

# *CCUS/S Surface, Mineral and Emitter Agreements*

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## *Presenters*



**Brent D. Chicken**

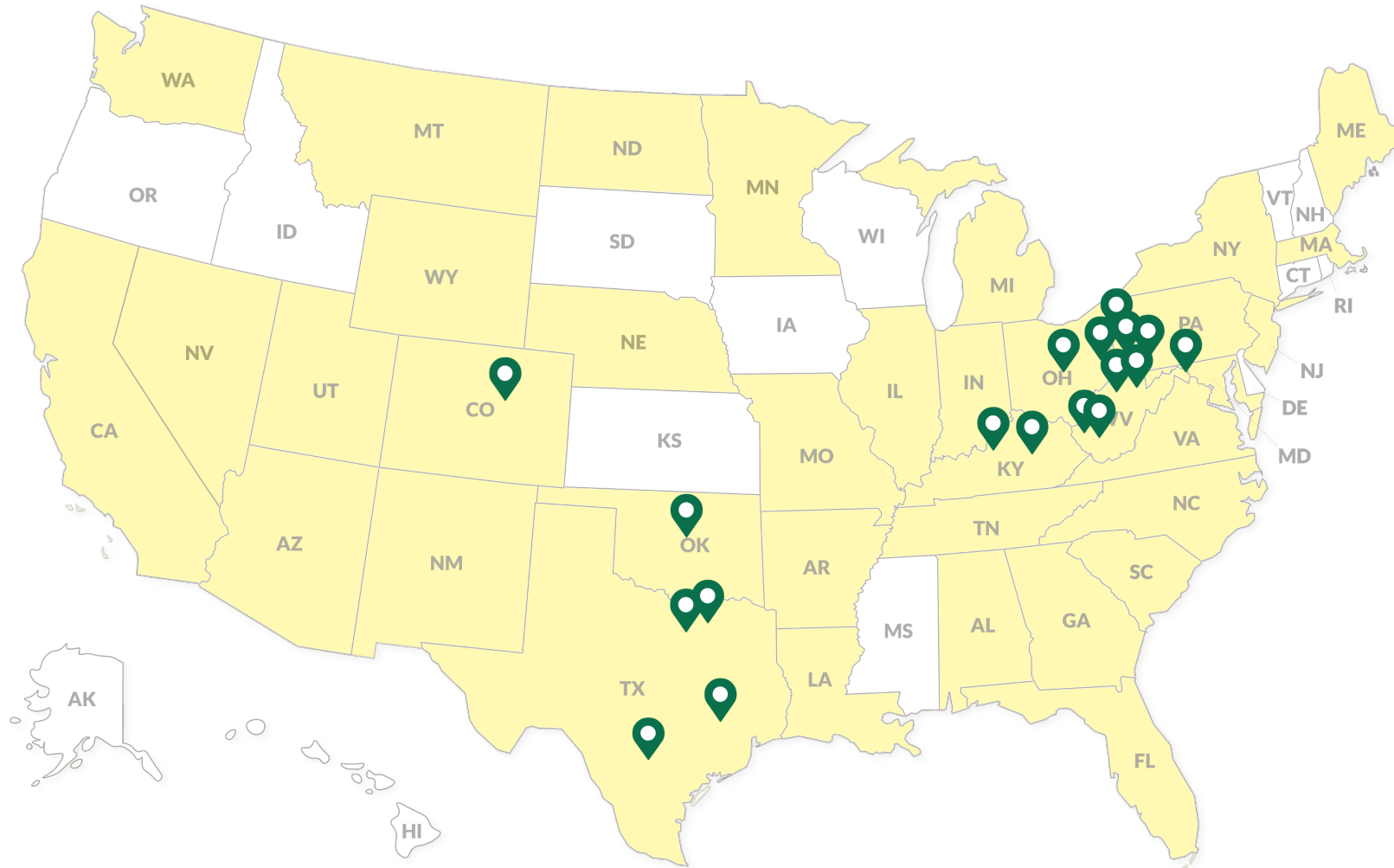
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# Office Locations & Attorney Licensure



## Office Locations

- Bridgeport, WV
- Charleston, WV
- Collin County, TX
- Columbus, OH
- Dallas, TX
- Denver, CO
- Huntington, WV
- Lexington, KY
- Louisville, KY
- Martinsburg, WV
- Meadville, PA
- Morgantown, WV
- Oklahoma City, OK
- Pittsburgh, PA
- San Antonio, TX
- Southpointe, PA
- The Woodlands, TX
- Wheeling, WV

 Attorney Licensure

## *Surface Estate Agreements*

- Focus on: (i) securing the material rights needed for CCUS/S operations and (ii) the incidental surface and mineral estate rights impacted by CCUS/S operations
- Pay attention to both split estate and non-split estate situations where fee owner has granted surface and/or mineral estate rights to third-parties
- Business risk analysis may be appropriate

# *Top Ten Surface Estate Agreement Considerations*

1. Title
2. Existing/potential surface estate uses
3. Consideration
4. Concurrent land use planning
5. Cost sharing
6. Reciprocal regulatory cooperation
7. Environmental liability
8. Term
9. Term extension
10. Remedies and damages

## *Top Ten Surface Estate Agreement Considerations*

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7. ~~Environmental liability (identify; report; remediate)~~
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6. ~~Reciprocal regulatory cooperation (no adversity vs. support)~~
7. ~~Environmental liability (identify; report; remediate)~~
8. ~~Term (plan; regulatory approvals; vendor timelines)~~
9. Term extension
10. Remedies and damages

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8. ~~Term (plan; regulatory approvals; vendor timelines)~~
9. ~~Term extension (unilateral; manner; options)~~
10. Remedies and damages

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7. Environmental liability (identify; report; remediate)
8. Term (plan; regulatory approvals; vendor timelines)
9. Term extension (unilateral; manner; options)
10. Remedies and damages (perpetuation; cure; indemnity)

## *Mineral Estate Agreements*

- Focus is on the incidental mineral estate rights impacted by CCUS operations
- Primarily applicable in split estate situations
- Potentially applicable in non-split estate situations where fee owner has granted mineral estate rights to third parties
- Business risk analysis may be appropriate

# *Top Ten Mineral Estate Agreement Considerations*

1. Title
2. Existing/potential mineral estate uses
3. Mineral trespass liability
4. Concurrent land use planning
5. Cost sharing
6. Reciprocal regulatory cooperation
7. Reciprocal data access
8. Term
9. Consideration options
10. Remedies and damages

## *Top Ten Mineral Estate Agreement Considerations*

1. ~~Title (foundational; co-tenancy; owner vs. lessee/licensee)~~
2. Existing/potential mineral estate uses
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1. ~~Title (foundational; co-tenancy; owner vs. lessee/licensee)~~
2. ~~Existing/potential mineral estate uses (investigate; identify; evaluate)~~
3. ~~Mineral trespass liability (address; drilling through; joint protection)~~
4. Concurrent land use planning
5. Cost sharing
6. Reciprocal regulatory cooperation
7. Reciprocal data access
8. Term
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4. ~~Concurrent land use planning (understand; details; benefits & burdens)~~
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5. ~~Cost sharing (common needs; scope)~~
6. ~~Reciprocal regulatory cooperation (no adversity vs. support)~~
7. ~~Reciprocal data access (sharing; confidentiality; use)~~
8. Term
9. Consideration options
10. Remedies and damages

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5. Cost sharing (common needs; scope)
6. Reciprocal regulatory cooperation (no adversity vs. support)
7. Reciprocal data access (sharing; confidentiality; use)
8. Term (no traps; permit timing; post injection timing)
9. Consideration options
10. Remedies and damages

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8. Term (no traps; permit timing; post injection timing)
9. Consideration options (promises vs. cash; project specific)
10. Remedies and damages

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7. Reciprocal data access (sharing; confidentiality; use)
8. Term (no traps; permit timing; post-injection timing)
9. Consideration options (promises vs. cash; project-specific)
10. Remedies and damages (injunctive relief; specific performance; liquidated dmgs.)

## *Emitter/Capturer Agreements*

- Agreements between the CCUS operator and the party providing the gases for sequestration/use
- May involve multiple emitters, capturers and sequesters/users
- Specific to each emitter entity

# *Top Five Emitter/Capturer Agreement Considerations*

1. Infrastructure
2. Title to gas
3. Consideration
4. Tax credits
5. Volume commitments

## *Top Five Emitter/Capturer Agreement Considerations*

1. Infrastructure (~~use vs. sequestration infrastructure; construction; operation~~)
2. Title to gas
3. Consideration
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## *Top Five Emitter/Capturer Agreement Considerations*

1. Infrastructure (use vs. sequestration infrastructure; construction; operation)
2. Title to gas (transfer point; metering; real property/regulatory rights maintenance)
3. Consideration
4. Tax credits
5. Volume commitments

## *Top Five Emitter/Capturer Agreement Considerations*

1. ~~Infrastructure (use vs. sequestration infrastructure; construction; operation)~~
2. ~~Title to gas (transfer point; metering; real property/regulatory rights maintenance)~~
3. ~~Consideration (payment by emitter/capturer vs. payment by CCUS operator)~~
4. Tax credits
5. Volume commitments

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1. ~~Infrastructure (use vs. sequestration infrastructure; construction; operation)~~
2. ~~Title to gas (transfer point; metering; real property/regulatory rights maintenance)~~
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4. ~~Tax credits (equipment; value paid; system integrity)~~
5. Volume commitments

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1. Infrastructure (use vs. sequestration infrastructure; construction; operation)
2. Title to gas (transfer point; metering; real property/regulatory rights maintenance)
3. Consideration (payment by emitter/capturer vs. payment by CCUS operator)
4. Tax credits (equipment; value paid; system integrity)
5. Volume commitments (delivery/acceptance capability; reliability)

## Questions?



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