



May 27, 2009

Honorable Lynn C. Woolsey  
Chairwoman  
Subcommittee on Workforce Protections  
Committee on Education and Labor  
House of Representatives  
2181 Rayburn House Office Building  
Washington, DC 20515-6100

Dear Chairwoman Woolsey:

The American Industrial Hygiene Association (AIHA) would like to take this opportunity to provide comments on your legislation, HR 2067 known as the “Protecting America’s Workers Act”, a bill to amend the Occupational Safety and Health Act of 1970. AIHA commends you and the cosponsors of this legislation for your continued interest in the health and safety of workers, an issue that impacts every family in America. We are also aware that any legislation amending the Occupational Safety and Health Act will undergo considerable discussion and hope our comments will assist in these efforts.

AIHA is one of the largest international associations serving the needs of professionals involved in occupational and environmental health and safety practicing industrial hygiene in industry, government, labor, academic institutions, and independent organizations. The AIHA mission is to promote healthy and safe environments by advancing the science, principles, practice, and value of industrial and occupational hygiene. AIHA is not only committed to protecting and improving worker health, but the health and well-being of adults and children in our communities.

Over the course of the last fifteen years there have been numerous attempts to amend the OSH Act. Other than a very few minor amendments, nearly every attempt ended in failure because of the inability of labor, industry and other stakeholders to reach an agreement on the kind of changes necessary and how best to make those changes. The result has been the continuation of an agency agenda that has become nearly impossible to complete. A lack of adequate funding, a shortage of personnel and a standard-setting process that many believe is “broken” has resulted in a view by most employees and employers, as well as occupational safety and health professionals, of an agency that is losing its focus in an attempt to protect workers.

Introduction of HR 2067 is another in a long line of legislative measures that attempts to provide the agency with a fresh look at various issues. With this in mind, AIHA would like to provide several comments on the legislation, as well as offer additional recommendations.

## **TITLE I – COVERAGE AND APPLICATION OF THE ACT**

### **Section 101. Coverage of Public Employees.**

AIHA supports expanding OSHA coverage to include state and local public employees and federal government workers not currently covered by OSHA, as well as other workers inadequately covered such as airline and railroad employees.

Currently 21 states and Puerto Rico have federally approved OSHA programs covering public employees. In addition, three states have federally approved programs that apply only to state and local governments.

That leaves 26 states and the District of Columbia with state and local government workers unprotected by any of the OSHA laws. Even more alarming is the fact that approximately 10 percent of all occupational fatalities in the United States occur among government workers.

Support for expansion of OSHA coverage is broad-based; not only from professional associations representing occupational safety and health professionals but from the U.S. Chemical Safety Board that has recommended governments at all levels establish OSHA programs for public employees.

AIHA support for this effort is not a difficult decision for AIHA as we have supported its enactment each time it has been introduced on both the federal and state level. AIHA believes that all workers, regardless of their employer, should be provided quality health and safety workplace protection.

However, we are also hopeful that as this effort proceeds Congress will ensure that OSHA, states, and local governments receive adequate resources for training, compliance assistance, and other forms of workplace health and safety education to meet OSHA compliance requirements. While expansion of health and safety protection is important, AIHA is just as concerned that resources expended by OSHA, states and local governments are for citizen services, and that those services are not compromised to provide worker health and safety protections. Both should be feasible if adequate resources are allocated.

### **Section 102. Application of Act.**

AIHA has no specific comment on this section to allow a federal agency to oversee worker health and safety if the Secretary determines that the standards and regulations to provide protection to those federal employees is at least as effective as the protection provided to those employees by the OSH Act. We understand the purpose of this section and offer only “cautious concern” that federal employees do indeed receive adequate workplace health and safety protections.

## **TITLE II – INCREASING PROTECTIONS FOR WHISTLE BLOWERS**

AIHA respectfully has no specific comments on this section of HR 2067 as it is outside the direct responsibility of AIHA members overseeing workplace health and safety.

## **TITLE III – INCREASING PENALTIES FOR VIOLATIONS**

### **Section 301. Posting of Employee Rights.**

AIHA supports language that requires employers to post information about the protections afforded employees. This does not seem to be an additional burden placed on employers nor should it be a costly obligation.

**Section 302. Prohibition on Discouraging Employee Reports of Injury or Illness.**

AIHA supports language prohibiting any employer policy or practice that would discourage the reporting of work-related injuries or illnesses by any employee or provide for adverse action against any employee for reporting a work-related injury or illness.

**Section 303. No Loss of Employee Pay for Inspections.**

AIHA supports language that would prohibit any loss of wages or benefits to employees who spend time participating in or aiding any inspection. Again, this should not create any costly obligation to the employer.

**Section 304. Investigations of Fatalities and Serious Incidents.**

AIHA supports language that would require employers to take appropriate measures to prevent the destruction or alteration of any evidence that would assist in investigating an incident. AIHA also supports language that would allow the employer to take any action on the worksite to prevent injury to employees or substantial damage to property after an incident.

**Section 305. Prohibition on Unclassified Citations.**

AIHA has no comment/position on this section.

**Section 306. Victims' Rights.**

AIHA has no comment/position on this section.

**Section 307. Right to Contest Citations and Penalties.**

AIHA has no comment/position on this section.

**Section 308. Abatement of Serious Hazards During Employer Contests to a Citation.**

AIHA has no comment/position on this section.

**Section 309. Objections to Modification of Citations.**

AIHA has no comment/position on this section.

**Section 310. Civil Penalties (and) Section 311. OSHA Criminal Penalties.**

As stated in AIHA's Global View of OSHA, "OSHA penalties, including criminal penalties, should be at least as stringent as penalties for environmental laws". AIHA is supportive of efforts to increase penalties on those employers that willfully violate OSH laws resulting in a fatality. AIHA supports language that also make "corporate officers" responsible. AIHA is also supportive of making willful violations that result in a fatality a felony rather than a misdemeanor.

However, with increased penalties AIHA recommends there be additional emphasis on correctly identifying the person who was truly responsible for the willful violation. AIHA is concerned that the health and safety professional will become the "fall guy" even if an investigation shows that these individuals were making efforts to comply with federal law and their recommendations were overruled or ignored by those with more authority.

There continues to be much debate on whether or not criminal penalties are adequate to deter health and safety violations. While this debate will likely continue, AIHA believes the debate should delineate the difference between OSHA penalties for so-called "non-serious" violations (if

there is such a thing) and those “serious” violations that are willful and disregard the health and safety of the worker.

While many argue that OSHA has been much too lenient in allowing for penalties to be lowered for violations, the fact is the agency has been forced to negotiate lower penalties for various reasons, including a lack of resources.

OSHA penalties and enforcement should be enhanced to penalize violators who willfully put workers in serious danger and cause death and injury.

## **ADDITIONAL SUGGESTIONS**

AIHA is aware that HR 2067 will receive considerable debate as it makes its way through the legislative process. We are also aware it will be extremely difficult to enact this legislation to include all of the recommendations. However, we also feel Congress should expand its consideration of changes to the OSH Act to include some, or all, of the following recommendations in HR 2067:

- AIHA recommends language be included in the legislation to require the Secretary to devise a process whereby, in addition to other health and safety standards promulgated, permissible exposure limits be modified and established for toxic materials and harmful physical agents on a regular basis. This process could include a requirement to regularly (perhaps at least every three years) evaluate available scientific evidence, data and information to determine if exposure limits should be established or updated.

There have been several attempts in the past ten years to update the Permissible Exposure Limits (PELs) with no agreement among the stakeholders on how best this can be accomplished. AIHA believes the only way to attain success is for Congress to enact legislative language providing for such a process. AIHA offers to provide legislative language incorporating such a process. Involvement of Congress, the Secretary of Labor and the agency, as well as the support of labor and industry, is the only way for this to succeed.

- AIHA urges inclusion of a new section to provide for an increase in the membership of the Occupational Safety and Health Review Commission from three to five members to ensure that cases are reviewed in a timely manner. This change would have a positive impact on the health and safety of workers as well as provide for timely review of contested citations.

Because a quorum of two Commissioners (of the three total) is needed for decision-making, OSHRC has in the past often been unable to act. Statistics show that since 1982 the Commission has consistently, more than half the time, faced the inability to have a quorum present to review cases. One needs to look no further than the past two years when only two Commissioners have served on the Commission.

In addition to language that recommends an increase in the number of Commissioners from three to five, AIHA recommends language is included to require that two of the five appointees be selected by the minority party having control of the White House. In addition, one of the appointees from each party must have practical experience and be qualified in the field of occupational safety and health. AIHA is

aware many believe all members of the Commission should be representatives from the legal profession; however AIHA feels individuals on the front line of health and safety (such as a Certified Industrial Hygienist or a Certified Safety Professional) would add expertise that is needed. These individuals may be a representative from the legal profession but should also hold a professional certification in occupational health and safety.

- AIHA recommends the legislation be amended to include language that all employers shall establish a written safety and health program. The Secretary shall be responsible for determining the requirements to be included in such written safety and health program.

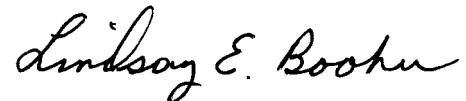
### Conclusion

In conclusion, AIHA applauds your efforts and sincerely hopes you will be successful in your endeavor to advance the cause of worker health and safety. We hope the input we have provided will be of benefit to you during the upcoming discussions and debate on OSHA and efforts to protect workers.

AIHA offers our full assistance to Congress, OSHA, and others to deliver the standards, regulations, compliance assistance and enforcement necessary to help achieve our mutual goal to provide workers and communities a healthy and safe environment and the prevention of occupational disease and injury.

Should you require additional information about AIHA or if we can be of any further assistance to you, please contact me.

Sincerely,



Lindsay E. Booher, CIH, CSP  
AIHA President

cc: AIHA Board of Directors  
Peter O'Neil, AIHA Executive Director  
Aaron Trippler, AIHA Director Government Affairs