EDF ENVIRONMENTAL DEFENSE FUND
Finding the ways that work

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 CO2 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

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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.

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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.[1] 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,

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[1] 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).

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