Tulsa Energy Attorney Blake Gerow for the Journal Record - Oklahoma Law Set to Leader Carbon Capture and Storage Boom

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By: Blake H. Gerow

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Oklahoma, a state long tied to the oil and gas industry, is finding itself at the forefront of a new energy frontier: Carbon Capture, Utilization, and Storage ("CCUS"). With its existing legal framework, available geological features, and robust oil and gas infrastructure, Oklahoma is positioned to play a key role in the development and deployment of CCUS technologies.

Oklahoma's Carbon Sequestration Enhancement Act ("OCSEA") initially focused on soil and forestry carbon sequestration methods. Recognizing the potential of geologic storage of carbon, the law was amended in 2003 to allow carbon dioxide ("CO2") injection into certain wells. Subsequently, the Oklahoma Carbon Capture and Geologic Sequestration Act ("OCCGSA") of 2009 (27A O.S. §3-5-101 et seq.) established a more comprehensive framework for regulating underground CO2 storage, specifically addressing the underground injection of captured CO2 and its value in enhanced recovery of oil and gas.

The OCCGSA outlines permitting procedures and establishes jurisdictional responsibility for subsurface sequestration of CO2 between the Department of Environmental Quality ("DEQ") and the Oklahoma Corporation Commission ("OCC"). In 2010, however, the Environmental Protection Agency ("EPA") finalized requirements under the Safe Drinking Water Act ("SDWA") for the underground injection of CO2 into a new class of injection wells, Class VI. The Class VI program is administered by the EPA. Therefore, as things currently stand, Class VI applicants in Oklahoma must go to the EPA to secure their necessary federal permits.

In 2023, the Oklahoma Legislature passed Senate Bill 200, amending 27A O.S. §3-5-104 to require both the DEQ and OCC to evaluate their respective regulatory frameworks with the goal of initiating the process for Oklahoma to gain program delegation from the EPA for Class VI carbon sequestration projects. This delegation would allow the state to approve Class VI projects and streamline the permitting process for companies undertaking such projects within Oklahoma.

While the full implications of Senate Bill 200 are not completely clear, we can expect significant developments in Oklahoma's CCUS framework in the near future. Specifically, we should expect statutory amendments and additions in the next legislative session, administrative changes, and a hopeful primacy application to the EPA for the delegation of Class VI carbon sequestration projects. Oklahoma's legal framework and ongoing efforts to support carbon sequestration positions Oklahoma to become a national leader in this critical technology.

Attorneys

- Blake H. Gerow

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