



# HORNBLOWER™

CRUISES & EVENTS

July 3, 2008

Clerk of the Board  
California Air Resources Board  
1001 "I" Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95814

**RE: Resolution 07-47, Regulations to Reduce Emissions from Commercial Harbor Craft Operated within California Waters and 24 Nautical Miles of the California Baseline.**

Dear Executive Officer:

We respectfully request an additional public hearing before the Board to allow further public testimony and discussion of the proposed legislative approaches in Resolution 07-47.

We reviewed the proposed changes in the legislation as well as the new supporting documents, and continue to believe the legislation is fundamentally flawed by requiring vessels with very different operating characteristics to make the same equipment or operational changes causing extreme economic hardship or possible bankruptcy of many small businesses throughout the State.

Suggested modifications: The proposed regulations would be more efficient and achieve the goals of improved air quality if the replacement schedules were based on the vessels actual duty cycle or fuel consumption rather than on the age of its engines. As written, the legislation unfairly penalizes owners with vessels having low hours, operating speeds and fuel consumption.

Another option may be for the Board to raise the 300 hour floor for compliance to reflect the lower hour operations of vessels throughout the State. Given inadequate survey information on the vessel fleets being affected, there is little justification to setting the floor at 300 hours.

More specifically, we observe:

1. There is a typo – on page A41, the text should read “The E.O. MAY grant....”
2. The definition that vessels must be “owned by the same person”. Many vessels are “owned” by separate companies established for the legal purpose of solely holding title to the individual vessels, even though ultimately each of these companies is controlled by the same individual or parent corporation.

Suggested modification: Revise definition of ownership to reflect ownership practices.

3. We are concerned about the repeated use of the phrase” at the Executive’s Officers discretion” and the potential for inconsistent interpretations of the proposed regulations and requested data.

Suggested modification: The Board may simplify administering the proposed legislation if the Executive Officer had little or no discretion in granting requested extensions. To achieve more certainty in the legislation, in various places in the text, the word “may” needs to be changed to “shall”. Or if there is disagreement with the Executive Officer’s determination, provide some type of appeal process.

4. Time extensions for multiple vessels.

A. For an extension to be invoked there must be a “set” (2 or more) of engines on two or more vessels. Many vessels will have engines of varying ages and may not have a set of engines that needs to be addressed at the same time. Moreover, to take a vessel into dry dock to replace only one set of engines is cost prohibitive and will lead to a more expensive project in the long run.

Suggested modification: The Board should eliminate the requirement that there must be a set of engines on a vessel and allow extensions when an owner has to address two or more engines.

B. Proposed draft only offers flexibility for vessels required to comply in 2009 and 2010. However, the way in which the time tables are structured there will be other years where multiple vessels in a fleet will need to comply with the proposed regulations. In the Hornblower fleet, we have several years (2009, 2010, 2011, 2012, 2013, and 2014) where multiple vessels/engines will need to comply with the proposed regulations.

Suggested modification: Permit time extensions in any year where a vessel owner has to address two or more engines (regardless of vessel).

The Board could adopt a “classic vessel” definition that parallels Department of Motor Vehicles Code exempting vessels which are a certain age (50 years or

older) and have annual hours of operation below 500.

5. D3 Engine's Tier 1 re-builds Model Year. Must have been rebuilt to a Tier 1 standard prior to January 1, 2008.

The suggested date does not make logical sense as it has already past and the owner did not realize the impact of the pending regulations.

Suggested modification: Change the date to allow owners the option of rebuilding to a Tier 1 standard within a certain time frame.

### **Appendix G, Assumptions for Estimating Greenhouse Gas Emissions from Commercial Harbor Craft Operating in California.**

The use of a composite value based on data in New York private ferry fleet is inconsistent with the various vessel operational characteristics in California. As was observed in the November hearing, the proposed legislation is based on incomplete survey information. It is impossible for staff to know what the operational characteristics are for the vessels being regulated with the amount of information they currently have in hand.

To use private ferry vessel characteristics as a generic model for all vessels in California inherently over estimates the amounts of CO2 emissions projected. Private ferry operations are:

- Scheduled services from one point to another point on New York Harbor,
- Vessels run every 15 to 30 minutes with little or no down time,
- Operations that produce a large number of annual hours.

This is incontinent with typical excursion, tug and tow operations in California which have low vessel annual hours, not scheduled on a daily time schedule, and have large amounts of down time between operations.

Suggested modification: Staff should adjust CO2 calculations for vessels that do not have ferry operational characteristics, such as crew, tug and excursion vessels.

### **Appendix H, Estimated Ticket Price Increase.**

The staff assumptions that vessel owners can simply increase their ticket prices to cover the anticipated equipment costs reflect a lack of understanding about the economics of operating a vessel. We observe the following flaws with the analysis:

1. The proposed amortization of costs does not account for the down time needed to make required modifications to the vessels. As was pointed out in our November correspondence, it may take anywhere from 3 -6 months (maybe longer as more and

more vessels are required to make modifications) to complete the necessary work on a particular vessel. During this time the owner is not earning any income from the operation of the vessel and losing a presence in the market place where they operate. Lost income can not be amortized over a period of time.

2. The owner will experience several other costs associated with the down time including – laying off vessel staff during the period (approximately 6-8 staff members per vessel); indirect affects on suppliers and vendors who depend on the activity of the vessel to generate demand for their products; lost income to the landlords (many of which are public enterprise agencies such as Port authorities) as many excursion vessels are on a percentage lease provision (if the vessel does not operate then it does not generate income to share with the underlying landlord).

3. Staff assumptions are based on 2004 costs. Obviously costs have changed since 2004. As mentioned in the November hearing, as more and more vessels are pressed into the shipyards for work, prices will rise in the shipyards due to availability of time slots and schedules of workers. It was also pointed out by the engine manufacturers that as demand increases for available engines, supplies will contract leading to inevitable price increases for available products (Email attached from Valley Power and Cummins West).

4. Amortization is not an accurate means of looking at the ability of owners to implement equipment improvements. The underlying premise of the analysis is the owner can somehow finance the improvements over time. Ticket revenue from excursion operations is seasonal and driven by the economy. During poor weather months the number of clients may drop as much as 50% which will affect total revenue. Similarly when the economy is in a recession, or gas prices spike limiting discretionary travel, the number of clients will drop accordingly.

Moreover, staff assumes the owner can simply raise ticket prices and gain additional revenue. This assumption does not reflect market reality. Increased ticket prices will force the consumer to look for more economical ways of access the water, driving business away from excursion vessels to less expensive resources. Staff analysis makes a static revenue assumption that does not reflect the reality of revenue flows in small businesses.

In November we relayed to staff the following economic impact on our company:  
*“With respect to the economic impact of the proposed regulations on our company, I note that the fellow CARB staffer indicated that staff could not generate accurate information of the proposed impact on the regulations on privately owned excursion and ferry boat companies. He emphasized that there was no way for staff to indicated an accurate ROE impact on large portions of the Harbor craft owners that proposed regulations will impact.*

*The 14 vessels (required to comply in 2009 and 2010) listed above make up approximately 50% of our vessel fleet in the State of California. Each vessel generates different levels of annual income for our company (estimated total of \$17,000,000) and*

*directly employs 100's of Californians. Given the proposed schedule, each vessel would be out of service approximately 6 -8 months (if not longer) representing an annual loss of income of approximately \$12,650,000. The indirect economic impact from the vessels not being in service are more difficult to calculate but could be approximately \$2.75 – 3.25 million and made up of lost income and employment by vendors, tax revenues, and percentage rent payments to underlying Port or landlord jurisdictions. How can small companies that have one or two vessels even begin to implement the proposed schedule?‘‘*

Suggested modifications: Staff should re-evaluate the economic impact of the proposed regulations on vessel owners, and develop measures to mitigate the potential devastation to many small business owners throughout the State. Possible measures could include:

- a) Revise the eligibility guidelines of various incentive grants (i.e.; Carl Moyer, Prop. 1B, etc.) of the Board to provide a necessary stream of revenue to achieve the air quality goals.
- b) Provide low or no interest loans to vessel owners so that amortization can actually take place with ticket revenues.
- c) Allow adjustment in implementation dates for financial hardship.

We appreciate the Board's consideration of our suggested changes. We would appreciate an opportunity to discuss the changes with staff and in a public hearing in the near future.

Sincerely,



Terry A. MacRae  
President and CEO