

BCSE Comments on the Credit for Carbon Oxide Sequestration

April 11, 2023

Thank you for the opportunity to share perspectives from the Business Council for Sustainable Energy (BCSE) in response to Notice 2022-57, requesting comments on the Credit for Carbon Oxide Sequestration. BCSE appreciates the work of the staff at the Department of the Treasury (Treasury) and Internal Revenue Service (IRS) as it develops guidance to implement the Inflation Reduction Act (IRA).

BCSE understands that the formal comment period has closed and appreciates consideration of the issues discussed in this submission.

BCSE advocates for energy and environmental policies that promote markets for clean, efficient, and sustainable energy products and services. Since its founding in 1992, BCSE has focused on policy adoption that will increase the deployment of energy efficiency, natural gas, renewable energy, energy storage, sustainable transportation, and emerging decarbonization technologies.

The IRA included important provisions to expand section 45Q to further incentivize new carbon capture technology, reduce emissions to address climate change, and support economic development and jobs. The 45Q tax credit has received strong bipartisan support and has been recognized as a valuable policy to bolster adoption of carbon management technologies. This includes support for the full value chain of carbon management technologies, including carbon capture, removal, transport, utilization, and storage.

BCSE is pleased to share views on implementation issues related to 45Q. For more detailed comments, BCSE would like to recognize the submission made by the Carbon Capture Coalition. As a diverse coalition, not all BCSE members take a position or endorse the issues discussed in this submission.

Guidance Should Retain the Current Flexible Definition of a DAC Facility and Allow DAC Facilities that Capture Carbon Oxide from the Surrounding Air to Receive Higher Credit

Section 45Q defines a direct air capture (DAC) facility as a “facility which uses carbon capture equipment to capture carbon oxide (CO) directly from the ambient air.” Current examples of DAC technology that meet this definition include solid sorbent-based air capture technologies; liquid solvent-based air capture technologies; and electrochemical air capture technologies. This current definition of a DAC facility provided in the statute and regulations ensures flexibility by defining what a DAC facility does not include and allows for innovation. Further, BCSE recommends that the guidance clarify that a DAC facility that captures CO from the surrounding air qualifies for the higher credit under section 45(b)(1)(B).



Guidance Should be Inclusive of Modular, Mobile, and Geographically Diverse Projects that Are DAC Projects Aggregated by One Company

Industrial decarbonization holds promise to be the most rapid adopting sector of DAC. Without aggregation, a limited set of large industrial users of CO₂ will benefit from these tax credits, whereas enhanced aggregation guidance can unleash rapid adoption across a variety of American industrial sectors and projects large and small.

For DAC projects, the IRA lowers the annual threshold from 100,000MTs to 1,000MTs. Further, previous Treasury guidance/rules allow for multiple facilities or units of carbon capture equipment to be aggregated as a single project or as disaggregated and evaluated separately, so long as meeting eight factors listed in previous Treasury guidance in Notice 2020-12.

Despite this policy change under the IRA and the existing Treasury guidance of 2020-21, several DAC facilities are unlikely to meet the reduced capture requirement absent new and specific aggregation guidance or rules. For example, some smaller-scale DAC systems can be installed at a variety of industrial sites across the United States. However, these systems are designed to capture somewhere between 100 and 1,000MTs annually based on customer demand. These types of projects could have a difficult time meeting the Notice of 2020-12, despite being designed and implemented under one strategic approach. So long as one company has the deployed DAC facilities on their balance sheet or otherwise owns them, aggregation toward the 1,000MTs threshold can be straightforward.

BCSE supports a technology-inclusive strategy to decarbonization and recommends that further guidance be issued that either: 1) provides an example of how such small-sized projects when aggregated by one company can meet the existing law and regulations, or 2) modifies the aggregation guidance to adopt a set of factors designed specifically for mobile or modular CO capture technologies.

Illustrative factors could include:

- All carbon capture equipment is owned by the same taxpayer.
- Final assembly of carbon capture equipment is at the same manufacturing facility or on adjacent or contiguous manufacturing facilities.
- The qualified CO captured by the carbon capture equipment is owned at the time of capture by the same taxpayer.
- The qualified CO captured by the equipment is disposed, injected, or utilized by the same taxpayer or under agreements for such disposal, injection, or utilization entered into by the same taxpayer.

Such guidance can allow smaller-scale companies to aggregate deployed projects and meet the direct language of the IRA.



Guidance Should Adopt EPA Reporting Requirements

BCSE requests that the guidance adopts the existing Environmental Protection Agency (EPA) Subpart RR and Subpart PP (once finalized) reporting requirements to verify the qualified CO captured by a DAC facility (qualifying for a higher credit) and CO captured from industrial sources within the facility (qualifying for a lower credit).

BCSE appreciates sharing its views in response to Notice 2022-57, Request for Comments on the Credit for Carbon Oxide Sequestration. Thank you for your consideration.