



## *Happenings From The Hill*

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

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#### **Notwithstanding Ongoing Concerns – Occupational Safety and Health Activity Increases**

As Washington continues to address a boatload of problems in this country – two wars, economic concerns, automobile bankruptcy, bank failures, unemployment, and now the swine flu; there were many who felt occupational safety and health activity would take a backseat to nearly everything. Much of this concern about OH&S pertained to the fact that OSHA had been without a “leader” since the inauguration and the fact that the agency seems to be in a constant state of “limbo”.

Well, no more! AIHA has consistently stated the last six months that what the agency needed to do was show some activity – any activity – if it was to regain credibility with employees and employers. This activity is now front and center with nearly all of it occurring in the last month.

#### **Acting Assistant Secretary of Labor for OSHA**

The first sign of increased activity was the early April appointment of Jordan Barab to be Deputy Assistant Secretary of Labor for OSHA. Immediately upon the appointment of Jordan, he was named as Acting Assistant Secretary of Labor for OSHA. What this means is that Jordan has been hired to be one of two Deputies at OSHA, but while a permanent head has not been nominated Jordan will assume this role.

Jordan comes to OSHA with a long, established background in worker health and safety, most recently serving as the chief labor staffer for the House Education and Labor Cmte.

What can we expect from Jordan? While early, it has already become obvious Jordan will move the agency forward on many of the issues that have lingered at the agency. This doesn't mean these issues will be completed anytime soon, but they will receive increased scrutiny. Among these are diacetyl, combustible dust, silica, GHS, and perhaps even a look at ergonomics. Jordan has been a long-time supporter of an ergonomics standard; however he may have to keep this issue at arms length for the time being. Jordan has also been a supporter of increased enforcement at the agency and has questioned some of the return vs cost of some of the OSHA programs such as VPP. And – in the past Jordan has indicated an interest in updating the PELs.

But in the end, Jordan may only be in this capacity for a short time. It all depends on whether or not the administration determines he is the best person for the number one job and down the road makes him the permanent leader at OSHA. Either way, we are probably not looking at a permanent Assistant Secretary for several months.

So, here is a quick look at the activity:

### **Silica**

OSHA has released a guidance document on silica in controlling silica exposures in construction. While not a legal document, the publication provides employers with recommendations on how best to incorporate various engineering controls for several kinds of construction operations and equipment. To see this document, go to <http://www.osha.gov/Publications/3362silica-exposures.pdf>

In a recent Advisory Committee on Construction Safety and Health meeting, OSHA rejected a request from the committee to review in advance the guidance documents. OSHA stated if the committee was to have any significant comments it would essentially kill the document.

### **Fall Protection**

OSHA personnel have briefed Acting Assistant Secretary Barab on the possibility of rescinding the agency's interim residential fall protection guidelines. No details on when such a decision might be made.

### **Diacetyl**

After considerable delay in addressing this issue, Secretary of Labor Solis has announced that OSHA will convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel May 5 on a draft proposed rule on occupational exposure to diacetyl and food flavorings containing diacetyl.

The SBREFA allows for small businesses that may be affected by a proposed rule to review the proposal and provide comments before an agency publishes it in the *Federal Register*. "The goal of the process is to develop recommendations designed to assure accuracy of the supporting analyses and to identify alternatives that may reduce the burden on small businesses," said Secretary Solis.

### **Combustible Dust**

OSHA has announced it will issue an Advanced Notice of Proposed Rulemaking on combustible dust, with plans to convene stakeholder meetings to evaluate possible

regulatory methods and request data and comments on issues related to combustible dust, such as hazard recognition, assessment, communication, defining combustible dust and other concerns.

### **Globally harmonized System (GHS)**

An issue OSHA “guaranteed” would be addressed by last December is still on hold. Now the agency has announced publication of the draft proposal on the GHS has been delayed due to the transition between administrations. OSHA stated the proposal has “gotten bogged down”. OSHA’s proposal will mean modifying the agency’s hazard communication standard from performance-oriented to specification-oriented. No word on when this proposal might be announced.

On another note regarding the GHS, the U.S. delegation to the United Nations on this issue has requested OSHA to assist the delegation in perhaps development of a classification system for combustible dust.

### **Enforcement**

OSHA has announced that 13,500 employers have been notified their injury and illness rates are considerably higher than the national average. While the agency did not announce what actions might be taken, these employers were encouraged to hire outside safety and health consultants and enlist workers to identify hazards and find solutions.

### **Advisory Panels**

OSHA acting chief Barab recently signaled he may rely more on the Advisory Committee on Construction Safety and Health to provide input on the increase in construction activity because of the influx of stimulus dollars. This is a positive move and the hope is Mr. Barab will also see the need to rely more on the National Advisory Committee on Safety and Health as well. NACOSH can be a valuable tool in providing recommendations to the agency on issues that need to be addressed.

And speaking of the stimulus dollars, there is considerable talk at OSHA and among several stakeholders about the need to have construction contracts and other stimulus projects include safety and health in these contracts, something AIHA called for many weeks ago.

### **Budget**

While Congress seems to have given preliminary approval to the Obama request to spend \$3.5 trillion in the 2010 budget, there is no word as to what kind of appropriation OSHA might receive. We do know the Labor Department is expected to receive upwards of \$600 million in additional funding. Let’s hope OSHA receives a considerable portion of this increase.

However, the Labor Department and OSHA have announced that with the increase in funding for 2009, the agency will be hiring up to 30 additional inspectors to provide assistance with the stimulus spending, another request AIHA made weeks ago.

### **MSHA**

Over at MSHA, we are still awaiting word of who might lead this agency. Former interim head Richard Stickler left the agency on January 20.

Now comes word there seems to be three leading candidates to take over the agency. They are Joe Main, former longtime head of the United Mine Workers Dept. of Occupational Health and Safety; J. Davitt McAteer, who led MSHA during the Clinton administration; and Tony Mayville, director of the Illinois Office of Land Management.

## **NIOSH**

Good news coming out of NIOSH. Not only did the institute avoid a proposed budget cut under the Bush administration, the institute has seen two unexpected benefits of funding. The first occurred in the final 2009 budget numbers when the institute received a \$16.1 million dollar increase. On top of that, NIOSH learned that an expected planned-for government rescission did not occur. This provides the institute with an additional \$7.6 million in spending.

As for who might lead NIOSH, that is still one area where there has been no activity. The Department of HHS finally has a confirmed Secretary, but both CDC and NIOSH are being served by acting directors. And with the current problems with swine flu, it is doubtful the administration is in any hurry to appoint a permanent head of NIOSH.

## **Occupational Safety and Health Review Commission**

President Obama has nominated Thomasina Rogers for reappointment as a member of the Review Commission. Her term was to expire the end of April. Ms Rogers will serve along with Horace Thompson III as the only members of the Commission. The Commission is to have three members, but will remain with two until the administration appoints a third member.

## **Office of Management and Budget**

As expected, President Obama officially nominated Cass Sunstein to head up the White House Office of Management and Budget Office of Information and Regulatory Affairs. Sunstein is a proponent of cautious regulatory approaches and supports cost-benefit analysis. This will be an interesting issue to follow as both industry and labor have some concerns about Mr. Sunstein.

## **Congress**

As expected, there has been a reintroduction of the Protecting America's Workers Act, known as House Bill 2067. The bill is similar to the one introduced in the last session of Congress and will be the major OSHA reform bill debated in this session of Congress. Obviously, with the Democrats in control of both Congress and the White House, the bill stands a much better chance of passage this go-around. But there will still be considerable debate over the bill. AIHA is currently preparing comments on the bill and will offer several suggestions. In the interim, here are the major areas of the bill (summary provided by Inside OSHA):

- Prohibits employers from discouraging reporting by requiring that regulations on injury and illness recordkeeping include a prohibition on employer policies or practices that discourage the reporting of work-related injuries or illnesses by an employee.

- Clarifies that the time spent by a worker accompanying an inspector is considered 'time worked' which must be compensated.
- Requires employers to abate violations for serious hazards during the time the employer contests a citation after it has been reviewed and resolved.
- Increases civil penalties for violations to account for inflation and sets a mandatory minimum penalty for violations involving fatalities for small employers that is lower than the mandatory minimum for larger employers.
- Omits the directive to OSHA to issue a final rule on employer payment for personal protective equipment (which was issued by OSHA in November 2007).
- States that the act takes effect 90 days after enactment -- except that states with section 18 state plans are given 12 months to come into conformance and states that do not have a state plan are given 36 months to comply.

### **AIHA Policy Comments**

AIHA has submitted several public policy comments in the past couple of weeks:

The AIHA Respiratory Protection Committee supported two separate NIOSH proposals, one to update the quality assurance requirements for all respirators approved by the institute and the other to update approval tests for closed-circuit escape respirators. The comments can be found at [http://www.aiha.org/1documents/GovernmentAffairs/NIOSH-QA\\_Reg\\_for\\_Respirators-Comments-04-06-09.pdf](http://www.aiha.org/1documents/GovernmentAffairs/NIOSH-QA_Reg_for_Respirators-Comments-04-06-09.pdf) and

[http://www.aiha.org/1documents/GovernmentAffairs/NIOSH-Approval\\_for\\_Closed-Circuit\\_Esc\\_Resp-Comments-04-06-09.pdf](http://www.aiha.org/1documents/GovernmentAffairs/NIOSH-Approval_for_Closed-Circuit_Esc_Resp-Comments-04-06-09.pdf)

AIHA also submitted a letter to OSHA requesting the lowering of the PEL for occupational noise exposure. This request can be found at

<http://www.aiha.org/1documents/GovernmentAffairs/NoiseLetter-OSHA-04-28-09.pdf>

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

It makes no difference whether you are a Republican or a Democrat. A supporter of labor or industry. In favor of more enforcement or less from OSHA. It's great news to see some activity at OSHA! I'm not sure whether or not it has to do with a new administration, a new Secretary of Labor, a new Acting Assistant Secretary of Labor for OSHA, or all three. But let's face it, occupational safety and health is going through a mini "resurgence" and it couldn't have come at a better time.

Several actions have brought about this resurgence:

- ✓ A few more dollars (still not enough) in the 2009 budget;
- ✓ Hiring additional inspectors to oversee some of the stimulus projects;
- ✓ The hope that with DOL expected to receive a \$600 million increase in 2010 that a good portion of this is allocated to OSHA;
- ✓ Word that the Secretary of Labor has indicated the agency will move forward with a standard on diacetyl (after pulling the ANPR to speed up the process);

- ✓ Introduction of a bill to address expanding coverage to all those not covered by OSHA and increasing certain criminal penalties;
- ✓ An Acting Assistant Secretary who has provided a morale boost to OSHA employees;
- ✓ The hope that the Acting Assistant Secretary and the Secretary of Labor will support efforts to update the PELs and the standard-setting process.

Again, it shouldn't make any difference if you support these efforts or oppose these efforts. The fact is we need to see the agency assume its proper roll in occupational safety and health and once again become a "leader". There will be plenty of time to offer alternatives to OSHA proposals; we aren't all going to agree on everything. But let's hope all stakeholders at least give the agency a chance to succeed.

## **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.**