

COMMITTEE SUBSTITUTE

FOR

H. B. 2860

(By Mr. Speaker (Mr. Thompson) and Delegate Armstead)

[By Request of the Executive]

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §22-11-4, §22-11-22, §22-11-24 and §22-11-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §22-11A-1, §22-11A-2, §22-11A-3, §22-11A-4, §22-11A-5, §22-11A-6, §22-11A-7, §22-11A-8 and §22-11A-9, all relating to regulating the sequestration and storage of carbon dioxide; providing for powers and duties of the Department of Environmental Protection; providing for civil penalties and injunctive relief; providing for criminal penalties; providing for civil liability; setting forth legislative findings; defining terms; specifying powers and duties; specifying carbon dioxide permitting requirements; establishing a working group to study and make recommendations regarding carbon dioxide sequestration; and authorizing the promulgation of legislative rules and cooperative agreements.

Be it enacted by the Legislature of West Virginia:
That §22-11-4, §22-11-22, §22-11-24 and §22-11-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §22-11A-1, §22-11A-2, §22-11A-3, §22-11A-4, §22-11A-5, §22-11A-6, §22-11A-7, §22-11A-8 and §22-11A-9, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-4. General powers and duties of director with respect to pollution.

(a) In addition to all other powers and duties the director has and may exercise, subject to specific grants of authority to the chief or the board in this article or elsewhere in this code, the director has the following powers and authority and shall perform the following duties:

(1) To perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act," 33 U.S.C. §1251, *et seq.*, as amended, relating to this state's participation in the "National Pollutant Discharge Elimination System," 33 U.S.C. §1342, established under that act;

- (2) To encourage voluntary cooperation by all persons in the conservation, improvement and development of water resources and in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the division may receive moneys from such agencies, officers and persons on behalf of the state. The division shall pay all moneys so received into a special fund hereby created in the State Treasury, which fund shall be expended under the direction of the director solely for the purpose or purposes for which the grant, gift or contribution was made;
- (3) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, industrial users, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of such waters, for the control and reduction of pollution;
- (4) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to the water resources of the state and water pollution and its causes, control and reduction, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;
- (5) To study and investigate all problems concerning water flow, water pollution and the control and reduction of pollution of the waters of the state, and to make reports and recommendations with respect thereto;
- (6) To collect and disseminate information relating to water pollution and the control and reduction thereof;
- (7) To develop a public education and promotion program to aid and assist in publicizing the need for, and securing support for, pollution control and abatement;
- (8) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;
- (9) To develop programs for the control and reduction of the pollution of the waters of the state;
- (10) To exercise general supervision over the administration and enforcement of the provisions of this article, and all rules, permits and orders issued pursuant to the provisions of this article, article eleven-a of this chapter and article one, chapter twenty-two-b of this code;
- (11) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the director may cooperate with any public or private agency and receive therefrom, on behalf of the state, and for deposit in the State Treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or contributions received as aforesaid shall be expended by the director according to the requirements or directions of the donor or contributor without the

necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the division;

(12) To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction and operation of, any activity or activities in connection with the issuance and revocation of such permits as are required by this article, article eleven-a of this chapter or the rules promulgated thereunder;

(13) To require any and all persons directly or indirectly discharging, depositing or disposing of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, and any and all persons operating an establishment which produces or which may produce or from which escapes, releases or emanates or may escape, release or emanate treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, to file with the division such information as the director may require in a form or manner prescribed for such purpose, including, but not limited to, data as to the kind, characteristics, amount and rate of flow of any such discharge, deposit, escape, release or disposition;

(14) To adopt, modify, or repeal procedural rules and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code administering and implementing the powers, duties and responsibilities vested in the director by the provisions of this article and article eleven-a of this chapter;

(15) To cooperate with interstate agencies for the purpose of formulating, for submission to the Legislature, interstate compacts and agreements relating to: (A) The control and reduction of water pollution; and (B) the state's share of waters in watercourses bordering the state;

(16) To adopt, modify, repeal and enforce rules, in accordance with the provisions of chapter twenty-nine-a of this code: (A) Implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the director and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; and (C) facilitating the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: *Provided*, That no rule adopted by the director shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant; and

(17) To advise all users of water resources as to the availability of water resources and the most practicable method of water diversion, use, development and conservation.

(b) Whenever required to carry out the objectives of this article or article eleven-a of this chapter the director shall require the owner or operator of any point source or establishment to: (i) Establish and maintain such records; (ii) make such reports; (iii) install, use and maintain such monitoring equipment or methods; (iv) sample such effluents in accordance with such methods, at such locations, at such intervals and in such manner as the director shall prescribe; and (v) provide such other information as the director may reasonably require.

(c) The director upon presentation of credentials: (i) Has a right of entry to, upon or through any premises in which an effluent source is located or in which any records required to be maintained under subsection (b) of this section are located; and (ii) may

at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under subsection (b) of this section and sample any streams in the area as well as sample any effluents which the owner or operator of such source is required to sample under subsection (b) of this section. Nothing in this subsection eliminates any obligation to follow any process that may be required by law.

(d) The director is hereby authorized and empowered to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, investigate and ascertain, with the assistance of the Public Service Commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports and recommendations thereon to the county commissions of the areas concerned, together with a request that such county commissions create a public service district or districts, as therein shown to be needed and required and as provided in article thirteen-a, chapter sixteen of this code. In the event a county commission fails to act to establish a county-wide public service district or districts, the director shall act jointly with the Commissioner of the Bureau of Public Health to further investigate and ascertain the financial feasibility and projected financial capability and, subject to the approval of the Public Service Commission, order the county commission to take action to establish such public service district or districts as may be necessary to control, reduce or abate the pollution, and when so ordered the county commission members must act to establish such a county-wide public service district or districts.

(e) The director has the authority to enter at all reasonable times upon any private or public property for the purpose of making surveys, examinations, investigations and studies needed in the gathering of facts concerning the water resources of the state and their use, subject to responsibility for any damage to the property entered. Upon entering, and before making any survey, examination, investigation and study, such person shall immediately present himself or herself to the occupant of the property. Upon entering property used in any manufacturing, mining or other commercial enterprise, or by any municipality or governmental agency or subdivision, and before making any survey, examination, investigation and study, such person shall immediately present himself or herself to the person in charge of the operation, and if he or she is not available, to a managerial employee. All persons shall cooperate fully with the person entering such property for such purposes. Upon refusal of the person owning or controlling such property to permit such entrance or the making of such surveys, examinations, investigations and studies, the director may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance or the making of such surveys, examinations, investigations and studies; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article: *Provided*, That nothing in this subsection eliminates any obligation to follow any process that may be required by law.

§22-11-22. Civil penalties and injunctive relief; administrative penalties.

(a) Any person who violates any provision of any permit issued under or subject to the provisions of this article or article eleven-a of this chapter is subject to a civil penalty not

to exceed \$25,000 per day of such violation and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or made and entered under the provisions of this article, article eleven-a of this chapter or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed \$25,000 per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the director in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation. Upon application by the director, the circuit courts of the state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, article eleven-a of this chapter, the rules of the board or director, effluent limitations, the terms and conditions of any permit granted under the provisions of this article or article eleven-a of this chapter or any order of the director or board, and the venue of any such actions shall be the county in which the violations or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunction application filed. Any other section of this code to the contrary notwithstanding, the state is not required to furnish bond as a prerequisite to obtaining injunctive relief under this article or article eleven-a of this chapter. An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article. The judgment of the circuit court upon any application filed or in any civil action instituted under the provisions of this section is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking review in any injunctive proceeding must be filed with said Supreme Court of Appeals within ninety days from the date of entry of the judgment of the circuit court. Legal counsel and services for the chief, director or the board in all civil penalty and injunction proceedings in the circuit court and in the Supreme Court of Appeals of this state shall be provided by the Attorney General or his or her assistants and by the prosecuting attorneys of the several counties as well, all without additional compensation, or the chief, director or the board, with the written approval of the Attorney General, may employ counsel to represent him or her or it in a particular proceeding.

(b) In addition to the powers and authority granted to the director by this chapter to enter into consent agreements, settlements and otherwise enforce this chapter, the director shall propose, for legislative promulgation, rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish a mechanism for the administrative resolution of violations set forth in this section through consent order or agreement as an alternative to instituting a civil action.

§22-11-24. Violations; criminal penalties.

(a) Any person who causes pollution or who fails or refuses to discharge any duty imposed upon him or her by this article, by article eleven-a of this chapter or by any rule of the board or director, promulgated pursuant to the provisions and intent of this article or article eleven-a of this chapter, or by an order of the director or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article or article eleven-a of this chapter, or who fails or refuses to comply with any term or condition of such permit, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail for a period not exceeding six months, or by both fine and imprisonment.

(b) Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article, article eleven-a of this chapter or any rules promulgated by the director thereunder is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment in jail not exceeding six months or by both fine and imprisonment.

(c) Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or article eleven-a of this chapter or who willfully or negligently violates any provision of this article or article eleven-a of this chapter, any rule of the board or director, any effluent limitation or any order of the director or board is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation or by imprisonment in jail not exceeding one year or by both fine and imprisonment.

(d) Any person convicted of a second or subsequent willful violation of subsections (b) or (c) of this section or knowingly and willfully violates any provision of any permit, rule or order issued under or subject to the provisions of this article or article eleven-a of this chapter, or knowingly and willfully violates any provision of this article or article eleven-a of this chapter, is guilty of a felony and, upon conviction, shall be imprisoned in a correctional facility not less than one nor more than three years, or fined not more than \$50,000 for each day of violation, or both fined and imprisoned.

(e) Any person may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided in this article have been pursued or invoked against said person and notwithstanding that civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against such person.

(f) Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of the permit, the person is not subject to criminal prosecution for pollution recognized and authorized by the permit.

§22-11-25. Civil liability; Natural Resources Game Fish and Aquatic Life Fund; use of funds.

If any loss of game fish or aquatic life results from a person or persons' failure or refusal to discharge any duty imposed upon such person by this article, section seven, article six of this chapter or article eleven-a of this chapter, either the West Virginia Division of Natural Resources or the Division of Environmental Protection, or both jointly may

initiate a civil action on behalf of the State of West Virginia to recover from such person or persons causing such loss a sum equal to the cost of replacing such game fish or aquatic life. Any moneys so collected shall be deposited in a special revenue fund entitled "Natural Resources Game Fish and Aquatic Life Fund" and shall be expended as hereinafter provided. The fund shall be expended to stock waters of this state with game fish and aquatic life. Where feasible, the Director of the Division of Natural Resources shall use any sum collected in accordance with the provisions of this section to stock waters in the area in which the loss resulting in the collection of such sum occurred. Any balance of such sum shall remain in said fund and be expended to stock state-owned and operated fishing lakes and ponds, wherever located in this state, with game fish and aquatic life.

ARTICLE 11A. CARBON DIOXIDE SEQUESTRATION. Legislative findings.

(a) The Legislature finds that:

(1) Carbon dioxide is a colorless, odorless gas that can be produced by burning carbon and organic compounds;

(2) Carbon dioxide is emitted into the atmosphere from a number of sources including fossil-fueled power plants, automobiles, certain industrial processes and other naturally occurring sources;

(3) By far, fossil-fueled power plants are the largest source of carbon dioxide emissions. These power plants emit approximately one-third of carbon dioxide emissions worldwide;

(4) On average, the United States generates approximately fifty-one percent of its electricity from coal-burning power plants, which are a prominent source of carbon dioxide emissions;

(5) West Virginia's reliance on electricity produced from coal is even more pronounced, as West Virginia generates approximately ninety-eight percent of its electricity from coal-burning power plants;

(6) There is increasing pressure, both nationally and worldwide, to produce electrical power with an ever-decreasing amount of carbon dioxide emissions;

(7) West Virginia is a state rich in natural resources, and its economy depends largely upon the demand for energy produced from materials found within the state, not the least of which is coal;

(8) As demand for energy produced from alternative and renewable resources rises, new technologies are needed to burn coal more cleanly and efficiently if West Virginia is to remain competitive as an energy producing state;

(9) Carbon dioxide capture and sequestration is the capture and secure storage of carbon dioxide that would otherwise be emitted to, or remain in, the atmosphere. This technology is currently being used and tested to reduce the carbon footprint of electricity generated by the combustion of coal;

(10) The science of carbon dioxide capture and sequestration is advancing rapidly, but the environmental effects of large, long-term carbon dioxide sequestration operations are still being studied and evaluated;

(11) Although the state is committed to expanding its portfolio of alternative and renewable energy resources, electricity generated from these resources is insufficient in the near term to meet the rising demand for energy;

(12) It is in the public interest to advance the implementation of carbon dioxide capture and sequestration technologies into the state's energy portfolio;

(13) The transportation by pipeline and sequestration of carbon dioxide by a public utility engaged in the generation of electricity may be integral to the construction, maintenance and operation of electric light, heat and power plants operating in the state; and

(14) Therefore, in order to expand more rapidly the generation of electricity with little or no carbon dioxide emissions, it is critical to encourage the development of carbon dioxide capture and sequestration technologies; to examine factors that may be integral to the construction, maintenance and operation of carbon dioxide sequestration facilities; and to study the economic and environmental feasibility of large, long-term carbon dioxide sequestration operations.

(b) It is therefore the purpose of this article to:

(1) Establish a legal and regulatory framework for the permitting of carbon dioxide sequestration operations;

(2) Designate a state agency responsible for establishing standards and rules for the permitting of carbon dioxide sequestration operations including, but not limited to, rules pertaining to:

(A) Environmental surveillance of carbon dioxide sequestration operations;

(B) The monitoring of geologic migration of carbon dioxide and the detection of carbon dioxide excursions;

(C) Construction standards for carbon dioxide sequestration operations;

(D) Bonding or other financial assurances; and

(E) The closure of carbon dioxide sequestration operations, including post-closure monitoring, verification and maintenance; and to

(3) With the aid of a carbon dioxide sequestration working group, develop a long-term strategy for the regulation of carbon dioxide sequestration.

§22-11A-2.

Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Department" means the Department of Environmental Protection;

(b) "Carbon dioxide sequestration" means the injection of carbon dioxide and associated constituents into subsurface geologic formations intended to prevent its release into the atmosphere; (c) "Carbon dioxide sequestration facilities" means the

surface equipment used for transport, storage and injection of carbon dioxide, excluding pipelines used to transport carbon dioxide from one or more capture facilities to the sequestration injection site or sites.

(d) "Carbon dioxide sequestration site" means the underground carbon dioxide formations where the carbon dioxide is stored or is intended to be stored;

(e) "Excursion" means the migrating of carbon dioxide at or beyond the boundary of a carbon dioxide sequestration site; and

(f) "Secretary" means the Secretary of the Department of Environmental Protection.

§22-11A-3. Prohibition of carbon dioxide sequestration without a permit; injection of carbon dioxide for the purpose of enhancing the recovery of oil or other minerals not subject to the provisions of this article.

(a) The provisions of article eleven of this chapter apply to all permits issued pursuant to this article except, where the express provisions of this article conflict with the provisions of article eleven of this chapter, the express provisions of this article control.

(b) Except as set forth in subsection (c) of this section, no person shall engage in carbon dioxide sequestration in this state unless authorized by a permit issued by the department in accordance with section eight, article eleven of this chapter.

(c) The injection of carbon dioxide for purposes of enhancing the recovery of oil or other minerals pursuant to a project approved by the department shall not be subject to the provisions of this article.

(d) If an oil, natural gas or coalbed methane operator converts its operations to carbon dioxide sequestration upon the cessation of oil or other mineral recovery operations, then the carbon dioxide sequestration facility and the carbon dioxide sequestration site shall be regulated pursuant to this article and article eleven of this chapter. If an operator does not convert its operations to carbon dioxide sequestration upon the cessation of oil or other mineral recovery operations, the wells shall be plugged and abandoned in accordance with article six of this chapter.

(e) Any entity owning or operating a carbon dioxide sequestration facility which has commenced construction on or before the effective date of this article is hereby authorized to continue operating until such time as the secretary has established operational and procedural requirements applicable to such existing facilities and the entity owning or operating such facility has had a reasonable opportunity to comply with those requirements.

§22-11A-4. General powers and duties of the secretary with respect to carbon dioxide sequestration.

(a) The secretary, after receiving public comment and after consultation with the state geologist and the working group established in section six of this article, shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article, including without limitation:

- (1) The requirements for issuance of permits for carbon dioxide sequestration;
- (2) The requirements for carbon dioxide sequestration permit applications;
- (3) The issuance of notice following the approval of a permit application, which shall identify the location at which the public may examine the permit, describe the nature of the public's opportunity to comment, and list any public hearing that may be held in connection with the permit. The secretary shall allow no less than thirty days for public comment on the draft permit and may for good cause extend the comment period up to an additional thirty days. Notice of any public hearing shall be given no less than thirty days prior to its conduct; and
- (4) The creation of subclasses of wells within the existing Underground Injection Control (UIC) program administered by the United States Environmental Protection Agency pursuant to Part C of the Safe Drinking Water Act, 42 U.S.C. §300h, *et seq.*, to protect human health, safety and the environment and to allow for the permitting of the sequestration of carbon dioxide;

(5) The appropriate bonding or other financial assurance procedures necessary to ensure that carbon dioxide sequestration sites and facilities will be constructed, operated and closed in accordance with the purposes and provisions of this article; and
(6) The proper duration of the post-closure care period for carbon dioxide sequestration sites.

(b) The secretary shall propose amendments to the rules promulgated under this section and take such action as may be required in order to fulfill the state's primary responsibility for assuring compliance with the federal Safe Drinking Water Act, including any amendments thereto.

§22-11A-5. Permit application requirements and contents; permit application fees.

(a) A carbon dioxide sequestration permit application shall include:
(1) A description of the general geology of the area to be affected by the injection of carbon dioxide, including geochemistry, structure and faulting, fracturing and seals, and stratigraphy and lithology, including petrophysical attributes;
(2) A characterization of the injection zone and aquifers above and below the injection zone that may be affected by the injection of carbon dioxide, including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;
(3) The identification of all other drill holes and operating wells that exist or have existed within and adjacent to the proposed sequestration site;
(4) An assessment of the effect on fluid resources, on subsurface structures and on the surface of lands that may reasonably be expected to be affected by the injection of carbon dioxide, together with the measures required to mitigate those effects;
(5) The plans and procedures for environmental surveillance and excursion detection, prevention and control programs;
(6) A site and facilities description, including a description of the proposed carbon dioxide sequestration facilities and documentation sufficient to demonstrate that the applicant has, or will have prior to the commencement of the operation, all legal rights, including without limitation the right to surface or pore space use, necessary to sequester carbon dioxide and associated constituents into the proposed carbon dioxide sequestration site;
(7) Proof that the proposed injection wells are designed, at minimum, to the construction standards set forth by the department;
(8) A plan for periodic mechanical integrity testing of all wells;
(9) A monitoring plan to assess the migration of the injected carbon dioxide and to ensure the retention of the carbon dioxide in the sequestration site;
(10) Proof of bonding or financial assurance to ensure that carbon dioxide sequestration sites and facilities will be constructed, operated and closed in accordance with the purposes and provisions of this article and the rules promulgated pursuant to this article;
(11) A detailed plan for post-closure monitoring, verification, accounting, maintenance and mitigation;
(12) Procedures for the operator of the facilities to provide immediate verbal notice to the department of any excursion after the excursion is discovered, followed by written notice to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests within thirty days of discovering the excursion;
(13) Procedures for the termination or modification of any applicable Underground

Injection Control (UIC) permit issued under Part C of the Safe Drinking Water Act, 42 U.S.C. §300h, *et seq.*, if an excursion cannot be controlled or mitigated;

(14) A plan to provide proof of notice to surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests regarding the contents of the application. At a minimum, the notice shall include:

(A) The publication of a Class I legal advertisement in a newspaper of general circulation in each county of the proposed operation. The applicant shall publish the notice at the time of filing and shall identify in the notice the location where the public may examine the application;

(B) The mailing of a copy of the notice to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests that are located within one mile of the proposed boundary of the carbon dioxide sequestration site; and

(15) Any other requirement set forth in legislative rules promulgated under this article.

(b) Upon filing an application, an applicant shall pay a reasonable fee, as established by the secretary in legislative rules, to the department for the costs of reviewing, evaluating and processing the permit, serving notice of an application and holding any hearings. The fee shall be credited to a separate account and shall be used by the department as required to complete the tasks necessary to process, publish and reach a decision on the permit application.

§22-11A-6. Carbon dioxide sequestration working group.

(a) The secretary shall establish the carbon dioxide sequestration working group.

(b) The secretary, in cooperation with the state geologist, shall appoint at least fifteen persons to serve on the working group.

(c) In selecting persons to serve on the working group, the secretary and the state geologist shall appoint at least three persons who are experts in carbon dioxide sequestration or related technologies, at least one person who is an expert in environmental science, at least one person who is an expert in geology, at least one person who is an attorney with an expertise in environmental law, at least one person who is an expert in engineering, at least one person who is an expert in the regulation of public utilities in West Virginia, one person who is a representative of a citizen's group advocating environmental protection, a representative of a coal power electric generating utility advocating carbon dioxide sequestration development, at least one person who is an engineer with an expertise in the underground storage of natural gas, the chairman of the National Council of Coal Lessors or his/her designee, a representative of the West Virginia Coal Association, a representative of the West Virginia Land and Mineral Owners Association, and at least one representative advocating the interests of surface owners of real property.

(d) The working group shall study issues pertaining to carbon dioxide sequestration including, but not limited to, scientific, technical, legal and regulatory issues, and issues regarding ownership and other rights and interest in subsurface space that can be used as storage space for carbon dioxide and other associated constituents, or other substances, commonly referred to as "pore space," and shall report to the secretary and the Legislature its recommendations with respect to the development, regulation and control of carbon dioxide sequestration and related technologies.

(e) In addition, the working group shall develop a long-term strategy for the regulation of carbon dioxide sequestration in West Virginia.

(f) The working group may conduct or initiate studies, scientific or other investigations, research, experiments and demonstrations pertaining to carbon dioxide sequestration, and to this end, the working group may cooperate with state institutions of higher education or any public or private agency. The secretary may receive on behalf of the state for deposit in the State Treasury any moneys which such institutions or state agencies may be authorized to transfer to the Secretary, and all gifts, donations or contributions which such private agencies or other may provide, to defray the expenses of the working group. Any amounts so received shall be expended by the secretary solely for the purposes set forth in subsection (d) of this section.

(g) The working group shall issue a preliminary report to the secretary and the Legislature by July 1, 2010, containing any preliminary recommendations or findings of the working group.

(h) The working group shall issue a final report to the Legislature by July 1, 2011, which report shall, at a minimum:

(1) Recommend appropriate methods to encourage the development of carbon dioxide sequestration technologies;

(2) Assess the economic and environmental feasibility of large, long-term carbon dioxide sequestration operations;

(3) Recommend any legislation the working group may determine to be necessary or desirable to clarify issues regarding the ownership and other rights and interest in pore space;

(4) Recommend methods of facilitating the widespread use of carbon dioxide sequestration technology throughout West Virginia;

(5) Identify geologic sequestration monitoring sites to assess the short-term and long-term impact of carbon dioxide sequestration;

(6) Assess the feasibility of carbon dioxide sequestration in West Virginia and the characteristics of areas within the state where carbon dioxide could be sequestered;

(7) Assess the costs, benefits, risks and rewards of large-scale carbon dioxide sequestration projects in West Virginia;

(8) Assess the potential carbon dioxide sequestration capacity in this state;

(9) Identify areas of research needed to better understand and quantify the processes of carbon dioxide sequestration; and

(10) Outline the working group's long-term strategy for the regulation of carbon dioxide sequestration in West Virginia.

(i) The working group, along with the state geologist, shall assist the secretary in developing and promulgating legislative rules under this article.

§22-11A-7. Reporting and accountability.

The department shall include within the reports to the Legislature required by section six, article twelve of this chapter its observations concerning all aspects of compliance with this article, including without limitation the promulgation of rules, the formation of the carbon dioxide sequestration working group, the permitting process and any pertinent changes to federal rules or regulations.

§22-11A-8. Oil, natural gas and coalbed methane activities at carbon dioxide sequestration sites; extraction of sequestered carbon dioxide.

(a) Nothing in this article shall be deemed to affect the otherwise lawful right of a

mineral owner to drill or bore through a carbon dioxide sequestration site, if done in accordance with the rules promulgated under this article for protecting the carbon dioxide sequestration site against the escape of carbon dioxide.

(b) Nothing in this article is intended to impede or impair the ability of an oil, natural gas or coalbed methane operator to inject carbon dioxide through an approved enhanced oil, natural gas or coalbed methane recovery project and to establish, verify, register and sell emission reduction credits associated with the project.

(c) The Office of Oil and Gas shall have jurisdiction over any subsequent extraction of sequestered carbon dioxide that is intended for commercial or industrial purposes.

§22-11A-9. Cooperative agreements.

The secretary is authorized to enter into cooperative agreements with other governments or government entities for the purpose of regulating carbon dioxide storage projects that extend beyond state regulatory authority under this article.