



March 5, 2021

Mr. Gabe Ruiz
 California Air Resources Board
 1001 I Street
 Sacramento, CA 95814

Re: Informal Comments on Draft AB 2588 EICGR and CTR 15-Day Changes

Dear Mr. Ruiz:

The undersigned organizations appreciate the opportunity to provide some initial feedback on the California Air Resources Board's (CARB) proposed 15-day changes to the AB 2588 Air Toxics "Hot Spots" Emission Inventory Criteria and Guidelines Regulation (EICG) and the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants (CTR). As you may recall, we commented extensively on the initial regulatory package and will plan to comment again when the formal rulemaking begins.

We remain concerned that CARB's approach to updating these regulations will reverse decades of investment by CARB, the air districts and regulated entities to determine which toxic air contaminants drive offsite health risks and therefore warrant further regulatory attention. This targeted risk-based approach has resulted in dramatic improvements in air quality, reducing statewide emissions and

related health impacts from exposures to air toxics by approximately 75 percent over the past 25 years.¹ Despite the undisputed success of this approach, CARB has decided to require a much larger universe of facilities to inventory and report hundreds of additional substances, in many cases without regard to their significance as potential risk drivers. CARB's regulatory updates also capture sources that were never intended to be included in a stationary source emissions inventory. The Air Toxics Hot Spots Information and Assessment Act (AB 2588, Connelly 1987) was designed to require stationary sources ("facilities") to report the types and quantities of certain substances routinely released into the air from those facilities. The program was never intended to cover non-stationary sources such as mobile sources or portable equipment. In fact, the definition of "facility" is tied to stationary equipment, and "stationary" is explicitly defined as meaning "neither portable nor self-propelled."²

Implementation of these policy changes will be extremely resource-intensive for all involved parties but is unlikely to result in commensurate gains in emissions reduction and public health protection. For these reasons, CARB should expand its proposed 15-day changes to include the additional recommendations presented below.

CARB is proposing several improvements to the language adopted by the Board in November 2020 that address several items submitted in our previous comments. We thank CARB for its willingness to address these issues and urge you to proceed with the following changes:

- New language in Sections II, III, IV and V clarifying that air district consideration of population-wide impact assessments or the potential for cumulative risk from multiple facilities in making compliance determinations related to facility applicability, exemptions, and the scope of update reporting requirements is voluntary. While this language appears to be an improvement over the prior version, we maintain that any consideration of these concepts in the context of AB 2588 implementation is inappropriate because it will burdensome facilities with additional compliance obligations related to emissions that are beyond their ability to control.
- Section II (H)(2) defers the Initial Emission Data Quantification Year for New Substances for district group B by one year.
- The new draft eliminates language in Section IV stating that a cancer burden of 0.5 or greater is an "acceptable indication of significant population exposure" [Section IV (A)(1)(d)(iii)]. This change is consistent with CARB's clarification that air district evaluation of population-wide impact assessments is not required.
- Removal of references to lawn mowers, leaf blowers and chainsaws as examples of non-motor vehicle mobile sources [Section VIII (G)(2)]. We interpret this change to mean that these sources are not required to be included in a stationary source emissions inventory. Similarly, we maintain that emissions from other state and federally regulated mobile sources, such as transitory vehicles and ships, do not belong in an AB 2588 emission inventory and references to these sources should be removed from the regulation.

¹ Air Resources Board and California Air Pollution Control Officers Association, Risk Management Guidance for Stationary Sources of Air Toxics, July 23, 2015.

² 17 CCR § 93402. Definitions.

- New language in Section IX stating that “The district may require source testing of any process and/or device when there are no adequate emissions factors, existing source test results or other method available to determine emissions.” This language appropriately clarifies that source testing is not required where other emissions estimation methods are available [Section IX (G)(a)].
- Changes to Appendix A-1 reclassifying 25 newly added substances from “existing” to ChemSet 1. This change clarifies that these substances are subject to the phase-in provisions established in Section II rather than the current facility reporting cycle.
- Deferral of the PFAS functional group to ChemSet 2. This deferral makes sense given the enormous breadth of this functional group and the lack of available quantification methods and health reference values for individual substances. We note however that Appendix A-1 still retains fluorotelomer compounds in ChemSet 1 and would urge CARB to include these compounds in ChemSet 2.
- Requiring annual reporting for ChemSet 2 substances under the CTR regulation only if a health reference value is available.
- Language changes in CTR Section 93403 (e) clarifying reporting obligations when facility ownership changes.

Though we appreciate the phase-in approach for newly added chemicals in Appendix A, we suggest further refinement of this language may be necessary. We urge you to consider the following:

- CARB should eliminate the seven chemical groups from ChemSet 1. The 171 individually listed substances - which include substances in each of these groups – should be the near-term priority. CARB does not have sufficient information for the other substances in these groups to include them in the first phase of implementation.
- All Appendix A-1 substances should be phased in based on availability of both health reference values and quantification methods, and substances without health reference values and quantification methods should be moved to Appendix A-2. CARB has indicated that all substances in ChemSet 1 should be reported to help prioritize OEHHA’s development of health reference values. However, if there are no quantification methods then the prioritization will be based on incomplete and potentially misleading information. For example, the reported value may be zero, based on emission factors which are inappropriately applied, or values determined by the local air district which can vary among air districts. Instead, CARB should work with the air districts to conduct ambient air quality surveys which provide a much stronger characterization of actual public exposure. These surveys can be prioritized using the information reported under Appendix A-2. This approach would be consistent with how OEHHA and CARB are required to prioritize the development of health reference values pursuant to Health and Safety Code Section 39660(f):

“The office and the state board shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of, and exposure to, usage of the substance in

California, persistence in the atmosphere, and ambient concentrations in the community.” (emphasis added)

- At a minimum, ChemSet 2 implementation under the EICGR should be phased in based on availability of health reference values for individual substances, as CARB is proposing for the CTR regulation. The value of the relief provided under the CTR regulation for ChemSet 2 will be greatly diminished if quantification and reporting of all ChemSet 2 substances is still required under EICGR.
- Appendix A-1 only identifies the source lists from which each new listing is derived. We believe this section should also identify any available health reference values (HRV) that CARB intends to use for AB 2588 compliance and the specific source of each HRV. At present, stakeholders have no certainty that “available” HRVs reflect the scientific rigor and validation necessary to support future facility screening, health risk assessment or other regulatory purposes.
- We continue to believe that CARB should provide information on its evaluation of individual substances listed pursuant to Health and Safety Code Section 44321 (f) to support the conclusion that each substance is present in ambient air at levels that constitute a chronic or acute threat to public health.

It will be important that future investments of CARB, local air district and regulated community resources are directed toward actions that will result in material health risk reductions. Including substances that have theoretical hazards but are not likely to present significant health risks can dilute the public health benefits that would otherwise result from the regulation. The development of health reference values is a necessary step in determining the potential for a substance to present a significant health risk. We also believe that CARB should phase in EICGR reporting requirements for new substances based on availability of health reference values, as it has proposed for reporting of ChemSet 2 substances in the CTR regulation.

The regulated community also urges CARB to ensure there is sufficient stakeholder engagement opportunities to provide input on the list of guidance topics discussed during the public webinar on the proposed 15-day changes. Staff indicated that CARB would be working with the California Air Pollution Control Officers Association (CAPCOA) on new implementation guidance related to the regulatory updates on a variety of topics, including: 1) pooled source testing; 2) reporting of use, production and presence where no quantification method exists; 3) reporting of functional group substances; 4) use of Appendix C; 5) development and use of provisional health reference values and 6) consideration of population-wide impact assessments and cumulative risk, to name a few.

We request that CARB clearly identify the complete list of guidance topics and what process CARB and CAPCOA will undertake to solicit stakeholder input. Stakeholders should have the opportunity to comment both on topic areas and on the substance of individual guidance documents, especially if the guidance is intended to serve as a substitute for language that would otherwise be incorporated into the regulation. In addition, to avoid confusion and inadvertent non-compliance, all guidance should be completed and posted ahead of compliance deadlines.

Finally, we believe that CARB should reconsider its current position on reporting of emissions from portable diesel-powered equipment.

- The proposed changes to CTR Section 93404 (c)(2)(C) clarify that reporting requirements for portable diesel engines (≥ 50 bhp) include equipment registered under the Portable Equipment Registration Program, but facility operators would still be responsible for reporting emissions from PERP-registered equipment.
- Requiring facilities to report third party portable diesel engines amounts to putting the facility in the position of a regulator without the necessary resources or enforcement authority. Businesses cannot be expected to verify the completeness and accuracy of emissions data from third-party operators under CTR or EICGR, nor verify and enforce the proper and continuous use of emissions controls under EICGR. This approach places an unreasonable compliance burden on the facility for equipment that is outside of their control.
- The PERP program is the most appropriate mechanism for reporting emissions from portable diesel equipment, and the registrant should bear the reporting obligation, not the owner of the facility where the equipment is used on a temporary basis. CARB should require PERP registration for all portable equipment subject to the CTR to ensure that emissions reporting is comprehensive and enforceable.

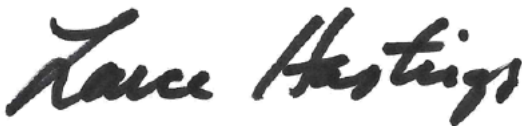
In our view, this approach would better position CARB and the air districts to evaluate potential health risks wherever portable equipment is used, not just at facilities that meet the statutory criteria for mandatory reporting under the CTR regulation. Should CARB choose to retain the current requirements, facilities should not be subject to certification or attestation requirements when submitting data for these sources under both CTR and EICGR. Facilities cannot certify the completeness or accuracy of emission data provided by third parties. At a minimum, CTR Section 93404(e) should be amended to exclude data for third party-owned portable diesel engines.

Thank you for the opportunity to provide this feedback and for CARB's efforts to engage stakeholders on this important program. We look forward to reviewing and commenting on the 15-day language when it is released. If you have any questions, please contact Tim Shestek at 916-448-2581 or Tim_Shestek@americanchemistry.com or Lance Hastings at 916-441-4520 or lhastings@cmta.net

Sincerely,



Tim Shestek, Senior Director
American Chemistry Council



Lance Hastings, President
California Manufacturers and Technology Association

On behalf of the following organizations:

African-American Farmers of California
American Chemistry Council
American Coatings Association
California Business Properties Association
California Chamber of Commerce
California Cotton Ginners and Growers Association
California Food Producers
California Independent Petroleum Association
California Manufacturers & Technology Association
California Small Business Alliance
Central Valley Business Federation
Central Valley Energy Coalition
Chemical Industry Council of California
Coastal Energy Alliance
FuturePorts
Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation
Kern Citizens for Energy
Kern Tax
Nisei Farmers League
Valley Industry & Commerce Association
Western Agricultural Processors Association
Western Independent Refiners Association
Western States Petroleum Association
Western Wood Preservers Institute

cc: Liane Randolph, Chair, California Air Resources Board
Members, California Air Resources Board
Richard Corey, Executive Officer, California Air Resources Board
David Edwards, California Air Resources Board

From: [Gino DiCaro](#)
To: [ARB Clerk of the Board](#)
Subject: Industry coalition comments re Draft AB 2588 EICGR and CTR 15-Day Changes
Date: Wednesday, April 14, 2021 4:48:43 PM
Attachments: [CA Air Resources Board EICGR CTR Draft 15-day Changes Coalition Letter 3-5-21 \(1\).pdf](#)

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Good evening,

We can't seem to get this submitted through CARB's docket system online. Keep getting a rejection notice, so sending via email.

In reviewing the proposed 15-day language, we see no indication that CARB has made any changes in response to the many unresolved issues identified in our March 5, 2021 letter on the discussion drafts. And, since CARB did not post an updated Statement of Reasons with its March 30 notice, we have no insight into CARB's rationale for rejecting our recommendations for further changes. These observations call into question the value of CARB's informal public engagement process.

We ask that you reconsider our March 5 comments signed by CMTA's Lance Hastings and ACC's Tim Shestek (attached), which we are resubmitting in response to the proposed 15-day changes, and make additional changes to the AB 2588 EICG and CTR regulations that are responsive to those comments before submitting a final rulemaking package to the Office of Administrative Law. Since the original notice of proposed rulemaking was issued on September 29, 2020, CARB still has ample time to issue a second 15-day notice and complete the rulemaking process within the 1-year timeframe provided by the Administrative Procedures Act.

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