



December 21, 2022

Mr. John Bjornson  
via email only – [jbjornson@nd.gov](mailto:jbjornson@nd.gov)  
Director, North Dakota Legislative Council  
State Capitol  
600 East Boulevard, 2nd Floor  
Bismarck, ND 58505-0360

**RE: Carbon Dioxide Storage Facility Trust Fund – 2022 Report**

Dear Mr. Bjornson:

North Dakota Century Code (NDCC) Chapter 38-22 Carbon Dioxide Underground Storage was created and enacted with the passage of Senate Bill 2095 during the Sixty-first Legislative Assembly of North Dakota. The bill became effective on July 1, 2009.

The creation of this Statute, followed by the promulgation of administrative rules, positioned North Dakota to become the first State in the Nation to have a complete and comprehensive legal and regulatory framework in place for the geologic storage of carbon dioxide.

On December 10, 2010, the United States Environmental Protection Agency (USEPA) finalized federal requirements for geologic sequestration of carbon dioxide under the authority of the federal Safe Drinking Water Act's (SDWA) Underground Injection Control (UIC) Program, creating a new class of injection well, Class VI. Under the federal UIC program, each State must apply for primary regulatory authority (primacy) by demonstrating, through primacy application to the USEPA, that its Class VI UIC program is at least as stringent as the federal standards.

On June 21, 2013, the North Dakota Class VI primacy application was submitted to the USEPA, was approved on April 10, 2018, and became effective on April 24, 2018. The USEPA determined that the North Dakota Industrial Commission (Commission) is capable of enforcing its Class VI UIC program in a manner consistent with the SDWA and all applicable regulations to protect underground sources of drinking water. North Dakota is the first State in the Nation to receive Class VI primacy enforcement responsibility.

One key element of NDCC Chapter 38-22 included the creation of the Carbon Dioxide Storage Facility Trust Fund, which mandates the Commission to charge a fee on each ton of carbon dioxide injected. The per ton fee amount is set by rule and based on the Commission's anticipated expenses associated with the long-term monitoring and management of a closed storage facility. The statute also addressed site stewardship and long-term liability. Following the closure phase of a project, and no sooner than 10 years after cessation of injection operations, the operator may apply for a release of liability and transfer of title of the storage facility and the stored carbon dioxide to the State. During this post-closure period, the financial resources necessary for the State or a State-contracted entity to engage in future monitoring, verification, and remediation activities would be provided by the Carbon Dioxide Storage Facility Trust Fund. The State is responsible for monitoring and managing the storage facility under the oversight of the Commission "until such time as the federal government assumes responsibility for the long-term monitoring and management of storage facilities."

NDCC Section 38-22-15(3) states the Commission shall file with the Director of the Legislative Council a report discussing whether the amount in the Carbon Dioxide Storage Facility Trust Fund and fees being paid into it are sufficient to satisfy the fund's objectives. The first report was due in December 2014, and subsequent reports are due every four years thereafter.

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To date, the Commission has received five applications for projects to inject carbon dioxide for storage purposes. Three of these projects have signed Commission orders approving carbon dioxide storage facilities, with one actively sequestering carbon dioxide since June of 2022. Injection on the remaining four projects is anticipated to begin before the next report deadline (December 2026). The Commission currently expects at least four additional applications to be submitted in the near term, with up to twelve by the next report deadline (December 2026). Each of which would also have the potential to begin injecting by the next report deadline.

North Dakota Administrative Code (NDAC) Section 43-05-01-17 (1)(a)(2) established a fee of seven cents on each ton of carbon dioxide injected for storage, to be deposited in the Carbon Dioxide Storage Facility Trust Fund. The signed Commission orders require that the Operator pay this trust fund fee annually, no more than thirty days after the receipt of 26 U.S. Code § 45Q tax credits. The fees for the carbon dioxide injected in 2022 are anticipated to be deposited into the trust fund in 2023. The five applications which have been received to date, including the active project, are projected for a maximum annual total of 7.38 million metric tons being sequestered in North Dakota, injection at this maximum volume would yield annual payments of \$516,600. An additional 21 million metric tons is being proposed annually by applications which have not been received, with over fifty percent of that volume coming from out of state industries, to be charged at a higher fee amount.

In addition, NDCC Section 38-22-14 mandates the Commission to charge a fee on each ton of carbon dioxide injected, to be paid into the Carbon Dioxide Storage Facility Administrative Fund. The per ton fee amount is set by rule and based on the Commission's anticipated expenses that it will incur in regulating storage facilities during their construction, operational, and preclosure phases. The statute allows for these funds to be used for defraying the Commission's expenses in processing permit applications; regulating storage facilities during their construction, operational, and preclosure phases; and making storage amount determinations under NDCC Section 38-22-23.

NDAC Section 43-05-01-17 (1)(a)(1) established a fee of one cent on each ton of carbon dioxide injected for storage, to be deposited in the Carbon Dioxide Storage Facility Administrative Fund. The signed Commission orders require that the Operator pay this administrative fund fee annually, no more than thirty days after the receipt of 26 U.S. Code § 45Q tax credits. The fees for the carbon dioxide injected in 2022 are anticipated to be deposited into the administrative fund in 2023. The five applications which have been received to date, including the active project, are projected for a maximum annual total of 7.38 million metric tons being sequestered in North Dakota, injection at this maximum volume would yield annual payments of \$73,800. Pursuant to NDCC Section 38-22-05(1)(b,c) the administrative fund has received payment in the amount of \$30,179 for processing applications and holding hearings on the three carbon dioxide storage facility applications that have thus far been issued Commission orders. To date, the Commission's expenses have far exceeded processing and storage fee monies entering the administrative fund and that deficiency is expected to continue through the 2023-2025 biennium. It is anticipated that a portion of the additional 21 million metric tons that is being proposed annually will begin sequestration during the second half of the 2023-2025 biennium, which would allow the administrative fund to become self-supporting going into the 2025-2027 biennium.

Thank you for your attention to this matter. If you have any questions or comments, do not hesitate to contact this office.

Sincerely,

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