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Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-49)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Via Federal eRulemaking Portal: http://www.regulations.gov

Subject: bp America Inc. Technical Comments on Notice 2022-49

Office of Associate Chief Counsel:

Pursuant to the request for comments on provisions contained in §§ 45, 45U, 45Y, 48, and 48E of the Internal Revenue Code ("Code") as modified by the Inflation Reduction Act of 2022 ("IRA"), we are seeking confirmation and/or clarification, pursuant to Section 3.02(1)(c) of IRS Notice 2022-49, on qualification under § 48(c)(7) of certain biogas investments wherein different taxpayers own separate parts of a "system" for converting biomass into gas that is at least 52% methane.

We are also offering comments on the types of technologies and/or components that should be included as qualifying biogas energy property under §48(a)(3)(A)(x).

bp is keenly interested in clarification of these matters, as we aim to increase our annual low carbon investment 10-fold to approximately $5 billion a year, building out an integrated portfolio of low carbon technologies and operating assets, including investments in renewable power and renewable transportation fuels production capability with biogas investments both in the digester and landfill space being an integral part in achieving our net zero ambitions.

bp Supports the Coalition for Renewable Natural Gas Technical Comments

The Coalition for Renewable Natural Gas ("the Coalition") has similarly provided technical comments pursuant to Notice 2022-49, which we support. The comments contained in this letter are closely aligned with certain comments and recommendations made in the Coalition's comment letter.

Digester versus Landfill Biogas Systems

There are two primary ways in which biogas (i.e., biomethane) is collected, conditioned, processed and sold for productive use as a renewable power source or as a renewable transportation fuel replacement. One method is via an anaerobic digester in which a biogas project investor procures manure solids or other organic waste originating largely in the agricultural sector and, via investment in a digester and gas cleanup system, is able to break down the waste and collect methane and inert gas byproduct. This gas is then, via separate tangible personal property, cleaned, conditioned, and sold for productive use.

In a traditional agricultural biogas facility, the same taxpayer will own all of the tangible personal property and feedstock used to produce methane gas for productive use.

In contrast, landfill-based biogas projects most often split the ownership of various aspects of the biogas collection, cleaning and conditioning "system" between two separate parties. For example, in a traditional landfill-biogas production arrangement, a landfill owner will purchase and install a gas collection system that will collect methane and other gases (i.e. biogas) originating from anaerobically digested municipal solid waste and, instead of flaring the gas into the atmosphere, enter into a contractual arrangement with a third party biogas investor. The third party will work to install the requisite infrastructure to divert the municipal waste gas from the flare to a separate facility, built by the biogas investor, to clean and condition the biogas for productive use either as a renewable power feedstock or as a renewable transportation fuel.

In the landfill biogas space, the "system" that produces and collects the gas converted from biomass (i.e., converted via the decomposition of municipal waste) is held separately from the "system" that processes and conditions the gas to meet the productive use requirements. Even though the two parts of the system are owned by different taxpayers, both parts are collectively the "system" that meets the statutory requirements contained § 48(c)(7).[1]

[1] An example is where a taxpayer enters into an agreement to purchase the biomass-generated biogas from a landfill operator and builds the necessary tangible personal property to clean and condition the biogas for eventual productive use.

We therefore respectfully seek clarification and/or confirmation that for landfill biogas investments, different taxpayers can own the two parts of the "system," and each can claim an Investment Tax Credit ("ITC") on its part so long as the two parts can be shown to be part of a single system. This can be demonstrated by showing that the back-end equipment that cleans and conditions the gas is dedicated to a particular front-end conversion system.

Additionally, we would respectfully request confirmation that the claiming of an ITC associated with an investment in cleaning and conditioning biogas tangible personal property is not predicated on an ITC also being allowable simultaneously for portions of the "system" owned by the landfill owner. This is important because the portion of the system owned by the landfill owner (i.e., the landfill envelope and collection system) will have likely been placed in service prior to passage of the IRA.

While we believe § 48(c)(7) is relatively clear on this point, commentators have suggested clarification from the IRS is warranted given that this statute was more specifically written in the context of a digester biogas facility where ownership of the system is almost always unified within the same taxpayer claiming the ITC.

From a policy perspective, we believe there should be no difference between the digester and landfill biogas ITC since both types of projects capture a source of renewable natural gas that might otherwise go to waste for use in meeting US energy needs, meet the key goals of materially reducing greenhouse gas emissions both from preventing the venting or flaring of methane from agricultural or landfill sites, as well as displacing higher emitting sources of energy.

Types of qualifying components

We believe the following types of tangible personal property components should be included as qualifying biogas energy property:

- Feedstock management systems (landfill gas collection and control system (GCCS), piping that establishes connection between landing GCCS and RNG plant, manure solids separation equipment on grounds that this equipment is a necessary step in anerobic digestion);
- Digester system (tanks, lagoons and associated gas collection and control systems);
- Gas clean-up and conditioning equipment and controls system; and
- Final compression, by analogy to the definition of carbon capture equipment in the § 45Q regulations where everything, including

compressors, that captures carbon dioxide through the point where it is ready for transport counts as part of the capture train.

Conclusion

We appreciate the opportunity to submit comments and the opportunity to meet with the IRS and Treasury to discuss these issues further as proposed and final rules are promulgated. Please reach out to Craig Boals or Andy Porter at craig.boals@bp.com and andrew.porter2@bp.com to discuss.

Respectfully submitted,

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