



R. E. STAITE ENGINEERING INC.

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October 21, 2022

Clerks' Office
California Air Resources Board
1001 I Street
Sacramento, California 95814

Attn: Steven Cliff, Ph.D., Executive Officer
California Air Resources Board

RE: Public Comments

Subject: Second Notice of Public Availability of Modified Text and Availability of Additional Documents and Information to the Proposed Amendments to the Commercial Harbor Craft Regulation

Dear Mr. Cliff:

R.E. Staite Engineering, Inc. (RES) is R.E. Staite Engineering, Inc. is a family owned, heavy marine construction company headquartered in San Diego. RES is classified as a Federal Small Business within the System for Award Management (SAM). In order to maintain our small business status, we are limited to a revenue of \$32,500,000 per year over an average of three years. RES owns over \$50 million dollars of specialized marine equipment that we use to perform predominantly government contracts that require ocean-going marine equipment such as ocean-going tug boats, dredges and 3,000 CY dump scows, in addition to the various support vessels such as flat deck barges, work boats, survey boats and crew boats that are required for most of our projects. Since 2007, RES has upgraded 30+ engines, most of them at our own expense within our limited income bracket. Every piece of our marine equipment is affected by the Proposed CHC Amendments. The Proposed CHC Amendments will have a devastating impact on our company; R.E. Staite Engineering, Inc. will likely go out of business. The impacts of the elimination of our business will not just impact our employees, but will impact the greater San Diego region and impact government agencies that we perform work for. It is not an insignificant loss.

We are responding to the Second Notice of Public Availability of Modified Text and Availability of Additional Documents and Information to the Proposed Amendments to the Commercial Harbor Craft Regulation. We have provided feedback to the changes at every opportunity. As a small business, we do not feel heard or understood. Our suggestions for making this rule workable for our company have not been incorporated into the draft proposals, our company data that we have shared with CARB has not been used in a way that we understand, and we still have serious concerns about a majority of the data and assumptions used for parts of the analysis.

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Our understanding last November was that Staff would work with Stakeholders to make grant funding more accessible and to make extensions easier and more affordable. The clarifications that have been made and the workshops that have been held have not affected grant funding at all. We have been directed to many resources that we knew of and have taken advantage of previously. We were told that Staff could not affect change at the grant level, so we are left with the same programs, same rules and dwindling possibilities for funding due to timing and a fleet that has to be upgraded within a short period of time. We would request that the Board direct Staff to initiate changes, particularly to the Carl Moyer Grant Program that would allow an extended period of time to be eligible for grant funding. As the program stands now, RES may not be able to qualify for any funding for the future upgrades.

Our last comments to CARB Staff on September 13, 2022, requested that a flow chart or more simplified way of determining what is required for an extension be provided. Ms. Haynes followed up with an e-mail to RES on September 15, 2022 to let us know "We are in the process of preparing several "fact sheet" documents to post on the CHC program webpage that will more succinctly explain the requirements. One of these will be a fact sheet explaining extensions, including a summary in table format that should be easier to follow than the regulation language itself." The language surrounding extensions is difficult to decipher and makes it hard to plan for change when the timeline cannot be easily determined. Not working with the language and rules everyday puts companies such as ours at a disadvantage. There may be generous extensions available to us, but we can't find them buried in the text or within the new rules and exceptions. We request that the "fact sheets" be generated by December 31, 2022 to allow for planning for extensions.

The Second Notice of Public Availability of Modified Text and Availability of Additional Documents and Information to the Proposed Amendments to the Commercial Harbor Craft Regulation describes additional modifications made to the regulatory language to address the concerns noted by OAL in its Decision of Disapproval of Regulatory Action, and to provide greater clarification and enforceability of the proposed amendments. RES has reviewed the new proposed revisions and would like to provide additional feedback related to the following changes detailed in the Notice:

25. In subsection 93118.5(e)(12)(B)6., staff replaced the word "locking" with "disabling" to clarify that an engine that does not meet performance standards but remains installed on a vessel must be disabled to prevent operation.

RES objects to locking or disabling any marine vessel to prevent operation. Unlike land equipment, a marine vessel cannot be "parked" somewhere and remain safe. A marine vessel must be constantly maintained, operating or not. Unless the vessel is hauled out of the water at great cost, any vessel that does not meet the performance standards will be docked at a wharf or similar structure. There are many reasons a vessel may need to be moved quickly other than for regular operation, such as for storm protection, regular maintenance or accessibility to an area where it is berthed. If an engine is disabled it may affect the safety of people and property adjacent to it. RES suggests that rather than be required to disable a vessel that an Owner be required to submit a signed statement that the vessel will not be operated unless it is for safety, maintenance or accessibility.

34. In subsection 93118.5(e)(12)(E)3.b.vi., staff added “Such actions may include developing new business structures (e.g., forming a new corporation) or restructuring existing accounting practices to pass some or all of the compliance costs associated with this regulation onto the consumers and entities receiving the applicant’s services, replacing existing engines with engines certified to more stringent marine engine or off-road certification standards, and procuring loans to finance anticipated compliance costs” to clarify examples of key actions applicants should include in the application and to match the intent as provided in the ISOR, p. IV-82. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.12 of its memo.

The American Waterways Operators (AWO) submitted an objection in their letter to Staff on September 14, 2022 related to this section. Their concern, taken from their September 14th letter states:

“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 is extremely concerned about this reporting requirement. The language 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. Proposed Subsection (e)(12)(E)3.b.vi is onerous and unnecessary and AWO asks CARB to strike it from the proposed CHC rule.”

CARB staff has revised this section in the 2nd Notice to expand upon the list of items necessary to prove eligibility in addition to three years of profit and loss statements, three years of federal and state income tax documents, and technical reports. It is requested that this section be omitted as it is unnecessary and onerous as originally detailed above by AWO.

As an invested Industry Stakeholder, and a business that has participated in the CHC Amendment process, we request that you take our objections and comments regarding the CHC Amendments into consideration. We value any further clarification and simplification of the Amended CHC Regulations that can be provided.

Sincerely yours,

R.E. STAITE ENGINEERING, INC.


R.A. Carpenter
President