

PUBLICATION

Primacy: The Gateway to Carbon Capture Storage in Louisiana

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The change of administrations in Washington, D.C. has prompted a renewed interest in carbon capture and sequestration (CCS) projects, especially in states such as Louisiana, where the natural subsurface geology provides opportunities for long-term storage of carbon dioxide and other oxides (like hydrogen). Although the concept of CCS has been around since about 2008, various climate change initiatives at both the federal and state levels have pushed it back into the spotlight. Louisiana Governor John Bel Edwards, for example, has required that the state achieve net-zero emissions by 2050, which mirrors the national requirement set by President Joe Biden. CCS also has become a major component in President Biden's proposed infrastructure plan. As many companies consider ways to leverage the plan once legislation passes (and any available tax credits), the issue of primacy – that is, the ability of states like Louisiana to act as the primary enforcement authority for the regulating and permitting of injection wells used for geologic storage (Class VI wells), is of incredible importance as it substantially expedites the timeline for permitting approvals. Louisiana submitted its primacy application to the U.S. Environmental Protection Agency (EPA) during the second quarter of 2021 and anticipates receiving a decision during the first quarter of 2022.

A Primer on Primacy

Primacy refers to the Louisiana Office of Conservation, Department of Natural Resources, having primary jurisdiction to facilitate the permitting, siting, construction, operation, monitoring, regulation, and closure over its Class VI injection wells used to inject carbon dioxide for the purposes of geologic sequestration. Maintaining clean and safe drinking water is perhaps the biggest concern with primacy over Class VI wells with the most significant environmental regulation directly impacting CCS being compliance with the federal Underground Injection Control (UIC) program of the federal Safe Water Drinking Act (SWDA). The UIC program envisions state, territorial, and tribal authorities carrying out the purpose of the federal UIC program and directly regulating underground injection within their boundaries to a level at least as stringent as the federal requirements. The UIC program, which is overseen by the EPA, provides for state governments taking Primary Enforcement Authority in protecting underground sources of drinking water from underground injection located within their territorial boundaries. The SDWA mandated EPA rulemaking to provide minimum standards for state UIC programs to be granted primacy, containing "minimum requirements for effective programs to prevent underground injection which endangers drinking water sources."

State underground injection programs, at a minimum, must meet certain requirements to be approved by the EPA. For example, one requirement prohibits underground injection within the state not authorized by a permit or by rule and only allows such permits to be granted (or the rules only authorize injection) when the state is satisfied the proposed underground injection will not endanger drinking water sources. This approval of a state UIC program by the EPA is commonly referred to as the "granting" of primacy. More specific requirements for a state program to be granted primacy are detailed in regulations promulgated by EPA. The amount of deviation from EPA regulatory requirements allowed for state UIC programs is dependent on the specific class of injection well at issue. With the exception of UIC programs for CO₂ geologic storage (Class VI), the EPA looks for state programs to be approved for primary authority over all injection well classifications and not to just cherry pick those programs that pose the least costs to a state's budget or those that are particularly popular.

Considering that the EPA permitting of Class VI wells may take approximately six years and that 45Q tax credits require construction on a qualifying carbon sequestration project to begin by January 1, 2026, a great demand by industry exists for quicker primacy approvals and permit decisions moving forward.

Louisiana Timeline to Obtain Primacy

Louisiana's numerous geological formations known as "sinks" make both enhanced recovery and geologic storage a natural fit for the state. Estimates indicate that Louisiana will have as much as 2.3 trillion tons worth of storage resources; ranking Louisiana second for CO₂ storage potential in the United States with Texas being the only state estimated to hold more potential. Louisiana currently seeks primacy from the EPA with respect to Class VI wells. While not confirmed, the state anticipates that primacy will be approved by the end of first quarter in 2022. To date, only two states – North Dakota and Wyoming – have been granted primacy over Class VI wells. A typical primacy application takes five years to obtain approval. Louisiana requested expedited consideration and hopes that its primacy application will be approved in a much shorter timeframe. The Louisiana Department of Natural Resources recently held a public hearing on Louisiana's primacy application on July 6, 2021, in Baton Rouge. A copy of Louisiana's primacy application may be found [here](#). The comment period for the application closed on July 13, 2021, at 4:00 p.m.

If you are considering leveraging Class VI wells for storage purposes, now is the time to begin negotiating with potential business partners and working with the Louisiana Department of Natural Resources regarding permit requirements to ensure your ability to secure the requisite regulatory requirements and benefit from the Internal Revenue Service's 45Q tax credits.