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HAPPENINGS FROM THE HILL

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“Spring Fever” Hits Washington as Both Congress and OSHA Show Increased Activity

Not sure whether there is something in the water or the thought of the year ending with nothing to show for it, but both Congress and OSHA have increased their activity the past six weeks. One would like to think that occupational health and safety issues are receiving a little more attention because of the importance of worker health and safety; and I'm not one to question the motive behind the activity.

Suffice to say, something seems to be happening and we'll take what we can get. Unfortunately, we're not sure there is enough time left in this session of Congress to actually have meaningful legislation enacted and signed into law. When one takes a close look at the Congressional schedule for the remainder of this session, one finds there are probably less than 50 days left to pass legislation. As I have said in the past, it seems we have much, much more activity, but the same result!

Let's take a look at some of the recent activity:

Occupational Safety and Health Administration

The big news out of OSHA was publication of the semi-annual regulatory agenda on May 5. When looking at the agenda, it is a little difficult to determine exactly which items OSHA considers more important. You see, beginning this last fall, only a portion of the agenda is published in the *Federal Register* with the complete list placed on the internet. Still waiting for someone to actually explain who determines which items deserve publication and which items do not.

So here is the latest from OSHA, the list of pertinent OH&S items that OSHA expects to work on between April 2008 and April 2009:

Prerule Stage

Occupational Exposure to Crystalline Silica (also published in the Fed. Reg.). A peer review of the health effects and risk assessment of the current standard is to be completed by August '08. This was pushed back from the previous date of January '08. The current permissible exposure limit was last determined in 1962.

Occupational Exposure to Beryllium (also published in the Fed. Reg.). A peer review on the health effects and risk assessment on beryllium has also been pushed back, this one from January '08 to November '08. However, OSHA did complete the small business review by January as promised. Long-term, the agency hopes to develop a proposed exposure standard. OSHA had earlier (2001) denied a request for an emergency temporary standard.

Emergency Response and Preparedness. OSHA is looking at this issue to determine what action the agency should take. It is a very complex issue because it involves several existing standards. The problem is that few of these existing standards address the issue of emergency response and preparedness. OSHA accepted comments on the issue until the end of '07 and the next step is to analyze the record by July of '08. For what it's worth, I believe this issue should receive much more attention.

Methylene Chloride (also published in the Fed. Reg.). OSHA is undertaking a review of this standard. The comment period was extended until March '08 and OSHA will review the comments until November '08.

Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl (also published in the Fed. Reg.). OSHA denied a request for an emergency temporary standard back in '07, but increased its efforts to work with manufacturing plants to control exposure to diacetyl. OSHA is expected to initiate another small business review panel by May '08. Congress has also become involved in this issue (see story elsewhere).

Proposed Rule

Confined Spaces in Construction (also published in the Fed. Reg.). OSHA is moving forward with efforts to issue this rule. The comment period originally ended in January '08, but OSHA extended the period until the end of February '08. Now, OSHA has scheduled public hearings on the issue to be held in September '08.

Cranes and Derricks (also published in the Fed. Reg.). A negotiated rulemaking committee completed its work on this rule in 2004, the small business review was completed in 2006 and a notice of proposed rulemaking is scheduled for August '08.

Standards Improvement. Phase III of this project is moving forward. A notice of proposed rulemaking is scheduled for November '08.

Hazard Communication. This could amount to a huge effort as OSHA reviews the existing haz com standard and determines where to make changes. One of the major changes will involve incorporating the Globally Harmonized System for labeling and classification into the standard. A notice of proposed rulemaking is slated for October

'08. Doubt if this will happen by then.

Cooperative Agreements. Changes coming to the consultation program. Most notably, these changes would include some incentives for employers who request and receive a consultation visit and agree to correct any hazards. The agency hopes to put out a notice of proposed rulemaking by July '08 and have the final rule take effect by February of '09. Looking back, this sounds somewhat similar to AIHA's earlier attempts to incorporate some kind of incentives for a third-party workplace review. Undoubtedly there will be opposition to this rule, especially with a change in administration of the agency next year.

Final Rule

Updating OSHA Standards Based on National Consensus Standards. OSHA is moving forward with this issue and expects to complete action by November '08.

Long-Term Action

Hearing Conservation for Construction Workers. With stakeholder meetings completed back in 2004, OSHA has no action scheduled on this issue.

Completed Action

Employer Payment for Personal Protective Equipment. Final rule was effective in February '08. Obviously, everyone is aware that one of the reasons for this final action was because of the threat of legal action and congressional pressure.

Ionizing Radiation. OSHA had completed stakeholder meetings on this issue at the end of 2007, but has now withdrawn any further action due to resource constraints and other priorities.

Now, everyone knows the regulatory agenda is a look at what the agency hopes to accomplish in the next twelve months. Everyone also knows that it is very difficult to move forward on many of these items, partly because of resource constraints, the process and other priorities. In the case of this latest agenda, one should also add increased difficulty because of the upcoming November elections and a change in administrations come January.

OSHA Resumes Fit-Testing on TB Issue

Following passage of the '08 appropriations bill, a bill that did not include a ban on OSHA's enforcement of fit-testing for respirators used to protect against TB infection, OSHA has announced that it is now enforcing the respiratory protection standard. OSHA issued a memo on April 16 stating that the agency could also now provide outreach and assistance activity. AIHA and many others had long opposed the amendment to the appropriations bill that banned OSHA from enforcing this standard.

Congress

Congress seems to have received a "wake-up" call when it comes to occupational health and safety. Over the course of the last few weeks, several hearings and congressional actions have involved issues of importance to AIHA and others. Now whether or not any of these issues make their way through the entire process and into law is another matter. Frankly, don't look for this happen; but it is a plus to see any kind of activity.

Combustible Dust. A bill was introduced (HR 5522) that would force OSHA to issue a rule regulating combustible dust. Following hearings in early April, the bill was sent to the full House and was passed on April 30. The bill now awaits committee action in the Senate. HR 5522, as passed by the House, would require OSHA to issue an interim standard within 90 days and a final rule in 18 months. Employers would be given six months before they must comply with the controls in the standard. The proposed rule would also be required to go through a small business review.

While the bill has passed the House, word is already out that if the bill is passed by the Senate, the President has threatened to veto the bill. The President does not believe the bill allows for proper stakeholder review or sufficient time to conduct a thorough analysis. In addition, the Congressional Budget Office has determined that implementing the bill would cost OSHA upwards of \$40 million between 2009 and 2013 to enforce.

Outlook – May pass the Senate, but doubt if Congress can override the veto.

Safe-Patient Handling. In what I would call a “minor-league ergonomics bill”, Rep. John Conyers of Michigan is talking about plans to reintroduce his safe-patient handling bill. A bill was introduced last year and remains inactive, so Conyers plans on reintroducing a bill that would require OSHA to issue a standard addressing this ergonomics issue.

According to sources, Conyers has been working with all stakeholders to “tweak” his original bill to make it acceptable. While it may look like this bill is moving forward, don’t expect any action other than possible committee hearings.

Speaking of safe-patient handling laws, a clarification from the last issue of *Happenings*. In the last issue I stated that one of the state legislative measures that had failed was in New Jersey. Technically, that is correct. What I failed to mention was that the reason this bill failed was because an earlier bill had been enacted into law. I promised to list those states with current safe-patient handling laws. There are several, including Ohio, Texas, Washington, Hawaii, Rhode Island, Maryland, Minnesota and New Jersey.

Multi-employer Enforcement. A House subcommittee hearing was held in late April to discuss the long-running legal interpretation over “multi-employer OSHA enforcement”. While this receives considerable interest from Congress and others, the legal status is what is up in the air at this time. All are waiting for the courts to rule on whether or not OSHA has the right to interpret the OSH Act to include general contractors responsible for all employees on the worksite, even those employed by sub-contractors.

Workplace Fatality Hike Spurs Hearing. Rep. George Miller has vowed to hold a hearing this month to discuss the most recent Bureau of Labor Statistics data showing workplace fatalities increased by 2 percent from 2005 to 2006. Total workplace fatalities in 2006 were 5,840.

OSHA Should Increase Penalties. A Senate hearing in late April focused on the issue of weak civil penalties and even weaker criminal penalties being enforced by OSHA. Sen. Edward Kennedy held the hearing to look at the penalty structure used by OSHA and push for support of his OSHA reform legislation that would increase these penalties.

Witnesses testified that OSHA often reduces the penalties by up to 70 percent, no matter how serious the violation. In addition, according to the Labor Dept., only 68 criminal cases have been prosecuted since the act went into effect. Other witnesses cited the success of existing environmental penalty prosecution and asked that OSHA take the same approach. AIHA has long supported an increase in penalties for willful violation of the OSH Act that results in a fatality. However, AIHA also has concerns about who would be charged in such a case, citing concern about placing blame on the OH&S professional.

Investigate Underreporting of Workplace Injury and Illness. Sen. Patty Murray and Senator Edward Kennedy have asked the Government Accountability Office to look into whether or not business is accurately reporting injuries and illnesses. The Senators are concerned that OSHA is not receiving accurate reporting. Some believe that the information received by BLS and used by OSHA does not include two-thirds of occupational injuries and illnesses.

OSHA Appropriations. Labor Secretary Chao was on the “hot seat” in early May during an appropriations hearing. Senate subcommittee hearing members asked Chao repeatedly about OSHA’s failure to address ergonomics, underreporting of workplace injuries, and the low number of OSHA promulgated regulations.

Nanotechnology. Legislation is being drafted that would allocate at least 10 percent of the funding for nanotechnology research and development be diverted into research for environmental, health and safety of future nano research. Whether or not this bill is actually introduced, AIHA sees a need for such legislation. Because of the lack of viable scientific data on the potential health and safety impact of nano research, AIHA believes this is one of the first things that should be addressed prior to moving forward with additional nano research. A recent House committee hearing on nanotechnology debated this issue, with the committee not voting to accept the 10 percent funding, thus the need for stand-alone legislation.

Pandemic Flu. OSHA is seeking comments on a proposed voluntary guidance on PPE issues to be used in a pandemic flu outbreak. If you recall, OSHA was originally requested to issue an emergency temporary standard on pandemic flu preparedness but announced they could not do so. Instead OSHA has been moving forward with this voluntary guidance.

AIHA Pushing for Reappointment of NIOSH Chief Howard

As most have heard, Dr. John Howard’s six-year term as the head of NIOSH is set to expire in July of ’08. After learning that Dr. Howard is interested in staying on in his position, AIHA unleashed a huge PR campaign to see if we can assist Dr. Howard in his effort. AIHA sent individual letters to HHS Secretary Leavitt, CDC head Dr. Julie Gerberding, as well as Republican and Democratic leadership in Congress with responsibility of overseeing NIOSH. In addition, AIHA contacted over 20 other organizations suggesting they also send letters of support for Dr. Howard. As a final measure, AIHA contact local sections and volunteer groups to solicit their support. AIHA received word that several local sections, committees and dozens of AIHA members submitted letters of support for Dr. Howard.

Chemical Safety Board Hopes to Complete More

According to the new Chairman of the Chemical Safety and Hazard Investigation Board, the

board plans on improving its existing success. John Bresland began his term as Chair in mid-March and has several goals for the board. Bresland says that in a typical year, the board sees between 800 and 900 accidents. 30 of these are determined to be worthy of an investigation. The board then investigates only about 8 of these and he wants to increase the number to 12. He also hopes to add two more investigators to the staff and increase this number even more in the future.

Quick News from Up North

A couple of quick news items from Canada. Alberta reported that it had fewer workplace injuries in 2007, falling to the lowest level ever, but had an increase in the number of fatalities.

And in Manitoba, the lost-time injury rate is lower by 25 percent since 2000.

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.

