



October 16th, 2023

Hon. Steven S. Cliff, Executive Officer
Chanell Fletcher, Deputy Executive Officer of Environmental Justice
Deldi Reyes, Director of the Office of Community Air Protection
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Final AB 617 Blueprint 2.0

The undersigned organizations provide recommendations in these comments to the California Air Resources Board (CARB) on the final second revision of the Statewide Strategy, or Blueprint 2.0 (BP 2.0). This letter builds on our previous comment submitted July 31st, included below as Attachment A.

The fundamental issue with the final draft of the BP 2.0 is CARB's lack of commitment to being accountable for its responsibility to significantly reduce emissions of toxic air contaminants and criteria air pollutants in communities affected by a high cumulative exposure burden as required by AB 617. In this final draft, CARB has figuratively taken the back seat rather than the driver's seat of the vehicle, to guide AB 617 implementation process and ensure accomplished emissions reductions in high pollution burden communities in collaboration and as directed by community. AB 617 clearly determines it is CARB's responsibility to enforce emission reductions, however, the final version of the BP 2.0 fails to reflect CARB's responsibility to do so. As a result, we are writing to outline the following outstanding fundamental issues with the document and request the following changes.

The BP 2.0 must outline how CARB and Air Districts will implement strategies and measures identified through Community Pathways

The final BP 2.0 indicates LCERPs will not be formally adopted by either CARB or the Air District. This is a serious concern as the BP 2.0 does not hold CARB or Air Districts accountable

to implementing strategies or actions identified with the use of a Community Emissions Reductions Plan (CERP), Community Air Monitoring Plan (CAMP), or a Local-CERP (L-CERP), or any of the community pathways. CARB and Air District implementation of community identified actions appear to be contingent upon whether a community is formally selected, thus leading to an adoption of a CERP and/or CAMP. If CARB and the Air District will not formally adopt L-CERPs, the BP 2.0 must have language committing CARB and the Air District to implementing the L-CERP measures. While recognizing community power is necessary, it is vital to also recognize that communities alone may lack the requisite authority to ensure the successful implementation of measures. Thus, community efforts and leadership will prove insufficient if CARB, the Air District, and other agencies are not committed to implementing community recommendations. Ultimately, the BP 2.0 fails to identify what will happen with L-CERPs after communities create them, and it must include clear commitments from CARB and Air Districts to implement them.

The BP 2.0 must clearly detail how CARB and the Air Districts will continue to formally select communities for targeted emission reduction initiatives.

The final draft of the BP 2.0 does not clearly detail how or if CARB and Air Districts will continue to formally select communities for CERPs. In fact, CARB has described community selection to be contingent upon whether Air Districts determine that they have available resources to support another community¹. However, despite lack of resources CARB continues to be required to select communities and provide grants under AB 617. Furthermore, CARB's intention to encourage air districts to work with communities and partner with other agencies to bring attention and resources does not guarantee resources nor does it commit CARB to reducing emissions in communities experiencing disproportionate pollution burdens. Instead CARB must take an active role in advocating for increased resources for the program as well as ensuring existing resources are utilized in the most efficient way possible with the goal of reducing emissions. Moreover, the BP 2.0 does not detail how it will support emissions reductions in communities beyond the sixty-five plus communities.

To ensure accountability to implementing CERPs, CARB must include a plan to work with communities beyond the consistently nominated communities, and do so for communities beyond the sixty-five plus list. In addition, CARB must acknowledge L-CERPs as formally selected communities and clearly detail agreement and responsibility for full implementation of the L-CERP.

The BP 2.0 must reflect how CARB will maximize collaboration with governmental agencies and local governments with the purpose of improving CAPP implementation.

¹ Final Draft Blueprint 2.0. Pg 82.

The final BP 2.0 fails to acknowledge the challenges faced in agency collaboration, such as the challenges faced to address pesticide-related concerns. The Shafter community worked for years on their goal to “establish a voluntary pesticide notification” as part of their right-to-know what harmful chemicals are being released in their neighborhoods. Despite eventual funding support from CARB to build a pilot notification system, the local agricultural commissioner was opposed to the plan and prevented the project from moving forward. However, the work of Shafter residents, along with pressure from partners, led to state funding for realizing a statewide notification system, one that the Shafter community has yet to benefit from². CARB should acknowledge these obstacles and reflect their authority to implement measures to ensure local benefits as identified by the community. CARB staff has repeatedly indicated that CARB cannot force other agencies or local jurisdictions to implement measures, however, we remind staff that CARB has authority to regulate toxic air contaminants. CARB must act upon that authority to regulate pesticides.

Additionally, though the final BP 2.0 document clarifies CARB’s authority to regulate Toxic Air Contaminants (TACs), including pesticides that are TACs, the language that was added fails to include CARB’s commitments to AB 617 communities to enforce reductions in TAC exposure or any commitment as to how CARB will use its authority to regulate TACs that are pesticides.

Moreover, CARB continues to use weak language when discussing CARBs and the Air Districts’ roles in land use projects which do not align with community CERPs or L-CERPs. The BP 2.0 should include language to commit CARB to provide comments in alignment with community priorities and recommendations, and include mitigation measures recommendations. The BP 2.0 should also include: language to commit the Air District to provide notice to CSC when receiving permit applications for projects to support public participation in permitting processes and language to commit to not issuing permits for projects which do not align with CERPs and L-CERPs. CARB and the Air District must also commit to achieving air quality attainment levels by opposing projects which will lead to increased emissions.

CARB is responsible for reducing emissions of toxic air contaminants and criteria air pollutants in communities affected by a high cumulative exposure burden. The statewide strategy or the final BP 2.0 must reflect the actions CARB will take to act upon this responsibility. We urge CARB to revise the final BP 2.0 before the Board’s consideration, to describe CARBs formal selection process, commitment to implementation of L-CERPs and other measures as identified through any of the community pathways, and commit to acting upon its authority to regulate emissions.

Sincerely,

²Accessed at: <https://www.ehn.org/pesticide-drift-2659335062.html>

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Attachment A

July 31, 2023

Hon. Steven S. Cliff, Executive Officer
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RE: AB 617 Draft Blueprint 2.0

The undersigned organizations provide recommendations through these comments to the California Air Resources Board (CARB) on the second revision of the Statewide Strategy, or Blueprint 2.0 (BP 2.0).

The Community Air Protection Program (CAPP) broke the pattern of excluding communities from emission reduction strategies, as a “first of its kind” program involving residents in the identification of pollution sources, as well as the development and implementation of emission reduction strategies. Given the importance of this program, it is vital that the BP 2.0 is structured as more than a program implementation guide and instead approached as an essential document that determines the success or failure of the CAPP requiring strong language that ensures successful implementation and enforcement of the program, as required by statute. The following are our recommendations on what BP 2.0 should include to accomplish this;

1. Acknowledge CARB’s and Air District’s regulatory authority and how it will strategically target regulation in AB 617 communities
2. Reflect how CARB will maximize collaboration with governmental agencies and local governments with the purpose of improving CAPP implementation.
3. Clearly detail a strategy to ensure CARB continues to improve its outreach and engagement efforts.
4. Clearly detail how CARB and the Air Districts will continue to formally select communities for targeted emission reduction initiatives.
5. Clearly establish a plan of action to ensure all emission reduction plans in the CAPP are fully implemented.
6. Detail how CARB will ensure compliance with Civil Rights Laws.

The BP 2.0 must acknowledge CARB’s and Air District’s regulatory authority and how it will strategically target regulation in AB 617 communities

CARB’s and the Air District’s regulatory authority is the core of the AB 617 program. This authority must be exercised throughout all levels of implementation to ensure success in targeted air emission reduction strategies. Targeted implementation and enforcement must consist of strategic and intentional actions that ensure rules, regulations, and programs are fully being met in all AB 617 communities.

The BP 2.0 does not acknowledge CARB’s regulatory authority over pesticides and heavy-duty trucks. CARB, DPR, and the Agricultural Commissioners each play roles in directly regulating the use of and emissions from pesticides and must coordinate with one another to ensure that pesticide-related emissions are measurably decreasing in AB 617 communities. As noted in Californians for Pesticide Reform’s September 2022 comment letter on the Draft State Strategy for the State Implementation Plan for Ozone, CARB has “...*primary regulatory authority over pesticide Toxic Air Contaminants (TACs) once they enter the ambient air. This authority was affirmed in Harbor Fumigation, Inc. v. County of San Diego Air Pollution Control District*”³. CARB must include direct regulation of pesticide TACs in the list of priority actions for which they will apply regulatory authority in the BP 2.0.

The BP 2.0 must include specific action items detailing how CARB will use its regulatory authority to target the implementation and enforcement of programs and regulations related to heavy-duty trucks in AB 617 communities. Heavy-duty trucks are a leading emissions source in many currently selected and consistently nominated communities, especially in the San Joaquin Valley and Inland Empire. Therefore, CARB must include goals and priority actions to support selected AB 617 communities, consistently nominated communities, and future communities, with targeted implementation and enforcement of regulations related to heavy-duty truck emissions.

Similarly, the Air District’s regulatory authority related to permitting requirements, Indirect Source Rules, stationary sources, and regulation on area-wide emissions is essential to the successful implementation of the CAPP. The BP 2.0 must detail expectations for Air Districts to target implementation and enforcement of these programs and regulations. Additionally, there must be an established procedure on how CARB will collaborate with the Air Districts to ensure these expectations are met.

³ Accessed at: <https://www.pesticidereform.org/wp-content/uploads/2022/09/FINAL-2022-SIP-comments-sign-on-letter-September-2022.pdf> (Pg. 6)

The BP 2.0 must reflect how CARB will maximize collaboration with governmental agencies and local governments with the purpose of improving CAPP implementation.

CARB must use its regulatory authority, resources, and expertise to act as a liaison and support effective communication and collaboration among the CSC, Air Districts, and other relevant entities including but not limited to; DPR, CalTrans, CalGem, Counsel of Government, and local government. Beyond acting as a liaison, or merely improving information-sharing tactics, CARB must partner with Air Districts and CSCs to create, communicate, and ensure agreement and implementation of expectations. CARB must maximize its collaboration and partnership not only with Air Districts but with other government agencies and local governments to ensure completion of the CERP as well as identify commitments to continuous air quality improvement.

To facilitate and ensure cross-agency coordination, we recommend CARB to enter into a formal partnership with each agency to ensure resources will be directed to the communities as described in the BP 2.0. The BP 2.0 must also reflect a requirement for state agencies and local governments to engage with the CSCs as applicable and/or requested by communities.

The *Land Use and Transportation Actions* section must include strong language that solidifies a commitment from CARB and the Air Districts to hold other stakeholders accountable. The California Health and Safety Code § 44391.2(c)(2) emphasizes that a CERP is not a plan that CARB implements alone but with the collaboration of different state and local agencies and stakeholders within the community. To achieve a successful implementation of an emission reduction plan, CARB and the Air Districts must ensure that all entities act within the best interest of a pollution-burdened community.

California Health and Safety Code § 44391.2(c)(2) states:

“...the district encompassing any location selected pursuant to this subdivision shall adopt, in consultation with the state board, individuals, community-based organizations, affected industry, and local governmental bodies in the affected community, a community emissions reduction program to achieve emissions reductions for the location selected using cost-effective measures identified.”

Throughout the BP 2.0, language focused on land use and transportation actions is very weak. For instance, a sentence reads as follows *“Both CARB and air districts can offer guidance on land use strategies to mitigate air pollution impacts...This engagement can ensure that Program concerns are raised as part of their decision making process and the outcomes consider air quality impacts.”* Through the usage of the phrase *“can offer,”* it frames both CARB and the Air Districts as volunteer actors that can step in.

More appropriate language would frame CARB and the Air Districts as key players in the decision-making processes and would require that they always raise concerns in the realm of air quality impacts. The BP 2.0 must detail protocol for CARB and the Air Districts to engage when a land use or transportation action is considered inappropriate. For example, if CARB deems a project as inappropriate, it should be identified how that local agency moves forward especially when it is out of compliance with the CERP in an AB 617 community. Additionally, CARB must update and release the “Air Quality and Land Use Handbook” and use this as a tool to inform CAPP implementation.

The BP 2.0 must clearly detail a strategy to ensure CARB continues to improve its outreach and engagement efforts.

While program statute requires Air Districts and CARB to make all information accessible to the public, the BP 2.0 merely lists tools and resources for transparency and accountability but fails to include guidelines to ensure this information is accessible to the public and/or the CSC. We support the action items in the BP 2.0 related to applying good practices that support meaningful engagement by early scoping, timely provision of accessible information, and follow-up with participants, however, these must be further developed to include measurable milestones and ensure continuous improvement of engagement and outreach.

CSC members across all communities are essential in peer-to-peer learning opportunities and guide the implementation of solutions identified in these spaces and the creation of outreach and engagement principles. CARB and the Air Districts must work with individual CSCs to ensure the application of these principles across communities. This provides space for the community to identify any barriers to how the data is presented and how to increase awareness of it.

Additionally, a common concern throughout selected communities is the lack of transparency of funds for CAPP implementation. As the second track for consistently nominated communities is developed CARB should provide budget transparency. The BP 2.0 must include a priority action to provide transparency on CAP allocations by Air District and the overall operating AB 617 budget for CARB and Air Districts. CARB’s goal to provide more cost-effective approaches for the second track does not dismiss CARB’s responsibility to be transparent about the allocation and use of funds for both the first and second track. While the goal is for CAP funds to be flexible, CARB must still ensure that the final guidelines require projects to be identified by the community through a community and Air District collaborative process. The Air Districts should not be able to access funds without working with communities through a formal CERP or L-CERP process.

The BP 2.0 must clearly detail how CARB and the Air Districts will continue to formally select communities for targeted emission reduction initiatives.

CARB has a statutory obligation to select communities for emission reduction programs, however, the BP 2.0 does not detail how community selection will move forward in the next phase of the program and instead alludes⁴ to an intent to no longer select communities. CARB must ensure the BP 2.0 contains clear commitments from CARB and the Air Districts to work in collaboration with communities to continue to implement the CERPs and/or Local Community Emission Reduction Plans (L-CERP) in formally selected communities.

In terms of consistently nominating communities, in addition to creating the mapping tool and suggesting that Air Districts, local jurisdictions, and state and federal agencies look for and allocate resources to these communities, the BP 2.0 must identify clear avenues for collaboration and strategies for bringing resources to the sixty-five plus communities. If the proposed L-CERP process is the formal process to directly support consistently nominated communities it must require CARB and the Air District to formally approve the L-CERP and clearly detail agreement and responsibility for full implementation.

The BP 2.0 must clearly establish a plan of action to ensure all emission reduction plans in the CAPP are fully implemented.

Establishing a plan to ensure complete CERP implementation in all communities including those in their fourth year of implementation is vital. CARB must not only track and report progress in AB 617 communities but also identify strategies to move forward with both opportunities and challenges, including clear guidance and expectations on how Air Districts will apply lessons learned to all communities.

In doing this, enforcement by CARB is necessary to ensure that the Air Districts will follow through with commitments to each selected community. If an Air District disagrees with the priorities of a community's air quality concerns, CARB must stand by the principles of AB 617 to ensure that emission reduction targets are met.

Through the implementation of CAPP to date it is clear that access to air monitoring data is vital to ensure that once data is collected, CARB and Air Districts partner with CSCs to develop strategies for successful CAPP implementation. To date, CARB and the Air District have operated and maintained air monitoring systems throughout all of the selected communities, however, these systems and the information that comes from them continue to be largely inaccessible. Data collection, tracking the results of CERPs' effectiveness, and a timeline for implementation will only be effective in decreasing emissions if an enforcement plan is implemented.

⁴"CARB anticipates that over the next few years of the program, few if any additional communities will be selected due to the following factors" Blueprint 2.0, Part 2, pg. 42.

The BP 2.0 must detail how CARB will ensure compliance with Civil Rights Laws.

In addition to program statutes, civil rights and nondiscrimination laws also apply to CARB and Air Districts in the operation of all programs, including the CAPP.⁵ These laws prohibit CARB and Air Districts from discriminating based on race, color, national origin, age, sex, disability, mental or physical disability under state and federal law; as well as based on ethnic group identification, ancestry, religion, marital status, sexual orientation, gender identity, gender expression, genetic information, and military or veteran status under state law. The prohibition of discrimination includes unintentionally causing disparate impacts under any program or activity receiving federal or state financial assistance.

To ensure CARB's goal of transparent compliance with these laws, it is imperative that CARB take the following actions. First, not only should grant agreements administered by CARB's Office of Community Air Protection (OCAP) be updated and amended to ensure consistency with civil rights laws, but so should all actions taken by CARB and the Air District under AB 617. That means all permitting actions, enforcement actions, incentive programs, grant funding, CERP implementation, and community engagement must be looked at and analyzed through an equity lens to ensure compliance with civil rights laws. Second, that analysis must be transparent and presented to the public in an accessible manner, so that an open and transparent dialogue can take place about the disparate impact these actions and programs may be having.

We also want to importantly note that the BP 2.0's discussion of civil rights laws that apply to CARB's actions critically omits CARB's duty to affirmatively further fair housing (AFFH) pursuant to Government Code section 8899.50(b). That statute provides that the State and every department and division thereof is subject to a mandatory duty to AFFH in all of its programs and activities relating to housing and community development and is prohibited from taking any action that is materially inconsistent with that duty. HCD's AFFH Guidance defines the scope of the AFFH duty broadly and many of CARB's actions, including those relating to its implementation of AB 617, fall within the scope of its duty to AFFH. Pursuant to that duty, CARB must not only avoid discriminatory actions and omissions but must take meaningful actions to overcome patterns of segregation and to foster inclusive communities free from barriers to opportunity. Sec. 8899.50(a). Pursuant to HCD's AFFH Guidance, barriers to opportunity can include poor environmental quality (including air quality), in addition to zoning and land use decisions involving the siting of toxic facilities, unequal housing and transportation opportunities, and more. We recommend that CARB acknowledge this duty in the Blueprint and develop a plan for compliance, informed by community input.

⁵ See, Title VI of the Civil Rights Act of 1964, as amended (Title VI); Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972; California Government Code sections 1135 – 1139.8; Cal. Const., Art. I, section 31.

We appreciate the consideration of these comments and look forward to continued collaboration with CARB and local Air Districts to ensure program implementation moves forward efficiently and in a community-centered manner.

Sincerely,

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