

Consideration for preliminary adoption of a new rule at 312 IAC 30 regarding regulation of carbon sequestration projects under Indiana Code 14-39; Administrative Cause No. 23-OG-027

TITLE 312 NATURAL RESOURCES COMMISSION

PROPOSED PERMANENT RULE

SECTION 1. 312 IAC 30 IS ADDED TO READ AS FOLLOWS:

Article 30. Underground Storage of Carbon Dioxide

Rule 1. Applicability

312 IAC 30-1-1 Applicability

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 1. (a) This article provides definitions that apply to this article and are in addition to those definitions set forth in IC 14.

(b) Except as otherwise provided in this article or under IC 14-39, this article applies to the permanent underground storage of carbon dioxide. *(Natural Resources Commission; 312 IAC 30-1-1)*

Rule 2. Definitions

312 IAC 30-2-1 “Carbon dioxide stream” defined

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 1. (a) “Carbon dioxide stream” means carbon dioxide that is:

- (1) captured from an emission source or the atmosphere; plus
- (2) incidental associated substances derived from the source materials and capture process; and
- (3) any substance added to the carbon dioxide to enable or improve the injection process.

(b) The term under subsection (a) does not include a carbon dioxide stream that is considered hazardous waste as defined by IC 13-11-2-99(c). *(Natural Resources Commission; 312 IAC 30-2-1)*

312 IAC 30-2-2 “Class VI well” defined

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 2. “Class VI well” means a well regulated by the United States Environmental Protection Agency under a UIC Class VI permit. *(Natural Resources Commission; 312 IAC 30-2-2)*

312 IAC 30-2-3 “Confining zone” defined

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 3. “Confining zone” means:

- (1) a geologic formation;
- (2) a group of geologic formations; or
- (3) part of a geologic formation;

capable of limiting carbon dioxide stream above an injection zone. *(Natural Resources Commission; 312 IAC 30-2-3)*

312 IAC 30-2-4 “Department” defined

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 4. "Department" means the department of natural resources. (Natural Resources Commission; 312 IAC 30-2-4)

312 IAC 30-2-5 "Mechanical integrity test" defined

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 5. "Mechanical integrity test" means a test performed on a Class VI well:

- (1) to confirm the Class VI well maintains internal and external mechanical integrity;**
- (2) that can measure the adequacy of the Class VI well construction; and**
- (3) that can detect a problem of a Class VI well system, if applicable.**

(Natural Resources Commission; 312 IAC 30-2-5)

312 IAC 30-2-6 "Responsible officer" defined

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 6. "Responsible officer", for purposes of IC 14-39-1-4, includes the following:

- (1) An authorized officer of a corporation.**
- (2) A manager of a limited liability company or, if the limited liability company is managed by another company, an authorized officer of the managing company.**
- (3) A partner in a general, limited, or limited liability partnership or, if the partner is an entity, an authorized officer of the general, limited, or limited liability partnership.**
- (4) An individual authorized by another entity not included under subdivisions (1) through (3) to sign for and bind the person.**

(Natural Resources Commission; 312 IAC 30-1-6)

312 IAC 30-2-7 "Transporting carbon dioxide" defined

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 7. (a) "Transporting carbon dioxide" means the movement of carbon dioxide to a carbon dioxide injection well located outside the storage facility for which a certificate of authority for a carbon dioxide transmission pipeline is required.

(b) The term under subsection (a) includes a carbon dioxide transmission pipeline that crosses a parcel above pore space that is:

- (1) a public right-of-way; or**
- (2) acquired by:**
 - (A) eminent domain; or**
 - (B) an integration order.**

(Natural Resources Commission; 312 IAC 30-1-7)

312 IAC 30-2-8 "Underground Injection Control (UIC) Program" defined

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 8. "Underground Injection Control (UIC) Program" refers to the program carried out by:

- (1) the United States Environmental Protection Agency; or**
- (2) an approved state or tribe;**

under the Safe Drinking Water Act to regulate underground injection. (Natural Resources Commission; 312 IAC 30-2-8)

Rule 3. Agreements

312 IAC 30-3-1 Participation; proposed storage facility

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39-2

Affected: IC 14-39-2-5

Sec. 1. An applicant for a carbon sequestration project permit and a pore space owner may enter into an agreement for the pore space owner to participate in the proposed storage facility in a way that is compatible with the correlative rights of the applicant and other pore space owners within the proposed storage facility. (Natural Resources Commission; 312 IAC 30-3-1)

Rule 4. Preapplication Coordination

312 IAC 30-4-1 Preapplication coordination

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39-2

Affected: IC 14-39-2-5

Sec. 1. (a) A responsible officer applying for a:

- (1) carbon dioxide transmission pipeline certificate of authority; or**
- (2) carbon sequestration project permit;**

may engage the department in preapplication coordination with the division of reclamation before submitting an application under this article.

(b) A statement made by the department to an applicant during preapplication coordination is nonbinding. (Natural Resources Commission; 312 IAC 30-4-1)

Rule 5. Carbon Dioxide Transmission Pipelines

312 IAC 30-5-1 Applicability

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 1. An applicant for a carbon sequestration project permit under this article is not required to obtain a carbon dioxide transmission pipeline certificate of authority under IC 14-39-1 or this article if the applicant is not transporting carbon dioxide to an injection well outside the storage facility. (Natural Resources Commission; 312 IAC 30-5-1)

312 IAC 30-5-2 Application; certificate of authority

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 8-1-22.6, IC 14-39

Sec. 2. (a) A responsible officer for a carbon dioxide transmission pipeline certificate of authority shall submit to the department:

- (1) a complete application under IC 14-39-1-4;**
- (1) the name, address, telephone number, and email address of the applicant;**
- (2) a map of the proposed pipeline route; and**
- (3) a statement agreeing to give the department the plans and official pipeline route after the pipeline is installed;**

to obtain a carbon dioxide transmission pipeline certificate of authority.

(b) An application for a certificate of authority under this section must include a plan for the pipeline that is signed by a professional engineer. (Natural Resources Commission; 312 IAC 30-5-2)

312 IAC 30-5-3 Carbon dioxide transmission pipeline; financial ability to construct, operate, and maintain a pipeline

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 3. (a) An applicant for a carbon dioxide transmission pipeline certificate of authority shall illustrate a financial ability to construct, operate, and maintain a carbon dioxide transmission pipeline by giving the department documentation proving the applicant obtained the insurance required under subsections (b) and (c).

(b) An applicant shall provide evidence to the department that the applicant maintains liability insurance in the following liability coverage amounts during the construction of a pipeline:

(1) For a pipeline not more than twenty (20) miles:

- (A) seven hundred thousand dollars (\$700,000) for each person; and
- (B) five million dollars (\$5,000,000) for each occurrence.

(2) For a pipeline greater than twenty (20) miles:

- (A) seven hundred thousand dollars (\$700,000) for the first twenty (20) miles; plus
- (B) twelve thousand five hundred dollars (\$12,500) for each additional mile or part of an additional mile for each person; and
- (C) five million dollars (\$5,000,000) for the first twenty (20) miles; plus
- (D) twelve thousand five hundred dollars (\$12,500) for each additional mile or part of an additional mile for each occurrence.

(c) In addition to the amounts required under subsection (b), an applicant shall provide a certificate of insurance to the department as proof the applicant maintains liability insurance in the following minimum liability coverage amounts while constructing, operating, and maintaining a pipeline:

(1) at least:

- (A) one million dollars (\$1,000,000) for each person; and
- (B) five million dollars (\$5,000,000) in the aggregate; and

(2) at least:

- (A) one million dollars (\$1,000,000) for each occurrence; and
- (B) five million dollars (\$5,000,000) in the aggregate.

(d) An applicant shall not cancel coverage required under subsections (b) and (c) during the construction of a pipeline.

(e) An applicant shall not cancel coverage required under subsection (c) while operating and maintaining a pipeline.

(f) The applicant shall provide a certificate of insurance for the coverage required under subsections (b) and (c):

(1) not later than December 31 each year; or

(2) not later than thirty (30) days before the required coverage under subsections (b) and (c) expires; whichever is earlier.

(g) An insurer that issues a certificate of public liability insurance to an applicant for a certificate of authority shall notify the department if a change is made to the coverage required under this section.

(h) If the required length of a pipeline increases, an applicant shall obtain the proper insurance coverage required under subsection (b). If the required length of the pipeline decreases, the applicant may obtain decreased insurance coverage under subsection (b). The applicant shall notify the department of the change to coverage under this subsection not later than fourteen (14) days after the change to the required coverage occurs. (Natural Resources Commission; 312 IAC 30-5-3)

312 IAC 30-5-4 Carbon dioxide transmission pipeline; managerial and technical ability to construct, operate, and maintain a pipeline

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 4. (a) An applicant for a carbon dioxide transmission pipeline certificate of authority shall illustrate a managerial and technical ability to construct, operate, and maintain a carbon dioxide transmission pipeline under this section by providing evidence to the department that an individual designated by the applicant, a contractor or subcontractor of the applicant, or an affiliate of the applicant, contractor, or subcontractor to manage the construction of the pipeline:

(1) holds a bachelor's or master's degree in engineering, physics, chemistry, geology or other physical science and has at least ten (10) years of experience in:

- (A) carbon dioxide;
- (B) hazardous liquid;
- (C) hydrocarbon refining;
- (D) natural gas transmission pipeline design or construction; or
- (E) hydrocarbon transmission pipeline design or construction; or

(2) has at least fifteen (15) years of experience in:

- (A) carbon dioxide;
- (B) hazardous liquid;
- (C) hydrocarbon refining;
- (D) natural gas transmission pipeline design or construction; or
- (E) hydrocarbon transmission pipeline design or construction.

(b) If an individual under subsection (a) leaves from the applicant's employment before the department issues a certificate of authority, and the applicant does not designate another individual under subsection (a), the applicant shall notify the department that the individual has left immediately after the applicant is notified about the departure. The applicant shall notify the department not more than fourteen (14) days after designating a replacement under subsection (a).

(c) An applicant using a contractor, a subcontractor, or an affiliate does not:

- (1) eliminate requirements; or
- (2) reduce liability;

for the applicant under the Indiana Code or this article. (*Natural Resources Commission; 312 IAC 30-5-4*)

312 IAC 30-5-5 Carbon dioxide transmission pipeline; experience to construct, operate, and maintain

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 5. An applicant for a carbon dioxide transmission pipeline certificate of authority, a contractor or subcontractor of the applicant, or an affiliate of the applicant, contractor, or subcontractor shall illustrate that the applicant has the requisite experience to construct, operate, and maintain a carbon dioxide transmission pipeline by providing to the department evidence of the following:

- (1) The previous experience of the applicant to construct, operate, and maintain a pipeline.
- (2) The applicant's history constructing, operating, or maintaining projects in the pipeline and infrastructure industries.
- (3) A description of a judgment entered against the applicant for a civil or an administrative complaint for violating a state or federal environmental protection law that imposed a fine or civil penalty of more than ten thousand dollars (\$10,000) on the applicant not more than five (5) years before the date the application is submitted.
- (4) The experience of the applicant developing a project of similar size and complexity to the proposed pipeline.
- (5) The experience of the affiliated entities of the applicant that will be advising or involved in constructing, operating, or maintaining the pipeline.
- (6) The insurance requirements under section 3 of this rule.

(*Natural Resources Commission; 312 IAC 30-5-5*)

312 IAC 30-5-6 Attestation; compliance with federal, state, and local law

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 6. (a) An applicant for a carbon dioxide transmission pipeline certificate of authority shall submit to the department a sworn statement stating the person intends to comply with federal, state, and local laws and provide the required permits to the department after the permits are issued.

(b) An applicant under subsection (a) shall submit to the department a compliance plan that must include a description of the processes to ensure compliance with all applicable federal, state, and local laws regarding carbon dioxide transmission pipeline company employees and the public, including regulations issued by any government agency with jurisdiction over pipelines. (Natural Resources Commission; 312 IAC 30-5-6)

312 IAC 30-5-7 Carbon dioxide transmission pipeline; mapping

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 7. (a) An applicant for a carbon dioxide transmission pipeline certificate of authority shall submit to the department at least one (1) map that depicts the:

- (1) proposed location and route of the carbon dioxide transmission pipeline;**
- (2) length and diameter of the proposed pipeline;**
- (3) pipeline corridor not more than five hundred (500) feet wide on each side of the proposed pipeline location;**
- (4) proposed width of a pipeline easement;**
- (5) proposed width of an accompanying pipeline construction easement;**
- (6) location of surface facilities for the pipeline;**
- (7) legal description of the proposed pipeline identifying the section, township, range, and county;**
- (8) location of each:
 - (A) high consequence area as defined under 49 CFR 192* and 49 CFR 195*; and**
 - (B) unusually sensitive area as defined under 49 CFR 195*;**within the proposed carbon dioxide transmission pipeline corridor;**
- (9) location of each:
 - (A) railroad;**
 - (B) public right-of-way;**
 - (C) existing pipeline easement; and**
 - (D) existing electric transmission line easement within the proposed pipeline corridor under subdivision (3); and****
- (10) existing property lines and names of persons that own the property through which the pipelines cross, and, if applicable, the property owners included in the list provided to the Indiana utility regulatory commission under IC 8-1-22.6-10.**

(b) Information submitted to the department under this section must state the rights related to any proposed easement, including the right to:

- (1) keep the easement clear of trees and brush; or**
- (2) prohibit, restrict, or require conditions for constructing roads and farm crossings over the easement.**

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Natural Resources Commission, Indiana Government Center North, 100 North Senate Avenue, N13, Indianapolis, IN 46204. (Natural Resources Commission; 312 IAC 30-5-7)**

312 IAC 30-5-8 Review; application for certificate of authority

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 8. (a) Not later than sixty (60) days after receiving an application for a certificate of authority, the department shall review the application and determine whether the application is incomplete or inaccurate, or both. Subject to subsection (c), if the department determines the application is incomplete or inaccurate, or both, the department shall return the application to the applicant, informing the applicant in writing they are entitled to file a corrected application. If the department determines the application is complete and accurate, the department shall notify the applicant of the:

(1) determination; and

(2) date, time, and location of the public information meeting to be held under IC 14-39-1-4.

The department shall schedule the public information meeting under subdivision (2) not later than one hundred twenty (120) days after determining whether the application is complete and accurate.

(b) If the department fails to act on an application not later than ninety (90) days after a public information meeting under subsection (a) or (d), the application is considered approved by the department.

(c) The department shall process a corrected application in the same way an initial application is processed.

(d) The department shall schedule an additional public information meeting as prescribed under subsection (a) if a material change is made to the application that is not:

(1) a minor modification under section 10 of this rule;

(2) a substantive change made due to comments received during a previous public information meeting under subsection (a) or this subsection; or

(3) a federal agency, a state agency, or another unit of government requires the change under IC 8-23-26, IC 36-9-42, or another applicable state or federal law.

The department shall expedite reviewing changes to an application for a certificate of authority under this subsection. *(Natural Resources Commission; 312 IAC 30-5-8)*

312 IAC 30-5-9 Use, occupy, and construct; right of way

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 9. (a) Before a person may obtain a certificate of authority under IC 14-39-1 to use, occupy, and construct pipeline facilities in a designated right-of-way, the person shall obtain the proper authorizations and permits from a state agency or another unit of government that has jurisdiction over the right-of-way under IC 8-23-4.

(b) The authority to use and occupy a designated public right-of-way under this rule is subject to compliance with applicable state and federal requirements for facilities, as defined by IC 8-1-26-7, which occupy rights-of-way, including IC 8-23-6-6, IC 8-23-26, or IC 36-9-42. *(Natural Resources Commission; 312 IAC 30-5-9)*

312 IAC 30-5-10 Certificate of authority; modification; amendment

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 10. (a) On the carbon dioxide transmission pipeline company's request, the department may modify a carbon dioxide transmission pipeline certificate of authority to make a minor modification under subsection (b) without requiring the storage operator to file an application to amend the carbon sequestration project permit.

(b) A minor modification includes the following:

(1) To correct a typographical error.

(2) To require more frequent monitoring or reporting by a pipeline company.

(3) To change an interim compliance date in a schedule of compliance that:

(A) is not more than one hundred twenty (120) days after the date specified by the existing certificate of authority; and

(B) does not interfere with reaching the required final compliance date.

(4) To change the location of a pipeline by not more than one hundred (100) feet on each side of the proposed pipeline location.

(5) A change to the length of a pipeline because of a change made by a pipeline company under subdivision (4).

(c) Except as provided in subsection (d), a modification to a certificate of authority not processed as a minor modification under subsection (a) must be filed as an application to amend an existing certificate of authority. A pipeline company may file an application to amend a certificate of authority regarding the following:

- (1) A change in the carbon dioxide stream to be injected, including the quantity and type.
- (2) Except as otherwise provided under subsection (b)(4) or (b)(5), a change to the diameter, length, or location of a pipeline.

(d) A pipeline company is not required to file an application to amend an existing certificate of authority if the pipeline company is required by a state agency or another unit of government to relocate the carbon dioxide transmission pipeline under IC 8-23-26, IC 36-9-42, or another applicable state or federal law. (Natural Resources Commission; 312 IAC 30-5-10)

312 IAC 30-5-11 Certificate of authority; transfer

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 11. (a) A carbon dioxide transmission pipeline company issued a carbon dioxide transmission pipeline certificate of authority by the department, with the transferee, may apply to the department for a transfer of a certificate of authority if the transferee meets the same underlying qualifications of the pipeline company.

(b) A pipeline company and transferee under subsection (a) shall notify the department of the intent to apply for a transfer at least one hundred twenty (120) days before the intended transfer date. An application for a transfer must be completed as prescribed by the department, including the information required under subsection (c).

(c) A pipeline company and transferee applying for a certificate of authority shall submit the following with an application for a transfer:

- (1) Proof the transferee meets the same underlying qualifications as the pipeline company.
- (2) The signature of the pipeline company representative and transferee.
- (3) A statement verifying the information submitted is accurate and complete to the best of the knowledge of the pipeline company and transferee.
- (4) A statement describing how the transferee will construct, operate, and maintain the proposed pipeline under applicable federal, state, and local law, including:
 - (A) safety regulations and rules governing constructing, operating, and maintaining the carbon dioxide transmission pipeline; and
 - (B) related facilities and equipment, to ensure the safety of the applicant's employees and the public.

A transferee shall include a copy of a federal, state, or local regulatory agency permit with the statement under this subdivision.

(5) A statement that the interests of a mineral lessee or mineral owner will not be adversely affected by the pipeline.

(6) An agreement between the transferee and the mineral lessee or mineral owner under IC 14-39-2-4.

(7) Documentation regarding the following:

- (A) A legal proceeding required under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) and the transferee's report under Form 10-K.
- (B) A description of a judgment entered against the transferee for a civil or an administrative complaint for violating a state or federal environmental protection law that imposed a fine or civil penalty of more than ten thousand dollars (\$10,000) on the transferee not more than five (5) years before the date the application was submitted.
- (C) A description of a conviction entered against the transferee for violating a state or

federal environmental protection law not more than five (5) years before the application was submitted.

(d) If the department determines the application for a transfer is complete, the department shall notify the transferee, and the transferee shall do the following:

(1) Not later than sixty (60) days after receiving the notice under this subsection:

- (A) place a copy of the application for the transfer in a public library located in each county where the pipeline is proposed to be located for public inspection; and
- (B) under 312 IAC 29-5-2(a), notify the following:

- (i) Each unit of government where a storage facility, monitoring well, or pipeline is located.
- (ii) An owner of a parcel of real estate adjacent to land for which the use is incidental to a pipeline.
- (iii) An owner of a parcel of real estate that may be, or is reasonably known to be, affected by injecting carbon dioxide.
- (iv) An owner of a parcel of real estate that may be, or is reasonably known to be, affected by constructing a new road, or improving or using an existing road to gain access to the pipeline.

(2) Provide the department proof that the notice under this subsection was published not later than thirty (30) days after publication.

(3) Provide the department proof the notice was delivered to a person under subdivision (1)(C).

(e) Not later than ninety (90) days after receiving proof the notice under subsection (b) was published, the department shall notify the applicant in writing that the department either approves or denies the transfer.

(f) If the department determines:

- (1) the Indiana general assembly or federal government enacted a statute or adopted a regulation that requires denying a transfer;
- (2) the applicant failed to provide the department with a complete application for a transfer for one (1) year after initially submitting the application;
- (3) the department has concerns about the character and fitness of the transferee based on the information under subsection (c)(7);
- (4) the transferee fails to satisfy the financial, managerial, and technical requirements of this rule;
- (5) the transferee did not complete the requirements under subsection (c);
- (6) the transferee demonstrated a pattern of willful violations that resulted in damage to the environment;
- (7) the transferee is a person against which there is a pending notice of violation or civil penalty. If this finding is made, however, the transferee is not disqualified from receiving the transfer if:
 - (A) the violation was, or is in the process of being, corrected to the satisfaction of the department; or
 - (B) the transferee filed and is pursuing administrative review of the violation under IC 4-21.5; or

(8) the transferee had a certificate of authority revoked;
the department shall deny the application.

(g) If an application for a transfer is filed and there is a pending notice of violation:

- (1) the transferor who has a pending notice of violation, and its surety, are liable to abate the violation and satisfy the assessed penalty;
- (2) the transferee may accept liability to perform the abatement of the violation, and the transferor is required to satisfy the assessed penalty; or
- (3) a transferee of a pipeline certificate of authority is liable to abate the violation and for the assessed penalty after transfer of the pipeline certificate of authority.

The department may waive a penalty for a notice of violation in writing not later than ninety (90) days after the transfer if the department determines the transferee is acting in good faith to abate the violation.

(h) The department shall notify the transferor and transferee in writing that the department approves or denies the transfer.

(i) A transfer is effective on the date the written notice approving the transfer under subsection (h) is issued by the department.

(j) A determination under this section is subject to review and appeal under IC 4-21.5. (*Natural Resources Commission; 312 IAC 30-5-11*)

312 IAC 30-5-12 Certificate of authority; suspension; revocation

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5

Affected: IC 14-39

Sec. 12. (a) The department may initiate a proceeding to suspend or revoke a carbon dioxide transmission pipeline certificate of authority for the following reasons:

(1) The certificate of authority was issued due to fraud or intentional misrepresentation by the carbon dioxide transmission pipeline company.

(2) The pipeline company failed to start construction not later than two (2) years after issuing the certificate of authority.

(b) The pipeline company may request one (1) extension of the certificate of authority under subsection (a)(2) for two (2) years.

(c) If the pipeline company does not remedy a violation not later than (30) days after the violation is issued, the department may suspend or revoke the certificate of authority.

(d) A determination under this section is subject to review and appeal under IC 4-21.5. (*Natural Resources Commission; 312 IAC 30-5-12*)

Rule 6. Carbon Sequestration Project Permit

312 IAC 30-6-1 Carbon sequestration project permit; application

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39-2

Affected: IC 14-39-2-5

Sec. 1. (a) A responsible officer applying for a carbon sequestration project permit under IC 14-39-2 shall submit a complete carbon sequestration project permit application to the department that includes the following:

(1) The application requirements under IC 14-39-2-5, including the information or documentation submitted by the responsible officer to the U.S. EPA with the UIC Class VI permit demonstrating the following:

(A) The applicant has the financial ability to construct, operate, and maintain a carbon sequestration project. The applicant shall give the department a copy of each financial responsibility instrument submitted to the U.S. EPA with the UIC Class VI permit.

(B) The applicant has the managerial and technical ability to construct, operate, and maintain a carbon sequestration project. The applicant demonstrates this by providing to the department the following:

(i) An area of review and corrective action plan.

(ii) A testing and monitoring plan.

(iii) A well plugging plan.

(iv) A postinjection site care and closure plan.

(v) A corrosion monitoring and prevention program.

(vi) An emergency and a remedial response plan.

(vii) Construction details.

(C) The applicant, a contractor or subcontractor of the applicant, or an affiliate of the applicant, contractor, or subcontractor have the requisite expertise to construct, operate, and maintain a carbon sequestration project. An applicant shall specify the components to be handled by:

- (i) the applicant; and
- (ii) a contractor, a subcontractor, or an affiliate.

(D) Information or documentation describing the scope of the proposed carbon sequestration project.

(2) A copy of a federal, state, or local regulatory agency permit required in addition to the UIC Class VI permit with the required statement under IC 14-39-2-5(e)(7).

(3) The name, mailing address, and telephone number of the storage facility and applicant.

(4) The location of each proposed monitoring well and carbon dioxide injection well.

(5) Whether the storage facility is located on Native American land, a historic or an archaeological site, or a public property (as defined by IC 14-8-2-225).

(6) The quantity and quality of carbon dioxide proposed to be injected and stored in the storage facility.

(7) Documentation regarding the following:

(A) A legal proceeding required under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq) and the applicant's report under Form 10-K.

(B) A description of a judgment entered against the applicant for a civil or an administrative complaint for violating a state or federal environmental protection law, which imposed a fine or civil penalty of more than ten thousand dollars (\$10,000) on the applicant not more than five (5) years before the date the application is submitted.

(C) A description of a conviction entered against the applicant for violating a state or federal environmental protection law not more than five (5) years before the application is submitted.

(8) Whether the application is an initial application under this section or an application to amend an existing carbon sequestration project permit under section 5 of this rule.

(b) The department may not issue a carbon sequestration project permit under this article if the applicant does not submit a complete application for a carbon sequestration project permit under subsection (a).

(c) The department may issue a carbon sequestration project permit under this article to an applicant that has not received an authorization to inject on the UIC Class VI permit issued by the U.S. EPA. *(Natural Resources Commission; 312 IAC 30-6-1)*

312 IAC 30-6-2 Carbon sequestration project permit; issuance

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39-2

Affected: IC 14-39-2

Sec. 2. (a) Not later than ninety (90) days after receiving an application under section 1 of this rule, the department shall review the submitted application and determine whether the application is complete and accurate.

(b) If the department determines an application is incomplete or inaccurate, or both, the department shall:

(1) notify the applicant not later than five (5) business days after making the determination that the application contains deficiencies; and

(2) give the applicant an opportunity to remedy the deficiencies not later than fifteen (15) business days after receiving the notice under this subsection before returning the application to the applicant.

After the department gives the applicant an opportunity to remedy the deficiencies under subdivision (2), the department shall return the application to the applicant. If the applicant fails to remedy the deficiencies not

later than fifteen (15) business days after receiving the notice under this subsection, the department may deny the application.

(c) The department may deny a carbon sequestration project permit if it determines any of the following:

- (1) The Indiana general assembly or federal government enacted a statute or adopted a regulation that requires denial.
- (2) The applicant failed to give the department a complete application for a carbon sequestration project permit for at least one (1) year after initially submitting the application.
- (3) The department has concerns about the character and fitness of the applicant based on the information provided to the department under section 1(a)(7) of this rule.
- (4) The applicant fails to satisfy the financial, managerial, and technical requirements under 312 IAC 30-5-3 through 312 30-5-5 and this rule.

(d) A determination under this section is subject to review and appeal under IC 4-21.5. (*Natural Resources Commission; 312 IAC 30-6-2*)

312 IAC 30-6-3 Carbon sequestration project permit; suspension; revocation

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39-2

Affected: IC 14-39-2

Sec. 3. (a) The department may suspend or revoke a carbon sequestration project permit for any of the following reasons:

- (1) The permit was issued due to fraud or intentional misrepresentation by the storage operator.
- (2) The information or conditions under which the permit was issued changed in a way that is not considered a minor modification under section 4(b) of this rule.
- (3) The storage operator failed to maintain the financial responsibility required under this article.
- (4) The storage operator violated IC 14-39 or this article.
- (5) The storage operator is polluting water or land in violation of IC 13 or IC 14.
- (6) The storage operator was issued a written notice of violation by the state and failed to do at least one (1) of the following:
 - (A) Abate a violation during the prescribed period.
 - (B) Receive in writing additional time to abate the violation before the abatement period under clause (A) expires.
 - (C) Request a proceeding under IC 4-21.5.
- (7) There is a change to the operating conditions of a monitoring well or carbon dioxide injection well that is not considered a minor modification under section 5(b) of this rule.
- (8) If a storage operator discovers that they:
 - (A) failed to submit information in a permit application; or
 - (B) submitted incorrect information in a permit application or report to the department; the storage operator shall immediately notify the department and submit the omitted or correct information to the department.

(b) A written notice of violation issued under subsection (a)(6) must include the following:

- (1) The nature of the violation.
- (2) The action necessary to abate the violation.
- (3) The date by which the violation must be abated.
- (4) Notice that a person may file a written request for administrative review of the notice of violation not later than thirty (30) days after the notice is issued under IC 4-21.5.

(c) A written notice of violation under subsection (a)(6) is considered properly served upon:

- (1) personal delivery upon the storage operator, or the storage operator's designee; or
- (2) service by United States First Class mail to the address of record on file with the division of reclamation for the department.

(d) The date by which the violation must be abated under subsection (b)(3) may be modified by the department upon a request from the storage operator demonstrating that:

(1) abatement within the original time established is not practicable due to:

- (A) the scope of actions required for abatement; or
- (B) circumstances beyond the control of the storage operator; and

(2) a delay in abating the violation will not:

- (A) substantially increases the damage to property;
- (B) increase the threat to the environment; or
- (C) increase the threat to public health or safety.

(e) If the department suspends or revokes a permit under this section, the storage operator shall immediately stop operating the carbon sequestration project.

(f) A determination under this section is subject to review and appeal under IC 4-21.5. (*Natural Resources Commission; 312 IAC 30-6-3*)

312 IAC 30-6-4 Carbon sequestration project permit; modification; amendment

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39-2

Affected: IC 14-39-2

Sec. 4. (a) At the storage operator's request, the department may modify a carbon sequestration project permit to make a minor modification to the permit under subsection (b) without requiring the storage operator to file an application to amend the permit.

(b) A minor modification includes the following:

- (1) To correct a typographical error.
- (2) To require more frequent monitoring or reporting by a storage operator.
- (3) To change an interim compliance date in a compliance schedule that:

- (A) is not more than one hundred twenty (120) days after the date specified by the existing carbon sequestration project permit; and
- (B) does not interfere with finishing by the required final compliance date.

(c) A modification to a carbon sequestration project permit not processed as a minor modification must be filed as an application to amend an existing carbon sequestration project permit. A storage operator may file an application to amend a permit regarding the following:

- (1) A change in the carbon dioxide stream to be injected, including the quantity or type.
- (2) A change in the construction requirements to a storage facility, monitoring well, or carbon dioxide injection well.
- (3) An amendment to:

- (A) a testing and monitoring plan;
- (B) a plugging plan;
- (C) a postinjection site care and closure plan; or
- (D) an emergency and a remedial response plan.

(d) If a storage operator files an application to amend an existing carbon sequestration project permit under subsection (c), the application is treated as a new carbon sequestration project permit. (*Natural Resources Commission; 312 IAC 30-6-4*)

312 IAC 30-6-5 Carbon sequestration project permit; transfer

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39-2

Affected: IC 14-39-2

Sec. 5. (a) A storage operator issued a carbon sequestration project permit by the department, with the transferee, may apply to the department for a carbon sequestration project permit transfer if the

transferee meets the same underlying qualifications as the storage operator.

(b) At least one hundred twenty (120) days before the intended transfer date, a storage operator and transferee under subsection (a) shall notify the department of the intent to apply for a carbon sequestration project permit transfer. An application for a carbon sequestration project permit transfer must be completed as prescribed by the department, including the information required under subsection (c).

(c) A storage operator and transferee that apply for a carbon sequestration project permit shall submit the following with an application for a carbon sequestration project permit transfer:

(1) Proof the transferee is issued a UIC Class VI permit from the United States Environmental Protection Agency (U.S. EPA) and meets the same underlying qualifications of the storage operator.

(2) The name, address, telephone number, and signature of the storage operator and transferee.

(3) A statement verifying the information submitted is accurate and complete to the best of knowledge of the storage operator and transferee.

(4) The information or documentation submitted to the U.S. EPA by the storage operator and transferee with the UIC Class VI permit demonstrating the following:

(A) The transferee has the financial ability to construct, operate, and maintain a carbon sequestration project. The transferee shall give the department a copy of each financial responsibility instrument submitted by the transferee to the U.S. EPA for the UIC Class VI permit.

(B) The transferee has the managerial and technical ability to construct, operate, and maintain a carbon sequestration project. The transferee shall give the department a copy of each of the following managerial and technical documents submitted by the transferee to the U.S. EPA for the UIC Class VI permit:

(i) An area of review and corrective action plan.

(ii) A testing and monitoring plan.

(iii) A well plugging plan.

(iv) A postinjection site care and closure plan.

(v) A corrosion monitoring and prevention program.

(vi) An emergency and a remedial response plan.

(vii) Construction details.

(C) The transferee, a contractor or subcontractor of the transferee, or an affiliate of the transferee, contractor, or subcontractor have the requisite expertise to construct, operate, and maintain a carbon sequestration project. A transferee shall specify the components to be handled by:

(i) the transferee; and

(ii) a contractor or subcontractor of the transferee.

(D) Information or documentation describing the scope of the proposed carbon sequestration project.

(5) A sworn statement describing how the transferee will construct, operate, and maintain the proposed carbon sequestration project to comply with applicable federal, state, and local law, including:

(A) safety regulations and rules governing constructing, operating, and maintaining the carbon sequestration project; and

(B) related facilities and equipment, to ensure the safety of the applicant's employees and the public.

A transferee shall include a copy of a federal, state, or local regulatory agency permit required in addition to the UIC Class VI permit with the statement under this subdivision.

(6) A statement that the interests of a mineral lessee or owner will not be adversely affected.

(7) An agreement between the transferee and a mineral lessee or owner under IC 14-39-2-4.

(8) Documentation regarding the following:

(A) A legal proceeding required under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) and the transferee's report under Form 10-K.

(B) A description of a judgment entered against the transferee for a civil or an administrative complaint for violating a state or federal environmental protection law, which imposed a fine or civil penalty of more than ten thousand dollars (\$10,000) on the transferee, not more than five (5) years before the date the application is submitted.

(C) A description of a conviction entered against the transferee for violating a state or federal environmental protection law not more than five (5) years before the application is submitted.

(9) The date the transfer will occur.

(d) If the department determines the application for a carbon sequestration project permit transfer is complete, the department shall notify the transferee, and the transferee shall do the following:

(1) Not later than sixty (60) days after receiving the notice under this subsection:

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

(B) notify the following parties under 312 IAC 29-5-2 as follows:

(i) Each unit of government where a storage facility, monitoring well, or carbon dioxide injection well is located.

(ii) An owner of a parcel of real estate adjacent to land for which the use is incidental to a carbon sequestration project.

(iii) An owner of a parcel of real estate that may be, or is reasonably known to be, affected by the injection of carbon dioxide.

(iv) An owner of a parcel of real estate that may be, or is reasonably known to be, affected by the construction of a new road or the improvement or use of an existing road to gain access to a storage facility, monitoring well, or carbon dioxide injection well.

(2) Not later than thirty (30) days after publication, provide the department proof the notice under this subsection was published.

(3) Provide the department proof the notice was delivered to a person under subdivision (1)(C).

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

(1) approves the transfer; or

(2) denies the transfer.

(f) The department shall deny a carbon sequestration project permit if it determines any of the following:

(1) The Indiana general assembly or federal government enacted a statute or adopted a regulation that requires denial.

(2) The applicant failed to give the department a complete application for a transfer for one (1) year after initially submitting the application.

(3) The department has concerns about the character and fitness of the transferee based on the information given to the department under subsection (c)(8).

(4) The transferee fails to satisfy the financial, managerial, and technical requirements under this article.

(5) The transferee did not complete the requirements under subsection (c).

(6) The transferee demonstrated a pattern of willful violations resulting in damage to the environment.

(7) The transferee is a person with a pending violation notice or civil penalty under IC 13 or IC 14. If this finding is made, however, the transferee is not disqualified from receiving the transfer if:

(A) the violation is, or is in the process of being, corrected to the satisfaction of the department; or

(B) the transferee filed and is pursuing administrative review of the violation under IC 4-

21.5.

(8) The transferee had a carbon sequestration project permit revoked under this rule.

(g) If an application for a permit transfer is filed and a pending violation notice is associated with the carbon sequestration project permit issued to the storage operator:

- (1) the transferor that has a pending violation notice, and its surety, are liable to abate the violation and satisfy the assessed penalty;**
- (2) the transferee may accept liability to perform the violation abatement, and the transferor is required to satisfy the assessed penalty; or**
- (3) a transferee is liable to perform the violation abatement and for the assessed penalty, after the carbon sequestration project permit transfer.**

The department may waive the penalty for a violation notice in writing not later than ninety (90) days after the permit transfer if the department determines that the transferee is acting in good faith to abate the violation.

(h) The department shall issue notice either approving or denying a permit transfer.

(i) A permit transfer is effective on approval in writing by the department.

(j) A determination under this section is subject to review and appeal under IC 4-21.5. (Natural Resources Commission; 312 IAC 30-6-5)

Rule 7. Ongoing Responsibilities of a Storage Operator

312 IAC 30-7-1 Financial responsibility

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39

Affected: IC 14-39

Sec. 1. (a) A storage operator shall provide proof of ongoing financial responsibility to the department annually.

(b) If a storage operator experiences a financial change that affects their ongoing financial responsibility, the storage operator shall notify the department of the financial change not later than thirty (30) days after the financial change occurs.

(c) If proof of financial responsibility is not maintained as required during the carbon sequestration project, the carbon sequestration project permit is invalid.

(d) If a carbon sequestration project permit is considered invalid under subsection (c), a storage operator may not engage in, or claim to be engaged in, a carbon sequestration project until:

- (1) the storage operator complies with the financial responsibility requirement under subsection (a); and**
- (2) the carbon sequestration project permit is considered valid by the department.**

(Natural Resources Commission; 312 IAC 30-7-1)

312 IAC 30-7-2 Annual reports

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39

Affected: IC 14-39

Sec. 2. (a) Except as provided in section 3 of this rule, a storage operator shall file with the department an annual report that includes the following information:

- (1) A change to the source or physical, chemical, and other characteristics of the carbon dioxide stream from the data initially provided with the UIC Class VI permit.**
- (2) The monthly average, highest, and lowest values for injection pressure, flow rate and volume, and annular pressure.**
- (3) An event that exceeds operating parameters for annulus or injection pressure under the UIC**

Class VI permit.

- (4) An event that triggers a shutoff device and the response to remediate the triggering event.
- (5) The annual volume and mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project to date.
- (6) The results of testing and monitoring required by the United States Environmental Protection Agency for a UIC Class VI permit.
- (7) The summarized results of:
 - (A) the periodic tests of mechanical integrity;
 - (B) all performed well workovers; and
 - (C) any other test of the monitoring well or carbon dioxide injection well required by the department.
- (8) Updated projections based on actual reservoir operational experience, including geologic data and information. Updated projections under this subdivision of the response and storage capacity of the storage reservoir.
- (9) An anomaly in predicted behavior as indicated by the requirements of a carbon sequestration project permit or in the assumptions for which the carbon sequestration project permit is issued must be explained and, if needed, the permit conditions amended under this article.
- (10) A summary of any instances of noncompliance with a UIC Class VI permit.

(b) The storage operator shall give the annual report required under subsection (a) to the department not later than sixty (60) days after the end of the calendar year. (*Natural Resources Commission; 312 IAC 30-7-2*)

312 IAC 30-7-3 Other reporting requirements

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39

Affected: IC 14-39

Sec. 3. A storage operator shall notify the department of any instance of:

- (1) a well workover; or
- (2) noncompliance with a UIC Class VI permit;

not later than thirty (30) days after an instance under subdivision (1) or (2). (*Natural Resources Commission; 312 IAC 30-7-3*)

312 IAC 30-7-4 Notice; alteration or addition; storage facility

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39

Affected: IC 14-39

Sec. 4. A storage operator shall give notice to the department at least ninety (90) days before:

- (1) a planned physical alteration or addition to the storage facility;
- (2) a planned change in the storage facility; or
- (3) an activity which may result in noncompliance with the requirements of the carbon sequestration project permit.

(Natural Resources Commission; 312 IAC 30-7-4)

Rule 8. Records

312 IAC 30-8-1 Access to records

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39

Affected: IC 14-39

Sec. 1. (a) A storage operator shall:

- (1) cooperate with the department; and
- (2) allow access to all records and documents;

as required by the department in carrying out the department's duties regarding a carbon sequestration project.

(b) A storage operator shall retain the following records:

- (1) Data collected for a carbon sequestration project permit application.**
- (2) Data regarding the source, nature, and composition of the carbon dioxide stream to be injected under a carbon sequestration project permit.**
- (3) Records from the closure period, including well plugging reports, post injection site care data, and a final assessment.**

(c) Once a project is finished, the storage operator shall deliver any records required under this section to the department.

(d) Except as provided under subsection (e), a storage operator shall:

- (1) retain records required under this section; and**
- (2) transfer the records to the department;**

not later than one hundred eighty (180) days after receiving the certificate of project completion from the department under IC 14-39-2-13.

(e) A storage operator shall retain the records under this section until the storage operator is issued a certificate of project completion from the department under IC 14-39-2-13.

(f) The record retention period under subsection (d) may be extended at the request of the department. (Natural Resources Commission; 312 IAC 30-8-1)

312 IAC 30-8-2 Inspections

Authority: IC 14-10-2-4; IC 14-10-2-5; IC 14-39-0.5; IC 14-39

Affected: IC 14-39

Sec. 2. A storage operator shall allow the department, or an agent or employee of the department, to at reasonable times:

- (1) review the location where records are kept; or**
- (2) copy a record;**

under the requirements of a carbon sequestration project permit. (Natural Resources Commission; 312 IAC 30-8-2)