June 4, 2021

Liane M. Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Update to Airborne Toxic Control Measure for Hexavalent Chromium [CrVI ATCM]

Chair Randolph and Board Members —

Our organizations are greatly concerned with the proposed regulatory language that has now been released for the update to the Airborne Toxic Control Measure for Hexavalent Chromium [CrVI ATCM]. As proposed, the update will ban decorative chrome plating on July 1, 2024, hard chrome plating on July 1, 2028, and chromic acid anodizing on July 1, 2033.

We urge the Board to revise the proposed language so that, rather than outright bans, the update is based on measures that will be effective in further reducing the negligible amount of air emissions of hexavalent chromium from metal finishing facilities, recognize the extremely negative consequences of these bans, and provide a reasoned, science- based approach moving forward.

The bans do not change what the market requires, but will simply export these operations to other states and countries where there are less if any controls and will result in an increase in emissions. These bans will leak significant businesses and associated jobs away from California.

The processes covered by the CrVI ATCM are critical to many industries. Decorative hex chrome plating is utilized for key segments of the consumer marketplace, while the aerospace and defense industries use hard chrome plating and chromic acid anodizing to meet strict OEM and defense [MIL-SPEC] requirements. It is estimated that 30% of contractors for the aerospace and defense sectors are located in California. The ability to meet these specifications is crucial to many supply chains.

There is an effective alternative. Metal finishing shops in Southern California are investing significant capital to install and operate new measures as required by the recently-enacted South Coast Air Quality Management District [SCAQMD] Rule 1469 to further reduce emissions of hexavalent chromium. CARB supported this rulemaking, and should adopt it on a statewide basis. State-enacted bans will override this new rule and strand significant assets.

Emissions have been significantly reduced over the years to the extent that chrome metal finishing comprises significantly less than 1% of total CrVI emissions for the entire state. The draft MATES V report shows a significant decline in hexchrome emissions. This is prior to the adoption of SCAQMD's Rule 1469. Adoption of this rule and its controls (HEPA/fume suppressant) by facilities not located within the district would reduce emissions statewide by a projected 94%.

For each of these reasons, we urge your timely engagement and leadership to ensure that the updated CrVI ATCM is based on currently available and proven technologies that significantly decrease emissions and does not lead to a ban of these critical processes, strand assets, export plating and their jobs to other states and countries, and significantly increase air emissions.

We remain committed to working with the Board as we have in each of the previous rulemakings addressing hexavalent chromium, to develop an updated rule that protects public health.

Sincerely,
[in alphabetical order]

American Motorcyclist Association
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California Small Business Alliance
Bill LaMarr, Executive Director, 714-778-0763

Metal Finishing Association of Northern California
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June 7, 2021

Via Email Only: Eugene.rubin@arb.ca.gov

Eugene Rubin
Air Pollution Specialist
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Re: Comment Letter for Proposed CARB Chromium Air Toxics Control Measure

Dear Mr. Rubin:

This firm represents the Metal Finishing Associations of Southern California and Northern California ("MFACA") and appreciates the opportunity to provide these comments and questions to the California Air Resources Board ("CARB") and its Staff ("CARB Staff") concerning its current draft language concerning the Air Toxics Control Measure ("ATCM") for chromium metal finishing operations ("Draft Chrome ATCM").

MFACA prepared comments to the Draft Chrome ATCM as well as a series of questions. We believe the questions are particularly relevant and require answers that will allow currently unknown areas of concern to be developed so that they can instruct and assist CARB and the regulated community in this process. Without this vital formative information, the Draft Chrome ATCM appears to be based more on conjecture concerning the overall presence of hexavalent chromium in the state and its communities, its actual emissions from chromium metal finishing operations and its perceived environmental justice concerns of harmful impacts to local communities.

Comments

1. The Draft Chrome ATCM includes three definitions that do not appear to be relevant anymore considering CARB's own conclusion that over 141 metal finishers in the state, there is less than four pounds of hexavalent chromium emitted. The three definitions are:

> "Large, hard chromium electroplating facility" (more than 10 pounds of hexavalent chromium emitted)
>
> "Medium, hard chromium electroplating facility" (between 2 and 10 pounds of hexavalent chromium emitted)

> "Small, hard chromium electroplating facility" (less than 2 pounds of hexavalent chromium emitted)

These three definitions appear to have been part of the Chrome ATCM when it was originally adopted; however, in the current regulatory environment, there are no metal finishing facilities statewide that would qualify as either medium or large. With all facilities falling within the small category, there appears to be no reason to segregate facilities based on these inapplicable definitions. Based on information known at this time, these definitions do not appear to have any function.

2. "Chromium electroplating or chromic anodizing tank" is a defined term that appears in the Draft Chrome ATCM text; however, there are several instances within the text where the terms "chromium electroplating or chromic anodizing operation" or "chromium electroplating or chromic anodizing facility" are used. See e.g., definition of "Source". Neither of these latter terms are defined. This ambiguity could alter the understanding and scope of what constitutes this sort of operation or facility.

3. The revised Table 93102.4 has proposed deleting the Effective Date for compliance for all allowed uses. Section 93102.7(a)(3) states: "Existing facilities must conduct the performance test required by this section 93102.7 no later than the applicable effective date contained in Table 93102.4." If there is no longer an effective date, then the latter section appears unnecessary.

Questions

The following questions have been organized according to a statement made by CARB Staff or by topic area. Each statement or topic is lettered, and the questions are numbered and grouped.

A. Based on Presentation #5 RTC

1. Based on CARB Staff comments at Workshop #5, we understand that CARB has identified 141 metal finishers ("MFs") statewide. Were all these facilities identified as part of CARB's survey?

2. Has CARB identified any MFs that are not part of its survey? Is CARB making assumptions on the existence of MFs? Has CARB verified the 141 MFs?

3. Based on CARB Staff comments at Workshop #5, we understand that CARB has identified 110 (of a total of 141) MFs within the jurisdiction of the South Coast Air Quality Management District ("SCAQMD"). Of the remaining 31 facilities, how many MFs are located in the San Diego area? How many MFs are in the San Joaquin Air Pollution Control District. Is there a list showing the number of facilities per each air pollution control district?

4. Is CARB assuming some MFs have not been identified? Is CARB assuming emissions data for MFs with unknown actual emissions? If so to either or both or the prior questions, how is CARB determining the number of MFs not being reported or with unknown actuals?

5. Has CARB determined and distinguished chromium emissions based on type of use (decorative, hard chrome, anodizing)?

6. If yes to question 4, how is CARB determining the type of MFs not being reported or with unknown actuals? (decorative, hard chrome, anodizing)?

B. Based on Presentation #4 RTC

In Workshop Presentation #4, CARB stated

> "The original 3 lb of emissions is attributed to 80% of the facilities in the inventory for which CARB has actual emissions data." Then CARB assumed "The last 1 lb comes from applying the same ratio of actual to potential emissions for the 20% of facilities with unknown actuals."

1. If 80% = 3 lbs, then why shouldn't 20% = ¼ of 3 lbs or 0.75 lbs? How was the 1 lb calculated by CARB Staff and why wasn't 0.75 lbs the result? What were the assumptions employed by CARB Staff to reach its conclusion? Are the 3 lb and 80% values in the statement exact or only approximations? If approximations, what are the actual values?

2. How is the 3 lbs figure calculated? Did CARB base this number using the current year emissions or is it based on an average of more than one year? If it was based on the most current data, did that calculation include emissions taken from different years?

3. How many California MFs exceed 15 grams hexavalent chromium per year in emissions? How many MFs exceed one pound?

4. What is the highest emitting amount (in pounds or grams) for a MF in the CARB database? From what year is this highest emitting amount derived? In what air district is this highest amount located?

5. Has the emissions difference for hexavalent chromium been determined for pre- and post-SCAQMD Rule 1469 ("1469") implementation?

6. Have the emissions data used by CARB been audited for accuracy? Is it coming from the air districts? Are the data sources similar? Is the data directly comparable or does it require further manipulation?

7. How do the current emissions compare between MFs in the SCAQMD (where 1469 applies) and the rest of California?

8. Are the values for assumed emissions derived solely from agency-derived default values and source tests? Is CARB using existing ATCM source emissions limits (from Table 92107.4) and multiplying them against the amp-hours per facility?

9. How are the default values for emissions calculations determined generally? Are they averaged or assume worst-case? Are margins of safety explicitly or impliedly used in the default values?

10. Source tests are conducted by applying maximum amperage for prolonged periods. How does this worst-case use compare to real-world use at lower amperages over shorter periods of time?

11. Is there an assumed margin of safety resulting from the source test process and results? Are hexavalent chromium emissions results using source test data overly conservative?

12. How many facilities have conducted source tests? Is there a list of facilities per air district? Has CARB used this information in making its calculations for statewide MF hexavalent chromium emissions?

In Workshop Presentation #4, CARB stated:

> "Surface plating makes up less than 1% of hex chromium emissions nationally. • Response – This number comes from the 2005 National Emission Inventory. CARB staff reviewed the 2017 National Emission Inventory which seems to agree with 2005 estimates. However, the inventory only lists ~1/2 of known chrome platers in California."

13. Does the response above mean that CARB now assumes surface plating in California would be double that amount and therefore surface plating makes up less than 2% of California's hexavalent chromium emissions? If not, then explain.

14. Is it possible there are equivalent other unlisted users and hexavalent chromium emitters (non-California MFs) not accounted for in the survey and located in the other 49 states?

15. Have you been able to determine the general accuracy of the survey as being consistent across all usages and jurisdictions?

16. What is the exact percentage of known MFs identified as "~1/2"? Are CARB's known chrome platers the 141 identified by CARB Staff?

17. Has there been a comparison of the MFs on the inventory list with CARB's known chrome platers to determine the emissions differences? Are the unlisted MFs known to CARB smaller or larger emitters compared to the listed parties?

18. Has there been an evaluation of the types of operations identified on the CARB inventory versus the MFs on the inventory list?

19. What are the other emissions sources comprising the remainder (98-99%) of the hexavalent chromium emissions? What does each other source emit by pounds and percentage?

20. How much of this remaining 98-99% can be regulated by CARB? What are the overall impacts to local communities affected by environmental justice from these sources CARB cannot regulate?

C. OEHHA

OEHHA has established an acceptable level of exposure to hexavalent chromium. It has further established that an inhalation exposure of 0.001 micrograms per day is a level at which there is no significant risk pursuant to California "Proposition 65". *See* Title 27 Cal. Code of Regs Section 25705(b)(1).

1. Are OEHHA's standards for safe levels of chemicals and health generally considered for all ATCMs?

2 Are the OEHHA standards for hexavalent chromium as a carcinogen and health risk being considered by CARB in this Draft Chrome ATCM?

3. Since OEHHA has not established a "zero" threshold for exposure for hexavalent chromium, is there an acceptable level of hexavalent chromium emissions that could continue to be emitted from MFs?

4. Are OEHHA's inherent margins of safety for all hexavalent chromium allowable emission levels being taken into account for this Draft Chrome ATCM?

5. Has CARB evaluated the application of equivalent hexavalent chromium reductions from other hexavalent chromium uses as an alternative to an outright ban?

6. Has CARB Staff evaluated continued hexavalent chromium use when facilities do not pose a harmful risk to sensitive receptors exceeding OEHHA's standards?

7. Has CARB identified facilities providing Proposition 65 notice to the local community? Is there a list of these facilities per air district? Have these Proposition 65 notices been accounted for as part of the evaluation for Environmental Justice?

8. Has CARB applied Proposition 65's no significant risk threshold for hexavalent chromium for off-site exposure (i.e., environmental exposure) at the known 141 MFs in California?

9. Notwithstanding Proposition 65, has CARB otherwise evaluated actual community risk at every MF facility?

D. Hot Spots

The Air Toxics "Hot Spots" Information and Assessment Act of 1987 was developed to identify and assess air toxics data, including hexavalent chromium. Facilities subject to the law are required to inventory and, in some cases, model their emissions for potential risk. Where required, facilities must reduce their airborne toxic risk.

1. Has CARB reviewed all Toxic Hot Spots inventories in the state as part of the development of the Draft Chrome ATCM? If so, have the hexavalent chromium emitters been identified generally?

2. Has CARB identified MFs specifically in reviewing the Toxic Hots Spots inventory? If so, have any of the MFs been required to model their risk? Have any MFs been required to reduce their airborne toxic risk?

3. Have these reports and considerations been accounted for as part of the evaluation for Environmental Justice?

E. Environmental Justice

1. How are the Environmental Justice values for general emissions determined for the state's website and how do they apply in this Draft Chrome ATCM? How do all the variables apply to this Draft Chrome ATCM?

2. Is hexavalent chromium captured as a separate component within the general emissions values used for Environmental Justice evaluation? Is hexavalent chromium from MFs being captured as a separate component within the general emissions values used for Environmental Justice evaluation.

3. Does the Environmental Justice value identify or determine the impact of encroachment of sensitive receptors moving toward the hexavalent chromium use?

4. Does Environmental Justice account for the direct and indirect benefit of valuable jobs being provided in the affected community? Conversely, does Environmental Justice account for the direct and indirect loss of valuable jobs in the affected community?

5. How many fewer cancer cases does CARB believe will result if the Draft Chrome ATCM is approved? How was that number determined? Is the evaluation specific to facilities or generally for the entire state? If it is for the entire state, how is that value being attributed to Environmental Justice since it is focused on specifically local emissions exposures? Are generalized numbers being spread to all locations?

6. How does Environmental Justice get affected where MFs are located more than 330 feet from sensitive receptors? More than 1,000 feet? Is distance from a source a consideration or is the evaluation solely on the risk presented?

7. How does Environmental Justice get affected when hexavalent chromium emissions are less than the risk levels deemed acceptable by OEHHA at a sensitive receptor? Would this outcome be considered acceptable for Environmental Justice?

F. Economics

1. What is the economic cost of this Draft Chrome ATCM? What assumptions are being used for the economic evaluation?

2. What businesses do CARB believe will be impacted with the loss of these activities? How many of the 141 MFs identified by CARB will cease business in California? Is CARB contemplating solely the loss of the activity or is it considering the loss of the entire business?

3. What other businesses, by type, will cease business in California? What is CARB using to base its assumptions for these losses?

4. How many employees will lose their jobs in California? From MFs? From other business (by type)?

5. What indirect economic impacts have been identified by CARB should the current Draft Chrome ATCM be approved? Has CARB considered the increased emissions generated from transportation due to lack of chromium metal finishing activities in California? Has it considered increased traffic issues?

6. What economic impacts are being considered due to the loss of jobs in the local communities that have also been identified as having Environmental Justice impacts?

7. Has CARB evaluated the cost of the Draft Chrome ATCM per pound of hexavalent chromium reduced? Is that amount presently four pounds? What is the economic value per life saved based upon the amount of hexavalent chromium reduced?

8. How is CARB accounting for the capital improvement losses that will occur for 1469-compliant facilities?

9. Is CARB evaluating the economics of any alternative other than a ban? Does that alternative account for the issues raised in the questions in this section above?

G. Rule 1469

1. SCAQMD approved its latest iteration of Rule 1469 in 2018 and it contains several provisions that differ from the Draft Chrome ATCM but provide significant hexavalent chromium emissions reductions.

2. Has CARB been provided by SCAQMD with the 1469 compliance costs incurred by the regulated MFs?

3. Has CARB done a direct comparison on hexavalent chromium emissions saved between Rule 1469 (if applied statewide) and the Draft Chrome ATCM? Has such a comparison been used as one of the alternatives for the economic analysis?

4. Can CARB demonstrate that the Draft Chrome ATCM will achieve greater reductions than Rule 1469 applied statewide?

5. Has CARB considered specific measures addressing amp-hours, enclosures, filtration, covers, or other actions to effectively reduce emissions, as alternatives to a total ban?

H. Other

1. Has CARB considered a lower acceptable emission threshold for source-tested facilities in lieu of a ban?

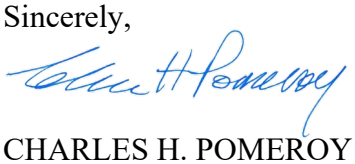
2. Has CARB considered, in lieu of an outright ban, the allowance of new MF uses of hexavalent chromium if both distance to a sensitive receptor and the exposure threshold meet a specific risk value? What about facilities that can further modify and reduce their emissions in lieu of a ban?

* * *

I trust the MFACA comments and questions provide a starting point for further evaluation and discussion of the Draft Chrome ATCM. Because of the volume of these thoughts, it would be helpful if your responses to any comment or question identify its number (e.g., F.2.) when responding. Rather than receiving a single response, we will be happy to receive information as it is developed by CARB Staff. Please let me know if you have any questions or comments, and please also feel free to contact MFACA Executive Director Bryan Leiker at 818-207-1021, or bleiker@klanodizing.com.

The MFACA will continue to refine and develop further questions and comments as the ATCM process proceeds. We look forward to our ongoing communication.

Sincerely,



CHARLES H. POMEROY
StilesPomeroy LLP

cc: Robert Krieger, CARB (via email)

June 9, 2021

Via email to Eugene.Rubin@arb.ca.gov

Eugene Rubin
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Additional Comments—Update to Airborne Toxic Control Measure for Hexavalent Chromium [CrVI ATCM]

Mr. Rubin —

Our associations write today to provide additional comments on the proposed regulatory language for the update to the Airborne Toxic Control Measure for Hexavalent Chromium [CrVI ATCM]. These are in addition to our previously filed comments, and there may also be additional submittals.

As written, the update will ban functional chrome plating on July 1, 2024, hard chrome plating on July 1, 2028, and chromic acid anodizing on July 1, 2033.

These bans will shift hexavalent chrome plating to other states and countries where there are less if any controls and will increase emissions. Bans will leak significant jobs and businesses away from California.

We continue to request that, rather than these outright bans, the update contains measures that will be effective in further reducing the negligible amount of air emissions of hexavalent chromium from metal finishing facilities, recognize the extremely negative consequences of these bans, and provide a reasoned, science-based approach moving forward.

We specifically reiterate one of the alternative pathways to these bans that we have previously discussed. This is compliance with the extensive, recently-adopted South Coast Air Quality Management District [SCAQMD] Rule 1469 to further reduce emissions.

This rule is at: http://www.aqmd.gov/docs/default-source/rule-book/reg-xiv/rule-1469.pdf?sfvrsn=4

There are other alternative pathways that are worth exploring, including specific measures addressing amp-hours, enclosures, filtration, covers, or other actions to effectively reduce emissions, as alternatives to a total ban.

We urge the California Air Resources Board to ensure that the updated CrVI ATCM does not ban chrome plating, ig-

nore the available alternatives and technologies, strand assets, export plating and their jobs to other states and countries, and significantly increase air emissions leakage.

We remain committed to working with the board as we have in each of the previous rulemakings addressing hexavalent chromium, to develop an updated rule that protects public health.

Sincerely,

Bobbi Burns

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510-659-8764

Justin Guzman

Justin Guzman, MFASC President
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MFASC
METAL FINISHING ASSOCIATION OF SOUTHERN CALIFORNIA, INC.

MFANC
METAL FINISHING ASSOCIATION OF NORTHERN CALIFORNIA, INC.

February 3, 2022

Via email to Evan.Kersnar@arb.ca.gov

Liane Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

via email to Richard.Corey@arb.ca.gov

Richard Corey, Executive Officer
California Air Resource Board
1001 I Street
Sacramento, CA 95814

RE: Proposed CARB Chromium Air Toxics Control Measure

Dear Chair Randolph and Executive Officer Corey –

The Metal Finishing Association of Southern California [MFASC] and the Metal Finishing Association of Northern California [MFANC] urgently request that the California Air Resources Board refrain from promulgating a new draft of proposed regulatory language for the update to the Air Toxic Control Measure for Hexavalent Chromium [CrVI ATCM] that was presented in the Technical Working Group Meeting on January 20 until the framework is revised to avoid establishing specific, draconian, precedent-setting ban dates for decorative chrome plating, chromic acid anodizing and hard chrome plating that will have an immediate impact on the economy with our customers taking their business and these operations out of California to other state and countries, exporting emissions and jobs.

MFASC and MFANC continue to be engaged in the development of this update, and we believe further consideration can lead to a better rule that will accomplish the objective of minimizing emissions of toxic air contaminants to protect public health and the environment. Following is an overview of the issues, our concerns, and reasonable alternatives that we suggest for consideration.

The plan for the ATCM update that was announced on January 20 would:

- Beginning two years after the effective date of the Amendments, that all decorative plating facilities must convert to the use of trivalent chromium or cleaner alternative or stop using hexavalent chromium [CrVI].
- Beginning after two years after the effective date of the Amendments, no person shall install or operate any new functional hard hexavalent chromium electroplating facility in the state.
- Beginning after 15 years after the effective date of the Amendments, all functional hard hexavalent chromium electroplating facilities must transition to trivalent chromium or another cleaner hexavalent chromium-free alternative, or stop using hexavalent chromium.

These proposed dates are bans, they are not "phase outs."

These bans will shift hexavalent chrome plating to other states and countries where there are less if any controls and will increase emissions.

Bans will not further development of important technology changes, they will put pressure on industries to move out of state, thereby increasing transportation-related emissions and leaking skilled jobs to other jurisdictions.

California metal finishing facilities have worked over the past decades to significantly reduce their emissions.

No other state has protections that are even close to the current ATCM.

California should acknowledge that protection of the environment is best achieved here in this state, with industry. Emissions have been significantly reduced over the years to the extent that chrome metal finishing comprises significantly less than 1% of total CrVI emissions for the entire state.

The draft MATES V report shows a significant decline in CrVI emissions.

This is prior to the adoption of SCAQMD's Rule 1469. Adoption of this rule and its controls (HEPA/fume suppressant) by facilities not located within the district would reduce emissions statewide by a projected 94%.

The timing for this new rule is quite problematic.

The resurgent COVID pandemic is further constraining metal finishing operations. Resources are again redirected to protecting the health of our workers. The available workforce has been diminished, presenting another obstacle to our efforts to eventually return to normal operations.

Repairs using hexavalent chromium plating and chromic acid anodizing are necessary for safety of flight on nearly all major aircraft and there is no alternative.

The use of hexavalent chromium in "hard chrome" plating processes is fundamentally necessary to maintain and repair the currently flying fleets of the DOD, commercial airlines, emergency government responders (police, fire, and medical), and business/private aviation.

Hexavalent chrome plating and chromic acid anodizing is used to maintain flight and safety critical components including:

Flight control servos and actuation (rudders, elevators, flaps, steering, engine power, propeller pitch), thrust reversers, landing gear, as well as hydraulic and pneumatic systems (engine bleed air, cabin environment).

Trivalent chrome plating processes are not approved as alternatives to the major hexavalent chrome plating processes.

They are not approved by the FAA, by EASA (European Safety Regulator), the OEMs (Boeing, Airbus, Sikorsky, Bell, Lockheed) or Systems manufacturers (Collins, Parker, Honeywell, Moog, and others).

The timeline for change in decorative [functional] chrome plating is much longer than the proposed 2 years.

Decorative hex chrome plating is utilized for key segments of the consumer marketplace. The marketplace requires hex chrome plating — our customers require decorative hex chrome plating for the consumer marketplace.

Without a significant change in customer acceptance, these customers will take their business to other states or countries which have less if any emission control requirements.

The timeline for change in hard chrome plating is much longer than the proposed 15 years.

Most aircraft have lifespans of 30+ years. There are tens of thousands of aircraft already designed, manufactured, and currently flying.

The parts on those aircraft contain hex chrome and/or must be repaired with hex chrome based upon the FAA's approval of the aircraft design, the aircraft's manufacture, and the aircraft's maintenance regime.

This is not easily or economically changeable due to the high quantities of parts, designers, manufacturers, and aviation regulators. With respect to the current fleet, change is not practically possible.

CARB lacks the authority to regulate interstate commerce.

California relies on the federal air transportation framework for support of every major economic driver in the state, including tourism, agriculture, aerospace, government, and technology.

California delivers 15% of United States GDP by relying on the air transportation infrastructure. The air transportation system relies on and includes repair and maintenance of that system.

Hexavalent "Hard" Chrome plating is the only acceptable, technologically feasible, FAA approved method by which flight and safety critical elements of the air transportation can be maintained.

The air transportation system is interstate commerce. Even if CARB believes that it has the legal authority to regulate the performance of a necessary element of safe air travel within California, how can CARB argue that it has the authority to ban a critical element of the system from which every person in California benefits?

Rather than these outright bans, the update contains measures that will:

Be effective in further reducing the negligible amount of air emissions of hexavalent chromium from metal finishing facilities,

Recognize the extremely negative consequences of these bans, and

Provide a reasoned, science-based approach moving forward.

One of the alternative pathways to these bans is adoption of the extensive, recently-adopted South Coast Air Quality Management District [SCAQMD] Rule 1469 on a statewide basis.

Many metal finishing facilities are investing significant resources to comply with the new requirements of Rule 1469.

Those investments will become stranded assets, will export plating and their jobs to other states and countries, and will significantly increase air emissions leakage.

CARB adopted Rule 1469 after several years of investigation and work with stakeholders, including extensive air monitoring for toxic metals and source apportionment studies, community monitoring, and source testing at metal finishers. The approach taken by the SCAQMD is strongly health protective while still allowing compliant businesses to remain in California.

CARB should work with researchers, metal finishers, other industry, and fellow federal and regional agencies to develop and test viable alternatives for hard plating, and work in a coordinated fashion to update requirements as alternatives can be proven to be safe and effective across different applications.

For example, after considering a similar ban on chrome plating, the European Union took a very different approach under its REACH program and now leads the way in pushing alternatives while at the same time tightly regulating specific uses where no short-term solutions exist.

Periodic technology reviews are an appropriate approach to determining whether there are alternatives to CrVI plating that are compliant with the requirements of the defense and aerospace industries, are acceptable to our customers, and that do not present new threats to the environment.

There are alternative pathways to bans that are worth exploring, that have not yet been the subject of dialogue, including:

Emissions – based Rule – an alternative to specific ban dates can be to establish an emissions limitation for each facility with periodic testing, which would enable a compliant facility to continue to operate.

Rule 1469 Plus – an alternative to specific ban dates can be to adopt SCAQMD's Rule 1469 with an added requirement such as the installation of HEPA filters.

Technology Review followed by Action – yet another alternative to specific ban dates is to establish specific dates for periodic technology reviews with a ban triggered by the determination in that review that an alternative to CrVI meets the requirements for a specific application [such as MILSPEC] or customer.

We remain committed to working with the board as we have in each of the previous rulemakings addressing hexavalent chromium, to develop an updated rule that protects public health.

Sincerely,

Bobbi Burns

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Vince Noonan

Vince Noonan CEF, MFASC President 858-775-9349

Bryan Leiker

Bryan Leiker, MFANC & MFASC Executive Director 818-207-1021

C: Members, California Air Board

MFASC
METAL FINISHING ASSOCIATION OF SOUTHERN CALIFORNIA, INC.

MFANC
METAL FINISHING ASSOCIATION OF NORTHERN CALIFORNIA, INC.

May 11, 2022

Via email to Evan.Kersnar@arb.ca.gov

Liane Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

via email to Richard.Corey@arb.ca.gov

Richard Corey, Executive Officer
California Air Resource Board
1001 I Street
Sacramento, CA 95814

RE: Updated Draft Language - CARB Chromium Air Toxics Control Measure Update

Dear Chair Randolph, Executive Officer Corey and Board Members –

The Metal Finishing Association of Southern California [MFASC] and the Metal Finishing Association of Northern California [MFANC] have serious concerns with the new draft of proposed regulatory language for the update to the Air Toxic Control Measure for Hexavalent Chromium [CrVI ATCM] that the California Air Resources Board [CARB] released on April 15.

We urge CARB to revise the update to prevent specific, draconian, precedent-setting ban dates for decorative chrome plating, chromic acid anodizing and hard chrome plating that will have an immediate impact on the economy with our customers taking their business and these operations out of California to other state and countries, exporting emissions and jobs.

California should acknowledge that protection of the environment is best achieved here in this state by working with industry. This has worked with our industry. Emissions have been significantly reduced over the years to the extent that chrome metal finishing comprises significantly less than one percent of total annual CrVI emissions for the entire state.

Most significantly, the April 15 language for the updated ATCM will ban decorative chrome plating on January 1, 2026. The proposal imposes significant new investments and operational requirements prior to the ban date and prohibits new or increased operations.

We have several continuing and new concerns:

1. **The proposed ATCM update is not an emissions-based rule**. Our facilities have worked effectively over the past decades to invest in the technology and operate in a manner that has lowered our CrVI emissions and protects our workers and communities. This includes the efforts many facilities continue to make to comply with Rule 1469 established by the South Coast Air Quality Management District [SCAQMD] in 2018 and updated in 2021.

The proposed ATCM update does not acknowledge the emissions reductions this rule has achieved to-date and will achieve in the upcoming years. It also fails to specify a target for reduced emissions from decorative CrVI plating and to identify alternative compliance pathways that would enable facilities to continue to operate. Further, the ban fails to acknowledge the impact the proposed update with its pre-ban investments and operational requirements will have in significantly reducing emissions, and assessing those impacts, prior to a ban.

2. **The proposed ATCM update fails to recognize that alternatives are not accepted in the marketplace.** Our customers require decorative CrVI plating for their products. The finish and durability are important, and they are not yet accepting alternatives such as trivalent chromium. This is confirmed in the correspondence submitted to CARB by the American Motorcyclist Association, Rod Shows, the Specialty Equipment Market Association, and others.

3. **The ban will not change customer demands**. The ban will apply specifically to CrVI metal plating operations. Nothing in the record supports an assertion that the ban will cause customers to accept trivalent chromium or any other alternative. The draft provides no incentive to do so.

4. **The ban will leak skilled jobs to other states and countries.** Our customers have many options with hundreds of CrVI plating facilities located in nearby states, across the country, and in neighboring nations. They will be pleased to serve our customers.

5. **The ban will negatively impact operations immediately.** The ban will present decorative CrVI plating facilities with an unreasonable choice: [a] close their operations immediately; or [b] invest significant dollars over two years to comply with new CARB emission rules, then close their operations on the January 1, 2026 ban date.

6. **The ban will negatively impact small businesses and their communities.** With an average workforce of 40 employees, the ban will lead to a loss of jobs in the communities in which metal finishing facilities are located. There will also be significant and negative impacts to other sectors up through the supply chain.

7. **The ban will not further development of mutually beneficial approaches.** The ban ends decorative CrVI plating in the state. A more reasoned endeavor would be to work together with industry, communities and other stakeholders to educate our customers to the value propositions presented by alternatives to CrVI and increase customer acceptance of a transition.

8. **The ban will increase emissions of toxic air contaminants**. No other state or country has CrVI emission limits anywhere near the level of protections established by SCAQMD's Rule 1469. In addition, the transport of products out-of-state for plating will increase emissions from commercial trucks transporting the products and components for plating.

9. **The ban will strand assets.** Metal finishing facilities located in the jurisdiction of the South Coast Air Quality Management District [SCAQMD] are investing tens of thousands of dollars to comply with the district's significant Rule 1469 that was adopted in 2018 and updated in 2021. Those investments will be worthless on January 1, 2026.

Rule 1469 requires the installation and operation of add-on air pollution control devices for sodium dichromate seal tanks and other tanks with similar operating properties that were not previously known to be sources of CrVI emissions. The rule also establishes new periodic source testing, enhanced parameter monitoring, new building enclosure requirements, as well as enhanced housekeeping and best management practices.

10. **The two-year deadline for facilities to transition to trivalent chrome plating does not work** [even if our customers were to accept trivalent chromium plating]. Each facility will be required to obtain funding, purchase, install and calibrate new tanks and lines, and obtain the necessary permits. Local permits alone can take up to five years.

As confirmed through our active participation in each Working Group meeting, facility tours, briefings, and previous comment letters MFASC and MFANC continue to be engaged in the development of this update, and we believe further consideration can lead to a better rule that will accomplish the objective of minimizing emissions of toxic air contaminants to protect public health and the environment. This new draft is a significant step backward.

Sincerely,

Bobbi Burns

Bobbi Burns, MFANC President 510-659-8764

Vince Noonan

Vince Noonan CEF, MFASC President 858-775-9349

Bryan Leiker

Bryan Leiker, MFANC & MFASC Executive Director 818-207-1021

C: Members, California Air Board

GROVEMAN | HIETE LLP

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July 18, 2022

VIA FEDERAL EXPRESS AND E-MAIL

Liane Randolph, Chair
CALIFORNIA AIR RESOURCES BOARD
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Re: NOTICE OF POTENTIAL LITIGATION;
DEMAND FOR NOTICE AND OPPORTUNITY TO BE HEARD;
DEMAND FOR LITIGATION HOLD;
PUBLIC RECORDS ACT REQUEST

Ms. Randolph, Mr. Corey and Ms. Peter:

Please be advised regarding the Metal Finishing Associations of California ("MFACA") correspondence below.

INTRODUCTION

The MFACA has attempted to provide serious and well documented evidence in connection with the California Air Resources Board's ("CARB") proposed regulatory language

relating to Airborne Toxic Control Measure for Hexavalent Chromium [CrVI ATCM]. These efforts have been in writing, and through a series of zoom meetings that CARB has contended are "public meetings."[1] The MFACA's data and documents provided to CARB regarding the proposed rule change are based on decades of experience in the field, including technical input from well-trained experts who understand the issues at hand as well as or better than any other professionals in the industry. However, despite extensive written and verbal comments to CARB, all of the MFACA's data has been completely ignored. There is, in fact, no indication that CARB considered any of the data provided by MFACA. Moreover, MFACA representatives have not been afforded the opportunity to have direct in person meetings with CARB rulemaking staff. Rather, they have been limited to watching zoom meetings that are controlled by CARB and do not provide the historical opportunity for the public to gather and provide important technical and economic data to the public agency.

Now, after this completely inadequate public rulemaking process, CARB has proposed an update to the rule that will: (1) prohibit new facility permits on January 1, 2024; (2) ban decorative chrome plating on January 1, 2026; and, (3) ban hard chrome plating and chromic acid anodizing on January 1, 2039.

CARB's conduct throughout this entire rulemaking process has been based on inaccurate data, false conclusions, and a complete disregard for the public's right to provide significant and important information to CARB staff.

For these and other reasons, the MFACA is left with no choice but to take steps to protect its members (and their employees and families) from the potential devastating effects if the currently proposed rule is implemented.

CARB HAS VIOLATED THE ADMINISTRATIVE PROCEDURES ACT - DEMAND FOR NOTICE AND OPPORTUNITY TO BE HEARD

California's Administrative Procedure Act ("APA"), like its federal counterpart, provides the formal procedures by which the executive branch agencies must conduct their rulemaking activities. There are essentially two main purposes of the APA. The first is to give notice to persons affected by a regulation. The second is to give them a voice in its creation. *Missionary Guadalupanas of Holy Spirit, Inc. v. Rouillard* (2019) 251 Cal.Rptr. 3rd 1, review denied; *Morning Start Company v. State Board of Equalization* (2006) 38 Cal. 4th 324; *Reilly v. Superior Court* (2013) 57 Cal. 4th 641.

[1] The MFACA and its individual members, as well as other impacted corporations and organizations, have sent substantial written comments to CARB on the proposed rule. It is not the purpose of this letter to reiterate all the technical, economic, and other data provided to CARB. That information should be easily accessed by each of your separate staffs. However, if there is any information that any of your offices should need when reviewing this letter, our office will work to provide extra copies or supplemental information as requested and needed.

In this case, CARB has effectively ignored the persons who will be most affected by the proposed rule for hexavalent chromium emissions. Substantial written comment has been submitted to CARB, **with zero substantive response**. CARB has conducted zoom meetings in place of traditional in person public meetings on the proposed rule. The zoom meetings have allowed CARB staff to control what information is discussed, limit the time and number of persons able to participate, and generally run "roughshod" over the entire public comment process. In short, CARB has violated, and continues to violate, California's APA.

MFACA demands that CARB establish a new rulemaking schedule for the proposed rule at issue, to ensure that the persons most affected by the rule have legitimate and real discussions with CARB staff, receive substantive feedback on relevant technical and economic data, and have proper in person public meetings to discuss all of this critical information.

If CARB refuses to implement a new process, it will lead to substantial litigation involving CARB 's failed public rulemaking and cast significant doubt on the legitimacy of the basis for any new rule passed by CARB.

NOTICE OF INTENT TO FILE TEMPORARY RESTRAINING ORDER / COMPLAINT - REQUEST FOR MEET AND CONFER

As stated above, after review of significant amount of documentation and information relating to CARBs rule making process for CrVI ATCM, MFACA believes CARB is in violation of the APA. MFACA believes that CARB may be subject to liability under several other applicable causes of action. Unless immediate corrective action steps are taken by CARB, the MFACA intends to pursue all of its legal rights and remedies associated with the flawed public rulemaking process, including filing a temporary restraining order against CARB to prevent the implementation of the proposed rule.

MFACA requests that CARB contact this office to arrange a meet and confer discussion about these topics, so that the parties can work towards an acceptable solution. It is MFACA's assessment that any Superior Court or Federal District Court overseeing this matter will want to see that the public agency took every effort and opportunity to resolve this dispute and not to encourage litigation, which is an extreme waste of California taxpayer money, and a waste of the agency's and court's time and resources.

MFACA looks forward to CARB contacting its legal counsel promptly to arrange for this meet and confer discussion.

FLAWED STANDARDIZED REGULATORY IMPACT ASSESSMENT ANALYSIS

CARB is required to prepare a Standardized Regulatory Impact Assessment ("SRIA") analysis that complies with the requirements set forth in Government Code Sections 11340 et seq. and Division 3, Chapter 1, Division 3, Chapter 1, Section 2002 of the California Code of Regulations.

On June 24, 2022, the California Department of Finance ("CDOF") issued a letter to CARB. (See **Attachment A**.) The CDOF's letter to CARB documents that CARB, even at this late date, has failed to address key concerns the MFACA has consistently and repeatedly emphasized. For example, the CDOF letter provides, in part:

"First, the SRIA does not expect any business closures in response to the proposed regulations, ***nor does it discuss any potential competitive disadvantages to California's chrome facilities***, despite acknowledging stakeholder concerns regarding the availability of alternatives. However, unavailable or inferior alternatives may reduce the demand for in-state chrome services and instead incentivize consumers to switch to out-of-state businesses who would still able to utilize hexavalent chromium processes."

The CDOF letter goes on to state that CARB's SRIA ***must include a comprehensive assessment of the potential business and employment impacts***, including a discussion of these potential behavioral responses to the proposed regulation, or further justify why it is reasonable to assume these adverse impacts would be unlikely to occur.

The MFACA concurs in the CDOF's assessment of CARB's SRIA, and demands that CARB move expeditiously ***in an open, public and transparent process to respond to the CDOF letter with fact-based information on the issues it has raised***. We will be contacting the CDOF separately to ensure that these actions are taken by CARB.

LITIGATION HOLD

Based on the foregoing dispute, and depending on CARB's corrective measures to address APA violations, litigation could be imminent. If a lawsuit is filed, MFACA anticipates serving some initial discovery. This initial discovery would include form interrogatories, special interrogatories, request for production of documents, request for admissions, and other discovery that will also include including electronically stored information ("ESI"). As such, at this time, MFACA hereby demands that CARB take action to preserve all potentially relevant ESI and to prevent the deletion or spoilation of any evidence. MFACA's discovery and records requests likely would cover the period January 1, 2020 to the present.

The topics that will be covered in such discovery will relate to CARB rulemaking to amend the Hexavalent Chromium Airborne Toxic Control Measure for Chrome Plating and Chromic Acid Anodizing Operations (Chrome Plating ATCM).

MFACA will be making discovery requests which may involve ESI stored on any and all devices used by CARB staff that worked on the rulemaking process, as defined above.

These individuals are believed to have or hold relevant information pertinent to the case and are deemed to be under the control of CARB and therefore the litigation hold for all ESI shall apply to CARB, as well as these CARB employees. These persons are required to maintain and preserve evidence and ESI on all computers, tablets, flash drives, CD Rom discs, handheld devices, smartphones, and any other media, whether digital or non-digital.

The ESI to be preserved includes, but is not limited to, all "WRITINGS" as defined by California Evidence Code section 250, which states:

> *"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."*

This demand shall include all digital messages, emails, text messages, video tapes, "tweets," Facebook posts, and other online communications and voicemail messages. We request that this demand to preserve all evidence take place immediately, and that all individuals set forth above be further informed of this request, of which you are now on notice. Failure to respond to this request could result in our client seeking sanctions, costs, attorney fees, and adverse inference jury instructions and any other remedies that may be available under the law.

Any action to destroy relevant and response information is prohibited.

PUBLIC RECORDS REQUEST PURSUANT TO GOVERNMENT CODE SECTION 6250, ET SEQ.

This is a public records act request submitted to CARB pursuant to California Government Code Section 6250, et seq.

For purposes of this records act request, a "WRITING" and "WRITINGS" means: handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by ***electronic mail*** or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, memos, calendar events, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. See California Evidence Code Section 250.

All WRITING and WRITINGS also must include any emails, text messages or other electronic communications that are made on public and private electronic devices, if the communications were made in the course of CARB and, *specifically*, its employees, doing business. City of San José v. Superior Court (2017) 2 Cal.5th 608. In City of San Jose, the Court held that "when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act."

We must reiterate that all of CARB (and employees and Boardmembers) business conducted on emails, text messages and other electronic data stored on private devices and accounts (e.g., cell phones, private email accounts) are public documents and must be made part of the response to this Government Code request. We hope that the CARB understands the implications of not conducting a proper and thorough search of all responsive records, so that we are not forced to pursue other legal remedies.

Furthermore, this request must be responded to by individuals that are not associated in any way with the subject matter of this request (as defined below). Specifically, those that are the subject of this records act request must have **no role** in determining what records are relevant and responsive to this request. The review of records and response to this request must be conducted in a manner that is independent and unbiased, and should not be influenced by anyone that is the subject of this request. We request that you provide this office with CARB's procedure to properly ensure that those subject to this request are properly walled off and recused from any decisions as to what materials are subject to and responsive to this request.

We hereby request all public records maintained by CARB as described below:

(1) All WRITINGS regarding CARB's rulemaking process related to the proposed regulatory language relating to Airborne Toxic Control Measure for Hexavalent Chromium [CrVI ATCM].

This public records act request is for all relevant and responsive WRITINGS from January 1, 2020, to the present.

Please respond to this public records act request within the 10-day required period. Also, MFACA will meet and confer with CARB to discuss methods to ensure this request is completed within a reasonable timeframe, including working on a rolling production of responsive materials.

CONCLUSION

We trust that CARB's takes this notice seriously and provides written responses promptly to this law firm. Thank you.

Very truly yours,

Ryan Hiete

K. Ryan Hiete
GROVEMAN | HIETE LLP

cc: Barry C. Groveman
Bryan Lieker, Executive Director, MFACA

Attachment A

DEPARTMENT OF FINANCE
GAVIN NEWSOM • GOVERNOR
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William Leung
California Air Resources Board
1001 I Street
Sacramento, CA 95814

June 24, 2022

Dear Mr. Leung:

Thank you for submitting the standardized regulatory impact assessment (SRIA) and summary (Form DF-131) for proposed amendments to the hexavalent chromium airborne toxic control measure regulations, as required in the California Code of Regulations, title 1, section 200(a)(1) for major regulations. Proposed text of the regulations were not submitted, therefore comments are based solely upon the SRIA and other publicly available information.

The proposed regulations phase out the use of hexavalent chromium for chrome plating operations by 2026 for decorative plating facilities and by 2039 for functional plating facilities. All facilities will be required to transition to other technologies or use control devices to limit exposure to the airborne toxin. While alternative technology exists for decorative plating facilities, ARB acknowledges that there are currently no alternatives available or in development for functional plating facilities (chrome acid anodizing facilities). There are about 113 decorative chrome plating facilities, hard chrome plating facilities, and chromic acid anodizing facilities that will be impacted. Decorative chrome plating facilities are expected to incur a one-time conversion cost of $16.5 million in 2025 and ongoing annual costs of around $1.3 million. Direct costs to functional chrome plating facilities include a one-time conversion cost of between $104 million and $144 million in 2038, and ongoing costs between $1.3 million and $60.1 million, depending on the facility type. Benefits consist of improved health outcomes and reduced cancer risk from exposure to hexavalent chromium emissions for workers and local communities, and are not quantified. State and local governments are expected to gain annual sales tax revenue of $2.7 million and $3.2 million, respectively, beginning in 2038 after all facilities convert to alternative technologies.

Finance generally concurs with the methodology used to estimate impacts of the proposed regulations, with the following exceptions. First, the SRIA does not expect any business closures in response to the proposed regulations, nor does it discuss any potential competitive disadvantages to California's chrome facilities, despite

acknowledging stakeholder concerns regarding the availability of alternatives. However, unavailable or inferior alternatives may reduce the demand for in-state chrome services and instead incentivize consumers to switch to out-of-state businesses who would still able to utilize hexavalent chromium processes. The SRIA must include a comprehensive assessment of the potential business and employment impacts, including a discussion of these potential behavioral responses to the proposed regulation, or further justify why it is reasonable to assume these adverse impacts would be unlikely to occur.

Second, the SRIA does not clearly disclose how inflation is incorporated into the analysis, however, costs may be different under higher assumed inflation rates. The brief qualitative discussion of the implications of higher inflation that is currently included in the SRIA should be expanded to clearly illustrate how costs are impacted by incorporating Finance's most recent inflation projections at the time of the analysis, as required.

These comments are intended to provide sufficient guidance outlining revisions to the impact assessment if a SRIA is required. The SRIA, a summary of Finance's comments, and any responses must be included in the rulemaking file that is available for public comment. Finance understands that the proposed regulations may change during the rulemaking process. If any significant changes to the proposed regulations result in economic impacts not discussed in the SRIA, please note that the revised economic impacts must be reflected on the Standard Form 399 for the rulemaking file submittal to the Office of Administrative Law. Please let us know if you have any questions regarding our comments.

Sincerely,

[Signature on File]

Somjita Mitra
Chief Economist

cc: Ms. Dee Dee Myers, Director, Governor's Office of Business and Economic Development
Mr. Kenneth Pogue, Director, Office of Administrative Law
Mr. Richard Corey, Executive Director, California Air Resources Board