Earthjustice Testimony for Treasury Public Hearing
Section 45 Credit for Production of Hydrogen
March 25, 2024

Good morning and thank you to representatives of Treasury and the IRS for convening this public hearing.

My name is Auburn Bell. I am a Legislative Representative at Earthjustice working on climate and energy policy.

I would like to start by thanking the Biden Administration for the progress already being made in addressing the climate crisis due to the historic investments from the Inflation Reduction Act – the largest climate investment in history. These unprecedented investments in climate and environmental justice are already boosting clean energy production across the country and helping clean up the air and water for communities that have long experienced the disparate impacts of pollution.

However, the promise of a new clean energy economy cannot come on the backs of the same frontline communities that continue to bear the brunt of last generation's dirty energy promises. It cannot come on the backs of people like Frank Pettis from Waukegan, IL whose sharecropper grandparents were drawn north by the promise of good jobs at manufacturing facilities and processing plants that are now superfund sites.

Treasury got it right with proposed rules for electrolytic hydrogen.

Earthjustice commends Treasury's strong proposed rule for the 45V tax credit for recognizing the importance of getting hydrogen production right the first time. The agency's adoption of stringent criteria—incrementality, hourly matching, and deliverability, often called the "three pillars"—correctly accounts for the induced grid emissions from electrolytic hydrogen production, which plays a significant role in the Biden Administration's roadmap for the hydrogen industry. Strict adherence to the three pillars is **necessary** to avoid the disastrous climate- and community-level consequences of subsidizing dirty hydrogen. The draft rule avoids wasting billions of tax dollars on subsidies for dirty hydrogen production projects that would spike climate and health-harming pollution. The draft rule also helps ensure this emerging industry does not cause families' electricity bills to skyrocket—an outcome we've seen from the similarly power-hungry crypto-mining industry.

However, more work is needed on hydrogen produced from methane.

While the proposed rules for electrolytic hydrogen are strong, Treasury needs to be just as rigorous in its carbon accounting for hydrogen produced from methane. To start, Treasury should accurately account for the emissions intensity of fossil hydrogen by updating GREET assumptions on methane leakage to reflect real-world data. For hydrogen producers that use carbon capture and sequestration, it will also be essential to accurately measure the emissions associated with capturing, handling, and storing that carbon. For storage, monitoring and verification protocols must be at least as rigorous as the ones Treasury adopts in its implementation of section 45Q. Proper carbon accounting will ensure Treasury does not illegally grant tax credits to hydrogen producers that fail to meet 45V's emission thresholds.

Treasury should not allow hydrogen producers to use biomethane credit schemes to negate emissions from their fossil methane purchases. For hydrogen producers that use biomethane or fugitive methane, Treasury should only treat these feedstocks as lower emitting than fossil fuels when they come from an unavoidable waste stream that has not been put to prior productive use. Any other approach would provide a powerful incentive to create additional methane waste through unsustainable practices that also burden neighboring communities with health-harming pollution.

Treasury should not weaken proposed rules due to an industry lobbying blitz.

This rule must be finalized **without** loopholes.

Weakening the rule would undermine the Biden Administration's pursuit of a net-zero emissions economy by allowing hydrogen producers to use paper accounting practices to characterize their hydrogen as low- or zero-carbon while continuing real-world practices that emit carbon pollution. We have heard the same talking points from industry irrespective of the rule in question; that sound policy will stifle economic progress and growth. That is a false choice that policymakers should roundly reject, and Congress was explicit when the 45v PTC program was enacted that this tax credit was intended to impact greenhouse gas emissions – not guarantee a profit windfall for industry. Weakening the rules would create a significant risk of hydrogen producers receiving 45V tax credits even when their hydrogen exceeds the emissions thresholds set by Congress, which would violate the statute.

The federal government has historically hastened the development of clean technologies and made progress on environmental justice when it set science-based standards despite industry complaints that they would be cost-prohibitive. Time and time again, once the policy signals are in place, industry has innovated and continued to thrive. Once again, we need the Biden Administration to follow the science and not set weak standards that cater to the lowest common denominator.

Treasury must properly account for fugitive emissions of hydrogen at production facilities.

To do so, Treasury must first clarify that taxpayers may only claim tax credits for hydrogen that they actually sell or use—not hydrogen that's vented or leaked. Second, the carbon intensity of the hydrogen that these facilities sell must reflect the climate-forcing impacts of their fugitive hydrogen emissions.

Conclusion

Earthjustice urges Treasury to finalize strong rules for the 45V tax credit to ensure hydrogen producers do not illegally receive tax credits for hydrogen production that is too polluting to meet Section 45V's emissions thresholds. Weak rules would drive dramatic increases in GHG emissions, health-harming pollution, and electricity rates and give dirty hydrogen producers an improper competitive advantage against companies with **truly** clean production processes. The stakes could not be higher. Our climate is warming rapidly, and we cannot risk investing precious time and resources in projects that plunge us deeper into our climate crisis. Nor can we subsidize projects that subject frontline communities to yet more toxic pollution in the name of "market creation." Our climate and communities need Treasury to get this right—and getting this right means finalizing a strong rule without loopholes.