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HAPPENINGS FROM THE HILL

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October 5, 2007

A Fall Report Card From Washington - - There Actually Is Some Activity

Washington has jumped into fall with a vengeance, as occupational health and safety activity seems to be picking up – both on the Congressional and Agency levels. Hard to say what has sparked this interest, but there doesn't seem to be much complaining. Now, whether or not this remains a case of "much, much more activity – same result" depends on many things.

First of all, one shouldn't get too excited, as Congress remains committed to debate and/or solve several major issues prior to their targeted scheduled adjournment on November 16. These issues include more debate over the Iraq war, the children's health insurance program, home mortgage/foreclosure problems, and the federal budget (which was supposed to take effect on October 1).

So let's take a look at the latest Washington activity:

Legislative Issues

Asbestos –

After numerous attempts the past several years to have a bill enacted that would prohibit the importing, manufacturing, processing, or distribution of asbestos-containing products in the United States, the issue has taken a huge leap forward. Yesterday (October 4) the U.S. Senate unanimously passed S. 742 to restrict the use of asbestos and increase research into asbestos hazard exposure. If the bill is passed by the House and signed into law, EPA would have one year to develop regulations and two years to implement the regulation. A similar bill (H.R. 3339) is pending in a House Committee, as well as the fact that two additional bills addressing an asbestos ban (H.R. 3285 and H.R. have also been introduced. AIHA submitted comments on this legislation stating our support for increased research and education as well as expressing our concerns for the

increased exposure to existing asbestos use and suggesting that if any asbestos creates a hazard it should not be used.

Diacetyl –

Trying to follow this issue in Washington has become one of the more interesting things to do. First, OSHA was asked to put in place an emergency temporary standard to protect workers from the hazards of diacetyl, commonly referred to as the “popcorn-flavoring chemical”. Then, before ruling on this request, OSHA announced a national emphasis program that would focus on manufacturing facilities that use diacetyl. This program includes targeted inspections and compliance assistance.

This was followed by Congress becoming involved with the introduction of legislation (H.R. 2693) that would give OSHA 90 days to create an interim standard and two years to issue final exposure limits. Next – OSHA announced that it would issue a safety and health information bulletin focusing on respiratory disease among the workers exposed to diacetyl. OSHA announced the intention for this bulletin back in June, but the bulletin was not posted until September 26.

On September 24 OSHA announced its intention to initiate a rulemaking process to address diacetyl. On September 25 OSHA announced that it had denied a request for an emergency temporary standard on diacetyl, citing insufficient evidence and the actions the agency had already taken. However, this wasn’t good enough for Congress and the House enacted the diacetyl legislation on September 26. Whether or not the bill passes the Senate remains to be seen. AIHA supported this legislation.

And finally, OSHA has announced that it will be holding an informal stakeholder meeting on diacetyl in mid-October. But let’s be real – any diacetyl standard that might be forthcoming from OSHA is several years away.

OSHA Reform –

The Kennedy-Woolsey bills (S. 1244 and H.R. 2049) that would make numerous changes to OSHA have yet to make their way out of committee. Both bills were introduced back in April and no hearings have been held. However, several of the changes, or similar recommendations, have also been introduced as separate measures by others in the House and Senate:

- H.R. 1327 would require OSHA to finalize the Personal Protective Equipment standard.
- H.R. 1517 would provide OSHA coverage to all state and local government employees.
- H.R. 2435 would increase criminal penalties for willful safety standard violations resulting in the death of contract employees.

None of these measures have moved out of Committee.

Mining Safety –

Both the House and the Senate have been considering numerous bills addressing the issue of mining safety.

Senate Confirmation Hearings –

Two important nominations have been made by President Bush that would impact occupational health and safety. On September 27 President Bush nominated Madonna Cynthia Douglass to be a member of the Occupational Safety and Health Review Commission. The nomination was referred to the Senate HELP Committee for confirmation. On October 2 the Senate

Environment and Public Works Committee held a confirmation hearing for John Bresland to serve as Chair of the U.S. Chemical Safety and Hazard Investigation Board. AIHA sent a letter of support for Mr. Bresland.

Federal Budget –

Oh Yeah! I forgot to mention the Federal Budget for the 2008 fiscal year. Congress has not moved on budget so they enacted a continuing resolution that would provide continued funding until November 16. Sound familiar? Congress didn't even pass a fiscal year '07 budget as the government operated on a year-long continuing resolution. I'll refrain from any additional comments on this issue.

Regulatory Issues

Lead in Construction Rule –

OSHA has decided to retain its standard on lead in construction without any major changes. The agency has just completed a regulatory review of the standard (first issued in 1993)

OSHA Role in National Response Plan –

After considerable debate, it looks as though OSHA may finally be granted a bigger role in the National Response Plan. OSHA was originally told that it would serve only in a support role in protecting emergency responders in the case of a national emergency. OSHA was told it would have no authority to protect these workers until it was "activated". In this case, "activated" meant that OSHA would have to wait until FEMA provides the okay to become involved.

At a hearing on the Hill, NIOSH expressed its concern that OSHA would not be a part of the National Response Framework and Congress seemed to agree. Following the hearing, the Department of Homeland Security agreed to consider elevating OSHA's role. The latest plan states that worker safety and health is delegated to a "support annex" as opposed to an "emergency support function annex". This seems like little change to me but we'll wait and see.

Emergency Response Standard –

OSHA has published a request for information seeking input to determine what action, if any, the agency should take to further address emergency response and preparedness. Current OSHA standards do not reflect all of the major improvements in safety and health practices that have already been accepted by the emergency response community and incorporated into industry consensus standards. The standards impacted by this request would be the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard, the personal protective equipment general requirements standard, the respiratory protection standard, the permit-required confined space standard, the fire brigade standard, and the bloodborne pathogens standard.

Ergonomics –

Just when you thought the word "ergonomics" had been removed from the dictionary at OSHA, the agency announced draft guidelines on ergonomics for employers and their employees in the shipyard industry. The draft comes nearly four years after the agency first announced they would develop these guidelines. This is the fourth set of ergo guidelines from OSHA and follows

those in nursing homes, poultry processing, and retail grocery stores.

Personal Protective Equipment –

Two issues here. One is that OSHA has announced an informal public hearing on its proposed rule updating its PPE design standard. The proposed rule was published in May and the hearing is scheduled for early December. The second issue is the “wait and see” on the updated PPE rule for employer payment for personal protective equipment. If you recall, a lawsuit was filed that would force OSHA to finalize the rule. Then Congress became involved with the introduction of legislation that would also force OSHA to finalize the rule. In the interim, OSHA announced that it would finalize the rule by November of this year. The lawsuit and the legislation were effectively put on hold to give OSHA a chance to publish the final rule. By my calculations, November is only a few weeks away. We’ll have to wait and see if OSHA meets its own deadline.

Methamphetamine Laboratory Cleanup –

EPA would be directed to produce guidelines for cleaning up methamphetamine laboratories if legislation enacted by the House makes its way through the legislative process. H.R. 365 has been enacted by the House and it looks like it might also be passed by the Senate. AIHA has some interest in this legislation as the guidelines would provide some guidance and standardization for determining when a lab site has been completely cleaned.

Beryllium –

OSHA has now set up a panel to determine how the agency’s draft beryllium rule would impact small business. OSHA originally expected to complete the small business review by September, but has fallen behind schedule. OSHA now states that it hopes to issue a notice of proposed rulemaking for beryllium in 2008.

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. 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.