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U.S. District Court Strikes Down Massachusetts Law to Regulate Vessel Crewing, Operations *Maritime Industry Files New Challenge to 2009 State Law*

On March 31, the U.S. District Court, District of Massachusetts, issued an order for Summary Judgment against the State of Massachusetts in the case of *U.S. v. Massachusetts*. The U.S. Government and AWO were both plaintiffs in the case. As a result of the ruling, the portions of the 2004 Massachusetts Oil Spill Prevention Act regulating the crewing and operation of towing vessels and tank barges in Buzzards Bay are null and void. The decision of District Court Judge Douglas P. Woodlock, which can be read by clicking [here](#), follows a recommendation for Summary Judgment that was issued by U.S. Magistrate Judge Leo Sorokin of the same court in July 2009. Judge Woodlock's ruling also includes a permanent injunction barring implementation of the state regulations that were invalidated. The State of Massachusetts has 60 days from the date of the ruling to appeal this decision.



The court's decision upholds the longstanding constitutional principle that the federal government, via the U.S. Coast Guard, has preemptive authority over state laws regarding vessel design, equipment, operations and crewing. This principle was unanimously affirmed by the U.S. Supreme Court in 2000 in the case of *U.S. v. Locke*, which struck down Washington state regulations governing

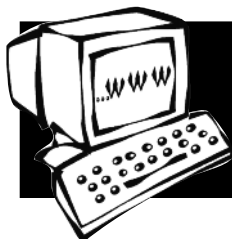
tank vessel operations. In *U.S. v. Massachusetts*, Judge Woodlock concurred with this reasoning, writing that "the law of preemption... leaves the last word under Federal law regarding the formulation of regulations to control vessel traffic, to enhance vessel safety and to decrease environmental hazards in Buzzards Bay to the Coast Guard."

The Massachusetts law in question was enacted in response to a 2003 accidental tank barge oil spill in Buzzards Bay. The U.S. and AWO both challenged several of the law's provisions in federal court shortly after its passage. For a more detailed history of the litigation, please see articles from the [September 12, 2008](#) and [July 31, 2009](#) editions of the *AWO Letter*.

Tank Vessel Industry, Insurers Challenge 2009 Massachusetts Law

On April 7, one week after the District Court ruling striking down the 2004 Massachusetts law, AWO, the International Association of Independent Tanker Owners (INTERTANKO), the Chamber of Shipping of America, the International Chamber of Shipping, and the International Group of Protection &

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U.S. District Court Strikes Down Massachusetts Law to Regulate Vessel Crewing, Operations



(continued from page 1)

Indemnity Clubs filed a new legal challenge before the same court seeking declaratory and injunctive relief from provisions of a 2009 Massachusetts law titled, “An Act Preventing Oil Spills in Buzzards Bay,” challenging the state statute as unconstitutional and detrimental to marine safety and environmental protection.

The 2009 law compels vessel operators to “voluntarily” comply with state requirements for transit through Buzzards Bay, through threat of extremely punitive monetary penalties, in violation of the Federal supremacy clause of the U.S. Constitution. Just as important is the concern of the maritime industry, which operates internationally and across multi-state boundaries, that a patchwork of individual state regulations rather than a consistent federal regulatory regime creates confusion and lack of uniformity that threatens safety and environmental protection.

The disputed Massachusetts law requires 24-hour notification of intent to transit Buzzards Bay, the acceptance of a state pilot on board for transit, and the presence of an escort tug to shadow vessels carrying 6,000 or more gallons of fuel.

As reported in the March 26 edition of the *AWO Letter*, AWO provided written and oral testimony explaining the unconstitutionality of the state requirements, as well as the risk to marine safety that they introduce. As of March 29, however, vessel operators are required to comply with the escort tug requirement of the 2009 law. The district court decision striking down the 2004 Massachusetts law does not relieve vessel operators of the

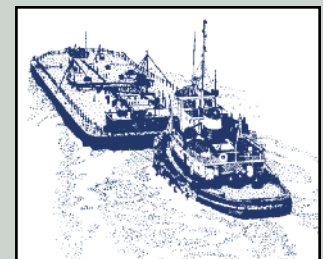
requirement to comply with the 2009 state law.

AWO will keep members informed of any new developments in both of these cases. To read the AWO filing, please click [here](#). For more information,

please contact Nicole deSibour or Benjamin Rogers at (703) 841-9300, extensions 297 or 292, respectively, or via email at ndesibour@vesselalliance.com or brogers@vesselalliance.com.

AWO Comments on EPA Study of Discharges from Vessels Less than 79 Feet

On April 7, AWO submitted comments on the Environmental Protection Agency’s (EPA) draft study of discharges from fishing vessels and commercial vessels less than 79 feet. The study was mandated by a bill passed by Congress in July 2008 that placed a two-year moratorium on regulation of such discharges under the Clean Water Act’s National Pollutant Discharge Elimination System (NPDES) permit program. (For more information on the study, see the March 12 edition of the *AWO Letter*.)



In its comments, AWO urged EPA to use the opportunity provided by Congressional interest in the study to stimulate a broader conversation about the need for a more effective statutory framework for the regulation of vessel discharges than the NPDES permit program, which is not well suited to the regulation of mobile sources engaged in interstate commerce. Until Congress passes legislation enacting such a framework that provides a uniform, national standard for discharges from all vessels, the current statutory moratorium on regulation of discharges from vessels under 79 feet should be extended for at least three years, AWO wrote.

AWO also pointed out that it is likely that the study grossly overestimates the number of barges less than 79 feet in length; in fact, the overwhelming majority of the nation’s tank and freight barges are over 79 feet and thus currently regulated under EPA’s Vessel General Permit. In addition, since the study did not examine discharges from barges, AWO urged EPA not to use the study to draw conclusions about such discharges.

AWO will continue to work to secure enactment of a uniform, national standard for ballast water and other vessel discharges. To read AWO’s comments, click [here](#). For more information, please contact Jennifer Carpenter or Mary McCarthy at (703) 841-9300, extensions 260 or 254, respectively, or via email at jcarpenter@vesselalliance.com or mmccarthy@vesselalliance.com.

Study Reveals that Chicago Lock Closures Would have a Devastating Impact on Economy, Environment

AWO Submits Comments to ACRCC

On April 7, the Illinois Chamber of Commerce released an economic study conducted by Joseph P. Schwieterman, Ph.D. of the DePaul University's Chaddick Institute for Metropolitan Development. The results of the study show that closures of the Chicago and O'Brien locks in Chicago, even on a modified schedule, would



O'Brien Lock

have a devastating impact on the economy, environment and quality of life in the Chicago region and beyond. Although the study is considered preliminary and does not consider all impacts, including employment-related effects, it estimates the economic value that would be lost from lock closures to be \$4.7 billion. This amount of lost economic activity would deal a substantial blow to the economy in general and industry-related jobs in particular. In addition, the study points out the environmental impact of more air pollution and highway congestion that would result from transferring cargo currently shipped by barge onto trucks.

Also on April 7, the Chamber released three other separate economic critiques of the information, methodology and conclusions of the February 2 paper, "Chicago Waterway System Ecological Separation: The Logistics and Transportation Related Cost Impact of Waterway Barriers," authored by John C. Taylor of Wayne State University and James L. Roach, formerly of the Michigan Department of Transportation. The paper was commissioned by the state of Michigan and it asserted a much smaller economic impact of lock closures. The three critiques were written by C. James Kruse, Director, Center for Ports & Waterways, Texas Transportation Institute; Dr. Ian Savage, a transportation economist from the Department of Economics and the Transportation Center of Northwestern University; and, Michael S. Bronzini, Ph.D., P.E.(PA).

To read the DePaul study, please click [here](#). To read the critiques of the Michigan study, please click [here](#).

AWO to ACRCC: Keep the Locks Open

On March 26, AWO submitted comments on the *Asian Carp Control Strategy Framework*. The February 8 document was released by the Asian Carp Regional Coordinating Committee (ACRCC), a consortium of state and federal agencies, including the U.S. Environmental Protection Agency; the U.S. Coast Guard; the U.S. Army Corps of Engineers; the White House Council on Environmental Quality; the U.S. Fish and Wildlife Service; and, the Illinois Department of

Important Dates and Reminders

..... at a glance

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

April 13: "Barge-In" Preparation Briefing, Arlington, VA

April 14-16: AWO Congressional "Barge-In" and Spring Convention, The Ritz-Carlton, Pentagon City, Arlington, VA

April 28-29: Interregion Safety Committee Meeting, The Fairmont, Pittsburgh, PA

June 9-10: Coastal Safety Committee Meeting, MGM Grand, Las Vegas, NV

July 27: Pacific Region Summer Meeting, Hilton Bellevue, Bellevue, WA

August 4-5: Executive Committee Meeting, AWO Headquarters, Arlington, VA

August 11-12: Atlantic Region Summer Meeting, The Barclay New York, NY

August 18-19: AWO Midwest and Ohio Valley Regions Joint Summer Meeting, St. Louis, MO

September 1-2: Southern Region Summer Meeting, Beau Rivage Resort & Casino, Biloxi, MS

September 8-9: Interregion Safety Committee Meeting, Sheraton Westport Lakeside Chalet Hotel, St. Louis, MO

October 13-15: 2010 AWO Fall Convention, The Fairmont, San Francisco, CA

December 1-2: Executive Committee Meeting, AWO Headquarters, Arlington, VA

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Study Reveals that Chicago Lock Closures Would Have a Devastating Impact on Economy, Environment

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Natural Resources. In its comments, AWO stated its strong opposition to closing the Chicago and O'Brien locks, a focus of the report, while endorsing most of the other proposed actions, including but not limited to: a) the identification of selective toxicants to control the fish; b) commercial fishing,

electro-fishing, netting, and targeted fish sampling; and, c) the completion of barriers to address flooding concerns.

Specifically, AWO wrote that lock closures, or "Modified Lock Operations," as they are referred to by the ACRCC, "would severely disrupt the regional and national economy." AWO also pointed to comments made by U.S. Solicitor General Elena Kagan in legal documents that closed locks are not effective as fish barriers. The U.S. Army Corps of Engineers - Chicago District will officially

recommend an alternative for "Modified Lock Operations" to Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy. The recommendation is expected within four weeks.

To read AWO's comments, please click [here](#). For more information, please contact Lynn Muench at (314) 446-6474, or via email at lmuench@vesselalliance.com, or Benjamin Rogers at (703) 841-9300, extension 264, or via email at brogers@vesselalliance.com.

MarAd Extends Enrollment for VISA Program

On March 24, the Department of Transportation - Maritime Administration (MarAd) announced the extension of the Voluntary Intermodal Sealift Agreement (VISA) program until October 1, 2011. The VISA program is open to operators of U.S.-flag, oceangoing, militarily useful vessels, including tugs and barges. The purpose of the VISA program is to make intermodal shipping and management services available to the Department of Defense (DOD) to support the emergency deployment and sustainment of U.S. military forces through a cooperative effort of the maritime industry and federal government agencies. Carriers that enroll in the VISA program also derive benefits for DOD peacetime contracts.

To read the announcement, please click [here](#). For more information, please contact Jerome Davis, Director - Office of Sealift Support, Maritime Administration, at (202) 366-2323, or via email at Jerome.Davis@dot.gov.

EPA Approves Three More Remanufacture Kits

On March 29, the Environmental Protection Agency (EPA) approved three more remanufacture kits for EMD engines used on tugboats and towboats. Under the remanufacture provision in EPA's 2008 regulations for Category 1 and Category 2 marine engines, vessel owners remanufacturing certain engines must use a kit if it is "available" for the engine; kits are considered "available" 120 days after they are approved by EPA. However, for the latest three kits, EMD did not submit the required documentation to EPA demonstrating that the kit reduces PM emissions at a cost less than \$45,000 per ton. Therefore, according to EPA, an owner has no obligation to use these kits when overhauling an engine, but can use one of these kits to meet compliance obligations triggered by another "available" kit certified for that engine.

The remanufacture provision applies to engines over 800 horsepower built between 1973 and 2012 when all of the engine's power assemblies are replaced (either at once or over a five-year period). Vessel owners with less than \$5 million in annual revenues fleet-wide are exempt from the provision.

To see the full list of approved kits, please click [here](#). If multiple kits have been approved for the same engine but one or more of those kits have not yet become available, the date that the first kit becomes available is the date that a vessel owner remanufacturing an engine must use a certified kit. The list of approved kits includes some that do not indicate a date on which they are considered available. As mentioned above, there is no regulatory obligation to use these kits when remanufacturing an engine.

AWO will immediately notify members of any future kit approvals through the *AWO Letter* and will continue to work with EPA to develop an improved process for notifying industry directly when kits are approved. If you have any questions, please contact Mary McCarthy at (703) 841- 9300, extension 254, or via email at mmccarthy@vesselalliance.com.

Principles and Guidelines Should Promote Environmental and Economic Benefits, AWO Comments to CEQ

The Council on Environmental Quality's (CEQ) proposed Principles and Guidelines (P & G) must recognize the economic benefits of waterways transportation, flood control and water supply infrastructure as the basic building blocks of a robust and expanding national economy, AWO told CEQ in comments filed April 5.

AWO's comments came in response to a December 9 notice regarding CEQ's draft *Principles and Standards (P & S) Sections of the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, the principles that will guide America's water resource planning. AWO's comments asserted that the draft P & G does not fully recognize the economic benefits gained from water resource infrastructure or the public uses of water resources. The Water Resources Development Act of 2007 directed the Secretary of the Army to ensure that the nation's water

resources project planning policy reflects current national priorities that would encourage economic development and protect the environment. CEQ has taken the lead role in revising the P & G.

Lynn Muench, AWO Senior Vice President - Regional Advocacy, offered three overarching recommendations to improve the draft P & G:

1. The P & G must ensure well-defined planning procedures that promote the sustainable development of our nation's economy along with continued investment to maintain, update and modernize the water resources infrastructure;
2. The P & G must place a strong emphasis on utilizing cost-benefit analysis and other proven methods of economic analysis in the evaluation of proposed environmental and economic projects; and,
3. The P & G must establish a peer-review process that offers balanced and unbiased consideration of all benefits of water resource planning. The developments of flood control, navigation and water supply projects have a long and impressive history of improving the lives of U.S. citizens and the economic welfare of the entire nation.

For a copy of AWO's comments, please click [here](#). If you have any questions, please contact Lynn Muench at (314) 446-6474 or via email at lmuench@vesselalliance.com or Robert McCaw at (703) 841-9300, extension 279, or via email at rmccaw@vesselalliance.com.

Registration Reminder for the Interregion Safety Committee Meeting

Please remember to register for the Interregion Safety Committee Meeting by clicking [here](#).

The meeting will be held April 28-29 at The Fairmont



Pittsburgh in Pittsburgh, PA. To access the meeting documents, please click [here](#).

For further Safety Committee information, please contact Bob Clinton at (703) 841-9300, extension 253, or via email at bclinton@vesselalliance.com. For further registration or hotel information, please contact Ashley Smith at (703) 841-9300, extension 291, or via email at asmith@vesselalliance.com.

CEMS Training Opportunities Available

The Crew Endurance Management System (CEMS) is a system for managing risk factors in maritime work environments that can lead to human error and performance slumps. The Coast Guard and AWO have been working together to help companies implement the principles of CEMS. In this space, AWO will publish details of CEMS training opportunities around the country. For further information on CEMS training opportunities, please contact Pik Kwan Rivera, U.S. Coast Guard, at (202) 372-1354.

DATE	LOCATION	CONTACT
April 20-21	Salyers Solutions, LLC Tampa, FL	Jo Ann Salyers (Instructor) (504) 236-4962 salyers_solutions@hughes.net
April 27-28	Salyers Solutions, LLC Oakland, CA	Jo Ann Salyers (Instructor) (504) 236-4962 salyers_solutions@hughes.net

(Additional classes can also be scheduled at your location.)

TUGS! Exhibit to Open at Mystic Seaport

Our industry has a great story to tell, and Mystic Seaport, The Museum of America and The Sea, in Mystic, CT is great at telling stories. Opening on May 8, the TUGS! exhibit will showcase the contributions of our industry to the nation. AWO is helping to promote the exhibition by publicizing it in the *AWO Letter*, in the “Barge-In” Leave-Behind packets, and by helping to seek sponsors for the exhibit.

Visitors to the TUGS! exhibit at Mystic Seaport will be presented with



information about the tugboat, towboat and barge industry that show our dynamic, modern and vibrant industry in a new light. More than 250,000 visitors and museum members will be introduced to the industry through stories about the work we do, the tools we use and the engaging heritage of our industry’s past.

Mystic Seaport has been receiving advice and assistance on the TUGS! exhibit from many in our industry, including designers, operators, suppliers and enthusiasts. AWO

member supporters include McAllister Towing; Foss Maritime Company; Crowley Maritime Corporation; and, Reinauer Transportation Company.

Please help us to help Mystic Seaport tell the remarkable story of our industry. Spread the word to your staff, clients, vendors and friends. If your company is interested in being a sponsor, you can find more information [here](#). This exhibit will run through the spring of 2011, so plan your visit to Mystic Seaport to witness this inspiring exhibit first hand. For more information, please contact Anne Burns at aburns@vesselalliance.com or (703) 841-9300, extension 252, or go to www.mysticseaport.org/tugs

LAST CHANCE TO REGISTER FOR THE 2010 SPRING CONVENTION!

Please be sure to register for the AWO 2010 Spring Convention, taking place April 14-16 at The Ritz-Carlton, Pentagon City, by clicking [here](#). The event is quickly approaching, and your help in confirming your convention attendance ahead of time is greatly appreciated! For further information on the Spring Convention, please contact Ashley Smith at (703) 841-9300, extension 291, or via email at asmith@vesselalliance.com.

In conjunction with the convention, the AWO “Barge-In” will take place on April 14. The day will start with a Continental Breakfast at Hotel Liaison from 8:00 a.m. to 9:00 a.m., followed by brief remarks from Rep. Bennie Thompson (D-MS). For those individuals who will not be able to attend the “Barge-In” Preparatory



Session at The Ritz-Carlton, Pentagon City the day prior, April 13, the breakfast will provide a good opportunity to ask questions and get informed on “Barge-In” details. To access the “Barge-In” documents, including complete schedule of events, please see page 11 in the Members Only section. For additional “Barge-In” questions, please contact bargein@vesselalliance.com

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MIDCONTINENT OFFICE

AWO Comments on MRAPS Situation Assessment

On April 1, AWO submitted comments to the Osprey Group on its Missouri River Authorized Purposes Study (MRAPS) Situation Assessment. The Osprey Group, a U.S. Army Corps of Engineers - Northwestern Division contractor, developed the Situation Assessment after holding a number of focus groups with stakeholders that are impacted by the study. MRAPS is a Congressionally-authorized study that will provide advice to Congress on contemporary and appropriate uses of the Missouri River system and could eliminate navigation as an authorized purpose of the system, one of its two primary purposes since 1944.

AWO's comments highlighted the fact that the focus group process was marked by a lack of purpose and transparency, and that many stakeholders were never invited to, or included in, the focus groups. AWO also expressed skepticism at the Situation Assessment's recommendations. Finally, AWO

urged the Osprey Group to ensure that Mississippi River stakeholders are included in the study's oversight, since Mississippi River waterborne commerce relies heavily on Missouri River flows. In fact, AWO commented, MRAPS should include an assessment on the Missouri River's benefits to the

nation and be focused on how to maximize the river's support of Mississippi River navigation.



To read AWO's comments, please click [here](#). For more information, please contact Lynn Muench at (314) 446-6474 or via email at lmuench@vesselalliance.com, or Mary McCarthy at (703) 841-9300, extension 254, or via email at mmccarthy@vesselalliance.com.




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

