

## EPA Finalizes Conditional Exclusion for Geologically Sequestered CO<sub>2</sub> and Issues Draft Guidance on Permitting Injection Wells for Carbon Capture and Sequestration

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As we reported in a previous [blog post](#), EPA was expected to issue a final rule conditionally excluding geologically sequestered CO<sub>2</sub> from the definition of hazardous waste. On December 19, EPA finalized the [rule](#), which had originally been proposed in 2011. The conditional exclusion was finalized largely as it had been proposed, with a few revisions. EPA revised the condition requiring CO<sub>2</sub> streams be transported in compliance with applicable Department of Transportation requirements to also require compliance with applicable state pipeline requirements that are at least as stringent as the federal requirements. EPA also changed the certification requirements to clarify that both CO<sub>2</sub> stream generators and Class VI well owners or operators are required to certify that the conditions of the exclusion have been met. Although EPA did not extend the conditional exclusion to CO<sub>2</sub> streams injected to wells other than Class VI wells, to address concerns raised by the public comments, EPA noted in the preamble that it does not expect the injection of CO<sub>2</sub> for the purpose of enhanced oil recovery (EOR) to be a waste management activity.

EPA also released [draft guidance](#) on transitioning Class II wells used to inject CO<sub>2</sub> for EOR, into Class VI wells used for carbon capture and sequestration. Under the regulations, Class II well operators are required to obtain Class VI permits if Underground Injection Control Program directors determine there is an increased risk to underground drinking water supplies. The guidance outlines the factors to be considered when determining whether a Class VI permit is required for a well previously permitted as a Class II well. The guidance all describes additional requirements that previously permitted Class II wells should comply with when transitioning into Class VI wells. Finally, EPA has provided guidance on the process for applying to expand the areal extent of an aquifer exemption when transitioning from a Class II to a Class VI well. EPA will accept comment on the draft guidance until March 1, 2014.

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