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COMMISSIONER OF CONSERVATION

**State of Louisiana**  
**DEPARTMENT OF NATURAL RESOURCES**  
**OFFICE OF CONSERVATION**

December 09, 2020

Senator Patrick Page Cortez, President  
Senator Bob Hensgens, Natural Resources Committee Chairman  
Representative Clay Schexnayder, Speaker  
Representative Jean-Paul Coussan, Natural Resources and Environment Chairman

Via Statutorily Prescribed E-mail

Re: Summary Report of Proposed New Rule  
Class VI Geologic Sequestration of Carbon Dioxide  
Office of Conservation Rules and Regulations  
LAC 43:XVII.6 (Statewide Order 29-N-6)

Dear Oversight Authorities:

The Commissioner of Conservation proposes to promulgate new rule LAC 43:XVII Chapter 6 in accordance with the provisions of the Administrative Procedures Act, La. R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana.

The proposed action is a rule adoption for Class VI Geologic Sequestration of Carbon Dioxide. The new proposed rule governs oversight of the Class VI carbon sequestration program within the Underground Injection Control Program (UIC Program), located within the Louisiana Office of Conservation, Louisiana Department of Natural Resources. Class VI (carbon sequestration) wells are a federally-designated well class that inject carbon dioxide gas underground for long-term containment, ultimately limiting net emissions of this greenhouse gas. The UIC Program is currently applying for Primary Enforcement Authority from the United States Environmental Protection Agency (US EPA) for Class VI wells, modifying the Louisiana UIC Program oversight to include Class VI wells in addition to current existing oversight authority for Class I, II, III, IV, and V wells. Promulgation of Statewide Order 29-N-6 is required in order to obtain enforcement authority from the US EPA.

The Commissioner forwarded notice of the proposed rule to the appropriate legislative committees, presiding officers of the House and Senate, and other state offices on October 7, 2020.

A comment period was held open from October 20, 2020 to December 1, 2020, which afforded interested parties an opportunity to comment on the proposed rule amendments. Pursuant to La R.S. 49:968.D(1)(b), the Commissioner of Conservation submits the following summary report of the public hearing.

I. La R.S. 49:968.D(1)(b)(i) – A summary of public hearing testimony:

No public hearing was requested, so a public hearing was not held.

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II. La R.S. 49:968.D(1)(b)(ii) – A summary of all comments received, a copy of the agency’s responses, and a statement of the agency’s action resulting from comments received:

The Office of Conservation received five (5) public comments. A summary of the public comments as well as the agency response to each comment is included as an attachment.

III. La R.S. 49:968.D(1)(b)(iii) – A revision of the proposed rule since submitting the report of La R.S. 49:968.B, or a statement that no changes were made:

No changes were made since submitting the previous report.

IV. La R.S. 49:968.D(1)(b)(iv) – A concise statement of the principal reasons for and against adoption of any amendments or changes suggested:

No changes or amendments are intended to be implemented at this time. The changes requested in the public comments are not substantive and do not require a change in the proposed rule. However, some comments may be considered during any future rule changes.

The Office of Conservation expects to publish the final rule in the Louisiana Register as soon as permissible under the Administrative Procedures Act. Please inform us of your decision on whether or not you intend to hold a hearing as permitted by La R.S. 49:968.D(2)(a).

Please contact me at 225-342-5569 if there are any questions or if any clarification of the above is needed.

Yours very truly,



Gary P. Ross, Assistant Commissioner  
Louisiana Office of Conservation

GPR:shl:ces

Attachments

**Louisiana Department of Natural Resources  
Injection and Mining Division**

Class VI Rule Promulgation – Public Comments and Agency Response  
December 9, 2020



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**Comment 1 – LMOGA**

Miscellaneous Wording: To ensure clarity, LMOGA recommends changing the wording in paragraph 609.C.5.a from “submitted a plugging and abandonment report” to “submitted a Well Closure Report and complied with closure and post-closure requirements according to paragraph 633.” LMOGA also recommends adding a definition of Well Closure Report to these rules.

**Comment 1 LDNR Response:** The Louisiana Department of Natural Resources (LDNR) has noted the comment and the suggested changes will be considered in future rule-making.

**Comment 2 – LMOGA**

Reporting Requirements: There appears to be a discrepancy between a reporting deadline in the EPA rules compared to the Department’s proposed rules. Specifically, the 14-day reporting requirement specified in the proposed paragraph 609.L.5 is shorter than the 30-day period outlined in the corresponding EPA rule at 40 CFR 144.51(I)(5).

A 14-day reporting requirement presents somewhat of a challenge, and LMOGA respectfully requests that the Department would consider making this requirement 30 days to reflect the requirement in the EPA rule.

**Comment 2 LDNR Response:** LDNR has noted the comment and the suggested changes will be considered in future rule-making.

**Comment 3 – Environmental Defense Fund**

Liability Management: CCS projects are long-lived, and Class VI requires an extended period of post-site care and monitoring. Many proponents of CCS, especially equity investors, are eager to derisk these projects through statutory elimination of liability, or transfer of liability to taxpayers.

EDF is concerned about this socializing of CCS liability for several reasons.

First, the risk of liability acts as a powerful motivator for high quality operations. Project developers who do not face commensurate consequences for negligent behavior will tend to behave negligently to save money. Elimination or transfer of liability introduces a moral hazard that potentially endangers workers, community members, and the environment.

Second, elimination or transfer of liability creates a rhetorical contradiction for CCS proponents who claim that the activity is well understood and safe, while simultaneously lobbying to escape from liability in case something goes wrong – this mixed message is absorbed by the public and creates skepticism about the reliability of CCS, which can be quite damaging in these early stages of widespread rollout.

Liability management is outside the scope of Class VI primacy, but is nevertheless an essential component of a state’s overall CCS regulatory program. Since 2009, Louisiana has had statutory provisions addressing liability arising from CCS projects at La. R.S. §§ 30:1109-1111. EDF supports

strengthening this system to hold operators more responsible for the consequences of their actions. However, had the Louisiana legislature adopted language proposed in early 2020 eliminating operator liability arising prior to the issuance of a certificate of completion of injection operations and eliminating the cap on operator liability release pegged to the solvency of the Carbon Dioxide Geologic Storage Trust Fund, EDF would not have been able to support CCS in Louisiana.

**Comment 3 LDNR Response:** LDNR certainly recognizes the importance of long-term liability management associated with CCS projects. As mentioned in the comment, the purview of the proposed rule does not extend to liability release and any changes to the current structure of liability management would require statutory changes. Therefore, no change to the proposed rule is warranted.

#### **Comment 4 – Environmental Defense Fund**

Agency resources and staff training: Louisiana policymakers are well aware that Class VI permitting and oversight is a resource-intensive activity, requiring a well-funded and well-trained regulator to facilitate safe and secure project development. Class VI oversight requires, for example, extensive modeling efforts outside the current scope of the Department of Natural Resources' workstream. The expected implementation costs that the DNR provides in its Notice of Intent are commensurate with estimates by the Ground Water Protection Council. EDF agrees with the Department that federal grants will be needed, especially in the early years while industry funding of oversight ramps up, to develop the regulatory program, and supports appropriations to make this happen at sufficient scale.

In particular, EDF supports the Department of Natural Resources' efforts to hire and train staff for Class VI permitting, modeling, inspections, and other oversight needs. Given the self-imposed short timelines for the Department to evaluate an application's completeness and then approve applications after the closure of public comment periods, it is especially important for the Department staff to be adequately trained and resourced to react quickly, knowledgeably and effectively on permitting decisions.

**Comment 4 LDNR Response:** LDNR concurs with this comment. Staffing and funding are not included within the scope of the proposed regulations. Therefore, no change to the proposed rule is warranted.

#### **Comment 5 – Environmental Defense Fund**

Scope of Protection: EPA's Class VI program, as part of the Safe Drinking Water Act, is focused on the protection of Underground Sources of Drinking Water. While the Department of Natural Resources' proposed language is consistent with this mandate, Wyoming's recently approved Class VI primacy application extends the scope of protection, and emphasizes in at least seventeen different places that its rules are intended to protect human health, safety, and the environment in addition to USDWs.<sup>1</sup> While the concept of regulating to safeguard human health, safety and the environment is not absent from the Department's proposal, these issues are surely central to the Department's approach, and the Department should take this opportunity to add language similar to that used by Wyoming in its rules.

**Comment 5 LDNR Response:** LDNR concurs with the importance of protecting human health, safety, and the environment. The Louisiana State Constitution in Article IX, Section 1, mandates that the natural resources of the state "shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people." Although these protections are only explicitly stated in LAC 45:XVII.603.H.4 of the proposed rule, they are already enumerated in the mission of the LDNR as laid out in the Louisiana Constitution.



Louisiana Mid-Continent  
Oil & Gas Association

December 1, 2020

Transmitted via hand delivery

OFFICE OF CONSERVATION

Stephen Lee  
Director  
Injection and Mining Division  
Office of Conservation  
Louisiana Department of Natural Resources  
PO Box 94275  
Baton Rouge, LA 70804

DEC 01 2020

INJECTION & MINING DIVISION

**Re: Comments on Proposed Regulations for Class VI Wells**

Dear Stephen,

The Louisiana Mid-Continent Oil and Gas Association (LMOGA) appreciates the opportunity to comment on the Louisiana Department of Natural Resources' (the Department's) notice of intent to establish regulations governing Class VI wells, which are for permanent carbon sequestration.

LMOGA is a state trade association which represents all aspects of the oil and gas industry in the State of Louisiana. The companies which make up LMOGA's membership consider safety and environmental stewardship to be core values in all aspects of their operations, and carbon sequestration will play a key role in Louisiana's recently announced emissions reduction goals.

LMOGA commends the Department for the work it does to manage Louisiana's bountiful natural resources in a responsible and environmentally conscious manner.

Additionally, LMOGA fully supports the Department as it works with the Environmental Protection Agency (EPA) Region 6, to become the primary regulator for Class VI wells.

LMOGA recognizes that the Class VI regulations proposed in the October issue of the Louisiana Register represent a critical step in the Department's primacy efforts, and as such, LMOGA supports the Department's notice of intent.

To ensure a fully functional and useable Class VI program, LMOGA respectfully requests that the Department would consider the following recommended changes to the proposed regulations:

**Miscellaneous Wording**

To ensure clarity, LMOGA recommends changing the wording in paragraph 609.C.5.a from "submitted a plugging and abandonment report" to "submitted a Well Closure Report and complied with closure and post-closure requirements according to paragraph 633." LMOGA also recommends adding a definition of Well Closure Report to these rules.

**Reporting Requirements**

There appears to be a discrepancy between a reporting deadline in the EPA rules compared to the Department's proposed rules. Specifically, the 14-day reporting requirement specified in the



# LMOGA

Louisiana Mid-Continent  
Oil & Gas Association

proposed paragraph 609.L.5 is shorter than the 30-day period outlined in the corresponding EPA rule at 40 CFR 144.51 (l) (5).

A 14-day reporting requirement presents somewhat of a challenge, and LMOGA respectfully requests that the Department would consider making this requirement 30 days to reflect the requirement in the EPA rule.

In conclusion, LMOGA supports this rulemaking action by the Department, and LMOGA appreciates the opportunity to provide comments and participate in the rulemaking process.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Nathan McBride  
Regulatory Affairs Manager  
Louisiana Mid-Continent Oil and Gas Association

OFFICE OF CONSERVATION

DEC 01 2020

INJECTION & MINING DIVISION





December 1, 2020

Stephen Lee  
Director, Injection and Mining Division  
Office of Conservation  
Louisiana Department of Natural Resources  
P.O. Box 94275  
Baton Rouge, LA 70804-9275

*Submitted via email to Stephen Lee and via fax*

**Re: Louisiana Class VI Regulations in Advance of Primacy Application**

Dear Mr. Lee,

The Environmental Defense Fund (EDF) appreciates the opportunity to provide comments in response to the Louisiana Department of Natural Resources, Office of Conservation's proposal to adopt Statewide Order No. 29-N-6 providing rules for Class VI injection wells in advance of Louisiana's application for primacy over Class VI regulation from the U.S. Environmental Protection Agency.

In general, EDF supports the proposed regulations and Louisiana's intention to achieve Class VI primacy. Carbon Capture and Sequestration (CCS) is an important suite of technologies for removing carbon dioxide from industrial waste streams and the air, and securely sequestering it in subsurface geology – CCS is well suited for Louisiana's abundance of CO<sub>2</sub> sources and sinks, and is a sensible component of Louisiana's approach to curbing climate pollution and saving its coastal areas from inundation.

The proposed rules are a result of significant collaboration with the EPA, and appear to meet EPA's minimum requirements for UIC programs under Section 1422 of the Safe Drinking Water Act. At the same time, EDF would like to highlight areas deserving the Office of Conservation's special attention. These are: 1) liability management; 2) agency resources and staff training; 3) scope of protection.

1) Liability management



CCS projects are long-lived, and Class VI requires an extended period of post-site care and monitoring. Many proponents of CCS, especially equity investors, are eager to derisk these projects through statutory elimination of liability, or transfer of liability to taxpayers.

EDF is concerned about this socializing of CCS liability for several reasons.

First, the risk of liability acts as a powerful motivator for high quality operations. Project developers who do not face commensurate consequences for negligent behavior will tend to behave negligently to save money. Elimination or transfer of liability introduces a moral hazard that potentially endangers workers, community members, and the environment.

Second, elimination or transfer of liability creates a rhetorical contradiction for CCS proponents who claim that the activity is well understood and safe, while simultaneously lobbying to escape from liability in case something goes wrong – this mixed message is absorbed by the public and creates skepticism about the reliability of CCS, which can be quite damaging in these early stages of widespread rollout.

Liability management is outside the scope of Class VI primacy, but is nevertheless an essential component of a state’s overall CCS regulatory program. Since 2009, Louisiana has had statutory provisions addressing liability arising from CCS projects at La. R.S. §§ 30:1109-1111. EDF supports strengthening this system to hold operators more responsible for the consequences of their actions. However, had the Louisiana legislature adopted language proposed in early 2020 eliminating operator liability arising prior to the issuance of a certificate of completion of injection operations and eliminating the cap on operator liability release pegged to the solvency of the Carbon Dioxide Geologic Storage Trust Fund, EDF would not have been able to support CCS in Louisiana.

## 2) Agency resources and staff training

Louisiana policymakers are well aware that Class VI permitting and oversight is a resource-intensive activity, requiring a well-funded and well-trained regulator to facilitate safe and secure project development. Class VI oversight requires, for example, extensive modeling efforts outside the current scope of the Department of Natural Resource’s workstream. The expected implementation costs that the DNR provides in its Notice of Intent are commensurate with estimates by the Ground Water Protection Council. EDF agrees with the Department that federal grants will be needed, especially in the early years while industry funding of oversight ramps up, to develop the regulatory program, and supports appropriations to make this happen at sufficient scale.

In particular, EDF supports the Department of Natural Resources’ efforts to hire and train staff for Class VI permitting, modeling, inspections, and other oversight needs. Given the self-imposed short timelines for the Department to evaluate an application’s completeness and then approve applications after the closure of public comment periods, it is especially important for the Department staff to be adequately trained and resourced to react quickly, knowledgeably and effectively on permitting decisions.



### 3) Scope of protection

EPA's Class VI program, as part of the Safe Drinking Water Act, is focused on the protection of Underground Sources of Drinking Water. While the Department of Natural Resources' proposed language is consistent with this mandate, Wyoming's recently approved Class VI primacy application extends the scope of protection, and emphasizes in at least seventeen different places that its rules are intended to protect human health, safety, and the environment in addition to USDWs.<sup>1</sup> While the concept of regulating to safeguard human health, safety and the environment is not absent from the Department's proposal, these issues are surely central to the Department's approach, and the Department should take this opportunity to add language similar to that used by Wyoming in its rules.

\* \* \*

EDF again appreciates the opportunity to comment on this important rule as Louisiana prepares its Class VI primacy application. We look forward to working with Louisiana policymakers and other stakeholders as the state continues to develop a robust CCS oversight framework.

Respectfully submitted,

Adam Peltz  
Senior Attorney, Energy  
Environmental Defense Fund  
257 Park Ave South, 17<sup>th</sup> floor  
New York, NY 10010

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<sup>1</sup> See, e.g., Wyoming DEQ Water Quality Ch. 24, Sec 2(tt); Sec 4(c)(i)(R)(I); Sec 8(c)(i)(B); Sec 12(a)(i) and (ii); Sec 14(b)(ix); Sec 17(a)(ii)(A).