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October 30, 2006

VIA E-MAIL AND U.S. MAIL

Peggy Taricco
Chief, Emission Inventory Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: **Proposed changes to draft AB 2588 Emission Inventory Criteria and Guidelines Regulation.**

Dear Ms. Taricco:

Our firm represents the Motion Picture Association of America¹ (the "MPAA"), a trade association representing the major producers and distributors of filmed entertainment, and we are submitting on their behalf the attached comments on the proposed changes to the AB 2588 Emission Inventory Criteria and Guidelines Regulations. The MPAA requests that:

- The regulations clarify that emission sources at leased premises not under the control of a "facility" operator should not be included in a facility's emission inventory;
- The routine use of rented or leased portable equipment should be considered "routine and predictable" only if the equipment is used in the same manner on a regular basis at a facility, and the facility operator can reasonably estimate the emissions resulting from such recurring operations;

¹ The Motion Picture Association of America, Inc. includes: The Walt Disney Company; Metro-Goldwyn-Mayer Studios Inc.; Universal City Studios LLP; Paramount Pictures Corporation; Sony Pictures Entertainment, Inc.; Twentieth Century Fox Film Corporation; Warner Bros. Entertainment Inc.

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- Emissions from stationary diesel engines equal to or less than 50 horsepower and portable engines should not be reported unless a district determines that such engines at a facility have the potential to pose a significant risk; and
- The regulations clarify that individual facilities should have the option to conduct facility-specific risk assessments.

If you have any questions concerning our comments, please feel free to call me.

Very truly yours,



Sharon Rubalcava
WESTON, BENSHOOF,
ROCHEFORT, RUBALCAVA & MacCUISH LLP

SFR/SR
Enclosure

cc: Melissa Patack
Sarah Walsh

MOTION PICTURE ASSOCIATION OF AMERICA
PROPOSED CHANGES TO AB 2588 GUIDELINES

1. **“Routine and predictable emissions”**

The proposed amendments require reporting by a facility if “the use of any number of diesel engines is a *routine and predictable* operation of the facility”. The proposed definition states that operations that are “routine and predictable” will be “determined by the district, and means all of the regular operations at the facility” excluding emergency or catastrophic releases. We are concerned that this definition may be overly broad as it pertains to motion picture and television production studios, and we are proposing an amendment to the definition.

Many of the emission sources at a typical studio are not under the control of the facility owner and should not be considered as “routine and predictable” for purposes of the Guidelines. Motion picture and television production studios consist of multiple facilities (e.g. sound stages) some of which may be operated by the studio owner and others that are leased to third party production companies for varying lengths of time. The studio owner may have little or no control over productions occurring in the leased portions of the facility, much as the owner of an industrial park has little or no control over a building leased to an individual business. Such discrete operations should not be considered as part of a single “facility”.

Health & Safety Code (H&SC) section 44304 defines “facility” as “every structure, appurtenance, installation, and improvement on land which is associated with a source of air releases or potential air releases of a hazardous material.” This definition could be read to include all of the activities at an entire studio. However, the definition of “facility” is modified by the definition of “operator”. “Operator” is defined as “the person who owns or operates a facility or *part of a facility*”. H&SC sec. 44307. We believe that it is essential that the regulations clearly specify that the obligations of AB 2588 apply only to the operator with control over the emission sources.

We note that the definition of “facility” in section X.14(a) appears to incorporate the concept of common ownership, operation, or control. We request that the Final Statement of Reasons confirm that this is the intent of the Guidelines.

If our understanding is not correct, we believe the proposed definition of “routine and predictable” in section X.25. should be clarified to reflect the issue of operator control. An operator should not be required to report emissions from diesel equipment that is located on a *part of a facility* that is operated by another entity. To clarify this point, we suggest that the proposed definition be amended to read as follows:

“Routine and Predictable” is determined by the district, and means all of the regular operations at the facility, or part of a facility, under the control of the operator. Emergency or catastrophic releases at a facility are not “routine and predictable” and are not included in a facility’s emission inventory.”

This change is necessary because an operator who is required to prepare and submit emissions inventory plans (H&SC sec. 44340) and, in some cases, to prepare health risk assessments (H&SC sec. 44360) should not be responsible for emission sources that are not under its control.

Also, we suggest that the ARB address the concept of predictability in emissions. An operation is “routine and predictable” if it happens at the same facility in the same manner on a periodic basis and if the emissions from that operation or event can be quantified with some degree of certainty. We understand that the ARB has elected to address this issue through examples in the Statement of Reasons. We suggest amending the second bullet in the Statement of Reasons, under the section entitled “Routine and Predictable Operations for Diesel Engines, to read as follows:

“Routine use of rented or leased portable engines if the equipment is used in the same manner on a regular basis and the facility operator can reasonably estimate the emissions at the facility resulting from such recurring operations.”

2. **Stationary Diesel Engines Equal to or Less than 50 Horsepower/Portable Engines**

We recommend that emissions from diesel engines less than 50 horsepower, or portable engines, should not have to be reported unless the district determines there is good cause to expect such engines will have the potential to pose a significant risk. Specifically, we propose the following amended language:

Draft Section XI (C)(2):

(b) Stationary Diesel Engines Equal to or Less than 50 Horsepower

The ~~district may request~~ operator of a facility is not required to submit the information in section XI.C.(2)(a) for diesel engines equal to or less than 50 horsepower ~~if~~ unless the district determines there is good cause to expect that the engines at the facility have the potential to pose a significant risk.

(c) Portable Diesel Engines of Any Size

The ~~district may request~~ operator of a facility is not required to submit the information in section XI.C.(2)(a) for portable diesel engines ~~if~~ unless the district determines there is good cause to expect that the engines at the facility have the potential to pose a significant risk.

3. **Site Specific Risk Assessment**

The MPAA requests that ARB clarify in the record that individual facilities have the option, at their election, to conduct facility-specific risk assessments. This is consistent with H&SC sec. 44360 (b)(3).