

Amending the Accord Acts

To Incorporate an
Occupational Health and Safety
Regime

Purpose of Information Sessions

- Inform key stakeholders on proposed Occupational Health and Safety (OHS) amendments
- Explain the new Governance model
- Highlight major features of the Bill
- Respond to questions

AGENDA

- Facilitator Comments
- Presentations
 - Rationale for amendments
 - Purpose and Overview
 - Background
 - Key Terminology
 - Role of Regulator
 - Overview of Key Elements
 - Next Steps
- Break
- Question and Answers

Rationale for Amendments

- Replace the current mechanisms used by the Board to administer occupational health and safety with a legislative framework under the Atlantic Accords

Application

- Proposed addition to Accord Acts will apply to exploration or drilling for, construction and development, production, conservation or processing of petroleum in offshore area

Structure of the Accord Acts

- Act consists of several Parts administered by the Ministers responsible for Energy
 - Part I – Joint Management
 - Part II – Petroleum Resources
 - Part III – Petroleum Operations
 - Part IV – Revenue Sharing
- Proposed amendment to Act creates new Part administered by Provincial Minister responsible for OHS and Federal Minister of Natural Resources in consultation with the federal Minister responsible for Labour
 - Part III.1 Occupational Health and Safety

Purpose

- Purpose of new Part is to allocate responsibility amongst the various workplace parties
- Establish a hierarchy of preventative measures to prevent incidents, accidents and injury to health arising out of, linked to, or occurring in the course of employment in the offshore area

Key Terminology

- Marine Installation or Structure includes
 - any ship, including any ship used for construction, production, diving, geotechnical or seismic work
 - any offshore drilling unit, including a mobile offshore drilling unit, any production platform, subsea installation, pipeline as defined,
 - pumping station, living accommodation, storage structure or loading or landing platform

Key Terminology

- Marine Installation or Structure does not include
 - any vessel, including any supply vessel, standby vessel, shuttle tanker or seismic chase vessel, that provides any supply or support services to a ship, installation, structure, work or anything else described in the previous slide
 - unless the vessel is within a class of vessels that is prescribed by the Federal and Provincial Minister as part of the definition of marine installation or structure by regulation

Key Terminology

- 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 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

Key Terminology

- Operator – a person or corporation who holds an authorization

Key Terminology

- Provider of Service – any person or partnership who for commercial gain
 - Provides services related to the placement with an Operator or employer of individuals who, in return for monetary compensation, perform work or services for the Operator or employer
 - Provides services that affect or could affect the health or safety of employees or other persons at a workplace, including an engineer, architect, a certifying authority or any person who provides information, advice or a certificate or affixes a professional seal or stamp

Key Terminology

- Employee – an individual who, in return for monetary compensation, performs work or services for an employer in respect of an authorized work or activity
- Employer – a person or corporation who employs, or contracts for the services of any individual, in respect of an authorized work or activity, if that person has the power to exercise direction and control over the individual's work at the workplace

Key Terminology

- Workplace committee – an occupational health and safety committee made up of management and worker representatives
- Special committee – an occupational health and safety committee ordered established by the Chief Safety Officer (CSO) to examine a specific issue or for a specific task

Key Terminology

- Occupational health and safety coordinator
 - Title accorded to a person selected by the Operator to carry out certain functions of a workplace committee on a temporary workplace

Key Terminology

- Health and Safety Officer – collective name used to refer to Occupational Health and Safety Officer and Special Officer
- Occupational Health and Safety Officer – Board employee designated for the purposes of verifying compliance with the occupational health and safety Part of the Accord Acts

Key Terminology

- Passenger craft – any aircraft or vessel used for the purpose of transporting employees to a workplace or between workplaces while and immediately before it is transporting employees

Key Terminology

- Provincial Minister – the minister who is responsible for occupational health and safety in the government of the Province

Offshore Boards

Role of the Offshore Boards

- Have oversight responsibility to monitor and verify that all parties are fulfilling their obligations and duties
 - Verify compliance with the Acts and Regulations
 - Operate using a number of regulatory tools
 - Work Authorizations
 - Orders
 - Guidelines
 - MOUs

Verification and Compliance

- The Boards will verify
 - that Operators have appropriate safety plans and safety management systems in place
 - through compliance audits and examinations, that Operators follow their safety plans, occupational health and safety management systems and policies, and other legislative occupational health and safety requirements
 - through compliance and monitoring activities, that deviations from approved plans or any legislative requirements are corrected

Enforcement

- Orders issued by OHS Officers
- OHS Officers will conduct formal enquiries into matters relating to occupational health and safety the outcome of which may result in prosecution
- The Board may revoke the work authorization

Proposed Amendments

Key Elements

Key Feature

- New oversight role for Provincial Ministers responsible for occupational health and safety
- New Governance model including clarified lines of accountability
- New enforcement provisions including designation of health and safety officers, officer powers, warrant provisions, creative sentencing

Governance

- Provincially, the Offshore Boards would report to the Ministers responsible for Occupational Health and Safety in respect of these new legislative requirements under the Atlantic Accords
- Federally, the Minister of Natural Resources retains responsibility for the entire Accords with advice and policy direction from the Federal Minister of Labour respecting the OHS components.

Accountability

- Offshore Boards are responsible for administering the regulatory regime of offshore activities including the occupational health and safety aspects 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

Accountability

- 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

Accountability

- Ministers will have authority to issue joint directives to the Board respecting
 - Development of Guidelines
 - Interpretation notes
 - Implementation of any recommendations arising from an audit or inquiry

Disclosure of Information

- CSO may disclose information with respect to OHS to government officials and agencies, and foreign governments and agencies if in the interest of health and safety
- Officials of the federal and provincial governments 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

Disclosure of Information

- 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 Policy

- The Operator shall develop an OHS Policy containing commitments of the Operator and the responsibilities of the employers in respect of OHS

Hierarchy of Responsibility

- Hierarchy of responsibility is based on the principles that
 - 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

Duties of Workplace Parties

- Operators, Employers, Supervisors, Suppliers and Providers of Service, Owners, Interest Holders 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

Duties of Workplace Parties

- 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

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 Committees

- Operator shall establish one Workplace (OHS) committee at the workplace for purpose of involving Operator, employers and employees in matters of OHS
- OHS committee has a list of duties

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 if not remedied

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

Right to Refuse

- An employee is not justified in refusing if:
 - the refusal puts the life, health or safety of another person directly in danger, or
 - the danger referred to is inherent in the work of the employee

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 Officer in NS

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

Authorizations

- On receipt of application for work authorization
 - 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

Code of Practice

- CSO can 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

Substitution

- CSO may permit the use of specific equipment, methods, measures or standards not in direct compliance with the regulations, if
 - CSO is satisfied that the use of the specific equipment, methods, measures or standards would provide an equal level of safety and
 - Protection of health equivalent to that provided by compliance with the regulations

Health and Safety Officers

- Federal and Provincial Ministers jointly designate person being recommended by the Board as an Occupational Health and Safety Officer for the purposes of the administration and enforcement of the regulations
- Powers and duties of Health and Safety Officer are outlined for the purposes of conducting examinations and enquiries

Special Officers

- Exceptional Power
- The Act will allow the appointment of a qualified person, who is a non-Board employee, to act as a Special Officer

Special Officers

- The Ministers must be satisfied there are reasonable grounds to believe such appointment is necessary to avoid serious risk to employees
- Implemented if the serious risk cannot be avoided through other statutory means such as the issuance of directive to the Board or an audit or inquiry
- Special Officer would, on the initiation of the Provincial Minister, enquire into a matter and have authority to act for the purpose and duration of the appointment

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

Drafting Convention

- Draft amendments reflect new Justice Canada drafting conventions
- No longer use “administration and enforcement”, “inspect” or “investigate”
- Now use words like verify compliance, examine and enquire

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

Offences and Penalties

- Establish those offences that relate to the OHS regime and the appropriate penalties
- Penalties vary and are those currently found in the Accord Acts
- New Part would allow for creative sentencing

Advisory Council

- There shall be established an advisory council comprised of
 - an equal number of representatives of employees and of representatives of industry
 - representatives of both governments, and
 - the CSO or their representative

Audits

- Federal Minister, Provincial Minister, or both, may appoint any person as auditor to measure and report on effectiveness of the Board in administering this Part.
- A report of the audit shall be made, as soon as practicable, to both Ministers and the Board

Inquiries

- Federal Minister, Provincial Minister, both, or the Board may appoint one or more persons to inquire into and report on matters concerning OHS

Next Steps

Legislation

Anticipated Timelines 2010

- April – June Continue drafting of Federal version of the Bill
- June – July Respond to Stakeholders
- Aug. – Sept. Drafting of provincial version of the Bill
- Sept. – Dec. Planned commencement of legislative processes in 3 legislatures

OHS Regulations

- Transitional Period between passing amendments and new regulations
 - *Oil and Gas Occupational Health and Safety Regulations*
 - plus select provisions from Installation regulations, Geophysical regulations and Drilling and Production regulations apply
- Three governments plus the Offshore Boards have started work on the Accord Act OHS regulations
- Will be consultation with stakeholders throughout process

Information Contacts

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Documents available online:

Department of Government Services

<http://www.gs.gov.nl.ca/>

Department of Natural Resources

<http://www.nr.gov.nl.ca/>

Nova Scotia Contact: Kim Himmelman

Email: HIMMELKA@gov.ns.ca

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Documents available online:

Department of Energy <http://gov.ns.ca/energy/>

Department of Labour and Workforce Development

<http://gov.ns.ca/lwd/>

Comment Period

**Comments must be sent by May 31,
2010 to:**

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