

State of Oregon
Department of Environmental Quality

Memorandum

Date: Aug. 1, 2012

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item N, Informational item: Proposed Oregon Clean Fuels Program
Aug. 23-24, 2012, EQC meeting

Why this is important Approximately one-third of Oregon's greenhouse gases come from transportation sources, and providing cleaner fuels will help reduce these emissions. The Oregon Clean Fuels Program is a component of several important Oregon initiatives, including Oregon's energy, transportation and climate protection action plans. DEQ intends to propose rules for commission action this year.

Background and other information DEQ has opened a public comment period to gather input on DEQ's proposed rules for the Oregon Clean Fuels Program. The comment period opened July 20 and will close Aug. 31, 2012, with a public hearing scheduling during this commission meeting, with telephone lines open to DEQ offices in Eugene, Medford, Bend and Pendleton.

The 2009 Oregon Legislature authorized the commission to adopt a low carbon fuel standard, now known as the Oregon Clean Fuels Program. In April 2012, Governor Kitzhaber asked DEQ to begin the rulemaking process.

The goal of this proposed rulemaking is to establish the Oregon Clean Fuels Program, which is designed to gradually lower greenhouse gas emissions of transportation fuels 10 percent over a 10-year-period. Fuel importers and producers of transportation fuels are the affected stakeholders.

This rule proposal anticipates a program with a two-phase implementation plan. The first phase would require regulated parties to report on the fuels they use; the second phase would regulate the average carbon intensity of the fuels.

Phase 1, if adopted, would begin Jan. 1, 2013, and would require Oregon fuel producers and importers to register, keep records and report to DEQ the volumes and carbon intensities of the fuels they provide in Oregon. Phase 1 is intended to provide DEQ and regulated parties time to fully develop recordkeeping and reporting protocols and systems. It would also

allow DEQ to gather valuable data about Oregon's transportation fuels that will help inform DEQ and decision makers about the feasibility of moving ahead with the next phase of the program.

Phase 2, if adopted, would require regulated parties to reduce the average carbon intensity of fuels they provide in Oregon each year. If DEQ recommends moving forward with Phase 2 of the program, DEQ would initiate a new rulemaking process, including new advisory committees to gather new input on the design of the Phase 2 rules and its fiscal and economic impact. Phase 2 can only be implemented if the Oregon Legislature adopts a bill to remove the statutory 2015 sunset that currently applies to the Oregon Clean Fuels Program. In addition, Phase 2 could only be implemented if the commission adopts rules to remove the regulatory deferral of Phase 2 of the Oregon Clean Fuels Program.

Key issues In addition to seeking general comments on any aspect of this rulemaking proposal, DEQ is specifically requesting comment on two issues:

Expiration of credits

Should there be a limit on how long a banked credit can be saved?

Should the amount of banked credit used in a given year be limited?

Background - If a regulated party lowers the average carbon intensity of affected fuel by more than required in a given year, the party may bank the extra reductions as a credit for use in a future year.

Current DEQ proposal – No expiration date and no limit on its use.

Definition of large and small importer

What should be the threshold to distinguish between large and small Oregon importers?

Background - Fuel importers are regulated parties under the proposed rules. In Phase 1, small importers are exempt from recordkeeping and reporting requirements and are only subject to registration requirements.

Current DEQ proposal – Establish a threshold of 250,000 gallons per business per calendar year for large importers.

Public outreach

DEQ developed the proposed rules based on discussions and recommendations from a 29-member advisory committee that helped DEQ explore technical issues and policy choices for designing the program. The committee included representatives of many areas of expertise, including petroleum fuel, low carbon fuel, environment, labor, farm, construction, trucking and rail. DEQ used the results of the committee process to develop a proposed design for a clean fuels

program that will work for Oregon. DEQ continued to reach out to business groups, local governments, environmental organizations and elected officials to solicit input on the proposed program design before beginning the rulemaking process.

DEQ also convened a specific advisory committee to gather input on the fiscal impact of complying with the Phase 1 requirements of the proposed rules. Eleven people from the business and environmental communities were invited to participate on the committee and, with members of the public, were provided an opportunity to comment on the draft Statement of Need and Fiscal Impact.

**Next steps
and
commission
involvement**

The public comment period will close Aug. 31, 2012. DEQ will carefully consider all comments received when developing its final recommendation to the commission. DEQ will prepare a response to all comments received during the public comment period and may modify the proposed rules based on those comments. DEQ plans to recommend adoption of the rules at the commission's December 2012 meeting.

Attachments

- A. Rulemaking announcement
- B. Low Carbon Fuel Standard advisory committee membership list

**Available
upon request**

- 1. Oregon Low Carbon Fuel Standards Advisory Committee Process and Program Design Final Report (including the economic analysis)

Approved:

Division: _____

Section: _____

Report prepared by: Cory-Ann Wind
Phone: 503-229-5388

Oregon's Clean Fuels Program

Adoption of the Oregon Clean Fuels Program for Fuel Suppliers and Producers of Transportation Fuels

Background

The 2009 Oregon Legislature authorized the Environmental Quality Commission to adopt a low carbon fuel standard, with the goal to reduce greenhouse gas emissions from Oregon's transportation fuels. DEQ worked with stakeholders to develop the framework to implement the standard. In April 2012, Governor Kitzhaber asked DEQ to begin the rulemaking process to adopt the Oregon Clean Fuels Program.

Why are the rules needed?

The Oregon Clean Fuels Program is a component for several important Oregon initiatives including Oregon's energy, transportation and climate protection action plans. Approximately one-third of Oregon's greenhouse gases come from transportation sources, and providing cleaner fuels will help reduce these emissions. [Oregon's 10-Year Energy Action Plan](#), [transportation planning strategy](#) and the [Global Warming Commission's Roadmap to 2020](#) all cite lower carbon transportation fuels as being a critical piece of Oregon's future.

What is the goal of this rulemaking?

The goal of this proposed rulemaking is to reduce the greenhouse gases emitted by transportation fuels through the adoption of the Oregon Clean Fuels Program rules for fuel suppliers and producers of transportation fuels. The proposal is for a complete program that would be implemented in two phases: an initial reporting phase and a later greenhouse gas reduction phase. The second phase would be deferred pending additional legislative and Oregon Environmental Quality Commission action.

Phase 1 is proposed to begin Jan. 1, 2013, and would require Oregon fuel producers and importers to register, keep records and report to DEQ the volumes and carbon intensities of the fuels they provide in Oregon. Phase 1 is intended to provide DEQ and regulated parties time to fully develop record-keeping and reporting protocols and systems. It would also allow DEQ to gather valuable data about Oregon's transportation fuels that will help inform DEQ and decision makers about the feasibility of moving ahead with the next phase of the program.

Phase 2, if adopted, would require regulated parties to reduce the average carbon intensity of fuels they provide in Oregon each year.

If DEQ recommends moving forward with Phase 2 of the program, DEQ would initiate a new rulemaking process, including new advisory committees to gather new input on the design of the Phase 2 rules and its fiscal and economic impact. Phase 2 can only be implemented if the Oregon Legislature adopts a bill to remove the statutory 2015 sunset that currently applies to the Oregon Clean Fuels Program. In addition, Phase 2 could only be implemented if the Oregon Environmental Quality Commission adopts rules to remove the regulatory deferral of Phase 2 of the Oregon Clean Fuels Program.

Who may be affected?

Regulated parties affected by these proposed rules are importers and Oregon producers of transportation fuels. In some cases, they may be large companies, such as fuel terminal operators, or smaller companies, such as fuel distributors, bulk plants and dispensing facilities.

What is the economic impact of this rulemaking?

In the Statement of Need and Fiscal and Economic Impact, DEQ estimated the average cost of compliance per regulated party, including initial and ongoing administrative activities described in the statement. Fuel users might be indirectly impacted if the regulated parties pass along their Phase 1 compliance costs, but the impact would be about 1/10th of a penny per gallon.

DEQ also commissioned an economic analysis of Phase 2 that assessed the costs and benefits of the entire program on Oregon's economy. The analysis found that this program would provide a net benefit to the economy in the form of increased job creation, gross state product and personal income and decreased fuel expenditures. If DEQ proposes to commence Phase 2 in a future rulemaking, DEQ will prepare a new Statement of Need and Fiscal and Economic Impact for Phase 2 to assess the costs to individual regulated parties.



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Oregon Clean Fuels Program

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<http://www.deq.state.or.us/aq/cleanFuel/index.htm>



How was this proposal developed?

DEQ developed the proposed rules based on discussions and recommendations from a [29-member advisory committee](#) that helped DEQ explore technical issues and policy choices for designing the Oregon Clean Fuels Program. The committee included representatives of many areas of expertise, including petroleum fuel, low carbon fuel, environment, labor, farm, construction, trucking and rail.

DEQ also convened an advisory committee to gather input on the fiscal impact of complying with the Phase 1 requirements of the proposed rules. Eleven people from the business and environmental communities were invited to participate on the committee and, with members of the public, were provided an opportunity to comment on the draft Statement of Need and Fiscal Impact.

Copies of the documents relied upon in the development of this rulemaking proposal can be viewed on DEQ's [Low Carbon Fuel Advisory Committee webpage](#) or at DEQ's office at 811 S.W. 6th Ave., Portland, OR.

Additional materials available

- Proposed rules
- Statement of Need and Fiscal Impact
- Land Use Evaluation statement
- Relationship to Federal Requirements
- Oregon Low Carbon Fuel Standards Advisory Committee Process and Program Design Final Report (including the economic analysis)

The above documents provide additional information related to this proposed rulemaking and can be viewed online. Visit DEQ's [Laws and Regulations webpage](#).

Requesting comments on specific issues

In addition to comments on any aspect of this rulemaking proposal, DEQ is specifically requesting comment on the following two issues:

Expiration of credits - If a regulated party lowers the average carbon intensity of affected fuel by more than required in a given year, the party may bank the extra reductions as a credit for use in a future year. The current proposal is to have no expiration date on these banked credits. DEQ is specifically requesting comment on whether there should be limit on how long a banked credit can be saved or

whether the amount of banked credit used in a given year should be limited.

Definition of Large and Small Importer – Fuel importers are regulated parties under the proposed rules. In Phase 1, small importers are exempt from recordkeeping and reporting requirements and are only subject to registration requirements. DEQ is specifically requesting comment on the proposed threshold of 250,000 gallons per year per business to distinguish between large and small Oregon importers.

How to comment

Comments on the proposed rulemaking may be submitted in writing via mail, fax or email any time prior to the comment deadline of 5 p.m., Aug. 31, 2012. Written and oral comments can be submitted during the public hearing specified below. It is not necessary to attend a hearing in order to comment. Written comments received prior to the deadline are treated equally with oral comments.

Written comments may be mailed to Cory-Ann Wind, Oregon DEQ, Air Quality Division, Oregon Clean Fuels Program, 811 SW 6th Avenue, Portland, OR 97204. Comments may be faxed to 503-229-5675 or emailed to: CleanFuelsAug2012@deq.state.or.us.

Email comments will be acknowledged immediately. Comments and attachments are limited to 10 MB. If you do not receive an automatic response, or your comments and attachments will exceed this limit, please contact Cory-Ann Wind at 503-229-5388 or wind.cory@deq.state.or.us.

If there is a delay between servers, emails may not be received before the deadline.

Public hearings

A public hearing will be hosted by the Oregon Environmental Quality Commission on Aug. 24, 2012 at 8:30 am. The hearing will be held at 811 SW 6th Avenue in Portland. For that hearing, members of the public may visit a [DEQ regional office](#) in Eugene, Medford, Bend, or Pendleton for the opportunity to observe and provide oral testimony via teleconference. The hearing will begin with a brief overview of the proposed rules, followed by the opportunity for members of the public to provide testimony. All comments will be recorded and reviewed by DEQ.

Comment deadline is Aug. 31, 2012

All comments are due to DEQ by 5 p.m., Aug. 31, 2012. DEQ cannot consider comments from any party received after the deadline for public comment.

How will rules be adopted?

DEQ will prepare a response to all comments received during the public hearing and comment period and may modify the proposed rules. DEQ plans to recommend that the Oregon Environmental Quality Commission adopt the rules at its December 2012 meeting. DEQ will notify persons of the time and place for final EQC action if they submit comments during the hearing or comment period or request to be placed on DEQ's email list for this rulemaking.

Accessibility information

DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at 503-229-5696 or call toll-free in Oregon at 800-452-4011; fax to 503-229-6762; or email deqinfo@deq.state.or.us.

People with hearing impairments may call 711.

Low Carbon Fuel Advisory Committee



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Low Carbon Fuel Advisory
Committee Website:
<http://www.deq.state.or.us/aq/committees/advcomLowCarbonFuel.htm>

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restoring, maintaining and
enhancing the quality of
Oregon's air, land and
water.*

Low Carbon Fuel Advisory Committee	
Name	Affiliation
Mark Reeve, Chair	Reeve Kearns, PC
Emily Ackland	Association of Oregon Counties
Eric Chung	PacifiCorp
Marie Dodds	AAA
Abe Fouhy	American Hydrogen Association Northwest
Robert Grott	Northwest Environmental Business Council
Sam Hartsfield	Port of Portland
Marion Haynes	Oregon Business Association
Ian Hill	SeQuential Biofuels
Frank Holmes	Western States Petroleum Association
Brock Howell	Environment Oregon
Randy James	Portland and Western Railroad
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Christine Kelly	Oregon State University, School of Chemical, Biological and Environmental Engineering
Mark Kendall	Oregon Environmental Council
Dan Kirschner	Northwest Gas Association
Tom Koehler	Pacific Ethanol
Geoff McPherson	Citizen
Matt Michel	Canby Utility
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Marcy Putman	Labor Union – IBEW
John Rakowitz	Associated General Contractors
Danelle Romain	Oregon Petroleum Association
Bob Russell	Oregon Trucking Association
Jennifer Shmikler	Farm Bureau

Last Updated: 8/24/2010
By: Sue Langston