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**Alberto Ayala**

November 16, 2020

Dr. David Edwards, Branch Chief  
Air Quality Planning and Science Division  
California Air Resources Board  
1001 I Street.  
Sacramento, CA 95814

### RE: Formal Comments on Proposed Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants

Dear Dr. Edwards:

The Sacramento Metropolitan Air Quality Management District (Sac Metro Air District, District) is providing formal comments on the *Proposed Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants* (CTR Regulation). While we fully support the overarching goals of the CTR regulation and want to provide timely access for our communities to important air pollution emissions information, we have significant reservations and concerns about the scope, timing and requirements in the latest proposed amendments that the Air Resources Board (ARB) is expected to consider at its next meeting. While we appreciate ARB's on-going attention to concerns raised by air districts, industry, and others and, in particular, your substantial engagement with stakeholders over the last two years, some of our original concerns remain unresolved to date and ARB staff has not provided an explanation for how or if the various outstanding issues will be addressed.

First and foremost, the state still has not identified a viable and sustained source of funding for implementation of the CTR regulation at the local level. Therefore, proceeding as intended will simply result in yet another unfunded mandate that will only risk achieving the intended broad goals of transparency and access to reliable air quality information. Instead, an ill funded regulation will be mired in confusion and misinterpretation for all stakeholders – the public, clean air advocates, air districts and the regulated industry, including many small businesses. We must point out that, originally, ARB staff and the Board fully acknowledged that funding for air district implementation was lacking and necessary. The Board directed ARB staff to look for solutions. While recent adjustments to your proposal might mitigate some of the funding gaps to a small degree, the core issue still remains since, for example, we will face a 10-fold increase in emission reporting workload alone. We understand the Board reasonably might expect some of the costs to be passed on locally, but recent experience in Sacramento county suggests otherwise.

As Supervisor Serna can attest, two recent efforts that would have generated some additional financial support for the Sac Metro Air District met strong local opposition and failed due to the growing economic uncertainties. In 2018, the Sac Metro Air District tried to implement a new per-capita fee to fund new local priorities such as AB 617 and the CTR. While initially supported by our Board, the idea was eventually unanimously voted down. In 2019, we also participated in the county's transportation Measure A. The measure would have generated additional funding for our agency and about a dozen other entities in the region. Similarly, while the idea originally enjoyed broad support, the Sacramento Transportation Authority eventually halted the measure due, in large part, to the rising pandemic concerns. Given the two examples above and the deep economic recession expected once the federal stimulus bounce back subsides, it is unlikely our Board would support new fees on our permit holders, many of whom are small business particularly vulnerable as the Sacramento Metropolitan Chamber of Commerce recently discussed with you.

As detailed in the attachments and as we have discussed with you, in addition to costs and lack of state funding, we have more concerns with the staff proposal pertaining to regulatory confusion, a rushed timetable, inadequate outreach, and ineffective data management. We are submitting these comments with the hope that a path forward can be forged to broaden dialogue with all affected parties. We share your goal of creating a reporting regulation that will provide meaningful and scientifically-robust emission data in a form that is actionable at the community level. You will find both general and language-specific comments on the currently proposed regulatory amendments for your consideration included in the following attachments:

- Attachment A – General Comments on the *Proposed Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants*
- Attachment B – Specific Comments on the *Proposed Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants*

We appreciate the opportunity to provide input in this process and anticipate that you will diligently review and assess them prior to any final Board action is taken. If you would like any clarification about our remarks, please contact me directly at (916) 874-6354 or [aroberts@airquality.org](mailto:aroberts@airquality.org).

Sincerely,



Amy Roberts  
Division Manager  
Stationary Source Division

Cc: Mr. Eric Guerra  
Chair, Sacramento Metropolitan Air Quality Management District  
Council Member, City of Sacramento  
915 I Street, 5th Floor  
Sacramento, CA 95814

Mr. Phil Serna  
Chair, Sacramento County Board of Supervisors  
Board Member, Sacramento Metropolitan Air Quality Management District  
Board Member, California Air Resources Board  
700 H Street, Suite 2450  
Sacramento, CA 95814

## ATTACHMENT A

### General Comments on the *Proposed Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants*

**Inadequate Timing for Consideration of Comments:** The Sac Metro Air District objects to the timing of CARB's deadline to receive comments on the CTR regulation and subsequent date of the CARB Board meeting to consider adoption of the regulation. There are less than three days between the November 16, 2020 deadline and the November 19, 2020 Board meeting. For a regulation that is so sweeping in its impact on air districts and the regulated business community, which ultimately impacts the final data product that the public will access, it is impossible for CARB to adequately review submitted comments in any meaningful way and incorporate any valid changes prior to Board consideration. Instead, this process appears to be disingenuous with only minimal review effort and making revisions through a 15-day rule change process to take those comments into consideration. A 15-day process may be adequate to correct deficiencies in the rule identified prior to implementation, but it should not be the process relied upon for more thorough stakeholder engagement. The Sac Metro Air District strongly urges CARB to respect the rulemaking process and stakeholder input by delaying consideration of this regulation until a reasonable amount of time has been given for review and consideration of all comments, preferably through a broader workgroup that has all stakeholders at the table.

**Economic Impacts & Lack of Funding:** While we appreciate CARB has taken steps to mitigate some of the reporting burden on permitted businesses and local air districts through an expansion of abbreviated reporting, there will still be significant costs associated with compliance and implementation of this regulation. These costs will be borne by air districts in the form of additional compliance assistance for regulated sources, development of technological systems to collect and track the large inflow of new emissions data and personnel costs to enact the regulation. These additional costs for our District may exceed one million dollars annually. If passed on to permitted facilities, this could mean an estimated additional fee of \$200 to \$400 per permit, representing an approximate 15-25% increase. This is especially concerning considering the immense economic downturn caused by the pandemic.

We furthermore believe the September 29, 2020 *Initial Statement of Reasons* underestimates the implementation costs of the CTR regulation and lacks the supporting documentation to justify the estimated costs provided.

The District calls for CARB to take these concerns into serious consideration and not adopt the amendments until an appropriate funding mechanism has been identified. As an unfunded mandate on local air districts that are already experiencing budgetary constraints and shortfalls, CARB should be at the forefront of pursuing funding solutions to support this important effort.

**Regulatory Confusion:** With the addition of the CTR regulation, there are now multiple emission inventory and reporting regulations that air districts, regulated entities and the public must decipher and interpret.

Moreover, there remains contradiction and confusion between the CTR regulation and AB 2588 “Hot Spots” regulation. For example, the AB 2588 program would exempt sources from reporting that have been categorized as “low” as they have been screened and determined to pose a low exposure risk. Though the EICG states that exemption from update reporting, the same is not the case (for sources categorized as low) under other programs, even though it would seem that a “low” category should be sufficient for both regulations. Or possibly, if it is determined that the previous designation on “low” categorized facilities no longer applies, then the reporting requirement or exemption thereof should be removed from the EICG. Likewise, the same holds true for the four-year update reporting under the hot spots program for facilities categorized as intermediate or high risk. This is in direct contradiction with the annual reporting requirements specified in the CTR regulation.

In general, the AB 2588 program has the following five goals; 1) collect toxics emission data; 2) identify facilities having localized impacts 3) ascertain health risks; 4) notify the public of significant risks; and 5) reduce significant risks to acceptable levels. The first goal, collect toxics emission data, is now being reimaged under the proposed CTR regulation. Therefore, if the annual reporting requirements proposed in the CTR regulation are the current direction, then the EICG should be revised to remove the reporting requirements so that there is no contradiction and confusion.

CARB should continue to look for ways to streamline emission inventory efforts between the Air Toxics “Hot Spots” Information and Assessment Act of 1987, GHG emissions reporting, criteria pollutant emission data submitted through CEIDARS, and the CTR regulation, such as the development of an all-encompassing emission reporting regulation and online reporting tool that will be used for all emission reporting requirements.

Having a CARB-developed online reporting tool will avoid the duplication of effort that will result if local air districts need to develop their own reporting tools. A state reporting tool will also foster consistent reporting requirements for the regulated community and increase efficiency, especially for businesses that operate in multiple air districts. We recommend that CARB develop the online tool as a prerequisite for CTR regulation implementation.

**Business Outreach & Lack of Meaningful Stakeholder Engagement:** CARB should perform robust and regular outreach to businesses that will be affected by the CTR regulation to ensure they understand the potential economic impacts the regulation will have related to permit fee increases and other internal business costs to comply. It is especially important to give affected facilities an opportunity to provide input during the rule development phase and also to prepare for regulatory impacts. Without a full and open rulemaking process that earnestly engages all stakeholders, the final regulation will likely include elements that have not been fully contemplated.

CARB has conducted several public workshops outlining the rule requirements. However, in each instance, the rule version that was presented in the workshop was released to the public just hours prior, making it difficult for meaningful public involvement. Lack of full stakeholder engagement was only enhanced, considering the bulk of the current rulemaking process was conducted this past year during the heart of the COVID pandemic where necessary resources of all stakeholders has been greatly impacted.

In addition, the initial statement of reasons (a document that should have been part of the rule development process shared with stakeholders) was again released just hours before the start of this last public comment period, thus negating the ability for full public discussion. Lastly, though CARB staff has made themselves available for discussions, it has been mostly done in individual or small group settings that eliminates the greater collaborative process of a larger stakeholder group. Implementing a formal engagement process will more likely avoid those unintended consequences and result in a better regulation.

**Applicability & Thresholds:** The District highly recommends CARB look at streamlining the regulation to improve the applicability determination process. The regulation as written, especially with the introduction of the fourth criterion under § 93401(a)(4) and Appendix A, introduces a high level of complexity to determine applicability and reporting requirements for the thousands of permitted facilities in our District. The proposed thresholds, even with the additional language allowing potential to emit to be used as a threshold will still, in effect, require the District to collect emissions data from all facilities. Otherwise, assessing facility applicability on an annual basis to compare to Appendix A thresholds will be too onerous and difficult.

Because the proposed reporting thresholds will require all our permitted facilities to report, representing a significant impact to businesses and air district resources, the District requests that CARB clearly explain the basis for the proposed thresholds for complete transparency about the need for reporting at these low and even zero threshold levels.

**Expanded Chemical Reporting:** The addition of new chemicals that will need to be reported, especially the addition of some 700+ chemicals that do not have health risk values is of concern. Districts rely upon approved levels in their permitting and health risk analyses and see a tremendous level of potential confusion in making data of this nature available without knowing what the documented health impacts are associated with those substances.

**Regulation Implementation Timing:** The District appreciates CARB's revision to the regulation that delays implementation of the fourth criterion Sector Phase 1 data year by one additional year. However, due to the COVID-19 health crisis and the economic ramifications to all business and local and state government sectors, we request that the implementation start date of the fourth criterion be further extended by at least one additional year, i.e., submittal of 2023 data in 2024. This will allow affected sources, local air districts and CARB to gauge economic impacts and better prepare for data collection and submission.

**Delayed implementation for Sac Metro Air District:** The District does not currently retain actual emission data for most of our permitted sources. Furthermore, our current database is not programmed to capture such data for future collection. While the District is seeking to upgrade our technology to store and track actual emission data, this will be a costly and lengthy endeavor. If the regulation is not delayed for other substantial reasons, we respectfully request to be moved from District Group A to District Group B to provide, at minimum, an additional year to put into place the necessary technology required for our District to implement the CTR regulation.

**Abbreviated Reporting:** District's should be granted discretion to add additional facility types without the need for approval by CARB under section § 93421(b). We suggest additional applicability facilities be allowed to provide abbreviated reporting when deemed appropriate by districts, especially when districts calculate emissions on behalf of the facility.

If CARB maintains that Districts should not be able to independently approve additional abbreviated reporting activities, we strongly urge CARB to reduce the onerous nature of the petition process listed in §93421(b) and, as an alternative, consider language that allows CARB to maintain an accessible list of all approved additional qualifying activities and avoid Districts submitting duplicative petitions.

**Flexibility of Reporting Deadlines:** The District recommends CARB consider different reporting deadlines that will allow districts to implement the CTR regulation as part of their annual permit reporting and inspection process. Specifically, changing the August 1 deadline to at least eighteen months after the data year would allow Districts enough time to properly review emission data and upload accurate emissions information to CARB. Submitted data will inevitably have errors that can be corrected with enough time to properly verify, such as during the annual inspection and permitting processes.

Not providing adequate time to properly verify emission data accuracy prior to submittal to CARB could lead to unvetted and possibly erroneous information being posted on a public-facing information portal. It is also less efficient in the long run if Districts must resubmit corrected information discovered later. The District encourages CARB to consider the unintended issues and inefficiencies that may occur due to the current reporting deadlines.

**Enforcement of CTR Regulation:** The regulation does not require verification of emission data accuracy. While the facility must sign an attestation, there is no requirement for data verification by districts, something that could be accomplished, for example, during compliance inspections. The District suggests this step be considered as a best practice. District's will naturally verify data through the inspection process, however, as previously mentioned, the reporting deadlines in the regulation render this impossible.

**Website & Future Emission Data Access:** The District highly recommends that CARB begin planning how online emission data can be made relevant and understandable for the public, e.g., requiring viewing of informational training videos prior to allowing public access. This step and others can help reduce confusion and misinterpretation and help explain the limitations and caveats inherent in the collected emission data.

## ATTACHMENT B

### Specific Comments on the *Proposed Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants*

**§ 93401(c)(2):** *The notification must be submitted no later than May 1, or by the local air district's data reporting deadline if it is earlier than May 1, of the year in which the emissions data report was due.*

Comment: It is not clear if this is a one-time notification or an annual notification. For example, if a facility that reported NO<sub>x</sub> emissions greater than 4 tpy in prior years has NO<sub>x</sub> emissions of 3.5 tpy in the current reporting year, must they prepare an inventory to show they are exempt from reporting for the current data year? What happens the following year? Must a facility submit a new inventory each year to show they are exempt from reporting? If so, the exemption from reporting is not useful.

**§ 93402(a):** *“Facility” means any physical property, plant, building, structure, or stationary equipment, having one or more sources, located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control.*

Comment: The definition of “Facility” should specify that it is classified under a single SIC code. Districts may have separate facilities that are contiguous or under common control but are categorized by EPA and a district as different facilities. CARB should align this definition or include a statement “or categorized by the district as a separate facility” so districts do not have to combine existing facilities for the purpose of reporting. That would be difficult to implement within district permit databases.

**§ 93403(f)(3):** *Reporting Responsibilities During Changes in Ownership.* The owner or operator at the time of a reporting deadline specified in this article must comply with the requirements of this article.

- (1) If an ownership change takes place between January 1<sup>st</sup> and the May 1<sup>st</sup> reporting deadline of a given calendar year, the prior owner or operator is responsible for submitting the emissions data report covering the previous data year, as applicable.
- (2) If an ownership change takes place at any time during a data year, the new owner or operator must submit an emissions data report in the following year, as applicable, that covers the period of time between the new owner's first day of operational control, and the end of the data year. The previous owner or operator must submit an annual emissions data report for the facility for the period of time during which the previous owner had operational control.



Comment: The intent of the revision is that the new owner would only be responsible for emissions reporting in a data year from the time that they began operation to the end of the data year. We agree with this concept. However, the revisions also make previous owners responsible for emissions for the part of the data year that they operated the equipment. While this sounds appropriate in concept, once a change of ownership takes place the permits are canceled, negating annual emissions reports that are for permitted pieces of equipment. This is best illustrated in § 93401(c)(1) which allows for a facility to be exempt from reporting requirements based on the fact that they are no longer applicable. An example cited in this section is that the permits have been cancelled which is precisely what happens when a change of ownership takes place. In addition, once a change of ownership takes place, more often than not, the District has no more contact with the previous owner. Thus, this requirement is not practical to implement and will be unenforceable.

**Table A-3. Sector 27** (Medical services, hospitals, and related facilities which use formaldehyde (or formalin), glutaraldehyde, ethylene oxide, or diesel engines)

- Add additional language to the “Activity Level Reporting Threshold”:

*110 pounds of formaldehyde emitted per year, or 110 pounds of glutaraldehyde emitted per year, or 4 pounds of ethylene oxide used per year, or 30 gallons of diesel fuel burned per year, **or alternatively, 5 hours per year of engine operation.***