Not Just Hot Air: Manitoba Introduces The Captured Carbon Storage Act

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By the time this article goes to print, Manitoba is expected to have a new legislative regime that will not only settle uncertainty as to who owns and who has the use of subsurface pore rights for carbon capture and storage (CCS) but will also position Manitoba to receive investments in CCS technology. Given that almost all of Manitoba's power is hydroelectric, it will make Manitoba an especially attractive jurisdiction for CCS projects that depend on an inexpensive and reliable source of renewable energy.

CCS is a technology designed to reduce greenhouse gas (GHG) emissions by capturing carbon dioxide (CO2) from industrial sources and storing it underground in geological formations. This process prevents CO2 from entering the atmosphere. CCS is considered a crucial tool in achieving net-zero emissions targets and managing industrial emissions.

Bill 31, *The Captured Carbon Storage Act* (CCSA or Act), will align with federal CO2 emission credits, allowing a cohesive strategy for reducing GHG emissions. The federal government has implemented a carbon pricing system that includes a carbon tax and an output-based pricing system (OBPS) for large industrial emitters. The OBPS sets a cap on emissions and provides credits for staying below that cap. The CCSA in Manitoba complements federal efforts by:

1. **Reducing Compliance Costs:** CCS projects developed under the CCSA can significantly reduce the carbon emissions of industrial facilities. This reduction helps these facilities lower their carbon tax liabilities.
2. **Generating Emission Credits:** By capturing and storing CO2, facilities can generate emission reduction credits under the OBPS. Credits that are not used by the facility can be sold to other CO2 generators to help them meet their federal compliance obligations, integrating seamlessly with the federal carbon pricing system.

The federal government is developing a federal Greenhouse Gas Offset System to incentivize projects that reduce or remove GHGs. The CCSA supports this by:

1. **Standardizing Reporting and Verification:** Regulations (still under development) under the CCSA are expected to contain monitoring, reporting and verification protocols that align with federal

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requirements. Alignment will ensure that emission reductions from CCS projects in Manitoba are recognized and accredited at the federal level.
2. **Meeting Canada's Net-Zero Emissions by 2050 Goal:** The deployment of CCS technologies in Manitoba will help it and Canada move closer to their respective net-zero emissions targets by capturing and storing significant amounts of CO2 that would otherwise enter the atmosphere.

Objectives of the CCSA

The main objectives of The CCSA are:

- establishing a legal and regulatory framework for CCS and related activities;
- ensuring the safe, efficient and environmentally responsible implementation of CCS projects;
- promoting investment in CCS technologies and infrastructure in Manitoba; and
- aligning Manitoba's climate policies with Canadian federal and international GHG reduction commitments.

Key Provisions

Regulatory Framework: The CCSA outlines the creation of a regulatory framework to oversee all aspects of CCS projects, from site selection and construction to operation and decommissioning. This includes licensing and permitting processes for the exploration, development, operation and decommissioning of CCS projects. Regulations that support the CCSA are under development and are expected to come into effect when the CCSA is proclaimed into force.

Ownership and Property Rights: The CCSA settles the uncertainties of ownership and property rights in underground pore space in Manitoba. "Pore space" is defined as space consisting of pores that are found in underground geological formations and are or have been occupied by minerals (such as oil and gas) or water. The CCSA declares that the provincial government (the Crown) is and always has been the owner of all subsurface pore space in Manitoba. Landowners who held surface or mines and mineral title prior to enactment of the CCSA will not be entitled to compensation for the loss of pore space rights.

The CCSA establishes a compensation mechanism for affected owners of surface rights (through the Surface Rights Board) and subsurface mineral rights (through a new Subsurface Rights Board, to be established).

Project Licensing: The first step is to reserve an area to explore for geological formations suitable for storing captured carbon ("carbon repositories") by obtaining an exploration reservation. Manitoba may prohibit exploration in defined areas. Geophysical exploration of the exploration reservation requires a permit. Any test wells require well licenses.

Once the regulated criteria have been met, the developer may apply for a carbon storage licence for the storage area. This licence allows for the storage of captured CO2 in a carbon

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repository within the storage area. A well licence must be obtained for each injection well or other type of well to be drilled or operated. Where land is included within a storage area, notice is registered against title to the land in the Manitoba Property Registry.

A closure certificate can be requested when a project ceases operations, provided that the criteria for closure are met.

Environmental Protection and Safety: The CCSA provides for mandatory environmental impact assessments for all CCS projects. The regulations are expected to apply rigorous monitoring and verification protocols to detect and manage any CO2 leaks.

Licence applications will require contingency planning and financial assurance to address potential environmental and health risks.

Compliance and Enforcement: Part 5 of the CCSA appoints a director to administer and enforce the Act. Compliance and enforcement measures include the ability to carry out inspections, issue orders, impose administrative penalties and prosecute contraventions. Fines can go as high as $500,000 per day for each day that the circumstances that constitute the offence continue.

Appeals: Part 6 of the CCSA establishes a new appeal board to deal with appeals of licensing conditions, orders and other specified decisions of the director.

Conclusion

The CCSA supports Manitoba's CO2 emission reduction goals and is intended to position Manitoba as a hub for innovation in CO2 management. CCS technologies are rapidly evolving and are expected to become integral to global climate strategy. Manitoba hopes to capitalize on its status as a jurisdiction with both low-cost green energy and geology that is well-suited to the development of CCS projects.

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If you have an environmental or natural resources law matter, ***contact John*** *or any one of our* ***natural resources and energy law*** *lawyers.*

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