

November 16, 2020

Mary Nichols, Chair,
California Air Resources Board
Sacramento CA

Submitted electronically for Items 20-12-2 and 20-12-3

Dear Chair Nichols,

We are writing to offer our comments on the proposed amendments to the Criteria and Toxics Reporting (CTR) rules and to the Emissions Inventory Criteria Document (EICD) Report before you for hearing on November 19. This letter addresses both topics.

These comments are submitted by environmental justice, environmental health, and clean air groups and individuals supporting protection of public health and the environment and equity for all.

The rules affect reporting, assessment, and management of stationary sources of air toxics in communities in California, and that is the focus of these comments.

- For the most part, the amendments improve the regulations and are important to adopt now. **We support adoption of these rules by the Board with one change.**
- **We ask the Board to adopt the complete list of air toxics included in the EICD Report for the CTR as well.**

We ask the Board to direct staff to take two further actions to supplement the amendments:

- **Institutionalize future updates of the lists of chemicals considered as air toxics; and**
- **Identify any sources of variability in practices by local air districts that contribute to inconsistencies in the CTR baseline of facilities and report back to the Board.**

We note that much more will need to be done to support equitable protection of communities and root out structural racism.

We ask the Board to consider these additional actions today:

- **create the appropriate focus at the community scale especially for stationary air toxics sources and to increase the role of communities in the air toxics program; and**
- **move more rapidly to emissions reductions and zero discharges into highly impacted communities.**

Detailed comments are attached. Thank you for your consideration of these comments.

Submitted by:

Martha Dina Arguello
Executive Director

Physicians for Social Responsibility-LA

Neena Mohan

Climate Justice Program Associate

California Environmental Justice Alliance and CEJA Action

Bill Magavern

Policy Director

Coalition for Clean Air

Janet Nudelman

Director of Program and Policy

Breast Cancer Prevention Partners

Robert M. Gould, MD

President

San Francisco Bay Physicians for Social Responsibility

Will Barrett

Director, Clean Air Advocacy

American Lung Association in California

Amy D Kyle, PhD MPH

Environmental Health Scientist (retired)

School of Public Health, University of California Berkeley

**Detailed Comments on the Proposed Amendments to the
Criteria and Toxics Reporting (CTR) rule and the
Emissions Inventory Criteria Document (EICD) Report under the
AB 2588 “Hot Spots” Air Toxics Program**

These comments are directed to the California Air Resources Board for its hearings on changes proposed for the Criteria and Toxics Reporting (CTR) rule and to the Emissions Inventory Criteria Document (EICD) Report for the AB 2588 “Hot Spots” air toxics program ¹ on November 19, 2020. These comments are submitted by environmental justice, environmental health, and clean air groups and individuals supporting protection of public health and the environment and equity for all.

Both of these rules affect several aspects of reporting, assessment, and management of air toxics from stationary sources released in and around communities in California, and that is the focus of these comments.

The proposal has important positive aspects and should be adopted -- with minor amendments and additional direction to staff.

1. Update outdated lists of air toxics

The substances considered by the State of California to be toxic air contaminants were identified in the 1980s under AB 1807 (Tanner, 1983). A decade later, hazardous air pollutants listed in the federal Clean Air Act were added. Though a few substances were added since, the list has never been reviewed and updated. This is troubling, as the scope of the program is defined in large part by what substances are covered. Practices and materials change, so analyses based on old lists cannot be seen as credible.

To rectify this, ARB staff conducted a review of the list of air toxics in conjunction with the Scientific Review Panel. They produced an updated list that considers scientific advances of the last thirty years and reflects more current chemical use

The EICD amendments incorporate the revised list (shown in Appendix A to Appendix B) ² in the proposed rule. **We encourage the Board to adopt this as presented.**

¹Amendments to the Emission Inventory Criteria and Guidelines Report for the Air Toxics “Hot Spots” Program <https://ww2.arb.ca.gov/rulemaking/2020/hotspots2020>

² This page last reviewed September 29, 2020. Amendments to the Emission Inventory Criteria and Guidelines Report for the Air Toxics “Hot Spots” Program. Appendix B: Proposed Amendments to the Emission Inventory Criteria and Guidelines Report (EICG Report) and its Appendices. **EICG Report: Appendix A - List of Substances. (Accessed Nov 9, 2020).** Linked through <https://ww2.arb.ca.gov/rulemaking/2020/hotspots2020> (scroll down to download PDF).

The CTR includes part of this revision, but not all of it. A current and correct list is as important to the CTR as it is to the EICD. **We ask the Board to incorporate the same, complete version of the substances list into the CTR on November 19.**

2. Update Commercial Sectors

The sectors that are to be considered as possible emitters of toxic air contaminants have also been updated based in part on business records to a more realistic version of commerce today. The review has adapted reporting thresholds to be more cognizant of scientific understanding, including the concerns for children's environmental health reflected in SB 25. **We encourage the Board to adopt this element of the proposal.**

3. Include Agricultural Sources

California communities deserve data systems and assessment methods that take account of the pollution burden that they face rather than institutional turf. The CTR rule adds agricultural exclusions and does not address this concern. **We encourage the Board to develop systems that consider the pollutants that communities actually face and not exclude important sources particularly agricultural sources.** Rather, coordination with other parts of Cal EPA would be appropriate.

4. Direct Staff to Keep Essential Elements More Current

It has been a major effort to update the lists of chemicals and sectors. We can expect that the world will continue to evolve and change. Because the air toxics program is defined to a great degree by the substances and sectors, as lists become outdated, so does the program.

We ask the Board to direct the staff to design an approach to provide on-going, scientifically credible updates to these crucial elements of the program, in consultation with the Scientific Review Panel. Updates could come to the Board on some regular basis, perhaps biennially.

5. Review the Implications of Relying on Existing Practices and Permits to Define Facilities in the CTR

We support the CTR rule in many respects. One recurring concern, however, is that it will bring variability in permitting that has developed over the last decades into the baseline for the State inventory.

We know that there are differences among the districts in terms of what is permitted. We would expect that there could also be patterns of differing attention among communities of different background. Efforts should be made to remove any patterns reflecting structural

racism from the new inventory that is to be statewide and uniform. **We ask the Board to analyze the approach it has taken and identify any issues that may arise from it.**

Specifically, we ask the Board to direct the Staff to Identify any sources of variability in practices by local air districts that contribute to inconsistencies in the CTR baseline of facilities and report back to the Board. This is the time to ensure that the new system does not incorporate past practices that contribute to disproportionate impacts on communities.

Further Actions to Redress Inequities

6. Address the Community Scale for Air Toxics

The State has embarked on an ambitious program to rectify the disproportionate burden of air pollution in communities in a Community Air Protection Program ³ established under AB 617. While this is new, it relies on data from the air toxics program and CTR.

One of the reasons that a new focus on community air protection is needed is that existing programs have focused to a great degree on regional scale and on individual facilities. This is especially true for stationary sources of air toxics.

Even under AB 2588, which was intended to address risks to communities, the focus has been on individual facilities. A facility must fall under a defined risk threshold. But there is no limit for multiple facilities in close proximity, even in highly impacted communities. This is a source of structural racism, as well as a scientific flaw.

The proposed amendments for the EICD adds new guidance that allows local districts to consider community scale impacts of the air toxics facilities. (The document uses the term “population scale.”) It also allows the districts to consider other factors that are scientifically important. However, it is simply as a suggestion to the districts that they may adopt or ignore.

We ask that CARB take an additional step to establish community scale assessment as a regular component of the toxics program and engage with the districts to make it work, in cooperation with the communities, and redress inequities.

7. Get to Emissions Reductions Sooner Rather than Later

The amendments before you today are primarily focused on reporting and tracking emissions as a way to move toward proper management of air toxics. As proposed, this will take many years.

In the meantime, we ask that CARB direct staff to develop a parallel path to identify sectors of concern and accelerate progress towards emission reductions.

³ California Air Resources Board. Community Air Protection. <https://ww2.arb.ca.gov/capp>

This will require that sectors with potential for greater risks be identified and assessment of alternate strategies to reduce emissions be considered. This should not be limited to available technologies. In highly impacted communities, available technologies may not be sufficient.

This is consistent with other areas of air pollution control. CARB has not settled for best available technologies for vehicles, and climate and air pollution programs would not ever succeed if they did. Now it is time to allow look for ways to reduce emissions and move toward zero discharge strategies for highly impacted urban environments that fundamentally are unsuited to emissions of highly toxic materials.