



755 Winslow Way East
Suite 105B
Bainbridge Island, WA 98110

PHONE: 203.980.3051
EMAIL: ccostanzo@americanwaterways.com

Charles P. Costanzo
General Counsel & Vice President – Pacific Region

August 14, 2020

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Re: Increasing Consistency and
Transparency in Considering Benefits
and Costs in the Clean Air Act
Rulemaking Process (Docket No.
EPA-HQ-OAR-2020-00044)

Dear Mr. Wheeler:

The American Waterways Operators is the national trade association for the tugboat, towboat, and barge industry. AWO's more than 300 member companies own and operate barges and towing vessels on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. The tugboat, towboat and barge industry provides family-wage jobs and ladders of career opportunity for nearly 300,000 Americans, including 38,000 positions as mariners on board our vessels who safely, securely, and efficiently move more than 760 million tons of cargo critical to the U.S. economy.

AWO appreciates EPA's solicitation of stakeholder input on whether and how to change its methodologies for considering costs and benefits of regulatory action under the Clean Air Act (CAA). AWO input will help EPA establish greater consistency in how the agency considers costs in the development of its regulations. AWO believes that concerns regarding consistent application of federal statutes will inform not only EPA's direct development of regulations, but also assist EPA in managing impacts to interstate commerce when granting federal authority to the State of California to develop and promulgate its own supplementary regulations under the CAA. EPA has an important role in balancing the impacts of state and federal environmental regulation and its constitutional obligations to safeguard the free flow of interstate commerce. AWO is particularly concerned with the economic impacts of California's regulation of commercial harbor craft – a sector that includes towing vessels – by the California Air Resources Board (CARB).

The tugboat, towboat, and barge industry supports considerable waterborne commerce in the State of California. California ranks third among the states in waterborne commerce by tonnage and fourth in economic impact, with more than \$12.2 billion annually in economic activity driven by the domestic maritime transportation industry. In California, the domestic maritime industry supports over 51,000 jobs and \$3.6 billion annually in worker income. The tugboat and barge industry is not only an integral part of California's intermodal transportation system, but also the safest and most fuel-efficient. Therefore, state regulations that do not adequately ensure the safe and environmentally responsible operation of all U.S.-flagged towing vessels, that impose unnecessary costs on companies operating towing vessels, or that result in the diversion of cargo to other modes of transportation harm not only the domestic towing industry, but also the U.S. economy and environment.

Although the federal CAA expressly preempts state regulation of emissions from many types of engines, it allows California, "under compelling and extraordinary conditions," to seek authorization from the EPA to adopt standards for certain nonroad engines and vehicles, including harbor craft¹. CARB is currently developing more stringent emissions standards, including performance standards, for commercial harbor craft in California waters. California may develop "in-use standards" without express authorization from EPA, but AWO's concerns relate specifically to engine performance standards.

AWO is concerned that EPA and CARB utilize different standards and methodologies for comparing regulatory costs and benefits. This rulemaking can provide greater clarity and consistency. While the CAA provides clear language on the consideration of costs, costs have historically been interpreted differently depending on the jurisdiction promulgating the regulatory action. This has led to inconsistent standards under the same provision of the statute and the regulated community's inability to rely on consistent national application of an important federal statute. With these comments, AWO seeks to provide EPA with greater detail on the negative effects of CARB's EPA-authorized regulatory proposals on both the maritime economy and the regulated towing vessel industry in California.

Mandate from *Michigan v. EPA*

Recent Supreme Court precedent should inform EPA's cost considerations in both direct regulatory action and indirect regulatory action granted by EPA's authorizations to states. Before granting authorization to any state to enact supplementary emission control regulations under the CAA, EPA should consider *Michigan v. EPA*² which compels the agency to consider cost – including cost of compliance - before deciding whether regulation is appropriate and necessary. These principles should guide EPA when California seeks authorization to supplement the CAA under Clean Air Act §209(e)(2). For the towing vessel industry to rely on consistent and clear rules governing the movement of interstate commerce, EPA must exercise its responsibility to oblige states, as supplementary authorities, to duly consider the cost of their regulations as compared to their benefits.

¹ Clean Air Act §209(e)(2)

² 135 S. Ct. 2699 (2015)

AWO is concerned that CARB may not give due consideration to cost in the development of its ongoing Commercial Harbor Craft rulemaking. Under its proposed rule, CARB would likely require expensive retrofits of towing vessels long before the costs of previous air quality investments in the same vessels can realize environmental benefit and amortize. Many of these recent investments were made with the understanding that CARB's current and forthcoming commercial harbor craft rules would allow vessels to continue to operate for a far greater portion of their useful lives than the proposed rule would allow. Tug and barge owners have, in good faith, designed and built vessels in compliance with international, federal, state, and local laws and regulations. In AWO's view, EPA should apply the analysis required by *Michigan* to ensure that CARB regulations do not impose costs to the towing industry that far outweigh the health or environmental benefits and create economic waste.

Economic Waste Without Proven Benefit

AWO is concerned that the high costs of cutting vessels' useful lives short do not lead to meaningful emissions reductions benefits. There are many examples of situations where the proposed CARB rules could lead to the wasteful outcomes contemplated by the Court in *Michigan*. AWO has aggregated some of these below:

- A vessel with two main engines (model year 2015) beginning service in 2018 would, under CARB's proposed compliance schedule, almost assuredly require main engine repowers by the end of 2026. Based on the vessel's past performance and projected service hours, the vessel operator estimates approximately 13,000 total in-use hours for each main engine. This amount of time is only about 33 percent of the in-use hours required for a major engine service interval, much less a complete main engine repower. Engines scrapped at 50 percent of their useful service life cost an operator \$400,000 to \$800,000 per vessel.
- Because the cost of lost revenue during an approximately 60-day main engine replacement process is \$200,000 to \$400,000 per vessel, operators find it more cost effective to simply replace even newer auxiliary engines during the same drydocking event to limit shipyard costs and out-of-service time. For example, consider that the same vessel described above (with model year 2015 main engines) has two model year 2016 ship *service generators*. For both generators, CARB's proposed compliance date would be 2027. Because the main engines are proposed for repower in 2026, operators would likely choose to align the service generators in compliance with the proposed rule earlier than necessary to limit out-of-service time and drydock/shipyard costs. This decision would cost both ship service generators approximately 4,000 in-use hours of wasted service life.
- CARB's proposed rule would require the same AWO member's towing vessel main and generator engines be brought to Tier 4 compliance, which includes the installation of Diesel Particulate Filter. Tier 4 engine replacement and installation of DPF comes to an approximate cost of up to \$6.05 million per vessel depending on class. This amounts to potential economic waste of up to \$42 million for a fleet of 7 vessels.

- When the above AWO member's towing vessel engine replacement costs are combined with its barge engine replacement costs, the potential economic waste for this AWO member is over \$63 million.
- One AWO member company was forced to sell one of its most useful towing vessels to a business operating in another state because of California rules. While the towing vessel is worth about \$750,000, the AWO member estimated a cost in excess of \$1 million to repower the vessel to comply with CARB's proposed rule.

AWO members continue to seek to protect the marine environment under a practicable regulatory framework that allows for the continued safe and efficient movement of critical maritime commerce. To achieve this goal, towing vessels must be governed by clear and practical federal statutes and regulations, consistently and uniformly applied and administered across the country. While well-intentioned, these California regulations impose debilitating costs for questionable benefit. By authorizing regulatory action that necessarily disrupts federal standards for interstate commerce, EPA allows California to reduce market competition and pick winners and losers through regulation. AWO is hopeful that EPA can shift this paradigm through this rulemaking.

AWO urges EPA to view its authority under the CAA to regulate vessel emissions through a national lens and to promote consistency among its regional offices in decision-making that affects the movement of interstate commerce by water. EPA can ensure that statutory obligations under the CAA is balanced and consistent.

Thank you again for the opportunity to comment. AWO would be pleased to answer any questions or provide supplementary information.

Sincerely,



Charles. P. Costanzo
General Counsel & Vice President – Pacific Region