

NEWS FROM THE DOCKS



Louisiana Ports Deliver

ASSOCIATION OF LOUISIANA December 2011
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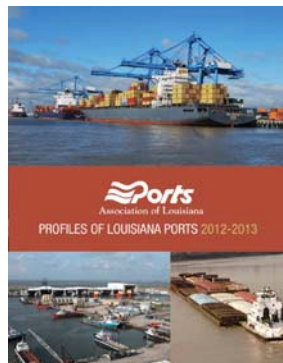


Message from the PAL Office

*Dear Santa,
All I want for Christmas is a
crystal football...*

What a season this has been! The Tigers (13-0) have provided all of the action and excitement we could have possibly wanted with a truly history making season. There's just one game left – and it's a BIG ONE. GEAUX TIGERS!!!!

PAL has released a new edition of the Directory of Louisiana Ports. Copies will be available at PAL's monthly meetings. Additional distribution will be made but a time frame has not yet been determined.



Plans continue for the 2012 Conference in Lake Charles. The dates are March 7-9 and the host hotel is the L'auberge Hotel Casino. For room reservations call 1(866) 580-7444 and mention the code #SPAL12. Rooms are \$99 per night and reservations must be made by February 14, 2012 to take advantage of this rate.

The conference registration fee will be \$350. Conference registration materials will be mailed about six weeks before the conference and will also be available on PAL's website.

The Port of Lake Charles will host the conference in association with the ports of southwest Louisiana, West Cameron, West Calcasieu, Mermentau and Vinton. We hope you are planning to join us. It is always an interesting, educational and entertaining event.

Legislative Update

The following is a report relative to the Legislature and other subjects PAL has been considering.

Legislative Elections:

In the House of Representatives, of 105 members, 74 are re-elected members, and 31 are newly elected.

In the Senate, of 39 members, 27 are re-elected members, and 12 are newly elected.

Gov. Jindal's choice for Speaker is Chuck Kleckley who continues to have opposition from Rep. Joel Ribodeaux. Gov. Jindal's choice for Senate President is John Alario who does not have any announced opposition. The choice of Speaker and President will occur during the Legislative Organizational session scheduled for Jan. 9-11, 2012, immediately after Inauguration of the La. State Officials and Legislature.

The Regular Session of the Legislature is for 60 days within an 85-day calendar period and will commence on March 12th, and end on June 4th, 2012. No taxes can be considered at the Regular Session.

Port Construction and Development Priority Program

DOTD continues to work on selecting a replacement for Dr. Jay as the economist for the PCDPP.

Hydrokinetic Generator Rules

The Office of Mineral Resources adopted the revised rules incorporating several requested changes by Ports and DOTD, however it rejected the request that Ports be allowed to charge the applicant for reimbursement of actual expenses incurred in contracting for experienced consultants to analyze whether the generator sites may hinder navigation. It may be necessary to file a bill to allow the reimbursement.

Design-Build Committee

The committee Chaired by Kent Dussum of URS continues to work on a compromise bill to allow Design-Build for ports. The ACES members are scheduled to suggest possible changes to the bill PAL filed in the last Legislative session. Additionally, a Design-Build Chapter in La. of the National Design-Build Association is to be established and I will participate.

Maritime Focus Group of the Coastal Protection and Restoration Authority-- met for the second time in November relative to the draft 2012 Coastal Master Plan. The purpose of the focus group is to allow the exchange of information as to how navigation and ports located within the coastal zone may be impacted by the master plan projects. The group was presented with the work product of several hundred people relative to approximately 285 projects, which are being considered in the plan. The projects were ranked and analyzed as they might affect navigation. The members were presented with the ranking scores for each project and were asked to comment by December 2nd. The consensus opinion is that further information and explanation of the process will be required. Another meeting of the Maritime Focus Group is scheduled for Dec. 20th. The CPRA is scheduled to complete the draft plan by mid-January of 2012 for consideration by the Legislature during the Regular Session.

Gulf of Mexico Drilling Permits

PAL participated with the U. S. Chamber of Commerce and thirty-six other industry groups in filing an Amicus brief supporting the

granting of drilling permits in the case -- *Defenders of Wildlife, et. al. v. Bureau of Ocean Energy Management, et. al and Shell Gulf of Mexico, et. al.*

Ports of La. Economic Study

Dr. Jim Richardson has begun the process of collecting information from ports and other sources. Ports are urged to cooperate. A separate report will be sent periodically.

Port Tax Incentive

The rules relative to the Import/Export Tax incentive have not been adopted as LED continues to review the data provided by the Port of New Orleans to support the economic conclusion that the state will not have a net loss of revenue upon implementation of the tax credit. The Infrastructure tax credit rules have been implemented.

Dredge Funding

The Big River Coalition continues to support the efforts to secure adequate funding for dredging of navigation channels in La. and the nation. It continues to support the legislation to require the use of the Harbor Maintenance Tax for dredging of harbors and channels.



Joe Accardo
Executive



Corporate Member News

Port of St. Bernard

Robert J. Scafidel, Ed.D., St. Bernard Port Harbor and Terminal District's Executive Director, to represent United States Delegation at the 100th Annual Convention of the

American Association of Port Authorities (AAPA).

The AAPA held their 100th Annual Convention in Seattle, Washington September 11-15, 2011. Dr. Scafidel was honored by being chosen to present the United States Delegation Response during the Opening Ceremonies. Responders from Canada, Latin America and the Caribbean will also speak on behalf of their respective delegations.

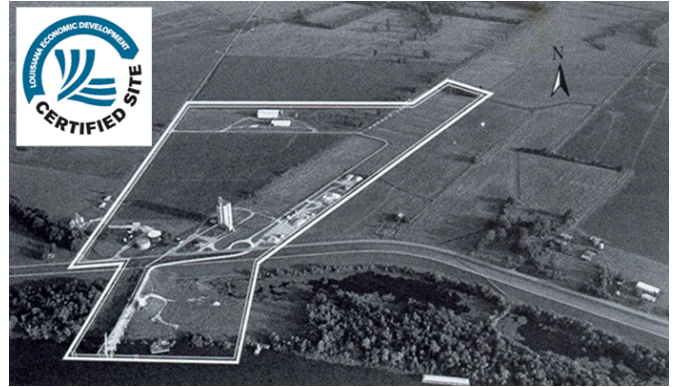


Pictured above is Dr. Robert J. Scafidel, Executive Director of St. Bernard Port.

Port of Pointe Coupee

The Port of Pointe Coupee has been recognized by Louisiana Economic Development (LED) as the ninth certified, development ready site in Louisiana. Certified sites are given priority consideration for referral by LED to firms interested in locating or expanding in Louisiana. The certification process was a joint effort by the Pointe Coupee Port Commission, Greater Pointe Coupee Chamber of Commerce, and Baton Rouge Area Chamber.

The Port of Pointe Coupee is located at approximately river mile 4.6 on the Lower Old River. It has the distinction of being at the confluence of three major waterways, the Mississippi River, Atchafalaya River, and Red River. Presently, the port's typical export commodities include corn, wheat, grain sorghum, soybeans, and cottonseed. It's import products include coal, liquid fertilizer, agricultural fertilizer, limestone gravel, and crushed rock. It has been under review for firms interested in handling wood pellets, timber, fracking waste water recycling, and bio-mass products.



Having a site “certified” reduces the risk associated with development of particular sites by providing up front and consistent information. The certification process provides current and accurate information into a single, useable package formatted so potential businesses, investors, site consultants, and industries can have this information readily available for review immediately upon showing interest in a site. In today’s fast paced, global economy it is increasingly important as a tool for attracting capital investment to Louisiana.

For further information regarding the Port of Pointe Coupee, contact Pointe Coupee’s director of economic development Scot Byrd at 225-638-3500, or port commission chairman Louis Hebert at 225-638-7077.

Port of South Louisiana

On November 8, 2011, the family of Commissioner Gregory Gravois, who passed away in September 2011, was presented a plaque in recognition of his 11 years of dedication and service to the Port of South Louisiana as a member of its Board of Commissioners. As the Governor’s appointee to represent St. James Parish, Mr. Gravois served as President, Executive Vice President, and Treasurer during his tenure.



“Greg will be sorely missed by all here at the Port of South Louisiana,” stated Joel Chaisson, Port of South Louisiana’s Executive Director.

“His legacy, however, will live on and we hope it will be an inspiration to those that succeed him.”

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The Port of South Louisiana was recently involved in assisting the St. John Parish Sheriff’s Department in preparing local students for a possible “Active Shooter / Armed Intruder” Event. During the months of September and October, every school in St. John Parish had the opportunity to view the St. John Parish LEPC “Active Shooter / Armed Intruder” Training Video. The Video, produced by Jan Herrington (Positive Results, Inc), was the culmination of lessons learned resulting from a full scale St. John Sheriff’s Dept. Active Shooter exercise that took place earlier this year at Emily Watkins School in LaPlace. Along with the video presentation, students were also provided with “Active Shooter” training material on how to best prepare for an “Active Shooter” Incident.

Port of South Louisiana’s Policy and Planning Director and Local Emergency Planning Committee-LEPC Member, Lester Millet, III, Entergy representative Sheila Butler, St. John Parish Sheriff Department’s Maj. Chuck Bazile, Lt. Keith Brooks and Capt. Vernon Bailey made presentations to the following schools: Leon Godchaux / Redirection, St. Charles High, West St. John High, and East St. John High. Lester also presented the video to the faculties of Leon Godchaux, East St. John High, and St. Peter’s Elementary.

The following St. John Parish LEPC members also participated in the “Active Shooter” Training Program: St. John Parish Emergency Preparedness Dept., St. John Parish Sheriff’s Dept., St. John Parish School Board, Air Products (Garyville), Air Products (Reserve), Arcelor Mittal, DPC Enterprises, DuPont, Entergy, Evonik, Marathon, and Nalco.



Port of Caddo-Bossier

Local Company Wants to Build Water Plant at Port

Shreveport Times - Dec. 6, 2011

Written by
Michele Marcotte

A local water company hopes to build a \$150 million water treatment facility at the Port of Caddo-Bossier.

Wholesale Water presented Port commissioners with a snapshot of plans for a 50 million gallons-a-day plant. The proposal is the same one presented to Bossier and Caddo officials this fall in connection with a planned regional utility system.

"The Port would be a great place to operate this plant," Wholesale Water manager David Wicker said.

The facility would treat water from the Red River and distribute it to new and existing systems, some of which could be outside Bossier and Caddo Parish, Wicker said. The company envisions a 20-acre site for the plant and employing an estimated 20 full-time workers. Construction would create approximately 120 jobs and be financed through bonds.

Shreveport, which had its T.L. Amiss water plant operate near capacity this summer, could be a potential customer. But, company officials told commissioners no informal or formal agreements have been made with the city.

Eric England, Port executive director, said the project is unlike any other that has come to the Port. He said because the company is in the

process of securing contracts, the Port's next step will be to await direction from Wholesale Water on how they want to move forward.

Port of Lake Charles

Continue to Seek Dredging Solutions

American Press Editorial 11/27/11

The U.S. Army Corps of Engineers has heard the plea of Cameron Parish officials and won't be putting dredging spoils from the Calcasieu Ship Channel into an open water site in Big Lake. Oyster harvesters and commercial fishermen were concerned about silt getting into oyster beds and causing other problems.

Dredging of the ship channel to maintain a depth of 40 feet and a width of 400 feet from the Port of Lake Charles to the mouth of the river is critical for ships going to and from the port. Constant silting makes it necessary to dredge almost continuously, but the money isn't always available.

The Lake Charles Dock Board works with the Corps of Engineers and U.S. Rep. Charles Boustany, R-Lafayette, to secure funds to finance the work. It hasn't been an easy task, and is an ongoing project much like the dredging. Most of the time the spoil has been piled up along the river bank levees, but it could have beneficial uses in other areas of marshland that has eroded through the years.

In early 2009, Gov. Bobby Jindal committed \$20 million in state funds to restore nearly 670 acres of marshes in Southwest Louisiana. The Calcasieu Parish Police Jury also committed \$1.4 million to the restoration effort that took place at Black Lake and in the Sabine National Wildlife Refuge. The Port of Lake Charles used dredged materials for the project.

Jindal said at the time the projects would help restore the natural buffer and protect the region during future hurricane seasons. He called the effort the largest state-local beneficial use of dredged material in the state's history.

Bill Rase, director of the Port of Lake Charles, said the initial phase of the work has been completed, but restoration of Black Lake and the Sabine Refuge are long-term projects that will require additional millions before they will ever be completed. That is where the Corps, the port

and other interests would like to see additional dredging spoil put to good use, but the funds aren't there. What federal money is available has to be used for the dredging work.

The Corps of Engineers was considering the possibility of putting the dredging material in an open water site in Big Lake, but Rase said it understands the concerns of Cameron Parish fishing interests and will instead continue to put the spoil along the banks of the ship channel as it has in the past.

Rase said he does hope funding will eventually be found that would allow the construction of permanent pipelines to Black Lake and the Sabine Refuge that would be less expensive than putting in temporary pipelines from time to time. Those pipelines could then be used continuously to pump dredged materials to well-defined disposal areas hit hard by erosion.

We commend all of the interests involved in this decision not to use Big Lake for the dredging spoils. Cameron fishermen and oystermen have had enough problems to deal with since Hurricane Rita. However, we hope all of the agencies involved will pursue efforts to find more beneficial uses for dredged materials.



Associate Member News



World-Class Dock Design and Terminal Receives International Award

The International Bulk Journal (IBJ) Awards have been announced and River Consulting's recent dock design and the St. James Stevedoring terminal has been awarded the 2011

Best Specialist Dry Bulk Port or Terminal award. The award specifically recognizes the facility for “how innovative design has increased flexibility, reduced costs and improved safety on the Mississippi River” with Paul Morton, president of St. James Stevedoring present to accept the award in Antwerp.

“We are truly proud of the work put forth by the team responsible for putting together the NOLA Gateway facility in which River Consulting played an integral part,” shared Paul Morton. “Their ability to think outside the box and implement a cost effective strategy truly helped shape the success of the project.”

River Consulting provided the design for the new floating dock at the terminal, providing preliminary and final design engineering and construction management services. River Consulting’s team of marine consultants worked with the client to provide a new transfer dock that met the client’s operational needs while remaining within budget and reducing the original concept capital costs. As a result of River Consulting’s design approach, while many other facility dock operations were impacted during the spring due to excessively high water levels, the successful design allowed for continued operation at the client’s terminal.

“We are extremely honored to have contributed to enhancing the St. James terminal operations and to be recognized by this prestigious group,” remarked Gregory DiFrank, P.E. River Consulting president. “River Consulting is proud to have industry experts who can provide world-class solutions to meet our client’s needs and keep their facilities operating under the most demanding conditions.”

The IBJ Awards are dedicated exclusively to the maritime dry bulk industry and recognize achievements by individuals and companies improving and enhancing efficiency, safety and environment protection in the global market. The finalists were narrowed down by the independent judging panel from more than 100 individual category entries from 28 different countries and all 5 continents. Visit www.ibj-online.com/ibj_awards/ for more information.

River Consulting is a leading mid-major A/E to global energy, food, process and industrial clients, delivering multidiscipline engineering and project management solutions for major

capital projects and facility and process expansions. The firm’s experience spans more than 30 years and 57 countries with offices in Columbus, Ohio; New Orleans, La.; and Pittsburgh, Pa. River Consulting is recognized nationally by Engineering News-Record as a Top 500 design firm. Visit riverconsulting.com for more information.

Louisiana Economic Development News

Louisiana's Business Climate Earns Highest Ranking Ever

Site Selection magazine has ranked Louisiana the No. 7 business climate in the country - the state's highest ranking ever. The overall business climate ranking improves Louisiana's standing from No. 9 in 2010 and No. 25 in 2009. In the 6 categories used to generate the business climate rankings, Louisiana ranked No. 1 in the U.S. for per capita project expansions, No. 1 in competitiveness, and No. 3 in new projects attracted in 2011. *Site Selection*, the official publication of the Industrial Asset Management Council, is distributed to more than 44,000 executives responsible for site selection and facility planning decisions around the world.

Legal News



Recent Cases of Interest

On November 4, 2011 the U.S. District Court in West Virginia issued its opinion as to whether an employee of a coal transloading facility who was injured at work was a seaman or longshoreman. Transloading involves loading, unloading and blending coal.

The coal barges were unloaded through use of a transloader barge. The barge is moored in the river and mounted with an excavator and a large hopper. On the date of his accident plaintiff was working on the transloader barge as an excavator operator. After unloading as much coal as possible from the stern of a coal barge, he stepped out of the excavator cabin and onto a

platform in order to peer down into the stern of the coal barge to determine if he had reached the bottom. While standing on the platform he slipped, fell, landed on the deck of the transloader barge and rolled into the river. He brought suit under the Jones Act claiming to be a seaman, and general maritime law for damages arising from his injuries.

His employer moved to dismiss his lawsuit on the grounds that he was not a seaman, but instead a longshoreman. The plaintiff sued as a seaman on the theory that he could be a seaman with regard to the customer barges that his employer serviced or as a member of the crew of the transloader barge on which he worked. The Court found that the coal barges owned by the customers and under his employer's limited control for the purpose of loading and unloading did not constitute an identifiable fleet. Consequently, he could not qualify as a seaman or a member of the crew of any of those barges.

However, the Court found that plaintiff's relationship to the transloader barge was sufficient to state a claim under the Jones Act. The Court found that recent jurisprudence has defined a vessel to include "every description of watercraft or other artificial contrivance used or capable of being used as a means for transportation on water." The Court recognized the distinction between watercraft temporarily stationed in a particular location and those permanently affixed to shore. The Court emphasized this distinction stating, "A watercraft is not capable of being used for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement.

The Court found that the transloader barge had no living quarters, no means of self propulsion, and was accessed by a steel framed walkway. Its operations were powered by electricity supplied via an onshore power cable and it had been moored for eleven months at the time of the accident.

However, the Court found that eleven months was a "relatively brief" period of time and not long enough to conclude that the barge had been removed from navigation. The Court noted that the barge could be removed from this location without great difficulty were it necessary for maintenance of the barge, the hopper, the

excavator or for some other business purpose. In summary, the Court concluded that at the time of the accident future use of the transloader barge in transportation was a practical, and not merely theoretical, possibility. Thus, plaintiff was allowed to pursue his claims as a Jones Act seaman. *Smith v. Kanawha River Terminals, LLC*, 2011 WL5358832.

On November 17, 2011 the Fourth Circuit Court of Appeals reached a decision in *Dise v. Express Marine, Inc.* There, the plaintiff filed a maritime lawsuit to recover for injuries he sustained when a skiff piloted by him and owned by his employer collided with a bridge piling, and as a result of allegedly negligent medical treatment he received at the University of South Alabama Medical Center. Plaintiff asserted claims for negligence under the Jones Act and unseaworthiness of the skiff.

His employer counter claimed to recover for property damage to his skiff. The employer moved for summary judgment to dismiss plaintiff's Jones Act and unseaworthiness claims and for judgment on its property damage counter claim. The District Court granted the employer's Motions and the Court of Appeals affirmed the judgment. The plaintiff was ordered to reimburse his employer the cost of repairs in the amount of \$3,254.

The plaintiff argued that his employer was vicariously liable for the allegedly negligent provision of medical care following the accident. The appellate court affirmed the District Court's conclusion that in order to be vicariously liable for the medical malpractice of a treating physician, the ship owner must take some affirmative act in selecting or engaging the physician. Here, however, the plaintiff failed to present evidence of an affirmative act on the part of his employer sufficient to give rise to his agency relationship with the medical providers.

As concerns the ruling that the plaintiff was required to reimburse his employer the cost of repairs to the skiff that he wrecked, plaintiff argued that the Jones Act bars the employer from bringing counter claims against employee seaman. The trial court recognized that the Jones Act arose out of the Federal Employers Liability Act which does not preclude such a counter claim by a railroad employer. Thus, the trial court found that the Jones Act does not

prevent the ship owner employer from bringing a similar counter claim.

The Court noted that FELA neither explicitly nor implicitly prohibited the filing of a counter claim by a railroad in a FELA case to cover property damages sustained by reason of the sole negligence of the plaintiff/employee. The appellate court held that given the particular facts of this case the employer's counter claim for damages to its skiff was not an act to escape liability from the claims brought by plaintiff, and thus allowed it. However, the Court stated, "We leave for another day, however, the questions of whether property damage counter claim by ship owners-employers against negligent seamen – employees are actionable in every Jones Act case." *Dise v. Express Marine, Inc.*, 2011 WL588913.



BY WILTON E. BLAND, PARTNER
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America's Wetlands



"Turning the Tide," will air statewide on Louisiana Public Broadcasting's network of stations on December 27, at 7:00 pm and on Friday, December 30 at 9:00 pm (**WLPB** - Baton Rouge, **LPB** - Lafayette, **KLTM-DT** - Monroe, **KLTS-DT** - Shreveport, **KLPA-DT** - Alexandria, **KLTL-DT** - Lake Charles).

New Orleans' PBS stations will broadcast the program in January with **WLAE** airing the program on New Year's Day night, January 1st at 8:30 pm. **WYES** will broadcast the program on January 8 at 7 pm and again on January 9th at 10 pm.

Turning the Tide is a 90-minute, high-definition documentary for regional and national broadcast that presents an in-depth examination of proposed solutions, proven strategies and bold engineering that can "turn the tide" on the national crisis unfolding at the mouth of America's largest and most productive river

delta. **LPB** tracks down the world's foremost authorities to demystify the complex challenges facing Louisiana's coast, revealing new discoveries that challenge conventional thinking and may change the course of the coast's future.

Turning the Tide will present the first truly comprehensive and objective look at the strategies being considered, allowing for true scientific debate with an examination of what is already working, what has not worked and what the best science suggests could work. The program also provides a sobering reality check on what the state of Louisiana could look like if scientific and public consensus isn't soon reached. If we don't do anything, 10,000 to 13,000 square kilometers of land will be lost by the year 2100.

What is happening at the mouth of the Mississippi River Delta and Louisiana's coastal marshes and wetlands constitutes a national emergency and requires immediate national resolve to "turn the tide" on the problem. Louisiana's wetlands cover 9,000 square miles, stretching 300 miles from east to west, and averaging 30 miles inland. Each year 20-25 square miles of coastline is lost to open water, placing critical resources in jeopardy. In recent years, major hurricanes, the costliest in American history, have demonstrated just how vulnerable this region has become due in large part to this degraded landscape. **Turning the Tide** will show audiences what is at stake in terms of crucial wetland ecosystems, Gulf seafood populations, North American migratory bird and waterfowl populations, the nation's energy infrastructure and national security, interior navigation and water transport for American produce and goods, and a totally unique American culture.

Turning the Tide examines multiple viable strategies for addressing coastal erosion including river diversions and sediment piping on large and small scales and land management techniques demonstrating that even private land owners can make a difference. Learn about the plans, the controversies and new discoveries that are turning much of the way we understand the problem on its head. Explore the more systemic issues like comprehensive river and sediment management and water quality throughout the entire Mississippi River watershed, and how they impact you. Discover bold and innovative strategies being employed in other parts of the

world that could be adapted to significantly benefit this region.

Can we begin **Turning the Tide**? Watch this powerful documentary and walk away with invaluable insight from the people who know the lay of the land, those who live off it, and those working tirelessly to save it. It is a race against time.

MARK YOUR CALENDARS

December 15, 2011, PAL Monthly Meeting, 10AM, Natchitoches, LA,

January 5th, 2012, PAL Monthly Meeting, 10AM, Baton Rouge

March 7-9, 2012, PAL Annual Conference, Lake Charles, LA



Happy Holidays!

