

**Citizens for Pennsylvania's Future (PennFuture) • Conservation Law Foundation  
• ENE (Environment Northeast) • Environmental Entrepreneurs (E2)  
• Natural Resources Defense Council • Sierra Club  
• Union of Concerned Scientists**

April 24, 2012

**Via Electronic Mail**

The Honorable William Sorrell  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001

**Re: Northeast/Mid-Atlantic States Clean Fuels Standard**

Dear Attorney General Sorrell:

We, the undersigned, represent a group of stakeholders committed to reducing greenhouse gas emissions from the transportation sector in the Northeast and Mid-Atlantic (NE/MA) states while also reducing the region's reliance on oil. This letter responds to recent correspondence from the Consumer Energy Alliance (CEA) addressed to you and your fellow Attorneys General in the eleven states participating in the NE/MA Clean Fuels Standard (CFS) initiative. As you may know, the CEA is a trade association comprised of fossil fuel interests and affiliated with organizations like the American Petroleum Institute. The concerns expressed by CEA should be carefully scrutinized by you in light of its substantial financial interest in the perpetuation of fossil fuel consumption.

We take issue with the framing of the California litigation in the recent letter from CEA and are confident that the NE/MA Clean Fuels Standard can be developed in a manner that will withstand rigorous judicial scrutiny. CEA has fundamentally misrepresented the California litigation. While the U.S. District Court for the Eastern District of California did find that California's Low Carbon Fuel Standard (LCFS) was a violation of the Constitution's Dormant Commerce Clause, the court's decision has been appealed to the Ninth Circuit. On April 23, 2012, the Ninth Circuit granted a motion to stay the District Court injunction against LCFS, allowing California to enforce the regulation while the appeal proceeds. Despite the implication made by CEA, the outcome of that appeal cannot and should not be predetermined.

Moreover, the district court's decision in no way precludes the successful finalization and implementation of the NE/MA CFS. CEA misrepresents the scope and consequences of this litigation by improperly assuming that the Constitutional Commerce Clause challenges in the California litigation would put a halt to the development of fuel standards in other states. CEA fails to recognize that the

Commerce Clause challenge in the California litigation is tied directly to *California's* program design. Thus, even if the California District Court decision should be upheld as to the Commerce Clause challenges lodged against the California LCFS, the NE/MA CFS program design is still under development and could readily be structured to avoid Commerce Clause roadblocks. Simply put: contrary to the claims of CEA's letter, the California litigation is simply not a predictor of the legality of fuel standards still under development in other locations.

There will undoubtedly be significant program design differences between the California LCFS rule and the clean fuels standard being developed by eleven Northeast and Mid-Atlantic states. The NE/MA states are still discussing how to structure the program framework, and have not yet reached the stage of determining carbon intensity values of various transportation fuels, or how the transport of these fuels will be treated in the determination of those values. Further, a number of regional differences exist between the NE/MA region and California, and these resource-specific differences undercut CEA's claim. We are confident that Vermont and the other NE/MA states can develop a CFS that will withstand stringent judicial scrutiny. We believe that the development of such a standard is a crucial means of significantly reducing the region's dependence on oil, transportation costs, and greenhouse gas emissions while at the same time providing consumers more choices.

In its letter to you, the CEA also made mention of its recent study citing the potential costs of a CFS in the Northeast and Mid-Atlantic region. The CEA's study is simply not a credible analysis. The study is strongly biased toward the interests of the fossil fuel industry and contains many unsupportable assumptions and significant analytical errors. The high costs the CEA attributes to the adoption of a CFS depend on unfounded conjecture regarding the provisions of the final NE/MA CFS rule, which, again, have not yet been determined. For example, the CEA erroneously assumes that states will impose large penalties for non-compliance. In fact, although the program details have not yet been written, the NE/MA states have discussed inclusion of an "alternative compliance payment" mechanism – similar to those included in many state Renewable Portfolio Standards in the region – that would essentially cap the cost of the program. CEA also assumes gas prices will not increase under a business as usual scenario (i.e., without a CFS), an assumption that is inconsistent with decades of compiled gas price statistics as well as future projections provided by the U.S. Energy Information Administration.<sup>1</sup>

For a more technically credible and independent assessment, we recommend to you the independent study of the NE/MA CFS completed by Northeast States for Coordinated Air Use Management (NESCAUM), an association of state air quality agencies in the Northeast.<sup>2</sup> In contrast to the CEA study, the NESCAUM analysis concluded that the CFS could deliver between \$22 and \$41 billion in net economic benefits, the creation of 20,000 to 50,000 job years, and a boost to total disposable income between \$7 and \$15 billion.

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<sup>1</sup> Available at: <http://www.eia.gov/oiaf/aeo/tablebrowser/#release=EARLY2012&subject=0-EARLY2012&table=3-EARLY2012&region=1-0&cases=full2011-d020911a,early2012-d121011b>

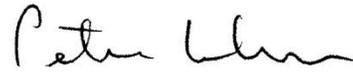
<sup>2</sup> See *Economic Analysis of a Program to Promote Clean Transportation Fuels in the Northeast/Mid-Atlantic Region*. August 2011. Available at: <http://www.nescaum.org/topics/clean-fuels-standard>

The CEA's recent letter ignored and omitted the substantial benefits of a regional clean fuels standard, and mischaracterized the implications of the California litigation. This is not surprising given the membership of the CEA. A carefully crafted NE/MA CFS offers a sensible climate change solution while creating significant economic and job benefits in our region. We encourage you to work with the Agency of Natural Resources and the Shumlin Administration to craft a NE/MA CFS rule that will withstand judicial review, while delivering the tremendous economic and environmental benefits that independent analysis show it would provide Vermont consumers.

Sincerely,



Heather Sage  
Vice President  
Citizens for Pennsylvania's Future (PennFuture)



Peter Lehner  
Executive Director  
Natural Resources Defense Council



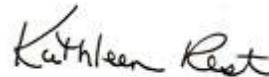
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cc: Elizabeth Miller, Commissioner, Department of Public Service  
Alexandra MacLean, Secretary of Civil and Military Affairs, Office of Governor Shumlin  
Deb Markowitz, Secretary, Agency of Natural Resources