

December 10, 2018

Dear Chair Nichols and Members of the Board:

We represent organizations dedicated to improving air quality and public health, implementing robust policies to address climate change, and achieving environmental justice for California communities.

We are writing to offer our comments about the Proposed Regulation for Reporting of Criteria Air Pollutants and Toxic Air Contaminants,¹ scheduled for hearing on December 14.

While the proposal is highly technical and may seem arcane, it is of great interest to our organizations. This is because it is about the data that will be brought forward to provide a foundation for the Community Air Protection Program and related efforts to improve air quality. The first step in any emissions reduction program is to accurately identify sources of emissions and quantities of the pollutants emitted. That allows us to identify opportunities for reduction measures and to assess their effectiveness. We need complete, consistent, and accurate emission inventories that we can rely on for the Community Air Protection Program to succeed as we all want it to.

In this letter, we ask that you take actions needed to provide for an accurate, consistent, and complete inventory that establishes a baseline that will be stable over time to serve the essential purposes of AB 617 and AB 197, California climate change and air quality laws, Cal EPA polices for environmental justice, and the needs of our communities.

We also ask you to make a commitment to supporting additional actions identified for a Phase 2, intended to be the follow-on to this proposal. This second phase will focus on developing practices for characterization and quantification of emissions that are appropriately consistent among the 35 air districts and achieve a reasonable level of accuracy.

Progress Toward Reducing Emissions with Impacts on Local Communities

At its October 2018 meeting, the CARB Governing Board discussed in detail the potential for the Community Air Protection program envisioned in AB 617 to create new models and partnerships to address previously intractable problems and redress disproportionate burdens. It was inspiring to us to hear the Board's commitment to transformative action for communities.

We are very appreciative of your recognition of the importance of the localized component of air pollution impacts, complementing the ARB's longstanding focus on regional pollutants and global climate change. Addressing the cumulative burden of localized impacts is an urgent priority, so this is a big step forward for us.

¹ Appendix A to the Staff Report. Proposed Regulation Order. California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 7.7, Article 1. General Requirements for Criteria and Toxics Reporting October 2018. California Air Resources Board.

Bringing forward data for a complete, consistent, and accurate inventory of sources and emissions is an essential foundation to this work. It is the necessary and logical next step after your selection of communities for emissions reduction and monitoring plans in September.

Such information needs to be accessible to all users, including organizations like ours, communities, members of the public, and researchers as well as emitters and air pollution control entities. This helps to engage communities and will allow people to see air pollution data and measure the progress and benefits of these programs.

This Staff Proposal

The staff has proposed a rule for approval.

We have communicated with ARB staff on the development of this proposal, participated in public and informal meetings, and submitted comments on the informal review draft circulated in August.

As far as we can tell, the staff did not incorporate any of our comments on the informal draft into this proposed rule.

Despite that, we appreciate the willingness of staff to engage in candid discussion about the the lack of adequate emission inventories.

We appreciate that the staff got a proposed rule to the point of public notice and consideration by the Board. We support many aspects of the proposal. These include

- Annual reporting (at a minimum)
- Specific inclusion of fugitive emissions, even as this topic will need further definition
- Deadlines for submission,
- Stronger mandate to report,
- Capacity for independent audit of accuracy of submittals.

We appreciate the proposal for unified data system based on modern standards such as use of electronic data. There is still a lot of information captured on paper records that are not accessible to the agencies much less the public.

We support efforts to streamline, standardize, clarify, document and otherwise improve time-consuming processes and disparate systems and approaches used by the 35 local air districts. It appears that every district has a different way of doing things. We hope that less time would be needed for data processing and review.

Newer technologies could make an important contribution to improving the system as a whole and deserve greater attention. Direct reporting of data could also help.

However, we must ask the Board to remedy important deficiencies that will preclude us from having the necessary foundation for the work we need to do.

1. We Ask the Board to Amend the Rule to Include All Sources

The main deficiency is that many emission sources are not included. We need to have all emission sources in the inventory so we can see them. We need a consistent, complete, and accurate inventory of sources and their emissions. There are several reasons, some of which are outlined here.

a. Timely data for Emission Reduction Plans under AB 617 and related efforts

The proposed rule will not provide information about sources and emissions in a timely way for the Community Air Protection Program projects that are the crux of AB 617.

The rule requires annual reporting from all permitted sources located within the boundary of a community selected for an emissions reduction plan. However, the process to identify the permitted sources in such an area only begins when area boundaries are designated by the Board with the approval of the plan. It then takes two years to bring new sources into the reporting system and then generate results. Under such a process, data about permitted emission sources within the designated community boundaries would not be available until after the planning period is over.

If all sources were included, there would not be this delay.

b. Data for tracking changes over time

The regulations as proposed will not provide data needed for a consistent baseline that can be used to track changes over time. This includes assessing the impacts of the many, diverse actions taken to address climate change as well as air pollution. A consistent baseline allows determinations about whether disproportionate increases are occurring in disadvantaged communities and whether actions are succeeding in reducing emissions.

c. Data to assess localized impacts and cumulative burdens

The regulation as proposed will not support assessment of cumulative impacts. Such impacts can arise from a combination of the quantity and types of emissions from individual sources and the juxtaposition of sources. Big sources will always matter and most of them will probably be included under the current rule (though we cannot verify this and neither did the staff analysis). Small sources may matter when they are closely collocated or when they emit the more toxic or persistent pollutants. Even relatively small releases of pollutants like lead or dioxin can be detrimental. Toxics emissions are usually measured in pounds or ounces (or their metric equivalent) and never in tons (or kilograms). It is important to include all sources that may contribute to localized impacts and cumulative burdens.

d. Sources identified through ground-truthing

It is important to be able to add sources identified through ground truthing into the inventory. We know that past ground truthing projects have identified many sources that were previously unknown to air districts and were not permitted. We need to have a way to incorporate these into the system as they are discovered and flag them for

follow-up by the air pollution authorities. We understand that some districts are including ground truthing in their Community Air Protection projects.

e. Identify sources even if emissions are unknown

We want to see all sources included in the inventory. If the rule excludes any sources from annual reporting, then it should require reporting of any information that the districts do have about the source and its emissions. If there is no emissions information, then this should be reported. If the last report was twenty years ago, that should be reported. While this is imperfect, it will at least give us a substantiated basis for moving forward. Simply leaving sources out of the inventory gets us nowhere.

2. We ask the Board to Continue Annual Reporting for Sources in Designated 617 Communities and for Air Toxics Sources

a. Decreasing reporting frequency for sources in Community Air Protection

The regulations as proposed would require all permitted sources in the boundaries for Community Air Protection emission reduction plans to participate in annual reporting of emissions.²

However, this would continue for only five years and then the reporting period would be changed to every three years.³ We oppose this provision as it will impact our ability to assess the value of emission reduction efforts. If reporting reductions are to be entertained, they should be substantiated and evaluated through the planning process in the community and approved only for cause after a transparent public process.

b. Cessation of reporting for sources with certain risk assessments.

The regulations as proposed would allow sources that produce certain kinds of risk assessments under the Hot Spots program to cease reporting.⁴ This is in direct conflict with the purposes of the reporting. The risk assessments discussed here, prepared pursuant to the Hot Spots program, are not designed nor intended to address cumulative burdens in communities. A facility may be viewed as having an “acceptable” level of risk by itself but still contribute to a cumulative burden.

The sources for which these assessments are prepared need to be included in the reporting rule if this process is to have any integrity.

² Proposed Rule. Section 93401(a)(4).

³ Proposed Rule. Section 93403 Emission Reporting Requirements. (a)(3)(A). Page A-15. We would also note that this language appears to be in the wrong section of the rules, as subsection (a) is about initial year of reporting and this language does not address that topic.

⁴ Appendix A to the Staff Report. Proposed Regulation Order. California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 7.7, Article 1. Section 93401(c) (2)(A), within Cessation of Reporting for Facilities Subject to Applicability Criteria under Section 93401(a)(3). Page A-4.

3. We Ask the Board to Include Pesticides for the Assessment of Localized Impacts

A third concern is the important topic of pesticide emissions. Pesticide emissions can be an important source of toxics especially in communities in agricultural areas. Pesticides are considered to be air toxics in codes relevant to the ARB and the Department of Pesticide Regulation.

While there is jurisdiction in both agencies, it is essential to credible assessment that the ARB incorporate pesticides. We see no provision in the rule to address this important topic.

We ask the Board to include pesticides from stationary sources in the reporting requirements and inventory.

4. We Ask the Board to Commit to the Review of Quantification Practices for Emissions

Oure last point has to do with what comes next.

Inventories of sources and emissions for criteria air pollutants and air toxics need to be brought up to an acceptable standard. That is the action pending now.

However, additional issues will be important to address. In particular, practices used to generate estimates of the amounts of the emissions and to identify the compounds emitted also need attention and improvement. They need to be reviewed and revised to create consistency and to provide a reasonable degree of accuracy.

As one example, toxics emissions are often estimated from metrics that are derived from the throughput of a facility such as fuel use or to product output. These metrics are then multiplied by “factors” to generate estimates of emissions amounts. Some factors in active use today are extremely outdated and applied in ways inconsistent with their purpose. They need to updated to a standard of reasonable accuracy.

It will also be important to consider whether newer and more direct practices including continuous emissions monitoring and remote sensing may generate more accurate results.

It is essential to complete the second phase. The draft proposal recognizes this and identifies this work as a follow-on project.⁵ We ask the Board to support this and to provide active oversight to ensure timely completion.

⁵ Appendix A to the Staff Report. Proposed Regulation Order. California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 7.7, Article 2. Requirements for Calculating and Reporting Criteria Pollutant and Toxic Air Contaminant Emissions. Page A-25. Article 2 is reserved for future revisions to the Criteria Pollutant and Toxic Air Contaminant Reporting Program to include Uniform Statewide Methods. October 2018. California Air Resources Board.

Conclusion

Many entities are now poised to contribute to a breakthrough in addressing cumulative burdens in our communities. We hope that you will take the steps necessary to ensure that we have the data resources to support a successful result.

Thank you for your consideration of our comments.

Central Valley Asthma Collaborative
Kevin Hamilton, Chief Executive Officer

Central Valley Air Quality Coalition
Dolores Barajas-Weller, Director

California Communities Against Toxics
Jane Williams, Executive Director

Californians for Pesticide Reform
Sarah Aird, Co-director

Breast Cancer Prevention Partners
Nancy Buermeyer, Senior Policy Strategist

American Lung Association in California
Will Barrett, Clean Air Advocacy Director

Pesticide Action Network North America
Paul Towers, Organizing Director & Policy Advocate

Coalition for Clean Air
Bill Magavern, Policy Director

Leadership Counsel for Justice and Accountability
Ivanka Saunders, Policy Coordinator

Physicians for Social Responsibility Los Angeles
Martha Dina Arguello, Executive Director

Central California Environmental Justice Network
Nayamin Martinez, Director

California Environmental Justice Alliance
Stephanie Tsai, Climate Justice Program Associate

California Safe Schools
Robina Suwol, Executive Director

Los Angeles Community Environmental Enforcement Network/Coalition for a Safe Environment
Jesse Marquez, Executive Director

Desert Citizens Against Pollution
Lyle Talbot, Founding Board Member

Environmental Health Coalition
Joy Williams, Research Director

Breathe of Los Angeles County
Marc Carrel, Chief Executive Officer

San Francisco Bay Area Chapter of Physicians for Social Responsibility
Robert M. Gould, MD, President

Watts Clean Air & Energy Task Force
Linda Cleveland

Amy D Kyle, PhD MPH
Volunteer Science and Policy Advisor
University of California, Berkeley (retired) *

*Institution shown for identification only