



# Financing Biofuel Refining and Recycling Facilities

The development of biofuel and recycling facilities around the country has surged in recent years in response to legal mandates to reduce the vast amounts of organic, medical, and plastic waste heading to our landfills. Federal and state tax incentives are available for the production of renewable natural gas to reduce our reliance on fossil fuels and cut greenhouse gases.

Our nationally recognized finance lawyers have extensive experience in the development of commercial-scale facilities to convert waste streams into marketable products and reduce landfill volumes. Our clients are engaged in groundbreaking work to transform biosolids (wood, sludge, and plant crops), food waste, plastics, farming wastes, and industrial wastes such as tallow into products ranging from biofuels (renewable gas, diesel, and jet fuels), fertilizers, and filtering media to plastic pellets and animal feedstocks.

We leverage decades of finance, tax, real estate, construction, and environmental experience in solid waste disposal facilities to represent developers, issuers, lenders, investors, and investment banks in complex capital structures combining equity, government funding, commercial bank loans, and taxable and tax-exempt debt offerings in the capital markets. We also handle recapitalizations, workouts, and restructurings of troubled biofuel and recycling facilities.

Our nearly 50 public finance attorneys represent government issuers, investment banks, borrowers and developers, investors, trustees, and credit providers in virtually every type of municipal bond transaction. Our role in project financings is similarly diverse. We regularly serve as bond counsel, special tax counsel, underwriter's counsel, disclosure counsel, and issuer's counsel, as well as counsel to bond purchasers, trustees, lenders, and credit enhancers.

We help clients take advantage of tax incentives—including tax-exempt bonds, the Renewable Fuel Standard Program, Clean Renewable Energy Bonds, solar and clean coal investment tax credits, and renewable energy production tax credits.

Our lawyers can facilitate the execution of complex capital markets strategies, including initial and secondary public offerings, Rule 144A offerings, shelf offerings, high-yield debt offerings, and private placements. We also are experienced in specialized finance structures, including hedges, and the full range of intercreditor issues arising from competing lender interests.

Our real estate lawyers provide critical support in relevant areas of project development, leasing and access rights, engineering and construction contracting, land use, and secured lending structures. Our environmental attorneys support the finance teams to help clients conquer challenges in site condition assessments, environmental permitting, brownfield redevelopment, and project operations. We also provide often critical experience in labor, procurement, public-private partnerships, and litigation.

Ballard Spahr's Biofuel and Recycling Team, which is part of the firm's P3, Energy, and Project Finance Practice Group, is backed by the resources of our nationally recognized Finance Department.

## REPRESENTATIVE EXPERIENCE

Our team has participated in more than \$10 billion in solid waste and pollution control financings over the last two decades. 33 of those financings have involved exempt facilities. Some recent examples:

**Rialto Bioenergy Facility (California).** Ballard Spahr served as bond purchaser counsel in the financing for a project consisting of the acquisition, construction, and equipping of a solid waste treatment and disposal and recycling facility to include the processing of solid food waste and biosolids to produce fertilizer, renewable electricity, and renewable natural gas in Rialto, California.

**Red Rock Biofuels (Oregon).** Ballard Spahr participated in the financing of the development of a biofuels production facility in Oregon that converts woody biomass from timber harvest residuals and forest thinning activities into jet, diesel, and gasoline blendstock fuels.

**Fulcrum Sierra Biofuels (Nevada).** Ballard Spahr served as counsel to the underwriter in connection with the limited offering of multiple bond issues for Fulcrum Sierra Biofuels, LLC for the acquisition, construction, improvement, development, equipping, and furnishing of biorefinery facilities and related infrastructure improvements that will convert municipal solid waste to diesel fuel.

**Carbonlite (Pennsylvania).** Ballard Spahr served as bond counsel in connection with the successful closing of unrated, tax-exempt bonds to finance a portion of the costs to construct and develop a new post-consumer polyethylene terephthalate (pcrPET) recycling facility in Reading, Pennsylvania.

**Maryland Biofuels Project.** Ballard Spahr is currently working on a project that will be used to construct a solid waste treatment and disposal and recycling facility for the processing of solid waste and biosolids to produce fertilizer, renewable energy, renewable natural gas, and other byproducts.

**Equilibrium Capital Group (Arizona).** Ballard Spahr served as counsel to the underwriters in connection with the limited offering of bonds for an affiliate of Equilibrium Capital Group. The bonds will be used to construct an anaerobic digestion facility and associated gas conditioning and interconnection facilities located at a large dairy in Arizona.

**RES Polyflow (Indiana).** Ballard Spahr worked on a 2019 project to finance the development of a plastics recovery and recycling facility that will convert mixed polymer waste into gasoline blendstock and wax in Indiana.

**Montgomery County (Maryland).** Ballard Spahr represented the private participant in a public-private partnership with Montgomery County to develop a 1,800 ton-per-day waste-to-energy facility, improvements to a 200 ton-per-day recycling facility and sanitary landfill, and an expansion and upgrading of its existing transfer station, including the construction of a rail yard and the creation of a rail system.

**Columbia Pulp (Washington).** Ballard Spahr served as counsel to the underwriter in connection with the limited offering of bonds used to finance the construction, equipping, and operation of an agricultural waste to pulp conversion plant in Washington State.

**KDC Agribusiness Fairless Hills (Pennsylvania).** Ballard Spahr served as bond counsel in connection with the financing, through the issuance of two series of taxable and tax-exempt municipal bonds, both featuring current delivery and forward delivery tranches, for a project consisting of the acquisition, construction, and equipping of a solid waste treatment and disposal and recycling facility which converts unsold food collected from supermarkets in the Philadelphia region to produce pet food and other animal feedstocks.

**Aries Linden LLC (New Jersey).** Ballard Spahr served as bond purchaser counsel in the financing by Aries Clean Energy of a project consisting of the leasehold acquisition, conversion, and equipping of an industrial building approximately 20 miles from New York City to house a facility designed to convert municipal biosolids into renewable energy in a closed loop system keeping biosolids out of area landfills and avoiding potentially harmful land application.

## CONTACTS



**Steve T. Park**  
*Co-Leader, P3, Energy, and Project Finance  
Practice Group*  
*Partner, Philadelphia*  
215.864.8533 | parks@ballardspahr.com



**Emilie R. Ninan**  
*Co-Chair, Finance Department*  
*Partner, Delaware and Washington, D.C.*  
302.252.4426 | ninane@ballardspahr.com



**Charles S. Henck**  
*Senior Counsel, Washington, D.C.*  
202.661.2209 | henck@ballardspahr.com



**Marybeth Orsini**  
*Partner, Baltimore*  
410.528.5514 | orsinim@ballardspahr.com



**Benjamin W. Johnson**  
*Partner, Minneapolis*  
612.371.6223 | johnsonbw@ballardspahr.com



**William C. Rhodes**  
*Education Industry Group Leader*  
*Partner, Philadelphia*  
215.864.8534 | rhodes@ballardspahr.com



**Kimberly D. Magrini**  
*Partner-Elect, Philadelphia and New York*  
215.864.8365 | magrinik@ballardspahr.com



**Randall J. Towers**  
*Partner, Philadelphia*  
215.864.8522 | towers@ballardspahr.com