WSPA

Kevin Buchan
Manager, Bay Area Region

August 12, 2020

Mr. Gabe Ruiz
Manager, Toxics Inventory and Special Projects Section
California Air Resources Board
1001 I Street
Sacramento, California 95814

Sent via email: Gabe.Ruiz@arb.ca.gov, ab2588ei@arb.ca.gov

Re: Supplemental WSPA Comments on CARB's Draft Amendments to the AB 2588 Emissions Inventory Criteria and Guidelines Regulation

Dear Mr. Ruiz:

The Western States Petroleum Association (WSPA) appreciates this opportunity to comment on the draft materials posted by the California Air Resources Board's (CARB) on July 29, 2020 detailing potential amendments to the AB 2588 Emission Inventory Criteria and Guidelines Regulation (EICGR). WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states.

WSPA appreciates CARB's effort to release additional information for public review and engage stakeholders in informal dialogue on potential amendments to the EICGR ahead of a formal notice and comment process. We also appreciate CARB's effort to address some of the concerns expressed by program stakeholders following CARB's April 30, 2020 public workshop. The July 27 materials indicate further consideration for the interaction between this regulation and proposed changes to the Criteria and Toxics Reporting (CTR) regulation. CARB's newly proposed "phased approach" to implement inventory requirements for proposed additions to the list of reportable substances (Appendix A) is a necessary step toward smoothing the transition to much more extensive and complex inventory requirements. CARB's draft regulatory language also includes important clarifications, such as confirming that facilities are not required to report emissions in the absence of a quantification method.

We remain concerned that some information still has not been made available for public review, including:

- Draft changes to Appendices B (Reporting Forms), F (Screening HRAs) and G (Documents Incorporated by Reference);

- The balance of the draft regulatory language in the Emissions Inventory Criteria and Guidelines Report; and
- CARB's "Non-Regulatory Technical Supplement" which we understand is intended to provide the technical justification for proposed additions to the Appendix A list.

As we noted in our prior comments, limited access to this and other relevant information impedes full stakeholder participation in the rulemaking process. **We also request that CARB give further consideration to the balance of comments in our June 3, 2020 letter on this rulemaking, which are not reflected in the July 29 materials.**

Phased Implementation for New Appendix A Substances

WSPA supports in concept CARB's proposed phased approach for integrating newly listed substances into facility emission inventory reports. This important step will help mitigate what would otherwise be an overwhelming workload burden for both facilities and local air districts. Based on our review of the revised draft Appendix A, it appears that CARB has designated approximately 190 substances for Phase 1 (ChemSet 1). However, the new information in Appendix A does not explain CARB's rationale for selecting these substances. Based on conversations with program staff, we understand that ChemSet 1 includes VOCs, substances that have OEHHA-approved health reference values, and substances for which quantification methods are available. In the interest of transparency, and to allow stakeholders the opportunity to validate CARB's designations, **CARB should specify the ChemSet 1 selection criteria in Appendix A.**

The ChemSet 1 selection criteria should exclude any chemicals that require development of new health reference values or adaptation of values from other jurisdictions, as both of these scenarios will involve new scientific inquiry that is likely to reach beyond the timeframe for implementation of Phase 1. **These chemicals should be moved to Phase 2 and CARB should update its draft Appendix A to reflect these adjustments.**

Emissions Quantification

We support CARB's proposed language clarifying that a facility is only required to report emissions for a chemical if a quantification method exists at the time of its "Effective Phase."[1] Consistent with this policy, **substances for which presence, use or production must still be reported should be relocated to Appendices A-II and A-III**. CARB has acknowledged that information on presence and use of a substance may not be relevant to facility emissions of that substance. If there is no measurement method or accurate emissions estimation method for a substance (e.g., lack of emission factors for PFAS compounds), that substance by definition cannot be quantified and therefore should be excluded from Appendix A-I. **In addition, CARB should specify available quantification methods for all Appendix A-I substances.**

[1] EICGR Report, page 17

WSPA expects that new quantification methods are likely to be developed in batches, such that large numbers of "new" substances would need to be evaluated in future inventory update cycles. This outcome could overwhelm available laboratory capacity, delaying reporting and creating compliance problems for regulated facilities. **CARB can reduce this risk by allowing AB 2588 facilities to complete sampling and laboratory analysis over the course of a full reporting cycle. CARB should also include an exception clause in the regulation for external factors beyond the control of the facility that may delay availability of data necessary for reporting.**

Scope of Appendix A-I

Appendix A-I , which lists substances for which emissions must be quantified, should be limited to substances with "routine and predictable" emissions. The Air Toxics Hot Spots statute, at Health and Safety Code §44340(c)(2), states: "Air release data shall be collected at, or calculated for, the primary locations of actual and potential release for each hazardous material. Data shall be collected or calculated for all *continuous, intermittent, and predictable air releases.*" (emphasis added) OEHHA's AB 2588 health risk assessment guidelines further clarify that the AB 2588 program is limited to reporting of "routine and predictable" emissions: "… the emissions reported under this program are routine and predictable and include continuous and intermittent releases and predictable process upsets or leaks. Emissions for unpredictable releases (e.g. accidental catastrophic releases) are not reported under this program."[2] Accordingly, **the EICGR Report should exclude substances that are not routinely and predictably released by a facility. At the very least, Section IV should be amended to conform to the exception in Appendix C for quantification of emissions that a facility can demonstrate are not present at the facility.[3]**

Appendix A-I should also exclude substances that do not have approved emission estimation methods. Even if a substance has a quantification method, it cannot be accurately quantified and reported unless it also has an approved emission estimation method. CARB is proposing to re-evaluate the availability of quantification methods at the time of the next facility update reporting cycle, and if new methods are available at that time, to require emissions quantification.[4] It should take the same approach for substances that currently lack emission estimation methods.

[2] Air Toxics Hot Spots Program Guidance Manual for the Preparation of Health Risk Assessments, Office of Environmental Health Hazard Assessment, 2015, pages 1-2.
[3] "FURTHER, IN CASES WHERE A SUBSTANCE SET FORTH HEREIN IS NOT PRESENT AT A PARTICULAR FACILITY, THE FACILITY OPERATOR SHALL NOT ATTEMPT TO QUANTIFY THE EMISSIONS OF SUCH SUBSTANCE, BUT SHALL PROVIDE ADEQUATE DOCUMENTATION TO DEMONSTRATE TO THE DISTRICT THAT THE POSSIBLE PRESENCE OF THE SUBSTANCE AT THE FACILITY HAS BEEN ADDRESSED AND THAT THERE ARE NO EMISSIONS OF THE SUBSTANCE FOR SPECIFIED REASONS."
[4] EICGR Report, page 17.

Reporting Degree of Accuracy

We appreciate CARB's acknowledgement that 1) the presence or use of a substance at a facility is not necessarily an indication of airborne emissions of that substance from facility operations and 2) detectable emissions are not necessarily relevant to the facility-wide health risk profile. We understand that CARB will develop a reporting degree of accuracy (RDA) for each substance that will serve as a threshold for determining whether a substance should be included in a facility's inventory update. We agree in concept that a threshold approach is necessary to focus emission inventory updates on substances that have the potential to impact a facility's health risk profile. At this time, **the process for establishing an RDA for a listed substance, the role of the RDA in establishing the scope of inventory requirements for individual facilities, and the role of the RDA in determining facility risk profile are all undefined. These features should be included in this regulation.**

Process for Removal of Chemicals from Appendix A

A majority of the approximately 900 substances included in the current draft of Appendix A would be added pursuant to CARB's discretionary authority at Health and Safety Code §44321(f). The statute indicates that listing a new substance pursuant to this authority should be based on evidence that the chemical poses an acute or chronic health threat when present in ambient air. However, CARB has not provided any evidence to date for any of these subsection (f) listings. In addition, future inventory data may indicate a substance is not emitted from covered facilities above the RDA or present in ambient air near covered facilities. Screening and prioritization of chemicals for future development of health reference values may also indicate that some of these chemicals present a de minimis risk. For these reasons, **the regulation should include a mechanism for removing chemicals from the Appendix A list if there is no available evidence supporting the findings specified in subsection (f).**

Non-Regulatory Technical Supplement

We understand CARB is developing a "non-regulatory technical supplement" (NRTS) which will include the technical justification for adding the "subsection (f)" substances to Appendix A. We also understand that CARB does not intend to release the NRTS until just before the first Phase 1 compliance deadline. This timing means that affected facilities will have no opportunity to engage CARB in discussions about the adequacy of available information to support including certain substances in ChemSet 1. **We recommend that CARB release the technical supplement as soon as possible to allow for stakeholder review and comment and possible changes to the ChemSet 1 list based on that input. At a minimum, since the NRTS is likely to be a living document, CARB should release technical information for new chemicals as it is developed, rather than waiting for the supplement to be complete for each phase of implementation.**

Provisional Health Reference Values

One stated purpose for development of provisional health reference values (PHRVs), discussed during the July 9, 2020 meeting of the Scientific Review Panel on Toxic Air Contaminants (SRP), is to aid OEHHA in prioritizing development of regulatory-grade health reference values. It is unclear why this purpose cannot be accomplished using alternative data points such as CTR/EICGR reporting, data on facility proximity to sensitive receptors or other potentially relevant scientific information. This approach would relieve CARB and OEHHA of the considerable burden of developing PHRVs for all of the "new" substances in Appendix A. It would also avoid potential misuse of provisional values for regulatory purposes.

CARB is also contemplating use of PHRVs by air districts to inform facility prioritization decisions. We agree with OEHHA's characterization that "PHRVs are likely to carry greater uncertainty than traditional procedures" and the "Level of uncertainty [of PHRVs] may be unacceptable in some contexts."[5] Furthermore, the purpose of facility prioritization is to focus resources on development of HRAs for facilities that are likely to pose a significant risk. Results of HRAs for high priority facilities may lead to additional public notification or risk reduction requirements. Prioritizing facilities using PHRVs could dilute this focus by requiring lower risk facilities to conduct HRAs. This outcome would be misleading to the public, indicating that some facilities present significant health risks when use of more representative and scientifically robust health reference values might indicate otherwise.

CARB has stated that PHRVs should not be used for facility HRAs but has also acknowledged that some stakeholders are likely to advocate for unrestricted use of PHRVs in AB 2588 implementation. Given the uncertainty inherent in PHRVs and potential regulatory and risk communication pitfalls, it is not appropriate to use provisional values for facility prioritization or for any other regulatory purpose. **CARB should explicitly prohibit regulatory application of any provisional values.**

CARB should also align the schedule for development of health reference values with phased implementation of inventory requirements. The timeframe envisioned for developing PHRVs for the remaining approximately 700 "ChemList 2" substances, described during the July 9 SRP meeting as early 2021 through late 2022, is unrealistic and likely infeasible. Rushing this process would require reliance on more conservative assumptions to overcome data gaps, leading to values that may be more stringent than necessary to protect public health. The perception that more stringent values are "more protective" is difficult to overcome, even with compelling scientific evidence to the contrary.

OEHHA has indicated that it intends to hold **further public workshops to solicit stakeholder input on use of emerging data and methods in developing health reference values**. For example, in its presentation to the SRP, OEHHA referred to "Further evaluation of existing read-across platforms."[6] This inquiry is necessary to improve the scientific foundation of methods that may be used to derive health

[5] OEHHA presentation to the SRP on Development of Provisional Health Reference Values, July 9, 2020, slide #3.
[6] Id., slide #7.

reference values, and it **should occur before health reference values are developed for newly listed chemicals.**

Source Testing

The existing regulatory language is very restrictive in terms of what emissions estimation methods are acceptable and when they may be used in lieu of source testing. The wholesale addition of approximately 900 chemicals to Appendix A adds tremendous additional burden and complexity to the emissions inventory update process for both facilities and air districts. **CARB should amend Section IX to allow greater flexibility to use alternatives to the specified methods that satisfy the applicable statutory requirements.** Rather than continuing to require strict adherence to a hierarchy of emissions estimation methods, when a facility is able to demonstrate that a particular method is sufficiently accurate for a substance that is reasonably expected to be emitted by the facility (e.g., the method can quantify the substance to the prescribed reporting degree of accuracy), the facility should be allowed to use that method. **CARB should also provide supplemental guidance for some example Phase 1/ChemList-1 substances to more clearly delineate instances where emissions estimation methods can be used in lieu of source testing. Furthermore, if a substance is not reasonably expected to be a part of a facility's emission profile based on mass balance calculations, the facility should not be required to source test for that substance and should be able to report a zero value.**

The proposed changes to Appendix D identify wastewater treatment plants as "open sources" for which source testing is required. The rationale for mandating source testing for "open sources" such as municipal wastewater treatment plants is that these facilities have little control or knowledge of the chemical composition of the materials they receive and process. By contrast, a wastewater treatment plant at a petroleum refinery processes water separated from crude oil and other intermediate hydrocarbon streams, and the chemical composition of the influent to the treatment plant and potential emissions are well characterized. **The regulation should clarify that these types of sources should not be considered "open sources" for purposes of determining source testing requirements.**

Diesel Engine Reporting Requirements

CARB has stated that it is proposing requirements for portable and stationary diesel engines without regard to engine size, in the CTR regulation. **We request CARB clarify that "alignment" of the CTR Regulation with the EICGR will subject *all* AB 2588-regulated facilities to the requirements in section 93404(c)(2)(C) of the CTR Regulation[7], not just "specified larger facilities."** This outcome is appropriate

[7] "Except as provided in sections 93401(b)(2) and (4), emissions of PM, ROG (or VOC) and NOx from any diesel-powered portable engines or devices operated at a facility, regardless of equipment ownership or permit status, if the engine or device is operated on site at any time during three different calendar months of the data year. The data of 93404(b)(1) does not need to be provided for portable engines or devices. The use of best available data and methods, including the use of engineering estimates, may be used to quantify emissions from portable engines, and the emissions data from multiple engines may be aggregated by engine tier. Alternatively, the activity data necessary to estimate the emissions from such portable diesel-powered engines shall be reported to the district, and the district may quantify the emissions on behalf of the facility."

given that facility size does not define facility health risk profile. A small facility with high portable diesel engine use may have a comparable or higher facility health risk than a larger facility that limits its use of diesel generators.

The draft CTR regulation requires use of best available methods (BAM) and **CARB has stated it will consider developing non-regulatory guidance on what constitutes BAM in this context. We encourage CARB to develop guidance on this issue.**

New Catch-all Inventory Language

The draft changes to the EICGR Report include new language that appears to expand air district authority to require facilities to submit emission inventories or to update existing inventory plans:

> "The district may consider population-wide impact assessment in addition to point estimates of risk, and may consider the facility's risk individually or in combination with other facilities. The district may consider additional properties of concern including persistence and bioaccumulative properties. The district may consider the potential for non-inhalation, multipathway exposures to contribute greater risk."

This language suggests that air districts can require facilities to develop emission inventories based on speculation about factors that are more appropriately considered in development of health reference values, in the facility prioritization process or in health risk assessments for high priority facilities. For example, consideration of non-inhalation, multipathway exposures is not relevant to a screening-level evaluation of whether facility air toxics emissions may present a significant health risk. This new language also suggests that a facility can be required to inventory its air toxics emissions, which may be a prelude to additional regulatory requirements, based on factors beyond the control of the facility.

AB 2588 allows for exemptions from emission inventory requirements provided the air district determines that any changes in facility activities or operations, or other factors (e.g., as an increase in a potency factor for an emitted substance or encroachment of a sensitive receptor), will not result in a "significant risk."[8] The statutory decision criteria are specific to the subject facility's emissions. Similarly, AB 617 requires air districts to determine whether risk reduction audits and air toxics emissions reduction plans should be updated for facilities in communities with high cumulative exposure burdens "to achieve emission reductions commensurate with its relative contribution, *if the facility's emissions either cause or significantly contribute to a material impact on a sensitive receptor location or disadvantaged community*"[9] (emphasis added) Both statutes envision that additional regulatory requirements should be predicated on the facility's contribution to localized air quality problems, not simply because it happens to be located in an area with a relatively higher air pollution burden.

[8] Health and Safety Code § 44344.7
[9] Health and Safety Code §44391.2(b)(3)

Similarly, a facility should not be required to update its air toxics emissions inventory because it happens to be treating contaminated groundwater or remediating contaminated soil, unless available evidence indicates that those activities may contribute significantly to the facility's air toxics emissions.

This language should be removed from the regulation.

Risk Communication

Several aspects of the proposed updates to the EICGR regulation will present new risk communication challenges. Prominent examples include the unprecedented expansion of the list of reportable substances and the potential impact of provisional health reference values on AB 2588 implementation. These changes may result in higher risk estimates for many facilities even if facility emissions remain unchanged or decrease. CARB should be forthcoming about these outcomes and **include language in the regulation clarifying that 1) air toxics risk from stationary sources has been trending strongly downward for more than three decades, 2) changes in individual facility risk estimates may be a function of including new substances in emissions inventories, not increases in facility emissions, and 3) comprehensive state and local air toxics regulatory programs are in place to mitigate any significant risks to the public.** CARB's 2015 update to the Air Toxics Hot Spots Risk Management Guidelines are a potential model for a risk communication element in this regulation.

WSPA appreciates this opportunity to provide initial comments on proposed amendments to the EICGR. We look forward to continued discussion, and hopefully more workshops on this rulemaking. Please feel free to reach me at kbuchan@wspa.org.

Sincerely,