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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

Courtney Taylor, *Democratic Staff Director*
Adam Tomlinson, *Republican Staff Director*

December 30, 2024

The Honorable Michael Regan
Administrator U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20004

Dear Administrator Regan:

I write to express my strong support for the Environmental Protection Agency's (EPA) approval of West Virginia's application for Class VI injection well primacy under its Underground Injection Control (UIC) program.¹ Currently, the West Virginia Department of Environmental Protection (WVDEP) has primacy over Class I, II, III, IV, and V wells, and has successfully implemented this enforcement responsibility through their UIC program.² West Virginia's application for Class VI injection well primacy meets all statutory requirements and the State has the demonstrated capacity to successfully exercise this authority. Therefore, I urge the EPA to issue a final rule approving West Virginia's application without delay.

West Virginia initiated this process more than three years ago, beginning with a public comment period on June 23, 2021.³ In March 2022, I urged the EPA to expedite the approval process.⁴ Since then, the state legislature, WVDEP and Congress have taken significant steps to advance this effort. For example, section 40306 of the Infrastructure Investment and Jobs Act (IIJA) allocated \$25 million to expedite EPA's carbon storage permit processing and \$50 million to assist states in achieving primacy.⁵ Yet, despite clear bipartisan Congressional support for state primacy, the EPA has granted Class VI primacy to only one state since IIJA's passage.

West Virginia has exceeded the EPA's requirements for public participation and engaged substantively throughout the process with the Agency. The state has conducted two comment periods and two public hearings, as well as participating in ongoing discussions with the EPA and dedicating significant time and resources to ensure compliance with all applicable rules. The

¹ West Virginia Underground Injection Control (UIC) Program; Class VI Primacy, 89 Fed. Reg. 93538 (Nov. 27, 2024).

² U.S. Environmental Protection Agency, *Primary Enforcement Authority for the Underground Injection Control Program*, <https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program-0#:~:text=Louisiana%2C%20North%20Dakota%2C%20and%20Wyoming,states%2C%20territories%2C%20and%20tribes> (last visited Dec. 18, 2024).

³ State of West Virginia, *WV Class 6 Public Participation Documentation* (Sept. 13, 2023) <https://www.regulations.gov/document/EPA-HQ-OW-2024-0357-0009>.

⁴ Letter from Senator Shelley Moore Capito *et al.* to Environmental Protection Agency Administrator Michael S. Regan (Mar. 30, 2022).

⁵ Infrastructure Investment and Jobs Act, P.L. 117-58, Title III, Subtitle A, Sec. 40306, 135 Stat. 1002 (Nov. 15, 2021).

current federal comment period further demonstrates the rigor of this process. West Virginia has gone above and beyond what was required of them, and will continue to do so in carrying out its primary enforcement responsibility for Class VI wells.

As the second-largest coal producer,⁶ and fourth-largest natural gas producer in the nation,⁷ West Virginia fills a critical role in our energy landscape. Many West Virginians are employed in these industries and recognize the importance of deploying carbon capture, utilization, and storage (CCUS) technologies to support an all-of-the-above energy strategy. State primacy for Class VI wells is critical to safely deploying CCUS to meet our environmental goals, particularly in a state like West Virginia. The State has an abundance of energy resources and heavy manufacturing, as well as development opportunities for new industry through initiatives such as the Appalachian Regional Clean Hydrogen Hub (ARCH2), which was selected under the IJJA's Regional Clean Hydrogen Hubs Program (H2Hubs).

Approving Class VI primacy for West Virginia will allow the state to efficiently permit geologic carbon sequestration facilities in the state, supporting its economy and workers. The WVDEP has superior familiarity and knowledge of the state's geology, and is most qualified to assess Class VI permit applications within West Virginia. Additionally, granting West Virginia primacy for Class VI wells will allow the EPA to prioritize their work on the backlog of individual Class VI well permit applications, of which there are currently 160 pending.⁸

I appreciate the EPA moving forward with the proposed rule to grant West Virginia primacy, and urge prompt consideration and approval of the state's application.

Sincerely,



Shelley Moore Capito
Ranking Member

⁶ U.S. Energy Information Administration, *Frequently Asked Questions (FAQs): Which States Produce the Most Coal?* <https://www.eia.gov/tools/faqs/faq.php?id=69&t=2> (last visited Dec. 18, 2024).

⁷ U.S. Energy Information Administration, *Frequently Asked Questions (FAQs): Which States Consume and Produce the Most Natural Gas?* <https://www.eia.gov/tools/faqs/faq.php?id=46&t=8> (last visited Dec. 18, 2024).

⁸ U.S. Environmental Protection Agency, *Underground Injection Control (UIC) Class VI Permit Tracker*, <https://awsedap.epa.gov/public/single/?appid=8c074297-7f9e-4217-82f0-fb05f54f28e7&sheet=51312158-636f-48d5-8fe6-a21703ca33a9&theme=horizon&bookmark=6218ffed-bb6e-42e4-a4f1-52d87e036a1b&opt=ctxmenu> (last visited Dec. 18, 2024).