



March 25, 2024

*Via Electronic Transmission: [www.regulations.gov](http://www.regulations.gov)*

Mr. Douglas W. O'Donnell  
Deputy Commissioner for Services and Enforcement  
CC:PA:LPD:PR (REG-132569-17), Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

**Re: Comments on the Definition of Energy Property and Rules Applicable to the Energy Credit; Correction; Docket No: REG-132569-17**

Dear Mr. O'Donnell:

The National Waste & Recycling Association (NWRA) and Solid Waste Association of North America (SWANA) are pleased to submit comments on the Internal Revenue Service's (IRS's) Definition of Energy Property and Rules Applicable to the Energy Credit, Docket No. REG-132569-17. NWRA and SWANA represent companies, municipalities, and professionals in the solid waste industry. NWRA is a not-for-profit trade association representing private solid waste and recycling collection, processing, and management companies that operate in all fifty states. SWANA is a not-for-profit professional association in the solid waste management field with more than 10,000 members from both the private and public sectors across North America. Members of both organizations strive to deliver collection, composting, recycling, and disposal services that are protective of the environment in a safe, science-based, and technologically advanced manner.

The correction clarifies the exclusion of gas upgrading equipment from the definition of qualified biogas property in proposed 26 C.F.R. §1.48-9(e)(11) to explain that "gas upgrading equipment that is necessary to concentrate the gas from qualified biogas property into the appropriate mixture for injection into a pipeline through removal of other gases...would be energy property if it is an integral part of an energy property as defined in §1.48-9(f)(3)." 89 Fed. Reg. at 13,294. We appreciate the clarification that may allow some gas upgrading equipment to qualify; however, we believe the correction notice continues to narrow the scope of the definition of qualified biogas property to exclude significant investments being made in equipment that processes and upgrades raw landfill biogas into renewable natural gas (RNG). Therefore, we continue to believe that treating gas upgrading equipment as a functionally interdependent component of qualified biogas property rather than property that is an integral part of qualified biogas property more appropriately reflects the function and purpose of gas upgrading equipment and is a better interpretation of the legislative language used in section 48.

Furthermore, the solid waste industry continues to have additional concerns under the proposed rule related to the following critical issues:

1. Application of the 80/20 Rule: Because it is most common for landfill gas collection property to have been placed in service before gas collected from the system is captured and integrated as part of a new RNG production system, the proposed treatment of landfill gas collection system property as a functionally interdependent part of the qualified biogas property makes it necessary to determine the fair market value of existing landfills and their collection wells (or components thereof) at the time new processing equipment is installed for the purpose of doing an 80/20 Rule analysis to determine the original placed-in-service date (and section 48 credit qualification) of the relevant RNG production system equipment. The valuation of this capital-intensive infrastructure may be difficult to determine and, in any event, jeopardizes the qualification of new RNG processing system property under section 48.
2. Ownership structures involving multiple, unrelated taxpayers: The proposed treatment of landfill gas collection system property as a functionally interdependent part of the qualified biogas property is problematic because it is very common for RNG production systems to be developed by a taxpayer at a landfill owned by a different, unrelated taxpayer. In this type of arrangement, it is important for the owner of the landfill to retain ownership and control of the landfill gas collection property in order to comply with existing regulatory and permitting requirements for operation of the landfill. In fact, as stated above, it is common for such landfill gas collection system property to have already been placed in service before such gas collected from the system is captured and integrated as part of a new RNG production system. Under the special rules concerning ownership by multiple owners in the Proposed Regulations, a taxpayer would have to own at least a fractional interest in both the landfill gas collection system and the RNG production system in order for the owner of the RNG production system to qualify for an investment tax credit on its new capital spending.

These two vitally important issues can both be addressed within the existing framework established by Treasury and IRS in the proposed rules by distinguishing between the “unit of energy property” and an “integral part of” such qualified biogas property. Specifically, we urge Treasury and IRS to modify the proposed rules to treat a landfill gas collection system as property that is an integral part of, but not functionally interdependent with, the other properties comprising an RNG production system, thereby recognizing that a landfill gas collection system is installed at a landfill for the primary purpose of complying with regulatory and permitting requirements at the landfill. In the words of the Proposed Regulations, the placing in service of a landfill gas collection system is “essential to the completeness of the intended function” of the qualified biogas property (or, in other words, an integral part of such qualified biogas property), but not “dependent on the placing in service of each of the other components in order to perform the intended function of” the qualified biogas property (or, in other words, not functionally interdependent).

As such, we recommend that the IRS make the following additional corrections:

1. Clarify that all of the property comprising cleaning and conditioning equipment, including gas upgrading equipment, are functionally interdependent components of a single unit of energy property;
2. Specify that a landfill gas collection system is property that is an integral part of, but not functionally interdependent with, the property comprising cleaning and conditioning equipment; and,
3. Clarify that the point of measurement of the gas methane content is at the point where the biogas is sold or put to productive use (i.e., after the biogas has passed through the cleaning and conditioning/gas upgrading equipment).

We very much appreciate the IRS's consideration of this information. Should you have any questions about this letter, please contact the undersigned at [agermain@wasterecycling.org](mailto:agermain@wasterecycling.org) or [koldendorf@swana.org](mailto:koldendorf@swana.org).

Very truly yours,



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