

**Congress of the United States**  
**Washington, DC 20515**

July 14, 2023

The Honorable Michael S. Regan  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20024

Dear Administrator Regan:

As members of Congress representing communities affected by the ongoing environmental impacts of the fossil fuel industry in Texas, we urge the Environmental Protection Agency (EPA) to reject the Railroad Commission of Texas' (the Commission) application for primacy enforcement of the Class VI Underground Injection Control (UIC) well program under section 1422 of the Safe Water Drinking Act (SWDA). At minimum, we ask that you initiate a thorough investigation of the Commission's permitting and oversight of Class II oil- and gas-related injections and other oil operations for stringent adherence to EPA's guidance and environmental justice standards prior to any consideration of the Commission's application.

Safe delegation of primacy to the Commission would require it to uphold the SWDA and maintain effective oversight to protect drinking water.<sup>1</sup> To date, the Commission has either been unwilling or unable to properly implement these standards. In the EPA's December 2022 letter to states encouraging them to develop their Class VI programs and obtain primacy, your agency acknowledges the need to "develop and deploy clean energy technologies at an unprecedented pace and scale... while protecting the environment, drinking water supplies, public health, and safety."<sup>2</sup> These priorities are certainly not those of the Texas Railroad Commission, which boasts a sorry history of mismanagement and handouts to oil and gas companies with little regard for human and environmental safety.

The Commission has a history of waiving its own rules and regulations to favor oil and gas companies over health and environmental protection standards.<sup>3</sup> Commissioners have waived requirements for oil and gas companies to plug their abandoned wells, pushed back deadlines for companies to clean up surrounding environments, and increased the number of sites available for crude oil storage. Additionally, the Commission's lax attitude toward enforcement is facilitated

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<sup>1</sup> "Primary Enforcement Authority for the Underground Injection Control Program," United States Environmental Protection Agency," May 17, 2023, <https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program-0>

<sup>2</sup> Michael S. Regan, Underground Injection Control Class VI Wells Memorandum, Letter to Governors, December 9, 2022, [https://www.epa.gov/system/files/documents/2022-12/AD.Regan\\_GOV\\_Sig\\_Class%20VI.12-9-22.pdf](https://www.epa.gov/system/files/documents/2022-12/AD.Regan_GOV_Sig_Class%20VI.12-9-22.pdf)

<sup>3</sup> Practical Law Oil and Gas, "Texas Railroad Commission Proposes Additional Amendments to Carbon Storage Rules," *Thomson Reuters Practical Law*, June 15, 2023, [https://content.next.westlaw.com/practical-law/document/Icd9e468f0ace11ee8921fbef1a541940/Texas-Railroad-Commission-Proposes-Additional-Amendments-to-Carbon-Storage-Rules?viewType=FullText&transitionType=Default&contextData=\(sc.Default\)](https://content.next.westlaw.com/practical-law/document/Icd9e468f0ace11ee8921fbef1a541940/Texas-Railroad-Commission-Proposes-Additional-Amendments-to-Carbon-Storage-Rules?viewType=FullText&transitionType=Default&contextData=(sc.Default))

by its frequent omission of measurable standards from many of its rules.<sup>4</sup> The Commission's apparent willingness to alter its application's rules for additional enforcement authority is no indication that the Commission will meaningfully enforce those rules.

We have little faith the Commission will oversee Class VI wells in accordance with environmental justice principles and expect they will fail to protect communities of color who reside next to carbon capture facilities and relating infrastructure. While the Commission's amended application states their staff will adhere to the EPA and other federal agencies' guidance on environmental justice, the application also states the Commission's belief that carbon capture "is beneficial to society at large for all, including disadvantaged communities."<sup>5</sup> Instead of approaching applications with a healthy amount of caution and care for environmental justice, the Commission assumes applicants are acting in good faith for all Texans. If carbon capture and sequestration are not subject to the most stringent regulations, pipelines and storage sites could leak harmful carbon dioxide into the soil and surrounding communities, exposing residents to dangerous levels of pollution. Current proposed sites, like Occidental's proposed carbon capture hub in the Gulf, are in communities of color that already face severe levels of pollution—up to twice as much pollution compared to communities of white residents.<sup>6</sup> The Commission has failed to demonstrate a serious understanding of and concern for the environmental justice threats underregulated carbon capture technologies could pose to historically marginalized communities.

Additionally, the Commission continues to shirk responsibility for enforcing laws to protect underground sources of drinking water. For example, the Commission has failed to ensure operators plug inactive wells in a timely manner. Unplugged wells often contain contaminated water and harmful chemicals that leak into surrounding environments.<sup>7</sup> While the Commission is planning to use federal money to plug about 7,000 orphaned wells, this represents less than 5% of the 150,000 unplugged inactive wells in the state.<sup>8</sup> Although the Commission has a state-managed orphaned well plugging program, Texas still has a growing number of orphaned wells. The Commission has not ensured that oil operators plug their own inactive wells, resulting in hundreds of thousands of inactive unplugged wells. These unplugged wells create environmental disasters, threaten the health of groundwater and soil, and release toxic chemicals into the air.

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<sup>4</sup> Mitchell Ferman, "Texas gas companies face fines up to \$1 million for failing to prepare for extreme weather," *The Texas Tribune*, August 30, 2022, <https://www.texastribune.org/2022/08/30/texas-power-grid-natural-gas-weatherization-rules/>

<sup>5</sup> Commissioners Wayne Christian, Christi Craddick, Jim Wright, "Memorandum: Amendments to 16 TAX Chapter 5, relating to Carbon Dioxide (CO<sub>2</sub>), page 43, <https://www.rrc.state.tx.us/media/0tta0c3k/adopt-amend-ch5-hb1284-epa-primacy-sig-08302022.pdf>

<sup>6</sup> Justine Calma, "The oil industry's carbon capture plan won't help Texas' most polluted communities," *The Verge*, March 7, 2023, <https://www.theverge.com/2023/3/7/23628772/texas-oil-company-occidental-carbon-capture-hub-pollution>

<sup>7</sup> Amal Ahmed, "Abandoned "dry hole" oil wells are polluting Texas farms, ranches and groundwater. The state won't fix them," *The Texas Tribune*, October 14, 2022, <https://www.texastribune.org/2022/10/13/texas-abandoned-oil-wells-railroad-commission/>

<sup>8</sup> Erin Douglas, "Texas will plug 800 abandoned oil and gas wells funded by \$25 million federal infrastructure grant," *The Texas Tribune*, August 26, 2022, <https://www.texastribune.org/2022/08/26/oil-gas-wells-infrastructure-money-texas-railroad-commission/>

In the early 2000s, abandoned oil wells in Pecos County, Texas began spewing thousands of gallons of salty water and venting hydrogen sulfide (H<sub>2</sub>S) into the surrounding community.<sup>9</sup> Over the following years, these leaking wells eventually formed a toxic body of water, now known as Boehmer Lake.<sup>10</sup> The wells that created Boehmer Lake are currently classified as P-13 water wells. In many instances, the Commission has allowed wells permitted as oil and gas wells to be conveyed to landowners as P-13 water wells.

Under Texas' Natural Resources Code Title 3 Subtitle B chapter 89 subchapter C section 89.047, an orphaned well is defined as a well that the Commission issued a permit for, among other requirements.<sup>11</sup> Though P-13 wells may no longer be classified as oil and gas wells, they still meet the statutory definition of orphaned wells, and the Commission acknowledges their jurisdiction over these wells in P-13 forms.

Instead of working to fix Boehmer Lake and address emerging issues such as abandoned wells on Antina Ranch, the Commission has shifted responsibility away from itself and towards landowners, who do not have the capacity to properly remediate these environmental disasters. Many landowners do not know the extent that legacy wells and their plugs have corroded, and the costs associated with fixing a leaking well. Consequentially, landowners, and not the Commission, are left with the responsibility to plug these so-called water wells which can cost upwards of \$100,000. Unfortunately, these environmental hazards are part of a broader pattern of the Commission's lax attitude towards regulating the oil and gas industry.

The Commission's historic unwillingness to regulate the same oil and gas industry the commissioners have a financial stake in is a pattern the EPA must not overlook. The Commission's three commissioners are almost totally dependent upon contributions from those they regulate. Companies that operate Class II wells are among their top donors. Although they have a direct conflict of interest through their ownership interests in the oil and gas companies they regulate, commissioners have also declined to recuse themselves and vote against imposing fines on companies in which they own stock.<sup>12 13</sup>

In December 2022, your office sent a letter to U.S. governors that outlined the EPA's criteria for a state's Class VI UIC program. According to the letter, the regulatory process must create an inclusive public participation process, consider environmental justice impacts on communities, and enforce strong regulatory protections to protect underground drinking water sources.<sup>14</sup> The

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<sup>9</sup> Russell Gold, "The Dead Sea of West Texas Just Got Deadlier," *Texas Monthly*, April 11, 2022, <https://www.texasmonthly.com/news-politics/lake-boehmer-hydrogen-sulfide-railroad-commission/>

<sup>10</sup> Amal Ahmed, "Abandoned "dry hole" oil wells are polluting Texas farms, ranches and groundwater. The state won't fix them," *The Texas Tribune*, October 13, 2022, <https://www.texastribune.org/2022/10/13/texas-abandoned-oil-wells-railroad-commission/>

<sup>11</sup> Texas Natural Resources Code, Title 3. Oil and Gas, Subtitle B. Conservation and Regulation of Oil and Gas, Chapter 89. Abandoned Wells, Subchapter A. General Provisions, <https://statutes.capitol.texas.gov/Docs/NR/htm/NR.89.htm>

<sup>12</sup> Ben Lefebvre, "Meet the Texas commissioners who could stymie Biden's climate agenda," *POLITICO*, June 20, 2023, <https://www.politico.com/news/2023/06/20/texas-biden-climate-methane-00098572>

<sup>13</sup> Amal Ahmed, "The Texas Railroad Commission is a 'captive' agency," *The Texas Observer*, November 5, 2021, <https://www.texasobserver.org/the-texas-railroad-commission-is-a-captive-agency/>


<sup>14</sup> Michael S. Regan, Underground Injection Control Class VI Wells Memorandum, Letter to Governors, December 9, 2022, [https://www.epa.gov/system/files/documents/2022-12/AD.Regan\\_GOVVS\\_Sig\\_Class%20VI.12-9-22.pdf](https://www.epa.gov/system/files/documents/2022-12/AD.Regan_GOVVS_Sig_Class%20VI.12-9-22.pdf)

EPA will fail to achieve these stated objectives if it grants primacy to the Commission. Given the new technologies used for carbon capture and sequestration, Class VI wells in Texas must be held to the highest standards. The people of Texas need more than paper promises from the state government.

To significantly reduce CO2 emissions, carbon capture and sequestration relies on new technology that requires significant capital and energy investments.<sup>15</sup> While carbon capture offers some potential for emissions reductions and achieving our climate goals, it must be done in accordance with high standards. Increased use of carbon capture technologies further increases the use and number of CO2 pipelines connecting emitting sources to injection wells. While intended to prevent harmful CO2 from entering our air and water, these pipelines may be subject to leaks and explosions that can endanger surrounding communities with potentially lethal CO2 poisoning.<sup>16</sup> To ensure carbon capture and sequestration projects are done well with stringent health and environmental protection standards, the EPA must not grant the Commission primacy.

The Commission's lack of oversight and enforcement, unwillingness to take responsibility for legacy oil and gas wells, and disregard for historically marginalized communities raises significant reservations about its ability to oversee the Class VI program effectively and responsibly. Time and time again, the Commission has failed to protect the environment, people, and private and public property. Therefore, we ask you reject its application for primacy of Class VI wells, or at a minimum, pause the decision pending the initiation and completion of a thorough investigation into the Commission's regulatory operations for stringent adherence to the EPA's guidance and environmental justice standards prior to further consideration of its application.

Sincerely,



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Lloyd Doggett  
Member of Congress



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Joaquin Castro  
Member of Congress

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<sup>15</sup> Angela C. Jones, Ashley J. Lawson, "Carbon Capture and Sequestration (CCS) in the United States," *Congressional Research Service*, October 5, 2022, page 2.

<sup>16</sup> Julia Simon, "The U.S. is expanding CO2 pipelines. One poisoned town wants you to know its story," *NPR*, May 21, 2023, <https://www.npr.org/2023/05/21/1172679786/carbon-capture-carbon-dioxide-pipeline>