



## Senate Bill Proposes Federal CCS Liability Scheme

By: [Amy Mowry](#)

Citing coal as our nation's most abundant energy source and a crucial part of any energy strategy, Senator Mike Enzi of Wyoming joined Pennsylvania Senator Robert Casey, Jr. to introduce Senate Bill 1502 to Congress last month. S.B. 1502, or the "Carbon Storage Stewardship Trust Fund Act of 2009" aims to promote commercial applications of carbon capture and storage ("CCS") within a national strategy for climate change mitigation. The bill proposes a tenable liability scheme for potential damages arising from geologic CO<sub>2</sub> storage units, the current absence of which is perhaps the most significant legislative obstacle to widespread deployment of CCS technologies. According to Enzi, CCS "will be essential in keeping coal a relevant energy source in a carbon constrained world," a view widely shared in Wyoming and other large coal producing states and increasingly embraced throughout the country.

S.B. 1502 contemplates commercial carbon sequestration programs for facilities siting, CO<sub>2</sub> injection, well capping, facilities decommissioning and MMV (monitoring, measuring and verification) during an "Active Project Period," or the operations phase of a CCS project. Once "safely completed," as determined by the authorized state or federal administrative authority, the project facility receives a "certificate of closure," after which MMV and remediation activities are taken over by the federal government through the Department of Energy. States are given the option to request reassignment of long-term stewardship responsibility for CCS projects located within their boundaries. If approved, reassigned stewardship remains subject to ongoing federal assessments of the state's compliance with required management standards, to be established by the Secretary of Energy in collaboration with the Environmental Protection Agency Administrator. State management of sequestration projects may be an attractive feature of the bill, since, as

Senator Enzi points out, states often prefer having a larger hand in the oversight and control of those programs happening within their boundaries.

Another crucial feature of the bill is the requirement for sequestration facilities operators to secure privately funded liability coverage, in the form of insurance, bonds or similar instruments for the coverage of any potential liability costs during the Active Project Period. Additionally, risk-based fees (to be determined using specified criteria) will be assessed on each injected ton of CO<sub>2</sub>, in conjunction with the establishment of the Carbon Storage Trust Fund ("Fund"). The Fund is intended to cover long-term stewardship administrative costs as well as any necessary payments for civil claims against the federal government brought after the issuance of a certificate of closure. Claims will be subject to aggregate damages limitations, to be established after enactment, and will exclude gross negligence and intentional misconduct on the part of the operator. Although the bill provides for an interim loan in the event initial funding is insufficient to cover the earliest claims, Senator Enzi notes that companies involved in CCS projects will pay into the fund for some time before the federal government takes on liability. This pay-in period should allow the Fund to grow significantly until any payouts during the long-term stewardship period are required.

Passage of the bill would help remove one of several road blocks for the commercial viability of CCS by advancing a much needed liability structure for risk assessment and management of projects. Senator Enzi counts among other obstacles the as-yet inadequate development of CCS technologies, the need for an effective system of deployment for those technologies, and the need for greater incentives to make CCS ventures cost competitive, although recently Congress has shown support for creating those growth incentives. This year's first Congressional session saw the introduction of the bipartisan Senate Bill 1013, "Department of Energy Carbon Capture and Sequestration Program Amendments Act of 2009." S.B. 1013 establishes a national indemnity program through the Department of Energy for up to 10 "early mover" commercial-scale carbon capture and sequestration projects. The bill sets qualifying criteria for the projects and establishes the procedure for closing CCS sites within a framework of safety and efficiency goals. Both S.B. 1013 and S.B. 1502 have been referred to the Senate Energy and Natural Resources Committee.

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