

FIRSTELEMENT FUEL

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Adam Saul
CFS Rule Lead
Department of Ecology
State of Washington

Subject: Clean Fuels Program Draft Rule Changes

Adam and Clean Fuels Standard (CFS) Staff,

FirstElement Fuel (FEF) is pleased to make these informal comments regarding the draft changes to the CFS program. FEF is the market leader in retail hydrogen refueling stations (HRS) in California with 41 stations throughout the state and the first-ever fast-fill, heavy-duty (HD) truck refueling station at the Port of Oakland. We applaud Washington state for undertaking changes to the CFS that align with California's recently adopted changes to the Low Carbon Fuel Standard (LCFS), in particular the Light- and Medium-Duty (LMD) Hydrogen Refueling Infrastructure (HRI) changes and the Heavy-Duty (HD) HRI programs. The HRI framework and incentives are critical to FEF and our business model and one of the few reasons we are able to deploy stations prior to vehicles. There is, however, a change from the California LCFS that we urge you to consider, just as we did during the California rulemaking¹: namely removal of the 1.5 times capital expense limit on HRI incentives.

The HRI program is ingeniously crafted to provide an incentive for station developers to build infrastructure prior to demand. The HRI credits provide a revenue stream that enables operations and maintenance support for the station and can help subsidize the price of hydrogen to the consumer. By limiting the number of credits that can be received defeats this purpose, especially if vehicle demand ramps up more slowly than anticipated. Such a situation would result in station owners with little to no revenue to sustain operations, forcing an increase in H2 pump prices. This, in turn, would disincentivize fuel cell vehicle drivers from using their cars, reducing demand and LCFS fuel sales, further exacerbating the losses. This is exactly what occurred in 2023-24 when California LCFS credit prices decreased by 3 times their historical values, causing us and the other station operators to raise prices. The situation would have been worse if we were not receiving HRI credits even at their low price. This tailspin was only lessened when CARB adopted the LCFS changes in November causing LCFS credit prices to increase (albeit slowly).

We also urge you not to abandon the LD fuel cell vehicle market. Although there is a lot of optimism and analysis regarding MD and HD fuel cell trucks, these products do not yet exist at scale, whereas LD fuel cell vehicles are offered for lease and sale *now* by three major original equipment manufacturers (OEMs). Furthermore, the state does not have any experience yet with LD vehicles because there is no infrastructure. Enabling the infrastructure will allow OEMs to bring the LD cars as well as the MD trucks on the horizon by the end of the decade. So, giving up on the LD market is premature and should be given a fair chance to take hold.

Finally, we recognize that the Department of Ecology cannot adjust the carbon intensity (CI), which is set in legislation, unlike California and Oregon. We do urge you to take whatever necessary steps, including legislative changes, that will enable a more agile program that is capable of responding to the oversupply of certain biofuels to bring credit prices back to sustainable levels.

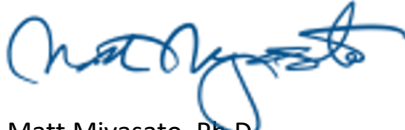
¹ <https://www.arb.ca.gov/lists/com-attach/49-lcfs2024-2nd15day-VTNTMAZhV1tSCwAy.pdf>

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As the leading retail HRS provider in the United States with the greatest uptime and reliability, we are anxious to branch out to other low-carbon policy states such as Washington. However, without significant demand and the appropriate incentive structure in place, it will be difficult to economically justify and maintain business operations. We look forward to working with you on the modifications to the CFS that can enable us to deploy our stations in Washington.

Best regards,



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