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

December 10, 2018

David Edwards
Assistant Division Chief, Air Quality Planning and Science
California Air Resources Board
Submitted electronically to https://www.arb.ca.gov

RE: CARB Proposed Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants

Dear David,

On behalf of the members of the California Council for Environmental and Economic Balance (CCEEB), we submit these comments on the California Air Resources Board (CARB) Proposed Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants ("reporting regulation" or "proposed regulation"). Collectively, CCEEB members operate equipment and facilities across the state and in each of the local thirty-five air districts. Additionally, CCEEB manages two regional projects – one in the Bay Area and one in the South Coast – where we work closely with district staffs on rules and programs, including existing requirements for the reporting of criteria and toxic emissions. We offer these comments in support of cross-agency efforts to align and harmonize CARB's proposed regulation with the many district reporting programs, with the overarching goal of having consistent and accurate facility information available to CARB and the public.

We appreciate the tremendous efforts you and your staff has provided in developing the proposed regulation. However, this rulemaking has moved at an accelerated pace, and many key pieces of the program have been left incomplete in order to accommodate a December 2018 board hearing. Below, CCEEB outlines several remaining issues that we believe must be addressed before rule adoption, or at a minimum, CARB must commit to resolving these issues during a 15-day comment period. We have separated our comments into Top-Level Issues, followed by a Question and Comments section that is organized by topic.

Top-Level Issues

- **More needs to be done to fix compliance traps in the initial years**. CARB and the air districts have stated a commitment to working towards consistent, non-

duplicative reporting programs. However, a significant amount of work needs to be done to harmonize the proposed statewide regulation with district reporting programs. Until this happens, facilities are left unfairly facing multiple compliance problems in the initial years of implementation of the statewide program.

These problems could include, but are not limited to:

1. Conflicting reporting schedules, with some districts still using permit-renewal deadlines rather than the calendar year being required by CARB.
2. Conflicting reporting requirements between the various district reporting rules and the reporting requirements in CARB's proposed rule,
3. Missing or unknown report contents, especially where districts calculate facility emissions based on a narrower scope of reported operation and activity level information,
4. Differences in the chemicals reported or emission required to be reported, and:
5. Use of inconsistent calculation methods and emission factors, where district methods differ from the "best available data and methods" required by CARB.

Among these issues, the misaligned reporting schedules is the most pressing problem since it would result in immediate non-compliance for thousands of facilities as of May 1, but each one is a significant cause of concern.

CCEEB recommends CARB address these issues by making clear that reporting according to existing air district practices and schedules will be acceptable to CARB for data years 2018 and 2019, or until such time as an Article 2 regulations is approved for a given industry and made final by the Board. In our comments on §§ 93403 and 93404 below, we provide detailed suggestions on how this can be accomplished.

- **Establish a process by which a facility may update its data.** As CCEEB discussed in our August 23, 2018 comments, CARB needs a process to allow facilities to update emissions data as new information becomes available, or to correct errors discovered after the reporting deadline. This is especially critical for in situations where an air district calculates emissions on behalf of the facility. Analogous to amending an individual income tax return, this is good governance and standard practice with district reporting programs, where it helps ensure that inventories are accurate and reliable.

- **Address fugitive emissions in a separate section.** The draft rule applies to both operational emissions (such as those from a stack) and fugitive emissions. Throughout the rule, some requirements appear to apply to both, while others do not, making it difficult to discern the actual requirements for fugitives.

Generally speaking, measuring stack emissions is very different than measuring fugitive emissions. We strongly recommend that staff dedicate a section specifically to fugitives in order to clarify reporting requirements and provide clear and simplified instructions to facilities. CARB's new fugitive reporting section should be ~~generally~~ consistent with the manner in which fugitives are currently reported to local air districts and the EPA. Additionally, a change to the definition of primary release location is needed to ensure this consistency.

- **Community boundaries must be defined**. CCEEB continues to be concerned that there is no formal process, at either CARB or at the air districts, to define community boundaries at the census tract or city block level. [Please see again our August 23 comments.] Indeed, preliminary discussions in AB 617 communities indicate a preference to have fluid boundaries that can be adjusted over time. However, this makes it impossible to determine applicability of the reporting regulation for those facilities at the edges of a community with permitted but minor sources of emissions. CARB must commit to a formal process to define and approve community boundaries, and reference this in the proposed regulation.

- **The definition of community monitoring is inconsistent with the Health & Safety Code.** §§ 42705.5(c) and (d) refer only to community monitoring systems deployed and operated by air districts, and as required by CARB. Thus, the H&SC definition in § 42705.5(a)(1) applies only to these district monitoring systems, consistent with AB 617. CCEEB disagrees with the expanded definition in the proposed regulation, which incorrectly includes third-party community monitoring systems. This is important since community monitoring, as defined in this section of the Health and Safety code, is meant for regulatory purposes. While CCEEB supports third-party monitoring programs and community science in general, we do not believe it is sufficiently robust to support regulatory actions.

- **Alternatives analysis is needed**. CCEEB believes that CARB has underestimated compliance costs and that the draft rule should be considered a major regulation where analysis of alternatives must be done. In particular, CCEEB would like CARB to analyze an alternative where § 93401(a)(4) applicability is removed since these facilities are small, consisting of primarily of area sources, and are not required by AB 617 to report emissions. Moreover, because these sources would not need to report emissions until two years after a community has been selected for AB 617 programs, data would not be available in time to influence community emissions inventories developed by the air districts. Instead, districts will use robust modeling and monitoring data to characterize area sources, as envisioned by AB 617.

Comments and Questions, by Section

§ 93401. Applicability

§ 93401 (a)(3) – a facility is prioritized by an air district based on *quadrennial* reporting of air toxics, under H&SC §§ 44341 and 44360. Additionally, California air districts are in the process of implementing new prioritization guidelines, based on updated health risk assessment guidelines from the Office of Environmental Health Hazard Assessment (OEHHA). As such, a district's list of high priority facilities may not be current for all facilities. And, as the air districts update prioritization scores, facilities may need to correct emissions data and equipment information, which in turn could change prioritization scoring. We ask CARB staff to clarify in the staff report what process should be used if a facility questions its applicability determination, and whether applicability is ultimately determined by the air district or by CARB. In the regulation, CARB should also clarify what compliance steps are needed during the time when a facility's emissions and prioritization are being re-evaluated.

§ 93401(a)(4) – in addition to CCEEB comments about the need to formally define community boundaries, we have further concerns about potentially undue administrative burden, for both the air districts and regulated facilities, because of this applicability requirement. As we discussed in our August 23 comments, facilities with permitted sources that are not already covered by other applicability criteria typically have minimal emissions associated with their operations, and these emissions can be characterized through other means, such as community monitoring and district modeling. Such facilities could include those with emergency backup generators, such as hotels, hospitals, data centers, fire stations, and commercial offices, or small businesses, such as dry cleaners and gasoline dispensing facilities. At a minimum, we ask staff to consider setting a reporting threshold, below which a facility's emissions would be considered de minimus. Community inventories could still characterize emissions from these facilities by other means and methods, recognizing that the value of reported emissions would not warrant the resources needed to collect this data. CCEEB notes that AB 617 only requires statewide reporting by facilities covered by § 93401(a)(1)-(3) (i.e., facilities that report GHG emissions to ARB, facilities that have a permit to emit 250 tons per year or more of a criteria pollutant, and facilities that have elevated priority scores for TAC emissions) and that subsection (a)(4) goes beyond statutory requirements.

§ 93401(c) – we ask staff to add a provision that allows cessation of reporting for a facility that meets the applicability requirements in § 93401(a)(4), but that no longer has a current air permit. For example, if a facility is brought into statewide reporting under this applicability criterion, but thereafter shuts down its permitted source(s) and has either no emissions or de minimis fugitive emissions, it should be allowed to cease reporting. § 93401(c)(3), which applies to shutdown *facilities*, does not seem to address this situation.

§ 93402. Definitions

CCEEB is ready and willing to work with CARB and other stakeholders to clarify vague or ambiguous definitions.

"Best available data and methods" – this section continues to be vague and ambiguous, despite the clarification that "best available" would be determined using "CARB's judgment." Without a preset list of calculation methods, by sector, by source, and by emissions type or consistent statewide guidelines, as proposed for Article 2, a facility cannot know with certainty which methods would be deemed "best." For example, if CARB approved a calculation method that is inconsistent with an air district-approved method for the same source, would CARB's judgment always be that its method is "best"? Or if a district, whose calculation methods are unknown, fails to submit a facility's emissions report to CARB by the May 1 deadline, and the facility is subsequently required to report directly to CARB, what method is supposed to be used? As defined, what exactly constitutes "best available" remains unclear. That said, we appreciate the clarification that calculations are for actual emissions, not potential to emit.

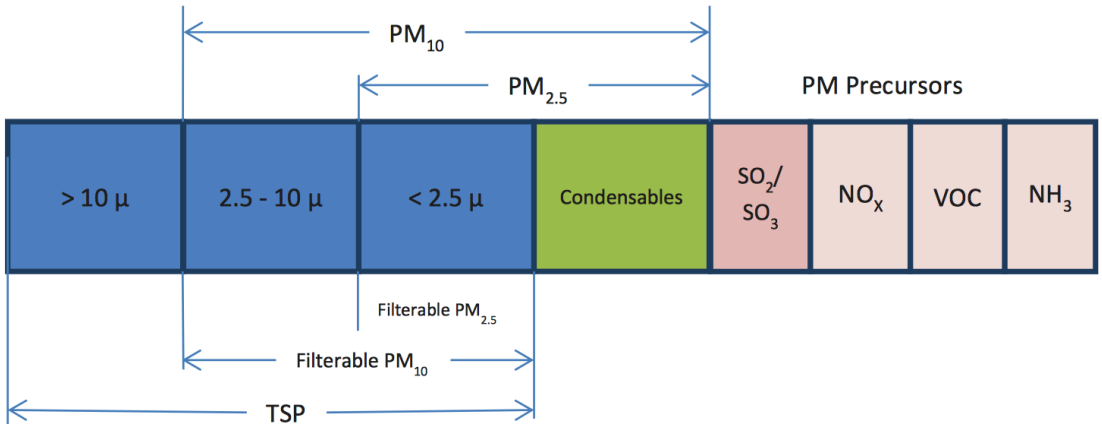
"Community" – we urge staff to clarify that the geographically defined area of a community must be based on either census tract or city block. As discussed previously, we continue to be concerned that there is no formal process to have precise boundaries for AB 617 communities, and no commitment at CARB to develop one. This makes applicability of the proposed regulation uncertain.

"Community Air Monitoring Program" - the definition is inconsistent with the Health & Safety Code. §§ 42705.5(c) and (d) refer only to community air monitoring systems deployed and operated by air districts, and as required by CARB. Thus, the H&SC definition in § 42705.5(a)(1) applies only to air district monitoring. CCEEB disagrees with the expanded definition in the proposed regulation, which incorrectly includes third-party community monitoring. This is important since community monitoring, as defined in the Health and Safety Code, is meant to support regulatory purposes. We ask staff to revise this definition so that it is consistent with the Health and Safety Code and AB 617.

"Device" – the definition is still vague and difficult to interpret. For example, would a valve or flange be considered a "device"? We ask staff to provide a clear definition so that facilities can understand what information is needed under the various reporting elements.

"Particulate matter (PM)" – we ask staff whether the definition of PM includes all of the sub-bullets (i.e., PM2.5, PM10, condensable PM, and filterable PM), or whether the sub-bullets are meant to be separate definitions that stand alone. If the former, then the draft regulation appears to require that condensable PM be reported. This would be problematic for a number of reasons. First and foremost, operating permits do not

count condensable PM, which could lead to reported emissions seeming to be higher than permitted limits, as well as having two different reported emissions for a single device. Second, methods to measure condensable PM may not be accurate. If it is the intention of staff to have condensable PM reported, then we strongly urge staff to move this work to the second phase of implementation under Article 2, and work closely with industry to ensure that reporting of condensable PM only be required when it is relevant for a piece of equipment and an accurate reporting method is available. In terms of the definition, we suggest staff consider the approach used by the BAAQMD in Regulation 6[1], which includes the following graphical definition, as well as the additional definition of "total suspended particles":



"Permit" – we ask staff to clarify that the definition of "permit" is not meant to include registered equipment or equipment otherwise exempted from district permit programs. We note that registered equipment would be reported at a "permitted facility" but that registered equipment in and of itself should not trigger reporting requirements under § 93401(a)(4). This is particularly important for portable equipment, which could be stored at facility but operated elsewhere.

"Portable" – we ask staff to clarify that construction equipment are not meant to be included under the definition of "portable," and, as such, are not meant to be covered under § 93404(b). We note that there are many pieces of portable equipment outside of the Statewide Portable Equipment Registration Program (PERP), which are instead registered through air district rules. It would not be practical to calculate emissions from temporary construction equipment or equipment brought onsite and used temporarily by an outside contractor.

[1] See BAAQMD Regulation 6: Particulate Matter – Common Definitions and Test Methods, Section 6-206. http://www.baaqmd.gov/~/media/dotgov/files/rules/archive-2018-regulation-6/documents/rg0600-pdf.pdf?la=en.

"Release location" – we appreciate the flexibility provided by defining release locations in terms of "the typical, or the most common or generally used, annual operating conditions," but note that this may not conform with emission inventories prepared to support health risk assessments (HRAs) for a facility. For estimating acute risk in an HRA, a facility must use maximum emissions, which may not be the same as "the typical, or most common or generally used, annual operating conditions". . We would like to work with staff to better clarify how releases should be defined in the regulation and how emissions should be properly reported. We recognize that some of this work could be done as part of Article 2 development.

"Toxic air contaminant" – Appendix A-1 of the Air Toxics "Hot Spots" (ATHS) Program Guidelines lists more than 500 chemicals, which are included under this definition by reference. In discussions with staff, CARB has indicated that it will update the guidelines and organize TACs by specific industry sector, so that each sector would only be required to report those chemicals associated with its operations. We ask CARB to add a discussion of these plans in the staff report, and to commit to a work schedule with a goal of completing the update before January 1, 2020, the first data year for which facilities must use Appendix A-1 for annual emissions reporting.

§ 93403. Emission Reporting Requirements

§ 93403(b)(1) – this subsection contains two of the most challenging aspects of the proposed regulation during the initial years of implementation. First, in trying to specify which calculation methods should be used, it falls victim to rather circular logic that creates compliance uncertainty:

> *"If a quantification method is not available from the air district, use best available data and methods. Air district or best available data and methods must be used to quantify emissions data until uniform methods are added to Article 2 of this Subchapter 7.7."*

As previously discussed, the definition in the proposed regulation for "best available data and methods" is both vague and ambiguous, relying on some future, unknown judgment by CARB staff based on its review of submitted emissions reports. This is a real problem in air districts that calculate emissions on behalf of facilities. For example, in the Bay Area, staff does not publish what methods or emission factors are used to calculate emissions, nor is this information routinely shared with the facility.

The proposed regulation then goes on to require submittal of reports to the air district by May 1 of each year. Returning to the Bay Area example, where reports are based on permit renewals, this means that several hundred facilities will be caught in an immediate compliance trap where (1) they must submit *CARB* reports to the *air district* out of sync with reports required by the air district itself, and then (2) they must apply unspecified "best available data and methods" which, by definition, will differ from

those used by the air district. At this point, it is unclear what the air district would do in terms of its August 1 submittal deadline to CARB – it could modify the facility calculations to match its own, without notifying the facility; it could pass along the facility submitted report, which would conflict with district calculations; or it could do nothing and force the facility to resubmit its data directly to CARB, which again would result in two separate and conflicting "books" documenting facility emissions. Under any scenario, it is unclear whether a facility could be deemed non-compliant with the CARB regulation.

In the proposed regulation, CARB somewhat address this problem in § 93404(b)(2), but only for toxic air contaminants (TACs). As this subsection states, "For data years prior to 2020, in cases where a subset of the toxic air contaminants has been historically reported, owners or operators of a facility subject to this article must report, at a minimum, the same subset of toxic air contaminants, or sufficient activity data to calculate such emissions." CCEEB strongly urges staff to expand this approach to include criteria pollutants, so that facilities already reporting to air districts are allowed to continue reporting emissions or activity levels using existing air district practices until such time as Article 2 is developed and approved by CARB.

§ 93403(c)(1) – CARB intends for air districts to submit facility emissions data to it by August 1 of each year. CCEEB urges CARB to add a step to this section requiring that air districts that elect to submit emissions data on behalf of a facility concurrently transmit to the facility designated representative a copy of all data files provided to CARB. This allows regulated facilities the opportunity to review and verify that data submittals are accurate and consistent with data provided by the facility to the air district.

§ 93403(c)(1)(A) – we raise two issues in this section. First, and most importantly, CCEEB believes that 30 days is too short a time for facilities to calculate and report missing emissions data if a facility must use "best available data and methods" as described in § 93403(b). A facility would need to work with both air district and CARB staffs to determine what would be considered "best available" in hopes of reconciling any difference of engineering opinions, which would likely be a time consuming process. We ask staff to increase the time for submittals to at least 60 days, and that CARB take the lead in working with the facility during the reconciliation process in order to streamline the reconciliation process

Second, we believe there is a typographical error, and that this section should read as follows:

> "If an air district does not submit data (on behalf of a facility subject to this article) to CARB by August 1, CARB, after consultation with the air district, will require that the facility designated representative provide the emissions ~~and~~ **or** activity data that was provided, or should have been provided, to the air district, as required pursuant to 93403(b), within 30 days. The facility data shall be

submitted to both the local air district and to CARB. The submitted emissions data reports shall represent the actual emissions from the entire previous calendar year."

§ 93404. Emissions Report Contents

*This section lays out in detail the report contents required by CARB, starting with reports submitted May 1, 2019 for the 2018 data year. CCEEB remains concerned that air district reporting formats will not be updated in time for the first year of implementation of the proposed regulation putting facilities at risk for non-compliance with either CARB's regulation or the local air district's regulation. As of this date, we do not have confirmation from any air district that this work is underway, and none have committed to a public process to make necessary programmatic changes. This is made more critical by the fact that facilities will be submitting their first reports only 5 months from the expected approval of this regulation. If the intention is that a facility reporting emissions using district report formats meets the requirements of this section (including both subsections (a) and (b)), then we suggest the following clarifying language be added (additions in **red**):*

"The owner or operator of a facility subject to this article must develop and submit criteria pollutant and toxic air contaminant emissions data to the air district in which the facility is located in accordance with the following requirements, in a format determined by the local air district. For data years prior to 2020 or until a facility is subject to an industry specific reporting regulation under Article 2, facilities which already report criteria and toxic emissions to their air district will be deemed in compliance with this regulation if they report emission or activity data as they have historically been reported to the air district. A facility subject to this article must report, at a minimum, the same subset of information in the same manner, according to existing air district practices."

§ 93404(a)(3) - the owner/operator is usually associated with the company that owns/operates the facility, but the designated representative is the person that prepares and submits the report. Therefore, we suggest the following changes (in **red**):

93404(a)(3) Owner or Operator. The owner or operator of each facility subject to this article must provide legal name(s), and physical and mailing addresses of the owner or operator. ~~responsible for preparing and submitting the required emissions data report~~.

93404(a)(4) Designated Representative. The facility owner or operator must designate a reporting representative (consistent with the requirements of 40 CFR §98.4) that is responsible for preparing and submitting the required emissions data report.

§ 93404(a)(8) – as discussed in our "Top Level Issues," this subsection and others create some confusion about which requirements apply to fugitive emissions. In particular, §§ 93404(a)(8)(E) and (F) do not reply to fugitive emissions. We suggest moving "release location exit gas flow rate," if measured, and "release location exit gas temperature, " if measured, as sub-bullets under § 93404(a)(8)(G), which is specific to stack emissions.

Another complementary approach to clarifying requirements could be to aggregate or cluster fugitive emissions, such as by "process unit," as is done by EPA for New Source Performance Standards (40 CFR 60 Subparts GGG & GGGa).

§ 93404(a)(9) – CCEEB asks staff to clarify why this information is being required. It appears to be a relic of the CEIDARS database but its relevancy to emissions calculations is not evident. While we understand that the agencies have been using the CEIDARS "Device"/"Process" terms for some time, this is not something that facilities typically use and these specific terms are likely to be the source of some confusion. To help clarify language, we suggest that the term "device" be replaced by "emissions unit" and that the term "process" be replaced by "emissions process."

§ 93404(a)(10)(E) and (F) – activity level and activity level unit of measure should only be reported when this information is required by an air district to calculates emissions on behalf of a facility. Activity level information should not be required when actual emissions are reported to an air district. This prevents the unintentional release of confidential business information, which could be back calculated when both activity level and emissions data are made publicly available.

§ 93404(a)(11) – CCEEB continues to be concerned that this subsection requires a facility to report information that may not be available from the air district. For example, in districts where activity level is reported, a facility may not know what a district will report as the actual emissions (D), actual emissions unit of measure (E), emission factor (F), source of emission factor (G), emission factor unit of measures (H), or emission calculation method (I). Under state law, air districts are not required to provide this information to a facility and, even if requested, are not compelled to make this information available in a timely manner. While we hope that this issue gets resolved through the development of Article 2, CCEEB believes until that time, facilities need compliance flexibility that allows them to report using existing air district reporting formats.

§ 93404(b) – this subsection is vague and ambiguous, and could be interpreted to include mobile sources, which we do not believe is the intent. We suggest it be revised to state, "Emissions from unpermitted sources, including fugitive emissions, that are currently reported to ~~or quantified by~~ the air district, shall also be quantified and reported, but are not included in the applicability determination for criteria pollutant emissions. Emissions from permitted portable equipment operated at a facility shall also

be reported, except for portable equipment registered and reported under the Statewide Portable Equipment Registration Program Regulation (CCR, title 13, section 2450 et seq.)."

Separately, we ask staff to consider developing a threshold for this section, which would apply to a source, device, or process, and below which emissions would not need to be included in a facility's report. The rationale is that de minimis emissions may not justify the cost or administrative burden needed to report these emissions. For example, there are many sources, such as tanks/totes, with annual total toxic emissions in the order of a tenth of a pound due to very low vapor pressure and small throughput, in which case a de minimis would be practical.

§ 93404(b)(1) – as we discuss on page 6 of these comments, we strongly urge staff to expand this subsection so that, for data years prior to 2020, facilities may use existing reporting practices and formats, as established by the various air districts, rather than the unspecified, vague, and ambiguous standard of "best available data and methods."

§ 93404(e) – CCEEB asks staff to revise and expand discussion of this subsection in its staff report.[2] Based on discussions with CARB staff, it is our understanding that an emission report audit is meant only in cases where a "bad actor" is suspected, and not as a routine quality assurance check. Unlike CARB's Mandatory Reporting Regulation, the proposed criteria and toxics reporting regulation relies on district review of facility data – in effect, the air district acts as a verifier for facility data, with CARB staff making a separate and further review. It is unclear what added value a third-party auditor could provide, and who would be responsible for selecting and compensating a third party auditor. We ask staff to make clear under what circumstances an Executive Officer would exercise his or her discretion to require a third-party audit, what is the purpose of such an audit, and what process would be used to conduct the audit, including what options a facility would have to dispute the auditor's findings should there be disagreement.

§ 93406. Confidentiality

We ask staff to work with CCEEB and other public stakeholders to develop a process by which whole categories of information can be appropriately marked as confidential business information (CBI). This reduces the administrative burden of having to claim and review each data point needing CBI protection.

[2] The ISOR provides this limited discussion and rationale: "The ability to audit and review emissions reports and supporting data will provide clarity in instances where there may be questions regarding the determination of emissions for a facility. The provision also allows for quality assurance checks of selected emissions data reports to ensure compliance with regulatory requirements, and the accuracy of the submitted data."

§ 93407. Enforcement

Based on discussions with staff, it is our understanding that CARB intends to delegate enforcement authority to local air districts through Memorandums of Understanding (MOUs), to the extent that CARB deems an air district responsible and capable of preforming this function. CCEEB strongly encourages the use of MOUs for enforcement purposes of this regulation, and asks staff to commit to working with air districts towards this outcome. At a minimum, we ask staff to discuss its intended use of MOUs in its staff report.

In terms of data updates, CCEEB strongly recommends that CARB encourage facilities to voluntarily revise emissions data as more accurate information becomes available or to correct minor data entry errors as these are discovered. In such instances, CARB would need to exercise enforcement discretion to determine whether or not the originally submitted information was "inaccurate" and, as such, warrants a violation under § 93407(a)(3).

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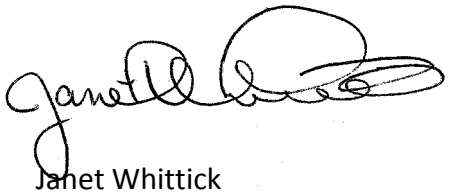
On behalf of the members of CCEEB, we sincerely thank you and CARB staff for working with us on the proposed regulation and for your efforts to engage and coordinate with CAPCOA and the local air districts. CARB has done much with the limited time given to develop this rule. We commit to working with you, CARB, CAPCOA, and other stakeholders going forward on the many remaining elements of CARB's reporting regulation, in support of a successful statewide emissions reporting program.

Sincerely,



Bill Quinn
CCEEB Chief Executive Officer and
Project Manager for South Coast and Bay Area Air Projects

Janet Whittick
CCEEB Policy and Communications Director

cc: Mr. Gerald Secundy
Ms. Kendra Daijogo, The Gualco Group, Inc. and CCEEB Air Project Manager
Mr. Alan Abbs, CAPCOA
Mr. Jack Broadbent, BAAQMD
Mr. Wayne Nastri, SCAQMD
Mr. Samir Sheikh, SJVAPCD