

Response to Public Comments

for

Notice of Intent
Class VI Injection Well Fee Schedule
Office of Conservation Rules and Regulations

LAC 43:XVII. Ch. 38 (Statewide Order 29-N-7)

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On February 20, 2024, the Injection and Mining Division (IMD) of the Louisiana Department of Energy and Natural Resources' (LDENR) Office of Conservation's (OC) published a Notice of Intent in the *Louisiana Register* for a new rule adoption which sets application filing fees for Class VI CO₂ Sequestration Wells.

A public comment hearing was advertised in the Notice of Intent publication, and the period was held open from February 20, 2024 until March 22, 2024. Four sets of written public comments were received. After reviewing and considering these comments, the Commissioner of Conservation has grouped them together based on topical similarity and responded to the relevant comments as follows:

COMMENT:

Comments were received noting that “escrow account” and “residual escrow account” were defined in Section 3801 of the proposed rule but that the subsequent provisions did not utilize these defined terms. Similarly, comments were also received requesting clarity on whether the escrow accounts would be deposited in the Carbon Dioxide Geologic Storage Trust Fund.

RESPONSE:

The enabling statute for application fees for Class VI permits is La R.S. 30:1110. In 30:1110.B(1), the statute states that “the fees [...] collected pursuant to this Chapter” shall be deposited into the Carbon Dioxide Geologic Storage Trust Fund. In 1110.C(3), the statute provides specifics for the determination of the application filing fee, and states that the commissioner may “charge a fee that shall not exceed the actual or anticipated cost to the state for the review of the permit application.”

Application filing fees are prescribed in this proposed rule under Section 3805. The actual cost of the application review (the “application fee”) will not be known until the end of the permit review process. Because of this, these filing fees must be held in escrow. The residual escrow account is comprised of the funds that remain after the total application fee is subtracted from any filing fees held in favor of the applicant for specific Class VI applications. Finally, according to 30:1110.B(1), these fees must be held within the Carbon Dioxide Geologic Storage Trust Fund.

LDENR-OC recognizes that this could have been more clearly stated in the proposed regulation. Due to the sensitive nature of timing regarding the collection of these fees, LDENR-OC will add clarifying language to this rule when next revised. Additionally, LDENR-OC will clarify the timing in which the residual escrow funds will be returned to the applicant.

COMMENT:

Comments were received requesting clarification on how an applicant may request expedited review and what types of permits may be considered for the expedited review program.

RESPONSE:

LAC 43:XIX Ch. 47 sets rules for the expedited permit review program. Class VI permit applications are eligible for this program. All expedited review requests require the submission of Form IMD-1 (https://www.dnr.louisiana.gov/assets/OC/im_div/docs_page/IMD-1.pdf) in order to calculate the expedited review fee pursuant to Chapter 47.

Clarifications to the verbiage relating to 43:XVII.3803.C.1 will be considered when this rule is next revised.

COMMENT:

Comments were received requesting transparency on the determination of the filing fee as well as transparency regarding the use of the deposited funds for the permit review process.

RESPONSE:

The filing fee was determined based on an estimate of the amount of review hours required multiplied by the average cost of a staff reviewer plus the cost of a supervisory staff reviewer.

The application reviews are estimated utilize between 1,200 and 1,800 hours of review time. The average salary and related benefits cost for a junior staff reviewer is \$55/hr, and a supervisory reviewer is \$75/hr. We estimated that junior staff reviewers would have a total permit review time of approximately 1,500 hours ($1,500 \times \$55 = \$82,500$) and a supervisory staff reviewer would utilize about 200 hours ($200 \times \$75 = \$15,000$). These were added together and rounded up to \$100,000.

The addition of \$10,000 per additional well covers any extra hours that would be needed for review specific to that well. The base project site characterization would be the same or very similar regardless of how many wells are included in the project; however, there is unique engineering and geology review required for each well specifically, which is why the \$10,000 is added on a per-well basis.

Qualified Third Party (QTP) reviewers will typically have a higher hourly cost than LDENR-OC staff reviewers. However, those review hours will be substituted for staff review hours. If the QTP review exceeds the filing fee, additional fees will be invoiced to the applicant to cover the higher QTP cost. The use of a QTP for application review will not be utilized without prior applicant approval since there may be a higher cost associated with these reviewers.

All time spent reviewing applications is tracked in tabular format by application reviewers, whether these reviewers are OC staff or QTP reviewers. This application is public and available by request.

There will be no changes to LAC 43:XVII. Ch. 38 (Statewide Order 29-N-7) based on these public comments.

COMMENT:

Comments were received requesting clarification on the time frame to pay the Application Filing Fee.

RESPONSE:

An invoice for the filing fee for an application will be issued upon receipt of the application. The invoice states that payment is required within 30 days. Review of an application will not begin until the filing fee is deposited into the escrow account favoring the application.

Because this is standard office procedure for all fees associated with injection well applications, there will be no changes proposed to LAC 43:XVII. Ch. 38 (Statewide Order 29-N-7) based on these public comments.

COMMENT:

Comments were received requesting clarification on how any interest may grow on the filing fees, and the process for managing that interest.

RESPONSE:

As stated in an earlier response, all application fees will be held in Carbon Dioxide Geologic Storage Trust Fund per La R.S. 30:1110.B(1). As noted by the commentor, this Trust Fund is held in the custody of the state treasurer, and as stated in 1110.A(2), "The monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund and all returns of such investment shall be deposited to the fund."

Any growth from monies deposited as application fees will be directly deposited into the Carbon Dioxide Geologic Storage Trust Fund in accordance with La R.S. 30:1110.B(3) and will not be held in favor of an applicant. These fees will be utilized in programmatic administration in accordance with 30:1110(A).

COMMENT:

Comments were received requesting clarification on the expected time frame for application review.

RESPONSE:

This request is not considered pertinent to this rulemaking effort, but will be considered when the Class VI Injection Well rule is next revised (LAC 43:XVII. Ch. 36; Statewide Order 29-N-6).

COMMENT:

A comment was received objecting to allowing multiple wells to be considered for permit application under one project.

RESPONSE:

Although the proposed application filing fee cap of \$200,000 calculates to a project which may contemplate permitting eleven wells, there is no tacit or implied approval for any project in the setting of this fee. Instead, this cap on the initial filing fee is simply setting a standard approach for application filing fee collection. As stated in earlier comment responses, DENR-OC is able to require more funds from the applicant if the review cost exceeds the application filing fee.

All applications for Class VI wells must meet the standards of LAC 43:XVII. Ch. 36 (Statewide Order 29-N-6). There will be no changes proposed to LAC 43:XVII. Ch. 38 (Statewide Order 29-N-7) based on these public comments.

COMMENT:

Comments were received stating that the proposed application filing fees should not apply to enhanced recovery projects which may transition into Class VI geologic sequestration projects.

RESPONSE:

In accordance with the Class VI Program Description and 40 CFR 145.23(f), DENR-OC has four years from the receipt of primacy for the Class VI program to evaluate if any existing Class II enhanced recovery projects should transition to a Class VI project. Primacy was received on February 5, 2024.

If DENR-OC finds that this transition is necessary for the protection of the underground sources of drinking water or the health, safety, and welfare of the public, the operator will be required to apply for Class VI permits and will be subject to these application filing fees.

There will be no changes proposed to LAC 43:XVII. Ch. 38 (Statewide Order 29-N-7) based on these public comments.