



**Antonio Machado**

Senior Manager, Northwest Regulatory Affairs and Fuels

June 7, 2024

Sent via upload to: <https://ecology.commentinput.com/?id=7auJYTbfk>

Mr. Adam Saul  
CFS Rule Lead  
Washington State Department of Ecology  
300 Desmond Drive SE  
Lacey, WA 98503

Re: WSPA Comments on May 2024 Clean Fuel Standard Rulemaking Workshops

Dear Mr. Saul,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the Washington State Department of Ecology (Ecology) Clean Fuel Standard (CFS) Rulemaking Workshops, held on May 2, 2024 and May 8, 2024 (identical Ecology staff presentations).<sup>1</sup> 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, liquid fuels, natural gas, and other energy supplies.

Presented below are WSPA's general and specific comments for the CFS Rulemaking Informal Comment Period #2, based on the Ecology staff slide presentation during the CFS Workshops. Each specific comment is referenced by the slide number from the slide presentation. Attached to this letter and incorporated by reference is the WSPA March 22, 2024 comment letter for the initial CFS Rulemaking Informal Comment Period.<sup>2</sup>

## **General Comments**

### **Rulemaking Process**

WSPA appreciates Ecology's focus on a process that allows for the review of draft rule language with stakeholders in public workshops. Stakeholder feedback on regulatory language is critical to avoiding unintended consequences or challenges in executing compliance. While the rulemaking timeline is aggressive, WSPA members are committed to providing timely constructive input to assist with the process

### **Fuel Pathway Applications Processing**

WSPA is concerned that fuel pathway applications are not processed in a timely manner by Ecology. We suggest that Ecology's focus for this rulemaking is on streamlining fuel pathway applications. Fuel pathways should be reviewed by Ecology in no more than 30 days.

During the February 2024 workshops, Ecology proposed to move up the date from October 2024 to process Tier 2 pathways for SAF (Slide 15 of the February Ecology presentation). WSPA encouraged Ecology to process all Tier 2 fuel pathway applications immediately, without any further

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<sup>1</sup> chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://ecology.wa.gov/getattachment/cfeb9fc5-7100-42d3-b80d-db6286ecd487/CFS-Rulemaking-May-Presentation.pdf.

<sup>2</sup> Western States Petroleum Association. "WSPA Comments on February 2024 Clean Fuel Standard Rulemaking Workshops", March 22, 2024.

delays. (See below prior WSPA comment letter for reference). Ecology should provide an update on when they are planning to review Tier 2 pathways.

WSPA also recommends that Ecology publishes a monthly progress report on fuel pathway application processing (or other means of timely communication of application processing progress), showing how many pathway applications are in the queue and how many pathways are being reviewed each month.

## **GREET Model**

WSPA requests that fuel pathways developed under the CA-GREET 3.0, CA-GREET 4.0, OR-GREET 3.0 and OR-GREET 4.0 are accepted and recertified in Washington without having to use the WA-GREET model. We believe that it is not to best use of Ecology's resources to essentially duplicate work that has already been completed by authorizing agencies in other states. Fuel pathways that have already been certified in California or Oregon should undergo a fast-track review by Ecology and should be certified within 15 days.

## **Specific Comments**

### **Recap; In-Scope/Out-of-Scope (Slide 5)**

Slide 5 indicates that updates to WA-GREET are out of scope of this rulemaking. In addition, it is our understanding that Ecology will not be updating the WA-GREET model at any time during this rulemaking process. Given that the California and Oregon programs are currently considering updates to CA-GREET and OR-GREET, respectively, we request that Ecology acknowledge in the proposed rule language that applicants would continue to be able to use CA-GREET and OR-GREET certified pathways.

### **SAF Background (Slide 10)**

It is unclear if tax credits overseen by the Department of Revenue and verified by Ecology will be retroactively applied to the first 20 million gallons of SAF produced or will the tax credits only be available starting with the 20,000,001<sup>st</sup> gallon. WSPA requests further clarity on this item.

### **SAF Updates (Slide 11)**

WSPA supports the inclusion of SAF as an opt-in fuel. It is essential that consistent CI methodologies between the CFS and tax credit programs are used to avoid undue burden on both staff and regulated parties.

WSPA also requests Ecology to confirm that if an alternative jet fuel has a CI of 95 gCO<sub>2</sub>e/MJ (as an example), then it would generate CFS credits in 2024 since the Table 2 standard is 99.11 gCO<sub>2</sub>e/MJ, which is greater than 95.

### **SAF and Hydrogen (Slide 12)**

WSPA believes that Book-and-Claim for low CI electricity, low CI hydrogen or RNG/biomethane should be allowed for all renewable fuel facilities and applicable to all renewable fuels, including alternative jet fuel, renewable diesel, renewable naphtha and ethanol, not simply to alternative jet fuel. Furthermore, some renewable fuel facilities may be producing alternative jet fuel along with other co-products, such as renewable naphtha and renewable diesel, so the Book-and-Claim option should be applied to the entire renewable facility, not narrowly to a specific fuel.

### **Sustainable Aviation Fuel (Slide 13)**

WSPA agrees with Ecology's determination that it is statutorily prevented from adding jet fuel used for intrastate flights as a regulated fuel, in accordance with RCW 70A.535.040(1)(b), which exempts fuels used for the propulsion of all aircraft from the CFS.

### **Third- Party Verification Background (Slides 15)**

WSPA requests that Ecology strives to ensure that a third-party verification program will not slow down processing of fuel pathway applications. Accordingly, Ecology should recertify fuel pathways that have been certified in California and/or Oregon without having to go through another third-party validation. If Ecology does continue with an annual 3<sup>rd</sup> party verification, it is essential that Ecology make clear when the verification process would start pursuant to this rulemaking. During Ecology's May 2<sup>nd</sup> Workshop Presentation, a stakeholder asked if 2023-2025 transactions would be subject to 3<sup>rd</sup> party verification. Ecology staff were unable at that time to confirm if those years would need to be verified. If 3<sup>rd</sup> party verification is expected to start in 2027, we request that Ecology stipulates that the verification affects transactions from 2026 and is not retroactive to 2023. In other words, the verification is an annual action but just looking at the prior year only.

As we noted in our March 22, 2024 comment letter, MCON (crude oil) reports should be eliminated. However, if Ecology maintains a requirement to report MCON, there should be no third-party verification on MCON reports. Since not all fuel consumed in Washington is supplied by refineries located in Washington, and the MCON reports are only limited to Washington refineries, there is limited value in these MCON reports, as they are not representative of all the crude oils processed into products for Washington consumption.

### **Third- Party Verification Basics (Slide 16)**

WSPA believes that nonmetered residential EV charging credits should NOT be exempt from third-party verification. Verification of residential EV credits should include the review of EV charging efficiencies, average miles traveled, distribution of EVs in Washington, comparison with actual EV on board information, residential surveys, and utility meter reconciliations.

For fuel pathways, WSPA agrees with Ecology that no additional verification is required for a fuel pathway being verified under the California LCFS regulation and/or the Oregon CFP regulation.

### **Third-Party Verification – Accreditation and Rotation Requirements (Slide 18)**

WSPA requests that Ecology clearly spells out in its regulation that the same third-party verifier and verification body can be hired by a company to verify GHG and LCFS reports in California, Oregon and Washington, and that situation does not constitute a conflict of interest.

### **Third-Party Verification Proposed Timeline (Slide 19)**

WSPA requests that Ecology consider flexibility related to site visits. Annual in-person verification of fuel transaction reporting is unnecessary, given that the data and records being reviewed are electronic.

We also recommend that verification procedures be clear to ensure agreement between Ecology, regulated parties, and verifiers. Vague regulatory language and procedures that are open to interpretation have led to confusion and delays under other programs.

Regarding verifier rotation, WSPA suggests that Ecology consider whether this rotation (while aligning with other programs) is necessary. Verifiers, particularly CPA firms, have strict procedures to avoid conflicts of interest. Forced rotation adds cost and inefficiency to the process to address a risk for which there are sufficient existing controls in place.

### **Book-and-Claim Background (Slide 21)**

Book-and-Claim accounting exists to ensure an efficient market and avoid added costs or even added transportation emissions. WSPA is concerned that overly-restrictive deliverability requirements defeat the purpose of book-and-claim accounting. We request that Ecology provide additional detail on proposed Book-and-Claim requirements, particularly components such as additionality and temporal matching, in future workshops.

### **Book-and-Claim - Electricity (Slide 22)**

WSPA believes that if Ecology allows Book-and-Claim for electricity, as a transportation fuel, it should also be allowed for electricity used in a renewable fuel facility and in a petroleum refinery.

If a renewable fuel facility or a petroleum refinery is located in a state other than Washington, Book-and-Claim for electricity should also be allowed. Under the California LCFS, the generating facility should have been built after January 1, 2011 (inception of the LCFS program). Under the Oregon CFP, the generating facility should have been built after January 1, 2016 (inception of the CFP).

Ecology should develop a mechanism to generate CFS credits when a petroleum refinery is procuring low CI electricity by Book-and-Claim, based on grid electricity displacement, similarly to the provisions of the California LCFS Refinery Investment Credit Program (California LCFS regulation section 95489 (e)).

### **Book-and-Claim - Biomethane (Slide 23)**

In concert with the comment above, if Ecology allows Book-and-Claim of biomethane/RNG, as a transportation fuel, the Book-and-Claim option should also be available to a biomethane used in renewable fuel facility and a petroleum refinery. WSPA suggests that Ecology develop a mechanism to generate CFS credits when a petroleum refinery is procuring biomethane/RNG by Book-and-Claim, based on fossil natural gas displacement, whether the biomethane/RNG is used as a fuel gas for any refinery units or feed gas for a hydrogen plant.

### **Reporting Liquid Fuels (Slide 30)**

WSPA supports the mass balance accounting for fuels in commingled storage. Since a tank can receive fuel for various carbon intensities/fuel pathway codes (FPC), the fuel should be reported based on the corresponding FPCs and associated volumes.

We do, however, encourage Ecology to implement this in a manner that does not narrowly limit the definition of commingled storage, especially once a liquid fuel has been imported into the state. To this end, WSPA appreciates that Ecology has scheduled a listening session on June 12<sup>th</sup> on this topic and looks forward to engaging in this conversation.

### **Certified CI vs Operational CI (Slide 31)**

WSPA supports a CI adjustment based on the annual reported values. However, there should be no further penalties if the CI in the annual report is higher (or lower) than the certified CI.

As Ecology is considering CARB's proposal for a "*Pathway Holder Deficit Obligation*", WSPA offers the following suggestions, consistent with comments submitted to CARB on this topic:

- Ecology should lessen deficit obligations for pathway holders that exceed their CI in a 24-month period. Under the proposed CARB amendments, pathway holders would incur a deficit four times the amount of the annual excess CI generated, and have excess credits invalidated, which effectively creates a penalty of five times the amount of the annual excess CI generated. This penalty is disproportionate and will have an outsized impact on pathway holders, particularly since any true up benefit in a CI is provided to the importer, not the pathway holder.
- Ecology should lessen the severity of this obligation providing true up benefits to the pathway holder. Imposing deficit obligations on pathway holders who do not produce fuel in the State, import fuel into the State, or sell fuel into the State, may unduly burden interstate commerce, by requiring out-of-State pathway holders to suddenly participate in the credit/deficit market, which creates significant new obligations compared to being a pathway holder participant.

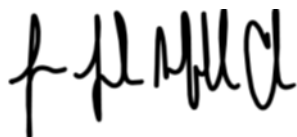
### **Other Refinements (Slide 33)**

WSPA requests that the following items (all noted in our comments above) be incorporated in the amended CFS:

- A deadline for Ecology to review fuel pathway application within 30 days and previously certified fuel pathway in California and Oregon within 15 days.
- Ecology should accept pathways submitted with CA-GREET 3.0, CA-GREET 4.0, OR-GREET 3.0 and OR-GREET 4.0 models, with no requirement to use WA-GREET.
- Removal of MCON reports requirements. However, if Ecology maintains the MCON reporting requirement, there should be no third-party verification on MCON reports.

WSPA appreciates the opportunity to provide comments on this important proposed regulation. We encourage Ecology to reach out to WSPA for any clarification on these comments. Please do not hesitate to contact me directly at (360) 594-1415 or via email at [amachado@wspa.org](mailto:amachado@wspa.org).

Sincerely,



Cc: Jessica Spiegel - WSPA

Attachment



**Sophia Steele**

Senior Manager, Northwest Region

March 22, 2024

Sent via upload to: <https://aq.ecology.commentinput.com?id=BsWVfdFP>

Mr. Adam Saul  
CFS Rule Lead  
Washington State Department of Ecology  
300 Desmond Drive SE  
Lacey, WA 98503

Re: WSPA Comments on February 2024 Clean Fuel Standard Rulemaking Workshops

Dear Mr. Saul,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the Washington State Department of Ecology (Ecology) Clean Fuel Standard (CFS) Rulemaking Workshops, held on February 22, 2024 and February 28, 2024 (identical Ecology staff presentations). WSPA is a trade association that represents companies that 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.

Presented below are WSPA's initial comments on this early phase of rulemaking, based on the Ecology staff slide presentation during the CFS Workshops. The slide number from the side presentation references each WSPA comment.

### **Sustainable Aviation Fuel (Slide 15)**

WSPA supports the elimination of all delays in fuel pathway applications rather than just allowing sustainable aviation fuel (SAF) pathway applications sooner. Specifically, we suggest the removal of the October 1, 2024 date from the CFS language and accept any Tier 2 fuel pathway applications starting immediately. As SAF may be produced along with other renewable fuels such as renewable naphtha and renewable diesel at a given facility, opportunities to enhance renewable fuel availability would be undermined by limiting Tier 2 pathway applications to simply SAF.

Ecology noted in Slide 15 that staff intends "to explore ways of further incentivizing production of low carbon intensity SAF." WSPA would be interested in the results of this Ecology effort and suggests that the exploratory scope be increased to identify further incentives for other low carbon intensity renewable fuels as well.

### **Third- Party Verification Program (Slides 16)**

Based on experience from other jurisdictions, WSPA suggests that Ecology consider the following elements in establishing a third-party verification program:

- Allow certification of fuel pathways that were validated under the California LCFS program or the Oregon CFP without requiring a third-party validation under the Washington CFS.
- All CFS credit generation must be verified, including electricity pathways. Furthermore, CFS credits allocated to electric utilities for residential EV charging should also be verified by a third-party.
- Have no third-party verification requirement on MCON reports (crude oil reports), as not all fuels consumed in Washington are produced by Washington-based refineries.

- Ensure that the third-party validation process does not slow down the review of fuel pathway applications by Ecology (but rather serves to speed up the application approval process).

### General Rulemaking Process Questions (Slide 26)

In response to Ecology staff's inquiry on "*hopes and concerns*" for the rulemaking along with "*barriers*" to this rulemaking, WSPA provides following feedback:

- **Fuel Pathways** - WSPA believes that Ecology should review all fuel pathway applications within 30 days. If no response is provided by Ecology within 30 days, then the pathway applications should be certified or deemed complete (and moved to third-party verifier for validation if such a program is in place. Further, WSPA recommends that Ecology certify fuel pathways established under the CA-GREET model or the OR-GREET model along with the WA-GREET model pathways (which would eliminate the redundant step of re-certifying pathways that have already been certified). It is also noteworthy that the California and Oregon programs are currently considering updates to CA-GREET and OR-GREET, respectively. If Ecology elects not to likewise update WA-GREET, Ecology should ensure that applicants would continue to be able to use CA-GREET and OR-GREET certified pathways.
- **Refinery Investment Credit Program and Refinery Renewable Hydrogen Program** - Ecology should expand the CFS to allow CFS crediting under a "refinery investment credit program" for refineries that reduce fossil energy usage and CFS crediting for the production renewable hydrogen for use in refinery applications.
- **MCON Report (crude oil reports)** - Ecology should eliminate this requirement to report crude oil processed at Washington refineries (MCON reports) as a sizable portion of the fuels supplied in Washington originate from refineries that are located outside Washington. If Ecology decides to maintain MCON reporting:
  - Ecology should no longer require MCON reporting on a quarterly basis, but only require MCON reporting on an annual basis.
  - As stated in the Side 16 comment above, no third-party verification should be applicable to the MCON reports.
- **2023 Opening Inventories** - Ecology should clarify how the 2023 opening inventories were managed in the CFS and whether the inventories created deficits or credits or whether the opening inventories were not obligated. If the opening inventories were obligated, WSPA is requesting that Ecology publish, on an aggregate basis, the number of credits and deficits that were generated by the opening inventories.

WSPA appreciates the opportunity to provide comments on this important proposed regulation. If you have any questions, please contact me at (425) 890-9723 or via email at [ssteele@wspa.org](mailto:ssteele@wspa.org).

Sincerely,



Cc: Jessica Spiegel - WSPA