



**Proposed 45V Credit -- Verbal testimony**  
**Before the U.S. Dept. of the Treasury and the Internal Revenue Service**  
**26 CFR Part 1, [REG-117631-23], RIN 1545-BQ97**  
**Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15)**  
**Election to Treat Clean Hydrogen Production Facilities as Energy Property**

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Delaware Riverkeeper Network advocates that the Department of the Treasury and the I.R.S. ensures that the final rule strictly maintains the “three pillars” of “additionally, deliverability, and hourly time-matching” to prevent dirty and inefficient energy from qualifying for the 45V credits. Polluters, including the oil and gas industry, are campaigning to weaken the proposed regulations, by allowing hydrogen produced from methane through electrolysis to be claimed as eligible for the 45V tax credits and by removing strict oversight of the program. If the proposed rules are eroded by not implementing the three pillars, the investment by the Biden Administration will have the opposite effect than the stated purpose. Hydrogen production from electricity would far exceed the carbon emissions requirements of the 45V tax credit and greenhouse gas emissions will thereby increase, further fueling the climate crisis and negatively impacting frontline communities. IRS must ensure that the final rule strictly maintains these three pillars.

Delaware Riverkeeper Network opposes the provision in the proposed rule that delays the implementation of “hourly time-matching” until 2028. You must enforce hourly time matching without delay or polluters will undermine the program’s potential benefit and turn this credit into a counterproductive subsidy to the gas and oil industry. We do not see any plausible justification to delay implementation; it seems to simply be a perk for dirty energy suppliers. Without hourly time matching, making hydrogen from dirty energy will end up qualifying for the clean energy tax credits by pulling dirty energy from the grid. This will subsidize polluting interests that would otherwise be ineligible for these benefits<sup>1</sup>, greatly reducing transparency regarding the source of the energy being used to create hydrogen, and would increase GHG emissions. Furthermore, this would allow the continuation of the ruining communities and the environment where gas and oil companies, resource extraction dealers and their infrastructure are operating, compounding the environmental injustices forced on those already overburdened.

Delaware Riverkeeper Network also objects to the underestimate of fossil fuel emissions in the proposed rules that is built into the assumption that would be used to calculate the proposed

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<sup>1</sup> Wilson Ricks et al 2023 Environmental Research Letters <https://iopscience.iop.org/article/10.1088/1748-9326/acacb5#artAbst>

accounting of these emissions. The assumption is only one-third of the actual leakage rate established by science<sup>2</sup>. By allowing such a gross inaccuracy, hydrogen made from polluting fossil fuels will receive tax credits and greenhouse gas emissions and co-pollutants will continue to be emitted. There would be no way to accurately track these unaccounted-for and thus “invisible” emissions or control them, further adding to atmospheric warming and worsening the climate crisis. Even when hydrogen is “blue”, using fossil gas/methane with carbon capture, we know that it is a disaster at all levels, including for the climate.<sup>3</sup> This error in the proposed rules must be corrected.

Additionally, the additionality requirement must apply fully and equally to nuclear power plants. This already heavily subsidized industrial sector should not be treated any differently than any other energy provider. No special favors for nuclear power.

Finally, credits for carbon capture will allow fudging of the actual effects of fossil fuel emissions. Today carbon capture is technically unreliable and its efficacy is unproven. This has become an enormous loophole that allows greenwashing of fossil fuel use and must not be allowed in the 45V tax credit program. This loophole is being exploited by industry’s standard practice of trying to hide the facts from the public to serve their own special interests – making profits at the expense of the public, externalizing costs, and successfully escaping the scrutiny required to expose the full effect of dirty energy generation and use.

45V will award billions of taxpayer dollars and must not reward the special interests that want to take advantage of these subsidies without meeting the strictest of government regulations and oversight. We advocate that the three pillars be maintained and that the loopholes in the proposed rules be closed so that this program will not be turned against our nation’s goals of reducing greenhouse gas emissions to combat climate catastrophe and providing environmental justice to frontline communities.

I want to lodge a complaint about how these Hearings were set up. The Federal Register Notice was confusing and misleading. It seemed as if Treasury and the I.R.S. were trying to intentionally exclude people from testifying; have you forgotten that we are the taxpayers funding the 45V credit initiative? Not only was there only one hearing planned (and many of us had asked for more) but it was in person with telephonic participation, even though virtual on-line platforms are readily available. People had to submit an outline, request to testify by a certain date (a full week ahead of the March 25 hearing) and submit these in 2 different places to be accepted to speak.

Then without warning there were additional hearing days and speakers were moved arbitrarily to Tuesday or Wednesday from Monday if testifying by phone. I, myself, almost missed testifying altogether because I had a conflict for today that was set weeks ago. I wasn’t even asked if I wanted to be moved to Tuesday’s or Wednesday’s hearing; many if not all of those who testified telephonically had this experience. There were so many thresholds that people had to get over just to testify for a few minutes that general public participation was functionally discouraged. You must do better. Your hearing process must be more accessible to the public so that these

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<sup>2</sup> Robert Howarth, 2022, “Methane Emissions from the Production and Use of Natural Gas”, EM Magazine [https://www.research.howarthlab.org/documents/Howarth2022\\_EM\\_Magazine\\_methane.pdf](https://www.research.howarthlab.org/documents/Howarth2022_EM_Magazine_methane.pdf)

<sup>3</sup> Robert Howarth and Mark Z. Jacobson, 2021, “How green is blue hydrogen?”, Energy science and Engineering <https://doi.org/10.1002/ese3.956>

important rulemakings can reap the benefits of broad public participation in federal government programs.

Thank you.

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