



November 3, 2011

The Honorable Doug Magnus
Chair, Senate Agriculture and
Rural Economies Committee
75 Rev. Dr. Martin Luther King Jr. Blvd.
Capitol Building, Room 205
St. Paul, MN 55155

The Honorable Chris Gerlach
Chair, Senate Commerce and
Consumer Protection Committee
75 Rev. Dr. Martin Luther King Jr. Blvd.
Capitol Building, Room 120
St. Paul, MN 55155

The Honorable Joe Gimse
Chair, Senate Transportation Committee
75 Rev. Dr. Martin Luther King Jr. Blvd.
Capitol Building, Room 303
St. Paul, MN 55155

The Honorable Rod Hamilton
Chair, House Agriculture and Rural Development Policy
and Finance Committee
559 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Joe Hoppe
Chair, House Commerce and
Regulatory Reform Committee
563 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Michael Beard
Chair, House Transportation Policy and
Finance Committee
417 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Dear Committee Chairmen:

Minnesota became the first state to mandate the use of biodiesel in September of 2005 and currently requires a minimum content level of five percent biodiesel (B5) in diesel fuel sold in Minnesota.¹

By law, Minnesota's minimum content mandate is set to increase to 10% biodiesel (B10) in 2012 and 20% biodiesel (B20) in 2015.² Before a new mandate can be implemented, however, the law (Minn. Stat. § 239.77, Subd. 2 (a)) requires the commissioners of agriculture, commerce and the pollution control agency to determine whether four statutory conditions have been met. These conditions involve federal standards for blend specifications, the production capacity of biodiesel in Minnesota, the amount of infrastructure and regulatory protocol for biodiesel blending, and the source of feedstocks.³

After much discussion and in consultation with the Minnesota Biodiesel Task Force and with stakeholders, the commissioners agree that these four conditions have not been met completely in Minnesota. Therefore, the commissioners **recommend a one-year delay in the implementation of the B10 mandate**. The commissioners acknowledge the following questions remain concerning the statutory conditions:

- **Regulatory protocol:** The Minnesota Department of Commerce, Weights and Measures Division is the enforcement agent for the state's biodiesel content mandate. Weights & Measures audits and samples biodiesel stored at bulk delivery facilities or sold at retail outlets in the state to ensure adequate biodiesel blends are offered. The division's investigators inspect retail outlets on a regular schedule. The length of the interval between inspections might allow for an opportunity for undetected violations of the content mandate. Also, Weights & Measures does not have the authority to audit or inspect at farms or fleet facilities to determine if Minnesota bulk facilities are delivering mandate-compliant fuel.

¹ The law makes exceptions for certain engines including railroad locomotives, off-road taconite and copper mining equipment, and heating equipment motors located at nuclear power plants.

² By law, B5 is effective year-round and B10/B20 during the summer months of April through October only (reverting back to B5 in the winter months).

³ See Minn. Stat. 239.77, Subd. 2 (b).

- Amount of blending infrastructure: The majority of the state is equipped with adequate biodiesel blending infrastructure. The southwestern portion of the state historically has experienced some issues with access to mandate-compliant fuel, leading to supply issues.

The commissioners firmly support the current B5 mandate, as well as eventual moves to B10 and B20. Along with monitoring/addressing the above issues, the commissioners pledge to do the following:

- The Department of Agriculture will convene the Minnesota Biodiesel Task Force Cold Weather Issues Team. Created in 2008, this team has provided essential guidance to the state on technical issues related to the production, handling and use of biodiesel in cold weather conditions. The team will discuss whether future waivers on #1 diesel are needed.⁴
- In accordance with Minn. Stat. § 239.77 Subd. 2(e) the Commerce Commissioner must determine wholesale diesel and biodiesel blend price differentials in the region and whether they may cause economic hardship to diesel retailers in the state by February 1, 2012. If such an economic hardship is found, the Governor is empowered to delay the move to B10. The Commerce Department will collaborate with the Department of Agriculture, Pollution Control Agency and the Biodiesel Task Force in the design and completion of this analysis.
- The Department of Agriculture will work with industry partners and the Biodiesel Task Force to track developments in federal support for biodiesel. Much uncertainty surrounds the question of whether the federal tax credit for biodiesel blenders will be allowed to expire, and if so, how RIN values will respond.⁵ The tax credit lapsed for six months at the beginning of 2011, until being restored retroactively by Congress. It is assumed that RIN values will rise to make up some or all of the value of the tax credit, should the tax credit expire. Industry experts contend that the situation will become more transparent in the coming months.

The commissioners will reevaluate Minnesota's readiness to implement B10, continuing to seek the input of the Minnesota Biodiesel Task Force and stakeholders throughout the process.

Sincerely,



Commissioner Dave Frederickson
MN Department of Agriculture



Commissioner Paul Aasen
MN Pollution Control Agency



Commissioner Mike Rothman
MN Department of Commerce

⁴ During the first winter following B5 implementation in May 2009, some diesel fuel users in Minnesota reported problems potentially associated with the use of higher biodiesel blends in extreme cold weather. In January 2010, the Minnesota Department of Commerce issued a temporary waiver for the B5 requirement in #1 diesel (moving to B2 in winter months) in response to these concerns. The waiver is effective through March of 2012.

⁵ Biodiesel blenders currently receive a \$1.00/gallon federal tax credit, set to expire at the end of 2011. Under the EPA's program for managing the federal Renewable Fuel Standard, biodiesel also earns 1.5 RINs (Renewable Identification Number) per gallon. Throughout August of 2011, RINs have been trading between \$1.30 and \$1.70 -- meaning that, on average, a gallon of biodiesel could earn about \$2.25/gallon (1.5 RINs per gallon of biodiesel * \$1.50 per RIN = \$2.25).