

PROGRESS ON UIC CLASS VI PRIMACY: EPA AND TEXAS RAILROAD COMMISSION SIGN MEMORANDUM OF AGREEMENT

On April 29, 2025, the U.S. Environmental Protection Agency (EPA) signed a Memorandum of Agreement (MOA) with the Texas Railroad Commission (RRC), a major step towards granting Texas primacy for regulation of Class VI underground injection control (UIC) carbon capture and sequestration (CCS) wells.¹ The MOA, and EPA's preparation of a proposed rulemaking approving the RRC's primacy application, indicate the possibility that Texas may receive Class VI primacy by the end of 2025.

BACKGROUND

The EPA generally has primary administrative authority ("primacy") for the Class VI program, with regional EPA offices evaluating permit applications and issuing permitting decisions. However, the EPA has approved Class VI primacy for North Dakota (2018), Wyoming (2020), Louisiana (2023), and West Virginia (2025), allowing those states to directly oversee Class VI regulation within the state.² Texas formally submitted its primacy application for Class VI wells on December 19, 2022, but the application stalled in the "pre-application" phase for over two years.³ In February 2025, Texas legislators and business organizations wrote letters to the EPA requesting an expedited review of Texas' primacy application and noting the EPA-issued Class VI permitting delay for projects in Texas.⁴ Of the 20 project applicants currently waiting in the EPA Region 6⁵ permitting queue, 17 are in Texas, with zero in the "draft permit" or "final permit" phases.⁶

¹ See <https://www.epa.gov/newsreleases/epa-and-texas-railroad-commission-sign-memorandum-agreement-geologic-storage-carbon>.

² See <https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program-0>. See also <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2025/02/Carbon%20capture%20-%20EPA%20grants%20West%20Virginia%20Class%20VI%20primacy.pdf>.

³ See <https://www.rrc.texas.gov/oil-and-gas/applications-and-permits/injection-storage-permits/co2-storage/>.

⁴ See <https://www.lrl.state.tx.us/currentissues/clips/resultsLinkclip.cfm?clipID=423087&headline=Legislators%2C%20businesses%20urge%20EPA%20to%20give%20Texas%20primacy%20on%20CO2%20wells>. The EPA issued the first, final Class VI permits for Texas CCS projects in April 2025. See [https://www.epa.gov/newsreleases/epa-issues-final-permits-geologic-sequestration-carbon-dioxide-texas#:~:text=DALLAS%2C%20TEXAS%20\(April%207%2C.and%20supporting%20the%20Texas%20economy.%E2%80%9D](https://www.epa.gov/newsreleases/epa-issues-final-permits-geologic-sequestration-carbon-dioxide-texas#:~:text=DALLAS%2C%20TEXAS%20(April%207%2C.and%20supporting%20the%20Texas%20economy.%E2%80%9D).

⁵ EPA Region 6 covers Louisiana, Arkansas, Oklahoma, New Mexico, and Texas.

⁶ Count as of May 9, 2025. See <https://www.epa.gov/uic/current-class-vi-projects-under-review-epa>.

NEW DEVELOPMENTS

On April 29, 2025, the EPA and the RRC executed MOA Addendum 2, an addendum to the 1982 MOA for the Texas UIC Program, which broadly sets forth the responsibilities for the RRC's proposed Class VI permitting program.⁷ The MOA includes general information about both the RRC's compliance monitoring and enforcement plans and the EPA's technical assistance and oversight role in the RRC's administration of the Class VI program. In the MOA, the EPA notes that it will transfer any pending Class VI permits and applications to the RRC once Texas' Class VI primacy is finalized.

NEXT STEPS

The EPA is now in the process of drafting a proposed rule approving the RRC's primacy application, which will be published in the *Federal Register* and initiate a minimum 45-day public comment period, potentially followed by a public hearing.⁸ After the close of the public comment period, the EPA will review, and provide summaries and responses to, the comments received. This process may also result in revisions or updates to the proposed rule for final consideration by the EPA Administrator.⁹ Once the EPA Administrator approves the final rule it will be published in the *Federal Register* and, once effective, the RRC will have statutory authority to regulate Class VI wells in Texas, including issuing Class VI permits for Texas CCS projects.¹⁰

Notably, in the EPA's rulemaking process that resulted in the approval of Louisiana's primacy application, over 42,000 comments were received and reviewed by the EPA, with many focused on the state's ability to administer the UIC program and the post-closure liabilities associated with CCS projects.¹¹ Additionally, Louisiana's Class VI primacy is currently being litigated in the U.S. Court of Appeals for the Fifth Circuit.¹² Any final rulemaking related to Texas Class VI primacy will present an opportunity for similar challenges.

CONCLUSION

The signing of the MOA represents major progress in the granting of Class VI primacy for Texas. Until primacy is granted, the EPA will continue to have Class VI permitting authority in Texas. Similar to the rulemaking process in Louisiana, it is likely that there will be substantial engagement by the public and other stakeholders, particularly regarding the RRC's enforcement timelines and transfer of post-closure liability to the state. Class VI applicants in Texas may soon interface primarily with the RRC, rather than the EPA, which will have significant impacts on project schedules, budgeting assumptions, and stakeholder engagement strategies. We will continue to track Texas' path to primacy, and any potential challenges, and provide updates as further information develops.

⁷ See <https://www.epa.gov/newsreleases/epa-and-texas-railroad-commission-sign-memorandum-agreement-geologic-storage-carbon>.

⁸ See https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program-0#what_proc. We note that on May 9, 2025, the EPA issued a proposed rule to approve Arizona's application for primacy of UIC Class I-VI wells. A public hearing for the proposed rule will be held on June 25, 2025. Arizona first applied for primacy in February 2024. See <https://www.epa.gov/newsreleases/administrator-zeldin-proposes-approve-arizonas-primacy-application-all-underground>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See <https://www.federalregister.gov/documents/2023/05/04/2023-09302/state-of-louisiana-underground-injection-control-program-class-vi-program-revision-application>.

¹² See <https://earthjustice.org/wp-content/uploads/2024/06/louisiana-class-vi-primacy-brief.pdf>. Oral argument was heard on February 4, 2025, and a decision is forthcoming. If the challenge is successful, Louisiana may be required to resubmit portions of its Class VI primacy application to the EPA, potentially halting pending Class VI applications that were transferred to the state for review.

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