

Congress of the United States
Washington, DC 20515

March 30, 2022

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20004

Dear Administrator Regan:

A key part of developing domestic deployment of carbon capture, utilization, and storage (CCUS) is the ability to inject captured carbon dioxide (CO₂) into deep rock formations, commonly referred to as geologic sequestration. Because the Biden Administration is committed to commercializing CCUS, we expect the U.S. Environmental Protection Agency (EPA) to work within the EPA's authorities to support that policy objective. Section 40306 of the bipartisan Infrastructure Investment and Jobs Act (IIJA) included significant investments for states' ability to permit, site and monitor carbon sequestration wells, so we hope that EPA moves expeditiously through the approval process, as to not discourage states from utilizing those opportunities. We therefore respectfully request an update on EPA's efforts to implement section 40306, as well as the EPA's plans to approve state applications to permit, site and monitor carbon sequestration wells.

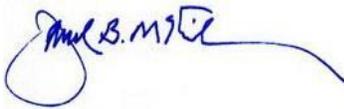
As you know, Part C of the Safe Drinking Water Act (SDWA) allows EPA to regulate the underground injection of CO₂ through its Underground Injection Control (UIC) program. The UIC program provides for six classes of wells, including "Class VI" wells, which are used for geologic sequestration of carbon dioxide. Under section 1422 of SDWA, states are allowed to submit an application for primary enforcement responsibility (primacy) to EPA to obtain Federal permission to establish, regulate, and enforce their own Class VI well program meeting minimum statutory criteria – as opposed to EPA operating the UIC program in that State. To date, two states have obtained Class VI primacy, and a number of others, including West Virginia, Louisiana, and Texas, have undertaken steps to begin assuming primacy from EPA.

SDWA is an example of cooperative federalism at work. Part B of that statute, for example, sets national primary drinking water standards under section 1412, but 49 states have the legal primacy to enforce those Federal requirements pursuant to section 1413. As mentioned above, this principle of cooperative federalism extends to the legal primacy for establishing and regulating Class VI wells under SDWA section 1422 – a partnership Congress expressly promoted with a \$50 million authorization in the IIJA, which was fully funded through the appropriations division of that law. The IIJA was enacted in November of 2021, and with no known action regarding implementation of section 40306, we ask you provide an update on EPA's actions.

We urge EPA to reaffirm its commitment to advancing much needed deployment of CCUS and work expeditiously to implement IIJA and its investments

Thank you for your attention to this matter and we look forward to your prompt response.

Sincerely,

A handwritten signature in blue ink that reads "David B. McKinley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David B. McKinley, P.E.
Member of Congress

A handwritten signature in blue ink that reads "Shelley Moore Capito". The signature is written in a cursive style with a prominent loop at the end.

Shelley Moore Capito
United States Senator

A handwritten signature in blue ink that reads "Joe Manchin III". The signature is cursive and features a large, stylized initial "J".

Joe Manchin III
United States Senator