

# NEWS FROM THE DOCKS



ASSOCIATION OF LOUISIANA

*Louisiana Ports Deliver*

October 2009  
Vol. 10, No. 10



## Message from the PAL Office

The fall has finally arrived. Football season is in full swing and the Tigers are winning! It doesn't get much better than that. PAL has been developing a new tri-fold brochure and it has just gone to the printer. Copies should be available very soon. Please contact our office if you would like to receive copies. It is an excellent pocket reference guide with contact information for all of our ports.

October marks the beginning of PAL's "last quarter" associate membership drive. If you join PAL during the last quarter of 2009, your membership will last through December of 2010. Visit our website for more information and to find a copy of our associate member profile that must be submitted with your membership request. Associate Members should also remember that PAL will be happy to run articles about your firm in our newsletter. Just write up a couple of paragraphs and submit them to the PAL office. We can use pictures, your logo and an article about activities at your company.

Plans for the 2010 annual conference continue. As mentioned last month, the conference will take place in New Orleans March 30<sup>th</sup>, 31<sup>st</sup> and April 1<sup>st</sup>. The Maison Dupuy Hotel in the French Quarter will be the host hotel. You can make your reservations now by calling 800-535-9177 and asking for the Ports of Louisiana block of rooms. The rate is \$119 per night and that includes breakfast.



## Corporate Member News

### *West Calcasieu Port*

Newly completed dredging off the Intracoastal Waterway in West Calcasieu is seen as a plus for business, industry and economic development. What was an area of potential waterway traffic jams is now bustling with activity.

The \$2.3 million project means barges can now pull right up to the shore in the West Cal Port Basin off the Intracoastal. Explains Port Director Lynn Hohensee, "The basin had silted in after recent hurricanes, forcing barges to anchor far from shore...you get far enough out and all of a sudden you become a safety concern for navigation up along the Intracoastal."

The flagship tenant here is Devall Towing. President Michael Devall says the dredging is good for business and good for the economy. "We had to pull out of here about three or four months ago due to hurricanes Rita and Ike, they really silted in the slip. And now we're bringing in all of our loaded barges back in here."

Hohensee says levee construction and spoil placement will eventually provide more land for expansion. They also built concrete shore reinforcements, all in line with maximizing economic development. "We're about half way between New Orleans and Houston. And as those deep-water ports start to grow, there's pressure on the shallow water barge industry to possibly move other places. We're a location that

could certainly afford to bring them in here and make them feel at home."

Port Board President Brent Clement says there's a lot of potential here. "We have water, electricity here at the port and there's plenty of room for growth and we hope that we can be a critical part of creating jobs in Southwest Louisiana."

The basin is also vital because in a hurricane it serves as a safe haven of sorts for shallow water marine vessels and barges. The project was funded with state and federal money as well as smaller local grants from the Calcasieu Police Jury and Sulphur City Council.

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***Port of New Orleans  
Cold Storage Terminal will be built at Uptown  
Terminal Complex - New Site Served by  
Dedicated Port Roadway, Geared to Handle  
International Commerce***

The Board of Commissioners of the Port of New Orleans approved a new location for its dockside-refrigerated terminal within the Uptown riverfront cargo terminal complex. Under the new relocation plan, one of the port's terminal operators has agreed to reduce the size of its leased area to make room for a refrigerated facility.

"The Port of New Orleans is a gateway for America's goods and an economic engine for Louisiana, generating more than 160,000 jobs and \$17 billion in spending statewide," said Lt. Governor Mitch Landrieu. "I'm very pleased that the Cold Storage facility is coming home and bringing good-paying jobs with it. This development allows us to move our city's economy forward and preserve our rich culture at the same time."

Under the agreement, Ports America has agreed to reduce its leased area from the Port of New Orleans by about 13.5 acres. The area includes a transit shed and open space normally used to store steel and other breakbulk commodities on the upriver end of Ports America's footprint. That will make room for the construction of a 147,000 square foot refrigerated warehouse, which will be operated by New Orleans Cold Storage.

"This site was not initially available to us because the property was under long term lease. It is geared for handling international cargo and is located within the existing footprint of the Uptown river terminal complex where we handle about 90% of our cargo today," said Gary LaGrange, President and CEO of the Port of New Orleans. "Access to and from the terminal via the Port truckway will make for efficient cargo movements and keep truck traffic off neighborhood streets. Thanks to the flexibility of Ports America and New Orleans Cold Storage, we have an agreement that will benefit all parties involved," he said.

The need to build a new cold storage facility was brought about by Hurricane Katrina, which cut off waterborne access for larger deep draft vessels to the Port's refrigerated terminal at Jourdan Road on the Industrial Canal. The closure of the Mississippi River Gulf Outlet substantially restricted access to the Jourdan Road Terminal.

Today, the only waterborne access to the Jourdan Road Terminal is through the Inner Harbor Navigation Canal Lock. Only about half of the vessels normally handled by New Orleans Cold Storage fit through the lock. Since Katrina, New Orleans Cold Storage has been forced to truck much of its cargo to docks in New Orleans along the Mississippi River to load it into ships. The additional transportation cost puts NOCS at a severe competitive disadvantage. The long term solution requires that New Orleans Cold Storage have a location on the Mississippi River, where it will have reliable, deep-draft ship access.

Sen. Mary Landrieu praised the new site and pledged her support to continue working for funding to mitigate the effects on the maritime industry of the closure of the Mississippi River Gulf Outlet.

"The \$75 million Congress has already authorized at my request was a critical first step. I am committed to working with the Port to secure the remaining funding for the relocation of New Orleans Cold Storage as soon as possible," Senator Landrieu said. "I congratulate and commend Port President Gary LaGrange and the Port Board of Commissioners on reaching today's important decision and moving this project forward."

For 40 years, New Orleans Cold Storage operated a refrigerated warehouse next to the site that has been identified for construction. However, that warehouse, which is now used to store coffee, was not on the waterfront and did not give the company the ability to load directly onto ships. In 2003, New Orleans Cold Storage relocated to the Jourdan Road Terminal, converting it to a dockside refrigerated terminal. With the ability to load its cargo directly from the warehouse onto ships, New Orleans' Cold Storage's business doubled and New Orleans became the leading port for U.S. poultry exports.

"In many respects, we're returning to our old home-- this time with a dockside location and a new state of the art warehouse," said Mark Blanchard, President and CEO of New Orleans Cold Storage. "This new site allows us to keep our business and jobs in Louisiana. Our capacity and efficiency will be substantially enhanced with this additional facility. That translates into increased jobs and export tonnage for the port"

Roughly 568 direct and indirect jobs are associated with the refrigerated terminal at Jourdan Road. With the ability to secure NOCS refrigerated cargo long term in New Orleans by developing a new riverfront terminal, that number is expected to significantly increase.

Gov. Bobby Jindal, who has supported the project by making funding available from the Community Development Block Grant program, applauded New Orleans Cold Storage's efforts to stay in its home state and retain and grow jobs.

"New Orleans Cold Storage's commitment to New Orleans solidifies the company's place in the local business community and represents even more exciting news of economic development from our existing Louisiana companies during this national economic downturn, said Governor Jindal. "The new terminal will enhance the company's competitiveness and productivity, in addition to increasing port activity and creating more jobs for our people."

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***LaGrange Highlights Port's Diversity, Cites New Challenges In Annual Address - New State Tax Credits Praised As Landmark Legislation***

Despite the challenge of a global recession, the Port of New Orleans is taking steps to improve its infrastructure and grow business, Port CEO Gary LaGrange said today during his annual address to the World Trade Club of Greater New Orleans.

"We've seen many challenges in recent years, but through it all we have managed to keep our eyes on the future and building a better and stronger Port of New Orleans," LaGrange said.

Two critical pieces of that future were passed by the Louisiana Legislature recently: A per-ton tax credit for Louisiana businesses using Louisiana ports and a tax credit encouraging private investment into public ports.

"Over the last year this port community came together like never before to support this landmark piece of legislation," LaGrange said. "Gov. Jindal, House Speaker Jim Tucker and Senate President Joel Chaisson deserve a lot of credit for thinking strategically about the future of our industry."

LaGrange also cited Reps. Nita Hutter, Cedric Richmond and Walt Leger as playing key roles in passing the legislation.

"The tax credit programs are very cost effective ways to help local companies compete globally, while also supporting Louisiana ports," LaGrange said.

The main topic of conversation throughout the industry, however; is the global economic downturn and its effects on trade and transportation.

"The recession poses a major challenge to all ports and New Orleans is no different," LaGrange said. "However, we are a diversified port and ready to face the challenges coming our way."

Recently, Port figures have shown signs of a rebound. Ship calls were up 4.5 percent in the first five months of 2009 and total general cargo

figures showed slight gains. Breakbulk cargo is up 15 percent, iron and steel imports were up more than 6 percent, and metals traded on the London Metals Exchange - such as aluminum, zinc and copper - have soared this year. Coffee imports are up 9 percent compared to a year ago, and the Port has handled about 5,000 tons of bananas so far - which is a new cargo. These gains offset losses on the container side of about 15 percent. However, LaGrange cited a positive statistic from July, when the Port handled 34,014 TEUs (twenty-foot-equivalent units) - up 57 percent from the same period one year ago.

"We have seen indications that conditions are improving," LaGrange said. "It's not across the board, but areas of strength will help to carry segments lagging behind."

LaGrange also cited millions of dollars of repair and construction projects either completed, underway or in the design phase. All told about \$70 million is currently being spent on infrastructure repair and improvement projects. In addition, design work is underway to modernize and improve the Julia Street Cruise Terminal - a \$9 million project slated to begin next year.

Port officials also applied for \$65 million in federal stimulus funds through a transportation grant program. The funds would build a new intermodal rail facility at the Napoleon Avenue Container Terminal, modernize sections of both Napoleon and the Louisiana Avenue Terminal Complex, and increase efficiencies.

LaGrange thanked Ports America and the current facility's terminal operator, New Orleans Cold Storage, for working together.

"We've bent over backwards to make this plan a reality," LaGrange said. "We're talking about the largest export poultry operation in the country, which is crucial to Louisiana's agriculture industry, as well as the maritime industry. It's time to move forward to save hundreds of high-paying jobs."

LaGrange said continued investment into the Port's Napoleon Avenue Container Terminal will be a priority and should be a top project for the state.

"The most cost-effective way to increase container capacity is incremental investments in

Napoleon," he said. "Louisiana's shipping community needs to pull together and stand behind the state's existing facility and send a clear message to the shipping community."

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### ***Port of Morgan City State panel approves Intermoor relocation grant***

A \$6.6 million Port Priority Fund grant to support the relocation of Intermoor on Port of Morgan City property has been approved by the Joint Committee on Transportation, Highways and Public Works.

Port Executive Director Jerry Hoffpauir told committee members earlier this week during a hearing on the request that Intermoor, currently operating locally from a local branch in Amelia, was contemplating a move to Houston, where the company is based, because the Amelia lease was to expire in March 2010.

He said the Morgan City H&B Young Foundation agreed to sell to the port a 23-acre tract on Youngswood Road for \$2.35 million, and the port, in turn, agreed to offer it to Intermoor.

Hoffpauir also said that the Louisiana Department of Economic Development had approved a \$1.5 million Economic Development Assistance Program grant, and an application is pending with a similar agency in Dallas for an additional \$2.3 million.

The local effort was important, he said, because 214 local jobs could be preserved, and an additional 300 jobs could be added over the next few years, Hoffpauir said.

He also emphasized that Intermoor brings to the Morgan City area a "superb reputation (that) should go a long way toward enticing other companies to an area that has much to offer."

Joining Hoffpauir at the committee meetings were Intermoor officials Scott Thomas and Chuck Fontenot. They provided a brief company history of the firm's international operations that the new facility in Morgan City would serve through its manufacturing division.

Rep. Sam Jones, D-Franklin, and Sen. Butch Gautreaux, D-Morgan City, made the motions

from the House and Senate, respectively, to approve the grant.

Their motions passed without objection.

“We are very aware of the economic meltdown going on in other places and are doing everything we can to keep our area strong and vibrant,” a joint statement from Gautreaux and Jones said.

“Retaining more than 200 jobs and seeing that grow ... is a strong statement inside the industry and a major impact statement as to our vitality and optimism in the place we call home.”

Jones said some legislators in north Louisiana questioned the funding. “Sen. Gautreaux and I reminded them of our support for their chicken industry, and any potential opposition melted away,” he said.

Gautreaux said he and Jones “made clear that our oil and gas industry is very competitive and our failure to act would cause us to lose to other states or even other countries.”

The legislators commended Hoffpauir and the port board for their aggressive work on the Intermoor project.

Intermoor is an international platform stabilization and mooring company with business on six continents. Projects constructed in St. Mary Parish will be utilized all over the world.



## Upcoming Event

### CLEAN CITIES TO HOST NATURAL GAS VEHICLE FORUM

*‘Natural Gas is the Solution’ Forum Set to Show Medium/Heavy Duty Fleet Operators and Fuel Station Owners how to implement a successful Natural Gas Vehicle Program.*

- WHAT:** Hosted by the Greater Shreveport-Bossier City Clean Cities Coalition and sponsored by Chesapeake Energy, the event will be a comprehensive workshop for public and private fleet operators and clean air and transportation policymakers.
- WHEN:** Thursday, October 15  
7:30 a.m. – 4:30 p.m.
- WHERE:** Shreveport Convention Center  
400 Caddo Street  
Shreveport, LA  
Registration information:  
<http://www.cngnow.com/ENUS/Events/TheSolution/Pages/default.aspx>
- WHY:** To inform public and corporate fleet operators how to implement a successful Natural Gas Vehicle (NGV) program and ways to identify and secure various sources of funding. Topics will also include the economic, environmental and domestic benefits of Natural Gas Vehicles (NGVs) for fleet operations, positive return on investment using NGVs, fuel station design, and identifying potential anchor fleets.



## Legal News



### **CONTRACTUAL LIABILITY**

#### ***Indemnity Agreements***

There are several devices which are used by contracting parties to shift liability for damages from one party to another, regardless of which party is at fault. One such method of shifting liability is the indemnity contract. An indemnity contract is a contract whereby one party undertakes and agrees to indemnify the other against loss or damage arising out of some contemplated act on the part of the indemnitor or from some responsibility assumed by the indemnitee or from the claim or demand of a third person, that is, to make good to him some pecuniary damage he may suffer. Simply stated, contractual indemnity agreements are those whereby one party assumes the liability inherent in a situation and relieves the other party from responsibility.

In addition to indemnity contracts and hold harmless agreements, a party may agree to waive his right of subrogation (and request that his insurer also waive subrogation) against another party that caused the damage complained of and/or may agree to name the other party as an additional assured on his liability policy by means of an endorsement to that policy.

The classification of a contract as maritime or non-maritime is essential in determining the effect of its provisions. Generally, if the nature of the contract is maritime, it falls within the jurisdiction of federal maritime principles. Conversely, if it is not of a maritime nature, then it is governed by the law of the applicable state. It is not unusual to have "mixed" contracts wherein maritime aspects may be governed by federal maritime law and others governed by state law. State and federal law, when applied to interpretation of indemnity agreements, share certain principles. First, the courts should not construe an indemnity clause to impose liability for a loss not expressly within its terms. Further, indemnity clauses, especially

indemnifying the indemnitee against his own negligence are strictly construed. Further, the courts will not presume that a mere agreement to indemnify includes indemnity for one's own negligence. Last, and perhaps most important, the intent to be indemnified for one's own negligence must be in clear and unequivocal language stating that the indemnitee's intent is to be held harmless for its own negligence in order to shift liability. Any ambiguities may be construed against the indemnitee.

The best advice that I can give is: when fashioning an indemnity agreement, make it simple, concise and to the point. This was illustrated in the Louisiana Fourth Circuit Court of Appeal decision dismissing a \$661 million award to oyster farmers in St. Bernard Parish. The Fourth Circuit reached this opinion after a nine year legal battle against the State Department of Natural Resources. This followed the \$1.3 billion award that was thrown out by the Louisiana Supreme Court last year. After years of wrangling, the Fourth Circuit and the Louisiana Supreme Court, when given the opportunity, cut to the chase and focused on the leases granted to the oyster farmers by the State. Both courts held that the leases made it clear that the State would not be held liable in such cases. Beginning in 1989, all leases contained a hold harmless clause which stated "this lessee hereby agrees to hold and save the State of Louisiana . . . free and harmless from any claims for loss or damages to rights arising under this lease from diversions of fresh water or sediment . . ."

These few words, written in a concise, simple and understandable manner, made it clear that the unequivocal intent was to protect the State from pollution or damage to oyster leases caused by actions on the part of the State in diverting fresh water and associated sediment.

All too often, attorneys and those charged with preparing indemnity clauses, go to great lengths to try to cover every conceivable situation. The resulting indemnity agreement oftentimes is so complex and so convoluted that not only is it difficult for the parties to the contract to interpret their meaning, but it is equally difficult for the attorneys and courts to sort them out. In my opinion, the test should be, if the party to the contract have a difficult time interpreting the meaning then so will the courts which played no part in the negotiations leading to the contract. The likely result is that the court will refuse to

enforce the obligations.



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During the operations trials, Mr Jami Cheramie of C&C Technology can be contacted at 337-210-0000 on any questions of the trials and the status of the USS working in the Cameron area

### MARK YOUR CALENDARS

October 8, 2009, PAL Monthly Meeting, Baton Rouge, Richmond Suites, 10am

November 5, 2009, PAL Monthly Meeting, Baton Rouge, Richmond Suites, 10am

November 16-18, National Brownfields Conference, New Orleans <http://www.criticalcommoditiesconference.com/>

December 8, 2009, PAL Monthly Meeting, Natchitoches, Papa's, 10am

March 30 – April 1, 2010 – PAL Annual Conference, New Orleans, Maison Dupuy Hotel – 1-800-535-9177

## NOAA



An unmanned hydro survey vessel is being tested for operational readiness. The unmanned semi submersible (USS), owned by C&C Technology of Lafayette, is making runs from the Pass into the Gulf and testing it's onboard multi beam sonar and sidescan sonar. Two escort boats are on site with the USS



## Welcome New Members

This month PAL welcomes another new associate member:

**Siemens** is a security integrator located in St. Rose, LA. They will be represented by Mr. Greg Domingue.



The new hydro survey vehicle, using a small diesel and above water mast, is able to work in higher sea conditions than conventional small hydro survey boats, run surveys for 48 hours at a time and will be able to stream survey imagery to the operator station on land during the survey. It can be launched from a flatbed truck by a small crane into the water

