

Valero (Sarah Homan)

Please find attached Valero's comments on the Proposed Adoption of 20.2.92 NMAC Clean Transportation Fuel Program. Thank you for your consideration.



October 13, 2025

Pam Jones
Administrator for the Environmental Improvement Board
New Mexico Environment Department
PO Box 5469
Santa Fe, NM 87502

Submitted Electronically via NMED Comment Portal

RE: Valero Comments on the Proposed Clean Transportation Fuel Program (EIB 25-23)

Dear Ms. Jones:

Valero Energy Corporation and its subsidiaries (collectively, "Valero") submit these comments on the New Mexico Environment Department (NMED) petition for regulatory change to adopt 20.2.92 NMAC, Clean Transportation Fuel Program (CTFP).

As the nation's largest independent petroleum refiner, one of the largest producers of low-carbon transportation fuels, and a supplier of fuels into New Mexico, Valero has an interest in NMED's development and implementation of the CTFP to ensure a feasible program that avoids unnecessarily raising fuel costs in New Mexico. Valero has been engaged throughout the rulemaking process, as a member of the Advisory Committee and via comments on the Discussion Draft Rule. Those comments are incorporated by reference and are also attached.^{1,2} As NMED moves forward with its petition for adoption, it remains essential that any rule adopted by the Environmental Improvement Board (EIB) is well-defined, achievable, and aligned with statutory requirements. Valero appreciates the opportunity to provide its comments and recommendations in that regard.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Elizabeth Bourbon'.

Elizabeth Bourbon
VP & Counsel, Fuels Compliance & Law

Encls. — Comments of Valero Energy Corporation

¹ Valero, "Valero's Comments on the Clean Transportation Fuel Program Discussion Draft," January 17, 2025.

² Valero, "Valero Comments on New Mexico Clean Transportation Fuel Standard Advisory Committee Technical Report," August 2, 2024.



1. The Proposed Effective Date of February 1, 2026 and Resulting Schedule are Infeasible for Both NMED and Regulated Parties.

NMED's proposed effective date of February 1, 2026 is infeasible given the current status of the rulemaking and the resources required of both NMED and regulated parties to successfully implement and comply with a clean transportation fuel program. The hearing on the proposed rule is not scheduled to conclude until late November 2025, with post-hearing proceedings, board deliberations, and other administrative processes to follow. The statutory deadline of July 1, 2026 would be a more appropriate and realistic timeline for NMED to publish a final rule. However, equally if not more important than the rule's effective date is the schedule NMED sets for the implementation of the program and associated compliance periods.

NMED proposes to begin the initial compliance period immediately upon the proposed February 1, 2026 effective date, which would give neither the department nor regulated entities any time between the publication of the final rule and the requirements of a fully functional program. This expectation is simply unrealistic given the department's proposed schedule for processing fuel pathways, the anticipated number of regulated parties who may not have prior experience with a Low Carbon Fuel Standard (LCFS) program, and the systems, resources, and outreach necessary to bring a program of this complexity online.

Valero continues to concur with the Advisory Committee members and other industry stakeholders who have advocated for a phased implementation schedule to include a reporting-only period or early credit generation period. We would also emphasize how critical the department's processing of fuel pathways (temporary or otherwise) and/or inclusion of a comprehensive set of default values for use at the start of the program will be for the success and feasibility of the CTFP in its early years.

2. Updates are Needed to Facilitate Fuel Pathway Availability at Program Start.

Though NMED proposes to begin the program's initial compliance period on February 1, 2026, the department would not begin accepting fuel pathway applications under 20.2.92.202 NMAC until July 1, 2026, with an intent to stagger their review based on complexity "and the department's ability to feasibly implement the reviews." The ability of regulated parties to comply with the CTFP standards in the initial years of the program will be highly dependent on the availability of fuel pathways. Any rule approved by the EIB should therefore prioritize the timely processing of fuel pathway applications from the start of the program, and NMED should allocate departmental resources accordingly. The adopted rule should also implement a required time frame for the agency to respond to and process submitted applications.

Valero understands that NMED proposes to rely on temporary pathways to support the initial phase of the CTFP. Several changes would be needed for this approach to be effective. First, the proposed rule currently requires regulated parties to apply to the department for a temporary carbon intensity. This would require the department to review, approve, and make available for use in the CTFP Data Management System (CTFP-DMS) temporary pathways for each regulated party that submits an application. NMED would need to complete this process extremely quickly upon the effective date of the rule and prior to the start of any initial compliance period, as credit-generating fuel is much less likely to flow into New Mexico if it has not yet received an approved carbon intensity from the department. As an alternative, NMED could make the temporary carbon intensities available for use at the start of the program without requiring an application.

Second, Subparagraph (b) of Paragraph (3) of Subsection B of 20.92.201 NMAC requires a fuel's operational carbon intensity to be less than a temporary carbon intensity. NMED proposes to retroactively adjust credits for any fuels for which it is later determined that the operational carbon intensity exceeds the temporary carbon intensity. This requirement is not appropriate as NMED has specified the temporary carbon intensity values based on average, default values in the R&D GREET model. An average, default value implies that some



individual data points may be higher than the average value while others may be lower. But by providing these default values in Table 5, NMED has deemed those carbon intensities to be representative of each fuel production process and feedstock in the aggregate. Fuel producers or suppliers should therefore not be retroactively penalized for having used these default values, especially given that the proposed rule provides no alternative approach for a regulated party to obtain a carbon intensity during the beginning of the program.

Third, Subparagraph (c) of Paragraph (3) of Subsection B of 20.2.92.201 NMAC gives the agency broad authority to impose additional conditions on approved temporary pathways, including limiting transportation fuel volumes reported using the pathway and imposing operational requirements. NMED has not provided any justification for this vague authority, and the addition of such conditions would only limit the amount of credit-generating fuel available for compliance with the carbon intensity standards.

Fourth, the proposed rule does not provide temporary carbon intensities for alternative jet fuel in Table 5, which would leave producers and importers of alternative jet fuel without a timely mechanism to receive an approved carbon intensity. To enable and incentivize supply of alternative jet fuel, the adopted rule should include temporary carbon intensity values for this fuel type. As alternative jet fuel is most commonly produced using the same feedstocks and production process as renewable diesel, it would be appropriate to assign alternative jet fuel the same temporary carbon intensities.

3. Additional Transparency, Certainty, and Consistency is Needed in the Proposed Rule's Lifecycle Analysis Models and Calculators.

Valero appreciates that NMED has published its calculations of the baseline and temporary carbon intensity values, and is supportive of NMED's use of a recent version of the R&D GREET model as the basis for the program. Valero would note that where errors in NMED's calculations have been identified by other stakeholders, these errors should be corrected prior to adoption of the rule. It is also unnecessary and inconsistent for NMED to replace the latest ILUC values from the R&D GREET model with the Indirect Land Use Change (ILUC) values as assessed by CARB in 2015. CARB's analysis is substantially outdated compared to more recent data sources and analysis, including but not limited to the analysis which supports the 2023 R&D GREET model³ selected by NMED as the basis for the program's lifecycle analysis.

The proposed rule also references simplified Tier 1 calculators that would be used for fuel pathway applications and annual reporting. It does not appear that these calculators have been released in NMED's exhibits or postings to date. These calculators are a key part of the department's proposal and as proposed would drive the lifecycle analysis, fuel pathway application process, and annual reporting process for the most common credit-generating fuels in the program. It is therefore imperative that any proposed Tier 1 calculators be released for stakeholder review and feedback prior to any adoption of a final rule. This would allow for necessary input to identify potential errors, ensure consistency in the selection of emission factors, and ensure that any proposed calculators included enough flexibility for various production facilities and processes. Establishment of *accurate* and *flexible* simplified calculators is a critical component of any carbon-intensity based program.

Subparagraph (a) of Paragraph (1) of Section B of 20.92.203 NMAC states that a fuel pathway holder shall use the most recently available Tier 1 or Tier 2 calculator when calculating their operational carbon intensity for submission in the annual fuel pathway report. Any rule adopted by the EIB should include a provision that any exceedance of the certified carbon intensity that is due only to a change in the Tier 1 or Tier 2 calculator should not be considered a non-compliance under the rule, and no credits should be retroactively adjusted in this case. This would prevent pathway holders from being unfairly penalized due to potential model updates and is

³ See *Updates to Carbon Calculator for Land Use and Land Management Change from Biofuels Production (CCLUB) for the GREET Model*, December 2023 at <https://greet.anl.gov/publications>



a concept included in other state LCFS programs. Valero also recommends that wherever the department proposes to retroactively adjust credits for an operational carbon intensity that is higher than the certified carbon intensity, it should also adjust credits when the operational carbon intensity is lower than the certified carbon intensity.

4. The Rule as Proposed is Not Technology Neutral.

The statute authorizing the Clean Transportation Fuel Program clearly directs the state to implement a technology-neutral program. Several provisions of the department's proposed rule fail to meet this standard. The fuel supply equipment (FSE) program appears designed to primarily benefit electric vehicle charging stations, and the proposed regulation provides a number of advantages to FSE when compared to other mechanisms for credit generation. First, Paragraph (1) of Section A of 20.2.92.303 NMAC indicates that the department may accept and review applications for fuel supply equipment (FSE) pathways immediately upon the effective date of the rule. And in general, 20.2.92.302—20.2.92.304 NMAC create a fuel supply equipment crediting program that appears to be incredibly resource intensive for NMED to implement and support. In contrast, as previously highlighted, the department is not planning to accept alternative fuel pathways under 20.2.92.202 NMAC until after July 1, 2026, and signals in Paragraph (1) of Section A that NMED may delay its review of applications based on department resources. Further, the department proposes to delay acceptance of applications for project crediting (often emissions reduction projects associated with the production of fossil fuels) until 2030. These discrepancies in timing and resource allocation, to provide preferential treatment to EV charging stations within the early period of the program, do not meet the statutory mandate to establish a technology-neutral CTFP.

5. A Transportation Fuel Supply Forecast in Accordance with Section C of 20.2.92.601 NMAC Should be Completed Prior to the Initial Compliance Period.

Despite proposing to begin the initial compliance period on February 1, 2026, NMED does not propose to complete a transportation fuel supply forecast to support a forecast deferral until October 1, 2026 for the 2027 compliance period. NMED has therefore not yet demonstrated to stakeholders and regulated parties that a sufficient number of credits will be available to support the initial compliance period. Recall that although a statutory biodiesel blending mandate has been in effect in New Mexico since 2007, the New Mexico Department of Agriculture has issued temporary suspensions of this requirement every six months based on its evaluation of supply, infrastructure and price differentials, with the most recent suspension issued September 2, 2025 effective through April 16, 2026. Thus, it is critical that a transportation fuel supply forecast be completed prior to the beginning of any compliance obligation under the program. This further supports the need for the proposed rule to include a reporting only period or early credit generation period to allow the department to collect necessary data about the supply and availability of clean transportation fuels to New Mexico.

6. NMED Should Consider CTFP Credit Prices and Related Consumer Costs to be Relevant Criteria in its Determination of Whether a Transportation Fuel Supply Emergency Exists.

Paragraph (1) of Section B of 20.2.92.601 NMAC outlines the criteria the department shall consider to determine if a transportation fuel supply emergency exists, including whether a deferral "is in the public interest". Valero encourages NMED to consider the CTFP costs paid by New Mexico consumers within this public interest criteria. To this end, Valero recommends the adopted rule explicitly consider the CTFP credit price and related costs for gasoline and diesel fuel as circumstances for determining and issuing an emergency deferral under 20.2.92.601 NMAC.



7. Recommendations for Public Disclosure and Information, Enforcement, and Limitation of Defense.

Valero believes that Paragraph (2) of Section A of 20.2.92.602 NMAC should be tied to the Inspection of Public Records Act, such that Paragraph (2) would read: "A person submitting a record to the department that the person believes contains confidential business information, trade secrets, *or other information exempted from disclosure under the Inspection of Public Records Act...*".

In 20.2.92.604 NMAC, the adopted rule should include self-disclosure protocols that would allow persons subject to 20.2.92 NMAC to obtain penalty mitigation or relief in the event that they disclose a potential violation. This would encourage parties to self-report and correct any potential violations and ensure the program functions as intended. Further, Valero encourages NMED to provide formal notice in advance of taking any of the actions listed in Paragraph (2) of Section C of 20.2.92.604 NMAC against a regulated party, particularly before suspending any approved fuel pathways or accounts in the CTFP-DMS. This would be more appropriate under Constitutional due process obligations binding upon NMED. It seems apparent from the remainder of this section that this is the intent, however, Valero encourages clarification of the language in Paragraph (2) of Section C of 20.2.92.604 NMAC to state that proper notice and opportunity to respond will be afforded prior to taking any of the listed actions.

Finally, Valero believes that 20.2.92.13 NMAC should be removed in its entirety as Valero is not aware of any statutory authority for this provision. In addition, determination of defenses to legal actions is a matter for the courts rather than rules adopted by the Board.



January 17, 2025
Submitted Via NMED Smart Comment Portal

Michelle Miano
Environmental Protection Division
New Mexico Environment Department
1190 St. Francis Drive, Suite N4050
Santa Fe, New Mexico 87505

RE: Valero's Comments on the Clean Transportation Fuel Program Discussion Draft

Dear Ms. Miano:

Valero Energy Corporation and its subsidiaries (collectively, "Valero") submit these comments on New Mexico Environment Department's (NMED) Discussion Draft Rule Regarding the Clean Transportation Fuel Program (CTFP) (December 19, 2024).

As the world's largest independent petroleum refiner, the world's largest producer of low-carbon transportation fuels, and a fuel supplier into New Mexico, Valero has an interest in NMED's development and implementation of its CTFP to ensure a feasible program that avoids unnecessarily raising fuel costs in New Mexico. We ask that NMED considers our frame of reference and recommendations presented in these comments.

Additionally, as Valero's comments are predominately technical in nature and intended to help NMED put forth a workable and effective rule, we would appreciate the opportunity to discuss any questions NMED may have related to our comments on the draft rule.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brian Bartlett', with a stylized flourish at the end.

Brian Bartlett
Executive Director, Strategic Planning and Public Policy

Encls. – Comments of Valero Energy Corporation



1. General Comments:

- a. NMED has not provided the calculations, model, or inputs necessary for stakeholders to be able to review the CI values in Tables 1-4, nor the protocol and calculations supporting the ILUC determinations presented in Table 8. NMED must provide, at a minimum, the following information for stakeholders to provide complete comments.
 - i. Transparency Needed: (details are also covered in the appropriate sectional comments)
 - 1. All Table 4 baseline input
 - 2. NM-GREET for modeling
 - 3. ILUC protocols and inputs
- b. NMED should review references to “producer”, particularly as it relates to obligations and credits/deficits and clarify such party to be “instate producers” or “producers”, as the context requires.

2. 20.2.92.7 Definitions

- a. Alternative Fuel 20.2.92.7(A)(4)
 - i. Definition should be clarified to reference “clear gasoline” and “clear diesel”, specifically tying the definition to the those set forth in 20.2.92.7(C)(10) and (11). Further NMED should update all references throughout the rule to gasoline and diesel to be “clear gasoline” and “clear diesel”, as the context requires.
- b. Blendstock 20.2.92.7(B)(11)
 - i. Strike “is either used alone or” from the definition of blendstock, as a blendstock is not a finished fuel and must be blended with other components to produce a finished fuel.
- c. Indirect Land Use Change 20.2.92.7(I)(5) and (I)(5)(a) and (b)
 - i. NMED’s definition indicates it derived the ILUC value for corn ethanol following the Argonne National Laboratory protocol and the remaining ILUC values from the CARB protocol.
 - 1. It’s inappropriate for NMED to cherry-pick ILUC values generated by sources that have modeled differing policy impacts and using differing methodologies and emissions factors.
 - 2. The actual corn ethanol ILUC value reported in Table 8 mirrors CARB’s Table 6 LUC of 19.8 gCO₂/MJ.
 - a. NMED should provide the protocol and calculations supporting all ILUC determinations used in the draft rule.
 - ii. The ILUC definition also references Table 10 of section 24 for the ILUC Table.
 - 1. The correct reference should be Table 8 of section 701.
- d. Renewable diesel blend 20.2.92.7(R)(8)
 - i. NMED should note that “R99” often refers to a blend of 99.9% renewable diesel and 0.1% ULSD.
- e. Responsible Official 20.2.92.7(R)(15)
 - i. Means the person holding the position with the highest executive authority within a company, such as a company’s owner, president, chief executive officer or managing partner.
 - 1. Definition of Responsible Official should be revised to include “or an officer of the company”.
- f. Specified source feedstocks 20.2.92.7(S)(3)



- i. NMED should include a clear list of feedstocks that are considered specified source feedstocks, as is provided in the California LCFS.

3. 20.2.92.102 Exemptions

- a. Dyed fuels are exempt from generating deficits until 2029 as per 20.2.92.102(A)(3).
 - i. Dye is administered at the rack, as such, reporting for dyed ULSD sold in New Mexico or for delivery into New Mexico will be significant, complex, and prone to the rack BOL error and correction cycle.
 - 1. NMED should consider whether this expectation is feasible and how to mitigate the complexity.
- b. Retailers are exempt from the program, but the retailer exemption does not extend to the producer, importer, or wholesaler supplying fuel to the retailer (20.2.92.102(C)).
 - i. How does this apply to retailers who are also importers, as defined in 20.2.92.7(l)(3) (specifically, Texas Panhandle and El Paso FOB sales)?
 - ii. How / does NMED expect to obligate up-stream, out-of-state producers and wholesalers that have no direct connection to New Mexico?
- c. Aviation fuels should be treated as truly exempt under the rule.
 - i. Obligated parties should not have to report volumes of petroleum-based jet fuel or aviation gasoline which are not obligated under the program and then subsequently be required to claim an exemption for such fuels.
 - ii. No other program requires obligated parties to report volumes of fuel which are exempt under the regulation, including California, Washington, and Oregon
 - 1. Exempt fuel categories should be truly exempt and not reported in the CTFP.

4. 20.2.92.103 General Requirements

- a. Opt-in requirements for out-of-state producers 20.2.92.103(C)(4)(b)
 - i. NMED has proposed that if an out-of-state producer does not opt-in to the CTFP, they may still retain the ability to generate credits for the specific quantities of their imported fuel.
 - 1. NMED should limit credit (and deficit) creation (generation) to instate producers and importers, while enabling out-of-state producers to participate by applying for fuel pathways, producing low-carbon fuels, and providing such fuels to the importer of record, while meeting the producer's obligations set forth in the CTFP (e.g. third-party verification etc.).

5. 20.2.92.201 Fuels with Indeterminate Carbon Intensities

- a. NMED proposes that fuels without a certified CI shall use the maximum carbon intensity for that fuel type in Table 4 20.2.92.201(C)(1).
 - i. NMED should clarify what it means by "fuel type"
 - 1. Examples based on the current Table 4:
 - a. If an entity were to import a non-certified biodiesel, would the corresponding fuel type be diesel or biodiesel?
 - b. Would renewable diesel without a certified pathway use the clear diesel lookup CI or the renewable diesel lookup CI?
 - c. Would the renewable diesel have to be soybean based to use the lookup table?



- ii. Is it NMED's intent to allow parties to utilize Table 4 – New Mexico Statewide Carbon Intensity Lookup Table as “default” pathways for alternative fuels in lieu of Tier 1 or Tier 2 calculators – e.g., NMBD001 (soy biodiesel, 30.93 gCO₂e/MJ) and NMRD001 (soy renewable diesel, 33.20 gCO₂e/MJ)
 - 1. When/how does NM intend for parties to use the lookup table?
 - a. Can a regulated party use the lookup table pathways to generate credits for renewable fuels indefinitely?
 - b. Is there any obligation for a fuel producer to apply for a facility-specific carbon intensity?
- iii. NMED states that regulated parties should use the maximum CI in the lookup table for a fuel with unknown origin/no certified pathway. However, the maximum CI in the lookup table for Electricity is 0.
 - 1. NMED should clarify that this CI can only be used for qualifying renewable electricity, not any electricity transaction.
- iv. Lookup tables are not the same as Temporary Pathways
 - 1. NMED should include a temporary pathway table with conservative default temporary CI values for fuels like naphtha and alternative jet (or any alternative fuel not in the lookup table).
 - a. NMED's current proposal of applying for an applicant-proposed CI will slow down the application and approval process. Temporary pathways will be critical to the beginning of the program since it will take time for facility-specific pathways to be approved. Other LCFS programs have default temporary pathways.
 - 2. NMED should allow temporary pathways (and all approved pathways) to be used in any currently open reporting quarter once approved.
 - a. For example, this would allow a pathway approved in the second quarter to be used for “open” first quarter reporting and would facilitate faster introduction of low-carbon fuels as the department works to certify pathways.

6. 20.2.92.202 CI Alternative Fuel Pathways

- a. NMED will not accept fuel pathway application until July 1, 2026 and proposes to limit those to “for use in the 2027” compliance period (20.2.92.202(A)(1)).
 - i. For the initial compliance period (pre-Jan. 1, 2027), does NMED intend to limit participating fuels to those identified in Table 4?
 - ii. For diesel fuel substitutes, the Table 4 lookup table includes only neat soybean-based biodiesel and neat soybean-based renewable diesel. If the CTFP is limited to Table 4 fuels for the initial compliance period, then non-soybean-based biodiesels and renewable diesels will be unable to participate in the program until 2027.
 - 1. Is this NMED's intention?
 - iii. NMED should consider accepting pathways from other states and Tier 1 applications much sooner than July 1, 2026.
 - 1. These types of applications are significantly less resource intensive (particularly recertifications). Having pathways/credit generation opportunities as quickly as possible will be critical to the early success of the program and attracting credit generating fuels to the state.



- iv. NMED intends to accept FSE applications 6 months earlier (January 1, 2026) than alternative fuel pathway applications (July 1, 2026 and limited to 2027 compliance use) (see 20.2.92.303(A)(1)).
 - 1. Why is NMED prioritizing FSE application timing and approval reviews over currently available Alternative Fuel Pathways?
 - 2. NMED's proposal fails to meet its requirements under HB0041 to be technology neutral by providing an advanced timeline to FSE applications versus alternative fuel applications.
 - v. NMED proposed timing for verifier applications of July 1, 2027 (20.2.92.508(T) and proposed timing for verifier conflict of interest submittal requirements January 30, 2027 (20.2.92.508(U)(3)(b), however both are significantly after the time in which a regulated party would need a verifier to verify a fuel application pathway application (July 1, 2026).
 - b. Timing of use of department-approved fuel pathways 20.2.92.202(A)(2)
 - i. NMED should allow NMED department-approved pathways to be used in any currently open reporting quarter once approved. For example, this would allow a pathway approved in the second quarter to be used for open first quarter reporting and would facilitate faster introduction of low-carbon fuels into the market.
- 7. 20.2.92.203 Requirements for Maintaining an Alternative Fuel Pathway**
- a. NMED's references to "the prior two calendar years" should be "the prior 24 months in 20.2.92.203 (B)(1) (a) and (b)(2)
 - b. Annual fuel pathway report 20.2.92.203(B)(1)(a)
 - i. (i) States that reporting should be done using NM-GREET for pathways novel to New Mexico, and
 - ii. (ii) the other state's GREET if the pathway is a recertification from that state.
 - 1. In other state LCFS programs, the data from the recertified pathway is placed into *that state's (i.e. New Mexico's)* GREET model for pathway applications and reporting, and the transport distance is modified. This ensures lifecycle analysis consistency between pathways novel to New Mexico and recertifications from other states.
- 8. 20.2.92.204 Carbon Intensities for Fuel Pathways Established in Other States Similar Programs**
- a. Use of other states approved Tier 1 or Tier 2 calculator 20.2.92.204(B)(3)
 - i. Similar to Oregon and Washington, who allow for other states alternative fuel pathways, NMED should require all other state pathway applications to utilize the NM-GREET with fuels transportation and distribution calculator fields modified for that fuel's pathway to New Mexico. This ensures lifecycle analysis consistency between pathways novel to New Mexico and recertifications from other states.
- 9. 20.2.92.205 Carbon Intensities for Fuel Pathways Novel to New Mexico**
- a. Tier 2 fuels 20.2.92.205(A)(2)
 - i. (a) Cellulosic alcohols (corn fiber ethanol) that is co-produced with starch ethanol along with fuels that are co-produced with (f) renewable diesel (renewable naphtha, HEFA alternative jet) should be a Tier 1 application and not Tier 2 applications.
 - b. Provisional pathways 20.2.92.205(C)



- i. The applicant should not have to submit all periods of operation in the application, they should be able to choose their application data period. This allows data collection to begin after facility startup, which is not representative of normal operations and should not be included in the basis for the carbon intensity. By contrast the proposed requirement to submit all periods would inherently result in a higher CI scores stemming from the facilities startup.

10. 20.2.92.206 Carbon Intensities for Electricity

- a. Utility renewable electricity products and power purchase agreements 20.2.92.206(F)(3).
 - i. States that NMED may recalculate a utility's EDU-specific CI if it determines it is "substantially" impacted by a separate application for a CI for the renewable electricity or power purchase agreement.
 1. NMED provides no definition or metric of what constitutes "substantially impacts".
 2. When combined with 20.2.92.206(B), which deems renewable electricity to be zero emission, and 20.2.92.206(F), which enables an EDU to allocate renewable electricity and power purchase agreements directly to EV charging, NMED directly favors the crediting mechanisms tied to electrification, resulting in a program that is not fuel neutral and results in double counting.
 - a. NMED should avoid the application of EDU-specific CI's due to the inherent risk of double counting.

11. 20.2.92.207 EER Adjusted CI Applications

- a. NMED intends to accept applications for EERs that vary from the Table 7 EERs 20.2.92.207.
 - i. If EER is meant to represent the average of a fleet of vehicles, then inherently some vehicles will perform better than the value in Table 7, and some worse.
 - ii. If NMED approves a vehicle-specific EER for a better-than-average vehicle within the fleet, it must also adjust the fleet average EER in Table 7 to exclude that same better-than-average vehicle.

12. 20.2.92.301 Fuel Credits and Deficits

- a. NMED's concept of credit and deficit "originates" vs "generated" needs clarification with regard to how obligated parties should treat such status and how obligated parties should pass on or retain such statuses, particularly credits which are in the "originates" status 20.2.92.301(B) and (C)
 - i. "Originates" is tied to the production, importation, or dispensing of fuel, which is also the point at which fuel title and program obligations would normally transfer.
 - ii. "Generates" is indicated as "when valid and accurate quarterly reporting is submitted", which will occur following the quarterly reporting period.
 - iii. Further (B) specifically prohibits parties from generating or claiming any transactions for which the quarterly reporting deadline has passed.
 1. Does NMED intend parties to transfer "originated" credits/deficits with title and obligation transfer during a given quarter?
 2. Can parties trade (transfer) "neat originated" credits during the quarter in which they were produced, imported, or dispensed or must a renewable fuel producer, importer, or



dispenser hold credits until after the prior quarters quarterly reporting is complete and credits are actually “generated” prior to monetizing such credits?

- a. If credits must be held, for the full quarter plus the reporting timing, has NMED considered cash flow impacts to the renewable fuel producer, importer, or dispenser and what that will mean for CTFP compliance, specifically for Q4 obligations and the Extended credit acquisition period set forth in 20.2.92.507 (G).
- b. Alternative jet fuel 20.2.92.301(F)(5)
 - i. NMED’s proposed draft rule requires that the producer or importer can demonstrate that the fuel is loaded into airplanes in New Mexico.
 1. In most cases the importer or producer will not be the party who loads fuel into airplanes at the airport, as a significant volume of jet fuel is sold at the rack for third-party delivery to an airport’s tankage where a separate on-site third-party service provider or the airline handles the planes refueling.
 2. NMED should consider modifying the producer or importers requirement to “sold for use to refuel airplanes in New Mexico”, where in the sales documents meet NMED’s documentation needs or by providing a specific process by which producer or importer may demonstrate the proposed obligations when the producer or importer is not directly involved in the refueling of aircraft in New Mexico.
- c. Transacting credits 20.2.92.301(G)(5)(a)
 - i. NMED should consider requiring the inclusion of both the Trade Date and a Transfer Date, such that both parties’ records record the same, but offsetting transaction.
 1. This is particularly important as credit transaction volumes increase and/or for end of quarter and end of year transaction periods, where parties may have multiple transactions within a very short period of time.
- d. Illegitimate credits 20.2.92.301(G)(9)(b)
 - i. NMED has proposed that if an initial generator of illegitimate credits is determined by NMED to be “unlikely of retiring” such credits, NMED may cancel those credits within the holding parties account and if the party has used such credit for compliance NMED may require the party to retire an approved credit to replace such illegitimate credits.
 1. Parties who have purchased credits in good faith for which NMED has 1) approved the pathway, 2) approved the generation of such credits, and 3) approved the transfer of such credit within NMED’s inventory and transfer system should not be required to replace such credits.
 2. Moreover, NMED’s credit inventory system does not appear to individually inventory credits by producer, facility, or even supplying counterparty (i.e. credits are all commingled into a single credit balance) and, similar to other low-carbon programs, the proposed transfer and trading systems do not provide any mechanism for the delivering party or the receiving party to select, review, or approve such credit specific details for each transaction (e.g. production facility, feedstock, or timing of production, as credits have an indefinite lifecycle).
 - a. As such, unless NMED intends to track and transfer credits in such a way that a delivering and receiving party can specifically select transfer criteria of each credit transferred between parties, the receiving cannot be held liable for “which” credits



are delivered from the sellers account to the buyers account by and through NMED's CTFP system.

- e. Prohibited credit transfers 20.2.92.301(G)(10)(c)
 - i. NMED should modify the proposed language to include “knowingly” (i.e. “any knowingly false reports”). The proposed insertion would align the false report activity with the remaining items in section (10)(c), which are intentional acts of misrepresentation versus one that is potentially an error, but would also result in a false report.

13. 20.2.92.303 Fuel Supply Equipment Pathway Applications

- a. Fuel supply equipment (FSE) applications 20.2.92.303(a)(1)
 - i. NMED's proposed rule enables FSE pathway applications to begin on January 1, 2026 versus July 1, 2026 for alternative fuel pathway applications (for 2027 compliance, see 20.2.92.202(A)(1)).
 - 1. Why is NMED prioritizing FSE application timing and approval reviews over currently available Alternative Fuel Pathways?
 - 2. NMED's proposal fails to meet its requirements under HB0041 to be technology neutral by providing an advanced timeline to FSE applications at the expense of alternative fuel applications
- b. General comment on NMED resources:
 - i. The FSE crediting portion of the rule appears to be immensely resource intensive for the department, while stakeholders note that 20.2.92.501(J) Registration Deferral states that NMED may delay processing registrations for alternative fuel producers “due to department capacity constraints including inadequate staffing”.
- c. NMED needs to ensure that the CTFP rules and available department resources and implementation timelines are allocated in such a way as to ensure the technology neutral program intended under HB0041.

14. 20.2.92.401 Liquid Fuels Reporting Entities

- a. Designation of fuel reporting entities 20.2.92.401(D)(1) and (2)(a) and (b).
 - i. NMED should clarify the reporting entity to be the “instate producer or importer”
 - 1. As with other low-carbon fuels standards (e.g. California LCFS), the reporting entity should be based on title owner at the time the product is 1) produced in the state of New Mexico or 2) imported into the state of New Mexico.
- b. Designation of fuel reporting entities in case of liquid fuel ownership 20.2.92.401(E)(1) and E(1)(a).
 - i. Needs clarity/consistency regarding use/application of “credit generator” (E)(1) and “credit and/or deficit generator” (E)(1)(a).
- c. Transfer Period 20.2.92.401(G)(1) and G(1)(a).
 - i. Needs clarity/consistency regarding use/application of “credit generator status” (G)(1) and “credit and deficit generator status” (G)(1)(a).

15. 20.2.92.501 Registration

- a. Primary contact 20.2.92.501(A)(2)



- i. NMED's proposed draft requires "the name of the person who shall be the primary contact for the registered party, and that person's business and mobile phone numbers, and email address;"
 - 1. NMED should only require a mobile phone number for primary contacts whose mobile phone number is a business mobile phone (i.e. NMED should not require a primary contact to provide a personal mobile phone number as a condition of completing registration).
- b. General requirements 20.2.92.501(A)(4)
 - i. NMED is proposing that registered parties provide "a list of all related business entities for the registered party, and any regulated parties that share common ownership or control;"
 - 1. For some companies this list could be comprised of hundreds of entities with no ties or interaction with the New Mexico CTFP.
 - a. NMED should consider limiting this request to those related business entities or those parties that share common ownership or control to those doing business in the state of New Mexico.
- c. Cancellation of CTFP-DMS registration 20.2.92.501(E)(4)
 - i. NMED proposes that "if a registered party does not have any fuel transactions reported in four consecutive quarters, the department shall deactivate the registered party's account in the CTFP-DMS and allocate all remaining credits in the registered party's CTFP-DMS account to the backstop aggregator."
 - 1. Since NMED has elected under 20.2.92.301(G)(2)(a) to enable registered parties to retain credits without expiration, NMED should not deactivate registered parties for lack of activity within the previous four quarters and subsequently force a forfeiture of any banked credits, which have an unlimited lifespan.
 - 2. If NMED feels it must force activity for registered parties it should allow registered parties that have not had any transactions in the previous four quarters to submit a written request to maintain their account, credit balances, and/or associated fuel pathways.
- d. Registration Deferral 20.2.92.501(J)
 - i. NMED's proposed draft of the FSE crediting portion of the rule appears to be immensely resource intensive for the department (see 20.2.92.303), while 20.2.92.501(J) Registration Deferral states that NMED may delay processing registrations for alternative fuel producers "due to department capacity constraints including inadequate staffing".
 - 1. Registration deferral-based prioritization of FSE's over alternative fuels is both inappropriate and not technology neutral.
 - 2. NMED needs to ensure that the CTFP rules and available department resources are allocated in such a way as to ensure the technology neutral program intended under HB0041.

16. 20.2.92.502 Program Fees

- a. Allocation of CTFP fees 20.2.92.502(E)(1), (E)(1)(c), and (E)(2)
 - i. NMED's proposal for deficit generators to pay 95% of the CTFP annual budget is both disproportionate to the NMED's workload generated by each type of participant and is overly burdensome and punitive to deficit generators.



- ii. NMED's percentile distribution appear to be inconsistent/incorrect in in (E)(1)(c), which reflects the 11th through 39th. Overlapping of the provided percentile range occurs regardless whether it was NMED's intent for this percentile band to be from the "bottom" or from the "top".
- iii. NMED's percentile distribution appear to be inconsistent/incorrect in in (E)(2), which reflects coverage of 1st-13th, 14th-69th, and 71st-100th percentile.
- b. Inflation adjustment
 - i. NMED has tied inflation adjustment to the U.S. Bureau of Labor Statistics West Region Consumer Price Index for All Urban Consumers for All Items
 - 1. New Mexico is part of the Southwest Region for U.S. Bureau of Labor Statistics

17. 20.2.92.504 Quarterly Reporting Requirements

- a. Reporting comingled storage locations 20.2.92.504(J)
 - i. NMED should broaden the scope of what it considers comingled storage to allow for the mass balancing of fuel pathway codes (FPC) within the state.
 - 1. For example, a regulated party could import or purchase fuels of the same type with different FPCs at different locations in New Mexico and apply those FPCs to subsequent sales or exports regardless of the locations within the state where those transactions occur. This operational flexibility aligns with the design of LCFS quarterly reporting platforms while still ensuring proper accounting of GHG emissions within the state.
 - ii. At a minimum, NMED should replace all references to a storage *tank* with storage *facility*. Liquid fuel reporting entities do not manage inventory of fuel pathway codes on a tank by tank basis, rather, they manage and balance the inventory of the facility.
 - iii. NMED should extend the two-quarter time limit in 20.2.92.504(J)(1)(a) to three quarters to align with the time limit on transfer of obligation in 20.2.92.401(G)

18. 20.2.92.505 Compliance Period Reporting

- a. Initial compliance period 20.2.92.505(A)
 - i. NMED has proposed that the initial compliance period for the CTFP will begin on the effective date of this part and ends on December 31, 2026.
 - 1. Regardless of the effective date of this part, the initial compliance period should not start before the later of, the effective date of this part or when the NMED has 1) updated Table 4 (the lookup table) to include initial default values for all major alternative fuel types and typical feedstocks or 2) issued temporary (or certified) pathways for all major alternative fuel types and typical feedstocks submitted to NMED for review at least 90 days prior to NMED's intended initial period start date.
 - a. Without such CI information, parties will be unable to fulfill CTFP obligations relating to initial inventories set forth in 20.2.506(D).

19. 20.2.92.506 Records and Record Keeping

- a. General Comment:
 - i. NMED should include a clear list of feedstocks that are considered specified source feedstocks, as is provided in the California LCFS.



- b. Feedstock transactions for alternative fuel pathways with specified source feedstocks 20.2.92.506(A)(2).
 - i. NMED should allow for a combination of documents, including; scale or meter tickets/BOLs/invoices or similar documents, to be used to satisfy the product and feedstock transfer document requirements as long as they contain all of the required information.
- c. Initial fuel inventory 20.2.92.506(D)
 - i. NMED should clearly address how initial inventories will be “subject to the CTFP” and specifically how credits will be generated for alternative fuels for which there are currently no Table 4 lookup carbon intensities nor any temporary pathways.
- d. Descriptions of measurement devices used to report data within the CTFP-DMS and how acceptable accuracy is demonstrated 20.2.92.506(F)(1)(g)
 - i. Why does this section specifically exclude EV chargers from complying with the monitoring plan requirement related to measurement accuracy?
 - ii. Such exemptions run contrary to the technology neutral mandate set forth in HB0041 and undermine validity of the emissions reductions and credibility of the CTFP.

20. 20.2.92.508 Third-Party Verification

- a. General comment:
 - i. Recertification pathway applications and annual fuel pathway reports which are third-party verified under another state’s program should not have to engage a separate third-party verification for New Mexico.
 - 1. Identical data is submitted to both programs, and duplicating verification of this data would create an unnecessary strain on verification resources.
- b. Requirements for verification of CTFP reports and fuel pathway applications. 20.2.92.508(C)(2)(b)(i) is too broad.
 - i. Entities should be required to submit the verification statement and verification report from the third-party verification as mentioned in (ii), but requiring applicants to submit “everything they submitted to the verifier” to the department defeats the purpose of the verification and over burdens NMED with unnecessary and potentially immaterial data.
- c. Site visits 20.2.92.508(I)
 - i. What is NMED’s rationale for requiring separate site visits to the same facility for a fuel pathway application and annual fuel pathway reporting?
- d. Material misstatement assessments for fuel pathways and quarterly fuel transactions 20.2.92.508(O)(2)(e)
 - i. NMED proposes to “determine whether any reported operational CI value contains a material misstatement and must be included in the final verification report” based on a metric that evaluates each individual quarter operating data, while the programs operational CI is based on 24 months.
 - 1. Defining material misstatements based on quarterly periods would result in all parties having to report material misstatements due to planned turn arounds (e.g. annual facilities maintenance) and unplanned downtime (e.g. hurricane or other natural disasters) all of which impact a facilities CI during the period in which such activity occurs.
 - 2. As such, annual verification should be consistent with the CTFP’s requirements that parties utilize and report based on the prior 24 months of operational data.



- ii. Moreover, NMED's proposed limits for any given quarter of the Percent Error CI 20.2.92.508(O)(2)(e)(iv) and Difference in CI 20.2.92.508(O)(2)(e)(v) are overly restrictive and do not account for downtime and facility restart following planned maintenance (e.g. scheduled annual turnarounds) or unplanned downtime (e.g. hurricanes and other natural disasters), virtually guaranteeing a facility will be forced to report a material misstatement for the affected quarter.
 - 1. Limits should be applied on, at most, an annual basis versus a quarterly basis, consistent with the facilities certification process, but NMED should consider applying the metric to the full 24 months of operational data being verified during the certification process.
- e. Department review and approval of verification statement and re-verification requirements 20.2.92.508(R)(2)
 - i. NMED has proposed that in certain circumstances the NMED may set aside a verifiers verification and may require a regulated party to re-verify such verification with new verifier within 90 days.
 - 1. Given the time required to procure, vet, and address conflict of interest issues for a new verifier, NMED should extend the re-verification period to 180 days.
- f. Applications and criteria for approval of verification bodies and verifiers 20.2.92.508(T)
 - i. NMED is not accepting applications for verifiers until July 1, 2027, however:
 - 1. Verification is required beginning for reports submitted in March 2027 with verification statements due by September 2027.
 - 2. Verification is also required prior to submittal of a fuel pathway application.
 - a. NMED should begin accepting applications for verifiers before the program begins requiring regulated to be third-party verified, not after, thus ensuring regulated parties can obtain a certified verifier as required under the rule.
- g. Conflict of interest requirements 20.2.92.508(U).
 - i. General comment 20.2.92.508(U)(2)(b)
 - 1. NMED should clarify that providing verification services to a regulated entity under a) another state's clean fuels program or b) a safe harbor provided by Treasury or IRS for the purpose of claiming a tax credit does not create a conflict of interest under this part.
 - a. This is essential to ensuring there are sufficient verifier resources to support the CTFP and the regulated parties requiring third-party verification under multiple low-carbon fuels and tax programs.
 - ii. Conflict of interest evaluation and submittal requirements 20.2.92.508(U)(3)(b)
 - 1. NMED has proposed a conflict of interest application date that is earlier than verifier application date, but is well after the date required for verifiers who need to verify a fuel pathway application (see 20.2.92.202).

21. 20.2.92.601 Authority to defer

- a. Emergency deferral 20.2.92.601(B)(3)(d)
 - i. NMED has included in its emergency deferral power that "Granting deferral is in the public interest to protect public and environmental health and welfare".
 - 1. Does NMED consider the CTFP program costs paid by New Mexico gasoline and diesel fuel consumers to be within the scope of this power?



2. If so, what metric or threshold cost in dollars per metric ton CTFP credit (\$/MT) or the related costs in cents per gallon of gasoline or diesel fuel does NMED intend to use to trigger an emergency deferral?
- b. Forecasted deferral 20.2.92.601(C)
 - i. Under the general authority to implement a deferral of the CTFP NMED has set forth the requirement to provide 1) a fuel supply forecast annually by October 1 and 2) to issue a declaration of forecast deferral no later than December 1.
 1. When is NMED required to complete its first annual fuel supply forecast?
 2. When is the first time a deferral can occur?
 - a. Given NMED's aggressive timeline for implementation, NMED should provide its first annual fuel supply forecast before the CTFP's initial period begins, regardless of the rules annually required timeline.

22. 20.2.92.603 PUBLIC INSPECTION AND DISCLOSURE

- a. NMED should ensure that all references to CBI protections are in alignment with the protections set forth in the New Mexico Inspection of Public Records Acts or other applicable New Mexico law, such that all protected information will not be disclosed.

23. 20.2.92.701, Table 4 Carbon Intensity Lookup Table

- a. NMED includes neat soybean-based biodiesel and neat soybean-based renewable diesel in the Table 4 lookup table as substitutes for diesel fuel alternatives, with CA values of 30.93 and 33.20 g/MJ, respectively.
 - i. The Table 4 values appear to be in conflict with NMED's Table 8 ILUC value of 29.1 g/MJ for soybean biodiesel and renewable biodiesel.
 1. NMED should clarify how it arrived at the Table 4 values and provide the model and data inputs utilized to reach such CI scores, including how it applied the aforementioned ILUC values.
- b. NMED has not yet publish the NM-GTREET nor the underlying data utilized to calculate the lookup CI's for any of the Fuels published in Table 4.
 - i. Without the model and the underlying data stakeholders cannot fully comment on the proposed Draft Rule
 1. NMED should promptly publish both the NM-GREET, including all technical documents, and the data underlying for all of the tables listed in the draft rule; including: Tables 1, 2, and 3, specifically how NMED calculated the 2018 baselines for New Mexico; Table 4, including how these emissions were calculated under the model; Table 6; and Table 8.

24. 20.2.92.701, Table 8 ILUC Values

- a. As NMED cites in the program definitions at 20.2.92.7(I)(5), it derived the ILUC value for corn ethanol following the Argonne National Laboratory protocol and the remaining ILUC values from the CARB protocol.
 - i. It's inappropriate for NMED to cherry-pick ILUC values generated by sources that have modeled differing policy impacts and using differing methodologies and emissions factors.
 1. Notably, NMED's corn ethanol ILUC value reported in Table 8 mirrors CARB's Table 6 LUC of 19.8 gCO₂/MJ.



- a. NMED should provide the protocol and calculations supporting all ILUC determinations used in the draft rule.
- b. The ILUC definition also references Table 10 of section 24 for the ILUC Table.
 - i. The correct reference should be Table 8 of section 701.
- c. Finally, ILUC penalties are not extended to the installation of solar arrays or wind turbines in NMED's deemed zero CI for electricity, nor does MNED account for the extraction of minerals to support EV batteries, despite their potential for significant direct and induced land use changes.
 - i. For instance, the Department of Energy projects that 10.4 million acres of solar arrays will be needed to help decarbonize the nation's power grid - as much as 83% of that acreage will likely be farmland¹ which will need to be replaced.
 - ii. NMED should develop CTFP rules that eliminate inconsistencies in its ILUC emissions calculations.

¹ Heller, Marc, "Fight grows over converting farm land to solar fields," GREENWIRE, June 3, 2024.



August 2, 2024
Submitted via NMED Comment Portal

Ms. Claudia Borchert
Climate Change Bureau Chief
New Mexico Environment Department
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505

Re: Valero Comments on New Mexico Clean Transportation Fuel Standard Advisory Committee Technical Report

Dear Ms. Borchert,

Valero Energy Corporation and its subsidiaries (collectively, "Valero") appreciate the opportunity to serve as a member of the New Mexico Clean Transportation Fuel Standard (CTFS) Advisory Committee. Valero offers the following comments regarding the CTFS Advisory Committee Technical Report and the diverse technical opinions contained therein.

In addition to being one of the world's largest independent refiners, Valero is a major biofuel producer. Valero was the first traditional petroleum refiner to enter the large-scale ethanol production market and is now one of the largest ethanol producers in the U.S. Valero is also a joint partner in Diamond Green Diesel LLC, one of the largest renewable diesel producers in the world, and as such is credited with significant contributions toward meeting the declining carbon intensity targets under the California Low Carbon Fuel Standard. In accordance with commitments to shareholders, Valero is actively engaged in the construction of sustainable aviation fuel production capabilities and is pursuing carbon sequestration opportunities as well.

As indicated in the Technical Report¹, New Mexico Environment Department (NMED) has set an aggressive timeline for this rulemaking, with a hearing targeted for late 2024 and program implementation targeted for early 2025. While we commend NMED's efforts to complete the rulemaking process in a timely fashion, we urge the department to spend the necessary time to continue stakeholder engagement on the wide array of technical considerations raised by the Advisory Committee before bringing a proposed rule to the Environmental Improvement Board. This feedback from future market participants is critical to NMED's goal of creating a market that will successfully drive long-term innovation to help New Mexico to achieve its climate goals.

Carbon Intensity and Fuel Lifecycle Analysis

The Technical Report states that a member advocated to express carbon intensity in terms of vehicle travel distance rather than in units of energy. Valero disagrees with this approach and underscores the importance of a universal definition of carbon intensity across global low carbon programs. Energy is the fundamental property which allows the emissions associated with different fuel types to be compared on the same basis.

¹ See Advisory Committee Technical Report at <https://service.web.env.nm.gov/urls/jeDOxDem>.



Several presentations given during Advisory Committee meetings as well as much of the written technical input supplied by committee members acknowledge Argonne National Laboratory's (ANL) GREET model as the standard for lifecycle analysis modeling in other LCFS programs in the United States. Valero recommends that NMED adopt the ANL GREET model as the lifecycle analysis model for the CTFS, and additionally adopt Tier 1 calculators based on the ANL GREET model, similar to the approach adopted by California, which will simplify and standardize the fuel pathway application process. As ANL often updates the GREET model to incorporate additional research and accurately reflect current scientific understanding and industry practices, Valero encourages NMED to use a recent version of the GREET model (2022 or later) for the lifecycle background data, including land use change.

Credit Generation Opportunities

Advisory Committee members noted throughout the oral and written discussions the potential for renewable diesel to be imported to the state primarily via truck, rail, and pipeline, as opposed to the Pacific states which are able to receive larger quantities of renewable diesel by ship. Valero agrees with the Committee members who state that the available means of transportation into New Mexico may complicate reporting requirements when compared to other LCFS programs. The fuel supply chain into New Mexico will almost certainly require different fuels with different carbon intensities to be commingled in storage and transport, and appropriate flexibility for fuel suppliers to mass balance the fuels in their inventory will be critical to ensuring the availability of liquid biofuels in the state.

The Technical Report states that several Advisory Committee members suggested the inclusion of sustainable aviation fuel (referred to in other LCFS programs as alternative jet fuel) as a credit-generating fuel in the CTFS. Valero supports this proposal which will help create opportunity for sustainable aviation fuel uptake in the state.

Much Advisory Committee discussion reflected in the Technical Report related to credit generation opportunities for electricity, including conflicting opinions amongst members about the use of Renewable Energy Certificates, or RECs. Valero agrees with the Advisory Committee members who suggest that NMED establish firm guardrails for RECs to ensure that the resulting credits represent real reductions in carbon intensity. The report also reflects disagreement amongst members on how the CTFS should determine the volume of electricity used in transportation and therefore which volume is eligible to generate credits. We believe it is important to generate credits which are measurable and verifiable, and therefore agree with members who suggest that electricity credits should be based on measured quantities of electricity delivered for transportation use as opposed to estimations based on adoption or capacity.

Program Implementation

Valero agrees with the Advisory Committee members who advocated for the inclusion of a "reporting-only" period at the beginning of the program. The first section of oral input in the Technical Report highlights the difference in fuel supply chains between New Mexico and states with existing LCFS programs. The high volume of fuel imported to the state via truck by small marketers and jobbers will likely result in a large number of obligated parties with limited resources and more complex reporting requirements, who will require time to prepare to comply with the program. New Mexico also does not yet have the physical nor administrative infrastructure in place to support immediate program requirements, and a reporting-only period will allow NMED to gain valuable information about New Mexico fuel markets which will support further implementation. In addition to a reporting-only year, NMED could consider an early credit generation period such as that implemented under the recent Canadian federal Clean Fuel Regulations.



Advisory Committee members stressed the importance of a streamlined pathway process and third-party verification as important components of a successful program in both their oral and written input. The overview of state LCFS programs presented in the June 21, 2024 meeting highlighted the harmonization across existing programs, including the mechanisms for Oregon and Washington to recertify pathways from other jurisdictions. Valero encourages NMED to adopt these expedited fuel pathway recertification processes in the CTFS due to both the department's limited resources as well as the immense value of such processes in attracting the necessary renewable fuel supply to meet New Mexico's emission reduction goals in the early years of the program. Valero also agrees with Committee members who highlight the need for transparency about verification requirements and verifier responsibilities with both verifiers and regulated entities so that all parties have the necessary information to fulfill their compliance role.

The Technical Report notes that a number of Advisory Committee members counseled NMED against limits on biofuel volumes, including crop caps. Valero agrees with the points made by Committee members that such limits would reduce availability of fuels capable of immediately reducing emissions in New Mexico and that the increased use of liquid biofuels over the past several years has not been demonstrated to increase land use change.

Credit Market Dynamics

Advisory Committee members agreed on the necessity of cost containment mechanisms (CCM) in the CTFS program while encouraging NMED to be cautious and transparent when setting conditions for program deferral so as not to undermine investment and program stability. Valero agrees that long-term stability and investor confidence will be key to attracting business and innovation in the state. Appropriately set CCM, such as credit price caps with opportunities for obligated parties to purchase credits at the cap price to satisfy their obligation, can instill confidence in both obligated parties and investors. However, mechanisms for program deferrals or waivers with low or unclear thresholds will disincentivize local investment in supply chain infrastructure and project development. A deferral process in which program reduction targets are frozen at their current level due to multi-year triggering of CCM or cap prices is a more appropriate alternative to attempting to define "emergency or forecasted conditions".

Valero appreciates the opportunity to provide these comments. If you have any questions regarding this submittal, please contact me via email at mandy.garrahan@valero.com.

Sincerely,

A handwritten signature in blue ink that reads 'Amanda Garrahan'.

Amanda Garrahan
Executive Director, Strategic Planning and Public Policy