

MEMORANDUM

TO: Stephanie Timmermeyer, Chairperson, CCS Working Group
FROM: David M. Flannery, Chairperson, Legal Subcommittee
DATE: November 18, 2009
RE: Legal Subcommittee November 2009 Status Report

Meetings

The Legal Subcommittee has participated in one conference call so far this month, which was held on November 3, 2009 with special guest speaker Mary Throne, a member of the Wyoming legislature.

A second conference call is scheduled for November 23, 2009 to accommodate the availability of Lynn Helms Director, North Dakota Industrial Commission, Department of Mineral Resources, to brief the subcommittee on North Dakota's program.

Progress

The November 3, 2009 teleconference was quite productive and a number of issues were discussed, however the primary focus of the teleconference was the Wyoming program presentation by Mary Throne, a member of the Wyoming legislature. Ms Throne stated that objective of the program was to provide a workable program that would provide regulatory certainty and to promote the role of Wyoming as a major coal producer. She pointed out that the decision to place the ownership of pore space with the surface owner was influenced by the conclusion that the Wyoming legislature would likely have concluded that surface owners owned the pore space. In addition, she noted that most minerals in Wyoming are owned by the federal government. Ms. Throne pointed out that a recommendation on the handling of liability had only recently been issued and had not yet been considered by the legislature. She advised that the state

has not yet reached the question of the nature of the compensation, if any, which would need to be paid to property owners forced into a project through unitization. She confirmed that unitization was preferred due to the political concern over expanding the use of eminent domain.

Efforts to provide legal research on property issues were deferred pending completion of briefing on the programs being advanced in other jurisdictions. However, the group discussed the pore space alternatives form I created identifying alternatives for the taking of property. We agreed to add to the form for evaluation the options based on the reverse rule of capture that effectively calls for no property rights to be taken. I will work with Laura Swingle to prepare a list of advantages and disadvantages of each alternative for presentation to the committee at a future meeting.

Issues for Other Committees Consideration

I reported on my discussion with Sara Smith, who chairs the Kentucky CCS working group. She has advised that their recommendation will be available in the month of November and that she would be glad to brief our group on those recommendations at our meeting in December if that is the wish of Stephanie Timmermeyer.

The legal subcommittee expressed interest in having the technical subcommittee to consider whether it would be feasible to have a CCS facility be located in the vicinity of either natural gas storage facilities or underground coal mines. The legal subcommittee wants to be sure that there are technologies that would allow these operations to coexist in a way that assure the safety of workers and the efficient development of mineral resources.

A second issue to be confirmed by the technical committee is whether my understanding that the injection pressure likely to be imposed on a CCS project will be the same as applied to

an EOR project, namely 0.80 psi per foot multiplied by the depth of the top of injection zone is correct.

Next Steps

Our next conference call will be held on November 23, 2009 at 3 pm. Our primary item of business will be to receive a report from Lynn Helm on the North Dakota program. I have also made contact with CCSReg folks out of Carnegie Mellon University about their recommendations. Both Sean McCoy (their Executive Director) and Lee Gresham would be very willing to brief the subcommittee on their recommendations. I anticipate a teleconference with them taking place either on December 16, 2009, December 17, 2009, January 6, 2010, or January 8, 2010.