

Dispute with Oregon regulators over climate program could spike prices at the pump, fuel supplier says

Mar 17, 2023, 2:57pm PDT

Mark Turnaukas, Portland Business Journal | co-licensed <https://lic.kr/p/9Bbh8x>

A dispute between a Texas-based petroleum products company and Oregon environmental regulators could disrupt fuel supplies and lead to higher prices at the pump, the company says.

HF Sinclair Corp. (NYSE: DINO) is in a fight with the Department of Environmental Quality for "compliance instruments" that transportation fuel suppliers are given each year as part of the state's young Climate Protection Program. They cover the emissions associated with fuels the suppliers bring into Oregon, which relies on imports for all its conventional fuels.

The company says it's being unfairly left out and that if the situation isn't fixed, it could pull out of the Oregon market, taking 17-20% of the state's fuel supply with it.

As the situation stands now, a Multnomah County Circuit Court judge has granted HF Sinclair a temporary restraining order that prohibits DEQ from issuing any compliance instruments pending a hearing next Thursday on a preliminary injunction. The agency is supposed to distribute compliance instruments for 2023 by the end of the month.

In a complaint, HF Sinclair has also asked the court to order DEQ officials to "acknowledge and exercise their discretion" under the Climate Protection Program and include it in the distribution.

It's unclear what a delay in distributions, should it occur, would mean to the program. In an email, a DEQ spokesperson said that "since this is a legal matter we are not able to comment much, other than the court has scheduled a hearing on HF Sinclair's motion for next Thursday and DEQ looks forward to the opportunity to present its arguments in opposition to HF Sinclair's motion to the court."

As part of the Climate Protection Program, DEQ hands out the compliance instruments for free annually proportional to suppliers' historical greenhouse gas emissions. The CPP, which kicked off at the beginning of 2022, aims to force overall emissions reductions by drawing down the total number of compliance instruments handed out each year.

HF Sinclair charges that DEQ won't give it the compliance instruments it deserves for the Puget Sound Refinery it owns in Anacortes, WA. The refinery historically and today supplies up to 20% of Oregon's transportation fuels, according to HF Sinclair.

Bought the refinery in late 2021

But HF Sinclair only acquired the refinery from Shell in late November 2021, and didn't begin selling transportation fuels directly into the Oregon market until May 2022. DEQ bases its distributions on data two years or more before the distribution year. That means DEQ is looking at 2019-2021 for its planned upcoming distribution. So as it did last year in Year 1 of the CPP, the agency is apparently set to give compliance instruments to Shell, not HF Sinclair. The company says it should get 2.5 million of them.

But shouldn't HF Sinclair have anticipated this issue when it acquired the refinery with Shell, perhaps including a provision that it — HF Sinclair — gets the Oregon CPP compliance instruments? "That contract was done before the draft Climate Protection Program had been issued," Jeremy Price, an HF Sinclair government affairs manager, said. "If the transaction were to occur today, we would be fully aware of the need to receive compliance instruments."

Has the company asked Shell for the compliance instruments, perhaps nicely? DEQ rules allow compliance instruments to be "traded," but there's no established market so how much they might be worth is up for grabs. "Communication is ongoing with Shell," Price said. "As of yet we have not been able to get to a fair and equitable agreement."

HF Sinclair might be able to get 300,000 compliance instruments from a reserve DEQ has established, but even with those, the company said in a court filing, it could face a \$12,000 penalty for each missing compliance instrument, adding up to "potentially billions of dollars in penalties."

Company needs to plan

HF Sinclair and other fuel suppliers won't face a reckoning on their program compliance until a three-year window closes in 2025. But the company says it can't go forward now amid uncertainty about how many compliance instruments it might end up receiving.

"We have to plan ahead and have some certainty, but there isn't any urgency on DEQ's part," Price said. "In our most recent conversation with DEQ they said an upcoming rulemaking will address new market entrants. Our response is that's going to take time, at least until November, and we can't wait that long."

The company's complaint offers a couple of ways DEQ could provide it 2.5 million compliance instruments for 2023, within the rules themselves or in line with the spirit of the rules, it says.

And if the dispute isn't resolved? "If we can't find a resolution that's fair and equitable we will indeed have to look at other markets outside Oregon," Price said.

The company uses a pipeline to bring its fuels into Oregon and would not give up the space that it controls. So HF Sinclair fuels could come into Oregon, only to be shipped elsewhere. It's unclear who might replace any shortfall, but HF Sinclair says the fuel would likely come to Oregon by barge, truck or rail. "These cumulative effects could collectively increase greenhouse gas emission in Oregon," the company said in a court filing. "And they could increase fuel costs in Oregon," it added, citing a Colorado refinery shutdown that pushed prices up \$1.50 per gallon in that state.