



COMMONWEALTH OF MASSACHUSETTS  
**THE GENERAL COURT**  
STATE HOUSE, BOSTON 02133-1053

August 7, 2009

Ian Bowles – Secretary  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street, 12th Floor  
Boston, MA 02114

**RE: Department of Energy Resources – Biofuels Regulations**

Dear Secretary Bowles:

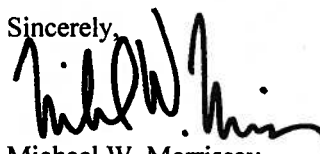
We are writing today to urge the Department of Energy Resources to move forward in an expeditious matter in promulgating regulations to implement the Clean Energy Biofuels Act of 2008. As you know, portions of this Act are scheduled to go into effect on or before July 1, 2010. We are gravely concerned that implementation of the Act will be stalled without the Department's immediate attention to the following matters.

It is our understanding that concerns have been raised regarding uncertainties about certain aspects of the blending requirements, but there are stakeholders that are confident blending requirements can be met once certainty is established through regulation. Concerns have also been brought to our attention regarding compliance measuring and fuel eligibility under the Greenhouse Gas requirements in the Act. With regard to compliance measuring, we support the position that if DOER demonstrates an averaging system to be beneficial, then a regime requires a maximum of quarterly compliance would provide a more proper balance between market certainty and flexibility for investment and development. Further, it is our understanding that DOER intends to wait before certifying non-waste biofuels thereby establishing a "waste only" biofuels program. This certification we feel is problematic given the "feedstock neutral" position of the Act. As you know, the Act opts for a performance-based GHG requirement.


We are told that the U.S. EPA intends to release an updated methodology measuring the carbon impacts of different fuels prior to July 1, 2010. We respectfully inquire as to whether or not this metric could be used as a guide in the Massachusetts rule, so that we could forward in a timely manner and create more stability and stimulation in the biofuels marketplace.

We have enclosed a letter from the New Fuels Alliance for your continued review. Thank you for taking the time to listen to our concerns. We look forward to continuing to work with you on this important matter for the betterment of the Commonwealth.


Sincerely,

  
Michael W. Morrissey  
Norfolk & Plymouth

  
Benjamin B. Downing  
Berkshire, Hampshire & Franklin

  
Robert A. O'Leary  
Cape & Islands

  
Steven A. Baddour  
First Essex

  
Bruce E. Tarr  
First Essex & Middlesex



# NEW FUELS ALLIANCE

July 30, 2009

Philip Giudice, Commissioner  
MA Department of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

**RE: Clean Energy Biofuels Act Rulemaking**

*Sent Via Electronic Mail to Phil.Giudice@state.ma.us*

Dear Commissioner Giudice,

We are writing in regard to the rulemaking process for the Massachusetts Clean Energy Biofuels Act (Ch. 206 of the Acts of 2008) that was signed into law by the Governor one year ago, on July 28, 2008. As stakeholders dedicated to meeting the requirements set forth in the Act, we have concerns about the Department of Energy Resources' (DOER's) current approach to implementing the rule.

First and foremost, we encourage DOER to publish the rule as soon as possible. Portions of the law are slated to go into effect on July 1, 2010, and the regulated community needs time to prepare. We are aware that there are uncertainties about certain aspects of the biofuel blending requirement. However, we are confident that fuel terminals will be able to meet the requirements of the Act if DOER publishes the guidelines in the near term.

Second, there are two key provisions that are critical to the state's ability to get this program up and running. The first provision pertains to how the state measures compliance (i.e. on a per-gallon or statewide averaging basis). The second provision pertains to how the state determines fuel eligibility pursuant to the greenhouse gas (GHG) requirements in the Act. DOER must strike the right

balance to ensure that the biofuel blending targets can be met within the timeframe allotted.

With regard to measuring compliance, DOER has announced that it prefers to utilize a statewide averaging compliance metric.<sup>1</sup> While we recognize that some flexibility can be useful, too much flexibility will allow the oil industry to dictate the terms of any supply agreements between biofuel producers and fuel distributors, and isolate its use of biodiesel to niche markets. Further, annual averaging with tradable compliance credits would require the state to manage and enforce a much more complicated trading scheme, which in turn could unnecessarily delay enforcement of the rule. At this point, it may be preferable to keep the program simple until DOER can fully consider the implications of an averaging/trading compliance mechanism. If DOER demonstrates that an averaging system would be beneficial and can be implemented in a timely manner, we strongly encourage the agency to institute a regime that requires a maximum of quarterly compliance. Quarterly averaging will provide the right balance between market certainty and flexibility for investment, production and infrastructural development. While we appreciate DOER's concerns about implementing an unnecessarily cumbersome rule, there is also the potential to destabilize the program by stepping into an uncertain compliance strategy.

With regard to how the state determines fuel eligibility pursuant to the GHG requirements, DOER has announced that it intends to wait for scientific certainty before certifying non-waste biofuels. This amounts to DOER establishing a "waste only" biofuel program. Certainly, waste will be the preferred feedstock given the stringent GHG requirements of the Act. But the exclusive certification of waste raises many problems. First, the legislation is clearly feedstock neutral, opting instead for a performance-based GHG requirement. Second, feedstock is just one part of the "cradle to grave" equation of

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<sup>1</sup> This decision is within the authority granted to DOER. However, the Act states that an averaging metric can only be implemented if DOER determines via study that such an averaging system is "feasible and that its benefits substantially exceed its costs." To date, we are not aware of any studies on the costs and benefits of a statewide averaging system.

determining a fuel's lifecycle carbon score; as such, choosing a single feedstock is inconsistent with the general intent of a performance-based GHG requirement. Third, the policy of limiting a fuel producer to one particular feedstock, regardless of whether it is a fossil fuel or renewable fuel, fails to recognize that most fuel refineries are not feedstock-dedicated, and getting them financed depends largely on flexibility in the feedstock marketplace. U.S. EPA, for example, has recognized this reality and intends to "carbon score" biodiesel based on a multi-feedstock framework, including allowing biodiesel producers to be scored based on feedstock averaging in the produced gallon. Fourth, it is inconsistent with regard to how petroleum (which is not feedstock controlled) and biofuels (which would be) are treated under the program. If Massachusetts is to make a meaningful commitment to the advanced biofuel sector, it must treat all fuels in a consistent manner and level the playing field for non-petroleum fuels. A feedstock limitation is inconsistent with both the Act and the common goal of supporting biofuel development in Massachusetts.

We are aware that there are many unresolved issues related to "carbon scoring" a gallon of biofuels relative to petroleum. However, we are also aware that we cannot afford to wait for the resolution of debates that may be perpetual in nature. The U.S. Department of Energy has been measuring the carbon impacts of different fuels for more than two decades. U.S. EPA will be releasing an updated methodology well before the Massachusetts biodiesel blending implementation date of July 1, 2010. This metric could be used as a guide in the Massachusetts rule. It is also worth noting that the current debate about the indirect effects of biofuels is decidedly one-sided, and will not be complete until the indirect effects of petroleum are studied and quantified. In passing the GHG performance standard, we believe the Legislature intended for biofuels and petroleum to be compared with common system boundaries to avoid an asymmetrical and invalid comparison. It is clear that we can move in a positive direction, given the stringent 50 percent GHG requirement already contained in the Act, using current methodologies.

We look forward to working with DOER on the timely advancement of this rule while addressing the key issues of averaging and fuel eligibility so that we can get this program up and running. We appreciate your attention to this important matter and look forward to your response.

Sincerely,

**R. Brooke Coleman**  
Executive Director  
New Fuels Alliance

**Joseph Dahmen**  
Chief Executive Officer  
Bodega Algae

**Andrew Schuyler**  
Director, Northeast Region  
New Fuels Alliance

**Reynolds Moore**  
Vice President, Sales  
Innovation Biofuels

**Jesse Reich**  
Chief Executive Officer  
Baystate Biofuels

**Charles Allison, Jr.**  
Co-Chief Executive Officer  
Interstate Biofuels

**Lee Harrison**  
Executive Vice President  
Berkshire Biodiesel

**Curtis Felix**  
Chief Executive Officer  
Plankton Power

**Gus Kellogg**  
Chief Executive Officer  
Greenleaf Biofuels, LLC  
President  
CT Biodiesel & Bioheat Association

**Andrew Kellar**  
Founder  
Simply Green Biofuels

cc: David Cash, Executive Office of Energy and Environmental Affairs  
Dwayne Breger, Department of Energy Resources