



## *Happenings From The Hill*

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

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#### **Activity at OSHA Continues to Outpace that of Congress**

The past few weeks has seen a flurry of activity at OSHA as the agency attempts to “reignite” the agency’s commitment to moving forward on occupational safety and health issues. While it may be too early to see if the agency can actually succeed with its plans, it is worth taking a few moments to review:

On May 11, the agency released the semi-annual regulatory agenda, the first under the Obama Administration, Labor Secretary Solis, and Acting Assistant Secretary Barab. It is obvious from reviewing the agenda the agency decided to increase the number of issues on the agenda. However, only time will tell if these issues actually come to any sort of conclusion.

Here is a look at some of the issues on the agenda, and their current status, that might be of high interest to AIHA:

**Occupational Exposure to Crystalline Silica** – Listed in the pre-rule stage on the agenda. In late April the agency released a guidance document on controlling silica exposure in construction. While no specific date has been listed as to when a proposed rule might be forthcoming, AIHA was notified this week that the peer review stage for the proposal has been initiated.

**Occupational Exposure to Beryllium** – Listed in the pre-rule stage. This is actually a small step back on this issue. The agency previously stated it was in the process of proposing a rule. The agency now simply lists the issue in the pre-rule stage and says it will initiate peer review by the end of 2009.

**Occupational Exposure to Diacetyl** – Listed in the pre-rule stage. OSHA hopes to move on this by the end of the summer and in early May sent the proposed standard to small business representatives for SBREFA review. According to reports, the agency presented two separate draft standards – one would set a PEL for the substance and the second would rely on process-specific requirements. Interesting results – seems the small business panel can't agree on whether a PEL or non-PEL approach is the best way to address the issue.

**Combustible Dust** – Listed in the pre-rule stage. Not only is this issue listed in the pre-rule stage, but Labor Secretary Solis specifically stated OSHA will issue an Advanced Notice of Proposed Rulemaking (hopefully by August) and convene stakeholder meetings to evaluate possible regulatory methods by December. This action follows introduction of legislation in the US House that would require OSHA to issue a final rule. AIHA submitted a letter of support for this legislation.

**Confined Spaces in Construction** – Listed in the proposed rule stage. This issue seems to have been in the final stage for some time. Many expected the rule to be completed in 2008, but it has continually been delayed. While the agenda lists it in the proposed rule stage, many are hoping the agency will finalize this rule in quick fashion.

**Cranes and Derricks in Construction** – Listed in the proposed rule stage. Similar to the confined spaces proposal, this issue has been around for some time and many expected it to be finalized by now. The comment period was extended and the record is to be closed in June. Just have to wait and see what happens next.

**Hazard Communication** – Listed in the proposed rule stage. A very important rule as it involves the Globally Harmonized System for Classification (GHS). OSHA expects to move quickly on this issue and just this week AIHA was notified that the GHS proposal has gone to the Office of Management and Budget for review.

**Hearing Conservation Program for Construction Workers** – Listed under long-term actions. While no specific time-line is provided, AIHA did write to the agency requesting that the PEL for noise in construction be reduced. AIHA recommends the PEL be reduced from 90 dBA to 85 dBA and adopt an exchange rate of 3dBA from the current 5dBA.

These are just a few of the issues listed in the semi-annual regulatory agenda for the agency. If you wish to receive a copy of the entire agenda and the links to each of these issues simply contact AIHA government affairs.

### **Other Agency Activity –**

**ATD** – The state of California recently approved the nation's first comprehensive standard on aerosol transmissible diseases (ATD) and there are now many calling for OSHA to do the same. Following this suggestion, Acting OSHA chief Jordan Barab suggested that the agency is considering the possibility. Along with discussions about ATD, there are also numerous calls for the agency to take more action to protect health care workers against the H1N1 virus. The agency responded to an earlier request by stating it would use its general duty clause to enforce existing pandemic flu guidance.

**Voluntary Protection Program** – Ever since the Obama Administration took over in January there has been talk that one of the first things OSHA might do is suspend the VPP program. While most of this seemed to be “idle chatter”, it received a big push when Jordan Barab, Acting OSHA chief, testified before Congress by saying that “OSHA would suspend the previous administration’s practice of establishing goals for new Voluntary Protection Program sites and Alliances”. Obviously, this raised considerable concern in many quarters, with many questioning how the agency could justify suspending a program that has been so successful. Mr. Barab followed up this testimony with a clarification that OSHA had no intention of suspending the VPP program but simply a shift in some of the resources of the program to the enforcement program. Not sure everyone believes this!

**Worker Safety in Stimulus Projects** – Secretary Solis announced that OSHA would enforce worker safety as part of stimulus projects and would increase oversight of federal worksites. This is great news and something AIHA called for even prior to the awarding of stimulus dollars. Our only hope is the agency expands this oversight to all stimulus projects, not just those involving federal workers.

**Risk Assessment Rule** – Remember the so-called “secret rule” the Bush administration was proposing in the waning days of the administration. This was the rule that would have imposed new internal rules for how OSHA would determine risks to various chemicals. Everyone was concerned the administration would finalize this rule prior to leaving town and it would become a lengthy process to rescind the rule. Well, the administration left town without finalizing the rule and the Department of Labor has now officially announced plans to withdraw the proposed rule. AIHA opposed the rule as did many other OH&S stakeholders. Notwithstanding the withdrawal of this rule, it did raise the subject of “risk assessment”, a subject many agree needs to be addressed.

**Ergonomics** – While the agency has not indicated any interest whatsoever in proposing a new ergonomics standard, the agency did announce it would use the general duty clause to cite employers for ergonomic and workplace violence hazards. Acting Assistant Secretary Barab stated he is well aware ergonomic injuries are the leading workplace hazard and the agency was considering taking a sector-by-sector approach to regulating the issue. However, Barab has also been clear he is more interested in working on the “low-hanging fruit” at the agency – meaning he wants to complete work on standards that have simply been languishing at the agency.

## **Are We Nearing the Appointment of a Permanent Assistant Secretary of Labor for OSHA?**

Word continues to leak that David Michaels, a professor in OH&S at George Washington University will soon be nominated to serve as the Assistant Secretary of Labor for OSHA. Michaels is currently the interim chair of the Department of Environmental and Occupational Health and the GWU School of Public Health. Michaels also is a former Department of Energy Assistant Secretary. While many are wondering exactly what Michaels might do at the agency there is some indication in recent newsletter articles written by Michaels. In one article Michaels stated :“OSHA badly needs a change in direction and philosophy”. He listed four goals the agency should undertake – issue an injury and illness program rule, increase training grants, develop an electronic recordkeeping system, and change the way the nation thinks about workplace safety.

No word on when his nomination will occur, if he is the one, but many believe it may happen within the next thirty days.

### **CDC Receives New Director**

The Obama Administration has named Thomas Frieden, commissioner of the New York City Health Department, as director of the Centers for Disease Control and Prevention. Frieden has both a medical degree and a master's degree in public health and has indicated his commitment to scientific values. Most stakeholders have indicated their support for his appointment and hope the CDC and NIOSH will also have a closer working relationship under Frieden.

Frieden will have the authority to name the head of NIOSH. Christine Branche remains the acting director of NIOSH and has indicated her wish to be named permanent director. However, there is already a push on by many stakeholders to have Dr. John Howard return as director of the Institute, especially since it looks as if Dr. Howard may not receive the position at OSHA. As one stakeholder stated "I can't imagine the administration losing someone as valuable as Dr. Howard".

### **Congressional Issues**

A quick overview of the major OH&S issues in Congress –

**HR 242** – A bill that would revise regulations on the recording and reporting of occupational injuries and illnesses. Employers would be required to keep a log of all injuries and illnesses for all employees on a worksite, even those of sub-contractors. Passage of this bill as a "stand-alone" bill is unlikely. If it has any chance at all it would have to be added to the major OSHA reform bill.

**HR 849** – Would require OSHA to issue an interim and final standard regarding worker exposure to combustible dust. It is unlikely this bill will pass. The main reason for its introduction was to put additional pressure on OSHA to address the issue of combustible dust.

**HR 2067** – This is the main OSHA reform bill, known as the "Protecting America's Workers Act". This bill has, and will continue to receive, considerable discussion in Congress. The bill may have difficulty in being enacted in its present form and may have to be split into separate bills. However, there is a good chance several sections of this bill will become law. AIHA will be putting out comments on this legislation yet this week.

**HR 2113** – This bill would require employers with more than one establishment and not fewer than 500 employees to report work-related deaths, injuries, and illnesses. This is another bill pertaining to multiple worksites and was also introduced because of the belief among many that employers are underreporting injuries and illnesses. The bill will receive serious consideration.

**HR 2199** – A bill to require the Secretary of Labor to prevent employee exposure to imminent dangers. Sounds simple and it is. But it essentially means that OSHA would have the authority to address imminent dangers without the approval of the employer.

**HR 2381** – A bill to require OSHA to issue a safe-patient handling standard. This bill will also receive considerable discussion. While the bill may face a difficult time in Congress, it will put pressure on the agency to seriously take a look at this issue.

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

Many have heard me state in the past it makes no sense that EPA receives in excess of \$10 billion a year in appropriations while OSHA receives a little more than \$500 million. This – comparing two agencies created at the same time. I have also stated there are many reasons, but one of the main reasons is that “politics” seems to play a much more important role at OSHA. We are constantly seeing industry and labor attempt to “lead” the agency down the road they wish it to go. This in turn creates opposing views on nearly every regulatory effort that arises.

And every election that takes place we keep hearing how the “new administration” will change things. They will “work across the aisle” with both industry and labor to accomplish the goal of seeing workers are kept safe.

I have yet to see this happen with any administration and it may be too early to see if this administration is any different.

We are less than six months into a new administration and we have already heard various allegations from both sides - the VPP program is not a good use of resources, employers need more enforcement of workplace laws, industry is corrupt and can't be trusted to get the science right, OSHA needs to put out an advance notice of proposed rulemaking to gather scientific data, OSHA needs to drop an advanced notice of proposed rulemaking because it delays a proposal, and the list goes on and on.

I tend to believe until an administration, any administration, begins by stating they will bring both sides together to discuss the future of the agency we will continue down this road of taking 15 years to adopt a standard, 40 years to update the PELs, or simply see nearly every effort delayed through the courts.

How about it! Someone take the lead and try something different!

## **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.**