

Earthjustice (Sara Gersen)

Please see attached Comments on Discussion Paper: Carbon Intensity Targets 2028–2038 (Ecology Publication 26-14-083), submitted by Sara Gersen and Victor Zertuche, Earthjustice.

September 28, 2026

Lauren Sanner
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Submitted electronically

Re: Comments on Discussion Paper: Carbon Intensity Targets 2028–2038
(Ecology Publication 26-14-083)

Dear Ms. Sanner,

Earthjustice appreciates the opportunity to comment on Department of Ecology's (Ecology) discussion paper concerning the carbon intensity reduction schedule for 2028 through 2038. We support a strong and durable Clean Fuel Standard (CFS) and an ambitious schedule that meets the state's climate objectives by maximizing real emission reductions. Because the statute leaves limited room to vary the schedule, the differences among Scenarios A, B, and C are small. The program design choices made in this rulemaking will shape market outcomes and the program's real emission reductions more than the choice among scenarios.

For this reason, we urge Ecology to model scenarios reflecting other potential policy improvements. We ask for this analysis to account for the substantial market changes of the past year, for its assumptions and results to be available for public review, and for it to be revisable so Ecology can update it as conditions change and use it to evaluate program design options throughout the rulemaking. This approach will help ensure the carbon intensity schedule adopted in this rulemaking is achievable in a program with focused support on technologies delivering the most reliable climate and public health benefits.

Market conditions have changed substantially since the schedule was set.

The Legislature established the 45 percent target and the 3–4 percent annual range in spring 2025. Several conditions underlying this framework have since changed. These changes create a significant risk that most of the new demand for CFS credits would be met with renewable diesel that industry produces for federal policy compliance. Consequently, the most common strategy for complying with an increasingly stringent CFS carbon intensity target might not provide climate or public health benefits to Washingtonians.

- **Federal volumes of biomass-based diesel have increased sharply.**
The Environmental Protection Agency’s (EPA) Renewable Fuel Standard “Set 2” Rule¹ substantially increased biomass-based diesel obligation for 2026 and 2027. The increase from 2025 to 2027 alone is several times Washington’s total annual diesel consumption.² Federal tax credit changes enacted in July 2025 further increased the value of domestic biomass-based diesel production.
- **Credit prices are recovering.**
In mid-2025, Washington’s CFS credit prices were under \$30, and as of August 2026, they were \$76.³ Renewable diesel is a drop-in fuel that requires no new infrastructure. Due to its status as a drop-in fuel and the dramatic increases in production volumes, renewable diesel is the fuel most able to respond quickly to higher credit prices.
- **Washington’s data already shows increases in renewable diesel.**
Renewable diesel’s share of Washington’s diesel pool rose from 10.6 percent in 2025 to roughly 16 percent in the first quarter of 2026.
- **The outlook for zero-emission vehicle (ZEV) policy has changed.**
Following federal action in June 2025 to revoke California’s vehicle waivers, on which Washington’s standards depend, the enforceability of those standards is uncertain.

Together, these developments suggest that the supply of renewable diesel available to Washington will be shaped largely by federal policy and relative credit value. Abundant supply could depress credit prices and weaken the program’s signal for zero-emission investment. Alternatively, maintaining credit prices through stringency alone would increase costs for Washington fuel consumers without a commensurate increase in the transformative investments the program is intended to drive. Ecology’s analysis should show which of these outcomes is likely under current conditions.

The Washington State Department of Commerce’s (Commerce) modeling does not displace the need for Ecology to model approaches for ensuring the CFS drives transformation of Washington’s transportation sector, despite changes in federal policy. Commerce’s fuel supply forecast is a feasibility assessment: it concludes that sufficient fuel is available to meet the standard, not what the market will look like. Its renewable diesel projections are best understood as a floor. The forecast limits the rate that Washington’s renewable diesel can increase, an assumption not justified for a drop-in fuel. Thus, Ecology will need to perform additional modeling to understand the market’s likely response in the current policy environment and under potential program improvements.

¹ *Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027*, 91 Fed. Reg. 16388 (Apr. 1, 2026).

² Washington diesel demand in 2025 was 755 million gallons. Ecology, Quarterly Data Summary, Q1 2026 (calculated by adding 2025 Q1–Q4 Total Volume of Diesel, Renewable Diesel, and Biodiesel) (file CFSQuarterlysummary_Q12026.xlsx, posted July 31, 2026), https://www.ezview.wa.gov/site/alias_1962/37916/clean_fuel_standard_data_reports.aspx.

³ Ecology, Clean Fuel Standard Credit Transfer Activity Report, August 2026 (file CFSCreditTransferActivityReport_August2026.xlsx, posted Sept. 23, 2026), https://www.ezview.wa.gov/site/alias_1962/37916/clean_fuel_standard_data_reports.aspx.

The analysis should be transparent, realistic about credit prices, and usable throughout the rulemaking.

We ask that Ecology share the key assumptions with stakeholders before the analysis is finalized. Key assumptions include federal volumes and prices, feedstock composition, ZEV uptake, and how fuel supply responds to credit prices. Providing stakeholders with an opportunity to understand and comment on these assumptions is likely to lead to more accurate outputs. We also ask that the results, including credit prices, fuel mix, and credit bank balance, be published for public comment before the CR-102 is filed. Realistic credit price projections will show whether the market can be sustained under the statutory benchmarks and policy choices used, which could affect policy choices made during the rulemaking. Additionally, market conditions are changing quickly, and the rulemaking will extend into 2027. We encourage Ecology to structure the analysis so it can be rerun as significant new information is available, including quarterly data, and so it can be used to evaluate the market effects of specific program design options as they are developed.

Responses to Ecology's questions.

1. Which scenario do you prefer: A, B, or C? Why?

We do not believe we can responsibly express a firm preference before the analysis is available. In general, we favor earlier reductions, which result in more cumulative emissions reductions over the period and more public health benefits. Additionally, a larger near-term reduction could be cushioned by the current substantial credit bank. However, that preference is conditioned on achieving real reductions based on the best available science.

2. Do you prefer a more gradual schedule or a less gradual schedule? Why?

A less gradual schedule, subject to the same conditions as above. Front-loading accelerates the program's benefits only to the extent that early credits reflect real reductions. If the near-term credit supply is dominated by crop-based fuels whose carbon intensity values do not reflect the current science, a steeper early schedule would accelerate the transfer of value to fuel producers without truly accelerating decarbonization.

3. Are there alternative scenarios you would like Ecology to consider?

Yes. Given the limited room in the schedule itself, additional variations on the annual percentages are not likely to be very informative. The alternatives worth modeling are the same schedules run under different assumptions about crediting and market conditions. We suggest the following:

- Current crediting compared with scenarios in which credit generation from biofuels with uncertain climate benefits is constrained;
- Current carbon intensity assumptions compared with assumptions updated to reflect current land use change science;
- Scenarios with expanded credit generation opportunities for zero-emission pathways;

- A scenario in which zero-emission vehicle regulations are not enforced, which is relevant to the determination Ecology may make in 2030; and
- The 55 percent pathway, as the discussion paper indicates.

Because the annual reduction targets will shape the program for more than a decade, the program design choices available in this rulemaking should be evaluated together with the schedule rather than separately.

We appreciate Ecology's engagement on these questions and welcome the opportunity to discuss any of these comments further.

Sincerely,

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