



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Alaska Oil and Gas Conservation Commission

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May 16, 2025

Ms. Marlee Goska
Alaska Staff Attorney
Center for Biological Diversity
P.O. Box 1178
Homer, AK, 99603

Re: Notice of Public Scoping
Docket Number: R-24-002
Carbon Storage Facility Regulations
Class VI Primacy Application

Dear Ms. Goska and Colleagues,

Thank you for submitting your comments to the Alaska Oil and Gas Conservation Commission (AOGCC) in response to the Notice of Public Scoping and Notice of Public Hearing (Notice). The hearing was held on November 7, 2024. As was stated in the Notice, AOGCC is intending to apply for Class VI primary enforcement authority (Primacy) from the United States Environmental Protection Agency (EPA) as a new well Class within the Underground Injection Control (UIC) program, and to engage with surface and subsurface landowners, industry, and other interested or affected stakeholders for their ideas and suggestions before the AOGCC undertakes the task of drafting any specific proposed regulations for public review.

AOGCC is now developing draft regulations for carbon storage and Class VI wells in Alaska. When ready, these proposed regulations will be noticed for public comment and public hearing. We encourage you to continue to engage with AOGCC throughout this regulation development process.

AOGCC's responses to your comments are below:

1. **CCS projects are expensive, dangerous, ineffective, and an especially poor fit for Alaska**
 - A. **CCS is not an effective climate solution**

AOGCC thanks you for your detailed and referenced comments. AOGCC, as a state regulatory agency, is not in a position to respond to your comment "the science is clear that renewable energy and energy storage projects are needed to avert a climate catastrophe." AOGCC doesn't agree that "CCS diverts resources from that goal". AOGCC believes the Class VI primacy pursuit

process has adequate available resources. AOGCC, again, doesn't have a response to comments relating to Global, Federal, or State policy positions or their effect on "After billions of dollars of investment and decades of development, CCS projects around the world have failed to meet their greenhouse gas emission reduction promises" or of greenhouse gas emissions in general or specific to current or future CCUS projects. AOGCC doesn't have a response to the comment "Alaska's diverse, dynamic, and unique environment is warming at least two to three times faster than the global average and nearly four times faster in the arctic region of the state." Additional comments relating to public health and safety, nature, critical infrastructure being damaged by and facing increasing risks of damage to the environment by climate related challenges, or focusing on false solutions are not items/issues AOGCC Class VI primacy is able to address. AOGCC continues to believe a compliant, regulated CCUS project, in Alaska, can be executed safely.

B. CCS is highly energy-intensive

AOGCC, as Alaska's oil and gas, geothermal, and CCUS regulator, does not have a position or response to CCUS being energy-intensive, an energy penalty, the retail price of electricity in Alaska, Railbelt electric grid challenges, or the use of Alaska's fossil fuel to power CCUS. AOGCC's mission is "To protect the public interest in exploration and development of Alaska's valuable oil, gas, and geothermal resources through the application of conservation practices designed to ensure greater ultimate recovery and the protection of health, safety, fresh ground waters and the rights of all owners to recover their share of the resource."

C. CCS projects endanger public safety and perpetuate environmental injustice

The Alaska Legislature, with the passing of House Bill 50 and AS 41.06.105- AS 41.06.210 specifically, calls upon AOGCC to regulate carbon storage facilities, with a storage facility defined as "the storage reservoir, underground equipment, well, and surface facilities and equipment used in accordance with a permit; "storage facility" does not include pipelines, compressors, surface facilities and equipment used to transport carbon dioxide to the storage facility that are unrelated to well safety and metering." A Class VI carbon storage project will be permitted in compliance with the AOGCC Class VI regulations, that must be as stringent as the federal code for AOGCC to be awarded primacy of the Class VI program. AOGCC encourages participation in the upcoming Class VI regulation public process as well as during individual storage facility permitting actions once AOGCC is the Class VI primacy authority for Alaska. AOGCC believes the flexibility of the program to utilize current staff, supplemented with additional skillsets by contracted staff, will ensure that drinking water is protected.

D. CO2 leaks endanger plants, animals, and ecosystems

EPA, when authorizing West Virginia's Class VI primacy application, stated "In response to concerns about subsurface pressures, leaks, carbon dioxide saturation, the long-term effect of carbon dioxide in the subsurface, and storage capacity, the EPA clarifies that the geologic siting requirements at 47 CSR 13.8.1.c. consider the geochemical and geomechanical properties and storage capacity of the injection zone as they relate to the stresses due to increased formation pressures that result from injection of carbon dioxide."

The causes of the sudden, natural release of CO2 as deadly and voluminous as that referenced from the 1986 Lake Nyos, Cameroon incident, referenced in the comments, AOGCC believes, are unrelated to the proposed activities of Class VI carbon storage. A release of that magnitude in Alaska, associated with Class VI activities, would indicate an uncontrolled release directly from the storage reservoir to surface, unrestrained by the small diameter of injection wells, monitoring wells, or any man made penetration(s). A breach to surface of CO2 of this catastrophic magnitude

could occur through seismic or volcanic activity creating a fault pathway from the storage reservoir, through the multiple barriers, to surface. The permitting and site selection process would evaluate reservoir confinement and existing faults, if any, and determine appropriateness for the proposed carbon storage project.

AOGCC agrees that uncontrolled CO₂ releases can have detrimental consequences to human health, plants, fish, and wildlife, soil and water quality. AOGCC, implementing the carbon storage statutes and federal codes permitting Class VI wells, believes the state is not risking damage to the “precious and fragile ecosystems of the state...” The AOGCC carbon storage regulations implementing the Alaska statutes are designed to be as stringent as the Class VI federal code and are designed to keep injected CO₂ confined to the wells and storage formation/reservoir, protecting subsurface confining layers, wellbore penetrations, and ultimately surface populations, and underground sources of drinking water.

E. CO₂ is highly corrosive to steel, making leaks possible, and compounding other environmental hazards presented by Alaska's unique environment

AOGCC, through a Memorandum of Agreement, with EPA, will continue to be provided with any guidance and information EPA has relating to Class VI wells and carbon sequestration. AOGCC acknowledges the comments surrounding CO₂ effects and corrosion on steel in wells subjected to CO₂, and the comments relating to CO₂ and water creating an acidic environment, and research ongoing in chrome and cement types for use in Class VI wells. For the specific comment relating to the Archer Daniels Midland (ADM) leak, AOGCC restates a response from EPA included in the EPA's West Virginia Class VI primacy application responsiveness summary that states “The EPA acknowledges concerns about corrosion (i.e., due to the formation of carbonic acid when carbon dioxide mixes with water) and carbon dioxide leakage at the ADM project. This leakage was due to corrosion of casing in the monitoring wells at the project. Class VI injection wells and monitoring wells that are completed in the injection zone that contact the CO₂ plume must be adequately corrosion resistant to tolerate the acidic conditions that can be generated by mixing of CO₂ streams and formation fluids in order to prevent endangerment of underground sources of drinking water”. Also, arctic operators are understanding of the effects of arctic conditions and permafrost on their activities, and AOGCC currently has regulations on well construction at 20 AAC 25 as it relates to arctic conditions and permafrost. As the Class VI program develops over time at both the Federal and State levels, additional research and information will guide AOGCC requirements. Any wells deemed not fit-for-purpose would be required to be corrected/remediated up to and including plugging or abandonment.

F. Injected CO₂ can lead to, and be impacted by, seismicity

AOGCC acknowledges the comments and concerns expressed about Alaska's seismic activity and those impacts/hazards on CO₂ injection and the Class VI program. As a very general observation, Alaska's hydrocarbons have been trapped and confined within reservoirs for geologic time. Depleted hydrocarbon reservoirs have been identified as possible candidates for carbon storage in Alaska, based in some part, on their ability to withstand Alaska's seismic activity that the comments raise. AOGCC disagrees with the comment that “injecting CO₂ into Alaska's active geology is a recipe for disaster and risks public safety and destabilizing our environment.” As stated elsewhere, a site assessment including surface and subsurface appropriateness, is part of the Class VI permitting process.

2. Alaska's fiscal and administrative struggles and its poor history of oil and gas oversight cautions against its assumption of Class VI primacy

A. The state lacks adequate resources and funding

AOGCC will evaluate staffing needs each year and supplement existing staff with contractors if additional skillsets are required. AOGCC believes the Alaska Legislature provided legislative funding sufficient to begin the Class VI primacy application process and this has now been supplemented with an EPA provided Class VI primacy grant (5 years). The program will be designed to be industry funded in that applicants would be subject to fees, trust funds, and financial assurance to unburden the state of ongoing financial obligations.

B. The state has a poor history of oil and gas oversight

AOGCC disagrees with the comment “While the Commission has taken anemic enforcement actions against Hilcorp for some violations, the agency was unwilling to hold Hilcorp accountable for the 2016 gas pipeline burst in Cook Inlet, even when the Alaska Supreme Court agreed with the former commissioner that the leak was under the Commission’s jurisdiction.” At reference 54 of provided comments. Again, AOGCC disagrees with the characterization of the Commissions handling and “gas leak at a ConocoPhillips oil field on the North Slope” as referenced in the provided comments at 55. AOGCC, under Docket OTH-22-012, provided a full accounting and timeline resulting in Other Order 200 being issued July 19, 2023. AOGCC also disagrees with the additional comments relating to AOGCC’s public transparency and accountability, credibility, and conflicts of interest. AOGCC believes it has established “a reliable track record of integrity and strong environmental enforcement and a commitment to protect Alaska’s people and environment” and AOGCC believes that the Class VI primacy and Class VI program, once implemented, will only serve to enhance this already reliable track record.

C. The state lacks the requisite technical expertise and struggles with staffing and implementation of much simpler programs

AOGCC agrees with the comment that “Class VI permits are complex and highly technical, covering activities spanning decades, including pre-injection, injection, and post injection.” AOGCC believes the Class VI permitting in Alaska, by AOGCC, will be as stringent as any EPA permit review or issuance. AOGCC disagrees with the statement of the commenter “It is irresponsible for the state to pursue the authority to administer Class VI permitting decisions and to take on that responsibility would jeopardize the health and safety of Alaska’s residents.”

D. The state lacks the requisite environmental justice expertise

The AOGCC Class VI program is based/modelled on the existing EPA Class VI program and to achieve Class VI primacy, AOGCC will need to demonstrate the states program is as stringent. AOGCC’s Class VI permitting will include a robust public notice and comment period, and surface and subsurface owner notifications and opportunity to comment. AOGCC disagrees with the comment “Due to these complexities and the accompanying resource demands, as well as the still-unfolding regulatory and technical landscape around CCS projects, it is preferable and in the interest of Alaskans that the Commission decide against pursuing Class VI primacy.”

3. The Commission may-and must-choose not to pursue Class VI primacy

The Alaska Legislature granted the AOGCC the authority to pursue Class VI primacy pursuant to AS 31.05.030(h). While the AOGCC agrees this statute used permissive and not mandatory language, the AOGCC disagrees with the commenter that the State of Alaska should not pursue primary permitting authority (primacy) over Class VI carbon storage wells. Class VI wells are already permissible in Alaska, primacy would only change who permits those wells: the federal government through the EPA or the State of Alaska through the AOGCC. The AOGCC already successfully regulates oil and gas drilling in Alaska and has managed the Class II oil and gas injection well program for nearly forty years after receiving primacy from the EPA in 1986. Moreover, through the recent passage of HB 50 (the Carbon Capture, Utilization, and Storage

Act)—which granted the Alaska Department of Natural Resources authority to license and lease state lands for carbon storage and exploration (AS 38.05.700 - 38.05.795) and the AOGCC jurisdiction to regulate carbon storage facilities, including wells, in Alaska (AS 41.06.105)—the Alaska Legislature expressed its intent that the AOGCC be tasked with regulating carbon storage in Alaska. Finally, the AOGCC wishes to correct a misunderstanding in the commenter’s comment asserting that the AOGCC may choose not to adopt regulations for the licensing and leasing of state land for carbon storage. As noted above, Alaska Department of Natural Resources is the state agency that was granted the authority to license and lease state land for carbon storage pursuant to AS 38.05.700 - 38.05.795. The AOGCC does not manage the leasing or licensing of state lands. Rather, it has the authority to regulate carbon storage facilities on all lands in Alaska, including state lands.

4. The “loser pays” fee shifting rule in Alaska’s state courts are incompatible with the SDWA

The AOGCC disagrees that Alaska’s rules surrounding attorney fees are incompatible with the SDWA. The SDWA mandated the EPA to promulgate regulations for state underground injection control programs with minimum requirements to prevent endangering drinking water. 42 U.S.C. § 300h(a)-(b). The EPA did so for Class VI wells by promulgating federal requirements at 40 CFR Parts 144, 145 and 146. A state’s Class VI program must be at least as stringent as the requirements in these federal regulations. 42 U.S.C. § 300h-1(b); 40 C.F.R 145.11(b)(1). While the federal regulations do have numerous requirements for public participation, including public participation in the enforcement process, there is not a requirement that a state have a particular rule regarding attorney fees. Moreover, even if it was a minimum requirement that a state was required to satisfy, Alaska’s attorney fee rule—which could require a losing litigant to pay some of the prevailing party’s attorney’s fees—is not incompatible with the rule under the SDWA which allows a federal court to do the exact same thing. 42 U.S.C. § 300j-8(d)(“court...may award costs of litigation (including reasonable attorney and expert witness fees) to any party...”)(emphasis added). In fact, Alaska’s rule may be even more generous to a public interest litigant, because Alaska has an explicit statutory provision allowing the prevailing public interest party asserting constitutional rights to recover full, instead of partial, attorney fees, while also allowing those same claimants to avoid the risk of an attorney fee award against them if unsuccessful. AS 09.06.010(c)

Sincerely,

Jessie L.
Chmielowski

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Jessie L. Chmielowski
Commissioner

Gregory C. Wilson

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