



## California Council for Environmental and Economic Balance

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Mr. David Edwards  
Assistant Division Chief, Air Quality Planning and Science Division  
Air Resources Board

Submitted electronically via:

[https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=ctr2018&comm\\_period=1](https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=ctr2018&comm_period=1)

Re: Proposed Criteria and Toxics Reporting Regulation, 25-Day Changes

Dear David,

On behalf of the California Council for Environmental and Economic Balance (CCEEB), we submit the following comments to the Air Resource Board (ARB) on its Proposed Criteria and Toxics Reporting (CTR) Regulation in response to the modified text released on May 13, 2019 for a 25-day comment period. We appreciate the time and dedication of ARB staff to thoughtfully consider stakeholder and air district comments and to revise the CTR based on this input. We hope our comments submitted here support continued refinement to and development of this important new statewide reporting program.

Our main comments are as follows:

- **CCEEB is concerned that the new subsection 93404(b)(2)(C) requiring reporting for portable engines and devices creates numerous compliance challenges** and will be difficult and costly to implement for equipment not owned or operated by the facility itself. While understanding emissions from portable equipment is important, we believe adjustments to ARB's Portable Equipment Registration Program (PERP) is a more effective way to gather this data. It would also be more comprehensive, as all PERP sources would then be included, rather than just those operating temporarily at a facility subject to the CTR regulation.
- **CCEEB requests staff provide the basis for its revised economic impacts analysis** in Attachment D. Specifically, we would like to understand how the average initial year costs of \$1,140 and ongoing costs of \$490 were calculated for facilities subject to §93401(a)(1), (2), or (3). We believe these estimates are significantly underestimated, particularly given the new and substantial

requirements for tracking portable equipment and future work needed to support a transition to uniform statewide emission calculation methods, as proposed in Article 2 of the rule.

- **Abbreviated Reporting is helpful in concept, but needs to be clarified** in terms of eligibility and how it will be applied in practice. CCEEB has several questions regarding §93403(c) and Table A-4 in Appendix A, which we specify in detail in this letter. Additionally, we strongly recommend that staff develop procedural flowcharts as part of the Final Statement of Reason (FSOR) and as guidance for reporting entities that may be eligible for Abbreviated Reporting.
- **CCEEB requests staff provide the basis for toxic air contaminant (TAC) applicability thresholds in Appendix A, Table A-3.** We assume these thresholds were established based on thorough review by staff, but lacking any written justification, they appear arbitrary. For clarity, we ask staff to include a discussion of how each threshold was established as part of the FSOR.

What follows is a more detailed discussion of each of these main points, as well as several minor comments and questions.

### **Compliance Challenges Related to Reporting Portable Equipment**

Subsection 93404(b)(2)(C) would require a facility to report emissions from “portable engines or devices operated at a facility, *regardless of equipment ownership or duration of operation....*” [*Emphasis added.*] This requirement would also apply to equipment in ARB’s Portable Equipment Registration Program (PERP) if the engine or device were “located and operating at the facility for a period of three months or longer.”

Our primary concern is with respect to the impracticality of requiring facilities to track and report emissions for equipment owned and operated by outside contractors. Most of these small sources are construction related or used for maintenance and repair, and would include ubiquitous equipment such as generators utilized for running power tools, air compressors, welders, grinders, pumps, light towers, and drills. Not only would a facility need to revise numerous agreements with contractors (who may often engage subcontractors) in order to require compliant emissions tracking, it would then need to assign facility staff to oversee and verify what equipment is actually being used by contractors onsite and for how long. This would amount to a significant administrative burden, which we describe further below, with very little added value in terms of data collection since much of the equipment would already be reported through ARB’s PERP regulation.

For this reason, CCEEB recommends that ARB instead look to PERP enhancements to address data gaps related to emissions from portable equipment. Such an approach would be more comprehensive as it would include, for example, construction-related

emissions from projects and development at sites not subject to the CTR regulation, and which, in many cases, are located in closer proximity to the public than portable sources at facilities. Thus, if the intention is to gather accurate data for portables, then ARB needs to gather emissions from all sources, which inherently means using the entire PERP dataset. This data could be used to aggregate emissions up to the basin level or down to the community level, and yield a much more accurate understanding of risks. If collected through the CTR regulation, then ARB could unintentionally be projecting a false level of risk to the public by only including portables used at facilities subject to the CTR regulation. PERP data, on the other hand, would allow ARB inventories to be based on a more accurate understanding of where portable sources are in the community, resulting in the design of controls that target specific problem areas.

Should ARB instead step away from PERP as the overarching program to track emissions from portable equipment, then it risks losing or confusing key definitions that have been established over time and through robust stakeholder engagement on PERP. For example, the PERP threshold of 50-brake-horsepower (bhp) for engines (regardless of usage) is inconsistent with the proposed Table A-3 thresholds, which instead are based on gallons of fuel consumption or hours of operation (regardless of engine size). Another area of concern is that the CTR regulation omits PERP definitions and recordkeeping exclusions granted to providers of essential public services.<sup>1</sup> At a minimum, and should ARB decide to move forward with its newly proposed reporting requirement for portables, we ask that these definitions and exclusions be included in the CTR regulation so as to provide consistency with PERP.

A secondary concern is the ambiguity regarding how PERP equipment needs to be reported, "...if the engines or devices are located and operating at the facility for a period of three months or longer." Several questions arise: for example, if the equipment is onsite for more than three months but used sporadically, would emissions still need to be reported (i.e., only the location criterion matters)? Or, if not, how many hours of operation could equipment be run over the three months before triggering reporting requirements? Would use of the equipment need to be continuous over the entire period? Once triggered, would a facility need to report all emissions from that point forward, or would emissions during the initial three-month period need to be included retroactively? What if a project were behind schedule and no tracking was done because it was assumed the equipment would have been moved offsite before the three-month period had expired? And what would be the reporting requirements, if any, if PERP equipment were operated for more than three months, but in two different calendar years, for example, from November 1 to February 15?

In terms of the workload required for compliance, a facility would have to develop new systems to track and monitor portable equipment as soon as it arrived at the site. This would include developing and maintaining a detailed inventory of which engines are in-

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<sup>1</sup> See §§2452(hh) and 2458(a)(1)(c) of the PERP Regulation.

use vs. those rented but on-site in stand-by or at staging; a tracking system to determine when an engine reaches three-months of operation; and a system to track equipment-specific information needed to calculate emissions, including horsepower, emission tier, manufacturer-guaranteed emissions rate, and operating hours or fuel usage for each individual engine. Such information is not currently available to facilities, and may be difficult to obtain from contractors and subcontractors, making it challenging for a facility to perform necessary emissions calculations and to conduct quality assurance checks on contractor data. Rental companies and contractors have a better handle on what equipment is coming and going offsite than a facility would have via their billing system, and would have access to engine information via manufacturer specifications. As such, they would be better positioned than the facility to track and report emissions and would be at less risk for errors.

In summary, CCEEB disagrees with the inclusion of portable equipment in the CTR regulation, particularly for equipment not owned and operated by the facility itself. We believe the proposed new subsection §93404(b)(2)(C) should be removed and that ARB should instead redirect its efforts to enhancements to the PERP regulation. Should ARB persist in moving forward with this requirement, then at a minimum, CCEEB asks staff to provide greater clarification in the proposed regulation and add detailed guidance in the FSOR about how this requirement would apply in practice, including relevant definitions and applicability provisions contained in the PERP regulation.

#### **Need for Detail on Economic Impact Analysis, Including Background Assumptions**

CCEEB requests that staff provide more details on how average costs were calculated, that no background was provided in Attachment D. We believe that requirements to track portable equipment alone would cost much more than the estimated \$490 annual average for ongoing costs. Furthermore, CCEEB believes staff should include a fair and reasonable assessment of the costs for updating and adjusting a facility's internal tracking and reporting systems, recognizing that such updates will be needed at regular intervals into the foreseeable future as new phases of the CTR regulation are implemented. These phases include staff's update to the Air Toxics Hot Spots (ATHS) guidelines, which will dictate what TACs are reported for each sector, numerous changes over time as both criteria and TAC emissions factors are updated and made consistent statewide, and development of sector-specific emission estimation methods or "best available data and methods," as envisioned in Article 2.

In addition to costs associated with implementing CTR changes at a facility, many reporting entities will be dedicating significant staff resources to work with local air districts and ARB in amending and adjusting district programs and rules, revising reporting guidelines, and developing consistent and uniform estimation methods, which could include conducting expensive and time consuming source testing. CCEEB recommends that staff's economic analysis include such costs, as they will be real and significant and directly related to implementation of the CTR regulation. Moreover, it is important to acknowledge that for many reporting entities, accuracy in reported

emissions affects much more than compliance with the CTR regulation; reported emissions are used to verify compliance with local air district permits and Title V permits; to assess emission-based fees, which could amount to hundreds of thousands or even millions of dollars each year; to track progress in emission and exposure reduction control measures; and, not least of all, to communicate to the public a facility's impacts on the local community. That is, facilities have a vested interest in ensuring that ARB's statewide reporting program results in transparent, accurate, and consistent emissions data and that development of future phases is well organized and successful.

### **§93403(c) Abbreviated Reporting Needs More Clarity Regarding Eligibility and Process**

CCEEB appreciates that staff added this important new subsection to help ease the administrative burden of §93401(a)(4) applicability for both facilities with minor permitted sources as well as local air districts. However, we must note our ongoing concerns with the (a)(4) applicability criterion and our questions regarding ARB interpretation of Health and Safety Code (H.&S.C.) requirements, incorporating by reference past CCEEB comments on this issue.<sup>2</sup> For those reasons, we also question the change to §93400 that adds reference to H&S.C. §39607, and reiterate our belief that this section of State code neither requires nor authorizes ARB to collect reported emissions from minor permitted sources.

In regards to Abbreviated Reporting, CCEEB requests that staff to provide greater clarity in the rule as well as guidance in the FSOR to help explain which sources are eligible and how the process works in practices. In particular, we suggest the following:

- Revise §93403(c)(2)(A)(1) and (2) so that eligibility is based on the source type rather than facility applicability requirements. This would allow Abbreviated Reporting for all emergency backup generators, fire pumps, and gasoline dispensing pumps.
- Revise §93403(c)(2)(A)(3) to allow for general notification by an air district through emails, online notices, and other regional communication strategies, rather than individual communications to each and every eligible facility.
- Include flowcharts in the FSOR that clearly identify (1) which sources are eligible for Abbreviated Reporting, and (2) what impact Abbreviated Reporting has on reporting requirements for other sources at a facility, recognizing that §93404(b)(2) requires reporting for all permitted processes, some unpermitted processes, and portable equipment.
- Clarify that §93403(c)(3) and the requirement to report "calculated emissions" applies to air district data submittals to ARB, not to a facility reporting its throughput or activity levels to a local air district.

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<sup>2</sup> See CCEEB comments on the Informal Draft Proposed 15-Day Changes (version 3/4/2019), submitted to ARB on March 29, 2019.

- Clarify in Table A-4 that portable emergency engines and other combustion equipment are eligible for Abbreviated Reporting.

### **Clarify Reporting of Air Toxics and Add Discussion of Table A-3 Applicability Thresholds**

CCEEB notes that the thresholds listed in Table A-3 are set so low as to render §93401(a)(3) applicability requirements as essentially meaningless, since most TAC sources are brought in through Table A-3. Of concern is that (a)(3) applicability is based on AB 617 and H.&S.C. §39607.1 (a)(2)(C) whereas nothing in either the authoring legislation or State code requires ARB to include minor sources as done in Table A-3.

In terms of reporting requirements for TACs, CCEEB recommends that staff clarify that §93403(a)(1)(B) applies to facilities subject under §93401(a)(1), (2) and (3) rather than just “Elevated Toxics Facilities.” That is, business-as-usual reporting methods should apply to all major sources for *at least* the two-year phase-in period covering data years 2019 and 2020, reported in 2020 and 2021 respectively. As currently written, it appears that BAU requirements only apply to (a)(3) facilities for data year 2020.

CCEEB understands this phase-in period is meant to provide ARB with the necessary time to update its Air Toxics Hot Spots (ATHS) guidelines, and that future reporting requirements will be based on sector-specific lists included in those guidelines. CCEEB strongly urges staff to commit to this step in writing, by adding a reference to the ATHS guidelines in §93404(b)(1)(B) and providing a discussion of anticipated ATHS revisions as part of the FSOR. Furthermore, we suggest that ARB allow the BAU period be extended past 2021 should work on the ATHS not be ready and final by January 1, 2021. We note that facilities will need sufficient lead-time to implement the new reporting and emissions tracking requirements. Finally, as part of this overall work on TAC estimation methods and reporting requirements, we ask that staff initiate a series of public meetings with affected facilities as early as possible to seek input on how this work should be phased and prioritized, including suggestions as to which emissions factors are outdated or inconsistent as well as what data is currently available as a basis for updating emissions factors. Such a process would be valuable to gain insight on criteria pollutants as well, not just TACs.

In terms of the applicability thresholds listed in Table A-3 of Appendix A, we ask staff to explain the rationale for each threshold as part of the FSOR. In particular, we would like a discussion of the “combustion of crude, residual, distillate, or diesel oil” threshold that applies to internal combustion and emergency backup generators. CCEEB notes that the number of facilities being brought into the CTR regulation under this applicability threshold is likely to increase substantially and rapidly as more businesses and facilities prepare for emergency electricity shutdowns by the utilities as a response to wildfire risk. ARB should also consider how emergency runtimes for emergency backup generators and other safety equipment are expected to increase as a response to wildfires.

The proposed applicability thresholds for internal combustion and emergency backup generators are particularly striking when contrasted with the provisions of the Stationary Compression Ignition ATCM (CI ATCM). The proposed applicability thresholds are based on a limited number of operating hours per year (5 hours) and/or fuel use, regardless of engine size. The CI ATCM has a size-based applicability threshold of 50 brake horsepower, and usage thresholds of 20 hours per year [17 CCR 93115.3(j)], the number of hours required for mandatory National Fire Protection Association testing [17 CCR 93115.3(n)], with additional provisions allowing for emergency generator operation of up to 100 hours per year for maintenance and testing, depending on the engine's emission rate. We ask staff to explain why reporting requirements in the CTR regulation are applicable to many more engines than those subject to the health-based requirements of the CI ATCM.

### **CCEEB Minor Comments and Questions**

§93401(a)(4). Applicability - CCEEB strongly recommends that reporting requirements be strictly limited to the permitted equipment or processes subject to §93401(a)(4) applicability for facilities not otherwise subject to the regulation under other sections of §93401(a). Clarification would be needed in §93404(b)(2), making clear that for facilities with only minor permitted sources, reporting of other sources of emissions would not be required. For example, if a facility were subject to the regulation because of an emergency backup generator, it would not be required to report fugitive emissions, emissions from unpermitted processes, emissions from other minor permitted sources operating below the reporting thresholds, or portable engines and devices. CCEEB notes that many of these facilities, such as commercial and institutional properties and small businesses, do not have staff trained to track and calculate emissions. Furthermore, while Abbreviate Reporting eases and streamlines requirements for certain minor sources, it does not include fugitives, such as evaporative emissions from solvents or trackout and dust plumes from vehicles on paved surfaces, or portable equipment. Reporting of these types of emission sources is complicated and resource intensive, and should only apply to major source facilities.

§93401(b)(2). Applicability: Exclusions – CCEEB agrees with the exclusion of irrigation pumps, noting that this equipment typically operates in remote locations far from the public. CCEEB strongly encourages staff to add a similar exclusion for emergency fire pumps and engines used for fire suppression, as well as engines, whether portable or stationary, used for safeguarding essential public services during periods of power curtailment in response to wildfire risks.

§93402. Definitions: Best Available Data and Methods - while improved, this language is still problematic in that facilities must still attest to the accuracy of data calculated by local air districts, even when the district estimation methods are unknown. CCEEB believes this definition, and compliance determinations based upon it, will be difficult to interpret until such time as ARB has finalized rulemaking on sector-specific estimation methodologies in Article 2. We encourage ARB, the California Air Pollution Control

Officers Association (CAPCOA), and the air districts to prioritize development of Article 2 and updates to the ATHS guidelines, and to engage with regulated facilities early and often in order to gather their insight on “best” emissions estimation methods.

§93403(d)(2): Emissions Reporting Requirement: Annual Submittal – CCEEB is concerned that 30-days for a facility to re-submit data to ARB in cases where an air district has failed to do so is not sufficient time. Instead, we recommend that a facility be given 90 days, recognizing that time is needed for facilities to calculate emissions, particularly in air districts where only activity or throughput is reported. CCEEB also asks staff to allow for some sort of compliance protection in cases where either ARB or the facility disputes data calculated and submitted by an air district and can show that more accurate estimation methods are available and should have been applied. That is, facilities should not be held at fault for late reports or those submitted by the local air district with “missing, incomplete, or incorrect” data.

§93404(b)(2)(B): Emissions from Unpermitted Processes – we ask staff to clarify what is meant by emissions that are “quantified by the local air district,” and as such, would be subject to reporting requirements. Specifically, would this include basin-wide estimates of unpermitted area sources, such as fugitive emissions from registered storage tanks or fugitive emissions from dust and track-out? Or does it only apply to unpermitted processes that are quantified on facility-level basis and not for general purposes of regional or community inventories?

§93406. Confidentiality – CCEEB reiterates our past recommendation that ARB should develop a streamlined process for flagging confidential business information (CBI) rather than asking a facility to request CBI protection for each individual process. For large and complex facilities, this could involve hundreds or thousands of data points. We commit to working with staff to explore options on how best to handle review of CBI requests.

In closing, we reiterate our appreciation for the time staff is taking to work through the many complex issues related to the CTR regulation, and commit to continued engagement in support of successful rule development and implementation. It cannot be stressed enough the significance of this effort to transition to a uniform statewide program, which will gather accurate, transparent, and consistent annual emissions reports for more than 50,000 individual facilities across the state. As the program further develops, particularly in regards to development of the Article 2 and related work to update the ATHS program guidelines, it will be essential that ARB continue its robust engagement with affected businesses, CAPCOA, and local air districts. These future stages of work support not just the validity and accuracy of reported emissions and emission inventories at ARB, but also have major implications for the air districts where significant work will be needed to harmonize emissions-based programs, policies, permit conditions, and rules according to the new estimation methods and requirements being put forth under the CTR regulation. Work is also needed in properly

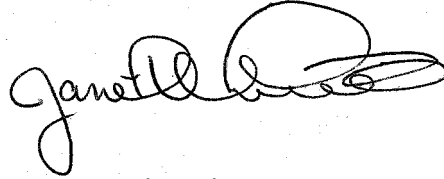


characterize and communicate to the public how these changes in reporting methods can affect estimates of facility emissions. CCEEB stands ready to work with you and ARB on all of these important CTR regulation implementation issues.

Sincerely,



Bill Quinn  
CCEEB President



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CCEEB Policy Director

cc: John Swanson, ARB  
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