



AB 617 COMMUNITY AIR PROTECTION PROGRAM

By Lee N. Smith

This memorandum addresses AB 617 Garcia (the Community Air Protection Program), Chapter 136, Statutes of 2017. There is also a short discussion of the recently released (2/7/2018) California Air Resources Board (“CARB”) “Concept Paper” and the accompanying “Draft Process and Criteria for 2018 Community Selections.”

I. Summary

AB 617 was approved by the California legislature in conjunction with AB 398, which was an extension of the Cap & Trade program, in an effort to garner support from the diverse interested parties in the air quality arena. It is a far-reaching bill that is intended to identify populations/communities in California that are being cumulatively impacted by local air quality, and requires that additional monitoring or mitigation be taken. In particular, it calls for the development of a plan for monitoring communities that are cumulatively impacted. The Concept Paper and the Draft Process and Criteria for Community Selection, which are discussed at the end of this memorandum, contain proposed policies that will directly impact local air districts.

One of the major concerns with AB 617 is the apparent interest by some groups to use inexpensive monitoring devices that cannot produce results that are likely to be sufficient to meet the technical and evidentiary requirements under the state and federal clean air acts.

II. Cap & Trade AB 398

AB 398 authorizes CARB to continue the GHG Cap & Trade program until 2030 and resolves certain questions over the future of cap-and-trade while working to meet the state’s target to cut GHG emissions to 40 percent below 1990 levels by 2030. Support by industry for the additional cap-and-trade regulation was an apparent desire to avoid command and control of greenhouse gas emissions as opposed to the economic incentives and compliance alternatives under the existing Cap & Trade program.

III. AB 617

A. Summary

AB 617 requires CARB to develop a monitoring plan for the state, and then select, based on the plan, the highest priority locations to deploy community air monitoring systems. Once the communities and relevant emissions are identified, various options for control measures are to be proposed.

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By July 1, 2019, air districts would be required to deploy monitoring systems in the selected locations, with data to be published on the CARB website.

Air districts would also be authorized to require any stationary sources that emit air pollution that materially affect the selected location, to deploy a fence-line monitoring system.

Additional locations would be selected to deploy community air monitoring systems on an ongoing basis, by January 1, 2020, and every year thereafter, as appropriate based on the monitoring plan.

The program also includes annual hearings to support continual improvements in implementing the network of community air monitoring systems.

Within one year, air districts that encompass identified communities would need to adopt a community emissions reduction program consistent with the state strategy and including emissions reduction targets, specific cost-effective reduction measures, an implementation schedule and enforcement plan. These programs could include measures for reducing emissions from the contributing sources or categories of sources, including, but not limited to, stationary and mobile sources.

Ensuring continuous progress towards fulfilling the statewide strategy, every year CARB is required to select additional locations with high cumulative exposures for participation in the program. The legislation further requires CARB to update the state-wide strategy at least once every five years.

B. Community Participation

CARB is required to consult with environmental justice organizations, affected industry and other stakeholders in preparing the state-wide strategy, including holding at least three public workshops in different parts of the state.¹

Air districts must similarly consult with CARB, individuals, community-based organizations, affected sources, and local government in developing the community emissions reduction program. It is our understanding that initial community identification will occur in April of 2018.

C. BARCT

AB 617 also requires air districts that are in nonattainment to adopt an expedited schedule to implement Best Available Retrofit Control Technology (“BARCT”) for existing sources of air pollution that were covered by Cap & Trade - a market based control program - as of January 1, 2017, and where such standards have not been updated within the last decade. The law offers compliance flexibility in how the standards are met.

AB 617 was intended to enhance consistency of regulatory standards by requiring the state board to establish and maintain a statewide clearinghouse for the technologies used across the state to define the best available control technology (for new sources that emit criteria air pollutants), BARCT, and for related technologies for the control of toxic air contaminants.

¹ 2/22 in Oakland, 2/27 in Bakersfield, 2/28 in Riverside. <https://ww2.arb.ca.gov/our-work/programs/community-air-protection-program-ab617/community-air-protection-program-events>

D. Increased Enforcement

AB 617 also increases the maximum criminal and civil penalties enforceable by the districts and CARB and requires affected air districts to prepare annual reports describing actions taken and the results of those actions.

IV. Concept Paper

On February 7, 2018, CARB's Office of Community Air Protection released a draft Concept Paper² which is the initial proposal for the framework of the Program that was discussed at three full-day public workshops held throughout California in late February. Comments received on the Concept Paper will be used in the development of a draft version to be released in May 2018. The following is a synopsis of the 45-page report that addresses the more relevant sections.

A. CARB Identifies Responsibilities Under the Air Protection Program to Include:

- Identifying communities with the highest cumulative exposure burdens and annually selecting priority communities for deployment of community air monitoring campaigns and/or community emissions reduction programs.
- Developing a statewide strategy, including measures to reduce emissions and exposure, methods for identifying contributing sources, and criteria to serve as the benchmark that air districts must meet when developing and implementing community emissions reduction programs.
- Preparing a statewide air monitoring plan to provide criteria and guidance for developing community air monitoring campaigns.
- Establishing and maintaining an emissions control technology clearinghouse.
- Establishing a statewide uniform system of annual emissions reporting for certain categories of sources.
- Assessment and identification of the most heavily burdened communities will be based on a compilation of data sources and factors characterizing cumulative exposure to criteria air pollutants and toxic air contaminants within disadvantaged communities. These sources include:
 - Information about concentrations of criteria air pollutants and toxic air contaminants from measurements, air quality modeling, or other information quantifying exposure burden.
 - Identifying sensitive receptors (e.g., schools, day care centers, hospitals), exposed population, and proximity to mobile, area-wide, and stationary emissions sources of concern, including freeways.
 - Density of contributing emissions sources and magnitude of emissions within the community.
 - Public health indicators that are representative of the incidence and/or exacerbations of disease.
 - Cancer risk estimates based on air quality modeling.
 - Socio-economic factors such as poverty levels, unemployment rates, and linguistic isolation.

B. Air District Responsibilities

CARB is proposing that air districts provide recommendations as to specific communities for deployment of community air monitoring campaigns and/or development of community emissions reduction programs.

² https://ww2.arb.ca.gov/resources/documents/community-air-protection-program-concept-paper?utm_medium=email&utm_source=govdelivery

According to CARB, the air districts are tasked with establishing the air monitoring campaigns, as well as developing and implementing the community emissions reduction programs because of their apparent expertise and experience.

CARB's plans include actions that are specific to air districts:

- Adopt air district rules that reflect the most stringent emissions limits, applicability, and best practices and associated cost-effectiveness.
- Assume that air district Best Available Control Technology ("BACT") and T-BACT determinations for new sources reflect the most stringent limits.
- New air district rules and emissions limits to meet AB 617 requirements for the expedited installation of BARCT.

Some of the duties of the District are discussed in detail in the Process and Criteria Draft which is discussed herein.

C. Additional Proposed Measures

In addition to District actions, CARB is suggesting:

- CARB-mandated mobile source technology and fuel measures that will advance zero and near-zero emissions technologies.
- Review and potential revision of CARB airborne toxic control measures (ATCMs) and suggested control measures for mobile, area-wide, and stationary sources.
- CARB and air district incentive funding for mobile, area-wide, and stationary sources to accelerate deployment of the cleanest technologies and associated infrastructure, with a focus on zero-emissions technologies wherever feasible.
- Facility-based approaches for reducing emissions.
- CARB and air district mechanisms for targeted enforcement activities.
- Enforceable agreements.
- Transportation-related strategies to reduce community-level emissions impacts such as alternative truck routes, preferential access for the cleanest technologies, and geo-fencing.
- Strategies to create more sustainable communities, including reducing vehicle miles travelled, encouraging active transportation, and urban greening.
- Resources to support education and community advocacy on land use planning and California Environmental Quality Act (CEQA) review.
- Mitigation strategies such as air filtration, buffers, and vegetation barriers.

In addition to the Concept Paper, the technical criteria, requirements for public process, and timelines for the air district and community, self-recommendations are available in the Process and Criteria for 2018 Community Selections.

V. The Community Air Protection Program Process and Criteria

The Community Air Protection Program DRAFT Process and Criteria for 2018 Community Selections³ were drafted to help identify the criteria for identifying the communities that will be addressed under their plan:

³ https://ww2.arb.ca.gov/resources/documents/capp-draft-process-and-criteria-2018-community-selections?utm_medium=email&utm_source=govdelivery

- 1) Community Self-Identification - There is a process for communities to essentially nominate themselves for consideration. Such nominations are submitted to the local Air Districts for review.
- 2) There is also a section to assist air districts in providing initial, and then final, recommendations for identifying local target communities. The Process and Criteria sets out numerous data resources that a District should use in its review. Sources the districts are to review include:
 - a. Information about concentrations of criteria air pollutants and toxic air contaminants from measurements, air quality modeling, or other information quantifying exposure burden.
 - b. Sensitive receptors (e.g., schools, day care centers, hospitals), exposed population, and proximity to mobile and stationary emissions sources of concern, including freeways.
 - c. Density of contributing emissions sources and magnitude of emissions within the community, including mobile, area-wide, and stationary sources.
 - d. Public health indicators that are representative of incidence or exacerbation of disease related to air quality.
 - e. Cancer risk estimates based on air quality modeling.
 - f. Socio-economic factors such as poverty levels, unemployment rates, and linguistic isolation.
- 3) Air District initial submittals and later final assessment are first due in April 2018, then the final in July of 2018. The Process and Criteria documents contain a list of the information required to be in an air district's submittals. Additionally, there are specific requirements for the public review process despite the short timeline for review and implementation of the CARB plan.

VI. Timeline

One of the concerns with the Concept Plan and the Process and Criteria is the short timeframe proposed per statutory requirements. The timeline under the process identified in this document is as follows:

February 2018: Draft Process and Criteria for 2018 Community Selections released.

April 30, 2018: Initial community list from air districts submitted to CARB.

July 31, 2018: Final air district 2018 Community Selections recommendations submitted to CARB.

August 2018: CARB posts recommended communities with Community Air Protection Program Framework and planning documents for public comment.

September 2018: Board meeting to consider selection of 2018 communities.

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