



July 23, 2018

To: CARB Community Air Protection Program

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RE: **CAPP Draft Blueprint**

On behalf of the Chemical Industry Council of California (CICC), I would like to offer the following comments regarding the above-referenced proposal. Our association represents a range of companies concerned with various aspects of chemical manufacturing, distribution and use within California. We appreciate the opportunity to offer our perspective as you approach the challenge of implementing the pioneering demands of AB 617.

Overriding Concern: The challenge of sending the right signals

AB 617 is clearly aimed at establishing a sense of protection and control for disadvantaged communities that have been suffering disproportionate environmental insults as a result of air pollution. However, while it is focused on these “environmental justice” communities, neither these communities nor this new law exist in isolation. Other laws also obligate and constrain CARB, and other units of government also have jurisdiction within and around these designated EJ communities. The unique approach to air pollution challenges being fashioned in response to this law has no parallels from which stakeholders both within and around these communities can arrive at common expectations.

The strategy to implement AB 617 – the Blueprint – must therefore not only frame steps that will be taken to advance mandates of the law, but at the same time make sure expectations of the law are tempered by awareness of other relevant laws and authorities, as well as practical and technical realities. That is the reason why the bulk of CICC’s comments on the Conceptual Draft focused on the necessity for clear signals on both fronts. Many of those specific suggestions do seem to be reflected directly or conceptually in this draft. We believe that does strengthen this document. So, too, do the appendices, by providing more explicit direction on the elements of the program. With that, this draft should enable much more fulsome consideration of the complex challenges posed by this unique statute.

Points Requiring Further Clarification

In viewing the Blueprint and Appendices through the lens of CICC’s prior comments, though, we find a few points that still warrant specific mention.

BARCT Acceleration: One key to accomplishing the reduction in air impacts on designated communities is the air district’s adoption of an expedited schedule for application of Best Available Retrofit Control Technology (BARCT). But while this can aid the process for certain pollutants, the aim of this law is to reduce the pollutant loadings to which the designated communities are inordinately subjected. For many of the communities, those pollutants are regional mobile sources, raising the question of the appropriateness of subjecting most facilities to accelerated BARCT. The current Blueprint has some extremely important and appropriate qualifications on that mandate. In particular, the Blueprint adds a clarification that seems to put the local district in the position of mediating which sources are subject to

the acceleration, rather than having a blanket mandate apply to any facility on an existing BARCT schedule. This is entirely reasonable, especially considering that the BARCT pollutant(s) may not necessarily be the ones for which the designated community is experiencing an excessive burden:

The community emissions reduction programs must identify which sources in the community will be subject to these requirements and ensure deployment of BARCT measures as applicable within the community. **C-18 – This should be Retained**

This is further amplified by citing the obligations to which the Districts are bound, in the form of mandates for explicit consideration prior to adopting a specific BARCT schedule:

Prior to adopting the schedule, the air district must hold a public meeting and take into account: (1) the local public health and clean air benefits to the surrounding community; (2) the cost-effectiveness of each control option; and (3) the air quality and attainment benefits of each control option. **D-12 - This should be Retained**

Another point regarding BARCT implementation was made in CICC comments on the Conceptual Draft. It is simply to urge the inclusion of a sentence sending the signal that it should not be assumed that any particular source can be subjected to BARCT. In some cases, it may be difficult, if not impossible, to define an applicable, generalized BARCT standard. In the chemical industry, for example, it is not unusual to find unique equipment or processes (often proprietary) utilized in the manufacture of particular chemicals or related products. In such cases it may even be the case that utilization of that specific equipment or process is vital to the value of the production in question and perhaps even to the viability of the facility itself. In the context of evaluating BARCT applicability, such circumstances need to be taken explicitly into account by the District. As a clear signal anticipating this, we therefore recommend the following be added as a footnote to the initial reference to BARCT:

In some cases where unique equipment or processes are utilized in a particular manufacturing circumstance, it may not be possible or feasible to apply a generalized BARCT standard (or applicable BACT or T-BACT in the case of new additions). **This should be Added**

Industry Involvement: AB 617 expressly directs that the State Board is to develop statewide strategies for both enhanced monitoring and reducing emissions “in consultation with the Scientific Review Panel on Toxic Air Line Contaminants, the districts, the Office of Environmental Health Hazard Assessment, environmental justice organizations, **affected industry**, and other interested stakeholders” (emphasis added). The inclusion of industry could have been subsumed under “interested stakeholders”. The law does not do so, however, and therefore this express recognition should consistently be explicitly reflected throughout the document.

The Draft Blueprint, though, suffers from an almost systemic avoidance of mentioning “affected industry” in almost all aspects of the program development and community engagement. Indeed, despite an abundance of focus on broad community participation in virtually all areas of the Program, there is just one mention of collaboration with industry:

CARB is committed to ongoing collaboration with communities, air districts, affected industry, and other stakeholders... **A-7 emphasis added**

Other mentions of affected industry throughout the document are confined to references of compliance obligations and the like. But there are multiple contexts in which community collaboration is invited. In all of these, some reference to allow for affected industry should be expressly included. **Following is a suggested approach to amending language. Some such language should be inserted throughout the document where similar iterative stakeholder references occur:**

To facilitate this community-driven process, air districts must work with selected communities to form a community steering committee, comprised primarily of community members, which includes participants who live, work, ~~or~~-own businesses, or who represent affected industry, within the community. Other participants include air district staff and additional participants from schools, land use planning agencies, transportation agencies, local health departments, and academic researchers as appropriate. E-7

Likewise, in the Draft Blueprint's extensive treatment of potential "community monitoring programs", it seems a broad range of input and consultation is invited, but affected industry is not explicitly mentioned. For example:

The process for identifying specific monitoring areas that will achieve the monitoring objective should be based on factors such as: public input from community members, review of existing air monitoring data, locations of source emissions, locations of sensitive populations, input from affected industry, and results from air quality modeling. E-12

In this latter example, no one knows their sites better than the facility managers and their EHS Directors. And many facilities have their own monitoring programs, as well as intimate knowledge of potential pollutants. That should not be irrelevant to the process, even if it is assumed that the District already has access to such information. Unfortunately, even when it comes to monitoring results, there is no explicit mention of affected industry.

Adding to the import of that point is the reality that more and more industries are already making efforts to engage their surrounding communities. The Responsible Care program that many segments of the chemical industry subscribe to, for example, obligates them to maintain programs of "Community Awareness and Emergency Response" (CAER), to enhance relations with and protection of surrounding communities. Such proactive initiatives should be expressly encouraged, as should the voluntary engagement of industry members as part of the community collaboration and partnership called for repeatedly in the document.

Involvement of Local Governments: Local governments are largely missing among the array of stakeholders actively focused upon EJ and the range of issues to which the AB 617 is attending. This is ironic, because (as the Draft Blueprint points out) they control the land use that is often at issue in these concerns, and that will have to be an element as effort is made to address them. The Draft does send clear and appropriate signals that they now are expected and have the opportunity to become directly involved. For example:

CARB recognizes that, in many cases, the authority for implementing these goals will reside with local government agencies. Air districts (and CARB where appropriate) will be responsible for identifying appropriate strategies and approaches for actively engaging with these agencies to promote adoption of these goals. C-16 - This should be Retained

Requirements that community emissions reduction programs include local government agencies on community steering committees, identify land use and transportation strategies that could reduce exposure within the community, and include specific engagement mechanisms to advocate for these strategies. D-2 - This should be Retained

However, local governments are conspicuous by their absence from the front-end of this process: the identification of prospective designated communities. These designated communities will ultimately need to be "re-integrated" into whatever local jurisdictions they are a part of (as will the economic impacts of any subsequent actions). The local jurisdictions responsible for those areas also have knowledge to share, to say nothing of potentially relevant plans and visions for the future. In light of that, **CICC recommends the following amendment to the key statement:**

To create the broad list of communities for inclusion in the Program, CARB staff will solicit recommendations from community organizations, community members, and air districts, and that they solicit and consider comments on communities under consideration from the responsible local governmental jurisdictions.. B-2

Pollution Reduction Strategies: The Draft Blueprint appropriately makes a point of focusing on considerations of the relative contribution of differing air sources. **CICC strongly endorses the distinctions drawn and the expressed intent to narrow the program focus to those pollutants for which the given community is determined to be suffering from excessive exposure burden.**

In that regard, we also endorse the distinction drawn regarding ozone pollution:

While significant work remains to meet ozone standards in many areas of the State, ozone pollution is driven by regional rather than localized source contributions and is most appropriately addressed through regional air quality improvement efforts like the State Implementation Plan. C 4-5 This should be retained.

Of greater concern is the paragraph that seems to dictate use of the most stringent approaches to emission reduction. **CICC recommends amendments as follows:**

Identify applicable regulatory, enforcement, incentive, and permitting strategies to implement the ~~most stringent~~ approaches for reducing emissions, with a focus on zero emission technologies where feasible. C-3

The reasons for this is simply that the law itself does not prescribe the most stringent approaches. Rather, it mandates that they be evaluated, as recognized in the following later paragraph:

Document the evaluation process undertaken in identifying these measures, which include: Evaluation of the most stringent control limits C-39

Cumulative Air Pollution Burden: The notion of cumulative impact of exposure to multiple chemicals remains a scientific challenge. Two paragraphs of the Draft document therefore drew our attention. **CICC strongly endorses the cautionary language contained in the following, as well as the programmatic direction drawn from that caution:**

Cumulative air pollution exposure impacts are driven by multiple air pollutants, and our understanding of the interactions between pollutants and the potential for synergistic health impacts between air pollutants is still an emerging field of research. Community emissions reduction programs will therefore focus on reducing individual criteria air pollutant and/or toxic air contaminant emissions C-4. This should be Retained

For the same reasons, however, the language below has raised questions. Is the referenced work of this consortium public? ...and will there be an opportunity to review and comment upon it before it becomes integrated into the screening tools?

CARB and the Department of Toxic Substances Control (DTSC) are contracting with a consortium of researchers to provide analytical support to identify appropriate datasets and to develop novel indicators that can be integrated into existing cumulative impacts screening approaches such as CalEnviroScreen. B 7-8

Community Bounds: It is not clear what “ground-rules” are to be observed in “bounding” communities. This becomes important in the context of mandatory reductions of emissions from sources that are

repeatedly referenced as being “within the community”. The industrial hubs that are often at issue in EJ concerns, however, are not typically thought of as being within specific neighborhoods or residential communities such as would spontaneously “arise” for recognition in this process.

Specifically, the draft in several places distinguishes between regional or areawide sources of air pollution and those sources “within” the community (for example in describing the Community Emissions Inventory of page C-12). Importantly, it also makes references in various places to reductions within the community. This implies that the process of accelerating reductions is aimed at sources within the community. There is, however, one sentence that could be interpreted as being open beyond the community. It is:

Develop a strong technical foundation for understanding the sources of air pollution impacting the community. C-3

Further, there is another sentence that implies that boundaries of “communities” are being adjusted, perhaps to encompass the principle industrial actors suspected of contributing to them.

Additional specific information for each community that is a candidate for recommendation, including descriptions of the community’s identifying characteristics and preliminary geographic boundaries. B-4 (emphasis added)

If indeed, boundaries are adjusted to encompass sources, it would seem to be open to complications. Significant industrial hubs, over time, could well become focused upon for inclusion in more than one of their bounding neighborhoods. This would seem to carry a potential for involving more than one local government jurisdiction, and would, of course, put the District and CARB in an awkward position – to say nothing of the prospect of double-counting the emissions from those sources. This warrants clarification.

Community Programs: The monitoring programs are important and it is important that appropriate standards for them be maintained, whether they are district- or community-driven. In that regard, CICC has several more points to make. First, **CICC strongly recommends that the Districts bear responsibility for the validity of the monitoring program outputs, whether from the District or Community programs. We therefore recommend modification of the following:**

*Community members have detailed knowledge and awareness of community issues based on their experience of living and working in the community. Leveraging this knowledge **and that of the District** to define the community-specific need will form the foundation of the entire air monitoring process. E-5*

Once the methods and equipment are selected, defining quality control procedures and data management steps help ensure the resulting data is useful to inform the stated community-specific purpose for air monitoring and all parties can understand how the data was generated. E-6. This should be retained

It should also be noted that there are confusing entries in the 2nd and 3rd paragraphs on page E-4, which should be clarified:

CARB will review air district community air monitoring plans to verify that criteria for each of the 14 elements are met prior to making the data available on the statewide data portal. E-4 (emphasis added)

Although the 14 community air monitoring elements are presented sequentially (Figure 20), air monitoring planning is often an iterative process. E-4 (emphasis added)

One additional note regarding CARB evaluation of the community's emissions programs is to strongly endorse the following admonition:

CARB staff will recommend rejection for community emissions reduction programs that are missing significant elements or are inadequate in their likelihood of delivering emissions reductions within communities. C-32. This should be retained

Finally, CICC has noted the extensive checklists for the various program elements, that CARB staff will be applying in their evaluations. They are quite complete and seem to be quite reasonable in light of the extensive mandates of the law, its pioneering character and the necessity of decentralizing the program in order to enable this type of community effort. It is also very demanding of the regional Districts, however – to the point that it makes quite clear that this over time may well lead to a significant diversion of District resources (to say nothing of the administering CARB staff). It is extremely ambitious.

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