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Environmental Protection Agency  
Four Penn Center  
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Philadelphia, PA 19103-2029

**Re: Docket No. EPA-HQ-OW-2024-0357  
Request for Extension of Public Comment Period**

On November 27th, 2024 the U.S. Environmental Protection Agency (“EPA”) proposed a rulemaking to approve West Virginia’s application for primary enforcement authority over the Class VI Underground Injection Control (“UIC”) Well Program.<sup>1</sup>

This announcement came mere months after West Virginia submitted their completed program revision to the EPA and included a comment period spanning most of the time between the Thanksgiving and New Year’s holidays.<sup>2</sup> The EPA’s accelerated review and abbreviated comment period is all the more objectionable considering that residents in North Dakota, Wyoming, and Louisiana received significantly more time to review and weigh in on this momentous decision.<sup>3</sup>

Moreover, fast-tracking this primacy decision in a state with a poor track record in regards to environmental protection cannot be reconciled with EPA’s commitments to environmental justice

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<sup>1</sup> Environmental Protection Agency. [West Virginia Underground Injection Control \(UIC\) Program: Class VI Primacy. November 27th](#), 2024.

<sup>2</sup> West Virginia submitted a complete Class VI primacy application on May 1st, 2024. EPA’s comment period opened on November 27th, 2024 and closes on December 30th, 2024.

<sup>3</sup> Environmental Protection Agency. [State of North Dakota Underground Injection Control Program: Class VI Primacy Approval](#). April 24th, 2018; Environmental Protection Agency. [Wyoming Underground Injection Control Program: Class VI Primacy](#). October 9th, 2020; Environmental Protection Agency. [State of Louisiana Underground Injection Control Program: Class VI Primacy](#). January 5th, 2024.

and marginalized communities and the expectations it has set for states in administering the Class VI program.<sup>4</sup>

Finally, EPA's perspective cannot be so narrow as to overlook the way in which its expeditious decision-making mirrors that of West Virginia's, a state whose actions in recent years demonstrate a strong disinterest in involving the public in deliberations and decisions regarding the state's decarbonization plans, including its treatment of state-level carbon capture and storage (CCS) policies. In this way, rather than serve as a model to help West Virginia achieve a higher standard, EPA's actions instead reward West Virginia for its poor track record.

In order to provide West Virginia residents with a meaningful opportunity to engage this proposal, we call on the EPA to extend the comment period by an additional 60 days and reschedule the public hearing to a time when more West Virginia residents can engage in what may be their only public participation opportunity for a decision that will have immense impacts for years to come.

*EPA fails to provide for meaningful public participation.*

By opening a comment period spanning most of the window between the Thanksgiving and New Year's holiday, EPA chose to issue its proposal at a profoundly inconvenient time for the public.<sup>5</sup> The decision to schedule the comment period at this time — only weeks before a new administration takes federal office — significantly limits the public's opportunity to learn about and respond to this proposal.

The EPA's accelerated review and abbreviated comment period is all the more objectionable considering that residents in North Dakota, Wyoming, and Louisiana received significantly more time to review and weigh in on this momentous decision. The surprise decision to approve West Virginia's request for Class VI primacy came less than seven months after state officials submitted their program revision on May 1st, 2024.<sup>6</sup> For comparison, EPA took nearly three times as long to review Louisiana's request and almost seven times as long to review North Dakota's request.<sup>7</sup>

Worse, the comment period is significantly shorter than the opportunity afforded to residents in prior Class VI primacy decisions. Wyoming residents were given 45 days to comment.<sup>8</sup> North

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<sup>4</sup> Mid-Ohio Valley Climate Action. [Group Letter re WV Class VI application](#). August 16th, 2023; Environmental Protection Agency. [Underground Injection Control Class VI Wells Memorandum](#). December 9th, 2022.

<sup>5</sup> EPA's comment period opened on November 27th, 2024 and closes on December 30th, 2024.

<sup>6</sup> Environmental Protection Agency. [West Virginia Underground Injection Control \(UIC\) Program: Class VI Primacy. November 27th](#), 2024.

<sup>7</sup> Environmental Protection Agency. [State of Louisiana Underground Injection Control Program: Class VI Primacy](#). January 5th, 2024; Environmental Protection Agency. [State of North Dakota Underground Injection Control Program: Class VI Primacy Approval](#). April 24th, 2018.

<sup>8</sup> Environmental Protection Agency. [Wyoming Underground Injection Control Program: Class VI Primacy](#). October 9th, 2020

Dakota and Louisiana residents both received two separate comment periods totaling 90 days.<sup>9</sup> Meanwhile, West Virginia residents were given only 34 days to review over 800 pages of documents pertaining to a regulatory decision that will have profound impacts on the nature of CO2 storage in the state and the communities' experiences with these projects.<sup>10</sup>

*EPA's accelerated decision-making falls short of the agency's own guidance*

In a December 9th, 2022 letter, EPA Administrator Michael Regan called on state governors to consider a variety of approaches when seeking primacy over and implementing the Class VI well program.<sup>11</sup> The first of these recommendations, further elaborated in a subsequent memo, focuses on establishing the conditions needed to ensure inclusive public participation.<sup>12</sup>

These recommendations include incorporating “robust and ongoing opportunities for public participation”, providing “early notice”, “enabling face-to-face or written feedback on permit applications early in the review process,” and “scheduling public meetings at times convenient for residents”.<sup>13</sup> By providing only a narrow window for feedback at the final step of this process and scheduling a public hearing at a time when most people will be traveling for the holidays or spending time with their families, EPA has failed to meet the expectations it has set for state officials.

The same letter to state governors indicates that EPA is aware that “community residents have shared their concerns about the safety of CCS and [carbon dioxide removal] projects and worry that their communities may bear a disproportionate environmental burden associated with geologic sequestration”.<sup>14</sup> EPA is also aware that public interest groups in West Virginia are concerned that granting primacy in West Virginia “would only dilute environmental justice protections” and that residents could encounter “accelerated timelines [that] would also reduce the amount of time available to the public to understand and engage with the nature of these projects and their resultant impacts”.<sup>15</sup>

We know this because the EPA itself included a letter from seventeen organizations attesting to these concerns alongside the state's application materials in the federal docket.<sup>16</sup> Elevating this letter to such a high degree but failing to heed its warnings by expediting this process is a slap

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<sup>9</sup> Environmental Protection Agency. [North Dakota Underground Injection Control Program Revision Application](#). August 9th, 2013; Environmental Protection Agency. [State of North Dakota Underground Injection Control Program: Class VI Primacy Approval](#). April 24th, 2018; Environmental Protection Agency. [State of Louisiana Underground Injection Control Program: Class VI Primacy](#). January 5th, 2024

<sup>10</sup> Environmental Protection Agency. [West Virginia Underground Injection Control \(UIC\) Program: Class VI Primacy. November 27th](#), 2024.

<sup>11</sup> Environmental Protection Agency. [Underground Injection Control Class VI Wells Memorandum](#). December 9th, 2022.

<sup>12</sup> Environmental Protection Agency. [Memorandum on Environmental Justice Guidance for UIC Class VI Permitting and Primacy](#). August 17th, 2023.

<sup>13</sup> Environmental Protection Agency. [Underground Injection Control Class VI Wells Memorandum](#). December 9th, 2022.

<sup>14</sup> Ibid.

<sup>15</sup> Mid-Ohio Valley Climate Action. [Group Letter re WV Class VI application](#). August 16th, 2023.

<sup>16</sup> See document ID [EPA-HQ-OW-2024-0357-0015](#) in docket no. [EPA-HQ-OW-2024-0357](#).

in the face to environmental justice advocates long invested in protecting West Virginia's most marginalized communities. EPA must correct its missteps and provide West Virginia residents with adequate time to review and respond to its primacy proposal in a manner consistent with its own guidance.

*Fast-tracking this decision compounds existing burdens on the public.*

Finally, what EPA fails to comprehend in limiting public involvement is how the steps they are taking track closely to West Virginia's approach in advancing its own state-level decarbonization policy, an approach that demonstrates a complete disinterest in meaningfully involving the public in state-level CCS and related hydrogen policies. Rather than try to address West Virginia's culture of disregard, EPA has instead chosen to reward it, adding to the issues already experienced by a beleaguered public trying to engage and shape state-level decarbonization plans.

For example, in 2022, the West Virginia legislature advanced a measure to "establish requirements for carbon dioxide sequestration".<sup>17</sup> This bill, House Bill 4491, went far beyond simply clarifying the legal paradigm pertaining to pore space; it also allowed operators of storage projects to be severed from liability and for operators to appropriate pore space without the consent of landowners, measures that significantly increase potential impacts to landowners and local communities. Legislators took only 40 days to introduce HB4491 and send it to the governor's desk.<sup>18</sup> The legislature later introduced and passed House Bill 5045, which amended state law pertaining to the transfer of liability for CO2 storage projects, an area of concern for West Virginia groups.<sup>19</sup> This bill was passed in 32 days, apparently at the behest of the EPA.<sup>20</sup>

The West Virginia Senate also suspended state constitutional rules to pass Senate Bill 162 without public comment.<sup>21</sup> SB162, a bill that authorizes state officials to lease state-owned pore spaces underlying state forests, natural and scenic areas and wildlife management areas, was passed in less than six minutes.<sup>22</sup> The text of this bill was not publicly available until three hours after the vote.<sup>23</sup>

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<sup>17</sup> West Virginia Legislature. [House Bill 4491](#).

<sup>18</sup> Ibid.

<sup>19</sup> West Virginia Legislature. [House Bill 5045](#); Mid-Ohio Valley Climate Action. [Group Letter re WV Class VI application](#). August 16th, 2023.

<sup>20</sup> Charleston Gazette-Mail. [WV Senate passes bill to give DEP primacy over underground CO2 injection wells](#).

<sup>21</sup> Charleston Gazette-Mail. [Bills expanding DNR power rammed through WV Senate advance to full House](#).

<sup>22</sup> West Virginia Legislature. [Senate Bill 162](#); Charleston Gazette-Mail. ["The public should know what they voted on": WV Senate passes bills before releasing their text](#).

<sup>23</sup> Ibid.

This legislation, signed into law in January 2023, facilitated the advancement of a 1,000 acre CO2 storage project on state land close to a population center.<sup>24</sup> This project, under development by hydrogen hub-affiliate Fidelis New Energy, later received a \$62.5 million forgivable loan from the West Virginia Economic Development Authority, a proposal that was not made public until the night before a special meeting was originally scheduled to take place.<sup>25</sup> This meeting was rescheduled for the following week and the loan was approved over the objection of several commenters and without any documents being made available to the public.<sup>26</sup>

The Appalachian Hydrogen Hub, which will primarily produce hydrogen from natural gas, necessitating the development of large CO2 storage projects, has also been a source of concerns for communities in West Virginia.<sup>27</sup> This project, backed by the State of West Virginia, has been met with strong concerns and opposition at every step.<sup>28</sup> Even two years into this process — and months after the hub received its first financial award — the federal and state officials backing this proposal have provided few answers to the many questions raised by the public.<sup>29</sup>

In May 2024, over 50 organizations sent a letter to the Department of Energy calling for the suspension of the hydrogen hub until the public could be given a meaningful opportunity to review and shape the proposal during project negotiations.<sup>30</sup> Instead, federal officials continued to keep the public out of negotiations and proceeded to allocate the first tranche of funding to the hydrogen hub.<sup>31</sup> Since receiving these funds, communities continue to be left in the dark.

Project backers, including state officials in West Virginia, recently held an open house that promised attendees the opportunity to get “the inside scoop on the vision” for the hydrogen hub and “speak directly with the people and companies” behind the project.<sup>32</sup> Instead, the event featured no new information and was attended by only two of the confirmed project developers, continuing a pattern of offering bare-bones engagement with little value for the public.<sup>33</sup>

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<sup>24</sup> Charleston Gazette-Mail. [Renewable energy advocates pan Mason County hydrogen production and carbon sequestration project plan](#); Mountain State Spotlight. [West Virginia's hydrogen hub is being built in their backyard. They have questions.](#)

<sup>25</sup> Charleston Gazette-Mail. [Officials dismiss concerns to approve \\$62.5M loan for Mason County hydrogen project.](#)

<sup>26</sup> Charleston Gazette-Mail. [Meeting to consider forgivable \\$62.4M loan for Mason County hydrogen production and carbon capture project rescheduled](#); West Virginia Economic Development Authority. [8.16.2023 Public Information.](#)

<sup>27</sup> Department of Energy. [Appalachian Hydrogen Hub \(ARCH2\).](#)

<sup>28</sup> See [the Allegheny Front](#), [Canary Media](#), [the Center Square](#), [Charleston Gazette-Mail](#), [E&E News](#), [Energy News Network](#), [Environmental Health News](#), [Financial Times](#), [Inside Climate News](#), [Mountain State Spotlight](#), [PA Environment Digest](#), [PublicSource](#), and [SpotlightPA](#) for coverage of these concerns.

<sup>29</sup> The Center Square. [Officials ignore most Appalachian hydrogen hub worries.](#)

<sup>30</sup> Ohio River Valley Institute. [Letter to Department of Energy.](#)

<sup>31</sup> Department of Energy. [Award Wednesdays | July 31, 2024.](#)

<sup>32</sup> Appalachian Regional Clean Hydrogen Hub. October 17th, 2024 email invitation; Appalachian Regional Clean Hydrogen Hub. [Gratitude for Your Support: A Joint Thank you from ARCH2 and the Dept. of Energy.](#)

<sup>33</sup> Charleston Gazette-Mail. ['Don't let ARCH2 in the door!': Hydrogen hub opposition persists after open house.](#)

Looking more closely at the public participation efforts undertaken by West Virginia in pursuit of Class VI primacy, we see more evidence that the state has failed to provide adequate public participation opportunities. West Virginia received a total of seven comments regarding its pursuit of Class VI primacy prior to submitting its request to EPA.<sup>34</sup> While the state's actions satisfied the EPA's requirements as they pertain to public participation when seeking primacy, the weak response to a regulatory change of this magnitude demonstrates that these measures were insufficient. Rather than indicate that West Virginia's pursuit of Class VI primacy is of little interest to the public, the low response is a clear signal that state and federal officials failed to communicate the significance of this decision and adequately invite participation on the part of the public.

EPA has the opportunity to serve as the public's lone advocate in this process, offering a corrective to the many ways in which West Virginia officials have failed to sufficiently invite and take into account the perspectives of the public in advancing its state decarbonization policies, including its pursuit of Class VI primacy.

Instead, EPA has chosen to further compound these challenges by limiting public participation to a very narrow window at a uniquely inconvenient time. Worse, EPA fails to demonstrate why any member of the public should expect to benefit from the program's environmental justice measures should EPA ultimately approve primacy for West Virginia.

In closing, we reiterate our request that EPA extend the public comment period by at least 60 days in order to allow the public to make informed comments. It's critical that the public be given additional time to review and respond to this proposal.

Thank you,

Tom Torres  
Hydrogen Program Director  
Ohio River Valley Institute

*The [Ohio River Valley Institute](#) (ORVI) is an independent, nonprofit research and communications center founded in 2020. We equip the region's residents and decision-makers with the policy research and practical tools they need to advance long-term solutions to some of Appalachia's most significant challenges. We believe the Ohio River Valley is a place where communities can thrive by investing in, rather than exploiting, local resources, and we work to improve the region's economic performance and standards of living by charting a course for shared prosperity, clean energy, and more equitable civic structures.*

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<sup>34</sup> West Virginia Department of Environmental Protection. [WV Class 6 Public Participation Documentation](#).