Jim Verburg
Director, Fuels

August 31, 2022

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

Ms. Rachel Assink
Air Quality Program
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: WSPA Comments on CR-102 for the Washington Clean Fuels Program WAC 173-424

Dear Ms. Assink,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the Washington State Department of Ecology (Ecology) proposed rulemaking (CR-102) for the Washington Clean Fuels Program (CFP) pursuant to WAC 173-424 and the air quality fee rule. 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.

General Comments

Consideration of Past Comments. Ecology staff indicated during the March 15, 2022 CFP Stakeholder Meeting that public comments made during the current informal rulemaking period would be considered for incorporation into the draft rule language, but no formal (written) response would be provided to stakeholders. As a result, WSPA's feedback to Ecology during the CR-101 process as documented in our comment letters sent on February 10, March 25, April 1, April 25 and April 28 of 2022 have, in general, not been addressed in either the proposed regulatory language or in a written response.[1,2,3,4,5] As these comments outline WSPA's continued concerns with the proposed regulatory language, WSPA includes our previously submitted comment letters as part of our formal comments by reference.

Fuel Life Cycle Credit. WSPA recognizes the value in evaluating a fuel based on its life cycle emissions. It allows for a full accounting of any fuel's emissions (from feedstock to end use) and provides the producer/supplier the opportunity to identify cost-effective solutions to reduce emissions at multiple points within the fuel's life cycle. The California Air Resources Board (CARB) has determined that the refining portion of emissions in the production of California Reformulated Gasoline Blendstock for Oxygenate Blending (CARBOB) was 14.80 gCO_2e/MJ out of a total 100.82 gCO_2e/MJ. CARB has also identified the need for crediting opportunities within the refinery production process to support projects that reduce a fuel's carbon intensity (CI). Section 6(a)(ii) of HB 1091 allows Ecology to adopt rules that are "project-based refinery greenhouse gas mitigation

[1] Western States Petroleum Association. "WSPA Comments on Washington Department of Ecology Rulemaking for WAC 173-424", February 10, 2022
[2] Western States Petroleum Association. "WSPA Comments on Clean Fuels Program OPGEE/GREET Modeling", March 25, 2022
[3] Western States Petroleum Association. "WSPA Comments on March 15, 2022 Washington CFP Rule Overview Presentation", April 1, 2022.
[4] Western States Petroleum Association. "WSPA Comments on April 13, 2022 Washington CFP Stakeholder Meeting #5", April 25, 2022.
[5] Western States Petroleum Association. "WSPA Comments on Carbon Intensity Lookup Table", April 28, 2022.

including, but not limited to, process improvements, renewable hydrogen use, and carbon capture and sequestration". WSPA recommends that Ecology include a Refinery Investment Credit Program (RICP) provision in this rulemaking to support refinery projects, such as electrification of machinery that substitutes high carbon intensity energy with grid electricity and process improvement projects.

Pathway Process. WSPA believes that it is beneficial to clarify the time a Temporary and Provisional Fuel Pathway Code (FPC) and the corresponding Carbon Intensity (CI) can be reported when an application is submitted. To remove uncertainty, WSPA recommends Ecology specify that any approved FPC may be used for reporting purposes, for all fuel transactions, that occur in the quarter for which a quarterly report has not been submitted to Ecology. If a Tier 1 or Tier 2 application has already been approved by California or Oregon, the FPC is reportable on all fuel transactions that occurred in the quarter for which Ecology receives the application, any differences between the CI applied for and accepted by Ecology will be trued up in a subsequent quarter.

Clean Fuels Program Fees. Proposed WAC 173-455-150 requires that: *"Ecology must establish fees based on workload using the process outlined below. The fees must be sufficient to cover ecology's costs to administer the clean fuels program."* Pursuant to this requirement, WSPA requests that Ecology disclose the number of employees and contractors who manage the CFP, any contracting services costs, and IT associated costs that would be included in the CFP fees. Ecology should provide a projection of the annual fees throughout the duration of the program (2023 through 2038) and what percentage of the fees Categories 1, 2, and 3 facilities are expected to bear. Furthermore, Ecology should include a provision to refund the fees to the program participants if the fees collected exceed the spending from Ecology for the CFP.

CI Standards. In proposed WAC 173-424-900, Tables 1 and 2, the proposed CI reduction standards jump up from 10% to 20% in a single year, from 2033 to 2034. As WSPA commented during the CR-101 process, this drastic increase will jeopardize the CFP by creating a huge decline on the CFP credit bank, possibly turning the program infeasible. WSPA recommends that the standards be increased gradually throughout the duration of the program, and at rate of no more than 2% per year incremental CI reduction.

2023 Compliance Period. WSPA appreciates Ecology's approach to early flexibility by combining the 2023 and 2024 compliance periods. This will help to avoid any unintended compliance gaps that may occur as the market adapts to these new requirements. That said, rather than requiring a 0.5% reduction in 2023, we continue to believe that the best approach to starting up a new program like this is to have a reporting-only year in 2023 with CI reduction targets beginning in 2024. With the schedule directed by the legislature, this program is coming together on an extremely tight schedule and a reporting-only year is the best way to "road test" a new regulation and avoid any unintended consequences from gaps in the program structure.

Alternative Jet Fuel CI Standards. WSPA believes that Ecology needs to clarify that the regulatory language does not have a specific table for the alternative jet fuel standards, in which case the description of Table 2 in WAC 173-424-900 should clearly spell out diesel standards and alternative jet fuel standards. The following sections should also indicate that the standards for alternative jet fuel are listed on Table 2:

- WAC 173-424-110(32).
- WAC 173-424-140 (1)(c)(iv)(B).
- WAC 173-424-510 (5)(a)(i)(B) and (5)(b)(i)(B).

Obtaining a Carbon Intensity. WSPA requests that Ecology provides in WAC 173-424-610 stakeholders with the date when the agency will start accepting fuel pathway applications. This starting date is essential to allow for certified fuel pathways to be available for first quarter (Q1) 2023 reports in the CFP (i.e., ethanol, biodiesel and renewable diesel fuel can be reported as soon as Q1 2023).

Renewable Hydrogen Definition. WSPA believes that the definition of renewable hydrogen, in proposed WAC 173-424-110(123), should be expanded to hydrogen produced from renewable hydrocarbons such as renewable fuel gas, including renewable ethane, renewable propane, renewable butanes, renewable pentanes, renewable C6+ or a mixture of thereof and not only biomethane or renewable natural gas (RNG). For instance, the off-gas from a renewable diesel operation, if fed to a hydrogen plant, should be a qualified feedstock to produce renewable hydrogen. Furthermore, hydrogen produced from renewable hydrocarbons (and not simply biomethane or RNG) should qualify as renewable hydrogen under the Hydrogen Refueling Infrastructure (HRI) crediting in proposed WAC 173-424-560(1).

Renewable Hydrogen Refinery Credit Program. WSPA urges Ecology to incorporate a provision for CFP crediting for refineries producing hydrogen from renewable sources similar to the CARB Low Carbon Fuel Standards (LCFS) regulation §94589(f). Renewable fuel gas, such as renewable ethane, renewable propane, renewable butanes, renewable pentanes, or a mixture thereof and not only biomethane or RNG should qualify for the generation of renewable hydrogen by steam reforming. For instance, the off-gas from a renewable diesel operation, if fed to a hydrogen plant, should be a qualified feedstock to produce renewable hydrogen.

Incremental Deficits and MCON. WSPA reiterates comments from prior letters that Ecology should remove all references to incremental deficits and MCON (crude oil) reports from the regulatory language. The modeling of crude oil CI is very approximative, with a significant portion of the crude oil processed not identified, as discussed in prior webinars, and the errors in the modeling will cause “noise” in the crude CI that do not warrant creating incremental deficit burden.

Third-Party Validation and Verification/Monitoring Plan. WSPA requests that Ecology remove all references in the regulatory language to third-party verification and monitoring plan. It is premature to include a third-party verification at the start of the CFP program and Ecology should focus on other topics mentioned above and below. As presented in proposed WAC 173-424-800, the third-party verification program lacks detail regarding: overall program requirements, prequalifying third-party verifiers, and training (which alone could take 1-2 years). WSPA suggests that third-party verification requirements can best addressed as part of a future rulemaking.

Specific Comments

WAC 173-424-110 - Definitions. WSPA requests further information for and/or modifications to the following definitions:

- **(25) Blendstock –** WSPA believes that this definition is too broad to refer to fuels regulated by this program. As written, the definition includes blending components at refineries that are not covered by the CFP. WSPA suggests that it would be better to use the term “BOB” (Blendstock for Oxygenate Blending) to cover the gasoline blendstock that becomes a finished fuel with the addition of ethanol.
- **(64) Export and (140(k)) Export -** The definition for “export” appears twice in WAC 173-424-110 with (64) differing from (140(k)). WSPA suggests that one definition for “exports” appear in the regulation.

- **(70) Fuel Pathway -** Given there are no wells involved in bio-based and electricity pathways, WSPA suggests removing *"well-to-wheel"* in this definition so that the last sentence simply says *" ...complete analysis..."*
- (**76) Fuel Supply Equipment -** It is suggested that an explicit statement in this definition that fuel supply equipment does not include traditional gasoline and diesel dispensers at service stations.
- **(82) Illegitimate Credits -** This definition appears to be "a work in progress" (i.e., contains an Ecology staff comment) and needs to be finalized by Ecology.
- **(86) Indirect Land Use Change -** WSPA requests that regulatory language identify the specific CARB "protocol" noted in this section.
- **(94) Low-carbon Intensity (Low-CI) Electricity -** This definition refers to *"average grid"* electricity. WSPA believes that this definition should more specifically refer to *"average Washington grid electricity*."
- (**119) Renewable Fuel Standard -** The reference to subpart K should be removed, as this subpart is now reserved (obsolete) section of the 40 CFR Part 80.
- **(131) Station Operational Status System (SOSS) –** WSPA requests clarification as to whether or not Ecology will maintain its own version of SOSS. If so, such action would require the modification of this definition.
- **(140)(h) Position Holder Sale -** The Oregon CFP has separate transaction types for "Position holder sale with obligation" and "Position holder sale without obligation." The definition here suggests that only the latter is allowed under the Washington CFP. To avoid confusion, WSPA suggests that this definition be deleted from WAC 173-424-110.
- **(145) Unspecified Source of Electricity -** It is not clear as to the applicability of the "unspecified source of electricity" definition. An example of an "unspecified source" would be useful as part of the definition. In addition, WSPA requests the basis for the 0.437 metric tons CO_2e per MWh emissions factor. It appears that this factor should be 0.229 metric ton CO_2e per MWh to match the Washington State grid electricity factor (equivalent to 63.51 gCO_2e/MJ).

WAC 173-424-120(2)(e) - Applicability. WAC 173-424-120(2)(a) lists "gasoline" as an applicable transportation fuel. In WAC 173-424-110(77), the regulation defines "gasoline" as meeting ASTM D4814. ASTM D4814 allows up to 15 percent ethanol. WSPA suggests that WAC 173-424-120(2)(e) is, therefore, not necessary and recommends that it be removed from WAC 173-424-120(2).

WAC 173-424-200(2)(b)(i)(A)(IV) - Designation of Fuel Reporting Entities for Liquid Fuels. This section should add an exception for fuels that are exported.

WAC 173-424-200(2)(b)(ii)(A) and (B) - Designation of Fuel Reporting Entities for Liquid Fuels. Since this section covers situations where the transferor retains the credit or deficit generator role for the fuel being transferred, WAC 173-424-200(2)(b)(ii)(A) and (B) language should be revised to *"... the transferor retains ..."* rather than *"...the ~~recipient accepts~~..."*

WAC 173-424-300 - Registration. WSPA requests that Ecology provides information to stakeholders as to how the agency will reach out to applicable entities for registration to ensure no entities are missed in the program. In addition, it is requested that ecology provide the method for registration (i.e., WFRS, AFP).

WAC 173-424-400 - Recordkeeping. WSPA recommends limiting the recordkeeping requirements to no more than five years, rather than 10 years. Five years is consistent with USEPA recordkeeping requirements and would limit the extraordinary volume of data that are covered under the CFP recordkeeping requirements. In addition, Section (1)(k)(i) references "federal FRS", it should instead reference "federal RFS".

WAC 173-424-400(1)(c) - Recordkeeping. WSPA recommends the following addition to the regulatory language: *"each fuel transaction applicable to this regulation*."

WAC 173-424-400(2) - Recordkeeping. WSPA recommends the following change to the regulatory language: *"A ~~fuel~~ product transfer document".*

WAC 173-424-400(2)(h) - Recordkeeping. Given that the regulation's definition for "diesel fuel" encompasses biodiesel and renewable diesel products, it is suggested that WAC 173-424-400(2)(h) refer specifically to *"fossil diesel fuel"* rather than *"diesel fuel".*

WAC 173-424-400(3) - Recordkeeping. The reference to (g) should be removed from the list as the credits or deficits cannot be passed for transactions below the rack that are not destined for export.

WAC 173-424-410(1)(c) - Quarterly Reports. WSPA requests that Ecology changes the deadline for third quarter reports from December 31 to January 15 of the following year to allow for flexibility in reporting during to the end of year holidays.

WAC 173-424-420(2)(e) - **Specific Reporting Requirements.** The reference to *"file 108"* in the last sentence should be removed.

WAC 173-424-420(6)(b) - **Specific Reporting Requirements.** For clarity, it is suggested that the word *"renewable"* to be add before the word *"gasoline"* in this section.

WAC 173-424-420(6)(f) - Specific Reporting Requirements. Consistent with our comment above on position holder sale (definition 140(h)), WSPA recommends that Ecology removes WAC 173-424-420(6)(f) as "position holder sale" transaction types are irrelevant to the Washington CFP.

WAC 173-424-420(10) and WAC 173-424-430(4) - Credit Corrections. WSPA reiterates that credits or deficits should be corrected and claimed if errors are discovered in prior quarters, so the language in sections WAC 173-424-420(10) and WAC 173-424-430(4) should be updated to allow for credits to be added and/or deficits to be removed retroactively if the correction generates more credits and/or fewer deficits than what is initially reported.

WAC 173-424-430 Annual Compliance Reports - In WAC 173-424-430 (1)(a) and (1)(b), it appears that the regulatory language should reference *"WFRS"* rather than *"WA-RFS"*.

WAC 173-424-520(4)(b) and (c) - Transacting credits. For clarity and accuracy, WSPA recommends that the regulatory language in WAC 173-424-520(4)(b) and (c) be combined to read:

> *"(b) If the exporter purchased the fuel with or without the compliance obligation, the exporter will ~~not~~ incur credits or deficits, as appropriate, to balance out the credits or deficits originally generated."*

WAC 173-424-520(4)(d) - **Transacting credits.** WSPA believes that this section is confusing and unnecessary. It should be clear that imports must be reported in the quarter when they occur, and exports must be reported in the quarter when they occur. WSPA recommends deletion of WAC 173-424-520(4)(d) from the regulation.

WAC 173-424-530(7) - Illegitimate Credits. WSPA believed that a party that unknowingly purchases credits that were later found to be illegitimate should not be responsible to acquire more credits to make up for the invalidated credits.

WAC 173-424-540(3)(b)(i) and (ii) Calculating Credits and Deficits. WSPA suggests that the order of these two sections be reversed. This change would clarify the intent of the regulation to first utilize vehicle-specific methods of estimating charging and then only resort to broader averages if vehicle-specific data is unavailable.

Further, the new WAC 173-424-540(3)(b)(ii) can be modified to read:

> *"(ii) If charging data related to the specific vehicle types registered in the utility's service territory is unavailable, an average amount of electricity consumed by BEVs and PHEVs at residential chargers, based on local, state, regional, or national data."*

WAC 173-424-550(6)(c) - Advance Crediting. This section currently reads: *"If the ownership of an investment project or program is transferred to another entity prior to the close of the payback period, the applicant is responsible for purchasing and retiring credits…"* WSPA suggests that the deletion of *"purchasing and"* as there may be situations where the applicant has or can generate sufficient credits to cover the new obligation.

WAC 173-424-560(1)(d)(viii)(B) - Generating and Calculating Credits for ZEV fueling infrastructure pathways. It appears that this WAC 173-424-560 (1)(d)(viii)(B) language should reference HRI rather than FCI.

WAC 173-424-560(1)(b)(vi)(A) and (B) - Generating and Calculating Credits for ZEV fueling infrastructure pathways. WSPA is concerned that the restrictions detailed in these sections may discourage projects with realistic commercial capacities. We encourage Ecology to work with medium- and heavy-duty vehicle Original Equipment Manufacturers (OEMs) to determine appropriate daily capacity maximums. These vehicles require significantly more fuel than light-duty vehicles to fill up their tanks. Additionally, WSPA encourages Ecology to work with the hydrogen fueling industry to identify an appropriate method for modeling stations that serve both light- and heavy-duty vehicles. Maintaining separate crediting for each may lead to inefficient use of capital and may slow growth.

WAC 173-424-560(1)(d)(vi)(A) and (B) - Generating and Calculating Credits for ZEV fueling infrastructure pathways. As the Hydrogen Refueling Infrastructure (HRI) provisions have been modeled after the CARB LCFS program, WSPA suggests that this section be modified to reflect the basis utilized for the CARB LCFS program - 150 gCO2e/MJ or less and 40% renewable content. Barring specific analysis demonstrating different conditions in Washington, this suggested change ensures consistency between Washington and California programs.

WAC 173-424-560(1)(d)(vii) - Generating and Calculating Credits for ZEV fueling infrastructure pathways. Similar to above, the CARB LCFS program allows for 10 years of crediting. Consistency between programs will enable better decisions as infrastructure investors determine the optimal location for new locations.

WAC 173-424-570(2)(b) - **Credit Clearance Market.** WSPA requests that this section specify a date which Ecology will publish the new maximum price for each year.

WAC 173-424-570(6) - Credit Clearance Market. WSPA requests that Ecology not inflate carry over deficits. Carry over deficits should be moved as such in the following year entity's obligation, with no multiplier applied. There is no reason to penalize the entities who are buying credits in the Credit Clearance Market (CCM) if not enough credits are offered in the CCM.

WAC 173-424-600 - Carbon Intensity. WSPA request that Ecology adds a processing deadline for Ecology to review fuel pathway applications, such as fuel pathway applications shall be deemed approved within 60 days of submission if Ecology does not review the pathway application within 60 days.

WAC 173-424-610(9)(f)(i) - Obtaining Carbon Intensity. This proposed section currently reads: *"The fuel pathway holder must inform ecology within seven days of the revocation and provide ecology with the documentation related to that decision."* WSPA requests setting this requirement to at least 14 days with at least 30 days being preferable. A seven-day requirement can lead to inadvertent violations when 1) Ecology's notification is slow in being delivered to the regulated party and 2) a responsible employee is out of office for illness or vacation when the notice arrives; or an emergency situation bars action for several days. Given that compliance reporting occurs on a quarterly basis, there is not practical reasons for this seven-day notice requirement.

WAC 173-424-610 (9)(g)(iii)(G) - Obtaining a Carbon Intensity. As WSPA has previously indicated, if a fuel pathway operational CI is found to be greater than the certified CI, the CI should be readjusted, but the fuel pathway holder should not be found out of compliance. WSPA requests that the regulatory language in the section be revised accordingly.

WAC 173-424-630(4)(b) Determining Carbon Intensity of Electricity. The reference to Table 7 in WAC 173-424-900 appears to be incorrect with the intended reference table being Table 6.

WAC 173-424-730(1) - Forecast Deferral. WSPA reiterates that the fuel forecast deferral should be triggered if less than 200% of the credits projected to be necessary (rather than 100%) to comply with the program are available, as regulated entities can hold CFP credits in their bank and not 100% if the credits will be offered for sale on the market.

WAC 173-424-900 - Table 3 (Energy Densities). Washington gasoline, blended at 10% ethanol, energy density should be 118.38 MJ/gallon, not 117.73 MJ/gallon.

WAC 173-424-900 - Table 9 (Summary Checklist of Quarterly and Annual Reporting Requirements). In the row identified as *"Fuel Supplying Equipment ID",* the second column should be labeled *"n/a."*

WAC 173-424-900 Table 9 (Summary Checklist of Quarterly and Annual Reporting Requirements). In the row identified as *"Amount of each fuel used as a jet fuel replacement"'* the second column should be labeled *"x"* and the last column should be labeled *"n/a."*

Review of Third-Party Cost Analysis

Ecology commissioned Berkeley Research Group (BRG) to prepare a "Clean Fuels Standard Cost Benefit Analysis Report" (Report) for this regulation[6]. In the Executive Summary of this Report, it is states that this analysis makes several assumptions including:

- *"Washington adopts a Zero Emissions Vehicle ("ZEV") mandate requiring all new cars and light duty trucks sold in the state to be zero-emissions vehicles by 2035, and drivers comply with this requirement.*
- *Washington adopts California's Advanced Clean Truck ("ACT") rule, requiring 40-75% of medium and heavy-duty vehicle sales to be zero emissions by 2035, depending on vehicle class.*
- *Washington achieves a 100% greenhouse gas ("GHG") neutral and 80% clean electricity sector."*

In the environmental benefits of the Report (Section 5), it is stated that:

> *"These improvements are due, in part, to the implementation of the CFS, and in part due to other transportation sector policies including the ZEV mandate, the Advanced Clean Trucks rule, and other state and federal policies contributing to improvements in fuel economy and reduced emissions. Health impacts are complex and represent the collective impact of these policies, and as such, benefits from the CFS are not easily distinguishable from other transportation fuel policies."*

While Report cites the environmental <u>benefit of all</u> proposed state programs, it ignores the potentially significant, anticipated <u>cost of all</u> the proposed state programs, in particular the cost of fleet electrification in Washington. In fact, Ecology has yet to provide stakeholders with a comprehensive cost analysis for the CFS, the Advanced Clean Trucks rule, or the Cap and Invest Program. In addition, Ecology staff has specifically indicated that they do not plan to perform a cost analysis of Washington's adoption of California's Advanced Clean Cars II rule stating:

> *"Because the Legislature specifically directs Ecology to adopt California's motor vehicle emission standards, we do not evaluate the economic impacts of those rules. So, what we will be evaluating is the cost of the credit system and the cost of fleet reporting [under the proposed rule]. The other actions we're taking through this rulemaking are not subject to an economic analysis."*[7]

Conversely, the Report cites the incremental costs of the CFS (which is characterized in the Executive Summary as *"little impact"*) but does not address the incremental benefits (which may be limited with consideration of other programs).

WSPA is very concerned with the lack of Ecology's plans to conduct a comprehensive cost analysis (a missed opportunity with the BRG study) and the resulting lack of transparency of overall costs for Washingtonians. We strongly recommend that a comprehensive study that addresses both the environmental benefits and costs of all state programs be conducted by Ecology as part of this rulemaking. It also is imperative that, at a minimum for this rulemaking, both the incremental environmental benefits and the incremental costs for the CFS program be evaluated if other state programs are assumed to be in place (i.e., it is inaccurate and misleading to mix cumulative environmental benefits with incremental costs).

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[6] https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Clean-Fuel-Standard?utm_medium=email&utm_source=govdelivery.
[7] https://www.youtube.com/watch?v=ixh5MvEWlOw (beginning at 38:41) – Accessed 6-17-2022

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 jverburg@wspa.org.

Sincerely,

James Verburg
Director, Fuels
WSPA

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