



# LOUISIANA WILDLIFE FEDERATION

*The voice of Louisiana's wildlife and natural resources since 1940.*

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July 29, 2023

U.S. Environmental Protection Agency Region 6,  
Lisa Pham, Groundwater/UIC Section  
Mail code: WDDG  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102

RE: State of Louisiana Class VI USEPA Primacy Application  
Docket ID No. EPA-HQ-OW-2023-0073,  
Public Comment Letter

Dear Ms. Pham:

On April 21, 2021, the State of Louisiana Department of Natural Resources Office of Conservation Injection and Mining Division filed a Class VI United States Environmental Protection Agency (USEPA) Primacy Application to add Class VI injection wells to the State's existing Underground Injection Control Program (UIC) to be administered by the State. The Application was subsequently updated on September 17, 2021. On April 27, 2023, the USEPA Administrator signed a proposed rule to approve the State of Louisiana's request to have primary enforcement responsibility (primacy) for UIC Class VI wells within the State, pending public comment.

This letter will serve as the Louisiana Wildlife Federation's (LWF) public comments to Louisiana's primacy application.

According to the USEPA, Louisiana is the third state to request primacy for UIC Class VI wells and after its review of the application, the USEPA is proposing to approve Louisiana's application, subject to public comment, based on the USEPA's determination that Louisiana's application meets all applicable requirements for approval. The USEPA's final approval will allow Louisiana to be the permitting authority for Class VI UIC wells with USEPA oversight.

LWF embraces the science that industrial plants burning fossil fuels is a top source of the carbon pollution driving climate change and that cutting these emissions can improve air quality and help fight climate change while the State transitions to cleaner sources of energy. We acknowledge that carbon capture utilization and storage projects and the expansion of blue hydrogen production for the purpose of reducing CO<sub>2</sub> atmospheric emissions may advance the federal and state goals of reducing carbon emissions in the short term as the world transitions to more renewable energy production.

With certain qualifications related to the State's ability to deploy an effective expanded UIC program to administer, implement, and enforce the federal Safe Drinking Water Act (SDWA) as it relates to Class VI injection wells, then, LWF supports the State of Louisiana's application for primacy.

First and foremost, LWF shares the belief that a state's UIC program must meet strict safeguards when considering a Class VI well permit application to ensure protection of the public's drinking water including requiring applicants have:

- Operating requirements to ensure the injection activity will not endanger USDWs or human health.
- Financial assurance mechanisms sufficient to cover the cost for all phases of the geologic sequestration project including the post injection site care period and until site closure has been approved by the permitting authority.
- Emergency and remedial response plans.
- Reporting of all testing and monitoring results to the permitting authority to ensure the well is operating in compliance with all permit and regulatory requirements.

To the extent the USEPA is evaluating the State of Louisiana's application with these priorities in mind, LWF supports the primacy request of the State.

We further affirm that carbon capture, utilization and storage (CCUS) may be an effective process when properly regulated and monitored for potential adverse impacts on the public and its drinking water. However, Louisiana's past experience with industrial development, including abandoned oil and gas wells and coastal damage from energy development and pipeline activities, gives rise to concerns that the State may not adequately administer and enforce the UIC program's laws and regulations, particularly as they relate to holding applicants accountable for the impact of their drilling.

To that end we outline below LWF's main concerns:

#### Environmental Justice

Given Louisiana's long history of adverse consequences associated with the proliferation of industrial processes and oil and gas exploration, LWF raises concerns that the State could repeat its past mistakes if it is too anxious to advance the next energy industry sector without due diligence in evaluating permit applicants in a rigorous and intentional manner.

Certain communities in Louisiana have asserted disproportionate adverse environmental and public health consequences as the result of the proximity and concentration of industrial development. We have documented cases of elevated cancer diagnoses among minority, underserved and low-income populations living in proximity to industrial plants.

And if we learned anything from the effects of generations of oil and gas exploration it is that there is an environmental price to pay. In addition to the increased strength and regularity of hurricanes hitting Louisiana's coast and catastrophic oil spills, thousands of miles of man-made canals for pipelines have caused significant subsidence contributing to Louisiana's coastal land loss problem. The billions in investments already made by the State to correct years of damage have resulted in only incremental progress. The cost to restore and reduce the risk of future erosion will cost \$50 billion in consistent investment over the next 50 years, according to Louisiana's 2023 Comprehensive Master Plan for a Sustainable Coast. Additionally, our state continues to grapple with over 4,600 documented abandoned and unplugged oil and gas wells threatening the health and safety of the surrounding community from methane emissions. The

effort to compel industry to plug unused wells has been a hard-fought battle that has resulted in only a fraction of those wells plugged and many being abandoned. It will take increased enforcement to identify the companies responsible and millions in investment for that to become a reality.

This history gives rise to concerns about the State's commitment to adequately monitor and hold permit holders accountable for the responsible management, maintenance and disposition of these new carbon dioxide pipelines and wells. We are hopeful the State has learned from its past mistakes and will be more diligent in enforcing the laws and rules its application promises to uphold, however, we urge the USEPA to remain as diligent in monitoring the State's implementation and execution of the Class VI UIC program.

### Siting

Where Class VI wells are sited should be a key consideration by both the USEPA and the State of Louisiana.

According to the report issued by Greg Upton, LSU Center for Energy Studies, Brian Snyder, LSU Department of Environmental Sciences and John Flake, LSU Cain Department of Chemical Engineering entitled: What is Carbon Capture, Utilization and Storage (CCUS)?, the surface risks of CCUS are most likely to occur during the transport stage. Since CO<sub>2</sub> is transported at high pressure, they recommend that pipelines need to be sited and constructed and monitored carefully. In light of the substantial land loss Louisiana has experienced over the past century from oil and gas exploration and canals that were never filled in, LWF is concerned about the addition of more pipeline canals needed to facilitate the transport of the CO<sub>2</sub>. LWF asserts that the transport of high-pressure CO<sub>2</sub> is as much of a concern as the injection into potentially vulnerable rock.

When wells are proposed to be sited near populous areas or on public lands utilized by the public, then rigorous environmental assessments as well as public input should be critical considerations, beyond simply geological adequacy.

### Public Input

Using the State of Louisiana's experience with permitting a Class V well by AIR PRODUCTS BLUE ENERGY, LLC, the USEPA should consider the public outcry relative to the proposed use of Lake Maurepas and the Maurepas WMA by Air Products to sequester CO<sub>2</sub>. The public input process, while perhaps consistent with the EPA's process, did little to engender confidence in state agencies by those most impacted. If the State is to offer state lands as sites for Class VI wells, LWF would argue the public participation process should involve additional steps to augment the minimum required public participation process. For the public to have confidence in the State's ability to properly regulate an industry, they need to be engaged.

The public often gets its information on a new regulation from the media, not from government and only after significant media coverage. We encourage public regulators to engage the media to help disseminate information about new rules and regulations and new permit applications so they can be prepared to give informed comments.

Relating to recent Class V well approval as an example, the public has at times found itself most involved after the decision has been made. In the case of the Air Products Blue Hydrogen Class V permit application there is certainly a perception that the outcome is pre-determined. Public notification of meetings and opportunities to comment on permit applications should be preceded by education about projects, their purpose, the timeline, the technology to be deployed, the benefits of the activity and how risks are being mitigated.

While science might support the safety and efficacy of CCUS technology as a solution to reducing carbon emissions it does not mean the public understands the benefit or has had an opportunity to learn the facts. And while the State or federal government may not have the legal obligation to educate the public, if it seeks to use CCUS as a means reaching its climate goals, which it views as a public protection action, it should do a better job of informing the public. Failure to do so is when the public loses faith in its government, no matter how well-intentioned.

We encourage EPA to require the State of Louisiana, should it be granted primacy, to:

- Give the public expanded opportunity to comment.
- Convene focus groups to solicit feedback on the impact to communities.
- Design public meetings that aim for dialogue rather than debate so that mutual learning can occur.
- Utilize social media, broadcast media and visible public signage relative to a project siting.

Public engagement and the use of relevant and quality information can bridge government with the people it represents.

There is more confidence and less conflict when the public and industry co-exist. We point out that the public's perception of the dangers inherent in drilling a carbon dioxide injection well led to several pieces of legislation filed during the 2023 Regular Legislative Session to prohibit this kind of drilling. The hearings elicited passionate arguments from the public, the State and industry. The prevailing legislation, [HB 571](#), outlines several steps that the State will have to follow to ensure adequate public input is considered by the State when permitting a Class VI injection well and requirements for well operators at the conclusion of a well's use. This legislation served as a compromise of sorts between the public's suspicions and the State's desire to advance a new solution to the State's carbon problem. But it was state legislation that was required *after* the State's USEPA application. Without this public outcry, one wonders if the State would have been so responsive in establishing additional requirements.

We cannot emphasize enough that the State must consider local input and employ rigorous cost-benefit analyses to ensure the State's assets are protected from irreversible ecological damage and public access to healthy recreational opportunities are preserved for residents and future generations to enjoy. To quote the federal government's own recommendation, "the public can bring a fresh perspective or greater insight into the outcomes of the regulations." ([How Members of the Public Can Contribute to the Regulatory Process | GSA](#))

### Staffing

Louisiana has struggled to adequately fund state enforcement agencies who are responsible for ensuring state and federal rules, regulations and laws governing the safety of the public are enforced. In an interview following his tenure as the Secretary of the Department of Environmental Quality, Secretary Chuck Carr Brown saw a steep drop in state funding and staff. According to Secretary Brown, the DEQ had 1,013 employees in 2008, in 2016 they had 687. A 2019 audit suggested the reduced staff led the agency to fall behind on enforcing violations.

Similarly, the Office of Conservation, the agency requesting primacy to enforce USEPA's Class VI injection well program has fewer positions authorized for the fiscal year beginning July 1, 2023 than it did in 2008 (192 compared to 179). While the number of authorized positions has increased over the past five years, it gives concern to LWF that the agency has the workforce and resources necessary to responsibly enforce a new program. We are hopeful that the Legislature's approval of seven (7) new employees and \$847,290 in new funding for the Class VI UIC program during the just ended legislative session will be adequate to successfully operate a robust permitting office, however, we remain concerned that the State is prepared to take on this highly technical industry for the long term and that it will be able to attract and retain the expertise needed to adequately provide rigorous analysis of applications. Further, the technological resources necessary to monitor well activity is going to be expensive and we question the State's commitment to ensuring the Office of Conservation is funded adequately to keep pace with evolving technologies.

### Application Transparency

LWF would like to know if the USEPA requires the State of Louisiana to publicly post all applicants for Class VI wells including the operator, location of the well, capacity of the proposed well and where the carbon dioxide will be transported from for sequestration as part of its evaluation of a permit application.

### Evaluating Louisiana's Performance

LWF would like to see the USEPA establish clear metrics for evaluating the State of Louisiana's performance in permitting Class VI wells. As Louisiana would be joining only two other states in leading the permitting of Class VI wells, it is unclear how the USEPA will regulate and monitor how states execute their federally delegated responsibilities. We appreciate the proposition that states can streamline permitting, however, we caution that faster is not always better when it comes to permitting the transport and storage of a highly volatile product such as carbon dioxide. Further, it has been LWF's observation that regulatory agencies in Louisiana have maintained close relationships with the industries they regulate creating mistrust by the public that state rules and regulations will be objectively enforced. While the current leadership at the Louisiana Department of Natural Resources and the Office of Conservation have years of public service, this cannot be assumed to be the case with future gubernatorial appointments. Given these concerns, LWF recommends the USEPA consider granting Louisiana limited primacy dependent upon the State meeting specific performance metrics periodically reviewed by USEPA for at least the first five years of primacy. We further recommend the USEPA create or require the State to have a transparent process for the public to report bad actors and questionable activities directly to the USEPA for review and investigation.

Conclusion

While Louisiana has decades of experience with injecting carbon dioxide into the earth for enhanced oil recovery, we have no experience permitting this technology at the scale that is about to occur. How do we ensure that injection wells do not leave behind the damage that onshore and offshore oil and gas drilling did at the turn of the century and some industrial plants continue to do today? How do we ensure our communities are protected? Our concern is that while the State can assert its commitment to strong enforcement and stricter rules, will it work independently to ensure those companies that are permitted to drill Class VI wells take responsibility for all permitted activities? When the State through the Secretary of the Department of Natural Resources, the Governor and the Legislature all cite Class VI wells as the energy future, the commitments of today must be upheld by the government of tomorrow.

Thank you for the opportunity to comment on this proposed rule. We stand ready to assist the State of Louisiana should it be granted primacy. We believe that the State shares our concerns for the protection of the public and we will leverage our membership and our voice to ensure the State's natural assets are preserved and industry is held accountable for its actions.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca Triche". The signature is fluid and cursive, with the first name being more prominent.

Rebecca Triche  
Executive Director