

## West Virginia Poised to Receive Primacy Over Permitting for Carbon Dioxide Underground Injection Wells

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The federal Environmental Protection Agency (EPA) recently proposed to approve the application of the State of West Virginia (through its Department of Environmental Protection (WVDEP)) to obtain primary authority (a.k.a., “primacy”) over the issuance of permits for Class VI underground injection wells located within its borders. 89 *Fed. Reg.* 93538 (Nov. 27, 2024). The federal rulemaking proposal may be found [here](#). Comments on the proposed approval are due on or before December 30, 2024. On the same day, EPA will hold a public hearing on the proposal at the Charleston Marriott Town Center, 200 Lee Street East, in Charleston, West Virginia. Details regarding public participation in the rulemaking may be found [here](#).

Class VI underground injection control (UIC) wells are those wells used for injecting carbon dioxide for the purpose of permanent geologic storage or “sequestration.” WVDEP’s rules for such permits are largely modeled on EPA’s detailed “Class VI” UIC regulations promulgated under the federal Safe Drinking Water Act. If approved, West Virginia will be just the fourth state to receive primacy over the Class VI UIC permitting program (joining North Dakota, Wyoming and Louisiana).

Should it be granted primacy over Class VI well permitting, the WVDEP will be able to issue such permits without following the lengthy (and oftentimes litigated) procedures required under the federal National Environmental Policy Act that applies to EPA-issued UIC permits. The WVDEP would also be in a better position to coordinate the issuance of such Class VI UIC wells with other West Virginia regulatory requirements for carbon dioxide injection projects, including the West Virginia Underground Carbon Dioxide Sequestration and Storage Act (*W. Va. Code* § 22B-1-1, et seq.). This would help facilitate the development of such projects by a variety of applicants, including those seeking to use underground carbon dioxide sequestration as a part of the production of so-called “blue” hydrogen (reforming fossil fuels to separate hydrogen and capture CO<sub>2</sub>) and those hoping to comply with proposed EPA rules mandating the use of carbon capture and injection technologies by certain natural gas and coal-fired power plants.

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