Earthjustice (Sara Gersen)

Please see attached Comments on the 2026 Clean Fuel Standard Rulemaking for Fee Structure and Credit Monetization, submitted by Sara Gersen and and Victor Zertuche, Earthjustice.

EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER

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Submitted electronically

Re: Comments on the 2026 Clean Fuel Standard Rulemaking for Fee Structure and Credit Monetization

Dear Ms. Sanner,

Earthjustice submits these comments in response to the Department of Ecology's (Ecology) July 15, 2026, public workshop on potential changes to the Clean Fuel Standard (CFS) fee structure and credit monetization. We appreciate Ecology's consideration of the equity and predictability of program participation costs, and we are broadly supportive of the direction of the proposed restructuring. We offer the following specific recommendations for Ecology's consideration as it develops rule language.

I. Support for Aggregated Invoicing

Earthjustice supports the proposal to consolidate invoicing at the aggregator level, rather than the current practice of invoicing the aggregator and designators separately. The role of an aggregator is, in part, to handle program participation on behalf of designators. Consolidating the invoice at the aggregator level is administratively logical and efficient, reduces the risk of invoices going unpaid by designators who may be less engaged with the program, and is consistent with the aggregator's role.

II. Caution on Participation Fee Restructuring

Ecology proposed a revised participation fee structure, in which opt-in entities and aggregators pay one base fee plus a per-pathway fee and a proportional per-credit fee. Deficit generators pay a separate base fee plus a proportional per-deficit fee. The current structure does not include a per-credit or per-pathway fee and has resulted in participation fees of $274–$373 over 2024–2026 program years.[1] The current fee structure is unlikely to be a major barrier to entry for opt-in credit generators, and the proposal would shift more of the cost onto credit generators. While we recognize that program costs for certain credit generators and pathway holders may be more

[1] https://ecology.wa.gov/air-climate/reducing-greenhouse-gas-emissions/clean-fuel-standard/requirements#ProgramFee

administratively burdensome than for others, should Ecology move forward with a revised fee structure, we recommend the following:

A. Exempt Opt-In Lookup Table Pathways from Pathway Fee

Earthjustice recommends that lookup table pathways used for credit generation be exempted from the per-pathway fee provided in Ecology's workshop proposal. Unlike other pathways, such as Tier 2 pathways, which require individualized carbon intensity modeling, entity-specific technical review, and ongoing verification of site-specific data, lookup pathways use pre-approved, standardized carbon intensity values that Ecology establishes and maintains at a program level. Some lookup pathway values require no ongoing staff calculation (such as renewable electricity pathways deemed by the rule to have a carbon intensity of zero). These set pathways reflect a one-time policy determination rather than ongoing technical work. Other lookup values, such as the utility-specific grid average carbon intensities in Table 10, are calculated once annually at the program level and then used by multiple entities, including utilities, electric vehicle (EV) infrastructure credit generators, and EV fleet owners. Charging each of these entities a separate per-pathway fee for using the same annually calculated value would recover the same staff cost multiple times over; an inequitable result. The staff cost associated with developing and maintaining lookup table pathways is therefore a program-wide, administrative expense, not an entity-specific one. That cost is appropriately recovered through the base opt-in fee.

The CFS is designed to create financial incentives for clean fuel investment. Placing additional barriers to entry is inconsistent with that purpose. Opt-in participation in the CFS represents a voluntary investment decision, and entry fees can affect market participation decisions. Regulated parties, by contrast, are required to participate. Likewise, entity-specific pathway applications require individualized staff review that justifies a per pathway fee. Exempting lookup pathways used for credit generation from the per-pathway fee would therefore align cost recovery and actual administrative burden while preserving low barriers to voluntary clean fuel market participation.

B. The Opt-In and Aggregator Base Fee Should Be Set as a Low, Fixed Amount in Rule

We recommend that the opt-in entity and aggregator base fees be minimal, as shown in the workshop example, and be set in the rule. Ecology presented $150 as an illustrative opt-in and aggregator base fee but did not indicate whether this amount would be codified in rule or remain subject to annual administrative determination. We strongly recommend that the base fee for opt-in entities and aggregators be set as a fixed amount in the rule, and that the amount be low, consistent with the $150 per year workshop example.

Leaving the base fee to annual determination would undermine two of Ecology's stated goals: predictability and equity. Small credit generators, including small fleet operators and entities reporting through aggregators, are the participants most sensitive to fee uncertainty. These entities often operate with limited administrative capacity and thin margins on credit revenue. A low, rule-determined base fee would provide the most cost certainty under this proposal.

We also recommend that the aggregator fee be consistent with the opt-in fee, as the aggregator fee will likely be passed on to the designator(s) and a high aggregator fee would ultimately represent a higher effective opt-in fee for those entities. As in the workshop example, we strongly recommend that the opt-in/aggregator fee be a fraction of the regulated party fee, to preserve the incentive for clean fuel market entrants.

C. Per-Pathway and Per-Credit Fees Should be Exempted for Electric Utilities and Transit Agencies

Electric utilities use standardized, relatively simple pathways to generate credits (primarily grid-average carbon intensity values applied to the electricity supplied for vehicle charging). These pathways require minimal Ecology staff time to review and maintain compared to entity-specific, Tier 2 pathways submitted by biofuel or biomethane producers. The per-pathway rationale (recovering staff costs) does not apply equally to utility-based pathway review and certification, and a per-pathway fee would not reflect the actual administrative burden they place on the program.

More fundamentally, utility credit revenue is not discretionary income. Electric utilities include spending requirements under RCW 70A.535.080. A per-credit fee that grows proportionally with EV adoption would effectively reduce a revenue stream that is legally dedicated to public benefit spending. As more EVs come onto the road, utilities will generate more credits, but this reflects program success, not an increase in administrative burden on Ecology. Assessing a growing per-credit fee would divert funds from the transportation and environmental justice investments.

Transit agencies warrant similar treatment. Transit agencies are required to reinvest spending to further transportation electrification, and by providing a public service, any reduction in revenue represents lost funds for an already struggling sector that disproportionately serves lower-income individuals. For these reasons, we recommend that Ecology exempt electric utilities and transit agencies from both the per-pathway and per-credit fee components, while retaining the opt-in base fee as a nominal participation cost.

III. Recommendation on the Proposed Deficit Fee Restructure

Ecology's proposed shift from a relative-position tiered structure to per-unit fees for deficit generators addresses a "cliff" issue in the current structure. A per-unit approach should improve predictability, though we note that year-to-year variability will persist to the extent that the per-unit rate itself shifts with changes in total program credits and deficits.

We strongly recommend that the fee structure continue to ensure that deficits bear the substantial majority of program costs. Under the current rule, 95% of program costs are allocated to deficit generators. The proposed structure should preserve this overall distribution. Within the deficit generator category, we further recommend that the per-unit fee be structured so that the largest deficit generators pay proportionally more in absolute terms than smaller deficit generators, which the workshop proposal achieves.

Thank you for the opportunity to provide input at this early stage in considering fee structure changes that support equity and streamlining.

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