



STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-7-93
BY BOARD SECRETARY

RECEIVED
MAY 27 1993

San Joaquin Valley Unified Air Pollution Control District

Office of the Chairwoman
Air Resources Board

Jan

May 24, 1993

93-7-3
6/10/93

XC: *Brd mbrs*
JS mHS
JD TSO
JB *d legal*

Pauline Larwood

Chair
Supervisor, Kern County

Tom Bohigian

Vice Chair
Councilmember, City of Fresno

Blair Bradley

Councilmember, City of Ceres

Doug Vagim

Supervisor, Fresno County

Joe Hammond

Supervisor, Kings County

Rick Jensen

Supervisor, Madera County

Mike Bogna

Supervisor, Merced County

Bill Sousa

Supervisor, San Joaquin County

Nick Blom

Supervisor, Stanislaus County

Charles Harness

Supervisor, Tulare County

Mel McLaughlin

Councilmember, City of Wasco

David L. Crow

*Executive Director/
Air Pollution
Control Officer*

1999 Tuolumne Street, Suite #200
Fresno, CA 93721
(209) 497-1000
Fax (209) 233-2057

Northern Region

4230 Kiernan Avenue, Suite #130
Modesto, CA 95356
(209) 545-7000
Fax (209) 545-8652

Central Region

1999 Tuolumne Street, Suite #200
Fresno, CA 93721
(209) 497-1000
Fax (209) 233-2057

Southern Region

2700 M Street, Suite #275
Bakersfield, CA 93301
(805) 861-3682
Fax (805) 861-2060

Jananne Sharpless, Chairwoman
CAL-EPA
Air Resources Board
2020 "L" Street
Sacramento, CA 95814

**Re: Air Toxics "Hot Spots"; Proposed Amendments to
the Emissions Inventory Criteria and Guidelines
Regulation**

The San Joaquin Valley Unified Air Pollution Control District has been significantly involved in the development of the recommended amendments to the Emissions Inventory Criteria and Guidelines Regulation proposed for adoption by CARB on June 10, 1993. The District believes that the proposed amendments will help promote the needed streamlining for the implementation of AB-2588 that is cost effective for all concerned parties and meets the intent of the law.

To this end, the San Joaquin Valley Unified Air Pollution Control District supports CARB's efforts of streamlining AB-2588 implementation requirements and requests that the Air Resources Board adopt the amended regulation.

Sincerely,

Mark Boese

MARK BOESE
DEPUTY APCO

cc. Linda Murchison, CARB
Bill Weese, SJVUAPCD
Genevieve Shiroma, CARB
Technical Advisory Committee for the Air Toxics
"Hot Spots" Emissions Inventory Guidelines

93-7-3
6/10/93

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-3-93
BY BOARD SECRETARY



Santa Barbara County
Air Pollution Control District

XC: Bud Mbr
JS MHS
JD TSO
JB Legal

June 8, 1993

Ms. Linda Murchison, Chief
Technical Support Division
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812

SUBJECT: Air Toxics Hot Spots Emission Inventory Criteria and Guidelines
Regulations - Follow Up to SBAPCD Comments on Draft Revisions

Dear Ms. Murchison:

District staff have reviewed the staff report and proposed amendments to the Emission Inventory Criteria and Guidelines Regulation (CGR) for the Air Toxics "Hot Spots" Program. Our letter to you dated June 3, 1993, which commented on the proposed CGR revisions, prompted our telephone conversation on June 7. As a follow up to our conversation, the District would like to reassess our comment in regard to BIS form reporting, and clarify our comment which discussed review of "new information" included in the BIS form.

In our letter, comment two addressed whether part C of the BIS form should be completed by low and intermediate priority facilities. Following your explanation, the District has a better understanding of the intent of this requirement and would therefore like to rescind comment two from consideration at the ARB Hearing. The comment was prompted by our belief that when determining whether submittal of a update plan and report is required, in some cases it will be necessary to request information from the facility analogous to that in part C. As proposed, the CGR revisions allow us the opportunity to collect this information when necessary.

In regard to comment three from our letter, the District stands by our requested revision. By stating in section 93349(c) that districts shall (rather than may) consider the factors listed, uniformity between districts is promoted. This clause simply directs districts to consider factors such as newly listed substances and changes in potency values when determining whether a plan and report is required, rather than leaving such review to the discretion of the district. Based on this review, the district determines whether any changes are substantial enough to necessitate submittal of an update plan and report. Such a language change does not force the districts to require plan/report submittal, but rather base requests for such submittals on all of the information available.

Hopefully, this clarifies our position on the CGR revisions. Once again, we would like to thank you and your staff for your continued work effort on the CGR revisions. Please call Rebecca Gaffney of my staff at (805) 961-8914 if you have any additional questions or comments.

Sincerely,

Doug W. Elard
Doug W. Elard
Planning Division Manager

cc: PLN Chron File

HAUSER\PLANTOX\WWW\WORK\REFS\CGRREV1.WPS
June 8, 1993
Page 1

26 Castilian Drive B-23, Goleta, CA 93117 Fax: 805-961-8801 Phone: 805-961-8800
James M. Ryerson, Air Pollution Control Officer William A. Master, Assistant Director

Our Vision: Clean Air



CALPINE

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-3-93
BY BOARD SECRETARY

P.O. BOX 11279
SANTA ROSA, CALIFORNIA 95406-1279
707.527.6700
707.544.2422 (fax)

93-7-3

6/10/93

XC: Bud Mbr
JS mHS
JD TSD
JB Legal

May 28, 1993

Mr. Roger Korenberg
California Air Resources Board
2020 L Street
Sacramento, CA 95812

Dear Mr. Korenberg:

As a participant in the geothermal industry at The Geysers in northern California I have followed the proposed amendments to the Air Toxics "Hot Spots" Fee Regulation for the fiscal year 1993-1994. Discussions with the Lake County Air Quality Management District and the North Sonoma County Air Pollution Control District and attendance at workshops leads me to strongly support the proposed fee structure.

I appreciate the time the ARB has put into revising the fee structure and the importance of transferring the costs of this program to the businesses in the state that are "Hot Spots". I also support the changes being made to streamline the reporting procedures for those facilities that do not trigger risk assessment and/or have had no change in their process streams.

Please call me at 707-527-6700 if you need more information about the impact of this regulation on the geothermal industry. Again, thank you for your efforts on these proposed amendments.

Sincerely,

Charlene L. Wardlow
Charlene L. Wardlow
Environmental Manager

cc: Sean Connolly, NSCAPCD
Robert Reynolds, LCAQMD

Date Submitted

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-15-93



World Leader in Specialty Gases & Equipment

June 1, 1993

6/10/93
93-7-3

XC:MH5

TSD

Legal

California Air Resources Board
P.O. Box 2815
Sacramento, California 95812

Att'n: Board Secretary

Re: Proposed Changes
Air Toxics "Hot Spots" Information and Assessment Act of 1987

Gentlemen;

This is in response to the recently published proposed changes to the above noted Act, codified as AB 2588.

Our company is a packager and distributor of compressed industrial gases, with two locations in California. No manufacturing from raw materials occurs at these facilities. Although a wide variety of materials, some of which may be considered as hazardous, are handled at these facilities, to date there have never been any detectable air emissions. The facilities are well equipped with wet scrubbing systems to eliminate any emissions that may be emitted from the packaging systems.

Emissions from our facilities are not only well below the 10 TPY limit, they are below the Degree of Accuracy values listed under Appendix A-1. In this regard, the provisions of AB 2588 are either only vaguely applicable, or are extremely burdensome. We are forced to comply, however, because the SIC code for Industrial Gases, 2813, falls under that for chemical manufacturing.

The specific amendments located under section IV-B, "Applicability Provisions", are of particular interest to us, and I would imagine to many other companies in the same industry. We understand that the Board is proposing to exempt facilities from the AB 2588 program who can demonstrate emissions of less than 10 TPY (tons per year), and meet certain other requirements. This exemption, however, does not apply for facilities belonging to any of the listed SIC codes under Appendix E-I.

We feel it would be beneficial to many companies, and thus the general well-being of the State, to allow a route for any company having less than 10 TPY of emissions to be exempted, regardless of SIC code.

To categorically exclude a extremely broad class of companies from these exemptions, based solely on their SIC code, does not truly reflect the intent of the Act: to identify significant risks to public health. This does an injustice to firms such as ours, for whom the regulations were never really intended, and for which our compliance efforts do not result in any real benefits in terms of the stated objectives of the Act.

We would be interested in any amendments that can be made to the Act to remedy this issue. Feel free to contact me at the below location, ext. 389 if I can be of any assistance.

Sincerely,

MATHESON GAS PRODUCTS, INC.


~~Joseph R. McCloskey~~
Compliance Manager

cc: E. Flaherty
R. Peetz
G. Harper
P. Kronenberg - CICC



Michael D. Wang
Manager
Operating and Environmental Issues

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-7-93
BY BOARD SECRETARY

93-7-3
6/10/93

XC: Brad Mbre
JS MHS
JD TSD
JB Legal

June 2, 1993

Board Secretary
California Air Resources Board
P.O. Box 2815
Sacramento 95812

**Subject: Re: CARB Proposed Amendments to the Emission Inventory
Criteria and Guidelines for AB2588 dated April, 1993**

Dear Sir or Madam:

The Western States Petroleum Association (WSPA) appreciates the many opportunities ARB staff has provided for public review and comment of the proposed amendments to the AB 2588 Inventory Criteria and Guidelines Regulation. WSPA would also like to commend staff for their diligent work with the CAPCOA Industry/Agency Working Group to reduce the extreme economic burden of the existing AB 2588 program, while still protecting public health. We have reviewed the proposed Regulation and strongly support the "streamlining" concepts contained therein. We believe that the proposed Regulation properly focuses the attention and efforts of both regulating bodies and industry on those facility emissions which could reasonably be expected to impact public health.

As you are aware, CARB is concurrently soliciting comments on the proposed Risk Management Guidelines, dated March 1993. WSPA has been working closely with ARB to revise the document to assure that guidance provided to districts regarding risk management decisions is substantively consistent with emission inventories prepared pursuant to the AB2588 Inventory Regulation. WSPA is hopeful that these revisions will address our concerns, particularly with regard to low and medium priority facilities. We strongly urge CARB to fully incorporate the streamlining and public health protection concepts included in the proposed Regulation into the proposed Risk Management Guidelines.

Pursuant to our review of the proposed AB 2588 Regulations, ~~WSPA would also like to make the following comments:~~

- 1. Reporting Mixtures and Trade Name Products - Page 22 (e)**
The proposed regulations revise the method for reporting gasoline vapor emissions. The Regulations require that these emissions be reported under the general substance name (i.e. gasoline vapors). The Regulations also require that

individual listed substances contained in the gasoline must be reported. One interpretation of this provision, and a particular concern to WSPA, is that these numbers will be combined, or "double-counted", to reflect an overly-conservative potential risk from exposure to gasoline vapors. Since the proposed Regulations do not expressly decrease the unit risk factor or the allowable exposure limit (AEL) for gasoline vapors, the estimated toxic effects of gasoline vapors will be extremely conservative. WSPA understands that this interpretation is inconsistent with ARB's intent for reporting gasoline vapors.

To assure that a double counting provision is not implicit in this reporting requirement, WSPA proposes that Section D.2.e. be revised as follows (underscored):

"Gasoline vapors: Emissions of the individual constituents of gasoline vapors that are listed substances must be reported along with the residual emissions of gasoline vapors."

The last sentence of the last paragraph of this section should also be revised accordingly:

"Consequently, the staff is proposing that the emissions of individually listed constituents and residual emissions be reported."

WSPA agrees with ARB's justification for the proposed change regarding the variable and dynamic composition of gasoline vapors. Reporting individual listed substances should address this concern.

2. Low and Intermediate Priority Facilities - Page 28

The proposed Regulations give the local districts discretion to require a low or intermediate facility to perform a Biennial Update if the Biennial Summary Form indicates that the changes at the facility could meaningfully increase the risk at the facility.

We request that language be added to this section to require identification and update for emissions from only those devices which constitute the 80 percent of facility risk. This language would make the update requirements consistent between significant risk, high risk, and low/intermediate risk facilities.

3. Reporting Schedule ... - Page 30

The proposed amendments require submittal of Biennial summary forms by February 1 of the reporting year. The forms are based on annual facility throughput/fuel usage data which is reported through December of each year. Once the annual record is complete, a facility can begin to process that data into a useable format. Of course, this process involves substantial technical review. Typically, data is made available by mid-February.

WSPA requests that the deadline for submittal of Biennial summary forms be extended to May 1 of the reporting year to allow facilities adequate time to develop an accurate emissions summary.

4. Use of Previously Submitted Source Test Data - Page 31

The proposed Regulation gives the local districts discretion to require new source testing if a test method changes and new testing would provide significant improvement in the assessment of the facility emissions.

We request this section be revised to give the local districts discretion to require new source testing if the new test method would provide significant improvement in the assessment of the facility's risk.

5. Reporting Forms - Page 37

The proposed Regulations imply that all facilities must fill in the UTM coordinates for all equipment devices.

We request that this section be revised to require that only high risk or significant risk facilities supply UTM coordinates. Unless a facility is required to perform a Health Risk Assessment, we believe that the effort required for a low or intermediate facilities to supply UTM coordinates is not justified.

6. PAH's - Page I-21

The existing Regulations also require reporting of total PAH emissions in addition to the carcinogenic PAH species listed in the CAPCOA Health Risk Assessment Guidelines. As discussed previously with regard to gasoline vapor reporting requirements, one could interpret this requirement as "double counting", which would result in both an overly conservative estimate of PAH toxic effects and, where applicable, an inaccurate risk assessment.

For purposes of consistency and technical accuracy, we request

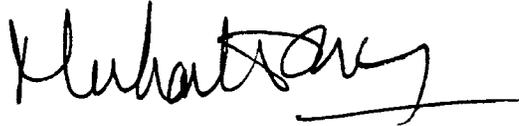
WSPA Comments
ARB Proposed Revisions -
AB2588 Emission Inventory Regulation
June 2, 1993
Page: 4

that this section be revised as follows:

"Each individual substance and residual PAH's shall be reported in accordance with the instructions set forth in Appendix B."

In summary, WSPA strongly supports the streamlining concepts that are contained in the proposed Regulations. We feel that the Regulation represents a significant step in reducing the economic burdens of AB 2588 on Industry while still protecting the public health and safety. Finally, we strongly urge that CARB incorporate this streamlining philosophy in the proposed Risk Management Guidelines to insure that the two documents are internally consistent. If you have any questions, please feel free to contact me ((818) 543-5349), or Mr. Jeff Sickenger ((818) 543-5329).

Sincerely,



cc: Linda Murchison
Robert Fletcher
Genevieve Shiroma
Peter Venturini



Santa Barbara County
Air Pollution Control District

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-7-93
BY BOARD SECRETARY

June 3, 1993

93-7-3
6/10/93

XC: Bud mbr
JS MHS
JD TSD
JB Legal

Ms. Linda Murchison, Chief
Technical Support Division
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812

SUBJECT: Air Toxics Hot Spots Emission Inventory Criteria and Guidelines
Regulations - Comments on Draft Revisions

Dear Ms. Murchison:

District staff have reviewed the staff report and proposed amendments to the Emission Inventory Criteria and Guidelines Regulation for the Air Toxics "Hot Spots" Program. As a result of this review, we would like to provide the following concerns and comments:

1. Consistency among districts - While we agree with the majority of the proposed CGR revisions, we believe they contain many areas that are left unnecessarily up to the districts discretion. We are extremely concerned that this approach will result in inconsistency among districts in the way the program is implemented. One of the greatest concerns to industry representatives with facilities throughout the state is that the program is not implemented consistently. It appears that these CGR revisions may create more inconsistency than that which already exists.
2. Important increases in risk from low and intermediate priority facilities should be reported - Section 93348 Part (d) - As you are aware, many facilities will have update reporting requirements greatly reduced to submittal of the BIS form. The district is to review this form to determine if a more detailed plan and report is required. We believe that it is imperative, as do several other districts, that low and intermediate priority facilities be required to complete part C of the BIS form. Such facilities may change to high priority and the information in part C of the BIS form is crucial for district staff to have enough information to determine whether an update plan is required. We are particularly concerned with this issue as we have found that intermediate priority facilities can pose significant risk.
3. Make consideration of important new information mandatory rather than optional - We believe that it is important that all districts take the factors that are listed in Section 93349 Part (c) into account when reviewing the BIS forms. Such an approach would result in greater consistency between districts and would help ensure that the program captures high risk facilities. We request the following language change for part (c) of this section: "In reviewing BIS forms to determine whether to require the facility to submit an update plan and report, districts shall (instead of may) take into account additional factors including, but not necessarily limited to..." This should not be difficult if recommendation (4) below is accepted.

As we stated in our February 23, 1993 letter to you, we feel that it is imperative that factors such as potency values and inclusion of newly

H:\USER\PLAN\TOXICS\WP\CORRES\CGRREV2.WP5

June 3, 1993

Page 1

26 Castilian Drive B-23, Goleta, CA 93117 Fax: 805-961-8801 Phone: 805-961-8800
James M. Ryerson, Air Pollution Control Officer William A. Master, Assistant Director

listed substances be considered by every district in their review of a facility BIS form. The proposed revisions would only require facilities with a greater than 10% increase in emissions to submit a biennial plan and report. Requiring the submittal of an updated report based solely on a change in aggregate facility emissions may result in the submittal of superfluous data. In our estimation such an approach appears to border on arbitrary. Moreover, it will tend to result in the continuous and seemingly increasing degree of inconsistency between districts in the implementation of AB 2588. Changes to other risk parameters, where review is discretionary as currently proposed, could have as much or more effect on total facility risk as aggregate facility emissions.

4. ARB should provide a listing of important changes - As we also stated in our February 23, 1993 letter, it would be tremendously helpful if CARB could provide an annual summary to the districts regarding changes (i.e., potency values, unit risk values, emission factors, etc.) that affect a district's review of a facility to determine whether an update is required. Please let us know whether your staff will be able to provide this information annually to the districts.

With this information provided by CARB, there would be consistent review among the districts. Districts could attach this annual summary information to all BIS forms along with a checklist of the items listed in Section 93349 (c) (1-10). This gives the subject facilities an idea of what the district will be reviewing in order to determine whether they will be subject to the biennial update requirement. Facilities could be asked to check off the items on this list that apply to them in order to expedite the district's review of each facility.

We appreciate your continued work effort on the CGR revisions and feel that you and your staff should be commended for your willingness to consider agency and industry concerns. We look to the ARB to provide leadership in promoting statewide program uniformity and believe that this goal can be attained by incorporating the above comments into the CGR revisions. Please call Rebecca Gaffney of my staff at (805) 961-8914 if you have any questions or comments.

Sincerely,



Douglas W. Allard
Planning Division Manager

cc: James McCarthy, Air Toxics Engineering Supervisor - SBCAPCD
PLN Chron File

H:\USER\PLAN\TOXICS\WP\CORRES\CGRREV2.WP5

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-8-93
BY BOARD SECRETARY

LAW OFFICES
MITCHELL, SILBERBERG & KNUPP

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

TRIDENT CENTER

11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064-1683

TELEPHONE: (310) 312-2000
FAX: (310) 312-3100

TELEX: 69-1347
CABLE ADDRESS: SILMITCH
FILE NO: 43379-29
DOC. NO: ABF_L331.HAL

ARTHUR FINE
A PROFESSIONAL CORPORATION
TELEPHONE: (310) 312-3133
FAX: (310) 312-3788

93-7-3
6/10/93

June 8, 1993

XC: *Ord mbr*
JS m HS
JD TSD
JB Legal

BY FAX (916) 323-0764 AND BY FEDERAL EXPRESS

Board Secretary
Air Resources Board
2020 L Street
Sacramento, CA 95814
P.O. Box 2815
Sacramento, CA 95812

**Re: Proposed Amendments to Regulations Adopted Pursuant to Air
Toxics "Hot Spots" Information and Assessment Act**

Dear Sir or Madam:

This firm is counsel to Halaco Engineering Company ("Halaco"), a small business which employs approximately 70 persons at its manufacturing facility in Oxnard, California. Halaco's principal business consists of smelting aluminum scrap metal and dross into aluminum ingots and sows. I am writing this letter on Halaco's behalf.

Halaco first learned on June 3, 1993, of the ARB's proposal to amend certain regulations promulgated pursuant to the Air Toxics "Hot Spot" Information and Assessment Act of 1987 (the "Act"), and of the June 10 hearing scheduled in connection therewith. Halaco, a "small business" within the meaning of the Act, is particularly concerned about proposed regulation 17-93346(a) Appendix B Reporting Forms and Instructions - Process and Emittents Data Form (PRO Form) 31(a) (the "Regulation"). That proposed Regulation applies to situations in which some, but not all, of the individual source test runs for a substance produce values which are below the limit of detection ("LOD"). The proposed Regulation reads in pertinent part as follows:

In situations where several test runs are performed for a given substance from a specific source, and one or more of the runs produced values below the LOD, while at least one run produced a value above the LOD, assign one-half of the corresponding LOD for each run which is below the LOD. Average the one-half LOD values together with the other runs that were above detectable limits for use in emissions computations.

The proposed Regulation basically requires Halaco to assume, with respect to any substance for which even one test run has yielded a concentration in excess of the LOD, that the substance was present in quantities equal to one-half of the LOD in test runs which yielded no detectable concentration whatsoever. By way of example, suppose that Halaco conducted ten test runs for a substance called bureaucratium, for which the established LOD is 10 ppm, that nine such runs revealed no detectable bureaucratium, but that one run revealed, for some reason, a concentration of 55 ppm. Halaco would then be obliged to assume, with respect to the nine runs for which no bureaucratium could be detected, that bureaucratium nevertheless was present in each of those runs in concentrations of 5 ppm. Averaging everything together as required by the Regulation, Halaco would be obliged to conclude that it emits bureaucratium in concentrations of 10 ppm - even though 9 out of 10 test runs unequivocally revealed that it did not do so. Halaco would be completely barred from proving that the one run yielding a concentration of 55 ppm was an anomaly and completely unrepresentative of its operations.

With all respect, this makes no sense at all. The proposed Regulation requires one to assume that substances are emitted in concentrations below detectable limits. By definition, one cannot prove that one is not emitting a substance in a concentration below the minimum detectable concentration. The Regulation, in essence, establishes an irrebuttable presumption and then penalizes firms based on that presumption.

Of course, the ARB cannot implement or enforce a regulation that is arbitrary or capricious. Henning v. Division of Occupational Safety & Health, 219 Cal. App. 3d 747, 758, 268 Cal. Rptr. 476 (1990). And it seems to Halaco quite clear that a regulation creating an irrebuttable presumption, on the basis of which a firm such as Halaco is adversely affected and possibly penalized, is a regulation that is arbitrary, capricious, and irrational. See, e.g., Amoco Oil Co. v. EPA, 501 F.2d 722 (D.C. Cir. 1974) (invalidating, as arbitrary and capricious, an EPA regulation which created an irrebuttable presumption of liability upon a refiner for certain contamination, without allowing the refiner any opportunity to establish that it was not in fact the source of the contamination); Amoco Oil Co. v. EPA, 543 F.2d 270 (D.C. Cir. 1976) (again invalidating, as arbitrary and capricious, an EPA regulation establishing an

irrebuttable presumption); Bunker Hill Co. v. EPA, 572 F.2d 1286, 1301 (9th Cir. 1977) (invalidating EPA regulation requiring smelter to make certain modifications in its technology, supposedly designed to establish 82% emission control of sulfur dioxide, the EPA having failed to show that there was anything but a "theoretical or experimental" basis for believing that such emission control could be accomplished).

If 50% of the test runs for a given substance revealed concentrations at least equal to the LOD, it might make sense to presume, with respect to the remaining runs, that concentrations are present in quantities equal to 50% of the LOD. Halaco does not see how it makes sense arbitrarily to make that presumption merely because one test run revealed a concentration at least equal to the LOD.

"No regulation adopted is valid or effective unless ... reasonably necessary to effectuate the purpose of the statute." Govt. Code § 11342.2. Halaco submits that "to effectuate the purpose" of the Act, it is not "reasonably necessary" to indulge in the fantasy that one emits a substance in an amount which by definition cannot be detected. Halaco does not see anything in the proposed Regulation, or materials disseminated to date by the ARB in connection therewith which it has received, indicating otherwise.

"No regulation adopted is valid or effective unless consistent and not in conflict with the statute" Govt. Code § 11342.2. The proposed Regulation, which will require Halaco to presume that it is emitting substances in concentrations that cannot be established even with state-of-the-art technology, is not consistent with and conflicts with the Act. For example, the Act states that an Air Pollution Control District shall approve a plan featuring "source testing or other measurement techniques ... to verify emission estimates ... to the extent technologically feasible." Govt. Code § 44340(c)(4). The proposed Regulation requires one to presume "emission estimates" in concentrations that can not be "verified," because it is not "technologically" possible now to do so. Similarly, the Act requires the ARB to establish guidelines and criteria which will "verify the accuracy of emission estimates, to the extent technologically feasible." Govt. Code § 44342(i). Again, that cannot be squared with the proposed Regulation, which mandates the presumption of emissions at levels that can not be technologically shown. And the Act states that Districts shall approve plans providing "state-of-the-art effectiveness," that will provide a "true representation of the types and quantities of air releases from the facility." Contrary to this directive, the proposed Regulation requires one simply to guess at the "quantities of air releases" from a facility - quantities that could not possibly be established by "state-of-the-art" technology.

Of course, a regulation is invalid if "the agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute ... is not supported by substantial evidence." Govt. Code § 11350(b)(1). Halaco is not aware of any evidence before the ARB, let alone "substantial" evidence, proving that the Regulation is reasonably necessary to effectuate the purpose of the Act.

I should add that, to the best of Halaco's knowledge, the ARB has not complied with the provisions of Govt. Code § 11346.7(a). Halaco is a "small business" within the meaning of the Act and of the pertinent provisions of the Government Code, and it is certainly likely to be affected by adoption of the proposed Regulation. Nevertheless, it did not timely receive notice of the proposed Regulation, or any statement of reasons for adoption of the Regulation. Nor do I find in the materials Halaco has now received any of the following, all of which are required by § 11346.7(a): (1) a description of the public program, administrative requirement, or other condition or circumstance that adoption of the Regulation is intended to address; (2) a statement of the specific purpose of the Regulation and the rationale for the ARB's apparent determination that adoption of the Regulation is reasonably necessary to carry out the purpose for which it is proposed; (3) an identification of each technical, theoretical, and empirical study, report, or similar document, if any, on which the ARB is relying it proposing the Regulation; or (4) a description of any alternatives the agency has identified that would lessen any adverse effect on small businesses such as Halaco.

The ARB may also have failed to comply with Govt. Code §§ 11346.7(b), 11346.7(c), and 11346.7(d). If the ARB has failed to do so, Halaco equally objects to adoption of the Regulation on such ground.

In addition, and to the best of Halaco's knowledge, the ARB has not complied with Govt. Code § 11346.14. In particular, as far as Halaco knows the ARB has not provided "a description of the alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives, and a statement that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation." Given that the ARB is proposing to establish an irrebuttable presumption that may have a serious adverse effect upon small businesses such as Halaco, the ARB certainly should have explained to the public the alternatives it has considered and the reasons it had for rejecting those alternatives.

Finally, I note that Halaco certainly did not receive adequate notice of the ARB's intention to adopt the Regulation or of the public hearing to be held with respect to it, even though the Regulation almost certainly will apply to its business. Halaco accordingly objects to any failure by the ARB to provide the notice required by

Board Secretary
June 8, 1993
Page 5

law or otherwise to comply with any of the procedures established by the California Administrative Procedures Act.

I presently expect that, if the ARB adopts the Regulation despite the considerations set forth above, Halaco will initiate litigation seeking to invalidate the Regulation. I suggest it would be prudent for the ARB to withdraw the proposed Regulation, carefully consider the alternatives, and work with knowledgeable persons in the industry for the purpose of arriving at a rational, intelligent regulation that will be consistent with the Act and that can be properly regarded as reasonably necessary to enforce the Act.

Sincerely,



Arthur Fine of
MITCHELL, SILBERBERG & KNUPP

AF/mt

cc: Halaco, Inc.
Douglas W. Bordewieck, Esq.

93-7-3
6/10/93

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-3-93
BY DAVID SECRETARY



Santa Barbara County
Air Pollution Control District

XC: Bud M. ...
JS MHS
JD TSD
JB Legal

June 8, 1993

Ms. Linda Murchison, Chief
Technical Support Division
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812

SUBJECT: Air Toxics Hot Spots Emission Inventory Criteria and Guidelines
Regulations - Follow Up to SBAPCD Comments on Draft Revisions

Dear Ms. Murchison:

District staff have reviewed the staff report and proposed amendments to the Emission Inventory Criteria and Guidelines Regulation (CGR) for the Air Toxics "Hot Spots" Program. Our letter to you dated June 3, 1993, which commented on the proposed CGR revisions, prompted our telephone conversation on June 7. As a follow up to our conversation, the District would like to reassess our comment in regard to BIS form reporting, and clarify our comment which discussed review of "new information" included in the BIS form.

In our letter, comment two addressed whether part C of the BIS form should be completed by low and intermediate priority facilities. Following your explanation, the District has a better understanding of the intent of this requirement and would therefore like to rescind comment two from consideration at the ARB Hearing. The comment was prompted by our belief that when determining whether submittal of a update plan and report is required, in some cases it will be necessary to request information from the facility analogous to that in part C. As proposed, the CGR revisions allow us the opportunity to collect this information when necessary.

In regard to comment three from our letter, the District stands by our requested revision. By stating in section 93349(c) that districts shall (rather than may) consider the factors listed, uniformity between districts is promoted. This clause simply directs districts to consider factors such as newly listed substances and changes in potency values when determining whether a plan and report is required, rather than leaving such review to the discretion of the district. Based on this review, the district determines whether any changes are substantial enough to necessitate submittal of an update plan and report. Such a language change does not force the districts to require plan/report submittal, but rather base requests for such submittals on all of the information available.

Hopefully, this clarifies our position on the CGR revisions. Once again, we would like to thank you and your staff for your continued work effort on the CGR revisions. Please call Rebecca Gaffney of my staff at (805) 961-8914 if you have any additional questions or comments.

Sincerely,

Doug W.illard
Doug W.illard
Planning Division Manager

cc: PLN Chron File

HAUSERPLANITOKIXWVWYRRESYCGRRV1.971

June 8, 1993

26 Castilian Drive B-23, Goleta, CA 93117 Fax: 805-961-8801 Phone: 805-961-8800
James M. Ryerson, Air Pollution Control Officer William A. Master, Assistant Director

Page 1



STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-9-93
BY [Signature]

4
**COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY**

1955 Workman Mill Road, Whittier, CA 90601-4998
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (310) 699-7411, FAX: (310) 695-6139

CHARLES W. CARRY
Chief Engineer and General Manager

93-7-3
6/10/93

June 9, 1993

XC: Brad Moran
JS mHS
JD TSD
JB Legal

California Air Resources Board
P.O. Box 2815
Sacramento, California 95812
attn. Pat Hutchens

Dear Members of the Board:

Proposed Amendments to AB2588 Emission Inventory Criteria and Guideline Regulations

We appreciate the opportunity to review the proposed AB2588 Emission Inventory Regulations, and offer the following comments for your consideration.

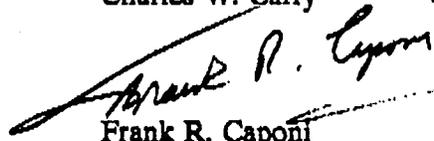
We strongly support the streamlining efforts proposed as part of the AB2588 Emission Inventory Criteria and Guideline Regulations. We do, however, believe that the proposed trigger mechanism for a full update should be re-evaluated. Under the current proposal, high priority facilities would be required to submit a full update if a greater than 10 percent increase has occurred, using activities such as throughput as a criteria. We believe that full updates should be required only if there is an indication that the notification levels, adopted by the respective districts, will be exceeded. The original intent of AB2588 was to develop an inventory of toxic air contaminants for the sole purpose of notifying the impacted public if a level of significance was exceeded. The proposed regulations, while achieving some streamlining, lose sight of this intent and have evolved into a tracking system for facility expansions, a responsibility of the local districts. We believe this is unnecessarily duplicative. We recommend that as an alternative to the current proposal, at each update period, the facility be allowed to update their existing approved Health Risk Assessment, to determine if the facility's updated risk is approaching the notification level. As a suggestion, an updated risk approaching 90 percent of the notification level established by the local district would trigger a full update.

We also realize that many operators may not have the resources to recalculate their risk. Therefore, we suggest that a facility may optionally use your suggested approach or recalculate their prioritization score, using the 10 percent increase as a trigger level for a full update.

We appreciate your consideration of these comments and welcome the opportunity to discuss these matters further with you.

Yours very truly,

Charles W. Carry

A handwritten signature in black ink, appearing to read "Frank R. Caponi", written over a horizontal line.

Frank R. Caponi
Supervising Engineer
Solid Waste Management Department

cc: Mr. Richard Bode



**South Coast
AIR QUALITY MANAGEMENT DISTRICT**

21865 E. Copley Drive, Diamond Bar, CA 91765-4182 (714) 396-2000

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-9-93
BY BOARD SECRETARY

June 9, 1993

93-7-3
6/10/93

Ms. Jananne Sharpless
Chairwoman
Air Resources Board
2020 "L" Street
Sacramento, CA 95814

Dear Chairwoman Sharpless:

The South Coast Air Quality Management District supports the proposed changes to the AB 2588 Air Toxics "Hot Spots" program as presented in the amended Emission Inventory Criteria and Guidelines Regulation, scheduled for adoption at the June 10, 1993 Board Hearing. Our staff have worked closely with the Air Resources Board staff in helping to craft the abbreviated reporting format for toxic inventory updates. We have also met, along with your staff, with sponsors of the new legislation which is being proposed to change the requirements of the state law for the AB 2588 program.

We feel the amended regulation represents an appropriate compromise between complying with our mandate to protect the public health, and at the same time minimizing the financial and resource burden on industry and the regulated community. The revisions represent simplified reporting that we feel would also improve the program efficiency.

For these reasons, the South Coast Air Quality Management District recommends the Air Resources Board adopt the amended Emission Inventory Criteria and Guideline Regulation.

Sincerely,

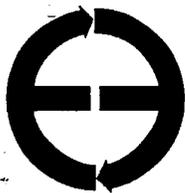
Pat Leyden
Deputy Executive Officer

cc: Dr. Jim Lents
James D. Boyd

California Council for Environmental and Economic Balance

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 6-9-93
BY BOARD SECRETARY

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897



OFFICERS

John T. Knox
CHAIRMAN
William R. Robertson
VICE-CHAIRMAN
Victor Weissner
PRESIDENT
John E. Koehn
SECRETARY
Dave Van Camp
TREASURER

BOARD OF DIRECTORS

Aida Alvarez
William T. Bagley
Edward Blakely
Frank Boren
William Britt
C. H. Broms
Edmund G. Brown
Arthur Carter
Chuck Center
Michele Corash
Jerry E. Cremins
Daniel M. Curtin
Katherine Dunlap
Greg Feere
Monica Florian
Ron K. Fuller
Edward N. Gladish
Carol A. Harris
Werner Hirsch
Frank Iwama
David Johnson
James (J. P.) Jones
Evelyn P. Kaplan
Peter Kelly
Ronald T. Kennedy
Kenneth L. Khachigian
Robert C. Kirkwood
John T. Knox
John E. Koehn
Arthur Latino
Henry Lange
William Luddy
Gordon MacDonald
Chuck Mack
Paul N. McCloskey, Jr.
Walter McGuire
Jack McNally
Hugo Morris
Larry Moxley
Cressey Nakagawa
L. F. O'Donnell
Michael R. Peevey
John L. Rafuse
Steve Roberti
William R. Robertson
Richard Roll
Anne Shen Smith
T. J. Stapleton
Katherine Strehl
Herbert D. Tobin
Dave Van Camp
Mason M. Warren
Daniel Waters
Victor Weissner
Ron Wood

William T. Bagley
Edmund G. Brown
Katherine Dunlap
L. F. O'Donnell

FORMER CHAIRPERSONS

June 9, 1993

93-7-3
6/10/93

The Honorable Jananne Sharpless
Chairwoman
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Re: Amendments to the Air Toxics "Hot Spots"
Information and Assessment Act Emission
Inventory Criteria and Guidelines Regulation

Dear Ms. Sharpless:

The California Council for Environmental and Economic Balance ("CCEEB") supports the Air Resources Board staff proposal which would streamline the inventory process under the Board's Air Toxics "Hot Spots" Information and Assessment Act Program.

Your staff has worked diligently with representatives of the California Air Pollution Control Officers Association, CCEEB and other organizations to take a hard look at an existing program and develop changes that would accomplish meaningful streamlining and maintain the public health protection called for by the statute. We appreciate the successful effort by Ms. Linda Murchison of the Technical Support Division in building consensus among the interested parties.

In closing, we recommend that ARB adopt the staff report referenced above. If you have any questions, please contact Ms. Cindy Tuck at 446-3970.

Sincerely,

Victor Weissner / by C.T.

VICTOR WEISSNER
President

cc: The Honorable James Strock
Air Resources Board Members
Mr. James Boyd
Mr. Jackson Gualco
Ms. Linda Murchison
Ms. Cindy Tuck
Mr. Stewart Wilson