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Greenhouse Gas and Toxics Emission Inventory Branch Chief
Air Resources Board
Submitted electronically to ctr-report@arb.ca.gov

RE: Preliminary Discussion Draft Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants, Version 7-27-2018

Dear David,

On behalf of the members of the California Council for Environmental and Economic Balance (CCEEB), we submit these comments on the Air Resources Board (ARB) Preliminary Discussion Draft Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants. CCEEB supports the goal of AB 617 to create a consistent and uniform approach to calculating and reporting emissions of criteria pollutants and toxic air contaminants (TACs or "air toxics"), and hopes that our comments here help further progress towards this shared goal. We also appreciate the work of ARB staff in developing the statewide reporting program and its commitment to partner with the California Air Pollution Control Officers Association (CAPCOA) and each of the state's thirty-five local air districts to align and harmonize reporting programs so as to avoid duplicative and conflicting reporting rules.

Our main points are as follows:

- **Regulatory requirements should be clearly phased-in.** The regulation should have at least two clear phases of implementation, starting with a truly "business as usual" reporting period for 2018 and 2019 emissions data. Full program implementation should be predicated on completion of all requisite support systems and procedures (e.g., an electronic reporting platform at ARB) and harmonization of core program elements between ARB and local air district reporting programs.

- **Allow for amendments to previously reported emissions data.** CCEEB recommends a provision be added to allow a facility to update and revise emissions data should new and more accurate information become available.

- **Given the multiple reporting rules and methods available to calculate emissions, it is difficult to determine what could be deemed "inaccurate information"** under the proposed draft regulation. Emissions reporting is an iterative process, particularly at large and complex facilities, with revisions to data routine and reasonably expected. Furthermore, in cases where air district staff calculates a facility's emissions, it may be impractical to ask a facility to guarantee the accuracy of district submittals. We ask staff to work with us, the local air districts, and other stakeholders to better clarify how the regulation would consider the accuracy and completeness of data submittals. It is critically important that facilities be able to comply with both ARB and air district reporting rules.

- **Define community boundaries.** The boundaries of AB 617 communities must be defined at the city block level in order to determine applicability for "all permitted sources."

- **Device-level data should be protected.** ARB must develop a process to protect confidential business information (CBI), particularly for emissions from specified devices and equipment that can be back-calculated to arrive at activity levels, throughput, or other operational information that would typically be deemed CBI.

Phased Implementation Periods: Business-as-Usual (2018 and 2019) followed by Full Implementation (2020 and beyond)

CCEEB asks staff to restructure the regulation around two distinct implementation periods: a business-as-usual (BAU) period for emissions data covering operations in 2018 and 2019 (reported in years 2019 and 2020, respectively) and then a full implementation period commencing in 2021 or as soon as ARB support systems are developed, tested, and operational. This would include, but is not limited to, an electronic reporting system that can manage data uploads by either a local air district or a facility. The full implementation period should also be contingent on necessary partnership and cooperative agreements with the air districts that align program elements among the agencies, such as reporting deadlines and rule applicability in terms of covered pollutants and sources.

Staff first presented the BAU approach at its May 2018 workshops, noting the only exceptions were broader applicability and requirement for annual updates of emission reporting. CCEEB strongly recommends that during the BAU period, facilities follow the various reporting practices, rule requirements, and submittal deadlines for each respective air district. Any additional or overlapping ARB requirements should be deemed optional. Additionally, staff should consider a "grace period" to allow for any needed program corrections as the reporting regulation develops and harmonizes across air district reporting programs. Flexibility in this first period is warranted given

that much of the success of ARB's program—and achieving staff's stated objective of being complementary and non-duplicative—will ultimately depend on the cooperation of the air districts.

What follows are more detailed comments and recommendations on how the BAU period should deal with applicability, emissions reporting requirements and contents, and enforcement.

§ 93401. Applicability

§ 93401 (a)(4) extends applicability beyond the statutory requirements of AB 617 by drawing into the regulation any facility with a permit to operate that is located within the boundary of an AB 617 community.[1] Facilities selected this year (2018) would need to begin reporting in 2020 (reporting 2019 emissions), with additional communities approved each year thereafter.

With other applicability criteria (a)(1-3) capturing most traditional stationary sources, the "all permitted" provision pulls into the regulation sources such as backup emergency generators and other small or area sources. Affected facilities–which would be required to report *all* emissions, not just those from permitted sources—could include hotels, hospitals, dry cleaners, gasoline dispensing facilities, data centers, transit centers, fire stations, and other commercial and institutional properties with permitted equipment. CCEEB notes that several of these facility types provide emergency or essential public services. Once brought into the regulation, these facilities would need to report emissions into perpetuity, with no off-ramp, unlike the other source categories which can cease annual reporting requirements when emissions fall below specified levels.

ARB staff explains that data from these small sources is needed to develop community inventories and to track emissions over time. However, ARB has not yet released technical guidance on how community inventories and assessments will be conducted, or described what source information will be needed from local air districts and ARB. (And, in most communities, sources under ARB's jurisdiction, both area and mobile, will contribute the majority of emissions.) There is also an issue with timing; because of the year-long lag time between community selection and start of annual reporting, *reported* emissions from these facilities would not be available in time for community assessments or planning efforts. However, it is likely that the local air district and ARB will use other data, such as monitoring, modeling, and permit inventories, to

[1] As selected and approved by ARB, pursuant to H&SC §§ 42705.5 and 44391.2

[2] H&SC § 41513: "Any violation of any provision of this part, or of any order, rule, or regulation of the state board or of any district, may be enjoined in a civil action brought in the name of the people of the State of California, except that the plaintiff shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or tending to show, irreparable damage or loss."

characterize these facilities and sources in the interim. The question is to what extent *reported* data is needed to support AB 617 implementation, and whether it warrants the additional administrative burden to the local air district and affected facilities.

Recommendation: *postpone consideration of this provision until technical guidance on community assessments is complete and local air districts have had an opportunity to evaluate whether reported emissions from (a)(4) facilities are needed for community inventories.*

Under the following Section 93402 ("Definitions"), staff has inserted placeholders for "boundary of a community" and "community," presumably awaiting board direction on how to define these terms. This lack of definition—and lack of locational precision—creates great uncertainty for potential (a)(4) facilities, which have no way of knowing whether the regulation applies to them. For example, ARB could decide not to define selected communities at the city-block level, instead waiting for some-future community or air district mapping effort to define the boundaries. Or a community could wish to have fluid boundaries, in order to be flexible about which sources and receptors are included in AB 617 programs. In either of these cases, affected facilities, particularly those on the border of a community, would have no way to determine applicability and may not have adequate time to setup required emissions tracking systems.

Recommendation: define community boundaries at the city-block level upon ARB adoption, or postpone reporting requirements until after ARB approves community plans with city-block level boundaries defined (e.g., if ARB approved a plan in June of a given year, facilities would need to begin tracking emissions starting in January of the following year, with reports submitted the year after that).

Recommendation: require the local air district to notify all potentially affected facilities and provide compliance assistance as needed. Air districts should clarify if any district reporting rules would also now apply.

Recommendation: create a de minimis threshold for (a)(4) facilities, below which annual reporting would not be required.

§ 93403. Emissions Reporting Requirements

As currently written, § 93403 requires a facility to "submit *complete* emissions data reports according to the requirements specified in sections 93403 and 93404" with no exception made for the various reporting methods and formats currently used by the local air districts. [*Emphasis* added.] The draft regulation then proceeds to make exceptions for 2018-year data and an unspecified number of "subsequent report years" in two circumstances: (1) for 2018 and 2019 emissions data, the 250 tpy threshold for criteria pollutants emissions (§ 93401 (a)(2)) is based on *actual,* not permitted

emissions, and (2) a facility regulated under the "all permitted sources" provision begins reporting the year *after* a community has been selected.

This creates confusion about when ARB will shift from actual to permitted emission limits (i.e., a permit to emit or "PTE" threshold).

Recommendation: restructure the regulation based on two distinct periods, clarifying that during the BAU period, the criteria pollutant applicability is based on actual emissions, whereas in the full implementation period it will be based on PTE.

More importantly, the start of reporting for facilities under the "all permitted sources" criterion could be misleading depending on when ARB approves community selection, and whether or not community boundaries have been identified at that time. For example, if ARB approves community selections at a December hearing, in order to meet the statutory deadline of naming additional communities by January 1 of each year, then the "year after" could mean that a facility must begin tracking its emissions within weeks of community selection (and potentially before city-block boundaries have been defined).

Recommendation: amend the draft language so that a facility must report its emissions beginning the calendar year after city-block level boundaries have been identified, in a community monitoring or emission reduction plan, and approved by ARB, but no sooner than 90-days from date of approval.

Finally, § 93403 (b) requires that an emissions report be submitted to the local air district no later than May 1 of each year, with a facility "liable" for any late submittals or inaccuracies. However, the May 1 deadline may not be consistent with deadlines at individual air districts. The air districts will need time to update their guidelines and rules to be consistent with the draft ARB regulation.

Recommendation: for the BAU period, allow facilities to report emissions and/or activity to the air districts using district guidelines, formats, and deadlines. ARB would only begin full implementation after first developing and implementing its electronic reporting platform and aligning its reporting schedule and rules with local air districts.

§ 93403. Emissions Reporting Requirements
§ 93404. Emissions Report Contents

The requirement in § 93403 that a facility subject to this regulation submit a "complete" report is of concern, because not all required information under § 93404 may be available to facilities, or facility-held information and emissions data may not be consistent with that being submitted by the local air district.

Additionally, language in § 93403 (b) and (c) is unclear about which calculation method(s) should be used and whether a facility is required to submit electronic reports to its local air district or directly to ARB. For example, subsection (b) reads "If a quantification method is not available from the air district, use best available data and methods." Does this mean that the district has not provided a facility with the quantification method being used, or that no quantification method exists? If a facility must use "best available data and methods," should it submit its report to the local air district or to ARB or both? If it submits "best available data" to the local air district, could it be held in violation of district rules and guidelines, or would it need to submit a second, separate report using the district practices – and if the latter, could ARB view inconsistencies between the reports as proof of "inaccuracy"?

Recommendation: during the BAU period, facilities report to local air districts using existing district deadlines. Districts provide biannual updates to ARB for new and revised facility emissions reports; ARB would then incorporate district updates into the statewide database.

Recommendation: clarify what is meant in subsections (b) and (c), describing in particular when a facility should use "best available data and methods," when it must submit reports directly to ARB, and when it must submit electronic reports, either to a local air district or to ARB. CCEEB believes that facilities using district-approved reporting methods, deadlines, and procedures would be deemed in compliance with the ARB regulation during the BAU period.

Recommendation: the regulation should not yet include deadlines for using electronic reporting, since development of this system is still underway and date-of-completion is speculative at this time. Once the system has been tested and made fully operational, then ARB should clarify in what circumstances facilities report to the local air district, which then submits the electronic report, and when facilities report directly to ARB.

Section 93404 (a)(8) contains report elements that may not be available to a facility. For example, in cases where the local air district calculates emissions based on reported activity or fuel use, a facility may not know or be able to guarantee what emission factor was used or what the "actual" calculated emissions are. In other cases, an air district may calculate total emissions for a facility rather than emissions by each device or piece of equipment.

Recommendation: during the BAU period, facilities report to local air districts using existing district guidelines and procedures. ARB should continue efforts to work with the air districts to ensure there is alignment between the statewide program and district programs, including the development of consistent and uniform calculation methods.

§ 93407. Enforcement
§ 93410. Implementation by CARB and the Local Air Districts

During the BAU period, it should be expected that individual air district reporting rules, deadlines, methods, and practices will be varied and not yet aligned with ARB proposed requirements. Until the separate programs can be harmonized, and all requisite reporting systems and procedures put into place, facilities should not be found in violation for having provided "inaccurate" or incomplete information, or penalized for complying with district requirements that deviate from the ARB regulation.

Recommendation: no enforcement by ARB during the BAU period, especially in cases where compliance with a dual reporting system may not be feasible or practical. Local air districts should only enforce district rules under their existing authority. Facilities compliant with district rules should be deemed compliant with the ARB regulation during the BAU period.

As the program shifts into full implementation, ARB will need to resolve the apparent "Catch-22" problem in § 93410. That is, as written, a facility caught between inconsistent reporting rules could be subject to enforcement by a local air district for either following the district rule (and not ARB) or following the ARB rule (and not the district). Another problem is that of "Double Jeopardy" in which a single reporting error could result in enforcement under both air district and ARB authorities.

Recommendation: whenever feasible, ARB should enter into a Memorandum of Understanding (MOU) with the local air districts to delegate enforcement authority. The MOU should be based on a showing by the air district that its own reporting program is harmonized with the ARB regulation and a commitment by the air district to maintain consistency with the statewide program. Language should be added to the regulation to specify that a local air district with an MOU with ARB may enforce either the statewide regulation or its own rule, but not both.

Allow Facilities to Update and Revise Emissions Data

CCEEB asks staff to add a provision to the regulation that would allow a facility to update and revise its emissions data without penalty should new and more accurate information become available. For example, a facility could have new source testing data approved by the local air district to replace an outdated emissions factor; in this case, the facility should be allowed to update its ARB-reported emissions accordingly. This also helps keep district-held data consistent with the ARB statewide database. We note that it is common practice at the air districts to allow for amendments to previously reported data, and that such revisions do not result in automatic violations, although an air district may charge an additional processing fee for time spent reviewing and approving revised emissions data.

Reframe "Inaccurate Information" to "True, Complete, and Accurate"

Section 93407 (a)(2) states that, "Submitting or producing inaccurate information required by this article shall be a violation of this article," and subject to possible enforcement by ARB and the local air district, pursuant to Health & Safety Code (H&SC) § 41513.[2] CCEEB recommends this subsection be reframed in the positive, replacing the notion of "inaccurate information" and instead requiring that reporting entities must provide "true, complete, and accurate information," to the best of their knowledge, at the time of submittal, or be subject to a violation.

As currently written, CCEEB is concerned that this subsection is overly broad, difficult to interpret, and could put a facility in compliance risk beyond its direct control. For example, as previously discussed, a facility could not and should not be asked to guarantee the accuracy of emissions calculated by its local air district, particularly for sources for which the facility has more precise emissions data, such as continuous emissions monitoring, source testing, or a more up-to-date emissions factor.
ARB should also describe the process by which it would determine a violation occurred, and how it would consider differences in calculation methods and decide upon "best available data and methods." For example, if a facility reported its emissions to ARB (or had a local air district report its emissions) using a district-approved calculation method that differed from a "uniform method" established under Subarticle 2, would the facility be in violation? Or if a facility followed ARB's uniform method, but submitted a different emissions quantity to the local air district under the district's rule, could it be found in violation for submitting "inaccurate" data to ARB?

Definition and Boundaries of a "Community" Need to Be Clearly Defined

As previously discussed, and because § 93401 (a)(4) would require annual emissions reporting at any facility with a permitted source within a community selected for AB 617, ARB will need to develop a process, in cooperation with the local air districts, to clearly defined community boundaries down to the city block level. Once the community boundaries have been approved, ARB and the local air district should provide notification to all facilities within the defined area.

Prevent "Back Calculation" that Could Reveal Confidential Information

Although emissions data for a facility is not considered confidential business information (CBI), confidential information could be unintentionally revealed through data provided

[2] H&SC § 41513: "Any violation of any provision of this part, or of any order, rule, or regulation of the state board or of any district, may be enjoined in a civil action brought in the name of the people of the State of California, except that the plaintiff shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or tending to show, irreparable damage or loss."

on the emissions or activity of a specific device or piece of equipment. For example, where the emissions of an individual source is known, and the calculation method is based on the product of an activity level and emission factor, then the activity level — which would typically be confidential business information — could be back calculated. CCEEB asks ARB staff to work with stakeholders as it sets up its electronic reporting system and systems that allow public access to reported data so that CBI is protected and confidential information cannot be derived through back calculations.

Other/Minor Issues

§ 93401. Applicability

(c) Cessation of Reporting for Facilities

(1) Cessation of Reporting for Reduced Greenhouse Gas or Criteria Pollutant Emissions

Suggest adding a de minimis level or other criteria by which a facility in an AB 617 community could cease reporting, so long as it did not meet any other applicability criteria under § 93401 (a)(1-3). It seems unreasonable that a small source would need to report facility-wide emissions under this regulation when larger sources have off ramps based on reductions in GHG and criteria pollutant emissions.

(2) Cessation of Reporting for Facilities Categorized as High Priority for Toxics

(A) 1 & 2: language conflicts with the SCAQMD Rule 1402 Voluntary Risk Reduction Program (VRRP).

Suggest adding an additional provision to address VRRP facilities. For example: *The facility is in the South Coast Air Quality Management District and has a Final Implementation Report approved by the Executive Officer showing that it has implemented risk reduction measures specified in its Voluntary Risk Reduction Plan, has followed procedures in the most current version of "SCAQMD Guidelines for Participating in the Rule 1402 Voluntary Risk Reduction Program," and is not a "high priority" facility for air toxics, as defined in § 93401 (a)(3).*

(3) Cessation of Reporting for Shutdown Facilities

(A): Cancelled permits from a local air district should be deemed sufficient demonstration that a facility has ceased to operate; facilities that cease to operate should only report final year

emissions and not be required to report (zero) emissions for the first full year after non-operation.

§ 93402. Definitions

"Fugitive emissions" – please clarify whether this definition applies to fugitive road dust, and if so, whether ARB intends to apply reporting requirements to fugitive road dust, under § 93404 (b).

"PM2.5" and "PM10" – please clarify that the definition does not include the condensable fraction, which is separately defined.

§ 93403. Emissions Report Contents

(a) General Contents

(5) For each release location at the facility:

(F) If the release location type is a "stack"

This provision requires reporting of stack diameter, velocity, and flow rate. However, velocity and flow rate (as well as gas temperature) is a dynamic valve, and vary over time. CCEEB asks staff to clarify how a facility should correctly report these valves.

(B) Release location type ("fugitive" or "stack")

§ 93404 (b) requires a facility to report "direct, process, and fugitive emissions for permitted processes and devices at the facility." CCEEB asks staff to clarify what is meant by fugitive emissions at a device, and whether it is the intention of ARB that a facility report the location of each "device" for which fugitive emissions are tracked for leak detection and repair (LDAR). For example, at large, complex facilities, this could include reporting the location of every valve, amounting to thousands of individual data points. CCEEB recommends that ARB require a facility to report aggregated fugitive emissions from these small sources since locational information may not be necessary for ARB modeling, and as such, not required for reporting purposes.

AB 2588 Compliance

CCEEB understands that it is the intention of ARB to have the annual TACs reported under this regulation meet the quadrennial reporting requirements in

AB 2588, the Air Toxics Hot Spots Program. We ask staff to make this clear in the appropriate section of this regulation.

We appreciate the ongoing opportunities to discuss the statewide reporting regulation with you and ARB staff at workshops and meetings with public stakeholders, and look forward to continuing our work to support program development and harmonization with local air district reporting programs. The technical and procedural challenges involved are significant, but CCEEB recognizes the great value in moving to a transparent, modernized, and uniform emissions reporting program, both in terms of AB 617 program implementation and more generally for all air quality efforts in the state. Thank you for your time and consideration of our comments. Please contact Bill Quinn or Janet Whittick of CCEEB should you wish to discuss our comments or have questions (billq@cceeb.org or 415-512-7890 ext. 115 and janetw@cceeb.org or ext. 111).

Sincerely,

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Janet Whittick
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cc: Mr. Gerald Secundy, CCEEB
Ms. Kendra Daijogo, The Gualco Group, Inc. and CCEEB Air Project Manager
Mr. Alan Abbs, CAPCOA
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