

November 6, 2006

Mr. Dale Shimp
California Air Resources Board
Clerk of the Board
1001 I Street
Sacramento California 95814

RE: AMENDMENTS TO AB 2588 TOXICS HOT SPOTS EMISSION
INVENTORY CRITERIA AND GUIDELINES REGULATION.

Dear Dale,

The California Council for Environmental and Economic Balance (CCEEB) submits the following comments on the Proposed Amendments to the Regulations, which will be considered at the Board Meeting scheduled for November 16th and 17th in San Francisco.

CCEEB is a coalition of California business, labor and public policy leaders that works together to advance collaborative strategies for a sound economy and a healthy environment. Many of our members are participants in the Toxics Hot Spots Program, and as such have inventoried emissions, analyzed risk through approved risk assessment procedures, and where appropriate implemented risk reduction measures to reduce risk levels from facilities to a level below significance.

1. Utilization of Risk Assessments

The Air Resources Board proposed amendments reflect new reporting thresholds to ensure that emissions from diesel engines that could result in potential exposures to nearby receptors are brought into the Hot Spots program, and are properly evaluated and addressed under that program. (See page 3 of the Notice of Public Hearing.). A key tool in the administration of

this program has been the preparation, evaluation, and, if appropriate, approval of a detailed Risk Assessment. (See Health and Safety Code sections 44360-44362.)

The detailed Risk Assessment is prepared by the source, made available to the public, reviewed by the Office of Environmental Health Hazard Assessment and then approved, returned or modified, as appropriate, by the Air District. The detailed Risk Assessment provides a more thorough analysis of specific, and therefore real, risk than does the more generic Screening Risk Assessment.

There is nothing in the proposed changes that explicitly states that a facility has the option to conduct a more detailed or refined risk assessment (if they have never done one) or to update their existing risk assessment to see if the added diesel risk puts the facility over the notification threshold. Based on recent communications it appears that some Districts are prepared to add the screening risk estimates for diesel engines to the existing facility risk and make facilities conduct public notifications based on these flawed estimates. Facilities should not be forced to notify the public of risks that a more refined analysis may show to be much lower and perhaps below the notification threshold. The option for a facility to conduct a refined risk assessment should be made explicit.

CCEEB recommends that the following clarifying language be added, either to the Proposed Amendments (page 71 at Section XI (E) (2) after the second sentence) or to the Final Statement of Reasons (page 26, first full paragraph at the end of the second sentence):

The Risk Assessment shall be made available to the public, reviewed by OEHHA and either approved, returned for revision or modified by the district in accordance with the provisions of Health and Safety Code sections 44361-44362.

2. Routine and Predictable Emissions

The Initial Statement of Reasons (ISOR) at page 59 states “the Hot Spots program requires emission reporting based on routine and predictable emissions from a facility.” However, the definition in the draft regulation focuses only on the “routine” nature of facility operations. It is silent on the concept of predictability as it relates to calculating emissions. An operation should only be viewed as “routine and predictable” if it occurs at the same facility in the same manner on a periodic basis and if the emissions from that operation can be quantified with a reasonable degree of certainty.

This issue could be addressed in the Final Statement of Reasons through an amendment to the second bullet in the section entitled “Routine and Predictable Operations for Diesel Engines” as follows:

“Routine use of rented or leased portable engines, even if the identity of the engines are not known (the district could require the facility operator to estimate the total number of hours that the engines operated, and a reasonable estimate of the emissions resulting from those operations) 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.”

In addition, certain diesel emission sources such as those operated on leased property, may not be under the control of the facility owner and should not be considered as “routine and predictable” for purposes of the Guidelines regulation. For example, the owner of a strip mall or industrial park has little or no control over operations occurring in a building leased to an individual business. Such discrete operations should not be considered as part of a single facility. Indeed, 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 regulation.

If our understanding is not correct, we believe the proposed definition of “routine and predictable” in section X.25. must be amended to address the issue of operator control. An operator should not be required to report emissions or prepare health risk assessments for diesel equipment that is located on a part of a facility that is operated by another entity. This interpretation is entirely compatible with the definition of “operator” in Health and Safety Code section 44307, which includes “the person who owns or operates a facility or *part of a facility*”. To clarify this point, we suggest the proposed definition be amended 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.”

3. Stationary Diesel Engines Equal to or Less than 50 Horsepower and Portable Engines

New language in the draft regulation states that the district may request information for stationary diesel engines equal to or less than 50 horsepower and 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.” This language reflects the fact that in many cases these sources will not contribute meaningfully to a facility’s risk profile. While we do not dispute the authority of the districts to request this information, language in the ISOR at page 60 appropriately clarifies that these sources are presumed to be low risk, and therefore should not be included in the facility emission inventory, unless the district can show good cause. The same language should be included in the regulation as follows:

- Draft Regulation, Section XI (C)(2)(b) and (c), amend as follows:

(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.

4. “Unique Diesel Engines Applications”

CCEEB believes this section of the Staff Report (page 54) should include mention of diesel engines used in remediation operations (site clean-up). They too should be considered for "alternate risk reduction requirements".

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CCEEB appreciates the opportunity to comment. If you have any questions, please give me a call.

Sincerely

William J. Quinn
Vice President

cc: Peggy Taricco