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**Via Email**

August 28, 2009

Wes Ingram  
California Air Resources Board  
Headquarters Building  
1001 "I" Street  
Sacramento, CA 95812  
Email: [wingram@arb.ca.gov](mailto:wingram@arb.ca.gov)

**RE: Comments On The Preliminary Draft of Procedures and Guidelines for Regulated Parties for Establishing New Fuel Pathways Under The California Low Carbon Fuel Standards**

Dear Mr. Ingram:

Shell Oil Company appreciates this opportunity to provide comments on the preliminary draft of Procedures and Guidelines for Regulated Parties for Establishing New Fuel Pathways Under the California Low Carbon Fuels Standards. Our comments focus on four aspects of the draft. First, we suggest that CARB simplify the process by using the same process regardless of whether or not the proposed fuel pathway potentially results in indirect emissions. Second, we suggest that CARB simplify the process to enable expedited decision-making. Third, we suggest that CARB clarify the process to ensure that a process is available for parties to demonstrate that their pathway avoids or significantly reduces indirect emissions relative to the default indirect emission values. And, lastly, we offer some specific comments on the proposed procedures and guidelines.

I. **CARB Should Simplify the Process by Using the Same Process Regardless of Whether The Proposed Fuel Pathway Results in Indirect Emissions**

CARB has proposed a bifurcated process in which pathways that have indirect effects must go before the Board before the pathway can be approved. Rather than adopt this approach, which is likely to result in substantial delays in the approval of new pathways, and which in turn can stifle innovation, we suggest that CARB adopt a single robust process that allows the Executive Officer to make the final decision on all new fuel pathways.

## II. CARB Should Simplify The Process To Enable Expedited Decision Making

We are concerned that a lengthy process that requires rulemaking in order to add new fuels pathways will slow the pace of new fuel development. CARB must create a faster process that provides investment certainty for companies considering development of a new fuel pathway and yet still provides the technical assurance that the new pathways are sound. We believe that CARB should be consistent with approaches it has taken in other fuels regulatory programs. For example, although the specifications for CARB diesel aromatics are included in CARB's regulations, CARB allows parties to develop alternative formulations that CARB approves via a petition process rather than through a formal rulemaking process.

Instead of requiring each petition for a new fuel pathway to be approved via a formal rulemaking process, we suggest that CARB revise the regulations to establish a petition process in the regulations that clearly specifies the process, and substantive criteria to be applied when the Executive Officer evaluates a petition for a new fuel pathway. By specifying the process that applies in the regulations, we believe that CARB can then approve new fuel pathways administratively without having to go through a formal rulemaking process, since the process itself would have been approved through the rulemaking process. If the petition process described in the regulations is robust, there should be no need to approve each new pathway through a formal rulemaking process. This approach would be consistent with the approach that CARB took in the CARB diesel program.

## III. CARB Should Clarify The Process To Ensure That Options Exist For Parties To Demonstrate That Their Pathway Avoids Or Significantly Reduces Indirect Emissions Relative To The Default Indirect Emission Values

CARB has set forth the process that applies when a proposed pathway will "create significant land use change effects." CARB also lists various biofuels that are deemed to have no or inherently negligible land use effects on carbon intensity. However, CARB's draft does not appear to provide a mechanism for a party to demonstrate that their biofuel has no or a significantly reduced indirect land use change effect compared to the effect established in the default values. To encourage innovation and the production of the most sustainable biofuels, CARB should ensure that the process allows parties to demonstrate that their biofuel is produced from feedstocks that have no or a significantly lower indirect land use change impact than implied by the default indirect land use change factor values for that feedstock pathway.

A suitable process could extend the mechanism for establishing a new fuel sub-pathway to include demonstrated revisions to the indirect land use change modeling alone (as opposed to only basing sub-pathways only on changes to CA-GREET). This is consistent with the CARB view (on p10 of the proposal) that pathways are created using both CA-GREET and GTAP (or equivalent) models as it allows new sub-pathways to be based on revisions to either of these models. Examples of suitable revisions to the

indirect land use change modeling could include factors such as demonstrable changes to the input parameters of the GTAP model, more accurate emission factors or consideration of the agricultural practices listed in section IV of the proposal, which sets out criteria for specific biofuel feedstocks that are expected to have no or inherently negligible land use effects on carbon intensity.

#### IV. Specific Comments On the Proposed Process

After a party submits an application and supporting information, the current proposed process would allow CARB to find that the new proposed pathway is not warranted. We believe that the process leading to this particular outcome is inconsistent with the overall scheme CARB has proposed. If CARB believes it necessary to go through a formal rulemaking process to approve a petition for a new pathway, then a decision by CARB to reject a new pathway should be subject to the same process. In any event, if CARB decides that a new pathway is not warranted, that decision should be accompanied by a statement of reasons, and an acknowledgement that CARB's decision constitutes a final agency action subject to judicial review.

CARB should provide additional examples, and clarification, as to what constitutes a new pathway versus a modified pathway.

We also suggest that CARB clarify the substantiality criteria under method 2A. As currently drafted, the language states that a party petitioning for a new modified pathway would be required to state "his or her ability and willingness to produce more than 10 million gallons per year." Instead, the substantiality criteria should be based on the pathway having the capability to be scaled by multiple producers to provide 10 million gallons of gasoline equivalent per year.

CARB should more specifically define what information is needed to support a carbon intensity calculation for a pathway. It is not clear, for example, whether CARB would accept emissions projections, or would require actual historical performance data.

We agree that the five basic categories listed in section IV represent a good initial set of criteria for specific biofuel feedstocks that are expected to have no or inherently negligible land use effects on carbon intensity. However, we would recommend that under section IV the first category should be expanded to include the following: 1) fuel feedstock crops grown on land deforested before a certain date (e.g. Roundtable for Sustainable Palm Oil uses 2005, European Renewable Energy Directive uses 2008), and 2) fuel feedstock crops grown on abandoned/underutilized/neglected farmland including pastureland. We also reiterate our earlier point in requesting that a suitable, simple process be defined for reducing or removing the indirect land use change carbon intensity factor for an existing pathway when one of these criteria can be demonstrated for a particular biofuel usage. In particular we suggest examining use of carbon intensity bonuses for the biofuel when one of these criteria can be demonstrated, partially or completely offsetting the default indirect land use change carbon intensity factor. This would enable synergies with the European Renewable Fuels Directive.

In addition, where CARB specifies 'sustainable' sources of biomass (e.g. sustainably harvested wood and forest residues), we believe it is critical that CARB ensures definitions are cited and consistent with the existing international sustainability standards/certification schemes. For instance, when referring to sustainably harvested wood and forest residues, CARB should ensure consistency and recognize the Forest Stewardship Council (FSC) definition. And, for defining sustainable biomass and specific feedstocks e.g. sustainable sugar, we would urge CARB to recognize and/or use definitions established by sustainable biofuel standards/certification bodies including Better Sugar Initiative, Roundtable for Responsible Soy, Roundtable for Sustainable Biofuels and Roundtable for Sustainable Palm Oil.

On the detail of Table 1, under the Conditions/Restrictions column for Crop Residue, we question how leaving crop residue on the fields impacts indirect land use change. We would suggest that this is an issue for the CA-GREET pathway in terms of fertilizer use and should be taken into account when developing the pathway.

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Shell appreciates this opportunity to comment on the preliminary draft of Procedures and Guidelines for Regulated Parties for Establishing New Fuel Pathways Under the California Low Carbon Fuels Standards. Should you have any questions concerning these comments please call me, or Clay Calkin at 925-313-3321.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Randy Armstrong', written in a cursive style.

Randy Armstrong  
Environmental Issues Director