November 13, 2020

Clerk of the Board
California Air Resources Board
1001 I street
Sacramento, CA 95814

RE: OPPOSITION: AMENDMENTS TO THE REGULATION FOR THE REPORTING OF CRITERIA AIR POLLUTANTS AND TOXIC AIR CONTAMINANTS

Dear Chair Nichols:

The California Construction and Industrial Materials Association (CalCIMA), and the California Asphalt Pavement Association (CalAPA) strongly oppose the amendment and expansion of statewide reporting by the California Air Resources Board from the "major sources" identified within AB 617 as being required to report to include practically all permitted stationary sources within California. As we will explain below, we believe these amendments far exceed the intent of the Legislature as well as authority which has been granted to CARB. Rather than targeting areas most in need of attention, this overly broad set of regulations will create a sweeping new reporting structure for practically all stationary sources in California, undermine local authority, and create the opportunity for confusion, rather than clarity, with regard to clean-air goals and progress.

CalCIMA is the state trade association for aggregate, industrial mineral, and ready-mix concrete producers in California. CalCIMA members provide the essential materials needed to build the state's public highways, roads, rail, and water infrastructure; to build homes, schools and hospitals; to grow crops and feed livestock; and to manufacture wallboard, roofing shingles, paint, glass, low-energy light bulbs, and battery technology for electric cars and windmills. While we have some sources that are major sources the majority of our member facilities are non-major stationary sources. CalAPA is a statewide trade association representing the asphalt pavement industry in California, including asphalt producers, refiners, paving contractors and other firms that build and maintain California's vital road transportation network. Asphalt facilities are already subject to stringent reporting requirements by local air districts across the state.

We are appreciative that the Air Resources Control Board has provided abbreviated reporting for construction aggregate facilities as well as adopted an implementation schedule that should somewhat reduce the burden of this regulation. However, we do not believe the State Board is authorized to adopt these regulations by statute.

These regulations would impose significant costs to materials producers and air districts. The lack of consistent emission factors and methodologies statewide between air districts in calculating emissions for stationary sources would create a database that is imprecise, inconsistent and will present inequivalent information as equivalent for similar types of facilities. As a result, it will misinform the public should they attempt to compare data across incompatible air district systems. The resulting confusion is the exact opposite of the original intent of AB617. The legislatively approved definition of stationary sources for this reporting system was targeting only major stationary sources and high risk facilities for which consistency can be created.

Approach Exceeds Explicit Legislative Authority in AB 617 and AB 197:

The Legislature provided an explicit definition of stationary source for this regulatory activity in Health and Safety Code 39607.1. Further, in legislative analysis, the Legislature specifically noted it covered reporting by "major sources." AB 617 was a carefully constructed, phased-in and targeted approach to reducing emissions exposure in our most impacted communities instead of a broad statewide approach.

Health and Safety Code 39607.1 is CARB's authorization for a statewide reporting system on stationary sources as defined. It has a three-part definition of Stationary source for the purposes of the section, not a four-part definition as created by this regulation.

> "39607.1.
> (a) For purposes of this section, the following definitions apply:
>
> (1) "Nonattainment pollutant" means a criteria pollutant for which a district is classified as a nonattainment area pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).
>
> (2) "Stationary source" means any of the following:
>
> (A) A facility that is required to report to the state board the facility's greenhouse gas emissions pursuant to Section 38530.
>
> (B) A facility that is authorized by a permit issued by a district to emit 250 or more tons per year of any nonattainment pollutant or its precursors.
>
> (C) A facility that receives an elevated prioritization score based on cancer or non-cancer health impacts pursuant to Section 44360.
>
> (b) (1) The state board, in consultation with districts, shall establish a uniform statewide system of annual reporting of emissions of criteria pollutants and toxic air contaminants for a stationary source.

(2) The state board shall require a stationary source to report to the state board its annual emissions of criteria pollutants and toxic air contaminants using the uniform statewide system of annual reporting developed pursuant to paragraph (1).

(c) With the report required pursuant to paragraph (2) of subdivision (b), the state board may require, as appropriate, a stationary source to provide relevant facility-level emissions data.

(d) The state board may require, as appropriate, a stationary source to verify or certify the accuracy of its annual emissions reports by a third-party verifier or certifier that is accredited by the state board."

The section reads clearly enough. It creates a three-part definition of stationary source that captures major and high-risk sources within the state and authorizes, in consultation with districts, the creation of an annual reporting system for those stationary sources explicitly defined for use within the section. In other words, it is the regulation that CARB has already adopted, and which is being amended. The additional provisions now being considered were previously removed by staff last year prior to the adoption of the regulation. We see no need, nor authority for those provisions to be re-inserted into the regulations.

There is further evidence that the Legislature considered this annual reporting system as being limited to "major stationary sources." In the July 14, 2017 Assembly Analysis on Concurrence with Senate Amendments the analysis notes:

"1) Provides for regular and consolidated reporting of emissions from *major stationary sources* (emphasis added) by requiring ARB to establish a uniform statewide system of annual reporting of criteria pollutants and toxic air contaminants (TACs), including reporting by sources of facility-level emissions data and third-party verification."

The Legislature got it right as those are the stationary sources best situated to report annually. Air Districts and non-major stationary sources are not ready for this annual reporting system at this time.

Further, AB 197, which has also been used as justification for this rule, specifically dictates that CARB only collect information from Air Districts that they collect in their inventory activities. Specifically, AB 197 provided CARB report the following data:

"(3) The criteria pollutant and toxic air contaminant emissions data for stationary sources shall be based on data provided to the state board by air pollution control and air quality management districts collected pursuant to Section 39607 and Chapter 3 (commencing with Section 44340) of Part 6 of Division 26."

The Legislature did not grant the Board authority to collect such information from operators and permittees of the local air districts. While the ISOR for this regulation notes AB 197 provides the following: "*H&SC section 39607(b)(2) established under AB 197 requires that the state board shall, 'Inventory sources of air pollution within the air basins and determine the kinds and quantity of air pollutants.'*" From this sentence fragment one might think the Board was authorized to collect this data from operators, however that is not true.

First, the ISOR language comes from 39607 (b)1 and not (b)2. However, under both sections the Legislature made it clear where CARB was to get the data. It is not from operators, but Air Districts as shown by the 39607(b)1 and (b)2. In neither section is the data provided from operators directly to CARB, nor is CARB granted authority to adopt a rule to collect data itself.

> "(b) (1) Inventory sources of air pollution within the air basins of the state and determine the kinds and quantity of air pollutants, including, but not limited to, the contribution of natural sources, mobile sources, and area sources of emissions, including a separate identification of those sources not subject to district permit requirements, to the extent feasible and necessary to carry out the purposes of this chapter. **The state board shall use, to the fullest extent, the data of local agencies and other state and federal agencies in fulfilling this purpose [Emphasis added]"**

Health and Safety Code 39607(b)2 as included within AB 197 also reinforces that the information the State will make available upon its website is to come from the local districts not their permittees. It states,

> "(2) Make available on the state board's Internet Web site the emissions of greenhouse gases, criteria pollutants, and toxic air contaminants throughout the state broken down to a local and subcounty level for stationary sources and to at least a county level for mobile sources. The emissions reported shall include data on the emissions of criteria pollutants and toxic air contaminants emitted by stationary sources **as provided to the state board by districts**. The information shall be displayed graphically and updated at least once a year.

Rather than collect the information already collected by Air Districts and make it available as authorized by Statute, CARB has instead embarked on a regulatory agenda to tell local air districts what and how to collect data followed by a requirement on operators to report the data that way to CARB should the air district not do so. This program clearly was not authorized under AB 617, which was precisely limited to Major Source reporting and reporting in selected and prioritized EJ communities. Further, this is not authorized by AB 197, which only authorizes CARB to collect information from Air Districts.

At the least CARB must remove provisions of this rule which would require operators to report to CARB. We expect that our local permitting agencies will collect such data as they need to determine compliance and would likely share information they do collect if asked. However, CARB has not been given the authority to manage the air districts in either AB 617 or AB 197 and we do not believe CARB has authority to adopt regulations on local districts in this matter.

<u>Significant Cost Burdens on Non-Major Emitters and Air Districts:</u>

As there are areas of the state where annual reporting occurs by our members, we have actual costs for complying with annual reporting obligations for non-major sources. The general operator cost to submit data to South Coast Air Quality Management District is between $2,500 to $5,000 per year in direct consultant cost without including time and labor costs, and significantly more for complex facilities. In meetings with CARB staff, we have learned this reporting system is expected to include up to 60,000 facilities annually. The annual compliance cost for 60,000 facilities at just $2,000 dollars per facility would be an estimated $120 million annually.

The added burdens on local air districts are also a significant concern to the materials industry. Added burdens on their staff resources directly impact their ability to undertake critical activities such as permit modifications, variances and other necessary activities that keep operations running. The equipment specificity of stationary source permitting systems and need to update permits due to replacement is a very real need and delays in such actions have real impacts on a material producer's ability to operate.

Permit Requirements and Emission Factors are not Consistent Statewide

Local air districts have developed and implemented stationary permitting systems which fit the needs and sources within their districts. This is fundamental to the design intent of the local district system and its recognition that South Coast is not Yolo-Solano. As a result, which emissions factors are utilized and what sources are encompassed within permits varies by district. These are not large, major-emitter combustion sources with CEMS systems, such as the facilities identified in AB 617's statutory authority, but rather a broader and more diverse array of businesses. Incorporating all of that mixed data into a statewide system doesn't create clarity — it will create confusion as sources from one district are "apples" and similar sources in other districts are "oranges," and the resulting numbers are therefore not directly comparable as to what is achievable.

AB 617 effectively accommodates this by enabling fence-line monitoring of stationary sources once AB 617 communities are identified. Consistent, comparable data on emissions leaving the sites in the direct area of concern was authorized. It is not necessary to bring every non-major facility into a statewide reporting system. AB 617 relies on monitored exposure assessments not emissions assessments. A more reasonable approach is to target the impacted community and do extra work within that community, not statewide. Again, the Legislature had the wisdom to create a scalpel that focused costs and burdens where change was most needed. It did not create a system to act everywhere — instead the concept was to target the resource expenditures of districts' businesses and the state on the communities most in need of reductions now, with the understanding that the lessons learned there may be expandable to other places later. This proposed reporting system as constructed is the opposite of that policy structure.

The Statewide Reporting System Creates an Illusion of Emissions Data Sufficiency

This emissions reporting system seems designed to create the appearance of comprehensive emissions reporting. It does not. Not only does it create "apples to oranges" data defects in comparing data

between districts, a statewide, stationary source inventory ignores many of the most significant sources which are mobile sources.

Again, we are thankful that the Board is proposing some reductions to your initial draft and allowing some construction aggregate facilities abbreviated reporting. The extended timeframes for air districts to prepare may be helpful. However, the program is a significant expansion beyond the authority granted CARB by the legislature in AB 617 and AB 197. At the very minimum CARB must recognize they were directed and authorized only to collect data from Air Districts and the provisions requiring operator reporting to CARB should air districts fail should be removed.

Respectfully,

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