To:

Ontario Ministry of the Environment, Conservation, and Parks
Regulatory Policy Branch
40 St. Clair Avenue West, 10th Floor
Toronto, ON M4V 1M2

Date: July 15, 2025

Subject: OBJECTION to Proposed Amendments to Ontario Regulation 663/20, Cleaner Transportation Fuels

This letter is submitted to formally object to the proposal posted on the Environmental Registry of Ontario on June 20, 2025 (ERO Number 025-0669). This proposal recommends a new domestic renewable content requirement for diesel fuel, purportedly to help maintain and sustain a circular economy in Ontario by supporting the continued operations of Ontario biodiesel facilities.

While we support the goal of a sustainable clean fuel market, the proposed policy is based on a flawed premise and ignores significant operational and supply chain realities. It will impose unnecessary costs and risks on Ontario's consumers and transportation sector.

Faulty Premise of an Unfair Market

The primary justification for this proposal is the perceived threat from the U.S. 45Z Clean Fuel Production Credit, which replaced the previous Blenders Tax Credit (BTC). The claim that this creates an unfair market environment necessitating protectionist measures is inaccurate. The 45Z credit is a technology-neutral incentive based on the carbon intensity of a fuel. It is an industrial incentive program, the likes of which also exist in Canada[1] for the benefit of Canadian industries. These types of programs do not pose harm to industries in other jurisdictions. It is also worth noting that for many common forms of biodiesel and renewable diesel, the 45Z credit is actually *less* generous[2] than the former BTC regime. To enact a trade-restrictive domestic content mandate based on a flawed interpretation of a foreign tax policy is an inappropriate and disproportionate response.

Insufficient Domestic Production Capacity

A domestic content requirement (75% of the 4% blending obligation) is unworkable given the current state of

[1] https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/corporations/business-tax-credits/clean-economy-itc.html .
https://www.canada.ca/en/revenue-agency/services/scientific-research-experimental-development-tax-incentive-program.html ,
https://ised-isde.canada.ca/site/strategic-innovation-fund/en as examples.
[2] http://clearbluemarkets.com/knowledge-base/decoding-the-45z-clean-fuel-production-credit

Canadian bio-source diesel production. The limited renewable diesel production (approx. 481 ML/yr[3]), which includes hydrogenation-derived renewable diesel (HDRD) and biodiesel, is spread out across the country. The only HDRD plant presently in operation (Tidewater, approx. 170 ML/yr[4]) is located in British Columbia. Another one expected to begin operations soon (Imperial, approx. 1,000 ML/yr[5]) is located in Alberta and both Tidewater and Imperial focus on supplying the BC market (approx. 1000 ML/yr[6]). The combined national production capacity of both biodiesel and HDRD is insufficient to meet the existing and growing mandates of the federal Clean Fuel Regulations and various provincial requirements, including those in Ontario and Quebec. Further, transportation of HDRD from Alberta and British Columbia is largely impractical due to the distance and inability to use ocean freight to move the HDRD across Canada.

Imposing renewable domestic content in Ontario will not magically increase supply. Instead, it will create a supply crunch, forcing fuel distributors to compete for a limited pool of domestic products. This will inevitably lead to higher compliance costs, which will be passed directly to consumers and businesses through higher prices at the pump. It also risks creating fuel shortages, particularly during peak demand seasons.

Operational Challenges and Practical Limits of Biodiesel

The proposal, expressly designed to provide a market for the Ontario biodiesel production, is in fact mandating the blending of domestic biodiesel. This proposed policy ignores the well-established operational challenges of this fuel, which the industry manages through strict seasonal and blend-level limits.

1. **Limited Blending Season:** Biodiesel use is largely restricted to warmer months. During Ontario's harsh winters, biodiesel blending is suspended to prevent fuel gelling, which can clog filters and disable vehicles. A year-round mandate promoting biodiesel is operationally unsafe and contradicts established industry best practices.
2. **Maximum Blend Constraints (B5 Limit):** Under most circumstances, the maximum accepted blend of biodiesel is 5% (B5), a limit that ensures compatibility with older diesel engines as well as striking a compromise for fuel quality aspects such as oxidation and cold flow properties. This proposal poses a risk, forcing blend levels beyond the safe and warrantied threshold due to the limited seasonal blending window mentioned above, placing the financial and operational risks on vehicle owners.

Even if the annual production of biodiesel was sufficient to cover the domestic blending requirements under this amendment proposal (which is not the case but only for discussion purpose), the seasonal blending limitations due to cold flow properties would require fuels distributors to stock up inventory for several months in the

[3] https://energy-information.canada.ca/sites/default/files/2024-10/energy-factbook-2024-2025.pdf
[4] https://www.tidewater-renewables.com/our-operations/core-projects/#:~:text=Nameplate%20Capacity,d%20(10.0%20MMcf%2Fd)
[5] https://news.imperialoil.ca/news-releases/news-releases/2021/Imperial-to-produce-renewable-diesel-at-Strathcona-refinery/default.aspx
[6] https://energy-information.canada.ca/en/subjects/refined-petroleum-products states diesel demands of approximately 83,000 bpd of diesel @ 21% renewable blend rates per https://www.naviusresearch.com/wp-content/uploads/2025/03/Biofuels-in-Canada-2024-2025-02-12.pdf

winter to blend and distribute the blended product in warmer months. This would likely be inadvisable considering the issues related to long-term storage stability of the product, assuming it would even be feasible given the infrastructure challenges, such as insufficient tankage.

The Superiority of Hydrogenation-Derived Renewable Diesel (HDRD)

A far more effective and forward-looking approach would be to promote the use of Hydrogenation-Derived Renewable Diesel (HDRD). HDRD is a "drop-in" renewable fuel that is chemically indistinct from petroleum diesel, making it a superior solution for Ontario.[7]

- **Excellent Cold Weather Performance:** HDRD performs reliably in cold weather, eliminating the gelling risks associated with biodiesel.
- **Seamless Integration:** As a true drop-in fuel, HDRD can be used in any concentration, up to 100%, in all existing diesel engines and infrastructure without any modifications or seasonal restrictions.
- **Equivalent or Greater GHG Reductions:** HDRD offers significant lifecycle greenhouse gas emissions reductions without the operational trade-offs of biodiesel.

By focusing on a domestic content requirement for biodiesel, the Ministry is picking a technological winner, and in this case, it is a less reliable and more constrained one. This policy stifles innovation and limits the market's ability to adopt the best available technology.

The legal obstacles

The proposal involves potential constitutional challenges due to the fact that it could be considered an attempt by the Province of Ontario to regulate international trade and therefore, constitutes an unconstitutional encroachment on federal jurisdiction.

In addition, the proposal triggers various procedural and substantive obligations of Canada under the WTO Agreement on Technical Barriers to Trade (WTO TBT Agreement), Canada-United States-Mexico Agreement (CUSMA), Comprehensive Economic and Trade Agreement (CETA), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which should all be carefully considered by the Ministry and Ontario government. Notably, where the Government of Ontario has acted in contravention of international agreements, Ontario has been liable to pay damages, such as the $25.2 million paid by Ontario as a consequence of breaching investment obligations in NAFTA.[8]

The proposed regulation is furthermore open to domestic challenge by contravening established administrative law principles, under which regulations will be held found to be unreasonable where they conflict with the

[7] https://www.eia.gov/energyexplained/biofuels/biodiesel-rd-other-basics.php
[8] https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/windstream.aspx?lang=eng

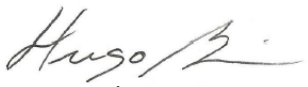
purposes of and fail to respect limits imposed by the enabling statute. In this case, the Cleaner Transportation Fuels Regulation aims to protect the natural environment and promote cost-effective, market-based mechanisms for improving environmental outcomes. The current proposal conflicts with these objectives. The proposal risks reducing cost-effectiveness by limiting access to broader fuel markets and does not directly support environmental standards. Notably, the regulation also fails to account for foreseeable supply shortages, which may disrupt implementation and undermine the intended environmental benefits.

Conclusion and Recommendation

We strongly urge the Ministry to withdraw this ill-conceived proposal. It is based on a faulty premise regarding U.S. tax policy and ignores the clear limitations of Canadian renewable fuel supply and the operational realities of using biodiesel in our climate.

Instead of implementing protectionist measures that will increase costs and reduce reliability, the Ministry should maintain a competitive, technology-neutral framework that rewards performance and GHG reductions, thereby encouraging the adoption of the best available fuels like HDRD, regardless of origin.

Sincerely,



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