

POLICY STUDY

CARBON CAPTURE & PROPERTY RIGHTS

There Is No Justification for Using
Carbon Capture and Storage Projects
to Abrogate Property Rights



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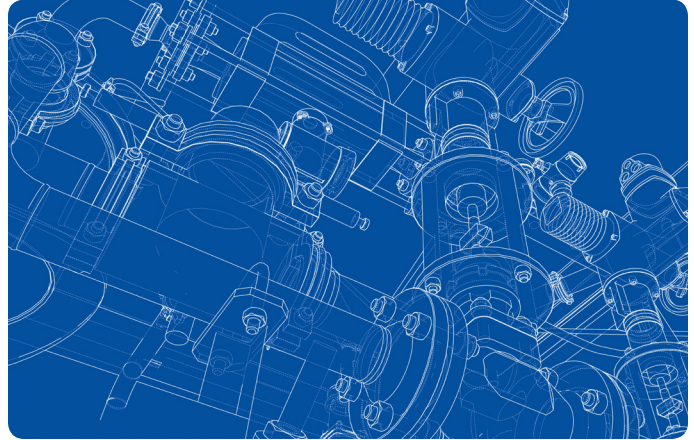
Executive Summary

- Carbon capture and storage (CCS) is one of the latest methods climate activists are using to combat greenhouse gases and achieve “net-zero” carbon dioxide emissions.
- CCS companies capture carbon dioxide emissions at their source, condense them into a liquid-like “supercritical” state, transport supercritical CO₂ through pipelines to a storage site, and then inject captured CO₂ into underground geologic formations.
- CCS can have dramatically deleterious effects upon public health and the environment, especially in the transport and storage phases.
- CCS is enormously expensive and propped up by vast amounts of government funding and coercive mechanisms designed to control the private sector, such as carbon credit markets and environmental, social, and governance (ESG) metrics.
- CCS projects are proliferating rapidly, with hundreds in operation or development around the globe, including more than 100 in the United States.
- One of the largest problems caused by CCS is the abrogation of private property rights.
- Government-funded private CCS companies—such as Summit Carbon Solutions—are using eminent domain to seize privately held land to transport and store captured carbon dioxide, on the basis that they are common carriers that serve the public good.
- Despite their claims, CCS companies are not common carriers, and should not be given the ability to seize private property in service of their own profits.
- CCS can and should be opposed at both the state and federal levels of government, such as by explicitly barring CCS companies from being able to use eminent domain, enacting stricter common carrier laws, deregulating carbon dioxide emissions, and cutting off federal funding for CCS projects.

Introduction

Carbon capture and storage (CCS) projects have become an increasingly popular method by which climate activists pursue their ultimate goal of global “net-zero” carbon dioxide (CO₂) emissions. Rather than focusing upon the societal harms of climate alarmism in general, this paper will focus specifically on the harms inflicted by CCS, with a particular emphasis upon the revocation of private property rights through the use of eminent domain.

This paper begins with a brief background of the chain of events and overarching agenda that has spawned CCS and an explanation of the CCS process. It then covers the significant public health and environmental problems that can be the direct result of CCS projects, as well as the massive public-private partnerships and funding mechanisms that incentivize the proliferation of CCS. The paper will close by clarifying how CCS indeed poses an imminent threat to Americans’ fundamental private property rights and providing specific recommendations for policymakers to protect those rights and push back against the green agenda.



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Background

Policies designed to combat ostensibly planet-threatening carbon dioxide emissions have escalated in recent decades in the United States and around the globe. The overarching agenda and goals are typically concocted and disseminated at the international level by intergovernmental organizations such as the United Nations and a host of oligarchic, ideologically aligned public-private partnerships, with the ensuing policies enforced by individual countries at national and local levels of government.

In the United States, the roots of the green agenda were planted by the Clean Air Act (CAA) of 1963, which granted the federal government the authority to address growing concerns about air pollution.¹ Subsequently, the Nixon administration established the Environmental Protection Agency (EPA) in 1970 to implement the various requirements included in the Clean Air Act and its amendments.² However, it was not until decades later—under the Obama administration—that the EPA’s mandate dramatically expanded to include the regulation of all carbon dioxide emissions, which greatly intensified draconian climate action by the federal government.

In 2007’s landmark *Massachusetts v. EPA* ruling, the U.S. Supreme Court determined that emissions of greenhouse gases fit the definition of “air pollutant” under the CAA and ordered the EPA to assess potential harms.³ After President Obama’s ascendance to the White House in January 2009, the EPA quickly acted. The EPA published its “Endangerment Finding” in December 2009, which asserted that six specific greenhouse gases “threaten the public health and welfare of current and future generations.”⁴ These GHGs included carbon dioxide, as well as methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.⁵

The inclusion of carbon dioxide in the EPA’s endangerment determination—a finding that has

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been repeatedly challenged on scientific grounds⁶—has provided the basis point for federal regulation of CO₂, particularly under the Obama and Biden administrations. This scientifically unsound, authoritarian, freedom-eviscerating, and economically calamitous agenda has been heavily influenced by the United Nations Intergovernmental Panel on Climate Change’s (IPCC) assertions that anthropogenic greenhouse gas emissions—primarily CO₂—have placed the world on the brink of environmental catastrophe.⁷ To avoid this supposedly inevitable crisis, the IPCC and aligned national governments have developed a global goal of achieving “net-zero” carbon dioxide emissions by 2050.

In addition to preventing carbon dioxide emissions from occurring in the first place, a critical component of the green lobby’s “war on carbon” is mitigating carbon dioxide emissions stemming from processes that cannot yet be completely stopped, such as natural gas production. This process—called carbon capture and storage—entails the use of eminent domain to seize privately owned land on behalf of government-supported companies. Ultimately, Americans’ fundamental private property rights are quickly becoming yet another casualty of the totalitarian climate-change agenda.

Carbon Capture and Storage

Carbon capture and storage (CCS) projects, also known as “carbon sequestration,” attempt to capture carbon dioxide generated during hydrocarbon production and utilization before it is released into the atmosphere, and then store the captured CO₂ underground. Capture is located at sources of significant carbon dioxide emissions, such as power plants and industrial facilities. The process utilizes a variety of complex technological methods that transform carbon dioxide from a gas into a liquid-like state through intense compression. Once compressed into “supercritical” form, captured CO₂ is then transported via ships, trucks, or most commonly pipelines to a storage location. At that location, it is then pumped deep underground into supposedly impermeable reservoirs—where it is, in theory, permanently stored.⁸

Historically, carbon dioxide has been pumped underground to flush out difficult-to-extract oil deposits through a process called enhanced oil recovery (EOR).⁹ When used for this purpose, CCS is sometimes referred to CCUS (carbon capture utilization and storage). However, considering the clearly stated goal of the climate change movement is to transition entirely from oil and other hydrocarbons to “green” sources of energy such as wind and solar, large-scale implementation of CCS is focused more upon long-term geologic storage rather than utilization.

Environmental and Public Health Concerns

The problems associated with CCS are significant and numerous. As mentioned, the transportation of captured carbon through pipelines can result in the seizure of private property from landowners who are unwilling to sell rights of way through their



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land, which is the focus of this paper’s penultimate section. There are additional problems related to both the storage and transportation of captured CO₂, however.

Regarding the storage aspect, despite the claims of CCS companies and climate activists, there is no guarantee that stored carbon dioxide will stay underground after it is injected into geologic formations. Stored CO₂ can escape due to a variety of factors, including undetected underground faults, fractures, seal failure, poor site selection, and mineral dissolution. Such leakage can contaminate nearby groundwater and soil, resulting in significant public health risks as well as damage to the environment, including animals, crops, and soil.¹⁰

Several real-world examples of the inability to keep stored gases trapped underground have already occurred. For instance, in 1986, a lake in Cameroon released a massive amount of carbon dioxide that had formed from volcanic activity, which ultimately killed nearly 1,800 people, 3,500 livestock, and countless birds and insects.¹¹ A CCS project in Algeria—which cost approximately \$2.7 billion to build in 2004—had to be shut down in 2011 due to concerns about leakage.¹² In 2015, a blowout at California’s Aliso Canyon gas storage facility caused the largest greenhouse gas release in U.S. history, which displaced thousands of families, forced schools to relocate, and caused significant health issues for those living in close proximity.¹³ Though the gas released was methane rather than carbon dioxide, the same phenomenon can easily occur at CO₂ storage sites. The United Nations Intergovernmental Panel on Climate Change has even admitted that “CO₂ storage is not necessarily permanent. Physical leakage from storage reservoirs is possible via (1) gradual and long-term release or (2) sudden release of CO₂ caused by disruption of the reservoir.”¹⁴

Beyond the risks presented by the storage of carbon dioxide lie the problems associated with its transportation through pipelines, which can leak or even completely rupture. Pipelines transporting highly pressurized, supercritical carbon dioxide are significantly more susceptible to ruptures than pipelines transporting natural gas.¹⁵ The unique properties of supercritical carbon dioxide can lead to the formation of carbonic acid, which is naturally corrosive to the infrastructure of the pipeline itself. The nonprofit pipeline safety watchdog Pipeline Safety Trust explains, “CO₂ pipelines are susceptible to ductile fractures, which can, like a zipper, open up and run down a significant length of the pipe, they can release immense amounts of CO₂, hurl large sections of pipe, expel pipe shrapnel, and generate enormous craters.”¹⁶ After a rupture, CO₂ can “travel large distances at lethal concentrations.”¹⁷

One example of this occurred in 2020, when a pipeline in Satartia, Mississippi leaked and caused 49 people to be hospitalized.¹⁸ Investigative journalist Dan Zegart, the first national journalist



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to investigate the catastrophe, described in an interview: “The people in Satartia were not prepared. They were not notified by the company that this could happen... But what did surprise me was the graveness, how bad the injuries were. People who had COPD under control, who are now on inhalers full time. People who are disoriented still, [and] have memory problems. One of the most seriously injured people can’t recognize his friends on the street.”¹⁹ Zegart went on to say that CO₂ pipelines are “a much more hazardous type of pipeline” than typical pipelines transporting other substances.²⁰ In April 2024, another CO₂ pipeline ruptured in Sulphur, Louisiana, leading the local government to issue a shelter-in-place advisory.²¹ Such incidents are almost certain to become more common as CCS projects continue to multiply.

Governmental Funding and Incentives

Yet another significant problem related to CCS is the fact that the projects revolving around permanent storage—rather than utilization—make no economic sense on their own. They provide no publicly available commodity or service to the market; such projects only serve the purely political goal of fighting climate change. CCS projects are enormously expensive and generally cost-prohibitive, unless propped up by public funds and governmental regulatory interventions. Though the total cost of capturing, transporting, and storing a single metric ton of CO₂ is variable depending on the project, the International Energy Agency estimates that capture costs range from \$15 to \$120 per metric ton depending on the CO₂ source, transport costs range from \$2 to \$14, and storage costs average approximately \$10.²² Taking the higher limits of those ranges, the overall CCS process can cost up to \$144 per metric ton. This number does not even include the initial capital investment required to start a commercial-scale project, which can cost several billion dollars.²³

Moreover, CCS has been proven to significantly drive up the cost of electricity produced at coal- and natural gas-powered plants. In a 2023 study of CCS implementation in Australia, the Institute for Energy Economics and Financial Analysis estimates that—if CCS is funded by increased electricity prices rather than others means—the average wholesale prices of electricity “could increase by 95% to 175% in Australia,”²⁴ all or a significant portion of which could be passed on to retail consumers. The report also notes: “If not directly passed on to energy consumers, any significant government spending or subsidization of CCS would ultimately be borne by the public through, for example, income taxes.”²⁵ Tax revenue and government spending more generally have been the primary means by which CCS has been funded to date, especially in the United States.

As of late 2023, governments around the world had spent more than \$20 billion on CCS projects and approved up to \$200 billion more, which is likely a conservative estimate due to the lack of transparency related to government subsidies and tax credits.²⁶ As a result, a vast amount of public

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funding and special financial advantages have been given to private companies for these projects, exemplifying the massive public-private partnership complex that is driving the green agenda internationally and domestically. Only government subsidies, mandates, and other forms of support make these projects possible.

The U.S. government has directly facilitated and invested in expanding CCS for nearly three decades, with advocates amongst both the Democratic and Republican parties. Though early steps were taken as far back as 1997,²⁷ the first major milestone for governmental support of CCS occurred in the final days of the George W. Bush administration through the introduction of the 45Q tax credit, which at the time provided \$20 for each metric ton of carbon dioxide that could be permanently stored.²⁸ The Obama administration’s 2009 American Recovery and Reinvestment Act (ARRA) allocated \$3.4 billion to CCS.²⁹ Further, in 2011, Congress began funding CCS through the annual appropriations process, which has provided the Department of Energy with hundreds of millions of dollars to spend on CCS each year. From 2011 to 2023, Congress appropriated a total of approximately \$5.3 billion for CCS.³⁰

Though the vast majority of these federally funded CCS projects have failed for a variety of reasons—wasting billions of taxpayer dollars³¹—the Biden administration has doubled down. Under the Biden administration, CCS support has included regulatory actions—such as EPA rules compelling existing coal and new natural gas power plants to either cut or capture 90 percent of their carbon dioxide emissions by 2032³²—and increased financial support through grants, subsidies, tax credits, and other mechanisms.

According to the U.S. Department of Energy, the 2021 Infrastructure Investment and Jobs Act included \$6.5 billion for “new carbon management funding over five years, largely for direct air capture and carbon dioxide storage,” as well as an additional \$11.5 billion for other Department of Energy projects, including carbon capture pilots.³³ The 2022 CHIPS and Science Act authorized an additional \$1 billion per year for CCS research and development.³⁴ Further, in 2022, the grossly misnamed Inflation Reduction Act (IRA) significantly expanded the existing 45Q tax credits to incentivize more CCS projects.³⁵ On top of making it easier for CCS companies to be awarded these tax credits, the IRA provides \$85 per metric ton of carbon dioxide that is successfully captured and sequestered in geologic formations³⁶—more than four times the amount provided in the original iteration of the 45Q credits.

It remains to be seen how the incoming Trump administration and a Republican-controlled Congress will address federal incentives and regulatory actions facilitating CCS. Though Democrats have generally been more ardent supporters of climate activism, it is important to recognize that many prominent Republicans have advocated for climate change mitigation policies as well, including CCS. This includes many current Republican congressmen, such as the several dozen Republican representatives and senators who make up the bipartisan Climate Solutions Caucus.³⁷



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Carbon Credit Markets

Though the federal funding and special financial advantages discussed above provide a significant incentive for private companies to pursue CCS projects—often covering all or a substantial portion of the total cost of CCS borne by private companies—these governmental policies are not the only way in which CCS companies profit enormously from such ventures. Carbon credit trading markets allow CCS companies to sell carbon credits to other entities. One carbon credit is equivalent to one metric ton of carbon dioxide that has been prevented from entering the atmosphere,³⁸ such as through sequestration in geologic formations.

There are two primary types of carbon markets: mandatory markets and voluntary carbon markets (VCMs). Mandatory markets exist in several jurisdictions, including in the European Union, United Kingdom, and the state of California.³⁹ Mandatory markets—also known as compliance markets—are created by official government policies that establish an emissions trading system (ETS). Mandatory markets establish strict limits on greenhouse gas emissions, and allow regulated entities to trade carbon dioxide removal credits amongst themselves. Companies that exceed mandated emissions limits are assessed financial penalties. Thus, they buy carbon credits from companies that have not used all of the credits allocated to them by regulatory authorities in order to offset their emissions and avoid fines, which are more expensive than purchasing the credits. In mandatory markets, governments are responsible for issuing, auditing, and pricing carbon credits.⁴⁰

On the other hand, voluntary carbon markets are not regulated by national and subnational governments. Carbon credits are ostensibly traded on a “voluntary” basis, and are treated as a commodity.⁴¹ There is no centralized VCM. In voluntary carbon markets, individual organizations—such as CCS companies—issue carbon credits that are attached to certain projects designed around reducing carbon dioxide emissions. Those carbon credits are then typically bought by brokers, retailers, and traders, who sell them to end buyers.⁴² A variety of nongovernmental organizations create standards by which they certify carbon credits and verify the validity and degree of a company’s emission reduction activities, such as the Verified Carbon Standard, the Gold Standard, and the Climate Action Reserve.⁴³

Prices attached to carbon credits are typically determined by the project developer, though they fluctuate wildly depending on the type of project, the volume of credits, and other factors. For instance, S&P Global estimates that the price of a carbon credit ranges from \$15 to \$20 for afforestation and deforestation projects, but can range from \$100 to \$300 for CCS projects.⁴⁴ As such, in addition to the aforementioned governmental incentives,

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CCS companies can make an enormous amount of money by selling credits valued in the hundreds of dollars per unit—on top of the massive amount of funding CCS companies receive from governmental authorities.

Yet, the question remains: Why would any company voluntarily purchase a carbon credit? Because VCMs are technically voluntary and not regulated by governmental authorities, there is no legal coercion to purchase carbon credits; no financial penalty can be assessed by the government for failing to achieve a certain standard. That does not mean there is no extralegal coercion, however.

Though companies operating in jurisdictions that do not mandate emissions reduction standards cannot be punished by the government for falling below expected targets, they can be—and are—punished by the “private sector” when they fail to achieve environmental, social, and governance (ESG) goals. These ESG metrics are crafted, disseminated, and enforced by an ideologically aligned, corporatist cartel of public-private interests consisting of globalist organizations such as the United Nations, the world’s largest financial institutions, and subservient regulatory authorities. If companies do not adhere to ESG metrics, which include strict emissions targets, their access to capital, lending, and basic financial services is significantly curtailed or eliminated altogether. If they do, they are handsomely rewarded.⁴⁵ To achieve these standards, it is often necessary for companies to



purchase carbon credits in order to offset whatever emissions are produced in the natural order of their business operations, and therefore avoid being completely frozen out of financial markets.

In a truly free market, there would be no appetite for or reason to create carbon credit trading systems. However, in a market that has been captured by oligarchic cartels working in concert with regulatory bodies to impose an overarching system of global corporatist control over all economic sectors, VCMs have become yet another way to make substantial profits from the war on carbon dioxide. CCS companies in particular stand to gain significantly, considering the extremely high price point of their carbon credits. For instance, one of the leading CCS companies in the United States—Summit Carbon Solutions, the activities of which will be a focus of the next section of this paper—has already signed multi-year agreements to sell the hundreds of thousands of carbon credits Summit will theoretically accumulate.⁴⁶

In line with the federal government’s programs to directly fund CCS projects through other means, the Biden administration is actively incentivizing participation in VCMs. In May 2024, the White House released a policy initiative that “represent[s] the U.S. government’s commitment to advancing the responsible development of VCMs, with clear incentives and guardrails in place to ensure that this market drives ambitious and credible climate action and generates economic opportunity.”⁴⁷ On the same day the White House released this statement, the Department of Energy announced finalists for a first-of-its-kind program in which the federal government directly purchases carbon dioxide removal credits from sellers, such as CCS companies.⁴⁸

The Proliferation of CCS Projects

Based on global and domestic incentives from the public and “private” sectors, CCS projects are proliferating rapidly. The Global CCS Institute, a think tank with the sole mission of “accelerating the deployment of CCS as an integral part of the net-zero emissions future,” found that as of July 2024, there were currently 50 CCS facilities already in operation globally, with 44 under construction and 534 in development—a 60 percent increase from 2023.⁴⁹

As for the United States, a report from the Congressional Budget Office (CBO) indicates that as of September 2023, there were 15 CCS facilities in operation, with six under construction, 69 in advanced development, and 46 in early development.⁵⁰ Of the 15 CCS facilities currently operating in the United States, four are located in Texas, three in Kansas, two in Wyoming, two in North Dakota, one in Oklahoma, one in Michigan, one in Louisiana, and one in Illinois, with types of production including natural gas processing, ammonia, hydrogen, ethanol, and electric power. Only two of these 15 facilities transport CO₂ purely for permanent sequestration rather than enhanced oil recovery,⁵¹ though the majority of projects in development are focused upon permanent storage. The Congressional Research Service estimated in 2022 that the U.S. CCS network “could total 66,000 miles of pipeline by 2050, requiring some \$170 billion in new capital investment,” which would be more than 13 times the current CO₂ pipeline mileage, most of which is used for enhanced oil recovery.⁵²

The 121 CCS facilities identified by the CBO as under construction or in development would theoretically capture a combined 134 million metric tons of carbon dioxide per year. One company—Summit Carbon Solutions—is the primary partner in approximately half of the projects in advanced development.⁵³ Summit is one of the preeminent companies behind CCS implementation and is at the forefront of the war against private property rights.

The Threat to Private Property Rights

Though there are many problems related to carbon capture and storage projects, arguably the most concerning is the threat to private property rights—one of the fundamental pillars the United States was founded upon and that the U.S. Constitution was designed to protect. CCS companies argue they can use eminent domain to take land from property owners unwilling to give up their ownership rights, seizing whatever portion of the property the carbon dioxide pipeline would cut through.

However, as will be discussed, private companies must typically be considered common carriers—with their proposed land use considered to provide a public benefit—to be granted eminent domain rights by the government. CCS companies do not meet those criteria, which provides an opportunity to push back against them.

Eminent Domain and Common Carriers

The U.S. Constitution provides the basis for the use of eminent domain via the “Takings Clause” of the Fifth Amendment, which provides that government authorities can take private property for “public use” as long as the property owner is given just compensation.⁵⁴ Similar eminent domain provisions are ensconced in all state constitutions.⁵⁵ Throughout the 19th and early 20th centuries, the federal government and states only allowed for eminent domain to be used for very clear instances of public use, such as roads, bridges, parks, schools, and public buildings.⁵⁶

Over time, governments began to delegate the use of eminent domain to private companies such as railroads and public utilities. In tandem, broad interpretations of the Takings Clause by the U.S. Supreme Court—such as 1954’s *Berman v. Parker*

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and 2005’s *Kelo v. City of New London*—essentially redefined the term “public use” as “public purpose,” which has allowed for eminent domain to be used in pursuit of amorphous objectives such as “economic development.”⁵⁷

When a public project is initiated, some property owners are willing sellers, negotiating a price that both parties voluntarily accept. Others, however, may not be—in which case eminent domain comes into play. When eminent domain is exercised, those losing their property must be paid “just compensation” for their loss, which is typically the fair market value of the portion of the property that is taken. However, this rarely compensates the property owners fully and fairly, since the market value of their property often falls once it is known that the property might be desired by an entity with eminent domain authority. Further, it does not compensate for the value of personal or commercial uses the property owner might have wanted to use the property for.

The most common situation in which private companies—such as utility and pipeline companies—attempt to utilize eminent domain is when they build infrastructure that ostensibly serves the interests of the public. However, these companies must be specifically delegated

such authority by law.⁵⁸ For instance, natural gas companies are authorized to use eminent domain for interstate pipeline development based on the federal Natural Gas Act, as long as the company has received a certificate of public convenience and necessity by the Federal Energy Regulatory Commission.⁵⁹

In the absence of a federal law, the delegation of eminent domain authority falls to the states, in which a private company's ability to employ eminent domain typically relies upon whether a company meets the definition of a "common carrier." Though the precise definition of a common carrier varies by state, such a designation generally refers to any commercial enterprise that transports people or commodities for a fee and establishes that their service is open for use by any member of the public.⁶⁰ As an example, though the Natural Gas Act allows authorized private companies to use eminent domain along the pipeline route for interstate pipelines, it confers no authority to use eminent domain for pipelines that do not cross state lines. Rather, individual states authorize such use if companies are considered common carriers under state law.⁶¹

There is no federal law governing the eminent domain powers of carbon capture and storage companies.⁶² Therefore, the battle over whether CCS companies can use eminent domain to seize private property for pipeline construction is currently confined to individual states. The best example of this debate—and how states can fight back against CCS companies—is the current fight over whether Summit Carbon Solutions has the right to seize private property in the five midwestern states its CO₂ pipeline would cross and operate within.

Case Study: Summit Carbon Solutions

Summit Carbon Solutions is one of the largest CCS companies in the United States. Summit's proposed CCS project involves capturing carbon dioxide from 57 ethanol plants in five states across the Midwest: 30 plants are located in Iowa, 15 in South Dakota, seven in Minnesota, four in Nebraska, and one in North Dakota.⁶³ Each of these biorefineries would

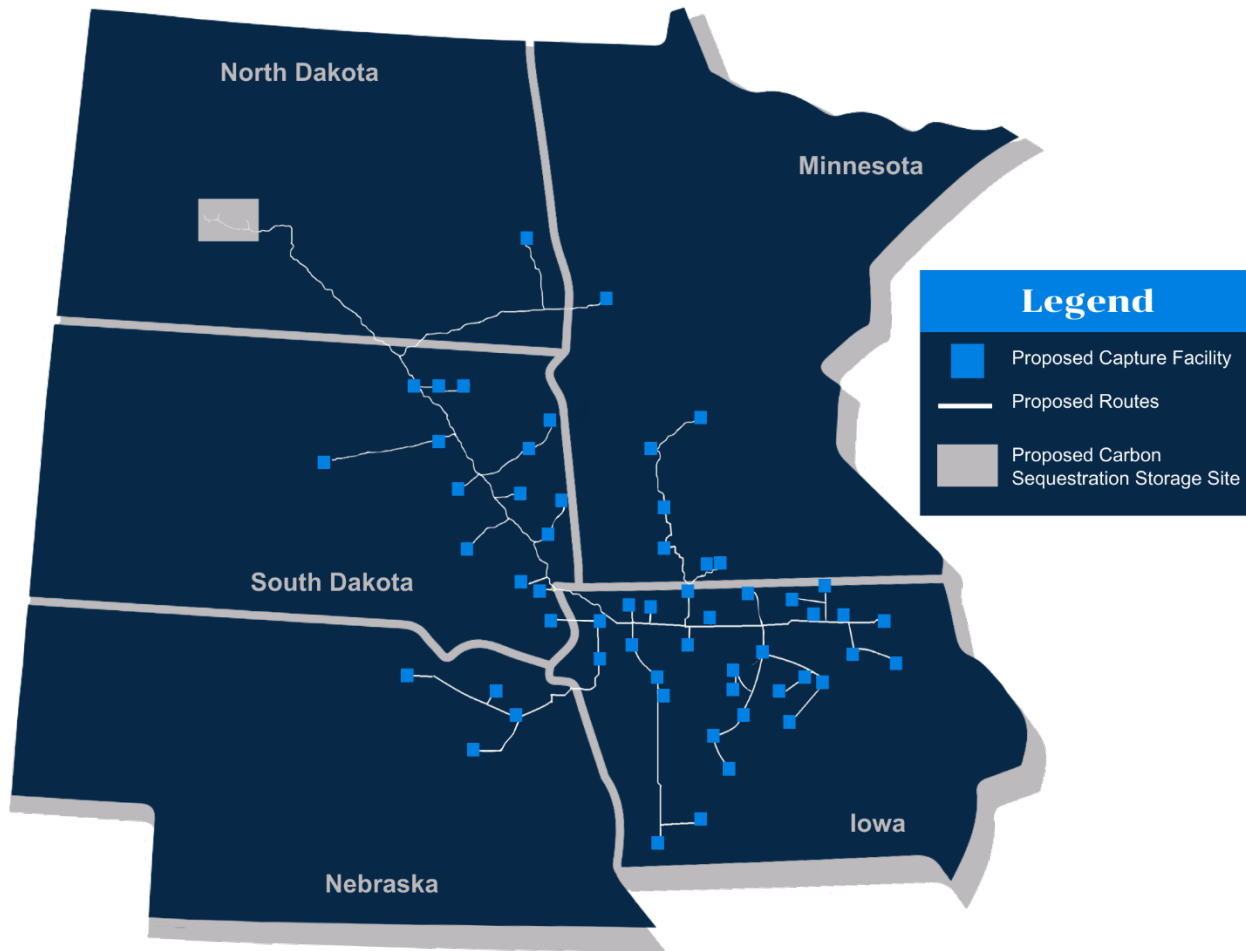


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feed captured CO₂ into an interconnected pipeline network, which would ultimately transport the captured carbon dioxide to a site near Bismarck, North Dakota, where the carbon dioxide would be “permanently and safely stored underground in deep geologic storage locations.”⁶⁴

Because not every property owner along the proposed route of Summit's 2,500-mile pipeline network has been willing to sell rights of way across their land, Summit contends it must use eminent domain to seize the remainder. For example, as of September 2024, Summit claimed to have negotiated voluntary easements on more than 80 percent of the land it needs in North Dakota. However, some of those landowners have testified that they only accepted Summit's offer because they did not want to fight Summit in court.⁶⁵ The remaining land would ostensibly be taken by Summit through eminent domain, if Summit is permitted to do so.

Figure 1: Proposed Summit CCS Infrastructure



(Source: Summit Carbon Solutions, "Project Footprint," <https://summitcarbonsolutions.com/project-footprint/>)

Summit claims that it has the right to use eminent domain because it is a common carrier that transports a commodity for public use and public benefit. In oral arguments before the South Dakota Supreme Court in March 2024, Summit's lawyers claimed captured carbon dioxide is a commodity, contending: "This carbon has a value, whether it's tradable as credits, or whether it's the federal government's willingness to pay for that to happen through tax credits."⁶⁶ Some government entities have been sympathetic to the argument that Summit's CCS project provides public benefits that outweigh the costs. For example, the Iowa Utilities Board granted Summit the necessary permits to exercise eminent domain against Iowans' property

in June 2024, concluding the pipeline is "in the public convenience and necessity."⁶⁷

Fortunately, the South Dakota Supreme Court rejected Summit's arguments that it could use eminent domain in an August 2024 ruling, focusing on Summit's dubious claim that it is a common carrier under South Dakota law. The Court's opinion stated, "[T]he record does not demonstrate that [Summit] is holding itself out to the general public as transporting a commodity for hire. It is thus premature to conclude that [Summit] is a common carrier, especially where the record before us suggests that CO₂ is being shipped and sequestered underground with no apparent productive use."⁶⁸ The case has been remanded

to lower courts, where Summit will have to prove that it is a common carrier before being allowed to proceed with land surveys.

This is the key argument against CCS companies being allowed to use eminent domain. CCS companies such as Summit are simply transporting a product that they own for profit, whether that profit comes from selling carbon credits, receiving tax credits and subsidies from the government, and/or other sources. Further, that product is not available to the public; it is simply pumped underground. Moreover, the general public cannot sell carbon dioxide into the pipeline or generate credits from its use.

As argued by the attorney representing the landowners in the case before the South Dakota Supreme Court, Summit is a “private, for-profit carrier.”⁶⁹ CCS companies are not common carriers. They do not provide commodities for purchase by the general public, nor do they serve a valid public purpose—even under the broad, modern, and extremely flawed interpretation of the constitutional

“Carbon capture and storage projects are nothing more than an opportunistic scheme to make vast sums of money from a problem that arguably does not exist. And, like most other green-energy policies, the solutions to this “problem” entail stripping Americans of their fundamental rights.”

basis for eminent domain. Sequestered carbon dioxide has no productive use, and as such, can provide no public benefit. Summit and other CCS companies are simply taking advantage of the massive financial incentives available to them. Carbon capture and storage projects are nothing more than an opportunistic scheme to make vast sums of money from a problem that arguably does not exist. And, like most other green-energy policies, the solutions to this “problem” entail stripping Americans of their fundamental rights.

Policy Recommendations

There are several ways that policymakers at the state and federal levels of government can push back against carbon capture and storage projects. Drawing from the South Dakota Supreme Court's opinion, state policymakers can focus upon protecting private property owners from having their land seized by CCS companies through eminent domain. In tandem, federal policymakers can focus upon cutting off the source of the funding for CCS and other climate-related projects, while also severing the roots of the climate alarmist agenda.

State Solutions

- States legislators can pass laws outright barring CCS companies from using eminent domain to seize private property.
- State legislators can, if needed, amend their existing common carrier laws to exclude CCS companies from being considered common carriers.
- State policymakers can specify that any request for the use of eminent domain be accompanied by a detailed analysis of the public good delivered to the particular state's residents. The analysis should also explain why eminent domain is necessary, and be as fair as possible to the owners of the property at issue. Though the priority should be barring CCS companies from using eminent domain entirely, if that is not feasible, then policymakers could ensure that compensation to landowners for any taking under eminent domain is a minimum of three times the market value of the property. Treble damages are often awarded to plaintiffs by law to compensate for harms against them, and those harmed by eminent domain should be treated no differently.
- At minimum, policymakers can increase pipeline safety and ensure there is enough truly impermeable storage space to safely house sequestered carbon dioxide.

Federal Solutions

- The EPA can reconsider its 2009 Endangerment Finding and delist carbon dioxide as a harmful greenhouse gas on scientific grounds. This would strike at the heart of the green energy agenda and would ultimately render CCS projects pointless for private companies to pursue.
- Congress can preclude the Environmental Protection Agency from regulating greenhouse gases such as carbon dioxide unless Congress passes a specific law, per the major questions doctrine established in the landmark Supreme Court ruling: *West Virginia v. EPA*.⁷⁰
- Federal policymakers can cut off the funding for CCS projects by eliminating the 45Q tax credits, grants, subsidies, government-backed carbon credit markets, and other artificial mechanisms that distort the market and provide incentives for CCS companies.

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