, including a description of the proposed carbon dioxide sequestration facilities and documentation sufficient to demonstrate that the applicant has, or will have prior to the commencement of the operation, all legal rights, including without limitation the right to surface or pore space use, necessary to sequester carbon dioxide and associated constituents into the proposed carbon dioxide sequestration site;

(7) Proof that the proposed injection wells are designed, at minimum, to the construction standards set forth by the department;

(8) A plan for periodic mechanical integrity testing of all wells;

(9) A monitoring plan to assess the migration of the injected carbon dioxide and to ensure the retention of the carbon dioxide in the sequestration site;

(10) Proof of bonding or financial assurance to ensure that carbon dioxide sequestration sites and facilities will be constructed, operated and closed in accordance with the purposes and provisions of this article and the rules promulgated pursuant to this article;

(11) A detailed plan for post-closure monitoring, verification, accounting, maintenance and mitigation;

(12) Procedures for the operator of the facilities to provide immediate verbal notice to the department of any excursion after the excursion is discovered, followed by written notice to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of

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subsurface interests within thirty days of discovering the excursion;

(13) Procedures for the termination or modification of any applicable Underground Injection Control (UIC) permit issued under Part C of the Safe Drinking Water Act, 42 U.S.C. §300h, et seq., if an excursion cannot be controlled or mitigated;

(14) A plan to provide proof of notice to surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests regarding the contents of the application. At a minimum, the notice shall include:

(A) The publication of a Class I legal advertisement in a newspaper of general circulation in each county of the proposed operation. The applicant shall publish the notice at the time of filing and shall identify in the notice the location where the public may examine the application;

(B) The mailing of a copy of the notice to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests that are located within one mile of the proposed boundary of the carbon dioxide sequestration site; and

(15) Any other requirement set forth in legislative rules promulgated under this article.

(b) Upon filing an application, an applicant shall pay a reasonable fee, as established by the secretary in legislative rules, to the department for the costs of reviewing, evaluating and processing the permit, serving notice of an application and holding any hearings. The fee shall be credited to a separate account and shall be used by the department as required to complete the tasks necessary to process, publish and reach a decision on the permit application.

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§22-11A-6. Carbon dioxide sequestration working group.

[Repealed.]

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§22-11A-7. Reporting and accountability.

[Repealed.]

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§22-11A-8. Oil, natural gas and coalbed methane activities at carbon dioxide sequestration sites; extraction of sequestered carbon dioxide.

(a) Nothing in this article shall be deemed to affect the otherwise lawful right of a mineral owner to drill or bore through a carbon dioxide sequestration site, if done in accordance with the rules promulgated under this article for protecting the carbon dioxide sequestration site against the escape of carbon dioxide.

(b) Nothing in this article is intended to impede or impair the ability of an oil, natural gas or coalbed methane operator to inject carbon dioxide through an approved enhanced oil, natural gas or coalbed methane recovery project and to establish, verify, register and sell emission reduction credits associated with the project.

(c) The Office of Oil and Gas shall have jurisdiction over any subsequent extraction of sequestered carbon dioxide that is intended for commercial or industrial purposes.

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§22-11A-9. Cooperative agreements.

The secretary is authorized to enter into cooperative agreements with other governments or government entities for the purpose of regulating carbon dioxide storage projects that extend beyond state regulatory authority under this article.

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