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Washington Department of Ecology
VIA Website upload
<https://aq.ecology.commentinput.com/?id=KTPeV>

Re: Comments on Proposed Clean Fuels Program Rule, WAC 173-424

Dear Department of Ecology Staff:

On behalf of bp America Inc., thank you for the opportunity to participate in the Washington Department of Ecology (“Ecology”) rulemaking on the Clean Fuels Program (“CFP”). bp’s ambition is to become a net zero company by 2050 or sooner, and to help the world reach net zero, too. Consistent with this ambition, we are actively advocating for policies that address greenhouse gas (“GHG”) emissions.

As we reach the end of the rulemaking development, bp wishes to recognize Ecology staff for their efforts and for adeptly managing stakeholder engagement. In particular, bp appreciates the updates Ecology made in terms of regulatory treatment of alternative jet fuel (“AJF”) to help facilitate its inclusion in the CFP and provide appropriate incentives to ensure AJF will contribute to decarbonization of the aviation sector in Washington in the coming years. We look forward to working with Ecology as the Final Rule is promulgated, and to helping the State reach its goals in reducing the carbon intensity of its transportation sector in the coming years.

When the CFP begins on January 1, 2023, there will be active clean fuels programs in California, Oregon, Washington, and British Columbia – stretching from San Diego to the Yukon Territory. We note the combined gross domestic product (“GDP”) of those three states and one province is equivalent to the 4th largest GDP in the world. bp is actively participating in the rulemaking and reviews of the clean fuels programs with all these governments. The creation of a robust West Coast clean fuels market will show how these programs can incentivize the decarbonization of transportation and also support economic growth.

With respect to the Proposed Rule,¹ we provide a number of comments below oriented towards ensuring the CFP is predictable and implementable, incentivizes investments in technologies that will drive decarbonization, and interacts harmoniously with existing and future CFPs as well as the Climate Commitment Act (“CCA”). Section I addresses important issues raised in our prior comment letters (attached for ease of reference as appendices to this letter) that the Proposed Rule appears not to address; Section II offers new comments for Ecology’s consideration based on the Proposed Rule text.

I. Significant Outstanding Issues

A. Accelerated Carbon Intensity Standards

bp supports ambitious yet credible target setting that provides regulatory certainty and a strong market signal for regulated entities to invest in the energy transition. Accordingly, bp supports the gradual reductions proposed for the early years of the program, which mirror the approaches used in other clean fuels programs. However, as explained in our previous comments, bp has significant concerns with Ecology’s proposal to require an unprecedented 10% reduction in carbon intensity (“CI”) from 10% to 20% in a single year—2034 (“Accelerated Reductions”).

First, this dramatic CI reduction will generate uncertainty in the program that could reward regulated parties that disregard the Accelerated Reductions period and undermine long-term investment decisions. Specifically, certain regulated parties may aggressively try to build up a credit bank sufficient to address the compliance challenge, while other parties may gamble that the 2034 reduction will not occur (e.g., through a program deferral), or will be undermined (e.g., through cost containment mechanisms), and will not plan adequately for the steep CI reduction. This credit market and program uncertainty will make it difficult for regulated parties to plan for the future in the years leading up to 2034 and jeopardizes the CFP’s ability to send clear price signals that allow regulated parties to confidently make investment decisions regarding lower CI transportation fuel—a goal that bp shares with Ecology. Given the interconnectedness of the West Coast CFPs and the need for low CI fuel to efficiently reach markets where it is most needed, this uncertainty may disrupt the other programs.

Second, this approach would add unnecessary cost burden to consumers that Ecology has not adequately presented consideration. Specifically, the economic modeling Ecology commissioned overlooks the need for regulated parties to build up substantial credit banks in the years preceding 2034.² Further, Ecology has not publicly shared what the “Least cost” scenario cost modeling demonstrates for a gradual decline in CI from 2034 to 2038; instead, it only includes the costs associated with the Accelerated Reductions in the Proposed Rule. For transparency and robust

¹ Proposed Clean Fuels Program Rule (July 18, 2022), <https://ecology.wa.gov/DOE/files/e9/e97a5150-9ed2-4512-a4fd-6b0317f907dc.pdf>.

² <https://ecology.wa.gov/DOE/files/42/42682205-963c-4e11-905d-8417ec3298b7.pdf>; see also Preliminary Regulatory Analyses, <https://apps.ecology.wa.gov/publications/documents/2202029.pdf>, at 66-68.

public dialogue and engagement, the potential consumer price impacts of the approach Ecology proposed as well as the lower cost alternative should be shared.

Third, the Accelerated Reductions scenario departs from the Legislature's careful judgment that the state should achieve 20% CI reduction in transportation fuel by 2038. If the Legislature intended for the 20% reduction to be achieved by 2034, it easily could have said so in the implementing statute. It did not. Ecology should not substitute its judgment for the carefully crafted and negotiated structure that was supported by stakeholders and adopted by the Legislature.

In sum, our concern is that the Accelerated Reductions approach is an unnecessary gamble by Ecology with potentially more downside for the program than upside. Regulated parties, Washington consumers, and potentially consumers in other West Coast jurisdictions will ultimately be impacted if Ecology elects to proceed with its proposed approach. Accordingly, we encourage Ecology to adopt in the Final Rule the gradual reduction from 2034 to 2038 envisioned by the Legislature.³

B. Important Program Features Absent from the Proposed Rule

A number of key program features that stakeholders, including bp, have advocated for are absent from the Proposed Rule. This is particularly concerning in light of Ecology's proposal to require an accelerated timeframe to meet 20% CI reduction. We summarize below important design features that would diversify credit generation opportunities earlier in the program. These features potentially could help regulated parties address the Accelerated Reductions approach, but under either scenario could facilitate a liquid credit market and efficient CI reductions. We extensively discussed these features in our prior comment letters, but reiterate them briefly here for reference:

- The CFP should allow broader application of book-and-claim methodologies, including but not limited to facilities that use renewable natural gas ("RNG") in the production of renewable fuels either for hydrogen or as a process energy. This is of great significance because, in order to be exempt from compliance obligations under the CCA, biofuels must achieve a 40% CI reduction as compared to substitute petroleum fuels. Under both the CCA and the CFP rules, Ecology should recognize in their life cycle analysis the real CI reductions associated with the use of RNG through a book-and-claim accounting system.
- The CFP should recognize project-based crediting such as for refinery GHG improvement investment and refinery renewable hydrogen production. Given that there is a strong in-state refinery presence, as well as stationary source GHG reduction synergies with the CCA, it is problematic that this important area has been de-prioritized during this initial rulemaking, notwithstanding that the statute expressly suggests its inclusion in the CFP. RCW 70A.535.050(1)(a)(ii). As stated in our previous comment letter of April 22, 2022, failing to include project-based crediting in the CFP from the start would be a significant missed opportunity for Ecology to send a market signal for long lead-time capital investment projects. It also risks undermining diversification of credit generation opportunities that are

³ Please also see our March 31, 2022, comment letter for additional discussion of this issue.

critical to ensuring a liquid, well-functioning credit market and to avoid program deferrals or implementation of cost containment mechanisms.

- The CFP should recognize Cover Crop Indirect Land Use Change (“ILUC”) values. Despite the welcome inclusion of carinata within the table of recommended values in Ecology’s early rulemaking engagement, this important biofuel feedstock opportunity has been overlooked in the Proposed Rule language. This is concerning because the ILUC values already exist when using the GTAP-BIO-ADV modeling methodology within the International Civil Aviation Organization’s “Carbon Offsetting and Reduction Scheme for International Aviation” modeling framework. This omission is a missed opportunity for Ecology to send a strong signal for agricultural innovation to encourage low CI feedstocks.

If Ecology is unable to integrate these critical program features into the Proposed Rule now, we encourage Ecology to provide regulated parties with greater certainty about when these features will be implemented as part of the program. Providing such a commitment will enable regulated parties to appropriately plan for compliance.

C. Updates to Program Assumptions for Baseline Fuel Values

bp appreciates that the Proposed Rule’s 2017 Washington gasoline baseline reflects a realistic 10.0% ethanol blend value when setting the carbon intensity value of 98.85 gCO₂e per MJ within WAC 173-424-900, Table 6, as we previously suggested.⁴ In light of this change, for consistency, the corresponding energy density in WAC 173-424-900, Table 3 requires updating to reflect 10.0% ethanol content, as it currently represents 11.6% ethanol content.

II. Additional Comments on the Proposed Regulatory Text

We appreciate Ecology’s consideration of these additional comments on the Proposed Rule and attention to necessary clarifications:

1. Legality of E15 in Washington

Through our inquiry and outreach, we have found that there is ambiguity from regulators regarding the legality of E15 gasoline sales within Washington. As E15 is a gasoline product approved for use at the federal level in almost all passenger vehicles, regulated parties may wish to include it in compliance planning. We encourage Ecology to work with Washington’s Department of Agriculture to ensure there are not state-level regulatory impediments to its use in the state.

2. Inclusion or Exclusion of Fuel Sold/Offered for Sale on Tribal Lands

We understand the CFP applies to transportation fuel “sold, supplied, or offered for sale in Washington.” WAC 173-424-120(1)(a). We recommend that Ecology clarify in the Final Rule

⁴ Additionally, we recommend that Ecology amend footnote 2 to WAC 173-424-900, Table 6 that references the EIA data source from which the originally proposed ethanol content was established.

whether “Washington” includes tribal lands within state boundaries to ensure regulated entities have a consistent understanding of the scope of the rule.

3. Tier 2 Pathways

As an initial matter, we encourage Ecology to commence processing Tier 2 pathway applications as soon as practicable, including in advance of the July 2025 date set forth in the Proposed Rule, if possible. Second, for consistency across programs, Ecology should ensure that the CCA regulations allow Washington to use modified Tier 2 pathways from Oregon and California to substantiate that biofuel will meet the 40% reduction requirement for exemption under the CCA. In order to meet the ambitious targets of the CCA and the CFP, we also encourage Ecology to consider in advance of July 2025 provisional pathways for the CCA and CFP that entail minor changes to existing Tier 2 pathways in California or Oregon. For example, Ecology could move forward with slightly modified liquid fuel Tier 2 pathways that include book-and-claim accounting for RNG, which are not yet included in an Oregon / California Tier 2 pathway, but its availability to Washington could be significant for meeting the biofuel 40% reduction requirement for exemption under the CCA.

4. Exemption for Fuel Used in Marine Vessels

The Proposed Rule specifies that fuels used in “marine vessels” are exempt from the CFP. Proposed WAC 173-424-130 (2)(a)(ii). However, the Proposed Rule does not define “marine vessels;” instead, it defines “ocean-going vessels.” Proposed WAC 173-424-100 (100). As the term “marine vessel” is open to interpretation, Ecology should clarify whether it intends to exempt all fuel used in all watercraft/marine vessels, consistent with the Oregon CFP (OAR § 340-253-0250(2)(E)), or fuel used in ocean-going vessels, consistent with the California LCFS (17 C.C.R. § 95482(d)(2)).

5. Documentation Necessary to Support Fuel Exemption

For documenting fuel that is exempt from the CFP, the Proposed Rule states that “[t]he method of documentation is *subject to approval by ecology* . . .”. Proposed WAC 173-424-130 (3) (emphasis added). This statement fails to adequately inform the regulated community what documentation qualifies and the minimum requirements specified by Ecology in the provision below do not resolve the ambiguity. We recommend that this provision contain more specific language describing the documentation that would meet Ecology’s approval.⁵

6. Applicability of CFP to Other Transportation Fuels

In the “Applicability” section, the Proposed Rule defines which transportation fuels are subject to the CFP and adds a catch-all that regulated fuels include any “other liquid or nonliquid transportation fuels as determined by Ecology.” Proposed Rule, WAC 173-424-120(b)(2)(j). We recommend

⁵ We also note that there seems to be language missing from WAC 173-424-130(3)(b).

removal of this language as addition of a new regulated fuel would require a rulemaking in order to adequately inform stakeholders of its inclusion in the program.

7. Diesel Fuel in Energy Density Table

In order to remove any ambiguity as to what “Diesel fuel” represents in WAC 173-424-900, Table 3, bp recommends that the value in the table is referenced as “neat” or “fossil” diesel. Diesel without any further qualification could have up to 5% renewable content and meet the ASTM D975 definition.

8. E10 Clarity in WAC 173-424-900, Table 3 and Table 6

bp recommends that Ecology note that the Pathway Code WAGAS002 in Table 6 as well as the “Washington gasoline” value in Table 3 reflect 10.0% ethanol to remove any ambiguity.

9. Typographical Error in Carbon Intensity Regulation

In WAC 173-424-600(5)(b), the first sentence of that subsection should refer to subsection (4), not subsection (3).

* * *

We thank Ecology for their efforts in developing the Proposed Rule and for the opportunity to provide comment. Please feel free to contact me at mark.bunch@bp.com or 708-228-6093 if you would like to discuss our comments further.

Sincerely,



Mark Bunch