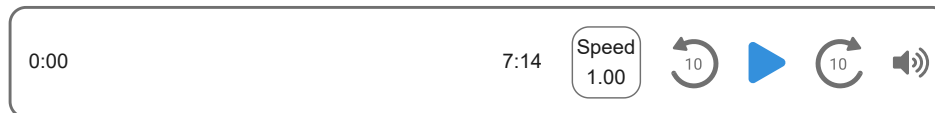


Andrea Townsend and Cody Coldren: An update on Indiana's evolving carbon capture landscape

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Relying upon studies stemming back to 2009, Indiana is set to make its mark in the national carbon capture sequestration (CCS) industry as it seeks primacy for permitting Class VI well operations within Indiana. In so doing, Indiana looks to the information gathered through its

local CCS pilot project, the Indiana Department of Natural Resources' rulemaking process and operations of other states emphasizing carbon capture sequestration.

At a high level, sequestration involves the process of capturing atmospheric carbon dioxide via various mediums and storing it long-term, either through natural or human-engineered processes. In practice, CCS has been applied to capture carbon dioxide that would otherwise be released into the atmosphere, condensing and compressing the captured carbon dioxide into a liquid state (known as "supercritical" carbon dioxide), and then transporting the condensed liquid to an underground storage facility where the supercritical carbon dioxide is then injected deep underground via a Class VI well.

While the concept of CCS originated with a focus on bolstering oil and natural gas production (the captured carbon dioxide is injected into older oil reservoirs to increase pressure and reduce oil/gas viscosity, making it easier to extract) rather than permanent storage of carbon dioxide, beginning in 2008 Congress placed an emphasis on utilizing CCS technology for permanent sequestration to reduce the impacts of increased atmospheric carbon dioxide. To incentivize permanent sequestration, Congress authorized tax credits for the capture and sequestration of carbon dioxide under 26 U.S.C. § 45Q. These credits are only available for "qualified" carbon dioxide — carbon dioxide that would have been otherwise released into the atmosphere if not for the qualifying capture equipment. Once it is confirmed that the captured carbon is "qualified," the tax credits are allocated based on multiple factors, including when the capture equipment was placed in service.

Generally, Class VI wells are overseen by the U.S. Environmental Protection Agency. Many states, then, install legal frameworks surrounding the CCS processes. In these

instances, the EPA has primary oversight and enforcement authority with respect to the Class VI wells, with state laws and regulations only impacting CCS ongoings separate and apart from the Class VI wells. In Indiana, for example, the Department of Natural Resources is tasked per Indiana Code section 14-39-0.5-1 et seq. with overseeing CCS permitting. With the EPA behind schedule in evaluating and deciding on applications for Class VI wells, however, this can result in unnecessary strain or hardship on local operators.

More and more states, in an effort to expedite the permitting and application process, have petitioned the EPA for Class VI well primacy — the authority to administer and enforce regulations related to Class VI wells. The EPA has granted primacy to six states (in order of achieving primacy: North Dakota, Wyoming, Louisiana, West Virginia, Arizona and Texas), and multiple other states have applications pending (alphabetically: Alabama, Colorado, Mississippi, Nebraska and Utah).

To obtain primacy, states must demonstrate that they will administer the program to at least meet the same EPA standards. The EPA explained the reasoning for its support shortly after its approval for Texas's primacy: "In the Safe Drinking Water Act, Congress laid out a clear vision for delegating decision-making from EPA to states that have local expertise and understand their water resources, geology, communities, and opportunities for economic growth." The EPA's press release dated June 9, 2025, is available at epa.gov/newsreleases. Indiana state Rep. Edmond Soliday, acknowledging the permitting burden faced by the EPA, has proposed that Indiana, through the Natural Resources Commission (the public governing body that sets policy and rules for the state's DNR), petition the EPA for primacy in an effort to expedite permit applications and shift enforcement responsibilities to the NRC. See Ind. House Bill 1368 (2026). While it is uncertain as to whether HB 1368 will become law, the support it is receiving in the Indiana House and Senate — evidenced by the bill passing multiple readings and being referred to the Senate — indicates Indiana is ready to take ownership and control over Class VI wells.

Per the EPA's tracker website, the EPA currently aims to review Class VI applications and issue appropriate permits within 24 months of receiving the permit application. Many of these applications, however, have taken longer than 24 months to complete based upon the volume of permits received by the EPA and the complexities associated with each application. In total, to date since 2011, the EPA has issued 14 Class VI well permits. On the other hand, the six states that have been granted primacy have issued more than 30 Class VI well permits since 2018.

With the EPA having issued only two final permit decisions on applications for CCS projects in Indiana, both submitted in May 2021 (with nine more applications pending), Indiana has an opportunity to impact this burgeoning market through primacy to ensure that Indiana CCS projects are not stifled by an unnecessarily protracted application review process. See H.B. 1368 (2026). Through primacy, Indiana can leverage its knowledge of local geography and business operations, rather than rely on the EPA to spend time analyzing the same, to ensure that potential carbon capture sequestrators can efficiently receive permits that are unnecessarily backlogged at the EPA. Indiana also

could impose more stringent regulations than those imposed by the EPA and monitor local projects, giving an additional layer of comfort to landowners and local operators.

At a hearing on Jan. 26, HB 1368 passed vote and was referred to the Senate the next day. While it is uncertain whether HB 1368 will pass Senate vote, with the rise of CCS permit applications to the EPA and the time that it takes the EPA to process the same, we continue to expect legislation regarding CCS permitting, licensing and operations in Indiana. •

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