

February 6, 2018

Dear Majority Leader McConnell, Democratic Leader Schumer, Chairman Hatch, and Ranking Member Wyden

On behalf of our millions of members, we write to express our opposition to Section 402 of the Senate tax extenders bill, which expands Section 45Q tax credits for enhanced oil recovery (EOR) while simultaneously removing environmental protections. We urge you to remove this provision from the final tax extenders package that might be included in a spending bill. **As currently written, the extenders bill would change the reporting requirements so companies could qualify for the tax credits without proving their operations actually permanently sequester any carbon, which undercuts the purpose and intent of the tax credit.**

Many of our groups have opposed related House and Senate bills, the Furthering carbon capture Utilization, Technology, Underground storage, and Reduced Emissions (FUTURE) Act (S.1535) and the Carbon Capture Act (H.R.3761), and we oppose including language from those bills that would increase credits for EOR in tax extenders legislation. Rather than sequestering CO<sub>2</sub> and reducing greenhouse gas emissions, EOR increases the production of climate polluting oil and puts drinking water at risk. Congress should be working to eliminate subsidies for fossil fuel production, not expand them.

The 45Q language currently in the tax extenders bill, not only increases credits but also removes the protections required under current 45Q law. Specifically, current law requires EOR operations that claim 45Q credits to comply with rules promulgated under subpart RR of part 98 of title 40, Code of Regulations under the Clean Air Act. The tax extenders bill, in Section 402 subsection f(2)(B)(ii), removes this requirement and instead only requires reporting compliant with subpart UU. The inclusion of this provision is unacceptable and compounds the many other existing problems with expanding 45Q.

Our groups oppose an expansion of Section 45Q in for the following reasons:

- **Regulations on CO<sub>2</sub>-EOR do not ensure permanent sequestration of carbon, and this bill further weakens oversight.** Regulation of EOR under the UIC class II program was not intended to ensure sequestration of carbon. Additionally, Clean Air Act regulations under EPA's Greenhouse Gas Reporting program subpart RR require monitoring and reporting, yet do not require prevention of leaks, blowouts or migration of CO<sub>2</sub> into the atmosphere. Although we believe subpart RR is not adequately protective on its own, removing this requirement and only adhering to subpart UU, as the bill proposes, would eliminate the minimal oversight that is currently required. The inclusion of this provision should be a non-starter for any 45Q extension, as it would negate any potential climate benefits associated with CO<sub>2</sub> injection for EOR.

- **Section 45Q is a handout to oil companies.** If 45Q expands as proposed, the CO<sub>2</sub>-EOR subsidy benefiting oil producers alone could cost taxpayers as much \$2.8 billion each year. That would make it the single biggest subsidy to the fossil fuel industry in the United States. To date, 45Q credits have not delivered measurable progress toward more climate friendly uses of carbon such as permanent sequestration or utilization, and appear to only have been used to increase oil production. A 2010 Department of Energy-commissioned analysis suggests that there is little evidence that increased CO<sub>2</sub>-EOR deployment is a necessary or beneficial step towards the commercial deployment of carbon capture and sequestration.
- **Instead of helping address climate change, CO<sub>2</sub>-EOR enables increased oil production, prolonging the life of dirty oil fields for decades,** enabling all of the associated climate, health and environmental damage that results from prolonged fossil fuel extraction, transport, and combustion. According to the Department of Energy, the proposed changes to the 45Q tax credit would result in an additional 400,000 barrels per day of CO<sub>2</sub>-enhanced oil produced in the U.S. in 2035, which would directly lead to as much as 50.7 million metric tons of net CO<sub>2</sub> emissions annually. This amount is equal to the annual emissions from more than 11 million cars or 12.5 coal-fired power plants.
- **Expanding the tax credit for CO<sub>2</sub>-EOR disproportionately affects people of color and environmental justice communities,** as low income and people of color are more likely to live near oil fields and be subjected to the associated pollution and health impacts. In California, for example, of the population living within one mile of oil and gas development and in communities identified as most vulnerable by the California Environmental Protection Agency, nearly 92 percent are people of color.
- **CO<sub>2</sub>-EOR threatens groundwater,** yet federal regulations on oil and gas injection activities are decades out of date and inadequate for protection underground sources of drinking water. The Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) class II regulations were developed in the 1980's, have not been updated and contain significant deficiencies that leave groundwater vulnerable to pollution.
- **EPA and state budgets for administering UIC programs are woefully underfunded.** The Federal UIC budget has not increased in more than a decade despite a dramatic increase in injection activity across the country, and many states lack the resources to adequately conduct permitting, environmental review or inspections. With these gaping regulatory and oversight inadequacies, expanding CO<sub>2</sub>-EOR activity puts our water and climate at risk.

- **Transparency and accountability related to 45Q credits has been lacking.** There is no publicly accessible list of credits claimed under Section 45Q, that specifies which companies have claimed credits, nor is there any public accounting of the ultimate end-use of captured carbon. Expanding the credit when there is limited accountability or knowledge of how it has been used is financially irresponsible.
- **There is inadequate public information concerning compliance with EPA's greenhouse gas reporting program** subpart RR, an existing reporting requirement for companies claiming 45Q credits. Currently the public has no idea if 45Q credits have resulted in the actual sequestrations of carbon. Once again without adequate public information, expanding 45Q credits is reckless.

The proposed changes to Section 45Q would encourage an increase in EOR activity while simultaneously de-regulating the practice, despite the already inadequate protections of the current regulatory scheme. Subsidizing fossil fuel production that puts the health and drinking water of local communities at risk may not be the intent of an expansion of Section 45Q, but that would be the outcome.

In terms of the costs to American taxpayers, the climate, and communities living on the fenceline of fossil fuel infrastructure – this legislation is far too expensive. Further subsidizing the oil industry is a step in the wrong direction. We urge you keep the extension and expansion of Section 45Q and the weakening of existing CO2-EOR regulations, out of any tax extenders legislation and instead work to increase protections for water and climate from CO2-EOR and eliminate taxpayer handouts to fossil fuel companies.

Sincerely,

350.org  
Amazon Watch  
Bold Alliance  
Center for Biological Diversity  
Chesapeake Climate Action Network  
Citizens Coalition for a Safe Community  
Clean Water Action  
Climate Justice Alliance  
ClimateTruth.org  
Earthjustice  
Earthworks  
Endangered Species Coalition  
Friends of the Earth  
Food & Water Watch

Greenpeace USA  
Hip Hop Caucus  
Indiana State Conference of the NAACP  
Indigenous Environmental Network  
Institute for Policy Studies  
Interfaith Climate Action Network of Contra Costa County  
Kentuckians For The Commonwealth  
Maryland Environmental Health Network  
Nuclear Information and Resource Service  
Oil Change International  
Power Shift Network  
Public Citizen  
Rainforest Action Network  
Save EPA  
The Alliance for Appalachia  
UMBC Progressives  
West Berkeley Alliance for Clean Air and Safe Jobs