May 7, 2010

Arthur Marin, Executive Director
NESCAUM
89 South Street, Suite 602
Boston, MA 02111

Submitted via electronic mail: amarin@nescaum.org; lcfs@nescaum.org; various interested parties

RE: Preliminary Comments Regarding Economic Analysis for Proposed Northeast/Mid-Atlantic Low Carbon Fuel Standard

Dear Mr. Marin,

Thank you for the opportunity to provide input on the proposed Northeast/Mid-Atlantic Low Carbon Fuel Standard (NE/M-A LCFS). We appreciate the work you and your staff have dedicated to the regional LCFS and other carbon reduction strategies and look forward to collaborating with NESCAUM and state regulators on this important policy.

The New Fuels Alliance (NFA) is a not-for-profit organization that educates political leaders, regulators, public interest groups, businesses, and the general public about the environmental, economic, and other benefits of non-petroleum fuel production and use. Its organizational purpose is to bring together the wide range of groups and sectors that are stakeholders in the development of advanced, non-petroleum fuels to build a broad and diverse base of support for a more sustainable energy future in the United States. NFA works closely with leading researchers and developers of advanced biofuels to support strategies and policies that will provide meaningful fuel diversification solutions.

As you may know, the biofuel industry was supportive of the concept of an LCFS framework when it was initially proposed in 2007 by California Governor Arnold Schwarzenegger. NFA and a wide range of biofuel stakeholders actively participated in the California LCFS process by providing technical, analytical, and industry expertise to the California Air Resources Board (CARB). Indeed, the biofuel sector continues to support the promotion of low carbon, sustainable fuels that enhance local economic development opportunities and curb greenhouse gas emissions from the transportation sector. It is our goal to assist with the development of a balanced NE/M-A LCFS so that we can ultimately support your efforts to secure passage of the measure in all 11 participating states. However, as you know, NFA, the advanced biofuel sector, researchers and investors all had specific concerns about carbon accounting in the California LCFS.[1] As the policy moves to the east and the economic analysis is developed, we request clarification regarding the process and procedures envisioned by NESCAUM and state regulators.

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

I. Stakeholders Require More Information about Process

Two recent webinars sponsored by NESCAUM indicated that the public could provide comment on the economic analysis of the regional program. While many biofuel stakeholders, including NFA, provided extensive comments to NESCAUM for the November 2009 request, it is unclear what NESCAUM is seeking in the latest comment opportunity. In terms of providing input and data, the industry has expressed concerns about how to respond in a useful and productive manner without a concrete and balanced proposal from NESCAUM. It would be helpful for NESCAUM to explain its proposal and to better articulate precisely what information the organization is looking for to move forward.

Biofuel stakeholders have several specific questions related to the process and timeline that NESCAUM and state regulators envision for the NE/M-A LCFS. Since NESCAUM is not a public agency and is therefore not bound by administrative laws applicable to those entities, a detailed assessment of how NESCAUM views the differentiation between the state processes from the NESCAUM process would be very helpful. Also, we request responses at your earliest convenience to the following questions and concerns:

- 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.

- 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)?

- Will each participating state also respond to comments that NESCAUM receives as part of the model rule drafting? If so, what form will the responses take and what is the anticipated timeframe? If not, when and how will stakeholders have an opportunity to comment directly to individual states on the model rule, policy and process?

- Presumably, NESCAUM is reviewing different policy and modeling options to use as the basis of the Model Rule. Does NESCAUM plan to present the policies and models under consideration to the public? Will stakeholders have an opportunity to review the record as it relates to policy and modeling decisions, such as input parameters, made by NESCAUM and the participating states?

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

- As discussed, 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/M-A 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?

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

II. Economic Analysis Should Include Balanced Carbon Intensity Numbers and Realistic Advanced Technology Forecasts

As you know, carbon intensity (CI) values are critical to estimating the specific fuels and volumes that would likely meet program objectives. It would be virtually impossible to know the economic impact, or costs and benefits, of LCFS implementation without understanding the composition of fuels and related supply chains that will be affected. Moreover, it is essential to develop and use scientifically defensible carbon values for a program like the NE/M-A LCFS, particularly when considering the potential for economic growth, or suppression, in a given sector that will be determined in large measure by CI values.

Regarding the establishment of specific CI values, on several occasions NESCAUM has publicly stated that: 1) NESCAUM does not envision conducting its own analysis of CI values, particularly as they relate to indirect carbon effects; and, 2) the NE/M-A LCFS will be independent from a policy perspective and is not bound to adopt any provisions from the California model. These statements appear to contradict one another. The process used by NESCAUM to develop CI values for participating fuels, as outlined in the April 15 draft presentation that is linked on the NESCAUM website, is unclear and requires clarification. Slide 56 from the presentation notes that NESCAUM is using CI numbers "based on EPA, CARB, and LCA estimates." Specifically, what additional "LCA estimates" were used or conducted, beyond the employment of EPA and CARB numbers? Furthermore, why did NESCAUM decide to draw on EPA and CARB CI values that use selective carbon accounting? Did NESCAUM consider a balanced approach to establishing CI values by limiting the carbon analysis to direct effects for biofuels, like it did for petroleum, natural gas, electricity, and hydrogen?

In November 2009 comments to NESCAUM, NFA provided a detailed outline of the problems with importing or developing asymmetrical carbon accounting metrics in a performance-based regime like the LCFS.[2] The CI values must be objective and balanced if the program is to be

[2] http://www.nescaum.org/documents/stakeholder-comments-on-the-low-carbon-fuels-standard/northeast-lcfs-comments-new-fuels-alliance.pdf/

durable, withstand potential legal challenge, and serve as a template for other jurisdictions. Unfortunately, NESCAUM is proposing the use of some combination of CARB's and EPA's CI values, which is problematic because those methodologies include indirect, market-mediated effects for biofuels, but not for the petroleum baseline or other compliance fuels. As such, the CI values proposed by NESCAUM for the economic analysis will significantly disadvantage biofuels by skewing their relative carbon scores. A very real outcome of this controversial policy decision will be reduced investment in biofuel technologies because investors will note the uncertainty associated with the treatment of biofuels. Moreover, selective inclusion of indirect effects only for biofuels increases the carbon score of biofuels relative to its likely competitors, natural gas and hydrogen, which also reduces the attractiveness of biofuels to the investment community. It is also important to reiterate that the proposed LCFS, unlike the federal RFS, is a performance standard, with the underlying implication that fuel providers will be held accountable for their actual performance via supply-chain accountability. NESCAUM has not made clear, in its public support of indirect effect penalties against biofuels, what the public policy rationale is for holding a fuel accountable for resource impacts occurring outside of its supply chain. Certainly, biofuel companies are willing to be held accountable for their own land impacts, but selective penalties for indirect effects runs afoul of the performance-based foundation of the LCFS and raises serious carbon accounting problems.

There are also major issues in California with regard to the treatment of oil. As you may know, the California LCFS allows oil that is up to 15% higher in carbon intensity to qualify as 2006 baseline petroleum.[3] Furthermore, CARB has recently proposed that the LCFS program would "grandfather" the petroleum originating from eight countries or states (California, Alaska, Saudi Arabia, Ecuador, Iraq, Brazil, Mexico, and Angola). The result of this controversial decision will be higher carbon intensity petroleum fuels receiving artificially low CI values under the LCFS. These policies are in addition to the preferential treatment that CARB provides to petroleum by not requiring it to undergo a comprehensive assessment of its indirect, or market-mediated, carbon effects.

While it is unclear how the NE/M-A LCFS will ultimately treat oil from a policy perspective, NFA is encouraged by the NESCAUM proposal, in certain reference cases, to increase the projected carbon intensity of petroleum over the duration of the program. While NFA seeks clarity on the details of this important policy decision, it is nonetheless appropriate to include higher carbon crude in any economic analysis because the marginal gallon of oil is unquestionably going to come from heavier crude.

It is also instructive to recall that it took more than five years to implement the Regional Greenhouse Gas Initiative (RGGI), which included ten of the eleven proposed LCFS states. While the two programs obviously differ in numerous areas, it is expected that the regional LCFS will take at least several years to establish and implement because of the complexities of the regional fuels market, the controversies associated with carbon accounting, and the reality that eleven state legislatures must approve and adopt the final rule. This is important to note because many of the alternative fuel technologies that will likely participate in the program, particularly on the liquid fuels front, will undergo significant economic scalability and commercialization growth in the coming years. As such, it is extremely difficult to gauge, from an economic perspective, which

[3] http://www.newfuelsalliance.org/15_percent_memo.pdf

technologies are likely to succeed and at what rate. Also, future petroleum price fluctuations are unpredictable and will have an impact on technology development. While all economic analyses are speculative, conducting one prior to establishing or using balanced CI scores, and at least several years prior to full implementation of the program, increases the potential for error and renders the overall economic impact statement less credible.

III. Next Steps

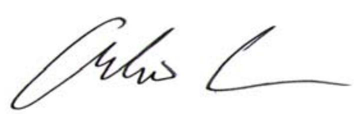
NFA welcomes the opportunity to work with NESCAUM on the economic analysis through the stakeholder engagement process. To make this process more productive, we strongly recommend that NESCAUM and state regulators conduct an economic analysis and draft a model rule in the following sequence:

1) Establish balanced CI values that incorporate symmetrical system boundaries for all fuels. If NESCAUM decides to use CARB or EPA CI numbers, then it should discount the penalty ascribed to biofuels for indirect effects, and should only reinstate those numbers when all other fuels have been equally debited for their market-mediated effects;
2) Gather substantive information from operating or planned facilities for advanced renewable technologies; and,
3) Determine cost estimates for fossil fuels and alternative energy that are updated and credible.

NFA believes NESCAUM should wait to conduct an economic analysis and draft a model rule until it can satisfy all of the above noted issues.

We appreciate your time and look forward to your responses to the questions outlined above. The advanced biofuel industry stands ready to partner with NESCAUM and state regulators in this important process. Please let us know if you require any additional information or clarification.

Sincerely,



Andrew Schuyler
Director, Northeast Region
New Fuels Alliance

R. Brooke Coleman
Executive Director
New Fuels Alliance