SCAP
SOUTHERN CALIFORNIA ALLIANCE OF PUBLICLY OWNED TREATMENT WORKS

November 13, 2006

Via Electronic Mail

Clerk of the Board
California Air Resource Board
1001 I Street
Sacramento, CA 95814

Re: Comments on Proposed Amendments to AB 2588 – Air Toxics "Hot Spots" Program

Dear Clerk of the Board:

SCAP appreciates the opportunity to comment on the proposed changes to the AB 2588 "Hot Spots" Program. The Southern California Alliance of Publicly Owned Treatment Works – or SCAP as we are commonly referred to – represents 78 public agencies that provide both water and wastewater treatment to nearly 18 million people in parts of Los Angeles, Orange, San Diego, Santa Barbara, Riverside, San Bernardino and Ventura counties. We treat and safely reuse or dispose of over 1 billion gallons of wastewater each day and deliver over 1.7 billion gallons of drinking water per day. We have reviewed the proposed amendments to AB 2588, and have evaluated potential impacts upon our member organizations.

Incorporating Diesel PM as a toxic air contaminant with such a high cancer potency factor has the potential to significantly elevate risk at some facilities, and cause other facilities to conduct health risk assessments (HRAs) that previously had been categorized as "low priority." As a result of these circumstances, the ARB should adopt a program that provides consistent guidance throughout the State for preparing inventories and HRAs. This consistency ensures that impacted communities can confidently compare risk between facilities. We are concerned, however, that the proposed changes instead provide too much local district discretion that could erode this much needed State-wide consistency.

Specific Comments:

Air District Discretion

The Hot Spots program was developed to: 1) create statewide inventories of toxic substances resulting from facility air emissions; 2) perform risk assessments where determined necessary;

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and 3), identify any significant impacts to the local communities. Determining significant impact thresholds is at the discretion of the local districts, but criteria in developing the toxic substance inventory and procedures for preparing risk assessments must be standardized to ensure inventories and risk between facilities are comparable throughout the State. The final risk numbers have no meaning if the procedures to develop them vary. Many of the proposed changes in the Hot Spots program run contrary to this goal for consistency by allowing a significant level of local district discretion where perhaps guidance should remain at the State level.

One of the most important changes where this has occurred is in the proposed definition of *Routine and Predictable*. Here, the local districts are allowed to determine what is *Routine and Predictable* with the guideline that it *means all of the regular operations at the facility.* This is an area where ARB must provide more substantive guidance since it involves diesel engines that now have the potential for very significant risk, where before the risk was low, or for some equipment was not even included in inventories. Thus, for example, two similar facilities with similar equipment emissions, may have very different risks under the proposed definition because the two districts could have defined equipment in one case *Routine and Predictable*, thus included the HRAs, and in the other case not *Routine and Predictable* and not included. In the ARB Staff Report, it is stated that *most of the issues related to determining what constitutes routine and predictable activities involve portable engines*. Since the Hot Spots program was originally envisioned to only include stationary equipment, substantive ARB guidance is needed here justifying inclusion of portable equipment, and under what circumstances.

ARB does cite one example in the Staff Report where *construction activities or capital improvements* should be included if it lasts more than a *few months*. District discretion is once again allowed to define *a few months*, but more importantly we believe that ARB and local districts may have overstepped their bounds by suggesting to include construction activities as *Routine and Predictable*. We believe that activities such as *construction* were never meant to be included as part of a facility's *stationary source,* as the activity is not *routine* nor a part of the core function of that facility. *Construction activities* are always short-term with a finite life, even if lasting more than a *few months*. Furthermore, the CEQA process is already in place to evaluate the impacts of construction projects. CEQA also provides vital local control to determine if significant projects can proceed based upon the overall need for the project. For example, construction of a wastewater treatment plant may be determined through an environmental impact statement to have a significant impact, even after all possible alternatives and mitigation measures were considered, but the Lead Agency may make a *Statement of Overriding Consideration* based upon the fact that the facility is an essential public service. Including construction projects in the Hot Spots program at the discretion of the local air district could create a situation where the local decision-making authority, established by State law through the CEQA program, is pre-empted by decisions made by the local air district. Thus conceivably, the operation of a treatment plant expansion may be evaluated to produce an acceptable risk, but under this proposal, diesel equipment involved in the construction project may result in an unacceptably high risk that could prevent the project from proceeding despite the critical nature of the project.

In light of these commends we recommend the definition be changed as follows:

> **"Routine and Predictable"** means all regular *stationary, and core* operations at the facility, *except as specified in Section XI (C)(2)(c)*. Emergency or catastrophic releases*, as well as construction projects,* are not "routine and predictable" and are not included in a facility's emission inventory.

In addition, it is important that the inclusion of any portable equipment be consistent with this definition, so we recommend the language in Section XI (C)(2)(c) also be modified to add the following language:

> (c) Portable Diesel Engines of Any Size
> The districts may request the information in section XI.C.(2)(a) for portable diesel engines if the district determines there is good cause to expect that the engines at the facility have the potential to pose a significant risk~~.~~***, consistent with the definition of "Routine and Predictable."***

In another proposed change, local districts are once again given wide discretion in interpreting a definition; in this instance, the definition of *Stationary Diesel Engine*. While this definition is well established in other State rulemakings, ARB attempts to provide a new definition that now allows the local districts discretion in determining, for engines not attached to foundations, if they are *stationary for the purposes of "Hot Spots" reporting*. Thus, a local district can now decide if an engine that has been permitted as portable, is instead *stationary*. With this new power, if a portable engine is now determined to be stationary for the purposes of Hot Spots reporting, then the equipment **would** need to be included in a HRA, if the local district decides a facility needs such an assessment. In addition to it being unreasonable to re-define *Stationary Diesel Engine*, it is unnecessary because proposed Section XI (C)(2)(c) already allows a district to determine if there is *good cause to expect that the portable engines at the facility have the potential to pose a significant risk.* At least here the local district has to determine *good cause* for including these units in a HRA. In the proposal to re-define *Stationary Diesel Engine*, it is left up to the discretion of the local district, without any requirement for *good cause*. We therefore recommend the definition be removed completely, or modified as follows:

> **"Stationary Diesel Engine" or "Stationary CI Engine"** means a CI engine that is designed to stay in one location, or remains in one location. A CI engine is stationary if the engine or its replacement is attached to a foundation.

Facilities Discretion to Perform Risk Assessments

One of the success stories of the Hot Spots programs was the effort facilities made to reduce risk in order to avoid public notification. Now with the inclusion of a Diesel PM cancer potency factor, facilities may be over levels of significance despite past efforts to reduce risk. However, facilities can once again be proactive by undertaking detailed HRAs prior to

receiving a request from the local district, for two important reasons. First, a facility may wish to demonstrate that the facility risk is below risk threshold levels, when it is certain the facility would be over these levels when calculated using conservative screening look-up tables applied to on-site engines. Second, a facility may wish to demonstrate that control equipment installed on engines to reduce risk has resulted in risk levels below established thresholds. This proactive approach also helps local air districts avoid having to complete individual source assessments, but more importantly, provides an **early reduction in facility risk.** No where in the proposal is it stated that this approach would be allowed. In conversations with staff, they indicate that nothing prevents a facility from performing detailed HRAs; however, we are aware that some local districts are trying to prevent this simply because they don't have the manpower to review detailed HRAs, but would rather rely on the simpler conservative screening risk assessments that use look-up tables. As stated, the proactive actions of facilities to reduce risk gave rise to the Hot Spots program success. ARB should build on this early success by explicitly stating in the proposed revisions that a facility has the option to prepare detailed HRAs. Manpower to review the assessments should not be an issue since the Staff Report states that the proposal to adopt the new diesel PM potency number will only negatively impact a small percentage of the facilities. We therefore recommend that additional language be added to the end of Section XI (E)(2) as follows:

> *A facility operator may at any time update their inventory and conduct a Health Risk Assessment in a manner consistent with OEHHA Risk Assessment Guidelines.*

Conclusion:

In conclusion, incorporating Diesel PM as a toxic air contaminant in the Hot Spots program has the potential to elevate risk at many facilities and in some cases significantly. We recommend that any changes to the program provide for consistency in developing inventories and HRAs so that impacted communities can compare risk between facilities. Too much local district discretion in interpreting definitions has the potential to erode this consistency. In addition, we recommend that facilities be allowed, if not be encouraged to prepare detailed HRAs and explore early risk reduction.

We appreciate the opportunity to comment on the proposed amendments to AB 2588 and look forward to working with you. Please contact Frank Caponi at (562) 699-7411, ext. 2460 with any questions or comments. Thank you for your consideration.

Sincerely,

John Pastore
Executive Director

cc: Peggy Taricco
Chris Halm