Carbon Regulation
FEDERAL v. STATE
2013 UPDATES

2013 Wyoming CO2 Conference:
U.W. Enhanced Oil Recovery Institute
Overview:

- **FEDERAL (USA)**
  - Legislative Impasse
  - Far Reaching Environmental Regulation

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

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
Federal Legislative Impasse
Snapshot: 113th U.S. Congress

Increase carbon control, incentives and federal administration


S. 332: Climate Protection Act of 2013 (Sen. Sanders, (VT))

S. 570: Grant program to carry out carbon reduction measures, etc. (Sen. Bennett (CO))

Waxman/Whitehouse Climate Change Task Force

Prohibit carbon regulation and remove incentives

H.R. 621: Ensuring Affordable Energy Act (Rep. Poe (TX))


S. Con. Res. 4: Carbon tax is not in the U.S. economic interest (Sen. Vitter (LA))
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).
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
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
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
Federal Environmental Regulation

- 2013
  - EPA *Completed* Guidance Documents
    - UIC Program Class VI Well Site Characterization Guidance – May 2013
    - UIC Program Class VI Well Area of Review and Corrective Action Guidance – May 2013
    - UIC Program Class VI Well Testing and Monitoring Guidance – March 2013
    - UIC Program Class VI Well Project Plan Development Guidance – August 2012
2013 cont.

- EPA *Draft* Guidance Documents *Closed for Comment*
  - Draft UIC Program Class VI Well Plugging, Post-Injection Site Care, and Site Closure Guidance – June 2013
  - Draft UIC Program Class VI Well Recordkeeping, Reporting and Data Management Guidance for Owners and Operators – March 2013
  - Draft UIC Program Class VI Well Recordkeeping, Reporting and Data Management Guidance for Permitting Authorities – March 2013
2013 cont.

  - Issuance deadline for draft rule is September 20, 2013
  - Revised standards for existing power plants due June 2014
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- 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
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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
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- 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
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- 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
Wyoming: A Guarded Approach to Carbon Dioxide Emissions Regulation

- 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
Wyoming: A Guarded Approach to Carbon Dioxide Emissions Regulation

- 2013
  - 2013 Session Laws Chapter 39; W.S. 35-11-213
    - Authorized DEQ to submit an amended greenhouse gas SIP to EPA
    - Authorized DEQ to promulgate new source performance standards for greenhouse gases
What to Watch: Federal

- The President’s Climate Action Plan – June 2013
  - No mention of EOR
  - No mention of CCUS
  - Commitment to methane emissions reduction
    - Reference to Bakken study group on venting and flaring
  - Loan guarantee program for advanced fossil energy R&D
  - Energy Cost Increase/Demand-Side impacts?
    - Emission reduction regulations
    - Renewable development
    - Efficiency and conservation
What to Watch: Federal

- Final Rule – RCRA Hazardous Waste Management System: Conditional Exclusion for CO2 Streams in Geologic Sequestration Activities August 2013

- Draft UIC Program Guidance on Transitioning Class II Wells to Class VI Wells
State Primacy UIC Class VI Wells
  ◦ Anticipate submitting primacy application package to EPA by June 30, 2014
    • Completed crosswalk comparison of WQD Rules Ch. 24 to federal rule and identified required changes
    • Working on draft Class VI Financial Assurance (FA) Rule
      • IOGCC Workgroup FA recommendation for Class II to Class VI transition expected September 2013
    • Present FA Rule and crosswalk changes to Water Advisory Board and EQC 4Q 2013 or 1Q 2014
Transition UIC Class II Wells to Class VI Wells

- In absence of primacy EPA would make determinations:
  - whether transition of Class II to Class VI is required
  - whether owner/operator is subject to enforcement and compliance for failure to convert/report

- Possible need to amend W.S. 35-11-313(b) and (c) to clarify oversight jurisdiction (WOGCC v. DEQ WQD) during transition

- Efforts to characterize CO2 injection/disposal as storage or sequestration (BLM, surface owners)
  - Becomes even more complicated during transition from EOR to GS
What to Watch: Wyoming

  - Theme 1: Economic Competitiveness, Expansion and Diversification
    - Objective 2: Infrastructure – CO2 Pipeline Network Corridors
  - Theme 2: Efficient, Effective Regulation
    - Objective 4: Primacy – Review State Oil and Gas Environmental Regulations
What to Watch:

- Wyoming Energy and Natural Resource Education Initiative - 2013 Session Laws, Chapter 146 (RFP Closed 7/1/13)
  - Joint effort: industry/education agencies/Governor’s Policy Office

- Horizontal drilling and spacing adjacent to pressure maintenance units
  - Future WOGCC Rulemaking
Thank You

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