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Mr. Craig Kenworthy  
Executive Director  
Puget Sound Clean Air Agency  
1904 Third Avenue, Suite 105  
Seattle, WA 98101

Dear Mr. Kenworthy:

On behalf of the American Waterways Operators, the national trade association for the tugboat, towboat, and barge industry, thank you for the opportunity to comment on the Puget Sound Clean Air Agency's (PSCAA) draft Regional Clean Fuel Standard.

The U.S. tugboat, towboat, and barge industry is a vital segment of America's transportation system. The industry safely and efficiently moves over 760 million tons of cargo each year, including more than 60 percent of U.S. export grain, energy sources, and other bulk commodities that are the building blocks of the U.S. economy. The fleet consists of more than 5,500 tugboats and towboats, and over 31,000 dry and liquid cargo barges. These vessels transit 25,000 miles of inland and intracoastal waterways, the Great Lakes, and the Atlantic, Pacific and Gulf coasts.

Nationwide, AWO's 300-plus member companies are proud to be part of an industry that is safe, secure, low-cost, fuel-efficient, and has the smallest carbon footprint of any surface transportation mode. We are deeply committed to building on the natural advantages of marine transportation. AWO is committed to continuous improvement of both marine safety and environmental protection.

These characteristics inform our view of PSCAA's draft Regional Clean Fuel Standard. AWO members are steadfast in protecting the marine environment. Government partners can ensure protection of the marine environment and the state's economy by providing a practicable regulatory framework that allows for the continued safe and efficient movement of essential maritime commerce, and ensures that regional and state regulations do not result in the diversion of cargo or marine business to other ports outside of Puget Sound or to other transportation modes that pose increased risks to safety and the environment.

## **1. The Proposed Clean Fuel Standard Should Exempt Towing Vessels**

### **A. Federal Preemption of Ocean-going Vessels**

AWO believes that the draft Regional Clean Fuel Standard should exempt towing vessels for the same reasons that other ocean-going vessels, aircraft, and interstate locomotives are exempted under the proposed Section 4.04. Like the aviation and interstate locomotive industry, harbor vessels that make up the towing vessel fleet within the jurisdiction of the PSCAA are “ocean-going” and most of these vessels are certified by the U.S. Coast Guard or other marine classification societies for ocean transit. Additionally, these vessels are routinely engaged in interstate commerce and transit to and from the jurisdiction of the PSCAA.

Under the Clean Air Act, the definition of “non-road engine” may exclude certain mobile sources such as aircraft, locomotives, and ocean-going marine vessels from emissions control measures in state and regional jurisdictions, as these types of mobile sources are engaged in interstate commerce. Section 209(e) of the Clean Air Act conditionally prohibits state action relating to the control of air emissions from non-road vehicles including vessels. AWO argues that those conditions, which relate to an exemption from this prohibition for California state standards, have not been met by the PSCAA. Absent this narrow exemption to the general prohibition, the federal government preemptively reserves authority to regulate interstate commerce, including for ocean-going vessels subject to international and federal air quality regulations.

### **B. HB 1110 Exemption of Mobile Sources Engaged in Interstate Commerce**

HB 1110 passed the Washington State House of Representatives on January 29, 2020 and is currently before the State Senate. This bill proposes many of the same rules as the PSCAA Regional Clean Fuel standard, and would, if enacted, achieve many of the substantive emission reduction goals. Section 5 of the bill exempts fuels used for the propulsion of marine vessels along with aircraft and railroad locomotives. AWO asks that PSCAA align the proposed Low-Carbon Fuel standard regulation with HB 1110 and exempt marine vessels.

## **2. The Towing Industry is Subject to Federal Air Emissions Requirements**

The tugboat, towboat, and barge industry is governed by a comprehensive federal air emissions scheme that achieves reductions nationwide without imposing undue or inconsistently applied burdens on vessel operators. The 1990 Clean Air Act amendments required the U.S. Environmental Protection Agency (EPA) to reduce emissions from marine engines, including tugboats and towboats. In 1999, EPA established emission standards for new marine engines at or above 50 horsepower (hp). In 2004, EPA finalized a rule decreasing the allowable levels of sulfur in diesel fuel

used in marine engines. In 2008, EPA set more stringent emission standards for new marine engines, establishing “Tier 3” standards that were phased in for new engines starting in 2009. Beginning in October 2016, “Tier 4” standards were phased in for new engines over 800 hp that require the use of high-efficiency catalytic after-treatment technology and ultra-low sulfur fuel, a significant technological change that is expected to yield significant emissions reductions across the entire domestic towing vessel fleet in a nationally consistent timeframe.

The robust federal regulatory framework outlined above ensures a balanced approach for all operators to make progress towards the reduction of greenhouse gas emissions. The federal regulations are yielding effective results by decreasing emissions of the tugboat, towboat, and barge industry. As federal “Tier 4” standards continue to phase in for all new engines over 800 hp, all operators are afforded a critical level of regulatory certainty in the present with increasingly stringent federal standards.

### 3. **Regional Economic Consequences**

The imposition of the proposed low-carbon fuel standard on vessels would negatively impact Puget Sound fuel suppliers by increasing supply costs. Ocean-going vessels, including many harbor vessels, transit into and out of the Puget Sound and sometimes refuel during Puget Sound port calls. Additionally, several AWO member companies provide bunker barge services to accomplish fuel transfers. A regional low-carbon fuel standard would elevate fuel prices in Puget Sound. More expensive fuel in Puget Sound will cause marine companies to purchase less expensive fuel elsewhere, such as Oregon, Alaska, Canada, or California. As a result, the Puget Sound’s regional bunker barge industry, fuel suppliers, and the region’s maritime economy would likely endure an economic setback.

AWO requests that the PSCAA reconsider the draft rule, exempt towing vessels, align the regulation with HB 1110 and federal regulation, and work closely with stakeholders to identify opportunities for emissions reductions in Puget Sound.

Thank you for the opportunity to comment. AWO would be pleased to answer any questions or provide further information as PSCAA sees fit.

Sincerely,



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