

U.S. EPA Approves Class VI Injection Well Primacy in West Virginia



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Environmental Alert

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On February 26, 2025, the U.S. Environmental Protection Agency (EPA) published a notice in the Federal Register approving West Virginia's application for Class VI injection well primary enforcement authority (primacy) pursuant to the Safe Drinking Water Act (SDWA) underground injection control (UIC) program. West Virginia is the first state in the Eastern U.S. to receive primacy. Primacy gives West Virginia the responsibility of overseeing and implementing a Class VI permitting program. Class VI wells are used to inject carbon dioxide into deep rock formations for permanent storage, known as carbon capture and sequestration (CCS), which is a tool used to reduce carbon dioxide emissions into the atmosphere. Point source emissions such as those from industrial facilities or power generation are common sources of carbon dioxide emissions and can be candidates for CCS. North Dakota, Wyoming, and Louisiana have already been granted Class VI primacy, and Alaska and Arizona currently have primacy applications pending with EPA. EPA has pledged to "fast-track" the agency's review and approval of other Class VI well primacy applications.

The Class VI injection well permitting process generally starts with the applicant submitting an application, which undergoes a completeness review to ensure all required information is included. An applicant may receive a notice of deficiency or a request for additional information regarding their application. The application then undergoes a technical review to ensure the project does not pose a risk to drinking water. EPA indicates that it aims to complete its review of the permit application and issue Class VI permits "within approximately 24 months," but states that have received Class VI permit primacy have completed the review process more quickly. Class VI well permit application requirements include site characterization, modeling to determine the impact of injection activities through the lifetime of the operation, well construction requirements, testing and monitoring throughout the life of the project, emergency and remedial response plans, operating requirements to prevent endangerment to human health or drinking water, and financial assurance mechanisms. If the application passes technical review, a draft permit is prepared and is made available for public comment period prior to the final permit being issued. Other requirements that apply to CCS projects in West Virginia are set forth in the West Virginia Underground Carbon Dioxide Sequestration and Storage Act, W.Va. Code § 22-11B-1, et seq.

CCS projects are eligible for the 45Q federal tax credit. The entity eligible to claim the tax credit is the owner of the capture equipment, and eligibility is determined based on the type of facility and its annual carbon capture thresholds. The eligibility thresholds are 1,000 metric tons of carbon dioxide for direct air capture facilities, 12,500 metric tons for industrial facilities, and 18,750 metric tons for electric generating units. Eligible projects that begin construction before January 1, 2033, can claim the tax credit for up to 12 years after being placed in service.

For more information on West Virginia's Class VI injection well primacy, please contact any of the attorneys listed or your Babst Calland client relationship attorney.