Regulatory Matters – Can you impact anything?

Roy Deitchman JD, CIH
Specialist – Environmental Safety and Health
Exelis Corporation
Herndon, Virginia

Outline + Mission

Outline:
1. Statutory and Regulatory Intervention
2. TLV case exercise

Mission:
To respond to regulatory/statutory matters by trying to understand and participate in the process for your organization.
First Amendment to the United States Constitution:

“Congress shall make no law...abridging the freedom of speech...or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”
Drafting of Safety/Environmental Regulations:

- Simple means of describing requirements
- Compliance monitoring methods
- Inspection targeting techniques
- Imposition of penalties

Types of lobbying groups

- Industries and Trade Associations
- Not-for-Profit Public Interest Groups
- Scientific and Research Organizations
Effective Lobbying Is Getting Votes

(from 21 Fundamentals for Effective State Legislature Lobbying by Robert Guyer, Esq.)

• One size doesn't fit all. Tailor your lobbying to the needs of that targeted lawmaker whose vote you are trying to get at that moment

• There are no unimportant staff. You may not need a staff person's support, but you can't afford his or her opposition

• Coalitions exist for advantage – not love, loyalty or debt

• Most contract lobbyists have very little personal political power. Don't confuse an ability to say “Hi” to lawmakers with the ability to get the lawmakers' votes

• Nobody cares about your issue as much as you do and nobody can win your issue for you. If you don't make it happen, it won't.

Brief Safety Regulatory History

• State initiatives
  o industrial safety laws
  o workers compensation

• Federal initiatives
  o Coal mine legislation in 1891
  o Public Health Service in 1902
  o Walsh-Healy Public Contracts Act in 1936
  o Fair Labor Standards Act in 1938
Leading up to the OSHAct

- Metal and Nonmetallic Mine Safety Act of 1966 was first significant federal step by Congress
- In January 1968, President Johnson proposed the first comprehensive occupational health and safety program
- In 1970, Congress passed the OSHAct signed into law by President Nixon

Development of OSHA Standards

- **Section 6(a)** – two year window for national consensus standards
- **Section 6(b)** – notice and comment rulemaking – includes notice, hearings, written record, post hearing comments and final rulemaking
- **Section 6(c)** – emergency temporary standards
Compliance Strategies

- Full compliance
- Substantial compliance
- “Pick and Choose” compliance
- Non-compliance

Big Compliance Experience

- $300,000,000 proposed EPA Clean Water Act Fine
- Multiple Facilities, Multiple Violations X Daily Penalties
- Two years of Negotiations with US EPA and US DOJ
- Settlement agreed to by all parties – included a Supplemental Environmental Project (SEP)
- Key compliance items included increasing the size of the environmental staff and developing an Environmental Management System (EMS)
- Close review of program including environmental audits
OSHA: Key Areas to Address Workplace Hazards at 40th Anniversary – Mr. Michaels

- More Inspections
- Larger fines
- Regulation by shaming
- Inspectors will interview employees
- More checks on employee training
- Injury and Illness Prevention Programs required
- Closer look at safety incentive programs
- Quicker development of new regulations
- Electronic workplace records to be required
- Strengthen State OSHA programs

Notice/Comments:

ANPRS and NPRMS

- Advance Notice of Proposed Rulemaking (ANPR) and Notice of Proposed Rulemaking (NPRM) are published in the Federal Register

- Standard format
  - Summary
  - Supplemental information: technical information, hazard analysis, feasibility analysis, illness/injury data
  - Text of proposed standard
Developing Effective Comments

- Standing – direct impact of proposed new rule
- Major Issues – most significant impact on your organization; respond by using factual materials
- Specific Concerns – direct impact to operations; cite to specific sections of the proposed regulations
- Cost Effectiveness and Consequences – costs and benefits of proposed new rule
- Alternatives – possible alternatives that could achieve the same objective
- Regulatory Docket Number – correct location for making comments

Legal Challenges to OSHA Standards

- **Under Section 6(f) of the OSHAct**, any aggrieved party may challenge a standard by filing a petition within 60 days with the appropriate US Court of Appeals
- **Can wait for an inspection and citation**
Measurements of Regulatory Success

• Successful integration of environmental/occupational health/safety position into law/regulations
• Defeat, modification or passage of specific legislation or rulemaking
• Lack of OSHA citations or EPA violations
• Successful challenge of OSHA citation or EPA violation
• Sustainable national interest – e.g. protection of working men/women from illness/injuries; protection of the environment

OSHA: Beyond Politics

How should OSHA regulate?
What is OSHA allowed to do?

• Enforcement
• Cooperative programs
• Information and education