

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM
Meeting Date: December 17, 2008
Request for Initial Resolution**

Prepared by: *Doreen Smith*

Applicant: BioFuels Energy, LLC and/or its Affiliates	Amount Requested: \$16,700,000
Project	Application No.: 00815 (SB)
Location: Chula Vista (San Diego County)	Initial Resolution No.: 08-09

Summary. BioFuels Energy, LLC and/or its Affiliates (the “Company”) requests approval of an Initial Resolution for an amount not to exceed \$16,700,000 to finance the acquisition of facilities for the collection and treatment of biomethane gas generated at a landfill and the distribution of treated, commercially usable gas.

Borrower. BioFuels Energy, LLC was organized on July 18, 2007 in the State of Delaware. The nature of the business is renewable energy. The Company has common ownership with BioFuels Energy Management, LLC.

The principal stockholders of the Company are as follows:

BioFuels Energy Management, LLC .	90%
Various Individuals/Trusts (less than 3% each)	10%
Total.....	100%

Legal Questionnaire. The Staff has reviewed the Company’s responses to the questions contained in the Legal Status portion of the Application. No information was disclosed that raises questions concerning the financial viability or legal integrity of this applicant.

Prior Actions and Financings. None.

Project Description. The Project involves the conversion of landfill gas into a renewable product that can be used in the community.

There are three steps to the proposed project:

- Biogas purification and compression
- Biogas loading, transport via tube trailers and off-loading
- Renewable power generation

The Company will collect biomethane gas from the Otay Landfill in San Diego County. The landfill is owned and operated by Allied Waste Services. Purified biomethane is compressed at the source and then placed into Department of Transportation approved trailers for short-term storage and transportation. The Company will then ship the gas, via tube trailers, to customers’ sites to be used as a replacement for natural gas. The vehicles will meet strict Department of Transportation standard and utilize the purified renewable biomethane to operate.

Agenda Item - 4.C.1.

The Company has identified the University of California, San Diego (UCSD) as a primary customer that is willing to consume a majority of the cleaned biomethane gas. The Company anticipates obtaining another one to two customers that will use the biomethane in fuel cells to generate clean electricity for their facilities.

The end use customers for the purified biogas will have one or more of the following fuel usage requirements: power generation equipment, electricity produced from fuel cells, or compressed gas for use as vehicle fuel.

The anticipated use of Bond proceeds and issuance costs are listed below:

Membrane Skid	\$2,630,617	
SulfaTreat System	835,640	
Distribution Tractors & Trailers	2,790,750	
Other Construction Costs	6,515,310	
Bond issuance expenses	<u>3,727,683</u>	<u>\$200,000</u>
Total:	<u>\$16,500,000</u> tax-exempt	<u>\$200,000</u> taxable

Anticipated Timeline. The Company anticipates construction commencing in March 2009 with a completion date of June 2010. Equipment purchases are anticipated to begin in June 2009 with completion by March 2010.

Pollution Control and/or Environmental Benefits. The Company represents the Project will generate the pollution control and environmental benefits described below.

Waste Diversion. The reduction of flaring biogas may create significant emissions reductions at the Otay landfill. The amount of landfill gas at the flare stack may be reduced on average by 1.872 million standard cubic feet per day.

Air Quality. The project will result in a reduction of over 14,000 tons per year of carbon dioxide emissions and other greenhouse gas emissions.

Energy Efficiency. More efficient fuel cells at a heat rate below 8,000 Btu's per kilowatt hour effectively replacing at least 2.4 MW's of less efficient energy from older power generation units which use fossil based fuels.

Recycling of Commodities. Landfill gas that is currently being flared is captured, purified, compressed and distributed via clean burning CNG trucks back into the community to allow customers to now purchase and use a renewable energy product displacing fossil fuel based natural gas.

Climate Change. Carbon and renewable energy credits will be generated from this project as a result of the renewable energy generation displacing fossil fuels that would otherwise be utilized.

Other. The Project assists with meeting the following objectives and requirements:

- California climate and energy objectives.
- California Green Building Action Plan Executive Order S-20-04 (at UCSD).
- California Global Warming Solutions Act AB 32 (at the Otay Landfill).
- Governor's Executive Order S-06-06 (increase development of Bioenergy).
- South Coast Air Quality Management District Rule 1110.2 (emissions from gaseous engines).
- AB 970 which calls for the creation of more energy and demand programs through utilization of California Public Utilities Commission Self-Generation Incentive Program.
- The Energy Policy Act of 2005 (H.R.6).
- The Energy Improvement and Extension Act of 2008 (H.R. 6049).

Permits. The Company will provide the Authority with copies of all required discretionary permits prior to requesting approval for Final Resolution.

Volume Cap Allocation. The Company anticipates applying to the Authority for volume cap allocation in the first quarter of 2009. The Company has indicated that it may request partial taxable financing. Since the project involves a technology not previously approved for funding, CPCFA staff will complete a new technology policy review. The review will be presented to the Authority prior to any request for approval of a Final Resolution on the project.

Financing Details. The Company anticipates issuance of private placement fixed rate bonds with a term not to exceed 15 years for the qualifying portion of the project. The target date for financing is the first six months of 2009.

Financing Team.

Bond Counsel: Orrick, Herrington & Sutcliffe
Private Placement Agent: George K. Baum & Co.
Issuer's Counsel: Office of the Attorney General

Staff Recommendation. Staff recommends approval of Initial Resolution No. 08-09 for BioFuels Energy, LLC and/or its affiliates for an amount not to exceed \$16,700,000.

Note: An Initial Resolution approval is not a commitment that the Board will approve a Final Resolution and bond financing of the proposed Project.

Initial Resolution No. 08-09
Application No. 00815 (SB)

**RESOLUTION OF OFFICIAL INTENT TO ISSUE BONDS TO
FINANCE SOLID WASTE DISPOSAL/RESOURCE RECOVERY FACILITIES FOR
BIOFUELS ENERGY, LLC AND/OR ITS AFFILIATES**

DECEMBER 17, 2008

WHEREAS, the California Pollution Control Financing Authority ("Authority"), a public instrumentality, is authorized and empowered by the provisions of the California Pollution Control Financing Authority Act ("Act") to issue bonds for the purpose of defraying the cost of facilities for the disposal of solid and liquid waste products, including resource recovery and energy conversion facilities; and

WHEREAS, BioFuels Energy, LLC, a Delaware limited liability company (the "Applicant"), and/or its affiliates (collectively, the "Company") has submitted an application (the "Application") requesting that the Authority assist in financing the acquisition of facilities for collection and treatment of biomethane gas generated at a landfill and distribution of treated, commercially usable gas, as more fully described in the Application (collectively, the "Project") to be owned and operated by the Company, and have presented an estimate of the maximum cost of such Project as shown in Exhibit "A" attached hereto; and

WHEREAS, the Authority desires to encourage the Company to provide solid waste disposal and resource recovery facilities and equipment which will serve the public of the State; and

WHEREAS, the Authority deems it necessary and advisable to further the purposes of the Act that the Project be acquired at the earliest practicable date, but the Company requires satisfactory assurances from the Authority that the proceeds of the sale of bonds of the Authority will be made available to finance such Project; and

WHEREAS, the Company expects to incur or pay from its own funds certain expenditures in connection with the Project prior to the issuance of indebtedness for the purpose of financing costs associated with the Project on a long-term basis; and

WHEREAS, subject to meeting all the conditions set forth in this resolution the Authority reasonably expects that debt obligations in an amount not expected to exceed \$16,700,000 will be issued and that certain of the proceeds of such debt obligations will be used to reimburse the Company for its prior expenditures for the Project; and

WHEREAS, Section 1.103-8(a)(5) and Section 1.150-2 of the Treasury Regulations require the Authority to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent borrowing;

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The Authority finds and determines that the foregoing recitals are true and correct. For purposes of this Resolution, an "Affiliate" of the Applicant means any person or entity

which controls, is controlled by, or is under common control with, the Applicant, as shown by the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through majority equity ownership, contract or otherwise. An Affiliate must also meet the definition of "participating party" in the Act.

Section 2. The Authority declares its official intent to issue, at one time or from time to time, an aggregate of up to \$16,700,000 principal amount of bonds of the Authority for the Project; including for the purpose of reimbursing to the Company costs incurred for the Project prior to the issuance of the bonds.

Section 3. The bonds will be payable solely from the revenues to be received by the Authority pursuant to a loan agreement or other agreements to be entered into between the Authority and the Company in connection with the Project. Each bond shall contain a statement to the following effect:

"Neither the faith and credit nor the taxing power of the State of California or any political subdivision thereof or local agency is pledged to the payment of the principal of, premium, if any, or any interest on this bond."

Section 4. The bonds shall be issued subject to the conditions that (i) the Authority and the Company shall have first agreed to mutually acceptable terms for the bonds and of the sale and delivery thereof, and mutually acceptable terms and conditions of the loan of the bond proceeds to finance the Project; (ii) all requisite governmental approvals shall have first been obtained; (iii) a Final Resolution shall have been received from the Authority; and (iv) an allocation shall have been received from the California Debt Limit Allocation Committee for any portion of the bonds which are to be sold as exempt from federal income tax.

Section 5. The Executive Director of the Authority is hereby authorized to indicate the willingness of the Authority to proceed with and effect such financing in order to assist the Company by defraying the cost of the Project, subject to due compliance with all requirements of the law and the obtaining of all necessary consents and approvals and to meeting all other requirements of the Authority.

Section 6. It is intended that this Resolution shall constitute "some other similar official action" towards the issuance of bonds within the meaning of Section 1.103-8(a)(5) of the Treasury Regulations and "official intent" within the meaning of Section 1.150-2 of the Treasury Regulations, each as applicable under Section 103 of the Internal Revenue Code of 1986, as amended. It is also intended that this statement of "official action" or "official intent" by the Authority shall continue in full force and effect even if this Resolution ceases to be effective for other purposes.

Section 7. This Resolution shall take effect immediately upon its passage and remain in full force and effect thereafter; provided that, subject to Section 6 above, this Resolution shall cease to be effective on December 17, 2011 unless the Authority specifically adopts a further resolution extending the effective date of this Initial Resolution. The Authority will consider such extension upon receiving a specific request for such action from the Company, accompanied by any additional information requested by the Authority to supplement the Company's application, and an explanation of the status of the Project.

EXHIBIT A

NUMBER: 00815 (SB)

LOCATION: Otay Landfill
1700 Maxwell Road
Chula Vista, CA 91911

TYPE: Solid Waste Disposal/Resource Recovery

AMOUNT: Up to \$16,700,000