

a. *North Dakota*

In early 2008, the State of North Dakota briefly debated whether new legislation was needed for the geologic storage of carbon dioxide in the state. In the end it was concluded that new legislation was needed and at the request of the North Dakota Industrial Commission (comprised of the Governor, the Attorney General, and the Agriculture Commissioner), a task force set to work drafting such legislation. The Task Force was composed of representatives of the state's major industrial sectors (coal mining, electric generation and transmission, and oil and natural gas), the trade associations for each industry, the State Health Department, the State Mineral Resources Department and the Office of the Attorney General. Based on the work of the task force, the Industrial Commission, in advance of the 2009 legislative session, pre-filed two bills. One covered geologic storage (SB 2095) and the other pore space (SB 2139). Both bills were subsequently passed into law and signed by the governor on April 8, 2009. The bills were effective on July 1, 2009 and April 9, 2009, respectively. While the North Dakota legislation was clearly modeled on the IOGCC model statute, it had two additional elements that are worth noting in particular. One feature of the geologic storage bill was its authorization of the commission to issue a determination as to the "amount of injected CO₂ stored in a reservoir that has been or is being used for an enhanced oil or gas recovery project."¹ It further states that the purpose in giving the commission the authority to determine "storage amounts is to facilitate using the stored carbon dioxide for such matters as carbon credits, allowances, trading, emissions allocations, and offsets, and for other similar purposes."² In the pore space bill, the bill prohibited the severance of the title to pore space from the title to the surface of the real property overlying the store space.³

As concerns development of regulations for geologic storage of CO₂ in North Dakota, the North Dakota Industrial Commission using the IOGCC Model Rules and Regulations issued a proposed set of regulations on September 10, 2009 as part of a broader set of administrative rule changes made by the commission. A public hearing was held on October 15, 2009, and based on comments received changes were made in the document. On November 16, 2009 the commission gave its final approval to the regulations. On December 4, 2009, the Attorney General certified that statutory requirements for approval of the regulations by the commission had been met. After being sent to the Administrative Rules Committee, a joint committee of the North Dakota House and Senate, the regulations became final on April 1, 2010, when no action was taken by the committee. With these rules becoming effective the State of North Dakota

¹ N.D. Cent. Code § 38-22-23(1) (2009).

² N.D. Cent. Code § 38-22-23(2) (2009).

³ N.D. Cent. Code § 47-31 (2009).

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arguably becomes the first state with a complete and comprehensive legal and regulatory regime for the geologic storage of CO₂ in North America.⁴

2009 Laws - Effective July 1, 2009 and April 9, 2009, respectively:

*Relating to the geologic storage of carbon dioxide*⁵

*Relating to the ownership of subsurface pore space.*⁶

2010 Regulations - Effective April 1, 2010:

*Geologic Storage of Carbon Dioxide*⁷

North Dakota Summary: Legislation was passed and became effective in 2009. The legislation in toto covers the general framework for geologic storage, pore space ownership, aggregation of storage rights, and long term liability. Regulations implementing the legislation became effective on April 1, 2010.

⁴ While Washington had legislation and rules two years earlier (*supra* notes 13-15), it can be argued that the North Dakota regime is the more comprehensive of the two.

⁵ S. 2095, 61st Leg., 2009 Regular Sess. (N.D. 2009). Enacted by the Legislature of the State of North Dakota as Senate Bill 2095, to create and enact chapter 38-22 of the North Dakota Century Code, relating to the geologic storage of carbon dioxide; to repeal section 38-08-24 of the North Dakota Century Code, relating to priorities in permitting carbon dioxide geologic storage projects; to provide a penalty; and to provide a continuing appropriation. The bill's effective date was July 1, 2009. A link to the legislation can be found at: <http://groundwork.iogcc.org/sites/default/files/North%20Dakota%20Senate%20Bill%20No.%202095%20Relating%20to%20the%20Geologic%20Storage%20of%20Carbon%20Dioxide.pdf>

⁶ S. 2139, 61st Leg., 2009 Regular Sess. (N.D. 2009). Enacted by the Legislature of the State of North Dakota as Senate Bill 2139, to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to ownership of subsurface pore space; to provide for application; and to declare an emergency. The bill's effective date was April 9, 2009. A link to the legislation can be found at: IOGCC <http://groundwork.iogcc.org/sites/default/files/North%20Dakota%20Senate%20Bill%20No.%202139%20Relating%20to%20the%20Ownership%20of%20Subsurface%20Pore%20Space.pdf>

⁷ ARTICLE 43-05, CHAPTER 43-05-01. <http://groundwork.iogcc.org/topics-index/carbon-sequestration/regulations/north-dakota>