

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 831 Session of 2023

INTRODUCED BY YAW, ROBINSON, STEFANO AND VOGEL, JUNE 20, 2023

AS REPORTED FROM COMMITTEE ON CONSUMER PROTECTION, TECHNOLOGY AND UTILITIES, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 25, 2024

AN ACT

1 Providing for the injection of carbon dioxide into an
2 underground reservoir for the purpose of carbon
3 sequestration, for the ownership of pore space in strata
4 below surface lands and waters of the Commonwealth, for
5 conveyance of the surface ownership of real property;
6 imposing duties on the Department of Environmental Protection
7 AND THE ENVIRONMENTAL HEARING BOARD; and establishing the <--
8 Carbon Dioxide Storage Facility Fund.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the Carbon
13 Capture and Sequestration Act.

14 Section 2. Findings and declarations.

15 The General Assembly finds and declares as follows:

16 (1) It is in the public interest to promote the geologic
17 storage of carbon dioxide.

18 (2) The capture and geologic storage of carbon dioxide
19 will benefit this Commonwealth and the global environment by
20 reducing greenhouse gas emissions and will help to ensure the

1 viability of the energy and power industries of this
2 Commonwealth, to the economic benefit of Pennsylvania and its
3 residents.

4 (3) Carbon dioxide is a potentially valuable commodity
5 and geologic storage may allow for its ready availability if
6 needed for commercial, industrial or other uses.

7 (4) The use of any subsurface stratum, formations,
8 cavities or voids, and any materials and fluids contained
9 therein, for geologic storage of carbon dioxide is a
10 reasonable and beneficial use.

11 Section 3. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Carbon dioxide injection well." A well that is used to
16 inject carbon dioxide into a reservoir for carbon sequestration
17 under a UIC Class VI permit.

18 "Carbon dioxide plume." The physical extent underground of
19 the injected carbon dioxide stream.

20 "Carbon sequestration." The underground storage of carbon
21 dioxide in a reservoir.

22 "Carbon sequestration project." A project that involves the
23 underground storage of carbon dioxide in a reservoir pursuant to
24 at least one UIC Class VI permit.

25 "CONSERVED LAND." AS FOLLOWS: <--

26 (1) LAND THAT IS PRIVATELY OWNED OR MANAGED.

27 (2) THE TERM INCLUDES:

28 (I) LAND OWNED OR MANAGED BY A LAND TRUST.

29 (II) A CONSERVATION EASEMENT.

30 "Department." The Department of Environmental Protection of

1 the Commonwealth.

2 "ENVIRONMENTAL JUSTICE AREA." A GEOGRAPHIC AREA THAT IS <--
3 IDENTIFIED OR DESIGNATED BY THE DEPARTMENT AND CHARACTERIZED BY
4 INCREASED POLLUTION BURDEN AND VULNERABLE POPULATIONS BASED ON
5 DEMOGRAPHIC, ECONOMIC, HEALTH AND ENVIRONMENTAL DATA.

6 "Fund." The Carbon Dioxide Storage Facility Fund established
7 under section 10(a).

8 "MUNICIPALITY." A COUNTY, CITY, BOROUGH, INCORPORATED TOWN <--
9 OR TOWNSHIP OF THIS COMMONWEALTH.

10 "Pore space." Subsurface strata, formations, cavities or
11 voids, whether natural or artificially created, that can be used
12 as a storage space for carbon dioxide or other media.

13 "PUBLIC LAND." LAND THAT IS OWNED OR MANAGED BY THE <--
14 COMMONWEALTH, A MUNICIPALITY OR AN AGENCY, AUTHORITY OR OTHER
15 GOVERNMENTAL ENTITY OF THE COMMONWEALTH OR A MUNICIPALITY.

16 "Secretary." The Secretary of Environmental Protection of
17 the Commonwealth.

18 "Storage facility." The subsurface area consisting of the
19 extent of a carbon dioxide plume which is required to be
20 delineated on an approved UIC Class VI permit or an amendment to
21 a UIC Class VI permit of a storage operator.

22 "Storage operator." An individual, corporation or other
23 legal entity that operates a carbon sequestration project.

24 "Subsurface property interest owner." A property interest
25 owner identified by the records of the recorder of deeds for
26 each county containing a portion of the proposed storage
27 facility who holds a fee simple interest, other freehold
28 interest or leasehold interest in the subsurface of the
29 property, which may include minerals, including coal, or oil and
30 gas rights. The term does not include the owner of a right-of-

1 way or an easement.

2 "Surface property interest owner." A property interest owner
3 identified by the records of the recorder of deeds for each
4 county containing a portion of the proposed storage facility who
5 holds a fee simple interest or other freehold interest in the
6 surface of the property, which may include minerals, including
7 coal, or oil and gas rights. The term does not include the owner
8 of a right-of-way, an easement or a leasehold.

9 "UIC Class VI permit." A permit issued under 40 CFR Pt. 144
10 (relating to underground injection control program) AND <--
11 REGULATIONS PROMULGATED BY THE ENVIRONMENTAL QUALITY BOARD that
12 allows the operation of a carbon dioxide injection and storage
13 well.

14 "Underground storage of carbon dioxide." The injection and
15 storage of carbon dioxide into underground strata and formations
16 under at least one UIC Class VI permit.

17 Section 4. Ownership of pore space.

18 (a) General rule.--The ownership of all pore space in all
19 strata below the surface lands and waters of the Commonwealth
20 shall be vested in the surface property interest owner above the
21 pore space.

22 (b) Conveyance.--A conveyance of the surface ownership of
23 real property shall be a conveyance of the pore space in all
24 strata below the surface of the real property unless the
25 ownership interest in the pore space previously has been
26 expressly excepted and reserved, conveyed or otherwise severed
27 from the surface ownership. The ownership of pore space in
28 strata may be conveyed in the manner provided by law for the
29 transfer of real property interests. No agreement conveying
30 minerals, including coal, oil and gas, or other interests

1 underlying the surface shall act to convey pore space in the
2 stratum unless the agreement expressly includes conveyance of
3 the pore space.

4 (C) TRANSPARENCY.--A LEASE OR CONVEYANCE OF PORE SPACE UNDER <--
5 ANY PUBLIC LAND MAY NOT BE MADE WITHOUT PUBLIC NOTICE, HEARING
6 AND A REASONABLE OPPORTUNITY FOR PUBLIC COMMENT.

7 ~~(e)~~ (D) Construction.-- <--

8 (1) No provision of law or regulation requiring notice
9 to be given to a surface property interest owner, subsurface
10 property interest owner or both, shall be construed to
11 require notice to individuals holding ownership interest in
12 pore space in the underlying strata unless the applicable law
13 specifies notice to the individuals is required.

14 (2) Nothing in this section shall be construed to change
15 or alter the common law existing as of the effective date of
16 this paragraph with respect to the rights belonging to, or
17 the dominance of, the mineral, including coal, estate or oil
18 and gas estate. For the purpose of determining the priority
19 of subsurface uses between a mineral, including coal, or oil
20 and gas estate and pore space, the mineral, including coal,
21 or oil and gas estate is dominant, including the surface use
22 necessary for the subsurface development of the mineral,
23 including coal, or oil and gas estate, regardless of whether
24 ownership of the pore space is vested in the surface property
25 interest owner or is owned separately from the surface.

26 (3) Nothing in this section shall alter, amend, diminish
27 or invalidate rights to an existing use of subsurface pore
28 space that were acquired by contract or lease prior to the
29 effective date of this paragraph, notwithstanding that the
30 contract or lease was entered into with a subsurface property

1 interest owner or a predecessor to the subsurface property
2 interest owner.

3 ~~(d)~~ (E) Transfer instruments.-- <--

4 (1) Instruments that transfer the rights to pore space
5 under this section shall describe the scope of any right to
6 use the surface estate. The owner of a pore space right shall
7 have no right to use the surface estate beyond that set out
8 in a properly recorded instrument.

9 (2) After the effective date of this paragraph, a
10 transfer instrument shall include a specific description of
11 the location of the pore space being transferred. The
12 description may include a metes and bounds description of the
13 surface lying over the transferred pore space and
14 identification of the subsurface strata, formations or
15 reservoirs. In the event only a description of the surface is
16 used, the transfer shall be deemed to include pore space at
17 all depths underlying the described surface area unless
18 specifically excluded. The validity of pore space rights
19 under this paragraph shall not affect the respective
20 liabilities of a party and liabilities shall operate in the
21 same manner as if the pore space transfer were valid.

22 Section 5. Cotenants, ownership of pore space by multiple
23 cotenants and collective storage.

24 (a) General rule.--If a storage operator does not obtain the
25 consent of all persons that own the storage facility's pore
26 space to the construction and operation of a storage facility,
27 the ~~secretary~~ ENVIRONMENTAL HEARING BOARD may require that the <--
28 pore space owned by nonconsenting owners be included in a
29 storage facility and subject to geologic storage. The following
30 shall apply:

1 (1) The permit applicant and prospective storage
2 operator shall negotiate with the pore space owners and
3 acquire rights needed to access the pore space.

4 (2) If, after good-faith negotiation, the applicant or
5 storage operator cannot locate or cannot reach an agreement
6 with all necessary pore space owners but has secured written
7 consent or agreement from the owners of at least ~~60%~~ 75% of <--
8 the ownership interest in the pore space for the storage
9 facility, all of the pore space of said interests for which
10 an agreement has not been reached shall be declared to be
11 included within the proposed storage facility if the
12 ~~secretary~~ ENVIRONMENTAL HEARING BOARD finds that the <--
13 requirements of this section have been met. For the purposes
14 of this subsection, an unknown or nonlocatable owner shall be
15 deemed to have consented or agreed to the use of the pore
16 space, provided that the storage operator has complied with
17 the publication requirements of this act.

18 (b) Collective storage.--

19 (1) The storage operator shall provide a list to the
20 ~~secretary~~ ENVIRONMENTAL HEARING BOARD of all persons <--
21 reasonably known to own an interest in pore space proposed to
22 be collectively used in an application to the ~~secretary~~ <--
23 ENVIRONMENTAL HEARING BOARD for a collective storage order. A <--
24 collective storage order shall be made only after the
25 ~~secretary~~ ENVIRONMENTAL HEARING BOARD provides notice to all <--
26 pore space owners proposed to be included within the order.

27 (2) The ~~secretary~~ ENVIRONMENTAL HEARING BOARD shall set <--
28 and collect a fee adequate to pay expenses associated with
29 the conduct of administrative hearings for the collective
30 storage of pore space.

1 (3) If the proposed collective storage order concerns
2 pore space with an unknown or nonlocatable owner, the storage
3 operator shall publish one notice in the newspaper of the
4 largest circulation in each county in which the pore space is
5 located. The notice shall appear no more than 30 days prior
6 to the initial application for the collective storage order.
7 The applicant shall file proof of notice with the ~~department~~ <--
8 ENVIRONMENTAL HEARING BOARD concurrently with the <--
9 application. The notice shall:

10 (i) State that an application for a collective
11 storage order has been filed with the ~~department~~ <--
12 ENVIRONMENTAL HEARING BOARD. <--

13 (ii) Describe the pore space proposed to be
14 collectively used.

15 (iii) In the case of an unknown pore space owner,
16 indicate the name of the last known owner.

17 (iv) In the case of a nonlocatable pore space owner,
18 identify the owner and the owner's last known address.

19 (v) State that a person claiming an interest in the
20 pore space proposed to be collectively used should notify
21 the ~~secretary~~ ENVIRONMENTAL HEARING BOARD and the storage <--
22 operator at the published address within 20 days of the
23 publication date.

24 (4) A collective storage order shall authorize the long-
25 term storage of carbon dioxide beneath the tract or portion.
26 The order shall also specify, where necessary, the location
27 of and how to access carbon dioxide injection wells,
28 outbuildings, roads and monitoring equipment. The collective
29 storage order shall identify the compensation to be paid to
30 unknown, nonlocatable and nonconsenting pore space owners and

1 the basis for fair market valuation of the collective
2 interest of the pore space owners.

3 (5) A certified copy of a collective storage order and a
4 survey of the storage field shall be recorded by the storage
5 operator in the office of the county clerk of the county in
6 which all or a portion of the collective tract is located.
7 The ~~secretary~~ ENVIRONMENTAL HEARING BOARD shall provide a <--
8 copy of the collective storage order to those required to be
9 notified. For purposes of this section, an unknown or
10 nonlocatable owner shall be deemed to have received notice,
11 provided that the storage operator has complied with the
12 publication requirements under this subsection.

13 (C) NO RIGHT OF SURFACE ACCESS OR USE.--A COLLECTIVE STORAGE <--
14 ORDER SHALL NOT GRANT THE STORAGE OPERATOR EXPRESSED OR IMPLIED
15 RIGHTS OF SURFACE USE OR ACCESS.

16 (D) COLLECTIVE STORAGE PROHIBITION.--THE ENVIRONMENTAL
17 HEARING BOARD MAY NOT CONSIDER OR APPROVE A COLLECTIVE STORAGE
18 ORDER THAT INVOLVES PUBLIC LAND OR CONSERVED LAND OPEN TO THE
19 PUBLIC.

20 (E) ATTORNEY FEES AND COSTS.--THE ENVIRONMENTAL HEARING
21 BOARD, UPON THE REQUEST OF A NONCONSENTING PORE SPACE OWNER, MAY
22 ORDER THE PAYMENT OF REASONABLE ATTORNEY FEES AND COSTS INCURRED
23 BY THE NONCONSENTING PORE SPACE OWNER FOR ADMINISTRATIVE
24 HEARINGS CONDUCTED BY THE ENVIRONMENTAL HEARING BOARD UNDER THIS
25 SECTION.

26 Section 5.1. Seismic exploration.

27 (a) Seismic activity review.--A storage operator shall
28 prepare a seismic activity review in accordance with existing
29 requirements for a UIC Class VI permit.

30 (b) Seismic survey or assessment.--Prior to application for

1 a UIC Class VI permit developed by the department, a storage
2 operator may conduct a seismic survey or assessment across the
3 vicinity of a potential storage facility.

4 (C) SEISMICITY MONITORING SYSTEM.--A STORAGE OPERATOR SHALL <--
5 DEPLOY AND MAINTAIN A SEISMICITY MONITORING SYSTEM TO DETERMINE
6 THE PRESENCE OR ABSENCE, MAGNITUDE AND THE HYPOCENTER LOCATION
7 TO THE BEST OF THE STORAGE OPERATOR'S ABILITY OF SEISMIC
8 ACTIVITY WITHIN THE VICINITY OF THE STORAGE FACILITY OF A
9 RICHTER SCALE MAGNITUDE AS MAY BE NECESSARY TO PERFORM A RISK
10 ANALYSIS FOR UNACCEPTABLE INDUCED SEISMICITY LEVELS. IF SEISMIC
11 MONITORING DETECTS UNACCEPTABLE INDUCED SEISMICITY LEVELS, THE
12 STORAGE OPERATOR SHALL NOTIFY THE SECRETARY NO LATER THAN A TIME
13 PERIOD SPECIFIED BY THE SECRETARY OF THE DETERMINATION OF
14 UNACCEPTABLE INDUCED SEISMICITY LEVELS AND THE REQUIRED
15 MITIGATION. IF, BASED ON CARBON SEQUESTRATION PROJECT-SPECIFIC
16 RISK ANALYSIS, THE SECRETARY DETERMINES THAT SEISMIC MONITORING
17 DOES NOT NEED TO BE PERMANENT FOR A PARTICULAR PROJECT, THE
18 DEPARTMENT MAY PERMIT THE LOCAL SEISMICITY MONITORING TO BE
19 DISCONTINUED AND DEFER INSTEAD TO NATIONAL OR STATE ARRAYS FOR
20 LONG-TERM SEISMICITY MONITORING.

21 ~~(e)~~ (D) Entry onto lands.--If a storage operator is unable <--
22 to reasonably negotiate with a surface owner for the right to
23 conduct a seismic survey on lands owned by the surface owner,
24 the secretary may issue an order for the entry onto the lands by
25 the storage operator. In this instance, the storage operator
26 shall pay the surface owner just and reasonable compensation as
27 established by the secretary.

28 ~~(d)~~ (E) Limitations and claims.--A seismic survey shall be <--
29 limited to geologic storage and shall remain confidential and
30 proprietary. The storage operator shall defend, indemnify and

1 hold harmless the property owner for all claims arising out of
2 entry onto the property by the storage operator, its contractors
3 and its agents.

4 Section 6. Authorization of projects.

5 (a) Carbon sequestration.--Carbon sequestration projects are
6 authorized in this Commonwealth for the purposes of:

7 (1) Injecting carbon dioxide into the pore space of an
8 underground storage facility through at least one carbon
9 dioxide injection well under a UIC Class VI permit.

10 (2) Employing the underground storage of carbon dioxide.

11 (b) Conditions for authorization.--

12 (1) To operate a carbon sequestration project under this
13 section, a storage operator must obtain, ~~and must be in~~ <--
14 ~~compliance with,~~ a UIC Class VI permit and all other permits
15 as required by applicable statutes and regulations. ~~Upon~~ <--
16 ~~submission of a UIC Class VI permit application, the storage~~
17 ~~operator shall provide notice of application to the surface~~
18 ~~property interest owners and subsurface property interest~~
19 ~~owners in the vicinity of the storage facility.~~ THE FOLLOWING <--
20 APPLY:

21 (I) THE ENVIRONMENTAL QUALITY BOARD SHALL PROMULGATE
22 REGULATIONS AND PERMITTING CRITERIA NECESSARY TO PROTECT
23 THE COMMONWEALTH'S NATURAL RESOURCES AND PUBLIC HEALTH,
24 SAFETY AND WELFARE. THE FOLLOWING APPLY:

25 (A) THE REGULATIONS SHALL INCORPORATE AND
26 CONSIDER COMMUNITY AND CUMULATIVE IMPACTS ANALYSES IN
27 PERMITTING FOR CARBON SEQUESTRATION PROJECTS.

28 (B) THE DEPARTMENT MAY CONDITION OR DENY A
29 PERMIT BASED ON THE CRITERIA SPECIFIED IN THE
30 REGULATIONS.

1 (II) IN A PERMITTING DECISION IMPACTING AN
2 ENVIRONMENTAL JUSTICE AREA, THE DEPARTMENT MAY REQUIRE
3 ADDITIONAL IMPACT ASSESSMENTS, PUBLIC PARTICIPATION,
4 TRANSPARENCY AND REPORTING MEASURES AS PART OF A PERMIT
5 REVIEW OR APPROVAL.

6 (III) THE DEPARTMENT MAY CHARGE A PERMIT OR PERIODIC
7 MANAGEMENT FEE SUFFICIENT TO MAINTAIN OVERSIGHT AND
8 ENFORCEMENT OF CARBON SEQUESTRATION PROJECTS IN THIS
9 COMMONWEALTH.

10 (2) UPON SUBMISSION OF A UIC CLASS VI PERMIT
11 APPLICATION, THE STORAGE OPERATOR SHALL PROVIDE NOTICE OF
12 APPLICATION TO THE SURFACE PROPERTY INTEREST OWNERS AND
13 SUBSURFACE PROPERTY INTEREST OWNERS IN THE VICINITY OF THE
14 STORAGE FACILITY.

15 ~~(2)~~ (3) The following apply to seismic monitoring: <--

16 (i) A storage operator shall deploy prior to carbon
17 sequestration, and periodically operate during carbon
18 sequestration, a seismicity monitoring system to
19 determine the presence or absence, magnitude and the
20 hypocenter location to the best of the storage operator's
21 ability of seismic activity within the vicinity of the
22 storage facility as may be necessary to perform an array
23 and a risk analysis and as required by the department. A
24 storage operator may apply to the department for a waiver
25 of this requirement if the storage operator presents a
26 geohazard assessment and historical injection data
27 demonstrating that induced seismicity does not pose
28 significant risk.

29 (ii) If a storage operator is unable to reasonably
30 negotiate with a surface property interest owner for the

1 right to conduct seismic monitoring on lands owned by the
2 surface property interest owner, the secretary may issue
3 an order for the entry onto the lands by the storage
4 operator. In this instance, the storage operator shall
5 pay the surface property interest owner just and
6 reasonable compensation as established by the secretary.

7 (iii) The storage operator shall defend, indemnify
8 and hold harmless the surface property interest owner and
9 subsurface property interest owner for all claims arising
10 out of entry onto the property by the storage operator,
11 its contractors and its agents.

12 (iv) A storage operator shall provide for the
13 submission to the department of any seismic data above a
14 seismic threshold or frequency determined by the
15 department in a manner provided for by the department.

16 ~~(3) To operate a carbon sequestration project under this~~ <--
17 ~~section, a storage operator shall design the carbon~~
18 ~~sequestration project to isolate any existing or future~~
19 ~~production from the mineral, including of the coal, or oil and~~
20 ~~gas estate, from the carbon dioxide plume and shall indicate~~
21 ~~whether the storage facility contains commercially valuable~~
22 ~~mineral, including the coal, or oil and gas estates, and, if it~~
23 ~~does, a permit may be issued only if the department is satisfied~~
24 ~~that the interests of the mineral, including coal, or oil and~~
25 ~~gas estate, will not be adversely affected and have been~~
26 ~~addressed in an agreement entered into by the storage operator~~
27 ~~and the subsurface property interest owners.~~

28 (4) TO OPERATE A CARBON SEQUESTRATION PROJECT UNDER THIS <--
29 SECTION, A STORAGE OPERATOR SHALL DESIGN THE CARBON
30 SEQUESTRATION PROJECT TO ISOLATE ANY EXISTING OR FUTURE

1 PRODUCTION FROM THE COMMERCIALY VALUABLE MINERAL, INCLUDING
2 OF THE COAL, OR OIL AND GAS ESTATE, FROM THE CARBON DIOXIDE
3 PLUME AND SHALL INDICATE WHETHER THE STORAGE FACILITY
4 CONTAINS COMMERCIALY VALUABLE MINERAL, INCLUDING THE COAL,
5 OR OIL AND GAS ESTATES, AND, IF IT DOES, A PERMIT MAY BE
6 ISSUED ONLY IF THE DEPARTMENT IS SATISFIED THAT THE INTERESTS
7 OF THE MINERAL, INCLUDING COAL, OR OIL AND GAS ESTATE, WILL
8 NOT BE ADVERSELY AFFECTED AND THE SUBSURFACE PROPERTY
9 INTEREST OWNERS HAVE BEEN NOTIFIED BY THE STORAGE OPERATOR.

10 Section 7. Ownership of material injected into storage
11 facilities and liability for holding interests
12 related to a storage facility or giving consent to
13 allow carbon sequestration activities.

14 (a) General rule.--All carbon dioxide, and other substances
15 injected incidental to the injection of carbon dioxide, injected
16 into a storage facility for the purpose of carbon sequestration
17 shall be presumed to be owned by the storage operator of the
18 material and all rights, benefits, burdens and liabilities of
19 the ownership shall belong to the storage operator. This
20 presumption may be rebutted by an individual claiming contrary
21 ownership by a preponderance of the evidence in an action to
22 establish ownership.

23 (b) Liability.--No owner of pore space, other individual
24 holding any right to control pore space or other surface
25 property interest owner or subsurface property interest owner,
26 shall be liable for the effects of injecting carbon dioxide for
27 carbon sequestration activities, or for the effects of injecting
28 other substances for the purpose of carbon sequestration which
29 substances are injected incidental to the injection of carbon
30 dioxide, solely by virtue of their interest in the pore space or

1 surface or subsurface rights.

2 Section 8. Liability of storage operator.

3 (a) General rule.--A claim for damages due to injection or
4 migration of carbon dioxide shall ~~not~~ ONLY be actionable against <--
5 a storage operator conducting carbon sequestration in accordance
6 with a valid UIC Class VI permit ~~unless~~ WHEN the claimant proves <--
7 that the injection or migration of carbon dioxide: <--

8 ~~(1) is injurious to health, or an obstruction to the~~
9 ~~free use of property so as essentially to interfere with the~~
10 ~~comfortable enjoyment of life or property; or~~

11 ~~(2) has caused injury to an individual, animal or real~~
12 ~~or personal property. DIOXIDE WAS PERFORMED WITHOUT <--~~
13 REASONABLE CARE.

14 (b) Redress and damages.--

15 (1) A surface property interest owner or subsurface
16 property interest owner or lessee who incurs injury or damage
17 or loss of property value as a result of the injection or
18 migration of carbon dioxide described in subsection (a) shall
19 have a right of action against the storage operator for
20 injunction, damages or other appropriate civil or equitable
21 relief.

22 (2) A surface property interest owner, subsurface
23 property interest owner or lessee may seek recovery for any
24 of the following:

25 (i) General and special damages, including actual
26 damages, for the diminution in property value resulting
27 from the injection and migration of carbon dioxide beyond
28 the storage facility.

29 (ii) Punitive damages.

30 (iii) Reasonable attorney fees and costs.

- 1 (iv) Injunctive and other equitable relief.
- 2 (v) Other relief which the court deems necessary and
- 3 proper.

4 (3) A surface property interest owner, subsurface
5 property interest owner or lessee may not seek punitive
6 damages due to injection or migration of carbon dioxide if
7 the storage operator is determined to have had a reasonable
8 basis for believing that the carbon sequestration project
9 would not result in migration of carbon dioxide beyond the
10 storage facility.

11 Section 9. Operation and storage fee.

12 (a) Requirement.--Storage operators shall pay the department
13 a fee on each ton of carbon dioxide injected for storage.

14 (b) Amount.--The fee under this section shall be in an
15 amount set by the Environmental Quality Board. The following
16 apply:

17 (1) The fee shall be based on the department's
18 anticipated expenses associated with:

19 (i) Regulating storage facilities during their
20 construction, operation and preclosure phases.

21 (ii) Long-term monitoring and management of the
22 storage facility following issuance of the certificate of
23 project completion under section 11.

24 (2) The department shall transmit to the Legislative
25 Reference Bureau for publication in the next available issue
26 of the Pennsylvania Bulletin a schedule of the fee set under
27 this section.

28 (c) Deposit.--The fee imposed by the department under this
29 section shall be deposited as follows:

30 (1) Fifty percent of the fee shall be deposited into the

1 fund.

2 (2) Fifty percent of the fee shall be deposited into the
3 restricted account within the fund established under section
4 10(a)(2).

5 (d) Penalties.--Penalties imposed for violations of this act
6 or regulations promulgated under this act and funds received by
7 the department from financial responsibility mechanisms shall be
8 remitted to the fund.

9 Section 10. Fund.

10 (a) Establishment.--

11 (1) The Carbon Dioxide Storage Facility Fund is
12 established as a separate fund within the State Treasury.

13 (2) A restricted account is established within the fund
14 for the purpose provided under subsection (c)(2).

15 (b) Administration.--The department shall administer the
16 fund.

17 (c) Use of fund and restricted account.--

18 (1) The fund shall be used only for defraying the
19 department's expenses associated with:

20 (i) Processing permit applications.

21 (ii) Regulating storage facilities during
22 construction, operational and preclosure phases.

23 (iii) Making storage amount determinations.

24 (2) The restricted account shall be used only for
25 defraying the costs associated with long-term monitoring and
26 management of a closed storage facility following the
27 issuance of the certificate of project completion under
28 section 11.

29 (d) Interest.--

30 (1) Interest earned by the fund shall be deposited into

1 the fund.

2 (2) Interest earned by the restricted account shall be
3 deposited into the restricted account.

4 (e) Transfer.--Money in the fund may not be transferred to
5 the General Fund or another fund.

6 (f) Appropriation.--Money in the fund and restricted account
7 shall be annually appropriated by the General Assembly.

8 Section 11. Certificate of project completion.

9 (a) Issuance.--After all carbon dioxide injections
10 underground or into pore space are completed and upon
11 application by the storage operator, the department may issue a
12 certificate of project completion. The department shall issue a
13 certificate upon satisfaction of the conditions imposed under
14 this section and after providing public notice of the
15 application, an opportunity for public comment and a public
16 hearing on the application.

17 (b) Timing.--A certificate of project completion shall not
18 be issued until at least ~~10~~ 50 years after carbon dioxide <--
19 injections end OR UNTIL AN APPROVED ALTERNATIVE PERIOD OF TIME. <--

20 (c) Conditions.--A certificate of project completion shall
21 not be issued until the storage operator establishes with a
22 degree of certainty that satisfies the department that:

23 (1) The storage operator is in full compliance with all
24 laws governing the injection and storage of the carbon
25 dioxide.

26 (2) The storage operator has addressed pending claims
27 regarding the injection and storage of the carbon dioxide.

28 (3) The carbon dioxide that has been injected
29 underground for storage is not expected to expand vertically
30 or horizontally and poses no threat to human health, human

1 safety, the environment or underground sources of drinking
2 water.

3 (4) The carbon dioxide that has been injected
4 underground for storage is unlikely to cross any underground
5 or pore space boundary and is not expected to endanger any
6 underground source of drinking water or otherwise endanger
7 human health, human safety or the environment.

8 (5) All wells, equipment and facilities to be used in
9 maintaining and managing the stored carbon dioxide are in
10 good condition and will retain mechanical integrity.

11 (6) The storage operator has plugged injection wells and
12 has completed all reclamation required by the department.

13 (d) After issuance.--Upon the issuance of a certificate of
14 project completion under this section:

15 (1) In exchange for assuming responsibility and
16 liability for the stored carbon dioxide as provided in this
17 section, title to the stored or injected carbon dioxide, and
18 any facilities used to inject or store the carbon dioxide,
19 without payment of compensation, shall be transferred to the
20 Commonwealth.

21 (2) Title acquired by the Commonwealth includes all
22 rights, and interests in, and all responsibilities associated
23 with, the stored or injected carbon dioxide, subject to
24 limitations provided within this subsection.

25 (3) Except in situations provided below, and except for
26 criminal and contractual liability, primary responsibility
27 and liability for the stored or injected carbon dioxide shall
28 be transferred to the Commonwealth:

29 (i) situations in which the operator violated a duty
30 imposed on the operator by Pennsylvania law or regulation

1 prior to approval of site closure and any applicable
2 statutes of limitation have not run;

3 (ii) situations in which the department determines,
4 after notice and hearing, that the operator provided
5 deficient or erroneous information that was material and
6 relied upon by the department to support approval of site
7 closure;

8 (iii) situations in which the department determines,
9 after notice and hearing, that there is carbon dioxide
10 migration for which the operator is responsible that
11 causes or threatens imminent and substantial endangerment
12 to an underground source of drinking water; or

13 (iv) the balance of the escrow or the fund is
14 insufficient to cover costs arising from storage
15 facilities and associated carbon dioxide injection wells
16 after site closure.

17 (4) The storage operator and all individuals who
18 generated, injected or stored carbon dioxide shall be forever
19 released from all regulatory requirements associated with the
20 continued storage and maintenance of the injected carbon
21 dioxide, except as provided in paragraph (3).

22 (5) A bond or financial assurance submitted to the
23 department shall be released.

24 (6) The department shall assume responsibility to manage
25 and monitor the stored carbon dioxide until a time when the
26 Federal Government assumes responsibility for the long-term
27 monitoring and management of stored carbon dioxide.

28 (e) Construction.--Nothing in this section shall be
29 construed as a waiver of sovereign immunity by the Commonwealth.
30 Section 12. Effective date.

1 This act shall take effect immediately.