IOGCC Task Force Report

Interstate Oil and Gas Compact Commission

Plains CO₂ Reduction Partnership

Task Force on Carbon Geologic Storage

Phase III Project

Guidance for States and Provinces On Operational and Post-Operational Liability

NDIC – DMR Oil and Gas Division
IOGCC Task Force Report
Why Class VI Primacy?

1. It is the public interest to promote geologic storage of CO$_2$.

2. Doing so will help ensure the viability of the State's coal and power industries, to the economic benefit of North Dakota and its citizens.

3. North Dakota considers Carbon dioxide a valuable commodity
   - pore space should be regulated and managed as a resource
Waste Disposal Framework

- Sidesteps the Public’s Role in both the creation of CO₂ and the mitigation of its release into the atmosphere
- Places the burden solely on Industry to rid itself of “waste” from which the public must be “protected”
- Use of the pore space for waste disposal under the federal UIC program does not constitute an economic use as the injectate has no value
A resource management framework allows for the regulatory complexities that accompany CO₂ Storage to be integrated into a unified regulatory framework and proposes a “public and private sector partnership”

1. Environmental protection
2. Ownership and Management of pore space
3. Maximize Storage Capacity
4. Long Term Liability
North Dakota CO$_2$ Storage Workgroup

• Formed in 2008 at the request of the Industrial Commission
• Public and Private partnership consisting representatives from:
  – Oil and Gas Division of the North Dakota Industrial Commission
  – Attorney General’s Office
  – Department of Health
  – Lignite Energy Council
  – North Dakota Petroleum Council
  – Energy and Environmental Research Center (EERC)
• Tasked with the development of regulatory framework for the long term storage of CO$_2$
• Address Ownership of Pore Space in Geologic Strata
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Phase I Exploratory
- Assignment of Storage Rights
- Exploratory Permits
- State Regulations

Phase II Permitting
- Issuance of Facility Permit, Permit to Drill Wells, Permit to Inject
- State/UIC Regulations

Phase III Storage
- Well Plugging and Facility Closure
- Injection Well Operations
- UIC Class VI Regulations

Phase IV Closure

Phase V Post-Closure (Long Term)
- Long Term Monitoring and "Caretaker" Function
- State Regulations

NDIC – DMR Oil and Gas Division
2009 Legislation

- Industrial Commission pre-filed two bills
  - Senate Bill No. 2095 Effective July 2009
    - Covered Geologic Storage of CO$_2$
    - Granted Regulatory Authority to the Industrial Commission.
    - Carbon Dioxide Trust Fund
    - Carbon Dioxide Storage Facility Administrative Fund
  - Senate Bill No. 2139 Effective April 2009
    - Title of Pore Space to the owner of the overlying Surface Estate
    - Severing Pore Space Prohibited, leasing pore space is not a prohibited severance

Pore Space
Long-term Liability
Administrative Rule Making

• 2010 New Administrative Chapter 43-05-01 “Geologic Storage of Carbon Dioxide”
  • Effective April 2010

❖ ND regulatory framework in place

• EPA Class VI Rule December 10, 2010 – 1422 UIC Program
• 2011 Legislation- House Bill No. 1014 Appropriations Committee
  • Carbon Dioxide Storage Facility Administrative Fund
    – NDIC was appropriated $532,000 from the General Fund
    – One full-time position for up to three years until fee income is sufficient to provide funding for the administration of the provisions of NDCC Chapter 38-22
    – Goal: Obtain Class VI Primacy

• September 7, 2011 EPA acting regulatory authority
• 2013 Amendments to NDAC Chapter 43-05-01 to meet federal stringency (from 18 pages to 69 pages)
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Duplication of Regulations
Unfavorable Regulatory Environment

- EPA federal authority
  - SDWA – UIC Program
  - Class VI Rule
- North Dakota laws and Regulations
  - Statute – CO₂ Underground Storage
  - Subsurface Pore Space Policy
  - Administrative Rules
- 2 Regulatory jurisdictions
- Project Development Deterrent
  - Solution – North Dakota Class VI Primacy
    - Primacy Application Submitted June 21, 2013
Class VI Primacy

- 1422 vs. 1425
  - 1425 program (i.e. Class II UIC program)
    - As effective as the federal standard
  - 1422 program typically administered by State Health Departments or DEQ
    - More than likely the Lead Agency for the State UIC Program
    - As stringent as the federal standard
- Oil and Gas Regulatory agency taking the leap from 1425 to 1422
Class VI Primacy

• Three Ways to meet federal stringency
  1. By Reference
  2. Verbatim
  3. Write entire rule to be as stringent as the federal standard
     • Resource Management philosophy in place
     • North Dakota Administrative Agencies Practices Act
       – An agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs when developing or modifying programs.
  • Crosswalk

Argue Interpretation later
Argue Interpretation Now
## GENERAL REQUIREMENTS

### PART 124—PROCEDURES FOR DECISION MAKING

#### SUBPART A—GENERAL PROGRAM REQUIREMENTS

<table>
<thead>
<tr>
<th>Federal Requirement</th>
<th>Federal Citation</th>
<th>State Citation and Regulatory Text (document title, page number, section/paragraph)</th>
<th>Different From Federal Requirement?</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 CFR 124.3 Application for a permit</td>
<td>40 CFR 124.3(a)(1)</td>
<td>43-05-01-07.1 Permitting Subsection 1a</td>
<td>A. Any person who is required to have a permit shall complete, sign, and submit a permit application to the commission.</td>
</tr>
<tr>
<td>The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See §§ 270.10, 270.13 (RCRA), 144.31 (UIC), 40 CFR 52.21 (PSD), and 122.21 (NPDES).</td>
<td>40 CFR 124.3(a)(2)</td>
<td>43-05-01-07.1 Permitting Subsection 1c</td>
<td>C. The commission shall not begin processing a permit until the applicant has fully complied with the application requirements for that permit.</td>
</tr>
<tr>
<td>Permit applications (except for PSD permits) must comply with the signature and certification requirements of §§ 122.22 (NPDES), 144.32 (UIC), 233.6 (404), and 270.11 (RCRA).</td>
<td>40 CFR 124.3(a)(3)</td>
<td>43-05-01-07.1 Permitting Subsection 2</td>
<td>2. All permit applications, reports, or information submitted to the commission must comply with the following signature and certification requirements.</td>
</tr>
</tbody>
</table>

### § 124.5 Modification, revocation and reissuance, or termination of permits.

(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).) Permits (other than PSD permits) may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director’s initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in § 122.62 or § 122.64 (NPDES), 144.39 or 144.40 (UIC), 233.14 or 233.15 (404), and 270.41 or 270.43 (RCRA). All requests shall be in writing and shall contain facts or reasons supporting the request.

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<td>40 CFR 124.5(a)</td>
<td>43-05-01-12 MODIFICATION, OR REVOCATION AND REISSUANCE OR TERMINATION OF PERMITS. Subsection 1</td>
<td>1. Permits are subject to review by the commission. Any affected person (i.e. the storage operator, local governments having jurisdiction over land within the area of review, and any person who has suffered or will suffer actual injury or economic damage other than as a member of the general public) may request that the commission review permits issued under this chapter for one of the reasons set forth below. All requests must be in writing and must contain facts or reasons supporting the request. If the commission determines that the request may have merit or at the commission’s initiative for one or more of the reasons set forth below, the commission may review the permit. After review, the commission may modify or revoke a permit. Permits may be modified, or revoked and reissued when the commission determines one of the following events has occurred:</td>
<td></td>
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</table>

### NDIC – DMR Oil and Gas Division

**State of North Dakota**

**Great Seal**

**OIL AND GAS DIVISION**

**North Dakota**
Crosswalk Stats

• Class VI Primacy Crosswalk
  • 150 Pages Complete
  • 465 Federal Citations (boxes)
  • 12 Definitions

• §1422 Program Crosswalk
  • 67 Complete Pages
  • 346 Federal Citations
  • 59 Additional Definitions

• Totals
  • 217 Pages Complete (60 pages blank)
  • 811 Federal Citations
  • 71 Definitions
Class VI Primacy Timeline

- June 21, 2013 Primacy Application Submitted
- EPA Region 8 Published Notice for Comment on the North Dakota’s Class VI Primacy Application – 30 Day Comment Period (Aug 9 – Sept 9)
  - No Comments Received in Opposition
- Federal Government Shutdown (Oct 1 – Oct 16)
- October 29, 2013 Finalized MOA with EPA Region 8
- January 8, 2014 Federal Register Approval to amend 40 CFR Subpart JJ 147.1751 to add Class VI program
- Need concurrence to approve North Dakota’s Class VI application from:
  1. Office of General Council
  2. Office of Water
  3. Office of Policy
  4. Region 8
- Final Approval by EPA Administrator
- EPA Headquarters to Publish in the Federal Register – A Proposed Approval of the North Dakota Class VI Primacy Application – 30 Day Public Comment Period
- If No Comments are received, then after 60 days, the North Dakota Class VI primacy is approved and codified in 40 CFR Part 147.1751
Thank You