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ENERGY UPDATE

Energy Independence and Security Act of 2007 – Carbon Capture and Sequestration

*This bulletin is the third in a series on the provisions of the **Energy Independence and Security Act of 2007 (EISA)**, which was signed into public law by President Bush on December 19, 2007.¹*

Carbon capture and sequestration is a method for mitigating global warming by capturing carbon dioxide (CO₂) from large point sources, such as fossil fuel power plants, and storing the CO₂ in the earth or oceans rather than releasing it into the atmosphere. Although CO₂ has been stored in geologic formations for various purposes, the challenge for carbon capture technology is to deploy it on a large scale, which creates technical and economic challenges.

Congress recognized the importance of further development of carbon capture technology in the EISA. In Title VII of the EISA, Congress expanded the carbon capture research and development program administered by the Department of Energy under the Energy Policy Act of 2005² beyond developing carbon capture technologies to include large-scale carbon sequestration demonstration projects. For the purpose of this program, “large-scale” means the injection of more than 1 million tons of CO₂ from industrial sources annually, or at a scale that demonstrates the ability to inject and sequester several million tons of industrial source CO₂ for a large number of years.³ All injection and sequestration activities under Title VII are also made subject to the requirements of the Safe Drinking Water Act.

The U.S. Department of the Interior (DOI) is directed to develop methodologies for assessing the national potential for geologic storage of CO₂ and for determining the total capacity of ecosystems to sequester carbon and reduce greenhouse gas emissions through management practices. Once these methodologies have been developed, the DOI is required to complete the assessments.

The DOI is also directed to develop a recommended regulatory framework for managing geologic carbon sequestration on public lands. The DOI’s recommendations must include an assessment of options to ensure that the United States receives fair market value for the use of public land, proposed public comment procedures, proposed procedures for protecting natural and cultural resources of the public land overlying the geologic sequestration sites, an assessment of liability issues related to the storage of CO₂, and the identification of legal and regulatory issues for situations where the United States owns title to mineral resources but not the overlying land.



FOR MORE INFORMATION

We will continue to monitor implementation of the EISA Title VII programs, including proposed regulations, and will keep clients informed of new developments. These developments will occur in coordination with DOE and EPA programs that will also impact the future of carbon capture and sequestration.

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¹ Pub. L. No. 110-140 (2007).

² Energy Policy Act of 2005, Section 963, 42 U.S.C. 16293.

³ Section 702(c)(3)(D)