

## Texas Is One Step Closer to Primacy for Carbon Injection Well Permits

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On April 29, 2025, the Environmental Protection Agency (EPA) and the Texas Railroad Commission (RRC) signed a [memorandum of agreement](#) (MOA) outlining how, if granted primacy, the RRC will administer the Class VI injection well permit process. Class VI wells, which are used to inject carbon dioxide underground to be stored in deep underground formations, are becoming more popular around the country as entities seek to reduce their carbon footprint by capturing and storing carbon dioxide.

Without primacy, entities wishing to be permitted to build and operate Class VI wells in Texas must obtain permits from both the EPA and the RRC. By signing the MOA, the RRC is one step closer to being granted primacy and administering the Class VI program. If that occurs, entities will only have to obtain permits from the RRC, with EPA retaining oversight and enforcement authority.

The EPA has previously granted primacy for permitting Class VI wells to Louisiana, North Dakota, West Virginia and Wyoming. Environmental groups have filed lawsuits in both Louisiana and West Virginia challenging the EPA's grant of primacy to those states.

In both lawsuits, environmental groups argue, among other things, that the state rules are not as stringent as the EPA's because they waive liability (subject to certain conditions) for owners and operators of Class VI wells after the wells are closed. The states and the EPA have responded that the rules do not waive liability, but instead, transfer it to the respective state's Class VI liability fund. The courts have not reached a decision in either case, leaving the door open for litigation if the RRC is granted primacy and the program has a similar liability waiver.

For companies contemplating carbon capture, utilization and storage projects, the MOA represents a significant procedural inflection point. Applicants may soon interface principally with the RRC in Austin rather than EPA Region 6. Entities with existing carbon capture storage projects or those in the early planning stages should consider reevaluating project schedules, budgeting assumptions, and stakeholder engagement strategies in light of the potential regulatory shift.

Attorneys at Haynes Boone will continue to track the formal approval of Texas's Class VI primacy application and stand ready to use our experience advising clients on Class VI permitting to assist clients in navigating the evolving permitting landscape. For assistance with permitting or questions about how this action could affect you, please contact one of the attorneys listed below or a member of the [Environmental Practice Group](#).