

August 31, 2022

Rachel Assink
Rulemaking Lead
Washington Department of Ecology
300 Desmond Dr SE, Lacey, WA 98503

Re: Formal comment on Chapter 173-424 WAC, Clean Fuels Program Rule

Dear Rachel Assink:

Thank you for the opportunity to provide comments on the development of the Clean Fuels Program through Chapter 173-424 WAC. As a statewide advocacy organization, the Washington Environmental Council works to develop, advocate, and defend policies that ensure environmental progress and justice by centering and amplifying the voices of the most impacted communities. We have worked on establishing a state-level clean fuel standard for years and are committed to realizing a just and equitable implementation of this law. As part of this work, we are invested in ensuring that our state's climate policies are implemented in ways that maximize benefits and minimize harm to communities experiencing the greatest environmental health disparities.

We appreciate Ecology's due diligence to develop this complicated and dynamic program and the work to date to provide information and an open public forum to develop the details of how the program will function. Our feedback is guided by our commitment to seeing the Clean Fuels Program achieve the reductions in the carbon intensity of transportation fuels mandated by RCW 70A.535 and reflect the best available science.

Uphold existing requirements for tribal consultation

All processes in the rulemaking and all actions resulting from the Clean Fuels Program must respect tribal sovereignty and treaty rights. This rule must explicitly incorporate Ecology's existing obligation to proactively and meaningfully engage and consult with federally recognized tribes, with sufficient time and information made available for this purpose.

Ensure reduction of environmental health disparities and prioritization of air quality improvements

Collect sufficient information to evaluate air quality impacts

The legislature made clear when it passed the Clean Fuels Program that reduction of air pollutants harmful to human health was a primary goal of the program:

(2)...As of 2017, the transportation sector contributes 45 percent of Washington's greenhouse gas emissions, and the legislature's interest in the life cycle of the fuels used in the state arises from a concern for the effects of the production and use of these fuels on Washington's



*environment and public health, including its **air quality** [emphasis added], snowpack, and coastline.*

(3) Therefore, it is the intent of the legislature to support the deployment of clean transportation fuel technologies through a carefully designed program that reduces the carbon intensity of fuel used in Washington, in order to:

***(a) Reduce levels of conventional air pollutants from diesel and gasoline that are harmful to public health** [emphasis added];*

(b) Reduce greenhouse gas emissions associated with transportation fuels, which are the state's largest source of greenhouse gas emissions; and

(c) Create jobs and spur economic development based on innovative clean fuel technologies.¹

The legislature's stated intent that the program reduce air pollution harmful to human health, combined with the law's requirements for the expenditure of credit revenues in communities disproportionately impacted by pollution and reporting requirements regarding the impact of the program on air pollution, lead to a clear conclusion: the Clean Fuels Program Rule should be designed in such a way as to enable the fulfillment of these requirements and the larger goals of the program.

Since motor vehicles are the largest source of air pollution in Washington,² the Clean Fuels Program has the potential to deliver significant air quality improvements through the use of lower carbon intensity fuels, especially to people along congested roadways and near transportation hubs. At the same time, there are unique air quality impacts and risks associated with different fuel types that warrant more thorough analysis and evaluation. These include potential increases in criteria pollutants and air toxics that endanger human health. For example, reports published in 2021 by the EPA,³ the California Air Resources Board,⁴ and the International Council on Clean Transportation⁵ showed mixed results for exhaust emissions and air quality — some beneficial, some negligible, and some detrimental — when comparing biodiesel, renewable diesel, and ethanol to petroleum diesel and gasoline.

As the science assessing the impacts of these fuels continues to advance, Ecology must develop mechanisms to track these advances and assess the real-world impacts of WA's changing fuel mix under the Clean Fuels Program. This includes collecting information and evaluating any changes in emissions of pollutants harmful to human health and the environment that are caused by the program, to uphold the intent to *"reduce levels of conventional air pollutants from diesel and gasoline that are*

¹ RCW 70A.535.005

² <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-423-400Jan18>

³ "Final Determination for Renewable Fuels and Air Quality Pursuant to Clean Air Act Section 211(v)," US Environmental Protection Agency, January 2021, <https://19january2021snapshot.epa.gov/sites/static/files/2021-01/documents/420r21002.pdf>.

⁴ "Low Emission Diesel (LED) Study: Biodiesel and Renewable Diesel Emissions in Legacy and New Technology Diesel Engines," University of California at Riverside Bourns College of Engineering Center for Environmental Research and Technology, November 2021, https://www2.arb.ca.gov/sites/default/files/2021-11/Low_Emission_Diesel_Study_Final_Report.pdf.

⁵ "Air Quality Impacts of Biodiesel in the United States," The International Council on Clean Transportation, March 2021, <https://theicct.org/wp-content/uploads/2021/06/US-biodiesel-impacts-mar2021.pdf>.



harmful to public health.” To do this, we urge Ecology to incorporate the following additions to Chapter 173-424 WAC:

- Establish a process to satisfy the requirements of RCW 70A.535.140: The statute requires the Joint Legislative Audit and Review Committee to “analyze the impacts of the initial five years of clean fuels program implementation” and submit a report to the legislature by December 1, 2030, that includes the following elements:
 - *“Costs and benefits, including environmental and public health costs and benefits, associated with this chapter for categories of persons participating in the clean fuels program or that are most impacted by air pollution, as defined in consultation with the departments of ecology and health and as measured on a census tract scale”⁶*
 - *“Levels of greenhouse gas emissions and criteria air pollutants for which the United States environmental protection agency has established national ambient air quality standards”⁷*

In order to fulfill these requirements, Ecology will need to provide JLARC with adequate information to complete a thorough review. We urge Ecology to establish a process within Chapter 173-424 WAC to collect this information. This could include coordination with the agency’s “Improving air quality in overburdened communities” initiative,⁸ the agency’s air emissions inventories,⁹ the agency’s statewide monitoring of criteria pollutants and air toxics,¹⁰ and other efforts. At a minimum, information should be collected for all criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide), as well as air toxics (acetaldehyde, formaldehyde, acrolein, and naphthalene, benzene, 1,3-butadiene, and others) relevant to understanding the impact of the program on air quality and human health, especially in communities overburdened with transportation-related pollution. Establishing this process in the rule at the outset of the program will provide a clear and defined path to fulfill the requirements of RCW 70A.535.140.

- Require sufficient information to comply with RCW 70A.535.090 and RCW 70A.535.060: These sections of the law provide directives to Ecology to report annually to the public and the legislature¹¹ and to conduct a biennial review of innovative technologies and pathways¹². These processes should include review and reporting of air quality impacts, and the rule should establish the mechanisms by which this will occur.

Additionally, RCW 70A.535.060(4) specifies that: *“In any reports to the legislature under RCW 70A.535.090, on the department’s website, or in other public documents or communications that refer to assumed public health benefits associated with the program created in this chapter,*

⁶ RCW 70A.535.140(a)

⁷ RCW 70A.535.140(a)(1)

⁸ <https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities>

⁹ <https://ecology.wa.gov/Air-Climate/Air-quality/Air-quality-targets/Air-emissions-inventory>

¹⁰ <https://ecology.wa.gov/Air-Climate/Air-quality/Air-quality-targets/Air-quality-standards>

¹¹ RCW 70A.535.090(1), RCW 70A.535.090(2), RCW 70A.535.090(3)

¹² RCW 70A.535.060(3)



the department must distinguish between public health benefits from small particulate matter and other conventional pollutant reductions achieved primarily as a result of vehicle emission standards established under chapter 70A.30 RCW, and the incremental benefits to air pollution attributable to the program created under this chapter.” This requirement necessitates that Ecology identify and deploy appropriate mechanisms to make these required distinctions.

- Collect information to enable compliance with future HEAL Act requirements: Although the HEAL Act’s directives for covered agencies do not require the completion of environmental justice assessments for actions initiated before July 1, 2023, Ecology will likely be required to conduct environmental assessments for the Clean Fuels Program in the future, since the program will affect the equitable distribution of environmental benefits to overburdened communities and vulnerable populations and has the potential to inadvertently cause environmental harm.¹³ We urge Ecology to proactively build elements into Chapter 173-424 WAC to ensure this rule establishes sufficient information for future environmental justice assessments.

Use clear criteria to identify “disproportionately impacted communities”

The identification of “disproportionately impacted communities” is an important element of RCW 70A.535.080(b) that directs utilities’ use of credit revenues. However, the law does not define these communities or describe a process to identify communities for the purpose of receiving the expenditure of credit revenues. The proposed rule includes a definition in WAC 173-424-110: *“Disproportionately impacted communities” means communities that are identified by the department of health pursuant to chapters 70A.02 and 19.405 RCW.* We appreciate Ecology’s work to add specificity to this area in order to enable appropriate investments by utilities and backstop aggregators but are concerned that this definition may cause confusion and be difficult to actualize. This is because the proposed definition references other laws using different terms with different definitions for distinct applications.

The following points summarize differences between the definitions:

- RCW 19.405 (Clean Energy Transformation Act) defines “highly impacted community” and identifies any census tract with a 9 or 10 rank on the environmental health disparities map and any community located in census tracts that are fully or partially on “Indian country” as defined in 18 U.S.C. Sec. 1151 as such; while
- RCW 70A.02 (HEAL Act) defines “overburdened community” as *“a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined”* by CETA. The HEAL act furthermore directs covered agencies to identify overburdened communities that will be affected by specific actions in specific circumstances, rather than creating a single list of specific communities; and
- RCW 70A.65 (Climate Commitment Act) defines “overburdened communities” as inclusive of, but not restricted to, the definitions referenced above in HEAL and CETA,

¹³ RCW 70A.02.060



with the addition of *“populations, including Native Americans or immigrant populations, who may be exposed to environmental contaminants and pollutants outside of the geographic area in which they reside based on the populations’ use of traditional or cultural foods and practices, such as the use of resources, access to which is protected under treaty rights in ceded areas, when those exposures in conjunction with other exposures may result in disproportionately greater risks, including risks of certain cancers or other adverse health effects and outcomes.”*¹⁴ Although the CCA’s definition is not currently referenced in Chapter 173-424 WAC, Ecology will be identifying overburdened communities for the purpose of CCA implementation concurrently with the Clean Fuels Program.

Differences between these definitions have the potential to cause confusion and lead to inconsistent and inadequate applications. To address these concerns, we encourage Ecology to consult with the Department of Health, the Environmental Justice Council, the interagency work group established by HEAL, other departments within Ecology, utilities, and others as necessary to ensure a coordinated and synchronized approach. This will help ensure that no eligible community is excluded from receiving the benefits of expenditures, while providing clear and actionable guidance to utilities and backstop aggregators in this matter. It will also help Ecology evaluate the impacts of the Clean Fuels Program alongside other relevant programs that aim to reduce pollution.

To these ends, we also urge Ecology to add a definition for “vulnerable populations” to the rule to support the implementation of the law and ensure targeted benefits to specific populations. We recommend that the definition for “vulnerable populations” be identical to that in RCW 70A.02.010.

Ensure appropriate expenditure of of credit revenues

RCW 70A.535.080(1)(b)’s requirement for utilities to expend 30% of credit revenues on electrification projects *“located within or directly benefiting a federally designated nonattainment or maintenance area, a federally designated nonattainment or maintenance area that existed as of January 1, 2021, a disproportionately impacted community identified by the department of health, or an area designated by the department as being at risk of nonattainment, if such a nonattainment or maintenance area or disproportionately impacted community is within the service area of the utility”* is a central environmental justice requirement of the law.

The proposed rule specifies reporting requirements for utilities (WAC 173-424-420(7)) and application and reporting requirements for backstop aggregators (WAC 173-424-220(11)). We urge Ecology to modify the rule to impose the same reporting requirements on utilities and backstop aggregators with regards to the expenditure of credit revenues.

The rule does not provide guidance to utilities or backstop aggregators regarding the expenditure of credit revenues according to RCW 70A.535.080(1)(b). We strongly encourage Ecology to seek

¹⁴ RCW 70A.65.010(54)(a)(iii)

recommendations from the Environmental Justice Council regarding development of these elements and to consider performing an environmental justice assessment as described in RCW 70A.02.060 for this purpose.

A public process is also necessary to develop the project list required in RCW 70A.535.080(2). We urge Ecology to begin developing this public process with the Department of Transportation as soon as possible to allow for robust public participation.

Finally, the proposed rule provides no mechanisms to review or enforce compliance with the requirements of RCW 70A.535.080. We urge Ecology to add requirements to the draft rule for the review and assessment of the reports required by WAC 173-424-420(7) and WAC 173-424-220(11). This is the only way to ensure that utilities and backstop aggregators are delivering the environmental justice benefits required by the statute.

Ensure the program is guided by an ongoing evaluation of the best available science

Update indirect land use change values

The draft rule proposes to use California's protocol to calculate the indirect land use change (iLUC) values for crop-based biofuels made from sugarcane, corn, sorghum, soybean, canola, and palm feedstocks. While the adoption of another iLUC state's values may be expedient, these values likely need significant corrections in light of emerging science. Some of these corrections may fundamentally call into question whether specific crop-derived fuels have any utility in a program designed to reduce the carbon intensity of transportation fuels. We urge Ecology to adjust the rule to account for a more rigorous and accurate accounting of iLUC values for crop-based biofuels at the outset of the program and to use the process proposed by WAC 173-424-600(2) to conduct an ongoing review of iLUC impacts with feedback from stakeholders, experts, and regulators in order to continue to correct the values as the science advances.

Update global warming potential values

We urge Ecology to take advantage of the opportunity to lead the way on integrating the most up-to-date climate science into its calculation of global warming potential values. While we understand the need for an apples-to-apples approach to compare the carbon intensities of different transportation fuels, traditional global warming potential (GWP) values fall short in accurately accounting for both near-term and long-term climate impacts. For this reason, we urge Ecology to

consider the approaches discussed in the IPCC's Sixth Assessment Report (AR6)¹⁵, such as GWP*^{16, 17} and combined-GTP.¹⁸

These approaches have been developed to more accurately compare emissions of short-lived gases, such as methane, to longer-lived gases like carbon dioxide. AR6, released in August 2021, represents the most accurate and up-to-date international assessment of climate science and reflects a growing understanding that traditional GWP calculations misrepresent the cumulative impacts of greenhouse gases with different atmospheric lifetimes. Thus, an updated approach that deviates from California's and Oregon's programs is necessary to establish a solid scientific foundation for Washington's Clean Fuels Program.

Ensure accuracy and integrity of book-and-claim accounting

Biomethane and Hydrogen

Tracking the environmental attributes of biomethane and hydrogen is an area of emerging importance across multiple clean energy policies in Washington. The tracking systems established under the Clean Fuel Standard should therefore be coordinated and consistent with other state policies governing how environmental attributes for these fuels are calculated and verified. We appreciate the proposed rule's requirements for the use of independent tracking systems for hydrogen and pipeline-delivered biomethane and encourage Ecology to add requirements for continued review and revision of these tracking systems to ensure their sufficiency and their alignment with other regulatory requirements across state agencies.

Electricity

We urge Ecology to remove from the proposed rule all references to the purchase and retirement of renewable energy certificates (RECs) solely to demonstrate a lower carbon intensity than the statewide or utility-specific electricity mix. If Ecology does not remove these elements, we urge Ecology to add a deliverability requirement to WAC 173-424-630(5), by mandating that RECs be associated with electricity that is generated within a balancing authority area that includes a portion of the state of Washington, as recognized by the North American Electric Reliability Corporation, or that the electricity from the generating facility is delivered to one of those balancing authorities on a real-time basis without shaping, storage, or integration services.

¹⁵ "IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change," August 9, 2021, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Chapter_07.pdf.

¹⁶ "Demonstrating GWP*: a means of reporting warming-equivalent emissions that captures the contrasting impacts of short- and long-lived climate pollutants," Environmental Research Letters, April 2, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7212016>.

¹⁷ "Improved calculation of warming-equivalent emissions for short-lived climate pollutants," npj Climate and Atmospheric Science, September 4, 2019, <https://www.nature.com/articles/s41612-019-0086-4>.

¹⁸ "Stable climate metrics for emissions of short and long-lived species—combining steps and pulses," Environmental Research Letters, February 11, 2020, <https://iopscience.iop.org/article/10.1088/1748-9326/ab6039>.

Retain key elements of existing draft rule

We appreciate Ecology's efforts to make the rulemaking process open, transparent, and adaptive to feedback. We would like to express our support for the following elements of the draft rule:

- WAC 173-424-600(2): Requiring the review of carbon intensities every three years or sooner, if new information becomes available.
- Maintaining strong and thorough recordkeeping requirements throughout the rule to ensure the integrity of the program and provide the ability for information verification and public oversight.

Trajectory of carbon intensity standards

We reiterate our ongoing support for a reduction requirement of 20% in the carbon intensity of transportation fuels by 2034, which is the earliest date allowed in the statute. This is aligned with Washington's statutory emissions reductions requirements and will send a strong signal for greater clean fuels investments in the near term.

Thank you for the opportunity to provide informal comment on the draft Clean Fuels Program Rule. We appreciate Ecology's efforts to build out this important climate policy on a short timeline and remain committed to supporting the law's successful implementation.

Sincerely,

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