Status of Class VI UIC Permitting in Region 6 with a focus on Texas and Louisiana

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The landscape of Class VI Underground Injection Control (UIC) permitting for carbon capture and storage (CCS) facilities is rapidly evolving in Region 6, with Texas and Louisiana at the forefront of these developments.[2] Class VI wells are crucial for the long-term, secure geologic sequestration of carbon dioxide (CO_2), which has been identified by many stakeholders as a key strategy in mitigating climate change. While the U.S. Environmental Protection Agency (EPA) maintains federal oversight, the push for state primacy – that is, the authority to regulate and permit these wells at the state level – continues to gain momentum as many states and other stakeholders see primacy as a tool to streamline the process while giving states additional autonomy in CCS project deployment. This paper discusses and gives regulatory updates on the current status of Class VI UIC permitting in both Texas and Louisiana, highlighting their paths to primacy and the implications for the future of carbon sequestration.

Understanding Class VI Primacy

Under authority granted by the federal Safe Drinking Water Act (SDWA), the EPA established the UIC program to protect underground sources of drinking water (USDWs) from contamination. The most recent class of wells designated by the EPA – Class VI wells – were included in 2010 after initially being proposed in 2008. Class VI wells are unique in that they are specifically designed for geologic sequestration of CO_2 and have stringent requirements meant ensure the permanent and safe storage of CO_2 deep underground, far beneath the USDWs protected by SWDA. States can apply for primacy for their UIC programs, which, if approved by the EPA, grants them the primary responsibility for issuing permits and enforcing regulations for specific well classes. This transfer of authority is highly sought after by states actively pursuing CCS projects, as it is expected to lead to quicker permit approvals and more tailored regulatory approaches compared to the federal permitting process. However, the primacy process itself is extensive, including proposed and final rulemakings and the opportunity for public comment and engagement at the state and federal level.

Currently, only a handful of states have achieved Class VI primacy, including North Dakota (2018), Wyoming (2020), Louisiana (2024), and West Virginia (2025). Texas is actively pursuing primacy, with significant progress made in recent months.[3]

Louisiana's Class VI Primacy: Recent Achievement & Some Challenges

Louisiana stands as a notable example of a state that has recently achieved Class VI primacy. On December 28, 2023, the EPA granted Louisiana primary enforcement authority over Class VI

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[1] https://www.hklaw.com/en/professionals/m/mcguire-james-britton.

[2] The EPA Region 6 includes the states of Arkansas, Louisiana, Oklahoma, New Mexico, Texas. See https://www.epa.gov/aboutepa/epa-region-6-south-central.

[3] The EPA has also proposed to grant primacy to Arizona for all well UIC classes under SDWA, including Class VI. The EPA's approval would allow the Arizona Department of Environmental Quality to authorize underground injection in the State in accordance with UIC program requirements. Public comment closed July 3, 2025.

wells within its borders. This was a significant milestone for a state that has played an active role in developing CCS projects while maintaining a significant industrial presence with CCS-related strategic goals. The Louisiana Department of Energy and Natural Resources' (LDENR) Office of Conservation, Injection and Mining Division, UIC Section, is now the primary regulatory and permitting authority for Class VI wells in the state. Based on the most recent data published by LDNER[4],there are eighteen (18) Louisiana parishes with proposed Class VI projects with 21 currently permitted stratigraphic test wells and nine (9) additional stratigraphic test wells under review. Stratigraphic test wells are often the precursor to and can be converted to permitted Class VI wells to support CCS projects. These are an indication that Louisiana may be providing an expedited process with primacy the additional state-level control that primacy offers. It also suggests a robust pipeline of CCS projects in the state, eager to move forward with a state-run program.

However, Louisiana's primacy grant has not been without its challenges. Environmental groups have raised concerns during the primacy process, alleging that Louisiana's program may not meet minimum federal standards, particularly regarding post-injection closure liability and the potential weakening of Class VI program requirements. These concerns underscore the importance of stringent oversight and the need for states to maintain, if not exceed, federal standards to ensure environmental protection. EPA received over 48,000 comments during its rulemaking process, with the majority of the 7,000 submitted in the final month being in favor of state primacy. Despite many months of attempting to bridge gaps and address concerns identified by environmental groups and other stakeholders, EPA and Louisiana were unable to provide a result that avoided subsequent scrutiny and litigation.

In February 2024, the Deep South Center for Environmental Justice (Deep South) and others filed a petition for review in the Fifth Circuit Court of Appeals challenging the EPA's approval of Louisiana's application for Class VI UIC primacy. On May 21, 2025, the Fifth Circuit dismissed the petition after it concluded that all petitioners lacked standing.[5] The Fifth Circuit's dismissal and its analysis in *Deep South* presents significant barriers to future challenges of EPA final rules granting primacy in the Fifth Circuit. Additionally, the Deep South opinion includes a lengthy analysis of SWDA's statutory and regulatory framework for Class VI UIC while noting that "[b]ecause carbon sequestration poses so many risks to drinking water, Class VI wells are subject to extensive safety requirements." See *Deep South Center for Environmental Justice v. EPA*, No. 24-60084, 2025 WL 1452098 (5th Cir. 2025). Taken as a whole, the *Deep South* decision is an indication that even if they can get to the merits, potential challengers will face an uphill battle to convince a court that primacy and the regulatory structure around permitting for Class VI UIC wells is fails to protect against risks to drinking water.

Texas's Path to Primacy: Nearing the Finish Line

Texas, a major energy-producing state with significant potential for carbon sequestration, is well on its way to achieving Class VI primacy. The Railroad Commission of Texas (RRC) has been working diligently on its application, which was formally submitted to the EPA on December 19, 2022, and the process of working collaboratively with the EPA Region 6 on progress towards a

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[4] See https://www.dnr.louisiana.gov/assets/OC/ClassVI/PermitsandApplications/LDENR_Class_V_and_VI_Online_Map_June_2025_Update.pdf

[5] DSCEJ alleged organization standing, and the two other petitioners alleged associational standing under various theories. The Fifth Circuit analyzed them all and found them wanting as either "not suffi[cient] to create cognizable injuries" or "fail[ing] for lack of imminence."

final rule for Class VI. The RRC has long held primacy over all other well classes (such as Class II wells for oil and gas operations), and it has many years of experience in regulating underground injection activities under federal grant of primacy.

A recent major step forward for Texas occurred on April 29, 2025, when the EPA Region 6 Regional Administrator and RRC Chairman and Commissioners executed a Memorandum of Agreement Addendum 2 (MOA). This MOA outlines how the RRC will administer its Class VI injection well program if primacy is granted.

Key aspects of the MOA include:

- **Transfer of Pending Permits:** The EPA will transfer any pending Class VI permit applications and related information to the RRC once primacy is achieved. This is significant, as Texas currently has a large portion of Class VI project applicants in the EPA Region 6 permitting queue.

- **RRC Commitment to Oversight:** The RRC has committed to robust inspections and surveillance of permitted CCS facilities to ensure compliance with permit conditions and other regulatory requirements.

- **Public Outreach and Engagement:** The MOA emphasizes the RRC's proposed robust public outreach and community engagement efforts during the permit application process, addressing growing environmental justice concerns.

The signing of the MOA signaled the end of the application phase and the beginning of the proposed rulemaking phase for Texas's primacy. On June 9, 2025, EPA announced its proposed rule approving the RRC's primacy application, initiating the public comment period with a public hearing. Region 6 Administrator Scott Mason's statement accompanying that announcement focused on the agency's conclusion that "[Texas'] primacy application review is technical and thorough, and I appreciate the cooperation of the Texas Railroad Commission throughout this process." Public comments are open until August 1, 2025, and a public hearing was held on July 24, 2025.

The process for Texas has faced challenges from environmental groups.[6] Environmental groups have questioning whether the support for Texas' bid for primacy during the public hearing and otherwise may have been the result of "astroturfing" – an informal terms for organizing activity that is intended to give the impression of widespread or grassroots support. Environmental groups also alleged that the public hearing was difficult to access or that slots were filled well in advance of the hearing. Those same groups have requested additional meetings statewide and in the counties with the most significant proposed Class VI projects, along with similar requests to expand public engagement through extensions of time. Although there have been no responses from the EPA, it seems unlikely that there will be a significant expansion over the public engagement or timeframe already put forward and conducted.

Despite the ongoing primacy process in Texas, the EPA issued its first final Class VI permits in Texas under federal authority on April 7, 2025, specifically for three wells in Ector County for geologic sequestration of CO_2.[7] In addition, on July 1, 2025, the EPA proposed issuance of three

[6] For example, see Public Citizen's comment to the EPA here: https://www.citizen.org/article/public-citizen-comments-opposing-texas-primacy-over-class-vi-injection-wells/.
[7] See https://www.epa.gov/newsreleases/epa-issues-final-permits-geologic-sequestration-carbon-dioxide-

Class VI wells for the Exxon Rose project in Jefferson County, Texas. For both the Ector County and Jefferson County projects, the wells were drilled as Class V stratigraphic test wells under authority of RRC and were proposed for conversion to Class VI well under EPA jurisdiction. The public comment period remains open until August 4, 2025.[8] This demonstrates continued federal activity in the interim, ensuring that critical CCS projects can still advance while the primacy application is under review.

Challenges and Considerations

The pursuit of Class VI primacy, while offering significant advantages, is not without its challenges.

- **Legal Challenges:** As seen with Louisiana's primacy, environmental groups have initiated legal challenges, citing concerns about the stringency of state regulations compared to federal standards, particularly regarding post-closure liability. Texas's application may face similar scrutiny. The debate often centers on whether state rules adequately protect underground sources of drinking water and address long-term liabilities associated with CO2 storage. In the Fifth Circuit, based on the theories put forward and rejected in *Deep South*, environmental groups have been unable to persuade the court that they have standing to challenge rulemakings granting primacy for Class VI UIC. In the absence of stronger standing arguments, *Deep South* could significantly limit the opportunity for a legal challenge to EPA's approval of Texas' Class VI program.[9]

- **Public Engagement:** Public engagement and community participation in the permitting process continues to be a focus for the EPA and states with primacy. From 2021 to 2024, environmental justice (EJ) was a strong consideration for the EPA in its permitting and primacy efforts. Applicants with long runways for their permit applications should consider their engagement approach when combined with the regulators' engagement approach is compatible with near and long-term success. In any instance, robust and meaningful public engagement – both from the state and federal regulator and the permit applicant, as appropriate – can be a big part of the public acceptance and future success of CCS projects.

- **Resource and Expertise:** States seeking primacy must demonstrate that they have the necessary financial and technical resources, as well as the expertise, to effectively administer and enforce a Class VI UIC program. This includes staffing, training, and the development of robust regulatory frameworks. These reflect both requirements for granting primacy and also expectations of the public and environmental groups that are engaged in the public notice, comment, and hearing process.

- **Pore Space Ownership:** In Texas, the regulatory uncertainty surrounding the extent of

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texas.

[8] See https://www.epa.gov/tx/uic-class-vi-permit-intent-issue-exxonmobil-low-carbon-solutions-onshore-storage-llc.

[9] This is an ongoing challenge in the Fourth Circuit Court of Appeals to EPA's grant of Class VI UIC primacy to West Virginia. *See West Virginia Surface Owners' Rights Organization v. Zeldin*, No. 25-1384 (4th Cir. filed Apr. 11, 2025). In addition, should Arizona be granted primacy, a challenge there might be properly filed at the Ninth Circuit Court of Appeals. The potential exists that the Fourth or Ninth Circuit might view issues differently than the Fifth Circuit did in *Deep South*. However, even if either circuit took a more lenient view of standing, it may have limited impact in the Fifth Circuit in the context of a petition to review filed for EPA's pending final decision on Texas' application.

pore space ownership has, to some extent, provided challenges in CCS projects. Further clarifying these legal frameworks will be beneficial to the deployment of CCS.[10]

Conclusion

The status of Class VI UIC permitting in Texas and Louisiana reflects a dynamic and evolving landscape driven by the increasing importance of carbon capture and storage in climate mitigation strategies. Louisiana has successfully navigated the path to primacy, demonstrating the potential for expedited permitting at the state level, and survived significant legal challenge in the Fifth Circuit Court of Appeals. Texas is on the cusp of achieving primacy, with the recent MOA and proposed final rule marking some of the final steps toward this goal. While challenges related to legal scrutiny, environmental justice, and regulatory frameworks persist, the momentum towards state-led Class VI permitting is undeniable and growing. As more states seek and obtain primacy, the efficiency and scale of carbon sequestration efforts in the United States could see growth in alignment with decarbonization goals.

[10] Some additional recent clarity was provided by the Texas Supreme Court in *Myers-Woodward, LLC v. Undergrounds Services Markham*, LLC, — S.W.3d —, No. 22-0878, 2025 WL 1415892 (Tex. May 16, 2025), and underground injection wells continue to be a priority for the Texas legislature. For more information and insight please see https://www.hklaw.com/en/insights/publications/2025/05/texas-supreme-court-subsurface-storage-rights-generally-belong.