OPI

Ontario's Subsurface Energy Association

Bill 228, Enabling the Development of Commercial-Scale Geologic Carbon Storage in Ontario: The *Geologic Carbon Storage Act* and Associated Regulations

Ontario Petroleum Institute Response to ERO Posting

January 9th, 2025

Preamble

Founded in 1963, the Ontario Petroleum Institute (OPI) is a non-profit industry association which represents professionals and organizations directly and indirectly related to the oil and gas, hydrocarbon storage and solution-mining industries of Ontario. Its fundamental objectives include encouraging responsible environmental, social and governance activities by those industries and to closely engage with industry stakeholders including government agencies which regulate the industry, and communities impacted by those activities.

For well over a century, Ontario has enjoyed a strong Canadian advantage of being first in understanding and developing geological formations to produce valued energy products and deliver them to competitive markets. Currently, with the adoption and growth of renewable energy and its use of subsurface formations for new substance injection, withdrawal and storage, the OPI's collective provincial expertise can lead in repurposing geological formations to support the clean and green transition to electrification.

In prior submissions, the OPI has focussed on the practical implications, opportunities and limitations of using geological formations for permanent carbon storage/sequestration ("CS"). Ontario is fortunate to contain geologically suitable locations for carbon storage and the OPI commends the efforts by the Ontario Government and the MNRF in preparing relevant legislation and related

regulations. We are confident that these efforts and this proposed Bill 228 can lead to a properly managed, safe, and staged development process for CS, particularly with the inclusion of Ontario's existing and proven regulatory models for the Province's energy industry.

The OPI supports the need for an economic, social and environmentally appropriate pathway for larger hub developments. These hubs can be developed in accordance within well-established principles of non-discriminatory open access and deployed within the regulatory concept of light-handed, incentive-based rate-making with provisions for sensible adjustments i.e private development, to ensure commercial sustainability, and accountability. To that end, the OPI would like to raise the following observations, concerns and recommendations pertaining to the proposed Bill 228 - Enabling the Development of Commercial-Scale Geologic Carbon Storage in Ontario: The *Geologic Carbon Storage Act* and Associated Regulations ("*GCSA*").

Competitive processes to select projects

The OPI recognizes that the proposed legislation must cover carbon sequestration under both the onshore (private ownership) and offshore (Crown ownership) areas of the Province. Furthermore, parties ("Proponents") interested in developing and/or utilizing CS will have varied motivations to do so. These motivations may encourage private development and utilization but they should also encourage development and utilization in the public interest. To that extent, the OPI respectfully finds gaps in the proposed legislation in a number of areas as follows:

1. The current draft of the *GCSA* has provided a practical process for establishing CS projects by defining, licencing and permitting research and evaluation activities that allows for preliminary evaluation of potential CS projects. The ability to undertake such activities is consistent with the CS regulatory framework in Alberta. However, in that province a "carbon storage hub" model is the approach taken where to date strategically-located CS hubs are being developed to service large-scale emitters in a specific geographic area. This selective process by the provincial government has allocated, upon review, the rights to undertake research and evaluation activities on application by companies which have existing

oil and gas rights ("PNG") in a proposed CS hub or have commercial arrangements with those who do. In British Columbia, the PNG rights holders are simply given priority with the subsurface tenure needed to investigate and develop CS projects (hubs or otherwise). In both jurisdictions, the holders of PNG rights are appropriately given priority when granted the right to undertake research and evaluation activities for CS. The draft *GCSA* is currently silent when it comes to priority for applications for licences or permits for research and evaluation activities by PNG rights holders, thus risking legal and compensatory complications unless that gap is rectified through the regulations referred to in this draft *GCSA* ("Regulations"). The OPI recommends that the language in the proposed section 11(3) be amended to include reference to priority granted to holders of *"current or planned surface and subsurface uses and activities, including mining and mineral development, oil and gas activities and underground geologic storage"*.

2. The draft *GCSA* also describes a research and evaluation permit and a storage permit and the conditions for the issuance of those permits. It is unclear as to why the activities provided by the research and evaluation licence and the storage activities provided by the storage licence do not already provide Proponents with the required rights to undertake those CS projects, thus making the inclusion of language pertaining to a permits moot. Additionally, why are the conditions required for granting the permits not also specifically referred to for the licences? The OPI observes that Section 12(2) may serve that purpose, but the language is unclear.

   Regardless, however, the OPI is concerned that unlike Alberta and British Columbia, where the issuance of CS licences or permits are granted to the holders of licences for research and evaluation activities upon successful application, such priority is unclear under the proposed section 12(3) even though that same section requires "(c) the applicant has obtained the rights to the use of land and to pore space necessary for the activities for which the permit is sought". Again, this gap risks legal and compensatory complications unless rectified through the anticipated Regulations. The OPI

believes the recommendation provided in the previous paragraph would sufficiently address that concern.

3. Finally, the regulatory process outlined throughout the draft *GCSA* appropriately involves both the MNRF and the Ontario Land Tribunal ("OLT"). The OPI observes that there is an absence of language related to granting storage licences to Proponents, which seek to develop a CS hub with open access to the public (although there is an inference in Section 9 (2)(b) that the holder of the authorization must ensure that a 'minimum number of industrial emitters' is considered. While the OPI recognizes that CS projects to date involve private interests, some Proponents may wish to offer open access to their CS project or find that their commercial development requires monopolistic rights in order to justify the full economics of their CS project from carbon gathering points to transmission to compression to pipeline to wells to permanent sequestration. Under such circumstances, the draft GCSA is absent language to address a storage licence or permit approval that would protect the public interest – likely intermediate to smaller scale emitters who seek a more cost-effective utility-style alternative for sequestering their carbon emissions. The OPI would recommend that in addition to the language currently involving the Ontario Energy Board ("OEB"), the draft *GCSA* should revise Section 14(2) to include the provision requiring applications for a storage licence or permit where CS services are proposed to be open access to be reviewed by the OEB to determine if a CS rate application is required to establish market-based rates for storage activities conducted by the Proponent.

4. The OPI supports engagement of Indigenous communities and municipalities, however requiring municipal endorsement as a condition of a CS permit should have Regulations that modify that condition to allow for appeals to the OLT in order to remove any potential barriers arising from meeting that condition. Additionally, the OPI questions why municipal endorsement of *offshore* storage activities on Crown lands should be a condition. A municipal veto – especially over offshore hub developments - is risky and severely could limit CS developments at a time the Province and industrial customers will need them to stay in business.

Ownership of Rights to Pore Space

The OPI recognizes the complexity associated with addressing private onshore and Crown offshore rights when drafting the *GCSA*. It is also recognized that concerns raised previously by the OPI regarding the demonstration of competency and operational subsurface experience by Proponents will be addressed in the Regulations to follow the *GCSA*.

The OPI's position on pore space rights has been made clear in previous submissions, and in the previous section of this submission, that the holder of PNG rights also has the rights to use any pore space contained within the entire geologic column. It is appreciated that the draft *GCSA* has defined pore space to include "(a) pores that are found in a storage repository [defined by the draft *GCSA* as "an underground geological area"] and that are or have been occupied by formation water, hydrocarbons or any other mineral, and (b) any other cavity or void in a storage repository, whether naturally or artificially created".

The OPI notes that the draft *GCSA* has language that gives the Crown the ability to take pore space rights without the consent of the owners of those rights, either owned directly as the surface owner or through agreement with the surface owner. While the draft *GCSA* stipulates that this action is not expropriation and reserves the determination of compensation to be made by the Lieutenant Governor in Council which may or may not happen, the OPI is concerned that the Crown's taking of pore of pore space rights without consent knowing that the Crown will receive financial benefit through CS fees may not pass legal review by the Courts.

Furthermore, expropriating pore space rights for CS activities but not providing for right of entry onto surface through new expropriation powers will severely limit the practicality of drilling and completing storage wells and installing gathering wells, especially traversing CS pipelines, and compression facilities.

Finally, the draft *GCSA* appears absent of any language requiring notice to impacted or potentially impacted parties of an application for a research and evaluation licence/permit or a storage licence/permit. There is existing language that requires applicants to submit their assessment of impacts on agricultural operations and systems, drinking water sources and current or planned surface and subsurface uses and activities, including mining and mineral development, oil

and gas activities and underground geologic storage, but no requirement to provide notice to those impacted parties. Without that requirement to provide notice how would a Proponent be able to adequately assess those impacts? The OPI observes that the draft *GCSA* does allow for the Regulations to require such notice: "*12(1)(b) the person has fulfilled any requirements to give notice or conduct consultation activities that are set out in the regulations made by the Minister;*", it is recommended that either specific requirements of notice to impacted parties is included in the language of the draft GCSA or that it will included in the draft Regulations arising from Act.

OPI Comments related to SCHEDULE 3 – CHANGES TO *Oil, Gas and Salt Resources Act* page 51 of Bill 228

The OPI submits that in 7.0.1.3 2(b) "hazard to the public" needs to be defined in clear and certain terms. There should be explicit criteria listed that fit the definition of "hazard to the public". It is not appropriate for this definition to be subjective at the Minister's opinion or discretion; an operator must be able to know in advance whether their work meets this definition thereby subjecting that operator to the actions proposed in this legislation.

In Section 9, Recovery of Costs, the OPI feel that the costs be "reasonable" and that the operator has the ability to appeal or challenge the repair costs.

Closing Commentary

The observation that there should be a central clearing house for the multiple approvals required to establish a CS project merits consideration.

Requiring municipal support for a provincial CS undertaking, in the broader public interest, is not, in OPI's submission, a sensible route to pursue when the stakes are significant and not necessarily local in scope. Municipalities are welcome to comment and make recommendations, but a veto is not a practical manner to advance these types of projects. Other means by which to ensure municipal participation or comment are available from Community Funding arrangements to more formal OLT hearings, but not an outright veto. CS projects are not local wind or solar projects.

The Province should be careful to not impose fees, charges or royalties on CS projects, which could drive out sustainable economics, which may already be a

challenge to the project being located in Ontario or the emitting industry staying in Ontario. Perhaps a close working group could be selected to advise the MNRF and Ministry of Finance as to the economics of CS.

OPI's members appreciate the MNRF's invitation to participate in these framework meetings and policy development as Bill 228 is progressed through to Royal Proclamation in July 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

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OPI Chair