



## **BRIEFING**



# **Capitol Power Plant Utility Tunnels Proposed Settlement Agreement**

*Peter Ames Eveleth  
General Counsel  
Office of Compliance*

*Pete Kushner  
General Counsel  
Architect of the Capitol*

# ***PARTIES:***

General Counsel of the Office of Compliance

*“OGC” or “General Counsel”*

Office of the Architect of the Capitol

*“AOC”*

# ***Settlement Agreement Resolves:***

## **COMPLAINT (Issued 2/28/06)**

Failure to comply with Citation 24 (12/7/2000)

### **Structural Hazards**

*Assures that employees working in utility tunnels are not exposed to layers or chunks of concrete that may fall without warning*

### **Communications Hazards**

*Ensures that communication equipment enables continuous monitoring of employees working in the tunnels*

### **Confined Space/Egress Hazards**

*Implements adequate confined space entry procedures and sufficient number of exits to permit prompt escape from tunnels in emergencies*

# ***Settlement Agreement Resolves:***

## **CITATION 59 (Issued 1/6/06)**

### **Temperature Hazards**

*Exposure to heat stress conditions likely to cause serious physical harm or death*

## **CITATION 60 (Issued 1/6/06)**

### **Asbestos Hazards**

*Inadequate monitoring of employee exposure to airborne asbestos*

*Failure to inform employees about presence and location of asbestos*

*Failure to maintain surfaces in tunnels and vaults free from asbestos and presumed asbestos waste, debris and dust*

## **OTHER HAZARDS**

# ***AOC's Obligations:***

- Implement the Abatement Plan (II.)
- Conduct initial health and safety audit of entire tunnel site within 30 days (II.A.)
- Implement interim protective measures (II.C.)
- Create a Site Management Plan (SMP) within 75 days (II.D.)
  - *Corrective measures*
  - *Priorities*
  - *Costs*

# ***AOC's Obligations:***

- Establish milestone dates for corrective measures for current fiscal year (II.D (2) e)
- Establish target dates for corrective measures for subsequent fiscal years (II.D(2)f)
- Permanently abate safety and health hazards within five years, unless extended by mutual agreement (I.D.)

# ***AOC's Obligations:***

- Conduct quarterly safety and health audits and issue progress reports until hazards are permanently abated (II.A (1))
- Assure access to tunnels for OGC inspectors and consultants (III.C. and D.)
- Maintain medical surveillance program and written safety and health programs (IV.)

# ***AOC's Obligations:***

- Include all newly discovered hazards in quarterly audit (II.A (4))
- Provide OGC with records, studies, reports, budgets and other documents (III.H. and II.F.)
  - OGC not required to withhold AOC-privileged documents from release (III.I.)



# **OGC:**

- Monitors the Abatement Plan (II.)
- Reviews and suggests changes to SMP and Audits (II.G.)
- Reviews closeout actions (NOCA) (XIII.A.)
- Enforces Agreement in the US Court of Appeals for the Federal Circuit, if necessary, to effect compliance (IX.A.)

# ***Funding / Budget Issues:***

- Abatement actions prioritized based on risk, legal requirements, technical feasibility, and funding (II.C.3.)
- AOC not required to obligate or expend funds in excess of, or advance of, appropriations (VII.C.)
- AOC Budget requests submitted to OGC prior to Congress (II.F.)

## ***Funding / Budget Issues:***

- AOC to provide OGC budget documents and reports, upon request (III.H.)
- Funding or reimbursement of OGC monitoring, oversight, and enforcement of Settlement Agreement (XII.)

# ***Collaboration:***

- AOC and OGC designate Liaisons to:
  - Facilitate communication
  - Assure Compliance with Settlement Agreement
  - Resolve disputes (III.)
  
- AOC and OGC Liaisons meet monthly to discuss hazards, inspections, and work progress (III.F.)

# ***DISPUTE RESOLUTION and ENFORCEMENT:***

- Disputes addressed through dispute resolution procedure (IX.)
- OGC may enforce Settlement Agreement in the United States Court of Appeals for the Federal Circuit (IX.A.)

# ***Protections for AOC Employees who Work in the Tunnels:***

- Opportunity to object to Abatement Period (XI.A.)
- Interim protective measures (II.C.)
- Representative may attend monthly meetings with OGC and AOC Liaisons (III.G.)
- Commitment by AOC to abate (I.E.)

## ***NEXT STEPS:***

- Stakeholder briefings
- Notice to “affected” employees and opportunity to object to duration of abatement period (XI.A.)
- Execute Settlement

## ***NEXT STEPS:***

- Review and approval by Executive Director of OOC (2 U.S.C. 1414)
- File Joint Motion with Hearing Officer to issue Decision and Order approving Settlement (App. D. and E.)





*Advancing Safety, Health, and workplace rights in the  
Legislative Branch*



# Office Worker Asbestos: The Employers' Role

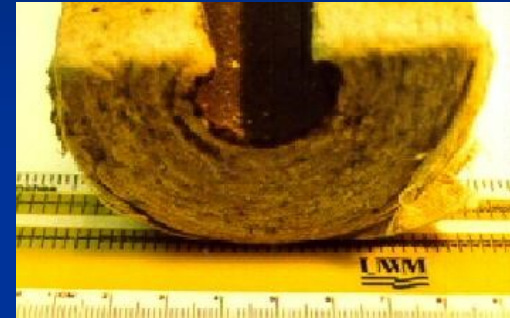
by Henry C. Woodcock, CIH

**OSHA/ADA Working Group Meeting**

June 12, 2007

# Basic Definitions

- "Asbestos" Class of magnesium-silicate minerals that occur in fibrous form
- "ACM" Asbestos-containing material
- "PACM" Presumed asbestos-containing material; thermal system insulation or surfacing materials installed before 1981
- "PEL" Permissible Exposure Limits
  - Time-Weighted Average of 0.1 fiber/cubic centimeter
  - Excursion Limit of 1.0 fiber/cubic centimeter (30 minutes)



# Basic Definitions

- “Friable” Material can be crumbled with hand pressure; therefore, likely to emit fibers



- “Disturb”
  - Disrupt the matrix of ACM/PACM, or
  - Crumble or pulverize ACM/PACM, or
  - Generate visible debris from ACM/PACM

# Effects, Pathways, Symptoms

## ■ Effects

- Asbestosis
- Lung cancer, mesothelioma
- Stomach/colon cancer

## ■ Pathways

- Inhalation; also ingestion

## ■ Symptoms

- May not appear for 20 or more years after exposure
- Breathing difficulty, shortness of breath
- Mesothelioma: Also pain in the walls of chest and/or abdominal pain



# OSHA Asbestos Standards

- 29 CFR §1910.1001 for “General Industry”
- 29 CFR §1926.1101 for “Construction”
  - Demolition, removal, abatement, encapsulation, emergency cleanup, transportation, disposal of PACM/ACM
  - Repair, alteration, maintenance, renovation of structures with PACM/ACM



# Initial Determination

29 CFR 1910.1001(d)



- Must be done if...
  - Exposures “may reasonably be expected”  $\geq$  PEL
  - A change “may result in ... exposures”  $>$  PEL
- Monitoring ... OR ... Objective Data
  - Objective data must “demonstrate that asbestos is not capable of being released”  $>$  PEL
- Notify “affected employees” of results
  - Individually or by posting within 15 days

# Duties of Employers

29 CFR 1910.1001(j)(2)

- Building/facility owner...
  - ... Determines presence, location, quantity of ACM or PACM
  - ... Informs employers [1910.1001(j)(2)(i)]
- Employers inform ...
  - ... Employees about presence and location of ACM and PACM [1910.1001(j)(2)(i)]
  - ... Employees who will perform housekeeping of presence and location of ACM and/or PACM [1910.1001(j)(2)(iii)]
- Employer also provides housekeepers ...
  - ... Awareness training [1910.1001(j)(7)(iv)]



# Signs and Labels

29 CFR 1910.1001(j)(4)

- Warning labels or signs shall be...
  - ... affixed or posted to notify employees of previously installed ACM and/or PACM [1910.1001(j)(4)(i)]
- Employer attaches labels where they ... [1910.1001(j)(4)(ii)]
  - ... will be clearly noticed by employees “likely to be exposed.”





# Housekeeping

29 CFR 1910.1001(k)

- All surfaces shall be...
  - “... maintained as free as practicable of ACM waste and debris and accompanying dust.”
- All spills and releases of ACM shall be ...
  - ... cleaned up as soon as possible.”
- Vacuuming only with a...
  - ... high efficiency particulate air (HEPA) filter
- Wastes shall be collected and discarded in...
  - ...sealed impermeable bag or other closed containers

# Housekeeping

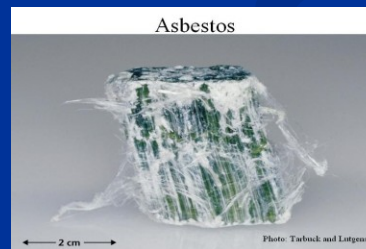
29 CFR 1910.1001(k)

- Prohibited activities where asbestos is present
  - Use of compressed air
  - Shoveling, dry sweeping, dusting, or other dry cleanup methods
  - Sanding
  - Stripping floors with abrasive pads, at  $> 300$  rpm, or with dry methods
  - Burnishing or dry buffing, unless floor finish prevents pad from contacting the ACM

# Exposure Records

29 CFR 1910.1001(m)

- Exposure Records must contain ...
  - Date    ■ Operation monitored    ■ Respirators (if any)
  - Sampling/Analytical methods & evidence of accuracy
  - Number, duration, and results of samples
  - Name, social security number and exposure for employees represented



- Exposure records must be maintained 30 years

# Objective Data Records

29 CFR 1910.1001(m)

- Records of objective data must include...
  - Product qualifying for exemption     ■ Source of data
  - Test protocol, results, and/or analyses of asbestos releases
  - Description of the operation exempted and how the data support the exemption
  - Other data on covered operations, materials, processes or exposures
- Maintain record for duration of reliance on data

# Construction/Abatement Project

29 CFR 1926.1101(d)(1) and (k)(3)(ii)

## Before the project

Employers who perform the project will

...inform employers of employees who work in areas adjacent to the project and the owner

... of the precautions to be taken to make sure asbestos is confined to the area.



# Construction/Abatement Project

[29 CFR 1926.1101(k)(3)(ii)]

## After the project

...inform employers of employees who work in areas adjacent to the project and owner ...

(within 10 days of completion)

... of the final monitoring results and the location and quantity of PACM/ACM remaining

(within 24 hours)

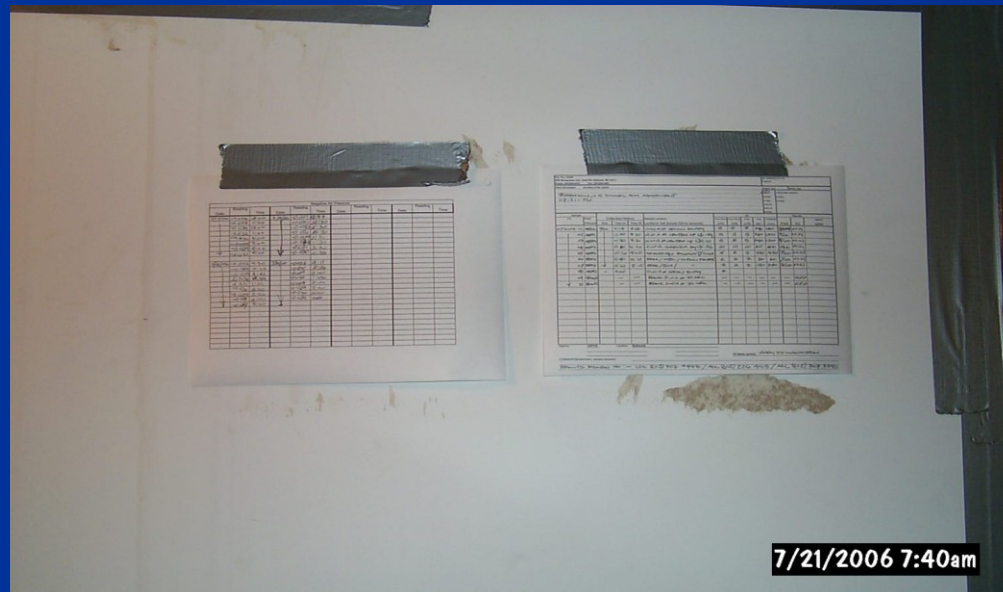
... of any newly discovered PACM/ACM

# Construction/Abatement Project

[29 CFR 1910.1001(d)(4)]

Employers of employees adjacent to the project

“shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method” designed to prevent fibers from migrating



# Summary & Discussion







# OSH/ADA Working Group Meeting

109<sup>th</sup> Congress Safety and Occupational Health  
Report  
And  
110<sup>th</sup> Congress Inspection Progress Report

June 12, 2007

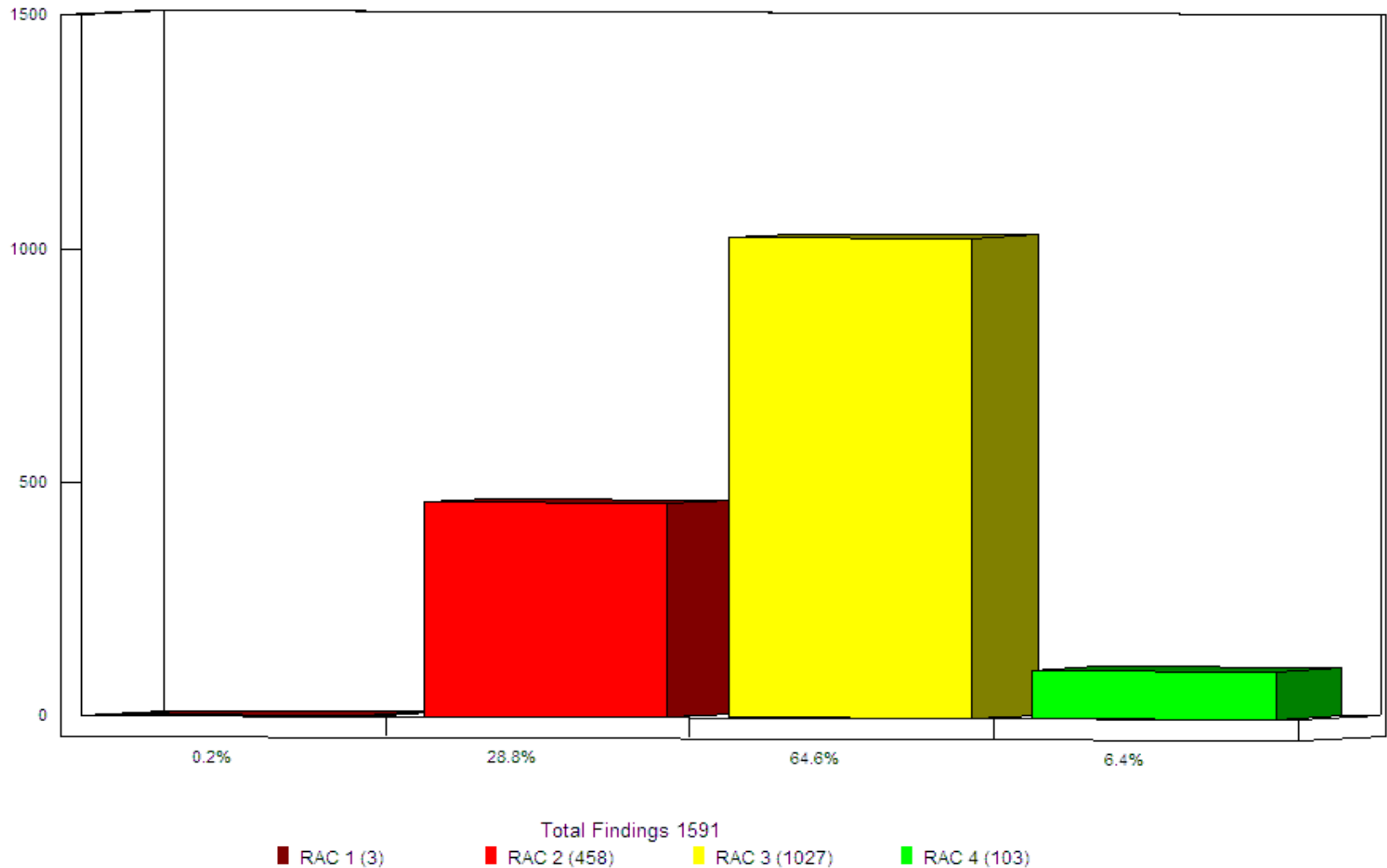
# 109<sup>th</sup> Congress Safety and Occupational Health Report

- Comments will be solicited
- Final version due out by the end of the Fiscal Year
- Will feature sections on each jurisdiction, general safety requirements, and provide detailed appendices regarding the 109<sup>th</sup> Congress Inspection

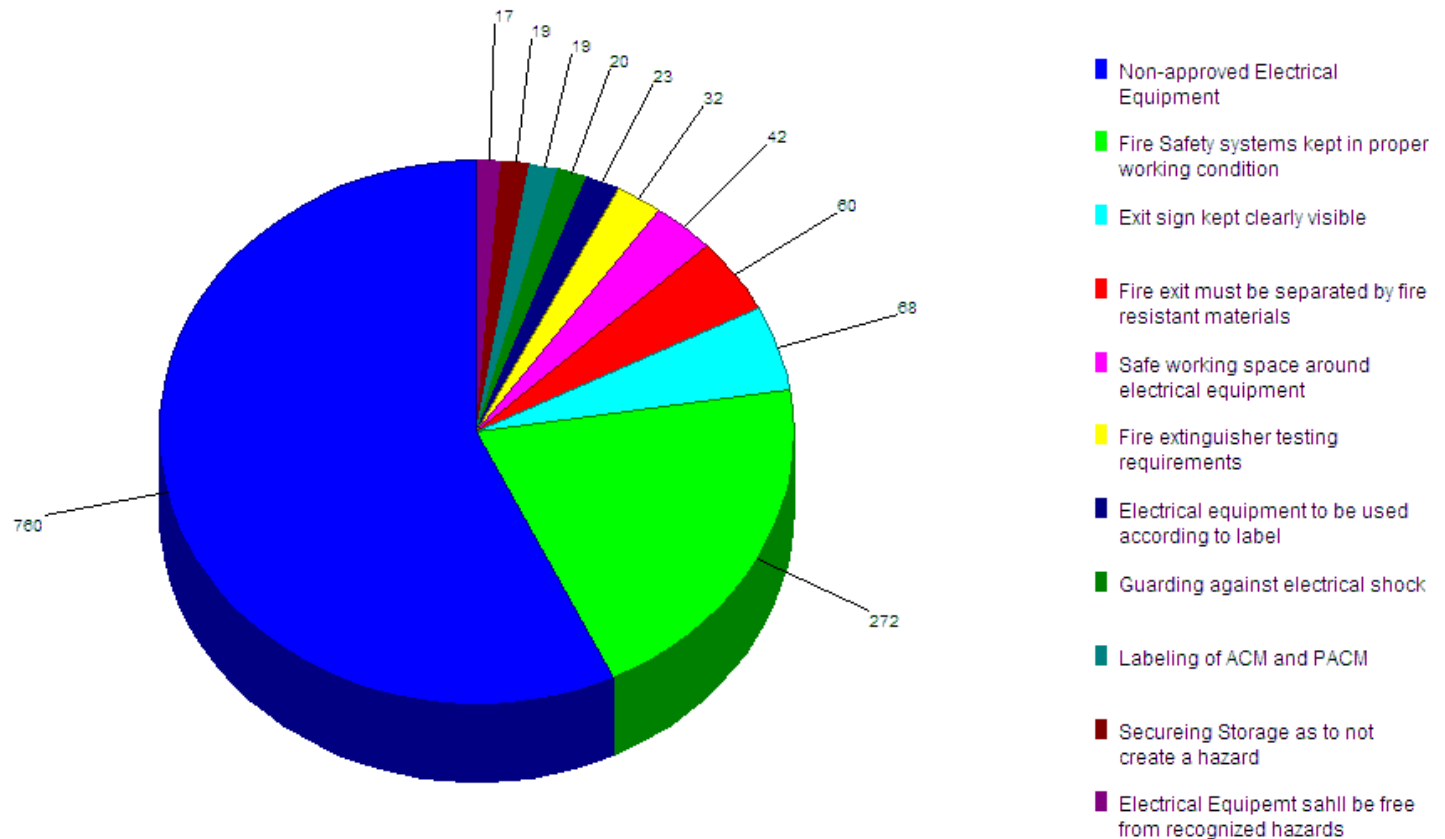
# 110<sup>th</sup> Congress Inspection Progress Report

- Thus far the OOC has identified 1,591 hazards
- Inspections are on schedule
  - House Committee Spaces (complete)
  - Page Dorms and Daycare Centers (complete)
  - Jefferson Building and other LOC Facilities (complete)
  - Ft. Meade Warehouses (complete)
- Seeing improvements in many areas
- Additional pre-inspections than in past leading to less identified hazards

# Number of Findings by Risk Assessment Code



# What we are finding this Congress



# 110<sup>th</sup> Congress Inspection in Relation to OOC Strategic Plan

## ■ Reduce Hazards

- Effect 10% reduction on identified hazards
  - Applying standards no less stringent than those applied during 109<sup>th</sup> Congress Inspection
  - Inspectors are beginning to see a positive trend in some areas

## ■ Accelerate OOC Reports of Hazard Findings Reports

- 109<sup>th</sup> Congress – average time – 6 months
- 110<sup>th</sup> Congress – average time – 3 weeks

# 110<sup>th</sup> Congress Inspection in Relation to OOC Strategic Plan

- Monitoring and Achieving Abatement
  - Ascertain status of all RAC 1 & 2 hazards during the 109<sup>th</sup> Congress
    - Inspectors verifying reported abatement of all identified hazards from prior inspections during the course of 110<sup>th</sup> Congress
    - OGC will be working with employing offices to accelerate verification of reported abatement



# 110<sup>th</sup> Congress Inspection in Relation to OOC Strategic Plan

## ■ Monitoring and Achieving Abatement

- Ascertain abatement status of all new RAC 1 hazards within 30 days and RAC 2 hazards within 90 days
  - OGC will be working with employing offices to achieve this objective
- Achieve abatement of 90% of all new RAC 1 within 30 days of issuing findings and 90% of all RAC 2 hazards within 90 days
  - OGC will be working with employing offices to achieve this objective



# ADA Findings

- ADA Common Findings
- Conducting inspections at the same time as OSH inspections
- Findings will be reviewed and forwarded earlier than previous years

# Questions and/or Comments

## ■ My Contact Information

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