

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1209

AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 14-39-1-4, AS ADDED BY P.L.150-2011, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 4. (a) A carbon dioxide transmission pipeline company may apply to the department for issuance of a carbon dioxide transmission pipeline certificate of authority. The department shall prescribe the form of the application, which must:

- (1) include a filing fee of one thousand dollars (\$1,000);
- (2) be signed by a responsible officer of the company;
- (3) include a statement verifying that the information submitted is true, accurate, and complete to the best of that responsible officer's knowledge and belief; and
- (4) include all information necessary for the department to find the following:
 - (A) That the applicant **or the contractor or subcontractor of the applicant** has the financial, managerial, and technical ability to construct, operate, and maintain a carbon dioxide transmission pipeline in Indiana.
 - (B) That the applicant has the requisite experience constructing, operating, and maintaining a ~~carbon dioxide~~ transmission pipeline.
 - (C) That the applicant has entered into a contract to transport

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carbon dioxide by pipeline in Indiana with:

- (i) at least one (1) producer of carbon dioxide located in Indiana; and
- (ii) unless all of the carbon dioxide to be transported in the proposed carbon dioxide transmission pipeline is for the applicant's own use or account, at least one (1) end user **or storer** of carbon dioxide.

(D) That the applicant has provided documentation to the department showing the proposed length, diameter, and location of the proposed carbon dioxide transmission pipeline in Indiana.

(E) That the applicant will construct, operate, and maintain the proposed carbon dioxide transmission pipeline in accordance with applicable local, state, and federal law, including federal and state safety regulations and rules governing the construction, operation, and maintenance of carbon dioxide transmission pipelines, and related facilities and equipment, to ensure the safety of pipeline employees and the public.

(F) That the applicant has:

- (i) entered into an agreement with the Indiana utility regulatory commission concerning the mitigation of agricultural impacts associated with the construction of the proposed carbon dioxide transmission pipeline; or
- (ii) signed a statement indicating that the applicant agrees to use, in connection with the construction of the proposed carbon dioxide transmission pipeline, the guidelines adopted under IC 8-1-22.6-8 by the pipeline safety division of the Indiana utility regulatory commission.

(b) The department shall review an application filed under subsection (a). Subject to subsection (f), if the department determines that the application is incomplete or inaccurate, or both, the department shall return the application to the applicant, informing the applicant in writing of the applicant's right to file a corrected application with the department. If the department determines that the application is complete and accurate, the department shall provide notice to the applicant of:

- (1) that determination; and
- (2) the date, time, and location of the public information meeting to be held under subsection (d).

(c) The applicant shall:

- (1) upon receipt of a notice under subsection (b):
 - (A) place for public inspection a copy of the application in a



public library located in each county in which the carbon dioxide transmission pipeline is proposed to be located; and
 (B) publish notice, in the same manner that would be required if the applicant were subject to IC 5-3-1, in each county in which the carbon dioxide transmission pipeline is proposed to be located, of:

- (i) the name and address of each library in which a copy of the application is placed under clause (A); and
 - (ii) the date, time, and location of the public information meeting to be held under subsection (d);
- (2) provide to the department proof of publication of notice under subdivision (1)(B); and
- (3) have a representative present at the public information meeting held under subsection (d).
- (d) The department shall:
- (1) conduct a public information meeting in the county seat of one (1) of the counties, as determined by the department, in which the proposed carbon dioxide transmission pipeline will be located; and
 - (2) provide an opportunity at the meeting for members of the public to be briefed and to ask questions about the proposed carbon dioxide transmission pipeline.
- (e) Not later than ninety (90) days after the public information meeting held under subsection (d), the department shall notify the applicant in writing that:
- (1) the department:
 - (A) has made the findings described in subsection (a)(4); and
 - (B) has approved the application; or
 - (2) the department:
 - (A) has determined that the department is unable to make the findings described in subsection (a)(4); and
 - (B) has disapproved the application.
- (f) The department shall process a corrected application that is filed as permitted under subsection (b) in the same manner the department processes an initially filed application under subsection (a).
- (g) If the department fails to act under subsection (e) not later than ninety (90) days after the public information meeting held under subsection (d), the application is considered to be approved by the department.
- (h) If:
- (1) the department approves the application under subsection (e)(1); or



(2) the application is considered to be approved as described in subsection (g);
 the department shall issue to the applicant a carbon dioxide transmission pipeline certificate of authority.

SECTION 2. IC 14-39-2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

Chapter 2. Underground Storage of Carbon Dioxide

Sec. 1. (a) Except as otherwise provided in this chapter, this chapter does not apply to extractable mineral resources.

(b) Except as otherwise provided in this chapter, this chapter does not preclude the exercise of rights provided by IC 14-37-9.

(c) Except as otherwise provided in this chapter, this chapter applies to the underground storage of carbon dioxide.

(d) The rights and requirements of this chapter:

(1) are subordinate to the rights pertaining to oil, gas, and coal resources; and

(2) may not adversely affect oil, gas, and coal resources, except as is strictly necessary to construct and maintain a carbon sequestration project that will provide for the permanent storage of carbon dioxide.

Sec. 2. (a) The following definitions apply throughout this chapter.

(b) "Carbon dioxide" has the meaning set forth in IC 14-39-1-1.

(c) "Carbon dioxide injection well" refers to a well that is used to inject carbon dioxide into a reservoir for carbon sequestration pursuant to a UIC Class VI permit.

(d) "Carbon dioxide plume" means the extent of an underground three-dimensional injected carbon dioxide stream.

(e) "Carbon sequestration" means the underground storage of carbon dioxide in a reservoir.

(f) "Carbon sequestration project" means any project that involves the underground storage of carbon dioxide in a reservoir pursuant to at least one (1) UIC Class VI permit.

(g) "Mineral lessee" means a lessee identified by the records of the recorder of deeds for each county containing a portion of the proposed reservoir who holds an interest in minerals on real property that are located above, below, or within the proposed reservoir that has been severed from the surface estate by:

(1) grant;

(2) exception;

(3) reservation;



- (4) lease; or
- (5) any other means.

(h) "Mineral owner" means an owner identified by the records of the recorder of deeds for each county containing a portion of the proposed reservoir who holds an interest in minerals on real property that are located above, below, or within the proposed reservoir that has been severed from the surface estate by:

- (1) grant;
- (2) exception;
- (3) reservation;
- (4) lease; or
- (5) any other means.

(i) "Pore space" means subsurface cavities or voids that can be used as a storage space for carbon dioxide.

(j) "Pore space owner" means:

- (1) a person;
- (2) a trust;
- (3) a corporation; or
- (4) another entity;

that has title to, a right to, or an interest in pore space.

(k) "Reservoir" means a subsurface:

- (1) sedimentary stratum;
- (2) formation;
- (3) aquifer;
- (4) cavity; or
- (5) void;

that is naturally or artificially created for the use of, or is capable of being made suitable for, injecting and storing carbon dioxide.

(l) "Storage facility" means the subsurface area consisting of the extent of a carbon dioxide plume which is required to be delineated on an approved UIC Class VI permit or an amendment to a UIC Class VI permit of a storage operator.

(m) "Storage operator" means:

- (1) a person;
- (2) a trust;
- (3) a corporation; or
- (4) another entity;

that operates a carbon sequestration project.

(n) "Surface or subsurface property interest owner" means a property interest owner identified by the records of the recorder of deeds for each county containing a portion of the proposed storage facility who holds a fee simple interest or other freehold



interest in the surface or subsurface of the property, which may include mineral rights. The term does not include the owner of a right-of-way, an easement, or a leasehold.

(o) "UIC Class VI permit" means a permit issued under the federal Safe Drinking Water Act's Underground Injection Control program that allows:

- (1) a person;
- (2) a trust;
- (3) a corporation; or
- (4) another entity;

to operate a carbon dioxide injection well.

(p) "Underground storage of carbon dioxide" means the injection and storage of carbon dioxide into underground strata and formations pursuant to at least one (1) UIC Class VI permit.

Sec. 3. (a) Before July 1, 2022, this chapter does not alter, amend, diminish, or invalidate ownership of the pore space of real property that has been divided into a surface estate and a mineral estate where ownership of the pore space was acquired or reserved by conveyance document. Any ownership rights to pore space that were not expressly or by implication acquired or reserved by conveyance document remain vested in the surface estate.

(b) After June 30, 2022, the ownership of pore space is vested in the surface estate of real property that is divided into a surface estate and a mineral estate unless such rights are explicitly acquired by conveyance document.

(c) This chapter does not alter, amend, diminish, or invalidate common law established prior to July 1, 2022, regarding the rights to or dominance of a mineral estate, or the implied or express right of a mineral owner or mineral lessee for the use of pore space.

(d) A grant of:

- (1) an easement to use; or
- (2) a lease of pore space;

for carbon sequestration is in perpetuity if specified by an easement or lease. Unless an individual who obtains an easement or lease operates carbon dioxide injection not later than twenty (20) years after obtaining the easement or lease, interest shall lapse, extinguish, and revert to the owner of the surface estate.

Sec. 4. (a) If at least two (2) pore space owners own pore space located within a proposed carbon dioxide storage area of a storage facility, the owners may agree to integrate their interests to develop the pore space as a proposed storage facility for the underground storage of carbon dioxide.



(b) If all of the owners of the pore space under subsection (a) do not agree to integrate their interests, the department may issue an order requiring the owners to integrate their interests and to develop the pore space as a proposed storage facility for the underground storage of carbon dioxide to serve the public interest subject to the findings under subsection (c).

(c) Before issuing an order under subsection (b), the department must make the following findings:

(1) That a storage operator has been issued a UIC Class VI permit or an amended UIC Class VI permit.

(2) That the storage operator has made a good faith effort to obtain the consent of all pore space owners located within the proposed storage facility.

(3) That the storage operator has obtained the consent of the owners of the pore space underlying at least seventy percent (70%) of the surface area above the proposed storage facility or amended proposed storage facility.

(4) That all pore space owners who do not agree to integrate their interests to develop the pore space as a proposed storage facility for the underground storage of carbon dioxide are equitably compensated.

(d) A right to pore space granted by this section does not confer a right to enter upon, or otherwise use, the surface of the land which is integrated under this section unless provided in an order requiring the owners to integrate their interests and to develop the pore space as a proposed storage facility for the underground storage of carbon dioxide.

Sec. 5. (a) Carbon sequestration projects are authorized in Indiana for the purposes of:

(1) injecting carbon dioxide into the pore space of an underground storage facility through at least one (1) carbon dioxide injection well pursuant to a UIC Class VI permit; and

(2) employing the underground storage of carbon dioxide.

(b) A storage operator may not operate a carbon sequestration project in Indiana without:

(1) a UIC Class VI permit; and

(2) a valid permit issued by the department.

(c) If a carbon sequestration project is owned by an entity other than the storage operator, the storage operator shall be responsible for obtaining a permit for a carbon sequestration project under subsection (b). A permit for a carbon sequestration project may be transferred or assigned from one (1) storage operator to another



storage operator.

(d) An individual may apply to the department for a permit for a carbon sequestration project in a form and manner prescribed by the department.

(e) An application under subsection (d) must include the following:

- (1) A filing fee of one thousand dollars (\$1,000).
- (2) The signature of the applicant.
- (3) A statement verifying that the information submitted is true, accurate, and complete to the best of applicant's knowledge.
- (4) Information illustrating that the applicant has the financial, managerial, and technical ability to construct, operate, and maintain a carbon sequestration project.
- (5) Information illustrating that the applicant or the contractors or subcontractors of the applicant have the requisite expertise in constructing, operating, and maintaining a carbon sequestration project.
- (6) Documentation to the department describing the scope of the proposed carbon sequestration project.
- (7) A statement describing how the applicant will construct, operate, and maintain the proposed carbon sequestration project in accordance with applicable local, state, and federal law, including federal and state safety regulations and rules governing the construction, operation, and maintenance of the carbon sequestration project, and related facilities and equipment, to ensure the safety of the carbon sequestration project employees and the public.
- (8) A statement that the interests of a mineral lessee or mineral owner will not be adversely affected. If a mineral owner or mineral lessee is adversely affected, the adversely affected mineral owner or mineral lessee and the applicant may enter into an agreement under section 4 of this chapter.

Sec. 6. (a) The department shall review an application submitted under section 5(d) of this chapter. If the department determines that the application submitted under section 5(d) of this chapter is complete, the department shall notify the applicant.

(b) The department shall return an application to the applicant if the department determines that the application is incomplete, inaccurate, or both.

(c) If the department returns an application to an applicant under subsection (b), the department shall inform the applicant in



writing that the applicant may file a corrected application not more than sixty (60) days after the receipt of the returned application.

(d) Upon receiving a corrected application under this section, the department shall review the application.

(e) Upon receiving notification that the corrected application is complete, the applicant shall:

(1) not more than sixty (60) days after receiving the notice under this subsection:

(A) place a copy of the corrected application in a public library located in each county in which the carbon sequestration project is proposed to be located for public inspection;

(B) publish notice under IC 5-3-1 in each county in which the carbon sequestration project is proposed to be located of the name and address of each library in which a copy of the corrected application is placed as required by clause (A); and

(C) provide notice to potentially affected parties pursuant to 312 IAC 29-5-2; and

(2) provide to the department proof of publication of notice under this subsection not more than thirty (30) days after the publication or delivery of the notice.

(f) Not later than ninety (90) days after receiving the proof of publication of notice under subsection (e), the department shall notify the applicant in writing that:

(1) the department has approved the application; or

(2) the department has denied the application.

Sec. 7. If the department approves an application under section 5 of this chapter or a corrected application under section 6(c) of this chapter, the department shall issue to the applicant a carbon sequestration project permit.

Sec. 8. (a) Except as provided in subsection (b), if a storage operator or an applicant files a verified statement to the department stating the reasons that trade secret or confidential and proprietary information should be disclosed, the storage operator or applicant may disclose the trade secret or confidential and proprietary information to the department, or in subsequent reports.

(b) The department shall take all necessary precautions to avoid public disclosure of confidential information under subsection (a).

Sec. 9. (a) A storage operator shall pay the department a fee for



every ton of carbon dioxide injected for storage.

(b) The storage operator shall provide the department with an estimate of the amount of carbon dioxide to be injected into a storage facility for the period of the permit at the time of application for a carbon sequestration project permit.

(c) A storage operator shall pay annually to the department a fee of eight cents (\$0.08) per ton of carbon dioxide estimated to be injected into a storage facility.

(d) A storage operator shall reconcile the previous calendar year's payment with the volume of carbon dioxide actually injected into the storage facility the previous calendar year. The storage operator shall submit payment for the amount of carbon dioxide injected into a storage facility less the amount paid the previous calendar year.

(e) The department shall refund a storage operator any overpayment in the current year from the previous calendar year.

Sec. 10. (a) The carbon dioxide storage facility trust fund is established.

(b) The fee collected under section 9 of this chapter must be deposited in the carbon dioxide storage facility trust fund established by subsection (a).

(c) The carbon dioxide storage facility trust fund must be maintained as a special fund and all money in the fund is appropriated and may be used only to defray the costs incurred by the department for the long term monitoring and management of a carbon sequestration project.

Sec. 11. (a) A mineral owner or mineral lessee shall provide written notice to a storage operator at least thirty-one (31) days prior to drilling a well if the mineral owner or mineral lessee wishes to drill a well not more than:

- (1) three hundred thirty (330) feet from the surface location of a well pursuant to a UIC Class VI permit; or
- (2) five hundred (500) feet from the uppermost confining zone of a carbon sequestration facility pursuant to a UIC Class VI permit.

Drilling permitted by this subsection must be conducted in cooperation with a storage operator.

(b) A well drilled under subsection (a) must be drilled in compliance with the requirements of:

- (1) the department to preserve the integrity of the storage facility;
- (2) a UIC Class VI permit; and



(3) any other applicable regulations.

Sec. 12. (a) Nothing in this section prohibits recovery by a public utility for any impact on a source of the public water supply from a carbon sequestration project.

(b) A claim of subsurface trespass shall not be actionable against a storage operator conducting carbon sequestration in accordance with a valid UIC Class VI permit and a permit issued by the department for a carbon sequestration project, unless the claimant proves that injection or migration of carbon dioxide:

(1) is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property; or

(2) has caused direct physical injury to a person, an animal, or tangible property.

(c) A surface or subsurface property interest holder shall be permitted to recover money damages only for the loss of a nonspeculative value resulting from the injection and migration of carbon dioxide beyond the storage facility.

(d) A surface or subsurface property interest holder may seek punitive damages in accordance with IC 34-51-3-4 only if the storage operator violates the requirements of the UIC Class VI permit or acts with reckless disregard of public safety.

Sec. 13. (a) A certificate of project completion shall be issued upon the application from the storage operator if the department finds that the storage operator does the following:

(1) The storage operator is in compliance with all applicable laws governing the storage facility.

(2) The storage operator shows that the storage facility is reasonably expected to retain the carbon dioxide stored therein.

(3) The storage operator shows that the carbon dioxide in the storage facility is stable by showing that either:

(A) the stored carbon dioxide is essentially stationary; or

(B) if the stored carbon migrates, migration will be unlikely to cross the boundaries of the storage facility.

(4) The storage operator shows that all wells, equipment, and facilities used after the closure period are in good condition and retain mechanical integrity.

(5) The storage operator shows that injection wells have been plugged.

(6) The storage operator shows that equipment and facilities,



not including fixed structures and long term monitoring equipment and wells, have been removed.

(7) The storage operator proves that the reclamation work required by the department where the project ceases to inject carbon dioxide is completed.

(8) The following with respect to site closure:

(A) The storage operator has provided a notice of intent for site closure to the United States Environmental Protection Agency.

(B) The United States Environmental Protection Agency has authorized site closure.

(C) The storage operator has provided to the United States Environmental Protection Agency:

(i) the site closure report required under 40 CFR 146.93(f) (as in effect January 1, 2022); or

(ii) a comparable report to the state regulatory body if the state assumes primacy for UIC Class VI permitting.

(b) The department shall issue a certificate of project completion not later than one hundred eighty (180) days after receiving an application from the storage operator. If the department determines that the application for a certificate of project completion is incomplete, inaccurate, or both, the department shall return the application to the storage operator.

(c) If the department returns the application to the storage operator under subsection (b), the department shall inform the storage operator, in writing, of the deficiencies of the submitted application and inform the storage operator of the right to file a corrected application with the department.

(d) Once a certificate of completion is issued, the following occurs:

(1) The state will assume ownership of and responsibility for the storage facility.

(2) The state will assume responsibility for all regulatory requirements associated with the storage facility, and the storage operator and the owner of the storage facility are released from responsibility for all regulatory requirements associated with the storage facility.

(3) The state will assume any potential liability associated with the storage facility.

(e) Unless there is documentation to the contrary, the storage operator has title to the carbon dioxide injected into and stored in a storage facility, and the storage operator holds title until the



department issues a certificate of completion.

Sec. 14. This chapter does not apply to the carbon sequestration pilot project established pursuant to IC 14-39-1.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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