

Date: April 22, 2025
To: Environmental Quality Commission
From: Leah Feldon, Director
Subject: Agenda Item A, Action Item: Clean Fuels Program Temporary Variance
April 25, 2025, Special EQC Meeting

Purpose DEQ is requesting the commission approve the attached proposed order authorizing the Director to extend certain deadlines in the Clean Fuels Program due to the cyberattack causing an extended outage of the Oregon Fuels Reporting System. Regulated parties rely on that system to determine their compliance obligations and trade credits, and the outage of the system has prevented them from being able to correct their reporting prior to the annual compliance deadline and trade credits they may need to come into compliance with the 2024 standard.

Recommendation DEQ recommends that the commission approve the attached proposed order (see page 2 of this staff report labeled Attachment A).

Background The background for this item is stated in the findings for the attached proposed order and Director Feldon and DEQ staff will be on hand to answer questions during the emergency meeting.

Attachments A. Proposed Order

*Report prepared by Bill Peters
Office of Greenhouse Gas Programs, Clean Fuels Program Lead*

Translation or other formats

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Attachment A: Proposed Order

Order Approving a Temporary Variance to the Compliance and Credit Clearance Market Deadlines for the Clean Fuels Program

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

In the matter of authorizing the Department of)
Environmental Quality to grant a temporary) FINDINGS and
Variance to the Compliance and Credit) ORDER
Clearance Market Deadlines for the Clean Fuels)
Program)

Findings

During the week of April 7, 2025, DEQ suffered a cyberattack requiring shutdown of the agency’s IT systems, including the Oregon Fuels Reporting System (OFRS). That system is used for reporting fuel quantities into the Clean Fuels Program (CFP), generating credits and deficits, and allowing credits to be traded between registered parties in the program.

Compliance with the Clean Fuels Program is due with the program’s Annual Report, which is due on April 30 each year per OAR 340-253-0650. In the weeks leading up to the Annual Reporting deadline, registered parties trade credits, check the accuracy of their data, and correct their quarterly reports when necessary. The weeks leading up to the Annual Report deadline are one of the program’s busiest periods for registered parties and DEQ staff. The corrections process is time consuming for both registered parties and DEQ staff as the reporting is complex and detailed, and DEQ staff must carefully review the requests to correct quarterly report data and the corrected data for completeness, accuracy, and to ensure that the corrections are made in accordance with the program’s regulations. Some parties may need to correct hundreds or thousands of transactions, or have corrections that require discussion with DEQ staff or their business partners. In some cases, corrections made by one registered party may require several other registered parties to also correct their reporting – for example, if a fuel was brought in under an incorrect carbon intensity score and then sold to other parties, all of the parties must re-file their quarterly reports with the correct carbon intensity score.

OFRS was down from Wednesday, April 9, through Thursday, April 24, and actions taken in the system on April 7 and 8 were lost due to the need to restore to a safe backup of the system that was taken on April 6. That will require registered parties that took actions on those dates to redo those actions once the system is functional again, and has delayed register parties’ ability to transfer credits or correct their reporting as required by OAR 340-253 ahead of the Annual Report deadline. That creates conditions which exist beyond the control of parties that are subject to, and must demonstrate compliance with, the Clean Fuels Standards for 2024.

The Credit Clearance Market, which acts as a last-chance credit market for regulated parties that do not have enough credits in their accounts to cover the deficits they owe at the Annual Report deadline, requires that all parties have submitted Annual Reports at the same time. That allows DEQ to determine if a Credit Clearance Market must be run in a given year and prevents DEQ from giving individual registered parties extensions to the Annual Report deadline. ORS 468.276 requires that DEQ run a Credit Clearance Market each compliance year and the agency must run such a market and give a regulated party the chance to buy credits in it. If a regulated party does not participate in the Credit Clearance Market, only then may DEQ pursue enforcement against them for violating the program’s annual standards. The

combination of the system outage and the operation of the program's regulations and statute present a special circumstance that renders strict compliance with the CFP's reporting deadlines unreasonable and impractical due to the cyberattack on DEQ's computer systems.

Order

Based on these findings, the commission, by this order, delegates authority to the Director of the Department of Environmental Quality to grant a variance under ORS 468A.075, if the Director determines that such a variance is necessary, appropriate, and remains consistent with the commission's findings above, subject to the following requirements, limitations, and conditions:

- (1) Class of persons eligible for the variance: Any registered party in the Clean Fuels Program who is required to submit a 2024 Annual Compliance Report per OAR 340-253.
- (2) Variance substance: DEQ may toll the program's deadlines under OAR 340-253-0650 and OAR 340-253-1040 such that the Annual Report is due on May 30. The period for transferring carry-back credits is extended to May 30. DEQ will determine if a Credit Clearance Market must be held by June 16 and inform regulated parties of their pro-rata purchase requirements by June 30. The credit transfer period will begin on July 1 and end by July 31. Regulated parties required to participate in the Credit Clearance Market would then be required to file their updated Annual Report by August 31.

The commission further delegates its authority under ORS 468A.075 to the Director either (i) to modify the date parameters provided in section (2) of this order, if the Director determines that OFRS remains non-functional for a longer period than anticipated and (ii) to make other technical modifications to any such variance deemed necessary and appropriate by the Director.

Dated _____

ON BEHALF OF THE COMMISSION
