AWO Model Vessel Security Plan Now Available

AWO's Board of Directors approved the AWO Model Vessel Security Plan at its April 12 meeting and agreed that it should be shared with all AWO members for use as a template in developing their own security plans. Copies of the plan have been mailed to all Board members, designated representatives and sector committee members. The plan has also been placed on AWO's Web site, www.americanwaterways.com, under "Model Vessel Security Plan."

The plan was developed by representatives from AWO member companies, the Coast Guard, and the Corps of Engineers. The plan outlines recommended practices that companies should take to guard against security risks. The plan includes a matrix of actions to take at the three Coast Guard Maritime Security Conditions (MARSEC 1-3). The plan also includes an appendix of high hazard cargoes that classifies nearly 100 cargoes based on their potential security risk. Additional cargoes will be classified over time and updates to the

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The Coast Guard has withdrawn its September 1999 advance notice of proposed rulemaking (ANPRM) seeking comment on possible changes to agency regulations for barges carrying bulk liquid hazardous materials (46 CFR Part 151). In announcing the withdrawal, which took effect immediately upon publication in the April 23 Federal Register, the Coast Guard noted that it planned to withdraw all ongoing regulatory projects that are not directly related to homeland security and on which the agency does not expect to take action during the coming year.

While withdrawal of the ANPRM does not mean that the Coast Guard intends never to make changes to 46 CFR Part 151, reactivating the project in the future would require beginning the regulatory process "from scratch." Moreover, the Coast Guard had already concluded, based on feedback from AWO, the Chemical Transportation Advisory Committee (CTAC), and company commenters, that a comprehensive overhaul of the regulations governing barges carrying bulk liquid hazardous materials was not necessary. Thus, any future changes to Part 151 are likely to be incremental and based on a shared Coast Guard-industry perception of the need for specific changes.

The notice announcing withdrawal of the Part 151 rulemaking is evidence that the Coast Guard is serious about its effort to focus its regulatory resources on projects affecting homeland security. According to Coast Guard officials, the agency has submitted to the Department of Transportation (DOT) a list of other rulemaking projects it would like to withdraw to focus on security issues. Upon approval by DOT, the Coast Guard will publish this information in the upcoming "Semi-Annual Regulatory Agenda" printed in the Federal Register. AWO will inform members of changes in the status of regulatory projects affecting tugboat, towboat, and barge operations.

AWO Model Vessel Security Plan Now Available

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AWO has filed an amicus curiae brief supporting member company SeaRiver Maritime, Inc., in its petition for Supreme Court review of the Fifth Circuit Court of Appeals decision in Owens v. SeaRiver Maritime, Inc. In November 2001, the Fifth Circuit ruled that a tankerman employed by SeaRiver assigned to a shore-based strike team was not "employed as a seaman" for purposes of the Fair Labor Standards Act (FLSA) and, as such, was not exempt from the FLSA's maximum work hour and overtime provisions.

On March 20, SeaRiver filed a Petition for Certiorari with the U.S. Supreme Court on the grounds that the Fifth Circuit decision conflicts with the lower court's interpretation of "employment as a seaman." AWO has been able to help SeaRiver prepare its petition and provide arguments to support its case. AWO will continue to monitor the progress of the case and keep members informed of any developments.
On April 25, Senators John Breaux (D-LA) and Gordon Smith (D-OR) introduced the Ship, Seafarer and Container Security Act (S. 2329). Senator Breaux, Chairman of the Surface Transportation and Merchant Marine Subcommittee of the Senate Commerce, Science and Transportation Committee, stated that his intent is to try to incorporate the bill in any House-Senate conference report on maritime security. The Senate had already passed Senator Ernest "Fritz" Hollings' Port and Maritime Security Act of 2001 (S. 1214) in December 2001. On the House side, the Maritime Transportation Antiterrorism Act of 2002 (H.R. 3983) has been approved by the Transportation and Infrastructure Committee and is awaiting consideration by the full House.

The new bill addresses concerns raised at field hearings that Senator Breaux has convened at U.S. ports since September 11. The Ship, Seafarer and Container Security Act contains several provisions of particular interest to AWO and its members, including:

**Automatic Identification System (AIS)**

The legislation states that the following vessels, when operating on the navigable waters of the United States, will be required to be equipped with an automatic identification system:

- Vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act; and,
- Commercial towing vessels while towing astern or pushing ahead or alongside, (except commercial assistance towing vessels rendering assistance to disabled small vessels).

The bill calls upon the Secretary of Transportation to initiate a rulemaking on AIS requirements, and further states that all vessels listed above must comply with the AIS requirement no later than December 31, 2004.

**Unique Seafarer Identification**

The legislation states that the Secretary of Transportation should undertake the negotiation of an international agreement, or amendments to an international agreement, that provides for a uniform, comprehensive international system of identification for seafarers that will enable the United States...

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Senators Breaux and Smith Introduce Another Maritime Security Bill

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If the Secretary fails to complete the international agreement negotiation or amendment process within 24 months after the date of enactment of S. 2329, then the Secretary must transmit to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure a draft of legislation that, if enacted, would establish a uniform, comprehensive system of identification for seafarers.

If you would like a copy of the Ship, Seafarer and Container Security Act (S. 2329), the Port and Maritime Security Act of 2001 (S. 1214), and/or the Maritime Transportation Antiterrorism Act of 2002 (H.R. 3983), please contact Megan Potter at (703) 841-9300 or via email at mpotter@vesselalliance.com.

AWO is now accepting sponsorship applications for the 2002 AWO Letter. Each great advertising opportunity costs $500, which includes a front-page “sponsorship block” featuring your company’s name, location, logo, and Web site address. The ad is also placed on AWO’s Web site, www.americanwaterways.com, which is archived and kept on the site for at least a year. To obtain a sponsorship form, please contact Traci Fischer at (703) 841-9300 or via email at tfischer@vesselalliance.com. Remember -- sponsorships are available on a first-come, first-served basis, so send your form in today!
AWO, Coast Guard to Sponsor Crew Endurance Management Training

AWO, in collaboration with both Coast Guard headquarters and the Coast Guard Research and Development Center (RDC), is sponsoring a workshop led by Dr. Carlos Comperatore of the RDC staff on the Coast Guard's Crew Endurance Management System (CEMS). This workshop will be an exciting opportunity for AWO members to learn more about the CEMS concept as was presented at the AWO Spring Convention. The workshop is a "train-the-trainer" class that will give individuals the training necessary to implement a crew endurance program at their companies. Attendance at the workshop is free, but is limited to 50 attendees. The training is specifically designed for marine operations managers and port captains who have direct responsibility for safely crewing and operating company vessels and would be charged with implementing CEMS at their companies. The training provided in the workshop is applicable to inland as well as coastal operations.

The Crew Endurance Management System developed by the Coast Guard's Research and Development Center complements the Coast Guard - AWO Safety Partnership's Crew Alertness Campaign. Crew alertness is at the top of the Coast Guard’s and AWO’s priority list of safety initiatives. The Campaign and the CEMS workshop are designed to increase the awareness of factors affecting alertness, provide training on ways to mitigate behaviors contributing to fatigue, and provide solutions such as alternative watch schedules and light management. The CEMS has been implemented on several vessels in the fleet of AWO member company American Commercial Barge Lines (ACBL). Staff from ACBL will assist in conducting the workshop and be on hand to offer their experience in introducing the CEMS to vessel crews, as well as other company employees affected by this comprehensive program.

The two-day workshop will be held from 8:00 a.m.- 5:00 p.m. on July 17-18 in Houston, TX, at the Hyatt Regency Houston Hotel, 1200 Louisiana Street. A block of rooms is being held at the rate of $115.00 single/double. Please call (713) 654-1234 to make your reservation by June 26.

As noted above, attendance at the workshop is limited. Please call Kathy Rehak at (703) 841-9300 to register or for further information.

AWO Participates in Confined Space Training Class

On April 17-18, AWO Safety Coordinator Kathy Rehak attended a seminar on "Confined Space Entry in the River Environment." The training was sponsored by the Huntington District Waterways Association and was held at the Tri-State Fire Academy in Huntington, WV. Seminar instructors were Guy Colonna and David Trebisacci of the National Fire Protection Association. In addition to Mr. Colonna and Mr. Trebisacci, personnel from the Tri State Fire Academy held workshops on rescue equipment, the rescue process and preparing the injured.

Participants at the seminar represented a broad range of the river industry and government agencies. In addition to employees of AWO member companies Marathon Ashland Petroleum LLC, Madison Coal & Supply Company and AEP River Transportation, others in attendance hailed from local repair and shipyards, the Coast Guard, and fire and rescue squads.

The Tri State Fire Academy is also home to the Inland Waterways Academy of Marshall University. The Inland Waterways Academy offers deckhand, cook and safety management training. For further information, please contact Mr. Dana Robertson, Coordinator, Inland Waterways Academy at (304) 697-5616.
**Southern Region**

**Louisiana Legislature to Address Industry Tax Concerns**

The Louisiana state legislature will consider two bills aimed at restoring maritime tax exemptions threatened by recent state court rulings. The bills were introduced at the start of the state's regular legislative session which began April 29 in Baton Rouge.

The first bill involves an existing state law that allows vessels engaged in interstate or foreign commerce to take an exemption on state and local sales tax for any fuel, repairs, groceries or other supplies purchased in Louisiana. For many years this had been interpreted to include vessels, such as fleet boats, harbor tugs and crane barges, that handle interstate or foreign cargo even though they only operate within state waters. However, in November the State Supreme Court ruled that the exemption only applies to vessels that physically leave the state as a part of their voyage. As a result local operators face large tax assessments going back three years. Bills introduced by Senator Art Lentini and Representative John Alario address this problem by clarifying the state law to restore the exemptions to local vessels helping to move legitimate interstate or foreign commerce.

The second bill involves the sale of new vessels and major repairs to vessels. Under the law, vessels over 50 gross tons and their component parts are exempt from sales tax in Louisiana. Some years ago, a casino boat owner tried to argue that gaming equipment such as video poker machines was tax exempt if it was bolted to the deck of the vessel. Last year the State Supreme Court ruled that gaming equipment was not a component part of the vessel and was not eligible for the exemption. Unfortunately, the Justices' opinion threw into question the basic definition of "component parts," saying that anything that could be removed from the vessel was taxable. This could add millions of dollars to the cost of vessels built in the state. A separate bill by Senator Lentini and Representative Alario seeks to restore the exemption and allow state shipyards to remain cost competitive.

The proposed legislation comes at the urging of a coalition of vessel operators and shipyards in the state. The group, which includes nearly 60 members, was formed under the auspices of the Louisiana Association of Waterways Operators and Shipyards (LAWS) and the Greater New Orleans Barge Fleeting Association. AWO's Southern Region office has taken a leadership role in organizing the initiative. For additional information, or to help with the effort, please contact Ken Wells, AWO Southern Region, at (985) 674-1718 or kwawo@msn.com.

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**South Dakota Sues the Corps: Stop the Flows!**

On Friday afternoon, April 26, the State of South Dakota filed suit against the U.S. Army Corps of Engineers Northwest Division and Omaha District. The suit states that "The State of South Dakota respectfully requests this Court to grant it a temporary restraining order restraining the Corps from further lowering the level of Lake Oahe or any other main stem reservoir (on the Missouri River) until May 22, 2002." The court date was Wednesday, May 1.

This potentially precedent-setting suit alleges the economic need for more water to increase the smelt population during its spawning.

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**Southern Region Meeting to be Held in June**

The AWO Southern Region will meet in Galveston on June 20-21. The meeting will be held at the San Luis Resort, 5222 Seawall Boulevard, Galveston, TX. The meeting kicks off with a reception Thursday night. Friday's business meeting will focus on important issues affecting members in the region.

The meeting registration fee is $75 for a company's first registrant and $40 for each additional participant, spouse or guest. Due to hotel guarantees, we are unable to refund any fees within 72 hours of the meeting. You will be invoiced upon receipt of the registration form. Rooms have been blocked at the San Luis Resort & Conference Center at a group rate of $135. To reserve a room, please call the resort directly at (409) 744-5000 or (800) 392-5937 and mention the group name "American Waterways Operators." The cutoff date for securing the group discount is May 28, 2002, or when the block has been filled.

To register, please complete the attached registration form and fax it to Marilyn Clark at (985) 674-2291 by May 28.
USCG Establishes Domestic Voyage Load Lines for River Barges on Lake Michigan

The U.S. Coast Guard has published an interim rule with request for comments establishing a special load line regime for certain unmanned dry cargo river barges to be exempted from the normal Great Lakes load line assignment while operating in Lake Michigan. This new interim rule affects river barge traffic transporting non-hazardous materials from Chicago (Calumet Harbor) to Burns Harbor, Milwaukee, St. Joseph, and Muskegon.

Each route will have specific requirements for registration, barge age, tow limits, and towboat equipment along with weather limitations. For more information, contact Lynn Muench at awo-midcontinent@msn.com.

Comments on the interim rule can be submitted the following ways:

Via Mail:
Docket Management Facility
RE: USCG-1998-4623
U.S. Department of Transportation
Room PL-401
400 7th Street SW
Washington, DC 20590-0001

Via Fax:
(202) 493-2251

Via the Internet:
http://dms.dot.gov

Midcontinent Office

South Dakota Sues the Corps: Stop the Flows!
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period, which means more walleye for sport fishing. The restraining order would cut flows at Gavin's Point from approximately 23,000 cfs to 13,000 cfs. Even with higher than normal tributary inflows, navigation would be below minimum service levels from Sioux City to Kansas City, perhaps as far as Booneville.

The court order would limit flows on the Missouri for up to six weeks.

According to the U.S. Fish & Wildlife Service (USF&WS), the pallid sturgeon needs a "spring rise" in May for spawning to begin. It does not appear that the USF&WS will be part of this court case. Sources indicate that the State of Missouri will testify that the lower flows will create larger than normal sandbars for two endangered bird species to nest. If this occurs, the Corps will be unable to return to normal flows until after the eggs are hatched, virtually shutting the river down this year.

Affidavits from members of AWO, The Coalition to Protect the Missouri River (CPR), Missouri and Illinois Farm Bureaus, Missouri Port Authority, and the Levee and Draining District were produced and sent to the court on April 29. The states of Missouri and Iowa, along with the Corps, will present documentation that provides environmental reasons to keep the flows at the present levels. The affidavits from members of the above organizations may be the only economic information allowed by the Court. CPR also filed an amicus brief.

Late breaking news...The United States District Court, District of South Dakota issued a Temporary Restraining Order (TRO) against the U.S. Army Corps of Engineers - Northwest Division and Omaha District on Wednesday, May 1, 2002. The TRO restrains the Corps from decreasing the reservoir levels of Lake Oahe. Although this does not restrain the Corps from releasing water from other reservoirs, it will no doubt also include extreme cutbacks in flows from Gavin's Point. The Corps is to release its plan to comply with the TRO on Thursday, May 02, 2002. The judge will review the TRO on May 9. At that time he will decide whether to include the other reservoirs in this TRO and will issue a date for how long water levels are to be maintained. The judge denied the opportunity for all other stakeholders, including the State of Missouri, CPR, and other downstream interests from filing documents, testifying, or becoming part of the suit. CPR, the Missouri Attorney General, and other interested groups are confronting the next action. The Corps is seeking an appeal.

For a copy of the suit, amicus brief, CPR's press release or other information, contact Lynn Muench via email at awo-midcontinent@msn.com or by phone at (314) 621-2929.