



The Secretary of Energy
Washington, DC 20585

December 13, 2018

The Honorable Steven Mnuchin
Secretary of the Treasury
Washington, DC 20220

Dear Mr. Secretary:

I write to bring to your attention circumstances that merit prompt action by the Internal Revenue Service (IRS) to clarify the requirements for taxpayers who qualify for the section 45Q tax credit (45Q tax credit or tax credit) in the 2018 tax year and beyond.

In February 2018, the President approved the Bipartisan Budget Act of 2018. This Act substantially increased and extended the 45Q tax credit, in turn increasing the applicable value of carbon dioxide (CO₂) stored in geologic formations to \$50 per ton, and the applicable value of both CO₂ used for enhanced oil recovery operations as well as CO₂ “utilized” and permanently removed from the atmosphere to \$35 per ton. The 45Q tax credit will increase from its current levels to these values by 2026, and is available for qualified facilities for a period of 12 years. Taxpayers are required to have commenced construction on qualified facilities prior to January 1, 2024 to be eligible for these increased values.

Department of Energy (DOE) stakeholders have expressed concern to the Department that the uncertainty regarding the requirements for taxpayers who qualify for the 45Q tax credit will prevent qualified facilities from meeting this deadline. DOE stakeholders seek IRS guidance and clarification on critical commercial and technical issues, including but not limited to: requirements for commencement of construction (including what activities constitute commencement of construction); transferability of the 45Q tax credit; treatment of partnerships; definition of “secure geological storage;” requirements for lifecycle analysis for CO₂ utilization; and recapture of the 45Q tax credits.

Fossil fuel resources power over 80 percent of the country’s total energy use, and are critically important to the Nation’s security as well as economic prosperity and growth. DOE’s Office of Fossil Energy (DOE/FE) research and development (R&D) program advances transformative science and innovative technologies that enable the reliable, efficient, affordable, and environmentally-sound use of fossil fuels. DOE and its stakeholders are actively working to develop advanced power generation technologies that increase the efficiency of new coal-fired power plants, as well as carbon capture, utilization, and sequestration (CCUS) technologies that capture and store CO₂ from both existing and new coal-fired power plants. These activities will enable coal to remain a strategic and viable fuel for the Nation while enhancing environmental protection.

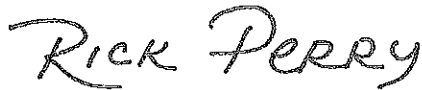


As you are aware, the Bipartisan Budget Act of 2018 directs the Treasury Department to work with DOE on certain aspects of the 45Q tax credit. Specifically, the Act directs the Treasury Department to consult with the Administrator of the Environmental Protection Agency (EPA), the Secretary of Energy, and the Secretary of the Interior to establish regulations for determining adequate security measures for the geologic storage of CO₂, and to consult with the EPA Administrator and the Secretary of Energy to determine appropriate requirements for measuring the amount of utilized CO₂.

DOE is prepared to work with the Treasury Department on these issues, and DOE/FE staff has made itself available to Treasury Department staff to provide technical support. The Department has decades of experience with CCUS technologies as a result of DOE/FE's CCUS R&D program. DOE's National Laboratories house some of the world's top CCUS experts, many of whom have worked for decades on how to characterize, select, manage, and monitor CO₂ capture and storage to ensure secure geologic storage, and DOE has evaluated lifecycle environmental impacts of CCUS. Given its technical expertise, DOE staff has been involved in drafting accounting frameworks for measuring, monitoring, and reporting geologic storage from the national- to the project-level since accounting for carbon sequestration was first contemplated in the early 2000s.

On behalf of our many stakeholders interested in pursuing advanced power generation and CCUS R&D that will spur economic growth, I appreciate your attention to these issues.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive, slightly slanted style.

Rick Perry