

Permanent Rule
Regulatory Analysis
LSA Document #25-162

I. Description of Rule

a. History and Background of the Rule – Interest in transporting and sequestering carbon dioxide increased nationally when Congress passed what is commonly referred to as the 45Q federal income tax credit for carbon capture and sequestration. The 45Q income tax credit was enacted under the Federal Energy Improvement and Extension Act of 2008 to encourage the construction and use of carbon capture and sequestration projects. The tax credit is part of a push by the federal government to decrease carbon emissions across the country. The increase to the 45Q tax credit in 2022 accelerated and expanded the demand for carbon capture and sequestration projects throughout the nation. Carbon capture and sequestration is permitted by the United States Environmental Protection Agency (EPA) under the Class VI program. There are four (4) Class VI permits issued by the EPA presently.

In 2022, the General Assembly passed HEA 1209, which allows carbon sequestration projects in the state. While the statute required the department to issue permits for carbon sequestration projects, the statute did not give the department rulemaking authority. Under HEA 1626-2023, the department was given rulemaking authority for carbon sequestration projects under IC 14-39-2 as well as carbon dioxide transmission pipelines under IC 14-39-1.

The proposed permanent rules establish a new article, 312 IAC 30, regarding carbon sequestration projects and carbon dioxide transmission pipelines. The department has been diligently working to draft rules with an external working group consisting of members of the industry, landowners, and other state agencies that may be involved in permitting carbon sequestration projects and carbon dioxide transmission pipelines. The department also established an internal working group made up of department employees to manage drafting the rule, discussing the different suggestions of the external working group, and compiling the proposed permanent rules. The proposed permanent rules are the product of both the external and internal working groups.

b. Scope of the Rule – The proposed rule establishes the applicability of carbon sequestration projects, in conjunction with IC 14-39-2. Additionally, the proposed rule contains definitions to clarify certain terms, as well as regulations for: (1) obtaining a carbon dioxide transmission pipeline certificate of authority; (2) obtaining a carbon sequestration project permit; (3) administrative and procedural items regarding carbon sequestration projects and carbon dioxide transmission pipelines; (4) ongoing responsibilities of a storage operator; and (5) records of a storage operator.

c. Statement of Need – The General Assembly tasked the department with permitting carbon sequestration projects under IC 14-39-2 and carbon dioxide transmission pipelines under IC 14-39-1. Under IC 14-39-0.5, the department has a duty to adopt rules under IC 4-22-2 to implement the tasks assigned to the department under IC 14-39. Rules adopted

under IC 14-39-0.5 must include the provisions necessary for the department's discharge of the duties imposed upon the department.

The statutory directive creates a duty on the department to adopt rules regarding carbon sequestration projects and carbon dioxide transmission pipelines for the directives assigned to the department by the general assembly under IC 14-39.

In anticipation of the enactment of P.L. 158-2023, which provided the department with rulemaking authority for carbon sequestration projects and carbon dioxide transmission pipelines, the department established a working group made up of department staff, other state agencies that are responsible for regulating pieces of these types of projects, industry members, and certain landowners. The working group spent more than one (1) year meeting and working through the rules to ensure that regulated entities would have input.

Working group members who are part of the industry and would be regulated by the proposed rules indicate they require adoption of the rules as quickly as possible to avoid unnecessary delays to their projects once the entity obtains a UIC Class VI permit. Once adopted, the department needs time to create the necessary forms and other regulatory pieces for industry to proceed accordingly with their projects. A delay in the adoption of the rules could result in massive delays to industry which would be costly and result in massive revenue loss. Timeliness is a serious concern for industry. The department is requesting use of the interim rulemaking process to ensure that there are no unnecessary delays to industry once members are issued their UIC Class VI permits; and to reduce costs to the industry for unnecessary delays.

d. Statutory Authority for the Proposed Rule – The department has a duty to adopt rules under IC 14-39-0.5 for IC 14-39-1 and IC 14-39-2. The Natural Resources Commission (commission) has the statutory authority to adopt rules under IC 14-10-2-4.

e. Fees, Fines, and Civil Penalties – The proposed permanent rules do not add or increase a fee, fine, or civil penalty.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule - The anticipated effective date of the proposed permanent rules is October 2025. Preliminary adoption with the commission is expected in March 2025. The public hearings are anticipated to take place sometime in April 2025, with a second public hearing anticipated in June 2025. Final adoption by the commission would likely take place in July 2025. Review by the Attorney General's Office and Governor's Office will take place in August and September 2025. Publishing with the Indiana Register, is likely to occur in September 2025. The permanent rule will likely be effective in October 2025.

b. Estimated Fiscal Impact on State and Local Government – There may be minimal increases to the expenditures and revenues of local governments if local ordinances require permitting for carbon dioxide transmission pipelines. However, the expenditures and revenues should be in the course of normal business.

The department will experience increases in expenditures to use the interim and permanent rulemaking processes to adopt rules for carbon sequestration projects under IC

14-39-2 and carbon dioxide transmission pipelines under IC 14-39-1. Additionally, there is an increase in the department's expenditures to maintain staff to issue permits for these projects. There will be revenue for the department resulting from application fees and storage fees. The application fee for a carbon dioxide transmission pipeline certificate of authority is one thousand dollars (\$1,000) and will be deposited in the Oil and Gas Environmental Fund established by IC 14-37-10-2. Additionally, the carbon sequestration project permit application fee of one thousand dollars (\$1,000) will only minimally offset program administration costs for the department. IC 14-39-2 does not specify where the carbon sequestration project permit fee is to be deposited. Finally, an injection fee of eight cents (\$0.08) per ton of carbon dioxide injected into a storage facility will be placed into the Carbon Dioxide Storage facility Trust Fund established by IC 14-39-2-10. There will be increased expenditures due to increased staff time and resources to perform preapplication coordination, review applications and supporting documentation, issue permits, and ensure ongoing requirements are met. These increases are part of normal operating costs of the department and will be taken from the Oil and Gas Operating Fund, 38220

The Indiana Department of Transportation (INDOT) will experience an increase in expenditures to issue permits for the use and occupancy of a right of way for a carbon dioxide transmission pipeline as permitting requirements will lead to increased staff time for reviewing permit applications. INDOT will need to update their federally required Utility Accommodation Policy. Until then, each permit will be reviewed as an exception request to the current Utility Accommodation Policy. Therefore, a civil engineer from INDOT's utility department, in addition to staff from INDOT's permits department will be required to review each application submitted. Based on the estimates in the fall of 2023, INDOT will likely be incurring additional expenses of at least three hundred forty-five dollars (\$345) and not more than nine hundred eighty-five dollars (\$985) for each permit, assuming there are no complications related to a specific carbon dioxide transmission pipeline installation. The financial estimates are based on current staff pay and do not account for pay increases. INDOT will assess a right of way occupancy permit fee of fifty-five dollars (\$55.00). INDOT has authority (subject to Budget Committee review) to increase its permitting fees through separate rulemaking actions to cover these costs, but currently, does not plan to do so.

The Indiana Utility Regulatory Commission (IURC) estimates that its Office of General Counsel (office) may spend at least three (3) and not more than five (5) hours for each agreement in reviewing potential agreements with applicants for carbon dioxide transmission pipeline certificates of authority. The IURC believes the additional workload to review and enter into any potential agreements will be absorbed as part of the normal operating costs of the office. Therefore, the IURC does not expect additional expenditures resulting from the proposed permanent rules. The IURC Pipeline Safety Division is already required by INDOT's Pipeline and Hazardous Materials Safety Administration to regulate the safety of jurisdictional carbon dioxide transmission pipelines; therefore, any increase to the workload of INDOT's Pipeline and Hazardous Safety Division would be due to federal requirements and would not result from the proposed permanent rules.

The total impact will vary each year depending on the number of applications received for the various permits across state agencies and local units of government. The impact on state agencies, like INDOT, will also be dependent on pipeline routes.

c. Sources of Expenditures or Revenues Affected by the Rule – Beginning as early as 2025, state agencies and local units of government may be affected by carbon capture and sequestration projects. The department, INDOT, the IURC, and local government units may be impacted by these projects. Expenditures for the department will come out of the Oil and Gas Operating Fund, 38220. Costs for INDOT are part of the normal operating expenses under the Utility Accommodation Policy and staff time under the utility and permits departments and will be paid out of INDOT’s accounts for those purposes. The increase to the office’s workload is part of the normal operating expenses for the office, and the IURC does not expect additional expenditures resulting from the increased workload. While local units of government may be impacted due to permitting, the department does not have access to information regarding the fund that may be impacted. Increases in expenditures to accommodate implementation of the programs will occur across different state agencies. Permit issuance by state agencies and local governments as well as safety regulations by INDOT and the IURC. The department hired staff for the program in 2023, so increased expenditures to the Oil and Gas Operating Fund, 38220, began in 2023 and will continue annually. Other state agencies and local governments will likely see increases in expenditures beginning in 2025.

III. Impacted Parties

Impacted parties include any person who wishes to transport carbon dioxide, sequester carbon dioxide, or both in Indiana. Additionally, pore space owners, surface owners, and persons who elect to participate in a carbon sequestration project will be impacted by the proposed permanent rules. The department, the Indiana Utility Regulatory Commission, the Indiana Department of Transportation, and local units of government will likely be affected due to increased permitting for projects.

IV. Changes in Proposed Rule

The proposed permanent rules are a new article regarding carbon sequestration project permits and carbon dioxide transmission pipeline certificates of authority, so the changes are an addition to existing requirements. The department has authority to adopt rules under IC 4-22-2-37.2; IC 4-22-2.3-3; IC 14-10-2-4; IC 14-10-2-5; and IC 14-39-0.5.

Supporting documentation required for various applications and petitions under the proposed permanent rules are the same as are required under the Class VI permit. This ensures applicants and petitioners are not required to submit different types of documentation for the state permit than they would be required to submit for the Class VI permit. There are not any requirements included as part of the proposed permanent rules that incorporate existing agency standards contained in non-rule documents.

V. Benefit Analysis

*****NOTE:** Estimated costs under the table below for “Estimated Business Impacts/Costs Savings to Regulated Entities” are possible expense estimates and will vary depending upon the specific project and the amounts each applicant pays staff for the same work. The size and scope of the project will also be a

determining factor in the actual costs to a regulated entity. Additionally, because there are not many projects of this type across the United States, actual costs will not be determined until the program is well underway in Indiana. Other state regulations are different in scope than what the department is tasked with under the Indiana Code, and the costs to regulated entities would likely differ greatly as a result. Finally, some costs may also be absorbed into the costs to apply for a UIC Class VI permit with the EPA.

Indiana Administrative Code Provision	Direct Effects	Indirect Effect	Fiscal Impact to the Department	Estimated Business Impacts/Costs Savings to Regulated Entities
Adds 312 IAC 30-1 Applicability Adds: (1) applicability for definitions under the document and the Indiana Code; and (2) applicability of the rules to permanent underground storage of carbon dioxide	Provides clear applicability of definitions to the rules, as well as applicability of the rules to underground storage of carbon dioxide	None known	None known	None known
Adds 312 IAC 30-2 Definitions Adds the following definitions: (1) carbon dioxide stream; (2) Class VI well; (3) confining zone; (4) department; (5) fair market value; (6) injection zone; (7) mechanical integrity test; (8) responsible officer; (9) transporting carbon dioxide; and (10) Underground Injection Control (UIC) Program	Provides definitions for certain terms used in the proposed rules that do not appear in the Indiana Code	None known	None known	None known
Adds 312 IAC 30-3 permitting agreements between pore space owners and storage operators which allow the pore space owner to	Permits an additional option to storage operators and pore space owners to negotiate use of pore space	Pore space owners may participate in the storage facility should they wish to and the	None known	None known This is a type of agreement permitted by the rules, but there is no

participate in the storage facility		storage operator agree		requirement that a regulated entity engage in this type of agreement
<p>Adds 312 IAC 30-4 Preapplication coordination</p> <p>Provides for the ability to use preapplication coordination with the department to reduce the turnaround time for applying for carbon dioxide transmission pipeline certificates of authority or carbon sequestration project permits</p>	<p>Provides for the opportunity for an applicant to enter into preapplication coordination with the department to ensure the applicant possesses all necessary application requirements</p>	<p>Provides for fewer delays in application processing</p> <p>Reduces the likelihood of an incomplete or inaccurate application that must be returned to the applicant which would ultimately delay issuing certificates of authority and project permits</p>	None known	<p>None known</p> <p>Preapplication coordination is a benefit provided to applicants by the department of natural resources, which is being explicitly spelled out as an option for regulated entities and does not impose a requirement on regulated entities</p>
<p>Adds 312 IAC 30-5 Carbon dioxide transmission pipeline certificate of authority</p> <p>Provides for when a storage operator does not need a carbon dioxide transmission pipeline certificate of authority</p> <p>Adds the application requirements for a carbon dioxide transmission pipeline certificate of authority</p> <p>Adds how an applicant for a carbon dioxide transmission pipeline certificate of authority illustrates</p>	<p>Provides clarity to storage operators for when they are required to obtain a carbon dioxide transmission pipeline certificate of authority from the department</p> <p>Clearly sets forth application requirements for a carbon dioxide transmission pipeline certificate of authority</p> <p>Provides instruction for how an applicant demonstrates required managerial and technical ability to construct, operate, and maintain a</p>	<p>Clarification of application requirements reduces time spent reviewing applications and streamlines the approval/denial process</p> <p>Provides applicants with estimates for timelines they will need to obtain other required permits and to comply with other federal, state, and local laws</p>	None known	<p>Application fees are found at IC 14-39-1-4 and are not imposed by the proposed rule. Additionally, the only state-specific documents for an application for a carbon dioxide transmission pipeline certificate of authority that are not already required by the U.S. EPA are regarding: (1) the financial, managerial, and technical ability to construct operate, and</p>

<p>managerial, and technical ability to construct, operate, and maintain a carbon dioxide transmission pipeline</p> <p>Adds how an applicant for a carbon dioxide transmission pipeline certificate of authority illustrates requisite experience to construct, operate, and maintain a carbon dioxide transmission pipeline</p> <p>Adds rules regarding the sworn statement to be made by an applicant that the applicant is in compliance with applicable federal, state, and local laws</p> <p>Adds mapping requirements to be provided to the department for a carbon dioxide transmission pipeline certificate of authority</p> <p>Adds requirements for the department regarding processing an application, as well as additional requirements for a carbon dioxide transmission pipeline certificate of authority</p> <p>Adds provisions regarding use and occupancy of a</p>	<p>carbon dioxide transmission pipeline</p> <p>Provides instruction for how an applicant demonstrates required requisite ability to construct, operate, and maintain a carbon dioxide transmission pipeline</p> <p>Provides clear instructions to an applicant regarding what is to be included with the sworn statement</p> <p>Provides instructions for fulfilling mapping requirements</p> <p>Provides the department with clearly established deadlines for making determinations</p> <p>Provides clear guidance regarding use and occupancy of a designated public right-of-way in coordination with regulations for INDOT</p>			<p>maintain a carbon dioxide transmission pipeline; and (2) the requisite experience constructing, operating, and maintaining a transmission pipeline</p> <p>The estimated cost of the cost imposed by the proposed rules is seventy-eight thousand five hundred fifty dollars (\$78,550)</p>
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designated public right-of-way				
Adds 312 IAC 30-5-3 regarding insurance requirements for pipelines for carbon sequestration projects	Provides clear insurance requirements for pipelines for carbon sequestration projects	None known	None known	<p>Cost of insurance premiums vary greatly by policy type and amounts across insurance providers</p> <p>Estimated insurance costs are as follows: Annual premiums: \$700,000 policy; approximately \$1,000 annually</p> <p>\$1 million policy; approximately \$1,300 annually</p> <p>\$5 million policy \$2,000-\$2,500 annually</p> <p>(Insurance premiums are included in the seventy-five thousand dollars (\$75,000) of annual ongoing compliance costs)</p>
Adds 312 IAC 30-5-10 regarding the ability to submit a modification to a carbon dioxide transmission pipeline certificate of authority, rather than requiring an entirely new application	Provides those holding a certificate of authority with an avenue by which to modify a certificate of authority, rather than submitting an entirely new application	Less work for all parties involved	None known	<p>None known</p> <p>Modification of a carbon dioxide transmission pipeline certificate of authority is a benefit to regulated entities</p>

				provided by the department of natural resources in lieu of submitting a new application and is not a requirement imposed by the proposed rule
Adds 312 IAC 30-5-11 regarding the ability to submit a transfer of a carbon dioxide transmission pipeline certificate of authority	Provides an avenue by which a certificate of authority may be transferred	None known	None known	None known Transfer of a carbon dioxide transmission pipeline certificate of authority is a benefit to regulated entities provided by the department of natural resources and is not a requirement imposed by the proposed rule
Adds 312 IAC 30-5-12 a provision regarding suspension and revocation of a carbon dioxide transmission pipeline certificate of authority	Gives the department reasons suspension or revocation of a certificate of authority is permitted	Puts applicants on notice of the reasons the department can suspend or revoke a certificate of authority	None known	None known Suspension or revocation only occurs in the event of a violation by a regulated entity, and this is not a requirement that imposes a cost under the rules
Adds 312 IAC 30-6 Petition for a carbon sequestration project permit Adds timelines for the department to review and approve or deny a carbon	Provides additional rules for obtaining a carbon sequestration project permit Provides the department with clearly established deadlines for making determinations	Clarifies items required by the Indiana Code to obtain a carbon sequestration project permit by providing applicants with clear	None known	Application fees are found at IC 14-39-2-5 and are not imposed by the proposed rule. Additionally, the only state-specific documents for

sequestration project permit		<p>documentation required</p> <p>Provides applicants with estimates for timelines they will need to obtain other required permits and to comply with other federal, state, and local laws</p>		<p>an application for a carbon sequestration project permit that are not already required by the U.S. EPA are regarding: (1) the financial, managerial, and technical ability to construct operate, and maintain a carbon sequestration project; and (2) the requisite experience constructing, operating, and maintaining a carbon sequestration project.</p> <p>The estimated cost of the cost imposed by the proposed rules is seventy-eight thousand five hundred fifty dollars (\$78,550)</p> <p>There is no additional cost imposed to a regulated entity by the department of natural resources for modification or transfer of a carbon sequestration project permit</p>
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				Modification and transfer are benefits to regulated entities provided by the department of natural resources and do not impose additional cost requirements on regulated entities
Adds 312 IAC 30-6-3 regarding suspension and revocation of a carbon sequestration project permit	Gives the department reasons suspension or revocation of a certificate of authority is permitted	Puts applicants on notice of the reasons the department can suspend or revoke a certificate of authority	None known	None known Suspension or revocation only occurs in the event of a violation by a regulated entity, and this is not a requirement that imposes a cost under the rules
Adds 312 IAC 30-7 Ongoing requirements of a storage operator	Clarifies to a storage operator the ongoing financial responsibility, record keeping, and reporting requirements	None known	None known	The cost of ongoing requirements is approximately thirty-seven thousand five hundred dollars (\$37,500)
Adds 312 IAC 30-8 Records	Provides storage operators with clear requirements for reporting and providing records to the department, as well as for allowing the department to inspect records	None known	None known	The cost of ongoing requirements is approximately thirty-seven thousand five hundred dollars (\$37,500)

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – The estimated costs for the proposed rules were provided by industry members of the working group and appear in the table above. Based on the costs in the table above for the state-specific regulations, the aggregate cost of permitting one (1) project could cost up to two hundred thirty-two

thousand one hundred dollars (\$232,100). The costs for the permitting of a project are duplicative of the work done for the Class VI permit through the U.S. Environmental Protection Agency and there are additional requirements under the Indiana Code. These regulations are not imposed by the proposed rule.

In addition, the total aggregate costs to operators are difficult to quantify due to the unknown number of staff, consultants, or attorneys and their respective positions and salaries, i.e. geologists, engineers, etc. working on a specific project. There may be increases in costs for training specific to carbon capture and sequestration. It is difficult to determine equipment necessary and associated costs because equipment and materials may vary by project.

However, offsetting operational costs are carbon capture credits offered by the state or federal government for each ton of carbon dioxide sequestered below ground. When considering the financial offsetting by the 45Q tax credits, there could be few overall cost to storage operators.

Additionally, compliance costs for regulated entities will occur over a period of more than two (2) years. The department anticipates at least two (2) and not more than three (3) projects each year for the first two (2) years of the program.

b. Estimate of Administrative Expenses Imposed by the Rules – Estimated costs to regulated parties appear in the table beginning on page 4 of this document.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 – The proposed permanent rules do not add or increase a fee, fine, or civil penalty. No analysis is required under IC 4-22-2-19.6 for the proposed permanent rules.

d. If the implementation of the proposed rule are expected to exceed the threshold set in IC 4-22-2-22.7(c)(6) – The combined implementation and compliance costs for the different phases a carbon sequestration project contained in the proposed permanent rule for businesses, units, and individuals will be over a period of more than two (2) years. The implementation of the proposed rule is not expected to exceed the threshold set in IC 4-22-2-22.7(c)(6).

VII. Sources of Information

a. Independent Verifications or Studies – There were no independent verifications or studies used to make this analysis.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – Estimated ranges are based on information provided by industry members of the working group regarding estimated possible costs associated with their projects.

VIII. Regulatory Analysis

The department was tasked with administering carbon sequestration projects under HEA 1209-2022 and issuing permits for the projects. IC 14-39-0.5 required the department to adopt rules regarding carbon sequestration project permits and carbon dioxide transmission pipeline certificates of authority. Based on the costs in the table above for the state-specific regulations, the aggregate cost of permitting one (1) project could cost up to two hundred thirty-two thousand one hundred dollars (\$232,100). The costs for the permitting of a project are duplicative of the

work done for the Class VI permit through the U.S. Environmental Protection Agency and there are additional requirements under the Indiana Code. These regulations are not imposed by the proposed rule. Additionally, compliance costs for regulated entities will occur over a period of more than two (2) years. The department anticipates at least two (2) and not more than three (3) projects each year for the first two (2) years of the program.

There are numerous benefits to this rule as well. The proposed rule establishes the regulations required by the General Assembly in the most nonrestrictive manner, and provides clarity for applicants, pore space owners, and who may be affected by a carbon sequestration project or the placement of a carbon dioxide transmission pipeline, as well as state agencies and local governments tasked with permitting other items associated with carbon sequestration projects and carbon dioxide transmission pipelines. This clarity will help promote smooth interaction between the agencies tasked with permitting different requirements and regulating different safety aspect of the projects, and will benefit the public by providing transparent, easy to understand regulations for the projects beyond what is already set out in the Indiana Code. The benefits of the proposed rules are likely to exceed the costs.

IX. Contact Information of Staff to Answer Substantive Questions

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[Text to be added by the Register]

First Notice of Public Comment Period [link to document with proposed rule]

LSA Document #XX-XXX

Notice of Determination Received: [date]