WEST VIRGINIA CODE: §22-11B-19

§22-11B-19. Co-tenants, ownership of pore space by multiple co-tenants and collective storage.

(a) If a storage operator does not obtain the consent of all persons who own the storage reservoir's pore space to the construction and operation of an underground carbon dioxide storage facility, the commission may require that the pore space owned by nonconsenting owners be included in a storage facility and be subject to geologic storage.

(1) The permit applicant and prospective storage operator shall negotiate with the pore space owners and acquire rights needed to access the pore space.

(2) If, after good-faith negotiation, the applicant or operator cannot locate or cannot reach an agreement with all necessary pore space owners of a tract or parcel but has secured written consent or agreement from the owners of at least 75 percent of the interests in the pore space of the tract or parcel for the storage facility, all of the pore space of said interests for which an agreement has not been reached shall be declared to be included within the proposed storage facility if the commission finds that the requirements of this section have been met. For the purposes of this section, any unknown or unlocatable owners shall be deemed to have consented or agreed to the use of said pore space, provided that the storage operator has complied with the publication requirements of this article.

(3) Except for temporary access for seismic studies and in cases of emergency, the commission or the secretary may not allow any surface disturbance on any surface tract or tracts overlying the pore space of a non-consenting owner.

(b) *Seismic study.* — It is the policy of this State to allow for the exploration for geologic storage. If an operator is unable to reasonably negotiate with a surface owner for the right to conduct seismic study on lands owned by the surface owner, the secretary or the commission is authorized to issue an order for the entry onto such lands by the operator. In such instance, the operator shall notify the owner or owners 15 days prior to entry, pay the surface owner just and reasonable compensation as established by the secretary or the commission, and reasonably repair all damages to the surface and anything thereon resulting from entry. Just and reasonable compensation shall include, without limitation, compensation for all unrepairable damages to the surface and anything thereon. Any order for entry shall establish an expiration date after a reasonable duration but also allow for reauthorization as needed. The operator shall post a bond with the secretary before entry to be used as compensation to the surface owner but shall not limit the amount of compensation to be paid to the surface owner for any damages to the surface and anything thereon. Further, any such seismic study conducted by this section shall be limited to geologic storage and shall remain confidential and proprietary. The operator shall defend, indemnify, and hold harmless the property owner for all claims arising out of any entry onto the property by the operator, its contractors, and its agents, except those claims arising from

WV Legislature

the intentional acts of a property owner.

(c) *Collective storage*. —

(1) The storage operator shall provide a list to the commission of all persons reasonably known to own an interest in pore space proposed to be collectively used in an application to the commission for a collective storage order.

(2) If after applying the provisions of §22-11B-19(a), the applicant or operator cannot locate, reach an agreement, or receive a commission order for all necessary pore space in a storage reservoir, but has under the provisions of §22-11B-19(a), secured written consent, agreement, or a commission order for at least 75 percent of the pore space acreage in the storage reservoir, all of the pore space in the storage reservoir shall be declared to be included within the proposed storage facility if the commission finds that the requirements of this section have been met. For the purposes of this section, any unknown or unlocatable owners shall be deemed to have consented or agreed to the use of said pore space, provided that the storage operator has complied with the publication requirements of this article. A collective storage order shall be made only after the commission provides notice to all pore space owners proposed to be included within the order.

(3) The secretary shall set and collect a fee adequate to pay expenses associated with the conduct of administrative hearings for the collective storage of pore space and reimburse the commission for said expenses.

(4) If the proposed collective storage order concerns pore space with unknown or unlocatable owners, the storage operator shall publish one notice in the newspaper of the largest circulation in each county in which the pore space is located. The notice shall appear no more than 30 days prior to the initial application for the collective storage order. The applicant shall file proof of notice with the commission concurrently with the application. The notice shall:

(A) State that an application for a collective storage order has been filed with the commission;

(B) Describe the pore space proposed to be collectively used;

(C) In the case of an unknown pore space owner, indicate the name of the last known owner;

(D) In the case of a unlocatable pore space owner, identify the owner and the owner’s last known address; and

(E) State that any person claiming an interest in the pore space proposed to be collectively used should notify the commission and the storage operator at the published address within twenty (20) days of the publication date.

(5) A collective storage order shall authorize the long-term storage of carbon dioxide

WV Legislature

beneath the tract or portion thereof. The order shall also specify, where necessary, the location of carbon injection wells, outbuildings, roads, monitoring equipment, and access to them. The collective storage order shall identify the compensation to be paid to unknown, unlocatable, and nonconsenting pore space owners and the basis for valuation of the collective interest. The commission may consider evidence submitted by nonconsenting surface and nonconsenting pore space owners as to the valuation of their interest.

(6) Except for temporary access for seismic studies and in cases of emergency, the commission or the secretary shall not allow any surface disturbance on any surface tract or tracts overlying the pore space of a non-consenting owner.

(7) A certified copy of any collective storage order and a survey of the storage field shall be recorded by the operator in the office of the county clerk of the county or counties in which all or any portion of the collective tract is located. The commission shall attempt to provide a copy of the collective storage order to those required to be noticed. For purposes of this section, any unknown or unlocatable owners shall be deemed to have received notice, provided that the operator has complied with the publication requirements of subdivision (c)(3) of this section with respect to the unknown or unlocatable owners.

(8) The commission shall provide a certified copy of any collective storage order to the secretary.

WV Legislature