



MCELROY,
SULLIVAN,
MILLER &
WEBER, LLP

Fundamentals of Carbon Capture and Sequestration

Thomas M. Weber
tweber@msmtx.com

Paul R. Tough
ptough@msmtx.com

McElroy Sullivan Miller & Weber LLP
www.msmtx.com



1

Key CCS Regulations

IRS – 26 CFR §1.45Q

EPA UIC – 40 CFR Part 144 and Part 146, Subpart H

EPA GHGR – 40 CFR Part 98, Subchapter RR

RRC UIC – 16 TAC Part 1, Chapter 3 (Rules 9 & 46)

RRC Carbon Dioxide – 16 TAC Part 1, Chapter 5



MCELROY,
SULLIVAN,
MILLER &
WEBER, LLP

2

Expanded 45Q credit applies to...

- carbon oxides that would otherwise be released to the atmosphere
- captured at qualified carbon captured facilities
- placed into service on or after February 9, 2018
- meet threshold volumes and are
 - disposed in “secure geologic storage”
 - injected into a qualifying EOR project, or
 - utilized according to 45Q(f)(5)



3

Qualified Carbon Oxide Facilities

“...a facility, including an electricity generating facility, that produces a carbon oxide stream from a fuel combustion source or fuel cell, a manufacturing process, or a fugitive carbon oxide emission source that, absent capture and disposal, injection, or utilization, would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release.”

- includes direct capture facilities



4

Threshold Volumes

- 25,000 metric tons for facilities that emit no more than 500,000 metric tons per year that capture and “utilize” the carbon oxides under 26 U.S.C.A § 45Q(f)(5);
- 500,000 tons for electric generating facilities that emit more than 500,000 tons per years of carbon oxides; or
- **100,000 tons** for any direct air capture facility and all other electric generating or industrial facilities



Who May Claim The Credit?

- owner of qualified carbon capture equipment
- that either physically or contractually ensures carbon oxides are
 - (1) disposed in “secure geologic storage”
 - (2) injected into a qualifying EOR project, or
 - (3) utilized according to 45Q(f)(5)
- may elect to transfer the credit to the party that contractually performs (1) – (3)



Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Fundamentals of Carbon Capture and Sequestration

Also available as part of the eCourse

[2022 Ernest E. Smith Oil, Gas and Mineral Law eConference](#)

First appeared as part of the conference materials for the
48th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"Fundamentals of Carbon Capture and Sequestration"