American biogas Council

The Honorable Pat Tiberi, Chairman of the Subcommittee on Select Revenue Measures
The Honorable Richard E. Neal, Ranking Member of the Subcommittee on Select Revenue Measures
The Honorable Charles Boustany, Chairman of the Subcommittee on Oversight
The Honorable John Lewis, Ranking Member of the Subcommittee on Oversight
Ways and Means Committee Office
1102 Longworth House Office Building
Washington D.C. 20515

September 29, 2011

RE: **Joint Hearing on Energy Tax Policy and Tax Reform**

Dear Chairmen Tiberi and Boustany and Ranking Members Neal and Lewis,

On behalf of the members of the American Biogas Council, I welcome the opportunity to submit the following written comments regarding the Joint Hearing on Energy Tax Policy and Tax Reform held on September 22, 2011.

The American Biogas Council (ABC) is the first and only industry association in the United States dedicated to maximizing the production and use of biogas from organic waste. Our member companies include municipalities, digester designers, equipment providers, farmers, natural gas providers, waste management companies, engineering and law firms, non profits and universities and other organizations covering the entire biogas supply chain. Anaerobic digesters turn waste into baseload renewable energy. They break down organic waste—including manure from livestock operations, wastewater treatment sludge and municipal solid waste—to produce biogas (a combination of methane, carbon dioxide, and trace amounts of other gases), which can then be turned into electricity or used as a substitute for natural gas in transportation or heating. In the U.S. we have only begun to build the biogas industry, which has experienced considerable success abroad. In fact, the methane in renewable biogas could displace as much as 10-15 percent of current fossil natural gas use by 2025-2035. In rural and urban areas alike, the members of the ABC are creating jobs, and maximizing the efficient use of local resources to make domestic, base-load, renewable energy.

In the background for the joint hearing originally scheduled for August 3, the Chairmen mention three general and differing views regarding energy tax policy: 1) that energy tax provisions are an effective and efficient way to advance important public policy goals; 2) that the current structure of energy tax incentives picks winners and losers; 3) and the tax code should not subsidize energy at all. The ABC would like to address each of these views in turn.

<u>1) Tax provisions are an effective and efficient way to advance important public policy goals like energy independence</u>

Federal energy tax policy is an effective and efficient means for the deployment of renewable energy, including anaerobic digestion technology. With Farm Bill programs that have helped the biogas industry like the Rural Energy for America Program (Section 9007) facing large cuts in the current fiscal environment, federal tax policy will become an even more important driver for deploying technologies that reduce our dependence on foreign oil and create U.S. jobs.

The Renewable Electricity Production Tax Credit (26 U.S.C. §45) is an important source of financial assistance offered for anaerobic digestion projects that produce electricity from open-loop biomass or municipal solid waste. Congress made this credit more flexible in 2009, allowing eligible facilities to elect instead the Investment Tax Credit (26 U.S.C. § 48), which has had very positive effects across the renewable energy sector. When taken in the form of a cash grant through the Section 1603 Treasury Grant in Lieu of Tax Credits program, the incentive becomes even more valuable to small agricultural producers that may not have a large tax appetite but want to invest and expand their operations. Moreover, the cash grant option plays a pivotal role in financing larger capital intensive renewable energy anaerobic digestion projects during this era of economic uncertainty and lending constraint. Its continued availability is critical to advancing the development of renewable energy capacity in the U.S. and in turn advancing the public policy of creating local jobs, increasing domestic energy security, sustainably managing our waste streams, and protecting water quality.

<u>2) Tax policy will always pick and choose, and in this case it should favor innovative renewable technologies with potential to create new industries, and technologies which enhance our energy security.</u>

The argument that renewable energy tax incentives should be scrapped because such policies “pick winners and losers” implies that the government should not incentivize certain technologies even if their development and adoption lead to better national outcomes such as economic growth or energy security. Tax policy should reinforce our national objectives to increase use of sustainable, reliable forms of energy, both to create new industries that can lead the world, and enhance our energy independence. The Defense Department recognizes the need to reduce its dependence on vulnerable and volatile fossil fuel supplies and an increasingly outdated and exposed power grid—all of which is driving the military to explore deeply a full range of alternatives, including biogas. The Department of Defense’s 2010 Strategic Sustainability Performance Plan states that “heavy reliance on fossil fuels creates significant risks and costs at a tactical as well as a strategic level" which can result in "lost dollars, in reduced mission effectiveness, and in U.S. soldiers' lives." The Committee should embrace tax policies that encourage emerging technologies that meet these sustainability objectives.

This investment in our future also spurs domestic economic growth and job creation. A July 2011 Brookings Institution study entitled "Sizing the Clean Economy: A National and Regional Green Jobs Assessment" recognized that while the clean economy can be difficult to adequately quantify, "newer 'cleantech' segments produced explosive job gains" between 2003 and 2010. The report concluded "that vigorous private sector-led growth needs to be co-promoted through complementary engagements by all levels of the nation's federal system to ensure the existence of well-structured markets, a favorable investment climate, and a rich stock of cutting-edge technology."

Over the past decades, federal support has facilitated the emergence of many new industries. Federal support also allows innovative capital intensive energy projects with long-term economic benefits. For example, sizeable federal investments in hydroelectric dams made years ago continue to provide clean, affordable electricity for large portions of the country. Likewise, tax policies incentivizing biogas production will produce reliable, clean energy and economic benefits for years to come.

While beneficial, the energy provisions in the tax code are far from perfect. Most of the favorable tax provisions to fossil fuels were written into the U.S. Tax Code as permanent provisions. By contrast, many renewable energy tax provisions were implemented through energy bills and contain expiration dates that limit their usefulness to the renewables industry. Moreover, even within the sphere of these short-term renewable energy credits, the value of tax credits for different technologies varies, as do the expiration dates. For instance, biogas producers can only take advantage of the §45 credit if they generate electricity, and this credit expires at the end of 2013, while other technologies have tax credits that extend to the end of 2016. Depending on the rate the utility will pay to buy excess power, a biogas producer may find it more economically feasible to forgo producing electricity and to use the biogas produced on-site for heating purposes. Or the producer may decide to use the biogas as a fuel, either to be used on site or to be cleaned up and sent into a pipeline or used as vehicle fuel.

While using biogas as fuel saves energy, reduces methane emissions, and does not impact food prices, no comparable tax benefit exists for biogas production that is not used for electricity generation. As a 2010 Congressional Research Service report highlighted, "Recent legislation pertaining to agricultural sources of renewable energy has focused primarily on corn-based ethanol and cellulosic ethanol for liquid fuel purposes, and not biogas." Consequently, we support past efforts by Rep. Kind and Sen. Nelson to provide parity for biogas production, no matter the final use. We also support efforts to extend the §45 open-loop biomass credit until December 31, 2016 so as to be in line with other §48 sunset dates.

Despite the imperfections of the tax code, eliminating renewable energy focused tax provisions is inconsistent with national economic and security interests. Emerging and underutilized technologies like anaerobic digestion increase our energy independence and create domestic jobs. Increasing deployment of these renewable technologies drives down costs, reducing the need for future subsidies. In addition, the United States spends a great deal to ensure our national security. Devoting a small fraction of that amount to deploying clean energy technologies is a cost effective way to increase our energy security for the long term.

To the extent that federal energy tax provisions pick “winners,” they attempt to make certain technologies competitive with traditional fossil fuel energy technologies that have received federal subsidies in a variety of forms over decades, many of which are permanent features of the Code. Consequently, extending renewable energy tax policy is crucial to ensuring a fair and a balanced approach that encompasses a variety of solutions. Allowing renewable tax provisions to lapse while ignoring the permanent provisions in the code for fossil energy would only undermine the Committee’s stated aims.

<u>3) The tax code should subsidize energy technologies to the extent that those technologies improve our natural environment and strengthen our energy security</u>

The American Biogas Council agrees that tax provisions that create jobs and enhance energy security should continue. ABC disagrees with those who assert that the tax code should not subsidize renewable energy. While we would welcome a simplified tax code in theory, removing energy tax incentives in the absence of substantive federal non-tax policies such as feed in tariffs, a clean energy standard, or well-funded grant programs would decrease our energy independence.

While the ABC is intrigued by the technology-neutral reverse auction concept proposed by Rep. Nunes, we remain concerned about shifting to an incentive structure where the trust fund is subject to appropriations. The annual appropriations process gives investors little certainty, and it would be a step backwards to eliminate existing tax incentives without an adequate replacement policy. It is also our understanding that the reverse auction would only apply to electricity production and so would not provide any incentive to the deployment of biogas as a fuel.

Anaerobic digestion produces many ancillary benefits apart from producing local jobs and renewable, base load power or biogas—it reduces methane emissions, controls odors and water pollution at livestock operations, and creates a valuable fertilizer product, to name a few. Biogas projects are relatively small and lend themselves to partnerships with local businesses with tax-liabilities that can be offset with participation in a biogas project. While the government must make difficult spending decisions in the coming months, we must also make targeted investments to grow our economy and increase our reliance on clean, domestic sources of energy. Tax incentives for biogas production and electricity from biogas achieve these aims and deserve your support.

The ABC appreciates the opportunity to provide these comments and would be happy to answer any questions the Committee may have. Thank you for your consideration.

Sincerely,

Patrick R. Serfass

Patrick Serfass
Executive Director