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Director

TO: Members of the Colorado General Assembly

RE: **SB09-098** "Tax Exempt Blended Diesel Products" (SCHWARTZ--VIGIL)Governor's Position: **SUPPORT****THE ISSUE:**

In order to sell diesel fuel in Colorado intended for off-road use on a tax-exempt basis, it must be dyed according to Colorado and Federal law. If the diesel fuel is not dyed, a special fuel distributor must collect the Colorado Special Fuel excise tax. However, off-road users of non-dyed diesel (clear, tax-paid diesel) may apply for a refund of excise tax paid. Colorado law explicitly prohibits the dying of "special fuels" (including biodiesel) below the terminal rack (i.e. the supplier). This places emerging biodiesel/biofuels blending companies at a severe competitive disadvantage since dyed diesel purchasers will not purchase dyed biodiesel if it involves their having to apply for a refund.

THE PROBLEM

- Places emerging biodiesel-blending companies at a significant competitive disadvantage due to an antiquated law that never anticipated biodiesel development and use in Colorado.
- Biodiesel blending companies are forced to charge excise taxes on dyed diesel even though it specifically cannot be used for highway use...all because of this antiquated law.
- Biodiesel blending in Colorado did not exist when the relevant statute was enacted.
- Customers are not willing to impact cash flow by paying excise tax at purchase and applying for a refund later ...in addition to current price premium for biodiesel. They feel, "Why bother."
- Customers have stated that they would prefer to avoid the unnecessary administrative time and cost associated with filing for excise tax refunds. Consequently, biodiesel use is hampered.
- The IRS currently allows up to 20% blends of biodiesel into dyed diesel...yet state law prohibits blending below the rack (i.e. at Colorado blending companies) while still maintaining its "ex-tax" dyed diesel status. This makes no sense because dyed fuels cannot be used on highways anyway.
- The current law significantly negatively impacts industry willingness to adopt biodiesel as a legitimate alternative to petrol-diesel for off-road applications. This means that the agriculture community, off-road contractors, utilities and a host of other potential off-road users are not utilizing the IRS allowable biodiesel B-20 blend due to this law.

THE SOLUTION

Revise CRS 39-27-102.5(1) that provides that tax-exempt special fuel must have dye added "before or upon withdrawal" at a terminal or rack. Language needs to be added that simply states that dyed petrol-diesel may be blended below the rack in a blend up to the federally allowable limit (20%) and still maintain its tax-exempt status.