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HAPPENINGS FROM THE HILL

American Industrial Hygiene Association Government Affairs Department

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Hex Chromium Rule Challenged

As expected, lawsuits have been filed challenging the OSHA final hexavalent chromium rule. No surprise there! However, somewhat of a surprise is the number of lawsuits filed. According to the BNA Occupational Safety and Health Reporter, four lawsuits have been filed as of May 1. While no more lawsuits are expected, there is still the possibility that another could be filed prior to the deadline (60 days after publication of the final rule).

The four lawsuits have been filed in different jurisdictions, but all four will be consolidated into one proceeding before one federal court. And no surprise in who filed the lawsuits. Three of the lawsuits were filed by affected industries who believe the PEL established in the final rule is too low, while the other lawsuit was filed arguing that the PEL is too high to protect workers.

Stay tuned for the next chapter!

OSHA Semi-Annual Regulatory Agenda Announced

The semi-annual regulatory agenda for OSHA has been released and, as expected, the agenda continues to be a pared-down version of regulatory activity. Over the course of the last several years, OSHA has attempted to limit the agenda to include only those activities OSHA feels are “doable”, as compared to agendas of years ago that were numerous pages in length. A quick look at issues of interest to AIHA:

Prerule Stage

- Occupational Exposure to Crystalline Silica. Complete review of health effects and risk assessment scheduled for 11/06.

- Occupational Exposure to Beryllium. The complete small business review report scheduled for 08/06.
- Emergency Response and Preparedness. Request for information scheduled for 05/06.
- Lead in Construction. End of review period scheduled for 12/06.
- Standards Improvement. Advanced notice of proposed rulemaking scheduled for 06/06.
- Hazard Communication. Advanced notice of proposed rulemaking scheduled for 05/06.

Proposed Rule Stage

- Updating OSHA Standards Based on National Consensus Standards. Notice of proposed rulemaking scheduled for 09/06.

Final Rule Stage

- Assigned Protection Factors. Final Action scheduled for 07/06.
- Employer Payment for PPE. Final action scheduled for 07/06.

Long-Term Actions

- Hearing Conservation for Construction. Next action undetermined.
- Ionizing Radiation. Stakeholder meetings scheduled for 04/07.

Completed Actions

- Exposure to Hexavalent Chromium. Final action effective 05/06.

AIHA Comments on Legislative Issues

AIHA has been busy drafting and submitting comments on several issues before Congress.

- In early April, AIHA submitted comments to Senator Michael Enzi on Senate Bill 2066, the Occupational Safety Fairness Act. This bill is comprised of 16 separate sections, many that were introduced as separate bills in the House earlier in the session.
- AIHA submitted a letter of support to Representative Sherwood Boehlert on May 4 in support of legislation that would afford the Environmental Protection Agency cabinet-level status.
- AIHA joined with more than a dozen other organizations in submitting letters to a select number of Representatives and Senators in support of increased funding for NIOSH in the FY07 budget. This support highlighted several areas where NIOSH needed additional funding, including mining safety, emergency preparedness and response, Research to Practice, and the National Occupational Research Agenda.
- AIHA is in the process of drafting comments on several bills addressing the Sago Mine fatalities, bills providing increased efforts to prevent future fatalities.

House Hearing Addresses TLV Issue and PEL Update

On April 27, the House Education and Workforce Committee Subcommittee on Workforce Protections held a hearing to discuss the continuing concerns expressed by some with OSHA references to ACGIH TLVs. Rep. Charlie Norwood, Chair of the Subcommittee, made it very

clear that he remains concerned that ACGIH TLVs are being referenced by OSHA, particularly in light of the fact that the TLVs are considered “non-consensus standards”. In Rep. Norwood’s comments, the Chairman pledged to stop OSHA from incorporating the TLVs into any standard, including the Hazard Communication Standard.

Obviously, the issue has not gone away over the course of the last two years and has been receiving increasing concern from Congress. In addition to this hearing in the House, Senator Michael Enzi has included language in Senate Bill 2066 that would stop OSHA from referencing the TLVs. The issue remains of concern to AIHA and we are monitoring the situation closely.

The issue of the TLVs was not the only issue that came up in the April 27 hearing. Rep. Norwood also addressed the continuing problem of outdated permissible exposure limits (PELs). Rep. Norwood sent a warning to industry and labor that they need to agree on a plan for updating the PELs or Congress would step in and come up with a plan on its own. AIHA worked hard for three years facilitating a group of labor and industry stakeholders in an attempt to come up with a process that could be used to update the PELs, but without success. Now, the threat of Congress getting involved looms over the whole issue. With no quick answer on the horizon, perhaps the best chance is to convince new Assistant Secretary of Labor for OSHA Ed Foulke to get involved by creating a working group of stakeholders to address the issue, with OSHA oversight.

Professional Recognition in State Laws and Regulations

AIHA government affairs recently oversaw a project to take the first-ever look at state statutes and regulations and their recognition of industrial hygiene. The idea was to see exactly where and how many times “terms” of the profession were used. The terms for reference were

ih	-	industrial hygiene
IH	-	Industrial Hygienist
IHIT	-	Industrial Hygienist in Training
CAIH	-	Certified Associate Industrial Hygienist
CIH	-	Certified Industrial Hygienist
AIHA	-	American Industrial Hygiene Association
ABIH	-	American Board of Industrial Hygiene
ACGIH	-	American Conf. of Govt. Industrial Hygienists
Labs	-	AIHA Laboratory Program Terms
Other	-	i.e., OHST, CHST

Not every state provides internet access to the statutes, and often it was not possible to search the statutes for specific terms. Searching state regulations was even more difficult because several states do not offer internet access to their standards, rules and regulations while others allow only a search within the individual regulation. An estimated 10 percent of the statutes and regulations may have been overlooked, but we are confident the results offer the most comprehensive look into this issue every conducted.

To summarize the results:

- 38 states have statutes containing at least one reference to the terms.
- 25 states have statutes that fall within the terminology of professional recognition for the profession. The individual statute must contain a legal definition of one of the terms.
- 19 states have enacted some form of the AIHA model legislation for professional recognition.
- 16 states have enacted what could be referred to as “title protection” for specific titles within the profession.
- There are 82 statutes with references to the profession and 677 references to the profession within the statutes. Of those 677, there are 616 in statutes enacted to create professional recognition or title protection.
- 43 states have regulations with at least one reference to one of the terms.
- 31 states have regulations that fall within the terminology of professional recognition, each of which contains a legal definition of one of the terms.
- There are 150 individual regulations containing reference to terms of the profession and 712 references to the profession within the regulations.
- There are literally thousands of references in agency guidelines addressing the many health and safety issues.

To see the complete results, visit the AIHA web site members-only section, click on government affairs and then choose the state activity center.

State Activity Continues

To give you an idea of the involvement of AIHA government affairs in state legislative activity, take a look at this summary of activity from January 1 through April 30:

- 43 states are in, or have concluded, their legislative session
- 81,126 legislative measures introduced in these states
- Of this amount, 1,709 bills with AIHA “keywords”, signifying possible interest
- From these 1,709 bills, 111 were of specific interest to AIHA
- 181 reports were sent out to 32 different states monitoring these 111 bills
- Combining bills from last year for those states with 2-year sessions, AIHA is monitoring 283 bills
- National has submitted comments on several dozen of these measures

Mold and Meth Labs “Hot” State Issues

Without a doubt, mold continues to be one of the most active issues in state legislatures, with methamphetamine laboratory clean-up concerns right behind it. Here is a quick look at what is happening with these issues:

Mold –

- 16 states have or had legislation introduced this year addressing the issue of mold
- There were 31 bills introduced in these 16 states
- 7 bills are “dead”, having been defeated or the legislature has adjourned
- 4 bills create a licensing requirement, 1 creates a registration requirement
- 3 bills have been enacted; however these bills simply recommend a study of the issue

Methamphetamine Lab Cleanup –

- 16 states have or had legislation introduced this year addressing the issue
- There were 44 bills introduced in these 16 states
- 7 bills are “dead”, having been defeated or the legislature has adjourned
- 10 bills have been enacted
- Numerous states are drafting regulations and/or guidelines on the issue

Federal and State Legislative Action Centers

Visit the AIHA Federal Legislative Action Center to stay abreast of national issues important to occupational health and safety. The center can be found within the members-only section of the AIHA web page.

The State Center offers AIHA members the opportunity to monitor all state legislative sites, scan IH professional recognition/title protection laws in states where adopted, and even review and follow all state legislation being monitored in the state legislatures throughout the year. Included under each State site is access to the various state agencies, including the Governor’s office and OSHA state plan sites. If professional recognition/title protection legislation has been enacted in a particular state, this law can also be found.

Another important feature is member access to each of the weekly legislative/regulatory reports sent to each state. With this access, members can follow any piece of legislation that may be of interest.

For information on any of the items in this report, please contact Aaron Tripler.