

Testimony by L. Alan Sankpill
President of Parmelee Industries, Inc.,
Kansas City, Missouri
on
NIOSH proposed Rulemaking 42 CFR 84
Washington, D.C.
January 27, 1988

Good Afternoon - My name is Alan Sankpill. I'm President of Parmelee Industries, with headquarters in Kansas City, MO. We are a 50-year old manufacturer of industrial personal protective equipment; primarily eye and face, and respiratory protection equipment. We employ approximately 460 people. We appreciate the opportunity to appear here today and to comment on the proposed standard. Others speaking today have addressed many of the concerns we have regarding this standard, so I will not repeat those comments.

Parmelee Industries has several concerns regarding the proposed rule for certification of respiratory protection devices.

First, we believe that the filter technology required in the proposed rule does not exist today. We believe there is a distinct possibility that the technology may not be developed at all in the five year period allowed. To assume that simply because new filter technology is mandated by a standard will suddenly cause the technology to appear is a rash and unwarranted assumption. What will NIOSH and end

users do if no such technology emerges in this five year window?

Second, we believe that certifying all respirators to the same level of performance allows manufacturers to build in an important safety factor in the performance of their products. Allowing manufacturers to request certification to higher levels of performance will encourage manufacturers to reduce that safety factor to gain a competitive advantage. The temptation to over-sell the capabilities of equipment will be very great. We believe this is a dangerous and unwise proposal.

We also believe that our constitutional due process rights have been violated because the new respirator standard was promulgated without a corresponding protocol to explain how the standard will be implemented.

Mr. Chairman, I am not a lawyer. I'm an engineer, so I will not try to make a scholarly legal argument.

However, I understand that both the fifth and fourteenth amendments of the U.S. Constitution prohibit governmental actions which would deprive any person of life, liberty or process without due process of law. While scholars have long argued over the legal nuances of due process, our view is simply that fundamental fairness should

accompany any official action which adversely affects private interests.

The concept of fundamental fairness is embodied in two related requirements which, at a minimum must be present to satisfy the due process guarantees: the right to adequate notice and the right to a meaningful opportunity to be heard on a proposal before it is finalized.

The guarantee of proper prior notice is the most essential ingredient of due process, and serves as the linchpin for all other procedural rights. Without such notice, additional procedural protections are nullified. For example, how can one meaningfully comment without full knowledge of what is being commented on?

This is exactly the problem facing our company in the matter at hand. In August we were given notice of a substantially revised respirator standard and asked to comment on the feasibility and economic impact of implementing the standard. However, how can we comment without knowing how the new standard will be implemented? How can the cost and feasibility of workplace testing be measured when we do not even know if the technology exists to do such testing repeatably and reliably?

Without the protocol guidelines, our hands are tied. For a small respirator manufacturer such as Parmelee Industries, a significant change in manufacturing, testing or certifying respirators can have a devastating impact on production. While a large respirator manufacturer with more resources and product lines may be able to absorb the changes without shutting down, a small company such as ours may not be able to continue production while attempting to implement the numerous changes suggested in the proposed standard. We have a very large investment in testing equipment to meet the requirements of the current standard.

Consequently, we need as much time and information as is possible to gear up for the changes. To facilitate this, Parmelee Industries requests that NIOSH publish the protocol and schedule an additional set of hearings to provide truly proper notice of the proposed changes, as well as adequate time to assess the implications of the standard and a meaningful opportunity to comment on the protocol and the standard together. Without these fundamental, minimal procedural protections, Parmelee Industries will be effectively censored from participating in the promulgation of a standard that will have a substantial, long lasting and potentially devastating impact on us.

Thank you.