

January 4, 2008

**To:** Energy and Telecommunications Interim Committee  
**From:** Montana Board of Oil and Gas Administrator, Tom Richmond  
**Re:** Interstate Oil and Gas Compact Commission (IOGCC) Model Statute and Rules

The following comments are intended to accompany the January 24, 2008 IOGCC analysis prepared by Sonja Nowakowski, staff for the Energy and Telecommunications Interim Committee. The comments are in same format as the original analysis, with discussion points under each section of the IOGCC model statute.

The information below should clarify and detail the original analysis from the perspective of the Montana Board of Oil and Gas, which also is a member of the Interstate Oil and Gas Compact Commission.

## **Section 1. Jurisdiction**

### *1. Underground Injection Control program -- federal regulations*

During the IOGCC Task Force discussion it was decided to “soften” the suggestion for the oil and gas regulatory agency to assume jurisdiction over geological storage as the committee recognized the wide variance in state programs. The IOGCC uses “state regulatory agency” somewhat generically; nevertheless, they recommend using the (natural) gas storage statutes as an analogue, which are usually administered by the state oil and gas agency.

Montana is an active member of the Ground Water Protection Council (GWPC). GWPC has been asked to provide language for the recently introduced Lieberman-Warner CO<sub>2</sub> bill, which is before Congress. The provided language specifically calls for “Section 1425-like” primacy delegation authority for wells that inject CO<sub>2</sub> for sequestration purposes. (Montana’s current Class II delegation is under the existing Section 1425 of the Safe Drinking Water Act.)

As noted, the EPA can authorize states to implement the UIC program. If a state does not apply for and obtain primacy, the EPA implements the program through regional offices. Native American tribes follow the same rules for primacy. In Montana, the Fort Peck Tribes have applied for Class II primacy, but it has not been delegated by EPA.

EPA grant money is available for the UIC program; however, States operating a Class V program often complain about the total lack of resources to regulate same.

The Class II grant for the MBOGC is usually around \$100,000 per year. The total grant available nationwide is about \$10 million and hasn’t been changed for years.

Money is generally allocated to primacy states based on the number of injection wells.

MBOGC's annual injection fee is \$200 per well; the statutory maximum for the fee is \$300 per well per year. The Board may change the fee by Rule. There are about 1,000 injection wells under the Board's regulation.

MBOGC's submitted a primacy application for Class II wells following the 1987 legislature, which was ultimately rejected by EPA. The Board once again became interested in obtaining a primacy delegation in the early 1990's and using the services of an experienced UIC consultant, prepared and submitted an application to EPA Region 8 in October of 1992. This primacy application, after much negotiation and Board rule changes to satisfy the program requirements, was approved in Nov of 1996.

## *2. Montana Climate Change Advisory Committee recommendations -- Agency oversight*

The IOGCC Task Force recognized that most states were not prepared to propose a regulatory structure to deal with CO<sub>2</sub> Geologic Sequestration at the time the Task Force produced its first report (2005). At this point some states are actively considering a regulatory structure, but only a handful have passed substantive law. The Task Force felt that the oil and gas agencies could move more quickly than other state agencies to fill the regulatory gap should the need arise. The use of the UIC program to fill the injection well operation slice of the regulatory pie complicates the process; however the statutory authority to implement the program was a major review requirement for EPA's UIC delegation to the Board in 1996. An official Attorney General's opinion supporting the Board's authority was required prior to program delegation.

It remains to be seen if would be easier for EPA to delegate CO<sub>2</sub> regulation to an existing UIC program and how much additional support documentation and program elements are required.

## **Section 2. Definitions**

The definitions in the model statute are relatively few, and fairly general. The definitions in the model rules are more specific and may be useful to review for possible inclusion in any proposed statute; however there are some problems with the model rules definitions (e.g.: Definition of "USDW" is not compatible with the existing EPA definition).

## **Section 3. Approval, record or order, certificate -- General requirements**

### *1. Uncertainty about federal guidelines*

Currently, the EPA looks to be pursuing rulemaking under the Safe Drinking Water Act (UIC) for sequestration. Congress also has several variations of proposed legislation, which could change the direction, or provide a whole new statutory framework. Presumably, the mechanics of injection will still fall under the SDWA structure.

### *2. Montana Oil and Gas law as a comparison*

In natural gas law, the seismic exploration requirements provide for permits from the County Clerk and Recorder, Bonds held by the Secretary of State and enforcement by the County Attorneys. The Board of Oil and Gas has responsibility for proper plugging of shot holes, cleanup and safe distances from houses and other structures.

## **Section 4. Storage Project permitting – protections**

### *1. Montana oil and gas law as a comparison*

Title 82, Chapter 11 reflect the changes made to facilitate the UIC program primacy application, particularly the substantial civil and criminal penalty provisions. IOGCC Model Statute may not address these particular provisions, because existing state statutes probably already make provision for enforcement activities.

### *2. Hazardous waste vs. commodity*

Industrial waste disposal, including hazardous waste, is covered under the Class I program. There are no Class I wells in Montana.

### *3. Water Quality considerations in Montana*

The modifications were made to 82-11(MCA) in 1987 do address the “overarching protectiveness standard” EPA speaks of. The Administrative rules adopted under the statute also address protection of Underground Sources of Drinking Water. Presumably any agency capable of obtaining a primacy delegation would either have protective language in statute or could (if granted the authority) adopt rules meeting protectiveness requirements.

## **Section 5. Eminent domain or other authority**

### *1. Underground gas storage reservoirs in Montana*

Siting a project is probably the single most important aspect of underground storage. The storage operator (in the case of natural gas) has a very strong economic incentive to insure the selected reservoir will, indeed, hold natural gas and allow it to be delivered back when needed. There is a somewhat different set of economic circumstances involved with disposal of CO<sub>2</sub>.

Current storage statutes limit the use of eminent domain to a “public utility.” The Legislature may need to consider who it wishes to authorize to use eminent domain for CO<sub>2</sub> storage/sequestration.

Currently the district court determines much of the procedural needs to invoke eminent domain for gas storage. For example, the current law does not specify a percentage of the (mineral) rights that need to be acquired voluntarily before the court can grant eminent domain for the non-voluntary interests.

## **Section 6. Carbon Dioxide Storage Facility Trust Fund**

### *1. Oil and gas production damage mitigation account*

The production damage mitigation account was proposed to be an “orphan well” account; however, the full funding was not appropriated. Instead, the fund was established as an emergency account and the “orphan well” program is funded from two priority grants in the Reclamation and Development Grant Program administered by DNRC. (\$600,00 per biennium)

### *2. Fee that meets future long-term needs*

Proper siting of proposed CO<sub>2</sub> storage reduces substantially the risk of leaks or migration and therefore the subsequent need for long-term monitoring, sampling etc. Under the UIC program, great emphasis is placed on finding and correcting potential paths of fluid migration. Most of these pathways are in improperly completed or poorly plugged wells within the “area of review” around each injector or the injection project. Studies of risks associated with injection indicate most failures are likely to occur during the active injection, and risks are greatly reduced after injection ceases, and are even lower after pressure equilibrium is gained in the injection zone(s).

## **Section 7. Administration expenses**

### *1. Oil and gas privilege and license tax*

Privilege and license tax is the primary funding source for the MBOGC. The tax rate is set by the Board and is currently set at 30% of the maximum, reflecting both increased prices and volume of oil produced.

### *2. Oil and gas fees*

The Board intends that the UIC program be self-funded without significant costs being absorbed by the privilege and license tax. The per well annual injection fee along with the annual EPA operating grant are sufficient to fund the program. The current grant is about \$100,000 per year, and the annual injection fee (currently \$200/well) generates about \$200,000 per year. The UIC program has one FTE professional assigned as the program director. Other staff allocate time based on UIC duties they perform. Total personnel costs are roughly equivalent to 3.5 to 4 FTE, other than the UIC director, most of the personnel costs and travel/transportation costs are associated with field inspections.

## **Section 8 Liability Release**

### *1. Precedent*

MBOGC does assume it has the responsibility for re-plugging or reclamation of improperly plugged and abandoned wells if the operator cannot be found or refuses to perform the work. Many of the old wells the Board plugs under its authority are “pre-regulatory” wells that were abandoned many years ago, and often by operators no longer in business. Regardless of ownership, the Board will address priority well plugging and cleanup, using the Damage Mitigation Account, RDGP grant funds, and the Emergency Environmental Contingency account as appropriate. The Board has successfully recovered costs in cases of existing operators in non-compliance.

## **Section 9. Cooperative Agreements**

MBOGC currently has a cooperative agreement with BLM on spacing and pooling issues on federal and Indian lands. The MBOGC also has a cooperative agreement with EPA as part of its primacy package.