



March 28, 2019

David Edwards, Ph.D.
Assistant Division Chief,
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California Air Resources Board
Submitted electronically to: David.edwards@arb.ca.gov

SUBJECT: Comments Regarding the 15-Day Modifications to the CTR Regulation

Dear Dr. Edwards:

The California Small Business Alliance (Alliance) is a non-partisan confederation of California trade associations committed to providing small businesses with a single constructive voice to advocate before all branches of government including air quality management districts and other environmental regulatory agencies. The individual businesses belonging to these trade associations generally reside in commercial and industrial neighborhoods, and many of them have resided there for generations. They are an integral part of these communities. Moreover, these small businesses are most often the only source of good paying jobs with benefits that are available to the residents.

Representatives of the Alliance have participated in the California Air Resources Board's (CARB) public workshops involving the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants (CTR) throughout 2018, and during the first quarter of 2019.

After participating in CARB's December 18, 2018, in which the board adopted the proposed CTR regulation subject to a 15-Day update process wherein the staff was directed to modify the applicability criteria to better satisfy the public health and major air quality objectives for communities and statewide, based on comments and letters received. As a business entity, stakeholder, and commenter we assumed – erroneously – that the updates would be relatively minor in scope given that the process was supposed to be accomplished in a span of only 15 days. However, after reading the Proposed 15-Day Modifications to the CTR regulation, we discovered that the applicability and scope has changed both significantly and fundamentally. In fact, in some respects the modifications made to the original document transform it into a completely different regulation from what was originally presented to the public and approved by the board.

Because the changes which are now being proposed by the CARB staff have the potential to massively burden the least of emitters (small businesses) with a plethora of inventorying, monitoring, recordkeeping and reporting responsibilities, as well as shouldering the costs involved in collecting, analyzing and formatting the necessary data, we feel compelled to

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provide the following comments for your earnest consideration before bringing the modified CTR regulation to the CARB board for further action.

General Requirements for Criteria and Toxics Reporting - Purpose and Scope

As previously stated, because the applicability and scope of this CTR regulation has changed to such a degree that it now attempts to regulate and require measurements and reports on every piece of permitted and reportable unpermitted processes, devices and equipment operating in the state of California, and not just those operating in or near designated disadvantaged communities, we strongly urge CARB to consider restarting the public outreach process over a longer period time so as to ensure that the thousands of small emitters (small businesses) have ample opportunity to hear and understand how this new regulation will affect them operationally and financially. Moreover, because of the vastness of the universe of small businesses that will ultimately be impacted by this regulation, we believe that CARB and the air districts are ethically, if not legally, obligated to offer ample time and opportunity for small business owner/operators to comment on this regulation. Further, in order to facilitate meaningful, not just emotional responses from this vital sector of our economy, we believe CARB should complete and publish a comprehensive cost-benefit analysis concurrent with the outreach process.

General Applicability

In the comment letters the Alliance submitted on the original Preliminary Discussion Draft of the CTR regulation, we expressed our concern about applying it to small emitters (small businesses), such as family-owned dry cleaners, auto body shops, gasoline service stations and light manufacturing operations for no reason other than they happen to reside within some arbitrary boundary that defines the area as a disadvantaged community. At the time we believed this was tantamount to "Red Lining" certain businesses for no other reason than their ZIP Code. Also, at that time, it seemed more logical and appropriate for CARB and the air districts to monitor and collect emissions data from all sources within these communities, and then develop a source attribution charts which would serve to determine the extent to which individual sources or source categories contribute to the presence of certain pollutants therein before phasing in a regulation that imposes a host of costly and burdensome regulatory requirements on small business owners who don't understand the rationale, and in many instances can't afford the cost of compliance.

Our concerns about these 15-Day Modifications to the CTR regulation while being similar are magnified many times over now that CARB has expanded the applicability of the regulation from a community level to one that applies statewide. Instead of hundreds of small businesses being put at risk by a regulation whose value is the subject of much debate, thousands of small businesses are likely to be put in the same situation because they don't know about the imminence of the regulation and what will be required of them. Many or most of them can't afford to hire outside technical expertise or add an extra employee to maintain records and prepare the requisite reports. Because of steady increases in the minimum hourly wage, rising insurance premiums, higher taxes, more and higher fees, etc., the added costs that would be imposed on small businesses to comply with the requirements of the CTR regulation cannot be taken from already thin operating margins nor can it be passed on to consumers in the form of price increases for goods and services. Simply put, if this regulation is implemented as currently written, it will be a death knell for many small businesses and jobs in California.

The Applicability Thresholds for Facilities Subject to Reporting Do Not Represent Real World Conditions:

The Proposed 15-Day Modifications to the CTR regulation states that: “A facility that has one or more permits to operate issued by an air district with actual emissions or activity levels of greater than or equal to any of the thresholds specified in (A) through (C) below, within a data year.

(A) 4 or more tpy of any criteria air pollutant (except for carbon monoxide).

(B) 100 or more tpy of carbon monoxide.

(C) Activity levels published in Appendix A, Table A-3 for a permitted emissions process.”

The Alliance believes that in many instances the Activity Level Reporting Thresholds, shown in Attachment A of the CTR regulation, are arbitrary and not based on the threat that individual sources actually pose for residents in nearby communities or even statewide. It is our position that the health risks from air pollutants and toxics is not always the same. The same emissions from similar processes, devices and equipment, but located in different communities or locations pose completely different risks – or no risk - to people.

Some examples of these arbitrary activity levels are as follows:

Surface coating at autobody shops, including new and used car dealers: The activity level for reporting is over 30 gallons of paint used per year. Considering that it takes the most of a gallon of single stage paint to coat a medium to full size car, this threshold appears to be set so low as to collect emissions data, less for the purpose of protecting public health and more for the purpose of merely collecting data.

Dry cleaning using perchloroethylene: The activity level for reporting is Zero, meaning the use of any amount of perc will trigger the requirement to report. The Alliance is confused as to why CARB intends to compel mom and pop dry cleaners who still have perc machines with closed loop vapor recovery systems in operation to go to the effort and expense of accumulating emissions data when perc will be banned in California in 2020. Whatever data is accumulated from this small segment of business will be useless by the time CARB is in a position to evaluate it.

Isocyanate compound use, including but not limited to print shops and commercial printing; aerospace manufacturing and maintenance, adhesive and sealants manufacturing; plastics foam products manufacturing; military facilities; and autobody shops: The activity level for reporting is any use of materials containing over 3 pounds of isocyanates per year. The Alliance feels compelled to remind CARB that commercial printers, autobody shops, and numerous other small business enterprises that apply coatings to substrates use products containing isocyanate compounds. Since these businesses are generally considered as “Job Shops,” the work they perform is done according to their customers’ specifications, and the amount of isocyanates used in these jobs varies from customer to customer. While the manufacturers of coatings, inks, adhesives and sealants provide Material Safety Data Sheets (MSDS) with the products they sell, the information on these MSDS sheets is often insufficient (e.g. “less than one percent”) to calculate the amount of isocyanates being used. To expect a small business owner to test every can or batch of paint, ink, adhesive and sealant for the exact amount of isocyanate compounds contained inside is as unrealistic as it would be to require them to allocate the amount used in each job in a day, week, or month.

Small businesses of this type simply do not have the time, technical resources, and the level of sophistication to perform these kinds of analyses and still run their businesses. We believe this threshold is another example of collecting emissions data, less for the purpose of protecting public health and more for the purpose of collecting data.

Retail sale of gasoline: The activity level for reporting is over 25,000 gallons of gasoline sold per year. According to our sources, an “*average station*” will sell ~4,000 gallons of gasoline per day. We therefore conclude that a profit-oriented business would not be sustainable with such meager sales of gasoline. We believe this threshold is yet another example of CARB wanting to collect emissions data, less for the purpose of protecting public health and more for the purpose of collecting data.

While attending a recent CARB workshop on the latest updates to the CTR regulation, we learned that an agreement has been reached with the air districts whereby they would estimate the emissions of gasoline service stations and back-up generators, thereby relieving the business owners of this responsibility. The Alliance congratulates CARB and the air districts for taking this innovative approach and easing the financial and regulatory burden on this segment of small business. We only wish that similar approaches could be taken to relieve the burden for the other segments of small business that are subject to this regulation.

In addition to the examples cited above, we were recently informed that CARB plans to include unpermitted facility sources in the mix if they are inventoried by air districts. This will add thousands more devices, equipment, processes and operations which are exempt from air quality permits but do require the owners to keep a modicum of records. While on a statewide level the emissions from some of these sources may rise to a level of some significance, but on a community or regional level, the potential harm from these emissions to the general public is problematical at best. The Alliance, however, would certainly support a scientific air modeling analysis of the emissions from this unpermitted source category providing that it was accomplished before implementing the regulation and subjecting small business owners to the rigors of accumulating and inventorying purchase records as preparation for complying with the reporting requirements of this regulation.

To summarize, Alliance members appreciate and support CARB’s leadership in establishing innovative new policies to improve many aspects of air quality including emission inventory. We also understand that emissions inventory data is critical to understanding the sources of emissions that may contribute to adverse health risks or other impacts at the local, regional, and statewide level. On balance, we believe that the concerns and comments we’ve put forth on other occasions are legitimate and worthy of your earnest consideration. Specifically, our major concerns are:

- These 15-Day Proposed Modifications to the CTR regulation differs drastically from the original intent of the regulation that CARB initially presented to the public which was to develop a regulation to implement the requirements established in Assembly Bill 617 (AB 617) for the annual reporting of criteria air pollutant and toxic air contaminant emissions data from facilities in designated disadvantaged communities.
- In view of the vast differences between the two versions of the CTR regulation especially with regard to its applicability and in consideration for the many comments

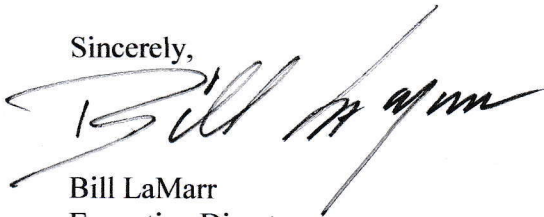
CARB has received – particularly from the business community, Alliance members believe that 15 days is grossly insufficient to address and resolve these issues and arrive at an equitable regulation; one that does not threaten small businesses and the jobs and revenue they provide to the state.

- Because Alliance members strongly encourage CARB to take some time to reconsider how this regulation can achieve the objectives for which it is now intended without causing a major disruption to our economy we recommend that the 15-day comment period be extended to a 3 to 6 month period so as to allow sufficient time to revise the regulation, as appropriate, and to conduct a through outreach to those in the business community who will have to comply with it.

Finally, we would like to remind CARB that ~ 80 percent of the NOx emissions come from sources other than stationary sources, such as mobile sources, trains, aircraft, ocean going vessels, and harbor craft. And while we acknowledge that CARB understands that emissions inventory data is critical to understanding the sources of emissions that may contribute to adverse health risks or other impacts at the local, regional, and statewide level, we are confused as to why the sources under your direct control are not included in either of the two versions of the CTR regulation.

Alliance members appreciate the ongoing opportunities to provide comments related to the proposed regulation for emissions reporting. We look forward to continued discussion of this important issue. Should you wish to discuss our comments and suggestions in more detail, please contact me at: (billamarr@msn.com) or (714) 778-0763.

Sincerely,



Bill LaMarr
Executive Director

cc:

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