PMSA
PACIFIC MERCHANT SHIPPING ASSOCIATION

November 12, 2021

David Quiros
California Air Resources Board
1001 I Street
Sacramento, California 95814

Subject: PMSA Comments on Proposed Amendments to the Commercial Harbor Craft Regulation

Submitted electronically to https://www.arb.ca.gov/lispub/comm/bclist.php

Dear Mr. Quiros

PMSA has appreciated the opportunity to work with California Air Resources Board (CARB) staff on the development of the harbor craft regulatory concepts and offer these comments on the final Proposed Amendments to the Commercial Harbor Craft Regulation (Amendments) ahead of the Public Hearing.

PMSA Supports AWO Comment Letter

PMSA supports the many significant issues raised by The American Waterways Operators (AWO) comment letters. AWO serves as the expert voice for the harbor craft industry, thus, PMSA's comments will focus on specific concerns and otherwise defer to the AWO remarks. One will note that many of the comments that have been raised were also shared publicly in a 15 signatory California State Legislature comment letter dated August 30, 2021, as well as other Assembly Member and stakeholder comment letters.

Facility Based and Infrastructure Responsibilities Must be Distinct

The responsibilities of infrastructure deployment, recordkeeping and overall facility-based compliance must be clearly obligated to the party which has the legitimate control. Proposing that facility owners and operators be *jointly responsible* for the installation and maintenance of shore power infrastructure of up to 99 kW will certainly cause confusion, and potentially conflict, regarding who will be responsible for purchasing, constructing, and maintaining the infrastructure. It poses a real question of who will then own the expensive infrastructure, as real estate agreements and operators could change, and who would face potential enforcement action from CARB if noncompliant? Furthermore, how would CARB enforce such a vague term under joint liability? Further confounding the issue is the responsibility of shore power infrastructure deployment greater than 99 kW is directed as the responsibility of Vessel Owner/Operator. For an industry that will be negatively impacted by these Amendments and

required to pay millions of hard-earned dollars for new or retrofitted vessels, having assurance of responsibility and ownership for the supporting infrastructure is critical.

The Zero-Emission and Advanced Technologies (ZEAT) Infrastructure Requirements, Section i(2)B, further complicates matters as facility owners and facility operators are *jointly responsible* for cooperating with vessel owners/operators for permitting, construction, installation, and maintenance of the infrastructure. Again, cooperating is an incredibly vague term and raises ambiguity of which party will complete these activities and which would face potential enforcement action from CARB if noncompliant. The proposed language and Table III-9 of the ISOR do not align, further confusing these many vague responsibilities. The marine ports of California have established procedures and contractual obligations for tenant improvements, to which these responsibilities do not align.

Extension E1 Must be Eligible so Long as Conditions Exist

The compliance extension of up to two years for shore power and ZEAT infrastructure delays under Extension E1 is certainly appreciated but may not provide adequate time. As Extension E1 is for unforeseen circumstances *outside of the owner's or operator's control,* the extension should not expire so long as adequate documentation confirming the circumstances still exist and mitigation efforts are attempted in good faith.

The Feasibility Extension Must be Inclusive

The feasibility of meeting performance standards does not change based on location of the home base, thus, the operational thresholds to secure an extension based on true feasibility cannot be based on proximity to a Disadvantage Community (DAC) as no justification exists. Halving the operational hours to 1,300 per year is nonsensical under Extension E4.

Pilot Boats Require Implementation Flexibility

Pilot boats are a unique vessel category and are necessary for pilots to safely navigate large ships to and from port terminals in both ocean and harbor marine conditions. With only 10 pilot boats operating in the state that are tasked with this essential duty, the Amendments would place an undue burden on these vessels that make up a miniscule fraction of commercial harbor craft operating in the state and de minimus contribution to CARB's emission inventory. Marine safety is paramount and pilot boats are compulsory, as such, CARB must provide implementation flexibility in emission performance standards schedules for these unique vessels. The small pilot boat fleet can't all be replaced simultaneously; based on model year of the fleet's engines and proposed implementation deadlines, the fleet would largely need to be replaced or retrofitted within an approximate two to three-year timespan. Retrofits, likely not even possible based on current technology, physical space and weight constraints, take time to complete and would require multiple pilot vessels being out of service during the same period. It is more likely that total replacement of California's pilot boat fleet would be required, at considerable cost and

uncertainty if the new builds could all be manufactured and commissioned in time to be compliant, and ready for their essential pilot service. Pilot vessels are needed at the ready; flexibility must be built into implementation timelines for pilot boats such that no more than one vessel would be taken out of service at any time in each homeport.

Proposed Amendments Require U.S. EPA Waiver

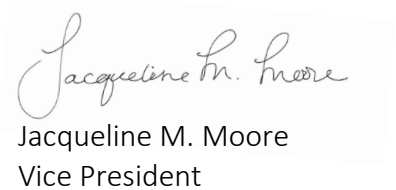
The Clean Air Act requires that California obtain a waiver from the U.S. Environmental Protection Agency (EPA) prior to enforcing any new or non-new off-road emission standard. As previously relayed by PMSA, the characterization of the proposed harbor craft rule as an "in-use standard" is incorrect. Failure by CARB to plan for and obtain an EPA waiver will result in regulatory confusion and uncertainty. CARB's attempt to bootstrap an emission standard requirement into an in-use standard by providing alternative compliance pathways will not shield the proposal from the requirements of the Clean Air Act. In fact, this issue has already been litigated: "Supplying a presumed mode of compliance does not alter the nature of the general requirement limiting emissions. Indeed, the Marine Vessels Rules do not impose an in-use fuel requirement because no particular fuel is required to be used at all." PMSA v. Goldstene, 517 F.3d 1108 (Ninth Cir. 2008).

Similarly, the proposed opacity limit for harbor craft is also a clear emissions standard. The proposed opacity limit would place a numerical limit on emissions that go beyond emissions standard limitations for harbor craft that have already been promulgated by CARB and are enforceable through an EPA waiver. Again, if CARB seeks to enforce an opacity standard, CARB must also seek an EPA waiver. This issue has also been litigated in the same PMSA v. Goldstene case, "In the end, Clean Air Act §209(e)(2) preempts the Marine Vessel Rules and requires California to obtain EPA authorization prior to enforcement because the Rules are 'emissions standard' that require that engines 'not emit more than a certain amount of a given pollutant." PMSA urges CARB to declare their intention to obtain an EPA waiver prior to adoption and implementation of the Amendments.

Conclusion

PMSA sincerely appreciates the opportunity to work with CARB staff throughout the rulemaking process, to ensure a feasible, cost-effective and realistic regulation. Should CARB have any questions, PMSA staff are always available to discuss these or other concerns.

Respectfully,



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