



## **Oregon Clean Fuels Program Phase 2 Rulemaking Advisory Committee Meeting #3**

Meeting Summary  
Tuesday, August 28, 2014  
9:00 am – 4:00 pm

Oregon Department of Environmental Quality  
Headquarters Office  
EQC Conference Room  
811 SW 6<sup>th</sup> Avenue  
Portland OR 97204  
  
Contact: Cory Wind

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### **Committee Members in Attendance:**

Mike Reeve, Chair  
Darren Engle, Blue Star Gas  
Mike Rensing, British Columbia Ministry of Mines  
Ralph Poole, Campo & Poole  
Peter Weisberg, The Climate Trust  
Josh Proudfoot, Good Company  
James Mast, Mast Collaborative  
Shanna Brownstein, Northwest Natural Gas  
Cory-Ann Wind, Oregon DEQ  
David Collier, Oregon DEQ  
Jana Gastellum, Oregon Environmental Council  
Bob Russell, Oregon Trucking Association  
Dan Sinks, Phillips 66  
David Breen, Port of Portland  
Brendan McCarthy, Portland General Electric  
Paul Romaine, Oregon Fuels Association  
Gavin Carpenter, SeQuential Biodiesel  
Terese Tyler, Space Age Fuel  
Chuck White, Waste Management  
Frank Holmes, Western States Petroleum Association

### **Committee Members on the Phone:**

Todd Campbell, Clean Energy Fuels  
Miles Heller, Tesoro  
Gina Grey, Western States Petroleum Association

### **Members of the Public in Attendance:**

Bill Peters, Argus  
Mike Eliason, Associated General Contractors  
Micah Berry, Chevron

Heather Kendall, CUB  
Brian Doherty, Miller Nash  
Jason Klotz, OPUC  
Derek Regal, Tesoro  
Kim Kaminski, Waste Management

**Members of the Public on the Phone:**

Stacy Hopkins, ExxonMobile  
Philip Gaarder, Flint Hills Resources  
Jeff Rosenfeld, ICF International  
Matt Tracy, Metro  
Ryan Lambert, National Biodiesel Board  
Ginger Laidlaw, RIN Alliance  
Jessica Hoffmann, RPMG  
Kiana Caleb, Shell

**Agenda Item A: Committee Business** - Cory Wind

Cory provided a recap of meeting #2 and reported there are no updates from the last meeting.

Mike Rensing gave a brief update on the low carbon fuel standard in British Columbia. They have been implementing their program since 2010 and are on the same reduction schedule as CA; in 2014 the reduction requirement is 1%.

**Agenda Item B: Definition of Importer** - Cory Wind

DEQ asked 61 registered importers whether the change to the proposed definition would change their regulatory status. To date, 36 businesses said they would remain an importer, 11 said they would no longer be an importer and 14 had not responded. DEQ also contacted 83 unregistered businesses that might be subject to the program. To date, 36 businesses said they would be an importer, 18 said they would not be an importer and 29 still had not responded. There will be another round of outreach if the rule is adopted.

**Agenda Item C: Importers of Finished Fuels** - Cory Wind

DEQ proposes deferring compliance with the clean fuel standards for businesses exclusively importing finished fuels in 2016 (clear gasoline, clear diesel, E10 and B5). 2015 is a reporting only year. Small importers, less than 250,000 gallons per year, are exempt from recordkeeping and reporting requirements in addition to meeting the clean fuel standards. DEQ will continue to identify other methods for importers of finished fuels to comply with clean fuel standards.

Also, DEQ proposes to have default carbon intensities for E10 and B5. Importers of finished fuels can use this in lieu of documenting the actual carbon intensity of the blended fuels they import from out of state terminals.

**Questions/Comments:**

- What will the process be for updating carbon intensities? The look-up table will be assessed at least every 3 years.
- If someone has a proposal for a CI that varies from the look-up table by 5gCO<sub>2</sub>e/MJ or

- 10%, they can apply for an individual pathway.
- If CA updates the CI will it be automatically updated in OR? No, Oregon needs to adopt it via rulemaking.
- If DEQ isn't approving new pathways with lower carbon intensities fuels, there is no incentive for lower carbon intensity fuels. Delay in approving lower carbon intensities hurts the program.
- Streamline the OR program by quickly approving fuel pathways that are getting approved in CA.
- May be better off not deferring because businesses get into a difficult situation when they don't build up credits, which is the situation early in the program.
- Regarding the deferral – what about companies that do both (blendstocks and finished fuels)? They are considered importers of blendstocks and must comply with all requirements.

#### **Agenda Item D: Setting the Baseline & Annual Standards** - Cory Wind & Jeff Rosenfeld

*Carbon intensities.*

##### Questions/Comments:

- Have we considered the option of someone supplying a green power for their charging station? They would have to apply for an individual carbon intensity.
- Clarified that these carbon intensity values include the California proposed ILUC values.
- These assumptions do not incorporate the latest California GREET values that were work shopped the previous week.

*Baseline carbon intensities of gasoline and diesel for E10, B2, and B5.*

##### Questions/Comments:

- Who makes decision to use B2 or B5? DEQ will consider comments received and make a recommendation.
- DEQ is assuming a 10% reduction over a 10 year period (2015 – 2025 versus by 2020). Need an AG opinion.
- Is there an option to choose 2015 numbers? Actual values won't be available so the best estimate would be actual 2012 values projected to 2015. That case is mostly reflected in the B5 values.
- Stay with as high a baseline value as possible.
- There might be a proposal introduced in the 2015 legislative session to change from B5 to B0 during the winter.

*Overview of the compliance scenarios.*

##### Questions/Comments:

- It's inappropriate for DEQ to expect advisory committee members to review and comment in such a short time period without the backup data to support it.

### *Balance of Credit and Deficits.*

#### Questions/Comments:

- This analysis has limited use. Shows you can bank credits in the early use but doesn't show what is feasible and what an appropriate compliance schedule is. It only shows a program that goes for 10 years and then abruptly ends and doesn't show how to sustainably achieve the reduction.
- Indicator of success or failure is whether the overall credit system is balanced, year to year.
- The assumption that all those credits will be generated and banked early in the program is wrong.
- How much will this cost?
- CA provides huge incentives to industry before they do rules; OR doesn't have those same incentives.

#### **Agenda Item E: Public Comment**

Rikki Seguin, Preservation Advocate, Environment Oregon. Comment: Environment Oregon is a statewide, citizen-based environmental advocacy organization representing over 35,000 Oregonians across the state. Environment Oregon was on the original CFP advisory committee. We are tracking progress and our members wish to see the program fully implemented as quickly as possible.

#### **Agenda Item F: Fiscal and Economic Impact Statement** – Mark Reeve, David Collier & Cory Wind

Here are the critical questions that must be addressed in the discussions:

1. Does the proposed rule have a significant fiscal impact on small business?
2. If so, do committee members have recommendations as to what extent? What are recommendations to lessen burden while maintaining integrity of rule?

We are looking at both costs and benefits to a variety of audiences including large and small businesses and the public. We are looking at both direct and indirect costs.

### *Potential impact on fuel prices.*

#### Comments/Questions:

- Unless you get an AG opinion regarding a different 10 year period, this fiscal and economic impact statement needs to be completed for a 10% reduction by 2020.
- This doesn't address the impact to DEQ for additional resources to administer the program.
- Do we have a count on producers, importers and blenders? Approximately 100 importers. Two producers. We don't have number of potential providers of clean fuels.
- Where are the funds going to pay DEQ staff going to come from?
- This is a one sided position paper. DEQ needs to treat all the studies as legitimate and to incorporate on an equal basis to show possible range of impacts that could happen. By discounting the BCG study, this is unbalanced.

- Need to show the range of assumptions of each study.
- Economic benefits must be included, not just costs.
- This is taking money out of one pocket and putting it in another. Selecting a portion of the economy that is going to pay for another portion of the economy and it's a net zero gain.
- The potential indirect impact is huge.
- Need to show a full range of credit prices rather than picking one month.

*Description of regulated parties and providers of clean fuel.*

Comments/Questions:

- Need to put more information about the requirements for credit generation and transactions in the rule.
- If it's not in the rule you won't be able to enforce it.
- If there is a question about the validity of a credit, DEQ will look to the generator of the credit.
- The administrative costs will be small compared to the benefits.

*Credit Costs and Transaction Costs.*

Comments/Questions:

- In CA, the reporting tool validates the generation of a credit.
- BC audits and inspects credit generators for up to 7 years. They do not require proof of validity up front.
- Most of these expenses fall on fuel producers for independent auditing.
- DEQ will not be setting the price of credits.
- In CA, only the generator of credit and a regulated party can transact credits.
- Would like a more open market, but balanced against the need to prevent fraud.
- DEQ asked for suggestions and examples of language that will allow aggregation of credits or for third parties to enter market.
- There is a potential risk of a market manipulation if a third party holds more than a certain percentage of credits. Regulators could specify allowable percentages. California has similar rules for the cap and trade program.
- There is risk in entering into contracts because DEQ could put the program on hold based on a deferral mechanism and then the value of the credits would fall.

*Estimate Direct Costs to Reduce Carbon.*

Comments/Questions:

- Methodology in this section uses only one credit price forecast and DEQ should use a range.
- Assuming that there will be sufficient credits to buy your way into compliance is a fallacy.
- Most of credits are acquired when lower carbon fuel is transferred and will be relatively stable and lower cost compared to those available on the market.

- All credits are the same. Credits will not be fuel specific or linked to a particular generator.
- There is more potential to generate credits from a facility with a lower carbon source.
- Some higher carbon sources will stop generating credits when the standard gets lower.
- Parties entering into contracts prior to the reporting tool may factor in where credits come from for business reasons.
- There was a concern that not knowing the source of credits could support foreign exports and not consider energy security policies.

#### *Administrative Costs.*

#### Comments/Questions:

- The administrative cost hours that DEQ presented are underestimated. DEQ needs to increase hours dramatically.
- It is very time intensive to keep track of fuels. Cost estimate of 20 to 30 k per year or about a half an fte.
- Does the proposed change to definitions, etc. make it easier? No, still have to go rail car by rail car, invoice by invoice.
- No difference between initial and on-going administrative costs at this point.
- Producers are not sending invoices or bills of lading with carbon intensity values included on a regular basis.
- Can reporting be aggregated for a compliance period and not required to be tracked via individual transactions? Allow individual fuel dealers to decide if they want to track carbon intensities per transaction to generate credits. Similar to CA GHG reporting requirement.
- Will DEQ have staff sufficient to verify compliance with reports?
- What is the value of reporting from Eastern Oregon fuel dealers if it is less than the margin of error in DEQ's analysis?
- DEQ asked businesses that are generating credits in California for estimates of how much resource it takes to keep records, transfer credits, etc. Waste Management will send its costs to DEQ. SeQuential spends about 5 to 10 hours a month to report to California's program.
- DEQ does not account for impact to smaller dealers - especially in border areas with Idaho - where Oregon dealers with higher costs will have a competitive disadvantage to those in Idaho.
- Margins in retail gas are very thin. Every time the government applies regulatory costs, it cuts into cost of doing business, and more so to small businesses because of their smaller size and smaller profit margins.

#### *Impacts to individual audiences.*

#### Questions/Comments:

- Should re-title this section to "indirect impacts to fuel consumers" to include benefits as well as costs.
- Can DEQ include rules to preempt local governments from adding additional

requirements beyond state rules?

- The program will have an impact on the cost of agricultural fuel even though they are exempt from the program since the fuel is essentially the same product as other non-exempt fuel.
- Off-road fuel users will be impacted.
- DEQ could include different types of the public that would be affected by fuel prices.

#### Fiscal Questions:

1. Does the proposed rule have a significant fiscal impact on small business?
  - The committee agrees that rule will have a significant impact on small business.
2. If so, do committee members have recommendations as to what extent? What are recommendations to lessen burden while maintaining integrity of rule?
  - Some small businesses support full implementation of this program. Not all the requirements will be detrimental; there is a benefit to switching to low cost alternative fuels – growing businesses.
  - Create default vs. more complex reporting option for importers of finished fuels. If using the default carbon intensities, businesses might have to buy credits, but that might be less costly than hiring a new person to keep track of the individual transactions.

#### Closing Comments:

- DEQ has done good job with process, kudos.
- Please submit comments on this meeting summary to DEQ by September 11, 2014.
- Comments for the ICF report are due September 6, 2014.
- The draft rulemaking package will be out on public notice from October 1, 2014 until early November 2014.

#### Updates:

- DEQ will post the data for the compliance scenarios on either September 5 or 8. Comments will be accepted through September 12.