

**Newsletter 7-09
July 15, 2009**

Dear Member:

BOARD MEETING INPUT REQUESTED – The 2009 Summer Membership and Board of Directors Meeting will be held August 5-7 in Wyoming’s Jackson Hole area. If you have any issues you would like the Executive Committee and Board to consider at the meeting, please contact NTTC staff with details. The meeting will open with an Executive Committee Meeting and Reception on Wednesday, August 5th and conclude by noon on Friday, August 7th. The meeting is open to all carrier and associate members. There is still time to register for the meeting.

A copy of the meeting agenda is included with this newsletter. If you are unable to join us, we hope that you will consider attending future meetings where we discuss the business of the association and hear timely presentations from industry thought leaders and suppliers.

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WETLINES . . . WHY NOW? – Perhaps the common question we receive from our members regarding the proposed Congressional ban on wetlines is “Why now?” No matter how you look at it, there has been a decrease in true wetlines incidents over the past several years. Nothing significant has happened since the U.S. Department of Transportation withdrew its proposed regulation to ban wetlines in 2006.

The old cliché that you “are more likely to be killed by lightning” certainly applies to the wetlines fascination of the National Transportation Safety Board and its allies in the Democratic majority on the House Transportation & Infrastructure Committee. According to the National Weather Service, there were a total of 449 deaths from lightning strikes between 1998 and 2008. In stark contrast, there were perhaps but 2 deaths from wetlines incidents during that same period.

Perhaps the best answer for those of you who live beyond the surreal world here inside the Capital Beltway can be found in a July 13th article in *Transport Topics*, written by ace reporter Sean McNally. Here are the first three paragraphs from his article entitled *Don’t Ignore NTSB Suggestions Nominee Hersman Tells Congress*:

Debbie Hersman, President Obama’s choice to lead the National Transportation Safety Board, told a Senate subcommittee that other transportation agencies should voluntarily adopt the board’s recommendations, and if they don’t, Congress should order them to.

“One of the best ways for those recommendations to be implemented and not ignored is for Congress to pay attention to them,” Hersman said during her testimony before the Senate Commerce, Science and Transportation Committee on July 8.

Hersman . . . singled out the Federal Motor Carrier Safety Administration for not implementing more of the NTSB’s recommendations to improve safety – even though she acknowledged the number of truck-related fatalities “has remained relatively flat since (FMCSA) has been created.”

In shorthand, NTSB simply does not like to take “No” for an answer and “elections make a difference.” As loyal readers know, the NTSB does not have the authority to make another agency pass any regulations. However, they can and do advise, cajole, wheedle, and embarrass. NTSB has twice “advised” DOT to ban wetlines on cargo tanks based, in part, on questionable and probably wrong conclusions NTSB reached in investigating a 1997 cargo tank accident in Yonkers, New York. DOT has twice “failed” to satisfy NTSB, the last time in 2006 after it withdrew a lengthy rulemaking. Come then, the 2008 elections and the current NTSB effort to achieve through legislative imposition what it could not achieve through the regulatory process.

NTTC staff recently met with Ms. Hersman who is a consummate professional and has earned high marks for her handling of the airplane crash in Syracuse earlier this year and the tragic Metro crash that killed 9 people here in the Washington area last month. She acknowledged that wetlines incidents are indeed rare, but she believes they represent a potential catastrophe that her agency is charged with preventing. The wetlines ban could be a benefit and costs are not a consideration. Such are the ways of Washington when you hold all the cards.

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BLAME AIR CONDITIONING – Speaking of the new financial capital of the United States, there was a time when the British government considered Washington D.C. to be a tropical posting for its diplomats to the Old Colonies. Shorts and pith helmets were uniform of the day during summer months. Our Honorables on the Hill all headed for home when the temperatures reached 90° and the mosquitoes ruled the marshes that now house big glass buildings full of budget-breaking bureaucrats. Alas, then came air conditioning. Now, the circus is in town almost year round and Hill Staffers are nervously checking their vacation reservations cancellation policies as Congress threatens to remain in town into August if the Health Care bitter pill bill is not passed.

With the arrival of Minnesota’s latest envoy to Washington, Senator Al Franken (why couldn’t they send a quality comedian like Lake Wobegon’s Garrison Keillor or WWF’s Jesse Ventura?), the Senate Democrats now have their holy grail of 60 filibuster-breaking votes to go with the White House and their “No Elephants can see the bill before voting” vast majority in the House. Liberal dream legislation will fly out of Washington quicker than cheatin’ Republican Family Value husbands out of a cheap motel on a Saturday night, right? Maybe not. In politics, if there is no one else to fight, you fight yourselves. Sometimes, these pols even worry about getting re-elected once in a while.

Take as an example the Highway Reauthorization and Pork Replenishment Bill of 2009 which House Transportation & Infrastructure Chairman James Oberstar (from the aforementioned Minnesota) and Ranking Republican Member John Mica (Florida) promised would be “marked up” by the August break and on the House Floor by September, and passed by the end of this session. No more extensions – unless of course it’s a Bridge to Nowhere in Duluth. This, by the way, is the same Omnibus bill that will be wrapped around the Hazardous Materials Transportation Safety Act of 2009 which includes a rather unfortunate amendment banning wetlines.

Somewhere between a late June press conference where a shovel-wielding team of Oberstar and Mica promised passage of the Highway Bill (which they said is really a jobs bill) and the ceremonial signing of the Act at the White House, the President and Senate constructed a giant 18-month roadblock. Token Republican Cabinet Secretary of Transportation Ray LaHood angered the T&I duo by calling for an 18-month extension of the 2005 Highway Bill SAFETEA-LU (don’t ask) and Senate Environment & Public Works Chairman “General, Call me Senator” Barbara Boxer, (D-PRC) quickly agreed with the Administration. Not to be outdone, Senate Commerce, Science and Transportation Chairman Jay Rockefeller (D-\$\$) agreed to the extension.

So, where are we now? I think the biggest mistake anyone could make at this time is to think the 18-month extension is a done deal and back away from strongly advocating industry positions on this very important issue. Now more than ever, Washington is the City of the Chinese Auction. Start off with your absolute final position than begin the logrolling process. I fully expect that a Highway Reauthorization Bill with an HMTA component that includes some provision on wetlines will pass in this 111th Congress, if not this year. No politician in the current Congress wants to let the pork and serious issues involved be passed onto the next Congress. There is way too much money involved and the Highway Bill really is a jobs bill. The House T&I Committee will take up the bill again in earnest when they return from whatever August break Congress gets. I predict that we will see a Highway Reauthorization completed by this time next year.

KEEP THE BARICADES MANNED – In line with the above item, your NTTC staff continues to work the wetlines issue as if it will be decided in the near future. Just yesterday, Dan Furth and I met with Congresswoman Laura Richardson (D-CA) and with transportation counsel for Congressman John Boccieri (D-OH). We will also be part of a group that briefs Republican T&I staffers on Friday. And, we’re keeping their mailboxes and fax lines jammed with updates on a regular basis. Please keep up your efforts to reach your Congressional Representatives on the T&I Committee. Our concern is that the wetlines issue will be decided at the Committee level shortly and that it will be very difficult to change in the future. Please contact NTTC if you need any information on this ridiculous proposal that we fear will, in some form, see the light of day.

CARD CHECK UPDATE – The pointing and posturing continues on Capitol Hill regarding the so-called Employee Free Choice Act (a.k.a. Card Check). The magic 60th vote for cloture was sworn in last week, but two of those 60 votes – Senators Robert Byrd (D-WV) and Edward Kennedy (D-MA) would probably have to come to the Senate floor via stretcher to cast their votes to cut off debate. That raises the question of whether or not those two liberal icons might not be “encouraged” to resign from the Senate to be replaced by healthy and sure votes. Both Massachusetts and West Virginia have Democratic governors. Actually, I have not heard anyone suggest that, but decorum and respect for old war horses is not what it used to be. You heard it here first.

There is tremendous pressure on Democrats from a few “somewhat red” states to toe the labor line or suffer consequences in the future. It is up to what is left of the business community to exert equal pressure in states with wavering senators. Backup efforts are being made to come up with a “compromise” that will lessen the secret ballot concerns and allow wiggle room for these senators. There is no compromise possible with so onerous a bill.

This bill will remain the litmus test for who labor will support in future elections.

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ONTARIO ENFORCING SPEED LIMITER RULE – No more Mr. Nice Guy in Ontario. If you enter the Province without proof of a speed limiter on your tractor, you will be cited and fined. The “soft enforcement” period is over. The law applies to all carriers, whether or not they are based in Ontario. We do know that the law is being enforced in Ontario and a similar regulation has been in place in Quebec.

Here are key portions of the regulation that applies to vehicles manufactured after January 1995.

14. (1) The speed-limiting system of a commercial motor vehicle shall be properly set at a maximum speed of 105 kilometres per hour. O. Reg. 396/08, s. 1.

(2) A speed-limiting system is properly set for the purposes of subsection (1) if it prevents a driver, by means of accelerator application, from accelerating to or maintaining a speed greater than permitted under subsection (1). O. Reg. 396/08, s. 1.

(3) The maximum speed under subsection (1) shall be set by means of the electronic control module that limits the feed of fuel to the engine. O. Reg. 396/08, s. 1.

(4) A commercial motor vehicle is exempt from subsection (3) if it is equipped with an equally effective system, not dependent on the electronic control module, that allows limitation of vehicle speed, remotely or not, but does not allow the driver to deactivate or modify the system in Ontario so that it does not comply with subsections (1) and (2). O. Reg. 396/08, s. 1.

15. (1) A speed-limiting system shall be in good working order. O. Reg. 396/08, s. 1.

(2) Without limiting the generality of subsection (1), all aspects of a commercial motor vehicle’s computer system or systems, computer programs, components, equipment and connections that are

capable of playing a role in preventing a driver from increasing the speed of a commercial motor vehicle beyond a specified value shall be in good working order. O. Reg. 396/08, s. 1.

16. A commercial motor vehicle’s electronic control module shall contain information that accurately corresponds with any component or feature of the vehicle referred to in the module, including information regarding the tire rolling radius, axle gear ratio and transmission gear ratio. O. Reg. 396/08, s. 1.

17. The prescribed speed for the purposes of subsection 68.1 (9) of the Act is 115 kilometres per hour. O. Reg. 396/08, s. 1.

Below is key language from the law authorizing the speed limiter regulation:

Verifying compliance

(4) A police officer or officer appointed for carrying out the provisions of this Act, in exercising his or her powers under section 82 or 216.1, may require that the driver or other person in charge of a commercial motor vehicle,

(a) provide the officer with access to the vehicle’s computer system in order to retrieve and read any information relevant to the activation and functioning of the vehicle’s speed-limiting system;

(b) surrender to the officer any device or equipment carried in the vehicle that operates as part of the vehicle’s speed-limiting system; and

(c) surrender to the officer any records that the driver is required by the regulations to carry with him or her while driving the vehicle. 2008, c. 8, s. 1.

Same

(5) A driver or other person in charge of a commercial motor vehicle shall comply with any requirement made under subsection (4) by a police officer or officer appointed for carrying out the provisions of this Act. 2008, c. 8, s. 1.

For more information on this regulation and texts of the law and regulations, please visit <http://www.mto.gov.on.ca/english/trucks/trucklimits.shtml>

MARK CALENDARS FOR FALL REGIONAL SAFETY MEETINGS – Registration materials are available (and **attached**) for the two NTTC Safety and Security Council Fall Meetings. The meetings will be held September 17th at the Sheraton City Center in Baltimore and October 21st at the Sheraton Oklahoma City Hotel (downtown, near Bricktown). The Baltimore meeting will be held in conjunction with the American Trucking Associations’ annual safety conference and the week before the CVSA fall conference.

RESULTS IN FROM JUNE’S CVSA ROADCHECK – Tank truck personnel who haul hazardous materials throughout North America are the safest commercial drivers on the roadways. This is our perspective at NTTC and the numbers from beyond the Beltway continue

to prove this as fact. Roadcheck 2009's record total of overall inspections and Level 1 inspections showed significant declines in vehicle and driver OOS rates, as well as a drop in safety belt violations.

From June 2-4, state and federal certified inspectors at 2,148 locations across North America performed a record 72,782 truck and bus inspections. Of that total, there were 57,013 NAS Level I inspections, the most comprehensive roadside inspection. Data show the highest overall vehicle compliance rate (80.4%) since 1996, and the highest overall driver compliance rate (95.7%) ever. In addition, safety belt violations were reduced in 2009 by 88.5% and a driver compliance rate of 96.4%, both improvements (5.7% for vehicles and 20% for drivers) over last year's totals. NTTC is part of a U.S. DOT/trucking industry coalition to raise awareness and usage of seat belts among the commercial motor vehicle driver population on the roadways.

Brakes continue to be the dominating vehicle out of service defect, comprising 52.6% of the total vehicle defects. The percentage of vehicle out of service defects that were brake related has declined noticeably over the last few years, down from a high of 56.6% in 2004.

Driver results for the vehicle types were as follows:

- All vehicles: 95.6% of drivers passed the inspection and 4.4% were placed out of service (5.3% were out of service in 2008).
- Hazmat: 97.0% of drivers passed the inspection and 3.0% were placed out of service (2.4% were out of service in 2008).

Vehicle results were as follows:

- All vehicles: 80.4% of vehicles passed the inspection and 19.6% were placed out of service (20.8% were out of service in 2008).
- Hazmat: 83.0% of vehicles passed the inspection and 17.0% were placed out of service (17.6% were out of service in 2008).

Some numbers that our membership should note: 2,333 cargo tank inspections took place and 4,331 hazardous materials inspections (including non-tank) were conducted over the three-day period.

The Commercial Vehicle Safety Alliance sponsors the annual Road Check, with participation by the Federal Motor Carrier Safety Administration, the Canadian Council of Motor Transport Administrators, Transport Canada, and the Secretariat of Communications and Transportation (Mexico).

CARGO TANK PART 180 WORKSHOPS SCHEDULED – Three 2009 Cargo Tank Test and Inspection Workshop are scheduled for 2009: Sept. 9-10 Boston, MA (Newton suburb); Sept. 16-17 Jacksonville, FL (Ponte Vedra); and, Sept. 29-30 Los Angeles, CA (downtown Long Beach).

DOT personnel will review Part 180 test and inspection requirements for specification cargo tanks and NTTC staff will provide regulatory updates. These outreach sessions conducted by trained DOT personnel are great for our industry. The attendees and instructors are free to interact and “get in the weeds” with the nuances of the regulations that our unique industry faces.

An example from the Kansas City session in June:

Question: *If an MC-307 went through an inspection for a pressure test, is it in compliance to note that a successful pressure test took place on 4-08 and etch that on a CTMV tag next to the original data plate from the manufacturer, instead of putting a decal on the front bulkhead?*

Answer: *The regulations say that the test date must be “durably and legibly marked” but makes no reference to decals or metal plates. However the regulations do specify that the letters and numbers must be 32mm (1.25 inches) high. On a jacketed MC307 cargo tank it would be very difficult to attach such a tag to the shell without compromising the integrity of the ring stiffeners. It could be attached with glue or some other substance. (180.415 (b) (2)).*

Registration materials **are attached** for the three remaining workshops. Certificates of attendance will be provided and the training can be used to satisfy required HM employee function specific training.

GO BOILERMAKERS: NTTC SEEKS STRONG PURDUE TURNOUT IN TOUGH ECONOMY – NTTC plans to conduct its **Leadership Development Seminar, November 15–18**, on the campus of Purdue University in West Lafayette, Indiana. This will be the 54th Management Development Conference and it is limited to the introductory “basic course” this fall. Every other year we conduct the “advanced” course. The sessions help tank truck carrier personnel such as terminal managers, dispatchers, safety and maintenance supervisors, and sales managers improve their team building and communications skills. Leading tank truck carriers send several of their promising managers to this conference every year. *We hope that this year is no exception, but we realize that many of our members have “grounded the troops” and imposed travel restrictions. Our coordinators at Purdue are confident that with a minimum of twenty registrants that it would be worth conducting the course.*

The interactive session will address such topics as: The Dynamics of Leadership; Managing Conflict, Counseling and Discipline; and Building Effective and Winning Teams. Please contact Fritz at fmead@tanktruck.org, phone 703-838-1960, or our Staff account at nttcstaff@tanktruck.org and indicate whether you plan to send promising leadership candidates

within your organizations to Purdue's campus this November. With solid demand, we will then give Purdue the green light for 2009 to conduct this valuable course.

NASHVILLE TO HOST MAINTNENACE SEMINAR – We are pleased to bring the annual NTTC Cargo Tank Maintenance Seminar and Equipment Show back to Nashville this year. Exhibit and Registration materials **are attached** for the industry's largest tank truck meeting which will be held October 26-28 at the Nashville Convention Center and Renaissance Hotel.

Please contact NTTC staff to suggest topics or speakers for this important meeting. Also, we always welcome sponsorship support from suppliers of equipment and services to the tank truck industry. Please contact Dan Furth if you're interested in sponsorship details.

ATA SETS ANNUAL CONFERENCE – The American Trucking Associations will hold its 2009 Management Conference & Exhibition October 4-7 at the Mandalay Bay Resort in Las Vegas. Tank truck's own Shorty Whittington will be recognized for his busy year of service as ATA Chairman. For information on the meeting, call ATA at 703-838-1755 or visit <http://mce.truckline.com>

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