

Richard Corey  
Executive Officer  
California Air Resources Board  
Sacramento CA

Dear Mr. Corey:

We are writing to express our opposition to the proposed rule regarding an inventory of sources of criteria pollutants and air toxics, known as the Criteria and Toxics Reporting rule, as currently written.

When this process started over a year ago, it seemed that this rule could advance our collective ability to address air toxics. Consequently, we participated in many workshops and submitted comments at every step.

We consistently asked ARB to develop a complete, accurate, and consistent inventory of sources and emissions of air toxics to support community air protection. We see the inventory as a way of to take a fresh look at these sources, informed by consideration of potential for cumulative impacts and an eye toward identifying targets for reductions.

We strongly support better processes for looking at communities and air toxics at this time. For the last decade, ARB looked primarily at regional scale impacts of criteria air pollutants and diesel emission with scant attention to the community scale. For air toxics, relatively small sources of many different compounds can lead to localized impacts invisible at the regional scale.

Board members have made encouraging comments about their commitment to community air protection and building a paradigm of working with communities. Collaboration from the local to the state level, rather than solely top-down approaches, can create new opportunities. We have hoped that the inventory would support this collaboration.

We are sorry to conclude that this rule goes entirely in the wrong direction from the prior draft. It does not address the comments and concerns that we have consistently raised over the last year. The inventory will not identify all sources. It will reflect the limitations and biases from past years. It will not reflect actual emissions. We cannot support that.

**We ask that you include all sources in the inventory not just permitted ones.**

Rather than including all sources of air toxics emissions, this proposal would acknowledge only sources that are “permitted” by local air districts.

It is important to recognize that “permitted” is a term of art and that districts use a number of mechanisms to authorize emissions besides permitting. We know that many sources of air toxics are authorized by mechanisms of “registration” and “notification.” No standards govern what sources are authorized through permits versus other kinds of approvals. This varies by district.

ARB’s proposed rule would retain this approach and reinforce the status quo. It will create a permanent incentive for emitters to push districts to use mechanisms other than permitting to shield emissions from reporting.

We ask that the ARB and districts work together to provide a list of all of the sources that are authorized by any of these mechanisms.

**We Ask You to Make it Possible to Add Real Sources Identified by Communities to the Inventory**

The proposal provides no mechanism to add sources to the inventory that are identified by communities through ground-truthing or other means. However, our experience has shown that communities identify sources that are not known to the air districts or ARB. It is very hard to understand how excluding real sources identified by communities can be consistent with the promises to work with communities on community air protection.

We ask you to add this to the rule and to the design for the data system.

### **We Ask You to Honor Your Promise to Bring in the “Area” Sources**

This rule is inconsistent with the commitment made by the staff at the December Board hearing to bring the so-called “area” sources into the inventory individually rather than as a group averaged over a county. The “area” sources are not necessarily permitted by districts and so will entirely disappear out of the inventory under your proposal.

We ask that you honor your commitment to include the individual area sources and add this to the rule.

### **We Ask you Not to Categorically Exclude Sources of Concern**

The rule has gone further to specifically exclude sources of significant concern such as those resulting from certain agricultural activities. Emissions of ammonia and pesticides can pose significant health concerns and yet these are excluded.

We ask you to include all sources in the inventory.

### **We Ask you to Substantiate Your “Thresholds” that Would If Adopted Exclude Sectors and Air Toxics**

The ARB has incorporated what they call “thresholds” for the inventory in Table A-3.

This approach is quite different from what was presented at the December Board hearing.

At the Board hearing, the ARB staff discussed use of “thresholds” as a way to exclude reporting for minimal amounts of pollutants. If a source emitted only a very tiny amount of a compound, it would not have to report. Thresholds were to be developed to define what might be considered to be the “very tiny amount” for different compounds. It was generally agreed that this might be able to be developed into a useful approach.

However, the proposed rule has turned this approach on its head.

Though the proposal still refers to “thresholds,” what is included (in Table A-3) are not thresholds for excluding reporting for minimal levels of pollutants. Instead, it lists sectors and substances to be included in reporting. **The rule provides that sectors and substances that are not listed will not be included in the reporting.** Anything not listed is out. This approach was never discussed in the public notice for the rule or at the Board hearing. We do not believe that it is within the scope of a 15-day rule.

One type of “thresholds” relates to processes (as identified by NAICS codes) to include in the inventory. Some of these are further modified by specific pollutants so that only those entities emitting a named pollutant would be included. Any process business sector not on the list is out.

A second type is named pollutants. There are roughly ten of these. This seems to be an oddly random set of pollutants that include 1,4-dioxane but few similar compounds. It includes polybrominated diphenyl compounds but no other flame retardants. The proposal says that it addresses children's health concerns but does not include pollutants of particular interest for children mercury and lead. One would expect any release of lead or mercury to be of interest and to be reportable. Metals are

excluded. Metals such as chromium, cobalt, arsenic, and manganese should be tracked closely to avoid exposures. Yet they are not named as pollutants to be brought into the reporting. If a pollutant is not named, it is out unless it is required to be reported by a process in a named sector.

The obvious question to ask is what this brings in and what it leaves out. Unfortunately, the ARB has provided zero documentation of this. We don't know and it does not appear that the ARB knows either.

To develop the list in Table A-3, ARB says that it relied on a document from 1997 from the "hot spots" program for the scientific analysis. It validated the approach using existing reporting of toxics emission. This existing reporting has been widely acknowledged to be incomplete, inaccurate, and unreliable. It is difficult to comprehend why the ARB would use outdated and poorly substantiated technical documents and reporting systems to design an inventory for the future. This seems to be the opposite of what you would want to do. It is not an appropriate basis to decide what to include and what to exclude. We want to see a scientifically justified and substantiated approach.

The approach to use these inclusion criteria is quite different from what was discussed at the Board hearing in December and is deserving of a full review based on the underlying analysis. Under California law, administrative agencies are required to provide analyses that support their rules to the public. This should be done for this rule as well and sufficient time provided for review.

### **We Cannot Review the Sectors for Limited Reporting Due to Inadequate Review Time**

The proposal includes provisions for limited reporting. Due to the limited review period we do not have enough time to review this.

### **We Have Good Reasons to Want to See Information About Sources and Ask you to Consider Them**

Speaking more generally, ARB seems to be very focused the reporting of emissions data but not at all interested in providing accurate and complete information about the sources of emissions.

We question this judgment for three reasons.

One is that for the public, the most useful and understandable information to begin to look at community impacts is to look at sources. If you look at the community air protection projects presented at the Oversight Hearing on AB 617 held this spring, project presentations start with maps showing the location of communities and sources of concern (some of which are located outside community boundaries). The ARB would do well to take this to heart and make it part of what they plan to provide. ARB has expressed a lot of concern about costs, and this would be the most cost-effective way to begin to provide useful information.

The second is that the usefulness of the modeling approaches used by the air quality agencies for communities has not been established as yet. The community air protection guidance requires a lot of modeling and analyses, and it is not at all clear that these will be helpful. Time will tell.

The third is that we know that it will take years to fix all the problems with the emissions data so that they can be relied upon. Some reasons include: use of estimation methods that are unsubstantiated or outdated; limited or nonexistent validation of estimation methods with measurements; idiosyncratic approaches used by air districts such that no two districts report data in the same way; systematic exclusion of fugitive emissions that may exceed the point source emissions; systematic exclusion of startup, shutdown, and upset related emissions; emissions estimated based on consideration of fee schedules rather than actual emissions; outdated list of air toxics dating from 2007 and before;

incomplete reporting of even those toxics that are on the purported list; infrequent reporting; loss of expertise at the ARB and districts in air toxics.

Consequently, it is important to put together a complete inventory of the sources that we can use now. This can have significant value while ARB works to try to fix the reporting over the next decade and will be beneficial even if ARB is not successful in fixing the reporting.

## **Conclusion**

A number of organizations interested in public health, environmental justice, and environmental protection have consistently asked that the Board and districts work together to develop a comprehensive list of sources of air pollutants including criteria and toxics pollutants, that is put on a common reporting schedule and scale with the greenhouse gases. The Legislature has directed the Board to do this. This is fundamental both to building public understanding and capacity for both pollution control and climate related actions.

We ask that you amend this proposal to incorporate this request. We do not see the value of expending millions of dollars to create an inventory that we know will be incomplete and inaccurate and that has no mechanisms to incorporate changing conditions and practices.

Thank you for your consideration of these comments.

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