

October 14, 2010

R. Brooke Coleman
Executive Director
New Fuels Alliance
101 Tremont Street
Suite 700
Boston, MA 02108

Andrew Schuyler
Director, Northeast Region
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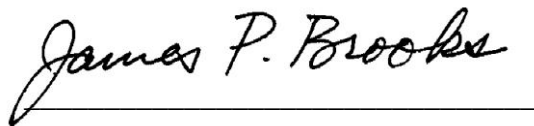
Bob Dinneen
President & CEO
Renewable Fuels Association
425 3rd Street, SW
Suite 1150
Washington, DC 20024

Dear Mr. Coleman, Mr. Schuyler and Mr. Dinneen:

I am writing as the current Chair of the NESCAUM Board of Directors in response to several questions you have raised regarding the process the states are using in developing the regional low carbon fuel standard. NESCAUM is an association of air quality control agencies, which has been representing the Northeast states for nearly forty-five years. Please see the attached responses to the process-related issues you have asked for clarification on. Feel free to contact me or NESCAUM's Executive Director Arthur Marin if you have further questions regarding the regional LCFS process or need additional information.

The states appreciate the input your organizations have provided to date on various aspects of the LCFS analysis and we look forward to a constructive on-going dialogue as the process moves forward.

Sincerely,



James P. Brooks
Director, Bureau of Air Quality
Maine Department of Environmental Protection

C: NESCAUM Directors
Arthur N. Marin, NESCAUM
Nancy Seidman, MassDEP

Attachment

10/14/10
Response to Questions from Stakeholders on LCFS Process

New Fuels Alliance

“Since NESCAUM is not a public agency and therefore not bound by administrative laws applicable to those entities, a detailed assessment of how NESCAUM views the differentiation between the state processes and the NESCAUM process would be very helpful.”

The 11 northeast and mid-Atlantic states are currently evaluating the option of a regional LCFS. NESCAUM – an association of state environmental agencies in the Northeast – is providing technical support, policy guidance, and facilitation to the states on this initiative as it does on many other air quality and climate programs. It is important for stakeholders to understand the difference between the non-regulatory nature of the regional assessment now underway and the state regulatory or legislative processes that might follow. At this time, rulemaking is not underway, so state administrative requirements for public processes do not apply. Nevertheless, we are endeavoring to involve stakeholders as much as possible. This pre-regulatory process offers interested parties the opportunity to provide early input, prior to any proposed state rules. Should states decide to move forward with a regional LCFS, they will do so on a jurisdiction-by-jurisdiction basis using their state requirements for notice and comment rulemaking processes and/or through legislative processes.

Most industries are generally uneasy with submitting sensitive information without knowing the precise nature of the request and potential use of that data. This unease is compounded by the fact that NESCAUM is an independent 501(c) (3) organization, and as such is not a publicly accountable agency. Therefore, we request specific guidance on what type of input NESCAUM is requesting for current and future comment opportunities, as well as a detailed explanation of how that information will be processed and, if requested by individual stakeholders, protected.

Should individual companies decide to share confidential business information, NESCAUM can enter into confidentiality agreements to protect such data.

Will NESCAUM provide written responses to public comments (including this round of documentation and the November 2009 public comment record)? If so, what form will the responses take and what is the anticipated timeframe? If not, how can stakeholders be certain that NESCAUM has reviewed all of the comments and informed the policy makers and rulemaking authorities in the 11 states (beyond publication of comments on the NESCAUM website)?

Neither individual states nor NESCAUM intend to officially respond to all comments received from interested parties during the course of the regional assessment. Given the number of stakeholders and the multiple opportunities for input, such a process would be time consuming and unwieldy. However, review of written comments and of the questions and comments raised during stakeholder meetings and webinars is a regular agenda item for the Steering Committee meetings. All written comments are posted on the NESCAUM website <http://www.nescaum.org/topics/low-carbon-fuels> for review and consideration by the participating states as well as anyone else with an interest in the process.. Note that in the course of this process several organizations have contacted NESCAUM directly for additional information and explanation of particular issues. NESCAUM and the state representatives participating in this process intend to remain available to answer questions.

Will NESCAUM make available the names and contact information for the state regulators who are participating in the six internal NE/MA LCFS working groups?

NESCAUM will post on our website the names of the state officials who serve as the staff Steering Committee and the Agency Heads who direct this effort.

NESCAUM is not a public agency, and therefore does not enjoy the presumptive objectivity that stems from being funded by public money. It is therefore reasonable to inquire about the funding mechanisms under which NESCAUM operates for the development of the NE/MA LCFS. Specifically, does NESCAUM receive funding from participating states and/or other public or private sources for the development and collaboration of the regional LCFS? If so, who supports the project financing and what is the amount that each state and/or entity contributes?

NESCAUM has received funding from the participating states and through competitive grants from private philanthropic organizations. State contributions are proportional to their relative gasoline throughput. No private industry funds have been used to support NESCAUM's work on the regional LCFS.

When does NESCAUM expect to have a draft model rule that is available for public review and comment?

The Governors from the participating states have asked for a proposed program framework by early 2011. The development of a model rule that states could use as basis for their own rule development efforts would be a separate process. Any decision regarding the development of a model rule will be made after the program framework has been publicly vetted, and a decision is reached on next steps for the regional LCFS.

Renewable Fuels Association

“We continue to have a number of questions regarding the NE/M-A LCFS rule development process and interaction with the public. Because NECAUM is not a public agency and is organized as a 501(c) (3) non-profit, it is not bound by public laws requiring openness, transparency and the opportunity for public participation in the rulemaking process. Therefore, we believe NESCAUM should provide to the public a detailed description of how it intends to ensure openness, transparency and public participation in the process...To date, opportunity for public participation has been haphazard and without significant advanced public notice.”

See responses above.

The states are providing significant opportunities for public participation in the regional process and will continue to do so as the process moves forward. The level of participation by stakeholders in our meetings and webinars suggests that states have provided sufficient advance notice for stakeholder events but we will endeavor to provide additional advance notice for the remainder of the process.