



## *Happenings On The Hill*

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

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#### **Congress Prepares to Take 7-Week Recess – Yours Truly to Take a Longer One – More on That Later**

Congress is preparing to leave town for its annual “summer recess”, leaving the end of this week for 7 weeks, returning after Labor Day. But as usual there is the “last minute” surge of activity and several issues to address. Let’s dig right in.

#### **Federal Budget –**

As if on command we can use the same words we usually use by saying we do not yet have a federal budget for FY17. Congress is charged to approve the budget before the existing FY16 budget expires on September 30.

There was hope that the compromise Congress agreed to last year to limit spending would hold up this year but that isn’t the case. None of the individual appropriations budgets have been approved; with one of the biggest sticking points whether or not these budgets will include any “policy riders”. These riders are usually very controversial, such as riders that might ban OSHA from spending any money on silica, etc.

The bottom line is that Congress will unlikely enact a budget before the deadline. The most likely scenario is that a Continuing Resolution will be adopted, perhaps to run as long as 6 months. This would mean all agencies are allowed to spend the same amount they are now spending until after a new administration comes to town in January. While

some speak the dreaded words “government shutdown” if no budget is forthcoming, I do not see that happening.

### **Agency Budgets –**

Speaking of the federal budget, the debate rages on about appropriations for occupational safety and health. Don’t get too concerned though as these are all preliminary figures.

The FY17 budget proposal now looks like this – (all in millions)

Agency	Senate Committee	President Proposal	House Committee	Existing Spending
OSHA	\$553	\$595	\$534.4	\$552.8
MSHA	\$376	\$397.3	\$350.5	\$375.9
NIOSH	\$334	\$285.6	\$329.1	\$339.1

### **Regulatory Reform –**

The House passed HR 4768 this past week; a bill that would limit federal agencies’ rulemaking power. The bill, the Separation of Powers Restoration Act overturns a 1984 Supreme Court decision. Here’s what it really means – the Supreme Court decision says that courts must defer to agency interpretations of statutes when disputes arise. Opponents of the current system say that courts should review all relevant questions of law instead of relying on agency interpretations. This debate has been going on for some time and will continue. Even if the Senate were to pass the bill, the President has vowed to veto the measure. This won’t make it into law during this session.

### **More Regulatory Reform –**

Congress continues to consider a couple of dozen legislative measures addressing regulatory reform; however it is likely few, if any, will make it into law. The most recent effort comes from the Democrats in the Senate who are calling for creation of a regulatory watchdog to speed OSHA and other agencies rulemaking. Proponents say such a watchdog would put a stop to what they consider is industry control over the regulatory process.

One example used is the recent silica standard that took nearly 40 years after it was first proposed; but that may be an extreme example. Proponents cited the fact that EPA takes an average of 3.8 years to craft a rule, while OSHA takes 12.5 years.

Don’t bet on anything happening with this issue. Besides, if one looks to the usual outcome of some new “watchdog” created, we are more than likely to spend some more tax dollars without ever seeing a result.

### **Could Asbestos be Banned?**

One of the results of the recent Toxic Substances Control Act (TSCA) amendments that were signed into law is the question about whether or not EPA now has the ability to ban asbestos. Proponents of a ban say that the new law provides EPA with the power to overcome any regulatory barriers and move forward to ban asbestos.

However, opponents of a ban say such a ban is not needed because the chemical is no longer widely used. Plus, EPA has not indicated it is interested in again addressing a

possible ban. While the debate will continue, don't look for any ban on asbestos in the near future.

### **Guidance Document or a Rule?**

And the debate on this issue also continues. There has long been concern that agencies are issuing more and more guidance documents because they can avoid the process of having to go through the public comment period and hearings. While guidance documents are not legally binding – they are often treated as such.

Proponents of guidance documents say it is sometimes the only way for agencies to address an issue, providing an interpretation for employers and others. Opponents say the documents are an attempt to put in new regulations without following the required process.

They are probably both right! That means it is likely that nothing will come of the debate and things will continue as they are for some time.

### **Licensing for Occupational Safety and Health Professionals –**

A long time debate over whether industrial hygienists and safety professionals should be licensed has always ended with the fact that most of these professionals are not in favor of having to be licensed; arguing that having such a license would be turning over the profession to government policymakers. On the other hand, there are those who believe that licensing would provide an additional level of professionalism and credibility.

While in the past government has left this debate to the private sector, the White House has now entered the discussion by announcing an effort to assist states with efforts to make licenses more portable across state lines. While on the surface one may wonder what this has to do with AIHA and our members, the fact is that the efforts by the White House may make it even more difficult to enact licensing for OH&S professionals, if that is the wish of these professionals.

An interesting debate. Over the years, AIHA national has stated many times that our members are not supportive of licensing, yet AIHA national has supported individual local section efforts in specific states to enact licensing. To date though there are no states that have licensing for industrial hygienists and I don't see it happening any time soon.

### **Similar Issue to Licensing Introduced –**

Speaking of licensing, a similar issue has come up in Congress with the introduction of HR 5543, the Environmental Health Workforce Act. This act would prioritize education and training for existing and new environmental health professionals. If enacted, the bill would direct the Secretary of Health and Human Services to develop model standards, guidelines and technical assistance for credentialing environmental health workers.

Another issue that looks as if it could have some impact on some AIHA members; but the intent of the legislation is to address the problems found during the recent water crisis in Flint, MI; problems that showed the need to have qualified, accountable and efficient professionals.

Doubtful if this will be enacted this year but am sure the issue will be back in the next session of Congress.

## **OSHA Activity**

Plenty to talk about from the agency.

### **Penalty Increases –**

OSHA received approval to raise maximum penalties for safety and health violations by almost 80 percent after the Office of Management and Budget provided guidelines to the agency. The penalty increases came about through a provision in last year's federal budget that allowed OSHA to increase the penalties up to 82% on a one-time basis and then update the amounts yearly according to inflation. The changes take effect August 1.

All is not as clear as it seems though. Since the announcement and the new penalty structure, there are those who believe OSHA should significantly strengthen agency practices to settle enforcement actions. They argue that settling violations for lower amounts does not provide enough of deterrence for providing a workplace that includes risks and hazards to workers.

This has been an interesting debate over the last couple of years. Why raise the penalty maximums if the agency negotiates for a lower penalty? On the other hand, a higher maximum must be in place to provide deterrence. Am sure the debate will rage on.

### **Silica Rule –**

The silica rule is now in effect with a year of implementation underway. But all is not as easy as it sounds as there are still legal challenges and always the threat of Congress getting involved.

Compliance dates for construction are June 23, 2017 but general industry and maritime compliance will be June 23, 2018. Oil and gas sector has until June 23, 2021.

Industry remains concerned about the cost and that the rule will be unworkable. That seems to be the thrust of the legal challenges that have yet to be heard. Then you have the threat of Congress getting involved through a policy rider in the budget. Its doubtful Congress will succeed with a policy rider but just the threat adds more and more complexity to the issue. Bottom line – I don't see anything stopping this rule.

### **Injury Reporting Rule –**

Now that OSHA has finalized its injury reporting rule that requires employers to submit electronically to the agency many injury and illness records, industry is gearing up to block some aspects of the rule. Industry is not happy with the drug testing portion of the rule and also believes that the safety incentive programs in the rule will not reduce injuries.

Bottom line – Not sure industry has enough to stop the rule from moving forward but the courts may be sympathetic to some of the arguments about privacy concerns, etc.

### **General Industry Fall Rule –**

OSHA has announced it is working hard to finalize OSHA's rule to revise general industry requirements to employers to protect workers from slips, trips, and falls. The agency has resubmitted the draft final rule to the White House for an analysis. There are few details about what the final rule might include so will have to wait until the draft is returned to the agency. OSHA still hopes to finalize this rule prior to the end of the Obama administration.

### **It's Time For A Break –**

As I mentioned in the first headline of this issue, Congress will take a break for the summer later this week. Yours truly has also decided to take a break for the summer, fall, winter, spring . . . .

After having worked in the government affairs field for 40 years, the last 24+ years with AIHA, I have decided to retire from the day to day politics of the job of government affairs and of Washington.

I'm not sure it takes much to explain why I want to retire? I want to spend a little more time traveling with my wife – on vacation and not business; I want to spend a little more time getting frustrated on the golf course; and I want to spend a little more time doing nothing! That's it, that's how simple it is.

Many of the "Happenings" readers know my wife and I are moving from Virginia to California. Many have asked "why California"? Well, how far can one get from Washington without moving to Alaska or Hawaii? California was the answer, plus the year-round weather and a lot of golf courses doesn't hurt.

What will I miss? The members of AIHA come to mind, as well as the many other individuals I have worked with over the years in Washington and around the country. I will also miss going out and making presentations to local section meetings, state conferences, etc. I figure I gave over 500 presentations while employed at AIHA, probably one of the most fun things I ever did.

So, how does this impact AIHA. Well, it's a little complicated. My last day in the AIHA office is July 15 and I will then be on vacation for 3 weeks. My last day employed at AIHA will be August 5. However, AIHA has asked me, and I agreed, to stay on and do a bit of consulting until the end of the year. This gives the association time to consider the next step with government affairs. The association will have a new executive director on board around October or November and this individual will no doubt want to have some input on the government affairs department. Having me stay on until the end of the year provides some backup for the association should anything happen in Washington (that would a first). So you will still be receiving a few things from me on behalf of AIHA and I will remain on the AIHA email system until December 31.

I will be putting out another "Happenings" or two; for sure one after the election. Oh, I have to give you my take on that!! And what an election this will be. If there was ever a time to get out of Washington before whoever comes to town in January this is the time.

I joke and complain a lot about what does or does not happen in Washington. But we still have the best representative government of any place in the world! We live in the best country in the world! The people who work for government, from the heads of agencies like NIOSH and OSHA to the individuals who do the work behind the scenes, are some of the finest leaders and protectors of worker health and safety anywhere.

But remember this. In the end it many times makes little difference what OSHA does or does not do. It many times makes little difference what Congress does or does not do. Because so long as you – professionals in occupational safety and health – continue to do what you do every day, workers will be protected and able to return home safe and healthy.

Keep up the effort to improve worker health and safety and I hope we have the chance to run into each other again. Thank you for your support and your friendship over the years.

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