



October 23, 2024

The Honorable Michael S. Regan  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Dear Administrator Regan:

The undersigned organizations, representing California commercial vessel operators and maritime workers, are writing to urge you to reject the pending request for authorization from the California Air Resources Board (CARB) to enforce amendments to its Commercial Harbor Craft (CHC) rule under section 209(e) of the Clean Air Act (CAA). Despite bipartisan, near-unanimous support from the California legislature, California Governor Gavin Newsom has vetoed a bill that would have addressed our organizations' grave concerns about the unacceptable risks to mariner and vessel safety, as well as the maritime supply chain, that these amendments pose. It is now paramount that the U.S. Environmental Protection Agency exercises its CAA authority to reject CARB's authorization request to prevent loss of life and other serious consequences for the safety of California's waterways and the strength of the U.S. economy.

### **Unproven, Unverified, and Infeasible Technology**

Beginning December 31, 2023, the CHC rule requires some tugboats and other commercial harbor craft to be powered with EPA Tier 4 engines equipped with Diesel Particulate Filters (DPFs). CARB has acknowledged that DPFs for the types of engines powering many commercial harbor craft do not exist, and has created a provision within the CHC rule giving regulated vessel operators six months to install DPFs once they become "commercially available" (a term that is undefined).

As our organizations have repeatedly reiterated to CARB, existing DPF technology is not feasible and has not been demonstrated to be safe for commercial harbor craft. DPFs are large ceramic filters that collect particulate matter from diesel exhaust. Once the filter is full, the DPF goes into a process called “regeneration,” in which the particulate matter is burned at extremely high temperatures. This process can be either active or passive; both pose serious risks to mariner, vessel, and waterways safety.

DPFs with active regeneration, which uses a burner or other outside heat source, have led to horrific fires in the trucking industry. While any fire emergency is serious, a vessel fire on water is much more dangerous than a truck fire on land. A truck driver can exit the vehicle and run from the danger. A vessel crew must attempt to fight the fire and, if they are unsuccessful in containing it, abandon ship in hazardous conditions.

For DPFs with passive regeneration, power is diverted from vessel propulsion in order to burn the particulate matter. Trucks and school buses with this equipment cannot be operated when the process is initiated and must be parked until it is complete. Commercial harbor craft, which operate nearly continuously and often in busy waterways, need to be able to use their full horsepower to ensure navigation safety, and cannot risk a loss of maneuverability when guiding a cargo vessel into and out of the port or passing other vessels and fixed or floating infrastructure in a crowded navigation channel with dynamic environmental conditions.

The U.S. Coast Guard, which exercises federal authority over vessel design, equipment, and operation, warned CARB during the CHC rule’s development that its DPF requirement poses a “safety issue.” In a letter, the agency made it clear to CARB that any changes to the regulated commercial harbor craft inspected by the Coast Guard will need to be approved by the local Officer in Charge of Marine Inspection and the national Marine Safety Center, and that “any conditions that are deemed unfeasible may not be approved.” The Coast Guard’s safety concerns, and the potential that the DPF mandate could force vessel operators to choose between state and federal compliance by requiring the installation of equipment that is not approved by the Coast Guard, were dismissed by CARB in its reply to the Coast Guard and unaddressed in the final CHC rule.

As the undersigned organizations have stated in comments to EPA (Docket ID No. EPA-HQ-OAR-2023-0153), we do not believe that the CHC rule’s mandate to install DPFs within six months of commercial availability meets the criteria for EPA authorization under CAA section 209(e). If CARB determines that a DPF is commercially available (setting aside whether the Coast Guard has approved its installation), it will likely take more than a year for vessel operators to perform the required design and safety studies before bids can be solicited, materials procured, drydocks scheduled, and work completed. As there are only five drydocks in California that have the capacity to carry out such drastic retrofits, we estimate that compliance would take a minimum of 18 months at a cost of \$5 million per vessel. Therefore, it is clear that the standard and accompanying enforcement procedures are not technically feasible, do not provide

appropriate lead time, and do not give appropriate consideration to the cost of compliance, which amply justifies EPA's rejection of CARB's authorization request per CAA section 209(e)(2)(A)(iii).

### **Supply Chain Crisis In the Making**

Although it is outside the scope of EPA's statutory decision-making authority, it is very important for the Biden Administration to recognize the economic consequences of approving CARB's authorization request. Over 50,000 California jobs and more than \$12.2 billion in state economic activity are driven by the U.S. vessels operating in California and the Americans that crew them. Moreover, California is home to three of the country's top ten busiest container ports, and also serves as a vital global gateway for agricultural products, vehicles, energy products, and other critical waterborne cargoes—meaning that any disruptions to the movement of goods in California are felt by consumers, producers, and farmers across the country.

Since the start of CARB's enforcement of the CHC rule, by CARB's own account, there are 72 fewer towing vessels operating in California. If EPA authorizes CARB to enforce the CHC rule, our organizations expect more operators to pull vessels out of service as it becomes practically and financially infeasible to comply. Fewer tugboats and other commercial harbor craft will delay goods movement and increase the sensitivity of the maritime supply chain to disruption, escalating costs nationwide for both producers and consumers. We saw a demonstration of this effect during the COVID-19 pandemic, when supply chain disruptions and port delays led to historically high prices for U.S. imports. The Biden Administration should not allow the shortsighted regulatory decisions of a single state to jeopardize the nation's economy.

### **EPA Must Act**

The undersigned organizations strongly supported California Assembly Bill (AB) 1122, which would have addressed many of our safety and feasibility concerns with the CHC rule by ensuring that DPFs would be required to be installed only if approved by the Coast Guard or a Coast Guard-recognized classification society and by allowing commercial harbor craft operators to install DPF bypasses to delay the passive regeneration process and maintain propulsion while underway, among other common-sense provisions. AB 1122 passed through both chambers of the state legislature with only one vote against, only to be vetoed by Governor Newsom. Due to the failure of California to address the fundamental deficiencies with the CHC rule that put mariner, vessel, and waterways safety at risk, it is imperative that EPA take action to reject CARB's authorization request and ensure that the state cannot move forward without making changes to the CHC rule that meet the criteria for approval under CAA section 209(e).

Our organizations are deeply committed to sustainability and proud to be part of an industry that is the lowest greenhouse gas-emitting mode of freight transportation, as well as essential to the development of offshore wind energy. We share CARB's goals of reducing emissions and improving air quality in California and across the country. However, those improvements cannot

come at unacceptable risk to the mariners that work on commercial harbor craft, or be to the detriment of the U.S. economy.

We urge you to reject this authorization request, and we thank you for your consideration.

Sincerely,



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CC:

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Senator Ted Cruz, Ranking Member, U.S. Senate Committee on Commerce, Science, & Transportation  
Senator Ed Markey  
Senator Pete Ricketts  
Senator Mark Kelly  
Senator Kevin Cramer  
Senator Alex Padilla  
Representative Sam Graves, Chairman U.S. House Committee on Transportation and Infrastructure

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Representative John Garamendi

Representative Michelle Steel

Representative Buddy Carter

Representative Paul Tonko

Senator Dave Cortese, Chair, California Senate Transportation Committee

Members, Senate Transportation Committee

Members, Senate Select Committee on Ports and Goods Movement

Assemblymember Lori Wilson, Chair, Assembly Committee on Transportation

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Assemblymember Dr. Jasmeet Bains, California State Assembly, 35th District, Author AB 1122

ADM Linda L. Fagan, Commandant, United States Coast Guard

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