California Council for Environmental and Economic Balance
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October 22, 2013

Mary Nichols, Chairman and Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Via web: http://www.arb.ca.gov/lispub/comm/bclist.php

RE: Comments on Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions: 45-day Draft Comment

Dear Chairman Nichols and Members of the Air Resources Board:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor, and public leaders that advances strategies for a strong economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

As part of its Adaptive Management Plan for the Cap-and-Trade Regulation (AMP), the California Air Resources Board (ARB) is proposing to include language in Section 95104(e), that would require covered entities that are subject to AB32 Cap-and-Trade (C&T) regulation to provide information if there is an increase in criteria pollutants or toxic air contaminants (TAC) emissions from the previous data year.

While CCEEB understands the purpose of ARB's Adaptive Management Plan (AMP), we are very concerned with what ARB is proposing in 95104(e) because it is inconsistent with ARB's own AMP document adopted October 2011 and it would essentially require operators to develop duplicative information that is already reported and sometimes calculated using differing methodologies by local and regional air agencies.

Based upon CCEEB's understanding, the October 2011 AMP was developed to ensure that the Cap-and-Trade Program for reduction of GHGs does not cause increases in criteria pollutants. The AMP first proposes to determine if an increase in a facility's GHG emissions could indicate that an increase in other pollutants has occurred. Pursuant to the AMP, if an increase is noted,

then the ARB would review indicators to assess if the change was caused by the facility's compliance with the Cap-and-Trade Regulation (or some other factor including a change in production caused by economic growth). If the GHG increase was determined to be caused by the Cap-and-Trade Program, then the Board would work with the local air district to determine whether the change has or was likely to have adverse impacts on local air quality. This approach appears reasonable and is based on monitoring GHG emission increases, which can be determined for a facility by comparing the annual GHG emissions reported pursuant to the Mandatory Reporting Regulation (MRR).

The new proposal in 95104(e) would instead require facility-specific reporting of criteria pollutants and TAC emissions through Mandatory Reporting requirements of the AB 32 Program contrary to the current AMP's process.

As noted previously, CCEEB has serious concerns about such an approach for a variety of reasons. First, this would establish a redundant and duplicative set of emissions data for criteria pollutants and TACs. Most, if not all, covered entities submit their criteria pollutant and air toxic contaminant emissions information to the U.S. Environmental Protection Agency (EPA) and air regulatory agencies per existing regulations. Furthermore, covered entities are subject to emissions reporting requirements to demonstrate continuous compliance with applicable emissions limitations under their new source review and Title V operating permits. Since this emissions information is public information available from EPA and local air regulatory agencies, CARB can easily access and use this information to assess the potential localized air quality impacts that may result from the Cap-and-Trade program.

More importantly, there is a high likelihood that the MRR data would not be consistent with data and inventories maintained by the local and regional air agencies because of differences in calculation methods and reporting procedures. This would result in confusing and contradictory sets of facility-level data, thus complicating both the MRR and AMP programs at the ARB as well as air agency permitting and inventory programs. For example, facilities in the South Coast calculate emissions based on district-approved emissions factors; whereas in the Bay Area, the district—not the facilities--calculates emissions for each permitted facility; and under MRR rules are different yet again, and also facilities must have third-party verification of emissions data. It seems unreasonable to subject facilities to MRR requirements and penalties for reporting inconsistencies beyond their direct control—especially since neither criteria pollutants nor TACs are regulated under AB 32.

Local and regional air agencies have issued operating permits that incorporate all applicable federal and state air regulatory requirements, including the new source review (NSR) requirements for new and modified units as well as stringent federal and state requirements to ensure the protection of local ambient air quality. These requirements are designed to ensure that each of these facilities will not cause or contribute to an exceedence of an air quality standard based on the **maximum potential emissions levels** from the unit under worse-case assumptions. This means that any fluctuations in emissions from these facilities due to the Cap-and-Trade program have already been determined by the local and regional air agencies not to pose an adverse risk to the local air quality.

Furthermore, even if ARB had authority to require an additional air quality assessment under the MRR, the proposed ARB approach would not be an effective tool for performing this assessment. There could be many reasons for a facility's fluctuations in air emissions from year-to-year and it would be very difficult to assign emissions increases, even qualitatively, to these reasons. It would also be very difficult to assign any changes in operation to specific regulations (Cap-and-Trade regulation, other air pollution regulations, or other regulations).

Significant questions also remain as to how the ARB would train third parties to verify a qualitative assessment of a facility's increase in criteria pollutant and toxic air contaminant emissions. CCEEB believes that it is inappropriate for a third party verifier to assess this information as facilities are required to comply with federal, state and local air quality regulations addressing criteria pollutants and toxic air contaminants and the state/local air regulatory agency determines the facilities' compliance with the regulations. As noted above, permit limits already set for each facility emissions limits that protect local air quality are based on the maximum potential emissions levels from each facility under worst-case assumptions.

CCEEB remains concerned that requiring the reporting of increases in criteria pollutants and toxic air contaminants would lead to confusion and reasonably assumable adverse regulatory implications. ARB needs to examine the regulatory implications of mandating the reporting of changes in emissions of criteria pollutants and TAC under the MRR program.

In addition, as referred to earlier, CCEEB believes that ARB lacks authority to require that criteria air pollutant and TAC emission information be submitted to ARB pursuant to the MRR. In contrast to the express authority granted in Division 26 of the Health and Safety Code to ARB and the agencies for obtaining facility emissions information, nothing in AB 32 (Division 25.5 of the Health and Safety Code) grants ARB authority to seek criteria air pollutant or TAC emissions information in connection with GHG related programs. AB 32 also does not provide ARB with implied authority to require facility submission of criteria pollutant and TAC emissions information. ARB's obligations to ensure that AB 32 rules do not interfere with pre-existing air quality programs and that market-based programs avoid direct or cumulative emission impacts from those mechanisms can be satisfied using existing emissions inventory and health risk data held by ARB and the local and regional air agencies, and both are requirements that were to be satisfied by ARB when AB 32 emissions regulations were adopted—not several years afterwards.

Recommendation: CCEEB recommends ARB utilize the recognized local and regional air agency facility criteria pollutants and TAC approved emission inventories. In short, CCEEB believes that all entities in the State would be better served by utilizing the local and regional air agency approved criteria pollutants and TAC emission databases for ARB's AMP purposes.

The ARB has already given thoughtful consideration of potential interactions of these different emissions through its AMP. We see no compelling reason to establish a different approach from the current AMP. We believe this would only be disruptive and counter productive to the existing regulatory systems that currently work as intended.

Thank you for your attention to these comments as you consider final revisions to the Mandatory Reporting Regulation. Please contact Robert Lucas at 916-444-7337 if you have any questions.

Sincerely,

Robert W. Lucas
Climate Change Project Manager

Gerald D. Secundy
President

cc: The Honorable Jerry Brown, Governor
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