

An Overview of the New Carbon Dioxide Capture and Storage Business Act



Shunta Doki
shunta.doki@ohebashi.com

I. Introduction

As major contributors to the transition movement to a carbon-neutral society, carbon dioxide capture and storage (“CCS”) projects have been attracting attention around the world in recent years. In May 2024, the Act on Carbon Dioxide Capture and Storage Business (“**CCS Business Act**”) was enacted in Japan. Prior thereto, there was no established legal system to regulate CCS projects.

The Japanese government has set as its goal the commercialization of CCS by 2030. The CCS Business Act began preparing the business environment by providing for systems, such as the procedure for granting the necessary permits for exploratory drilling and storage projects for the development of CCS projects.

This article describes the CCS Business Act, which provides the legal framework for implementing CCS projects in Japan.

II. Licensing System for Storage or Exploratory Drilling Projects

The Ministry of Economy, Trade and Industry (“**METI**”) may designate areas where storage tanks are currently located or may be located as “specified zones” (Article 3(1)). After designating a specified zone, implementation guidelines for the recruitment of operators will be established, including the evaluation

criteria for the selection of operators (Article 3(4)-(7)). Thereafter, an operator who wishes to operate any storage or exploratory drilling project in the specified zone must submit an application to METI for a permit stating (a) the name and address thereof (in case of a corporation, the name of its representative), (b) the storage or exploratory drilling area subject of the application, (c) the scheduled commencement date of the storage or exploratory drilling project, and (d) an outline of the project (Article 4(1)-(2)).

Upon receipt of the application for a permit, METI shall first examine whether the following criteria can be met without delay after the end of the application period (Article 5(1)):

- The applicant must have sufficient economic basis and technical capability to carry out the storage or exploratory drilling project in a competent manner as well as sufficient social credibility.
- The applicant must not be a person who has committed a crime under the CCS Business Act, and if applicable, five years have passed from the date of completion of the execution of a sentence or the date the execution of the sentence has become inapplicable.
- The applicant must be able to safely store carbon dioxide in the storage tanks in the storage area.
- Where the application is for storage or an exploratory drilling area and is adjacent to another party's licensed storage or exploratory drilling area, the storage or exploratory drilling project in the applied-for storage



or exploratory drilling area shall not significantly interfere with the implementation of the storage or exploratory drilling project in such other party's licensed storage or exploratory drilling area.

- Where the area immediately above the storage area subject of the application overlaps or adjoins the mining area of another party, the storage or exploratory drilling project in the storage or exploratory drilling area being applied for shall not significantly interfere with the mining operation in such other party's mining area.
- The storage or exploratory drilling operations in the storage or exploratory drilling area applied for or the exploratory drilling will not be contrary to the public welfare by considering the interests of the agriculture, fisheries and other industries.
- The storage or exploratory drilling operations should be implemented in the storage or exploratory drilling area applied for in a manner that is not significantly inappropriate in light of domestic and foreign social and economic circumstances and without likely hindering the promotion of the public interest.

After the above conformity assessment is completed, METI shall select the most suitable applicant to conduct the storage or exploratory drilling project in the specified zone in accordance with the evaluation criteria for selecting an operator, and grant it permission for such project (Article 5(4)). Whenever METI grants a license for a storage or exploratory drilling project, it shall provide public notice thereof without delay, together with the storage or exploratory drilling area and other specified matters pertaining to such license (Article 24). In the event of such public notice, the exercise of any other rights related to the land subject of the public notice shall be restricted to the extent that it would prevent the operator from storing or drilling carbon dioxide in the licensed storage or exploratory drilling area, or hinder the storage of carbon dioxide or exploratory drilling (Article 25(1)).

The CCS Business Act establishes storage and exploratory drilling rights as exclusive rights to use the licensed storage or exploratory drilling area. Storage and exploratory drilling rights are created in favor of a person who has been granted permission when public notice of such permit for a storage or exploratory drilling project is issued (Article 25(1)). Since storage and exploratory drilling rights are regarded as real rights, an operator who possesses such rights may file a legal action to prevent or eliminate any interference by any third party with such rights. In addition, the establishment, transfer, modification, extinguishment, and restriction on the disposition of any mortgage over a storage right must be registered in the registry of storage or exploratory drilling projects (Article 36(1)). Thus, a mortgage can be established on the storage right (Article 34(1)) to facilitate financing for the storage operator. It should also be noted that unlike the Mining Act, which limits mining rights to Japanese nationals and companies (Article 17 thereof), the CCS Business Act does not have a similar limitation on storage and exploratory drilling rights.

III. Implementation of Storage and Exploratory Drilling Projects

To implement appropriate storage or exploratory drilling projects, operators must establish an implementation plan and obtain approval from METI before starting the project (Articles 38(1) and 59(1)). In principle, the operator must start the storage project within the period that is considered ordinarily necessary to start such project as specified by the ministerial ordinance (Articles 37(1), 58(1) and 59(1)). The project proponent must also monitor the temperature and pressure of the storage tank in accordance with the implementation plan and other matters specified by the ministerial ordinance as necessary to confirm the status of storage of carbon dioxide in the relevant storage, and report the results of such monitoring to the competent minister (Article 43).



The CCS Business Act obliges the operator to take measures to secure funds, such as the accumulation of reserves, to cover monitoring costs during the period from the time the injection of carbon dioxide in the storage tank is completed until the termination of the project (Article 44(1)). When a leakage of the CO₂ stored in a storage tank has occurred or is likely to occur, the operator must take emergency measures and report to the competent minister (Article 48(1)).

If damage is caused to another person by the excavation of the land for the storage of carbon dioxide in a storage or exploratory drilling, discharge of well water, or leakage of the carbon dioxide stored in a storage, the operator at the time the damage occurs will be liable regardless of its negligence (Article 124(1)). If storage or exploratory drilling rights are transferred after the occurrence of such damage, the storage operator at the time the damage occurred and the subsequent storage operator shall be jointly and severally liable for compensation thereof (Article 124(3)). In principle, damages are compensated in monetary terms, but if the cost is not significantly large compared to the amount of the compensation, the injured party may demand restoration of the area to the original state (Article 126(2)). In addition, if the person liable for compensation files a motion and the court deems it appropriate, the court may order restoration of the area to the original condition (Article 126(3)).

IV. Pipeline Transportation Business

The CCS Business Act also provides for the transportation of carbon dioxide by pipelines from the emission site to the storage site. Those who intend to engage in the pipeline transportation business are required to notify METI of their intention to do so.

They are required to (1) stipulate the rates and other conditions in their general terms and conditions, and (2) notify METI and make a public announcement (Article 82(1) and (4)). In addition, they may not refuse requests to transport carbon dioxide without any justifiable reason (Article 82(5)), and are prohibited from any discriminatory treatment of specific carbon dioxide emitters (Article 83(1)). It should also be noted that pipeline carriers are subject to security regulations, including the obligation to comply with technical standards, give notice of construction plans, and formulate security regulations.

V. Conclusion

The CCS Business Act has just begun to create a favorable environment for such projects in Japan. To make CCS projects more attractive as investment targets in the future, more active emissions trading and subsidies are important. As this is an area where the rules are changing significantly, it is essential for operators investing in CCS projects in Japan to keep up to date with the latest information.