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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, **AMERICAN TRUCKING ASSOCIATIONS, INC.**, a trade association, and **CONSUMER ENERGY ALLIANCE**, a trade association,

Plaintiffs,

v.

JANE O'KEEFFE, **ED ARMSTRONG**, **MORGAN RIDER**, **COLLEEN JOHNSON**, and **MELINDA EDEN**, in their official capacities as members of the Oregon Environmental Quality Commission; **DICK PEDERSEN**, **JONI HAMMOND**, **WENDY WILES**, **DAVID COLLIER**, **JEFFREY STOCUM**, **CORY-ANN WIND**,

CV No. 3:15-cv-00467

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

42 USC § 1983; 28 USC §§ 2201-02

LYDIA EMER, **LEAH FELDON**, **GREG ALDRICH**, and **SUE LANGSTON**, in their official capacities as officers and employees of the Oregon Department of Environmental Quality, **ELLEN F. ROSENBLUM**, in her official capacity as Attorney General of the State of Oregon; and **KATE BROWN**, in her official capacity as Governor of the State of Oregon,

Defendants.

Plaintiffs American Fuel & Petrochemical Manufacturers ("AFPM"), American Trucking Associations, Inc. ("ATA"), and Consumer Energy Alliance ("CEA"), (collectively referred to as "Plaintiffs") allege as follows:

INTRODUCTION AND SUMMARY

1. This is an action for declaratory, injunctive and other relief brought by Plaintiffs against (i) Jane O'Keeffe, Ed Armstrong, Morgan Rider, Colleen Johnson, and Melinda Eden in their official capacities as members of the State of Oregon's Environmental Quality Commission (EQC); (ii) Dick Pedersen, Joni Hammond, Wendy Wiles, David Collier, Jeffrey Stocum, Cory-Ann Wind, Lydia Emer, Leah Feldon, Greg Aldrich, and Sue Langston in their official capacities as officers and employees of the Oregon Department of Environmental Quality (DEQ); (iii) Ellen F. Rosenblum in her official capacity as attorney general of Oregon; and (iv) Kate Brown in her official capacity as governor of Oregon.

2. Plaintiffs seek injunctive and declaratory relief enjoining implementation and enforcement of Oregon's Clean Fuels Program, OAR §§ 340-253-0000, *et seq*., (Oregon Program) and declaring that the Oregon Program violates the United States Constitution and is preempted by the federal Clean Air Act and other federal statutes.

3. First, the Oregon Program violates the Commerce Clause of the United States Constitution because it discriminates against transportation fuels imported into Oregon with the intended purpose and effect of promoting the development of in-state fuel production,

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promoting economic development in Oregon, keeping more money in Oregon over other states, and discouraging the use of fuels from outside of Oregon.

4. Second, the Oregon Program violates both the Commerce Clause and the principles of interstate federalism embodied in the federal structure of the United States Constitution by attempting to regulate and control economic conduct occurring outside the borders of Oregon, including the extraction, production and distribution of transportation fuels outside of Oregon in interstate and foreign commerce.

5. Third, the Oregon Program is preempted by Section 211(c) of the Clean Air Act and therefore is unconstitutional under the Supremacy Clause of the United States Constitution, because it is a control or prohibition, adopted by the State of Oregon for the purpose of controlling vehicle emissions, of characteristics or components of fuel and fuel additives where the EPA Administrator has concluded that no control or prohibition is necessary under Section 211(c).

6. Finally, the Oregon Program is preempted by the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 and the federal Renewable Fuels Standard, 42 USC § 7545(o), and therefore is unconstitutional under the Supremacy Clause of the United States Constitution, because it frustrates the goals and purposes of federal law.

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I. THE PARTIES

A. Plaintiffs

7. Plaintiff AFPM is a national trade association of more than 400 companies. AFPM's members include virtually all United States refiners and petrochemical manufacturers. AFPM's members supply consumers nationwide with a wide variety of products and services used daily in their homes and businesses. These products include gasoline, diesel fuel, and the chemicals that serve as "building blocks" in making diverse products, such as plastics, clothing, medicine, and computers. The regulation of the interstate and international market for transportation fuel is of vital concern to AFPM and its membership.

8. A number of AFPM's members produce and sell gasoline, diesel and ethanol used as transportation fuels in Oregon, and several of AFPM's members import such gasoline, diesel and ethanol themselves into Oregon. According to Oregon's Department of Environmental Quality, the Oregon Program imposes economic and administrative burdens on regulated parties, including importers, that must satisfy the annual carbon intensity standards set forth in the Oregon Program, as well as the Oregon Program's administrative burdens. In addition, other AFPM members sell gasoline, diesel and ethanol to companies that then import the products into Oregon. The Oregon Program adversely affects these members' sales by increasing the regulatory cost of using these products in Oregon. The Oregon Program thus illegally imposes burdens on AFPM's members importing transportation fuels into Oregon or selling them to Oregon importers subject to the Oregon Program.

9. AFPM's members sell transportation fuels throughout Oregon, including in the area falling under the Portland Division of this Court.

10. AFPM brings this lawsuit on behalf of its members, one or more of which are parties regulated under the Oregon Program and which would possess standing to challenge the Oregon Program on their own behalf.

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11. Plaintiff ATA is the national association of the trucking industry, comprising motor carriers, state trucking associations, and national trucking conferences, and was created to promote and protect the interests of the national trucking industry.

12. ATA's direct membership includes approximately 2,000 trucking companies and industry suppliers of equipment and services; and in conjunction with 50 affiliated state trucking organizations, it represents over 30,000 motor carriers of every size, type, and class of motor carrier operation.

13. The motor carriers represented by ATA haul a significant portion of the freight transported by truck in the United States and virtually all of them operate in interstate commerce among the States.

14. Several of ATA's members buy transportation fuels in Oregon for use in Oregon. The Oregon Program increases the regulatory costs of importing such fuels, and some of these costs will be passed along to members of ATA who buy these fuels.

15. ATA's members buy transportation fuels throughout Oregon, including in the area falling under the Portland Division of this Court.

16. ATA brings this lawsuit on behalf of its members, one or more of which would possess standing to challenge the Oregon Program on their own behalf.

17. Plaintiff CEA is a national association of more than 400,000 individual members representing every sector of the United States economy. CEA's members include both transportation fuel end-users and producers and sellers of gasoline, diesel and ethanol, both in Oregon and elsewhere in the United States. The regulation of the interstate and international market for transportation fuel is of vital concern to CEA and its membership.

18. A number of CEA's members produce and sell gasoline, diesel and ethanol used as transportation fuels in Oregon, and several of CEA's members import such gasoline, diesel and ethanol themselves into Oregon. According to DEQ, the Oregon Program imposes economic and administrative burdens on regulated parties, including importers, that must satisfy

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the annual carbon intensity standards set forth in the Oregon Program, as well as filing requirements and other administrative burdens.

19. Further, several of CEA's members buy gasoline- and diesel-based transportation fuels in Oregon for use in Oregon. The Oregon Program increases the regulatory costs of importing such fuels, and some of these costs will be passed along to members of CEA who buy these fuels. CEA's members buy and sell transportation fuels throughout Oregon, including in the area falling under the Portland Division of this Court.

20. CEA brings this lawsuit on behalf of its members, one or more of which are parties regulated under the Oregon Program and which would possess standing to challenge the Oregon Program on their own behalf.

21. Neither the claims asserted nor the relief sought in the Complaint requires the participation of any individual member of AFPM, ATA, or CEA.

B. Defendants

22. Defendants Jane O'Keeffe, Ed Armstrong, Morgan Rider, Colleen Johnson, and Melinda Eden are members of the State of Oregon's Environmental Quality Commission, which adopted the Oregon Program. They are being sued in their official capacities.

23. Defendants Dick Pedersen, Joni Hammond, Wendy Wiles, David Collier, Jeffrey Stocum, Cory-Ann Wind, Lydia Emer, Leah Feldon, Greg Aldrich and Sue Langston are officers or employees of the State of Oregon's Department of Environmental Quality, which is tasked with implementing the Oregon Program. These defendants are responsible for implementing and facilitating the implementation of the Oregon Program. Each defendant is sued in his or her official capacity.

24. Defendant Ellen F. Rosenblum is the Attorney General of the State of Oregon. Defendant Rosenblum is responsible for the enforcement of the Oregon Program and is being sued in her official capacity.

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25. Defendant Kate Brown is the Governor of the State of Oregon. Defendant Brown is responsible for the enforcement of the Oregon Program and is being sued in her official capacity.

II. JURISDICTION AND VENUE

26. Subject matter jurisdiction is founded on 28 USC §§ 1331 and 1343 because this case arises under the Constitution and laws of the United States.

27. The Court has authority to enjoin enforcement of the Oregon Program under 42 USC § 1983, and to grant declaratory relief pursuant to 28 USC §§ 2201 and 2202.

28. Venue is proper in this Court under 28 USC § 1391(b). Defendants maintain their offices within this judicial district and events giving rise to the claims herein occurred within this judicial district.

29. AFPM's, ATA's, and CEA's members market imported transportation fuels throughout Oregon (including within this judicial division) and sell transportation fuels to be used throughout Oregon (including within this judicial division), and therefore a substantial portion of the events giving rise to this lawsuit occur in this division.

III. LEGAL AND FACTUAL BACKGROUND

A. <u>Development of the Oregon Program</u>

30. In 2009, the Oregon Legislature authorized DEQ to attempt to reduce greenhouse gas (GHG) emissions by 10 percent over a 10-year period. 2009 Or. Laws ch. 754, § 6(2)(b)(A). As part of that effort, the statute provided that DEQ "may adopt" a "schedule to phase in implementation of [low carbon fuel standards] in a manner that reduces the average amount of greenhouse gas emissions per unit of fuel energy of the fuels by 10 percent below 2010 levels by the year 2020." *Id.* The Legislature defined GHGs as "any gas that contributes to anthropogenic global warming including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride." *Id.* § 6(1)(a); ORS § 468A.210.

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31. The Legislature stated that, if DEQ were to adopt such a program, it must achieve reductions of GHG emissions across all stages of the "lifecycle[]" of the fuel, which includes the "emissions from the production, storage, transportation and combustion of the fuels and from changes in land use associated with the fuels." 2009 Or. Laws ch. 754, § 6(2)(b)(B).

32. On April 17, 2012, Oregon Governor John A. Kitzhaber directed DEQ to initiate a rulemaking process to implement a low carbon fuel standard in two phases. In Phase 1, "fuel suppliers would begin to track and report the carbon intensity of transportation fuels over a two year period." *See* J. Kitzhaber, Letter to D. Pedersen, Director, DEQ (Apr. 17, 2012), *available at* http://www.deq.state.or.us/aq/cleanFuel/docs/LowCarbonStandards041712.pdf. In Phase 2, "fuel suppliers would be required to meet the standard." *Id.* The Governor stated that implementation of a clean fuels program was "important" to support the goals of Oregon's "ten-year energy action plan," which are to "[1] Reduce our dependence on carbon-intensive fuels and foreign oil; [2] Develop home-grown renewable energy resources; [3] Mitigate greenhouse gas emissions; [4] Improve energy efficiency and create rewarding local jobs; and [5] Boost Oregon's economy through investment and innovation." *Id.*

33. DEQ formed advisory committees to assist in designing the Oregon Program. In 2010, DEQ convened an advisory committee that produced a "final report" for the implementation of low carbon fuel standards. DEQ, Final Report, *Oregon Low Carbon Fuel Standards: Advisory Committee Process and Program Design* 122, 123 (Jan. 25, 2011) ("Advisory Final Report"), *available at* http://www.deq.state.or.us/aq/committees/docs/lcfs/reportFinal.pdf.

34. On December 17, 2012, DEQ adopted rules to implement Phase 1 of the Oregon Program that require Oregon fuel importers and producers to "register, keep records, and report to DEQ the volumes and carbon intensities of the transportation fuels they provide in Oregon." OAR § 340-253-0000(4).

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35. DEQ convened another advisory committee in 2014 to advise DEQ regarding implementation of Phase 2 and consideration of its effects on the Oregon economy. On August 15, 2014, DEQ published the proposed Phase 2 of the Oregon Program.

36. AFPM, on behalf of its members, submitted comments on November 20, 2014 in response to DEQ's proposal and requested that DEQ not proceed with the rulemaking because it "is contrary to governing federal law and raises serious constitutional concerns."

37. On January 7, 2015, DEQ adopted rules for Phase 2 of the Oregon Program and imposed a mandatory reduction in average carbon intensity on importers and producers of fuels sold in Oregon.

38. As originally enacted, the legislation authorizing development of the Oregon Program included a "sunset provision" providing for automatic repeal of the authorizing legislation on December 31, 2015. 2009 Or. Laws ch. 754, § 8. On March 12, 2015, Governor Brown signed into law SB 324, which removes the December 31, 2015, sunset provision from the legislation. *Oregon Clean Fuels Program*, Oregon DEQ, http://www.deq.state.or.us/aq/cleanFuel/ (last visited Mar. 16, 2015).

B. <u>The Oregon Program Regulates "Carbon Intensity"</u>

39. The Oregon Program regulates the average "carbon intensity" of transportation fuels sold in Oregon.

40. Carbon intensity means "the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO_2e per MJ)." *Id.* § 340-253-0040(9).

41. Lifecycle GHG emissions are "[s]tated in terms of mass values *for all greenhouse gases* as adjusted to CO2e [carbon dioxide equivalent] to account for the relative global warming potential of each gas." *Id.* § 340-253-0040(37)(c) (emphasis added). Under HB 2186, which authorized the adoption of the Oregon Program, "[g]reenhouse gas" has the "meaning given that term in ORS 468A.210." 2009 Or. Laws ch. 754, § 6(1)(a).

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ORS 468A.210, in turn, defines "[g]reenhouse gas" as "any gas that contributes to anthropogenic global warming including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride."

42. The Oregon Program regulates CO_2 emissions and other GHG emissions, including emissions of methane. *See, e.g.*, OAR § 340-253-8030, tbl. 3. DEQ has stated that the term "CO_2 equivalent, or CO_2E, is a unit of measurement that combines CO_2 and other greenhouse gases like methane … into one number." Advisory Final Report, Appx. J, Credit and Deficit Calculations at 4, , *available at* http://www.deq.state.or.us/aq/committees/docs/lcfs/appendixJ.pdf. And DEQ has explained that "carbon intensity values for vehicle CH_4 [methane] and N_2O emissions were added to the final diesel and gasoline carbon intensities" included in the Program's lookup table for petroleum. Advisory Final Report, Appx. B, Lifecycle Analysis at 7, *available at* http://www.deq.state.or.us/aq/committees/docs/lcfs/appendixB.pdf.

43. DEQ states that it calculates lifecycle GHG emissions by aggregating the "direct emissions and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels" and measuring "all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of fuel by the consumer." OAR § 340-253-0040(37). A fuel's carbon intensity reflects not only the GHG emissions when a fuel is used in a vehicle, but also "all greenhouse gas emissions associated with a fuel's production [and] distribution." Advisory Final Report at 40. The Oregon Program thus assigned different carbon intensity values to biofuels that are physically and chemically identical. *See* OAR § 340-253-8030, tbl. 3; *id.* -8040, tbl. 4. While the regulations purport to include emissions from land use changes in the calculation of lifecycle GHG emissions, DEQ has thus far declined to include such emissions from land use change in the lookup tables published with the regulations. *See* OAR § 340-253-8030, tbl. 3; *id.* -8040, tbl. 4.

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C. The Oregon Program Imposes Burdens on Regulated Parties

44. The Oregon Program defines both "regulated fuels" and "clean fuels." OAR § 340-253-0200. "Regulated fuels" include gasoline, diesel fuel, denatured fuel ethanol and biodiesel. *Id.* § 340-253-0200(2). "Clean fuels" means "a transportation fuel with a carbon intensity value lower than the clean fuel standard. . . ." *Id.* § 340-253-0200(3). The "clean fuel standard" refers to the annual average carbon intensity standard set forth in Table 1 and Table 2 of OAR § 340-253-8010 and -8020. *Id.* § 340-253-0100(6)(a), (b).

45. The Oregon Program distinguishes between "regulated parties" and "credit generators." The Oregon Program defines "regulated party" as "[a]ll persons that produce in Oregon or import into Oregon any regulated fuel." OAR § 340-253-0100(1). An importer is the party that has "ownership title to the transportation fuel from locations outside of Oregon at the time it is brought into the State of Oregon by any means of transport other than in the fuel tank of a motor vehicle for the purpose of propelling the motor vehicle." *Id*. at § 340-253-0040(32), (33).[1] The producer is the "person who makes the fuel in Oregon." *Id*. at § 340-253-0040(46). The Oregon Program defines "credit generators" as "providers of compressed natural gas, liquefied natural gas, liquefied compressed natural gas, liquefied petroleum gas and renewable diesel for use as a transportation fuel in Oregon," "providers of electricity used as a transportation fuel," and "providers of hydrogen fuel and a hydrogen blend for use as a transportation fuel in Oregon." *Id.* §§ 340-253-0320, 340-253-0330, 340-253-0340.

46. Under the Oregon Program, regulated parties must comply with specific administrative requirements as well as substantive requirements relating to the average carbon intensity of regulated fuels imported into Oregon.

[1] Importers that import into Oregon more than 250,000 gallons of transportation fuel in a given calendar year must comply with all of the requirements of the Oregon Program, whereas importers that import into Oregon 250,000 gallons or less of transportation fuel in a given calendar year are exempt from certain requirements. *Id*. §§ 340-253-0100(1)(b), 340-253-0040(35), (51). As used herein, the terms "importer" and "regulated party" are used only in reference to those parties that must comply with all of the requirements of the Oregon Program.

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47. First, as to administrative requirements, regulated parties must register with DEQ "for each fuel type on or before the date upon which the party begins producing the fuel in Oregon or importing the fuel into Oregon." OAR § 340-253-0100(4). Regulated parties also must develop and retain records as required by OAR § 340-253-0600. *Id.* § 340-253-0100(5). Further, regulated parties must complete quarterly progress reports and annual compliance reports. *Id.* § 340-253-0100(7), (8).

48. Second, as to substantive requirements, each regulated party must "demonstrate compliance in each compliance period by producing or importing fuel that in the aggregate meets the standard or by obtaining sufficient credits to offset deficits for such fuel produced or imported into Oregon." *Id.* § 340-253-0100(6). The "standard" refers to the annual average carbon intensity standard set forth in Table 1 and Table 2 of OAR § 340-253-8010 and -8020. *Id.* § 340-253-0100(6)(a), (b).

49. The Oregon Program exempts certain fuels and fuel uses that otherwise would be subject to the Oregon Program's administrative and substantive requirements. OAR § 340-253-0250(1), (2). For example, the Oregon Program exempts "fuels that are exported for use outside of Oregon," and transportation fuels used in motor trucks "if used primarily to transport logs." *Id* § 340-253-0250(2)(a)(I).

D. <u>The Oregon Program Burdens Importers and Out-of-State Refiners of Gasoline and Diesel</u>

50. The Oregon Program has a stated goal of achieving, by 2025, a 10 percent reduction in the annual average carbon intensity for transportation fuels sold in Oregon. Reductions in average carbon intensity are mandated to begin in 2016, and the required reductions increase each year through 2025. OAR §§ 340-253-0100(6), 340-253-8010, tbl. 1, and -8020, tbl. 2.

51. Although the Oregon Program distinguishes between the carbon intensities of different biofuels, it applies the same average state-wide carbon intensity to all sources of

gasoline or diesel fuel. Specifically, the Oregon Program calculates a carbon intensity for each source of gasoline and diesel fuel and then adopts a weighted state-wide average that each importer of transportation fuels must use in calculating its annual average carbon intensity. As a result, importers of gasoline or diesel must use the assigned state-wide average even if the carbon intensity for their gasoline or diesel would be lower than the average state-wide carbon intensity for gasoline or diesel. *See* OAR § 340-253-0400(1).

52. In setting state-wide averages for gasoline and diesel, DEQ considered "[t]he sources of crude and associated factors that affect emissions such as flaring rates, extraction technologies, capture of fugitive emissions and energy sources." OAR § 340-253-0400(4)(a)(A).

53. Regulated fuels provided to Oregon that are below the annual average carbon intensity requirement will generate credits. OAR § 340-253-1000(5). And fuels that are above the annual average carbon intensity requirement will generate deficits. *Id.* § 340-253-1000(6).

54. DEQ requires regulated parties that accumulate deficits to purchase credits from other parties or generate credits through the use of lower-carbon-intensity fuels during the compliance period. *Id*. §§ 340-253-1050, 340-253-0100(6).

55. Under the Oregon Program, the baseline carbon intensity for gasoline is 89.31 gCO_2e/MJ. That baseline carbon intensity value comprises 10% ethanol Oregon GREET default ethanol and 90% clear gasoline, which is based on a weighted average of gasoline supplied to Oregon. For 2016, importers of gasoline must meet an average carbon intensity target of 89.08 gCO_2e/MJ, which is lower than the carbon intensity for their gasoline. As a result, importers of gasoline would need to replace existing sources of ethanol with ethanol that has lower calculated carbon intensities or purchase credits from other parties to meet their annual average carbon intensity requirements.

56. Likewise, the baseline carbon intensity value for diesel fuel is 87.09 gCO_2e/MJ. That baseline carbon intensity value comprises 5% biodiesel and 95% clear diesel, which is

again based on a weighted average of diesel fuel supplied to Oregon. For 2016, importers of diesel must meet an average carbon intensity of 86.87 gCO_2e/MJ, which is lower than the carbon intensity for their diesel fuel. As a result, diesel importers would need to replace existing sources of biodiesel with biodiesel that has lower calculated carbon intensities or purchase credits from other parties to meet their annual average carbon intensity requirements.

57. The practical effect of the Oregon Program is that importers of gasoline and diesel cannot generate credits but instead must either change the composition of the fuel they import or purchase credits. As explained by DEQ, revenue from the sale of credits is a benefit to a provider of a fuel that generates credits. Thus, "the regulated party would incur the costs of purchasing credits to comply and providers of clean fuel would benefit from the sale of credits." DEQ, *Clean Fuels Program Phase II Rulemaking* (DEQ recommendations to EQC) at 12 (Jan. 7-8, 2015), *available at* http://www.deq.state.or.us/aq/cleanFuel/docs/CFPPH2staffReport.pdf.

58. The Oregon Program requires importers and out-of-state refiners of gasoline and diesel fuel to subsidize the development of a transportation fuel industry in Oregon and is designed to displace imported fuels produced from petroleum sources. *See id.* at 4 ("Increased use of clean fuels will displace fuels produced from petroleum sources"). That burden is imposed exclusively on imported fuels because, as DEQ has explained, "there are no producers of gasoline or diesel in Oregon." *See id.* at 10. In-state producers of ethanol and biodiesel face no such burden because the biofuels produced in Oregon already meet the proposed average annual carbon intensity. *Id.*

59. The Oregon Program will burden out-of-state refiners of gasoline and diesel fuels. It will require importers of petroleum-based fuels either to change the composition of the fuel they import or to purchase credits from other parties. The Oregon Program will incentivize importers not to import fuels from out-of-state refiners and impose additional costs on out-of-state refiners.

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60. In 2015, the baseline carbon intensity of gasoline or gasoline substitutes is 89.31 gCO_2e/MJ. OAR § 340-253-8010, tbl. 1. In 2016, importers of gasoline or gasoline substitutes must reduce the carbon intensity of their fuels from an average of 89.31 gCO_2e/MJ to 89.08 gCO_2e/MJ (a 0.25 percent reduction). *Id*. In 2020, importers of gasoline or gasoline substitutes must reduce the carbon intensity of their fuels to 87.08 gCO_2e/MJ (a 2.5 percent reduction from baseline). And, by 2025 and beyond, importers of gasoline or gasoline substitutes must reduce the carbon intensity of their fuels to 80.36 gCO_2e/MJ (a 10 percent reduction from baseline). *Id*.

E. The Oregon Program Burdens Out-of-State Competitors

61. The Oregon Program is tailored to benefit fuel producers within Oregon at the expense of fuel importers and refiners that produce fuels in other states and countries.

62. The burdens associated with the Oregon Program fall almost entirely on importers of transportation fuel. According to DEQ, "[b]usinesses that import gasoline, ethanol, diesel fuel, bio-diesel and biomass-based diesel for use as a transportation fuel in Oregon are the largest group of regulated parties." DEQ, *Clean Fuels Program Phase II Rulemaking* at 10.

63. In contrast, according to DEQ, "there are no producers of gasoline or diesel fuel located in Oregon." *Id.* at 10. The Governor's Office likewise has stated that "[t]here are no oil refineries in Oregon, but there are biofuel producers[and] feedstock growers." *See* Press Release, Governor's Office, *Governor Kitzhaber Announces New Clean Fuels Initiative* (Feb. 13, 2014).

64. DEQ has explained that, apart from administrative reporting requirements, the Oregon Program would impose no additional costs on in-state producers of ethanol or biodiesel because "the biofuels produced already meet the proposed clean fuel standards" and that these in-state "businesses could also generate credits and benefit from the sale of those credits." DEQ, *Clean Fuels Program Phase II Rulemaking* at 10. DEQ further explained that "revenue from the sale of credits is a benefit to a provider of clean fuel." *Id.*

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65. Further, DEQ identifies a "variety of businesses types" within Oregon that will benefit from the Oregon Program and "could become credit generators" including: "[1] Businesses, local governments, school districts and transit agencies that own alternative fuel fleets and dispensing infrastructure; [2] Auto manufacturers that own electric charging stations; [3] Businesses that provide chargers for their employees to charge their electric vehicles during work hours; and [4] Utilities that help businesses provide fuel and infrastructure." *Id*. at 10-11.

66. The Oregon Program benefits in-state producers of transportation fuels, including biofuels (and the feedstock growers who supply the in-state biofuels producers) at the expense of petroleum refiners because it assigns gasoline and diesel fuel higher state-wide carbon intensity values than in-state transportation fuels. *See* OAR § 340-253-8030, tbl. 3; *id.* -8040, tbl. 4.

67. The Oregon Program burdens regulated parties that import petroleum-based gasoline and diesel by requiring them to offset deficits by, for example, buying credits from credit generators in Oregon.

68. The Oregon Program benefits Oregon's producers of transportation fuels because these producers may sell credits they generate from the fuels produced in Oregon. The Program thus discriminates against out-of-state petroleum fuels in favor of in-state fuels.

69. Similarly, the Program is designed to benefit Oregon ethanol producers at the expense of ethanol producers in other parts of the country (and in particular in the Midwest). The Oregon Program's lookup table assigns different carbon intensity scores based on where the ethanol is produced, either in "California" or in the "Midwest," OAR § 340-253-8030, tbl. 3, and requires providers to use the carbon intensity value in the lookup table "that best matches" the fuel's production method, OAR § 340-253-0400(2).

70. The carbon intensity values for ethanol produced in the Midwest are consistently higher than for ethanol produced in California. For instance, ethanol produced in "California" from corn using "Dry Mill; Wet [Distillers Grain with Solubles ("DGS")]; [Natural Gas

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("NG")]" would have a carbon intensity value of 50.70 gCO_2e/MJ. OAR § 340-253-8030, tbl. 3. This is the process used in the only ethanol plant operating in Oregon on the date of this complaint, to Plaintiffs' knowledge. *See Our Company*, Pacific Ethanol, http://www.pacificethanol.net/our-company (last visited Mar. 16, 2015). But corn ethanol produced in the "Midwest" using the same procedure would have a carbon intensity value that is nearly 10 points—or 20%—higher, at 60.10 gCO_2e/MJ. *See* OAR § 340-253-8030, tbl. 3. The same disparity between "California" and "Midwest" producers would be true for other forms of ethanol. *See id.*

71. The Oregon Program discriminates in favor of Oregon industry at the expense of out-of-state industry by design.

72. A centerpiece of former Governor Kitzhaber's environmental policy was a "ten-year energy action plan" designed in part to "[d]evelop home-grown renewable energy resources," "[i]mprove energy efficiency and create rewarding local jobs," and "[b]oost Oregon's economy through investment and innovation." J. Kitzhaber, Letter to D. Pedersen, Director, DEQ (Apr. 17, 2012), *available at* http://www.deq.state.or.us/aq/cleanFuel/docs/LowCarbonStandards041712.pdf. Governor Kitzhaber explained, when directing DEQ to issue regulations implementing the Oregon Program, that the Oregon Program "supports these goals and [is] important to the success of this plan." *Id.*

73. The ten-year plan itself (which Governor Kitzhaber hailed as an "economic action plan" designed to "keep capital circulating in our region through local sourcing and supply chains while reducing our dependence on carbon-intensive fuels," J. Kitzhaber, Letter to Oregon (Dec. 14, 2012)) stated that the Oregon Program would "provide important economic benefits to Oregon's economy," J. Kitzhaber, 10-Year Energy Action Plan 37 (Dec. 14, 2012), *available at* http://www.oregon.gov/energy/Ten_Year/Ten_Year_Energy_Action_Plan_Final.pdf.

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74. Consistent with the view of the Oregon Program as a means of improving Oregon's economy by creating new green jobs that "keep capital circulating in [the] region through local sourcing," Oregon's lawmakers have highlighted the Oregon Program's intended effect of discriminating against out-of-state industry in favor of "home-grown … resources" and industry. For example, in a 2014 press release announcing his instruction to DEQ to move forward with the Oregon Program, the Governor's Office set forth the problem the Program is designed to solve: "In 2012, Oregonians sent more than $6 billion out of state to import gas and diesel, while homegrown, low carbon fuel producers remain locked out of a promising market." Press Release, Or. Governor's Office, *Governor Kitzhaber Announces New Clean Fuels Initiative* (Feb. 13, 2014), *available at* http://us2.campaign-archive1.com/?u=41b11f32beefba0380ee8ecb5&id=a4eced804d.

75. The Governor's Office explained that the Program's purpose was to shift revenue away from out-of-state refineries to Oregon's own fuel producers: "There are no oil refineries in Oregon, but there are biofuel producers, feedstock growers, a burgeoning electric vehicle industry, and propane, natural gas, and other innovative fuel companies ready to invest in the state if they have regulatory certainty." *Id.*

76. The Governor explained that he was "committed to using every tool at [his] disposal to support 21st century industries and innovation, and to attract investment and new jobs to our state," and that Oregon had "the opportunity to spark a homegrown clean fuels industry right here." Associated Press, *Kitzhaber: Low-carbon Fuel Mandate Will Go Forward*, (Feb. 13, 2014) (quoting Gov. John Kitzhaber), *available at* http://newsok.com/kitzhaber-low-carbon-fuel-mandate-will-go-forward/article/feed/651053. The Governor's objective was "to try to spark this home-grown industry that can capture a portion of the billions of dollars that Oregonians send out of the state every year to purchase diesel and gasoline and keep those dollars circulating here in our own economy.'" *Id.*

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77. According to Governor Kitzhaber, "We've only scratched the surface of the potential for alternative fuels to create a homegrown industry to tap into the billions we spend on gasoline every year. . . . We should keep more of those dollars in Oregon to grow, produce, and deliver fuels that benefit our communities with new good-paying jobs." *See* Ian K. Kullgren, *Clean-fuel controversy: Oregon Democrats push bill; GOP tries to hit brakes*, The Oregonian/OregonLive (Feb. 2, 2015), *available at* http://www.oregonlive.com/politics/index.ssf/2015/02/oregon_democrats_push_low-carb.html.

78. Governor Kitzhaber stated that Oregon was faced with the choice "to invest in clean fuels here at home or continue to export fuel dollars out of state, out of the country and out of Oregon," Yuxing Zheng, *Oregon Clean Fuels: Gov. John Kitzhaber Takes Action After Legislation Stalls*, The Oregonian, Feb. 13, 2014 (quoting Gov. John Kitzhaber), and explained that the Oregon Program would "keep more of those dollars here—in Oregon." Gov. John Kitzhaber, Op-Ed., *Clean Fuels Program Will Help Oregon's Economy, Environment*, The Oregonian, Feb. 18, 2014.

79. Likewise, Oregon's legislators have confirmed that the Oregon Program is designed to create green jobs in Oregon at the expense of other states' economies. According to State Senator Chris Edwards, the chief sponsor of the recent bill that repealed the sunset provision and thus paved the way for the latest regulation in the Program, *see supra* at ¶ 39, the Program is designed to "reduce carbon pollution, increase consumer choice, and create jobs right here at home." Press Release, Or. Sen. Majority Office, *Senate takes historic step advancing Oregon's economy and fuel alternatives* (Feb. 17, 2015), *available at* https://www.oregonlegislature.gov/edwardsc/Documents/Press%20Release_Caucus_CleanFuels_2-17-15.pdf. State Senator Lee Beyer similarly explained that the "Clean Fuels Program is a smart, pragmatic approach to protecting our environment and encouraging innovating investments," and that the Program will "reduc[e] [Oregon's] dependence on petroleum and channe[l] those dollars into Oregon's economy." *Id.* And State Senate Majority Leader Diane

Rosenbaum noted that the Program "will help support the growing green energy sector [and] power [Oregon's] economy," as well as "help address the imminent threats … from global warming." *Id.*

80. Consistent with the statements of the Governor and legislators, DEQ acknowledges that the Oregon Program will promote Oregon jobs at the expense of jobs elsewhere.

81. DEQ explained in a 2011 analysis that "the existence of an Oregon's low carbon fuel standards would be a significant incentive to increase the production capacity of Oregon's existing Biofuels facilities and attract new biofuels production." Advisory Final Report at 121.

82. In the analysis accompanying the draft rule that DEQ submitted for approval to Oregon's Environmental Quality Council, the agency explained the regulation's economic impacts: (1) "To achieve compliance, significant investment in infrastructure and fuel production and capacity results in an influx of economic activity, including growth in employment, income and gross state product," (2) "Positive economic impacts in Oregon stem from importing less petroleum fuel," and (3) "Many of the lower carbon fuels that replace gasoline and diesel cost less and would result in lower costs at the pump for fuel users." DEQ, *Clean Fuels Program Phase II Rulemaking* at 9.

83. During the rulemaking process, one advisory committee member explained:

> The state currently exports over $5 billion every year for transportation fuels. While the [Oregon Program] is a performance-based standard, it provides a market incentive for locally produced fuels (while also allowing for low-carbon fuels to continue to flow in from other locations), which will create net jobs, make net improvements for household income, and be beneficial for Oregon's Gross State Product. This is a clear win for Oregon…. [T]he [Oregon Program] establishes a strong incentive policy for investment and new business in Oregon.

Advisory Final Report, Appx. A, Summary of Advisory Committee Input at 142, *available at* http://www.deq.state.or.us/aq/committees/docs/lcfs/appendixA.pdf.

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84. DEQ was aware that new jobs created in Oregon would come at the expense of other states' economies. One advisory committee member commented to DEQ that "the whole intent of the [Oregon Program] is to reduce the use of petroleum, which is going to have a significant impact in the petroleum industry out of state." *Id.* at 119.

F. The Oregon Program Regulates Interstate and Foreign Commerce

85. The requirements of the Oregon Program constitute extraterritorial regulation of commerce in other states and foreign countries.

86. Through the use of a lifecycle analysis, the Oregon Program determines a fuel's carbon intensity by commercial activities that occur outside of Oregon, including "feedstock generation or extraction, production, [and] distribution." OAR § 340-253-0040(37); *see also* Advisory Final Report at 122, 123 (regulation of activities associated with "extracting or growing the feedstock, refining, storage, [or] transportation" of the fuel or feedstock).

87. The Oregon Program assigns carbon intensity values based on out-of-state activities and requires a reduction in the carbon intensity of the fuels. It requires reductions in carbon intensity to begin in 2016 through 2025 and beyond. OAR §§ 340-253-0100(6), 340-253-8010, tbl. 1. Over this ten-year period, the Program seeks to alter the practices that produce the GHG emissions in order to reduce the carbon intensities of fuels sold in Oregon.

88. The Oregon Program classifies fuels based on their raw materials, geographic origin, manufacturing process, and the power source used to refine them. OAR § 340-253-8030, tbl. 3; *id.* -8040, tbl. 4. The Oregon Program refers to each class of such fuel as a "fuel pathway." *See, e.g.*, *id.* -0400(3)(b)(B).

89. Thus, to compete in the Oregon market, producers of higher carbon-intensity fuels must change the manner in which they produce and transport fuels to obtain lower carbon-intensity scores to avoid the commercial disadvantage placed on their higher carbon-intensity fuels. Indeed, the petroleum used in Oregon all comes from out-of-state producers and

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refineries. *See* DEQ, *Clean Fuels Program Phase II Rulemaking* at 10; Advisory Final Report at 41.

90. By regulating the "fuel pathway," the Oregon Program directly and unconstitutionally regulates interstate commerce and conduct occurring entirely outside of Oregon and imposes environmental standards on interstate and foreign commerce by erecting a barrier to imports produced and transported in a manner Oregon disfavors.

G. The Oregon Program is a Fuel Standard Under the Federal Clean Air Act

91. The Oregon Program is a control or prohibition of fuels for the purpose of emissions under Clean Air Act Section 211(c).

92. Section 211(c)(4) of the Clean Air Act provides that "no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine . . . (i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published his finding in the Federal Register." 42 USC § 7545(c)(4)(A).

93. The Oregon Program regulates life-cycle GHG emissions, including vehicle emissions, associated with transportation fuels. Under the Oregon Program, "lifecycle greenhouse gas emissions" are "measured over the full fuel lifecycle, including all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer" and are "[s]tated in terms of mass values for all greenhouse gases as adjusted to CO_2e to account for their relative global warming potential of each gas." OAR § 340-253-0040(37)(b), (c).

94. Under the Oregon Program, "Greenhouse gas means any gas that contributes to anthropogenic global warming including, but not limited to, carbon dioxide, *methane*, nitrous

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oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride." ORS § 468A.210 (emphasis added); *see also* 2009 Or. Laws ch. 754, § 6(1)(a).

95. EPA has previously addressed emissions from transportation fuel associated with methane under Section 211(c)(1) and concluded that no regulation was appropriate under 211(c)(1).

96. In adopting rules for reformulated gas and EPA's anti-dumping program, EPA expressly declined to regulate emissions of "methane" under Section 211(c)(1) and published that determination in the Federal Register. *See* 59 Fed. Reg. 7716 (Feb. 16, 1994). Likewise, in connection with the anti-dumping program, EPA expressly declined to regulate methane emissions. *Id.*

97. EPA's regulatory actions were taken under Section 211(k) and Section 211(c), thereby preempting non-identical regulation by all States (except for California). *Id*. at 7809. EPA stated:

> Whenever the federal government regulates in an area, the issue of preemption of State action in the same area is raised. The regulations proposed here will affect virtually all of the gasoline sold in the United States. As opposed to commodities that are produced and sold in the same area of the country, gasoline produced in one area is often distributed to other areas. The national scope of gasoline production and distribution suggests that federal rules should preempt State action to avoid an inefficient patchwork of potentially conflicting regulations. Indeed, Congress provided in the 1977 Amendments to the Clean Air Act that federal fuels regulations preempt non-identical State controls except under certain specified circumstances (see, section 211(c)(4) of the Clean Air Act). EPA believes that the same approach to federal preemption is desirable for the reformulated gasoline and anti-dumping programs. EPA, therefore, is issuing today's final rule under the authority of sections 211 (k) and (c), and promulgate[s] under section 211(c)(4) that dissimilar State controls be preempted unless either of the exceptions to federal preemption specified by section 211(c)(4) applies. Those exceptions are sections 211(c)(4) (B) and (C).

Id.

98. EPA expressly concluded that it would not regulate methane under Section 211(c)(1) of the Clean Air Act and published that determination in the Federal Register. EPA's

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determination not to regulate methane under Section 211(c)(1) of the Clean Air Act preempts any effort by Oregon to regulate emissions of methane under Section 211(c) of the Clean Air Act.

H. The Oregon Program Conflicts with Federal Law

99. The federal Renewable Fuels Standard program (RFS) is mandated by the Energy Policy Act of 2005 (EPAct 2005), Pub. L. No. 109-58, 119 Stat. 594, and modified by the Energy Independence and Security Act of 2007 (EISA) §§ 201 *et seq.*, Pub. L. No. 110-140, 121 Stat. 1492.

100. Federal law requires "that transportation fuel sold or introduced into commerce in the United States . . . on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel" mandated by the EISA. EISA § 202(a)(1), 42 USC § 7545(o)(2).

101. The categories of advanced biofuel, cellulosic biofuel, and biomass-based diesel are defined in terms of their "lifecycle greenhouse gas emissions, as determined by the Administrator" of the United States Environmental Protection Agency.

102. The EISA expressly exempts certain existing ethanol biorefineries (that were either in production or under construction on the date the EISA was enacted) from the EISA's requirements for reduced GHG emissions. 42 USC § 7545(o)(2)(A)(i).

103. The EISA also provides that EPA's regulations may not "restrict geographic areas in which renewable fuel may be used." 42 USC §§ 7545(o)(2)(A)(i), (o)(2)(A)(iii)(II)(aa).

104. One of the purposes of the EISA is to ensure a continued market for ethanol and other renewable fuels nationwide. 42 USC § 7545(o)(2)(B).

105. The Oregon Program conflicts with the EISA by penalizing the continued production of renewable fuels in existing biorefineries. See 42 USC § 7545(o)(2)(A)(i).

106. The Oregon Program is designed to close Oregon as a market for certain renewable fuels produced in existing biorefineries and thus frustrates and stands as an obstacle

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to the congressional purpose of ensuring a continued market nationwide for these renewable fuels and meeting the applicable volume requirements for these renewable fuels.

IV. STATEMENT OF CLAIMS

FIRST CLAIM FOR RELIEF

(Discrimination in Violation of the Commerce Clause)

107. The prior paragraphs of the Complaint are incorporated by reference.

108. The Oregon Program violates the Commerce Clause of the United States Constitution by discriminating against transportation fuels produced in other States and other countries.

109. The Oregon Program confers an advantage on fuels produced in Oregon at the expense of fuels produced outside of Oregon. By assigning lower carbon intensities to ethanol and other fuels produced within Oregon and higher carbon intensities to petroleum-based fuels (which are produced in other states and countries but are not produced in Oregon), the Oregon Program discourages the use of fuels produced outside of Oregon and encourages the production of transportation fuels in Oregon.

110. The discrimination inherent in the Oregon Program is designed to provide a competitive advantage to local economic interests and to promote the production and use of Oregon fuels in Oregon, thus keeping more money paid by Oregonians for fuel within the State.

111. The Oregon Program discriminates against imported petroleum-based fuels by requiring importers of those fuels to use a mandatory state-wide carbon intensity average even if the fuels that they import into Oregon have individual carbon intensity values that are lower than the assigned state-wide average. This discrimination against petroleum-based fuels is directed entirely at exports from other states and countries.

112. Further, the Oregon Program treats chemically identical ethanol differently based on where it is produced. By assigning higher carbon intensities to Midwest ethanol, the Oregon Program discourages the use of ethanol produced in the Midwest.

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113. The discrimination inherent in the Program is designed to provide an unfair competitive advantage to local economic interests and to promote the use of Oregon ethanol in Oregon.

114. By expressly conditioning favorable or unfavorable regulatory treatment on the ethanol's point of origin, the Oregon Program discriminates against interstate commerce on its face.

115. The Oregon Program imposes significant burdens on Plaintiffs' members in connection with their conduct of interstate commerce.

116. The Program is not justified by any valid public welfare, consumer protection, or pro-competitive purpose unrelated to economic protectionism.

117. Defendants are purporting to act within the scope of their authority under State law in enforcing and implementing the Oregon Program.

118. Defendants are liable to Plaintiffs for proper redress under 42 USC § 1983 because the Program deprives Plaintiffs' members of the rights, privileges, and immunities secured by the Commerce Clause of the United States Constitution.

119. Plaintiffs have no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(Impermissible Extraterritorial Regulation)

120. The prior paragraphs of the Complaint are incorporated by reference.

121. The Oregon Program violates the United States Constitution by directly regulating interstate and foreign commerce and purporting to regulate conduct that occurs in other States and countries.

122. By regulating the "fuel pathway" of transportation fuels – *i.e.*, the manner in which transportation fuels are produced and ultimately reach the Oregon market – the Oregon Program impermissibly penalizes producers and importers based upon the manner in which

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their transportation fuels are produced in other States and countries and the manner in which they move in interstate and foreign commerce.

123. The express purpose and practical effect of the Oregon Program is to control commerce conducted in other States and countries by attaching restrictions to imported transportation fuels that are produced and transported in a manner that Oregon disfavors.

124. By design and in practical effect, the Oregon Program impermissibly regulates conduct occurring wholly outside of Oregon by making it more difficult to market and sell transportation fuels based upon where the fuels are produced, the manner in which they are produced, and the manner in which they reach the Oregon market.

125. The Oregon Program improperly extends Oregon's police power beyond its jurisdictional bounds by regulating conduct that lies within the regulatory jurisdiction of other States and countries.

126. The Oregon Program regulates, on its face and in its practical effect, the channels of interstate and foreign commerce and the use of these channels of interstate and foreign commerce.

127. By regulating interstate and foreign commerce that occurs wholly outside of Oregon, the Program violates the Commerce Clause of the United States Constitution and the principles of interstate federalism embodied in the federal structure of the United States Constitution.

128. Defendants are purporting to act within the scope of their authority under State law in enforcing and implementing the Oregon Program.

129. Defendants are liable to Plaintiffs for proper redress under 42 USC § 1983 because the Oregon Program deprives Plaintiffs' members of the rights, privileges, and immunities secured by the Commerce Clause of the United States Constitution and principles of interstate federalism embodied in the federal structure of the United States Constitution.

130. Plaintiffs have no adequate remedy at law.

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THIRD CLAIM FOR RELIEF

(Preemption under the Clean Air Act)

131. The prior paragraphs of the Complaint are incorporated by reference.

132. The Oregon Program qualifies as a control or prohibition respecting a characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control within the meaning of Section 211(c) of the Clean Air Act. *See* 42 USC § 7545(c).

133. The Oregon Program regulates emissions of GHGs, which, under Oregon law inseparably encompasses CO_2, methane (CH_4), and nitrous oxide (N_2O), in the calculation of a CO_2-equivalent score for the life cycle of transportation fuels.

134. The Administrator of the EPA has determined, under Section 211(c) of the Clean Air Act, 42 USC § 7545(c), that no control or prohibition relating to the GHG methane is necessary for transportation fuels and has published that finding in the Federal Register.

135. Defendants may not prescribe or attempt to enforce, for purposes of motor vehicle emission control, a control or prohibition respecting methane in transportation fuels.

136. The Oregon Program is preempted by the Clean Air Act because it regulates the emission of methane with respect to transportation fuels where the EPA Administrator has determined that there should be no control or prohibition of methane under Section 211(c)(1), and is therefore unconstitutional under the Supremacy Clause of the United States Constitution.

FOURTH CLAIM FOR RELIEF

(Preemption Under Federal Law)

137. The prior paragraphs are incorporated by reference.

138. The Oregon Program conflicts with and stands as an obstacle to the purposes and goals of the Energy Policy Act of 2005 (EPAct 2005), Pub. L. No. 109-58, 119 Stat. 594, the Energy Independence and Security Act of 2007 (EISA) §§ 201 *et seq*., Pub. L. No. 110-140, 121 Stat. 1492, and the federal Renewable Fuels Standard, 42 USC § 7545(o).

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139. The Oregon Program is designed to close Oregon as a market for certain renewable fuels (in particular, certain forms of corn ethanol) produced in existing refineries necessary to meet national renewable fuel standards set by Congress and implemented by EPA in the laws above, and thus frustrates and stands as an obstacle to the congressional purpose of ensuring a continued market nationwide for this corn ethanol.

140. The Oregon Program imposes significant burdens on Plaintiffs' members in connection with their conduct of interstate commerce and their compliance with the federal laws and regulations.

141. The Oregon Program conflicts with federal standards and regulations set forth above regarding the suitability of using certain renewable fuels produced outside Oregon to meet the federal mandates within the borders of Oregon.

142. The Oregon Program is unconstitutional under the Supremacy Clause of the United States Constitution because it conflicts with and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the federal laws and regulations.

143. Defendants are purporting to act within the scope of their authority under state law in enforcing and implementing the Program.

144. Defendants are liable to Plaintiffs for proper redress under 42 USC § 1983 because the Program deprives Plaintiffs' members of the rights, privileges, and immunities secured by the Supremacy Clause of the United States Constitution.

145. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. A declaratory judgment, pursuant to 28 USC § 2201, that the Oregon Program violates the United States Constitution and is unenforceable;

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B. A preliminary and permanent injunction enjoining the Defendants from implementing or enforcing the Oregon Program;

C. An order awarding Plaintiffs their costs and attorneys' fees pursuant to 42 USC § 1988; and

D. Such other and further relief as the Court deems just and proper.

DATED this 23rd day of March, 2015.

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General Information

Court	United States District Court for the District of Oregon; United States District Court for the District of Oregon
Federal Nature of Suit	Constitutionality of State Statutes[950]
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