

Comprehensive Offshore Area Occupational Health and Safety Regime

October 30, 2013

Current Environment

- The Atlantic Accord was signed in 1985 with proclamation of the Accord Acts in 1987
- The Accord Acts were amended in 1992 in response to recommendations of the Ocean Ranger Commission and the Harrison Task Force. These amendments inadvertently separated the concepts of occupational health and safety
- This resulted in the ability to make regulations on occupational safety but not occupational health

Current Matters Related to OHS Regime

- An OHS regime currently applies to the offshore and is administered and enforced by the C-NLOPB through
 - Safety provisions in the Accord Act,
 - An MOU to give C-NLOPB safety officers the authority to administer key provisions of the provincial OHS Act, and
 - The authority to attach Draft OHS regulations as terms and conditions of work authorizations

New Offshore OHS Regime

- Result of a cooperative and collaborative effort on the part of the departments responsible for Energy, OHS and Justice in the Federal, NL and NS governments, as well as officials from both the NL and NS Offshore Petroleum Boards
- Extensive consultations were conducted with key stakeholders in NL and NS in 2002/2003 and again in 2010
- A discussion paper was released for the purposes of these consultations and written comments were solicited from stakeholders
- Bill 1 subsequently creates a comprehensive OHS legislative framework for the offshore and provides legislative authority to promulgate occupational health and safety regulations

Key Features of Proposed Legislation

- Amendments tailor standard OHS policies and principles to the offshore working environment:
 - ❑ A worker's Right to Refuse to perform unsafe work, Right to Know the risks associated with the work, and Right to Participate in health & safety committees
 - ❑ A worker's Right to Reprisal Protection for raising health & safety concerns
 - ❑ Joint Allocation of Responsibility amongst operators, employers, workers and suppliers for matters related to health & safety

Joint Management

- Bill 1 recognizes the joint management of NL and Canada in the offshore
- Provincially, the Offshore Board will report to the Minister responsible for Occupational Health and Safety (Minister of Service NL) in respect of these new legislative requirements
- The provincial NR Minister retains responsibility for all other matters under the Accord Acts
- Federally, the Minister of Natural Resources retains responsibility for the entire Accord Act, with advice and policy direction from the Federal Minister of Labour respecting the OHS components
- Transport Canada remains the regulator of passenger craft (air or marine) transporting workers to offshore installations and their approval will be required for the promulgation of regulations respecting OHS on passenger craft

Application

- Bill 1 applies to workplaces in the offshore area for the purpose of exploration or drilling for, or the production, conservation or processing of, petroleum
- Workplace – in relation to a work or activity for which an authorization has been issued, means:
 - ❑ any marine installation or structure where an employee is employed
 - ❑ any work-boat operating from a marine installation or structure that is used by an employee to perform routine maintenance or repair work
 - ❑ any dive site from which a diving operation is conducted
 - ❑ any underwater area where a diving operation is conducted by an employee

OHS Principles and Policies - Part III.1

- Accountability
 - ❑ Offshore Boards are responsible for administering the legislation including the occupational health and safety on behalf of both governments
 - ❑ Provincial Ministers responsible for OHS and Federal Minister of Natural Resources will be jointly responsible for designation of OHS Officers
 - ❑ Provincial Ministers responsible for OHS or Federal Minister of Natural Resources may call for an audit or inquiry into activities of the Board in relation to occupational health and safety
 - ❑ Both Ministers will have authority to issue joint directives to the Board respecting
 - The development of Guidelines
 - Interpretation notes
 - The implementation of any recommendations arising from an audit or inquiry

OHS Principles and Policies - Part III.1

- Disclosure of Information
 - ❑ Chief Safety Officer (CSO) may disclose information with respect to OHS to government officials and agencies, and foreign governments if in the interest of health and safety
 - ❑ Officials of the federal government and its agencies may also disclose information to CSO for health and safety reasons
 - ❑ Provincial and Federal Ministers entitled to information or documentation related to OHS under control of the Offshore Board upon request
 - ❑ No person shall be prevented from providing information to the CSO or a Health and Safety Officer in carrying out their duties and functions under the Act
 - ❑ Board has discretionary power to release health and safety information in the public interest
 - ❑ The CSO may direct the sharing of certain information related to worker health and safety

OHS Principles and Policies - Part III.1

- OHS Policy
 - ▣ The Operator shall develop an OHS Policy containing commitments of the Operator and the responsibilities of the employers in respect of OHS
- Management System
 - ▣ The Operator shall develop an OHS management system to implement the Policy

OHS Principles and Policies - Part III.1

- Hierarchy of Responsibility
 - ❑ An Operator has overall responsibility for ensuring health and safety
 - ❑ Operators, employers, suppliers, providers of services, employees, supervisors, owners and interest holders have individual and shared responsibilities
- Duties of Workplace Parties
 - ❑ Operators have overall responsibility for ensuring health and safety of persons engaged in carrying out work or activities related to the Operator's authorizations
 - ❑ Operators, Employers, Supervisors, Suppliers and Providers of Service, Owners, Interest Owners and Corporate Officials have individual and shared responsibilities with regard to health and safety of persons and are responsible for cooperating with each other and coordinating their activities regarding health and safety at workplace
 - ❑ Employees have duty to take reasonable measures to protect their own health and safety at the workplace and that of other persons and have a list of specific duties

OHS Principles and Policies - Part III.1

- Passenger Craft
 - ▢ Amendments set out those duties that are relevant and within the control of an Operator and an employer in the transport of workers by aircraft or vessel to and from and between installations
 - ▢ Rights and duties of an employee in relation to such transit.
- Communication of Information
 - ▢ Operator and employer shall make certain information and documents relevant to health and safety available to employees at the workplace and at points of embarkation when being transported by passenger craft
- Workplace (OHS) Committees
 - ▢ Operator shall establish one workplace committee for each installation for purpose of involving Operator, employers and employees in matters of OHS
 - ▢ Workplace committees have a list of duties

OHS Principles and Policies - Part III.1

- Workplace Monitoring
 - ▢ Committee can choose an employee as an observer while monitoring related to health and safety is being conducted
- Duty to Report
 - ▢ Employee who has reasonable cause to believe that there is likely to be accident or injury to health shall
 - ▢ Report it to employee's supervisor and if not remedied to employees satisfaction
 - ▢ Shall report it to workplace committee and then to a health and safety officer

OHS Principles and Policies - Part III.1

- Right to Refuse
 - ❑ An employee may refuse to perform an activity at a workplace if the employee has reasonable cause to believe the activity constitutes a danger to the employee or another person
 - ❑ An employee may also exercise this right in respect of transportation to and from the workplace
 - ❑ An employee is not justified in refusing if the refusal puts the life, health or safety of another person directly in danger
- Reprisal Action
 - ❑ No person or organization shall take, or threaten to take, reprisal action against an employee because the employee has acted in accordance with Accord Acts
 - ❑ Any allegation of reprisal can be brought for determination to Labour Relations Board in NL

OHS Principles and Policies - Part III.1

- Authorizations
 - ▢ On receipt of application for work authorization the CSO shall consider potential impact of work or activity to be authorized on the health and safety of employees engaged in work or activity, and
 - ▢ Make written recommendation to the Board on the matters considered
- Activities of the Offshore Board
 - ▢ May undertake research and programs, and cause studies with respect to OHS
 - ▢ May issue and publish guidelines and interpretation notes with respect to the application and administration of provisions related to OHS

OHS Principles and Policies - Part III.1

- Code of Practice
 - ❑ CSO may require an employer to establish or adopt Code of Practice
 - ❑ Code of Practice will allow for timely, flexible, site and situation specific solutions to problems without need to amend regulations
 - ❑ Code of Practice is not a statutory instrument
- Orders
 - ❑ Health and Safety Officer may make an order to terminate an activity in contravention of the OHS regime, and
 - ❑ Where the health and safety of a person is in danger, issue orders to immediately correct hazard or condition that constitutes the danger

OHS Principles and Policies - Part III.1

- Review and Appeals
 - ❑ Some orders or decisions of the OHS Officers may be reviewed or appealed to the CSO by a person or union representing employees who are directly affected by the decision or order
 - ❑ Other orders or decisions are appealable directly to the external appeal processes for OHS matters within the respective provinces
- Substitution
 - ❑ CSO may permit the use of specific equipment, methods, measures or standards not in direct compliance with the regulations, if
 - ❑ The CSO is satisfied that the use of the specific equipment, methods, measures or standards would provide a level of safety and
 - ❑ Protection of health equivalent to that provided by compliance with the regulations

OHS Principles and Policies - Part III.1

- Health and Safety Officers
 - ▣ Powers and duties of Health and Safety Officer are outlined for the purpose of the enforcement of Part III.1
 - ▣ The OHS Officers are recommended by the Board and designated by both the Provincial Minister of Service NL and the Federal Minister of NR
- Offences and Penalties
 - ▣ Establish those offences that relate to the OHS regime and the appropriate penalties
 - ▣ Amendments allow for creative sentencing

OHS Principles and Policies - Part III.1

- Provision for establishment of an OHS Offshore Advisory Council
 - ▢ Comprised of an equal number of employee and industry representatives, representation from both governments, and the CSO
- Audits
 - ▢ Federal Minister, Provincial Minister, or both, may appoint any person as auditor to measure and report on the Board's effectiveness in administering Part III.1
 - ▢ A report of the audit shall be made to both Ministers and the Board
- Inquiries
 - ▢ Federal Minister, Provincial Minister, or both, or the Board, may appoint one or more persons to inquire into and report on matters concerning OHS

OHS Principles and Policies - Part III.1

- Transportation of Workers to the Offshore
 - Operator to take all reasonable measures to ensure health and safety of workers while being transported
 - Workers have rights and duties in relation to such transit
 - Any information affecting the health and safety of workers must be provided prior to transport

OHS Principles and Policies - Part III.1

- Special Officers
 - ❑ Part III.1 will allow the appointment by the Provincial Minister with the concurrence of the Federal Minister of a qualified person to act as a Special Officer
 - ❑ The Special Officer would inquire into a matter and will have authority to act on behalf of the Minister for the purpose and duration of the appointment
 - ❑ The Provincial and Federal Ministers must be satisfied there are reasonable grounds to believe such an appointment is necessary to the avoid serious risk to the health and safety of employees and if all other avenues available to governments (such as audits, inquiries, joint directives) to correct a problem were unsuccessful

OHS Regulations/Transitional Provisions

- Transitional provisions for the period between the proclamation of these amendments and the development of new regulations:
 - NL Offshore Marine Installations and Structures Health and Safety Transitional Regulations - those used in the North and Beaufort Sea
 - NL Offshore Marine Installations and Structures Transitional Regulations
 - Transitional Regulations Respecting the Safety of Diving Operations Conducted in the NL Offshore Area
- Unless repealed earlier, transitional regulations are to be repealed within 5 years of Act proclamation
- Working group has been established to develop OHS regulations

Consequential Amendments

- Consequential amendments are required to the *Labour Relations Act* and the *Workplace Health, Safety and Compensation Act*
 - Appeals of orders or decisions made under Part III.1 will be heard by the Labour Relations Board, similar to the process for provincial OHS appeals
 - Amendments to the *WHSC Act* will allow the Commission to continue to support OHS Committees and to provide OHS services to offshore employers