HOUSE BILL NO. 586

INTRODUCED BY V. COURT

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PUBLIC DISCLOSURE AND LANDOWNER NOTICE OF FRACTURING FLUID INFORMATION IN OIL AND GAS OPERATIONS; AMENDING SECTIONS 82-11-101, 82-11-117, 82-11-123, 82-11-136, 82-11-163, 82-11-181, AND 82-11-182, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-11-101, MCA, is amended to read:

"82-11-101. (Temporary) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(9) "Fracturing" means the introduction of fluid that may carry in suspension a propping agent under pressure into a formation containing oil or gas for the purpose of creating cracks in the formation to serve as channels for fluids to move to or from the well bore.

~~(9)~~(10) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others, and the term includes all persons holding that authority by or through the person with the right to drill.

~~(10)~~(11) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

~~(11)~~(12) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

~~(12)~~(13) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

~~(13)~~(14) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

~~(14)~~(15) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

~~(15)~~(16) "State waters" means any body of water, either surface or underground.

~~(16)~~(17) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)

(b) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of this definition.

82-11-101. (Effective on occurrence of contingency) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Carbon dioxide" means carbon dioxide produced by anthropogenic sources that is of such purity and quality that it will not compromise the safety of a geologic storage reservoir and will not compromise those properties of a geologic storage reservoir that allow the reservoir to effectively enclose and contain a stored gas.

(4) (a) "Carbon dioxide injection well" means a well that injects carbon dioxide for the underground storage of carbon dioxide in a geologic storage reservoir.

(b) The term does not include a class II injection well in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas.

(5) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(8) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by

the application of energy extrinsic to the pool; artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(9) "Field" means the general area underlaid by one or more pools.

(10) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(11) "Fracturing" means the introduction of fluid, which may carry in suspension a propping agent under pressure, into a formation containing oil or gas for the purpose of creating cracks in the formation to serve as channels for fluids to move to or from the well bore.

~~(11)~~(12) "Geologic storage operator" means a person holding or applying for a carbon dioxide injection well permit.

~~(12)~~(13) (a) "Geologic storage reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including vacant or filled reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

(b) The term does not include a natural gas storage reservoir. However, the owner of a natural gas storage reservoir may convert a depleted natural gas storage reservoir into a geologic storage reservoir to be used pursuant to Title 82, chapter 11, parts 1 and 2.

~~(13)~~(14) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others, and the term includes all persons holding that authority by or through the person with the right to drill.

~~(14)~~(15) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

~~(15)~~(16) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild

animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

~~(16)~~(17) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a structure that is completely separated from any other zone in the same structure is a pool. For the purposes of unitization pursuant to Title 82, chapter 11, part 2, "pool" also includes an underground reservoir for the long-term storage of carbon dioxide after the effective date of this section.

~~(17)~~(18) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

~~(18)~~(19) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

~~(19)~~(20) "State waters" means any body of water, either surface or underground.

~~(20)~~(21) "Verification and monitoring" means measuring the amount of carbon dioxide stored at a specific geologic storage reservoir, checking the site for leaks or deterioration of storage integrity, and ensuring that carbon dioxide is stored in a way that is permanent and not harmful to the ecosystem. The term includes:

(a) using models to show, before injection is allowed, that injected carbon dioxide will be securely stored. Modeling includes but is not limited to consideration of seismic activity, possible paths for fugitive emissions, and chemical reactions in the geologic formation.

(b) tracking plume behavior after injection of carbon dioxide, including the use of pressure monitoring; and

(c) establishing a system of leak monitors.

~~(21)~~(22) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas.

(b) (i) The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the

board, is not waste within the meaning of subsection ~~(21)(a)~~ (22)(a).

(ii) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of subsection ~~(21)(a)~~ (22)(a)."

Section 2. Section 82-11-117, MCA, is amended to read:

"82-11-117. Confidentiality of records. (1) Any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner or operator disagrees with a determination by the board that certain material will not be maintained as confidential, the owner or operator may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party.

(3) Any information not intended to be public when submitted to the board or the board's staff must be submitted in writing and clearly marked as confidential.

(4) Information submitted in accordance with [section 4] may not be considered confidential.

~~(4)~~(5) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters may not be considered confidential.

~~(5)~~(6) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section."

Section 3. Section 82-11-123, MCA, is amended to read:

"82-11-123. (Temporary) Requirements for oil and gas operations. Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures (in order to facilitate the discovery of potential geothermal energy sources), the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion

of those wells;

(3) the drilling, casing, producing, and plugging of wells and class II injection wells in a manner that prevents the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) prior to fracturing, the disclosure and notice provided for in [section 4];

~~(4)~~(5) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

~~(5)~~(6) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

(a) the board determines the well is properly plugged and abandoned as provided in the board's rules; or

(b) the requirements of 82-11-163 are met.

~~(6)~~(7) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

~~(7)~~(8) that every person who produces, transports, or stores oil or gas or injects or disposes of water in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of the oil, gas, or water.

~~(8)~~(9) the installation, use, and maintenance of monitoring equipment or methods in the operation of class II injection wells.

82-11-123. (Effective on occurrence of contingency) Requirements for oil and gas and carbon dioxide injection operations. (1) Subject to the administrative control of the department under 2-15-121, the board shall require:

(a) identification of ownership of carbon dioxide injection wells, carbon dioxide, geologic storage

reservoirs, and oil or gas wells, producing properties, and tanks;

(b) the making and filing of acceptable well logs, including bottom-hole temperatures, in order to facilitate the discovery of potential geothermal energy sources, the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made. However, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells.

(c) the drilling, casing, producing, and plugging of wells, carbon dioxide injection wells, and class II injection wells in a manner that prevents the escape of carbon dioxide, oil, or gas out of one stratum into another, the intrusion of water into carbon dioxide, oil, or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by carbon dioxide, oil, gas, salt, or brackish water;

(d) prior to fracturing, the disclosure and notice required by [section 4];

~~(d)~~(e) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

~~(e)~~(f) except as provided in subsection ~~(1)(f)~~ (1)(g), the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

(i) the board determines the well is properly plugged and abandoned as provided in the board's rules; or

(ii) the requirements of 82-11-163 are met.

~~(f)~~(g) the furnishing of reasonable bond or other surety for a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir with good and sufficient surety for performance of the duty to operate and manage a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir and to properly plug and reclaim each carbon dioxide injection well. The bond or other surety may be forfeited in its entirety by the board for failure to perform the duty to properly manage and operate a well, reservoir, and stored carbon dioxide or to plug a well. Except as provided in 82-11-183(8), the bond or other surety may not be canceled or absolved.

~~(g)~~(h) proper gauging or other measuring of oil and gas produced and saved to determine the quantity

and quality of oil and gas;

~~(h)~~(i) that every person who produces, transports, or stores oil or gas or injects or disposes of water or carbon dioxide in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of the oil, gas, carbon dioxide, or water.

~~(i)~~(j) the installation, use, and maintenance of monitoring equipment or methods in the operation of carbon dioxide injection wells and class II injection wells.

(2) In addition to the requirements of subsection (1), the geologic carbon dioxide injection well permitting system must include:

(a) recordkeeping and reporting requirements sufficient to measure the effectiveness of carbon dioxide injection wells and geologic storage reservoirs;

(b) characterization of the injection zone and aquifers above and below the injection zone that may be affected, including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(c) verification and monitoring at geologic storage reservoirs;

(d) mitigation of leaks, including the ability to stop the leaking of carbon dioxide and to address impacts of leaks;

(e) adequate baseline monitoring of drinking water wells within 1 mile of the perimeter of the geologic storage reservoir; and

(f) at a minimum, requirements pursuant to applicable federal regulatory standards established by:

(i) the Energy Independence and Security Act of 2007, Public Law 110-140, and subsequent acts;

(ii) the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.; and

(iii) the underground injection control program, 40 CFR, parts 144 through 147."

NEW SECTION. **Section 4. Fracturing fluid disclosure -- requirements.** (1) The fracturing fluid disclosure required by 82-11-123 must include:

(a) the complete composition of the fracturing fluid, including the product name, the additive type, the chemical compound name, the chemical abstracts service registry number, and any hazardous component listed on a material data safety sheet as defined in 50-78-102;

(b) the proposed rate or concentration for each additive per gallon, which may be expressed as percent by weight, percent by volume, parts per million, or parts per billion; and

(c) the maximum surface treating pressure range, the maximum injection treating pressure, and the estimated or calculated fracture length and fracture height.

(2) The administrator shall post the information submitted pursuant to subsection (1) to the board's website.

(3) After the posting required in subsection (2), the owner shall provide at least 20 days' notice by mail before fracturing occurs to landowners adjacent to the well where fracturing will occur.

Section 5. Section 82-11-136, MCA, is amended to read:

"82-11-136. (Temporary) Expenditure of funds from bonds for plugging wells. The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in ~~82-11-123(5)~~ 82-11-123(6).

82-11-136. (Effective on occurrence of contingency) Expenditure of funds from bonds for plugging wells. (1) The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in ~~82-11-123(1)(e)~~ 82-11-123(1)(f).

(2) The board may accept and expend all funds received by it from bonds for properly plugging abandoned carbon dioxide injection wells as authorized in ~~82-11-123(1)(f)~~ 82-11-123(1)(g)."

Section 6. Section 82-11-163, MCA, is amended to read:

"82-11-163. (Temporary) Landowner's bond on noncommercial well. If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in 82-11-123 upon its acceptance of surety in the form of a certificate of deposit or a surety bond in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well or in the form of a property bond of two times the value of the required certificate of deposit or surety bond. The release of the certificate of deposit, surety bond, or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged.

82-11-163. (Effective on occurrence of contingency) Landowner's bond on noncommercial well. If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in

~~82-11-123(1)(e)~~ 82-11-123(1)(f) upon its acceptance of surety in the form of a certificate of deposit or a surety bond in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well or in the form of a property bond of two times the value of the required certificate of deposit or surety bond. The release of the certificate of deposit, surety bond, or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged."

Section 7. Section 82-11-181, MCA, is amended to read:

"82-11-181. (Effective on occurrence of contingency) Geologic storage reservoir administrative fee -- account established. (1) (a) A geologic storage operator shall pay to the board a fee on each ton of carbon dioxide injected for storage for the purpose of carrying out the state's responsibility to monitor and manage geologic storage reservoirs. If a geologic storage operator chooses to indefinitely accept liability pursuant to 82-11-183(9)(a), the board shall remit the fee to the operator. If a geologic storage operator is required to maintain liability pursuant to 82-11-183(9)(b), the board may not remit the fee.

(b) The fee must be in the amount set by board rule.

(c) The amount must be based on the anticipated actual expenses that the board will incur in monitoring and managing geologic storage reservoirs during their postclosure phases.

(2) There is a geologic storage reservoir program account in the special revenue fund.

(3) (a) Each fiscal year there must be deposited in the account the fees collected pursuant to 82-11-184(2)(b) and subsection (1) of this section, to be used by the board for monitoring and managing geologic storage reservoirs pursuant to 82-11-183(6) and (8).

(b) Funds received from bonds or other surety as authorized in ~~82-11-123(1)(f)~~ 82-11-123(1)(g) and 82-11-183 must be deposited in the account.

(4) Interest and earnings on the funds in the geologic storage reservoir program account accrue to that account."

Section 8. Section 82-11-182, MCA, is amended to read:

"82-11-182. (Effective on occurrence of contingency) Liability for carbon dioxide during injection. (1) Until the certificate of project completion is issued pursuant to 82-11-183(1) and title to the stored carbon dioxide and geologic storage reservoir is transferred to the state pursuant to 82-11-183(8), the geologic storage operator is liable for the operation and management of the carbon dioxide injection well, the geologic storage

reservoir, and the injected or stored carbon dioxide.

(2) Bond or other surety furnished pursuant to ~~82-11-123(1)(f)~~ 82-11-123(1)(g) must be adequate to meet the requirements of subsection (1).

(3) For the purposes of 82-11-183 and this section, "title" includes title to the geologic storage reservoir and the stored carbon dioxide."

NEW SECTION. **Section 9. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 4].

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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