November 17, 2009

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Governor Donald Carcieri
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Governor David Paterson
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Governor Deval Patrick
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Governor Edward Rendell
225 Main Capitol Building
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Sent Via U.S. Postal Service and Electronic Mail

RE: Memorandum of Understanding for the proposed Northeast/Mid-Atlantic Low Carbon Fuel Standard

Dear Northeast and Mid-Atlantic Governors,

We are writing in regard to the Memorandum of Understanding (MOU) that is currently being developed as part of the proposed 11-state Northeast/Mid-Atlantic Low Carbon Fuel Standard (Northeast LCFS). As leaders in the advanced biofuel sector that are actively pursuing research, development, and deployment strategies that could have a profound impact on U.S. liquid fuel markets, we respectfully request that you adopt language for the MOU that clearly supports balanced carbon accounting and a level regulatory playing field.

As you may know, California recently adopted a preliminary LCFS regulation that is being offered as the model for the Northeast LCFS. The LCFS assigns carbon scores to all transportation fuels, and then requires the oil industry to reduce the carbon intensity of their fuel over time (10% by 2020). The idea is that the most carbon reductive alternative fuel will be the most attractive for meeting the targets, thereby creating competition in the marketplace to produce low carbon fuels.

However, the LCFS recently adopted by the California Air Resources Board (CARB) proved to be highly controversial. The foundation of the policy – debiting all fuels for their supply chain greenhouse gas (GHG) emissions – was well-supported. But CARB decided to penalize biofuels for an extra category of purported GHG emissions called indirect, market-mediated effects. Indirect carbon effects are an attempt to quantify highly uncertain, price-induced "knock on" effects occurring in the marketplace outside of the actual supply-chain of the fuel. For biofuels it's the possibility of pushing existing agriculture (e.g. food and feed) onto new land (called indirect land use change). The California LCFS assigns a penalty on biofuels for these modeled emissions. To be consistent, a similar approach would be applied across all fuels under the LCFS; for natural gas it's the disruptive effect of pulling natural gas out of power markets and pushing more power generation to coal; for electric cars, it means increasing demand on the grid, which in turn could pull more coal plants into electricity markets. Selective enforcement of indirect effects touched off widespread opposition to the LCFS from a variety of groups, including more than 110 PhDs and a range of respected environmental, academic and cleantech investment entities.[1]

It is worth noting that one of the reasons for the controversy surrounding the imposition of penalties for indirect carbon effects (e.g. indirect land use change) is the reality that an indirect carbon effect is, by definition, the *direct* carbon impact of another supply chain. For example, indirect land use change for biofuels is actually the *direct* land conversion for food and feed production, imported into the net carbon score of biofuels. Applied logically, the retirement of land into the highly successful Conservation Reserve Program (now having taken ~ 31 MM acres of productive land out of active use) could be viewed as counterproductive from a climate perspective based on indirect land use change. It is difficult to see how this type of carbon accounting/shifting fits into a performance-based standard like the LCFS. While we support efforts to properly account for all supply-chain emissions, this particular protocol has several unresolved questions attached to it that could bog down the Northeast LCFS.

The California approach to carbon-scoring petroleum-based fuel must also be improved if the Northeast LCFS is going to bring meaningful change to east coast

[1] http://www.newfuelsalliance.org/LCFS%20Public%20Record%20Summary.pdf

transportation and heating fuel markets. First, the California LCFS allows virtually all of today's oil to be counted as "average" petroleum, when in fact different petroleum blends have markedly different carbon intensities. This means that individual oil companies are not held accountable for their different supply chains. Second, the CA LCFS allows oil companies to increase their carbon intensity by more than 15 percent, without penalty, before reporting requirements for "high carbon intensity petroleum" are enforced. This is, in essence, a 15 percent leniency provision not applied to other fuel types. Third, a recent amendment to the rule appears to provide a loophole for oil companies to use tar-sands derived fuel in California without penalty under the LCFS if the crude is first cracked outside of California. This would defeat the purpose of a regulation designed to promote supply chain accountability. In order for the LCFS to achieve its desired result, different fuels must be credited and debited for their actual GHG performance, including oil.

We are bringing the issue of balanced carbon accounting to your offices in part because advocates for the Northeast LCFS have endorsed the California approach. On April 17, 2009, commissioners from the 11 Northeast LCFS states signed a letter to CARB in support of the California LCFS policy.[2] While the letter acknowledges the importance of fair competition, it expressly supports the selective enforcement of indirect effects against all biofuels. NESCAUM and several state representatives have since reinforced this position at recent LCFS stakeholder meetings in Boston and Newark. An asymmetrical LCFS is not good policy, and may come at the expense of certain state policy goals related to petroleum independence and sustainable bioenergy production.

A reasonable first step toward correcting the asymmetry in the current LCFS framework, and ensuring that the ongoing regulatory process sends the right signals to the marketplace, is to demand that the Northeast LCFS MOU explicitly commit to the basic principles of balanced carbon accounting. Specifically, the MOU should state that: (1) the cornerstone of a performance-based fuel regulation is supply-chain accountability; (2) all fuels in the LCFS must be subjected to the same carbon lifecycle assessment system boundaries; (3) if market-mediated indirect GHG effects are considered for one fuel, they must be assessed and applied to all fuels to avoid skewing the relative carbon intensity values of the eligible compliance fuels relative to each other and petroleum.[3]

We appreciate your efforts to develop a regulatory program that puts a market value on fuels with lower carbon intensity values. To this end, it is critically important that Mid-Atlantic and Northeast states remain steadfast in their commitment to establish a level playing field, in part by judging each fuel through the same analytical

[2] http://www.arb.ca.gov/lists/lcfs09/267-arb_lcfs_ltr_041709.pdf
[3] There is an ISO Standard (ISO 14040) that should be used as reference for balanced LCA accounting.

lens. A commitment to fuel neutrality will result in a meaningful and durable regulation that will help ultra-low carbon fuels, including advanced biofuels, reach commercialization.

We look forward to working with you on this important matter.

Sincerely,

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Executive Director
New Fuels Alliance

Andrew Schuyler
Director, Northeast Region
New Fuels Alliance

Charles Allison
Chief Executive Officer
Interstate Biofuels

Cary Claiborne
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cc: Arthur Marin, NESCAUM