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June 8, 2012

Ms. Shuka Rastegarpour  
Environmental Scientist  
Ocean Standards Unit  
Division of Water Quality  
California State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Dear Ms. Rastegarpour:

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 California's certification of the U.S. Environmental Protection Agency's draft National Pollutant Discharge Elimination System Vessel General Permit (VGP) and Small Vessel General Permit (sVGP) under section 401 of the federal Clean Water Act.

The U.S. tugboat, towboat, and barge industry is a vital segment of America's transportation system. The industry safely and efficiently moves over 800 million tons of cargo each year, including more than 60 percent of U.S. export grain, energy sources such as coal and petroleum, including most of New England's home heating oil and gasoline, and other bulk commodities that are the building blocks of the U.S. economy. The fleet consists of more than 4,000 tugboats and towboats, and over 27,000 barges of all types. These vessels transit 25,000 miles of inland and intracoastal waterways, the Great Lakes, and the Atlantic, Pacific, and Gulf coasts. The tugboat, towboat, and barge industry provides the nation with a safe, secure, low-cost, environmentally friendly means of transportation for America's commerce.

Nine AWO members are headquartered in California, and many more operate tugboats, tank barges, and deck barges in California waters. These vessels help to move tens of millions of tons of freight every year on California waterways, reducing congestion on the state's highways and railroads while producing fewer pollutants than trucks and trains. In addition, harbor and ship assist tugboats perform shipdocking, tanker escort, and bunkering services in California's harbors and ports.

Nationwide, AWO's 350 member companies are proud to be part of an industry that is the safest and most 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 and leading the development of higher standards of marine safety and environmental protection. In 1994, AWO became the first transportation trade association to adopt a code of safe practice

and environmental stewardship for member companies. Today, compliance with the Responsible Carrier Program is a condition of AWO membership, and members undergo independent third-party audits every three years to demonstrate their continued compliance.

AWO is also a member of the Shipping Industry Vessel Discharges Coalition, an alliance of maritime trade associations that, together, represent over 90 percent of all vessels calling at U.S. ports, in both the domestic and international trades. The coalition is committed to working with legislators, regulators, and environmental groups to develop environmentally sound and economically practicable solutions to prevent the introduction and spread of invasive species in U.S. waters.

This history and these organizational characteristics inform our view of the California State Water Resources Control Board's draft certification conditions for the 2013 VGP and sVGP. We seek to protect the marine environment in which our vessels operate, to provide a practicable regulatory framework that allows for the continued safe and efficient movement of essential maritime commerce, and to ensure that infeasible regulations do not result in the diversion of cargo to other transportation modes that pose increased risks to safety and the environment.

Although AWO supports initiatives to learn more about the environmental impacts of vessel discharges, we strongly oppose the State Water Board's proposed certification condition 13, which would compel vessel operators to conduct an independent discharge monitoring study or to participate in a group discharge monitoring study "developed in consultation with State Water Board staff" in order to provide the board with "an adequate representative characterization of the vessel discharges to determine compliance" with state initiatives. Our interpretation of Attachment 5 is that a vessel operator who selects the individual study approach will effectively be subject to annual discharge monitoring and reporting requirements for each vessel he or she operates, which is likely to be impracticable and cost-prohibitive. Unless the State Water Board is prepared to mandate monitoring and reporting requirements, and promulgate associated sampling protocols, for the discharges listed in Table 1 of Attachment 5, AWO firmly believes that it is the responsibility of the State Water Board to design a monitoring study, develop sampling protocols, and solicit participants from each vessel class necessary to develop a comprehensive characterization of vessel discharges into state waters.

The proposed collaborative study option grants enormous discretionary authority to the State Water Board. The study would be required to be developed "in consultation with State Water Board staff," and its design would be "subject to the approval of the Executive Director of the State Water Board." The State Water Board employs environmental scientists responsible for enforcing water quality objectives and implementation plans, while most of AWO's members have neither the staff resources nor expertise to develop a discharge monitoring study. We believe that the State Water Board's objectives could be achieved much more efficiently if it was to design and administer such a study itself.

It is also entirely unclear how the State Water Board expects vessel operators to sample discharges such as deck runoff and effluent from above-water-line hull cleaning. Deck runoff from a moving vessel is unconfined; it does not flow through a defined discharge point or into an

accessible impoundment. There is simply no practical means to access those runoff discharges for sampling. Those discharges that are conveyed discretely may not be any more reachable; certain vessels simply are not constructed to allow easy access to piping. While the State of California and, recently, the U.S. Coast Guard have promulgated specifications for ballast water sampling ports, creating sampling ports for discharges such as graywater and bilgewater may require bulkhead or deck modifications of other costly structural changes that may not meet Coast Guard requirements for vessel design and equipment. Moreover, introducing new sampling points has the potential to result in severe consequences, including vessel damage or flooding, if water is able to enter the vessel due to valve failure or human error.

Other discharges from vessels occur at the edges of decks and barge gunnels or at the water line. This highlights a third major concern regarding the establishment of numeric effluent limits: the safety of vessel crewmembers who would be required to conduct sampling of discharges. The primary cause of fatalities in the barge and towing industry is falls overboard, and barge and towing companies' safety management systems focus on the prevention of falls overboard by reducing or eliminating crewmembers' exposure to high-risk areas like the edge of barges and towing vessels. Discharges that occur at vessel edges and at or below the water line are either inaccessible or cannot be safely accessed without risking a potentially fatal fall overboard incident.

For these reasons, AWO strongly recommends that the State Water Board strike draft certification condition 13 and work with vessel operators and other stakeholders to develop a monitoring study that provides the Board with the representative characterization of vessel discharges it requires without imposing unnecessarily burdensome, unacceptably ambiguous, and potentially unsafe requirements on vessel operators.

AWO will continue to work with the California State Lands Commission as it implements its requirements for ballast water and biofouling management, incorporated by reference in certification condition 6. However, we note with concern that the SLC seems intent on enforcing its performance standards for ballast water discharges, despite the fact that ballast water treatment technologies meeting the SLC's standards do not exist. Both the Coast Guard and U.S. EPA have concluded that the International Maritime Organization's D-2 standard is the most stringent standard that can be achieved using currently available technology, based on the reports of the U.S. EPA Science Advisory Board and the National Research Council, among others. Further, the SAB has determined that "moderate adjustments or changes to existing combination technologies are expected to result in only incremental improvements. Reaching the [Coast Guard's proposed] Phase 2 standard, or even 100 x IMO D-2/Phase 1, would require wholly new treatment systems."

The SLC's 2010 findings that eight ballast water treatment systems have the "potential to meet" its performance standards, based on a single successful test, "in no way guarantees" that use of the systems identified in the SLC's report will result in compliance with the agency's "no detectable living organism standard," as U.S. EPA wrote in its Proposed 2013 VGP Fact Sheet. U.S. EPA concluded that the data presented in the SLC's report were "not adequate to determine whether any of the treatment systems can meet a significantly more stringent limit" than the IMO

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D-2 standard because “the data California reviewed for their evaluation of ballast water treatment systems were generally from tests to determine whether systems could meet the IMO limits, and do not have significant precision or resolution to detect efficacy significantly beyond these limits” – a conclusion supported by the SAB’s and NRC’s assessment of the current capabilities of ballast water treatment technology testing and sampling. AWO members report that ballast water treatment technology vendors are unwilling to certify that their systems will meet SLC’s standards and may withdraw from the state’s market. Therefore, AWO would again urge the SLC to work with the California legislature to amend its ballast water performance standards so that they are consistent with the standards proposed in U.S. EPA’s draft 2013 VGP.

Thank you again for the opportunity to comment on the State Water Board’s draft certification conditions for the 2013 VGP and sVGP. We would be pleased to answer any questions or provide further information as the Board sees fit.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles P. Costanzo". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles P. Costanzo