

8-17-1976

William Lilley, III to Senator James O. Eastland, 17 August 1976

William Lilley

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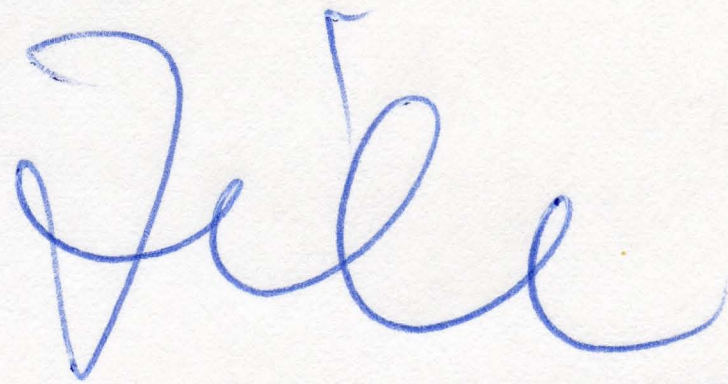
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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY
726 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20506

AUG 17 1976



A handwritten signature in blue ink, appearing to read "Lilly", is written above a horizontal blue line.

Honorable James O. Eastland
United States Senate
Washington, D. C. 20510

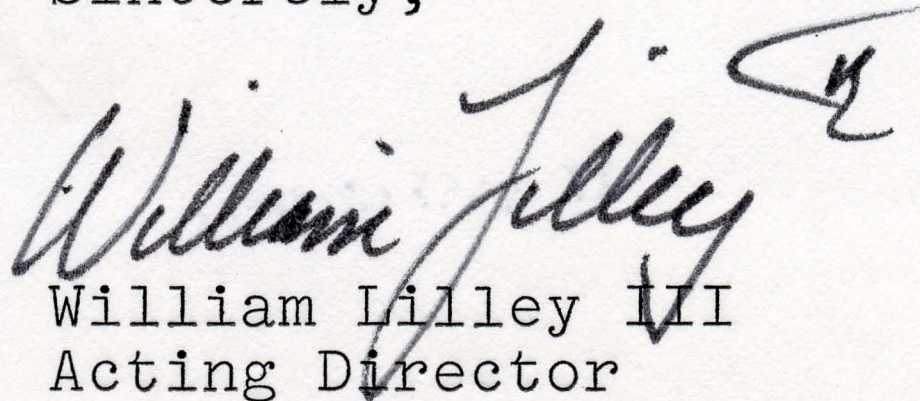
Dear Senator Eastland:

Because of your interest in OSHA's recent proposal to mandate sanitation facilities for field agricultural workers, I thought you would find our filing before OSHA on this matter of interest.

As you know, the Council on Wage and Price Stability Act directs the Council to review and comment on the inflationary impact of proposals made by federal departments and agencies. We are also mandated to examine alternatives to proposed government actions that may be less costly, which we have done in our filing on the OSHA proposal.

If you have any questions or comments about this matter, please let me know.

Sincerely,



A handwritten signature in black ink, appearing to read "William Lilly III", is written above the typed name and title.

William Lilly III
Acting Director

Enclosure

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY

726 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20506

FOR IMMEDIATE RELEASE
Friday, August 6, 1976

FOR INFORMATION CALL:
(202) 456-6757

COUNCIL CRITICIZES
OSHA'S PROPOSAL TO MANDATE SANITATION FACILITIES
FOR AGRICULTURAL WORKERS IN THE FIELD

The Council on Wage and Price Stability today sharply criticized certain provisions of OSHA's recent proposal to mandate sanitation facilities for agricultural workers in the field. While noting public health and cultural reasons for having such facilities, the Council's analysis concluded that application of the standards in many areas would be inflationary, since costs would greatly exceed benefits. Council Acting Director William Lilley III said, "The OSHA proposal is premature and unrealistic; it treats all of U. S. agriculture as if it were one homogeneous unit."

The OSHA proposal was first published in the Federal Register on April 27 of this year. Briefly, OSHA would require farmers to provide employees working in the field with potable drinking water and toilet and hand-washing facilities within five minutes walking distance.

OSHA estimates the cost of the proposal to be between \$8 million and \$16 million for the first year and lower amounts subsequently. As the Council pointed out in its filing, however, these cost estimates are on the low side since they neglect certain costs, such as the cost of transporting field sanitation facilities back and forth to follow the agricultural operation.

Also, the Council noted that OSHA apparently made little attempt to quantify the cultural benefits of the proposal and provided no epidemiological information substantiating the claim that the proposal would improve workers' and consumers' health.

In its analysis, the Council noted that working conditions are a major portion of the wage bargain and that it is in the self-interest of the employer to provide reasonable sanitation facilities for employees. The Council also pointed to the diverse character of agricultural operations. It suggested that where land is intensively utilized, with a large number of workers of both sexes, a strong

(MORE)

argument can be made for the proposed standard. But where the operation is spread out over a large area, as in the case of cattle-grazing and wheat-growing, the proposal makes little sense. Moreover, the Council noted that the proposal would apply to nonfood crops such as forestry and to food crops that are later washed or otherwise sanitized. In these areas, the Council said, the justification for the standard is considerably weaker.

The Council's analysis concluded by recommending that OSHA consider the diversity of U. S. agriculture and examine the standards promulgated by State and local governments and appraise them before issuing a national standard. It also urged OSHA to reformulate the present proposal to reflect more clearly the divergencies of working conditions noted by the Council. Acting Director Lilley said, "The Council appreciates that there are certain types of agricultural operations which require the sort of sanitary standards proposed in this regulation from both a standpoint of public health and the human dignity of the farm worker, and we applaud OSHA's concern with these objectives. However, until a much better attempt is made to focus the standards more sharply, introduce the needed degree of flexibility to reflect the great diversity of American agriculture, and analyze the actual benefits more carefully, the Council believes it would be imprudent and premature to promulgate these standards."

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(MORE)

CH2-178

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

FOR AGRICULTURE

29 CRF PART 1928

COMMENTS OF THE

COUNCIL ON WAGE AND PRICE STABILITY*

The Council on Wage and Price Stability ("Council") hereby submits its comments to the Occupational Safety and Health Administration ("OSHA") concerning a proposed rulemaking which would require certain sanitary facilities for employees engaged in agricultural work in the field. OSHA's proposal was published in the Federal Register of April 27, 1976 (41 FR 17576). The date for filing comments has been extended to August 16, 1976.

Introduction

According to the announcement, inadequate sanitation is a principal factor in the transmission of parasitic infections and other bacterial and viral diseases (ibid.). Poor sanitation often gives rise to the pollution of soil with human wastes, creating a situation that increases the possibility of contaminating drinking water, food, and

* Neither the Secretary of Labor nor the Secretary of Agriculture, both of whom are Members of the Council, participated in the preparation of this statement.

workers' hands, 1/ and of attracting flies and other health problems. Moreover, there are cultural reasons for the provision of adequate toilet and sanitation facilities, particularly where work is carried on under crowded conditions and where sexes are mixed.

Standards for sanitation have been in effect for all permanent workplaces since OSHA began promulgating regulations in 1971 (41 FR 17577). Sanitary facilities have also been required in the construction industry and in temporary labor camps (ibid.). At the present time there are no Federal health standards for agricultural employees working in the field. The OSHA proposal would eliminate this disparity. (It should be noted, however, that a number of States -- such as California and New Jersey -- have established regulations pursuant to their specific circumstances.) The OSHA proposal, which establishes a uniform nationwide standard, is addressed to the health and cultural problems described above. It also represents a response to petitions submitted by the Migrant Legal Action Program, Inc., and several other labor organizations on behalf of migrant and seasonal farm workers for, among other things, a standard on field sanitation.

The proposed OSHA standard was developed by a subcommittee of the OSHA Standards Advisory Committee on Agriculture (SACA) and is patterned after a standard that has been in effect in the State of California for a number of years. The basic features of the proposed standard are summarized as follows:

1/ In some instances food crops are harvested and packed in the field ready for delivery to the consumer without being washed or processed.

(1) Potable water for drinking purposes must be provided to all employees engaged in agricultural work in the field.

(2) Toilet and handwashing facilities must be provided for all agricultural employees engaged in agricultural field work. Facilities must be made available in a ratio of one facility for each 40 employees or fraction thereof, must be within a five-minute walk of the place of work, and must be kept clean and in good working order. For groups of fewer than five employees, facilities need not be physically provided in the field as long as they are otherwise easily accessible by readily available transportation.

In cases where the work is to be performed in two hours or less, toilet and handwashing facilities are not required.

(3) Field food service, if provided, must be carried out in accordance with sound hygiene principles.

The proposed regulations are comprehensive and apply across the board, irrespective of the particular circumstances surrounding the agricultural operation.

The Council's Interest

The Council has an interest in the instant proceeding. The Council was created by the Council on Wage and Price Stability Act of 1974 ("Act"). 1/ The Council's purpose under the Act is, generally summarized, to monitor the inflationary impact of activities in both the private and public sectors of the economy. With regard to the public sector, Section 3(a) of the Act expressly directs the Council to:

(7) review and appraise the various programs, policies, and activities of the departments and agencies of the United States for the purpose of determining the extent to which those programs and activities are contributing to inflation; and

(8) intervene and otherwise participate on its own behalf in rulemaking, ratemaking, licensing, and other proceedings before any of the departments and agencies of the United States, in order to present its views as to the inflationary impact that might result from the possible outcomes of such proceedings.

The Act, then, specifically directs the Council to examine alternatives to proposed government actions -- "possible outcomes of such proceedings" -- and to determine "the extent to which" the proposed actions might contribute to inflation. The method the Council has adopted to implement this mandate is to examine the costs and benefits of alternative actions. To the extent that the benefits of a proposed regulation exceed its costs, that regulation is anti-inflationary. On the other hand, if the costs of a proposed regulation exceed the benefits, it is inflationary. 2/

1/ Public Law 93-387, as amended by Public Law 94-78, 12 U.S.C. 1904 note.

2/ This approach is superior to simply examining changes in conventional measures of inflation such as the Consumer Price Index (CPI).

A related criterion employed by the Council is that the "cost" of a regulation may be the foregone opportunity of adopting a better regulation. Therefore, to the extent that the goals of a proposed regulation could be achieved in a more efficient, less costly manner than the method which the regulation contemplates, that regulation is, in a real sense, inflationary.

The Council has a responsibility for administering the President's Inflation Impact (IIS) Program with respect to proposed rules and regulations. 1/ OSHA has concluded that the proposed regulation is not a "major" action requiring the preparation of an IIS. OSHA, nevertheless, has provided an estimate of the direct money costs which the standards would impose. 2/ For the first year, costs are estimated to range between \$7,800,000 and \$15,750,000; for subsequent years, (incremental) costs would be considerably below these amounts. Since these figures may not take all costs into account (e.g., the costs of moving portable sanitation facilities back and forth where the agricultural operation is highly mobile), the real cost of the proposal could be considerably higher.

An effort to measure benefits, in this case, obviously involves intractable problems. However, OSHA apparently has made little attempt to quantify the cultural benefits and has provided no solid epidemiological information relating to the possible impact on workers' and consumers' health.

1/ See Executive Order 11821 and Office of Management and Budget Circular A-107.

2/ OSHA, Inflationary Impact Assessment of the Proposed Standard on Field Sanitary Facilities for Agricultural Employees, 29 CFR 1928.110.

In order to fashion a regulation to minimize its possible inflationary impact, a balance must be struck between benefits on the one hand and costs on the other. Though the Council is well aware of the significance of a clean, safe, and healthful environment for workers, it is concerned that the regulations as presently formulated may not represent the least costly method of achieving the general objectives of the regulations.

The Council's Comments

Where land is intensively utilized and large numbers of workers--often of both sexes--are concentrated on a relatively small amount of land at the same time (as in the case of harvesting many types of vegetable crops), the biological "need" and the epidemiological benefits would seem to be the greatest. Certainly it is in this sort of situation where a degree of personal privacy should be sought (the so-called "esthetic" reasons according to the SACA committee).

However, in situations where the land is not intensively utilized, such as in cattle-grazing, wheat-harvesting, and other large-scale, mobile operations, both the health and cultural arguments are less persuasive. In many cases it is impractical to have facilities within five minutes walking distance of all workers, and even if such facilities were available, it seems likely they would not always be used (this might be particularly true of workers paid on a "piece" basis who would be sacrificing income by spending up to ten minutes walking to and from a sanitary facility).

Even in a typical fruit or vegetable operation, workers move regularly and rapidly back and forth across fields, sometimes near a

particular location which contains facilities, other times quite distant. Thus, the requirement that the sanitary facilities be located within five minutes walking distance appears quite impractical and extremely arbitrary. In those circumstances where sanitary facilities are deemed to be truly necessary, it would seem as if a criterion of "reasonable access" would be superior to, even if less definitive than, the arbitrary and fixed five-minute rule. Moreover, where workers are paid on an hourly basis, it is clearly in the grower's interest to provide facilities in locations which will minimize the time spent away from the job.

From an epidemiological standpoint, there appear to be major areas of agriculture where little or no case can be made for the regulations--such as forestry and livestock grazing--and other areas where the need for such standards requires substantially more justification--such as crops which are later washed or otherwise processed prior to reaching the consumer.

Another factor that might condition the development of a standard is whether the work on a particular parcel of land is continuous from year to year, as in many fruit crops, or discontinuous as fields are rotated. From the point of view of cost, and quite possibly from an epidemiological standpoint as well, it would seem more reasonable to impose standards in the case where operations are continuous.

The proposed regulations are based largely on sanitary facility standards developed in the State of California, primarily in response to the migrant labor situation which exists in that State.^{1/} Thus, the

^{1/} "The ratios, distances, and other compliance factors associated with these provisions are substantially based on the experience and record of the California Health and Administrative Codes" (41 FR 17577).

essentials of the California standard are applied uniformly throughout the nation. It is the Council's position that applying a fixed and fairly specialized set of standards to diverse types of agricultural operations that exist in the United States is entirely too arbitrary and unjustified, and certainly is not the most cost-effective way of achieving the legitimate objectives of the regulation.

Moreover, no documentation has been brought to bear on the question of the epidemiological need for standards or on the development of the specific criteria embodied in the standards. As a result of this apparently oversimplified approach, the standards would be impractical in some situations and would yield few, if any, benefits in others at not insignificant cost. The criteria seem especially unsuitable to large-scale, mechanized operations, cattle-grazing, and a number of field crops.

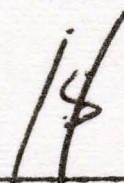
Where diversities of the sort that exist in agriculture are found in a federalist system, States and local governments are usually relied upon to develop regulations appropriate to their own circumstances. The Council has not examined the extent or reasonableness of State and local responses to this problem but does note that States have adequate authority to develop such standards. Thus, it would seem reasonable for OSHA to make a determination (which it apparently has not done) that the States have not adequately responded and are not likely to respond before promulgating a nationwide standard.

Conclusion

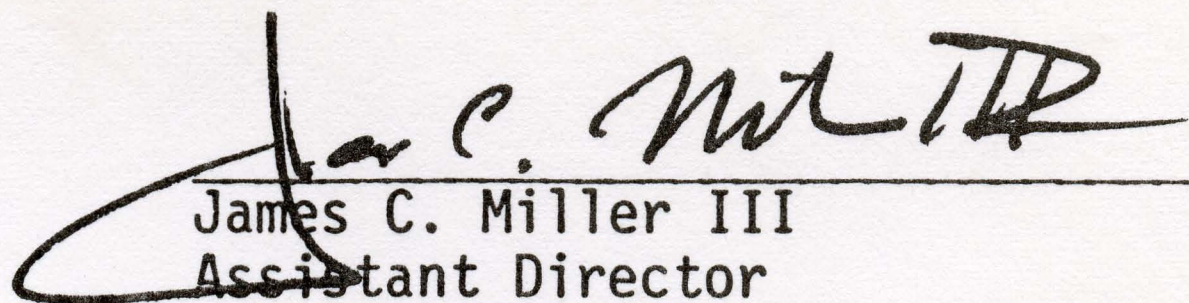
The Council appreciates that there are certain types of agricultural operations which require the sort of sanitary standards proposed

in this regulation from both a standpoint of public health and the human dignity of the farm worker, and we applaud OSHA's concern with these objectives. However, until a much better attempt is made to focus the standards more sharply, introduce the needed degree of flexibility to reflect the great diversity of American agriculture, and analyze the actual benefits more carefully, the Council believes it would be imprudent and premature to promulgate these standards.

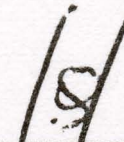
Respectfully submitted,



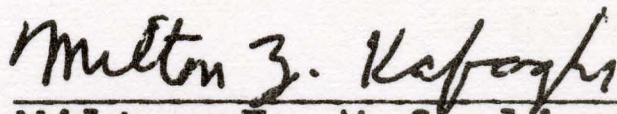
William Lilley III
Acting Director



James C. Miller III
Assistant Director
Government Operations and Research



Peter H. Lowry
Assistant General Counsel



Milton Z. Kafoglis
Economist
Government Operations and Research

Date: August 6, 1976