



**CALCIMA**

**California Construction and  
Industrial Materials Association**

June 07, 2019

Clerk of the Board  
California Air Resources Board  
1001 I street  
Sacramento, CA 95814

**RE – OPPOSITION: PROPOSED REGULATION FOR THE REPORTING OF CRITERIA AIR POLLUTANTS  
AND TOXIC AIR CONTAMINANTS – Supplemental 25-Day Comments**

Dear Mr. Gaffney:

The California Construction and Industrial Materials Association (CALCIMA), and the California Asphalt Pavement Association (CalAPA) oppose the expansion of statewide reporting by the California Air Resources Board from the “major sources” identified specifically by the legislature in AB 617. CARB’s expansion to include practically all stationary sources within California is not appropriate. We do not believe such a program has benefits nor fits the structure of AB 617’s effort to target resources on impacted communities.

CALCIMA is the state trade association for aggregate, industrial mineral, and ready mix concrete producers in California. CALCIMA members provide the essential materials needed to build the state’s public highways, roads, rail, and water infrastructure; to build homes, schools and hospitals; to grow crops and feed livestock; and to manufacture wallboard, roofing shingles, paint, glass, low-energy light bulbs, and battery technology for electric cars and windmills. While we have some sources that are major sources the majority of our member facilities are non-major stationary sources. CalAPA is a statewide trade association representing the asphalt pavement industry in California, including asphalt producers, refiners, paving contractors and other firms. Asphalt facilities are already subject to stringent reporting requirements by local air districts across the state.

We are appreciative that the Air resources Control Board has provided abbreviated reporting for construction aggregate facilities as well as adopted an implementation schedule that should somewhat reduce the burden of this regulation. Expanding from the statutorily authorized approximately 1400-

2000 large facilities as mandatory reporters identified by CARB as meeting the AB 617 definition to over 50,000 reporters creates significant impacts.

These regulations would impose significant costs to materials producers and air districts. The lack of consistent emission factors and methodologies statewide between air districts in calculating emissions for stationary source would create a database that is imprecise, inconsistent and will present inequivalent information as equivalent for similar types of facilities. As a result it will misinform the public should they attempt to compare data across incompatible air district systems. The resulting confusion is the exact opposite of the original intent of AB617. The legislatively approved definition of stationary sources for this reporting system was targeting only major stationary sources and high risk facilities for which consistency can be created.

### **Approach Exceeds Explicit Legislative Authority in AB 617:**

The legislature provided an explicit definition of stationary source for this regulatory endeavor in Health and Safety Code 39607.1. Further, in Legislative analysis, the legislature specifically noted it covered reporting by “major sources.” AB 617 was a carefully constructed, phased-in, targeted approach to reducing emissions exposure in our most impacted communities instead of a broad statewide approach.

Health and Safety Code 39607.1 is CARB’s authorization for a statewide reporting system on stationary sources as defined. It has a three part definition of Stationary source for the purposes of the section, not a four part definition.

“39607.1.

(a) For purposes of this section, the following definitions apply:

(1) “Nonattainment pollutant” means a criteria pollutant for which a district is classified as a nonattainment area pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(2) “Stationary source” means any of the following:

(A) A facility that is required to report to the state board the facility’s greenhouse gas emissions pursuant to Section 38530.

(B) A facility that is authorized by a permit issued by a district to emit 250 or more tons per year of any nonattainment pollutant or its precursors.

(C) A facility that receives an elevated prioritization score based on cancer or non-cancer health impacts pursuant to Section 44360.

(b) (1) The state board, in consultation with districts, shall establish a uniform statewide system of annual reporting of emissions of criteria pollutants and toxic air contaminants for a stationary source.

(2) The state board shall require a stationary source to report to the state board its annual emissions of criteria pollutants and toxic air contaminants using the uniform statewide system of annual reporting developed pursuant to paragraph (1).

(c) With the report required pursuant to paragraph (2) of subdivision (b), the state board may require, as appropriate, a stationary source to provide relevant facility-level emissions data.

(d) The state board may require, as appropriate, a stationary source to verify or certify the accuracy of its annual emissions reports by a third-party verifier or certifier that is accredited by the state board.”

The section reads clearly enough. It creates a three part definition of stationary source that captures major and high risk sources within the state and authorizes in consultation with districts the creation of an annual reporting system for those stationary sources explicitly defined for use within the section.

There is further evidence that the legislature considered this annual reporting system being limited to “major stationary sources.” In the July 14, 2017 Assembly Analysis on Concurrence with Senate Amendments the analysis notes:

“1) Provides for regular and consolidated reporting of emissions from major stationary sources (emphasis added) by requiring ARB to establish a uniform statewide system of annual reporting of criteria pollutants and toxic air contaminants (TACs), including reporting by sources of facility-level emissions data and third-party verification.”

The legislature got it right as those are the stationary sources best situated to report annually

### **Confidentiality of Data**

With the Air Boards decision to move forward with a detailed reporting regulation will enable the calculation of production totals for industries such as construction aggregate and asphalt facilities by third parties. This knowledge may be utilized to gain competitive advantage in the marketplace and in worst-case scenarios subject public agencies to bid responses from parties who know they have no competition inflating project costs. Rock, Sand gravel concrete and asphalt are all local commodities and the dominant consumer of those commodities is the public through infrastructure maintenance and creation programs. Particularly in certain markets this leads to the potential that competitors knowing each other’s production information can gain market advantage at the public’s expense. We strongly encourage the board to limit the availability of data which enables the reverse engineering of production data. While the state has no mandatory data collection for asphalt until the boards reporting system goes active, it does have annual reporting for mines. In public Resource Code 2207(g) it protects that mineral production data to prevent abuse.

“(g) Any information in reports submitted pursuant to subdivision (a) that includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation may not be disclosed to any member of the public, as defined in subdivision (b) of Section 6252 of the Government Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each

mineral produced therein. In order not to disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30 or as soon thereafter as practicable.”

The nature of the data collected and reported in this reporting regulation is such that one will be able to reverse engineer production data for every mineral operation within the state, which could in turn trigger federal anti-trust concerns.

### **Significant Cost Burdens on Non-Major Emitters and Air Districts:**

As there are areas of the state where annual reporting occurs by our members, we have actual costs for complying with annual reporting obligations for non-major sources. The general operator cost to submit data to South Coast Air Quality Management District is between \$2,500 to \$5,000 per year in direct consultant cost without including time and labor costs. In meetings with CARB staff, we have learned this reporting system is expected to include up to 60,000 facilities annually up from less than 20,000 annually in the version before the Board in December. The annual compliance cost for 60,000 facilities at just \$2,000 dollars a facility would be an estimated \$120 million annually.

The added burdens on local air districts are also a significant concern to the materials industry. Added burdens on their staff resources and lack of a budget directly impact their ability to undertake critical activities such as permit modifications, variances, health risk assessments and other necessary activities that keep our operations running. Some local air districts are implementing special fees for these additional activities. The equipment specificity of stationary source permitting systems and need to update permits due to replacement is a very real need and delays in such actions have real impacts on material producer’s ability to operate.

### **Permit Requirements and Emission Factors are not Consistent Statewide**

Local air districts have developed and implemented stationary permitting systems which fit the needs and sources within their districts. This is fundamental to the design intent of the local district system and it’s recognition that South Coast is not Yolo-Solano. As a result, which emissions factors are utilized and what sources are encompassed within permits varies by district. These are not large major emitter combustion sources with CEMS systems such as the facilities identified in AB 617’s statutory authority but a broader more diverse array of businesses. Some of these sources do not have health risk assessment requirements and are now subject to AB 2588 due to AB 617. Incorporating all of that mixed data into a statewide system doesn’t create clarity but confusion as sources from one district are

“apples” and similar sources in other districts are “oranges,” and the resulting numbers are therefore not directly comparable as to what is achievable.

AB 617 effectively accommodates this by enabling fence-line monitoring of stationary sources once AB 617 communities are identified. Consistent, comparable data on emissions leaving the sites in the direct area of concern was authorized. It is not necessary to bring every non-major facility into a statewide reporting system. AB 617 relies on monitored exposure assessments not emissions assessments. Target the impacted community and do extra work within that community, not statewide. In addition, allow the use of existing available air monitoring data rather than require the implementation of a new monitoring network. Again the Legislature had the wisdom to create a scalpel that focused costs and burdens where change was most needed. It did not create a system to act everywhere -- instead the concept was to target the resource expenditures of districts’ businesses and the state on the communities most in need of reductions now, with the understanding that the lessons learned there may be expandable to other places later. This reporting system as constructed is the opposite of that policy structure.

Again we are thankful that the Board is proposing some reductions to your initial draft and allowing some construction aggregate facilities abbreviated reporting. The extended timeframes for air districts to prepare may be helpful. However the program is a significant expansion beyond the authority granted CARB by the legislature in AB 617.

Respectfully,

A handwritten signature in black ink, appearing to read "Russell W. Snyder".

Russell W. Snyder, CAE  
Executive Director  
CalAPA

A handwritten signature in blue ink, appearing to read "Adam Harper".

Adam Harper  
Director of Policy Analysis  
CalCIMA