U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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September 15, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Hearing on Oil Spill in New Orleans in July 2008 and Safety on the Inland River System

PURPOSE OF HEARING

The Subcommittee on Coast Guard and Maritime Transportation will meet on September 16, 2008, to examine the circumstances surrounding the spill of 282,828 gallons of oil into the Mississippi River near New Orleans, Louisiana, that occurred on July 23, 2008, when a barge being pushed by a towing vessel crossed in front of a tanker ship and was severely damaged by the tanker.

The Subcommittee will also look more broadly at safety in the towing industry, including the status of the Coast Guard's effort to complete a rulemaking needed to begin the process of inspecting all towing vessels, as required by the *Coast Guard and Maritime Transportation Act of 2004* (P.L. 108-293).

BACKGROUND

Overview of the Towing Industry

Towing vessels (also known as tug boats) can be divided into several distinct categories based on where they operate and how they move other vessels. There are two categories of inland towing vessels – harbor tugs and river tugs, which are often referred to as towboats or pushboats. Harbor tugs have a round bow and are often used to move other vessels around berths in harbors. River tugs or pushboats have flat or squared-off bows and are frequently outfitted with "kneeling knees" used to push barges along coastal areas or on inland rivers.

Oceangoing tug boats also come in several configurations. The conventional oceangoing tug looks like a larger version of a harbor tug with a rounded bow. Such tugs frequently tow their payloads using what is known as a hawser made of steel cable or synthetic fiber rope, but such tugs can also push a load from alongside. Another type of oceangoing tug boat is a boat that is designed to push a barge outfitted with a notch in its stern (back) that fits the towing vessel with which it is paired. The tug is secured in the notch and pushes the barge, but the towing hawser remains attached in the event sea conditions require towing from the stern of the tug. In addition, there are also articulated tug and barge units (ATB) and integrated tug and barge units (ITB), both of which use specially designed equipment to "marry" the tug and barge together into a single unit. In many instances the barge being moved is inspected by the Coast Guard if it is carrying petroleum or other hazardous cargo), but the towing vessel is not. A similar sized tank vessel is required to be inspected by the Coast Guard and manned by a fully licensed and certificated crew as set forth on the Certification of Inspection (COI) issued to the vessel by the Coast Guard.

Whether it is a tugboat, a pushboat, a notch tug, an ATB, or an ITB, all such vessels can be known as "towing vessels" and can range in size from 30 feet to several hundred feet. The Coast Guard reports that as of August 20, 2008, there were 6,956 documented towing vessels in the U.S. larger than 5 net tons and an unknown number of smaller, state numbered towing vessels.

The sizes of the crews working on towing vessels can vary depending on the size of each vessel and the length of its voyage.

According to the American Waterways Operators (AWO), the industry trade association for the towing industry, the top five tow/barge companies based on the amount of equipment owned (including towing vessels and barges) are:

1. Ingram Barge Company;
2. American Commercial Lines;
3. Kirby Corporation;
4. AEP River Operations; and,
5. American River Transportation Company.

Overview of Accident on the Mississippi River on July 23, 2008

At approximately 1:30 a.m., CDT, on the morning of July 23, 2008, the tug *Mel Oliver* pushing the fuel barge DM 932 crossed in front of the *M/T (Motor Tank Vessel) Tintomara*, a double-hulled tanker flagged in Liberia, at mile marker 96 on the Mississippi River near New Orleans, Louisiana. The resulting collision between the barge and the *Tintomara* severely damaged barge DM 932. The barge DM 932 is owned by American Commercial Lines LLC (a wholly-owned subsidiary of American Commercial Lines, Inc. [ACL]). According to documents provided to the Subcommittee by ACL, the *Mel Oliver* was owned by ACL but chartered under a bareboat charter to DRD Towing (DRD) and then chartered back by ACL under a fully found charter, a type of time charter (the term "fully found" means that a vessel is seaworthy for its intended voyage and that DRD, in this case, is responsible for hiring the crew engaged on the vessel). The barge was not chartered to DRD but was under its control at the time of the accident.

The Coast Guard reports that the watchstanders in the Vessel Traffic Service (VTS) in New Orleans were the first personnel within Sector New Orleans to become aware of the collision. The

VTS watch supervisor notified the Coast Guard Command Center at Sector New Orleans about the accident at 1:41 a.m. The Coast Guard closed the lower Mississippi River between mile marker 98 and mile marker 99 at 1:44 a.m. The River closures were subsequently extended.

At approximately 1:45 a.m., the Coast Guard's Incident Management Division was notified of the collision. The Coast Guard indicates that it was informed at 2:01 a.m. by U.S. Environmental Services (USES), an Oil Spill Response Organization (OSRO) hired by ACL, that USES was preparing to respond to the collision. Personnel from the Coast Guard's Incident Management Division reached the Delta Queen terminal at 3:00 a.m., and at 3:20 a.m., the Incident Management Division notified Sector New Orleans that they had confirmed that a potential oil spill had occurred.

ACL has indicated that it received notification of the collision between the barge DM 932 and the *Tintomara* from the manager of the Stone Oil terminal (the terminal where the barge was loaded) within minutes of the collision; that individual also indicated that a spill may have occurred. ACL indicates it then activated its primary OSRO.

ACL indicates that several local, independent towing vessels that were in close proximity to the accident site responded to a request from the Coast Guard for assistance and worked to secure the damaged barge. At first light, these tugs were joined by an ACL towboat and later in the morning of July 23, ACL hired two of the independent tow boats that had responded to the accident.

The Coast Guard indicates that personnel from its Command Center at Sector New Orleans and from its Incident Management Division notified the Louisiana State Police Hazardous Materials Hotline that a spill may have resulted from the collision at some time prior to 4:20 a.m.; however, the exact time that notification was provided is not known. The Waterways Warning Network was notified at 4:00 a.m. The Incident Management Division also notified the Louisiana Oil Spill Coordinator's Office and the Louisiana Department of Environmental Quality. Sector New Orleans indicates that it exchanged information with the Gretna Police Department, New Orleans Harbor Police, Jefferson Parish Police, and Plaquemines Parish officials throughout the early morning of July 23 following the collision. The Coast Guard reports it began assessing the impacts of the spill at 5:30 a.m. (first light).

In the days following the accident, there were varying reports about how much oil was actually spilled. Both the Coast Guard and the National Oceanic Atmospheric Administration (NOAA) initially reported that all or nearly all of the oil in the barge had been spilled into the Mississippi River shortly after the collision. The Coast Guard now indicates that there were 419,286 gallons of number 6 fuel oil on the barge DM 932 at the time of the accident, of which 282,828 gallons were discharged during the event. Additionally, 3,249 barrels (136,458 gallons) of oil were removed from the barge during salvage operations. As of August 28, 2008, 187,782 gallons of oil had been recovered from the water through skimming operations and through clean-up of the shoreline. As of that date, there was no longer any free floating oil in the River or its environs – but 17,850 gallons were estimated to remain in the environment.

By 6:30 a.m. on July 23, the crewmembers on the *Mel Oliver* and the *Tintomara* – as well as the watchstanders in the VTS center – had undergone drug and alcohol testing. The Coast Guard reports that all drug and alcohol tests on all personnel on the *Tintomara* were negative, as were the tests on the pilot on board the *Tintomara.* The tests on the apprentice steersman operating the *Mel*

Oliver were negative, as were tests on one of the two deckhands on board the *Mel Oliver.* However, a second deckhand on the *Mel Oliver* tested positive for the presence of illegal drugs.

In a press release issued at 1:00 p.m. EDT on July 23, NOAA reported that "the leading edge of the oil slick was already 16 miles downriver" by 7:30 a.m., local time as observed by a Coast Guard helicopter overflight. On July 23, the Coast Guard imposed a safety zone on the lower Mississippi River. From July 24-29, the zone extended from mile marker 98 (above Head of Passes) to the Southwest Pass Sea Buoy, a total of 120 statute miles. Between July 26 and August 4, 788 vessels experienced delays in transiting the Lower Mississippi River due to the safety zone.

The National Transportation Safety Board (NTSB) also announced on July 23 that it was dispatching a team of investigators to participate in the examination of this accident.

In a press release issued at 5:13 p.m. CST on July 23, the Coast Guard wrote "Representatives from the tug boat, *Mel Oliver* [italics added], report that there were no properly licensed individuals on the vessel during the time that the incident occurred."

On July 26, the Unified Command announced sites had been established to decontaminate vessels allowed to transit the areas of the River affected by the oil spill by removing oil from the hulls of vessels after they completed their transits. The Lower Mississippi River re-opened to regular traffic transits on July 30, but the vessel cleaning stations remained open until August 13. The Coast Guard reports that 1,190 vessels were cleaned at cleaning stations.

On July 27, the Coast Guard reported that five OSROs were on scene with more than 600 personnel and that approximately 150,000 feet of boom had been deployed. The Coast Guard also reported that the Port Authority of New Orleans had indicated that the spill was costing the local economy $275 million per day. By July 28, the Coast Guard reported that the five OSROs had a combined total of more than 1,300 employees on-scene.

In a press release issued on July 28, the Coast Guard reported that the crew member that had been piloting the tug *Mel Oliver* at the time of its collision with the *Tintomara* held an apprentice mate's license – which meant that he was authorized to operate a towing vessel only under the direct supervision of a licensed master. Per 46 USC 8904, towing vessels longer than 26 feet must be operated by a licensed master; the *Mel Oliver* is 61.2 feet in length.

On August 2, the Coast Guard released a set of preliminary findings regarding the collision between the barge DM 932 and the *Tintomara.* The findings are presented below (italics are added):

- There were no mechanical or electrical issues with the *Tintomara.*
- There were no crew competency issues with the *Tintomara.*
- There were no competency issues with the pilot aboard the *Tintomara.*
- The *Tintomara* did call out via radio to the *Mel Oliver* prior to the collision.
- The captain of the *Mel Oliver* was not aboard the vessel at the time of the collision.
- *Mel Oliver* had an assigned crew of a Captain, Steersman apprentice, and two deck hands.
- The steersman apprentice was operating the *Mel Oliver* at the time of the collision. He was licensed but his license did not authorize him to operate the vessel without the captain's presence in the wheelhouse.

- The *Mel Oliver* did not return the radio call outs from the *Tintomara* prior to the collision.
- Vessel traffic service did call out to the *Mel Oliver* prior to the collision.
- The *Mel Oliver* did not answer the vessel traffic service prior to the collision.
- The *Mel Oliver* was moving the barge DM 932.
- As the *Mel Oliver* was pushing against the bow of barge DM 392 [sic.], the *Tintomara* made contact with the port side of barge DM 392 [sic.].
- Drug and alcohol testing was done on the bridge and watch crew of the *Tintomara* and the *Mel Oliver.*
- An independent survey relating to the mechanical and electrical system was conducted on the *Mel Oliver* and it has been moved to dry dock to be inspected, reports on the survey and the inspection are pending [sic.].
- The formal hearing has been scheduled for Aug. 12, 2008.
- The pilot of the *Tintomara*, the *Tintomara*, the steersman of the *Mel Oliver*, the Captain of the *Mel Oliver*, DRD towing, American Commercial Lines, and the *Mel Oliver* have been named as parties of interest, official letters were sent out Aug. 1, 2008 [sic.].

The Coast Guard indicates that no suspension and revocation proceedings have been initiated against any personnel associated with the *Mel Oliver* pending the completion of on-going investigations. The steersman who was on board the vessel at the time of the collision made a good faith deposit of his license the week of August 18. Such a deposit ensures that the individual will not operate under the authority of his license while it is deposited. However, the license can be restored based on the outcome of the investigation into the collision.

Between August 1-9, the Unified Command reported that efforts to salvage the barge DM 932 continued. The salvage operations concluded on August 10, when the aft section of the barge was lifted from the River.

The Coast Guard reports that between July 24 and August 20, 43 oiled animals were captured alive; 37 of these animals were cleaned, of which 32 were eventually released back into the wild, while 6 of the captured animals died during the cleaning/rehabilitation process. The captured animals included a variety of birds as well as alligators, turtles, snakes, and a raccoon. Additionally, from July 24 through August 20, private citizens or members of organizations that worked to assist wildlife reported observing an additional 884 oiled animals, of which 845 were birds (including more than 500 egrets).

Coast Guard Hearing on the July 23 Accident

The Coast Guard and NTSB conducted a two-day hearing in mid-August, 2008, to take testimony from the crew of the *Tintomara.* The master of the that vessel – Jan Stefan Bjarve – testified that there were no mechanical problems on the vessel and that the weather at the time of the accident was calm and river traffic was light. Bjarve stated that the *Mel Oliver* turned, without warning, into the path of his vessel. Recordings of the radio communications played at the hearing revealed calls made by crew members on *Tintomara* as the collision occurred.

The hearing revealed that the *Mel Oliver* was being operated at the time of the accident by John Bavaret, an apprentice mate (sometimes called a steersman) who was only qualified to operate

the vessel under the direct supervision of a licensed master. The licensed master, Terry Carver, was not on board at the time of the accident.

Two additional individuals who were on board the *Tintomara* at the time of its collision with barge DM 932 – the lookout and the chief engineer – also testified during the August hearing. The lookout, Gilberto Guevarra, confirmed the *Mel Oliver* made an abrupt turn in front of the *Tintomara.* Guevarra recalled that the *Tintomara* was sounding emergency signals even before he called the bridge to notify the master that the *Mel Oliver* was cutting in front of them. The chief engineer, Henrik Olsson, testified that the engines and all other mechanical equipment were in 'top shape' before and during the collision.

The hearings recessed to an undetermined date, but it is expected that the Coast Guard will take testimony from Mr. Bavaret and Mr. Carver as well as other witnesses when the hearings resume.

American Commercial Lines (ACL)

In its current form, ACL was incorporated in December 2004 in the State of Delaware following its emergence from bankruptcy. According to documents filed by ACL with the Securities and Exchange Commission (SEC), the majority of its revenues arises from the movement of bulk products, liquids, grains, coal, and steel on barges. It states that it is the "third largest provider of dry cargo barge transportation and second largest provider of liquid tank barge transportation on the United States Inland Waterways."[1] Specifically, ACL reported that it accounts for "13.5% of the total inland dry cargo barge fleet and 12.9% of the total inland liquid cargo barge fleet."[2] Citing Informa, ACL further reported that "the top five carriers (by fleet size) of dry and liquid barges comprise over 62% of the industry fleet in each sector."[3]

ACL reported that as of the end of the second quarter of 2008, it operated 2,722 barges, of which 2,338 were designed for dry cargoes and 384 were tank barges.[4] ACL further reported that as of June 30, 2008, it owned 137 boats with an average age of 32.5 years.[5] The firm reports that from January through June 2008, revenues in its transportation division derived from the following sources: 30% liquid, 32% bulk, 17% grain, 11% coal, and 10% steel.[6]

According to the quarterly report filed by ALC with the SEC for the quarterly period ended June 30, 2008, ACL had total revenues of $593 million in the six-month period ended June 30, 2008 – compared to total revenues of $489 million in the six-month period ended June 30, 2007. The firm's net income from continuing operations was $5.7 million for the six-month period ended June 30, 2008 – compared to $4.8 million for the six-month period ended June 30, 2007.

In its annual report to the SEC for the year ended December 31, 2007, ACL reported that it "invested $37.4 million in new barges built by the manufacturing segment, $36.0 million in

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[1] American Commercial Lines, Form 10-Q, as filed with the Securities and Exchange Commission for the quarterly period ended June 30, 2008, pages 21-22.
[2] Ibid, page 22.
[3] Ibid, page 22.
[4] Ibid, page 27.
[5] Ibid.
[6] Ibid, page 31.

improvements to the existing boat and barge fleet, $7.2 million in improvements to our shipyard, $24.1 million in improvements to our facilities including our marine services facilities along the Inland Waterways."[7]

In its filing for the quarterly period ended June 30, 2008, ACL reported the collision of a tank barge owned by its subsidiary, American Commercial Lines LLC, with the tank vessel *Tintomara* and indicated that the Coast Guard had sent a letter to the firm "designating it as the owner of the source of the discharge, barge DM932, and stating that ACL LLC may be liable for removal costs and damages under the Oil Pollution Act of 1990".[8] ACL notes that it denies responsibility but will comply with the requirements of the *Oil Spill Pollution Act* of 1990. ACL also reported that several class action law suits had been filed against it as a result of the collision alleging "adverse health and psychological damages" and "destruction and loss of use of natural resources."[9] ACL has responded by filing an action seeking exoneration from or limitation of liability.

DRD Towing Company

DRD Towing LLC, is a limited liability company registered in the state of Louisiana; its registered members are Daniel W. Dantin, Jr., Randall William Dantin, and Carol Dantin.

On July 13, 2008, the towing vessel *Ruby E,* operated by DRD, collided with the tow being pushed by another towing vessel and subsequently sank. The Coast Guard stated in a press release issued on July 28 that a preliminary investigation associated with the *Mel Oliver* accident had found that DRD Towing had been operating the tug boat *Ruby E* on July 13, 2008, with a crewmember who held only an apprentice mate's license. In response to these findings, the Coast Guard reported that it "identified 18 DRD Towing-owned vessels operating throughout the Western Gulf region, including 12 in New Orleans" and that it visited each of the 12 vessels operating in New Orleans on July 23 and found that all were "properly manned with adequately licensed personnel."

According to the Coast Guard, in 2007, the service assessed a civil penalty against DRD Towing when one of its towing vessels was operated by a licensed master who did not have a towing endorsement on his license.

The Coast Guard further confirms that in 2004, DRD was cited for manning a vessel without a properly licensed master. Media reports indicate that this citation arose from an incident in which the tow that was being pushed by the towing vessel DRD was operating experienced a collision with another vessel.

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[7] American Commercial Lines, Form 10-K, as filed with the Securities and Exchange Commission for the year ended December 31, 2007, page 36.
[8] American Commercial Lines, Form 10-Q, as filed with the Securities and Exchange Commission for the quarterly period ended June 30, 2008, page 19.
[9] Ibid, page 20.

Relationship Between ACL and DRD Towing

According to ACL's filing with the SEC made for the quarterly period ended June 30, 2008, at the time of the accident between barge DM 932 and the tanker *Tintomara*, the barge involved in the accident was "in the exclusive care, custody and control of DRD Towing."[10]

According to information provided to the Subcommittee by ACL, DRD Towing had been a provider of services to ACL for 10 years. At the time of the accident, ACL indicates that the *Mel Oliver* was operated and crewed by DRD Towing under long-term bareboat charter and fully found charter agreements. ACL further indicates that it had a total of three boats chartered to DRD Towing and fully found chartered back to ACL at the time of the collision of the *Mel Oliver* with the *Tintomara*. The three chartered boats were the *Pam D, Regina Ann,* and *Celeste McKinney*; however, on June 19, 2008, the *Pam D* was replaced by the *Mel Oliver* while repairs on the *Pam* D were being completed. ACL reports that it bareboat charters and fully found charters 27 of its towboats to other operating companies.

Under the bareboat charter, DRD chartered the three towing vessels from ACL at the rate of $1 per day per vessel. Under the terms of the charter agreement, DRD agreed to maintain the vessels and to operate the vessels entirely at its own expense, including employing all crew members working on the vessels.

ACL hired the vessels it had bareboat chartered to DRD under fully found charters. Beginning January 1, 2008, the daily rates were set at $2,915 for the *Pam D* and $3,500 for the *Regina Ann*. The rate for the *Celeste McKinney* was set at $3,500 in the fully found charter agreement signed on August 6, 2007.

Safety in the Towing Vessel Industry

According to data provided by the Coast Guard, between 2000 and September 3, 2008, 149 people have died or have gone missing aboard towing vessels (excluding individuals who died as a result of assault, misconduct, attempted suicide, existing medical conditions, or SCUBA-related accidents). The table below shows deaths in the industry by year.

Deaths in the Towing Vessel Industry

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	TOTAL
Number of Deaths or Missing Individuals	16	24	15	11	17	22	24	15	5	149

Source: United States Coast Guard

[10] American Commercial Lines, Form 10-Q, as filed with the Securities and Exchange Commission for the quarterly period ended June 30, 2008, page 19.

While it is difficult to create a comprehensive picture of safety in the towing industry due to the limitations in existing information, presented below are casualty statistics for the two largest towing/barge industry firms, Ingram Barge Company and ACL.

According to the Coast Guard, Ingram Barge Company has been involved in 306 marine casualties between 2003 and 2007. These casualties are listed in the table below.

Casualties Involving Ingram Barge Company Between 2003 and 2007

Type of Incident	2003	2004	2005	2006	2007	Total
Allision	7	14	4	10	14	36
Collision		4	2		1	7
Fire	3	2	1			6
Explosion			1			1
Flooding				1	1	2
Fouling (hindered or impaired rudder or accumulation of unwanted material on solid surfaces)					4	4
Grounding	11	7	7	15	12	52
Loss of Electrical Power	2	4	2		3	11
Loss of Stability					1	1
Material Failure	23	23	27	34	32	139
Set Adrift		1		2		3
Vessel Maneuverability	12	11	9	8	4	44
TOTAL	58	53	53	70	72	306

Source: United States Coast Guard

According to the Coast Guard, ACL has been involved in 395 marine casualties between 2003 and 2007. These casualties are listed in the table below.

Casualties Involving ACL Between 2003 and 2007

Type of Incident	2003	2004	2005	2006	2007	Total
Allision	23	10	4	12	15	64
Collision	2	1		1	3	7
Fire		1	4		3	8
Flooding				1	2	3
Fouling					1	1
Grounding	34	13	17	17	23	104
Loss of Electrical Power	8	1	3	3	2	17
Material Failure	18	34	18	23	43	136
Sinking		1				1
Vessel Maneuverability	16	23	5	5	5	54
TOTAL	101	84	51	62	97	395

Source: United States Coast Guard

Between 2000 and 2008, ACL was the managing owner of equipment on which a total of 8 people died or went missing – more than on equipment under the control of any managing owner in the towing or barge industry aside from the cumulative total of instances (9) in which the managing owner was not specified in Coast Guard records and the number of deaths (8) arising from a single incident involving Brown Water Towing I. Inc, in 2001. By comparison, only one person was killed on equipment of which Ingram Barge Company was listed by the Coast Guard as the managing owner.

In August 2006, ABSG Consulting Inc. issued a report entitled "Uninspected Towing Vessel Industry Analysis Project," which it had completed under contract to the Coast Guard (Task Order: USAED GS-10F-0242L, Deliverable Number: 6; Report Number: 469-05). The report was intended to "support the ongoing development of a proposed regulation to require the inspection of towing vessels" (see below for additional details on this rulemaking) by indentifying "the risks of the towing industry, both those faced by towing vessels and crews and those posed by towing vessels to other maritime infrastructure (e.g., bridges, locks)" (page iii).

As part of their work, ABSG Consulting sought to assemble basic data on the number of towing vessels and to develop a profile of the towing industry. ABSG consulted the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database as well as data maintained by the United States Army Corps of Engineers, which operates the locks and dams on the inland river system. Analysis of both databases revealed that the Coast Guard database was often incomplete. ABSG further noted that "because of the quality of the data and the lack of consistently common data fields, it was not practical to make a reliable one-to-one comparison of the vessels" in each of the Coast Guard's and the Army Corps of Engineers' databases (page 2-2). ABSG concluded, however, that the Coast Guard could "consider 5,100 to 5,200 as a reasonable estimate of the active towing vessel population" (page 2-2).

The lack of complete and comprehensive information on the towing industry that impeded ABSG's establishment of an accurate count of active towing vessels also affected the development of a detailed industry profile; however, ABSG presented the data that were available. Thus, ABSG stated that data from the Army Corps of Engineers showed that 3,659 of the 5,172 tow boats in its database were more than 25 years old and another 822 boats were between 16 and 25 years of age. Only 157 of the tow boats in the Army Corps of Engineers' database were 5 or fewer years old. The analysis also concluded that more than half of all the towing vessels thought to be in service were under 79 feet in length and under 100 gross tons. After analyzing the data sets available from both the Army Corps of Engineers and the Coast Guard, ABSG developed a trend analysis that suggested that the towing industry is both "relatively stable" and "aging" (page 3-12).

To assess safety trends in the towing industry, ABSG analyzed records of incidents involving towing vessels from the Coast Guard's MISLE database. ABSG's review of Coast Guard incident case files found that towing vessels were involved in more than 19,000 incidents from 1994 through 2003. ABSG then reviewed a selection of individual casualty reports (including those that were judged to be the most high consequence as well as a selection of other incidents that were not judged to be among the most high consequence incidents). From its analysis of the incident case files it studied, ABSG concluded that "human factors are the cause of incidents the majority of the time (58 to 63%), with lack of situational awareness and helmsman errors making up the dominant

subfactors in this group" (page 4-20). ABSG also noted that equipment failures were estimated by it to account for up to 40 percent of accidents involving towing vessels.

ABSG Consulting also analyzed two previous studies of accidents, including a report issued by the Coast Guard-American Waterways Operators (AWO) Bridge Allision Working Group in 2003.

The Coast Guard-AWO Bridge Allision Working Group was created by AWO and the Coast Guard under the terms of their existing Coast Guard-AWO Safety Partnership Initiative (described below). The Bridge Allision Working Group was assembled specifically to examine the causes of – and possible ways to reduce the incidence of – towing vessel allisions with bridges. The Working Group issued its report on May 23, 2003.

The Bridge Allision Working Group examined allisions occurring between 1992 and 2001 and found that there were 2,692 bridge allisions involving a U.S.-flagged towing vessel (with or without a tow) during that time period. The report argues it is important to view this number within the context of the total number of towing vessel transits. Using data from the U.S. Army Corps of Engineers, the Group concluded that there were approximately six allisions for every 10,000 towing vessel trips.

The Bridge Allision Working Group categorized the towing vessel-bridge allisions it examined into four categories. Sixty-one of these allisions were classed as the most significant cases because they involved either damage exceeding $500,000 in value; a pollution incident; or a death, injury or missing person (of the 61 cases, three involved fatalities). The next most severe category was designated for allisions resulting in damage between $100,001 and $500,000 in value; there were 99 allisions in this category. The next category was designated for allisions resulting in damage between $25,001 and $100,000; 220 allisions were placed in this category. There were 610 allisions that resulted in damage totaling less than $25,000, while 1,702 allisions resulted in either no damage or no recorded damage.

The Bridge Allision Working Group report found that "The information contained in the Coast Guard casualty reports posed a significant challenge to the Work Group" because "Coast Guard standards for gathering casualty facts and information, especially human factors information, were incompatible with the intent of the Work Group to conduct a detailed analysis." The report continues that "In many cases, the detail necessary to determine precisely the causal factors of an allision was not available."

Nonetheless, the Working Group examined a sample of 459 allisions, which included all of the cases from the two categories of casualties classed as the most severe as well as a sample of cases from other classes of severity. Even with the limitations noted on available data (which the report identifies as a "significant caveat"), "the Group concluded that 90% of the cases were related to human performance (78% to pilot error and 12% to other operational errors)." Five percent of the remaining allisions were attributed to mechanical problems and for the remaining five percent of cases, the cause could not be determined.

Licensing of Towing Vessel Operators

Section 8904 of Title 46 requires that every towing vessel "that is at least 26 feet in length measured from end to end over the deck (excluding sheer) shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations."

The current regulations governing the types of licenses required of towing vessel operators were adopted on May 21, 2001, and came into full effect on May 21, 2006. These regulations were developed following an accident in September 1993 in which the towing vessel *Mauvilla* and its barges allided with a bridge near Mobile, Alabama. The bridge girder was damaged in the accident – and the bridge subsequently collapsed when an Amtrak train passed over the bridge minutes after the allision (killing 47 people). The NTSB determined that the operator of the towing vessel *Mauvilla* did not have adequate training to operate towing vessels safely and recommended the development of higher licensing standards for towing vessel operators.

Per 46 CFR 15.610(a), every towing vessel at least 26 feet in length must be in the control of a person holding a master's license in any of a variety of permissible classifications, including master of towing vessels (unlimited or limited); master of inspected, self-propelled vessels (now to read "steam or motor vessels" per final rule issued by the Coast Guard on September 11, 2008) within the restrictions specified by the license; or mate or first-class pilot of steam or motor vessels with a license for service in vessels exceeding 200 gross register tons (individuals holding this license must also have 30 days of training and observation on towing vessels and must have a complete Towing Officer's Assessment Record or have completed an approved towing vessel operator's training course). Additionally, any towing vessel operating for more than 12 hours must have a second person on board holding either (1) one of the master's or mate's licenses listed above or (2) a license as mate (pilot) of towing vessels.

The licensing system established in 2001 also creates the license of apprentice mate (also known as a "steersman"); however, individuals holding this license are authorized to operate towing vessels only under the direct supervision of an individual holding a master's or mate's license for a towing vessel.

Per 46 CFR 10.465, individuals who began service in the towing industry after May 21, 2001, must fulfill the following requirements to obtain a license as a mate (pilot) of towing vessels:

- Complete 30 months of total service on towing vessels.
  - 12 of the total 30 months of service must be completed as an apprentice mate (steersman).
  - 3 of the total 30 months of service must be completed on the route (oceans, near coastal, Great Lakes/inland, Western Rivers) for which an endorsement is sought.
- Complete a Towing Officers Assessment Record or a course of study approved by the Coast Guard.

To obtain the license of master of towing vessels, an individual must have 48 total months of service on towing vessels, including 18 months of service as a mate (pilot) of towing vessels, only

six months of which can be on a harbor assist towing vessel and three months of which must be on the route for which the master's license is sought.

Additional requirements may apply depending on the route for which the master's license is sought; for example, special training requirements apply to individuals operating towing vessels moving tank barges carrying hazardous materials.

As noted above, there are classes of licenses other than the mate or master of towing vessels that authorize an individual to operate a towing vessel, including master of inspected, self-propelled vessels (now to read "steam or motor vessels") or mate of an inspected, self-propelled vessel with a license for service in vessels of greater than 200 gross register tons. The requirements for the operation of towing vessels under these licenses are similar (but not identical) to the requirements that must be completed to obtain a license as mate and subsequently master of towing vessels.

Drawing on data provided by the Coast Guard, the table below indicates the number of individuals who hold the specified types of licenses for the operation of towing vessels.

Individuals Licensed to Operate Towing Vessels

Type of License	Total
Master Towing Unlimited	18,111
Master Towing Limited	507
Mate (Pilot) Unlimited	1,096
Mate (Pilot) Limited	7
Apprentice Mate (Steersman) Unlimited	2,214
Apprentice Mate (Steersman) Limited	23
Total	21,958

Source: United States Coast Guard

Operation of a towing vessel greater than 26 feet in length without the properly licensed crew members is subject to a civil penalty of not more than $25,000 (Section 8906 of Title 46). The Coast Guard indicates that in the past three years, it has imposed 85 civil penalties against firms operating towing vessels without properly licensed personnel; these penalties are presented by Coast Guard District in the table below. No penalties have been assessed against ACL in the past three years for operating a towing vessel without properly licensed personnel, but one such penalty has been assessed against DRD Towing.

Civil Penalties Imposed For Operation of Towing Vessels Without Properly Licensed Personnel
(By Year and Coast Guard District)

CG District	2005	2006	2007	TOTAL
D1 (New England)	1	0	1	2
D5 (Mid-Atlantic)	1	0	0	1
D7 (Southeast)	2	3	5	10
D8 (Gulf Coast and Inland Rivers)	14	25	20	59
D9 (Great Lakes)	2	1	1	4
D11 (California)	2	2	2	6
D13 (Pacific Northwest)	0	1	0	1
D14 (Hawaii)	0	0	2	2
Total	**22**	**32**	**31**	**85**

Source: United States Coast Guard

On September 5, 2008, the Coast Guard issued Marine Safety Alert 4-08 in which the Coast Guard "strongly reminds the towing industry of its responsibility to properly man their vessels with adequate numbers of qualified and licensed crewmembers."

Changes to Current Licensing Requirements

On September 17, 2007, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Training and Service Requirements for Merchant Marine Officers" that proposed to alter the licensing requirements for towing vessel operators. The Coast Guard received 14 comments on this rulemaking by the close of the comment period. The Coast Guard subsequently published a final rule on September 11, 2008; the rule will take effect on October 14, 2008. The regulatory changes made by the final rule are described below.

On January 4, 2006, Kirby Towing Co. submitted a petition requesting that Coast Guard-approved training courses be counted toward the months of service required of applicants for the license of mate of towing vessels; this petition was supported by the "Report of the Licensing Implementation Working Group of the Towing Safety Advisory Committee (TSAC)" dated October 3, 2005. The Coast Guard stated in its notice that because time spent in a training course is time that could otherwise be spent completing the months of service on a towing vessel required of license applicants, this creates a disincentive preventing those seeking towing vessel licenses from enrolling in training courses. The final rule revises service requirements to allow time spent in approved training programs to count toward the fulfillment of the service requirements for a mate (pilot) of towing vessels license.

On February 11, 2005, Delta Towing Co. requested the establishment of an alternate path that individuals could follow to obtain a license as mate (pilot) of towing vessels; this petition was also supported by the "Report of the Licensing Implementation Working Group of the Towing Safety Advisory Committee (TSAC)" dated October 3, 2005. The final rule allows individuals who hold a license as master of steam or motor vessels of not more than 200 gross tons (except for limited masters' licenses as provided for in 46 CFR 10.429) to obtain a license as mate of towing vessels after completing (1) three years of service as a master of steam or motor vessels less than 200

gross register tons, (2) the exam required to obtain an apprentice mate's license, (3) the Towing Officers Assessment Record, and (4) a minimum of 30 days of training and observation on a towing vessel on the route for which the license is being sought (through individuals wanting to work on the Western Rivers would still need 90 days of experience on the Western Rivers to receive an endorsement for that route). The types of vessels that would qualify as steam or motor vessels not exceeding 200 gross register tons would include small passenger vessels and utility/supply boats. Regulations in place prior to the adoption of this new rule required individuals licensed to operate these vessels who wanted to obtain a mate's license for a towing vessel to complete 12 months of service as an apprentice mate on a towing vessel.

According to the Coast Guard, among the comments received by it regarding this proposed rule change, the TSAC and other proponents "laud" this change "as a streamlined mechanism for experienced masters from other segments of the industry to operate towing vessels" that is "expected to help alleviate the shortage of towing vessel officers while maintaining high standards of maritime safety." The Coast Guard also stated that "the proponents view the alternate progression as a 'win' for the towing industry." By contrast, the four comments submitted in opposition to this proposal were all submitted by currently licensed towing vessel masters. The Coast Guard indicated that the four opponents were "concerned that the alternate progression 'lowers the bar for training' on towing vessels and negatively impacts safety." The Coast Guard argued that the training requirements under the alternate progression scheme actually exceeded the training requirements currently required of applicants for the license of mate (pilot) of towing vessels because under current rules, mate candidates need 30 months of sea service, 24 of which must be on a towing vessel and only 12 of which must have been as an apprentice mate (the other 12 could have been in any capacity), while those who will apply for the mate license under the alternate progression will have a minimum of 36 months' experience as a master of steam or motor vessels less than 200 gross register tons.

Accelerated Licensing Programs

According to a legal case filed by ACL against the Northeast Maritime Institute (NMI), ACL and NMI entered an agreement on March 9, 2006 under which "NMI agreed to develop and deliver to ACL various courses and teaching programs relating to the training and credentialing of ACL's river pilots."[11] In January 2007, the agreement was supplemented by a Modification Agreement under which ACL agreed to pay $292,630 for the training program. ACL terminated its relationship with NMI in 2008 and ACL and the NMI are now engaged in legal proceedings regarding their contractual relationships. The Coast Guard indicated that ACL has discussed with the Coast Guard the possibility of creating an in-house training program but has not formally applied for approval of such a program from the National Maritime Center.

The Coast Guard approved an accelerated pre-steersman training program for personnel from ACL and their contract companies at the NMI on October 1, 2006; the approval is valid through October 31, 2008. The program is approved to last for a 15-month period. The Coast Guard indicated that as part of this program, 45 percent of sea time that would normally be required for the apprentice mate's license is to be acquired through classroom and simulator time. The Coast Guard further indicated that this arrangement was approved because in the classroom and in

[11] American Commercial Lines LLC, vs. Northeast Maritime Institute, Inc., 4:08-cv-0096 (S.D. Indiana 2008), page 3.

simulator settings, issues and conditions can be presented that may not always be encountered during actual service on a towing vessel.

The Coast Guard reports that it licensed 3 of the 4 individuals who completed the accelerated licensing program at Northeast Maritime Institute. One individual received an apprentice mate's (steersman) license for the inland waters and the Western Rivers. One individual received a master's license for the operation of steam or motor vessels not more than 100 gross register tons on inland waters, a license as a mate of steam or motor vessels not more than 200 gross register tons operating on inland waters, and an apprentice mate's (steersman) license for inland waters and the Western Rivers. One individual received a master's license for the operation of steam or motor vessels not more than 100 gross register tons on inland waters and the Western Rivers, a license as a mate of steam or motor vessels not more than 200 gross tons operating on inland waters or the Western Rivers, and a license as an apprentice mate (steersman) on inland waters and the Western Rivers. One individual who graduated from the Northeast Maritime Institute program provided insufficient information to the Coast Guard to receive a license.

The Coast Guard further reports it has approved one other accelerated training program for individuals seeking a license as a mate of towing vessels. The program is operated by Kirby Inland Marine for the purpose of training its own personnel.

Hours of Service on Towing Vessels

Licensed officers and crewmembers on towing vessels operating in locations other than the Great Lakes typically work on a two-watch system, under which they serve six hours on-duty and then are off-duty for six hours. The two-watch system is permissible under the limitations of Section 8104 of Title 46, which states that on a towing vessel "on a voyage of less than 600 miles, the licensed individuals and crew members (except the coal passers, firemen, oilers, and watch tenders) may be divided, when at sea, into at least 2 watches." Section 8104(h) of Title 46 continues by stating "an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period expect in an emergency." Violations of the 12-hour rule are punishable by a civil penalty of $10,000.

Section 81049(c) imposes different hours-of-service restrictions for those working on towing vessels on the Great Lakes, harbors of the Great Lakes and connecting or tributary waterways (except for such vessels engaged in fishing or salvage operations). In these areas, "a licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered." The hours-of-service prescribed under these regulations effectively constitute a three-watch system.

Section 409 of the *Coast Guard and Maritime Transportation Act of 2004* (P.L. 108-293) authorized the Coast Guard to prescribe hours-of-service on towing vessels that are at least 26 feet in length. Section 409 required the Coast Guard to conduct a demonstration project involving the implementation of Crew Endurance Management Systems (CEMS) on towing vessels prior to issuing the hours-of-service regulations for the towing industry. This statute was adopted following the issuance in 1999 by the NTSB of recommendation M-99-1, which called for the Coast Guard to "Establish within 2 years scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human

sleep and rest requirements" for domestic vessel operators. This recommendation is now on the NTSB's "Most Wanted Transportation Safety Improvements" list.

In a report dated December 2005, the Coast Guard presented the results of its CEMS demonstration project. To conduct this project, the Coast Guard worked with AWO to assess how "feasible, effective, and sustainable" CEMS are on towing vessels. In the project, the CEMS were demonstrated over a 6-month period on a total of 59 vessels drawn from the inland, coastal, and harbor towing vessel industries.

The Coast Guard reports that the demonstration project showed that "CEMS is effective in addressing known risks and factors that contribute to fatigue or endurance-related incidents" – albeit the "degree of effectiveness depends upon the adherence to the process and principles of CEMS." The project also found that CEMS is "feasible to practice" and "sustainable."

Having completed the CEMS demonstration project, the Coast Guard can now prescribe hours-of-service regulations for towing vessels. However, the Coast Guard has not yet moved to develop hours-of-service regulations and has not issued a notice of proposed rulemaking (NPRM) that would establish hours of service on towing vessels. The Coast Guard indicated in its report on the CEMS demonstration project that the use of CEMS is being "considered as a potential requirement" of the inspection regulations it develops for towing vessels.

On March 21, 2008, the Coast Guard issued Navigation and Vessel Circular (NVIC) No. 02-08 on "Criteria for Evaluating the Effectiveness of Crew Endurance Management System (CEMS) Implementation." NVICs are not formal rules – and this NVIC on CEMS indicates that it merely "represents the Coast Guard's current thinking" on the topic of CEMS. Specifically, the Coast Guard indicates in the NVIC that the document "provides guidelines for use by vessel owners, operators, third-party auditors, Coast Guard Officers in Charge, Marine Inspection (OCMI), marine casualty investigators, and others to aid in their assessment of the veracity and effectiveness of a company's or vessel's CEMS program."

NVIC 02-08 notes that "The causes for the vast majority of marine-related casualties are rooted in human factors. A large number of casualties have been specifically attributed to the human factor of crew fatigue." The NVIC lays out in detail how CEMS can be implemented to address "the full range of environmental, physiological, operational, and psychological risk factors affecting performance and safety in normal maritime operations."

The NVIC emphasizes that there is no one-size-fits-all approach to developing and implementing a CEMS – and that each CEMS must be tailored to the specific context and risks on a given vessel. However, the NVIC emphasizes that an effective CEMS will likely be characterized by the creation within a towing vessel company of a Crew Endurance Working Group incorporating members of the towing company's employees (such as company officers, department heads, vessel captains etc.). The Working Group's primary task is to identify the risk factors that can contribute to fatigue, prioritize these factors, and then identify strategies to mitigate these factors. The implementation of the CEMS then progresses to the development and implementation of the Crew Endurance Plan, which the NVIC indicates should organize watch schedules, napping schedules, light management, and shipboard policies to promote rest among crew members. Implementation of a CEMS is best guided by a CEMS Coach – and the NVIC indicates that "A company should

have at least one trained coach or an acceptable alternative onboard each vessel to help initiate and oversee its CEMS implementation effort."

Inspection Requirement for Towing Vessels

Prior to enactment of the *Coast Guard and Maritime Transportation Act of 2004* (P.L. 108-293), towing vessels powered by diesel engines were exempt from inspection by the Coast Guard. Section 415 of that Act added towing vessels to the list of vessels required to be inspected by the Coast Guard. The Section also authorized the Secretary to "establish by regulation a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels."

The conference report accompanying the *Coast Guard and Maritime Transportation Act of 2004* (108-617) states that, "Safety management systems allow the Coast Guard to oversee the maintenance and repair of vessel equipment and ship systems subject to inspection through an approved safety management plan that includes maintenance schedules and system tests. The Coast Guard may enforce the plan through audits of the vessel's logs and vessel operator's records rather than having to directly oversee the repair or maintenance work conducted on a particular piece of equipment or ship system."

Title 46 defines the scope of vessel inspections that must be performed by the Coast Guard on those vessels subject to inspection. Specifically, Section 3305 of Title 46 requires that inspections conducted by the Coast Guard must ensure that a vessel:

(1) is of a structure suitable for the service in which it is to be employed;
(2) is equipped with proper appliances for lifesaving, fire prevention, and firefighting;
(3) has suitable accommodations for the crew, sailing school instructors, and sailing school students, and for passengers on the vessel if authorized to carry passengers;
(4) is in a condition to be operated with safety to life and property; and
(5) complies with applicable marine safety laws and regulations.

Section 3306 of Title 46 expands on these requirements by authorizing the Coast Guard to issue regulations for inspected vessels regarding "the design, construction, alteration, repair, and operation of those vessels, including superstructures, hulls, fittings, machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew"

Additionally, Section 8101 of Title 46 requires that the Coast Guard must specify on the certificate of inspection issued to inspected vessels "the complement of licensed individuals and crew (including lifeboatmen) considered ... to be necessary for safe operation" of the vessel. Thus, as part of the inspection process for towing vessels, the Coast Guard will be required to identify the number and qualifications of crew members required to operate the vessels.

It is estimated that there are more than 7,000 documented towing vessels (and an unknown number of state numbered towing vessels) that will be subject to inspection by the Coast Guard once the final regulations for these inspections are issued. Among other considerations, as vessels are brought under the inspection process, it will be necessary for the Coast Guard to assess the extent to which existing vessels will have to be retrofitted to comply with inspection standards.

The Coast Guard reports that it has begun the process of writing regulations to implement the inspection regime for towing vessels. In December 2004, the Coast Guard published a "request for comments" regarding several questions pertaining to the inspection of towing vessels. Since that date, however, the Coast Guard has not published a notice of proposed rulemaking. This rulemaking effort is among approximately 100 rulemaking efforts pending in the Coast Guard.

Safety Boardings on Towing Vessels

Under Section 89 of Title 14, the Coast Guard may "make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States." Using this authority, the Coast Guard conducts safety boardings of vessels in U.S. waters, including towing vessels. During such boardings on towing vessels, the Coast Guard typically ensures that the vessel is properly documented, that properly licensed personnel are on board the vessel (46 CFR 78.61-1 requires that licenses must be "conspicuously displayed"), that required safety equipment is present and functioning, and that pollution control measures are present and functioning. The table below indicates the number of safety boardings the Coast Guard has conducted on towing vessels by Coast Guard District.

Safety Boardings on Towing Vessels

CG District	2003	2004	2005	2006	2007	TOTAL
D1	17	59	54	260	49	439
D5	73	27	26	135	47	308
D7	65	129	136	179	84	593
D8	147	609	1,040	2,407	1,045	5,248
D9	8	31	155	219	132	545
D11	9	23	66	127	104	329
D13	30	52	70	111	34	297
D14	14	31	31	44	20	140
D17	5	12	11	51	59	138
TOTAL	368	973	1,589	3,533	1,547	8,037

Towing Safety Advisory Committee

In 1980, Congress created the Towing Safety Advisory Committee (TSAC), which is tasked with advising, consulting with, and making recommendations to the Secretary on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.
According to 33 USC §1231a, the Committee is to consist of 16 members, including:

- 7 members from the barge and towing industry, reflecting a regional geographic balance;

- One member from the offshore mineral and oil supply vessel industry; and,
- 2 members from each of the following:
  - Port districts, authorities, or terminal operators;
  - Maritime labor;
  - Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); and,
  - The general public.

The members of the TSAC are appointed by the Secretary of the Department in which the Coast Guard is operating; the Secretary is also tasked with designating the Chairman and Vice Chairman of the TSAC. The current Chairman of the TSAC is Mr. Mario Muñoz, who is also the Vice President of Vessel Operations for American Commercial Lines. The Vice Chairman of the TSAC is Mr. Rex H. Woodward, Senior Director, Safety and Logistics at Pennsylvania Safety and Security Institutes.

According to the Coast Guard, there are three members of the TSAC who are active mariners; two of these individuals work full-time under their licenses while the third individual works occasionally under his license.

The members of the TSAC are not entitled to payment for their service. They "may be allowed travel expenses, including per diem in lieu of subsistence;" however, no funding has been provided in 2008 or 2007 to pay member reimbursements.

The TSAC met two times in 2007 (April 24-25, 2007, in Easton, Maryland; and September 18-19, 2007 in Laurel, Maryland) and has met once in 2008 (April 1-2, 2008, in Jeffersonville, Indiana). The TSAC held a teleconference in July 2007.

In 2007 and 2008, the TSAC made the recommendations to the Coast Guard outlined in the table below.

Recommendations Made to the Coast Guard by the TSAC

Recommendation	Date Recommendation was Made
Model Training Program for Apprentice Mate (Steersman) to Mate (pilot) of Towing Vessels (with Recommendation #134a Model Course Packet)	April 2007
Towing Vessel Inspection Text Redline	May 2007
TWIC-Two; Card Readers	July 2007
Towing Vessel Inspection Working Group Report	March 2008
Medical NVIC Working Group Final Report	April 2008

Source: United States Coast Guard

The TSAC is currently scheduled to terminate on September 30, 2010.

American Waterways Operators (AWO)

AWO is the trade association of the towing vessel, tug boat, and barge industry. It was created in 1944 and, according to its website, now has more than 400 member companies.

AWO formally established a "Responsible Carrier Program" on December 7, 1994, for the stated purpose of improving "marine safety and environmental protection in the tugboat, towboat, and barge industry." The Program is intended to accomplish these objectives by "establishing preferred industry operating principles and practices as voluntary standards of conduct for tugboat and towboat companies." The Program addresses three issues: management and administration, equipment and inspection, and human factors. Participation in the Responsible Carrier Program is now a condition for membership in AWO.

To implement the Responsible Carrier Program, AWO subjects its member firms to audits to ensure that they are in compliance with the requirements of the Program. AWO's Responsible Carrier Accreditation Program certifies auditors that conduct the audits, which are to be conducted every three years. Materials issued by AWO on the Responsible Carrier Program indicate that firms are notified 180 days prior to the date on which their audit is due. Only 10 percent of a company's fleet is to be subjected to a vessel audit – and AWO states that the auditor should select the boats to be audited.

Companies found during their audit to be in non-compliance with any part of the requirements of the Responsible Carrier Program have 90 days to come into compliance and complete their audit. Companies that cannot pass their audit when it is required "due to their inability to present sufficient evidence of ongoing compliance with the documentary requirements of the program, may in lieu of having their membership terminated, immediately apply in writing to the Responsible Carrier Program Accreditation Board for probationary status." If such status is granted, AWO will issue a valid Responsible Carrier Program certificate. Further, according to AWO's materials, "A company in 'probationary status' will receive all rights and privileges accorded to AWO member companies in full RCP-compliant status, such as publishing the company name on a list of valid third-party audited RCP-compliant companies." To obtain probationary status, the firm must produce a letter from their AWO-certified auditor certifying that the firm has all policies and procedures required by the Program in place and must submit a letter from the head of the firm stating that the company will submit to an annual audit for those requirements in which it was found to be deficient. Probationary status will be withdrawn from a company that fails to complete a required audit within three months of the date when it is due.

According to AWO, DRD Towing underwent its last audit on or about May 17, 2008. DRD failed the audit because it did not have adequate documentary evidence to prove ongoing compliance with the requirements of the Responsible Carrier Program (although AWO indicates that the auditor that assessed DRD found that the firm did have all required policies and procedures in place at the time of the audit). On May 21, DRD applied for probationary status – but the application was incomplete. AWO indicates that DRD was informed by email on June 6 and by phone call on July 30 of the additional information that it was required to submit to apply for probationary status. DRD failed to provide the additional information and its membership in AWO was terminated on August 5.

AWO indicates that ACL underwent its last audit on March 3, 2008 – and passed the audit.

On September 19, 1995, AWO and the Coast Guard established a safety partnership when they signed an "Outline of Quality Partnership for Marine Safety and Environmental Protection." The stated purpose of this partnership was to "strengthen the communication and working relationship between the Coast Guard and the barge and towing industry." The agreement, which states that it is intended to complement other government and industry functions (such as the TSAC), indicates that it will provide a "flexible mechanism for joint Coast Guard-industry action in a results-oriented, non-regulatory environment." Among other activities, the partnership provides for the creation of "Quality Action Teams," which are to be assembled to analyze problems or process improvements that are needed, analyze the problems, and identify solutions based on the available data. One such Quality Action Team created under the AWO-Coast Guard partnership was the Bridge Allision Working Group (discussed previously).

PREVIOUS COMMITTEE ACTION

On August 2, 2007, the Subcommittee on Coast Guard and Maritime Transportation convened to examine "Challenges Facing the Coast Guard's Marine Safety Program." During this hearing, the Subcommittee heard from the Coast Guard and maritime industry representatives about the state of the Coast Guard's Marine Safety Program, which in the opinion of several witnesses from industry is challenged by a lack of continuity in the assignment of personnel and a loss of technical expertise, particularly among inspectors and investigators.

On October 17, 2007, the Subcommittee on Coast Guard and Maritime Transportation convened to examine "Mariner Education and the Workforce." This hearing examined the degree to which the maritime industry was experiencing worker shortages as well as the nature and extent of training opportunities available to attract new individuals to the industry and to prepare them for industry-related careers.

On May 20, 2008, the Subcommittee on Coast Guard and Maritime Transportation convened to examine the "Coast Guard and National Transportation Safety Board Casualty Investigation Program." During that hearing, the Subcommittee reviewed the results of a report issued by the Department of Homeland Security's (DHS) Office of the Inspector General (OIG) on the Coast Guard's investigation of marine causalities. The OIG found that many of the Coast Guard's casualty investigations were not conducted at the level of scope (formal, informal, data collection) that was appropriate to the circumstances of the casualty under the Coast Guard's own policies. The report identified more than 1,200 casualties that should have been investigated at a higher level than the level at which they were investigated. Further, the OIG found that a significant number of individuals who were not qualified under Coast Guard standards as casualty investigators had nonetheless been assigned to such positions. Finally, the report noted that there was a significant backlog of casualty investigations that had not been reviewed or closed and a number of instances in which data collected on an accident were incorrectly entered into the Coast Guard MISLE database.

WITNESSES

Panel I

Rear Admiral James Watson, IV
Director of Prevention Policy for Marine Safety, Security and Stewardship
United States Coast Guard

Mr. David Westerholm
Director, Office of Response and Restoration
National Oceanic and Atmospheric Administration

Panel II

Mr. Mario Muñoz
Vice President of Vessel Operations
American Commercial Lines

Mr. Eric Dawicki
President
Northeast Maritime Institute

Mr. Richard A. Block
Secretary
National Mariner's Association

Mr. Augustin Tellez
Executive Vice President
Seafarers International Union

Mr. Thomas A. Allegretti
President and CEO
American Waterways Operators