



California Council for Environmental and Economic Balance

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June 29, 2018

Greenhouse Gas and Toxics Emission Inventory Branch Chief

Air Resources Board

Submitted electronically to Ctr-report@arb.ca.gov

RE: Concepts Presented at May-June 2018 Workshops on Proposed Regulation for
Criteria Pollutant and Toxic Air Contaminant Emissions Reporting

Dear David,

On behalf of the members of the California Council for Environmental and Economic Balance (CCEEB), we submit the following comments on the Air Resources Board (ARB) concepts, as presented during workshops held in May and June 2018, for a Proposed Regulation for Criteria Pollutant and Toxic Air Contaminant (TAC) Emissions Reporting (“proposed regulatory concepts”). CCEEB supports the goal of consistent statewide emissions reporting as part of AB 617 implementation, and believes that this effort will help improve data transparency and public accountability for emission sources.

However, we also recognize the need to follow the language in the statute of AB 617 as ARB undertakes the significant challenges inherent in harmonizing its proposed regulatory concepts with the many different air district rules already in place. Existing emissions reporting rules exist pursuant to the air districts’ historic authority to require emissions reporting from stationary sources within their jurisdiction.¹ Partnering with the individual air districts to synchronize reporting rules is critical. We commit to working with you, your staff, the air districts, the California Air Pollution Control Officers Association (CAPCOA), and other interested stakeholders on identifying and addressing potential issues with the proposed concepts, and avoiding duplicative or conflicting agency requirements.

Our main comments are as follows:

¹ Cal. Health & Safety Code section 41511.

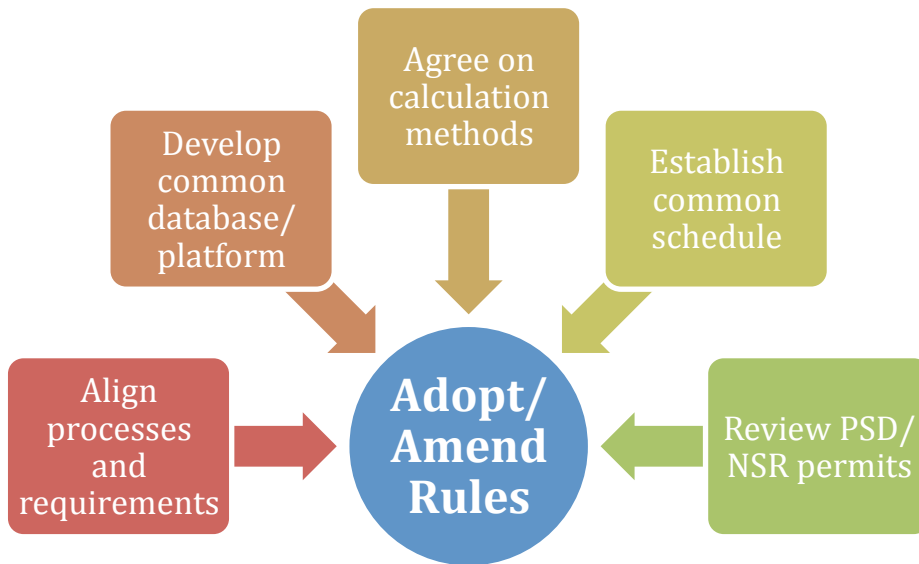
- **Phasing the implementation of program components should be done so as to ensure consistency between and accuracy of ARB and air district rules.** State reporting requirements should become effective only after ARB has demonstrated that its regulation is aligned with the air districts and that it is not creating overlapping or conflicting mandates. We note that Health and Safety Code Section 39607.1 only requires ARB to develop a uniform statewide system of annual reporting of emissions for stationary sources as defined in §§39607.1.a (2)(A)-(C).
- **Enforcement of dual reporting programs needs to be better understood.** It is unclear how an ARB-adopted reporting regulation will be enforced in conjunction with all air district reporting rules, and whether air district rules could need to be amended in order to be consistent with State requirements. To help minimize confusion over who has authority to enforce, CCEEB asks ARB staff to consider delegating enforcement to the air districts.
- **Applicability should result in community-level data necessary for robust source apportionment and community inventories, while being realistic in terms of additional workloads for air districts and ARB.** For example, adding “elevated” sources of air toxics sources, as well as “all permitted sources” in AB 617 communities and “clustered” sources, would increase the number of reporting facilities by many hundreds over the course of the program.
- **CCEEB supports convening technical working groups consisting of interested stakeholders and air district partners.** In particular, aligning sector-specific reporting methods across air districts and potential new requirements for clustering of facilities, should this additional phase of the program be implemented, will be technically challenging to develop and necessitate clear understanding of source operations. Technical working groups provide a venue to discuss pertinent issues.

What follows is a more detailed discussion of these points.

Phasing Implementation Can Help Resolve Duplicative or Overlapping Requirements

One of the objectives of statewide reporting under AB 617 is to provide the public with transparent and consistent emissions reporting data. CCEEB supports this objective, and commits to working with ARB towards a program where air districts are applying consistent calculation methods and then transmitting data to a common statewide platform, rather than co-reporting by facilities to both an air district and to ARB. (We leave open the possibility for air districts to opt to have facilities report directly and only to ARB, with ARB submitting the data to the air district.) Conversely, efforts must be made to align air district and ARB requirements and schedules and avoid having “two sets of books” that show different values for a source or facility.

CCEEB recommends removing the somewhat arbitrary distinction between Phases 1 and 2, as outlined in workshop presentations, and instead focus on developing consistency between ARB's proposed regulatory concepts and air district rules. As harmonization is achieved for each component of the program, then ARB can move forward with adopting State requirements, with the air districts working to concurrently amend their rules and facility permits as needed. An example of such a process could look like this:



This phasing-in of harmonized program components is appropriate for annual toxics reporting,² source-specific requirements, and general requirements. Over the interim, sources would report “business-as-usual” to air districts, and air districts would continue to submit reported data to ARB, as required under AB 197. Facilities and sources facing new reporting requirements under AB 617 could be brought into air district programs until such time as ARB establishes consistent statewide reporting requirements.

Emissions reporting schedules present another challenge to ARB's proposed regulation, should it move forward before harmonizing with air district rules. Air district deadlines impact a number of operations, such as budgeting, planning, and compliance audits for rules and permitting, and facilities have staffed and designed data collection procedures with these deadlines in mind. For example, in the Bay Area, annual toxics reporting is aligned with federal EPA requirements and due at the end of June of each year for the prior year's emissions. This would only give the BAAQMD about a month to validate, reconcile, and approve data in accordance with the proposed August 1 deadline for submittals to ARB. This would leave very little time for administrative review of errors or to settle disagreements should a facility question BAAQMD calculations. Rather than

² CCEEB notes that regional air districts are in the process of implementing revised guidelines from the Office of Environmental Health Hazard Assessment for AB 2588 Air Toxics Hot Spots Program health risk assessments. As part of this work, individual air districts are updating facility emissions reporting for TACs.

setting its own deadline in the hopes that air districts comply—and without any authority to mandate the timely submittal of facility data by air districts—ARB should first work to align schedules with the air district and only then adopt new reporting requirements for facilities and sources.

Over time, ARB will need an ongoing process to work with CAPCOA and the air districts on periodic updates to calculation methods and other program requirements in order to maintain and sustain uniform reporting systems, while taking into account new information about sources and emissions. Such a process should be developed up front as part of ARB's regulatory concepts.

Identifying and Addressing Potential Compliance and Enforcement Issues

Just as it is critical to apply consistent emissions calculation methods and requirements, it is equally important that ARB align any proposed regulation with air district rules in terms of compliance and enforcement so as to avoid creating “double jeopardy” for reporting entities or inadvertently placing reporting entities into compliance traps where they can comply with one but not both sets of requirements. Moreover, changes in reported emissions have the potential to create unintended compliance issues with federally enforceable permits, particularly Title V permits that consolidate all permitted limits at a facility. Additionally, facilities have an increasing interest in the accuracy of emission reports as the data becomes publicly available, as they will be held accountable for emissions.

Some initial questions we ask staff to consider:

1. If a facility has an error in its reported data, would it be subject to enforcement by both ARB and the air district, or just to the agency to which the data was originally submitted?
2. If ARB and an air district have different requirements—whether in rules or guidance documents—but a shared submittal process (e.g., facilities report to the air district, which then submits data to ARB) which rule would supersede the other? Could a facility be found in violation by one agency when it was in compliance with the other?
3. Facilities often work with air districts to correct or refine already reported data. If ARB has a single annual submission, how would updates be processed? Would a facility be considered in violation by ARB if an air district later revises its emissions calculations?
4. If a facility submits its data to the air district on time, but the air district fails to submit the data to ARB by its deadline, could the facility be found in violation of ARB's requirements?

For CCEEB members, compliance assurance is a major operational consideration, and one taken very seriously by reporting entities. Having a clear compliance pathway at every phase of the program is critical. CCEEB recommends that ARB consider contracting

with the air districts through Memorandums of Agreement (MOAs) to delegate enforcement of its reporting regulation, once adopted, similar to the approach used for its oil and gas field methane control regulation, landfill methane control regulation, semiconductor operations regulation, and certain mobile diesel regulations. We believe the MOA-approach reduces the potential for overlapping enforcement authority, and is more efficient given that ARB staff is already envisioning using air districts to validate and verify data being reported by facilities.

CCEEB asks staff, regardless of its ultimate approach to harmonizing enforcement authorities, to develop reasonable and achievable compliance pathways and schedules, and to give due consideration to potential compliance challenges that could occur during the program's initial years or as new phases of the program are implemented. This could include holding joint meetings with the Enforcement Division to better clarify how ARB would address compliance concerns and questions, including the retroactive assessment of *daily* penalties for *annual* reporting programs. This is an issue that CCEEB has raised with ARB in the past, and believes could be compounded once an AB 617 reporting regulation is adopted.

Applicability Issues

CCEEB suggests that ARB assess air district guidelines for Air Toxics Hot Spots Program prioritization and base its definition of "elevated" on the least stringent threshold, so that a facility prioritized by any one air district would be prioritized by ARB. CCEEB notes that prioritization scoring varies across air districts, although all use CAPCOA guidance as a starting point for prioritization procedures. However, given the conservative nature of prioritization scoring, we believe that differences amongst various air district procedures will be minimal, and that an appropriately large universe of facilities will be subject to ARB's proposed reporting requirements.

CCEEB notes that the proposed applicability requirements for "all permitted sources" in AB 617 communities and "clustered" sources are not specifically mandated under the Health and Safety Code Section 39607.1. We believe that ARB should first develop the required uniform statewide system of annual reporting for stationary sources, as defined, before delving into territory beyond the reach of the statute.

Process and Schedule for Developing Technical Details of an ARB Regulation

CCEEB believe the rulemaking process outlined by staff may be premature, but supports the convening of technical working groups that can help staff develop uniform reporting methods. We urge ARB to reconsider the need to adopt a regulation by the end of the year, as there is no statutory requirement to do so. Rather, we encourage ARB to expend its resources to develop a comprehensive statewide approach before drafting regulatory language, working with the air districts as closely as possible.

Finally, to the extent possible, we ask staff to clarify expected timing of implementation for the different program phases, such as new requirements for “elevated” sources, supplemental data and “all permitted sources” in AB 617 communities. This will help potentially affected businesses to participate in rule and program development, and plan in advance for compliance.

We thank you for the time and effort you and your staff have given to understanding the complex regulatory, administrative and technological challenges involved in moving towards a statewide reporting system, and to the outreach made to engage stakeholders and air districts. CCEEB feels we are moving in a positive direction, and hopes that these comments help support your work. Please contact us should you wish to discuss our suggestions in more depth (billq@cceb.org or 415-512-7890 ext. 115 and janetw@cceb.org or ext. 111).

Respectfully,



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