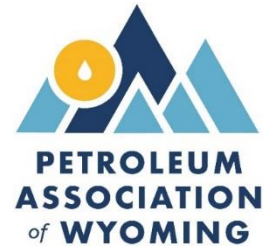


Memo

To: Joint Minerals Committee
From: Pete Obermueller
Re: Unitization Statute Amendments
Date: May 9, 2023



Summary:

W.S.35-11-14 through 19 create the unitization process for carbon sequestration. Unitization refers to the necessity of combining (or “unitizing”) sub-surface pore space to accommodate a single sequestration project that extends to multiple pore space owners.

Wyoming’s unitization statutes were written in the late 2000’s, prior to the advent of modern sequestration technology. The base of legislative authorization is sound, but it was tied to an understanding of upstream production, so there are improvements necessary to ensure that Wyoming remains at the forefront of CCUS investment in the U.S. The following proposal accomplishes the following things:

- 1) Creates a specific purpose of statute to facilitate the use of pore space for storage;
- 2) To clearly define economic benefits and unit area inclusion so that pore space owners and injectors understand the obligations required;
- 3) Ensure that operators have access to plugged wells for any potential UIC 6 remediation.

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

(a) The purpose of W.S. 35-11-314 through 35-11-319 is declared by the Wyoming legislature to be the protection of corresponding rights, compliance with Underground Injection Control (UIC) Class VI well~~environmental~~ requirements, ~~and~~ to facilitate the use and production of Wyoming energy resources, ~~and to facilitate the utilization of pore space for storage.~~

(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 35-11-320. When used in W.S. 35-11-314 through 35-11-320:

(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.

(ii) “Economic benefits” means the equitable proportionate share of money proceeds due to the various pore space owners in a unit area based upon each individual pore space owner’s contribution of pore space storage capacity to a unit area, which may include injection fees, lease payments or other consideration.

(iii) “Unit area” means the pore space lying within the geologic formation(s) proposed to be operated, and may include the area of geologic sequestration for one (1) or more injection wells.

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(s) or draft permit(s) 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 ~~included in se operated, termed in~~ 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, ~~if federal pore space is included within the proposed unit area~~, 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 ~~estate~~ 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 ~~estate~~ not included within but which immediately adjoins the proposed unit area or a corner thereof.

(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~~, ~~or to utilize pore space for storage~~;

(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-included~~ within the ~~unit~~ 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~~ ~~area~~ and the formula or method by which ~~pore space each separately owned tract~~ will be allocated the economic benefits generated by use of pore space in the unit area;

(viii) A proposed plan for ~~generating-providing for~~ economic benefits ~~for-and~~ 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~~ ~~Underground Injection Control (UIC) Class VI well~~ requirements.

(x) ~~The location of any identified and existing oil and gas production or injection wells, whether previously plugged or not, which may require evaluation monitoring and/or corrective action as part of the proposed geologic sequestration.~~

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

(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:

(iii) The application outlines operations that will comply with ~~environmental requirements applicable UIC Class VI well permit(s) or any applications for such permit(s);~~

(iv) Granting the application will facilitate the use and production of Wyoming energy resources, ~~or utilize pore space for storage;~~

(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 included within the sequestration activity-unit area;~~

(vi) The method ~~by which for~~ 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. Federal injection fees, lease payments or other considerations shall not be considered for purposes of this determination;~~

(vii) The method ~~of generating for providing for~~ 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 of the pore space.~~

(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, ~~if any,~~ shall be entitled to ~~a proportionate share of~~ 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 ~~or orders~~ 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.

(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, ~~except that a unitization order granted under this section may accommodate and provide for the use of horizontal wellbore laterals that may penetrate the subsurface of separate parcels for geologic sequestration purposes within the unit area.~~