

**TITLE X            RESERVE 4**  
**CHAPTER X       RESERVE 4**  
**PART X           PROPOSED NEW MEXICO STATE AMENDMENTS**

**RESERVE 4**

**A.            *Acquisition of Lands for Geologic Sequestration***

(1) New Class VI permit applications shall not supersede existing mineral rights, existing surface rights or existing disposal rights.

(2) An operator that desires to form a sequestration unit shall make and document a good faith attempt to acquire by option, lease, conveyance or other negotiated means the rights necessary for geologic sequestration within the proposed sequestration unit prior to resorting to the procedure for unitization of such interests.

(3) The lands to be included shall be the reasonably ascertained areal extent, including necessary buffers, of migration of the sequestered carbon dioxide within the formation or formations based on known geologic information available at the time of the application.

(4) The commissioner of public lands or a state agency may grant to an operator rights for geologic sequestration on lands subject to its jurisdiction on such terms as it finds are reasonable and that provide compensation equal to the fair market value of the rights.

**B.            *Unitization of Sequestration Facilities.***

(1) An operator may apply to the division for an order unitizing a geologic formation or formations for geologic sequestration of carbon dioxide to be included within the proposed sequestration unit

(2) An application for sequestration facility unitization filed pursuant to this section shall contain:

(a) a copy of a permit or draft permit for injection of carbon dioxide.

(b) a description of the proposed geologic formation or formations and a plat of the surface lands proposed to be included in the proposed sequestration unit, including identification of the buffer and subsurface monitoring zones;

(c) the names and addresses of the owners of the surface estate within the proposed sequestration unit and of lands within one-half mile of the exterior boundary of the proposed sequestration unit as disclosed by:

(i) the records of the county assessor of each county in which the proposed sequestration unit is to be located with respect to privately owned land; and

(ii) the bureau of land management with respect to federal lands, the commissioner of public lands with respect to state trust lands and the applicable state agency owning the surface estate with respect to lands owned by the state but not subject to the jurisdiction of the commissioner of public lands;

(iii) the names and addresses of the owners of the mineral estate and mineral lessees within the proposed sequestration unit and for all lands within one-half mile of the exterior boundary of the proposed sequestration unit;

(iv) the names and addresses of the owners of the pore space estate within the proposed sequestration unit and for all lands within one-half mile of the exterior boundary of the proposed sequestration unit

(v) evidence of the following:

(A) geologic evidence establishing the storage capability of the formation to accept and sequester carbon dioxide;

(B) an estimate of the quantity and volume of carbon dioxide

(C) the pressure of the storage zone and proposed injection pressure

(D) if available, the proposed locations of wells, types of wells, anticipated total depth of the wells, the casing program for the wells and the proposed locations of sequestration facilities

(E) the depth of all fresh water aquifers and location of any water wells within the sequestration unit and buffer zone;

(F) the date the proposed plan is desired to become effective;

(G) the anticipated date of the commencement of development of sequestration facilities;

(H) the anticipated date of the commencement of injection operations;

(I) the estimated period of time it will take to complete the construction of the sequestration facility;

(J) the estimated life of the injection operations

(K) the estimated pressure in the formation at the end of the injection operations;

(L) the amount per acre or the amount per volume of carbon dioxide injected that the operator proposes to pay to compensate the owners of the surface estate, including owners in the designated buffer area and, if severed, the owners of the subsurface formation or formations containing pore space within the sequestration unit in which the carbon dioxide is to be injected for sequestration. Each owner of the formation or formations shall be deemed for all purposes to have an equal amount of capacity to store sequestered carbon dioxide and shall be compensated on a surface acreage basis for such injection and storage; and

(M) the amount per acre that the operator proposes to pay to compensate the surface owners or, if severed, the owners of the formation or formations within the buffer and monitoring zones.

(3) Upon receipt of a Class VI application for geologic sequestration, the Division shall set the matter for hearing and, in addition to notice otherwise required by law or the division's rules, shall cause the applicant to give notice of the hearing, specifying the time and place of the hearing and describing briefly its purpose and the land and formations affected,

to be mailed by certified mail at least thirty days prior to the hearing to all persons whose names and addresses are required to be listed in the application.

(4) Upon receipt of an application for unitization, the Division shall set the matter for hearing and, in addition to notice otherwise required by law or the division's rules, shall cause the applicant to give notice of the hearing, specifying the time and place of the hearing and describing briefly its purpose and the land and formations affected, to be mailed by certified mail at least thirty days prior to the hearing to all persons whose names and addresses are required to be listed in the application.

(5) If the proposed unitization order concerns unknown or non-locatable owners and interest holders, the applicant shall publish notice once a week for two consecutive weeks in the newspaper of the largest circulation in each county in which the proposed sequestration unit is located and shall file proof of notice with the Division concurrently with the application. The first notice shall appear at least thirty days prior to, and the second notice no more than twenty-five days from, the hearing on the application for a sequestration unit order. The notice shall:

(a) state that an application for a sequestration unit has been filed with the Division;

(b) describe the land proposed to be unitized and the buffer area and any monitoring area;

(c) in the case of an unknown owner or interest holder, indicate the name of the last known owner or interest holder;

(d) in the case of a non-locatable owner or interest holder, identify the name of the owner or interest holder and the owner's or interest holder's last known address; and

(e) state that any person claiming an interest in the formations or lands proposed to be unitized should notify the director and the operator of the proposed sequestration facility at the published address within twenty days of the publication date of the most recent notice.

(6) After considering the application and hearing the evidence offered regarding the application, the Division may enter an order setting forth the following findings if established by the evidence presented:

(a) The geologic formation sought to be unitized is suitable for the geologic sequestration of carbon dioxide and its use for such purposes is in the public interest;

(b) The geologic formation sought to be unitized will contain the carbon dioxide and will not contaminate fresh water;

(c) The geologic formation sought to be unitized will contain the carbon dioxide and will not contaminate oil, gas, condensate, potash or other commercial mineral deposits capable of being produced in paying quantities, unless all the owners, mineral lessees and other parties owning interests in such oil, gas, condensate, potash or other commercial mineral deposits have consented to the sequestration unit;

(d) The geologic formation sought to be unitized will contain the carbon dioxide and will not interfere with existing or planned injection of produced water, carbon dioxide or other fluids from ongoing oil and gas or mineral operations;

(e) the application denotes the areal extent of migration of the injected carbon dioxide within the underground stratum or formation and that all lands reasonably determined to be within the migration zone are included within the sequestration unit;

(f) the anticipated volume of carbon dioxide planned to be sequestered in the sequestration unit;

(g) the compensation to be paid by the operator to the owners of the surface or, if severed, the owners of the formation or formations within the sequestration unit is fair, just and equitable;

(h) the compensation to be paid by the operator to the owners of the surface or, if severed, the owners of the formation or formations within the buffer area or any monitoring area is fair, just and equitable;

(i) the compensation to be paid by the operator to the owners of the surface where sequestration facilities are to be built on the surface, including roads and pipelines, is fair, just and equitable;

(j) no portion of the subsurface sought to be unitized is being used, or is currently being proposed to be used, for production of oil, natural gas, potash or any other mineral capable of being mined and marketed in paying quantities or for the geologic sequestration of carbon dioxide by others within the proposed sequestration unit, including its buffer;

(k) the sequestration unit does not include unleased state land without an agreement with the state land office;

(l) the applicant has made a good faith effort to secure voluntary unitization and has secured voluntary agreements from owners of at least eighty-five percent of the lands within the proposed sequestration unit;

(m) the application sets forth the following information:

(i) the approximate anticipated date geologic sequestration would commence within the sequestration unit if approved;

(ii) the approximate date of commencement of the sequestration facilities if approved;

(iii) the anticipated pressures encountered within the formation or formations in which the sequestration is to occur;

(iv) the anticipated pressure required to sequester the carbon dioxide into the formation or formations;

(v) the estimated duration of the sequestration operations; and

(vi) the areal extent of the migration of carbon dioxide sequestered into the sequestration unit; and

(vii) the application includes additional provisions found to be appropriate for the operation of the sequestration facility and does not violate stipulations within the Oil and Gas Act for the prevention of waste and preservation of correlative rights.

(7) The Division shall not issue an order approving the application until the applicant has received agreements in writing by persons owning at least eighty-five percent of the lands within the proposed sequestration unit. When the persons owning the required percentage of interest have approved the sequestration unit, the division may enter an order approving the application and unitizing the interests of all persons within the sequestration unit whether or not the persons have voluntarily agreed to the sequestration unit. If the required percentage of interest for a proposed sequestration facility does not approve the sequestration unit within a period of six months from the date of filing the (7) The Division shall not issue an order approving the application until the applicant has received agreements in writing by persons owning at least eighty-five percent of the lands within the proposed sequestration unit. When the persons owning the required percentage of interest have approved the sequestration unit, the Division may enter an order approving the application and unitizing the interests of all persons within the sequestration unit whether or not the persons have voluntarily agreed to the sequestration unit. If the required percentage of interest for a proposed sequestration facility does not approve the sequestration unit within a period of six months from the date of filing the application, the application shall be revoked by the division unless the division, for good cause shown, extends the time for ratification; provided that the time for ratification shall not be extended for more than six months.

(8) An order entered by the Division pursuant to this section may be amended by the division after notice and a hearing as follows:

(a) for amendments concerning an expansion of the sequestration unit, notice shall be in the same manner and subject to the same conditions as notice provided in Subsections A and B of this section and to include all the interests in the area in which the additional lands considered for expansion are located;

(b) for amendments dealing only with a modification of operations of the sequestration facility or sequestration unit, notice shall be sent to all owners of interests within the sequestration unit at the owners' last known address on file with the operator; and

(c) for all other amendments, notice shall be in the same manner and subject to the same conditions as notice provided in § Reserve.XXX.NMAC, and;

(d) A certified copy of any order of the division entered pursuant to this section shall be recorded in the land records of the counties where a portion of the sequestration unit and attendant buffer and monitoring zones are located.

C. *Effects of a Unitization Order.*

(1) Except to the extent that the parties affected agree, no order providing for a sequestration unit shall be construed to result in a transfer of all or any part of the title or other rights in any tract in the sequestration unit, except for the right to inject carbon dioxide into the formation or formations subject to the sequestration unit. The rights to use the surface for access

and sequestration facilities requires a separate agreement between the surface owner and operator, and the terms of surface agreements shall treat all surface owners fairly. No agreement or order shall operate to violate the terms and requirements of any permit applicable to the formation or formations or the wells within the sequestration unit.

(2) No order of the Division issued shall be construed to confer on any person the right of eminent domain, beyond the unitization of the sequestration unit.

(3) Each of the tracts of land within the sequestration unit shall be allocated a pro rata share of the proceeds for the sequestration of carbon dioxide on an acreage basis, with the numerator being the number of acres within the tract divided by the total number of acres in the sequestration unit. Upon an expansion or contraction.

(4) Each tract's share shall be allocated and paid to the surface owners or, if previously severed, the owners of the subsurface formation or formations or the voids within the formations within the sequestration unit into which the carbon dioxide is to be injected for sequestration, the operator and any other persons owning interests in the sequestration of carbon dioxide within the tract on the basis of the agreement or agreements.

(5) With respect to the interest of any party who cannot be located or whose identity cannot be ascertained, the operator shall deposit the unlocatable or unknown owner's share in an interest-bearing account in a national or state-chartered bank with deposits insured by the federal deposit insurance corporation for a period of five years or until the owner is located and the share distributed to the owner, whichever is less. If the share is not distributed to the owner in five years, on the anniversary of the fifth year, as provided in Paragraph (15) of Subsection A of Section 7-8A-2 NMSA 1978, such sum shall be paid to the taxation and revenue department to be distributed pursuant to Section 7-1-6.43 NMSA 1978

**D.**        *Ownership of Injected Carbon Dioxide*

(1) All carbon dioxide injected into geologic sequestration in a sequestration unit shall be deemed the property of the operator. During the term of the sequestration unit and for so long as the sequestration unit agreement remains in force and effect, no surface or mineral interest owner or lessee shall have the right to produce, capture, take, reduce to possession, waste or otherwise interfere with or exercise any control over such carbon dioxide within the sequestration unit unless approved by the operator and the division or except as to drilling operations through the formation subject to the sequestration unit for purposes of drilling to deeper depths and horizons for the extraction of oil, gas and other minerals.

**E.**        *Effects of Certificates*

(1) A person acting pursuant to a certificate or order issued by the Division in compliance with these rules, shall not be deemed to be a public utility subject to the provisions of the Public Utility Act or a common carrier as that term is used in the Oil and Gas Act solely because the person owns, controls or operates all or part of a carbon sequestration unit or carbon sequestration facility.

(2) The division may levy on operators the following fees, which shall be paid to the division and deposited in the oil conservation division systems and hearings fund:

**(a)** An annual regulatory fee for sequestration facilities approved. The annual regulatory fee shall be in an amount set by division rule, and the amount of the fee shall be based on the annual projected costs to the division for oversight and regulation of sequestration facilities; and

**(b)** application fees for applications, certificates or orders, the amounts of which shall be set by division rule; provided that the amount of the fee shall be based on the anticipated cost of processing the application for which the fee is levied.