



September 12, 2022

Chair Randolph and Members of the Board
California Air Resources Board (CARB)
1001 I Street
Sacramento, CA 95812

Re: 2022 State Strategy for the State Implementation Plan

Dear Chair Randolph and Members of the Board:

Thank you the opportunity to submit these comments on CARB's 2022 State Strategy. We are optimistic that state planning is heading in the right direction, including avoiding some of the pitfalls of the past and accelerating the necessary transition to electrified transportation and buildings. To succeed, however, CARB must still change some of the ways it approaches planning. Before offering specific comments on measures that should be included in the state plan, we offer some broader recommendations that should be addressed to ensure the state plan succeeds where past efforts have not.

I. A New Planning Framework

- A. Recognize that CARB's past planning efforts have failed and a new approach is necessary.

For decades, CARB has treated air planning as a bureaucratic nuisance, and convinced the Board that the details are unimportant and that the objective is simply to check the necessary boxes to avoid EPA sanctions. The results speak for themselves. California has the worst polluted regions in the country. California counties consistently fill the top spots in the American Lung Association's annual ranking of worst polluted regions. The San Joaquin Valley is the only air basin in the country still violating the 1997 PM2.5 national standards, and South Coast continues to violate the 1-hour ozone standard first adopted by EPA decades ago. The few successes that have occurred in these basins are more likely the result of closing problematic ambient monitors than true reductions in emissions. CARB and the Districts can blame the weather or the topography of the basins, but the fact is that plan after plan has failed to achieve the promised results, and California has had more plans thrown out by the courts than any other state. The science underpinning these plans has been flawed, the promised reductions have failed to materialize, and the insistence on legal flexibility has sacrificed public health protection in the name of administrative expediency. It is critical, however, that CARB recognize that its past approaches have not worked, that planning must be more than a paperwork exercise, and a real commitment to meaningful plans is key to finally delivering

clean air to Californians. We hope this state strategy and the upcoming approval for Air District plan usher in a new paradigm of planning that creates the necessary accountability to finally succeed in meeting clean air standards on time.

B. CARB plans must follow CARB's science.

CARB has long recognized that attainment of the national ambient air quality standards in California requires nothing less than a wholesale transition away from combustion in our transportation and electricity generation. See Draft Vision for Clean Air: A Framework for Air Quality and Climate Planning (June 27, 2012) (available at: <https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2012-air-quality-management-plan/vision-for-clean-air-2012/draft-vision-for-clean-air-a-framework-for-air-quality-and-climate-planning.pdf?sfvrsn=4>). More recent analyses, for example in the recent Mobile Source Strategy have only confirmed these projections for nearly 10 years ago. Yet CARB has not adopted plans that actually reflect this modeling. The plans adopted to date have not required action or set standards consistent with any of CARB's own analyses.

Going forward, this state strategy must include control measures that CARB has authority to adopt that align with, and mandate, the transition away from combustion that CARB's own analyses demonstrate is necessary. Two obvious examples requiring realignment are the recently passed Advanced Clean Cars and forthcoming Advanced Clean Fleet rules, both of which currently fail to require the number of zero-emission car and trucks sales that CARB projects must be achieved to have any shot at attaining national standards.

Such alignment is the *minimum* that must be required by the state plan because: (1) many sources that must be regulated are outside CARB's regulatory authority; and (2) the current analyses are to achieve national standards that California itself has challenged as inadequate to protect public health. See, e.g., *State of New York v. EPA*, No. 21-1028 (D.C. Cir. filed Jan. 19, 2021). There simply is no reasonable basis for preparing a plan that does not include the measures that CARB's own analyses demonstrate are needed. Any "flexibility" CARB has to reduce emissions in other sectors must be additive not reductive because CARB cannot depend on federal action to reach other sources and public health demands more than planning for the bare minimum reductions.

C. Incentives are not a replacement for mandates.

We remain concerned about an over reliance on incentives (particularly by Air Districts). Recent state plans have included absurdly large commitments to achieve emission reductions through voluntary incentive programs. No one actually believes the imagined funds or voluntary turnover could ever possibly materialize. Such avoidance may seem politically desirable, but it is bad policy.

California must transition away from combustion technologies in virtually every sector. That transition will require innovation, which in turn requires investment. Public subsidies simply do not provide the long-term certainty that is necessary to spur markets to invest and innovate. For example, subsidies to farmers to buy zero-emission agricultural equipment may have led manufacturers to offer one-off products that they can sell at a premium, but they have not led to the investment in zero-emission technologies and production lines that are necessary to bring down costs and promote widespread adoption. In fact, the Revised Draft South Coast Air Quality Management Plan identified the FARMER incentive program as one of the least cost effective strategies in its entire plan.¹

As CARB implements its state plan, it must adopt mandates that will provide the clear market signal that will provide certainty to manufacturers that they will need to invest and innovate in order to stay competitive. Subsidies can be used to ease the transition in the early years before costs come down. Subsidies can also help encourage turnover to zero-emission alternatives, but if mandates are not in place to require the production of those zero-emission vehicles, the result is likely to be merely an increase in price not an increase in the number of vehicles on the road or in the field. Incentives are simply not a substitute for mandates, and CARB must stop building its plans on the fiction that it can pay industry to voluntarily clean up.

D. Abandon the black box.

The other strategy CARB has used to avoid adopting necessary control measures is to invoke the "black box" flexibility in Clean Air Act section 182(e)(5) allowed for extreme ozone nonattainment areas. *See* 42 U.S.C. § 7511a(e)(5). CARB and the air districts have abused this flexibility at the expense of public health. The argument for continuing to invoke this flexibility is simply indefensible at this point. There is no question of where emission reductions must come from or what level of emissions can be achieved. The emission reductions necessary for attainment in the South Coast and San Joaquin basin require transition of combustion sources to zero-emission alternatives. Pretending that agencies do not know what technologies might emerge to achieve emission reductions undermines the clear market signal that will drive innovation in the zero-emission technologies in the sectors that must reduce emissions. There may be new technologies that emerge in the future that make that transition easier, but there is no argument that CARB should wait for new technologies to emerge before setting zero-emission mandates, especially for buildings and mobile sources where the transition is dependent on consumers turning over existing equipment. Delay allows combustion replacements to continue and locks in years of more emissions. The continued reliance on black boxes might be politically easier, but it makes the problem harder and undermines any likelihood of a successful plan.

¹ 2022 Revised Draft South Coast AQMP, at p. 4-86 (showing various pots in FARMER program as some of the least cost effective incentive programs California implements).

E. It is time to rethink transportation budgeting.

Section 176 of the Clean Air Act could be a much more potent approach to curbing harmful air pollution. This section requires transportation projects, programs and plans to conform to the state implementation plan. 42 U.S.C. § 7506(c). To date, however, air planning agencies in California have assumed the reverse – that the state implementation plan must conform to the transportation projects, programs and plans that are developed independently.

We appreciate the SIP for the first time looking at strategies aimed at Motor Vehicle Emissions Budget and Transportation Control Measures. We suggest that these measure be pursued as quickly as possible because the harms from overly loose emissions budget approaches are happening now in the form of poorly conceived transportation projects. Earthjustice thinks many tons of NOx reductions are imbedded in rooting out poor decisions from transportation planners.

II. Specific Comments on State Strategy

A. We need regulations faster.

Several regulatory commitments are slated to achieve large emissions reductions, but will not be adopted for many years. For example, the In-Use Locomotive Regulation (63.2 tpd/2023), Cleaner Fuel and Vessel Requirements (23.6 tpd/2027), Advanced Clean Fleets Regulation (19.3 tpd/2023), Transportation Refrigeration Unite Phase II (15.2 tpd/2026), Zero-emission standard for space & water hearing (13.5 tpd/2025), and Tier 5 Offroad Vehicles & Equipment (10.4 tpd/2025) are all critical measures that will reduce large quantities of pollution. Several of these regulations are way out into the future, and we recommend CARB bump regulatory measures – particularly in the off-road sector – up to be adopted sooner. To the extent that lack of staffing is a bottleneck, then we suggest that the Board direct staff to produce a budget that could finalize adoption of these regulatory measures a year or more early than the dates proposed in the State Strategy. We also remain concerned because dates of rule adoption routinely are missed, and a 2023 date could be 2025 or beyond. The six regulations identified above must be pursued very aggressively and all be completed in the next 2-3 years with no delays. Thus, we ask the Board to direct staff to shore up these regulatory programs and monitor the progress to make sure they are delivered on time.

B. Marine vessel strategies must be strengthened.

As the proposed State SIP Strategy acknowledges, marine vessels are one of the largest contributors of air pollution in California. Emissions from these vessels disproportionately impact portside communities. We recommend that CARB strengthen the proposed SIP Strategy by including the following measures:

- Strengthen the at-berth regulation – Include bulk carriers into CARB’s at-berth regulation. Pollution from bulk carriers impact communities living adjacent to smaller ports, such as the Ports of Stockton and Richmond. CARB’s at-berth rule should be expanded to include bulk carriers in order to further reduce the DPM, NOx, and PM pollution burdens imposed on California’s portside communities.
- Commercial harbor craft commitments – The State SIP Strategy provides little detail on CARB’s proposed SIP commitments to reduce emissions from commercial harbor craft. In the adopting resolution, the Board directed staff to pursue a contingency measure to include additional zero-emissions requirements for harbor craft in nonattainment areas such as the South Coast and San Joaquin Valley. CARB also committed to technology reviews and future amendments to assess whether accelerated zero-emission targets are feasible. These measures should be included in the SIP Strategy, which they currently are not.
- Update spark-ignition marine engine standard on an earlier timeline – CARB has not updated the regulation since 2001. There have been significant technological developments and this is a category where electrification is feasible. CARB should amend this rulemaking by 2023.

C. California needs an advanced clean trucks (ACT) II regulation, in addition to a very strong advanced clean fleets (ACF) rule.

The State Strategy makes clear the need for an updated and more aggressive ACT Rule. In fact it notes that “in 2037, even after the implementation of the ACT and ACF regulations, about 480,000 heavy-duty combustion powered trucks will still be on the road.”² This means that CARB should pursue a revision to its ACT Rule to create more robust manufacturing requirements. In addition, the ACF rule provides a great opportunity to advance zero-emission trucks to reduce the large number of combustion trucks that will remain on our roads in 2037. Finally, Earthjustice supports the proposal to add provisions to the Inspection/Maintenance Program for low mileage methane burning trucks because of evidence that in use emissions are above certified levels.³

D. Locomotive regulations are critical to attainment.

The amount of pollution stemming from locomotives is staggering. We need locomotive regulations to be adopted as quickly as possible. We ask the Board to place adopting locomotive regulations as a top priority for the agency and make sure these important measures are adopted by the end of 2023 at the latest.

² State Strategy, at 61.

³ State Strategy, at 63.

E. Include agricultural equipment in off-road zero emissions manufacturer rule.

CARB has refused to mandate feasible electrification of agricultural equipment. This practice must end. The Governor's Executive Order N-79-20 directs CARB to pursue zero-emissions for all equipment, including agricultural equipment. We are disappointed that CARB, which has regulatory authority, has as its only strategy to address agricultural equipment petitioning EPA to set more stringent standards and incentive programs. This is woefully inadequate, and we need actual standards at the state level.

F. The State Strategy lacks contingency measures, which violates the law.

We also remain concerned about the lack of contingency measures. This must be fixed as contingency measures provide a powerful tool to ensure planning is done correctly, in addition to being required under the Clean Air Act.

We appreciate the significant work from the changed leadership in the SIP team at CARB. While there are many places where this plan should be fixed, we appreciate the many commitments of the plan to pursue many zero-emission regulations, which is vital to tackling deadly air pollution in California. We just need these measures to be pursued on a much more ambitious timeline.

Sincerely,
Adrian Martinez
Senior Attorney