

# 2008 INTERNATIONAL TELECOMMUNICATIONS SAFETY CONFERENCE

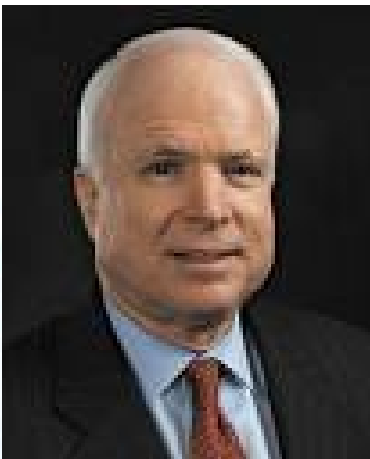
Today's Hot Topics – and the  
Road Ahead!

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ORC Worldwide

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We Will Not Be Covering:







# What We Will Cover

- **The Waning Days of the 110<sup>th</sup> Congress  
(Plus Bonus Crystal Ball Gazing!)**
- **Federal Agency Highlights**
  - **DOL, OSHA, NIOSH, DOT**
- **Quick Takes on Other Hot Trends and Issues**



“Everything is Political”

# Legislative Update

## 110th Congress, 2<sup>nd</sup> Session



Thanks to Susan Spangler Nussbaum!

# House Education & Labor Committee



## Oversight hearings:

- **“The Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses” June 19, 2008**
- **Report issued:**  
<http://edlabor.house.gov/hearings/fc-2008-06-19.shtml>
- **GAO report to follow (2009?)**

# House Education & Labor Committee



## Oversight Hearings:

- **Construction Safety, June 24, 2008**
- **Focus on crane collapses**
- **Call for legislative reform to create separate Construction Safety & Health Administration**

# Senate Health Education Labor & Pensions Committee



- **Mostly inactive**
- **Issues pending:**
  - **Combustible dust leg.**
  - **Diacetyl legislation**
- **Combustible dust hearing, 7/29/08**

# Combustible Dust Hearing -- July 29



- **Senate Subcommittee on Employment & Safety**
- **Witnesses:**
  - **Ed Foulke, OSHA**
  - **John Bresland, CSB**

# Regulation v. Status Quo



**John Bresland**  
**Chairman**  
**Chemical Safety Board**

*versus*



**Ed Foulke**  
**Assistant Secretary**  
**OSHA**



Election Day, November 4, 2008

**Senate and House Races**

# In the Senate--

- **Current numbers, although very close, favor Democrats (49/49/2)**
- **35/100 seats up for election; 23 by GOP and 12 by Dems**
- **So Dems only have to defend 12 seats compared to 23 for GOP**
- **This open seat margin between the parties is the largest in 50 years**
- **Four of the 23 currently GOP states leaning toward Democrats – VA, NH, CO & NM**

# In the House

- **Most likely will stay majority Democrat**
- **Current numbers favor Democrats (235/199)(power of incumbency)**
- **A dozen highly contested seats (out of 435), of those 12, 10 are GOP seats but were won by less than 3% of the vote in 2006 or otherwise considered at risk**
- **Three special elections held for open Republican seats were won by Dems**

# What Will the Outcome Mean for OSH Legislation?

- **Either way, expect an activist Congress on OSH issues**
- **At top of labor's legislative/regulatory agenda – ergonomics, safety and health program std**
- **Combustible dust, diacetyl, recordkeeping**
- **Both Kennedy and Miller have sponsored “OSHA reform” legislation**
  - **Strengthening OSHA enforcement e.g. increasing penalties, making any willful violation causing death of a worker = felony with prison time**



# Agency Update

- **Department of Labor (DOL)**
- **OSHA**
- **NIOSH**
- **Department of Transportation**

# The Saga of DOL's "Secret Rule"

- **NPR published in FR August 29, 2008**
- **DOL draft proposal surfaced end of July entitled "Requirements for Dept. of Labor Agencies' Assessment of Occupational Health Risks"**
- **Rep. Miller & Sen. Kennedy very angry**
- **Rep. Miller introduced HR 6660 to block the "secret rule."**

# DOL Risk Rule: The Initial Sequence

- **July 7 – OMB posts web notice that it is reviewing a DOL Proposed Rule: “Requirements for DOL Agencies’ Assessment of Occupational Health Risks”**
- **July 10 – Chairman Miller expresses surprise and requests a copy from Sec Chao**
- **July 17 – DOL responds: no copy but here’s an abstract**
  - **Rule’s goal: establish a “consistent, reliable, transparent set of procedures when conducting risk assessments”**

# What Were They Thinking?

- **Every administration learns that:**
  - OSHA + Washington Post = No Secrets***
- **July 23 Post article**
  - “Political appointees at [DOL] are moving with unusual speed to push through . . . a rule making it tougher to regulate on-the-job chemicals and toxins.”
  - In the works since 2007, but never placed on Semi-annual Regulatory Agenda
  - Little or no participation by OSHA or MSHA in preparation despite the impact on those agencies

# What's the Big Deal?

- **Bottom line: the political drama surrounding the “secret nature” of the project more intriguing than the actual content**
- **The proposal attempts to codify OSHA's risk assessment process for health standards**

# What Does It Do?

- **Provides general guidance on 4 elements of risk assessment process: Hazard identification, Dose-response assessment, Exposure assessment, Risk characterization**
- **In most respects, tracks 2007 OMB Risk Assessment Guidelines and existing OSHA rulemaking precedent, e.g.,**
  - **Use best available peer-reviewed science**
  - **Use a central estimate of risk, showing lower and upper bounds**
  - **Articulate key assumptions and uncertainties**

BUT . . .

“The Department believes that risk communication should involve the open exchange of information among technical experts in relevant disciplines, policy makers and the public. Therefore, the Department’s agencies shall issue an Advance Notice of Proposed Rulemaking soliciting public input . . . related to the development of a health standard . . . prior to issuing a Notice of Proposed Rulemaking . . . .”

# Most Controversial Provision: “Working Lifetime” Estimates--GONE

- In carrying out the OSH Act’s directive to set a standard that assures that “no employee will suffer material impairment of health,” OSHA should no longer assume a 45 year working lifetime unless:
  - There are “no reliable data upon which to accurately customize the hourly, daily, weekly and yearly components of ‘working life’ for a particular occupation.”
- Draft proposal claimed industry sector data show that no one works 45 years in an industry any more!

# Finally . . .

- **This proposed rule, if finalized, would essentially make the OMB Guidelines mandatory for OSHA/MSHA**
- **Failure to strictly adhere to the requirements would be yet another grounds to sue the agency**
- **Short comment period (30 days)**
- **A new administration could rescind this rule relatively easily.**

# OSHA Regulatory Outlook – Near Term

- **Few rules under development**
- **Hard to get standards finalized**
- **New standards always challenged in court**
- **Increased emphasis on Alliances, strategic partnerships, and “guidance”**

# OSHA Regulatory Outlook After January 20, 2009...

- **More rules under development?**
- **APA requirements will mean rulemaking still a slow process**
- **New standards will probably always be challenged in court by somebody**
- **If McCain wins, continued emphasis on Alliances, strategic partnerships, and “guidance” likely**
- **If Obama wins, shift in emphasis to rulemaking and increased enforcement**

# OSHA Rulemaking Highlights

- **GHS -- NPR October 2008?**
- **Cranes and Derricks – NPR soon?**
- **Walking & Working Surfaces – NPR soon?**
- **Electric Power Transmission/Protective Equipment – OSHA to reopen rulemaking record seeking additional info on minimum approach distances—soon?**

# Other OSHA News

- **May 9, OSHA asks for comment on "Proposed Guidance on Workplace Stockpiling of Respirators and Facemasks for Pandemic Influenza" (73 FR 26431)**
- **August 19, NPR entitled "Clarification of Remedy for Violation of Requirements to Provide Personal Protective Equipment and Train Employees (73 FR 43385)"**
  - **Generally consistent with the Agency's longstanding intent and policy of treating the failure to provide PPE or to train each individual employee as a distinct violation and therefore does not impose new obligations**

# OSHA Revising its 1989 Safety and Health Program Guidelines

- **Using ANSI Z 10 Standard, OHSAS 18001 as primary references**
- **Establishing 4 “tiers” (maturity levels) for 6 Core Elements: Leadership, Employee Participation, Hazard Identification/ Assessment, Hazard Prevention/Control, Education/Training, System Evaluation/Improvement**
- **Focus is on encouraging SME’s to “get started” implementing a basic system, then working toward more complete systems**

# Example

## Employee Participation Sub-Element

Sub-Element	Tier 1: Getting Started	Tier 2: Striving for Success	Tier 3: Achieving Robust System	Tier 4: Above & Beyond
Encourage reporting of safety and health concerns	Establish a method for reporting S&H concerns and system deficiencies	Establish a process to report S&H concerns and suggestions for improvement; must include timely mgt response and tracking of issues	Tier 2 requirements PLUS documenting report and providing feedback to employees about results	No criteria in this column

# Expected Action

- **OSHA just beginning to “go public” by briefing stakeholders on status**
- **They will consider this project to fall under OMB directive on “significant agency guidance” that will require publication of draft and public comment**
- **Will probably hold public meetings**
- **Timing is unclear – DOL/OMB may be concerned about timing**

# OSHA Enforcement Update

- **Site Specific Targeting (SST) 2008**
- **National Emphasis Programs (NEPs)**
- **What Works Best: Targeting by the Numbers or the Hazards...?**



# New Site-Specific Targeting Plan for (SST-08)

- **Announced: May 21, 2008**
  - **Effective: 5-19-2008 – 5-18-2009**
  - **Based on 2006 injury and illness data that was collected by the 2007 Data Initiative**
  - **Primary Inspection List will target: ~ 3,800 individual worksites:**
    - **Those reporting a DART\* rate of 11 or higher**
    - **Those reporting a DAFWII\*\* rate  $\geq 9$**
- \*Dart = days away from work, restricted work activity, or job transfer**
- \*\*DAFWII = days away from work due to illness and injury**

# SST- 08 (Cont.)

- **Secondary List:**

- Employers not on the primary list who reported DART rates between 7.0 and 11.0 or DAFWII rates of between 5.0 and 9.0

- **Random List of the “super low” rate reporters from “high rate” industries**

# National Emphasis Programs (NEPs)

- **OSHA searching for best enforcement strategy to find and eliminate most serious hazards**
- **OSHA looking for ways to balance resources with results**
  - **Pilot program – chemical plants**
    - High Volume – Narrow Focus (“Quick Hitters”) Inspections

# OSHA NEPS

- **Oil Refineries**
- **Combustible dust**
- **Buttered Flavored Popcorn**
- **Lead**
- **Silica**
- **Amputations**
- **Trenching**
- **Shipbreaking Operations**

# NEPs Under Development

- **PSM – Chemical Plants**
- **Primary metals – smelting and foundries**
- **Flavorings with Diacetyl**
- **Occupational asthma**
- **Oil and gas well drilling**

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# NIOSH Highlights

# Job Opening at NIOSH...

- **John Howard not reappointed for second term as Director**
- **Christine M. Branche, Ph.D. appointed Acting Director**
- **Formerly Associate Director, NIOSH and Director, Division of Unintentional Injury Prevention, National Center for Injury Prevention and Control at the Centers for Disease Control and Prevention (CDC)**

# NIOSH Hot Topics

- **Prevention Through Design (PtD)**
- **r2p – Research to Practice**
- **Worklife Initiative**
- **Work Organization and Stress-Related Disorders**
- **Occupational Illness Surveillance**
- **Better understanding root causes of fatalities and serious injuries**

# Transportation Safety — Flurry of Activity!

## FMCSA is working to complete:

- **Hours/EOBR Final Rule early Dec 2008?**
- **Two medical rules, sent to the secretary, publication in late November or early December?**
  - **Creation of a national registry of medical examiners for drivers**
  - **Rule linking medical certification to the commercial driver license**

# Drug Testing Rules Amended

- **June 28, 2008—DOT amended drug and alcohol testing procedures to change instructions to collectors, laboratories, medical review officers, and employers regarding adulterated, substituted, diluted, and invalid urine specimen results.**
- **Intended to create consistency with specimen validity requirements established by the U.S. Department of Health and Human Services and to clarify and integrate some measures taken in two DOT Interim Final Rules.**
- **This Final Rule makes specimen validity testing mandatory within the regulated transportation industries.**

# But....

- **August 25, 2008 DOT changed effective date for mandatory direct observation (DO) for follow-up and return-to-duty testing. DO for FU and RTD drug testing will remain an employer's option until November 1, 2008. The Department is also seeking comments [for 30 days] about whether DO for FU and RTD testing should be mandatory.**
- **The rest of the June 25, 2008, final rule went into effect on August 25, 2008, as scheduled - including the new DO procedures which require observers to check for prosthetic and other devices when specimen collections are observed.**

# More Drug Testing News

- **June 13, 2008 -- Interim Final Rule (IFR) [73 FR 33735] permitting state commercial drivers license (CDL) issuing authorities to receive commercial motor vehicle (CMV) driver positive and refusal drug and alcohol test results from employers without driver written consent. The IFR also permits these state licensing authorities to receive owner-operator positive and refusal results from Consortia / Third Party Administrators (C/TPAs).**
- **So, when a state law requires employers and C/TPAs [for owner-operators] to report CMV driver positive and refusal results for tests conducted under 49 CFR Parts 382 [FMCSA] and 655 [FTA] to a state licensing authority, there are no barriers, real or perceived, in part 40 preventing them from doing so.**

# DOT Drug and Alcohol Testing Resource

- **“What Employers Need To Know About DOT Drug and Alcohol Testing”** -- new on-line document designed to help employers implement the DOT’s drug and alcohol testing regulations.
- **Best practices and instructions for having a “quality” DOT program**
- **Topics include program implementation, employee education, selecting service agents, recordkeeping, preparing for DOT Agency program reviews**

# The “Buzz” – What ORC Members Are Talking About

- **Refining EHS Management Systems**
  - Metrics development -- leading vs. lagging
- **Corporate Social Responsibility and Sustainability – EHS contribution**
- **“Safety Culture” and “Safety Climate”**
- **Lean EHS staffing practices**
- **Contractor & Supplier Safety**

# Challenge--

## Memo

**To: All Workplace Health and Safety Stakeholders**

**From: National Telecommunications Safety Panel**

**Subject: Critical Next Steps for Further Reductions in  
Work-related Injuries, Illnesses and Fatalities**

# Questions/Comments?

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