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**By Email and Hard Copy**

July 27, 2022

Dear Deputy Commissioner Berkman,

We are writing in response to *Enforcement Discretion Related to ECL § 19-0327(3) Bioheating Fuel* issued by the New York State Department of Environmental Conservation on June 30, 2022, in which enforcement of the 5% bioheating fuel mandate is being delayed from July 1, 2022, until July 1, 2023.

First, thank you for participating in the July, 2022 conference call with representatives of the Clean Fuels Alliance America (Clean Fuels) to discuss the Enforcement Discretion. We respect the Department's authority in this matter and we understand the rationale behind the decision. We also appreciate the Department's support for the inclusion of renewable diesel in the mandate and your commitment to support legislation next session which will add renewable diesel into the definition of allowable fuels.

As stated in Enforcement Discretion, "a majority of terminals in upstate New York are available and ready to meet the July 1<sup>st</sup> deadline." For the minority that are not ready to comply with the state law, due to equipment supply chain issues, it is our belief that these issues will likely resolved by the end of this calendar year. If that is the case, there would be a window of opportunity to revisit the Enforcement Discretion, which we would encourage when appropriate.

With the Department's support, Governor Hochul signed S.3321-A/A.7290 into law as Chapter 750 on December 20, 2021, which made "statewide heating consumption less harmful to the environment by establishing minimum levels of biodiesel in all heating oil for use in any building in the state." The bill was supported by our industry as part of our commitment to reduce greenhouse gas emissions from liquid heating fuels and is an important step in achieving the State's goals outlined in the Climate Leadership and Community Protection Act.

While we understand that the Department has no control over supply chain issues which have affected almost every facet of the economy including the infrastructure needed to retrofit a small number of terminals supplying upstate New York, we wish to point out for the record that biodiesel feedstocks and neat biodiesel (B100) used for blending with conventional heating oil is not in short supply. In fact, projected volumes show that the biodiesel industry is well positioned to meet growing market demands, including the state's increased blended volumes as outlined in the bill.

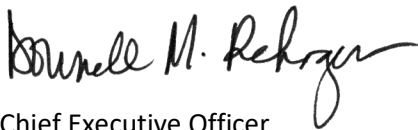
We also want to thank the Department for its continued support of the mandate which, of course, remains the law – increasing to B10 blends effective in 2025 and B20 blends by 2030. We also thank for Department for keeping in effect the downstate B5 mandate for New York City and Nassau, Suffolk and Westchester counties (accounting for 70 percent of the state's market by volume), which have been in effect without issue since 2017 and 2018 respectively.

Our associations, in conjunction with the entire home heating industry, are committed to providing low-carbon biomass-based renewable liquid fuels to customers as we work together to lower the state's carbon footprint. Like the state, we understand the clean fuels industry is good for our farmers, our rural and urban communities, and our economy. We also know that the carbon reduction our fuels offer is immediate and do not require investment in new heating appliances or infrastructure. Therefore, they are the most cost-effective and impactful improvement a homeowner can make to reduce their carbon footprint. But, those homeowners need to have access to these clean fuels and that requires the commitment of the terminals.

Thank you again for your continued efforts to ensure that New York remains one of the nation's leading clean fuels innovators – efforts that will not only immediately reduce carbon emissions but keep the state's renewable liquid fuels (primarily family-based) industry intact, while attracting new jobs and providing environmental benefits to residents of New York.

Sincerely,

**Donnell Rehagen**



Chief Executive Officer  
Clean Fuels Alliance America



**Clean Fuels**  
ALLIANCE AMERICA


**Kris DeLair**



Executive Director  
Empire State Energy Association



**Rocco J. Lacertosa**



Chief Executive Officer  
New York State Energy Coalition



*Clean Fuels Alliance America serves as the clean energy industry's primary organization for technical, environmental, and quality assurance programs, representing the entire distribution chain for biodiesel, renewable diesel and sustainable aviation fuel.*

*The New York State Energy Coalition, Inc. (NYSEC) and Empire State Energy Association, Inc. (ESEA) are trade associations representing the independent retail and wholesale heating fuels and energy marketers throughout New York State. Their members live and work in the neighborhoods they serve and are committed to improving the fuel products and appliances for their customers and their communities. Both NYSEC and ESEA have are committed to transforming the industry from supplying petroleum-based fuels to non-fossil renewables such as biodiesel.*

cc. Rajiv Shah, Assistant Counsel to the Governor for Energy and Environment  
John O'Leary, Deputy Secretary to the Governor for Energy and Environment