



November 4, 2022

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2022-51)  
Room 5203  
P.O. Box 7604,  
Ben Franklin Station  
Washington, DC 20044

**Re: Notice 2022-51 (“Notice”), Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022**

To whom it may concern:

D. E. Shaw Renewable Investments (“DESRI”) is one of the country’s leading renewable energy independent power producers. DESRI currently owns, operates, or has a signed power purchase agreement in place with respect to more than 6,000 MW of solar and wind assets in the United States across more than 70 projects, as well as more than 5,000 MW of solar projects in development across the United States.

We are submitting this commentary because guidance is needed to clarify the definition of a “brownfield site” for purposes of IRA Section 45(b)(11)(B)(i) in order to promote renewable energy development in communities that the IRA has targeted for such projects.

Section 45(b) of the IRA provides that renewable energy projects can qualify for a 10% investment tax credit adder by being sited in an energy community. Under Section 45(b)(11)(B) of the IRA, an “energy community” means, *inter alia*, “a brownfield site” as defined in 42 U.S.C. 9601(39)(A), (B), and (D)(ii)(III). This reference designates parcels as brownfields under the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”). CERCLA defines a brownfield site as including real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. CERCLA also excludes certain sites from the definition of brownfield site, including sites that are on the National Priorities List (“NPL”) or that are the subject of CERCLA administrative orders. Problematically (for purposes of the IRA), sites are often included on the NPL or are subject to a CERCLA order for a period of several years, before they are removed (and thus would then qualify as brownfield sites).

575 Fifth Ave  
35th Floor  
New York, NY 10017

(212) 478-0000  
FAX (212) 478-0100

Reliance on the “brownfield site” definition in CERCLA without the clarifications discussed herein limits potential development activities close to sites addressed by the U.S. Environmental Protection Agency (“USEPA”) via the NPL or administrative orders, because the boundaries of such sites change throughout the Remedial Investigation/Feasibility Study (“RI/FS”) and CERCLA processes. These processes can take many years, and while the process is ongoing, the parcel will likely be considered as within a CERCLA site listed on the NPL or as subject to a CERCLA administrative order, and therefore excluded from the CERCLA definition of a “brownfield site.”

Once the RI/FS and CERCLA processes are completed, a parcel that was listed on the NPL or as subject to a CERCLA administrative order may ultimately be considered a brownfield site under CERCLA, but because the processes often take multiple years, confirming the brownfield site designation may not align with when developers need to spend significant capital to secure development milestones. The proposed clarification below allows timely renewable energy redevelopment to occur on such parcels, consistent with the purposes of the IRA.

**Proposed Clarifications as to Exceptions to the “Brownfield Site” Definition under CERCLA**

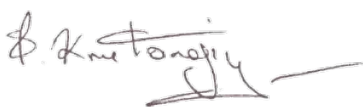
The definition of a “brownfield site” for purposes of meeting the definition of an “energy community” under the IRA should be clarified to include parcels that are, at the applicable time, on the NPL and/or under a CERCLA administrative order, but that can be shown, for instance through a Ready for Reuse Determination, to be suitable for redevelopment because potential risks are within acceptable risk ranges.

**Who We Are**

DESRI is one of the country’s leading renewable energy independent power producers. DESRI currently owns, operates, or has a signed power purchase agreement in place with respect to more than 6,000 MW of solar and wind assets in the United States across over 70 projects, as well as more than 5,000 MW of solar projects in development across the United States.

Sincerely,

D. E. Shaw Renewable Investments, L.L.C.

By: 

Name: Stan Krutonogiy  
Title: Authorized Signatory