

23 April 2020

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

Re: Proposed 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 changes proposed by California Air Resources Board ("CARB") to the At-Berth Rule (the "15-Day Changes"). As the largest operator of tankers and large petroleum articulated tug barges ("ATB") in the United States whose tankers and ATBs operate regularly in California ports, Crowley is directly affected by the Proposed Regulation.

There are two aspects of the proposed 15-Day Changes to which we draw your attention:

- (1) the proposed updated implementation schedule is not practical for tankers; and,
- (2) the 15-Day Changes omit the modification requested in our written comment dated December 6, 2019, specifically, that the Proposed Regulation be modified to delete the arbitrary and improper exclusion of ATBs from the definition of ocean-going vessels.

With regard to the proper inclusion of ATBs within the category of vessels regulated under the Proposed Regulation, CARB's failure to consider Crowley's written comment is inconsistent with its duties under the Administrative Procedures Act, Cal. Gov. Code, §§ 11346 *et seq.*, and with the direction the Board, as set forth in Resolution 19-28 of December 5, 2019.

Crowley respectfully submits that the Proposed 15-Day Changes be modified as set forth herein.

I. Preliminary Comment

Crowley applauds CARB's leadership in the stewardship of California's air quality and shares the goals of the Proposed Regulation to reduce the impacts of air pollution for Californians. Furthermore, Crowley appreciates CARB's recognition that the United States domestic maritime industry's fleet of ocean-going vessels play a substantial role supporting the economies of West Coast states and the livelihood of their citizens, including those of California, with respect to the region's requirements for coastal energy transportation.

By advocating for the Proposed Regulation to include an implementation schedule that is practical for tankers, and that ATBs be included within the definition of vessels it regulates, Crowley proposes amendments that, we submit, will improve the Proposed Regulation.

There should be no doubt as to Crowley's expertise and experience in connection with these matters, particularly in relation to the practicalities of the operation of tankers and ATBs. Crowley has proven itself as an innovator and leader in petroleum transportation through the development of an unrivaled ATB and tanker fleet which includes the newest and most sophisticated United States-flagged vessels. The company owns and operates a diverse, sophisticated fleet of double-hull tank vessels, enabling us to offer a wide range of environmentally safe and reliable transportation options and meet virtually any commercial or governmental customer requirement. In so doing, we maintain an extensive fleet of 40 United States flagged product and crude oil tankers and large petroleum ATBs ranging in size from 20,000 deadweight tons (DWT) to 115,000 DWT that safely and reliably carries petroleum in bulk throughout the United States East, Gulf and West Coasts, including Alaska, as well as international ports.

Crowley is directly affected by the Proposed Regulation. Crowley-affiliated companies operate self-propelled tank ships and ATBs that regularly call at California ports, general cargo vessels and container ships that may call California ports, and a fleet of harbor tugboats servicing the San Francisco Bay area, the Los Angeles-Long Beach area, and San Diego. Because of Crowley's extensive experience with vessel operations across a broad range of vessel types, many of which may be covered under the proposed At-Berth rule, Crowley is uniquely qualified to submit these comments to CARB.

II. Support for World Shipping Council Comments

Crowley is a member of World Shipping Council ("WSC") and supports WSC's comments provided to CARB on proposed 15-day changes to the At-Berth Rule.

III. Accelerated Tank Vessel Compliance Dates

The accelerated tank vessel compliance dates are not practical.

The proposed 15-day Changes call for an accelerated timeline to 2025 for compliance by tank vessels calling Los Angeles-Long Beach, and to 2027 for compliance by tank vessels calling at other California ports. Crowley accepts that there is substantial urgency surrounding reducing emissions from vessels at berth in California. We respect CARB's interest in accelerating the compliance timeline. But adopting an accelerated timeline for compliance that cannot be complied with by the industry is counterproductive. The accelerated timeline proposed is contrary to the comprehensive comments presented to CARB late last year by both the Western States' Petroleum Association and Power Engineering and Construction, who detailed the significant infrastructure modifications required and showed that these modifications rendered it impractical to meet CARB emissions control requirements by even the original 2027 and 2029 deadlines, let alone the accelerated timetable.

Crowley is not aware that there is any evidence to support the theory that the use of an emissions capture barge is or could be a safe alternative for petroleum tank vessels. Shore-side electrical infrastructure or shoreside emissions capture are options that have the potential to be implemented safely, but only if such implementation provides sufficient time for design, permitting, construction, installation, and commissioning (both of onshore and vessel components). But we submit that such processes could not reasonably be completed by 2025 or 2027.

Under the circumstances, we respectfully request, therefore, that, with reference to objective evidence, CARB should revisit the accelerated timelines set forth in the proposed 15-day changes to the At-Berth Rule.

IV. It Would Be Arbitrary and Capricious to Exclude ATBs from the Proposed Regulation

The exclusion of ATBs from the definition of tankers in the proposed 15-Day Changes makes no common sense and is inconsistent with industry practice. ATBs, which are ocean-going vessels designed to transport oil cargo between ports, squarely fall within CARB's own definition of "ocean-going vessels". See, Initial Statement of Reasons, dated October 15, 2019 (ISoR), p. ES-1. In the ISoR, CARB itself recognized that,

"When an ATB is fully connected, it may meet the definition of ocean going vessel, as defined in this chapter."

Respectfully, Crowley submits that there should be no doubt: an ATB that is "fully connected", to use CARB's own language, definitely meets the definition of ocean-going vessel.

In short, there can be no justification for excluding ATBs from the definition of “ocean-going vessel” for the purposes of regulation under the Proposed Regulation.

An ATB is clearly a tanker. It carries oil cargoes from port to port and conducts operations at berth that are effectively indistinguishable from those of a tanker. The particular nature and functions of ATBs properly render these tankers, when transiting within California ports and conducting cargo operations at berth, to be within the definition of “ocean-going vessels” for the purpose of being regulated vessels under the Proposed Regulation. Merely because the propulsion unit of the ATB is not contained within the same hull as the cargo tanks and pumps does not prevent an ATB from operating as a tanker. CARB has acknowledged this fact: In its Standardized Regulatory Impact Assessment for the Proposed Regulation, dated August 1, 2019, CARB properly defined Tankers by reference to the industry meaning of the term explained in the publication *Marine insight* (see, p. 9 thereof); that definition of tanker included among the various types of tanker Integrated Tug Barges, a forerunner to the modern ATB. To adopt this definition but arbitrarily exclude ATBs from the regulation makes no sense.

In the ISoR, CARB staff stated, without support or substantiation:

“However, despite being defined as subcategory of tankers, ATBs are considered a barge and a tug separately.” [p.IV-6]

Crowley submits that this statement is plainly incorrect. When the tug is connected to the barge, an ATB is not considered to be a separate tug and barge, but as one vessel, functioning as a tanker. For the purposes of regulating the emissions of an ATB conducting operations at berth in a California port, there can be no justification whatsoever in not treating an ATB like any other tanker.

The At-Berth Rule arbitrarily excludes ATBs from the definition of ocean-going vessels and improperly classifies ATBs as commercial harbor craft, which they are not. When the ATB is underway or conducting cargo operations at berth, the tug unit is not operating separately as a harbor tug. Crowley commented extensively on this matter in a 6 December 2019 letter to CARB regarding the At-Berth rule. CARB has offered no reasoning in the 15-day Changes that explains this anomaly. As such, the 15-day Changes are flawed and incomplete.

To summarize, ATBs are principally United States-flagged, Jones Act-qualified combined tug and barge vessels consisting of a large-bulk, liquid shipping capacity barge connected to a large ocean-going tug for propulsion. These vessels are functionally equivalent to ocean-going, medium-range, self-propelled tankers. Under the Board’s current proposal, all self-propelled bulk tank vessels calling at port in California—whether foreign or US-flagged—will be subject to the At-Berth Rule while their functional equivalents, Jones Act ATBs, will not. This makes little sense, especially given that ATBs operate at multiple ports of call across the United States and internationally. They are regulated as ocean-going vessels under numerous applicable Federal regulations and should be included as such under the Proposed Regulation.

If not included in the final At-Berth Rule, ATBs and self-propelled tank vessels will face significantly different emissions control requirements in California, despite performing the same function. This would be neither rational nor fair, considering that self-propelled bulk liquid tankers, many of which fly foreign flags of convenience, are ATBs' competition in interstate and international commerce. Including ATBs in the final rule will ensure they are subject to the At-Berth Rule's cold iron, plug-in, or emissions capture requirements when moored alongside bulk liquid terminals in California.

CARB's failure to address the classification of ATBs in the proposed 15-day changes moves the agency further along a path that will result in the control of emissions from two types of vessels with nearly-identical operational profiles – ATBs and tank ships – under separate regulatory schemes. As noted in Crowley's 6 December 2019 letter, this approach will generate an illogical, inefficient, costly patchwork regulatory scheme applicable to the movement of petroleum products in bulk between California ports and among California and other West Coast States or Foreign countries. This disparity in treatment between vessels also raises regulatory process issues under applicable statutes and Constitutional violations related to ATBs' role in interstate commerce. Failing to include ATBs in the At-Berth Rule would not advance CARB's interest in improving California air quality. There can be no justification for a regulation that treats ATBs differently from other tankers and ocean-going vessels.

The Board's resolution 19-28 directed CARB, in preparing the 15-Day Changes, to consider any additional conforming modifications that are appropriate and to consider and evaluate all comments in doing so. CARB evidently failed to take Crowley's December 6, 2019 comment into proper consideration. In failing to do so, CARB has, we submit, acted arbitrarily and capriciously and not in accordance with the California Administrative Procedures Act. Moreover, by failing to consider and incorporate Crowley's comment and position in the proposed 15-Day Changes, CARB is proposing a regulation that is neither workable nor fair to the segment of the industry that, like Crowley, relies upon its ability to transport oil products to California ports using ATBs.

We urge you to reconsider.

Yours respectfully,
CROWLEY MARITIME CORPORATION

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