



Jim Verburg
Senior Manager, Fuels

April 1, 2022

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 March 15, 2022 Washington CFP Rule Overview Presentation

Dear Ms. Assink,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment regarding the rule overview portion Washington Department of Ecology (Ecology) Clean Fuels Program Rule (Chapter 173-424 WAC) Stakeholder Meeting, held on March 15, 2022. WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the west, including Washington. This includes the transporting and marketing of petroleum, petroleum products, natural gas, and other energy supplies.

Presented below are comments regarding the "Draft Rule Overview" portion of the March 15, 2022 Clean Fuels Program (CFP) Stakeholder Meeting staff slide presentation¹ as well as the draft rule language².

General Comments

Consideration of Past Comments - Ecology staff indicated during the CFP Stakeholder Meeting that public comments during the current informal rulemaking period (which ends on April 25, 2022) would be considered for incorporation into the draft rule language, but no formal (written) response would be provided to stakeholders. Ecology did address previous stakeholder comments in the March 15, 2022 Stakeholder Meeting slide presentation. WSPA suggests that Ecology continue this approach of responding to stakeholder comments during the next CFP Stakeholder Meeting and WSPA looks forward to the corresponding changes to be including in the next revision of the draft rule language.

Availability of Revised Draft Rule Language - Ecology staff also indicated during the CFP Stakeholder Meeting that there will be a revised version of the draft regulatory language (considering stakeholder input) released in advance of the planned April 13, 2022 CFP Stakeholder Meeting. WSPA requests that a new version of the draft rule be provided to stakeholders at least one (1) week in advance of the next stakeholder meeting. It is particularly important for stakeholders to have proposed regulatory language with enough time to review in order to have a meaningful discussion on key rulemaking elements such as removal of third-party verification and incremental deficits provisions during the next stakeholder meeting.

Inclusion of Refinery Investment Credit Program - WSPA encourages Ecology to adopt a Refinery Investment Credit Program (RICP) as an element of the CFP that would allow CFP credit generation for refineries. This is an important aspect of a life cycle-based program, that it

¹ <https://ecology.wa.gov/DOE/files/26/26c03a09-487d-4b7f-a568-d88c5981423a.pdf>.

² <https://ecology.wa.gov/DOE/files/69/6948522a-3c2d-49d1-8736-2c955029bffe.pdf>.

incentivizes emission reductions throughout any fuel's lifecycle. A GHG reduction in one fuel results in the same benefit as a GHG reduction in any other fuel. For projects at refineries, however, it provides an opportunity to reduce local pollutants while providing well-paying jobs that support the economies in the surrounding communities. CARB's program has already approved three applications³, providing a regulatory structure available to for adoption in Washington. Opportunities for credit generation could include: electrification of machinery that substitutes high carbon fossil energy with grid electricity, energy efficiency improvements within the refining process, CO₂ capture at the refinery, use of renewable or low CI electricity, use of renewable natural gas to displace natural gas, and production or use of renewable hydrogen.

Removal of References to MCON - As noted in the February 12, 2022 WSPA comment letter, we request that Ecology strikes all references to quarterly and annual crude oil volume reports (MCON) in the proposed regulatory language.

Alternative Fuel Pathway Application - WSPA recognizes that Ecology has work to do in order to get the CFP up and running in a short time frame. To that end, WSPA has identified in its December 23, 2021 comment letter our regulatory priorities. In that letter we asked for regulatory elements that can help grow the credit bank in the beginning of the program. The ability to apply for and obtain Tier 2 pathways is a key opportunity to growing the credit bank. However, Ecology has proposed to begin accepting Tier 2 applications on July 1, 2025. The delay in Tier 2 fuels is problematic as fuel suppliers need abundant amounts of low carbon fuels available in the market to blend with and purchase credits from. Instead of preventing all Tier 2 pathways applications from being filed before 2025, WSPA recommends that Tier 2 pathway applications prior to 2025 allow applicants to have access to as many pathways as possible including new applications in addition to active pathways in either California or Oregon.

Carbon Intensity Standards 2034-2038 - WSPA recognizes Ecology may set standards that achieve at least a 10% CI reduction by 2031 and 20% CI reduction by 2038. However, as proposed during the workshop a 20% CI reduction by 2034 must be analyzed thoroughly to ensure fuel supply expectations are in line with the state's targets. Achieving a 20% CI reduction for a fuel on the surface may appear possible provided the types and CI's of fuels that are currently available, but Ecology must consider the volumes of available fuels, the blend limits tied to them, such as ethanol blending which must not exceed 15% of a retail blend, biodiesel and renewable diesel, the latter which requires specific cumbersome labeling requirements (for blends 5% to 20% and separate requirements for blends over 20%) according to a Federal Trade Commission (FTC) label law⁴ along with the monetary resources to build and logistic capabilities to deliver fuels to the state. Each of these must be considered when determining appropriate targets. WSPA recommends Ecology pause on moving the target to 20% by 2034, and conduct an independent third party fuel supply study to better understand how the fuel mix will need to change, how competition for the fuels in other programs may impact Washington and publish it for stakeholder comments prior to recommending a change to the targets.

Specific Comments – Proposed Rule Language

WA 173-424-CI (2)(d)(ii) - The definition of "CCLUB" needs to be added to this section.

WA 173-424-CI (5)(b) - Consistent with our General Comment above, WSPA requests that Tier 2

³ <https://ww2.arb.ca.gov/resources/documents/approved-lcfs-refinery-project-applications>

⁴ https://www.ftc.gov/sites/default/files/documents/federal_register_notices/automotive-fuel-rating-certification-and-posting-16-cfr-part-306/080311automotivefuelratings.pdf

pathways, including co-processing at petroleum refineries, be available at the onset of the program (i.e., starting on January 1, 2023 and not of July 1, 2025). It is noteworthy that most existing renewable diesel fuel pathways are actually Tier 2 pathways under both CARB and Oregon DEQ programs. Not allowing any renewable diesel Tier 2 pathways (even California or Oregon pathways which appears to be the intent of the regulatory language) to even be considered until July 1, 2025 could put CFP at risk of not being feasible as not enough credits may be available to offset deficits if certain renewable fuels are excluded from the program early on.

WA 173-424-CI (6) - WSPA believes that low CI feedstocks, such as specified source feedstocks, should be allowed prior to July 2025. Specifically, renewable fuels produced from low CI feedstocks should be made available at the onset of the program, as early as January 1, 2023.

WA 173-424-OIC (6)(e) - WSPA recommends that the CI value be adjusted to the operational CI value if it is lower than the CI value on the application.

WA 173-424-OIC (7) - WSPA encourages Ecology to adopt a simplified approach to approve and report renewable fuel pathways at petroleum refineries that co-process renewable feedstock. A mass balance approach should be acceptable with reporting based on feedstock processed.

WA 173-424-CI (8) - It is unclear why this reporting requirement is listed as part of the Carbon Intensities section of the proposed rule. This appears to be more closely associated with a reporting requirement for a Product Transfer Document (PTD) and, thus, may be a better fit for the Reporting section(s).

As a general requirement, this proposed regulatory language could ultimately prove to be a significant challenge as the fuel moves from production to end use. Fuel distribution is complex, as fuel is transferred between parties, in aggregated systems, including pipelines and tanks the quality of the fuel leaving may not be the same as what entered the pipeline or tank. As an example of this issue, biodiesel tanks at third party storage facilities may not segregate systems based on a biodiesel CI, if they do not multiple fuel supplier's biodiesel may be in a single tank, sourced from multiple producers. If Ecology is intending to require a fuel supplier to "label" the fuel sold with a CI, Ecology must also recognize that fuel suppliers can only do this based on the information available to them. Attempting to determine the actual CI of a fuel that has been distributed through a co-mingled system will not be accurate as any one fuel supplier will not know the CI of the other fuel supplier's biodiesel. If Ecology does intend to require fuel sold to include a CI, Ecology must allow for the fuel supplier to utilize the best information it has available to it, which includes utilizing the CI that was identified when the fuel was produced or imported into Washington state.

WA 173-424-OIC (9)(e) - Reference to third-party verification needs to be removed from this section.

WA 173-424-OIC (9)(g)(iii)(G) - WSPA recommends that if the operational CI is greater than the certified CI, the fuel pathway holder CI be recertified with the operation CI value, and CFP credits be adjusted. However, the fuel pathway holder should not be deemed out of compliance and no investigation should be undertaken. Investigations should be reserved for situations where there are true non-compliances such as reporting incorrect feedstocks or monitoring issues.

WA 173-424-OIC (10)(b) - WSPA recommends that the "within 180 days" requirement be changed to a "within 1 year" requirement, as some complex applications may take longer to be approved by Ecology.

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WA 173-424-OIC (11) - The definition of “substitute pathway codes” needs to be added to this section.

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
 WSPA

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