growth energy™
America's Ethanol Supporters

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RE: Comments on Credits for Carbon Oxide Sequestration
Notice 2019-32
Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Thank you for the opportunity to provide comments on the implementation framework governing this important tax incentive to encourage the capture, utilization, and storage of qualified carbon oxides. As you analyze these comments, it is important that the agency recognizes the final rule further incents industrial facilities to capture, utilize, or store carbon oxides in new ways – and do so in a broad manner. If implemented with a strong focus on expanding opportunity for capturing, utilizing, and storing carbon oxides, America's ethanol industry can provide a readily available, accessible source for our nation's carbon oxide users and geologic formations that store carbon oxides.

Growth Energy is the world's largest association of biofuels and supporters representing 100 ethanol plants and 91 associate members who serve America's need for renewable fuel. Representing more than half of the U.S. ethanol industry, our association has many facilities that are either currently capturing qualified carbon oxides, looking at projects to capture carbon oxides, or are in the process of financing and citing a carbon oxide capture project. Because our main carbon oxide source is from fermentation, the U.S. ethanol industry produces a pure source of carbon dioxide, which is desirable not only to drive enhanced oil recovery and permanent geologic sequester, but also for use in food and beverage applications.

According to a recent assessment of ethanol plants capturing carbon dioxide from fermentation by Ethanol Producer Magazine, approximately 49 U.S. ethanol plants capture, clean and condense carbon dioxide. Growth Energy believes that number could be higher – potentially up to 60 ethanol plants – and we estimate that almost all ethanol plants capturing carbon dioxide meet the 25,000 tons/year threshold required under law. According to Christianson PLLP's Biofuels Benchmarking program, of the participating plants that currently capture carbon dioxide, they capture, on average, 1,980 tons of carbon dioxide per million gallons of ethanol produced. The leaders in this category (top 25%), capture 3,075 tons of carbon dioxide per million gallons of ethanol produced. This means an average 50 million gallon per year ethanol plant would capture 99,000 to 153,750 tons of carbon dioxide each year. With a fleet of more than 200 ethanol plants, there is room for additional opportunities to capture carbon if the final regulations provide a clear pathway to incent ethanol producers to install the proper equipment to capture carbon dioxide, a natural byproduct of fermenting sugar into alcohol.

Utilization definition should include food and beverage carbon:

To fully recognize the opportunity to achieve the optimal carbon capture from America's ethanol biorefineries, the final rule will need to ensure that qualified carbon oxides captured at ethanol plants for food and beverage use qualify as a treasury secretary endorsed practice under the definition of utilization.

Under 45Q before the recent changes, credit was only provided for tertiary injections of carbon. Recognizing that the uses and needs of carbon were well beyond just tertiary injections, Congress added additional purposes that qualify, including the fixation of carbon oxides through photosynthesis or chemosynthesis, such as through the growing of algae or bacteria, and the chemical conversion of such qualified carbon oxide to a material or chemical compound in which such qualified carbon oxide is securely stored.

26 U.S. Code § 45Q(f)(5)(A)(iii) states that the "utilization of qualified carbon oxide means… the use of such qualified carbon oxide for any other purpose for which a commercial market exists (with the exception of use as a tertiary injectant in a qualified enhanced oil or natural gas recovery project), as determined by the Secretary." We strongly believe that the secretary should include carbon captured for food purposes (such as preserving meat) or beverages purposes (for carbonation) as a suitable practice for carbon utilization.

Carbon dioxide captured for use in food and beverage applications is very clearly a commercial market for a qualified carbon oxide. It is utilized by dozens of ethanol plants as a place to utilize captured carbon dioxide. This market is also used by others who utilize carbon oxide. Since this expanded definition, specifically for utilization, occurred at the end of 2017, we would further maintain that facilities placed in service before 2017 should still qualify as well.

The intent of the statute very clearly is to provide incentive to those enterprises seeking to reduce emission of carbon dioxide into the atmosphere. While all ethanol plants are capable of capturing food grade carbon dioxide, often, similar to enhanced oil recovery, the market incentive to do so does not exist due to the cost of transportation. This credit, if applied to food and beverage use, undoubtedly many ethanol plants that currently capture carbon dioxide will increase their capture rate. Furthermore, we are aware that a number of plants that do not currently capture will begin to do so. This sequester of carbon is consistent with the intent and spirit of the law passed in 2017.

Credits should be transferable among taxpaying entities:

As is common practice in several other credits across the tax code, this credit also needs to be transferable among different taxpaying entities. While it is not always the case, the domestic ethanol industry is currently enduring a difficult economic outlook. In situations like these, it is possible that entities will not have adequate taxable income to satisfy the credit. In these cases, in order to ensure that long-term projects remain viable and have the ability to monetize the credit, they will have to be able to transfer the credit.

Placed in service date rules should reflect project lead time:

The Tax Cut and Jobs Act, the parent legislation for the updated 45Q credit, was passed in December 2017. It is very likely the final rule for this credit will not be in place until sometime in 2020, with a

requirement that construction begins before January 1, 2024. Given the limited window this credit will be available, we ask the agency to allow planning and design stages to meet the requirements of beginning construction.

Rule should recognize states with primacy over class 6 injection wells:

Currently, the Environmental Protection Agency (EPA) has provided regulatory primacy over class 6 injection wells to some states. Since these wells are likely to qualify for the 45Q credits, the agency should recognize the government entity with regulatory primacy when performing an assessment of required EPA approvals. Currently, the statutory language specifically references EPA approvals and does not provide for specific reference to state-based agencies. The final rule should reflect this special regulatory consideration to expedite credit availability given the limited window.

Expanded capture should be eligible for enhanced credits:

The new incentive to capture, utilize, or store qualified carbon oxides will inevitably lead to some expansions of existing projects that were placed in service before the credit rate was increased. If a facility takes on an expansion project, they should be eligible for the higher credit for that expanded capacity. In the case of an ethanol facility, there should be plenty of adequate record keeping delineating between new and existing capacity.

Credits should be allowed in a prorated amount:

As new facilities come online to capture, utilize, or store carbon, some may come online during the later part of the year. The agency should allow facilities that can present that – overall an annualized basis during their first year of capturing qualified carbon oxides – that they would meet the 25,000 tons a year of qualified carbon oxide capture.

Thank you again for the opportunity to submit comments. Should you require any further information, please contact John Fuher, Growth Energy's Vice President of Government Affairs at jfuher@growthenergy.org or 202-545-4020.

Sincerely,

Emily Skor, CEO
Growth Energy