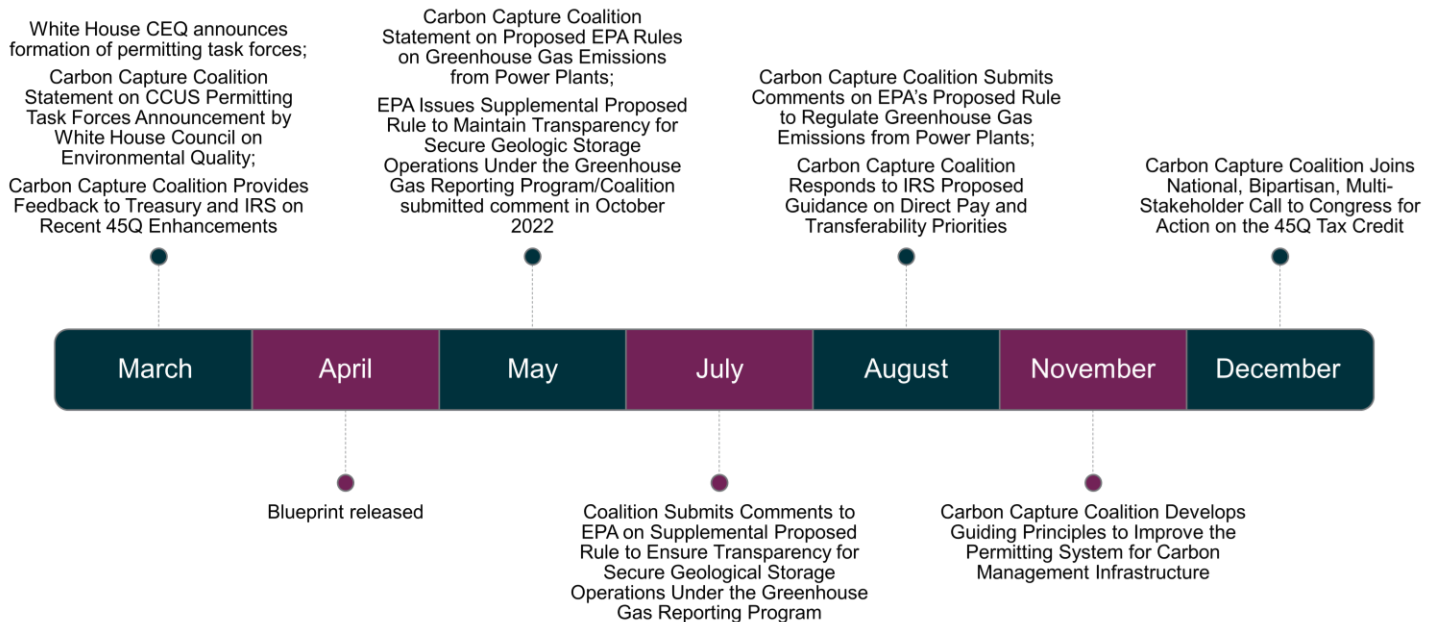




# CARBON CAPTURE COALITION

## Regulatory & Guidance Work Group 2023 Year in Review



### Progress on the Necessary Regulatory Ecosystem for Management Technologies in 2023

In 2023, the Coalition continued to prioritize engagement with policymakers and federal agencies on the implementation of recent legislative victories as well as new and proposed regulations required to scale the full suite of carbon management technologies. Over the course of the past year, regulatory agencies unveiled several proposals that impact the economywide deployment of carbon management technologies. Below please find a summary of Regulatory & Guidance Work Group activities throughout 2023 across a number of issue areas.

### Implementation of the 45Q Tax Credit

The Inflation Reduction Act (IRA) made the most important enhancements to the federal Section 45Q tax credit since the 2018 FUTURE Act and included nearly all of the Coalition's top tax-based priorities for the 117th Congress.

In March, the Coalition submitted a [comment](#) letter to the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) reflecting a monthslong process to develop consensus Coalition positions for these agencies to consider as they work to issue regulations and guidance to implement the 45Q enhancements. These recommendations built off the significant legislative victories for carbon management technologies contained within the 45Q tax credit. While most issues necessary to elect the tax credit are addressed by the 2021 guidance, the IRA introduced the need for additional clarity and guidance on several topics.

More specifically, the Coalition's comment touched on how the new 45Q guidance should apply to the following technologies:



- **Direct Air Capture (DAC):**
  - Retain the flexible definition of a DAC facility to ensure both current and future technology can qualify.
  - Clarify that a DAC facility that captures carbon oxide (CO) from the surrounding air qualifies for the higher credit applicable to DAC facilities, notwithstanding the close proximity of the DAC facility to an industrial facility that emits CO into the atmosphere.
- **Electric Generating Units (EGU):**
  - Clarify the mechanism and nature of records required to measure annual capture volumes and that minimum capture volumes should apply to entire facilities, not individual units.
  - Allow taxpayers to report capture volumes under the Environmental Protection Agency's (EPA) subpart PP, to ensure reporting is as streamlined between agencies as possible.
  - Define the new terms in statute; "applicable generating unit", "capture design capacity", and "baseline carbon oxide production."
  - Clarify the means by which a taxpayer can show that an electricity generating unit meets the design capture requirements.
- **Qualified Facilities and Other Guidance:**
  - Include clear guidelines and a narrow definition of what is considered a "facility" for purposes of the overlap provisions for claiming the section 45V or section 45Z credit at a facility that also claimed a section 45Q credit.
  - Provide taxpayers with an option to obtain DOE pre-approval of a lifecycle analysis (LCA) report before claiming section 45Q credits or to submit the LCA with their tax return and address any issues on audit.

In August, the Coalition [commented](#) on the IRS's proposed guidance on direct pay and transferability. Enacting a direct pay mechanism was the Coalition's top legislative priority in the 117th Congress, and ensuring these mechanisms are implemented in a manner that directly drives project development and fosters certainty for project developers remains a top priority. Of particular significance, the comment identified the following priorities for guidance issued on this matter:

- **45Q(f)(3) Transfer:**
  - The proposed regulations would prohibit taxpayers from making a direct pay election or transfer election with respect to a section 45Q credit that a taxpayer earns by disposing of, utilizing, or injecting qualified carbon oxide. In Coalition comments, we urged Treasury to re-evaluate Prop. Treas. Reg. § 1.6417-2(c)(4) to the extent it disallows a direct pay election for a credit transferred pursuant to section 45Q(f)(3) and Prop. Treas. Reg. § 1.6417-2(c)(5)(iv).
- **Annualization Principle:**
  - Final regulations should affirm taxpayers can claim direct pay for the full 5-year window of the tax credit and address direct pay timing issues.
  - Final regulations should issue a 60-month rule or implement an annualization principle to apply to direct pay elections to ensure taxpayers can receive direct pay for the full 5-year window.
  - Currently, if a taxpayer places a project in service other than on the first day of a taxpayer's taxable year, the taxpayer may only be able to claim a pro-rata portion of the first year, which is inconsistent with the intent of the IRA and 45Q.

### **Reporting Greenhouse Gas Emissions from Power Plants**

Also in August, the Coalition submitted a [comment](#) on the EPA's proposed rule "New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units and Emissions Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired

EGUs.” EPA stated it aims to finalize the proposed rule in April 2024 and the Coalition will provide a readout for members once it is released.

The proposed rule is complex, and as a result, the Coalition’s comments did not reflect a single, consensus-based perspective. However, the main points in our comment include:

- The importance of carbon capture technology to reducing emissions in the power sector from both new and existing plants, providing low-emissions energy resource flexibility to regions with increasing shares of renewable generation, and the role of bioenergy generation in reaching net zero emissions.
- The US’ long record of success in deploying carbon capture technologies dates back over 50 years.
- The importance of carbon capture implemented at existing coal plants and gas plants and at new natural gas combined-cycle plants.
  - This includes promulgating realistic cost and timeline expectations for technology retrofits, projected at around five years for coal plants and nine years for gas plants by EPA. These are realistic timelines **assuming no obstacles** present themselves throughout the process.
- Proximity of a capture facility to either appropriate geologic storage with access to sufficient pore space, available carbon utilization pathways, or effective transport infrastructure such as CO<sub>2</sub> pipelines.
- Considerations for safe and timely permitting of CO<sub>2</sub> transport and storage infrastructure.
  - This includes the timely review of Class VI well permits and state primacy applications.
- Reconsidering lifecycle pre-approval for project construction.
- Identifying the best use of funds provided by the Storing CO<sub>2</sub> and Lowering Emissions (SCALE) Act.

### **Strengthening the Nation’s Permitting Regime**

In March, the White House Council on Environmental Quality (CEQ) [announced](#) the formation of two task forces to improve the performance of the permitting process for carbon management projects on federal and non-federal lands. The Coalition is supportive of the efforts of the task forces and looks forward to working with them to continue growing US investment in carbon management technologies.

Mandated by the bipartisan Utilizing Significant Emissions with Innovative Technologies (USE IT) Act, a Memorandum of Understanding (MOU) between CEQ and the Department of Energy (DOE) was finalized in 2023 and outlines how these task forces will operate. Most importantly, DOE will be taking over the administration of the task forces and the first meeting is expected in April 2024. The Coalition provided suggestions regarding task force membership. We were pleased to note that all Coalition nominees were ultimately appointed to the task forces, in addition to many Coalition members who were nominated by their own organizations. We look forward to reviewing the information and recommendations the task force provides with regard to the responsible, effective permitting of carbon management projects and identifying how these recommendations fit with the Coalition’s guiding principles for [permitting](#).

### **Transparency for Secure Geologic Storage Operations**

In July, the Coalition submitted a [comment](#) on the EPA’s re-proposed supplemental rule “Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule.” As written, this proposed rule would improve transparency in reporting practices carried out under the GHGRP for those EOR operators choosing to report under ISO 27916, a long-standing Coalition priority.

Specifically, the Coalition made the following recommendations:

- Adding DAC technologies to subpart PP of the Greenhouse Gas Reporting Program (GHGRP) to ensure they qualify as CO<sub>2</sub> suppliers in carbon reuse pathways and thereby qualify for 45Q.

- Creation of subpart VV in the GHGRP to allow facilities to demonstrate secure geologic storage associated with CO<sub>2</sub>-Enhanced Oil Recovery (EOR) to claim 45Q.
  - This includes operators reporting to EPA providing a copy of non-confidential data reported under ISO 27916 (relating to EOR), which includes the independent engineer or geologist's certification of the mass balance calculations as well as information on monitoring and containment assurance. This would harmonize the information available to the public about those projects reporting under Subpart RR and ISO 27916.
- With regards to adding CO<sub>2</sub> utilization to Part 98 of the GHGRP, the Coalition recommended a public engagement process, whether through a formal Request for Information or by other means, to gain a better understanding of the very complex considerations of greenhouse gas emissions and sinks related to CO<sub>2</sub> utilization.

### Regulatory Meetings

Thanks in great part to your cooperative efforts as members of the Regulatory & Guidance Work Group, the Coalition was able to successfully discuss these and other issues with relevant agency staff over the course of 2023 and make recommendations that seem to have been well-received. This is perhaps best exemplified by two meetings held in 2023 with DOE and Treasury to discuss issues related to 45Q guidance implementation.

In October, Coalition staff and consultants met with DOE staff to discuss the Coalition's comments on direct pay and transferability. More specifically, the conversation centered on the §45Q(f)(3)(B) election issue as outlined in our comment letter, as well as the importance of being able to elect direct pay for the full five years as the statute intends, and the ability to claim direct pay against estimated tax payments.

In December, Coalition staff and the Governance Board met with Treasury staff to discuss our 45Q priorities outlined in our comments to IRS Notice 2022-57. Coalition comments revolved around the urgency of finalizing guidance for 45Q. It was a very positive meeting and speaks to the unique perspective the Coalition can bring to those responsible for implementing guidance and regulations for the tax credit. A more detailed summary of that meeting can be found [here](#).

### 2024 Work Group Agenda

In 2024, we anticipate the Coalition will continue to engage with federal agencies on the following Coalition priorities and anticipated rulemaking:

- **Tax:**
  - **45Q Guidance or Proposed Rulemaking:** Coalition staff and consultants continue to track the status of 45Q implementation and various tax credits in the Inflation Reduction Act. Coalition consultant Steptoe has prepared a helpful [memo](#) that summarizes the status of the tax credits as of early 2024. We will continue to [advocate](#) for the swift implementation of 45Q, whether through earned media, or engagement with lawmakers and federal agencies. We will reconvene the Work Group to react to any proposed 45Q guidance or rulemaking when appropriate, we do not currently have an outlook or timing for when this will occur.
  - **Addressing issues related to the election of the 45Q tax credit for utilization:** The effect of current Treasury regulations and informal DOE guidance interpreting the lifecycle analysis (LCA) requirement for utilization is to require a pre-approval process for the section 45Q tax credit, which creates a significant barrier for utilization technologies to benefit from the tax credit. The Coalition's Reuse Work Group is continuing to convene discussions on regulatory, legislative, and appropriations pathways to address these issues, and we will convene the Regulatory & Guidance Work Group as necessary.

- **Regulations and Rulemakings:**

- **CO<sub>2</sub> Pipelines:** The Department of Transportation's Pipeline and Hazardous Materials Safety (PHMSA) delivered a proposed rule to the White House Office of Management and Budget on the safety of carbon dioxide pipelines in early February; the notice of proposed rulemaking (NPRM) is expected to be released in March. The Coalition anticipates commenting on the NPRM and supporting the implementation of supplemental safety measures that are already outlined in our 2023 Policy Blueprint.
- **CO<sub>2</sub> storage in the OCS:** The Bipartisan Infrastructure Law gave the Secretary of the Interior the authority to grant a lease, easement, or right-of-way on the Outer Continental Shelf for long-term storage of CO<sub>2</sub> and tasked the relevant agencies with promulgating regulations. We will continue to monitor any relevant federal action and anticipate reconvening the work group for discussion and formulating consensus comments on the NPRM.

In 2024, we will continue to strive to enact the regulatory ecosystem needed for carbon management technologies to flourish, and we look forward to another year of working together.

One perfect opportunity for that is at our annual **CO<sub>2</sub>NNECT on Carbon Storage** event. It will be held in Austin, TX in April 2024. You can find more information on the event and register by clicking [here](#).