

MACOSH EXECUTIVE SUMMARY

Washington, D.C.

October 15 and 16, 2003

The first meeting of the newly re-chartered Maritime Advisory Committee on Safety and Health (MACOSH) met in Washington, D.C. on October 15 and 16, 2003.

In attendance were members of the Committee: MACOSH Chairperson James Thornton, Northrop Grumman Newport News Shipyard; Dan Nadeau, Bath Iron Works; James Burgin, National Maritime Safety Association, Cooper/T. Smith Stevedoring Co., Inc.; Captain John McNeill, Pacific Maritime Association; Captain Teresa Preston, Atlantic Marine/Alabama Shipyard; Charles Thompson, III, Virginia International Terminals, Stephen Hudock, NIOSH; Captain Keith Cameron, U.S. Coast Guard; Pete Schmidt, State of Washington; Michael Flynn, International Association of Machinists & Aerospace Workers; Chico McGill, International Brotherhood of Electrical Workers, Local #733; Mike Freese, International Longshore and Warehouse Union; and Earnest Whelan, International Union of Operating Engineers Local 25. Others present included Jim Maddux as the Designated Federal Official and Susan Sherman, Committee Counsel.

Steven F. Witt, Director of the Directorate of Standards and Guidance gave the introductory remarks welcoming the Committee. Steve then introduced Gary Visscher as the Deputy Assistant Secretary with responsibility for Standards and Guidance and overall responsibility for this committee.

Mr. Visscher welcomed returning members and new members to the Committee on behalf of Secretary of Labor Elaine Chao and thanked Jim Thornton for agreeing to chair the Committee. Mr. Visscher noted that MACOSH has a long history of being a very valuable provider of expertise to OSHA and expects that will continue to be the trademark of this committee. Reference was made to OSHA's strategic plan which commits OSHA to focusing its resources on achieving three over-arching goals: reducing occupational hazards through direct interventions, promoting a safety and health culture through compliance assistance, cooperative programs, strong leadership, and lastly maximizing OSHA's effectiveness and efficiency by strengthening our own internal capabilities.

Chairman Thornton reviewed the committee 2-year charter: The objectives and scope of the Advisory Committee charter for MACOSH are "to obtain advice for the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) from a broad range of representatives from the maritime industry on all matters relevant to the safety and health of workers in that sector. Jim Thornton also expressed the importance of all committee members to attend and participate.

Jim Maddux continued reiterating that in the past there were two workgroups, one dealing with shipyard issues and one dealing longshore issues. Now that the Standards

Directorates have been combined through the reorganization and with the additional duty of developing guidance products, workgroups should be formed that are more issue-specific and that would cross both industries. Jim emphasized that a number of guidance products are in various phases of development.

Jim reviewed the standards rulemaking process mentioning the OSH Act, the Administrative Procedures Act, the Regulatory Flexibility Act, the Small Business Relief and Enforcement Fairness Act (SBREFA), the Paperwork Reduction Act, and the new Data Quality Act. He stated that the Agency must get through all of the legal requirements, the policy requirements, the economic requirements, and proceed through the clearance process to publish rules. When rules are in a pre-proposal stage, the Committee and others can give advice to OSHA on a number of topics that may involve a rulemaking. But once a proposal is issued, then the time for advice is past and the proposal is now in the rulemaking process. At that point, Exhibit 1, Directorate of Standards and Guidance Activity Affecting the Maritime Industry During FY 2004 was used.

Other items discussed included Maritime Guidance Projects that are just getting started such as abrasive blasting and fall protection on ship pedestals on container cargo vessels.

General Industry guidance products potentially affecting the maritime industry:

- Assigned Protection Factors for Respirators. The docket just closed. Hearings will be held in January 2004 with 10 or 11 groups making oral arguments at a hearing.
- Respirator Fit Testing closed about a month ago.
- Subpart D, Walking and Working Surfaces had a reopening of the record recently. We had several hundred comments into that docket and we're taking a look at those comments and trying to figure out how to proceed with that very large issue that encompasses a tremendous amount of material.
- The Standards Improvement Project is moving towards a final rule.
- Hazcom has to do with global harmonizing for hazard communications and trying to improve the quality of the Material Safety Data Sheets.
- NHTSA published a booklet that tells people how to implement a motor vehicle safety program for their workforce, both on-the-job and off-the-job driving. Working with them to publish a new, updated version of that booklet that will be useful for people in a lot of industries.
- Personal Protective Equipment (PPE) Disaster Situations is related to homeland security area on how to deal with respirators and things like that in the case of an unfortunate event.
- Selection of Respirator Change-Out Model is trying to provide some advice on dealing with respirators.
- A PELs guidance document on three chemicals is being developed. Expect fairly technical pieces that talk about all of the different exposure levels that are out there, including OSHA PEL, the NIOSH RELS, and the German MAKs.
- Explosive Dust guidance to raise awareness of people that are doing work in a number of areas, that the things that they're doing can inadvertently create

explosive dust and the need to control that dust to avoid an explosion. In the clearance process and could be out in the next month or two.

- Indoor Air Quality.

The Committee raised some questions about this update. A suggestion was made that for any of the regulatory matters, an OSHA subject expert could provide more detail to the Committee upon request.

At this point, Committee members were canvassed to contribute a subject or issue for inclusion on a worklist from which the Committee could prioritize.

A suggestion was made to revisit a health standard on diesel emissions and look into radiation exposure such as in longshoring with the use of Vehicle And Cargo Inspection System (VACIS). Jim Maddux did mention that there is a radiation item on the regulatory agenda to look at whether or not OSHA needs to update the 1910 standard on radiation. The question on Motor Vehicle Safety was clarified that the primary emphasis on this guidance product is more for passenger vehicles, cars and pick-up trucks for all of the industries. Chico McGill was talking about diesel exhaust emissions, not to be confused with diesel TLDs.

A labor representative suggested that for future meetings, old MACOSH and old SESAC issues and projects be reviewed.

Later, the subject of one committee came up again and a suggestion was made that it be a two-thirds majority. If anyone wishes to express a particular opinion, whether in favor or against, it would be on the record and represent his or her position on that. Everyone's opinion counts and ought to be heard. Much discussion followed on the topic of workgroups, working on smaller projects, revisiting the Shipyard Employment Standards Advisory Committee (SESAC) recommendations, looking at best-practices being used in the industry, and prioritizing. A list was developed by everyone on the Committee and a few items were added to the list by the public in attendance.

The list was then broken down into three groups: Cross-Cut; Longshoring; or Shipyards.

A MACOSH group photo was taken.

A presentation was made by Vanessa Welch and Greg Sentkoski, Fiscal Officer for OSHA, on basic background on government travel. Vanessa will be your contact person at (202) 693-2080. Please feel free to call for assistance.

At this time, Jim Maddux began with a Standards and Guidance update.

- Subpart P, Fire Protection, is a longstanding work that went through the negotiated rulemaking process. The Fire Protection proposal was published fairly true to the work of the negotiated rulemaking committee. It went through a comment period but there were no requests for hearings. We are now working towards publishing a final rule and are not accepting public input at this stage.

The Fire Protection for Shipyard Employment rule is almost ready to go into the clearance process with the Solicitor's Office and our own political leadership.

- Subpart F, General Working Conditions, is at the pre-proposal stage. This subpart includes a variety of different subject matters, everything from sanitation and housekeeping to lockout/tagout, and probably some motor vehicle safety rules. We have a draft document but there are a few policy issues that are going to have to be bumped up inside of the organization. In terms of the committee, there are no legal prohibitions in terms of the letter of the law with going to the committee and seeking advice on this rule. However, the regulatory agenda calls for this rule to be published in just a couple of months. Jim suggested that OSHA continue with this project. If for some reason it gets derailed during the regulatory process, then we could consider bringing it back to the committee. Chico McGill asked for a copy of what's currently sitting there, not for committee action, but just to review. Jim promised to look into that and confer with Steve Witt and Gary Visscher.

David O'Connor provided a handout and the following overview

- Hexavalent Chromium is a big priority at the moment. Exposure has been associated with a number of very serious health effects, most prominently lung cancer. It has also been associated with asthma, allergic reaction, dermatitis, skin ulceration, and inflammation and ulceration of the nasal membranes. In the Maritime industries, applications that could result in exposure to hexavalent chromium would include spray application of paints and coatings that contain hexavalent chromium; welding, cutting and torch burning of stainless or materials that are coated with chromium 6-containing products. The stainless steel itself does not contain hexavalent chromium, it's created by certain processes, such as welding or abrasive blasting. The Agency has been working on a hexavalent chromium rulemaking for some time and a proposal has not been issued because of other priorities. That resulted in lawsuits against the Agency. The court has order OSHA to issue a proposal by October 4, 2004 followed by a 90-day comment period and a final rule by January 18, 2006. A SBREFA process will begin in December 2003 or January 2004. Informal public hearings could be in January or February 2005. Information from the maritime industry could include worker exposures, what types of controls are being used, and when the time comes, look at what we're proposing to see if it is workable. David later informed the Committee that the maritime industry was included in two of the site visits conducted by NIOSH, one in shipbuilding and repair and the other a ship demolition facility. OSHA staff has visited two shipyards to look at chromium issues. OSHA is also using information developed by the Navy through the University of New Orleans and the Edison Welding Institute. In answer to a question, paints containing chromium are often used on bridges and exposed steel structures.
- The rulemaking on beryllium is a long-term action on the regulatory agenda. Serious health effects that are associated with exposure to beryllium are lung cancer, allergic contact, irritant dermatitis and chronic beryllium disease, or CBD

(an allergic reaction where people are sensitized to beryllium that could cause a chronic inflammation of the lungs.) At present, OSHA is not aware of real great potential for exposures in maritime. No site visits on this issue have been conducted. Shipyard site volunteers were requested to contact David O'Connor. A shipyard Committee member shared views for visiting and including shipyards when collecting data for rulemaking. David shared a 2-page document referred to as Exhibit 2, entitled, "Rulemaking Update, October 15, 2003."

Mike Seymour, Director of the Office of Physical Hazards in the Office of Standards and Guidance followed with an update of rulemaking projects:

- The rulemaking project on Ionizing Radiation is currently working on a Request for Information.
- On the Hearing Conservation in Construction currently conducting site visits and preparing for stakeholder meetings.
- The Standards Improvement Project is in the final rule stage.
- Process Safety Management includes reactive chemicals.

Other responsibilities include guidance products on PELs for chemicals. Recently, we completed a booklet describing controls for perchlorethylene and dry cleaning. And we have a guidance product on Safety and Health Information Bulletin (SHIB) on dust explosions.

Our first ergonomics guideline addressed MSDs in the nursing home environment and was published in March 2003. (Copies were shared). The disclaimer language was pointed out making it clear that the guidelines are advisory in nature and informational in content. The guidelines are not a new standard and do not create any new compliance obligations.

We have two draft guidelines published in August of 2003 for the retail grocery and poultry processing industries. The final grocery store guidelines are expected later this year and the poultry processing guidelines early next year.

Ergonomics guidelines are being developed for the shipyard industry. We are conducting site visits during the information collection phase. The Committee was asked for success stories, what works and what does not work. Need to know what can be accomplished when ergonomics is addressed in the shipyard environment.

Steve Hudock, NIOSH, provided some background. The ergonomics project was started in 1998 after a MACOSH meeting when concerns were raised about ergonomics in shipyards. In fiscal year 1999, NIOSH started the project with some funding from NSRP which later became Maritech. Shipyards were visited in the United States and Japan. The culmination of the project "Compendium of Ergonomic Analyses for Shipyard Work Processes" is at the printers and will be available early next year. In the meantime, a draft is available on the web. After that there are general articles that are out that are actually in press that will address some of these other issues. There's a journal article on STORM (a shipyard Trade Occupation Risk Matrix) that prioritizes where the problem

areas are within the certain trades. That is one of the products that came from the compediuem.

In response to a question, Mike Seymour explained that the NIOSH information has been reviewed by OSHA and anticipates future discussions with NIOSH. Comments from the Committee and the public were encouraged. Another member suggested looking at best practices and flow charts for use in the guidelines.

Loretta Schuman, project officer for the silica standard, with the Directorate of Standards and Guidance presented an overview of the work in progress for a draft silica standard for maritime, general industry, and construction. Silica can cause disabling illnesses or death. Silica can cause silicosis, a lung disease; is associated with autoimmune diseases, and kidney diseases. The draft standard includes a number of provisions, as well as, the permissible exposure limit. The provisions include control methods, exposure assessment, respiratory protection, and protective work clothing, housekeeping and hygiene practices, health screening for employees, information, and training. Site visits were conducted in the maritime industry. OSHA is now in the SBREFA review. As part of this process, the draft standard and other materials along will be in the public docket

Bob Burt followed by reviewing that the SBREFA applies to OSHA and EPA uniquely and when we find that there is a significant impact on a substantial number of small businesses we hold a panel. The panel consists of members from OSHA, SBA Office of Advocacy, and OMB's Office of Information and Regulatory Affairs. A package that explains the kind of rule being considered, preliminary analysis of costs and economic impacts is sent to small entity representatives and the package is placed in the docket. The draft, initial reports provide detailed alternatives in this step of the decision making process.

In response to the question on what defines small employer, the SBA definition for shipyards is 1,000 employees or fewer.

Jim Maddux delivered the update on Subpart S and Maritime Guidance Products. The 1910 Subpart S, Electrical has been updated and simplified. It is in the clearance stage at the departmental level and is moving fairly well towards a proposal. The discussion covered land-side operations, work practices, grounding and bonding in ship building. Comments were encouraged for the comment period as soon as the proposal is published

A best practice was shared by a shipyard on the development of using ground fault detection systems and ground fault systems while onboard ship by going through breakers at web locations.

The Office of Maritime is working on a best practice guidance product for marine hanging staging. A draft copy that has not been put into the clearance process was provided (Exhibit 3 of the transcript.) Individual comments were to be directed to Jim Maddux or Joe Daddura.

Paul Rossi with the Office of Maritime provided the background and update on the vertical tandem lift (VTL) proposal published September 16, 2003. The OSHA proposal allows two containers up to 20 tons, which includes the weight of the containers and cargo inside, connected by semi-automatic twist-locks, which after some certification and testing, become known as lift-locks. The proposal requires that a container crane and only a shore-based container gantry with a working load indicating device be used to lift the VTLs. A pre-lift is required and all lift-locks on a ship that are used for VTLs must lock and unlock in the same manner. The proposal included a requirement for a plan to address speed, tipping hazards and any other kinds of hazards in the terminal. No bulk liquids or solids or hazardous materials are allowed in a container used as a VTL. No platform containers, containers with manual twist-locks, or below-deck containers are allowed. The proposal lists 14 issues for consideration. Comments are encouraged and should be in by December 15. In the vertical tandem lifts (VTL) proposal, written comments and views from individuals as well as groups are encouraged to be sent to the docket for the VTL and if a hearing is requested, then it will be scheduled after the end of the comment period. A copy of the VTL proposal was shared with the Committee.

Numerous questions taken from the members and the public were addressed by Mr. Rossi. For instance, Paul explained that a pre-lift in the proposal means that the crane operator pauses the lift when the initial strain has been taken and the lifting frame wires tensioned in order to assure that all the lift-locks are properly engaged.

Paul's slide presentation was provided in hard copy as Exhibit 4 of the transcript. A concern was raised by a Committee member that throughout the discussions it seemed that OSHA was in a rush to get publications out and that it was too late for the committee to get involved. Jim Maddux agreed that to get the timing just right so that the committee provides feedback on these regulatory projects and OSHA can put it to its best use is a big concern. The discussion also covered that teleconference meetings would not be applicable because the meetings are open to the public.

Mike Freese read a position paper on the VTLs from ILWU for the record and provided a copy to the Court Reporter. The ILWU strongly objects to the proposed regulations and requests a public hearing on VTLs as soon as possible on the West Coast.

Miriam Miller, general counsel/FACA expert provided an overview of advisory committee requirements through the use of a video. Ms. Miller noted that openness was the key. Several points she made were:

- When the government is getting advice, it has to get it in the open. The public has a right to have access to this meeting, to sit and listen to what the Committee is saying. The public doesn't have any entitlement or right of speaking, of being part of the committee, but they do have the right to be in the audience and to listen.
- The Committee is an entity and have to perform as an entity and talk in public.
- She spoke about the role of the Designated Federal Official on the committee as well as the Chairperson's.
- A notice in the Federal Register must be published 15 days in advance.

- Work groups or task forces are an option. The subgroup reports back to the full Committee which advises the Department of Labor.
- Telephone conferences can be held but technically very difficult to include the public and a 15-day notice must be given.
- A charter and a committee can only live for two years from the date it's signed.

Thursday, October 16, 2003

Tom Galassi presented an enforcement update. Tom expressed his and Rich Fairfax's (Director of Enforcement Programs,) commitment of the directorate to this process. The Office of Maritime Enforcement is now a full office in the Directorate of Enforcement Programs. The slides used for the presentation were made available and included as Exhibit 5 of the transcript. Topics discussed included:

- Site Specific Targeting Program released June 16, 2003 covers post offices and maritime establishments in state plan states.
- The enhanced enforcement program was released in September applies to general industry, construction, and the maritime industry. Nursing homes which were in the national emphasis program before are now included. This targeted at employers who give OSHA repeat business and significant business.
- The Agency's Strategic Management Plan (available on the internet). In particular for ship, boat building and repair, OSHA will focus on enforcement, compliance assistance, cooperative programs, and guidelines.
- In April 2002 OSHA developed a strategy and an enforcement plan on how to address ergonomic enforcement. This relies on the general duty clause of the OSHA Act.
- Lead National Emphasis Program
- Nursing Home National Emphasis Program (NEP) has been completed and is now consumed by the Site Specific Targeting Program.
- Shipbreaking NEP only directs enforcement for Navy and MARAD sites.
- A final draft on the Silica NEP.
- In 1999 the memorandum of agreement between the Navy, Defense Logistics Agency, MARAD, EPA and OSHA was established to provide guidance to our state consultation programs to provide assistance to shipbreaking employers.
- Shipyard "tool bag" directive.
- Marine terminals toolshed directive.
- Cargo gear directive.
- Appendix A replaces STD.2 which addressed the application of the 1910 standards to shipyard employment.
- Appendix B, the shipyard interpretations, is in the final stages of processing.
- Cargo Gear handling directive is complete and available to the public for review.
- Final rule effective January 2004 that revises 29 CFR 1960 for federal agencies to conform to the private sector recordkeeping requirements in 1904.
- Discussion of enforcement data.

Tom answered questions on repeat violations for different corporate sites, the triggers for accident frequency for the Site Specific Targeting Program, and training.

Lisa Ramber, Team Leader for the Alliance Program in the Office of Outreach Services and Alliances within the Directorate of Cooperative and State Programs presented an update on the Strategic Partnerships and the Alliance Program.

The strategic partnerships are voluntary, cooperative relationships that are built between groups of employees, employers and employee representatives. They are usually site specific, and include an on-site inspection or review.

The Alliance Programs are voluntary, cooperative agreements but are mainly formed with associations, businesses, or employees. They are not site specific but are focused around three goal areas: training and education; outreach communication; and promoting the national dialogue for worker safety and health with no enforcement component.

Ruth McCully, Director of the Directorate of Science, Technology and Medicine updated the Committee on different types of maritime compliance assistance tools and e-products. A copy of the presentation was labeled Exhibit 6 for the transcript. Thanks were given to Bob Curtis, Debbie Gabry, Christi Dearing and Tom Pope for their assistance. Topics included:

- Maritime Section of the website
- Safety and health topics pages
- Shipyard Employment e-tool
- Safety and health injury prevention sheets (SHIPS)
- Animated video of fatality cases
- A summary of longshoring fatality cases
- Maritime targeted CD-ROM (given to each member)
- OSHA's contact person for this Directorate is Bob Curtis.

Amy Wangdahl is the maritime web officer for the OSHA Internet site. Any updates or changes should go through Amy.

Jim Thornton, Chairperson, passed out the information that was typed from the charts that were developed the day before. (Exhibit 7 of the transcript.) The sheet contained three categories, cross-overs, longshoring, and shipyard activities. After a lengthy discussion, it was decided to break down the list into workgroups. The first person listed is the chairperson for that workgroup.

- **Outreach:** website, SHIPS, mini MACOSH, e-tools, alliance, multi-employer work site.
Members: Theresa Preston, Chico McGill, Dan Nadeau, Jimmy Burgin, and Mike Flynn
Health: AED, PELs, hearing loss, hexavalent chromium, radiation, ergonomics, diesel exhaust, silica, beryllium
Members: Dan Nadeau , Steve Hudock, Mike Flynn, Chico McGill, Ernie Whelan, and Captain McNeil
- **Traffic Safety Work:** powered industrial truck, shipyard and terminal traffic
Members: Jimmy Burgin, Pete Schmidt, Mike Freese, and Chico McGill
- **Container Safety:** Chassis inspections, beam ridings, twin 20s, lashings, and maintenance and repair training
Members: Jimmy Burgin, Keith Cameron, Captain McNeil, Steve Hudock, Terry Preston
- **Safety Culture:** culture change, root cause analysis, statistical measurement, multi-employer issues
Members: Captain McNeil, Dan Nadeau, Steve Hudock, Mike Flynn, Mike Freese, Chico McGill, Ernie Whelan

The public in attendance were encouraged to approach these workgroups and provide information and data.

It was decided that at the next meeting, the work groups conceptually would report to the full committee with what, if any, action the full committee ought to take and a recommendation on each of the issues citing an objective or not. If not, why not.

Some issues for reporting at future meetings included: CSHO mentoring, crane NegReg, follow-up on previous MACOSH and SESAC; hearing loss, VACIS (homeland security), and at a later date: a report on NSRP's ergo and lockout/tagout projects; and a report from Captain McNeil/Mike Freese on NIOSH's diesel emissions project.

After further discussion, when planning for the next meeting, OSHA staff and the workgroup will develop an agenda and decide whether a report would be needed, keep the subject for a future meeting, or what action to take in between.