

January 29, 2009

The Honorable Mark V. Rosenker  
Chairman  
National Transportation Safety Board  
490 L'Enfant Plaza, S.W.  
Washington, D.C. 20594-2000

Re: Cosco Busan

Dear Mr. Chairman:

The Pacific Merchant Shipping Association (PMSA), which represents ocean carriers and marine terminal operators on the West Coast, looks forward to the completion of the National Transportation Safety Board (NTSB) report and recommendations regarding the November 7, 2007 allision of the *Cosco Busan* with the San Francisco-Oakland Bay Bridge. We anticipate that the publication of your report will allow all interested parties the opportunity to engage in a public debate on how to avoid similar events from occurring in the future.

The events immediately leading up to this incident are many and complex, however, as the NTSB prepares to conclude its investigation, we hope your report will address ways to improve some of the systemic issues facing pilotage regulation and licensing. Because many state pilotage grounds, such as in the San Francisco Bay, are compulsory under state law with pilotage services provided by state-endorsed monopolies, there is no choice of vendors and little to no market feedback on safety, quality or service. In these situations, shipowners rely almost exclusively on the oversight provided by both state and federal licensing agencies to ensure pilot safety, competency and fitness. Even so, except when there is a finding of gross negligence or willful misconduct, a vessel owner or operator is held liable in the event of a marine causality involving a pilot (and held strictly liable in the event of an oil spill) despite the fact that they have relied on the implied safety of state and federal licensing.

In the case of the *Cosco Busan*, it has exposed a critical lack of communication between the State and Federal licensing agencies with regard to governance and oversight of pilot licensing. The primary example is the lack of public information with regard to the DUI arrest and conviction of the pilot involved in the *Cosco Busan* or any formal and regular communications between the two licensing bodies regarding their common licensee. Our review of the minutes of the State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun for 1998, 1999 and 2000 has failed to find any reference to the DUI arrest and conviction of Capt. John Cota or any action by the United States Coast Guard against his underlying federal license. According to press reports, Capt. Cota was convicted of driving under the influence in February 1999 and then entered an alcohol rehabilitation program. While the minutes reflect that Capt. Cota was "off the board" due to a variety of reasons, ranging from an undisclosed sickness to a tendon injury, there is no reference or citation of the DUI arrest/conviction or subsequent action by the USCG on the basis of his alcohol-related offense. In

addition, while it is the regular practice of the Board of Pilot Commissioners to memorialize in the minutes of its meetings the annual license renewal for all pilots, Capt. Cota's license renewal for 1999, the year of his DUI conviction, is omitted without explanation, but the minutes do reflect his license renewal in February 1998, 2000 and 2001.


As noted above, shipowners in a compulsory pilotage ground serviced by a monopoly must rely on these licensing agencies to faithfully police their licenses to ensure safety. It is therefore problematic that these agencies do not regularly communicate with each other regarding incidents, licensing actions or qualifications. Similar to requirements for a commercial driver's license, common sense would dictate that a DUI arrest and conviction should be considered by all state and federal licensing entities with regard to the privilege of holding a license to operate a vessel. This information should also be immediately disclosed to the users of pilot services. While shipowners may retain the right to "bar" individual pilots from their vessels, this is a hollow right if they are not fully informed of a particular pilot's qualifications or disciplinary history.

From the interviews and transcripts leading up to the April 2008 NTSB hearing, it is clear that a lack of oversight and poor communication between the State and USCG over the course of a number of years set the stage for the unfortunate events of November 7, 2007. The DUI arrest and conviction of a state and federal licensed pilot should have been information required to be disclosed to both licensing agencies and they in turn should have made this information available to the general public and to the users of pilot services. We are left with several fundamental questions that are critical to the integrity of any compulsory pilotage area: If the State Board of Pilot Commissioners or the USCG didn't know about the DUI conviction, why didn't they know about it and what steps should they take to make sure they have access to that information in the future? If they did have knowledge of the DUI, why was no action taken against his license and why is the public record at the State absent such information?

In the absence of a robust state or federal oversight system, as appears to be the case in the time leading up to the *Cosco Busan* incident, information available to the shipowner regarding a pilot's history and qualifications becomes that much more critical and important. Given the liability exposure to vessel operators, and the random assignment of pilots, a shipowner should have access to all pertinent information in order to make a determination as to whether to allow a pilot on their vessel.

We look forward to reviewing your findings.

Sincerely,

  
John R. McLaurin  
President

Cc: Honorable Robert L. Sumwalt  
Honorable Deborah A. P. Hersman  
Honorable Kathryn O'Leary Higgins  
Honorable Steven R. Chealander



November 5, 2008

Mr. Knute M. Miller  
President, California State Board  
of Pilot Commissioners  
Pier 9, Suite 102  
San Francisco, CA 94111

Capt. Harry Dudley  
Chairman, Washington State Board  
of Pilotage Commissioners  
2901 Third Avenue  
Seattle, WA 98121

RE: Regional Meeting of State Boards of Pilot Commissioners in Portland, Oregon,  
November 6<sup>th</sup> and 7<sup>th</sup>

Dear President Miller and Chairman Dudley:

I am writing on behalf of the Pacific Merchant Shipping Association (PMSA), which represents ocean carriers utilizing compulsory state pilotage services in Puget Sound and the San Francisco Bay, to express dismay with the failure to involve stakeholders, or even provide public notice, of the west coast regional meeting of state Boards of Pilot Commissioners set for later this week. What could have been a positive forum for all of the west coast Boards of Pilot Commissioners to have a comprehensive discussion of the regulation of piloting, shipping and safety, and a mechanism to establish an industry-wide and public dialogue about issues of pilotage, is now an opportunity that has been effectively squandered.

It would have been fitting, on the one year anniversary of the *Cosco Busan* oil spill, for the Boards to demonstrate a renewed commitment to transparency and accountability. Instead, both Boards have effectively eliminated the public and the maritime industry from these meetings by not inviting interested parties and by failing to properly notice the meetings to the public.

When the notion of a regional meeting to discuss "best practices" was first raised earlier this year, PMSA expressed its support, assuming that our members would be afforded an opportunity to participate in a public meeting. We believed that such a meeting could be a positive opportunity to exchange ideas and begin a dialogue beyond the limited experiences of regulators in their local pilotage jurisdictions.

We did then, and still do, believe that such a conference, if done in an open, public and fair way that involves all stakeholders, would be a good tool for your Boards and others to discuss ways to improve pilot licensing, oversight and safety.

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Yet, no formal or informal invitation has been delivered to PMSA in either Seattle or San Francisco. And while there was public mention of the regional meeting at the October Washington Board of Pilotage meeting, no announcement of the final time, place or agenda of this meeting has been made public or posted by either of the Boards online. Additionally, no formal notice has been distributed to the public, or even provided to all stakeholders, in either state to inform them of the existence of this meeting.

The maritime industry expects and deserves safe, competent pilot performance delivered in an efficient and rational manner at reasonable rates in state regulated pilotage grounds. In order to preserve these interests, we must remain meaningfully involved in the operations and decision-making processes of your Boards. To do so, we rely on you conducting your business and public policymaking in a public and open forum.

We are at a loss as to why your Boards completely disregarded direct communication with the California and Washington maritime community at-large with regard to this Regional Boards meeting. The lack of notice or invitation for PMSA to participate is a significant departure from the operating norms of both Boards, which have PMSA listed as an interested party on *all* Commission business and which provides all public meeting notices to PMSA. Indeed, as you know, PMSA attends nearly all commission meetings on behalf of its members and participates on a number of commission subcommittees.

Conversely, it is abundantly clear that direct communication, invitations and scheduling occurred with the licensed pilots that you regulate, their counsel and national trade association. Because no similar effort was made to communicate with the users of pilotage services, we are left to conclude that our participation was neither encouraged nor expected. As a result of this specific exclusion, while you include the entities that you license and regulate in policymaking discussions, the public and consumers of compulsory pilotage services are not present. Unfortunately, this will only add to the concern that the relationships between state pilot commissions and their licensees is less than transparent, not at arm's length, and not in full public view.

With regard to the lack of public notice specifically, your participation in this unnoticed, private meeting violates the spirit of the Washington Open Meetings Act of 1971 as well as the very letter of the California Bagley-Keene Open Meeting Act. As the Boards are both well aware, each state's open meeting statutes are meant to deter this very behavior.

In fact, both the California and Washington legislatures have declared that "the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (Cal. Govt. Code §11120)(RCW 42.30.010).

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It should be noted that we were apprised of this meeting's agenda, time and location only from the "industry members" of your Boards who will be participating in Portland. These individuals took it upon themselves to at least inform us of the meeting. We now understand that they are attending with the clear intent to ensure that any information received at the meeting will be shared with the public and the maritime industry.

Given the lack of notice, the imbalanced agenda, and lack of respect for the public and consumers of the compulsory pilotage services that you are responsible for regulating in the public interest, PMSA recommends that you cancel and reschedule this meeting. A new regional meeting that is truly open and accessible, publicized and made known to any interested party, as opposed to a closed and unnoticed meeting where only a select few invitees are encouraged to participate, will not only cure your current open meeting act defects, but would provide all of the Boards with a real opportunity to have the discussion of "best practices" that is in everyone's best interests.

One of the key lessons learned from the *Cosco Busan* allision and oil spill was the need for more public oversight and involvement in the regulation of pilotage. So it is sadly ironic that this meeting, which is being held on the first anniversary of that unfortunate event, was organized in a manner which deprives the public of its right to participate.

We look forward to participating in a future regional meeting where the public is properly noticed and the voices of all stakeholders in our West Coast pilotage areas are welcome.

Sincerely,



John McLaurin  
President

cc: Hon. Arnold Schwarzenegger, Governor of California  
Hon. Christine Gregoire, Governor of Washington  
Hon. Jerry Brown, Attorney General of California  
Hon. Dale Bonner, Secretary, California Business Transportation & Housing  
Hon. Paula Hammond, Secretary, Washington Department of Transportation  
Hon. Jay Manning, Director, Washington Department of Ecology



STATE OF WASHINGTON  
BOARD OF PILOTAGE COMMISSIONERS

2901 Third Avenue, Suite 500 \* Seattle, Washington 98121 \* (206) 515-3904 \* FAX (206) 515-3906

November 17, 2008

Mr. John McLaurin  
President  
Pacific Merchant Shipping Association  
250 Montgomery St, Suite 700  
San Francisco, CA 94104

Mr. McLaurin:

I was shocked and more than dismayed to receive - at around noon on November 7 - a copy of your November 5, 2008 letter to Mr. Mike Miller and myself. I have been in the service of the "waterfront" since 1966 and I have never in all that time seen a letter that was so filled with vitriolic distortions of reality and unfounded claims. I am sure that the California Board will address your charges regarding their behavior so I will not be answering your accusations on their behalf. However, your issues are, in some cases, so broad that my responses to them may appear to be providing answers regarding actions by other pilotage commissions, which is not the case. My intent with this letter is to address the accusations you have leveled at the Washington State Board of Pilotage Commissioners (Board).

Throughout your letter you generally refer to "the Boards" meaning both the California and Washington Boards. Since I am Chairman of the Washington Board, I am fully aware that you most probably intended that I be a primary target of your claims of improper action or inaction. If any of your accusations had any validity, and were the result of a failure on my part to properly carry out my obligations as Chairman, I would gladly take responsibility for my role; work to ensure that such behavior was corrected; and if unable to fix real problems, resign my position. Your letter unjustifiably and inaccurately impugns the integrity of the entire Board and also, either directly or by implication, levels unsupported claims of impropriety and even illegal behavior at me. I will address them one-by-one.

In your first paragraph you "...express dismay with the failure to involve stakeholders, or even provide public notice of the west coast regional meeting..." There was no failure to involve stake holders or provide public notice. As you point out on page 2 of your letter, I announced in an open, public meeting on October 9, 2008 that the Regional Meeting was scheduled. The issue was then discussed for over six minutes. The dates and location of the meeting were announced as well as the fact that the Board's Administrator, Ms. Peggy Larson and I would be attending. It was made clear that the Regional Meeting was being hosted by the Oregon Board of Maritime Pilots. Mr. Vince Addington, the foreign shipping representative on the Board, specifically asked if the Regional Meeting would be "open" and was told that it would operate under Oregon rules and that there would be an "audience" open to the public and a "core group" made up of various commission members and staff from the west coast. I invited both the Board and the public (stakeholders) to provide input on the agenda which at that time was still being developed. Not only were the two industry representatives on the Board present at that October meeting, Mr. Jordan Royer was also there and was signed in as representing PMSA.

On October 10, 2008, Ms. Larson forwarded to the Board (including the shipping members) an email from the Oregon Board's Administrator asking for input on the agenda and giving some suggested topics. Mr. Addington, responded to that email and was sent additional emails with more information about the Regional Meeting. In short, there was clear public notice that the meeting was being held; that Ms. Larson and I would be attending; and that the meeting was open to the public. In addition PMSA was specifically involved by my request, in a public meeting attended by at least two PMSA representatives, that you provide agenda input and by the Board staff sending details of the meeting to one of the PMSA representatives subsequent to the October Board meeting. Later in your letter you acknowledge that the information regarding this meeting was indeed passed to you which is exactly what I expected would happen. I have never felt a need to prompt the shipping representatives on the Board or those that attend the meetings as part of the public to be sure that all the stakeholders they represent get the word on an important issue.

Your first paragraph continues by stating, "What could have been a positive forum...is now an opportunity that has been effectively squandered." I can assure you that the fact that a limited number of representatives of PMSA were in attendance did not in any way cause the opportunity to be squandered other than by PMSA. The apparent internal policy decision that occurred within your organization that limited PMSA participation was certainly regrettable since I assume other PMSA members might have been able to add to the discussions that occurred; but it did not prevent those stakeholders who did attend from providing valuable input to the various pilotage commission representatives (such as Ms. Larson and me).

Your second paragraph alludes to a lack of transparency and accountability on the part of the Board. It further contends that the Board effectively eliminated the public and the maritime industry from these meetings by not inviting interested parties and by failing to properly notice the meetings to the public. As indicated above, your accusations are totally without foundation. The Board has consistently maintained the highest standards of transparency and accountability and this case was no exception. The announcement of the event; the fact that it was a public meeting (under Oregon rules); and the invitation to participate in the development of agenda items that I made at the October meeting could not have been misinterpreted by any reasonable person. The fact that you apparently did not get the information in a manner or format that was satisfactory to you is not my or the Board's responsibility. The Board provided more than enough information to representatives of the shipping industry and the public for them to completely comprehend the opportunity that was available to them.

The third paragraph makes it clear that you knew that this meeting was being planned. Your unwillingness to accept the feedback about the meeting - that you later in your letter state you received - as sufficient notice has more to do with your attitude than the quality of the information the various PMSA representatives on the west coast received regarding the planning and development that went into the Regional Meeting. The fact that the information came to you in a way you did not care for is not a valid reason for you to accuse the Board of failing to provide notice when clear and ample notice was, in fact, given in an appropriate manner.

Your fourth paragraph implies that the Regional Meeting was not conducted in an open, public and fair way because some shipping industry representatives were not present. It appears that the only reason "all" stakeholders were not present was because of either a communications breakdown within your own organization or a policy decision by leaders in your organization to essentially boycott the meeting because you were not happy with the method by which you were given notice. I did not know about your letter when I talked to Mr. Jeff Thompson of General Steamship at the Regional Meeting. Had I read your letter at that point, I would have asked him how he happened to just stumble into the meeting room in Portland since, if your accusations were correct, he could not possibly have known about it.

Your fifth paragraph claims that "...no formal or informal invitation has been delivered to PMSA..." and "...no formal notice has been distributed to the public, or even provided to all stakeholders..." As I stated above, that is simply not true. PMSA representatives were in attendance at the October meeting at which I formally advised of the Regional Meeting; noted that it was open to the public (in accordance with Oregon rules); and invited input on the agenda. An informal discussion of my announcement immediately followed the formal statement. A PMSA representative also received additional details about the Regional Meeting subsequent to the October Board meeting.

I did not personally send ("distribute") a written invitation to the Regional Meeting to any stakeholder or the public for two reasons: First, our Board was not the host of the meeting and we had been advised by the Oregon Board that they were involving stakeholders from both industry and pilot associations. It is not appropriate that I send written invitations to individual stakeholders for an event that the Board is not sponsoring. Second, I made a clear and detailed announcement about the Regional Meeting and the Board's involvement – coupled with an invitation for input – at an open meeting attended by the public (including stakeholders). This type of announcement of an event not sponsored by the Board has always been sufficient in the past. This is the first time - since I have been involved with the Board - that anyone has claimed otherwise. The fact that Mr. Thompson and two representatives from Puget Sound Pilots attended the Regional Meeting tells me that the word was passed to stakeholders (including some PMSA members) in the Puget Sound region. The fact that you personally did not get an invitation that met your specifications is not the responsibility of the Board. Even when the Board is the sponsor of an event, I generally do not send individual invitations to stakeholders. It is my policy to send out general invitations or information (by mechanisms such as an "Open letter to those interested in Washington State Maritime Pilotage") rather than individually addressed correspondence. That way I avoid the appearance of favoritism should someone who did not personally receive such an item demand to know why they were left out.

Your fifth paragraph goes on to, at least, acknowledge that the public and stakeholders were given notice of this meeting at our October Board meeting. However you characterize it as a "mention" rather than what it actually was. As I stated above, this item was discussed for over 6 minutes which clearly constitutes more than just a "mention." You go on to say that "no announcement of the final time, place or agenda of this meeting has been made public or posted by either of the Boards online." Given what it costs the Board (and, therefore, indirectly the shipping industry) to place items on our web site, I do not put every event that I am aware of on that site; particularly when I know that the event is being hosted and adequately published by others and I have made an appropriate announcement in an open meeting of the Board attended by the stakeholders I know would be interested in the event. For example, I do not publish an announcement of the Harbor Safety & Security Committee meetings on our web site even when I plan to attend one. It appears that you were fully aware that representatives of PMSA (Mr. Royer and/or Mr. Addington) were given details about the meeting that included the final time, place and agenda (plus other information).

Your sixth and seventh paragraphs lament what you indicate was a failure of the Board to conduct business and public policymaking in a public and open forum and a disregard for direct communications with the maritime community. You once again claim there was a "lack of notice or invitation for PMSA to participate." Your accusations are patently false. Not only did I make the announcement and invitation I have described above in an open meeting at which two PMSA representatives were present, Ms. Larson engaged in an exchange of emails with Mr. Addington about the event that included an updated version of the agenda and information about accommodations in Portland, etc. Mr. Addington's last reply on October 16 was, "Got it. Will pass this along." In an earlier email Mr. Addington noted that he had already received from another shipping industry representative the information that the Board staff had sent to him. I have known Mr. Addington for a number of years and know that he takes his role on the Board very seriously, and he knows that he is a primary representative of the shipping community (in particular PMSA) on the Board.



Washington Board of Pilotage Commissioners letter to PMSA – November 17, 2008

In your eleventh paragraph you acknowledge that you received the information about this meeting which indicates that Mr. Addington did, in fact, “pass this along” to other representatives of PMSA as he said he would. You acknowledge that you knew about the Regional Meeting early in the year, and that you were apprised of the meeting’s agenda, time and location and yet you still claim you did not get proper notice – I am at a loss to understand how you can draw that conclusion.

In your paragraph eight, you claim that “...it is abundantly clear that direct communications, invitations and scheduling occurred with the licensed pilots that you regulate, their counsel and national trade association.” You further charge that, “...no similar effort was made to communicate with the users of pilotage services...” and other similar accusations. You conclude that as a result “...our participation was neither encouraged nor expected” plus other distortions of reality. A brief review of the emails sent by the Board’s staff reveals that the shipping community (represented by Mr. Addington) received more direct, personal communications (in addition to the information provided to everyone) than anyone else including any representative of Puget Sound Pilots or the American Pilots’ Association. If there were any error on the part of the Board’s staff, it might be said that they gave preferential treatment to the PMSA representative rather than, as you wrongly claim, the other way around. It is abundantly clear that you have decided that, since you personally did not receive an invitation in a form that met your own criteria, it is somehow appropriate for you to level false accusations at the Board.

Your ninth and tenth paragraphs contain perhaps the most blatantly egregious charges in the entire letter. You essentially accuse me and the Board of being in violation of state law since the “spirit” of the law is an essential part of that law. I and every member of the Board take our responsibilities with regard to all the concepts laid down in the Revised Code of Washington (RCW) - including those regarding open meetings - very seriously. I and the Board fulfilled both the letter and the spirit of the RCW by providing the kind of notice that was promulgated by the Board regarding the Regional Meeting. The fact that you are disgruntled that you did not personally and directly get a written invitation from the Board does not prove otherwise.

In the eleventh paragraph you acknowledge that the shipping industry was, in fact, apprised of information regarding the Regional Meeting by the industry members of the Board, but you make it sound as if they did something unusual and unexpected by doing so. On the contrary, what they did is exactly what they are expected to do as shipping industry representatives on the Board. You state that you received information about the Regional Meeting “only” from Board industry members. Mr. Royer was the direct PMSA representative present (not on the Board) when the announcement of the Regional Meeting was made at the October Board meeting. What Mr. Royer did with that information is a PMSA matter, but I assume that he also passed the information he gained “up the chain” in which case you did not hear about it only from Board members. I also assume that, when you first learned of this possible Regional Meeting back at the beginning of the year, you exercised appropriate leadership and passed the word to your local staffs to ensure that you received information regarding the details of the meeting as they were obtained. A direct representative of PMSA (in addition to the Board representative) received a clear announcement and invitation to participate from our Board on October 9, 2008. I don’t know what Mr. Royer did with the information, but it is clear that Mr. Addington fulfilled his responsibility as a shipping industry representative by asking for additional details regarding the Regional Meeting. He received that additional information between October 10 and 16 and, as you acknowledge, he passed that information to you. That is “notice” by any standard.

The last sentence in paragraph eleven implies that it would take the presence of a PMSA representative at the Regional Meeting to ensure that the information passed at the meeting will be shared. I am confident that the Oregon Board will provide the public with adequate minutes from the meeting, so your aspersion of their integrity will turn out to be as invalid as the rest of your letter.

Washington Board of Pilotage Commissioners letter to PMSA – November 17, 2008

Paragraphs twelve and thirteen continue in the vein of the first part of the letter by claiming "...lack of notice...imbalanced agenda...lack of respect for the public..." and calling for the cancellation of the Regional Meeting. You sent your letter to the Board office via FAX on November 5, 2008. Both Ms. Larson and I were on the road at that time. I personally did not receive a copy until November 7 - midway through the second day of the meeting. In spite of your claims otherwise, the Regional Meeting was truly open and accessible, publicized and made known to interested parties. There were no "open meeting act defects" and the Regional Meeting was not "a closed and unnoticed meeting where only a select few invitees are encouraged to participate." The active participation of both pilot and shipping industry representatives (including from PMSA) at the two-day Regional Meeting proves those facts to be true and clearly disproves all your accusations to the contrary.

The last two paragraphs of your letter finally claim that the Regional Meeting "...was organized in a manner which deprives the public of its right to participate" and conclude with a desire for a meeting "...where the public is properly noticed and the voices of all stakeholders...are welcome." The Board was not responsible for the organization of the Regional Meeting, but the public with which I interface was given more than adequate notice about it. The only thing that deprived you (PMSA) from more active participation was your failure to capitalize on the notice you were given. Your motives for doing so are unclear, but, given your failure to discuss this with me prior to sending a scathing letter; the list of persons to whom you sent a copy of your letter; and your use of the media to broadcast your accusations, it appears that they were more of a political nature than a desire to be involved in an important forum of maritime personnel at which you could have provided valuable input. The Regional Meeting was properly noticed by the Board and the voices of all stakeholders were not only welcomed but those who did attend gave the commission representatives exactly the kind of information we need to continue to carry out our duties appropriately. Your failure to use the clear notice you were given (through your representatives) and your decision to "boycott" the meeting because you were not happy with the manner in which you were invited does not lessen the significance or value of the Regional Meeting. Your letter and claims in the media do not change that fact.

I am truly saddened by the damage your unwarranted accusations and the manner in which you have presented them have done to the good working relationships with the shipping industry that the Board and I have tried to foster through the years. I am willing to try to work through this situation and seek to return to the kind of appropriate professional communications that I have come to expect from PMSA. However, as I hope this letter has made clear, I will not let unfounded and inappropriate accusations aimed at me or the Board go unanswered.



Captain Harry Dudley  
Chairman

- Cc: Hon. Arnold Schwarzenegger, Governor of California  
Hon. Christine Gregoire, Governor of Washington  
Hon. Jerry Brown, Attorney General of California  
Dale Bonner, Secretary, California Business, Transportation & Housing Agency  
Paula Hammond, Secretary, Washington Department of Transportation  
Jay Manning, Director, Washington Department of Ecology  
Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun  
Oregon Board of Maritime Pilots  
Captain Mike Moore

Board of Pilot Commissioners for the Bays of San  
Francisco, San Pablo and Suisun  
Pier 9, Suite 102, San Francisco, CA 94111  
Phone: (415) 397-2253 Fax: (415) 397-9463  
E-mail: [pilots@earthlink.net](mailto:pilots@earthlink.net) website: [www.pilotcommission.org](http://www.pilotcommission.org)



November 17, 2008

Mr. John McLaurin, President  
Pacific Merchant Shipping Association  
250 Montgomery Street, Suite 700  
San Francisco, CA 94104

Dear Mr. McLaurin:

On November 5, 2008 you wrote to me and to Capt. Harry Dudley, Chairman of the Washington State Board of Pilotage Commissioners, in connection with the regional meeting of state boards of pilot commissioners held in Portland, Oregon on November 6<sup>th</sup> and 7<sup>th</sup>. This letter responds on behalf of the California Board.

In your correspondence you "express dismay with the failure to involve stakeholders, or even provide public notice, of the west coast regional meeting. . . ." Further, you assert that, "With regard to the lack of public notice specifically, your participation in this unnoticed, private meeting violates . . . the very letter of the California Bagley-Keene Open Meeting Act."

*With respect to public notice*, during my President's Report at the September 26, 2008 meeting of the Board of Pilot Commissioners, I publicly advised all those present that Executive Director Moloney and I would attend a regional conference hosted by the State of Oregon pilot commission. A statement to that effect is included in the minutes of the meeting which were approved at the subsequent Board meeting on October 23, 2008, and posted on the Board's website on October 27, 2008. Both industry members of the Board participated in the September Board meeting. One, PMSA's nominee for appointment to the Board, was present in person; the other, nominated by the Western States Petroleum Association, participated by speakerphone. Subsequently, PMSA's nominee attended and participated in the regional conference.

Additionally, on October 30, 2008 the Oregon Board issued a public notice of the meeting together with the agenda, consistent with Oregon state law. It is important to recognize that the California, Washington, Alaska and British Columbia boards were invitees, not organizers, of the regional meeting. The meeting was not our meeting, nor was the agenda one set by those boards. Further, none of the invited boards were in a position to cancel or reschedule the meeting, as you recommended in your letter.

*With respect to involving stakeholders*, your letter states that the California and Washington ". . . Boards have effectively eliminated the public and maritime industry from these meetings by not inviting interested parties and by failing to properly notice the meetings to the public." As you may now be aware, the meeting was attended by representatives of the Alaska Steamship Association, K-Line, APL, Columbia Grain, the Columbia River Steamship Owners Association, and the Port of Portland. They participated actively in the meeting and their contributions were appreciated by all in attendance. PMSA could also have participated, given that it has five West Coast executives.

Your letter also states, “. . . it is abundantly clear that direct communication, invitations and scheduling occurred with the licensed pilots that you regulate, their counsel and national trade association.” This assertion is, at least with respect to the California board, factually inaccurate. The Board received notice from the Port Agent of his intention to attend. The Board did not solicit his attendance, nor that of pilots’ counsel, nor that of their national trade association.


*With respect to the California Open Meeting Act*, the Open Meeting Act recognizes that not all gatherings of a majority of board members at a single location constitute a meeting. Government Code Section 11122.5(c)(2) excludes from the definition of a meeting the attendance by a majority of members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body. Government Code Section 11122.5(c)(3) excludes the attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body.

As you may know, both of these exceptions carry a proviso. The two types of gatherings are not meetings only if "a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body."

Since the meeting was open to the public, noticed, and put on by the Oregon board, the California board was not required to put out a meeting notice or agenda. All Board members were cautioned to refrain from discussing among themselves any item of business, other than as part of the scheduled program, in order to remain in compliance with the law and to the best of my knowledge, they conducted themselves in accordance with the law.

Please do not hesitate to contact me if you would like to discuss these matters further.

Sincerely yours,

  
Knut Michael Miller  
President

cc: Hon. Arnold Schwarzenegger, Governor of California  
Hon. Jerry Brown, Attorney General of California  
Hon. Dale Bonner, Secretary, California Business, Transportation and Housing Agency  
Hon. Christine Gregoire, Governor of Washington  
Hon. Paula Hammond, Secretary, Washington Department of Transportation  
Hon. Jay Manning, Director, Washington Department of Ecology  
Capt. Harry Dudley, Washington Board of Pilotage Commissioners  
Ms. Kim Duncan, Oregon Board of Maritime Pilots