

June 7, 2019

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814
<http://www.arb.ca.gov/lispub/comm/bclist.php>

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

The California Chamber of Commerce is the largest broad-based business advocate in the state, representing the interests of 14,000 California businesses, both large and small. Many of CalChamber's members are directly covered by the cap-and-trade regulation or have air permits, while many others will now fall under the expanded applicability of this proposed regulation.

CalChamber supports the efforts of the California Air Resources Board (CARB) to create a state-wide approach to data collection and monitoring to avoid piecemeal data collection and to ensure best available technology is utilized to appropriately measure air emissions across the state. We appreciate the efforts of the CARB and the districts in putting together this draft and for the attempts at streamlining the reporting process. However, we remain concerned with several aspects of the proposed regulation included in the most recent 15-day notice, including the burden on tens of thousands of additional businesses now sought to be covered by the rule, many of which are small businesses without in-house air specialists.

Dramatic Expansion of Covered Entities

In the first version of the draft regulation, CARB proposed to require data submission from entities that were within specified community boundaries. Public Comments expressed concern regarding the fluid nature of the boundaries and the difficulty with cross-boundary air emissions. Recognizing this concern, CARB removed the community boundaries concept and expanded applicability of monitoring obligations to four categories of "facilities," many of which were not contemplated by AB 617 (Garcia, C. 2017) or AB 197 (Garcia, E. 2016), the authorizing statutes cited for these regulations. The first three categories include:

- (1) Greenhouse Gas (GHG) Facility (those required to report under Health and Safety Code (HSC) §38530)
- (2) Criteria Facility (those in a nonattainment district and have permitted discharges of greater than 250 tons per year of nonattainment pollutants/precursors)
- (3) Elevated Toxics Facility (those that are categorized as high priority for toxics under HSC § 44360).

These first three categories are consistent with AB 617, which states that the district may require "any stationary source" that emits pollutants to submit data. AB 197 provides no authority for a data submission requirement or enforcement authority for failure to comply. Stationary source was defined by AB 617 and codified at §39607.1 as three categories:

- (1) facilities that are required to report pursuant to HSC §38530
- (2) that are authorized by permit to emit greater than 250 tons per year (tpy) of nonattainment pollutants, or
- (3) that receive an elevated priority pursuant to HSC §44360.

This 15-day version of the regulation adds a fourth category of required reporters: A broad category of any entities with permits to operate issued by an air district with emissions greater than a specified threshold. These categories are set forth in a new Appendix to the regulation, at Tables A-1 through A-4 and are primarily based on a newly defined “Activity Level Reporting Threshold.”

As noted by Attachment D’s Preliminary Revised Economic Impacts Summary, CARB expects that approximately 1,300 facilities are included in the first three criteria. **48,700** facilities would fall under the new fourth category, and impact more small businesses (approximately 17,200) than under the original proposal. The inclusion of this fourth category is particularly problematic because AB 617 only authorized monitoring requirements for defined stationary sources, and many of the sources that fall within category four would fall outside of that definition.

We also note with concern the lack of a public hearing to discuss this new application criteria, and the likelihood that input from the business community may be reduced due to the expedited adoption process.

Additional Applicability Criteria Comments:

- Table A-3: Although an asterisk is included in Table A-3 to explain that “zero” in the Activity Level Reporting Threshold really means more than zero, we recommend stating this more clearly, especially considering the breadth of applicability to small businesses who may not have in-house air specialists upon which to rely.
- §93401(a)(3): Facilities that are awaiting prioritization re-designation due to backups at the district level will likely be swept under this section. We recommend a phase-in approach to allow for facility updates prior to triggering reporting requirements under this regulation.
- §93401(a): remove categories that are inconsistent with AB 617’s definition of “stationary sources.” Alternatively, move section §93401(a) to a similar reporting as is set forth in proposed §93401(a)(5). Enforcement authority and penalty provisions under this regulation against §93401(a)(4) facilities should be removed as inconsistent with statutory authority.
- §93401(b)(2): We appreciate this exclusion, which, because of their rural nature, have minimal impact on local air quality concerns intended to be addressed by AB 617. However, the term “irrigation pumps” is undefined, and various terms are used to refer to these systems. Additionally, this exclusion also fails to address fuel tanks used in the same areas for other agriculture-related activities. Please revise to confirm that fuel tanks, irrigation pumps, booster pumps, ag well pumps, and all related terms are intended to be included in this exclusion.
- §93401(b)(3): Clarify whether this exclusion extends to controlled burns for the purpose of wildfire prevention activities.
- Cessation of Reporting should be divided into emissions units, not the entire facility, to account for shutdown of certain units but not the entire facility.
- Demonstration of non-applicability: For small businesses now subject to this regulation, a 30-day response time may be not enough time to, if necessary, retain an expert to evaluate the applicability criteria and respond. We recommend at least a 60-day response time.

Definitions

- The definition of “Activity Level,” and especially the first sentence, is very broad. This term may be better defined by reference to the activity levels set forth in Table A-4 rather than set forth a general definition, especially in light of its limited use in this regulation.
- The definition “Best Available Data” remains unclear despite additional language. Please clarify whether CARB or district-approved methods are the only acceptable methods, and if so, specify the

means of CARB or district approval. For example, in § 93404(c)(4), for abbreviated reports, it is stated that the Executive Officer will evaluate and approve methods for calculating emissions every three years. Procedures should be added to allow a facility to request approval of an emissions calculation method. Additional clarity is needed on the means and methods available for estimating emissions using best available data.

- “Criteria Air Pollutant:” unclear definition.
 - The first two sentences of this definition can be read in two ways: (1) all CAAQS or NAAQS and precursors are “criteria air pollutants” or (2) only VOCs, ROG, NO_x, SO_x, CO, PM, Pb and NH₃ are criteria air pollutants if they have an established standard under CAAQS or NAAQS. Additional clarification is necessary.
 - The last sentence of this definition is unclear. “For the purposes of this article, vinyl chloride, hydrogen sulfide, and sulfates are considered toxic air contaminants, and must be reported as such.” This can be read in multiple ways: (1) these four pollutants are “Toxic Air Contaminants” **but not** Criteria Air Pollutants for purposes of this article; or (2) these four pollutants are **both** Toxic Air Contaminants and Criteria Air Pollutants for purposes of this article. We recommend moving this definition to the definition of “Toxic Air Contaminants” and otherwise clarifying the definition of Criteria Air Pollutant for purposes of this regulation.
- “Particulate Matter:” For clarity, we recommend inserting the phrase “for purposes of this article” after “is a criteria air pollutant” in the first sentence.
- “Portable:” It remains unclear, under this definition, whether and by whom reports are required when a portable device or equipment does not meet the definition set forth in this regulation, and whether the reporting threshold is consistent with the Portable Equipment Registration Program

Abbreviated Reporting

CalChamber believes that abbreviated reporting is appropriate and necessary to avoid a burden on sectors of the economy that should have little or easily quantifiable emissions. However, some sections require clarification.

- §93403(c)(1), which states that an Additional Applicability Facility may submit an abbreviated report “if the local air district or CARB has provided notification to the owner or operator of the facility that the air district or CARB will prepare and submit the emissions report for the facility.” Because there is no affirmative requirement for CARB or the air districts to send such notice within a specified time before the reporting deadline, clarification should be included on the timing and form of this notice so that businesses can better prepare for a full or abbreviated submission. Alternatively, the regulation should allow the A-4 facilities abbreviated reporting without first receiving notice.
- §93403(c)(3) and (4): Clarity is necessary to determine how facilities will estimate emissions in the absence of measurable emissions prior to the Executive Officer approving a method of calculating emissions from abbreviated reporting facilities.
- §93404(d)(2)(B)’s liability could be read to extend to submissions by the district to CARB. For clarity, the phrase “by the facility owner or operator” should be inserted at the end of subsection (B).
- § 93404(e)(1)(B) should be revised to clarify that the air district may not require submission of data under this article prior to the 3-year deferral period.

Emissions Reporting Requirements

We appreciate the phase-in approach taken by CARB, and the attempts to streamline reporting by certain readily-quantifiable industry groups. Utilizing existing district reporting methods, forms, and processes while CARB develops a more streamlined electronic submission program is crucial to avoid backlogs and mistakes

that could subject a facility to violations under this regulation. We recommend that reporting deadlines also be phased-in to coincide with district deadlines until they can be reconciled to the same date.

CalChamber remains concerned with the significant amount of data required to be submitted under this program, much of which is already part of the public record and which may already be submitted to the air district in other forms. This is especially concerning in light of the substantial increase in entities subject to reporting, and the small nature of many of the businesses. We hope that CARB and the air districts continue to work together to reduce to the maximum extent possible duplicative reporting.

Remaining Concerns include the following:

- §93404(c): specifies that reports “must provide the emissions calculation method, source of the reported emissions factor, and *other general information required to document that best available data and methods were used,*” Given the lack of clarity on emissions methods, and the fact that § 93407 (a)(2) makes “any report, data, or documentation submittal required by this Article that is not submitted or is submitted late” a violation subject to maximum penalties, clarity is needed to confirm that a facility will not be in violation of this Article if the district or Executive Officer requires additional information to confirm an emissions calculation method.
- §93403(d)(2)(A): this section provides that if the air district fails to submit information to CARB, CARB may request, and the facility must provide data to CARB, within 30 days. This short time period is a challenge, and we request that the time be extended to 60-90 days to allow full, accurate reporting of data, especially in light of the nature of some small facilities and the harsh penalties for late submissions.

Confidentiality and Enforcement

§93406(a): CalChamber is concerned with the language in § 93406(a) dictating that “Emissions data” submitted to CARB is not confidential, followed by a section indicating how a facility may claim confidentiality. Emissions data is not defined, and these provisions are in conflict. Information submitted to CARB should be subject to the same confidentiality and trade secret protections that prevent unnecessary disclosure under the public records act and other confidentiality protections to protect process and competition among the 48,700 businesses expected to be subject to this regulation.

Enforcement and civil penalties assessed under proposed § 93407 should be limited to those stationary sources as defined by AB 617 (see HSC § 39607.1(a)(2) & §42705.5(c)), and not extended to the additional entities that are implicated by proposed §93401(a)(4). Additionally, we recommend clarifying the language to confirm that facilities are not subject to double penalties by the districts and by CARB for the same violation.

Magnitude of Costs

Finally, CalChamber has significant concerns regarding the cost of this program, especially to the extent it duplicates or complicates data submissions already being collected by the air districts. Original estimates concluded costs of approximately \$20 million. The revised regulation being considered today is now over \$80 million. This is especially concerning given that the majority of the costs to the agencies will be passed along to regulatory entities on top of the estimated costs to industry, and that CARB must still incur additional costs to develop an electronic reporting system to fully integrate and streamline this process, and that resources dedicated to this new reporting system will require diversion from other important CARB programs. We recommend additional alternatives analysis to determine other options for data collection that do not require similarly substantial costs.

Conclusion

We appreciate the efforts to date to attempt to streamline the reporting process, and look forward to working with staff to address these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'LS', with a long horizontal flourish extending to the right.

Leah Silverthorn
Policy Advocate

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