



September 22, 2025

New Mexico Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr.
Suite N4050
Santa Fe, NM 87505

Re: New Mexico Clean Transportation Fuel Program

Members of the Environmental Improvement Board:

Americans for Affordable Clean Energy (“AACE”) is a non-profit organization established by several of the country’s leading retail fuel companies to educate policymakers and the public on how to best diversify our nation’s transportation energy portfolio. AACE represents hundreds of retail fuel locations in New Mexico. Our membership employs tens of thousands of New Mexicans and contributes tens of millions of dollars in tax revenue annually. We are eager to work with the Environmental Improvement Board as you implement the Clean Transportation Fuel Program (“CTP”) in New Mexico, and for the opportunity to comment on this Proposed Rule.¹

The fuel retail industry is experienced and well-versed in operating under CTP-type regulatory frameworks, including the California Low Carbon Fuel Standard and the federal Renewable Fuel Standard (“RFS”). We generally support both of those programs. Our industry is fuel-agnostic, meaning we are eager to sell whichever forms of transportation energy that our customers want to buy. We have a long history of supporting alternative fuel incentive policies when those policies enable us to offer fuel that is both cleaner *and* competitively priced for consumers. AACE respectfully offers our insights to help New Mexico implement a consumer-oriented CTP.

Successful decarbonization policies align *economic incentives* with *environmental objectives*. To avoid overly penalizing New Mexican consumers, the CTP should tether the cost of compliance to market participants’ ability to innovate and offer low-carbon alternatives that are priced competitively with petroleum-based fuels.

New Mexico should carefully implement its CTP to ensure that the primary objective is *consumer adoption* of low carbon fuels. This objective is best facilitated by – among other things – adopting a technology-neutral program that (i) obligates fuel *producers* and *importers* (rather than retailers or consumers) to generate program “deficits,” (ii) avoids counterproductive “opt-in” schemes that incentivize certain fuels (*i.e.*, sustainable aviation fuel, or “SAF”) over others for reasons unrelated to emissions attributes, (iii) prohibits credit generation for “co-processed” fuels; (iv) requires any incentivized fuel to be publicly available, and (v) establishes a level playing field for all market participants.

The proposed CTP is misaligned with virtually all of these objectives, differentiating it

¹ Petition to Adopt 20.2.92 NMAC, Clean Transportation Fuels Program,” New Mexico Environment Department, filed May 16, 2025, <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2025/05/2025-05-16-EIB-25-23-Petition-to-Adopt-20.2.92-NMAC-CTFP-pj.pdf>

from other LCFS-type regimes in other states and at the federal level. If it is not rectified, it will result in New Mexican fuel consumers paying more than they need to for fuel that is less clean than it could be. New Mexico fuel retailers are confident that their objectives are mutually compatible with those of the Environmental Improvement Board. They do however have serious concerns that the proposed CTP's "fine print" exhibits insufficient consideration for the economics and supply chains associated with bringing clean transportation energy to market.

AACE's principal concern with New Mexico's proposed implementing regulations is that they could be construed to impose obligations on intrastate fuel distributors and retailers, a result that would increase costs without any offsetting uptick in investment for clean fuels. It would further create administrative inefficiencies and generally undermine the CTP's stated objectives. No other state does it this way. Sound CTPs function effectively only when compliance obligations are assigned solely to producers and importers. These are the entities that control the inputs and environmental characteristics of fuels that are sold in New Mexico. Other LCFS-type schemes that assign obligations to producers and importers have successfully achieved the CTP's objectives in a manner that enables renewable fuels to be cost-competitive with petroleum.

When low-carbon fuels are more economical than a petroleum alternative at the pump, consumers tend to purchase the lowest-carbon, lowest-cost alternative. This perpetuates a *virtuous cycle of adoption* where price-motivated consumers gravitate toward more environmentally attractive fuels. Ensuring that consumers share the value of any incentives generated under a CTP helps mitigate any resulting inflationary impacts of the program.

I. Fuel Producers and Importers Should Generate Deficits.

Well-designed CTPs displace traditional fuel and replace it with renewable substitutes to reduce emissions without destabilizing fuel prices and supply. These objectives can only be satisfied if renewable fuels are price-competitive with traditional petroleum-based fuel. The best way to ensure this outcome is a CTP where the entities that generate deficits are *producers* of fuel within the state, or *transporters/importers* of fuel from out-of-state fuel terminals to in-state retail outlets.

This approach has worked effectively elsewhere, most notably under CTPs in California, Washington, Oregon, and the federal RFS. It creates a strong financial incentive for downstream fuel retailers and marketers to blend renewable fuels into the fuel supply, while also encouraging fuel consumers to gravitate toward cleaner and lower-cost options. Given consumers' price sensitivity, it is imperative that renewable fuels be sold on a cost-competitive basis with traditional petroleum-based fuels if they are to achieve the type of market penetration the CTP envisions.

The Proposed Rule includes downstream parties (fuel dispensers) in the definition of regulated parties that generate deficits under the CTP.² This definition will unnecessarily increase prices and complexity without any offsetting benefit. Blenders, dispensers, and retailers buy fuel in New Mexico; they do not control the characteristics of New Mexico's fuel supply.

² *Id.* at P. 5, ("As used in proposed new rule 20.2.92 NMAC a "regulated party" means a person producing, importing or **dispensing** for use a regulated fuel, unless exempt from the rule, or a person that voluntarily opts into the CTFP in accordance with proposed new rule 20.2.92.103(C) NMAC.") [emphasis added] *See also* P. 4 ("Dispense" means distributing transportation fuel into a motor vehicle or equipment in New Mexico.")

Refiners and importers (*i.e.*, those transporting fuel from out-of-state refineries and terminals to in-state retail stations) do control such characteristics. If fuel retailers were to generate deficits, their ability to satisfy their obligations would be dictated by their upstream counterparts, who would have the leverage and incentive to raise prices. The resulting price increase will be passed down to consumers via higher prices at the pump.

Including fuel retailers as deficit generators would also result in unnecessary administrative complexity for New Mexico officials. There are substantially fewer refiners and importers today than there are retailers. Thus, New Mexico's ability to ensure that all deficit generators are compliant with their CTP obligations is relatively simple and straightforward if confined to fuel *producers* and *importers*. **No active state-wide CTPs or Low Carbon Fuel Standards include fuel dispensers in the definition of a regulated party, nor does the underlying statute enacted in New Mexico. The Environmental Improvement Board should modify the definition of regulated party to align with other states and best support the success of the CTP.**

Similarly, *electricity producers* (power plants, utilities, etc.) should generate deficits under the program if the "fuel" they produce is not derived from renewable sources. Electricity is a fuel and, like liquid fuels, should be incentivized to improve its emissions over time as a part of a CTP. In turn, when public electric vehicle ("EV") charging activity generates credits, consumers can be assured that the electric fuel supply is obligated to reduce its emissions in alignment with all other transportation fuel technologies.

II. CTPs Should be Technology-Neutral

CTPs should be technology-neutral and avoid incentivizing the production of one fuel over another unless there is an environmentally defensible rationale for doing so. No single solution will decarbonize transportation energy. The best decarbonization solution in New Mexico today may be eclipsed by subsequent ingenuity or information. Sound policy should not stifle innovation by mandating specific solutions, or favoring specific technologies without environmental justification.

In response to technology-neutral federal and state CTPs, many of AACE's members have modified their operations to offer to consumers low-carbon fuels such as E15 (85% gasoline blended with 15% ethanol), EV charging stations, renewable diesel, and biodiesel.³ A growing biofuel industry enhances the overall supply of transportation energy and improves the transportation sector's emissions footprint. Today, the trucking industry relies on renewable diesel and biodiesel supply to help keep transportation costs low. Consumers also rely on ethanol to keep gasoline prices low at the pump.

New Mexico should regulate environmentally similar fuels on a consistent basis,

³ In California, this has resulted in a reduction of more than 12.5 percent in the average carbon intensity of the transportation fuel pool from the 2010 baseline, exceeding the 2022 benchmark of 10 percent reduction. See "Low Carbon Fuel Standard 2023 Amendments", California Air Resources Board, *available at* https://ww2.arb.ca.gov/sites/default/files/2023-09/CTP_sria_2023_0.pdf.

irrespective of the fuels' end use-cases. Sustainable aviation fuel ("SAF") production, for example, has similar environmental benefits as other biofuels that displace over-the-road gasoline or diesel, and uses the same feedstock inputs as those renewable substitutes (such as ethanol, biodiesel, and renewable diesel). Finite amounts of available feedstock, however, creates a zero-sum game for these fuels.⁴ In other words, every gallon of SAF produced is a gallon of renewable over-the-road fuel that is *not* produced. The object of a CTP should be to encourage the market to efficiently allocate feedstock to the use-case that is able to maximize emission reductions at the lowest cost.

The aviation industry is often dissatisfied with these outcomes. Their objective is not to lower emissions but rather to be able to convince industry observers that *the aviation sector* is lowering emissions. In recent years, biofuel producers have made more renewable diesel and less SAF because renewable diesel is a more economically and environmentally compelling product. Despite this reality, the aviation industry and other SAF advocates often encourage lawmakers to contort CTPs to create asymmetrically favorable regulatory treatment for SAF.

Preferential treatment of SAF under an CTP – for example, by allowing SAF producers to "opt-in" without petroleum jet fuel producers generating concomitant deficits – will disrupt, and may eventually eliminate, the market for biodiesel and renewable diesel by diverting limited feedstocks to SAF. It also threatens to siphon off ethanol that is blended into the gasoline supply, diminishing supply and raising prices at the pump. This policy effectively forces over-the-road drivers—who are generally less affluent—to pay higher fuel prices to subsidize emissions reductions that primarily benefit more affluent air travelers. Overall carbon emissions will *increase* because fewer gallons of SAF will be produced than over-the-road biofuel gallons will be lost.⁵ There is no economic or environmental justification for pursuing this outcome.⁶ It doesn't help the climate to prompt trucking emissions to increase by more than aviation emissions decrease. We therefore encourage New Mexico to adopt a strict cap on credit generation for opt-in fuels to avoid this perverse outcome.⁷

⁴ The Environmental Protection Agency correctly noted in a December 2022 rulemaking that "feedstock limitations are likely to cause any growth in renewable jet fuel to come at the expense of biodiesel and renewable diesel." See Environmental Protection Agency, "Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes," 87 FR 80582 (December 30, 2022) available at <https://www.govinfo.gov/content/pkg/FR-2022-12-30/pdf/2022-26499.pdf>

⁵ LMC International, "Comparative Economic Analysis of Renewable Jet Fuel and Renewable Diesel," (September 2021); Carlo Hamelinck et al., "Conversion Efficiencies of Fuel Pathways for Used Cooking Oil Study," 2021, https://www.studiogearup.com/wp-content/uploads/2021/03/2021_sGU_EWABA-and-MVaK_Options-for-the-deployment-of-UCO.pdf; Stephanie Searle et al., "Long-Term Aviation Fuel Decarbonization," International Council on Clean Transportation, January 15, 2019, <https://theicct.org/publication/long-term-aviation-fuel-decarbonization-progress-roadblocks-and-policy-opportunities/> ("policies that promote the use of low-carbon fuel regardless of end-use sector will be most effective at developing the advanced fuel industry" and that "in the medium term, advanced fuel industry growth will be maximized if fuel is supplied mainly to the road sector.")

⁶ While emissions from the airline industry alone may decrease, limiting the availability of all other biofuels will only increase the transportation sector's overall carbon footprint. SAF only reduces emissions if it is displacing petroleum or existing ethanol consumption. An incentive for only SAF is like robbing Peter to pay Paul – it takes emissions reductions from one industry and gives them to another, without reducing emissions overall.

⁷ A opt-in credit generation cap that would reasonably prevent adverse emissions and fuel price consequences would not exceed 2 percent of all credit generation.

III. Co-Processed Fuel Should be Ineligible for Credit Generation.

New Mexico should amend its implementing regulations to exclude co-processed fuels from credit eligibility under the CTP. Co-processing refers to the simultaneous transformation of biofuel feedstocks and petroleum distillates in conventional refined fuel. Unlike standalone biodiesel or renewable diesel production, co-processing does not add new refining capacity or increase the domestic supply of renewable fuel. Rather, it subsidizes existing petroleum refining operations and allows refiners to commingle small amounts of renewable inputs with crude oil streams, yielding a product that is chemically indistinguishable from petroleum fuels. This commingling prevents any transparent tracking of renewable content through the fuel supply chain. As a result, co-processed fuels are priced the same as petroleum fuels, eliminating the ability of consumers to benefit from lower-cost, lower-carbon products.

Allowing co-processed fuels to generate credits would distort biofuel markets and undermine transparency in the retail fuels sector. Co-processed fuels would capture credit value only at the refinery level, with no way for wholesalers, retailers, or consumers to discern the environmental attributes of the fuel they are purchasing. This structure would concentrate benefits of the CTP among a small number of refiners while raising costs for trucking fleets and over-the-road drivers, who would be forced to subsidize fuel with no demonstrable emissions savings. New Mexico should make clear that co-processed fuels are ineligible for credit generation under the CTP.⁸

I. Alternative Refueling Infrastructure Under the CTP Should be Publicly Available.

New Mexico should only permit charging stations that are publicly available to generate CTP credits.⁹ By opening up credit generation to other EV charging sites that are only available to a limited universe of companies (*e.g.*, a single company's fleet or a private parking garage), New Mexico threatens to prompt finite EV charging investment dollars to migrate *away* from publicly accessible offerings and *toward* more limited offerings. This will concentrate subsidy benefits with a limited, disproportionately affluent universe of consumers and further prolong New Mexico's efforts to help consumers overcome EV charging range anxiety.

The greatest limitation on light-duty vehicle electrification lies no longer the price of the vehicle but rather in the so-called "range anxiety" that consumers feel about the readily available public charging.¹⁰ New Mexico should avoid redirecting finite private capital toward non-publicly accessible EV charging stations that a limited universe of vehicles could utilize, rather than encouraging investment in publicly accessible charging stations that would be available to all current and prospective EV owners.

⁸ Fuels that are a co-process of other biofuel production (*e.g.*, renewable naphtha or SAF) do not result in the same adverse implications and could remain permissible under the CTP.

⁹ New Mexico's proposed CTP rule explicitly provides credits for residential EV charging through so-called "incremental credits".

¹⁰ "Fact from Fiction: Why Consumers Don't Buy EVs," Blink Charging, April 8, 2020, <https://blinkcharging.com/fact-from-fiction-the-real-reason-why-consumers-dont-buy-electric-vehicles/?locale=en>.

The extent to which EV penetration is outpacing public charging station deployment is changing the landscape of the light-duty EV market. A recent national, representative survey by Consumer Reports and the University of Chicago found that 61 percent of Americans point to “not enough public charging stations” as the primary issue preventing them from buying or leasing an EV.¹¹

The availability of EV charging stations at existing locations motorists utilize today is the most effective way to solve range anxiety. Consumers freely drive their gas- and diesel-powered vehicles to every part of the country without concerns about whether they will be able to refuel safely and reliably whenever necessary. Offering EV charging at fuel retailing locations would mean drivers do not need to change their habits—they can refuel on the go at the same convenient locations they do today. The availability of EV charging on large price signs at fuel retailers’ locations in communities and along New Mexico’s highways will effectively relieve EV range anxiety. If EV charging is not available *and reliable* in the neighborhoods consumers want to visit, as well as along Interstate locations, many Americans simply will not purchase an EV, no matter the price.

At the moment, there are several impediments that make it challenging for private businesses to identify a pathway to profitability with respect to EV charging. Most of these impediments involve an electricity market that was not designed for, and is in many ways incompatible with, the retail fuel market. Robust CTP credit availability for publicly accessible charging station owners and operators would make installing EV charging stations more attractive for existing fuel retailers. Allowing private charging stations to generate credits undermines the attractiveness of credits available for public charging owners and would be counterproductive to New Mexico’s long-term transportation decarbonization efforts.

a. All Market Participants Should Enjoy a Level Playing Field.

In addition to a technology-neutral approach with respect to the fuels participating in the program, New Mexico should ensure that all participants of the CTP are made to play by the same rules. This threat manifests most directly with respect to EV charging, as utilities often enjoy access to risk-free capital from captive ratepayers. Private businesses do not have this option. New Mexico should design the CTP to encourage businesses to place private capital at risk, rather than as a mechanism to enable utilities to further de-risk ratepayer-subsidized utility investments. Entities considering charging investments must be confident that they could fairly compete and generate a return, and should compete with one another to offer more attractive pricing and amenities for consumers.

In this respect, utilities should be required to modernize their electricity tariffs to meet the particular needs of EV fast charging. These needs demand an EV-specific rate (similar to a residential rate, a commercial rate, or an industrial rate that utilities offer) that is applicable to all charging station owners whether regulated or unregulated. New Mexico also should strongly

¹¹ Consumer Reports, “Battery Electric Vehicles and Low Carbon Fuel: Overview of Methodology,” April 2022, https://article.images.consumerreports.org/prod/content/dam/surveys/Consumer_Reports_BEV%20AND%20LCF%20SURVEY_18_FEBRUARY_2022.

discourage punitive demand charges for electricity that were designed with a very different use of electricity in mind.

II. Conclusion.

Thank you for considering our perspective on these important topics. These considerations are not exhaustive, and there are a variety of other factors that could decisively influence the success of New Mexico's CTP. That said, we are eager to lend our experience as New Mexico continues to implement the CTP and we would welcome the opportunity to further discuss these issues with you at any time.

Sincerely,

Americans for Affordable Clean Energy (AACE)