



July 3, 2023

***Via Electronic Submission through the Federal eRulemaking Portal and email***

**Re: NAACP Comment regarding Docket ID No. EPA-HQ-OW-2023-0073**

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Dear Mr. Regan:

The NAACP submits the following comments regarding the proposed Class VI Program Revision Application submitted by the Louisiana Department of Natural Resources Office of Conservation, Underground Injection Control (UIC) to the EPA for primacy and to include Class VI geologic sequestration. As outlined below, this is an opportunity to ensure that the EPA thinks carefully regarding whether this decision is in line with how it has outlined its environmental justice goals. The NAACP Center for Environmental and Climate Justice and the NAACP Louisiana State Conference appreciate the opportunity to comment and offer recommendations.

The NAACP has a longstanding interest in ensuring that issues of community engagement and environmental justice center the communities most impacted. The NAACP Center for ECJ and the Louisiana State Conference and its branches and units are deeply concerned by the steps that

Louisiana has taken regarding the proposed permit for carbon dioxide management and its potential implications on water quality and historically excluded communities. Our branch and unit members live in these communities which are at issue in this proposal. As it stands, the Louisiana Department of Natural Resources (DNR) plans to use its permit with the Environmental Protection Agency (EPA) to inject carbon dioxide into the ground through carbon capture and storage (CCS). The EPA plans to allow the state to manage this all on its own.

The Biden Administration has not approved any other states to use CCS as of yet. This process is risky. Using Black and frontline communities as a testing ground is out of step with the Biden Administration's promise to center environmental justice through its existing commitments and new Executive Order to reaffirm environmental justice across the nation. Louisiana's environmental justice practices are not a model that the EPA and Biden Administration should be using to launch its debut in approvals for CCS. We are asking that the EPA withdraw this proposed approval of Louisiana's application or at a minimum mandate Louisiana send a revised application that takes into consideration recent state law changes with federal regulations.

Because of Louisiana's particular history and current relationship with the oil and gas industry, we understand the importance of seeking clean energy solutions and addressing climate change.<sup>1</sup> We cannot ignore the potential risks and injustices associated with the CCS system. We also cannot ignore the real implications of completely leaving any environmental justice decisions to a state that has recently postured itself as a champion of degrading environmental justice by trying to remove federal and state-level environmental community engagement and misapplying how Title VI should function.<sup>2</sup> Our concerns stem from Louisiana's historic and current disinvestment in Black communities and other frontline communities, making them more vulnerable to the detrimental impacts of compromised water quality.

### **History of Environmental Injustice in Louisiana and Black communities**

Black communities and frontline communities have long suffered from disinvestment and lack of resources, leaving them less resilient in the face of environmental challenges. The EPA must consider that it is not the community's job to bear the burden of additional harm caused by companies and states who use their neighborhoods for testing grounds for processes that are known to compromise water quality regarding CCS.

For decades, Black communities along the Gulf Coast have been forced to bear the brunt of environmental injustices perpetrated by industrial polluters and negligent government regulators. Across the country, and particularly in Louisiana, Black communities encounter disproportionate

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<sup>1</sup> See Class VI USEPA Primacy Application – Underground Injection Control Program, STATE OF LA. DEP'T OF NAT. RES. (May 13, 2021), [http://www.dnr.louisiana.gov/assets/OC/im\\_div/uic\\_sec/ClassVIPrimacyApplicationstamped.pdf](http://www.dnr.louisiana.gov/assets/OC/im_div/uic_sec/ClassVIPrimacyApplicationstamped.pdf) [<http://perma.cc/LD4U-W9GA>].

<sup>2</sup> H. Kanu, "Louisiana attorney general's lawsuit seeks to roll back civil rights laws" Reuters, June 1, 2023, *available at* <https://www.reuters.com/legal/government/louisiana-attorney-generals-lawsuit-seeks-roll-back-civil-rights-laws-2023-06-02/>.

amounts of pollution. Moving forward with a process that has a high possibility of contaminating water despite community members' strenuous objection to this proposal will only serve to further marginalize their voices and exacerbate exposure of Black and frontline communities to harmful chemicals in residents' air and water supply.

Next, Executive Order 12898 directs federal agencies to identify and address disproportionate and adverse human health or environmental impacts on historically excluded and low-income populations. This order emphasizes the need to consider environmental justice in decision-making processes, particularly in communities that have historically borne a disproportionate burden of environmental hazards. And recently, Biden's Executive Order 14096 to revitalize the country's commitment to environmental justice for all affirmed that all federal agencies must center environmental justice and the communities who have been historically harmed.<sup>3</sup>

To address CCS concerns, EPA Administrator Regan has emphasized the importance of incorporating environmental justice and other equity considerations into the CCS permitting process. In the EPA's letter to state governors on December 9, 2022, the EPA outlined various approaches, including an inclusive public participation process, consideration of environmental justice impacts on communities, enforcement of regulatory requirements, and the incorporation of mitigation measures.<sup>4</sup>

Additionally, environmental justice communities fought for equity considerations to be part of funding decisions regarding the Inflation Reduction Act and Bipartisan Infrastructure Law. Companies will now use these subsidies to push for CCS in Black and other frontline communities. The EPA's decision to approve this plan will directly reflect whether these subsidies will indeed prioritize environmental justice or create space for greenwashing of processes that may not benefit frontline communities.

In Louisiana, Black and other frontline communities have continuously sounded the alarm with the EPA and the state that they are disproportionately burdened by a number of emissions, chemical and other plants that are in frontline community parishes. Moreover, Louisiana has no track record of incorporating environmental justice in how it analyzes its decisions as emphasized by the EPA's letter to states in December 2022. Moving forward with this CCS process would be in line with other bad environmental decisions that Louisiana has been able to push that harm Black and other frontline communities.

### **The community's perspective has been disregarded throughout this process**

Environmental justice organizations have raised serious concerns regarding this CCS process as well as the procedure in general. DNR's permit has continued to move through the process swiftly without any true obstacles or robust input from the communities it will harm.

The concerns raised by stakeholders regarding the safety of such a large CCS system in Louisiana and potential environmental burdens on frontline communities are valid and merit serious attention. It is

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<sup>3</sup> 88 FR 25251.

<sup>4</sup> M. Regan, "Letter to Governors regarding Carbon Capture and Storage", Dec. 9, 2022, *available at* [https://www.epa.gov/system/files/documents/2022-12/AD.Regan\\_GOV5\\_Sig\\_Class%20VI.12-9-22.pdf](https://www.epa.gov/system/files/documents/2022-12/AD.Regan_GOV5_Sig_Class%20VI.12-9-22.pdf).

essential to ensure that the proposed CCS system does not exacerbate existing environmental injustices or compromise the well-being of communities of color and low-income populations. Additionally, community members highlighted that there are examples that point to CCS being a potentially deadly process.

For example, at the EPA's recent public hearings in June 2023, community members raised that within the last few years, a carbon dioxide pipeline ruptured in Satartia, Mississippi sending 49 people to the hospital.<sup>5</sup> Indeed, the county's emergency management team stated that it was luck that ensured people did not die from this very similar process that Louisiana plans to expansively implement across the state.<sup>6</sup>

### **This is one of the largest Carbon Capture and Storage requests and there are many unanswered questions**

CCS is a process that supposedly captures carbon and permanently stores it within the ground and it has had less than two decades of research and testing. The EPA created a new class of wells, Class VI wells, in 2010, to ensure that any CCS process had additional oversight and review before granting a state primacy. Louisiana is not the best testing ground for CCS.

As the EPA is well-aware, carbon dioxide, particularly when combined with water, minerals, and metals in the ground can create a likelihood of groundwater contamination.<sup>7</sup> It is also generally accepted that there is a lack of information and that even simulating different scenarios needs much more research to see the long-term impacts of this risky process.<sup>8</sup>

Louisiana currently has at least 22 Class VI permits pending in front of the EPA.<sup>9</sup> This decision will clearly have a large impact on the state and its residents. There are some CCS technologies that have addressed smaller projects, however, Louisiana's proposal is the largest in the Gulf region and larger than nearly any successful projects in the country to date.

Louisiana's output that would need storage is 200 times greater than what many consider the most successful project to date.<sup>10</sup> Additionally, a Stanford study demonstrates that this process may not

<sup>5</sup> D. Zegart, "The Gassing of Satartia" HuffPost, Aug. 2021, available at [https://www.huffpost.com/entry/gassing-satartia-mississippi-co2-pipeline\\_n\\_60ddea9fe4b0ddef8b0ddc8f](https://www.huffpost.com/entry/gassing-satartia-mississippi-co2-pipeline_n_60ddea9fe4b0ddef8b0ddc8f).

<sup>6</sup> D. Zegart, "The Gassing of Satartia" HuffPost, Aug. 2021, available at [https://www.huffpost.com/entry/gassing-satartia-mississippi-co2-pipeline\\_n\\_60ddea9fe4b0ddef8b0ddc8f](https://www.huffpost.com/entry/gassing-satartia-mississippi-co2-pipeline_n_60ddea9fe4b0ddef8b0ddc8f).

<sup>7</sup> Li, Z.; Fall, M.; Ghirian, A. CCS Risk Assessment: Groundwater Contamination Caused by CO<sub>2</sub>. *Geosciences* **2018**, available at <https://doi.org/10.3390/geosciences8110397/>.

<sup>8</sup> Li, Z.; Fall, M.; Ghirian, A. CCS Risk Assessment: Groundwater Contamination Caused by CO<sub>2</sub>. *Geosciences* **2018**, available at <https://doi.org/10.3390/geosciences8110397/>; A. Kolker, "Guest column: A new geological risk for Louisiana?", NOLA, May 2023, available at [https://www.nola.com/opinions/guest-column-carbon-capture-geological-risk-for-louisiana/article\\_c6c6c5c8-fa09-11ed-a20c-83df8fcf35b5.html](https://www.nola.com/opinions/guest-column-carbon-capture-geological-risk-for-louisiana/article_c6c6c5c8-fa09-11ed-a20c-83df8fcf35b5.html).

<sup>9</sup> 2030 Fund "Carbon Capture or Sequestration in Louisiana Part 1: Permitting for Rapid Expansion" [https://static1.squarespace.com/static/6422298c9536175973c5173c/t/647fba41fdb96c18bd68e27a/1686092354913/CCS+in+Louisiana\\_Part+1\\_7JUN2023.pdf](https://static1.squarespace.com/static/6422298c9536175973c5173c/t/647fba41fdb96c18bd68e27a/1686092354913/CCS+in+Louisiana_Part+1_7JUN2023.pdf)

<sup>10</sup> See A. Kolker, "Guest column: A new geological risk for Louisiana?", NOLA, May 2023, available at

actually help to capture carbon dioxide, but it undoubtedly increases air pollution.<sup>11</sup> Other concerns exist with moving forward with such a large proposal including potential ground shifting and a need for expanding pipelines that will inevitably mean land loss for a process that may harm frontline communities.<sup>12</sup>

Louisiana's overreliance on carbon capture as a way to reduce greenhouse gasses is out of step with heed from the Intergovernmental Panel on Climate Change (IPCC) who stated that countries need to be wary of this process altogether.<sup>13</sup> Further, the IPCC found an over-reliance on the technology could be detrimental for longer-term climate solutions.<sup>14</sup>

Given that the Biden Administration will be sending a clear message with this approval as its first, ensuring that it is done with as few risks as possible to frontline communities should be critical to this decision. Louisiana's plan is not that model.

### **Lack of clarity regarding whether Louisiana has demonstrated it will protect frontline communities**

In addition to the broader issues for using CCS in Louisiana, the EPA is planning to give the state the ability to make decisions regarding CCS through primacy, despite the state's long-history of harming Black and front-line communities. While we appreciate that a couple years ago, the state created a taskforce to produce an illusion of adopting environmental justice approaches,<sup>15</sup> the fact remains that Louisiana continues to demonstrate it does not want to ensure community engagement or environmental protections across the board.

Louisiana's Memorandum of Agreement (MOA) addendum and Program Description feels like empty words regarding environmental justice concerns and implementing an inclusive public participation processes. Louisiana is tangibly trying to cut public participation from Title VI, a civil rights complaint process that currently allows the public to share environmental justice concerns. Indeed, Louisiana has pledged to examine the potential risks of each proposed Class VI well to minority and low-income populations and to evaluate project sites using EPA's EJ Screen and qualified third-party reviewers. This

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[https://www.nola.com/opinions/guest-column-carbon-capture-geological-risk-for-louisiana/article\\_c6c6c5c8-fa09-11ed-a20c-83df8fcf35b5.html](https://www.nola.com/opinions/guest-column-carbon-capture-geological-risk-for-louisiana/article_c6c6c5c8-fa09-11ed-a20c-83df8fcf35b5.html).

<sup>11</sup> See M. Jacobson, "The health and climate impacts of carbon capture and direct air capture" Energy and Environmental Sciences, 2019, available at <https://news.stanford.edu/2019/10/25/study-casts-doubt-carbon-capture/>.

<sup>12</sup> See A. Kolker, "Guest column: A new geological risk for Louisiana?", NOLA, May 2023, available at [https://www.nola.com/opinions/guest-column-carbon-capture-geological-risk-for-louisiana/article\\_c6c6c5c8-fa09-11ed-a20c-83df8fcf35b5.html](https://www.nola.com/opinions/guest-column-carbon-capture-geological-risk-for-louisiana/article_c6c6c5c8-fa09-11ed-a20c-83df8fcf35b5.html).

<sup>13</sup> See B. Reed, Carbon capture and storage is 'no free lunch', warns climate chief, The Guardian, June 2023, available at <https://www.theguardian.com/environment/2023/jun/06/carbon-capture-and-storage-is-no-free-lunch-warns-climate-chief-hoesung-lee>.

<sup>14</sup> See B. Reed, Carbon capture and storage is 'no free lunch', warns climate chief, The Guardian, June 2023, available at <https://www.theguardian.com/environment/2023/jun/06/carbon-capture-and-storage-is-no-free-lunch-warns-climate-chief-hoesung-lee>.

<sup>15</sup> See Exec. Order No. JBE 2020-18 (2020).

is completely at odds with its current posture to dismantle one of the only tools community members have to hold the state accountable for environmental injustices.<sup>16</sup>

Louisiana is actively fighting the EPA in court regarding investigations into whether the state violated the rights of Black Louisianans living in ‘Cancer Alley’ by not enforcing their current environmental laws, exposing residents to pollution and failing to listen to community feedback.<sup>17</sup> The state is using tax dollars and resources to highlight why community members should not be part of administrative processes when the state fails to protect its residents from environmental harms.

At this critical juncture when Louisiana is sharing that it will absolutely protect frontline communities through its CCS process, its current actions tell a better story. Louisiana’s lawsuit dismisses community members’ participation in environmental accountability processes.<sup>18</sup> This lawsuit, not the MOA and program description, is much more telling of what can be expected of how Louisiana will treat residents once the CCS technology is in their communities.

Through filing a lawsuit that challenges Title VI, Louisiana has highlighted it does not want residents to have the ability to flag and request investigation and remedy when it discriminates against residents based on protected categories such as a race. The lawsuit’s resulting actions of three dropped federal administrative civil rights complaints have made residents rightfully wary of any commitment to have proper oversight in an equally harmful process that requires the state to consider environmental justice and civil rights impacts. Additionally, the EPA is supposed to “consider[sic] requiring measures to ‘avoid, minimize, or mitigate’ those impacts ‘to the maximum extent practicable’” when doing an environmental justice analysis of the Louisiana application.<sup>19</sup> This has not been completed in Louisiana.

Further, a 2009 Louisiana law allows for transfer of liability for long-term carbon waste storage to the State of Louisiana 10 years after the completion of injecting carbon waste, leaving the people of Louisiana on the hook for any long-term catastrophic storage issues.

Louisiana’s application for primacy does not demonstrate that it will adequately update its processes to take the needs of Black Louisianans into account and will only further exacerbate environmental injustice in Black communities. If the state is to be granted primacy, EPA must ensure that proper stakeholder engagement mechanisms are in place to provide awareness to communities about carbon

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<sup>16</sup> STATE OF LOUISIANA., LOUISIANA CLIMATE ACTION PLAN 42 (Feb. 2022), [https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate\\_Action\\_Plan\\_FINAL\\_3.pdf](https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate_Action_Plan_FINAL_3.pdf) [<https://perma.cc/99H3-J3GT>]

<sup>17</sup> See H. Kanu, “Louisiana attorney general's lawsuit seeks to roll back civil rights laws” Reuters, June 1, 2023, *available at* <https://www.reuters.com/legal/government/louisiana-attorney-generals-lawsuit-seeks-roll-back-civil-rights-laws-2023-06-02/>.

<sup>18</sup> See H. Kanu, “Louisiana attorney general's lawsuit seeks to roll back civil rights laws” Reuters, June 1, 2023, *available at* <https://www.reuters.com/legal/government/louisiana-attorney-generals-lawsuit-seeks-roll-back-civil-rights-laws-2023-06-02/>.

<sup>19</sup> 88 FR 25251.

sequestration activities and their potential hazards, and take community opinions into account when citing CCS (Class VI) wells. At this point, that seems incredibly unlikely in Louisiana.<sup>20</sup>

Additionally, because the Governor recently signed Act No. 378 into law on June 14, 2023, Louisiana's application to the EPA does not take this critical state law into consideration.<sup>21</sup> The law will create substantial changes regarding carbon capture in record keeping and environmental analysis. The EPA must consider this type of information for Class VI programs because an incorporation of state and federal laws must be outlined in applications.<sup>22</sup> Louisiana clearly has not and therefore, the EPA cannot move forward with this application.

Next, the state has not shown that it will safely oversee this program and its regulations under the Safe Drinking Water Act (SDWA). SDWA requires the EPA to develop minimum standards for underground injection control programs and the state must develop a plan for providing drinking water in emergency circumstances, if needed. Louisiana has admitted in its application that the state does not have the resources it needs to evaluate all areas of Class VI wells, including risk analysis, and does not have systems in place for long-term monitoring of injection sites. Without these important mechanisms in place, leaks of carbon into air and underground sources of drinking water can occur, leading to further environmental harm in frontline communities.

For these reasons, we do not agree with moving forward with this project at all. We also ask that there is an extension of the time for public engagement for at least sixty days. As of now, these are some recommendations that absolutely have to be included for any next steps:

**Rigorous Monitoring and Mitigation:** As of now, there is no plan for comprehensive and continuous monitoring system for water quality in and around the proposed CCS sites. For any program of this magnitude, this type of observation must be centered. This monitoring should include regular testing of drinking water sources, surface waters, and groundwater to ensure that any potential contamination is identified and addressed promptly.

**Community Engagement and Participation:** It is vital to include the voices and perspectives of our community members in decision-making processes. We request that the council implements an inclusive and transparent public participation process, providing ample opportunities for meaningful engagement, especially for communities of color. This will ensure that their concerns and insights are considered and integrated into the decision-making regarding the CCS system. As part of this recommendation, we are asking that the timeline for public participation to be extended by sixty days.

**Equitable Distribution of Benefits and Burdens:** If there is job creation and economic development regarding CCS, research, and development, alternatives, and next steps, Black communities and frontline communities must be centered. Moreover, any burdens or risks associated with the system,

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<sup>20</sup> See H. Kanu, "Louisiana attorney general's lawsuit seeks to roll back civil rights laws" Reuters, June 1, 2023, *available at* <https://www.reuters.com/legal/government/louisiana-attorney-generals-lawsuit-seeks-roll-back-civil-rights-laws-2023-06-02/>.

<sup>21</sup> Louisiana Act 378, 2023, <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1332572>.

<sup>22</sup> 40 CFR § 145.23.



including potential water quality impacts, must be minimized and not disproportionately borne by already marginalized communities. This means not starting or approving CCS projects while further research is needed for the impacts in Louisiana.

**Alternatives Assessment:** We urge the EPA to offer guidance to Louisiana to explore and evaluate alternative approaches to carbon capture and storage that minimize the risks to water quality and prioritize environmental justice. This assessment should consider innovative technologies and practices that can achieve carbon reduction goals without compromising the well-being of our communities.

In conclusion, the NAACP stands united in our commitment to a sustainable future and a just transition to clean energy. We believe that Louisiana has not adequately addressed critical issues regarding water quality, historical disinvestment, and environmental justice as it relates to CCS and these topics are vital for the well-being of our community. We request that the EPA carefully consider our recommendations and take decisive action to protect the rights, health, and future of all residents, especially those who have historically been excluded.

We hope that the EPA recognizes the gravity of this decision and the precedent it will set with granting Louisiana even more power to harm frontline communities. We again request that the EPA does not move forward with this project at all and extend the comment period time by at least 60 days.

Please do not hesitate to reach out with any additional questions that you may have. We are available to answer additional questions or share additional thoughts as needed.

Sincerely,

*Abre' Conner*

Abre' Conner

Director, Center for Environmental and Climate Justice, NAACP

*Michael McClanahan*

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