



Happenings From The Hill

American Industrial Hygiene Association Government Affairs Department

Aaron K. Trippler, Director
703-846-0730 atrippler@AIHA.org

August 25, 2009

Congress on Recess – Little Activity Expected on OH&S

With nearly two weeks remaining for the Congressional summer recess period, legislative activity in Washington has nearly come to a standstill. Everyone has left town on vacation and it is even difficult contacting staff to discuss issues. Of course, the real action is taking place in the home districts of Congress as they hear from every side of the debate over health care. This issue will undoubtedly be number one when Congress returns and means other issues make take a back seat. Among the issues likely to receive little scrutiny are those dealing with occupational health and safety. A quick look at some of the issues of importance to AIHA:

OSHA Reform

If you recall, Rep. Lynn Woolsey introduced HR 2067, known as the Protecting America's Workers Act. This is the major OSHA reform bill and if there is any action on OH&S, this will be the bill that will become the lead vehicle. AIHA submitted extensive comments on this bill and remains convinced that some form of OSHA reform will be enacted, albeit probably not until 2010. We also expect this bill to be "watered down" before any serious debate takes place.

The Senate version of HR 2067 has also been introduced. This bill is S 1580 and is identical to the House version. The bill was introduced by Senate Majority Leader Harry Reid on behalf of Senator Ted Kennedy and Senator Patty Murray. Senator Reid became the sponsor because of the health problems facing Senator Kennedy.

The fact the Senate version is identical to the House version is somewhat unusual as each side usually introduces its own version and includes different provisions. The fact that these versions are identical means the Senate will likely allow the House to take the lead on the issue and wait for action on that side of the Capitol. As for timing, it's hard to say when anything might take place.

Toxic Substances Control Act

It looks as if Senator Frank Lautenberg will reintroduce a bill from last session that would amend the Toxic Substances Control Act (TSCA). The bill, known as the Kid-Safe Chemical Act, would require chemical manufacturers to provide health and safety information on chemicals and prove they do not pose an unacceptable health risk before they could be used in products.

What makes this issue noteworthy is that the American Chemistry Council has announced it will join with environmentalists, public health groups and consumer advocates in supporting the legislation. This is a total reversal from what the chemical industry has been saying in the past. One of the reasons for this reversal is the chemical industry would rather see the federal government adopt one measure to address these chemicals. As it now stands, many states are adopting their own regulations making it difficult for the chemical industry to comply with the many different rules.

Look for this legislation to be introduced shortly.

Appropriations

Congress will also have to adopt a federal budget for fiscal year 2010 upon its return to Washington. While the House and the Senate have both provided preliminary numbers for OH&S issues, adoption of a final budget is a long way from adoption.

OSHA – There are several interesting tidbits in the existing OSHA numbers. The House approved 2010 appropriations for OSHA in the amount of \$554.6 million. This is a \$41.6 million increase over 2009 funding, but is \$9 million less than requested by President Obama. The House report also urged OSHA to adopt a comprehensive aerosol transmissible disease rule and to consider recording of ergonomics injuries in a separate column on the injury recordkeeping form.

The Senate numbers come from the Senate Appropriations Committee. There, OSHA would be provided \$562 million, about \$7 million more than the House but still \$2 million less than the President's request. The Senate also addressed the need to strengthen recordkeeping for ergonomics and other recordkeeping in general.

NIOSH – The budget outlook for NIOSH remains good. The House bill provides \$369.3 million for NIOSH, nearly \$1 million more than what was requested. The Senate Committee went even further, approving \$371.6 million for NIOSH. These figures compare to a 2009 NIOSH budget of around \$360 million.

Speaking of NIOSH, we are awaiting word on who might lead the agency. The agency officially announced the search for a permanent director several weeks ago and there are at least six or seven names that have been floating around. We expect CDC to name a director sometime in the 30-60 days.

Agency Activity at Highest Level in Years

Those who have complained the past few years of very limited activity from OSHA and other federal agencies can complain no more. The past month or two has seen more activity from OSHA than was seen in several previous years combined. Much of this movement can be attributed to a commitment by the administration and those in charge at the agency. Labor Secretary Solis is committed to worker health and safety and has given her blessing to move forward. Acting Assistant Secretary of Labor for OSHA Jordan Barab has been aggressive in moving many stalled issues forward. He promised to address worker health and safety and should be commended for his leadership.

While we await the confirmation of David Michaels to head up the agency, OSHA looks as if it will continue down the current path. Speaking of the Michaels confirmation, no word on when the Senate may consider the nomination. Most do not believe it will take place prior to mid-October. On another note, it is interesting that OSHA has now named a Chief of Staff, Deborah Berkowitz and from what we hear is interviewing to fill the Construction Directorate position. I say interesting because one would think these positions would not be filled until a permanent head of OSHA is in place. This raises all kinds of possible scenarios.

A look at agency activity:

Silica – OSHA has announced it will expedite silica rulemaking by accepting public comments on the Preliminary Health Effects Analysis and Quantitative Risk Assessment at the same time as the proposed rule. OSHA expects to complete the analysis and risk assessment in September. After the rule is published, the agency will then accept public comments and then submit amendments.

Acetylene – A similar approach on the acetylene standard for general industry. The agency published a direct final rule on August 11 and published the proposed rule on the same date. What this means is that unless the agency receives comments in opposition to the direct final rule, the direct final rule will take effect.

Voluntary Protection Program – OSHA has announced some changes to its VPP. The changes are in response to an earlier government report finding OSHA had not provided adequate oversight of the program and that some VPP participants had high injury and illness numbers. The VPP Participant's Association has announced it supports the changes recommended by OSHA. All sounds good, but there are still hurdles to overcome. OSHA has stated on numerous occasions it would "thoroughly review" the program to address the problems found in the government report. Keep your eyes on this.

Combustible Dust – OSHA is preparing to announce an ANPR. The ANPR will be based on some of the findings from OSHA's national emphasis plan on combustible dust. OSHA has already published a hazard communication guidance document. Some are concerned OSHA will base the ANPR only on those findings from the NEP rather than look at all industries with combustible dust concerns.

Ethylene Oxide – OSHA recently published a Small Business Guide for Ethylene Oxide to address ethylene oxide exposure levels and monitoring requirements. The guide will help understand the ethylene oxide standard and how to monitor the air quality.

Hazardous Chemicals – OSHA is also establishing a Chemical National Emphasis Program that outlines the policies and procedures for compliance officers to follow when inspecting workplaces covered by the Process Safety Management Standard. This is a one-year program.

PPE Rule – Remember the PPE rule OSHA completed the end of 2008. This is the rule stating OSHA had the authority to cite and penalize employers for PPE use and training on a “per-employee” basis. Seems industry is not happy with this rule. The US Chamber, NAM and others have filed a lawsuit over the rule, asking the courts to vacate the rule. OSHA is now preparing its response to the lawsuit. No idea when this might be resolved, but oral arguments are not scheduled until November. In the interim, the rule stands and is being enforced.

Cranes and Derricks – Final rule not expected until sometime next year. It was proposed in October 08. Some in industry say even this date is “optimistic”.

Confined Spaces in Construction – No date announced for this rule, but OSHA says it will not be addressed until the cranes and derricks rule is completed.

NEP on recordkeeping – Review low-rate reporting in high-rate industries. Also to look at incentive programs. OSHA admits this is an enforcement action. No plans to change recordkeeping rule at this time.

Diacetyl – The final SBREFA report on diacetyl found some interesting comments. First, the report did not decide whether or not OSHA should base a diacetyl rule based on a PEL or non-PEL approach, stating the agency should look at both. Second, the panel did recommend the agency consider leaving out employers that have minimal diacetyl exposures and exempt those which use the chemical naturally. In the meantime, NIOSH has announced it has started writing the Diacetyl Criteria Document and hopes to have a draft available for review next year. This document will include a recommended exposure limit and guidance for controls.

Fall Protection – OSHA has announced it plans to rescind a compliance directive on fall protection for its steel erection standard.

Control Banding – Awaiting the final document from NIOSH, now in internal review, on control banding. Control banding is an approach to controlling chemical exposures in the workplace when there are no established occupational exposure limits. CB is viewed as a supplement to OELs, environmental monitoring and industrial hygiene expertise, not as a replacement. There are 4 controls – good IH practices, engineering, containment, and seeking specialist advice.

Nanotechnology

Activity on several fronts. A bill has been introduced in the Senate that would reauthorize the National Nanotechnology Initiative. The bill, S 1482, is similar to the bill approved by the House, HR 554. The legislation would increase the attention given to environmental, health and safety questions about nanotechnology and nanoparticles.

The bill would support research to develop methods to detect and measure exposure to nanoparticles.

NIOSH has also weighed in by advocating a risk management approach to addressing occupational health risks of nanotechnology. On the international scene, a study in Beijing reports that exposure to nanoparticles could have contributed to the deaths and illnesses of several Chinese workers; and Canada has gained a new nanotechnology research and product development center.

The Way I See It!

AIHA continues to work on efforts to update the Permissible Exposure Limits (PELs). We are now discussing whether or not we should hold a meeting of all stakeholders (including labor and industry) or limit this first meeting to only those involved with the standard-setting process. We are also discussing whether or not everyone agrees there is a reasonable a chance to update the PELs or if a broader approach is needed.

While these are big decisions, one wonders where the agency is in this effort. Perhaps it is time for OSHA to publicly announce its intentions when it comes to updating the PELs. Does the agency support updating the PELs? Would the agency rather see a broader approach such as risk assessment or an expanded general duty clause, perhaps more of a control banding approach? Would the agency support a legislative “fix” to change the administrative hurdles to updating the PELs?

All of these are legitimate questions. The agency has proven it can move forward on several fronts. The activity level, whether one supports the issues or not, is a welcome sight. And I’m not asking for a proposal at this time. I just feel it is time the agency publicly provides stakeholders with a view of the PELs or some other approach.

Early writings by OSHA nominee David Michaels spell out his view that perhaps updating the PELs is too resource intensive. This may be true. It may also be true that we need to wait for Mr. Michaels to be confirmed prior to hearing any further language on the issue. But as I view the considerable activity taking place within the agency, it would be nice to hear a public statement about an issue that has tremendous impact on the health and safety of workers. How about it?

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 Trippler.