



## Alerts

### Louisiana Passes Significant New Carbon Capture and Sequestration Bill

June 13, 2023

*Hinshaw Alert*

The Louisiana Legislature recently wrapped up its 2023 Session. While there were nine bills this Session that addressed carbon capture and sequestration (CCS), only one of them passed and is currently awaiting the Governor's signature—House Bill 571 sponsored by House Speaker Clay Schexnayder. This bill was the only one of the nine original CCS bills that actually sought to advance CCS projects in Louisiana. The bill made a number of notable amendments to current law, as outlined below.

#### Key Changes:

- Provides for the distribution of revenues collected by the Office of Mineral Resources pursuant to any contractual agreement for the storage of carbon dioxide beneath state-owned land or water bottoms.
- Amends the procedures for the State Mineral and Energy Board to enter into operating agreements to share in the revenues from the storage of oil, natural gas, liquid or liquified hydrocarbons, or carbon dioxide.
- Provides additional notice be provided to local governments in advance of future CCS projects. It also allows for certain revenue sharing between parishes and the State for CCS projects on state-owned land.

#### New Environmental Analysis Requirement:

- HB 571 requires the submission of an environmental analysis as a feature of the application for a Class VI permit. The environmental analysis must address the following questions:
  - Have the potential/real adverse environmental effects of the proposed permit activity been avoided to the maximum extent possible?
  - Does a cost-benefit analysis of the environmental impact costs versus the social and economic benefits of the proposed activities demonstrate that the latter outweighs the former?
  - Are there alternative activities that would offer more protection to the environment than the proposed activity without unduly curtailing non-environmental benefits?
  - Are there alternative sites which would offer more protection to the environment than the proposed site without unduly curtailing non-environmental benefits?

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- Are there mitigating measures which would offer more protection to the environment than the proposed activity without unduly curtailing non-environmental benefits?

## New Reporting and Record-Keeping Requirements:

- New reporting and record-keeping requirements for owners/operators of permitted Class VI wells, including quarterly reports regarding characteristics of the carbon dioxide stream and other related data. Moreover, the storage operator must provide notice within 24 hours to the Commissioner of Conservation of any noncompliance, malfunction, or failure relating to CCS operations.

## Limited Liability for Project Operators:

- New requirements that must be demonstrated to receive a certificate of completion of injection operations, which transfers ownership of the remaining project to the State.
  - Also prescribes for the limited liability of operators and other groups affiliated with the project upon the receipt of the certificate of completion of injection operations.
  - Instead of ten years after the last injection, the State will now assume liability fifty years after the last injection per La. R.S. 30:1109.
  - It also provides additional environmental requirements that the storage operator must satisfy in order to qualify for a certificate of completion of injection operations after fifty years

## Fiscal Updates:

- Provides, among other things, the fees and costs that the Commissioner of Conservation is authorized to levy on each storage facility for the purpose of funding the Carbon Dioxide Geologic Storage Trust Fund and how said funds in the Trust Fund will be collected and expended.
- Increases the amount that a storage operator must contribute to the Carbon Dioxide Geologic Storage Trust Fund from \$5 million per operator to \$5 million per facility with a \$10 million per operator cap.

## Recordation of Notice of Geologic Storage:

- A party may record a notice of geologic storage agreement, signed by the grantor who executed the agreement, in lieu of recording an agreement for the geologic storage of carbon dioxide or any amendment or modification of such agreement.
- Recordation of a notice shall make the geologic storage agreement and any subsequent amendment or modification effective as to third persons to the same extent as recordation of the instrument.
- The notice of geologic storage agreement shall contain the following:
  - A declaration that the property is subject to the geologic storage agreement and the names and addresses of the parties who executed the agreement.
  - A description of the surface and depths covered by the geologic storage agreement.
  - The effective date of the geologic storage agreement, its term, and the provisions of any other extensions and renewals of the term provided for in the agreement.
  - A description of any restrictions on drilling through or otherwise penetrating the carbon dioxide storage reservoir for purposes of exploring, developing, or producing minerals from or below the reservoir.
- A change in a geologic storage agreement with respect to any matter that is required to be included in a notice of geologic storage agreement is not effective as to third persons unless the parties record a signed amendment to the notice that describes the change.
  - If the change is a transfer of a party's rights, the parties may either: (a) record an amendment to the notice signed by the transferor and transferee evidence the transfer; or (b) record the instrument transferring the party's rights.



- The effect of recordation of a notice of geologic storage agreement ceases on occurrence of either of the following:
  - (1) Upon recordation of an instrument signed by the parties to the agreement or their successors declaring that the geologic storage agreement has terminated.
  - (2) On the date that the geologic storage agreement may finally terminate as set forth in the notice of geologic storage agreement.
- The grantee of any recorded notice of geologic storage agreement shall notify the governing authority of the parish in which the instrument is recorded within thirty days after recordation. Such notice may be made by electronic mail to the parish president, police jury president, or mayor-president, depending on the form of parish government.

## Key Takeaways

The passage of this bill shows that Louisiana is serious about its commitment to carbon capture and sequestration development. The fact that eight of the nine bills were defeated in committee or on the House Floor—all of which were aimed at deterring future CCS projects—is significant. It shows that Louisiana is moving forward with CCS because CCS projects will not only help eliminate climate change, but will also be an economic driver for the State, bringing in crucial revenue and jobs to local parishes. Now is the time for companies at the forefront of CCS operations to communicate to the general public the facts and science behind CCS so that everyone can operate from a place of knowledge and understanding, not fear.