

Reviewing National and Wyoming Efforts to Create CCS Legal and Regulatory Frameworks

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As with any industrial activity, carbon capture and storage (CCS) will require various frameworks within which to operate. These frameworks include legal statutes that outline subsurface ownership, precedence of different estates, liability issues and mechanisms for unitization. Built upon this legal framework is the regulatory structure that defines the day-to-day operating procedures of the industry. To create these necessary frameworks, various legislative bodies and governmental agencies in the United States are designing, debating and passing laws and regulations to govern a commercial CCS industry. These efforts are occurring both at the national and state level and are taking various directions.

In the United States, considerable progress has been made in establishing the regulatory framework under which CCS will operate. These efforts have been made on several fronts including: reporting of greenhouse gas (GHG) emissions; geologic sequestration (GS) of CO₂ and controlling GHG emissions. Under authority of the Safe Drinking Water Act, the EPA has created a new class of well (Class VI: Geological Sequestration) in the Underground Injection Control (UIC) program. This new regulation deals with characterizing a potential site for sequestration, developing testing and monitoring programs, designing a site closure plan and creating post-injection site care strategy. Complementary to the Class VI well regulation is a new regulation governing reporting of CO₂ injected during enhanced oil/gas recovery and GS. This rule is intended to provide a means of monitoring the growth and efficacy of GS as a means of reducing GHG emissions in the U.S. Under authority of the Clean Air Act, EPA has also promulgated a new rule for reporting GHG emissions. The act, which requires reports from downstream facilities that emit >25,000 tons CO₂-e/yr., upstream suppliers of fossil fuels and industrial GHG suppliers, requires monitoring of all major GHG starting Jan. 1, 2010 with the first reports due 2011. As part of its UIC program, the Wyoming DEQ has proposed and adopted a new Class VI well category (Chapter 24), which covers GS. To ensure Wyoming maintains primacy over the entire UIC program, WDEQ is applying for Class VI primacy within the states UIC program. According to the final EPA Class VI rule the state has 270 days since the implementation of the new EPA rule (Dec. 10, 2010) to achieve primacy. If the new state rule is not approved by the deadline, EPA will administer Class VI wells in Wyoming until the state rule is approved.

To promote GS, the Wyoming State Legislature has passed laws governing the ownership of pore space, permitting responsibilities, estate priorities, liability and rules for unitization of GS sites. These laws provide the legal framework within which GS projects in Wyoming can move forward.