

CHAPTER 318

NATURAL RESOURCES

SENATE BILL 01-228

BY SENATOR(S) Windels and Perlmutter;
also REPRESENTATIVE(S) Scott, Hoppe, Jahn, Jameson, Kester, Madden, Plant, Rippey, Smith, and Williams S.

AN ACT

CONCERNING THE EXCLUSIVE AUTHORITY OF THE OIL AND GAS CONSERVATION COMMISSION TO
REGULATE THE CLOSURE OF UNDERGROUND NATURAL GAS STORAGE CAVERNS.

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

SECTION 1. 34-60-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

34-60-103. Definitions. As used in this article, unless the context otherwise requires:

(10.7) "UNDERGROUND NATURAL GAS STORAGE CAVERN" MEANS A FACILITY THAT STORED NATURAL GAS IN AN UNDERGROUND CAVERN OR ABANDONED MINE ON OR BEFORE JANUARY 1, 2000. AN UNDERGROUND NATURAL GAS STORAGE CAVERN INCLUDES ALL SURFACE OR SUBSURFACE RIGHTS AND APPURTENANCES ASSOCIATED WITH THE UNDERGROUND INJECTION, STORAGE AND WITHDRAWAL OF NATURAL GAS, BUT DOES NOT INCLUDE ANY COMPRESSOR STATIONS OR PIPELINE FACILITIES SUBJECT TO REGULATION BY THE PUBLIC UTILITIES COMMISSION OR THE UNITED STATES DEPARTMENT OF TRANSPORTATION.

SECTION 2. The introductory portion to 34-60-106 (13) and 34-60-106 (13) (a), (13) (b), and (13) (e), Colorado Revised Statutes, are amended to read:

34-60-106. Additional powers of the commission. (13) The commission shall require every operator to provide assurance that it is financially capable of fulfilling any obligation imposed under subsections (11), ~~and~~ (12), AND (17) of this section. FOR PURPOSES OF THIS SUBSECTION (13), REFERENCES TO "OPERATOR" SHALL INCLUDE AN OPERATOR OF AN UNDERGROUND NATURAL GAS STORAGE CAVERN AND AN APPLICANT FOR A CERTIFICATE OF CLOSURE UNDER SUBSECTION (17) OF THIS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION. In complying with this requirement, an operator may submit for commission approval, without limitation, one or more of the following:

(a) A guarantee of performance where the operator can demonstrate to the commission's satisfaction that it has sufficient net worth to guarantee performance of any obligation imposed by rule under subsections (11), ~~and~~ (12), AND (17) of this section. Such guarantee and demonstration of net worth shall be annually reviewed by the commission.

(b) A certificate of general liability insurance in a form acceptable to the commission which names the state as an additional insured and which covers occurrences during the policy period of a nature relevant to an obligation imposed by rule under subsections (11), ~~and~~ (12), AND (17) of this section;

(e) An escrow account or sinking fund dedicated to the performance of any obligation imposed by rule under subsections (11), ~~and~~ (12), AND (17) of this section;

SECTION 3. 34-60-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

34-60-106. Additional powers of the commission. (17) (a) THE COMMISSION HAS EXCLUSIVE AUTHORITY TO REGULATE THE PUBLIC HEALTH, SAFETY, AND WELFARE ASPECTS, INCLUDING PROTECTION OF THE ENVIRONMENT, OF THE TERMINATION OF OPERATIONS AND PERMANENT CLOSURE, REFERRED TO IN THIS SUBSECTION COLLECTIVELY AS "CLOSURE", OF AN UNDERGROUND NATURAL GAS STORAGE CAVERN.

(b) NO UNDERGROUND NATURAL GAS STORAGE CAVERN MAY BE CLOSED UNLESS THE OPERATOR HAS SECURED A CERTIFICATE OF CLOSURE FROM THE COMMISSION. THE COMMISSION SHALL ISSUE A CERTIFICATE OF CLOSURE IF THE APPLICANT DEMONSTRATES THAT ITS CLOSURE PLAN PROTECTS PUBLIC HEALTH, SAFETY, AND WELFARE, INCLUDING PROTECTION OF THE ENVIRONMENT.

(c) BEFORE SUBMITTING ITS APPLICATION, AN APPLICANT FOR A CERTIFICATE OF CLOSURE MUST, TO THE EXTENT SUCH OWNERS ARE REASONABLY IDENTIFIABLE FROM PUBLIC RECORDS, NOTIFY ALL OWNERS OF PROPERTY, BOTH SURFACE AND SUBSURFACE, OCCUPIED BY AND IMMEDIATELY ADJACENT TO THE UNDERGROUND NATURAL GAS STORAGE CAVERN OF THE APPLICANT'S INTENT TO SUBMIT A CLOSURE PLAN. "IMMEDIATELY ADJACENT TO" MEANS CONTIGUOUS TO THE BOUNDARIES OF THE UNDERGROUND NATURAL GAS STORAGE CAVERN. THE NOTICE SHALL ADVISE THE OWNERS OF A LOCATION WHERE A FULL COPY OF THE CLOSURE PLAN MAY BE INSPECTED, THAT WRITTEN COMMENTS MAY BE SUBMITTED TO THE COMMISSION, AND THAT THEY MAY PARTICIPATE IN THE PUBLIC HEARING REQUIRED BY THIS SUBSECTION (17). THE APPLICANT SHALL NOTIFY THE OWNERS OF THE DATE, TIME, AND PLACE OF THE PUBLIC HEARING. CONTEMPORANEOUSLY WITH NOTIFYING THE OWNERS, THE APPLICANT SHALL SEND A COPY OF THE NOTICE TO REGISTERED HOMEOWNERS' ASSOCIATIONS THAT HAVE SUBMITTED A WRITTEN REQUEST FOR SUCH NOTICE PRIOR TO THE FILING OF THE APPLICATION WITH THE COMMISSION AND THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY WHERE THE UNDERGROUND NATURAL GAS STORAGE CAVERN IS LOCATED.

(d) THE COMMISSION SHALL PROVIDE THE PUBLIC WITH NOTICE AND AN OPPORTUNITY TO COMMENT ON AN APPLICATION FILED UNDER THIS SUBSECTION (17) FOR A CERTIFICATE OF CLOSURE PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 34-60-108 (7). THE APPLICANT SHALL ATTEND THE PUBLIC HEARING AND SHALL BE AVAILABLE AT OTHER REASONABLE TIMES AS THE DIRECTOR MAY REQUEST TO RESPOND TO COMMENTS AND QUESTIONS.

(e) THE DIRECTOR MAY CONSULT WITH OTHER STATE AGENCIES POSSESSING EXPERTISE IN MATTERS RELATED TO CLOSURE OF UNDERGROUND NATURAL GAS STORAGE CAVERNS IN THE AREAS OF THE JURISDICTION OF SUCH AGENCIES, INCLUDING, BUT NOT LIMITED TO, SAFETY, ENVIRONMENTAL PROTECTION, PUBLIC HEALTH, WATER RESOURCES, AND GEOLOGY. AGENCIES CONSULTED UNDER THIS SUBSECTION (17) MAY INCLUDE, BUT ARE NOT LIMITED TO, THE PUBLIC UTILITIES COMMISSION, THE DIVISION OF MINERALS AND GEOLOGY, THE COLORADO GEOLOGICAL SURVEY, THE DIVISION OF WATER RESOURCES, AND THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT. ANY AGENCY CONSULTED SHALL PROVIDE ADVICE AND ASSISTANCE WITH RESPECT TO MATTERS WITHIN ITS EXPERTISE.

(f) THE COMMISSION MAY ATTACH CONDITIONS TO ITS CERTIFICATE OF CLOSURE, INCLUDING REQUIRING REASONABLE RECOVERY OF RESIDUAL NATURAL GAS, IF THE COMMISSION DETERMINES THAT SUCH CONDITIONS ARE TECHNICALLY FEASIBLE AND NECESSARY TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (17), TAKING INTO CONSIDERATION COST-EFFECTIVENESS. IF THE CLOSURE APPLICATION REQUIRES THE ABANDONMENT OF WELLS AND RECLAMATION OF WELL SITES ASSOCIATED WITH THE UNDERGROUND NATURAL GAS STORAGE CAVERN, THE COMMISSION SHALL ATTACH CONDITIONS TO ITS CERTIFICATE OF CLOSURE REQUIRING THAT SUCH WELL ABANDONMENT AND RECLAMATION OCCUR IN A MANNER CONSISTENT WITH APPLICABLE COMMISSION RULES.

(g) THE COMMISSION MAY, SUBJECT TO THE LIMITATIONS CONTAINED IN PARAGRAPH (f) OF THIS SUBSECTION (17), ATTACH CONDITIONS TO ITS CERTIFICATE OF CLOSURE REQUIRING:

(I) REASONABLE POST-CLOSURE MONITORING AND SITE SECURITY AT A CLOSED UNDERGROUND NATURAL GAS STORAGE CAVERN; AND

(II) THAT THE APPLICANT FOR THE CERTIFICATE OF CLOSURE WILL PERFORM POST-CLOSURE CORRECTIVE ACTIONS CONSISTENT WITH THIS SUBSECTION (17), INCLUDING, BUT NOT LIMITED TO, THE LIMITATIONS CONTAINED IN PARAGRAPH (f) OF THIS SUBSECTION (17) IF ANY SUCH POST-CLOSURE MONITORING ESTABLISHES THAT THE CLOSURE DOES NOT PROTECT PUBLIC HEALTH, SAFETY, OR WELFARE, INCLUDING PROTECTION OF THE ENVIRONMENT.

(h) THE COMMISSION SHALL REQUIRE THAT THE APPLICANT FOR A CERTIFICATE OF CLOSURE PROVIDE REASONABLE ASSURANCE THAT IT IS FINANCIALLY CAPABLE OF FULFILLING ANY OBLIGATION IMPOSED UNDER THIS SUBSECTION (17) INCLUDING, BUT NOT LIMITED TO, POST-CLOSURE CORRECTIVE ACTION REQUIRED BY PARAGRAPH (g) OF THIS SUBSECTION (17), IN ACCORDANCE WITH SUBSECTION (13) OF THIS SECTION.

(i) THE APPLICANT FOR A CERTIFICATE OF CLOSURE UNDER THIS SUBSECTION (17) SHALL REIMBURSE THE COMMISSION'S REASONABLE AND NECESSARY COSTS OF

REVIEWING AND ACTING ON THE APPLICATION. SUCH REIMBURSEMENT SHALL INCLUDE:

(I) REIMBURSEMENT TO THE COMMISSION, ITS STAFF, AND ANY AGENCIES CONSULTED UNDER THIS SUBSECTION (17) FOR THE REASONABLE COST OF THE TIME REQUIRED TO REVIEW THE APPLICATION, AT A RATE COMMENSURATE WITH THE HOURLY COMPENSATION OF THE STAFF EMPLOYEE PERFORMING THE ACTUAL WORK, BUT NOT TO EXCEED THE HOURLY COMPENSATION OF THE HIGHEST PAID COMMISSION STAFF EMPLOYEE, BASED ON THE EMPLOYEE'S ANNUAL SALARY DIVIDED BY TWO THOUSAND EIGHTY HOURS; AND

(II) REIMBURSEMENT OF THE REASONABLE COST TO THE COMMISSION OF HIRING ONE OR MORE PRIVATE CONSULTANTS TO REVIEW THE APPLICATION AND PROVIDE ADVICE TO THE COMMISSION AS A RESULT OF SUCH REVIEW, IF THE APPLICANT CONSENTS IN WRITING TO THE SCOPE AND EXPECTED RANGE OF COSTS OF THE ACTIVITIES TO BE UNDERTAKEN BY EACH SUCH PRIVATE CONSULTANT. IF THE COMMISSION AND APPLICANT CANNOT AGREE ON THE SCOPE OR EXPECTED RANGE OF COSTS AND IF THE COMMISSION DETERMINES A PRIVATE CONSULTANT IS NECESSARY IN THE REVIEW OF THE APPLICATION, THEN THE COMMISSION MAY HIRE A PRIVATE CONSULTANT AT ITS OWN EXPENSE.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 2001