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Senator Obama Supports Jones Act

On August 28, Democratic Party Presidential nominee Senator Barack Obama (D-IL) affirmed his support for the Jones Act, releasing a statement to the Seafarers International Union (SIU), saying, "America needs a strong and vibrant U.S.-Flag Merchant Marine. That is why you and your members can continue to count on me to support the Jones Act (which also includes the Passenger Vessel Services Act) and the continued exclusion of maritime services in international trade agreements." Senator Obama continued, "American Merchant Mariners always have answered the nation's call from the first days of the Revolutionary War to today. In peace and in war, our Mariners have stood with us and my Administration will stand with them." The senator concluded, "Those programs set a firm foundation for America's Merchant Mariners by providing opportunities for decent wages, good benefits and fair treatment." Senator Obama's public appreciation for the Jones Act came in response to the August 13 SIU endorsement of the senator.

Senator Obama, a strong supporter of the 2007 Water Resources and Development Act, has also embraced as a campaign issue the rebuilding of America's transportation infrastructure, including ports and bridges, to ensure long-term competitiveness and economic growth. To furnish funds for rebuilding,



the senator has called for establishing a National Infrastructure Reinvestment Bank, expanding upon existing federal transportation investments. The independent bank would receive \$60 billion in federal funds over 10 years and leverage up to \$500 billion of private investment by issuing tax credit bonds.

As the Presidential election draws near, AWO will continue to reach out to both the Obama and McCain campaigns to reiterate the importance of the Jones Act and the inland waterways infrastructure to the nation's economy, security, environment and quality of life. For more information, please contact Jennifer Carpenter or Robert McCaw at (703) 841-9300, extensions 260 or 279, respectively, or via email at jcarpenter@vesselalliance.com or rmccaw@vesselalliance.com.



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District Court Judge Issues Preliminary Injunction Against Massachusetts Oil Spill Law

On August 27, Judge William G. Young, U.S. District Court, Massachusetts District, issued an

order granting a preliminary injunction against the 2003 Massachusetts oil spill statute. As a result of this decision, AWO members will be required to comply only with existing U.S. Coast Guard regulations

regarding tug escorts and the manning of tank vessels. This injunction was granted on the recommendation of Magistrate Judge Leo Sorokin, also from the Massachusetts District Court, on June 9, and represents a result that AWO had been pursuing. The granting of the injunction also reveals that AWO and its coalition partners have a substantial likelihood of success when the case is finally decided on the merits.

Judge Young's order, while welcome, is not the last step along a very lengthy path that the Massachusetts law has traveled. It was first passed in 2003 after the Buzzards Bay oil spill off the Southeastern coast of the state, and called for a significant amount of unconstitutional state regulations on tank vessels in these waters. In January 2005, the U.S. Department of Justice (DOJ) filed a lawsuit against many of the bill's provisions, claiming that they unconstitutionally trespassed on an area reserved for federal, not state, regulation. Shortly afterwards, AWO, along with three other maritime trade associations, intervened in the case on the side of DOJ.

In July 2006, the District Court of Massachusetts ruled in favor of DOJ, as it found the challenged provisions to

indeed be unconstitutional usurpations of federal responsibility. In December of that year, the decision was appealed by the Commonwealth of Massachusetts, specifically the portions that invalidated regulations on tank vessel manning, tug escorts and financial responsibility. In June 2007, the U.S. Court of Appeals for the First

Circuit vacated the District Court ruling with regard to these three areas and remanded the case to the District Court for further proceedings. DOJ and the intervenors subsequently withdrew their challenge to the financial responsibility portion of the statute, as the implementing regulations that would have provided a basis for proceeding had not yet been issued.

While waiting for a further decision, DOJ and the intervenors filed a motion at the District Court for preliminary and permanent injunctions on the enforcement of the manning and escort requirements. This motion was heard before Magistrate Sorokin in December 2007. In his June 2008 decision recommending a preliminary injunction, Magistrate Sorokin ruled that the challenged provisions of the

state law fell into an area currently regulated by the Coast Guard. Specifically, he noted that the Coast Guard has already established a Regulated Navigation Area (RNA) for Buzzards Bay.

While the preliminary injunction prevents current enforcement of the Massachusetts statute, a decision on whether or not to grant a permanent injunction has not yet been reached by the District Court. In his initial recommendation, Magistrate Sorokin noted that the status of the injunction could be converted from preliminary to permanent upon receipt of the final administrative record of the Coast Guard RNA, a record that will be filed with the District Court by the end of September. Additionally, AWO and its coalition partners made a motion with the District Court last year for a summary judgment. Court decisions on these motions could come by the end of the year.

If you have any questions about the litigation involving the Massachusetts oil spill statute, please contact Chris Coakley or Benjamin Rogers at (703) 841-9300, extensions 297 or 264, respectively, or via email at ccoakley@vesselalliance.com or brogers@vesselalliance.com.



TWIC Enrollment Update

TWIC enrollment has begun at the following ports:

- **September 15:** Kona Coast, Kailua Kona, HI

For the complete up-to-date TWIC Quarterly Deployment Plan, please click [here](#).

Coast Guard Publishes Final Rule on Training and Service Requirements for Mariners

“Bridging” Provision Will Help Alleviate Personnel Shortage

On September 11, the U.S. Coast Guard published a final rule on Training and Service Requirements for Merchant Marine Officers. The rule includes three industry-sought changes to the towing vessel officer licensing requirements endorsed by the Towing Safety Advisory Committee:

1. Removing the expiration date of the radar-observer endorsement from a mariner’s license;
2. Allowing an apprentice mate (pilot) of towing vessels to reduce required sea-service time for mate (pilot) by completing a Coast Guard-approved training program; and,
3. Providing an alternate path, or “bridge,” to mate (pilot) of towing vessels for mariners from other segments of the maritime industry.

The third provision, also known as “alternate progression,” was one of AWO’s key goals for 2008 as part of the association’s strategy to reduce the vessel personnel shortage. It allows mariners with at least three years of experience as masters of steam or motor vessels less than 200 gross tons to qualify as mates (pilots) of towing vessels if they complete the following: a Towing Officer Assessment

Record; the towing vessel license (apprentice mate) exam; and, at least 30 days of training and observation on a towing vessel on the route being sought. Earlier this year, the Coast Guard received complaints about the provision from a small number of vocal critics who incorrectly characterized it as a reduction in the level of experience required for mariners operating towing vessels. In the preamble to the final rule, the Coast Guard set the record straight on this misunderstanding, noting that “the level of experience and training required of the new alternate progression candidates is equivalent to, or even surpasses, existing requirements.” AWO had made the same point in a series of visits with congressional staff who raised questions about the proposal last spring.

The final rule represents a very positive development for industry and a step toward alleviating the vessel personnel shortage while ensuring high standards of marine safety. To read the final rule, please click [here](#). If you have any questions, please contact Jennifer Carpenter or Mary McCarthy at (703) 841-9300, extensions 260 or 254, respectively, or via email at jcarpenter@vesselalliance.com or mmccarthy@vesselalliance.com.

Important Dates and Reminders

..... at a glance

For more information, please contact Hermoine Wellman at (703) 841-9300, extension 291, unless otherwise noted.

October 15-17, 2008:
AWO Fall Convention,
Fairmont Olympic Hotel,
Seattle, WA

January 22-23, 2009:
Southern Region Annual
Meeting, New Orleans, LA

January 28-29, 2009:
Midwest & Ohio Valley
Regions Joint Annual
Meeting, Pittsburgh, PA

February 4-5, 2009:
Atlantic Region Annual
Meeting, Tampa, FL

February 11-12, 2009:
Pacific Region Annual
Meeting, Seattle, WA

Baltimore REC Becomes Field Unit of National Maritime Center



On September 1, the U.S. Coast Guard Regional Examination Center (REC) in Baltimore, MD, completed its transition to become a field unit of the National Maritime Center (NMC) in Martinsburg, WV. Mariners served by this REC will continue to verify their identity, get fingerprinted and take their tests at the Baltimore location. Now, however, the NMC will conduct security, professional qualification and medical evaluations, and will print and issue credentials. AWO members with questions about this transition should contact Benjamin Rogers at (703) 841-9300, extension 264, or via email at brogers@vesselalliance.com.

NPDES Exemption Extended Until December 19

Feedback Requested on Defining Industry BMPs

On September 3, the U.S. District Court for the Northern District of California granted the Environmental Protection Agency's (EPA) request to extend until December 19, the deadline for expiration of the agency's current regulatory exemption for vessel discharges from the National Pollutant Discharge Elimination System (NPDES) program. As reported in the August 29 *AWO Letter*, EPA requested the extension to allow time to review and incorporate public comment into the Vessel General Permit (VGP), and to receive certification for its use in each state. Without this certification, the permit cannot take effect in state waters and vessels will be open to citizen suits.

In granting this extension, the District Court ensures that the regulatory exemption for vessel discharges will remain in place until December 19, providing an additional three months for EPA to finalize and publish the VGP and for vessel operators to implement the new requirements. The extension is welcome relief for industry, which otherwise would have been expected to comply with the VGP by October 1 or else be subject to citizen suits; but, it is far short of the three-year extension that AWO had sought. Moreover, given the considerable work that must be done to finalize the permit, it is likely that EPA will not publish the final VGP until just before the December 19 deadline, leaving industry with little time to come into compliance and at risk of exposure to citizen suits regardless.

AWO and the Shipping Industry Ballast Water Coalition are seeking legislative relief from Congress that would allow the current regulatory exemption to remain in place for some period of time following publication of the final VGP in order to provide a compliance period for industry; however, the prospects for such relief remain uncertain. In the meantime, AWO recommends that members begin to prepare for the worst-case scenario that compliance will be required on December 19.

Member Feedback Needed

While AWO is hopeful that the final VGP will include changes to the draft permit based on industry comments, the association expects that the final permit will still include Best Management Practices (BMPs) that, in many cases, are worded in very vague terms. On September 4, AWO sent an email memorandum to members seeking feedback on the value of an AWO-led effort to develop industry standards that would add specificity to the BMPs for tugboats, towboats and barges and give vessel owners and operators more defensible procedures to point to if ever challenged by a citizen suit.

Any such effort would be very labor-intensive and require a large amount of member involvement.

AWO members with questions about this issue or comments on the utility of developing industry-specific BMPs should contact Jennifer Carpenter or Mary McCarthy at (703) 841-9300, extensions 260 or 254, respectively, or via email at jcarpenter@vesselalliance.com or mmccarthy@vesselalliance.com.

Coast Guard Announces More TWIC Compliance Dates

On August 26, the U.S. Coast Guard and the U.S. Transportation Security Administration (TSA) announced a Transportation Worker Identification Credential (TWIC) program compliance date of



December 30 for facilities in the following Coast Guard Captain of the Port (COTP) zones: Baltimore, MD; Delaware Bay; Mobile, AL; Lower Mississippi River; Ohio Valley; Pittsburgh, PA; and, San Diego, CA. These zones include the ports of Annapolis, MD; Philadelphia, PA; Camden, NJ; Gulfport, MS; Memphis, TN; Cincinnati, OH; Pittsburgh, PA; and, San Diego, CA.

As reported in the August 1 edition of the *AWO Letter*, the Coast Guard and TSA will make additional TWIC compliance date announcements in the coming weeks. Compliance will be phased in by COTP Zones between October 15, 2008, and April 15, 2009, after which all ports must be in compliance and all credentialed mariners must be in possession of a TWIC card. The Coast Guard and TSA, in conjunction with TWIC contractor Lockheed Martin, have opened 147 fixed enrollment centers and a few dozen mobile sites nationwide. As of September 1, 60,440 mariners and 22,797 longshoremen have applied for TWIC cards, along with 390,730 other individuals.

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NTSB to Offer Two Marine Safety Training Courses for FY 09

On August 26, the National Transportation Safety Board (NTSB) announced that it would be offering two marine safety training courses for marine industry professionals during Fiscal Year 2009 (FY 09). The classes are scheduled for October 2008 and January 2009. NTSB, an independent federal agency that investigates all civil aviation accidents as well as selected accidents in other modes of transportation, promotes independent, objective, and technically-advanced accident investigations in order to enhance safety.



The first course, “Accident Investigation Orientation for Marine Professionals,” will be held October 7-8. The course, led by senior NTSB management and investigators, details how the NTSB investigates major marine accidents and what it expects of participants in an investigation. The course will educate attendees on issues such as the NTSB’s legal authority, the relationship between NTSB and Coast Guard investigations, and the NTSB safety recommendations process, among other areas of interest.

The second course, “Marine Accident Investigation,” will be held January 26-30, 2009. The course will detail

how to investigate major marine accidents by gathering, examining and analyzing data related to engineering investigations, deck operation investigations and human factors in marine accidents.

Both courses will be held at the NTSB Training Center in Ashburn, VA. Representatives from the NTSB Office of Marine Safety will lead both courses, but other senior professionals from the NTSB will serve as guest presenters on a variety of relevant topics, including public affairs, research and engineering, and safety recommendations.

Anyone interested in registering for one or both courses can consult the NTSB Web site, www.nts.gov, for more information.

Coast Guard Announces More TWIC Compliance Dates

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Once more AWO urges all member companies to encourage their employees to obtain a TWIC as soon as possible to minimize the likelihood of last-minute processing delays or confusion as facilities begin to implement the program. AWO also requests member feedback on the proposed implementation schedule and its effect on mariners, in particular those who are not required to have Merchant Mariner’s Documents. Please share any feedback with Jennifer Carpenter or Robert McCaw at (703) 841-9300, extensions 260 or 279, respectively, or via email at jcarpenter@vesselalliance.com or rmccaw@vesselalliance.com.

NMSAC to Hold September 18 Meeting in Nation’s Capital

On September 18, the National Maritime Security Advisory Committee (NMSAC) will meet in Washington, D.C. to discuss various issues relating to national maritime security. This meeting will be open to the public and broadcast via a Web-enabled interactive online format. NMSAC is chartered to advise, consult with, report to, and make recommendations to the Secretary of the Department of Homeland Security on matters relating to maritime security.

During the meeting, NMSAC will hold a briefing on sensitive security information, present and discuss the Seafarer’s Access Working Group report, receive a briefing and hold a discussion on the Coast Guard/Customs and Border Protection (CBP) Senior Guidance Team, and have a briefing and discussion on the Coast Guard/CBP Joint Command Center Initiatives.

The meeting will be held from 9:00 a.m. to 4:00 p.m. at the Association of American Railroads Conference Center, Conference Room C, 50 F Street, NW, 4th Floor, Washington, D.C. 20001. Written material and requests to make oral presentations to be considered by the committee should be sent by September 15 to: Mr. Ryan Owens, Assistant to Designated Federal Officer of the National Maritime Security Advisory Committee, 2100 2nd Street, SW; Room 5302, Washington, D.C. 20593. If you would like to participate in this meeting via the online Web format, please click [here](#) and follow the online instructions to register for the meeting.

To read the meeting announcement, click [here](#). For more information, please contact Mr. Owens at (202) 372-1108 or via email via ryan.f.owens@uscg.mil.

AWO to Testify at Two Congressional Hearings Hearings to be Broadcast Online



As reported in the August 29 edition of the *AWO Letter*, on September 16 and 17, AWO will testify before two separate House of

Representatives committees. On September 16, AWO President & CEO Tom Allegretti will testify before the Subcommittee on Coast Guard and Maritime Transportation of the House Committee on Transportation and Infrastructure regarding the July *Mel Oliver* collision and oil spill. On September 17, AWO member Steve Golding, Golding Barge Line, Inc., will testify on behalf of AWO before the House Subcommittee on Border, Maritime and Global Counterterrorism of the Homeland Security Committee regarding progress made in the implementation of the Transportation Worker Identification Credential (TWIC) program.

The September 16 Coast Guard and Maritime Transportation hearing will be held at 10:00 a.m. To watch the hearing live online, click [here](#), and follow the appropriate directions.

The September 17 Homeland Security Committee hearing will be held at 10:00 a.m. To watch the hearing live

online, click [here](#), and follow the appropriate directions.

For more information, please contact Jennifer Carpenter or Robert McCaw at (703) 841-9300, extensions 260 or 279, respectively, or via email at jcarpenter@vesselalliance.com or rmccaw@vesselalliance.com.

Congress Returns from Recess



Congress reconvened on September 8 following the August recess and two back-to-back Presidential conventions. During this three-week session, Members of Congress must pass a Continuing Resolution to keep the government running. Issues expected to be addressed by Congress include a controversial energy bill that could result in a lifting of the ban on offshore drilling, the economy and military spending. Congress is scheduled to break again on September 26 for the rest of the year; however, they may decide to remain in session past that date, or reconvene after the November 4 election.

SEPTEMBER IS NATIONAL PREPAREDNESS MONTH!

AWO Participates in Annual DHS Ready Campaign Coalition

President George W. Bush has proclaimed September 2008 as the fifth annual National Preparedness Month. In a press release issued from the White House on August 26, the President referred to the Department of Homeland Security's (DHS) Ready campaign and its efforts to highlight preparedness steps, including having an emergency supply kit, making a family emergency plan and becoming informed about different types of



emergencies. In a statement issued by DHS, Secretary Michael Chertoff said, "This is the time, each year, when every American should ask the question, 'Am I ready?'" Ready's Web site, www.ready.gov, is a free resource where individuals can find an emergency supply checklist, download an emergency plan and link to local information. Ready also has resources and tools available on its Web site to help business owners ensure their

businesses stay up and running, talk to their employees and protect their assets, which can be accessed by clicking [here](#).

AWO is participating in the Ready campaign coalition of 2,700 members, including corporations, associations and community organizations, helping DHS to spread the word about national preparedness for natural and man-made disasters. Recent hurricanes on the Gulf and Atlantic coasts and flooding in the Midwest underscore the need to prepare ourselves, our families and our businesses for emergencies.

DOCUMENTATION: A Critical Element of RCP Recertification Audits

The article below first appeared in the *AWO Letter* in May 2001, when many members were preparing for their first Responsible Carrier Program (RCP) recertification audit. Today, many of these same members are preparing for their third RCP recertification audit, and this advice on preparing for an audit is as useful today as it was seven years ago.

In preparing for any audit, all required policies and procedures must be current and in place, including recently-required RCP policies such as Designated Person, Personal Hygiene, and Sanitation and Safe Food Handling. It is also important to note the critical need to maintain, and be able to produce, proper documentary evidence of inspections, safety meetings, training and other required elements of the RCP. AWO-certified RCP auditors are instructed to physically inspect and verify compliance with all required elements of the RCP as part of the recertification audit process.

Auditors must ascertain that all of a company's policies and procedures are supported by records that contain sufficient information to determine the means by which the company meets the requirements of the program. Auditors will also be looking for evidence of a company's ongoing commitment to complying with the letter and spirit of the program.

The required documentary evidence that auditors will be looking for may include – but is not necessarily limited to – vendor safety inspections, maintenance records, crew safety meeting records, vessel inspection checklists and personnel training records. Ideally, these records will indicate consistent, ongoing compliance with the company's RCP. This documentation needs to be readily accessible to the RCP auditor. Centrally-located and readily-available documentation will be another indication to an auditor that a



company's program is a vibrant and integral part of its operations.

In preparing for the audit, AWO members should act now to ensure that these records are or will be available to their auditors. One helpful way to prepare for an audit is to perform a thorough internal audit. Internal audits are required by the RCP, and are the best way to identify deficiencies in a program before the auditor arrives. If you have questions about any aspect of your Responsible Carrier Program, please contact Bob Clinton at (703) 841-9300, extension 253, or via email at bclinton@vesselalliance.com.

THE AWO FALL CONVENTION IS ALMOST HERE...

Have you made your travel plans yet?

The AWO Fall Convention is being held in Seattle, WA, at the Fairmont Olympic Hotel. Meetings will begin on the morning of Thursday, October 16 and conclude at noon on Friday, October 17. New Directors should plan to attend the Board orientation session to be held the day before the Convention on Wednesday, October 15 at noon. Registration for the Convention will be available soon, but it's not too early to make your flight arrangements. If you have any questions, please contact Hermoine Wellman at (703) 841-9300, extension 291, or via email at hwellman@vesselalliance.com.



If you receive a hard copy of the *AWO Letter* and need to know the exact Web addresses of the hyperlinks in any articles, please contact Mary McCarthy at (703) 841-9300, extension 254, or mmccarthy@vesselalliance.com.