

Carbon Capture and Storage Projects

The Threat to Property Rights

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THE PROBLEMS

- Carbon capture and storage (CCS) companies are using eminent domain to seize private property in the path of their pipeline networks, on the basis that they are common carriers rather than private, for-profit carriers.
- Sequestered carbon dioxide has no productive use, and therefore can provide no public benefit, which should preclude CCS companies from being considered common carriers and therefore being granted the authority to use eminent domain.
- CCS is enormously expensive. It is propped up by vast amounts of government funding and other coercive mechanisms designed to control the private sector, such as ESG metrics and carbon credit markets.
- CCS can have dramatically deleterious impacts upon public health and the environment.
- CCS projects are proliferating rapidly across the United States and around the globe.

THE SOLUTIONS

- State policymakers can explicitly bar CCS companies from being able to use eminent domain and enact stricter common carrier laws. At minimum, state policymakers can guarantee fairer compensation to property owners if their land is forcibly taken, increase pipeline safety, and ensure there is enough truly impermeable storage space to safely house carbon dioxide.
- Federal policymakers can deregulate carbon dioxide emissions and cut off all forms of federal funding for CCS projects.

INTRODUCTION

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.¹ Government-funded CCS companies manage projects that capture CO₂ emissions at their source and condense carbon dioxide into a liquid-like “supercritical” state. The liquified CO₂ is then transported through pipelines or other means to storage sites, where it is pumped deep underground into geologic formations. The process creates an array of problems,² with one of the largest being the abrogation of private property rights—one of the most fundamental pillars the United States was founded upon.

THE THREAT TO PROPERTY RIGHTS

Because the CCS process entails transporting captured carbon dioxide across vast distances, CCS companies require possession of significant tracts of land for their pipeline networks to cross. Most of this land is private property. In some instances, CCS companies are able to negotiate with landowners and reach an agreed upon price to buy or use all or a portion of their property. In many other instances, however, landowners are not willing

¹ For a more detailed examination of CCS, the many problems created by it, and solutions to those problems, see: Jack McPherrin et al., “Carbon Capture & Property Rights: There Is No Justification for Using Carbon Capture and Storage Projects to Abrogate Property Rights,” The Heartland Institute, Policy Study, January 21, 2025, <https://heartland.org/publications/carbon-capture-property-rights-there-is-no-justification-for-using-carbon-capture-and-storage-projects-to-abrogate-property-rights/>

² While this Tip Sheet is focused solely on property rights, the Policy Study referenced above discusses the other problems related to CCS at length.

sellers, at which point CCS companies use the power of eminent domain to take the property.

Historically, the U.S. and state governments have used eminent domain to take property for “public use” and provide landowners with just compensation—as provided in the Fifth Amendment to the U.S. Constitution—for very limited purposes. Over time, eminent domain has been used more frequently and for broader purposes, and has increasingly been delegated by the government to private companies. However, even under this highly flawed, modern-day interpretation of constitutionally provided eminent domain authority, private companies that are delegated these powers must be considered “common carriers.”

Though the precise criteria for being considered a common carrier can vary depending on jurisdiction, such a designation essentially applies to a commercial entity that transports people or commodities for a fee and is open for use by any member of the public. Examples of common carriers include certain transportation, telecommunications, and natural gas companies, among others. These companies are allowed to use eminent domain because they serve the public, and their products are open to all members of the public.

CCS companies claim to be common carriers, and some state-level authorities have unfortunately agreed with them based on the language of their legal codes. Yet, CCS companies do not provide any commodity for purchase by the public; captured CO₂ is simply pumped underground. These companies are simply transporting a product that they own for profit, a large portion of which comes from federal funding, as is discussed more thoroughly elsewhere.³

EXAMPLE: SUMMIT CARBON SOLUTIONS

The most prominent example of this problem is the project currently under development by Summit Carbon Solutions, one of the largest CCS companies in the United States. Summit’s planned CCS project involves capturing CO₂ from 57 ethanol plants in five states across the Midwest: Iowa, South Dakota, Minnesota, Nebraska, and North Dakota. Each of



these biorefineries would feed captured CO₂ into a 2,500-mile pipeline network, which would ultimately transport the carbon dioxide to a storage site in North Dakota.

Many property owners along the route of Summit’s proposed pipeline have been unwilling to sell rights of way across their land, for various reasons, not the least among them being the environmental degradation and public health concerns caused by CO₂ pipelines. And, among those who have already negotiated “voluntary” easements with Summit, many landowners have testified that they only accepted Summit’s offer because they did not want to fight Summit in court, which would entail heavy legal expenses. For unwilling landowners, Summit contends it must use eminent domain to seize their property.

Some states, such as Iowa, have already given Summit approval to use eminent domain to seize private property for Summit’s pipeline. In South Dakota, however, the state’s Supreme Court ruled in August 2024 that Summit has not sufficiently proven that it is a common carrier under South Dakota law, citing the fact that sequestered carbon dioxide has no productive use. The case has been remanded to lower courts, where Summit will have to prove that it is a common carrier before being allowed to use eminent domain.

This is the key argument against allowing CCS companies to use eminent domain. Sequestered CO₂ has no productive use, and provides no public benefit. CCS projects are simply an opportunistic scheme to make vast sums of a money from a problem that arguably does not exist. And, like other green-energy policies, the solutions to this problem entail stripping Americans of their fundamental rights.

³ The Policy Study discusses governmental incentives in more detail, as well as other profit mechanisms, such as carbon credit markets and their intersection with environmental, social, and governance (ESG) systems.

POLICY RECOMMENDATIONS

Despite the pushback against CCS companies in South Dakota, most other states within Summit's proposed network are allowing Summit to move forward with eminent domain powers, or have signaled their intent to do so. And, CCS projects are proliferating elsewhere across the United States, with at least 15 facilities currently operating and another 121 under construction or in development. It would behoove policymakers to stop CCS in its tracks.

There are several ways that policymakers at the state and federal levels of government can push back against CCS projects and companies.⁴ 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 U.S. Environmental Protection Agency (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 EPA 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*.
- 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.

⁴ More context for the basis of state and federal solutions is provided in the Policy Study referenced in footnote 1.