

October 27, 2016

Mr. Alan Abbs
Executive Director
California Air Pollution Control Officers Association
1107 Ninth Street, Suite 1005
Sacramento, CA 95814

Sent electronically to: alan@capcoa.org

**SUBJECT: BUSINESS COALITION COMMENTS ON DRAFT CAPCOA AIR TOXICS
“HOT SPOTS” PROGRAM PUBLIC NOTIFICATION GUIDELINES**

Dear Mr. Abbs:

The undersigned organizations appreciate this opportunity to comment on the California Air Pollution Control Officers Association’s (CAPCOA) draft Air Toxics “Hot Spots” Public Notification Guidelines (Notification Guidelines). This document is arguably the most critical of the various state program and guideline updates undertaken in response to the revised air toxics health risk assessment (HRA) guidelines issued in February, 2015 by the Office of Environmental Health Hazard Assessment (OEHHA). The new HRA guidelines represent a paradigm shift in a mature program which presents significant new risk communication challenges for the air districts and the facilities they regulate.

As we have asserted in previous correspondence to CAPCOA on this topic, a business as usual approach to public notification and risk communication in the current environment is untenable. It will lead to public alarm about perceived increases in health risk, despite the fact that in the vast majority of cases facility emissions are unchanged or reduced relative to previous air toxics inventories. It will also promote greater distrust of facility operators and the air districts themselves.

Draft Guidelines Fail to Achieve their Stated Purpose

The purpose of this document, described in Section 1(B) on page 4, is to update the prior CAPCOA Public Notification Guidelines (issued in 1992) “to reflect new understanding of toxic risk and the changed public outreach landscape.” We agree with this stated purpose. However, the draft update falls far short of satisfying these objectives. Apart from a few recommendations for opt-in electronic information dissemination in sections 3 and 4, this document does very little to improve the current practice of air toxics risk communication. In particular, the document fails to provide any guidance to local air districts on how best to communicate to the public the recent changes in state risk assessment methodology (OEHHA, 2015) and the impact of those changes on facility risk estimates.

Section 3(A)(iii) indicates that ARB and CAPCOA will collaborate on “a one page messaging document outlining the change in risk factors and the state’s large reduction in toxic risk from air pollution.” By CAPCOA’s own admission, this issue is one of the two core purposes for which CAPCOA embarked on an update of its 1992 Public Notification Guidelines, and yet this one page document was not included in the draft released for stakeholder review. Without this baseline information, it is impossible for stakeholders to evaluate the adequacy of the draft guidelines. Once this document is completed, CAPCOA should include it in a revised draft of the Public Notification Guidelines and reissue the entire document for another round of public review and comment.

CAPCOA should make every effort to expedite this next step. It has been 18 months since OEHHA updated the state air toxics health risk assessment guidelines and some districts are already approving updated health risk assessments and requiring facilities to notify affected receptors. The value of these guidelines to local air districts and the communities they serve continues to diminish with the passage of time.

Sample Notification Letters Ignore Impact of Changes to the Health Risk Assessment Guidelines

Any resident or business receiving a notification letter based on the Sample Letters provided in Appendices A and B would have no more knowledge of the impact on facility risk estimates from changes to the state risk assessment guidelines than if the district used the Sample Letters provided in the 1992 guidelines. Moreover, any notice recipient who takes the time to compare current risk estimates to prior risk estimates for the subject facility would reasonably - but wrongly - conclude that any increase in risk is a result of changes at the facility that increased air toxics emissions. As we discussed in our March, 2016 letter on this subject, not only is the proposed language misleading in terms of the information it omits, but it fosters the false perception that both the facility and the district have failed to take actions to reduce facility emissions and risk.

CAPCOA acknowledges in Section 3(A)(iii) that the updated risk assessment guidelines will likely result in sources being included in district Hot Spots programs for the first time, and "substantial" increases in risk estimates for sources already subject to these programs. We agree with CAPCOA's statement in this section that "providing a basic explanation of why this has happened can help the public understand why these risks are being communicated now." However, this information should not be relegated to an abstract summary in a separate document that may or may not accompany the actual notification letter. This approach is inconsistent with CAPCOA's statement on page 7 that "some context is necessary to ensure comprehension." The proposed approach also does not provide meaningful information to the public about how the risk assessment policy changes impact risk estimates for the facility that is the subject of the notification.

The notification letter should disclose the drivers for new or elevated facility risk estimates. This is particularly important in the majority of instances where OEHHA's updated risk assessment methodology is the only driver of elevated risk estimates. As noted above, failure to disclose this information in the notification letter will lead to false perceptions about facility and district actions, promoting community distrust and greater public anxiety about health risks from stationary sources. We encourage CAPCOA to reconsider our prior recommendations for the Sample Letter, which are designed to mitigate these unintended outcomes.

In addition to incorporating our prior recommendations for the sample letters, we also recommend that CAPCOA include the following changes to the proposed sample letter language. These recommendations apply to both Appendix A and Appendix B.

1. In the second paragraph, third sentence, we propose replacing the term "increase" with "contribute to" to reflect the reality that in the vast majority of cases, changes in facility risk estimates are due exclusively to changes in the risk assessment methodology, not actual increases in emissions (and health risk). The District should not communicate directly or indirectly to notice recipients that the facility is contributing to an increase in their total health risk unless facility emissions of air toxics have increased since the prior emission inventory reporting period. The current draft language should be revised as follows:

[FACILITY] is located at [LOCATION], which is approximately [DISTANCE] from your address. [FACILITY] emits a substance called [SUBSTANCE] into the air in order to [PRODUCT OR PROCESS]. This substance is a toxic air pollutant. Exposure [to this/ these substances] may ~~increase~~ contribute to your potential risk of developing cancer or experiencing non-cancer adverse health impacts.

2. The following statement can be interpreted to mean that the only source of cancer risk for a worker or resident is from facility emissions:

The estimated maximum contribution of worker cancer risk from [FACILITY] is [NUMERATOR] in a million, assuming that emissions from [YEAR] continue for a 25-year career. The maximum estimated contribution of resident risk from [FACILITY], assuming [30/70] years of exposure, is [NUMERATOR] in a million.

It is critical that the sample letters include language placing the facility risk into context with risks from exposure to other sources of air toxics emissions. This feature has been a hallmark of district public notification letters for two decades and we cannot imagine a defensible argument for excluding it from future notification letters. At a minimum, CAPCOA should use the following language from the Risk Management Guidance for Stationary Sources (July, 2015, pages 7-8):

“When including all cancer risk factors, the 2012-2014 average potential cancer risk for a person in California is 830 in a million.”

Industrywide Notification Proposals Create Greater Uncertainty and Additional Burden

Section 4(B) seems to propose contradictory requirements for industrywide notifications. We agree with the intent of industrywide notifications described in section 4(A), “to protect small businesses with the potential economic hardships of producing health risk assessments and distributing notification letters while still ensuring the public has clear information on the potential toxic risks posed by these facilities.” However, section 4(B) on page 13 seems to suggest that air districts could require public meetings for individual sources in industrywide categories. The burdens associated with a public meeting would negate much of the protection afforded by including the facility in an industrywide category. We request that CAPCOA clarify that any public meetings for industrywide sources would address multiple sources within a given category and not single out individual sources.

We object to the statement in section 4(B) that “because of space considerations, the background on air toxics risk may be eliminated if a reference to additional information on air toxics risk is included.” As indicated above, this background information, including the drivers for all notifications required after the effective date of the revised OEHHA risk assessment guidelines, is a critical element of the notification letter. It should not be detached from the notification letter, much less relegated to a website reference. We recommend that CAPCOA delete this statement from the document.

The mapping tool concept in section 4(C) would create new vulnerabilities for industrywide facilities by allowing the public to locate individual facilities that may exceed the district’s notification threshold without providing any additional information to explain why the facility now finds itself in this position. Presumably the mapping tool would not provide the actual facility risk at the MEIR or MEIW, since the district does not calculate risk for individual facilities in industrywide categories. Similarly, there is no indication that the mapping tool would disclose steps that have already been taken by individual facilities to reduce air toxics risk, such as installation of toxics best available control technology. Members of the public would be left to draw their own conclusions. Some may take actions that could be detrimental to the district and affected facilities.

On balance we are disappointed that the draft Notification Guidelines seem to reflect little consideration of the comments submitted by this Coalition on March 22, 2016. Our goal was to promote a collaborative process for updating the 1992 Public Notification Guidelines. However, apart from a brief procedural discussion during a CAPCOA-hosted meeting with industry stakeholders on July 7, 2016, there has been no apparent interaction between the regulated community and the CAPCOA representatives tasked with developing these draft Notification Guidelines. We are further concerned that the insular and informal nature of this guideline update process will fail to yield any documentation of the decision making process that lead to the development of this draft guidance (e.g., responses to public comments).

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We look forward to revisiting our prior recommendations in future discussions with CAPCOA toward the development of effective Hot Spots Public Notification Guidelines. We would be happy to schedule a subsequent meeting to discuss these comments at your convenience.

Sincerely,



Anthony Samson, Senior Attorney/Policy Advisor
Arnold & Porter LLP

On Behalf of the Following Organizations:

California Chamber of Commerce
African-American Farmers of California
Agricultural Council of California
Almond Alliance of California
American Chemistry Council
Associated General Contractors- California
Associated General Contractors- San Diego
Bay Area Council
Bay Planning Coalition
Big Bear Chamber of Commerce
Building Industry Association of Fresno and Madera Counties
California Association of Sanitation Agencies
California Attractions and Parks Association
California Cement Manufacturers Environmental Coalition
California Building Industry Association
California Business Properties Association
California Cement Manufacturers Environmental Coalition
California Citrus Mutual
California Construction and Industrial Materials Association
California Cotton Ginners Association
California Cotton Growers Association
California Farm Bureau Federation
California Fresh Fruit Association
California Hospital Association
California League of Food Processors
California Manufacturers and Technology Association
California Metals Coalition
California Paint Council
California Refuse Recycling Council
California Small Business Alliance
California Society for Healthcare Engineering, Inc.
California Trucking Association
Can Manufacturers Institute
Cathedral City Chamber of Commerce
Cerritos Chamber of Commerce
Chambers of Commerce Alliance of Ventura and Santa Barbara Counties
Chemical Industry Council of California
Coastal Energy Alliance
Construction Industry Air Quality Coalition
Culver City Chamber of Commerce
Dairy Cares
Delano Chamber of Commerce

Dinuba Chamber of Commerce
Elk Grove Chamber of Commerce
El Monte/South El Monte Chamber of Commerce
Folsom Chamber of Commerce
Gateway Chambers Alliance
Greater Bakersfield Chamber of Commerce
Greater Riverside Chamber of Commerce
Hayward Chamber of Commerce
Indio Chamber of Commerce
Industrial Association of Contra Costa County
Industrial Environmental Association
Industry Manufacturers Council
Inland Empire Economic Partnership
Irvine Chamber of Commerce
Kern County Farm Bureau
Kern County Taxpayers Association
Laguna Beach Chamber of Commerce
League of California Cities
Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation
Malibu Chamber of Commerce
Manufacturers Council of the Central Valley
Metal Finishers Association of Northern California
Metal Finishers Association of Southern California
Milk Producers Council
NAIOP – Southern California
National Federation of Independent Business
National Tank Truck Carriers, Inc.
Nisei Farms League
North Orange County Chamber of Commerce
Norwalk Chamber of Commerce
Ontario Chamber of Commerce
Orange County Business Council
Pasadena Chamber of Commerce
Rancho Cordova Chamber of Commerce
Richmond Chamber of Commerce
Rural County Representatives of California
Sacramento Metropolitan Chamber of Commerce
San Bernardino County Solid Waste Management Division
San Diego Regional Chamber of Commerce
San Francisco Chamber of Commerce
San Gabriel Valley Legislative Coalition of Chambers
San Gabriel Valley Economic Partnership
San Jose Silicon Valley Chamber of Commerce
San Rafael Chamber of Commerce
San Ramon Chamber of Commerce
Seawright Custom Precast
Solid Waste Association
Southwest California Legislative Council
Southwest Riverside County Association of Realtors
Styrene Information & Research Center
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Tulare Kings Hispanic Chamber of Commerce
Valley Industry and Commerce Association

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West Coast Lumber & Building Material Association
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Western States Petroleum Association
Western United Dairymen
Western Wood Preservers Institute
Wilmington Chamber of Commerce