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California Air Resources Board (CARB)
Low Carbon Fuel Standard (LCFS) Program

Comments: *Accounting and Permanence Protocol for Carbon Capture and Geologic Sequestration*

The North Dakota Industrial Commission's Oil and Gas Division (NDIC) appreciates the opportunity to comment on the draft requirements titled, Accounting and Permanence Protocol for Carbon Capture and Geologic Sequestration (CCS Protocol).

In 2009 the North Dakota Legislature granted the NDIC regulatory authority over Geologic Storage of Carbon Dioxide in North Dakota. On April 1, 2010 the NDIC promulgated the first ever regulations for geologic storage of carbon dioxide and North Dakota became the first state in the Nation with a complete and comprehensive regulatory framework in place for Carbon Dioxide Storage. In December of 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. These requirements, also known as the Class VI Rule, are designed to protect underground sources of drinking water based on the UIC program regulatory framework with modifications to address the unique nature of carbon dioxide injection for the primary purpose of long term storage. In September of 2011 the USEPA became the acting regulatory authority in all states, including North Dakota. Under the federal UIC program each state must apply for primary regulatory authority (primacy) by demonstrating, through a primacy application, to the USEPA that its Class VI UIC program is at least as stringent as the federal standards. On June 21, 2013 North Dakota became the first state to apply to the USEPA for Class VI primacy. North Dakota's application is currently pending, with approval expected to be granted and published in the federal register January 2018.

The purpose for the proposed draft CCS Protocol states, "The CCS Protocol is guided by requirements in AB 32 that GHG emissions reductions achieved from voluntary action, such as CCS projects, must be real, permanent, additional, quantifiable, verifiable, and enforceable." California Assembly Bill No. 32 states, "...to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the state board are

complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner". The proposed draft CCS Protocol is duplicative and inconsistent with the federal Class VI UIC Program requirements and NDIC's Geologic Storage of Carbon Dioxide Program laws and requirements. The CCS Protocol requires operators to apply for and receive site approval and injection approval, which goes beyond CARB's authority and duplicates the Class VI UIC program requirements. Operators would have to receive approvals from both CARB and the Class VI primacy authority, with differing requirements for the permit application. Confusion is created by having the Class VI requirements duplicated with minor and sometimes major differences and sometimes the Class VI requirements are verbatim. The CCS Protocol not only duplicates the state and federal requirements, but the draft protocol goes beyond the Class VI requirements for site selection and characterization, area of review delineation, injection well operations, and post-injection site care and site closure (e.g. 100 years after injection). The departure from already established and vetted state and federal Class VI UIC programs creates confusion and inconsistency. The draft CCS Protocol does not compliment the already existing state and federal Class VI UIC programs, but instead the CCS Protocol adds another layer of requirements that are more stringent and unnecessary.

The CCS Protocol states, "The GCS Project Operator must show proof that there is binding agreement among relevant parties that drilling or extraction that penetrate the confining layer above the injection zone are prohibited within the AOR to ensure public safety and the permanence of stored CO₂." This proposed draft requirement is in conflict with North Dakota law which states, "Nothing in this chapter nor the issuing of a permit...Prevents a mineral owner or mineral lessee from drilling through or near a storage reservoir to explore for and develop minerals, provided the drilling, production, and related activities comply with commission requirements that preserve the storage facility's integrity and protect this chapter's objectives." (NDCC 38-22-13) The proposed draft requirement prohibiting drilling or extraction through a carbon dioxide storage reservoir in another state goes beyond the authority of the State of California and directly conflicts with North Dakota law. Currently the way the draft CCS Protocol is written it appears as if CARB is attempting to expand its authority over private property and privately owned minerals in other states.

The NDIC recommends removing all duplication of the Class VI UIC requirements. Alternatively CARB could require operators to submit a copy of all applications, approvals, and reporting required under the Class VI UIC program. The regulated community needs to have the certainty of knowing clearly where one jurisdiction begins and the other ends. Duplication of regulation may have negative implications, unintended consequences, and may be a major project deterrent. By deferring all Class VI UIC regulation to an already established regulatory program CARB would be able to

focus its regulations and resources on the accounting aspects of the LCFS program and allow the USEPA or the primacy delegated state to regulate the safe injection and long term storage of carbon dioxide. This would also allow CARB to implement the LCFS program in an efficient and cost-effective manner, while at the same time promoting consistency with federal and state Class VI UIC programs.

Please feel free to contact me with any questions at (701) 328-8020

Sincerely,



Kevin C. Connors
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