



Oil and Gas Division

Lynn D. Helms - Director Bruce E. Hicks - Assistant Director

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

www.dmr.nd.gov/oilgas/

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HAND DELIVERED

Mr. Jim W. Smith
Director
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

RE: Carbon Dioxide Trust Fund - 2014 Report

Dear Mr. Smith:

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 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 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 and is currently pending approval. North Dakota was the first State to apply to the USEPA for Class VI primacy enforcement responsibility.

One key element of NDCC Chapter 38-22 included the creation of the Carbon Dioxide Trust Fund, which mandates the Industrial 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 Industrial Commission's anticipated expenses associated with the long-term monitoring and management of a closed storage facility. The geologic storage bill 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 Trust Fund. The State is responsible for monitoring and managing the storage facility under the oversight of the Industrial 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 Industrial 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 is due in December of 2014 and subsequent reports are due every four years thereafter.

The Geologic Storage of Carbon Dioxide program remains in its infancy, primarily due to the pending Class VI primacy application. To date no projects are permitted to inject Carbon Dioxide for storage purposes, no applications have been received, and no injection has occurred under the statutory authority of NDCC Chapter 38-22. Therefore, no fees have been deposited into the trust fund. Currently both federal and state laws and regulations apply to any potential carbon dioxide storage project in North Dakota. Until primacy is granted, the regulatory environment in North Dakota is extremely unfavorable for any project development. After North Dakota obtains primacy as the lead regulatory authority for geologic storage of carbon dioxide, then the potential for storage projects will become plausible.

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

Sincerely,



Kevin C. Connors
Carbon Capture and Storage Supervisor
North Dakota Industrial Commission
Department of Mineral Resources
Oil and Gas Division