Submitted via online form at https://ero.ontario.ca/notice/025-0669.

Re: Cleaner Transportation Fuels - Proposed Domestic Renewable Content Requirement for Diesel Fuel (ERO Number 025-0669)

To Whom it May Concern:

Diamond Green Diesel, LLC, ("DGD"), a joint venture between subsidiaries of Darling Ingredients Inc. and Valero Energy Corporation, appreciates the opportunity to respond to this Proposed Domestic Renewable Content Requirement for Diesel Fuel (the "Proposal") from the Ministry of the Environment, Conservation and Parks of Ontario. DGD is a leading producer of renewable diesel in the United States and an important exporter of renewable diesel to the Canadian market to enable regulated parties to meet their regulatory requirements. Last year, we also completed a project to upgrade approximately half of the new Port Arthur facility's production capacity to produce sustainable aviation fuel ("SAF").

As one of the North America's leading producers of renewable diesel and as a trailblazer in SAF production, we are proud to have played a leading role in helping not only Ontario, but also Canada, to achieve the goal of reducing the carbon intensity of the transportation fuel pool. We look forward to helping Ontario continue to improve the program so that it can remain the premiere market-based regulatory program supporting innovation in low-carbon fuels. With that goal in mind, we offer the following comments.

A Domestic Renewable Content Requirement Will Restrict Supply and Harm Consumers.

The Proposal recommends a domestic renewable content requirement for diesel fuel placed in the Ontario market under the Cleaner Transportation Fuels (CTF) Program. Specifically, it would require that 3% of the renewable content required in diesel fuel to be produced in Canada, which represents 75% of the renewable content that is currently blended in diesel fuel (the current mandate is set at 4% overall). However, there are significant concerns about whether there is enough domestic supply to meet this requirement in addition to others recently put into place. This could cause a supply shortage and ultimately make transportation costs rise as a result. This would directly impact consumers.

Ontario has not adequately considered how the Proposal will operate in conjunction with a similar British Columbia requirement, which was only recently finalized in February 2025 and effective as of April 1, 2025. Not only did British Columbia implement the domestic production requirement, it also doubled the renewable content blending target from 4% in 2024 to 8% starting in the 2025 period. If the Proposal were finalized, it would only further compound domestic supply bottlenecks resulting from the British Columbia mandate. Combined, the two mandates would now require at least 344.4 million litres per year to be domestically sourced.[1] There has been no reported data suggesting that domestic producers are able to meet the new British Columbia mandate, since it has only been in place since April 1, let alone an additional 3% as outlined in the Proposal.

[1] *See, e.g.*, *Sales of fuel used for road motor vehicles, annual*; Statistics Canada (available at https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=2310006601). In 2023, Ontario net diesel sales were 5.4 billion litres with British Columbia being 2.28 billion litres. With a 3% and 8% domestic requirement, respectively, this means that approximately 344.4 million litres must be produced in Canada each year. This will only grow as consumption increases year over year.

If at least 344.4 million litres per year must now be domestically sourced, any facility outage or other supply disruption could introduce massive feasibility issues with the supply of biodiesel destined for Ontario and British Columbia. Currently there is only one operational renewable diesel producer in Canada and another that is forthcoming in 2025, but none of these are located in Ontario.[2] Thus, much of the mandated volumes for the Proposal would have to come from biodiesel blending. However, there are only two biodiesel plants currently operational in Ontario and one operational plant in Quebec from which local supply to the Ontario market could be feasible.[3]

Biodiesel blending is largely seasonal due to its poor cold flow properties[4], which restrict its use primarily to the warmer months. In addition, the ASTM D975 fuel specification limits biodiesel blending to a maximum of 5%, further constraining the ability of obligated parties to meet their renewable volume obligations. These limitations are likely to lead to higher costs, increased price volatility, and concerns around supply reliability.

In contrast, renewable diesel meets the ASTM D975 specification for petroleum diesel, allowing it to be used as a "drop-in" replacement for conventional diesel. It can be transported through existing petroleum pipeline infrastructure and sold at retail stations without the need for further blending. Renewable diesel is also better suited for year-round blending due to its low cloud point (typically around -20°C), whereas higher blends of biodiesel are not viable in colder months because of their higher cloud point (typically around 0°C).

As a result, implementing a domestic content requirement would be particularly challenging. This would further exacerbate potential supply shortages during peak blending periods and reduce renewable fuel blending opportunities in winter months, when renewable diesel is better positioned to meet cold-weather fuel specifications.

Thus, if the Proposal is finalized, Ontario fuel suppliers will have to compete to acquire the limited supply of locally sourced biodiesel to support aggressive biodiesel blending in the summer season. Any corresponding benefit to local producers would occur at the expense of Ontario consumers, who would ultimately absorb the higher prices resulting from the artificially constrained supply. Because the bulk of biodiesel blending would necessarily occur in summer, this could exacerbate the potential for seasonal price spikes. Further, if the volumes necessary to meet the mandate are not met in the summer months

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[2] *2024 Biofuels Annual Report for Canada*, United States Department of Agriculture, (available at https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels%20Annual_Ottawa_Canada_CA2024-0057.pdf), at page 18 ("Canadian commercial production of HDRD began November 7, 2023 with the Tidewater facility in B.C. coming online (capacity: 170 ML). A second facility, Braya, began operation in Come By Chance, Newfoundland in February 2024 (planned capacity: 824 ML). A third facility in Alberta, owned by Imperial Oil, is expected to come online in early 2025."). Braya has since ceased operations. *See*, *Biofuel Woes Idle Private Equity-Backed Renewable-Diesel Refinery*, The Wall Street Journal, Feb. 26, 2025.

[3] *U.S. & Canada Biodiesel and Renewable Diesel/SAF Plant Map 2024*, Biodiesel Magazine (available at https://issuu.com/bbiinternational/docs/biodieselmap-2024-final). Verbio Diesel Canada Corp. in Welland with a total capacity of 45 MMgy and World Energy in Hamilton at 18 MMgy. Innoltek Inc. is in Saint-Jean-sur-Richeliu, QC and has a capacity of 6 MMgy.

[4] *Biodiesels and Cold-Weather Don't Always Mix*, Fluid Life Equipment Reliability Services, (available at https://www.fluidlife.com/blog-biodiesels-cold-weather/).

and suppliers attempt to blend biodiesel too late into the year in order to meet the mandate by year-end, there is a risk that consumers may be affected by subpar engine performance or even engine failure.

A Domestic Renewable Content Requirement Will Disrupt Other Markets.

The Proposal would likewise cause significant disruptions in compliance with the federal Clean Fuels Regulations (CFR) by regulated parties. Domestic production will now have to be used to fulfill the CFR targets, which was previously partially met based on imported fuel. The most recent CFR Credit Market Data Report indicates that for 2022 and 2023, roughly 43% of the compliance credits generated for low carbon intensity fuels were generated on fuel supplied in Ontario.[5] In 2022, there was no fuel produced in Canada that met the Hydrogenation-Derived Renewable Diesel (HDRD) requirements, and in fact all credits created for HDRD in 2022 were from imported fuel. In 2023, the data for Canadian produced HDRD is obscured for confidentiality reasons, but the imports only continued to rise from 502,095 m^3 in 2022 to 1,244,358 m^3 in 2023. Because the Ontario market plays such an outsized role in credit generation under the CFR, Ontario's proposed reduction in imports will likely significantly disrupt credit creation under the CFR in the coming years, with no defined end in sight (as this is a "temporary" measure so long as subsidies "threaten Ontario's biodiesel industry").

As such, the domestic requirement will increase regulatory complexity and reporting burdens for Canadian producers, which in addition to increased prices associated with supply constraints, will also be passed through as additional costs to consumers. A more diverse pool of fuel provided by both domestic and foreign suppliers allows more compliance flexibility for reporting entities.

The Domestic Renewable Content Requirement Does Not Rest on Adequate Legal Grounds.

The Proposal could likely be considered a "technical regulation" which would make it subject to international agreements that govern Technical Barriers to Trade. This will trigger procedural and substantive obligations under the WTO Agreement on Technical Barriers to Trade (WTO TBT Agreement), the Canada-United States-Mexico Agreement (CUSMA), the Comprehensive Economic and Trade Agreement (CETA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (collectively, the “Agreements”). “Technical Regulations” are those that (1) apply to an identified category of products (here, diesel fuel), (2) set out product characteristics (here, that fuels supplied in Ontario must contain 3% renewable content produced in Canada) and (3) are imposed in a binding legal instrument (here compliance with the renewable content blending requirements is mandatory in order to sell fuel in the province).

Because the Proposal is a “technical regulation,” the Agreements impose obligations on Canada to ensure that certain procedural safeguards including notification, comment, consultation, and publication are fulfilled. Further, this action by Ontario may be in violation of Canada's procedural obligation to consult or notify other Parties to the trade agreements with regards to the technical regulations. Perhaps more importantly, the action appears directly contrary to Canada’s international obligations to ensure that technical regulations do not create unnecessary obstacles to trade by restricting imports and to confer national treatment on imported goods.

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[5] *CFR Credit Market Data Report*, Government of Canada Publications, June 2024 (available at https://publications.gc.ca/collections/collection_2024/eccc/en4/En4-734-2024-eng.pdf). 870,581 compliance credits in 2022 and 2,065,316 in 2023, out of a total of 6,806,598 compliance credits across both years.

Notably, it appears that the sole justification of the Proposal is in response to certain changes in international policies related to biofuel production and that the direct intent of the Proposal is to restrict biodiesel imports. Namely, the Proposal cites to the U.S. 45Z tax credit, which is unavailable to Canadian producers, as "offering U.S. producers a strong competitive advantage" resulting in closure of Ontario's biodiesel facilities and Ontario's' resource recovery objectives should "no action [be] taken." This is an impermissible attempt to regulate international trade, which is generally reserved to the exclusive jurisdiction of the Canadian government. The stated objective here is clearly related to the trade of international goods and the effect truly would be to change the flow of goods between the U.S. and Canada. As noted above, this would have a significant effect on the compliance within the federal CFR as well. Therefore, in purpose and in effect, this Proposal is likely unconstitutional as well as contrary to Canada's international trade obligations under the WTO and other agreements.

The Policy Justifications for the Domestic Renewable Content Requirement are Misguided and Ignore Substantial Recent Changes Benefitting Canadian Feedstock Producers.

To the extent that Ontario is relying on responding to a tax credit benefiting only U.S. producers, the eligibility for 45Z tax credit has recently been severely curtailed in the final version of the One Big Beautiful Bill Act, signed into law on July 4.[6] More specifically, many of the CFR and Ontario qualified feedstocks that were previously considered eligible to generate a 45Z credit are no longer eligible. However, the eligibility for all Canadian feedstocks was added. A more holistic view of the 45Z tax credit framework is necessary here so as to avoid disrupting both the finished fuel and feedstock markets in not only Ontario, but also Canada generally. While it is true that Canadian renewable fuel producers no longer qualify for clean fuel production credits, Canadian feedstocks are eligible under the 45Z framework. And, with changes to the ILUC provisions that allow the exclusion of these emission rates, Canadian soy and canola will see increased demand in the U.S.

Other notable influences on the Canadian biodiesel industry are the U.S. Blenders Tax Credit (BTC), which expired last December, and U.S. RIN values (Canadian biodiesel generates RINs because the U.S. EPA approved their production pathways to meet RFS renewable fuel obligations). There is significant uncertainty in the bio-based diesel (BBD) market; recent developments in U.S. federal tax policy and renewable fuel programs will have implications for North American biofuel production and U.S.-Canada trade. Given imminent and ongoing changes, the addition of another unknown variable such as the proposed domestic content requirement would likely invite unnecessary risk and lead to unintended consequences.

DGD's experience in various low carbon markets has demonstrated that technology neutral, feedstock neutral approaches are the best way to ensure success of the programs and any attempts to control trade are not supportive of the goal at hand – reducing the carbon intensity of the transportation fuels in use in the province. The Cleaner Transportation Fuel Regulation aims at reducing the carbon intensity of the transportation fuels in Ontario, not dictating trade policy. Canada considered but did not pass Clean Economy investment tax credits that would have incentivized local production (these were mirrored after similar provisions in the IRA). Instead of considering this option, Ontario is proposing to

[6] *See, e.g.,* H.R. 1 - One Big Beautiful Bill Act (available at https://www.congress.gov/bill/119th-congress/house-bill/1/text).

enact trade restrictions that will limit supply, increase prices, and cause credit bank disruptions. We strongly urge you to reconsider this counter-productive and potentially illegal approach.

Thank you for your consideration of our comments.

Sincerely,

Neil Fox
Executive Director Commercial
Diamond Green Diesel