Memorandum

TO: IWSA Membership
FROM: Ted Michaels
DATE: February 20, 2009
RE: Provisions of H.R. 1 (Stimulus bill) with applicability to WTE

On February 17, President Obama signed into law the American Recovery and Reinvestment Act (H.R. 1), otherwise known as the "stimulus bill". The legislation spends $787 billion on projects that are intended to have an immediate stimulative impact on the economy. Approximately $20 billion is aimed at investing directed toward renewable energy projects, including waste-to-energy. This memo summarizes several provisions of the stimulus bill that could assist in the development of waste-to-energy facilities.

Long-term Extension and Modification of Renewable Energy Production Tax Credit ("PTC"). The bill extends the placed-in-service date for waste-to-energy for three years (through December 31, 2013). Any new waste-to-energy capacity placed in service by a taxpayer prior to December 31, 2013 is eligible to receive a tax credit (currently set at one-cent per kilowatt hour; adjusted for inflation) for a period of ten years. The tax credit applies to electricity produced by new facilities or the increased electric generation associated with an expansion unit.

Temporary Election to Claim the Investment Tax Credit ("ITC") in Lieu of the PTC. The bill allows taxpayers that own facilities eligible for the PTC (such as waste-to-energy) to elect to claim the 30 percent ITC in lieu of the PTC. Waste-to-energy facilities are eligible if placed in service by December 31, 2013. The ITC may be claimed if no PTC has been allowed with respect to that facility and the taxpayer makes an irrevocable election to take the ITC.

Treasury Department Energy Grants in Lieu of Tax Credits. The bill allows taxpayers who are eligible to receive the PTC (such as waste-to-energy) to receive a grant from the Treasury Department in lieu of the PTC or the ITC. The Treasury Department will issue a grant in an amount equal to 30 percent of the cost of the qualifying renewable energy facility within sixty days of the facility being placed in service or, if later, within sixty days of receiving an application for such grant. The grant provision applies if property is placed in service during 2009 or 2010 or is placed in service after 2010 and before the credit termination date with respect to the property, but only if the construction of the property began in 2009 or 2010. If the property is disposed of the Secretary of the Treasury shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of the Treasury determines appropriate. The Secretary of the Treasury shall not make any grant under this section to any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof) or any non-profit organization. The Secretary of the Treasury shall not make any grant to any person under this section unless the application of such person for such grant is received before October 1, 2011.

Repeal Subsidized Energy Financing Limitation on the ITC. Under current law, the ITC must be reduced if the property qualifying for the ITC is also financed with industrial development bonds or through any other Federal, State, or local subsidized financing program. The bill repeals this subsidized energy financing limitation on the ITC in order to allow businesses and individuals to qualify for the full amount of the ITC even if such property is financed with industrial development bonds or through any other subsidized energy financing.

Clean Renewable Energy Bonds ("CREBs"). The bill authorizes an additional $1.6 billion of new clean renewable energy bonds to finance facilities that generate electricity from renewable resources eligible for the PTC (including waste-to-energy). CREBs are “tax credit bonds” in which interest is paid for by the Federal Government in the form of tax credits. This $1.6 billion authorization will be subdivided into thirds: 1/3 will be available for qualifying projects of State/local/tribal governments; 1/3 for qualifying projects of public power providers; and 1/3 for qualifying projects of electric cooperatives.

Advanced Energy Investment Credit. The proposal establishes a new 30 percent ITC for facilities engaged in the manufacture of advanced energy property. Credits are available only for projects certified by the Secretary of Treasury, in consultation with the Secretary of Energy, through a competitive bidding process. The Secretary of Treasury must establish a certification program no later than 180 days after date of enactment, and may allocate up to $2.3 billion in credits. Advanced energy property includes technology for the production of renewable energy (not specifically defined), energy storage, energy conservation, efficient transmission and distribution of electricity, and carbon capture and sequestration. A credit under this section shall not be allowed under this section for any qualified investment for which a credit section 48, 48A, or 48B.

Temporary Loan Guarantee Program. $6 billion is provided for a temporary loan guarantee program for renewable energy systems (including facilities of component manufacturers of renewable energy technology), biofuel projects, and electric power transmission systems. Eligible projects must commence construction by September 30, 2011. Eligible projects include renewable energy systems that (1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases, and (2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.

Eliminate Costs Imposed on State and Local Governments by the Alternative Minimum Tax ("AMT"). Under current law, interest on tax-exempt private activity bonds is generally subject to the AMT. The bill excludes interest on tax-exempt private activity bonds from the AMT if the bond is issued in 2009 or 2010. The bill also allows AMT relief for current refunding of private activity bonds issued after 2003 and refunded during 2009 and 2010.