312 Natural Resources Commission

Permanent Rule
Regulatory Analysis LSA
Document #25-702

I. Description of Rule

a. History and Background of the Rule – Interest in transporting and sequestering carbon dioxide increased nationally when Congress passed what is commonly referred to as the 45Q federal income tax credit for carbon capture and sequestration. The 45Q income tax credit was enacted under the Federal Energy Improvement and Extension Act of 2008 to encourage the construction and use of carbon capture and sequestration projects. The tax credit is part of a push by the federal government to decrease carbon emissions across the country. The increase to the 45Q tax credit in 2022 accelerated and expanded the demand for carbon capture and sequestration projects throughout the nation. Carbon capture and sequestration is permitted by the United States Environmental Protection Agency (EPA) under the Class VI program. There are four (4) Class VI permits issued by the EPA presently.

In 2022, the General Assembly passed HEA 1209, which allows carbon sequestration projects in the state. While the statute required the department to issue permits for carbon sequestration projects, the statute did not give the department rulemaking authority. Under HEA 1626-2023, the department was given rulemaking authority for carbon sequestration projects under IC 14-39-2 as well as carbon dioxide transmission pipelines under IC 14-39-1.

The proposed permanent rules are added to 312 IAC 30, regarding carbon sequestration projects and carbon dioxide transmission pipelines. The department has been diligently working to draft rules with an external working group consisting of members of the industry, landowners, and other state agencies that may be involved in permitting carbon sequestration projects and carbon dioxide transmission pipelines. The department also established an internal working group made up of department employees to manage drafting the rules, discussing the different suggestions of the external working group, and compiling the proposed permanent rules. The proposed permanent rules are the product of both the external and internal working groups.

b. Scope of the Rule – The proposed rule establishes the applicability of carbon sequestration projects, in conjunction with IC 14-39-2. Additionally, the proposed rules contain regulations for the department issuing: (1) involuntary integration orders; and (2) certificates of project completion.

c. Statement of Need – The General Assembly tasked the department with permitting carbon sequestration projects under IC 14-39-2 and carbon dioxide transmission pipelines under IC 14-39-1. Under IC 14-39-0.5, the department has

a duty to adopt rules under IC 4-22-2 to implement the tasks assigned to the department under IC 14-39. Rules adopted under IC 14-39-0.5 must include the provisions necessary for the department's discharge of the duties imposed upon the department.

The statutory directive creates a duty on the department to adopt rules regarding carbon sequestration projects and carbon dioxide transmission pipelines for the directives assigned to the department by the general assembly under IC 14-39. In anticipation of the enactment of P.L. 158-2023, which provided the department with rulemaking authority for carbon sequestration projects and carbon dioxide transmission pipelines, the department established a working group made up of department staff, other state agencies that are responsible for regulating pieces of these types of projects, industry members, and certain landowners. The working group spent more than one (1) year meeting and working through the rules to ensure that regulated entities would have input.

Working group members who are part of the industry and would be regulated by the proposed rules indicate they require adoption of the rules as quickly as possible to avoid unnecessary delays to their projects once the entity obtains a UIC Class VI permit. Once adopted, the department needs time to create the necessary forms and other regulatory pieces for industry to proceed accordingly with their projects. A delay in the adoption of the rules could result in massive delays to industry which would be costly and result in massive revenue loss. Timeliness is a serious concern for industry. The department is requesting use of the interim rulemaking process to ensure that there are no unnecessary delays to industry once members are issued their UIC Class VI permits; and to reduce costs to the industry for unnecessary delays.

d. Statutory Authority for the Proposed Rule – The department has a duty to adopt rules under IC 14-39-0.5 for IC 14-39-1 and IC 14-39-2. The Natural Resources Commission (commission) has the statutory authority to adopt rules under IC 14-10-2-4.

e. Fees, Fines, and Civil Penalties – The proposed permanent rules do not add or increase a fee, fine, or civil penalty.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule - The anticipated effective date of the proposed permanent rules is May or June of 2026. Preliminary adoption with the commission is expected in October, 2025. The public hearings are not anticipated to take place until sometime between November and December, 2025, then final adoption by the commission would not likely take place until January 2026. The proposed rule is anticipated to become effective, after review by the Attorney General’s Office and Governor’s Office, and publishing with the Indiana Register, in April or May of 2026. Rules are effective thirty (30) days after they are

accepted for publishing by the publisher. This would place the effective date of the rules in May or June of 2026.

b. Estimated Fiscal Impact on State and Local Government – There are no increases to expenses for local governments. The department will experience increases in expenditures to use the permanent rulemaking processes to adopt rules. There will be revenue for the department resulting from application fees and storage fees. There will be increased expenditures due to increased staff time and resources to perform preapplication coordination, review applications and supporting documentation, issue involuntary integration orders and certificates of project completion, and ensure ongoing requirements are met. These increases are part of the normal operating costs of the department and will be taken from the Oil and Gas Operating Fund, 38220. The total impact will vary each year depending on the number of petitions for involuntary integration or applications for certificates of project completion received for the various permits across state agencies and local units of government.

c. Sources of Expenditures or Revenues Affected by the Rule – Beginning as early as 2025, the department is impacted by these projects. Expenditures for the department will come out of the Oil and Gas Operating Fund, 38220. The department hired staff for the program in 2023, so increased expenditures to the Oil and Gas Operating Fund, 38220, began in 2023 and will continue annually. Other state agencies and local governments saw increases in expenditures beginning in 2025.

III. Impacted Parties

Impacted parties include any person who wishes to sequester carbon dioxide in Indiana. Currently, there are six (6) Class VI permit applications being reviewed by the EPA, as well as the pilot project. At this time, these are the only known projects in Indiana. Any other potential project is speculative in nature. Additionally, pore space owners, surface owners, and people who elect to participate in a carbon sequestration project will be impacted by the proposed permanent rules. There is not a way to ascertain the exact number of pore space owners, surface owners, and people who elect to participate in a project until permits are approved. Until an approved permit is issued, the area of review, which provides information regarding the pore space and surface owners can change drastically. Additionally, a project could obtain the pore space and surface access needed by agreement with the owner, which would render the option of involuntary integration unnecessary. The department will likely be affected due to increased staff time for permitting projects. Because 312 IAC 30 is not yet effective, staff have not yet begun to permit a carbon project to determine how long it will take the staff for the carbon program to issue permits.

IV. Changes in Proposed Rule

The proposed permanent rules are additions to 312 IAC 30 regarding carbon sequestration project permits and carbon dioxide transmission pipeline certificates of authority, so the changes are an addition to requirements that are in the finishing stages of the rulemaking process. 312 IAC 30 will be effective long before the proposed permanent rules would be effective. The department has authority to adopt rules under IC 4-22-2-37.2; IC 4-22-2.3-3; IC 14-10-2-4; IC 14-10-2-5; and IC 14-39-0.5. Supporting documentation required for a petition for involuntary integration is similar to that required for oil and gas purposes. Obtaining the supporting documentation required in an application for a certificate of project completion is in no way overly burdensome and is in coordination with the requirements under IC 14-39-2. There are no requirements included as part of the proposed permanent rules that incorporate existing agency standards contained in non-rule documents.

V. Benefit Analysis

*****NOTE:** Estimated costs under the table below for "Estimated Business Impacts/Costs Savings to Regulated Entities" are possible expense estimates and will vary depending upon the specific project and the amounts each applicant pays staff for the same work. The size and scope of the project will also be a determining factor in the actual costs to a regulated entity. Additionally, because there are not many projects of this type across the United States, actual costs will not be determined until the program is well underway in Indiana. Other state regulations are different in scope than what the department is tasked with under the Indiana Code, and the costs to regulated entities would likely differ greatly as a result. Finally, some costs may also be absorbed into the costs to apply for a UIC Class VI permit with the EPA.

Indiana Administrative Code Provision	**Direct Benefits**	**Indirect Benefits**	**Fiscal Impact to the Department**	**Estimated business Impacts/Cost Savings to Regulated Entities**
Adds 312 IAC 30-5.5 regarding petitions for involuntary integration order requiring pore space owners to integrate their interests to develop pore space as a proposed storage facility, notice requirements to affected pore space owners, equitable compensation, surface access, priority of petitions, amendments to	Provides a clear structure, in line with current oil and gas resources standards, for obtaining an involuntary integration order under IC 14-39-2 Removes subjectivity on the part of the department regarding decisions on equitable compensation	Providing clarity on the requirements of storage operators and pore space owners and surface owners in an involuntary integration setting will help promote smooth interaction between storage operators, pore space owners and surface owners, and the	None known	None known

orders, restoring rights to the pore space owner, and transfer of the order which coincide with the involuntary integration rules for oil and gas resources	These benefits cannot be quantified since we do not know the cost savings in operator time. Further, without involuntary integration, the project wouldn't go forward and we cannot quantify the overall benefit of doing the project. These benefits are believed to be significant	agencies tasked with permitting different requirements and regulating different safety aspects of the projects		
Adds 312 IAC 30-9 Certificate of project completion from the department	Provides application requirements for a certificate of project completion, as well as when a certificate may be invalidated or voided. This benefit cannot be quantified because it depends what happens with the project after completion and any liability is unknown at this time. These benefits are believed to be significant	Provides clarity to a storage operator for how to obtain a certificate of project completion, which promotes smooth interaction between the storage operator and the department	None known	None known

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – The proposed permanent rules provide options for regulated entities, rather than requirements, that benefit the regulated entity. Involuntary integration provides an option for a storage operator that prevents waste and protects correlative rights, as has been seen in oil and gas integration. In oil and gas production, water rights determinations, extraction of minerals, and riparian rights determinations, this is commonly referred to as the correlative rights doctrine. This doctrine states that a property owner of a common reservoir is expected to have the property owner's fair share of the recoverable oil or gas beneath the land owned. Additionally, the

doctrine restricts the right to extract resources to prevent waste, damage to the common source, or depletion that harms other landowners sharing the resource. The doctrine helps to place a reasonable limit on the overproduction of oil and gas production to prevent damage to a common reservoir. This is protected by pooling and unitization regulations, also known as involuntary integration, as well as production allowable and well-spacing rules. Involuntary integration is the involuntary consolidation of neighboring tracts of land and mineral rights by a state agency to allow for the joint development of oil and gas, even when some landowners object. The primary purpose is to ensure that regulatory spacing requirements for wells are met, to prevent resource waste, and to enable operators to develop resources under properties whose owners refuse to participate voluntarily. Due to the nature of carbon sequestration projects, involuntary integration is a common practice among states with these projects. There are also possible costs to non-consenting pore space owners who may hire attorneys or experts to present relevant evidence regarding the value of the property and to represent them in administrative proceedings under IC 4-21.5. Attorneys across the State charge amounts that vary greatly depending upon the amount of experience, location, firm size, and other factors. It is possible nonconsenting pore space owners could hire multiple attorneys or multiple experts. The costs would likely vary greatly depending on the scope of the proposed project, the area of review, property values in the area, the type of expert, where the expert is from, and other factors relevant to the informal hearing or administrative proceeding. It would be very difficult, if not impossible, to attempt to quantify those possible costs. As there are no active projects at this time, we don't know what those rates might be, what attorneys' fees and time might be, or what expert costs and time might be because those would vary greatly depending on so many factors, and there are no proceedings of this type in the State at this time. In addition to attorney costs, there is a cost for nonconsenting pore space owners who will be losing use of their pore space rights after involuntary integration is finalized.

IC 14-39-2-13 requires the department to issue, not a storage operator to apply for, a certificate of project completion. This option allows a storage operator to put long-term liability for carbon storage on the State of Indiana, as long as the storage operator meets certain requirements. The other option is for the storage operator to hold liability in perpetuity. There is no requirement that the storage operator put the long-term liability for carbon dioxide storage on the State of Indiana. Obtaining a certificate of project completion absolves the storage operator and the owner of the storage facility of any long-term liability, and places that responsibility on the State.

While there may be costs to the regulated entity, those costs are associated with the storage operator opting into that option. A storage operator or owner of a storage facility is in no way required to use involuntary integration or obtain a certificate of project completion. Neither the Indiana Code nor the proposed permanent rules establish these options as a requirement. Nonconsenting pore space owners could see expenses in hiring attorneys or experts to represent the

nonconsenting pore space owner or present relevant evidence at an informal hearing or administrative proceeding. However, nothing requires nonconsenting pore space owners to do so.

However, offsetting operational costs are carbon capture credits offered by the state or federal government for each ton of carbon dioxide sequestered below ground. When considering the financial offsetting by the 45Q tax credits, there may be a few overall costs to storage operators. This offsetting would be determined on a case-by-case basis, based on the tax returns of the storage operator. The factors that may play into the amount of the credit vs. the costs associated with the project would largely depend upon the size and scope of the project, the number of wells and the equipment associated with those wells, whether a pipeline is necessary, staffing of each individual storage operator to perform all required tests, staffing and experts needed for operating the project on a day-to-day basis, as well as many other factors. Because there is not a project in Indiana that is active, at this time, it would be impossible to know exactly what the difference between the costs associated with the project, and the exact amount offset by the 45 Q tax credit might be. Also, the amount could be vastly different depending on the factors listed above.

Additionally, compliance costs for regulated entities will occur over a period of more than two (2) years.

b. Estimate of Administrative Expenses Imposed by the Rules – Estimated costs to regulated parties appear in the table beginning on page 4 of this document.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 – The proposed permanent rules do not add or increase a fee, fine, or civil penalty. No analysis is required under IC 4-22-2-19.6 for the proposed permanent rules.

d. If the implementation of the proposed rule are expected to exceed the threshold set in IC 4-22-2-22.7(c)(6) – The combined implementation and compliance costs for the different phases of a carbon sequestration project contained in the proposed permanent rule for businesses, units, and individuals will be over a period of more than two (2) years. There are also possible costs to non-consenting pore space owners who may hire attorneys or experts to present relevant evidence regarding the value of the property and to represent them in administrative proceedings under IC 4-21.5. The implementation of the proposed rule could exceed the threshold set in IC 4-22-2-22.7(c)(6); therefore, the department is seeking budget committee review of the proposed permanent rules.

VII. Sources of Information

a. Independent Verifications or Studies – There were no independent verifications or studies used to make this analysis.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – The department asked about estimated costs for involuntary integration and certificates of project completion from possible projects. An estimate received from a potential project is that it may cost approximately fifty-six thousand dollars ($56,000) for a storage operator to go through the process to obtain an involuntary integration order, and it may cost approximately fifteen thousand dollars ($15,000) for a storage operator to apply for and obtain a certificate of project completion. These estimates were from a smaller project who does not have actual costs from which to draw data because the potential storage operator has not applied for either an involuntary integration order or a certificate of project completion. The estimates here were not used in the analysis above because involuntary integration and certificates of project completion are optional to a storage operator and it would be misleading to say there is a compliance cost for a provision of the rules which a storage operator may opt into, but is in no way required to use.

VIII. Regulatory Analysis

The department was tasked with administering carbon sequestration projects under HEA 1209-2022 and issuing permits for the projects. IC 14-39-0.5 required the department to adopt rules regarding carbon sequestration project permits and carbon dioxide transmission pipeline certificates of authority. The possible aggregate costs for a carbon sequestration project, as was outlined in the regulatory analysis for 312 IAC 30, would be approximately two hundred thirty-two thousand one hundred dollars ($232,100). However, any costs associated with the proposed rules do not impose compliance costs, because the two (2) items addressed by the rules, involuntary integration orders and certificates of project completion, are not requirements imposed on a storage operator, but are optional benefits to a storage operator provided under the Indiana Code. The proposed rule establishes the regulations required by the General Assembly in the most non-restrictive manner possible. It also provides clarity for applicants, pore space owners, and others who may be affected by a carbon sequestration project or the placement of a carbon dioxide transmission pipeline, as well as state agencies and local governments tasked with permitting other items associated with carbon sequestration projects and carbon dioxide transmission pipelines. This clarity will help promote smooth interactions between the agencies tasked with permitting different requirements and regulating different safety aspects of the projects, and will benefit the public by providing transparent, easy to understand regulations for the projects beyond what is already set out in the Indiana Code. The benefits of the proposed rules are likely to exceed the costs.

IX. Contact Information of Staff to Answer Substantive Questions

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[Text to be added by the Register]
First Notice of Public Comment Period [link to document with proposed rule]
LSA Document #XX-XXX
Notice of Determination Received: [date]