

Waterways

A publication of the Upper Mississippi Waterway Association

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August 2011

Federal regulators decide...

Farmers may move their grain

Years ago, "Saturday Night Live" character Rosanne Roseannadanna used to say, "Well you know, it's always something..." And that might well express the feelings of farmers who truck their own grain to river terminals on the Upper Mississippi. Earlier this year a guidance document from the Federal Motor Carriers Safety Administration (FMCSA) indicated that perhaps farmers taking grain to market should be treated as commercial truckers. Because grain hauled to a river terminal for down-river movement crosses state lines in transit to the Gulf of Mexico, the implication from FMCSA and the U.S. Department of Transportation (USDOT) was that these grain haulers, no matter how small or seasonal, are engaged in interstate commerce.

CDL's & Medical Cards?

If they'd been put into effect, the guidelines would have required federal medical cards, detailed maintenance logs and a commercial driver's license for any farmer or family member making the trip to the terminal. Additionally, FMCSA guidelines were poised to label farmers who hauled commodities grown on rented or share-cropped land to be a "for hire" carrier and subject to those rules.

However earlier this week, the USDOT, after hearing from farm state lawmakers and agribusiness interest groups, said it's not going to happen, at least



(Above) The Mississippi River and its infrastructure remains a vital lifeline for Midwestern farmers and other shippers.

not at the federal level.

Deputy DOT Secretary John Porcari issued a statement saying that the department will not be changing any federal rules on commercial driver's licenses.

States might require

But several farm groups continue to be worried that individual states might impose CDL requirements and so FMCSA published a notice in the Federal Register seeking comment on three issues: What

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From the Executive Director . . .

Thirty Years and Counting

We recently came upon a cache of UMWA monthly newsletters from 1982 to the present. With that in hand, we thought it would be appropriate to do a short, light-hearted piece about our newsletter, or at least those issues not stuffed away in a file drawer or stored upon outdated and unretrievable digital media.

Early leadership and warm vermouth

Since its 1932 incorporation in Minnesota, UMWA was fortunate to have the vision and leadership of such notables as C.C. Webber, President, Deere and Webber Company, forerunner of today's Deere & Company (1932-1938); H. M. Baskerville, President, Riverway Company (1948-1953) and J. L. Shiely, Jr., President of the company bearing his name, now known as Aggregate Industries US (1957-1959) to name just a few.

The 1982 newsletter masthead indicated an Amery, Wisconsin address and telephone number, reflecting the address of Andy Nelson, its then Executive Vice President. While employed by GTA – the forerunner of today's CHS, Inc. – Andy was instrumental in clawing through the multi-level permit process required to construct GTA's barge terminal at Savage on the Minnesota River. Recognized or not, the regional grain and waterway industry is indebted to Andy for his tenacious drive and dedicated work-ethic, without which, the terminal might not exist today. As an aside, Andy was also known to some as being the only person-of-note to prefer a glass of warm, dry vermouth as his beverage-of-choice; please, no ice.

Association governance

In an edition covering the 1982 Annual Meeting, Rear Admiral Sidney Vaughn, Commander of the 2nd Coast Guard District, commented that two vital areas of the waterway industry are communications and involvement. Coincidentally, at that same meeting UMWA members voted to amend the bylaws to permit the election of state vice presidents as the association's eyes-and-ears in their respective states. The change was designed to "help UMWA function more efficiently" and to give attention to all relevant issues in the five Upper Mississippi River states. Ironically, today's members are debating whether to continue the practice; this time

around it's not a question of improving efficiency, but of the realization by members that the Illinois Waterway and the Missouri River have grown in commercial and environmental importance over the last three decades, requiring the day-to-day attention of local shippers, supported, when requested, by UMWA.

Department of Interior flip

However, it was a two-line sentence about a coal slurry pipeline that really piqued our curiosity. The November 1, 1982 issue stated that the U.S. Secretary of Interior and a slurry pipeline operator entered into a contract to withdraw Missouri River water for use in an interstate coal slurry pipeline. Excuse me, but isn't that the same federal agency which now claims that Missouri river water is sacrosanct for the preservation of the Piping Plover and other endangered species – and that waterways, a critical component of national transport infrastructure, can go-fish (remember, this is a light-hearted article)? Intrigued by this radical change of heart, a Google search uncovered a 1982 case decided by the U.S. Supreme Court in 1988.

Testimony reflected that the ETSI Pipeline Project entered into a 40-year contract with the Secretary of the Interior to withdraw a certain amount of water per year from Lake Oahe, a reservoir located on the Missouri River in South Dakota, for use in an interstate coal slurry pipeline. The State of South Dakota had already granted ETSI a permit to use this water to transport coal from Wyoming to the southeastern United States. Soon after the contract was signed, however, the states of Missouri, Iowa and Nebraska filed suit in District Court to stop the contract, alleging that Interior lacks authority to execute a contract for industrial use of water without first obtaining the approval of the Secretary of the Army, which, according to court documents, was never intended to be granted, nor was it ever granted.

As a matter of interest, the Supreme Court cited that the Lake Oahe reservoir holds in excess of 23 million acre-feet of water and the ETSI Project would withdraw only about 20 thousand acre-feet of water per year for 40 years, seemingly not a huge amount of water when considering the pipeline would cover a distance of 1,036 miles.

However, the major point in this case addressed the fundamental issue specifying the powers of the

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Secretary of the Army and the Secretary of the Interior – particularly the former’s authority as to the use and disposal of water at any reservoir under the Department of the Army’s control. Specifically, “the Interior Secretary does not possess the authority to execute a contract to provide water from an Army reservoir for industrial use without obtaining the Army Secretary’s approval.” In other words, the Secretary of the Army has exclusive contract authority to remove water from its reservoirs for industrial use.

Needless to say, the ETSI-Department of Interior project was never commissioned notwithstanding claims it would be a preferred alternative to damage-causing large dams and made-made lakes.

Minneapolis favorable towards navigation

Closer to home, the City of Minneapolis, according to the November, 1983 edition, is officially considering the completed Task Force report on Upper Harbor Navigation. A committee of the City Council has accepted this study in its present form, unless some unforeseen problems arise to change it. “The Task Force report strikes an even balance and is quite favorable to navigation. Recommendations include assigning a specific team or City agency to guide future development of the harbor.” [The City of Minneapolis is currently in the second decade of a thirty-year plan to eliminate commercial navigation from the harbor, and possibly from their memory; apparently something ‘unforeseen’ *did* arise.]

1980 Russian grain demand

And this from a December 1983 issue: the Minneapolis Grain Exchange indicated that more than 59 million bushels of grain were shipped downriver in November, or 1100 barge loads. The Exchange also said that as of the end of the calendar year, the total was 438 million bushels in 8,400 barge loads of grain. Already, the figures are up from the 282 million bushels recorded in 1982 . . . approximately a 55% increase. [Remember: During the 1970s, Russia went from being a significant exporter to the world’s largest importer of grains, upwards to 40 million tons per year – expressed in 60-pound units, annual Russian grain demand is a staggering 1.3 billion bushels.]

What started out as a scan of past newsletters quickly reaffirmed our belief that headlines, no matter

their date, are merely random placeholders in a yet-to-be-completed essay. For example, UMWA governance will always change to reflect adjustment to trade agreements, environmental movements and federal funding; Federal agencies must continue to reflect changing political agendas; Minneapolis has not yet found ways to finance their overpriced Above the Falls plan; and world population growth pushes global grain production. And even though we focused on only two years of the thirty, this airy assessment resulted from merely reading a few sentences about the Piping Plover and Minneapolis’ once warm, fuzzy feeling towards commercial navigation in Mark Johnson newsletters of almost thirty years ago.

Other river related items:

- The Army Corps of Engineers recently christened its newest vessel the Mv. Rock Island, in an Aug. 9, ceremony at the Rock Island Arsenal. The new boat joins the Mississippi River Structures and Maintenance fleet located at Pleasant Valley, Iowa. (See picture on page 4)
- On the other end of the ledger, the Corps says that the 74-year-old retired dredge William A. Thompson may be sold for scrap unless a qualified non-profit group comes forward to make public use of it.
- A \$10 million habitat improvement program in Pool 9, funded under the federal Environmental Management Program will create nine new islands and protect about 10 existing islands. When completed, it will benefit fish, waterfowl and wildlife in and along the river.
- Free Flow Power Corporation says its first full-scale hydrokinetic turbine generator on the Mississippi is operational at a Dow Chemical dock in Plaquemine, La. Free Flow says it is pursuing approval for arrays of turbines in the Mississippi at several Locks and Dams. And the Federal Regulatory Energy Commission has issued a preliminary hydropower permit to a group called Lock+Hydro Friends Fund, LLC for an installation at Lock and Dam 21.

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distinguishes intra- and interstate commerce for operation of a commercial motor vehicle in a state; Whether a farmer transporting supplies or crops under a crop-sharing agreement needs a CDL; and whether farm equipment should be considered commercial vehicles.

For UMWA members who have had to fight similar kinds of unnecessary regulation at the state and federal level over the years, this latest flap does underscore that as Rosanne used to say, it is always something!

COB Being Talked About

Periodically the idea of container-on-barge shipping comes up and is usually said to be a great idea. For example UMWA Executive Director Russ Eichman has talked about COB several times in the pages of this newsletter.

Idea floated again

Last month the idea was raised and praised again at the Transportation Research Board's summer meeting in Boston, Mass. Transportation Consultant Paul Pollinger told the meeting that a hull design that could operate on the inland waterways system and the open ocean. But, Pollinger said, the U.S. Department of Transportation hasn't shown much interest in the idea. He also said he has contracted with a well known boat builder to develop a prototype hull design that will demonstrate the feasibility of the idea.

Pollinger says COB could mean \$500 million annually to the inland waterways.

Shippers reluctant

However, James McCarville, executive director of the Port of Pittsburgh Commission told the same group that his commission tried to develop a COB service several years ago to run between Pittsburgh and New Orleans and found that attracting shippers is a long-term process. A pre-feasibility study done by the Pittsburgh group showed great economic potential for the service, but also found shippers reluctant to change modes despite future cost savings.

Another economic impact study was completed in late 2006 by the Missouri Department of Transportation (MODOT) and used the International Port of Memphis to develop some interesting data on COB's potential impact.



Above: The new Corps of Engineers Mv. Rock Island which recently joined the fleet.

MODOT said that the impact of COB operations on the county surrounding Memphis would be \$5.5 billion a year with over 16,000 jobs created.

Economic benefits

Their study reiterated the economic benefits of water-borne transportation, often talked about in this newsletter, including: Shipping by water is about one-tenth of trucking costs and one quarter the cost of rail movement. In addition to the cargo carrying capacity of a tow, the study pointed out that a tow requires less crew and support staff than the 900 semi-trucks it can replace.

Editors note: Thirty years ago this summer I began writing and publishing the *Waterways* newsletter for UMWA. "Publishing" is a pretty high-flown word for some of my first efforts and I have always appreciated the patience and tutoring of the Executive Directors and Association Officers over the years. And today, three decades later, I am honored to still be associated with an organization that continues to advocate for an industry that is so economically and environmentally vital to the Upper Midwest.

Thank you.

Mark Johnson, editor.