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Mission complete: Treatment Fee Working Group reports back to USDA

"I've presided over many committees — some substantially larger — and few presented as much of a challenge as the Treatment Fee Working Group," said Exchange Vice President Lisa Himber. "Who knew I would look fondly on the days when all I had to do was bring maritime industry and security technology stakeholders together to develop a technical specification for the Transportation Worker Identification Credential?"

Himber is referring to a four-month initiative arising from a meeting with the Exchange and several members and the USDA Deputy Administrator for the Animal and Plant Health Inspection Service back in April. One action item was to convene a national working group to develop a unified proposal for an alternative unit of measure for assessing fees for APHIS supervisory oversight of cold treatments and fumigations.

No small charge, that.

The Treatment Fee Working Group included 27 members, comprised of fumigators, brokers, terminal operators, and ocean carriers from the South Florida, Mid-Atlantic, and West Coast regions. Several trade group representatives, such as the National Pest Management Association and the Peruvian Asparagus Importers Association, participated in the group. "Our goal was to be as inclusive as possible and to ensure the membership adequately reflected the differing operations across regions," Himber said.

The Issue

The current regulation as finalized last December says that APHIS will assess a user fee of $47 — for now — for each "enclosure" which undergoes Agricultural Quarantine Inspection treatment. The fees are scheduled to increase each of the next four years, capping at $275 in 2020. In December of this year, the fee increases to $95.

"The problem is that an enclosure can be anything . . . from an entire warehouse to a single pallet or anything in between. This unit of measure does not allow for equitable distribution of fees across the board and makes it difficult for customers to plan their expenses. If a shipment is part of a small treatment, one importer may pay the full $47, but if it's part of a larger group the next time, the importer may pay a small fraction of the $47 fee," said Kurt Reichert, Fumigation Director at Western Fumigation.

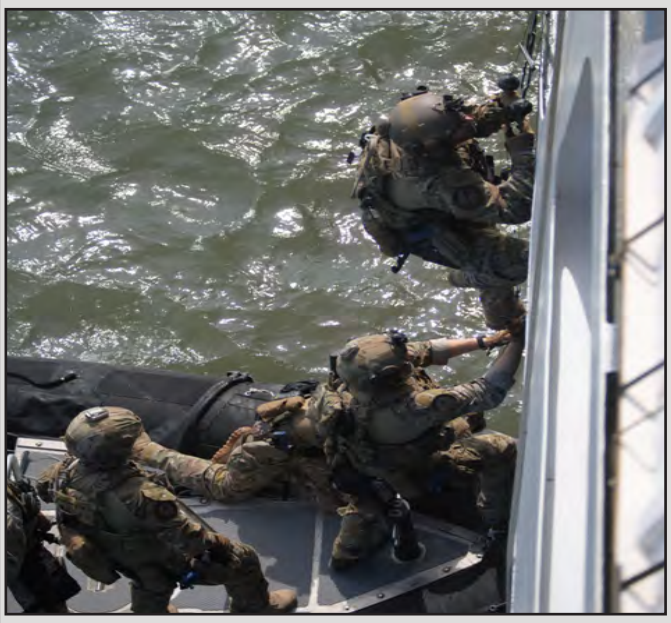
The Divide

During the kick-off meeting held on June 15, working group members unanimously agreed that "enclosure" is not the ideal unit of measure. Yet unanimity went by the wayside after that. For the next 12 weeks, members debated vigorously over the merits of various options, quickly discarding some ideas, such as charging by weight or by the entry, and focusing primarily on two alternatives: an hourly rate or a per-pallet fee.

"From our perspective, the hourly rate allows APHIS to do what it set out to do when it began charging fees in

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Marine security response on the Delaware River



Maritime Security Response Team members hook and climb up the CGC "WILLIAM TATE" during Operation Neptune Guardian in the Delaware Bay. ***See story page 15.***

Exchange expands individual membership eligibility

After over 140 years of operation, a relatively few short years ago the Exchange created an "individual" class of membership for students and retirees. The idea was to create a low-cost way for those just entering the maritime industry to learn about the issues important to port business operators and for those leaving to stay engaged.

The Exchange is pleased to announce that individual memberships will now be extended to anyone not associated with a maritime business to come on board. The benefits for individuals will be largely the same as those provided to corporate members, with the primary difference of listing the individuals by name rather than company in the membership roster.

Employees of organizations which service maritime businesses, such as banks or insurance companies, who want to keep informed of their customers' industries are likely individual member candidates. The same is true for those who are simply interested in maritime transportation, history, and lore.

Current members are encouraged to refer potential candidates, and anyone reading this newsletter who is not directly affiliated with the industry is welcome to apply!

Visit www.maritimedelriv.com/membership/membership.htm or contact Beverly Ford at 267- 670-7946 or bford@maritimedelriv.com to learn more!



Interview with Joan Lyons

Executive Director, Seamen's Center of Wilminton



Joan Lyons has been at the helm of the Seamen's Center of Wilmington since 2000. A very small organization, SCW has only one full-time employee and another who works half time. It relies on its cadre of volunteers and the maritime community to support the organization. Ms. Lyons recently talked to The Beacon *about some of the challenges this important organization faces and the value it provides.*

Q: While many maritime business community members are familiar with seafarer welfare organizations such as SCW, an equal number are not as their jobs don't bring them into contact with vessel and crew operations. Would you take a moment to explain what SCW does?

A: I think the easiest way to think of SCW and most especially our volunteers is that we are the "life line" between ship and shore for the thousands of mariners we meet each year. The average seafarer works a contract that is nine months in length. For most of us it is hard to imagine being away from home and all things familiar for that length of time —many of these men and women do just that their entire lives, having short periods of time at home between contracts. Our role is to help them hold their lives together, whether it is to wire money home, go shopping, find a Wi-Fi connection, or to be their advocate when problems arise. I do believe, though, that our most valuable gift to this invisible society of workers is the warm welcome that makes them understand they are not forgotten.

Q: Everyone knows that many nonprofits frequently struggle to meet their missions. What are some of the unique challenges you face trying to run the SCW?

A: Every nonprofit will tell you it is

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Barge/tow traffic a hole in MDA

One of the age-old truths of the port industry is that the same information used to plan for navigational safety, such as vessel schedules and hazmat manifests, is the same information needed to efficiently plan for commercial operations. The events of 9/11 also taught us — among many other lessons learned — that the same information needed for commercial operations is also critical to improving maritime security.

In the years following the September 11 attacks, federal agencies increased demands for information and for electronic data exchange. The Coast Guard expanded the requirement for advance notice of vessel arrival from 48 to 96 hours and set up the National Vessel Movement Center to process electronic submissions. In 2004, Customs mandated electronic filing of cargo manifest data, which had been voluntary since 1986. It also required container manifest information 24 hours prior to loading at foreign ports and electronic stow plan submissions.

The purpose of these and other initiatives was to improve MDA — maritime domain awareness — in an era of heightened security. Yet these automation efforts have also resulted in improved safety and facilitated cargo and vessel processing at U.S. ports.

One area that has lagged behind in the data sharing curve is tug/tow movement information. While real-time information is available through automatic identification systems, advance schedules and location information for unattended barges are simply not part of today's MDA picture.

The Exchange has met with barge/tug operator members over the last several months in an effort to improve the flow of information. Reaction has been mixed.

While members understand the importance of sharing information to promote navigational safety, to improve planning for events such as dredging operations or fireworks permits, and to prevent congestion at area anchorages, concerns over workloads and proprietary information are well founded and must be addressed.

That said, we note that ocean carriers and importers expressed the same concerns in the 1980s at the outset of Customs' automation efforts, and industry successfully overcame them in fairly short order. Today, electronic information exchange has saved time for employees, minimized errors, and reduced some expenses dramatically.

Coast Guard and the Corps of Engineers have already expressed a desire to receive advance tug/barge schedule information. And one thing industry can absolutely depend on is that new regulations will follow an incident.

We believe Delaware River port stakeholders should get ahead of the curve and create a program for sharing barge/tow information voluntarily before the federal government steps in to issue new requirements. By doing so, we can improve overall port operations in the near term and serve as the model for future mandatory requirements.



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Visit the Exchange's web site at www.maritimedelriv.com

Exchange enhances real-time AIS display

Recently referred to by one Maritime Exchange member as the "easy button for the port," the Exchange Maritime On-Line system, or MOL, has been the information hub of the Delaware River port community for nearly three decades.

Through MOL and its suite of commercial port applications, the Exchange works to provide superior service and respond to the needs of the maritime community.

Recently, the Exchange completed an update to the Automatic Identification System component of MOL. Like any other off-the-shelf or custom AIS system, MOL AIS provides visibility into real-time vessel positions, but it goes well beyond. Through a single window, eligible subscribers can also review ship schedules, cargo manifest data and Customs clearance status, and notice of arrival/departure data.

The most recent update to AIS modified the way the map renders locations, providing the ability to draw almost any shape and give it a label in addition to the existing capability of simply marking locations.

Exchange Director of Operations Paul Myhre said, "Subscribers can now outline areas such as anchorages or put marker dots on the map and have them appear as selectable locations." The functionality is similar to that of the geofence alert zones users can create on the map.

"We can now also display the markers and shapes independently by changing opacity separately or turning one on and leaving others off," Myhre said.

"The Exchange's AIS module allows us to operate more efficiently because we can track our boats and see which is poised to respond to our customer needs faster," said Christopher Rowland, Vice President of Operations for Wilmington Tug, Inc. "Having the anchorages selectable from the list of locations makes it easier to maneuver throughout the region and find a specific spot on the map."

Based on user requests, the Exchange is now updating the AIS geofence functionality to provide the ability to create an alert zone that stays with a moving vessel. "This work is underway, and we hope to be in production sometime during the first quarter of next year," Myhre said.

Be sure to check out the AIS module to see how it can help make your business more efficient.

Contact Paul Myhre at pmyhre@maritimedelriv.com to find out more about what MOL has to offer.

MISNA tackles cyber, barges, and Segways

In October, the Maritime Exchange welcomed its sister organizations to the city of brotherly love for a meeting of Maritime Information Service of North America. Comprised of maritime exchanges from ports throughout the country, MISNA members meet annually to share best practices, develop strategies to address challenges common to all, and to identify opportunities to benefit their respective members.

"Most folks who have maritime exchanges in their communities understand how integral these organizations can be to facilitating portwide communications and, in some cases, advocating on issues of importance to stakeholders," said Ed Kelly of the Maritime Association of the Port of New York/New Jersey and outgoing MISNA president. "Yet, few probably realize how much more effective exchanges can be when they work together for the benefit of the maritime industry in this country as a whole as they do through MISNA."

Exchanges from the west, gulf, and east coasts met in Philadelphia on October 17-19 and covered a wide array of topics.

Members shared operational and IT experiences and advice. Two exchanges recently completed cybersecurity vulnerability assessments, and another talked about how a very legitimate looking email coming into its operations staff contained malware which brought down the entire network. Others provided recommendations on choosing consultants, streamlining the contract negotiation process, and developing a comprehensive assessment plan.

Among other relevant issues, MISNA members tackled regional efforts to engage the tug/barge community in obtaining schedules for safety, commerce, and security purposes. While attempts to obtain this information have met with limited success, the group believes it is important to collect this information now under a voluntary environment before a major incident occurs that might mandate such a collection under less desirable circumstances.

But it wasn't all work. MISNA delegates convened at the colonial City Tavern for dinner just as the delegates to the first Continental Congress did over 240 years ago, and they braved a Segway® tour of Old City, Penn's Landing, and the Italian Market in South Philadelphia. And of course what trip wouldn't be complete without a big bag of warm Philly soft pretzels to welcome guests on their first day in town.

"As always, the MISNA meeting was extremely productive," said Exchange Vice President Lisa Himber. "No one in the local port community does what we do, and having the opportunity to share best practices and lessons learned is invaluable. It helps us improve our own internal operations, and more importantly, MISNA members provide suggestions on ways to improve products and services available to our own members."

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Air Force Celebrates 69th Birthday



(*l-r*) Exchange Chairman John Reynolds, Exchange Board member Admiral Joe Hare with U.S. Air Force General Robin Rand, Commander of the Air Force Global Strike Command, at the Union League celebration of the Air Force Birthday on September 16, 2016.

Corps of Engineers awards contract for Reach E

Only one section of the river left to be deepened to 45 feet

With seven of the ten dredging contracts complete, one underway, and one more now awarded, the Delaware River Main Channel Deepening Project is fast approaching its final year of construction. Once completed, the depth of main shipping channel between the Ben Franklin Bridge and the sea will be increased from 40 to 45 feet.

"This is really good news," said Jeff Theobald, Executive Director and Chief Executive Officer of the Philadelphia Regional Port Authority. "Deepening the channel to 45 feet will first and foremost keep us competitive with other East Coast ports to protect the shipping customers we now serve. It will also position the port to compete for new business as a result of the Panama and Suez Canal expansions. The Commonwealth of Pennsylvania, through the PRPA as local sponsor, has already contributed about $112 million to match the federal contribution of $264 million."

The contract currently underway, the project's largest at $77 million, involves rock removal in multiple locations within Reach B of the channel, primarily in the area adjacent to Chester and Marcus Hook, Pa. This work is taking place during two separate environmental windows in order to protect the Atlantic sturgeon. A significant amount of rock was removed between December of 2015 and March of 2016; the second phase will take place during the same months in 2016-17.

"During what was a fairly complex process to remove rock and keep ship traffic moving during the first phase of the project, the Corps of Engineers, Coast Guard, the Pilots' Association, the Mariners' Advisory Committee, the Maritime Exchange, and Great Lakes Dredge and Dock Company worked to ensure cargo vessel transits were not disrupted by construction activity," said Ward Guilday, Pilots' Association President.

The ninth contract to deepen upper Reach E, the north end of the Delaware Bay, was awarded to The Dutra Group for $32.6 million. Work is expected to begin later this fall and be completed sometime next year.

The final contract will be for pipeline and bucket dredging to deepen the remainder of Reach B of the channel between Chester and Wilmington as well as the Marcus Hook Anchorage. It is expected this contract will likely be awarded in the spring of 2017.

"As this project moves forward toward completion, our regional port is now positioned to capitalize on this momentous navigational infrastructure improvement and press ahead to build on our reputation as a world class port," said Exchange President Dennis Rochford.

Exchange mourns the passing of Eileen Collins



The Maritime Exchange is deeply saddened to report the passing of long-time Exchange employee Eileen Collins on August 8. Eileen's last VHF radio broadcast was heard on September 13, 2002, when she retired after 35 years of dedicated service.

Born in Philadelphia in 1935, she was the daughter of Thomas J. and Nora (Brennan) Collins.

Prior to her career with the Exchange, Eileen worked with future Maritime Exchange president Bill Harrison for cruise ship line Furness Withy. When Harrison was chosen to lead the Exchange in 1967, he asked her to join him. Originally hired to work on the Exchange's annual port directory, her responsibilities quickly grew to that of office manager. She was involved in many aspects of the Exchange's functions throughout her long tenure, including administration, accounting, and operations.

The Exchange's primary method of communication then was telex. It was a time when 6,000 ships called Delaware River ports annually, and each arrival was recorded in a leather-bound log book. Dispatchers logged ship movement information on an enormous blackboard for chandlers, suppliers, and other members who would come by each morning to plan their daily schedules.

Eileen's no-nonsense and professional manner served her well and earned her the respect of many friends and colleagues throughout the port community. The port was solely a man's world when she started her career, but her hard work, tenacity, and dedication helped open the way for women in the industry.

Eileen was involved in Ports of Philadelphia Maritime Society events from the start of her career. At society dinners, she greeted guests and collected tickets just outside the main dining hall, but she was not allowed to go inside. Ultimately, she and two other volunteers became the first women to be invited to come in and join the other guests.

In 1994, she became the society's treasurer, a position she held until her retirement. She also served on the board of the Women's International Trade Association.

"I learned so much from her," said dear friend and colleague Theresa Penot, who retired after 47 years with Norton Lilly in 2014. "I came to realize that her sometimes tough exterior covered up a heart of gold. She was a friend to so many in the industry and never hesitated to give her time and help to anyone who needed it."

Upon her retirement, Eileen moved to the Jersey shore with her sister, Nancy, who survives her. She moved back to Delaware County shortly before her passing in September.

"Eileen Collins dedicated nearly half of her life to the Maritime Exchange and its members," said Exchange President Dennis Rochford. "She was a staunch supporter of this port community, and she epitomized the ethic of hard work and service our staff strives to emulate today."

Navy Yard Anchorage repurposed to ease congestion

While congestion is never ideal for a commercial port, it is a much better problem to have than a whole lot of others.

In an effort to help alleviate congestion in the Delaware River port system, officials have recently repurposed anchorage number ten, also known as the Navy Yard Anchorage, for commercial use. The idea to re-designate the anchorage — originally floated during a meeting of the Mariners' Advisory Committee for the Bay and River Delaware — started in December of 2008.

Working with Coast Guard, the National Oceanic and Atmospheric Administration, and the Philadelphia Industrial Development Corporation, a MAC subcommittee started the arduous process to get the previously Navy-only anchorage open to the public. The goal was to review options for the anchorage and develop a proposal to allow for tug boat use.

According to Captain Jon Kemmerley, MAC Chairman, "the dimensions of the anchorage are not suitable for use by deep draft vessels but would alleviate some of the congestion in the nearby Marcus Hook and Mantua Creek anchorages." The subcommittee created a recommendation, requested that NOAA survey the anchorage to ensure safety, and identified necessary changes to the Code of Federal Regulations.

The Marcus Hook area of the Delaware River has always been a particularly busy spot, and the Marcus Hook Anchorage is one of only three that can accommodate the deeper draft vessels ships. "As vessel traffic in the Delaware River continues to increase, so does congestion in our anchorages. The effort to repurpose the Navy Yard anchorage for commercial use shows how our port community can come together to address issues that concern us all," said Coast Guard Captain Ben Cooper, Captain of the Port at Sector Delaware Bay.

Last fall, the Coast Guard reported that the Navy transferred ownership of the area to the PIDC and that it was preparing to seek public comment.

In October of last year NOAA surveyed the area, and Coast Guard published a notice of proposed rulemaking on January 5, 2016. The final rule was promulgated on the May 5, and the anchorage officially opened for commercial use on June 6, 2016.

"It is a long process from start to finish, but I'm pleased that we have been able to provide a benefit to mariners and improve safety on the river," Cooper said.

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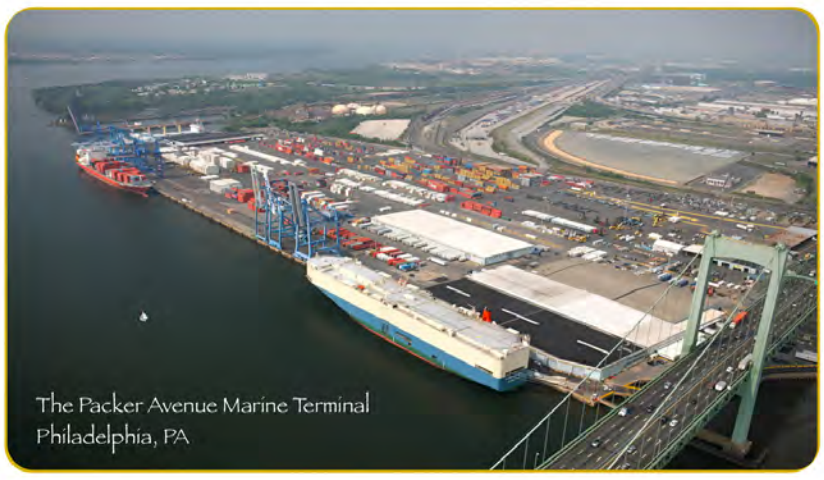
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FEMA raises cyber awareness through virtual exercise

As the number of daily alerts skyrockets, it is clear that the frequency of cyber-attacks is growing at near exponential levels. With awareness and planning seen as key to preventing and mitigating cyber threats, the Federal Emergency Management Agency sponsored a virtual cyber table top exercise on September 13 to foster these practices.

"The cost and effort to prevent and respond to cyber incidents is increasing at an alarming rate," said Michael Fink, Director of Information Technology for the Maritime Exchange. "My colleagues and I appreciate events such as these — where we can learn from others, share ideas, and make new contacts."

Representatives of the Delaware River port business community, law enforcement, and state agencies who gathered at the Coast Guard in Philadelphia to participate in the event were joined by city, state, and university representatives in Montana, North Dakota, and Tennessee. Hosted by FEMA's Emergency Management Institute, the discussion-based virtual table top exercise aimed to raise awareness, assess cybersecurity's integration in all-hazards preparedness, and examine information sharing, escalation criteria, and incident management structures. Attendees also considered cyber resource request and management processes.

The four-hour exercise used a theoretical cyber-attack scenario that focused discussion on three key areas: preparedness, detection and analysis, and containment, eradication and recovery.

Glena Tredinnick, Coast Guard Sector Delaware Bay Port Security Specialist, facilitated the local group and promoted dialogue designed to benefit not only the individual participants but regional efforts as well. "In addition to identifying resources we can use," she said, "it's important keep in mind what we can do as a community to increase awareness, share information, and enhance cybersecurity across the port community."

Delaware River area participants paid particular attention to the availability of regional and national resources to help prepare for and prevent cyber incursions. The New Jersey Cybersecurity & Communications Integration Cell, known as NJCCIC, shares actionable IP address lists, internet addresses that are known to be or are suspected of malicious activity and should be blocked. The Pennsylvania State Police distributes weekly broadcasts highlighting the latest threats, and the Delaware Intelligence and Analysis Center, or DIAC, distributes similar alerts, as does the DVIC, the Delaware Valley Intelligence Center.

The FBI outlined the importance of incident reporting to help the agency combat local and regional threat vectors and to help it identify specific threats to the maritime sector.

Despite the acknowledged need for open information exchange, private industry is often reluctant to share information with government agencies because of liability and competitiveness concerns. "They want anonymity when sharing incident data or particulars," Fink said. Private sector operators also seek a centralized reporting system. One exercise participant noted reporting cyber incidents to as many as 10 separate offices on a routine basis.

The exercise also provided a good opportunity to discuss maritime-specific threats to equipment, facilities, and vessels.

"Mariners must ensure that their systems are secure to maintain safe navigation," said Kenneth Beatty, Vice President of Compliance at Wilmington Tug, Inc. "Continual training is a critical component to reinforce this mindset. Seemingly innocent actions like plugging a smart phone into a ship's computer for a charge could comprise the navigation or propulsion system."

Although the Delaware River contingent was the only maritime-focused group, themes are common across industry sectors and regions: awareness and training, communication and information sharing, and proper planning and preparedness.

"The tabletop exercise provided new information, perspectives, contacts, and resources," Fink said. "It was extremely valuable, and we look forward to participating in similar events in the future."

CBP delays final core rollout

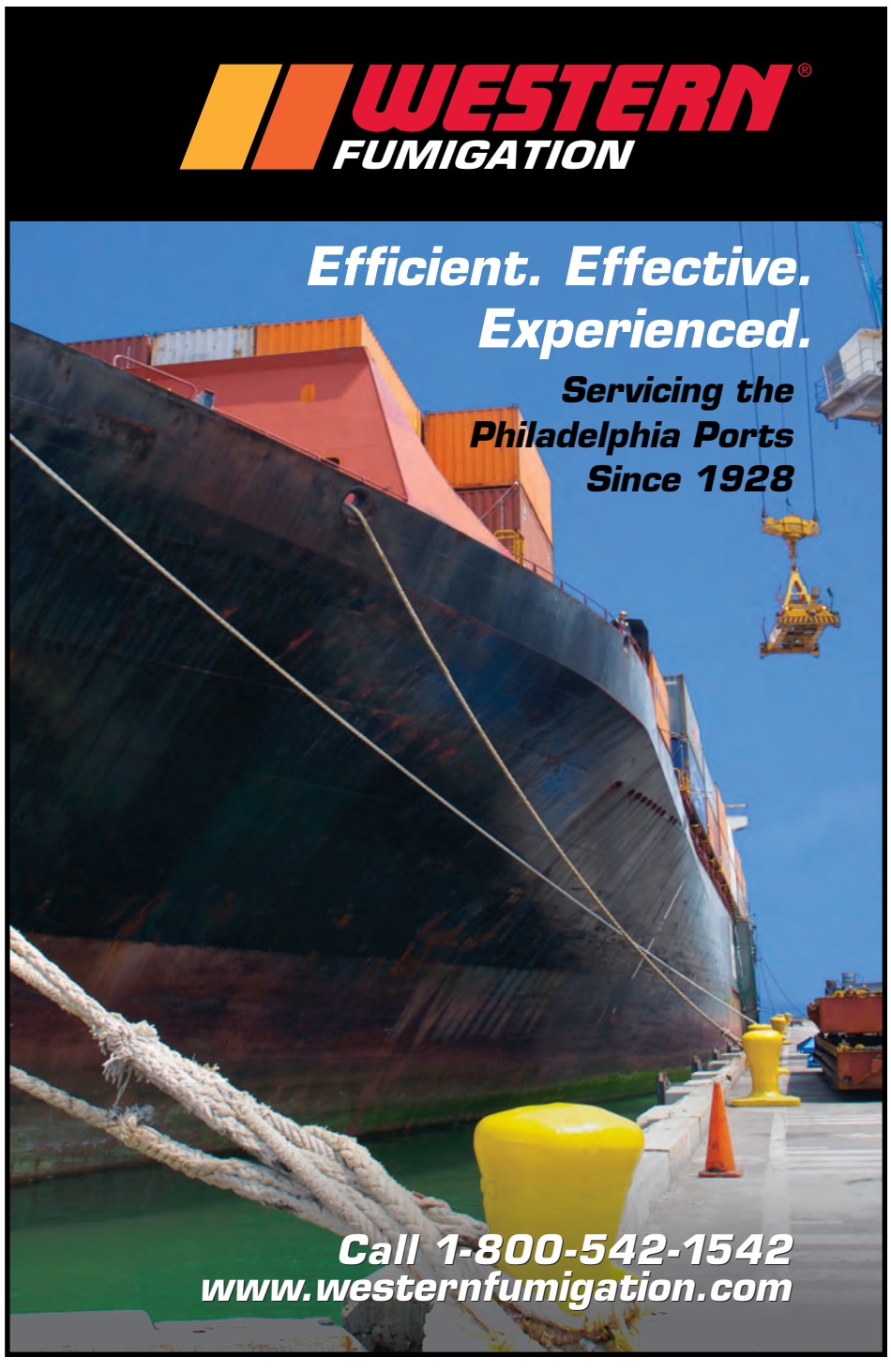
On October 3, CBP announced that the mandatory filing for electronic drawback and duty deferral entry and entry summary filings in ACE, the Automated Commercial Environment, has been delayed indefinitely. Originally scheduled for October 1, CBP had expected this rollout to complete the delivery of core trade processing in ACE. This delay follows on the heels of several successful implementations in 2016.

As of last July, CBP mandated most electronic entry and entry summary filings through ACE. The agency phased in varying entry types throughout the first half of 2016 culminating in the July deadline. Electronic protest filings followed in late August.

CBP also brought partner government agencies, known as PGAs, online with the system this year. The National Marine Fisheries Service, Food and Drug Administration, Animal and Plant Health Inspection Service, and National Highway Traffic Safety Administration all mandated electronic filing of entries through ACE. The Environmental Protection Agency, Fish and Wildlife, and several other agencies are conducting — or planning to conduct — pilots which will ultimately lead to mandatory ACE filing.

CBP has published its full deployment and PGA rollout schedule at https://www.cbp.gov/trade/automated.





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"M/T ATHOS I" – The saga continues

By: Frank P. DeGiulio, Esq., Palmer Biezup & Henderson LLP

Although she was scrapped long ago, the infamous "M/T Athos I" sails on in the federal court system with a final destination yet to be determined. This article will focus on recent decisions in the ongoing litigation that, if left standing after appeal, will impose new legal obligations on marine terminal operators and expose them to potential liability for casualties that occur in Federal Project Waters created, maintained, and surveyed by the U.S. Army Corps of Engineers.

In November 2004, the "Athos I," loaded with a full cargo of crude oil, struck an unknown abandoned anchor while navigating in the Mantua Creek Anchorage area (Federal Anchorage Area No. 9) on the Delaware River. The contact punctured the hull and caused the second largest oil spill from a tanker in U.S. history, behind the "Exxon Valdez." The vessel owner and the U.S. government spent millions of dollars cleaning up the spill. In 2005, the vessel owner, later joined by the U. S. government, sued a subsidiary of CITGO that had voyage chartered the tanker and was the owner of the refinery at Paulsboro, N.J., where the ship was bound on the voyage in question.

Among other theories, the plaintiffs claimed that as a marine terminal operator CITGO had a legal responsibility to insure that no hazards to navigation were present in the Federal Anchorage Area because the tanker had to pass through the anchorage to reach the terminal.

It is undisputed that no one, not CITGO, the Army Corp of Engineers, or any other party knew or had any reason to know of the existence of the abandoned anchor prior to the incident. There is no hard evidence of when or by whom the anchor was abandoned. However, experts testified that it was present on the bottom of the anchorage for at least three years and possibly as long as 10 years. Some believe the anchor was used as a dredge weight because its stock had been cut off, making it useless as a ship's anchor.

The case was originally tried in the Federal District Court in Philadelphia in 2010. After a 41-day trial, the federal judge originally assigned to the case issued an opinion rejecting all of the various theories of liability advanced against CITGO and exonerating it from any liability for the casualty and oil spill.

The vessel owner and the government appealed the original District Court decision to the Third Circuit Court of Appeals, which reversed the decision in part. In its 2013 decision, the Third Circuit defined an approach to a terminal as waters traversed by a ship after it "transitions from its general voyage to a final, direct path" to the terminal. On that basis, the Court held that the "Athos I" was in the "approach" to the CITGO terminal and it was immaterial that the casualty occurred entirely within the federal anchorage.

The Circuit Court's definition of an approach is problematic in part because a terminal has no ability to control how a ship is navigated to the berth, and the "approach" area can therefore vary from ship to ship. However, the Court of Appeals did not decide that CITGO was actually liable nor did it determine what standard of care should be applied to determine whether a terminal operator should be held liable for hazards to navigation in federal waters. The case was sent back to the District Court for further proceedings and was assigned to a new judge, the original judge having retired.

After a second trial, the District Court issued a new decision in July 2016. In that decision the District Court held generally that private terminal operators have a legal duty to conduct sonar surveys or take other affirmative action (such as the use of wire dragging or divers) to search for unknown hazards to navigation in approach waters traversed by vessels bound to their berths, even if those waters are Federal Project Waters created, surveyed, and maintained by the Army Corps of Engineers that are open to navigation by any vessel whether or not bound for their terminal.

Although finding that the casualty occurred in a "federally controlled waterway" open to public navigation, that CITGO did not control or maintain the anchorage, and that the U.S. Army Corps of Engineers, NOAA, and the Coast Guard had specifically led CITGO and other marine terminal operators on the Delaware River to believe that the government was maintaining the anchorage and scanning for underwater hazards, the District Court nevertheless held CITGO liable in negligence based on its conclusion that CITGO could have found the anchor through periodic side-scan sonar searches. The District Court reached this conclusion even though it found that both terminal operators and mariners alike rely on the government's representations that its agencies control, monitor, and maintain Federal Project Waters like Mantua Creek Anchorage.

The decision of the Third Circuit and the most recent District Court decision change the responsibilities of a private marine terminal operator by requiring it to conduct periodic searches for unknown and unsuspected obstructions in Federal Project Waters traversed by vessels bound for its terminal outside of the immediate berth area. No law, custom, statute, regulation, or judicial decision had previously imposed such a responsibility on private terminal operators.

CITGO has appealed the latest decision to the Third Circuit Court of Appeals and is seeking reversal.

Frank DeGiulio is a partner at Palmer Biezup & Henderson, which he joined in 1984 after obtaining his law degree and an MBA. After completing his undergraduate degree at the U.S. Merchant Marine Academy, he obtained an unlimited tonnage Third Officer's license and First Class Pilot's License for the Great Lakes. His litigation practice focuses on a variety of maritime claims including collision, oil pollution liability, commercial disputes, cargo and property damage, and Coast Guard violations. Contact him at 215-625-7809 or fpd@pbh.com.



Greek ship owners victorious in 2004 oil spill litigation

Submitted by: Montgomery McCracken

This summer, Montgomery McCracken maritime successfully obtained a $71.5 million judgment for its Greek ship owner clients against CITGO Asphalt Refining Co. in connection with a 2004 oil spill on the Delaware River near Paulsboro.

Montgomery McCracken represented the Frescati Shipping Co., Ltd. and Tsakos Shipping & Trading, S.A., the Greek owners and operators of the "M/V Athos I," a tanker chartered by CITGO to transport oil from Venezuela to a CITGO asphalt refinery on the river across from the Philadelphia airport. The Montgomery McCracken team included partners John Levy, Fred Kuffler, Gene O'Connor, Tim Bergère and Tricia Sadd. The group also included associates Melanie Leney, Robert O'Connor and David Herman, and senior paralegal Pamela Theisen.

On November 26, 2004, as the "Athos I" was approaching CITGO's Paulsboro dock, her hull was punctured by an uncharted abandoned steel anchor lying with flukes pointed upward on the river bed. The ship lost over 264,000 gallons of bachaquero crude oil, causing the port to close while emergency responders scrambled to contain the spill under difficult tidal and weather conditions.

The oil spill response took nearly six months and involved over 1,100 oil spill response workers on both sides of the river across three states, at a cost in excess of $143 million. The vessel also suffered millions of dollars in damages and was off hire for many months. The vessel owners sued CITGO for breach of the safe berth warranty in the voyage charter and for negligence for failing to ascertain the riverbed conditions in the approach and to remove or warn of dangers lurking there.

Early in the case, Fred Kuffler requested that the U.S. Coast Guard take over the cleanup, which it agreed to do in early 2005, thereby saving the owners about $60 million in additional costs. The owners then petitioned the U.S. Coast Guard's National Pollution Fund Center for reimbursement of certain costs under provisions of the Oil Pollution Act of 1990, resulting in the Coast Guard's reimbursement of nearly $88 million of the money already committed to the oil spill response. According to O'Connor, "This was a major oil spill, one of the most expensive in the country after the "Exxon Valdez," and until the Deepwater Horizon incident was one of the largest reimbursements from the fund." The $88 million payment still left the owners out about $55.5 million in unreimbursed cleanup costs and other damages, and the owners turned to CITGO for that.

After a long battle, the Honorable Joel H. Slomsky handed the vessel owners a victory on July 25, 2016, awarding all of the requested damages, plus prejudgment interest over a period of 11 years, which added $16 million to the judgment. The final award was just over $71.5 million.

John Levy, who led the successful trial team, said, "When every issue is so vigorously challenged at trial, as CITGO's lawyers did here, it is difficult to predict an outcome. But we had a high degree of confidence in the credibility of our witnesses and the soundness of our theory about how this casualty occurred. We are especially pleased that the Court accepted all of the evidence on damages, resulting in a complete recovery for our clients." Levy complimented the Palmer Biezup lawyers who tried the case for CITGO, saying, "They were always well prepared, professional, and highly skilled."

O'Connor, who defended the ship against claims of poor navigation and seamanship added, "Every trial presents different challenges, and this case was a logistical challenge from the start, with over 100 depositions taken on several continents, witnesses whose testimony required translation, dozens of experts and thousands of exhibits."

Tim Bergère and Tricia Sadd took on the enormous task of successfully proving — to the penny — the millions of dollars in damages the owners sought from CITGO. "At trial we had to put on thousands of invoices and other documents to prove just over $150 million in damages, which included the $88 million we recovered earlier from the National Pollution Fund Center," said Bergère. "We then had to defend virtually every spending decision against a concerted attack by CITGO's cost control expert."

On the wharfinger's negligence claim, Bergère and Levy worked with sidescan sonar experts who testified to the effectiveness and modest costs of using that technology to look for potential hazards on the riverbed. That testimony was accepted and adopted by the Court as the standard of care CITGO should have been following.

"At the end of the day, we can only try the cases that come to us," Levy said. "We were fortunate here to have very committed clients, which included the tremendous support and resolve of the UK P&I Club. Favorable results like this help overseas shipping companies who visit our shores have confidence they will be treated fairly in our legal system."

Montgomery McCracken is a full-service, multidisciplinary law firm with offices in Pennsylvania, New York, New Jersey, and Delaware. The firm represents leading businesses, multinational corporations, nonprofit organizations and individuals across a wide range of industries in complex litigation matters, significant corporate transactions, and challenging disputes. Visit mmwr.com for more information.





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Host updates its brand

The Host companies recently unveiled its refreshed brand identity, including distinctive business names, updated logos, and new websites. "These updates show the evolution of T. Parker Host since its founding and pave the way for how we're moving forward," according to a company statement.

The parent company of all Host entities, including agency, terminal, and marine assets, is now T. Parker Host, Inc., or "Host" for short. Each of the Host companies now has its own name. The agency side of the corporation will now be known as Host Agency, the terminal side will continue to be Host Terminals, and the marine asset division will be Host Marine.

For more information, visit www.tparkerhost.com. The site is frequently updated to include the latest news and career opportunities. Also see the new website for Host Agency at www.hostagency.com.

Treatment Fee Final Recommendations

continued from page 1

the first place: recover its costs," said Anne Bookout, Vice President and General Counsel at RPS/Royal Pest Solutions. "The benefits to an hourly fee are several, including recognizing that inspectors spend the same amount of time whether the treatment is one or many units. It also affords the ability to apply the standard equally to both fumigation and cold treatments, and, perhaps most importantly, eliminates duplicate payments."

Those duplicate payments arise from the fact that in the Delaware River area APHIS requires that all fumigation treatments be conducted during off hours. So importers are paying overtime plus the treatment fee. "While it may not be double dipping, it certainly has the appearance of it," Bookout said.

Delaware River stakeholders and those in California favor the hourly rate, yet those in the South Florida region prefer the per-pallet fee, arguing that a pallet is a common unit of measure to all fumigated shipments. "Because their treatment units tend to be smaller, and most of their treatments take place during normal working hours, of course they're going to support a per-pallet fee rather than an hourly rate," Reichert said. "But where else in business do we purposely choose to disregard the efficiencies gained by economies of scale?"

The Solution

Recognizing that consensus was not to be found, the group looked, unsuccessfully, to find a compromise. "We considered different algorithms for assessing the fees against treatments of different sizes, but none of these was technically workable," Himber said.

Ultimately, the group agreed to disagree.

With the key issue unresolved, the group developed a report back to APHIS which explained the challenge. Himber noted that the decision was to submit the two potential options and ask for continued dialogue with APHIS program managers.

Yet the working group did craft a series of five recommendations it believes APHIS must address to bring this process to closure and which would further improve AQI processing.

"Just as we did when the rules were first proposed, the stakeholder community again requested that APHIS provide additional detail to support the $12 million figure it says it needs to recover for AQI services," said Andrew Bray, Director of Public Policy for the National Pest Management Association.

The working group also recommended that APHIS revisit the dual-fee nature of the costs, charging either a user fee or an hourly overtime rate, but not both. It also suggested the agency develop metrics to eliminate disparities in the amount of time inspectors take to complete various tasks and look to ensure all fees owed are collected. "APHIS should not turn to treatment fees as the source of all new revenue when other legitimate sources receiving services remain unexplored . . . examples include, for instance, import permit applications, identification of insects, plants inspections, etc.," according to the report.

"Despite the rift among members, I think we accomplished a great deal," Himber said. "If nothing else, we all came away with a new appreciation for the challenge APHIS faced in the regulatory development process, and we put forth some good ideas to further the discussion. The next step is to sit down with APHIS and come to a final resolution."

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A look back at Pennsylvania Nautical School

I initially heard about the existence of the Pennsylvania Nautical School on my first training cruise with Fort Schuyler, in May of 1962. One of our watch officers was a graduate of the school and spoke about it often, during those long midnight to four bridge watches. I also learned the school closed in 1947, after graduating nearly 2,000 cadets, most of whom went on to work in the U.S. Merchant Marine, the Navy, and the Coast Guard.

I would not hear about this great institution again until May 24, 2014 when the Pennsylvania Schoolship Association dedicated a permanent plaque to the school along the Delaware riverfront next to the Independence Seaport Museum.

The establishment of the school grew out of a June 20, 1874 act of Congress designed to meet the nation's demand for trained seamen. To that end, in 1889 the Pennsylvania Assembly established the Pennsylvania Nautical School aboard the 47-year-old, 882-ton sailing ship "USS Saratoga," named for the Battle of Saratoga of the American Revolutionary War.

The "Saratoga" operated as a nautical school from 1889 to 1908 when the 65-year-old ship was replaced by the 32-year-old sail and steam powered, 1,400-ton "USS Adams." Both the "Saratoga" and the "Adams" were operated jointly by the Commonwealth of Pennsylvania and the City of Philadelphia, and it was said that this combination would lead to serious problems at the school.

The schoolship "Adams" ceased operations on February 16, 1914 when the U.S. Navy withheld its appropriation and withdrew the ship due to local disagreement and the legislature's failure to appropriate funds. This action would close the school for five years.

On July 8, 1919, an act of the Assembly reactivated the school, and it was renamed the Pennsylvania State Nautical School. Replacing the "USS Adams" was the 23-year-old, 1,000-ton, steam-powered "USS Annapolis," which would serve as the school's training ship for 20 years.

School administration was transferred to the U.S. Maritime Commission in 1940, and the academy was renamed the Pennsylvania Maritime Academy. By 1942 the administration ended; the cadets were transferred to the U.S. Merchant Marine Academy at Kings Point, and they received their fourth schoolship, the "Seneca."

This positive event would only last six months, and the school was returned to the Commonwealth of Pennsylvania in September of 1942. In 1946, the "Selinur," was renamed "Keystone State" and assigned as the school's fifth and last training ship. The cadets made one cruise on their new ship in 1946. Yet, sadly, lack of federal, state, and municipal funding — as well as a decrease of applicants — led to the permanent closure of the Pennsylvania Maritime Academy on June 20, 1947. The remaining cadets transferred to the New York maritime academy and the federal maritime academy.

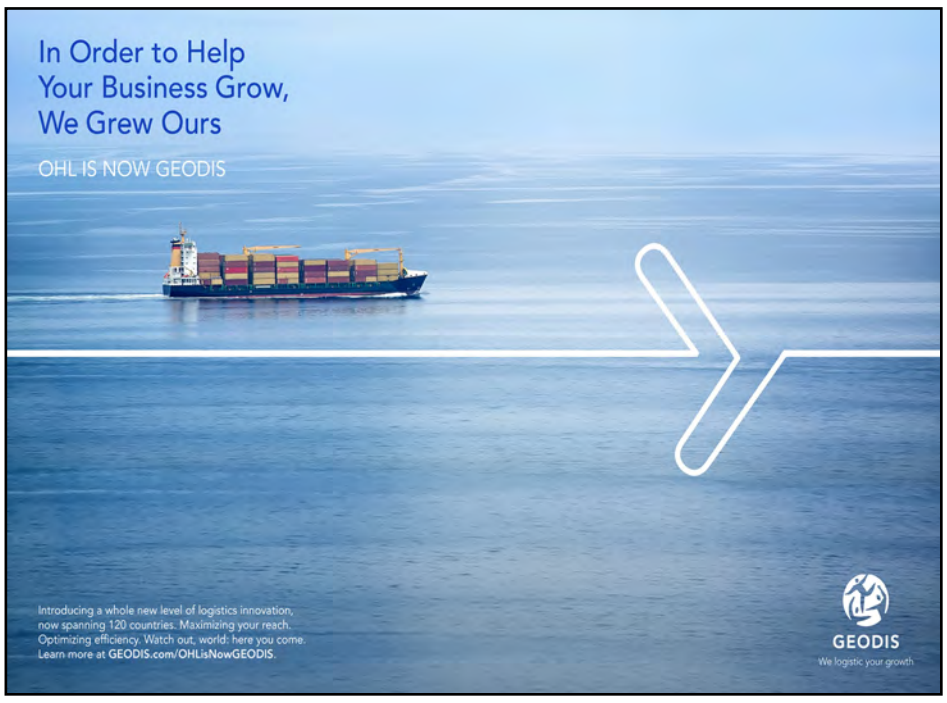
The next time you visit the Independence Seaport Museum, please take a look at the memorial marker at its entrance. The closing of this historic maritime academy is a good reminder that we must all fight to keep our one federal and five state academies open to work in this great business we simply call shipping. Also keep in mind that Philadelphia has its own maritime charter school that needs our support.

The tradition lives on . . .

The spirit of the Pennsylvania Maritime Academy lives on in Philadelphia today. The Maritime Academy Charter High School opened its doors in 2003 with grades 5 and 6. It is now the nation's largest school, with over 800 students in grades 2-12. MACHS is located at two facilities in the city. It offers an integrated, inclusive maritime program to middle schools students, and high school students can choose a traditional academic program or one of three career tracks: maritime studies, transportation and logistics, or oceanography/metrology.

Graduates are attending State University of New York Maritime College and Seafarers International Union Lundeberg School of Seamanship, and some are working for local marine employers. See www.maritimecharter.org for more information.

Many thanks to my friend and colleague Art Sulzer for his contribution to this article.





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DelBay WISTA launch a huge success



Chapter President Cynthia Hudson welcomes guests to the WISTA USA Delaware River and Bay Chapter launch party on September 28.

"If anyone had told me we'd get so much support for yet another maritime trade association in the Delaware River port area, I wouldn't have believed it," said Cynthia A. Hudson, CEO of HudsonAnalytix, "but it's clear our community stands firmly behind the new local chapter of WISTA USA." Hudson is president of the new chapter and hosted its inaugural reception on September 28.

WISTA — the Women's International Shipping & Trading Association — developed out of an informal lunch among a handful of British women involved in the tanker market. These ladies then decided to start meeting on a regular basis, and over time they invited colleagues throughout Europe to join them. From this 1974 lunch began an organization which today boasts over 2,100 members in 35 countries throughout the world.

"What makes WISTA different from other maritime networking organizations is that while it is open to men, WISTA is focused solely on finding opportunities to empower women in this still male-dominated industry," said Exchange Vice President Lisa Himber. "Not only do I expect to enjoy the all-too-infrequent company of my female peers, I want to use WISTA as a way to pay it forward . . . to provide guidance to the younger generation of women in maritime as those who came before me helped me when I was just starting out in the industry."

Sage Bronzino, Business Operations & Customer Care Manager at Coil-Tainer Limited, is one such a person. "As a relative newcomer to the shipping industry, I could not pass up the chance to learn more about WISTA by attending the inaugural chapter event. It certainly did not disappoint! The networking opportunities WISTA affords are invaluable to my role within my organization and a wonderful way to stay connected to trade issues on both a local and national level. On my return to the office, I promptly submitted my application and look forward to joining this dynamic group," she said.

Nearly 70 people came out for the launch party, held on a rainy Tuesday evening at Hudson's offices overlooking the river and the Philadelphia night skyline. "We are so excited to become a part of WISTA USA," Hudson said. WISTA USA board President Alexandra Anagnostis-Irons and board members Jeanne Grasso and Laura Sherman travelled to the region to celebrate the launch. The Delaware River and Bay is now home to one of eleven WISTA USA regional chapters.

Hudson said that "Since the 'gang of four' first got together to discuss the idea last July and we started outreach, over 25 people have joined or applied to join. It's going to be a great group!"

In addition to Hudson and Himber, the gang of four includes Lisa Reeves of Reeves McEwing, who is chapter vice president, and Lynn Kruger of River Services.

WISTA's purpose is to facilitate the exchange of contacts, information, and experiences, and promote education among its members. WISTA Delaware River and Bay chapter leadership will now work to develop a program that meets these objectives.

"Our goal is to find creative outlets for our members both for education and camaraderie — and to allow them to broaden their network of industry contacts locally, across the country, and internationally," Hudson said. The next WISTA chapter event will take place in conjunction with the Ports of Philadelphia Maritime Society/World Trade Association joint holiday dinner on December 8.

Contact Cynthia.Hudson@HudsonAnalytix.com or visit www.wista.net to learn more and to get involved.

In Memoriam

Rebecca Johnston

The Exchange is saddened to report the passing of Norton Lilly's Becky Johnston on September 27. Becky was born in Las Vegas, Nevada where she graduated from Rancho High School. Wife of Exchange board member Tom Johnston, her greatest accomplishment in life was being a mother and grandmother. In addition to her husband Tom, Becky is survived by daughter Tracey Johnston, sons Steven, Timothy, Mark, David, and Thomas Johnston, as well as numerous grandchildren and great-grandchildren.

The Exchange extends its deepest condolences to the Johnston family.

"Compassion in Action" highlights work of SCI

A new exhibit at the Independence Seaport Museum, "Compassion In Action," offers an inside look at the day-to-day life of seafarers who visit the Philadelphia and South Jersey ports through the lens of the Seamen's Church Institute of Philadelphia & South Jersey. SCI, a nonprofit organization, has been providing clothing, counseling, land transport, cross-cultural spiritual support, and more to seafarers since 1843.

Using videos, historical images and artifacts, original paintings by Carole Goddard, along with a variety of everyday items that resonate with individual seafarers, the exhibit tells stories that show how SCI has adapted over the years to best help the seafarers' changing needs — especially with the evolution of new technologies and security.

"We are excited for the opportunity to tell the story of our work through this community exhibit space," says Helene Pierson, SCI Executive Director. "We have been quietly serving the seafarers of the region in Philadelphia and South Jersey across three centuries and are thankful to be able to share our work with the broader regional community."

"Compassion in Action" opened to the public on October 21, 2016 and will be open through March 12, 2017.

To learn more about the Seamen's Church Institute of Philadelphia & South Jersey, visit www.sciphiladelphia.org. For more information about the Independence Seaport Museum and the exhibit, visit www.phillyseaport.org.

Senator Sweeney "Friend of Chile"



N.J. Senate President Stephen F. Sweeney *(center)* accepts the 19th Annual "Friend of Chile" Award from Chilean American Chamber Chairman Robert W. Palaima, President Delaware River Stevedores and Exchange Director, Leo A. Holt, President, Holt Logistics Corp, Thomas J. Holt, Jr., President of Astro Holdings, LLC, and Michael Holt, Holt Logistics.

FDA provides importer assistance through new website

The Food and Drug Administration's Division of Import Operations unveiled a new website to assist importers in navigating the sometimes muddy waters of clearing goods. Products regulated by FDA are subject to review when offered for entry into the U.S., and the agency electronically reviews all regulated entries submitted through the U.S. Customs and Border Protection Automated Commercial Environment.

Through the new website, FDA details the entry summary filing process and requirements, includes up-to-date information on many importation issues, lists types of enforcement actions and common entry errors, and answers many common import questions. The site also includes local and headquarters FDA contact information.

FDA reports that the job of protecting consumers includes an ever-increasing need to oversee imports, which have been increasing by 10-15 percent per year for the last decade, and it anticipates those percentages are expected to keep rising.

Importers are encouraged to visit www.fda.gov/ForIndustry/ImportProgram.

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Barbara Hunter departs Western after more than 40 years



Miriam Borja-Fisher (left) and Kurt Reichert of Western Fumigation present Barbara Hunter with the 2016 "Lifetime Achievement Award" at the October Chilean and American Chamber of Commerce banquet.

After a long and dynamic career with Western Industries that was hallmarked by her tireless support of the Chilean trade, Exchange director Barbara Hunter recently retired from the company she has been deeply connected to since 1976.

"This is a company that always inspired one to reach higher, find new and better ways to serve their clients, to stay ahead of the trends, and to always conduct business with the highest ethical standards," Hunter said. "I was always proud to be affiliated with such a fine team of talented and committed colleagues."

Prior to joining Western as Marketing Director in 1976, Hunter was the Director of Consumer Affairs for the National Pest Management Association in Washington, D.C. In 1980, she became Western's Director of Imported Commodities while working with the cocoa trade and later with the Chilean fruit business she was instrumental in attracting to Western in 1979.

Always an innovator and a steadfast advocate for Chilean fruit interests, one of her endeavors was the creation of Western's Food Safety and Security Program for terminals, initiated in 2001. This was the first program of its type in the country.

Hunter was elected to the Exchange board in 1993, the first female director in the organization's then 118-year history. Three years later, she was selected by her peers to serve as a member of the Executive Committee of the board, a position she continues to hold today.

For her steadfast efforts on behalf of Delaware River ports, Hunter has earned much recognition and many awards. Included among these are:

- ★ Chilean and American Chamber of Commerce prestigious Lifetime Achievement Award in October 2016.
- ★ The first "Woman of Distinction Award" initiated by Western to honor Hunter's accomplishments and those of other outstanding women in the organization who would follow in her footsteps in 2010.
- ★ The Seamen's Church Institute "Spirit of the Port Award" in April of 2009.
- ★ Recognition by Ambassador of Chile "for her valuable contribution to the development of the fruit trade between Chile and the United States."
- ★ An "Award of Recognition" from the Chilean Exporters Association (ASOEX) for "her valuable contribution in the development of the fresh produce industry" in November 2005.

"Barbara Hunter has brought a wealth of expertise and commitment to her clients at Western and to the Exchange board. We are honored that she continues to serve Exchange members even into her retirement, which is yet another indication of the magnitude of her dedication to the success of our ports," said Exchange President Dennis Rochford.

OHL acquired by GEODIS

OHL, which previously acquired long-time local Customs broker BARTHCO International, has now completed its transition to new owner GEODIS, which acquired OHL in November of last year. GEODIS says the acquisition was an important step toward its "Ambition 2018" strategic plan — to be the preferred growth partner for clients in supporting them with flawless logistics. The acquisition adds to the GEODIS portfolio of services and geographic scope, and it enhances its position as a leading global 3PL.

"The acquisition, the integration and now rebranding of OHL is a critical step toward our plan to be the global growth partner for our clients," said Marie-Christine Lombard, GEODIS CEO. "Customers demand a market leading set of solutions on a global level. As OHL is now GEODIS, we provide that global platform to serve our customers . . . Integrating and rebranding OHL as GEODIS is a continuation of our investments in making our services more attractive and enhancing our value proposition."

Q&A with Joan Lyons

continued from page 1

difficult to raise funds to keep the operation in motion. Although that will always be a concern and challenge, SCW is very fortunate to have a Delaware River maritime community that supports us financially, attends our fundraising events, and donates items that we pass on to seafarers.

Our real issue at present is recruiting the necessary volunteers. SCW has been blessed with a corps of hospitable souls, but many are facing serious health issues and are retiring because of those issues. Volunteers act as hosts and drivers, and we also have folks who do building maintenance and gardening. Our real need at the moment is to find people interested in learning about our organization and having the desire to meet a stranger in a strange land. Typically our volunteers make a long-term commitment to SCW. Many have worked in our building over 15 years, and our original volunteer who came on board in 1990 is still active. I think that type of record speaks highly for our organization and for the rewards they get from meeting these seafarers.

Q: Your position brings you into contact with seafarers from around the world. It must be fascinating to talk with them and learn about their lives. Do you have a particularly favorite story?

A: The volunteers and I should really write a book! We have had many unique, funny, sad, real-life moments through the years. I have had the opportunity to make lasting friendships with many of our "return callers," the fellows that work for Dole and Chiquita and are in our port every other week. Some of these men have been coming to Wilmington for 15 years! From selecting a Quinceañera dress for a young lady in Honduras, to finding windshield wipers for the bridge of a ship, I have pretty much seen or done it all. I think the happiest day in the Center came when a young Filipino seafarer asked his girlfriend in the Philippines to become his wife. Imagine getting engaged by telephone! The saddest day was when I comforted a seafarer whose home in the Philippines had burned to the ground and his 7-year-old son died in the fire.

Q: If you had to look down the road, what potential challenges do you see for the SCW?

A: SCW has seen so many changes in the 26 years we have been in operation. TWIC regulations have been our greatest challenge thus far. It's hard to predict our future, but I think eventually technology may change how men contact our Center and make arrangements for service.

While we wholeheartedly support expansion of the Port of Wilmington, it will undoubtedly have a huge impact on our day-to-day operation and how ships are served. We look forward to the challenges and continuing to do our part to help the port and its customers.







Philadelphia welcomes first shipments of Brazilian beef to U.S.

Officials of the Philadelphia Regional Port Authority and other port industry leaders recently welcomed a historic shipment: the first containers of fresh beef from Brazil to enter the U.S.

Hamburg Süd vessel "Monte Aconcagua" discharged the cargo at PRPA's Packer Avenue Marine Terminal on October 13 and 14.

Following nearly two decades of negotiations between the U.S. Department of Agriculture and meat importers — with the support of U.S. trade groups — the USDA Food Safety and Inspection Service recently determined that fresh Brazilian beef, either chilled or frozen, now meets its standards for quality and safety and can be imported into the country.

This initial beef shipment is a product of JBS, one of a handful of private firms approved by the USDA. Initial projections point to about 3,000 tons of Brazilian meat per month arriving in Philadelphia in the coming months. The cargo will load at Brazil's port of Itapoa.

"Hamburg Süd has been serving Philadelphia since 1957, and the selection of Hamburg Süd and the Port of Philadelphia by JBS to handle the first shipment of frozen Brazilian beef to the U.S. is a testament to the leadership role both parties play in the refrigerated cargo supply chain," said Juergen Pump, Senior Vice President of Hamburg Süd North America, Inc.

Greenwich Terminals, LLC operates the Packer Avenue Marine Terminal, where future beef shipments will arrive.

PRPA officials are optimistic about this latest business development, which will build on other recent cargo successes. "I'm pleased that we, as a port community, were able to work effectively with Greenwich Terminals, trade interests like the Meat Importers Council of America, and others to help bring this cargo to the port," said Jeff Theobald, Chief Executive Officer of PRPA. "It's proof positive that Philadelphia is a leader in the handling of refrigerated cargoes."

Officials expect that strong working relationships with meat importers will also encourage exports of U.S. beef abroad, as the movement of refrigerated vessels in both directions encourages cargo movement in both directions as well. With U.S. beef imports totaling $6.2 billion at 1.1 million tons in 2015 and exports of 716,000 tons totaling $5.2 billion, the gap between imports and exports is expected to narrow in 2016.

Resin another new cargo

A popular manufacturing component is now making its way to U.S. factories faster and more economically than ever thanks to an exciting new ocean service. The resin, which arrives in individual cardboard shipping boxes, is transported to the Port of Philadelphia inside metal shipping containers. Manufactured by Polimeros S.A., a Mexican company that developed the specialized product, the resin is used in the manufacturing of everything from children's toys to plastic office furniture.



The Hamburg Süd vessel "Monte Aconcagua" in Brazil, preparing to bring its first load of U.S.-bound Brazilian beef to the port of Philadelphia.

"This is such a great cargo for us, and we're proud to have it," said William J. Parker, Jr., President of William Parker Associates, Inc. and its warehousing subsidiary Associates Warehousing, Inc., together a major warehousing and trucking operation located in a 10-acre complex in Philadelphia's Port Richmond neighborhood. "The resin comes off vessels at the Packer Avenue Marine Terminal, is trucked to our Port Richmond facility, and we process it for delivery via truck fleet to the final customers. The biggest customer right now is in Ohio."

PRPA Marketing Representative Joe Fox is excited about the confluence of events that brought this new cargo to Philadelphia. "The SeaLand Atlantico service is the brainchild of Philadelphia shippers, our terminal operator at Packer Avenue Marine Terminal, our port staff, and, of course, SeaLand itself," he said. "The idea was, in part, to establish a service that might be attractive to those who traditionally move their Mexican cargoes to the U.S. via truck.

The Atlantico service began last spring and has been making inroads with various Mexican cargos, including some that had previously moved by ship and others that have made the leap from truck to vessel transport, such as Polimeros.

So far, Parker Associates has handled about 75 containers of the resin. The cargo usually arrives in increments of about four to six containers at a time.

"Things can get complicated when you're going after a new cargo, but ultimately it comes down to providing, first, a welcoming attitude and, second, flexibility," Fox said.

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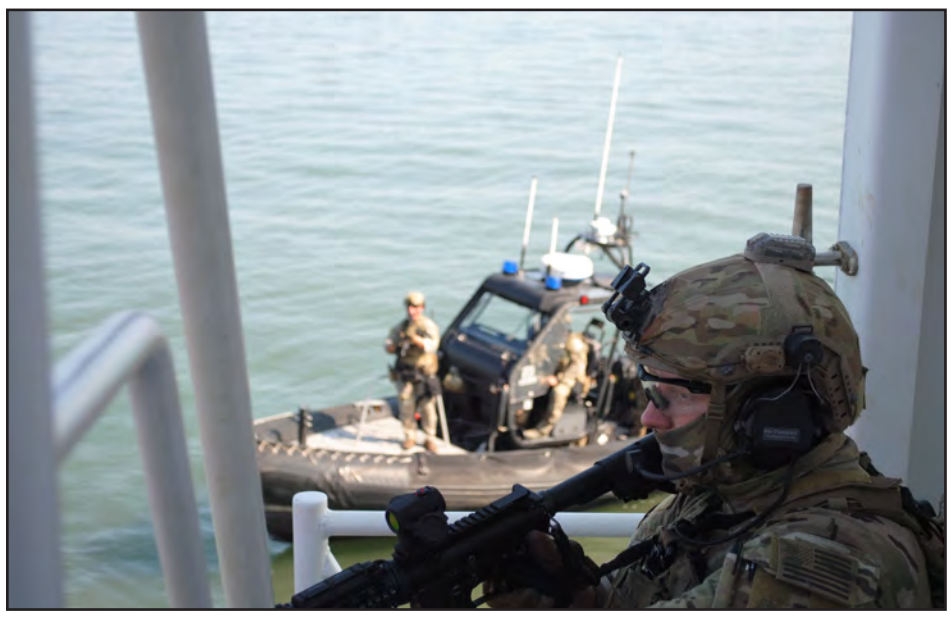
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Crane Capacity: 65 tons
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Coast Guard, partner agencies exercise radiological detection capabilities



By: LT Michael B. Lewis

The Coast Guard conducted a large-scale exercise in Delaware Bay the week of October 17 involving the deployment of the Maritime Security Response Team, as well as a number of state and federal partners.

The law enforcement team received the latest intelligence at approximately 4:00 in the afternoon: there was a credible report of a potential offshore vessel carrying illicit nuclear radiological material somewhere outside the mouth of the Delaware Bay. The team had been staged in the region conducting surveillance on small vessels entering the bay, working with a variety of agencies to screen for possible radiological devices entering U.S. waters by unconventional means.

This scenario played out during Operation Neptune Guardian, a week-long training exercise. The exercise was intended to fully implement the region's radiological detection capabilities, and specifically, to test the readiness of the U. S. Coast Guard Maritime Security Response Team's, or MSRT, full law enforcement and national defense capabilities.

The MSRT deployed to the Delaware Bay area to participate in the operation, a full-scale maritime domain awareness exercise, alongside other federal and state partners. The team, based out of Chesapeake, Va., is required to conduct at least one full-scale exercise each operational cycle, approximately every 12-18 months. These exercises are conducted as a culmination of all the unit preparation to become fully operational for world-wide deployment.

The MSRT deployed to Dover Air Force Base and established a staging area in Lewes, Del. It conducted small vessel off-shore radiation detection screenings and boardings, responded to an active shooter scenario on a vessel, and executed a large vessel interdiction off shore with a combined boat and helicopter assault force.

From the Coast Guard Office of Counterterrorism and Defense Operations Policy, "The Maritime Security Response Team is a highly specialized resource with advanced counterterrorism skills and tactics. The MSRT is trained to be a first responder to potential terrorist situations, deny terrorist acts, perform security actions against non-compliant actors, perform tactical facility entry and enforcement, participate in port level counterterrorism exercises, and educate other forces on Coast Guard counterterrorism procedures."

Coast Guard Sector Delaware Bay served as the operational commander for the event. A joint Sector and MSRT team planned the event and folded the Federal Bureau of Investigation, the Department of Nuclear Detection Office, Customs and Border Protection Air and Marine Operations, Coast Guard Auxiliary volunteers, and the New Jersey and Delaware State Police into the event. A number of vessels provided much-needed exercise platforms, including the Coast Guard Cutter "William Tate" and the Oil Spill Response Vessel "Delriver."

"Our regional partnerships are the cornerstone of our operational capabilities," said Capt. Ben Cooper, Coast Guard Captain of the Port. "The MSRT provides an additional unique Coast Guard capability for an adaptive force package to detect, interdict, and board suspect vessels. This was a great demonstration of the MSRT's superb capabilities and an excellent chance to ensure our regional readiness for this type of low-probability, high-risk scenario."

After a final walkthrough of a mock up of the suspect vessel, the Alert Response Team climbed aboard three specialized Coast Guard boats and two Customs and Border Protection helicopters on its way to the suspect vessel under the cover of darkness. Finally, when the assault force was ready, the teams surreptitiously approached the vessel by sea and by air and quickly gained control of the vessel. Simunitions were expended, role players were covered in blue and red from the paint filled rounds, and the MSRT team was beginning a sweep of the vessel for radiological devices.

Overall, the climactic exercise was a great success; the team is "bravo ready" for worldwide deployment. Team members are already discussing how they could have done it differently, what worked and what didn't work, and what will make the team better.

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Editorial

PSGP: Where should we go from here?

By: Paul D. J. Arnett

In the 15 years since the terrorist attacks of September 11, 2001, the Port Security Grant Program has provided funding with the intention of improving the nation's ports and waterways security. The program is intended to support increased port-wide risk management, to enhance domain awareness, and to further capabilities to prevent, detect, respond to, and recover from attacks, among other important goals.

Has it done that, and is this really the best way to enhance port security?

No. Not really. But, that does not mean that the PSGP cannot accomplish those goals. We are entering that portion of the PSGP's annual cycle when FEMA will start to develop the precepts for the 2017 Notice of Funding Opportunity. This is the time to ensure FEMA is armed with the best information for improving the next iteration.

What should be done?

The PSGP has often been criticized for apparent inefficiencies, waste, mismanagement, ever-changing guidelines, and ever-changing administrators. That is understandable.

Yet, a disconnect exists between the intended program goals and the manner in which it is administered. By design, the members of the port community compete against one another for grant funding. Despite recognition that the ports are systems — part of the Marine Transportation System — the PSGP insists on only funding individual entities.

The *Quadrennial Homeland Security Review* speaks of "A Whole Community approach to planning and implementing disaster strategies," whereby port stakeholders seek common ground to improve port security and resiliency. We must recognize that the Maritime Transportation System is a system-of-systems and construct port security solutions accordingly. We must also recognize that focusing primarily on *protection* is defensive by nature, and as such, as the Congressional Research Service notes, is a "brittle strategy." Building r*esiliency* into the port system must be a prime consideration.

The Congressional Research Service also rightly suggests that a more useful way to make the distinction between protection and resilience may be that protection focuses on the threat, and resilience focuses on the consequences.

Recommendations

To counter that imbalance between national policy and program strategy, my own research suggests the following:

- *Maintain the PSGP as a discrete grant program.* Periodic calls to consolidate the PSGP into a block grant for homeland security or outright eliminate it should be discounted as ill advised.
- *Improve transparency of proposal review and grant award processes.* The PSGP is almost universally criticized by port stakeholders for failing to keep applicants and AMSCs informed.
- *Jettison the cookie cutter.* The standard guidelines for submitting PSGP proposals throughout its existence have been a "one-size-fits-all" model, treating all ports as homogeneous. The PSGP must recognize that each port is different requiring different system-wide solutions.
- *Employ port-wide risk management plans.* These plans provide insight into security and resiliency gaps and a roadmap for closing them, and they outline measurable goals and supportable investment justifications.
- *Keep cost sharing at 25% for all stakeholders.* A flat rate for all stakeholders encourages greater participation and should be a permanent feature of the PSGP.
- *Revise PSGP core capabilities objectives.* The objectives for PSGP funding have remained essentially unchanged over the program's life.

Conclusion

The PSGP has not evolved sufficiently over the course of its existence. Programmatic changes were frequently eliminated in future iterations. The Fiduciary Agent, allowance for consortia to compete for grant funds, the grouping of ports into different tiers by consequent risk, flat 25% cost share for all applicants, and the requirement for risk management plans are prime examples.

The tendency for the PSGP is to approach port security and resiliency as a cookie-cutter. The one-size-fits-all program fails to acknowledge the variation between ports and that the MTS is a system-of-systems. The insistence that grants be awarded only to individual entities further exacerbates the disconnect between national level policy goals and the PSGP's guidance.

The PSGP can be a tremendously valuable vehicle for improving the overall security and resiliency of the nation's maritime transportation system, but it has to be flexible enough to respond to the unique conditions of each competing port system. It also must have a means for measuring the success of awarded proposals. The risk management plan provides that metric. Program managers must evaluate the efficacy of awards at filling the security and resiliency gaps they seek to close.

The Port Security Grant Program can be a valuable tool for improving port security and resiliency. But, indeed, it can be made better.

The views expressed herein are those of the author and are not to be construed as official or reflecting the views of the Commandant or of the U. S. Coast Guard.
Paul D. J. Arnett is a Captain in the U.S. Coast Guard, currently serving as the Chief, Prevention Division, Ninth Coast Guard District in Cleveland, Ohio. He holds an M.S. in Environmental Protection and Safety Management from St. Joseph's University and an M.A. in Security Studies, Homeland Defense and Security, from the Naval Postgraduate School. His full thesis on the PSGP is available for download at https://www.hsdl.org/?view&did=794593.

TWIC: The good, the bad, and the ugly

To say the Transportation Worker Identification Credential program hasn't been without its setbacks is being generous. Since its first inception in 2002 — the year we began the East Coast TWIC pilot program — TWIC has been characterized by mishaps, delays and sometimes outright failures.

For the card issuance process, the mishaps and failures have, for the most part, been kept in check over the last several years. TSA has largely gotten the process down to a science and continues to make program improvements.

Unfortunately, the same can't be said for the challenge of delays.

The Good

Earlier this year in *The Beacon*, we prophesized that Coast Guard would publish the final rule governing the use of TWIC readers sometime this year. On August 23, the Coast Guard proved us right.

It wasn't a particularly tough call. TWIC card issuance has been mandatory since 2008, and the Coast Guard could only hold the reader rule back for so long without facing ever-increasing backlash. To its credit, the agency entered into an extremely thoughtful, albeit lengthy, rulemaking process. The end result, we think, is a regulation that appropriately balances risk and consequence.

By requiring use of TWIC readers and everything that requires only at vessels and facilities handling 1,000 passengers or more and/or certain dangerous cargoes in bulk, the Coast Guard avoided the all-too-common tendency to impose unnecessarily burdensome requirements against low-risk vessels and facilities.

The Coast Guard is to be applauded.

The Bad

TSA recently informed stakeholders that fraudulent TWIC discount coupons are making their way around the internet. Like any phishing ploy, the malicious actors who developed this scam are trying to prey on the unwary to gain access to sensitive information or to reap ill-gotten gains.

Shame on them. And shame on us if we fall for it.

The Ugly

The DHS Office of the Inspector General recently found that the Transportation Worker Identification Credential background check process is not as reliable as it should be.

In its September 1 report, the OIG noted that fraud detection techniques are not monitored and used in completing background checks, and it said that adjudicators may grant TWICs even if questionable circumstances exist. The report further states that background check and terrorism vetting processes lack key quality assurance and internal control procedures, among other deficiencies.

According to the report, TSA agrees with the OIG recommendations and has already begun to implement corrective actions.

These are serious weaknesses. How could an agency whose sole mission is to protect the security of the nation's transportation system fail to secure its keystone maritime security program?

The one thing TSA needs to get right — and right now — is the background check. Otherwise, why bother?

Reports such as this one erode the public trust in the TSA and its programs. TWIC already had its detractors as many question the need for expensive biometric cards used as flash passes since 2008. No doubt, the cry will become louder based on the new reader rule, which means cards will continue to be used as flash passes at most maritime sites going forward.

This OIG report brings grim news indeed.



Letters

Editor:

Thank you for a great news publication! As someone who has been working the shipyards on the river for 50 years, it's great to know what's going on.

It's a shame more folks don't understand the criticality of the river and bay to our area! That being said, I do living history as a hobby and put together a little piece you might find interesting on the contributions of our long lost shipyards to the nation's security and the ultimate price paid by these people.

[*Editor's note: view Mr. Cashin's photo essay at www.maritimedelriv.com/misc/ShipPix.pdf]*

Enjoy and Remember,

Dan Cashin
Rigger Trainer

Customs compliance letters and what they really mean

Legal Ease

By: John P. Donohue, Counsel, Reed Smith, LLP

Beginning in July of this year, selected U.S. importers began receiving unusual letters from Customs and Border Protection. The letters detailed certain facts known by Customs about their imports — the Harmonized Tariff item numbers under which the company's highest valued goods were imported, the value of such goods, and the percentage that the highest-valued goods represented to all goods imported by that company.

Customs said it was supplying this information "to ensure *future* compliance" (the implication being that *past* shipments might not have been in compliance).

The letter furnishes the importer with a DVD containing a substantial number of compliance publications "to assist in understanding CBP's laws and regulations." Unfortunately, the breadth of the publications is such that the importer cannot identify the concerns Customs has about the importer's compliance levels. One importer who got such a letter was given 17 separate compliance documents, covering virtually all potential Customs issues.

The letter encourages the importer to review its entries, conduct assessments for errors, and then pay any duties due through the "voluntary disclosure" program that has been successfully managed by Customs for more than 40 years. The letter then requests that the importer acknowledge receipt of the letter by signing a copy and returning it to Customs. Lawyers will identify the "sign and return" request as an attempt by Customs to establish what is known as proof of "actual notice," which ultimately will be used against the importer if an irregularity not previously disclosed by the importer is later uncovered.

The letter prompted an almost immediate and predictable reaction from the import community: What is behind such a letter, and why have I received one?"

Informally, Customs has been fairly candid in responding to those who have inquired. Customs has said that 1,000 letters were sent, principally to importers who have not been audited in a significant period, and hence the letter could be construed as a "head's up" that the company is now an audit target. In other cases, Customs may have identified anomalies in the import transactions of the importer which may warrant further inquiry.

Whatever may be the motivation in any particular case, the lesson of the letter is clear — the Customs Regulatory Audit team may be on its way.

What is the best response to such a letter? First, an importer would be wise to review its entries and entry processes for the last year at a minimum and should probably begin with the Harmonized Tariff item numbers identified in the letter. If an error is found, then the company should consider a five-year review. This can be done internally, with the appointed Customs broker, with a consultant, or with counsel.

Companies which retain their brokers or consultants for such a review should understand that there is no privilege between the broker or consultant and the importer. This frees Customs to ask a broker or consultant "what did you find?" which legally obligates the broker or consultant to reply. No such risk is incurred if the importer hires counsel to assist in such a review.

If an error is detected, and duties have been underpaid, disclosure is very much advised. It would be folly for an importer to be told in advance that it is on a Customs radar screen, to locate an error in the entry documents, and then fail to disclose.

Should the importer sign and return the letter, as Customs requests? Some lawyers have advised against signing the document, for the obvious reason that the goal of Customs is to use the letter against the recipient as evidence of "actual notice,"



and no company has an obligation to create evidence against itself. So the cautionary advice not to sign is understandable.

However, the other side of that legal coin is that most courts will accept proof of actual notice by showing of proof of mailing as a substitute for proof of receipt, and the failure to sign and return may just further elevate the prospective target in the eyes of Customs. Eventually, someone at Customs will be tasked with prioritizing the 1,000 audit candidates, and it would be easy to place at the front of the line those whom Customs knows to have received, but not returned, the letter.

To those who have received the letter, the message should be clear. Customs is likely coming. Protect yourself.

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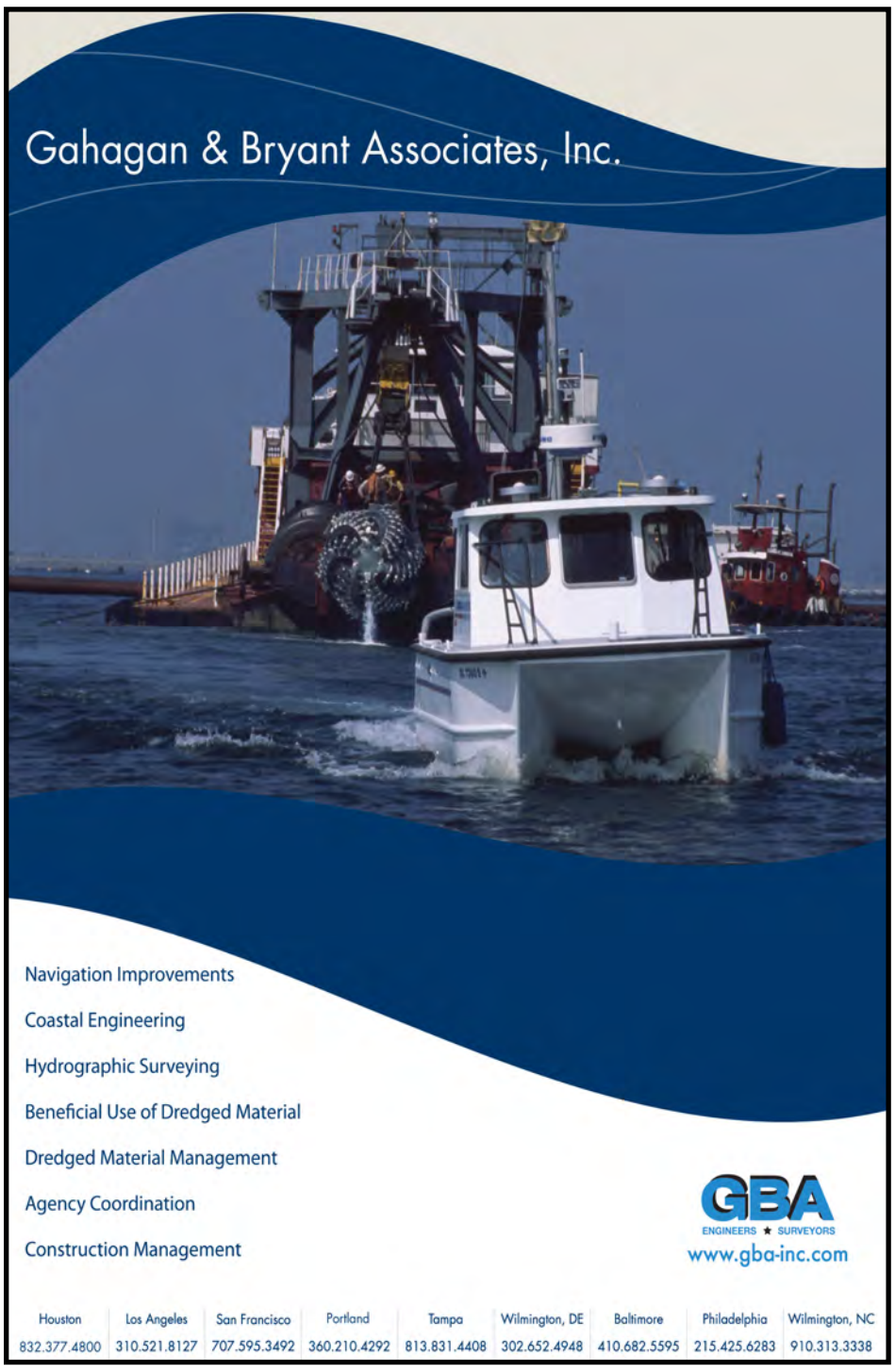
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Notes & News

Exchange member **MTC Logistics** achieved a perfect score for its Port of Wilmington, Delaware distribution center in its recertification under the Global Food Safety Initiative from the British Retail Consortium. Diane Busch, Director of Corporate Administration, said,"Globally recognized certification such as BRC helps us to ensure that our distribution centers and food safety practices are meeting the best possible standards and provide valuable third-party recognition of our commitment to our customers. As a member of the GFSI, the BRC is committed to continuous improvement of its food safety standard and requires the same continuous improvements from the distribution centers they certify." Congratulations!

Long-time Exchange member **Maryland Nautical** announced the launch of its newly redesigned website, which is now faster, easier to navigate, easily accessible, and user friendly. Its products are easily accessible to its current and perspective customers. Visit www.mdnautical.com.

Carla Sydney Stone is the new Executive Director of **World Trade Center Delaware**. Carla is a fierce advocate for trade and international relations, introducing Delaware's businesses and citizens to people around the world. She brings energy, inspiration, intelligence, and business acumen to the executive director's position, along with more than 35 years of diverse business and political experience on the international stage. **Rebecca Faber** will continue to serve as President of the World Trade Center Delaware Board of Directors. Best of luck, Carla!



Calendar of Events

11/08/16	Tri-State Maritime Safety Association Board Meeting
11/09/16	Maritime Exchange Board Meeting
	Traffic Club of Philadelphia Industry Night with Philly Shipyard Temple University Alter Hall, Philadelphia, Pa. Contact Maureen Waddington, tcphila@gmail.com or 215-393-3144
11/10/16	PENJERDEL Council Annual Awards Luncheon Honoring the Navy Yard Citizens Bank Park, Philadelphia, Pa. Contact Andrew Warren, alwarren@penjerdel.org or 215-972-0900
	Port of Wilmington Maritime Society Annual Dinner Hotel DuPont, Wilmington, Del. Contact Lindsay Pennington, powms@wtcde.com or 302-656-7000
11/12/06	Seamen's Church Institute Guardian of the Seafarers Gala & Exhibition Independence Seaport Museum, Philadelphia, Pa. Contact Christine Polit, cpolit@sciphiladelphia.org or 215-940-9900 x 104
11/15/16	Philadelphia Regional Port Authority Board Meeting
	Traffic Club of Philadelphia Industry Night Contact Maureen Waddington, tcphila@gmail.com or 215-393-3144
11/16/16	DRPA/PATCO Board Meeting
	World Trade Association of Philadelphia Board Meeting PRPA Second Floor Conference Room, Philadelphia, Pa.
11/18/16	AMSC Main Meeting, Coast Guard Sector Delaware Bay Contact Glena Tedinnick, glena.t.tredinnick@uscg.mil
11/30/16	Seamen's Center of Wilmington Board Meeting
12/08/16	Mariners' Advisory Committee Meeting La Veranda, Philadelphia, Pa. Contact Scott Anderson, sanderson@maritimedelriv.com.
	PPMS/WTA MaritimeJoint Holiday Dinner Ballroom at the Ben, Philadelphia, Pa.
12/14/16	Maritime Exchange Executive Committee Meeting
	Traffic Club of Philadelphia Bowling at Lucky Strikes, Philadelphia, Pa. Contact Maureen Waddington, tcphila@gmail.com or 215-393-3144
12/20/16	Philadelphia Regional Port Authority Board Meeting
12/21/16	DRPA/PATCO Board Meeting
	World Trade Association of Philadelphia Board Meeting PRPA Second Floor Conference Room, Philadelphia, Pa.

For a complete schedule and event details, visit www.maritimedelriv.com.



The Beacon is the official newsletter of the Maritime Exchange for the Delaware River and Bay. The Exchange encourages its readers to submit letters to the editor at any time in response to articles that appear in *The Beacon* or to address other topics of interest to the port community.

Please direct any correspondence, comments, or inquiries regarding the contents of this newsletter to:

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