



## *Happenings From The Hill*

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

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### **Congress Moves Slowly on OH&S – But OSHA Continues to Push Agenda**

When Congress returned from its summer recess, it was believed issues such as health care, the economy and the ongoing military concerns would continue to consume the debate and occupational health and safety would take a back seat. That's exactly what has happened. In other words, circumstances overtook the OH&S agenda.

Senator Harry Reid introduced the Senate version of the Protecting America's Worker Act on behalf of Senator Ted Kennedy and Senator Patty Murray. However, with the death of Senator Kennedy the Senate has put any talk of OH&S on hold. Senator Kennedy was the champion of OH&S in the Senate and his absence will be missed. Filling his shoes as Chairman of the HELP Committee is Senator Tom Harkin. While it is hoped Senator Harkin will move on OH&S it is unlikely any time soon.

This means if any OH&S issues are to receive consideration the burden will fall on the House, much as we expected from the beginning. Rep. George Miller and Rep. Lynn Woolsey have considerable interest in moving an OH&S agenda.

One more thing, no word on when Congress might actually take a look at the 2010 budget for OH&S.

### **Protecting America's Worker Act**

While no visible activity has taken place on this OSHA reform measure there is plenty going on behind the scenes. Expect this bill to receive some sort of action in the next few months. While too early to determine exactly what might take place, look for the bill to possibly be reintroduced or amended with some slight changes.

Labor supporters believe if they want any sort of reform they must pass a bill in the House that has some chance of passage in the Senate; therefore they want to have a bill that may have to be simplified and a bill that has the support of many different stakeholders. What will that bill look like? Hard to say at this point in time. When looking at the bill it seems two sections labor seems intent on keeping are the ones addressing whistleblower protection and victim's rights. But don't expect the bill to be easy to pass. And don't expect action any time soon. Nearly the entire House and Senate are consumed with the health care debate.

### **No Date Set for Michaels Confirmation**

Still no word as to when David Michaels might have his confirmation hearing in the Senate. Again, with health care taking over the Capitol, there doesn't seem to be anyone pushing for a quick confirmation. On the one hand, AIHA and others wish the Senate would consider this appointment as quickly as possible so the agency and others can get a good look at the agenda Michaels might set. While there has been much talk about an agenda – including risk assessment and ergonomics – nothing concrete has surfaced. On the other hand, it seems many believe a quick confirmation is not important, as the agency is being served quite well with Jordan Barab serving as Acting Assistant Secretary.

### **OSHA Pursuing Many Issues**

OSHA has been quite active the past few weeks, moving on several long-standing issues.

#### **GHS**

After nearly three years since OSHA announced an advanced notice of proposed rulemaking, the long awaited Globally Harmonized System of Classification and Labeling of Chemicals (GHS) proposal has been announced. Today's Federal Register issued a proposed rule for the GHS.

AIHA has not yet reviewed the proposal so no details are included here. However, according to OSHA the proposal was developed to address inconsistencies in hazard classification and communications. The GHS will provide a single, harmonized system to classify chemicals, labels and safety data sheets with the primary benefit of increasing the quality and consistency of information to workers, employers and chemical users.

Comments are due December 29. You can read the proposal at

<http://edocket.access.gpo.gov/2009/E9-22483.htm>

### **Process Safety Management Standard**

OSHA has begun working on a compliance directive to address process safety hazards posed by reactive chemicals. OSHA action is a result of a request from Congress to revise the standard. In 2002 the Chemical Safety Board urged OSHA to address the

standard but no action was taken. When finished, the compliance directive will be an instructional manual to clarify the dangers posed by reactive chemicals.

### **PPE**

Just so you don't lose track of the PPE issue, both industry and labor have filed court briefs addressing OSHA policy of setting penalties based on the number of employees affected by employer responsibility to provide training and personal protective equipment. No idea when this issue will be settled.

On another note regarding PPE – OSHA issued a direct final rule in early September revising PPE sections of several standards to include the most recent national consensus standards. The rule applies to general industry, shipyards, longshoring, and marine terminals.

### **H1N1**

There continues to be considerable debate over guidance on how health care workers and others can be protected from contracting the H1N1 virus. CDC guidelines recommend health care workers wear N95 or better respirators; however others believe surgical masks will do the job. Adding to the discussion is the fact there are not nearly enough of the N95 respirators to address any pandemic.

### **Voluntary Protection Program**

An issue that seems to continually receive attention is the VPP. OSHA originally announced it would take a “fresh look” at the program to determine what changes are needed. This fresh look is a result of a Government Accountability Office report stating OSHA lacked oversight of the program. Obviously, those in the VPP program became concerned about just what OSHA might be planning for the program. OSHA laid some of these concerns to rest at the recent VPP annual meeting; but now it seems some of these concerns have again been raised. If there is one issue to keep your eye on at the agency in the coming year this is it!

### **Silica**

OSHA's latest guidance document addresses the control of worker exposure to dust containing crystalline silica. The publication includes methods for controlling silica. By the way, OSHA published a final rule on silica and a proposed rule at the same time. This means unless they receive negative comments the final rule takes immediate effect.

### **Risk Assessment Rule**

Many OSHA stakeholders received another piece of good news in early September when the Department of Labor withdrew a proposed risk assessment rule. The rule was proposed at the end of the Bush Administration and would have allowed OSHA to change some of its internal rules when determining risk before issuing health-related rules. The proposed rule was controversial – not only because of the change in internal rule-making but also because of the way it was being proposed, without the opportunity for public comment.

### **Quickies –**

Combustible Dust – no word on when OSHA might announce its advance notice of proposed rulemaking.

Cranes and Derricks – OSHA says a final rule will not be forthcoming until next year.

Confined Spaces in Construction – No date announced for this rule.

Control Banding – NIOSH says it may establish a task force to further research control banding. Look for this to be an active issue.

## **NIOSH**

As reported earlier, OH&S stakeholders received great news in early September when Dr. John Howard was reappointed to a six-year term as the head of NIOSH. Dr. Howard had the support of nearly every stakeholder during his previous time at NIOSH and is expected to pick up right where he left off. In early statements from Dr. Howard he indicated that some of his agenda will involve a closer look at risk assessment, continued research into nanotechnology and an effort to have more collaboration with OSHA. All of this is great news. Now we have to ensure NIOSH is provided adequate funding. Another good idea might be if Dr. Howard expands his collaboration approach with OSHA and brings back something called the ONE Committee. This is a committee that involves OSHA, NIOSH and EPA in the hopes of better communication.

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

There are those who think everything revolves around what happens in Washington when it comes to occupational safety and health. That may be true for many things, but too many forget the real action is taking place in the states. The main reason for this is the states seem to recognize a problem – look for a solution – then go ahead and fix it. On the federal level, the process is so out of whack everything seems to take forever. If the feds do address an issue, lawsuits drag the issue out for years.

If you don't believe this just take a look at some of the things that occurred in the states this year. California addressed the airborne transmissible disease issue and has one of the better plans on the use of N95 respirators to address the H1N1 virus. Illinois became an OSHA state plan state for the sole purpose of covering their public employees. Texas attempted to adopt an OSHA state plan and several others introduced legislation to drop their state plan recognition. Several states addressed the issue of mold abatement while others took a closer look at the issue of methamphetamine laboratory cleanup. The list goes on and on – AIHA monitored more than 350 legislative measures impacting OH&S.

What the federal policymakers need to do is take a closer look at some of these actions to not only see what is being debated but how the states come to a decision. It doesn't mean the decision is always the right one, or one we support, but at least they make a decision.

Yes, things are harder to accomplish on the federal level. One of the reasons is the decisions impact many more individuals. But the main reason is politics plays too large of a role on the federal level. When was the last time we saw both sides of the aisle agree on an occupational safety and health issue? I tend to think if a bill would be introduced and no one knew who sponsored the bill we would see considerable support.

Yet every OH&S issue seems to be divided between Republicans and Democrats, labor and industry, liberal and conservative.

Things will probably never change, but it sure explains why EPA receives over \$10 billion in annual funding while OSHA survives with just over \$500 million – agencies created at the same time. Whatever happened to looking at the issue of worker health and safety and working toward eliminating fatalities and injuries?

If we are to succeed it is going to take effort from everyone. Labor must understand industry is not the enemy and industry needs to understand labor has a place in the debate because they are on the front line. Probably never happen – but sure would be nice to see every once in a while – and it just might work. Federal policymakers might think about taking their next “recess” by visiting their state capitol to see how things are done.

## **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.**