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Clean Fuel Standard Rule Lead
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Submitted electronically via: <https://aq.ecology.commentinput.com/?id=47sSbFWVp>

**RE: POET COMMENTS ON WASHINGTON’S DEPARTMENT OF ECOLOGY’S
CLEAN FUEL STANDARD RULEMAKING**

Dear Mr. Saul:

POET appreciates the opportunity to participate in Washington’s Department of Ecology (“Ecology”) Clean Fuel Standard (“CFS”) Rulemaking. POET has participated actively in Ecology’s ongoing rulemaking, including through comments submitted this year on [March 24](#), [June 7](#), and [October 3](#). POET reiterates those comments and provides these additional comments focused on the draft rules released on November 26, 2024 (“Nov. 26 Proposed Rules”).

I. Book-and-Claim Accounting

POET is supportive of Ecology’s proposed mass balancing for biofuel gallons comingled in storage, production, or transport. *See* Nov. 26 Proposed Rules at WAC 173-424-410(6)(d). POET is also encouraged by Ecology’s efforts to introduce book-and-claim accounting treatment for renewable electricity used to produce low carbon fuel; however, the inclusion of a “regionality” requirement threatens to stall efforts to decarbonize the transportation sector and attract SAF feedstocks to Washington. *See* Nov. 26 Proposed Rules at WAC 173-424-630(5)(d). POET thus urges Ecology to reconsider and abandon the regionality requirement as part of the proposed book-and-claim accounting rules.

Book-and-claim accounting for electricity used to produce low carbon fuel is an effective policy tool that will encourage the development of renewable electricity projects. Because renewable electricity providers typically supply their electricity to the grid where it is combined with non-renewable electricity, there is no way to accurately track the renewable electricity reaching a specific purchaser. Book-and-claim accounting addresses this issue by allowing purchasers to claim the amount of electricity purchased from a renewable energy provider without showing they physically received the renewable electricity, ultimately supporting renewable electricity development and the gradual decarbonization of the electric grid. Without book-and-claim

accounting, however, biofuel producers can only claim the lower CI associated with the use of renewable electricity if there is a direct connection between the renewable electricity generator and the biorefinery.

Ecology’s regionality requirement ignores the basic principles of book-and-claim accounting and practicalities of biofuel production and, as a result, unfairly punishes the biofuel industry. As shown in the map below, taken from recent research published the former Department of Energy Secretary, Dr. Ernest Moniz, nearly all bioethanol production facilities are located in the Midwest where the majority of corn feedstock is grown—with few facilities located in the Pacific Northwest. See, e.g., Moniz, Ernest, et al., *A Strategic Roadmap for Decarbonizing the U.S. Ethanol Industry*, EFI FOUNDATION at pp. 2-7, 28-42 (Sept. 2024) available at <https://efifoundation.org/foundation-reports/a-strategic-roadmap-for-decarbonizing-ethanol-in-the-united-states/> (“Moniz Study”).¹



This map highlights the distribution of ethanol plants across the U.S., with a concentration primarily in the Midwest Corn Belt region, reflecting the area's prominence in corn production. Data from: Horizon Climate Group.

Locating bioethanol facilities near farms where corn is grown significantly reduces the carbon intensity of transporting feedstock to those facilities. Due to their locations, bioethanol facilities rely on electricity from the Midwest and are best positioned to invest in local renewable electricity projects. But those investments are costly, and companies like POET rely on incentives to pursue

¹ Similar distributions appear for biodiesel and renewable diesel production. See, e.g., <https://farmdocdaily.illinois.edu/2023/02/overview-of-the-production-capacity-of-u-s-biodiesel-plants.html> and <https://farmdocdaily.illinois.edu/2023/03/overview-of-the-production-capacity-of-u-s-renewable-diesel-plants-through-december-2022.html>.

renewable process power. Ecology’s proposal essentially requires bioethanol facilities be located in the Pacific Northwest to receive credit for using renewable electricity and will not encourage carbon-reducing investments by bioethanol facilities in renewable electricity projects.

The issues raised by Ecology’s proposal can be resolved by recognizing that normal book-and-claim accounting is consistent with the stated purpose of the CFS: to “curb carbon pollution from transportation, the largest source of greenhouse gas emission in Washington, by reducing these emissions from the production and supply of transportation fuels.” See <https://ecology.wa.gov/air-climate/reducing-greenhouse-gas-emissions/clean-fuel-standard>. Purchasing renewable electricity and investing in renewable electricity development, regardless of where it’s generated, is one way for biofuel producers to help Washington achieve this goal. To the extent Ecology seeks to promote investment in and development of renewable electricity projects in the Pacific Northwest, it should do so through separate policy initiatives designed for that purpose. Since that is not the purpose of the CFS, POET respectfully requests Ecology abandon the “regionality” requirement in the proposed book-and-claim accounting language.

II. Credit Modifications and Penalties

POET remains concerned with Ecology’s overly punitive approach for credit modifications and penalties, which POET highlighted in its October 3 comment. Moreover, the inconsistency between the static penalty established by WAC 173-424-610(9)(1) and the scaled penalty established by WAC 173-424-700(3) creates potentially confusing scenarios for credit generators. These proposed rules establish separate but overlapping penalties. First, in situations where the verified operational CI exceeds the certified CI, Ecology proposes a static penalty of four deficits for every invalid credit generated due to the exceedance. See Nov. 26 Proposed Rules at WAC 173-424-610(9)(1). Second, in situations where invalid credits were generated due to various listed reasons, Ecology proposes a sliding scale of punishments ranging from a 1:1 to 4:1 credit penalty and the threat of further enforcement. See Nov. 26 Proposed Rules at WAC 173-424-700(3).

Ecology previously justified its proposed penalties as being necessary to “reduce reporting errors, ensure accuracy of the program data, and improve environmental stringency.” Sept. 9, 2024 CFS Rulemaking Workshop at Slide 19. Ecology further explained that “the aim is not to issue harsh penalties [for] small mistakes, but to deter inaccurate reporting that distorts the credit market and harms the functioning of the CFS program.” *Id.* at Slide 22. Despite pushback from commentors, Ecology did not identify any evidence of intentional misreporting, misrepresentations, or other wrongdoing. And that is unsurprising, given the significant deterrence mechanisms already existing under WAC 173-424-700. The reality is the proposed rules *will* result in harsh penalties for small mistakes or unexpected events reported by transparent and proactive credit generators. Moreover, the existing *force majeure* provision under WAC 173-424-610(13)(c) provides little comfort to protect credit generators dealing with unexpected events, as it lacks detail and is not referenced by WAC 173-424-610(9)(1) nor WAC 173-424-700(3). In the end, harshly punishing small mistakes and unexpected events is precisely what these proposed rules will do.

Putting aside the overly punitive nature of the penalties, the proposed rules also provide for additional, parallel punishment when an operational CI exceeds the approved CI of a certified fuel

pathway. In such circumstances, it would seem that WAC 173-424-610(9)(1) would apply. But an operational CI exceedance occurring likely means either incorrect information was used to calculate the certified CI or the biofuel was produced or transported in a manner inconsistent with an approved pathway, both of which trigger WAC 173-424-700(3). The latter situation is especially possible due to *force majeure* events, such as the extensive flooding in the Midwest that occurred earlier this year. Yet based on the proposed rules, a credit generator could potentially be punished under either, or both, sections of the rules, depending on Ecology's enforcement decision making. This murky outcome is an unfortunate and likely unintended result of the proposed language as currently drafted.

POET understands and appreciates Ecology's need to allow for credit modifications and penalties to deter intentional misrepresentations and misreporting; however, POET urges Ecology to take a less punitive approach at least for self-reporting entities. The proposed rules could be simplified by combining the various proposed penalty provisions into one section with a static penalty for self-reported violations and another static penalty for unreported violations. For self-reported violations and operational CI exceedances,² a reasonable enforcement approach would be to claw back all incorrectly generated credits on a one-to-one basis regardless of the number of credits at issue. For unreported violations, Ecology should continue to wield its current authority under WAC 173-424-700 on a case-by-case basis. These simplified proposals would address Ecology's concerns and provide notice to credit generators of potential penalties.

III. CONCLUSION

POET appreciates the opportunity to comment and looks forward to working with Ecology to make the Clean Fuel Standard a continued success for Washington. If you have any questions, please contact me at Paul.Townsend@POET.com or (605) 756-5612.

Sincerely,



Paul W. Townsend
Associate Regulatory Counsel

² For inconsistencies between operational and certified carbon intensities, POET also encourages Ecology to consider adopting the DEQ's straightforward credit reconciliation process for replacing the certified carbon intensity with the higher operational carbon intensity and adjusting the credit balance accordingly.