

SENATE FILE NO. SF0047

Carbon storage and sequestration-liability.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to geologic sequestration of carbon
2 dioxide; clarifying ownership of carbon dioxide injected
3 into geologic sequestration sites; specifying the transfer
4 of title and liability of injected carbon dioxide;
5 providing definitions; renumbering current statutes; making
6 conforming amendments; specifying applicability; requiring
7 rulemaking; and providing for effective dates.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 35-11-318 and 35-11-319 are created
12 to read:

13

14 **35-11-318. Title to sequestered and injected carbon**
15 **dioxide; definitions.**

1

2 (a) As used in this section and in W.S. 35-11-319,
3 "injector" means a person applying for or holding a permit
4 or certificate for geologic sequestration of carbon dioxide
5 under W.S. 35-11-313.

6

7 (b) An injector shall:

8

9 (i) Have title to any carbon dioxide the
10 injector injects into and stores underground or within a
11 unit area;

12

13 (ii) Hold title for any injected or stored
14 carbon dioxide until the department issues a certificate of
15 project completion as specified in W.S. 35-11-319.

16

17 (c) During any time the injector holds title to
18 carbon dioxide under this section, the injector shall be
19 liable for any damage the injected or stored carbon dioxide
20 may cause, including damage caused by carbon dioxide that
21 escapes or is released from where it is being stored
22 underground.

23

1 **35-11-319. Certificate of project completion;**
2 **release; transfer of title and custody.**

3

4 (a) After all carbon dioxide injections underground
5 or into pore space are completed as provided by a permit
6 issued under W.S. 35-11-313 and upon application by the
7 injector holding title to the carbon dioxide under W.S.
8 35-11-318, the department may issue a certificate of
9 project completion. The department shall only issue a
10 certificate upon satisfaction of the conditions imposed
11 under subsections (b), (c) and (d) of this section and
12 after providing public notice of the application, an
13 opportunity for public comment and a public hearing on the
14 application.

15

16 (b) A certificate of project completion shall not be
17 issued until at least ten (10) years after carbon dioxide
18 injections end.

19

20 (c) A certificate of project completion shall not be
21 issued until the injector with title to the carbon dioxide
22 establishes to the satisfaction of the department that:

23

1 (i) The injector is in full compliance with all
2 laws governing the injection and storage of the carbon
3 dioxide;

4

5 (ii) The injector has addressed any pending
6 claims regarding the injection and storage of the carbon
7 dioxide;

8

9 (iii) The underground place or pore space where
10 the carbon dioxide was injected or stored is expected to no
11 longer expand vertically or horizontally and poses no
12 threat to human health, human safety, the environment or
13 underground sources of drinking water;

14

15 (iv) The stored or injected carbon dioxide is
16 unlikely to cross any underground or pore space boundary
17 and is not expected to endanger any underground source of
18 drinking water or otherwise endanger human health, human
19 safety or the environment;

20

21 (v) All wells, equipment and facilities to be
22 used in maintaining and managing the stored carbon dioxide
23 are in good condition and will retain mechanical integrity;

1

2 (vi) The injector has plugged any injection
3 wells and has completed all reclamation required by the
4 department.

5

6 (d) Upon the issuance of a certificate of project
7 completion under subsection (a) of this section:

8

9 (i) In exchange for assuming responsibility and
10 liability for the stored carbon dioxide as provided in this
11 section, title to the stored or injected carbon dioxide,
12 and any facilities used to inject or store the carbon
13 dioxide, without payment of any compensation, shall be
14 transferred to the state;

15

16 (ii) Title acquired by the state includes all
17 rights, and interests in, and all responsibilities
18 associated with, the stored or injected carbon dioxide;

19

20 (iii) Primary responsibility and liability for
21 the stored or injected carbon dioxide shall be transferred
22 to the state;

23

1 (iv) The injector and all persons who generated
2 any injected or stored carbon dioxide shall be forever
3 released from all regulatory requirements associated with
4 the continued storage and maintenance of the injected
5 carbon dioxide;

6

7 (v) Any bond or financial assurance submitted to
8 the department under W.S. 35-11-313 through 35-11-317 shall
9 be released;

10

11 (vi) The state, through the department, shall
12 assume responsibility to manage and monitor the stored
13 carbon dioxide until such time when the federal government
14 assumes responsibility for the long-term monitoring and
15 management of stored carbon dioxide.

16

17 **Section 2.** W.S. 30-5-104(d)(viii), 30-5-502(a),
18 34-1-153, 35-11-313(e), (f)(ii)(F), (vii) and by creating
19 new subsections (n) and (o), 35-11-314(a) and (b)(intro)
20 and 35-11-316(j) are amended to read:

21

22 **30-5-104. Oil and gas conservation commission; powers**
23 **and duties; investigations; rules and regulations.**

1

2 (d) The commission has authority:

3

4 (viii) To issue orders allowing the unitization
5 of pore space associated with geologic sequestration sites
6 pursuant to W.S. 35-11-314 through ~~35-11-317~~35-11-320 and
7 adopt such rules and regulations as necessary to effectuate
8 the purposes of W.S. 35-11-314;

9

10 **30-5-502. Certification of carbon dioxide**
11 **incidentally stored during enhanced recovery operations.**

12

13 (a) If there is production of oil, gas or both from
14 enhanced recovery operations under a commission order
15 entered pursuant to W.S. 30-5-110 utilizing the injection
16 of carbon dioxide, the commission upon voluntary
17 application by the unit operator, and after review of the
18 operator's plan for accounting for the incidentally stored
19 carbon dioxide, may enter an order recognizing the
20 incidental storage of carbon dioxide occurring through the
21 enhanced recovery operation and certifying the quantity of
22 carbon dioxide being stored. An application or
23 certification under this section does not subject the

1 enhanced recovery operation to the requirements of W.S.
2 35-11-313 through ~~35-11-318~~35-11-320 or require the
3 operator to obtain a permit under those sections.

4

5 **34-1-153. Ownership of material injected into**
6 **geologic sequestration sites; liability for holding**
7 **interests related to a sequestration site or giving consent**
8 **to allow geologic sequestration activities.**

9

10 (a) All carbon dioxide, and other substances injected
11 incidental to the injection of carbon dioxide, injected
12 into any geologic sequestration site for the purpose of
13 geologic sequestration shall be presumed to be owned by the
14 injector of such material subject to W.S. 35-11-318 and
15 35-11-319 and all rights, benefits, burdens and liabilities
16 of such ownership shall belong to the injector. This
17 presumption may be rebutted by a person claiming contrary
18 ownership by a preponderance of the evidence in an action
19 to establish ownership.

20

21 (b) Except as provided in W.S. 35-11-318 and
22 35-11-319, no owner of pore space, other person holding any
23 right to control pore space or other surface or subsurface

1 interest holder, shall be liable for the effects of
2 injecting carbon dioxide for geologic sequestration
3 purposes, or for the effects of injecting other substances
4 for the purpose of geologic sequestration which substances
5 are injected incidental to the injection of carbon dioxide,
6 solely by virtue of their interest or by their having given
7 consent to the injection.

8

9 **35-11-313. Carbon sequestration; permit requirements.**

10

11 (e) Permit requirements for geologic sequestration of
12 carbon dioxide shall be as defined by department rules. The
13 injector of the carbon dioxide shall apply for any permit
14 required under this section.

15

16 (f) The administrator of the water quality division
17 of the department of environmental quality, after receiving
18 public comment and after consultation with the state
19 geologist, the Wyoming oil and gas conservation commission
20 and the advisory board created under this act, shall
21 recommend to the director rules, regulations and standards
22 for:

23

1 (ii) Requirements for the content of
2 applications for geologic sequestration permits. Such
3 applications shall include:

4

5 (F) A site and facilities description,
6 including a description of the proposed geologic
7 sequestration facilities and documentation sufficient to
8 demonstrate that the applicant has all legal rights,
9 including but not limited to the right to surface use,
10 necessary to sequester carbon dioxide and associated
11 constituents into the proposed geologic sequestration site.
12 The department may issue a draft permit contingent on
13 obtaining a unitization order pursuant to W.S. 35-11-314
14 through ~~35-11-317~~ 35-11-320;

15

16 (vii) Requirements for fees to be paid by all
17 permittees of geologic sequestration sites and facilities,
18 which may include a per ton injection fee or a closure fee,
19 during the period of injection of carbon dioxide and
20 associated constituents into subsurface geologic formations
21 in Wyoming, which fees shall be deposited in the geologic
22 sequestration special revenue account created by W.S.
23 ~~35-11-318~~ 35-11-320 for use as provided therein.

1

2 (n) Upon issuing a permit, the department shall issue
3 a certificate that includes a statement that the permit has
4 been issued, a description of the area covered by the
5 permit and any other information that the department deems
6 appropriate. The injector shall file a copy of the
7 certificate with the county clerk in the county or counties
8 where the geologic sequestration site is located.

9

10 (o) The provisions of W.S. 35-11-318 and 35-11-319
11 shall apply to any certificate for sequestration of carbon
12 dioxide under this section and to any unitization of
13 geologic sequestration sites under W.S. 35-11-314 through
14 35-11-317.

15

16 **35-11-314. Unitization of geologic sequestration**
17 **sites; purposes; definitions.**

18

19 (a) The purpose of W.S. 35-11-314 through ~~35-11-317~~
20 ~~35-11-319~~ is declared by the Wyoming legislature to be the
21 protection of corresponding rights, compliance with
22 environmental requirements and to facilitate the use and
23 production of Wyoming energy resources.

1

2 (b) Except when context otherwise requires or when
3 otherwise defined in this subsection, the terms used or
4 defined in W.S. 35-11-103, shall have the same meaning when
5 used in W.S. 35-11-314 through ~~35-11-317~~35-11-320. When
6 used in W.S. 35-11-314 through ~~35-11-317~~35-11-320:

7

8 **35-11-316. Unitization of geologic sequestration**
9 **sites; hearings on application, order; modifications.**

10

11 (j) No provision of W.S. 35-11-314 through ~~35-11-317~~
12 35-11-319 shall be construed to confer on any person the
13 right of eminent domain and no order for unitization issued
14 under this section shall act so as to grant to any person
15 the right of eminent domain.

16

17 **Section 3.** W.S. 35-11-318 is amended and renumbered
18 as 35-11-320 to read:

19

20 ~~35-11-318~~35-11-320. **Geologic sequestration special**
21 **revenue account.**

22

1 (a) There is created the Wyoming geologic
2 sequestration special revenue account. The account shall
3 be administered by the director and all funds in the
4 account shall be transmitted to the state treasurer for
5 credit to the account and shall be invested by the state
6 treasurer as authorized under W.S. 9-4-715(a), (d) and (e)
7 in a manner to obtain the highest return possible
8 consistent with the preservation of the corpus. Any
9 interest earned on the investment or deposit of monies into
10 the fund shall remain in the fund and shall not be credited
11 to the general fund. All funds in the account are
12 continuously appropriated for use by the director
13 consistent with this section.

14

15 (b) The account shall consist of all monies collected
16 by the department to measure, monitor and verify Wyoming
17 geologic sequestration sites following ~~site-closure-project~~
18 completion certification, release of all financial
19 assurance instruments and termination of the permit. The
20 department shall promulgate rules necessary to collect
21 monies in an amount reasonably calculated to pay the costs
22 of measuring, monitoring and verifying the sites.

23

1 (c) Funds in the account shall be used only for:

2

3 (i) The measurement—testing, monitoring and
4 verification—long-term inspections of geologic
5 sequestration sites;

6

7 (ii) Remediation of mechanical problems
8 associated with remaining wells and infrastructure;

9

10 (iii) Plugging and abandoning monitoring wells;

11

12 (iv) All future claims associated with the
13 release of carbon dioxide from the geologic sequestration
14 sites following site—closure—project completion
15 certification, release of all financial assurance
16 instruments and termination of the permit.

17

18 (d) The existence, management and expenditure of
19 funds from this account shall not constitute a waiver by
20 the state of Wyoming of its immunity from suit, nor does it
21 constitute an assumption of any liability by the state for
22 geologic sequestration sites, or the carbon dioxide and
23 associated constituents injected into those sites.

1

2 **Section 4.** The provisions of this act shall apply to
3 all holders of permits for geologic sequestration of carbon
4 dioxide issued under W.S. 35-11-313 and to all orders of
5 unitization of geologic sequestration sites under W.S.
6 35-11-314 through 35-11-317 before, on and after the
7 effective date of this section.

8

9 **Section 5.**

10

11 (a) The department of environmental quality may take
12 all actions necessary to implement the provisions of this
13 act.

14

15 (b) The environmental quality council and the Wyoming
16 oil and gas conservation commission shall promulgate all
17 rules necessary to implement the provisions of this act.

18

19 (c) Not later than October 31, 2022, the department
20 of environmental quality shall report to the joint
21 minerals, business and economic development interim
22 committee on the status of implementing this act, including
23 whether further legislation is necessary to retain the

1 state's primacy in regulating class VI injection wells and
2 whether more time is necessary to implement this act in
3 order to amend or retain any plan agreement for the state's
4 regulation of class VI injection wells.

5

6 **Section 6.**

7

8 (a) Except as provided in subsection (b) of this
9 section, this act is effective July 1, 2023.

10

11 (b) Sections 5 and 6 of this act are effective
12 immediately upon completion of all acts necessary for a
13 bill to become law as provided by Article 4, Section 8 of
14 the Wyoming Constitution.

15

16

(END)