

August 31, 2022

Rachel Assink
Washington Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504
Submitted via online public comment form

RE: 3Degrees comments in Response to Proposed Rulemaking - Clean Fuels Program Rule, Chapter 173-424 WAC

Dear Rachel Assink,

3Degrees Group, Inc. (“3Degrees”) submits the following comments to the Department of Ecology (“Ecology”) in response to the July 18, 2022 Notice of Proposed Rulemaking for the Clean Fuels Program (“CFP” or the “Program”). 3Degrees has appreciated the opportunity to work with Ecology and other CFP stakeholders through the pre-rulemaking process to inform the development of a strong CFP that maximizes climate, public health, and economic benefits.

About 3Degrees

3Degrees is a certified B Corporation with deep expertise in greenhouse gas accounting, environmental markets, renewable energy and carbon project development, transportation decarbonization solutions, and utility renewable energy programs. We are active in clean fuels programs in multiple jurisdictions and work with organizations to leverage these programs to enable transportation decarbonization. Specifically, 3Degrees is one of the largest participants in California’s Low Carbon Fuel Standard by registered fuel supply equipment (“FSE”) and we are pioneering new vehicle-fuel applications in Oregon.

- 1. 3Degrees supports the credit aggregator opportunity outlined in the proposed rule in WAC 173-424-140 (3), but recommends revisions to the rule in order to ensure that the opportunity is available across the program.**

Enable the Opportunity to Designate a “Credit Aggregator” for All Program Participants

3Degrees supports the rule structure that Ecology has proposed that creates a standalone section, WAC 173-424-140 (3), stipulating the requirements of credit aggregators. However, we recommend that Ecology make several revisions to the rule to make clear that any entity can designate a credit aggregator to act on its behalf. This change involves fully removing references and requirements related to credit aggregators from individual sections, and instead placing these details in WAC 173-424-140 (3). Doing so will ensure that there is no conflicting

information in the rule related to credit aggregator opportunities or responsibilities, and also ensure that all entities participating in the CFP are able to realize the benefits of a credit aggregator.

Allowing an eligible credit generator to designate an aggregator enables this entity to benefit from the program even if they do not have the resources to manage program participation themselves or might not otherwise be able to participate directly. Designating fuel reporting status is particularly beneficial for smaller entities, including entities providing smaller volumes of credit-generating fuels, and applies to credit generation from all sources.

We recommend the following revisions to the rule:

- Revise WAC 173-424-140(3) to clearly state that any entity may designate an aggregator. 3Degrees recommends the following edits to WAC 173-424-140(3)(b)(i):
“(i) Any registered party may designate an aggregator to act on its behalf to facilitate credit generation and trade credits. Aggregators may facilitate credit generation and trade credits only if a registered party ~~regulated party or an eligible credit generator~~ has authorized an aggregator to act on its behalf by submitting an aggregator designation form to ecology.”
- In subsequent sections of the rule where the ability to designate fuel reporting status is referenced, such as the designation of fuel reporting entity for electricity under WAC 173-424-220, Ecology should remove the reference that the designated entity “may elect to designate another entity to be the credit generator.” Within WAC 173-424-220, specific reference to designating a credit aggregator is currently included for (5) Electric Forklifts, (6) Electric transport refrigeration units (eTRU), (7) Electric cargo handling equipment (eCHE), (8) Electric power for ocean-going vessel (eOGV), and portions of (10) Residential electric vehicle (EV) charging, but is **not** included for (3) Nonresidential EV charging, (4) Fixed guideway systems, and (9) Electric ground support equipment. All credit generators should be eligible to designate an aggregator, not just the subset currently identified in the regulation.
- Any specific requirements related to credit aggregator designation that are currently within the individual credit generation opportunities, such as under WAC 173-424-220, should be incorporated into WAC 173-424-140(3). For example, the requirement that the original designated credit generator must agree via written contract with the credit aggregator that it will not generate credits and will provide the necessary data to the aggregator.
- We recommend that Ecology include language in section WAC 173-424-140(3) stating that the credit aggregator inherits the priority and any other preferential treatment of the designator, along with all program responsibilities. This means that wherever an order of precedence is assigned, as with residential EV charging, the priority of the entity making the designation transfers to the credit aggregator. The following language could be added at the end of WAC 173-424-140(3)(b)(i):

“When designated, the credit aggregator takes on the CFP privileges and requirements of the fuel reporting entity or credit generator.”

Alternatively, if Ecology elects not to revise WAC 173-424-140(3) to be the primary section for all information related to credit aggregator designations, 3Degrees requests that language be added to each individual credit generation opportunity to clarify that any entity can designate an aggregator. For example, within WAC 173-424-220, language must be added around the opportunity to designate an aggregator for owners of EV supply equipment for nonresidential charging (-220(3)(a)), transit agencies for fixed guideway systems (-220(4)), owners of electric ground support equipment (-220(9)), and each entity listed as an eligible credit generator for residential EV charging (-220(10)).

Ensure that Program Participants are Able to Reclaim Credit Generation from an Aggregator

We recommend that Ecology revise its proposed process for aggregator withdrawals and transitions as outlined in WAC 173-424-140(3)(b)(iv) to require notification from the designator, not from the credit aggregator. We are concerned that, lacking an incentive to provide such notice to Ecology, the aggregator whose authorization has been withdrawn may not act in a timely manner, which may prevent the designator from being able to continue to participate in the program.

After aggregator withdrawal has been reported to Ecology, the designator’s FSE, facilities, credit generation rights, etc. that were managed by the outgoing aggregator should transition to the designator or a new aggregator, as directed by the designator. We note that Ecology has actually included this dynamic in WAC 173-424-220(10)(a)(i), but only for utilities designating a credit aggregator (“*once a utility has made an aggregator designation under this section, that designation will remain in effect unless the utility requests a change in writing to Ecology*”). We recommend removing language from -220(10)(a)(i) and revising WAC 173-424-140(3)(b)(iv) as follows:

“Once a credit generator or regulated party has made an aggregator designation, that designation will remain in effect until that entity notifies Ecology that the aggregator’s authorization to act on its behalf has been withdrawn. An aggregator must notify ecology when a credit generator or regulated party has withdrawn designation of the aggregator...”

We also request language clarifying that a withdrawal and a new designation can happen in the same quarter, with the new designation taking effect in the quarter that immediately follows such notification. For example, if a designation notice is provided to Ecology in Q2 with sufficient time to register FSE in the same quarter, designation takes effect in Q2 and the aggregator can report to generate credits for the designator’s Q1 fueling.

We recommend revising the second part of WAC 173-424-140(3)(b)(iv) as follows:

“...Aggregator withdrawals designations may only take effect at the end of the current full calendar quarter when ecology receives such notice. **Aggregator withdrawals and**

subsequent designations can be reported in the same quarter, both going into effect at the start of the next full calendar quarter after Ecology receives notice.”

2. 3Degrees supports allowing renewable energy credits (RECs) to be matched with EV charging to substantiate renewable electricity consumption (“book-and-claim accounting”), but recommends revisions to the eligibility rules to maximize EV benefits.

3Degrees strongly supports the inclusion of a book-and-claim accounting method to substantiate the use of off-site renewable electricity supplied as a transportation fuel. RECs are recognized across the country and within other Washington policies as the mechanism used to track, transact, and consume renewable electricity on the shared North American grid. By allowing RECs sourced from the WECC, Washington’s CFP will contribute to decarbonization of the broader regional grid. On top of this, matching off-site renewable electricity to EV charging maximizes benefits to EVs under the CFP program.

In an effort to augment the potential benefits that can be derived from the EV charging opportunity within the CFP, we recommend several revisions to the REC eligibility criteria:

- **Introduce a vintage requirement.** The current rules do not include a vintage requirement (i.e. the date when the REC was generated). This means that a REC generated in 2024 would be able to be matched with EV charging in any year thereafter. We recommend that Ecology move forward with a vintage requirement in line with California’s program, which allows a three quarter window from the date of the associated generation to when it must be matched with EV charging.

As described in the California regulation:

“Such book-and-claim accounting for low-CI electricity may span only three quarters. If a low-CI electricity quantity (and all associated environmental attributes, including a beneficial CI) is supplied to the grid in the first calendar quarter, the quantity claimed for LCFS reporting must be matched to grid electricity used as a transportation fuel or for hydrogen production no later than the end of the third calendar quarter.”

- **Remove the COD requirement for biogas-derived electricity.** We are concerned that applying a COD requirement for biogas-derived electricity projects does not align with the unique needs of this electricity project type nor the technology-neutral basis of the CFP. Placing a COD requirement on biogas-derived electricity projects but not biomethane projects disincentivizes biogas-derived electricity in favor of biomethane for use as a transportation fuel.

The CFP should support both transportation fuels, not favor one end-use over the other when both have climate benefits. It is true that biomethane is a climate-friendly solution for hard-to-electrify vehicle applications, such as large trucks and buses, but as a fuel for passenger vehicles, biogas may have the greatest greenhouse gas reduction potential when used to power EVs (see World Resources Institute’s [The Production and Use of](#)

[Renewable Natural Gas as a Climate Strategy in the United States](#), p.15, Box 2).

Washington’s CFP should create an equal playing field for both fuel types, allowing technology and markets to decide the most appropriate use for waste-derived biogas.

- **Temporarily extend the COD requirement for other renewable electricity project types.** We are concerned that the requirement that generators must be placed into service after 2023 is so restrictive that it will lead to very few EVs sourcing renewable electricity as a transportation fuel. We understand and support the objective of supporting incremental renewable energy generation to meet EV charging under the Program, however a 2024 or later COD will severely limit the opportunity for electricity used as a transportation fuel under the Program to be fully decarbonized for the first several years of the Program. We recommend that Ecology initiate the Program with a 5-year rolling COD requirement until 2029 and then hold the COD requirement at 2024.
- **Clarify that no certification of RECs is required.** The current REC requirements reference WREGIS twice—once as a certification system and once as a system for tracking RECs. WREGIS is only a tracking platform and the reference to certification under “WREGIS, or by a certification system approved by ecology as substantial equivalent.” Should be removed.
- In order to incorporate the above COD and certification recommendations, 3Degrees proposes the following revisions to WAC 173-424-630(5):

~~“(a) Renewable energy certificates (RECs) retired in order to claim a carbon intensity other than the statewide mix or utility-specific mix must be certified by the WREGIS, or by a certification system approved by ecology as being substantially equivalent. Unbundled RECs being used to claim low-carbon electricity through book-and-claim accounting must be certified at the wholesale level, while RECs used in a power purchase agreement or utility renewable electricity product may be certified at the retail level; (b) RECs must be generated by an electric generator that was placed into service after 2023; (c) RECs must be generated from facilities located in the western electricity coordinating council;~~

(b) RECs from renewable electricity projects that use a resource other than biogas to generate electricity must begin operation during or after the years indicated in the following table:

Compliance Year	Commercial Online Date
2023	2018
2024	2019
2025	2020
2026	2021

2027	2022
2028	2023
2029+	2024

~~(d)~~(c) RECs must be recorded and retired in a recognized...”

3. 3Degrees recommends revisions to clarify the requirements of the credit generation opportunity for residential EV charging.

Clarify preferential order for incremental credits for residential EV charging

3Degrees supports the preferential order Ecology outlines in WAC 173-424-220(10)(b)(iii), however language in WAC 173-424-420(3)(c)(ii)(B) needs to be revised to align with this provision. WAC 173-424-420(3)(c)(ii)(B) states that only a single entity can generate incremental credits, and if two or more entities report for the same FSE, no credits will be issued.

Clarify revenue reinvestment requirement described in WAC 173-424-420(3)(b)(iii)

Our understanding of the proposed rule is that the backstop aggregator and the utility are the only entities that must reinvest credit generation revenue to benefit EV drivers in the state. This requirement is outlined in WAC 173-424-420(7) and WAC 173-424-220(11). Section WAC 173-424-420(3)(b)(iii) states that a nonutility credit generator generating credits for non-metered residential EV charging must also “use credit revenues to increase consumer EV resources to promote transportation electrification[.]” It is our understanding that non-utility credit generators would customarily be reporting against metered, rather than non-metered, residential EV charging.

We recommend revisions to clarify which entities are required to reinvest and report on credit generation revenue. We recommend removing 173-424-420(3)(b)(iii) to make clear that only the backstop aggregator and utility must reinvest credit generation revenue to benefit EV drivers. If, however, Ecology’s intention is to require nonutility credit generators to reinvest revenues to increase EV adoption in the state, we recommend placing this requirement under 173-424-420(3)(c) (“For metered residential EV charging.”). Should Ecology introduce a revenue requirement with respect to non-utility participants, those rules should remain flexible enough to account for the wide range of businesses with varying levels of sophistication, overall financial means, and market influence that may be subject to the obligation.

4. 3Degrees recommends revising the Hydrogen Refueling Infrastructure (HRI) and DC Fast Charging Infrastructure (FCI) Pathway requirements with those in California.

3Degrees is supportive of the HRI and FCI pathways for credit generation provided under the CFP regulations and we applaud the work done by Ecology to design these specialized systems. Our only concern is related to the crediting and capacity limits outlined in the rule. We recommend revising these limits to align with California's Low Carbon Fuel Standard.

Specifically, for the HRI pathway, the regulation only allows credits to be generated based on 50% of the fueling capacity of the station (WAC 173-424-560(1)(a)(vi)). For the FCI pathway, it limits crediting eligibility to FSE sites with 1,500 kW generally and up to 3,600 kW with special approval (WAC 173-424-560(2)(b)(v)).

The analogous California program allows for 100% credit generation based on capacity under the HRI pathway and 2,500/6,000 kW nameplate capacity maximums under the FCI pathway. We respectfully request that Ecology revise these provisions to mirror those in California, which were designed to enable developers to deploy more sites while also encouraging economies of scale.

5. 3Degrees recommends revisions to differentiate requirements to register in the program versus requirements to register individual FSEs.

3Degrees supports the establishment of a registration system that maintains current, comprehensive information on program participants in order to preserve the integrity of the CFP. To this end, we see several opportunities for Ecology to achieve this objective while reducing administrative burden.

3Degrees recommends that Ecology only require information specifically about the applicant entity for initial registration in Washington's Fuels Reporting System under WAC 173-424-300(1)(b)), and move the information requirements related to fuel supply equipment, specific fuels that will be reported, and other details of dispensing facilities, as currently outlined in WAC 173-424-300(1)(b)(v)-(vii), to Section WAC 173-424-300(1)(g) Registration of fueling supply equipment (FSE).

For example, WAC 173-424-300(1)(e)(i) could be interpreted to require that every time a registered party adds a new charger, hydrogen fueling station, or other credit-generating facility, it would be required to amend its company-level registration. We recommend that Ecology revise WAC 173-424-300(1)(e) to specify that registered parties only need to amend their company-level information when changes are made to the portion of the registration required under WAC 173-424-300(2)(b), rather than to any information managed in the Alternative Fuel Portal that is described in subsection (2).

6. 3Degrees requests clarification and revisions to several provisions impacting eligible fuel pathways.

Revisions to definition of base credits in WAC 173-424-110(12)

In order to capture what we believe is the intended opportunity for base crediting, 3Degrees recommends revising the definition of "base credits" (WAC 173-424-110(12)) to read:

"Base credits" refers to electricity credits that are generated by the carbon reduction between the gasoline or diesel standard and the carbon intensity of utility electricity or statewide mix.

We also recommend clarifying how the statewide mix will be impacted when utilities claim a utility-specific mix. If it is not the intention to allow entities to claim the statewide mix, reference to "statewide mix" should be removed from throughout the rule.

Revisions to Tier 1 calculator pathways in WAC 173-424-110(135)

We recommend the inclusion of a simplified Tier 1 calculator for RNG-derived electricity in addition to the dairy and swine digester-derived RNG calculator (WAC 173-424-110(135)). This pathway is common enough to justify a Tier 1 simplified calculator.

Revisions to WAC 173-424-610(9)(g)(iii)(C)(I) to maximize the decarbonization potential of hydrogen used as a transportation fuel

We recommend that Ecology revise WAC 173-424-610(9)(g)(iii)(C)(I) to state:

Provide the attestation regarding environmental attributes or proof of nongeneration or retirement of any RECs as required by WAC 173-424-420 (2)(e) or WAC 173-424-630 (4)(d) or WAC 173-424-630 (5):

As currently drafted, the rule does not allow off-site renewable electricity to be used to reduce the CI of hydrogen used as a transportation fuel. California and Oregon have both introduced this option in order to maximize the decarbonization potential of hydrogen under their respective programs.

7. Text Corrections

We noted a few typographical errors in our review of the draft regulation which we are sharing here with the objective of supporting Ecology with the final round of revisions.

- In WAC 173-424-110(82), there appears to be some errant text:

"Illegitimate credits" means credits that were not generated in compliance with ~~(either say "the CFS" or cite to the WAC provision on credit generation. I believe "division" is specific to the Oregon program).~~

- We noted that a definition for "aggregator" or "credit aggregator" is provided; however, the later section which details the designation of fuel reporting entity for electricity (WAC 173-424-220) does not use these terms. To ensure consistency throughout the regulation and to be clear about which entities are involved, 3Degrees suggests employing "aggregator" or "credit aggregator" as applicable instead of alternate terms. Similarly, we note that sections WAC 173-424-540(4)(a) and (c) appear to introduce a new term—"incremental aggregator"—where we believe the intention is to refer to the backstop aggregator.

- We believe the following correction is needed in WAC 173-424-220(6)(a):
“For electricity supplied to the eTRU, ~~the owner of the eTRU~~ fleet owner is the fuel reporting entity and the credit generator.”
- WAC 173-424-900, Table 1: Our understanding based on Ecology’s June 28th presentation is that the CI reduction schedule should follow a gradually decreasing curve. It appears that the levels for 2031-2033 lag at 10% with a jump to 20% in 2034 that persists to 2038 and beyond. We are unsure if this is an error or if interim values are yet to be determined. If the latter, we suggest clarifying this somewhere near the table.

3Degrees appreciates this opportunity to provide feedback and we look forward to continuing to work with Ecology on the development of the CFP. Please reach out with any questions or for further discussion.

Sincerely,

/s/ Maya Kelty

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