

Carbon capture, utilization and storage: updates from Ontario, Alberta and Ottawa

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This bulletin provides an overview of recent developments related to carbon capture, utilization and storage (CCUS) in the provinces of Ontario and Alberta and federally.

What you need to know

- The government of Ontario recently amended the *Oil, Gas and Salt Resources Act* to remove the prohibition on CCUS in Ontario. The province is proposing to further amend the Act to authorize and regulate projects that are to test, assess, pilot or demonstrate an activity, method or technology (such as CCUS) that is new or innovative to Ontario. These amendments would allow certain CCUS projects to proceed on private lands in Ontario.
- The government of Alberta has granted evaluation permits to 25 CCUS “hub” proponents to conduct evaluation work to assess the suitability of their respective geological formations for CO₂ sequestration. It remains to be seen which of these projects will proceed to the next regulatory approval stage. Alberta Premier Danielle Smith has indicated willingness to consider expanding public funding and possibly a provincial tax credit to support the development of CCUS in Alberta.
- The federal government’s 2023 budget included further details on the proposed investment tax credit for capital invested in CCUS projects. The government is expecting to release a package of legislative proposals in respect of the tax credit in the coming months. The tax credit would be retroactively applicable to eligible expenses incurred on or after January 1, 2022.

Ontario CCUS developments

On March 22, 2023, the *Less Red Tape, Stronger Ontario Act, 2023* received royal assent, amending the *Oil, Gas and Salt Resources Act* (the Act) to remove the prohibition on CCUS. On April 3, 2023, the government of Ontario published further proposed amendments to the Act that would authorize and regulate projects that are to test, assess, pilot or demonstrate an activity, method or technology (such as CCUS) that is new or innovative to Ontario.

The proposed amendments to the Act include the following:

- the Minister will be authorized to designate an eligible proposed project as a special project at the request of a proponent;
- eligibility criteria for projects will include: (1) the purpose of the project is to test, assess, pilot or demonstrate an activity, method, or technology that is new or innovative to Ontario, (2) the project will involve the use of one or more new or existing wells to access underground geological formations of Cambrian age or younger, (3) the Minister believes that the project can be designed, constructed, operated and decommissioned in a manner that protects people and the environment, and (4) any additional criteria established through the Minister's regulations;
- in requesting that a project be designated a special project, a proponent, in some cases, will be voluntarily requesting to make all or part of their project subject to the Act, where it would otherwise not be;
- special projects involving CCUS will only be able to proceed on private land (further changes to other legislation will be required before it could be authorized on Crown land);
- when making a decision to designate a project as a special project, the Minister will assess the potential for adverse impacts on the exercise of treaty or Aboriginal rights;
- as part of the special project designation, the Minister will also have the authority to specify matters related to the project such as the term of the designation, or to exclude any structures or equipment associated with a well;
- inspectors will have new authority to issue orders to prevent or minimize the risk of hazards occurring, such as ordering an operator of a well to eliminate or decrease the likelihood of the hazard occurring;
- the Minister will have the authority to consider past non-compliances when making designation or authorization decisions under the Act; and
- certain offence provisions will be amended to make it an offence to create a hazard to the natural environment, which will apply to prescribed compressed air energy storage projects; projects that inject, store or withdraw oil, gas or other prescribed substances; and other prescribed activities.

Importantly, designating a project as a special project under the Act will not authorize it; separate licences and injection permits under the Act would be required before the project can proceed. The proposed amendments will allow the Minister flexibility in adapting existing authorization processes and requirements where needed to address special projects. The Minister will have the ability to substitute or exempt existing requirements, if the Minister is in the opinion that the existing requirement is not suitable for the special project and the exemption or substitution of the requirement would adequately protect public safety and the environment.

The province is seeking comments on the proposed amendments to the Act until May 18, 2023. Comments may be submitted through the [Environmental Registry of Ontario](#). The province is expected to begin designing a framework to regulate commercial-scale CCUS projects on Crown and private land in summer or fall 2023.

Alberta CCUS updates

Other Canadian jurisdictions have the advantage of watching CCUS development charge forward in Alberta. The Shell Quest CCS project and the Alberta Carbon Trunk Line were commissioned in 2015 and 2020, respectively, and are the only commercial-scale CCUS projects in Canada, with a combined capacity of 2.8 Mt CO₂/year. Alberta is also currently in the evaluation stage for 25 potential CCUS “hubs”—seven of which, according to the Canada Energy Regulator, offer the potential to sequester about 56 Mt CO₂/year (or 22% of Alberta's 2020 emissions)¹.

The 25 CCUS hub proponents are currently conducting evaluation work under evaluation permits from Alberta's Minister of Energy to assess the suitability of their respective geological formations for CO₂ sequestration. The next step for these projects will be to obtain approval from the Minister and Alberta Energy Regulator to begin injecting CO₂ under long-term carbon sequestration leases.

Proponents have called for greater financial support from the Alberta government, and Alberta Premier Danielle Smith has indicated that the province may consider CCUS projects for funding under the Alberta Petrochemicals Incentive Program (APIP) and may consider implementing a provincial tax credit². APIP has funded two petrochemical projects that integrate carbon capture facilities but has not yet funded a standalone CCUS project³.

Areas currently under evaluation cover a wide swath of Alberta, and some proponents are targeting first CO₂ injection as early as Q4 2023, although it remains to be seen which of these projects will move forward to commercial operation.

Federal CCUS developments: investment tax credit

Budget 2022 announced the introduction of an investment tax credit for capital invested in CCUS projects (the CCUS Tax Credit). Since the announcement in 2022, the federal government has released additional information on the design of the credit. This includes information released in Budget 2023 on March 28, 2023. However, the CCUS Tax Credit has not yet been legislated.

CCUS tax credit prior to Budget 2023

In August 2022, the Department of Finance released for public comment draft legislative amendments to the *Income Tax Act* (Canada) and its regulations related to the CCUS Tax Credit and a backgrounder describing additional design features of the credit⁴. The design of the credit was proposed to include the following:

- the CCUS Tax Credit will be a refundable investment tax credit for businesses that incur eligible CCUS expenditures incurred on or after January 1, 2022, which may include the cost of acquiring eligible equipment used in qualified CCUS projects;
- the investment tax credit will be available to CCUS projects to the extent that they permanently store captured CO₂ through an eligible use (such as dedicated geological storage and storage in concrete);
- eligible equipment will include equipment that is used solely to capture, store or use CO₂ as part of a qualified CCUS project and is situated in Canada;
- a qualified CCUS project must meet certain conditions, such as the project is expected to capture CO₂ in Canada that would otherwise be released into the atmosphere or is captured directly from the ambient air;
- for projects with eligible expenditures of \$20 million or more, corporations (and all corporate partners of a partnership) will be required to prepare an annual Climate Risk Disclosure report beginning in the first tax year in which a CCUS Tax Credit is claimed and continuing through the first 20 years of operations; and
- projects with cumulative eligible expenses of \$250 million or greater based on the project plan would be required to contribute to public knowledge sharing in Canada, including producing a public “knowledge sharing report” (to be developed by Natural Resources Canada).

[As set out in Budget 2022](#), from 2022 to 2030, the investment tax credit rates would be set at: (i) 60% for investment in equipment to capture CO₂ in direct air capture projects, (ii) 50% for investment in equipment to capture CO₂ in all other CCUS projects, and (iii) 37.5% for investment in equipment for transportation, storage and use. The CCUS Tax Credit rates are proposed to be reduced to 30%, 25%, and 18.76%, respectively, for the period from 2031 through 2040, to encourage industry to move quickly to lower emissions.

Budget 2023

Budget 2023, released on March 28, 2023, provided additional detail on the design of the CCUS Tax Credit, based on comments received on the legislative proposal released in August 2022. [Budget 2023](#) sets out the following additional information on the credit:

- the CCUS Tax Credit will include dual use heat and/or power equipment and water use equipment, with tax support prorated in proportion to the use of energy or material in the CCUS process, subject to certain conditions;
- in addition to Saskatchewan and Alberta, it will be available to projects that would store CO₂ using dedicated geological storage in British Columbia;
- in addition to an initial project evaluation to be completed by the Minister of Natural Resources based on a proponent's submitted CCUS project plan, projects storing CO₂ in concrete will need to have their concrete storage process validated by a third party based on an ISO standard prior to claiming the credit;
- there will be a recovery calculation for the credit in respect of refurbishment property; and
- labour requirements will be applied to the CCUS Tax Credit, which will be announced at a later date and are proposed to apply to work performed on or after October 1, 2023.

A full package of legislative proposals is expected to become available in the coming months. Once legislated, the CCUS Tax Credit will be retroactively available to businesses that have incurred eligible CCUS expenses on or after January 1, 2022.

FOOTNOTES

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

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