



## *Happenings From The Hill*

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

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#### **Labor and OSHA Positions Still Not Announced**

While the Obama Transition Team continues to move along at a speed nearly unheard of for transitions, we still have no clue as to who might be leading occupational health and safety in the new administration.

As of today President-elect Obama has nominated someone for every cabinet-level position, as well as EPA, except for the Department of Labor, OSHA, MSHA, CDC and NIOSH. Not sure if one can make anything out of this, but it doesn't exactly send a positive message for those with vested interests in OH&S. Hopefully, the next 48 hours will find at least a Secretary of Labor nominee put forward.

Speaking of the Secretary of Labor, insiders seem to think that Michigan Governor Jennifer Granholm holds the inside track on this position. What we do know about Governor Granholm is that she is very interested in the issue of ergonomics. The state of Michigan has been debating this issue for several years and is expected to approve an ergonomics standard in the very near future, even though there will be considerable opposition and a continued effort to halt the standard. One would expect OSHA to at least take a serious look at ergonomics if Governor Granholm becomes the Secretary of Labor.

So where does this leave OSHA? Well, names keep popping up and names keep getting dropped. Insiders tell AIHA there may have been at least 15 names forwarded to the transition team for consideration. However, even though the transition team will

undoubtedly wait for a Secretary of Labor before moving too swiftly, the list seems to be getting smaller every day. Part of the reason is some individuals have indicated they are not interested and the other reason is simply looking at the list and determining who may or may not be qualified.

AIHA has remained very active in this process. AIHA earlier sent a letter to Emily Spieler, identified as one of those who was leading the transition for OSHA. AIHA provided some of the minimum qualifications we feel are necessary for anyone assuming the position of Assistant Secretary of Labor for OSHA. In addition, we provided the transition team with a list of AIHA priorities in the coming two years. Earlier this week, we submitted letters to additional individuals we learned may be involved in the "personnel" issue for OSHA. Again, we provided these individuals with a list of the minimum qualifications we feel are necessary for any individual considered to lead OSHA.

Before listing the names we still hear are being considered, it should be noted that this transition team is conducting business in a much different way than previous transitions. One difference is they seem to have divided their efforts into "policy" considerations and "personnel" review. While one group of transition officials are asking stakeholders to provide the transition with issues of importance at OSHA, the other half is looking at personnel who might fit in with the administration. Even more so is the fact that the group leading the effort on personnel seems to be conducting their efforts with a great deal of secrecy.

Another difference in this transition is one that is frankly, quite amazing. It's the fact that this transition team is not only moving very quickly, but the fact they have shown such a huge interest in what stakeholders actually have to say. When AIHA contacted Ms Spieler with our top issues, we heard back from her within 24 hours. She followed that contact up with a request that we provide them with additional contacts in other organizations. But if you think a 24 response was quick, when AIHA sent letters earlier this week to those individuals we heard were in charge of personnel, we heard back within hours that they appreciated the input and would be sure that appropriate personnel were informed of our suggestions. Let's hope this carries over to DOL and OSHA. If there's one thing we need to see at OSHA in the coming year it is activity! Activity of nearly any kind will do, but the agency must again show employers and employees that it can address issues.

Now, back to the list of those still being discussed for the head job at OSHA. Insiders tell AIHA there are at least five or so names that are consistently being discussed. However, don't be surprised if there are a few names no one has yet heard about. This is many times the case and with this transition team I wouldn't be surprised if that were true.

We still hear that Peg Seminario of the AFL-CIO is on the list as is Jordan Barab, lead Democratic staff with the House Education and Labor Committee. Hamid Arabzede of California is on the list as is Dr. John Howard, former head of NIOSH. We have picked up word that a new name has been forwarded to the transition team, that of Usha Wright, a CIH, former AIHA national board member, attorney and former senior vice president with ITT. And of course, several names have been forwarded and since then indicated they are not interested.

In AIHA's latest letter to the transition team we indicated that AIHA has yet to receive a request from any individual to support their nomination with the Administration and we have not announced our support for any one candidate. When the time comes we will consider each and every request. However, we will also look closely to ensure that any nominee meets the minimum qualifications we believe are necessary.

When will we hear? We don't expect the OSHA job to receive any serious consideration until some time after the Secretary of Labor nominee has been announced. An OSHA announcement likely won't happen before the first of the year at the earliest and could take some time after that.

#### NIOSH -

Over at NIOSH, we are also in a waiting mode. The transition announced that former Senator Tom Daschle will head up the Department of Health and Human Services. Next up for Mr. Daschle will be to take a look at who should head up the CDC. While nothing has been discussed in public, AIHA has heard current CDC director, Dr. Julie Gerberding, will not be returning to that position. Insiders tell us she was recently in California checking out positions with a CA university.

Once a CDC Director is appointed, we can then move on to NIOSH. Christine Branche has been serving as acting director of NIOSH and has announced that she is interested in being appointed as the new director of the Institute. Our hope is that NIOSH is not forgotten in this new Administration. AIHA and others have pledged to do everything we can to see that NIOSH is recognized as an important player in OH&S.

And speaking of NIOSH, the budget for the Institute is of major concern. Under the continuing resolution passed by Congress, NIOSH was limited to 2009 funding at the same amount as in 2008, at least through March 9. However, even though Congress says it's the same amount it really isn't. There was a slight rescission in the amount (\$7.6 million in the case of NIOSH) as Congress determined everyone should take a little less. Now NIOSH has been told to expect an additional \$10 million cut to cover reductions. We have our work cut out for us to see that NIOSH is adequately funded.

### **Agency Activity**

#### Cranes and Derricks –

OSHA has announced they have extended the comment period for the cranes and derricks proposed rule. The proposed rule was published in the Federal Register October 9 and comments were due December 8. The agency has now extended this deadline to January 22. OSHA says they extended the deadline to provide additional time for some stakeholders to respond. Let's hope they get this rule finalized soon. Few are in opposition to the rule but it has taken years to get this far.

#### Personal Protective Rule –

OSHA finalized the personal protective equipment rule on December 12. This rule was a clarification to ensure that employers know they are required to provide PPE to every employee. If an employer does not provide the equipment to every employee they can be cited for the violation on a per-employee basis. The clarification also involved training provided to each employee.

### DOL Risk Rule –

Because OSHA adopted the PPE rule without sending the rule to OMB for final review, there are some saying that DOL may do the same thing with the so-called “secret risk rule” that has received considerable debate. This proposed rule has been pushed through by DOL without so much as any public hearing and with limited chance for public input. Most expected OSHA to send the rule to OMB sometime in December so the Administration could finalize the rule before January 20. While many still expect the rule to be finalized before this Administration leaves town, it now looks as if they may simply finalize the rule without so much as any OMB review. If this rule is finalized it will be somewhat difficult for the Obama Administration to rescind it in any easy manner.

### **States Begin to Gear Up**

We are starting to see State Legislatures gear up for the 2009 session. Several bills have been pre-filed in many states and AIHA will be monitoring all of these bills to determine what impact the legislation may have on OH&S and our membership. We are already looking at one bill that would create an OSHA state plan in one state. Regulatory activity is also starting to pick up as we are in the process of providing comments on a regulation regarding meth lab cleanup.

### **And Finally –**

As we near the end of 2008, it is obvious our country faces several major problems. Many of these do not pertain directly to occupational health and safety, but all have some impact on employers and employees in other ways. Here’s hoping that as we enter 2009, we see a coming together of differences in Washington to address these problems. Let’s hope our government gives serious consideration to addressing workplace health and safety and our members are provided with the tools they need to ensure that workers are protected.

On behalf of AIHA government affairs, here’s wishing you and your family a Happy, Healthy and Safe Holiday.

**For information on any of the items in this report, please contact Aaron Tripler.**