



Catherine Reheis-Boyd
President

September 24, 2018

Mr. Richard Corey
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: WSPA Comments on CARB Final Draft Community Air Protection Program Blueprint and Supporting Information (August 2018)

Dear Mr. Corey:

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide comments on the California Air Resources Board (CARB) *Final Draft* Community Air Protection Program Blueprint (Blueprint). 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.

The scope of the information released for public comment underscores the enormity of the tasks facing CARB and the air districts in implementing AB 617. WSPA appreciates CARB's response to our previous comments, reflected in both the Blueprint and Appendices in several areas including:

- **Program focus** - New language emphasizing emissions reductions in "disproportionately burdened communities" (Section II, page 2, Section VIII, page 19) is more consistent with the statutory focus on the subset of communities with "high cumulative exposure burdens" that stand out relative to other communities on a statewide basis.
- **Emissions reduction strategies** - A new reference to "potential" regulations for first year communities (Section III, page 4) helps to clarify that the listed strategies are a menu of options that should be tailored to the specific needs of each community.
- **Public health references** - New language describing the program's core focus on addressing public health risks that may be caused by air pollution and inclusion of the footnote from CARB's February Concept Paper describing the many factors that influence community health (Section III, page 5) provide important context for designing emissions reduction programs.
- **Community Steering Committee makeup** - New language specifying individuals with "technical and scientific expertise" and "responsibility for implementing effective solutions for cleaner air" (Section IV, page 6), and multiple references in the Blueprint and Appendices to inclusion of facility managers/workers will help ensure a role for these individuals in the Community Steering Committee process.

- **Implementation strategies** - A new reference to “cost-effective” that appears to apply to all emissions reduction strategies and individual measures considered for an emissions reduction program, consistent with Health and Safety Code § 44391.2(c)(2) (Section IX, page 24).
- **Land use authority** - Section IX includes a new sub-section, “Who Has the Authority to Implement Actions”, which more clearly differentiates land use management roles and decision-making authorities between air quality regulatory agencies and local land use management authorities (pages 24-25).
- **Monitoring** - New language on pages 28, 29 and 30 emphasizes the importance of proper data collection, (QA/QC) analysis, uses and limitations of monitoring technologies and data. We also support CARB’s reference to the need for “action oriented” data in community monitoring plans (page 28). This approach will ensure that the monitoring campaigns are focused on filling data gaps that preclude effective design and implementation of emissions reduction programs and do not become broad brush fishing expeditions.
- **Educational materials for monitoring programs** - We strongly support the requirement to “include educational or informational materials on monitoring equipment, data collection methods, data review, and limitations of data” in community monitoring programs. This educational component should also include a public outreach element to facilitate the broadest possible understanding of community monitoring results (Section X, page 30).

These changes improve the Blueprint as a stand-alone document that more accurately conveys program design features and CARB’s proposed approach to program implementation. However, not all of the Blueprint changes are carried forward into the Appendices. Both the Blueprint and the Appendices also retain stand-alone statements and program features that contradict the above noted changes and conflict with specific statutory requirements. These issues must be resolved to set reasonable expectations among program stakeholders, to avoid any potential confusion and to ensure that program resources are deployed in a manner that will maximize emissions reduction benefits in communities that meet the statutory selection criteria. **Provided below and in the attachments to this letter are general and detailed comments on the Blueprint and supporting information for your consideration.**

Blueprint Still Conflicts with Statutory Requirements

There are several features of the Blueprint, the Appendices and other supporting information that leave prior concerns unresolved or introduce new problems that are likely to undermine program success. An overarching concern is that CARB’s proposals frame an “all feasible measures” approach which encompasses several problematic features:

- Immediate actions in all candidate communities regardless of whether they meet the statutory selection criteria,
- Simultaneous monitoring and emissions reduction programs in the same communities absent adequate analyses demonstrating their eligibility for either,

- Implementing advanced technologies that “provide the greatest emissions reduction potential” or prioritize deployment of zero emissions technologies without reference to cost-effectiveness,
- A minimum suite of strategies prescribed for all emissions reduction programs without regard to their suitability for particular communities, and
- Additional “required” measures that reach well beyond the actual statutory requirements.

These features, discussed in this letter and the attached comments, should either be eliminated or clarified to reflect the systematic, science-based implementation approach required by the statute. This approach necessitates a tighter focus on 1) the most burdened communities on a statewide basis, 2) individual sources that drive the high cumulative exposure burden in those communities and 3) strategies that employ the most cost-effective measures to achieve meaningful emissions reductions in the shortest possible timeframe.

Proposed Changes Introduce New Problems

Lack of analysis supporting year one community recommendations - Neither the Blueprint, nor any of the other documents posted by CARB provide sufficient information supporting CARB’s proposed community selections for year one air monitoring and community emissions reduction programs (CERP). The Blueprint presents only the initial screening criteria for selecting *candidate* communities (Step 2, page 19)¹ and two additional criteria intended to achieve regional diversity and capture a mix of air pollution sources (Step 3, page 20), neither of which are required by the statute and both of which distract from the statutory requirement to focus on the most highly burdened communities. Moreover, in the absence of clear criteria for prioritization of candidate communities, it is difficult to evaluate whether resources are being allocated in the most efficient manner to achieve program benefits in the shortest possible timeframe. CARB should improve transparency in the community selection process by including additional information in the Blueprint, the Appendices and the 2018 Community Recommendations Staff Report describing how candidate communities are prioritized to inform final community selections.

Concurrent development of statewide monitoring plan and selection of year one monitoring communities - A plain reading of the statute indicates that the statewide monitoring plan must inform CARB’s selection of communities for monitoring programs. Health & Safety Code § 42705.5(c) states:

*“Based on **findings and recommendations in the monitoring plan** prepared pursuant to subdivision (b), the state board shall **select, concurrent with the monitoring plan**, in consultation with the districts and based on an assessment of the locations of sensitive receptors and disadvantaged communities, **the highest priority locations** around the state to deploy community air monitoring systems ...” (emphasis added)*

¹ The “assessment and identification” described in the statute at Health and Safety Code § 44391.2(b)(1) describes a screening process that is intended to identify *candidate* communities for further prioritization and *potential* selection. Actual selection of communities for an emissions reduction program requires further analysis pursuant to subsections (b)(2-4) to determine whether a candidate community is sufficiently well characterized to support development of an emissions reduction program.

CARB is required to prepare the monitoring plan and select communities concurrently, with both tasks to be completed by October 1, 2018. Subdivision (b) requires CARB to include information in the monitoring plan “regarding the availability and effectiveness of toxic air contaminant and criteria air pollutant advanced sensing monitoring technologies and existing community air monitoring systems ...” which suggests the monitoring plan must provide enough detail to recommend monitoring methods and equipment appropriate for the various emissions sources within the selected communities. Yet there is no publicly available information indicating CARB has completed the monitoring plan tasks necessary to support its year one community recommendations. The “statewide monitoring plan” described in the Blueprint is merely an outline of requirements for a future monitoring plan. Absent additional information, it appears CARB intends to defer to the air districts and the Community Steering Committees (CSC) to translate its outline into actual community-specific monitoring plans. This approach fails to satisfy the statutory requirement that the statewide monitoring plan must inform CARB’s selection of communities for AB 617 monitoring programs, including year one communities.

Concurrent development of statewide strategy and selection of year one emissions reduction program communities - Health and Safety Code § 44391.2(b) requires the statewide strategy to include the four elements specified in subdivisions 1-4:

1. Assessment and identification of communities with high cumulative exposure burdens (effectively a screening process to identify candidate communities);
2. A methodology for identifying contributing sources and estimating their relative contribution to elevated exposure (source attribution);
3. An assessment of the need for air districts to update and implement risk reduction audit and emissions reduction plans developed pursuant to the Air Toxics Hot Spots Act (AB 2588) “for any facility to achieve emissions reductions commensurate with its relative contribution if the facility’s emissions either cause or significantly contribute to a material impact on a sensitive receptor location or disadvantaged community”; and
4. An assessment of existing and available measures for reducing emissions from contributing sources.

Subdivision (c)(1) requires CARB to select year one communities for emissions reduction programs concurrent with the statewide strategy. Subdivisions (b)(1) through (b)(4) are interdependent – all four elements need to be completed to inform CARB’s year one selections.

Subdivision (b)(2) requires an estimate of the relative contributions of emissions sources or categories of sources to the elevated exposure in communities identified pursuant to subdivision (b)(1). Neither CARB’s Blueprint and Appendices, nor its 2018 Community Recommendations Staff Report make any reference to relative source contributions. While the South Coast Air Quality Management District’s (SCAQMD) final “Community Recommendations for AB 617 Implementation” report does provide some information on apportionment of emissions at the broad source category level, it does not include any source apportionment based on exposure in the identified communities. Emissions do not necessarily correlate to exposure. Rather, exposure is influenced by several factors including proximity to emissions sources, dispersion of pollutants, exposure frequency and duration. Neither CARB nor SCAQMD have

provided any analysis or estimates of exposures to the pollutants of concern in the identified communities. Without this information, CARB cannot select communities with the highest cumulative exposure burdens or provide recommendations for emissions reduction measures that would meaningfully reduce those exposures. To achieve cost-effective emissions reductions (required by subdivision (c)(2)), and to ensure the environmental and economic sustainability of CERPs, the focus must be on the individual sources whose emissions contribute materially to the community exposure burden.

Subdivision (b)(3) requires CARB to determine whether a facility's AB 2588 risk reduction audit or emissions reduction plan should be updated and implemented by the air district to achieve emissions reductions commensurate with its relative contribution to the cumulative exposure burden, based on available information identified pursuant to subdivision (b)(1). Here the statute is clear that source attribution analysis is necessary to determine the relative contribution of certain individual sources and not just to categories of sources. This code section also requires a determination of the materiality of individual source contributions. Indiscriminant application of emissions reduction strategies to de minimis or low risk sources will not result in cost-effective reduction of the high cumulative exposure burden in the community.

Subdivision (b)(4) requires an assessment of existing and available measures for reducing emissions from the contributing sources or categories of sources identified pursuant to (b)(2). This language indicates that the assessment of control technologies would apply to both individual sources and to source categories (e.g., mobile or large area sources). The required assessment must include any individual source (facility) that contributes to the high cumulative exposure burden in the community. Moreover, without an analysis of source attribution at the individual source level, air districts will not be able to identify the full suite of cost-effective measures necessary to define, much less achieve, emissions reduction targets in the selected community.

This analysis demonstrates that CARB's apparent decision to select year one communities for emissions reduction programs based only on the screening assessment and identification of candidate communities pursuant to subdivision (b)(1) is incorrect. The statewide strategy clearly requires all four elements, and any reasonable assessment of community "readiness" for a CERP must include an evaluation of all four elements to inform CARB's selection of year one communities. Moreover, this baseline information, which is further defined in Appendix B starting at page B-10, is necessary to ensure that CERPs target the correct sources and will yield meaningful benefits in the community. If ARB has obtained the required information and has completed a preliminary analysis to support its year one recommendations, that work should be evident in the materials released for public review.

Absent this information, CARB's proposed action deprives stakeholders of meaningful opportunity to engage in the development of the statewide strategy and the community selection process. While we recognize the statute provides a very short window to develop the statewide strategy and select year one communities, that circumstance does not excuse CARB of its duty to fully comply with the statute. Proceeding on this path would set a harmful precedent for industries located in communities selected in subsequent years. It also casts doubt on CARB's ability to demonstrate that these initial program decisions satisfy the requirements of the California Administrative Procedures Act. Certainly the proposed materials raise issues regarding lack of clarity, vague or misdirected lines of authority for CARB, the air districts and the Community Steering Committees, and a truncated ad-hoc administrative process that impedes meaningful stakeholder participation.

Simultaneous implementation of monitoring and emissions reduction programs - The Blueprint requires air districts to “deploy monitoring in first-year communities selected for community air monitoring” by July 2019, and “adopt programs in first-year communities selected for community emissions reduction programs” by October 2019. A three-month timeframe between initiating air monitoring and adoption of an emissions reduction program is inadequate, especially in the context of CARB’s year one recommendations to develop both monitoring and emission reduction programs in seven of its ten recommended communities. It will not allow for time series air monitoring across a relevant range of conditions, analysis of monitoring results, required source attribution analysis, or use of this information to inform the design of an effective CERP. If a community is sufficiently well characterized to support a CERP, then any additional community monitoring should be developed as an element of the CERP for the sole purpose of tracking progress toward defined emissions reduction targets. The monitoring program should not be developed independently of the CERP or ahead of the CERP, unless the purpose of the program is to fill data gaps that preclude the analyses required by Health and Safety Code § 44391.2(b)(1-4). In these cases, the community is not ready for a CERP and should begin with a stand-alone monitoring program.

Data deficiencies argue strongly against parallel implementation of community monitoring and emissions reduction programs, since the additional data generated by the monitoring program is likely to impact the design of the emissions reduction program. Making mid-stream adjustments to the CERP based on information that should have been available at the outset of the program is likely to result in inefficient allocation of air district resources and irreparably harm some sources subject to initial emissions reduction requirements based on inadequate information.

Delegation of authority to Community Steering Committees - CARB included a new paragraph on page 20 under “Selection of Communities” stating that final community boundaries will be defined by Community Steering Committees (CSC). As we discuss in our attached comments on the Appendices and the 2018 Community Recommendations Staff Report, this proposal is inconsistent with the statutory language which envisions a consultative role for AB 617 program stakeholders² and will create practical impediments in the CSC process. Among other challenges, it will be difficult to determine who should participate on a CSC if the community boundaries are not set in advance of creating the CSC. This problem will be most pronounced for any facility or business on the fringes of the areas identified by CARB and the air districts, including facilities “directly surrounding” the community. No source should be subject to a CERP that does not have the opportunity to participate in the program design process. Moreover, if the community boundaries cannot be clearly defined at the outset of this process, then the community is not sufficiently well-characterized to support a CERP. In these cases, the first step should be to design a monitoring program that will fill the data gaps which preclude the analyses required by the statute.

To address these concerns, the Blueprint should be amended to require designation of community boundaries at the outset of the CERP process, and the CSC should be open to all sources that contribute materially to the high cumulative exposure burden in the community based on monitoring data and source attribution analysis.

² Health and Safety Code § 42705.5(b) and 44391.2 (b).

Advisory Role of Community Steering Committees – The Blueprint and Appendices should explicitly state that the role of CSCs in AB 617 implementation is strictly advisory. It should also specify which regulatory agencies (CARB or air districts) have decision making authority for particular program elements, consistent with their statutorily-designated requirements.

BARCT reviews - The discussion of stationary source measures in Section VII on page 15 of the Blueprint now includes a bullet on BARCT retrofits stating that a goal of “implementing” BARCT on certain sources by December 31, 2023, but fails to clarify that “implementation” involves the entire regulatory process required by Health and Safety Code § 40920.6. This process is complex, source-specific and time-consuming. The air district is required to identify potential control options for the particular emissions unit subject to the determination, an evaluation of the cost-effectiveness of each option and the incremental cost effectiveness between each option, a public meeting to discuss the district’s analysis and a presentation of findings at a public hearing supporting the district’s recommended control option. For some sources, this process will inevitably extend beyond the AB 617 BARCT implementation deadline.

CARB should discuss these statutory requirements in the Blueprint and the Appendices and specify that “implementation” means BARCT reviews for designated facilities should be in process by December 31, 2023, but that actual installation and operation of new retrofit technology is likely to occur at a later date. This interpretation is implied in the language CARB uses to describe the BARCT review process in its “Summary of Milestones” on page 9.³ Inconsistencies and lack of specificity in the BARCT language in both documents will lead to conflicting interpretations that will complicate the implementation process.

The balance of this letter provides detailed comments on the Blueprint and Appendices (Attachment 1), CARB’s 2018 Community Recommendations Staff Report and related appendices (Attachment 2), CARB’s Recommended Source Attribution Technical Approaches (Attachments 3 and 4) and on CARB’s Final Environmental Analysis for the proposed Blueprint and 2018 Community Recommendations (Attachment 5). Attachment 5 responds to CARB’s notice for the September 27, 2018 meeting which states that the changes from the Draft Environmental Analysis (EA) to the Final EA did not contain significant new information that would trigger recirculation pursuant to CEQA Guidelines 15088.5 “and therefore, CARB staff will not be accepting additional comments on the Draft Environmental Analysis during this comment period.”⁴

These comments are submitted for inclusion in the record for both the Final EA and CARB’s action to select the initial communities for Blueprint implementation. We also note that CARB’s online Resource Center is still incomplete, which complicates review and comment on its specific features and overall adequacy. However, since the Resource Center is designed to evolve over time, we expect there will be ongoing opportunities to provide input on Resource Center elements as new information is posted. We request clarification in the record for this proceeding that such opportunities will be available to program stakeholders moving forward.

³ “By January 2019: Air districts develop expedited schedules for implementing best available retrofit control technologies, which must be implemented by the end of 2023.”

⁴ Notice of Public Meeting to Consider Assembly Bill 617 Community Air Projection Program – Community Selection and Program Requirements, p. 3.

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WSPA appreciates the CARB's consideration of these comments. If you have any questions, please contact me at this office, or Tiffany Roberts of my staff at (916) 325-3088 or by e-mail at troberts@wspa.org.

Sincerely,

A handwritten signature in blue ink that reads "Catherine A. Healy-Boyd". The signature is fluid and cursive, with the first name "Catherine" being the most prominent.

Attachments

cc: Karen Magliano – CARB
Heather Arias – CARB
Vernon Hughes – CARB
Tiffany Roberts - WSPA