

# NEWS FROM THE DOCKS



ASSOCIATION OF LOUISIANA

*Louisiana Ports Deliver*

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## Message from the PAL Office

Yes! Finally there is a slight hint of cooler weather. September always brings the promise of more pleasant temperatures and fall color. Hopefully that thought will invigorate all of us. PAL has a lot of work to do to get ready for our conference next year. We have already identified the host hotel and now we are busy working on the program and other activities. As mentioned last month, the host hotel will be the Maison Dupuy in the French Quarter. The conference will take place the three days preceding Good Friday. That might be an opportunity to stay a few extra days in New Orleans. Be sure to plan ahead and mark your calendar for March 30<sup>th</sup>, 31<sup>st</sup> and April 1<sup>st</sup>.

It should be mentioned that PAL has undertaken several steps to advance the conclusions of the recently completed Strategic Economic Development Plan for Louisiana Ports. Dave Wagner of Port Professionals is leading an effort on behalf of PAL to survey 31 other states on how port infrastructure is funded across the U.S. Additionally, several elements of the Five Year Capital Improvement Plan for Ports will be updated. This information will allow PAL to develop future strategies aimed at securing a larger, more stable capital-funding source for ports in Louisiana. The work is to be completed by mid-November.

## LED Update

The PAL office has gotten several calls about the new tax incentive legislation. That program will be administered through Louisiana Economic Development (LED) and Paul Sawyer of that office has been charged with leading the effort to develop rules and regulations for program implementation. PAL and several other

industry leaders have been working with LED to insure that program execution is consistent with the legislative intent.

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On August 13<sup>th</sup> a briefing was held at LED. A presentation was made by A. T. Kearney relative to their findings on the prospects for container trade through La. deepwater ports.

The Kearney study reviewed the recent Norbridge, Parson Brinkerhoff, Boos Allen studies and utilized its own research to reach the conclusions presented in its study.

Essentially, Kearney found that La.container ports would be most competitive and would have an advantage in the middle southern states of Louisiana and Arkansas, and would be less competitive in the adjacent states of Mississippi, Missouri and Tennessee. The Pacific ports and eastern U. S. container ports would be substantially more competitive for containers destined for the mid-west. This conclusion is consistent with the container portions of the Shaw/Norbridge PAL Strategic Economic Development Plan.

## DOTD Update

This month DOTD announced the retirement of Ed Preau . PAL has worked with Ed for many years as DOTD's Assistant Secretary who administered the Port Construction and Development Priority Program. We appreciate all Ed did for us during this time and we wish him the best in his retirement.

DOTD also announced the appointment of Col. Tom Atkinson as Acting DOTD Assistant Secretary, Public Works, Hurricane Protection and Intermodal Transportation. PAL welcomes

Col. Atkinson and we look forward to working with him.

## Corporate Member News

### *West Calcasieu Port*

The third and final phase of the maintenance dredging project at the West Calcasieu Port's west barge basin is underway.

"The \$2.31 million maintenance dredging project should be completed during the last half of September, weeks ahead of schedule," said Lynn Hohensee, WCP director. "The first two phases focused on preparing the spoils reception area and the installation of concrete revetment along the west barge basin shoreline.

"The Mike Hooks, Inc. dredge barge – named the 'Mike Hooks' – moved on site last week, and dredging operations began over the weekend," he continued.



State and federal monies are covering the larger portion of the expenses associated with this project which is essential to returning the West Cal Port's west barge basin to its original 12-foot depth. The port also received critical financial support from the City of Sulphur and Calcasieu Parish.

"The Mike Hooks team is working around the clock to move approximately 180,000 cubic yards of spoil material to a 40-acre spoils-reception site a short distance to the northwest on the port property that has been approved by the U.S. Army Corps of Engineers," Hohensee said.

"Returning the basin to full operation capability is not only critical to our port's barge services for the towing industry along the Gulf Intracoastal Waterway, but it also plays a vital

role to the Southwest Louisiana maritime industry hurricane-response planning," he further explained. "Because of the port's strategic location on the GIWW two miles west of the Calcasieu River Waterway, the port's expansive west barge basin serves as a 'safe haven' of sorts for shallow-water marine vessels and barges in the event that our corner of Louisiana is struck by another hurricane."

Hohensee also noted that the port's largest tenant, Devall Towing, currently operates one of the most expansive barge fleet operations along the Gulf Intracoastal Waterway, and that demand for quality barge docking space is essential if the company is to meet growing demand for shallow-water maritime transportation in Southwest Louisiana.

Located 12 miles south of Interstate 10 and just west of Highway 27, the WCP offers 2,500 feet of waterfront property on the GIWW.

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### *Port of New Orleans*

#### ***Board Action Moves Julia St. Cruise Terminal Ahead***

#### ***Port Applying For \$65 Million Federal Transportation Grant***

The Port of New Orleans is a step closer to realizing another new, modern cruise ship terminal at the Julia Street Wharf after the Board of Commissioners took action to forge ahead with an agreement with the Louisiana Department of Transportation's Port Priority Program.

The \$9 million project to combine two existing terminals into one state-of-the-art facility received the state program's highest approval rating during the 2009 Regular Session of the Louisiana Legislature. The state will invest \$8.1 million into the project, with the remaining \$900,000 coming from the Port.

"The improved Julia Street Cruise Terminal will make New Orleans more attractive and more available to cruise lines looking to expand their home port options, as it will double our capacity to handle multiple ships at one time," said Port President and CEO Gary LaGrange. "The close proximity of our terminals to the historic French Quarter and other nearby attractions, and the tourism lure of New Orleans itself, makes cruising from New Orleans like two vacations in

one. We are confident that this selling point combined with the renovated terminal will attract new, home-ported cruise ships to our Port.”

Construction will reconfigure two existing smaller ship terminals into one larger terminal to attract the industry’s largest vessels. The interior of the terminal will be renovated, building a new vertical circulation core with an elevator and two escalators and installing an elevated, articulating and climate-controlled passenger bridge similar to the bridge in place at the Port’s Erato Street Cruise Terminal. The bridge will allow the industry’s largest cruise ships to simultaneously load and unload passengers and supplies in a safe and efficient manner. The project, which will increase the Port’s cruise ship terminal capacity by 100 percent, is anticipated to create 150 new jobs and generate \$169.5 million annually for the region’s economy.

Currently, the 2,056-passenger *Carnival Fantasy* sails four- and five-day Western Caribbean itineraries from the Port year-round. However, in November Carnival Cruise Lines will expand its capacity in the Crescent City by 34 percent when the 2,758-passenger *Carnival Triumph* replaces the *Carnival Fantasy*. The cruise ship will re-introduce the seven day western Caribbean cruise and will also offer a new seven-day eastern Caribbean itinerary, which visits Key West, Fla.; and Freeport and Nassau, Bahamas.

The Port and Norwegian Cruise Line recently inked a new long-term agreement, which allows NCL to homeport one of its Freestyle Cruising ships in New Orleans through Oct. 31, 2014. Currently, the *Norwegian Spirit* offers seven-day western Caribbean cruises from New Orleans seasonally – November through April.

Today, the Board also approved a measure to apply for a \$65 million federal grant to fund infrastructure improvements at the Napoleon Avenue Container Terminal and Louisiana Avenue Complex. The Transportation Investment Generating Economic Recovery program, authorized by the American Recovery and Reinvestment Act of 2009, made \$1.5 billion available to transportation projects nationwide.

The Port’s application hopes to garner funding for the Mississippi River Intermodal Terminal

and Yard Improvements project. The project includes converting a small, existing intermodal rail yard into a modern, efficient near-dock facility between the existing Napoleon Avenue Container Terminal and the Louisiana Avenue Terminal. The project also calls for additional concrete marshalling yards at these two terminals, which will facilitate the movement of both containerized and general cargo. The project, which will generate new permanent maritime and rail transportation employment, is shovel-ready and can be completed in 36 months.

“This project will greatly enhance transportation efficiency by diverting containers and other general cargo from highway trucks to rail and marine modes of transportation,” LaGrange said. “It would also diminish the Port’s carbon footprint and increase overall efficiency of transportation services in southeast Louisiana and the Port’s mid-American service area.”

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***Port of New Orleans Sells 27 Acre Site Transaction paves the way for \$10 million project for TCI headquarters***

The Port of New Orleans sold a 27-acre tract of surplus property this morning paving the way for construction of a \$10 million investment by France Road Parkway Properties.

France Road Parkway Properties will begin building a 150,000-square-foot world-class corporate office and warehouse facility for New Orleans-based Transportation Consultants, Inc. As a result of the long-term lease agreement between France Road Parkway Properties and TCI, TCI will move its corporate headquarters to the New Orleans site upon completion of construction.

This private investment will assist the Port of New Orleans in building the necessary logistical infrastructure to retain and attract new international trade opportunities. The project consists of approximately 27 undeveloped acres between France Road Parkway and Alvar Street, which is located west of the Industrial Canal. Groundbreaking will occur at the end of September and the construction is expected to be completed in June of 2010.

The project is expected to retain and create approximately 150 jobs in New Orleans in the next three years. "This investment shows our

strong commitment to the City and our confidence in the local and regional economy," said TCI's Founder and CEO Jack Jensen.

Christian Jensen, the company's President, said the facility will allow TCI to service its current demand and future strategic plans at the Port of New Orleans. "The on-site access to 6 class-1 rail services provided by the New Orleans Public Belt Railroad and immediate proximity to the Port of New Orleans will allow us to efficiently and cost-effectively move cargo for our customers," Jensen said. "This facility will greatly assist with our efforts to attract new cargo and commodities to New Orleans, especially with the timing of the implementation of the new Cargo Tax Credit program," he added.

"Without a doubt, in this economy this is one of the more exciting and real private economic development projects in New Orleans," said Christopher Kane, legal counsel for Transportation Consultants, Inc. and attorney from Adams and Reese LLP. The financing of the construction of the project, which is being completed by IBERIABANK, is nearing finalization and includes GO Zone bond financing, which was approved by the New Orleans Industrial Development Board and Louisiana State Bond Commission earlier this year. The GO Zone bonds will be leveraged by new market tax credits.

In addition to its cargo handling and cruise facilities, the Board of Commissioners of the Port of New Orleans traditionally has leased industrial property located near the Inner Harbor Navigational Canal. Recently, it has received many requests from existing or prospective tenants to purchase tracts of industrial properties in this area. In order to take advantage of financing opportunities, sometimes the investor has to own the property. The board has said that it will evaluate these transactions on a case by case basis, and decide whether they are in the long term interest of the New Orleans port community.

"This transaction fits into the port's mission of job retention and creation by building the trade and transportation infrastructure of metro New Orleans," said Gary LaGrange, President and CEO of the Port. "TCI came to us with a good project that improves efficiencies and creates

new cargo opportunities for the Port. It's exciting to see these plans come to fruition."

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### ***Port of Morgan City***

The U. S. Army Corps of Engineers Mississippi River Commission recently completed its annual low-water inspection tour with a public hearing at the Port of Morgan City dock on Friday, August 21st. The hearing was held aboard the M/V MISSISSIPPI. Among those speaking at the hearing were Morgan City Mayor Tim Matte, Terrebonne Levee District Director Reggie Dupre, South Lafourche Levee District Director Windell Curole, Terrebonne Parish Manager Al Levron, Gulf Island Fabrication representative Roy Francis, National Wildlife Federation Program Manager Maura Wood and Morgan City Harbor and Terminal District President Raymond "Mac" Wade.



the M/V MISSISSIPPI docked at the Port of Morgan City

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### ***Avoyelles Parish Port***

*Port 'a big plus' for Avoyelles Parish: Facility on Atchafalaya may be operational in fall*

When Tommy Maddie was on the Avoyelles Parish Police Jury nearly 20 years ago, a functioning port in the parish was a dream.



Tommy Maddie, chairman of the Avoyelles Parish Port Commission, (Tia Owens-Powers/towens@thetowntalk.com)

Now, every day it gets closer to being a reality.

The biggest piece of the truss walk that will connect barges to shore has arrived, moving the project that much closer to completion. Maddie, now chairman of the Avoyelles Parish Port Commission, expects the port to be operational in late fall.

"It's been awhile getting going," Maddie said. "Since 1992, this has been my No. 1 priority." "We're very, very excited," said state Rep. Robert Johnson, D-Marksville, who along with state Sen. Eric Lafleur, D-Ville Platte, and former state Sen. Don Hines has worked extensively in securing funding for the project. "This is going to be great for the economy of Avoyelles Parish. We have been lacking a port. We had a port in name but not in function. Now we're going to have that."

And it's one that local officials think is going to be quite successful. The port is on 108 acres on the Atchafalaya River just outside of Simmesport. Approximately 1,300 adjacent acres are available for commercial development. The initial phase of development will cost \$2.8 million in a mix of local and state funds. The major construction going on right now is installing the truss walk, which took a big step toward completion with the arrival of its biggest component -- a 160-foot span. The truss walk will run from shore, down the bank and to the river. Pipes along the walk can be connected to docked barges, allowing material to be pumped from the barge through an underground system to tanks on land -- such as the two holding tanks the Helena Chemical Co. is building nearby.

Fluids such as water and fuel can similarly be pumped onto barges. Helena Chemical Co., which sells agricultural products, is currently the only tenant, but Maddie thinks others will be coming soon. "About six other businesses are interested," Maddie said. "They're looking at the port as soon as we get it up and running."

By Jeff Matthews • [jmatthews@thetowntalk.com](mailto:jmatthews@thetowntalk.com) • August 27, 2009

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## Associate Member News

RallyPoint is a new PAL Associate Member. They offer the first-to-market and only true in-bound and outbound messaging solution that maintains your corporate infrastructure in a virtual environment so that you are prepared when the unexpected happens.



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## Legal News



### DUTY OF DOCK OWNER TO SEAMAN ON VESSEL

Imagine this scenario; a vessel is moored at your dock. A deckhand assigned to the vessel is returning from the dock to the vessel by means of a ladder when he falls, strikes his head on your dock, and drowns. What is your exposure as the dock owner? What was your obligation to the decedent?

This was the factual scenario in *Florida Fuels v. CITGO Petroleum*, which the United States Fifth Circuit Court of Appeals had to decide. The Fifth Circuit focused on two issues: 1) did CITGO owe a duty to the deckhand to provide a means of access between the dock and the vessel; and 2) did CITGO owe a duty to aid in the mooring of the vessel.

In addressing the first, the Court recognized that the circumstances of the case involved "an intersection between state and federal law." In *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 92 S.Ct. 418 (1971), the Supreme Court observed

that, traditionally, “the gangplank has served as a rough dividing line between the state and maritime regimes. Piers and docks are deemed extensions of the land, while the means of access between a dock and a vessel is considered an appurtenance of the vessel.”

Continuing, the Court stated that it is well established that maritime law encompasses the gangway, and that the vessel owner has a “fundamental duty to provide its crew members with a reasonably safe means of boarding and departing from the vessel.”

With regard to the dock owner, which had no employer/employee relationship to the crew of the vessel at its dock, the Court held that “Absent a maritime status between the parties, a dock owner’s duty to crew members of a vessel using the dock is defined by State law, not maritime law.” The Court found there was no maritime status between CITGO and the deckhand, and that Louisiana law defined the obligation CITGO owed an invitee, such as the deckhand, as the duty to provide a wharf or dock which is reasonably safe.

As for whether CITGO owed a duty to aid in the mooring of the vessel, the Court found that there was no duty on the part of CITGO to assist in mooring of the tug and barge. The Court found that “it is the Master, when present and supervising, and not a wharfinger (absent some type of contractual commitment not present here), who is responsible for the mooring of a ship.”

With this in mind, the Court held that; 1) the dock owner did not have the duty to furnish means of ingress or egress to and from the dock; 2) the dock owner is not responsible for the mooring of a vessel to a dock. The dock owner’s only duty is to exercise reasonable diligence to furnish a safe place to dock. This includes the duty to warn the vessel of any hidden hazard or deficiency known to the dock owner, and which could not reasonably be known to the vessel.

The signature holding of this decision is the Court’s recognition that the dock owner’s duty to persons crossing to his dock from a vessel is governed by state law.

## LOUISIANA LAW

### Duty of Dock Owner to Those on his Dock

In Louisiana, the duty of a dock owner to a person on his dock differs, depending on that person’s status *vis-a-vis* the owner. This was discussed in *Barrilleaux v. Noble Drilling Corporation*, 160 So.2d 319 (La. 4<sup>th</sup> Cir. 1964), where a person was killed when he fell from a dock. The Court stated:

We must first classify Lester’s status when he climbed the ladder to reach the deck of the barge; whether he was a ‘trespasser,’ or ‘licensee,’ or ‘invitee.’ The case of *Alexander v. General Accident Fire & Life Assurance Corp.*, La. App., 98 So.2d 730, clearly defines them as follows:

(1) A trespasser is one who enters the premises without the permission of the occupier or without a legal right to do so; and towards the trespasser no duty exists in most instances except to refrain from willfully or wantonly injuring him.

(2) A licensee is one who enters the premises with the occupier’s express or implied permission, but only (according to the conventional description) for his own purposes which are unconnected with the occupant’s interests; and to him in addition to the duty owed a trespasser, is owed the duty of warning the licensee of latent dangers of the premises if actually known by the occupier.

(3) An invitee is a person who goes on the premises with the express or implied invitation of the occupant on the business of the latter or for their mutual advantage; and to him, the duty owed is that of reasonable and ordinary care, which includes the prior discovery of Reasonably discoverable conditions of the premises that may be unreasonably dangerous, and correction thereof or a warning to the invitee of the danger.

See *Cates v. Beauregard Electric Cooperative*, 316 So.2d, 907 (La. 3d Cir. 1975), the duty owed to a trespasser is not to willfully or wantonly injure him. There is no duty owed to the trespasser to warn him of latent, non-apparent dangers or defects in the premises and there is no duty to warn of obvious dangers; *Stanolind Oil & Gas co. v. Franklin*, 193 F.2d 561 (5<sup>th</sup> Cir. 1951), the general rule is that when people go upon the land of others for their own purposes, without right or invitation, and are

exposed to injury from unseen dangers, the responsibility therefore is upon themselves; *Arcement v. Southern Pacific Transportation Company*, 517 F.2d 729 (5<sup>th</sup> Cir. 1975), a trespasser is one who enters the premises without the permission of the occupant or without the legal right to do so, and toward the trespasser no duty exists except to refrain from willfully and wantonly injuring him.

In sum, these cases instruct us that as a dock owner, you do not have an affirmative duty to assist or supervise in the mooring of the vessel and no duty to furnish means of ingress or egress to or from the dock. Your duty is to warn of hidden or latent defects in your dock. There is no duty to warn of open or obvious conditions, or those conditions which those in control of the vessel have actual knowledge. Be sure to determine the status of the person who may claim injury on your dock, under Louisiana law your duty to that person is different depending if he is there with your permission and the purpose of his mission.



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## NOAA



On August 13<sup>th</sup> a crew worked on the installation of the NOAA PORTS System for the Lower Mississippi River at New Orleans. They are completing the installation of the new current meter at the Port of New Orleans and will move up to the installation of the next current meter at the Port of Baton Rouge. The Port also saw the regularly scheduled Thursday departure of the Carnival cruise ship by the Crescent City Connection Bridge, the location of the NOAA PORTS Air Gap Sensor installation site.



Carrying up to or more than 2,000 passengers, this Carnival Ship will be replaced this year by a much larger cruise ship that will make weekly arrival and departures from the Port of New Orleans.

For the world's largest port area and busiest waterway, the new NOAA PORTS System has seen a very important service in the movement of the USS New York from the Avondale Ship Yard and to the Gulf (under the Huey Long Bridge using the NOAA Air Gap Sensor) for it's first sea trials before going into service for the Navy.

## World Trade Center



### *Louisiana Exports Decline in First Six Months of Year, While Sales to China Surge*

Continuing to feel the full effects of the global recession and low agricultural and oil prices, Louisiana's worldwide merchandise exports declined by nearly one-third in value in the first half of 2009 compared to one year earlier, according to a report issued by the World Trade Center of New Orleans. This follows a record-breaking year in 2008 with exports from the state reaching nearly \$42 billion.

Louisiana's total export shipments for January-June 2009 declined 31.6 percent to \$15.0 billion, compared to the first six months of 2008, while total U.S. exports dropped by 24.6 percent, according to the WTC report. However, even with its lower exports for the January-June

period, Louisiana moved up to 8th in the state rankings from 9th place for all of 2008.

The decrease in total vessel weight for Louisiana's exports for the first six months of 2009 was 11.6 percent, compared to the first half of last year, while total U.S. exports measured in tonnage registered a 15.4 percent decline.

Louisiana's principal export markets for the first six months of 2009 were China, Japan and Mexico. The state's shipments to China increased 48.1 percent, reaching \$2.3 billion in the first half of the year as exports to almost all other major markets declined.

"The full effect of the prolonged worldwide recession is still impacting Louisiana's exports to most markets. We're hopeful that the recovery that appears to be underway in China, India, and some other countries will spread worldwide," said Larry Collins, Director of International Services with Louisiana Economic Development.

Agricultural products (\$6.3 billion, a fall of 24.8 percent); petroleum and coal products (\$2.57 billion, a 53.5 percent decline); chemicals (\$2.53 billion; a 28.3 percent decline); and processed foods (\$1.5 billion, a 28.4 percent decline) ranked as Louisiana's top exports for the January-June 2009 period.

## MARK YOUR CALENDARS

September 15 & 16, 2009, Louisiana Freight Transportation Summit, New Orleans Hilton Riverside. For more information contact DOTD – 225/379-1200

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

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

March 30 – April 1, 2010 – PAL Annual Conference, New Orleans, Maison Dupuy Hotel

## Welcome New Members

This month PAL welcomes another new associate member:

**Johnson Controls** is a technology contractor located in New Orleans. They will be represented by Mr. Bruce Pontier.

