February 26, 2024

Douglas W. O'Donnell
Deputy Commissioner for Services and Enforcement
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property (IRS REG-117631-23)

Dear Mr. O'Donnell:

Waste Management (WM) appreciates the opportunity to submit comments on the proposed rule. WM is the leading provider of comprehensive waste management services in North America, with approximately 50,000 employees operating 263 solid waste landfills, 337 transfer stations, 135 materials recycling facilities, 44 organics processing facilities, 5 hazardous waste landfills, and a fleet of nearly 20,000 collection vehicles—the largest heavy-duty fleet of its kind operating in the United States and Canada. WM also is a top producer of transportation fuel, making compressed and liquefied renewable natural gas (RNG) from landfill biogas.

WM commends Congress and the Administration for recognizing the capability of RNG as a low-carbon feedstock for clean hydrogen production and urges the agency to work closely with WM and other RNG stakeholders in development of a final rule. As such, we offer the following comments outlining some of the unique features of our sector that may warrant continued attention to avoid inconsistency with other federal and state programs and nationwide decarbonization initiatives.

I. Book-and-Claim/Mass Balance Accounting

WM applauds the agency for acknowledging that sourcing of RNG as a feedstock, which is largely distributed through the North American common carrier pipeline system, can be achieved through book-and-claim or mass balance tracking systems where RNG is injected into the same distribution system from which gas is withdrawn for downstream uses. This approach has a long history in the natural gas market, as well as in established regulatory programs (the federal Renewable Fuel Standard program, California's Low-Carbon Fuel Standard program, etc.), and was envisioned by Congress upon enactment of the Inflation Reduction Act, as reflected in the colloquy that occurred in the Senate between Senate Finance Committee Member Thomas R. Carper and Senate Finance Committee Chair Ron Wyden:

> *Mr. CARPER. It is also my understanding of the intent of section 13204, is that in determining "lifecycle greenhouse gas emissions" for this section, the Secretary shall recognize and incorporate indirect book accounting factors, also known as a book and claim system, that reduce effective greenhouse gas emissions, which includes, but is not limited to, renewable energy credits,*

renewable thermal credits, renewable identification numbers, or biogas credits. Is that the chairman's understanding as well?

Mr. WYDEN. Yes. [1]

Critically, the book-and-claim/mass balance approach is a foundational backbone for facilitating RNG transactions and has been in use for decades without identified cases of fraud or double-counting. This type of system also has proven successful in many established programs and should be available to taxpayers in demonstrating the use of RNG as a feedstock for clean hydrogen production under section 45V of the Tax Code.

II. The Proposed "First Productive Use" Requirement

Of particular concern to WM is the proposed "first productive use" requirement, which, if finalized as proposed, could exclude the vast majority of RNG from use as a feedstock for clean hydrogen production. Unlike with electricity, there is a dearth of evidence to support the concept that RNG used in current applications and diverted for clean hydrogen production would be replaced with fossil fuels. The growing popularity of policies that incentivize the production of RNG—the expanded Section 48 tax credit for qualified biogas property, the federal Renewable Fuel Standard program, and the California Low Carbon Fuel Standard program, among others—serve as a backstop to induced emissions and will continue to incentivize RNG production over the period of tax credit availability.

Nevertheless, if the agency remains concerned about induced emissions, it could adopt a mid-program "check-in" (e.g., in 2029) to evaluate whether clean hydrogen produced using RNG is leading to unintended increases in emissions. Facilities that have achieved commercial operation during this period could qualify as "additional" for purposes of tax credit eligibility. Moreover, any biogas sources that are newly converted from electricity generation to RNG production should be credit-eligible regardless of whether the agency adopts the proposed "first productive use" requirement.

III. Geographic Restrictions on the Use of RNG

Unlike the power sector, all major North American gas pipelines are interconnected and, in many instances, bidirectionally flowing. Natural gas has long been distributed throughout these pipelines under federal and state oversight that carefully tracks volumes being injected and withdrawn throughout the entire system. Natural gas and RNG thus are able to flow, for example, from New England to all areas of the United States, from Texas to California, and from Colorado to California.

WM has a strong commitment to sustainability, with planned investments in RNG production infrastructure totaling over $1.2 billion through 2026, potentially increasing our nationwide level of production by 715 percent. Many of the landfills that we are targeting for investment are at geographically dispersed, and often remote, locations. Any deliverability requirement that limits the use of RNG transmitted in the common carrier pipeline system therefore could preclude RNG from many of these sources from being used as a feedstock for clean hydrogen production. Any such policy also would run counter to established programs (e.g., the federal Renewable Fuel Standard program) and undermine

[1] S.4165 – 117th Congress (2021-2022): Honoring the Dedication of the Ball Family, Aug. 6, 2022, *at* https://www.congress.gov/congressional-record/volume-168/issue-133/senate-section/article/S4165-3.

the primary environmental benefits of RNG: its current availability, low carbon intensity, and compatibility with the entire North American gas pipeline system.

WM appreciates the opportunity to comment on the proposed rule, and we look forward to working constructively with your office in the months ahead. If you have any questions about our recommendations, please do not hesitate to contact me at 202-639-1218 or at mjensen1@wm.com.

Sincerely,

Michael C. Jensen
Senior Counsel / Director of Regulatory Affairs
WM