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Statement on the Approval of West Virginia’s Class VI Primacy Application

On Tuesday, February 18th, the U.S. Environmental Protection Agency [announced](#) that it had approved West Virginia’s application for regulatory oversight over Class VI wells in the state, also known as primacy. Class VI wells, used to inject carbon dioxide in deep geologic formations for long-term storage, are an essential component of the Appalachian hydrogen hub, Tenaska’s Tri-State CCS Hub, and similar projects in the region.

[Numerous groups](#), including [the Ohio River Valley Institute](#), opposed primacy for West Virginia, citing the state’s poor track record with environmental compliance, lack of attention to environmental justice concerns, and its [demonstrated challenges](#) managing its existing injection well program. State primacy in West Virginia will likely lead to accelerated permitting, which could result in weaker permit reviews and reduced opportunities for public participation. North Dakota, the first state to receive Class VI primacy, approved its first permit [less than five months](#) after receiving the application. West Virginia’s application indicates that it intends to issue permits between [nine to twelve months](#) following submission, a period significantly shorter than the EPA’s [twenty-four month](#) timeline. The state’s lack of practical expertise with this class of wells relative to federal regulators only underscores these concerns.

Then Acting Administrator Jane Nishida initially approved the state’s primacy application on January 17th but due to [the subsequent freeze](#) on regulatory actions, the rule was never promulgated. The [pre-publication draft](#) made available by the EPA reflects numerous changes from the original version submitted for publication in the Federal Register.

Notably, the version signed by current Administrator Lee Zeldin strips the rule of any mention of environmental justice. The [comment response document](#) was also subject to numerous changes, including the removal of references to “Black, rural, and underserved communities” and large sections addressing concerns raised by commenters that granting primacy to West Virginia would further expose environmental justice communities to pollution.

The pre-publication draft asserts that no changes were made to West Virginia’s application materials, which included [a requirement](#) to conduct environmental justice reviews during permitting. The rule has not yet been published and the [federal docket](#) reflects no updates but the erasure of environmental justice from the federal public record raises concerns about EPA’s

interest in holding West Virginia accountable should state regulators fail to follow through with the environmental justice review requirement.

In response, **Ohio River Valley Institute Hydrogen Program Director Tom Torres** issued the following statement:

The EPA first approved West Virginia's application for Class VI primacy less than two months after publishing the proposed rule in the federal register and without acting on any of the issues raised by eighty percent of commenters. These comments reflect concerns that the state improperly allows companies to shed liability for their projects, that the state lacks the funding and expertise to regulate carbon storage wells, and that the rushed decision-making seen in this process impairs the public's ability to meaningfully participate.

The pace of this approval, incredibly accelerated compared to EPA action on primacy in other states, rewards state officials for years of lax environmental protection and incentivizes an industry with an almost absent track record.

EPA's recent reversal in removing references to potential disproportionate impacts only compounds the injustice at the heart of this approval and we fear that West Virginia's most vulnerable communities will all too soon experience the impacts of this reckless decision.

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