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Province Issues Request for Expressions of Interest for Carbon Sequestration Hub Proposals

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Documents Commented On: [Request for Expressions of Interest for Carbon Sequestration Hub Proposals](#), September 9, 2021 and [Carbon Sequestration Tenure Management](#)

In early May of this year, the Department of Energy issued [Information Letter 2021-19](#) on Carbon Sequestration Tenure Management. In that letter, the Department indicated that it would be calling for proposals for sequestration hubs by “late spring” (at 2). I commented on the Information Letter [here](#). Well, late spring morphed into late summer, and a call for proposals morphed into a [Request for Expressions of Interest \(REOI\)](#) with the expectation that a Request for Full Project Proposals (RFPP) will be posted in December of this year and successful proponents selected by the end of March 2022 ([Alberta Energy web page](#)).

The purpose of this two-step approach, and specifically the REOI, is that the responses to the REOI will be “used to inform the subsequent request” for an RFPP (REOI at 2). “Participation in the REOI stage is not required to be eligible to participate in the RFPP stage” (Alberta Energy web page). The REIO contemplates that at the end of the RFPP process sequestration agreements will be issued to the successful applicants for the purposes of developing carbon sequestration storage hubs.

The REIO indicates that the intent of the sequestration agreement is to:

1. grant the successful proponent the right to drill wells, conduct evaluation and testing, and inject captured carbon dioxide into deep subsurface formations within previously defined zones for sequestration, while also:
2. placing requirements on the Agreement holder to:
 - a. ensure open access to the hub,
 - b. provide competitive market service rates,
 - c. address how carbon offsets or future credits will be approached,
 - d. provide opportunity for Albertans, including Indigenous communities, to realize a fair economic benefit as operations advance, and
 - e. other criteria set out in the RFPP and informed by the REOI process and

engagement with stakeholders. (at 3)

The REIO is limited to pure disposal operations. Projects that inject carbon dioxide (CO₂) as part of enhanced oil recovery operations will continue to be handled under the current mineral rights tenure systems, and the REIO further states that “the Province is not considering issuing carbon sequestration agreements in mature oil and gas reservoirs in this process” (at 3). That said, the REIO goes on to note that “the Province is interested in gaining an understanding of the sequestration scenarios currently being considered throughout the marketplace” (at 3).

All of this suggests that we have not come very far over the summer at all. In fact, we might even have taken a step backwards. This is very disappointing given the important contribution that geological sequestration can make to net-zero targets and the considerable experience that already exists within the province with this technology.

A principal legal question in all of this relates to the form of agreement that the province will use. At present, we have a two-step tenure scheme for geological sequestration purposes embedded in Part 9 of the *Mines and Minerals Act*, [RSA 2000, c M-17](#) (*MMA*) and the *Carbon Sequestration Tenure Regulation*, [Alta Reg 68/2011](#) (*CSTR*). The first step is an evaluation permit, issued on application, followed by a carbon sequestration lease. While the holder of a permit may inject CO₂ for evaluation purposes, it is only the lease that authorizes injection for storage purposes. It is thus far from clear that the province intends to use these tenure forms under this REIO/RFPP process insofar as the sequestration agreement described above seems to be intendeds to confer not just evaluation rights but also storage rights.

It is possible, therefore, that the Minister plans to use their discretionary powers under s 9 of the *MMA* which allows them “[n]otwithstanding anything in this Act or any regulation or agreement” to enter into a contract respecting, inter alia, “the storage or sequestration of substances in subsurface reservoirs” (s 9(a)(iii)). The principal difficulty with this option, however, is that it is decoupled from all of the detailed provisions in Part 9 of the *MMA* and the *CSTR* dealing with, inter alia, such matters as the post-closure transfer of liability and the Post-closure Stewardship Fund.

The Department could usefully clarify this point. It could also usefully provide a progress report on where it stands on implementing the 71 recommendations of the [Regulatory Framework Assessment](#) dating back to 2013. One of my overall concerns here is that the Department did all the hard work of assessing the necessary tenure and regulatory framework for carbon capture & storage (CCS) activities in Alberta nearly ten years ago. Since then, it seems to have dropped the ball and it’s now scrambling to put something in place to catch the uptick in interest in CCS.

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