



NMA REPORT #R-341, Rev. 4

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Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

PETITION TO CONGRESS: TO CURB ON-BOARD SMOKING TO PROMOTE MERCHANT MARINER HEALTH

OUR PETITION

The National Mariners Association (NMA) on behalf of "limited tonnage" merchant mariners whose health and welfare are at risk from the actions of "active smokers" and the consequent production of secondhand tobacco smoke hereby petitions the Congress:

To require the Coast Guard to initiate rulemaking to protect mariners under their superintendence from the actions of active smokers and the health consequences of secondhand smoke on inspected vessels to the same degree and extent that they protect their own personnel from those same dangers.

NO SMOKING ON BOARD – AN OVERVIEW By Captain Joel Milton

[*Source: WorkBota, June 21, 2011. By Capt. Joel Milton. Joel has worked aboard fishing boats, pilot boats, Coast Guard cutters and small boats, dredge tenders, offshore crewboats and supply boats, towing vessels, a small container ship, and a wide variety of small craft. He currently works on a tug-barge transporting black oil in the Northeast. Joel is a member of our Association and is co-Director of the Master of Towing Vessel Association (MTVA). Emphasis is ours.*]

Despite the evidence,⁽¹⁾ the marine industry and its regulators continue to put off doing the right thing. Meanwhile many people are forced to jeopardize their health from the regular exposure to a cocktail of toxins because of the selfish and thoughtless behavior of a shrinking minority. [⁽¹⁾The "evidence" appears in NMA Report #R-341-A. The Health Consequences of Involuntary Exposure to Tobacco Smoke – i.e., the Surgeon General's Report]

For all practical purposes, this is a condition of employment that has to be accepted or rejected more-or-less in whole, putting mariners in a no-win situation. It is also an aspect of the marine industry that damages its reputation and makes it an unattractive career choice.

If you haven't figured it out by now, I'm talking about smoking. The scientific evidence is irrefutable that exposure to secondhand smoke, even for brief periods, is bad for your

health. Continuous exposure to secondhand smoke can lead to chronic health problems, such as asthma and heart disease, and even cause cancer. It's also a filthy and disgusting habit that can be terrible for crew morale, much like living with someone who doesn't practice adequate personal hygiene. A workboat's tight confines with an HVAC system ensuring that secondhand smoke circulates 24-7 throughout the vessel can make for a truly awful experience.

On land, many city, county and state governments have become proactive and placed the burden right where it belongs – on the smokers. Mariners, however, have been left without any protection. The Coast Guard doesn't permit its personnel to be exposed to secondhand smoke, but it sits silently by ignoring the problem while it cracks down on regulations governing mariner health standards. This just does not add up. For the most part, operating companies seem to be either indifferent to the problem or treat it as a minefield to be avoided at all costs. When formal smoking policies are in place, they tend to be loose and leave far too much discretion up to a vessel's supervisory personnel, who are often the root cause of the problem. So far, this approach has been ineffective at protecting non-smokers from exposure.

The worst culprits are those in the top positions onboard the vessels. Tug captains and senior tankermen on the barges view their positions as a license to have it their way without taking into consideration those that may be harmed in the process. Nicotine is a highly addictive drug, and you can't leave it up to the addicts to do what's right for the rest of their crew, whose safety and welfare they are responsible for. Adult intervention from the outside is clearly required.

The marine industry, particularly the limited-tonnage towing and oilfield sectors, has a long history of complaining about what it views as unnecessary meddling and misguided regulation. At the same time, the industry often refuses to take common-sense steps that would eliminate the need for regulation.

This pattern has been going on for a long time and, particularly in this case, utterly fails mariners. But when mariners attempt to organize in any way in their own defense it is viewed as a threat. The industry needs to realize that it can't have it both ways. It (industry) must lead, follow, or get out of the way.

So, where is a good place to start? That's easy. All operating companies need to quickly adopt a clear policy that puts the health of non-smokers first, before smokers who

want to indulge their habit. Non-smokers should not have to be involuntarily exposed to cigarette smoke, whether it is secondhand, third or otherwise. There should be no exceptions.

The American Waterways Operators should step up and lead by adding a clear requirement to their Responsible Carrier Program (RCP) that reflects this type of company smoking policy as a pre-condition for certification. And most importantly, the Coast Guard should use a powerful tool it has at its disposal – the Legislative Change Proposal – to cover all the bases and let Congress know that a swift legal remedy is called for but is beyond the agency's present authority (if that is the case). Congress needs to pass a law that permits smoking only when circumstances guarantee that non-smokers are completely unaffected. It must be unequivocal and there can be no loopholes.

And what if no action is taken? Eventually, if things remain on this trajectory, frustration and anger could conceivably result in a federal class-action lawsuit. Call this extreme remedy the “nuclear option.”

It would be a terrible shame if it comes down to a lawsuit, but sometimes change must be forced on people. A lawsuit, while effective, would also be expensive and time-consuming. But we don't need any more studies, and we don't need to wait for people to finally come around someday. What we really need is action. NOW.

BACKGROUND

Our Constituency

Our Association represents the common interests of licensed and unlicensed **“limited-tonnage” mariners** who, by definition, serve on tugs, towboats, small passenger vessels, and offshore supply vessels of up to 1,600 gross register tons.

Out of a total of about 210,000 mariners holding Coast Guard credentials, approximately 126,362 are “limited-tonnage” mariners. This is a conservative estimate since many mariners without Coast Guard or TSA credentials exist outside that count.

The Basis of Our Petition

Title 46 U.S. Code §2103 places the Superintendence of the merchant marine in the hands of the Secretary of Homeland Security. Our Association formally addressed the health issues of smoking with the Coast Guard and asked about its smoking policy. CDR M. A. Prescott, former Division Chief, Vessel and Facility Operating Standards Division answered our letter as follows:

"On behalf of Admiral Loy, I am responding to your letter of June 4, 2001, requesting information on the Coast Guard's smoking policy onboard our vessels and whether any Coast Guard initiatives were planned addressing health-related concerns of mariners faced with exposure to second-hand smoke on commercial vessels.

"Smoking in any Coast Guard floating unit, aircraft or vehicle is prohibited except on weather decks of Coast Guard vessels (small boats and cutters). The policy appears similar to the Amtrak policy you enclosed with your letter in that it is based on an employer's decision as opposed to a legal mandate.

"The Coast Guard does not currently regulate health-

related smoking in the commercial industry and there are no plans to do so at this time. The Coast Guard regulations regarding smoking on commercial vessels are generally for fire prevention purposes..."

The Coast Guard has been aware of our concerns for the past ten (10) years and clearly has not acted to initiate any changes. We question whether they even have the authority to do so and, therefore petition Congress to initiate action.

Smoking Policies in Confined Spaces

Prior to addressing the smoking issue with Coast Guard officials, our Association asked AMTRAK what public and corporate policies were in effect for AMTRAK passenger trains. At the time, both the Coast Guard and the Federal Railroad Administration were agencies of the U.S. Department of Transportation. The Federal Railroad Administration oversees and provides financial assistance to AMTRAK and administers special governmental financial assistance programs. AMTRAK moves approximately 25 million passengers a year. We received this answer from R. Clifford Black, IV, Director of Special Projects as follows:

"Thank you for your letter of March 28, 2001, in which you inquire about smoking regulations on board Amtrak intercity trains.

"No statute prohibits smoking on Amtrak trains. However, as a matter of operational policy, Amtrak prohibits smoking on board virtually all its trains, with the exception of most long-distance (overnight) trains, where provision is made for smoking in designated areas.⁽¹⁾ The designated area usually consists of a specially ventilated smoking room either in a coach (bi-level Superliners) or in the lounge car (single-level trains). Smoking elsewhere by passengers is prohibited. [⁽¹⁾We note that since 2005 smoking has been prohibited on all AMTRAK intercity trains. Specific outdoor smoking stops are scheduled.]

"The policy as it relates to employees is as follows: General Rules governing the conduct of service employees:

Item 8. The use of chewing tobacco, cigarettes, pipes, cigars, chewing gum, snuff or toothpicks in the presence of passengers is prohibited.

Item 38. On-board personnel must enforce smoking restrictions in cars for which they are responsible. Employees will adhere to these regulations as well.

"General rules governing Train and Engine crews..."

Item 44. Train crews will be responsible for enforcement of smoking restrictions. Enforcement must be accomplished with tact and utmost courtesy. Smoking is prohibited in train vestibules."

Conclusion #1: The Coast Guard failed to offer the same degree of protection against the active and passive effects of smoking to the merchant mariners that it superintends that they enforce on their own civilian, officer, and enlisted personnel.

Conclusion #2: AMTRAK, The National Railroad Passenger Corporation subsidized by Congress, offered internal policy protection against the active and passive effects of smoking in the workplace to their own train crewmembers as well as to members of the traveling public. Recent changes in AMTRAK policy closed on board smoking compartments in lounge cars reflect scientific evidence that separately ventilated rooms do not control exposures to secondhand smoke.

American merchant mariners on vessels up to 1,600 gross

register tons are regulated by the U.S. Coast Guard rather than by states and their political subdivisions. Mariners are subject to stringent medical evaluations before credentials are issued, upgraded, or reviewed. Prohibition on indoor smoking has positive health value as shown in the Surgeon General's report.

Allowing employers to adopt "voluntary" non-smoking policies on vessels in navigation they cannot physically supervise leaves our mariners manning these vessels at risk. Effective "no smoking" regulations require at least an effective federal regulation that mandates employer and employee compliance is necessary to protect the health and welfare of our mariners.

DISCUSSION

Public Policy: The Surgeon General's Reports

The topic of smoking involves "voluntary" or active smoking as well as "involuntary" or inhaling secondhand smoke by individuals who may be either smokers or non smokers.

The Surgeon General first raised public awareness of the health consequences of active smoking in 1964. In 1972 the Surgeon general raised the issue that non-smokers inhale the mixture of sidestream smoke given off by a smoldering cigarette and mainstream smoke exhaled by a smoker, a mixture now referred to as secondhand smoke or environmental tobacco smoke.

The 1982 Surgeon General's Report stated: "Cigarette smoking is the major single cause of cancer mortality in the United States." This statement is as true today as it was in 1982 and is backed by years of research. Because cigarette smoking and tobacco use is an acquired behavior, one that the individual chooses to do, smoking is the most preventable cause of premature death in our society. Yet, 48 million adults (25.7 million men and 22.3 million women) were current smokers in 1997. According to the American Cancer Society's Cancer Prevention Study II, it is estimated that 430,700 U.S. deaths per year (nearly one in five) were attributed to smoking from 1990-1994. Cigarettes kill more Americans than alcohol, car accidents, suicide, AIDS, homicide, and illegal drugs.

Cigarette smoking is a major cause of cancers of the lung, larynx, oral cavity, pharynx and esophagus and is a contributing cause in the development of cancers of the bladder, pancreas, uterine, cervix, kidney, stomach, and some leukemia's. Smoking causes about 87% of lung cancer deaths. Lung cancer is one of the most difficult cancers to treat. It is very difficult to detect when it is in the earliest, most treatable stage. Fortunately, lung cancer is largely a preventable disease. Groups that advocate non-smoking as part of their religion such as Mormons and Seventh-day Adventists, have much lower rates of lung cancer and other smoking-related cancers.

Smoking is a major cause of heart disease, bronchitis, emphysema, and stroke and contributes to the severity of colds and pneumonia. Tobacco has a damaging affect on women's reproductive health and is associated with increased risk of miscarriage, pre-term delivery, stillbirth, and infant death, and is a cause of low birth weight in infants. Furthermore, the smoke from cigarettes has a harmful health effect on those around the smoke.

Smoking becomes "involuntary" when the exposure

occurs as an unavoidable consequence of breathing in a smoke-filled environment. This is the problem our "lower-level" mariners face in the enclosed environment in which they must live and work – similar to life in an enclosed railroad car or bus if smoking is permitted.

The 1979 Surgeon General's report contained a chapter on "Involuntary Smoking" and was the topic for the entire 1986 Surgeon General's 359-page report titled The Health Consequences of Involuntary Smoking.

The 2006 Surgeon General's Report: The Health Consequences of Involuntary Exposure to Tobacco Smoke

Twenty more years of research led to the release of the latest report that reaffirmed and strengthened the findings of the 1986 report. With regard to the involuntary exposure of non-smokers to tobacco smoke, the scientific evidence now supports the following major conclusions: ⁽¹⁾ [⁽¹⁾2006 Report, Executive Summary, page 9, "Major Conclusions.]"

1. Secondhand smoke causes premature death and disease in children and in adults who do not smoke.
2. Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their children.
3. Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.
4. The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.
5. Many millions of Americans, both children and adults, are still exposed to secondhand smoke in their homes and workplaces despite substantial progress in tobacco control.
6. Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from non-smokers, cleaning the air, and ventilating buildings cannot eliminate exposure of non-smokers to secondhand smoke.

"Active" Smokers and Secondhand Smoke on Small Commercial Vessels

Smoking is a personal habit that is increasingly under attack not only because it has proven to be unhealthy but also because of the effects of "second hand smoke." The effects of second hand smoke are especially pervasive on all small commercial vessels because it is re-circulated through a vessel's central heating and cooling system or simply remains in galleys, lounges and public accommodation areas.

Ingredients in Tobacco

Cigarettes, cigars, and smokeless and pipe tobacco consist of dried tobacco leaves, as well as ingredients added for flavor and other properties. More than 4,000 individual chemical compounds have been identified in tobacco and tobacco smoke. Among these are about 43 compounds that are carcinogens (i.e., are proven to cause cancer).

The effects of burning the additives used in cigarettes are not well understood. Substances that seem harmless or even beneficial when eaten as food can have entirely different effects when burned and breathed as smoke.

Nicotine Addiction

Addiction is characterized by the repeated, compulsive seeking or use of a substance despite harmful consequences. Addiction is often accompanied by adverse physical and psychological dependence on the substance. Nicotine is the addictive drug in tobacco. Regular use of tobacco products leads to addiction in a high proportion of users.

In 1988, the U.S. Surgeon General concluded the following on nicotine addiction:

- Nicotine is the drug in tobacco that causes addiction.
- Cigarettes and other forms of tobacco are addicting.
- The pharmacological and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine.

Nicotine is found in substantial amounts in all forms of tobacco. It is absorbed readily from tobacco smoke in the lungs and from smokeless tobacco in the mouth or nose and rapidly spreads throughout the body.

Tobacco companies are required by law to report nicotine levels in cigarettes to the Federal Trade Commission (FTC) but are not required to show the amount of nicotine on the cigarette brand labeling. The actual amount of nicotine available to the smoker in a given brand of cigarettes may be different from the level reported to the FTC.

Benefits of Breaking the Habit

In September 1990, the U.S. Surgeon General outlined the benefits as follows:

- People who quit, regardless of age, live longer than people who continue to smoke.
- Smokers who quit before age 50 have half the risk of dying in the next 15 years compared with those who continue to smoke.
- Quitting smoking substantially decreases the risk of cancer of the lung, larynx, pharynx, esophagus, mouth, pancreas, bladder, and cervix.
- Benefits of quitting include reduced risk for other major diseases including coronary heart disease, lung diseases, and cardiovascular disease.

The risk of having lung cancer and other smoking-related cancers is related to total lifetime exposure to cigarette smoke, as measured by the number of cigarettes smoked each day, the age at which smoking began, and the number of years a person has smoked. The risk increases steadily with the number of cigarettes smoked per day. In those who smoke 40 or more cigarettes a day (2 or more packs), the risk of lung cancer is nearly 20 times the risk in nonsmokers.

The risk of having lung cancer and other cancers can be reduced if you quit smoking. The risk of lung cancer is less in people who quit smoking than in people who continue to smoke the same number of cigarettes per day, and the risk decreases as the number of years since quitting increases.

Second Hand Smoke – Clean Indoor Air

Environmental Tobacco Smoke (ETS) also called second hand smoke, or passive smoke, is the combination of two forms of smoke from burning tobacco products: sidestream, or smoke that comes from a lighted cigarette, pipe, or cigar, and mainstream smoke, or the smoke that is exhaled by a smoker.

The exposure of nonsmokers to ETS is referred to as involuntary smoking or passive smoking. Nonsmokers who are exposed to ETS absorb nicotine and other compounds

just as smokers do, and the greater the exposure to ETS, the greater the level of these harmful compounds in the body.

The Environmental Protection Agency has classified ETS as a **Class A carcinogen**. Tobacco smoke contains over 4,000 chemical compounds with forty-three cancer-causing chemicals identified.

Heart disease, lung cancer, and other cancers caused by exposure to ETS result in an estimated 53,000 deaths annually in the United States. This makes second hand smoke the third leading cause of death, behind only active smoking and alcohol. Each year, about 3,000 non-smoking adults die of lung cancer from breathing the smoke of others' cigarettes. ETS also causes other respiratory problems in non-smokers, including coughing, phlegm, chest discomfort, and reduced lung function. According to the EPA, each year exposure to environmental tobacco smoke contributes to 150,000 to 300,000 lower respiratory tract infections (such as pneumonia and bronchitis) in infants and children younger than 18 months of age in this country. of asthma in about 20% of this country's 2 to 5 million asthmatic children.

These infections result in 7,500 to 15,000 hospitalizations every year. Second hand smoke increases the number of asthma attacks and the severity. The 1986 Surgeon General's Report reached three important conclusions about second-hand smoke: The 2006 Surgeon General's report strengthens these conclusions with additional research studies.

- Involuntary smoking causes disease, including lung cancer, in healthy non-smokers. The children of parents who smoke compared with the children of non-smoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slower development of lung function as the lung matures, and are more likely to have middle-ear disease.
- The simple separation of smokers and non-smokers within the same air space may reduce, but does not eliminate the exposure of the non-smoker to environmental tobacco smoke.

There are three areas where you should be especially concerned about exposure to second hand smoke:

- Your workplace - According to government estimates, 83% of worker-health complaints related to problems with indoor-air quality would be eliminated with the creation of smoke-free work places. Over the next 45 years, smoke-free work places could prevent over 32,000 cancer deaths and over 75,000 heart disease deaths. Workplace smoking restrictions may also serve to encourage smokers who wish to quit smoking or reduce their consumption of tobacco products.
- Public places - Everyone is vulnerable to ETS exposure in public places, such as restaurants, shopping centers, public transportation, schools and day care centers. Although some businesses are reluctant to ban smoking, there is no credible evidence that going smoke-free is bad for business. Public places where children go are a special area of concern.
- Your home - Making your home smoke-free is perhaps one of the most important things you can do. Think about it: we spend more time in our homes than anywhere else. A smoke-free home protects your family, your guests, and even your pets.

Public policies to protect people from secondhand smoke and to protect children from tobacco-caused diseases and addiction can be enacted at the local, state, or federal levels.

However, state laws and ordinances generally have no effect upon commercial vessels operated and crewed by our mariners. Because there are no safe levels of second hand smoke, it is important that any such policies be as strong as possible and that they do not prevent action at other levels of government.

The Role of the Master

The master of a commercial vessel is responsible taking care of his crew – including caring for their health and welfare. This includes affording his crew reasonable protection from the dangers of second hand smoke cited in the USPHS Surgeon General's report. In fact, the master is the crew's most important line of defense. If the employer has included a smoking policy in his company operations manual, then it is incumbent upon the Master to enforce that policy regardless of his personal preferences. Unfortunately, many employers do not establish or enforce “no smoking” policies because they may be unpopular. However, the absence of a “no smoking” policy creates an unhealthy working environment for vessels crewed by live-aboard personnel. It also creates an unhealthy living environment because of the continual circulation of trapped tobacco smoke by the heating and ventilation system.

Company Policy

Some enlightened boat companies have a smoking policy that generally conforms to the factual evidence publicized by the Surgeon General. Many of these companies have posted signs in the galley and other public places that state their policy. It is up to the Master to enforce the stated company policy as well as it is his duty to protect his crew from harm. This is especially important for an increasing number of individuals who are allergic to second hand smoke. Many of these individuals are former smokers that have broken the habit.

On one vessel, for example the company port captain and other supervisory personnel took it upon themselves not to enforce their company's policy. In doing so, they openly violated their obligation to support the vessel Master who was abiding by the rules over the objections of an unruly crew and resulted in the master losing his job. Our Association found this conduct an unacceptable breach of supervisory responsibility. After hearing evidence including several tape recordings and a video tape, our Association reported the incident to the president of the company – American Commercial Barge Lines (ACBL). This is one of the country's largest towing vessel and barge operators. The company elected to ignore the letter clearly indicating their contempt for promoting the good health of the mariners they employ.

Controlling Secondhand smoke

NMA member and towboat Captain Ray Ashford spearheaded the Association's efforts to control secondhand smoke. Ray says, "I have nothing against smokers...it's just the smoke I can't handle." He provided some solid evidence based on the Surgeon General's report that shows the dangers of smoking as well as the dangers from second-hand smoke. This is a particularly important health issue with Ray, who is allergic to smoke.

Workplace safety and health. The Supreme Court decision in *Chao vs. Mallard Bay Drilling*⁽¹⁾, points out that mariners serving on uninspected vessels such as uninspected

drilling barges and towing vessels had not received the workplace protections that Congress mandated for most other workers under the Occupational Safety and Health Act of 1970. [⁽¹⁾Refer to NMA Report #R-300 on our website.]

The Mallard Bay case left either OSHA or the Coast Guard with an obligation to see that the mariner's workplace provides health and safety protections! Congress has directed the Coast Guard to inspect towing vessels in the Coast Guard and Maritime Transportation Act of 2004. The current rulemaking would provide an excellent vehicle to provide workplace protection against secondhand smoke – if the Coast Guard has both direction and authority to do so.

The accommodation spaces on any towing vessel serve as an office, as sleeping quarters, and a work area. The unhealthy shortcomings found on many vessels are a pressing matter of concern sooner rather than later because of the crew shortage that already exists. If anything is unhealthy, it has to be smoking...and this is borne out by the Surgeon General's Report.

Captain Ashford, who is allergic to smoke, points out that mariners are a major group of workers that are left behind and that many vessels do not have designated smoking and non-smoking areas. He points out that air handlers in the pilothouse and crew accommodations only re-circulate heated and cooled air and all crewmembers, smokers and non-smokers alike are forced to breathe secondhand smoke. He worked on towboats that “are constantly burning around the clock.” The 2006 Surgeon General's report more than backs him up in its findings that separating smokers from non-smokers in enclosed spaces simply is not effective.

Captain Ashford is *not out to ban smoking*, only to do as the Coast Guard does on its own vessels, namely prohibit smoking “indoors” but allow it on the weather decks.

Our Association's Role: Since this is a matter that is important to the health and welfare of every crewmember, it is worthy of our support. We reiterate that Captain Ashford is not on a crusade to “prohibit” smoking, only to control where smoking takes place to outside of enclosed areas of the boat where he and other mariners do not have to breathe it.