March 5, 2013

The Honorable Kevin Brady
301 Cannon House Office Building
Washington, DC 20515

The Honorable Mike Thompson
231 Cannon House Office Building
Washington, DC 20515

Dear Reps. Brady and Thompson:

Green Earth Fuels of Houston, LLC greatly appreciates your efforts leading the House Ways and Means Committee's "Energy Working Group," and the opportunity to provide comments. Tax reform is a critical undertaking for the country and could have significant impacts on businesses and individuals throughout the country. Your time spent understanding the needs, impacts, and interests of the business community as it relates to tax reform is a valuable service.

During an Energy Working Group, Green Earth Fuels highlighted the need for tax policy to have long-term forward visibility, to ensure that U.S. companies are not tax-disadvantaged relative to foreign competition, and to incent domestic infrastructure and job creation. That said, we understand the urgent need balance the Federal budget. To this end, Green Earth Fuels would like to recommend an amendment to the current Biodiesel Excise Tax credit which we believe would lower the cost of the tax credit as well as support the goals of domestic job and infrastructure creation and ensure that U.S. biodiesel is not traded at a disadvantage to foreign produced biodiesel sold under more advantageous tax regimes.

Specifically, we would recommend the conversion of the biodiesel "Blender's Credit" to a "Producer's Credit," thereby transferring eligibility for the $1.00 per gallon of biodiesel tax credit from the entity that blends eligible biodiesel with petroleum-based diesel to the **domestic producer** of eligible biodiesel fuel. As a result of this change, foreign produced biodiesel will no longer be eligible for the credit. It is our position that this treatment is WTO compliant, since nations can offer incentives to further domestic manufacturing and the subsequent build out of the infrastructure necessary to support these endeavors just as several countries in Asia and South America offer tax incentives similarly designed to incent their domestic manufacturing base.

This change is expected to create significant tax savings in future years by incenting only domestically produced biodiesel that supports U.S. jobs and infrastructure rather than imported finished product.

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Current Tax Provisions, Impact on Domestic Production and Foreign Imports

The current Blender's Tax Credit, which provides a $1.00 per gallon credit for every gallon of biodiesel that is blended into transportation fuel, plays a critical role in developing and expanding the U.S. Biodiesel market. By lowering the cost of biodiesel and biodiesel blends, the tax credit sends an economic incentive to use biodiesel, it helps create sufficient margins for wholesalers and retailers to invest in the infrastructure necessary to grow this domestic industry, it sends economic signals to equity markets to invest in more infrastructure and second generation feedstock technologies, and if converted to a producer's tax credit, would help balance the tax treatment of U.S. biodiesel producers when competing against similarly incented foreign producers. This policy has been a major factor in creating an industry that supported over 64,000 jobs and 175 companies in the U.S. in 2012 and that already has reduced our nation's dependence on foreign sources of petroleum, and petroleum based fuels, by over one billion gallons a year.

Further, we would recommend a long-term extension (5 years) of the tax credit. When the biodiesel industry is faced with the lack of this tax credit, or uncertainty about a potential lapse in the federal tax credit, the industry is harmed significantly, even when reinstated retroactively. For example, during 2009 and again in 2012, the tax credit lapsed and created dramatic disruptions in the market. In addition to increasing the cost of biodiesel to consumers, it slows purchases of wholesalers waiting for the reinstatement of the tax credit before purchasing biodiesel, and it makes the financing of both biodiesel projects and the working capital necessary to operate them virtually impossible as revenues and forward pricing are impossible for banks or the capital markets to predict.

The result of the Blender's Tax Credit current construct is creating a market in the U.S. for an unprecedented increase in imported biodiesel from both Argentinian and SE Asian sources in 2013. This in turn is driving continued expansion overseas rather than supporting U.S. infrastructure and jobs, and significant volumes are now being directed to the more profitable U.S. market in 2013 instead of local markets where the fuel is produced. Due to their own beneficial trade policies, lower cost of capital and more lax labor and environmental practices, foreign biodiesel producers can unfairly compete in the U.S. biodiesel market by taking advantage of the Blender's Tax Credit without supporting the infrastructure goals of the U.S. tax credit policy. As the European Union is increasing protectionist policies and closing its doors to imports, all market reports indicate that the import of foreign produced biodiesel to the U.S. in 2013 will increase dramatically over prior years. In light of current domestic budget concerns, and the goal of building U.S. infrastructure and jobs, it seems unwise to continue to pay this tax credit to foreign producers.

Current Domestic and Foreign Import Volumes

According to the EPA, domestic production of biodiesel for both 2011 and 2012 was approximately 1.1 billion gallons. (see Addendum A below)

In 2012, the first year that the Foreign Trade Division of the U.S. Census Bureau tracked imports of foreign produced biodiesel, the annual volume of imports of B 100 (100% biodiesel) was 28,832,534 gallons. In the first two months of 2013, Census reports 484,928 and 1,930,851 gallons for January and February respectively (see Addendum B below) which is a 400% increase month over month. Based on the market intelligence provided, we expect this growth in month to month volumes to continue in 2013. Industry analysts currently predict the volumes of both soy-based imports from Argentina, and palm-based imports from SE Asia to continue to ramp up significantly throughout the year based on the estimated vessel loading and inbound cargos from these countries. Unfortunately, Census data is not yet available to validate that expectation as the Census data reports are not created for up to 45 days from month of report. Further, EU policies which are expected to come into effect in May, have not yet shifted complete focus to the U.S. market. (See Addendum C and D below) This expected dramatic increase in imports is coming even without foreign product having the benefit of supporting policies such as the RFS2. If pathways for foreign feedstocks are approved by EPA as expected, the prognosis for the domestic manufacturing industry is far graver.

We believe that Congress should take proactive measures to evaluate and modify this credit for future years so as to continue the efforts to reduce the United States' dependency on foreign oil, support the domestic biodiesel industry, its infrastructure, and the important rural family wage jobs that are in place today, and most importantly, save U.S. taxpayer dollars by preventing U.S. tax policy that indirectly supports manufacturing jobs in foreign countries.

We appreciate your careful consideration of this issue. Please contact us if we can provide any additional information or comment to assist the Ways and Means Committee in finding a solution to this issue.

Sincerely,

Martin D. Beirne, III
CEO, Green Earth
Fuels of Houston

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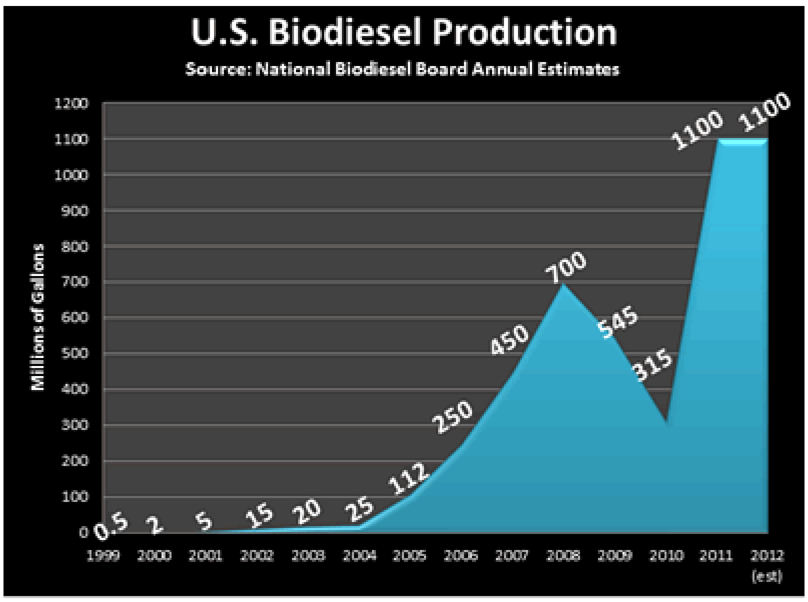
Addenda

Addendum A: 2011-2012 EPA Reports 2012 Biodiesel Production



(Available at http://www.biodiesel.org/production/production-statistics)

Production Statistics

The U.S. biodiesel industry reached a key milestone by producing more than 1 billion gallons of fuel in 2011, according to year-end numbers released by the EPA in January 2012.

The total volume of nearly 1.1 billion gallons is by far a record for the industry and easily exceeded the 800 million gallon target required under the EPA's Renewable Fuel Standard (RFS). The previous record for biodiesel production was about 690 million gallons in 2008.

A recent economic study commissioned by the National Biodiesel Board found that biodiesel production of 1 billion gallons supports 39,027 jobs across the country and more than $2.1 billion in household income. An additional 11,698 jobs could be added between 2012 and 2013 alone under continued growth in the Renewable Fuel Standard (RFS) and with an extension of the biodiesel tax incentive.

Addendum B: 2012-2013 Census Data on Biodiesel Imports

Total US Biodiesel Imports (gal)

Data Source: U.S. Census Bureau, Foreign Trade Division (Imports District 10-digit HS)

	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	FY 2012	Jan-13	Jan-13	Feb-13
3826 Biodiesel And Mixes Contain Lt 70% Petrol Oils Etc (Total gal)	1,682,230	2,227,897	2,122,049	1,903,296	3,635,940	3,941,241	6,156,443	1,668,410	3,110,357	1,279,872	322,680	2,508,795	30,559,210	484,938	484,938	1,930,851
3826001000 Biodiesel Nt Cont. Petro Oils (b100) (gal)	53,033	2,130,478	2,121,989	1,903,296	3,635,940	3,941,241	6,156,443	1,668,410	3,110,357	1,279,872	322,680	2,508,795	28,832,534	484,938	484,938	1,930,851
3826003000 Biodiesel And Mixtures Thereof, Nesoi (gal)	1,629,198	97,419	60										1,726,677			

Note: This data is compiled and published by the U.S. Census Bureau, Foreign Trade Division. For more information on how the data are collected and compiled please visit the Guide To Foreign Trade Statistics at http://www.census.gov/foreign-trade/guide/index.html .

Addendum C: "EU Looks to Tax Argentine, Indonesian Biodiesel"

Posted by **John Davis** – April 12th, 2013

The European Union is targeting foreign biodiesel … again. Reuters reports this time the EU is looking to hit imports of biodiesel from Argentina and Indonesia with a duty to keep the green fuel out:

Those countries represent 90 percent of EU biodiesel imports and face retroactive duties from Thursday if an investigation finds the countries have benefited from illegal subsidies.

In an official publication, the European Commission said it had enough evidence that producer subsidies were "causing material injury to the (European) Union industry, which is difficult to repair".

The European Union is already registering biodiesel from some companies in the two countries as part of a separate case on alleged price dumping – deliberately selling products for less abroad than at home, or for less than they cost to make.

For Argentina, the world's No. 1 biodiesel exporter, EU regulators said taxes placed on exports of raw materials like soy bean oil used to make biodiesel, but not on the finished product, made it uneconomical to buy the fuel from European Union refiners.

A similar raw material export tax exists in Indonesia, which the Commission said undercuts European refiners.

Both Argentina and Indonesia say they are in line World Trade Organization rules.

U.S. renewable fuel producers have already had their own issues with the EU. Soybean-based biodiesel from the U.S. is banned in Europe, and anti-dumping measures were put on ethanol earlier this year.

Source: http://domesticfuel.com/2013/04/12/eu-looks-to-tax-argentine-indonesian-biodiesel/

Addendum D: "Indonesia PME heads to U.S.; EU clamps down on biodiesel imports"

Indonesia PME heads to U.S.; EU clamps down on biodiesel imports

13 February 2013 05:01 [Source: ICIS news]

By **Heng Hui**

SINGAPORE (ICIS)--Indonesia may opt to ship out more **palm methyl ester**(PME) cargoes to the U.S. in the coming months, as Europe – the southeast Asian country's biggest market for the product – has effectively restricted imports of **biodiesel**, industry sources said on Wednesday.

The U.S. will be needing more of the material this year following reinstatement of a government incentive that promotes the use of more environment-friendly fuel or "green" fuel, they said. PME is a type of biodiesel that is derived from crude palm oil (CPO).

In Europe, on the other hand, an ongoing investigation on imported biodiesel originating in Indonesia and Argentina are making buyers nervous over a possible retroactive implementation of antidumping duties (ADDs) once they are finalised this year.
Europe imported about a third of Indonesia's 3m tonnes of PME output in 2012, with no recorded shipments from southeast Asia to the U.S., industry sources said.

Strong buying indications from the U.S. this year saw southeast Asia PME prices rising to $970-1,050/tonne (€718-777/tonne) FOB (free on board) SE Asia on 7 February, up from the low-$800/tonne FOB SE Asia levels in early January, according to ICIS.

"There has been a lot of prompt demand that we cannot fulfil because of the long shipment times from Indonesia to the U.S.," a major Indonesia biodiesel producer said.

In January 2013, the U.S. Congress reinstated the tax credit of $1.00/gal for biodiesel, with retroactive implementation to cover the whole of last year – a positive development for Indonesian PME producers that are looking for an alternative market to Europe, industry sources said.
The policy change is expected to fuel U.S.' demand for biodiesel this year, they said.

The U.S.' biodiesel subsidy withdrawn in 2012 by the Obama administration, citing that it is costly to the government, leading to a sharp decline in green fuel production in the country.
If the tax incentive were in place last year, the U.S. industry would have produced 300m gallons more biodiesel, according to media reports citing a study by consulting firm Cardno Entrix.

Theoretically, with the incentive, blenders will be able to afford biodiesel at the price of **heating oil** plus $1.00/gal, as a maximum purchase price, according to a market observer. At midday, the Nymex March heating oil futures were at $3.24/gal.

In EU countries, on the other hand, a mandatory registration of all diesel imports from Indonesia and Argentina took effect on 30 January 2013 and will remain in place for nine months, as their trading regulatory body - the European Commission (EC) - is collating fresh data to determine dumping claims by its regional players. The probe is expected to be completed in the third quarter of this year.

On concerns over a retroactive implementation of ADDs, EU countries have shied away from buying Indonesian PME since last year. The region's volume of PME imports from Indonesia had gone down by about 30% last year from around 1.4m tonnes in 2011, a major Indonesian producer said.
($1 = €0.74)

*Read John Richardson and Malini Hariharan's blog – **Asian Chemical Connections***

By: **Heng Hui**

Source: http://www.icis.com/Articles/2013/02/13/9638754/indonesia-pme-heads-to-us-eu-clamps-down-on-biodiesel-imports.html