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California Air Resources Board
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Subject: WSPA Comments on CARB's Proposed Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants, dated September 29, 2020.

To Whom it May Concern:

The Western States Petroleum Association (WSPA) appreciates this opportunity to comment on the California Air Resources Board's (CARB) proposed amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants (CTR). WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states.

While WSPA recognizes and appreciates that the implementation timeline for amendments to the CTR regulation has been extended, there are still numerous problems with the proposed amendments. In particular, there is broad underlying concern that air districts have not made much progress developing their respective emission reporting programs since the CTR was adopted in December 2018. The proposed expansion of reporting requirements will impose unsustainable workload burdens not only on regulated facilities but also on the local air districts responsible for implementing this program. Further and as stated in previous comment letters, the proposed expansion reaches beyond the statutory authority granted to CARB under AB 617 and AB 197, and the Initial Statement of Reasons (ISOR) fails to identify any other statutory authority that would allow for the proposed expansion. Additionally, CARB's proposed application of the "any activity level" reporting threshold in Appendix A (Table A-3) is arbitrary and inconsistent with volume-based thresholds used for other sectors to screen out facilities with de minimis emissions or risk. It will impose additional cost and workload burdens on facilities to produce data that will not advance the purposes of either AB 617 or AB 197.

These and other issues deserve further analysis and consideration of public comments before CARB brings the proposed CTR expansion to the Board for adoption.

Feasibility of Proposed Amendments

Based on the structure of the proposed CTR amendments, we are concerned that CARB has not considered key lessons from past decades of experience with emission inventories (inside and outside of California). In particular:

1. Requiring reporting of emissions for *all* pollutants from *any* potential source might be useful for research purposes but is not practical or even possible in the context of routine reporting from every facility in the state. By failing to prioritize the most significant pollutants and sources, enormous amounts of effort will be wasted by facility personnel on quantification and reporting, by air district staff required to evaluate the data, and by members of the public attempting to interpret the data. For example, the five refineries in the Bay Area have recently been subjected to multiple revisions of emissions inventory guidance (more than 100 pages) and have been required to submit refinery-wide inventories for the past four years. These inventories primarily cover permitted sources, not *every* potential source at a refinery. The subject facilities have had to invest heavily in contractor services because facility staff do not have the bandwidth to complete comprehensive inventories in the short amount of time allowed by the District. Despite all of this effort and expense, not a single component of these inventories has been approved by the District.

   Decades of experience have demonstrated that some sources do not contribute meaningfully to emissions burden or facility risk. In the interests of maximizing the air quality benefit of facility and air district investments in emissions reporting, and providing useful information to the public, CARB should re-focus the proposed regulation on sources that have the potential to meaningfully impact air quality in AB 617 communities. Exemptions for some low-level unpermitted sources are necessary and consistent with applicable statutes and federal and state programs. For example, the Title V permit program defines "insignificant sources" including but not limited to office and janitorial supplies; the Toxics Release Inventory (TRI) program exempts laboratory chemical usage and CARB's MRR regulation includes a 5% "de minimis" threshold. There are number of other sources that are not significant contributors to facility emissions, such as evaporative emissions from diesel generator fuel tanks and hot water heaters. This same prioritization approach should also apply to individual pollutants. For example, reporting requirements for toxic air contaminants should continue to focus on risk-driving substances because the emissions of these substances define the potential impact of the facility on nearby communities. It is for this reason that Districts have developed simplified speciation profiles for common sources such as natural gas-fired external combustion[1] and gasoline evaporation.[2]

[1] BAAQMD's "Emission Factors for Toxic Air Contaminants from Miscellaneous Natural Gas Combustion Sources" (https://www.baaqmd.gov/~/media/files/engineering/policy_and_procedures/tacemfacfromnatgascombustion.pdf?la=en) lists only three TACs.

[2] SJVUAPCD's AB2588 "Hot Spots" Air Toxics Profiles (available from https://www.valleyair.org/busind/pto/toxics.htm) list just three TACs for gasoline and diesel storage tanks (Toxic Profile IDs 23 and 24).

2. Using spreadsheets and databases to try to categorize everything into SCC codes - which were developed in the 1970s and are both outdated and incomplete - is burdensome and does not add value for complex sources such as refineries. The corresponding format of "activity data × emission factor = emissions rate" may be useful for relatively simple sources that are not monitored, but does not work well for sources that: a) do not fit neatly into an existing SCC code (or for which the code is ambiguous), b) are more complex, c) have more complex computational methodologies (such as for storage tanks), or d) have continuous emissions monitoring systems (CEMS). In these contexts, the proposed approach only results in greater workload (see example in Attachment A). It is for reasons such as this that CARB's MRR program - which only addresses a handful of pollutants, rather than thousands - does not require these types of structures.

ISOR Section VII. Economic Impacts Assessment

CARB's analysis concludes that the CTR amendments do not constitute a "major regulation" because the economic impact would not exceed $10 million per year, and therefore would not trigger the additional analysis required by Health and Safety Code Section 57005. This conclusion is based on several assumptions that systematically understate costs to both regulated facilities and local air districts. The ISOR estimates that the average cost per facility to comply with the proposed requirements, which staff describes as determination of applicability, data gathering and recordkeeping activities, preparation of emissions inventory plans and reports, quality assurance/quality control, and submitting reports to the local air district, would initially average $560 per facility, dropping to $300 per facility over an undefined period of time. These estimates seem improbably low, especially for the tens of thousands of facilities that would be brought into the program for the first time under the proposed expansion.

CARB estimates lower costs in the ISOR based on the assumption that CTR reporting requirements constitute a small additional workload burden "supplementing the workload that is typically already required in most regions to meet existing mandated data collection and reporting requirements."[3] This sweeping generalization is not supported in the ISOR. The staff analysis also assumes that new requirements and costs imposed on smaller facilities will be borne largely by local air districts.[4] Given the scope of smaller facilities subject to the proposed regulations - CARB estimates that 50,000 small businesses will be covered under the proposed amendments[5] - it is highly unlikely that air districts will be able to absorb these costs within existing resources. Rather, it is much more likely that air districts will seek cost recovery from these facilities through administrative fee authority. The sheer number of facilities being brought into the program invalidates the assumption that local air districts, with no additional funding, can absorb the additional workload being imposed on these facilities. For these

[3] ISOR, page 17
[4] "In addition, for smaller facilities, it is anticipated that the local air districts will provide assistance to these facilities in computing emissions based on easily obtained throughput and activity information such as the quantity of material sold (such as gasoline), material consumed (such as natural gas, diesel fuel, or coatings), or material produced or processed." ISOR, page 20
[5] ISOR, page 18

reasons, the full costs of implementation - on a per-facility basis - should be reflected in the staff analysis.

The ISOR cost estimates are also internally inconsistent. The ISOR states that the proposed amendments will bring an additional 60,000 facilities into the program, 58,400 of which are private businesses and 50,000 of which are small businesses. Using CARB's initial estimate of $560 per facility, the total cost of program implementation for all affected facilities would be $32,704,000, which is more than 3 times higher than the $9.6 million estimate in the ISOR[6] and the $10 million threshold for a "major regulation" under Health and Safety Code section 57005. The statutes governing evaluation of economic impacts from proposed "major regulations" require consideration of total costs following full implementation of the regulation, and therefore it is not appropriate for CARB to amortize implementation costs over the multi-year period reflected in the proposed phase-in schedule.

ISOR Section VIII. Evaluation of Regulatory Alternatives

1. CARB does not adequately consider alternatives to the proposed regulation and misinterprets its statutory authority. The ISOR states that AB 617 requires CARB to "establish a uniform statewide system of annual reporting of emissions of criteria pollutants and toxic air contaminants for a stationary source."[7] Health and Safety Code Section 39607.1 limits CTR applicability to three categories of stationary sources.[8] None of these categories authorize inclusion of all permitted sources at de minimis activity thresholds.
2. We do agree with the ISOR's statement that "collecting release location data from certain smaller and relatively less impactful facilities, whose emissions present considerably less risk, would not justify the costs of collecting such information in many cases."[9] We also agree that expanding the program beyond what is currently proposed would accomplish little while significantly expanding costs. This same reasoning should be applied to many of the permitted sources in Appendix A, especially those assigned the "any activity level" reporting threshold designation. Gathering data at such de minimis levels is costly and would not serve any public health purpose identified in the ISOR.

ISOR Section XI. The Specific Purpose of Each Adoption and Rationale for CARB's Determination That it is Reasonably Necessary

1. **Rationale for Section 93401(a)(4)(A).** This section provides too much discretion for air districts and undermines certainty for smaller facilities. Applicability should be conditioned on permitted emissions, not potential to emit (PTE). Any facility subject to permit conditions limiting emissions to less than 4 TPY should not be subject to the CTR. Section 93401(a)(4)(B) should

[6] ISOR, page 16
[7] ISOR, page 24
[8] Health and Safety Code Section 39607.1 "(2) "Stationary source" means any of the following:
(A) A facility that is required to report to the state board the facility's greenhouse gas emissions pursuant to Section 38530.; (B) A facility that is authorized by a permit issued by a district to emit 250 or more tons per year of any nonattainment pollutant or its precursors; (C) A facility that receives an elevated prioritization score based on cancer or noncancer health impacts pursuant to Section 44360."
[9] ISOR, page 25

require the air districts to inform a facility of any intended change to a PTE basis at least one year in advance of the beginning of any data year.

2. **Rationale for Section 93401(a)(4)(C).** The ISOR provides little explanation as to why the "any" activity thresholds are necessary for determining impacts to communities. If CARB is committed to pursuing mandatory reporting for the permitted processes identified in Appendix A, it should provide clear and specific authority and policy rationale for each proposed threshold. It should do more than simply offering the blanket assertion that the proposed thresholds are necessary to accomplish programmatic goals.

3. **Rationale for Section 93401(d).** "The inclusion of this section is necessary to provide CARB and air districts the authority to collect data from facilities to ascertain if they may be subject to CTR." The ISOR does not identify any specific language in AB 617 or AB 197 that authorizes CARB to undertake exploratory data gathering to determine applicability. The very next sentence rejects potential alternatives that should be more clearly identified and analyzed in the ISOR: "This authority is necessary because otherwise, without facility data, *the regulatory agencies would either need to rely on non-facility data, or use other mechanisms for obtaining the facility data*, hampering the ability of the agencies to ensure compliance when identifying applicability." (emphasis added)

4. **Rationale for Section 93403(b)(4).** Requiring facilities to report for all processes, not just those that trigger applicability, diminishes the benefits the ISOR attributes to the proposed phase-in schedule.

5. **Rationale for Section 93404(c)(1)(B).** This addition obligates the facility to report the amount of a toxic substance produced or used if no best available method exists to estimate emissions. No context is provided as to how, when, or by whom such determinations will be made. This comment also applies to section 93404(b)(1)(C)(13). Facilities should not be subject to enforceable requirements without being given the information necessary to comply with those requirements. Additionally, in this case, facilities should not be required to report amounts of toxic substances produced or used in the absence of evidence that those substances are likely to be emitted from the facility. A definition for "Produced" should be added with specific relevance to sections 93404(b)(1)(C)(13) and 93404(c)(1)(B), and addressing toxic air contaminants which are intended products of a chemical process or reaction, including intermediates used downstream in a subsequent facility process. The reference in section 93404(c)(1)(B) to a substance being "present" should be removed (i.e., the reference to "used or produced" alone is sufficient and consistent with section 93404(b)(1)(C)(13)).

6. **Rationale for Section 93404(c)(2)(C).** CARB underestimates the difficulty of facilities gathering emissions data for portable diesel engines greater than 50 hp regardless of whether the facility owns the engine. We reiterate our earlier request that CARB either reconsider modifying the PERP program to augment collection of emissions data for portable diesel engines or work with the air districts and engine owners to develop a more suitable alternate reporting mechanism.

7. **Rationale for Inclusion of Sector No. 1.** The explanation for setting activity reporting thresholds is vague and does not identify any statutory authority for requiring such reporting. Further, CARB does not explain how "any activity level" involving certain substances (e.g., hexavalent chromium) would impact public health. Requiring a facility to report any activity level, rather than a level of emissions that presents a potentially significant health risk (based on the potency or toxicity of the substance), will invite speculation that the facility may be a threat to community. Available toxicity data should be used to set emissions-based reporting thresholds.

Specific Comments on Proposed Amendments to the CTR Regulation

1. **Section 93401(a)(3). Applicability / Elevated Toxics Facility.** This proposed change gives air districts discretion to categorize a facility as high priority for toxics up until the reporting deadline for the data year instead of at the beginning of the data year. Any air district "high priority" determination should be made and communicated to the facility owner or operator well in advance of the data year. Only confirmations of nonapplicability should occur within the data year itself or before the otherwise applicable reporting deadline.

2. **Section 93401(d). Determination of Nonapplicability.** This proposed change allows for an extension of up to 30 days (beyond an initial 30 days) for a facility to respond to requests for information. A total timeframe of 60 days may still be inadequate, depending on the complexity of information requested and the timing of the request relative to reporting deadlines. Any request from CARB or an air district should be no later than the beginning of the data year in question.

3. **Section 93403(a)(2). Annual Emissions Reporting.** Additional data reporting requirements following phase-in periods are expected to be difficult for facilities and air district to meet, including certain data elements in section 93404(b)(1) Full Report Contents (e.g., SCCs, acquisition methods for activity level data, applicable emission factors, emission calculation methods, control efficiencies, emission limits, toxics used/produced when best available data/emission estimation methods are not available). Little or no district information has been provided yet to facilities as to how and in what format this additional data will need to be reported. For facilities already subject to CTR reporting for data year 2020, little time is left in the current calendar year to be informed of new requirements in a timely manner. The phase-in provisions of section 93403(a)(2) should be extended by another year to allow adequate time for air districts to define data collection formats and for facilities to collect the required information. The same extension should also apply to section 93404(d), which obligates facilities to report a general description of activity data used to calculate emissions.

   In addition, as noted above, we have observed that some air districts frequently change reporting requirements. This practice will add complexity and confusion to the new reporting burdens under the proposed changes to the CTR and the AB 2588 Emission Inventory Criteria and Guidelines Regulation and should be avoided to the extent possible.

4. **Section 93403(e)(2). Reporting Responsibilities During Changes in Ownership.** These proposed changes imply that a change in ownership during a data reporting year obligates both the previous and new owner/operator to submit an emissions report for the respective periods of operational control. This interpretation is inconsistent with annual emissions reporting under the MRR, EPA/TRI, and most air district reporting programs. At a minimum, the CTR should explicitly allow the new owner or operator the option to report emissions data for the entire data year.

5. **Section 93410(b). Implementation / Agreements.** This proposed new section allowing CARB and an air district to enter into an agreement should specify that public participation will be solicited on any matters related to implementation, enforcement and data sharing.

6. **Section 93410(f). Implementation / Request for Determination of Applicability.** This proposed new section allows any member of the public to request clarification of a facility's permit status and CTR applicability. CARB's determination of applicability within 60 business days is an unreasonably short period of time, and will further burden air districts and facilities, particularly in the months leading up to a reporting deadline. It also creates a potential conflict with the 60-day timeframe for facility response proposed in section 93401(d) for determinations of nonapplicability.

WSPA appreciates this opportunity to comment on the proposed amendments to the CTR. Should the Board choose to adopt the staff proposal, we request that it direct staff to develop additional post hearing changes that will achieve the policy goals of the regulation in a manner that is less burdensome to air districts and regulated entities. If you have any questions, please feel free to reach me at kbuchan@wspa.org.

Sincerely,

Enclosure: Attachment A: Example for a Single Gasoline Storage Tank

Attachment A: Example for a Single Gasoline Storage Tank.

Consider the simple case of a single gasoline storage tank, a common source at a refinery or bulk terminal. The tank will contain different Reid Vapor Pressures (RVP) of wintertime gasoline (e.g., 10-14 psi CARBOB) in different months (depending on proximity to the ozone season and type of facility), and then store summertime gasoline RVP (e.g., 6 psi CARBOB) for the remainder of the year. Different SCC codes exist for storing RVP 13, 10, and 7 gasoline, but not for any other RVPs. There are also different SCC codes for tanks with 67,000 barrel capacity and 250,000 barrel capacity.

Additionally, there are separate SCC codes for working losses and standing losses (and the units of the activity data are different). Having to break out emissions for each gasoline tank six ways (working & breathing for each of the three listed RVPs) is a burdensome effort that will require facilities to arbitrarily split emissions or develop a new methodology from scratch. It also seems unlikely to produce useful information given that the actual RVPs are not equal to the three for which SCC codes exist. Even assuming facilities arbitrarily assign or split emissions, or develop a new methodology to assign SCC codes, if different facilities use different assumptions (likely), the resulting emission factors will be inconsistent, limiting the utility of the data.

The proposed amendments to the CTR and the AB 2588 Emissions Inventory Criteria and Guidelines Regulation include “any activity level” reporting thresholds for some sources, capturing even de minimis or intermittent emissions. For example, there are additional methods that can be used to calculate emissions from “landing” a floating roof to swap out one gasoline RVP for another – that activity is represented by a distinct SCC code. Painting the tank would require another SCC code (and TAC speciation profile, which a facility would need to obtain from the painting contractor) for emissions from the paint and additional SCC codes for any engine-powered equipment used by the contractor (reflecting engine technology and operating parameters). If a tank is taken out of service for scheduled or required maintenance, it must first be degassed, requiring yet another SCC code (and a speciation code for the combustor, etc.).

The foregoing example indicates the overwhelming amount of additional work and data the proposed regulations would require for just one tank that is already required to implement “all feasible” control measures pursuant to Health and Safety Code section 40914(b)(2). Moreover, all other potential sources identified in the above examples are already subject to separate regulatory requirements designed to limit emissions from those sources. Complex facilities may have 50 to 100 tanks and dozens of other sources. It is unclear how successful facilities and air districts would be in compiling the data required by the proposed regulations or what value it will add to existing reporting programs.