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February 26, 2010

Internal Revenue Service
CC: PA: LPD: PR (REG-140492-02)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C., 20044

RE: Proposed Regulations Addressing the Definition of Solid Waste Disposal Facilities for Tax-Exempt Bond Purposes (REG-140492-02)

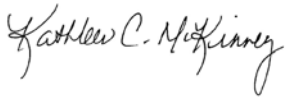
Ladies and Gentlemen:

The National Association of Bond Lawyers ("NABL") respectfully submits the enclosed supplement to our comments submitted on December 15, 2009, on proposed rulemaking REG-140492-02, Definition of Solid Waste Disposal Facilities for Tax-Exempt Bond Purposes (the "Proposed Regulations"). We have prepared these supplemental comments to address a matter that arose at the January 5, 2010, public hearing. These comments were prepared by NABL's Tax Law Committee, under the leadership of Charles S. Henck and Perry E. Israel.

As before, I want to express NABL's appreciation for the thorough process that the Treasury and the Internal Revenue Service is undertaking in the preparation of the Proposed Regulations. NABL submits these comments with the hope that its participation in this administrative guidance process can aid in the development of, and thereby improve compliance with, the law in the field of public finance. NABL and its members welcome the opportunity to discuss the enclosed comments or any other aspect of the Proposed Regulations in order to assure that the final regulations defining solid waste disposal facilities are as clear and administrable as possible.

If you have any questions regarding the enclosed comments, please contact Charles S. Henck at (202) 661-2209 or via email at henck@ballardspahr.com.

Sincerely,



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National Association *of* Bond Lawyers

SUPPLEMENT TO COMMENTS BY
THE NATIONAL ASSOCIATION OF BOND LAWYERS
TO THE INTERNAL REVENUE SERVICE
REGARDING
NOTICE OF PROPOSED RULEMAKING REG-140492-02

FEBRUARY 26, 2010

I. INTRODUCTION

The National Association of Bond Lawyers ("NABL") is submitting these comments to supplement comments submitted by NABL on December 15, 2009 (the "December 15 Comments") on proposed rulemaking REG-140492-02 (the "Proposed Regulations"). In particular, we are submitting these supplemental comments to address a point made at the public hearing with respect to the Proposed Regulations that was held on January 5, 2010. Except as noted defined terms used in these supplemental comments have the same meaning as in the December 15 Comments. As indicated in our December 15 Comments, we would welcome the opportunity to discuss these comments with representatives of the Department of the Treasury and the Internal Revenue Service ("IRS") and to answer any questions that the comments may raise.

II. BACKGROUND

NABL Comments With Respect to 65% Test. In our December 15 Comments we expressed concerns about the certain aspects of Section 1.142(a)(6)-1(g)(2)(ii). As noted in the December 15 Comments, paragraph (g)(2)(ii) provides a rule comparable to the 65% rule in the existing regulations. It states that for any qualified solid waste disposal process (*i.e.*, an energy conversion process or a recycling process), if at least 65% of the input the facility is solid waste "for each year that the issue is outstanding" then all of the costs of the facility are treated as allocable to a solid waste disposal process. In contrast to the rule in paragraph (g)(2)(i), which calculates waste input on the basis of average annual input, the implication of the language in paragraph (g)(2)(ii) is that the 65% test will not be met if the solid waste input for a facility is less than 65% for any one year.

As we discussed in our December 15 Comments, and as indicated in the testimony presented on NABL's behalf at the hearing held on January 5, 2010, we believe the rule, as currently proposed, is both unduly restrictive and unnecessarily difficult to administer. As noted in our December 15 Comments, depending upon the facts, similarly situated facilities would be treated quite differently, without any apparent policy or administrative objective being served; that is, a borrower operating a recycling facility that achieves overall throughput levels substantially in excess of 65% might well be treated substantially less favorably than a borrower that barely achieves that level, but that can do so every year. Thus, for example, notwithstanding that a borrower expected the waste input to a facility, as calculated under paragraph (g)(2)(i) (i.e., on an average annual basis), to exceed 65% the borrower might nevertheless be unable to take advantage of the 65% rule because of the possibility

that a shortfall in a single year could adversely effect the tax-exempt status of the issue. As a solution, we recommended that the waste percentage throughput be measured using the averaging approach used in paragraph (g)(2)(i) (*i.e.*, on an average annual basis).

Comments at Hearing. During the course of the hearing there was a discussion of another aspect of this issue. The Deputy Tax Legislative Counsel asked, in effect, whether the more restrictive rule was justified on the grounds that 35% on an annual test provided a "fairly high margin of error" for an annual test, noting that the percentage had been reduced from the 80% figure set forth in the 2004 Proposed Regulations. There are two implications of that question that we believe merit additional comment, and it is to these points that this supplemental submission is addressed.

III. DISCUSSION OF POINTS MADE AT HEARING.

First, we believe that the 35% figure should not be thought of as a margin of error. The fact is that many recycling operations require significant non-waste input in order to produce a marketable product, in much the same way that they require operating facilities specifically designed for recycling purposes. For example, the physical characteristics (*e.g.*, fiber length) of pulp produced from waste paper recycling operations differ from those of virgin pulp. Thus, depending on the desired end product and the type of waste paper being recycled, it often is necessary to introduce virgin pulp into the pulp mixture to produce an end product that can be marketed successfully. For example, tissue paper made from 100% recycled fiber is not as bright or soft as the same product made from virgin material, so virgin fiber usually is added to the mix to raise the quality of the product to the required level. Similarly, and as noted in our testimony at the hearing, it is often necessary to add higher Btu market fuel to waste fuel to achieve the heat rate necessary operate a waste to energy facility profitably. In such instances, the "margin of error" could indeed be quite small. More importantly, the 35% figure actually reflects a reality in the recycling industry; that is, that it often is necessary to combine a significant amount of "non-waste" with the waste material to create an economically viable recycling process or product – and this is more than a "margin of error."

The second point we wish to emphasize is that the rule we have advocated since the publication of the 2004 Proposed Regulations - *i.e.*, a 65% threshold with compliance determined on an average annual basis – is essentially the rule that is in the existing regulations; this rule has operated successfully for decades, and it should not be changed now.