



Date: October 28, 2020

To: Governor's Council on Biofuels

From: Bob Patton (Bob.Patton@state.mn.us, 651-201-6226)
Jordyn Bucholtz (Jordyn.Bucholtz@state.mn.us, 651-201-6685)

RE: Cover Memo for Friday, October 30th meeting

This packet includes:

1. Agenda
2. Draft annotated memorandum from the Governor's Council on Biofuels to Commissioner Thom Petersen

We've heard some frustration expressed by councilmembers over the consensus results of the last Council meeting on Friday, October 23. These concerns mostly pertained to the ethanol/biodiesel/infrastructure recommendations. We've heard dissatisfaction that the recommendations were watered down and not bold enough.

Part of the problem is that we've had to move pretty quickly over the past several weeks to stay on schedule, and that has forced rapid decision-making on members. Additionally, particularly around questions about infrastructure and content requirements, there has been considerable disagreement, which we've tried to resolve through adjusting recommendations to meet the various interests and points of view.

This could suggest that we pivot away from a consensus decision-making process and use a supermajority voting process as was discussed at last Friday's meeting.

Alternatively, we are recommending that the Council adopt recommendations by consensus as planned, but additionally have its report include discussion that describes the variety of perspectives expressed by councilmembers. That is the approach we've attempted in the draft memorandum from the Council to Commissioner Peterson. The memorandum contains the recommendations as captured at the October 23rd meeting, but precedes them with a set of findings and conclusions that are meant to convey the context for the recommendations and the variety of opinions expressed by councilmembers. We believe this approach preserves Council consensus, but also expresses opposing points of view in a similar way that a majority-adopted set of recommendations with a minority report would do.

Once adopted, the memo from the Governor's Council to Commissioner Petersen is to be conveyed to the Governor with a short cover memo.

As always, we thank you for your hard work and commitment. Please let us know if there are any questions.

Governor's Council on Biofuels

October 30, 2020 Meeting

9:00 a.m. to 12:00 p.m.
Webex Video Conference

Agenda

9:00 a.m.
Welcome and Introductions
Commissioner Thom Petersen

9:10 a.m.
Agenda overview
Bob Patton

9:25 a.m.
Discuss and adopt recommendations
All

11:50 a.m.
Public Comment

12:00 p.m.
Adjourn

Date: October 28, 2020

To: Commissioner Thom Peterson

From: Governor's Council on Biofuels (GCB)

RE: [Annotated Draft] Report on Council Recommendations

The following is a report on the findings, conclusions, and recommendations that resulted from the nine-month-long consensus-building process with the members of the Governor's Council on Biofuels. Topics of discussion included E15 and mid-level blends, biodiesel, and biofuels infrastructure; Low Carbon Fuel Standard (LCFS); biofuels use in the state fleet; public understanding and marketing; vehicles and biofuels; advanced biofuels; and benzene/BTEX.

The findings and conclusions section of this report intends to capture the nuances and concerns present during discussions that are not conveyed in the recommendations section. The recommendations section lists the recommendations that reached consensus among the Council members.

Note to Council: Upon approval of this memo and its findings, conclusions, and recommendations, Commissioner Thom Peterson will send this report/memo to Governor Tim Walz along with a cover memo. Together, they will comprise the report from the Minnesota Department of Agriculture to the Governor required by Executive Order 19-35.

Findings and Conclusions

E15 and mid-level blends, biodiesel, and biofuels infrastructure

1. Due to compatibility standards at the federal and state levels, the ability for Minnesota to move to higher blends of ethanol and biodiesel is highly dependent on upgrading Minnesota fuel-dispensing infrastructure: underground storage tanks (USTs), piping, dispensers, and associated equipment.
2. An Infrastructure Subcommittee was convened by the Council, consisting of the following members representing the following groups and agencies:
 - Minnesota Corn Growers: Amanda Bilek
 - Ethanol Industry: Mick Miller (alternate: Gary Anderson)
 - Biodiesel Industry: Scott Hedderich (alternate: Mike Youngerberg)
 - Minnesota Service Station & Convenience Store Association (MSSA): Lance Klatt
 - Minnesota Petroleum Marketers Association (MPMA): Tim Gross
 - Minnesota Department of Agriculture: Deputy Commissioner Andrea Vaubel (alternate: Commissioner Thom Petersen)
 - Minnesota Department of Commerce: Greg Vanderplaats (alternate: Jon Kelly)
 - Minnesota Pollution Control Agency: Assistant Commissioner Kirk Koudelka (alternate: Nate Blasing)

3. The Subcommittee met five times between Tuesday, August 11, 2020 and Thursday, October 15, 2020.
4. As part of the Subcommittee process, the MPCA prepared cost estimates for bringing infrastructure up to compatibility with E15 (such equipment is generally compatible with up to E25), based on information in the MPCA's data and costs provided by fuel-dispensing-equipment installers. High-level conclusions of the cost estimates were that:
 - a) Fifteen percent (15%) of service-station sites were estimated to be compatible with E15, leaving 85% of sites needing replacement of underground storage tanks, piping, dispensers, and other miscellaneous equipment.
 - b) Costs of bringing those sites up to compatibility standards were estimated to range from approximately \$771 million to \$784 million.
5. In meetings, installers and service-station representatives indicated that, given the current capacity of underground storage tank contactors and supply of tank system equipment, it would take 10 years to upgrade infrastructure in Minnesota to E15/E25 compatibility standards.
6. At its final meeting on October 15, 2020, the Subcommittee members present (one member was unable to attend) came to consensus on two items: (1) a funding package, and (2) minimum compatibility standards for new infrastructure. The members present were unable to come to consensus on a third item, timelines for implementation of content requirements.
7. There were differences of opinion among Infrastructure Subcommittee members, and are differences of opinion among councilmembers, regarding the total cost of upgrading infrastructure and the length of time needed to accomplish upgrading. Differences of opinion center around questions including:
 - a) Whether compatibility standards are needed and reasonable to protect public health and safety and the environment.
 - b) Whether the length of time to upgrade Minnesota's infrastructure to compatibility standards (i.e., at least 10 years) is overestimated. This involves a question whether, if policy changed (content requirements were implemented and/or financial assistance was made available):
 - i. the capacity of the installation service industry and the available supply of equipment would remain fixed; or alternatively
 - ii. the market (of installation services and equipment) would respond and capacity/supply would increase, reducing the length of time needed to bring Minnesota's infrastructure up to compatibility standards.
 - c) Whether different construction/installation procedures, such as replacing individual USTs rather than all of USTs on a site, would reduce cost.
8. The consensus recommendations adopted by the Council put aside, for the time being, disagreement among councilmembers over whether a minimum content requirement for E15 should be implemented and, if so, whether the content requirement could be implemented earlier than the 10-year timeframe.
 - a) Some councilmembers advocated for implementation of an E15 content requirement faster than 10 years based on reasons including: (1) that most of the national fleet consists of vehicles newer than model year 2001 and are therefore compatible with E15; (2) federal regulations now permit year-round use of E15; and (3) E15 is seen as one of the important near-term pathways to decarbonizing the transportation sector.
 - b) Other councilmembers were concerned that E15 content requirements, especially if implemented in a timeframe of less than 10 years, would be impractical, would strain financial resources of retailers (especially independent retailers and small chains), and would put independents/small chains at a competitive disadvantage.
9. The consensus recommendations are intended to:

- a) Provide a stable and reliable source of financial assistance, particularly for independent retailers and small chains;
- b) Provide that new infrastructure is compatible up to E25; and
- c) Provide flexibility in the implementation timeframe for E15 and other compatibility requirements and base the implementation of compatibility requirements on criteria that protect independent and small chains from undue risk or harm.

Low Carbon Fuel Standard (LCFS)

10. Adoption of a Low Carbon Fuel Standard (LCFS) would advance the goals in Executive Order 19-35 by incentivizing advancement of carbon efficiency improvements of biofuels plants and sources of biofuels feedstocks and by providing opportunities and benefits related to biofuels production for farmers, rural communities, the natural environment, and economically disadvantaged populations. By meeting the six-month deadline, the State can ensure that this process moves forward in a timely manner. By establishing a working group for LCFS, the State can ensure that this conversation will continue, decision-makers will be equipped to take action, and the tradeoffs for biofuels and cost at the pump for consumers can be evaluated.

Biofuels use in the state fleet

11. Increased use of E85 in state fleet vehicles provides a significant opportunity to reduce the State of Minnesota's fossil fuel emissions and improve environmental and public health, and for state government to lead by example. The intention of an executive order is to make progress toward the State's goals while recognizing and creating flexibility for the challenges regarding data collection and the various needs and missions of individual agencies.

Public understanding and marketing

12. A number of state and national groups engage in education and promotion of biofuels to consumers, and currently MEG Corp (the fuel testing and consulting firm based in Plymouth, Minnesota; MEG Corp runs the Diesel Help Line) is certified to instruct auto service professionals on biofuels, and holds an annual course. A state role can be providing funding and convening a representative advisory group to inform the funding program.
13. Relevant stakeholders to include on the Council are, but are not limited to, marketing professionals, Growth Energy, the Renewable Fuels Association, and racing, boating, and small engine (ATV, lawnmowers, etc.) industries.

Advanced biofuels

14. Developing liquid transportation fuels production in Minnesota is a long term, vital part of the Governor's vision for reducing carbon emissions from the transportation sector.
15. Increasing the use of woody feedstocks in advanced biofuels will help improve forest health and other aspects of the natural environment, while bolstering economically-disadvantaged populations.
16. Consistent with the recommendations of the Intergovernmental Panel on Climate Change, the Biofuels Council believes that Minnesota has bountiful cellulosic natural resources that have enormous potential to help Minnesota achieve its greenhouse gas reduction goals through the use of cellulosic biofuels (biomass-derived hydrogen, methane, gasoline, diesel, and kerosene) to provide lower carbon fuels for

the transportation, electricity, industrial, and residential/commercial buildings sectors. In addition to policies such as a clean fuels standard for transportation fuels, state policy can play a critical role in helping to create and sustain markets in these advanced cellulosic biofuels that help to spur investments, reduce long term capital costs through economies of scale, and contain systems costs by leveraging existing infrastructure, including existing workforces that may be impacted by a statewide transition away from carbon-intense fuels for transportation, electricity, and buildings.

Benzene/BTEX

Note to Council: There has been discussion at the Council about a possible recommendation regarding standards for benzene in gasoline, and perhaps more broadly regarding benzene, toluene, ethyl benzene, or xylene (referred to as "BTEX"). The Council has briefly discussed a recommendation that the MPCA and MDH study the prominence of BTEX in Minnesota's largest cities, document effects of BTEX on human health and the environment, and propose limits on BTEX in gasoline based on the study findings. This idea is continuing to be discussed among the three agencies. Preliminarily, however, it does not appear that the recommended study is warranted for a number of reasons:

- While benzene levels are significant contributors to cumulative air pollutant risks (for toluene, ethyl benzene, and xylene, the measured levels are very low to not-detectable), it would be very difficult, if not impossible, to link BTEX to any human health outcomes. It is possible to overlay occurrence data with health outcome data, such as cancer incidence or asthma hospitalizations, but that does not represent "cause and effect" and would not be responsible.*
- The MPCA and MDH have produced two reports on the impact of air pollution on public health (see <https://data.web.health.state.mn.us/web/mndata/healthimpacts>), and while these reports focused on particulates and ozone rather than BTEX, we would expect similar findings. The impacts are most felt amongst vulnerable populations – BIPOC, the elderly, people with asthma, etc. Heavy transportation corridors show the greatest burdens, especially in the Twin Cities Metropolitan Area. There may be limited benefit of further study, since we already understand that reducing fossil fuel use will produce public health benefits.*

We are continuing to look at this issue.

Recommendations

E15 and mid-level blends, biodiesel, and biofuels infrastructure

Note to Council: At your 10/23/2020 meeting, you removed the language regarding a fee on petroleum products and what the fee could be levied on. This redirects the responsibility of determining the details of a dedicated funding source to the Governor and Board.

1. Develop a state funding package with a dedicated funding source, modeled after the Petrofund (possibly named the Infrastructure Fund), with the following features:
 - a. The dedicated funding source and financial assistance program would be administered by a board in conjunction with state agencies (MPCA and Commerce). The board could take into account ability to pay, such as greater assistance to independents/small chains.
 - b. Funds generated could be used to leverage federal funds and funds from private sources through public/private partnership with biofuel interests and other vested parties.

- c. Grants should be augmented by a low-interest loan or loan guarantee program.
2. Adopt a minimum compatibility standard for new infrastructure:
 - a. By a date certain, all new fuel storage and delivery systems should, at a minimum, be compatible with ethanol blends up to E25.
 - b. The law should provide that, when there is a new mid-level blend certification for ethanol or biodiesel, the minimum compatibility standards will be revisited.
3. Adopt minimum content standards for gasoline, implemented along a timeline, modeled after the Biodiesel Content Mandate statute (Minn. Stat. 239.77), with the following characteristics:

Note to Council: At your 10/23/20 meeting, you added 'but realistically' to "a." below to account for the variables that might affect an aggressive timeline. You also deleted language suggesting a phased-in approach to implementing content standards, and giving extra time to independents/small chains. The deletions were due to concerns that such provisions would put certain stations at a competitive disadvantage.

- a. Content standards should be set aggressively, but realistically in order to drive the market to increase the availability of equipment and installation services.
- b. The policy should include mechanisms similar in structure to the Biodiesel Content Mandate statute, with criteria for implementation of the content standard designed to protect small/independent chains from harm, including criteria regarding:
 - i. The availability of financial assistance targeted to independents/small chains that would be experiencing a competitive disadvantage; and
 - ii. The timely availability of equipment and installation services.

Low Carbon Fuel Standard (LCFS)

Note to Council: At your 10/23/20 meeting, you removed Option C, which recommended a feasibility study. You also merged Options A and B to include a deadline for the Governor to release a proposal for LCFS adoption and to include the establishment of a working group. A deadline was not included in the working-group recommendation in order to leave open the question whether a working group comes before or after a policy proposal.

4. Propose and advocate for a Low Carbon Fuel Standard (LCFS)/Clean Fuels Policy (CFP) that builds on the vision, principles, and considerations of the white paper *A Clean Fuels Policy for the Midwest (2020)* from the Midwestern Clean Fuels Policy Initiative, and to the vision and principles of the Governor's Council on Biofuels. By May 1, 2021, unless the 2021 legislature adopts an LCFS proposal, release a brief proposal detailing a plan for LCFS adoption and by November 1, 2021, release a full proposal for LCFS adoption.
5. Establish a working group that will ensure the process of adoption and policy design includes modeling data from Midwest and national efforts/organizations and advice from a broad spectrum of stakeholders and interests, including those of agriculture and biofuels, such as through a task force.

Biofuels use in the state fleet

6. Issue an executive order
 - a. Directing the Departments of Administration, Transportation, Public Safety, and Natural Resources to revise fuel-use tracking in agencies to include tracking of E15 and mid-grade gasoline-ethanol blends and blends of biodiesel in diesel fuel (e.g., B5, B10, B20, and higher blends);

Note to Council: At your 10/23/20 meeting, you added language to direct agencies to use E85 and E15 as much as possible, in addition to analysis and planning.

- b. Directing agencies, assisted by the Department of Administration's Fleet and Surplus Services and Office of Enterprise Sustainability and the interagency Fleet Council, to use E85 and E15 as much as possible, and to conduct analysis and planning for increased use of biofuels to be submitted to the Sustainability Reporting Tool and the Fleet Council by March 31, 2021, with an update by March 31, 2022 including:
 - i. E85 in flex-fuel vehicle (FFVs),
 - ii. E15 in non-FFV internal-combustion vehicles, and
 - iii. biodiesel use in diesel vehicles;

Note to Council: At your 10/23/20 meeting, you added a bullet point for making usage data public in order to add accountability.

- c. Directing the Department of Administration's Office of Enterprise Sustainability to continue to make E85 usage data public through its online dashboard, and, as feasible and practical, to also show E15 usage;
- d. Directing the Department of Agriculture and the Minnesota Pollution Control Agency with the assistance of the Department of Health to develop concise, fact-based information for employees on the comparative health and environmental benefits of biofuels; and
- e. Encouraging agencies to pilot technology to increase use of biofuels in fleet and other fuel applications in the enterprise, including:
 - i. Extending the blending of biodiesel to greater levels than mandated in statute;
 - ii. The use of 100% renewable diesel, biodiesel, and blends thereof;
 - iii. Explore strategies to develop the renewable diesel supply in Minnesota.

Public understanding and marketing

- 7. Create a standing Council on Biofuels Education and Promotion run by the Minnesota Department of Agriculture and comprised of representatives of stakeholder groups responsible for developing and directing a coordinated program of education and promotion of biofuels among consumers and auto-industry professionals in Minnesota. This council should be no larger than 15 people.
- 8. Establish a regular source of funding for education and promotion of biofuels administered by the MDA with guidance from the Council on Biofuels Education and Promotion.

Advanced biofuels

- 9. Increase funding for the AGRI Bioincentive Program to provide a stable market and pathway for biofuels development.

Note to Council: At your 10/23/20 meeting, you revised language of a third advanced biofuels recommendation that recommended advocating for changes to federal regulations. The revision to the recommendation was intended to ensure that the federal Renewable Fuel Standard (RFS) would not be opened for amendment. However, the author of the recommendation, Councilmember Rick Horton, has requested that the Council instead delete the recommendation. Consequently, the recommendation does not appear in this document.

10. Establish an Advanced Biofuels Taskforce to provide recommendations, by December 15, 2021, for legislative or administrative state policy (excluding the clean fuels policy referenced in these recommendations) to advance the goal of developing Minnesota's cellulosic natural resources to lower the carbon intensity of energy use in transportation, electricity, residential and commercial buildings, and industry.

Agenda

- 9:00 a.m. **Welcome and Introductions**
- 9:10 a.m. **Agenda overview**
- 9:25 a.m. **Discuss and adopt recommendations**
- 11:50 a.m. **Public Comment**
- 12:00 p.m. **Adjourn**

Why consensus?

Consensus decisions...

...when done well, develop higher quality solutions/outcomes because they integrate the needs and wisdom/perspectives of all stakeholders.

...are easier to implement because buy-in has already been developed (sometimes decisions are made and then held for years at the legislature or in court, etc).

Why consensus rather than voting?

- Council is to advise the Governor;
Governor (and lawmakers) are the decisionmakers
- Knowing what a majority of the Council thinks might not be that helpful
- More helpful for decisionmakers to know:
 - Where do interests lie?
 - What options meet the most interests?
 - What are areas of agreement and disagreement?

Questions to consider

- Are interests adequately incorporated into recommendations?
- Do findings and conclusions adequately capture:
 - Differing perspectives?
 - Areas of continuing disagreement?
 - Concerns about how recommendations are implemented?

Definition of consensus

A consensus decision **does not mean that everyone agrees on all the details or that some have changed their ideas or perspectives.** Ideally, a consensus decision reflects mutual understanding, agreement to support a decision, and commitment to take action steps for the benefit of the group.

Consensus operationally

Members should not block or withhold consensus unless they have serious reservations with the approach or solution that is proposed for consensus. If members disagree with the approach or solution selected by the rest of the group, **they should make every effort to offer an alternative that integrates the interests articulated by other members.** Members should remain at the table during deliberations to hear the full discussions in order to make informed judgments when decision making occurs.

Today's process

- Initial Fist to Five on whole recommendation package
- Starting with lowest scores, identify and capture issues concerns
- Go back through to try to resolve concerns
- Final Fist to Five
- Each member affirms they accept and will support the package of recommendations

Fist to Five

- Fist (=0):** A no vote - a way to block consensus. I need to talk more on the proposal and require changes for it to pass.
- 1 Finger (=1):** I still need to discuss certain issues and suggest changes that should be made.
- 2 Fingers (=2):** I am not in total agreement with the proposal and would like to discuss some minor issues.
- 3 Fingers (=3):** I'm neutral on this proposal but feel comfortable to let this decision or a proposal pass without further discussion.
- 4 Fingers (=4):** I think it's a good idea/decision and will work for it.
- 5 Fingers (=5):** It's a great idea and will work for it.

Voting Option

Should the Council fail to reach consensus on certain pressing issues, the facilitator may call for a vote, and a recommendation that receives a super-majority of three-fifths in favor will be included in the report.