



WEST VIRGINIA SECRETARY OF STATE

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ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Water Resources Division Of Water And
Waste Management

RULE TYPE: Legislative

TITLE-SERIES: 47-09B

RULE NAME: Carbon Dioxide Sequestration Fee
Schedule

CITE AUTHORITY: 22-11-10, 22-11B

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Charles Driver -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 47

LEGISLATIVE RULE

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT

SERIES 9B

CARBON DIOXIDE SEQUESTRATION FEE SCHEDULE

§47-9B-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes schedules of fees for carbon dioxide capture and sequestration authorized by underground injection control permits issued by the Director of the Division of Water and Waste Management of the West Virginia Department of Environmental Protection. This rule applies to any person who is required to apply for and obtain a permit from the Director in order to conduct activities associated with the capture and underground sequestration of carbon dioxide, that is enumerated in W. Va Code §22-11B and §22-11-10, and is separate from fees required under W. Va. Code §22-6-6. Hereinafter, references to “permit”, unless specifically described otherwise, refer only to the term defined in section 2.18 of this Rule.

1.2. Authority. -- W. Va. Code §22-11-10, §22-11B

1.3. Filing Date. --

1.4. Effective Date --

1.5. Incorporation by Reference -- Whenever federal or state statutes or regulations are incorporated into this rule by reference, the reference is to the statute or regulation.

§47-9B-2. Definitions.

2.1 “Access Orders” means orders issued by the Director or the Commission granting a storage operator the right to enter surface lands owned by nonconsenting or unlocatable owners, for the purpose of seismic studies or for emergencies.

2.2. “Activity” means an activity for which a permit is required pursuant to the provisions of W. Va. Code §22-11B and §47CSR13.

2.3. “Administrative Hearings” means hearings conducted by the Commission related to the collective storage of pore space and the compensation of non-consenting or unlocatable pore space owners, or hearings held for other purposes.

2.4. “Annual Permit Fees” means fees to be paid by the storage operator to cover the Department’s costs for permit maintenance and for regulating storage facilities during their construction, operation, and pre-Completion phases.

2.5. “Carbon Capture and Sequestration”, “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.

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2.6. “Carbon Dioxide Storage Facility Administrative Fund” means the special revenue fund the Director shall draw from for the purposes expressed in W. Va. Code §22-11B, which include payment of all expenses of the Department in processing permit and certificate applications; regulating storage facilities during their construction, operation, and pre-Completion phases; and making storage amount determinations; or to compensate a cooperating agency for these regulatory responsibilities. The fund may also be used to reimburse the Commission for administrative hearing expenses associated with collective storage of pore space.

2.7. “Carbon Dioxide Storage Facility Trust Fund” means the special revenue fund the Director shall draw from for the purposes expressed in W. Va. Code §22-11B. After issuance of a completion certificate and release of any bonds posted by the operator, the Director shall utilize this fund for the long-term management and monitoring of closed storage facilities or to compensate a cooperating agency for management or monitoring responsibilities. The Director shall draw from this fund to defend, indemnify, and hold harmless the pore space and surface owners against all claims regarding the stored carbon dioxide.

2.8. “Class 6 Well” is an underground injection well as described in the Underground Injection Control rule (§47CSR13, subdivision 4.6.1).

2.9. “Collective Storage Determinations” means orders issued by the Commission after finding that storage operators identified surface owners, mineral owners and lessees, and pore space owners; reached agreements with mineral owners, claimants, and lessees that their interests will not be adversely affected; and reached agreements with at least 75 percent of pore space owners to use the pore space for carbon dioxide storage.

2.10. “Commission” means the WV Oil and Gas Conservation Commission.

2.11. “Completion Certificate” means a Certificate of Underground Carbon Dioxide Storage Project Completion.

2.12 “Director” means the Director of the Division of Water and Waste Management of the Environmental Protection, which is the position responsible for administering this Rule, as delegated by the Secretary.

2.13. “Facility” means any injection well and associated surface operations that are subject to rules under the Underground Injection Control (UIC) Carbon Capture and Sequestration Program.

2.14. “Fluid” means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.

2.15. “Major modification” means a modification of an issued permit made in accordance with the provisions of the Underground Injection Control rule §47CSR13, subsection 14.18.

2.16. “Minor modification” means a modification of an issued permit made in accordance with the provisions of the Underground Injection Control rule §47CSR13, subsection 14.20.

2.17. “Operation Fee” is a fee paid by the storage facility operator on each ton of carbon dioxide injected for storage.

2.18. “Permit” means an authorization issued by the state to implement the requirements of the UIC Carbon Capture and Sequestration Program.

2.19. “Permit Application Fee” is a fee paid by a potential storage operator for the costs of reviewing an application, preparing a draft permit, and holding a public hearing regarding issuance of a permit.

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2.20. "Permit Modification Fee" is a fee to be paid by a storage operator for Department expenses reviewing a proposed change to a previously issued permit, for preparing a draft permit and public notice, and in the case of major modifications, holding a public hearing regarding the change.

2.21. "Person", "persons", or "applicant" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry, sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatsoever.

2.22. "Public Notice Fees" means the costs of notifying the public.

2.23. "Secretary" means the Secretary of the West Virginia Department of Environmental Protection.

2.24. "Storage Determination" means calculating the storage volume and total area based on a volumetric determination derived from a submitted reservoir model with total volume projection allotment (in cubic meters/yards) of the target injection reservoir for the lifetime of the project.

2.25. "UIC" means the Underground Injection Control program under Part C of the Safe Drinking Water Act, 42 USC §300f including the West Virginia approved program.

2.26. "Underground Injection" means the subsurface emplacement of fluids through a well.

2.27. "WVDEP" means the West Virginia Department of Environmental Protection.

2.28. "Wellhead" means the physical surface location of a single Class 6 UIC injection well, identified by its wellhead, where carbon dioxide is introduced into the subsurface. For the purposes of fee assessment, each wellhead constitutes a distinct injection point subject to applicable permitting and regulatory fees.

§47-9B-3. Fee Assessment and Collection

3.1. W. Va. Code §22-11B authorizes fees for Class 6 UIC permit applications, for storage facility completion certificates, and for storage determinations, all of which are to be deposited into the Carbon Dioxide Storage Facility Administrative Fund. This fund is also the depository for fees the Director or Commission will set for Public Notice expenses.

3.2. W. Va. Code §22-11B also establishes operating fees for deposit into the Carbon Dioxide Storage Facility Trust Fund and assigns spending authority for both funds (\$0.13 per sequestered ton).

3.3. Expenditures from the Carbon Dioxide Storage Facility Administrative Fund and the Carbon Dioxide Storage Facility Trust Fund shall only be made in accordance with this rule.

§47-9B-4. Carbon Dioxide Storage Facility Administrative Fund Fees

4.1. Fees for permit applications, annual permit fees, Completion Certificates, and Storage Determinations shall be deposited into the Carbon Dioxide Storage Facility Administrative Fund. All such fees shall be submitted to the West Virginia State Treasurer and shall be paid by electronic transfer utilizing the Automated Clearing House (ACH), credit card, or check or money order payable to the WVDEP. The applicant shall pay any convenience fees charged by their credit card company, when choosing a credit card as the payment method. The storage operator has responsibility to update the WVDEP of any address changes.

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4.2. Permitting Fees - Any person who applies or reapplies for a Class 6 UIC permit shall pay a fee of \$55,000 per Class 6 UIC injection wellhead.

4.2.1. If a permittee wishes to continue an activity pursuant to paragraph 14.12.2 of the Underground Injection Control rule, §47CSR13, the permittee must apply for a permit renewal at least one hundred eighty (180) days prior to expiration of the permit. If a permittee wishes to modify a permit or conditions of the permit, pursuant to subsections 14.18 and 14.20, the permittee must apply for a modification and pay the applicable fee.

4.2.1.a. The fee for a Class 6 UIC permit which requires a major modification is \$10,000.

4.2.1.b. The fee for a Class 6 UIC permit which requires a minor modification is \$1,000.

4.2.1.c. No permit application will be processed until the appropriate fee has been paid.

4.3. If the Director determines that a submitted application is incomplete and must be returned to the applicant for additional information, a permit application resubmittal fee shall accompany the re-filed application. This fee is a sum equivalent to five percent (5%) of the application fee. The resubmittal fee is required each time an incomplete application must be returned to the applicant for additional information.

4.3.1. Permit application and permit renewal applications – the resubmittal fee shall be \$2,000.

4.3.2. Major Modification applications – the resubmittal fee shall be \$500.

4.3.3. Minor Modification application - the resubmittal fee shall be \$50.00.

4.4. Any person who holds a permit shall pay an annual permit fee. The first annual permit fee shall be remitted to the WV State Treasurer one calendar year from the date of permit issuance; subsequent annual permit fees shall be remitted on or before the anniversary date of the permit issuance.

4.4.1. The annual permit fee for a Class 6 UIC Permit is \$5,000.

4.4.2. A permit becomes void if the annual permit fee has not been paid within 90 days of the due date.

4.4.3. The Director shall not reissue a permit until all annual permit fees due during prior terms of that permit have been paid in full.

4.5. Assessment of Completion Certificate Fees - The storage operator shall pay a fee to the Director to review the compliance history of the storage facility, to validate there are no pending claims associated with the stored carbon dioxide, and to review, through modeling, the capability of the reservoir to retain the carbon dioxide.

4.5.1. The Completion Certificate Fee is \$10,000, payable at the time of the submission of the Completion Certificate.

4.5.2. No Completion Certificate will be processed until all fees associated with the permit have been paid.

4.5.3. The time frame for review of the Completion Certificate is unrestricted but limited to a reasonable opportunity for the WVDEP Office of Legal Services to verify there are no pending claims and for the technical staff to model the capability of the reservoir to retain the sequestered carbon dioxide.

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4.6. Public Notice Fees - Storage operators shall pay the cost of providing notice, including costs charged by newspapers for publishing Class I Legal advertisements; certified mail, personal delivery, or process delivery.

4.7. Reasonable Compensation to Nonconsenting and Unlocatable Surface and Pore Space Owners - Within a Collective Storage order, the Commission shall determine the appropriate compensation and order the storage operator to pay for access to pore space owned by non-consenting or unlocatable owners. To determine the appropriate compensation, the commission shall:

4.7.1. Require storage operators to submit financial agreements reached with consenting surface and pore space owners and calculate the average amounts paid; and

4.7.2. Consider evidence from nonconsenting surface and pore space owners as to the valuation of their interest.

4.7.3. The Director shall not issue the permit until the storage operator submits proof to the ordered compensation that has been paid to non-consenting owners.

4.7.4. The storage operator shall establish an interest-bearing account into which the ordered compensation for unlocatable owners shall be deposited.

4.7.4.a. The Director shall not issue the permit until the storage operator documents that the ordered compensation has been paid into the interest-bearing account and that the WV State Treasurer Unclaimed Property Division has been provided with details of the account, the amount paid, and the interest rate as well as any information discovered to date about the possible identity of the unlocatable owner.

4.8. Storage Determination Fee - Reserved.

§47-9B-5. Carbon Dioxide Storage Facility Trust Fund Fees

5.1. Operation fees shall be deposited into the Carbon Dioxide Storage Facility Trust Fund. Upon approval of a Completion Certificate, the Director shall withdraw from the fund to meet the statutory directives in W. Va. Code §22-11B-12, which are to defend, indemnify, and hold harmless the pore space and surface owners against all claims associated with the stored carbon dioxide.

This fund shall also be used by the Director for long-term management and monitoring of stored carbon dioxide for any permitted facility wherein the Completion Certificate is approved prior to 50 years from the date injection ceased.

5.2. Assessment of Operation Fees -- All storage operators shall pay a fee on each ton of carbon dioxide injected for storage.

5.2.1. Storage operators shall continuously monitor the volume of injectate. At the end of each month, the operator shall prepare a report for submission to the Director certifying the tonnage injected during the month.

5.2.2. Storage operators injecting carbon dioxide originating from within the State of WV shall pay \$0.13 for each ton injected.

5.2.3. Storage operators injecting carbon dioxide originating from outside the State of WV shall pay \$0.13 for each ton injected.

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5.3. Operation Fees shall be paid on a monthly basis, on the fifteenth day of the month following injection, to the WV State Treasurer for deposit into the Carbon Dioxide Storage Facility Trust Fund and shall be paid by electronic transfer utilizing the Automated Clearing House (ACH), Credit Card, or check or money order payable to the WVDEP. The applicant shall pay any convenience fees charged by the Credit Card company, if choosing Credit Card as the payment method. The storage operator has responsibility to update the WVDEP of any address changes.

5.4. The cost of long-term management and monitoring or indemnifying pore space and surface owners from liability associated with stored carbon dioxide in the facility is limited to the amount paid into the Carbon Dioxide Storage Facility Trust Fund for the facility.

5.4.1. The Director is not authorized to utilize funds for one facility from those paid into the fund for another facility.