April 4, 2014

Via E-Mail and FedEx

Dr. Steven Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Shell – Martinez Refinery Comments to March 21, 2014 Proposed Cap and Trade Revisions

Dear Dr. Cliff:

Shell – Martinez Refinery is providing comments on the March 21, 2014 proposed revisions to the Air Resources Board's ("ARB") Cap and Trade regulations. Shell – Martinez Refinery's comments address two issues: 1) The treatment of legacy contract counterparties proposed in Section 95891(f); and 2) The standard for establishing a "direct corporate association" with a limited liability corporation ("LLC") under proposed Section 95833(a)(2)(F).

1. The Rules that Apply to Legacy Contract Counterparties Should Not Impact Transition Assistance that is Provided to Qualified Industrial Entities Under Section 95891

The Staff's proposed amendments (specifically, Section 95891(f)) would penalize an industrial entity receiving a direct allocation of free allowances under Section 95891(d), if the industrial entity has a "direct corporate association" with an entity that is a counterparty to a "Legacy Contract." Pursuant to Section 95891(f), free allowances that otherwise would be allocated to an industrial entity under Section 95891(d) would be taken from the industrial entity based on its direct corporate association with a Legacy Contract Counterparty, even when the industrial entity has no contractual relationship with the Legacy Contract Generator, and no influence over that Legacy Contract.

Shell - Martinez Refinery and Shell Energy North America (US) L.P. ("Shell Energy") share a "direct corporate association." Shell Energy is a party to a Legacy Contract, but Shell - Martinez Refinery has no contractual relationship with either Shell Energy or the Legacy Generator with respect to this contract. The effect of the proposed amendment would remove free allowances allocated to the refinery as an entity of the "trade exposed' industry sector, and provide those free allowances to the legacy contract generator to cover their compliance obligation. But for the fact that Shell Martinez Refinery and Shell Energy are deemed to have a "direct corporate association," the refinery would not be obligated to relinquish free allowances they have been given as part of the "trade-exposed" sector, and these free allowances would be provided to the legacy contract generator by ARB.

The interplay of these proposed regulations has the unintended consequence of disadvantaging Shell - Martinez Refinery in relation to other refineries within the refining sector. Furthermore, introduction of these regulatory changes impacts the refinery's long term GHG emissions reduction strategy. Lastly, removing free allowances that ARB has allocated to a 'trade exposed" entity, and then providing those allowances to a legacy contract generator that the refining entity has no contractual relationship also raises potential legal questions.

The ARB should modify or eliminate Section 95891(f) to remove the inconsistent treatment and impact on the Shell Martinez Refinery. In a highly competitive refined products market, the potential disadvantage to the Refinery as a result of this proposed rule is significant.

2. Establishment of a "Direct Corporate Association" with an LLC Must be Based on Evidence Demonstrating the Entity's Ability to Exercise Control of the LLC

The Staff proposes to include an LLC within the meaning of a "direct corporate association," if an entity owns more than 50 percent of the LLC. Ownership of more than 50 percent of the LLC is not enough, however, to establish a "direct corporate association" with an LLC. In order to determine the level of "control" that is required to establish a "direct corporate association" with an LLC in which an entity has an ownership interest, evidence of control should be considered, based on the terms of the LLC's operating agreement and/or through an attestation by an authorized officer.

Shell – Martinez Refinery proposes that the ARB include the following language at the end of Section 95833(a)(2)(F):

> " . . . except that with respect to a limited liability corporation, a direct corporate association does not exist if the entity holding more than 50 percent of the limited liability corporation may not and does not exercise control over the activities of the limited liability corporation, as evidenced by all of the following:
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> (i) Does not hold (and may not appoint or remove) more than 50 percent of the directors of the limited liability corporation;
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> (ii) May not appoint or remove officers of the limited liability corporation; and
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> (iii) May not act on behalf of the limited liability corporation or commit it to any obligation.
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> Evidence that an entity holding more than 50 percent of the limited liability corporation does not have the authority to exercise control

> over the activities of the limited liability corporation may be established through disclosure of the Operating Agreement of the limited liability corporation, and/or by a written attestation provided by an authorized officer of the entity that owns more than 50 percent of the limited liability corporation, affirming that the above criteria are met."

This proposed language, if adopted, would ensure that a "direct corporate association" relationship with an LLC is limited to those entities that have control (or that have the ability to control) the LLC based on objective, verifiable criteria. It is unreasonable for the ARB to conclude that a "direct corporate association" with an LLC exists if an entity cannot and does not exercise control over the activities or the governance of the LLC.

In conclusion, we urge your review and modification of the above-referenced proposed amendments to the Cap and Trade regulations. If you have any questions regarding the matters raised in these comments, please feel free to contact Teresa Makarewicz at 925-313-3989.

Respectfully submitted,

Teresa K. Makarewicz

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