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Peter J. Schrappen, CAE
Vice President – Pacific Region

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Steven S. Cliff, Ph.D.
Executive Officer
California Air Resources Board
1001 I Street, Sacramento, CA 95814

RE: 15-Day Changes after Office of
Administrative Law's Disapproval of Regulatory
Action for the Commercial Harbor Craft Rule

Dear Dr. Cliff:

The American Waterways Operators (AWO) is the tugboat, towboat, and barge industry's advocate, resource, and united voice for safe, sustainable, and efficient transportation on America's waterways, oceans, and coasts. Our industry makes up the largest segment of the U.S.-flagged domestic maritime fleet and represents the most sustainable mode of freight transportation, producing 43 percent less greenhouse gas emissions than rail and more than 800 percent less than trucks. Tugboat, towboat, and barge operations are particularly significant in California, which ranks third among states in waterborne commerce by tonnage and fourth in economic impact, with more than \$12.2 billion in annual economic activity driven by the domestic maritime transportation industry.

Introduction

On September 9, 2022, the California Office of Administrative Law (OAL) published a Decision of Disapproval of Regulatory Action for the California Air Resource Board's (CARB) final Commercial Harbor Craft (CHC) rule. Government Code section 11349(c) requires a regulation to be "easily understood by those persons directly affected by them." OAL determined that the proposed regulatory changes failed to comply with this clarity standard.

AWO and its members have appreciated CARB's willingness to discuss the CHC rule over the last three years and welcome the opportunity to provide additional comments on CARB's proposed changes and OAL's decision.

Comments on Proposed Modifications to Commercial Harbor Craft Regulation

34. Subsection 93118.5(e)(12)(E)3.b.vi

Proposed Subsection (e)(12)(E)3.b outlines the application requirements for the (E)(3) Extension application. Among other things, this subsection requires:

“vi. A list of actions that the applicant has taken to comply or in anticipation to comply with the regulation at the earliest compliance date and supporting documentation to demonstrate that these actions have been taken.”

AWO recognizes the benefit that CARB’s proposed amendment provides by offering examples of what types of actions an applicant can take. However, we still believe that requiring this information puts an undue and unworkable burden on companies to prove that compliance will harm their business. It is impossible for companies to determine whether various business models will prevent this loss. The application package already requires three years of profit and loss statements, three years of federal and state income tax documents, and technical reports to prove eligibility. Subsection (e)(12)(E)3.b.vi is onerous and unnecessary and AWO asks CARB to strike it from the proposed CHC rule.

Additional Comments from OAL’s Decision

1.1 Proposed Subsection (k)(1)(C) of Section 93118.5

Subsection (k)(1)(C) requires training for individuals conducting opacity tests. OAL rejected this subsection, stating that the proposed regulation implies that training courses and certifications for opacity-test procedures are available, but the Initial Statement of Reason (ISOR) indicates they are not. AWO agrees with OAL’s determination and underscores the need for flexibility in this process. Therefore, we recommend changing the ISOR language to the following¹:

“If, during implementation of the Amended Commercial Harbor Craft Regulation, there are challenges associated with the consistent application of the proposed CHC opacity testing methodology, *then an operator may submit an alternative strategy for testing that achieves equivalent results as those required within this subsection or submit an alternate proof of compliance as required by a federal enforcement agency*².”

While standardized testing because of uniform training is important, certain vessels’ operational profiles do not fit into the proposed testing procedures. This change will allow operators to determine the best way to report opacity for their vessel.

¹ Additions to the proposed language are *italicized*.

² An example of an alternate proof of compliance is International Air Pollution Prevention certificates. These certificates are issued by the U.S. Coast Guard or class societies and the program is regulated jointly by the USCG and U.S. Environmental Protection Agency. The certification’s standard is set by the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex VI and the Act to Prevent Pollution From Ships (APPS).

Additionally, AWO urges CARB to clarify which opacity method they want operators to use. Subsection (k)(1) states that “Opacity testing shall be performed...using Society of Automotive Engineers ‘Surface Vehicle Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-Duty Powered Vehicles.’” However, Subsection (k)(4)(B) requires the opacity of exhaust from auxiliary engines to be measured using the test Method 9 - Visual Determination of the Opacity of Emissions from Stationary Sources as described in 40 CFR, Chapter I, subchapter C, Part 60 Appendix A-4. AWO asks CARB to work with industry to identify a reasonable, reliable, and consistent opacity testing method.

Other Comments

AWO appreciates that CARB incorporated recommendations from our previous comments into their proposal, especially the expansion of the (E)(5) Scheduling Extension. The goal of this extension is to make sure owners and operators who are working in good faith are not be penalized for noncompliance if there are project delays outside of their control. Allowing applicants to renew this extension and use it for any equipment, installation or inspection delays will create new flexibility in the CHC regulation that will promote long-term compliance. We would also like to thank CARB for reiterating that any technology an owner or operator is required to install must be approved by the U.S. Coast Guard.

It is essential that CARB continue to engage with stakeholders as they build out their implementation procedures. AWO appreciates having the Alternative Control Emissions (ACE) program as a way for operators to create their own plan for meeting CARB’s emission-reduction goals. As part of the application, operators must demonstrate that their mitigation measures meet or exceed the regulatory requirements. CARB has stated that they would like to create a standard method for calculating emissions reductions to ensure consistency and uniformity in reporting. AWO supports this and requests that CARB work with industry during the development process, publish the draft procedure, and hold a formal comment period before finalizing the methodology. It is necessary that every vessel class under the CHC rule use the ACE emissions calculation.

The current program requires operators to report a vessel’s emissions profile in its homebase and operational area. In order to modify an ACE, an operator needs to recalculate their projected emissions and show that they will not exceed the compliance baseline or increase/transfer emissions into any disadvantaged communities (DACs) prior to making any operational changes. However, tugboats and barges move their homebase depending on where they work. These operators need the flexibility to move their vessels in a timely manner. AWO believes that if an operator has demonstrated that their vessel will continue to meet its emissions reductions obligations in additional air basins and the geographic change will not impact DACs, they should be able to do so without delay. Therefore, we ask CARB to include a grace period that allows owners and operators to continue using their ACE plan vessels while the E.O. reviews the plan modifications. AWO also requests that CARB amend Subsection (f)(1)(B) to allow an ACE application to include multiple air basins:

“An applicant wishing to participate in an ACE may include *one or more air basins and/or one or more harbor craft* in the ACE...”

AWO recognizes that the ACE application covers a single air basin to ensure DACs are not disproportionately impacted by emissions. This amendment would not change that burden of proof. However, allowing an entire fleet spanning multiple air basins to be included in a single ACE will streamline the application process and decrease the number of future modifications to approved-ACE plans.

Additionally, AWO would like CARB to remove the phrase “under the person’s direct control” from Subsection (f)(1)(B), allowing a vessel or operator to apply for an ACE.

Conclusion

Thank you again for the opportunity to submit additional recommendations on the Commercial Harbor Craft Rule. We would be pleased to answer any questions or provide further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Schrappe". The signature is fluid and cursive, with the first name "Peter" being more prominent and the last name "Schrappe" following in a similar style.

Peter Schrappe
Vice President – Pacific Region