Carbon Regulation

A COMPARATIVE ANALYSIS: FEDERAL v. STATE APPROACHES
Overview:

- **FEDERAL (USA)**
  - Legislative Impasse
  - Far Reaching Environmental Regulation
  - Investment in CCUS Research

- **STATE (Wyoming)**
  - Pioneering CCUS Legislation and Regulation
  - Guarded Approach to Carbon Emissions Regulation
  - Investment in CCUS Research

Emphasis on Administrative Policy Development and Direction: Environmental Regulation to Achieve Climate Change Objectives

Emphasis on Legislative Policy Development and Direction: Property Rights, Economic Opportunity, Risk Management
Congress has not passed a comprehensive greenhouse gas (GHG) reduction bill.

- The American Power Act (S. 1733) and other legislation introduced in the 111th Congress would have put limits on GHG emissions consistent with the Obama Administration’s climate change goals.
Pending Legislation: 112th U.S. Congress

- Require electric utilities to obtain a percentage of electric energy from clean energy. (S. 2146)
- Impose a $10/ton excise tax on the carbon content of any taxable fuel. (H.R. 3242)
- Expand the tax credit for new qualified plug-in electric drive vehicles. (S. 1602)
- Require the Secretary of Commerce to establish a Clean Energy Technology Manufacturing and Export Assistance Program. (S. 1586)
- Establish in the Department of Energy the Clean Energy Deployment Administration. (S. 1510)
- Repeal the tax credit for carbon dioxide sequestration. (S. 2064) (H.R. 3308)
- Eliminate appropriations for grants to communities to develop plans and demonstrate and implement projects which reduce greenhouse gas emissions and prohibit EPA from expending funds for purpose of enforcing or promulgating regulation of greenhouse gases. (H.R. 1)
- Amend the Clean Air Act to exclude CO2 from the definition of “air pollutant.” (H.R. 97)

Increase carbon control, incentives and federal administration.

Prohibit carbon regulation and remove incentives.
Federal Environmental Regulation

- **2007**
  - U.S. Supreme Court concluded EPA is authorized to regulate carbon dioxide emissions under the Clean Air Act if endangerment determination made. 

- **2009**
  - EPA determined that carbon dioxide emissions “may reasonably be anticipated to endanger public health or welfare.” 74 Fed. Reg. 66496 (Dec. 15, 2009).
Federal Environmental Regulation

2010

- EPA adopted a threshold of 25,000 tons per year for stationary sources subject to regulation. 75 Fed. Reg. 31514 (June 3, 2010) (the “Tailoring Rule”)
- EPA recognized CCUS as a pollution control technology which emitters should evaluate and may select for emissions reduction. [http://www.epa.gov/nsr/ghgpermitting.html](http://www.epa.gov/nsr/ghgpermitting.html)
2010 cont.

2010 cont.

- EPA adopted regulations governing carbon dioxide storage in Class VI UIC Program wells.
  http://water.epa.gov/type/groundwater/uic/wells_sequestration.cfm

- EPA adopted regulations requiring mandatory reporting of carbon dioxide emissions. 40 C.F.R. Part 98
  - Large emission sources
  - Carbon dioxide injection for geologic sequestration (subpart RR)
  - All other facilities that inject carbon dioxide, including EOR (subpart UU)
  - Carbon dioxide supplied to the economy (subpart PP)
  www.epa.gov/climatechange/emissions/ghgrulemaking.html
Federal Environmental Regulation

- **2011**
  - EPA proposed a rule to conditionally exclude carbon dioxide from the definition of hazardous waste under RCRA. 76 Fed. Reg. 48073 (Aug. 8, 2011)

- **2012**

  - EPA’s “Endangerment Finding” was upheld and challenges to its “Timing Rule” and “Tailoring Rule” were dismissed by the U.S. Court of Appeals, D.C. Circuit, on June 26, 2012
  
  http://1.usa.gov/OmJOVb
American Recovery and Reinvestment Act of 2009

- $90 billion in government investments and tax incentives as a foundation for a clean energy economy
  - $32.5 billion to Department of Energy
  - $70 million to NETL’s Carbon Storage Program
    - $50 million for geologic storage site characterization
      - $9.6 million for UW Carbon Management Institute WY-CUSP geologic site characterization project – Phase I
    - $20 million for development of qualified carbon storage workforce

- [www.doe.gov/recovery-act](http://www.doe.gov/recovery-act)
Wyoming: A Pioneer in State Geologic Storage Legislation

- **2001**
  - Established a carbon sequestration advisory committee to assess sequestration potential, identify research needs and recommend policies or programs. House Enrolled Act No. 107 (Original House Bill No. 47)

- **2008**
  - Determined that pore space underlying surfaces is owned by the surface estate owner, but that the mineral estate is dominant and its development will take priority over geologic storage activity. W.S. 34-1-152
Wyoming: A Pioneer in State Geologic Storage Legislation

2008 cont.

- Preserved the right of the surface or mineral owner to drill or bore through a geologic sequestration site if done in accordance with WOGCC rules for protecting the storage site from carbon dioxide escape. W.S. 30-5-501
- Directed the WDEQ to develop standards for regulating long-term geologic storage of carbon dioxide in Wyoming under the existing UIC program. W.S. 35-11-313
  - Preserved WOGCC authority over EOR operations
  - Formed a working group to develop bonding and financial assurance protocols
Wyoming: A Pioneer in State Geologic Storage Legislation

- **2009**
  - Affirmed dominance of severed mineral estate over pore space. W.S. 34-1-152(e)
  - Established that the carbon dioxide injector is presumed to own and bear all rights, benefits, burdens and liabilities for the injected carbon dioxide. W.S. 34-1-153
  - Established a procedure for unitizing geologic sequestration sites by order of the WOGCC. Pore space owned by multiple parties can be aggregated for the efficient development of a geologic sequestration site so long as 80% of the parties approve the unitization plan. W.S. 35-11-314 through 317; W.S. 30-5-104
2010

- Established the Wyoming geologic sequestration special revenue account to be funded with fees paid by carbon dioxide injection well permit applicants to pay for WDEQ to measure, monitor and verify geologic sequestration sites following site closure. W.S. 35-11-318

- Imposed specific carbon dioxide injection well permit application requirements related to bonding and financial assurance. W.S. 35-11-313
Wyoming: A Pioneer in State Geologic Storage Regulation

- 2010 cont.
  - WDEQ Published Class VI UIC Injection Well Permit Rules
    - WQD Rules and Regulations, Chapter 24
      - Filed November 5, 2010, prior to EPA Class VI Rules
      - Applying for primacy so that state can regulate rather than EPA
WDEQ Class VI UIC Rules cont.

- Key Revisions Necessary to Obtain Primacy
- Financial Assurance Requirements
  - Clarify requirements to determine whether an EOR project could affect a USDW; see 40 CFR 144.19
  - Clarify requirements for injection depth waiver application
    - http://deq.state.wy.us/wqd
Wyoming: A Guarded Approach to Carbon Dioxide Emissions Regulation

- **1999**
  - Legislature prohibited WDEQ from proposing or promulgating any new rule or regulation intended to reduce greenhouse gas emissions from the residential, commercial, industrial, electric utility, transportation, agricultural, energy or mining sectors. W.S. 35-11-213

- **2011**
  - Legislature adopts a resolution to request that Congress limit air quality regulation by EPA. Senate Joint Resolution No. 6
2012

- Provided WDEQ limited authority to promulgate greenhouse gas regulations to extent necessary to submit a SIP and obtain primacy over the PSD permitting program. 2012 Wyoming Session Laws, Chapter 11
  - State thresholds cannot be more stringent than federal requirements
  - WDEQ may only submit SIP after Legislature authorizes or Federal Court issues final ruling
  - Authority is automatically repealed if:
    - Congress prohibits EPA from regulating greenhouse gases
    - A Federal Court prohibits EPA from regulating greenhouse gases
State Investment in CCUS Research

- Abandoned Mine Land (AML) Funding
  - $7 million US for UW Carbon Management Institute WY-CUSP geologic site characterization project – Phase I
  - $40 million in future funding was redirected by the 2012 Legislature to higher priority projects.
  - The 2012 Legislature allocated $1 million to the UW School of Energy Resources to continue research related to carbon storage and enhanced oil recovery. These funds must be matched dollar for dollar by private funds or public funds other than State of Wyoming funds.
Thank You

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