The American Waterways Operators

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August 17, 2023

RE: AWO Comments to the Mississippi River Commission

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 is the largest segment of the nation's 40,000-vessel domestic maritime fleet and moves 665 million tons of cargo each year safely and efficiently through 25,000 miles of inland and intracoastal waterways, the Great Lakes, and the Atlantic, Pacific and Gulf coasts. This includes more than 60 percent of U.S. export grain, energy sources such as coal and petroleum, cement, iron ore, and other bulk commodities critical to the U.S. economy.

AWO welcomes the opportunity to submit comments on behalf of the towing industry to the Mississippi River Commission (MRC) during this low water tour and appreciates MRC's engagement with our industry over the years. We share a mutual concern for the Mississippi River and its tributaries. These comments reflect that, but they also highlight one overarching concern: navigational safety. Commerce moving on the rivers is an incredible asset for the American people. The 2022 Transportation Statistics Annual Report[1] noted that, in 2020, 165.5 million tons of freight moved between the 12 states that touch the Mississippi River system. However, low water and other challenges are creating new navigation concerns and underlining the need for consistent, transparent, and proactive solutions that protect communities, mariners, and the environment.

Today I plan to address: 1) the inland waterways regional dredge pilot program; 2) Corps-TVA collaboration; 3) the permitting process; 4) the CEMUS dock; 5) the Delta Field Mat Casting Field; and 6) the proposed Brandon Road electric barrier.

**Inland Waterways Regional Dredge Pilot Program**

In January 2023, the U.S. Army Corps of Engineers (Corps) published a request for comments on implementation guidance for the Water Resources Development Act (WRDA) of 2022. Section

[1] U.S. Department of Transportation, Bureau of Transportation Statistics, Transportation Statistics Annual Report 2022 (Washington, DC: 2022). https://doi.org/10.21949/1528354

8133 of this law established a five-year Inland Waterways Regional Dredge Pilot Program with the goal of improving year-round inland navigation reliability; increasing freight capacity on inland waterways; and enhancing the availability of containerized cargo. The inland waterways are a vital part of America's supply chain and AWO strongly supports the timely implementation of this program. Doing so will ensure that navigation channels, as well as ports and harbors, are maintained to the authorized depth of 12 feet on the lower Mississippi River in a cost-efficient manner and prevent shutdowns, especially during low water, because of safety concerns.

AWO recommends that the Corps strategically award dredging contracts that will proactively address trouble spots on the river and decrease response time during significant water events. This will ensure that there are minimal impacts to the country's supply chain. The Corps is already improving maritime transit with similar programs in the Pacific Northwest and in the Lower Mississippi's deep-draft areas. Determining what works well elsewhere will aid the Corps in executing the program successfully, providing a significant return on investment for the nation.

**Tennessee Valley Authority (TVA) Collaboration**

The TVA and the Corps are both responsible for maintaining navigable waterways. This requires regular coordination and collaboration. Recently, flow releases from TVA into the Ohio River have made navigation on the Mississippi dangerous. The Corps' Great Lakes and Ohio River Division (LRD) needs to work more closely with TVA to improve communication and ensure safe and reliable flows.

AWO also remains concerned about the speed of the guide wall repair at Wilson Lock. This lock, located at Tennessee River mile 259.4, is the highest single lift east of the Rocky Mountains. In February 2022, the lock's "floating" guide wall sank. It has been well over a year and this structure is still not repaired. Navigation through this lock remains hazardous without a guide wall or helper boats, forcing tows to break apart and reassemble in order to safely transit the lock. Because TVA and the Corps have joint management of this facility, there has been confusion about who has the authority to rebuild the guide wall and which agency will pay for the repairs. Given the military significance of some of the commodities that move through Wilson Lock, ensuring timely repairs is also a matter of national security. Both the Corps and TVA need to coordinate and take immediate action to identify a funding source and rebuild the guide wall, which is critical to the nation's economy and security.

**Consistency in Permitting Procedures**

AWO and its member companies have experienced significant differences in how Corps Districts process permit applications. Some Districts, such as the Rock Island District, are extremely transparent to stakeholders, , providing an opportunity to weigh in during the review process, while others have required a Freedom of Information Act (FOIA) request even to see an application. Transparency is essential to a reasonable and thoughtful permitting process.

AWO respectfully requests that the Corps participate vigorously in a Quality Action Team put together by the Coast Guard-AWO Safety Partnership's Mid-America Regional Quality Steering Committee, which will provide a collaborative opportunity for the Coast Guard, Corps and industry to identify permitting best practices that facilitate the safe and efficient flow of maritime commerce.

**CEMUS Dock**

In 2021 CEMUS requested a permit from the Corps which authorizes docking of a Panamax-sized cargo ship at the facility. The dock is located on a stretch of the Mississippi River that has been called "one of the more treacherous locations on the Mississippi River system. Stakeholder analysis determined that this project "would increase the probability of a major marine incident," that using this dock would result in "loss of life, oil, or hazardous material release," and that "it is not feasible for vessels to be moored at the CEMUS dock when barge tows need to navigate." All Corps permits state that if the structure or activity presents an "*unreasonable obstruction to free navigation of the navigable waters*" the structure needs to be removed.

In 2022, AWO and other stakeholders asked the Coast Guard to request that the Corps require CEMUS to perform a Navigation Safety Risk Assessment (NSRA) to evaluate the permit. The request was granted. Following AWO's update at the April MRC high water tour, CEMUS submitted a scoping proposal for the NSRA to the Corps and Coast Guard that the agencies rejected as inadequate. The towing industry believes the Corps should deny the permit because of the unreasonable obstruction to navigation and safety risk the dock would pose. For a more detailed overview of this issue, see the attached AWO comments.

**Delta Point Casting Field**

The Corps has proposed a project to reduce flooding impact at the Delta Mat Casting Field in Vicksburg, MS. This project will be located at MM 438 on the Mississippi River just north of the Vicksburg Bridge, an area described by mariners as one of the most challenging two-mile stretches on the river with a history of bridge allisions. The Corps' flow model estimates that the Casting Field Dikes will result in a three percent change in velocity north of the bridge. In an area where flow is more than ten miles per hour at high water, this change so close to the upriver side of the Vicksburg Bridge is likely to significantly impact navigability. Industry members from the River Industry Executive Task Force (RIETF), a collaboration between the Corps, USCG, and maritime industry, have recommended raising two of the dikes and curving a third in order to minimize the impact on navigation.

AWO urges the Corps' Mississippi Valley Division to consider alternative project designs and consult with Coast Guard - Sector Lower Mississippi River, RIETF and/or the Lower Mississippi River Committee (LOMRC) on safety concerns. The towing industry understands how critical the casting field is to maintain the river; we need to find a way to protect both the field and the safety of navigation.

**Brandon Road Electric Barriers**

AWO remains concerned that adding additional electric barriers, as currently proposed as part of the Brandon Road Project, would increase safety risks to mariners operating through the Brandon Road Lock as well as involve significant capital expenditures without meaningfully reducing the movement of invasive carp to the Great Lakes. The current electric dispersal barrier system near Romeoville, Illinois is the only location on the navigable waterways where the Coast Guard will not rescue individuals who fall overboard due to the unsafe conditions. Over 20 AWO member companies rely on safe and efficient passage through the Brandon Road Lock. Installation, maintenance, and safety testing have already caused several extended closures and an additional electric barrier on the Chicago Area Waterway System would present a safety hazard to all who traverse the area, decrease navigational efficiency, and increase operating costs.

AWO and our coalition partners are pleased at the collaboration between the Corps, affected states, and other federal agencies and private sector stakeholders. Our goal is to support technologies and embrace actions that will safely reduce the risk of invasive carp movement while not allowing "obstruction to, or interference with, the navigability of a public body of water."[2] To this end, we recommend the use of technologies or actions, such as overfishing, bubble curtains, and acoustic deterrents, that effectively prevent the movement of invasive carp without jeopardizing safe navigation.

**Conclusion**

As stated above, AWO has several requests to further the safety and efficiency of navigation on the Mississippi River:

- Permits for the Inland Waterways Regional Dredge Pilot Program should be awarded as soon as possible.
- The Corps and TVA should consider ways to improve communication and collaboration.
- A Quality Action Team should be formed under the Mid-America RQSC to examine and identify best practices for the evaluation of permits and ensure the safe and efficient flow of commercial navigation. The Corps should be an active participant in this QAT.
- The Corps should deny the CEMUS dock permit as an unreasonable obstruction to navigation.
- The Corps should consider alternative design plans for the Delta Point Casting Field flood protection project.
- The Corps should investigate and implement methods for invasive carp control that do not impact navigation safety.

The Mississippi River Commission is a shining example of interagency coordination and subject matter expert engagement. As maritime industry professionals, we are grateful to be a part of this dialogue.

[2] Illinois Public Water Law

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June 28, 2022

COL Stephen Murphy
Commander and District Engineer, New Orleans District
U.S. Army Corps of Engineers
7400 Leake Avenue
New Orleans, LA 70118

CAPT Kelly Denning
Commander, Sector New Orleans
U.S. Coast Guard
200 Hendee Street
New Orleans, LA 70114

RE: Navigation Safety Risk Assessment for CEMUS, LLC Permit

Dear COL Murphy and CAPT Denning,

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 safely and efficiently moves nearly 700 million tons of cargo each year, including 630 million tons along the Mississippi River System. The towing industry contributes $30 billion to the U.S. GDP annually, 75% of which is derived from the inland waterways. This river system is a vital link in the transportation of American grain and energy products. The CEMUS dock can disrupt and has disrupted this critical supply chain, which is important not just to our nation but to the world's food and fuel supply, especially during times of crisis such as the current war in Ukraine.

Considering the grave economic impacts of the CEMUS dock, The American Waterways Operators (AWO) is pleased that the U.S. Army Corps of Engineers (Corps) will follow the recommendation of the U.S. Coast Guard to require a formal National Safety Risk Assessment (NSRA) for the CEMUS, LLC permit MVN-1998-02358. Over the last several years, industry and the Coast Guard have expressed concern about the dock's impact on navigational safety, with documented concerns dating back to 1947. To help ensure transparency and credibility, AWO provides the following input, focusing on the scope of the study and the communication needed during the NSRA process.

The NSRA is designed to be undertaken before potentially unsafe structures are constructed, but the CEMUS dock has never undergone an NSRA. The dock was constructed in the early 1940s when the primary concern was winning World War II and safety concerns were minimally considered. The study must finally answer the following question: is this dock or its potential utilization an obstruction to navigation? We request that the study include historical data that has been summarized in an attachment from CAPT Watson dated March 14, 2022.

The NSRA should evaluate whether the dock and/or its intended customers' vessels would cause an "obstruction or alteration of navigable waters." And, if so, should the obstruction be removed? In all Corps permits, sections (c) and (f) discuss obstructions to free navigation, with section (f) stating that if future use causes unreasonable obstruction the owner will be required to remove or alter the obstruction. AWO believes that the scoping and the risks evaluated must consider whether the present and proposed future work does or will obstruct free navigation based on current and expected operations.

In keeping with the direction of Coast Guard risk-based waterways management, the study should focus on the strategic goals of 1) maritime safety; 2) maritime mobility; 3) maritime security (including economic security); and 4) protection of natural resources. The final product should "deploy high quality risk-based decision-making policies and tools to support decision makers." AWO encourages a robust and specific recommendation from Coast Guard Sector New Orleans to the Corps' New Orleans District that will ensure these strategic goals are met.

Scoping

Since there does not appear to be an original permit for the dock and the dock has either been hit or caused other allisions, industry believes the study should include a no dock scenario. Along with the no dock scenario, the following scenarios should also be included:

- The dock with one-deep barges attached;
- The dock with a Panamax vessel; and,
- The dock with a post-Panamax vessel.

The risk assessment must focus on heavy tows (25 or more barges). Evaluating transits by all vessels, including small recreational vessels, will distract from the navigation situations of greatest concern. An allision with the dock or bridge from a heavy tow could cause the river to be closed for days, resulting in catastrophic economic impact. Historical and modeled data should also consider environmental and/or social impacts of allisions from large tows.

Mishaps within Areas of Concern

The Coast Guard's NSRA guidance states that all public interest factors should be included in the evaluation. However, as the study is only allowed to consider a limited number of mishaps, it is essential that the correct issues are selected to accurately assess the complex nature of navigation safety. Industry requests CEMUS use the following mishaps, as outlined in the NSRA guidance:

- Location, Public Safety Impacts
    - Allisions or collisions with a structure and/or secondary vessel
    - Personnel injury or loss of life
    - Structural damage due to changes in environmental factors
    - Exposure to hazardous materials
- Waterway and Port Operations/Economic Impact
    - Damage to structures[1] in, on or adjacent to a waterway from an allision or wake wash from passing vessels
    - Vessel damage from mishaps such as collisions and groundings
- Environmental Impact
    - Potential or actual releases of oil or hazardous materials
    - Shoreline damage as a result of passing vessels

Risk Factors that Should be Evaluated

While the areas of concern outlined in the Coast Guard's risk model are broad to ensure flexibility in an NSRA, industry believes the following factors should be included when modeling risk for each issue area:

- Physical Location
    - Proximity to navigable channel, including vessels that could be moored at the dock;
    - Location on the inside or outside bank of a bend;
    - Composition and speed of existing vessel traffic in the Mississippi River and/or adjacent waterways;
    - Proximity to population centers; and,
    - Location relative to other waterfront structures or projects, including the 190 bridge and the Baer facility.
- Activity Related to the Structure/Waterways and Port Operations
    - Changes to the existing volume and type of vessel traffic; and,
    - Impact on the type and quantity of cargo moving through the ports.
- Weather and Environmental Conditions
    - Storms;
    - High wind; and,
    - Severe and sudden weather conditions, such as hurricanes and quickly changing water levels.

[1] The NSRA guidance defines *structures* to "include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction" (§ 322.2 (b)). Section C.6. of the *Waterways Management (WWM): Navigation Safety Risk Assessments Tactics, Techniques, and Procedures (TTP)* also directs the evaluator to include submerged pipelines, cables, and waterway intakes in their evaluation of "structures."

Communication

As the NSRA guidance states, "Collaboration, communication, and transparency are essential elements of the navigation safety risk assessment process." AWO encourages the following communication processes:

- Place all public hearings and comment periods in the *Federal Register*.
- Provide a 15-day window for stakeholders to provide input on the scope of the study.
- Utilize the Port Safety Council (PSC) as the primary portal for input and communication.
- Provide a minimum of two to three opportunities, utilizing a public meeting at the PSC, to comment on the study process and initial outcomes.
- Communicate progress on the NSRA on a quarterly basis, at a minimum, to all stakeholders, including but not limited to:
    - Carriers: AWO, Lower Mississippi River Coalition (LOMRC), River Industry Executive Task Force (RIETF)
    - Shippers: National Grain and Feed Association (NGFA), National Corn Growers Association (NCGA)
    - Shippers/Carriers: Port Safety Council (PSC), Louisiana Association of Waterways and Shippers (LAWS), Waterways Council, Inc. (WCI)
- Provide a 30- to 60-day comment period after the study is completed.

Professional Mariner Input

Respected professional mariners, mutually agreed upon by industry and CEMUS, should be part of the study process and analysis. On behalf of industry, the LOMRC has the knowledge, expertise, and skill to help select the appropriate mariners.

AWO and our partners thank you for your consideration and look forward to working with the Coast Guard and Corps throughout the NSRA process. Please do not hesitate to contact me or other industry members as you see fit.

Sincerely,

Lynn M. Muench
Senior Vice President – Regional Advocacy