

BEFORE THE CALIFORNIA AIR RESOURCES BOARD

**PETITION TO AMEND REGULATIONS
REGARDING COMMERCIAL HARBOR CRAFT
AND OCEAN-GOING VESSELS AT BERTH**

**Cal. Govt. Code 11340.6
17 CCR 93103.2 and 93118.5**

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Petitioner Crowley Maritime Corporation, on its own behalf and on behalf of its affiliates (“Petitioner” or “Crowley”), hereby petitions the California Air Resources Board (“CARB”), pursuant to California Government Code section 11340.6, to amend Title 17, California Code of Regulations (“CCR”), section 93118.5 (“Airborne Toxic Control Measure for Commercial Harbor Craft”) and 17 CCR section 93130 (“Control Measure for Ocean-Going Vessels At Berth.”) Section 93118.5 shall be referred to herein as “the CHC Regulation Amendments” and section 93130.2 shall be referred to herein as “the At-Berth Rule.”

I. Introduction and Summary of Grounds for Petition

Articulated tug barges (“ATBs”) are tank vessels used in the U.S. domestic petroleum trade range. They range in size from under 40 bbl. of cargo capacity to just over 330,000 bbl. capacity. Annually, ATBs currently carry at least 15%, by volume, of the total clean petroleum products transported by sea to and from California. Crowley, a leader of the U.S. maritime industry in sustainability and environmental innovation, operates this country’s largest fleet of ATBs. Crowley’s ATBs, including the newest and most sophisticated U.S.-flagged vessels, safely and reliably carry bulk liquid throughout the U.S. East, Gulf and West Coasts, including Alaska, and international ports. Crowley operates nine of the fourteen ATBs currently operating on the U.S. West Coast. In California, Crowley operates OGV-ATBs of 120,000 bbl. capacity or more.

This Petition addresses CARB’s regulation of emissions from larger articulated tug barges (“ocean-going ATBs, or “OGV-ATBs”) operated by Crowley to carry liquid cargoes to and from California ports. OGV-ATBs are modern, flexible, ocean-going tank vessels consisting of a barge connected to a tug; in their cargo-carrying operations in California and elsewhere, the tug does not generally detach from the barge: OGV-ATBs function as a single vessel.¹

Despite being the functional equivalent of ocean-going tank vessels, Crowley’s OGV-ATBs are arbitrarily excluded from the At-Berth Rule, although the regulation applies to all other ocean-going tankers. Instead, these large OGV-ATBs² are mistakenly regulated under the CHC Regulation Amendments, as if they were harbor tugboats or other small vessels whose operations are confined to California’s harbors.

The effect of the current CHC Regulation Amendments is that Crowley OGV-ATBs will no longer be able to operate in California. This outcome will eliminate an entire segment of the tank ship industry, and substantially disrupt interstate commerce. It will also, as will be discussed herein, have seriously adverse effects on the environment, given the increased harmful emissions from transportation modes that are the alternatives to OGV-ATBs.

¹ With its roots in California, Crowley has committed to achieve, by 2050, net-zero greenhouse gas (GHG) emissions from its operations. Crowley plans, using ATBs as a key, to facilitate California’s transition from conventional fossil fuels.

² This Petition does not address smaller ATBs, for instance, those used in bunkering operations. This Petition only addresses ocean-going ATBs of 120,000 bbl. capacity or more.

This Petition is necessary so that 120,000 bbl. capacity ATBs can comply with California regulations and can continue to trade in California.

II. Factual Background for the Petition

For the past four years, Crowley has submitted a series of comments to CARB, both orally and in writing, explaining the nature and California operational profile of its ATBs, and setting forth the reasons why ATBs of 120,000 bbl. capacity or more should be regulated like any other ocean-going tank vessel.³ As the factual basis for this Petition, Crowley incorporates those submissions by reference, and attaches the relevant past submissions as Exhibits hereto.

III. Regulatory Background

On April 20, 2006, CARB adopted Resolution 6-14, which referred to and approved the Emission Reduction Plan for Ports and Goods Movement in California (“the Emission Reduction Plan.”) Among the resolutions contained in Resolution 6-14 was the direction that the CARB Executive Officer initiate and bring to the Board “effective regulations or equivalent emission reduction strategies for ... 4. Shore power for ships and harbor craft (or the equivalent), 5. Harbor craft fleets. [and] 6. New harbor craft engine standards.”

One of the products of Resolution 6-14 and the Emission Reduction Plan was the CHC Regulation that became effective on November 19, 2008 (“the 2008 CHC Regulation.”) This regulation was amended as of July 20, 2011 (“the 2011 Amendments.”)

The Emission Reduction Plan did not address ATBs. And neither the 2008 CHC Regulation nor the 2011 Amendments referred specifically to ATBs. But in early 2019, CARB began to engage the maritime industry regarding the regulation of emissions from ATBs operating in California.

At that time and consistently ever since, Crowley explained to CARB that, based on their size and operational profile in California, larger ATBs, or OGV-ATBs, should be regulated like other ocean-going tank vessels, under the At-Berth Rule, instead of being treated as if they were harbor tugs, and regulated under the CHC Regulation.⁴

Notwithstanding Crowley’s repeated submissions that CARB was misunderstanding the nature and operational profile of OGV-ATBs, CARB continued to regulate OGV-ATBs as if they were smaller commercial harbor craft, under further amendments to the CHC Regulation. These regulations sought to regulate the engines used on Crowley’s OGV-ATBs, instead of employing emissions control measures during their operations at berth, under the At-Berth Rule.

³ See, Crowley white paper “Common Sense: The Proper Inclusion of Articulated Tug-Barges As Ocean-Going Tank Vessels Regulated Under the At-Berth Rule”, Exhibit A herewith, submitted to CARB in June, 2020.

⁴ See, Letter dated May 31, 2019 from Crowley to CARB, Exhibit B hereto.

In April 2020 and August 2020, Crowley submitted further comments to CARB explaining why regulating its OGV-ATBs as harbor craft is inconsistent with their operational profile, why Crowley's ATBs could not comply with the proposed CHC Regulation Amendments, and identifying other deficiencies with those proposed Amendments.⁵ Following receipt of the August letter, which included an analysis of the emissions profile of one of Crowley's OGV-ATBs based on actual operational conditions in California, the CARB Board adopted Resolution 20-22, on August 27, 2020, which included the following statement:

BE IT FURTHER RESOLVED that the Board directs staff to continue to engage the articulated tug barge (ATB) industry to determine the best options for **cost-effective emission reductions** that recognize **the unique nature of ATBs** as CARB updates the commercial harbor craft regulation. [Emphasis added.]

Even though CARB staff were given this clear directive, CARB did not modify or amend its regulatory approach to take into account the unique nature of ATBs. Nor did CARB provide for regulations that are cost-effective.

To the contrary, CARB proceeded to adopt the At-Berth Rule in 2020, specifically excluding ATBs from the definition of "ocean-going vessels." CARB never gave any rational explanation for such an exclusion. Then, in 2021, CARB proceeded to propose CHC Regulation Amendments, including emissions from ATBs, despite Crowley explaining why its ATBs of 120,000 bbls. capacity or more were not functionally or operationally equivalent to harbor craft and making clear that it could not comply with those proposed regulations, if enacted.⁶

Prior to the proposal of the CHC Regulation Amendments, Crowley submitted a further public comment⁷ in 2022 explaining that its OGV-ATBs could not comply with the CHC Regulation Amendments and would be driven from California by them, that it made sense to regulate OGV-ATBs like other ocean-going vessels under the At-Berth Rule, and that the proposed regulations would have adverse economic and ecologic consequences.

To support that comment, in August 2022, Crowley submitted to CARB a set of analyses comparing Crowley's 2019 ATB fleet emissions with emissions from other modes of transport. These data prove that the net effect of excluding ATBs from California would be an increase in harmful emissions, particularly GHG.⁸ It is apparent that CARB never took these submissions into

⁵ See, Crowley comment dated April 29, 2020, Exhibit C hereto; Crowley comment dated August 21, 2020, Exhibit D hereto.

⁶ See, letter from Crowley dated November 15, 2021, Exhibit E hereto.

⁷ See, letter from Crowley dated June 2, 2022, Exhibit F hereto.

⁸ Those August 2022 submissions contain commercial, confidential and proprietary business information; they are not part of the exhibits hereto.

consideration. By the time those analyses were prepared, CARB had already submitted the final CHC Regulation Amendments rulemaking package to the Office of Administrative Law.

This Petition, therefore, gives CARB an opportunity now to reexamine and amend the regulations, properly taking into account all of Crowley's submissions, including those analyses provided to CARB in August 2022.

IV. The Substance or Nature of the Regulation and Amendment Requested.

A. The CHC Regulation Amendments

Petitioner requests an amendment of the Commercial Harbor Craft ("CHC") Regulation Amendments, 17 CCR section 93118.5, which became effective on January 1, 2023.⁹ The CHC Regulation Amendments, specifically 17 CCR section 93118.5(e)(12), require that, although existing engines on Crowley's ATBs fully comply with federal and international standards and voluntarily comply with the CARB fuel requirements for ocean-going vessels, they must be retrofitted or replaced with lower-emission engines and a diesel particulate filter (DPF.)

It is manifestly impossible for Crowley to comply with the requirements of the CHC Regulation Amendments, as currently drafted. Safe DPF technology is currently unavailable for the marine engines in question. As explained in Crowley's comments and submissions to CARB over the years, the engine retrofits or replacements required are so prohibitively expensive as to be effectively impossible to implement while keeping the OGV-ATBs in commercial operation.

So, unless the regulations are amended as proposed, Crowley's OGV-ATBs will no longer operate in California. Driving larger ATBs from California will have profoundly adverse environmental consequences for the people of this State. The regulations, unamended, will effectively lead to higher emissions, particularly greenhouse gas (GHG) emissions, produced by the alternative modes of petroleum transportation required to replace OGV-ATBs.

The regulation provides, in section 93118.5 (f), for owners or operators to apply to the CARB Executive Officer for approval of alternative strategies, or an Alternative Control of Emissions ("ACE.") The ACE provision of the regulation needs to be amended to provide meaningful options for OGV-ATB owners and operators, so that OGV-ATBs can continue to operate in the State. The amendment requested is explained in more detail below.

⁹ On or about January 30, 2023, CARB requested authorization, pursuant to 42 U.S.C. section 7543(e)(2) from the U.S. Environmental Protection Agency ("EPA") for CARB to adopt and enforce the standards and other requirements set forth in the CHC Regulation Amendments. Crowley has submitted a comment to the EPA objecting to such authorization on the grounds that CARB's determination, as required under said statutory provision, is arbitrary and capricious as it relates to the effect of regulating OGV-ATBs as commercial harbor craft.

B. The At-Berth Rule

Petitioner also requests an amendment of the Control Measure for Ocean-Going Vessels at Berth (the “At-Berth Rule”), 17 CCR section 93130, which became effective on January 1, 2021.¹⁰ The regulation provides for certain emissions-reducing measures to be undertaken by ocean-going vessels when calling at California marine terminals. The size and operational profile of Crowley’s larger ATBs mandates that these OGV-ATBs be regulated as “ocean-going vessels.” Despite this, the current version of the At-Berth Rule specifically excludes ATBs from the definition of “ocean-going vessels” in that regulation.

This exclusion makes no common sense, especially since OGV-ATBs are clearly “ocean-going vessels” and meet the definition of “ocean-going vessels” in the CHC Regulation Amendments. Under the circumstances, it is necessary, for the sake of clarity and regulatory consistency, for the At-Berth Rule to be amended to include OGV-ATBs as “ocean-going vessels.” The amendment requested are explained in more detail below.

V. Petitioner Is an Interested Person

Under the California Administrative Procedures Act, “any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation” unless “the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute.” Cal. Gov’t Code § 11340.6. This petition is not one for the adoption of a regulation; it seeks amendment of two existing regulations. A party qualifies as an “interested person” if the party “is or may well be impacted by a challenged regulation.” *Env’tl. Prot. Info. Ctr. v. Dep’t of Forestry & Fire Prot.*, (1996) 43 Cal.App.4th 1011 (C.A., Div. 2); *Brown v. Wal-Mart Store, Inc.*, 2018 WL 3417483, Case No. 09-cv-03339-EJD, dated July 13, 2018 (N.D.Cal. 2018.)

The largest employer of coastal and deep-sea mariners in the United States, Crowley owns and operates a diverse fleet of ocean-going vessels and harbor tugboats. Crowley is the largest independent operator of American-owned and -operated Jones Act -compliant vessels, which include ATBs, tugboats, and self-propelled tank vessels. Crowley’s fleet of ATBs range in size from 14,600 deadweight tons (DWT) to 45,000 DWT; Crowley operates nine of the fourteen ATBs currently operating on the U.S. West Coast. Under the circumstances, the two regulations in question unquestionably have a profound impact on Crowley.

¹⁰ CARB has also requested authorization, pursuant to 42 U.S.C. section 7543(e)(2) from the U.S. Environmental Protection Agency (“EPA”) for CARB to adopt and enforce the standards and other requirements set forth in the At-Berth Rule. As with the CHC Regulation Amendments, Crowley is preparing a comment to the EPA objecting to such authorization on the grounds that CARB’s determination, as required under said statutory provision, is, as it relates to OGV-ATBs, arbitrary and capricious.

VI. The Reasons for the Request.

A. The Necessity for the Regulations to Achieve Emissions Reduction in California

Petitioner submits that the goal of CARB’s regulations, consistent with its mandate under the California Health and Safety Code, as referenced in part VIII of this Petition below, and the specific directive of the 2006 Emission Reduction Plan, should be to adopt regulations to reduce emissions from marine vessels operating within California. As currently written, the CHC Regulation Amendments and At-Berth Rule fail to achieve this goal.

The CHC Regulation Amendments effectively prevent OGV-ATBs from operating in the State by imposing engine standards, exceeding federal and international requirements, that cannot be implemented at a commercially reasonable cost.¹¹ The regulations require the installation of DPF technology that is neither safe or feasible for these types of ATB marine engines.¹² Even assuming that a retrofit is physically possible, the estimated cost to retrofit Tier 4 engines (without a DPF) is \$9.5 million per OGV-ATB. Such an investment is not commercially feasible, since it cannot be recovered through increased charter hire, and it makes no commercial sense otherwise.¹³ Moreover, currently there are no DPFs approved by the U.S. Coast Guard or Classification Societies that are available for marine engines.¹⁴

Because Crowley’s OGV-ATBs cannot comply with the CHC Regulation Amendments, Crowley will not be able to continue operating OGV-ATBs in California once the CHC Regulation Amendments come into effect.

The removal of Crowley’s OGV-ATBs from California will have an adverse impact on an entire sector of the maritime industry and a substantial disruption of interstate commerce, particularly in connection with the interstate trade of clean petroleum products.

A substantial portion of liquid cargoes currently carried by OGV-ATBs are transported between California ports or between other U.S. States and California. Based on 2019 data, 69.7% of petroleum cargoes carried by OGV-ATBs were loaded in California and 96.6% were discharged in California.¹⁵ A further 30.1% of cargoes carried by OGV-ATBs were loaded in Washington and

¹¹ See, Crowley letter dated April 29, 2020, Exhibit C hereto, pp. 1-3; Crowley letter dated November 15, 2021, Exhibit E, p.6; Crowley letter dated June 2, 2022, Exhibit F, p.3.

¹² See, Exhibit C, Crowley April 29, 2020 letter, p.3; Crowley letter dated November 15, 2021, Exhibit E, p. 6.

¹³ See, analysis at pp 15-16 of Navigistics Consulting report, submitted to CARB in August 2022.

¹⁴ See, Navigistics Consulting report, submitted to CARB in August 2022, p.8.

¹⁵ See, Navigistics Consulting report, submitted to CARB in August 2022, p.10.

Texas. If Crowley’s OGV-ATBs are not available, these cargoes must, absent a waiver, be carried by vessels that are U.S. flagged and U.S. built.¹⁶ If such vessels are not available, California will need to import petroleum products from overseas, and movements of petroleum within California will need to be made by truck or by rail (assuming that were possible.)

According to the analysis performed by Starcrest Consulting Group and provided to CARB in August 2022, these alternative modes of transportation will result in higher harmful emissions for Californians and, potentially, for communities elsewhere in the U.S. and rest of the world. The Starcrest analysis demonstrates that movement of the ATB cargoes by a truck alternative within California – even assuming enough trucks are available – might reduce NOx and PM emissions in comparison with ATBs, but this alternative would result in much higher GHG emissions. Locomotives – again, assuming there is capacity for rail to be an alternative – and tankers would emit comparatively more NOx than ATBs.

From an environmental perspective, the alternatives to OGV-ATBs should therefore be unacceptable for California.

As shown by the Starcrest Consulting Group analysis submitted to CARB in August 2022, removing OGV-ATBs from California does not achieve any clear reduction in emissions. OGV-ATBs cause fewer harmful emissions than tankers, locomotives and trucks, when evaluating all criteria pollutants and GHGs together.¹⁷ Rail and truck emissions are higher than OGV-ATBs per unit of cargo.¹⁸ Loading OGV-ATB cargoes on other self-propelled Jones Act tank vessels, assuming that such tankers are available, will actually increase emissions of PM and NOx, in comparison to OGV-ATBs. And, due to the lack of a domestic supply chain, without ocean-going ATBs, California would need to resort to importing and exporting petroleum cargoes to and from the State in foreign-flagged tankers; resulting in longer voyages and increased global GHG emissions.

To lower emissions for California, retaining OGV- ATBs is the best option.

B. The Necessity to Take the Crowley Analyses into Account

As demonstrated above, CARB should properly study and consider the analyses conducted by Navigistics Consulting and Starcrest Consulting Group, as presented by Crowley to CARB in August 2022. Petitioner appreciates that these documents were made available to CARB after the final rulemaking package was submitted to the Office of Administrative Law. But it is not too late: this Petition affords CARB the opportunity to acknowledge the results of the Navigistics Consulting and Starcrest Consulting Group and amend the regulations accordingly.

¹⁶ This is the effect of the U.S. coastwise laws, the so-called Jones Act, 46 U.S.C. §§55102 and 55013.

¹⁷ See, Starcrest Consulting Group report, submitted to CARB in August 2022.

¹⁸ See, Navigistics Consulting report, submitted to CARB in August 2022, p.15.

C. The Necessity for Consistency Between Regulations

From the outset, it has been clear that much of the problem experienced by CARB in effectively regulating OGV-ATBs is derived from CARB's refusal to understand OGV-ATB operations and to characterize OGV-ATBs properly. Because it is technically possible for the tug to detach from the barge in an OGV-ATB combination – even though, as a practical matter, the tug does not, in fact, detach during normal operations and the tug has no commercial use other than to provide propulsion to the barge as part of an OGV-ATB¹⁹ – CARB mistakenly concluded that an ATB could be considered to be a tug and barge “separately.”²⁰

Based on this false initial assumption, CARB has been led to view OGV-ATBs as a form of ocean-going tugboat and barge, as opposed to the reality, which is that an OGV-ATB functions as a single ship. An OGV-ATB is an innovative, highly efficient and flexible form of modern ocean-going tank vessel.²¹

In addition to this false assumption, CARB has impliedly accepted that the application of the CHC Regulation Amendments and the At-Berth Rule should be mutually exclusive. This makes no sense for OGV-ATBs based on their “unique nature.” CARB should accept that OGV-ATBs can comply with both regulations, if they are properly amended.

There are three ways this can be achieved through the amendment sought by Petitioners.

First, the two regulations should contain consistent definitions of “ocean-going vessels”.

Both the CHC Regulation Amendments and the At-Berth Rule include a definition of “ocean-going vessels.” But, as currently written, those definitions are inconsistent. The CHC Regulation Amendments define “ocean-going vessels” by reference to the size of the vessel or the capacity of its engine. While the At-Berth Rule uses the exact same definition, it also adds a specific, arbitrary exception, stating that ATBs “are not considered ocean-going vessels” for the purposes of that regulation.

The effect of this inconsistency is that, while Crowley's OGV-ATBs are unquestionably within the definition of “ocean-going vessels” for the purposes of the CHC Regulation Amendments, they are, because of the arbitrary exclusion of ATBs, not also within the definition of “ocean-going vessels” for the purpose of the At-Berth Rule. This dichotomy makes no common sense. The size and operational profile of Crowley's larger ATBs (that is, with over 120,000 bbl.

¹⁹ See, Navigistics Consulting report, submitted to CARB in August 2022, p.6.

²⁰ See, Initial Statement of Reasons accompanying the At-Berth Rule. The fallacy of this approach and its inconsistency with Federal and State regulations, was explained in Crowley's letter of December 6, 2019, Exhibit G hereto, pp.2-3. The mistake is also addressed extensively in Crowley's White Paper, Exhibit A hereto, pp.1-2.

²¹ See, Exhibit F, Crowley letter to CARB, dated June 2, 2022, p.2.

capacity) clearly meet the definition of ocean-going tank vessels. The definitions should be consistent, and OGV-ATBs should be defined as “ocean-going vessels” under both.

Second, the two regulations can and should be harmonized so that compliance with the At-Berth Rule is recognized as substantial compliance with the CHC Regulation Amendments.

This can be achieved through amending the alternative compliance provisions of the CHC Regulation Amendments with requirements that are specific to OGV-ATBs and, in accordance with the CARB Board’s directive in Resolution 20-22, dated August 27, 2020, to “recognize the unique nature of ATBs as CARB updates the commercial harbor craft regulation.”

Third, the definition of “articulated tug barge” must be the same in both regulations.

As currently written, the CHC Regulation Amendments include a differently worded definition of “articulated tug barge” that incorporates a reference to “petrochemical tank barge” which does not appear in the At-Berth Rule. This is problematic since the definition of “petrochemical tank barge” in the CHC Regulation Amendments includes a reference to the combination of the tug and barge being “temporary.” In the case of a Crowley OGV-ATB, the tug and barge do not in fact detach during normal operations in California. It therefore cannot be said that the Crowley OGV-ATB is a “temporary” combination. Moreover, in the At-Berth Rule, the definition of “articulated tug barge” includes that it functions as one vessel, a correct characterization that is omitted from the definition in the CHC Regulation Amendments. There is no reason for these inconsistencies.

D. The Necessity for Clarity Around Alternative Compliance Programs for OGV-ATBs

In addition, Petitioners propose that the alternative compliance provisions of the CHC Regulation Amendments that are applicable for OGV-ATBs incorporate more certainty. This will enable Crowley, and other owners and operators of OGV-ATBs, to plan and present Alternative Compliance Plans or Programs to CARB which can be measured against a clear and stated regulatory framework and standards. Thus, for instance, it should be clearer that Alternative Compliance Programs or plans for Alternative Control of Emissions may be approved on an interim basis or for a set period of time. Such a provision would incorporate the goal of ongoing cooperation between CARB and industry to ensure reasonable alternatives for compliance.

VII. Specific Amendments Requested

Redlined versions showing the proposed amendments to the CHC Regulation Amendments, and the At-Berth Rule are attached hereto as Appendices 1 and 2.

A. The CHC Regulation Amendments

1. The Definitions [section 93118.5(d)]

The definition of "articulated tug barge" should be amended so it is consistent with the definition in the At-Berth Rule. The definition of "Petrochemical Tank Barge" should be amended to remove the reference to the combination of the tug and barge in an ATB being "temporary."

2. The Alternative Control of Emissions (ACE)

(a) Preamble

The CHC Regulation Amendments state that they apply to (a) "harbor craft"; (b) "towboats and tugboats engaged in or intending to engage in the service of pulling, pushing, or hauling alongside tank vessels or tank barges"; and (c) "ATB tug-barge combinations and petrochemical tank barges". See section 93118.5(b)(1), (3) and (4).

The terms "ATB" and "harbor craft" are not used interchangeably in the CHC Regulation Amendments. The CHC Regulation Amendments provide specifically that they apply to "ATB tug-barge combinations and petrochemical tank barges," Section 93118.5(b)(4). There are parts of the regulation, including section 93118.5(e)(12), that specifically apply to ATBs. Other parts of the regulation apply to harbor craft and do not specifically apply to ATBs.

Under the definition in the CHC Regulation Amendments, a "harbor craft" is defined as a commercial marine vessel (including specifically identified types of vessels) that does not otherwise meet the definition of "ocean-going vessels." Based on their size, Crowley's ATBs clearly meet the definition of "ocean-going vessels" irrespective of being a commercial marine vessel listed in the "harbor craft" definition. Therefore, under a plain reading of the "harbor craft" definition, Crowley's ATBs do not meet the definition of "harbor craft" in the regulation.

Accordingly, Petitioner requests that the preamble to the ACE provisions be amended to add the provision:

"Where specified, parts of this subsection apply only to harbor craft and other parts apply only to ATBs; unless so specified, this subsection applies to harbor craft and ATBs."

(b) Requirements for ACE

(i) Section (1)(A)

This section includes a reference to “in subsection f(1)(E)” which is in error. Petitioner submits that, in making the amendments, this should be removed.

(ii) Sections (1)(B), (C) and (D)

These sections should be amended to clarify that they apply to harbor craft or ATBs.

(iii) Section (1)(E)

This section should be amended to make clear that it applies to harbor craft only.

(iv) Section (1)(F)

This section should be amended to make clear that it applies to ATBs only. The section should include provisions that allow an ACE for ATBs that involves the ATB’s compliance with the At-Berth Rule, and other provisions that recognize the operational profile of ATBs in more than one air basin in California, and ways for ATBs to comply, in addition, through an approved ACE that allows for an expanded definition of fleet averaging, measures to achieve enhanced reduction of emissions in and around the marine terminal served by the ATB from sources other than harbor craft and ATBs, and other measure to fund efforts to reduce emissions.

Petitioner proposes that the amended section (1)(F) should read:

(F) With respect to ATBs only, AECS may include any of the following, individually or in combination:

1. engine modifications;
2. exhaust treatment control;
3. engine repower or rebuild;
4. shore power;
5. fleet averaging, including within the definition of “fleet” for this purpose: (a) all vessels within the definition of “harbor craft” in this section and all ATBs; and (b) all vessels owned or operated by any affiliate of the owner or operator of the ATB;
6. performance standards and emissions reductions measured with respect to every California air basin in which the ATB is operating;

7. full compliance by the ATB with section 93130, irrespective of whether section 93130 is made applicable to ATBs;
8. funding of accelerated conversion of cargo handling equipment used at marine terminals in California;
9. funding of accelerated conversion of drayage trucks operating out of California ports from diesel to alternative energies that have demonstrated emissions benefits;
10. funding the expansion of shore-side port infrastructure for cold ironing and other electric vehicle uses, including the investing in roll-on-dock containerized clean power solutions;
11. funding measures designed to reduce cancer risks from stationary sources in and around California port communities;
12. Co-investing with the State of California on the development of zero emissions alternative assets to the ATBs that are the subject of this section;
13. measures to achieve reductions from sources other than harbor craft in and around the marine terminal at which the ATB is loading or discharging, within adjacent communities or overwater within three nautical miles of the marine terminal; and
14. any other measures that sufficiently reduce emissions.

(v) The remainder of section (1)

The remainder of section (1) should change the lettering applicable to the subsections, should make clear where the provision applies to harbor craft or ATBs, and should clarify that new section (1)(H) applies to harbor craft only. Petitioner requests these amendments.

B. The At-Berth Rule

The definitions section should be amended so that the definition of “Articulated tug barge” to exclude the additional sentence: “For the purposes of this Control Measure, articulated tug barges are not considered ocean-going vessels.” The definition of “Ocean-going vessel” should be amended so that it excludes the phrase “excluding articulated tug barges.” This will make the definition consistent with the definition in the CHC regulation Amendments.

That definition should also refer to the term “tank barge”, to be consistent with the definition in the CHC Regulation Amendments.

Petitioner also requests that, to be consistent with the definitions in the CHC Regulation Amendments, the At-Berth Rule definitions be amended to add the following:

(74) “Tank Barge” means a non-self-propelled vessel constructed or adapted primarily to carry, or that carries, oil, petrochemicals, sewage, or other noxious liquid substances hazardous material in bulk as cargo or cargo residue. Tank barges also include both petrochemical tank barges and barges carrying gaseous or liquid fuels, such as those performing fuel bunkering services.

The remainder of the definitions section should be renumbered accordingly.

VIII. Reference to the Authority of the State Agency to take the Action Requested.

Petitioner submits that CARB has authority to make the amendments requested in the petition pursuant to California Government Code section 11340.6, and by lack of contrary authority in California Health & Safety Code sections 38505 *et. seq.*, 39650 *et. seq.*, 39666, 39730 *et. seq.*, 41511, and 43013 *et. seq.*

In general, the requirements under Cal. Gov. Code 11340.6 for filing a petition are minimal. Section 11340.6 gives interested persons a general right to petition "a state agency requesting the adoption, amendment, or repeal of a regulation." Interested persons are excluded from this right only when the “restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute.”²² Careful review of the governing statutes for CARB demonstrate that it is not an agency that restricts petitions to only a certain group or to a certain form. Any interested person has the right to petition. As demonstrated, Petitioner is an interested party and thus this petition is properly brought.²³

Upon receipt of this petition, CARB has 30 days to either schedule a hearing on the petition or deny the petition.²⁴ If CARB denies the petition, Petitioner will have a remedy in the courts to challenge the denial.²⁵ If CARB instead holds a hearing, Petitioner, along with other members of the public, will be given the opportunity to further present evidence and arguments regarding the petitioned course of action. If CARB subsequently denies the petition after a hearing, Petitioner and any other interested party will have a remedy in the courts.²⁶

²² *Id.*

²³ *See, supra*, Section III.

²⁴ *See* Cal. Gov. Code § 11340.7.

²⁵ *See, e.g. McClain v. Sav-On Drugs*, (2017) 9 Cal.App.5th 684, 701 (C.A. Div. 2), as modified on denial of reh'g (Apr. 10, 2017), *aff'd*, (2019) 6 Cal.5th 951, 435 (holding that petitioners may sue under the APA for declaratory relief regarding the validity of a regulation), *cert.denied*, 140 S.Ct. 127 (2019).

²⁶ *Id.*

As such, CARB is not just empowered to hear this petition, but in fact must hear it. Further, by CARB’s own statement, the powers of CARB include the exclusive power to “oversee[] all air pollution control efforts in California to attain and maintain health-based air quality standards.”²⁷ Further, CARB cites to various authorities within the Health and Safety Code for the proposition that it may regulate vessels as petitioner requests here.²⁸

Accordingly, CARB is both required to both hear²⁹ and consider³⁰ the instant petition. Further, based on CARB’s own determination in both the 2008 CHC Regulation and the 2011 Amendments,³¹ as well as its determination in the regulation challenged by the instant petition,³² CARB has the power to make the amendments requested here and, pursuant to Cal. Gov. Code section 11340.7, either must make the requested changes or demonstrate to petitioner why it has not sufficient to withstand the scrutiny of Section 11346 *et. seq.*

IX. Non-Duplication

Petitioner submits that these amendments will not duplicate any applicable regulations.

²⁷ See CARB Mission Statement, CALIFORNIA AIR RESOURCES BOARD, Last Accessed Feb. 23, 2023, <https://ww2.arb.ca.gov/about>.

²⁸ See, Cal. Code Regs. tit. 13 § 2299.5 (“Authority cited: Sections 38505, 38510, 38560, 38566, 38580, 39600, 39601, 41511, 43013, 43018 and 43019.1, Health and Safety Code.”)

²⁹ Cal. Gov. Code § 11340.6 “any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346).”

³⁰ Cal. Gov. Code § 11340.7 “Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.”

³¹ See, *supra*, Section II.

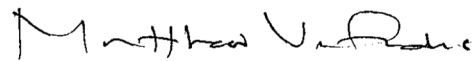
³² See, Cal. Code Regs. tit. 13 § 2299.5

X. Conclusion

For the reasons set forth herein, Crowley requests that the CHC Regulation Amendments and the At-Berth Rule be amended as proposed. Crowley reiterates its continuing commitment to work with CARB to achieve reasonable and effective emissions reduction regulation that can be complied with by ATBs operating in California.

Respectfully submitted,

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