Clean Fuels Program 2017 Rulemaking

Meeting Summary

Meeting #2

Dec. 16, 2016
Portland State Office Building
Conference Room 1E
800 NE Oregon
Portland, OR 97232

Oregon Clean Fuels Program
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Suite #600
Portland, OR 97232
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www.oregon.gov/DEQ

DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

List of Attendees:

Committee Members in Attendance:

Anne Smart, ChargePoint
Amanda Dalton, ChargePoint
Nick Economides, Chevron
Bob Jenks, Citizens Utility Board
Annie Stuart, Coleman Oil
Jana Gastellum, Oregon Environmental Council
Bob Russell, Oregon Trucking Association
Lindsay Fitzgerald, Renewable Energy Group
Miles Heller, Tesoro
Jeremy Martin, Union of Concerned Scientists
Jeff Rouse, Carson Oil
Jessica Spiegel, Western States Petroleum Association
Dave Vant Hof, Climate Solutions
Jessica Hoffmann, RPMG
Connor Nix, Shell
Lester Spitler, TriMet
Graham Noyes, Low Carbon Fuels Coalition
David Rocker, OFA

Committee Members on the Phone:

Craig Campbell, AAA
Marie Dodds, AAA
Micah Berry, Chevron
Brandon Price, Clean Energy
Danelle Romain, Oregon Fuels Association
Brendan McCarthy, Portland General Electric
Ian Hill, SeQuential Biodiesel
Peter Weisberg, The Climate Trust
Ralph Poole, Campo & Poole Distributing
John Costantino, Manatt
Mary Wiencke, Pacificorp
Tuba Aviscert, Pacificorp
Ryan Kenny, Clean Energy

DEQ staff in Attendance:

Cory-Ann Wind, Oregon Clean Fuels Program

Bill Peters, Oregon Clean Fuels Program
David Collier, Air Quality Planning Manager
Elizabeth Elbel, Greenhouse Gas Reporting Program
Jeff Rosenfeld, ICF (consultant to DEQ for this rulemaking)

Members of the Public in Attendance:
Mark Graham, Jubitz
Mike Eliason, AOC
Mike Mercer, E2

Members of the Public on the Phone:
Marla Benyshek, Phillips 66
Mark Bunch, BP
Paul Garrahan, DOJ
Jerome Rose, Oregon Cattlemen Association
Julie Witcover, UC Davis

Summary of Input:

Meeting Commencement, Welcome and Introductions:
Mark Reeve, Chair, Clean Fuels Program 2017 Rulemaking Advisory Committee
Cory-Ann Wind

- Committee introductions around the room and on the phone. Introductions of members of the public.
- Agenda review for Meeting #2
- Reminder about where we are in the overall rulemaking process

Agenda Item A: Cost Containment
Cory-Ann Wind and Bill Peters

Where we are in the process:
- The November meeting had good dialog and we got a general sense of what people liked and didn't like.
- The written comments were helpful but not specific.
- We will walk through two potential options and then discuss the key questions originally posed in the first meeting.
- Comments due by January 13, 2017 but the sooner the better.
- DEQ will review the comments and discuss internally.

Questions and Comments:
- What is the direction from the legislature? Do we need to do something or just study something? Can we use what we have already? Response: We need cost containment in the rule. There are elements of cost containment already in the program so we could just keep these but committee needs to explore the options. Here is a link to SB324. The cost containment language is in Section 3(2)(d).
- There is a fine line between hoarding and banking. Banking is important to the programs. There is already a small incentive to hoard. Hoarding can look like banking. Don't create a new incentive to hoard.

- Do we assume an end date or that the market will continue? How should regulated parties think about compliance? Time period or the perception of the program time period may cause companies to hoard or not. Response: The program goes to 2025 but we may need to think about how to consider this issue as we design the illustrative scenarios. The model utilizes the most economically efficient method to generate, retire and bank credits but that doesn't mean that it will happen.
- Who can own a credit? Response: You have to be a regulated party or credit generator to hold credits. Third parties can't hold credits.
- If you have a stable program with enough credits for the deficits generated then the need for banking lessens. Need to highlight the feasibility and sustainability of a program to ensure it's a healthy program. DEQ will need to watch the market, provide feedback, data. As a regulator if you look at the data you should be able to see problems in the data. Feedback to the market helps it perform in a healthy way. Feasibility, sustainability and transparency.
- If you have excess of credits it's great. When talking about cost containment I think about what is the worst that can happen. Systemic shortages are the problem or shortages that propagate year after year. Want to set up a program that will be feasible.
- Everyone is going to bank. Oregon has a less attractive market place than California so regulated parties need to bank for the future. Many companies are going to bank to offset risk. Maybe we can find a better way for Oregon.
- We want to incent the market earlier because they provide environmental benefits. Banking indicates early emissions reductions. If it seems like hoarding is going on there should be some way to navigate it and keep it fair. Response: It's the role of the agency to manage that. If you see balances that don't look right, then we need to analyze it.
- Can DEQ compel the credit holders to sell into the CCM?
- Everyone will be speculating on the economics and policy uncertainty is factored into the prices. We should try and provide policy certainty.
- California has about 8 million credits. Market in the two ($) figures. Some of the regulated parties are looking down the road and conserving and planning. Credits are still on the market and being banked. Liquidity of the market is important. If you have a big enough market it can be healthy, but that is not the case here.
- If you set the price about the expected range how will you protect consumers? Response: There is a price above the market that still protects consumers. We need to find a balance to plan for compliance and credit generation.
- Has the department considered how (soon) the prices would be pushed up to the cap? Response: Since we haven't chosen a mechanism we haven't done that analysis. Also, California hasn't had a problem with credit prices hitting their cap yet.
- How is the consumer protected? In a short market, prices go up and stops at the ceiling. There is no relationship between the regulated party and the consumer. Response: There is a relationship between regulated parties cost and price at the pump that a consumer has to pay.
- How often would the credit price be reviewed? Market likes stability. Set it and leave it unless there is an overwhelming need to change it. Response: Credit prices will be reviewed as they come in and a transaction activity report will be published monthly to provide transparency to the market. It's hard for the agency

to change anything quickly because of the rulemaking process so our approach is to provide long-term regulatory stability.

- We should put the 10% (small deficit carryover) in the parking lot. We were against removing it from the program in California because it forced us to do business with companies we believe are not credit worthy. If you want to avoid some of those hassles it might be helpful to keep 10% and imbed it somehow into whatever cost containment mechanism we recommend.
- Does DEQ take possession of the credits in this process? Response: No.
- We should prohibit people from buying more than their pro-rata share to ensure that all parties that are short deficits will have access to their own pro-rate share. Response: Agreed.
- A net share CCM is allowing to roll over a liability which causes trouble for publicly traded companies. Big companies are not going to want to go into the CCM and will pay any price to avoid going into the CCM. This will push the price up.
- Infeasible standards create a liquidity problem. Want to see address underlying liquidity and supply issue with any cost containment. Cost containment should not be a replacement for an infeasible program. Response: Deferral and cost containment can complement each other. DEQ does not intend to create a program that is triggering CCM yearly; it should be an outlier. The forecasted fuel deferral will deal with systemic shortfalls. When the agency looks at this it will be across the market not at any one regulated party. If one regulated party has issues it's an individual issue not a systemic issue.
- WSPA has a tiered proposal that they are working on and will provide it to DEQ incorporating lessons learned from California.
- Be careful of over relying on the fuels forecast…there are so many levels/factors (EPA, RINS, change in administration) that interplay resulting in uncertainty.
- Cost containment system should be able to give you an early warning of trouble with your system.
- In a CCM you may be forced to buy from someone you don't want to do business with because you're concerned about invalid credits. If we are forced to buy credits and DEQ invalidates them there should be a reasonable approach to enforcement and keeping the program whole.
- Who has the ultimate responsibility for invalid credits? If everyone acts in good faith the regulated parties should not be penalized for invalidated credits. Response: Due diligence is essential to prevent fraud. Request comments on how this should be worded in the regulation.
- The program will be judged on the environmental benefits. Complete relief to affected parties may undermine the environmental benefits.
- Regulated parties should not be penalized for fraudulent credits but the environmental integrity of the program must be retained. Loss should be built back into the program and spread out amongst all the regulated parties.
- Could the replacement of credits be passed on the next year?
- Should reconsider the idea about charging the 5% interest charge. Response: The 5% add on is trying to prevent regulated parties from not complying and there should be some level of penalty/disincentive. We want to provide a disincentive for going the CCM route.
- The complexity of the cost containment will add to the inability to forecast years down the road. If there are too many regulatory decisions being made too often

the market is held up by participants waiting to hear what the regulator will decide.

- The price should be well above the market but low enough to protect consumers.
- The forecast will be the assurance that there are enough credits to comply.
- The point of the program is to bring in new fuels but those markets are “lumpy” and it takes time for a new facility to come on line. Don’t assume because one year the program was challenging the next year it will be a new facility might come on line. You want to keep the incentives for that investment.
- Money from the credit window can’t go into a slush fund; must be put toward making the credits toward emission reductions.
- Likes the simplicity of the credit window option.
- Credits act as permits to supply fuel. This mechanism makes sure that there is an adequate number of credits for the program to keep the system whole. DEQ will be able to know the details of the market.
- Don’t like paper credits. No environmental integrity, not good for CFP. It would have to be tied to additional emissions reductions. This ruins the incentive to comply.
- Would the state have additional emissions reductions opportunities to put this money toward?
- Love the security and stability and wants to comply at lowest possible cost. Paper credits are not environmentally sound. You should get real emission reductions from the investments “paper credits.”
- Likes the certainty of the concept but it sends the wrong message to the market place. It will erode investments.
- Do we know if this a large portion or small portion of the regulated parties? Response: Not yet. When annual reports submitted, then we should have a better idea of the situation.
- Why do we need to do something for them (importers of finished fuels)? Response: Economic considerations of small business is a requirement of the agency. For CFP this is focused on importers of finished fuels. Right now they have an additional year to comply. There may be a way in cost containment to deal with this and maybe not.
- Why are these companies disadvantaged? Response: They don’t have control over the CI they get for B5 or E10. They have no way to blend a lower CI or blend more bio into the fuel. Limits their ability for generating credits.
- An investment plan option might help to create infrastructure for alternative fuels like blending pumps and charging stations. It would be nice to be able to help with the goals of the program not just be considered for preferential treatment within a cost containment mechanism.
- They would need to be clear and transparent investments so they aren’t “paper.” You could argue that these investments should be made anyway.
- Add a third variable to the chart with a CCM price at the pump to reflect the price of credits vs. the CCM price. Whatever you say is the cap of the program people will multiply and provide misleading information about the program. 100% of credits is not being purchased and the CCM would not be functioning for 100% of the compliance costs.

Agenda Item B: Draft 2017 Forecast
Jeff Rosenfeld, ICF

Questions and Comments:

- Did you use fuel tax data for diesel estimates? There is no fuel tax on trucks over a certain weight so that wouldn't have been included in the data. Maybe use ODOT or ODOE fuel estimates? Response: Yes it was a few different sources including EIA and utilized the fuel tax projection.
- Do you have a suggestion for a better data source? Response: Might be able to come up with a better estimate for fuel growth. Will talk with members and get a better idea.
- Trying to provide a conservative estimate. Over time CFP program will have a better idea of the data. Data can also be compared to the Oregon GHG reporting data.
- How much is assumed to be coming from Brazil to Oregon? Are you getting there without Brazilian ethanol? Run a sensitivity without Brazilian ethanol coming into Oregon. Response: In the high end estimate we are including Brazil ethanol. However if you use just corn you still get 580,000 credit. We can also provide estimates for the Pacific Ethanol facilities (OR and ID).
- Is there going to be 80-95 million gallon renewable diesel? The numbers are unrealistic for 2017.
- Can you tool out the renewable and Brazilian to improve projection? Debatable on if these fuels will actually come to Oregon. Response: The point is what could come here, not necessarily what will come.
- Is the renewable diesel displacing diesel gallons? Response: No. Which means that it makes the forecast more conservative since we didn't cut out the gallons that would generate deficits.
- Building a new renewable facility is expensive; there won't be a new facility for a long time. The supply that we have today is what we have.
- Why would you assume Oregon's fair share of the available fuels? Response: We think that's a good default for assumptions that should be incorporated into the methodology. Additional factors might be considered after that.
- Oregon is going to get the last dregs of what is coming to the west coast and if there is not enough to go around, Oregon is not going to get it. If there is a higher credit price in California it will go to California. Response: But we still need to include the renewable diesel to make sure that it's incentivized to come here. As was discussed in the first meeting, the forecast is focused on physical and policy barriers.
- This is methodology that should be used year after year and there should be a rationale for determining any fuel that can come here. Response: Good comment. In general, we would like input on what goes into the methodology. Since we're also looking at the 2017 forecast itself, we'd also like input on the forecast.
- You can use the data collected in the program to check the forecast. Response: Yes, as the program progresses, we'll have better data to inform the forecast.
- The fuel providers want the programs to succeed so we may see some surprises in 2017 in terms of fuel.
- Liked the way it was laid out, the ranges with basis on the ranges, the treatment of the banked credits.

- On the growth chart, why is gas and diesel tapering off? Maybe provide a range of projections. Response: This comes from EIA growth forecast for 2016-2017 details will be in the final report.
- Is 60.5 ethanol realistic? Where are we now? It would be helpful to have a percent change metric to determine if it's realistic to see if it's within the scope of producing facilities.
- There is a soft 5% limit for renewable diesel before you have to do notifications labeling which makes it hard to ramp up above 5%. Don't put anything over an R5 unless you know it's really happening. It's also an infrastructure issue for anyone on the same pipeline.
- How does the natural gas growth chart compare to California's? Response: The rates are not comparable on growth because CA is a large consumer of NG in transportation and has been for a while, while Oregon is not.
- How were finished fuels handled in the analysis? Response: They weren't broken out.
- For electric vehicles, PGE has some additional data points from their own analysis. Will send. Looks like ICF estimates may be a little aggressive.

<u>Agenda Item C – 2014 Scenarios Update</u>
Jeff Rosenfeld, ICF

No specific comments.

<u>Agenda Item D – Draft Additional Electrification Report</u>
Jeff Rosenfeld, ICF

The draft report include fixed light rail, street car, tram, forklifts. Truck stop electrification – will be in final report.

Questions and Comments:

- Indoor forklifts should not be used since they have not used gas or diesel because of OSHA requirements.
- Truck stop electrification has been completely unused.
- Don't include max, tram, and street car…this is essentially issuing "paper credits" because if this program did not exist, the same thing would have happened.
- Please provide an example calculation with and without displacement for a fixed guide way and forklift.
- Do you assume that 100% of the people in the system are displacing cars? Or is there some other assumption or methodology? Response: It's compared against diesel buses so its MJ/passenger compared to light rail.
- Who gets forklift credits? Response: We would take comment on this.
- Don't just defer to what California did in terms of displacement.
- Are you interested in hearing about additional opportunities for credit generation? Response: That would probably be appropriate for the January meeting when we start talking about the new illustrative scenarios.

Written comments:
Committee members should utilize the OregonCleanFuels@deq.state.or.us for submitting written comments. Comments due by Friday, January 13th but the sooner the better.

Next meeting scheduled:

Thursday, January 26, 2017
Portland State Office Building, 800 NE Multnomah
Possible agenda items:

- Final report on additional electrification
- Final 2017 forecast
- Draft 2014 scenario updates
- Draft assumptions for illustrative scenarios
- Cost containment – discuss authority, barriers, options to move forward on
- Discuss modifications to electricity rules