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**Chemical Industry Council of California**

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To: CARB Community Air Protection Program

From: Tom Jacob, Executive Director

Chemical Industry Council of California

[*thomas.r.jacob@gmail.com*](mailto:thomas.r.jacob@gmail.com)

*916-990-1195*

RE: **CAPP Concept Paper**

On behalf of the Chemical Industry Council of California (CICC), I would like to offer the following comments regarding the above-referenced proposal. Our association represents a range of companies concerned with various aspects of chemical manufacturing, distribution and use within California. We appreciate the opportunity to offer our perspective as you approach the challenge of implementing the extensive demands of AB 617. Your provision of the CAPP Concept Paper for public review has been extremely helpful in communicating about the effort under way and in helping to crystalize some thoughts that may be of use as you refine your thinking.

**GENERAL COMMENTS**

AB 617 was a controversial legislative compromise, and the implementation of its provisions will likewise be controversial, no matter how enlightened that effort is. This Concept Paper is logically-organized and offers a rational, relatively clear interpretation of the provisions of the law, even while some key elements remain to be determined (esp. the actual interpretation of “community” under the law).

We are conscious that this is not a regulatory proposal and our comments should be read in that spirit. It’s intent is clearly to send early signals regarding key elements anticipated in the Program. The paper moves far toward that very necessary end. It does send clear signals to the local communities ultimately selected, the regulated industry and the regional districts about the deference being accorded those select-communities, the ways in which that will be expressed and the implications of that for both the regulated and regulating communities.

The larger challenge in delivering on the promise of AB 617, however, is that enhancing protection of select-local communities is only half the job. Ultimately CARB (and the State) must integrated the response to those particularly communities into the larger legal and institutional structures for which CARB, the districts and the regulated community are already responsible, as well as the larger economic and social contexts in which they are all imbedded. Because of the pioneering character of this law, it is all the more important that clear signals also be sent to pave the way for that larger integration. In that respect, the Concept Paper falls short in ways that threaten to make all the more challenging the ultimate goal of meeting the enhanced expectations of those select communities while minimizing disruption of the established legal, institutional, economic and social fabric surrounding them.

In the judgement of the CICC, there are four major aspects of this draft that merit attention to assure that the range of signals sent clearly frames elements necessary both to enhance responsiveness to these select-communities and to enable that response to be fully integrated into the larger interests in which they are imbedded. These elements are:

* Making more explicit the direction imparted to the districts in establishing an accelerated schedule for **BARCT implementation**, as well as ongoing concerns regarding BACT, T-BACT and BARCT implementation in certain circumstances;
* More directly and explicitly integrating the **affected industries** into this process, and supporting and encouraging proactive industry outreach efforts; and
* More directly integrating the **local authorities** responsible for the select-communities, and for key elements of resultant paths forward;
* More consistently signaling the **inherent limitations** in delegation of responsibilities under this law, and of the tools that must be relied upon, particularly in monitoring activities.

The following offers a general perspective on those four key elements and iterates specific points in the text where we believe specific amendments are warranted to directly address them.

**THEMES MERITING ADDITIONAL ATTENTION**

**Accelerated BARCT implementation**

One key to accomplishing the reduction in air impacts on designated communities is the air district’s adoption of an expedited schedule for application of Best Available Retrofit Control Technology (BARCT). This is discussed in the first paragraph of page 49. Considerations the districts are obligated to make in establishing BARCT schedules are alluded in the prior section describing their existing obligations. As ­­drafted, however, the paragraph describing new district obligations under 617 fails to acknowledge those considerations, and could be read as implying that they do not apply under AB 617. That is not the case, and we therefore recommend inserting directly at that point reiterating the full obligation of the districts in making those judgements under AB 617, to make sure that all parties understand that those obligations still stand:

**Pg 49 para 1:** *Under AB 617, air districts in non-attainment areas are required to adopt an expedited schedule and implement the most current BARCT limits on industrial sources that are subject to the AB 3228 Cap-and-Trade program. Air district BARCT schedules must be adopted by January 1, 2019 and implemented by December 31, 2023, and must give the highest priority to permitted units that have not modified emissions-related permit conditions for the greatest period of time. The expedited schedule does not apply to emission units that have implemented BARCT since 2007 due to a permit revision or new permit issuance.* ***In establishing the expedited schedule under AB 617, the Districts remain obligated to conduct a public meeting and take into account:***

***(1) The local public health and clean air benefits to the surrounding community.***

***(2) The cost-effectiveness of each control option.***

***(3) The air quality and attainment benefits of each control option.***

Further to the point above is the reality that in some cases, it may be difficult, if not impossible, to define an applicable, generalized BARCT standard (or applicable BACT or T-BACT in the case of new additions). In the chemical industry, for example, it is not unusual to find unique equipment or processes (often proprietary) utilized in the manufacture of particular chemicals or related products. In such cases it may even be the case that utilization of that specific equipment or process is vital to the value of the production in question and perhaps even to the viability of the facility itself. In the context of evaluating the relevant considerations above, such circumstances need to be taken explicitly into account. As a clear signal anticipating this, we therefore recommend the following be added as a footnote to the initial reference to BARCT in “para 1” referenced above:

***In some cases where unique equipment or processes are utilized in a particular manufacturing circumstance, it may not be possible or feasible to apply a generalized BARCT standard (or applicable BACT or T-BACT in the case of new additions).***

**Collaboration with Industry**

AB 617 expressly directs that the State Board is to develop statewide strategies for both enhanced monitoring and reducing emissions **“***in consultation with the Scientific Review Panel on Toxic Air line Contaminants, the districts, the Office of Environmental Health Hazard Assessment, environmental justice organizations,* ***affected industry****, and other interested stakeholders***”** (emphasis added). This express priority should be reflected throughout the document.

One important aspect of this is that some industries and companies have already developed and maintain efforts to reach-out to surrounding communities. The Responsible Care program that many segments of the chemical industry subscribe to, for example, obligates them to maintain programs of “Community Awareness and Emergency Response” (CAER), to enhance relations with and protection of surrounding communities. Such proactive initiatives should be expressly encouraged, as should the voluntary engagement of industry members as part of the community collaboration and partnership called for repeatedly in the document. We therefore recommend that the following amendments be made to strengthen the signal sent regarding the clear role that affected industry must be provided under the law:

**Pg 4 *#2*:***Develop a strong collaborative relationship between local community groups, air districts, CARB,* ***affected industry*** *and other stakeholders*

**Pg 20 para 2:** *should be informed by a baseline understanding of current enforcement efforts at each source in the community, as well as the concerns of local community members* ***and the affected industry****.*

**Pg 26 #1:** *community participation structure to ensure community members are partners* ***and that proactive programs within industry be expressly recognized if not directly integrated.***

**Pg 26 #7:***information on selecting air monitoring sites, types of samples required, sampling periods, sampling procedures, and identifying potential constraints****, taking into account relevant input from the affected industry****.*

**Responsible Local Authorities**

The Concept Paper references local governments in a number of important points. However, the draft is inconsistent in its attention to integration of such responsible local authorities. This is a very important dimension of the process. The signal sent should be clear at every relevant point, that the process recognizes that local governments and related agencies exercise direct authority over critical dimensions of the targeted communities, including the decision making authority over land-use. They also bear responsibility for the affected industries, and the economic and social well-being of the larger communities surrounding them. Their input must be both solicited and taken expressly into account by both the Districts and CARB, as they make decisions under AB 617 ranging from selection of designated communities to selection of remedies for their problems.

The reality is that the problems in question are local in character and response to them cannot be fully implemented by either the districts or CARB, alone. Neither the districts nor CARB can afford to embark on these community challenges without fully understanding and integrating the perspective of the local authorities that will have to play a role in implementing or adjusting to the Program decisions. We therefore recommend that the following amendments be made to expressly signal intent to ensure local authorities input to Program decision makers at both the district and CARB levels:

**Pg 4 bullet 4:** *Include* ***responsible*** *city and county government participation in the implementation of AB 617, ~~along with~~* ***including through encouraging*** *the****i****r development* ***and application*** *of improved land use tools.*

**Pg 7 para 2:** *This will include bringing in the knowledge and expertise of air districts,* ***affected industry,*** *communities,* ***responsible local authorities,*** *academia, and non-profit organizations.*

**Pg 9 para 2:** *Existing air quality planning efforts****, including SB 375 planning potentially relevant to the local AB 617 strategies.***

**Pg 11 bullet 8:** *Strategies to create more sustainable communities****, including those of SB 375 plans and other relevant local land use tools.***

**Pg 11 1st para:** *Close partnership and coordination with* ***responsible*** *local governments, land use commissions, transportation agencies, and other relevant parties****, to include provision for their direct input to both the responsible district and to CARB.***

**Pg 12 para 3:***must also be developed through a robust public process involving all stakeholders and they must include meaningful engagement and partnerships with community members****, as well as with responsible local governments and affected industry****.*

**Pg 18 last full para:** *programs should also consider strategies that fall under the jurisdiction of* ***responsible*** *cities, counties, planning commissions, transportation agencies, or other local agencies*

**Pg 27 para 1:** *districts should work with selected communities to form a community steering committee made up of ~~local~~ residents* ***within the designated community, as well as*** *business, government, schools, and other stakeholders* ***both within the designated community and from surrounding areas potentially impacted by the program****, along with academic researchers as appropriate.*

**Pg 35 para 3:** *CARB staff will work closely with these groups****, local governments*** *and other agencies as new State tool kits are developed.*

**Appropriate Cautions**

One of the important dimensions of the signals being sent by this document involves the limitations inherent in this complex undertaking. This is manifest particularly in the realm of community monitoring, where organizational and manpower challenges can be amplified by technical demands of response options or inherent limits of the technologies. While harnessing community energy and manpower can enable add more data and awareness, it must be appropriately disciplined since both the districts and CARB must be answerable to the extent they rely upon it.

There are a number of points in the Concept paper where these matters are touched upon. CICC has found that most are entirely relevant and should be retained (see below). In several instances, however, the references have spawned either questions or need for clarifying amendment. We therefore recommend attention to the following questions and suggestions:

**Pg 9 para 1:** *also contracting with a consortium of researchers to identify potential new data sources and methods for assessing cumulative exposure*

QUESTION: Who participates in that? Are its proceedings or output public?

**Pg 13 para 3:** *ozone is a regional air pollutant that is driven by regional rather than localized source contributions.* ***This Program will be confined to air pollutants that differentially impact the particular designated community.*** *~~In addition,~~ CARB staff’s analysis has shown ozone levels in environmental justice communities are similar to their neighboring communities,*

**Pg 13 bottom and 14 top:**  *~~Although s~~****S****ome levels of exposure to* ***some*** *toxic air contaminants may be safe with regard to acute and chronic health effects~~, any level of exposure can increase cancer risk~~.*

OBSERVATION: The key point here is to signal that simply because a contaminant is present, it should not be presumed to pose a serious risk. The reference to cancer risk adds nothing to this point, but it may well needlessly constrain some response options.

**Pg 22 bottom:** *community air monitoring campaigns under AB 617 led by ~~both~~ government agencies****, with collaboration of involved*** *community-based organizations,*

**Pg 23 bullet 3: *A primary consideration for any designated community should be that it is****~~Identifying and characterizing areas in communities~~ experiencing disproportionate air pollution impacts.*

**Pg 25 para 1:** *resulting data may be* ***relevant as a screening indicator, and only where it is*** *of sufficient quality to help understand spatial variability, identify areas with relatively higher pollutant concentrations for further investigation*

**Pg 38 para 1:** *CARB encourages public participation in the process of environmental protection by making its community air monitoring expertise and resources available to community scientists* ***that adhere to relevant principles of sound science and respect the demands and limitations of the tools being relied upon.***

We find the following cautionary notes appropriate and recommend that they be retained:

**Pg 13 para 1:** *our understanding of the interactions between pollutants, as well as between pollutants and other determinants, and the potential*

*for synergistic health impacts is still an emerging field of research.*

**Pg 13 para 2:** *proposing that the community emissions reduction programs focus on achieving individual criteria air pollutant and/or air toxics air quality goals.*

**Pg 13 para 3:** *proposing that community emissions reduction programs focus on strategies for addressing these disproportionate impacts*

**Pg 18 para 2:** *include strategies that take into account the relative contributions of the sources of emissions, considering the full suite of sources contributing to elevated health risk*

**Pg 24 para 1:** *methods may take weeks or in some cases months after sampling to become available as these sophisticated methods often require labor-intensive analytical procedures.*

**Pg 24 para 2:** *air or space-borne remote sensing systems can identify the general location of air pollution hotspots but finer spatial measurements are needed to identify the exact location or source, or more specific measurements to identify the pollutants.*

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