



January 29th, 2024

Liane Randolph, Chair
California Air Resources Board

1001 "I" Street
Sacramento, CA 95814

Hon. Steve Cliff, Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

RE: Community Protections in CARB's SB 905 Rulemaking

Dear Chair Randolph and Dr. Cliff,

On behalf of the undersigned environmental justice and environmental organizations, we are writing to articulate our expectations for California Air Resources Board's (CARB) SB 905 (Caballero, 2022) rulemaking and to request a robust, inclusive, and productive process for community stakeholders.

SB 905 requires CARB to create and enforce strong protections for frontline communities.

On the whole, carbon capture, use, and storage (CCUS) is a dangerous distraction from the only viable path forward on climate: phasing out fossil fuels and replacing them with clean renewables—wind, solar, and storage. CCUS delays meaningful climate action by subsidizing dubious techno-fixes rather than directly reducing emissions as necessary to avert climate collapse. CCUS is substantially more expensive than renewable energy production and storage with little proof of its efficacy and permanence. Indeed, CCUS is a long-term campaign from the fossil fuel industry to continue its operations while taking public money to advance private profits, despite the public harms the industry knowingly wreaks. State and federal policy subsidizing CCUS supports polluting infrastructure predominantly located in low-income communities of color, exacerbating public health harms, air and water pollution, and environmental racism.

Yet, while SB 905 codifies CCUS strategy in California, it also includes meaningful and critical protections for frontline communities. Some of these protections are self-executing, such as the carbon pipeline moratorium and the prohibition on using captured carbon for enhanced oil recovery. Others rely on agencies—primarily CARB—to produce strong rules to enact the legislative intent of protecting communities. Thus, as CARB gears up to begin its mandated rulemaking to create its Carbon Capture, Removal, Utilization, and Storage Program (CCRUSP), enacting those protections through strong rules as required under the statute is essential to public health, environmental justice, and meeting the terms and intent of the legislative protections for communities embodied in SB 905.

SB 905 requires CARB to conduct a rulemaking to ensure strong protections for frontline communities.

Per SB 905, under the plain language of Section 39741.1 of the Health and Safety Code, CARB must promulgate rules to protect communities from CCUS. Section 39741.1(a)(3) requires that CARB establish the CCRUSP to:

“Ensure that all carbon capture, removal, or sequestration projects include the following as appropriate:

- A. Strategies to minimize, to the maximum extent technologically feasible, copollutant emissions from facilities where CCUS or CDR technology is deployed to ensure that the use of carbon dioxide removal technologies and carbon capture and storage technologies does not have an adverse impact on local air quality and public health, particularly in low-income and disadvantaged communities.
- B. Strategies to ensure that carbon dioxide capture, removal, or sequestration projects minimize, to the maximum extent technologically feasible, local water pollution or air pollution from construction- and transportation-related impacts from the projects in communities adjacent to carbon dioxide capture, removal, or sequestration projects, including a geologic storage complex.
- C. Strategies to minimize the risk of seismic impacts to, and from, geologic storage projects, including the risk of gas leakage due to seismic activity.
- D. Monitoring and reporting of seismic activity related to geologic sequestration of carbon dioxide, and monitoring of sequestered carbon dioxide, including movement within the geologic storage complex, for a period of time that is sufficiently long enough to demonstrate that the risk of carbon dioxide leakage poses no material threat to public health, safety, and the environment and to achievement of net zero greenhouse gas emissions in California and that terminates no earlier than 100 years after the last date of injection of carbon dioxide into a geologic storage reservoir. In adopting regulations pursuant to subdivision (c) that pertain to this subparagraph, the state board shall consult with the State Geologist.
- E. Monitoring of criteria pollutants and potential toxic air contaminants at the one or more sites within the geologic storage complex and at mobile or fixed sites within the facility, and monitoring of ambient carbon dioxide concentrations over the geologic storage complex to facilitate leak detection. Monitoring required under this section shall continue for a period of time that is sufficiently long enough to demonstrate that the risk of carbon dioxide leakage poses no material threat to public health, safety, and the environment and to achievement of net zero greenhouse gas emissions in California and that terminates no earlier than the completion of the applicable postinjection site care and site closure plan pursuant to Section 146.93 of Title 40 of the Code of Federal Regulations.
- F. Projects meet best available control technology requirements as determined by the local air district.”

Further, subsection (b) of the same section 39741.1 requires that, “[i]n carrying out the objectives of the program, the state board shall prioritize”, among other things, “[m]inimizing land use and potential environmental, noise, air quality, water quality, traffic, seismic, and other related impacts, and any potential health and safety risks, to all communities where CCUS and CDR technologies are deployed,

and carbon dioxide capture, removal, or sequestration projects are located to the maximum extent feasible” and “[r]educing fossil fuel production in the state.”

Then, the code states: **“The state board shall adopt regulations to implement this section.”** Thus, while CARB has already announced that it plans to promulgate regulations pursuant to SB 905, we further expect CARB to follow SB 905’s clear statutory mandate to promulgate rules specifically under section 39741.1 as quoted above in order to protect our communities and our climate.

CARB must evaluate which deployments of CCUS are in the public interest and only approve those that support our climate and air quality goals.

Under Health and Safety Code Section 39741.1(a)(1), CARB must “[e]valuate the efficacy, safety, and viability of CCUS and CDR technologies and facilitate the capture and sequestration of carbon dioxide from these technologies, where appropriate.” CARB is thus directed to facilitate deployment of CCUS technologies, which we accept as a reality of SB 905 even if we strongly disagree as a matter of policy. However, CARB is not directed to deploy CCUS wherever possible, nor to attain a certain amount of sequestered carbon. Rather, CARB must facilitate deployment “where appropriate” after due consideration of the various technologies’ and applications’ efficacy, safety, and viability. We agree with conducting that evaluation and only deploying CCUS where appropriate. From our perspective, that would confine CCUS at most to truly hard-to-decarbonize sectors like cement, and rule out CCUS in the energy and fuels sectors.¹

CARB must also include other protections in its SB 905 rulemaking.

CARB must prevent double counting of emissions reductions from the CCRUSP

In addition to the substantive community protections provided under 39741.1(a), Section 39741.1(e) requires that CARB prevent double counting of emissions reductions from carbon capture and removal. CARB must ensure appropriate oversight mechanisms are in place to ensure reductions are not credited in multiple programs. Relatedly, CARB must ensure the CCRUSP does not violate the additionality requirements of AB 32 but instead safeguards the integrity of emissions accounting, contributing to a more transparent and accountable approach to achieving our climate objectives. CARB must keep this priority centered not just in the SB 905 rulemaking but also in other related rulemakings. We name this priority here largely because of the possibility that updates to the Low Carbon Fuel Standard (LCFS) CCS Protocol are included in this rulemaking.

CARB must require project operators to maintain strong financial responsibility.

Financial responsibility is a necessary aspect of financial assurance, and vice-versa. Operators must be held accountable for the long-term risks of carbon storage, and they must remain financially responsible for any associated harms. Communities and taxpayers cannot be left to pay to deal with these

¹ This reading is consonant with the requirements of AB 1279 (Muratsuchi, 2022), which requires that CARB “[i]dentify and implement a variety of policies and strategies that enable carbon dioxide removal solutions and carbon capture, utilization, and storage technologies in California to complement emissions reductions and achieve the policy goals stated in subdivision (c).” CARB must evaluate CDR and CCUS options and enable and deploy only the specific applications and technologies that are efficacious, safe, and viable, per the requirement of 39741.1(a)(1).

externalities. Health and Safety Code 39741.5 requires that CARB adopt “stringent” regulations for operators to maintain financial responsibility “for a period of time that is sufficiently long enough to demonstrate that the risk of carbon dioxide leakage poses no material threat to public health, safety, and the environment and to achievement of net zero greenhouse gas emissions in California and that terminates no earlier than 100 years after the last date of injection of carbon dioxide into a geologic storage reservoir.” Relatedly, financial assurances must be anchored in mechanisms, such as bonds and robust third party insurance, that transcend the longevity of individual operators, and CARB must require reasonable contingency cost allocation, with operators ready to absorb unforeseen costs and maintain the integrity of CCUS projects

CARB must require pauses in carbon storage if monitoring shows increased seismic activity or leaks

CARB must require operators to pause project operations if monitoring and reporting from the State Geologist “detects increased seismicity or carbon dioxide leakage outside the geologic storage reservoir,” pursuant to authority from SB 905 under Public Resources Code 71463. This provision is self-executing and does not necessarily require new regulations, but regulations would be helpful to provide greater clarity of expectations for operators and predictability and assurance for community members to understand under what circumstances CARB would—or would not—require operations to pause upon problems with carbon storage.

CARB must develop a centralized public database for CCUS and CDR projects.

39741.3. In furtherance of the objectives in Section 39741.1, by January 1, 2025, the state board shall develop a centralized public database to track the deployment of CCUS and CDR technologies and the development of carbon dioxide capture, removal, or sequestration projects throughout the state.

The creation of a centralized public database is a crucial step towards fostering public trust and facilitating informed discourse throughout California regarding carbon management. By consolidating this information, CARB will foster public awareness and empower communities to actively engage in the evaluation and oversight of these initiatives. Further, creation of the database will satisfy a statutory obligation under SB 905, Health and Safety Code 39741.3. This database should include all public data about active and developing CCUS and CDR projects from all state and local agencies as well as from the federal government.

CARB must protect frontline communities through the CCRUSP.

In conclusion, the undersigned appreciates the opportunity to express our expectations and concerns regarding the SB 905 rulemaking. Our engagement stems from a collective commitment to advancing environmental justice and safeguarding frontline communities. SB 905 establishes crucial mandates for CARB to create and enforce robust protections for communities that will be affected by carbon capture, use and storage. We stress the importance of CARB adhering to the legislative intent and statutory requirements in its rulemaking to develop a comprehensive and responsible CCRUSP that genuinely protects public health and mitigates environmental racism. We call upon CARB to embrace the gravity of its role and to fulfill the promises made to environmental justice communities in a transparent, inclusive,

and rigorous rulemaking process this year. For further discussion or questions, please contact Dan Ress (dress@crpe-ej.org, 303.437.3289).

Sincerely,

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