CHAPTER 38-25
UNDERGROUND STORAGE OF OIL AND GAS

38-25-01. Definitions.

As used in this chapter:

1. "Commission" mean the industrial commission.
2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.
3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.
4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.
6. "Pore space" has the same meaning as in section 47-31-02.
7. "Prevent waste" means the locating, spacing, drilling, equipping, operating, or producing of any oil or gas storage well or facility in a manner that increases the quantity of oil or gas stored, or which decreases unnecessary loss or destruction of oil or gas.
8. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline formations suitable for or capable of being made suitable for injecting, storing, and withdrawing oil or gas. The term does not include salt caverns.
9. "Salt cavern" means a natural occurring cavity contained within a salt formation or a cavity created in a salt formation by solution mining, suitable for injecting, storing, and withdrawing oil or gas.
10. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock to create a salt cavern for underground storage of oil or gas.
11. "Storage facility" means the reservoir, salt cavern, underground equipment, and surface facilities and equipment used or proposed to be used in an underground storage operation. The term does not include a pipeline used to transport oil or gas to the storage facility.
12. "Storage operator" means a person holding or applying for a permit.
13. "Waste" means the inefficient storing of oil or gas.

38-25-02. Commission authority.

The commission has authority:

1. Over all persons and property necessary to administer and enforce this chapter when necessary to prevent waste, to protect correlative rights of the mineral and surface estate, or to effect greater ultimate storage and recovery of oil and gas.
2. To regulate activities relating to an underground storage facility, including construction, solution mining to create salt caverns, operation, and closure.
3. To enter an underground storage facility at a reasonable time and manner to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility.
4. To require storage operators provide financial assurance, including bonds, to ensure money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority to amend or revoke a permit after notice and hearing.
6. After notice and hearing, to dissolve or change the boundaries of any commission established oil or gas field or unit within or near a storage reservoir's or salt cavern's boundaries.
7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to implement the policies of this chapter.

8. After notice and hearing, to grant exceptions to this chapter's requirements and implementing rules if required to comply with applicable federal law.

38-25-03. Permit required - Permit transfer.

Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-25-04. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing any storage permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir or salt cavern is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.
3. Written notice of hearing must be mailed to each surface owner of record of land overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or salt cavern's boundaries. The notice of hearing must be mailed to an owner's last-known address.
4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas reservoir, notice of the hearing also must be mailed to each mineral lessee, mineral owner of record, and pore space owner of record within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern, notice of the hearing must be mailed to each salt mineral lessee, salt mineral owner of record, and pore space owner of record within the salt cavern outer boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be required by the commission.
6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer, notice of hearing must be mailed to each pore space owner of record within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.
7. Hearing notices required by this section must comply with the deadlines set by the commission and must contain the information the commission requires.

38-25-05. Permit requirements - Storage in oil and gas reservoir.

Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to get the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own oil and gas minerals and oil and gas leases.
6. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's pore space unless the percentage required to unitize the oil and gas unit is otherwise provided for by order of the commission before August 1, 2021, in which case the percentage in the order required to pool the mineral interests prevails as to the percentage of pore space owners from whom the storage operator must obtain consent.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's oil and gas minerals and oil and gas leases unless the percentage required to unitize the oil and gas unit is otherwise provided for by

order of the commission before August 1, 2021, in which case the percentage in the order prevails.

8. Whether the storage reservoir contains any commercially valuable oil, gas, or other minerals and, if it does, a permit may be issued only if the commission is satisfied the interests of the mineral owners or mineral lessees will not be affected adversely or have been addressed in an arrangement entered by the mineral owners or mineral lessees and the storage operator.
9. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
10. The injected oil or gas will not escape from the storage reservoir.
11. The storage facility will not endanger health or unduly endanger the environment.
12. The storage facility is in the public interest.
13. The vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
14. The horizontal extent of the injected gas within the storage reservoir, as estimated by reasonable means and confirmed through appropriate monitoring methods, are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
15. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
16. The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.
17. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.
18. All nonconsenting owners are or will be compensated equitably.

38-25-06. Permit requirements - Storage in saline reservoir or aquifer.

Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the storage reservoir's pore space.
5. The storage operator has obtained the consent of persons that own at least sixty percent of the storage reservoir's pore space.
6. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
7. The injected oil or gas will not escape from the storage reservoir.
8. The storage facility will not endanger health or unduly endanger the environment.
9. The storage facility is in the public interest.
10. The vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the

storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.

11. The horizontal extent of the injected gas within the storage reservoir, as estimated by reasonable means and confirmed through appropriate monitoring methods, are defined to include any necessary or reasonable buffer zones for the purpose of ensuring the safe operations of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.
12. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
13. The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.
14. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.
15. All nonconsenting pore space owners are or will be compensated equitably.

38-25-07. Permit requirements - Storage in salt cavern.

Before issuing a permit for storage in a salt cavern, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.
2. The storage operator has complied with all requirements set by the commission, including all necessary permits to conduct solution mining, if applicable.
3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.
4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's pore space.
5. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's salt minerals and salt leases.
6. The storage operator has obtained the consent of persons that own at least sixty percent of the salt cavern's pore space.
7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's salt minerals and salt leases.
8. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.
9. The injected oil or gas will not escape from the salt cavern.
10. The storage facility will not endanger health or unduly endanger the environment.
11. The storage facility is in the public interest.
12. The horizontal and vertical boundaries of the salt cavern are defined to include a buffer zone from the outer walls of the cavern for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom.
13. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. The method of underground storage is reasonably necessary to effectively carry on the joint effort, will prevent waste, protect correlative rights of the mineral and surface estate, and, with reasonable probability, will result in the increased storage and recovery of more oil and gas.

15. The time, conditions, and method by which the storage facility must be dissolved and the facility's affairs wound up. A storage facility may be dissolved ten years after the storage facility permit is issued upon a petition to the commission by the pore space owners and mineral owners that are credited with at least the percentage of interest of the pore space required to ratify the storage facility amalgamation agreement, and a subsequent hearing and order by the commission.
16. That all nonconsenting owners are or will be equitably compensated.

38-25-08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage if the minimum percentage of consent is obtained as specified in this chapter. Any pore space owner who does not have responsibility over the construction, management, supervision, or control of the storage facility operations is not liable for money damages for personal or other property damages proximately caused by the operations.

38-25-09. Ownership of oil and gas.

All oil or gas previously reduced to possession and subsequently injected into underground storage facilities must be deemed the property of the storage operator subject to the obligation to pay royalties as set forth in section 38-25-10.

38-25-10. Injection of produced gas - When royalties owed.

1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease owners, royalties on gas produced but not sold and which is injected into a storage facility instead of flaring or for lack of market, are not due on the produced and stored gas until gas volumes actually are withdrawn from the storage facility, sold, and proceeds received from the sale.
2. Prior to gas being withdrawn and sold from a storage facility under this section, the storage operator, after notice and hearing, shall obtain approval from the commission evidencing a reasonable and equitable method of allocation of the stored gas sale proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into storage. The commission may adopt such rules and orders as necessary to implement the purposes of this section.

38-25-11. Application.

This chapter does not apply to applications filed with the commission which propose to use produced gas for an enhanced oil or gas recovery project. Those applications must be processed under chapter 38-08.