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LOS ANGELES AREA CHAMBER OF COMMERCE
IWLA
The Resource for Warehouse Logistics

September 16, 2020

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

Subject: Business and industry stakeholder comments on draft updates to the Air Toxics Hot Spots Emission Inventory Criteria and Guidelines Regulation

Dear Mr. Ruiz:

The undersigned organizations have reviewed the California Air Resources Board's (CARB) supplemental materials for the Air Toxics Hot Spots Emissions Inventory and Criteria Guidelines Regulation Update (EICGR) and conclude that CARB's current path remains fundamentally unworkable for both regulators and regulated entities. While we recognize the need to periodically update this regulation based on new information, this process must be conducted in a manner that: 1) facilitates compliance with emissions inventory requirements; 2) allows regulated facilities, local air quality management districts and CARB to absorb additional workload burdens; 3) conveys accurate information to the public about potential health risk from exposure to facility emissions; and 4) is grounded in peer-reviewed scientific methods, principles and analysis, not generalizations applied to large groupings of chemicals for the sake of expediency. The draft materials released by CARB on July 29 take a step in the right direction but leave many problems unresolved.

The draft regulatory language and appendices must be further refined in CARB's proposed regulation to address, at a minimum, the following issues:

1. **Basis for Listing New Substances** – The draft Appendix A spreadsheet indicates that the vast majority of the ~900 substances proposed for listing have not been evaluated by the Office of Environmental Health Hazard Assessment (OEHHA) or any other authoritative body designated under Health and Safety Code section 44321. Absent this review, and absent evidence of their occurrence in ambient air, CARB cannot reasonably conclude that these substances present an acute or chronic threat to public health.

    - Substances that do not satisfy the listing criteria at Health and Safety Code section 44321(f) should not be included in Appendix A. Candidate substances should be subject to a more rigorous screening and prioritization process to determine if they occur in ambient air or present significant health risks before they are listed.

    - CARB has indicated that it is developing a "non-regulatory technical supplement," which will include the technical justification for adding substances to Appendix A. Given the above noted statutory criteria, this analysis should be part of the rulemaking record. At a minimum, CARB should release this document as soon as possible to allow for stakeholder review and comment and possible changes to Appendix A before the first phase of implementation.

- When both atmospheric emissions and risk characteristics are poorly qualified or unknown, chemical species should not be generalized by creating large groupings. Large groupings of substances (e.g. PFAS) exhibit a wide range of chemical and physical properties that defy broad categorizations and must be vetted individually through the appropriate scientific process.

2. **Phased Implementation –** We support a phased implementation approach for including new substances in emissions inventories. However, the approach currently contemplated by CARB – adding nearly 200 substances in Phase 1 (starting in January 2023) and more than 700 substances in Phase 2 (starting in January 2027) – does not allow adequate time for development of health reference values (HRVs) or integration of additional substances into emission inventories. We recommend CARB further refine the implementation schedule in a manner that phases substances into inventories based on realistic estimates of the state's ability to conduct regulatory-grade, peer reviewed health assessments for those substances. This approach will prioritize substances for which adequate information is available and identify data gaps for other substances that need to be filled.

    - Phase 1 (ChemSet 1) should exclude any chemicals that require development of new HRVs or adaptation of values from other jurisdictions, as both of these scenarios require further scientific inquiry that is likely to reach beyond the proposed implementation timeframe.

    - CARB should align the schedule for development of HRVs with phased implementation of inventory requirements. The timeframe envisioned for developing HRVs is unrealistic and likely infeasible, even for the proposed ChemSet 1 substances. Rushing this process would invite reliance on extremely conservative assumptions instead of substance-specific data, leading to values that are likely to be more stringent than necessary to protect public health. Once these values are established, they will be difficult to change, especially if more reliable scientific information suggests a less stringent value.

3. **Development of Provisional Health Reference Values -** CARB staff are proposing development of "provisional" health reference values (PHRVs) for all substances for which HRVs do not already exist. This process would encompass all but a handful of the chemicals CARB is proposing to add to Appendix A. For example, only 68 of the ChemSet 1 substances have been evaluated by OEHHA, U.S. EPA, the National Toxicology Program, or the International Agency for Research on Cancer. None of the remaining ChemSet 1 substances have existing reviews that could be used to establish an HRV.

    - Given the inherent uncertainty in any PHRV derived from methods discussed during the July 9, 2020 meeting of the Scientific Review Panel on Toxic Air Contaminants (SRP), it would be inappropriate to use such values for risk screening, facility prioritization, health risk assessment or any other regulatory purpose. The EICGR should explicitly prohibit such applications of PHRVs.

    - OEHHA has indicated that it intends to hold further public workshops to solicit stakeholder input on use of emerging data and methods to develop HRVs. This inquiry is necessary to

improve the scientific foundation of methods that may be used for substances with significant data gaps, and it should occur before HRVs are developed for these substances.

- OEHHA should utilize available hazard information and exposure data to prioritize substances for development of regulatory-grade HRVs. This approach would relieve the considerable burden of developing PHRVs for all of the ~900 substances proposed for inclusion in Appendix A in an artificially compressed timeframe. It would also prevent potential misuse of provisional values for regulatory purposes.

4. **Workload Burden –** Even with CARB's proposed adjustment to the implementation schedule, the current draft materials indicate an insurmountable workload burden on facilities, air districts and CARB staff. They are also likely to jeopardize the ability of regulated facilities to maintain compliance with regulatory requirements, increasing the probability of enforcement actions that penalize responsible businesses but do not advance the public health protection purpose of the regulation.

    - The only substances that should be included in emissions inventories are those that can be identified as "continuous, intermittent, and predictable air releases," consistent with Health and Safety Code §44340(c)(2).

    - We support CARB's proposed language clarifying that a facility is only required to report emissions for a substance if a quantification method exists at the time of its "Effective Phase." 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 should also identify available quantification methods for substances listed in Appendix A-I.

    - We agree 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. CARB has indicated it will develop a substance-specific "reporting degree of accuracy" (RDA) for this purpose. The process for establishing RDAs and the role of the RDA in defining the scope of inventory requirements for a given facility should be specified in the EICGR.

    - The existing regulatory language is overly restrictive in terms of what emissions estimation methods are acceptable and when they may be used in lieu of source testing. The new burden that would result from the wholesale addition of ~900 substances to Appendix A warrants greater flexibility for regulated entities to use alternatives to the specified methods where they can demonstrate the alternative satisfies the RDA for the substance.

    - Similarly, the proposed expansion of the Appendix A list would necessitate greater reliance on the information in Appendix C, especially for smaller facilities that lack the resources and expertise to conduct an exhaustive examination of potential emissions sources. Staff's current interpretation – that facilities are responsible for determining which Appendix A-listed substances must be included in their emission inventories - diminishes the value of Appendix C and adds further complexity to the inventory process. The proposed EICGR should instead clarify that Appendix C establishes the scope of emission inventory requirements for designated process and source types.

- Consistent with both AB 2588 and AB 617, air district authority to require facilities to submit or update emissions inventories should be firmly grounded in evidence that facility emissions are likely to pose a "significant risk" to nearby receptors, as that term defined in applicable air district regulations. New inventory requirements should not be based on factors beyond the control of the facility or indicators of potential environmental impacts involving media regulated by other agencies (e.g., soil or groundwater contamination). Draft language seeking to expand air district authority along these lines should be excluded from the proposed EICGR.

- CARB should include an exception clause for external factors beyond the control of the facility that may delay availability of data necessary for reporting, such as laboratory capacity becoming constrained by increased demands for sample analysis for newly listed substances.

5. **Public Perception of Facility Risk -** The unprecedented expansion of the list of reportable substances and the potential impact of PHRVs present new risk communication challenges for AB 2588-regulated facilities. These and other recent changes to program implementation guidance will result in higher risk estimates for most facilities even if facility emissions remain unchanged or decrease. This outcome can be expected to generate greater public concern about local air quality and particular facilities with little basis in scientific evaluation of potential health risks.

    - CARB should include a risk communication element in the EICGR 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 actual 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 should also consider measures to avoid overwhelming the public with a large volume of information that would be meaningless without some context for understanding relative risks. California's ubiquitous Proposition 65 warnings are the subject of ongoing media inquiry questioning the value of the program because it does not provide consumers with sufficient information to differentiate products based on potential health risks (see, for example, https://www.latimes.com/business/story/2020-07-23/prop-65-product-warnings and https://www.latimes.com/california/t3ecv-gwevm-123). To avoid this outcome, CARB should present new AB 2588 information in a manner that compares potential health risks from exposure to newly listed substances with health risks from routine exposures to currently regulated substances present in ambient air.

We appreciate your consideration of these comments. If you have any questions, please contact Lance Hastings of CMTA at 916 441-5420, or Tim Shestek of ACC at 916 448-2581.

Sincerely,

African-American Farmers of California
American Chemistry Council
American Coatings Association
California Asphalt Pavement Association
California Business Properties Association
California Chamber of Commerce
California Construction Materials and Industrial Materials Association
California Cotton Ginners and Growers Association
California Independent Petroleum Association
California League of Food Producers
California Manufacturers & Technology Association
California Metals Coalition
California Retailers Association
California Small Business Alliance
Central Valley Business Federation
California Waste Hauler's Council
Chemical Industry Council of California
Construction Industry Air Quality Coalition
East Bay Leadership Council
Future Ports
Garden Grove Chamber of Commerce
Harbor Association of Industry and Commerce
The Industrial Association of Contra Costa County
Industrial Environmental Association
Inland Empire Disposal Association
Inland Empire Economic Partnership
International Warehouse Logistics Association
Kern Citizens for Energy
Kern County Taxpayers Association
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation
Metal Finishing Association of Northern California
Metal Finishing Association of Southern California
NAIOP SoCal Commercial Real Estate Development Association
Nisei Farmers League
NFIB – California
Orange County Business Council
Sacramento Metropolitan Chamber of Commerce
San Gabriel Valley Economic Partnership
South Bay Association of Chambers of Commerce
Torrance Area Chamber of Commerce
Valley Industry and Commerce Association
West Contra Costa County Council of Industries
Western Agricultural Processors Association
Western Independent Refiners Association
Western States Petroleum Association
Western Wood Preservers Institute
Wilmington Chamber of Commerce

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