



CENTER ON RACE, POVERTY & THE ENVIRONMENT

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California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Re: Public Comment on the AB 617 Community Air Protection Program Draft Blueprint

Dear Chair Nichols and Members of the Board:

The Center on Race, Poverty & the Environment (“CRPE”) submits these comments regarding the Draft Community Air Protection Blueprint (“Draft Blueprint”) and the Functional Equivalent Document (“FED”) under the California Environmental Quality Act.

CRPE represents low-income communities and communities of color throughout California, primarily in the southern San Joaquin Valley. These communities are the disadvantaged communities AB 617 intends to address as they bear a disproportionate share of California’s environmental and public health burdens.

This letter addresses the California Air Resources Board’s (“ARB’s”) failure to adequately analyze a reasonable range of alternatives in the Draft Blueprint and ARB’s failure to include an accurate description of the Project’s environmental setting. CRPE requests ARB to analyze an alternative that includes the implementation of a statewide setback on all oil and gas operations in California.

I. ARB Failed to Adequately Analyze Alternatives to the Draft Blueprint

ARB’s certified regulatory program requires that where a contemplated action may have a significant effect on the environment, a staff report shall be prepared in a manner consistent with the environmental protection purposes of ARB’s regulatory program and with the goals and policies of the California Environmental Quality Act (“CEQA”).¹ CEQA requires that a certified regulatory program preparing a functional equivalent document include “a description of the proposed activity with alternatives to the activity, [and] mitigation measures to minimize any significant adverse effect on the environment of the activity.”² CEQA Guidelines Section

¹ See 17 C.C.R. §§ 60000-08

² Cal. Pub. Res. Code § 21080.5(d)(3)(A)

15126.6(a) requires an evaluation of “a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic project objectives but would avoid or substantially lessen any of the significant effects, and evaluate the comparative merits of the alternatives.”

ARB’s alternatives analysis fails to comply with CEQA. ARB presents a cursory range of alternatives, none of which achieve the objectives of the Project. The alternatives analyzed must attain most of the basic objectives of the Project.³ ARB identified only three alternatives: (1) No-Project Alternative (2) Remove Regulatory-Based Measures (3) Remove Port-Related Regulatory-Based Measures. ARB limited its alternative analysis to three alternatives that have no possibility of achieving the objectives set forth by ARB. A court will find an alternatives analysis to be legally inadequate if it contains an overly narrow range of alternatives.⁴ By limiting its analysis, ARB failed to analyze viable and reasonable alternatives that meet the objectives of the Project.

The fundamental purpose of the Draft Blueprint is to map out how ARB is going to implement the goals of AB 617 by including community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants.⁵ The goal of AB 617 is to reduce exposure to criteria air pollutants and toxic air contaminants in communities most impacted by air pollution.⁶ Oil and gas extraction produces air toxics, including volatile organic compounds (“VOCs”) like benzene and formaldehyde, particulate matter (“PM”), and hydrogen sulfide. Approximately 5.4 million California residents live within a mile of one or more oil and gas wells.⁷ One third of these residents live in areas of the State most burdened by environmental pollution, and 92 percent of Californians living in these heavily burdened neighborhoods are people of color.⁸ Living near oil and gas extraction activities, and specifically actively producing wells, increases risks of various health impacts – including asthma and other respiratory diseases, cardiovascular disease, cancer, birth defects, nervous disorders and dermal irritation, among others. Thus, ARB cannot meaningfully address the reduction of criteria air pollutants and toxic air contaminants in California’s most disadvantaged communities without considering regulations to reduce the impacts of oil and gas operations in the state.

The range of alternatives that an agency must analyze is governed by the rule of reason.⁹ The rule of reason requires the EIR to examine in detail the alternatives that the lead agency determines could feasibly attain *most* of the basic objectives of the project.¹⁰ Subsequently, a

³ 14 Cal Code Regs 5126.6(a)

⁴ *Watsonville Pilots Ass’n v. City of Watsonville*, 183 Cal.App.4th 1059, 1087 (2010).

⁵ Seth B.C., Shonkoff, Jake Hays, *Toward an Understanding of the Environmental and Public Health Impacts of Shale Gas Development: An Analysis of the Peer-Reviewed Scientific Literature*, 11 PLoS ONE (Apr. 20, 2016), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0154164>

⁶ California Air Resources Board, Community Air Protection Program Framework, (Feb. 7, 2018), (concept paper).

⁷ Tanja Srebotnjak and Miriam Rotkin-Ellman, *Drilling in California: Who’s at risk?*, NATURAL RESOURCES DEFENSE COUNCIL, (Oct. 2014, 4:00 PM), <https://www.nrdc.org/sites/default/files/california-fracking-risks-report.pdf>.

⁸ *Id.*

⁹ 14 C.C.R. § 15126.6(a)

¹⁰ 14 C.C.R. § 15126.6(f)

court will reject an alternatives analysis when an alternative that would reduce significant impacts and achieve most project objectives is excluded from the analysis and fails to include a reasonable explanation of the decision to exclude that alternative.¹¹

Below are a few of the stated objectives listed in the Draft Blueprint. These objectives can be achieved with the implementation of a statewide setback for all oil and gas operations in the state.

1. Provide the criteria necessary for community emissions reduction programs to achieve the requirements of AB 617 as set out in the Health and Safety Code;¹²
2. Provide other measures to ensure the success of the Program, which include regulatory measures that CARB could undertake using its authorities, funding programs, a statewide emission reporting system, a technology clearinghouse, and other resources as described in Chapter 2, Section C of this Draft EA;
3. Further the objectives set forth in AB 617 to support a reduction of emissions of Toxic Air Contaminates (“TACs”) and criteria air pollutants in communities affected by a high cumulative exposure burden; and
4. Develop a strategy that is consistent with and meets the goals of AB 617.

Most significantly, the implementation of a statewide setback on all oil and gas operation fits squarely within the objective to provide regulatory measures that ARB could undertake using its authorities. As mentioned in detail in CRPE’s letter to ARB to implement recommendations of the California Council on Science and Technology regarding oil and gas extraction operations, the implementation of a statewide setback is within ARB’s legal authority. ARB has the authority given the inaction of local and regional authorities to protect public health from the impacts of oil and gas extraction operations.¹³ Moreover, implementation is consistent with ARB’s mission: to promote and protect public health, welfare and ecological resources through the effective and efficient reduction of air pollutants.

Additionally, the implementation of a statewide setback furthers the objective set forth in AB 617 to support a reduction of emission of TACs and criteria air pollutants in communities affected by a high cumulative exposure burden. A variety of TACs are released from well stimulation activities. Key TACs include VOCs or fugitive hydrocarbon emissions, PM, and emission of substances used in hydraulic fracturing fluids.¹⁴ Emissions of VOCs from oil and gas facilities are causing elevated ozone levels and exposures to toxic pollutants like benzene – a carcinogen classified as a TAC.¹² Research links pollution from fracking to unhealthy levels of

¹¹ Ctr. for Biological Diversity v. Cty. of San Bernardino (2010) 185 Cal.App.4th 866

¹² See Cal. Health & Safety Code § 44391.2

¹³ Cal. Health and Safety Code § 39002

¹⁴ An Independent Scientific Assessment of Well Stimulation in California: An Examination of Hydraulic Fracturing and Acid Stimulations in the Oil and Gas Industry, CALIFORNIA COUNCIL ON SCIENCE & TECHNOLOGY, <http://ccst.us/publications/2015/2015SB4summary.pdf>

¹² Just the Fracking Facts, SIERRA CLUB, <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/sierra-club-california/PDFs/CA%20JustTheFrackingFacts.pdf>

toxic air contaminants. Exposure to this pollution can cause eye, nose, and throat irritation, respiratory illnesses, central nervous system damage, birth defects, cancer, or premature death.¹³

II. The EA Fails to Include an Adequate Description of the Environmental Setting

ARB failed to include an adequate description of the environmental setting because it failed to discuss such a large pollution source that disproportionately impacts disadvantaged communities. Once a lead agency determines that an EIR is required, two tasks are fundamental — preparing an accurate, stable, and finite description of the proposed project, and describing the environmental setting. When describing a project’s environmental setting, CEQA mandates that a description of the physical environmental conditions in the vicinity of the project, as they exist at the time ... environmental analysis is commenced.¹⁵ This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

CEQA states the baseline for determining the significance of environmental impacts would normally be the existing conditions at the time the environmental review is initiated.¹⁴ In order to deliver an accurate description of the baseline conditions, ARB must include an accurate description of the oil and gas operations in California, specifically focusing on the impact on communities AB 617 intends to improve.

A study done by the Natural Resources Defense Council found 84,434 active and new oil and gas wells in California.¹⁶ More than a third of the 5.4 million people living within a mile of one or more oil and gas wells, 1.8 million (mainly in Los Angeles and Kern Counties), also live in areas identified by CalEnviroScreen 2.0 as most burdened by environmental pollution. Excluding the predominant polluters in Los Angeles and Kern Counties is especially egregious since these two areas are the areas in California with the most disadvantaged census tracts as measured by CalEnviroScreen 2.0. Kern County and Los Angeles County top the charts with total well counts of 63,430 and 6,065, respectively.¹⁷

In Los Angeles County, 580,000 people live within a quarter and gas well(s) are mile of 5,715 active and 350 newly permitted oil and gas wells. At a one mile distance the number grows to 3.5 million (i.e., one third of the County’s population), nearly half are Hispanic/Latino. Ninety-seven of Los Angeles County’s 855 census tracts with the highest environmental pollution burden have at least one well for a total number of 1,723 wells (28 percent of the total number of wells in Los Angeles County).¹⁸

¹³ John L. Adgate et al., *Potential Public Health Hazards, Exposures and Health Effects from Unconventional Natural Gas Development*, ENVTL. SCI. AND TECH., (2014).

¹⁵ 14 C.C.R. § 15125(a)

¹⁶ 14 C.C.R. § 15125(a)

¹⁷ Tanja Srebotnjak and Miriam Rotkin-Ellman, *Drilling in California: Who’s at risk?*, NATURAL RESOURCES DEFENSE COUNCIL, (Oct. 2014, 4:00 PM), <https://www.nrdc.org/sites/default/files/california-fracking-risks-report.pdf>.

¹⁸ *Id.*

Kern County produces approximately 75 percent of California's oil and about 58 percent of its natural gas.¹⁹ CalEnviroScreen 2.0 ranks 55 Kern County census tracts, with a population of 330,000, as among the most vulnerable to pollution and this includes many tracts with a high well density. Thirty five percent of people living in Kern County live within one mile of one of the 63,430 oil and gas wells. Hispanic/Latino and African American communities carry a disproportionate environmental pollution burden. Of the approximately 122,000 people living close to oil and gas wells and suffering the most health threats from pollution as measured by CalEnviroScreen 2.0, nearly 92,000 (76 percent) are people of color. In contrast, the communities less impacted by environmental pollution and not near oil and gas wells are majority white (49 percent).

ARB must include the aforementioned facts regarding oil and gas operations in California in order to give a complete and accurate description of the environmental setting of the Draft Blueprint.

Conclusion

For the reasons set forth above, CRPE urges ARB to remedy the deficiencies in the Draft Environmental Analysis. Further, should ARB decline to consider the proposed alternative above, CRPE expects ARB to explain why further consideration of the alternative was rejected or provide an evaluation of the proposed alternative.²⁰

Thank you for the opportunity to provide comments on this important matter. If you have any questions or concerns, please do not hesitate to contact me. I can be reached at ptorres@crpe-ej.org or at (415) 346-4179 x307.

Sincerely,



Paulina Torres
Staff Attorney

¹⁹ GREATER BAKERSFIELD CHAMBER OF COMMERCE, OIL AND GAS INDUSTRY (September 8, 2014) www.bakersfieldchamber.org/section.asp/csasp/DepartmentID.537/cs/SectionID.1171/csasp.html

²⁰ California Native Plant Society v. City of Santa Cruz (2009) 177 Cal.App.4th 957