

February 5, 2019

Mr. Richard Corey, Executive Officer  
California Air Resources Board  
Executive Office  
1011 I Street  
Sacramento CA 95814

Transmitted via email

**Re: 15-Day Changes to Proposed Rule on Reporting of Criteria and Toxic Air Contaminants and Community Air Pollution**

Dear Mr. Corey:

We represent organizations from across the State of California working on air quality, environmental justice, public health, and environmental protection. Many of us are involved with the Community Air Protection Program. We are seeking a complete, current, consistent, and accurate inventory of sources and emissions of criteria pollutants and air toxics that supports reduction of emissions in our communities and analyses of impacts of air quality and climate policies.

We have several purposes in writing to you at this time:

- First, we reiterate our support for many elements of the October 2018 public hearing draft of the rules.
- Second, we express our support and appreciation for the significant progress reflected in actions at the December 14 meeting of the California Air Resources Board (ARB).
- Third, we outline our suggestions and concerns for the development of the fifteen-day changes to the proposed rule as authorized by the Board.
- Finally, we identify four issues that we would like to explore further with the ARB staff.

**First, we would like to reiterate our support for many elements of the October 2018 public notice<sup>i</sup> proposal for the Criteria and Toxics Reporting emissions inventory rule,<sup>ii</sup> <sup>iii</sup> as noted in our prior comments<sup>iv</sup> submitted on December 9. We support these aspects:**

- Annual reporting of emissions (at a minimum);
- Including fugitive emissions in emission estimates;
- Deadlines for submission of emissions data each year by facilities and/or districts;
- Stronger mandate to get data reported;
- Capacity for independent audit of accuracy of submittals;
- Plan for unified data system based on modern standards using electronic data;
- Efforts to streamline, standardize, clarify, document and improve disparate systems and approaches used by 35 local air districts.

**Second, we appreciate the significant progress achieved in conjunction with the December 2018 Board meeting,** reflected in the following items and discussed more fully below.

1. Resolution 18-57 prepared by the staff and adopted by the Board.
2. Additional comments and direction provided by the Board.
3. Staff Presentation delivered by Mr. Edwards preceding the public hearing.

### **1. ARB Resolution <sup>v</sup>**

We highlight three elements in the resolution approved by the Board on December 14 that represent important steps forward from our perspective.

#### **a. Multiple sources of authority support actions**

The resolution laid out multiple sources of legal authority for the Governing Board to take actions to build data infrastructure to better characterize emissions to support air pollution control programs for communities. As we have noted in our previous comments and discussions with the staff, the Board has significant authorities from multiple statutes that supplement AB 617. The resolution explains this well.

#### **b. Authorization for 15-day changes**

The resolution granted authority for you as Executive Officer to complete a rule revised from the October draft after a 15-day public comment period and consideration of additional topics as raised in the Staff presentation. This will allow the process to move forward, and we support that.

#### **c. Additional consideration of scope**

The resolution detailed the extensive history and consultative processes used by ARB staff to set “applicability criteria” that would establish the scope of the inventory by defining sources and facilities subject to reporting.

We commented to the Board that the October 2018 public notice draft of the regulation would set these criteria too narrowly to meet the purposes of the statutes taken together and the needs of our communities. We want to see an emissions inventory that supports (and does not delay) timely development of community air protection, that supports our ability to identify areas of concern for cumulative impacts, and that allows us to determine whether sources and emissions are increasing or decreasing in disadvantaged communities.

To accomplish this, we want to see all sources in the inventory with information about facility characteristics, location, geocodes, industry, and so on.

The Board resolution incorporated staff recommendations to further develop the applicability criteria to overcome limitations in the October draft, and we thank the Board for this essential step.

## **2. ARB Direction to Staff**

Board members provided additional direction for staff in comments after the public hearing during discussion of the resolution on two issues of particular importance to us.

### **a. Stationary Sources of Pesticides and Agricultural Chemicals that are Air Toxics**

Board members supported including stationary sources of air toxics pesticides and agricultural materials including fertilizers and ammonia in the emissions inventory.

Stationary sources include emissions from facilities and post-application volatilization from field applications of fumigants and other pesticides and fertilizers as well as emissions from facilities that fumigate imported and exported products. Tenants at the Ports of Los Angeles and Long Beach use methyl bromide fumigant.

We would expect that in some cases such sources would be important at the community level and could contribute to cumulative burdens of air pollution, so this is important to us.

We agree with the Board comments as well that any pesticide use data already reported should be fully explored before requiring any new reporting, as we noted in our comments in December.

We recognize that while the DPR regulates pesticides in their pesticidal use, the ARB has primary authority to regulate emissions of pesticides and other toxic chemicals once they volatilize into the air.<sup>vi</sup> We would welcome and support efforts between the ARB and DPR to work together to represent all of the pesticide air toxics in the inventory and related activities.

### **b. Ground-Truthing of Emission Sources**

The Board addressed the importance of ground-truthing to verify inventories and identify sources of emissions that are not permitted or otherwise authorized. We have learned from past work that there can be many sources that have emissions but no permits or authorizations and that have not come to the attention of the relevant air district or the ARB. We know from direct experience that communities will need to conduct ground-truthing. We understand that this has been incorporated into the community air pollution planning by at least some air districts.

The planning and implementation for the unified emissions inventory will need to provide means (such as an “on-ramp”) to add facilities identified by ground-truthing. We appreciate the endorsement of this concept by Board members. We look forward to working with you to develop an approach to make this work for everyone.

## **3. ARB Staff Presentation<sup>vii</sup>**

The ARB Staff presentation included several elements that we want to highlight as important to the overall success of this project. We thank you for these.

**a. Area sources**

The Staff presentation noted that stationary sources that have been previously assessed as a group as “area” sources would be included as individual sources. This is an important step forward in the air toxics program. The previous approach would generate an average value applied across a relatively large area such as a county. This does not allow for assessment of community level impacts or cumulative burdens. We thank you for incorporating this important methodological improvement.

**b. Fugitive emissions**

The Staff presentation discussed the importance of incorporating fugitive emissions into estimates for stationary sources. While this had been briefly mentioned in the October public notice draft of the rules, we appreciate the additional discussion of the significance of including these emissions and the need to properly account for them.

**c. Scope**

The staff presentation recommended extending the scope of the program to meet the statutory needs identified in the resolution, in particular to include all permitted sources of emissions. We support this needed change and thank the staff for more fully analyzing the multiple uses for the emissions data.

**d. Communities as Users for the Emissions Inventory Data System**

The emissions inventory is to be developed as part of what has been described as a new paradigm for addressing air pollution at the community level, as endorsed by the Board at its September meeting. One implication of the expanded partnership will be greater engagement of communities in understanding and using data about emissions. Consequently, the emissions inventory data system will need to be usable and accessible to many parties including communities.

We have asked the ARB Staff to consider the community participants as a user group for the data system, beyond availability of the data visualization tool. Identifying users of data systems and including them in the planning for design and implementation have become standard practices in modern data systems. We appreciate that the Staff has recognized this and identified community partners as users of the system.

Ultimately, we hope that we will be able to view the inventory as a shared resource supported by contributions from facilities, air districts, ARB, and communities.

**e. On-going reporting**

To have an inventory that supports valid analysis and actions, the scope must be consistent and provide a stable basis for detecting changes that occur over time. Facilities should not be dropped out. We appreciate that sunseting of sources out of the inventory is not in the staff presentation.

**Third, as the development of 15-Day changes are underway, we have concerns about the “threshold” proposal. We have alternatives to suggest. We understand that workshops may be held soon.**

**We would like to discuss this with ARB staff before a workshop draft is released or workshops are scheduled.**

**a. Thresholds for exclusion of sources**

The ARB staff presentation introduced the possibility of a reporting threshold based on mass of emissions for consideration as part of the 15-day process. For sources of criteria pollutants the threshold was suggested to be 4 tons. For air toxics this would be in the very small to pounds range.

We understand that this concept was put forward by some or all of the air districts as a way of screening sources out of the emissions inventory and reporting requirements.

We are skeptical of the technical feasibility of the proposal. We do not believe that the data about emissions are good enough to support the fine distinctions necessary for the types of thresholds being contemplated, especially for air toxics.

It is widely acknowledged that emissions estimates reported for California air toxics sources are produced using inconsistent approaches and that some methods are outdated. The thresholds proposal would have us use these data to screen sources out of the inventory.

As a general principle, we do not support building any complex analyses such as detailed toxics reporting schema, based on the use of data for which accuracy is not substantiated.

A second equally important concern is that it is important to move toward a stronger basis for decisions about air toxics. If we are to consider excluding sources from reporting, this should be based on an analysis that shows why reporting is not necessary. We would like to move toward an approach that relies on facts to make decisions.

As we have pointed out, a major concern is to consider the cumulative burden of multiple sources of air pollutants on communities, not just one source at a time. Excluding sources from reporting without any assessment of their potential contribution to a cumulative burden will not address this concern and is not acceptable from a technical perspective.

## **b. Other ways to address different kinds of sources in reporting**

While we do not think that the thresholds approach can be implemented using currently available data, we are not opposed to looking at other ways to design reporting to reflect the potential for impact.

As a general principle we agree that requirements for reporting of emissions could appropriately vary by facility size and impact. We agree that a gas station and a refinery are not the same. However, it is important for all facilities and sources to be identified in the inventory.

Perhaps an alternative would be to consider tiered reporting requirements by identifying those that can be documented to be of minimal impact and then separating them out for a lesser reporting burden. Perhaps three or so categories could be established and sources categorized initially on a temporary basis subject to confirmation in the first two years.

We recognize that businesses, especially local and small businesses and those with significant local employment, can be important to communities. Incorporation of a just transition to new jobs is needed for workers displaced by new processes or better technologies to new jobs. Reporting for small businesses should be streamlined.

Early referral of source categories for improved technologies may obviate the need for more accurate reporting, and we encourage use of mixed strategies to achieve reductions.

## **c. First Year Implementation. What about a Year of Truth and Reconciliation?**

We would suggest that you consider a phase in to new reporting requirements. You might consider a first-year reporting strategy that would help to prepare for the data system. It might include reporting by districts of facility information for all sources that they have any relationships with through a permit or other authorization or reporting requirement. For emissions, in the first year it might be sufficient to require districts to estimate whether sources have regional impact, local community impact, highly localized impact, or no impact without consideration of other sources. They could report whatever data they are now collecting or generated whether that is current reporting requirements, for the last time that they obtained emissions data (even if years ago), or if they have no data. That would allow for identification of what the capacity is at this time and to see the range of facilities that would need to be included in the data system.

**Fourth, we would like to discuss four issues that will be important to the implementation of the inventory and reporting.**

**a. Sources with Significant Seasonal Variation or Extraordinary Emissions**

The rule is focused on establishing comparable reporting periods for greenhouse gases, criteria pollutants, and air toxics, and we support that.

While not true for greenhouse gases, for some criteria pollutants and air toxics, seasonal variations in emissions may be significant with regard to health. When there is a significant seasonal variation with potential health significance, measurement and estimation strategies need to account for it.

For example, the San Joaquin Valley experiences seasonal differences in emissions related to agriculture.

In the Valley, PM<sub>2.5</sub> is the worst during the cooler months of October through February. This is strongly related to ammonium nitrate levels which increase during the colder months of the year. A situation may exist where dairies are emptying manure lagoons during these months which would add greatly to ammonia levels.

The pattern for PM<sub>10</sub> is different, as PM<sub>10</sub> is the worst during the months of August through November. PM<sub>10</sub> is related strongly to harvest activities. During harvest there is extra dust from field activities and extra NO<sub>x</sub> and PM<sub>2.5</sub> from agricultural trucks with older diesel engines plus all the field harvest equipment.

These are examples where it would be important to identify time periods of higher emissions and ensure that emission estimates accurately capture them in order to identify the most significant impacts. It is also important to recognize that short term monitoring may fail to detect significant elevations in emissions if it is outside time periods of greatest concern.

Another consideration is that awareness of seasonal variation may be helpful to identify actions to reduce the higher emissions seasons. For example, in cases where PM<sub>2.5</sub> is highest during the winter, switching heating sources to non-combustion electricity could be appropriate.

While it is a reasonable step forward to construct an inventory with annual reporting, the actual estimates in some cases may need to capture a shorter period or season of interest.

Similarly, we know that extraordinary emissions are common. Sources experience upset conditions (intentionally or not), conduct startups and shutdowns, and may not comply with permit limits, technology requirements, or expected practices. All of these can cause sharp and atypical increases in emissions that may be of public health concern

that might not be identified would be if averaged over a year. These are well known issues but need to be addressed. Such atypical events cannot simply be averaged over an annual reporting period.

Taking this one step further, we are experiencing more extreme weather that causes fires and floods that may lead to entirely unanticipated releases as any number of toxic compounds such as trichloroethylene, perchlorate, dioxins and heavy metals may be combusted or displaced and released into the environment. Some such incidents will be a predictable result of climate change. It may be time to consider ways to measure such releases and incorporate them into our understanding of the burden of contaminants that communities face.

This would be particularly true in communities that are vulnerable to emergency releases from fire, flood, or other such phenomena and where facilities or site that could pose such hazards are located. Perhaps a capacity for measurement of such emergency releases could be created and deployed when needed.

#### **b. Proceeding to Phase II**

As you know, the second phase of work on the emissions inventory is as important as the first. It is essential that we move rapidly into the process to update procedures to generate emissions estimates, particularly those based on outdated emission factors, and to validate estimates with stack testing, continuous monitoring, and fence line monitoring where needed. We would like to understand the plan and schedule for this second phase.

#### **c. Toxic Super Pollutants**

We appreciate the acknowledgement by the Staff in our prior discussions of the importance of addressing the potential for accumulation of highly persistent super pollutants such as lead or PFASs in the environment. We look forward to working with you on ways to identify and address the “super pollutants.”

We appreciate the commitment by the Staff to update the list of air toxics. We understand that these tasks are currently in the context of an update to 2588 hot spots rule.

Though these issues have not reached the level of the Board, we want to highlight them as important elements that support the credibility of the program as a whole. We have had some discussions with the staff on approaches and hope to continue this dialogue.

#### **d. Multiple Approaches to Community Air Protection**

We would like to discuss whether there may be nimble ways to achieve community air protection, as a supplement to the intensive planning projects now underway.



We strongly support the efforts of the Legislature and the ARB to create a focus on air pollution at the local level. Clearly, the process of Community Air Protection has just gotten started. We commend the ARB for getting projects up and running. We share the hope expressed by ARB that these projects will lead to emission reductions as intended.

However, we have some unease. One reason is the amount of money that it seems will be needed for the air districts to manage the planning processes as designed by ARB. We are hearing discussions of massive staff increases. We are wondering if this will be sustainable.

We think it would be worth considering whether there are fundamentally less expensive and time-consuming ways to make progress on community air protection. We are very cognizant that the community steering committee members are volunteers who mostly work on this after hours at night and on weekends.

A second reason is to foster greater progress and cooperation among communities across the state not limited only to those that receive grant funding. We want to be able to allow communities to collaborate and learn from each other's experiences and to find economies of scale in addressing common issues.

To support this, we would like to see early identification of technologies that can be used to make early reductions in emissions in communities with planning projects but also in communities that face the same sources. At the outset, the technology clearinghouse mandated by AB 617 should identify approved off-the-shelf technologies that can be easily be incorporated such as vapor recovery systems for storage tanks or non-toxic chemical fumigation.

As a broader comment, it would seem that closer integration between the emissions inventory and emissions reduction might allow for more progress in more areas.

We don't want community air protection to be a concierge-level experience available to the few. We want community air protection for all.

We value the interactions that we have had with the ARB staff over the last year. We hope that we will be able to continue to have a strong and open working relationship.

Thank you for your consideration of these comments and suggestions and for all you do to support the health of the people of California.

Very truly yours,

Bill Magavern  
Policy Director  
Coalition for Clean Air

Kevin D. Hamilton  
Chief Executive Officer  
Central California Asthma Collaborative  
Fresno

Jane Williams  
Executive Director  
California Communities Against Toxics  
Rosamond

Tom Frantz  
President  
Association of Irrigated Residents  
Fresno

Anne Katten  
Pesticide and Work Safety Project Director  
California Rural Legal Assistance Foundation  
Sacramento

Sarah Aird  
Co-Director  
Californians for Pesticide Reform  
Berkeley

Robert M. Gould, MD  
President  
Physicians for Social Responsibility, San Francisco Bay Area Chapter

Joel Ervice  
Associate Director  
Regional Asthma Management and Prevention (RAMP)  
Oakland

Robina Suwol  
Executive Director  
California Safe Schools  
Los Angeles

Joy Williams  
Research Director  
Environmental Health Coalition  
San Diego

Stephanie Tsai  
Climate Justice Program Associate  
California Environmental Justice Alliance  
Oakland

Paulina Torres  
Staff Attorney  
Center on Race, Poverty & the Environment

Martha Dina Argüello  
Executive Director  
Physicians for Social Responsibility - LA  
Los Angeles

Janet Nudelman  
Director of Program and Policy  
Breast Cancer Prevention Partners  
San Francisco

Will Barrett  
Clean Air Advocacy Director  
American Lung Association in California  
Sacramento

Katelyn Roedner Sutter  
Senior Analyst, Climate Policy  
Environmental Defense Fund  
Sacramento

Medha Chandra  
Organizer & Policy Advocate  
Pesticide Action Network North America  
Sacramento

Gina Solomon, M.D., M.P.H.,  
University of California San Francisco

Jesse N. Marquez  
Executive Director  
Coalition For A Safe Environment  
Wilmington

Chaplain Anthony Quezada  
American Legion Post 6  
Long Beach

Drew Wood  
Executive Director  
California Kids IAQ  
Wilmington

Magali Sanchez-Hall  
Executive Director  
EMERGE  
Wilmington

Anabell Romero Chavez  
Board member  
Wilmington Improvement Network

John G. Miller, MD  
President  
San Pedro & Peninsula Homeowners Coalition  
San Pedro

Joe R. Gatlin  
Vice President  
NAACP San Pedro-Wilmington Branch 1069  
San Pedro

Modesta Pulido  
Chairperson  
St. Philomena Social Justice Ministry  
Carson

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Amy D Kyle, MPH PhD  
Volunteer Science and Policy Advisor  
San Francisco

cc:

Kurt Karperos, Deputy Executive Officer, ARB  
Veronica Eady, Assistant Executive Officer, ARB  
Michael Benjamin, Office of Air Quality Planning and Science Chief, ARB  
Karen Magliano, Office of Community Air Protection Chief, ARB  
David Edwards, AQPSD Greenhouse Gas and Toxics Emission Inventory Branch, ARB

Dr. John Balmes, Chair, AB 617 Consultative Group and Member, California Air Resources  
Governing Board

## Notes

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- <sup>i</sup> California Air Resources Board. **Notice of Public Hearing** to consider the proposed regulation for the reporting of criteria air pollutants and toxic air contaminants. October 13, 2018. <https://www.arb.ca.gov/regact/2018/ctr2018/ctrnotice.pdf> (accessed January 25, 2019).
- <sup>ii</sup> State of California Air Resources Board. Public Hearing to consider the proposed regulation for the reporting of criteria air pollutants and toxic air contaminants. **Staff Report Initial Statement of Reasons**. October 13, 2018. <https://www.arb.ca.gov/regact/2018/ctr2018/ctrisor.pdf> (accessed January 25, 2019).
- <sup>iii</sup> State of California Air Resources Board. Public Hearing to consider the proposed regulation for the reporting of criteria air pollutants and toxic air contaminants. Staff Report Initial Statement of Reasons. **Appendix A to the Staff Report. Proposed Regulation Order**. October 13, 2018. <https://www.arb.ca.gov/regact/2018/ctr2018/ctrpro.pdf> (Accessed January 25, 2019).
- <sup>iv</sup> **Letter from 19 environmental health, environmental justice, and environmental protection groups on the Proposed Rule**. December 9, 2018. <https://www.arb.ca.gov/lists/com-attach/17-ctr2018-B2kfZAdpAn9VMFc4.pdf> (accessed January 25, 2019)
- Signed by Central Valley Asthma Collaborative, Kevin Hamilton, Chief Executive Officer; Central Valley Air Quality Coalition, Dolores Barajas-Weller, Director; California Communities Against Toxics, Jane Williams, Executive Director; Californians for Pesticide Reform, Sarah Aird, Co-director; Breast Cancer Prevention Partners, Nancy Buermeyer, Senior Policy Strategist; American Lung Association in California, Will Barrett, Clean Air Advocacy Director; Pesticide Action Network North America, Paul Towers, Organizing Director & Policy Advocate; Coalition for Clean Air, Bill Magavern, Policy Director; Leadership Counsel for Justice and Accountability, Ivanka Saunders, Policy Coordinator; Physicians for Social Responsibility Los Angeles, Martha Dina Arguello, Executive Director; Central California Environmental Justice Network, Nayamin Martinez, Director; California Environmental Justice Alliance, Stephanie Tsai, Climate Justice Program Associate; California Safe Schools, Robina Suwol, Executive Director; Los Angeles Community Environmental Enforcement Network/Coalition for a Safe Environment, Jesse Marquez, Executive Director; Desert Citizens Against Pollution, Lyle Talbot, Founding Board Member; Environmental Health Coalition, Joy Williams, Research Director; Breathe of Los Angeles County, Marc Carrel, Chief Executive Officer; San Francisco Bay Area Chapter of Physicians for Social Responsibility; Robert M. Gould, MD, President; Watts Clean Air & Energy Task Force, Linda Cleveland. Submitted to the docket by Amy D Kyle, Science and Policy Advisor.
- <sup>v</sup> State of California Air Resources Board Regulation for the Reporting of Criteria Pollutants and Toxic Air Contaminants **Resolution 18-57**. December 14, 2018. Agenda Item Number 18-10-03. <https://www.arb.ca.gov/regact/2018/ctr2018/res18-57.pdf> (accessed January 25, 2019).
- <sup>vi</sup> The relevant court decision is: **Harbor Fumigation, Inc. v. County of San Diego Air Pollution Control Dist.** (1996) 43 Cal. App. 4th 854, 870, 50 Cal. Rptr. 2d. (stating “DPR's primary purpose [is] to regulate the use of pesticides in a manner safe to human beings and the environment, while it is a primary purpose of ARB and Districts to regulate emissions of TAC's, including pesticides, into the ambient air to protect human beings and the environment”).
- <sup>vii</sup> California Air Resources Board. Proposed Regulation for Criteria Pollutants and Toxic Air Contaminant Emission Reporting. **Staff Slide Presentation**. December 14, 2018. Agenda Item Number 18-10-03. Presented by Mr. Edwards. <https://www.arb.ca.gov/board/books/2018/121318/18-10-3pres.pdf> (accessed January 25, 2019).