WEST VIRGINIA CODE CHAPTER 22 ARTICLE 11B

WV Legislature

§22-11B-1. Statement of Purpose.

It is the purpose of this article to:

(1) Foster, encourage, promote, and establish a legal and regulatory framework for the development and approval of underground carbon dioxide sequestration facilities;

(2) Designate a state agency responsible for establishing standards and rules for the development and approval of underground carbon dioxide sequestration and storage facilities; and

(3) Safeguard, protect and enforce the correlative rights of operators, mineral owners, pore space owners, and surface owners in that each may obtain just and reasonable compensation for their respective contribution for underground carbon dioxide sequestration facilities.

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§22-11B-2. Definitions.

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

(1) “Carbon dioxide” means carbon dioxide produced by anthropogenic sources which is of such purity and quality that it will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir which allow the reservoir to effectively enclose and contain a stored gas;

(2) “Carbon dioxide sequestration” or “carbon dioxide storage” means the injection of carbon dioxide and associated constituents into subsurface geologic reservoirs intended to provide for the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations and thereby prevent its release into the atmosphere;

(3) “Class VI underground injection control” or “Class VI UIC” refers to the classification by the US EPA of wells for injection of substances or materials into deep rock formations and, specifically, to the class of wells that are used to inject carbon dioxide into underground rock formations to reduce carbon dioxide emissions to the atmosphere and mitigate climate change;

(4) “Class VI underground injection control permit,” “Class VI UIC permit,” or “Class VI permit” means a permit to drill injection wells and to conduct carbon dioxide sequestration at a specified site;

(5) “Commission” means the Oil and Gas Conservation Commission established pursuant to §22C-9-1 *et seq*. of this code.

(6) “Completion certificate” means a Certificate of Underground Carbon Dioxide Storage Project Completion;

(7) “Excursion” means the migration of carbon dioxide at or beyond the designated boundary of a carbon dioxide sequestration site;

(8) “Permit” means a Class VI underground injection control permit issued by the secretary or by the US EPA, authorizing a person or business entity to drill an injection well and to construct and operate a carbon dioxide sequestration facility;

(9) “Pore space” means a cavity or void, whether naturally or artificially created, in a subsurface stratum and is also known as container space or storage rights;

(10) “Reservoir” means a subsurface stratum, formation, aquifer, cavity, or void, whether naturally or artificially created, including oil and gas reservoirs, saline formations, and coal seams suitable for, or capable of being made suitable for, injecting and storing carbon dioxide;

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(11) “Secretary” means the Secretary of the Department of Environmental Protection;

(12) “Storage facility” or “sequestration facility” means the reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a carbon dioxide sequestration project, but does not include pipelines used to transport carbon dioxide to the storage facility;

(13) “Storage operator” means a person applying for or holding a permit until the issuance of a completion certificate for the relevant storage facility;

(14) “Storage reservoir” means a reservoir proposed, authorized, or used for storing carbon dioxide;

(15) “UIC” means underground injection control;

(16) “Unknown or unlocatable owner” means a person vested with a present ownership interest in the pore space whose present identity or location cannot be determined from:

(A) A reasonable review of the records of the clerk of the county commission, the sheriff, the assessor, and the clerk of the circuit court in the county or counties in which the property is located, and includes unknown heirs, successors and assigns known to be alive;

(B) A reasonable inquiry in the vicinity of the owner’s last known place of residence;

(C) A diligent inquiry into known interest owners in the same tract; and

(D) A reasonable review of available Internet resources commonly utilized by the industry; and

(17) “US EPA” means United States Environmental Protection Agency.

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§22-11B-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.

(a) It is unlawful for any person to commence work on, or to operate, a carbon dioxide sequestration facility or storage site without first securing a Class VI underground injection control permit from the secretary or from the US EPA.

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

(c) If an oil, natural gas, or coalbed methane well operator proposes to convert its operations to carbon dioxide sequestration, then the underground carbon dioxide sequestration facility shall be regulated pursuant to this article and §22-11-1 *et seq*. of this code.

(d) All applications for permits submitted after the effective date of this article shall be governed by the provisions of this article and the provisions of §22-11-1 *et seq*. of this code. Permits issued and applications submitted prior to the effective date of this article shall be governed by the provisions of §22-11-1 *et seq*. and §22-11A-1 *et seq*. of this code. If the holder of a Class VI underground injection control permit or other carbon dioxide sequestration permit, granted prior to the effective date of this article, seeks a modification of that permit after this article becomes effective, then the permit holder shall have the option to proceed either according to the provisions of this article or the provisions of §22-11A-1 *et seq*. of this code.

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§22-11B-4. Permit application requirements and contents; application fee, required findings, and rulemaking.

(a) Every permit application filed under this article shall be on a form as may be prescribed by the secretary, shall be verified, and shall contain all information specified by legislative rule.

(b) Upon filing an application for a permit, an applicant shall:

(1) Pay a fee in an amount set by the secretary. The amount of the fee shall be set by rule and shall be based on the secretary's anticipated cost of processing applications for permits, orders, or determinations under this article. The fee shall be deposited in the Carbon Dioxide Storage Facility Administrative Fund.

(2) Pay to the secretary the costs the secretary incurs in publishing notices of applications and notices for hearings on applications submitted under this article.

(c) Before a permit application may be approved, the secretary shall determine whether the proposed storage facility contains commercially valuable minerals and, if it does, a permit may be issued only if the secretary is satisfied that the interests of the mineral owners or mineral lessees will not be adversely affected or have been addressed in an written agreement entered into by the mineral owners, mineral lessees, and the storage operator;

(d) No permit shall be issued under this article unless the secretary finds:

(1) That the application and the proposed operations comply with all requirements established by the secretary, including any applicable underground injection rules, and with all applicable provisions of state and federal law;

(2) That the storage facility is suitable and feasible for carbon dioxide injection and sequestration;

(3) That the storage operator has made a good-faith effort to obtain the consent of all persons who own the storage reservoir's pore space;

(4) That the storage operator has obtained the written consent of persons who own at least 75 percent of the storage reservoir's pore space and have at least begun the process to obtain the remaining interests through the commission;

(5) That the proposed storage facility will not adversely affect surface waters or formations containing fresh water;

(6) That the storage facility will not unduly endanger human health or the environment;

(7) That adequate horizontal and vertical boundaries of the storage reservoir are defined, including buffer areas, to ensure that the storage facility is operated safely and prudently;

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(8) That the storage operator will establish monitoring facilities and protocols to assess the location and migration of carbon dioxide injected for storage and to ensure compliance with all permit, statutory, and administrative requirements;

(9) That all nonconsenting pore space owners are or will be justly and reasonably compensated in accordance with the rules and procedures set forth in or promulgated under this article by the secretary and the commission; and

(10) That the storage facility is in the public interest.

(e) To the extent not inconsistent with state and federal regulations, the secretary shall render a decision on a permit application within one year after submission of a complete application.

(f) The secretary shall propose rules for legislative approval, pursuant to the provisions of §29A-3-1 *et seq*. of this code, detailing additional requirements for inclusion in a permit application, such as:

(1) Site characterization requirements;

(2) Injection well construction requirements for materials that are compatible with and can withstand contact with carbon dioxide over the life of a carbon dioxide sequestration project;

(3) Well operation requirements;

(4) Comprehensive monitoring requirements that address all aspects of well integrity, carbon dioxide injection and storage, as well as air and ground water quality during the injection operation and the post-injection site care period;

(5) Financial responsibility requirements assuring the availability of funds for the life of a carbon dioxide sequestration project (including post-injection site care and emergency response); and

(6) Reporting and recordkeeping requirements that provide project-specific information to continually evaluate the site operations and confirm environmental protection.

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§22-11B-5. Public participation in permit process, notices, public hearing.

(a) Public notice of an application for a permit required under this article shall allow at least 30 days for public comment. The secretary shall specify the required contents of the public notice.

(b) The secretary shall send the public notice to the applicant, who shall be responsible for publication of a Class 1 legal advertisement of the notice by a date and in a paper specified by the secretary. Upon publication, the applicant shall send the secretary a copy of the certificate of publication. The costs of publication shall be borne by the applicant.

(c) Notice of an application for a permit shall be served to each mineral lessee, mineral owner, and pore space owner with a legal interest that involves the storage reservoir.

(d) Notice of an application for a permit shall be served to each surface owner of land overlying the storage reservoir.

(e) Notice of an application for a permit shall be served to any additional persons that the secretary requires.

(f) Service of individual notices required by this section shall be through personal service, by registered mail, or by any method of delivery that requires a receipt or signature confirmation.

(g) The secretary and/or the commission shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest of issues relevant to the draft permit. The secretary and/or the commission may also hold a public hearing at his or her discretion if a hearing may assist in clarifying one or more issues involved in the permit decision. Should a public hearing be held, notice of the hearing shall be provided in the same manner as set forth above with respect to public notice of the preparation of a draft permit.

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§22-11B-6. Permit and order provisions; identification of agent.

(a) The secretary may include in any permit or order all things necessary to carry out this article's objectives and to protect and adjust the respective rights and obligations of persons affected by a carbon dioxide sequestration facility.

(b) Every well operator required to designate an agent under this article shall, within five days after the termination of the designation, notify the secretary of the termination and designate a new agent.

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§22-11B-7. Additional rulemaking authority.

In addition to the rules specified in §22-11B-4 of this code, the secretary and the commission may promulgate such emergency, interpretive, legislative, and procedural rules, pursuant to the provisions of §29A-3-1 *et seq*. of this code, useful or necessary to carry out the requirements of this article, including, but not limited to:

(1) The issuance of Underground Carbon Dioxide Storage Facility Completion Certificates;

(2) The administration of the Carbon Dioxide Storage Facility Administrative Fund and the Carbon Dioxide Storage Facility Trust Fund;

(3) The issuance of determinations of the amounts of carbon dioxide stored pursuant to individual underground injection control permits issued for that purpose, based upon requests for storage determination;

(4) The issuance of orders allowing for seismic studies and other steps to explore for suitable locations of carbon dioxide geologic storage; and

(5) The issuance of collective storage orders as a part of the development of a proposed carbon dioxide sequestration project.

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§22-11B-8. Environmental protection, other law.

(a) For the purposes of this article and in all other respects, any carbon dioxide injected and sequestered in accordance with an underground injection control permit issued by the secretary shall not be considered a pollutant and the operation and existence of such a carbon dioxide sequestration facility shall not be considered a public nuisance.

(b) The secretary's and the commission's authority as set forth in this article shall not otherwise limit the authority or jurisdiction of the secretary and the commission in any manner.

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§22-11B-9. 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 storage facility if done in accordance with the secretary's underground injection control permit rules or any other applicable legal requirements which are intended to protect the carbon dioxide storage facility 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) Subject to compliance with any applicable underground injection control regulations or permit, the Office of Oil and Gas shall have jurisdiction to review and approve of any subsequent extraction of sequestered carbon dioxide from a permitted underground carbon dioxide storage facility that is intended for commercial or industrial purposes.

WV Legislature

§22-11B-10. Cooperative agreements.

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

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§22-11B-11. Ownership of carbon dioxide.

The storage operator shall be the owner of the carbon dioxide injected into and stored in a storage reservoir approved under this article and shall maintain ownership and control until the secretary issues a Certificate of Underground Carbon Dioxide Storage Project Completion. While the storage operator has ownership, the operator is liable for any damage the carbon dioxide may cause, including damage caused by carbon dioxide that escapes from the storage facility.

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§22-11B-12. Certificate of project completion, release, transfer of title and custody, filing.

(a) After carbon dioxide injections into a reservoir end, and the storage operator has fulfilled all requirements of its Class VI underground injection control permit including requirements related to post-injection site care and site closure, and upon application by the storage operator demonstrating compliance with this article, the secretary may issue a Certificate of Underground Carbon Dioxide Storage Project Completion ("completion certificate").

(b) The completion certificate may only be issued after public notice and hearing. The secretary shall establish notice requirements for this hearing by legislative rule.

(c) The completion certificate may not be issued until at least 50 years after carbon dioxide injections end or other time frame established on a site-specific basis in accordance with the legislative rules regarding the timeframe for post-injection site care and site closure.

(d) The completion certificate may only be issued if the storage operator:

(1) Is in full compliance with all laws and other requirements governing the storage facility, and has fulfilled all requirements of any underground injection control permit associated with the facility including permit requirements related to post-injection site care and site closure, legislative rules regarding post-injection site care and site closure, and other applicable requirements;

(2) Demonstrates that it has addressed all pending claims regarding the storage facility's operation; and

(3) Demonstrates that the storage reservoir is reasonably expected to retain the carbon dioxide stored in it.

(e) As of the effective date of a completion certificate:

(1) Ownership of the stored carbon dioxide transfers, without payment of any compensation, to the owners of the pore space as established in §22-11B-18 of this code;

(2) Ownership acquired by the pore space owners under subdivision (e)(1) of this section includes all rights and interests in the stored carbon dioxide and any associated leasing rights: *Provided*, That all liability other than contractual obligations and criminal liability associated with the stored carbon dioxide shall become the responsibility of the state and the state shall defend, indemnify, and hold harmless the pore space and surface owners against all claims using only funds from the Carbon Dioxide Storage Facility Trust Fund;

(3) The storage operator and all persons who transported and/or generated any stored carbon dioxide are released from all liability other than contractual obligations and criminal liability associated with the storage facility;

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(4) Any bonds posted by the storage operator shall be released; and

(5) Notwithstanding ownership of the stored carbon dioxide in the pore space owners as provided herein, monitoring, and managing the storage facility shall become the state's responsibility to be overseen by the secretary utilizing only money from the Carbon Dioxide Storage Facility Trust Fund until such time as the federal government assumes responsibility for the long-term monitoring and management of storage facilities. The release of liability under this section shall not apply to a current or former owner or operator of a storage facility when such liability arises from that owner or operator's noncompliance with applicable underground injection control laws, regulations, or permits prior to issuance of the certificate of completion of injection operations nor shall it apply when the director determines that there is fluid migration for which the operator is responsible that causes or threatens imminent and substantial endangerment to an underground source of drinking water.

(f) The secretary shall require that a copy of the completion certificate and a survey of the storage field be filed with the county recorder in the county or counties where the carbon dioxide storage facility is located.

(g) The secretary shall implement this article in a manner consistent with and as he or she deems necessary to carry out the purposes and requirements of the federal Safe Drinking Water Act, as amended, and its implementing regulations relating to the State's primary enforcement authority for the underground injection control program established under that Act with respect to the storage and sequestration of carbon dioxide, including, but not limited to, the State's authority to immediately and effectively restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment. Additionally, in no event may the release of liability under this section interfere with the US EPA's authority under Section 1431 of the federal Safe Drinking Water Act.

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§22-11B-13. Carbon Dioxide Storage Facility Administrative Fund.

(a) There is hereby created in the State Treasury a special revenue fund to be known as the Carbon Dioxide Storage Facility Administration Fund. Expenditures from the fund shall be made by the secretary for the purposes set forth in this article, and are not authorized from collections, but are to be made only in accordance with appropriation from the Legislature and §12-3-1 *et seq*. of this code. The fund may only be used for the purpose of payment of all expenses of the department in processing permit and certificate applications; regulating storage facilities during their construction, operation, and pre-closure phases; and making storage amount determinations under §22-11B-17 of this code. Any balance remaining in the fund at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue fund. The moneys accrued in the fund, any interest earned thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section.

(b) The secretary may, through a cooperative agreement with another agency, use money from the fund to compensate the cooperating agency for expenses that cooperating agency incurs in carrying out regulatory responsibilities that agency may have over a storage facility.

WV Legislature

§22-11B-14. Application fee, deposit, use in cooperative regulatory functions.

Permit applicants and operators seeking completion certificates shall pay the secretary an application fee, established by legislative rule, based upon each ton of carbon dioxide stored or to be stored at the facility. This fee shall be deposited in the Carbon Dioxide Storage Facility Administrative Fund.

WV Legislature

§22-11B-15. Carbon Dioxide Storage Facility Trust Fund.

(a) There is hereby created in the State Treasury a special revenue fund to be known as the Carbon Dioxide Storage Facility Trust Fund. Expenditures from the fund shall be made by the secretary for the anticipated expenses associated with the long-term monitoring and management of closed storage facilities, and are not authorized from collections, but are to be made only in accordance with appropriation from the Legislature and §12-3-1 *et seq*. of this code. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the special revenue fund. The moneys accrued in the fund, any interest earned thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section.

(b) The secretary may, through a cooperative agreement with another agency, use money from the fund to compensate the cooperating agency for expenses that cooperating agency incurs in carrying out regulatory responsibilities that agency may have over a storage facility.

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§22-11B-16. Operation fee, use, report to legislature.

(a) Storage operators shall pay the secretary a fee on each ton of carbon dioxide injected for storage. The fee shall be in the amount set by legislative rule. The amount shall be based on the contribution of the storage facility and the source of the carbon dioxide to the energy and agriculture production economy of West Virginia and the secretary's anticipated expenses associated with the long-term monitoring and management of closed storage facilities. This fee shall be deposited in the Carbon Dioxide Storage Facility Trust Fund.

(b) The secretary shall file with the Legislature's Joint Committee on Government and Finance a report discussing whether the amount in the Carbon Dioxide Storage Facility Trust Fund and fees being paid into it are sufficient to satisfy the fund's objectives. The first report is due December 31, 2025, and subsequent reports are due every four years thereafter.

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§22-11B-17. Determining storage amounts, carbon credits, fee.

(a) The secretary, under procedures and criteria developed by legislative rule, shall determine the amount of injected carbon dioxide stored in a reservoir that has been or is being used for an enhanced oil or gas recovery project. The secretary may also make such a determination for carbon dioxide stored under this article.

(b) The storage amounts determined by the secretary under subsection (a) of this section may be used for such matters as establishing the amounts of carbon credits, allowances, trading, emissions allocations, and offsets, and for other similar purposes.

(c) The secretary may charge a reasonable fee to the person requesting a storage determination. The fee shall be set by legislative rule.

(d) Fees the secretary receives for storage determinations shall be deposited into the Carbon Dioxide Storage Facility Administrative Fund.

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§22-11B-18. Subsurface pore space or container space.

(a) Title to pore space in all strata underlying the surface of lands and waters is vested in the owner of the overlying surface estate.

(b) A conveyance of title to the surface of real property conveys the pore space in all strata underlying the surface of the real property.

(c) Title to pore space may not be severed from title to the surface of the real property overlying the pore space. An instrument or arrangement that seeks to sever title to pore space from title to the surface is void and unenforceable as to the severance of the pore space from the surface interest.

(d) This article does not affect transactions before the effective date of this article, where the terms are clear and unambiguous upon the face of the instruments which severed pore space from title to the surface estate. However, there shall be a rebuttable presumption that for all transactions prior to the effective date of this article, that the pore space remains vested with the surface owner unless there was a clear and unambiguous reservation, conveyance, and/or severance of the pore space from the surface upon the face of the instruments.

(e) In the relationship between a severed mineral owner and a pore space estate, this article does not change or alter the common law, as it relates to the rights belonging to, or the dominance of, the mineral estate.

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§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 the intentional acts of a property owner.

(c) *Collective storage*. —

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(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 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,

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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.

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§22-11B-20. Funds to be held in trust for unknown or unlocatable owners.

The storage operator shall hold all funds of unknown or unlocatable owners in trust in an interest bearing account and shall transfer said funds as unclaimed property to the State Treasurer pursuant to §36-8-1 *et seq.*, the Uniform Unclaimed Property Act.

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§22-11B-21. Judicial Review.

Any person aggrieved by a final decision of the department or the commission under this article is entitled to review of such final decision in accordance with the applicable provisions of §29A-1-1 of this code, State Administrative Procedures Act, §22-9-1 *et seq*. of this code, and in the Circuit Court of Kanawha County or any other county where the property is located.

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