

**Comments submitted to the Docket of the California Air Resources Board  
Informal Public Review Draft for Workshops of the Proposed 15-Day  
Modifications of the Regulation for the Reporting of Criteria Air Pollutants and  
Toxic Air Contaminants dated 3/4/2019**

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March 29, 2019 |

Submitted via email to [ctr-report@arb.ca.gov](mailto:ctr-report@arb.ca.gov)

## **Background**

### **Major Comments**

1. The Inventory Should Disclose All Sources Authorized by Air Quality Agencies
2. Goal Should be to Create a Complete Inventory – Ground-Truthing and Pesticides
3. Informal Proposal Delays Results
4. Too Many Sources are Required to Report Emissions
5. The Proposal Incorporates Complex Thresholds

Institutional Objections and Limitations Need to be Addressed

### **Conclusion -- Start with the Existing Information**

### **Technical Comments**

## Background

These comments address the Informal Review Draft of the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants released on March 4, 2019<sup>i</sup> for workshops starting the following day.<sup>ii</sup> The Informal Review Draft was developed after a hearing before the Air Resources Board in December 2018 of proposed rules<sup>iii iv v</sup> released in October 2018. The Board approved the proposed rules with certain changes plus further direction for staff<sup>vi vii</sup> and authorized the Executive Officer to approve final rules after a 15-day review.

I have been engaged with ARB staff since February 2018 on the development of this rule because I believe that a good inventory of sources and emissions could make a significant contribution to addressing cumulative burdens of air pollutants including air toxics in highly impacted California communities. In particular, it could be used to better identify areas where cumulative impacts are a concern and to speed identification of targets for reduction of emissions.

I have been working with a number of environmental justice, environmental health, and clean air groups over the last year to analyze proposals and provide input. We have submitted several letters<sup>viii ix</sup> and participated in many workshops and hearings. This letter reflects concerns identified through this work as well as my analysis of this informal draft proposal.

## Major Comments

I am sorry to say that this proposal does not provide information needed to advance community air protection and achieve emissions reductions in a timely way.

### 1. The Inventory Must Disclose All Sources Authorized by Air Quality Agencies

Reasons to construct an inventory of sources are to support (and not delay) community air protection, identify opportunities for emission reductions through improvements in technologies or other methods, increase capacity to identify areas of concern for cumulative impacts, and determine whether sources and emissions are increasing or decreasing in disadvantaged communities.

A number of the community groups and environmental justice and environmental health organizations working on community air protection have asked the ARB to provide an inventory that shows all of the sources of air toxics releases that have been authorized by the air quality agencies including the local air districts. However, the informal draft does not do that and would include only permitted sources.

It is not sufficient to include only “permitted” sources. This is because California air quality agencies use multiple types of actions to authorize releases not limited to permits but also including notifications, registrations, and exemptions. There is no standard for when a permit is required for a release of air toxics, and practices vary among from districts.

Communities and the public should be allowed to see all of the sources. It would be quite extraordinary in my experience for regulatory agencies to take the position that information about their authorizations of releases should not be made available to the public. In general, accountability for such actions is a fundamental responsibility of any regulatory agency.

## **2. Goal Should be to Create a Complete Inventory – Including Ground-Truthing and Pesticides**

Key sources are missing from the approach proposed in the informal rule.

Experience has shown that community ground truthing identifies sources that are unknown by local Air Districts, sometimes a lot of them. To have a credible inventory, there needs to be a mechanism to add sources that exist even if an Air District is not aware. The rule needs to include a way to add sources that are not known to Air Districts but identified from ground-truthing or other means. This has been raised in previous comments but not addressed.

A second concern is about the lack of provisions to address pesticides, which can make a contribution to air toxics in communities. This has been raised in previous comments but still needs to be addressed.

## **3. The Proposal Delays Results Too Long and Will Take Years to Produce Usable Information**

The informal rule pushes completion of any inventory out at least three years into the future.

The proposal creates new categories for sectors, which would be implemented over some series of years. This adds to the implementation phasing for air districts.

It makes sense to start with the larger air districts and then go on to the smaller ones. However, adding a phase in for categories of sectors, also to be implemented over what looks like three years, means that no area has a complete inventory even of sources before 2025. This is too long to wait.

## **4. Too Many Sources are Required to Report Emissions**

In previous comments, we have suggested that you consider whether the reporting of emissions would need to be the same for all sources. The full emissions reporting requirements would be appropriate for many sources, but for small and consistent emissions sources, the full reporting rules would not be warranted.

The rule can be fixed by restricting the expansive requirements for reporting of emissions for cases where that is truly needed. The view expressed by a member of the Board that small facilities that do not have environmental compliance professionals on their staff or available as consultants should generally be shielded from detailed reporting unless there is a compelling need for it.

Provisions for just transition should be added.

## **5. The Proposal Incorporates Complex Thresholds**

At the Board hearing, the staff introduced the idea of adding “thresholds” into the proposal to limit the sources that would be included. This had not previously been suggested or reviewed.

The informal draft includes a proposal for thresholds that includes a variety of approaches. Some are based on sectors, some on pollutants, some on processes. We don’t have any substantiation about what these numbers represent. It is also not clear what happens for sectors, contaminants, or processes for which no threshold has been set. This approach seems complex beyond the capacity of the system.

## **Institutional Objections and Limitations Need to be Addressed**

One thing that has become clear with analysis of the existing data, data systems, rules, and guidance is that the current air toxics program of the State of California is not well substantiated and inconsistent. As the staff has conceded at the workshops, there are few defined parameters. There seems to both ambiguity and inefficiency in the system, with separate processes and rules in every district. Many districts are described as being too small to have requisite expertise. Perhaps it would be constructive for some of them should join together and pool resources to increase capacity.

I understand from various discussions that the Air Districts object to providing information basic to the inventory including information about sources that are authorized through mechanisms other than permits.

At this point it is not clear that the current institutional infrastructure will yield results even with further investment.

From a historical point of view, it is hard to understand why the air quality agencies would go so many years without taking easily foreseeable steps needed to produce an inventory that would be used to address environmental justice issues.

## **Conclusion -- Start by Producing the Existing Information**

At this point in time, I believe that the most constructive action would be for ARB to retrieve all of the information currently held by the air districts about sources for which they have authorized releases, their location and organizational details, along with any currently existing information about emissions. Such an approach would not require collection of new data but simply compilation and submittal of data that already exist. The cheapest data to collect are the data that you already have. This could be done now.

- It would provide information about sources to inform selection of targets for emissions reduction.
- It would provide a basis for spatial analysis to identify areas of potential concern for cumulative impacts and emissions reductions not currently identified. To this point, there has not been even a screening level assessment based on a full inventory of where the sources are.

A second step would then be for ARB and the Air Districts to sort out the institutional issues and see whether there is a path forward for the air quality agencies to reform the existing system.

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<sup>i</sup> <https://www.arb.ca.gov/ei/ctr/ctr-regulation/ctr-regulation-15-day-draft-march2019.pdf>

<sup>ii</sup> <https://www.arb.ca.gov/ei/ctr/ctr-regulation/ctr-workshop-notice-march2019.pdf>

<sup>iii</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>iv</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

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Staff Report. Proposed Regulation Order. October 13, 2018.

<https://www.arb.ca.gov/regact/2018/ctr2018/ctrpro.pdf> (Accessed January 25, 2019).

- <sup>v</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>vi</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).
- <sup>vii</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>viii</sup> Letter to Chairman Nichols and Members of the California Air Resources Board on the Proposed Regulation for Reporting of Criteria and Toxic Air Contaminants on December 10, 2018 from environmental health, environmental justice, and clean air groups. <https://www.arb.ca.gov/lists/com-attach/17-ctr2018-B2kFZAdpAn9VMFc4.pdf> (accessed March 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; Amy D Kyle, PhD MPH, Science and Policy Advisor, University of California, Berkeley (retired)
- <sup>ix</sup> Letter to Executive Officer Richard Corey regarding 15-Day Changes to Proposed Rule on Reporting of Criteria and Toxic Air Contaminants and Community Air Pollution on February 5, 2019 from environmental health, environmental justice, and clean air groups. <https://ww2.arb.ca.gov/sites/default/files/2019-03/ctr-cca-15-1.pdf> Signed by 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

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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; Amy D Kyle, MPH PhD, Volunteer Science and Policy Advisor.

## Technical Comments

A general comment is that it would be helpful to add line numbers.

At page A-2

### 93401 (a)

The rule should bring in all sources authorized by any District or the ARB or known to be in need of an authorization (scofflaws).

The exclusion of unpermitted processes, devices and equipment is not appropriate.

Fugitive emissions should not be expressed as a type of “processes, devices, and equipment” and should not be excluded from the “applicability determination” at line 14.

### 93401 (a)(2)(C)

should refer to the facility’s permit to operate OR its actual emissions, whichever is greater.

If a facility is emitting over its permitted amount that should bring it in.

### 93401 (a)(3)

The districts are all over the map in terms of how they characterize the facilities that do risk assessments. If you are going to retain this formulation some meaningful guidance is needed.

The citation here is to the risk assessments performed pursuant to the hot spots program. The hot spots program as implemented does not consider the potential for cumulative impacts. Each risk assessment is done with regard to the emissions only from that facility and does not consider other sources relevant to the community. A facility that scores as having no significant impact in the hot spots program may contribute to a cumulative burden that is in fact very significant.

Moreover, the methods related to the hot spots program including some of those used by Districts appear to be outdated and do not seem to appreciate that exposures of a shorter time period can lead to significant effects at particular life stages. Methods refer to long term chronic exposures and seem to discount exposure periods relevant to women and children.

### 93401 (a)(4)

Take out this language: [that has one or more permits to operate issued by an Air District]

### 93401 (a)(4)(B)

The extremely large threshold for CO is not explained I believe was not been part of the earlier drafts.

The explanation offered at the Oakland workshop that CO is a product of incomplete combustion does not explain why it is here. With incomplete combustion come toxic emissions. This should be substantiated or removed.

**93401 (a)(4)(C)**

Remove the reference only to “permitted” sources. The inventory should be based on what is in the air.

Table A-3 referenced here needs to be substantiated. What about everything that is not on this table? Is that then excluded from the reporting?

**93401 (b)(1)(B)**

Please explain what this brings in and what it leaves out.

**93401 (c)(2) Cessation of reporting of facilities due to hot spots risk assessments**

This may be moot if all facilities that would be eligible to cease reporting under 93401(a)(3) that would be covered under 93401(a)(4)

If not, then this should be amended so that toxics sources are NOT allowed out because they passed the risk assessment process. That does not address cumulative impacts, and the risk assessment results are largely irrelevant to consideration of cumulative impacts. This section should be stricken in its entirety.

**93401 (c)(3) Shutdown facilities**

These provisions should only apply if the facility actually shuts down. They would apply if a facility lost or declined to renew its permit. This could provide an adverse incentive.

**93401 (d) Verification of status**

This section should be revised to allow petitions from communities or others for such verification to be conducted. Communities are most likely to know when a facility is claiming not to need to report and should be able to have their concerns investigated.

**93402 Definitions (a)**

“Activity level”

The extended text in the definition of activity level includes language that should be in the rule rather than the definition.

“Agricultural operations” -- strike this exclusion from the definition based on common sense:

[Agricultural operations do not include activities involving the processing or distribution of crops or animals.]



Best available data and methods – The phrase “reasonably and accurately” seems odd. What is a “reasonable” calculation?

“CAAQS” – don’t redefine this here. Either cite or quote the definition. Or both

“Continuous Emissions Monitoring System” -- definition is awkward. The issue of certification should not be embedded into the definition. There can be continuous emissions monitoring systems that are not certified.

“Criteria air pollutant” or “criteria pollutant” – this is a sloppy definition because these words do NOT refer particularly to the emissions but to the pollutants. So, these terms refer to compounds and do not necessarily to the emissions of these compounds. If you need to refer to emissions of criteria air pollutants, say so directly. This is also confusing because this is the California definition and not the federal definition.

Definitions of “device” and “processes” seem confusing. Elsewhere fugitive emissions are considered to be a device or process.

“Emission calculation method” means “describing” how the emissions for a pollutant were calculated (e.g., by stack test, continuous emissions monitor, emission factor, etc.). The methods are not the same as describing. A method exists whether or not anybody describes it.

Emission factor – is it always a ratio? I don’t think so. Also, if you are going to say “specific” air pollutant you should also say “specific” activity.

Emissions definition – why say “may” include? Who decides?

“Emissions process” means the same as “Process” as defined in this article. This makes it more confusing. Not everything you have as a “process” is an emissions process. I would take this out and use the term “emissions process” when you need it.

“Emittent ID” means the Emittent IDs assigned for substances as identified in Appendix A-1, Substances for which Emissions Must Be Quantified, of the Emission Inventory Criteria and Guidelines for the Air Toxics “Hot Spots” Program, version effective September 26, 2007, as issued by CARB, which is incorporated by reference herein.

Do you want to incorporate another document through in a definition? This does not define what the emittent ID is. Emittent does not seem to be an English word.

“Equipment” definition does not make sense. What is the issuance of air contaminants? Stationary should not be incorporated into this definition. When you have equipment that is stationary, then use the phrase “stationary equipment.”

“Facility” – the two subpoints should be stricken here and written into the rule. If you are going to exclude things, do it by name and not as part of the definition of a facility. That is a tricky.

“Lead” should not be defined to mean the emissions of lead. Lead is a substance.

“National Ambient Air Quality Standards” should not have a date on it. If you want to limit the rule to only a specific version of the standards, then put that at the appropriate place in the rule.

“PM “– remove the word “emissions” in the second sub bullet

“Pollutant Code” seems to have yet another version of the list of criteria pollutants. Confusing. Particulate matter is elsewhere defined to be only PM10.

“Reactive organic gases” – what is the significance of this list? Why are these here?

“Source Classification Code” – Are you sure you want to limit this to a particular version? Then you have to change the rule if you change a code? Also, should clarify how this relates to the federal codes at some point.

“Source” – are the definitions of process and device intended to limit the definition given here for source?

### **93403 Emission Reporting Requirements**

As noted in the general comments. These requirements are too widely applied. Not all sources need to report all of the information included here. Please see earlier discussion of this issue.

It could be helpful to identify sources for which you can get the data needed to estimate emissions from some other source and hire an enterprising data scientist who is into data mining.

Given the protracted process and the additionally protracted phase in, I recommend that the first reporting year should be 2019 and that you should call in all of the currently existing data about sources and emissions and make it available, as noted in the general comments.

All of the tiering by sector will mean that you don’t have full data for any area until the end of the process. It would be more productive to focus on fewer areas but get all the data sooner.

In the data reporting section, are you putting too much into the rule? For example, do you want to put in text as shown below. Putting routine communications into a rule can get into an argument about whether you made an adequate “determination” before you make the call, for example.

After August 1 of each year, if CARB determines that data required from any facility subject to this article is found to be missing, incomplete, or incorrect, CARB will contact the air district and the facility designated representative in an effort to resolve the data deficiency.

Page A-23. Facility information.

We need to have facility identifiers at the State level so that data in different data systems can be called and matched. You will need that as you try to create something that people can use. State standards for dates, geocodes, chemicals, and other identifiers should also be referenced here or perhaps in a companion piece on data standards for the reporting piece at least as a draft so you don’t have to go back and fix all of that later.

It seems like we will need some kind of code for facility size (tiny, normal, huge).

Page A-24. Why use the term emissions unit in addition to device when they are defined as being the same thing? (this is near the bottom of the page)

Page A-25.

The SCC should reference to the federal SCC if it is actually different.

I am glad to see both the permitted emissions and actual emissions included here as both are needed.

Page A-26

Paragraph listed as (D) – the schedule details do not seem to belong here. It would seem better to consolidate these.

Page A-27

The first subpart (d) – even though I have heard the explanation of this, I don't understand it.

Page A-29

For the emission report audits, there should be a mechanism for communities to request such audits or verifications.

Is it possible to add a concept of “due diligence” in the penalties section? There should be some expectation of due diligence in obtaining and submitting appropriate information, both on the part of the agencies and also on the part of the emitters. It should not be enough to sit back and do the minimum that they are forced to do. Rather, there should be an expectation that they take reasonable, due diligence steps to make sure their methods are correct, that they are identifying and including relevant pollutants, etc. This is a well-recognized practice in other sectors and I think is really needed here where there has been not much due diligence for some time it appears.

Table A-2. These classifications seem appropriate.

Table A-3 Thresholds

This is a hard problem given the current state of the program as a whole. The main questions are whether it is feasible to implement these and what is left out by these thresholds. CARB should answer these questions.