

OFFICE OF CONSERVATION

STATE OF LOUISIANA

INJECTION AND MINING DIVISION

DOCKET NO. IMD 2021-02

CLASS VI USEPA PRIMACY APPLICATION

REPORT OF HEARING

HELD AT

BATON ROUGE, LOUISIANA

JULY 6, 2021

Michelle S. Abadie, CCR
Baton Rouge, Louisiana

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OFFICE OF CONSERVATION
STATE OF LOUISIANA

INJECTION AND MINING DIVISION
DOCKET NO. IMD 2021-02
CLASS VI USEPA PRIMACY APPLICATION

Report of the public hearing held by the Office
of Conservation, State of Louisiana, on July 6, 2021,
via Zoom Video, in Baton Rouge, Louisiana.

IN ATTENDANCE:

REPRESENTING THE OFFICE OF CONSERVATION:

John Adams, Attorney, Office of Conservation
Laura Sorey, Injection and Mining Division

Michelle S. Abadie, CCR
Baton Rouge, Louisiana

1 ALSO PRESENT:

2

3 REPRESENTING ALLIANCE FOR AFFORDABLE ENERGY:

4 JESSE GEORGE

5 4505 S. CLAIBORNE AVENUE

6 NEW ORLEANS, LOUISIANA 70125

7

8 REPRESENTING GREEN ARMY:

9 GENERAL RUSSEL HONORE

10 14443 MEMORIAL TOWER DRIVE

11 BATON ROUGE, LOUISIANA 70818

12

13 REPRESENTING SELF:

14 MARION FREISTADT

15 Marionfreistadt@yahoo.com

16

17 REPRESENTING GREATER NEW ORLEANS INTERFAITH CLIMATE

18 COALITION:

19 JONATHAN LEO

20 10942 NEALE FRASER DRIVE

21 BATON ROUGE, LOUISIANA 70810

22

23

24

25

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1 REPRESENTING HEALTHY GULF:
2 SCOTT EUSTIS
3 935 GRAVIER, SUITE 700
4 NEW ORLEANS, LOUISIANA 70112

5
6 REPRESENTING CLIMATE REALITY PROJECT:
7 BLAKE BAUDIER
8 6123 DAUPHINE STREET
9 NEW ORLEANS, LOUISIANA 70117

10
11 REPRESENTING SELF:
12 KIM GOODELL
13 304 WOODBLUFF DRIVE
14 LAFAYETTE, LOUISIANA 70503

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16 REPRESENTING AIR PRODUCTS CF INDUSTRIES:
17 JIM HARRIS
18 721 LORREL STREET
19 BATON ROUGE, LOUISIANA 70801

20
21 REPRESENTING SELF:
22 SCOTT PATTON
23 521 LAUREL STREET, SUITE A
24 BATON ROUGE, LOUISIANA 70801

25

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1 REPRESENTING EARTHWORKS, INC.:

2 KAITLYN JOSHUA

3 4821 INNISWOLD ROAD

4 BATON ROUGE, LOUISIANA 70009

5

6 REPRESENTING HARRIS, DEVILLE AND ASSOCIATES:

7 JACI JUNEAU

8 521 LAUREL STREET

9 BATON ROUGE, LOUISIANA 70801

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11 REPRESENTING ALLIANCE FOR AFFORDABLE ENERGY:

12 KANITRA CASTON-HILL

13 7725 DEVIN AVENUE

14 BATON ROUGE, LOUISIANA

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DOCKET NO. IMD 2021-02
CLASS VI USEPA PRIMACY APPLICATION

* * * * *

MR. ADAMS:

We're going to go ahead and get started, so let me begin by saying good afternoon and welcome to the Office of Conservation's public hearing for Docket No. IMD 2021-02.

My name is John Adams. I'm an attorney for the Office of Conservation. I've been designated by the Commissioner of Conservation to act as hearing officer for today's hearing. My duty as hearing officer is to see that a clear and accurate record of this hearing is made so that the decision makers understand all of the testimony. Please do not disrupt the comments, as such only tend to distort or mask the recording, and it makes the job of the court reporter more difficult.

The purpose of today's hearing is to allow all interested persons an opportunity to enter into the record any relevant oral or written comments concerning the application to the United States Environmental Protection Agency by the Louisiana Office of Conservation for Primary Enforcement Authority of Class VI Carbon Sequestration Injection wells.

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1 Based on comments received so far from the
2 public, the Louisiana Office of Conservation is
3 extending the public comment period from the close of
4 the hearing today until 4:00 p.m. on July 13th, that's
5 a week from today, 2021.

6 Additionally, based on public request, comments
7 may also be -- will be accepted by email until the end
8 of the extended public comment period. Emailed
9 comments must be submitted to Injection-mining@la.gov.
10 And I'll -- I'll -- I'll spell that out for you. It's
11 I-N-J-E-C-T-I-O-N, hyphen, Mining, M-I-N-I-N-G@la.gov
12 by 4:00 p.m. on Friday, July 31st, 2021. Hard copy,
13 mailed -- mailed written comments will also be
14 accepted during that time.

15 So that everyone has an opportunity to make
16 comments for the record, I would ask that each of you,
17 who have not already done so, fill out one of these
18 blue attendance cards. They're located at the front
19 table. We ask that each person include your email
20 address on the blue attendance card, in addition to
21 any other requested information on the card. Please
22 mark whether or not you -- you wish to speak, and then
23 bring the card up here to the table to the court
24 reporter.

25 Also, if you desire to submit written comments

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1 for consideration, please, provide them to the court
2 reporter before the hearing adjourns, or, once again,
3 you may mail them to the Office of Conservation prior
4 to the close of the comment period.

5 Please understand that this afternoon you may
6 make statements or submit written comments. If you
7 have a lengthy statement that you intend to read, I
8 would ask that you, please, summarize the statement
9 and submit the written statement to the court reporter
10 for inclusion in the record. Comments -- oral
11 comments today will initially be limited to four
12 minutes per person. However, once everyone has had
13 the opportunity to speak, there'll be additional time
14 for people to expound on comments that they previously
15 had made.

16 If you plan to enter into the record any
17 oversized documents that are larger than legal size,
18 they must be reduced to at least legal size. If you
19 plan to enter into the record a video recording, you
20 need to submit a copy to the court reporter in a -- a
21 manner that you can transport it to the court
22 reporter.

23 Copies of the Class VI Primary Enforcement
24 Authority, also known as Primacy, applications were
25 available for public review at the Injection and

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1 Mining Division in Baton Rouge, Louisiana, on the
2 Injection and Mining Division web page, and on the
3 official Conservation web page.

4 Public notices regarding this hearing were
5 published at least 30 days before this hearing in the
6 *Town Talk of Alexandria*, *The Times-Picayune* of
7 southeastern Louisiana, *The Times* of Shreveport, *The*
8 *News Star* of Monroe, the *American Press* of Lake
9 Charles, and *The Advocate*, which is the official state
10 journal.

11 Again, the comment period has been extended to
12 4:00 p.m., July the 13th. Written comments should be
13 delivered to the Office of Conservation Injection and
14 Mining Division at -- in -- in this building, which is
15 617 North Third Street, the 8th Floor, Baton Rouge,
16 Louisiana, 70802. Please reference Docket No. IMD
17 2021-02. If you need the address or the email
18 address, come see me after the hearing, and I'll give
19 it to you again.

20 At this time, I'll now file into the record the
21 appropriate State exhibits and provide a synopsis of
22 the application.

23 The Office of Conservation Injection and Mining
24 Division is seeking to modify the existing Underground
25 Injection Control Program by adding regulatory

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1 authority of Class VI Carbon Dioxide Injection wells
2 into the scope of the existing Primacy Agreement with
3 the United States Environmental Protection Agency.

4 The State submits the following exhibits into the
5 record:

6 Exhibit 1 is the original public notice.

7 Exhibit 2 is the proof of publication for various
8 state newspapers.

9 Exhibit 3 is the list of interested parties
10 notified of the public hearing today.

11 Exhibit 4 is the documentation of application
12 availability.

13 Exhibit 5 is the Class VI USEPA Primacy
14 application.

15 And Exhibit 6 is reserved for public comments or
16 exhibits that are received today or during the comment
17 period.

18 The docket is now filed into the record, so it's
19 time to allow interested persons to read their
20 comments into the record.

21 As you begin speaking, please, state your name
22 and who you represent.

23 And for those of you that have not already filled
24 out a blue card that wish to speak, please, come up
25 and grab one and do so now.

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1 emitted by industrial processes from being released.

2 It has never been proven to work at scale or to
3 securely store carbon over the long term.

4 Currently, the vast majority of the tiny fraction
5 of carbon that is captured is used for forced
6 injection oil recovery, which only further exacerbates
7 the climate crisis. In order for this technology to
8 be economically feasible on a national scale would
9 require, first, the construction of pipelines
10 equivalent to the mileage of existing oil and gas
11 pipelines pumping lethally-concentrated and highly-
12 pressurized CO2 gas through communities around the
13 country.

14 We know from experience with oil and gas
15 pipelines that the communities that bear the most risk
16 when these projects are cited and constructed are low-
17 income communities and communities of color.

18 Fossil fuel companies have touted the false
19 solution of carbon capture and sequestration for
20 decades as a way to obfuscate and distract from the
21 harmful effects of continuing oil and gas extraction
22 and associated greenhouse gas emissions.

23 Last week, undercover video emerged of Exxon's
24 senior director for federal relations, Keith McCoy,
25 candidly admitting to the underhanded tactics these

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1 companies use to meaningful action to reduce carbon
2 emissions and mitigate the effects of climate change.
3 Meanwhile, images of the infernal glow of an
4 uncontrolled, undersea fire at a natural gas well in
5 the Gulf of Mexico played across our screens. We
6 ignore such obvious portents at our peril.

7 Here we are in the midst of yet another hurricane
8 season predicted to be more active than average. In
9 fact, it's storming cats and dogs outside. Of course,
10 more frequent and more intense hurricanes are yet
11 another symptom of a warming climate.

12 I just returned from visiting my parents in Lake
13 Charles over the holiday weekend. Their home is still
14 not repaired from Hurricane Laura last year. I'd be
15 willing to bet that others in this room are in the
16 same position or know folks who are.

17 The executives of Exxon or Chevron or Shell or BP
18 do not care for the people or the natural landscape of
19 this state. They view it as just another place from
20 which to extract whatever they can while contributing
21 as little as possible in return.

22 In contrast, I've never held an address outside
23 of Louisiana, or, for that matter, north of I-10. I
24 care deeply for this state. I believe it is worth
25 fighting for and protecting, and I know that we do not

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1 have time to devote to false solutions.

2 Rather than lend credence to yet another lie of
3 the fossil fuel industry, we should focus public
4 resources on the only sure solution to our climate
5 crisis, a sharp abatement of fossil fuel extraction
6 and a rapid deployment of energy efficiency and
7 renewable energy, which are the cheapest ways to meet
8 our energy needs, are proven technologies for reducing
9 greenhouse gas emissions, and provide the basis for a
10 new, clean energy economy, not one based on dirty, oil
11 and gas.

12 Above all, the great irony of the idea of carbon
13 capture and sequestration is that Mother Nature
14 perfected the secure storage of carbon billions of
15 years ago in the form of petroleum deposits. The best
16 way to keep excess carbon out of our atmosphere is to
17 leave it in the ground.

18 Thank you very much.

19 MR. ADAMS:

20 Thank you, sir.

21 Our next speaker is General Russel Honore.

22 STATEMENT BY GENERAL RUSSEL HONORE

23 GENERAL HONORE:

24 My name is Russel Honore. I live at 142 Memorial
25 Tower Highway, Baton Rouge, and lead the Green Army.

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1 I commend our State for attempting to take
2 actions to deal with the global warming that we face,
3 not only nationally, but globally, and the challenge
4 of climate change to our national security. We
5 already have significant issues when using injection
6 wells as we import production water from other states
7 that is used in oil and gas production and
8 manufacturing, and we allow that production water to
9 be brought to Louisiana in places like the Atchafalaya
10 Basin where we inject that production water in
11 abandoned wells.

12 The State, nor the federal government, have
13 established a standard for how long in abandoned well
14 pipes would have the integrity to hold this carbon,
15 just like we don't have one for how long it will hold
16 the production water that we're pumping into the
17 earth. Indications is water that's going through
18 these injection wells go to our aquifer. And I'm
19 concerned for the Green Army and our friends to put
20 carbon inside an injection well, whether it's a new
21 well or an existing well -- and we have over 6,000 of
22 them -- to reuse them oil and gas wells or to put new
23 ones in or even try to use the caverns or salt domes,
24 that would be a high-risk operation, because the
25 operation has not been made operationalized, as the

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1 previous speaker.

2 Our concern is what could this do to our
3 aquifers? We have three significant aquifers in the
4 state of Louisiana, the Chicot, the Southern Hills,
5 and the -- one more --

6 MR. ADAMS:

7 Carrizo Wilcox.

8 GENERAL HONORE:

9 Yes, sir. Thank you, sir.

10 what that might do to the integrity of our
11 aquifers.

12 Right now, there's a litigation going on in
13 DeSoto Parish where the parish pushed back and said,
14 no on injection. The State said, yes. Now they're in
15 litigation because that parish water has now -- has
16 been polluted by production water. So we're dealing
17 with a technology we don't know.

18 I request that -- and my comments are that we not
19 do this, because this will open us up to other states
20 sending carbon here through pipelines to be stored,
21 and that comes at a risk.

22 Four hundred of our 1,200 water systems in the
23 parishes now are at risk, and we -- and the State just
24 have a plan to fix those water systems. And to bring
25 in more stuff to pump into the ground could put our

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1 aquifers and the local water systems at risk, because
2 we're dealing with an unknown technology.

3 Did -- it sounds good.

4 The other thing is, it leaves room for
5 speculators on wall street to trading carbon to say
6 they're sending it to Louisiana. We already receive
7 their production water. We receive all the protein
8 that come down the Mississippi River that create a
9 6,000-square-mile dead zone for manufacturing toilets
10 and agriculture runoff. We don't need something else
11 that might infringe on the quality of life in
12 Louisiana. And comments are that we not do this
13 project. This is not proven technology.

14 Thanks for the opportunity to speak, and thanks
15 for extending the comment period. Thank you very
16 much.

17 MR. ADAMS:

18 Thank you, sir.

19 Marion Freistadt. And feel free to correct me on
20 pronouncing your name.

21 MS. FREISTADT:

22 That's why I changed my name to Penny.

23 STATEMENT BY MARION FREISTADT

24 MS. FREISTADT:

25 Good afternoon to the LDNR, Office of

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1 Conservation, Injection and Mining Division. Thank
2 you for your work and for the opportunity to provide
3 public comment.

4 My name is Marion Freistadt. As mentioned, I
5 prefer to be called Penny. I'm a volunteer -- I'm --
6 I'm working -- I'm speaking on my own behalf, and I am
7 speaking in opposition to the approval of the Class VI
8 USEPA Primacy application for the following reasons.

9 Number one, has LDNR demonstrated competency for
10 Primacy? The public needs to see documented --
11 documented evidence that LDNR has this competency. If
12 this information is publicly available, it has not
13 been readily found.

14 Number two, has LDNR determined that its program
15 is at least as stringent as the federal regulations?
16 According to EPA, EPA's role in approving a State's
17 program is to determine that it is at least as
18 stringent as the federal regulations. Research has
19 shown that, in general, State Primacy over the Clean
20 Water Act has had mixed results. In some cases,
21 federal inspections are more effective than State
22 inspections. And I have references. I have sent this
23 as a paper letter, as well.

24 Number three, where are the LDNR enforcement
25 records on the other wells? Currently, Louisiana has

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1 Primacy on the VI -- pardon me -- on V wells, Classes
2 I through V. EPA recognizes six categories of the UIC
3 wells. An adequate track record of State level
4 regulation on these wells for which State Primacy
5 already exists needs to be demonstrated.

6 Also, are there regulations concerning potential
7 seismic impact? Class VI wells may be -- may present
8 more of a danger to the Clean Water Act, the Safe
9 Drinking Water Act, and the other congressionally-
10 mandated regulations.

11 Class VI wells may be more dangerous than the --
12 the other five classes, because they are built for
13 long-term storage, so they may be deeper than the
14 other wells. They're going to be closer to fossil
15 fuel projects, so there's -- pardon me, I misspoke --
16 the Class VI wells, because they're closer to fossil
17 fuel projects, they have more potential for carrying
18 toxins into drinking water and aquifers, as General
19 Honore was discussing.

20 LDNR needs to demonstrate that these issues are
21 addressed in the Primacy application and in its own
22 regulations.

23 Precedent on Primacy in the areas of Class VI
24 wells is not well established and may be overturned.

25 Currently, only two states, Wyoming and North

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1 Dakota, have Primacy on Class VI wells. Both were
2 granted during the Trump administration. It is likely
3 that the Trump era EPA decisions will be revisited by
4 the new EPA administrator.

5 And this is an -- I'm also presenting another
6 reason that I'm very concerned. I found inaccuracy in
7 the public EPA record concerning public comments on
8 Wyoming's Primacy application. So this brings into
9 question the integrity of the Primacy transfer
10 process. In the *Federal Register* article documenting
11 Wyoming's application for Primacy it's stated EPA
12 received seven public comment submissions. Of the
13 seven commentors, all submitted comments in support of
14 the rule, and, in fact, when you look at the actual
15 comments, that's not correct. The actual number of
16 commenters is not fully documented, and of the
17 comments that are presented in the *Federal Register*,
18 three of them are not favorable.

19 Very low numbers of Class VI wells suggest that
20 more precedent is needed concerning safety and
21 regulatory mechanisms. Minimally, it would be best to
22 defer this decision since there are no wells in
23 Louisiana for which jurisdiction will be transferred,
24 at least that I could find documented.

25 what is the impetus for the current application?

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1 It appears the impetus consists of laying regulatory
2 framework for such wells in Louisiana.

3 A 2020 opinion piece from American Association of
4 Petroleum Geologists, entitled "Carbon Capture and
5 Storage Potential in Southern Louisiana, a New
6 Business Opportunity," clearly states that the pursuit
7 of CCUS/CCS for underground storage will develop --
8 will help restore the flagging oil and gas economy in
9 Louisiana. And this is a quote from the abstract, "a
10 combination of factors makes Louisiana an attractive
11 place to kickstart this industry. LDNR Primacy would,
12 in effect -- in effect, subsidize the hydrocarbon
13 business by lowering entry barriers.

14 I also have another important concern, which is
15 whether environmental justice has been considered.
16 This is mentioned by the previous speakers, as well.
17 I'd like to point out, President Biden and the White
18 House Environmental Justice Advisory Council recommend
19 that environmental justice be considered in all
20 programs going forward. EPA provides tools for EJ.

21 In Louisiana, the petrochemical plants producing
22 carbon dioxide for which the wells would be drilled
23 are primarily located in sacrificed zones of black,
24 brown, and indigenous communities, which already
25 suffer disproportionately high risks of cancer, high

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1 rates of asthma, and high death rates from COVID.
2 Hundreds, perhaps thousands, of unmarked burial sites
3 of formerly enslaved persons have recently come to
4 light. These sites are all along the Mississippi
5 River, the sites of the former plantations, and they
6 are now the current and proposed petrochemical sites.
7 And this is where the Class VI wells will be drilled,
8 because that's near the carbon dioxide sources.

9 Louisiana law states that any known cemetery must
10 be cordoned off and protected. Since the
11 petrochemical plants are located on former
12 plantations, undoubtedly, the overlap will be
13 significant. LDNR needs to demonstrate sufficient
14 regulatory capacity to address this issue. A complete
15 EJ analysis needs to be conducted.

16 Does LDNR have sufficient staff and resources to
17 establish and enforce Primacy? An example of -- from
18 EPA Region III, which is Pennsylvania and Virginia, of
19 2018 UIC violations and enforcement noted
20 approximately 1,500 conducts requiring inspections of
21 wells -- this is Class II and V -- with 120 requiring
22 follow up over several years, including several
23 emergency orders.

24 Does LDNR have the budget for Primacy?
25 Environment and natural resources is less than one

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1 percent of the State's discretionary and non-
2 discretionary spending from the 2020-2021 budget. New
3 positions and training would have to be authorized and
4 funded. Louisiana, like most states, will be facing
5 dire financial circumstances in the near future.

6 Has LDNR demonstrated competency to test for the
7 chemicals that the carbon dioxide may dissolve and
8 carry? Carbon dioxide can carry toxins, caustic pipe
9 materials, rock minerals, and other chemicals which
10 may contaminate the drinking water in violation of the
11 Clean Water Act and the Safe Drinking Water Act.

12 Those are my objections to the Primacy
13 application, but also have some comments about the
14 technology itself, the CCUS/CCS. Primacy is not the
15 correct question. We need to address the technology
16 itself.

17 Our governor, our president, and 197 nations have
18 acknowledged the dire situation of the global climate
19 crisis and are united in supporting action to solve it
20 by reducing greenhouse gases -- greenhouse gas
21 emissions.

22 The stated purpose of this technology to avert
23 climate change through deep decarbonization is false.
24 In fact, it's the exact opposite. It will increase
25 anthropogenic carbon dioxide, both directly and

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1 indirectly, because the technology promotes continued
2 fossil fuel consumption, which is directly responsible
3 for climate change.

4 To contribute to solving climate --- climate
5 change, the carbon dioxide must essentially remain
6 underground forever. Gases, by their nature, do not
7 remain stationary. We cannot inject gigatons of
8 carbon dioxide gas underground and expect it to stay
9 there forever.

10 The regulations require source -- safe storage
11 for 50 -- only 50 years. What will happen to the
12 carbon dioxide after the 50 years? There will
13 inevitably be leaks during manufacturing, transport,
14 and drilling processes. And the sister technology,
15 the EOR, enhanced oil recovery, for the Class II wells
16 will basically create additional commercialization
17 opportunities for carbon dioxide.

18 I have other comments, but I -- I think I've
19 covered most of it.

20 Thank you very much.

21 MR. ADAMS:

22 Thank you.

23 Our next speaker is Mr. Jonathan Leo.

24 STATEMENT BY JONATHAN LEO

25 MR. LEO:

Michelle S. Abadie, CCR
Baton Rouge, Louisiana

1 Good afternoon. Thank you for the opportunity to
2 be able to present public comment on this very
3 important Primacy application of Louisiana for a Class
4 VI UIC Program Control.

5 I am a -- an environmental lawyer. I have only
6 been in Louisiana for the past year. My roughly 40
7 years of practicing environmental law and doing
8 environmental consulting work is in California, where
9 I still am an active member of the California bar.

10 I began my career as an environmental crimes
11 prosecutor with Los Angeles, and I have represented,
12 for over 15 years, different kinds of businesses in
13 private practice in organic and organic chemical
14 manufacturers, regulated industries of various kinds,
15 in administrative, as well as judicial proceedings.
16 So I have a fair degree of understanding of how
17 different elements of the regulatory system work.

18 I'm not going speak of the science of carbon
19 capture sequestration and storage. I am gonna speak
20 to what I regard as concerns that I have regarding the
21 enforcement program outlined in the application for
22 Primacy and particular emphasis on concerns I have
23 regarding the environmental justice element.

24 I'll start with the environmental justice
25 element, which is more -- I can be more specific

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1 about. Section 2(H) of the Memorandum of
2 Understanding, Addendum 1, that is part of the permit
3 application talking about environmental justice says,
4 and I quote, the State agrees to examine the potential
5 risks of a proposed Class VI well to identify any
6 particular impacts on minority and low-income
7 populations, unquote.

8 Section 3 of the permitting administration and
9 judicial review procedures of the State's 1422 program
10 description, also part of the application, states
11 that, an owner or operator be required, and, again, I
12 quote, to conduct an EJ review and submit a report as
13 part of the application process. At a minimum, I'm
14 still quoting, the State will require the report to
15 consider the data and factors available in the EPA-
16 developed EJ screen tool and identify any portions of
17 the Area of Review which encompass EJ areas.

18 And it concludes with this statement, when the
19 application is submitted, LOC staff will use the EJ
20 screen tool to evaluate the location of the project.
21 The EJ Impact Report submitted by the applicant will
22 -- will be reviewed to ensure that it is thorough,
23 contextualized, and agrees with the data from the EJ
24 screen tool, close quotes.

25 The problem is that EPA's website in describing

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1 the EJ screen tool, which Louisiana's application in
2 the context of environmental justice review identifies
3 as its central resource in providing this -- this
4 service says, and here I quote from EJ's website --
5 from the EPA's website, EJ screen is not used by EPA
6 staff for any of the following, and identifies four
7 areas. Those four areas that EJ screen is not
8 appropriate for are a means to identify or label an
9 area as a, quote, EJ community, unquote, to quantify
10 specific risk values for a selected area, to measure
11 cumulative impacts of multiple environmental factors,
12 or as a basis for agency decision making or making a
13 determination regarding the existence or absence of EJ
14 factors, close quotes.

15 There is only one other element of the
16 application that Louisiana has -- has submitted to EPA
17 that could conceivably implicate an EJ analysis, and
18 that is what it refers to as the SOS questions, which
19 I believe is a term taken from a judicial decision in
20 the Louisiana Court from the 1980s regarding
21 environmental review.

22 And what is clear from the SOS questions, whether
23 it's in the context of how the State of Louisiana
24 would use these evaluative questions in an
25 environmental justice context or in any other kind of

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1 environmental impact assessment context, demonstrates
2 that, in my judgment -- and I've -- I've -- I've
3 litigated NEPA cases, and I used -- worked with the
4 regulations extensively -- is inconsistent with and
5 impossibly, actually, in violation of the principles
6 of a NEPA analysis.

7 The SOS questions clearly demonstrate, all five
8 of them or perhaps six, that their purpose is to
9 require a project proponent to balance the protection
10 or potential harm to the environment from the project
11 with a calculation of the so-called nonenvironmental
12 benefits that the project will generate, which is not
13 just shorthand, but in -- elsewhere made very
14 explicit, the promotion of business opportunity and --
15 and profit. That kind of cost benefit analysis is not
16 found in NEPA, and the National Environmental Policy
17 Act certainly would apply to the review of any
18 application for a permit for a UIC Class VI well under
19 this kind of admin -- of this kind of regime.

20 what this persuades me of is that the State of
21 Louisiana has not thoroughly evaluated the integrity
22 of mechanisms that it proposes to use to identify what
23 is a sensitive environmental justice community
24 potentially. And I refer back to and incorporate by
25 reference in my own testimony the remarks made both by

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1 General Honore and Ms. Freistadt -- I'm hoping I
2 pronouncing her last name correctly -- because I think
3 they're very relevant here, as well.

4 There is an infirmity that indicates a lack of
5 understanding on the part of the State of Louisiana of
6 how to evaluate environmental justice concerns in the
7 context at the very least of this underground
8 injection well program.

9 I would suggest that the Primacy application be
10 denied, or at least delayed, until this issue, which
11 is of possibly greater concern in Louisiana than any
12 other state in the United States, before that
13 application be proceed -- go forward.

14 My last remarks are going to address enforcement
15 specifically, and here I also want to refer back to
16 Ms. Freistadt's remarks. In my judgment, and I've
17 worked with both the Clean Air Act, Clean Water Act,
18 and the RCRA programs in the state of California,
19 where California is an authorized -- authorized state
20 to implement the Clean Water Act, Clean Air Act, and
21 RCRA programs, federal programs, within the state.

22 It's much the same here with the UIC program.
23 There has to be -- in order for a Primacy application
24 to be granted, there has to be a convincing
25 determination made that the State is seeking to

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1 implement the federal program within its own borders,
2 not only be able to dot I's and cross T's in a
3 checklist about whether or not it has certain kinds of
4 permitting and monitoring and enforcement programs and
5 staff, but what kind of permitting monitoring and
6 enforcement it's got.

7 That requires serious due diligence on the part
8 of EPA to go behind what Louisiana is professing it is
9 capable of doing in this application and actually look
10 at what the training of which staff members currently
11 with the Department of Natural Resources who would be
12 administering this program, if it were granted Primacy
13 actually is. How many of them are there? How many
14 years have they been doing the kind of work that would
15 be called for by the -- by the compliance requirements
16 of this program? If they are not currently properly
17 trained for that, how much money and how long will it
18 take before they are able to do that?

19 This is the concern I have that underlies all of
20 the statements in the application regarding
21 enforcement, because it seems to me that it is
22 somewhat cavalier in the way that it's described.

23 And in particular, there are inconsistencies
24 within the application documents submitted by
25 Louisiana with respect to what the civil enforcement

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1 provisions of its program would be, in particular.

2 And this is almost like the -- the very beginning
3 of a compliance enforcement program when a director of
4 a program or an administrator of a program learns from
5 inspectors in the field that the inspectors have
6 concerns, that the project -- operator may be in
7 violation of the permit conditions or certain
8 statutory or regulatory provisions, and those lead to
9 a Notice of Violation or a -- a threat that, if
10 certain things are not corrected within a given period
11 of time, a Notice of Violation may be issued, followed
12 perhaps by a Compliance Order. There has to be a -- a
13 clear picture of where this is going to end up
14 potentially, consistency, both for the -- the -- the
15 program administrator, as well as for the project
16 operator.

17 In this case, in the statutory section cited in
18 Louisiana -- Louisiana's application, both in the 14
19 -- program 1422 description, as well as in the
20 Memorandum of Understanding, Addendum 1, different
21 sections of Louisiana's civil Enforcement provisions
22 are cited. One of which says the maximum civil
23 penalty may be \$5,000 per day of violation.

24 Another one referenced, again, in the -- in one
25 of these documents says that where civil penalties can

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1 be imposed for violations of a UIC Compliance Order,
2 they can rise to as much as \$25,000 per day of
3 violation.

4 And there are still a third section that
5 discusses civil enforcement where Compliance Order
6 violations may be punished by a maximum, I believe,
7 \$37,500 a day.

8 It's not clear, in other words, which of these
9 compliance enforcement mechanisms in a civil context
10 is applicable here, and I think that's critical to
11 clarify.

12 In the criminal context, and this is where my own
13 specialty is, there is a provision which references
14 hazardous waste enforcement in the application. And I
15 may not have done enough homework. It's possible
16 that, under Louisiana law, which I don't know,
17 certainly, as well as I know California law, the kinds
18 of materials which are proposed to be injected into
19 the geologic structures of the Class VI UIC program
20 would be classified as hazardous waste under Louisiana
21 law without for the review.

22 I don't believe that's the case. Because this is
23 a brand-new program, I don't see anything in the
24 timing or amendment of any of those definitional
25 sections of the criminal provisions that indicates to

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1 me they have been adjusted in light of Class VI UIC
2 programs, which leads me to wonder whether or not, if
3 I were a prosecutor, Attorney General, or somewhere
4 else in the state of Louisiana looking at the
5 possibility of criminal enforcement of some serious
6 willful or intentional or -- or criminally negligent
7 violations of the operation of one of these projects,
8 I would not be certain what my charging section would
9 be or what the prima facie case that I would have to
10 make out in order to get a conviction would be to a
11 jury.

12 And if it's unclear to me looking at this as a
13 former prosecutor, that, to me, signals that there
14 would be impunity on the part of operators who would
15 be advised by their private, whether outside or in-
16 house counsel, that Louisiana is not going to be able
17 to enforce these -- these provisions.

18 Thank you for your time. Thank you for your
19 consideration.

20 My conclusion is that, at the very least, this
21 application should be delayed until these questions
22 can be addressed by EPA with Louisiana, or else
23 denied.

24 Thank you.

25 MR. ADAMS:

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1 Thank you.

2 Mr. Scott Eustis.

3 STATEMENT BY SCOTT EUSTIS

4 MR. EUSTIS:

5 Thanks. Thanks for the opportunity to comment.

6 My name is Scott Eustis. I'm representing
7 Healthy Gulf at 935 Gravier in New Orleans, and we're
8 here today to comment on the things we need to see
9 from the Department in order to make a program like
10 this meet cost benefit in order to make it worth it to
11 proceed with an application.

12 This is a momentous decision for the future of
13 Louisiana, and Healthy Gulf needs the Department to
14 consider a wider range of concerns and pick a narrow
15 path forward for the kinds of locations and wells that
16 it approves.

17 In the past, the Department has been less
18 selective about sensitive areas for drilling. As a
19 consequence, we do live in a state with a large burden
20 of failed and failing oil and gas infrastructure in a
21 state where those failures have larger consequences
22 than in most states.

23 The LDNR must refine its environmental justice
24 analysis to identify overburdened communities, as well
25 as avoid them, and failing to notify communities of

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1 additional risks posed by the infrastructure.

2 You know, the application as proposed mentions EJ
3 screen, but that's not -- that's a tool. It's -- the
4 Department needs to develop a method of maybe using
5 that tool, and just as -- you know, it wouldn't really
6 be an environmental justice policy, if you just said
7 the United States Census and pointed to the census
8 over there, but the Department itself must develop a
9 consistent demographic method for how pollution
10 affects our rural areas.

11 There's -- there's plenty of precedent in the way
12 that the Army Corps and EPA have proceeded from EPA
13 best practices beyond what's been published in the
14 *Federal Register* for Class VI. I think we definitely
15 need a Department to go beyond that -- what's in the
16 *Federal Register* in order to develop an idea of which
17 communities are overburdened and then actively
18 avoiding those communities, if possible.

19 Carbon capture is -- is kind of inherently
20 unjust, because it -- it's basically trading
21 improvements in air quality in the shadow of
22 industrial plants for sequestration in another
23 location that could also be -- have unjust
24 implications.

25 The current federal applications in our area seek

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1 to take carbon from Beaumont and Port Arthur. And,
2 you know, if you had to pick any places in the country
3 to identify as environmental justice communities,
4 Beaumont and Port Arthur would be -- would be them.
5 So the petrochemical facilities in those areas, which
6 are built out into the floodplain of the Natchez River
7 disparately affect black Americans and native
8 Americans, and the facilities have left the
9 communities in penury with little flood protection
10 when the storms arrive and people often have to
11 evacuate in the middle -- midst of chemical disaster.
12 So, you know, we have many similar communities in
13 Louisiana.

14 We foresee that our -- within our state, you
15 know, we foresee that the program will engage CF
16 Industries in Donaldsonville, the top climate changer
17 in the state of Louisiana, which is similarly located
18 in a coastal community, a disparately black community,
19 a community that has not received benefits from the
20 massive petrochemical pollution and risk that it
21 receives.

22 Donaldsonville is one of the poorest communities
23 in the state, and so, you know, I'd like the
24 Department to consider creating a program, and when
25 you think about it, think about how this would be

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1 beneficial to Donaldsonville. How do we lift
2 communities that are in the shadow of petrochemical
3 pollution? How can we lift our brothers and sisters
4 from penury? As Donaldsonville goes, so goes our
5 state.

6 So we have more comments on particular methods,
7 but I do think that using the United States Census and
8 EJ screen with an eye for rural areas, rural block
9 groups, and comparing block groups with parish
10 reference, that's how, sociologically, we need to
11 identify overburdened communities, and that's how LDNR
12 could be in compliance with the meaningfully greater
13 language of the Executive Orders on environmental
14 justice.

15 I believe we have other comments that will be
16 written on other efforts, such as CPRA's Social
17 Vulnerability Index Analysis, as well as New Jersey --
18 New Jersey's rules and demographic method and
19 protocols for notification.

20 The Department must study impurities in the
21 carbon from petrochemical generation before proceeding
22 with its application.

23 You read the press, you look at existing
24 applicants, the EPA, Louisiana will mostly be
25 receiving this waste stream from the state of Texas,

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1 most likely via the existing Denbury pipeline from the
2 Houston Ship Channel. But, once it goes in the pipe,
3 which begins in the Ship Channel, it's hard to
4 determine -- you know, it'd be difficult for the
5 Department to determine what is actually in the
6 pipeline.

7 we know that EPA has only ever considered
8 impurities from coal-fired power, and that's what's in
9 their rule. But from the applications we've seen,
10 again, from Beaumont and Port Arthur, you can -- you
11 can imagine the array of petrochemical facilities and
12 the array of impurities by reviewing the -- the Title
13 V applications from those facilities.

14 The Denbury pipeline backs up to the Houston Ship
15 Channel, and so we're talking about what's coming out
16 of the smoke stacks at Shell Deer Park going into and
17 pass Louisiana's drinking water, our underground
18 aquifers.

19 So we know that EPA hasn't considered -- that
20 they haven't considered anything beyond coal-fired
21 power as a source of carbon dioxide, so we do think
22 the Department needs to look at impurities that must
23 be removed in Texas from a -- a much wider array --
24 array of petrochemical facilities.

25 Louisiana Department of Natural Resources must

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1 consider lost, orphan, and unplugged wells in its
2 applications for wells. Louisiana has 9,729 unplugged
3 gas wells and 13,839 unplugged oil wells, inactive,
4 you know, nonproductive facilities that are found to
5 be more likely to be leaking methane. And, within
6 those numbers, there are 2,589 wells that the
7 Department cannot locate or plug. So all of these go
8 through our drinking water, through our aquifers.

9 LDNR must consider the cumulative impacts of
10 thousands of perforations to the integrity of our
11 aquifers and the formation in any application and have
12 that be a basis for denial of applications if there is
13 an overburden of unplugged, abandoned, and lost wells.
14 The Department cannot guarantee the integrity of the
15 carbon capture system and have wells that it can't
16 even locate running through the same aquifer.

17 I'll skip to -- to maintain basic integrity of
18 the wells at the surface. the Department must exclude
19 carbon capture surface infrastructure from the Coastal
20 Zone. Unless LDNR excludes Class VI surface activity
21 from the Coastal Zone, such activities are
22 inconsistent with Louisiana's Master Plan for
23 Sustainable Coast and Executive Orders, in addition,
24 just being a greater financial burden on the
25 Department.

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1 A recent Princeton study stated that Louisiana is
2 generally unsuitable for carbon capture for many
3 reasons, but they include cultural impacts, which I
4 believe the Department is considering under
5 environmental justice, and wetlands impacts.

6 Current proposals, both the -- the applications
7 we have in the public that are publicly available, as
8 well as things that are advertised in the press, they
9 -- they all include wells and massive pipeline impacts
10 to coastal wetlands.

11 You know, my grandfather was a petroleum
12 geologist. Certainly, you know, some of us have
13 benefited from the legacy of that industry, but, since
14 2013, Louisiana has become more of a trading floor for
15 petrochemicals rather than a producer. And being the
16 trading floor for other states and other companies has
17 resulted in hundreds of acres of impacts from
18 pipelines every year that we've looked.

19 From 2014 to 2016 alone, pipelines impacted over
20 2,000 acres of wetlands in the New Orleans District of
21 the Army Corps, the area south of Baton Rouge,
22 excluding the Pearl and Sabine. Mitigation is often
23 lacking for these facilities. It's the highest single
24 category of wetlands impact to the Coastal Zone, even
25 as, you know, we are reeling from pipeline impacts

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1 from my grandfather's day.

2 Our damages in the state of Louisiana from storms
3 rank up with Texas and Florida as the highest in the
4 United States, and we are not nearly as wealthy as
5 Texas and Florida. The infrastructure placed in
6 wetlands is more likely to corrode from saltwater and
7 more likely to fatigue with the movement of tidal and
8 flood water as it moves through wetland soils.

9 I'll skip ahead to some comments about the rates
10 of failure that we already see. Gas pipelines in the
11 Coastal Zone are more likely to have accidents or
12 incidents, as listed by the PHMSA, the Pipeline
13 Hazardous Material and Safety Administration, and more
14 likely to have larger accidents and releases, and this
15 will likely increase over the life of any project
16 considered here, since the lifespan is 50 years for
17 Class VI.

18 Louisiana, and already has a pipeline incident
19 rate, that's all pipelines, when you look at just our
20 state. And all -- all of the incidents across the
21 nation, we have it three times higher than other
22 places -- than the entire nation considered, and
23 that's about twice as high as Texas, and this is just
24 incident rate per mile.

25 So our sense is that the loss of integrity from

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1 infrastructure, it's largely driven by incidents in
2 the Coastal Zone, especially during hurricanes.

3 When we consider gas transmission pipelines
4 exclusively, pipelines on the Louisiana coast have
5 twice as many incidents as the national onshore rate.
6 And as our Coastal Zone loses wetland integrity,
7 incident rates will approach the frankly horrendous
8 rates of gas pipeline incidents we see offshore.
9 Offshore, it's -- it's orders of magnitude more than
10 the -- the normal U.S. onshore rate of pipelines.

11 So we're losing material, and we're also -- as
12 the carbon or other things in the pipeline spread
13 across the community, there's an increase of risk, if
14 the facilities are in the Coastal Zone.

15 Just, in general, as far as environmental
16 justice, the Coastal Zone is a generally poor area of
17 the state, as well as being a generally disparately
18 native American area of the state. So it would be
19 simple to avoid coastal overburden -- it would avoid a
20 lot of overburdened communities who have -- part of
21 that overburden is the great evacuation need when
22 incidents occur. There's a lack of infrastructure to
23 get people out of the way of incidents and releases
24 that cause loss of life and health impacts, and so it
25 -- excluding surface facilities from the Coastal Zone

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1 would just to be a very simple way of complying with
2 environmental justice.

3 And the Denbury pipeline, which I've mentioned,
4 which has already seen as kind of the backbone of
5 Louisiana's carbon transport system, has RA been
6 designed to avoid the Coastal Zone? This is the
7 pipeline the nation talks about when it talks about
8 carbon sequestration in Louisiana. When the
9 University of Houston has week-long seminars, Houston
10 depends on this pipeline in order to sequester its
11 carbon. This pipeline is outside of the Coastal Zone,
12 except for the community of Donaldsonville.

13 So we foresee that the Department can minimize
14 many costs, many different kinds of impacts to land
15 and water, as well as transportation impacts to all
16 communities simply by following the current example
17 and excluding activities from the Coastal Zone.

18 we'll have more, and I'd like to submit these
19 written comments into the record.

20 MR. ADAMS:

21 All right. Thank you. If you would go ahead and
22 hand those to the court reporter.

23 That is all of my blue speaker cards that I've
24 received. Is there anyone else who would like to put
25 oral comments in the record today?

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1 capture sequestration, as a great threat with many
2 risks to our water resources, both the sustainability
3 of our aquifers, our surface waters, and our
4 groundwater.

5 I received this morning at about 11 o'clock an
6 official notice that you -- you all would be extending
7 the public comment period, and that you would be
8 allowing for electronic submission of comments and
9 testimony, and I intend to supplement my comments by
10 electronic email and just wanted to go on record now
11 that I would be doing that.

12 Thank you.

13 MR. ADAMS:

14 Thank you.

15 Is there anyone else who would like to put oral
16 comments into the record?

17 Seeing none. I would like to remind everyone that
18 the comment period was extended. It will close at
19 4:00 p.m., Tuesday, one week from today, July 13th,
20 2021. And up until that time, we will accept comments
21 that are both -- both postmarked that date or that
22 have been received by our office via email by that
23 date. If you need the mailing address or the email
24 address, by all means, stop by after the hearing, and
25 -- and I will provide them to you, once again.

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1 Seeing that there are no more comments, the --
2 this hearing for Docket No. IMD 2021-02 is hereby
3 adjourned, pending the public comment period.

4 Thank you very much.
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CERTIFICATE

I, MICHELLE S. ABADIE, Certified Court Reporter in and for the State of Louisiana, as the officer before whom this hearing was held, do hereby certify that the comments of the Hearing Officer, John Adams, Attorney, Office of Conservation, on July 6, 2021, in Baton Rouge, Louisiana, and public comments heard in Docket No. IMD 2021-02 were reported by me in the stenomask reporting method, was prepared and transcribed by me or under my personal direction and supervision; that the foregoing pages, numbered 1 through 48, inclusive, is a true and correct transcript to the best of my ability and understanding; that I am not related to counsel, if any, or to the parties herein, nor am I otherwise interested in the outcome of this proceeding.

MICHELLE S. ABADIE, CCR #24032
CERTIFIED COURT REPORTER

Michelle S. Abadie, CCR
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