

# NATIONAL MARITIME SAFETY ASSOCIATION, INC.

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*Dedicated to Maritime Safety & Health*

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## TECHNICAL COMMITTEE

Ken Killough  
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## NMSA News Bulletin . . . 10/07/2009

- **Personal Protective Equipment Final Rule**—In the *Federal Register* of September 9, 2009, OSHA published its final rule revising PPE provisions for “general industry, shipyard employment, longshoring and marine terminals standards for eye and face-protective devices and head and foot protection. As you may recall from previous newsletters, OSHA has been updating its protective equipment regulations to delete “outdated national consensus and industry standards.”

The rule becomes effective on October 9, 2009.

- **Deputy Secretary Speaks about OSHA**—DOL Deputy Secretary Seth Harris, speaking to an organization of government executives, discussed his job at DOL and how DOL’s current leadership views the organization and its responsibilities—referring to the DOL as the “department of good jobs for everyone” encouraging higher wages, safe workplaces, and a diverse workforce. Regarding OSHA specifically, Secretary Harris made several points:
  - Corporate-wide enforcement: expect to see OSHA at other sites/facilities if there is a problem at one site;
  - OSHA will be using networking tools for enforcement;
  - OSHA will be regulating those hazards posing the greatest risk in order to save lives;
  - OSHA will focus on the most egregious employers and the neediest laborers.

Secretary Harris also noted that we will be seeing “values driven reforms” at DOL.

- **Harwood Training Grants Announced**—Earlier this month, OSHA awarded \$6.8 million in Susan Harwood Training Grants, which support workplace safety and health programs. The list of recipients is available on the [OSHA website](#).

- **Site Specific Targeting**—In 2009, OSHA’s Site-Specific Targeting program will be focusing its energies on approximately “4,000 high-hazard worksites.” OSHA has divided the sites into three employment sectors: manufacturing, non-manufacturing, and nursing homes. OSHA set minimum injury and illness rates for each group, and the 500 non-manufacturing worksites have Days Away, Restrictions, & Transfers (DART) rates of 15 or more, or a Days Away From Work Injury and Illness (DAFWII) rate of 13 or more. On its secondary list, non-manufacturing facilities would have DART rates between 6 and 15, or DAFWII between 4

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and 13. The rates were based on data from the 2008 Data Initiative survey of employers "with 40 or more workers, in industries with historically high occupational injury and illness rates."

- **OSHA Recordkeeping Program**—On October 1, 2009, OSHA announced a new "National Emphasis Program" (NEP) for recordkeeping. OSHA plans to inspect businesses' injury and illness records to determine if employers are under-reporting injuries and illnesses. OSHA wants to assess the accuracy of employer injury and illness data, and "appropriately" enforce "regulatory requirements" when data is under-reported. The agency's inspections will include "a records review, employee interviews, and a limited safety and health inspection of the workforce." Industries with high rates of injuries and illnesses will be targeted.

- **Business Requests Hearings on DOL's Assistant Secretary for OSHA Appointee**—Business groups have sent a joint letter to members of the Senate's Committee on Health, Education, Labor, and Pensions (HELP Committee) requesting that the committee hold hearings on the nomination of Professor David Michaels to be Assistant Secretary of Labor, OSHA. The letter cites Mr. Michaels' advocacy for "more government regulation," even without adequate scientific support and data. The letter comments that Mr. Michaels' "writings frequently cast corporations as perennial bad actors in need of regulation." It also notes that Mr. Michaels has questioned a unanimous Supreme Court's decision requiring "that scientific evidence in litigation must meet certain standards to be admitted." Finally, the letter states that Mr. Michaels' nomination warrants the confirmation hearing that all other OSHA Assistant Secretaries have been subject to.

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## NMSA News Bulletin . . . 11/02/2009

• **Monitoring of OSHA State Plans Expected to Increase**—In mid-October, OSHA released a study of Nevada's state OSHA plan. The study was prompted by press reports criticizing Nevada's OSHA program. The results of the study—that Nevada OSHA had failed to "issue appropriate willful and repeat citations," that inspectors were poorly trained, and that there was little or no follow-up "to determine whether hazards were abated"—has led Acting Assistant Secretary for OSHA Jordan Barab to decide that there will be "strengthened oversight, monitoring, and evaluation of state programs." DOL wishes to ensure that state OSHA programs are "at least as effective as the federal program." In addition, Mr. Barab noted that, in the future, OSHA will make all federal OSHA National Emphasis Programs "and other similar initiatives mandatory rather than discretionary changes to the states' programs."

Mr. Barab also noted that the federal share of the cost of state OSHA programs, initially around fifty percent, has declined to about thirty-three percent, and that the current fiscal condition that most states find themselves in does not bode well for increases in state funding. However, DOL expects to increase the current federal share of the cost of the program. ([Barab House Committee on Education & Labor testimony](#).)

• **2008 Injury and Illness Rates Decline**—The Bureau of Labor Statistics (BLS), on October 29, 2009, released its 2008 statistics for workplace injuries and illnesses. The [report](#) showed a "significant decline" for the combined injury and illness rate for private industry, for injuries only, and for illnesses. Labor Secretary Hilda Solis commented that she was "cautiously optimistic" about the drop in the rates, but also noted that they "do not lessen the need for strong enforcement." She also noted, as we reported in last month's NMSA Bulletin, that OSHA has begun a National Emphasis on Recordkeeping to ensure the accuracy of employer records.

• **OSHA Issues Huge Fine Against BP**—As perhaps a harbinger of things to come, OSHA levied a record \$87.4 million fine against BP. Following a 2005 explosion at a Texas refinery that killed 15 employees, BP and OSHA reached a settlement agreement, with BP agreeing to take corrective actions to "eliminate potential hazards." OSHA, contending that BP has not complied with the settlement terms and which has cited the company for additional willful violations, levied the record fine at the end of last month. Rep. George Miller (D-CA), Chairman of the House Education & Labor Committee, commented that "OSHA is taking the agency's enforcement responsibilities seriously...This sends a clear message to other employers that they cannot ignore the health and safety of their workers."

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- **OSHA Assistant Secretary Nomination Postponed**—David Michaels' nomination was scheduled to be considered by the Senate Committee on Health, Education, Labor, and Pensions (HELP) on October 21, 2009. However, the Committee postponed its consideration of the nomination and has not yet rescheduled. The HELP Committee did not schedule a hearing on the nomination of Mr. Michaels, and members of the business community objected strongly to any approval of the nominee without full committee hearings, which have been standard for all previous OSHA Assistant Secretaries.

- **Ergonomics Rears Its Head Again**—OSHA is expected to initiate another push on ergonomics, including a rule on repetitive-motion injuries. You may recall that OSHA's National Advisory Committee on Ergonomics made a variety of recommendations on the ergonomics issue to the Department of Labor prior to the Committee's charter expiring at the end of 2004. The 2004 news release detailing the recommendations is available on the [OSHA website](#). The last time that ergonomics was a serious issue, the Senate killed the regulation at the last minute during the Clinton administration. Despite the fact that the regulation did not apply to the maritime industry, NMSA played a role in this effort.

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## NMSA News Bulletin . . . 12/10/2009

- **Next MACOSH Meeting Scheduled**—OSHA has scheduled the next meeting of the MACOSH for January 19-20, 2010. The meeting will be held at the U.S. Department of Labor building in Washington, DC. The Longshore and Shipyard workgroups will meet on January 19, 2010 from 9 AM until 5 PM, and the Committee will meet on January 20, 2010 from 9 AM until 5 PM. The Longshore workgroup discussion is expected to cover the issues of welding guidance, safety zone guidance, speed limits in marine terminals, and container repair safety guidance. If any NMSA members expect to attend, please contact Chuck Carroll at [carroll@nmsa.us](mailto:carroll@nmsa.us).
- **GAO Report on OSHA's Records Audit Process**—In mid-November, the GAO released a report on the workplace injury & illness data audits performed by the Occupational Safety & Health Administration (OSHA). The report is generally critical of the way OSHA performs audits of the data, and how it does, or does not, verify the collected data.

The GAO criticizes OSHA for not regularly interviewing workers in order to verify employer-reported data. GAO is also critical of the long lag time—often up to two years—between the filing of injury & illness reports and the actual audit of the report. This lag time contributes to the lack of worker interviews to verify the reports because, frequently, an injured worker is no longer with the company or, alternatively, cannot remember the particulars of a reported injury or illness. OSHA is also criticized in the report for excluding eight high hazard industries, a result of OSHA's use of the Standard Industrial Classification (SIC) system rather than the North American Industry Classification System (NAICS) used by the Bureau of Labor Statistics.

The GAO asserts that both workers and employers have disincentives to accurately reporting illnesses & injury statistics. On the worker side, GAO says that workers fear job loss or other disciplinary action, that they fear that they might be required to undergo mandatory drug testing, and that employer safety incentive programs that reward workers might also be a disincentive to reporting illnesses or injuries. An OSHA official told the GAO that under the recently announced National Emphasis Program, "OSHA will explore the possible impact that incentive programs have on workers' decisions to report injuries and illnesses."

On the employer side, GAO cites increased worker compensation costs and the fact that high injury and illness rates might jeopardize an employer's ability to compete for contracts. GAO also says that "businesses



sometimes hire independent contractors to avoid the requirement to record workers' injuries and illnesses because they are not required to record them for self-employed individuals." The GAO report also states that OSHA inspectors and stakeholders believe that there is a "lack of understanding of OSHA's recordkeeping requirements" by individuals who record injuries and illnesses.

GAO's recommendations to improve OSHA's injury and illness records audits include:

- o requiring inspectors to interview workers during audits;
- o minimizing the amount of time between record filing and audits;
- o updating the list of high hazard industries; and,
- o increasing employer training to insure proper recordkeeping.

OSHA has agreed with the GAO recommendations, and intends to implement all of the above recommendations. OSHA notes that updating the list of high hazard industries by switching from the SIC system to the NAICS system will require a rulemaking. In a press release, Acting Assistant Secretary for OSHA Jordan Barab said the "agency will move swiftly to implement the recommendations." *Labor Secretary Hilda Solis stated that "many of the problems identified in the report are quite alarming, and OSHA will be taking strong enforcement action where we find underreporting."*

**In light of the GAO report and September's announcement from OSHA regarding the National Emphasis Program (NEP) (see October NMSA Bulletin), Carol Lambos, Esq., of the Lambos Firm in New York City, suggests that employers gain a complete understanding of the consequences of OSHA's NEP and that employers "better [be] compliant than sorry."** Ms. Lambos notes that a NEP is "generally a one-year program that targets a specific area of compliance. The program will focus on high-hazard industries where there may be underreporting of injuries and illnesses." It is likely that "OSHA will be looking at low-reporting facilities in high-risk workplaces," and that you should anticipate "that such audits will be conducted at marine-cargo-handling facilities in the near future."

Ms. Lambos recommends that employers visit the [OSHA website](#) for help with compliance with recordkeeping requirements and to obtain information about "what to expect in the event of a record keeping audit." Downloading the OSHA Compliance Directive from the website would be a good first step, and remember that you "cannot be cited for over-reporting but will most certainly be cited for under-reporting." Also, "be aware that OSHA will look for gray-area situations that are likely to involve illnesses or chronic conditions as reporting injuries is generally more clear cut."

Finally, Ms. Lambos offers the following suggestions:

- o Make sure you are thoroughly familiar with OSHA Forms 300, 300A, and 301;
- o Record workplace injuries in a timely manner;
- o Know whose injuries you are responsible for reporting;
- o Utilize medical information to assist in making a decision whether or not to report;
- o If you choose not to report, be sure to have appropriate back-up information;
- o Remember that work-related illnesses and chronic conditions can also be reportable;
- o A case is considered work-related if an event or exposure in the work environment either caused or contributed to the condition;
- o A case is presumed work-related only if an event or exposure in a work environment is a discernable cause of the injury;
- o A worker's pre-existing injury or illness can become work-related if it is aggravated by a workplace event or exposure;
- o Know the difference between a new versus a continuing case; and,



- Accurately record days an employee is unable to work—not just the days that the employee misses work.

*NMSA suggests that its members inform their constituent MTOs of the NEP implementation and the recommendations listed above so they can take appropriate action. Thanks to Ms. Lambos for providing this information.*

- **Labor Secretary Discussed DOL Regulatory Agenda on December 7**—At 10 AM EST on December 7<sup>th</sup>, DOL released its regulatory agenda on the [DOL website](#). Web chats were also held this week by the heads of OSHA, Office of Labor-Management Standards, the Wage & Hour Division, the Employment and Training Administration, MSHA, Office of Federal Contract Compliance Programs, and the Employee Benefits Security Administration. The DOL's complete regulatory agenda was published in the December 7, 2009 *Federal Register*, and is also available on the [DOL website](#). Videos of the web discussions are also available at the [DOL regulatory website](#).

- **OSHA Assistant Secretary Nomination Approved by Senate**—Dr. David Michaels' nomination was approved by the Senate on December 3, 2009 after approval by the Senate Health, Education, Labor and Pensions (HELP) Committee on November 18, 2009.

#### **Notes on the Legislative Front:**

- **OSHA Reform Legislation (H.R. 2067)**—One of the current provisions of the "Protecting America's Workers Act" would permit criminal penalties to be levied in cases of willful safety violations. The legislation allows "any responsible corporate officer" to be prosecuted under this criminal penalty provision. Because the definition of "responsible corporate officer" is ambiguous, Rep. Lynn Woolsey's (D-CA) staff on the House Education and Labor Subcommittee on Workforce Protections is trying to find a way to tighten up the language to limit the number of "corporate officers" who might be affected. The unions, obviously, want the broadest definition possible.

- **Federal OSHA Jurisdiction Possible Even if State Has its Own Program**—Rep. Dina Titus (D-NV) is looking at the possibility of introducing legislation that would allow the federal OSHA to have concurrent jurisdiction over workplace safety and health issues even if a state has its own, approved-by-OSHA, workplace safety and health program. The issue of state OSHA programs arose after a House Education & Labor Committee hearing critical of the state of Nevada's OSHA program. Acting Assistant Secretary of Labor Jordan Barab stated at that hearing that OSHA is currently reviewing all state OSHA programs with an eye to making recommendations to improve programs that OSHA feels don't pass muster.

**Happy Holidays from the NMSA Staff!**

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## NMSA News Bulletin . . . 01/21/2010

**SAVE THE DATE**  
**2010 NMSA ANNUAL MEETING**  
**June 23-25, 2010**  
**Windsor Court Hotel**  
**New Orleans, LA**

### Tentative Schedule

Wed., June 23	All Day TC Meeting Afternoon Board Meeting Evening Reception - World War II Museum
Thur., June 24	All Day General Meeting Evening Reception/Dinner
Fri., June 25	Morning General Meeting

Registration Forms will be emailed by mid-February.

- **NMSA v. OSHA: Briefing Schedule Agreed to in NMSA's Challenge to the VTL Rule**—As noted in last month's News Bulletin, NMSA's opening brief was filed in November. The parties to the case have agreed upon a briefing schedule. The brief from OSHA/Department of Justice is due on January 25, 2010, and the brief from the intervenor, the ILWU, is due on February 22, 2010. Subsequently, the NMSA reply brief will be due on March 22, 2010, and final briefs will be due on April 12, 2010. Oral argument will be scheduled once all briefs have been filed. As we go to press, we understand that OSHA/Department of Justice have requested an extension of time until February 16<sup>th</sup> for the filing of their brief. If the Court grants that request, there will be a domino effect on the due dates of the rest of the briefs.
- **OSHA Assistant Secretary**—Dr. David Michaels' nomination was approved by the Senate on December 3, 2009. He began his tenure at OSHA on December 9, 2009, and attended the recent MACOSH meeting.
- **Assistant Secretary Michaels' Speech "Making Green Jobs Safe"**—Wasting no time, in a speech in mid-December to the NIOSH Going Green Workshop, Secretary Michaels enunciated a series of five "Green Reform Principles," stating that "green jobs cannot be good jobs unless they are safe jobs." The first principle is that employers and workers should come together to assess and abate hazards. The second involves chemical safety. The third principle is "Prevention through Design," a fundamental change that would integrate safety efficiently and thoroughly. The Secretary questions retrofitting "hazardous industries to make them safer when we have the ability and opportunity to begin fresh and make work safe from start to finish." The fourth principle involves OSHA moving ahead on rulemaking for urgently needed standards, obtaining the input of scientists, academics, and workers, as well as progressives in the business community.

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The fifth principle is “enhancing workers’ voice in...workplace safety.”

- **OSHA Regulatory Priorities**—Among its list of Fall 2009 regulatory priorities, OSHA includes a revision to its recordkeeping requirements to “restore a column in the OSHA 300 Injury and Illness Log that employers will check when recording work-related musculoskeletal disorders (MSDs). OSHA expects to issue a proposed rule on this issue in January 2010. Employers are questioning whether the reinstatement of this column in the Injury and Illness Log is a prelude to, and a data collection for, *another attempt to issue an ergonomics rule*.

OSHA also expects to issue a rule in March 2010 to update its rules “covering slip, trip and fall hazards and establish requirements for personal fall protection systems.”

Finally, last September 30<sup>th</sup>, OSHA published a [proposed rule](#) that is intended to conform OSHA’s own Hazard Communication Standard with the United Nation’s (UN) Globally Harmonized System of Classification and Labeling of Chemicals. The proposal would “include more specific requirements for hazard classification, as well as standardized label components which will provide consistent information and definitions for hazardous chemicals and a standard approach to conveying information on material safety data sheets.” In the December 29, 2009 *Federal Register*, OSHA announced a [schedule of informal public hearings](#) on this issue to take place on March 2, 2010 in Washington, DC, March 31<sup>st</sup> in Pittsburgh, PA, and on April 13<sup>th</sup> in Los Angeles, CA.

- **Coast Guard Request for Comments on Flexible Strapping Systems**—In the *Federal Register* of January 8, 2010, the Coast Guard (CG) published a [Notice of Request for Comments](#) “to determine if a standardized approval or certification process or improved performance criteria for flexible strapping securing systems is needed.” The CG states that damage and shifting of cargo has “purportedly occurred” in cargo units where cargo is secured with flexible strapping, leading to concerns that some flexible strapping systems “may not adequately secure cargo.” Comments should be submitted on or before March 9, 2010.

- **MACOSH Meeting Held**—The Maritime Advisory Committee on Occupational Safety and Health (MACOSH) held its most recent meeting January 19-20, 2010. Dr. David Michaels, Assistant Secretary of Labor for OSHA, attended the meeting and announced that he will be rechartering MACOSH and expects meetings to continue to be held this year. While attending the meeting, Marc MacDonald and Ken Killough invited Dr. Michaels to attend the 2010 NMSA Annual Meeting in New Orleans, LA, and a written invitation has now been extended.

- **Occupational Safety & Health Review Commission (OSHRC) Issues Important Decision on Employer Responsibility in [Secretary of Labor v. Burford’s Tree, Inc.](#)**—On January 8, 2010, OSHRC reversed an administrative law judge’s (ALJ) decision that an employer could not be fined by OSHA if an employee failed to wear a **seatbelt**, despite company policy to do so, because of his own “preventable misconduct.” Instead, OSHRC affirmed the \$7,000 fine against the company, citing the fact that the employee’s supervisor did not inspect the seatbelt to ensure it was in working condition (which it was not) and that neither the company’s general foreman nor its safety director followed up on the supervisor’s written reports of inspection. Burford’s Tree, Inc. argued that employees know that they will be disciplined “if they violated work rules.” However, the OSHRC decision argues that an employer cannot rely on its employees to report that seatbelt equipment does not work. A company must enforce its own rules.

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## NMSA News Bulletin . . . 03/18/2010

### REGISTRATION OPEN

### 2010 NMSA ANNUAL MEETING

June 23-25, 2010

Windsor Court Hotel

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Fri., June 25	Morning General Meeting

*Agenda will be sent separately by the end of March.*

*See attached Registration Form.*

- **House Hearings on OSHA Reform Bill (H.R. 2067)**—Rep. Lynn Woolsey (D-CA), Chairman of the House Education & Labor Committee's Subcommittee on Workforce Protections, held hearings on March 16, 2010 on H.R. 2067, the "Protecting America's Workers Act." Rep. Woolsey is the primary sponsor of the bill, which also has 59 co-sponsors. The legislation includes substantial increases in civil penalties and imprisonment for willful violation convictions of the OSH Act. Additionally, it includes mandatory minimum penalties for violations involving the death of a worker (no less than \$50,000). Felony prosecutions for willful violations would also be permitted. Included in the bill is an expanded definition of "employer," which would include "any responsible corporate officer."

Testifying for the **Obama Administration**, and in favor of the legislation, were Assistant Secretary of Labor for OSHA Dr. David Michaels and Deputy Assistant Attorney General John C. Cruden. Dr. Michaels noted DOL Secretary Hilda Solis' "vision" of "good jobs for everyone," and commented that good jobs are safe jobs. He stated that: current OSHA penalty levels do not provide "adequate incentives;" increases in civil and criminal penalties included in the legislation raise the penalties to the same level as 1990, accounting for inflation; "serious violations of the OSH Act that result in death or serious bodily injury should be felonies;" and, the burden of proof in the OSH Act should be changed from "willfully" to "knowingly." In addition, **Secretary Michaels commented that OSHA is planning to "implement long-overdue internal changes in our penalty proposal policies."**

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In his testimony for the **Department of Justice (DOJ)** in support of the legislation, Assistant Attorney General Cruden stated that the OSH Act should be amended to make its penalties equivalent to penalties included in environmental laws. He noted that he oversees the Environmental Crimes Section, and that the criminal and civil penalties included in the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act all exceed the civil and criminal penalties included in the OSH Act. In 2005, the DOJ inaugurated its Worker Endangerment Initiative “to highlight that environmental crimes frequently put our country’s workers at risk of death or serious bodily injury.” DOJ has used strong enforcement mechanisms in environmental laws, as well as provisions of Title 18 of the U.S. Code (which cover making false statements, obstruction of justice, and conspiracy to defraud) to, in some cases, prosecute safety violations. Mr. Cruden also comments that the environmental laws include “knowing endangerment” provisions, and responsible corporate officer doctrines “which make[s] company managers criminally liable for illegal conduct they knew about and could have prevented, but failed to prevent.” Finally, he states that the DOJ “supports the strengthening of the OSH Act’s criminal penalties so that they are more consistent with other criminal statutes,” and that “adding felony provisions to the OSH Act...would provide important tools to prosecute employers...”

The Workforce Protections Subcommittee has not yet scheduled a mark-up on this legislation, but clearly this bill will become a priority item for the Subcommittee given the all but certain death of legislation to amend the Taft-Hartley Act. The solicitation of testimony from the Department of Justice, which has never before been asked for its views on OSH Act legislation, is a further indicator of the importance the subcommittee places on increasing OSH Act criminal penalties.

- **NMSA Court Challenge Update on VTL Rule**—The Department of Labor (DOL)/ Department of Justice (DOJ) finally filed the government’s brief on this challenge to the VTL rule, as required, on February 19, 2010. On March 19, 2010, intervenor ILWU is expected to file its brief. The NMSA Legal Review Committee is reviewing these briefs to assist NMSA counsel in filing the NMSA reply brief on April 23, 2010. Final briefs from all parties are due on May 14, 2010.

- **OSHA FY 2011 Budget Request**—The OSHA budget request for FY 2011 is for \$573 million, an increase of nearly \$14.5 million over the FY 2010 budget. OSHA has several goals it wants to meet with the increase in its budget: decrease days away from work by 1% per year over the next two years; reduce injury and illness rates by 4% per year over the next two years; promote employee involvement in safety and health management programs; increase protections for employees by adding a column for musculoskeletal disorders on recordkeeping logs; “shift the burden of compliance onto the employer” and “emphasize corporate-wide enforcement to leverage resources.” OSHA also expects to strengthen its “regulatory impact” by developing “robust standards, regulations and guidance that address significant and newly emerging workplace risks.” OSHA’s proposed FY 2011 budget also increases, by about \$1.5 million, grants to states for OSHA State Plans that are supposed to be “at least as effective as the federal program.” OSHA intends to work with the states on “performance or structural problems” that OSHA has identified as a result of evaluations conducted in FY 2010. Finally, the Susan Harwood Training Grants Program receives an increase of \$240,000.

- **OSHA Official Appointed to Assist Cal/OSHA**—Last October, the House Education & Labor Committee held hearings on deficiencies found in state OSHA plans. This was followed by a proposed budget increase in grants to states to improve their state plans, as noted above in the article on the OSHA FY 2011 budget request. The Cal/OSHA program has been operating for the past 36 years on a “provisional” approval from the federal OSHA program. In an effort to bring the program to final approval status, Cal/OSHA has obtained the services of Mr. Alan Traenkner, assistant regional manager for OSHA’s Region IX. In addition,



the federal OSHA program last fall decided to audit all federally-approved state OSHA programs over the next couple of years. Among the first to be audited is the Cal/OSHA program.

- **OSHA Issues Revised and Updated Instruction Regarding “OSHA Authority over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS)”**—This instruction has an effective date of February 22, 2010. The instruction notes that “OSHA does enforce the OSH Act upon...stevedoring companies with longshoremen working aboard inspected vessels.”

- **OSHA Issues Proposed Recordkeeping Rule on Work-Related Musculoskeletal Disorders (MSDs)**—In the January 29, 2010 *Federal Register*, OSHA issued a proposed rule that would add (“restore”) a column to the OSHA 300 Log that would require employers to “place a check mark in the MSD column...if a case is an MSD that meets the Recordkeeping regulation’s general recording requirements.” The proposed rule also includes a definition of MSD, which OSHA says is identical to the MSD definition included in the 2001 Recordkeeping rule, which defines MSDs as “disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs, except those caused by slips, trips, falls, motor vehicle accidents or other similar accidents” and is recordable if the MSD “is work-related, and is a new case, and meets one or more of the general recording data.”

**In the event you were wondering where this is going, this addition to the Recordkeeping rule is likely a means of collecting data for another attempt at promulgating an ergonomics rule.** In the proposed rule, OSHA says, “Having more complete MSD data would assist OSHA, and other safety and health policy makers, in understanding MSDs and making informed decisions on policies concerning workplace MSDs.” OSHA’s rationale for MSD recordkeeping is specific: “MSDs...accounted for significantly more occupational illnesses than the combined total for the specific illnesses currently listed on the OSHA 300 Log. Looking only at MSDs that resulted in days away from work” OSHA says that the BLS data indicates MSDs account “for 29% [of days away from work injuries]...and 8.4% of all occupational injuries and illnesses combined.”

In its language, OSHA makes clear that the proposed rule substitutes the term MSD for ergonomics. Recording of MSDs on the OSHA 300 Log will be effective on January 1, 2011. In combination with the Longshore Act, putative MSDs will be an insurance disaster for the industry. Needless to say, this proposed rule will be welcomed by the House and Senate Labor Committees.

Written comments must be submitted to DOL by March 30, 2010. OSHA held a public hearing on the rulemaking on March 9, 2010.

NMSA’s Technical Committee is currently reviewing the proposed rulemaking and the proposal has also been sent to the NAWA Insurance Committee for comment. NMSA and NAWA expect to provide OSHA with joint comments on the proposal.

- **OSHA Marine Cargo Handling “QuickCards”**—In February, OSHA released three safety “QuickCards” for the marine cargo industry. The card topics include: gangway safety, first aid, and lifesaving facilities. These cards were developed by the Longshore Working Group of the MTSNAC. One additional card, aimed at the marine cargo handling industry, is also in development. (*Note: Patience may be required while waiting for the links to open!*)



- **Occupational Safety & Health Review Commission (OSHRC) Issues Important Decision on Employer Responsibility**—On January 8, 2010, OSHRC reversed an administrative law judge's (ALJ) decision that an employer could not be fined by OSHA if an employee failed to wear a **seatbelt**, despite company policy to do so, because of his own "preventable misconduct." Instead, OSHRC affirmed the \$7,000 fine against the company, citing the fact that the employee's supervisor did not inspect the seatbelt to ensure it was in working condition (which it was not) and that neither the company's general foreman nor its safety director followed up on the supervisor's written reports of inspection. Burford's Tree, Inc. argued that employees know that they will be disciplined "if they violated work rules." However, the OSHRC decision argues that an employer cannot rely on its employees to report that seatbelt equipment does not work. A company must enforce its own rules. [http://www.oshrc.gov/decisions/pdf\\_2010/07-1899.pdf](http://www.oshrc.gov/decisions/pdf_2010/07-1899.pdf) (Secretary of Labor v. Burford's Tree, Inc.)

###

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Ken Killough  
*Chairman*

## NMSA News Bulletin . . . 04/19/2010

**REGISTRATION OPEN**  
**2010 NMSA ANNUAL MEETING**  
**June 23-25, 2010**  
**Windsor Court Hotel**  
**New Orleans, LA**

### Tentative Schedule

Wed., June 23	All Day TC Meeting Afternoon Board Meeting Evening Reception - World War II Museum
Thur., June 24	All Day General Meeting Evening Reception/Dinner
Fri., June 25	Morning General Meeting

*See attached Registration Form.*

## IN THE COURTS

• **Late Breaking News on NMSA VTL Lawsuit**—The U.S. Court of Appeals for the D.C. Circuit granted NMSA's request for an extension until May 14, 2010 to file its reply brief. Final briefs will then be due from all parties on June 4, 2010. The extension was granted over an objection to the extension from the ILWU.

## IN THE CONGRESS

• **OSHA Reform Bill Update (H.R. 2067)**—After holding hearings on the legislation, Rep. Lynn Woolsey (D-CA) has been actively pursuing additional co-sponsors (there are currently 65 co-sponsors). As the legislation is currently written, it increases civil penalties and imprisonment for willful violation convictions, establishes mandatory minimum penalties for violations involving the death of a worker, and permits felony prosecutions for willful violations. Also included in the bill is an expanded definition of "employer," which will now include "any responsible corporate officer."

*Subsequent to the hearings, Rep. Woolsey proposed some additional amendments to the legislation. These include: lowering the mens rea requirements for a criminal conviction from a "willful" state of mind to a "knowing" state of mind, which lowers the bar for a conviction; altering the definition of "employer" from "any responsible corporate officer" to an "officer or director," which expands the*

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*number of corporate executives who could be charged; eliminating the \$50,000 penalty for fatalities associated with "other than serious" category of violations because that could put a cap of \$50,000 on the daily accumulation (\$12,000/day) of violations; and, requiring that employers immediately abate violations, even if they are appealing citations.*

#### AGENCY UPDATES

• **OSHA Strategic Planning**—The Department of Labor is developing a new overall six year strategic plan. OSHA held a web chat to answer questions regarding its plan on April 7, 2010 (see article below). [Information](#) on the strategic plans for each of DOL's agencies is available on the DOL website.

OSHA's plan includes "measuring results differently" through a reduction in the number of fatalities from the four leading workplace causes of death, "increasing the number of targeted hazards abated," and, increasing "worker and employer awareness of OSHA rights, responsibilities and programs."

OSHA also notes that it is "using new approaches" to achieve these goals, including strengthening enforcement and regulatory capabilities, "increasing OSHA's presence in the workplace," protecting workers in high-hazard industries and workers who are in vulnerable and hard-to-reach worker populations, and reviewing and restructuring penalties, among others.

• **OSHA Strategic Plan [Web Chat](#)**—During the April 7, 2010 web chat several issues of interest to NMSA members were discussed. Primary among these issues was a discussion regarding **ergonomics**. The initial questioner asked if ergonomics will be on OSHA's agenda. The answer, from Deputy Assistant Secretary Jordan Barab was that, yes, ergonomics would be on the agenda along with other workplace hazards, that the MSD column is being added to the OSHA log, and that there will be **increased "enforcement activities addressing ergonomic issues."** **A SUBSEQUENT RESPONSE NOTED THAT ERGONOMICS ENFORCEMENT WILL BE CONDUCTED UNDER THE GENERAL DUTY CLAUSE.** The lengthiest response came from Assistant Secretary David Michaels, "**Until recently, enforcement around ergonomic hazards languished. We recognize that thousands of workers annually suffer from musculoskeletal conditions associated with ergonomic hazards and OSHA must do more. OSHA's field staff will be looking for ergonomic hazards in their inspections and we will be providing them with the support and back-up they need to enforce under the general duty clause. In addition, we will be examining employer logs to see if MSDs are accurately reported.**" Another questioner asked how an employer would "comply if enforcement is left to the discretion of the inspector?" The response was that "[e]nforcement is not left to the discretion of the inspector. **In order to document a general duty clause violation for ergonomics, among other things, the agency would have to demonstrate industry recognition and feasible ways to abate the hazard.**"

Steve Crouch, Ceres Marine Terminals Vice President of Environment, Safety & Security, asked about the role of **Alliances** in OSHA's Strategic Plan. Steve Witt, Director of Cooperative and State Programs, stated that Alliances "will continue to be an integral part of the agency's overall programs. Though we are considering some changes to the alliance model, the agency will continue to support them." A question arose regarding **post-injury drug testing** as a "disincentive to reporting a workplace injury," and Secretary Michaels response noted that "it is clear that there are a number of policies that employers use that discourage injury reporting."

Also mentioned during the web chat was a notation in the strategic plan of **restructuring penalties**. Deputy Assistant Secretary Rich Fairfax said that "OSHA will shortly be changing our penalty calculation



method resulting in higher penalties. Stay tuned.” Another questioner asked if OSHA was examining ways to “**expedite the rulemaking process.**” The short answer to that question was “yes.”

- **DOL [Open Government Plan](#)**—The Obama Administration has initiated an “Open Government Initiative” intended to make government operations “more transparent while expanding opportunities for public participation and collaboration.” DOL expects that all data it collects (excluding personally identifiable data) will eventually “be made public online and in downloadable formats.”

- **DOL [Enforcement Data Website](#)**—The DOL, as part of its “Open Government Plan,” has established a website specifically for the dissemination of enforcement data from DOL enforcement agencies. The website is currently a work in progress.

- **MSDs: NMSA/NAWE Joint Comments**—NMSA and NAWA submitted joint comments on the proposed addition of an MSD column to the OSHA 300 Log. The primary argument made in the comments is that OSHA’s definition of a musculoskeletal disorder (MSD) “is open-ended, and confuses known injury-related disorders and syndromes...with ‘symptoms’ of injuries, as in the case of ‘sciatica’ and ‘low back pain’...” In addition, the possibility that an MSD could be characterized as an illness, rather than an injury, “will have a direct impact on many LHWCA and state workers’ compensation claims,” likely trigger litigation over whether an MSD is an illness or an injury, and, further, cause confusion over the requirement that an MSD must be work-related. The industry notes that the MSD definition is vague and subjective. A National Academy of Sciences study concluded that most MSDs are not “uniquely caused by work exposures.” Furthermore, the National Advisory Committee on Ergonomics was unable to reach a consensus on a definition of an MSD.

Led by the Chamber of Commerce, the general business community filed a tome’s worth of comments in opposition to the MSD requirement and “definition,” clearly laying the groundwork for a legal challenge to the rule.

- **OSHA Assistant Secretary Michaels: “New Sheriff in Town”**—Dr. Michaels, at an ABA Occupational Safety and Health Law Committee meeting, commented that OSHA is “a public health agency intent on saving workers’ lives.” Secretary Michaels said his priorities are strong enforcement, including egregious citations and confiscation of property, where necessary, in place of fines, and setting standards with “an aggressive regulatory system.” He also commented on musculoskeletal injuries calling them among “the biggest workplace health and safety problems in industry.” He acknowledged that OSHA has not decided how to deal with the ergonomics issue because of the cumbersome regulatory process and political issues. Dr. Michaels also said that OSHA would ensure that there is no underreporting of workplace injuries through an increase in surveillance programs.

- **MACOSH Request for Nominations**—OSHA announced that it will be rechartering the Maritime Advisory Committee on Occupational Safety & Health for another two years. The current charter will expire in September. The request for nominations was published in the [Federal Register on March 23, 2010](#) and also includes all requirements for submitting nominations. Nominations should be postmarked by May 7, 2010. The NMSA Board is in the process of advancing the names of two nominees for the MACOSH.

- **[MACOSH Meeting Scheduled](#)**—A MACOSH meeting is scheduled for April 27 and April 29 at the Newport Marriott Hotel in Newport, RI. The Shipyard and Longshore workgroups will meet on Tuesday, April 27, and the full Committee will meet on Thursday, April 29, 2010.





- **Injury and Illness Rates Letters**—OSHA announced on March 9, 2010 that it had sent letters to about 15,000 workplaces with the highest rate of injury and illnesses. The [list of workplaces](#) is available on the OSHA website.

- **OWCP—Division of Longshore: Strategic Planning**—Not to be outdone, the Longshore Division of the OWCP notes that its mission is to “minimize the impact of employment injuries and deaths on employees and their families by ensuring that workers’ compensation benefits are paid promptly and properly.” It hopes to ensure “income support when work is impossible or unavailable” and facilitate return-to-work. They will measure results by focusing on “dispute resolution timeliness” and on insurer performance in “timely reporting claims and delivering benefits.” They want to reduce the number of days to first report of injury and first benefit payment. They hope to achieve their goals by: focusing “on identifying deficiencies in reporting and paying,” “escalate to corporate executives if necessary,” and “assess fines and penalties for violations.”

###

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*Chairman*

## NMSA News Bulletin . . . 11/22/2010

### 2011 NMSA ANNUAL MEETING

Mark your calendars

June 22 - 24, 2011

Vancouver, British Columbia

Rooms - [Delta Vancouver Suites](#)

Meeting - [Morris J. Wosk Centre for Dialogue](#)

Program Chairman - John Beckett, British Columbia Maritime Employers Association

*Additional information and registration details will be forwarded in January 2011.*

### NMSA / INDUSTRY NEWS

Submitted by Marc MacDonald

- **MACOSH**—The current two year charter for MACOSH concluded with the meeting held on July 13-15, 2010 in Long Beach. By all accounts it was one of the most productive charters in memory. The Longshoring Workgroup completed and turned in fourteen consensus documents to OSHA for consideration. The documents ranged from the creation of 7 OSHA "Quick Cards" to Safety Guidance Documents, and included reviews or updates to OSHA's previously published guidance documents. The NMSA Technical Committee backed up the two delegates at MACOSH and acted as a sounding board for the documents being developed.

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Of particular note, the group developed policy guidance on traffic lane and safety zone widths under container gantry cranes. Although lanes have been in place for a long time, the variance detected between terminals in a national comparison study done by the NMSA TC for the Longshoring Workgroup was dramatic. While searching internationally for similar guidelines, ICHCA advised that there were none. Professional engineers too noted they did not have any guidance. A Quick Card on Working Safely on the Apron or Highline was developed as a companion document to the lane width policy. NMSA members have already used these two particular draft documents to respond to a state OSHA citation on safety lane widths resulting in the citation, with a potential penalty of \$20K, being dropped. The draft documents submitted to OSHA by the Longshoring Workgroup of MACOSH are available through NMSA TC members. A list of the completed draft documents is below. NMSA has already submitted nominees, as requested by OSHA, for the next charter of this national committee.

One of the last documents completed by the Longshoring Workgroup and submitted to OSHA was a guidance document for Marine Terminals with On Dock Rail Capabilities. One of the largest documents submitted (it runs some 18 pages) it covers the safety aspects of not only on dock container rail but on dock bulk rail as well. This is not an easy feat to combine safety guidance for these two different types of operations into one document. This document is intended to supplement the meager rail safety guidance currently in 29 CFR 1917, which focuses on the traditional flat car and box car break bulk cargoes.

NMSA looks forward to OSHA's publication of these documents and products in the form and with the language which was submitted by the Longshoring Workgroup. It is hoped that MACOSH will be re-chartered without delay so that the NMSA Technical Committee can continue this important work.

#### ■ MACOSH Documents Completed

1. Quick Card (QC) Marine Terminal First Aid
2. QC Marine Terminal Lifesaving
3. QC Marine Terminal Gangways
4. Guidance Document on Container Repair
5. Guidance Document on Break Bulk Cargo Handling
6. Traffic Lane and Safety Zone Guidance Document
7. QC Safety on the Apron or Highline
8. Edits to the Traffic Safety Guidance Document
9. QC Mechanics Working in the Yard
10. QC Mechanics Working on Power in the Yard
11. QC Plugging and Unplugging Reefers
12. Guidance document on Dealing with Inoperable SATLs
13. Guidance Document For Marine Terminals with On Dock Rail Capabilities
14. Ro-Ro Ship and Dock Safety Document reviewed and corrected

• **NMSA OSHA Alliance Update**—The second two-year term of the NMSA-OSHA Alliance (which NMSA has not sought to renew) concluded on June 23, 2010. During this Alliance, NMSA undertook the development of a series of “Learn and Live” videos depicting a fatality in the marine cargo handling environment. Four videos have been completed and two more are well into production. The NMSA TC developed the scenarios and has worked with the production company to ensure accuracy and realism. These videos were produced along the lines of the Shipyard Fatality Videos which OSHA produced for the Shipyard industry. Since OSHA was unable to make the financial commitment for the Marine Cargo



Handling Industry videos, NMSA members elected to go it alone. The Alliance partnership with OSHA ensures an OSHA buy-in to the project. OSHA required that Spanish language translations of the videos, as well as closed captioning, be added before it would allow the NMSA-OSHA Alliance logo to be added to the project. Although the Alliance is drawing to a close, the remaining two videos will be submitted as Alliance projects.

The completed videos are entitled:

1. Longshore Worker Killed by Top Loader
2. Longshore Worker Killed During Container Loading and Offloading Operations
3. Longshore Worker Killed by Yard Tractor Tip Over
4. Longshore Worker Killed by Container Falling from Ship.

These videos are available through a link on the NMSA website under the "information" tab as well as a link from the NMSA-OSHA Alliance page on the OSHA website. These videos have been generously put into the public domain by NMSA to the benefit of all employers and employees. NMSA members have been using the videos in safety training, saving hundreds of thousands of dollars in individual association development costs. The NMSA-OSHA Alliance also resulted in several policy and safety documents. The completed documents are: the generic person in the water safety guide; container lashing tip sheet; and, traffic safety tip sheet. They can also be downloaded from the NMSA website information tab.

**NATIONAL MARITIME SAFETY ASSOCIATION** **NMSA**

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**NMSA / OSHA Alliance Links and Documents**

- [Generic Person in Water \(PIW\) Recovery Guide - June 2010](#)
- [Drug-Free Work Week \(October 19-25, 2009\)](#)
- [Container Lashing Tip Sheet - June 2009](#)
- [Marine Terminal Traffic Safety Tip Sheet - June 2008](#)
- [NMSA/OSHA Alliance Home Page](#)

**Safety Videos**

- [Safety Video #1 - Longshore worker killed by top loader](#)
- [Safety Video #2 - Longshore worker killed during container loading and unloading operations](#)
- [Safety Video #3 - Longshore worker killed by yard tractor tip-over](#)
- [Safety Video #4 - Longshore worker killed by container falling from ship](#)

The National Maritime Safety Association (NMSA) represents the marine cargo handling industry in the United States in safety and health matters arising under various statutes, including the Occupational Safety and Health Act.

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## AGENCY ACTION

### Occupational Safety & Health Administration

- **OSHA Proposes Revision to Noise Exposure Guidelines**—The *Federal Register* of October 19, 2010 includes an OSHA [“proposed interpretation”](#) of the phrase “feasible administrative or engineering controls” as the phrase relates to noise exposure standards. In a nutshell, OSHA proposes that employers be required to use “administrative or engineering controls,” rather than personal protective equipment, to reduce noise exposures when “such controls are feasible...capable of being done.” OSHA says its enforcement policy will be amended to reflect this change. Initially, comments on the “proposed interpretation” were due by December 20, 2010. **Due to the significant number of requests for an extension of the comment date, OSHA recently agreed to extend the deadline for comments until March 21, 2011.**

The Coalition for Workplace Safety (CWS), run jointly by the U.S. Chamber of Commerce and the National Association of Manufacturers, and of which NMSA is an informal member, is in the process of putting together a comprehensive statement in opposition to this new “interpretation” of noise exposure controls by OSHA. Subject to Board approval and guidance, NMSA may join in the CWS comments or submit comments independently. If you have any specific points you wish to be raised on this issue, please contact Chuck Carroll ([chuck@cflaw.us](mailto:chuck@cflaw.us)).

- **Walking-Working Surfaces and PPE (Fall Protection Systems) Informal Hearings**—In the *Federal Register* (FR) of November 12, 2010, OSHA announced informal public [hearings](#) on the Walking-Working Surfaces [proposed rule](#) published in the FR of May 24, 2010. The hearings will be held on January 18, 2011 in Washington. Requests to present testimony at the hearing must be made by November 30, 2010. Please see the FR notice for further information.

- **OSHA to Target High-Hazard Workplaces**—On October 22, 2010, OSHA [announced](#) its intention to “direct enforcement resources to high-hazard workplaces where the highest rates of injuries and illnesses occur.” Sites are selected for targeting based on “several variables such as the number of injury and illness cases and number of days a worker has to stay away from work, or the number of workers who received job transfers or work restrictions due to injury or illness.”

### Occupational Safety and Health Review Commission (OSHRC)

- **Occupational Safety and Health Review Commission Upholds OSHA Citations**—An OSHRC Administrative Law Judge (ALJ) recently [upheld](#) OSHA’s “egregious or violation-by-violation policy” that permits the issuance of violations, and penalties, for each employee exposed to the same hazard.

### Bureau of Labor Statistics

- **Bureau of Labor Statistics (BLS) Announces 2009 Decline in Workplace Injuries & Illnesses**—On October 21, 2010, the BLS released a [report](#) on 2009 workplace injuries and illnesses that shows declines in cases of injury and illness rates across the board among private industry employers. In addition, on November 9, 2010, the BLS released its [data](#) on occupational injuries and illnesses requiring days away from work which showed a 9 percent decrease in such injuries. Overall, BLS notes a 13% decrease in workplace injuries and illnesses requiring time away from work for transportation and material moving workers, which



includes the cargo handling industry.

OSHA Assistant Secretary David Michaels [commented](#) that, although “encouraging...economic conditions may have weighed heavily on the decline” and “as the economy improves more Americans back on the job could potentially lead to easily preventable work-related injuries and illnesses.”

### ***IN THE CONGRESS***

• **House Republicans Plan to Conduct Oversight Review of Government Rules, Regulations & Statutes**—Rep. Eric Cantor (R-VA), who will be Majority Whip in the 112th Congress starting in January, 2011, released a plan for the Congress that includes a comprehensive review of government regulations and rules that “impose additional, unnecessary costs” on employers. Each House committee would review the regulations, rules, and statutes within its jurisdiction and produce a final report by mid-2011. Some of the regulations being suggested for review are: OSHA’s recent proposal to reinterpret noise standards, the proposed injury and illness prevention program, and any effort to institute an ergonomics rule.

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## NMSA News Bulletin . . . 12/29/2010

### 2011 NMSA ANNUAL MEETING

**Mark your calendars**

**June 22 - 24, 2011**

**Vancouver, British Columbia**

**Rooms - [Delta Vancouver Suites](#)**

**Meeting - [Morris J. Wosk Centre for Dialogue](#)**

**Program Chairman - John Beckett, British Columbia Maritime Employers Association**

*Additional information and registration details will be forwarded in January 2011.*

### AGENCY ACTION

**Department of Labor  
Occupational Safety & Health Administration**

- **OSHA Semi-Annual Regulatory Agenda**—OSHA's regulatory plan includes information on its proposed Injury and Illness Prevention Program (I2P2). OSHA states that it "believes that an injury and illness prevention program is a universal intervention that can be used in a wide spectrum of workplaces to dramatically reduce the number and severity of workplace injuries." (See [Federal Register](#) of December 20, 2010 (Part II), then scroll down to p. 79602.) The timetable for this regulation notes that stakeholder meetings were held in June, 2010, and that OSHA intends to begin a review pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA) in June, 2011. The document also comments that "[T]he

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Ports of the Delaware River Marine Trade Association · British Columbia Maritime Employers Association · Maritime Employers Association (Montreal)



scope of the proposed rulemaking and the costs and benefits are still under development for this regulatory action.”

A second regulation of interest from OSHA is entitled “Occupational Injury and Illness Recording and Reporting Requirements—Modernizing OSHA’s Reporting System.” OSHA states that “the collection of establishment specific injury and illness data in electronic format on a timely basis is needed to help OSHA, employers, employees, researchers, and the public more effectively prevent workplace injuries and illnesses...” (See *Federal Register* of December 20, 2010 (Part II), then scroll down to p. 79604.) The estimate for publication of the NPRM for this rulemaking is September, 2011.

- **DOL Agency Regulatory Web Chats Scheduled**—Subsequent to the release of its semi-annual regulatory agenda, DOL has scheduled web chats for several agencies proposing rules. The OSHA web chat is scheduled for Wednesday, January 5, 2011 from 2:30 until 3:30 PM EST. To participate in the web chat go to: <http://www.dol.gov/regulations> and please review the web chat link above regarding the schedule.
- **Proposed OSHA Noise Exposure Guidelines**—As we reported last month, OSHA is extending the comment period for its proposed interpretation of noise exposure guidelines until March 21, 2011. OSHA announced the revised comment deadline in the December 14, 2010 *Federal Register*. OSHA also announced that it will hold a stakeholder meeting “before the end of the comment period to listen to the concerns of businesses and workers about the proposed noise interpretation.”

NMSA Counsel is evaluating options after receiving comments from the NMSA Technical Committee and, subject to NMSA Board approval, NMSA may submit comments for the maritime industry and/or join with the comments of the U.S. Chamber of Commerce, which is coordinating the comments of a broad spectrum of industry.

#### **Department of Transportation Federal Motor Carrier Safety Administration (FMCSA)**

- **Notice of Proposed Rulemaking Restricting the Use of Cell Phones in Interstate Commerce**—In the *Federal Register* of December 21, 2010, the FMCSA has published a rule that would restrict the use of hand-held mobile phones by drivers of Commercial Motor Vehicles (CMV) in interstate commerce. The significant issue here is that there will be driver disqualification sanctions for those drivers failing to comply with the restriction, as well as those drivers with CDL licenses who have multiple convictions for violating state and local prohibitions on the use of mobile phones while driving. In addition, interstate motor carriers would be prohibited from requiring their drivers to use a hand-held mobile telephone while operating a vehicle. Please note that this rulemaking effort follows a DOL/OSHA campaign to prevent distracted driving which we mentioned in the October newsletter.

#### **Department of Commerce Maritime Administration (MARAD)**

- **MARAD Releases Study “Improving Marine Container Terminal Productivity”**—This study is, essentially, a review of productivity metrics and concepts that might be used to measure marine terminal productivity. The paper comments on the variety of measures of productivity, the difficulty in collecting and analyzing the data that is needed, the difference between ports and between marine terminals in measuring productivity, and the fact that some data that would be useful in measuring productivity is proprietary, including labor costs.





Please note that the Transportation Research Board [study](#) on “Truck Drayage Practices” (NCFRP 14) is now in publication and should be available in the not too distant future. (New publications are listed on the right side of the TRB home page, or look under “Projects” for the status of the paper.)

### IN THE CONGRESS

- **Robert C. Byrd Mine Safety Protection Act of 2010 (H.R. 6495) Falls by the Wayside**—House leaders decided to have a vote on this legislation on December 8, 2010, after stripping out the onerous, and contentious, amendments to the Occupational Safety & Health Act which NAWE, among others, opposed. The bill was taken up under suspension of the rules, which requires a two-thirds vote of those present and voting. Although enough votes were available to pass the legislation on a majority vote, the bill failed, by a vote of 214-193, to attain the required two-thirds majority under suspension of the rules. Legislation taken up under suspension of the rules is usually non-contentious, so this vote was a “Hail Mary,” and really intended to embarrass those House members opposed to the legislation.

With the House of Representatives reconstituted under Republican leadership, it is very doubtful that OSHA revisions will be proposed, although revisions to the Mine Safety & Health Act are a possibility.

HERE'S WISHING EVERYONE

A VERY

HAPPY

HEALTHY

PROSPEROUS AND

ABOVE ALL...SAFE

NEW YEAR!!!



# National Maritime Safety Association

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July 2011

## Marc MacDonald Honored with NMSA "Man of the Year" Safety Award



NMSA President Joe Curto (l) and Marc MacDonald (r)

NMSA named Marc MacDonald, Vice President Accident Prevention, Pacific Maritime Association (PMA) as the association's Man of the Year at the recent Annual Meeting in Vancouver, British Columbia. NMSA President Joe Curto presented Mr. MacDonald the award for his long and dedicated service to NMSA's Board and Technical Committee, and his representation of NMSA on the Maritime Advisory Committee on Occupational Safety & Health (MACOSH). Prior to his 13-year tenure at PMA, CAPT MacDonald had a 30-year career with the U.S. Coast Guard, primarily spent in California. Subsequently, on June 30, 2011, Mr. MacDonald retired from PMA—everyone in the NMSA family congratulates him on his well-deserved award and wishes him all the best in his retirement!

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## Decision handed down in *NMSA v. OSHA*: VTL Ruling

After a nine month gestational period, the U.S. Court of Appeals for the D. C. Circuit released its [decision](#) on NMSA's challenge to OSHA's VTL rule on June 17, 2011. The ruling by the three judge panel vacated and remanded to OSHA both the ship-to-shore inspection requirement for VTLs and the regulation of flat rack VTLs.

The Court noted that "OSHA standards must be both economically and technologically feasible," and concluded that "the record lacks substantial evidence to support the feasibility." The Court also stated that, "[t]he VTL Standard is almost devoid of feasibility analysis." While the **ship-to-shore VTL**

**inspection requirement was vacated and remanded to OSHA, the shore-to-ship VTL inspection requirement was upheld.**

Regarding **flat racks**, the Court ruled that there is no evidence of feasibility regarding the regulation of flat rack VTLs. It also noted that the regulation on VTLs for flat racks was "a significant departure from OSHA's proposed rule" and that agencies should not "use the rule-making process to pull a surprise switcheroo on regulated entities." Again, the Court **vacated and remanded** to OSHA this portion of the rule.

**The end result?** The ship-to-

shore inspection and flat rack requirements are no longer valid.

These provisions of the VTL rule were the driving factors in bringing the complaint to the Court of Appeals. The decision, in fact, goes further than OSHA was willing to go during negotiations with NMSA prior to the lawsuit being filed. The ball is now in OSHA's court, and should the agency choose to regulate either or both of these issues, it will have to start a new rulemaking process.

The NMSA Board and Technical Committee are currently reviewing the Court's decision.



BCMEA President Andy Smith



Program Chair John Beckett

## Kudos and Thank You All-Around

NMSA's 2011 Annual Meeting, held in Vancouver, British Columbia was a tremendous success, with a record number of attendees from both Canada and the U.S. Congratulations and many thanks to Program Chair John Beckett (BCMEA VP of Training, Safety and Recruitment) and his staff for their tremendous efforts in presenting a topical program on safety in the maritime environment. The panelists and speakers provided both thought-provoking and informative presentations that were enjoyed by all in attendance.

Wednesday's full day of Technical Committee and Board meetings ended along the beautiful Vancouver waterfront aboard the *Britannia*. The 2011 Annual Meeting officially began Thursday morning with welcome remarks from BCMEA President Andy Smith followed by a full day of speaker presentations. Thursday evening's dinner at the Terminal City Club was highlighted by the *Man of the Year Award* presentation to Marc MacDonald (see p. 1). The meeting continued through Friday morning and culminated in a surprise and funny "wrap-up" by a troupe from the Vancouver Improv.

Presentation summaries are below; PDFs can be found at [www.nmsa2011.com/downloads.html](http://www.nmsa2011.com/downloads.html).

Thank you again to our exhibitors and generous sponsors, all of whom are listed on p. 4.

## NMSA Meeting Presenters

The meeting's keynote address was delivered by **Mr. Jim Spigener**, Vice President, Behavioral Science Technology Inc. Mr. Spigener discussed the issue of safety leadership, and how corporate culture affects safety behavior and priorities. What's important? An organizational value for safety, upward communication, management credibility and support, teamwork, and, most of all, a commitment to safety that makes safety a core value.

Following the keynote speaker was a panel discussion on "Innovation in Fall Protection" that was chaired by **Wayne Donnelly** of New Heights Industries and included on the panel **Mr. Terry Bertram** of BCMEA, the NMSA Annual Meeting hosts, and **Mr. Dave Turner** of APM Terminals. Mr. Donnelly's presentation notes the needs to: identify and assess fall hazards in order to choose appropriate fall protection equipment and systems; consider passive and active restraint systems; develop written procedures and fall protection training refreshers. Important considerations are that: employers and employees are exposed daily to fall hazards, there is not one "solution for every hazard" and "each hazard requires a specific solution," and, finally, a viable rescue plan is necessary. Fall protection options include: "elimination of the hazard," passive and active restraints, "fall arrest systems" that include a rescue plan, and safety nets. If a fall occurs, Mr. Donnelly comments that the "four key elements of fall protection are: anchorage, connecting means, body holding device, and rescue."

**Mr. Robert G. Allan**, Robert Allan Ltd., was the second session presenter whose topic was "The Role of Escort Tugs in Tanker Safety Today." Mr. Allan reviewed the history of oil spills, noting the fact that "accidents involving oil tankers and offshore installations account for some 10 percent of the annual total amount of oils entering the marine environment." On the other hand, "tanker accidents and accidents with offshore installations do, however, account for most of the world's largest oil spills." When looking at the possibility of oil spills, the focus must be on risk reduction by using the "most advanced shipping technologies...highly trained professional mariners...training in tanker response strategies...use of the latest escort towing technologies." According to Mr. Allan, escort tugs have seen "significant improvements in hull design/escort capability, proven configurations with both VSP and Z-Drive propulsion, [the] ability to accurately predict performance, and [the] ability to define effectiveness in rough weather."

The third session was focused on alertness testing and was led by **Mr. Henry Bowles**, President of Bowles-Langley Technology, Inc. Mr. Bowles stated that alertness is affected by: "fatigue, prescription drug effects, injury, illegal drug effects, alcohol, illness and stress," and/or a combination of all of these factors. In order to judge alertness, there are now physical tests, e.g. eye and face scans, graphic tests that create individual baseline alertness performance, and shift work alertness technology, including smartphone apps. Alertness testing is one of many tools in a "Safety Manager's toolbox."



Jim Spigener



Wayne Donnelly, Dave Turner, Terry Bertram



Robert Allan

## NMSA Meeting Presenters (continued)

Session Four on Thursday afternoon, led by **Mr. Thomas Ward** of Ports America, discussed automated terminal design and safety. Primary safety concerns as terminals become more automated include: "keeping humans away from moving equipment...any system fault leads to a safe condition: 'fail safe'," strict adherence to applicable safety regulations, and using the most robust automation practices, whether US or European. Mr. Ward noted that "[t]he interface between machines, infrastructure, and humans is fundamentally different from manual terminals" and that "humans must be physically separated at all times from equipment moving under robotic control." Robots, of course, "do what they are told and no more," which is why "manned operations and automated operations do NOT mix." When converting terminals from manned to automated, it is necessary to segregate these two areas.

The final session on Thursday, June 23, was chaired by **Mr. Ron Signorino**, The Blueoceansa Company, Inc., with presenter **Capt. Jim McNamara**, and reviewed how to accurately assess container weights and, thereby, ensure safety in loading, transporting and unloading containers. Findings after container incidents have indicated sometimes enormous differences between cargo manifest weights and actual container weights, particularly when viewed in the aggregate. Other incidents result from maximum allowable stack weights being

exceeded, leading to the collapse of the cargo containers. Safely transporting containers means that containers should be inspected each time they are put into service to ensure that they are structurally sound, that containers are suitable for the load being carried, and that they are appropriately packed. Finally, load sensing technology has been developed to assist in identifying container overloads, "understatement of container weight, and out-of-balance" loads.

Friday morning's sessions included a presentation by **Dr. Ray Baker** regarding the "Modern Approach to Addictions." Dr. Baker also reviewed the management of employee disabilities that result from addictions and other "psychomedical conditions." Noting that about ten percent of employees have mental disorders, Dr. Baker said that the most common are: anxiety, mood, and thought disorders, pain, sleep and substance use disorders, and compulsive behavior disorders. He noted that "stress" is not a diagnosis, and "leave is usually not an effective tool." Instead, stress hides other problems and "requires further explanation." Addictions mimic other medical conditions. Drug or alcohol abuse is "not considered a disability." Warning flags at work include: changes in attendance, appearance, performance, and behavior, increasing conflict at work, accidents, and obvious impairment. In sum, mental health problems in the workplace are a growing problem, addictions

mimic other mental health problems, a comprehensive disability management process should be established, and medical monitoring is the "key to improved outcomes."

The final session, "Driving to Zero," was led by **Mr. Jason Pratt**, Operations Superintendent, DP World Vancouver. A comprehensive process for managing safety risks is a necessity, with goal setting, planning and performance measurement. A culture of safety is also necessary. Controls are needed to eliminate hazards or "reduce the level of risk associated with exposure to the hazard." Mr. Pratt noted that accidents are caused by: "organizational and system factors, unsafe conditions, and at risk behavior." Specific risky activities to be targeted include: "pedestrian safety, working at heights, handling loads, mobile equipment, vessel safety, engineering safety, and isolation" and safe operating standards need to be established for these and other risky activities. Near misses should be reported, and an incident review committee established to review safety incidents. In addition, monthly management safety meetings should be held, vessel safety requirements reviewed and implemented, and, importantly, communication should be a large part of the safety toolbox—implement a monthly safety focus, and include poster campaigns, safety bulletins, incident reviews, etc. as part of this communication.



Henry Bowles



Tom Ward



Jim McNamara and Ron Signorino



Dr. Ray Baker



Jason Pratt

## NMSA Officers (see photo p. 5)

As of June 24, 2011, the officers of the Board of Directors (with NMSA member designations) are as follows:

President: Joe Curto (New York Shipping Association)  
 1st Vice President: Nick Jumonville (Midgulf Assn. of Stevedores)  
 2nd Vice President: Sean Lindsay (Pacific Maritime Association)  
 3rd Vice President: Dave Adam (New York Shipping Association)  
 Secretary: Gerald Swanson (Pacific Maritime Association)  
 Treasurer: George Brown (Hampton Roads Shipping Association)

## 2011 NMSA Annual Meeting Exhibitors

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Bronze: Southeast Florida Employers Port Association, Pacific Coast Terminals Co. Ltd., Western Stevedoring, Maersk Inc., Ports of the Delaware River Marine Trade Association, Midgulf Association of Stevedores

## Agency Action



**Updated" Injury & Illness Recording and Reporting Requirements**—In the *Federal Register* on June 22, 2011, OSHA published a proposed rule that would change reporting requirements for work-related fatalities and hospitalizations, as well as work-related amputations. Currently, employers are required, within eight hours, to inform OSHA about work-related fatalities and in-patient hospitalizations of three or more employees. This proposed rule would require that any work-related fatality or in-patient hospitalization be reported to OSHA within eight hours, and any work-related amputations be reported within twenty-four hours. In addition, the proposed rule replaces the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) for use in providing the Appendix A list of industries with partial exemptions from requirements to maintain injury and illness logs due to their low rates of occupational injuries and illnesses. Comments are due by September 20, 2011.

**OSHA Directive Regarding Corporate-Wide Settlement Agreements**—A revised OSHA instruction regarding guidelines for the ad-

ministration of corporate-wide settlement agreements became effective on June 22, 2011. The new instruction "extends the use" of national and regional corporate-wide settlement agreements "to a broader range of enforcement cases, particularly where an employer has or may have a significant pattern of non-compliance with the OSH Act across multiple site locations." Each agreement must have a termination date "not to extend beyond two years from the final order date." In state plan states, if federal OSHA has an agreement with an employer covered under a state plan, the state may: honor the terms of the federal agreement; enter into a separate agreement that may accept "the terms and conditions of the federal settlement" or establish "different but equivalent or more stringent terms and conditions;" or, enforce state standards and regulations without regard to the federal agreement" (i.e., not honor the agreement). In any instance, the state must let the regional OSHA administrator know which option it will follow.

**DOL Regulatory Agenda Web Chats**—Seven DOL agencies will be holding live web chats on the most recent DOL regulatory [agenda](#) published in the *Federal Register* of July 7, 2011. The OSHA web chat is scheduled for Monday, July 11, 2011 from 2:30-3:30 EDT. To participate in any of the web chats, visit <http://www.dol.gov/regulations>.

**OSHA Goes Live with Recordkeeping**—OSHA recently went live with an interactive website intended to assist employers in determining "whether injuries and illnesses are work-related and recordable under the OSHA Recordkeeping rules." Compliance—and no excuses—is a big part of the effort.

**Maritime Advisory Committee for Occupational Safety and Health (MACOSH) Meeting Scheduled**—OSHA has scheduled a MACOSH [meeting](#) for July 19 (workgroup meetings) and July 20 (committee meeting) in San Diego, CA. Included on the tentative agenda: single and multi-piece rim wheels, working safely around radiation, person in water, fire watch responsibilities, eye injury reduction, and injury and illness prevention plans. In addition, the workgroups will also "discuss topics on which they may focus for the duration of the current Committee charter."

**Susan Harwood Training Grants**—Susan Harwood Training Grant applications are now available. The program is funded at \$4.7 million with grants in the following categories: targeted topic training, training and educational materials development, capacity building developmental, and capacity building pilot. Applications must be completed by July 20, 2011.

## NMSA Board of Directors and Staff



Standing: Dave Adam, Sean Lindsay, George Brown, Doug Beeber, Marc MacDonald, Jerry Swanson, Norman Lamb, Billy Adams, Stéphane Saucier  
Seated: Joe Curto, Walt Egee, Mark Baker, Elaine Tandler (Staff), Nick Jumonville, Kelly Garber, John Beckett, Chuck Carroll (Executive Director)  
Not Pictured: Pat Dolan, Phil Feldhus, Win Froelich (General Counsel), Buddy Greene, Meg Kane (Senior Editor), Mark Montgomery, Tony Petrizzo, Tom Sullivan

## 2012 NMSA Annual Meeting – June 27-29, 2012



*Additional information to follow.*

## NMSA Technical Committee



Standing: Terry Bertram, Steve Crouch, Mark Blackman, Marc MacDonald, Vince Lamaestra, Dave Turner, Jimmy Burgin, Joseph Farley  
Seated: Susan Winfree, Chuck Maravolo, Steve Allen, Ed Hughlett, Dan Harrison, Ken Killough (Chairman)  
Not Pictured: Stéphane Saucier, Tim Sheppard, Ron Signorino, Brad Stoker, Larry Toepper, Bill Williams



# National Maritime Safety Association

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July 2013

## NMSA 2013 Annual Meeting

This year's NMSA Annual Meeting was held at the Silverado Resort in Napa, CA on June 26-28. The topic, "Future Safety Focus for the Maritime Industry," and all of its facets, were reviewed in-depth by a variety of speakers from academia, business and government. NMSA 2013 Program Chair Ed Hughlett, Ports America Regional Safety, Health & Security Manager in Northern California, was ably assisted by Messrs. Curtis Shaw, Mike Hall, Jerry Swanson, and Vince Lamaestra, all with the Pacific Maritime Association (PMA). The program was well-developed, thought-provoking, and interesting—and we thank all of the gentlemen for their time and efforts.

And, thank you again to our sponsors and exhibitors, shown on pages 6 and 7, and to Erin Adams (daughter of Billy Adams, SCSA) who was this year's unofficial photographer.

## Thomas P. Sullivan Honored with NMSA "Man of the Year" Award

**Mr. Tom Sullivan**, Director, Labor Relations, United States Maritime Alliance (USMX), was this year's recipient of the NMSA "Man of the Year" safety award. Mr. Sullivan received the award for his tireless efforts to bring safety to the forefront of both the ILA rank and file and employers in the ports on the East and Gulf Coasts. He is a member of the recently formed ILA/USMX safety committee that travels to ports to assist in safety procedures and assists ports with disputes regarding safety.

Mr. Sullivan began his career in the maritime industry as a Marine Superintendent for Universal Maritime. In 1983, he joined Atlantic Container Line (ACL) where he served as a Marine Superintendent, Manager of Terminal Operations and General Manager of Terminals, North America. He subsequently served as Director, Workforce Development for NYSA, Inc. Mr. Sullivan has been with USMX since 2004, where his duties include oversight of the USMX-ILA CFS Trust Funds, including all Joint Training Programs. He serves on the Board of Directors of NMSA.

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Photo Courtesy of Erin Adams

Editor: Meg Kane

"Man of the Year" Honoree Tom Sullivan pictured (L-R) with NMSA Board Member George Brown, ILA Safety Representatives Bob Fiore and George Lynch, NMSA Board Member Mark Baker, and ILA Safety Representative Benjamin Bryan.



## NMSA Technical Committee Chairmanship

**Technical Committee Chairmanship**—Mr. Ken Killough, Safety Director, South Carolina Stevedores Association, passed the TC Chairman's gavel to Mr. Ed Hughlett, Ports America Regional Safety, Health & Security Manager in Northern California, during the NMSA Annual Meeting. Mr. Killough has served as TC Chairman for the past seven years and is only the fourth Chairman since the committee's inception over 50 years ago under NMSA's predecessor, the Management Advisory Cargo Handling Safety Committee (MAXIE). The NMSA community and staff thanks Mr. Killough for the substantial time and effort he has put into the Chairman's position over the past several years—that time and effort has not gone unnoticed and is greatly appreciated. We now look forward to working with Mr. Hughlett, who has big shoes to fill.

## NMSA 2013 Annual Meeting Presentations

*Summaries of speaker presentations follow. PDFs of presentations are available on the NMSA website under 2013 Annual ([www.nmsa.us](http://www.nmsa.us)).*

### Keynote Address

Mr. James Howe, President of Safety Solutions, gave an interactive presentation entitled "ANSI Z-10 Road Map: From Fighting Fires to an Effective Management System." Meeting attendees were encouraged to respond, using "clickers" on their tables, to a variety of questions throughout the presentation, which were then tabulated and presented on-screen in real time.

ANSI Z-10—Occupational Health & Safety Management Systems—emphasizes management systems as tools to improve health and safety, and advocates moving from program-based solutions to management-based solution systems and from being reactive to becoming proactive in corporate health and safety efforts.

In mobilizing an organization to improve safety, a careful analysis of major hazards and an assessment of risks is necessary, and old biases must be set aside. A plan should be developed and resources should be provided to implement the plan. Processes should be in place to monitor the implementation process, and a management review should be conducted to improve and adjust the plan. Z-10 also emphasizes the need for employee participation to build teamwork and collective knowledge. Mr. Howe also noted that, although everyone speaks about risk sensitivity, risk sensitivity declines over time.

Essentially, ANSI Z-10 suggests that occupational health and safety management systems can be broken down into four components: **plan** (establish a policy, prioritize and implement); **do** (implementation and operation, including risk assessment, education, and communication); **check** (monitor, measure, assess, correct); and, **act** (management review to assess risk and deficiencies and to review policies, priorities and objectives).

Mr. Howe stated that there are three subcomponents to a safety culture: (1) a reporting culture that encourages participation of the workforce; (2) the creation of a reporting culture in which employees can report their errors and near misses without being punished; and, (3) a learning culture in which the organization learns from its mistakes and makes changes. Mr. Howe noted that new hazards and hazardous situations are introduced into the workplace through new processes, new equipment, new materials and changes to existing processes, materials, and methods.

Developing and enforcing safety procedures is the best way to prevent injuries. The hierarchy of controls over safety, from most effective to least effective is: eliminating hazards; substituting the less hazardous for the more hazardous; improving the engineering of systems to increase safety; using warnings such as signs and back-up alarms; using administrative procedures and training; and, using personal protective equipment.

### Panel Topic: New Frontiers in the Cargo Handling Industry

This panel, moderated by **Mr. Ron Signorino**, President of The Blueoceans Company, reviewed the efforts of the Occupational Safety & Health Administration (OSHA) to regulate and improve maritime safety, the efforts of the California Air Resources Board (CARB) to reduce air pollution near the ports, the efforts of the maritime industry to improve its environmental footprint, and the efforts of individual ports to meet environmental requirements while enabling ports to modernize and expand.

**Ms. Barbara Goto**, OSHA Deputy Regional Administrator for Region IX, stated that OSHA expects to publish a notice in the *Federal Register* soon that will rescind the two provisions (flat racks and interbox connector inspection requirements) overturned by the U.S. Court of Appeals for the District of Columbia in *NMSA v. OSHA* and include a request for comments on the two provisions. In tandem, OSHA will amend its "Tool Shed" Directive for the marine cargo handling industry. She noted that members of the recently re-chartered Maritime Advisory Committee on Occupational Safety & Health (MACOSH) should be approved soon. The crane and gear certification forms are now electronic, and few problems have been found in audits. Regarding compliance assistance, Ms. Goto noted that pictograms will now be used for hazard communication in the maritime industry, and will be required by 1 June 2015. The OSHA maritime website includes "Fatal Facts" information. Ms. Goto said that the agency expects to continue moving ahead with its Injury & Illness Prevention Program (I2P2) which the

## NMSA 2013 Annual Meeting Presentations (continued)

agency considers a way to increase safety and health at workplaces. The core elements of the I2P2 proposal are: management commitment, worker participation, hazard identification, control and prevention, and training. Ms. Goto also commented on the safety problems related to undeclared container weights, and the heat exposure and fall awareness campaigns currently being undertaken by OSHA.

**Mr. Jack Kitowski**, Assistant Chief, Stationary Source Division, California Air Resources Board (CARB), spoke about the "Clean Air Frontier." CARB has been using regulations in an effort to reach a near zero emissions freight program in conjunction with the ports and industry. Thus far, CARB has adopted: cleaner diesel fuel rules, port and rail yard truck rules, truck idling and refrigeration unit rules, ship fuel and shore power rules, and harborcraft and cargo equipment rules. Mr. Kitowski noted that industry efforts have shown high compliance rates and a successful voluntary anti-idling program. Now, there is a need to move to cleaner technologies, such as, hybrids, battery-electric and alternative fuels. In order to achieve cleaner air goals, infrastructure planning must be paired with technology development and incentive programs should be used. CARB has targets for a sustainable freight system in its "Vision 2050" which includes a 2020 greenhouse gas emission target and 2023 ozone and particulate matter goals. A change in equipment will be required if CARB is to reach its target of an 80% decrease in these emissions. Elements required for the California sustainable freight initiative include: use of cleaner, more fuel efficient ships and aircraft, electric cargo equipment at ports/rail yards, shifting freight from trucks to rail, and the use of zero emission trucks in high use freight corridors.

**Mr. Kevin Krick**, Senior Director of Security and Environment, APL Limited, reviewed the "environmental angle" to cargo handling in the future. To set the stage, Mr. Krick noted that the shipping industry is the "most environmentally-friendly" way to move large quantities of material and goods. Container shipping requires only 10 grams of carbon dioxide to carry 1 ton of cargo one kilometer. In contrast, rail requires 21 grams, truck 59 grams, and air freight 470 grams. International shipping is responsible for only 2.7% of global CO2 emissions. APL's 2015 goal is "to reduce greenhouse gas emissions associated with cargo transportation and handling to 30% below 2009 emissions levels." The Clean Cargo Working Group is developing tools to measure and manage environmental performance and to standardize the calculation of the industry's carbon footprint. The North American Emission Control Area hopes to reduce sulfur dioxide emissions by 96% by 2020. California cold ironing requirements hope to reduce emissions by 80% by 2020. However, there are cost and benefit calculations that need to be completed in order to reach goals. There is also the issue of how state regulations, including environmental regulations, stifle business development and retention.

**Dr. Robert G. Kanter**, Managing Director of Environmental Affairs & Planning, Port of Long Beach, CA, reviewed the "New Frontier of Environmental Requirements." Dr. Kanter talked about the POLB's Green Port Policy, which is intended to enable port modernization and growth, build "community and political support," make the port sustainable, and keep the port both in compliance with, and ahead of, regulatory actions affecting it. The Port believes in being proactive, rather than reactive, which allows management to handle environmental issues, as well as other issues, in the best possible way, and on its own terms. Air studies in 2000 linked "diesel pollution, transportation corridors and ports to increased health risks," leading to a clean air action plan at POLB. The primary source (62%) of diesel pollution was identified as coming from ships, followed by harbor craft (15%), trains (9%), cargo handling equipment (9%), and trucks (6%). In response, the port developed plans, and provided monetary incentives in some instances, to transition vessels to more expensive low sulfur fuels, and replace trucks through the Clean Truck Program, for example. As a result, by 2013, diesel particulate matter was reduced 75%, nitrogen oxides reduced by 50%, sulfur oxides down 80%, and greenhouse gases down by 23%. The POLB has the ability to enforce its environmental requirements through lease requirements, tariff changes, incentives and voluntary measures.

### Panel Topic: New Frontiers in Terminal Operations

**CAPT Marc MacDonald, USCG (Ret)**, formerly Vice President of Accident Prevention at Pacific Maritime Association (PMA), moderated this second panel discussion, which reviewed new technology and equipment on its way to a terminal near you.

**Mr. Mike Boyles**, Director of Engineering, Taylor Machine Works, provided an overview of how technology has improved the safety of container handlers. Mr. Boyles also noted the need for a partnership between the equipment users and manufacturers in order to address equipment hazards. For example, load scales options to improve safety can include audible and/or visible alarms for overloads, height sensors, and controls that would limit vehicle speed based on load/lift height. Sensors have become more reliable. Ancillary devices are also important for safety, and include lateral flashing lights on the rear of a machine, obstacle detection, exterior seat belt fastened lights, open door alarms, environment specific work lights, container deflectors to warn of overhanging containers, and high visibility paint. Vision Plus monitors pedestrians around vehicles, detecting them and tracking them for vehicle operators 360 degrees around a vehicle.

Who would have guessed that lighting technology could hold an audience's attention? **Mr. Tom Ward**, Chief Engineer for Ports America, spoke about "New Lighting Technology" for the ports. As an essential safety device, lighting is dictated by OSHA regulations (29 CFR 1917.123), but OSHA regulations do not provide a good definition of the quality of lighting to be used.

## NMSA 2013 Annual Meeting Presentations (continued)

Additionally, at night, and especially at twilight, our vision is less precise regarding curves, depth, and perspective, so lighting is especially important. At the moment, all terminal lighting is provided by high-pressure sodium (HPS) fixtures of about 1,000 watts, and each pole and foundation costs approximately \$300,000 to replace. HPS fixtures, however, consume a great deal of energy, last only about two years, and provide high light pollution but poor light quality. New lighting technology is providing new energy saving options with brighter and improved light: LEDs, metal halides, and light emitting plasma. All of these options provide about a 50% energy savings, uniform lighting, very white light, and about double the service life as compared to HPS fixtures. However, careful consideration is necessary because of initial cost outlays.

**Mr. Ross Clarke**, Head of Design & Innovation, APM Terminals, The Netherlands, reviewed “Technologies Supporting Improvements in Container Terminal Safety.” The goal of APM Terminals is to reach zero fatalities; the challenge to APM Terminals is to inculcate a safety culture in less developed countries (LDCs). APM’s priorities are safety, productivity, cost competitiveness, and innovation. Automated terminals will reduce man vs. machine hazards, but new risks from automation need to be identified and addressed. Electronic personnel proximity detection and warning systems provide an additional layer of detection for equipment operators, but must be an add on to good driver training and good operating procedures. Around the corner detection ability is provided by MineSite magnetic field technology, and Zone Safe RFID technology also assists in vehicle safety. However, non-operational employees should be removed from areas first. When changing systems at a terminal, proper risk assessment is necessary, operator complacency can become a risk itself, and alarms need to be infrequent. Stack profiling systems are used to prevent load collisions—3D laser scanners build a map of where containers are on a ship or in a stack, enabling the “flight path” of the container to be automated. Remotely operated cranes improve the working environment for crane operators, who work two hours at a time. Soft landing systems use automation to remove containers from ships, and once containers are clear, an operator moves them to the ground. Personnel proximity warning systems can also be used to warn crane operators if lashers are working near a spreader.

### Topic: Future Safety Focus—Industry and Labor Perspectives

PMA President & CEO **Mr. James McKenna** noted that the common goal for industry and labor is to send workers home safely. There are new demands on the labor force and new skills needed because of automation. The PMA/ILWU 2008 labor agreement included an automation agreement that permitted the elimination of some ILWU positions. Industry and labor must be proactive in improving safety through training and changes to cargo handling. West Coast ports currently have Joint Area Accident Prevention Committees at the ports.

### Topic: The Fully Loaded Cost of Lost Time Incidents

**Mr. Richard D. Weeks**, Vice President, Lamorte Burns & Co., spent some time reminding employers of proper accident investigation procedures and of the need for a post-accident/injury action plan. Regarding employer response to accidents, Mr. Weeks commented on the need to: respond promptly, show compassion, treat the injury before investigating, move the employee to a comfortable location, determine the root cause of the accident, don’t place blame, be conscious of the employee’s perception of your response (comments, facial expressions), keep a positive attitude, record ALL information, and treat ALL accidents the same. Mr. Weeks noted that there are administrative costs to providing compensation and medical benefits to an injured employee. He said that, in the stevedoring industry, that cost is about 36 additional cents for every dollar of benefits delivered to the user. Bottom line: “conduct a thorough investigation, generate detailed documentation, know the status of the injured worker, recognize and report red flags, and insist on zero fraud tolerance.”

### Topic: Meeting the Training Requirements for the Future Workforce

**Dr. George Haber’s** (Manager, Instructional Systems Design, DuPont Sustainable Solutions) presentation revolved around how best to instill a good safety culture in your employees, and the type of training necessary to do so. He noted that the purpose of a good safety culture is to make someone acting unsafely feel out of place. In addition, if you have a mission statement, e.g., Pepsi’s “Beat Coke,” don’t allow a disconnect or contradiction between that mission statement and reality at the company. Sacrificing your business’ traditional learning theory for more rapid training can lead to unwanted results—less safety, less understanding of the company’s mission statement. Ensure that your method of training and selection of the medium of training do not compromise your overall training goal: have your corporate culture drive the design of your training rather than the other way around, and align them with your corporate strategies. Risk/benefit analysis is a good way to drive home safety training. Using diagrams, for example, determine the risks and benefits of cellphone use in the car—injury and death are two risks, but what are the benefits compared to these risks, and include in your analysis the effects on family and friends. In forming a training program, several steps should be followed: an analysis of the audience and overall course goals, the objectives of the course, the competencies expected at the end of training, and the production of high quality training materials. Finally, training should comprise three elements: affective (being safe is the only way to be), cognitive (how we operate), and psycho-motor (specific skills).

## Other News

**Vertical Tandem Lifts (VTL)**—The Department of Labor's (DOL) recently released "Spring" Regulatory Agenda shows that OSHA expects to remove from the VTL rule the two provisions that the Court of Appeals remanded to the agency because there was insufficient evidence on the record that they were technologically feasible. The Department's regulatory agenda indicates that OSHA expects to publish a notice in the *Federal Register* requesting comments on these two issues in April 2014.

**Injury and Illness Prevention Program (I2P2)**—The recent DOL Regulatory Agenda also notes that OSHA is developing a rule to require employers to implement Injury and Illness Prevention Programs and expects to publish a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* in January 2014.

**Workplace Injuries and Illnesses**—Two NPRMs are expected this year. First, in July 2013 OSHA expects to produce an NPRM on "Improved Tracking of Workplace Injuries and Illnesses" to modernize the OSHA reporting system and enable a "more timely collection of data." The second NPRM, expected in November 2013 at this point, is "Clarification of Employer's Obligation to Make and Maintain Accurate Records of Work-Related Injuries and Illnesses." OSHA wants to clarify in its regulations that the duty to "make and maintain an accurate record of an injury or illness" does not expire "if the employer fails to create the necessary records when first required to do so."

**MACOSH**—The MACOSH was re-chartered earlier this year, but we are still awaiting an announcement from the Department of Labor (DOL) regarding its membership. DOL says that all the MACOSH nominees have been vetted and they have the correct representation on the committee. The names are now making their way through the DOL bureaucracy for approval.

**New Labor Secretary Confirmed**—Mr. Thomas Perez, currently Justice Department Assistant Secretary for Civil Rights, was confirmed on July 18, 2013 as the new Secretary of Labor, replacing Secretary Hilda Solis who resigned earlier this year. Along with overseeing labor laws, employment benefits, and jobs data, Mr. Perez is expected to also to involve himself in immigration reform and civil rights issues. Republicans had been blocking the vote on his nomination because of his left-wing ideology and, according to the Senate Republican leader, his willingness "to bend the rules to achieve his ends."

## NMSA 2014 Annual Meeting – March 19 - 21, 2014



Ponte Vedra Inn & Club

Ponte Vedra Beach, Florida (near Jacksonville)

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Mobile Steamship Association (MSSA)  
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Pacific Maritime Association (PMA)  
Puerto Rico Shipping Association (PRSA)  
Ports of the Delaware River Marine Trade Association (PMTA)  
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