

HENNEPIN COUNTY

MINNESOTA

November 17, 2022

The Honorable Janet Yellen
Secretary
United States Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

RE: Hennepin County Comments in Response to IRS Notice 2022 51 on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements

Dear Secretary Yellen,

Thank you for the opportunity to submit comments in response to the U.S. Department of Treasury notices, requesting comments on the guidelines to implement key provisions of the Inflation Reduction Act of 2022. Hennepin County is the most populous county in the State of Minnesota, and the City of Minneapolis is the county seat.

Organics recycling is a focus of the county's Solid Waste Management Master Plan to make progress toward zero waste and a foundational strategy in the county's Climate Action Plan to achieve net zero emissions by 2050. An anaerobic digestion (AD) facility would provide the additional organics processing infrastructure needed to support the expansion of organics recycling programs throughout Hennepin County.

Organics recycling is our biggest opportunity to reduce our trash. Minnesota law requires metro counties achieve a 75% recycling rate by 2030. Waste sort studies continue to show that organic materials are the largest proportion of our trash – about 25% to 30%. The AD facility would process organics to produce energy and beneficial soil and agricultural products. The biogas can be used to produce various forms of clean, renewable energy including renewable natural gas. The digestate can replace fossil-fuel-based fertilizers.

The county issued a Request for Proposals (RFP) for the Anaerobic Digestion of Organic Materials in June 2021 and has recently selected a preferred proposer to develop an anaerobic digestion facility in the county. We are now entering into the next phase of design and plan to begin construction of the facility sometime in 2024.

We applaud the inclusion of biogas incentives in the Inflation Reduction Act, some of which we plan to utilize to complete the development of the facility. At their core, biogas systems protect our air, water, and soil, and are a crucial part of the solution to the challenges these credits seek to address.

We appreciate the opportunity to provide input on the guidelines for these tax incentives. Thank you for considering the following comments.



Prevailing Wage Requirement

(2) Section 45(b)(7)(B)(i) generally provides a correction and penalty mechanism for failure to satisfy prevailing wage requirements. What should the Treasury Department and the IRS consider in developing rules for taxpayers to correct a deficiency for failure to satisfy prevailing wage requirements?

In response to the request for comment in Subheading (2) under the heading Prevailing Wage Requirement, Hennepin County submits the following comments.

Hennepin County encourages the Treasury Department and IRS to consider the impact to the investor and the project development timeline when developing the timeline for which the correction and penalty mechanism would be implemented.

(3) What documentation or substantiation should be required to show compliance with the prevailing wage requirements?

In response to the request for comment in Subheading (3) under the heading Prevailing Wage Requirement, Hennepin County submits the following comments.

Hennepin County suggests that the IRS and Treasury Department consider accepting prevailing wage data that is already commonly collected, tracked, and monitored as evidence of compliance with the prevailing wage requirements. An example of an electronic monitoring and reporting system that is already commonly used in the construction industry is LCP Tracker. The IRS and Treasury Department should accept prevailing wage reports generated from these electronic systems.

Additionally, the IRS and Treasury Department should consider accepting attestations of compliance to the prevailing wage requirements from contractors and subcontractors as evidence of compliance. These attestations will be collected from all contractors and subcontractors and submitted to the IRS and Treasury Department, while the project owners do the monitoring and enforcement of prevailing wage payments on the projects in acceptable electronic formats. This will reduce the amount of reporting generated and submitted to the IRS and Treasury Department as long as the data is being collected and saved in acceptable electronic systems.

Hennepin County also suggests that the IRS and Treasury Department stop requiring paper forms as evidence of compliance. The use of paper documents is antiquated and wasteful. Most government agencies and the private sector use electronic systems, such as LCP tracker and others, for tracking and reporting on prevailing wage compliance.

Finally, the use of electronic systems will prevent double reporting (i.e., paper for the IRS and Treasury and electronic for owners that use electronic reporting) of this prevailing wage information by contractors and subcontractors to owners that use electronic systems.

(4) Is guidance for purposes of § 45(b)(7)(A) needed to clarify the treatment of a qualified facility that has been placed in service but does not undergo alteration or repair during a year in which the prevailing wage requirements apply?

In response to the request for comment in Subheading (4) under the heading Prevailing Wage Requirement, Hennepin County submits the following comments.

Hennepin County encourages the Treasury Department and IRS to provide guidance for facilities that are placed in service but have not undergone alterations or repair during a year in which the prevailing wage requirements apply to avoid any confusion about which facilities must meet prevailing wage requirements.

Apprenticeship Requirement

(1) Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to a qualified facility must employ one or more qualified apprentices from a registered apprenticeship program to perform that work. What factors should the Treasury Department and the IRS consider regarding the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of this requirement?

In response to the request for comment in Subheading (1) under the heading Apprenticeship Requirement, Hennepin County submits the following comments.

Hennepin County encourages the Treasury Department and IRS to consider the timing of projects in relationship to their maximum eligibility for tax credits when determining the appropriate duration of employment for purposes of the apprenticeship requirement. While Hennepin County supports the development of qualified apprentices in this field, it is also important to consider that these projects are large, complicated undertakings and on-time project completion will be imperative for certain credit eligibility. Rather than a specific duration of time, Hennepin County encourages the Treasury Department and the IRS to consider an alternative measure, such as a percentage of the labor cost of a project. Additionally, as with the prevailing wage requirement, the location and availability of local apprentices should be considered for this requirement.

(2) Section 45(b)(8)(D)(ii) provides for a good faith effort exception to the apprenticeship requirement.

(a) What, if any, clarification is needed regarding the good faith effort exception?

In response to the request for comment in Subheading (2)(a) under the heading Apprenticeship Requirement, Hennepin County submits the following comments.

Hennepin County encourages the IRS to develop practical requirements to demonstrate compliance with the good faith efforts standard in Section 45(b)(8)(D)(ii) (e.g., how to demonstrate efforts to find an apprentice and/or that no apprenticeship program was available for the labor needed). Furthermore, we ask that the IRS include specific disqualifying examples for clarification to the good faith effort exception. The clear intention of this provision is to encourage project developers to comply with the apprenticeship requirements to the best of their abilities. There will likely be instances where there are disagreements on what constitutes a good faith effort, so more clarity and examples in the guidelines will help project developers know plan and budget for compliance efforts.

(b) What factors should be considered in administering and promoting compliance with this good faith effort exception?

In response to the request for comment in Subheading (2)(b) under the heading Apprenticeship Requirement, Hennepin County submits the following comments.

Hennepin County encourages the Treasury Department and IRS to only consider making exceptions to compliance with the Apprenticeship Requirement for marketplaces that do not have approved apprenticeship programs recognized by their State. Good faith on the part of contractors and subcontractors should demonstrated thorough efforts to engage with pre-apprentice and apprentice programs recognized in the marketplace of the project.

(3) What documentation or substantiation do taxpayers maintain or could they create to demonstrate compliance with the apprenticeship requirements in § 45(b)(8)(A), (B), and (C), or the good faith effort exception?

In response to the request for comment in Subheading (3) under the heading Apprenticeship Requirement, Hennepin County submits the following comments.

Hennepin County encourages the Treasury Department and IRS to consider using electronic systems for collection and reporting of compliance with apprenticeship requirements. Most electronic systems allow for collection of data related to apprentices on projects. The use of electronic systems, such as LCP Tracker, will lessen the burden on contractors and subcontractors while still providing the information required for reporting to the IRS and Treasury. It will also reduce the burden and cost of double reporting where owners (public agencies) are using electronic reporting, but the IRS and Treasury are requiring paper reporting.

Domestic Content Requirement

(1) Sections 45(b)(9)(B) and 45Y(g)(11)(B) provide that a taxpayer must certify that any steel, iron, or manufactured product that is a component of a qualified facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. 661).

(a) What regulations, if any, under 49 C.F.R. 661 (such as 49 C.F.R. 661.5 or 661.6) should apply in determining whether the requirements of section §§ 45(b)(9)(B) and 45Y(g)(11)(B) are satisfied? Why?

In response to the request for comment in Subheading (1)(a) under the heading Domestic Content Requirement, Hennepin County submits the following comments.

Hennepin County is broadly supportive of the domestic content requirements for providing incentives for increased investment in U.S. manufacturing of clean energy equipment and components. However, given timeline and supply chain constraints, as well as technical requirements for project components for specialized equipment, it may be challenging to comply with this requirement. Hennepin County encourages the IRS to provide waiver provisions for steel and iron domestic content provisions under certain circumstances.

Hennepin County also requests that the scope of this requirement be defined. For example, does this requirement pertain to the overall project cost, facility cost, construction cost, equipment cost, or steelwork cost? Hennepin County is supportive of the further development of the U.S. renewable energy industry. However, we need clear guidance and a transparent process for how to comply with these requirements, as we move forward toward the final phase of planning and budgeting for our anaerobic digestion project.

(c) Should the definitions of “steel” and “iron” under 49 C.F.R. 661.3, 661.5(b) and (c) be used for purposes of defining those terms under §§ 45(b)(9)(B) and 45Y(g)(11)(B)? If not, what alternative definitions should be used?

In response to the request for comment in Subheading (1)(c) under the heading Domestic Content Requirement, Hennepin County submits the following comments.

Hennepin County suggests that the IRS and Treasury Department utilize the same definitions for the sake of consistency in regulation.

(2) Sections 45(b)(9)(B)(iii) and 45Y(g)(11)(B)(iii) provide that manufactured products that are components of a qualified facility upon completion of construction will be deemed to have been produced in the United States if not less than the adjusted percentage of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States.

(c) Does the term “manufactured product” with regard to the various technologies eligible for the domestic content bonus credit need further clarification? If so, what should be clarified? Is guidance needed to clarify what constitutes an “end product” (as defined in 49 C.F.R. 661.3) for purposes of satisfying the domestic content requirements?

In response to the request for comment in Subheading (2)(c) under the heading Domestic Content Requirement, Hennepin County submits the following comments.

Hennepin County encourages the Treasury Department and the IRS provide guidance on the definition of domestic content for a manufactured product. The definition of § 45(b)(9)(B) implies that the weighted aggregate of all the manufactured products used by the taxpayer must be at least 40% domestic, however the definition of domestic content of each individual manufactured product is vague.

(e) Does the treatment of subcomponents with regard to manufactured products need further clarification? If so, what should be clarified?

In response to the request for comment in Subheading (2)(a) through (e) under the heading Domestic Content Requirement, Hennepin County submits the following comments.

Hennepin County encourages the Treasury Department and IRS provide as much clarification as possible, regarding “components of a qualified facility”, products that are “mined, produced, or manufactured in the United States”, “manufactured products”, “end product[s]”, “total costs”, “adjusted percentage threshold”, and treatment of subcomponents, as described above in this Request for Comments. Ultimately, any confusion in the application of these definitions will only serve to inhibit

the administration of these new regulations and delay the projects that these regulations are intended to incentivize.

(3) Solely for purposes of determining whether a reduction in an elective payment amount is required under § 6417, §§ 45(b)(10)(D) and 45Y(g)(12)(D) provide an exception for the requirements contained in §§ 45(b)(9)(B) and 45Y(g)(10)(B) (respectively) if the inclusion of steel, iron, or manufactured productions that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent or relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

(a) Does the determination of “overall costs” and increases in the overall costs with regard to construction of a qualified facility need further clarification? If so, what should be clarified?

In response to the request for comment in Subheading (3)(a) under the heading Domestic Content Requirement, Hennepin County submits the following comments.

Hennepin County suggests the IRS provide an example of what is included in the definition of “overall costs”. Hennepin County also encourages the IRS to clarify which, if any, costs associated with a project that would be specifically excluded from the “overall costs” calculation with regard to increased construction costs.

(b) What factors should the Secretary include in guidance to clarify when an exception to the requirements under section §§ 45(b)(10)(D) and 45Y(g)(12)(D) applies? What existing regulatory or guidance frameworks, such as the Federal Acquisition Regulation (FAR) and Build America Buy America (BABA) guidance, may be useful for developing guidance to grant exceptions under §§ 45(b)(10)(D) and 45Y(g)(12)(D)?

In response to the request for comment in Subheading (3)(b) under the heading Domestic Content Requirement, Hennepin County submits the following comments.

Hennepin County supports the use of FAR and BABA frameworks for establishing a regulatory framework for clarifying when an exception may apply to the requirements under sections §§ 45(b)(10)(D) or 45Y(g)(12)(D).

(c) Do the “sufficient and reasonably available quantities” and “satisfactory quality” standards need further clarification? If so, what should be clarified?

In response to the request for comment in Subheading (3)(c) under the heading Domestic Content Requirement, Hennepin County submits the following comments.

Hennepin County encourages the Treasury Department and IRS provide as much clarification as possible, regarding “sufficient and reasonably available quantities” and “satisfactory quality” standards. Ultimately, any confusion in the application of these definitions will only serve to inhibit the administration of these new regulations and delay the projects that these regulations are intended to incentivize.

(4) Sections 48 and 48E have domestic content bonus amount rules similar to other provisions of the Code. Section 48(a)(12) has domestic content requirement rules similar to § 45(b)(9)(B) and § 48E(a)(3)(B) has domestic content rules similar to the rules of § 48(a)(12). What should the Treasury Department and the IRS

consider in providing guidance regarding the similar domestic content requirements under § 48(a)(12) and § 48E(a)(3)(B)?

In response to the request for comment in Subheading (4) under the heading Domestic Content Requirement, Hennepin County submits the following comments.

Hennepin County encourages the Treasury Department and the IRS to provide examples that demonstrate the distinct differences between the domestic content *requirement* and the domestic content *bonus*. Specifically, Hennepin County recommends the Treasury Department and IRS provide a model project that would satisfy the initial domestic content requirement and show how the subsequent domestic content *bonuses* would affect the tax credit received. A model that demonstrates the varying degrees of compliance would allow for developers to adequately compare their projects against the model to determine for themselves the degree to which they will comply with the *bonus* domestic content requirements.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read "Kareem Murphy", with a stylized flourish extending to the right.

Kareem Murphy
Director of Intergovernmental Relations