Environmental Registry of Ontario proposes changes to allow permanent geologic carbon storage projects

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The Ministry of Northern Development, Mines, Natural Resources and Forestry (NDMNRF) recently sought feedback on a discussion paper exploring possible legislative changes to remove barriers to the geologic storage of carbon dioxide.

On Jan. 11, 2022, the NDMNRF filed a proposal (the Proposal) on the Environmental Registry of Ontario (ERO) website to gather input from stakeholders. The Proposal aims to narrow the prohibitions under the *Oil, Gas and Salt Resources Act* (the Act) and the *Mining Act* that relate to the storage of carbon dioxide generated through processes such as electricity generation, or as a by-product of creating hydrogen from methane.

Background

Under the Act, NDMNRF regulates the drilling and operation of wells and related equipment used for the exploration and production of oil, natural gas, salt solution mining, the underground storage of hydrocarbons and compressed air energy storage projects using salt caverns. These activities tend to take place in southwestern Ontario where the geological structure is the most conducive. Under Part IV of the *Mining Act,* NDMNRF administers the disposition of Crown lands related to these activities.

In response to evolving energy needs and environmental priorities over time, there has been an increased interest in pursuing new underground geologic storage projects such as the storage of carbon dioxide that were not contemplated when the current regulatory frameworks were developed. As the current regulatory framework does not cover standalone geologic carbon storage projects, and the laws relating to the advancements of these projects are unclear, the legislation and regulatory framework acts as a barrier to advancing these innovative projects.

NDMNRF's proposal

Under the Proposal, NDMNRF is exploring four possible changes to the regulatory structure. First, the Proposal would allow the narrowing of the prohibitions under the Act

that relate to the injection of carbon dioxide for permanent storage. Currently, the Act prohibits the injection of carbon dioxide for storage in association with certain activities regulated under the Act such as:

- A project to enhance the recovery of oil, gas or formation water;
- A project to inject, storage or withdrawal of oil, gas or another prescribed substance;
- the disposal of an oil field fluid;
- any prescribed project, activity or undertaking; and
- A compressed air energy storage project or part of a project that is prescribed.

The proposed changes would narrow the prohibition to apply only to enhanced oil and gas recovery projects, allowing the potential for carbon storage projects related to other types of activities regulated under the Act.

Second, the Proposal allows proponents to voluntarily enter into agreements with NDMNRF to use wells to explore, test, pilot or demonstrate new technology such as carbon storage in areas where oil, gas and salt resources are typically found. If a proponent voluntarily enters into an agreement with NDMNRF in relation to activities that are not currently regulated under the Act, the activity and project would become subject to the Act. It is expected that the types of activities and projects that would be eligible for agreements would include other new projects in addition to carbon storage that are not currently subject to the Act. The agreement will require project proponents to secure all necessary rights to the land and meet any Indigenous consultation requirements in advance of receiving approval. While municipal approvals for surface facilities are not affected by the Proposal, pilot or demonstration projects would not be subject to hearings or appeals before the Ontario Land Tribunal or the Ontario Energy Board unless a gas storage area could potentially be affected.

Third, the Proposal enhances protections by allowing the issuance of orders to prevent risk to the public or environment, and strengthening the accountability of corporate directors involved in any activities regulated under the Act. The Proposal intends to implement preventative orders to avoid or reduce risks resulting from situations where there are reasonable or probable grounds of risk to the public or the environment.

Finally, the Proposal would change the *Mining Act* framework to allow the NDMNRF to grant authorizations to use Crown land for carbon storage activities. There is currently a prohibition on the permanent storage of any substance under a storage lease under this part of the *Mining Act*. The proposed changes to the *Mining Act* and the associated regulation would be expressly limited to allowing permanent geological storage of carbon.

Consultation

Interested parties were asked to submit comments on the proposed changes, potential demonstration projects and potential future regulation of carbon storage projects in Ontario to NDMNRF before March 14, 2022.

As part of the consultation process, some of the comments the NDMNRF received focused on making Ontario a carbon capture and storage (CCS) leader by removing the

regulatory barriers to CCS currently in place in the *Oil, Gas, and Salt Resources Act.* Additional comments related to creating a streamlined permitting regime for new CCS projects, encouraging commercial-scale CCS projects, and ultimately ensuring that any regulatory amendments can be leveraged in the future to facilitate more extensive infrastructure.

Key takeaway

Geological carbon storage presents a unique opportunity to better align the legislative and regulatory framework with the evolving energy needs and the environmental priorities that we face today. It remains to be seen whether the responsibility for any potential future liabilities will fall to the taxpayers of Ontario.

BLG will continue to monitor the proposal and any additional related legislative changes. If you have any questions about the discussion paper or the new regulation, please reach out to your BLG lawyer, or to any of the key contacts listed below.

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