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HAPPENINGS FROM THE HILL

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Administration Decides NOT to Reappoint Dr. John Howard at NIOSH **- Labor, Industry and Professional Associations Baffled -**

In what is somewhat baffling to many and not at all surprising to others, Dr. John Howard was informed this past week that he would not be reappointed as the head of NIOSH at the conclusion of his six-year term July 15. Notification to Dr. Howard came despite the support of nearly every labor, industry and professional association involved in occupational health and safety; probably one of the only times the entire OH&S community has come together on an issue. As a matter of fact, I know of no individual or organization, save for some within the administration that was opposed to the reappointment of Dr. Howard.

With the departure of Dr. Howard, the OH&S community has lost what many considered the finest head of NIOSH in the history of the agency. Dr. Howard promoted quality science, increased access to NIOSH research, positioned NIOSH as a leader with emerging issues and provided some of the finest leadership ever exhibited at the agency. But in the end, it just wasn't enough for this Administration!

While I could provide a more colorful view of my thoughts on this departure, suffice to say that Dr. Howard will be truly missed by everyone in the OH&S community. Let's hope he doesn't stray far from the core of OH&S!

As to the future? Dr. Julie Gerberding, head of CDC, has appointed Christine Blanche to serve as the temporary director until a new director is appointed. Let's hope we are not left without a permanent director of NIOSH for an extended period of time. While it seems to take around six months, on average, for a new director to be appointed, NIOSH was left without a permanent director for nearly two years prior to the appointment of Dr. Howard.

Even more important might be the future structure of NIOSH. Will there be a new attempt to reorganize NIOSH into one of the coordinating centers within CDC? Will there be talk of moving NIOSH to Atlanta? Will there be bigger budget cuts to the agency?

And finally, a huge thank you to the dozens and dozens of AIHA members, local sections and committees who responded to our request to contact their elected officials and others in support of Dr. Howard. This was our second request, the first being back in April, and the response was even bigger the second time.

Dr. Howard – We're gonna miss ya!

Will we see any more OSHA proposals in 2008?

The odds are looking very slim that we will see any substantial activity at OSHA the rest of 2008. The main reason is that President Bush has instructed federal agencies not to issue any final regulations after November 1. Even more important is the fact that the memorandum states that "except in extraordinary circumstances" no regulations should even be proposed after June 1.

According to the administration this is intended to stop the usual "end of administration" increase in regulatory activity that many have criticized in the past. Will it work? Expect some last-minute regulations to make their way into the mainstream under the term "emergency", but don't look for the long-standing proposals AIHA and others have been following at OSHA.

- Crane and Derrick Standard

What with the many recent crane accidents taking place around the country, there is even greater urgency for OSHA to finalize the crane and derrick standard. Many expected the final rule in 2006 following a negotiated rulemaking. But we all know the process doesn't work as quickly as we wish. Now, the proposed rule is moving forward, albeit slowly. The proposal has been sent to the White House Office of Management and Budget for review. Some hope it will be published in the fall (despite the White House memo on rulemaking, see story above). But others feel there is no way we will see the final rule anytime in 2008. OMB has 30 days to review it, and then the public would have 60 days for comments. If you want to place a bet – don't bet on seeing it in 2008!

- Globally Harmonized System

OSHA says it is close to issuing a proposed rule on the Globally Harmonized System for classifying and labeling chemicals, commonly referred to as the GHS. The proposal would amend the haz com standard and according to OSHA is taking a lot of time. If you recall, the United Nations recommended that all developed countries adopt the GHS by the end of 2008. This obviously will not happen in the U.S. We're still hopeful that a proposed rule will be published in October, but again, don't bet the farm on it.

- Diacetyl

And where are we with the popcorn-flavoring issue? Congress has legislation pending that would force OSHA to enact a standard addressing diacetyl, but don't expect that to happen. OSHA, on the other hand has started the rulemaking process. The problem is, they are using the traditional approach, which means we are talking years. OSHA had previously turned down a request for an emergency standard.

Congress holds hearings to look at OSHA – But little Action Expected

Congress continued its late spring-early summer assault on OSHA by holding several hearings the past few weeks. Unfortunately, don't expect much to happen because of these hearings.

One of the hearings was held in late June and focused on the fact that many believe the penalty structure of the OSH Act is not working, especially within the construction industry. House Committee members complained that the penalties are usually assessed long after inspections, are too low, and are often reduced after meeting with OSHA. In addition to the discussion about penalties there was even testimony that asked Congress to consider creating a new agency within the Dept. of Labor. The new agency would be similar to OSHA and MSHA, but would be limited to construction and would be called the Construction Safety and Health Administration.

Another hearing was held to listen to accusations that the measurement of occupational injuries and illnesses is being misrepresented. Testimony focused on the accusation that many illness and injury incidents are being undercounted. Seems that many feel that since the OSHA log only includes those deemed "recordable" under the OSHA recordkeeping standard that the data is not correct. No word on how to correct the situation.

In late May, a House Subcommittee held a hearing to discuss the issue of OSHA enforcement of multi-state employers.

Waiting for the Budget!

While the President has proposed the fiscal year 2009 budget for OSHA, MSHA and NIOSH, don't expect to see anything until early 2009. In one sense, this is good news; and in another it is bad news.

The bad news is that we once again will probably have the agencies living with continuing resolutions for several months, meaning they can only spend the same amount they were appropriated in 2008. The good news is that by perhaps waiting until a new administration comes to town we can secure additional funding over and above the proposed budget. At the present time, OSHA is to receive somewhere between a \$15 and \$18 million increase. Look for this to be increased by at least another \$10 million before all is said and done. Over at MSHA, they are essentially flat-lined by the administration, but look for a final budget to provide them with an increase of around \$20 to \$30 million. And another reason we hope they wait until next year is that it gives us time to convince Congress to treat NIOSH fairly. The administration proposed a cut of around \$100 million in the NIOSH budget. We have our work cut out for us on this one – especially with the loss of Dr. Howard!

What's the Rest of the Year Look Like for Congress?

I don't know for sure, but what I do know is it is just about over. Congress returned from their July 4th holiday and immediately went about its business. Unfortunately, July will come and go very quickly and then Congress takes the entire month of August off for "summer recess". Congress returns following Labor Day for what is expected to be less than 30 days of activity prior to adjourning this session of Congress for the elections.

Ontario Moves Forward on Reducing Workplace Injuries

And finally, our neighbors to the north continue to address workplace health and safety in new ways. Ontario has initiated a new, four-year plan to improve worker safety. The province has already reduced the annual rate of workplace injury by 20%. Now, they are putting in place new criteria for determining which workplaces should be inspected. The new criteria includes injury rates, compliance history, hazards inherent to the work, new businesses and business size, specific events, and new or vulnerable workers. The ministry will also adopt a better approach to compliance assurance by allowing inspectors to refer workplaces to health and safety associations for additional assistance.

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.

