



Shell Oil Company
Marnie Funk
Sr Advisor, Federal Government Relations
1050 K Street, NW, Suite 700
Washington DC 20001, USA
Tel : +1 202-341-5631
Email: Marnie.Funk@Shell.com

August 3, 2020

CC:PA:LPD:PR (REG-112339-19)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Via Federal eRulemaking Portal at: www.regulations.gov (REG-112339-19)

Re: Comments on Proposed Regulations for IRC §45Q

Dear Sir/Madam:

This letter is submitted in response to the publication of the Notice of Proposed Rulemaking on the §45Q, Credit for Carbon Oxide Sequestration in the Federal Register. It is very important the IRS (and Treasury) issue final regulations providing technical guidance on the requirements and operation of the new section 45Q tax credit program. The proposed regulations that were published in the Federal Register on June 2, 2020 go a long way to addressing the issues and uncertainties that taxpayers experienced in complying with the original 45Q tax credit. We urge that the IRS issue final regulations, reflecting our particular concerns, as quickly as possible in order to address these issues and uncertainties that could create significant potential hurdles to the successful development of carbon capture, utilization and storage (CCUS) projects.

The Shell group of companies has long been interested in carbon capture utilization and storage as a decarbonization technology and believes that the deployment of CCUS is critical to transitioning to a low-carbon energy economy. As a result, we have participated in CCUS projects in other countries, most notably the Quest Project that a Shell group company developed and operates in Alberta, Canada. Quest has now stored underground the most CO₂ of any onshore CCS facility in the world with dedicated geological storage. We are also a minority partner in Gorgon, the largest CCUS project in the world off the coast of Australia. In the United States, Shell Oil Company (hereinafter "Shell") and its affiliates also have a strong interest in the deployment of CCUS. Shell sat on the steering committee of the National Petroleum Council (NPC) CCUS study and was actively engaged in its various workstreams to promote the deployment of the technology. In

addition to policy development such as that undertaken by the NPC, Shell offers these comments because our experience tells us that clear and workable 45Q implementing regulations and guidelines are critically important for projects to advance. These comments focus on issues that Shell deems key to CCUS deployment.

SECURE GEOLOGICAL STORAGE

Shell strongly supports the establishment of an effective and workable framework for demonstrating “secure geological storage” of the captured Carbon Oxide under §45Q. In the comments Shell filed in response to Notice 2019-32 we outlined the following principles as vital to the development of a framework for monitoring, reporting, and verification of secure geological storage of carbon oxide injected into subsurface geological formations. Those principles included: environmental integrity, public transparency, the IRS assuming the lead role, establishment of a rigorous framework and standards for demonstrating secure geologic storage, flexible implementation of the framework, and protection of confidential business information. The proposed regulations include a framework for defining secure geologic storage that addresses these principles, except for public transparency. Although understanding that the IRS is prohibited from releasing a taxpayer’s tax return data, Shell believes public transparency of the amount of CO₂ that is securely stored by or on behalf of the taxpayer is vital to the integrity of the 45Q and carbon sequestration program. This transparency will instill confidence in American taxpayers that we have achieved the safe and secure geological storage for which we are claiming the credit.

The proposed regulations provide two options for a company to show secure geologic storage:

- Subpart RR requirements that EPA has adopted for monitoring and reporting CO₂ injected for long-term containment under a UIC Class VI permit or enhanced oil recovery (EOR) under a UIC Class II permit; or
- CSA/ANSI ISO 27916:19 Standard that was developed by the International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) for quantifying and documenting the amount of CO₂ incidentally stored in association with the injection of CO₂ for EOR purposes.

Third-Party Verification - Shell appreciates the IRS requiring certification by an independent third-party under the CSA/ANSI standard. Shell suggests the IRS should establish minimum eligibility requirements for the independent third-parties who will validate and verify that the specific EOR project satisfies the substantive criteria and requirements of the ISO 27916:19 Standard for demonstrating secure geological storage at the project level. Those minimum eligibility requirements must assure that the independent third-party (comprising either individual or team) has sufficient expertise and experience on the geologic storage of carbon oxide in underground formations. These eligibility requirements include: (i) experience and a high degree of knowledge in the assessment of geological containment, particularly in regard of CO₂ EOR, and (ii) experience and a high degree of knowledge regarding the design and implementation of systems for monitoring both EOR and geological storage of CO₂. We also believe the individual or team should be registered professional engineers or geologists that have experience in an earth science discipline relevant to monitoring, such as reservoir engineering, geophysics, geology, hydrology, geomechanics, geochemistry, or other relevant discipline. Finally, Shell believes third party verification should occur with each new or materially-updated submission under the ANSI-ISO process.

Public Transparency – The Subpart RR requirements provide for public transparency of the CO₂ that is securely stored through the Environmental Protection Administration (EPA) reporting process. Shell believes the CSA/ANSI Standard should also be implemented in such a way as to provide for that public transparency. The IRS should encourage the EPA to develop additional regulations under the Greenhouse Gas Reporting program that would provide for the implementation of ISO 27916:19 Standard and the public release of the amount of CO₂ that is securely stored by the injection operator through EOR.

Interim Process – Shell is concerned that it would most likely take a year or more for EPA to develop a new subpart for reporting carbon oxide stored through EOR and documented through the ISO/ANSI process, as referenced above. Such a lengthy delay realistically requires IRS to develop an interim approach that would assure the public disclosure of the relevant information prior to EPA’s adoption of a new subpart. The IRS would establish a voluntary, interim approach using the ANSI/ISO standard for documenting the quantity of CO₂ securely geologically stored on an annual basis and demonstrating that storage is secure. To participate in this approach, a taxpayer would agree to make the relevant information available for public review. This means that no taxpayer would be required to use the ANSI/ISO standard, but rather, could use the ANSI/ISO standard at their election, but in so doing, they would also be voluntarily electing to make their information available for public review. This process would remain an option until the EPA promulgates a rule under the Greenhouse Gas Reporting rule relevant to the ISO/ANSI standard requiring appropriate public disclosure.

DEFINITION OF CARBON CAPTURE EQUIPMENT

The proposed regulations provide a definition of carbon capture equipment (CCE) that generally follows the original Shell comments by including the equipment necessary for capturing the CO₂ and preparing it for transport. The primary concern we have is that a situation could exist in which multiple parties may be considered owners of the same CCE, because they own different pieces of equipment that may be considered CCE in a single project. In that situation, the owner of the CCE should be the entity that owns the equipment that separates and captures the CO₂ should be eligible for the credit pursuant to §45Q(f)(3). In addition, Shell’s original comments suggested including “transporting, disposing, injecting, and/or utilizing the carbon dioxide” in the definition of carbon capture equipment. For a project in which the capture owner also owns the pipeline for transporting the CO₂, we urge that this equipment should be included in the definition of CCE given it is an essential aspect of the CCUS process.

LIFECYCLE GREENHOUSE GAS ANALYSIS

Shell supports a robust, credible and data-based LCA as outlined in the proposed regulations, particularly as it relates to the novel utilization of CO₂. We believe the process for approving the LCA by the IRS and the Department of Energy outlined in 1.45Q-1(c)(3) should include a reasonable deadline for the agencies to approve the LCA.

ELECTION TO TRANSFER CREDITS

Shell supports greater flexibility and further clarification of the ability to transfer credits throughout the CCUS “value chain.” The proposed regulations explain how and to what extent credits can be shared between capturing company and storing company. Shell believes the IRS should expand the

definition of the qualifying transferee to include any party that is in a chain of contractual sequestration or utilization of the carbon oxide. The statutory language in 45Q for this election says the credit may be transferred “to the person that disposes of the qualified carbon oxide, utilizes the qualified carbon oxide, or uses the qualified carbon oxide as a tertiary injectant.” It does not require the transferee to physically do those activities.

Related to Shell recommendation regarding expanding the definition of a qualifying transferee to parties in the contractual chain, the IRS should:

- Expand the companies eligible to be transferred credit to include companies that transport or otherwise participate in the project. This would allow greater commercial flexibility, such as credit sharing arrangements in place of tariff payments to the pipeline transporting the CO₂.
- Allow the carbon capture owner to transfer the credits to the person (Party 2) that contracts with the capture owner to dispose of, utilize, or use for EOR the qualified carbon oxide even if that person does not physically perform those tasks and contracts with a third party (Party 3) to physically perform those tasks on their behalf.
- Allow Party 2 (above) to transfer the credits to Party 3 (above) in order to provide additional flexibility in developing the project.

BEGIN CONSTRUCTION GUIDANCE IN IRS NOTICE 2020-12

Notice 2020-12, Section 4.02, provides that construction is deemed to begin upon the earlier satisfaction of either the Physical Work test or the Five Percent Safe Harbor. As a result, taxpayers may find that they have already triggered the construction period through front-end expenditures, changes in budgeting (*e.g.*, because of current economic conditions), etc., and therefore their Continuity Safe Harbor period has already commenced. The Notice allows for Excusable Disruptions to Continuous Construction and Continuous Efforts Tests and offers a non-exclusive list of examples that seem fairly directly related to the project (and not driven by broader economic conditions); however, there are no excused disruptions for the Continuity Safe Harbor. Some taxpayers may thus have to abandon availing themselves of the Continuity Safe Harbor and instead rely upon the non-safe harbor continuity requirements and then hope that current or any future disruptions to continuity of construction qualify as “excusable.” Certainly, the Notice did not contemplate the pandemic and the resulting sharp economic downturn, or their effect on the Continuity Safe Harbor. Taxpayers are struggling with broader economic and operational disruptions that, while not as project-related as the examples of excusable disruptions suggest, significantly disrupt their ability to satisfy the non-safe harbor continuity. To address these concerns, additional guidance should provide

- Construction is deemed to begin upon satisfaction of either the Physical Work test **or** the Five Percent Safe Harbor at the taxpayer’s election; and
- The Continuity Safe Harbor is extended to bring the majority of taxpayers into it. For instance, the risks and outcomes as discussed above would be mitigated by a longer safe harbor period to go from concept identification to first injection. Shell recommends the IRS provide a period longer than the 6-year construction period safe harbor to address the significantly complexity of and longer time it takes to develop, implement, and construct CCUS projects. Shell would prefer an 8-year construction period safe harbor.

We appreciate the opportunity to comment on these important issues from the proposed regulations implementing the recently enacted amendments to IRC §45Q. If you have any questions regarding this submission, please contact Marnie Funk at (732) 621-5672, Marnie.funk@shell.com.

Respectfully submitted,

Marnie Funk
Senior Advisor
U.S. Government Relations