

Input to GD 3: Criteria for Transfer of Responsibility to the Competent Authority

24th Feb 2023

Reference to text in Guidance Document / general comment:

General Comment: This Guidance Note makes no distinction whether the storage site is (i) onshore or (ii) offshore.

Perhaps the guidance on monitoring/CO2 behaviour etc. requires some differences or nuances whether the site is onshore or offshore?

Proposed changes:

None proposed at this stage, but we would like a response to the above suggestion from DNV including rationale on how they reached their decision.

Justification:

The physical characteristics and risk profile of storage in saline aquifers and depleted hydrocarbon fields are different and some consideration should be given to treating them differently in the Guidance Notes.

Reference to text in Guidance Document / general comment:

To page 3, boxed text: The guidance on "*all legal obligations*" excludes obligations and liabilities other than those under CCS Directive, the ETS Directive (2003/87/EC) and the Environmental Liability Directive (2004/35/EC)" e.g., under other legal regimes such as civil and common law, other EU statutes, contractual agreements.

Proposed changes:

The update should consider using different terminology or at least include a better explanation of what is included in the expression "all legal obligations" and what are the admitted exceptions.

Justification:

The current explanation of "*all legal obligations*" creates challenges for financing CCS projects as in effect the operator retains an uncapped liability with respect to those other legal regimes not covered by the "all legal obligations" terminology.

Reference to text in Guidance Document / general comment:

To Section 2: Transfer of Responsibility - general comment: It mentions that competent authority must be satisfied that "*there is sufficient evidence for complete and permanent containment of the stored CO2*"

Proposed changes:

It would be helpful to provide general guidance on what could constitute "sufficient evidence" and on "complete" & "permanent containment".

Justification:

Such guidance could minimize the risk that, at the time that transfer is proposed, critics submit contrary evidence that casts doubt on complete and permanent containment.

Reference to text in Guidance Document / general comment:

To Section 2.1.1 Conformity with models - There is the emerging field of 3rd party certification of CO2 storage - could the guidance be updated to reflect that certification of the model by a reputable and qualified 3rd party should be adequate evidence of conformity?

Proposed changes:

None proposed at this stage, but we would like a response to the above suggestion from DNV including rationale on how they reached their decision.

Justification:

Guidance document should reflect current trends.

Reference to text in Guidance Document / general comment:

To Section 2.3 page 14 (as marked in the document) lines 10-13, starting with "*In the Commission's view (...)*"

Proposed changes:

DNV is requested to update this statement to reflect the Commission's current views

Justification:

It is important that the Guidance documents reflect the Commission's current view on CCS as this has changed since 2011.

Reference to text in Guidance Document / general comment:

To Section 2.6 Paragraph 1, lines 1-12 page 15 & 16 (as marked in the document)

Proposed changes:

Revised Guidance Notes should contain more details on this item of transfer of data by Operator to the Competent Authority.

Justification:

Data transferred will be key determining cause and liability if anything goes wrong post transfer