

## Renewable Energy Law Update

4/15/2011

### Treasury Department Clarifies Availability of Cash Grant for Waste-to-Fuel Conversion Equipment

The U.S. Treasury Department (“Treasury”) has released additional guidance clarifying that waste-to-fuel conversion equipment may qualify for the 30 percent cash grant under ARRA Section 1603 in many circumstances. On April 13, Treasury updated the formal program [Guidance](#) (the “Guidance”) and added several items to its list of [Frequently Asked Questions](#) (the “FAQs”) to clarify that equipment that converts biomass, municipal solid waste, and other qualifying resources to fuel that is used to generate electricity may be eligible for the grant. Eligibility is possible even if the conversion equipment and the generation equipment are located at different sites and/or owned by different persons.

Under the prior Guidance, there was confusion about whether waste-to-fuel conversion equipment is eligible for the grant in cases where the conversion equipment is an integral part of a process of generating electricity but the generation equipment is located at a different site, is owned by a different person, or both.

The new Guidance clarifies that there is no “same site” or “same owner” requirement. The only requirements that *must* be met are that (1) the conversion equipment is “integrated” with the generation equipment and (2) the generation equipment meets applicable placed-in-service requirements.

Following are some of the points that are clarified in the new Guidance:

- In the case of open-loop biomass, closed-loop biomass and municipal solid waste, equipment that prepares the material to be used by a power plant may be eligible for the grant even if it is not located at the same site as the power plant.
- Equipment used to produce gas or liquid fuel from biomass or municipal solid waste may be eligible for the grant.
- Equipment (including pipelines) used to transport fuel from the conversion site to the generation site is *not* eligible for the grant.

- Equipment that is placed in service as an “integral part” of an existing generation facility is eligible for the grant only if the existing facility meets the applicable placed-in-service requirements of Code section 45. Those placed-in-service requirements vary depending on which energy resource is being converted into fuel for power generation. For example, in the case of equipment that converts municipal solid waste to fuel, the generation facility that uses the fuel must have been placed in service after October 22, 2004.

The new FAQs provide additional clarification regarding (1) how to determine whether conversion equipment is an integral part of a qualified facility; (2) how to treat conversion equipment that produces fuel that is not dedicated for use in a qualified facility; and (3) how owners of conversion equipment should apply for the grant. The new FAQs include the following points:

- Conversion equipment that is located at the same site and owned by the same person as generation equipment generally will be treated as an integral part of the facility that includes the generation equipment.
- If the conversion equipment and generation equipment are at different sites and/or have different owners, the owner of the conversion equipment will need to demonstrate a sufficient degree of integration. Relevant factors include (1) whether the conversion equipment and the generation equipment are placed in service simultaneously; (2) the extent to which the gas or liquid produced by the conversion equipment is dedicated to the generation equipment (e.g., under an exclusive long-term supply contract); and (3) the dependence of the generation facility on the gas or liquid produced by the conversion equipment.
- If less than all of the fuel produced by the conversion equipment is dedicated to a qualifying power generation facility, the eligible basis of the conversion equipment will be reduced proportionally. If less than 75 percent of the fuel is dedicated to a qualifying power generation facility, the conversion equipment may not be considered sufficiently integrated to qualify at all.
- The grant-eligible basis of the conversion equipment is determined without regard to the mix of fuels used by the generation equipment.
- If conversion equipment produces fuel that is dedicated to an existing power generation facility, the owner of the generation facility must join in the grant application for the conversion equipment (even if the owners are not the same), agreeing to the terms and conditions of the grant. Thus, the owner of the generation facility must waive any right to claim a production tax credit with respect to the electricity generated using the fuel produced by the conversion equipment.

Although the Guidance and the FAQs provide specific examples regarding the production of liquids and gases for use in power generation, the clarification of the “integral part” requirement should apply equally to equipment that produces solid fuels, such as pelletized biomass, as long

as the equipment is appropriately integrated with a qualifying generation facility.

We understand that the Internal Revenue Service is likely to apply the foregoing principles in determining the eligibility of property for the investment tax credit. Application of these principles to the investment tax credit will have increased importance if the cash grant program is not extended beyond 2011.

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