



California Council for Environmental and Economic Balance

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March 6, 2020

Mr. John Swanson
Manager, Criteria Pollutant and Air Toxics Reporting Section
Air Resources Board
Submitted Electronically to ctr-report@arb.ca.gov

RE: Proposed Amendments to the Criteria and Toxics Reporting (CTR) Regulation
Draft Regulation Order, February 4, 2020

Dear John,

On behalf of the members of the California Council for Environmental and Economic Balance (CCEEB), we are pleased to submit the following comments on the proposed amendments to the CTR regulation. We appreciate the opportunity to discuss these issues in a pre-regulation discussion draft, as many are complicated with significant impacts on entities regulated under the CTR regulation, whom we believe will benefit from the iterative process staff has initiated with public stakeholders.

Our three main points are as follows:

- **ARB must partner with the air districts to establish a joint-agency public process meant to harmonize reporting programs and efforts.** It is important that ARB have a mechanism to coordinate efforts with the air districts and the California Air Pollution Control Officers Association (CAPCOA). Equally important is the need for public stakeholders with expertise on emissions reporting to be able to engage with the agencies on technical issues. CCEEB believes such a process would help improve the uniformity and accuracy of reporting programs, consistent with the goals of AB 617.
- **Priority should be given to developing statewide consistency for major sources, as required by AB 617.** CCEEB is concerned that the purpose of the proposed amendments is to greatly expand the universe of facilities and sources under the CTR rule *before* requisite work on major source emissions has been developed. We believe that by diverting agency staff resources at ARB and the air districts, the intended outcomes of AB 617 will be unnecessarily delayed, and that major source facilities will be left with unclear program guidance for existing requirements in the CTR rule.

- **Emissions from portable equipment should be reported by the equipment owners and operators.** While CCEEB appreciates ARB's desire to better characterize emissions from portable equipment, we note that facility staff would face numerous challenges trying to track and verify emissions from contractor and subcontractor equipment being used temporarily and sporadically onsite. More importantly, by putting reporting requirements in the CTR regulation *instead of* ARB's Portable Equipment Registration Program (PERP), ARB will miss emissions from construction and other activities not directly linked to an existing facility. CCEEB believes this could paint an uneven and inequitable portrait of sources within an area, and may not address sources of concern to a particular community.

What follows is a more detailed discussion of each of these three main points, as well as additional and important comments and questions on specific sections of the proposed amendments.

Forum Needed to Coordinate Air District and ARB Efforts and Allow for Public Input

CCEEB very much appreciates the ongoing outreach done by ARB staff, including the five public workshops conducted in February and the countless stakeholder meetings in which staff participates. However, we are concerned that major elements of the CTR regulation related to *Article 2: Requirement for Calculating and Reporting* are being developed in a closed-door process managed by CAPCOA and the air districts, without direct input from CARB staff or stakeholders. CCEEB believes greater transparency would speed this work and help ensure that the resulting CAPCOA proposal is widely accepted by technical experts and based on the most accurate and up-to-date engineering estimates.

Furthermore, CCEEB believes a statewide process could leverage parallel efforts underway at individual air districts; ARB should capitalize on this work without reinventing the wheel or creating divergent requirements that increase rather than reduce inconsistencies in emissions reporting. For example, entities are working through the South Coast Air Quality Management District (SCAQMD) to conduct and submit updated source testing data for air toxics in response to Rule 301(e) and other rules. Similarly, source testing is being done for the Bay Area Air Quality Management District in support of its rules 11-18 and 12-15.¹ Recognizing that source testing is time and resource intensive, CCEEB asks that such data be considered by ARB for the CTR regulation. To do so, agencies will need to coordinate and harmonize source testing requirements and review. Whenever possible, the agencies should also work towards "pooled" source testing that allows facilities within a sector to work together to collect

¹ While the examples here are limited to the SCAQMD and BAAQMD, source testing and emission factors at all air districts would be valuable sources of data for ARB to consider and evaluate for purposes of developing the CTR regulation and Article 2.

and validate data, thereby reducing administrative burden and costs while ensuring consistency in reporting across similar source types.

Finally, a statewide process allows ARB and the air districts to begin discussions with stakeholders about how changes to the AB 2588 Air Toxics Hot Spots (ATHS) guidelines will impact both CTR reporting requirements, as well as air district implementation of AB 2588 and other toxics rules. Although the AB 2588 amendments are moving along a separate regulatory path, there is substantial overlap and interactivity with the CTR regulation. More importantly, the AB 2588 changes will have significant and widespread implications for district reporting and air toxics rules. With more than 800 new chemical compounds being proposed for the ATHS guidelines (and an increase of more than 150 percent in reportable chemicals), CCEEB believes the AB 2588 changes represent as big a seismic shift in emissions reporting as the CTR regulation itself. This will require ongoing coordination among responsible agencies through an open public process, since for most of these compounds, no emission testing method is known, and no toxicity evaluations have been conducted by the Office of Environmental Health Hazard Assessment, as required by Article 3 of the Health and Safety Code. CCEEB urges ARB to begin this interagency coordination as soon as possible.

Prioritize Consistency for Major Sources *before* Expanding Who/What Gets Reported

In our letter to ARB dated March 29, 2019, CCEEB described in detail the many program components needing to be developed to allow for consistent and uniform reporting of emissions from major sources. We also noted the significant administrative burden imposed on the air districts should ARB move to expand applicability under § 93401(a)(4), and suggested alternative ways that emissions from small sources could be more readily characterized. Our concern is that efforts to bring small sources into the CTR program at this point will detract from the more pressing work on harmonizing requirements for major sources. As such, we incorporate those comments by reference into this letter.

Major Sources Need Guidance as Business-as-Usual Period Closes

Underscoring our concerns about program development and work priorities—and lacking needed guidance in Article 2—major source facilities are becoming increasingly confused about what is required and when as the business-as-usual (BAU) period comes to a close. Facilities subject to § 93401(a)(1-2) continue to follow district rules (i.e. BAU) this year only, and must newly comply with ARB requirements as described in §§ 93403 and 93404 beginning with 2020 emissions reported in 2021.² Facilities subject to § 93401(a)(3) have BAU until

² In the October 2019 *Final Statement of Reasons*, staff clarify that ARB will, “...continue allowing use of ‘best available data and methods’, which must remain in place until specific uniform estimate methods are developed for industry sectors and incorporated into Article 2.” [Page 73] Our understanding is that “best available data and methods” includes reporting methods and emissions estimates as required under air district rules and programs. However, this clarification is not in the regulation itself, which causes confusion

2022, for emissions data covering 2021. We note that facilities must have prior notice and time to implement changes to emissions tracking and record retention systems well ahead of rule effective dates.

Justification Is Needed for Additional Applicability Thresholds

Should ARB retain its proposal to expand applicability under 93401(a)(4), then CCEEB asks staff to provide justification for the proposed thresholds in the *Initial Statement of Reasons* so that public stakeholders can provide informed input on the 15-day changes. This would include justification for each activity level specified in Appendix A, Table A-3, as well as the four tons per year (tpy) for criteria pollutants and 100 tpy of carbon monoxide listed in subsections (A) and (B). Furthermore, CCEEB recommends that applicability thresholds be based, to the extent feasible, on the best representation of a facility's potential significance, rather than merely citing the lowest reporting threshold at any one air district.

Finally, we ask staff to consider whether and how it could consider exposure differences from air toxics, especially given that many of the thresholds in Table A-3 are exceedingly low or apply to any level of activity. For example, tier 4 emergency back-up generators running five hours per year would trigger rule applicability thresholds. Since most testing requirements are greater than 5-hours/year, this means virtually all permitted emergency generators in the state would need to report. CCEEB believes some distinction could be made for rural and remote engines and equipment, particularly if these facilities are unstaffed and difficult to access. For example, an emergency backup generator at a mountaintop cell phone tower may not warrant the same administrative effort as an emergency generator at a hospital since no exposure would be expected. We note that data collection from such remote equipment could inadvertently increase emissions if staff or contractors would now need to visit each site solely for purposes of record tracking.

Portable Emissions Should be Reported under PERP, Not CTR

In our June 7, 2019 letter to ARB, CCEEB described numerous and significant challenges with asking facilities to report emissions from portable equipment they neither own nor operate. Again, we incorporate comments related to PERP and portable equipment from that letter here, as our concerns remain the same. Additionally, we wish to raise questions about the adequacy of CTR to capture the majority of portable equipment emissions, as well as the potential for inequitable treatment of source types. CCEEB believes the preponderance of portable emissions are from construction and other activity unrelated to existing facilities. By requiring reporting through CTR rather than PERP, these emissions will be inadequately characterized or missed entirely. For these

over rule interpretation. Furthermore, if our understanding is incorrect, then we strongly urge ARB to extend the BAU period until such time as Article 2 amendments have been adopted and made effective.

reasons, we recommend that ARB first identify gaps in PERP reporting, and then evaluate which program can most effectively and accurately provide the desired data.

Finally, we are concerned that by making CTR facilities responsible for portable equipment being used onsite by contractors and subcontractors, ARB is shifting enforcement responsibility away from itself and onto private party contracts. We believe that this poses significant compliance challenges, especially in cases where subcontractors provide inaccurate or incomplete information – these subcontractors by definition have no contractual obligation to the facility, and may not have reporting requirements specified in their agreements with the facility’s primary contractors. Put simply, a facility could make every good faith effort to collect and validate portable emissions data, at a significant administrative cost, and still fall short through no fault of its own.

Should ARB continue to pursue portable emissions under its CTR regulation, then CCEEB asks staff and the air districts to consider how to segregate such data so that permit and rule compliance determinations based on facility total emissions are not adversely impacted, since these requirements are based on a different and more narrow set of sources.

Other Issues Related to Specific Sections of the Proposed Regulation Order

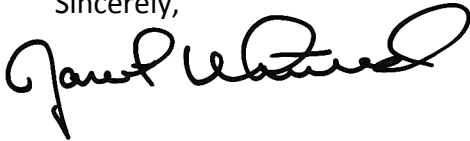
§ 93400: Purpose and Scope – please clarify the intention for adding “temporary...permits to operate” and whether and under what condition a holder of a temporary permit would need to report facility-wide emissions under § 93401(a)(4). If this new language is meant to capture facilities moving from a permit to construct to a permit to operate, where the latter is still under agency review, then this should be specified more clearly.

§ 93404(c)(2)(C) – while we continue to oppose inclusion of this category of sources generally, we do ask staff to please clarify how “any time during three different calendar months” is meant to be understood and applied. For example, does it need to be three consecutive months of operation, non-consecutive, or it doesn’t matter? How many hours per day and days per month matter? For example, if a piece of equipment runs for one hour in January, March, and November, would it need to be reported? What if it ran 24-hours a day, 7-days per week for two consecutive months? What happens if a contractor used one piece of equipment one month, but brought in a second and separate piece of the same type of equipment another month?

§ 93405(d) – please describe what conditions might trigger a *Request for Additional Data* on an abbreviated source. Presumably, a facility reporting for an abbreviated source would not be tracking all data requested under the *Full Report Contents* in § 93404(b) since this is the very purpose of abbreviated reporting. It is unclear how a facility would be able to retroactively report data not tracked, if requested by ARB.

Again, we thank staff for this opportunity to comment, and look forward to continued engagement with ARB as further refinements are made to the CTR regulation, including but not limited to those proposed in the draft regulation order. Should you have questions or wish to discuss our comments in more detail, please contact Janet Whittick at janetw@cceb.org or (415) 512-7890 ext. 111.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Whittick". The signature is fluid and cursive, with a large initial "J" and "W".

Janet Whittick
CCEEB Policy Director

cc: Mr. David Edwards, Assistant Division Chief, Air Quality Planning and Science, ARB
Mr. Wayne Nastri, SCAQMD Executive Officer and CAPCOA President
Mr. Tung Le, Executive Director, CAPCOA
Mr. Bill Quinn, President, CCEEB
Ms. Frances Keeler, Vice President, CCEEB
Ms. Kendra Daijogo, CCEEB Air Project Manager, The Gualco Group, Inc.