

July 22, 2020

California Air Resources Board  
Attention: Clerk's Office  
1001 I Street  
Sacramento, CA 95814

**Re: Second 15-Day Changes to the Control Measure for Ocean-Going Vessels At Berth ("At-Berth Rule")**

California Air Resources Board:

On behalf of Crowley Maritime Corporation (Crowley), we thank you for the opportunity to comment on the second 15-day changes to the At-Berth Rule proposed by California Air Resources Board ("CARB"). As the largest operator of tankers and ATBs in the United States, Crowley, whose tankers and ATBs operate regularly in California ports, is directly affected by the proposed regulation.

ATBs carry 15% of the clean petroleum products annually transported to and from California, and are a significant part of the ocean-going vessel traffic calling at California ports today. Crowley's ATBs of more than 120,000 bbl. capacity are the functional equivalent of ocean-going tankers and they should not be excluded from the At-Berth Rule.

Crowley fully supports the environmental goal of the At-Berth Rule to reduce emissions from ocean-going vessels docked at California ports. The current measure, which amends and supersedes the existing 2007 At-Berth regulation, offers CARB the opportunity to extend the At-Berth Rule to all categories of ocean-going vessels calling at California ports, including ATBs. Therefore, Crowley has, since the spring of 2019, consistently demanded that ATBs be included in the At-Berth Rule in order to achieve the maximum benefit of localized harmful emissions reductions, particularly for at-risk California communities.

By the second 15-day changes, CARB has focused on the operations of certain categories of vessels affected by the At-Berth Rule and proposed changes designed to achieve improved emissions reductions to benefit Californians living in the vicinity of its ports. The second 15-day changes thus provided CARB with the ideal opportunity to further strengthen the At-Berth Rule by the inclusion of ATBs. To date, CARB has failed to take this opportunity, and should do so now.

The second 15-day changes amend the definitions provision of the control measure, section 93130.2(b). These changes highlight the inconsistency of the definition used for ATBs and CARB's rationale for the ATB exclusion.

In the second 15-day changes, CARB amends the definition of ATB, subsection (b)(7), which now reads as follows:

“Articulated tug barge” means a tanker barge [sic] that is mechanically linked with a paired tug that functions as one vessel. For the purposes of this Control Measure, articulated tug barges are not considered ocean-going vessels<sup>1</sup>.

This definition makes clear that CARB defines an ATB as a tank vessel that functions as one vessel. This is correct: An ATB is an innovative, highly efficient, and flexible form of modern tank vessel. An ATB carries cargo in a tank barge with a double hull configuration, equipped with sumped cargo tanks, remote radar gauging, two ballast pumps, a dual-mode inert gas vapor collection system and other systems, and is propelled and maneuvered by a high-horsepower tug that is physically a part of the whole vessel, positioned in a notch in the stern of the barge, and attached by rigid, articulating pins. ATBs function as a single unit in a system that allows for improved maneuverability and sea-keeping. By definition, an articulated tug barge is an ocean-going vessel that functions “as one vessel.”

This definition is belied by CARB's stated rationale for excluding ATBs from the At-Berth Rule. In the Initial Statement of Reasons (“ISR”), CARB states as its sole reason offered for excluding ATBs from the At-Berth Rule is the following:

“When an articulated tug barge is fully connected, it may meet the definition of an ocean-going vessel, as defined in this chapter (Section 93130.2(b)). However, despite being defined as a subcategory of tankers, articulated tug barges are considered a barge and a tug separately.” [ISR, p. IV-6.]

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<sup>1</sup> Under subsection (b)(82), the term “vessel” is used interchangeably with the term “ocean-going vessel.” The ATB definition in subsection (b)(7) is therefore internally inconsistent.

This statement of a purported rationale for the ATB exclusion is unsupported by reference to any industry studies, analyses or definitions, particularly as to under what circumstances, and by whom, an ATB in operation could be “considered” to be “a barge and a tug separately”. CARB offers no insight as to the source of its stated rationale, which is not borne out by Crowley’s experience of its ATB operations. During operations in California waters, an ATB of over 120,000 bbl. capacity is the functional equivalent of an ocean-going tanker. Based on their California operations, Crowley’s ATBs cannot be “considered a barge and a tug separately”.

When the rationale given in the Initial Statement of Reasons is compared to the definitions section in the second 15-day changes, the reason for the ATB exclusion is shown to be circular and entirely arbitrary. Where a barge and tug are separated, they do not and cannot function “as one vessel”. According to the regulations, as confirmed by the second 15-day changes, an “articulated tug barge”, *by definition*, functions as one vessel, not as “barge and tug separately”. A separated barge and tug therefore do not, and cannot, meet the regulatory definition, in section 93130.2(b)(7), of “articulated tug barge”.

In excluding ATBs from the At-Berth Rule, CARB failed to consider all relevant industry and environmental factors, and so it did not demonstrate any a rational connection between those factors, the choice made, and the purposes of the enabling statute. Under the circumstances, the only conclusion that can be drawn is that the continuing exclusion of ATBs from the definition of “ocean-going vessels” in the At-Berth Rule, as set forth in section 93130.2(b)(50) of the second 15-day changes, is that CARB refuses to reconsider an arbitrary and capricious decision it made at the outset of this regulatory process. CARB should now reverse this ATB exclusion before the final rule is submitted.

A Crowley ATB of at least 120,000 bbl. capacity should be regulated like any other ocean-going tank vessel. Crowley submits that, by including ATBs from the At-Berth Rule, CARB will not only improve air quality for at-risk communities in the vicinity of California’s ports, but it will also strengthen the At-Berth Rule by making it internally consistent and removing the arbitrary and capricious exclusion of a significant portion of ocean-going vessels calling in California.

CARB’s consideration of the second 15-changes affords an opportunity for CARB to delete the ATB exclusion in section 93130.2(b)(50). This exclusion that does not further the purpose of the At-Berth Rule to reduce emissions from ocean-going vessels docked at California ports and is operationally and practically unjustifiable.

Yours respectfully,

**CROWLEY MARITIME CORPORATION**

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*Vice President & Chief Counsel*  
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