

**TAKINGS CHECKLIST**

	<b>CRITERIA</b>	<b>YES</b>	<b>NO</b>
1.	Does the action affect private property? (If no, no further inquiry is necessary.)		
2.	Is the action mandated by State or federal law? (If yes, go to question 3. If no, go to question 4.)		
3.	Does the proposed action advance a statutory purpose?		
4.	Does the action result in permanent occupation of private property?		
5.	Does the action require the property owner to dedicate property or grant an easement?		
6.	Does the regulatory action interfere with the owner's investment-backed expectations?		
7.	Does the character of the government action balance the public interest and private burdens?		
8.	Does the action deprive the owner of all economically viable uses of the property?		
9.	Does the action have a significant impact on the landowner's economic interest?		
10.	Does the action deny the owner a fundamental attribute of ownership?		
11.	Does the action serve the same purpose that would be served by directly prohibiting use of the land?		
12.	Could the problem which has necessitated the action be addressed in a less restrictive manner?		

*If these questions are answered yes, legal counsel should be consulted, for it is possible the proposed action will be a taking.*

## **Water Quality Rules and Regulations Chapter 24 Takings Checklist Analysis for Proposed Revisions**

1. *Does the action affect private property?* Yes. Chapter 24 contains regulations which apply to all Underground Injection Control (UIC) Class VI wells used to inject carbon dioxide into the subsurface for the purpose of geologic sequestration. The injected carbon dioxide will occupy pore space owned by the owner of the surface estate who may have sold the right to occupy the pore space to other parties, or leased it to other private parties.

2. *Is the action mandated by State or federal law?* Yes. The proposed revisions were initiated in response to state statute W.S. 35-11-313(f).

3. *Does the proposed action advance a statutory purpose?* Yes. W.S. 35-11-313(f) directs “the administrator of the Water Quality Division to recommend to the director rules, regulations, and standards for... requirements for the content of applications for geologic sequestration permits.”

4. *Does the action result in permanent occupation of private property?* No. The proposed revisions do not require the design or construction of UIC Class VI facilities. The proposed revisions establish permitting requirements for UIC Class VI facilities for those individuals or organizations wishing to install these types of facilities. However, the injection of carbon dioxide into privately owned pore space within the subsurface will likely result in permanent occupation of that pore space by carbon dioxide.

5. *Does the action require the property owner to dedicate property or grant an easement?* No. The chapter does not dictate specific placement of Class VI well facilities on private property nor does it require easements.

The injection of carbon dioxide for the purpose of geologic sequestration will require the owner of pore space (to be occupied by injection carbon dioxide) to provide access to the pore space voluntarily, and may require him/her to participate as part of a geologic sequestration “unit”, or unitized area pursuant to W.S. 35-11-315.

6. *Does the regulatory action interfere with the owner’s investment-backed expectations?* No. The design and construction standards which applicants must comply with in order to obtain a permit are not prohibitive.

7. *Does the character of the government action balance the public interest and private burdens?* Yes. The purpose of existing state statutes W.S. 35-11-314 through 35-11-317 (governing the injection carbon dioxide for geologic sequestration) as declared by the Wyoming legislature is to protect property rights, comply with environmental requirements, and facilitate the use and production of Wyoming energy sources.

8. *Does the action deprive the owner of all economically viable uses of the property?* No. The injection of carbon dioxide into subsurface pore space for the purpose of geologic sequestration allows the pore space owner to enjoy economic benefit from the sale or lease of that pore space, or from economic benefit if the event that the owner’s pore space is unitized into a geologic sequestration unit.

9. *Does the action have a significant impact on the landowner’s economic interest?* No. The revisions do not reduce or eliminate reasonable profitable uses of the property nor do they contribute to a severe reduction in property value.

10. *Does the action deny the owner a fundamental attribute of ownership?* No. The revisions do not deny property owners of the right to possess, exclude others, or dispose of all or a portion of their property.

The injection of carbon dioxide into subsurface pore space does not deny pore space owners the right to possess, exclude others, or dispose of all or a portion of their property.

11. *Does the action serve the same purpose that would be served by directly prohibiting use of the land?* No. Directly prohibiting use of the land would be much more restrictive than the proposed revisions.

12. *Could the problem which has necessitated the action be addressed in a less restrictive manner?* No. Less restrictive provisions could potentially endanger human health, the environment, or private property rights.