

LONG TERM LIABILITY AND CCS

RICHARD MACRORY

Barrister, Director UCL Carbon Capture Legal Programme

Abu Dhabi 7-8 Sept 2011

ARE LIABILITY ISSUES FOR CCS DISTINCTIVE?

- Short term similar to other industrial activities
- CCS large scale industrial activity raises many liability risks beyond CO₂
- Many legal mechanisms developed in commercial energy world (e.g. shared use of pipes).

ARE LIABILITY ISSUES DISTINCTIVE?

- BUT long term nature of CCS
urgency of deployment
remoteness/inaccessibility of sites
large private sector involvement
link with emissions trading/credits

TRANSFER of RESPONSIBILITY TO THE STATE

- Familiar feature in environmental regulation (e.g. landfill of waste)
- Transfer is never completely clear cut and nearly always limited in some way (fault)
- Conditions and what liability is transferred critical
- National/Regional CCS laws to date differ and harmonization very unlikely

EU Directive - Closure and Transfer of Liabilities

Minimum 20 years after cessation of storage unless authority satisfied earlier

Financial contribution by operator for monitoring for 30 years

'All available evidence indicates that the stored CO₂ will be completely and permanently contained'.

But no indemnity where fault on the part of the operator, including wilful deceit, negligence, a lack of due diligence or the provision of deficient data.

‘All available evidence indicates that the stored CO₂ will be completely and permanently contained’

- Very difficult to satisfy literal reading
- Directive requires report by operator demonstrating **at least**:
 - (a) conformity of the actual behaviour with the models
 - (b) absence of any detectable leakage
 - (c) site evolving towards long- term stability
- **GUIDANCE DOCUMENT 2011** issued by Commission
- Tends to equate report as satisfying the overall test

AUSTRALIA FEDERAL OFF-SHORE

- (a) Minister satisfied that actual storage behaving as predicted in plan and
- (b) Minister is satisfied that there is no significant risk that injected carbon will have a significant adverse impact on environment

s 399 **Offshore Petroleum and Greenhouse Gas Storage Act 2006**

Queensland Greenhouse Gas Storage Act 2009

- “The Minister considers the risks associated with GHG stream storage under the GHG lease have been reduced as much as is reasonably practicable”

FINANCIAL SECURITY UNDER EU DIRECTIVE

- Financial security (in formed agreed by Member State) provided by operator cover obligations under permit including post-closure PLUS liabilities under Emissions Trading Directive
- Can be periodically adjusted to take account of assessed risk of leakage etc.
- GUIDANCE from Commission 2011
“The aim of the guidance is to strike the right balance between full coverage of obligations as required under Article 19 while at the same time not overpricing the risks in relation to these obligations for early movers”.

CDM and LIABILITY

- Many issues on liability similar to those being addressed in national/regional jurisdictions
- But CDM specific issues due to (1) liability imposed on project by Kyoto Protocol and mechanisms and (2) distinctive governance issues involving Annex I country, host country. Project developer, and CDM Executive Board.

POST TRANSFER LIABILITY

- If to host non-Annex I country, then no liability to limit emissions account for leakage?
- Benefit of CERs rests with Annex I country and logic suggest Annex I must be liable to account for leakage
- Liability then rests with sponsoring country but legal powers to remediate and reduce leakage rests with operator and host country.

UCL CARBON CAPTURE LEGAL PROGRAMME

LEGAL RESOURCES

non technical summaries, key CCS questions, original
legislation

POLICY NEWS

BIBLIOGRAPHY

www.ucl.ac.uk/cclp