

1 AN ACT  
2 RELATING TO THE ENVIRONMENT; ENACTING THE GEOLOGIC CARBON  
3 DIOXIDE STORAGE STEWARDSHIP ACT; PROVIDING RULEMAKING  
4 AUTHORITY; CREATING A FUND; PERMITTING TRANSFER OF  
5 STEWARDSHIP TO THE STATE; MAKING AN APPROPRIATION.  
6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 SECTION 1. SHORT TITLE.--This act may be cited as the  
9 "Geologic Carbon Dioxide Storage Stewardship Act".

10 SECTION 2. DEFINITIONS.--As used in the Geologic Carbon  
11 Dioxide Storage Stewardship Act:

12 A. "carbon dioxide" means carbon dioxide produced  
13 by anthropogenic sources or captured from the atmosphere,  
14 including qualified carbon oxide as defined pursuant to  
15 applicable federal law and carbon dioxide stream as may be  
16 defined in federal law and regulations pertaining to class 6  
17 carbon dioxide injection wells;

18 B. "division" means the oil conservation division  
19 of the energy, minerals and natural resources department;

20 C. "geologic sequestration" means the long- or  
21 short-term underground sequestration of carbon dioxide within  
22 a geologic stratum, formation, aquifer, cavity or void,  
23 whether naturally or artificially created, including deep  
24 saline aquifers, oil and gas reservoirs and unminable coal  
25 seams, such that injected carbon dioxide does not escape to

1 the atmosphere;

2 D. "operator" means a person who has the right to  
3 inject carbon dioxide for geologic sequestration into a  
4 sequestration facility, whether for the person's own account  
5 or for the account of others;

6 E. "pore space" means the empty space between rock  
7 grains, fractures and voids in the earth's subsurface; "pore  
8 space" is the available space within, and contained by,  
9 geologic formations;

10 F. "sequestration facility" means carbon dioxide  
11 injection wells, monitoring wells and devices, science wells,  
12 but excluding stratigraphic and similar wells for assessing  
13 the nature of the subsurface, and other wells used for the  
14 injection of carbon dioxide in subsurface geologic  
15 formations, including the underground equipment, pipelines  
16 and surface equipment and buildings used for the purpose of  
17 geologic sequestration of carbon dioxide. "Sequestration  
18 facility" includes a facility that injects carbon dioxide for  
19 secure geologic sequestration pursuant to applicable federal  
20 laws, including a geologic sequestration project as may be  
21 defined in federal regulations pertaining to federal  
22 environmental protection agency class 6 underground injection  
23 control wells for carbon dioxide injection wells; and

24 G. "sequestration unit" means the geologic  
25 formation or formations proposed for the injection of carbon

dioxide for geologic sequestration and the lands to be included within the unit. "Sequestration unit" does not include oil and gas units where carbon dioxide is injected for purposes of enhancing oil and gas production.

**SECTION 3. APPLICABILITY--DIVISION AUTHORITY--  
RULEMAKING.--**

A. The Geologic Carbon Dioxide Storage Stewardship Act applies to sequestration facilities that commence injection of carbon dioxide after the effective date of that act; provided that sequestration facilities that commenced injection of carbon dioxide before the effective date of that act may apply to the division for a certificate of completion of injection operations and for the transfer of the continuing stewardship responsibilities to the state pursuant to applicable statutes and rules and after payment of a fee equivalent to the fee that the division would otherwise have collected pursuant to Section 5 of that act.

B. The division has the jurisdiction and authority necessary to enforce the provisions of the Geologic Carbon Dioxide Storage Stewardship Act and may adopt and promulgate rules and issue orders for the implementation of the provisions of that act.

C. The fees collected from operators and deposited in the geologic carbon dioxide long-term storage stewardship fund shall not relieve a facility owner or operator from

1 responsibility for posting and maintaining financial  
2 assurance mechanisms as required by applicable statutes and  
3 rules or from any liability caused by conditions or operation  
4 of a sequestration facility prior to transfer of stewardship.

5       **SECTION 4. CERTIFICATE OF CLOSURE FOR GEOLOGIC**  
6 **SEQUESTRATION UNITS.--**

7           A. An operator that has obtained a permit for  
8 geologic carbon dioxide sequestration may ask for a  
9 certificate of closure for that site; provided that the  
10 operator can demonstrate that the storage has demonstrated  
11 long-term security, monitoring of the site has not shown  
12 significant risk of future leakage and the conditions as  
13 provided in Subsection E of Section 6 of the Geologic Carbon  
14 Dioxide Storage Stewardship Act are satisfied.

15           B. The lands to be included on the certificate of  
16 closure shall be the reasonably ascertained areal extent of  
17 migration of the sequestered carbon dioxide within the  
18 formation or formations and shall include all necessary and  
19 reasonable areal buffer and subsurface monitoring zones as  
20 required by federal or state law, rule, regulation, order or  
21 permit.

22           C. The commissioner of public lands or a state  
23 agency may grant to an operator a certificate of closure for  
24 geologic sequestration on lands subject to the agency's  
25 jurisdiction on such terms as the agency finds are

1 reasonable.

2 D. The division may grant to an operator a  
3 certificate of closure not less than five years after  
4 completion of injection activities and satisfaction of the  
5 requirements of the Geologic Carbon Dioxide Storage  
6 Stewardship Act, allowing for the transfer of stewardship to  
7 the state.

8 SECTION 5. GEOLOGIC CARBON DIOXIDE LONG-TERM STORAGE  
9 STEWARDSHIP FUND CREATED.--

10 A. The "geologic carbon dioxide long-term storage  
11 stewardship fund" is created as a nonreverting fund in the  
12 state treasury. The fund consists of fees collected from  
13 operators at a rate of not less than ten cents (\$.10) per  
14 metric ton of carbon dioxide injected for storage pursuant to  
15 applicable statutes and rules, distributions, appropriations,  
16 gifts, grants and donations. The oil conservation commission  
17 shall establish by rule a fee schedule sufficient to meet the  
18 projected needs of the fund. All fees collected pursuant to  
19 this section shall be transmitted to the state treasurer for  
20 credit to the fund. All money in the fund is appropriated to  
21 the division for the sole purpose of ensuring the long-term  
22 storage security of geologic sequestration facilities.  
23 Disbursements from the fund shall be made by warrant of the  
24 secretary of finance and administration pursuant to vouchers  
25 signed by the secretary of energy, minerals and natural

1 resources.

2 B. The division shall administer the geologic  
3 carbon dioxide long-term storage stewardship fund, and money  
4 in the fund shall be used for:

5 (1) long-term monitoring of geologic  
6 sequestration facilities and associated class 6 injection  
7 wells;

8 (2) remediation of mechanical problems  
9 associated with geologic sequestration facilities and  
10 associated carbon dioxide class 6 injection wells;

11 (3) repairing mechanical leaks at geologic  
12 sequestration facilities;

13 (4) plugging abandoned carbon dioxide class  
14 6 injection wells used for geologic sequestration;

15 (5) remediation of surface facilities,  
16 access, and rights of way related to a geologic sequestration  
17 site;

18 (6) training and technology transfer related  
19 to carbon dioxide injection and geologic sequestration;

20 (7) compliance and enforcement activities  
21 related to geologic sequestration facility operation and  
22 associated class 6 injection wells;

23 (8) oversight and management of geologic  
24 sequestration facilities and associated class 6 injection  
25 wells after site closure; and

1 (9) emergency response as deemed necessary  
2 by the director of the division.

3 SECTION 6. CERTIFICATE OF COMPLETION OF INJECTION  
4 OPERATIONS--LIABILITY RELEASE.--

5 A. The division shall issue a certificate of  
6 completion of injection operations upon a showing by the  
7 operator of a sequestration facility and a division finding  
8 that the requirements of Subsection E of this section have  
9 been satisfied.

10 B. Upon the issuance of a certificate of  
11 completion of injection operations:

12 (1) all stewardship responsibilities for the  
13 sequestration facility that are covered in Subsection B of  
14 Section 5 of the Geologic Carbon Dioxide Storage Stewardship  
15 Act, including the stored carbon dioxide, shall transfer to  
16 the state;

17 (2) the operator, owners and all persons who  
18 generated, transported or injected carbon dioxide into the  
19 sequestration unit and all owners otherwise having an  
20 interest in the sequestration unit and sequestration facility  
21 or the injected carbon dioxide shall be released from all  
22 stewardship responsibilities associated with or related to  
23 the sequestration unit and sequestration facility;

24 (3) all bonds posted by or on behalf of the  
25 operator shall be released; and

1                   (4) the state shall succeed and be subject  
2 to the terms of all agreements, permits, rules, regulations  
3 and orders applicable to the owner or operator and its  
4 successors, and the sequestration facility and all  
5 monitoring, repair and remediation required by law shall  
6 become the state's responsibility to be overseen by the  
7 division, unless and until the federal government assumes  
8 responsibility for the long-term monitoring and management of  
9 the sequestration unit and sequestration facility.

10                  C. The release from stewardship responsibilities  
11 provided pursuant to this section shall not apply to an owner  
12 or operator or generators or transporters of injected carbon  
13 dioxide if, after notice and hearing, the division determines  
14 that:

15                   (1) the person provided deficient or  
16 erroneous information that was material and relied upon by  
17 the division to support approval of the sequestration  
18 facility's certification of completion;

19                   (2) the person concealed or misrepresented  
20 facts relating to the mechanical integrity of the  
21 sequestration facility or sequestration unit or the chemical  
22 composition of the injected carbon dioxide;

23                   (3) the operator violated a state statute or  
24 rule related to the sequestration facility that was not  
25 remedied prior to approval of site closure and any applicable



1 statutes of limitation have not run;

2 (4) liability arises from the operator's  
3 conduct associated with the sequestration facility or  
4 sequestration unit that, if known, would have materially  
5 affected the division's decision in issuing the certification  
6 of completion;

7 (5) the division determines that there is  
8 fluid migration for which the owner or operator is  
9 responsible that causes or threatens imminent and substantial  
10 endangerment to an underground source of drinking water; or

11 (6) the division determines that the  
12 geologic carbon dioxide long-term storage stewardship fund is  
13 insufficient to cover costs arising from the sequestration  
14 unit or sequestration facility.

15 D. The division shall set the certification matter  
16 for hearing and, in addition to notice otherwise required by  
17 law or the division's rules, shall cause the operator to give  
18 notice of the hearing, specifying the time and place of the  
19 hearing and describing briefly the hearing's purpose and the  
20 land and formations affected, to be mailed by certified mail  
21 at least thirty days prior to the hearing to all persons  
22 whose names and addresses are required to be listed in the  
23 application.

24 E. The certificate of completion of injection  
25 operations shall be issued upon a showing by the operator and

1 division findings that:

2 (1) the operator is in full compliance with  
3 all laws governing the sequestration unit and sequestration  
4 facility;

5 (2) the operator has resolved all claims,  
6 pending or perfected, regarding the sequestration unit and  
7 sequestration facility;

8 (3) the sequestration unit is reasonably  
9 expected to retain the carbon dioxide stored in it;

10 (4) the carbon dioxide in the sequestration  
11 unit is stable and does not show a significant risk of future  
12 movement and leakage;

13 (5) all wells, monitoring devices, equipment  
14 and facilities to be used following the cessation of  
15 injection are in good condition and retain mechanical  
16 integrity; and

17 (6) the operator has plugged all wells and  
18 removed all equipment and facilities, unless the equipment  
19 and facilities are needed for use following the cessation of  
20 injection, and has completed all reclamation work required by  
21 law.

22 SECTION 7. OWNERSHIP OF PORE SPACE WITHIN THE EARTH.--

23 A. Absent specific language in a severing  
24 instrument to the contrary, the surface estate includes the  
25 pore space, and the ownership of all pore space in all strata

1 below the surface lands and waters of this state is declared  
2 to be vested in the several owners of the surface above the  
3 strata or formations.

4 B. To the extent the dominant mineral estate is  
5 reasonably utilizing the surface estate for the production of  
6 minerals located thereon and therein, the formations so used  
7 shall not be interfered with.

8 C. A conveyance of the surface ownership of real  
9 property shall be a conveyance of the pore space in all  
10 formations and strata below the surface of the real property  
11 unless the ownership interest in the pore space was  
12 previously severed from the surface ownership or is  
13 explicitly excluded in the conveyance.

14 D. The ownership of pore space in any formations  
15 or strata may be conveyed in the manner provided by law for  
16 the transfer of interests in real property. No agreement  
17 conveying minerals or other interests underlying the surface  
18 shall act to convey ownership of any pore space in the  
19 formation or stratum unless the agreement explicitly conveys  
20 that ownership interest.

21 E. No provision of law, including a lawfully  
22 adopted rule or regulation, requiring notice to be given to a  
23 surface owner, to an owner of a mineral interest or to both  
24 shall be construed to require notice to persons holding  
25 ownership interests in any pore space in the underlying

formations or strata unless the law specifies that notice to  
the persons is required.\_\_\_\_\_

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