

Agenda Item C

Regulated Parties for Gasoline, Diesel, and Biofuels

October 14, 2010



Background

This discussion and proposal is the culmination of several committee discussions on the topic of defining regulated parties for gasoline, diesel, and biofuels; and which entities within the fuel distribution chain will have a compliance obligation under the LCFS. Over the course of several meetings the advisory committee has given DEQ input on regulated parties for LNG, CNG, biogas, hydrogen, and electricity. The committee also requested DEQ hold a separate sub-group meeting specifically to discuss issues for regulated parties for gasoline, diesel, and biofuels, and then bring a proposal to the advisory committee for discussion. DEQ has completed this sub-group meeting, and this discussion paper outlines the resulting options for gasoline, diesel, and biofuels regulated parties. References to discussion papers and meeting notes from past committee meetings on regulated/opt-in parties can be found on our website (also see **Table 1 on page 5**). For a complete summary of all proposed Regulated and Opt-In parties please refer to **Table 2 on page 6**.

DEQ convened a subgroup June 14, 2010 to have a more focused conversation on the topic of regulated parties for gasoline, diesel, and biofuels. DEQ received input from petroleum industry, biofuel industry, environmental and other representatives. At the meeting, participants discussed various ideas and worked through pros, cons, and considerations related to different regulated party options. There were a diversity of opinions expressed at the meeting. Stakeholders for the petroleum industry believed that the approach of defining the fuel producer or importer as the regulated party would be workable.

Participants also discussed how the compliance obligation for fuel could transfer with the sale of that fuel. One related issue participants identified is that small gas stations that import any amount of fuel from out-of-state would become an “importer” and as such, would have a compliance obligation for that fuel, and also (as an importer) could then not refuse the compliance obligation for any other fuel bought in-state. Small gas stations might not have the resources to manage participation in the low carbon fuel standard for the fuel they buy, and participants discussed the option of exempting small gas stations. But some participants felt strongly that small gas stations should not be exempt from the low carbon fuel standard because of fairness issues.

DEQ’s proposed approach for defining regulated parties for gasoline, diesel, and biofuels is discussed below, followed by a discussion of how the compliance obligation could transfer with the sale of the fuel. This section contains a description of unique issues and options for addressing gas stations or small fuel users that could be viewed as fuel “importers” under a LCFS. DEQ is

proposing two different options for how the compliance obligation could transfer with the sale of fuel for your consideration.

Who should the regulated party be for gasoline, diesel, and biofuels?

DEQ is seeking the most efficient, cost-effective point of regulation for a LCFS. Considerations for choosing a regulated party include:

- **The regulated party should capture the use of the fuel for transportation.** Some fuels are used mainly for transportation, while others are not. For example, the bulk of gasoline is used as a transportation fuel, so it make sense to set the point of regulation as close to the source of the fuel as possible.
- **DEQ is seeking the most efficient point of regulation.** Ideally, the point of regulation would involve as few entities as possible who use, distribute, or sell large amounts of the fuel for transportation purposes.
- **Flexible implementation to minimize compliance cost.** Although DEQ generally is seeking fewer regulated or opt-in entities, another consideration is that this regulation should incorporate some flexibility to minimize compliance cost as directed by HB 2186. This could mean having the option to include more regulated parties within a fuel's distribution chain. This could increase the number of regulated parties, but also add more flexibility in deciding who has the compliance obligation for a particular fuel.

Under DEQ's current proposal, regulated parties for gasoline, diesel, and biofuels would be **the producer or Oregon importer of the fuel or blendstock**. The point of regulation would be the point at which gasoline, diesel, or biofuel is first manufactured or imported into Oregon. In other words, the entity that owns the fuel when it crosses into Oregon for sale is the initial regulated party and would have the compliance obligation for that fuel. The concept of fuel ownership will be especially important when talking about whether or not a gas station could be considered an importer of fuel under an LCFS.

In general, this proposal would put compliance obligations initially on upstream entities (that is, producers and importers that are legally responsible for the gasoline, diesel, or biofuels transportation fuels sold in Oregon), rather than on downstream distributors and fueling stations.

How and when should the compliance obligation transfer when a fuel is sold?

DEQ proposes that under some circumstances, the compliance obligation for a volume of fuel sold transfers with the sale of fuel, and that in other circumstances, it does not. Options 1 and 2 outline two

different methods for how the compliance obligation could or could not transfer with the sale of fuel. Option 2 addresses issues related to businesses that import small volumes of fuel from out of state.

Issues related to gas stations that import fuels from other states

The question of who is a regulated party largely turns on who owns the fuel or blendstock when it crosses into Oregon. If a gas station orders fuel directly from an out-of-state distributor and owns the fuel when it is shipped into Oregon, the gas station would be considered a fuel importer and a regulated party under the LCFS, and would have the compliance obligation for meeting the LCFS. Another consequence of being defined as an “importer” is that the compliance obligation for all fuel they buy could transfer to them, even for fuel bought in Oregon. The credits for low carbon fuels could also transfer to them. However, if the gas station does not take ownership of the fuel until it is delivered, then the upstream distributor will be the regulated party for that fuel because they owned it as it was imported into Oregon.

Ideally, the point of regulation for Oregon’s LCFS would involve as few entities as possible that use, distribute, or sell large amounts of fuel for transportation purposes. Therefore DEQ would like to avoid including individual gas stations as regulated parties if possible. DEQ’s discussion with the subgroup raised two options to be considered by the committee.

Based on our discussions with the subgroup, it seems the best way for individual gas stations to remain outside the LCFS program would be to take legal possession of fuel only when it is delivered to the gas station. They would therefore not be considered an importer of fuel. A gas station purchasing fuel from an out-of-state provider could avoid becoming the regulated party by taking ownership of the fuel only when it is delivered to their facility in Oregon. In this case, the out-of-state provider would be the importer because they own the fuel when it enters Oregon.

If a gas station chooses to own the fuel as it is imported into the state, then they will be considered a fuel importer. However, DEQ could explore options to allow an out-of-state distributor to voluntarily take on the gas stations compliance obligation for the fuel delivered. That said, the gas station/importer could still potentially become responsible for the compliance obligation of other fuels they purchase from in-state providers. This could happen if the initial in-state importer wants to pass down their compliance obligation to the gas station.

Option 1

The regulated party would be the producer or Oregon importer of the fuel or blend stock. In order to maximize flexibility, the compliance obligation for gasoline, diesel, or biofuels could transfer in the following ways:

A. When the fuel or blend stock is sold, and the **recipient is a producer or importer**, the seller can choose from the following two options:

1. Seller can transfer the compliance obligation to the recipient; or
2. Seller can choose to retain the compliance obligation.

B. When the fuel or blendstock is sold, and the **recipient is NOT a producer or importer**, the seller must retain the compliance obligation, unless both the seller and the recipient agree that the recipient will take the compliance obligation. For example, if a fuel importer sells to a distributor (that only buys fuel from within Oregon)¹, the distributor can either refuse or accept the compliance obligation for that fuel purchase.

- Regulated parties would need to keep track of, and subtract from their compliance obligation, any fuel sold out of state.
- Small importers of fuel or gas stations could become a regulated party under the LCFS, if they own the fuel or blendstock when it crosses into Oregon, and could not refuse the compliance obligation for any fuel purchased, including fuel purchased from within Oregon.
- Based on our discussions with the subgroup, it seems the best way for individual gas stations to remain outside the LCFS program would be to take legal possession of fuel only when it is delivered to the gas station. They would therefore not be considered an importer of fuel.

Option 2

The goal of Option 2 is to address the issue of gas stations or importers of small fuel volumes and involves using a minimum volume threshold to excuse smaller gas stations or small fuel importers that would not have the resources to deal with the requirements of a LCFS. Thresholds are proposed below for “Oregon Small Importer” and “Oregon Large Importer”. The Oregon Small Importer (e.g. gas station) could refuse the compliance obligation for any fuels they purchase from an in-state supplier. However, that station would still have the compliance obligation for any fuel they import from out-of-state, if they own the fuel when it crosses into Oregon. DEQ is considering the following thresholds for discussion purposes:

Oregon Small Importer: An importer who imports less than or equal to 50,000 gallons of gasoline and diesel to Oregon.

Oregon Large Importer: An importer who imports more than 50,000 gallons of gasoline and diesel to Oregon.

In order to maximize flexibility, the compliance obligation could transfer in the following ways:

A. When the fuel or blend stock is sold, and the **recipient is a producer or Oregon Large Importer (but not an Oregon Small Importer)**, the seller can choose from the following two options:

1. Seller can transfer the compliance obligation to the recipient; or
2. Seller can choose to retain the compliance obligation.

¹ A distributor that directly buys fuel from outside Oregon would be a fuel importer.

B. When the fuel or blendstock is sold, and the recipient is an **Oregon Small Importer, or a person who does not import any fuel**, the seller must retain the compliance obligation, unless both parties agree that the obligation should transfer.

- Use of the small importer threshold described above is one approach to avoid having the compliance obligation of a larger importer transfer to a small fuel purchaser, such as a small gas station. It would relieve that smaller importer/gas station from the compliance obligation for all the fuel they purchase from in-state providers. However, a small importer would still have compliance obligations for any fuel they purchase directly from out-of-state providers (if the small importer/gas station owned the fuel when it crosses the border).
- Reporting: Regulated parties (large or small) would need to keep track of, and subtract from their compliance obligation, any fuel sold out of state.
- Under Option 2, DEQ proposes that a “Small Importer” be defined as a fuel importer who imports less than or equal to 50,000 gallons per year. This is based on gas station throughput, and seems to capture throughput by a smaller fuel user or smaller gas station. DEQ is seeking advisory committee input on this number.

Table 1: Past discussion on regulated and opt-in parties

Date of Advisory Committee Meeting	Title	Weblink
January 27	Presentation: Regulated and Opt-In Parties	http://www.deq.state.or.us/aq/committees/docs/janLCF/fRegulated.pdf
	Meeting notes: Jan. 27 meeting notes (pages 10-12)	http://www.deq.state.or.us/aq/committees/docs/janLCF/janMeetingNotes.pdf
February 24	Discussion paper: Regulated/Opt-In Parties	http://www.deq.state.or.us/aq/committees/docs/feb09/itemF.pdf
	Meeting notes: Feb. 24 meeting notes (pages 24-32)	http://www.deq.state.or.us/aq/committees/docs/feb24/Feb24notes.pdf
May 20	Discussion paper: Electricity Issues (pages 14-15)	http://www.deq.state.or.us/aq/committees/docs/may10/itemD.pdf
	Meeting notes: May 20 meeting notes (pages 4-8)	http://www.deq.state.or.us/aq/committees/docs/lcfs/juneItemA.pdf

Table 2 – Summary of proposed regulated and opt in parties

Fuel	Regulated or Opt-In?	Regulated Party	Point of regulation	How is regulated party status transferred
Gasoline, Diesel, and Biofuels	Regulated	Producer or Oregon importer of fuel	Point at which fuel is manufactured or imported into Oregon	<i>Options to be discussed at October 14, 2010 low carbon fuel advisory committee meeting</i>
Compressed Natural Gas (fossil sources)	Opt-in	Utility company, energy service provider, or other entity that owns the fuel dispensing equipment in Oregon	Point at which the fuel is dispensed for transportation use	Transfer only occurs if both transferor and recipient agree.
Liquefied Natural Gas (fossil sources)	Opt-in: any LNG liquefied from natural gas pipeline Regulated: any LNG that is not gasified and injected into natural gas pipeline	Utility company, energy service provider, or other entity that owns the fuel dispensing equipment in Oregon	Point at which the fuel is dispensed for transportation use	Transfer only occurs if both transferor and recipient agree.
Biogas CNG, Biogas LNG	Opt-in	Utility company, energy service provider, or other entity that owns the fuel dispensing equipment in Oregon	Point at which the fuel is dispensed for transportation use	Transfer only occurs if both transferor and recipient agree.
Hydrogen	Opt-in	Person who owns the fuel at the time the finished fuel is made or imported into Oregon	Point at which finished fuel is first manufactured or imported into Oregon	Transfer only occurs if both transferor and recipient agree.
Electricity	Opt-in	Utility or electricity service supplier. If a utility agreed, bundled service providers or owners of electric charging equipment (including homeowners)	Point at which electricity is dispensed for transportation use.	A utility or service supplier must agree for a bundled service provider or owner of electric charging equipment to opt-in. If a utility does not opt-in, the charging equipment owner can opt-in for that year.