RECENT DEVELOPMENTS

COMMONWEALTH

MINISTERIAL COUNCIL RELEASES DRAFT GUIDING PRINCIPLES FOR REGULATING GEOSEQUESTRATION OF CO_2*

The Ministerial Council on Mineral and Petroleum Resources (MCMPR) (which consists of the Commonwealth Minister for Industry, Tourism and Resources and State and Territory Ministers with responsibility for minerals and petroleum) met earlier this year and has announced the release of a draft guiding regulatory framework for the regulation of carbon dioxide geosequestration together with an associated regulatory impact statement (Draft Guiding Regulatory Framework).[1]

What is Geosequestration?

Geosequestration involves the capture (from power stations and other facilities) and storage of carbon dioxide for very long periods of time in underground geological formations. The MCMPR identified the following four main stages which characterise a carbon dioxide geosequestration project:

- the capture and separation of carbon dioxide from emission streams;
- the compression of the carbon dioxide into liquid form and its transport to a site where it can be injected;
- the injection of the compressed liquid carbon dioxide; and
- the long term storage of the carbon dioxide in underground geological formations.

While the technology to enable the capture and injection of substances into geological formations has been used widely and successfully overseas and in Australia for many years (for example in relation to the reinjection of petroleum and natural gas for storage in depleted reservoirs),[2] commercially viable and proven carbon dioxide geosequestration technology is not yet available in Australia. One of the key reasons for this is that many of the available technologies for separating and capturing carbon dioxide are costly and of limited effectiveness. However, broader political concerns involving issues of community acceptance and the place of geosequestration within the wider greenhouse debate are also significant.

Interest in geosequestration has intensified in Australia following the recent release of the Federal Government's energy strategy White Paper, *Securing Australia's Energy Future*, in which, among other things, the Government announced that it was prepared to invest up to $500 million to promote the development of commercially viable, low cost abatement technologies including the

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1 The Draft Guiding Regulatory Framework and the associated regulatory impact statement are available on the Commonwealth Government Department of Industry, Tourism and Resources' website at www.industry.gov.au/ccs.

2 See Thomas Kennedy, "Filling Cavities: Storing Natural Gas Naturally" [1999] AMPLA Yearbook 521.

use of coal-fired generation with geosequestration. A large-scale geosequestration project has already been proposed for Barrow Island off the north-west coast of Western Australia and other projects are currently being considered for Victoria and Queensland.

The Draft Guiding Regulatory Framework

In September last year, the MCMPR established a Carbon Dioxide Geosequestration Regulatory Working Group (Working Group) to work with industry representatives and research organisations to develop agreed principles for a nationally consistent regulatory framework for carbon dioxide geosequestration projects and to produce the Draft Guiding Regulatory Framework. The need to do so arose from the absence of uniform legislation or regulatory controls over geosequestration projects in Australia.[3]

The Draft Guiding Regulatory Framework addresses the following key issues in relation to the regulation of a geosequestration project:

- access and property rights;
- long term responsibilities;
- environmental issues;
- authorisation and compliance;
- monitoring and verification;
- transportation issues; and
- financial issues.

The most significant issue confronted by the Working Group was how to allocate responsibility at various stages in a carbon dioxide geosequestration project between private industry proponents and government. In this regard, the Working Group endorsed an approach which is consistent with decommissioning and rehabilitation regulations that are currently in place for the mining and petroleum industries. That is, that the responsibility and associated liabilities should remain with the project proponent until the relevant government is satisfied to a high degree of certainty that the future risks of leakage and liability and the ongoing costs associated with the site are acceptably low or are otherwise appropriately managed (for example through financial assurances, indemnities and trust funds). Following closure, primary responsibility for a geosequestration project site will pass to the government.

The MCMPR is now seeking public comment from industry, community groups and other non-government organisations in relation to the Draft Regulatory Framework and Regulatory Impact Statement. According to the Commonwealth Department of Industry, Tourism and Resources, State and Territory Ministers have agreed that, following this further consultation period, they will consider the possible use of the principles contained in the Draft Regulatory Framework when implementing regulatory frameworks in their respective jurisdictions. If this is the case, it would

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[3] We note, however, that there exists some state based legislation which specifically regulates one or more of the capture, transport, injection and long-term storage of carbon dioxide. For example, the *Petroleum Act 2000* (SA) which regulates the transportation of carbon dioxide; and the *Barrow Island Act 2003* (WA) which is a State Agreement for the specific regulation and facilitation of the proposed Barrow Island geosequestration project.

seem most likely that any reform proposals would involve regulating geosequestration within the framework of relevant existing legislative regimes (such as those relating to petroleum, mineral resources, environment protection, health and safety, dangerous goods, pipelines etc) rather than establishing separate geosequestration-specific legislation.

Conclusion

While it may be some time before geosequestration is accepted as a technically and commercially viable (and politically acceptable) method of curbing the release of carbon dioxide into the atmosphere, Australia's reliance on its abundant fossil fuel resources will ensure that the large-scale use of geosequestration technology in this country will continue to be seriously considered. The decision by the MCMPR to release the Draft Guiding Regulatory Framework indicates that the Federal and State and Territory Governments are keen to understand who and what might be impacted by geosequestration and then set out as clear a regime as possible to establish the responsibility and liability of a geosequestration project proponent.

Industry, community groups and other non-government organisations will need to review the Draft Guiding Regulatory Framework and carefully consider its consequences for geosequestration projects. The Federal and State and Territory Governments will need to proceed cautiously to ensure that any reform proposals are aimed not only at adequately protecting the public but also at striking an appropriate balance between encouraging investment in geosequestration technologies on the one hand while not hindering investment in other methods for reducing carbon dioxide emissions on the other.

ESTABLISHMENT OF A NATIONAL OFFSHORE PETROLEUM SAFETY AUTHORITY FOR AUSTRALIA*

The *Petroleum (Submerged Lands) Amendment Act 2003* (Cth) will establish, as from 1 January 2005, a National Offshore Petroleum Authority (NOPSA) to regulate safety on oil and gas facilities in Commonwealth waters and State and Northern Territory coastal waters, in accordance with the commitment agreed to this effect by the Commonwealth, States and the Northern Territory. As was said in the Explanatory Memorandum to the Commonwealth Act, the offshore petroleum industry is strategically important to Australia and any serious disruption to this supply through an accident would have major economic consequences.

NOPSA will operate (a) in "Commonwealth waters – ie waters of the continental shelf outside the three nautical mile territorial sea – and (b) in "designated coastal waters" of each State and the Northern Territory – ie the first three nautical miles of the territorial sea adjacent to each State and the Northern Territory – by virtue of State or Northern Territory mirror legislation.

These arrangements fit in with the 1979 Offshore Constitutional Settlement under which the States and the Northern Territory have been granted title by the Commonwealth to all waters (including seabed) landward of the three nautical mile limit, and have the same power to legislate over these coastal waters as they do over their land territory. Commonwealth title and legislation applies outside those coastal waters, under cooperative governance arrangements consisting of a "Joint Authority" (which is the Commonwealth Minister and the relevant State or the Northern Territory Minister in respect of the respective adjacent areas) for all major decisions affecting petroleum

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