



New Climate Law Explodes Direct Air Capture

By Mark Fogarty

It's too early yet to apply for funding under the many carbon removal, carbon capture and climate change provisions of the Inflation Removal Act, but it's not too early for tribes and others to start thinking about it.

No RFPs or DOIs have been issued yet in connection with the \$369 billion worth of climate change and renewable energy funding designed to reduce U.S. carbon emissions by 40 percent by 2030, but there will be many of them.

The first stop, though, may be the Internal Revenue Service. The new law increases the amount of credits that can be received for carbon removal (and carbon capture as well).

Credits for removal (direct air capture) would go from \$50 to \$180 per ton if the carbon is stored and from \$30 to \$150 if it is used.

The increase in credits may be crucial in jumpstarting this market. According to Wil Burns, a visiting environmental professor at Northwestern University, "Direct air capture cost estimates vary from \$250 to \$600 per ton, according to one analysis, while experts have estimated that a price under \$100 and closer to \$50 could create a market." See [here](#).

According to Burns, "There's hope that the increase in credit values for direct air capture will help to foster "synthetic economics" for this nascent market, infusing sufficient capital to develop technologies at scales that are profitable." And since there are only a few carbon removal facilities in existence now (Burns cites a study that counts 19 of them), there is a lot of opportunity for tribes and others to get established in this technology.

For those who would rather not read the entire 750-page law, the part most applicable to direct air capture and carbon capture (the two are sometimes confused, but DAC takes out of the atmosphere carbon that has already been emitted, while carbon capture prevents new carbon from being emitted) is Section 13104, EXTENSION AND MODIFICATION OF CREDIT FOR CARBON OXIDE SEQUESTRATION, which details the changes to the 45Q tax credit.

The relevant language for those considering startups, including direct air capture facilities, is spelled out clearly.

To qualify for the credit, you need to have a facility "the construction of which begins before January 1, 2033, and in the case of a direct air capture facility, captures not less than 1,000 metric tons of qualified carbon oxide during the taxable year."

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For those who want to get deeper into the weeds, you quickly get into DCSpeak such as the following: `(B) Special rule for direct air capture facilities.--In the case of any qualified facility described in subsection (d)(2)(A) which is placed in service after December 31, 2022, the applicable dollar amount shall be an amount equal to the applicable dollar amount otherwise determined with respect to such qualified facility under subparagraph (A), except that such subparagraph shall be applied--(i) by substituting `\$36` for `\$17` each place it appears, and (ii) by substituting `\$26` for `\$12` each place it appears."

The translation of this, according to DC law firm Nixon, Peabody, [here](#) is "The IRA also creates separate direct air capture (DAC) 45Q baseline credit amounts of \$36 per ton for permanent carbon sequestration and \$26 per ton for EOR and carbon utilization.

The DAC credits may also be multiplied by five if prevailing wage, hour, and apprenticeship requirements are met resulting in

45Q credits for sequestration and EOR/utilization of \$180 and \$130, respectively."

One top lawmaker, Sen. Brian Schatz, D, Hawaii, thinks tribes will be able to develop the expertise to take advantage of the provisions of the IRA.

"Native communities have the technical expertise, capacity, and place-based knowledge needed to develop effective climate change and energy solutions," said Schatz, chairman of the Senate Indian Affairs Committee.

"With critical investments in the Inflation Reduction Act, we're making sure the federal government steps up to support Native-driven climate resilience, advance Tribal energy development, and fulfill its trust responsibility to Native communities."

The Indian Affairs Committee tallied \$720 million in climate and environmental benefits to tribes from the IRA:

- \$235 million for Tribal climate resilience, including fish hatchery operations and maintenance;

- \$225 million for development of Tribal high-efficiency electric home rebate programs;
- \$150 million for Tribal home electrification;
- \$75 million for the Tribal Energy Loan Guarantee Program and \$20 billion in allowable loan guarantees;
- \$25 million for Native Hawaiian climate resilience; and \$12.5 million for Tribal emergency drought relief.

Breakouts for each of these programs are [here](#).

That tribal energy loan program, however, has been a non-starter to date (see sidebar) and will need to be jumpstarted to be really useful to tribes.

The IRA is a huge bill, and no doubt more will be discovered in the days and weeks ahead by expert analysis of its multitude of climate and environmental provisions.

For a good summary of all 31 (!) major things the IRA does through each of its eight parts, click on the JDSupra readout [here](#).

