

U.S. EPA Grants Louisiana Primacy for Class VI Geologic Sequestration Wells: What's Next?

Hinshaw Alert | 3 min read

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Yesterday, the United States Environmental Protection Agency (“EPA”) signed a final rule granting the State of Louisiana’s request for primary responsibility for the permitting, compliance, and enforcement of Class VI (deep geologic sequestration) wells under the EPA’s Underground Injection Control Program (“UIC”).

What are Class VI Wells?

Class VI wells are heavily regulated wells that must comply with the EPA’s Safe Drinking Water Act requirements. The EPA has set forth very rigorous and stringent federal requirements for injecting carbon dioxide (“CO₂”) that protect public health by ensuring that any CO₂ injection wells do not contaminate underground sources of drinking water. This is a top priority of the EPA and (now) the State of Louisiana regarding Class VI wells.

The process for granting primacy has been a multi-year process for Louisiana. The state originally submitted its primacy application to the EPA in April/May 2021. On September 17, 2021, Louisiana submitted a revised application to add Class VI injection wells to the state’s existing federally approved UIC program.

After considering input from four public hearings (one in July 2021 and three in June of 2023) and an extensive review of over 45,000 comments received from the proposal and a Notice of Availability, EPA determined that the State of Louisiana’s Class VI UIC program meets all requirements for approval and that the State will implement and enforce a Class VI UIC program consistent with the Safe Drinking Water Act.

Environmental Justice Analysis

An important component of Louisiana’s Class VI program is implementing an environmental justice (“EJ”) analysis. Key safety and environmental considerations will be intertwined with the Class VI application process in

Louisiana to protect the health and well-being of all communities. EPA has included specific environmental justice provisions in the Memorandum of Agreement between EPA and Louisiana.

These environmental justice commitments are now a clear benchmark for any state that seeks Class VI primacy in the future. Some of those requirements include:

1. an enhanced, inclusive public participation process;
2. an analysis of environmental justice impacts on communities in permitting, including environmental hazards, exposure pathways, as well as susceptible subpopulations;
3. incorporation of other mitigation measures to ensure Class VI projects do not increase environmental impacts and public health risks in already overburdened communities; and
4. measures designed to protect residential areas that could include carbon dioxide monitoring and release notification networks, and installation of enhanced pollution controls.

These controls are designed to:

- identify EJ communities,
- enhance public involvement,
- conduct appropriately scoped EJ assessments,
- enhance transparency, and
- minimize adverse effects on underground sources of drinking water and communities they may serve.

Governor John Bel Edwards was informed that Louisiana had been granted primacy yesterday morning. Louisiana is now only the third state in the United States to have primacy over Class VI wells. This development will solidify Louisiana's status as the carbon capture capital of the United States.

What Does This Mean for Operators Developing Carbon Sequestration Projects in Louisiana?

1. All future Class VI applications will now be submitted to the Louisiana Department of Natural Resources (LDNR), not the EPA.
2. Current Class VI well applications pending with EPA will be transferred to LDNR for handling.
3. Operators must comply with Louisiana's regulatory and statutory laws relating to Class VI well and carbon sequestration.
4. Operators must follow Louisiana's rule relating to environmental justice and potential community impact.
5. Operators should invest in working with local communities to build trust and provide accurate information regarding Class VI well operations and the science behind CCS.

Overall, the news about Louisiana being granted primacy yesterday was well received by everyone watching and waiting for this historic day. There are over 45 projects currently in the works in Louisiana, with more to come onboard now that primacy has been granted.

These projects will now be able to move forward under the watchful eye of the state, and they will be a real economic driver for the state as a whole, including those communities where these projects will be sited and developed.

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