

# AN ACT

To amend sections 1509.01, 1509.33, and 1509.99 and to enact sections 1509.71, 1509.72, 1509.73, 1509.75, 1509.76, 1509.77, 1509.78, 1509.79, 5301.57, 5301.58, 5301.59, and 5301.60 of the Revised Code to establish a process to regulate carbon capture and storage technologies and the geologic sequestration of carbon dioxide for long-term storage.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 1509.01, 1509.33, and 1509.99 be amended and sections 1509.71, 1509.72, 1509.73, 1509.75, 1509.76, 1509.77, 1509.78, 1509.79, 5301.57, 5301.58, 5301.59, and 5301.60 of the Revised Code be enacted to read as follows:

Sec. 1509.01. As used in this chapter:

(A) "Well" means any borehole, whether drilled or bored, within the state for production, extraction, or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil field waters. "Well" includes a carbon dioxide well, as defined in section 1509.71 of the Revised Code, and a stratigraphic well.

(B) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, but does not include hydrocarbons that were originally in a gaseous phase in the reservoir.

(C) "Gas" means all natural gas and all other fluid hydrocarbons that are not oil, including condensate.

(D) "Condensate" means liquid hydrocarbons separated at or near the well pad or along the gas production or gathering system prior to gas processing.

(E) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both, but does not include a gas storage reservoir. Each zone of a geological structure that is completely separated from any other zone in the same structure may contain a separate pool.

(F) "Field" means the general area underlaid by one or more pools.

(G) "Drilling unit" means the minimum acreage on which one well may be drilled, but does not apply to a well for injecting gas into or removing gas from a gas storage reservoir and does not apply to a stratigraphic well.

(H) "Waste" includes all of the following:

- (1) Physical waste, as that term generally is understood in the oil and gas industry;
- (2) Inefficient, excessive, or improper use, or the unnecessary dissipation, of reservoir energy;

(3) Inefficient storing of oil or gas;

(4) Locating, drilling, equipping, operating, or producing an oil or gas well in a manner that reduces or tends to reduce the quantity of oil or gas ultimately recoverable under prudent and proper operations from the pool into which it is drilled or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

(5) Other underground or surface waste in the production or storage of oil, gas, or condensate, however caused.

(I) "Correlative rights" means the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense.

(J) "Tract" means a single, individual parcel of land or a portion of a single, individual parcel of land.

(K) "Owner," unless referring to a mine, means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter. "Owner" does not include a person who obtains a lease of the mineral rights for oil and gas on a parcel of land if the person does not attempt to produce or produce oil or gas from a well or obtain a permit under this chapter for a well or if the entire interest of a well is transferred to the person in accordance with division (B) of section 1509.31 of the Revised Code.

(L) "Royalty interest" means the fee holder's share in the production from a well, except a stratigraphic well.

(M) "Discovery well" means the first well, except a stratigraphic well, capable of producing oil or gas in commercial quantities from a pool.

(N) "Prepared clay" means a clay that is plastic and is thoroughly saturated with fresh water to a weight and consistency great enough to settle through saltwater in the well in which it is to be used, except as otherwise approved by the chief of the division of oil and gas resources management.

(O) "Rock sediment" means the combined cutting and residue from drilling sedimentary rocks and formation.

(P) "Excavations and workings," "mine," and "pillar" have the same meanings as in section 1561.01 of the Revised Code.

(Q) "Coal bearing township" means a township designated as such by the chief of the division of mineral resources management under section 1561.06 of the Revised Code.

(R) "Gas storage reservoir" means a continuous area of a subterranean porous sand or rock stratum or strata into which gas is or may be injected for the purpose of storing it therein and removing it therefrom and includes a gas storage reservoir as defined in section 1571.01 of the Revised Code.

(S) "Safe Drinking Water Act" means the "Safe Drinking Water Act," 88 Stat. 1661 (1974),

42 U.S.C.A. 300(f), as amended by the "Safe Drinking Water Amendments of 1977," 91 Stat. 1393, 42 U.S.C.A. 300(f), the "Safe Drinking Water Act Amendments of 1986," 100 Stat. 642, 42 U.S.C.A. 300(f), and the "Safe Drinking Water Act Amendments of 1996," 110 Stat. 1613, 42 U.S.C.A. 300(f), and regulations adopted under those acts.

(T) "Person" includes any political subdivision, department, agency, or instrumentality of this state; the United States and any department, agency, or instrumentality thereof; any legal entity defined as a person under section 1.59 of the Revised Code; and any other form of business organization or entity recognized by the laws of this state.

(U) "Brine" means all saline geological formation water resulting from, obtained from, or produced in connection with exploration, drilling, well stimulation, production of oil or gas, or plugging of a well.

(V) "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, springs, irrigation systems, drainage systems, and other bodies of water, surface or underground, natural or artificial, that are situated wholly or partially within this state or within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

(W) "Exempt Mississippian well" means a well that meets all of the following criteria:

(1) Was drilled and completed before January 1, 1980;

(2) Is located in an unglaciated part of the state;

(3) Was completed in a reservoir no deeper than the Mississippian Big Injun sandstone in areas underlain by Pennsylvanian or Permian stratigraphy, or the Mississippian Berea sandstone in areas directly underlain by Permian stratigraphy;

(4) Is used primarily to provide oil or gas for domestic use.

(X) "Exempt domestic well" means a well that meets all of the following criteria:

(1) Is owned by the owner of the surface estate of the tract on which the well is located;

(2) Is used primarily to provide gas for the owner's domestic use;

(3) Is located more than two hundred feet horizontal distance from any inhabited private dwelling house other than an inhabited private dwelling house located on the tract on which the well is located;

(4) Is located more than two hundred feet horizontal distance from any public building that may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic, or occupancy by the public.

(Y) "Urbanized area" means an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than five thousand in the most recent federal decennial census prior to the issuance of the permit for the well or production facilities.

(Z) "Well stimulation" or "stimulation of a well" means the process of enhancing well productivity, including hydraulic fracturing operations.

(AA) "Production operation" means all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under this chapter, including operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging. "Production operation" also includes all of the following:

(1) The piping, equipment, and facilities used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

(2) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities;

(3) The processes and related equipment and facilities associated with production compression, gas lift, gas injection, fuel gas supply, well drilling, well stimulation, and well completion activities, including dikes, pits, and earthen and other impoundments used for the temporary storage of fluids and waste substances associated with well drilling, well stimulation, and well completion activities;

(4) Equipment and facilities at a ~~wellpad~~ well pad or other location that are used for the transportation, handling, recycling, temporary storage, management, processing, or treatment of any equipment, material, and by-products or other substances from an operation at a ~~wellpad~~ well pad that may be used or reused at the same or another operation at a ~~wellpad~~ well pad or that will be disposed of in accordance with applicable laws and rules adopted under them.

(BB) "Annular overpressurization" means the accumulation of fluids within an annulus with sufficient pressure to allow migration of annular fluids into underground sources of drinking water.

(CC) "Orphaned well" means a well that has not been properly plugged or its land surface restored in accordance with this chapter and the rules adopted under it to which either of the following apply:

(1) The owner of the well is unknown, deceased, or cannot be located and the well is abandoned.

(2) The owner of the well has abandoned the well and there is no money available to plug the well in accordance with this chapter and the rules adopted under it.

(DD) "Temporarily inactive well" means a well that has been granted temporary inactive status under section 1509.062 of the Revised Code.

(EE) "Material and substantial violation" means any of the following:

(1) Failure to obtain a permit to drill, reopen, convert, plugback, or plug a well under this chapter;

(2) Failure to obtain, maintain, update, or submit proof of insurance coverage that is required under this chapter;

(3) Failure to obtain, maintain, update, or submit proof of a surety bond that is required

under this chapter;

(4) Failure to restore a disturbed land surface as required by section 1509.072 of the Revised Code;

(5) Failure to reimburse the oil and gas well fund pursuant to a final order issued under section 1509.071 of the Revised Code;

(6) Failure to comply with a final nonappealable order of the chief issued under section 1509.04 of the Revised Code;

(7) Failure to submit a report, test result, fee, or document that is required in this chapter or rules adopted under it.

(FF) "Severer" has the same meaning as in section 5749.01 of the Revised Code.

(GG) "Horizontal well" means a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated. "Horizontal well" does not include a stratigraphic well.

(HH) "Well pad" means the area that is cleared or prepared for the drilling of one or more horizontal wells.

(II) "Stratigraphic well" means a borehole that is drilled within the state on a tract solely to conduct research or testing of the subsurface geology, including porosity and permeability. "Stratigraphic well" does not include geotechnical or soil borings or a borehole drilled for seismic shot or mining of industrial minerals or coal.

Sec. 1509.33. (A) Whoever violates sections 1509.01 to 1509.31 or sections 1509.71 to 1509.79 of the Revised Code, or any rules adopted or orders or terms or conditions of a permit or registration certificate issued pursuant to these sections for which no specific penalty is provided in this section, shall pay a civil penalty of not more than ten thousand dollars for each offense.

(B) Whoever violates section 1509.221 of the Revised Code or any rules adopted or orders or terms or conditions of a permit issued thereunder shall pay a civil penalty of not more than ten thousand dollars for each violation.

(C) Whoever violates division (D) of section 1509.22 or division (A)(1) of section 1509.222 of the Revised Code shall pay a civil penalty of not less than two thousand five hundred dollars nor more than twenty thousand dollars for each violation.

(D) Whoever violates division (A) of section 1509.22 of the Revised Code shall pay a civil penalty of not less than two thousand five hundred dollars nor more than ten thousand dollars for each violation.

(E) Whoever violates division (A) of section 1509.223 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each violation.

(F) Whoever violates section 1509.072 of the Revised Code or any rules adopted or orders issued to administer, implement, or enforce that section shall pay a civil penalty of not more than five thousand dollars for each violation.

(G) In addition to any other penalties provided in this chapter, whoever violates section 1509.05, section 1509.21, division (B) of section 1509.22, or division (A)(1) of section 1509.222 of the Revised Code or a term or condition of a permit or an order issued by the chief of the division of oil and gas resources management under this chapter or knowingly violates division (A) of section 1509.223 of the Revised Code is liable for any damage or injury caused by the violation and for the actual cost of rectifying the violation and conditions caused by the violation. If two or more persons knowingly violate one or more of those divisions in connection with the same event, activity, or transaction, they are jointly and severally liable under this division.

(H) The attorney general, upon the request of the chief of the division of oil and gas resources management, shall commence an action under this section against any person who violates sections 1509.01 to 1509.31 or sections 1509.71 to 1509.79 of the Revised Code, or any rules adopted or orders or terms or conditions of a permit or registration certificate issued pursuant to these sections. Any action under this section is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions. The remedy provided in this division is cumulative and concurrent with any other remedy provided in this chapter, and the existence or exercise of one remedy does not prevent the exercise of any other, except that no person shall be subject to both a civil penalty under division (A), (B), (C), or (D) of this section and a fine established in section 1509.99 of the Revised Code for the same offense.

(I) For purposes of this section, each day of violation constitutes a separate offense.

Sec. 1509.71. As used in sections 1509.71 to 1509.79 of the Revised Code:

"Carbon dioxide" means naturally occurring, geologically sourced, or anthropogenically sourced carbon dioxide including its derivatives and all mixtures, combinations, and phases, whether liquid, gaseous, solid, stripped, segregated, or divided from any other fluid stream thereof.

"Carbon dioxide well" means a well that is used to inject carbon dioxide into pore space for carbon sequestration under a UIC Class VI permit.

"Carbon dioxide plume" means the extent, underground, in three dimensions, of injected carbon dioxide stream.

"Carbon sequestration" means the underground storage of carbon dioxide in a geological formation.

"Carbon sequestration project" means a project that involves the underground storage of carbon dioxide in a geological formation pursuant to at least one UIC Class VI permit.

"Owner" includes, unless the context indicates otherwise, a person who has the right to drill a carbon dioxide well and to inject carbon dioxide in an underground geologic formation. "Owner," as defined in section 1509.01 of the Revised Code, does not apply to sections 1509.71 to 1509.79 or sections 5301.58 to 5301.60 of the Revised Code unless the context indicates otherwise.

"Pore space" means subsurface cavities and voids, whether natural or artificially created, that are used for sequestration.

"Storage facility" means the pore space in the subsurface area consisting of the extent of a

carbon dioxide plume and the geological seals that confine the carbon dioxide plume that are required to be delineated on an approved UIC Class VI permit or an amendment to a UIC Class VI permit issued to a storage operator.

"Storage operator" means an individual, corporation, or other legal entity that operates a carbon sequestration project, regardless of whether an owner that has the right to drill and store carbon dioxide in the project area contracts, retains, or allows an individual, corporation, or other legal entity to conduct operations or provide other services at the carbon sequestration project.

"UIC Class VI permit" means an underground injection control program permit issued by the chief of the division of oil and gas resources management or the United States environmental protection agency that allows the operation of a carbon dioxide well.

"Underground storage of carbon dioxide" means the injection and storage of carbon dioxide into underground strata and formations under at least one UIC Class VI permit.

Sec. 1509.72. The division of oil and gas resources management has sole and exclusive authority to regulate carbon sequestration and the operation of storage facilities within the state, excepting only those activities regulated under federal laws and for which the state does not have primacy. The regulation of carbon sequestration activities is a matter of general statewide interest that requires uniform statewide regulation, and sections 1509.71 to 1509.79 of the Revised Code and rules adopted under those sections constitute a comprehensive plan with respect to all aspects of carbon sequestration within this state, including storage facility operation and permitting related to those activities.

In order to assist the division in the furtherance of its sole and exclusive authority as established in this section, the chief of the division of oil and gas resources management may enter into cooperative agreements with other states that share jurisdiction regarding carbon sequestration projects and other state agencies regarding carbon sequestration projects. Such cooperative agreements do not confer on other state agencies any authority to administer or enforce sections 1509.71 to 1509.79 of the Revised Code and rules adopted under those sections. In addition, such cooperative agreements shall not be construed to dilute or diminish the division's sole and exclusive authority as established in this section.

The division may create a program to incentivize innovation for the use of and reutilization of captured carbon dioxide.

Nothing in this section affects the authority granted to the director of transportation and local authorities in section 723.01 or 4513.34 of the Revised Code, provided that the authority granted under those sections shall not be exercised in a manner that discriminates against, unfairly impedes, or obstructs carbon sequestration projects regulated under sections 1509.71 to 1509.79 of the Revised Code.

Sec. 1509.73. (A) The chief of the division of oil and gas resources management shall adopt, rescind, and amend rules in accordance with Chapter 119. of the Revised Code for the administration, implementation, and enforcement of sections 1509.71 to 1509.79 of the Revised

Code.

(B) Rules adopted under this section shall include provisions regarding applications for and the issuance of UIC Class VI permits; the terms and conditions of those permits; entry to conduct inspections and to examine records to ascertain compliance with sections 1509.71 to 1509.79 of the Revised Code, rules adopted under those sections, and orders and terms and conditions of permits issued under those sections; the provision and maintenance of information through monitoring, recordkeeping, and reporting; and other provisions in furtherance of the goals of this chapter and the Safe Drinking Water Act.

(C) The rules adopted under this section shall establish all of the following:

(1) To the extent ground disturbance is necessary, a requirement that owners review field drainage systems with landowners, determine ways to mitigate or avoid damage to drainage systems, and promptly repair or restore drainage conditions;

(2) Requirements and procedures for statutory consolidation applications under section 1509.76 of the Revised Code that include any land owned by the state;

(3) The amount of the costs estimated to implement the closure plan of the carbon dioxide well and associated facilities and any post injection site care and site closure;

(4) Requirements and procedures that allow a storage operator to seek a permit to drill a carbon dioxide well while an application for statutory consolidation submitted under section 1509.76 of the Revised Code is pending.

(D) The rules adopted under this section shall include an identification of the subjects that the chief shall address when attaching terms and conditions to a UIC Class VI permit. The subjects shall include at least all of the following:

(1) Requirements for the operation and monitoring of a carbon dioxide well;

(2) Safety concerning the drilling and operation of a carbon dioxide well;

(3) Spacing, setback, and any other provisions to prevent storage facilities and storage operators from impacting the ability of owners of existing oil and gas well interests to develop those interests;

(4) Protection of the public and private water supply, including the amount of water used and the source or sources of the water;

(5) Fencing and screening of surface facilities of a carbon dioxide well;

(6) Containment and disposal of drilling and other wastes;

(7) Construction of access roads for purposes of the drilling and operation of a carbon dioxide well;

(8) Noise mitigation for purposes of the drilling of a carbon dioxide well and the operation of such a well, excluding safety and maintenance operations;

(9) Liability insurance to pay damages for injury to persons or property caused by the construction or operation of the storage facility, to be maintained for the period of time beginning at the commencement of construction operations and ending when the chief issues a certificate of

project completion under section 1509.77 of the Revised Code;

(10) Liability insurance coverage of at least fifteen million dollars to cover bodily injury and property damage caused by the construction, drilling, or operation of the owner's carbon dioxide wells in this state. The rules shall require the insurance policy to include additional coverage for an environmental endorsement.

(11) A financial instrument, including a surety bond, letter of credit, insurance, escrow, or self-insurance, conditioned on compliance with all obligations imposed under sections 1509.71 to 1509.79 of the Revised Code, to be maintained for the period of time beginning at the commencement of construction operations and ending when the chief issues a certificate of project completion. The rules shall establish the required amount of the financial instrument that is not less than the cost estimate identified in the application. The financial instrument shall be sufficient to cover corrective actions, plugging, post-injection site care prior to receipt of a certificate of project completion, and emergency or remedial response.

(E) Notwithstanding any provision of section 121.95 of the Revised Code to the contrary, a regulatory restriction contained in a rule adopted under this section is not subject to sections 121.95 to 121.953 of the Revised Code.

Sec. 1509.75. (A) Carbon sequestration projects are authorized in the state for the purposes of injecting carbon dioxide into the pore space of a storage facility through at least one carbon dioxide injection well under a UIC Class VI permit.

(B) To operate a carbon sequestration project under sections 1509.71 to 1509.79 of the Revised Code, a storage operator shall obtain at least both of the following:

(1) A UIC Class VI permit, which shall be applied for in the name of the storage operator;

(2) Any additional permits required by applicable laws, rules, and regulations, except that a storage operator is not required to obtain a permit required under section 1509.05 of the Revised Code.

(C) Prior to carbon sequestration, the chief of the division of oil and gas resources management may require a storage operator to deploy a seismicity monitoring system. The storage operator shall use the system to determine, to the best of the operator's ability, the presence or absence, magnitude, and the hypocenter location of seismic activity within the vicinity of the storage facility as may be necessary to perform an array and a risk analysis and as required by the chief. The chief may periodically require the storage operator to utilize the seismicity monitoring system during carbon sequestration operations.

(D) Prior to, or during the operation of, a carbon sequestration project under sections 1509.71 to 1509.79 of the Revised Code, a storage operator shall design the project to endeavor to isolate any existing or future production of oil and gas from above and below the proposed storage facility.

(E) Provisions of this chapter codified in sections other than sections 1509.71 to 1509.79 of the Revised Code apply to carbon sequestration projects to the extent that those provisions are

consistent with, and not specifically excepted from, sections 1509.71 to 1509.79 of the Revised Code.

Sec. 1509.76. (A) If, after good-faith negotiation, the applicant for a UIC Class VI permit cannot locate or reach an agreement with pore space owners in the proposed storage facility but has obtained the consent of owners of at least seventy per cent of the pore space proposed to be used in a storage facility, the applicant may submit a statutory consolidation application for the operation of the entire proposed storage facility to the chief of the division of oil and gas resources management. In calculating the seventy per cent, a pore space owner's entire interest in the proposed storage facility, including any divided, undivided, partial, fee, or other interest in the pore space, shall be included to the fullest extent of that interest.

(B) An applicant shall include the following with the application:

(1) A list of all persons reasonably known to own oil, gas, or coal interests above or below the pore space proposed to be used for the storage facility;

(2) An application fee in the amount of fifty thousand dollars. The division shall maintain a record of all costs incurred processing the application. If the costs of processing the application exceed the initial application fee, the division shall send the applicant a final statement of those additional costs. The applicant shall pay the additional amount before the division issues its final decision on the application. If the costs of processing the application are less than the initial application fee, the division shall refund the difference to the applicant. The division shall send the applicant the refund after the division issues its final decision on the application. Except for any portion of the application fee that is refunded, the applicant shall pay the complete application fee regardless of whether a permit is issued or denied or the application is withdrawn.

All application fees shall be credited to the carbon capture administrative fund created under section 1509.78 of the Revised Code.

(3) Proof of notice provided under division (D) of this section, if applicable;

(4) A notarized affidavit listing a minimum of three attempts to contact all known pore space owners on three separate dates;

(5) Any additional information reasonably requested by the chief.

(C) For each application, the chief shall provide notice to all pore space owners and lessees located within the proposed storage facility and all owners and lessees of the subsurface areas located above and below the proposed storage facility of the proposed carbon sequestration project, as identified by the applicant in the application. The notice shall be sent not later than thirty days after the chief determines that the application is complete. The chief shall not rule on an application until after such notice has been provided. If, upon receipt of the notice, an owner or lessee of the subsurface area that is located above or below the proposed storage facility expresses an objection to the chief regarding the design of the carbon sequestration project based on the potential adverse effect to an existing or future oil, gas, coal, or potable water operation, the storage operator shall demonstrate, to the satisfaction of the chief, that any such objection has been addressed as part of the

application requirements established under this section. Such objections are not required to be submitted in the timeframe required for notifications to the chief under division (D) of this section, but shall be made not later than thirty days after receipt of a notification.

(D)(1) If the proposed storage facility contains pore space for which the owner is unknown or unlocatable, the storage operator shall do both of the following:

(a) Publish one notice in a newspaper of general circulation in each county in which the carbon sequestration project is located. The notice shall appear not more than thirty days prior to the date the application is submitted to the chief.

(b) Request the chief to post a notice on the division's web site. Upon receiving the request, the chief shall ensure that such notice is posted to the division's web site.

(2) Any notice published in accordance with division (D)(1) of this section shall:

(a) State that an application for statutory consolidation will be filed with the division;

(b) Describe the proposed storage facility;

(c) In the case of an unknown pore space owner, state the owner's interest in the proposed storage facility, and the name of the last known owner of that interest;

(d) State that a person claiming an interest in the pore space proposed to be consolidated shall notify the chief and the applicant at the published address within twenty days of the notice's publication date. Within seven days of receiving notice of a claim, the applicant shall provide information to the claimant, in a form and manner prescribed by the chief, regarding the right of the claimant to file an objection and participate in the application proceeding before the division.

(E)(1)(a) The chief shall hold a hearing regarding an application submitted under this section, except as otherwise provided in division (E)(1)(b) of this section.

(b) If the chief determines that an application is materially incomplete before the required hearing date, the chief shall notify the applicant. If the applicant does not timely correct the application, the chief may reschedule the hearing date.

(2) At the hearing, the chief shall consider whether the application is reasonably necessary to facilitate carbon sequestration.

(F)(1) The chief shall issue an order approving the application submitted under this section and providing for the operation of the proposed storage facility if the chief finds that such operation is reasonably necessary to facilitate carbon sequestration. The chief shall issue the order not later than sixty days after the date of the hearing under division (E) of this section, unless the chief denies the application by order within that sixty-day period.

(2) An order approving an application shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for operations that include:

(a) A description of the pore space and storage facility proposed to be operated;

(b) The location of and means to access carbon injection wells, outbuildings, roads, and monitoring equipment;

(c) A statement of the nature of the operations contemplated;

(d)(i) An allocation to the separately owned interests in the storage facility of all economic benefits derived from operation of the storage facility. The order shall ensure that all pore space owners are compensated in a fair and reasonable manner.

(ii) The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no agreement between the parties, the chief shall determine the value of each separately owned interest in the storage facility, exclusive of physical equipment, for development of the storage facility, and the economic benefits allocated to each interest shall be the proportion that the value of each interest so determined bears to the value of all interests in the storage facility.

(e) The time when the storage facility operations shall commence and the manner in which, and the circumstances under which, the operations shall terminate;

(f) Any additional provisions as are found to be appropriate for carrying on the operations, and for the protection or adjustment of correlative rights.

(3) The storage operator shall file a certified copy of the order and a survey of the storage facility in the office of the county recorder of the county in which all or a portion of the storage facility is located. The chief shall make the order publicly available, which may include posting the order on the division's web site.

(G) Storage facility operations conducted pursuant to an order issued under this section constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the storage facility to the extent that compliance with such obligations cannot be had because of the order of the chief.

Economic benefits allocated to any interest shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for storage facility operations.

(H) No order of the chief or other contract relating to the pore space and the storage of carbon dioxide from a separately owned interest shall be terminated by the order providing for storage facility operations, but shall remain in force until terminated in accordance with the provisions thereof.

Except to the extent that the parties affected so agree, no order providing for storage facility operations shall be construed to result in a transfer of any person's title to all or any part of the pore space in the storage facility. All property, whether real or personal, that may be acquired for the account of the owners within the storage facility shall be the property of such owners in the proportion that the expenses of operations are charged.

(I)(1) Except as provided in division (I)(2) of this section, the right to utilize pore space for a storage facility pursuant to this section does not confer a right to enter upon, or otherwise use, the surface of the land above such pore space unless authorized by a properly executed surface use agreement. A statutory consolidation order shall not grant the storage operator expressed or implied rights of surface use or access.

(2) Notwithstanding division (I)(1) of this section, a storage operator may have a right to

enter upon the surface of the land as required by state or federal law, due to an imminent or emergent threat to public health, safety, or the environment pursuant to an order from the chief, or pursuant to any other order from the chief.

Sec. 1509.77. (A) After carbon dioxide injection into a storage facility ceases, the chief of the division of oil and gas resources management may issue a certificate of project completion upon application by the storage operator. The chief shall issue a certificate only upon satisfaction of the conditions imposed under this section and after providing public notice of the application, an opportunity for public comment, and if deemed necessary by the chief, a public hearing on the application.

(B) A certificate shall not be issued until at least fifty years after carbon dioxide injections cease or until an established alternative timeline approved by the chief has elapsed.

(C) A certificate shall not be issued until the storage operator establishes with a degree of certainty to the satisfaction of the chief that all of the following apply:

(1) The storage operator is in full compliance with all laws governing carbon sequestration.

(2) The following apply to the carbon dioxide that has been injected underground for storage:

(a) It is not expected to extend or migrate outside of the storage facility and is not expected to pose a threat to public health or safety or the environment or underground sources of drinking water.

(b) It is not likely to cross any boundary vertically from the storage facility and is not expected to endanger public health or safety or the environment or underground sources of drinking water.

(3) All carbon dioxide wells and associated equipment and facilities to be used in maintaining and managing the stored carbon dioxide, including any monitoring wells, are in good condition and will retain mechanical integrity.

(4) The storage operator has plugged all carbon dioxide wells not used in maintaining and managing the stored carbon dioxide and has completed all reclamation required by the division.

(D) Upon the issuance of a certificate of project completion, the following shall occur:

(1) Except as otherwise provided in this section, the former storage operator is released from all regulatory requirements associated with continued storage and maintenance of the injected carbon dioxide, and financial assurance required under rules adopted under section 1509.73 of the Revised Code shall be released to the former storage operator.

(2) Primary responsibility and liability for the stored or injected carbon dioxide shall be transferred to the state, except for criminal and contractual liability and except under any of the following circumstances:

(a) The storage operator violated a duty imposed on the storage operator by state law or rule prior to the issuance of the certificate of project completion and any applicable statutes of limitations have not run out;

(b) After notice and a hearing, the chief determines either of the following:

(i) The storage operator provided deficient or erroneous information that was material and relied upon by the chief to support the issuance of the certificate of project completion;

(ii) There is carbon dioxide migration that threatens public health or safety or the environment or underground sources of drinking water;

(c) The balance of the carbon dioxide storage facility fund is insufficient to cover costs arising from storage facilities and associated carbon dioxide wells after site closure.

(3) The storage operator and all individuals who generated, injected, or stored carbon dioxide shall be forever released from all regulatory requirements associated with the continued storage and maintenance of the injected carbon dioxide, except as provided in division (D)(2) of this section.

Sec. 1509.78. (A) Storage operators shall pay the department of natural resources a fee of five cents for each metric ton of carbon dioxide injected for storage in a storage facility. The fee shall be paid quarterly and credited to the carbon dioxide storage facility fund created under this section.

(B)(1) The carbon dioxide storage facility fund is created in the state treasury. Except for fees collected under divisions (C) and (D) of this section, the fund shall consist of any money collected under this section in relation to a carbon dioxide well, including money received by the department from financial responsibility mechanisms established and penalties imposed for violations of sections 1509.71 to 1509.79 of the Revised Code, rules adopted under those sections, and orders and terms and conditions of a permit issued under those sections. All interest earnings of the fund shall be credited to the fund.

(2) The chief of the division of oil and gas resources management shall use the money in the fund for the purpose of defraying expenses of the division that are associated with post-closure care of sequestered carbon dioxide in a storage facility, including the maintenance of carbon dioxide wells, associate surface facilities, remediation of any environmental impacts from the injected carbon dioxide, and plugging of monitoring wells associated with the injection of carbon dioxide in a carbon dioxide well.

(3) The existence, management, and expenditure of money from the fund do not constitute a waiver of governmental immunity or an assumption of any liability by the state for carbon sequestration.

(C) In addition to the fee established under division (A) of this section, an owner of a carbon dioxide well, an applicant for a UIC class VI permit, and the holder of a UIC class VI permit shall pay fees to defray the department's costs of administering sections 1509.71 to 1509.79 of the Revised Code and the rules adopted under those sections. The chief, by rule, shall establish the type and amount of the fees. The fees may include, without limitation, additional application fees, annual fees, and other fees that the chief determines are necessary to administer sections 1509.71 to 1509.79 of the Revised Code and the rules adopted under those sections. The fees shall be credited to the

carbon capture administrative fund created under this section.

(D) In addition to the fee established under division (A) of this section, an owner of a carbon dioxide well shall pay to the chief a fee of three cents for each metric ton of carbon dioxide injected for storage in a storage facility, for the purpose of supporting the needs of host communities in which the storage facility is located. The owner shall pay the fee to the chief quarterly on the basis of carbon dioxide injected during the calendar quarter. The fees shall be credited to the carbon capture administrative fund created under this section.

(E)(1) The carbon capture administrative fund is created in the state treasury. The fund shall consist of the fees collected under divisions (C) and (D) of this section. The chief shall use the funds collected under division (C) of this section for the sole and exclusive purpose of administering sections 1509.71 to 1509.79 of the Revised Code and the rules adopted under those sections. The chief shall use the funds collected under division (D) of this section in accordance with division (E) (2) of this section. All investment earnings of the fund shall be credited to the fund.

(2) The chief shall provide for payment of the revenue from the fee collected under division (D) of this section to the county treasurer of the county in which the storage facility is located. If the storage facility is located in more than one county, the chief shall provide for payment of the revenue equally to the county treasurer of each such county. The county treasurer shall deposit any such payment into a special fund the treasurer shall create in the county treasury called the carbon storage host community fund.

(3) Money in a carbon storage host community fund shall be used by the board of county commissioners, or disbursed to a township, municipal corporation, school district, or other subdivision located within the county, solely and exclusively for one or more of the following purposes within the county or other subdivision:

(a) Infrastructure, including roads, bridges, water and wastewater systems, broadband, and other public works;

(b) Parks, recreation, and trails;

(c) Education, including support for primary, secondary, and career-technical education within the subdivision;

(d) Public safety, including law enforcement, fire protection, emergency medical services, and emergency preparedness and response.

Sec. 1509.79. Any person adversely affected by an order issued by the chief of the division of oil and gas resources management under sections 1509.71 to 1509.79 of the Revised Code may appeal to the oil and gas commission for an order vacating or modifying the order. Notwithstanding any provision of the Revised Code to the contrary, a person to whom a permit is issued by the chief may appeal any of the terms and conditions included in the permit to the commission.

The person so appealing to the commission shall be known as appellant, and the chief shall be known as appellee. Appellant and appellee shall be deemed to be parties to the appeal.

The appeal shall be in writing and shall set forth the order complained of and the grounds

upon which the appeal is based. The appeal shall be filed with the commission within thirty days after the date upon which the person to whom the order was issued received the order and, for all other persons adversely affected by the order, within thirty days after the date of the order complained of. Notice of the filing of the appeal shall be filed with the chief within three days after the appeal is filed with the commission.

Upon the filing of the appeal, the commission may decide the appeal, in whole or in part, without a hearing when, in its judgment, it is appropriate to do so. If the commission decides to hold a hearing, the commission promptly shall fix the time and place at which the hearing on the appeal will be held and shall give the appellant and the chief at least ten days' written notice thereof by mail. The commission may postpone or continue any hearing upon its own motion or upon application of the appellant or of the chief.

The filing of an appeal provided for in this section does not automatically suspend or stay execution of the order appealed from, but upon application by the appellant the commission may suspend or stay the execution pending determination of the appeal upon such terms as the commission considers proper.

Either party to the appeal or any interested person who, pursuant to commission rules has been granted permission to appear, may submit such evidence as the commission considers admissible.

For the purpose of conducting a hearing on an appeal, the commission may require the attendance of witnesses and the production of books, records, and papers, and it may, and at the request of any party it shall, issue subpoenas for witnesses or subpoenas duces tecum to compel the production of any books, records, or papers, directed to the sheriffs of the counties where the witnesses are found. The subpoenas shall be served and returned in the same manner as subpoenas in criminal cases are served and returned. The fees of sheriffs shall be the same as those allowed by the court of common pleas in criminal cases. Witnesses shall be paid the fees and mileage provided for under section 119.094 of the Revised Code. Such fees and mileage expenses incurred at the request of appellant shall be paid in advance by the appellant, and the remainder of those expenses shall be paid out of funds appropriated for the expenses of the division of oil and gas resources management.

In case of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the court of common pleas of the county in which the disobedience, neglect, or refusal occurs, or any judge thereof, on application of the commission or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from that court or a refusal to testify therein. Witnesses at such hearings shall testify under oath, and any member of the commission may administer oaths or affirmations to persons who so testify.

If a hearing occurs, and at the request of any party to the appeal, a record of the testimony and other evidence submitted shall be taken by an official court reporter at the expense of the party

making the request for the record. The record shall include all of the testimony and other evidence and the rulings on the admissibility thereof presented at the hearing. The commission shall pass upon the admissibility of evidence, but any party may at the time object to the admission of any evidence and except to the rulings of the commission thereon, and if the commission refuses to admit evidence the party offering same may make a proffer thereof, and such proffer shall be made a part of the record of the hearing.

If the commission finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the commission finds that the order was unreasonable or unlawful, it shall make a written order vacating the order appealed from and making the order that it finds the chief should have made. Every order made by the commission shall contain a written finding by the commission of the facts upon which the order is based.

Notice of the making of the order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each such party by certified mail.

The order of the commission is final unless vacated by the court of common pleas of Franklin county in an appeal as provided for in section 1509.37 of the Revised Code.

Sec. 1509.99. (A) Whoever violates sections 1509.01 to 1509.31 or sections 1509.71 to 1509.79 of the Revised Code or any rules adopted or orders or terms or conditions of a permit issued pursuant to these sections for which no specific penalty is provided in this section shall be fined not less than one hundred nor more than one thousand dollars for a first offense; for each subsequent offense the person shall be fined not less than two hundred nor more than two thousand dollars.

(B) Whoever violates section 1509.221 of the Revised Code or any rules adopted or orders or terms or conditions of a permit issued thereunder shall be fined not more than five thousand dollars for each violation.

(C) Whoever knowingly violates section 1509.072, division (A), (B), or (D) of section 1509.22, division (A)(1) or (C) of section 1509.222, or division (A) or (D) of section 1509.223 of the Revised Code or any rules adopted or orders issued under division (C) of section 1509.22 or rules adopted or orders or terms or conditions of a registration certificate issued under division (E) of section 1509.222 of the Revised Code shall be fined ten thousand dollars or imprisoned for six months, or both for a first offense; for each subsequent offense the person shall be fined twenty thousand dollars or imprisoned for two years, or both. Whoever negligently violates those divisions, sections, rules, orders, or terms or conditions of a registration certificate shall be fined not more than five thousand dollars.

(D) Whoever violates division (C) of section 1509.223 of the Revised Code shall be fined not more than five hundred dollars for a first offense and not more than one thousand dollars for a subsequent offense.

(E) The prosecuting attorney of the county in which the offense was committed or the attorney general may prosecute an action under this section.

(F) For purposes of this section, each day of violation constitutes a separate offense.

Sec. 5301.57. (A) As used in sections 5301.57 to 5301.60 of the Revised Code, "carbon dioxide," "carbon dioxide well," "carbon sequestration," "carbon sequestration project," "owner," "pore space," "storage operator," and "storage facility" have the same meanings as in section 1509.71 of the Revised Code.

(B) As used in sections 5301.58 to 5301.60 of the Revised Code, "subsurface property interest owner" means a property interest owner identified by the records of the recorder of deeds for each county in which a portion of a proposed storage facility is located who holds a fee simple interest, other freehold interest, or leasehold interest in the subsurface of the property, which may include mineral rights, such as coal or oil and gas rights. "Subsurface property interest owner" does not include an owner who holds an interest in property consisting solely of an easement or right-of-way.

Sec. 5301.58. (A) The ownership of all pore space in all strata below the surface lands and waters is vested in the owner of the surface directly above the pore space.

A conveyance of the surface ownership of real property shall be a conveyance of the pore space in all strata below the surface of the real property unless the ownership interest in the pore space previously has been expressly excepted and reserved, conveyed, or otherwise severed from the surface ownership. The ownership of pore space in the strata may be conveyed in the manner provided by law for the transfer of real property interests. No agreement conveying mineral, oil and gas, coal, limestone or similar resource, or other interests underlying the surface shall convey pore space in the strata unless the agreement expressly includes conveyance of the pore space.

(B) No provision of law or rule requiring notice to be given to a surface owner, owner of the mineral or oil and gas interest, or both shall be construed to require notice to individuals holding ownership interests in pore space in the underlying strata unless the applicable law specifies notice to the individuals is required or unless the owner of the pore space also owns an interest in the surface or in the mineral or oil and gas interests.

(C)(1) Nothing in sections 1509.71 to 1509.79 and 5301.58 to 5301.60 of the Revised Code shall be construed to change or alter the common law existing as of the effective date of this section with respect to the rights belonging to, or the dominance of, the mineral estate or oil and gas estate. For the purpose of determining the priority of surface and subsurface uses between a severed mineral or oil and gas estate and pore space, the severed mineral or oil and gas estate is dominant regardless of whether ownership of the pore space is vested in the owner of the surface or is owned separately from the surface.

(2) If pore space is severed from the surface ownership, the pore space estate shall be considered to be dominant over the surface estate unless the conveyance specifically provides otherwise.

(3) Nothing in sections 5301.58 to 5301.60 of the Revised Code shall alter, amend, diminish, or invalidate rights to the pore space that were acquired by deed, contract, or lease prior to the effective date of this section.

(D) An instrument that transfers the rights to pore space shall include a specific description of the location of the pore space being transferred. In the event that the instrument uses only a description of the surface, the transfer shall be considered to include pore space owned by the transferor at all depths underlying the described surface area unless specifically excluded. The owner of the pore space shall have no right to use the surface estate beyond that set out in a properly recorded instrument due solely to its ownership in the pore space.

An instrument that conveys the surface directly above the pore space, but otherwise seeks to except or reserve the rights to the pore space, shall include a specific reference to the pore space in the instrument. In the event of such exception or reserved rights, the reserved rights to the pore space shall include pore space owned by the transferor at all depths underlying the described surface area unless otherwise specifically excluded.

Sec. 5301.59. All carbon dioxide injected into a storage facility for carbon sequestration, and all other substances injected incidental to the injection of carbon dioxide, shall be presumed to be owned by the storage operator. This presumption may be rebutted by an individual claiming contrary ownership by a preponderance of the evidence in an action to establish ownership.

No owner of pore space, other individual holding any right to control pore space, or other surface or subsurface property interest owner, shall have any liability relating to the injection of carbon dioxide, or any other substances injected incidental to the injection of carbon dioxide, for carbon sequestration activities solely by virtue of their interest in the pore space or their surface or subsurface rights.

Sec. 5301.60. (A) A claim for damages due to injection or migration of carbon dioxide shall not be recoverable against a storage operator conducting carbon sequestration in accordance with a valid UIC Class VI permit unless the claimant proves that the injection or migration of carbon dioxide has caused direct physical injury to an individual, animal, or real or personal property.

(B) A surface or subsurface property interest owner asserting a claim for injury to personal or real property may recover monetary damages due to injection or migration of carbon dioxide only for the diminution in real or personal property value resulting from the injection or migration of carbon dioxide beyond the storage facility.

(C) A surface or subsurface property interest owner may not seek punitive damages due to injection or migration of carbon dioxide if the storage operator acts in compliance with the requirements of the UIC Class VI permit.

(D) Divisions (A), (B), and (C) of this section do not apply to any claims that may be asserted by owners of oil and gas interests or owners of class II disposal wells for damages or injuries related to any of the following:

- (1) The injection or migration of carbon dioxide;
- (2) The construction or operation of a storage facility;
- (3) A carbon sequestration project.

SECTION 2. That existing sections 1509.01, 1509.33, and 1509.99 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. H. B. No. 170

136th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_