

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
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Little Rock, Arkansas 72201-1094
(501) 682-5070
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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____



OIL & GAS COMMISSION

Sarah Huckabee Sanders
GOVERNOR

Shane E. Khoury
SECRETARY

NOTICE OF RULE CHANGE Request for Public Comment

The Oil and Gas Commission (“OGC”) has proposed amendments to Commission General Rule D-23, “General Rule for the Regulation of Underground Natural Gas Storage Projects.” The proposed amendments will apply changes in the Arkansas Code made by Act 140 of 2023. Specifically, the rule amendments are promulgated to provide for the underground storage of other gases, such as carbon oxides, ammonia, hydrogen, nitrogen, and noble gas. Oral and written comments by industry representatives and the public will be received and made a part of the record during the public comment period.

Pursuant to the Arkansas Administrative Procedures, Arkansas Code § 25-15-201, et seq., and Oil and Gas Statutes, Arkansas Code § 15-71-110 and § 15-72-608, the OGC by this notice solicits comments of any interested party to the proposed rule amendments by submitting comments in writing on or before the end of the public comment period, which is April 15, 2024. Comments sent by regular mail should be sent to Lawrence Bengal at the address below.

Full and complete copies of the proposed general rule are available for inspection and review at the OGC offices in North Little Rock, Arkansas, at 5301 Northshore Drive, phone 501-683-5816; or may be viewed on the OGC website at <https://www.aogc.state.ar.us/rules/new.aspx>.

A public hearing will be held on March 27, 2024, beginning at 3:00 p.m., Central Time, to accept comments on the rulemaking. The hearing will be held in the Commission Room (Room Number 1W06) at the Department of Energy and Environment headquarters building at 5301 Northshore Drive, North Little Rock, AR 72118, phone number 501-683-5816. Written and oral statements may be submitted regarding the proposed rulemakings to the Presiding Officer for consideration at the Public Hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date.

Written comments may also be submitted to Shannon Raglin by e-mail at Shannon.Raglin@aogc.state.ar.us, until 11:59 p.m., on April 15, 2024, and must also include the commentator’s name, mailing address, and e-mail address.

By: Lawrence E. Bengal, Director
Production and Conservation
Oil and Gas Commission
5301 Northshore Drive
North Little Rock, Arkansas 72118

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT Department of Energy and Environment
BOARD/COMMISSION Oil and Gas Commission
BOARD/COMMISSION DIRECTOR Lawrence Bengal
CONTACT PERSON Lauren Ballard
ADDRESS 5301 Northshore Drive, North Little Rock, AR 72118
PHONE NO. (501) 682-0581 EMAIL Lauren.Ballard@adeq.state.ar.us
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Lawrence Bengal and Lauren Ballard
PRESENTER EMAIL(S) lawrence.bengal@aogc.state.ar.us Lauren.Ballard@adeq.state.ar.us

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?
Rule D-23: "General Rule for the Regulation of Underground Natural Gas Storage Projects"
2. What is the subject of the proposed rule? Establishment, maintenance, and closure of underground storage
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☒ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☒

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☒ No ☐

If yes, please provide the state statute and/or rule citation.

The rule amendments are required by Act 140 of 2023, which amended Ark. Code Ann. Sec. 15-72-602 through Sec. 15-72-607.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☒

If yes, please list the rules being repealed.

If no, please explain.

The Oil and Gas Commission has previously repealed all unnecessary rules. The rule amendment is required by specific legislation as is referenced above. The rule amendment is necessary to allow for the establishment of underground storage facilities for gases other than natural gas. The Oil and Gas Commission uses all of its current rules and believes that they are necessary and therefore does not have any rules that can be revoked

8. Is this a new rule? Yes ☐ No ☒

Does this repeal an existing rule? Yes ☐ No ☒

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☒ No ☐

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

The Oil and Gas Commission is vested with general rulemaking authority in Ark. Code Ann. Sec. 15-71-110(d), and specific rulemaking authority for this rule in Ark. Code Ann. Sec. 15-72-608.

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☒ No ☐

If yes, please provide the year of the act(s) and act number(s).

Act 140 of 2023.

11. What is the reason for this proposed rule? Why is it necessary?

The current version of D-23, "General Rule for the Regulation of Underground Natural Gas and Other Storage Products," provides for the establishment, maintenance and closure of underground storage facilities for natural gas. Act 140 of 2023 amended 15-72-602 through Sec. 607 to allow for the underground storage of carbon oxides, ammonia, hydrogen, nitrogen, and noble gas, in addition to natural gas. The rule amendment is necessary to establish underground facilities for the storage of these additional gases.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

<https://aogc.state.ar.us/rules/new.aspx>

13. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: [03/27/2024](#)

Time: [3:00 pm](#)

Place: [Commission Room, Dept. of Energy and Environment, 5301 Northshore Drive, North Little Rock, AR 72118](#)

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. [04/15/2024](#)

15. What is the proposed effective date for this rule? [June 1, 2024](#)

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

[Unknown](#)

19. Is the rule expected to be controversial? Yes ☐ No ☒

If yes, please explain.

[Act 140 of 2023 was passed by the Legislature and signed by the Governor without controversy.](#)

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Department of Energy and Environment

BOARD/COMMISSION Oil and Gas Commission

PERSON COMPLETING THIS STATEMENT Lawrence Bengal

TELEPHONE NO. (501) 683-5814 **EMAIL** larry.bengal@aogc.state.ar.us

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Rule D-23: "General Rule for the Regulation of Underground Natural Gas Storage Projects"

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$ 0.00

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$ 0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$ 0.00

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ 0.00

Next Fiscal Year

\$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0.00

Next Fiscal Year

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

MARK-UP DRAFT

RULE D-23: GENERAL RULE FOR THE REGULATION OF UNDERGROUND NATURAL GAS ~~AND OTHER GAS~~ STORAGE PROJECTS

a) Authority and Applicability

- 1) The underground storage of ~~Natural~~ Gas promotes conservation, permits the building of reserves for orderly withdrawal in periods of peak demand, makes more readily available and economical natural gas resources to the domestic, commercial, and industrial consumers, ~~contributes to a healthier environment~~, and promotes the public interest and welfare of the State of Arkansas. Therefore, the ~~Arkansas~~ Oil and Gas Commission may find and determine, in accordance with Ark. Code Ann. § 15-72-603, that the underground storage of ~~natural g~~Gas is in the public interest.
- 2) All Natural Gas Public Utilities ~~or Gas Storage Facilities~~ engaged in the process of the storage of ~~natural g~~Gas in underground reservoirs within the State of Arkansas, as specified in Ark Code Ann. § 15-72-601, et seq., are subject to the provisions of this rule. This rule does not apply to gas injection or withdrawal operations conducted as a part of, or in conjunction with, any secondary or tertiary ~~oil~~ recovery methods utilized in a unitized pool or unit area established by the Commission.
- 3) ~~Underground Gas~~ Storage Facilities established by the Commission, which ~~are were~~ in existence ~~on or before December 21, 2020 at the time of the adoption of this rule~~, are not subject to the provisions contained herein with the exception of subparagraph ~~(f)(9)~~ below.
- 4) All ~~Underground Natural~~ Gas Storage Facilities are subject to the provisions ~~of subparagraphs (c), (d) and (e) of this rule~~ unless any provisions contained herein ~~dealing with Natural Gas Storage Facilities~~ are less stringent than any applicable federal requirement enumerated in subparagraph ~~(f)(9)~~, ~~or unless any provisions contained herein dealing with carbon dioxide storage wells, are in conflict with provisions of the US Environmental Protection Agency, Underground Injection Control, Class VI Well Program.~~
- 5) ~~The Commission retains jurisdiction over the regulation of gas storage.~~

b) Definitions

- 1) “Certificate of Storage” shall mean an order issued by the Commission that:
 - A) Identifies an underground stratum or formation that is suitable for the underground storage of ~~natural g~~Gas and that its use for such purposes is in the public interest;
 - B) Designates the horizontal and vertical boundaries of the ~~Underground sStorage Reservoir facility~~, such boundaries to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the ~~Underground sStorage Reservoir-facility~~ from pollution or invasion, or escape or migration of ~~g~~Gas therefrom;

- C) Designates the minimum and maximum operating pressures of the storage facility;
 - D) Designates the storage operator for said facility; and
 - E) Adopts special rules for the operation of the facility.
- 2) "Commission" shall mean the Oil and Gas Commission.
 - 3) "Cushion Natural Gas" shall mean the volume of gas required as permanent storage inventory to maintain adequate reservoir pressure to meet minimum gas deliverability demand (also called "base gas").
 - 4) "Gas" shall mean Natural Gas or carbon oxides, ammonia, hydrogen, nitrogen, or noble gas.
 - 5) "Gas Storage Reservoir" (GSR) shall mean the same as an "Underground Storage Reservoir" (USR).
 - 6) "Gathering Line" shall mean a pipeline that transports gas from a current production facility to a transmission line or main.
 - 7) "Native Natural Gas" shall mean gas which has not been previously withdrawn from the earth;
 - 8) "Natural Gas" shall mean all natural gas, casinghead gas, and occluded natural gas found in coalbeds, and all other hydrocarbons not defined as oil in General Rule A-4, but not including liquid petroleum gas.
 - 9) "Natural Gas Public Utility" shall mean any person, firm, corporation or entity engaged in the business of producing, transporting, or distributing Natural Gas by means of pipelines into, within, or through this State for ultimate public consumption.
 - 10) "Observation Well" shall mean any well drilled or converted for the purpose of monitoring reservoir pressures, temperatures, or integrity of a UGSR.
 - 11) "Storage Operations" shall mean the process of injecting Natural Gas into a USR.
 - 12) "Gas Storage Operator" shall mean any company, person, corporation, partnership, limited partnership, association of persons, municipality, association of municipalities, public utility, gas district, or any other entity; engaged in the business of capturing, producing, or storing Gas and authorized by the Commission to operate any UGSF.
 - 13) "Storage Well" shall mean any well drilled or converted, within a UGSF, for the purpose of Natural Gas injection and Natural Gas withdrawal; but excluding storage wells utilized for storage of carbon dioxide.
 - 14) "Underground Storage" shall mean the storage of Natural Gas in an USR.
 - 15) Underground Gas Storage Facility" (UGSF) shall mean a USR, the injection and withdrawal wells and well tubular goods, the wellhead, and related equipment to the last

positive shut-off valve before the gathering line that is used or to be used for the underground storage of ~~Natural~~ Gas, and all surface and subsurface rights and appurtenances necessary or useful in the operation of the facility for the underground storage of ~~Natural~~ Gas, including any necessary or reasonable buffer zone as identified and recommended by the ~~Gas~~ Storage Operator and approved by the Commission for the purpose of ensuring the safe operation of the storage of ~~Natural~~ Gas, and to protect the storage facility against pollution or invasion, or escape or migration of ~~Natural~~ Gas therefrom.

- 16) “Underground Storage Reservoir” (USR) shall mean any porous subsurface sand, stratum, or formation which is completely separated from any other porous zone and is suitable for, or capable of, being made suitable for the injection and storage and withdrawal of ~~Natural~~ Gas.
- 17) “Working ~~Natural~~ Gas” shall mean the portion of the storage volume that can be removed from a USR for deliveries, and still maintain pressure sufficient to meet design deliverability.

c) Eminent Domain

- 1) Any Natural Gas Public Utility or Gas Storage Operator desiring to exercise the right of eminent domain in accordance with Ark. Code Ann. § 15-72-606, to acquire or take any property for the Underground Storage of ~~Natural~~ Gas, shall first obtain from the Commission a Certificate of Storage setting forth the following:
 - A) The amount of recoverable oil and Native ~~Natural~~ Gas, if any, remaining in the USR and a determination as to proper allocation of that amount;
 - B) That the property to be taken or acquired is suitable for the Underground Storage of ~~Natural~~ Gas; and
 - C) That the use of the USR for storage of ~~Natural~~ Gas is in the public interest.
- 2) The Natural Gas Public Utility or Gas Storage Operator shall present to the circuit court of the county wherein the land is situated, or to the judge thereof, a petition setting forth the purpose for taking the property, a legal description of the property to be taken, and the names of the title owners thereof as shown in the public record of the county.
- 3) The petitioner shall file the Certificate of Storage issued by the Commission as a part of its petition, and no order by the court granting the petition shall be entered without the Certificate of Storage being filed therewith.

d) Issuance Certificate of Storage

- 1) Any Natural Gas Public Utility or Gas Storage Operator may file an application to have the Commission issue a Certificate of Storage for the ~~Underground Sstorage~~ of ~~Natural~~ Gas in a USR.
- 2) The Commission shall publish notice at least once each week for two (2) successive weeks in a newspaper of general circulation in the county or counties where the proposed

~~USR UGSF~~ is to be located. The first publication of the notice must be at least ten (10) days prior to the date of the hearing.

- 3) Only the area of the USR that may reasonably be expected to be penetrated by ~~Natural~~ Gas displaced or injected into the USR, as determined by the Commission, may be covered by the Certificate of Storage.
- 4) The Certificate of Storage granted in this section shall not prejudice the rights of the owner or owners of the lands (or of other rights or interests therein), to drill or bore through the USR as established by rules of the Commission, and shall not prejudice to the rights of the owner or owners of the lands (or other rights or interests therein) as to all other uses of the lands not inconsistent with the operation of the UGSF.
- 5) All ~~Natural~~ Gas which has been reduced to possession and which is subsequently injected into a USR shall at all times be deemed the property of the Gas Storage Operator, or his or her heirs, successors, or assigns. This ~~Natural~~ Gas shall not be in any manner subject to the right of the surface owner of the lands or the owner of any mineral interest under or above the UGSF, or subject to the right of any other person or entity. The Gas Storage Operator, or his or her heirs, successors, and assigns, has the sole and only right to produce, take, or reduce to possession this ~~Natural~~ Gas in the USR, and no other person may waste, or otherwise interfere with or exercise any control over the USR or any ~~Natural~~ Gas therein. The Gas Storage Operator, or his or her heirs, successors, and assigns, shall have no right to ~~Natural~~ Gas in any other underground reservoir that is not subject to the Certificate of Storage.
- 6) After notice and hearing, the Commission may issue a Certificate of Storage if it affirmatively finds, based upon substantial evidence, that the proposed USR is geologically suitable and has a greater value or utility as a USR for the purpose of ensuring an adequate supply of Natural Gas for any particular class or group of consumers of Natural Gas, or for the ~~storage conservation~~ of ~~Natural~~ Gas, than for the production of relatively small volumes of Native ~~Natural~~ Gas which may remain therein. The Commission shall not issue a Certificate of Storage if the proposed USR is capable of producing oil, in paying quantities, through any known recovery method, or is a USDW as defined in General Rule H-1.

e) Contents of Application for Certificate of Storage

- 1) No UGSF shall be constructed or operated without the Gas Storage Operator obtaining or holding the necessary and sufficient property rights for construction and operation of the UGSF. The Gas Storage Operator shall provide evidence of holding such rights for any real or personal property, or evidence the Gas Storage Operator can obtain such property through eminent domain proceedings related to that property. A Certificate of Storage shall expire twelve (12) months from the date of issuance if the Storage Wells have not been drilled and completed, or within twenty-four (24) months if the Storage Wells have been drilled and completed and if Storage Operations have not commenced.
- 2) Application for a Certificate of Storage shall include the following:
 - A) A plan view map showing:

- i) The surface and extent of the UGSF, indicating the proposed location of Storage Wells, Observation Wells, and the location of all proposed pipelines and other surface facilities within the boundary of the UGSF;
 - ii) Locations of all other wells or boreholes, including but not limited to, water wells, oil and natural gas exploration and development wells within the boundary of the UGSF and extending ¼ mile outside the boundary of the UGSF;
 - iii) The subsurface extent of the USR and any buffer zone.
- B) Applicant shall submit evidence or information showing that the proposed USR is not a USDW, and identify any freshwater bearing horizons known to be developed in the immediate vicinity of the USR.
- C) Applicant shall conduct an evaluation to identify any productive oil and natural gas zones occurring stratigraphically above, below, or within the USR, and if productive natural gas zones are present within the USR, the applicant shall identify and determine the remaining reserves of Native Natural Gas within the USR.
- D) A geologic evaluation of the USR, including an isopach map of the USR, a structure map of the top and base of the USR, identification of all structural spill points or stratigraphic discontinuities controlling the isolation of stored Natural Gas, and a structural and stratigraphic cross-section that describes the geologic conditions of the USR.
- E) A geologic evaluation of all existing information on all geologic strata overlying the USR, including the immediate containment formation (caprock) characteristics and all designated subsurface monitoring zones. The evaluation shall focus on the proposed USR and provide a description of mechanisms of geologic confinement with regard to the ability of that confinement to prevent migration of Natural Gas beyond the proposed USR. The evaluation shall include any available geophysical data and assessments of any regional tectonic activity, local seismicity and regional or local fault zones, and a comprehensive description of local and regional structural or stratigraphic features which may impact confinement.
- F) A review of all wells within the proposed USR, which penetrate the USR or primary and/or secondary confining layers overlying the USR, and all the wells, within one mile of the USR, which penetrate the geologic formation to be used for storage. This review shall determine if all abandoned wells have been plugged, and whether all unplugged wells are constructed in a manner that prevents the movement of Natural Gas from the USR.
- G) The proposed calculated maximum volume of the USR to be used for storage, shall include Working Natural Gas, Native Natural Gas, and Cushion Natural Gas volumes. In the event the Storage Operator of a UGSF recalculates the actual reservoir volume determined and identified to the Commission after continued operation of the Gas Storage Facility, then the Gas Storage Operator shall file an application for a redetermination of the allowed volume.

- H) The proposed maximum bottom-hole injection pressure to be utilized for the USR shall be measured in psig, shall be no greater than ninety percent (90%) of the formation fracture pressure as determined by a step-rate test (or other approved method), unless a higher percentage is approved by the Commission. The USR shall not be subjected to injection pressures in excess of the calculated fracture pressure. The maximum allowable stabilized reservoir pressure (gauge) shall be no greater than seventy-five percent (75%) of the fracture pressure of the USR, as determined by a step rate test or as calculated by a method acceptable to the Commission. The average USR pressure shall be no greater than ninety percent (90%) of the fracture pressure.
- I) A corrosion monitoring and prevention plan for all wells and surface facilities, and a leak detection and monitoring plan for surface facilities and wells, which shall include subsurface observation wells to monitor any movement of ~~Natural~~ Gas from the USR.
- J) A detailed description of the proposed public safety and emergency response plan. The response plan shall detail the safety procedures concerning the UGSF and any residential, commercial, and public land use within one (1) mile, or any other distance as deemed necessary by Commission beyond the outside boundary of the UGSF. The plan shall include contingency plans should ~~Natural~~ Gas leak from any well, flow line, or any other UGSF. These emergency response procedures should be updated as necessary throughout the operational life of the UGSF.
- K) Authority to conduct an injectivity test, step rate test, or other injection test to determine the suitability of the USR, prior to the issuance of the Certificate of Storage. This authority may be approved by the Director upon issuance of the test well permit in accordance with subsection (f)(1) below. The Director shall establish the parameters of the test for the protection of public safety, the USDW, and any oil and gas resources potentially impacted by the test, and may require the submission of any information or test data deemed necessary.

f) Natural Gas Storage Wells

~~1)~~ 1) Permitting Natural Gas Storage Wells

~~1)A)~~ 1)A) No person shall drill, deepen, re-enter, recomplete or operate any Storage or Observation Well until a Certificate of Storage and applicable well permits have been issued by the Commission, application for which shall be made on forms prescribed by the Director. Permits are valid only for the permit holder stated on the permit, and shall remain valid only if the permit holder is in compliance with established operating requirements specified in this rule. Permits to drill, deepen, or re-enter shall automatically expire six (6) months from the date of issuance, unless commencement of the drilling, deepening or re-entry of plugged well operations authorized by the permit has occurred and are continued with due diligence, but not to exceed one (1) year from the date of commencement of the drilling, deepening or re-entry of plugged well operations authorized by the permit. If the activity authorized in the permit is not completed within one (1) year, the well shall be plugged, casing set, or a new permit application, along

with a new permit fee and plat, must be filed. Failure to comply with the operating requirements in this rule may result in revocation of the Storage or Observation Well permit in accordance with General Rule B-1 (c).

~~2)B)~~ No Storage Well or Observation Well may be drilled at a surface location other than that specified on the permit. However, if a permit holder has commenced drilling operations and the Storage or Observation well is lost due to adverse drilling conditions prior to surface casing being set, the permit holder may request an amendment of the permit without a fee for the new location, provided the Storage or Observation Well remains on the same property where the Storage or Observation Well was originally permitted, and all other aspects of the permit request remain the same. Movement of the Storage or Observation Well location off the original surface owners' property, or after surface casing has been set, will require the filing of a new permit application, along with a new permit fee and plat. Drilling may not commence prior to the issuance of a new permit.

~~3)C)~~ Upon issuance of a permit, a copy of the permit shall be displayed at the site where the Storage Well or Observation Well is being drilled for review by Commission staff.

~~4)D)~~ The application to drill, deepen, re-enter or recomplete a Storage Well or Observation Well shall include, at a minimum:

~~A)~~ i) The information required by subparagraph ~~(f)(f1)(6F)~~ below, for the existing or proposed well, and any additional information deemed necessary by the Director for public safety and the protection of USDWs;

~~B)~~ ii) A permit fee in the amount of three hundred dollars (\$300.00), if the Storage Well or Observation Well is drilled, deepened, or re-entered;

~~C)iii)~~ The minimum financial assurance of thirty-five thousand dollars (\$35,000) per well. The Director is authorized, however, to require additional financial assurance based on, but not limited to, how long a permit holder has operated in the State of Arkansas, environmental consideration of the well location, other factors impacting the cost of plugging the well and restoring the associated well site, and the compliance history of the permit holder. The required financial assurance shall be submitted in accordance with General Rule B-2;

~~D)iv)~~ A Form 1 Organizational Report in accordance with General Rule B-13;

~~E)v)~~ An oath that the application is executed under penalty for perjury;

~~F)vi)~~ If the applicant is a corporation, limited liability company, limited liability partnership or other business entity, it must be incorporated, organized, or authorized to do business in the State of Arkansas. The applicant must state that by filing an application, the applicant irrevocably waives, to the fullest extent permitted by law, any objection to the jurisdiction of the Commission or to a hearing before the Commission, or in a court of competent jurisdiction in the State of Arkansas; and

~~6~~vii) If the applicant is an individual, partnership, or other entity that is not domiciled in the State of Arkansas, the applicant must be authorized to do business in the State of Arkansas. By filing an application, the applicant irrevocably waives, to the fullest extent permitted by law, any objection to the jurisdiction of the Commission or to a hearing before the Commission, or in a court of competent jurisdiction in the State of Arkansas.

~~5~~E) If the application does not contain all of the required information or documents, the Director shall notify the applicant in writing. The notification shall specify what additional information or documents are necessary for an evaluation of the application and shall state to the applicant that the application will be deemed denied unless the information or documents are submitted within sixty (60) days following the date of notification.

~~6~~F) The application for a Storage Well shall include the following:

~~A~~i) On a form prescribed by the Director, the applicant shall provide the name, address, phone, fax, and e-mail (if available) of the local or on-site supervisory or field personnel responsible for the Storage Well;

~~B~~ii) A survey plat of the location and ground elevation of the proposed Storage Well or existing well. The survey plat shall include all wells within ¼ mile of the proposed or existing well and the current well status of each well;

~~C~~iii) The name and the approximate top and bottom elevation, from sub-sea, of the formation (indicating the perforated or open hole interval) into which Natural Gas will be injected. If an existing well is to be converted, a geophysical log of the well shall be submitted showing the above information. For a proposed well, an induction log from a well in the immediate vicinity of the proposed disposal well shall be submitted; and

~~D~~iv) A well bore diagram of the proposed or existing well showing casing for the Storage Well, indicating from the well head to total depth of the well, all casings and cementing of casings, tubing and packer setting depth, and all perforations and or open hole intervals. If application is for an existing well, a cement bond log shall be submitted with the application, or if submitted after the application is filed, the cement bond log shall be submitted prior to commencement of operations as a condition of the permit. If a cement bond log must be run, it shall be witnessed by a Commission representative.

~~7~~G) If the application does not satisfy the requirements of this rule, the application shall be denied. If the application is denied under this section, the applicant may request to have the application referred to the Commission for determination in accordance with General Rules A-2, A-3, and other applicable hearing procedures.

~~g)2)~~ New Non-Storage Wells Drilled, Re-Entered or Deepened Through ~~the~~ a Natural Gas Storage Reservoir

~~1)A)~~ Any new well drilled, after December 21, 2020 ~~the effective date of this rule~~, through the USR within a UG~~S~~SF, for any purpose other than storage shall comply with the casing programs contained in ~~(if)(14)(A)~~ below.

~~2)B)~~ Any new well re-entered or deepened, after December 21, 2020 ~~the effective date of this rule~~, through a USR within a UG~~S~~SF, shall be evaluated for compliance with ~~(if)(24)(B)~~ below. Wells not in compliance shall be reworked and cemented, in accordance with ~~(if)(24)(B)~~, to achieve the necessary isolation of the USR.

~~3)C)~~ Well plugging requirements of a non-storage well located within the UG~~S~~SF area shall be the same as for a Storage Well as outlined in ~~(kf)(6)~~ below, and any other additional requirements in General Rule B-9.

~~h)3)~~ Existing Non-Storage Wells located in a Natural Gas Storage Reservoir

~~1)A)~~ Any non-storage well penetrating a USR, in existence on or before December 21, 2020 ~~or after the effective date of this rule~~, shall be evaluated to determine adequate isolation of the USR. The Director may require a cement bond log, cement evaluation log or other logs, to determine adequate isolation of the USR. Non-storage wells which the Director has determined do not provide adequate isolation of the USR, may be required by the Commission, after notice and hearing, to be reworked to properly isolate the USR.

~~2)B)~~ All casing strings or liner strings run in any existing well, which extends through the USR, shall be cemented in accordance with ~~(if)(24)(B)~~ below.

~~3)C)~~ Well plugging requirements of a non-storage well located within the UG~~S~~SF area shall be the same as for a Storage Well as outlined in subsection ~~(kf)(6)~~ below, and any other additional requirements in General Rule B-9.

~~i)4)~~ Natural Gas Storage Well Construction, Operation, Maintenance and Decommissioning Requirements

~~1)~~ A) All Storage Wells drilled after ~~the effective date of this rule~~ December 21, 2020, for the purpose of Underground Storage, shall comply with the following requirements:

~~A)i)~~ All casing used in Storage Wells shall meet American Petroleum Institute standards, shall be rated for the pressures to be encountered during the operational life of the well, and shall either be new casing or reconditioned casing of new quality;

~~B)ii)~~ All casing strings shall be centralized throughout the intervals to be cemented, and all casings shall be cemented to surface. Casing set through the USR shall have centralizers placed near the top and bottom of the USR;

~~E)iii)~~ All cement used for casing cement shall meet or exceed current American Petroleum Institute standards or recommended practices. Cement should be of the appropriate type and class of cement for the intended use and mixed to the appropriate weight. Cement pumping pressures shall not exceed the fracture pressure of the USR. Cement slurry samples shall be taken and properly labeled and stored by the Storage Operator for further testing as necessary;

~~D)iv)~~ Surface casing shall be:

~~i)aa)~~ Set at a depth of one hundred (100) feet below any known USDW within ½ mile of the UGSF, or at a depth of five hundred (500) feet, whichever is greater, and

~~ii)bb)~~ Cemented with a minimum of one hundred fifty percent (150%) of the calculated annular volume to circulate cement to the surface;

~~E)v)~~ All wells shall be completed with tubing and packer.

~~2)B)~~ Any non-storage well converted for the purpose of underground storage shall comply with the following requirements:

~~A)i)~~ The top of cement and the degree of bonding of the cement used to anchor the existing production casing or liner string shall be verified by cement bond log, cement evaluation log or other logs approved by the Director;

~~B)ii)~~ The injection of Natural Gas shall not result in the movement of Natural Gas or other fluids into a USDW, or other oil or Natural Gas reservoir;

~~E)iii)~~ New casing liners shall be cemented with sufficient volume to fill the annular space to the surface; and

~~D)iv)~~ All wells shall be completed with tubing and packer.

~~7)5)~~ Mechanical Integrity Requirements for New and Existing Natural Gas Storage Wells:

~~4)A)~~ Each Storage Operator of a Storage Well equipped with a tubing and packer completion, shall prove mechanical integrity of the well before placing it into service. Mechanical integrity shall be demonstrated by pressure testing the annulus to the permitted Storage Well injection pressure, with a minimum test pressure of five hundred (500) psig. Following successful demonstration of mechanical integrity, the Storage Well shall be re-tested at least every three (3) years.

~~2)B)~~ Each Storage Operator of a Storage Well not equipped with a tubing and packer completion, shall prove mechanical integrity within thirty (30) days after the effective date of this rule. Mechanical integrity shall be demonstrated by setting a retrievable plug within the production casing at a point fifty (50) feet above the uppermost perforation, and pressure test the casing up to the permitted Storage

Well maximum injection pressure, with a minimum test pressure of five hundred (500) psig. Following successful demonstration of mechanical integrity, the Storage Well shall be re-tested at least every five (5) years.

~~3)C)~~ The pressure test shall be continued for thirty (30) minutes and shall not decrease by more than 10 percent (10%) of the initial pressure over the length of the test.

~~4)D)~~ Upon request, the Director may approve alternate test methods, including tracer survey, temperature survey, gamma ray log, neutron log, noise log, casing inspection log or a combination of these methods to demonstrate mechanical integrity. All mechanical integrity alternate test methods shall be witnessed by a Commission representative.

~~5)E)~~ If a Storage Well fails to demonstrate or maintain mechanical integrity, the well shall be removed from service immediately. The Storage Operator shall notify the Commission's regional office within four (4) hours of any well that fails or loses mechanical integrity. The Storage Operator must take action to isolate the cause of the failure and demonstrate to the Director that the well does not pose a threat to a USDW or public safety.

~~6)F)~~ Storage Wells which fail to demonstrate mechanical integrity shall be repaired within one hundred eighty (180) days, and successfully pass a mechanical integrity test or be plugged.

~~k)6)~~ Monitoring and Reporting for Natural Gas Storage Wells

~~1)A)~~ Each Storage Well shall be monitored, on a weekly basis, for wellhead and casing annulus pressure. All monitoring records shall be retained by the Storage Operator for five (5) years and be available to Commission staff for review upon request.

~~2)B)~~ The operator of the UG~~S~~F shall notify the Commission regional office of any potential leak discovered within four (4) hours of the discovery of the leak.

~~3)C)~~ The Storage Operator shall file, on a form prescribed by the Director, the monthly volumes of Natural Gas injected and withdrawn from the USR.

~~4)D)~~ Prior to performing any well servicing activity, cementing, or any wireline logging activities, the Storage Operator of the UG~~S~~F shall provide notice to the Commission regional office where the Storage Well is located so as to allow Commission staff to be present to observe the activity. Any well servicing which requires the resetting of the packer shall require that an internal mechanical integrity test be conducted in accordance with subparagraph ~~(j)5)~~ above, prior to re-commencement of injection.

~~4)7)~~ Natural Gas Storage Well Abandonment

~~1)A)~~ A well plugging plan shall be filed with the Commission regional office thirty (30) days prior to any planned well plugging activity. All Storage Wells shall be plugged in a manner to permanently isolate the USR from all other oil and Natural Gas reservoirs and any existing USDWs within the UG~~S~~F area.

~~2~~B) -The minimum well plugging requirements are as follows:

~~A~~i) The Storage Well shall be plugged as follows:

~~i~~aa) Utilizing a cement retainer set fifty (50) feet above the top perforation in the Storage Well, adequate cement shall be pushed into the USR to prevent pressure channeling while the subsequent Storage Well cement plug is setting.

~~ii~~bb) Following completion of the Storage Well cementing operation, an additional one-hundred fifty (150) feet of cement shall be placed on top of the cement retainer utilized in the Storage Well cementing operation.

~~B~~ii) If cement is not present on the backside of the production casing at the required plug depths specified in (~~A~~i) above, cement shall be placed on the backside of the production casing during the Storage Well plugging operations.

~~C~~iii) Following the completion of the Storage Well plugging operation, a pressure test shall be run on the casing to determine cement integrity. If the casing fails this test, it shall be repaired and retested prior to the subsequent plugs being set as required in accordance with (~~D~~iv) below.

~~D~~iv) Subsequent plugs shall be set to satisfy the requirements of Rule B-9.

~~E~~v) If wellbore conditions preclude the setting of a cement retainer for the Storage Well plugging operation, an alternative plugging method may be approved or required by the Director. In determining whether to approve an alternative plugging method, the Director shall consider the time and cost associated with the alternative plugging method, the potential for damage to USDWs or other oil or gas reservoirs, the depth of the reservoir in relation to the depth of the USDWs, well construction characteristics, and the potential for upward migration of wellbore fluids into a USDW.

~~m~~8) Decommissioning of Underground Natural Gas Storage Facility

~~1~~A) The Gas Storage Operator of a UGSF shall file a plan for decommissioning a UGSF six (6) months prior to commencement of the decommissioning activity. The plan shall include:

~~A~~i) The anticipated date of commencement and final completion of the decommissioning activities;

~~B~~ii) A detailed plan and timeline for the activities, including well plugging operations, equipment removal from the well sites and all central or remote facilities in the UGSF, abandonment of pipelines, and restoration of property as necessary;

~~E)iii)~~ The names and contact information for the persons, consultants, contractors and firms used in the decommissioning activity; and

~~D)iv)~~ The anticipated reservoir pressure at abandonment.

~~2)B)~~ The Storage Operator shall file a monthly report on the 15th of each month indicating the work completed for the preceding month during the decommissioning activity.

~~3)C)~~ At the completion of the decommissioning, the Storage Operator shall submit a final decommissioning report and termination of storage operations. Upon receipt of the final report and completion of a final inspection of the UG~~S~~SF, and all wells and facilities by the Commission staff, the Storage Operator's Certificate of Storage shall be terminated.

~~n)9)~~ Additional Federal Requirements for Natural Gas Storage Operations

~~4)A)~~ The UG~~S~~SF is additionally subject to and required to be in compliance with the following federal requirements, unless the following federal requirements are less stringent than any other applicable requirements of General Rule D-23.

~~2)B)~~ Required federal requirements are as follows:

~~A)i)~~ Operation and maintenance requirements in Federal Regulations 49 CFR, Part 192, as amended;

~~B)ii)~~ Applicable enforcement provisions of Federal Regulation 49 CFR, Part 190, as amended;

~~E)iii)~~ Applicable incident and other reporting requirements contained in Federal Regulation 49 CFR, Part 191, as amended (and all such reports shall be submitted to the Oil and Gas Commission); and

~~D)iv)~~ All Storage Operators of a UG~~S~~SF shall be subject to the applicable drug and alcohol testing requirements contained in Federal Regulation 49 CFR, Part 199, as amended.



OIL & GAS COMMISSION

Sarah Huckabee Sanders
GOVERNOR

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SECRETARY

Proposed amendment to OGC GENERAL RULE D-23: “GENERAL RULE FOR THE REGULATION OF UNDERGROUND NATURAL GAS STORAGE PROJECTS”

January, 2024

PURPOSE AND AUTHORITY

The Department of Energy and Environment, Oil and Gas Commission (“OGC” or “Commission”) proposes this rulemaking regarding General Rule D-23: “General Rule for the Regulation of Underground Natural Gas Storage Projects,” in order to comply with changes in Arkansas law enacted in Act 140 of 2023. The Commission is vested with general authority for this rulemaking in Ark. Code Ann. § 15-71-110(d), and specific authority to amend this rule in Ark. Code Ann. § 15-72-608.

BACKGROUND

OGC General Rule D-23 provides procedural guidelines for the establishment, maintenance, and closure of underground facilities for the storage of natural gas. The Underground Storage of Natural Gas Law, Ark Code § 15-72-601 *et seq.*, provides the statutory authority for this rule. These statutory sections were amended by Act 140 of 2023, to provide for the underground storage of carbon oxides, ammonia, hydrogen, nitrogen, or noble gas, as well as natural gas. The ultimate purpose of the rule amendments is to start the process to create and establish the Underground Injection Control, Class VI Well Program delegated by the Environmental Protection Agency. It is governmental priority to establish this program to allow the Commission to continue to regulate underground storage facilities in the State of Arkansas.

THE PROPOSED RULE AMENDMENTS

The proposed amendment to General Rule D-23 modifies this rule to conform to the new statutory requirements. The authority and applicability section of the rule was broadened to allow for the creation of gas storage facilities, which include facilities for the storage of gases other than natural gas. New definitions were added for the term “Gas” and “Gas Storage Reservoir.” Other definitions, such as “Gas Storage Operator,” and “Underground Gas Storage Facility” have been modified to allow for the underground storage of other gases. Other definitions, such as “Cushion Natural Gas,” “Native Natural Gas,” and “Working Natural Gas,” have been modified to allow certain provisions in the rule to continue to apply only to natural gas, and not other gases identified in Act 140 of 2023. The new definitions are utilized in the rule to allow for eminent domain powers to be used to establish underground storage facilities for other gases. Finally, terminology has been modified to clarify that certain provisions in the rule for permitting, drilling, well construction, well abandonment and closure and decommissioning, now only apply to natural gas wells related to underground storage facilities.

NECESSITY AND PRACTICAL IMPACT OF RULE AMENDMENTS

The amendments to General Rule D-23 are necessary to allow Arkansas business interests to use geological resources to have a positive impact on the state and local economy. The state will benefit from the utilization geological formations for the underground storage of gas as it will create new industry and jobs for Arkansans. The program will be attractive to both existing businesses and new business enterprises seeking to develop gas storage facilities.

The practical impact of the rule amendment is to allow the Commission to adopt Class VI rules and seek primacy for carbon capture utilization and storage. These rule amendments also help our HALO (hydrogen) efforts by granting the Commission authority to regulate the underground storage of hydrogen.

Although there is a positive impact for the state and local economy, there is no negative financial impact for the State of Arkansas or local government. There will be no additional cost for the State as a result of this rule amendment.