



June 29, 2023

Michael S. Regan, Administrator  
Radhika Fox, Assistant Administrator  
Environmental Protection Agency  
1101A EPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20004

**Re: Public Comment on Docket No. EPA-HQ-OW-2023-0073**

*Submitted via regulations.gov*

Dear Administrator Regan and Assistant Administrator Fox:

We are writing to oppose the U.S. Environmental Protection Agency's (EPA) proposed rulemaking to approve of Louisiana's Application for primary enforcement authority over the Class VI Underground Injection Control (UIC) Well Program.

As a foundational matter, we reject the premise that CCS is a necessary—or even appropriate—approach to addressing the climate crisis and pollution burdens borne by frontline and fenceline communities. After billions of dollars of investment and decades of development, deployment of CCS has consistently proven to be ineffective, uneconomic, and unwise.<sup>1</sup>

We oppose primacy for Louisiana for numerous reasons, many of which are already being shared with EPA by the residents of Louisiana who will be directly impacted by the State assuming responsibility for permitting the many proposed dangerous and unnecessary carbon capture and storage (CCS) projects. This comment seconds the residents' concerns, and specifically highlights safety problems with CO<sub>2</sub> pipelines and EPA's weak CCS guidance.

**CO<sub>2</sub> Pipelines:** First, the industry push for obtaining Class VI permits at an increasingly rapid rate comes at a time when agencies such as the Pipeline and Hazardous Materials Administration (PHMSA) have yet to even begin developing rules that adequately respond to the extreme risks posed by CO<sub>2</sub> pipelines.<sup>2</sup> To this point, the Pipeline Safety Trust analyzed current

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<sup>1</sup> See Gov't Accountability Office, *Carbon Capture and Storage: Actions Needed to Improve DOE Management of Demonstration Projects* (Dec. 2021), <https://www.gao.gov/assets/gao-22-105111.pdf> (warning against the Department of Energy "expending significant funds on CCS demonstration projects that have little likelihood of success").

<sup>2</sup> See Unified Regulatory Agenda, *PHMSA RIN: 2137-AF60* (last accessed June 28, 2023) <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2137-AF60> (noting that the proposed rulemaking for draft CO<sub>2</sub> pipeline safety regulations is not planned for issuance until October of 2024).

CO<sub>2</sub> pipeline regulation under PHMSA and concluded that “existing federal regulations do not allow for the safe transportation of CO<sub>2</sub> via pipelines.”<sup>3</sup> Consequently, there should be a moratorium on all CO<sub>2</sub> pipelines and associated infrastructure, including Class VI wells, until PHMSA completes its rulemaking.<sup>4</sup> We recognize that a pipeline moratorium is outside of EPA’s jurisdiction, but we urge EPA to halt primacy applications over Class VI wells until PHMSA completes its CO<sub>2</sub> pipeline safety regulations to avoid public safety disasters like what happened in Satartia, Mississippi.<sup>5</sup>

**Environmental Justice Guidance:** Second, we urge EPA to halt its issuance of primacy over Class VI wells to states—including the process underway for Louisiana—until EPA and the White House Council on Environmental Quality (CEQ) release updated environmental justice guidance on Class VI wells. EPA produced environmental justice guidance for Class VI wells in 2011.<sup>6</sup> This guidance is outdated and too weak to meaningfully protect disadvantaged communities. For example, EPA’s 2011 guidance suggests that “UIC Program Directors and permit writers *may* choose to examine the information provided to determine if any minority or low-income communities might be impacted by the proposed well.”<sup>7</sup> This is not enough. While EPA’s Memorandum of Agreement with Louisiana contains stronger language: “The state agrees to examine the potential risks of a proposed Class VI well within its jurisdiction to identify and address any particular impacts on minority and low-income populations,”<sup>8</sup> as advocates are pointing out in their comments, Louisiana expressed that it does not see itself as having the authority to do this. And even this stronger language requires only minimum analysis of environmental justice impacts, and more robust review (and the authority to deny Class VI permits upon a finding of adverse impacts and risks to communities) should be required.

EPA must therefore update its 2011 environmental justice guidance on Class VI wells—incorporating meaningful input from impacted communities—and enshrine the minimum requirement to review Class VI permits for environmental justice concerns in regulation.

Similarly concerning, EPA cited to the *draft* CEQ guidance on CCS in its press release announcing Louisiana’s primacy application, saying: “EPA’s proposal also follows

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<sup>3</sup> Pipeline Safety Trust, “CO<sub>2</sub> Pipelines – Dangerous and Under-Regulated” Backgrounder, <https://pstrust.org/wp-content/uploads/2022/03/CO2-Pipeline-Backgrounder-Final.pdf>.

<sup>4</sup> See Food and Water Watch, Press Release: “Over 150 Groups Push White House to Enact Carbon Pipeline Moratorium” (May 30, 2023), <https://www.foodandwaterwatch.org/2023/05/30/over-150-groups-push-white-house-to-enact-carbon-pipeline-moratorium/>.

<sup>5</sup> Pipeline and Hazardous Materials Safety Administration, “PHMSA Announces New Safety measures to Protect Americans From Carbon Dioxide Pipeline Failures After Satartia, MS Leak” (2022), <https://www.phmsa.dot.gov/news/phmsa-announces-new-safety-measures-protect-americans-carbon-dioxide-pipeline-failures>; see also Dan Zegert, *The Gassing of Satartia*, Huffington Post (August 26, 2021), [https://www.huffpost.com/entry/gassing-satartia-mississippi-co2-pipeline\\_n\\_60ddea9fe4b0ddef8b0ddc8f](https://www.huffpost.com/entry/gassing-satartia-mississippi-co2-pipeline_n_60ddea9fe4b0ddef8b0ddc8f).

<sup>6</sup> EPA, Additional Tools for UIC Program Directors Incorporating Environmental Justice Considerations into the Class VI Injection Well Permitting Process (June 2011), <https://www.epa.gov/sites/default/files/2015-07/documents/epa816r11002.pdf> (emphasis added).

<sup>7</sup> *Id.* at 3 (emphasis added).

<sup>8</sup> MEMORANDUM OF AGREEMENT ADDENDUM Between the State of Louisiana and the United States Environmental Protection Agency Region 6 For the Class VI UIC Program (2023).

guidance from the Council on Environmental Quality to ensure that the advancement of carbon capture, utilization, and sequestration technologies are done in a responsible manner that incorporates the input of communities and reflects the best available science.”<sup>9</sup> What EPA seemingly fails to recognize here is that CEQ’s guidance only exists in draft form, and that dozens of concerned public commenters had submitted requests to CEQ during the public comment period on the draft to strengthen that guidance to better consider and protect communities. CEQ failed to respond to those comments or to finalize its draft,<sup>10</sup> making EPA’s reliance on it not only alarming, but also wholly unsupportive of its contention that Louisiana’s primacy application follows principles of environmental justice.

**Fast-tracking Permits:** Finally, primacy will enable fast-tracking of Class VI permits. In EPA’s own words to Congress, “[Geologic storage] is a complex process that is highly dependent on site-specific conditions; therefore, *a robust and comprehensive permit application and permit review process is fundamental* to preventing endangerment of [underground sources of drinking water] from these activities.”<sup>11</sup> Yet examples from other states demonstrate that often state review of such permits is truncated. For example, North Dakota, which has obtained primacy over Class VI wells from EPA, permitted its first Class VI well in October 2021—*less than five months* after receiving the project application.<sup>12</sup> With fewer resources and less-trained staff than EPA, Louisiana is likely to follow suit and fail to provide as robust a review of forthcoming Class VI permit applications as EPA has historically done.

In light of these public safety and environmental justice concerns, we urge you to reject Louisiana’s application for primacy over Class VI UIC well permitting. Thank you for considering these comments.

Victoria Bogdan Tejada  
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<sup>9</sup> EPA, “EPA Opens Public Comment on Proposal Granting Louisiana Primacy for Carbon Sequestration and Protection of Drinking Water Sources” (April 28, 2023), <https://www.epa.gov/newsreleases/epa-opens-public-comment-proposal-granting-louisiana-primacy-carbon-sequestration-and->

<sup>10</sup> See Docket CEQ-2022-0001, <https://www.regulations.gov/document/CEQ-2022-0001-0034> (containing 103 public comments).

<sup>11</sup> Env’tl. Protection Agency, “Report to Congress Regarding Recommendations to Improve Class VI Permitting Procedures for Commercial and Research Carbon Sequestration Projects” (Oct. 28, 2022) at 19 (emphasis added) (hereinafter, EPA Report to Congress).

<sup>12</sup> Ethanol Producer Magazine, “Red Trail Energy begins carbon capture and storage” (July 18, 2022), <https://ethanolproducer.com/articles/19447/red-trail-energy-begins-carbon-capture-and-storage/>; see also North Dakota: Class VI wells, Order 31453, <https://www.dmr.nd.gov/oilgas/or31453.pdf>.