**Jessica Spiegel**
Senior Director, Northwest Region

December 23, 2021

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

Mr. Debebe Dererie
Rulemaking Lead
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: WSPA Comments on Washington Department of Ecology Rulemaking for WAC 173-424

Dear Mr. Dererie,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment regarding the Washington Department of Ecology (Ecology) Clean Fuels Program Rule Chapter 173-424 WAC Stakeholder Meeting, held on November 16, 2021. WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the west, including Washington. This includes the transport and market petroleum, petroleum products, natural gas, and other energy supplies.

The comments in the letter focus on the Ecology staff presentation during the November 16, 2021 Workshop but are also responsive a subsequent discussion with Ecology via teleconference on December 14, 2021.

**Recommended Priorities**

As part of the rulemaking process, Ecology desires that stakeholders identify regulatory priorities. This desire was clearly expressed further during the December 14$^{th}$ teleconference. Please find below our recommended priorities for the WA LCFS rulemaking process (i.e., items that are critical to a successful program that must be included in the program for a 2023 start):

- Compliance standards that are demonstrated to be achievable.

- Clear definitions, reporting thresholds, and recordkeeping requirements for obligated parties and/or reporting entities.

- Description or expectation of rule applicability through the supply chain (i.e., where does reporting/obligations start/stop).

- Completed development of a WA GREET.

- Sufficient time between final rules and implementation to allow for registration on WA website and for pathway applications to be approved

- Provide for regulatory elements that can help grow the credit bank in the beginning of the program (i.e., advanced credit generation, addition of opt-in fuels such as marine and sustainable aviation fuel).

## General Comments

### Life Cycle Assessment Modeling

During the December 14th teleconference, Ecology indicated that it will adding on staff member soon with modeling expertise and is also in process of retaining a modeling firm for the rulemaking process. While this action is supported, WSPA reiterates its concerns about the fact that Ecology internal expertise in life cycle assessment (LCA) modeling will still be limited. Further, we are concerned, as the LCA modeling is a major element of a CFP regulation, that Ecology has not selected a contractor at this point when there is less than one year left for the regulation to be adopted. WSPA continues to support Ecology in developing internal LCA expertise to the greatest extent possible.

### Incremental Deficits

Ecology references "incremental deficits" in the presentation (slide 24) and in the proposed regulatory language (WAC 173-424-200). Although the incremental deficits have yet to be defined in the proposed regulatory language, it appears from the staff presentation that Ecology does intend on establishing incremental deficits due to crude carbon intensity (CI) in the CFP. WSPA strongly advises Ecology <u>against</u> implementing incremental deficits in the CFP, as the modeling of crude CI is highly contested in the OPGEE model used by CARB, and Ecology does not have any expertise in crude oil LCA modeling.

If Ecology intends to apply incremental deficits due to crude CI, it raises the significant question of how Ecology would model the crude CI. During the December 14th teleconference, Ecology noted that an existing version of OPGEE would be adapted to Washington. Given this anticipated approach, WSPA advises that Ecology, at a minimum, to delay the implementation of incremental deficits until a future rulemaking. This would allow Ecology to establish a robust crude oil LCA model that is appropriate for crude oil refined in Washington and based on solid data, as the OPGEE model might not be the right tool for Ecology.

## Specific Comments

### WAC 173-424-130 - Applicability

It is not clear why alternative jet fuel listed in both Section (2) – Fuel Subject to the Regulation and Section (3) – Opt-in Fuel. If alternative jet fuel is subject to the regulation, it clearly implies that it is <u>not</u> an opt-in fuel. WSPA recommends that fuels should list as either subject to the regulation or opt-in fuels but not both.

Section (3)(a) states: "*Each fuel in (b) of this sub-section is presumed to meet the carbon intensity standards (benchmarks) in WAC 173-424-910 (a) through (c) through December 31, 2038.*" WSPA request clarification as to whether or not this section means that the CFP will expire at the end of 2038.

### WAC 173-424-150 – General Requirements

Section (1)(b)(ii) indicates *"keep records"* but does not specify the retention time requirements. Similarly, Section (5) indicates regulated parties must retain all records but does not specify the retention time requirements. WSPA suggests that retention time be identified for recordkeeping.

Section (1)(b)(iv) specifies compliance separately for gasoline and diesel fuels. However, the CFP compliance should be based on the combined gasoline and diesel fuel produced or imported. There should not be a specific requirement to meet the standard for gasoline separately and diesel fuel separately. For instance, gasoline production or imports could be a net deficit generator, but diesel production and imports could be a net credit generator, with the combined gasoline and diesel fuel being a net credit generator. WSPA requests that Ecology clarify this proposed regulatory language.

Section (7) indicates regulated parties must submit an annual compliance report for 2023, but there is no compliance obligation for 2023. WSPA requests Ecology to clarify the regulatory language.

**WAC 173-424-200 – Designation of Fuel Reporting Entities for Liquid Fuels**

Section (2)(b)(i)(A)(IV) indicates that the deficit or credit generator cannot pass its status to an entity acquiring the fuel below the rack. If this section also applies to fuel that is exported out of Washington, then the language seems to be inconsistent with Section (2)(b)(iv).

**WAC 173-424-220 – Designation of Fuel Reporting Entity for Electricity**

Section (7) appears to inadvertently reference CARB and ODEQ which should be removed from the proposed regulatory language.

WSPA appreciates the opportunity to provided comments on this important proposed regulation. If you have any questions regarding this submittal, please contact me at jspiegel@wspa.org.

Sincerely,

Cc: Joel Creswell - Ecology