

# **Supplemental Responses to Comments**

on the

## **Environmental Analysis**

Prepared for the

## **Community Air Protection Blueprint**

**California Air Resources Board  
1001 I Street  
Sacramento, California, 95814**

**Released September 27, 2018  
to be considered at the  
September 27, 2018 Board Hearing**

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## 1. INTRODUCTION

On August 24, 2018, CARB released the Final Draft Community Air Protection Blueprint (Final Draft Blueprint), which incorporates refinements to specific measures in response to public comments received. The Final Draft Blueprint includes: processes and criteria for identifying and selecting impacted communities, statewide strategies to reduce emissions of criteria air pollutants and toxic air contaminants; and requirements for the development of air monitoring systems and community emissions reduction programs. A comment docket for the Final Draft Blueprint was opened on August 24, 2018 and closed September 24, 2018. Three comment letters were submitted during that time the referenced the Environmental Analysis (EA) prepared for the Blueprint. Comments are available at: <https://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=ab617>

The Final EA was not recirculated because the changes made to the Final EA merely clarify, amplify, or make insignificant modifications to the otherwise-adequate Draft EA. There is no significant new information that would require the Final EA to be recirculated. Though the comment docket was not opened for the EA for the Blueprint, pursuant to CARB's certified regulatory program, staff is providing written responses to the comments raised on the EA for the Blueprint. This document presents those comments and CARB staff's written responses to environmental comments. Although this document includes written responses only to those comments related to the EA, all of the public comments were considered by staff and provided to the Board members for their consideration.

The Final EA, together with the Response to Comments on the Draft EA and this supplemental response document, will be presented to the Board for its consideration for approval prior to taking final action on the Blueprint. For reference purposes, this document includes a summary of each comment followed by the written response. The full comment letters containing comments related to the Final EA are provided in Attachment 1 of this document.

## **A. Comments Requiring Substantive Responses**

CARB prepared substantive responses to all comments that raise “significant environmental issues” associated with the proposed action as required by CARB’s certified regulatory program to comply with the California Environmental Quality Act (CEQA; California Code of Regulations, title 17, section 60007(a)).

Although CARB has not provided written responses to the remaining comments, all comments were considered and provided to Board members for their consideration. Written responses were not prepared for other comments that were determined to not raise significant environmental issues because this action is not subject to the requirements under the Administrative Procedures Act to prepare a Final Statement of Reasons with written responses to each issue raised. As noted above, pursuant to CEQA and CARB’s certified regulatory program, CARB is required to prepare substantive responses only to those comments that raise “significant environmental issues” associated with the proposed action, pursuant to California Code of Regulations, title 17, section 60007(a).

## **B. Requirements for Responses to Comments**

These written responses to public comments on the EA are prepared in accordance with CARB’s certified regulatory program to comply with the California Environmental Quality Act (CEQA). ARB’s certified regulations states:

*California Code of Regulations, title 17 section 60007. Response to Environmental Assessment*

*(a) If comments are received during the evaluation process which raise significant environmental issues associated with the proposed action, the staff shall summarize and respond to the comments either orally or in a supplemental written report. Prior to taking final action on any proposal for which significant environmental issues have been raised, the decision maker shall approve a written response to each such issue.*

Public Resources Code section 21091 also provides guidance on reviewing and responding to public comments in compliance with CEQA. While this section refers to environmental impact reports, proposed negative declarations, and mitigated negative declarations, rather than an EA, it contains useful guidance for preparing a thorough and meaningful response to comments.

Public Resources Code section 21091, subdivision (d) states:

*(1) The lead agency shall consider comments it receives ... if those comments are received within the public review period.*

*(2) A) With respect to the consideration of comments received ..., the lead agency shall evaluate any comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to*

*subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.*

*(B) The written response shall describe the disposition of each significant environmental issue that is raised by commenters. The responses shall be prepared consistent with section 15088 of Title 14 of the California Code of Regulations.*

California Code of Regulations, title 14, section 15088 (CEQA Guidelines) also includes useful information and guidance for preparing a thorough and meaningful response to comments. It states, in relevant part, that specific comments and suggestions about the environmental analysis that are at variance from the lead agency's position must be addressed in detail with reasons why specific comments and suggestions were not accepted. Responses must reflect a good faith, reasoned analysis of the comments.

*California Code of Regulations, title 14, section 15088 (a – c) states:*

*(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft Environmental Impact Report (EIR) and shall prepare a written response. The Lead Agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.*

*(b) The lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.*

*(c) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.*

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## 2.0 RESPONSES TO COMMENTS

The comment letters were coded by the order in which they were received. Table 2-1 provides the list of comment letters that purport to or conservatively may be read to contain substantive environmental comments. Responses to these comments are provided below. Responses are not provided to comments which do not raise substantive environmental issues. The full comment letters are provided in Attachment 1.

<b>Table 2-1: List of Comment Letters Receiving Responses for CEQA Purposes</b>			
<b>Comment Number</b>	<b>Date</b>	<b>Name</b>	<b>Affiliation</b>
22	September 24, 2018	Whittick, Janet	California Council for Environmental and Economic Balance
23	September 24, 2018	Reheis-Boyd, Catherine	Western States Petroleum Association
24	September 24, 2018	Reheis-Boyd, Catherine	Western States Petroleum Association

Comment Letter 22 September 24, 2018	Whittick, Janet California Council for Environmental and Economic Balance
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**22-1:** The comment incorporates by reference previous comments made by the commenter (see Letter 26 of the Final EA) with respect to the Draft Blueprint.

**Response:** Refer to pages 31 through 33 of the Responses to Comments on the Draft Environmental Analysis prepared for the Community Air Protection Blueprint for responses to comments made in that letter pertaining to environmental issues. No further response is necessary.

Comment Letter 23 September 24, 2018	Reheis-Boyd, Catherine Western States Petroleum Association
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**23-1:** The comment refers to Attachment 5 of the comment letter, which addresses the EA.

**Response:** Please see responses to comment 24-1 through 24-6.

Comment Letter 24 September 24, 2018	Reheis-Boyd, Catherine Western States Petroleum Association
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**24-1:** The comment correctly states that CARB’s notice of the September 27, 2018 meeting indicated that no new comments on the Draft EA need to be considered. It is acknowledged, as stated by the commenter, that additional comments may be received prior to the lead agency’s decision that may pertain to responses provided as part of the Final EA.

**Response:** The commenter appears to conflate the notice’s statement regarding additional comments on the Draft EA with any and all additional comments received prior to CARB’s decision regarding the Blueprint, which would be part of the record. The notice’s statement pertained specifically to the CEQA requirement for providing formal responses to comments received during public review of a draft CEQA analysis. The notice’s statement should not be over interpreted to state that no additional public testimony/comments would be considered. To that end, the additional comments received from the commenter, that raise significant environmental issues, have been considered and responses have been provided herein.

**24-2:** The comment states that the EA evaluates environmental consequence of state-level regulatory action, but fails to consider reasonably foreseeable environmental consequence of future actions by air district and other local agencies which, commenter contends, the Blueprint has predetermined.

**Response:** As discussed in response to comment 3-3, in the Final EA:

For district programs, the proposed Draft Blueprint sets forth policies, requirements, and criteria for community emissions reduction programs. However, the individual strategies selected by the air districts will vary by air district and community. While the proposed Draft Blueprint provides criteria and broad guidance on the types of actions to be included in district air programs, it is the role of local air districts to develop, adopt and implement community-level projects after state board approval. As explained in the Draft EA, the programs developed by local air districts in response to CARB’s criteria, will involve extensive decision-making processes that cannot be forecasted with reasonable specificity. Moreover, any future district projects are contingent upon CEQA compliance, if required. Repeated statements are made in both the proposed Draft Blueprint and the Draft EA for preparation of future CEQA documents prior to district approval. For example, in its development and approval of a community emissions reduction program, air districts (as CEQA lead agencies) will be required to conduct CEQA compliance, as warranted.

The comment states that air districts that choose to tier from the Draft EA would not be able to adopt the no project alternative in their respective CEQA review document and this improperly precludes future decisions, and so requires CEQA analysis of those decisions at this early stage. As CARB has already explained, this claim, if accepted, would essentially

require CARB to speculate improperly as to the content of district decisions which have not yet been made. The Blueprint provides a framework for decisions, but does not prejudge those decisions. It has neither predetermined choices nor precluded policy options. On the contrary, CARB has, as required by AB 617, only offered an analytic framework. A no project alternative may, in fact, be described by a district to provide a useful comparison in future documents as a district considers options within this framework. These decisions are within the discretion of districts in the first instance. Of course, the AB 617 statute itself may constrain this discretion, but this statutory point does not bear on the adequacy of CARB's analysis. As noted throughout the Final EA, the methods and particular programs to be implemented by local agencies are up to the local agencies to determine. As noted in the Final EA, the actions taken and programs implemented by the local agencies are up to local agencies to determine based on the specific characteristics and capabilities of their jurisdictions. Thus, with future tiered documentation, a "no project" alternative would be available to local agencies with regard to any particular program for analysis but such an option would likely acknowledge that a substitute/equivalent program would be required in order to achieve statutory compliance. Thus, for the second tier of review referred to by the commenter, consideration of a "no project" or lack of adoption of a particular local program is not precluded. Commenter's attempt to convert caselaw addressing circumstances in which an agency pre-decides its *own* options improperly to require CARB to anticipate district compliance responses in response to a statutorily required framework is, for these reasons, unavailing. CARB's statutory charge stops at providing a framework for decision; it has not committed itself to future actions, nor committed the districts to particular choices. CARB has, in short, fulfilled the role AB 617 required, and properly analyzed its programmatic work at this juncture. Future decisions by independent decisionmakers, at the district level, may properly be analyzed when they are considered. There is no value to the public from high-level guesses at the yet-to-be-determined content of programs.

**24-3:** The comment states that if the intent of footnote 8 in Blueprint Appendix C is to implicitly reserve the ability to adopt no project alternative during second tier CEQA analysis CARB should clearly state that. Commenter further asserts that is the intent it appears inconsistent with the overall thrust of the Blueprint and Appendix C.

**Response:** As quoted, the commenter only includes a portion of the footnote. Staff wishes to clarify that the footnote 8 referenced spans two pages, and reads in full, "CARB acknowledges that there may be cases where a community emissions reduction program fails to meet certain procedural requirements but is still being developed in the spirit of these requirements. CARB staff will evaluate the extent to which deviations from these requirements are acceptable on a case-by-case basis and will communicate findings in writing." As noted, the footnote allow the possibility for community emissions reduction programs to include deviations from the procedural requirement outlined in the Blueprint. Staff expects that these deviations would be minor, and as specified in the footnote, any deviations approved on a case-by-case basis will be specified in writing, as part of the Staff Report to the Board, which will be released for public comment prior to the Board hearing at which the specific emissions reduction program will be heard. The footnote is not intended to apply to any CEQA requirements air districts are required to comply with when developing emissions reduction programs; nor could CARB waive CEQA's independent requirements. This intent is substantiated in that the sentence in the paragraph noting any

CEQA process that air districts are required to comply with when developing emissions reduction programs comes after the footnote.

Please also see response to comment 24-2.

**24-4:** The comment states that the Final EA categorically excludes impacts from implementation by agencies other than CARB because they involve extensive decision-making processes and are currently too speculative. However, despite this claim, CARB added two inserts into the Final EA regarding our districts implementing BARCT requirements pursuant to the Blueprint. However, no such high-level programmatic analysis is provided for other potential environmental impacts of increased deployment of BARCT regulations.

**Response:** Contrary to statements provided by the commenter, the additional text provided as part of the Final EA pertains to the implementation of regulations related to best available retrofit control technology (BARCT), primarily required by AB 617 independent of the Draft Blueprint. Further, the use of BARCT is already required statewide under certain conditions as part of California Health and Safety Code. As such, unlike other programs developed by local air districts or other state agencies, the potential impacts associated with its expanded use are reasonably foreseeable based on available data and were provided as part of the EA. Although CARB has provided programmatic analysis at a very high level, to maximize transparency, this effort cannot reasonably be construed to require CARB to guess at district decisions *not* set out in statute with this level of clarity. Further, while the commenter states that no additional potential environmental impacts associated with increased deployment of BARCT regulations are provided in the Final EA, they do not identify other potential impacts that the commenter perceives may be associated with BARCT deployment, and no further response is possible.

**24-5:** The comment states that CARB's position to rely on the "common sense" or "not a project" exemption for its action to select the initial set of communities ignores the fact that as an indirect but certain consequence of administrative selection for the initial Community Emission Reduction Program development, the selected communities will be the first to experience any adverse environmental side-effects of implementation. The commenter further asserts that the same potential for environmental impacts associated with implementation of the Blueprint and its Community Emission Reduction Program requirements is also a foreseeable consequence of the selection of communities that will experience those impacts.

**Response:** CARB disagrees with the commenter's claims about our position to rely on the "common sense" exemption for the 2018 Community Recommendations. The mere selection of a community for future planning does not itself cause any environmental impacts. It is an administrative step. Determining whether a project qualifies for the "common sense" exemption need not necessarily be preceded by detailed or extensive fact-finding; evidence appropriate to the CEQA stage in issue is all that is required. 14 CCR § 15061(b)(3). (See *also*, Muzzy Ranch Co. v. Solano Cty. Airport Land Use Com., 41 Cal. 4th 372, 160 P.3d 116 (2007), as modified (Sept. 12, 2007)) Under CEQA, a public agency is not always required to make a detailed analysis of the impacts of a project; detail required

in any particular case necessarily depends on a multitude of factors, including the nature of the project, the directness or indirectness of the contemplated impact, and the ability to forecast the actual effects the project will have on the physical environment. (*Id.*) It is the role of local air districts to develop, adopt and implement community-level projects after the state board selects the initial set of communities and the programs developed by local air districts in response to CARB's selection, will involve extensive decision-making processes that cannot be forecasted with reasonable specificity, and are contingent upon CEQA compliance, if required. Specific strategies adopted by the air districts will vary based on the local air quality needs, topography, and meteorology, existing emissions reducing measures and community engagement.

Furthermore, the EA prepared for the Blueprint provides a good-faith effort to evaluate programmatically the potential for significant adverse impacts associated with implementation of the proposed Final Draft Blueprint based on what is known at this time. Because of the statewide reach of the Blueprint, the analyses was conducted at the program level, rather than site or project specific level. Therefore, the statewide analysis functionally includes the maximum degree of analysis possible at this early stage for potential implementation with regard to all communities within California; more specific analyses, if any, are required not for the mere act of community selection, but (if at all) when particular programs are developed.

**24-6:** The comment incorporates by reference previous comments made by the commenter (see Letters 3 and 4 of the Responses to Comments of the Draft Environmental Analysis) with respect to the Draft Blueprint.

**Response:** Refer to pages 12 through 23 of the Responses to Comments on the Draft Environmental Analysis prepared for the Community Air Protection Blueprint for responses to comments made in that letter pertaining to environmental issues. No further response is necessary.

**ATTACHMENT 1: COMMENT LETTERS**  
**CONTAINING COMMENTS RELATED TO THE**  
**FINAL EA**





**California Council for Environmental and Economic Balance**

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September 24, 2018

Karen Magliano  
Director, Office of Community Air Protection  
Air Resources Board  
Submitted electronically to <http://www.arb.ca.gov/lispub/comm/bclist.php>

RE: Final Draft ARB Community Air Protection Blueprint (August 2018) and  
AB 617 Program Implementation

Dear Karen,

On behalf of the members of the California Council for Environmental and Economic Balance (CCEEB), we submit these comments on the Air Resources Board (ARB) Final Draft Community Air Protection Blueprint (“Blueprint”) and implementation of AB 617. We appreciate the efforts of ARB to engage stakeholders and other public partners in developing the Blueprint, as well as the many other related efforts that are meant to build a foundation for AB 617 programs going forward. This work is even more remarkable given the accelerated deadlines required under AB 617 to complete the statewide strategy for reducing emissions of toxic air contaminants (TACs or “air toxics”) and criteria pollutants in communities affected by high cumulative exposure burden and the accompanying state plan for community air monitoring. While AB 617 has other provisions and requirements, these two plans, combined as the Blueprint, are the core of AB 617 and reflect the main goals of the bill, i.e., reducing emissions and exposures in over burdened communities.

CCEEB previously submitted comments on the Draft Blueprint (CCEEB to ARB, July 23, 2018). Those recommendations still stand, and we incorporate them by reference in our comments here. In particular, CCEEB believes focus must be placed on implementing the statutory requirements of AB 617, and is concerned that efforts going beyond the already ambitious bill will divert needed resources and distract from the legislation’s core goal, i.e., reducing emissions and exposures in overly burdened communities.

22-1

CCEEB also reiterates our recommendation that ARB adopt a process for formalizing community boundaries at the city-block level – this is critically important since future rulemakings at ARB and the air districts could mandate actions within these boundaries, and affected industry must have clear signals for regulatory compliance. These

boundaries are also important for determining eligibility for incentive programs and participation in Community Steering Committees (CSCs).

Our other main comments are as follows:

- **The selection of AB 617 communities in future years should be based on a well-defined and transparent process, as described in the bill.** This includes selection of communities for both air monitoring and emissions reduction plans. Efforts should be made to improve use of best available data in prioritization and to minimize any appearance of politicization in community selections.
- **ARB must coordinate closely with CAPCOA and the air districts** to further develop and implement key program details. This includes, but is not limited to, efforts to 1) support community air monitoring, 2) define boundaries of AB 617 communities, 3) develop a statewide emissions reporting system, and 4) secure and allocate funding for program activities and community capacity building. ARB staff should fully leverage air district expertise and resources, avoiding duplication of effort and conflicting guidance as much as possible.
- **ARB should be strategic as it develops its community monitoring program** so as to ensure the technical foundation is scalable, can evolve to meet future needs of all stakeholders, and results in transparent, actionable, and valid data. The Board and the public should be mindful of the significant technical and resource challenges involved in this effort.
- **Ongoing efforts to develop technical guidance must include a public process** so that stakeholders have an opportunity to review and comment on critical elements of AB 617 programs. This would include, but is not limited to, guidance on conducting community assessments and establishing baseline conditions, guidance for doing source apportionment using monitoring data, the ARB process for vetting control strategies in the Clearinghouse, and technical requirements and quality assurance-quality control (QAQC) protocols for third-party air monitoring.
- **Community Steering Committees must be inclusive and open advisory bodies that support decision making** at the air districts and ARB. The public consultation requirements mandated in AB 617 apply to these committees, as do open meeting and public notification laws that govern state agency proceedings.

What follows is a more detailed discussion of these key points. We also include additional comments and requests for clarification related to Appendix C of the Blueprint.

## Community Selections

CCEEB recognizes the significant scale and breadth of AB 617, which will grow and evolve into one of the largest air pollution programs ever undertaken by California, its communities, and its businesses. Given the legislatively mandated deadlines for key milestones, we also understand that initial year implementation will involve some degree of experimentation and “best guesses” as ARB, the air districts, and agency partners continue to develop program details and technical guidance. For example, the ten recommended communities for initial-year implementation are considered “communities of no regret” where the cumulative exposure burden is as much assumed as it is documented. Going forward, however, more must be done on the objective and transparent evaluation of communities, as well as demonstration that proposed communities experience a relatively high exposure burden as compared to other areas in the state. This helps ensure that communities are being selected based on exposure burden and not for expediency or political reasons.

Similarly, seven of the ten recommended communities in the initial year are proposed for both emissions reduction plans, or “Clean Air Plans” (CAPs), as well as community monitoring. As such, ARB presumes the exposure burden in these communities warrants priority action to reduce emissions, even before conducting community inventories and air monitoring. Section 44391.2 (b)(1) of the Health and Safety Code (H.&S.C.) describes the data to be used in prioritizing communities, and includes AB 617 “monitoring results.” CCEEB takes this to mean that, ideally, air districts would deploy community monitoring and develop community-level inventories *before* moving into the emissions reductions phase, so that further prioritization and development of CAPs could be informed by an assessment of community conditions. While initial-year communities will forge ahead without full benefit of technical assessments, CCEEB believes the process in later-year communities should be staged so that communities and agency decision makers have access to monitoring data and inventories *before* planning emissions reduction goals and objectives.

## ARB and Air District Coordination and Partnership

As AB 617 moves from the state planning stage to local implementation by the air districts in selected communities, ARB should increase its efforts to partner with the local air districts and the California Air Pollution Control Officers Association (CAPCOA). In particular, ARB staff should fully leverage the expertise and resources available through the air districts and CAPCOA and help coordinate efforts among the many agencies, organizations, and entities involved in AB 617 programs. For example, some of the areas appropriate for partnership include:

- Training and technical assistance for community-based organizations (CBOs) – ARB staff is in the process of developing online resources to support CBOs interested in community monitoring, and has a contract with outside researchers

to assist with CBO training. We recommend that ARB coordinate this work closely with similar efforts underway at the air districts, including work in the Bay Area to develop a community monitoring resource center and work in the South Coast on community monitoring, particularly efforts at the South Coast Air Quality Management District (SCAQMD) AQ-SPEC laboratory. AQ-SPEC is leading a large-scale community monitoring pilot, funded by EPA and in partnership with UCLA and others, which will deploy over four hundred low-cost sensors to CBOs across California. Lessons learned from this pilot are directly relevant to AB 617, and materials and other resources being developed by AQ-SPEC and its partners could quickly be leveraged for AB 617 purposes. Moreover, this team is internationally recognized by technology developers, environmental agencies, and public health researchers, and is at the forefront of evaluating emerging monitoring technologies and techniques.

- Emissions databases and online data portals for community monitoring – just as the air districts and CAPCOA are working to support community air monitoring, some are also working to develop regional databases and online data portals that can aggregate district-managed data and other data streams. This allows the air districts to put emissions into a local and regional context, and supplement AB 617 monitoring data with relevant information for communities. As ARB works towards a statewide data system, it should partner with technical staffs at the air districts so that the various systems can be integrated, to the extent feasible, and work towards common data standards and platforms.
- Air Grants and Community Capacity Building – CCEEB is a strong supporter of community capacity building through AB 617 Air Grants, and believes that communities should have the technical resources needed to engage in program development and implementation. Local air districts have direct knowledge of and, often, existing relationships with many of the entities likely to participate in AB 617. Moreover, the air districts are primarily responsible for identifying communities for AB 617 selection and are the key points of contact for those wishing to engage in program implementation. As such, we believe the air districts can provide valuable perspective and should help inform funding decisions for the ARB Air Grant program.

### **Building a Sound Technical Foundation for Community Monitoring**

ARB's efforts to build the data management foundation for its community monitoring program is one of the most technically challenging aspects of AB 617. The scale of this effort – which has no equivalent anywhere in the world – is made even more complicated by the legislative deadline to get the system in place by July 2019. However, given that the state and the regulated community will be investing hundreds of millions of dollars in community monitoring over time, and given the intense public and academic interest in air monitoring data, CCEEB believes this work must be done

with care and attention so that the system we build today supports our needs for tomorrow – this means it must be adaptable and scalable even as sensor and monitoring technologies and techniques quickly evolve.

CCEEB recommends that ARB adopt a phased approach to building its data management system, so as to meet legislative requirements while also ensuring that it is technically robust enough to meet future needs. The initial phase should focus on aggregating data from district-managed networks, which we anticipate will be built using reference grade and other sophisticated monitoring equipment, and will include rigorous quality assurance-quality control (QAQC) protocols. We note that AB 617 only requires the air districts to conduct community monitoring, with ARB publishing district data online so that it is publicly available. As such, the July 2019 deadline only applies to that portion of the program.

ARB staff has chosen to expand the monitoring program beyond AB 617, and seeks to incorporate third-party data into its public database. This means that many millions of additional data points from an unknown number of monitoring networks will need to be incorporated into the ARB system, with various study objectives, monitoring methods, duration, and QAQC procedures. Third-party monitoring should be the focus of a second and subsequent phase of work, informed by lessons learned and outreach to CBOs and others as they develop monitoring networks. Most of the Air Grant recipients, for example, are still in the early planning stage and may not yet have defined technical specifications to inform ARB's work.

A sound technical foundation relies not just on data inputs, but also data access and uses. While ARB has been appropriately focused on engaging community stakeholders in terms of their needs and ideas, many other types of entities should be involved, such as technology developers, researchers and academics, "big data" and data aggregator specialists, affected industry, and other agencies that are working with ARB and the air districts to understand what real-time localized emissions data means in terms of air quality and public health. Most if not all of these potential system users would agree that data needs to be valid and transparent, and that the system should work towards an open platform and standardized data protocols. However, each will have specific needs and parameters for data format and access to ARB's database. CCEEB recommends that ARB develop a robust process to work with the various data users on design of the system, possibly convening technical working groups or workshops organized around specific areas or objectives, such as data quality objectives, QAQC protocols, and data formats, to name a few.

CCEEB will continue to consider issues related to the ARB data system and commits to engaging staff in support of this important work.

## **Public Input Can Benefit Development of ARB Technical Guidance**

The final Blueprint document establishes a high-level policy framework for AB 617 programs. However, much of the technical guidance needed to implement these policies is still under development, and public review opportunities are not well defined. For example, we understand that ARB is working on guidance for how air districts should conduct community assessments, which include community-level emissions inventories, source identification and source apportionment, and a method to establish baseline conditions for ambient air pollution, public health, and socioeconomic factors. These community assessments are critically important and will inform community planning efforts as well as the tracking of progress under AB 617. CCEEB believes that public stakeholders should have an opportunity to review and comment on these technical documents, and that ARB staff should define its public participation process, keeping in mind the public consultation requirements of AB 617.

Another technical document appropriate for public input would be guidelines for third-party community monitoring. Additionally, CCEEB asks that ARB staff convene technical workshops or working groups on the process by which control strategies will be evaluated and added to the AB 617 Clearinghouse.

## **Community Steering Committees Must Be Inclusive and Open**

ARB's proposal to convene community steering committees (CSCs) for each of the selected AB 617 communities is grounded in environmental justice principles that support meaningful community participation in regulatory decision making. To reflect the consultative requirements of AB 617, the CSCs must be inclusive and operate according to state laws regarding open public meetings. To this end, efforts must be made to include *affected* industry, local government bodies, and interested individuals, in addition to community-based organizations. CSCs should be as inclusive as possible, avoiding any appearance of imbalance or favoritism of some groups or types of participants over others.

Public discourse around environmental justice is often politically charged. One of the key benefits of AB 617 is that it provides the state and local air districts with an opportunity to change the nature of community partnerships and interaction among residents, affected industry, regulatory agencies, and local government decision makers. CCEEB has long been a proponent of dialogue among diverse stakeholders, and our experience has shown that, while dialogue can be difficult and time intensive, it results in better public processes and sound policy decisions. CCEEB believes that affected industry can and should play a positive role in AB 617, and that including the perspective of the regulated community can lead to more innovative and credible emissions reduction strategies. To the extent possible, ARB and the air districts should work towards the greatest level of "buy-in" across all stakeholders, and, with the assistance of strong, neutral facilitation, seek shared understanding of community issues.

While it is beneficial to work towards consensus as much as possible at the CSCs, these are advisory bodies. Ultimate decision making authority rests first with the boards of each affected air district, and then with the ARB board, as part of plan adoption hearings. The distinct roles and responsibilities of the air districts, ARB, and the CSCs should be made explicit upfront and early in the process, along with a discussion of agency authorities.

### **Additional Comments and Requests for Clarification on Appendix C**

Appendix C: Criteria for Community Emissions Reduction Programs contains additional guidance for developing Community Air Plans (CAPs), supplementing the Blueprint discussion in Section IX. While the Blueprint allows for sufficient flexibility in tailoring the CAPs to meet individual community needs, parts of Appendix C are either ambiguous and in need of clarification, or overly prescriptive and seem to predetermine what should be in the CAPs before the community planning process can play out. To address this, we make the following suggestions:

- Proximity-Based Goals (starting page C-18): this section appropriately recognizes that “in many cases, the authority for implementing these goals will reside with local government agencies.” It then states that ARB will seek to “obtain these goals” through engagement with local government agencies. This language seems overly prescriptive, in that it seems to suggest that the role of ARB and the CAPs would be to dictate or predetermine what requirements local agencies should or should not adopt. We believe this would be beyond the scope of AB 617, which provides no new authority to ARB or the air districts, and does nothing to change the statutory relationship between the air agencies and local government authorities. CCEEB recommends that ARB instead pursue a process of early engagement and partnership with local government agencies, allowing them to bring forward actions as appropriate.

This same section states that one such action or “goal” could be to require “changes to facility design to reduce exposure.” CCEEB asks staff to clarify what is meant by this phrase, noting that it could be interpreted in various ways. We further suggest that ARB consider expanding its approach – existing law provides limited and specific regulatory authority to mandate or “require” physical changes at an existing site, and any requirement would need to follow administrative law and all applicable regulatory procedures. Another approach (and possibly more effective) would be to partner with affected industry and provide incentives to encourage desired actions.

- Missing “cost effectiveness” and technological feasibility (page C-4): AB 617 directs the CAPs to achieve emissions reductions “using cost-effective measures” that are based on an assessment of Best Available Control Technology (BACT)

and Best Available Retrofit Control Technology (BARCT) and other available measures.<sup>1</sup> AB 617 does not mandate that “most stringent approaches” must be used. Moreover, BACT and BARCT require technical determinations, based in part on evaluation of cost effectiveness and technological feasibility. CCEEB suggests that page C-4 be revised to read “...implement new actions and approaches for reducing the maximum amount of emissions and exposures, taking into account cost effectiveness and technological feasibility, as required by law.”

Similarly, page C-6 should be revised to read, “Efforts to significantly reduce exposure to toxic air contaminants therefore rely on identifying technologies and practices that offer the maximum level of emissions reductions achievable *while being cost effective and technologically feasible.*” As currently written, this language is inconsistent with state law for adopting air toxics control measures.

- Sound science and regulatory processes (page C-19, text box): we assume that the “immediate implementation of any feasible activities” during the community planning process is not meant to bypass standard and legally required public rulemaking procedures, although this is not entirely clear by the language as written. This should be clarified. Furthermore, CCEEB would be concerned if an action were to be taken before it could even be shown to be effective at reducing emissions in a specific community. The objective of expediency should not short circuit proper technical review and sound science.
- Regulatory authority (page C-21): CCEEB asks staff to clarify by what authority a CAP could impose “activity limits and other operational requirements” to existing sources, particularly those with current permits to operate. The extent to which local air districts already have authority seems adequately covered in the general review of air district rules and regulations.

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<sup>1</sup> H.&S.C. Section 44391.2 (c)(2).

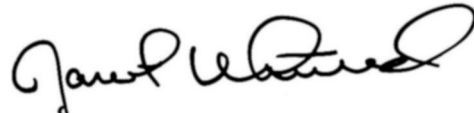


We appreciate the opportunity to comment on the Blueprint and AB 617 implementation. Should you, your staff, or members of the Board have questions or wish to discuss our comments in greater detail, please contact Bill Quinn ([billq@cceb.org](mailto:billq@cceb.org) or 415-512-7890 ext. 115) or Janet Whittick ([janetw@cceb.org](mailto:janetw@cceb.org) or ext. 111) at CCEEB.

Sincerely,



Bill Quinn,  
CCEEB Chief Operating Officer and Project  
Manager of the South Coast and Bay Area  
Air Projects



Janet Whittick,  
CCEEB Policy Director and  
ARB Consultation Group Member

cc: Veronica Eady, ARB  
Jack Broadbent, BAAQMD  
Wayne Nastri, SCAQMD  
Samir Sheikh, SJVAPCD  
Alan Abbs, CAPCOA

**Catherine Reheis-Boyd**  
President

September 24, 2018

Mr. Richard Corey  
Executive Officer  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Re: WSPA Comments on CARB Final Draft Community Air Protection Program Blueprint and Supporting Information (August 2018)

Dear Mr. Corey:

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide comments on the California Air Resources Board (CARB) *Final Draft* Community Air Protection Program Blueprint (Blueprint). WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states.

The scope of the information released for public comment underscores the enormity of the tasks facing CARB and the air districts in implementing AB 617. WSPA appreciates CARB's response to our previous comments, reflected in both the Blueprint and Appendices in several areas including:

- **Program focus** - New language emphasizing emissions reductions in "disproportionately burdened communities" (Section II, page 2, Section VIII, page 19) is more consistent with the statutory focus on the subset of communities with "high cumulative exposure burdens" that stand out relative to other communities on a statewide basis.
- **Emissions reduction strategies** - A new reference to "potential" regulations for first year communities (Section III, page 4) helps to clarify that the listed strategies are a menu of options that should be tailored to the specific needs of each community.
- **Public health references** - New language describing the program's core focus on addressing public health risks that may be caused by air pollution and inclusion of the footnote from CARB's February Concept Paper describing the many factors that influence community health (Section III, page 5) provide important context for designing emissions reduction programs.
- **Community Steering Committee makeup** - New language specifying individuals with "technical and scientific expertise" and "responsibility for implementing effective solutions for cleaner air" (Section IV, page 6), and multiple references in the Blueprint and Appendices to inclusion of facility managers/workers will help ensure a role for these individuals in the Community Steering Committee process.

- **Implementation strategies** - A new reference to “cost-effective” that appears to apply to all emissions reduction strategies and individual measures considered for an emissions reduction program, consistent with Health and Safety Code § 44391.2(c)(2) (Section IX, page 24).
- **Land use authority** - Section IX includes a new sub-section, “Who Has the Authority to Implement Actions”, which more clearly differentiates land use management roles and decision-making authorities between air quality regulatory agencies and local land use management authorities (pages 24-25).
- **Monitoring** - New language on pages 28, 29 and 30 emphasizes the importance of proper data collection, (QA/QC) analysis, uses and limitations of monitoring technologies and data. We also support CARB’s reference to the need for “action oriented” data in community monitoring plans (page 28). This approach will ensure that the monitoring campaigns are focused on filling data gaps that preclude effective design and implementation of emissions reduction programs and do not become broad brush fishing expeditions.
- **Educational materials for monitoring programs** - We strongly support the requirement to “include educational or informational materials on monitoring equipment, data collection methods, data review, and limitations of data” in community monitoring programs. This educational component should also include a public outreach element to facilitate the broadest possible understanding of community monitoring results (Section X, page 30).

These changes improve the Blueprint as a stand-alone document that more accurately conveys program design features and CARB’s proposed approach to program implementation. However, not all of the Blueprint changes are carried forward into the Appendices. Both the Blueprint and the Appendices also retain stand-alone statements and program features that contradict the above noted changes and conflict with specific statutory requirements. These issues must be resolved to set reasonable expectations among program stakeholders, to avoid any potential confusion and to ensure that program resources are deployed in a manner that will maximize emissions reduction benefits in communities that meet the statutory selection criteria. **Provided below and in the attachments to this letter are general and detailed comments on the Blueprint and supporting information for your consideration.**

### **Blueprint Still Conflicts with Statutory Requirements**

There are several features of the Blueprint, the Appendices and other supporting information that leave prior concerns unresolved or introduce new problems that are likely to undermine program success. An overarching concern is that CARB’s proposals frame an “all feasible measures” approach which encompasses several problematic features:

- Immediate actions in all candidate communities regardless of whether they meet the statutory selection criteria,
- Simultaneous monitoring and emissions reduction programs in the same communities absent adequate analyses demonstrating their eligibility for either,

- Implementing advanced technologies that “provide the greatest emissions reduction potential” or prioritize deployment of zero emissions technologies without reference to cost-effectiveness,
- A minimum suite of strategies prescribed for all emissions reduction programs without regard to their suitability for particular communities, and
- Additional “required” measures that reach well beyond the actual statutory requirements.

These features, discussed in this letter and the attached comments, should either be eliminated or clarified to reflect the systematic, science-based implementation approach required by the statute. This approach necessitates a tighter focus on 1) the most burdened communities on a statewide basis, 2) individual sources that drive the high cumulative exposure burden in those communities and 3) strategies that employ the most cost-effective measures to achieve meaningful emissions reductions in the shortest possible timeframe.

### **Proposed Changes Introduce New Problems**

**Lack of analysis supporting year one community recommendations** - Neither the Blueprint, nor any of the other documents posted by CARB provide sufficient information supporting CARB’s proposed community selections for year one air monitoring and community emissions reduction programs (CERP). The Blueprint presents only the initial screening criteria for selecting *candidate* communities (Step 2, page 19)<sup>1</sup> and two additional criteria intended to achieve regional diversity and capture a mix of air pollution sources (Step 3, page 20), neither of which are required by the statute and both of which distract from the statutory requirement to focus on the most highly burdened communities. Moreover, in the absence of clear criteria for prioritization of candidate communities, it is difficult to evaluate whether resources are being allocated in the most efficient manner to achieve program benefits in the shortest possible timeframe. CARB should improve transparency in the community selection process by including additional information in the Blueprint, the Appendices and the 2018 Community Recommendations Staff Report describing how candidate communities are prioritized to inform final community selections.

**Concurrent development of statewide monitoring plan and selection of year one monitoring communities** - A plain reading of the statute indicates that the statewide monitoring plan must inform CARB’s selection of communities for monitoring programs. Health & Safety Code § 42705.5(c) states:

*“Based on **findings and recommendations in the monitoring plan** prepared pursuant to subdivision (b), the state board shall **select, concurrent with the monitoring plan**, in consultation with the districts and based on an assessment of the locations of sensitive receptors and disadvantaged communities, **the highest priority locations** around the state to deploy community air monitoring systems ...” (emphasis added)*

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<sup>1</sup> The “assessment and identification” described in the statute at Health and Safety Code § 44391.2(b)(1) describes a screening process that is intended to identify *candidate* communities for further prioritization and *potential* selection. Actual selection of communities for an emissions reduction program requires further analysis pursuant to subsections (b)(2-4) to determine whether a candidate community is sufficiently well characterized to support development of an emissions reduction program.

CARB is required to prepare the monitoring plan and select communities concurrently, with both tasks to be completed by October 1, 2018. Subdivision (b) requires CARB to include information in the monitoring plan “regarding the availability and effectiveness of toxic air contaminant and criteria air pollutant advanced sensing monitoring technologies and existing community air monitoring systems ...” which suggests the monitoring plan must provide enough detail to recommend monitoring methods and equipment appropriate for the various emissions sources within the selected communities. Yet there is no publicly available information indicating CARB has completed the monitoring plan tasks necessary to support its year one community recommendations. The “statewide monitoring plan” described in the Blueprint is merely an outline of requirements for a future monitoring plan. Absent additional information, it appears CARB intends to defer to the air districts and the Community Steering Committees (CSC) to translate its outline into actual community-specific monitoring plans. This approach fails to satisfy the statutory requirement that the statewide monitoring plan must inform CARB’s selection of communities for AB 617 monitoring programs, including year one communities.

**Concurrent development of statewide strategy and selection of year one emissions reduction program communities** - Health and Safety Code § 44391.2(b) requires the statewide strategy to include the four elements specified in subdivisions 1-4:

1. Assessment and identification of communities with high cumulative exposure burdens (effectively a screening process to identify candidate communities);
2. A methodology for identifying contributing sources and estimating their relative contribution to elevated exposure (source attribution);
3. An assessment of the need for air districts to update and implement risk reduction audit and emissions reduction plans developed pursuant to the Air Toxics Hot Spots Act (AB 2588) “for any facility to achieve emissions reductions commensurate with its relative contribution if the facility’s emissions either cause or significantly contribute to a material impact on a sensitive receptor location or disadvantaged community”; and
4. An assessment of existing and available measures for reducing emissions from contributing sources.

Subdivision (c)(1) requires CARB to select year one communities for emissions reduction programs concurrent with the statewide strategy. Subdivisions (b)(1) through (b)(4) are interdependent – all four elements need to be completed to inform CARB’s year one selections.

Subdivision (b)(2) requires an estimate of the relative contributions of emissions sources or categories of sources to the elevated exposure in communities identified pursuant to subdivision (b)(1). Neither CARB’s Blueprint and Appendices, nor its 2018 Community Recommendations Staff Report make any reference to relative source contributions. While the South Coast Air Quality Management District’s (SCAQMD) final “Community Recommendations for AB 617 Implementation” report does provide some information on apportionment of emissions at the broad source category level, it does not include any source apportionment based on exposure in the identified communities. Emissions do not necessarily correlate to exposure. Rather, exposure is influenced by several factors including proximity to emissions sources, dispersion of pollutants, exposure frequency and duration. Neither CARB nor SCAQMD have

provided any analysis or estimates of exposures to the pollutants of concern in the identified communities. Without this information, CARB cannot select communities with the highest cumulative exposure burdens or provide recommendations for emissions reduction measures that would meaningfully reduce those exposures. To achieve cost-effective emissions reductions (required by subdivision (c)(2)), and to ensure the environmental and economic sustainability of CERPs, the focus must be on the individual sources whose emissions contribute materially to the community exposure burden.

Subdivision (b)(3) requires CARB to determine whether a *facility's* AB 2588 risk reduction audit or emissions reduction plan should be updated and implemented by the air district to achieve emissions reductions *commensurate* with its relative contribution to the cumulative exposure burden, based on available information identified pursuant to subdivision (b)(1). Here the statute is clear that source attribution analysis is necessary to determine the relative contribution of certain *individual sources* and not just to categories of sources. This code section also requires a determination of the *materiality* of individual source contributions. Indiscriminant application of emissions reduction strategies to de minimis or low risk sources will not result in cost-effective reduction of the high cumulative exposure burden in the community.

Subdivision (b)(4) requires an assessment of existing and available measures for reducing emissions from the contributing sources or categories of sources identified pursuant to (b)(2). This language indicates that the assessment of control technologies would apply to *both* individual sources and to source categories (e.g., mobile or large area sources). The required assessment must include any individual source (facility) that contributes to the high cumulative exposure burden in the community. Moreover, without an analysis of source attribution at the individual source level, air districts will not be able to identify the full suite of cost-effective measures necessary to define, much less achieve, emissions reduction targets in the selected community.

This analysis demonstrates that CARB's apparent decision to select year one communities for emissions reduction programs based only on the screening assessment and identification of candidate communities pursuant to subdivision (b)(1) is incorrect. The statewide strategy clearly requires all four elements, and any reasonable assessment of community "readiness" for a CERP must include an evaluation of all four elements to inform CARB's selection of year one communities. Moreover, this baseline information, which is further defined in Appendix B starting at page B-10, is necessary to ensure that CERPs target the correct sources and will yield meaningful benefits in the community. If ARB has obtained the required information and has completed a preliminary analysis to support its year one recommendations, that work should be evident in the materials released for public review.

Absent this information, CARB's proposed action deprives stakeholders of meaningful opportunity to engage in the development of the statewide strategy and the community selection process. While we recognize the statute provides a very short window to develop the statewide strategy and select year one communities, that circumstance does not excuse CARB of its duty to fully comply with the statute. Proceeding on this path would set a harmful precedent for industries located in communities selected in subsequent years. It also casts doubt on CARB's ability to demonstrate that these initial program decisions satisfy the requirements of the California Administrative Procedures Act. Certainly the proposed materials raise issues regarding lack of clarity, vague or misdirected lines of authority for CARB, the air districts and the Community Steering Committees, and a truncated ad-hoc administrative process that impedes meaningful stakeholder participation.

**Simultaneous implementation of monitoring and emissions reduction programs** - The Blueprint requires air districts to “deploy monitoring in first-year communities selected for community air monitoring” by July 2019, and “adopt programs in first-year communities selected for community emissions reduction programs” by October 2019. A three-month timeframe between initiating air monitoring and adoption of an emissions reduction program is inadequate, especially in the context of CARB’s year one recommendations to develop both monitoring and emission reduction programs in seven of its ten recommended communities. It will not allow for time series air monitoring across a relevant range of conditions, analysis of monitoring results, required source attribution analysis, or use of this information to inform the design of an effective CERP. If a community is sufficiently well characterized to support a CERP, then any additional community monitoring should be developed as an element of the CERP for the sole purpose of tracking progress toward defined emissions reduction targets. The monitoring program should not be developed independently of the CERP or ahead of the CERP, unless the purpose of the program is to fill data gaps that preclude the analyses required by Health and Safety Code § 44391.2(b)(1-4). In these cases, the community is not ready for a CERP and should begin with a stand-alone monitoring program.

Data deficiencies argue strongly against parallel implementation of community monitoring and emissions reduction programs, since the additional data generated by the monitoring program is likely to impact the design of the emissions reduction program. Making mid-stream adjustments to the CERP based on information that should have been available at the outset of the program is likely to result in inefficient allocation of air district resources and irreparably harm some sources subject to initial emissions reduction requirements based on inadequate information.

**Delegation of authority to Community Steering Committees** - CARB included a new paragraph on page 20 under “Selection of Communities” stating that final community boundaries will be defined by Community Steering Committees (CSC). As we discuss in our attached comments on the Appendices and the 2018 Community Recommendations Staff Report, this proposal is inconsistent with the statutory language which envisions a consultative role for AB 617 program stakeholders<sup>2</sup> and will create practical impediments in the CSC process. Among other challenges, it will be difficult to determine who should participate on a CSC if the community boundaries are not set in advance of creating the CSC. This problem will be most pronounced for any facility or business on the fringes of the areas identified by CARB and the air districts, including facilities “directly surrounding” the community. No source should be subject to a CERP that does not have the opportunity to participate in the program design process. Moreover, if the community boundaries cannot be clearly defined at the outset of this process, then the community is not sufficiently well-characterized to support a CERP. In these cases, the first step should be to design a monitoring program that will fill the data gaps which preclude the analyses required by the statute.

To address these concerns, the Blueprint should be amended to require designation of community boundaries at the outset of the CERP process, and the CSC should be open to all sources that contribute materially to the high cumulative exposure burden in the community based on monitoring data and source attribution analysis.

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<sup>2</sup> Health and Safety Code § 42705.5(b) and 44391.2 (b).

**Advisory Role of Community Steering Committees** – The Blueprint and Appendices should explicitly state that the role of CSCs in AB 617 implementation is strictly advisory. It should also specify which regulatory agencies (CARB or air districts) have decision making authority for particular program elements, consistent with their statutorily-designated requirements.

**BARCT reviews** - The discussion of stationary source measures in Section VII on page 15 of the Blueprint now includes a bullet on BARCT retrofits stating that a goal of “implementing” BARCT on certain sources by December 31, 2023, but fails to clarify that “implementation” involves the entire regulatory process required by Health and Safety Code § 40920.6. This process is complex, source-specific and time-consuming. The air district is required to identify potential control options for the particular emissions unit subject to the determination, an evaluation of the cost-effectiveness of each option and the incremental cost effectiveness between each option, a public meeting to discuss the district’s analysis and a presentation of findings at a public hearing supporting the district’s recommended control option. For some sources, this process will inevitably extend beyond the AB 617 BARCT implementation deadline.

CARB should discuss these statutory requirements in the Blueprint and the Appendices and specify that “implementation” means BARCT reviews for designated facilities should be in process by December 31, 2023, but that actual installation and operation of new retrofit technology is likely to occur at a later date. This interpretation is implied in the language CARB uses to describe the BARCT review process in its “Summary of Milestones” on page 9.<sup>3</sup> Inconsistencies and lack of specificity in the BARCT language in both documents will lead to conflicting interpretations that will complicate the implementation process.

The balance of this letter provides detailed comments on the Blueprint and Appendices (Attachment 1), CARB’s 2018 Community Recommendations Staff Report and related appendices (Attachment 2), CARB’s Recommended Source Attribution Technical Approaches (Attachments 3 and 4) and on CARB’s Final Environmental Analysis for the proposed Blueprint and 2018 Community Recommendations (Attachment 5). Attachment 5 responds to CARB’s notice for the September 27, 2018 meeting which states that the changes from the Draft Environmental Analysis (EA) to the Final EA did not contain significant new information that would trigger recirculation pursuant to CEQA Guidelines 15088.5 “and therefore, CARB staff will not be accepting additional comments on the Draft Environmental Analysis during this comment period.”<sup>4</sup>

23-1

These comments are submitted for inclusion in the record for both the Final EA and CARB’s action to select the initial communities for Blueprint implementation. We also note that CARB’s online Resource Center is still incomplete, which complicates review and comment on its specific features and overall adequacy. However, since the Resource Center is designed to evolve over time, we expect there will be ongoing opportunities to provide input on Resource Center elements as new information is posted. We request clarification in the record for this proceeding that such opportunities will be available to program stakeholders moving forward.

<sup>3</sup> “By January 2019: Air districts develop expedited schedules for implementing best available retrofit control technologies, which must be implemented by the end of 2023.”

<sup>4</sup> Notice of Public Meeting to Consider Assembly Bill 617 Community Air Projection Program – Community Selection and Program Requirements, p. 3.



Mr. Richard Corey  
September 24, 2018  
Page 8

WSPA appreciates the CARB's consideration of these comments. If you have any questions, please contact me at this office, or Tiffany Roberts of my staff at (916) 325-3088 or by e-mail at [troberts@wspa.org](mailto:troberts@wspa.org).

Sincerely,

A handwritten signature in blue ink that reads "Catherine A. Boyd". The signature is fluid and cursive, with the first name "Catherine" and last name "Boyd" clearly legible.

Attachments

cc: Karen Magliano – CARB  
Heather Arias – CARB  
Vernon Hughes – CARB  
Tiffany Roberts - WSPA

**Attachment 1**  
**WSPA Detailed Comments on**  
**CARB Final Draft Community Air Protection Program**  
**Blueprint and Appendices**

**Detailed Blueprint Comments**

**Action before analysis** - The Blueprint makes statements directing air districts to take immediate actions to reduce emissions in candidate communities before they conduct any of the analyses required by statute. For example, the fifth bullet on page 11 requires a “Focus on immediate action in communities where the nature of the air pollution burden and contributing sources are well known.” A similar statement occurs at the bottom of page 19: “Therefore, the selection of initial communities will also include a description of near-term actions to reduce emissions and exposure in disproportionately burdened communities throughout the State.” Appendix C states on page C-19 that “The systematic development of targets and strategies should not delay action that can quickly deliver emissions and exposure reductions. CARB encourages immediate implementation of any feasible activities identified in parallel with program development.” (emphasis added) These statements encourage a scattershot implementation approach that bypasses critical statutory requirements intended to focus efforts and expenditure of resources for maximum benefit in eligible communities in the shortest possible timeframe.

**Community monitoring data quality** - If CARB plans to post monitoring data generated by community-based organizations alongside regulatory agency monitoring data in its web portal, as suggested on page 4, the intended use of the data should be specified and it should meet specified data quality and QA/QC requirements applicable to that use. CARB should specify these requirements both in Appendix E and in any documentation provided pursuant to grant funding that may be spent on community-based monitoring.

**Technology Clearinghouse** - CARB needs to provide more information on how the Technology Clearinghouse will differentiate BACT/BARCT relative to “next generation technologies.” CARB should provide more discussion about how BACT and BARCT determinations are made for individual emissions units pursuant to the requirements of Health and Safety Code § 40920.6 (e.g., in consideration of energy, environmental, and economic impacts and other costs, a track record of application to similar sources, etc.). CARB should also discuss impediments to implementation of next generation technologies and why direct comparisons between next generation technologies and BACT/BARCT technologies are not appropriate (page 15).

**Enforcement strategies** - References to “enforcement strategies and enforceable agreements to help ensure rules and regulations achieve their expected reductions” (page 24) should be accompanied by additional language clarifying that violations and inadequate enforcement are not the only reasons a rule may not achieve its intended emission reductions. In fact, there are multiple reasons why a rule may not achieve the intended emissions reductions including, but not limited to, changes in markets,

inaccurate predictions of available technology, or poor performance of technology relative to initial predictions and assumptions.

## **Appendix B**

**Program sustainability** - The description of the community selection process in Appendix B suggests that AB 617 will be an ever-expanding program. There are no explicit statements or requirements limiting the life span of community monitoring or emissions reduction programs. Even where CARB discusses a five-year timeframe for achieving emissions reduction targets, it does not state that the CERP will be complete and closed at the end of that timeframe. As we have indicated in our previous comments, this approach is not sustainable. If CARB intends to shift program resources from completed CERPs to other communities that meet the statutory selection criteria, then it should clearly state that intent in the Blueprint and the Appendices. Absent this clarification, some stakeholders will expect CERPs to continue to operate in perpetuity in every selected community.

**Technical assessments for self-nominated communities** - CARB is proposing to complete technical assessments for all self-nominated communities as part of the “statewide process”, making them eligible for AB 617 programs without first determining if the self-nominated community meets the statutory selection criteria (i.e., the community faces a disproportionately high cumulative air pollution exposure burden relative to other communities on a statewide basis) (page B-4). This approach would not support effective allocation of program resources, particularly where the self-nomination is influenced by impacts other than air pollution. For this reason, self-nominations should be subject to the same information requirements imposed on the air districts for identifying candidate communities listed on page B-5.

**Data sources for community assessments and recommendations** - To the best of our knowledge, at least some of the information sources listed on pages B-8 and B-9 have not been subject to public or external peer review to determine whether they are scientifically valid or fit for the intended purpose. Similarly, CARB and the Department of Toxic Substances Control should include a process for external scientific peer review of the cumulative effects research program mentioned briefly on page B-9. At a minimum, this process should satisfy the peer review requirements at Health and Safety Code § 57004 before CARB posts a final report or guidance document in the online Resource Center, given that it is a scientific work product that will inform future regulatory decisions.

**Minimum requirements for communities recommended for emissions reduction programs** - The list of requirements starting at page B-10 includes information intended to establish that “emissions sources are well characterized in the community,” that available air monitoring results are sufficient to inform community emissions reduction program development and that “sufficient data and resources are available to produce source attribution results for use in strategy development within the timeframes prescribed by AB 617.” This information is critical to ensure that CERPs target the correct sources and will yield meaningful benefits in the community. However, CARB’s 2018 Community Recommendations Staff Report does not include this required information for any of the communities selected for CERPs in year one. If CARB has obtained the required information and has completed a preliminary analysis to support its year one recommendations, that work should be evident in the materials released for public

review. This information is necessary both as justification for CARB's year one recommendations and as a guide for future community nominations and selections.

**Additional selection criteria** - As stated in our comments on the first draft Blueprint, CARB's proposed additional selection criteria – regional diversity and source diversity - are not required by the statute and may skew the selection process intended by the Legislature. For example, these criteria could divert program focus from some communities that face a disproportionately high cumulative exposure burden from a limited number of pollutants to other communities that face a lesser burden simply because they are a better fit relative to these arbitrary criteria.

### **Appendix C**

**Requirements for community emissions reduction programs** - The 5<sup>th</sup> bullet on page C-4 specifies "Identifying applicable regulatory, enforcement, incentive, and permitting strategies to implement new action and the most stringent approaches for reducing emissions, with a focus on zero emission technologies where feasible." Several of these elements are not contemplated, much less required by AB 617, and should be presented as options to be considered rather than as minimum requirements. In addition, any consideration of "the most stringent approaches" and zero emission technologies should be accompanied by references to evaluation of technical feasibility and cost effectiveness, consistent with statutory requirements (e.g., Health and Safety Code § 44391.2(c)(2)). This bullet will invite demands from some stakeholders that a CERP must contain all of the referenced elements instead of those needed to reduce the high cumulative exposure burden in the community. Similarly, the 6<sup>th</sup> bullet appears to require land use and transportation measures in every emissions reduction plan, even if they are not relevant to a particular community or would not be achievable within a 5-year timeframe. CARB should preface this list with cautionary language indicating that it encompasses a broad menu of potential program elements from which air districts will select strategies and measures that best address the needs of particular communities.

**Toxic air contaminant reductions** - CARB asserts on page C-6 (and again in the first bullet on page C-7) that the focus for reducing exposures to toxic air contaminants will be on "identifying technologies and practices that offer the maximum level of emissions reductions achievable." Again, this statement is devoid of any reference to the statutory requirement for selection of cost-effective measures. It also ignores the design and operation of state air toxics law and regulations. For example, under South Coast AQMD Rule 1402, if a facility health risk assessment indicates a level of cancer risk below 10 in one million at the maximally exposed individual, the facility is not required to notify, much less take actions to reduce emissions. This language suggests that if there is any measurable concentration of a carcinogenic pollutant that it has to be reduced to the maximum extent achievable. Since AB 617 does not void or supersede existing air toxics laws or regulations, any measures targeting toxic air contaminants must be risk-based and consistent with applicable state and local requirements.

**Community Steering Committee makeup** - We support new references to inclusion of facility managers/workers in CSCs (e.g., C-4, C-9) and the reference on page 8 to business owners having "first-hand knowledge of the impacts of air pollution within their community and potential solutions." We agree the CSC should include those business representatives best suited to provide necessary information and perspective with regard to a particular facility. In many cases, this individual may be

the facility manager/worker, but not in all cases. For these reasons, CARB should also include the term “business representative” wherever it discusses the makeup of the CSCs.

**Health based air quality objectives** - We support CARB’s re-ordering of Appendix C to elevate discussion of health-based air quality objectives and removal of the statement on page C-7 explicitly encouraging air districts to pursue PM 2.5 reductions below California Ambient Air Quality Standards. However, statements on page C-7 still appear to promote, at least indirectly, reductions of PM 2.5 beyond existing health-based standards to “help reduce the cumulative exposure burden within the community,” despite the fact that there is no identified health benefit in achieving reductions below these levels. Federal and state ambient air quality standards are developed through rigorous regulatory processes designed to ensure that the promulgated standards will protect public health and are supported by a strong scientific consensus. Moreover, since AB 617 does not operate independently of these programs - the statute does not alter, suspend or supersede existing requirements - *any* potential measures that may be considered as part of a CERP must comport with existing statutory and regulatory requirements applicable to particular pollutants and sources. Resources that might be dedicated to the efforts CARB suggests would be better invested in reductions of toxic air contaminants that present health risks in excess of significant risk levels identified by air districts, or to develop CERPs in other communities that meet AB 617 selection criteria but do not meet existing health-based standards for air pollutants subject to AB 617.

It is also unrealistic to expect that pockets of PM 2.5 attainment can be achieved within a regional non-attainment area. This concept is also reflected in the Table C-1 Checklist (“Provide a description of health-based objectives, including: Reducing exposure caused by local sources to achieve healthful levels of PM2.5 within the community.”) At a minimum, CARB should modify the text in the Appendix and the checklist to specify achievement of healthful levels of PM2.5 within the community “to the extent technically and economically feasible.”

**Natural factors influencing cumulative exposure burden** - CARB’s discussion of the localized health impacts of PM2.5 at page C-6 is an oversimplification of the challenges facing air districts in attaining federal and state ambient air quality standards. In particular, CARB fails to acknowledge that local emissions sources are not the only contributors to exposure burden in a given community. Weather patterns and topography can influence the transport of air pollutants from one community to another, leading to higher exposures in certain communities. CARB should clarify here that weather and topography can influence, and in some cases drive, elevated exposure burden from air pollutants independent of local emissions sources.

**Community technical assessments** - This section states that technical assessments will be based on best available data. However, CARB should also require identification of data gaps and mechanisms for obtaining all of the information required by Health and Safety Code § 44391.1(b)(2-4) *before* proceeding with an emissions reduction program. For example, identification and characterization of previously unknown or unquantified sources is essential to develop a useful community-level emissions inventory (page C-13) and to support accurate, reproducible source attribution analyses. This step is especially critical for year one communities since CARB’s statewide emission reporting regulation will not be completed in time for submittal of emissions data from sources which do not currently report to the air districts. Omitting unregulated or minimally regulated sources that may contribute significantly to the

cumulative exposure burden in the community is a recipe for failing to achieve program emissions reduction targets.

**Source attribution tasks** - We support CARB's expanded discussion of source attribution tasks on page C-14. Among other things, this section emphasizes the importance of data adequacy to support accurate source attribution analysis. Data adequacy for source attribution must also inform CARB's threshold determination of whether a particular community is sufficiently well-characterized for selection as an emissions reduction program community. CARB continues to state that emissions reduction strategies in some communities can be based on broader source categories and that "more detailed source resolution may not always be necessary." This position suggests that even if individual source data are limited, some communities can proceed to emissions reduction programs. It is fundamentally incompatible with the required elements of an emissions reduction program, including but not limited to source attribution analysis that informs development of five-year emissions reduction targets and the source-specific measures necessary to achieve them (Health and Safety Code § 44391.2(b)(2-4)). For example, CARB states on page C-17 that "the technical assessment will have identified the mobile, stationary, and area-wide sources causing localized impacts within the community" and that the emissions reduction program "will identify source-specific technologies and control techniques that can reduce emissions of the identified pollutants and applicable precursors." It is not possible to establish "specific, quantifiable and measurable targets" that can be achieved in five years or corresponding source-specific measures if available data only support a coarse source-category-level analysis. We also recommend that CARB include an off-ramp in the CERP if it becomes apparent in the Community Steering Committee (CSC) process that available data are not sufficient to support source attribution analysis at the individual source level. The identified data gaps should be filled through a community monitoring program before the CSC proceeds to development of a CERP.

**Planned rules and regulations** - CARB states on page C-16 that "targets should commit to air quality benefits beyond existing reductions to occur from planned rules and regulations." This statement raises several questions. It is unclear how a CERP would account for planned rules and regulations in the community emissions baseline. If emissions reductions can be reasonably estimated from supporting documentation, then the planned rules and regulations should be considered in determining whether the community is subject to a high cumulative exposure burden relative to other communities on a statewide basis. However, CARB has not provided any information indicating that such analyses were considered in the community selection process. Moreover, the Blueprint documents should not require additional reductions based on the presumption that planned rules and regulations will not adequately address the high cumulative exposure burden in a given community. CARB must include a mechanism to account for emissions reductions associated with planned rules and regulations in determining the need for a CERP and in establishing the emissions baseline for a CERP. Failure to fully account for these reductions conflicts with CARB's proposal to include "planned" BARCT rules in CERPs, and would negate the anticipated emissions reduction benefits from the planned statewide regulatory measures referenced in the third bullet on page C-21 and detailed in Appendix F.

While it is possible to define an emissions baseline relative to rules and regulations that are adopted but not yet fully implemented, it is impossible to determine the emissions reductions that might accrue from air quality plans that have not been translated into regulations. Any estimates of potential emissions

reductions associated with planning documents would be highly speculative and would not be a technically defensible baseline for developing CERP targets.

Finally, air districts will need to account for routine fluctuations in annual emissions in the planning process and should not base reduction targets solely on the current or previous reporting year. This step will be especially important for any business which has maintenance schedules spanning long periods of time or for sources with emissions that fluctuate in response to economic expansions and contractions (e.g., mobile sources and some area sources).

**Proximity-based goals** - The discussion of proximity-based goals starting on page C-18 envisions measures that reach beyond what is feasible and what may be necessary from a source emissions reduction standpoint. For example, the concept of establishing “minimum setback requirements from significant sources” disregards the Air Toxics Hot Spots program and the operation of air district implementing regulations which rely on health risk assessments (HRA) to determine the need for emissions reductions from particular sources. The HRA considers proximity of the source to potential receptors, but also incorporates dispersion modeling and exposure assessment so risk estimates reflect pollutant concentrations at the receptor that are actually attributable to the source. Similarly, the notion of reducing fence line concentrations on page C-19 does not necessarily translate to reductions from the fenced source, especially in mixed use areas where multiple sources may be contributing to localized ambient concentrations. These concepts have no foundation in AB 617, but their presence in the Blueprint documents would obligate CARB and air districts to advocate that land use authorities implement measures to attain these narrative goals.

**Emissions reduction program design and duration** - CARB does not discuss the fate of CERPs after the five-year emissions reduction targets are achieved, but implies on page C-19 that the CERP may continue indefinitely. This approach will not be sustainable and will diminish program benefits in some communities. As noted above, if CARB intends to shift AB 617 resources to other eligible communities upon completion of a five-year CERP, then this policy decision should be explicitly stated so all stakeholders have a common understanding of how emissions reduction programs will be designed and when they will be completed.

**Cost-effectiveness** - We support new language on page C-20 stating that the statute requires emissions reduction programs to “identify cost-effective measures to achieve the targets.” This same language should be cross-referenced elsewhere in the Blueprint documents where CARB specifies “implementing available technologies or control techniques that provide the greatest emissions reduction potential” (e.g., page C-17) or indicates a preference for deployment of zero emissions technologies. This analysis is not only required by the statute, but it is necessary to ensure that CERPs will maximize program benefits per dollar invested. CARB should require a similar approach for incentive-based strategies. On page C-33 CARB proposes as an annual implementation metric “The dollar amount invested and number of projects implemented in and/or benefitting the community if incentive strategies are part of the community emissions reduction program.” This metric should not be limited to a simple project count – it should also quantify the incremental benefit per dollar amount invested for each project. This additional requirement would ensure that projects are not undertaken just to add to a project count, but because they will make a meaningful contribution to achieving emissions reduction targets and reducing exposure burden in the community.

**Emissions and exposure reduction strategies** - We note that the six categories of measures to be evaluated for an emissions reduction program are appropriately characterized as considerations (the district is required to evaluate applicability of each category to the problems in a particular community), rather than as minimum requirements (e.g., page C-20-21). As indicated in the cover letter to these comments, a distinctly different inference can be drawn from the Blueprint language. The language in the Blueprint should be harmonized with the language in Appendix C to ensure consistent interpretation by air districts and stakeholders. CARB must preserve flexibility for air districts to tailor measures to the sources that drive the impact in the selected community to ensure that CERPs will achieve emissions reduction targets in the prescribed timeframe. The text box on page C-19 also undermines this construct. This language suggests that “any feasible activities” must be immediately implemented, presumably even in the absence of information characterizing the nature and the extent of air quality impacts in the community and demonstrating which potential actions are the most cost-effective and technically feasible means of mitigating those impacts. This statement should be removed because it violates the systematic, science-based approach to program implementation required by the statute.

**Consideration of Facility Emissions Reductions** – AB 617 provides specific guidance for considering facility emissions reductions that is not adequately described in Appendix C. ARB references Section 44391.2(b)(3) in a footnote on page C-22, which requires a district first to determine whether a facility’s emissions “cause or significantly contribute to a *material* impact” based on the available and enhanced AB 617 data (emphasis added). If the district makes such a materiality determination, then it may require the facility to “achieve emission reductions *commensurate with* its relative contribution” (emphasis added). In these cases, the statute requires community emissions reduction programs to include measures that materially reduce the community exposure burden and that reflect the degree of source contribution.

**Changes to facility design and activity limits** - CARB encourages air districts to consider retroactive changes in facility design (page C-18) and limits on facility activity levels (page C-21) but offers no criteria for determining whether these strategies would be appropriate for a given facility. Both strategies would undermine existing air quality permitting processes which are already designed to ensure that facilities do not emit criteria pollutants at levels which would adversely impact attainment of regional standards specified in the State Implementation Plan. Similarly, local air toxics rules ensure that existing facilities do not expose the public to levels of toxic air contaminants that pose a significant health risk and include risk-based permitting requirements for new or modified sources. Such unprecedented retroactive measures would violate long-standing statutory and regulatory protections allowing stationary sources to continue to operate provided they meet applicable, cost-effective criteria pollutant and local risk-based standards for new, modified and existing sources. Since AB 617 does not alter, suspend or supersede any of these existing requirements, *any* potential measures that may be considered as part of a CERP must satisfy existing statutory and regulatory requirements applicable to particular pollutants and sources.

Requirements to change facility design and operation independent of these requirements would eliminate regulatory certainty and may result in negative impacts that reach beyond the community and override any localized benefit (e.g., shifting production to other regions, facility shutdowns, lost jobs, diminished regional economic productivity, etc.). Trading greater socio-economic disadvantage for



incremental gains in air quality is likely to do more harm than good in terms of public health and welfare in affected communities. CARB should remove references to retroactive facility changes and activity limits.

**Facility risk reduction audits** - We support CARB's focus on risk-based decision making on page C-22 but cannot reconcile it with the concept on page C-6 that "there are no safe exposure thresholds for carcinogens." WSPA previously commented that this blanket statement should be removed from the document because it is not scientifically defensible.<sup>1</sup> In addition, the baseline for determining whether a facility should be included in the air district's review of risk reduction audits and plans should include any voluntary risk reduction plans (VRRP) undertaken pursuant to air district rules (e.g., SCAQMD Rule 1402). The air district reviews should not assume a-priori the need for facilities to implement additional reduction measures beyond those specified in their VRRP.

**Application to sources outside of selected communities** - CARB is proposing to extend at least some emissions reduction program requirements to sources "directly surrounding" the selected community (e.g., permitting and enforcement on page C-22). This new language effectively expands the scope of the CERP in every community and introduces new procedural complexities that will delay development and implementation of the program. For example, if these sources are subject to the same requirements as those operating within the community, then they should be allowed to participate in the CSC process. It is unclear why CARB would choose this approach over drawing community boundaries to include all of the sources driving the cumulative exposure burden in the community.

**Land use planning** - The range of potential measures identified for community-specific land use strategies retains recommendations such as minimum setback requirements and zoning code amendments to prevent or reduce permitting of incompatible land uses. As CARB now acknowledges in the Blueprint, these strategies should only be considered by the appropriate local land use authorities through the appropriate local land use management processes. Moreover, they should only be considered for proposed projects and should be uniformly applied to residential, commercial and industrial projects. Retroactive application of these strategies to existing land uses should be actively discouraged because they would be infeasible for such uses. The City of Paramount has recognized this challenge in recent updates to its zoning code. Paramount's approach balances the need to prevent future co-location of incompatible land uses while also preserving a path for existing uses to continue operating in a manner that reasonably addresses potential offsite impacts in the community. CARB should propose a similar approach.

CARB's list also retains the concept of terminating existing incompatible land uses. This approach would likely lead to closure of some businesses, regardless of their compliance with existing regulatory requirements, and without due consideration of adverse localized impacts including lost jobs and tax base or idled industrial properties presenting new hazards in the community. As discussed above under "Emissions and Exposure Reduction Strategies," CARB should clearly state that land use and transportation strategies are among the menu of options that can be considered in a community selected for a CERP, to the extent they are necessary to control emissions from the sources driving the

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<sup>1</sup> Research is emerging in the published scientific literature indicating that historical assumptions about the linearity of cancer risk do not hold true for some chemicals.

high cumulative exposure burden. Some strategies will not be appropriate in a given community, and therefore these elements should not be presented as minimum requirements to be included in every community emissions reduction program. CARB should also clarify here, consistent with the expanded discussion in Section IX of the Blueprint, that land use measures are developed separately from CERPs. They must be evaluated, and when deemed necessary adopted, by the appropriate land use regulatory authorities through the appropriate land use management processes.

**Incentive funding for deployment of clean technology** - Page C-23 retains language indicating that incentive funding exists to support deploying the cleanest technologies (including “next generation” technologies) beyond what is required in regulation. While this statement may be true in the context of other state and local programs, it is certainly not true in the context of AB 617. Elsewhere in the Appendices, CARB describes the intent of AB 617 as achieving emissions reductions in the most highly burdened communities in the shortest possible timeframe (see for example Appendix F page 9: “The Legislature also recognized the importance of immediately reducing emissions in highly burdened communities ...” and the reference on page F-10 to approval of supplemental Carl Moyer program guidelines to “... facilitate funding the types of projects that are most beneficial to communities ...”), not to fund development or deployment of next generation or zero emissions technologies. The latter approach is a recipe for limiting immediate program benefits within currently selected communities and overall program benefits in other communities on a statewide basis and therefore is inconsistent with the intent of the statute. The statutory approach requires a program framework that is technology-neutral.

**Specific mitigation strategies** - The mitigation strategies listed on pages C-25-26 are presented as additional measures that should be incorporated into CERPs on top of the strategies described under the six broad categories listed on page C-20. This approach reinforces our threshold concern that the Blueprint departs from the systematic and science-based approach required by the statute. Emissions reduction programs cannot be designed to target the sources that monitoring data and source attribution analysis show are driving the high cumulative exposure burden in the community if they are required to include every conceivable emissions reduction measure without regard to the community technical assessment, incremental benefit or cost-effectiveness.

**Environmental review for major projects** - Language at the bottom of page C-26 obligates CARB to follow-up on all comment letters submitted for “major projects” (undefined) implemented in a named community. This approach assumes that all concerns leveled at a proposed project are valid and necessitate some resolution. It would lead to a de-facto redlining that would likely chill investments in many projects in selected communities. CARB and the air districts should exercise discretion and professional judgment in determining which comments warrant follow-up, as they do in all other policy and regulatory proceedings. At a minimum, CARB and the districts should grandfather projects approved ahead of the development of a CERP.

**Implementation schedule** - On page C-27 CARB is allowing each air district to use its own cost-effectiveness calculation methodology for evaluating emissions reduction strategies. As CARB is aware, there are variations among air district approaches, which is likely to lead to strategies in one community that may not be comparable to strategies in other communities, even if the source and emissions profiles would warrant similar approaches. CARB’s Technology Clearinghouse should be expanded to

incorporate a methodology for calculating the cost-effectiveness of emissions reduction strategies and measures that is transparent, requires use of current data and employs best practices in evaluating technical and economic feasibility. **Enforcement plan** - The enforcement plan should be limited to actions that will ensure the CERP will be implemented as designed. While we appreciate new language clarifying that enforcement of air quality rules and regulations is the sole responsibility of CARB and the air districts (e.g., pages C-22, C-28-30), it is also important to communicate to stakeholders that AB 617 does not authorize broad new community-focused enforcement authority that reaches beyond the scope of the CERP. This section should state that complaints and alleged violations involving sources in the community that have nothing to do with pollutants targeted in the CERP are not subject to the CERP enforcement plan. In addition, the discussion of Enforcement Processes and Techniques starting on page C-29 references coordination of enforcement efforts involving “facility or equipment owners,” which suggests a focus on stationary sources. CARB should clarify that the enforcement plan will cover all source types and individual sources subject to the CERP.

**Enforcement history and compliance goals** - The 3-year enforcement history (page C-30), which establishes the baseline for the enforcement plan will always be biased toward complex facilities subject to extensive regulatory requirements and dedicated inspectors, yet the high cumulative exposure burden in the community may have little or nothing to do with these facilities or their enforcement history. Appendix C also retains the requirement to include compliance goals in the enforcement plan. These goals could be interpreted as enforceable regulatory requirements by virtue of their inclusion in a CERP. While we do not object to the concept that the pursuit of reasonable goals can help reduce instances of non-compliance, CARB should state that sources will not be subject to enforcement actions if an air district does not achieve a goal/target in the enforcement plan.

**Additional enforcement activities** - While we continue to object to CARB’s proposal to establish arbitrary performance metrics that have no bearing on source emissions or impacts in the community, CARB should at least clarify that some of the proposed metrics, such as number of complaints received, are only relevant to the extent they are verified by the air district (page C-33). Community complaints are common, especially in the vicinity of highly visible industrial sources, but frequently are not verified upon air district inspection. CARB should not encourage abuse of this process as a means of justifying more punitive measures for particular sources.

**Air quality metrics** – CARB states on page C-33 that “as new strategies are developed and deployed, it may take several years to see significant reductions in exposure that can be measured at the community scale.” Based on the design of the emissions reduction program framework – particularly the five-year deadline for achieving reduction targets – it will be important for CARB to clarify that strategies which cannot show measurable reductions consistent with program targets in the required timeframe will not be included in emissions reduction programs. CARB should also clarify in the same section that monitoring results may show periodic increases in targeted air pollutants even after completion of an emissions reduction program due to factors beyond the control of individual emissions sources, including but not limited to seasonal weather patterns and regional pollutant transport.

## **Appendix D**

**Incentive actions** - We support new language on page D-11 (and F-3) stating that “subsequent implementation (of current regulatory *and incentive actions*) will be conditional on the successful completion of applicable public processes, necessary financing approvals, technical feasibility analyses, economic competitiveness, safety, and environmental reviews.” Considering these balancing factors in the design of new incentive-based measures, including use of incentive funding to deploy any available technologies such as zero emission equipment and infrastructure, is necessary to maximize program benefits locally and on a statewide basis. This same language should be incorporated in references elsewhere in the documents pertaining to incentive-based measures (e.g., pages C-23, F-11).

**BARCT** - We support new language on page D-14 stating that “the expedited schedule is designed to ensure a full review of existing applicable measures and, as appropriate, accelerated implementation of cleaner control technologies ...” The Blueprint document should include similar language, and the discussion should be expanded in both documents to describe the full scope of the BARCT determination process required by Health and Safety Code § 40920.6. For example, the BARCT process requires a district to consider the availability, feasibility and incremental cost-effectiveness of candidate control options as well as the lead time required for permit modifications and other district review procedures (e.g., CEQA), contractor, material and delivery constraints, among other relevant factors. As noted in our cover letter, this process will inevitably extend beyond the AB 617 BARCT implementation deadline for some sources. CARB should cite the statutory requirements and specify that “implementation” means BARCT reviews for designated facilities should be in process by this date, but that actual installation and operation of new retrofit technology is likely to occur at a later date.

## **Appendix E**

**Concurrent development of monitoring plan and selection of communities for monitoring** - Language in the last paragraph on page E-13 summarizes CARB’s proposed requirements for the statewide monitoring plan:

*“The plan must identify the selected method(s) and include a full description of the equipment that will be used (e.g., make, model, characteristics) and how it will be applied. The plan should justify the suitability of the method and equipment to meet the level of action required and include a description of how the selected method will achieve the data quality objectives. Limitations of selected air monitoring methods and equipment should be made clear to stakeholders and documented in the plan. Other method requirements or needs considered in the selection process should also be documented (e.g., maintenance requirements, operating costs, specific features). The plan should also identify and describe any additional equipment needed to meet air monitoring objectives, such as meteorological monitoring equipment.”*

WSPA agrees this is a reasonable interpretation of the statutory requirements at Health and Safety Code § 42705.5(b). However, this discussion omits an important statutory requirement – the selection of communities for monitoring must be done concurrently with development of the statewide monitoring plan. While we acknowledge that this construction creates a procedural challenge, the statute clearly requires that the “findings and recommendations” in the monitoring plan inform CARB’s community

selections, including for year one communities. It seems apparent from the publicly available information that CARB has recommended communities for monitoring without having completed the monitoring plan.

**Timeframe for monitoring programs** - We support additional language on page E-6 placing greater emphasis on defining “the necessary duration” of community monitoring programs. Additional specificity on appropriate timeframes for monitoring programs would help ensure effective deployment of program resources – it is not possible or beneficial to sustain exploratory community monitoring programs in perpetuity - and to manage stakeholder expectations. It is also not prudent to conduct rushed, poorly designed monitoring programs that could result in misleading or incomplete data. At a minimum, CARB should specify here and in the Blueprint on page 28 that any monitoring conducted in the context of an emissions reduction program should sunset with the CERP.

**Applicability of monitoring criteria** - New language on page E-7 indicates that “if criteria are not applicable, plans should indicate why the criteria are not relevant to the specific community air monitoring.” CARB does not identify any hypothetical situations where one or more of the 14 proposed monitoring plan elements would not be relevant and it seems highly unlikely that an air district would be able to justify excluding any of them from a community monitoring program. Accordingly, we recommend removing this language.

**Public education element** - New language on page E-9 states that “the purpose of preparing an air monitoring plan with the community steering committee is to bring all parties to a common understanding of what air monitoring will achieve, potential limitations, what tools will be utilized to collect, review and interpret data, and how data will be used.” We support a greater focus on educating CSC members and the public on these issues to avoid conflicting interpretations and misapplication of monitoring data, especially monitoring data generated by community-based organizations.

## **Appendix F**

**Technology Clearinghouse** - In discussing Phase II of the technology clearinghouse, CARB states that “The market barriers for each next generation technology will also be provided to help identify opportunities for incentive programs, and provide the public with increased transparency on technology gaps and barriers associated with deployment of advanced technologies.” The heightened emphasis on public education is helpful, and we support the steps CARB is taking to formalize that process for multiple AB 617 program elements.

**Grant-based community monitoring projects** - Grant-funded community monitoring campaigns should be subject to the same criteria and requirements specified in Appendix E for AB 617 monitoring programs developed by air districts in consultation with CSCs. This approach is necessary to ensure that any data generated from these programs is properly validated and interpreted, and that future use of the data will reflect the purpose for which it was generated and its inherent limitations.

**Attachment 2**  
**WSPA Detailed Comments on**  
**CARB Final Draft Community Air Protection Program Blueprint**  
**2018 CARB Community Recommendations Staff Report**

**Simultaneous monitoring and emissions reduction programs** - As noted above in our cover letter and our comments on the proposed Blueprint and Appendix C, communities should not be selected for both monitoring and emissions reduction programs. If the information available for a candidate community is not sufficient to support the analyses required by Health and Safety Code section 44391.2(b)(2-4), then that community should only be selected for a monitoring program to generate the additional data necessary to fill the identified data gaps. If the available information satisfies the statutory requirements and supports immediate development of a CERP, any additional monitoring that may be necessary to track program progress should be incorporated in the CERP. It is not appropriate to start air districts and emissions sources down a particular emissions reduction path while simultaneously gathering new data that could lead the CERP in a different direction.

**Scientific justification for community recommendations** - We recognize that CARB may have sufficient data in some communities to support source attribution analysis, and that the technical assessments conducted for year one communities may demonstrate sufficient knowledge of individual sources to facilitate development of emissions reduction targets and measures that can achieve those targets in five years. However, CARB has not provided adequate information in its staff report to establish that the communities selected for CERPs are sufficiently well characterized to support such programs. Even where the supporting documents cite quantitative data, CARB still does not indicate how this information was used to prioritize and select AB 617 program communities from a larger universe of candidate communities. For example, the Table of Metrics in Appendix B (Table B-2) compares all of the nominated communities using a range of characteristics and quantitative measurements, but there is no explanation of how all of this information was synthesized and analyzed or how it supports CARB's community recommendations for year one. In addition, this table presents only the worst-performing census tract in a given community for a given metric. While this may be a directionally accurate representation of the level of exposure burden in some communities, it is not obvious or transparent that this approach will be representative for every community.

**Community boundaries are not clearly defined** - The "heat maps" included in CARB's 2018 Community Recommendations Staff Report for South Coast communities invite debate about where community lines should be drawn and can easily be interpreted to encompass additional communities beyond those recommended by SCAQMD. For example, the boundary for San Bernardino appears to encompass the City of Colton, which was not identified by SCAQMD as a year one candidate. The reason for this vagueness is not apparent, but we are concerned that it will lead to confusion, conflict and delays in the Community Steering Committee (CSC) process. This problem is compounded by CARB's proposal to defer to CSCs to define final community boundaries (page 9). The Blueprint Appendices also indicate that at least some program requirements will be extended to sources outside of designated community boundaries (e.g., application of the enforcement plan to facilities "directly surrounding" the community, page C-28). It is unclear whether representatives of

these sources would have the opportunity to participate in the CSC process, but they should be included if their operations may be impacted by a CERP. The air districts and CSCs already face an extremely challenging task in developing programs that can achieve measurable success in a five-year timeframe. Arbitrarily expanding community boundaries will create confusion about who should participate on CSCs, dilute program focus and delay actions that could benefit selected communities.

**West Long Beach technical assessment** – The source attribution analysis required at Health and Safety Code § 44391.2(b)(2) is foundational to determining whether a “high cumulative exposure burden community” is sufficiently well characterized to proceed to an emissions reduction program, and to designing a program that will target the sources driving the exposure burden, as the statute requires. In the interest of informing staff recommendations to the Board in these areas, WSPA contracted with a third-party air quality consulting firm (EcoCira) to conduct a review of available source attribution methodologies. This project is intended to evaluate the suitability of particular methodologies for varying source types and distribution patterns and to identify additional data needs to ensure source attribution analyses yield accurate results. The scope of work also included a hypothetical analysis for West Long Beach (WLB) to demonstrate a science-based approach to source attribution in an actual community. WSPA submitted this West Long Beach case study report to CARB staff on August 17, 2018. It is included in this submittal as Attachment 4. CARB subsequently identified West Long Beach, Carson and Wilmington as a proposed year one community for both AB 617 monitoring and emissions reduction programs.

As we indicated in our transmittal message, the EcoCira report concludes that WLB is a complex, challenging setting for source attribution analysis - the density and similarities among emissions sources in this community necessitates a high level of quantitative precision to ensure accurate source attribution. The monitoring data necessary to support such analysis does not yet exist for this community. CARB has also indicated that communities will be selected in the early years of AB 617 implementation in consideration of their utility as models for developing programs in other communities in later years. The challenges identified in this case study indicate that WLB is unique and would not be a useful model for programs in other communities.

South Coast AQMD has developed a new rule (Rule 1180) that will require additional monitoring of sources in the subject community. This additional data will be necessary to inform accurate source attribution and a future determination of the need for and proper design of an emissions reduction program for this community. Until this information is available and can be properly analyzed by SCAQMD and CARB, it would be premature to select this community for an AB 617 program. If CARB chooses to proceed with an AB 617 program in this community, it should be designated for monitoring only, and that program should be designed by SCAQMD to supplement gaps in monitoring already scheduled pursuant to existing district rules and monitoring programs.

The WLB case study also supports the need to include additional information in the AB 617 Resource Center to ensure a consistent and rigorous approach to source attribution analysis. A listing and description of available methodologies is not sufficient to ensure those methodologies will be properly employed in a given community. ARB should also include criteria for method selection

based on identified strengths, weaknesses and suitability for a given community, guidance on method application, and guidance on evaluation and interpretation of results.

**Shafter technical assessment** - The staff report states on page 20 that “The San Joaquin Valley has been the focus of numerous air quality studies, which lay the necessary foundation for development of an emissions reduction program in this rural community.” While there have been air quality studies throughout the San Joaquin Valley, there are no studies of Shafter that adequately characterize the community-specific sources. Without proper source attribution analysis and understanding of localized air quality impacts, it would be impractical to develop a CERP for this community. Adequate community air monitoring data and source attribution analysis are necessary precursors to development of an effective CERP.

**Oil and gas operations in Shafter** - The staff report also states on page 20 that “Oil and gas operations, such as hydraulic fracturing are common in the area.” Data available in the Division of Oil Gas and Geothermal Resources (DOGGR) well stimulation treatment (WST) map, which dates back to 2014, does not show any hydraulic fracturing jobs in the oilfields within 5 miles of Shafter, so the characterization of fracturing being “common” in this area is misleading and the reference to hydraulic fracturing should be removed. The report also states that “There are 2 oil and gas production facilities in Shafter.” It is unclear what CARB considers an “oil and gas production facility” and therefore difficult to verify this statement. Therefore, the reference to the number of oil and gas operations should be removed.

**Air pollution disparities** - CARB introduces the term “air pollution disparities” for the first time on page 7 in lieu of the statutory terminology (high cumulative exposure burden). Unless CARB can provide additional context (e.g., a benchmark community against which other communities are assessed for potential air pollution disparities) it should replace this new terminology with the statutory language.



**Attachment 3**  
**WSPA Detailed Comments on**  
**CARB Final Draft Community Air Protection Program Blueprint**  
**Recommended Source Attribution Technical Approaches**  
Version 1.0.1 – August 22, 2018

**General** - The referenced document is simply a compendium of recommended methods and a brief description of each, along with reference materials and a placeholder for development and use of alternative methods. In its current form, this document is an inadequate treatment of one of the most important elements of AB 617 implementation. Among the deficiencies in the current document is a lack of source attribution implementation guidance to ensure a consistent and rigorous approach to source attribution analysis. A listing and description of available methodologies is not sufficient to ensure the identified methodologies will be properly employed in a given community. As noted in Attachment 2 in the context of the West Long Beach case study report, ARB should also include criteria for method selection based on identified strengths, weaknesses and suitability for a given community, guidance on method application, and guidance on evaluation and interpretation of results.

**Validation of results** - CARB should discuss the need to validate the results of any source attribution analysis. While models are useful tools, they incorporate assumptions and the results can be compromised by limitations in the available data. To address these uncertainties and ensure that modeling results are reliable (i.e., they can be replicated and substantiated), the air districts should be required to validate and verify the results of any source attribution modeling with monitoring information.

**Method limitations** - Table 1 oversimplifies the limitations of many of the listed methods. For example, Chemical Mass Balance (CMB) can only delineate contributions from primary sources (i.e. direct emissions) and lacks the ability to apportion secondary sources (e.g. secondary PM formation). Another example is that Community-Specific Air Quality Modeling would need hyper-local meteorological information and proper characterization of boundary conditions in the community of interest. These requirements are much more comprehensive than the basic information presented by CARB. (Source Apportion page 4)

**Pollutant transport** - Any community emissions inventory should also include an assessment and accounting of emissions emanating from outside the community boundary including regional pollutant levels. Without a full accounting of the emissions coming in from outside of the community it is impossible to identify which sources are driving the exposure burden in that community. This problem is especially pronounced when analyzing regional pollutants like PM. (Source Apportion page 6).

**Multiple lines of evidence** - Community emissions inventories, back trajectory, and/or pollution roses should be used in combination with other source attribution techniques to determine source contribution. These techniques are useful for estimations but have too many sources of error and uncertainty to be used in isolation to determine relative source contributions. Modeling will be

necessary prior to identification and implementation of emissions reductions in any community where there are multiple sources of emissions. (Source Apportion pages 6, 10)

**Attachment 4**  
**Eco Cira Technical Report**  
**AB 617 Source Apportionment Case Study:**  
**West Long Beach, CA**  
August 15, 2018



EcoCira AB617 WLB  
Case Study (Comple

**Attachment 5**  
**WSPA Comments on Final Environmental Analysis**  
**Prepared for the Proposed Final Draft Community Air Protection Program**  
**Blueprint and on Initial Community Selection**

**Comments on the Final EA** - CARB’s notice of the September 27, 2018 meeting to consider the Final Draft Community Air Protection Blueprint (Blueprint) states that the changes from the Draft Environmental Analysis (EA) to the Final EA did not contain significant new information that would trigger recirculation pursuant to CEQA Guidelines 15088.5 “and therefore, CARB staff will not be accepting additional comments on the Draft Environmental Analysis during this comment period.” *Notice of Public Meeting to Consider Assembly Bill 617 Community Air Projection Program – Community Selection and Program Requirements*, p. 3. However, it is well established that, prior to the close of the final public hearing, the public may submit written comments, as well as verbal comments at that hearing. Such comments constitute part of the record and suffice to exhaust administrative remedies on issues raised in the comments, for purposes of judicial review. CEQA (Pub. Res. Code) § 21177, *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 926-928; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1201.

24-1

Revision and recirculation of a draft CEQA document is a separate issue. If recirculation is triggered, under CEQA Guidelines § 15088(f), the lead agency is required to prepare written responses to comments received on the recirculated CEQA document, in the same manner as on the original document. By contrast, no written responses are required to comments received after the close of the specified comment period. However, if CARB chooses not to consider the comments at all, “it does so at its own risk. If a CEQA action is subsequently brought, the [document] may be found to be deficient on grounds that were raised at any point prior to close of the hearing on project approval.” *Bakersfield Citizens* at 1201.

These comments are submitted for inclusion in the record for both the Final EA and CARB’s action to select the initial communities for Blueprint implementation (see comment 3, below).

**Programmatic CEQA Review Does Not Excuse CARB From Considering Reasonably Foreseeable Consequences of Program Adoption** - In Master Response 1 and responses to WSPA’s comments, CARB asserts that its EA for the Blueprint is an early stage programmatic CEQA analysis and has addressed reasonably foreseeable compliance responses at an appropriately general level of detail. *Responses to Comments on the Draft Environmental Analysis Prepared for the Community Air Protection Blueprint*, pp. 8-9, 12-23. As stated in our previous comments, WSPA agrees that tiered CEQA review is appropriate here, that the degree of specificity required by CEQA is greater at the second tier or project level than at the first tier or programmatic level, and that a high-level analysis is appropriate for the first tier, programmatic action of Blueprint adoption. More detailed second-tier review will be required for future actions by air districts and other local agencies to implement the Blueprint program in general and Community Emissions Reduction Programs (CERPs) in particular.

24-2

Nevertheless, “[w]hile proper tiering of environmental review allows an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for

approval, CEQA's demand for meaningful information is not satisfied by simply stating information will be provided in the future." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431 (internal quotations omitted). Deferring CEQA analysis to a later tier is permitted only when the agency makes "no commitment" for the future at the first stage of the project, and there is an "understanding that additional detail will be forthcoming when specific second tier projects are under consideration." *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1172. Thus, while WSPA agrees that program-level analysis is appropriate, CARB does not respond to WSPA's comments regarding what is omitted from the EA, rather than its level of analysis. The EA evaluates environmental consequences of state-level regulatory actions but fails to consider reasonably foreseeable environmental consequences of future actions by air districts and other local agencies.

In response, CARB asserts that it is not committing to any action with potential environmental consequences, since those commitments will be made by air districts and other agencies in actions for which CARB is not responsible. However, as discussed in WSPA's previous comments, in this first tier action CARB is committing to implementation and enforcement of the Blueprint and of CERPs that satisfy the minimum requirements specified in the Blueprint. Thus, while the specific details of later tier actions are left to other agencies, in this first tier action, CARB commits to *require action* from the air districts and, through the CERPs, potentially from other agencies. When air districts and other agencies conduct their project-level CEQA reviews, CARB's commitment will prevent them from adopting the no-project or no-action alternative. In CEQA terminology, the agencies must reject the no project alternative as legally infeasible. Courts have held that lead agencies engage in improper piecemealing "when the reviewed project legally compels or practically presumes completion of another action." *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 280. Here, CARB is both legally compelling and practically presuming other actions by air districts and other agencies. Moreover, CARB is "commit[ing] itself to the project. . . so as to effectively preclude . . . the alternative of not going forward with the project." *POET LLC v. State Air Resources Board* (2012) 218 Cal.App.4th 681, 721-722. That CARB is precluding other agencies, rather than itself, does not change the fact that the no project alternative will not be an option during second tier CEQA review. The elimination of an otherwise required aspect of future second tier CEQA review, and commitment to an outcome as a consequence of first tier CEQA review, is improperly categorically excluded from the Final EA. In response to WSPA's comments, CARB points to its own consideration of a no project alternative to the Blueprint in the first tier CEQA review but does not address preclusion of the no project alternative during second tier CEQA review.

We note that revised Blueprint Appendix C, specifying the minimum requirements for developing a community emissions reduction program, includes a new footnote 8 stating that "CARB acknowledges that there may be cases where a community emissions reduction program fails to meet certain procedural requirements but is still being developed in the spirit of these requirements." While the meaning of this footnote is unclear, CARB staff advised that it refers to the CEQA process. If the intent of this footnote is to implicitly reserve the ability to adopt no project alternative during second tier CEQA analysis, CARB should unambiguously say so, enabling air districts and other agencies, as well as the public, to understand their options. However, if that is the intent, it appears inconsistent with the overall thrust of the Blueprint and Appendix C specifying minimum CERP requirements.

24-2

24-3

CARB's responses also assert that potential environmental consequences of implementation actions by other agencies are too speculative for any analysis, even at the programmatic level. That assertion has no basis. CARB itself correctly emphasizes that only a high-level, general evaluation is necessary for first tier CEQA review. As noted in WSPA's previous comments, the form of analysis and degree of detail could be similar to that already included in the EA for CARB's own contemplated regulatory actions. Instead of extending that analysis to cover similar impacts from required actions by other agencies, however, the Final EA focuses only on "impacts from conceptual emission reduction strategies that CARB would directly implement, because these strategies are directly in CARB's control." Final EA, p. 10. By contrast, the Final EA categorically excludes impacts from implementation by agencies other than CARB, because "the programs developed by local air districts or activities approved by other State agencies or local jurisdictions in response to CARB's criteria, involve extensive decision-making processes that cannot be forecasted at this time with reasonable specificity." *Id.*

Yet, despite disclaiming its ability to do so, CARB has added two inserts to the Final EA that do forecast and reach program-level conclusions regarding the prospect of air districts implementing BARCT requirements pursuant to the Blueprint:

- "Deployment of BARCT rules could result in exposure of workers to hazardous chemicals resulting in toxic and adverse working conditions.... [discussing compliance with worker safety laws]. As such, increased use of BARCT rules would not be expected to result in the exposure of workers to hazardous workplace conditions." Final EA, pp. 61-62.
- "Increased deployment of BARCT regulations, though primarily required by AB 617 independent of the Draft Blueprint, could occur as a result of implementation of the proposed Draft Blueprint, and if so, could [result in population and housing impacts] ... It would be anticipated that additional employment opportunities associated with BARCT regulations would not adversely affect housing availability in communities within the proximity of stationary sources requiring BARCT regulations." Final EA, pp. 76-77.

Whether or not these assertions are accurate, they demonstrate that CARB was able to examine, at the programmatic level, at least two purported CEQA consequences of BARCT deployment as a result of implementation of the Blueprint. However, no such high-level programmatic analysis is provided for other potential environmental impacts of increased deployment of BARTC regulations as a result of implementing the Blueprint.

Separately from its adoption of the Final Blueprint in reliance on the Final EA, for purposes of CEQA compliance, CARB proposes to rely on a CEQA exemption for its action to select the initial set of communities required to develop CERPs. *2018 Community Recommendations Staff Report*, p. 3. As the Staff Report explains, for that action CARB intends to rely on the "common sense" or "not a project" exemption in CEQA Guidelines 15061(b)(3): "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." CARB's position is that the mere listing of communities is an administrative action without material environmental consequences.

24-4

24-5

On the contrary, a “project” under CEQA encompasses actions with the potential to result in reasonably foreseeable indirect physical changes in the environment, as well as direct physical changes. CEQA Guidelines 15378. CARB’s position ignores the fact that, as an indirect but certain (not just foreseeable) consequence of administrative selection for initial CERP development, the selected communities will be the first to experience any adverse environmental side-effects of implementation. Before the initial communities were identified, such impacts might have occurred in any communities, anywhere throughout the state. To the extent that uncertainty of environmental setting and context and/or uncertainty of time frame might impair CARB’s ability to evaluate potential impacts on a statewide basis, such uncertainties are reduced or eliminated for those communities selected. Even assuming that the Final EA would suffice as CEQA compliance for the selection of the initial communities as well as for the Blueprint itself, CARB is not relying on the Final EA, but on the “not a project” CEQA exemption. Since the same potential for environmental impacts associated with implementation of the Blueprint and its CERP requirements, as acknowledged in the Final EA, is also a foreseeable consequence of the selection of communities that will experience those impacts, the CEQA exemption is inapplicable and improper.

24-5  
cont.

WSPA’s previous comments and comments above also apply to the determination of communities and locations where any such impacts may occur. To the extent that CARB may consider the record for its community selection action to be separate from the record for the Blueprint and EA, WSPA incorporates by reference its July 18, 2018 comments on the Draft EA and comments above, and requests that all of our comments be included in the record for CARB’s community selection action.

24-6