

## **New Legislation Signals Strong Support for Carbon Capture, Use, and Sequestration in Texas**

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On June 9, 2021, Texas Governor Greg Abbott signed House Bill 1284 (“HB 1284”), which was introduced along with its Senate companion, SB 450, during the state’s 87th legislative session. HB 1284 grants the Texas Railroad Commission (“RRC”), the governmental agency that regulates the state’s oil and gas industry, sole jurisdiction over Class VI Injection Wells and carbon capture, use, and sequestration (“CCUS”) activities in Texas.

Class VI Injection Wells are used to inject carbon dioxide (“CO<sub>2</sub>”) into deep rock formations, also known as geologic sequestration. This technology is used to reduce CO<sub>2</sub> emissions and thereby mitigate climate change. Class VI wells are one of six types of underground injection well classes established by the EPA that are subject to Section 1421 of the Safe Drinking Water Act, which is aimed at protecting underground sources of drinking water.

A Class VI Underground Injection Control permit is required prior to drilling and operating a Class VI well for CCUS operations. While Texas currently has “primacy” (EPA approval to permit and enforce) over permitting Classes I through V wells, it does not yet have primacy over wells in Class VI, and the EPA is still responsible for issuing final authorization of Class VI wells. At this time, Wyoming and North Dakota are the only states that have Class VI primacy, though Louisiana is currently in the process of applying for primacy.

HB 1284 tasks a single agency with seeking delegation authority from the EPA on Class VI Injection Wells. Until the passing of HB 1284, the RRC and the Texas Commission on Environmental Quality (“TCEQ”) split jurisdiction over geologic storage of CO<sub>2</sub> based on whether the geologic formation itself was capable of producing oil, gas, or geothermal resources. This shared regulatory responsibility within the state created an impediment to Texas’ eventual goal of receiving primacy from the EPA.

The RRC now has sole jurisdiction in Texas over the regulatory processes for Class VI Injection Wells, paving the way for the RRC to seek primacy from the EPA and thus streamline the permitting process. If Texas is granted primacy from the EPA over Class VI Injection Wells, the RRC will be required to enforce the EPA’s environmental standards. However, if the RRC fails to do so, primacy could be revoked. And, regardless of whether primacy is granted, the TCEQ will continue to have input on each application for a permit to build a Class VI well.

The recent enactment of HB1284 reflects the strong support in Texas for the development of CCUS projects. The legislation helps clear the path for onshore and offshore CCUS deployment within the state. Now, the next is for Texas to apply for primacy from the EPA, a process that is expected to take one to two years.