



## *Happenings From The Hill*

### **American Industrial Hygiene Association Government Affairs Department**

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**May 10, 2010**

#### **One of the Busiest Months in Years for OH&S**

Never thought I would see a month like the past month when it comes to occupational health and safety activity. With OSHA publishing its semi-annual regulatory agenda and pushing forward on several fronts, the agency is on its way to again becoming a leader.

And let's not forget Congress! With numerous hearings held to discuss occupational health and safety issues, it seems there might even be a "spark of interest" from the elected side of Washington.

So let's take a look at this activity and what it might mean:

#### **Congress**

The Senate Health, Education, Labor and Pensions Committee held a full-committee hearing to discuss the "culture of workplace safety". While the purpose of the hearing was to discuss the recent mine accident in West Virginia, the Committee designated half of the hearing to discuss criminal and civil penalties under OSHA.

AIHA President-elect Mike Brandt testified on behalf of AIHA and offered our support for increasing criminal and civil penalties for violations of OSHA rules and regulations, especially on those who willfully violate OSHA rules that result in a fatality.

In addition to the discussion about criminal penalties, AIHA offered our support for continued funding of the Voluntary Protection Program (VPP). There has been considerable discussion about the VPP and OSHA's attempts to scale back the program, perhaps even moving to a fee-based participation requirement.

Over in the House, a hearing was held to discuss changes to whistleblower protections for those reporting health and safety violations. AIHA also supports this provision that is included in the Protecting America's Worker Act.

### **Voluntary Protection Program**

Speaking of the VPP, Senator Mike Enzi (WY) and Senator Mary Landrieu (LA) have introduced Senate Bill 3257, a bill that would provide for the legal establishment and continuation of the VPP. This bi-partisan bill would put this program in statute so future administrations could not dismantle the program. AIHA is working on a letter of support for the legislation.

On another note, Republicans and Democrats on the Senate HELP Committee were successful in convincing the Senate Budget Committee to reject President Obama's proposal to cut from the fiscal 2011 budget approximately \$3 million for the VPP program. Look for this issue to receive some attention when the final OSHA budget comes up for approval.

### **TSCA Reform**

Senate Bill 3209 has been introduced that would reform the EPA Toxic Substances Control Act (TSCA). AIHA is reviewing this measure (160+ pages) for its impact on occupational health and safety.

### **Safe-Patient Handling**

A Senate subcommittee is holding a hearing on May 11 to discuss safe-patient handling issues. Both the House and the Senate have introduced legislation that would require OSHA to enact a safe-patient handling standard within two years. However, the hearing is to simply address the issue and not a particular piece of legislation. OSHA has not addressed this issue and it was not included in its semi-annual regulatory agenda.

### **Outlook**

One of these issues may make it through before the end of this session of Congress. The issue of criminal and civil penalties for mine accidents will likely be addressed because of the recent accidents. If this happens, do not be

surprised if they tack on an increase in criminal and civil penalties for OSHA violations in the same bill. AIHA is making this suggestion in the hope that Congress sees the need.

Notwithstanding the fact that all of these have received attention in the last month, the outlook for passage of most of these measures will be difficult. This is due partly because many of the issues will have industry taking on labor and raising many questions. However the main reason for difficulty in enacting these measures is timing. When one looks at the Congressional schedule you find there are only around 75 days left for Congress to enact legislation. That just doesn't leave enough time in this session, but look for all of these issues to come back in the 112<sup>th</sup> Session.

### **OSHA**

To say the agency has increased activity on the regulatory front is an understatement. As you will see in the list below, the agency is moving forward on numerous fronts. Let's be up front about this. Dr. David Michaels deserves a lot of credit for his efforts to move issues forward. Since his arrival only a few short months ago the agency has announced movement on a number of issues.

Of course, activity doesn't always mean results and we will have to wait and see how fast OSHA can move on some of these issues. But if the past few weeks are any indication, I foresee the completion of several issues and movement on many more in the next 12 months.

The bottom line is that it makes no difference if you are on the side of labor or industry, the agency is finally addressing issues many feel deserve to be addressed. The agency has taken a huge step in restoring relevance and credibility to workers and employers as well as occupational safety and health professionals.

Keep up the effort!

### **OSHA semi-annual regulatory Agenda**

OSHA recently announced its semi-annual regulatory agenda and the agenda definitely shows the agency is in more of an "activist" mode. Here is a quick look at the relevant issues to AIHA:

#### **Prerule Stage –**

- Occupational Exposure to Beryllium. Hope to complete peer review by October, 2010.
- Methylene Chloride. The agency has already announced its report stating there is a continued need for this standard.
- Occupational Exposure to Diacetyl. Peer review by October, 2010. But

- the big question here is whether or not flavoring substitutes should be included. In other words, a standard for diacetyl may no longer be needed as substitutes are being used which may cause the same health effects.
- Occupational Injury and Illness Recording and Reporting. See story elsewhere on this issue.
  - Injury and Illness Reporting. See story elsewhere on upcoming stakeholder meetings.

#### Proposed Rule Stage

- Confined Spaces in Construction. While listed in the proposed rule stage, this effort is being delayed even further. OSHA now says it hopes to analyze the comments received by October, 2010.
- Occupational Exposure to Crystalline Silica. OSHA says it hopes to issue a notice of proposed rulemaking in February, 2011, pushed back from July of 2010.
- Hazard Communication. This involves bringing the Hazard Communication Standard in line with GHS. No specific date has been mentioned as to the next step.

#### Final Rule Stage

- MSD Column on OSHA 300 Log. OSHA says it is on track to issue this rule in July of 2010. Don't be surprised if this is delayed as industry stakeholders have questioned the cost of implementation for small business.
- Cranes and Derricks in Construction. The agency says it will finalize this rule in July, 2010. This is one that just may happen.

#### Long-Term Actions

- Combustible Dust. OSHA hopes to hold a small business panel sometime in 2011.
- Hearing Conservation for Construction Workers. Placed in the long-term action file, it looks as if this issue may be in for a long delay, or possibly dropped.

### **Injury and Illness Prevention Program**

OSHA's most recent semi-annual regulatory agenda included an injury and illness prevention program (I2P2) in the "prerule" stage. The agency didn't waste any time in moving forward with this idea. OSHA has announced a series of stakeholder meetings to gather information to develop a rule that will help employers reduce workplace injuries and illnesses through a systematic process that proactively addresses workplace safety and health standards.

This issue has been discussed for many years, dating way back to 1995 when OSHA held the first series of stakeholder meetings. In 1998, OSHA developed a draft proposed rule and went so far as to convene a small business panel to

discuss the effort. However, a proposed rule was never published and the rulemaking effort was removed from the Regulatory Agenda in 2002.

Simply stated, a program standard would provide a mechanism for employers to identify hazards while the control of those hazards would be required by existing OSHA standards and the general duty clause.

There seems to be a high level of support for I2P2 in some sectors, but there is also concern from many in industry that OSHA may include substantial requirements for ergonomics within the program. There is also talk that the program may include chemical hazards. If this occurs look for a huge battle over the program. Either way, this program is a long way from being implemented.

AIHA has submitted a request to participate in one of these meetings. To read the Federal Register notice go to: <http://edocket.access.gpo.gov/2010/2010-10138.htm>

### **Infectious diseases**

Following Cal-OSHA adoption of an Aerosol Transmissible Disease standard to protect workers from exposure to infectious agents transmitted via droplet or airborne routes, pressure began to mount on OSHA to adopt a similar standard. The pressure seems to be paying off.

OSHA recently announced a “request for information” on occupational exposure to infectious agents in settings where healthcare is provided. While this is only a request for information, it does signal that the agency is considering some sort of standard to address this issue. OSHA is asking for information but one of the major questions to be addressed is whether or not the agency should consider expanding an aerosol transmissible disease standard via droplet or airborne routes, to include contact routes.

Hard to tell how long this effort might take. Not sure if OSHA could have published an ATD standard anytime soon and by expanding its reach to also include “contact” diseases one can assume it will take considerable time.

Comments on the request for information must be received at OSHA by August 4. To read the entire Federal Register notice go to: <http://edocket.access.gpo.gov/2010/2010-10694.htm>

### **Injury and Illness Data Collection Process**

OSHA has also announced a series of stakeholder meetings to discuss OSHA’s injury and illness data collection program. Meetings will be held in late May and early June to gather information about a modernized electronic recordkeeping system. To read the Federal Register notice go to: <http://edocket.access.gpo.gov/2010/2010-10163.htm>

## **Methylene Chloride Report**

OSHA has announced the availability of a final report to determine whether the Methylene Chloride Standard has functioned as intended, whether it could be simplified or improved to reduce the regulatory burden on small businesses, or whether it is no longer needed and should be rescinded. The final report states continuation of the standard should be continued. To obtain a copy of the report, see the Federal Register notice at: <http://edocket.access.gpo.gov/2010/2010-10107.htm>

## **Permissible Exposure Limits (PELs)**

Many readers are well aware of AIHA's continued efforts the past few years to work at updating the PELs. AIHA has worked hard the past year to raise the level of interest in this effort, recognizing that unless we could convince the administration and Congress of the need to update the PELs no action would be taken.

Now, Dr. David Michaels has taken the first step by appointing an internal agency task force to gather options on how to address this issue. Once this internal task force has the options available and presented these to Dr. Michaels the task force will be expanded to include labor, industry and other stakeholders in the issue.

AIHA has appointed our own advisory group to work on this issue and has now "paused" our efforts to see what options come from the OSHA task force.

Let's face it; there are numerous options to consider. The first question to be addressed is "should the PELs be updated?" That may sound like an easy question to answer but is more difficult than one thinks. If the answer is "yes", then how do we go about updating the PELs? If the answer is "no", then what alternatives are there?

Obviously AIHA and others have a lot at stake in this effort. Rest assured we will be involved.

## **Renovation, Repair and Painting under the Lead Program**

EPA has issued a final rule making revisions to the Lead, Renovation, Repair and Painting Program rule that was published in 2008. The change involves the "opt-out" provision that was included in the 2008 rule.

The change states that all individuals providing renovations in most pre-1978 housing and child-occupied facilities must undergo training and certification. The 2008 rule had provided an exemption, or "opt-out" for these individuals if the firm obtained a certification from the owner of a residence that no child under age 6 or pregnant women resided in the home.

This change takes effect July 6, 2010. To read the entire final rule go to:  
<http://edocket.access.gpo.gov/2010/2010-10100.htm>

### **The Way I See It!**

Notwithstanding all of the good news from Congress I wrote about in this issue, it should also be noted I am not optimistic that Congress will do much of anything to address occupational health and safety.

As I mentioned, AIHA was privileged to be asked to testify at a full Senate Committee hearing to discuss workplace health and safety. We offered our suggestions on what needs to be changed to improve worker health and safety.

What is frustrating is the fact that the only reason this hearing was even scheduled was the tragedy of the mine accident in West Virginia that took the lives of 29 miners. While I would like to believe Congress will address the issue of criminal penalties for health and safety violations it will still be an uphill battle.

Congress loves to hold hearings to address existing problems. That's great and something they should do. But when you look at the record, you find that once the headlines die down there are few times laws are changed.

Perhaps this is one time Congress decides to act and moves forward on addressing health and safety violations both at MSHA and OSHA. Stakeholders such as AIHA can only do so much. Let's hope we don't have to wait for another mining accident or oil drilling accident before action is taken.

### **AIHA Government Affairs "Podcast"**

Want to have the latest news on what is happening in Washington and the States? Check out the AIHA government affairs podcast. It's your opportunity to hear the latest on some of the issues important to AIHA, the profession and occupational health and safety.

## **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. Simply go to the AIHA home page. Click on "government affairs", located left side under access to information. Once in government affairs, click on "Federal Legislation Action Center". You will need to sign in as this is a members-only section. Also available within this Action Center is the opportunity for any member to directly contact their elected officials in Washington simply by inserting their zip code. You can send an email or learn how to contact them by phone or mail. Take a look!

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.**