



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

January 11, 2023

THE ADMINISTRATOR

Dear Honorable Leader:

Communities across the United States are experiencing the impacts of climate change, which will worsen as the planet continues to warm. The Biden-Harris Administration is committed to taking bold action to make communities more resilient to these impacts and reduce emissions of carbon dioxide and other greenhouse-gas emissions that drive climate change. To avert the worst impacts, the United States will need to develop and deploy clean-energy technologies at an unprecedented pace and scale, including technologies to capture and remove carbon from the atmosphere and store it beneath the earth's surface.

This process, known as geologic sequestration, relies on injection wells to store carbon dioxide beneath the earth's surface that has been captured from an emissions source or the atmosphere. Geologic sequestration – when used as a part of carbon capture and storage and carbon dioxide removal projects – is a promising tool for reducing the amount of carbon dioxide in the atmosphere. The Inflation Reduction Act, signed by President Biden August 16, 2022, extends and expands the 45Q tax credit for carbon capture and storage and offers enhanced credits for one type of carbon dioxide removal, direct air capture.

Injection wells are regulated under an existing, rigorous Safe Drinking Water Act framework that manages the permitting process while protecting the environment, drinking-water supplies, public health and safety. Well-designed and deployed carbon capture and storage projects can deliver environmental and climate benefits, create good-paying jobs and address cumulative pollution impacts in historically disadvantaged and overburdened communities. Several states have expressed interest in seeking primary enforcement and permitting responsibility (primacy) for these wells, called Class VI underground injection control wells under the Safe Drinking Water Act, to attract geologic sequestration projects to their area.

The Biden-Harris Administration is committed to supporting efforts by states, tribes and territories to obtain Class VI primacy. To that end, the Bipartisan Infrastructure Law established a \$50 million grant program to assist states, tribes and territories that have or are interested in Class VI primacy, with no match requirement for any awards of federal funding. In the coming weeks, the EPA will issue a request for interested parties to submit a letter of intent for this grant program, which will be available to all qualifying states, tribes and territories.

At the same time, during my travels across the country, community residents have shared their concerns about the safety of carbon capture and storage and carbon dioxide removal projects and worry that their communities may bear a disproportionate environmental burden associated with

geologic sequestration. Tribes and the EPA must work together to address these concerns and set a strong foundation of practices that will protect our most vulnerable communities while encouraging the development of tribal Class VI UIC primacy programs.

As the EPA considers state, tribal and territorial Class VI primacy applications, we will look for approaches that balance the use of geological sequestration with mitigation of impacts on vulnerable communities, while ensuring protection of underground drinking-water sources.

Tribes should support communities through a variety of approaches, such as:

- **Implement an inclusive public participation process.** Tribes seeking Class VI primacy should fully incorporate robust and ongoing opportunities for public participation, especially for lower-income people and communities of color. Tribes should provide early notice of proposed Class VI wells and tailor public participation to specific community needs and interests, including scheduling public meetings at times convenient for residents with appropriate translation services where needed, enabling face-to-face or written feedback on permit applications early in the review process or supporting the development of community-benefits agreements.
- **Consider environmental justice impacts on communities.** Tribes should include environmental justice as a core element in implementing their Class VI programs. For example, in their review of permit applications tribes should evaluate whether the siting of a Class VI project at the proposed location will create any new risks or exacerbate any existing impacts on lower-income people and communities of color. Such evaluations might consider the presence of existing environmental hazards, potential exposure pathways and susceptible sub-populations, as well as the likely distribution of any environmental and public health benefits from the proposed Class VI project in affected communities. The EPA's EJScreen is a useful tool tribes can employ to identify environmental and social stressors in specific communities.
- **Enforce Class VI regulatory protections.** The Safe Drinking Water Act Class VI regulations include strong protections for communities to prevent contamination of underground drinking-water sources. These regulatory protections include a variety of measures, including proper site characterization and strict construction, operating and monitoring requirements to ensure well and formation integrity, proper plugging of wells and long-term project management and post-injection site care to ensure leakage prevention. Tribes should properly implement and enforce these requirements to protect communities from potential harms associated with injection wells.
- **Incorporate other mitigation measures.** Tribes with Class VI primacy should proactively work to prevent and/or reduce any adverse impacts to underground sources of drinking water from well construction and operational activities. While the UIC program is designed to protect underground sources of drinking water, there are a range of mitigation measures that tribes could incorporate to ensure Class VI projects do not increase environmental impacts and public health risks in already overburdened communities. Measures designed to protect residential areas could include carbon-dioxide monitoring and release notification

networks and installation of enhanced pollution controls. Additionally, tribes could encourage the adoption of other measures to offset impacts by improving other environmental amenities for the communities identified within the delineated area and providing resources for clean-up of previously degraded public areas. All communities should benefit equally from these mitigation and prevention efforts.

As you consider potential Class VI primacy, we recommend that you first meet with EPA staff, who can explain the primacy process, discuss expectations and outline different approaches to ensure that equity and environmental justice will be appropriately considered in permit reviews. If your tribe decides to move forward with a Class VI primacy application, it is important for environmental justice and equity considerations to be fully integrated into the UIC Class VI program, including in permitting. The EPA is currently evaluating strategies to address these considerations in the UIC Class VI permitting program and will provide guidance that will serve as a resource for interested tribes.

Beyond the Class VI program, tribes are in a unique position to proactively support the development of carbon capture and storage and carbon dioxide removal projects while protecting vulnerable communities. Incorporating safety and environmental-burden considerations into the process early on, such as during site selection for the various components of carbon capture and storage and carbon dioxide removal projects, will lead to sustainable and successful efforts in decarbonizing the nation's energy and industrial sectors. Overall, taking action to address climate change, including by deploying carbon capture and storage and carbon dioxide removal safely and responsibly, will benefit vulnerable communities that are most at risk from the worsening impacts of climate change.

I deeply appreciate the partnership with each of you and with tribal governments. As a former state environmental regulator in North Carolina, I understand the need for states, tribes, territories and the EPA to work together to tackle issues that are bigger than any one of us. Tribes often lead the way in developing creative new ways to address our environmental challenges. The EPA looks forward to working with you to develop robust Class VI programs and deliver on our common commitment to protecting vulnerable and tribal communities.

If you have additional questions, please feel free to contact me; additionally your staff may contact Bill Bates in the Office of Ground Water and Drinking Water at bates.william@epa.gov or (202) 564-6165.

Sincerely yours,


Michael S. Regan