

NATIONAL MARITIME SAFETY ASSOCIATION, INC.

OFFICERS

E. Walter Egee
President

Dave Adam
First Vice President

Joseph C. Curto
Second Vice President

Nick Jumonville
Third Vice President

James M. MacDonald
Secretary

George H. Brown
Treasurer

919 - 18th Street, NW
Suite 901
Washington, DC 20006
tel (202) 587-4830
fax (202) 587-4888
www.nmsa.us



Dedicated to Maritime Safety & Health

EXECUTIVE DIRECTOR

Charles T. Carroll, Jr.
Carroll & Froelich, PLLC
chuck@cflaw.us

GENERAL COUNSEL

F. Edwin Froelich
Carroll & Froelich, PLLC
win@cflaw.us

TECHNICAL COMMITTEE

Ken Killough
Chairman

NMSA News Bulletin . . . 01/21/2010

SAVE THE DATE

2010 NMSA ANNUAL MEETING

June 23-25, 2010

Windsor Court Hotel

New Orleans, LA

Tentative Schedule

Wed., June 23	All Day TC Meeting Afternoon Board Meeting Evening Reception - World War II Museum
Thur., June 24	All Day General Meeting Evening Reception/Dinner
Fri., June 25	Morning General Meeting

Registration Forms will be emailed by mid-February.

- **NMSA v. OSHA: Briefing Schedule Agreed to in NMSA's Challenge to the VTL Rule**—As noted in last month's News Bulletin, NMSA's opening brief was filed in November. The parties to the case have agreed upon a briefing schedule. The brief from OSHA/Department of Justice is due on January 25, 2010, and the brief from the intervenor, the ILWU, is due on February 22, 2010. Subsequently, the NMSA reply brief will be due on March 22, 2010, and final briefs will be due on April 12, 2010. Oral argument will be scheduled once all briefs have been filed. As we go to press, we understand that OSHA/Department of Justice have requested an extension of time until February 16th for the filing of their brief. If the Court grants that request, there will be a domino effect on the due dates of the rest of the briefs.
- **OSHA Assistant Secretary**—Dr. David Michaels' nomination was approved by the Senate on December 3, 2009. He began his tenure at OSHA on December 9, 2009, and attended the recent MACOSH meeting.
- **Assistant Secretary Michaels' Speech "Making Green Jobs Safe"**—Wasting no time, in a speech in mid-December to the NIOSH Going Green Workshop, Secretary Michaels enunciated a series of five "Green Reform Principles," stating that "green jobs cannot be good jobs unless they are safe jobs." The first principle is that employers and workers should come together to assess and abate hazards. The second involves chemical safety. The third principle is "Prevention through Design," a fundamental change that would integrate safety efficiently and thoroughly. The Secretary questions retrofitting "hazardous industries to make them safer when we have the ability and opportunity to begin fresh and make work safe from start to finish." The fourth principle involves OSHA moving ahead on rulemaking for urgently needed standards, obtaining the input of scientists, academics, and workers, as well as progressives in the business community.

MEMBERS Pacific Maritime Association · New York Shipping Association · Boston Shipping Association · United States Maritime Alliance
Hampton Roads Shipping Association · Mobile Steamship Association · South Carolina Stevedores Association · West Gulf Maritime Association
Georgia Stevedore Association · Southeast Florida Employers Port Association · Midgulf Association of Stevedores · Steamship Trade Association of Baltimore
Ports of the Delaware River Marine Trade Association · British Columbia Maritime Employers Association · Maritime Employers Association (Montreal)



The fifth principle is “enhancing workers’ voice in...workplace safety.”

- **OSHA Regulatory Priorities**—Among its list of Fall 2009 regulatory priorities, OSHA includes a revision to its recordkeeping requirements to “restore a column in the OSHA 300 Injury and Illness Log that employers will check when recording work-related musculoskeletal disorders (MSDs). OSHA expects to issue a proposed rule on this issue in January 2010. Employers are questioning whether the reinstatement of this column in the Injury and Illness Log is a prelude to, and a data collection for, *another attempt to issue an ergonomics rule*.

OSHA also expects to issue a rule in March 2010 to update its rules “covering slip, trip and fall hazards and establish requirements for personal fall protection systems.”

Finally, last September 30th, OSHA published a [proposed rule](#) that is intended to conform OSHA’s own Hazard Communication Standard with the United Nation’s (UN) Globally Harmonized System of Classification and Labeling of Chemicals. The proposal would “include more specific requirements for hazard classification, as well as standardized label components which will provide consistent information and definitions for hazardous chemicals and a standard approach to conveying information on material safety data sheets.” In the December 29, 2009 *Federal Register*, OSHA announced a [schedule of informal public hearings](#) on this issue to take place on March 2, 2010 in Washington, DC, March 31st in Pittsburgh, PA, and on April 13th in Los Angeles, CA.

- **Coast Guard Request for Comments on Flexible Strapping Systems**—In the *Federal Register* of January 8, 2010, the Coast Guard (CG) published a [Notice of Request for Comments](#) “to determine if a standardized approval or certification process or improved performance criteria for flexible strapping securing systems is needed.” The CG states that damage and shifting of cargo has “purportedly occurred” in cargo units where cargo is secured with flexible strapping, leading to concerns that some flexible strapping systems “may not adequately secure cargo.” Comments should be submitted on or before March 9, 2010.
- **MACOSH Meeting Held**—The Maritime Advisory Committee on Occupational Safety and Health (MACOSH) held its most recent meeting January 19-20, 2010. Dr. David Michaels, Assistant Secretary of Labor for OSHA, attended the meeting and announced that he will be rechartering MACOSH and expects meetings to continue to be held this year. While attending the meeting, Marc MacDonald and Ken Killough invited Dr. Michaels to attend the 2010 NMSA Annual Meeting in New Orleans, LA, and a written invitation has now been extended.
- **Occupational Safety & Health Review Commission (OSHRC) Issues Important Decision on Employer Responsibility in [Secretary of Labor v. Burford’s Tree, Inc.](#)**—On January 8, 2010, OSHRC reversed an administrative law judge’s (ALJ) decision that an employer could not be fined by OSHA if an employee failed to wear a **seatbelt**, despite company policy to do so, because of his own “preventable misconduct.” Instead, OSHRC affirmed the \$7,000 fine against the company, citing the fact that the employee’s supervisor did not inspect the seatbelt to ensure it was in working condition (which it was not) and that neither the company’s general foreman nor its safety director followed up on the supervisor’s written reports of inspection. Burford’s Tree, Inc. argued that employees know that they will be disciplined “if they violated work rules.” However, the OSHRC decision argues that an employer cannot rely on its employees to report that seatbelt equipment does not work. A company must enforce its own rules.

###