California Council for Environmental and Economic Balance
101 Mission Street, Suite 1440, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

April 14, 2021

Mr. Gabe Ruiz Manager,
Toxic Inventory and Special Projects Section
Mr. John Swanson, Manager, Criteria Pollutant and Air Toxics Reporting Section
Air Resources Board
Submitted to https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=ctr2020&comm_period=1
and https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=hotspots2020&comm_period=1

RE: Proposed Amendments to the Regulation for the Reporting of Criteria Air Pollutants and Toxic Air Contaminants and to the Emission Inventory Criteria and Guidelines Report for the Air Toxics "Hot Spots" Program, 15-day changes

Dear Gabe and John,

On behalf of the California Council for Environmental and Economic Balance (CCEEB), we submit the following comments on the 15-day changes to the Criteria and Toxics Reporting (CTR) regulation and the AB 2588 Air Toxics "Hot Spots" (ATHS) Emission Inventory Criteria and Guidelines (EICG) report. We appreciate efforts at the California Air Resources Board (CARB) to improve and update these important rules, and support the overall goal of transitioning to a transparent and uniform statewide program for reporting criteria and toxics emission inventories at stationary sources so that data is both publicly accessible and meaningful.

In general, CCEEB supports 15-day changes that adjust applicability criteria and implementation schedules for small sources in rural and small "Group B" air districts (CTR) and related changes to the EICG Appendix E. CCEEB also supports changes to the phase-in schedule for the thousands of newly added air toxics, which need to have sector- and facility-specific quantification and test methods developed before emissions can be quantified.

What follows are more detailed comments and questions related to specific sections of the rules.

Comments that apply to both the CTR and the EICG regulations

Requirements to report third-party emissions. Section (§) 93404(c)(2)(C) of the CTR regulation requires specified GHG and/or Criteria Facilities to report portable diesel-fueled engines and devices rated at 50 brakehorse power or more "regardless of equipment ownership or permit

status, if the engine or device is operated on site at any time during the data year." Similarly, Section VIII.(G)(1) and (2) of the EICG requires all facilities subject to reporting to include specified on-road and off-road mobile sources.[1] In discussions with staff, it is CCEEB's understanding that this is meant to apply equally to facility as well as "third-party" emissions, such as those from common carriers delivering goods, contractors working onsite, and/or tenants in leased spaces within the facility. We refer to such sources and emissions not owned or operated by a facility as "third party."

CCEEB is confused by these sections, which appear to conflict with CARB regulatory definitions of "facility," as shown below (*emphasis* added):

> CTR Section 93402(a). "'Facility' means any physical property, plant, building, structure, or stationary equipment, having one or more sources, classified under the same two-digit, i.e., major industry grouping Standard Industrial Classification code (SIC), 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*."
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> EICG Section X.(14). "'Facility' means the same as defined in Health and Safety Code section 44304. 'Facility' shall not include any motor vehicle as defined in section 415 of the Vehicle Code. (a) Except for the oil production operations defined in section X.14(b), for purposes of this regulation, the phrase 'every structure, appurtenance, installation' shall mean all equipment, buildings, and other stationary items, or aggregations thereof, (A) which are associated with a source of air emission or potential air emission of a listed substance; (B) which involve activities that belong to the same two-digit Standard Industrial Classification code, or are part of a common operation; (C) which are located on a single site or on contiguous or adjacent sites; *and* (D) *which are under common ownership, operation, or control, or which are owned or operated by entities which are under common ownership, operation, or control*."[2]

Our interpretation of the simple language of the regulations is that third-party emissions are not under common ownership, operation, or control of the facility, and as such, would not be subject to reporting requirements. We ask that staff clarify this in its Final Statement of Reason (FSOR), in particular how CARB defines in which instances third-party emissions would be considered under "common control" and, as such, what is the legal responsibility of facility owners and operators.

Determining applicability for small sources. CTR § 93401(a)(4) sets applicability at either 4 or 10 per year (tpy) of criteria pollutants, depending on which district a facility is located in (i.e., either Group A or Group B). Determinations are based on either "actual emissions," or activity, or can be

[1] Section XI of the EICG also requires reporting of portable engines. However, (B) applicability is based on engines "the facility operates," which we presume do not include third-party engines as these are not "operated" by the facility.
[2] H&SC § 44303: "'Facility' means 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."

based on Permit to Emit levels, based on a district's discretion. § 93402(a) then defines "emissions" as "the release of criteria air pollutants or toxic air contaminants into the atmosphere from *any* sources and processes within a facility, including direct emissions or *fugitive* emissions." [*Emphasis* added.]

Similarly, Section II.B of the EICG applies to facilities emitting 10 tpy and Section II.E applies to facilities emitting less than 10 tpy but are within a class listed in Appendix E. Section VIII then explicitly requires reporting fugitive dust from motor vehicles and exhaust and fugitive dust from non-motor vehicle mobile sources operated on site.

Is it CARB's intent to require the assessment and inclusion of emissions from unpermitted or exempt activities, fugitive emissions, portable equipment, and, in the EICG at least, mobile sources, in the *determination* as to whether a facility has "actual emissions" exceeding applicability thresholds? If a facility has a potential to emit for all *permitted* sources and activities below the applicable threshold, is the facility excluded from reporting requirements regardless of the emission level associated with unpermitted/exempt activities, fugitive emissions, portable equipment and/or mobile sources? In seeking this clarification, we recognize each district's discretion to require reporting based on criteria other than the annual emission thresholds. Our question relates solely to the automatic application of the emission-based applicability thresholds.

Emergency standby generators and fire pump engines. Article 2, § 93421 of the CTR regulation allows a facility to use "Abbreviated Reporting" to report its emission for specified qualifying activities, including the operation of emergency standby generators and fire pump engines.[3] However, abbreviated reporting overlaps with the EICG, which has more detailed requirements and includes any potential source, as noted previously, not just the generator or fire pump itself.

In CCEEB's discussions with staff, it is our understanding that CARB's intention is for emissions reported annually through the CTR program be acceptable for compliance with quadrennial toxics reporting under the ATHS program. If that is the case, then we ask staff to clarify in its FSOR whether and how abbreviated reporting satisfies ATHS/EICG requirements, describing in detail how facilities should best interpret and implement the overlapping requirements.

Additionally, in Section XI of the EICG report, CARB requires a facility with one or more stationary diesel engine that operates above the reporting threshold to report emissions from both stationary and portable diesel engines at the facility. In this case, is reporting limited to diesel particulate matter (DPM) emissions from the stationary and portable engines? That is, if the facility has other emission sources, but does not trigger applicability requirements under any other provisions of the EICG, is it correct that the inclusion of the facility in Section XI remains limited to reporting DPM emissions from specified sources?

[3] Abbreviated reporting is also available for small boiler and heaters and agricultural operations, if these are the only sources at a facility.

Reporting substances with no quantification method but with (any) published health value.
Table B-3 in the CTR rule, which corresponds to ChemSet2 of Appendix A-1 of the EICG, lists substances that must be quantified staring with data year 2026. During its February 11, 2021 workshop, staff indicated that this list was based on the availability of any published health value, regardless of the exposure pathway and whether or not the originating health study considered exposures via airborne emissions. As CCEEB commented in our February 25, 2021 letter, we hope to continue to work with CARB staff to understand its intended use of published health values in assessing air toxics, and ask that staff include in the FSOR a discussion of the degree of uncertainty when using such an approach to characterize risks from air toxics.

In terms of ATHS health risk assessments and facility prioritization, CCEEB understands that only health values approved by the Office of Health Hazard Assessment and reviewed by the Scientific Review Panel will be used, as required under AB 2588. That is, Table B-3 and Appendix A-1 are not meant to shortcut or circumvent the statutorily required scientific review process, but can help inform priorities for this work.

Reporting the presence of a substance when no quantification method is available.
Section II.H.(5) of the EICG requires a facility to report the presence, use, or production of a substance using the Appendix B-1 Supplemental Use and Production form or equivalent. Section 93404(c)(1)(B) of the CTR has a parallel requirement, stating that, "If an air district determines that none of the alternatives listed would provide a reasonable, technically justified emissions estimate, and no other method can be determined that will provide such an estimate, then the presence of the toxic air contaminant and the amount used or produced at the facility during the data year must be reported without an estimated quantitative emissions value."

For the terms "presence" and "production" CCEEB understands this to apply to substances that are intended to be used in production, or intended as products of a process, and not to unintended compounds that could potentially be produced or present as a byproduct of combustion or other processes. We ask staff to include in the FSOR a discussion of the limitations in using reported presence as a proxy for quantifiable emissions estimates, including uncertainties over whether substances even become airborne, let alone contribute to risks from exposure.

More broadly, CCEEB believes the significant increase in reported substances will exacerbate source testing backlogs at local air districts and at CARB, which further underscores the need for a coordinated, multiple agency approach to the development of valid testing and quantification methods. We ask staff to include a detailed discussion in the FSOR about the time and effort needed to develop this body of work and properly set expectations and increase transparency in the process. CCEEB also urges CARB to create sector-specific public working groups to help speed development and review of quantification methods and resolve technical questions and challenges as expeditiously and transparently as possible, which would also help further development of Article 2 of the CTR rule. There is a particular need for technical guidance for refineries given the thousands of hydrocarbon compounds present in crude; reporting the "presence" of a substance may create as much uncertainty as reporting without quantification methods.

Reporting Perfluoro and Polyfluoro compounds as Air Toxics. CCEEB provided comments and questions about perfluoro and polyfluoro (PFAS) compounds in our letters from November 16, 2020 and February 25, 2021, which we incorporate here by reference. We appreciate the move to reclassify this category of compounds into ChemSet-2, and we look forward to working with staff to understand how airborne emissions of PFAS compounds drive human health exposures, as well as the development of valid test methods for different sectors and industrial uses, including remediation activities and the use of recycled water onsite.

Comments specific to the CTR regulation

§ 93404(c)(2)(C) - Portable Diesel-Fueled Engines and Devices at GHG and Criteria Facilities. This subsection requires a facility to report emissions from portable equipment and devices if "operated on site at any time during the data year" even if the equipment is owned and operated by third parties and not under direct control of the facility itself, beginning with data year 2022. However, nowhere in the rule does CARB specify how such emissions should be tracked and quantified, nor what records would need to be kept to validate third-party data. Instead, CARB states that undefined "best available data and methods" *may* be used, and that certain options on how to calculate emissions *could* be decided by the local air district, if it so chooses, including whether or not the full report contents of § 93404(b)(1) apply, whether or not data from multiple engines can be aggregated, and whether or not activity data may be submitted in lieu of quantified emissions. This ambiguity is highly problematic; nowhere within any CARB program do staff provide guidance on how to estimate third-party emissions or what would be an acceptable degree of accuracy. Similarly, to CCEEB's knowledge, no air district has ever issued guidance on how to quantify emissions from third-party portable equipment, and no district has indicated how it intends to interpret and enforce this subsection, nor have we seen plans to develop any such guidance. This makes compliance with this subsection uncertain and possibly speculative.

For these reasons, CCEEB requests that § 93404(e) be revised as follows:

> "With the submitted annual report, the designated representative for a facility subject to this article must provide an attestation to the local air district or to CARB that he or she is authorized by the owner or operator of the facility to submit the emissions report, and that to the best of his or her knowledge, all information submitted by the designated representative pursuant to this article, except for information from third-party owned or operated sources reported pursuant to § 93404(c)(2)(C), is true, complete, and correct."

CCEEB also asks that CARB work with the California Air Pollution Control Officers Association (CAPCOA) and facilities subject to this new subsection to develop guidance on what would be considered "best available data and methods" for tracking third-party sources, as well as requirements for compliant record keeping.

Comments specific to the EICG regulation

Section VIII.G.(1) and (2) - Motor Vehicles and Non-Motor Vehicle Mobile Sources. CCEEB continues to have concerns with CARB interpretation of Health & Safety Code §§ 44345(b) and 44340, and incorporate by reference our comments to the board on November 16, 2020. At a minimum, we ask staff to post its 1989 legal memo on mobile sources emissions to the EICG webpage and include it as an appendix or attachment to the FSOR as so that it can be included as part of the formal regulatory documents.

In terms of the new subsection (1) on motor vehicles, CCEEB asks staff to clarify in the FSOR what is meant by "routine and predictable motor vehicle activity at the facility" and provide specific, detailed examples of what activity is and is not included.

In terms of the new subsection (2) on non-motor vehicle mobile sources, CCEEB finds the amended language confusing and hard to interpret. For example, the first sentence applies to mobile sources which operate "within the facility" and says, "the following inventory information is required to be included…" However, there is no "following information" described afterwards. The next sentence says the facility operator must report "sources which stay within the facility," but examples given include locomotives, airplanes, pleasure craft, and ships, which presumably do not remain within the facility footprint. The section does say that a district "may" require activity data on mobile sources that "are periodically located within the facility property," but does not indicate when or how a district would make this determination, nor is any guidance available to explain how these mobile sources would need to be quantified. CCEEB asks that staff provide clarification in the FSOR or consider future 15-day changes to provide consistency and clarity to these requirements.

CCEEB appreciates CARB's efforts to update and develop these important reporting rules, and is grateful for staff's willingness to engage stakeholders in the many technical details involved, as well as for staff's professionalism and technical expertise. We look forward to continuing to work to support implementation with CARB, the air districts, CAPCOA, and other interested stakeholders. Should you or your staff have any questions or wish to discuss our comments, please reach out to me at janetw@cceeb.org or (415) 512-7890 ext. 111.

Thank you,

Janet Whittick
CCEEB Vice President

cc: Mr. Bill Quinn, CCEEB President and CEO
Ms. Kendra Daijogo, The Gualco Group, Inc. and CCEEB Air Project Manager