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Capturing the Moment: Congress Moves Forward to Promote Carbon Capture Technologies

*By Erin Grubbs, Allison B. Rumsey, Ethan G. Shenkman, Sarah Grey and Brian D. Israel**

The White House Council on Environmental Quality has issued a report to Congress on carbon capture utilization and storage that outlines a variety of policy recommendations to bolster these projects in the United States. In the Infrastructure Investment and Jobs Act, Congress echoed these sentiments. The authors of this article discuss.

Carbon capture utilization and storage (or sequestration) (“CCUS”) refers to the process of capturing carbon dioxide from sources of emissions and either reusing the carbon dioxide or storing it permanently underground. Carbon dioxide can be stored in different geological formations, including oil and gas reservoirs and deep saline reservoirs. Although still in its nascency due to costs, regulatory uncertainty, infrastructure, and technology needs, CCUS continues to be a central focus for the United States in achieving its climate targets.

The White House Council on Environmental Quality (“CEQ”) has issued a report to Congress¹ on CCUS that outlines a variety of policy recommendations to bolster CCUS projects in the United States. CEQ asserted that the administration “is committed to accelerating the responsible development and deployment of CCUS to make it a widely available, increasingly cost-effective, and rapidly scalable climate solution across all industrial sectors.”

In the Infrastructure Investment and Jobs Act (“IIJA”), Congress echoed these sentiments. Congress found that “carbon capture and storage technologies are necessary for reducing hard-to-abate emissions from the industrial sector,”

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¹ <https://www.whitehouse.gov/wp-content/uploads/2021/06/CEQ-CCUS-Permitting-Report.pdf>.

large-scale deployment of CCUS “is critical for achieving mid-century climate goals” and CCUS “will drive regional economic development, technological innovation, and high-wage employment.” While most of the CCUS provisions address the sequestration and storage of captured carbon, the reuse of captured carbon is also an important aspect of the CCUS strategy.

Based on these findings, Congress:

FUNDED DEMONSTRATION AND PILOT PROJECTS

- Congress appropriated \$937 million for the Department of Energy to fund carbon capture large-scale pilot projects over Fiscal Year (“FY”) 2022–FY 2025. Congress previously described the large-scale pilot projects in the Energy Policy Act. The large-scale pilot projects represent “the scale of technology development beyond laboratory development and bench testing, but not yet advanced to the point of being tested under real operational conditions at commercial scale.”
- Congress appropriated \$2.04 billion for the Department of Energy to fund carbon capture demonstration projects over FY 2022–FY 2025. Congress previously described the demonstration projects in the Energy Policy Act. The demonstration projects should “demonstrate substantial improvement in the efficiency, effectiveness, cost, and environmental performance of carbon capture technologies for power, industrial, and other commercial applications.”

ESTABLISHED DEPARTMENT OF ENERGY PROGRAMS

- A front-end engineering and design program for carbon dioxide transport infrastructure to enable deployment of CCUS technologies. Congress appropriated \$100 million for the program over FY 2022–FY 2026.
- A carbon dioxide infrastructure finance and innovation program to provide low-interest loans for carbon dioxide transport infrastructure projects. Congress appropriated \$900 million for the program over FY 2022–FY 2026.

EXPANDED DEPARTMENT OF ENERGY PROGRAMS

- The carbon storage validation and testing program now includes commercial large-scale carbon sequestration projects focused on feasibility, site characterization, permitting and construction. Congress appropriated \$2.5 billion for the program over FY 2022–FY 2026. The Department of Energy will manage the program funding, establish an application process, and select the projects for funding.

PROVIDED GRANT FUNDING FOR CARBON UTILIZATION

- The carbon utilization program allows states, local governments, or

public utilities/agencies to procure and use commercial or industrial products that “use or are derived from anthropogenic carbon oxides.” Congress appropriated \$310 million for this program over FY 2022–FY 2026.

ESTABLISHED A PROGRAM FOR FOUR REGIONAL DIRECT AIR CAPTURE HUBS

- These hubs will be “a network of direct air capture projects, potential carbon dioxide utilization off-takers, connective carbon dioxide transport infrastructure, subsurface resources, and sequestration infrastructure located within a region.” The Department of Energy will select eligible projects based on the carbon intensity of the local industry, geographic diversity, carbon potential, proximity to fossil-producing regions, scalability, and employment. Congress appropriated \$3.5 billion for the program over FY 2022–FY 2026.

AUTHORIZED FUNDING AND CLARIFIED PERMITTING FOR CARBON DIOXIDE INJECTION

- Increases funding to the Environmental Protection Agency to permit Class VI wells for carbon dioxide geologic sequestration. Congress appropriated \$25 million for the program over FY 2022–FY 2026.
- Increases funding for states to establish their own Class VI permitting programs. Congress appropriated \$50 million for the program over FY 2022–FY 2026.
- Clarifies the Secretary of the Interior may grant a lease, easement, or right of way for activities related to long-term sequestration of carbon dioxide on the outer continental shelf. Thus, resolving a longstanding legal question of how CCUS is managed in federal waters and clarifying the federal government has authority to permit injection notwithstanding the Ocean Dumping Act.

POTENTIAL MODIFICATION TO THE 45Q TAX CREDIT

- A key CCUS provision, not in the IIJA, but rather in the Build Back Better Act, which did not pass, were modifications to the 45Q tax credit for carbon oxide sequestration, which:
- Extends the 45Q tax credit through 2031;
- Allows for direct pay of the credit;
- Lowers the project size requirements, but pairs that with a new percentage of carbon oxide released from the facility;
- Creates a direct air capture tax credit set at \$180/ton for CCS and

CONGRESS PROMOTES CARBON CAPTURE TECHNOLOGIES

\$130/ton for enhanced oil recovery; and

- Adds certain prevailing wage requirements and apprenticeship requirements.