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Bipartisan Infrastructure Bill Invests Billions in CCUS

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On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (“Bipartisan Infrastructure Bill”), a \$1.2 trillion commitment of funding for the country's physical infrastructure. Along with appropriations for roads, bridges, and transportation, the Bill dedicates billions to the country's energy and natural resources infrastructure, including significant funding for the development of carbon capture, utilization, and storage (“CCUS”) projects. Carbon capture offers the potential to dramatically reduce carbon dioxide (“CO₂”) emissions, as well as other pollutants, from large stationary sources. Spurred by an expansion of the federal 45Q tax credits, market demand, and technological advances, a growing number of companies have begun to consider CCUS projects in recent years.

The Bipartisan Infrastructure Bill seeks to accelerate this momentum by expanding existing CCUS programs at the Department of Energy (“DOE”), establishing a new finance and innovation program for the construction of CO₂ pipelines, improving the permitting of geologic sequestration wells, and creating new programs for direct air capture. This alert summarizes the CCUS provisions of the Bipartisan Infrastructure Bill.

Carbon Capture Technology Program

The Bipartisan Infrastructure Bill appropriates billions to support and expand the existing Carbon Capture Technology program at the DOE, which Congress established in the Energy Policy Act of 2005 and expanded in the Energy Act of 2020. The Carbon Capture Technology program is designed to support the technologic development of carbon capture through research on post-combustion and pre-combustion capture as well as funding for large-scale pilot projects, demonstration projects, and front-end engineering and design (“FEED”) projects. The Bill focuses on these late-stage projects, appropriating a total of \$3.5 billion for carbon capture demonstration projects and carbon capture large-scale pilot projects over the next five years. Additionally, the Bill appropriates \$100 million for carbon capture FEED projects.

Carbon Dioxide Transportation Projects

To support the construction of CO₂ pipelines, the Bipartisan Infrastructure Bill establishes a new Carbon Dioxide Transportation Infrastructure Finance and Innovation (“CIFIA”) program to provide \$2.1 billion in low-interest loans to large CO₂ pipeline projects. The CIFIA program would finance up to 80% of the costs of approved projects, including planning, permitting, design work, construction, real property acquisition, capitalized

interested, legal, and technical consultant costs.

Carbon Storage Validation and Testing

The Bipartisan Infrastructure Bill expands the DOE's Carbon Storage program to include commercial large-scale carbon sequestration projects and associated CO₂ transport. The Bill instructs the Secretary of Energy to prioritize projects with substantial storage capacity or from multiple carbon capture facilities. The Bill appropriates \$2.5 billion for the carbon storage program.

Secure Geologic Storage Permitting

To improve the permitting of Class VI Underground Injection Control wells for geologic sequestration under the Safe Drinking Water Act, the Bipartisan Infrastructure Bill provides \$5 million for each of fiscal years 2022 through 2026 for federal permitting by the Environmental Protection Agency (EPA) and \$50 million in grants for States to establish and operate their own Class VI permitting program. At present, only Wyoming and North Dakota have been delegated primacy over Class VI permits by EPA.

Carbon Removal

Finally, the Bill establishes a program to create four regional direct air capture hubs with the capacity to capture and sequester at least 1 million tons of CO₂ annually from the atmosphere. The Bill appropriates \$3.5 billion for the program as well as appropriates funds for a precommercial direct air capture technology prize competition (\$15 million) and commercial direct air capture technology prize competition (\$100 million). In order to facilitate the development of integrated regional and interregional carbon hubs or networks, the Bill instructs the Secretary of Energy to coordinate and leverage from funding from the various CCUS programs to the maximum extent possible.

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With the enactment of the Bipartisan Infrastructure Bill, federal agencies will be tasked with administering dramatically expanded CCUS programs and developing new programs with the bulk of this work occurring at the DOE. Companies interested in pursuing CCUS projects need to monitor developments and the federal financial funding these programs could provide. In addition, Congress is considering expanded 45Q incentives in the Reconciliation Proposal (also known as the Build Back Better Bill) which could make CCUS projects an even more attractive investment.

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