King County

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April 27, 2022

Rachel Assink
Rulemaking Lead
Washington Department of Ecology
300 Desmond Dr. SE
Lacey, WA 98503

Re: Informal comment on Chapter 173-424 WAC, Clean Fuels Program Rule

Dear Ms. Assink:

Thank you for the opportunity to comment on the draft Rule Language shared on April 11 for the Clean Fuels Program. As mentioned in prior comment letters, confronting climate change, and accelerating the transition to a clean energy economy are top priorities for King County.

King County's Strategic Climate Action Plan (SCAP), a five-year blueprint for County climate action, sets ambitious targets to reduce emissions by half by 2030, lead with climate justice, and prepare for the impacts of climate change. Transportation is the largest source of greenhouse gas emissions in King County, and Washington State, and we must take urgent and immediate action to lower emissions from that sector. King County is working to reduce transportation related emissions through electrification of our bus fleet by 2035, conversion to electric light-duty vehicles for our non-revenue fleet and piloting an electric heavy-duty Class 8 truck for our Solid Waste operations later this year. But this work is not enough – we need sector-wide policy, and we must work together, in alignment with neighboring states, to set and reach bold targets to minimize emissions and the resulting impacts of climate change.

Specifically, King County asks the Department of Ecology to incorporate the following recommendations into the proposed rule:

1. **Incorporate the maximum possible reduction in carbon intensity of fuels, at 20 percent by 2034.** We must move urgently to reduce emissions from the transportation sector and spur new fuels and technologies. Additionally, implementing goals as similar as possible to our neighboring jurisdictions will ensure alignment with those trading partners. A 20 percent reduction in carbon intensity by 2034 is still a less

aggressive standard than California and British Columbia, both of which require a 20 percent reduction by 2030. Oregon is considering changing their standard to 20 percent below 2015 levels by 2030 and 37 percent below 2015 levels by 2035.

2. **Credit revenue investment opportunities directly benefiting "a disproportionately impacted community identified by the department of health" must be additive, impactful, and informed by overburdened communities.** Credit revenue investment opportunities should be maximized and directed to benefit overburdened communities identified on the Washington Environmental Health Disparities Map and other tools per the Healthy Environment for All Act (Chapter 70A.02 RCW). Moreover, investments stemming from clean fuels revenue should be additive, and not replace already allocated programs. The list developed by Ecology and WSDOT for programs and projects allocating utility revenue, should ensure additional investments. Project selection should also be informed by engagement with the Environmental Justice Council and overburdened communities. The statute specifies that this list must be based on what has "the highest impact on reducing greenhouse gas emissions and decarbonizing the transportation sector."

3. **At the very minimum, use California iLUC estimates for biofuels.** While the current model draft uses the Argonne National Laboratory values for indirect land use conversion (iLUC) for corn ethanol, on March 15, Life Cycle Associates' referenced research stating these lower iLUC values were based on insignificant evidence. Further, the current iLUC value for sorghum is much lower than the listed studies and is lower than both California's and Oregon's programs. Additionally, the peer review by International Council on Clean Transportation suggests values are not reflective of the full body of research and recommends using the current values in California's program. Inaccurate scoring will inhibit the state of Washington in reaching greenhouse gas emission reduction goals.

4. **Ensure ongoing public investments in fixed guideways systems generate equivalent credits to investments in new systems.** It is in the public interest to maximize credit generation for public transportation that is zero-emission and shifts load from passenger vehicles to public transportation. Fixed guideways systems require significant ongoing investment in the system and vehicles. New investments in vehicles and systems result in efficiency improvements that should be reflected in credit generation. For example, in 2015, the new trolley bus fleet Metro Transit improved electricity efficiency by 20 percent as a result of regenerative braking functionality. Metro received a rebate from Seattle City Light for that efficiency improvement. Given these considerations, we recommend that either the:
    a. **In-service date for public transportation fixed guideway systems be removed;** or,
    b. **In-service requirement apply to the system or vehicle** to allow for new more efficient electric transit vehicles to generate credits commensurate with their improved efficiency and not be restricted by the system date.

5. **Allow public transit systems flexibility in reporting electricity usage via estimation methods and not require separated metering.** Requiring separate metering would be cost-prohibitive and prevent public transit from securing credit generation from using electricity for transportation. For example, the Metro Transit trolley system and Sound Transit light-rail share a substation in one location, separately metering these systems would be cost-prohibitive. Reporting by vehicle would need to be estimated based on vehicle milage. Electricity usage for new expansions to the trolley system would need to be estimated by comparing to the baseline system.

6. **Ensure public fleet owners can secure ownership rights to credits generated from publicly owned electric vehicle fleets.** Rulemaking explicitly states that public fleet owners can generate credits from fleet. Clear language regarding credit generation ownership ensures that revenue generated can support the expansion of fleet electrification in our publicly owned fleets.
    a. **Clarify priority for transit agencies' credit generation ownership.** We appreciate and support the clear provision that transit agencies have the priority for credit generation from fixed guideway fleet. King County's investment in transit bus fleet electrification will primarily focus on battery-electric vehicles that do not use a fixed guideway, we want assurance that as a public transit agency we have priority for the credit generation ownership. Therefore, we recommend that the transportation unit be expanded from "Fixed Guideway System" to "Electric Public Transit Vehicles" to ensure that public transit agencies are priority 1 for credit generation from all electric public transit vehicles. Otherwise, battery-electric public transit vehicles are considered as "Non-residential EV" where credit generators are the owner of the charging equipment (priority 1) and designated aggregator (priority 2). We want to secure credit generation whether or not we lease or own charging infrastructure.
    b. **Transfer of electrical generation credit ownership.** Similar to the provision that allows for liquid fuel credit generation transfer, I recommend that fleet electricity charging credit generation transfer be explicitly permitted in the rule. We want to have the ability, through contracting and negotiations, to secure the credit generation ownership from all EVSE charging infrastructure that we lease and/or own.

7. **Support book and claim mechanism** that allows fleet owners to increase revenues from credits by bundling fleet electrification with renewable energy agreements generated off-site, so long as they are generated in Washington State and renewable energy credits are retired and not claimed separately by the utility. Book and claim mechanisms ensure that the investment in the renewable electricity purchase agreements can be captured, further incenting the development and use of renewable electricity.

8. **Support advance credit option for public fleet owners, but only for activities that use electricity as a transportation fuel.** Public fleets have varying capacity to meet the high upfront capital investments for charging and fleet. Advance crediting allows public fleets to generate credits and revenues upfront or have an upfront guarantee of future credit revenue. A similar program has been successful in Oregon. We support this provision as it will enable more fleets, especially smaller fleets, and smaller public agencies, to consider the credit generation revenue as they are making upfront capital investments. However, the advance credit option should be restricted to the same activities that generate credits from using electricity as a transportation fuel, as per WAC 173-424-220. The April 13, 2022, draft suggests that advance credits could be generated from a broader set of activities, this is inconsistent with the Oregon program.

   In addition, the current rule offers advance credits only to the "Washington Department of Transportation or other public entities that are implementing state transportation investments funded projects and program [sic]." Under the current draft rule, entities may earn advance credits for investments that are already funded in the transportation package passed this spring, Move Ahead Washington. This allows for advance credits for state agencies already charged with implementation of programs that are already receiving Climate Commitment Act funding. The Clean Fuels program has the opportunity to expand investments in clean fuels to entities not already funded to do so. This approach limits that opportunity.

   Also under the draft rule, clean fuels credits could potentially be used for Complete Streets grants, or bike and pedestrian grant programs. While these are important climate investments under the Climate Commitment Act, they do not directly increase the usage of clean fuels. Therefore, King County recommends that Ecology expand its offer of advance credits to public transit, local government, Tribes, school districts, and companies contracted to provide services to local governments or school districts.

Thank you for your continued partnership in furthering Washington state's emissions reductions goals.

Sincerely,

Rachel Brombaugh

Rachel Brombaugh
Director, Climate and Energy Initiatives
Office of King County Executive Dow Constantine