



## **West Virginia Surface Owners' Rights Organization**

1500 Dixie Street, Charleston, WV 25311

(304) 346-5891 - [www.wvsoro.org](http://www.wvsoro.org)

### For Immediate Release

WVSORO contact: David McMahon, (304) 993-0468, [wvdavid@wvdavid.net](mailto:wvdavid@wvdavid.net)

WV Rivers Coalition contact: Autumn Crowe, 204-992-6070, [acrowe@wvrivers.org](mailto:acrowe@wvrivers.org)

WV Sierra Club contact: 304-594-3322 , [jkotcon@gmail.com](mailto:jkotcon@gmail.com)

### **Concerned Organizations Petition Fourth Circuit Court of Appeals To Challenge the Grant of Primacy to West Virginia For Permitting and Oversight of Carbon Capture and Sequestration Wells**

The West Virginia Surface Owner's Rights Organization, along with three environmental organizations, and represented by lawyers from Appalachian Mountain Advocates, have petitioned the United States Fourth Circuit Court of Appeals challenging EPA's decision to grant primacy of oversight of the drilling and closure of carbon dioxide injection wells that will be used to permanently inject and store CO<sub>2</sub> captured from power plants and some industrial processes rather than release the CO<sub>2</sub> into the atmosphere. This process, called "carbon capture and sequestration", or CCS for short, is an attempt to limit the effect that the release of carbon dioxide (CO<sub>2</sub>) is having on climate change.

The Sierra Club, the West Virginia Rivers Coalition, Inc., and the West Virginia Highlands Conservancy are also involved in this Fourth Circuit petition. . The respondents being sued are Lee Zeldin, Administrator of the EPA and Catherine Libertz, Acting Regional Administration for EPA Region III.

Appalachian Mountain Advocates, on behalf of the environmental group petitioners and six other organizations had filed comments opposing EPA's proposal to turn over regulation of carbon dioxide injection to the state. Those comments informed the EPA that the State's proposed program did not meet federal minimum standards and includes key provisions that are beyond EPA's statutory and constitutional authority to approve (some of which EPA agreed with).

The Fourth Circuit has now allowed the State of West Virginia and its Department of Environmental Protection (which oversees carbon capture and sequestration wells) to be a party to the court action. In its motion to intervene, the State said it has "a substantial interest in the regulation and management of its own natural resources" and to be "free to develop a variety of solutions to [environmental] problems and not be forced into a common, uniform mold". However, one of the first storage well permits is for a project named "Tri-State CCS Redbud1."

And the area of review for that permit includes the town of East Liverpool, Ohio<sup>1</sup>, population 9,958.

WVSORO is particularly concerned because the Legislature and DEP have done a miserable job overseeing other similar environmental processes,” said Dave McMahon, a lawyer and co-founder of the surface owners’ organization. “The State oversees the drilling and closure of oil and gas wells. And there are more 12,000 of those wells that should already have been plugged that the State has not made the industry plug, including 4,500 that have gone unplugged for so long that the operators have gone out of business leaving them orphaned on citizens’ land. Pollution from these unplugged wells can cause problems. That threat and even their mere existence sticking out of the ground decreases citizen’s property values and uses. So we oppose trusting the oversight of these dangerous wells to the State.”

“We are particularly concerned that the state income tax cuts with which politicians pandered to the citizens means funding for the oversight will have to come from a fee on the industry, and that fee has to be imposed by the Legislature in a rule it approves. Not much gets out of our current Legislature without an industry permission slip. So we are really sure this West Virginia state oversight will be underfunded. The best example again is oil and gas well oversight. The Legislature has provided funding for only 23 oil and gas inspectors and the State’s data base (and that database is incomplete) has 75,000 oil and gas wells and 20,000 associated tanks. And right now, in part because of low salaries, the State only has 18 oil and gas inspectors actually working.<sup>2</sup> Plus those same few inspectors have to review parts of 200+ drilling permits each year; plus those same inspectors are supposed to oversee the easy-to-cheat-on plugging of orphaned wells using some available federal funding. We should learn from history. If West Virginia is granted primacy, the important oversight of these wells will be underfunded.”

If one of these huge sequestration storage fields should leak, the way currently existing gas storage fields sometimes do, the CO<sub>2</sub> is not itself poisonous, but it can displace the fresh air that contains oxygen that people need to breathe leading to asphyxiation or suffocation. CO<sub>2</sub> leaks can cause a car engine to stall, preventing people from fleeing a CO<sub>2</sub> disaster. This happened when a CO<sub>2</sub> pipeline to a secondary oil recovery project ruptured – the pipeline owned by a company that had several blowouts from underground aspects of the project.<sup>3</sup>

“Adequate oversight of carbon injection is critical to protect the health of West Virginians,” stated Autumn Crowe, Deputy Director of West Virginia Rivers Coalition. Our communities are already overburdened by pollution and the addition of another source of a potentially deadly gas puts our communities at even greater risk. We must ensure that we are prioritizing the health and safety of residents in close proximity to the proposed injection sites.”

The environmental organizations will present their legal arguments to the Court in their opening brief after the Court sets a briefing order. West Virginia can proceed with administering the carbon dioxide injection program until the Court makes a ruling.

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<sup>1</sup> See attached/enclosed.

<sup>2</sup> <https://dep.wv.gov/oil-and-gas/Pages/Contact-Us.aspx>

<sup>3</sup> [https://www.huffpost.com/entry/gassing-satartia-mississippi-co2-pipeline\\_n\\_60ddea9fe4b0ddef8b0ddc8f](https://www.huffpost.com/entry/gassing-satartia-mississippi-co2-pipeline_n_60ddea9fe4b0ddef8b0ddc8f)