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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Office of the General Counsel

Memorandum

Date July 21, 1988

From Attorney Advisor
Office of General Counsel

Subject Memorandum to the Record: July 15, 1988 Meeting of Dr. Windom with Representatives of the Jefferson Group, Industrial Safety Equipment Association and Senator Strom Thurmond's Office

To The Record

On Friday July 15, 1988, at the Hubert H. Humphrey Building in Washington, D.C., Dr. Robert Windom, Assistant Secretary of Health, met, at the request of Senator Strom Thurmond's office, with representatives of the Jefferson Group and the Industrial Safety Equipment Association (ISEA). The Jefferson Group was represented by Mr. Mark D. Cowan, Mr. Fred Hannett, and Mr. William Keperly. Representatives from the ISEA included Mr. Frank E. Wilcher, Jr., ISEA, and Mr. James Spool, Siebe North, Inc. Also in attendance were Mr. Richard Riseberg, Chief Counsel, Public Health Service; Dr. George Hardy, Assistant Director, CDC Washington office; Dr. Ralph Reed, Deputy Assistant Secretary for Health; Gwendolyn L. Strickland-Cid, Office of General Counsel, CDC; and Mr. Jeff Kull from Senator Strom Thurmond's office.

The meeting began at 11:05 a.m. Dr. Windom welcomed the visitors. Mr. Riseberg stated that minutes would be taken and a memorandum for the record will be prepared and made available to anyone who desires it.

Mr. Cowan stated that the purpose of the visit of the group was to implore Dr. Windom to prevail upon NIOSH to enter into dialogue with industry concerning the proposed 42 CFR Part 84. Mr. Cowan indicated that the group has been trying to enter into dialogue with NIOSH since the rule was proposed but, to date, has been unsuccessful. Mr. Cowan stated that there have been public hearings on this proposal without meaningful discussion and two meetings at NIOSH which have been "legalistic" in nature. Mr. Cowan summarized the content of the last meeting with NIOSH on April 27, 1988 (see Attachment A). The industry is again appealing for NIOSH to move forward on the issues raised at that meeting.

Mr. Hannett of the Jefferson Group agreed that there was a need to revise the regulation, but felt that NIOSH needed to open the dialogue with all affected parties, "to come up with a rule that all could live with." Mr. Hannett indicated he would leave a fact sheet on the three ideas that they would be presenting today. He indicated that it was the same information distributed to Dr. Millar at the April 27 meeting. Specifically, Mr. Hannett noted that industry was asking Dr. Windom to set up an advisory committee with all affected persons to (1) assist in the preparation of the Regulatory Impact Analysis (RIA), (2) to examine workplace testing, and (3) to review the possibility of engaging in negotiated rulemaking on this issue. Mr. Cowan noted what he felt were the benefits of negotiated rulemaking.

Mr. Riseberg inquired whether the union was in agreement with the Jefferson Group/ISEA's concerns. Mr. Cowan commented that he could not speak for the union, but noted that AFL comments are in the docket. "One problem," noted Mr. Cowan, "is that the agency didn't propose a complete rule, because no protocols were included." Mr. Cowan then reiterated that the major problem with the NIOSH rulemaking was the lack of dialogue and failure to publish a complete rule.

Mr. Spool, of Siebe North, showed Dr. Windom a sample of a half-mask respirator and gave a short history of the current respirator certification regulation, 30 CFR Part 11. Mr. Spool stated that NIOSH ignored Siebe's comments that the proposed rule would be too expensive, but, eventually, Siebe was able to demonstrate to the Office of Management and Budget (OMB) that the cost estimate was really greater than that projected by NIOSH. Thus, OMB determined that the proposed rule should be designated as a major rule and a RIA needed to be performed. Mr. Spool indicated that NIOSH is doing the RIA in-house and he does not feel that NIOSH has the capability to do it. He noted that NIOSH had not met with industry to discuss the RIA. Mr. Cowan stated that he had spoken with the NIOSH docket officer at a conference who allegedly said that NIOSH did not want industry input in the RIA, but would develop its own information base. Allegedly the docket officer admitted that NIOSH had no in-house expertise with doing a RIA and was not using any outside contractors. Mr. Cowan expressed the belief that NIOSH had predetermined the outcome of the RIA, thus, was not interested in getting input from the industry.

Mr. Riseberg asked if there were other issues besides workplace testing which were of concern. Mr. Spool noted there were many public health issues. For example, he stated that one of the technical requirements of the proposed rule would require cartridge filters to increase significantly in size and such an increase in size could adversely affect workers' comfort and compliance. Mr. Spool then stated, "Here we come petitioning our government for redress and all we get is stonewalling, Mr. Secretary. Why?" He asked Dr. Windom to <u>direct</u> the establishment of

an advisory committee. At that point Dr. Windom acknowledged the industries complaint and offered to review the situation and get back to them. Mr. Jeff Kull from Senator Thurmond's office offered his office as a conduit between Dr. Windom and the industry. Mr. Hannett reiterated that the Group is looking for "open dialogue, not death of the regulation."

At this point, Dr. Windom had to leave the meeting and Dr. Ralph Reed presided. Mr. Cowan asked if Dr. Windom would have another meeting with the Group. Dr. Reed said yes, but didn't think such a meeting could take place until late August or September. However, Dr. Reed stated that NIOSH will correspond with the Group prior to any subsequent meeting.

The meeting concluded at 11:32 a.m.

Gwendolyn L. Strickland-Cid

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