

Summary of SB 498

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During the 2009 Montana legislative session, Montana lawmakers passed Senate Bill 498 to establish regulations for carbon capture and storage (CCS) in Montana. This bill survived a tumultuous ride through the session with many amendments, a veto threat by the governor, a late session resurrection and tight deadlines for votes. The bill was drafted and revised with hard work from both sides of the aisle. Below are the bill's details.

Oversight

SB 498 has designated the Montana Board of Oil and Gas Conservation Commission (board) to have regulatory oversight for developing the specific rules for carbon sequestration in Montana. Additionally, the bill states that in making decisions the board shall solicit, document, consider and address comments from the Montana Department of Environmental Quality (MT DEQ).

Property Rights

Under SB 498, unless otherwise documented, the surface owner owns the pore space for geologic carbon sequestration. The bill also protects the existing rights of mineral owners and does not change common laws regarding surface and mineral rights. This bill does not apply to Montana tribal lands unless the tribe adopts a carbon sequestration law and enters into an agreement with the state.

Administrative fee

This bill establishes an account that will be used by the state to monitor and manage geologic storage reservoirs. Geologic operators will pay the state of Montana a fee on each ton of CO₂ injected into a storage reservoir. The fee amount will be set by the Montana Board of Oil and Gas and be based on anticipated actual expenses that the board will incur. An annual well operating fee will also be imposed in the amount of \$5000/yr for each injection well permitted.

Liability and Title Transfer

Prior to project completion and transfer of title, the geologic storage operator is liable for the operation and management of the CO₂ injection well, the storage reservoir and the injected or stored CO₂. The operator must furnish an adequate bond or other surety to guarantee that all requirements of the state are met. The completion and transfer of ownership and liability from the operator to the state is a process that takes 30 years as described in the following paragraphs.

Fifteen years after injection of CO₂ ends, the board will issue a certificate of completion to the operator if the operator is in full compliance of all rules. For a period of an additional 15 years after the certificate of completion is issued, the operator must continue adequate monitoring of the wells and reservoir and continue to accept all liability.

The certificate of completion will only be issued if the operator:

- Is in full compliance with all regulations
- Shows that all wells, equipment and facilities used in the post-closure period are in good condition and retain mechanical integrity
- Shows that it has plugged wells, removed equipment and facilities and completed reclamation work as required by the board
- Shows that the carbon dioxide in the storage reservoir has become stable, meaning that it is stationary or chemically combined, or that no migration will cross the storage boundary and
- Shows that the geologic storage operator will continue to provide adequate bond or surety for 15 years after receiving the certificate and that the operator continues to accept liability for the storage reservoir and the stored CO₂.

Following the 15 year period of required monitoring and verification, if the operator has title to the storage reservoir and the stored CO₂, it may transfer the title to the state if the operator meets all requirements.

Prior to a transfer of the title, the operator must show that the reservoir and wells are in full compliance and that the reservoir will maintain its structural integrity and will not allow CO₂ to move out of the injection formation into another stratum or pollute drinking water supplies. The board will solicit and address comments from MT DEQ and then make a recommendation to the Board of Land Commissioners, who will make the final decision on the transfer of title.

Once the title is transferred to the state, the state is granted all rights and interests in and all responsibilities associated with the geologic storage reservoir and the stored CO₂. The transfer releases the operator from all regulatory requirements and liability associated with the reservoir and the stored CO₂. At this time, all bonds or other surety posted by the operator must be released and the state will be responsible for all monitoring and management of the reservoir and stored CO₂.

If the operator does not transfer title to the state, the operator accepts liability indefinitely for the reservoir and the stored CO₂.

Conversion of enhanced recovery wells

Wells that have been used for injecting CO₂ for the purpose of enhanced recovery of oil or gas may be converted to carbon sequestration wells. The board will develop rules for the conversion of the wells, and they must be in compliance with all sections of this bill including the bond and fee requirements.

Unitization

SB 498 states that 60% of the persons owning or holding the pore space capacity of the proposed storage area need to consent for an operator to inject CO₂ into an area. The bill also requires that if an operator intends to do a carbon sequestration project, they must notify all persons with an ownership in

the surface, subsurface storage rights and the subsurface mineral rights within the proposed area of their intentions.

Effective Dates

SB 498 will not be made effective until the MT Board of Oil and Gas Conservation is granted primacy to administer activities for CO2 wells by the US EPA. It is assumed that the primacy will not be approved until 2015.

Important Definitions in SB 498

Carbon dioxide means CO2 produced by anthropogenic sources that is of such purity and quality that it will not compromise the safety of a geologic storage reservoir and will not compromise those properties of a geologic storage reservoir that allow the reservoir to effectively enclose and contain a stored gas.

Verification and monitoring means measuring the amount of carbon dioxide stored at a specific geologic storage reservoir, checking the site for leaks or deterioration of storage integrity, and ensuring that carbon dioxide is stored in a way that is permanent and not harmful to the ecosystem. The term includes:

1. Using models to show, before injection is allowed, that injected carbon dioxide will be securely stored. Modeling includes but is not limited to consideration of seismic activity, possible paths for fugitive emissions, and chemical reactions in the geologic formation.
2. Tracking plume behavior after injection of carbon dioxide, including the use of pressure monitoring;
3. Establishing a system of leak monitors.