

December 13, 2023

Submitted via ca.gov

Liane M. Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Tier 2 Pathway Application No. B0520

Dear Chair Randolph:

Communities for a Better Environment (“CBE”) writes in opposition to Phillips 66 Company’s Tier 2 Pathway Application No. B0520 for renewable diesel derived from soybean oil produced in Argentina, on behalf of our organization and our community resident members. This is a consequential pathway application that would lock in a feedstock supply chain with significant environmental sustainability risks. It would also exacerbate pollution in already overburdened environmental justice communities near the refinery. In addition to denying the application based on its technical deficiencies and requiring any amended application to address these deficiencies (particularly with respect to the application’s Land Use Change (“LUC”) analysis), the Executive Office should consider further analysis and public input on this pathway. Further, the application should not be approved while the Air Resources Board (“CARB”) is considering changes to the Low Carbon Fuel Standard (“LCFS”) program.

1. The proposed pathway application does not properly analyze the direct and indirect LUC effects of importing soybean oil from Argentina.

The application improperly uses the LUC impact value for soy biodiesel that is listed in Table 6 of the LCFS regulation. Instead of using this standard value, the Executive Office should conduct a LUC analysis using the GTAP-Bio model combined with the AEZ-EF model. The LUC value in Table 6 is calculated based on an increase in soy biodiesel production sourced primarily from U.S. soybean production.¹ The proposed pathway, however, would source biodiesel feedstocks from Argentinian soybean oil. This distinction is important because indirect LUC effects are likely higher in Argentina, the world’s top exporter of soybean oil.² Increasing demand for Argentina soybean oil exports will likely spur competition with Argentina’s other international buyers and raise the price of soybean oil. This competitive pressure indirectly incentivizes substituting soybean oil for other similar oils, and soybean oil’s most important substitute is palm oil, a product strongly associated with deforestation in the tropics.³ This phenomenon of large-scale substitution between soybean oil and palm oil is particularly pronounced

¹ See CALIFORNIA AIR RESOURCES BOARD, DETAILED ANALYSIS FOR INDIRECT LAND USE CHANGE I-20–21 (2015), https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/iluc_assessment/iluc_analysis.pdf (hereinafter “CARB LUC Report”).

² U.S. DEPARTMENT OF AGRICULTURE FOREIGN AGRICULTURAL SERVICE, OILSEEDS: WORLD MARKETS AND TRADE 19 (Dec. 2023), <https://apps.fas.usda.gov/psdonline/circulars/oilseeds.pdf>.

³ For more details about fungibility between soybean oil and palm oil, and the environmental and climate externalities of palm oil production, see Natural Resources Defense Council, *NRDC Recommendations for Updates to the Low Carbon Fuel Standard*, submitted to CARB on Jun. 14, 2023, https://ww2.arb.ca.gov/system/files/webform/public_comments/4036/NRDC%20Letter%20to%20CARB%20on%20LCFS%20Updates_061423_final.pdf. See also JANE O’MALLEY ET AL., SETTING A LIPIDS CAP UNDER THE CALIFORNIA LOW CARBON FUEL STANDARD 8 (2022), <https://theicct.org/wpcontent/uploads/2022/08/lipids-cap-ca-lcfs-aug22.pdf>.

in India and China,⁴ and both of these countries currently buy Argentinian soybean oil.⁵ Argentinian soybean oil is therefore likely to pose greater indirect LUC risks than U.S. soybean oil. Because of this, the standard LUC impact value used in the application is likely inaccurate.

The application's discussion of direct land conversion in Argentina is also inadequate. The application suggests that cropland expansion effects would be low because total croplands in Argentina have been "relatively stable" in the past decade and because soybean double cropping has expanded. This overlooks the unique risks of deforestation associated with soybean production in Argentina. These risks are so widely known that the European Union has passed legislation banning the import of Argentinian soybeans that are associated with deforestation.⁶ Most of the deforestation occurs in Gran Chaco Forest, a highly sensitive biome that has been identified by the World Wildlife Fund as one of the world's greatest "deforestation fronts" due to pressures from soybean farming.⁷ Gran Chaco is the second-largest forest in South America and is home to several Indigenous communities whose ancestral lands are at risk. Although soybean-driven deforestation has been declining in Argentina in recent years, these critical areas remain at risk, and Phillips 66's proposed pathway may create new deforestation pressures that undermine the progress that has been made.

2. The application does not adequately account for the unprecedented scale of renewable diesel production at the Phillips 66 facility.

The Phillips 66 biofuel refinery is expected to produce renewable diesel at a scale far greater than existing facilities of its type, raising California renewable diesel production to levels not anticipated in the modeling framework for assessing LUC effects. To model the impacts of biofuel production changes, CARB used baseline data from 2004 when biodiesel and renewable diesel production levels were very low.⁸ But biodiesel and renewable diesel production have taken off in recent years, increasing from 32 million gallons in 2012 to 1.8 *billion* gallons in 2022.⁹ The Phillips 66 biofuel refinery expects to add an unprecedented 0.8 billion gallons per year to that number.¹⁰ Together with the Martinez refinery biofuel conversion, these two projects are expected to double the volume of biodiesel and renewable diesel production in California.¹¹ These volumes are far greater than the production changes that CARB

⁴ See, e.g., Eko Listiyorini, *Renewed Demand From China and India Helps Palm Oil Price Rise*, BLOOMBERG (Jul. 7, 2022), <https://www.bloomberg.com/news/articles/2022-07-08/renewed-demand-from-china-and-india-helps-palm-oil-to-advance>.

⁵ Ministerio de Economía Argentina, *Aceite de soja en bruto, incluso desgomado*, accessed Dec. 12, 2023, [https://www.magyp.gob.ar/sitio/areas/ss_mercados_agropecuarios/exportaciones/_archivos/000019_Evoluci%C3%B3n%20de%20las%20Exportaciones%20Argentinas%20\(Fuente%20INDEC\)/000100_Complejo%20Sojero/000101_Aceite%20de%20Soja/000095_2023.php](https://www.magyp.gob.ar/sitio/areas/ss_mercados_agropecuarios/exportaciones/_archivos/000019_Evoluci%C3%B3n%20de%20las%20Exportaciones%20Argentinas%20(Fuente%20INDEC)/000100_Complejo%20Sojero/000101_Aceite%20de%20Soja/000095_2023.php).

⁶ Kevin Damasio & Jorgelina Hiba, *EU deforestation law presents a major test for South American farmers*, DIALOGO CHINO (Jul. 19, 2023), <https://dialogochino.net/en/agriculture/374430-eu-deforestation-law-major-test-for-south-america-farmers/>.

⁷ WORLD WILDLIFE FUND, *DEFORESTATION FRONTS: DRIVERS AND RESPONSES IN A CHANGING WORLD* (2021), https://files.worldwildlife.org/wwfmsprod/files/Publication/file/ocuoymdil_Deforestation_fronts_drivers_and_responses_in_a_changing_world_full_report_1_.pdf?_ga=2.236113411.302536818.1702347446-1435904355.1702347446.

⁸ CARB LUC Report at I-6.

⁹ California Air Resources Board, *LCFS Data Dashboard Figure 2*, accessed Dec. 12, 2023, <https://ww2.arb.ca.gov/resources/documents/lcfs-data-dashboard>.

¹⁰ Contra Costa County Department of Conservation and Development, *Phillips 66 Rodeo Renewed Project Staff Report*, accessed June 14, 2022, <https://www.contracosta.ca.gov/DocumentCenter/View/74662/CDLP20-02040-cpc-web-version-rev>.

¹¹ *Id.*; Joseph W. Jr Lawlor, *Martinez Refinery Renewable Fuels Project*, Contra Costa County Department of Conservation and Development (2022), <https://www.contracosta.ca.gov/DocumentCenter/View/74650/LP20-2046-Presentation-County-Planning-Commission->.

modeled.¹² It is therefore unreasonable to assume, without further analysis, that LUC effects would be the same as those calculated for Table 6 in the LCFS regulation.

The pathway application also omits data that are important for understanding its climate impacts. The CARB LCFS Fuel Pathway Report that Phillips 66 submitted redacts all data about feedstock volumes as “confidential business information.” These data are critical for evaluating the carbon intensity calculations.

3. The Phillips 66 biofuels conversion project has consistently violated public review process requirements.

While this comment period is uniquely about the LCFS, these types of concerns with the Phillips 66 biofuels refinery are not new; the biofuels conversion project violated the information sharing and public review requirements of the California Environmental Quality Act (“CEQA”).¹³ The Contra Costa County Superior Court held that the project’s environmental impact report (“EIR”) failed to comply with CEQA for: (1) piecemealing out prior biofuel facility conversions at the refinery; (2) ignoring cumulative impacts of on-site biofuels units; and (3) improperly deferring development of an odor mitigation plan.¹⁴

The Court was not convinced by past attempts to claim the 2021 conversion of the NuStar Rail Terminal used by the Phillips 66 Refinery was not, in fact, part of the ongoing biofuels conversion of the broader refinery, given the terminal has quadruple the capacity of Unit 250, the existing biofuels unit.¹⁵ The Court also took issue with the EIR’s failure to consider Unit 250’s cumulative impacts in light of the broader biofuels conversion.¹⁶ Further, despite the fact that the “key element of controlling odors is to engineer control measures into the facility design,”¹⁷ project proponents had illegally attempted to defer development of an odor mitigation plan.¹⁸

In the October 2023 recirculated EIR, which is meant to correct these past failures, project proponents refused to undertake a robust analysis of some environmental impacts, asserting it would have been too speculative to assume what feedstocks the biofuels refinery would process. Yet in November, only weeks later, Phillips 66 submitted this pathway application seeking approval of Argentinian soybean feedstock.

Each of these CEQA violations, and the refusal of Phillips 66 to engage with the impacts its feedstocks will have on local communities, underscore a consistent pattern of obfuscation, of sidestepping public review. In this pathway application, Phillips 66 now attempts to continue this pattern, offering only meager and inadequate analysis of its intended feedstock and its calamitous environmental effects.

4. CARB should not approve this application while the LCFS rulemaking is underway.

¹² CARB LUC Report at I-29–36.

¹³ *Communities for a Better Environment v. County of Contra Costa*, Contra Costa County Superior Court Case No. N22-1091, July 21, 2023, https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230721_docket-N22-1091_decision.pdf (hereinafter “Statement of Decision”).

¹⁴ *Id.*

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 12.

¹⁷ Rodeo Renewed Project Draft Revised Environmental Impact Report, County File No. CDLP20-02040, State Clearinghouse No. 2020120330, October 2023, at 10 (hereinafter “REIR”).

¹⁸ Statement of Decision, at 28.

If CARB approves this pathway application now, it will lock in a consequential fuel pathway that embodies many of the concerns raised by the public and considered by CARB staff and the CARB board in the ongoing LCFS rulemaking process. Many climate justice organizations, including CBE, have asked CARB to consider setting a cap for lipid-based biofuels, and the Environmental Justice Advisory Committee made an official recommendation that CARB cap lipid-based biofuels at 2020 levels pending an updated risk assessment for crop-based feedstocks.¹⁹ A cap on lipid-based biofuels was proposed in response to concerns that the LCFS is driving soy and corn-based oil demand to unprecedented levels. These dramatic increases in demand are diverting feedstock supply away from other states and threatening food security by raising food commodity prices. Further, because renewable diesel demand can no longer be met by waste oil alone, the LCFS directly incentivizes more feedstock production and land conversion, and it indirectly incentivizes production of substitute food crops like palm oil. These dynamics risk undermining the goals of the LCFS and California's broader climate goals.

Phillips 66's proposed pathway directly raises many of these concerns that members of the public have asked CARB to consider in the current rulemaking process. As explained above, the Phillips 66 biofuel refinery will produce renewable diesel at far greater volumes than other existing facilities, and it will have a considerable impact on total statewide production of renewable diesel. Further, this proposed pathway to import Argentinian soybean oil will lock in program credits for a new feedstock supply chain that poses serious deforestation risks. The likely impacts of this fuel pathway raise important policy questions that should be addressed in the LCFS rulemaking process, not rushed through with minimal public involvement in this pathway application.

5. This proposed pathway is another false solution to the climate crisis and risks undermining California's climate goals.

Fundamentally, Argentinian soybean feedstocks are the latest false solution for the global climate crisis. False solutions are proposed by oil companies and those who benefit from extractive, polluting economies to delay the imminent and necessary Just Transition towards a regenerative, community-centric economy and world. These false solutions may appear to improve existing conditions, but beneath the surface, they often present just as many, and just as complicated, challenges for future generations to solve, burdening the most disenfranchised. The "extractivist bioeconomy" of Argentinian soybean agribusiness is a false solution, accelerating soil exhaustion, increasing reliance on pesticides, and displacing Indigenous communities and ecosystems.²⁰ While exacerbating these problems in the Global South, Phillips 66's biofuels conversion perpetuates the local harms at the refinery site here in Rodeo, where "the difference[] in criteria pollutant emissions" between petroleum refining and biofuel refining "is small" and in some cases *increases* local air pollution.²¹ Climate change makes Phillips 66's plan even riskier; an intense drought led to the lowest yield estimate for Argentinian soybean production in 24 years

¹⁹ See Assembly Bill 32 Environmental Justice Advisory Committee (EJAC) DRAFT Recommendations to the California Air Resources Board (CARB) on the Low Carbon Fuel Standard Regulation Updates, Aug. 24, 2023, <https://ww2.arb.ca.gov/sites/default/files/2023-08/EJAC%20Low%20Carbon%20Fuel%20Standard%20Recommendations%20Version%201%20082423.pdf>.

²⁰ Tittor, A., "Towards an Extractivist Bioeconomy? The Risk of Deepening Agrarian Extractivism When Promoting Bioeconomy in Argentina," in *Bioeconomy and Global Inequalities*, Palgrave Macmillan (2021), https://doi.org/10.1007/978-3-030-68944-5_15; see also Leguizamon, A., *Disappearing nature? Agribusiness, biotechnology and distance in Argentine soybean production*, 43 JOURNAL OF PEASANT STUDIES 2 (2016), 313-330, https://leguizamon.wp.tulane.edu/wp-content/uploads/sites/461/2020/05/2016_Leguizamon_JPS_Disappearing-nature.pdf.

²¹ REIR at 16.

and approaching a 50-year record.²² CARB must demand more of Phillips 66 through this process to ensure that it does not continue to extract from and pollute in communities here in California, and around the world.

6. Conclusion

CBE requests that the Executive Office deny the application. The application does not include an accurate carbon intensity calculation, and the proposed fuel pathway will undermine the goals of the LCFS as well as California's climate and environmental justice goals.

Respectfully submitted,



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²² Boroughs, B., *Oilseeds and Products Annual – Argentina*, U.S. Department of Agriculture Foreign Agricultural Service Report Number AR2023-0004, April 14, 2023, https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Oilseeds%20and%20Products%20Annual_Buenos%20Aires_Argentina_AR2023-0004; *see also* Boroughs, B., *Oilseeds and Products Update – Argentina*, U.S. Department of Agriculture Foreign Agricultural Service Report Number AR2023-0007, July 19, 2023, https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Oilseeds%20and%20Products%20Update_Buenos%20Aires_Argentina_AR2023-0007 (detailing a further reduced crop yield estimate).