TO: Members, Governor's Task Force on Global Warming

COPY: Members, Wisconsin State Legislature
Governor Jim Doyle

FROM: Wisconsin Petroleum Marketers & Convenience Store Association
Wisconsin Petroleum Council
Flint Hills Resources
Marathon Oil Company
Kwik Trip, Inc.
US Oil Co., Inc

DATE: December 16, 2009

RE: Clarification and Opposition to Low Carbon Fuel Standard Provisions in Global Warming Bill (LRB 3883/1)

We understand that certain Task Force members reconvened yesterday, December 15, to discuss the omnibus climate change legislation relating to your July 2008 report and recommendations. Given your interest in this legislation, we thought it was still timely to provide clarification on those provisions in LRB 3883/1 relating to a Wisconsin Low Carbon Fuel Standard (LCFS) mandate.

Generally, we oppose the LCFS provisions in LRB 3883/1. Contrary to the interpretation of the co-chairs, the draft bill will result in a Wisconsin-specific fuel standard that will ban or restrict the use of corn ethanol and Canadian crude derived from oil sands. Given our reliance on these fuel sources, this legislation will unavoidably hurt Wisconsin consumers by adversely impacting fuel prices and supply.

The Low Carbon Fuel Standard Mandate is not linked to a Midwest Standard

We are in receipt of the December 3 memorandum to you by 23 industry groups and the December 8 response by Task Force Co-Chairs Roy Thilly and Tia Nelson. The Wisconsin Petroleum Marketers & Convenience Store Association and Wisconsin Petroleum Council were signatories on the industry memorandum and as such concur with the more general observations contained therein.

In their response, the co-chairs stated the following with respect to the proposed LCFS:

> [T]he [industry] memo assumes that a low carbon fuel standard is imposed by the draft. It is not. The state would only move forward if most of the Midwest does.

This is an incorrect reading of the proposed statutory language, which is attached to this memorandum. (Attachment 1) We believe the language assures a Wisconsin-only fuel standard that will adversely impact motor vehicle fuel supply and price. A LCFS is inevitable because those *preconditions* in LRB 3883/1 to such a mandate are certain to occur.

As in prior drafts, LRB 3883/1 provides that DNR "shall" develop a LCFS if:

1. The Low Carbon Fuel Standard Advisory Group makes "recommendations on the design" of state low carbon fuel standard, and

2. Those recommendations are "endorsed" by the majority of governors who endorsed the MGA Energy Security and Climate Stewardship Platform (Milwaukee, Nov. 2007).

The Low Carbon Fuel Standard Advisory Group (Advisory Group) is a group of industry, agency and environmental groups organized to make general design recommendations. (Attachment 2) This advisory group *will* make design recommendations sometime next year. (Several of us are members of the Advisory Group and we are familiar with its schedule.) Thus, the first condition is inevitable.

Given the diverse makeup of this group and other factors, it is also certain that its "design" recommendations will be very general, and nothing akin to a LCFS regulation. For example, the recommendations by the Midwestern Low Carbon Fuel Standard Working Group, associated with the Midwestern Accord, made design recommendations that include:

> A technical committee "should review and evaluate the best available science and existing governmental rule-making efforts in recommending carbon intensity values for fuels."

It is important that you understand, then, that certain fundamental components of a LCFS – such as a fuel's carbon intensity – are not something that will be specified in the Advisory Group's design recommendations.

The certainty these recommendations will be general and broadly supportable (e.g., the design should be based on "the best available science") also assures the second hurdle is cleared. That is, there are no foreseeable obstacles, political or otherwise, that would give governors pause in endorsing the expected design recommendations.

It is misleading to state that an endorsement of the Advisory Group's design recommendation equates to the imposition of a Midwest Low Carbon Fuel Standard for "most of the Midwest." We are convinced that after endorsement by the majority of the governors on the noted Platform document, the Advisory Group's recommendations will be duly noted and filed away because a LCFS is patently not in the best interest of Midwest states.[1]

But in Wisconsin, the mere recommendation by this group of unelected, mostly non-Wisconsinites will trigger a mandate that DNR promulgate a LCFS. DNR's only restraint is that they be consistent with the recommendations, which, given the general recommendations expected, amounts to giving a blank check to DNR.

LCFS will Target Corn Ethanol and Canadian Crude

Establishing a low carbon fuel standard is predicated on identifying and then restricting the use of fuel with higher carbon intensity. Specifically, LRB 3883/1 dictates that DNR's LCFS rule require "a reduction in the carbon intensity of transportation fuels sold in this state." "Carbon intensity" is defined as "the average amount of greenhouse gases emitted, measured as carbon dioxide equivalent, during the production, distribution, and use of a fuel per unit of energy produced by the fuel."

Requiring consideration of emissions during production, distribution and use assures that land use changes and other indirect emissions will be included in a fuel's carbon intensity calculations. As such, and by design, two fuel sources critical to the Midwest will be targeted – corn-based ethanol and Canadian crude.

[1] For example, California's Low Carbon Fuel Standard, discussed below, was opposed by Midwest agriculture groups such as the Nebraska Corn Board, Illinois Renewable Fuels Association, Illinois Corn Growers Association, and Iowa Corn Growers Association. See http://www.arb.ca.gov/fuels/lcfs/120109_newpathway_comments.pdf.

It is virtually certain that DNR will look to the California Air Resources Board (CARB) as a starting, and probably ending point when determining the carbon intensity of fuels sold in Wisconsin. Just this month, CARB published its Final Statement of Reasons for its newly promulgated Low Carbon Fuel Standard (CARB Statement of Reasons).[2] In that document, CARB notes that its rule will rely upon a "Lookup Table" to determine the carbon intensity of certain fuels. This table includes the following values for ethanol from corn:

Ethanol from Corn (CARB Statement of Reasons, pp. 19)			
Type of Ethanol from Corn	**Direct Emissions**	**Land Use or Other Indirect Effect**	**Land Use Penalty**
Midwest average; 80% Dry Mill; 20% Wet Mill; Dry DGS	69.40	30	43%
Midwest ; Dry Mill; Wet DGS; NG	68.40	30	44%
Midwest; Wet Mill, 60% NG, 40% coal	75.10	30	40%
Midwest; Wet Mill, 100% NG	64.52	30	46%
Midwest; Wet Mill, 100% coal	90.99	30	33%
Midwest; Dry Mill; Wet DGS	60.10	30	50%
Midwest; Dry Mill; Dry DGS; 80% NG; 20% Biomass	63.60	30	47%
Midwest; Dry Mill; Wet DGS; 80% NG; 20% Biomass	56.80	30	53%

Units are grams of CO2 equivalent per energy unit of fuel.

DGS means distillers grains and soluble; NG is Natural Gas.

The main point here is that it is inevitable that DNR will impose a carbon intensity penalty on corn ethanol, which equates to an average 45 percent under CARB's calculations. That means that corn ethanol will have higher carbon intensity than baseline gasoline. In essence, then, corn ethanol would be banned or severely restricted if, as expected, DNR follows CARB's lead.

It is also important to consider that the impact on corn ethanol isn't an accident, but instead, an outcome desired by most environmental groups and regulators. This was made clear in the CARB Statement of Reasons that highlighted their anti-corn ethanol priority:

> Several environmental groups including the American Lung Association of California, Sierra Club of California, Union of Concerned Scientists, NRDC, Environmental Defense Fund, Environmental Coalition, and Friends of the Earth, supported most elements of the proposal, particularly including indirect effects of changes in land use patterns caused by crop-based biofuels. Pp. 30 (Emphasis ours)

In a typical environmental group position, the Union of Concerned Scientists argued in April 22, 2009 comments that CARB's 45 percent corn ethanol penalty was insufficient:

> [W]e find that staff's proposed carbon intensity values for biofuels may be too low for the following three reasons. First, the staff's proposed methodology to account for CO2-equivalent emissions (CO2e) over time undervalues the impact of biofuels that cause land use change. Second, the staff has adjusted the GTAP model variables to increase yields of biofuel feedstocks without increasing direct emissions from fertilizers and other inputs. Third, there is growing evidence that the direct emissions from fertilizer use may be higher than estimated in the LCFS.

[2] http://www.arb.ca.gov/regact/2009/lcfs09/lcfsfsor.pdf

> We urge the Board to send a clear signal to conventional biofuel producers that the current carbon intensity values for biofuels will likely be adjusted upward in the next review of the program.[3]

The other, somewhat more obtuse purpose behind a LCFS is to target crude oil produced from Canada's oil sands. Environmental groups attempted to get CARB to impose an outright ban on Canadian crude oil derived from oil sands. CARB, however, took a more circular route that gets to the same end-point.

Unlike corn ethanol that has its land use/indirect penalty conveniently listed in the Lookup Table, CARB does not list a carbon intensity for oil derived from Canadian oil sands. Instead, such crude would be considered "high carbon intensity crude oil" that requires its carbon intensity to be calculated under a mechanism established by rule. But the result is the same considering CARB's position that oil sands are a high carbon-intensity crude oil.

One reason CARB does not seem particularly concerned about effectively banning Canadian crude is the fact that such fuel is not used in California. On that point, CARB notes that "oil sands-based crude was neither refined in California in 2006 nor otherwise present in the 2006 baseline crude mix in significant amounts." CARB Statement of Reasons, pp. 131.

Low Carbon Fuel Standard Will Harm Wisconsin and the Midwest

Once it is understood that the current draft bill *will* require a LCFS and that such a standard *will* ban or restrict the use of corn ethanol and Canadian crude, the real implications of this legislation become clearer.

Adopting a LCFS will have an adverse impact on energy costs for consumers and transportation-dependent employers in Wisconsin. Moreover, adopting a LCFS will discourage oil imports from neighboring countries and instead force Wisconsin to obtain its oil from the Middle East. What's more, adopting a LCFS will be a negative for the environment. Therefore, we oppose the proposed LCFS language in global warming omnibus bill for the following reasons:

1. **Adopting California's LCFS – Square Peg, Round Hole.** *California's laws aren't for Wisconsin*. Transportation accounts for more than 40 percent of California's annual greenhouse gas emissions – in Wisconsin that figure is just 24 percent. California also has its own crude supply and ranks third in the nation for refining capacity. Wisconsin only has one small refinery that uses Canadian crude and relies on refineries in surrounding states that also process crude oil from Canada. Therefore, we should *not* base Wisconsin's energy regulations on California's laws.

2. **A LCFS will Increase Gasoline Prices and Create Supply Problems.** A recent study performed by the consulting firm CRA International concluded that fuel prices would increase to "extraordinary levels by 2015… [under] the LCFS requirements without large reductions in total fuel demand." According to a report published by the Marshal Institute, a LCFS will raise ethanol prices $.91 per gallon and gasoline prices $.61 per gallon.

   Having a Wisconsin-only fuel specification could also isolate the state's fuel supply and leave it vulnerable to supply disruptions. Motorists in Southeast Wisconsin are well aware of the pricing implications of boutique fuels such as reformulated gasoline. Similarly, a Wisconsin-only low carbon standard creates a supply "island" precluding us from borrowing

[3] http://www.arb.ca.gov/lists/lcfs09/313-ucs_comments_lcfs_april_22.09.pdf

from our neighbors when supplies run short. Instead, we would have to wait for supplies of Wisconsin LCFS to arrive from more distant supply sources. Moreover, if the fuel is difficult to produce, fewer suppliers will be available to respond when a problem occurs. All these supply hurdles, in turn, lead to price spikes.

3. **Discouraging North American Crude in favor of the Middle East.** Once implemented, a LCFS will discourage the use of heavier crude from trading partners like Canada and Mexico. Combined, Canada and Mexico account for more than 20 percent of U.S. crude oil imports. Canada has the second largest proven oil reserves in the world (15 percent of world reserves), after Saudi Arabia. A LCFS will force the Midwest and Wisconsin to abandon secure sources of North American crude oil and replace it with crude oil from the Middle East. It is also an important fact that the only two manufacturers of heavy equipment used to remove crude oil from the oils sands are from Milwaukee, Wisconsin.

4. **A Negative for the Environment.** Wisconsin has some of the cleanest burning fuels in the U.S., and emits less carbon than most other cold-weather states in the country (using Canadian crude). In addition, the U.S. is the most efficient transportation destination and refiner for Canadian crude oil.

   If Wisconsin and other Midwestern states adopt a LCFS, existing and proposed pipeline infrastructure could be used to bypass the region. In addition, Canadian crude will likely be produced for export to developing nations such as China and India. These nations have lower environmental standards than the U.S., which means there would be a net increase in GHG emissions if that crude is ultimately refined elsewhere. It also would be less energy efficient and a potentially greater risk to the environment for Canada to transport its crude abroad by oil tanker versus keeping it in North America.

   The Midwestern United States is the most efficient transportation destination and refiner of Canadian oil sands crude, which reduces its environmental impact. Oil sands crude oil is a growing resource that is attracting significant investment. If Wisconsin restricts Canadian crude oil, it will be used somewhere else in the world.

5. **A Solution Looking for a Problem.** Wisconsin already has among the cleanest burning fuels in the U.S. and emits less carbon dioxide than most other comparable cold-weather states.

   The transportation sector's share of GHG emissions in the U.S. is 27 percent. In Wisconsin, transportation fuels are just 24 percent of these emissions. Several federal policies have already been adopted to address transportation GHG emissions, including increased mileage standards and the renewable fuel standards. In addition, the economic stimulus bill passed by Congress earlier this year contained significant funding for clean energy and technology development.

In summary, we think it is clear the current draft bill *will* require a LCFS and that such a standard *will* ban or restrict the use of corn ethanol and Canadian crude derived from oil sands. This will have serious adverse impacts on Wisconsin's fuel prices and supply given our reliance on these fuel sources.

Although the Task Force is officially dissolved under the Governor's Executive Order #191, we believe your leadership on these matters remains relevant. Thank you very much for your consideration.

Attachment 1

LOW CARBON FUEL STANDARD (LRB 3883/1)

SECTION 278. 285.795 of the statutes is created to read:

285.795 Low carbon fuel standard. (1) DEFINITIONS. In this section:

(a) "Carbon dioxide equivalent" has the meaning given in s. 299.03 (1) (b).

(b) "Carbon intensity" means the average amount of greenhouse gases emitted, measured as carbon dioxide equivalent, during the production, distribution, and use of a fuel per unit of energy produced by the fuel.

(c) "Greenhouse gas" has the meaning given in s. 299.03 (1) (d).

(d) "Low Carbon Fuel Standard Advisory Group" means the body established by the Midwestern Governors Association in 2009 to make recommendations on the design of state low carbon fuel standards.

(2) RULE. If the Low Carbon Fuel Standard Advisory Group makes recommendations on the design of state low carbon fuel standards and the recommendations are endorsed by the governors of a majority of the states whose governors endorsed the Midwestern Governors Association Energy Security and Climate Stewardship Platform at the Midwestern Energy Security and Climate Stewardship Summit on November 15, 2007, including the governor of this state, the department shall promulgate a rule, consistent with the recommendations, requiring a reduction in the carbon intensity of transportation fuels sold in this state below the carbon intensity of transportation fuels sold in this state as of a date specified in the rule.

(3) COOPERATION WITH OTHER STATES. If the department promulgates a rule under sub. (2), it shall cooperate with other states in effectuating the requirements under the rule, including cooperating with other states in operating a regional system for trading credits that may be used to comply with the requirements under the rule.

(4) CONSULTATION REQUIRED. If the department promulgates a rule under sub. (2), the department shall consult with the department of agriculture, trade and consumer protection, the department of commerce, the public service commission, the office of energy independence, and the University of Wisconsin−Extension in determining the carbon intensities for different types of transportation fuels necessary to implement the rule.

(5) COLLECTION OF INFORMATION. (a) If the department promulgates a rule under sub. (2), the department shall consult with the department of agriculture, trade and consumer protection, the department of commerce, the department of revenue, the public service commission, and the

office of energy independence to determine the method of collecting information needed to implement and enforce the rule under sub. (2) that is most cost−effective for state government and least burdensome for the persons subject to the reporting requirements.

(b) If an agency with which the department is required to consult under par. (a) has the authority under other law to collect information needed to implement and enforce a rule under sub. (2), the department may enter into an agreement with the agency to have the agency collect the information.

(c) The department of revenue may collect information needed to implement and enforce a rule under sub. (2) in the reports under s. 78.12 (1) to (3).

(6) PENALTIES. (a) Any person who sells a transportation fuel in violation of a rule promulgated under sub. (2) shall forfeit not more than $5,000 for each violation.

(b) Any person who fails to provide information requested by a state agency under sub. (2) or (5) shall forfeit not more than $1,000 for each violation.

(c) Each sale in violation of a rule promulgated under sub. (2) and each failure to provide information requested under sub. (2) or (5) constitutes a separate offense, and each day of continued violation is a separate offense.

(e) A court imposing a forfeiture under par. (a) or (b) shall consider all of the following in determining the amount of the forfeiture:

1. The appropriateness of the amount of the forfeiture considering the volume of business of the person subject to the forfeiture.

2. The gravity of the violation.

3. Any good faith attempt to achieve compliance after the person receives notice of the violation.

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