



California Council for Environmental and Economic Balance

101 Mission Street, Suite 805, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

March 29, 2019

Mr. David Edwards
Assistant Division Chief, Air Quality Planning and Science
Air Resources Board
Submitted electronically to ctr-report@arb.ca.gov

RE: Proposed 15-Day Changes – Criteria and Toxics Reporting Regulation

Dear David,

On behalf of the California Council for Environmental and Economic Balance (CCEEB), we submit these comments on the Air Resources Board (ARB) proposed 15-day changes to the Criteria and Toxics Reporting (CTR) Regulation. We appreciate this opportunity to work with staff, the air districts, the California Air Pollution Control Officers Association (CAPCOA), and other stakeholders on the proposed changes. While CCEEB recognizes that work to fully implement the statewide reporting program will be ongoing over the next several years, we believe it is critically important to establish a workable and practical framework through this rule development so that the program results in accurate, transparent, and meaningful emissions reporting.

Our main points are as follows:

- **The overarching goal of the CTR regulation must be to develop accurate facility inventories for major sources using uniform and transparent calculation methods and based on the best available data.** AB 617 sets out clear requirements in this regard, while not speaking to timeliness deadlines for how long this work will take to develop and implement. CCEEB believes this statutorily required portion of the program must be given priority, with recognition that this effort will be both technically and administratively complex and time consuming. Phasing of other program elements should be reasonable and not detract resources from this important core work.
- **The CTR Regulation needs to be considered as one —but not the only— tool used to develop community-level emissions inventories.** While there will be many uses of the emissions data, one primary use will be for the development of community inventories.

However, reported emissions are not the only data used since these inventories also rely on emissions modeling and monitoring data to paint a complete picture. ARB should do more to develop its reporting regulation within this context, including a discussion of when modeled emissions could be more useful (e.g. minor sources with little or no variability in operation from year to year) and how monitoring can be used to validate both emissions modeling and reporting. These tools should be considered together so that ARB and the air districts can look for ways to improve all methods being used to characterize emissions.

- **“All Permitted” is a wide net to cast to determine applicability, yet may leave some important sources out while pulling in others unnecessarily.** For example, some minor area sources, like commercial cooking equipment and emergency generators in rural towns with low concentrations of ambient air pollution, may not warrant the administrative burden needed to collect and validate annual facility reporting. At the same time, ARB must acknowledge administrative costs and staff capacity at the air districts, which do not have sustained funding to implement this regulation. CCEEB wants to ensure that core functions at the districts remain timely and fully functioning, including rulemaking, community emissions reduction planning, development of community inventories, and permitting (i.e., services provided by engineering staffs, who are also responsible for emissions reporting).
- **Abbreviated Reporting [Section 93403 (b)] needs more detail.** While this appears to be a useful and practical addition to the CTR Regulation, it is unclear how it would be implemented, particularly in terms of how the regulation would apply to unpermitted emission sources.

What follows is a more detailed discussion of each of these main points.

Phasing Work on the CTR Should Reflect the Highest Program Priorities

The timelines described in the proposed 15-day changes are both broad and aggressive in terms of the number of additional sources being brought under the regulation. CCEEB is concerned that changes to expand applicability at the onset of the program will slow down work on the core components actually specified in AB 617.¹ To begin to address this concern, we recommend that ARB work with the air districts and public stakeholders to establish clear work priorities and timelines for AB 617-specified sources.

Some examples of the work that ARB must be do for AB 617-specified sources include:

¹ From AB 617, Legislative Counsel's Digest: "This bill would require the state board to develop a uniform statewide system of annual reporting of emissions of criteria air pollutants and toxic air contaminants for use by certain categories of stationary sources. The bill would require those stationary sources to report their annual emissions of criteria air pollutants and toxic air contaminants, as specified.

- Work with the air districts to align reporting schedules and contents, i.e., what gets reported when. This work could involve significant rule and process changes since it directly impacts the districts' emission fee programs and budgeting schedules.
- Establish uniform, consistent, and transparent emission calculation methods for major sources that would apply in all 35 air districts. This work must involve public stakeholders and district engineering and technical staffs, since there is no current process or agency that determines what are the "best" or most accurate methods for each source and application. This will also involve updating many outdated or misapplied emission factors used by various agencies.
- Update and restructuring of ARB's lengthy toxics list, including development of sector-specific chemical lists within the Air Toxics Hot Spots Program.
- Development of a statewide electronic reporting database and web portal that can be integrated with new and existing reporting systems across the 35 air districts. Cross-agency data integration will entail significant changes to district reporting processes, particularly in larger districts that have thousands of reporting entities and existing electronic reporting systems.

CCEEB believes that each of these core program components amounts to substantial work that will take time and significant agency and industry resources to implement. By committing to clear deliverables and timelines for the development of this work, ARB can prioritize its own resources and processes. In all of this, ARB needs to work closely with individual industrial sectors, many of which have a long history reporting toxics and criteria pollutants based upon experience, extensive testing, and analytical work done in coordination with the air districts. This historical work has resulted in a set list of compounds that a facility or sector would expect to see, as well as realistic assumptions for emissions. Using this historical information as a starting point, ARB should help coordinate industry and air district partners to conduct an intensive testing program, the results of which can be used to update specific emission factors, taking into account variability in application or operation of sources among different facility or sector types. This work should be done in the first phase of the CTR implementation, and be given sufficient time and resources to arrive at accurate and defensible outcomes.

Reporting, Modeling, and Monitoring Are All Useful and Complementary Tools for Emissions

CCEEB supports ARB efforts to provide accurate, timely, and transparent information to communities and the public about emission sources, both individually and collectively. However, we believe that annual reporting may not always be warranted for some minor sources that have little real impact on the environment, or that operate with little variability where accurate estimates can be made through other means. For example, most emergency backup generators only operate for limited hours during monthly testing, as required by building code and safety standards. These emissions can be reliably estimated using known emissions factors.

This effort needs to be supplemented with ambient data collected from the monitoring portions of AB 617, so that pollutants of real concern are appropriately addressed. Community

monitoring can help determine if the historical list of compounds a facility uses for reporting needs to be supplemented based upon actual ambient levels of these compounds. Not all compounds are equal in the environment, so such determinations need to be weighed by risk analysis. Without consideration of these issues, inventories could be overinflated and not representative of what the source is actually emitting. ARB and public stakeholders must recognize that resources are limited, so reliance on more efficient and available tools makes sense.

More generally, we ask ARB to include comprehensive discussion of monitoring and modeling as complementary tools to reporting, so that the public understands how each is used to develop emissions inventories.² As part of this discussion, ARB should provide background on the level of uncertainty for any emissions estimate – whether reported, modeled, or monitored – since each means and method will have varying degrees of confidence. It is also useful to note that reporting is not necessarily the most or only “accurate” way to estimate emissions. For example, reported emissions based on activity level and an emissions factor may be either over- or under-estimated, depending on the accuracy of the emissions factor. Or, as another example, local monitoring may show different than expected emissions from a facility, despite the facility being in full compliance with all emission reporting requirements. Moreover, both modeling and monitoring are needed to characterize emissions from sources that cannot be reported at all, such as mobile, fugitive, and unpermitted or unregistered area sources. This would be a timely discussion given the significant public and private investments now being made to expand air monitoring in the state, as well as the rapid advancements being made in monitoring technologies, which range from low-cost personal air sensors to ARB’s partnership with NASA on satellite remote sensing. Feedback from stakeholders can then be used to inform work at ARB to refine community inventory guidelines and the development of its new online pollution mapping tool and emissions database.

ARB Should Continue to Refine Section 93401 (a)(4) and Appendix A Thresholds

ARB should continue to consider the proposed 15-day changes to the CTR Regulation, as well as the toxic air contaminant (TAC) thresholds listed in Appendix A-3, with input from public stakeholders, the California Air Pollution Officers Association (CAPCOA), and individual air districts. CCEEB notes that changes to minor source applicability significantly expand the statewide reporting program, increasing the number of regulated facilities from an estimated 13,980³ to as many as 80,000 facilities statewide, without regard to ambient air concentrations or actual public health exposures and risk, which may be de minimis. This is almost a six-fold increase in the number of entities covered by the proposal and does nothing to change applicability requirements for the 580 major source facilities that are already brought into the program through § 93401(a)(1)-(a)(3).

² For example, see 2/27/2019 presentations to the SCAQMD AB 617 Technical Advisory Group on Emissions Inventories and Chemical Transport Modeling and Community Air Monitoring. <http://www.aqmd.gov/nav/about/initiatives/environmental-justice/ab617-134/technical-advisory-group>

³ See the Staff Report: Initial Statement of Reasons, October 23, 2018, Page 7. ARB then estimated that of the 13,980 facilities originally included in the regulation, 13,400 (96 percent) were minor permitted sources in AB 617 communities.

At the five March 2019 public workshops, staff justified § 94301 (a)(4) “all permitted” applicability based on AB 197 and AB 617 requirements, as well as Board direction at the December 14, 2018 rule adoption hearing. However, CCEEB believes this is an overly broad interpretation of State statute. Specifically, AB 197 (E. Garcia, 2016) requires ARB to post online criteria pollutant and TAC emissions from facilities that report greenhouse gas emissions under its Mandatory Reporting Regulation, as defined in Health and Safety Code (H&SC) § 38530. AB 197 does not speak facilities outside of the MRR program, nor does it imply any changes to minor source reporting requirements. Similarly, AB 617 reporting requirements in H&SC § 39607.1 (a)(2) apply only to clearly defined stationary sources (i.e., MRR facilities, a facility with a permit to operate \geq 250 tons per year of criteria pollutants, or a facility with an “elevated” priority score under the Air Toxics Hot Spots Program or “ATHS Program”). Rather than citing these specific reporting applicability requirements, ARB instead cites a different section of AB 617 [See H&SC § 44391.2 (b)(1) and (2)], which require ARB to develop an assessment of community exposures and contributing sources as part of its statewide strategy to reduce emissions. This strategy was adopted by ARB at its September 27, 2018 board hearing and first-year community inventories are being done by the air districts – all without any information from the future-year reporting program. As discussed previously, these inventories can be developed using a suite tools to characterize emissions.

The largest drivers of the expanded applicability are the Appendix A-3 TAC thresholds, which are based on mass emissions, quantity of chemical used, or hours of operation. None of these measurements consider actual public health exposures or toxic risks, the typical metrics used when looking at air toxics. Proposed thresholds are so low that a permitted Tier 4 diesel engine operating more than five hours per year would be required to report emissions – this would include virtually all commercial and multi-family property backup generators and other emergency equipment, such as fire pumps, that need to be routinely tested under building code requirements and mandatory safety standards. Also included would be the many pieces of permitted agricultural equipment, regardless of where this equipment is operated or where the nearest receptor is located. Much of the equipment will have little or no contribution to public exposures to TACs, and the businesses and facilities operating the equipment are very unlikely to be familiar with air district or ARB reporting programs and emissions reporting protocols. That is to say, sources are generally exempted from current reporting rules because they have been judged minor.

The impact on air district staff capacity and funding available for all aspects of AB 617 implementation will be significant. For example, prior to the release of the proposed 15-day changes, the South Coast Air Quality Management District (AQMD) estimated that the cost for the statewide reporting program would be nearly \$2 million per year⁴ and the Bay Area AQMD testified to the Assembly Natural Resources Committee that its annual costs would range from \$2.1 million to \$3.7 million. Additionally, in a March 7, 2019 Advisory issued by the Mohave Desert AQMD, the District stated that, “Compliance with this new reporting mandate is

⁴ See SCAQMD staff presentation to the Wilmington Community Steering Committee, February 12, 2019. <http://www.aqmd.gov/docs/default-source/ab-617-ab-134/steering-committees/wilmington/presentation-feb12-2019.pdf?sfvrsn=8>

expected to bring significant cost increases to all businesses in California, with small businesses likely to be the most affected.” CCEEB is concerned that an unnecessarily broad reporting regulation would do little to add to public understanding of emissions and emission sources, yet would add to AB 617 costs and may result in the diversion of resources from other program areas and core district functions like planning, rule development, and permitting, which typically rely on the same engineering staffs responsible for reporting.⁵ By potentially siphoning off key resources for existing programs, the CTR proposal may actually have the perverse impact of negatively affecting programs that result in real emission reductions.

At a minimum, CCEEB asks ARB staff to work with the air districts and update its economic impact assessment to show the significant additional administrative costs across all air districts and at ARB, as well as costs to regulated facilities. Because this regulation should now be considered a “major regulation,” CCEEB requests that ARB to conduct an alternatives assessment where one alternative limits applicability to those stationary sources defined in AB 617, and another alternative includes the “all permitted” criterion but with different TAC thresholds to reduce the number of reporting facilities.

Concurrently, ARB should continue public discussions about what sources need to be included in community inventories and its online pollution mapping online tool, and how these sources should best be characterized, including but not necessarily limited to reported emissions. This information should be used to further refine the proposed 15-day changes and Appendix A, as well as related work at ARB to better characterize and communicate emissions and emission sources. Regarding the CTR Regulation, CCEEB believes that ARB should first prioritize work being done to harmonize reporting requirements for major sources; develop uniform, consistent, and transparent emission calculation methods for major sources and sectors; and update outdated and inaccurate emission factors for TACs as part of its ATHS Program.

Abbreviated Reporting Is Good in Concept, Needs More Details

CCEEB supports the addition of an abbreviated reporting pathway for minor sources, and believes this section could be expanded to include other types of permitted equipment, such as fire suppression equipment. CCEEB also asks staff to clarify whether a facility could still use this pathway if it has sources of unpermitted emissions. For example, if a commercial property was brought into the regulation because of a permitted emergency backup generator, would it need to report emissions from unpermitted sources, such as water heaters, cleaning products, and commercial cooking equipment? And if so, could it still report under the abbreviated reporting pathway, or would it need to do a full emissions report?

⁵ At the December 14, 2018 adoption hearing, board members Serna and Riordan expressed concerns about the “unfunded mandate” being imposed on the air districts and uncertainty about state funding, with particular emphasis on workloads at smaller districts. Vice Chair Berg focused on actual emission reductions, saying, “I’m not convinced it isn’t the tools to manage that we don’t have versus what we have measured. We’ve measured an awful lot of things. We’ve required a lot of data to come in. And I’m not thoroughly convinced that it isn’t some of the tools that we’re missing to manage this...” Chair Nichols added to this, “It’s a point about data and the lure of data; that we think that if we just have the data, then we’ll be able to make the right decisions.” Nichols then asked what level of fine granularity is needed and how collected data would be used, reminding staff to think about what they hope to do with the data, a point later reiterated by Dr. Sherriffs.

Minor Technical Suggestions Related to Applicability, Reporting Requirements and Contents

Section 93401(a)(4) – CCEEB suggests the following minor changes to clarify that the thresholds listed in sub-sections (A) through (C) apply to the permitted equipment and not to total facility emissions: “A facility that has one or permits to operate issued by an air district, **where the with** actual emissions or activity levels **of a piece of permitted equipment is of** greater than or equal to any of the thresholds specified in (A) through (C) below, within a data year.

Section 93404(d)(4) – Portable Equipment: CCEEB disagrees with proposed language that would require a facility to report emissions from portable equipment *not owned or operated by the facility itself*. This situation occurs when an outside contractor uses their own equipment or rented equipment onsite at a facility, e.g., during a construction project. The facility should not be expected to track, record, and verify equipment and emissions outside its direct control, just as it would not be able to guarantee the accuracy of emission reports submitted by an outside contractor.

Section 93404(d)(4)(A) – PERP Requirements: CCEEB asks staff to clarify what basis and justification would be used to make a “good cause” determination, by either an air district or ARB, under this subsection. This new requirement seems to be at odds with the CTR program’s state purpose of having consistent and uniform reporting requirements statewide, since it would apply different requirements and standards for similar pieces of equipment, and could treat similar facilities differently based on potentially subjective decisions at different agencies. More generally, ARB should consider how it wants to account for emissions from all equipment in its Portable Equipment Registration Program (PERP). CCEEB believes that responsibility for characterizing these emissions should rest with ARB since it administers and oversees the PERP program, rather than asking the air districts to manage this through the reporting regulation.

CCEEB appreciates the tremendous work that has gone into this rulemaking, and supports many of the proposed 15-day changes in the draft document. We hope that our comments help improve upon the proposal and can be addressed as staff continues to work on rule amendments. We are committed to working with ARB, CAPCOA, the air districts, and other public stakeholders to further refine the regulation and to develop the many core pieces of the program that are needed to ensure successful and timely implementation.

Sincerely,



Janet Whittick
CCEEB Policy Director

cc: Bill Quinn, CCEEB
Kendra Daijogo, The Gualco Group, Inc.