



April 7, 2022

*Submitted via Regulations.gov*

Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503

**Re: Council on Environmental Quality, “Carbon Capture, Utilization, and Sequestration Guidance”; Docket No. CEQ–2022–0001**

Dear Ms. Coyle:

The U.S. Chamber of Commerce (Chamber) submits the following comments in response to the Council on Environmental Quality’s (Council or CEQ) notice of availability and request for comments on the CEQ’s interim guidance document, “Carbon Capture, Utilization, and Sequestration Guidance” (Guidance).<sup>1</sup>

Combating climate change requires citizens, governments, and businesses to work together. The climate is changing, humans are contributing to these changes, and inaction is not an option. American businesses are already playing an essential role in addressing the threats posed by climate change, and the business community is an essential partner in the development of sound policies and technologies that protect and preserve our planet. Accordingly, the Chamber works to leverage innovation and the strength of American businesses to find durable solutions that improve our environment, grow our economy, and leave the world a better place for generations to come.

The Chamber supports market-based solutions to accelerate emissions reductions and address climate change, including policies that facilitate development and deployment of carbon capture, utilization, and sequestration (CCUS) technologies. According to both international and domestic climate authorities, substantial deployment of carbon capture technologies is required to meet global emissions reduction objectives, to produce low-carbon fuels, and to maintain and create high-wage jobs. Regulatory certainty and clear, efficient policies that

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<sup>1</sup> 87 Fed. Reg. 8808 (Feb. 16, 2022).

appropriately reflect the benefits of these technologies are needed for American businesses to confidently develop and invest in CCUS projects and unlock the associated substantial environmental benefits.

CEQ's development of the Guidance to "(I) facilitate[] reviews associated with the deployment of [CCUS] projects and carbon dioxide pipelines; and (II) support[] the efficient, orderly, and responsible development of [CCUS] projects and carbon dioxide pipelines"<sup>2</sup> is a step in the right direction in providing greater certainty and clarity. Nonetheless, CEQ should provide more robust leadership and further prioritize CCUS to effectively facilitate and support CCUS development. To these ends, the Chamber respectfully requests that CEQ consider and incorporate the following comments before advancing a final guidance document. This includes specifically responding to and addressing the following recommendations, as discussed in further detail below:

- CEQ should more fully recognize and reflect the environmental purpose and beneficial aspects of CCUS, and direct agencies to consider, quantify, and discuss these benefits as part of their permitting and review processes;
- CEQ should provide additional, specific guidance on the processing of CCUS projects under Title 41 of the Fixing America's Surface Transportation (FAST-41) Act, and work with the Permitting Council to create a FAST-41 CCUS pathway that meets the Fast-41's presumptive two-year timeline;
- CEQ should provide additional guidance and do more to encourage inter-agency collaboration on anticipated CCUS projects, including strongly recommending that agencies implement memoranda of understanding (MOUs), taking an active role in identifying where such MOUs will be helpful, and coordinating with agencies to develop such MOUs;
- CEQ should provide stronger direction to agencies to help ensure that National Environmental Policy Act (NEPA) reviews are conducted in a manner that avoids unnecessary duplication, cost, or delay, including, but not limited to, use of programmatic reviews as appropriate;
- CEQ should develop further CCUS-specific NEPA guidance, including guidance to agencies on consideration of CCUS project benefits;
- CEQ should provide additional specificity on a methodology for a consistent and accurate lifecycle analysis (LCA) for CCUS projects; and

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<sup>2</sup> Utilizing Significant Emissions with Innovative Technologies (USE IT) Act, Pub. L. No. 116-260, div. S, § 102(d)(2) (2020).

- CEQ should more fully respond to congressional direction to “address applicable requirements” under relevant Federal laws to facilitate reviews and support development of CCUS projects.

***The Guidance should more fully recognize and reflect the beneficial aspects of CCUS***

The CEQ Guidance should more fully reflect the positive environmental impacts of CCUS and the environmental and public health benefits of CCUS locally, regionally, nationally, and globally. At the outset, the Guidance should recognize that CCUS project deployment can positively impact public health and the environment by significantly reducing not only greenhouse gas emissions but local air pollutants. While the Guidance discusses the need for CCUS projects to achieve ambitious domestic climate change goals, the Guidance appears to focus more on addressing potential adverse impacts of CCUS projects rather than on the importance of a well-coordinated and consistent approach to the approval of CCUS projects to achieve the associated environmental benefits of CCUS. Express acknowledgment of these benefits, and direction to agencies to consider, quantify, and discuss these benefits as part of their permitting and review processes, is important to building public support for these projects and to facilitating development of these projects on a timely and cost-effective basis.

President Biden’s January 27, 2021, Executive Order 14008 on *Tackling the Climate Crisis at Home and Abroad* set a domestic climate change goal of achieving net-zero emissions economy-wide by 2050. As CEQ recognizes, to reach this ambitious goal, “the United States will likely have to capture, transport, and permanently sequester significant quantities of carbon dioxide.”<sup>3</sup> The International Energy Agency (IEA) has found that “[r]eaching net-zero will be virtually impossible without CCUS.”<sup>4</sup> Furthermore, Congress, in the Infrastructure Investment and Jobs

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<sup>3</sup> Council on Environmental Quality Report to Congress on Carbon Capture, Utilization, and Sequestration, at 6, available at <https://www.whitehouse.gov/wp-content/uploads/2021/06/CEQ-CCUS-Permitting-Report.pdf> (June 2021); 87 Fed. Reg. at 8809.

<sup>4</sup> IEA, Energy Technology Perspectives 2020, *Special Report on Carbon Capture Utilisation and Storage: CCUS in Clean Energy Transitions*, at 3 & 13, available at [https://iea.blob.core.windows.net/assets/181b48b4-323f-454d-96fb-0bb1889d96a9/CCUS\\_in\\_clean\\_energy\\_transitions.pdf](https://iea.blob.core.windows.net/assets/181b48b4-323f-454d-96fb-0bb1889d96a9/CCUS_in_clean_energy_transitions.pdf) (Sept. 2020); see also United Nations Economic Commission for Europe (UNECE), *Technology Brief: Carbon Capture, Use and Storage*, at 5, available at [https://unece.org/sites/default/files/2021-03/CCUS%20brochure\\_EN\\_final.pdf](https://unece.org/sites/default/files/2021-03/CCUS%20brochure_EN_final.pdf) (Jan. 2021) (noting that CCUS technologies are the “key to unlock” full decarbonization potential); Intergovernmental Panel on

Act (Pub. L. 117–58, Title III, Subtitle A – Sec. 40301), found that the large-scale deployment of carbon capture, removal, utilization, transport, and storage is critical for achieving “mid-century climate goals,” with carbon capture and storage necessary to reduce hard-to-abate emissions from the industrial sector, which accounts for nearly 25 percent of carbon dioxide (CO<sub>2</sub>) emissions in the United States.

Yet, while the Guidance acknowledges the climate change benefits of CCUS, it fails to fully appreciate and reflect the unique environmental, public health, and other benefits of CCUS projects, instead essentially approaching these projects as any other industrial project. In addition to highlighting the GHG reductions associated with CCUS projects globally, the Guidance should more specifically recognize local benefits to be gained from CCUS project development. For instance, where CCUS is added to an existing industrial facility, communities would benefit from potentially significant improvements in local air quality, due to reductions in emissions of nitrogen oxides (NO<sub>x</sub>), sulfur oxides (SO<sub>x</sub>), and particulate matter (PM) associated with the necessary treatment of flue gas as part of the CO<sub>2</sub> capture process. This is especially important to note, as existing facilities where carbon capture is likely to be considered are sometimes located near historically disadvantaged communities. While the Guidance appropriately recognizes that “CCUS deployment can and should reduce emissions of other kinds of pollution in addition to carbon pollution [and] protect communities from increases in cumulative pollution” and can maintain and create jobs,<sup>5</sup> this needs to be explicitly reflected in how agencies address permitting and review processes and decisions.

The Guidance should also specifically encourage agencies to provide communities with information relating to the benefits of CCUS projects to better enable them to meaningfully engage on CCUS issues. While the Chamber appreciates the Guidance’s emphasis on public engagement, including meaningful engagement with environmental justice and Tribal communities, achieving Congress’s direction to CEQ that the Guidance facilitate CCUS project reviews and support the “efficient, orderly, and responsible development” of these projects requires that agencies fully recognize and consider beneficial and not only adverse impacts, and envision approaches to public engagement that involve support for these projects rather than

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Climate Change (IPCC), *Special Report on Carbon Dioxide Capture and Storage*, at 3, available at [https://www.ipcc.ch/site/assets/uploads/2018/03/srccs\\_wholereport-1.pdf](https://www.ipcc.ch/site/assets/uploads/2018/03/srccs_wholereport-1.pdf) (2005) (noting the role of CCUS as a mitigation option for stabilization of atmospheric GHG concentrations).

<sup>5</sup> 87 Fed. Reg. at 8809.

presupposing community opposition. In addition to the benefits noted above, this includes recognizing the decades of experience with large-scale CO<sub>2</sub> sequestration demonstrating that the risk of seepage is very low and can be managed effectively.<sup>6</sup> This also includes recognizing that CO<sub>2</sub> storage often will be sited in remote locations, far from the capture site and residential communities. Efforts to address monitoring for sequestration similarly should reflect the benefits of sequestration and should not add undue costs or burdens.

CCUS technology and projects also present significant job growth potential, as recognized in a recent Department of Energy (DOE) National Energy Technology Laboratory report, which concluded that CCUS industry buildout could result in the creation of up to 1.8 million good-paying jobs through construction, operation, and maintenance of CCUS projects.<sup>7</sup> Notably, this recent DOE report concludes:

CCUS can also provide economic benefits, including job creation, especially in some of the communities most affected by emissions reductions (e.g., fossil fuel plants). As highlighted by the Biden Administration's July 2021 Justice40 Executive Order, providing benefits (including job transition) to the communities affected most by the energy transition is a top priority and a crucial challenge to the United States' success. As job losses from high-emission industries are not likely to occur in the same geographic areas where low-emission industry jobs are created, CCS can facilitate a transition that helps bridge the gap economically [by] providing employment . . . .<sup>8</sup>

In sum, as it proceeds to develop final guidance, to meet its mandate under the USE IT Act, CEQ should explicitly recognize that CCUS projects are different from other industrial projects and should address them accordingly. As discussed above, CCUS projects provide unique and important environmental, public health, and other

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<sup>6</sup> DOE National Energy Technology Laboratory, *Safe Geologic Storage of Captured Carbon Dioxide – DOE's Carbon Storage R&D Program: Two Decades in Review*, available at [https://www.netl.doe.gov/sites/default/files/Safe%20Geologic%20Storage%20of%20Captured%20Carbon%20Dioxide\\_April%2015%202020\\_FINAL.pdf](https://www.netl.doe.gov/sites/default/files/Safe%20Geologic%20Storage%20of%20Captured%20Carbon%20Dioxide_April%2015%202020_FINAL.pdf) (April 13, 2020) (noting advancements in CCUS technology that DOE and its partners have made as evidence that geologic storage is a viable and safe approach to reducing CO<sub>2</sub> emissions).

<sup>7</sup> DOE National Energy Laboratory, *Carbon Capture, Transport, and Storage: Supply Chain Deep Dive Assessment*, available at <https://www.energy.gov/sites/default/files/2022-02/Carbon%20Capture%20Supply%20Chain%20Report%20-%20Final.pdf> (Feb. 24, 2022).

<sup>8</sup> *Id.* at 2.

benefits—locally and globally. Recognizing these benefits in agency permitting and review processes is essential to advancing the development of CCUS in the United States.

***The Guidance should be clarified and revised to further facilitate efficient federal decision-making on CCUS projects, including CO<sub>2</sub> pipelines***

For CCUS technologies to play an important role in decarbonization in a way that meets the urgency of the Administration’s climate change goals, permitting and environmental reviews for these projects must be better coordinated and more efficient. American businesses interested in developing and investing in CCUS projects need appropriate processes to be in place so that projects can be delivered on time and on budget. While the Guidance notes that “[t]he process for permitting a CCUS project is similar to that for any industrial activity,” it is inappropriate to view CCUS projects as the same as other industrial activities due to the critically important environmental benefits associated with CCUS. There is a need to further prioritize CCUS project environmental reviews, permits, and approvals. The Guidance identifies a number of potential avenues to facilitate thorough and timely review of CCUS project components. However, additional concrete actions as suggested in these comments and clarity are needed from CEQ to ensure an efficient federal review process for CCUS projects to address climate change, improve local air quality, support economic growth, and create jobs.

First, the establishment of CCUS as a sector under FAST-41 through the USE IT Act<sup>9</sup> is a noteworthy step in the right direction, but additional guidance is needed on how a CCUS project would proceed under the FAST-41 process. As CEQ accurately notes in the Guidance, the Federal Permitting Improvement Steering Council (Permitting Council) has not yet received any CCUS project applications for FAST-41 coverage, and thus agencies have not yet had the opportunity to develop a comprehensive permitting timetable for any CCUS project. The Chamber generally agrees that actions should be taken to address how CCUS projects will be processed under FAST-41, and in doing so, the Chamber urges CEQ and the Permitting Council work to create a FAST-41 CCUS pathway that would meet FAST-41’s presumptive two-year timeline. The Chamber continues to support FAST-41 and its goals to drive more efficient permitting through increased transparency and interagency coordination. At

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<sup>9</sup> 42 U.S.C. § 4370m(6).

the same time, FAST-41 processes could be improved to continue to reduce delays and inefficiencies and help to further expedite federal permits and approvals for CCUS projects.<sup>10</sup> The Chamber supports CEQ’s recommendation that the Permitting Council Executive Director develop a recommended performance schedule identifying the environmental reviews and authorizations required for each category of CCUS project. Nevertheless, additional clarity—and stakeholder input—is needed concerning what project categories will be included and what appropriate facilitating agencies will take the lead for these CCUS categories.

Second, rather than suggesting that agencies “may also consider” implementing them,<sup>11</sup> CEQ should more strongly recommend that agencies implement MOUs to establish processes by which they will collaborate on anticipated CCUS projects and related activities. CEQ should take an active role in identifying where such MOUs will be helpful, with industry stakeholder input, and should coordinate with the agencies to develop them including pre-identifying lead agencies on a regional basis. Among other MOUs that could be helpful, we specifically recommend that relevant agencies enter into an MOU to address significant regulatory uncertainty regarding offshore CCUS pipelines. Even given the Department of the Interior’s offshore CCUS rulemaking, additional clarity will likely still be needed to address the role, if any, of other agencies, such as the Federal Energy Regulatory Commission and the Pipeline and Hazardous Materials Safety Administration, in regulating CO<sub>2</sub> pipelines on the Outer Continental Shelf.

Third, the Guidance should provide stronger direction to agencies to help ensure that NEPA reviews are conducted in a manner that avoids unnecessary duplication, cost, or delay. The multiple layers of environmental review that could come into play in advancing CCUS projects—e.g., federal funding, pipeline rights-of-way, possible resource management plan amendments—have the potential to add significant time, litigation risk, and cost to these projects. Accordingly, Congress provided specific direction in the USE IT Act, stating that CEQ’s Guidance “shall include direction to States and other interested parties for the development of programmatic environmental reviews under [NEPA] for [CCUS] projects and [CO<sub>2</sub>] pipelines.”<sup>12</sup> Congress was clear that CEQ “shall” provide direction “for” the

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<sup>10</sup> For example, CEQ should consider any lessons learned in permitting efficiency associated with the increased inclusion of offshore wind projects on the Federal Infrastructure Permitting Dashboard.

<sup>11</sup> 87 Fed. Reg. at 8810.

<sup>12</sup> Pub. L. No. 116-260, div. S, § 102(d)(2).

development of programmatic environmental reviews to streamline NEPA compliance, rather than merely suggesting that agencies “should consider developing programmatic environmental reviews” under statutes such as NEPA and the Endangered Species Act (ESA). We recommend CEQ revise this language in the final guidance, and provide more robust direction, to meet Congress’s intent that CEQ “facilitate[]” environmental reviews associated with the deployment of CCUS projects and CO<sub>2</sub> pipelines and to “support[] the efficient, orderly, and responsible development” of such projects and pipelines. NEPA reviews for projects that may be proceeding in advance of the establishment of programmatic environmental reviews should not be held up while a programmatic review is being developed. CEQ should also actively engage with relevant permitting agencies and industry stakeholders to identify opportunities where such programmatic reviews are likely to be helpful. Similarly, CEQ should provide guidance to agencies on the appropriate use of environmental assessments (EAs) and categorical exclusions for CCUS projects. CEQ should also consider development of further CCUS-specific NEPA guidance, including guidance to agencies on consideration of CCUS project benefits. Finally, CEQ should, in cooperation with the Environmental Protection Agency, provide clarity as to how the NEPA exemption (based on functional equivalence) for Underground Injection Control Class VI permits will be handled for CCUS projects where other project components or authorizations may require an EIS or EA.<sup>13</sup>

Fourth, CEQ should provide additional specificity and request public input on a methodology for a consistent and accurate lifecycle analysis (LCA) for CCUS projects. This should include clear and reasonable boundaries for what emissions should be included in the LCA. Further, the Guidance needs to facilitate consistent agency application of LCA methodology in both modelling and model assumptions. The broad language in the Guidance as drafted does little more than identify the issue, and CEQ should provide specific direction on how to ensure consistent LCA methodology across projects and different agencies.

Fifth and finally, the Guidance should provide additional specific information to ensure coordinated and efficient CCUS reviews. For example, the Guidance notes that a CO<sub>2</sub> pipeline could trigger obligations under the Clean Water Act (CWA), such as a CWA Section 404 permit. To facilitate the efficient, orderly, and responsible deployment of CCUS, CEQ should work with the Army Corps of Engineers to clarify

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<sup>13</sup> See, e.g., *W. Neb. Res. Council v. U.S. EPA*, 943 F.2d 867, 871-72 (8th Cir. 1991) (finding Safe Drinking Water Act procedures functionally equivalent to NEPA review requirements).



whether, and if so under what conditions, CCUS pipeline projects requiring a Section 404 permit would be eligible for nationwide permit (NWP) 58 or another NWP. To this end, we note that the USE IT Act specifically requires that CEQ guidance “address applicable requirements” under the CWA, NEPA, ESA, and several other statutes, as well as “any other Federal law that the Chair determines to be appropriate.”<sup>14</sup> Given this clear statutory direction, the Chamber respectfully suggests that CEQ should address these requirements—and the facilitation and simplifying of permitting and reviews associated with CCUS and CO<sub>2</sub> pipelines under each of these statutes—in a more meaningful way in its guidance.

### *Conclusion*

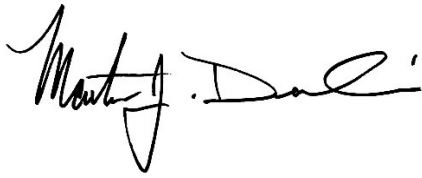
The Chamber appreciates CEQ’s efforts to facilitate CCUS environmental reviews and approvals to support the efficient, orderly, and responsible development of these projects. As CEQ further develops its guidance, the Chamber urges CEQ to provide appropriate direction to agencies to ensure that they fully consider the unique and important local, regional, national, and global benefits of CCUS projects and CO<sub>2</sub> pipeline development in their permitting and review processes, and that the agencies share information relevant to these benefits as part of their public engagement efforts. The speed and scale at which we can deploy the suite of CCUS technologies, while ensuring the environmental integrity of projects and engaging communities, will be critical to achieving mid-century climate and clean energy goals. CCUS provides an important tool in the toolbox as American businesses and government entities work together to reduce emissions and ensure a healthy environment for generations to come. Accordingly, the Chamber respectfully requests that CEQ consider the above comments aimed at highlighting the many benefits of CCUS as well as specific methods for better coordinating efficient and effective federal permitting and approvals.

Thank you for the opportunity to comment on the Guidance and to provide recommendations for CEQ to consider as it moves forward. The Chamber would welcome the opportunity to meet with you to discuss these comments and related issues.

Sincerely,

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<sup>14</sup> Pub. L. No. 116-260, div. S, § 102(d)(2).

A handwritten signature in black ink, appearing to read "Martin J. Durbin". The signature is fluid and cursive, with the first name "Martin" and last name "Durbin" clearly legible.

Martin J. Durbin  
President, Global Energy Institute  
Senior Vice President, Policy  
U.S. Chamber of Commerce