



Client Alert

New Legislation Provides Additional Support for Carbon Sequestration

On Tuesday, February 17, 2009, President Obama is expected to sign the American Recovery and Reinvestment Act of 2009 (the "Act") into law. The Act is designed to reinvigorate the US economy and includes US\$30 billion in spending and US\$20 billion in tax incentives for energy initiatives. Several of these provisions are relevant to carbon capture and sequestration and build on pre-existing efforts to encourage development of the field. These measures promote investment in advanced energy projects, clarify the requirements of a carbon tax credit enacted last fall and increase government funding for fossil energy research and development. Overall, these provisions represent the US government's continued efforts to make carbon capture and sequestration a viable commercial and environmental practice.

Carbon Sequestration Stimulus Provisions

Section 1302 of the Act establishes a tax credit equal to 30 percent of the qualifying investment with respect to any qualified advanced energy project (the "Qualifying Advanced Energy Project Credit"). A qualifying advanced energy project includes a project which re-equips, expands or establishes a manufacturing facility for the production of property designed to capture and sequester carbon dioxide emissions (as well as technology for the production of renewable energy, energy storage, energy conservation or efficient transmission and distribution of energy). The qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during the taxable year which is part of the qualifying advanced energy project. Credits are available only for qualifying advanced energy projects certified by the Secretary of the Treasury. There is a total of US\$2.3 billion in credits available under this program through a competitive bidding process. A taxpayer that claims the Qualifying Advanced Energy Project Credit may not also claim the Energy Credit, Qualifying Advanced Coal Project Credit or the Qualifying Gasification Project Credit with respect to the same investment.

Under the Act, the Secretary of the Treasury, in consultation with the Secretary of Energy, is required within 180 days of enactment to establish a qualifying advanced energy project program to consider and award certification of the credits. Each applicant will have one year from the date of acceptance of its application by the Secretary of the Treasury to provide evidence that it has met the requirements for certification. A taxpayer has three years from the issuance of the certification to place the project in service. In determining whether to certify a particular project, the Secretary of the Treasury is required to consider only those projects that have a reasonable expectation of commercial viability. In addition, the Secretary of the Treasury is required to take into consideration projects that provide for: (a) the greatest domestic job creation during the credit period; (b) the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases; (c) the greatest potential for technological innovation and commercial deployment; (d) the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission and (e) the shortest project time from certification to completion.

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Energy Infrastructure and Project Finance

The Act also tightens the qualifications for a tax credit for carbon dioxide sequestration. In October 2008, Congress passed the Emergency Economic Stabilization Act (the "EESA") to inject money into the financial sector. In addition to the provisions of the Troubled Asset Relief Program ("TARP"), the EESA also created a new tax credit equal to US\$20 per metric ton of qualified carbon dioxide captured at a qualified facility and permanently disposed of in secure geological storage (with a minimum capture of 500,000 tons per year to be eligible). The EESA also provided a credit of US\$10 per metric ton for the first 75 million metric tons of qualified carbon dioxide that is captured at a qualified facility and used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project (the "Tertiary Injectant Credit"). Under the Act, the Tertiary Injectant Credit is only available if the carbon dioxide used as a tertiary injectant is permanently sequestered in secure geological storage following its injection.

On the spending side, the Act allocates US\$3.4 billion to the Department of Energy ("DOE") to be used for Fossil Energy Research and Development. The final legislation does not include specific parameters or additional conditions (in contrast to earlier versions of the bill), suggesting that DOE has discretion as to

allocation of the funds within the existing parameters of the prescribed area. Eligible programs listed in the Joint Explanatory Statement of the Committee of Conference include: (a) fossil energy research and development programs; (b) Clean Coal Power Initiative Round III Funding Opportunity Announcement; (c) industrial carbon capture and energy efficiency improvement projects; (d) site characterization activities in geological formations; (e) geological sequestration training and research grants and (f) program direction funding. Sequestration research and development programs have already been created under DOE's Fossil Energy Research and Development programs. For example, DOE has established Regional Carbon Sequestration Partnerships that bring together government agencies, academic institutions and private energy companies. These partnerships have already conducted numerous small-scale geological storage tests and are expected to implement seven large-scale projects around the country. Most recently, in January 2009, the Southeast Regional Carbon Sequestration Partnership began injecting carbon dioxide into coal seams in the Central Appalachian Basin in Virginia. Continued funding will help further the research and development necessary to bring this technology to commercialization.

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