CARBON CAPTURE COALITION

Comments of Jessie Stolark: Carbon Capture Coalition, Public Policy & Member Relations Manager

Credit for Carbon Oxide Sequestration Hearing
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Hello, I'm Jessie Stolark, the Public Policy and Member Relations Manager for the Carbon Capture Coalition. The Carbon Capture Coalition is a nonpartisan collaboration of more than 80 businesses and organizations building federal policy support for economy-wide deployment of carbon capture, transport, use, removal and storage. Our mission is to **reduce carbon emissions to meet midcentury climate goals, foster domestic energy and industrial production, and support a high-wage jobs base** through the adoption of carbon capture technologies. Coalition membership includes industry, energy, and technology companies; energy and industrial labor unions; and conservation, environmental, and energy policy organizations.

Thank you for the opportunity to testify today and for IRS' diligence in preparing a final rule that will allow carbon capture project developers and investors to move forward. The Coalition has counted over 30 carbon capture projects in response to the revamped 45Q tax credit that are in various stages of project development and span industry, electric power and direct air capture technologies. Finalizing regulations to claim the 45Q tax credit is paramount to ensuring that project development can move forward under the current commence-construction window, as well as ensuring carbon capture can scale economywide by midcentury.

Since the passage of the revamped and expanded 45Q tax credit as part of the Bipartisan Budget Act in February of 2018, the Coalition has spent over two years building consensus among its growing membership on the effective implementation of 45Q, including two comprehensive submissions of consensus model guidance and recommendations to Treasury and the IRS in November 2018 and June 2019. My testimony today will focus on the IRS' final proposed rule and three important areas that Coalition members chose to remark on in July 2020 comments. These three areas are:

- Secure geologic storage;
- Credit recapture, and;
- Various definitions.

Secure Geologic Storage

First, the Coalition commends the agency for affirming ISO as an alternative quantification methodology, in addition to Subpart RR of the EPA Greenhouse Gas Reporting Program, to demonstrate secure geologic storage associated with CO_2-enhanced oil recovery to claim the 45Q tax credit. We are pleased that the agency opted not to relax existing robust monitoring, reporting and verification (or MRV) requirements, which would have risked undermining policymaker and public faith in the 45Q program.

In previous comments to the IRS and Treasury, the Coalition outlined principles and guidelines for an ISO-based program to provide for a demonstration of secure geologic storage that is equivalent to the existing EPA Subpart RR rule. In those comments, the Coalition recommended specific supplementary transparency and accountability provisions for an ISO program to ensure equivalency and underscored the vital importance of such measures in the demonstration and reporting of secure geologic storage to maintain public confidence in the integrity of the 45Q tax credit. The Coalition continues to strongly support requiring public disclosure of relevant documentation by taxpayers relying on this alternative ISO pathway and encourages IRS to explore ways to ensure public disclosure consistent with relevant statutory limitations.

Credit Recapture

With regards to credit recapture, the Coalition supports the general lookback period approach adopted in the proposed regulations for credit recapture. This approach helps address the otherwise open-ended nature of recapture risk, which risks diminishing the incentive value provided by section 45Q credits. However, the Coalition believes that a five-year lookback period contained within the proposed rule is longer than justified by the physical properties of CO_2 storage or than is required to maintain the environmental integrity and achieve the geologic storage purposes of the section 45Q program. Additionally, the MRV requirements for claiming the credit provide for confidence in CO_2 storage because, under the conditions specified in an MRV plan, the chance of CO_2 leakage is low and the risk of a leakage quantity exceeding credits claimed in a single tax year is exceedingly low. A shorter lookback period would better align taxpayer incentives with congressional intent, while still maintaining confidence in the secure geologic storage of CO_2.

In previous comments to IRS, the Coalition recommended a lookback to the immediately preceding taxable year to provide a sufficient safeguard for secure geologic storage, based on the scientific and technical aspects of geologic storage at scale, and the imperative of providing for the security of that storage. The Coalition encourages IRS to reconsider the five-year lookback period in the proposed rule and consider the evidence supporting a shorter lookback period.

This evidence-based support for a shorter lookback period is also justified under existing Executive Orders in effect, including, EO 12866 and EO 13563, which, among other things, require that benefits justify costs, the use of best available techniques to quantify anticipated present and future benefits, and the use of objective scientific and technical information.

Definitions

Lastly, I would like to comment on several definitions which the IRS sought comment from stakeholders in the Notice of Proposed Rules. They include the definition of carbon capture equipment, the definition of commercial markets, and definition of electric generating facility.

With regards to the definition of "carbon capture equipment" in the proposed regulations, the Coalition is concerned that it is overly broad and will create confusion. The proposed regulations provide that, in general, carbon capture equipment includes all components of property that are used to capture or process carbon oxide until the carbon oxide is transported for disposal, injection, or utilization.

This broad definition means that multiple, distinct pieces of equipment that produce a single stream of qualified carbon oxide may all be treated as "carbon capture equipment." This may create confusion because a section 45Q credit generally is attributable to the owner of carbon capture equipment at a qualified facility.

Additionally, the proposed regulations do not address the consequences if more than one taxpayer owns distinct pieces of equipment that all produce a single stream of qualified carbon oxide.

The definition of carbon capture equipment can be refined to make it clear that the definition applies to equipment that "prevents the carbon oxide from being otherwise released into the atmosphere as an industrial emission of greenhouse gas." Furthermore, the final regulations should address the distinction between equipment that is integral to the industrial process that also, as a side effect, produces a stream of carbon oxide emissions and the equipment that is added on to such equipment expressly to capture this stream of emissions. Taxpayers should be permitted to elect to exclude such "dual purpose" property from the definition of carbon capture equipment.

With regards to the "definition of commercial markets", the inclusion of beneficial usage of carbon oxides was an important and deliberate motivation for Congress to enact the new 45Q tax credit. In addition to expanding the volume of greenhouse gases that are geologically stored, Congress intended the Bipartisan Budget Act of 2018 to serve as an incentive to catalyze uses of carbon oxides in a variety of products and processes including, but not limited to, building materials, fuels, plastics, algae biofuels and bioproducts. Many of these and other types of utilization were considered nascent but valuable to encouraging a lower-carbon economy.

The 45Q statute broadly defines utilization of carbon oxide as “the use of such qualified carbon oxide for any other purpose for which a commercial market exists.” The Coalition supports a broad definition of “commercial markets” based on the ordinary meaning of such term for purposes of section 45Q utilization. If the use of qualified carbon oxide results in a product that is available for purchase by governmental or private sector entities, it should be deemed to constitute use for a purpose for which a commercial market exists.

With regards to the definition of “Electric Generating Facility”, the proposed regulations contain uncertainty as to how carbon capture equipment installed to capture carbon oxides at a facility that is an industrial combined heat and power plant (or CHP) is categorized under 45Q (i.e., whether CHPs are “electric generating facilities” or “industrial facilities”). These facilities’ primary purpose is to provide steam and electric power to the industrial facilities at which they are located. However, as a practical matter, virtually all such CHP facilities are directly or indirectly connected to the grid; and most such CHP facilities sell electricity to the grid from time to time.

The Coalition requests explicit guidance as to whether a CHP facility, the majority of the carbon oxides emitted from which are attributable to serving the steam and industrial load of the host industrial plant, may be treated as an industrial facility and, therefore, the 100,000 ton threshold would apply.

Conclusion

With the release of this proposed rule, the accompanying comment period and anticipated final rule, developers and investors now have the remaining critical information they need to continue moving forward on commercializing carbon capture projects. Additional information on the above testimony and other topics may be found in the Coalition’s written comments to Treasury. The Coalition looks forward to working with Treasury and other federal agencies to ensure the final implementation of the 45Q tax credit, and we urge the swift completion of the final rule.

Thank you for your work to date and for your consideration of the Coalition’s comments.

CARBON CAPTURE COALITION

Coalition Participants

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Air Liquide
Air Products
AK Steel
American Carbon Registry
ArcelorMittal
Arch Coal
Archer Daniels Midland Co.
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