

United States Energy Association
Promoting Domestic and International Consensus on Fossil Energy Technologies
(CONSENSUS)
Cooperative Agreement #DE-FE-002415-19

REQUEST FOR PROPOSALS (RFP)
DE-FE-002415-19-03

Study on States' Policies and Regulations per CO₂-EOR-Storage Conventional, ROZ and EOR in Shale: Permitting, Infrastructure, Incentives, Royalty Owners, Eminent Domain, Mineral-pore Space, and Storage Lease Issues.

Questions Due: Oct. 18, 2019

Proposals Due: Nov. 08, 2019

Background

The United States has nine CCUS facilities in operation and a tenth in development. Marketplace developments and updates to the Section 45Q Tax Credit will likely result in an increase in the number of projects. As such, it is necessary to understand the Federal, Tribal and State policies and regulations regarding:

- land use, mineral and pore space rights;
- storage rights;
- royalty owners;
- ownership,
- shale EOR and CO₂ storage considerations, including revue on wells with laterals;
- Federal and State eminent domain;
- Unitization;
- Federal and Tribal Sovereignty

With the expected increase in interest prompted by the prospective use of 45Q tax credits, policymakers, investors and regulators will require certainty regarding the security of CO₂ storage over a long time horizon.

It will be necessary to understand the policies and regulations for CO₂ that is produced in one state, transported through several states in interstate pipelines, and injected for EOR in wells that may draw from oil reservoirs in more than one state, etc.

This study will review and catalog policies and regulations in selected states to determine the legal/regulatory framework currently in place and provide recommendations for changes to facilitate large scale CCUS deployment for coal power generation and industrial processes.

In addition, the study will give a more detailed view of local aspects of this emerging industry including: permitting, infrastructure right of ways, production and disposal requirements, etc.

An outcome of this study will be a listing by the selected States, check list and/or matrix of the various surface/subsurface regulations pertinent to the management of CO₂ utilization and storage.

Scope of Work

The United States Energy Association (USEA), in cooperation with the U.S. Department of Energy's Office of Fossil Energy (DOE), seeks proposals for a contractor to conduct a State-by-State assessment for the following states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Montana, Ohio, Oklahoma, Pennsylvania, West Virginia, Wyoming, Tennessee, Texas, and Utah.

This assessment will review:

- a) The code of law informing legal philosophy in each state. For example, Louisiana operates under the Napoleonic Code of Law that may create specific considerations for CCUS technology application not found in other states.
- b) Mineral lease and ownership laws:
 - How are accessible commodities prioritized for oil, coal, gas, drinking water, and other valuable minerals like lithium?
 - How are surface rights treated?
 - Who has legal right to the pore space for storage (precedent has been set decades ago in some states with natural gas storage)?
 - Produced water disposal rights;
 - Existing lease rights for coal that hold all the other minerals captive;
 - Formation and/or depth restrictions in the mineral and pore space leasing requirements and how this pertains to shale leases vs conventional oil and gas leases, if at all.
- c) Unitization or forced pooling parameters:
 - what is the procedure to create a unit?
 - What is the percent in agreement threshold before forced pooling is triggered? (for example, Texas needs >98% acceptance before unitization can proceed. Other states require as low as approximately 65%.)
 - Does this apply to CO₂ geologic storage rights per each State;
- d) Municipal condemnation per each State for access to drinking water, and each State's definition of drinking water? Does Municipal water access subordinate other resources? (Note: With recent advancements in water clean-up and purification, what was once considered non-potable as a resource can now be converted to potable.);
- e) State and Federal eminent domain procedures for rights of way for pipelines, etc. Since CO₂ is not under FERC jurisdiction, eminent domain for interstate pipelines is not granted in a manner similar to that for natural gas;
- f) Whether a state or the Federal government has primacy over EOR, disposal and storage (For example, Pennsylvania defers to the US EPA);

- g) How each State treats the producer's resource rights in reservoirs that extend over large areas, i.e., first "straw" in draws what it can, subordinating later producers;
- h) How do the States differentiate CO2 as a commodity or pollutant according to its source -- natural production, processed out from natural gas/helium production, captured from industrial/power generation processes, direct air capture or other means?
- i) Which States, for long term liability purposes, take title to the stored CO2 after a certain period of time?
- j) What fees, bond/escrow requirements and insurance specific to CO2 tied to long term liability are required?
- k) Who owns the CO2 in long term geologic storage if not the State? Where is ownership delineated?
- l) Which States differentiate subsurface storage mediums, such as man-made salt caverns, depleted oil and gas reservoirs, hard rock caverns, coal bed seams, brine reservoirs, etc. by different permitting regimes and ownership definitions?
- m) Which states have "do no harm" mineral conservation laws, and for which minerals and commodities does this apply?
- n) Definition of states' "trespass" laws and regulations pertaining to when an operator's CO2 migrates into a nearby non-CO2 EOR operator and affects that operator's field characteristics and produced fluids/gasses.
- o) List States that have specific underground natural gas storage rules and regulations.
- p) List States that have specific CO2 storage rules and regulations. Have any states issued or addressed regulations for CO2-EOR in Shale and related processes different from conventional CO2-EOR?
- q) Identify/list by Tribe in the targeted States, special considerations for Tribal lands for CO2 storage above and beyond what is required on Federal lands for both conventional CO2-EOR and CO2-Shale EOR. How does Tribal Sovereignty affect captured and geologically stored CO2 on Tribal lands and what are the liability issues on tribal land if different from Federal lands?
- r) Any State laws current or pending on induced seismicity from mineral extraction, natural gas storage, CO2 storage and produced water disposal.
- s) Which states have current or pending legislation specific to lithium extraction? If so would they subordinate CO2 EOR and geologic CO2 storage?

The final paper should not exceed 150 pages in length excluding appendices, maps, or matrices.

Collaborations or consortiums are acceptable as long as there is a single lead contractor and point of contact.

The contractor will designate a primary contact to coordinate and provide monthly updates on the status via written high-level reports and conference calls between the contractor and USEA which will commence within the 15 days after the initial award is formally accepted and contracted. USEA will provide a primary contact to coordinate these activities with USEA.

Deliverables

The contractor will be required to submit the following deliverables:

- Written monthly status updates detailing progress to date, challenges and recommendations for overcoming them
- Individual drafts of each state assessment
- Draft final report
- Final Report

Proposal Preparation

Interested parties are requested to submit a cost proposal and a brief concise technical proposal of process, and participants not to exceed 10 pages, including the following:

- Qualifications Statement demonstrating expertise and technical/legal understanding in the areas of Federal, State and Tribal mineral, pore space, surface, water, environmental liabilities, UIC Class II and VI regulations, disposal and eminent domain rights laws, rules and regulations.
- Bios on the lead investigators and overview of entities to be involved.
- Any references and brief overviews the contractor deems pertinent to show expertise to past similar work or participation in similar work.
- An expected timeline with agreed milestones and proposed workflow leading to the deliverable.

The sub-agreement between USEA and the winning offer will be structured as a fixed sub-agreement for labor, fringe benefits and overhead. USEA will fund other direct costs, including travel (transportation, lodging and a U.S. Government approved daily meals and incidental allowance) directly.

The cost proposal should include an estimate of the number of trips required to organize and conduct each of the studies. **DO NOT** include travel costs as USEA will fund this per the above.

Labor costs should include a level of effort for each person proposed to work on this assignment, their daily loaded rate, and the total estimated charge for each individual proposed.

CVs of each person proposed to work on this project must be included as an appendix and will not count toward the technical proposal page limit.

Selection Criteria

The following criteria will be used to evaluate proposals:

70% -- Proven experience in legal/regulatory expertise and experience of Federal, Tribal and States mineral rules and regulations, permitting, and land use/ownership, the UIC Class II and Class VI regulations, natural gas storage rules and regulations, CO₂-EOR –storage and surface rights.

30% -- Price

Schedule

Interested parties are requested to register their interest prior via email to the following mailbox: proposals@usea.org. Registering interest will ensure you receive all questions submitted by interested parties and the corresponding responses from USEA.

Questions on the terms of this request for proposals must be submitted prior to : **Oct. 18, 2019** by email to the following mailbox: proposals@usea.org. All questions received and their corresponding responses and other RFP related announcements will be posted on the USEA website and distributed to parties registering interest in this RFPs.

Final proposals must be submitted by email by 5:00 pm on : **Nov. 08, 2019** to the following mailbox: proposals@usea.org.

The review process will take up to 60 days. Notification will be sent to the selected offeror, at which point, contract negotiations, including setting milestones and deliverable due dates, will commence.