

Wyoming Statutory Provisions on Pore Space

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

(d) The commission has authority:

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

34-1-152. Ownership of pore space underlying surfaces.

(a) The ownership of all pore space in all strata below the surface lands and waters of this state is declared to be vested in the several owners of the surface above the strata.

(b) A conveyance of the surface ownership of real property shall be a conveyance of the pore space in all strata below the surface of such real property unless the ownership interest in such pore space previously has been severed from the surface ownership or is explicitly excluded in the conveyance. The ownership of pore space in strata may be conveyed in the manner provided by law for the transfer of mineral interests in real property. No agreement conveying mineral or other interests underlying the surface shall act to convey ownership of any pore space in the stratum unless the agreement explicitly conveys that ownership interest.

(c) No provision of law, including a lawfully adopted rule or regulation, requiring notice to be given to a surface owner, to an owner of the mineral interest, or to both, shall be construed to require notice to persons holding ownership interest in any pore space in the underlying strata unless the law specifies notice to such persons is required.

(d) As used in this section, the term "pore space" is defined to mean subsurface space which can be used as storage space for carbon dioxide or other substances.

(e) Nothing in this section shall be construed to change or alter the common law as of July 1, 2008, as it

relates to the rights belonging to, or the dominance of, the mineral estate. For the purpose of determining the priority of subsurface uses between a severed mineral estate and pore space as defined in subsection (d) of this section, the severed mineral estate is dominant regardless of whether ownership of the pore space is vested in the several owners of the surface or is owned separately from the surface.

(f) All instruments which transfer the rights to pore space under this section shall describe the scope of any right to use the surface estate. The owner of any pore space right shall have no right to use the surface estate beyond that set out in a properly recorded instrument.

(g) Transfers of pore space rights made after July 1, 2008 are null and void at the option of the owner of the surface estate if the transfer instrument does not contain a specific description of the location of the pore space being transferred. The description may include but is not limited to a subsurface geologic or seismic survey or a metes and bounds description of the surface lying over the transferred pore space. In the event a description of the surface is used, the transfer shall be deemed to include pore space at all depths underlying the described surface area unless specifically excluded. The validity of pore space rights under this subsection shall not affect the respective liabilities of any party and such liabilities shall operate in the same manner as if the pore space transfer were valid.

(h) Nothing in this section shall alter, amend, diminish or invalidate rights to the use of subsurface pore space that were acquired by contract or lease prior to July 1, 2008.

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

(a) All carbon dioxide, and other substances injected incidental to the injection of carbon dioxide, injected into any geologic sequestration site for the purpose of geologic sequestration shall be presumed to be owned by the injector of such material and all rights, benefits, burdens and liabilities of such ownership shall belong to the

injector. This presumption may be rebutted by a person claiming contrary ownership by a preponderance of the evidence in an action to establish ownership.

(b) No owner of pore space, other person holding any right to control pore space or other surface or subsurface interest holder, shall be liable for the effects of injecting carbon dioxide for geologic sequestration purposes, or for the effects of injecting other substances for the purpose of geologic sequestration which substances are injected incidental to the injection of carbon dioxide, solely by virtue of their interest or by their having given consent to the injection.

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

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

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

(i) "Corresponding rights" means the right of all pore space owners in a unit area who will be affected by unit operations, either now or in the future, to concurrently share in the economic benefits generated by using the pore space in the unit area.

35-11-315. Unitization of geologic sequestration sites; agreements; application for permit; contents.

(a) Any interested person may file an application with the Wyoming oil and gas conservation commission requesting an order providing for the operation and organization of a unit of one (1) or more parts as a geologic sequestration site and for the pooling of interests in pore space in the proposed unit area for the purpose of conducting the unit operation. The application shall contain:

(i) A copy of any permit or draft permit issued by the department allowing geologic sequestration or any application for such permit;

(ii) A description of the pore space and surface lands proposed to be so operated, termed the "unit area";

(iii) The names, as disclosed by the conveyance records of the county or counties in which the proposed unit area is situated, and the status records of the district office of the bureau of land management of:

(A) All persons owning or having an interest in the surface estate and pore space in the unit area including mortgages and the owners of other liens or encumbrances; and

(B) All owners of the surface estate and pore space not included within but which immediately adjoins the proposed unit area or a corner thereof.

(iv) The addresses of all persons and owners identified in subparagraphs (iii)(A) and (B) of this subsection, if known. If the name or address of any person or owner is unknown, the application shall so indicate;

(v) A statement of the type of operations contemplated in order to effectuate the purposes specified in W.S. 35-11-314 to comply with environmental requirements and to facilitate the use and production of Wyoming energy resources;

(vi) A proposed plan of unitization applicable to the proposed unit area which the applicant considers fair, reasonable and equitable and which shall include provisions for determining the pore space to be used within the area, the appointment of a unit operator and the time when the plan is to become effective;

(vii) A proposed plan for determining the quantity of pore space storage capacity to be assigned to each separately owned tract within the unit and the formula or method by which pore space will be allocated the economic benefits generated by use of pore space in the unit area;

(viii) A proposed plan for generating economic benefits for the use of pore space within the unit area;

(ix) A proposed operating plan providing the manner in which the unit area will be supervised and managed and, if applicable, costs allocated and paid, unless all owners within the proposed unit area have joined in executing an operating agreement or plan providing for such supervision, management and allocation and, if applicable, payment of costs. All operating plans shall comply with all applicable environmental requirements.

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

(a) Upon receipt of an application under W.S. 35-11-315, the Wyoming oil and gas conservation commission shall promptly set the matter for hearing, and in addition to any notice otherwise required by law or the commission's rules, shall cause the applicant to give notice of the hearing, specifying the time and place of hearing, and describing briefly its purpose and the land and pore space affected, to be mailed by certified mail at least thirty (30) days prior to the hearing to all persons whose names and addresses are required to be listed in the application.

(b) After considering the application and hearing the evidence offered in connection therewith, the Wyoming oil and gas conservation commission shall enter an order setting forth the following findings and approving the proposed plan of unitization and proposed operating plan, if any, if the commission finds that:

(i) The material allegations of the application are substantially true;

(ii) The purposes specified in W.S. 35-11-314 will be served by granting the application;

(iii) The application outlines operations that will comply with environmental requirements;

(iv) Granting the application will facilitate the use and production of Wyoming energy resources;

(v) The quantity of pore space storage capacity, and method used to determine the quantity of pore space

storage capacity allocated to each separately owned tract within the unit area represents, so far as can be practically determined, each tract's actual share of the pore space to be used in the sequestration activity;

(vi) The method by which the allocation of economic benefits generated from use of pore space within the unit area between pore space owners; and between pore space owners and the unit operator or others is fair and reasonable, taking into consideration the costs required to capture, transport and sequester the carbon dioxide;

(vii) The method of generating economic benefits from the use of pore space in the unit area is fair and equitable and is reasonably designed to maximize the value of such use;

(viii) Other requirements specified by rules or regulations adopted by the oil and gas conservation commission have been met.

(c) No order of the Wyoming oil and gas conservation commission authorizing the commencement of unit operations shall become effective until the plan of unitization has been signed or in writing ratified or approved by those persons who own at least eighty percent (80%) of the pore space storage capacity within the unit area. If such consent has not been obtained at the time the commissioner's order is made, the commission shall, upon application, hold supplemental hearings and make findings as may be required to determine when and if the consent will be obtained. The commission shall require the applicant to give notice of a supplemental hearing by regular mail at least thirty (30) days prior to the hearing to each person owning interests in the pore space in the proposed unit area whose name and address was required by W.S. 35-11-315(a) to be listed in the application for the unit operations. If the required percentages of consent have not been obtained within a period of six (6) months from and after the date on which the order of approval is made, the order shall be ineffective and revoked by the commission, unless, for good cause shown, the commission extends that time. Any interested person may file an application with the Wyoming oil and gas conservation commission requesting an order applicable only to the proposed unit area described in the application which shall provide for the percentage of approval or ratification to

be reduced from eighty percent (80%) to seventy-five percent (75%). The application shall contain the information required by W.S. 35-11-315(a) and any order of the commission entered pursuant to the application shall comply with subsection (b) of this section. Notice of the hearing on the application shall be given in the same manner and to the same persons as required by subsection (a) of this section. If the commission finds that negotiations were being conducted since July 1, 2009, or have been conducted for a period of at least nine (9) months prior to the filing of the application, that the applicant has participated in the negotiations diligently and in good faith, and that the percentage of approval or ratification required by this subsection cannot be obtained, the commission may reduce any percentage of approval or ratification required by this section from eighty percent (80%) to seventy-five percent (75%). The order shall affect only the unit area described in the application and shall operate only to approve the proposed plan of unitization and proposed operating plan and to reduce the required percentage of approval or ratification thereof and shall not change any other requirement contained in this section.

(d) From and after the effective date of an order of the Wyoming oil and gas conservation commission entered under the provisions of this section, the operation of the unit area defined in the order by persons other than the unit operator or persons acting under the unit operator's authority, or except in the manner and to the extent provided in the plan of unitization approved by the order, shall be unlawful and is hereby prohibited.

(e) Unless otherwise provided in this section, an order entered by the Wyoming oil and gas conservation commission under this section may be amended in the same manner and subject to the same conditions as an original order or previous agreement: provided, no amendatory order shall change the assignments of pore space storage capacity between existing pore space owners in the unit area as established by the original order or previous agreement, except with the written consent of those persons who own at least eighty percent (80%) of the pore space storage capacity in the unit area, nor change any allocation of costs as established by the original order or previous agreement, except with the written consent of those persons who own at least eighty percent (80%) of the unit pore

space storage capacity. If consent has not been obtained at the time the commission order is made, the commission shall, upon application, hold supplemental hearings and make findings as may be required to determine when and if such consent will be obtained. The commission shall require the applicant to give notice of a supplemental hearing by regular mail at least thirty (30) days prior to the hearing to each person owning interests in the unit area whose name and address was required by the provisions of W.S. 35-11-315(a)(iii) to be listed in the application for the unit operations. If the required percentages of consent have not been obtained within a period of six (6) months from and after the date on which the order of approval is made, the order shall be ineffective and revoked by the commission, unless, for good cause shown, the commission extends that time. Any interested person may file an application with the Wyoming oil and gas conservation commission requesting an order applicable only to the unit area described in the application which shall provide for the percentage of approval or ratification to be reduced from eighty percent (80%) to seventy-five percent (75%). The application shall contain the information required by W.S. 35-11-315(a) and any order of the commission entered pursuant to the application shall comply with subsection (b) of this section. Notice of the hearing on the application shall be given in the same manner and to the same persons as required by subsection (a) of this section. If the commission finds that negotiations were being conducted since July 1, 2009 or have been conducted for a period of at least nine (9) months prior to the filing of the application, that the applicant has participated in the negotiations diligently and in good faith, and that the percentage of approval or ratification required by this subsection cannot be obtained, the commission may reduce any percentage of approval or ratification required by this section from eighty percent (80%) to seventy-five percent (75%). The order shall affect only the unit area described in the application and operate only to reduce the required percentage of approval or ratification necessary for amending the assignment of pore space and shall not change any other requirement contained in this section.

(f) The Wyoming oil and gas conservation commission, upon its own motion or upon application, and with notice and hearing, may modify its order regarding the operation, size or other characteristic of the unit area in order to prevent or assist in preventing a substantial inequity

resulting from operation of the unit, provided that no such modification may amend any permit issued under W.S. 35-11-313.

(g) Any owner of pore space within a geologic sequestration site who has not been included within a unitization application or order authorizing a unit under this section, may petition for inclusion in the unit area. The petition shall be filed with the Wyoming oil and gas conservation commission and shall describe the petitioner's legal entitlement to the pore space, the location of the pore space, whether the pore space is included within any permitting area applicable to the unit area and the bases for inclusion in the unit area. The petition shall be accompanied by a deposit of money sufficient to pay all costs of the inclusion proceedings. The commission shall require the petitioner to publish a notice of filing of the petition which notice shall state the filing of the petition, the name of the petitioner, the location of the pore space and the prayer of the petitioner. The notice shall notify all interested persons to appear at a specified time and place and to show cause, in writing, if any they have, why the petition should not be granted. The commission at the time and place mentioned in the notice shall proceed to hear the petition and all objections thereto and shall thereafter grant or deny the petition. The filing of the petition shall be deemed and taken as an assent by each and all petitioners to the inclusion in the unit of the pore space mentioned in the petition or any part thereof. If the petition is granted, the petitioner shall be considered to have been a member of the unit since its inception and, upon the payment of any costs paid by unit members, shall be entitled to all economic benefits received by unit members since the inception of the unit provided that no unit modification affects any permit issued under W.S. 35-11-313. The oil and gas conservation commission shall adopt rules providing for the fair and equitable determination of pore space storage capacity for each successful petitioner and the means by which successful petitioners shall be paid the economic benefits to which they are entitled under this subsection, including, if necessary, a reallocation of economic benefits among unit members.

(h) A certified copy of any order of the Wyoming oil and gas conservation commission entered under the provisions of this section shall be entitled to be recorded

in the land records of the county clerk for the counties where all or any portion of the unit area is located, and the recordation shall constitute notice thereof to all persons.

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

(k) No order for unitization issued under this section shall act so as to grant any person a right of use or access to a surface estate if that person would not otherwise have such a right.

35-11-317. Unitization of geologic sequestration sites; economic benefits; liens.

(a) No order of the Wyoming oil and gas conservation commission or other contract relating to a separately owned tract within the unit area shall be terminated by the order providing for unit operations, but shall remain in force and apply to that tract, its benefits, burdens and obligations, until terminated in accordance with the provisions thereof.

(b) Except to the extent that the parties affected agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title to pore space or other rights in any tract in the unit area and no agreement or order shall operate to violate the terms and requirements of any permit applicable to pore space within the unit area.