



October 2, 2024

Submitted electronically at <https://ecology.commentinput.com/?id=R57Ysf3Ud>

Mr. Adam Saul
Clean Fuel Standard Rule Lead
Climate Pollution Reduction Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Informal Comments on the September 12, 2024, Workshop on the Clean Fuel Standard Rulemaking

Dear Mr. Saul:

Twelve Benefit Corporation (Twelve) appreciates the opportunity to provide these additional comments on the Department of Ecology's (Ecology) forthcoming proposal to update the Clean Fuels Program (CFP) Rule (i.e., Chapter 173-424 of the Washington Administrative Code (WAC)), and in particular on the preliminary draft rule language that Ecology released on August 30, 2024, as well as the materials it presented during the September 12, 2024, rulemaking workshop.¹

Although "renewable naphtha" was not discussed during the workshop, Twelve observes that the August 30 preliminary draft rule language includes a revised definition of the term and an accompanying margin comment indicating that the revision "[a]ligns with updated definition in CARB LCFS proposed rule language and adds additional detail."² The revised definition would provide, in relevant part, that the term "means naphtha that is produced from hydrotreated lipids and biocrudes, or from gasified biomass that is being converted to liquids using the Fischer-Tropsch process."³

As we indicated in our June 7, 2024, comments, the Moses Lake AirPlant™ that we are now constructing (and our future commercial-scale plants) will produce not only E-Jet®, our Power-to-Liquid Sustainable Aviation Fuel, but also E-Naphtha,™ which we may sell as a gasoline blendstock. For this reason, we encourage Ecology to broaden the proposed definition of "renewable naphtha" so that it also encompasses the E-Naphtha to be produced by Twelve. We suggest the following amendment to the first sentence of the proposed definition (underline indicates additions and ~~strikeout~~ indicates deletions):

¹ Our earlier comment letter, which is posted in the docket, provided background information on Twelve and our electrochemical technology.

² Draft Rule Language at 14, available at <https://ecology.wa.gov/draft-rule-language-tracked-173-424>.

³ *Id.*

“Renewable naphtha” means naphtha that is produced from hydrotreated lipids and biocrudes, ~~or~~from gasified biomass that is converted to liquids using the Fischer-Tropsch process, or from captured carbon dioxide and renewable hydrogen that are converted to liquids using electrolysis and the Fischer-Tropsch process.⁴

With respect to slides 8-9 of the September 12 workshop presentation,⁵ and specifically Ecology’s “plan to add” an additionality requirement for electricity book-and-claim, we believe such a provision is not needed and would directly contradict the Washington State Department of Commerce’s (Commerce) position on additionality. Commerce, of course, implements the Washington Clean Energy Transformation Act.

Last summer, in the context of the forthcoming federal regulations on the clean hydrogen production credit (i.e., the section 45V credit) under the Inflation Reduction Act, Commerce, ostensibly with the support of the Governor’s Office, wrote to the Internal Revenue Service (IRS) and explained that “[t]he case for an additionality requirement is unfounded in Washington state because of its statutory 100% clean electricity standard and its statutory GHG cap-and-invest regulation.”⁶ Commerce continued:

[An] additionality restriction[] [is] not only unnecessary in a statutory clean energy state such as Washington, [it] would also complicate the development of electrolytic hydrogen production An additionality requirement would prevent the use of electricity from existing hydroelectric, wind, solar, or nuclear generating facilities even if those facilities are most suitable to serve a particular hydrogen production facility and even if state law ensures this use would not result in any increase in GHG emissions.⁷

Earlier this year, Commerce reiterated this position in the Pacific Northwest Hydrogen Hub’s formal comments on the IRS’ December 26, 2023, proposed rule under section 45V.⁸ That letter stated in pertinent part:

⁴ In addition to this suggestion, we note that the current definition of “renewable hydrogen” in WAC 173-424-110(128) probably should be updated to reflect the correct citation to the statutory definition of that term, RCW 19.405.020(31) rather than (32), as well as the correct citation in the final sentence, RCW 19.405.020(33) rather than (34).

⁵ Posted at <https://ecology.wa.gov/presentation-wac-173-424-9-9-and-9-12-2024>.

⁶ Letter from Commerce to the IRS dated July 14, 2023, available at <https://deptofcommerce.app.box.com/s/tv8091970uthjqiekdtc1i2bo30rp525>.

⁷ *Id.*

⁸ Letter on the Section 45V Proposed Rule dated February 26, 2024, available at https://pnwh2.com/wp-content/uploads/2024/06/CG.Sgnd_PNWH2-45V-FINAL-on-Letterhead-55.pdf.

[Washington's] policies focus on decarbonization at a grid level, and they place the onus on electric utilities and major industrial customers to pursue least-cost, policy-compliant resources that will benefit all utility ratepayers. The policies also tacitly assume that the [state's] abundant supply of private- and federally-operated hydropower power generation . . . will continue to support and shape electric power deliveries and the addition of new carbon-free resources on the grid.⁹

Finally, in a section 45V comment letter that he co-signed with the Governors of Oregon and California, Governor Inslee made very clear his official position that additionality is wholly unnecessary in Washington due to its "firm commitment[] to get to 100 percent clean electricity."¹⁰

In sum, an additionality provision is not warranted under the CFP, and we recommend that Ecology reconsider its plan to add one for electricity book-and-claim.

* * *

Thank you once again for your consideration of our comments. We look forward to the impending release of Ecology's draft rule language on indirect accounting, the use of utility-specific carbon intensity values, and other issues, and of course to Ecology's issuance of the formal rule proposal early next year.

Please do not hesitate to contact me or Ira Dassa (ira.dassa@twelve.co) if you have any questions.

Sincerely yours,

Andrew Stevenson

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⁹ *Id.*

¹⁰ See Western States Letter on the Section 45V Proposed Rule dated February 26, 2024, available at <https://www.regulations.gov/comment/IRS-2023-0066-29615>. Notably, Senators Cantwell and Murray have also articulated that an additionality requirement should not be imposed in a state, like Washington, with an enforceable clean energy mandate. See Senate Letter to Treasury Secretary Yellen dated July 10, 2024, available at <https://www.padilla.senate.gov/wp-content/uploads/7.10.24-Letter-to-Secretary-Yellen-Section-45V-Credit-for-Production-of-Clean-Hydrogen.pdf>.