

State activities on carbon sequestration
May 1-2 Energy and Telecommunications Interim Committee
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The information provided below offers a snapshot of the regulatory framework that other states are contemplating for geological carbon sequestration. This information supplements the summary provided by the National Conference of State Legislatures. Wyoming, Washington, New Mexico, and Oklahoma are four states that have addressed, or are in the process of addressing, issues similar to those before the 2007-08 Energy and Telecommunications Interim Committee. The information provided below outlines how those states are handling issues related to jurisdiction, oversight, liability, ownership, eminent domain, and funding.

Wyoming

Wyoming is the first state to enact comprehensive carbon sequestration legislation that designs a legal framework for storing carbon underground. In March, Wyoming Governor Dave Freudenthal signed into law two bills, House Bill Nos. 89 and 90, associated with the ownership and regulation of carbon sequestered and stored underground. The law takes effect July 1, 2008. In addition, during Wyoming's 2008 interim, a legislative committee will study clean coal incentives. Wyoming also authorized the DEQ to submit an application to the federal office of surface mining for \$1.2 million to evaluate carbon sequestration sites and activities and the advancement of clean coal and carbon management activities in Wyoming.

Jurisdiction

Wyoming currently has primacy over Class I-V wells in the Underground Injection Control program.

Agency Oversight, permitting and regulations

House Bill 90 requires the Wyoming Department of Environmental Quality to expand the Underground Injection Control program to include carbon sequestration and to develop rules to regulate sequestration activities. The Wyoming Board of Oil and Gas is granted jurisdiction over the subsequent extraction of sequestered carbon for commercial or industrial purposes.

Liability

The Wyoming legislation does not spell out who or what entity is liable if carbon sequestered underground migrates beyond its permitted perimeter. The legislation only notes that regulations cannot be construed to create any liability by the state for failure to comply.

Ownership

House Bills 89 addresses the ownership of the pore space. The bill establishes that pore space is owned by the surface owner. It allows that pore space is conveyed with the surface, unless the space has been previously conveyed or is explicitly excluded. Carbon sequestration would not affect the common law related to mineral estate dominance.

Eminent Domain

The Wyoming legislation did not alter the state's existing eminent domain laws to include carbon sequestration pore spaces or pipelines.

Funding

House Bill 90 also creates a working group, which includes the Wyoming Board of Oil and Gas supervisor, the state geologist, and the DEQ director, to design bonding procedures for sequestration. The working group must report back to an interim committee concerning bonding or other financial assurances by September 2009. The working group was given \$250,000 from the general fund for expenses related to its task.

New Mexico

New Mexico is currently studying the issue of geological sequestration. Executive Order 2006-69 required the New Mexico Energy, Minerals, Natural Resources Department Oil Conservation Division to identify statutory and regulatory requirements needed to geologically sequester carbon. The report was completed in December 2007. The New Mexico Legislature is not expected to contemplate legislation on the subject until its 2009 session.

Jurisdiction

New Mexico currently has primacy over Class I-V wells in the Underground Injection Control program.

Agency Oversight, permitting and regulations

The recently completed study recommends the Oil and Gas Conservation District oversee a carbon sequestration program.

Liability

This issue is raised in the report, and the OCD requests direction from the New Mexico Legislature on the subject.

Ownership

The report recommends that surface owners maintain ownership of pore space.

Eminent Domain

This issue is raised in the report, and the OCD requests direction from the New Mexico Legislature on the subject.

Funding

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Washington

The Washington Legislature approved legislation that requires utilities to develop greenhouse gas mitigation plans. Fossil-fueled electric units must calculate maximum potential for carbon emissions, and then provide mitigation for those emissions. A utility can pay per metric ton to mitigate, purchase carbon credits, or invest in mitigation projects. New fossil fuel plants also must meet emissions performance standards. Included in the legislation was direction to the Department of Ecology to draft rules guiding geological carbon sequestration. The Department was given until June 2008 to finalize the rules.

Jurisdiction

Washington currently has primacy over Classes I-V wells in the Underground Injection Control program.

Agency Oversight, permitting and regulations

The Department of Ecology recently released rules to guide the sequestration and storage of carbon underground. Permanent sequestration projects approved by the Department of Ecology must be in accordance with standards that insure 99% containment for 1,000 years.

Liability

Legislation has not addressed this issue. The department is operating under the assumption that the owner or operator of an injection project and site maintains liability, and any change in the liability scheme would need to be granted by the Legislature.

Ownership

Current legislation does not address the issue of ownership. The Department of Ecology is operating under existing mineral ownership laws, where the surface owner is expected to be the pore space owner in a sequestration project.

Eminent Domain

Existing laws are narrowly focused, with a high bar for eminent domain takings.

Funding

Based on the rules, a sequestration plan must include financial requirements, including a closure and post-closure letter of credit to cover all expenses. The amount of those requirements has not yet been set.

Oklahoma

The Oklahoma Legislature is considering Senate Bill No. 1765. The legislation is now in a House Committee. It is modeled largely after the Interstate Oil and Gas Compact Commission model regulations that were discussed and reviewed by the ETIC in January. The Oklahoma Legislature adjourns May 30.

Jurisdiction

Oklahoma currently has primacy over Class I-V wells in the Underground Injection Control program.

Agency Oversight, permitting and regulations

The Department of Environmental Quality and Corporation Commission, which is similar to the Montana Public Service Commission, are instructed to develop a memorandum of understanding outlining shared regulatory oversight. The agency is charged with developing a permitting system, rules, and sufficient financial sureties necessary in implementing the program.

Liability

After a "Certificate of Completion of Injection Operations" is issued by the regulating agency, 10 years after cessation of the operation or another time frame determined by rule, the operator is released from all liability. Future responsibility is to be covered by the Carbon Dioxide Storage Facility Trust Fund.

Ownership

The legislation does not directly address the issue of ownership. However, it is based on the Interstate Oil and Gas Compact Commission model regulations, which indicates the surface owner also owns the pore space.

Eminent Domain

The proposed legislation allows for the use of eminent domain in acquiring pore space for geological carbon storage.

Funding

The regulating agencies are charged with overseeing a Carbon Dioxide Storage Facility Trust Fund in the Oklahoma Treasury. The agencies will be authorized, by subsequent legislation, to establish a fee that is placed on each ton of carbon dioxide that is injected to fund the trust. A per ton fee, collected as a percentage of the fee established in the trust -- to be determined by the regulating agencies -- also is levied on the storage operator. The second fee is to fund administration and enforcement of the program.