

Memorandum of Understanding
between the
Council on Environmental Quality
and the
U.S. Department of Energy
concerning the
Carbon Dioxide Capture, Utilization, and Sequestration
Permitting Task Forces

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to promote cooperative efforts between the White House Council on Environmental Quality (CEQ) and the U.S. Department of Energy (DOE) (collectively, the Parties) to establish, maintain, and manage not less than two carbon capture, utilization, and sequestration (CCUS) regional permitting task forces, being established pursuant to the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act, Pub. L. No. 116-260, Div. S § 102, 134 Stat. 2253-55 (Dec. 27, 2020).

The task forces will provide crucial advice to the President, Congress, the Parties, other federal agencies, and state, local, and Tribal governments regarding the capture, use, and sequestration of carbon dioxide. CCUS is an important approach to emissions reductions that can contribute meaningfully to the global fight against climate change and improve the efficiency and sustainability of various forms of energy production. The task forces will identify best practices by which federal and state authorities can make the regulatory and permitting frameworks for CCUS projects more efficient, effective, transparent, responsive to community concerns and input, and responsible, which will advance not only the purpose of the USE IT Act, but also CEQ's and DOE's joint energy and environmental missions.

This MOU formalizes the collaborative relationship between CEQ and DOE regarding the administration of the task forces and sets forth procedures for appointing members, developing charges for the task forces, and reporting on the task forces' responsibilities.

II. Authorities

- A. DOE enters into this MOU under the authority of section 646 of the Department of Energy Organization Act (Pub. L. 95-91, as amended; 42 U.S.C. § 7256), which authorizes the Secretary of Energy to enter into and perform such contracts, leases, cooperative agreements, or other similar transaction with public agencies as the Secretary may deem to be necessary or appropriate to carry out the Secretary's functions.

- B. CEQ enters into this MOU under the authority of section 205 of the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended; 42 U.S.C. § 4345), which authorizes CEQ to utilize, to the fullest extent possible, the services, facilities, and information of public agencies.

III. Background

CEQ's mission is to coordinate the federal government's efforts to improve, preserve, and protect America's public health and environment. This includes:

- advising the President and developing policies on climate change, environmental justice, federal sustainability, public lands, oceans, and wildlife conservation; and
- working to ensure that environmental reviews for infrastructure projects and federal actions are thorough and efficient and reflect the input of the public and local communities.

DOE's mission is "[t]o ensure America's security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions." This includes:

- minimizing the environmental impacts of fossil fuels while working towards net-zero emissions; and
- using research, development, demonstration, and deployment approaches to advance technologies to reduce carbon emissions and other environmental impacts of fossil fuel production and use, particularly in the hardest-to-decarbonize applications in electricity and industrial sectors.

The USE IT Act requires the Chair of CEQ (the Chair) to establish not less than two task forces, which shall each cover a different geographical area with differing demographic, land use, or geological issues, for the following purposes:

- 1) to identify permitting and other challenges and successes that permitting authorities and project developers and operators face in permitting projects in an efficient, orderly, and responsible manner; and
- 2) to improve the performance of the permitting process and regional coordination for the purpose of promoting the efficient, orderly, and responsible development of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines.

The USE IT Act requires each task force to:

- A. inventory existing or potential federal and state approaches to facilitate reviews associated with the deployment of CCUS projects and carbon dioxide pipelines, including best practices that—
 - i. avoid duplicative reviews to the extent permitted by law;

- ii. engage stakeholders early in the permitting process; and
 - iii. make the permitting process efficient, orderly, and responsible;
- B. develop common models for state-level carbon dioxide pipeline regulation and oversight guidelines that can be shared with states in the geographical area covered by the task force;
- C. provide technical assistance to states in the geographical area covered by the task force in implementing regulatory requirements and any models developed under subclause (B);
- D. inventory current or emerging activities that transform captured carbon dioxide into a product of commercial value, or as an input to products of commercial value;
- E. identify any priority carbon dioxide pipelines needed to enable efficient, orderly, and responsible development of carbon capture, utilization, and sequestration projects at increased scale;
- F. identify gaps in the current federal and state regulatory framework and in existing data for the deployment of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines;
- G. identify federal and state financing mechanisms available to project developers; and
- H. develop recommendations for relevant federal agencies on how to develop and research technologies that –
 - i. can capture carbon dioxide; and
 - ii. would be able to be deployed within the region covered by the task force, including any projects that have received technical or financial assistance for research under paragraph (6) of section 103(g) of the Clean Air Act (42 U.S.C. 7403(g)).

To support the efficient, effective, and responsible permitting of CCUS projects, the task forces shall also consider and develop recommendations to address community concerns regarding the climate benefits and environmental justice implications, including public health and safety, of CCUS. In the development of these recommendations, the task forces will consider and identify recommended mechanisms to ensure just treatment and meaningful involvement of impacted communities.

In order to ensure continuity of operations for the task forces, to leverage the resources and expertise of the Parties, and to facilitate accomplishment of the Parties' shared goals, the Parties agree that DOE will be responsible for administration and technical support of each task force established pursuant to the USE IT Act, which shall include the responsibility to support the task forces as federal advisory committees, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. Ch. 10 subject to the

availability of resources. Nevertheless, the Parties acknowledge that, pursuant to the USE IT Act, the Chair (or designee) has sole legal responsibility, pursuant to paragraph (d)(2)(D)(ii)(I)(bb) of the USE IT Act, for selecting the members of each task force.

IV. Task Force Membership and Appointments

The USE IT Act directs the Chair to select the members of each task force. The Chair has announced initial member selections for each task force. For subsequent selections of members or to fill vacancies, the Parties agree that the Chair shall select and appoint the members for each task force, decide on task force members' terms of service, select members to fill vacancies on the task forces as they occur, and determine whether to reappoint members whose terms are expiring. The Chair shall solicit and take into consideration DOE's views regarding task force membership, including with respect to selection and appointment of members, members' terms of service, and whether members whose terms are expiring should be reappointed.

Subject to the USE IT Act and this MOU, the Chair and DOE will conduct all appointments to the task forces in accordance with FACA, its implementing regulations, DOE Manual 515.1-1, *Advisory Committee Management Program*, and other applicable internal DOE requirements for advisory committee management.

If a vacancy arises on a task force as a result of which the task force lacks a member required by the USE IT Act, and the Chair fails to fill that vacancy within six months (180 days), DOE may exercise the functions of the Chair under the preceding paragraph with respect to that vacancy.

DOE will obtain the Chair's approval before amending any provisions of the Charter or the Membership Balance Plan that relate to the appointment, reappointment, or removal of members.

V. Charges to the Task Force

The USE IT Act sets forth specific responsibilities for each task force. DOE will develop charges in consultation with CEQ – *i.e.*, specific missions and assignments for the task forces that identify discrete tasks to accomplish their statutory responsibilities – in alignment with the purposes and requirements set forth in the USE IT Act. The Assistant Secretary of the Office of Fossil Energy and Carbon Management (DOE) will transmit these charges to the task forces.

VI. Reporting

Each task force will report annually to the Chair, the Assistant Secretary of the Office of Fossil Energy and Carbon Management (DOE), and the other CCUS permitting task force(s). The report will include:

- A. any recommendations for improvements in efficient, orderly, and responsible issuance or administration of federal permits and other federal authorizations required under environmental law, as more fully set forth in the USE IT Act; and
- B. any other nationally relevant information that the task force has collected in carrying out its duties.

The task force will convey special reports and recommendations of the task force to the above-named officials.

VII. Administration and FACA Requirements

The Parties agree that DOE is authorized to take all steps necessary to ensure that each task force complies with FACA and its implementing regulations (41 CFR Part 102-3, *et seq.*), and DOE M 515.1-1 Advisory Committee Management Program; provided, however, for the avoidance of doubt, that the Chair shall have sole authority to exercise the functions that the USE IT Act and this MOU allocate to the Chair, except as this MOU otherwise provides.

VIII. Resolution of Disagreements

If the Parties cannot resolve a disagreement regarding the interpretation of this MOU at the staff level, staff will refer the matter to the Secretary of Energy (or designee) and the Chair (or designee) for resolution.

IX. Amendment and Termination

The Parties may modify or terminate this MOU by written agreement. Either Party may terminate this MOU upon 90-day written notice to the other. Notices of termination will be signed by the Secretary of Energy (or designee) and the Chair (or designee). Following termination of this MOU, DOE will continue to administer the task forces and the Chair will continue to select task force members pursuant to the USE IT Act.

X. Funding

This MOU is not a funds authorizing document and is not a basis for any reimbursement of funds or contract. This MOU does not create legal rights or obligations in either party, or obligate, commit, or transfer funds. All parties are responsible for their own costs in pursuance of the goals of this MOU. For any action undertaken pursuant hereto, each party is responsible for complying with law and its policies and procedures for acquiring necessary funding. Any transfer of funds for this or a related project must be accomplished under a proper fiscal document that is independent from this MOU.

XI. Contacts

The initial point of contact for each Party is set forth in Attachment A.

XII. Additional Terms

This MOU in no way restricts either of the Parties from participating in any activity with other public or private agencies, organizations, or individuals.

This MOU is not legally enforceable and does not create any legal obligation on the part of either Party. This MOU does not provide a private right or cause of action for or by any person or entity.

This MOU is effective when signed by both Parties.

**BRADFORD
CRABTREE**

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CRABTREE
Date: 2023.10.30 15:55:32
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Mr. Brad Crabtree
Assistant Secretary
Office of Fossil Energy and Carbon Management
U.S. Department of Energy

Ms. Brenda Mallory
Chair
Council on Environmental Quality

Date

Date

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Mr. Brad Crabtree
Assistant Secretary
Office of Fossil Energy and Carbon Management
U.S. Department of Energy

Ms. Brenda Mallory
Chair
Council on Environmental Quality

Date

10/31/23

Date

Attachment A

Points of Contact

For the U.S. Department of Energy:

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