



Jim Verburg
Senior Manager, Fuels

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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 January 27, 2022. 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.

General Comments

Response to Prior Comments

It appears that Ecology has yet to respond to prior WSPA comment letters.^{1,2} WSPA requests that Ecology addresses all stakeholder comments (including those in past WSPA comment letters as well as this letter) in advance of the next stakeholder meeting, scheduled for March 15, 2022.

Program Elements

WSPA appreciates the effort that Ecology staff is making in attempting to utilize use the most effective elements of both the California Low Carbon Fuel Standard (LCFS) program and Oregon Clean Fuels Program (CFP). However, it remains unclear as to the selection process (choosing one state's program element over another). We therefore request that Ecology staff explain during subsequent stakeholder meetings why and how specific elements of the proposed program have been selected as the rulemaking process moves forward.

Reporting At/Below the Rack

WSPA recommends that Ecology follow California's lead and require reporting "at the rack" rather than "below the rack". Experience in Oregon has shown that reporting below the rack leads to overly burdensome reporting requirements for rack suppliers. The burden of the reporting falls on rack suppliers and requires them to know what occurs to the fuel once it has been sold. Fuel suppliers at the rack have little to no insight into what happens after the fuel is sold over the rack due to the way that supply chains are established.

¹ Western States Petroleum Association, "WSPA Comments regarding Washington Clean Fuels Program Rule Stakeholder Meeting", November 20, 2021.

² Western States Petroleum Association, "WSPA Comments on Washington Department of Ecology Rulemaking for WAC 173-424", December 24, 2021.

Life Cycle Assessment Contractor

WSPA is interested in an update on the selection and hiring of the contractor to work on the life cycle assessment (LCA) as part of the CFP. Specifically, we would appreciate Ecology's feedback on the following items: contractor name, start date of the contract, end date of the contract, number of people under contract, contract cost, and scope of work.

Specific Comments – Staff Presentation

Recordkeeping (Slide 27):

WSPA recommends that the retention requirement of the records be set at 5 years. This is consistent with USEPA record keeping requirements.

WSPA requests that Ecology delay requiring third-party verification until the data year that includes the assignment of credits and deficits. California and Oregon have both established their LCFS and CFP programs without a third-party verification program initially. WSPA suggests that Ecology instead focus on the fundamental parts of the CFP this year and consider implementing a verification program in a future year to ensure enough time is provided to establish accredited verifiers and ensure potential conflicts of interest due to other states programs are considered.

Quarterly Reports (Slide 28)

WSPA requests that the deadline for the third quarter reports be set on the second Friday of January of the following year. This would avoid conflicts with holidays at Ecology and/or at regulated entities at the end of December.

Specific Reporting Requirements (Slide 29)

WSPA recommends that Ecology not include quarterly and annual crude oil volume reports (MCON) and incremental deficits in this rulemaking as it is a complex provision that cannot be implemented correctly in Washington, as fuel supplied in eastern Washington originates from out of state refineries. Since Ecology does not have the authority to regulate out of state refineries, the agency cannot request that these refineries report the crude oils that they process. Therefore, Ecology cannot obtain a representative crude slate processed for all the fuels supplied in Washington.

Furthermore, a lot of issues have been exposed with the California OPGEE model, so Ecology would need time to develop its own crude oil model to estimate carbon intensities of the various crude processed for the fuels supplied in Washington. Since Ecology has not even started developing its own crude oil life assessment model, it is not realistic to adopt incremental deficit provisions in this rulemaking

Specific Comments - Regulatory Language

WAC 173-424-130 Applicability (4)(b)

This subsection states: “...*alternative fuel intended to be used in a single-fuel application other than a single-fuel light- or medium-duty vehicle.*” WSPA requests that Ecology clarifies this language with regard to its intent to exempt diesel fuel and alternative diesel fuel used in light or medium duty vehicle applications from the CFP.

WAC 173-422-140 Exemptions (1)(c)

This subsection states: *“Fuels listed under (a) and (b) of this section are eligible to generate credits. WSPA recommends that Ecology removes the (1)(c) language to allow low carbon fuel used in exempt applications to generate credits.*

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

WSPA recommends that Ecology not adopt incremental deficits in this rulemaking and, therefore, remove the language referring to “incremental deficits” in this section at this time.

WAC 173-424-REG Registration (1)(a)(i)

WSPA requests that Ecology replaces “a fuel reporting entity” with alternative language. A fuel importer or fuel producer that simply chooses not to report in the CFP should not automatically be exempt from the CFP. In addition, Ecology should clarify that petroleum refineries that produce petroleum fuels, but no biofuels should not register in the Washington Alternative Fuel Portal (AFP). WSPA also requests that the comparable language in section (2) be updated accordingly.

WAC 173-424-REG Registration (1)(b)(ii)(D)

The language indicates that to register in the Washington Fuels Reporting System (FRS), a reporting entity “must be uploaded in the WA-FRS to complete the registration.” However, an embedded note indicates that this requirement may need to be delayed. WSPA requests that Ecology verify that this requirement will be delay and indicate when the requirement will become effective (i.e., 2024 for 2023 data).

WAC 173-424-REG Registration (1)(b)(v)(B)

WSPA requests that Ecology include language in this section that allows the owner of the fueling supply equipment (FSE) to elect not to be the credit generator and the ability to designate a credit generator on their behalf.

WAC 173-424-REG Registration (1)(e)

As referenced in this section, there is regulatory language in WAC 173-424-REG Registration (2) as to how to amend registration with Ecology in the AFP. However, there is apparently no comparable language as to how to do this in the FRS. WSPA recommends that this discrepancy be addressed in the rulemaking.

WAC 173-424-REG Registration (1)(g)

WSPA recommends that regulated entities be required to only have to update the list of related entities when a change in ownership occurs. To require entities to resubmit this information every year would be unnecessary and overly burdensome.

WAC 173-242-RK Recordkeeping

As previously noted, WSPA recommends that the retention requirement of the records be set at 5 years. This is consistent with USEPA record keeping requirements. In addition, it is recommended that the language related to third-party verification and Monitoring Plan not be included in this

rulemaking.

WAC 173-424-RK Recordkeeping (3)(g)

The acronym “LCFS” needs to be replaced with the acronym “CFP”.

WAC 173-424-RK Recordkeeping (4)

WSPA recommend that the language in this subsection be removed. While this language was taken from Oregon CFP, it does not exist in the California LCFS program. In the Oregon CFP, this requirement caused significant issues for obligated parties that have to report “below the rack”.

WAC 173-424-RK Recordkeeping (5)

In documenting credit transactions, the proposed regulatory language appears to combine Oregon and California regulations. As a result, it is unclear as to the difference between documenting credit transactions in this section and the reporting requirements in *WAC 173-424-RK Recordkeeping (2)*. Further, the terms “fuel reporting entity” and “regulated party” in this subsection need to be defined. WSPA suggests that Ecology reassess this subsection for consistency and clarity..

WAC 173-424-RK Recordkeeping (9)(d)

WSPA recommends that Ecology reference WA-GREET 1.0 model rather than a 3.0 version since GREET model versions for Washington have not yet been developed.

WAC 173-424-RK Recordkeeping (9)(e)

The reference in this subsection to “Oregon producers” needs to be changed to “Washington producers.”

WAC 173-424-QREP Quarterly Reports (1)(c)

WSPA requested that the 3rd Quarter reporting deadline of December 31st be reset for a date in January to accommodate the year-end holiday schedule. WSPA has made the same request of the Oregon CFP regulatory language.

WAC 173-424-SRR Specific Reporting Requirements

WSPA requests that Ecology strikes all references to MCON in this section, including subsection (6), as the recommendation is not to include crude oil reporting in this rulemaking. Under subsection (10), correcting a previously submitted report, WSPA requests that Ecology allows credits and deficits to be adjusted per the correction. There appears to be no valid reason why a corrected report should not properly adjust credits and deficits.

WAC 173-424-SRR Specific Reporting Requirements (3)

WSPA requests that Ecology provides the rationale as to why the use the Oregon CFP language chosen rather than California LCFS language. The enabling legislation allows Ecology to create a similar program for EVs as currently exists in California. It is unclear why that did not happen.

WAC 173-424-SRR Specific Reporting Requirements (6)

This subsection appears to include only portions of California Code of Regulations §9541(d)(1). As a result, “other transaction types” are not addressed and it is unclear as to the production company ID and facility ID requirements for each blendstock or the FPC of each blendstock as required in California LCFS regulations. WSPA requests that Ecology revisits the proposed language in this subsection.

WAC 173-424-SRR Specific Reporting Requirements (6)(d-f)

WSPA recommend that the language in these subsections indicate that reporting is to be done “at the rack”, consistent with California LCFs regulations. As previously noted in this letter, the Oregon CFP “below the rack” requirement caused significant issues for obligated parties.

WAC 173-424-ACR Annual Compliance Reports (4)

WSPA requests that Ecology modifies the language in section (4) to allow credits and deficits to be adjusted when corrections are made. To avoid confusion, Table 1 - Summary Checklist of Quarterly and Annual Reporting Requirements should perhaps be divided into two separate tables (one for conventional fuels and one for renewable fuels) as the current Table 1 also refers to the gasoline standards. As noted elsewhere in this letter, WSPA requests that the reference to MCON reports be removed from this check list table, as Ecology should not implement MCON reports and incremental deficits in this rulemaking.

WAC 173-424-ED Emergency Deferral



It is requested that language be added to this subsection to allow for entities to generate credits during an emergency deferral.

WAC 173-424-FSFD Forecast Deferral

WSPA requests that Ecology uses a different threshold than 100% of the credits projected to be necessary to trigger a forecast deferral. Regulated entities are allowed to bank credits, and not all entities holding credits in their bank will be willing to sell all of their credits. Therefore, Ecology should set a higher threshold to trigger a forecast deferral. For example, Ecology may trigger a deferral if fewer than 200% of the credits projected to be necessary are available, which would assume that about half of the credits are remaining in regulated parties’ credit bank.

WSPA appreciates the opportunity to provide 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 jverborg@wspa.org.

Sincerely,


James Verburg
Sr. Manager, Fuels


Cc: Joel Creswell - Ecology