Amp Americas

December 5, 2022

The Honorable Janet L. Yellen
U.S. Secretary of the Treasury
Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-58)
Room 5203, P.O. Box 7604
Ben Franklin Station, Washington, D.C., 20044

Re: Notice 2022-58, Request for Comments on Credits for Clean Hydrogen and Clean Fuel Production

Dear Secretary Yellen:

Amp Americas ("Amp") hereby submits these comments in response to the U.S. Department of the Treasury's ("Treasury") above referenced request for comments to issue guidance regarding the clean hydrogen credit provision under new Code[1] Section 45V and the clean fuel production credit provision under new Code Section 45Z, as added by Sections 13204 and 13704, respectively, of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 ("IRA"). Amp thanks Treasury for the opportunity to comment on aspects of the IRA.

Founded in 2011 and based in Chicago, Illinois, Amp is an American-owned and operated developer, owner, and operator of facilities that convert dairy waste into carbon negative renewable natural gas ("RNG") and electricity. RNG produced by Amp fuels heavy duty truck fleets and hydrogen fuel cell vehicles and charges electric forklifts. Amp's facilities both reduce on-farm methane emissions upstream and displace higher emission fuels downstream. Accordingly, Amp's facilities are a crucial ingredient in the American energy transition and fight against climate change.

As a pioneer in the dairy RNG industry, Amp registered the first dairy RNG project certified by the U.S. Environmental Protection Agency's Renewable Fuel Standard ("RFS") Program to generate D3 Renewable Identification Numbers ("RINs") and the first dairy RNG project certified by California's Low Carbon Fuel Standard Program ("LFCS"). Our experience building, operating and reporting on these assets gives us a unique perspective on the implementation and administration of greenhouse gas emissions-based incentive frameworks.

Amp supports policy that addresses the immediate imperative to reduce greenhouse gas emissions and believes that the incentives in the IRA will stimulate rapid deployment of low carbon energy solutions, positioning the United States for global leadership in a diverse portfolio of renewable energy production capabilities. To this end, Amp requests Treasury consider the following comments when drafting guidance regarding new Code Sections 45V and 45Z.

[1] All references to the "Code" herein are to the Internal Revenue Code of 1986, as amended and restated.

I. Treasury should broadly interpret the phrase "suitable for use as" in Code Section 45Z(d)(5)(A)(i).

The clean fuel production credit under Code Section 45Z is available in respect of "transportation fuel" with a carbon emissions rate of no more than 50 kilograms of CO2 equivalent per million BTUs (the "45Z Credit"). For purposes of the 45Z Credit, transportation fuel is defined as any fuel that meets the carbon emissions rate requirement, is not derived from co-processing certain materials with biomass and "is *suitable for use as* a fuel in a highway vehicle or aircraft."[2]

It is very clear that Congress intended the concept of transportation fuel to be interpreted broadly. First, in both the credit for biodiesel and renewable diesel used as fuel under Code Section 40A and the sustainable aviation fuel credit under Code Section 40B, Congress drafted specific requirements that fuels eligible for such credits must be "used as" a fuel, "sold . . . and placed in the fuel tank" or "sold for use as" a fuel.[3] The statutory language for both of these credits lacks any reference to suitability and focuses exclusively on actual and intended use. The substitution of the "suitable for use as" language in the 45Z Credit in lieu of the "used or sold for use as" language in Code Sections 40A and 40B indicates a clear intention to decouple the 45Z Credit from the actual or intended use of the resulting fuel. Code Sections 40A and 40B were amended and drafted, respectively, contemporaneously with the 45Z Credit and it is clear that if Congress had intended for the 45Z Credit to be interpreted in the same restrictive manner as the credits in Code Sections 40A and 40B it would have used the same language. Rather, Congress' choice to create the unique "suitable for use" language employed in the 45Z Credit demonstrates clear intent to broaden the application of the 45Z Credit.

Second, the excise tax credit for alcohol fuel, biodiesel and alternative fuel mixtures under Code Section 6426, like the credits under Code Sections 40A and 40B, also requires that eligible fuels be "sold by the taxpayer . . . for use as a fuel" or "used as a fuel by the taxpayer" in order to qualify for the excise tax credit.[4] As with the credit under Code Section 40A, this credit was amended contemporaneously with the creation of the 45Z Credit and Congress's choice to draft unique language for the 45Z Credit emphasizing "suitability for use" rather than actual use must be seen as evidence that the 45Z Credit is intended to be available much more broadly than the credits available under Code Sections 40A, 40B or 6426.

Third, in the IRA, Congress describes Code Section 45Z transportation fuel as indicative of an energy efficient *furnace* under Code Sections 25C(d)(2)(C) *et. seq.* and 25C(d)(3)(C). Specifically, these provisions together provide that hot water boilers and oil furnaces that use transportation fuel as defined in new Code Section 45Z(d)(5) are eligible for the energy efficient home appliance credit. Given that furnaces are definitely not a mode of transportation, Congress could not have meant that a Code Section 45Z fuel *actually must* be used in any kind of transportation application.

In addition, the plain meaning of "suitable for use" is that something *may* be used for a particular purpose, but not at the exclusion of other use cases, as pointed out by Senator Wyden on the floor of the Senate

[2] Code Section 45Z(d)(5)(A)(i), emphasis added.
[3] Code Sections 40A(b)(1)(B), (b)(2)(A), and 40B(c)(2), respectively.
[4] Code Section 6426(c)(3)(A) and (B), respectively.

prior to the Senate vote on the IRA.[5] Fuels that are "suitable for use" in highway vehicles or aircraft are often equally useful in many other applications. For example, while natural gas is suitable for use as a fuel for on-highway vehicles, it is also widely used in other applications such as home heating, cooking and even residential standby power generation. While ammonia is suitable for use as a fuel that powers a maritime vessel, it may also be burned in an industrial furnace or spread on fields as a fertilizer. Crucially, *the chemical composition of these fuels is the same regardless of the use case.* Thus, just because a fuel is suitable for use in one application does not mean that it should not or may not be used in any other application. This interpretation is consistent with the Congressional intent expressed by Senator Wyden: "The credit is intended to incentivize production of biofuels of a certain quality, usable as fuel for highway vehicles or aircrafts, but not limited only to fuels which are actually used in highway vehicles or aircrafts."[6]

As such, Treasury should interpret the "suitable for use" requirement as meaning only that the fuel be of a type that may be used in a transportation application. Such an interpretation will dramatically increase the adoption of clean fuels in transportation and other applications such as the very difficult to decarbonize industrial sector. Taken together, this would serve the Biden Administration's intention that the IRA immediately lead America's fight against climate change *this decade*.

II. Treasury should provide clear and predictable guidelines for emissions rates for both Code Section 45Z and 45V and permit taxpayers to obtain a facility-specific emissions rate.

A. Applicable law

Code Section 45Z(b)(1)(B)(i) and (ii) requires that Treasury publish annual emissions rate tables for "similar types and categories of transportation fuels" based on lifecycle greenhouse gas ("GHG") emissions for those fuels, with the emissions rates for fuels other than sustainable aviation fuels being determined under the Greenhouse gases, Regulated Emissions, and Energy use in Transportation model developed by Argonne National Laboratory ("Argonne GREET") or a successor model. If an emissions rate has not been established by Treasury for any transportation fuel, a taxpayer producing such fuel may file a petition for determination of the emissions rate with respect to such fuel.[7]

Section 45V also specifies that the amount of U.S. federal income tax credit available in respect of hydrogen produced is based on the most recent Argonne GREET or a successor model, but does not specify that Treasury publish a table of emissions rates. Similar to Section 45Z, if an emissions rate has not been determined for any hydrogen, a taxpayer producing such hydrogen may file a petition for determination of the emissions rate with respect to such hydrogen.[8]

[5] 168 Cong. Rec. S4165, S4166 (Aug. 6, 2022).
[6] *Id.*
[7] Code Section 45Z(b)(1)(D).
[8] Code Section 45V(c)(2)(C).

B. Treasury should publish annual emissions rate tables using Argonne GREET model assumptions that align with actual facility emissions.

The unmodified Argonne GREET model provides certain scores based on specific types of energy production pathways (e.g., RNG from dairy operations) and assumptions (e.g., the amount of solids that are transferred to a lagoon). These scores are based on generalized assumptions per state or across the United States and do not reflect the emissions produced by any one facility. The generalized assumptions in the model are often significantly different than the facts at actual facilities. For example, while some dairies may not use lagoon storage for manure, dairy RNG is only produced at dairy farms that use a lagoon system for storing solid waste. In contrast, the unmodified Argonne GREET model uses a generalized assumption about the percentage of solids that are transferred to a lagoon at any farm utilizing any kind of livestock in a given state, regardless of whether RNG is produced using that farm's solids. Thus, simply using the standard Argonne GREET score for a livestock-to-RNG facility would produce a score that is radically less negative than that at a dairy farm that is actually producing RNG.

Nonetheless, it is useful for Treasury and for taxpayers to have the simplicity and foreseeability of a standardized default score for facilities that may qualify for the Code Section 45Z or 45V credits. This can be accommodated by using the Argonne GREET model and modifying certain key assumptions. In the context of livestock waste-to-RNG facilities, Amp notes that a reasonable approach would be to modify the Argonne GREET model to account for animal species and the percentage of solids that go to a lagoon. These nominal changes would result in scores that significantly, but not entirely, correlate with the score that a facility would obtain in an audit, as described below, and account for avoided emissions.

In the context of Code Section 45Z, Amp suggests that these scores based on small modifications of the Argonne GREET be used to create an emissions rate table that applies as of January 1 of each year in which the credit is available (the scores listed on such table, the "Default 45Z Rate"). The Default 45Z Rate for each year should be based on the modified Argonne GREET score that was published most recently before the annual effective date. Further, Amp suggests that the Default 45Z Rate available at the time that a facility begins construction[9] be the default rate for fuel produced by that facility. For any facility that begins construction prior to January 1, 2025, Amp suggests that Treasury publish guidance stating that the Argonne GREET score for the relevant pathway using standard modifications appropriate to the pathway (such as animal species and percentage of solids transferred to a lagoon in the case of livestock waste-to-RNG) that was available on the day on which a facility began construction will be the Default 45Z Rate for such facility.

In the context of Code Section 45V, Amp suggests that the most recent Argonne GREET score published for hydrogen pathways again, modified as appropriate, be used as default scores for hydrogen production facilities, in each case based on the beginning of construction date for that facility.

[9] For this purpose, beginning of construction should have the meaning set forth in Notice

C. Treasury should permit taxpayers to obtain a facility-specific GHG score.

As noted above, even a modified Argonne GREET score that is relatively standardized is likely to materially deviate from the score obtained for a facility based on a calculation using facility-specific facts. Thus, Amp urges Treasury to authorize a process whereby a taxpayer may obtain a facility-specific Argonne GREET score.

Neither Code Section 45Z nor Code Section 45V prohibits Treasury from permitting a taxpayer to use a GHG rating for a facility and such a process is within Treasury's authority to issue guidance interpreting these provisions. Moreover, Treasury will have the tools to evaluate facility-specific ratings because Code Sections 45V(c)(2)(C) and 45Z(b)(1)(D) permit taxpayers to petition Treasury for an emissions rating when a lifecycle GHG emissions rate has not otherwise been determined with respect to a facility.

Treasury does not have to deviate from GHG emissions ratings under the Argonne GREET or a successor model to permit taxpayers to obtain a facility-specific rating. As discussed above, both the low-carbon fuels industry and the hydrogen industry currently use iterations of the Argonne GREET model to create estimated ratings for fuels produced by a specific facility and use the same models to obtain a rating for each such facility based on operations. Both the estimates and the ratings based on operations are obtained on a facility-specific basis *and* verified by independent third parties.

Accordingly, Amp strongly suggests that Treasury publish in guidance a process by which a taxpayer may obtain a facility-specific score for a Code Section 45Z or 45V qualified facility, as applicable. Such a process would include permitting taxpayers to submit an independent third-party audited, facility-specific emissions rating using a recognized GREET method (such as the modified Argonne GREET model, the California GREET 3.0 model or the California Simplified Models, or similar tools used in other states that have a GREET-derived model) with an accompanying audit report no later than the last day on which a tax return must be filed (after accounting for extensions) for the tax year in which the facility was placed in service. In all cases, the recognized GREET method should calculate lifecycle greenhouse gas emissions from feedstock to the point of RNG injection. These boundary limits—and specifically allowing for avoided emissions—are critical for consistency with the concept of a production credit and for incentivizing accelerated development of projects that reduce and capture emissions for beneficial use.

By allowing taxpayers to utilize existing, recognized processes for verifying the GHG emissions of a facility using methods derived from Argonne GREET, Treasury will significantly reduce the administrative burden on itself and taxpayers, while also significantly increasing the impact of clean fuels and hydrogen on the American economy and fight against climate change.

D. When calculating a facility-specific emissions rating, Treasury should permit taxpayers to use book and claim accounting to calculate GREET scores for Code Section 45Z and 45V facilities.

Book and claim accounting is frequently used to correlate the environmental attributes of RNG that is produced in one location with the RNG that is used in another location. These methods are well established in the context of the RFS program and widely used. Part of the reason why they are so widely

used is because they are an efficient way to trace the natural gas that a person uses to the RNG that is produced in another location and displaces fossil natural gas without attempting to trace individual molecules in a commingled pipeline or impose expensive and energy inefficient transportation methods on producers and users of RNG. Quite simply, without using a book and claim method, it would be extremely difficult to promote the development of the renewable fuels industry, which, after all, produces and sells commodities. Moreover, the Congressional Record indicates that Senator Wyden agrees that book and claim accounting may be used in the context of calculating emissions from a Code Section 45Z or 45V facility.[10]

E. Further, Treasury should not consider co-products of hydrogen production using RNG and steam methane reformation ("SMR") in the context of determining a facility-specific emissions rating.

RNG is fundamentally purified methane from captured biogenic emissions. Biogenic emissions occur through natural processes such as the decomposition of organic matter and are not a result of extraction, combustion, or other use of fossil fuels. Given that Code Section 45V is intended to incentivize the production of very low-emissions fuel, requiring that co-products ultimately derived from a biogenic emission be accounted for in a GREET rating must be carefully considered. Because biogenic emissions ultimately derive from a naturally-occurring process, i.e., the breakdown of organic matter), co-products of the use of RNG would generally be released into the air in any event. Therefore, when they result from an SMR process using RNG, any co-products that are vented should be treated as neutral at worst. In addition, co-products that are put to a commercial use rather than being vented should be treated as avoided emissions because commercial use avoids the emissions that would otherwise enter the atmosphere if the material used to produce RNG had not been collected and converted to RNG

III. Treasury should interpret the phrase "gallon equivalent" in a manner that is consistent with the existing equivalence values promulgated by the Environmental Protection Agency ("EPA") as part of its Renewable Fuel Standard ("RFS").

The 45Z Credit specifies in Code Section 45Z(a)(1) that the amount of the 45Z Credit is calculated by multiplying the applicable per gallon (or gallon equivalent) credit amount by the number of gallons (or gallon equivalents) sold and then multiplying that result by an Emissions Rate determined annually by Treasury. The statute is silent with respect to the reference fuel used to determine the energy content of a "gallon equivalent" for purposes of the 45Z Credit. Congress's decision to leave the reference fuel unspecified appears to be deliberate given that all other references to a "gallon equivalent" contained in the Code also include a specific reference fuel[11] and many of these other Code sections, including the portions defining reference fuels, were revised contemporaneously with the creation of the 45Z Credit as part of the IRA.

[10] 168 Cong. Rec. S4165, S4166 (Aug. 6, 2022).

[11] For example, Code Section 30B(c)(2)(A)(ii) specifies the use of a "gasoline gallon equivalent," Code Section 6426(b)(4)(A) specifies an "alcohol gallon equivalent," and Code Sections 6426(j)(1) and (2) specify gasoline and diesel as reference fuels, respectively.

By leaving the reference fuel for the 45Z Credit undefined, Congress implicitly granted Treasury wide latitude in the administration of the 45Z Credit. Essentially, Treasury has been given the power to expand or restrict the amount of credit available based upon the reference fuel it chooses when defining a "gallon equivalent." For example, diesel fuel has an energy density of approximately 128,488 Btu/gallon while ethanol has an energy density of approximately 76,330 Btu/gallon.[12] Defining a gallon equivalent by reference to diesel fuel would effectively reduce the available credit compared to defining ethanol as the reference fuel because a given amount of clean fuel will produce fewer diesel gallon equivalents than ethanol gallon equivalents.[13]

Treasury should use the discretion intentionally given to it when Congress drafted the 45Z Credit to increase the effects of this credit by promulgating guidance congruent with that issued by the EPA as part of its RFS program and defining gallon equivalents by reference to ethanol.[14] By interpreting the phrase "gallon equivalent" as referring to an ethanol gallon equivalent and thereby effectively increasing the available credit amount, Treasury would increase the incentive for taxpayers to produce clean RNG and accelerate the use of RNG to displace higher emissions fuels derived from nonrenewable sources that generate higher lifecycle greenhouse gas emissions compared to RNG.

IV. Treasury should clearly include facilities that convert biogas to RNG and facilities that convert biogas to electricity within its interpretation of the definition of a "qualified facility" for purposes of Section 45Z.

Code Section 45Z(a)(1)(A)(i) requires that transportation fuel be produced in a "qualified facility" in order to be eligible for the 45Z Credit. The term "qualified facility" is defined in Code Section 45Z(d)(4) *et. seq.* simply as "a facility used for the production of transportation fuels," excluding only certain clean hydrogen production and carbon sequestration facilities for which certain other credits are allowed.[15] As discussed in greater detail in Section II, the definition of a "transportation fuel" for purposes of the 45Z Credit requires only that a fuel be "suitable for use" in highway vehicles or aircraft and does not require that the fuel actually be used in, or even purchased or produced with the intention of use in, such applications.

This broad statutory language and the extremely specific statutory exclusions indicate that the focus for the 45Z Credit is on broadly encouraging the production of clean fuels in general rather than on narrowly tailoring a credit to specific industries. Amp encourages Treasury to make this broad focus clear in its regulations. Specifically, Amp requests that Treasury expressly include facilities that convert biogas

[12] Alternative Fuels Data Center Fuel Properties Comparison, U.S. Dept. of Energy, last accessed Nov. 16, 2022, https://afdc.energy.gov/files/u/publication/fuel_comparison_chart.pdf.

[13] For example, if a given amount of clean fuel contains 150,000 Btus, that amount of clean fuel would represent 1.17 diesel gallon equivalents but 1.97 ethanol gallon equivalents.

[14] 40 C.F.R. § 80.1415(b)(5) ("77,000 Btu (lower heating value) of compressed natural gas (CNG) or liquefied natural gas (LNG) shall represent one gallon of renewable fuel.") Note that for convenience of calculation the EPA has rounded the Btu/gal equivalent value to 77,000 Btu instead of the 76,330 Btu/gal value noted in the fuel properties comparison chart published by the U.S. Dept. of Energy.

[15] Code Sections 45Z(d)(4)(B)(i) through (iii) exclude facilities for which either the Section 45V clean hydrogen or 45Q carbon oxide sequestration credit is allowed, and any facility for which a credit is allowed under Section 46 that is attributable to the Section 48 energy credit for a hydrogen facility making a Section 48(a)(15) election.

derived from livestock waste into electricity within its examples of qualified facilities for purposes of Code Section 45Z(d)(4).

Electricity produced by a biogas electrical generation facility is indistinguishable from electricity generated through other means and with over 1.4 million all-electric vehicles currently registered in the U.S. alone[16] the suitability of electricity for use in highway vehicles is self-evident. The classification of electricity as a vehicle fuel is consistent with precedent set by the Energy Policy Act of 1992 and electricity is considered a fuel for purposes of the Clean-Fuel Vehicles deduction under Code Section 179A and the Alternative Fuel Vehicle Refueling Property credit under Code Section 30C.[17] Categorizing electricity as a fuel in the context of the 45Z Credit is therefore consistent with other sections of the Code in which clean vehicle fuels are discussed. Because electricity should itself be considered a fuel that is suitable for use in highway vehicles, a facility that uses biogas to produce electricity should be considered a facility that is "used for the production of transportation fuel" within the context of the 45Z Credit. An interpretation of the 45Z Credit in which electricity is considered a fuel suitable for use in highway vehicles, in addition to being consistent with other sections of the Code, would further increase the incentives for investment in clean electrical generation facilities and help accelerate the expansion of U.S. electrical grid capacity to accommodate increased vehicle charging loads as electric vehicles increasingly supplant internal combustion engine ("ICE") vehicles.

Increasing the number of clean electricity generation facilities would also drive down the cost of electricity, thereby reducing the running costs associated with electric vehicles and increasing the attractiveness of such vehicles to consumers. The greater the cost advantage of electric vehicles, the more attractive such vehicles become in comparison to ICE vehicles, accelerating the displacement of ICE vehicles and reducing overall greenhouse gas emissions, a key goal of the energy credits contained in the IRA. Additionally, providing further incentives for the production of clean electricity will contribute to the IRA's goal of accelerating the country's transition away from greenhouse gas intensive power production using coal and other non-renewable fossil fuels.

For all of the above reasons, Amp strongly encourages Treasury to include facilities that use biogas derived from livestock waste to generate electricity alongside facilities that use biogas to create RNG in any list of examples of facilities that are considered qualified facilities for purposes of the 45Z Credit.

V. Treasury should provide unambiguous reassurance that downstream users of qualified transportation fuel for which the Section 45Z credit has been claimed may also claim other credits for which they are otherwise eligible.

Under Section 45Z(d)(4)(B), the term "qualified facility" does not include any facility for which a credit under Sections 45V and 45Q is "***allowed***". The distinction between the terms "allowable" and "allowed"

[16] Alternative Fuels Data Center Electric Vehicle Registrations by State as of Dec. 31, 2021, U.S. Dept. of Energy, last accessed Nov. 17, 2022, https://afdc.energy.gov/files/u/data/data_source/10962/10962-ev-registration-counts-by-state_6-30-22.xlsx

[17] Alternative Fuels Data Center, Electricity Basics, U.S. Dept. of Energy, last accessed Nov. 16, 2022, https://afdc.energy.gov/fuels/electricity_basics.html; Code Section 179A(e)(1)(E); Code Section 30C(c)(1)(B)(iii).

is significant when determining whether a taxpayer may claim certain credits. It is important to stress that "allowable" means that there is a possibility that a credit can be claimed (even if a taxpayer has not done so), while "allowed" means that a taxpayer has actually claimed a credit and IRS has *allowed* the credit to offset the taxpayer's tax liability. Thus, a taxpayer may not claim Code Section 45Z credits in respect of a facility for which the taxpayer has claimed a Section 45V or 45Q credit.

Although Code Section 45Z(d)(4)(B) sets forth limited circumstances under which the 45Z Credit is not available for certain clean hydrogen production and carbon oxide sequestration facilities, there is no provision in the Code that would preclude downstream purchasers of fuel for which the producer claimed a 45Z Credit ("45Z Fuel") from claiming other renewable energy credits for which such downstream purchaser's use of the fuel may qualify. For example, there are no statutory provisions that would prevent a taxpayer from taking the clean electricity investment credit under Code Section 48E simply because the facility for which the credit under Section 48E was claimed used 45Z Fuel. Nor is there a statutory provision that would prevent a taxpayer from taking the Code Section 45V credit in respect of hydrogen produced using 45Z Fuel purchased from an unrelated person.

Amp requests Treasury include clear and unambiguous guidance stating that the use of 45Z Fuels will not preclude a taxpayer from claiming any federal income tax credit for which such taxpayer would otherwise be eligible. Amp further encourages Treasury to honor the plain language of the 45Z Credit and impose only such requirements on downstream users of 45Z Fuels as are required to prevent abuse. For example, Amp agrees that downstream producers should not be permitted to merely re-sell 45Z Fuels and claim a new 45Z Credit. However, Amp encourages Treasury to recognize that downstream producers using 45Z Fuels in the *production of other fuels* for which the 45Z Credit is generally available should be permitted to claim the 45Z Credit in respect of such fuels. Providing clear guidance to this effect will reassure the potential market for 45Z Fuels and will encourage American businesses to choose clean fuels before fossil fuels. Without such guidance, uncertainty with respect to downstream credit availability will suppress the market for clean fuels and slow the adoption of green energy alternatives.

VI. Treasury should issue additional guidance linking the beginning of construction rules applicable to Section 48 property with Section 45Z qualified facilities.

Code Section 48(a)(9)(B)(ii) provides that the prevailing wage and apprenticeship rules in Code Section 48(a)(10)(A) and (11) will not apply to a project that begins construction before the date that is 60 days after the Secretary publishes guidance concerning such subsections. Code Section 45Z(f)(6)(B) includes a similar rule, but only in respect of qualified facilities that are placed in service before 2025. This mismatch eliminates the relief provided to Code Section 48 biogas production property by effectively eliminating the ability of the taxpayers that own that property to use the continuous construction rule promulgated in Notice 2022-61. Given that many, and perhaps most, biogas production facilities that will begin construction before 2025 (as required in Code Section 48(c)(7)) will be intended to produce fuel that qualifies for the Code Section 45Z credit, this disconnect will be very damaging to the biogas production industry that is so needed to accelerate the decarbonization of America's industrial base.

VII. Treasury should expedite the release of guidance relating to the Section 45Z Credit.

Finally, establishing certainty with respect to the credits under Sections 45Z and 45V is ***critical*** for building facilities that produce fuels now. In order to encourage increased clean fuel production, facilities that will produce the fuels that qualify for the 45Z Credit must be built ***now***. Financing these facilities requires certainty about the tax credits that will arise from their operation. For example, the expected economic return for a biogas facility that intends to qualify for the energy credit under Code Section 48, for example, could vary significantly depending on how the 45Z Credit operates in respect of the RNG produced by the facility and how the Code Section 45V credit operates in respect of the hydrogen that may be produced by a third party using that RNG. This variance may be the difference between building a new biogas production facility to capture methane from livestock waste or wastewater or crop residues and allowing those sources to continue to emit methane and other dangerous greenhouse gases into the atmosphere.

It is imperative that Treasury join the other executive agencies that are making so many strides in the fight against climate change by providing practical and administrable guidance under Code Sections 45Z and 45V *as swiftly as possible*.

Amp Americas

Amp appreciates the opportunity to communicate these points to Treasury in advance of the release of guidance interpreting the new tax credits enacted as part of the IRA and looks forward to continuing to work with the Treasury and IRS on implementation of this historic investment in the production of clean renewable fuels. In the event you have any questions or would like to discuss any of the points raised herein, please contact Amp's Senior Counsel, Jim Waddell, at JWaddell@AmpAmericas.com.

Sincerely,

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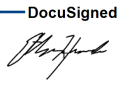
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Ethan Hendricks
SVP RNG Marketing
Amp Americas