

CHAPTER 219

NATURAL RESOURCES

HOUSE BILL 23-1069

BY REPRESENTATIVE(S) McCormick and Amabile, Bacon, Bird, Boesenecker, Brown, deGruy Kennedy, Dickson, Froelich, Gonzales-Gutierrez, Hamrick, Jodeh, Lindsay, Mabrey, McLachlan, Ortiz, Parenti, Sharbini, Snyder, Story, Titone, Valdez, Velasco, Weissman, Willford, Woodrow, McCluskie;
also SENATOR(S) Cutter and Priola, Bridges, Gonzales, Jaquez Lewis, Sullivan, Winter F., Fenberg.

AN ACT

CONCERNING THE CREATION OF THE BIOCHAR IN OIL AND GAS WELL PLUGGING WORKING ADVISORY GROUP TO MAKE RECOMMENDATIONS FOR THE DEVELOPMENT OF A PILOT PROGRAM TO STUDY THE USE OF BIOCHAR IN THE PLUGGING OF OIL AND GAS WELLS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) It is important to focus on finding innovative solutions to:

(I) Mitigate the impacts of climate change;

(II) Further protect human and animal health; and

(III) Lower the carbon footprint of current methods of plugging oil and gas wells;

(b) The state recognizes the importance of regulating the oil and gas industry and supports the implementation of practices and technologies to address emission reduction goals and research to develop these practices and technologies;

(c) The state should continue to regulate the plugging of oil and gas wells by both state agencies and the oil and gas industry;

(d) It is important to create opportunities for the oil and gas industry to permanently sequester carbon from the atmosphere;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(e) Exploring the use of biochar in oil and gas well plugging operations may potentially open up economic opportunities for Colorado to become a leader in the use of biochar in oil and gas well plugging operations; and

(f) Biochar could be beneficial to efforts by the oil and gas industry to reduce greenhouse gas emissions in Colorado.

(2) The general assembly further finds and declares that it is in the interest of Colorado to convene a working advisory group that coordinates with Colorado state university and makes recommendations on establishing a pilot program to study the use of biochar in oil and gas well plugging operations.

SECTION 2. In Colorado Revised Statutes, **add** 34-60-136 as follows:

34-60-136. Biochar in oil and gas well plugging working advisory group - created - members - study by Colorado state university - recommendations for the development of a pilot program - report - definitions - repeal. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BIOCHAR" MEANS THE SOLID CARBON-RICH PRODUCT MADE WHEN WOODY BIOMASS UNDERGOES PYROLYSIS IN AN OXYGEN-DEPLETED ATMOSPHERE AT APPROXIMATELY EIGHT HUNDRED DEGREES CELSIUS.

(b) "COLORADO ENERGY OFFICE" MEANS THE COLORADO ENERGY OFFICE CREATED IN SECTION 24-38.5-101 (1).

(c) "DIRECTOR" MEANS THE DIRECTOR OF THE COMMISSION APPOINTED PURSUANT TO SECTION 34-60-104.5 (1) OR THE DIRECTOR'S DESIGNEE.

(d) "ENVIRONMENTAL JUSTICE ADVISORY BOARD" MEANS THE ENVIRONMENTAL JUSTICE ADVISORY BOARD CREATED IN SECTION 25-1-134 (2)(a).

(e) "LOCAL GOVERNMENT" MEANS A HOME RULE OR STATUTORY COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

(f) "PILOT PROGRAM" MEANS THE PILOT PROGRAM DESCRIBED IN SUBSECTION (4)(b) OF THIS SECTION.

(g) "SELECTED OIL AND GAS WELLS" MEANS THE OIL AND GAS WELLS SELECTED BY THE WORK GROUP PURSUANT TO SUBSECTION (4)(c)(II) OF THIS SECTION.

(h) "STATE FOREST SERVICE" MEANS THE COLORADO STATE FOREST SERVICE IDENTIFIED IN SECTION 23-31-302.

(i) "UNIVERSITY" MEANS COLORADO STATE UNIVERSITY ESTABLISHED IN SECTION 23-31-101.

(j) "WORK GROUP" MEANS THE BIOCHAR IN OIL AND GAS WELL PLUGGING WORKING ADVISORY GROUP CREATED IN SUBSECTION (2)(a) OF THIS SECTION.

(2)(a) THE BIOCHAR IN OIL AND GAS WELL PLUGGING WORKING ADVISORY GROUP IS CREATED IN THE COMMISSION.

(b) THE WORK GROUP CONSISTS OF THE FOLLOWING MEMBERS:

(I) A MEMBER OF THE COMMISSION'S TECHNICAL STAFF WITH EXPERTISE IN ENGINEERING OR ORPHANED WELLS, APPOINTED BY THE DIRECTOR;

(II) A MEMBER REPRESENTING THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT CREATED IN SECTION 24-1-119 (1), APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT;

(III) A MEMBER REPRESENTING THE COLORADO ENERGY OFFICE, APPOINTED BY THE DIRECTOR OF THE COLORADO ENERGY OFFICE;

(IV) A MEMBER REPRESENTING THE OIL AND GAS INDUSTRY, APPOINTED BY THE DIRECTOR;

(V) A MEMBER, APPOINTED BY THE DIRECTOR OF THE COLORADO ENERGY OFFICE, REPRESENTING AN ENVIRONMENTAL ADVOCACY ORGANIZATION WITH:

(A) A FOCUS ON THE REDUCTION OF GREENHOUSE GAS EMISSIONS; AND

(B) EXPERIENCE WITH CARBON REMOVAL AND SEQUESTRATION SOLUTIONS;

(VI) A MEMBER WITH EXPERTISE IN THE BIOCHAR INDUSTRY, APPOINTED BY THE DIRECTOR; AND

(VII) A MEMBER OF THE COMMISSION, WHO IS THE CHAIR OF THE WORK GROUP, APPOINTED BY THE DIRECTOR.

(c) THE WORK GROUP ALSO CONSISTS OF THE FOLLOWING MEMBERS, WHO SHALL PARTICIPATE IN THE WORK GROUP IN AN ADVISORY, NONVOTING CAPACITY:

(I) A MEMBER REPRESENTING THE STATE FOREST SERVICE, APPOINTED BY THE DIRECTOR OF THE STATE FOREST SERVICE;

(II) A MEMBER REPRESENTING A BIOCHAR MANUFACTURING ENTITY LOCATED IN THE STATE, APPOINTED BY THE DIRECTOR;

(III) A MEMBER REPRESENTING A LOCAL GOVERNMENT WHO HAS A DEMONSTRATED FOCUS ON ENVIRONMENTAL AIR QUALITY ISSUES, WITH CLIMATE PROTECTION AS A DEMONSTRATED PRIORITY, APPOINTED BY THE DIRECTOR OF THE COLORADO ENERGY OFFICE;

(IV) A MEMBER, APPOINTED BY THE DIRECTOR, REPRESENTING THE FEDERAL BUREAU OF LAND MANAGEMENT WHO HAS KNOWLEDGE CONCERNING:

(A) THE FEDERAL STANDARDS FOR PLUGGING OIL AND GAS WELLS; AND

(B) THE OPPORTUNITIES FOR OBTAINING FEDERAL FUNDING FOR THE PILOT PROGRAM;

(V) A MEMBER WITH EXPERTISE IN PLUGGING AND ABANDONMENT OPERATIONS AND METHANE MITIGATION FROM WELLBORES, APPOINTED BY THE DIRECTOR;

(VI) A MEMBER OF THE ENVIRONMENTAL JUSTICE ADVISORY BOARD, APPOINTED BY THE CHAIR OF THE ENVIRONMENTAL JUSTICE ADVISORY BOARD; AND

(VII) A MEMBER REPRESENTING THE INTERESTS OF DISPROPORTIONATELY IMPACTED COMMUNITIES, AS DEFINED IN SECTION 24-4-109 (2)(b)(II), APPOINTED BY THE CHAIR OF THE ENVIRONMENTAL JUSTICE ADVISORY BOARD.

(d) THE APPOINTING AUTHORITIES SHALL MAKE ALL APPOINTMENTS TO THE WORK GROUP NO LATER THAN JULY 1, 2023. THE MEMBERS OF THE WORK GROUP SERVE WITHOUT COMPENSATION BUT SHALL BE REIMBURSED FOR EXPENSES INCURRED BY THEM IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

(e) THE WORK GROUP SHALL CONDUCT MEETINGS AS OFTEN AS NECESSARY TO PERFORM THE WORK GROUP'S DUTIES PURSUANT TO THIS SECTION, INCLUDING CONSULTING AND COORDINATING WITH THE UNIVERSITY ON THE UNIVERSITY'S DUTIES PURSUANT TO THIS SECTION.

(3) (a) THE UNIVERSITY SHALL:

(I) REVIEW PEER-REVIEWED SCIENTIFIC ARTICLES AND STUDIES ON BIOCHAR'S CAPACITY TO:

(A) LOWER GREENHOUSE GAS EMISSIONS;

(B) LOWER CHEMICAL LEAKS;

(C) REMOVE AND SEQUESTER CARBON;

(D) LOWER THE CARBON FOOTPRINT IN CEMENT;

(E) ADD STRENGTH TO CEMENT; AND

(F) BIND CHEMICALS SUCH AS METHANE, BENZENE, AND CARBON DIOXIDE FROM FUGITIVE EMISSIONS;

(II) REVIEW ANY APPLICABLE FEDERAL LAWS AND LAWS OF OTHER STATES THAT ADDRESS THE USE OF BIOCHAR IN THE PLUGGING OF OIL AND GAS WELLS;

(III) CONDUCT DESK RESEARCH RELATED TO BIOCHAR, INCLUDING GEOMECHANICAL MODELING AND CALCULATIONS TO LIMIT VARIABLES;

(IV) CONDUCT LABORATORY RESEARCH, INCLUDING RESEARCH TO CHARACTERIZE:

(A) THE MECHANICAL STRENGTH, PERMEABILITY, PORE STRUCTURE, AND GAS ABSORPTION OF BIOCHAR;

(B) THE GEOCHEMICAL REACTION OF BIOCHAR WITH WATER FROM AN UNDERGROUND FORMATION; AND

(C) THE CHEMICAL REACTION OF BIOCHAR WITH CEMENT USED IN THE PLUGGING OF OIL AND GAS WELLS;

(V) EVALUATE WHETHER ANY FEDERAL OR STATE PROGRAMS OR PRIVATE ENTITIES COULD PROVIDE FUNDING FOR THE PILOT PROGRAM;

(VI) ASSESS THE COSTS ASSOCIATED WITH USING BIOCHAR IN THE PLUGGING OF AN OIL AND GAS WELL;

(VII) DETERMINE THE AMOUNT OF BIOCHAR THAT IS AVAILABLE FOR USE IN THE STATE;

(VIII) EXAMINE WHETHER THE USE OF BIOCHAR IN THE PLUGGING OF OIL AND GAS WELLS IS CONSISTENT WITH THE STATE'S SHORT-TERM AND LONG-TERM GREENHOUSE GAS AND POLLUTION REDUCTION GOALS, AS SET FORTH IN SECTION 25-7-102 (2)(g), TAKING INTO CONSIDERATION THE EMISSIONS OF GREENHOUSE GASES AND OTHER POLLUTANTS CAUSED BY THE PRODUCTION OF BIOCHAR AND THE USE OF BIOCHAR IN THE PLUGGING OF OIL AND GAS WELLS; AND

(IX) DETERMINE WHETHER THE USE OF BIOCHAR WHEN PLUGGING AN OIL AND GAS WELL:

(A) COULD, WITH VERIFIED NET PERMANENT REMOVAL OF ATMOSPHERIC CARBON AS ESTABLISHED ACCORDING TO INTERNATIONALLY RECOGNIZED STANDARDS, ALLOW AN OPERATOR OR OTHER PERSON PLUGGING AN OIL AND GAS WELL TO RECEIVE LEGITIMATE CARBON CREDITS OR OFFSETS;

(B) WOULD REQUIRE ANY CHANGES TO STATE LAW TO ALLOW THE USE OF BIOCHAR IN THE PLUGGING OF AN OIL AND GAS WELL OR TO ALLOW A STATE AGENCY TO COORDINATE WITH APPLICABLE FEDERAL AGENCIES AND OTHER ENTITIES IN THE IMPLEMENTATION OF THE PILOT PROGRAM; AND

(C) WOULD COMPLY, IN THE CASE OF PLUGGING AN OIL AND GAS WELL OWNED BY THE UNITED STATES OR A TRIBAL LAND TRUST, WITH FEDERAL LAW OR ANY OTHER APPLICABLE LAW.

(b) IN PERFORMING ITS DUTIES PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION, THE UNIVERSITY SHALL UTILIZE ANY APPLICABLE EXISTING FEDERAL, STATE, OR LOCAL PROGRAMS OR FUNDING AND MAY COORDINATE AND CONSULT WITH OTHER INSTITUTIONS OF HIGHER EDUCATION.

(4) (a) NO LATER THAN MARCH 1, 2024, THE UNIVERSITY SHALL PROVIDE AN UNOFFICIAL PROGRESS REPORT OF ITS FINDINGS PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION TO THE WORK GROUP.

(b) NO LATER THAN JUNE 1, 2024, THE UNIVERSITY SHALL PROVIDE AN OFFICIAL REPORT OF ITS FINDINGS PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION TO THE WORK GROUP. IF, BASED ON THE REPORT, THE WORK GROUP DETERMINES THAT A PILOT PROGRAM TO STUDY THE USE OF BIOCHAR IN THE PLUGGING OF OIL AND GAS WELLS WOULD HAVE A POSITIVE IMPACT ON THE HEALTH, SAFETY, AND WELFARE OF THE STATE AND WOULD BE CONSISTENT WITH THE STATE'S SHORT-TERM AND LONG-TERM GREENHOUSE GAS AND POLLUTION REDUCTION GOALS, AS SET FORTH IN SECTION 25-7-102 (2)(g), THE WORK GROUP SHALL, NO LATER THAN AUGUST 1, 2024, DIRECT THE UNIVERSITY TO MAKE RECOMMENDATIONS REGARDING THE DEVELOPMENT OF THE PILOT PROGRAM.

(c) THE RECOMMENDATIONS PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION MUST INCLUDE RECOMMENDATIONS REGARDING A PLAN TO:

(I) DEVELOP STANDARDS FOR:

(A) USING BIOCHAR IN THE PLUGGING OF THE SELECTED OIL AND GAS WELLS;

(B) MONITORING THE EMISSIONS OF THE SELECTED OIL AND GAS WELLS; AND

(C) COMPARING EMISSIONS DATA FROM THE SELECTED OIL AND GAS WELLS TO EMISSIONS DATA FROM OIL AND GAS WELLS THAT HAVE NOT BEEN PLUGGED USING BIOCHAR;

(II) SELECT OIL AND GAS WELLS WHERE AN OPERATOR OR OTHER PERSON PLUGGING AN OIL AND GAS WELL WILL USE BIOCHAR WHEN PLUGGING THE WELL IN ACCORDANCE WITH THE STANDARDS DEVELOPED PURSUANT TO SUBSECTION (4)(c)(I)(A) OF THIS SECTION; AND

(III) CONTINUE, AFTER THE SELECTED OIL AND GAS WELLS ARE PLUGGED, TO:

(A) MONITOR EMISSIONS AND COMPARE EMISSIONS DATA FROM THE SELECTED OIL AND GAS WELLS IN ACCORDANCE WITH THE STANDARDS DEVELOPED PURSUANT TO SUBSECTIONS (4)(c)(I)(B) AND (4)(c)(I)(C) OF THIS SECTION;

(B) ASSESS THE CONDITION OF THE SELECTED OIL AND GAS WELLS; AND

(C) CONDUCT LABORATORY TESTING ON THE SELECTED OIL AND GAS WELLS TO DETERMINE THE ABILITY OF BIOCHAR TO ABSORB OR ADSORB METHANE AND OTHER CHEMICALS FOUND IN A PLUGGED OIL AND GAS WELL AND TO DETERMINE THE BEST ESTIMATE OF THE LONG-TERM DURABILITY OF BIOCHAR WHEN USED IN THE PLUGGING OF AN OIL AND GAS WELL.

(d) THE RECOMMENDATIONS PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION MUST INCLUDE, AT A MINIMUM, RECOMMENDATIONS REGARDING:

(I) THE ESTIMATED COSTS TO IMPLEMENT THE PILOT PROGRAM;

(II) THE DURATION OF THE PILOT PROGRAM;

(III) A DETAILED PLAN FOR THE IMPLEMENTATION OF THE PILOT PROGRAM BY THE COMMISSION;

(IV) A DESCRIPTION OF ANY OPPORTUNITIES TO WORK WITH OR RECEIVE FUNDING FROM FEDERAL AGENCIES OR PRIVATE ENTITIES IN THE IMPLEMENTATION OF THE PILOT PROGRAM; AND

(V) A PROCESS FOR REPORTING THE FINDINGS OF THE PILOT PROGRAM.

(5) NO LATER THAN DECEMBER 1, 2024, THE UNIVERSITY SHALL SUBMIT A DRAFT REPORT DESCRIBING ITS RECOMMENDATIONS FOR THE DEVELOPMENT OF A PILOT PROGRAM PURSUANT TO SUBSECTIONS (4)(b), (4)(c), AND (4)(d) OF THIS SECTION TO THE WORK GROUP. NO LATER THAN DECEMBER 15, 2024, THE UNIVERSITY SHALL:

(a) IN CONSULTATION WITH THE WORK GROUP, CREATE A FINAL REPORT THAT INCORPORATES THE WORK GROUP'S COMMENTS REGARDING THE DRAFT REPORT; AND

(b) PROVIDE A COPY OF THE FINAL REPORT TO THE DIRECTOR.

(6) THE DIRECTOR SHALL POST A COPY OF THE FINAL REPORT DESCRIBED IN SUBSECTION (5)(b) OF THIS SECTION ON THE COMMISSION'S WEBSITE.

(7) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2025.

SECTION 3. In Colorado Revised Statutes, 34-60-124, **amend** (4)(b); and **add** (4)(d) as follows:

34-60-124. Oil and gas conservation and environmental response fund - repeal. (4) The oil and gas conservation and environmental response fund may be expended:

(b) For purposes authorized by section 23-41-114 (4); ~~C.R.S.~~; AND

(d) (I) BY THE COMMISSION AND COLORADO STATE UNIVERSITY, ESTABLISHED IN SECTION 23-31-101, FOR THE PURPOSES OF THE STUDY CONDUCTED PURSUANT TO SECTION 34-60-136.

(II) THIS SUBSECTION (4)(d) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2025.

SECTION 4. Appropriation. (1) For the 2023-24 state fiscal year, \$370,140 is appropriated to the department of higher education. This appropriation is from the oil and gas conservation and environmental response fund created in section 34-60-122 (5)(a), C.R.S., and is based on an assumption that the department will require an additional 3.0 FTE. To implement this act, the department may use this appropriation for the board of governors of the Colorado state university system for the biochar in oil and gas well plugging working advisory group.

(2) For the 2023-24 state fiscal year, \$5,600 is appropriated to the department of natural resources for use by the oil and gas conservation commission. This appropriation is from the oil and gas conservation and environmental response fund

created in section 34-60-122 (5)(a), C.R.S. To implement this act, the commission may use this appropriation for program costs.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 18, 2023