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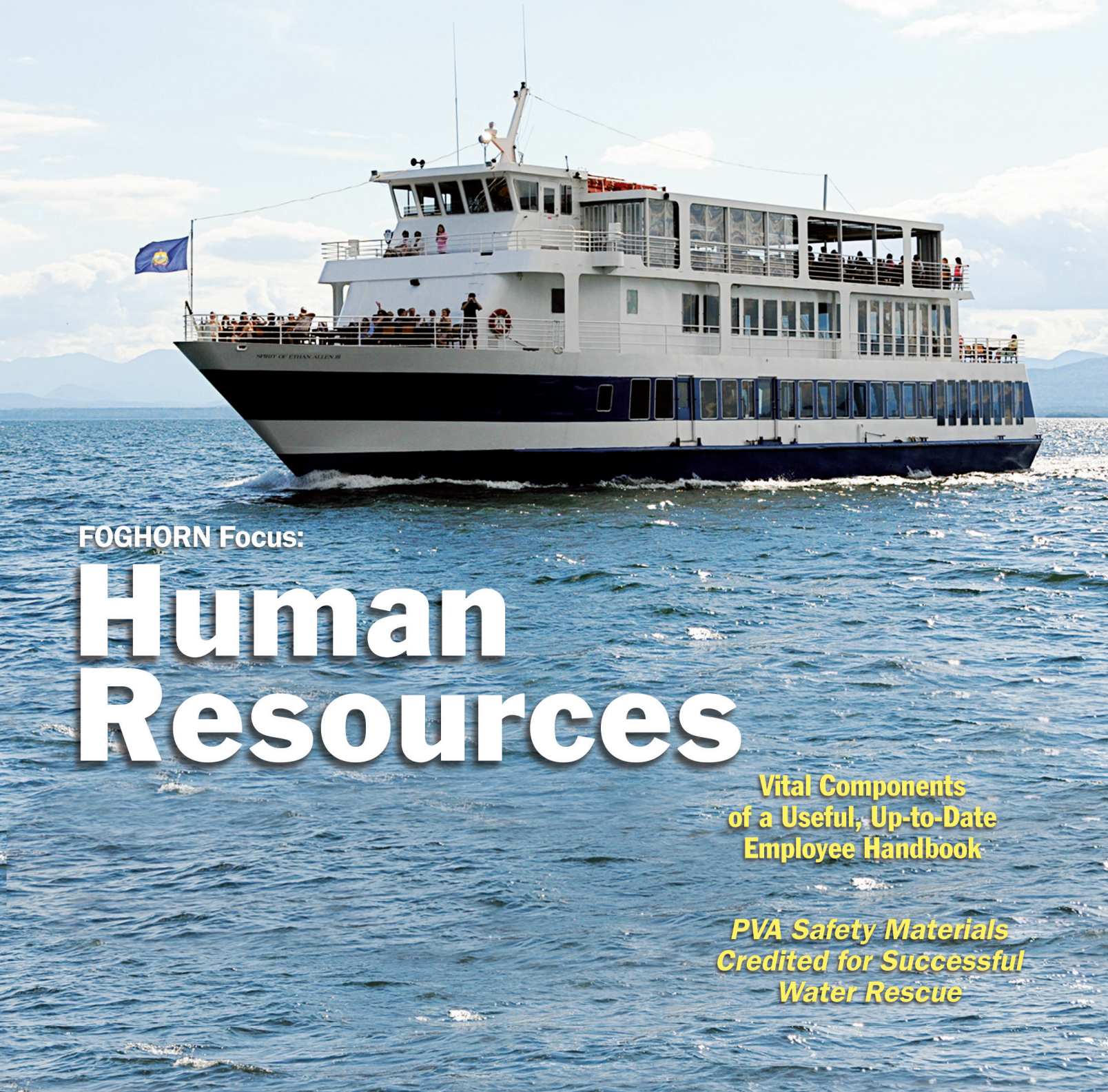

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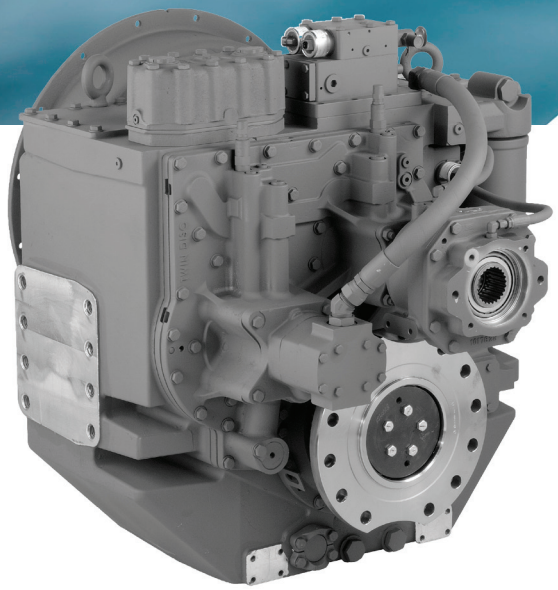

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Passenger Vessel Association

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About the Cover

Green Mountain Boat Line, Burlington, VT, operates the *Spirit of Ethan Allen III* on Lake Champlain. Built by Chesapeake Shipbuilding, the captain and crew of the vessel were successful in the rescue of three teens last summer. See the story on page 22. Photo credit: Green Mountain Boat Line.

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Drug Testing Success and Emerging Questions

Terri Bernstein

I wanted to sit down and ramble off an interesting soliloquy about my ever-failing crusade to keep my car clean, my beautiful daughter Emma happy, or the challenges of requesting vacation days in a family business. Since the "Powers that Be" at FOGHORN would promptly make an immediate and stern phone call shortly after my submission, I decided to stay within the monthly theme of Human Resources.

I polled my staff about potential topics on this subject and was quite surprised about the answers that I received. To me, this was a pin-less hand grenade thrown into a 50-gallon drum of gasoline leading to one certain outcome, or in this case, one certain answer. The staff's answer has to be hiring, correct? With the seasonality that the majority of our industry must deal with, is there a more critical component than hiring the perfect staff to propel your business to a successful outcome? I sure didn't think so. It seems my staff knew the grenade was a dud.

Drug testing. That's right...Drug testing is what they thought was the most pertinent topic. To ensure I kept my staff thinking I am the smartest person in the room, I agreed.

The Department of Transportation (DOT) and the U.S. Coast Guard have required drug tests in the maritime and transportation industries for about 25 years. In our company's history, we have had very few instances or problems pertaining to our drug-testing program. We have had a couple dilutions, one or two random test positives, and a few reasonable cause tests since we began the program. At the time of the DOT program's inception, over 10 percent nationally tested positive for illicit drugs. By 1998, only five percent of pre-employment tests were failed and that number dropped to just two percent for those in random drug-testing programs. The passenger vessel industry has performed exceedingly well, which recently prompted the Coast Guard to reduce the random testing required rate from 50 percent to 25 percent. This was a big objective of PVA's because it recognizes our management practices and reduces costs for members. It also goes without saying, that the program has made our roads, waterways, and skies a much safer place, but we live in an ever-changing world and there is still more work to be done.

I gave the opening speech at the Inland Waterways Conference in March in New Orleans. I touched on the subject of drug testing during my speech and was later approached with some difficult, yet pertinent, questions and concerns. The questions centered around a group that I will call the "other drugs." Currently, the DOT requires testing for marijuana, cocaine, opiates, amphetamines, and PCP. While this list encompasses the majority of recreational drugs, what do we do about those that fall outside these categories? What do we do if we suspect an employee appears to be under influence only to learn their subsequent DOT drug test came back negative? Thankfully, we have not had to deal with this situation up to this point, but we absolutely need to be prepared for it in the future.

Some operations have taken the initiative to administer two drug tests in order to test for all substances that could have a negative effect on their operation including the "other drugs." This sounds like an obvious solution to our problem--until you consider the cost involved. My company currently pays $44.00 per DOT drug test which tests for the standard drugs I previously listed. This is for every pre-employment, random, or reasonable cause test that is administered. We are not a large operation but do employ around 100 seasonal employees every year. While my company only spends around $1,100 a year on testing, it is feasible that larger operations spend much more. Nonetheless, this may be an issue that will have to deal with in the future.

Another big topic in drug testing is the continued legislating for the legalization of marijuana. While only two states currently allow the recreational use of marijuana, more and more whispers are being heard about other states following their lead. With the economic condition some of our states are in, the amount of potential tax dollars may start speaking louder. A positive drug test cannot determine how recently a person used the drug. It makes no distinction between you using the drug the previous night or 10 days prior. It simply tests for low levels of THC resulting in a positive or a negative result. A growing number of employees in the legalized states believe that what they do on their own time is their own business and they should not be reprimanded or terminated for something they do on their own time. The fact is, we operate under a federal law that requires drug testing. Since marijuana is a federally banned substance, it

LETTER FROM THE PRESIDENT, CONTINUED ON PAGE 30

A Very Tragic TWIC Lapse

John Groundwater

An unfortunate security breach occurred at the Norfolk Naval Station last month that resulted in the fatal shooting of a sailor aboard the destroyer *Mahan*. Shockingly, the alleged shooter was a civilian truck driver who gained access to the naval base using his Transportation Worker Identification Credential (TWIC). According to media sources, he had also been previously convicted of drug possession and voluntary manslaughter. This unfortunate incident underscores the overall inefficiency of the TWIC program.

Recently, in Coast Guard hearings and comments to the federal docket, PVA has emphasized that TWIC and the proposed TWIC readers are ineffective and unnecessary for U.S.-flagged passenger vessels, many of which are small companies. In fact, the Coast Guard, through its own risk-based analysis asserts that passenger vessels of 1,000 passengers or fewer are considered to be low risk and therefore not likely to be involved in a transportation security incident.

Sadly, in the Norfolk Naval Station shooting, the TWIC was used for access control or in other words, it was used as a "flash pass." PVA has consistently maintained that it is entirely inappropriate to use TWIC for access control. In fact, it is clear that the Marine Transportation Security Act (MTSA) established TWIC as a background verification and identification document, not as an access control system.

Unfortunately, many in government have lost sight of this mandate and are taking the extra step of attempting to force the use of TWIC and TWIC readers aboard passenger vessels. TWIC readers should not to be used as access control aboard a vessel or within a facility. Rather, we believe that a high level of security can be achieved through effective security measures that in most cases are already in place.

Through risk assessments and vessel security plans, passenger vessel operators have incorporated wide-ranging security measures that include physical and technological elements as well as operational procedures. Importantly, these plans ensure a heightened state of awareness through the most effective security measure that can be devised—an informed and alert workforce. PVA has additionally contributed to an ever-evolving security culture in the passenger vessel industry through the creation of its Coast Guard-approved Alternative Security Program (ASP).

The passenger vessel industry has historically embraced security as a necessary component of safe vessel and facility operations. Since 9/11, the industry has redoubled its efforts to implement reasonable and effective security to protect passengers and crew. Yet, we have not wavered in our belief that TWIC has delivered very little in terms of security enhancements for our industry.

As you know, TWIC "relief" is only one of quite a few regulatory issues that have been on PVA's regulatory list of priorities. Over the last several months, PVA has filed multiple comments on important issues facing PVA members.

Access Board Accessibility Guidelines

If you will recall, PVA has worked closely with the U.S. Access Board for many years. Recently, PVA submitted comments on the Board's rulemaking on vessel construction guidelines for accessibility for individuals with disabilities. In its comments, PVA addressed the issues of alterations, applicability of the guidelines to ferry vessels that are permitted to carry between 100 and 150 passengers, accessible routes between passenger decks (vertical access), assistive listening systems, and passenger guest rooms on vessels with overnight accommodations.

Marine Casualty Reporting

Earlier this month, PVA and members commented on the Coast Guard's proposed NVIC on Marine Casualty Reporting. As you know, PVA has been advocating for significant change in this program and, as a result, urged the Coast Guard to improve its overall management of the casualty reporting process to achieve consistency and better define what is reportable.

Coast Guard Preemption

There is sometimes confusion about the jurisdiction of federal, state and local laws in regulating passenger vessel operations and many other businesses for that matter. PVA recently submitted comments in support of the Coast Guard's determination that federal authority should preempt state and local laws and thereby establish a more consistent national system of interstate commerce on navigable waters.

Great Lakes and Mississippi River Interbasin Study (GLMRIS)

Last month, PVA submitted comments to the U.S.

LETTER FROM THE EXECUTIVE DIRECTOR, CONTINUED ON PAGE 30

TIME FOR A VESSEL EMPLOYEE HANDBOOK CHECK-UP?

ADD, DELETE AND CLEAN-UP

BY STEVEN E, BERS, ESQ.

Handbooks are living documents; they grow and change with the times and they even require occasional pruning. The handbook of year 2000 is now the functional equivalent of an 8-track tape cassette or black-and-white TV. Technological developments, combined with a decade of changes in social mores and workplace expectations and government dictates, make comprehensive handbook revision a "must" for vessel owners who have not conducted a comprehensive update in years. This article visits some of the additions, deletions and clean-up recommendations for vessel owners' to consider.

HANDBOOK ADDITIONS

Let's start with the additions. Does your handbook address the issue of gay and lesbian rights? Many states (17 as of this writing) now recognize, either by statute or court decision, gay and lesbian unions. Although there is no federal law barring gay/lesbian based discrimination, many states, counties or cities have enacted ordinances prohibiting discrimination based upon an employee's sexual orientation. These new laws create a need for handbooks to be updated to reflect gay/lesbian/bisexual/transgender (GLBT) status among the list of classes protected against discrimination. Your policies, and thus your handbook, need also address the gay/lesbian benefit issues ranging from health benefits to family sick leave and funeral leave benefits. In a jurisdiction subject to laws prohibiting GLBT discrimination, any handbook section addressing sexual harassment should be updated to reflect a prohibition against harassment based upon GLBT status.

Next, a well-developed current handbook must address technology developments; how and when technology can be used. Most notably, in an age in which every deckhand carries a mobile telephone, and in which every employee under the age of 30 has grown up in a culture that accepts constant texting and phone calls, whether on the clock or not, a vessel owner should include in the handbook clear "do's" and

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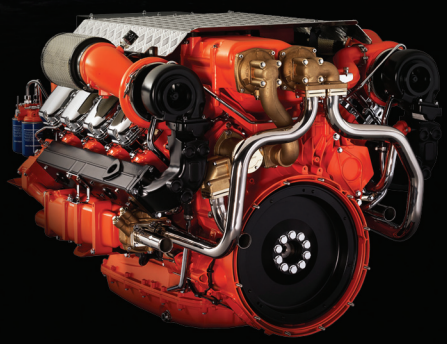

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"don'ts" as to when cell phones can be used. Failure to establish a clear publicized policy can cede control of the workplace to employees who see no problem responding to text messages while passengers wait for service. A technology policy should make clear when texting is, or is not, allowed. The policy may be so shocking to the expectations of younger employees that it may be wise to caution new-hires at the outset, warning them to seek other employment if their need for immediate social accessibility makes compliance impossible.

New technology also requires handbook provisions warning that when using social media, the employee must be clear that he or she is communicating in the capacity of an individual, and not as a representative of the vessel company. While an employee may be limited in certain negative messages about the vessel operations, evolving and debated precedent by the pro-active National Labor Relations Board (NLRB) has made it clear that employees may not be disciplined or limited in the right to discuss among themselves, in the social media, topics relating to the terms and conditions of employment. So too, new laws make clear that retaliation for vessel-related safety complaints aired through the social media are unlawful. Rules as simple, or as seemingly benign, as "Don't say bad things about the company or co-workers" or "Don't say things that reflect negatively on anyone in the company," are being challenged as unlawful employee restrictions by the 2014 NLRB. In short, the law and expectations of the law are so unsettled at present that any vessel company seeking to issue a "social media policy" should only do so after review by an employment attorney, more so than with any other policy in 2014.

If not already included, vessel employer handbooks should include cautions against computer usage which downloads unauthorized material, and which may download viruses, as well as prohibitions against accessing pornographic or other objectionable content. The computer provisions should make clear that employees enjoy no right to privacy in any communications on any company electronic systems. Finally, a complete computer handbook policy makes clear that the employer must be provided with all access words, and "owns" all social media sites and all intellectual property developed during employment.

Other handbook additions that an employer should consider include updating the Family and Medical Leave Act (FMLA) provision to add leave rights related to military exigencies (for those employers covered by FMLA requiring at least 50 employees), and updating the list of protected classes for discrimina-

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tion purposes to include the Federal prohibition against "genetic testing." Also, many localities have now issued laws prohibiting or limiting credit checks and now mandating leaves or leave accumulation for purposes such as family illness, domestic violence or birth or adoption. One particularly emergent category of handbook need is the issuance in many states of "Right to Carry" gun laws which allow employers, by policy, to limit the right of employees to report to work with firearms.

One additional recommendation to vessel owners is updating the section of the handbook dealing with vacations and holidays to make sure these policies are more specific to the unique requirements of the hospitality industry. It is such an important fact that vessel companies are busiest on holidays, that handbooks should shout that employees, especially summer deck hands, should not expect Memorial Day, July 4th or Labor Day off. Also, a vessel-industry specific handbook should stress professional image – that the perception of care and safety is greatly enhanced by the appearance of the crew.

HANDBOOK DELETIONS

A healthy handbook review should also entail some deletions. Often I see handbooks that try to address every eventuality under the sun. The result is a handbook in which the important messages get lost in the white noise. The handbook becomes so unwieldy that nobody uses it. By example, why should a handbook include provisions about I-9 pre-employment forms and applicant testing, when the handbook is not issued to an employee until after the employee is already hired? Likewise, while possibly of interest, why load the handbook with pages

about policies, such as COBRA and unemployment, that are only used after an employee is no longer working for the vessel operation? Can't these be sent to the cutting room floor in the interest of developing a shorter handbook people actually use?

Look for sections that are often included, but not really needed. My favorite useless section, in vogue 10 years ago, are sections on "workplace violence." I have never understood why there needed to be a page-long policy to say "Run like hell, alert other people and call for help." Neither have I heard of people running to get their handbook to read what they should do when they see violence.

More deletion fodder: some handbooks include a page explaining that some employees are full time, some part time and some are "exempt" and some are "non-exempt," and I have always wondered why these pages are included; does

an employee really need to know, or care to know, this information beyond knowing what his or her individual job is?

Another section worthy of critical review, and possible deletion, in fact a section that it can create legal exposure unexpectedly, is one which describes the "disciplinary procedure" with many elaborate steps (oral warning, written warning, suspensions) if the process is not really used, as is often the experience in a small company. A useful exercise for employers with such a policy is to review whether the steps in the policy have ever actually been used as described. Often these elaborate discipline processes are the product of some human resource guilt that the discipline system has to have formal structure, without the offsetting appreciation that in small employment settings, actual discipline seldom follows such a structured pattern. Too often, the failure to follow a procedure (even if the procedure contains the relief valve that the employer may "skip steps") is

used to claim some manner of impropriety in a disciplinary decision, if any step is not followed. To be clear, a disciplinary policy may speak in general terms about using various approaches, in the employer's discretion, to address deficiencies in conduct or performance, but the inclusion of rigid disciplinary progressions should only be used if closely followed.

Another healthy "delete" is ending the practice of ending every section with the sentence, "Failure to comply may result in discipline, up to and including termination." In addition to creating an unnecessarily negative tone, it is implicit that the statement of conduct expectation implies that failed compliance can lead to discipline. There is no reason to add this warning to every directive. Note, however, that if there is a directive, it is important that the directive be included in the conduct/disciplinary section. So, by example, if texting in the workplace is prohibited, be sure it is listed in the conduct/disciplinary section as prohibited conduct and that the list of infractions is inclusive of the rules that have been stated elsewhere in the handbook.

An unlawful term often found in dated handbooks is the directive that employees must keep their salaries confidential. Some even say that an employee may be disciplined for discussing wages, which the employer deems to be "confidential." The National Labor Relations Board has ruled these prohibitions illegal.

The practice of deleting old material requires the discipline to consider that longer documents tend to be read less, and used less by front line employees. Sometimes less is more in highlighting the matters important to the relationship.

HANDBOOK CLEAN-UP

Clean-up – the third exercise in the handbook revision trilogy of add, delete and clean-up – is best described as healthy pruning to create a crisp document. First in the clean-up exercise is the deletion of "fluff," explanations that are either self-apparent, or overly wordy. For example, a vacation policy that begins with a paragraph that explains, "We all need time to relax and spend time with families and loved ones by taking time from our work from time to time. For this reason, appreciating the need for family time, and as a small boat company, vacation time is provided as a benefit to employees so

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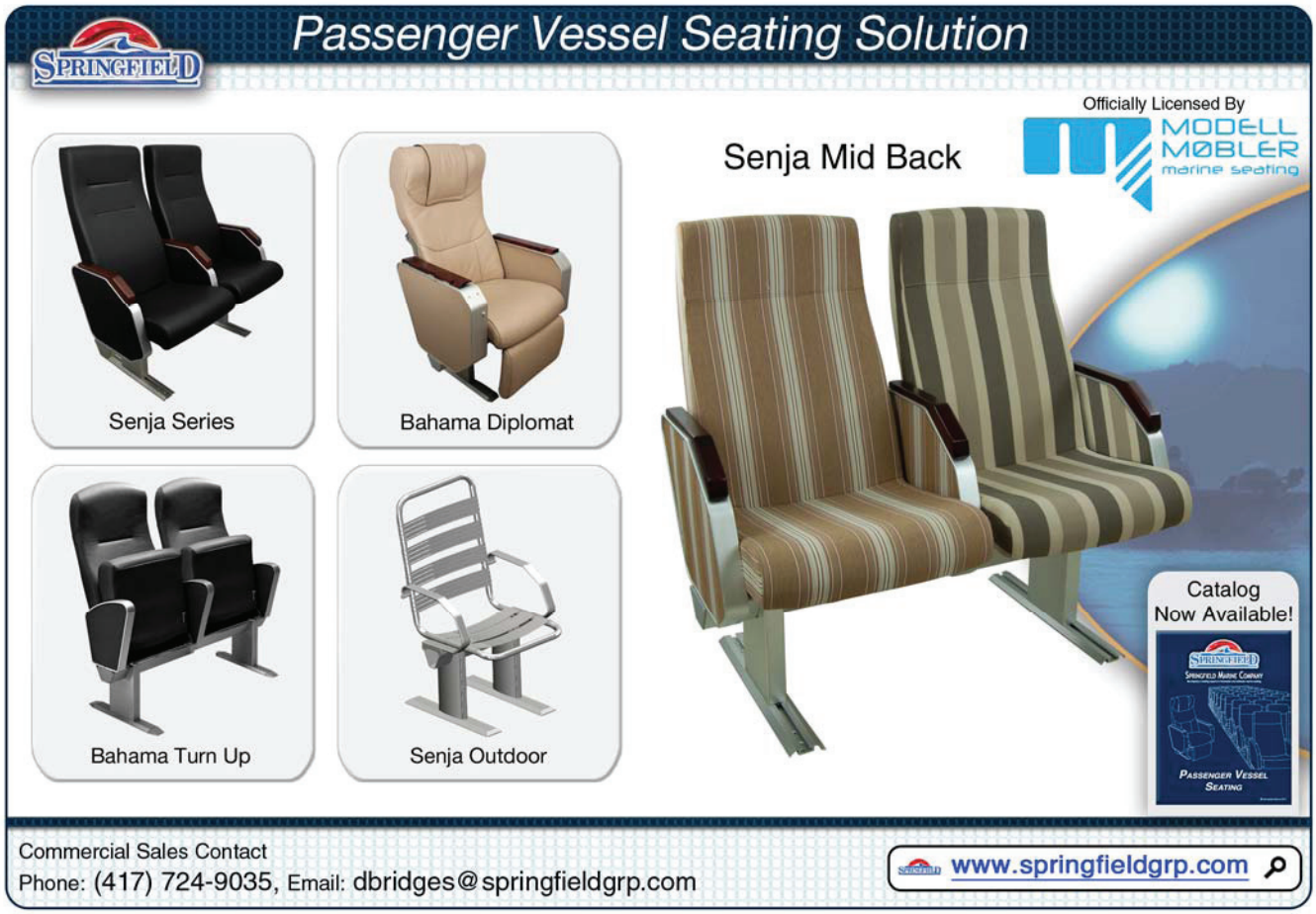
VITAL COMPONENTS OF A USEFUL, UP-TO-DATE EMPLOYEE HANDBOOK

- ADD information on new or emerging issues and how they play into your operation
  Examples:
  - Rights of Gay and Lesbian Employees Policy
  - Cell Phone and Social Media Usage on the Job Policy
  - Family and Medical Leave
  - Vacation and Holiday Policy Update
- DELETE antiquated or confusing text that doesn't offer employee necessary information
  Examples:
  - Pre- and Post-Employment Policies
  - Job Status
  - Potential Legally Problematic Language
  - Rules Against Discussing Compensation
- CLEAN-UP ambiguous sections to make the handbook easy to read, and ensure it is consistent, concise, and flows appropriately

they can spend time with their families and loved ones…" or a safety section that spends two paragraphs explaining that "safety is good and we all need to be safe…" While certainly these messages are good, handbooks should spend only quick reference because people already get it.

Another pruning exercise is to read the handbook in one sitting from front to end, and harmonize the style. Many handbooks were launched years ago, and the updating has consisted of dropping into the original document, handouts from seminars, policies copied from the Internet, and items copied from another employer's handbook. Often, after years of having items cut and pasted in, handbooks become a hodgepodge of long and short section, some writing is casual and some writing is very formal, some policies are in first-person and others are in third-person format, and sometimes even different fonts and margins vary. An oft seen result of failure to harmonize is a hodgepodge of different directives as to titles and people for employees to contact; sections that say, if you have a question, or need approval, go see "HR," or "your human resource representative," the "HR director," the "HR manager," your "manager," your "supervisor," the "operations manager," your "depart-



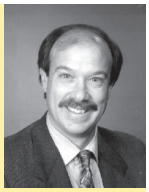
ment manager," your "department head" or just "management." With borrowing content from so many sources, all these titles can appear in the same handbook. In short, no effort was spent harmonizing titles.

When all additions, deletions and clean-up is completed, return to the table of contents and see if the material can be easily found. One table of contents format I recommend follows, believing all policies can usually be fit into one of the following section categories:

- **About our Company /Our Values**
- **Wages, Hours and Schedules**
- **Our Professional Image/ Expectations and Policies**
- **About our Vessel / Caring For Passengers**
- **Employee Benefits**
- **Discipline/Conduct Guide**

CONCLUDING THOUGHT FOR YOUR HANDBOOK PROJECT

So there you have it: add, delete and clean-up. It is often a daunting project that will die on the corner of a vessel owner's desk. The final recommendation is to outsource the project – you run boats and you do it well – do what you do best and appreciate that the preparation of a handbook is a legalistic process benefiting from skills and experience held best by those who create handbooks on a regular basis and don't drive boats. ■



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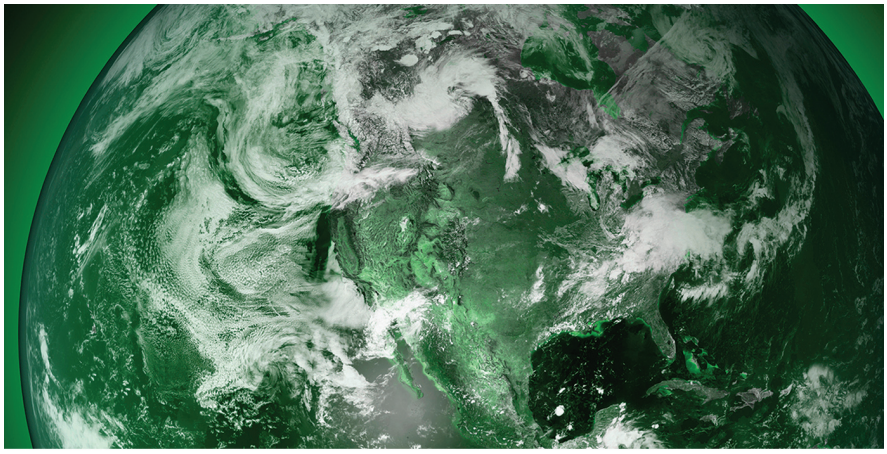

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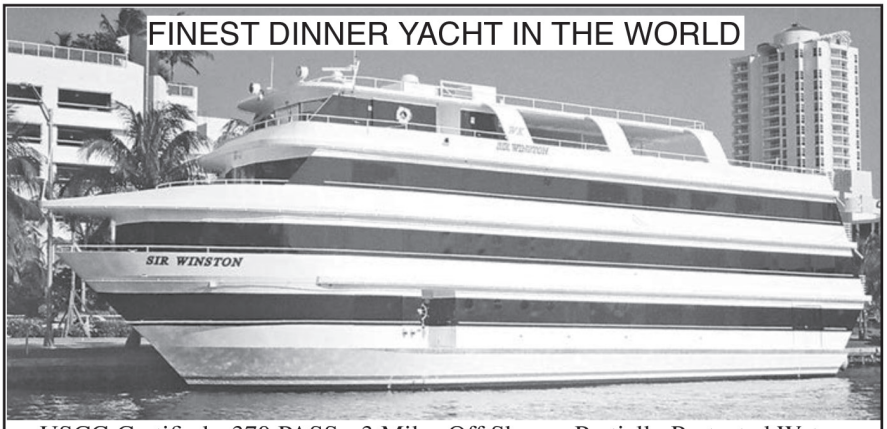

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PVA Regulatory Affairs Consultant

Safety Lessons Learned from a Forgotten Passenger Vessel Accident

Safety is at the forefront of every passenger vessel operation today, and all operators strive toward ensuring that their crews are fully prepared for the unfortunate incidents that can occur on the waterways.

Throughout the last century, vessel operations have become increasingly safer with technological advancements in navigation, life-saving equipment, fire protection, communication systems, and construction materials. Automatic Identification Systems (AIS), global positioning system (GPS), personal flotation devices (PFDs), and mobile phones all make passenger vessel operations safer on the waterways.

At PVA, the staff and a cadre of dedicated volunteers have developed a plethora of materials—guidelines, manuals, DVDs, and videos—to assist in the education, training, and required drills that make our sector among the safest in the maritime community.

The reasons for all these efforts towards a safer maritime environment are obvious, but sometimes it's good to briefly review the past to see how far we've come. Recently, I have had the opportunity to retell the story of my first significant passenger vessel casualty interaction. Even though it occurred more than 40 years ago, I am still surprised that this significant marine accident remains largely forgotten.

From time to time it is advisable to revisit the past to put the present into better focus. In this spirit, what follows is a brief recounting of the collision between *George Prince*, a Louisiana state ferry, and the *Frosta*, a Norwegian tanker, which resulted in the unfortunate deaths of 77 persons.

The abstract of the Marine Board of Investigation summarized the event as follows: "On 20 October 1976 the Norwegian tankship *Frosta* and the American ferry *George Prince* collided at mile 120.8 above Head of Passes (AHP) on the Lower Mississippi River. The *George Prince* was struck on the portside, amidships by the bow of the *Frosta*, pushed up river a short distance and then capsized to starboard throwing the full load of vehicles and pas-

sengers into the water. Seventy-six persons perished; their bodies have been recovered and identified. Eighteen passengers survived. One passenger is missing and presumed dead."

The *George Prince* was an uninspected (not carrying passengers for hire) Louisiana-operated ferry that served the Luling-Destrahn ferry route with another ferry vessel, the *Ollie K. Wilds*. On the morning of October 20, 1976, both ferries were operating and at the time of the casualty the *Ollie K. Wilds* was on the west-to-east leg of the cross-river route. The *George Prince* was on the east-to-west leg. The *Frosta* was upbound with a pilot aboard. Just below the ferry route was a grain elevator on the east bank with a large vessel moored parallel to the bank. Shortly after 6:00 a.m. the pilot on *Frosta* saw the *Ollie K. Wilds* crossing from his port to starboard about a mile upriver. As *Frosta* approached the moored vessel at the grain terminal the *George Prince* appeared from behind the obstructed line of sight, passing from *Frosta*'s starboard to port. There appeared to be risk of collision, but the *Frosta*'s operator had doubts as to *George Prince*'s intentions, thinking it might hold up and pass astern of the *Frosta*. *George Prince* never changed course or slowed, and the *Frosta* attempted to establish a meeting/passing agreement by radio and whistle before belatedly sounding the danger signal and backing down. Both vessels continued their paths into the resultant collision and capsizing of the *George Prince*.

The pilot on the *Frosta* was in direct control of the vessel. His attempts at communication with the *George Prince* included both whistle signals and radio communication. He initially tried to rely on a custom of a two-whistle passing that would have shifted the burden of avoiding a collision to the *George Prince*. Under the applicable rules of the road, *Frosta* was the burdened vessel. When communications failed and the vessels were in a near-dire risk of collision, the pilot sounded the danger signal and went full astern. Had the *Frosta* earlier slowed or had the pilot turned to starboard, a maneuver he considered imprudent, still expecting the *George Prince* to eventually give way and pass under his stern, a collision might have been avoided or minimized.

That being said, the cause of the accident was *George Prince*'s master's failure to take appropriate precau-

tionary measures upon departure from his berth without an apparent concern for possible upbound traffic obscured by the ship at the grain elevator and once in the stream not visibly reacting in any way to the presence of and communications from the *Frosta*.

The master of the *George Prince* did not survive the accident so there is no explanation for his apparent failure to hear or heed the danger signal or his apparent failure to observe the close proximity of the upbound *Frosta*. In the analysis of the accident, the Marine Board of Investigation did conclude certain failures to act on his part based on observations of the witnesses.

The report of the Commandant's Marine Board of Investigation is available at http://www.uscg.mil/hq/cg5/cg545/docs/boards/frosta.pdf.

How much have things changed or improved since 1976? First the highway bridge that was under construction at this crossing was completed. More widely accepted improvements have occurred. Some cannot be directly attributed to this one accident, but it remains a historical reference point in consideration of subsequent regulatory and statutory change.

There was confusion between custom and rules of the road. At the time, navigation was controlled by Western River Rules that promulgated by statute. Transit from sea to above the Huey P. Long Bridge involved three sets of rules of the road an certain generally accepted customs.

Many ports with commuter ferry service are covered by Vessel Traffic Services (VTS). VTS New Orleans was under initial development at the time of this casualty. Bridge-to-bridge radiotelephone carriage requirements did not cover vessels "not carrying passengers for hire." Federal safety oversight of the

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George Prince operation was limited to an uninspected vessel boarding program. Now, federal law has been amended to provide that every ferry vessel, even one on which fares are not charged, is subject to Coast Guard inspection.

Today, of course, with proper training, better equipment, more advanced navigation technology, and enhanced communication abilities, the number of severe incidents involving Coast Guard regulated passenger vessel operations has dramatically fallen, making the small passenger vessel industry one of the safety modes of transportation in the U.S.

The details of this casualty remain vivid in my memory. Not only was I on the scene as a Coast Guard Commander as part of the recovery and investigative efforts, but I served as a member of the ensuing Marine Board of Investigation

It is interesting that I have found myself closely involved in passenger vessel safety in my post-Coast Guard career. It was coincidental, serendipity perhaps. In my Coast Guard career and my association with the Passenger Vessel Association, I have often found myself at a point where I initiated, modified or opposed a regulatory or policy action that brought me back to that day in October when I was on scene of the *George Prince/Frosta* collision. Many of the decisions that I've made throughout my career—both at PVA and in the Coast Guard – may have been influenced by that experience and the resolve to avoid repeating such an incident in the future.

If you are interested, the report of the Commandant's Marine Board of Investigation is available at http://www.uscg.mil/hq/cg5/cg545/docs/boards/frosta.pdf. ■

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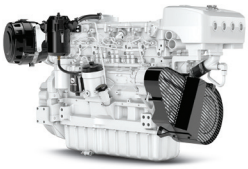

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Ed Welch,
PVA Legislative Director

PVA Seeks Smaller Vessel Exemption From EPA Vessel General Permit for Wastewater Discharges

A prime legislative goal of the Passenger Vessel Association this year is to shield vessel members whose boats are less than 79 feet in length from having to comply with the Environmental Protection Agency's Vessel General Permit (VGP) for incidental wastewater discharges.

Right now, these smaller vessels don't have to adhere to the terms of the VGP because of a temporary exemption originally enacted by Congress in 208 (Public Law 110-299). However, absent new legislation, that exemption is scheduled to expire this coming December 18.

In recent weeks, Congress has begun developing legislation to provide the relief sought by PVA. On February 11, the House Committee

on Transportation and Infrastructure approved H.R. 4005, the Coast Guard and Maritime Transportation Act of 2014. Section 502 would make permanent the current smaller vessel exemption from the VGP. Subsequently, on April 1, the House approved J.R. 4005 by voice vote.

Congressman Frank LoBiondo of New Jersey has been instrumental in advocating reform of the VGP; last year, he sponsored H.R. 3464, the Commercial Vessel Discharges Reform Act of 2013. In December 2013, the PVA Board of Directors approved a resolution endorsing the LoBiondo legislation, saying, "The bill will ensure that smaller passenger vessels follow best management practices for such discharges, a more appropriate regulatory regime than application of the EPA's Vessel General Permit."

On March 6, 2014, Senators Mark Begich of Alaska and Marco Rubio of Florida introduced S. 2094, the Vessel Incidental Discharge Act. Explaining his bill, Senator Begich said, "I introduced this legislation with Senator Rubio so shippers and other vessel owners that visit multiple ports don't have to deal with the unreasonable patchwork of EPA rules telling them how to manage ballast water and other discharges. It sets a national standard for ballast water and other discharges and significantly tightens these rules over time. It gives a permanent exemption for fishermen and other small boat owners who are not considered part of the problem."

In addition to providing the permanent exemption for smaller vessels, the Begich-Rubio bill would also alter the current wastewater discharge regulatory situation for vessels of 79 feet and above. It would transfer primary regulatory responsibility from the EPA to the Coast Guard, set a tough but achievable cleanliness standard for ballast water discharges (to be set at the national level), and preempt the power of individual states to set differing wastewater discharge requirements.

On March 13 of this year, PVA joined with 56 other maritime and trade organizations in a letter to Senators urging passage of the Begich-Rubio Vessel Incidental Discharge Act. In the letter, the coalition members summed up the current confusing regulatory situation: "Today, two federal agencies, the U.S. Coast Guard and the Environmental Protection Agency, regulate ballast water and other vessel discharges under two differing statutory authorities. And, because neither federal statute preempts state action, more than two dozen states have established their own requirements for many of

those same discharges – over 150 in all. This overlapping patchwork of federal and state regulations makes compliance complicated, confusing and costly for vessel owners and mariners. It is counterproductive to the goal of enhanced environmental protection, as companies have delayed investment in costly treatment technologies because they lack certainty that such systems will be acceptable wherever a vessel calls. It creates inefficiencies and uncertainty that add costs for shippers that rely on marine transportation to move essential cargoes. And, it has forced resource-constrained federal and state agencies to duplicate efforts and expend significant time and taxpayer money in a well-intentioned but unsuccessful attempt to harmonize their requirements."

Commercial vessels of 79 feet in length and above and vessels of any length that discharge ballast water have been subject to the VGP for over five years. PVA has produced a guidance document that assists affected operators in complying; it is available in the "Members Only" section of www.passengervessel.com.

Beginning this year, most passenger vessels covered by the VGP have been required to carry on board a simple form known as a Permit Authorization and Record of Inspection (PARI); however, this one-page document does not have to be sent in to the EPA. It contains basic information about the vessel, has a place for the vessel operator to acknowledge familiarity and compliance with the provisions of the VGP and to certify performance of the annual inspection required by the VGP.

Although the VGP is an EPA permit, a Coast Guardsman undertaking an annual passenger vessel inspection may inquire about the operator's and crew's familiarity with it and may ask to see the PARI. A prudent passenger vessel operator will make sure whether or not the vessel is subject to the VGP, will take steps to become familiar with the PVA Guidance Document if the vessel is covered, will ensure that the PARI is on board (if required), and will educate the vessel's crew about permit compliance.

If there are questions about the VGP, the PVA Guidance Document, or the legislation to make permanent the exemption for smaller vessels, please contact Jen Wilk or Ed Welch at PVA Headquarters. ■

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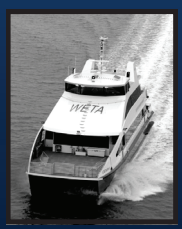

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Vermont Vessel Operator Credits PVA Safety Materials for Successful Water Rescue

By Karen Rainbolt, Managing Editor

August 3, 2013, was sunny and beautiful, with light, choppy seas due to winds of 10 to 15 knots. Pretty as it was, it turned dangerous for three teens on Vermont's Lake Champlain when their kayaks overturned, dumping them into the chilly, northern New England waters.

Lucky for these three kids, a sharp-eyed, experienced vessel captain, John Carter, of the *Spirit of Ethan Allen III*, spotted them splashing in the water, one-third to one-half of a mile away from his vessel. He also noticed that they were not wearing life jackets. Capt. Carter immediately took action.

Veering from his intended course, Capt. Carter headed to the teens in the water and informed his crew,

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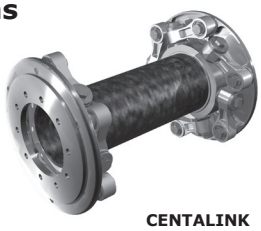

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Damian Bellows, Matt Anmis, Wilson Tucker, and Kendra Loata, to prepare for a rescue if the situation warranted it. It did.

Meanwhile, the 250 guests on board the passenger vessel were celebrating two separate weddings with food, beverages, music, and dancing. For them, the day on the lake could not have been better. For the kids in the water, however, it was a different story. They had been in the lake for more than 30 minutes. Their kayaks were swamped and without personal flotation devices (PFDs), they were growing tired as they tried to keep themselves on the surface.

Approaching the teens and seeing their distress, Capt. Carter contacted the U.S. Coast Guard to alert them of the situation. Unfortunately, the closest Coast Guard vessel was too far away to assist, informing Capt. Carter that it would reach the scene in 25 minutes, which may have been too late for the fatigued teens. It was up to the *Spirit of Ethan Allen III* to rescue the exhausted kids who, by that time, had already given up trying to stay afloat.

As the captain positioned the vessel for the rescue, the crew formed a line mid-ship at the ladder, and kept the passengers away from the area while the retrieval was underway.

Quickly and efficiently, the crew plucked the three 17-year-olds from the water and got them onto the *Spirit III*, and then ferried them to land. After a harrowing ordeal, the teens were safe and the wedding receptions resumed.

When Mike Shea, of Green Mountain Boat Line, Burlington, VT, the company that operates the *Spirit of Ethan Allen III*, phoned PVA about the incident, he was not calling to boast. He called because of what his crew told him after the rescue was completed.

"The crew said, 'Mike, the training worked! We knew exactly what to do and how to do it,'" Shea later relayed. "And, all our training materials came from PVA."

At Green Mountain Boat Line, Shea's crews receive frequent training. "We train twice a month, on the first and 15th of each month," said Shea.

Green Mountain Boat Line uses a wide array of PVA training materials to instruct its crew about how to respond to a variety of incidents, from a fire aboard the vessel to man overboard drills and everything in between. This was pivotal in the August rescue.

"The foundation of the safety training is very clear in all the PVA safety DVDs, manuals, and videos." Shea said. "I believe in the training information that comes from PVA. It's great stuff."

Capt. Carter was impressed at

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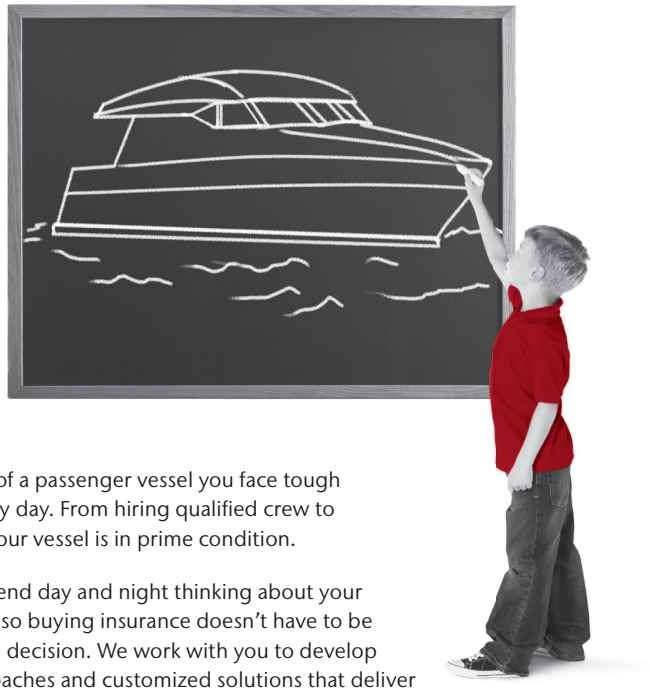

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how well the crew reacted throughout the situation. "It was amazing how well they all remembered their training," he said. "The captain is only as good as his crew," and conceded that the crew is only as good as their training.

Green Mountain Boat Line employs four full-time, year-round staff and hires 50-55 seasonal people to operate four daily cruises, including lunch and dinner cruises aboard the Chesapeake Shipbuilding-constructed vessel. The *Spirit of Ethan Allen III* is 140-feet long with a 33-foot beam. It has three decks and its COI allows up to 396 passengers aboard. Scenic summer and fall cruises are very popular.

Located between New York and Vermont, Lake Champlain, a large freshwater lake, is 125 miles long and 14 miles across at its widest point, with a maximum depth of approximately 400 feet.

With that much time spent on such a large body of water, Shea, Carter and the entire crew of the *Spirit of Ethan Allen III* understand the importance of training for the inevitable safety-related incident. According to the U.S Coast Guard, Station Burlington, located in the First Coast Guard District (Sector Northern New England), "the station averages over 200 search and rescue cases a year" and assists "about 1,000 boaters each year."

"I can't imagine doing training without the PVA information," Shea said. "Because of their training, the crew knew what was needed and was successful. There's no doubt in my mind that my crew saved three kids lives that day."

Wilson Tucker, an engineer aboard the vessel, was grateful for the time spent on safety drills. "The training really works," Tucker said. ■

Washington State Ferries Seeks New CEO
Assistant Secretary, Washington State Ferries Division

Washington's ferry system is the largest in the United States, serving eight counties within Washington and the Province of British Columbia in Canada.

POSITION PROFILE: The Assistant Secretary, Ferries Division reports to the Deputy Secretary and serves on the WSDOT Executive Management Team.

The position is responsible for leadership and management of the ferries system within the overall framework of the Washington State Department of Transportation (WSDOT).

The principal responsibilities of the Assistant Secretary are:

- As part of the WSDOT Executive Management Team, lead, direct and guide the ferries management team and all ferries employees and meet operational and budgetary goals and strategies from the Secretary of Transportation, the legislature, and the Governor.
- Collaborate with other WSDOT management to assure that ferries programs and initiatives are effectively integrated with the directions of the entire Department.
- Maintain a collaborative working relationship with federal, state and local governments and agencies with interests in ferries services, including the United States Coast Guard, the Federal Transit Authority, local transit agencies and the Puget Sound Regional Council.
- Represent WSDOT to Washington citizens in matters relating to ferries, including liaison with key constituencies such as the local Ferry Advisory Committees, outreach to the communities served by the Ferries System, the press and local leaders.
- Assist the Secretary of Transportation in reporting to the state legislature, the Governor and other officials.
- Make any infrastructure changes or revisions using community design principals.

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HOW TO APPLY: Applications for this recruitment will be accepted electronically. You will need to set up an account profile in Washington State's automated employment application system NeoGov located at www.careers.wa.gov.

CONTACT US: For inquiries about this position, candidates are encouraged to contact Ted Koska at (360) 705-7509 or email to koskat@wsdot.wa.gov.

Please reference recruitment number **EMS-14-005.**

By Jen Wilk, PVA Manager of Membership & Public Affairs

PVA Working for You

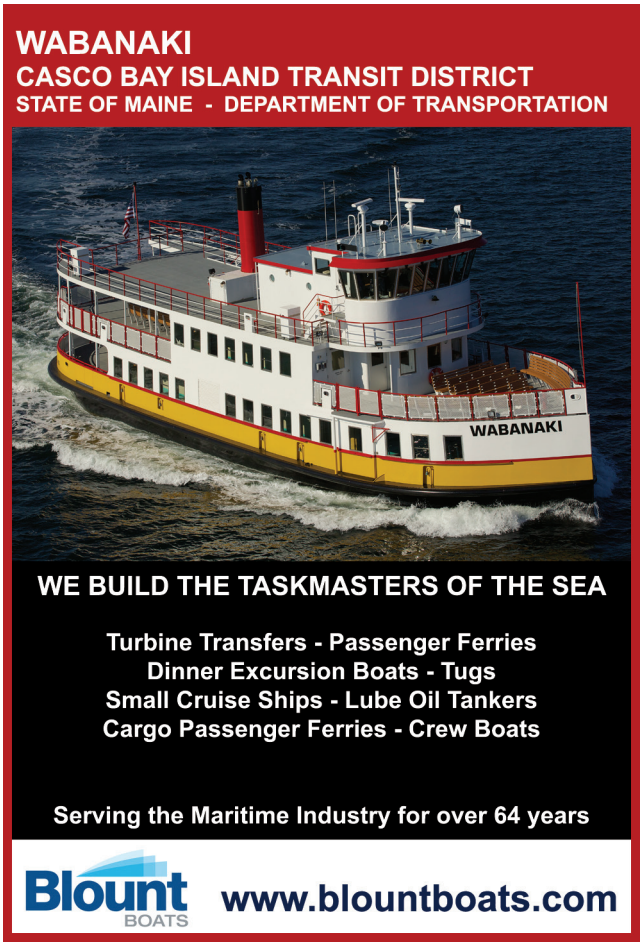
PVA is your advocate, representing your interests in Washington, D.C., and around the country on the issues that impact your business. Here are just a few of the recent activities that PVA has been working on to benefit you.

Participating in Coast Guard Industry Days

From San Francisco to Chicago and Maryland to Massachusetts, PVA members and staff have been participating in annual Coast Guard Industry Days in ports around the country this spring. These valuable meetings foster in-person interaction between vessel operators and their local Coast Guard personnel. Operators have the opportunity to ask the tough questions of their inspectors and local Coast Guard leadership on policies critical to their operations. Gaining a understanding of expectations and developing these relationships has yielded PVA members a familiar face to work with when a situation arises impacting their business that needs to be resolved.

PVA Comments on Army Corp of Engineers Study

PVA urged the protection of the navigational use of the waterways in comments submitted to the U.S. Army Corp of Engineers on the recently released Great Lakes and Mississippi River Interbasin Study (GLMRIS). In its comments, PVA stated, "PVA's goal is to ensure that federal policy-



makers remain aware of the commercial passenger vessels in Chicago and throughout the Great Lakes so that the policies chosen to deter the movement of Asian Carp and other invasive species also preserves the well being of PVA companies and the employees that work for them."

PVA Comments on Coast Guard's Proposed Rule on Preemption for Certain Regulations

PVA supported the Coast Guard's approach to preemption of state and local laws when it comes to certain appropriate regulations to meet "consistent standards of universal application and enforcement, coupled with Federal initiatives to meet unique regional concerns, best meet local and national safety and environmental goals with the least disruption to maritime commerce" as stated in the proposed rule. PVA's comments illustrated the importance of a single nationwide regulatory structure as opposed to state-specific equipment, manning, or safety requirements that would impose extra cost and compliance challenges as well as obstruct interstate commerce. The Coast Guard has continually worked with industry to develop regulations and achieve safety and security goals.

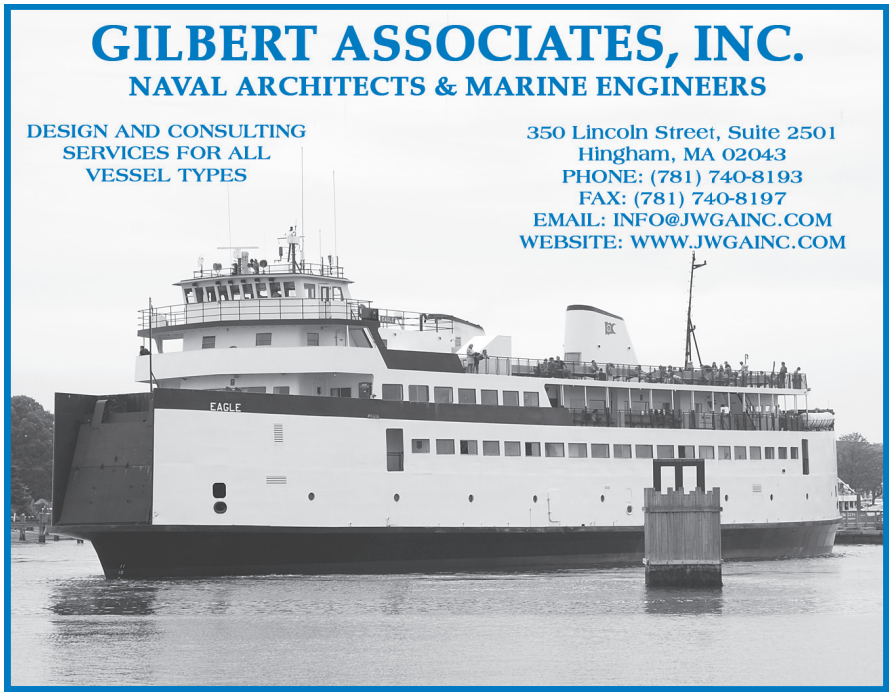
Alternative Security Program Meeting

Recently, PVA members and staff attended a Coast Guard-hosted workshop for organizations that manage Alternative Security Programs (ASP) to discuss security issues at Coast Guard Headquarters in Washington, D.C. While there, PVA was briefed on a variety of topics including cyber security and other maritime security updates including a presentation from TSA on the TWIC program. PVA took this opportunity to advocate for members voicing concerns about enrollment center appointment availability as well as ensuring forward progress is made on rollout of the one visit to the enrollment center program.

Planning for the Fourth Annual PVA Congressional Fly-In

PVA CONGRESSIONAL FLY-IN
APRIL 29, 2014
WASHINGTON D.C.

PVA is planning for the Fourth Annual PVA Congressional Fly–In scheduled for April 29. PVA members will travel to Capitol Hill in Washington, D.C. to meet with Members of the Senate and House of Representatives and staff to discuss issues of importance to the passenger vessel industry. PVA members are encouraged to participate in the Congressional-Fly In. ■



Free NOAA PDF Nautical Charts Now Permanent, Part of a New Wave of Navigational Products and Services

The National Oceanic and Atmospheric Administration (NOAA) is now offering free, digital, permanent nautical charts to replace traditional charts. The new PDF charts are part of a suite of new and enhanced navigational products designed to make NOAA's data more accessible to the general public.

"Up-to-date charts help boaters avoid groundings and other dangers to navigation, so our aim is to get charts into the hands of as many boaters as we can," said Rear Admiral Gerd Glang, director of NOAA's Office of Coast Survey.

NOAA has also launched a new interactive chart locator that allows individuals to select a chart from a map of the U.S. and choose their format. Whether downloading one of the new PDF nautical charts, selecting a chart to order from a "print-on-demand" vendor, or finding an electronic chart, the interactive catalog presents a highly integrated suite of navigation products.

NOAA is also making available for free the NOAA ENC Online, a web map viewing application that shows chart data previously only available to users who purchased specialized viewing systems.

Also the digital charts' image resolution will increase, from 254 dots per inch (DPI) to 400 DPI. This will improve image quality and legibility of the raster navigational charts (RNC) that are used in chart display systems. The suite of RNCs will be upgraded starting this month.

Printing PDFs may alter the chart scale, color, or legibility that may impact suitability for navigation. Printed charts provided by NOAA-certified Print-on-Demand (POD) providers fulfill a vessel's requirement to carry a navigational chart "published by the National Ocean Service" in accordance with federal regulations.

The changes are part of a systematic reconstruction of NOAA's nautical products, anticipating mariner needs as navigation transitions to a new digital age. Last year, NOAA announced the privatization of chart print and distribution, with NOAA-certified vendors providing improved paper "print-on-demand" charts that fulfill a vessel's requirement to carry a navigational chart published by the National Ocean Service in accordance with federal regulations.

NOAA's newest addition to the nautical charting portfolio is the new Portable Document Format (PDF) nautical chart, which provides up-to-date navigation information in this universally available file type.

For more information, go to http://www.nauticalcharts.noaa.gov/. ■

PVA Members Appointed to Federal Travel and Tourism Advisory Board

U.S. Secretary of Commerce Penny Pritzker recently announced the appointment of 32 members to the Travel and Tourism Advisory Board. Three of these members include representatives from PVA member companies. These members include Holly Agra, Owner and Chief Executive Officer, Chicago's First Lady Cruises, Chicago, IL, Darrell Bryan, President and CEO, Clipper Navigation, Seattle, WA, and Kirk Hoessle, President and Chief Executive Officer, Alaska Wildland Adventures, Girdwood, AK.

The U.S. Travel and Tourism Advisory Board plays an important role in formulating the federal government's travel and tourism policies. Established in 2003, this Board serves in an official advisory capacity to the Secretary of Commerce and provides guidance on prioritizing policy issues that contribute to the growth and enhanced facilitation of travel from both international and domestic travelers to the U.S.

These representatives are also active participants in numerous regional, national and international travel and tourism and business groups and associations, and contribute a valuable perspective as U.S. travel and tourism policy is developed.

More information about the Board and the work it's doing to promote travel and tourism policies can be found at www.trade.gov/ttab/. ■

PVA WELCOMES NEW MEMBERS

American Maritime Security
White Plains, NY
Ms. Stacy Govan
Associate

RSC Bio Solutions
Indian Trail, NC
Mr. Mark Miller
Associate

Lake Hopatcong Cruises
Lake Hopatcong, NJ
Ms Eden Blazovic
Vessel

Marina Rose
Hernando, Beach, FL
Mr. Randall P. Rossi
Vessel

Milwaukee River Cruise Line
Wilwaukee, WI
Mr. Dan Jorgenson
Vessel

Mystic Whales Cruises
Mystic, CT
Capt. John Eginton
Vessel

Coast Guard Presents Public Service Commendation to Shoreline Sightseeing

PVA Board of Directors member Charles "Chip" Collopy, President of Shoreline Marine Co., Chicago, IL, accepted a public service commendation on behalf of his crew for the dramatic rescue of an unresponsive person in the water. The commendation was given at the 2014 Great Lakes Waterways Conference in Cleveland, OH, in February and was presented by Rear Admiral Fred Midgette.

U.S. Coast Guard Rear Admiral Fred Midgette presents a commendation to Chip Collopy, Shoreline Marine Co., Chicago, at the Great Lakes Waterway Conference in February. Photo credit: U.S. Coast Guard.

The commendation read, "The Commandant of the Coast Guard takes great pleasure in presenting the United States Coast Guard Public Service Commendation to Shoreline Sightseeing for their successful rescue of a person in the water on September 12, 2013 in Chicago, Illinois."

A sharp-eyed passenger aboard the *M/V Gotta Go Now* water taxi operated by Shoreline Sightseeing witnessed a person fall off a bridge into the river and immediately alerted the captain and crew. Captain Eric Gierzynski changed course to assist while callig the Chicago Marine Police. Deckhand Anthony Mbanu saw the unresponsive victim floating in the water, and instructed two passengers to hold his legs so that he could reach down to pull the injured man to safety. When he realized the man wasn't breathing, he administered CPR which he continued until paramedics arrived. Although he was transported to a local hospital in critical condition, the man fully recovered, thanks to the quick actions of the captain and crew of *Gotta Go Now*.

In the commendation, RADM Midgette said of Shoreline Sightseeing's personnel, "They upheld an ancient maritime practice of assisting others in distress; a call to action reflected in the pride and professionalism at Shoreline Sightseeing that is most heartily commended and in keeping with the highest traditions of the United States Coast Guard." ■

PVA MEMBER CALENDAR

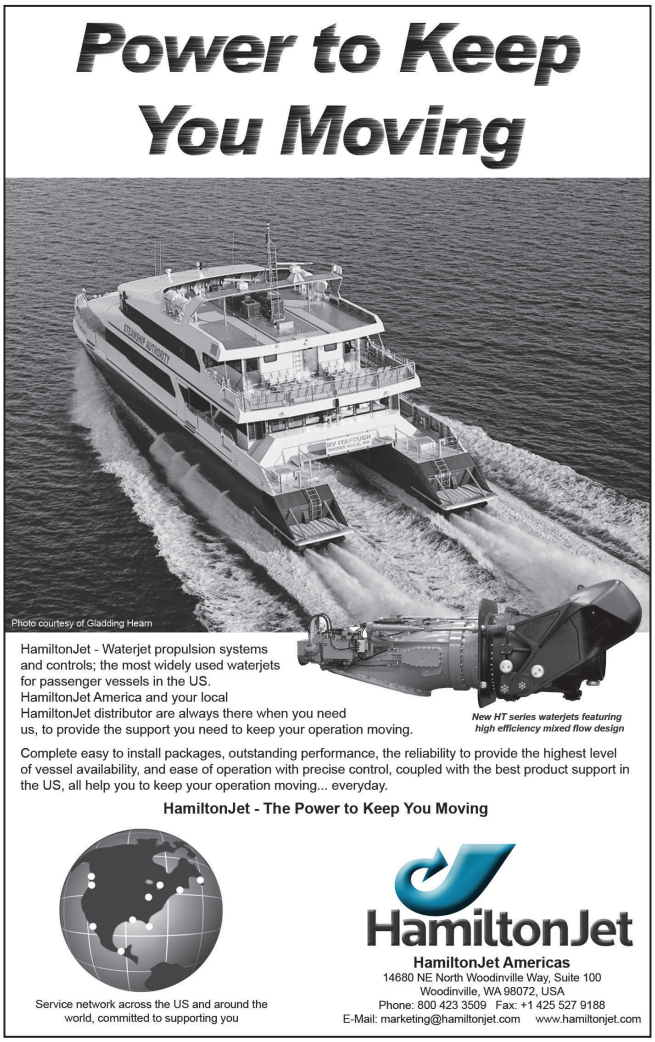
April 29
PVA Congressional Fly-In Breakfast Meeting
Sheraton Suites Old Town Alexandria, VA

April 30
PVA Board of Directors Meeting
Sheraton Suites Old Town Alexandria, VA

May 1
PVA/Coast Guard Quality Partnership Meeting –
Tentative (Invitation Only) Sheraton Suites Old Town Alexandria, VA

Sheraton Suites Old Town Alexandria
801 N. St. Asaph Street, Alexandria, VA 22314
Call 703-836-4700 for reservations.

January 31-February 3, 2015
PVA Annual Convention at MariTrends 2015
Long Beach, CA



LETTER FROM THE PRESIDENT, CONTINUED FROM PAGE 4

is illegal in our industry to use the drug even when residing in a state that has approved it recreational use. So, If one wants to work on the bridge, engine room, or deck, drug use on or off the job is still prohibited, no matter where you live. The dialogue on this issue is nowhere near finished and it will continue to be something to follow as the years go on. I would love to hear anyone's thoughts or comments about this subject. Please email me at tbernstein @bbriverboats.com.

Terri Bernstein
President ■

LETTER FROM THE EXECUTIVE DIRECTOR, CONTINUED FROM PAGE 5

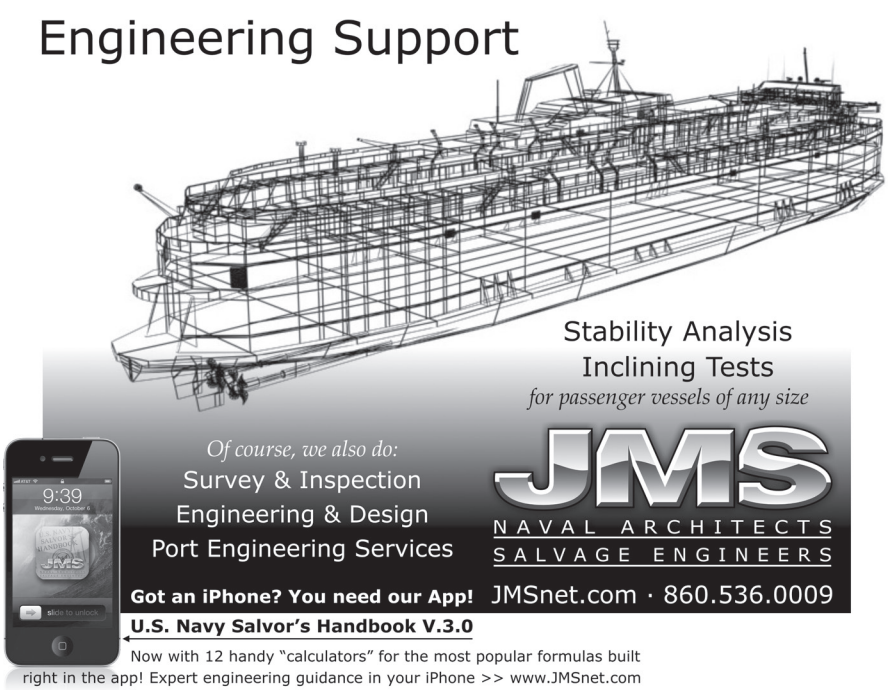
Army Corps of Engineers on its Great Lakes and Mississippi River Interbasin Study, wherein PVA urged federal and state officials responsible for devising Asian Carp control strategies to take into account the needs of and economic benefits of commercial passenger vessels that operate in the Chicago area, in particular those that regularly transit the lock at the Chicago River Controlling Works.

Thanks very much to those of you who joined with us to comment on these matters. We appreciate your involvement and pledge to continue to advocate on your behalf.

In the meantime, please let me know when we can be of assistance to you.

Sincerely,

John R. Groundwater
Executive Director ■



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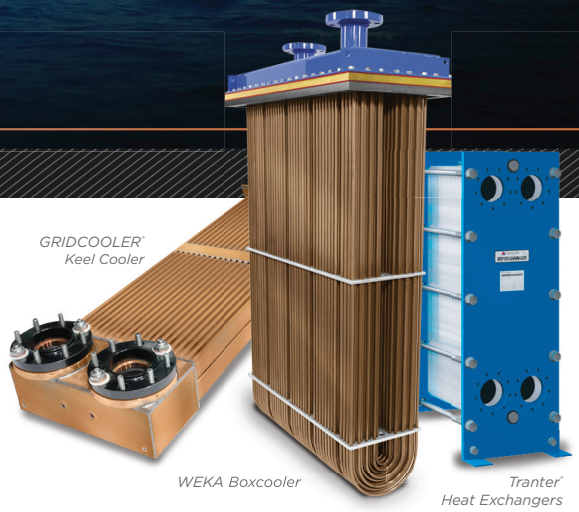

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