RPMG

See attached RPMG Comments

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December 13, 2024

Clean Fuel Standard Department
Washington Department of Ecology

Re: 2024 Informal Rulemaking Draft Language and December 5th and 11th Workshops Comments

Submitted via electronic docket

Clean Fuels Regulatory Team,

RPMG Inc. (RPMG) appreciates the opportunity to comment on the Washington Clean Fuels Program proposed rulemaking draft language released on November 26th and workshopped on December 5th and 11th.[1] We understand the timeline associated with this draft and therefore attended both workshops in an attempt to understand as much as possible of Ecology's intent with these changes. With the turnaround time being shorter than normal, RPMG wishes to request a follow up conversation with staff to more fully understand what is being proposed. There are some important concepts that will impact implementation and compliance which RPMG needs to fully understand before the next rulemaking stage.

RPMG is a leading biofuel marketing company representing our diverse owner and marketing partner facilities throughout the Midwest. Our member facilities provide bioethanol and distillers corn oil (DCO) as essential inputs to Washington's low-carbon transportation fuel market. These facilities are continually investing in lower-carbon technologies to produce lower carbon intensity fuels in furtherance of the CFS program goals.

Mass Balance Accounting (Commingled Products)

At the workshops, the proposed Mass Balance Accounting changes (slide 21) topic was discussed in a bit more depth. Ecology staff indicated the draft language in section WAC 173-424-420(6)(d) was not meant as a new requirement, but instead was inserted to add clarity for reporting entities. However, the original proposal to restrict inventory accounting to a singular facility or singular tank imposes more restrictive new regulatory parameters related to inventory management. It is not clear how the insertion of draft language in section WAC 173-424-420(6)(d) would directly alter WFRS reporting or impact anticipated Verification scope.

Inventory management is the key to a functioning clean fuels program. RPMG has dedicated great resources to tracking, reporting and maintaining a full understanding of our liquid fuel products as they are produced, stored, transported and sold to our counterparties. We believe the current system works, and the newly proposed language seems to add additional requirements, confusion and hurdles to the flexibility already within the reporting system. Given the stated intent of much of this rulemaking is to be consistent with Oregon's CFP, included are *RPMG's recent CFP comments concerning this item for ECY consideration as an alternative for inclusion in the next CFS rulemaking.*

[1] https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-424#CR101

"In addition to the suggested rulemaking language noted in a previous section, RPMG also suggests language changes to section 340-253-0640(6)(a) to remove unclear terminology and simplify the language to account for all storage, production, and transport that occurs in Oregon:

(a) For reporting liquid fuels that are being transferred in and out of commingled storage ~~tank~~ or that are commingled in production or in transport, the reporting entity may mass balance transfers out of that commingled ~~tank or system~~ storage, production, or transportation by fuel pathway code based on the gallons input ~~into that tank or system in~~ for the current or prior quarter. Liquid gallons reported under a specific fuel pathway code may only be reported as transferred out of commingled storage, production, or transport if they were put into ~~a tank~~ storage, production, or transport two or more quarters prior if the reporting entity demonstrates to DEQ that the ~~tank~~ commingled storage, production, or transport has not fully turned over by the quarter it is reporting the volume being transferred out;"

Automatic Ratios Associated with Credit or Deficit Modifications

As noted in more detail in our October 3, 2024 CFS comment letter, RPMG does not support automatic credit penalty modifiers in the form of additional credit ratio requirements. Section WAC 173-424-700(3) is still being proposed on the basis that it could increase the validity of reporting and provide an incentive to self-report errors. RPMG believes the existing authority and enforcement structure at Ecology provides sufficient incentive to remain in compliance and that this new language is unnecessary, therefore we remain opposed to these new provisions. *RPMG recommends that this subparagraph (3) be removed from the formal proposal.*

Other Jurisdiction Pathway Acceptance

RPMG seeks additional clarity on how WAC 173-424-610: Obtaining a carbon intensity, will actually work in practice, as we are unable to understand how WA-GREET 3.0 will be equivalent to the new CA-GREET and OR-GREET 4.0 pathways. Therefore, RPMG is looking to have this conversation in the meeting requested as a follow-up to this letter. RPMG believes additional regulatory guidance or language is needed prior to implementation and is critical for pathway compliance for 2025.

Credit True Up After Annual Verification

Another important concept presented at the workshops and in the draft rule at section WAC 173-424-610(9)(m) is that of a Credit True Up after Annual Verification. RPMG is supportive of the concept providing credits to pathway holders who operate in a manner that produce and deliver fuels below a certified CI score. This is the right incentive.

We encourage CFS program staff to continue with this addition, and in the spirit of participation we wish to raise awareness the language below is incomplete in two ways. The calculation in (ii) is missing. Also, the reference to the prohibition on retroactive credit generation should be clarified to express the scope of the prohibition in WAC 173-424-430(4) is specific to transactional Annual compliance reports

(m) Credit True Up after Annual Verification. Beginning with the 2025 annual Fuel Pathway Report data reporting year, ecology may perform credit true up for a fuel pathway, including a temporary pathway used by an entity that subsequently receives fuel pathway certification for the associated production facility, that has a lower verified operational CI upon receiving a positive or qualified positive verification statement for the associated fuel pathway report and quarterly fuel transactions reports, ***notwithstanding the prohibition on retroactive transactional reporting credit generation*** in WAC 173-424-430(4) Correcting a previously submitted report. [emphasis and additional qualifying language added]

(i) To implement this true up, ecology will calculate an equivalent number of credits representing the reported CI and the verified operational CI from annual Fuel Pathway Reports for each fuel pathway code reported with non-liquid transaction types and with the following transaction types: “Production in Washington”, “Production for Import”, and “Import” during a compliance year, and place those credits in the account of each appropriate fuel reporting entity a er August 31 for the prior compliance year. Only reporting quarters for which complete operational data are reported in the applicable AFPR are eligible for credit true up of a temporary fuel pathway.

(ii) The credits will be calculated according to the following equation: ***[missing]***

Final Implementation of 2023 and 2024 Pathways from Oregon and California
In addition to the compliance true up concept proposed above, RPMG is interested in working through the implementation of original regulatory section WAC 173-424-600(9).

RPMG needs to understand how Ecology is ensuring cohesive implementation of the related sections concerning Annual Compliance Reports and Credit True Up after Annual Verification, in WAC 173-424-430(4) and WAC 173-424-610(9)(m) respectively, in coordination with fuel pathway reported in 2023 and 2024 under WAC 173-424-600(9)(c).

RPMG takes the sum of these three aforementioned sections to indicate 2023 and 2024 Credit True-ups After Annual Verification would be initiated upon completion of Ecology review of Annual Fuel Pathway Reports for both periods.

RPMG recommends amending WAC 173-424-600(9)(c) as follows to encapsulate this interpretation.

(c) The registered entity ~~M~~must submit the 2023 ~~temporary~~ annual compliance reports using the CARB or ORDEQ approved fuel pathway issued to registered facilities, unless ecology approves the revised fuel pathway before December 31, 2023, according to WAC 173-424-430. In accordance with WAC 173-424-610(9)(m) The registered ~~entity~~ facility must submit the 2023 ~~revised~~ annual ~~compliance~~ fuel pathway report prior to or together with the 2024 annual ~~compliance~~ fuel pathway report ~~using~~ to calculate an ecology-approved fuel pathway carbon intensity.

RPMG does not support requiring stakeholders to resubmit 2023 or 2024 annual compliance reports in order to accomplish removing temporary status as the original language of WAC 173-424-600(9)(c) implies. The workload for stakeholders to accomplish such adjustments is significant and would ripple through the market from participant to participant. The fuel transaction market needs stability. Any induced adjustments to transactional reporting will cause confusion and unintended issues for all stakeholders and the agency. Further it is and has been a grave concern to RPMG re-opening “temporary” 2023 and 2024 compliance reporting would trigger the prohibition on retroactive credit generation in WAC 173-424-430(4).

Therefore, RPMG is seeking a resolution of this outstanding issue either via the rulemaking, or through immediate supplemental guidance to stakeholders. We intend to include this important topic in our requested call agenda. Timing is critical here as Q4 2024 reports are due in March 2025 and 2024 annual reports are due in April 2025.

RPMG advocates for the resolution of a Credit True Up without adjusting two years' worth of reporting and commercial contracts.

In conclusion, we again submit our gratitude to Ecology on the process and look forward to working with staff to assist in successful program implementation.

Thank you,

/s/

Jon M. Costantino, on behalf of RPMG,