

House Committee Explores OSHA Standard-Setting Process

On November 1, the House Committee on Education and the Workforce's Subcommittee on Workforce Protections held a hearing during which it explored the Occupational Safety and Health Administration's (OSHA) reliance on the American Conference of Government Industrial Hygienists' (ACGIH) "threshold limit values" (TLVs) for certain substances. ILMA has been particularly interested in this issue as a result of ACGIH's current TLV proposal for petroleum mineral oil mist. The Association will submit a written statement for the hearing record.

ACGIH historically has been viewed as a credible industry partner, and its TLVs have been scientifically based and supported. However, ILMA believes that ACGIH recently has begun to propose TLVs that have a political, rather than scientific, basis, which fails to make them protective of employee health. For example, ACGIH has recommended a TLV for petroleum oil mist of 0.2 mg/m³ and an "A2" carcinogen classification. If published as proposed, formulators of thousands of products containing mineral oils, such as baby oils, food-grade mineral oil, and industrial oils, would face either specific labeling requirements or potential product liability if they do not apply a carcinogen label.

ILMA has expressed concern over this proposal, and has submitted comments to ACGIH. However, the Association has been unable to meet with the organization because its proceedings are closed. This raises obvious concerns within the industry. Representative Charlie Norwood (R-GA), who chairs the Workforce Protections Subcommittee, shares these concerns.

In May, he wrote to Secretary of Labor Elaine Y. Chao, suggesting a potential conflict of interest in the use of ACGIH as a standard-setting body due to the large number of Department of Labor (DOL) and OSHA employees who are also ACGIH members. Rep. Norwood also expressed concern that ACGIH's proceedings are not open to the public, resulting in a *de facto* secret rulemaking, a clear violation of federal law. Rep. Norwood also noted that several employers have filed lawsuits against ACGIH – most of which have been settled – complaining that the organization has developed standards without opportunity for public participation.

Rep. Norwood's hearing allowed industry representatives an opportunity to comment on OSHA's reliance on what he calls "consensus standard setting organizations." The congressman stated that, "I know that consensus standard setting organizations can play many roles with OSHA – not simply confined to rulemaking. They can also work with OSHA in partnerships to improve the quality of OSHA's work, and to share ideas and expertise with OSHA staff about advancing safety and health in the workplace." However, Rep. Norwood

cautioned that, “I do, however, believe that Congress has an obligation to pay attention to what OSHA does with information provided by private standard setting organizations. If OSHA is in any way relying on private standards then it seems to me that OSHA needs to ensure the integrity of the process used by the private group. If it cannot do so, then OSHA should not make use of that information.”

Travis Nichols, representing the American Bakers Association (ABA), testified that ACGIH has been reviewing a TLV for flour dust since September 1999, which he called “laudible” because exposure can aggravate asthmatic conditions. Nichols explained that ABA was anxious to participate in the proceeding, but found that when it attempted to contact ACGIH for “a better understanding of the science supporting their proposal and what opportunities there were to open a dialogue to discuss this important issue,” it was informed that ACGIH does not provide an opportunity for public participation.

“At best,” stated Nichols, “ACGIH will occasionally allow a representative of an industry to address their organization. Particularly disturbing is that all attempts to find out any information – even a list of members of the Chemical Substances Committee – were ignored. Repeated phone calls, emails and correspondence were not acknowledged during the entire time that the ACGIH-imposed decision clock was ticking.” The final TLV for flour dust that was issued by ACGIH was opposed by ABA, and the organization has been asking for its withdrawal, without success, since May. Obviously frustrated by the situation, Nichols testified that “all of this is not intended to air our dirty laundry as it were, but merely to point out that a so-called ‘consensus organization’ is conducting its scientific evaluations and decision making completely in private, with no outside input or oversight, and thus no confidence in the final work product. It is no wonder that ACGIH has found itself battling numerous lawsuits and may continue to face legal action. Their work product – at least in the case of flour dust – is unsubstantiated, unreliable, and completely secretive.”

ACGIH did attempt to defend itself, but its representative seemed to confuse the situation even further. Patrick Breysse, a professor at the Bloomberg School of Public Health at Johns Hopkins University in Baltimore, Maryland, stated emphatically that ACGIH:

- does not set standards;
- does not make submissions to government agencies;
- does not participate in or submit comments in government rulemaking proceedings;
- is not a quasi-governmental agency of federal advisory committee; and
- does not act in secret, as alleged.

Rather, he indicated that ACGIH publishes education materials to assist

industrial hygienists in doing their jobs. A large part of the education component is the publication of TLVs and Biological Exposure Limits (BELs). Breyse stated that “I emphasize that the TLVs and the BEIs are not developed for use in rulemaking proceedings or in standard setting activities. ACGIH does not submit the TLVs or the BEIs to any government agencies that are responsible for rulemakings or to any private organizations that are setting standards. The TLVs and the BEIs are guidelines designed to assist industrial hygienists in the control of workplace hazards.”