State of Oregon Department of Environmental Quality

# Written Comments

## December 2016, Clean Fuels Program 2017 Rulemaking Advisory Committee Meeting

### Commenters

Coleman Oil Company

Western States Petroleum Association

SeQuential, Oregon Environmental Council, The Climate Trust, National Biodiesel Board, and Drive Oregon

Oregon Fuels Association

Thank you for accepting our comments on the second meeting of the Oregon Clean Fuels Program Rulemaking Advisory Committee.

**Cost Containment**

*Credit Clearance Market*

The straw proposal for an Oregon Credit Clearance Market is a good start for cost containment. We agree that if fewer credits are pledged then debits are needed by regulated parties there should be a calculation that determines pro-rata shares for each buyer. The question remains what this calculation would be. We would like to see more detail on how this share would be determined for each buyer in the CCM and have this written into the rule for the CCM.

The 5 percent interest rate for unfilled deficits should be eliminated. This interest rate is effectively punishing a company for circumstances beyond their control. As long as a company is actively trying to meet their obligation, by participating in the CCM and buying the required number of credits, they should not be charged an interest rate on the deficits they are not able to fill. These deficits should be carried over to the next year. While the issue of carrying deficits over without penalty can be argued as a way for a company to game the system, the requirements for carrying over the deficits without interest would be that the company participated in the CCM and purchased the allotted number of credits. This shows that the company is acting in good faith. If there is a perpetual problem where each year companies are carrying over deficits because there are not enough credits in the CCM to cover those deficits, the Clean Fuels Program is at a point where the feasibly of it continuing would need to be questioned.

Valid credits are a concern. The validly of the credit should rest with the company that generated the credit, not with a party that purchases the credit down the road. Without this the CCM would not be successful due to obligated parties being fearful of purchasing credits that may later become invalidated.

*Credit Window*

As a cost containment measure the credit window is not a good option. This creates paper credits which represent no actual reduction in emissions. This proposal is not within the scope of the program and is essentially alternative compliance payments, without the name. The program should aim for cost containment that is still in the spirt of the program.

*Importers of Finished Fuel*

Since importers of finished fuel have to either change their business models or buy credits for compliance it is a good idea to consider them when implementing cost containment measures. The method of cost containment that we support for all obligated parties is an investment plan. This would not only help importers create their own credits, it would also allow other obligated parties in Oregon to

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invest in new technologies that help further the goals of the Clean Fuels Program as well as expand the reach of the program in the future. The investment plan is a great incentive for companies to invest their resources in Oregon.

If the CCM is adopted as a cost containment measure, then giving priority status to finished fuel importers and allowing them to buy their credits needed first is a good option. This allows companies that have a small presence in Oregon to fully comply with the program. This cost containment measure for finished fuel importers would help level out their costs and allow them to comply with the program without have to change their business models.

*Other Considerations*

Nesting mechanisms that would prioritize the exhaustion of real credits doesn't take into consideration the need for companies to bank their credits now for future use. By creating a mechanism that exhausts real credits obligated parties would then be out of compliance for later periods, creating an environment of noncompliance throughout the program.

**2017 Forecast and Methodology**

The forecast for 2017 indicates that renewable diesel could generate 265,000-395,000 credits. This is based on Oregon's fair share of the renewable diesel going to carbon constrained markets. As noted in the meetings this is highly unlikely. Per the slides provided by DEQ the credits created in the first two quarters of 2016 are largely from ethanol and biodiesel. Very few credits were created from other (as listed on the graphs). In the first two quarters, based on the graphs, it looks like near 400,000 credits were generated. The forecast indicates that renewable diesel could create almost that much in one year. That is a lot of credits for a product that is currently not creating any credits, and the fuel industry indicates is in short supply in Oregon.

With the more established markets in California and British Columbia all indications point to more than their fair share of renewable diesel going to those markets. We would like to see another method for estimating the availability of renewable diesel in Oregon used for the first year of the forecast. Then once a year has passed with credit generation from renewable diesel the forecast can project forward based on known variables. For the 2017 model if renewable diesel is removed the credit range drops to 620,000-1,149,000, the low end of the estimate being less that the estimated deficits generated. Given the supply of renewable diesel this would be a much more likely result.

The 2017 forecast also takes banked credits from 2016 and adds them to the credits available for 2017. Bank credits should not be taken into account for the next years forecast. The forecast is a tool used to predict if the program can generate enough credits to cover the deficits created in the same year. By taking banked credits into consideration the forecast is assuming that those credits will be used in that year, when by all admissions the banked credits are used for compliance in the later years of the program. Using banked credits in a forecast could also cover up any issue of the ability of the program to create credits, therefore sustaining the program another year when otherwise it could be shown to not be feasible.

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We would like to see the forecast model supply a percentage change for all products that generate credits and deficits for prior year to forecast. This will help when determining if the forecast is feasible.

**Expanding Electricity Credit Generation**

We support expanding electricity credit generation though light rail, street car, trolley and forklift reporting. The credits generated through this method will help offset the deficits and allow the program to continue.

Thank you,

Annie Stuart
Systems Manager
Coleman Oil Company

**Western States Petroleum Association**
Credible Solutions • Responsive Service • Since 1907

**Catherine Reheis-Boyd**
President

January 20, 2017

Via email at: OregonCleanFuels@deq.state.or.us

Ms. Cory-Ann Wind
Oregon Department of Environmental Quality
Clean Fuels Program
811 SW Sixth Ave
Portland, OR 97204

Re: WSPA Comments on the Oregon Clean Fuels Program

Dear Ms. Wind:

The Western States Petroleum Association (WSPA) is a non-profit trade association that represents companies that account for the bulk of petroleum exploration, production, refining, transportation and marketing in the five western states, including Oregon. WSPA appreciates the opportunity to provide the Oregon Department of Environmental Quality (DEQ) comments on cost containment provisions. Our member companies are key stakeholders in the Oregon Clean Fuels Program (CFP).

WSPA proposes a two-tier cost containment mechanism for both short-term price spikes and long-term unavailability of credits. It is designed around the Credit Clearance Market (CCM) that is in use in California, with a maximum credit price per metric ton of carbon emitted. In either case, once a cost containment mechanism is triggered, it should be seen as a sign that the program is not functioning as predicted. DEQ should perform an analysis within sixty days to determine if there is a long-term program viability issue.

## Credit Clearance Market

### Basic Guidelines

- Suggested ceiling price of $200/MT CO2.
- Banking is allowed as a forward planning tool. Credits do not expire.
- The ability to carry over 10% of last year's obligation without penalty is retained.
- Credit prices are evaluated annually for impact to consumers. Credit price is the most direct measure of cost that could affect consumers (not fuel price which is based on too many factors to be a good indicator of a healthy market).
- Brokers (traders/aggregators) that are not regulated parties or credit generators cannot hold credits for more than one year and must sell their credits into the market during that period.

## Tier 1 Short-Term Spike Relief

The short-term mechanism triggers when there is an unforeseen credit price spike in the Oregon Market. It is a back-up in the event that the program forecasts are not accurate (e.g., lower carbon intensity fuel volume not growing as anticipated and/or petroleum demand is greater than expected, low carbon fuel exists but does not come to Oregon as foreseen, or there is some other unanticipated shortage in credits). This is intended to protect consumers from these unforeseen circumstances.

### Short-Term Mechanism

- DEQ publishes credit trading data (volumes and prices) monthly.
- If credit prices increase more than 25% from one month to the next, or more than 40% over two consecutive months, this will be considered a "spike". Program targets will be frozen at the previous year's target for the remainder of the compliance period.
- If the ceiling price ($200/MT) is hit at any point during the year the program targets will be frozen at the previous year's target for the remainder of the compliance period.

## Tier 2 Cost Containment Strategies

This tier is intended to complement forecasting tools.

### Quarterly Evaluation: Monitoring market health-liquidity

- DEQ monitors the bank of credits quarterly for a potential early sign of a short market via significant draw down of credits.
  - If the overall bank of CFP credits has drawn down below 105% of the of the next year's forecast obligation, DEQ will consider this an indicator that not enough new credits are available for the next year and an analysis of next year's targets should be done.

### Annual CCM Function (modeled after California Code 95485 (c))

If one or more regulated parties has a credit shortfall in the annual report, DEQ triggers a call to parties to pledge credits for the CCM.

- Seller pledging credits would:
  - Be previously verified by DEQ. In the event that credits are deemed invalid at a later date, DEQ will not hold the party purchasing credits liable for replacing those credits. In addition, this means no violation or penalty to the purchaser.

  - Agree to sell credits at a price no higher than the ceiling credit price to buyers in need of credits.

- Regulated parties:

  - If the credit shortfall is less than 10%, regulated parties have to inform DEQ if they will take the up to 10% small deficit carryover option, or purchase credits from the CCM.
  - If the credit shortfall exceeds 10%, then they must purchase from the CCM.

- If more credits are pledged than needed:

  - DEQ posts a list of credit sellers and contacts.
  - Deals will be completed within 30 days, and the credits will be transferred to the CFP online system.

- If fewer credits pledged than needed and a "short" market occurs:

  - DEQ will post a list of sellers and buyers.
  - DEQ calculates the pro-rata share for each buyer that they are required to buy, and informs the buyer confidentially of their purchase obligation.
  - The deals will be done within a 30-day window, with credits transferred to the CFP online system.
  - In the first year of a short market, allow remaining unfulfilled obligation to be deferred to the following compliance year, without penalty, to allow more time for credits to enter the market.
  - A sustained (or annual forecasted) credit shortfall over a two consecutive calendar year time period is a sign that the program is not working as forecasted and costs to consumers are at risk. In this case, WSPA recommends that the CFP targets be reset back to the carbon intensity target level of the most recent compliance year in which a surplus of credits occurred. The reset targets should remain in place until a program year demonstrates that the shortfall has been overcome, i.e., when the market which has been forecasted by ICF comes to fruition. There should be no penalty to regulated parties resulting from the shortfall.

**CCM Confidential**

The credit activity and compliance status of individual regulated parties should be confidential.

**<u>Additional Credit Generation Opportunities</u>**

Legacy projects and/or programs should only be able to generate credits for incremental or new emission reductions occurring after the program began, January 1, 2016.

**Credit Window Option**

Finally, regarding the Credit Window option from the December 15, 2016 advisory committee meeting:

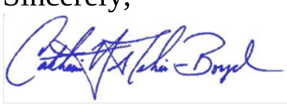
> *Alternative compliance payments ("paper credits") not resulting in immediate emissions reductions, but allow for compliance while raising funds for emissions reducing research in the transportation sector.*

WSPA members do not support this option for the following reasons:

- The emissions reductions are not real.
- There is uncertainty with regard to how the state would manage the investments and whether the obligated party liability would truly be resolved.
- It does not address program infeasibility – but enables an infeasible program to continue at high cost to obligated parties. It does not address the underlying problem causing the credit price increase.

Thank you for your consideration of WSPA's comments. We welcome any questions or comments you might have. Please contact me at this office or Jessica Spiegel of my staff at (360) 352-4512 or via email Jessica@wspa.org.

Sincerely,



cc: Jessica Spiegel, WSPA

January 13, 2017

Dear Cory-Ann and Bill:

We appreciate DEQ's discussion of additional cost containment provisions. Stakeholders would like the ability to thoroughly evaluate all proposals, including those proposed by other stakeholders. In advance of the next Advisory Committee discussion, we would like to submit the following principles:

1. Cost containment should build investor confidence—not create additional uncertainty. Any provisions that create uncertainty about whether or not a program is going to be in effect from year-to-year, reduces predictability about the size of market demand for low-carbon fuels, or creates additional uncertainty about credit prices will undermine the program. The program already has many layers of protections (credit banking, fuel forecasts, etc.), and increasing complexity may only create confusion.

2. Cost containment should align as much as possible with other programs in the region. This reduces complexity for businesses that operate in multiple jurisdictions.

3. Any cost containment mechanisms should not disadvantage Oregon's market relative to other markets. Oregon's is the most nascent program in the region. We encourage DEQ to consider measures that can bolster the market (creating stability helps reduce costs), such as adding a price floor.

4. Cost containment should not stifle innovation. Too low of a price cap can inhibit natural market fluctuations and dampen price signals for more innovative processes and other advanced fuels.

5. If alternative compliance is allowed, those actions must result in real greenhouse gas emissions reductions in Oregon's transportation sector. Paper credits are the least optimal choice presented thus far.

Sincerely,

Ian Hill, SeQuential

Jana Gastellum, Oregon Environmental Council

Peter Weisburg, The Climate Trust

Shelby Neal, National Biodiesel Board

Jeanette Shaw, Drive Oregon

To: Cory-Ann Wind & Bill Peters, Air Quality Program, Oregon Department of Environmental Quality (ODEQ)

Re: Comments to the ODEQ on Point of Obligation as Cost Containment under Oregon's Low Carbon Fuel Standard (LCFS)

January 4, 2017

Dear Cory-Ann and Bill,

The Oregon Fuels Association represents the majority of Oregon's fuel distributors, retailers, and commercial fueling entities. The LCFS is of great significance to our members, who include many Oregon small businesses. We propose a change to the "point of obligation" under the LCFS. A significant cost under the LCFS could be relieved with the following rule change in place.

**Point of Obligation Rule Proposal**

Mitigating the impact of the LCFS on small businesses is critical to cost containment. A significant administrative cost on small businesses could be avoided by the following rule change.

Currently, an entity bringing-in fuel from out-of-state (importing) is a "regulated party" under the LCFS rule and therefore avails themselves to the LCFS obligation potentially being passed-down to them from the fuel producer. Small importers (currently defined as 500,000 gallons or less per year) are exempt. First, the OFA proposes raising the 500,000 gallon threshold to mitigate the cost on small businesses. Second, the OFA proposes a rule change for fuel an entity pulls at the rack in Oregon. Under the new rule, an entity would not be considered a "regulated party" for the fuel they pull at the rack within the State of Oregon and the LCFS obligation could not be passed down to them from the fuel producer, even if they remain a "regulated party" for the fuel they are importing.

These two changes to the point of obligation under the LCFS rules would significantly decrease the cost of administering the program on small businesses currently impacted.

The OFA has already submitted formal comments on why truck stop electrification is immaterial to the LCFS and the issue of fuel availability, so we will not duplicate those comments here. We will provide by separate communication our fuel forecasts.

Thank you in advance for your consideration of our "point of obligation" proposal.

Sincerely,

Paul Romain, Danelle Romain & David Rocker, Representing the Oregon Fuels Association

Mark Gram, Jubitz Corporation

Jeff Rouse & Brad Woodbury, Carson Oil Company

Ralph Poole, Campo & Poole Distributing LLC