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Docket Management Facility (M-30)
U.S. Department of Transportation
ATTN: CDR Tim Cummins
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

RE: USCG-2009-1080, Safety Zone and
Regulated Navigation Area, Chicago
Sanitary and Ship Canal,
Romeoville, IL

Dear CDR Cummins:

The American Waterways Operators (AWO) is the national trade association for the tugboat, towboat and barge industry. AWO represents 350 member companies in an industry of nearly 4,000 towing vessels, more than 27,000 dry and liquid cargo barges and over 30,000 mariners. About twenty AWO members transit through, or are based on, the Chicago Area Waterways System (CAWS). AWO appreciates the opportunity to comment on the U.S. Coast Guard's revised temporary interim rule (TIR) for the Regulated Navigation Area (RNA) as it applies to vessels transiting the Chicago Sanitary and Ship Canal between Mile Markers 295.5 and 297.2. ***AWO encourages both the U.S. Coast Guard and the U.S. Army Corps of Engineers (Corps) to continue to ensure the safe, free flow of commerce through this Congressionally-authorized waterway.***

AWO members have demonstrated their full commitment to protecting the ecosystems of the Great Lakes and the Western Rivers through their collaborative work with the Corps and the Coast Guard to build, test and maintain the electric dispersal barriers in the Chicago Sanitary and Ship Canal (CSSC) over the past several years. AWO has provided comments on the matter of ecosystem protection to the Asian Carp Regional Coordinating Committee, the U.S. House Water Resources & Environment Subcommittee of the Committee on Transportation & Infrastructure, the Illinois Senate Environment Committee, the Chicago City Council and the Corps. These comments have included recommendations on strategies to prevent Asian carp entry into the Great

Lakes while preserving the waterborne commerce that is essential to the nation. AWO has also worked cooperatively with the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service, the Council on Environmental Quality and state environmental agencies on other issues, including the recovery of threatened and endangered species and reducing emissions from engines and tank barges.

AWO submitted comments to the Coast Guard in February on the previous TIR. Many of the same concerns are still contained in this most recent TIR issued on June 25.

Based on the experiences of our members, and our review of the revised TIR, AWO would like to comment on the following portions of the rule; 1) the discovery of carp in the waterways; 2) the geographic range of the RNA; 3) the movement of carp through the waterways; 4) the handling and discharge of ballast water; 5) the economic impact statement and the effect of the TIR on small businesses; 6) the need to notify industry in advance of closures; and, 7) the safety implications of the electric barriers.

Discovery of Carp in the Waterways

As in the original TIR, this revised version includes a passage that reads, “One Silver Carp was found in the area immediately south of the barrier” during the December 2009 application of rotenone. AWO, again, respectfully submits that this statement is not accurate. The single carp that was found was located just above the Lockport Lock and Dam, nearly six miles below the barrier. The difference is important because the TIR’s language suggests an imminent arrival of the carp into the area just south of the barrier, a suggestion that has not been corroborated by any physical evidence.

The misleading implication of the carp’s proximity appears to follow from the unfortunate willingness of federal and state authorities to treat positive eDNA samples as proxies for physical discovery, as can be seen by positive samples frequently leading to waterways closures. A positive eDNA sample is not a substitute for the actual capture of the fish, a point which has been made clear by the fact that there has been a complete lack of correlation between positive eDNA “hits” and carp findings. For example, the June discovery of a carp in Lake Calumet was the result of routine fishing in the lake and was not in response to any eDNA feedback. When assessing the level of immediacy of the carp, it is vital to present known facts of the situation so that future decisions can be made based on science and not emotion. This will ensure that decisions are made that will prevent the spread of the carp. Therefore, ***AWO strongly requests that the Coast Guard correct the record with regard to the December Silver Carp finding, and make clear that a positive eDNA result is not a substitute for physical discovery.***

Geographic Range of RNA

Although the revised TIR reduces the range of the RNA in the CSSC from 2.5 to 1.7 miles, it continues to represent an unnecessary expansion from the previous RNA. As AWO stated in our February comments, ***the expansion will increase traffic congestion and costs without producing an increase in safety.*** The previous range included the area

from 1,200 feet south of the Romeo Road Bridge to 1,200 feet north of the Aerial Pipeline Arch, or between Mile Markers 296.1 and 296.7 of the CSCC. The active area for electricity is between Romeo Road Bridge and the Aerial Pipeline Arch, and the largest tows traveling through the area are less than 1,150 feet long. Therefore, it is only possible to operate in an area of concern within 1,200 feet on either side of the two structures.

Additionally, vessels in fleets or at terminals within the proposed RNA would have to leave due to restrictions on passing, further increasing economic hardship on the industry and the region. This would also affect the terminal at Midwest Generation - Will County Station located at Mile Marker 296.0. The coal unloaded at this plant provides a significant amount of energy for the Chicago area, and unnecessary delays in these shipments will have far-reaching economic impacts. ***AWO, once again, strongly urges the Coast Guard to only include the area from 1,200 feet south of Romeo Road Bridge to 1,200 feet north of the Aerial Pipeline Arch as the geographic range of the RNA.***

Movement of Carp Through the Waterways

In the February comments, AWO requested that the Coast Guard “correct its implication that barges have been transporting carp across the barrier, when their having done so has yet to be established.” In addition to the points we made in our original comments, in the months since our submission, the initial finding of the multi-agency Towboat/Barge Sampling Work group has been that the industry’s vessels do not serve as vectors for carp. Any hypothesis that vessels serve as vectors also has to contend with the fact that carp have been caught in at least four landlocked locations in the Chicago area since 2003, the most recent such capture having taken place earlier this summer in Garfield Park Lagoon in Chicago. Moreover, the forensics performed on the carp that was found in Lake Calumet in June, referenced earlier in these comments, indicated that the carp was most likely placed there by humans, and did not arrive in the lake as the result of vessel movement through the electric barriers, or by recently moving through the barriers.

AWO greatly appreciates that the Coast Guard, in this revision, refrained from repeating its statement from the original TIR that the bringing of non-potable water across the barrier is “considered a bypass vector for transporting Asian carp eggs or juvenile fish from south of the barrier to north of the barrier.” In order that the public record is as accurate as possible, however, ***we ask that the Coast Guard officially state that there is no evidence that barges or towboats serve as vectors for Asian carp transport.***

Handling and Discharge of Ballast Water

The original TIR contained provisions for the transportation of ballast water across the safety zone which are still in effect. AWO reiterates our concerns with two of these provisions. First, the TIR states that “vessels are prohibited from transiting the safety zone with non-potable water on board in any space except for water on board that will not be discharged on the other side of the safety zone.” ***In order to be consistent with the***

Coast Guard's ballast water regulation, AWO suggests adding "water on board from a commercial or municipal source (which ultimately could be discharged)" to the exception language for transit prohibition. This addition would provide consistency because water from a municipal or commercial source is no longer potable when placed in a ballast or void tank, although it is still suitable for discharge without being non-compliant with the afore-referenced ballast water regulation. Our industry currently maintains full compliance with Coast Guard standards on ballast water and is committed to minimizing the risk of invasive species transfer.

Second, the Coast Guard's ballast water regulation and standard operational procedures must be consistent throughout the TIR's provisions on discharging. For example, the language stating that "water in void spaces being unintentionally introduced through cracks or other damage to the hull" is to be included in the definition of non-potable water does not take into account the operational realities of the industry. Salt, among other commodities, is often transported through the CSSC in older barges. As these barges are more prone to leakage, they would be likely to run afoul of the "cracks" prohibition in the TIR. In addition to the expenses incurred by industry in replacing countless barges, this prohibition does not recognize that when water is discharged, it is for the safety of the crew and the stability of the vessel. As a result, *an inadvertent leakage should not be held as violation equivalent to a discharge that is not in compliance with the Coast Guard regulation on ballast water.*

Economic Impact Statement and Effect on Small Businesses

As AWO indicated in its February comments and through the comments it submitted to the Coast Guard and the Office of Management and Budget on the notice of proposed rulemaking for this RNA in July 2009, the economic impact of the TIR is high. Additionally, AWO submitted an affidavit, which is enclosed with these comments, to the U.S. Supreme Court in January 2010 as part of the case, *Michigan v. Illinois*. The affidavit illustrates that the Coast Guard's statement that the TIR "is not an economically significant rule" is not accurate. For a comprehensive description of the industry's impact on the regional economy, we also recommend a review of the attached economic study completed by DePaul University in April. This study found a conservative and preliminary economic value of the industry to be \$4.7 billion.

With regard to small businesses, dozens of barge and towing operators, ranging from small, family-owned operations to major corporations, routinely use the CSSC. AWO was not able to locate any substantial analysis of this range of operators in the Coast Guard's economic study. Furthermore, the Corps' September 2009 termination of bow boat funding, in spite of the CSSC being a Congressionally-authorized waterway, will continue to put a strain on the resources of smaller companies as they seek to fund the required service. Currently, companies transporting cargo through the fish barrier are paying an average of \$1,200 per round trip for the use of these bow boats. The use of

bow boats also create delays in commercial traffic, a state of affairs that is not cost-free to towing companies and their customers.

As was seen during the week-long August 2009 closure of the CSSC, the cessation of waterborne commerce for even a limited period of time has a large effect. During this closure, an estimated 16 towing vessels were stranded in the canal at a cost of \$5,000 to \$12,000 a day per boat. On a yearly basis, 16.9 million tons of valuable commodities move through the CSSC. Additionally, the introduction of the U.S. Maritime Administration's "Marine Highway" program may well facilitate an even greater amount of navigation. It is also not clear that either the economic impact statement or the small business analysis takes into consideration the shipyards that service the towing industry or the terminals of varying sizes that receive, ship, and store cargo. ***Considering that this TIR alludes to possible imposition of limits in vessel traffic through the CSSC in the near future, these economic effects must be calculated.***

AWO urges the Coast Guard to reassess its small business analysis and economic impact statement in light of these factors. We also urge the Corps to develop stable funding for bow boats, and we request that the Coast Guard commit to reopening the TIR for comment if appropriate federal funding for the bow boat is not forthcoming by January 1, 2011.

Notice to Industry in Advance of Closures

AWO greatly appreciates the advanced warning of more than 30 days that the Coast Guard provided regarding the temporary closure of the CSSC from September 7 through September 11 in order to install Barrier IIB's underwater structures. The realities of barge transportation are such that towing companies and their customers need a minimum of 30 days warning prior to any disruption. The average transit from Houston to the Chicago area is 22 to 24 days. This is transit time only and does not include loading, unloading or any unforeseen delays. Without the 30-day notice, companies cannot make sound business decisions because, as with any transportation system, customers count on reliability and just-in-time deliveries. The Coast Guard's recognition of these business concerns is commendable. ***AWO requests that the Coast Guard continue to provide the industry with at least 30 days notice and a firm timeline prior to any waterways closure in order to ensure appropriate business planning.***

Safety of Electric Barriers

AWO has stated in a variety of forums that it strongly supports the presence of electric dispersal barriers in the CSSC as a way to prevent the advance of invasive species. In order to be able to fulfill our mutual goals of ecosystem protection, the free flow of waterways commerce and the safety of mariners, it is essential that the history of the barriers be presented in an accurate fashion. Unfortunately, there continue to be several areas in the TIR where the historical record contains errors.

First, the text states that the Corps “selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.” The Corps selected the barrier, however, because it was directed to by the U.S. Congress through the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. Second, there was no proven history of the use of such a barrier in navigable waterways. Indeed, on the question of safety, the barriers have a history of causing injuries, and testing performed by the U.S. Navy has led to the conclusion that the current voltage could kill a human. The frequent closures that have been necessary while the voltage has been adjusted and while testing has taken place indicate that the barriers’ potential for harm is quite high.

Safety remains a concern for industry as Barrier IIB is activated in the near future. Given the Coast Guard’s statement that during this barrier’s safety testing, “fewer vessels will be given permission to enter the RNA and safety zone until further safety testing and analysis can be completed,” it is clear that serious questions about vessel and mariner safety remain. ***Before moving to higher voltages, AWO strongly requests that the Coast Guard and other federal agencies conduct testing to ensure mariner safety.***

Thank you for the opportunity to comment on this TIR, especially at this late a date. If the Coast Guard would like further information, AWO would be pleased to provide it.

Sincerely,

A handwritten signature in cursive script that reads "Lynn M. Muench". The signature is written in black ink and is positioned above the typed name.

Lynn M. Muench

Enclosures: - Affidavit submitted by AWO in January 2010 in the case of *Michigan v. Illinois*;

- April 2010 report from DePaul University titled, “An Analysis of the Economic Effects of Terminating Operations at the Chicago River Controlling Works and O’Brien Locks on the Chicago Area Waterway System”

