The 2021 Babst Calland Report

Regional developments

This is another excerpt from **The 2021 Babst Calland Report**, *which represents the collective legal perspectives of Babst Calland's energy attorneys addressing the most current business and regulatory issues facing the oil and natural gas industry. The full report is available online at reports.babstcalland.com/the-2021-babst-calland-report-1.*

Appalachian Storage Hub

As has been chronicled in earlier editions of this white paper, the explosive growth of natural gas production from the Marcellus and Utica shale formations in the Appalachian region starting in 2010 produced strong economic gains for West Virginia, Pennsylvania and eastern Ohio for several years.

In addition, much of that gas is relatively "wet"—meaning that it has a high proportion of natural gas liquids (NGLs) such as ethane, propane, butanes and natural gasolines (pentanes) that are used as petrochemicals in various manufacturing industries. Regional leaders, seeking to capitalize on the vast natural gas resources of those shales, began to stress the importance of developing local businesses that use NGLs—rather than allowing plastics manufacturing and other uses to accrue in other areas.

In 2017, the American Chemistry Council published a report suggesting that the buildout of the petrochemical industry in Appalachia could support the construction of as many as five ethane crackers. Among other factors, the report described that a key to the development of petrochemical manufacturing presence in the area would be the establishment of an Appalachian Storage Hub (ASH) that would act as a conduit for the production and sale of NGLs, storing massive quantities of the liquids and connecting the storage facilities to end users via pipelines. U.S. Senators Shelley Moore Capito and Joe Manchin of West Virginia, along with Senator Rob Portman of Ohio, introduced legislation intended to promote the goal of establishing an ASH. In 2018, the U.S. Department of Energy's National Energy Technology Laboratory (located in Morgantown, West Virginia, and led by Project Director Brian Anderson) published the "Ethane Storage and Distribution Hub in the United States Report to Congress," outlining the potential benefits of an ASH and ranking the most likely methods of building such a facility based on the geology, topography and other relevant regional factors. As recently as November 17, 2020, Senator Manchin wrote to DOE Secretary Dan Brouillette, seeking an update on the department's efforts at preparing a report addressing the proposed ASH, as called for in the Fiscal Year 2020 Energy and Water bill.

Today, we find that Mr. Anderson has been appointed as the Executive Director of the Biden's administration Interagency Working Group (IWG) on Coal and Power Plant Communities and Economic Revitalization. The NETL website offers no discussion of planned updates to the 2018 study, and the prospect of development of an ASH backed by DOE-guaranteed loans would seem to be directly at odds with most if not all of President Joseph R. Biden, Jr.'s plans to move swiftly away from the use of fossil fuels in our energy mix. Speaking at a recent meeting of the Ohio River Valley Institute, Finance Professor Kathy Hipple of Bard College's MBA in Sustainability program commented that the recent major shift in the plastics market away from single-use plastic products, as well as China's 2018 decision to stop importing plastics waste and recycled material, have created considerable concerns about the growth projections for the plastics industry, which only creates a further cloud on the development of an ASH anytime in the foreseeable future.

In short, while unforeseen events have a way of changing the outlook for the natural gas industry (including NGLs), for now it appears that the development of an ASH to support a robust plastics manufacturing industry in our region is firmly on the back shelf.

Carbon capture and storage

The federal government is trying to incentivize the development of carbon capture and storage (CCS) to inject captured carbon dioxide from emissions into underground geologic formations by expanding tax credits for qualifying projects. The Bipartisan Budget Act of 2018 expanded Section 45Q of the tax code to increase the CCS project credit value (so long as the project started within seven years of enactment), reduce the minimum eligibility threshold, allow for the transfer of credit and expand the program to include carbon oxides, rather than just carbon dioxide.

In January 2021, the Treasury Department and IRS issued final regulations regarding the Section 45Q credit. These regulations provide procedures to determine adequate CCS security measures, exceptions for determining to whom the credit is attributable, procedures to allow third-party taxpayers to claim the credit, standards for measuring carbon oxide and conditions that allow smaller carbon capture facilities to be aggregated for purposes of claiming the credit.

Some states are also working together to incentivize the development of CCS projects. For example, on October 1, 2020, seven states– Kansas, Louisiana, Maryland, Montana, Oklahoma, Pennsylvania and Wyoming—signed a memorandum of understanding committing to establish and implement a regional CO_2 transport infrastructure plan. Under the MOU, the signatory states will establish a coordination group to

develop an action plan that will include policy recommendations for and barriers to CO_2 transport infrastructure deployment. This action plan is set for release in October 2021.

Other states are taking more direct action. In March 2021, the North Dakota Legislature passed, and the governor signed, a bill exempting CO_2 that is either stored underground or injected into old oil fields to boost production, a process known as "enhanced oil recovery," from sales tax. A number of CCS projects are already underway in North Dakota.

Wyoming is looking to use CCS to extend the use of traditional fossil fuels including coal. The governor of Wyoming requested a study and the state partnered with the U.S. Department of Energy to evaluate the potential opportunities for retrofitting existing power plants with CCS technology. The study showed CCS retrofits can provide significant benefits, including reduced carbon dioxide emission, reduction in consumer cost, increased employment benefits, and higher state and local revenue.

In addition to funding studies, the Department of Energy has also provided federal funding for research into air capture technologies and other CCS-related technologies. As technology and infrastructure development for both capture and transportation improves, and with the availability to tax incentives, an increase in CCS projects is anticipated in the coming years. ■