CARBON CAPTURE AND R&D TAX CREDITS: WORTH THE INVESTMENT?

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AGENDA

Carbon Capture Sequestration 101
How does the 45Q credit incentivize carbon capture?
Is ethanol the sweet spot for carbon capture?
How to use the 45Q credit
Ethanol and the research credit
CARBON CAPTURE SEQUESTRATION 101
The Pacala and Socolow Wedges:
Fifteen possible wedges based on existing technology that each avoid 25 billion metric tons of carbon production over a 50 year period.
NET ZERO EMISSIONS

• 27 CCS facilities operational globally; need up to 2700 by 2050 to achieve Paris Agreement

• Limiting global warming to 2°C requires installed CCS capacity to increase from around 40 Million Tons Per Annum (Mtpa) today to over 5,600 Mtpa by 2050.

• Between USD$655 billion and USD$1,280 billion in capital investment is needed by 2050.

• Building 70 to 100 facilities a year, up to 100,000 construction jobs and ongoing jobs for 30,000 to 40,000 operators and maintainers.

• Companies are measuring their Environmental, Social and Governance (ESG) impacts.
  • Carbon Accounting software such as NetZero by Salesforce.
Carbon Capture Sequestration (CCS) mitigates emission of CO2 by capturing it at point of combustion and subsequently storing it in geological formations.

CCS can sustain a transition period in world’s energy use and help mitigate alarmingly high CO2 levels in the atmosphere.

Most important source of atmospheric CO2 is the burning of fossil fuels as part of our energy consumption. The burning of oil, coal and natural gas account for over 80% of CO2 emissions we use for energy.
CCS FACILITY DATA

**FIGURE 6** COMMERCIAL CCS FACILITIES IN SEPTEMBER 2021 BY NUMBER AND TOTAL CAPACITY

<table>
<thead>
<tr>
<th>Number of facilities</th>
<th>Operational</th>
<th>In Construction</th>
<th>Advanced Development</th>
<th>Early Development</th>
<th>Operation Suspended</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>27</td>
<td>4</td>
<td>58</td>
<td>44</td>
<td>2</td>
<td>135</td>
</tr>
<tr>
<td>Capture capacity (Mtpa)</td>
<td>36.6</td>
<td>3.1</td>
<td>46.7</td>
<td>60.9</td>
<td>2.1</td>
<td>149.3</td>
</tr>
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</table>

**FIGURE 8** LARGEST CONTRIBUTORS TO GROWTH OF PROJECTS IN DEVELOPMENT, 2021

<table>
<thead>
<tr>
<th>Plant</th>
<th>Industry</th>
<th>Country</th>
<th>Mean CO₂ Capture Capacity (Mtpa)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dave Johnson Plant</td>
<td>Electricity generation</td>
<td>United States</td>
<td>4.00</td>
</tr>
<tr>
<td>G2 Net zero LNG</td>
<td>Natural gas processing</td>
<td>United States</td>
<td>4.00</td>
</tr>
<tr>
<td>NextDecade Rio Grande LNG</td>
<td>Natural gas processing</td>
<td>United States</td>
<td>5.00</td>
</tr>
<tr>
<td>Keadby 3 Power Station</td>
<td>Electricity generation</td>
<td>United Kingdom</td>
<td>2.10</td>
</tr>
<tr>
<td>Repsol Sakakemang</td>
<td>Natural gas processing</td>
<td>Indonesia</td>
<td>1.80</td>
</tr>
<tr>
<td>Barents Blue Clean Ammonia</td>
<td>Chemical production</td>
<td>Norway</td>
<td>1.60</td>
</tr>
<tr>
<td>Shell Refinery Rotterdam CCS</td>
<td>Hydrogen production</td>
<td>Netherlands</td>
<td>1.20</td>
</tr>
<tr>
<td>Stockholm Exergy BECCS</td>
<td>Electricity and heat generation</td>
<td>Sweden</td>
<td>0.80</td>
</tr>
<tr>
<td>Air Liquide Refinery Rotterdam CCS</td>
<td>Hydrogen production</td>
<td>Netherlands</td>
<td>0.80</td>
</tr>
<tr>
<td>Lawler Biorefinery CCS</td>
<td>Bioethanol production</td>
<td>United States</td>
<td>0.53</td>
</tr>
<tr>
<td>Copenhagen (Amager Bakke) Waste to Energy CCS</td>
<td>Waste processing</td>
<td>Denmark</td>
<td>0.50</td>
</tr>
<tr>
<td>Casselton Biorefinery CCS</td>
<td>Bioethanol production</td>
<td>United States</td>
<td>0.47</td>
</tr>
<tr>
<td>Marcus Biorefinery CCS</td>
<td>Bioethanol production</td>
<td>United States</td>
<td>0.43</td>
</tr>
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</table>
CCS IS AN ESSENTIAL CLIMATE MITIGATION TOOL

The CCS project pipeline is growing more robustly than ever. From 75 million tonnes a year (Mtpa) at the end of 2020, the capacity of projects in development grew to 111 Mtpa in September 2021 – a 48 per cent increase.

3.1 NORTH AMERICA

More than 40 new projects and networks have been announced since the release of the 2020 Status Report.

The US Energy Act of 2020 passed, which authorised more than US$6 billion for CCS research, development and demonstration.

+40

US ENERGY ACT PASSED

AUTHORISING MORE THAN $6 BILLION IN CCS RESEARCH, DEVELOPMENT & DEMONSTRATION

Two large-scale CCS networks with biorefineries were announced in the US Midwest, facilitated by low CO₂ capture costs from ethanol production and potential access to 45Q and LCFS incentives.

TWO LARGE-SCALE CCS NETWORKS

FACILITATED BY LOW CO₂ CAPTURE COSTS FROM ETHANOL PRODUCTION & POTENTIAL ACCESS TO 45Q AND LCFS INCENTIVES

FIGURE 1 CCS FACILITIES IN DEVELOPMENT

SOURCE: 'CO2RE Database' 2021
## CCS FINANCIAL DRIVERS

<table>
<thead>
<tr>
<th>FACILITY</th>
<th>SOURCE INDUSTRY</th>
<th>STORAGE</th>
<th>FINANCIAL DRIVERS</th>
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</thead>
<tbody>
<tr>
<td>Wabash</td>
<td>Fertiliser Production</td>
<td>Geological</td>
<td>45Q, LCFS</td>
</tr>
<tr>
<td>Lake Charles Methanol</td>
<td>Methanol Production</td>
<td>EOR, Geological</td>
<td>EOR, 45Q</td>
</tr>
<tr>
<td>Dry Fork</td>
<td>Power Generation-Coal</td>
<td>EOR, Geological</td>
<td>EOR, 45Q</td>
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<tr>
<td>Tundra</td>
<td>Power Generation-Coal</td>
<td>EOR, Geological</td>
<td>EOR, 45Q</td>
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<tr>
<td>San Juan Generating</td>
<td>Power Generation-Coal</td>
<td>EOR, Geological</td>
<td>EOR, 45Q</td>
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<tr>
<td>Gerald Gentleman</td>
<td>Power Generation-Coal</td>
<td>In evaluation</td>
<td>45Q</td>
</tr>
<tr>
<td>Cal Capture</td>
<td>Power Generation-Natural Gas</td>
<td>EOR</td>
<td>EOR, 45Q, LCFS</td>
</tr>
<tr>
<td>Velocys Bayou Fuels</td>
<td>Power Generation-Biomass</td>
<td>Geological</td>
<td>45Q, LCFS</td>
</tr>
<tr>
<td>Clean Energy Systems</td>
<td>Power Generation-Biomass</td>
<td>In evaluation</td>
<td>45Q, LCFS</td>
</tr>
<tr>
<td>Illinois Clean Fuels</td>
<td>Power Generation-Waste-to-Energy</td>
<td>Geological</td>
<td>45Q, LCFS</td>
</tr>
<tr>
<td>ZEROS</td>
<td>Power Generation-Waste-to-Energy</td>
<td>EOR</td>
<td>45Q</td>
</tr>
<tr>
<td>CarbonSafe Illinois Storage Hub</td>
<td>Multiple</td>
<td>EOR, Geological</td>
<td>EOR, 45Q</td>
</tr>
<tr>
<td>Mid-Continent Storage Hub</td>
<td>Multiple</td>
<td>EOR, Geological</td>
<td>EOR, 45Q</td>
</tr>
<tr>
<td>ECO2S Storage Hub</td>
<td>Multiple</td>
<td>Geological</td>
<td>45Q</td>
</tr>
</tbody>
</table>

- **Section 45Q tax credit**
- **Enhanced Oil Recovery (EOR)**
- **California Low Carbon Fuel Standard (LCFS)**
CCUS STAGES FOR THE 45Q CREDIT

**EXPLORATION**

We will begin the planning process with a kick-off meeting with all key stakeholders to confirm and clarify goals and objectives, identify known project pain points and define a timeline and/or tasks, as needed. During this phase we’ll learn more about you, your business to best determine and align the project scope and objectives.

**CREATION**

As you and your stakeholders initiate the CCUS project, we’ll document and report the initial decisions and verify alignment with the section 45Q tax credit regulations. We are able to review vendor contracts to ensure your goals are being addressed and that you remain in compliance with regulatory requirements. This will include baseline reports used to monitor and account for the tax credit.

**OPERATION**

We’ll monitor, report and verify the section 45Q tax credit on a quarterly basis. During this phase we’ll adapt utilization of the section 45Q tax credit with your financial and sustainable goals in any given tax year and continue to make recommendations on corrective actions, monitor target dates and track legislative changes or finding that may affect future activity. We will prepare the tax Form 8933 and the Model Certificates to comply with current law.

**ONGOING COMMUNICATION**
45Q credit was initially established in 2008. Credits were made available only for the first 75 million tons of qualified carbon dioxide captured by all projects. Each taxpayer claiming 45Q credits were required to capture at least 500,000 metric tons of qualified carbon dioxide in a single taxable year.

The Bipartisan Budget Act of 2018 made Section 45Q more attractive by eliminating overall credits made available, expanded to cover both carbon dioxide and carbon oxide, and for some taxpayers, lowered thresholds for carbon needing to be captured.

In the Taxpayer Certainty and Disaster Tax Relief Act of 2020, 45Q was extended to projects that begin construction prior to January 1, 2026. Original date was January 1, 2024.

In 2020, US Treasury Department and Internal Revenue Service (IRS) released proposed regulations, Notice 2020-12 and Revenue Procedure 2020-12. Proposed regulations were followed by final regulations in early 2021.

The Inflation Reduction Act...
HOW DOES 45Q CREDIT INCENTIVIZE CARBON CAPTURE?
SECTION 45Q PROVIDES A MONETARY INCENTIVE

PRESENT LAW

• If sequestered, a section 45Q credit worth $34.81 per ton in 2022, increasing by $3.04 each year to $50 per ton in 2026 and thereafter indexed for inflation.

• If used as a tertiary injectant a section 45Q credit worth $25.15 per ton in 2022, increasing by $2.465 each year to $35 per ton in 2026 and thereafter indexed for inflation.

INFLATION REDUCTION ACT OF 2022

• If sequestered, a section 45Q credit worth $85 per ton ($17 if wage and apprenticeship rules not met), indexed for inflation after 2026.

• If used as a tertiary injectant a section 45Q credit worth $60 per ton ($12 if wage and apprenticeship rules not met) indexed for inflation after 2026.
WAGE AND APPRENTICESHIP REQUIREMENTS IN THE IRA

• In order to claim full amount of carbon capture credit after 2022, wage and apprenticeship requirements must be met 60 days after guidance is published.

• Wage requirement – laborers and mechanics must be paid the most recently published prevailing wage rates for the locality in which project is located.
  • Expected to be like rules government wages paid on Federal government contracts.

• Apprenticeship requirement - Qualified apprentices must perform a minimum percentage of total labor hours on project based on year in which construction begins (10% in 2022, 12.5% in 2023, and 15% in later years).
  • Any contractor or subcontractor employing 4 or more individuals to perform construction on a project must employ at least one qualifying apprentice UNLESS apprentices were requested, and the request was denied or not responded to within 5 business days.
HOW LONG DOES 45Q CREDIT LAST?

45Q credit is available for 12 years, beginning when carbon capture equipment is placed in service. This provides more certainty for investors and increases value of 45Q credits.

Inflation Reduction Act of 2022 would not modify this rule.
WHAT DO YOU HAVE TO DO TO GET THE MONEY?

Carbon oxide or carbon dioxide must be **captured** at a **qualified facility** the construction of which began before 2026 (2032 if the IRA is enacted) and **securely stored, fixed, or used** for a **commercial purpose**.
WHAT IS CONSIDERED A “QUALIFIED FACILITY” IN SECTION 45Q?

- A qualified facility is a facility that:
  - Stores or uses the carbon oxide it captures in accordance with the rules under Section 45Q.
  - Meets the “beginning of construction requirement”. Construction begins before January 1, 2026 (would be extended to 1/1/2032 if IRA enacted) if either:
    - Physical construction of the carbon capture equipment used at the facility has begun or,
    - 5% of costs have been incurred, including the original planning and design for the facility having included the installation of carbon capture equipment.
WHAT IS CONSIDERED PHYSICAL WORK?

• Physical work may be performed by taxpayer or by third party under binding written contract. Physical work may be performed onsite or offsite.

• Examples of physical work include excavation for and installation of foundations, manufacture of components necessary for carbon capture processes and installation of equipment necessary for disposal of qualified carbon oxide in secure geological storage spaces.
WHAT IS NOT CONSIDERED PHYSICAL WORK?

Physical work does not include preliminary activities, such as securing financing, clearing a carbon capture project site, or obtaining permits and licenses. Further, work to produce components that are either in existing inventory or are normally held in inventory also does not qualify.
WHAT ARE THE STORAGE AND USE REQUIREMENTS UNDER SECTION 45Q?

A qualified facility must either properly dispose of the carbon oxide in a secure geological storage space or use it for certain approved processes, such as a tertiary injectant in connection with certain oil or natural gas extraction processes.
WHAT IS CONSIDERED A SECURE GEOLOGICAL STORAGE PLACE?

Secure geological storage includes storage in deep saline formations, oil & gas reservoirs and unminable coal seams.
Are there requirements to meet the definition of secure geological storage under Section 45Q for EOR?

- Yes, final regulations stipulates a secure geological storage place requires compliance and reporting under Subpart RR of the Federal Environmental Protection Agency’s Greenhouse Gas Reporting Program or under International Organization of Standardization (ISO) standard for quantifying safe long-term storage of carbon dioxide is association with EOR.
WHAT ARE THE APPROVED WAYS FOR A QUALIFIED FACILITY TO USE CARBON OXIDE AS OPPOSED TO STORE IN A SECURE GEOLOGICAL STORAGE PLACE?

• Final regulations stipulate three ways for a qualified facility to use carbon oxide:
  • Chemical conversion into a compound in which such carbon oxide is securely stored.
  • Fixation through photosynthesis or chemosynthesis (such as growing bacteria).
  • Use for other purposes for which a commercial market exists.
DO THE FINAL REGULATIONS DEFINE “COMMERCIAL MARKET”?  

Yes, final regulations define commercial market as market in which a product, process, or service that utilizes carbon oxide is sold or transacted on commercial terms. This is a broad definition that is not limited to any product or market. This would seem to encourage innovation such as use of carbon oxide for meat preservation or creating soft drinks.
ARE THERE MINIMUM REQUIREMENTS FOR CARBON CAPTURED AND SEQUESTERED IN A SINGLE TAXABLE YEAR?

In order to be considered a qualified facility, a facility such as an ethanol plant needs to capture and sequester at least 25,000 metric tons (reduced to 12,500 if IRA enacted) of qualified carbon oxide.
CAN THE 45Q CREDIT BE RECAPTURED?

Yes, Section 45Q credits are subject to recapture if previously stored or utilized carbon oxide leaks into the atmosphere during the recapture period.
WHAT IS THE RECAPTURE PERIOD?

• Recapture period is the period that begins on date of the first injection of qualified carbon oxide and ends at the earlier of three years after taxable year for which the applicable Section 45Q credit was claimed or date the relevant monitoring requirements end.

• The monitoring requirements end under Subpart RR of Federal Environmental Protection Agency’s Greenhouse Gas Reporting Program regulations of the ISO standard, as applicable.
HOW ARE CREDITS RECAPTURED?

In general, leaked carbon oxide first reduces the Section 45Q credits available in the taxable year in which leak is identified and reported. If amount exceeds the carbon oxide captured in such taxable year, the excess will result in recapture in preceding taxable years following a last-in-first-out (LIFO) basis.
WHO CAN CLAIM THE 45Q CREDIT?

In general, the taxpayer who owns the equipment placed in service on or after February 9, 2018 and physically or contractually ensures capture and disposal, injection or utilization of such carbon oxide is entitled to tax credits with respect thereto. Final regulations clarify the taxpayer who owns carbon capture facility does not need to own the facility that emits the carbon oxide being captured to be eligible for credits.
CAN OWNER OF CARBON CAPTURE EQUIPMENT STILL CLAIM 45Q CREDIT IF SOMEONE ELSE SEQUESTERS THE CARBON DIOXIDE?

Yes, an owner of the carbon capture equipment who “contractually ensures” the sequestration of carbon oxide can still claim the credit.
ARE THERE CONTRACTUAL REQUIREMENTS FOR ENGAGING WITH SOMEONE TO SEQUESTER THE CARBON DIOXIDE?

Under the final regulations, contractual requirements include:

• A binding written contract must be enforceable under state law and generally must not limit amount of damages to less than 5 percent of the contract price.

The contract must include:

• Commercially reasonable terms.
• Contain enforcement mechanisms.
• Require the counterparty to comply with relevant tax law and regulatory requirements.
• Provide information relating to recapture events (for qualified oxide intended to be disposed of in secure geological storage spaces, not used as tertiary injectant).
• Each party to the contract is generally required to report such contract (and certain other information) to the IRS on an annual basis.
Yes, the owner may make an election on an annual basis to allow the person who contractually ensures sequestration to claim the 45Q credit. This pass-through credit mechanism provides significant flexibility for taxpayers to use or monetize a project’s tax credits.
Yes, several states offer tax incentives that vary on scale and timing. Texas, for example, has the widest variety of incentives, especially for projects involving enhanced oil recovery (EOR). Some states such as California, Hawaii, New York, and Washington have passed legislation adopting 100 percent clean or renewable energy mandates or goals.
IS ETHANOL THE SWEET SPOT FOR CARBON CAPTURE?
ETHANOL IS THE SWEET SPOT FOR CARBON CAPTURE

Ethanol production results in a relatively clean carbon stream.

- A significant portion of capture costs relates to the need to “clean” the carbon stream by removing SOX and NOX contaminants.
- SOX and NOX contaminants increase water solubility, require additional energy to “dry” the stream and limit corrosion of infrastructure.

How much credit is needed to break even (National Petroleum Council estimates)

- Ethanol - $46/ton
- Cement - $77/ton
- Natural Gas - $107/ton

Geographic concentration of ethanol plants consistent with development of gathering systems.

Ethanol benefits from legislative changes
CHANGES TO 45Q IN INFLATION REDUCTION ACT OF 2022

- Credit available if construction begins by 2032 (extended from 2026).
- Minimum capture requirement reduced to 12,500 tons/year (was 25,000 tons).
- Credit rate increased to $85/ton ($60 if carbon is utilized) provided wage and apprenticeship rules are met; otherwise, $17 per ton (previously $50/ton by 2026, phased in).
- 3-year carryback allowed (previously 1 year).
- Credit can be monetized (made refundable) as a prepayment of tax.
- Credit can be transferred to 3rd parties in cash transactions.
- 5-year life for carbon capture property.
Proposed Ethanol Gathering Systems

- Summit Carbon Solutions
- Carbon America
- Navigator CO₂ (Heartland Greenway)
- Wolf Carbon Solutions (Canada)
- Others

https://summitcarbonsolutions.com/project-footprint/
HOW TO USE THE 45Q CREDIT
ALTERNATIVES — HOW CAN ETHANOL PARTICIPATE IN 45Q?

• Sell carbon stream to someone else who will install the equipment, transport and sequester the carbon.
  • Minimizes risk
  • Avoids need for in house expertise
  • May be necessary if a limited carbon stream

• Joint venture – participate in process for a share of credits
  • Shares risk
  • Minimizes need for in house expertise

• Do it yourself
  • Assumes risk, need for in house expertise.
  • Requires an economically significant carbon stream
STRUCTURING ETHANOL PARTICIPATION

• Partnerships
  • Credit will be typically be apportioned by partnership agreement.
  • Ability to assign credits under new legislation may make special allocation easier.

• S corporations
  • Credit must (eventually) be equally apportioned to avoid second class of stock issues.

• Agricultural Co-operatives
  • Credit will typically be apportioned in same manner as patronage.
ETHANOL AND R&D TAX CREDIT
R&D TAX CREDIT

Benefit

• Range from 5-8% of qualified research expenditures (QREs).
• States:
  • Some state credits can exceed federal benefit.
  • Can offset payroll taxes for certain start-ups.

Doing an “R&D Study”

• Can compute and document credit for all “open” tax years:
  • Typically, current year and prior 3 years.
  • Can amend prior tax returns.
  • Unused credits carry forward 20 years.
Case Study #1

• $300M Gross Receipts
• 125M Gallon Ethanol
• 40M Bushels of Corn
• Dry milling process
• $12M federal R&D Tax Credits
• $3M state R&D Tax Credits

Case Study #2

• $170M Gross Receipts
• 60M Gallon Ethanol
• Dry milling process
• $7M federal R&D Tax Credits
• $1.6M state R&D Tax Credits
QUALIFICATION CRITERIA

• Broad definition of R&D

• New or improved “business components”:
  • Products
  • Processes
  • Software
  • Techniques, formulations, inventions, etc.
<table>
<thead>
<tr>
<th>ACTIVITIES THAT TYPICALLY QUALIFY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>New Product Design or Improvements</strong></td>
</tr>
<tr>
<td>• Testing enzymes – new product development</td>
</tr>
<tr>
<td>• Raw materials research (product vs process)</td>
</tr>
<tr>
<td><strong>Manufacturing Process Development</strong></td>
</tr>
<tr>
<td>• Automation/robotics</td>
</tr>
<tr>
<td>• Improving production (faster, better quality, reducing resources)</td>
</tr>
<tr>
<td>• Implementing new machinery</td>
</tr>
<tr>
<td>• New concepts or technology</td>
</tr>
<tr>
<td><strong>Developing Software</strong></td>
</tr>
<tr>
<td>• Marketed to customers</td>
</tr>
<tr>
<td>• Internal use</td>
</tr>
<tr>
<td>• Dual function (both)</td>
</tr>
<tr>
<td><strong>Other</strong></td>
</tr>
<tr>
<td>• Engineered designs</td>
</tr>
<tr>
<td>• Genetic development (plant/animal)</td>
</tr>
<tr>
<td>• Recipes/formulation development</td>
</tr>
</tbody>
</table>
QUALIFIED RESEARCH EXPENSES (QREs)

Wages:
- Direct involvement, direct support, direct supervision

Supplies:
- Materials / supplies used in the research

Contract research:
- 65% of eligible costs
R&D TAX CREDIT UPDATES

Chief Counsel Memorandum (Specificity Requirement)

• Increased documentation requirements for R&D credit “claims”
• Effective date of 1/10/2022
• R&D study needs to be done prior to filing for amended R&D refund claims

IRC Section 174 Law Change (TCJA)

• No longer able to currently deduct R&D expenses
• Effective 1/1/2022
• Capitalize and amortize research and experimentation expenses over 5 years (mid-year convention)
Internal Revenue Service is often aggressive:
• Key IRS focus is on documentation/substantiation.

Taxpayers should gather/retain contemporaneous records proving the following:
• Activities meet the 4-part definition of qualified research.
• Expenses incurred meet statutory requirements.
• Nexus between qualified activities and qualified costs.
QUESTIONS?

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