



July 11, 2011

State Energy Plan Draft Regulations Comments  
NYSERDA  
17 Columbia Circle  
Albany, NY 12203-6399

Dear State Energy Plan Committee Members:

I am writing to share comments from the National Biodiesel Board on the draft State Energy Plan Regulations. I would like to briefly note our concerns in this letter, while formally requesting a personal meeting in the near future to discuss these issues in greater depth.

Our primary concerns relate to Section 7862.1, which includes informational requirements for biodiesel producers. In short, if these draft regulations were to acquire the force of law, New York State would have the most oppressive set of regulatory requirements found anywhere in the world. Below, our concerns with several subsections within Section 7862.1 are briefly noted.

Subsections 2, 3, 4, 5, 6, and 10

Since only three biodiesel plants are currently located in New York State, publication of information required in these subsections would provide valuable trade information to competitors. And, of course, this is to say nothing of the costs of compliance for our members, all of which are small to medium sized business owners. Specifically, we are concerned about the following informational requirements:

- Total production volume;
- Where product is sold;
- Price paid for final product;
- Price paid for feedstock;
- Volume of coproduct produced;
- Where coproduct is sold;
- Volume of byproduct produced;
- Where byproduct is sold; and
- Type and quantity of fuel used to produce biodiesel.

Subsection 7-8

This subsection requires reporting of the amount of land needed to produce each feedstock used in the finished fuel, i.e. X acres of soybeans produced Y gallons of biodiesel at New York plant Z. It also requires the biodiesel producer to report how the land was used prior to feedstock production.

It is impossible for biodiesel producers to report this data because they are disconnected from farmers who grow biodiesel feedstocks. Unlike in the case of corn ethanol, where farmers often deliver corn directly to the ethanol plant for processing into fuel, farmers do not take soybeans to

biodiesel plants; farmers take soybeans to crushing facilities where the beans are processed into protein meal (80% of the bean) used for animal feed and vegetable oil used for cooking or biodiesel (20% of the bean). Since there is a premium paid for soybean oil used in cooking applications (baked goods, frying, etc.), soybean processors endeavor to sell the oil portion of the soybean into the food market. Biodiesel producers simply use the oil that is left over after the food market has been satisfied. Therefore, biodiesel producers typically do not know from which processing facility their feedstock will derive from quarter to quarter, and they never know from what farm it came. As such, it is impossible for our members to comply with this requirement.

#### Subsection 9

This subsection requires biodiesel producers to report the precise amounts of inputs from every individual farmer whose feedstock is used for biodiesel production including, but not limited to, the following: “fertilizer, limestone, herbicides, pesticides, diesel fuel.”

Compliance with this requirement is impossible for two reasons: 1) as written previously, biodiesel producers are not connected in any way to feedstock producers/farmers; and 2) many farmers do not keep data this detailed.

#### Subsection 11

This section requires biodiesel producers to report “the current storage capacities in the state by county and the means by which these facilities can be filled e.g. barge, pipeline, rail, and truck.”

Biodiesel producers have no way of knowing this information. If this is to be a requirement, I would suggest the burden be placed on the petroleum sector since the owners of the facilities in question are the customers or affiliates of that industry.

#### Conclusion

The biodiesel industry simply cannot comply with the requirements of Section 7862.1 of the draft regulation. As such, our recommendation is to eliminate the section in its entirety and to begin working with staff at the National Biodiesel Board to identify sources of data that can provide insight into these issues. It is my firm belief that studies which have been published by various federal agencies and academic institutions could prove useful, mitigating the need for onerous regulations that would jeopardize the New York biodiesel industry.

Thank you, in advance, for your consideration of our comments. Should you have any questions about this matter or should you wish to schedule a personal meeting, please feel free to contact me at any time at 573.635.3893 or [sneal@biodiesel.org](mailto:sneal@biodiesel.org).

Sincerely,



Shelby Neal  
Director of State Governmental Affairs