



Southwest OCCUPATIONAL HEALTH SERVICES, INC.

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July 25, 1983

Mr. William D. Ruckleshaus, Administrator
Environmental Protection Agency
401 M. Street, N.W.
Washington, DC 20460

Dear Mr. Ruckleshaus:

The ASARCO situation in the state of Washington is a very tough issue illustrative of the continuing benefit/risk balancing problem the EPA and society are struggling with. Based on my experience, we will not make progress in this area until we realize that we are dealing with at least two related but separated problems. The first is how do we make the societal balance. What are the benefits and what are the risks and where should the proper balance be. The second problem, which we have not addressed very well, has to do with how do we determine who the victims are and how do we compensate them, if at all.

We have become rather sophisticated at estimating the benefits and theoretically calculating the risks. However, what we are going to do with those risks that come home to roost.

First let me say that I am not in favor of a Federal program for compensating victims exposed to chemicals or other hazardous materials. I feel strongly that existing mechanisms can be adapted to meet this problem. The first one that jumps to mind is the insurance approach. If ASARCO were to establish an insurance policy covering those folks who were injured as a result of the increased risk of arsenic emissions and was reasonably effective in communicating that to the public, I am convinced the local residents would accept a much higher level of risk than without such a mechanism.

The negatives, of course, come to mind quickly. With lung cancer rampant, primarily as a result of smoking, ASARCO is going to be inundated with claims based on arsenic. Also, if not handled correctly, the public may perceive that since ASARCO or its insurance carrier has the decision as to who receives benefits and who doesn't that it will be a purely

political maneuver and with ASARCO denying all claims. Finally, it may be perceived as an admission on ASARCO's part that it agrees that arsenic causes lung cancer. A position the company I am sure does not at this point wish to take.

The benefits on the other hand are equally convincing. First, it is important to confirm in the public's mind that these materials are hazardous and are recognized as hazardous and that reasonable steps have been taken not only to control the emissions, but to compensate those persons who happen to be uniquely susceptible; too close to the operation, or for whatever reason incurred its most feared consequences. Second, it avoids the creation of a major new effort on the part of the government such as the toxic victim compensation legislation. Third, and probably most important, it starts us down the road for the first time really identifying the risks. The projected risk of one new lung cancer per year is purely a mathematical model. What we desperately need are real facts; real people who have suffered the consequences of arsenic, if any, so that our future formulas will be much more sophisticated and accurate. Fourth, we need desperately a definition of what constitutes arsenic induced cancer. If this question is left purely to scientists, we will never have a decision unless the data is so overwhelming that no one can resist. Clearly, that will not be the case with arsenic and many other compounds. What we need is a legal definition of what constitutes cancer caused by arsenic. We need to get these alleged cases into the system that best provides us those answers. For better or worst, that system is our legal system.

My company is a small technical company who specializes in the technical aspects of toxic tort cases. In the last year and a half, we have participated in some 200 of these cases. There is no question in my mind that an adequate (both timely and one that provides compensation comparable to the injury) compensation program virtually eliminates the victim's litagatory behavior.

There is no question such an approach would not eliminate all controversy associated with plants like ASARCO. However, the objective in front of us is to get on with our day-to-day business and to generate the data so that in the future we can make better and better decisions. We cannot hope to leap to some point twenty or forty years in the future where all these

problems are behind us. We must get there one step and one day at a time.

It is equally clear that the classic industrial confrontation posture is not going to get us there either. If ASARCO truly believes that only one new case of cancer a year will result from its operations then from a pure business standpoint the premium on a \$500,000.00 or \$1,000,000,000.00 insurance policy should be justifiable. If ASARCO is proved wrong and more than one cancer per year are generated then it provides us all with valuable data so we can re-adjust and re-think our cost/benefit equations.

Mr. Ruckleshaus, I wish you well in your new assignment and if I can ever be of assistance, please do not hesitate to call.

Sincerely,

A handwritten signature in cursive script that reads "Frank M. Parker, III". The signature is written in dark ink and is positioned above the printed name.

Frank M. Parker, III

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