

Broad Federal Support for Carbon Capture, Utilization and Storage May Lead to Greater Investment

Update

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Federal support for carbon capture, utilization and storage (“CCUS”) demonstrated over the last two months has generated even greater enthusiasm for carbon capture projects in the United States. First, in the final weeks of the Trump administration, there were positive legislative and regulatory developments with respect to the availability of federal income tax credits for CCUS under section 45Q of the Internal Revenue Code of 1986, as amended (“Section 45Q”). Section 45Q, which was expanded pursuant to the Bipartisan Budget Act of 2018, provides a significant incentive for taxpayers to capture and store or utilize carbon oxide. Section 45Q permits a federal income tax credit of up to \$50 per metric ton of carbon oxide captured and stored in secure geological storage. Section 45Q also provides a credit of up to \$35 per metric ton of carbon oxide captured and used as a tertiary injectant for enhanced oil or gas recovery, or used for another permitted purpose described in Section 45Q. Because CCUS projects often generate little or no revenue, the Section 45Q credit is a critical economic incentive for taxpayers to develop, or invest in, CCUS projects.

Section 45Q, as amended in 2018, granted tax credits with respect to carbon oxide captured at a qualified facility if construction of such facility began before January 1, 2024. Because most qualified facilities require substantial capital and time to design and construct, by late 2020, when only a few years remained to achieve start of construction, some developers and investors were anxious about whether such deadline could be met, and whether the Section 45Q credits would be available. Then, as part of the Consolidated Appropriations Act, 2021 (the “2021 Act”), signed by President Trump on December 27, 2020, the start of construction deadline was extended by two years to January 1, 2026. ([Changes to Renewable and Carbon Capture Tax Credits](#)) Such extension, released together with the extension and expansion of credits for wind and solar power generation assets, signals continued federal

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support for CCUS projects. Importantly, the 2021 Act also allocates billions of dollars for research and development of CCUS including funding for demonstration projects. Overall, the 2021 Act signals that not only renewable energy, but also CCUS, will be important elements of the U.S. energy transition and carbon management efforts.

In addition, in the final days of the Trump administration, the Department of Treasury and the Internal Revenue Service released final regulations (the “Final Regulations”) providing taxpayers important interpretive guidance under Section 45Q ([Treasury Releases Final Regulations on 45Q Carbon Capture Credits](#)). This long awaited guidance followed the release of proposed regulations under Section 45Q in May of 2020. ([Treasury Releases Long-Awaited Proposed Regulations under Section 45Q](#)) The Final Regulations include critical details about the application of Section 45Q, providing developers and investors with greater certainty as to the availability of Section 45Q credits for future projects.

The Final Regulations generally were well received by taxpayers and viewed as interpreting certain provisions of Section 45Q in a taxpayer favorable manner. Under Section 45Q, credits are available for carbon oxide captured at facilities that capture certain minimum quantities of carbon oxide. The Final Regulations permit taxpayers to aggregate smaller facilities, under certain circumstances, to achieve such minimum capture requirements, expanding the scope of CCUS projects eligible for the credits. Further, the Final Regulations shorten the period for recapture of the credits if the captured carbon oxide is subsequently released into the atmosphere. Such shorter recapture period was viewed favorably as limiting the risk of loss of the credits, and increasing investors’ certainty of achieving and maintaining the credits.

Finally, there have been favorable signs from the Biden administration with respect to support for CCUS. Former Michigan governor, Jennifer Granholm, was named as President Biden’s choice to head the U.S. Department of Energy (the “DOE”). At the Senate Committee on Energy and Natural Resources hearing to consider her nomination, Granholm acknowledged that coal, oil and gas likely will be part of our national fuel supply for many years to come, and technology like CCUS will be important to allow the United States to reach net carbon zero goals. Accordingly, if she is confirmed as Secretary of the DOE, she could advance further federal economic support for CCUS.

Overall, there has been a notable wave of support in favor of advancement of CCUS technology and projects. We will be carefully following both the federal legislative and regulatory support for CCUS, as well as the willingness of capital providers to invest in, and advance, CCUS projects.