



November 12, 2020

Ms. Mary D. Nichols, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Amendments to the Emission Inventory Criteria and Guidelines Report for the Air Toxics
“Hot Spots” Program

Dear Chair Nichols:

The undersigned organizations provide the following comments on the initial statement of reasons (ISOR) on the proposed amendments to the emission inventory criteria and guidelines report for the air toxics “Hot Spots” program. As we have stressed in previous comments, we continue to have strong concerns with the proposal to identify an additional 1000 substances for which emissions would be required to be quantified, or amounts reported, under the “Hot Spots” program without first assessing the extent to which each substance represents a risk to public health from exposure in ambient air and confirming that each substance can be reasonably expected to be released from facilities in the state. All the findings to support inclusion of chemicals on the reporting list must be made available for public review and made part of the rulemaking process in accordance with APA requirements

We recognize and appreciate that CARB staff have proposed a two-phase approach to implementing the new reporting requirements. However, the addition of such a large number of substances without first confirming an appropriate basis for listing imposes a significant and unnecessary burden on facilities, air districts, and CARB staff. Moreover, implementation of the proposal is likely to generate considerable public concern about air quality without any basis in scientific evaluation of potential health impacts. This outcome – a generalized fear of potential health effects from possible exposures to listed substances - would undermine regulatory focus on risk driving sources and the public right-to-know objectives of AB 2588, AB 617 and AB 197.

We believe that the ISOR underestimates the costs to the private sector likely to result from the proposed amendments, in part because they do not include increases in fees that will undoubtedly result from the significant increase in costs to state and local governments to administer the proposed

changes.¹ Some industry calculations have concluded that just the assessment of applicability of the newly listed chemicals to a facility may take approximately \$20,000 per business just in employee time. Additional costs for developing the inventory plan and any modeling work are estimated between \$15,000 - \$20,000 for consultant costs and source testing ranging from \$15,000 to \$80,000 per facility. Including these costs increases the estimate of the economic impact on the private sector in excess of \$10 million for at least one year making the proposal a major regulation under Health & Safety Code 57005², thus requiring a more rigorous analysis of potential alternatives.

Nor does the ISOR evaluate all of the reasonable alternatives to the proposal as required by Gov. Code § 11346.2(b)(4). Among the obvious alternatives not addressed by the ISOR are the addition of fewer substances to Appendix A1 or a more gradual phase-in of the 1000 identified chemicals. In light of the fact that the ISOR acknowledges that methods for quantifying releases do not exist for at least some of the chemicals to be added and that toxicity values do not exist for most of these chemicals, it would be difficult for the ISOR to conclude that such alternatives are not as effective in carrying out the purposes of AB 2588.

As noted in the spreadsheet developed by CARB, most of the identified substances have not been subject to a review by the state or an authoritative body designated under Health and Safety Code section 44321. CARB staff have consequently proposed the development of provisional toxicity values for those substances for which such toxicity values do not already exist – encompassing all but a handful of the chemicals CARB proposes to add to Appendix A-1. For example, of the 191 chemicals and chemical groups proposed for ChemSet 1, with reporting beginning in 2022, only 20 have been assigned a no significant risk level (NSRL) by the Office of Environmental Health Hazard Assessment (OEHHA) under Proposition 65. Of the remaining ChemSet 1 substances, 44 have been reviewed by OEHHA, the US Environmental Protection Agency, National Toxicology Program, or the International Agency for Research on Cancer. The remaining 127 (66 percent of the total) do not have existing reviews that could form the basis for a provisional toxicity value.

In addition to concerns about whether staff could meaningfully assess the potential health effects of such a large number of substances in the prescribed timeframe, we expect that provisional values would be misused for risk screening, facility prioritization, risk assessment or as a mechanism to drive emission reductions. Regardless of their intended use, such provisional values are likely to impact the operations of reporting facilities.

For these reasons we remain opposed to the addition of any substance to Appendix A for which the state cannot conduct a robust health assessment that has been subject to external peer review prior to the initiation of the reporting requirement. We urge CARB staff to further refine the revised draft implementation schedule for the EICG proposal in a manner that phases substances into Appendix A-1 based on realistic estimates of the state's ability to conduct health assessments for subsets of chemicals. This approach will require CARB to prioritize those substances for which adequate information is

¹ The ISOR projects total costs of \$34.1 million (\$3.4 million/year) to local governments and notes that these will be covered through the "Hot Spots" fees and other means. The ISOR also estimates that an additional \$3.8 million (\$0.4 million/year) will be collected to fund state agency activity under the existing fee regulation.

² Even using the lowest average cost of \$300 per facility provided in the ISOR, the projected compliance cost would be \$11 million in 2025 and \$10.6 million in 2026 based on the projected number of affected facilities in Table 1.

available, and to defer substances for which significant data gaps must first be filled. It also will provide CARB with the opportunity to refine the list of substances to be added over time and to avoid establishing arbitrary degree of accuracy limits for reporting of substances.

We welcome the opportunity to discuss our concerns with you at your convenience. Thank you in advance for your consideration of these comments. Please contact Tim Shestek at 916-448-2581 or tim_shestek@americanchemistry.com should you have any questions or comments.

Sincerely,



Tim Shestek
American Chemistry Council

On behalf of the following organizations:

Agricultural Council of California
American Chemistry Council
American Coatings Association
California Asphalt Pavers Association
California Business Properties Association
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association
California Food Producers
California Manufacturers & Technology Association
California Small Business Alliance
Chemical Industry Council of California
Industrial Environmental Association
Western Agricultural Processors Association
Western Independent Refiners Association
Western Wood Preservers Institute