



# CARBON CAPTURE LEGAL PROGRAMME REVIEW

2008-09

## Introduction

Since its foundation in June 2007, the Carbon Capture Legal Programme (CCLP) has continued to provide independent analysis of the legal aspects of carbon capture and storage (CCS). This has been for the most part through the open access website detailing and analysing legal and policy developments although, increasingly, also through its activities within the International Regulators' Network and beyond.

## Sponsors

The Programme is based at the Centre for Law and the Environment, University College London and has been made possible by unrestricted donations from RPS Group plc, Freshfields Bruckhaus Deringer, RWE npower and Rio Tinto.

# Key Legal Developments 2008–09

## Ian Havercroft, Research Fellow

The last twelve months have seen significant steps taken by State-level and national governments to regulate CCS activities. At the supranational level the European Commission introduced its 'Energy and Climate Change Package', which included detailed proposals for a Directive concerning the storage of captured CO<sub>2</sub>.

In the UK, the Energy Bill was introduced to the House of Commons in January 2008 and finally received Royal Assent on the 26th November. **The Energy Act 2008** seeks to create a dedicated regulatory framework for CCS and introduces a regime based upon the licensing of CO<sub>2</sub> storage activities. Under the Act, all activities relating to the 'permanent' geological storage of CO<sub>2</sub> shall require a licence from the relevant authority and detailed provisions regarding the processes for obtaining and maintaining a licence are provided. The Act also applies provisions of the Petroleum Act 1998, concerning the abandonment of offshore installations, to carbon storage installations.

The United States and Australia have also seen rapid development of CCS legislation at State and Federal level; many of these proposals are being refined prior to their ratification by national legislatures and administrations. Of particular note is the United States Environmental Protection Agency's **Proposed Federal Rule** under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO<sub>2</sub>) Geologic Sequestration (GS) Wells, which applies to the owners and operators of wells which inject CO<sub>2</sub> into the subsurface for permanent storage. This modification of existing legislation, concerning the protection of underground sources of drinking water, provides full coverage of the CO<sub>2</sub> storage process from site characterisation through to monitoring and post-closure aftercare.

In Australia, the Federal government has enacted the **Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008**, covering the offshore storage of CO<sub>2</sub>; and the States of Victoria and Queensland have recently passed the **Greenhouse Gas Geological Sequestration Act 2008** and **Greenhouse Gas Storage Act 2009**, respectively.

All Acts provide a detailed permitting regime for CO<sub>2</sub> storage activities modelled upon existing petroleum legislation and include provisions regarding liabilities and public participation.

One of the most significant developments in the past year has been the development and negotiation of the European Commission's proposed **CCS Directive**. The draft Directive was the subject of intense negotiations between the European Parliament and Commission during 2008 and what is likely to be a final draft was released in late December. Various amendments were proposed and included by the Council and Parliament; including amongst others, minimum timescales for the post-closure transfer of responsibility for storage sites, qualitative standards for sequestered CO<sub>2</sub> streams and provision for Member States to legislate upon financial security.

Although much has been achieved, the framework nature of some of these proposals means that many of the permitting mechanisms are to be elucidated at a later stage by the relevant competent authorities. In addition, a number of issues are yet to be fully addressed within the various regulatory proposals; including amongst others CO<sub>2</sub> transport and safety, jurisdictional issues and the inclusion of CCS in the international climate change regime.



---

## Carbon Capture Legal Programme – Hosted Events

### CCLP Conference 2008

The CCLP hosted its first in-house seminar on CCS legal issues in June 2008. Around 40 invitees from the legal, industry and academic communities attended the afternoon session, which focussed on the proposed EC directive, State aid for CCS and liability issues. Speakers included Mihai Tomescu, of the European Commission team working on the CCS Directive; Professor Bugge, from the University of Oslo, together with insights into the EFTA surveillance proceedings and UK legal experts focusing upon liability issues.

### CCLP and KCRM Conference 2009 – Public Perception

The CCLP, together with Professor Ragnar Löftstedt and his team at King's College London's Centre for Risk Management (KCRM), are to hold a one-day event on 12 June 2009 to examine issues surrounding the public perception of CCS. The event, which is by invitation only, will seek to engage actors across the legal, industry, NGO and academic communities, with a view to the engagement of the public in CCS.

# IEA Regulators' Network

## Launching the Network

In May 2008, the CCLP, together with the International Energy Agency and the Carbon Sequestration Leadership Forum, hosted a conference to launch the CCS Regulators' Network. The two-day event in Paris brought together over 100 delegates from across the world and established what is hoped to become the leading international forum for the discussion of regulatory approaches to CCS. Ian Havercroft, Research Fellow for the CCLP, chaired some of the sessions and Professor Richard Macrory gave an opening address to delegates.

## Webinar Series

The Network is hosting a series of meetings including internet-conferences, or 'webinars', on specific legal and regulatory aspects of CCS. In the past twelve months webinars have addressed:

- 'Regulatory Approaches to CCS Liability', 15 January 2009.

- 'Getting Started: Laying the Legal and Regulatory Foundations for Early CCS Demonstration Projects', 9 October 2008 – chaired and facilitated by Ian Havercroft.
- 'CO<sub>2</sub> Transport, Health and Safety Issues', 10 July 2008.

By hosting these conferences online, participants from all over the world are able to engage in dialogue on a regular basis. These early webinars have been well received, with around 80-100 participants logging in from around the globe.

## Roadmap Meeting

In February 2009, Ian Havercroft attended the second and final IEA CCS Roadmapping meeting in Paris. The aim of the roadmapping exercise is to identify and assess the near, medium- and long-term milestones needed to guide the international community in technology and policy development. A great deal needs to be accomplished in the next 10-15 years if CCS is to make a meaningful contribution to global CO<sub>2</sub> reductions efforts by 2050. The roadmap process brought together regulatory, finance, insurance and public awareness experts and it is expected that the outcomes will be released at the IEA Ministerial in October 2009.

---

## Conferences and Seminars

### Invited Presentations and Papers

**'Addressing legal frameworks for CCS in Europe and the UK'**, Carbon Capture, Storage and Transport Summit 2008, Energy IQ, 23–24 September 2008, London [Ian Havercroft].

**'Carbon Sequestration – Legal Issues'**, Climate Change and its Challenges for the International System – British Institute of International and Comparative Law, Annual Conference, October 2008, London [Richard Macrory].

**'Legal Regulatory Developments Associated with Carbon Dioxide Capture and Storage: A Global Update'**, 9th International Greenhouse Gas Technologies Conference (GHGT-9), 16–20 November 2008, Washington DC. [Presented by Ian Havercroft (pictured right) – Paper co-authored with Tom Kerr and Tim Dixon]. All papers delivered at GHGT-9 are available online: <http://mit.edu/ghgt9/>

**'Regulating Carbon Capture and Storage'**, Regulation, Enforcement, and Governance in Environmental Law: Contemporary Developments in India and the UK, Centre for Policy Research, March 2009, New Delhi [Ian Havercroft]



## Participation

**'Carbon Capture and Storage: Making it Happen'**, Friends of Europe Roundtable Debate, May 2008, Brussels [Chris Clarke].

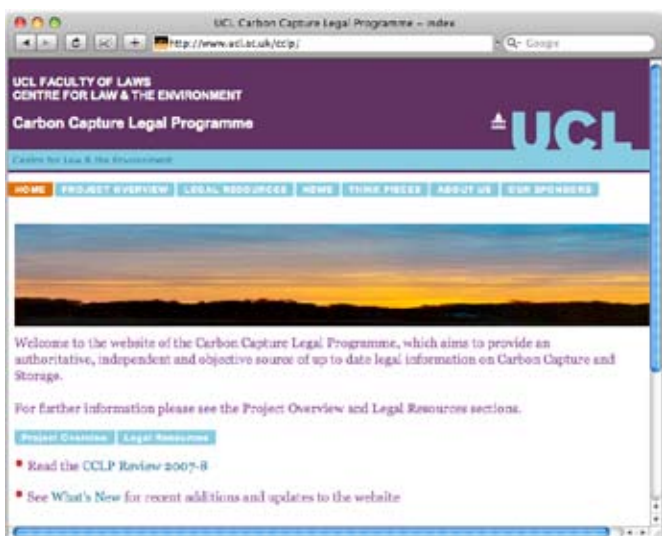
**'Assessing the Commission's Proposal on CCS'**, European Parliament, 28 May 2008, Brussels [Ian Havercroft].

**'RPS Carbon Capture & Storage Seminar Series'**, 27 October 2008, London [Carrie Bradshaw].

**'Commercialising CCS in the EU & Japan'**, 12 November 2008, Brussels [Carrie Bradshaw and Ian Havercroft].

**'Global Carbon Capture and Storage Institute' (GCCSI) Preparatory Meeting**, 24–25 November 2008, London [Carrie Bradshaw and Richard Macrory].

## Website



The CCLP website has continued to provide a means of disseminating policy and regulatory developments concerning CCS across the globe, with an ever expanding Legal Resources section, together with over 400 News entries which are updated at least weekly. In the past year the CCLP has also commissioned a number of 'Think Pieces'. These small items are written by experts on discrete CCS topics and are published with a view to provoking further discussion and research. Think Pieces on issues relating to CCS liability and Australian legislative activity are currently under commission.

The CCLP will also be launching a bibliography of articles concerning CCS regulation which, it is hoped, will be a valuable resource for those working in this area, from a legal perspective or otherwise.

In addition, a number of 'user-friendly' changes will be made to the site over the coming months, including a more prominent place for the regularly updated News function; improved navigation around the 'Legal Resources' section of the site; and better printing options for those who prefer to read in hard copy. A new 'IEA Tab' will also be added to link through to the IEA's CCS pages and the important work being undertaken by the International CCS Regulators' Network.

## Contact Us

### Professor Richard Macrory

Director

[r.macrory@ucl.ac.uk](mailto:r.macrory@ucl.ac.uk)



### Professor Catherine Redgwell

Co-Director from January 2009

[c.redgwell@ucl.ac.uk](mailto:c.redgwell@ucl.ac.uk)



### Ian Havercroft

Research Fellow

[i.havercroft@ucl.ac.uk](mailto:i.havercroft@ucl.ac.uk)



### Carrie Bradshaw

Project Co-ordinator  
from September 2008

[carrie.bradshaw@ucl.ac.uk](mailto:carrie.bradshaw@ucl.ac.uk)



### Chris Clarke

Visiting Fellow

[chris.clarke@ucl.ac.uk](mailto:chris.clarke@ucl.ac.uk)



### Centre for Law and the Environment

Faculty of Laws,  
University College London  
Bentham House  
Endsleigh Gardens  
London  
WC1H 0EG

[cclp@ucl.ac.uk](mailto:cclp@ucl.ac.uk)

[www.ucl.ac.uk/cclp](http://www.ucl.ac.uk/cclp)