



California Council for Environmental and Economic Balance

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November 16, 2020

Chair Mary Nichols and Member of the Board
California Air Resources Board

Submitted Electronically via <https://www.arb.ca.gov/lispub/comm>

RE: Proposed Amendments to the CTR and AB 2588 EICG Regulations

Dear Chair Nichols,

The members of the California Council for Environmental and Economic Balance (CCEEB) appreciate the opportunity to submit comments on proposed amendments to the Criteria and Toxics Reporting (CTR) Regulation and the AB 2588 Emissions Inventory and Criteria Guidelines (EICG) Regulation. Together, these amendments are the most significant overhaul of emissions reporting in California since 1989 when AB 2588 was first enacted. CCEEB asks the Board to recognize the scale and scope of the proposed amendments, as well as the need for close and supportive coordination with the thirty-five local air districts, which bear shared responsibility for program implementation with the Air Resources Board (ARB).

CCEEB has worked in earnest over the past year with staffs at ARB, the California Air Pollution Control Officers Association (CAPCOA), and the air districts on the proposed amendments. We are also engaged at the South Coast Air Quality Management District and Bay Area Air Quality Management District to bring district reporting programs into alignment with the statewide rules. Our overriding goal – and one we believe is shared by ARB and the districts – has been the establishment of a uniform and transparent statewide system of emissions reporting that provides timely, accurate, and meaningful data to the agencies and public.

The challenge has never been one of intent, as there has been no disagreement over goals. Instead, the challenge is the complexity involved in creating an adaptable framework that can serve the state's needs over time and will be implemented by more than 60,000 facilities on an annual basis in perpetuity. Even though the program is expected to grow and evolve, the framework must be made right from the start. CCEEB believes ARB staff is close, but not quite there yet. A few foundational questions remain, along with many needed technical clarifications. For these reasons, **we respectfully request the Board to direct staff to continue working with CCEEB, the air districts, and other stakeholders** towards resolution of the issues we raise in our letter.

What follows is a more detailed discussion of the reporting rules, organized around three general topics: (1) issues we believe should be addressed or resolved before the rules are made final, (2) other general issues to consider, and (3) recommendations specific to sections of the CTR or EICG rules.

Key Issues Remaining to Be Addressed or Resolved

CCEEB believes the following issues should be resolved or better defined before the rules are made final. While most sit outside specific regulatory language, all are foundational and must be better understood in relation to the proposed rule amendments; that is, successful implementation depends on these issues.

- **Plan for addressing the technical review backlog at OEHHA, the SRP, and ARB.** Health & Safety Code (H&SC) Section (§) 44342 sets forth the statutory requirements that ARB must follow in developing the EICG for facility emissions reporting. Importantly, these include preparation of source testing methods and emissions measurement requirements, as well as specification of acceptable emissions factors and estimation techniques. H&SC § 39660 requires the Office of Environmental Health Hazard Assessment (OEHHA) to evaluate substances for potential health and toxicity effects, with review by the Scientific Review Panel on Toxics Air Contaminants. ARB and OEHHA guidance is needed for subsequent technical evaluation and regulatory control of stationary sources conducted by the air districts.

Even before ARB staff proposed the current amendments, ARB and OEHHA had a backlog of many hundreds of substances. For example, the existing list of substances required for quadrennial reports is less than two hundred (200) substances, or less than fifty percent (50%) of the total Appendix A-I list. The remainder (>300 substances) still needs to be evaluated for purposes of developing test methods and health values. ARB is now proposing to add *thousands*¹ more substances to the Appendix A-I list. Before doing so, CCEEB asks the Board to direct staff to prepare and make public a work plan to prioritize and expedite technical reviews of Appendix A-I substances at ARB, the SRP, and OEHHA.

- **Define interagency process for determining “Best Available” data and methods** for CTR Appendix B-1 and AB 2588 EICG Appendix A-I. Until ARB has developed and approved testing and quantification methods for A-I substances, staff proposes applying “best available” methods and data. CCEEB agrees with this approach, but notes that the process to determine what is, in fact, a “best

¹ Because of the use of the three broad functional groups, the actual number of individual substances being added totals several thousand, not 900. For example, EPA lists 9,252 compounds within the PFAS group alone. See https://comptox.epa.gov/dashboard/chemical_lists/pfasmaster.

available” method has not been defined, nor does either rule specify which agency or agencies are to make these determinations. That is, it is unclear how facilities must work with the local air districts and ARB to quantify emissions for unknown substances with no approved test methods. See CTR §§ 93402, 93404(b)(1)(C)13 and EICG Section II.H.(5).

Ideally, work being done now by CAPCOA and ARB to develop Article 2 of the CTR regulation will provide needed guidelines and requirements for sector-based emissions reporting. Added to this work will be development of substance-specific test methods and health values, as discussed in the point above. Over the interim, CCEEB recommends that ARB direct facilities to work with the respective local air district to make “best available” determinations, since in most cases, the districts will be responsible for reviewing and approving emissions reports. This also expedites development of guidelines, as the districts will be able to assist and augment ARB staff in furthering technical review of appropriate test methods.

For pooled source testing, which we address later in our comments in more detail, CCEEB recommends that ARB be the primary point of contact for groups of facilities within a sector that may be located in more than one air district. If all facilities in the group were in a single air district, then the district would be the primary point of contact and would work in coordination with ARB to review and approve test methods, protocols, and testing results.

- **ARB Electronic Reporting Portal and Data Management Platform.** The e-reporting system and backend data management system will allow districts and facilities to upload emissions data. Users need to understand how the system will be designed so that they can develop compatible reporting platforms and data formats ahead of implementation deadlines for 2022 and 2023 data years. CCEEB requests the Board to direct staff to make public its work plan and timelines for developing and beta testing the e-reporting system, providing as much information as possible on report formats and data transfer specifications.
- **Funding for Air Districts.** The statewide air districts are primarily responsible for outreach and education to reporting facilities, including training for the 60,000 coming into annual reporting for the first time. The districts also need to review and validate reported emissions data, including but not limited to approvals for novel test methods and protocols. While fee increases can be adopted to offset costs in many districts, all are anticipated to face funding shortfalls. Additionally, State funding for AB 617 has been primarily (and appropriately) directed towards identified communities located in only six districts. Funding for statewide expansion of annual reporting warrants separate analysis and consideration by ARB and the Legislature. While funding issues are not a reason to delay the rulemaking, funding realities will dictate the speed and

success by which the districts are able to engage facilities and implement the new requirements. CCEEB recommends that ARB continue discussions with the Legislature and the air districts on funding and resources needs, and make adjustments to the reporting timelines as needed and as appropriate.

- Per- and polyfluoroalkyl substances (PFAS) as a Functional Group.** CCEEB would like further opportunity to discuss with staff the inclusion of the PFAS-related Functional Group in EICG Appendix A-I amendments. While CCEEB understands studies may indicate evidence of health impacts, these studies have focused on contamination of water sources and soil, not on direct inhalation due to airborne emissions. As such, this category of substances is different from other air toxics, where the primary exposure pathway is direct inhalation. CCEEB wishes to understand how air emissions data would be used to estimate water and food-based exposures, the degree to which ARB is coordinating its efforts with other agencies (e.g. the state water board and the Department of Toxics Substances Control, which are also collecting data on the prevalence of PFAS compounds), and the status of agency efforts to develop test and quantification methods for airborne emissions and related health risk estimates. For example, the federal EPA is working towards development of test methods for airborne PFAS-related emissions; CCEEB believes there may be opportunities to draw from EPA efforts.

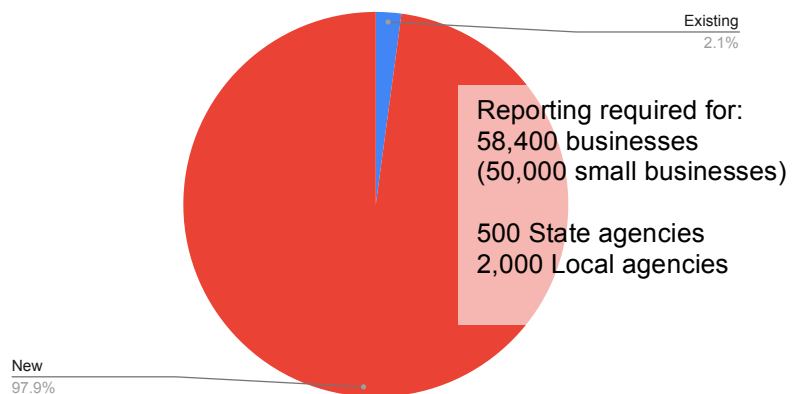
Additionally, we would like to work with ARB staff to understand whether there could be site remediation issues related to the reporting of PFAS-related substances. CCEEB notes that PFAS compounds are ubiquitous in many residential, commercial, and industrial settings, including site cleanups and other environmental control activities. Implications from reporting should be better understood to avoid unintended consequences.

Other General Comments on the Proposed Amendments

Expanded reporting shifts focus *away* from Major Sources and Impacted Communities

The promise of AB 617 and the Criteria and Toxics Reporting (CTR) Regulation was to establish a uniform and transparent annual emissions reporting system for those sources of concern in impacted communities. Importantly, Article 2 of the CTR must be developed by ARB and CAPCOA to provide sector-specific

60,900 Facilities Required to Report Annually



guidelines that would enable reporting consistency and comparisons of sources across districts – something that *cannot* currently be done due to inconsistent reporting periods and quantification methods.

CCEEB has always recommended that ARB and the air districts focus initial efforts on statewide reporting consistency for major sources, as identified in AB 617.² Sector-specific approaches allow the major sources to “test drive” new reporting requirements and data tracking systems, and to develop test and quantification methods that can be adapted for use by other sectors at lower costs and in quicker time. If we focus our efforts and get it “right” for the major sources, CCEEB believes the entire program will be more likely to succeed.

By shifting agency focus away from work that remains to be done for major sources, including development of consistent guidelines and test methods, ARB and district attention will be redirected to the tens of thousands of small area sources coming into annual reporting for the first time, and without regard to where these facilities are located and whether or not they are in impacted communities. The proposed amendments represent a 47-fold increase in who must report (from 1,300 to 60,900), based on a 63-fold increase in applicability stringency (from 250 tons per year of criteria pollutant emissions to 4 tons per year). Although abbreviated reporting in the CTR rule is helpful, it only applies to 24,000 facilities (or 40 percent) and does not address AB 2588 requirements.

Ultimately, this recasting of priorities is within the Board’s discretion, and CCEEB members are required to report either way. However, it should be acknowledged by the Board that, in adopting changes that greatly expand who reports, it is slowing efforts to bring about the consistency and uniformity for major stationary sources.

Board and public should understand scope of new reportable substances

No one can estimate the full scope of the statewide reporting expansion in terms of added Appendix A-I substances. For example, ARB staff cannot say exactly how many new substances will need to be reported, or by whom. Instead, air districts must figure out the “who” and facilities³ must determine the “what” (at risk of violation should they fail). To help visualize the magnitude of change and put it in some sort of context, consider the following quick estimate, provided here only for purposes of illustration -

60,900 facilities x 10 sources* x 1,000 substances = 609 million possible new data points**

** Number of sources at a facility will vary from 1 to >100*

*** Number of individual substances emitted from a source is refined over time, but facilities will initially need to consider potential to emit for each one*

² See CCEEB letter to ARB on CTR 15-day Changes, dated March 29, 2019.

³ Most are unaware of this regulatory proceeding and have not had opportunity to engage with ARB.

For almost all, no test or quantification method exists, and this work will need to be done on a source-by-source basis. In addition, ARB will need to work with the districts and facilities to consolidate, synthesize, and make available annual reported data for public access, including work to communicate emissions in ways that are transparent, timely, and meaningful. CCEEB believes there has been inadequate discussion with public stakeholders and researchers about how the end results should be presented.

Using CTR and EICG to Gather Data on Non-Stationary Sources

Section (§) 93404(2)(C) of the CTR and Section VIII.G. of the EICG require extensive reporting for portable equipment and mobile sources, respectively, that go well beyond statutory requirements to report stationary source emissions at a facility. In both cases, sources owned and operated by third parties would become the responsibility of a facility, even if the facility has little or no control over those sources.

CCEEB agrees that emissions data for mobile sources and portable equipment are lacking, and that data collection for these sources is far behind stationary source reporting. However, we disagree with the use of the CTR and EICG rules to accomplish these goals as this approach fails to collect data for the preponderance of emissions. For example, the vast majority of portable emissions would *not* be included under the CTR requirements.⁴ For this reason, we urge ARB to redirect its efforts to its Portable Equipment Registration Program (PERP), where much of the portable equipment is already tracked. This is a far more efficient and targeted approach, and one that would better characterize portable equipment emissions.

For mobile sources, the proposed EICG amendments would be limited to only some activity at a facility, and then would primarily only account for dust – not tailpipe emissions. The vast majority of mobile sources, whether on-road or off-road, would be missed. ARB is advancing new technologies and techniques for mobile source data collection, including but not limited to the use of telemetry and on-board diagnostics systems, hotspots air monitoring and geofencing pilots, and fleet reporting through the Truck and Bus rule, the Advanced Clean Trucks rule, and other mobile source rules at ARB. CCEEB believes that additional data collection opportunities will arise through the Advanced Clean Fleets rulemaking. We strongly urge ARB to refocus its data collection efforts to these more comprehensive and relevant programs rather than trying to paint an incomplete picture of mobile sources using very limited facility information. We must note that not only do we believe the data collected will be incomplete and uneven in coverage, but the administrative burden involved is also significant and could, for some facilities, be highly impractical.

⁴ For example, more than 11,000 pieces of portable equipment are currently registered in ARB's PERP program. Reporting of portables used onsite temporarily at major source facilities would only capture a small fraction of this equipment, but accurate tracking of third-party contractors would be onerous, time consuming, and hard to administer on an ongoing basis.

What follows are specific comments organized by section of each rule.

Criteria and Toxics Reporting Rule

§ 93403(c)(1) – staff should clarify that district reporting schedules are based on the calendar year and not rolling 12-month periods. This ensures consistent statewide reporting periods.

§ 93403(c)(1)(A) – this subsection allows an air district to quantify facility emissions based on activity data reported by the owner or operator. CCEEB strongly urges ARB to add a process step that allows a facility to review, clarify, and verify district generated reports before the data is approved by ARB and made public. This helps ensure accuracy and transparency, and allows a facility to correct any quantification errors.

§ 93404(b)(1)(C)11 and 94404(d): Control Efficiency – CCEEB disagrees with the addition of “control efficiency,” for all control devices. First, for an annual reporting program, this information would be time consuming to collect, yet changes nothing in terms of reported emissions. In some cases, as with selective catalytic reduction (SCR), continuous emissions monitoring is already done; reporting control efficiency as proposed would require an entirely new and likely costly methodology, with no added benefit. CCEEB recommends these sections be removed, or if put forward, made optional. At a minimum, the proposed regulatory language oversimplifies how information would be reported across the various types of sectors and control systems; staff should engage with sector-specific representatives to understand how it could be streamlined and more practicably implemented.

§ 93404(b)(1)(C)12: Permit Limits: similar to control efficiency, this requirement seems to oversimplify the concept of “permit limits.” A source could have multiple limits established by various district rules, or a permit limit could apply to a group of sources. Moreover, this information is not needed to quantify emissions and can already be provided by the air districts. CCEEB recommends it be removed or, at a minimum, made optional.

§ 93404(b)(1)(B)4: Source Classification Codes (SCCs): CCEEB recommends that the reporting of outdated federal EPA SCCs be made optional or, alternately, that requirements be refined so as to distinguish between relatively simple sources that lack monitoring and those that are more complex and, as such, rely on established computational methodologies and/or continuous emissions monitoring in support of state-of-the-art control systems. For the complex sources, SCCs will vary over time for a single source, and the reporting of these changes is both burdensome and incompatible with current quantification systems, yet does nothing in terms of quantification accuracy or transparency. As such, we believe this section should be removed or modified.

§ 93406: Confidentiality. Although State code and the “public right to know” principle applies to facility-level emissions data, data at the device and process level could need to be protected as confidential business information, especially when activity data is also made available. CCEEB requests a more detailed discussion of how confidential information will be protected.

AB 2588 Emissions Inventory Criteria and Guidelines

Section VIII.G: On-Site Mobile Sources – in addition to our overall comment about the efficacy of using stationary source reporting to track mobile sources, we have specific comments related to this section. First, and importantly, we wish to raise questions about the September 12, 1989 regulatory interpretation letter from ARB to the air districts, which is referenced in the Initial State of Reasons (ISOR) but not included as part of the proposed regulatory materials. Moreover, we do not believe this document has ever been publicly posted, nor has the pertinent language in Attachment I of the document ever been incorporated into any district rules. CCEEB appreciates that staff provided us a copy of the document after a written request was made. However, we note that the document does not provide a statutory rationale for the inclusion of mobile source dust emissions or other mobile sources that operate within the facility. Instead, in the ISOR, staff cites Health & Safety Code § 44345(b), which requires ARB to compile inventories for mobile and area sources *at the district level*. Nothing in this code section applies to stationary source facilities, which, in terms of emissions reporting, are regulated separately under H&SC § 44340.

In terms of the H&SC requirements that ARB develop mobile and area source inventories for each district, we note that this work has never been done, or if it has, we are unaware of it. For example, the most recently published Air Almanac (2013) only includes criteria pollutants, and only covers five air basins. Moreover, to do a complete toxics inventory, the minor emissions from on-site mobile sources at AB 2588 facilities would account for a de minimis fraction of total toxics emissions from these source types. However, tracking these facility emissions would be extremely onerous and, in many cases, impractical.⁵

⁵ For example, an airport would need to track all on-site motor vehicle dust emissions, as well as potentially vehicle activity. Short of having multiple staffers available 24/7 to physically count vehicle traffic, we are unclear how this could be done. Additionally, the facility would need to track all non-vehicular mobile sources that stay within the facility property, including “locomotives, airplanes, lawn mowers (non-riding), leaf blowers, refrigeration units, chainsaws, auxiliary generators, welding machines, pleasure craft, and cranes.” For both vehicular and non-vehicular mobile sources, facility staff would further need to distinguish and understand which sources remained on-site, and which moved on- and off-site. The administrative burden suggested by these requirements is staggering. Moreover, it is unclear how this data would be

In terms of the actual EICG regulatory amendments, CCEEB finds the language ambiguous and hard to interpret. Specifically, the section heading is “On-Site Mobile Sources” but the referenced definition of “motor vehicle” from the State Vehicle Code states that it must be able to be “propelled, moved, or drawn upon a *highway*.” [Emphasis added.] Examples given then include golf carts, earthmovers, tractors, and forklifts, even though these vehicles are not all highway compliant. Most importantly, Sections VIII.G.(1) and (2) do not clarify if reporting is only for those mobile sources that never leave the property, or whether it includes mobile sources that move on and off the property, and if so, would it include third-party sources. For example, if reporting mobile sources associated with a facility parking lot, would the security golf car be included? Company-owned vehicles? Visitor vehicles? With each additional category, emission tracking becomes exponentially more challenging and, for many, highly impractical.

Finally, CCEEB notes that ARB has never approved nor published any methodology for quantifying vehicular dust emissions, nor has it developed guidelines for how to track activity data for mobile sources. Dust itself is not an air toxic – in discussions with staff, it has been indicated that dust is meant as a surrogate for non-tailpipe vehicular emissions. If this is the case, then CCEEB requests that ARB publish its quantification method that would convert reported dust into associated air toxics, and explain how this data would then be added to a facility’s overall inventory. Lacking this background, CCEEB believes this amendment is premature and not fully fleshed; as such, we strongly urge that it be removed.

Section IX.B: Pooled Source Testing – current EICG requirements for pooled source testing seem to assume that all facilities within the sector group are located within a single air district. Given the extraordinary volume of source testing that will be required due to additions to Appendix A-I, CCEEB believes there will be a significant demand for pooled source testing across air districts. Additionally, source testing review and approval backlogs already exist at the air districts; these backlogs will be further exacerbated by the new requirements. CCEEB recommends that ARB work with the districts to establish a joint-agency review process that allows for multi-district pooled source testing, and revise this section accordingly. In doing so, CCEEB asks ARB to consider availability of certified source testers and laboratories, and explicitly assess how this might affect implementation timelines.

Section IX.H.: Two-Step Process and Protocol at Waste-Handling Facilities – CCEEB supports concerns raised by the California Association of Sanitation Agencies related to the timing needed to complete the two-step screening process set forth in this section of the rule. While CCEEB appreciates staff’s ongoing efforts to address testing challenges

incorporated into AB 2588 facility inventories or ARB district-wide inventories. We do not believe this was the legislative intent of H&SC § 44340(c)(2) or § 44345(b).

unique to this sector, and generally agrees with the proposed approach, we are mindful of the technical complexities involved. Moreover, subsection (5) requires that a facility operator submit results of qualitative testing within 120 days of the plan approval. No other sector has a similar deadline to submit test results when testing methods are undefined, and as we have previously stated, CCEEB believes that backlogs at the air districts and with third-party consultants and laboratories are likely. We recommend that more flexibility be included to address timing concerns.

Sections X.(21) and VIII.F.(10): Material Safety Data Sheets (MSDSs) – the federal Occupational Safety and Health Administration transitioned and improved its requirements to specify the use of Safety Data Sheets (SDSs) rather than the former MSDSs and Technical Data Sheets. CCEEB asks that the relevant language in Sections X and VIII be updated accordingly. Additionally and more importantly, CCEEB strongly recommends that ARB develop specific guidelines to help facilities understand how SDSs can be used to verify the presence of listed substances that would need to be reported. CCEEB believes that, in general, SDSs are appropriate for this use and that staff should explain any exceptions or deficiencies and clarify this in the guidelines.

Section II.H.(5) – related to our comments on needed guidance for SDSs, CCEEB asks for general guidance on how a facility is meant to quantify the amount of substance present, used, or produced, but for which there are no emission tests or quantification methods. As written, and lacking specific guidance, this language is overly broad and difficult to interpret for compliance purposes.

Other Issues Related to Both Rules

Unclear applicability for sources in tenant-controlled leased spaces – CCEEB has requested but not yet received clarification from staff as to whether reporting requirements apply to sources at facility in tenant-controlled spaces. For example, if a facility is required to report due to operations or equipment under control by the owner, and part of the facility footprint contains leased space, is the facility required to report tenant-controlled equipment and process emissions? CCEEB notes that lease terms may not provide regular and continuous access to and monitoring of tenant activities.

Unclear requirements for architectural coatings – CCEEB has requested but not yet received clarification from staff as to whether emissions from architectural coatings would need to be reported. This question could also be combined with our question about leased spaces; for example, if a tenant uses paint in leased space, would the facility need to track and report associated emissions?

Cost Impact Analysis – CCEEB believes the estimated implementation costs for affected facilities is underestimated. For example, we believe the costs associated with source

testing and new and intensive tracking requirements for onsite mobile and portable sources of emissions are underestimated.

Public Data Access and Risk Communication - as mentioned previously, CCEEB recommends that ARB convene stakeholder discussions to seek input on how the public will access reported data, and how emissions and risk will be communicated so as to be timely and meaningful. Efforts should be made to put stationary source emissions in broader context to reflect the proportional contribution of stationary, mobile, and area sources. We note that stationary source data will become more detailed, timely, and spatially granular than data for other sources – more robust data should not paint a false picture that these sources are necessarily the largest emitters affecting an area.

Alternatives Analysis – neither AB 197 nor AB 617 specifically apply to small sources. CCEEB believes that an alternative should have been included that applies less stringent applicability thresholds (i.e. > 4 tpy) and one that looked at different implementation schedules.

CCEEB appreciates the extensive efforts made by ARB staff to engage with us and thoughtfully consider our issues and questions. Much progress has been made, even if that is not entirely evident by the long list of outstanding issues we have expressed in this letter. We are also grateful to the staffs at CAPCOA and the air districts who have shared with us their perspectives and expertise, and who work diligently as partners to ARB. Our hope is that our comments can move ARB forward in ways that support successful program implementation and preserve the integrity of its goals, while providing facilities with the technical resources they need to prepare annual reports. Please contact me at janetw@cceb.org or 415-512-7890 ext. 111 with any questions.

Sincerely,



Janet Whittick
CCEEB Policy Director

cc: Members of the CAPCOA Board of Directors
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Mr. David Edward, ARB
Mr. John Swanson, ARB
Mr. Gabe Ruiz, ARB