



Jim Verburg
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Sent via e-mail and upload to: <https://aq.ecology.commentinput.com/?id=DpgZ3>

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

Re: WSPA Comments on Carbon Intensity Lookup Table

Dear Ms. Assink,

On April 26, 2022, Washington Department of Ecology (Ecology) provided Clean Fuel Program (CFP) stakeholders with draft carbon intensity (CI) lookup tables (Tables 4, 6 7, 8, and 9) and supporting documentation. Ecology extended our informal public comment period until Thursday, April 28, 2022 to accept additional comments on the lookup table only.¹

While Western States Petroleum Association (WSPA) appreciates the opportunity to comment on CI lookup tables, allowing only two days to provide stakeholder comments clearly does not provide opportunity to interested parties to participate in a critical aspect of the rulemaking and run counter to the spirit and intent of the prenotice notice inquiry under RCW 34.05.310.

The purpose of the current “prenotice inquiry” and negotiated rules process under RCW 34.05.310 (CR-101) is to provide greater public access to administrative rulemaking and to promote consensus among interested parties.² In addition, RCW 34.05.310 requires an agency to solicit comments from the public on a subject of possible rulemaking before filing with the code reviser a notice of proposed rulemaking during the CR-101 phase. The process has been utilized successfully by several Washington agencies, including the Department of Ecology, as an opportunity to correct critical issues prior to the CR 102, even if more time is needed.

As a direct example from the CI lookup tables released on April 26th, it unlikely that the gasoline blend in Washington was 11.6% corn ethanol in 2017. A thoughtful discussion of issues such as this one is critical to the program as more restrictive baselines for gasoline and diesel make program compliance more difficult in future years.

Even a cursory review of CI lookup tables and supporting materials has resulted in concerns that we believe warrant further Ecology staff and stakeholder review, comment, and revision. These concerns are summarized below.

Significant Implications for Cap-and-Invest Program

Proposed Table 9 has potentially significant implications for the upcoming rulemaking WAC173-446 for Washington’s Cap-and-Invest program. As we noted in our January 26, 2022 comment letter regarding the informal draft WAC173-446 rule³, the definition of biofuel (from the enabling legislation

¹ Washington Department of Ecology. E-mail correspondence from Rachel Assink, April 26, 2022.

² <https://apps.leg.wa.gov/rcw/default.aspx?cite=34.05.310>.

³ Western States Petroleum Association. “Further WSPA Comments on Washington Dept of Ecology Rulemaking for Chapter WAC 173-446, Climate Commitment Act (CCA) Program”, January 26, 2022.

SB 5126 which states that: “*Biomass-derived fuels,*” “*biomass fuels,*” or “*biofuels*” means fuels derived from biomass that have at least 40 percent lower GHG emissions based on a full life-cycle analysis when compared to petroleum fuels for which biofuels are capable as serving as a substitute”) becomes very problematic with the values presented in Table 9. Application of Table 9 as drafted suggests that major sources of biofuel (e.g., corn ethanol) utilized in the State of Washington would not be exempt from the program. This would have significant implications for establishing the correct baseline for the program and would inhibit the only compliance option in the program that transportation fuel suppliers would have besides the purchase of allowances to satisfy the obligations incurred for the fuel delivered to its customers.

Questionable Carbon Intensity Values

WSGAS002 - Washington gasoline blended with corn ethanol: The CI value should be established with 10% volume denatured ethanol, rather than the proposed 11.6% volume denatured, as the vast majority of gasoline supplied in Washington is blended with 10% ethanol.

WAULSD002 - Washington diesel blended with soy biodiesel: The CI value should be established on typical biodiesel blends supplied in the state, rather than the arbitrary proposed 2.5% biodiesel blend. Ecology could establish instead a CI value for “B5” (5% biodiesel) for WAULSD002 and create another pathway, for example WAULSD003, with a CI value for “B20” (20% biodiesel).

WAULSD0116 - Substitute CI for B5 diesel: The CI value is actually calculated for 2.5% biodiesel blend, not 5% biodiesel blend. WSPA requests that Ecology updates the definition of WAULSD0116 and establishes the CI value based on the average percentage of biodiesel in diesel fuel sold in Washington State.

WSPA appreciates the opportunity to provided comments on this important proposed regulation. If you have any questions regarding this submittal, please contact me at (360) 296-0692 or via email at jverburg@wspa.org.

Sincerely,



James Verburg
Sr. Manager, Fuels



Cc: Jason Alberich – WA Ecology
Joel Creswell – WA Ecology